



## False Claims Act – Overview

The Federal Government describes the False Claims Act as its “primary vehicle” for combating fraud against the United States, and in Fiscal Year 2010, the government collected over \$3 billion under the statute. (Many states have similar fraud or whistleblower statutes.) The False Claims Act targets companies that submit false claims for payment to the government, make false statements to diminish amounts owed to the government or make false statements in connection with false claims. For instance, a false certification about equipment or services that do not meet government specifications can be the basis of a claim under the statute. **The FCA has been widely used in the defense contracting, health care, and energy industries. Recent reports indicate that the government is also targeting the financial industry for statements made to obtain government mortgage guarantees or TARP funds.** The financial exposure can be staggering, with treble damages plus penalties for each false claim. To encourage whistleblowers to come forward, the statute entitles those who meet certain conditions to receive a portion of the recovery. The FCA also allows whistleblowers to prosecute cases in the name of the government in “*qui tam*” lawsuits. Last year alone, whistleblowers were paid \$386 million for bringing *qui tam* lawsuits. Because the recoveries can be so large, the plaintiffs’ bar actively recruits whistleblowers.

- **V&E is nationally recognized as a top-tier firm in General Commercial Litigation**

– *U.S. News -Best Lawyers*  
“Best Law Firm,” 2010

- **Litigation practice “Highly Recommended” in Texas and “Recommended” in DC**

– *Euromoney’s 2011 Benchmark Litigation Survey*

**Vinson & Elkins has the substantive experience and the resources to handle all aspects of False Claims Act cases, from the investigation phase through litigation.** The statute has many intricacies that have been interpreted differently by courts in different parts of the country. We know and understand those subtle complexities. The government and private whistleblowers have raised many allegations of procurement fraud involving the wars in Iraq and Afghanistan, and we have been at the cutting edge of defending those cases. We have defended some of the most prominent government contractors, and in the process have established important judicial precedents. We have represented clients in the defense, government procurement, energy, financial and health care industries in such lawsuits under both state and federal law.

**Often, the most important advocacy is made outside the courtroom.**

Cases are filed under seal, and the government investigates to decide whether to step in and take control of a *qui tam* lawsuit. Companies and inexperienced counsel may not recognize the subtle signs that a government False Claims Act investigation is underway. We recognize the signs, and begin advocating

with the government early to try to persuade it not to take over the whistleblower’s case. Often, if the government stays on the sideline, the *qui tam* plaintiff drops the case. If the plaintiff does not, we have been successful in resolving cases at early stages of litigation. If a trial is necessary, our team of seasoned trial and appellate lawyers is ready. If there is a related criminal investigation or congressional inquiry, we have experienced white collar and government investigations lawyers with substantial prosecution and government experience to handle it. If a client is confronted with a government contracts or debarment issue, we have lawyers who understand those complicated issues. Often former or disgruntled employees assert employment-related, statutory retaliation claims, and our experienced employment lawyers have successfully moved many of those claims into arbitration.

**We recognize that prevention is an essential element of any False Claims Act strategy,** especially for companies that regularly contract with the government or receive government funds. V&E lawyers can help design and implement a compliance program, both to detect and deter potential false claims and, if necessary, to help persuade the government that drastic measures are not required to assure future compliance with the FCA. ►

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## Representative Experience

### Government Contractors

- Successfully represented a defense contractor in a *qui tam* lawsuit involving the use and maintenance of trucks in the Iraq war, and persuaded the court that disputes about contractual performance cannot be the basis for a False Claims Act claim
- Successfully represented a defense contractor in several *qui tam* lawsuits alleging fraudulent charges for food services, laundry, ice and water purification operations in the Iraq war
- Successfully represented a defense contractor in connection with false claims investigations involving military operations in Haiti and Bosnia
- Currently representing contractors assisting in the Iraq and Afghanistan conflicts in civil, criminal, and administrative investigations, FCA litigation, *qui tam* lawsuits, congressional investigations, and suspension and debarment proceedings

### Energy

- Successfully represented an energy company in a *qui tam* case brought by a government auditor claiming certain pipeline transportation charges were fraudulent
- Successfully represented many energy companies in a series of *qui tam* lawsuits and investigations involving allegations of underpayment of royalties on natural gas produced from federal and Indian lands

### Health Care

- Represented a number of hospitals in investigations and related *qui tam* cases involving constitutional challenges to the FCA
- Counseled entities in the health care and defense contracting industries to develop and upgrade compliance programs to prevent the submission of potentially false claims
- Represented hospitals, physician groups, and laboratory services providers in connection with allegations of false Medicare and Medicaid billings

- Represented academic medical centers on issues related to the OIG's Physician Audit at Teaching Hospitals (PATH) recovery project, including PATH-related *qui tam* lawsuits
- Represented groups of hospitals involving investigation of bundling laboratory charges

### Other

- Successfully defended several employment-related lawsuits brought by *qui tam* relators, both in court and in arbitration, and secured the first federal appellate decision holding that retaliation claims under the False Claims Act are subject to mandatory arbitration clauses contained in employment agreements
- Represented an international law firm against allegations that the firm was liable under New Mexico's *qui tam* statute for investment losses sustained by state pension funds

## For more information, please contact:



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*Prior results do not guarantee a similar outcome.*