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The False Claims Act: A Consumer's Tool to Combat Fraud Against the Government

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> *"The sad truth is that crime against the Government often* does *pay."*[1]

Consumers have many tools available to effectuate positive changes in public policy. Most of these tools involve indirect means such as public education, legislative lobbying, lawsuits challenging inappropriate public and private action. There are some state and federal statutes that allow the consumer to assume the role of private attorney general to enforce statutory violations. Most statutes that authorize a private right of enforcement, such as the Clean Water Act[2] and the Clayton Act,[3] have a significant limitation, however. These types of statutes create private causes of action *only* for persons who have standing to bring them, mostly those who are directly aggrieved or harmed in some way by the private or public wrongdoing.

Unlike almost all other federal fraud statutes or common law causes of action,[4] the False Claims Act, with its unique *qui tam* provisions, allows individuals to file and prosecute a lawsuit in the name of the United States. The False Claims Act offers a tremendous opportunity for consumers to effectuate significant public policy change by authorizing suits even if the plaintiff has suffered no direct harm.

The False Claims Act empowers individuals and organizations with knowledge of private fraud against the government. Its express intent is to encourage *qui tam* suits by giving consumers the tools and incentive to

represent the government in actions against individuals and organizations who falsely bill for services not rendered or goods not delivered.

Although the roots of the False Claims Act extend beyond its Civil War origins, in the past thirteen years it has become one of the most valuable tools available to private citizens in combating fraud against the government. Its future use is certain to generate significant private policy changes in the manner in which organizations seek payment of government funds. It will likewise generate significant public policy changes in the way those organizations are subject to liability for falsely billing the government and falsely obtaining government moneys.

FALSE CLAIMS ACT ORIGINATED IN CIVIL WAR

The False Claims Act[5] was originally known as the "Informer's Act" or the "Lincoln Law." It was enacted during the height of the Civil War at the urging of President Abraham Lincoln when dramatically increased government spending on military procurement led to widespread fraud by private contractors.[6] The most glaring examples of fraud included the following: sawdust sold as munitions and transported to Union soldiers; supplies such as horses and mules sold to units of the Union cavalry and then resold to other units; and unseaworthy ships freshly painted and delivered to the Navy as newly built.[7]

By 1863, the fraud and profiteering in military supplies for the Union Army severely imperiled the Union war effort. In Lincoln's words, "[W]orse than traitors in arms are the men who pretend loyalty to the flag, feast and fatten on the misfortunes of the Nation while patriotic blood is crimsoning the plains of the South and their countrymen are moldering in the dust."[8] Unfortunately, in the 1860s, there were no federal law enforcement agencies (such as a centralized Department

of Justice or Federal Bureau of Investigation) to spearhead the enforcement effort. This situation left the United States – and the Union Army – with neither the tools nor the institutional mechanism to combat the fraud that the President viewed as threatening the very existence of the United States.[9] In response to President Lincoln's concerns, Congress enacted the False Claims Act of 1863, which the President immediately signed into law.[10]

One of the most important parts of the False Claims Act of 1863 allowed private *qui tam* informers to initiate fraud actions against government suppliers and contractors on behalf of the United States. *Qui tam* is the abbreviation of the Latin phrase "*qui tam pro domino rege quam pro si ipso in hac parte sequitur*," which means, "who sues on behalf of the King as well as for himself."[11]

Qui tam statutes are well-established in English jurisprudence[12] and were long considered a legitimate private means of enforcing public law. At the time of the False Claims Act's passage in 1863, numerous other *qui tam* statutes had been codified by the federal and state governments. In fact, ten of the first fourteen statutes enacted by the first United States Congress relied on *qui tam* actions to aid the police enforcement role of government agencies.[13]

Under the 1863 Act, persons found liable of fraudulently billing the government were fined an amount equal to twice the damages caused by the false claim and were required to remit a $2,000 civil penalty for each false claim submitted to the United States.[14] The individual who filed suit on behalf of the government, the "relator," received 50% of all monies recovered as well as reimbursement of costs of suit from the defendant.[15]

CONGRESS ADJUSTED ACT FOR MODERN CONDITIONS

After the Civil War, the False Claims Act fell into

disuse. During the 1930s and 1940s, following enactment of the New Deal and the military build-up prior to World War II, expansion of the government's economic role provided new opportunities for private contractors to profit through fraud.[16] However, because of what was perceived to be an abuse of the system by relators who had no direct knowledge of the fraud, yet were able to recover monies under the Act after a public disclosure of a government criminal investigation, amendments were made in 1943 which restricted the statute. The 1943 amendments prohibited a *qui tam* recovery where there was any prior government knowledge of the false billing. The 1943 amendments also gave the government discretion to award nothing to the *qui tam* relator and reduced the maximum amount the relator could obtain to 25%.[17] The effects of these changes limited the availability of *qui tam* as a means of eliminating government fraud and reducee the incentives for private individuals to file *qui tam* actions. Although these changes effectively restricted the False Claims Act's availability to private litigants, there were a few cases brought under the 1943 amendments.[18]

After passage of the 1943 amendments, another period of relative disuse followed. However, the number of filings of False Claims Act complaints increased dramatically after 1986, when Congress liberalized some of its provisions making it easier to bring lawsuits under the Act and increasing the incentives for relators to pursue False Claims Act lawsuits.

RAMPANT DEFENSE INDUSTRY FRAUD PROMPTS FURTHER CONGRESSIONAL ACTION

The 1986 amendments to the False Claims Act were prompted in large measure by increasing congressional concern over rampant fraud, particularly in the defense industry.[19] Just as the Civil War and pre-World War II military build-ups presented defense contractors

with increased opportunities to profit from false billings, the dramatic increase in military spending after 1980 again created the climate for government contractors to steal from the government.[20]

During this time period, Congress was increasingly confronted with reports of fraud and fraudulent billings that permeated virtually every government program.[21] For example, in 1985 the Department of Defense Inspector General reported that nine of the top ten defense contractors were under investigation for multiple fraud offenses, including four of the largest which were later convicted of criminal offenses against the government.[22] Public money lost to fraud ranged from hundreds of millions of dollars to $50 billion per year.[23]

In considering amendments to the False Claims Act, Congress recognized that "the most serious problem plaguing effective enforcement [of federal anti-fraud laws] is a lack of resources on the part of Federal enforcement agencies."[24] Congressional leaders thus acknowledged that in many instances the government's enforcement team was overmatched by the legal teams retained by major contractors. Faced with this untenable situation, Congress took action by strengthening private enforcement tools to supplement inadequate government action and specifically sought to increase the number of *qui tam* filings to achieve this goal:

> The Committee believes that the amendments in S. 1562 which allow and encourage assistance from the private citizenry can make a significant impact on bolstering the Government's fraud enforcement effort.[25]

1986 AMENDMENTS TO THE FALSE CLAIMS ACT STRENGTHEN THE STATUTE

The 1986 amendments were passed with bi-partisan sponsorship and support.[26] Although the Department of Justice supported strengthening the False Claims Act, it opposed any changes to the *qui tam* provisions of the False Claims Act.[27] President Ronald Reagan – like his Republican counterpart one hundred and twenty years earlier – approved the amendments and apparently recognized the need for liberalizing the q*ui tam* provisions to combat fraud committed against the government.

The 1986 amendments strengthened the False Claims Act in several different areas. Taken as a whole, the changes were designed to accomplish three purposes. First, the amendments sought to encourage the bringing of *qui tam* actions and promote *qui tam* filings by increasing the incentives available to relators and by affording relators greater protection under the Act. Second, the amendments sought to forge a "partnership" between the government and the relator by increasing the role of the relator in prosecuting false claims actions.[28] Third, the amendments modified certain procedural requirements by clarifying the knowledge required for liability and the appropriate standard of proof, broadening service of process and venue under the statute, and including a tolling provision for the statute of limitations.

Congress expressly recognized the need to "encourage more private enforcement suits" in its passage of the 1986 amendments.[29] In order to accomplish this goal, it eliminated the significant bar passed in 1943 that precluded a private cause of action where the government had any prior knowledge of the fraud. This provision was perhaps the most far reaching change under the 1986 amendments because it specifically allowed q*ui tam* actions to be pursued even if a *qui tam* complaint followed public disclosure of false billings from a criminal,

civil or administrative hearing, or other public sources. However, such cases could only be brought where the relator was an "original source" of the allegations and had direct and independent knowledge of the fraudulent activity.[30]

Increased financial incentives also encouraged relators to file *qui tam* cases. The 1986 Amendments established a minimum award of 15% (but not more than 25%) if the government intervened in the case. If the government failed to intervene, the minimum award was increased to 25% (but not more than 30%).[31] In addition, the civil penalties for relator awards were increased. First, the penalty for each false claim was raised from $2,000 per claim to $5,000 to $10,000 per claim. Second, treble, rather than double, damages were imposed for the actual loss suffered by the government.[32]

Also encouraging *qui tam* filings was the inclusion of an anti-retaliation cause of action for employees who filed complaints against their employers (or former employers). Recognizing that these "whistleblowers" were often subjected to retaliation or dismissal for reporting suspected fraud,[33] Congress included a new provision in the Act that protected these employees from retaliation for reporting fraudulent claims or taking actions in pursuit of a *qui tam* complaint by allowing them an independent cause of action under the statute.[34]

The second major thrust of the 1986 Amendments, which was to encourage a new partnership, resulted in a strengthening of the relator's role in the litigation. As the Act was originally enacted, after filing the complaint, the government had the option of intervening and prosecuting the case in place of the relator. The 1986 Amendments changed the relator's post-intervention role by allowing the relator to remain in the litigation even if the government intervened in the case.[35] Participation by the relator after government intervention was also seen as a "check that the Government does not neglect evidence, cause unduly delay [sic], or drop the false claims case without

legitimate reason."[36] Although the government could seek to limit the relator's role after its intervention,[37] with both the Department of Justice and the relator litigating the case, there would be effectively two law firms representing the government's interest.

The last objective of the 1986 Amendments – to liberalize the Act's application – was accomplished by several procedural changes. Before 1986, some courts had interpreted the False Claims Act requirement that a false claim be "knowingly" presented to the government.[38] By requiring a specific intent to defraud, the 1986 amendments clarified this standard to allow recovery where the person defrauding the government acted in deliberate ignorance of the truth or acted in reckless disregard of the truth.[39]

The standard required under most sections of the Act is that the defendant knows the information is false; or acts in deliberate ignorance or reckless disregard of the truth or falsity.[40] Congress clearly intended to impose liability for conduct that was more than merely negligent but less than intentional.[41] The Senate Committee noted that it sought to:

> strike a balance which is 'designed to assure the skeptical both that mere negligence could not be punished by an overzealous agency and that artful defense counsel could not urge that the statute actually require some form of intent as an essential ingredient of proof.'[42]

Although this standard is sometimes incorrectly referred to as an "intent" standard,[43] the Act makes clear that "no specific intent to defraud is required."[44] Rather, intent implies some type of voluntary or reckless act taken in violation of a duty.[45]

Liability under the False Claims Act is premised on knowledge, not intent. Liability is a question of scienter, or knowledge, which the Defendant possesses about false claims. However, the statute imposes a spe-

cific duty to inquire about false claims. Congress made clear that liability standard included those who have:

> actual knowledge that the claim is false, fictitious, or fraudulent, or acts in gross negligence of the duty to make such inquiry as would be reasonable and prudent to conduct under the circumstances to ascertain the true and accurate basis of the claim.[46]

Accordingly, Congress specifically wanted to include the situation where "an individual 'buried his head in the sand' and failed to make simple inquiries which would alert him that false claims are being submitted."[47] Because of the duty to make an affirmative inquiry imposed under the law, although Congress referred to the liability for "who know or have reason to know" that a claim is false,[48] liability under the False Claims Act is more accurately imposes liability for those "who know or *could* have reason to know" that a claim is false.

Congress also clarified that in order to prevail on a False Claims Act claim, the fraud must be proven by a preponderance of the evidence.[49] Courts had previously imposed varying standards of proof by "clear and convincing evidence" or even the functional equivalent of a standard similar to "beyond a reasonable doubt."[50]

Congress also liberalized venue for False Claims Act cases. As originally enacted (and unchanged by the 1943 amendments), the Act allowed a defendant to be sued within a district where "the person doing or committing such act shall be found wheresoever such act may have been done or committed."[51] In response to government concerns that cases would have to be filed in separate districts against multiple defendants, the venue provisions were broadened to allow an action "in the judicial district where any defendant can be found, resides, transacts business, or in which any act alleged as a

violation is alleged to have occurred."[52] In other words, even if one of the defendants committed only one act in a district, venue was proper. The 1986 Amendments also provided for international service of process,[53] national service of trial, and hearing subpoenas.[54] Finally, the Amendments extended the statute of limitations from "six years from the doing or committing of the act,"[55] to include a tolling provision which would extend liability to as long as ten years.[56]

As outlined above, the standard for liability under the Act makes it clear that it is not a fraud statute to which common law fraud principles apply. Instead, it is a false claim or false statement statute[57] that, as shown below, has procedural standards that place the relator and his or her attorney in the position of private government prosecutor, a unique position in American jurisprudence.

PROCEDURE REMAINS UNALTERED UNDER THE FALSE CLAIMS ACT

Since 1986, the Act's primary provisions and procedure remain unchanged despite being amended. A relator who has information about the submission of false or fraudulent claims to the government still files a complaint under seal and serves a copy of the complaint on the United States Attorney.[58] As noted above, the relator is in a unique position in American jurisprudence since the relator represents his or her own interest, as well as the government's interest:

> **Actions by private persons.** —(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government.[59]

Thus, unlike any other civil action, the relator and relator's attorney are pursuing two interests – that of the person filing the complaint and that of the United States. In addition, a separate retaliation claim or common law or statutory wrongful discharge claims may be joined with the action. Thus, the interests of the relator and the United States, as articulated by the United States Supreme Court, are not always harmonious:

> That a *qui tam* suit is brought by a private party "on behalf of the United States"...does not alter the fact that a relator's interests and the Government's do not necessarily coincide. Moreover, as the statute specifies, *qui tam* actions are brought both "for the person and for the United States Government."[60]

Several types of false claims submitted for payment to the government are actionable under the Act. The most common are "mischarge" cases in which the government has been overcharged for a service not rendered, or charged more than it should have been. Other types of false claims include the submission of false statements in contract negotiations, the submission of false statements to create eligibility for federal programs and supplying substandard services or products.[61] In short, almost any action that involves a payment or demand for payment of government funds may impose liability under the Act.[62]

The complaint, which must be accompanied by a written disclosure of evidence and information possessed by the relator, is then evaluated by government attorneys who decide whether or not to intervene in the case.[63] Although the statute requires the government to make its decision to intervene within sixty days, the government often seeks extensions and may typically take two or three years to decide.

If the government chooses to intervene, the U.S. Attorney's Office will either attempt to settle the action or ask that the complaint be sealed. If the complaint is unsealed, it will be served on the defendant and the government will have primary responsibility for prosecuting the action.[64] The relator may still participate in the lawsuit, unless the government seeks to limit the relator's involvement by court order.[65]

If the government declines to intervene, the relator may continue the action on his or her own, while continuing to inform the government of the course of the litigation. The government may also retain its right to intervene at a later stage in the case. Regardless of whether the government decides to intervene, the court must approve any settlement that is fair and reasonable.[66]

THE CONSUMER ACTS AS ADVOCATE AND PRIVATE ATTORNEY GENERAL IN *QUI TAM* ACTION

The *qui tam* statute uniquely places the relator in the position of private attorney general. As such, the relator and his counsel are only able to determine the breadth and scope of the investigation based upon the information they present. In other words, after the case is filed, the government attorneys effectively take over investigation of the case based upon information provided by the relator. While the relator and his or her attorney may focus government efforts in the government investigation, the degree of involvement remains dependent upon the type of information brought by the relator and the credibility (and potentially the resources) the relator and his or her attorney can bring to the investigation. It is therefore necessary that any relator and his counsel thoroughly and competently investigate the case and present a complete factual basis of the laws that are alleged to have been breached, and the damages resulting therefrom.

The relator's first step in the litigation process is to supply the government with factual information about fraudulent billings and fraudulent statements presented by a private contractor. The relator often acts as an interested third party by providing direct information that forms the basis of the government's investigation.

A variety of individuals are potential relators because the False Claims Act contains virtually no restrictions on who may be a relator. Often relators are employees or former employees who have direct knowledge of fraudulent activity and have complained directly or indirectly to their company. When the relator and his or her attorney present a comprehensive and well-founded factual presentation, the government has a stronger basis and a stronger inclination to intervene in the case.

It is extremely important that an attorney investigating a *qui tam* action have sufficient information on which to build a strong factual case. The attorney must properly inform the government to fulfill his obligations under the False Claims Act statute and thoroughly evaluate and complete a presentation of all facts that form the basis of the claim.

The filing of the complaint begins an investigation by the U.S. Attorney's office into both civil and criminal aspects of the complaint, if the facts warrant it. This means that two attorneys and two investigators may be simultaneously investigating the case or working in concert to investigate the case. After filing, the relator's attorney must bolster the government's case as much as possible by providing whatever information is required of the government and by ensuring the complete and thorough presentation of the factual bases of the relator which form the cause of action.

DEPARTMENT OF JUSTICE COMPILES STATISTICS UNDER THE FALSE CLAIMS ACT

Between 1986 and 1997, more than $640 billion

was lost to fraud by Federal contractors.[67] The Department of Justice estimates that as much as $100 billion, or ten percent of our total annual health care costs, may be lost each year to fraud and abuse. Medicare – which serves almost forty million Americans at an annual cost of over $180 billion – is annually defrauded by contractors of almost $27 billion.[68]

Since its liberalization in 1986, the False Claims Act has served as a valuable tool in combating fraud against the government. As can be expected from the intent of the 1986 amendments, the Act's initial application focused on the defense industry from 1986 through 1990. Approximately 75% of the *qui tam* cases filed in that period were against defense contractors.[69] With the reduction in defense spending over the past decade, other recipients of government funding have been the subject of *qui tam* actions in recent years, particularly the health care industry.

Increasingly, *qui tam* cases are a major factor in deterring and preventing health care fraud. Health fraud cases brought under the False Claims Act have increased at a dramatic rate. Between 1992 and 1996, the number of government cases brought against health care providers increased from 199 to 333. During this same time period, private *qui tam* cases increased tenfold, rising from 17 to 178.[70] Cases involving health care fraud have risen from 12% of all cases filed in 1987 to 61% of all cases filed in 1998.[71]

From 1986 through the end of fiscal year 1998, over 2,400 *qui tam* suits were filed, with the number of cases increasing steadily each year from 33 cases filed in fiscal year 1987 to 417 cases filed in fiscal year 1998. During this same time period, the Department of Justice intervened in only 337 of the cases and declined to intervene in 1229, with the remainder still under investigation[72] $625 million was recovered in *qui tam* cases in 1997 and $331 million was recovered in *qui tam* cases in 1998.[73] In the largest recovery in a civil *qui tam* case, SmithKline

Beecham Clinical Laboratories agreed to pay back $325 million to the Treasury for false billings submitted to Medicare through its clinical labs.[74]

Government intervention remains the key to successful resolution of *qui tam* action. As October 1998, cases filed by *qui tam* relators generated $2.085 billion in moneys recovered and paid into the United States Treasury.[75] Over 98.%, or $2.027 billion came from cases where there was government intervention. Non-intervention cases have generated only $58 million of the recoveries paid to the United States.[76]

CONSUMERS ARE INJURED BY FALSE CLAIMS

Because the health care industry produces the majority of current *qui tam* cases, inadequacies within the health care system are the most common source of injury to consumers. There is a common misconception that false billings do not affect the quality or delivery of health care services. In other words, the only damage that results from the false billings is money being improperly taken from the government. In fact, nothing could be further from the truth. All consumers pay the price for fraud against the government, particularly health care fraud: patients pay more in premiums, copayments and contributions for health insurance and medical services; businesses are compelled to pay increasing amounts to provide health care to their employees; and taxpayers pay more to cover health care expenditures in public health plans, such as Medicare and Medicaid. The costs of increased health care are coming directly out of the consumers' pockets – the American public is in effect subsidizing that part of the health care industry that fraudulently bills for services.

Americans pay about $ 1 trillion in health care costs per year. According to the Department of Justice, 10% of what Americans spend on health care is fraudulently billed in services not rendered, overcharges, dupli-

cate charges and other health fraud schemes. The result is that $100 billion per year is fraudulently billed.[77]

How much health care can be delivered for $100 billion?

* $100 billion would give every man, woman and child in the United States and Canada a complete health examination and physical.
* $100 billion would pay for 20 million days in an intensive care unit at a hospital.
* $100 billion would pay for 40 million CT scans.

How do higher health costs translate into lower patient care? Plainly, if there is not enough money to pay for appropriate patient care, the quality the health service delivered will go down. If there is not enough money to pay for the service in the future, the services will not be provided, particularly to those who can not afford private insurance. Inflated and false billings also serve to directly diminish the quality of health care that is delivered. Patients are paying more than necessary to receive adequate health services.

Qui tam cases involve all health care providers: hospitals, physicians, medical equipment suppliers, clinics, ambulance companies, clinical laboratories, universities, billing services, therapists, home health care providers and nursing homes. The lawsuits are generally brought by employees, doctors, nurses, researchers, subcontractors, and even competitors.

Health care fraud hurts everyone. It should be reported, thoroughly investigated and soundly eliminated. The future of our health care system, particularly our Medicare system, depends on ordinary citizens stepping forward to get rid of the fraud in health delivery.

CONCLUSION

The False Claims Act has made a dramatic difference in not only recovery of monies for fraud already committed, but also in deterring fraud by the threat of *qui*

tam lawsuits. In a study commissioned by the Taxpayers Against Fraud, former Senate Budget Committee chief economist William Stringer estimated that $35 billion of fraud has been deterred since 1986 by the threat of these lawsuits.[78]. This same study projected a deterrence of over $100 billion over the next ten years.

The future of the statute, however, remains uncertain. The health care industry in particular has pushed for a series of amendments that would severely weaken the False Claims Act provisions.[79] Whether or not the False Claims Act can withstand this frontal assault may hold the key to its continued viability as one of the few avenues for consumers to directly eliminate fraud and waste.

Thomas Grande is a partner in Davis Levin Livingston Grande in Honolulu, Hawaii where he represents qui tam relators and consumers in class and group actions in state and federal courts. He was counsel for the relator in the largest Medicare fraud settlement in Hawaii and is co-editor of the American Bar Association's *Survey of State Class Action Law*. Mr. Grande is a past officer and Board member of the Consumer Lawyers of Hawaii and is the recipient of the Outstanding Delivery of Legal Services Award for pro bono activity on behalf of low-income individuals. He can be contacted at tgrande@davislevin.com.

Endnotes

1. S. REP. NO. 99-345, at 3 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5268 (*quoting* GAO Report to Congress, "Fraud in Government Programs: How Extensive Is It? How Can It Be Controlled?"(1981)(emphasis in original)).

2. 42 U.S.C. § 7604(a) (1995).

3. 15 U.S.C. § 4 (1997).

4. There are at least four federal *qui tam* statutes in addition to the False Claims Act. *See* HELMER, LUGBILL AND NEFF, FALSE CLAIMS ACT: WHISTLEBLOWER LITIGATION § 5-2, at 66, n. 11 (1994).

5. 31 U.S.C. § 3729 (1983).

6. *See* U.S. ex rel. Newsham v. Lockheed Missiles and Space Co., 722 F.Supp. 607, 609 (N.D. Cal. 1989).

7. *See* 132 Cong. Rec. 22339-40 (1986)(Remarks of Rep Berman and Rep. Bedell).

8. 89 Cong. Rec. 10847 (1943).

9. SEE HELMER, *supra* note 4 § 3-3, at 27 (1994).

10. *See* 12 Stat. 696 (1863).

11. BLACK'S LAW DICTIONARY 1251 (6th ed.) (1990).

12. *See generally, The History and Development of Qui Tam*, 1972 WASH.U.L.Q. 81.

13. *See* U.S. ex rel. Newsham v. Lockheed Missiles and Space Co., 722 F.Supp. 607, 609 (N.D. Cal. 1989).

14. *See* 12 Stat. 696, 698 §3 (1863).

15. *See* 12 Stat. 696, 698 §6 (1863).

16. SEE BOESE, CIVIL FALSE CLAIMS AND QUI TAM ACTIONS, at 1-12 (1999 Supplement).

17. *See generally* 31 U.S.C. §§ 232, 233, 235 (1976).

18. *See* BOESE, *supra* note 16 at 1-14.

19. SEE HELMER, *supra* note 4 § 3-6(b), at 38 (1994).

20. *See id.* at 33.

21. SEE S. REP. No. 99-345, at 2 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5267.

22. SEE S. REP. No. 99-345, at 2 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5267 *citing* Testimony of Department of Defense Inspector General Joseph Sherick, Hearings on Federal Securities Laws and Defense Contracting before the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, House of

Representatives. 99th Congress, lst session (1985).

23. *See* S. Rep. No. 99-345, at 3 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5268.

24. S. Rep. No. 99-345, at 7 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5267.

25. S. Rep. No. 99-345, at 8 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5267.

26. In the Senate, the False Claims Reform Act, S. 1562, was sponsored by Senators Charles E. Grassley (R. Iowa), Dennis DeConcini (D. Arizona) and Carl Levin (D. Michigan).

27. *See* S. Rep. No. 99-345, at 36 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5301 (Letter from Acting Assistant Attorney General Phil Brady).

28. *See* 132 Cong. Rec. 20535 (1986) (Remarks of Senator Charles Grassley).

29. S. Rep. No. 99-345, at 23-24 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5288-89.

30. *See* 31 U.S.C. § 3730(e)(1) (as amended, Oct. 27, 1986).

31. *See* 31 U.S.C. § 3730(d)(1)-(2).

32. *See* 31 U.S.C. § 3729(a)

33. *See* S. Rep. No. 99-345, at 26 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266.

34. *See* 31 U.S.C. § 3730(h).

35. *See* 31 U.S.C. § 3730(c)(1).

36. S. Rep. No. 99-345, at 26 91986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5291.

37. *See* 31 U.S.C. § 3730(c)(2)

38. *Compare* United States v. Hughes, 585 F.2d 284, 286-88 (7th Cir.

1978) (no specific intent to defraud required to satisfy knowing violation) *with* United States v. Mead, 426 F.2d 118, 122-23 (9th Cir. 1970) (specific intent to defraud required to show knowing violation) *and* United States v. Ekelman & Associates, Inc., 532 F.2d 545, 548 (6th Cir. 1976) (actual knowledge of falsity of claims required).

39. *See* 31 U.S.C. § 3729(b).

40. *See* BOESE, *supra* note 16 at 2-96.

41. *See* S. REP. NO. 99-345, at 21 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5286.

42. S. REP. NO. 99-345, at 21 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5286 (*quoting* Department of Justice).

43. *See* Wang v. FMC Corporation, 975 F.2d 1412, 1421 (9th Cir. 1992) and BOESE, CIVIL FALSE CLAIMS AND QUI TAM ACTIONS Chapter 2.D. at 2-92 (1999) and Supplement.

44. 31 U.S.C. § 3729(b).

45. *See* BLACK'S LAW DICTIONARY 810 (6th ed. 1990).

46. S. REP. NO. 99-345, at 20 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5285.

47. S. REP. NO. 99-345, at 20-21 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5285-86.

48. S. REP. NO. 99-345, at 21 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5286.

49. *See* 31 U.S.C. § 3731(c).

50. H. REP. NO. 99-660, at 25 (1986).

51. 12 Stat. 696, 698 §4 (1863).

52. H. REP. NO., 99-660 at 33 (1986).

53. *See* 31 U.S.C. § 3732(a).

54. *See* 31 U.S.C. § 3731(a).

55. 12. Stat. 696, 698 §7 (1863).

56. *See* 31 U.S.C. § 3731(b).

57. *See* BOESE, *supra* note 16 at 2-5.

58. *See* 31 U.S.C. § 3730(b)(1).

59. 31 U.S.C. § 3730(b)(bold in original).

60. Hughes Aircraft Co. v. United States ex.rel. Schumer, 520 U.S. 939, 949 n.5, 117 S.Ct. 1871, 1876 n.5, 138 L.Ed. 2d 135, 145 n.5 (1997).

61. *See* 31 U.S.C. § 3730(a)(1)-(7)(1994).

62. *See* BOESE, *supra* note 16 at 2-5.

63. *See* 31 U.S.C. § 3730(b)(2).

64. *See* 31 U.S.C. § 3730(c).

65. *See* 31 U.S.C. § 3730(c)(2).

66. *See* 31 U.S.C. § 3730(c)(3).

67. *See* Taxpayers Against Fraud: Whistleblowers Recover $1.8 billion for Treasury Under Revitalized "Lincoln Law" <http://www.taf.org/taf/docs/recover.html> [hereinafter Taxpayers Against Fraud].

68. *See id.*

69. *See* Phillips, *False Claims Act in Practice*, 14 L.A. LAW 30, 31 (1991)

70. *See* BOESE, *supra* note 1 at 1-29 *citing* Johnson, *A Gold Mine in False Claims*, 39 AM. MED. NEWS 40, p. 1 (October 28, 1996).

71. *See* Statistics from Taxpayers against Fraud, source: U.S. Department of Justice [hereinafter DOJ Statistics].

72. *See id.*

73. *See id.*

74. *See* Taxpayers Against Fraud, *supra* note 67.

75. *See* DOJ Statistics, *supra* note 71.

76. *See id.*

77. *See* Taxpayers Against Fraud, *supra* note 67.

78. *See id.*

79. *See generally* Taxpayers Against Fraud: Anti-FCA Bill Introduced in Congress – Health Care Industry Seeks Exemptions for Medicare Fraud. <http://www.taf.org/taf/docs/congress.html>.