



## 2013 year in review and 2014 forecast

January 9, 2014

On the heels of the U.S. government's record-breaking 2012 monetary recovery using the False Claims Act (FCA), the 2013 fiscal year also proved to be a strong year for FCA recovery for the government.

The Department of Justice (DOJ) announced that for its fiscal year ending September 30, 2013, it secured \$3.8 billion in settlements and judgments from civil cases.<sup>1</sup>

Of the \$3.8 billion recovered:

- \$2.6 billion came from health care related fraud
- \$890 million came from procurement fraud
- \$2.9 billion came from whistleblower suits

The DOJ noted that procurement fraud cases — mainly stemming from defense contracts — constituted a record recovery.

Additionally, although overall recovery was down from the \$4.9 billion recovery in 2012, the number of whistleblower actions increased by more than 100 cases.

Although the overall dollar amount recovered by the government in 2013 was less than in 2012, the fact that the number of whistleblower cases increased is important. Companies should take heed of this fact and emphasize the importance of compliance and internal reporting within their organizations.

### Summary and Highlights from 2013

#### I. Health Care Fraud

The \$2.6 billion recovery in health care related fraud in fiscal year 2013 marked the fourth straight year of a more than \$2 billion recovery by the DOJ in cases involving health care.

#### II. Procurement Fraud

A federal court held that United Technologies Corporation was liable under the FCA for making false statements to the Air Force in negotiating the price of a contract for fighter jet engines. This \$664 million judgment, if upheld, would be the largest judgment in the history of the FCA.

This case demonstrates that procurement fraud continues to be an area of focus, including General Services Administration contract compliance.

#### III. Whistleblower Cases

RPM International Inc. paid \$60.9 million to resolve claims that a subsidiary overcharged the U.S. government for building supplies. The whistleblower, a former vice president of the subsidiary, received \$10.9 million as his share of the recovery.

Although the DOJ has not yet released the average award paid to whistleblowers during fiscal year 2013, the Department has paid out a total of \$345 million to whistleblowers. The increase in whistleblower suits is believed to be due in part to additional inducements and protections in the FCA, the Affordable Care Act and other fraud statutes.

#### Cases to Follow in 2014

This case, also from the Fourth Circuit, is on appeal before the U.S. Supreme Court. The issue for the Court to decide is how much specificity a whistleblower must provide in alleging false claims to defeat a motion to dismiss brought under Federal Rule of Civil Procedure 9(b). If heard, the Court could use this as an opportunity to clarify the specificity requirements for FCA suits.

- *Kellogg Brown & Root Services Inc. et al v. U.S. ex rel Carter*, case no. 12-1497

This case is on appeal to the United States Supreme Court from the Fourth Circuit. The issues for the Supreme Court to decide, if oral argument is granted, are:

1. whether the Wartime Suspension of Limitations Act (WSLA) applies to civil claims; and
2. whether the WSLA applies without a formal declaration of war

We reported on another Fourth Circuit case discussing the application of the WSLA earlier this year. Currently, the WSLA stops the clock on the statute of limitations for fraud committed against the government during war. The outcome of this case would greatly affect the ability of both the U.S. government and whistleblowers to bring FCA claims.

- *U.S. ex rel Nathan v. Takeda Pharmaceuticals North America Inc. et al.*, case no. 12-1349
- *U.S. ex rel. Landis v. Tailwind Sports Corp. et al.*- the Lance Armstrong FCA case

Throughout the year we have reported several updates on this FCA case, made notable by defendant Lance Armstrong. Pending in the United States District Court for the District of Columbia, no settlement has been reached yet between the parties.

Interestingly, the DOJ and Landis, the whistleblower, have argued that their claims are not barred by the FCA statute of limitations because of the WSLA. If the U.S. Supreme Court does take up the issue of the WSLA and its reach to civil claims, the outcome of this case could be affected. Continue to stay tuned for updates.

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#### Footnotes

- Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Justice Department Recovers \$3.8 Billion from False Claims Act Cases in Fiscal Year 2013 (Dec. 20, 2013).

# Authors

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