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Federal and State False Claims Act Overview

Tristram J. Coffin, Director, DRM White Collar Group

The False Claims Act: A very powerful tool

- Used to recover false or fraudulent claims for payment by federal programs.
- Substantial penalties: Up to \$11,000 to \$20,000 per claim
- Triple damages.
- Claim can be a billing for an office visit or lab test, or larger, like a jet aircraft engine. Penalty provisions can be substantial.
- “Qui tam” whistleblower provision.
- Whistleblower can collect attorney fees if successful.

False Claims Act 2021

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- Permits recovery of payments made that are “false”, untrue, or inaccurate.
- The government does not need to prove intentional fraudulent conduct.
- It is sufficient if the entity making the claim deliberately ignores whether the claim is true or false, or acts in “reckless disregard” a claim’s truth or falsity.

False Clams Act 2021

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- FCA gives the government huge leverage. Particularly due to penalties.
- Voluntary disclosure program: if entity discloses mistaken payments, payment can be limited to two times damages but zero penalties.
- Vermont State False Claims Act is very similar to Federal FCA.

False Clams Act 2021

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- How to address?
 - Don't ignore a problem (!). Opportunities to limit the damage can be lost.
 - Assess the problem and see what is really the issue.
 - Issues can be complex.
 - Recommend having counsel so you do not prove the government's case and have to provide them the roadmap.
 - Attorney-Client privilege and Attorney Work Product protections.
 - An internal investigation, discretely done and of an appropriate scope, can let you understand what the issues are so you can make information-based decisions.
 - Recommend counsel experienced in this area because often detailed government investigation and negotiations follows.

Presented by

Tristram J. Coffin, DRM Director & Chair
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DRM's White Collar and Enforcement Group