

# FALSE CLAIMS ACT & WHISTLEBLOWER REPRESENTATION

From 30 whistleblower cases filed in 1987 to 753 in 2013, it is clear that whistleblowers are now driving the fight to expose the waste of taxpayer dollars through fraud against the government.

Whistleblowers accomplish this through the False Claims Act (FCA)—the federal statute that allows private individuals to bring a qui tam lawsuit against an individual or entity defrauding the government. If successful, whistleblowers, also called “relators,” are entitled to a portion of the recovered funds under the FCA. These recoveries can be substantial. In fiscal year 2013, whistleblowers recovered almost \$400 million.

The importance of whistleblowers cannot be overstated, and Hodgson Russ recognizes and respects the contributions that whistleblowers make to protecting taxpayers. Hodgson Russ is one of only a few major law firms with experience representing both whistleblowers and companies accused by whistleblowers of wrongdoing in high-profile FCA cases. We believe in pursuing meritorious cases on behalf of whistleblowers and helping companies accused of wrongdoing investigate and, if necessary, correct any deficiencies they may encounter. This rare perspective means we are exceptionally well positioned to advise you about a potential whistleblower claim.

Our approach to representation is as distinct as our perspective. We are not a “whistleblower mill” that pays little attention to the personal needs of its clients or the factual nuances of complex cases. Rather, our Whistleblower

Representation Practice is composed of highly experienced lawyers who, only after careful consideration, agree to represent the claims of select whistleblowers. We do not take every case, nor do we believe the number of cases we have at any given time is a measure of our success. Instead, we select only the best cases, allowing us the ability to become fully immersed in the factual and legal details necessary to bring cases to successful resolutions.

We encourage you to explore our website, where you can find answers to many frequently asked questions, obtain a description of the False Claims Act, and review an explanation of how the whistleblowing process works. We will not charge you for an initial consultation, and our legal fees are paid by you only if you recover, as a percentage of that recovery.

Or call us at 716.848.1433. Dan Oliverio, who leads our Whistleblower Representation Practice, can be reached via e-mail or at his home telephone number: 716.873.4090. Contact him any time, including on weekends.

Our whistleblower clients work side by side with our lawyers and staff from start to finish – in essence becoming part of the Hodgson Russ family. And, like family, we stick by our clients through every step of the False Claims Act process.

Hodgson Russ clients were among the whistleblowers to share in the proceeds from the largest-ever False Claims Act settlement by Johnson & Johnson.

Our practice is enhanced by virtue of our representation of both plaintiffs and defendants. Few firms can bring this type of balanced experience to a case.



## The False Claims Act

The False Claims Act, also known as the Lincoln Law, is the primary legal rule used by the U.S. government to prosecute individuals and businesses that attempt to defraud federal programs. Passed in 1863 because of the poor quality of supplies sold to the Union Army during the Civil War, the False Claims Act also protects and rewards whistleblowers who report the fraudulent activity. The law has recovered well over \$35 billion since 1987, after Congress passed several important amendments. Of this amount, about \$24 billion was recovered as a direct result of whistleblower involvement.

As False Claims Act attorneys, Hodgson Russ provides innovative, experienced representation to whistleblowers and others involved in government fraud cases. The federal False Claims Act gives you the power to identify government fraud and bring a lawsuit on behalf of the United States to recover ill-gotten gains through a legal device called a qui tam provision. In these cases, the False Claims Act permits the government to recover up to triple damages from those who knowingly present, or cause to be presented, false claims to a U.S. government officer or employee, or member of the U.S. armed forces, or who knowingly make, or cause to be made, false statements to get such claims paid by the United States. The law also applies to those who make false statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the government, and it covers certain conspiracies to violate the act. In return, the False Claims Act provides whistleblowers with a monetary incentive of 15 to 30 percent of any recovery. Many states have their own false claims acts, which are often similar to the federal act. Visit the Taxpayers Against Fraud Education Fund's website to view individual state's false claims acts.

## Whistleblowers' Increasing Importance

Those who report fraud under a false claims act, whether federal or state, are called relators or whistleblowers. As the size of the government has grown and the complexity of its business affairs expanded, whistleblowers have exposed fraud in a multitude of industries, including health care, transportation, defense

contracting, pharmaceutical sales, Medicare, Medicaid, construction, and a host of others. The U.S. Department of Justice recognizes the important role whistleblowers play in the fight against government fraud and has stepped up its enforcement efforts. Working together, whistleblowers, their counsel, and the U.S. Department of Justice have recovered billions of dollars in taxpayer money obtained by fraud.

## The Whistleblower Process

Federal and state false claims act cases are often very complicated, and the stakes can be high for the relator. At Hodgson Russ, our whistleblower lawyers possess deep knowledge of the law and extensive experience dealing with people on both sides of false claims act cases, which can make or break a case and be invaluable in helping the relator and his or her family get through what can be a very trying experience.

The first step our firm takes in any potential false claims act case is to discuss the facts thoroughly with you. We study the allegations and applicable law, and we conduct any necessary factual investigations with your input and participation. If we determine that your case is worth further investigation, we discuss the particulars of our engagement with you. If you agree to hire us, and we agree to the representation, we execute an engagement letter setting forth the terms of our representation.

Next, we draft a complaint and other case-initiation documents as well as a disclosure statement, which contains the evidence and other factual information that supports the complaint. The complaint is filed under seal with the appropriate court, which means that it is filed in such a way that the neither the defendant nor the public knows about the case. Your identity is known only to the court and to the government at this stage, and these entities must keep your identity confidential for a certain period of time.

Under the federal statute, the complaint initially remains under seal for 60 days. That period may be, and usually is, extended to allow the government to decide whether to intervene in the case. During this period, we work with you and the government's attorneys to help them understand and investigate the facts of the case and the evidence available to prove

the allegations. Until the case is unsealed and the complaint is served on the defendant, you also share the obligation to keep the case confidential.

Once the defendant receives the complaint, the case is litigated like most other cases, with motions and discovery. Cases with merit are resolved either through settlement or by a trial. There is no typical case. Some are resolved in a year or less, some in one or two years, and others may take several years to resolve.

At the conclusion of the case, assuming a favorable settlement or successful trial and appeal, you are entitled to share in the proceeds recovered by the government in percentage amounts set forth in the applicable statute and depending on how helpful you have been to the case.

## Whistleblower Reward

A whistleblower is awarded a share of the proceeds if the false claims act case he or she brings to the government is successful. The whistleblower's reward – also called the relator's share – can be between 15 and 30 percent of the government's recovery.

Several factors affect the size of a whistleblower reward. These factors include:

- The scope of the whistleblower's contribution to the government's case and investigation.
- Whether the case primarily depended on disclosures from other sources (in which case the whistleblower's reward can be no more than 10 percent).
- Whether the whistleblower planned and participated in the false claim scheme. If so, the whistleblower's reward can be reduced to any amount the court deems appropriate.
- Whether statutory bars preclude the whistleblower from sharing in the recovery because of a criminal conviction or a jurisdictional disqualification in the case.
- Whether the government intervened in the case or whether the whistleblower pursued it alone.

Part of our job is to ensure, at the conclusion of a successful case, that our whistleblower client receives the maximum reward permitted under the law. As your counsel, we catalog and track

the information and input you provide the government so we can make the case for a high share at the case's conclusion.

## Federal Retaliatory Protections

Many whistleblowers worry about retaliation. Fortunately, the False Claims Act provides whistleblowers with protection against many of the risks associated with coming forward.

First and foremost, a whistleblower's identity remains secret while the case is under seal.

When the case is no longer under seal, the False Claims Act provides remedies for whistleblowers who come forward against their employers and are subsequently discharged, demoted, suspended, "or in any other manner discriminated against in the terms and conditions of employment" in retaliation for involvement in a False Claims Act case. If the court finds a whistleblower or other person covered by the anti-retaliatory provision of the False Claims Act was terminated or otherwise mistreated for the whistleblower's activities, the person is entitled to reinstatement at the same seniority level; two times the amount of back pay owed, plus interest; and compensation for any special damages sustained as a result of the discrimination, such as litigation costs and attorneys' fees.

If you are retaliated against for making a whistleblower complaint, Hodgson Russ will work with you to determine whether to bring a claim for retaliation against your employer as part of your False Claims Act case.

We have successfully represented whistleblowers in cases involving pharmaceutical fraud, medical device fraud, and government procurement fraud of various types.

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