

Federal Contracting

DOJ Recovered \$2.2 Billion in False Claims Act Cases in 2022 (1)

By Daniel Seiden

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- \$1.7 billion related to health care industry matters
 - Whistleblowers filed 652 suits, announcement says
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The Justice Department obtained over \$2.2 billion in government fraud and abuse cases in 2022, thanks to 351 settlements and judgments, the second-highest number ever in a single year.

The DOJ has now recovered more than \$72 billion under the False Claims Act since Congress' 1986 amendments to the law, which penalizes falsely claiming money from or failing to pay money to the government, the DOJ said in a Tuesday announcement.

Over \$1.7 billion of the \$2.2 billion recovery related to matters involving the health care industry, but that amount doesn't include recoveries the DOJ helped facilitate for state Medicaid programs, it said.

But the "statistics are shocking," said David Colapinto, who represents whistleblowers with Kohn, Kohn & Colapinto LLP in Washington. "It is the worst showing for the DOJ in False Claims Act cases since 2004. It also continues a disturbing trend of the DOJ obtaining lower fraud recoveries every year since 2016."

It is also the first time in the history of the False Claims Act of 1986 that whistleblower recoveries in cases in which the government declined to intervene exceeded recoveries obtained by the government in intervened cases, he said.

"And it wasn't close. But for the whistleblowers, who recovered over \$1.1 billion compared to the \$776 million in government intervened cases, this would have been a disastrous year for the government's most important anti-fraud program," Colapinto said.

The DOJ's recovery is "far less than half the year prior and the lowest in total FCA recoveries in 14 years" without adjusting for inflation, said Bob Rhoad of Nichols Liu LLP in Washington.

"The lack of any acknowledgment of that sharp decline in DOJ's press release is conspicuous," he said.

Rhoad also said that calling attention to the number of settlements and judgments is “akin to a magician dangling a shiny object to obfuscate the sleight of hand. Most knowledgeable practitioners would agree that the number of settlements is meaningless in the wake of a steep increase in low-dollar Covid/PPP-related FCA cases filed in recent years,” he said.

The DOJ’s recoveries in 2022 “also reflected the department’s focus on new enforcement priorities, including fraud in pandemic relief programs and alleged violations of cybersecurity requirements in government contracts and grants,” the announcement said.

For example, the DOJ obtained its first-ever FCA settlement with a bank that allegedly made a Paycheck Protection Program loan to a customer it knew was ineligible to receive the funds. PPP was enacted to provide loans guaranteed by the Small Business Administration to eligible small businesses for payroll, rent, and other costs during the Covid-19 pandemic, the announcement said.

The DOJ’s “continued focus on pandemic-related fraud was almost certainly a key driver behind the increased number of new matters that were initiated by both the government and relators in FY 2022,” said Jason Crawford of Crowell & Moring LLP in Washington. Crawford recently rejoined Crowell & Moring after working on FCA cases at DOJ’s Civil Fraud Section.

Whistleblowers filed 652 FCA suits in 2022, and this past year DOJ reported settlements and judgments exceeding \$1.9 billion in these and earlier-filed suits, the announcement said.

Some other notable FCA recoveries include:

1. Biogen Inc. paid nearly \$844 million to resolve allegations that it offered and paid kickbacks to physicians who spoke at or attended programs connected with Biogen’s multiple sclerosis drugs;
2. Kellogg Brown & Root Services Inc. paid nearly \$14 million to resolve allegations related to its logistics services contract to support the US Army in Iraq; and
3. Honeywell International Inc. paid about \$3 million to resolve allegations that it sold defective material used in bullet proof vests.

(Updated with comments from attorneys throughout.)

To contact the reporter on this story: Daniel Seiden in Washington at dseiden@bloomberglaw.com

To contact the editors responsible for this story: Rob Tricchinelli at rtricchinelli@bloomberglaw.com; Brian Flood at bflood@bloomberglaw.com

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