

Wiley Rein Releases 2014 False Claims Act Preview

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Companies doing business with the Government could be more at risk than ever for a False Claims Act (FCA) investigation or lawsuit in 2014. The U.S. Department of Justice (DOJ) collected \$3.8 billion in fiscal year 2013 for FCA matters, the second largest recovery ever. Although the largest portion of FCA recoveries related to health care, particularly in the pharmaceutical and medical devices industries, companies in the procurement space paid out a record \$887 million in settlements and judgments. Courts also handed down hundreds of FCA decisions over the past year, many of which complicated the FCA landscape.

The types of conduct that can subject a company to FCA liability continue to change. In 2013, cases premised on implied certification and fraudulent inducement continued to shape the contours of FCA liability. Courts have provided additional insight into when *qui tam* whistleblowers are proper. In the second half of 2013, a court rejected a constitutional limitation on FCA penalties. In addition, a contractor has sought Supreme Court review of a key jurisdictional prohibition on whistleblower suits, the first-to-file rule, and has challenged recent court decisions relating to the Wartime Suspension of Limitations Act that have effectively undermined the FCA statute of limitations. With all of these developments, it can be difficult for a company to know precisely what conduct violates the FCA.