

THE DOJ IS NOT BACKING DOWN: FCA CASES RECOVER MORE THAN \$2.8 BILLION IN 2018

The Department of Justice ("DOJ") reported it collected more than \$2.8 billion in False Claims Act ("FCA") settlements and verdicts in 2018.¹ This is significantly down from the record \$5.69 billion recovered in 2014 and from the \$3.6 billion - \$4.7 billion in 2015 through 2017. This can primarily be explained by the absence of huge industry settlements in 2018, which drove the high numbers in previous years.

The amount recovered has declined overall, but the number of cases brought under the FCA have remained fairly constant. The decline in recoveries is likely explained both by the absence of big industry settlements in 2018 and the application of the Granston Memo to FCA cases.

The FCA remains the government's primary tool to fight health care fraud. The consistent number of FCA cases, as well as the continued recovery in the billions of dollars every year, demonstrates the ongoing threat of FCA litigation to health care providers.

THE DOJ'S REPORT SUMMARY

The DOJ has recovered more than \$59 billion since Congress strengthened the FCA in 1986. With its fiscal year ending in September 2018, the DOJ announced that it obtained more than \$2.8 billion in settlements and judgments from cases involving the FCA. Of the \$2.8 billion, \$2.5 billion were from cases involving managed care providers, hospitals, pharmacies, hospice organizations, laboratories, physicians and many other health care providers.

Individuals are not immune from liability under the FCA. The government is increasing its focus on holding individuals accountable for submitting false claims in cases involving health care providers, top health care executives and other professionals receiving money from the government. The government collected about \$131 million from individual settlements or judgments in 2018.

Overall, the number of cases brought under the FCA is not changing - the dollar amounts from settlements or judgments is declining. The decline in recoveries is likely explained both by the absence of huge industry settlements in 2018 and the application of the Granston Memo to FCA cases. For example, the DOJ had blockbuster recoveries including the \$1.2 million mortgage fraud settlement with Wells Fargo in 2016 and the \$343.9 million settlement paid by Shire Pharmaceuticals LLC in 2017.

Other possible reasons in the reductions of settlements could be due to dismissing cases under the Granston Memo that once ended up just being settled. The Granston Memo directs justice attorneys to dismiss FCA *qui tam* cases that were frivolous or contrary to the government's interest. Although the government will never tell us cases are being dismissed under the Granston Memo, we can see its effects through the increasing amount of recently unsealed and dismissed FCA cases. The government wants to use its time and resources towards the cases that the government believes are stronger.

PRACTICAL TAKEAWAY

Although the amounts from settlements have declined overall, it does not indicate that the government is backing down from pursuing FCA cases. In fact, the steady amount of FCA *qui tam* cases being filed in tandem with the government weeding out the frivolous cases under the Granston Memo indicates the government will bring more of its resources to the cases it feels are stronger, and the awards from settlements or judgments may be greater.

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¹ <https://www.justice.gov/opa/pr/justice-department-recovers-over-28-billion-false-claims-act-cases-fiscal-year-2018>.