

FCA Basics: Qui Tam Lawsuits

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This is the third post in the Dorsey FCANow Blog's FCA Basics Series covering the fundamentals of the False Claims Act ("FCA"), outlining FCA procedure, and highlighting key facets of FCA practice. Today's post introduces the *qui tam* provisions of the FCA.

The FCA's Qui Tam Device

Under the *qui tam* provisions of the FCA, private citizens—called relators—bring FCA lawsuits on behalf of the United States. Relators are incentivized to expose and prosecute fraudulent activity because the FCA allows relators to collect a portion of the government's recovery, whether it was obtained via settlement or through final judgment.

The number of FCA lawsuits filed by relators has increased in recent

years, and *qui tam* cases

composes a majority of all filed FCA cases. *Qui tam* lawsuits are a major driver of FCA settlement and judgment recoveries. In fiscal year 2024, the Department of Justice obtained over \$2.9 billion in FCA recoveries. Of that \$2.9 billion, approximately \$2.4 billion came from *qui tam* lawsuits.



The Qui Tam Procedure

To initiate a *qui tam* lawsuit, a relator files a lawsuit on behalf of the United States against an organization or person allegedly defrauding the government. The lawsuit is first filed under seal and served to the U.S. Attorney in the district, meaning initially only the relator and the government know about the lawsuit and the allegations. The complaint remains under seal for at least 60 days while the Department of Justice has an opportunity to evaluate and investigate the claim. But those investigations often take a

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year or more. After the government completes its investigation, it generally does one of three things: (1) intervenes and takes over the case from the relator; (2) declines to intervene, leaving the relator to prosecute the claim; or (3) move to dismiss the action.

- When the government intervenes, it directly controls and prosecutes the action. After intervening, government may file an amended complaint adding or removing defendants and pleading new claims, particularly any unavailable to the relator due to lack of standing. The FCA also allows the government to settle the case notwithstanding the objections of the relator, so long as the court determines the settlement is “fair, adequate, and reasonable under the circumstances.” The relator remains a party to the litigation. The government may partner with the relator and their counsel in the prosecution of the case or limit the relator’s role.
- **Decline to intervene.** The government may decide after its investigation that pursuit of the litigation is not worth the investment of resources, which may or may not reflect the strength of the relator’s case. If the government declines to intervene, relators continue to prosecute the action under the FCA’s *qui tam* provisions and may receive a larger share of any recovery. The government remains the real party in interest and can still later seek to enter the case. The relator(s) and defendant(s) still must seek government approval of agreements to resolve the litigation, and the relator’s share of any settlement is determined by the government within the statutory range.
- **Move for dismissal.** The government may seek dismissal of a *qui tam* action, at the end of its investigation or at later junctures in the litigation. Relators receive notice and an opportunity to be heard. Where the government declines to intervene because it believes the case to be meritless, there is no affirmative duty under the FCA to seek dismissal. Justice Department guidance, however, instructs government attorneys to exercise the dismissal power to curb meritless or duplicative actions. As recently as 2023, the Supreme Court affirmed in *United States ex rel. Polansky v. Executive Health Res., Inc.*, 599 U.S. 419 (2023) that broad judicial deference should generally be given to the government’s decision to dismiss *qui tam*

A Unique Form of Litigation

The FCA’s *qui tam* device is unique and a bit unusual. There is peculiar co-plaintiff posture created by empowering relators to sue on behalf of the United States. The requirement that a *qui tam* action initially be filed under seal without notice to the defendant. The statutory mandate that the government investigate the allegations. The incentive structure created by the statutory relator’s share. The FCA’s *qui tam* device gives rise to numerous novel legal questions.

Several constitutional principles are implicated by *qui tam* lawsuits. The case or controversy requirement of standing doctrine exists in some tension with the relator’s lack of a particularized injury in fact. See *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000). Separation of powers questions arise, too. Article II’s Vesting and Take Care Clauses empower and burden the President with execution of the laws of the United States. Through the *qui tam* device, Congress imbues relators with prosecutorial authority, but based on the powers vested in Article I. Similarly, Article II’s Appointments Clause applies to “inferior” officers of the United States. See *Lucia v. SEC*, 585 U.S. 237 (2018). In 2023, in dissenting and concurring opinions in *Polansky v. Executive Health Res.*, Justices Thomas, Kavanaugh, and Barrett opined “there are substantial arguments that the *qui tam* device is inconsistent

with Article II and that private relators may not represent the interest of the United States in litigation.” Since *Polansky*, one federal district court has held that the Appointments Clause required that an FCA *qui tam* relator be appointed by the President. This case, *United States ex rel. Zafirov v. Florida Medical Associates*, is now before a three-judge panel in the Eleventh Circuit Court of Appeals. The Eleventh Circuit heard arguments in [Zafirov on December 12, 2025](#), and is now poised to possibly become the first court of appeal to strike down the FCA’s *qui tam* provisions on constitutional grounds.

Qui tam lawsuits raise other unique questions. Issues arise when multiple relators file similar *qui tam* claims on behalf of the government. Legal and ethical questions emerge when a relator brings a *qui tam* suit over fraudulent conduct the relator initiated or contributed to. Additionally, the settlement process can be complicated by potentially conflicting interests between the government and relator. Special concerns animate all stages of *qui tam* litigation. Dorsey’s FCA Basics Series will cover these and more features of FCA litigation in upcoming posts.