

For FY2018, Justice Department Touts Nearly \$3 Billion in False Claims Act Recoveries, Mostly From Qui Tams and Alleged Healthcare Frauds

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The Justice Department announced in a recent [press release](#) that it obtained more than \$2.8 billion in settlements and judgments from cases involving fraud and false claims against the government. The vast majority of this amount—\$2.1 billion—came from lawsuits filed by whistleblowers, or “relators” suing on behalf of the government, under the *qui tam* provisions of the False Claim Act (“FCA”). Included in the *qui tam* recoveries was \$5 million from former professional cyclist and seven-time Tour de France winner, Lance Armstrong, which he paid to resolve a lawsuit alleging his admitted use of performance enhancing drugs resulted in the submission of millions of dollars in false claims to the United States Postal Service for sponsorship payments. Altogether, *qui tam* actions in FY2018 generated over 70% of the recoveries and represented over 80% of new cases (645 out of 767). The Department’s [historical statistics](#) show that *qui tam* actions, in fact, have consistently accounted for the substantial majority of settlements and new cases since 1986 when Congress increased the incentives for whistleblowers.

Will 2019 show continued reliance on *qui tam* actions? As reported earlier this year, the nominee to be the next Attorney General of the United States, Bill Barr, [has expressed skepticism](#) regarding the constitutionality of the FCA’s *qui tam* provision. Given the Department’s continued success in recouping large settlements and deterring future misconduct through *qui tam* actions, however, it may prove difficult to suddenly reverse the Department’s traditional reliance on such actions. In the press release announcing the FY2018 statistics, Assistant Attorney General for the Civil Division Jody Hunt voiced strong support for *qui tam* plaintiffs, saying: “Whistleblowers have played a vital role in unmasking fraudulent schemes that might otherwise evade detection. The Taxpayers owe a debt of gratitude to those who often put much on the line to expose such schemes.”

Whether the Department continues to rely heavily on *qui tam* actions, there is no doubt the Department will continue to prosecute FCA cases in 2019. And although the FY2018 statistics demonstrate FCA actions may cover just about anything—even *qui tam* against former Tour de France winners—they are more likely to involve highly scrutinized fields

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such as healthcare and defense. Nearly 90% of 2018 FCA recoveries involved the healthcare industry, and 2018 marked the ninth consecutive year that recoveries from the healthcare industry exceeded \$2 billion. Thus, all companies and professionals, but particularly those operating in the healthcare industry, must remain vigilant to protect against such claims, and would be well-advised to bolster compliance programs to ensure the integrity of claims submitted to the government. Or, as Armstrong's many yellow jerseys perhaps should have suggested: proceed with caution.