I. What Is Qui Tam Litigation?

The term *qui tam* is an abbreviation of the Latin phrase *qui tam pro domino rege quam pro se ipso in hac parte sequitur*, which means “[he] who sues in this matter for the king as well as for himself.”¹ Consistent with the foregoing, qui tam litigation is a term that refers to a civil lawsuit brought by a private party on behalf of the government for the purpose of recovering monies obtained by fraud, wherein the private party—known statutorily as a “relator”—has the right to receive a portion of the recovery as a reward.

The term originated in medieval England and became a part of U.S. jurisprudence during the Civil War, when President Lincoln recruited the private sector in order to stem a wave of defective supplies being sold to the Union. To that effect, President Lincoln urged Congress to pass the first qui tam statute in the United States, the False Claims Act (FCA),² nicknamed then as “Lincoln’s Law” or

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the “Informer’s Law.” Historically thereafter, FCA actions pursued primarily defense fraud. However, when healthcare federal spending surpassed defense spending in the 1990s, healthcare fraud became a primary focus of FCA enforcement. Today, recoveries under the FCA are in the billions and 50 percent of them involve qui tam actions in the healthcare sector. Thus, understanding qui tam litigation under the FCA is essential for healthcare lawyers.

Qui tam litigation is unique. Doctrinally, qui tam litigation calls into play concepts that are nonexistent in other arenas. Procedurally, qui tam litigation invokes numerous rules unique to qui tam actions that are completely foreign to most federal litigators even though much of qui tam litigation takes place in the federal court system. The purpose of this book, therefore, is to give healthcare practitioners a basic overview of qui tam lawsuits under the FCA from stem to stern. The book begins with a discussion of liability under the FCA, followed by discussions of the pleading, filing, and service requirements; the seal and investigatory period; partial seal lifts and settlement discussion issues; intervention, declination, and its effect on seal and relator


4. See Press Release, Dep’t of Justice, Justice Department Recovers Nearly $6 Billion from False Claims Act Cases in Fiscal Year 2014 (Nov. 20, 2014), available at http://www.justice.gov/opa/pr/justice-department-recovers-nearly-6-billion-false-claims-act-cases-fiscal-year-2014 ($3 billion of the $5.69 billion reported in 2014 alone were the result of qui tam actions and $2.3 billion were recovered in the healthcare sector); Press Release, Dep’t of Justice, Justice Department Collects More Than $24 Billion in Civil and Criminal Cases in Fiscal Year 2014 (Nov. 20, 2014), available at http://www.justice.gov/opa/pr/justice-department-collects-more-24-billion-civil-and-criminal-cases-fiscal-year-2014 (reporting recovery of more than $24 billion in 2014 in civil and criminal cases combined).

5. However, as further explained herein, numerous states have qui tam statutes that provide a basis for qui tam litigation in the state courts.
share; procedures unique to the intervened case; and procedures unique to the declined case that is prosecuted by a relator alone, among other topics. Throughout, the book will briefly address important doctrinal principles and hot topics in qui tam litigation, including the role of state FCAs and state enforcement agencies, such as the Medicaid Fraud Control Units and/or state attorney generals; the first-to-file rule; the public disclosure “bar”; the enforceability of severance and confidentiality agreements and its effect on the taking of documents by relators; attorney-client privilege issues; the scope and means of information gathering and sharing between the government and the relator; and statutory fees, among other areas.

II. The FCA Substantive Legal Framework

A. Evolution of the FCA

Over the life of the statute, the FCA has been interpreted on hundreds of occasions by federal courts, which sometimes have issued conflicting interpretations in a myriad of areas. Further, the FCA has been amended five separate times, with the effect being that portions of earlier judicial opinions have been statutorily reversed via those amendments. It is not within the scope of this book to cover in detail all of the amendments, though there are references made throughout the book to some of the salient ones. Nonetheless, understanding the permutations of the FCA throughout the amendments provides an important backdrop for anyone who seeks to understand qui tam litigation today. To that effect, it can generally be said that, as originally enacted in 1863, the FCA contained civil and criminal penalties that were separated by amendments in 1872. Thereafter, amendments in 1943 weakened the FCA and caused it to fall into disuse until 1986, when it was amended again. It is the 1986 amendments that strengthened and provided the framework for the modern FCA that is credited as being the premier fraud-enforcement tool in