THE FALSE CLAIMS ACT LEGAL CENTER

Testimony of Alan Shusterman, Associate Director Taxpayers Against Fraud The False Claims Act Legal Center

Before the House Judiciary Committee Subcommittee on Courts

Hearing on House Bill 1671 The Pennsylvania False Claims Act

August 20, 1998

1220 19th Street, NW Suite 501 Washington, DC 20036 phone (202) 296-4826 fax (202) 296-4838
internet: http://www.taf.org or taf-info@taf.org

Testimony of Alan Shusterman, Associate Director
Taxpayers Against Fraud, The False Claims Act Legal Center

Mr. Chairman, Members of the Subcommittee, thank you for inviting me here today. My name is Alan Shusterman, and I am the Associate Director of Taxpayers Against Fraud, The False Claims Act Legal Center, a nonprofit public interest organization based in Washington, D.C.

Benjamin Franklin is quoted as saying, "There is no kind of dishonesty into which otherwise good people more easily and frequently fall than that of defrauding the Government." It is in response to this unfortunate reality that Taxpayers Against Fraud exists. That is, our organization is dedicated to combating fraud committed against the Federal Government through the promotion and use of the *qui tam* or whistleblower provisions of the federal False Claims Act (FCA).

In 1986, prompted by reports of widespread yet undetected and unremedied fraud being perpetrated against the Government, the U.S. Congress substantially strengthened the False Claims Act, which originally was passed during the Civil War at the urging of President Lincoln. House Bill 1671, the proposed Pennsylvania False Claims Act, has been modeled largely after the federal False Claims Act.

Among other things, Taxpayers Against Fraud serves as a False Claims Act information clearinghouse. In that role, we are in a position to report on how well the amended Act has been working. That is why I was asked to testify here today.

In short, the amended False Claims Act has proven to be an undeniable success. Marking the tenth anniversary of the 1986 FCA Amendments, Senator Charles Grassley (R-Iowa) and Congressman Howard Berman (D-Cal.), the original sponsors of the Amendments, reflected upon their success. Senator Grassley stated: "[N]o one can question the effectiveness of Howard Berman's work and how we worked together. We're equally proud parents of this legislation. And for me, its passage is the single greatest accomplishment that I want to refer to in my years in the Senate." The Senator explained: "My philosophy regarding *qui tam* is simple: It works because it's a true partnership. It's a partnership between private citizens and the Government. It joins private resources with government resources. It's a successful formula that we honor Lincoln for. In his wisdom, President Lincoln knew that you could create a team of public servants and private citizens and that they would work together for a common good serving the American taxpayer."

Likewise, Congressman Berman stated: "I take great pride in being involved with this legislation and what, most importantly, people have done with the law since we passed it. . . . [N]othing can more quickly undermine people's faith in government than the notion that inefficiencies, waste, fraud, and cheating goes on and takes the taxpayers' money. So in my sight, for me, the False Claims Acts Amendments affirm my belief in

what an honest government, and a vigilant government dealing with the people it does business with, can do on behalf of the public's relationship to that government."

Also marking the tenth anniversary, former Attorney General Edwin Meese lauded the success of the amended Act, which was signed into law by President Reagan: "It was my privilege to have been Attorney General of the United States at that time, and I have continued to appreciate the significance of this important legislation." According to Mr. Meese, the law has been "an excellent example of privatization in the public interest."

Likewise, Vice President Al Gore, in trumpeting the success of the amended Act and, in particular, the *qui tam* provisions, stated: "Certainly, this represents the kind of public-spirited participation in government that needs to be encouraged and applauded."

A year earlier, upon total *qui tam* recoveries under the amended Act passing the $1 billion mark, Assistant Attorney General Frank W. Hunger summed up the Justice Department's view: "This is a remarkable achievement for the taxpayers of this country. Senator Grassley and Representative Berman must be commended for their leadership and vision in sponsoring the legislation that has been used so effectively in the nine years since its enactment. . . . [T]he public-private partnership encouraged by the statute works and is an effective tool in our continuing fight against the fraudulent use of public funds."

In April of this year, the U.S. House Judiciary Committee Subcommittee on Immigration and Claims held a hearing on health care initiatives pursued under the False Claims Act. At that hearing, Donald K. Stern, the U.S. Attorney for the District of Massachusetts, and the Chair of the Attorney General's Advisory Committee, spoke about the critical importance of the FCA. Mr. Stern stated that "[the Act] has become the [Justice] Department's primary civil enforcement tool to combat fraud" and is "a critical tool in fighting and deterring fraud and other false billing in the health care industry." Likewise, Lewis Morris, the U.S. Health and Human Services Assistant Inspector General for Legal Affairs, called the FCA "invaluable" and "the most important tool we have in stemming the tide [of health care fraud]."

So, what I am here to talk about today is a law that has withstood the test of time, a law that the United States Congress can actually take pride in having passed. It is a law that has become a critical tool for the federal law enforcement community. It is a law that works.

Let me share with you some statistics indicative of this success. In fiscal year 1985, the year before passage of the 1986 Amendments, the Government's civil fraud recoveries totaled approximately <u>$27 million</u>. In fiscal year 1997, as a result of *qui tam* cases alone, over <u>$600 million</u> was returned to the U.S. Treasury, with hundreds of millions more recovered through government-initiated actions.

The upward trend in *qui tam* recoveries is striking. *Qui tam* recoveries from 1989 to 1991 totaled about $130 million; from 1992 to 1994, they totaled about $690 million; and from 1995 through 1997, they totaled almost one billion dollars.

Total *qui tam* recoveries since 1986 recently passed the $2 billion mark. Total civil fraud recoveries since 1986, including *qui tam*, are well over $4 billion. Moreover, a 1996 economic study by former U.S. Senate Budget Committee Chief Economist William L. Stringer projects that total fraud recoveries through the year 2006 can be expected to exceed $21 billion. According to the Stringer study, which was commissioned by Taxpayers Against Fraud, total *qui tam* recoveries from 1996 to 2006 are expected to equal between $6.9 billion and $9.3 billion.

As Congress anticipated, the amended Act has been applied to remedy a wide variety of fraud schemes that have ripped off a wide variety of federal programs. That said, the first big wave of post-1986 cases primarily involved defense contract fraud. In recent years, health care fraud has become the FCA's number one target.

Let me try to give you a sense of the types of successful cases that have been brought under the Act. From 1995 through 1997, the top government recoveries through *qui tam* cases included, among many others: $88 million in a case alleging false testing of military components and the provision of defective parts; $12 million in a case alleging the provision of nonconforming parts and false representations regarding environmental compliance; $7.5 million in a case alleging the overcharging of the Department of Veterans Affairs for generic drugs; $5.9 million in a case alleging overcharging for materials used to maintain and repair railroad crossings; $182 million in a case alleging false claims submitted to Medicare, Medicaid, and CHAMPUS for medically unnecessary laboratory tests; $6.8 million in a case alleging improperly tested and defective aircraft parts; $4 million in a case alleging the falsification of documents concerning the medical condition of Medicare beneficiaries; $7.2 million in a case alleging the manufacturing of faulty transmission parts for Army helicopters and resulting flight failures; $7.75 million in a case alleging the upcoding of Medicare and other claims for emergency physician services; $15.5 million in a case alleging the submission of false information in connection with indirect costs associated with federally sponsored research grants and contracts; and, of special local interest, $325 million in a case filed in the Eastern District of Pennsylvania involving false billing of Medicare, Medicaid, CHAMPUS, and the Federal Employees Health Benefits Program for laboratory tests.

Over the past year or so, False Claims Act cases have been brought that involve, among other things: inflated home health care management costs charged to Medicare; the billing of Medicaid and CHAMPUS for unnecessary or unperformed mental health services; overbilling on FDIC and RTC contracts; the provision of defective aircraft carrier parts to the Navy; overcharging on a Department of Energy power contract; overbilling for helicopter ambulance services; student financial aid fraud; Medicare and Medicaid hospice fraud; kickbacks involving HUD-insured properties; the underpayment of oil royalties under federal mineral contracts; mischarging of space technology costs; false prescription drug claims; false certifications under the Foreign Military Sales Program; false

information provided to the Navy in connection with computer sales; and the billing for services by physicians who actually were on leave.

Beyond remedying wrongdoing and replenishing the U.S. Treasury, the amended Act has had an even more important impact. That is, it has introduced a powerful deterrent to those contemplating fraud against the Federal Government. Before 1986, those who were tempted to defraud the Government faced relatively little chance of getting caught, and a relatively small price to pay if caught. The 1986 Amendments changed that. The existence of strong *qui tam* provisions greatly increases the likelihood of wrongdoers being exposed. And the amended FCA hits bad actors with significant financial consequences.

While admittedly difficult to quantify, the 1996 Stringer economic study estimates that the deterrence of fraud due to the 1986 Amendments for their first ten years of existence totaled between $148 billion and $296 billion, and for their second ten years (i.e., 1996-2006) will total between $240 billion and $480 billion, even assuming a conservative estimate of deterrent effect.

In conclusion, a strong False Claims Act and *qui tam* are the American taxpayers' best hope for ensuring that all funds fraudulently diverted from federal programs will ultimately be recovered and, more importantly, that fraud against the Federal Government will be diminished in the future. I respectfully suggest that the taxpayers of Pennsylvania deserve the same.

Before I answer questions, let me quickly point out what I've included in the appendix to my written testimony. In the appendix you will find: (1) a summary of the most recent *qui tam* statistics released by the Justice Department; (2) charts describing the cases that led to the top *qui tam* recoveries in 1995, 1996, and 1997; (3) descriptions of about fifty False Claims Act cases that have been brought or resolved in the first half of this year; (4) excerpts from *The 1986 False Claims Act Amendments Tenth Anniversary Report*, including a brief history of the Act; and (5) the Executive Summary and Table of Contents from the 1996 Stringer economic study.

Complete copies of the Stringer study and the *Tenth Anniversary Report* can be obtained free of charge by calling our office at 202-296-4826. And, if anyone has any questions that I don't end up answering today, please feel free to call me at that same number. Thank you.

A graduate of the University of Pennsylvania and Harvard Law School, Mr. Shusterman has served as the Associate Director of Taxpayers Against Fraud, The False Clams Act Legal Center (TAF) for the past four years. Established in 1986, TAF is based in Washington, D.C. where it maintains a comprehensive False Claims Act library open to the public and a staff of lawyers and other professionals who are available to assist anyone interest in the Act and qui tam.

APPENDIX

- *Qui Tam* Statistics (as reported by DOJ in October 1997)
- Top 1997 *Qui Tam* Recoveries, Top 1996 *Qui Tam* Recoveries, and Top 1995 *Qui Tam* Recoveries
- INTERVENTIONS AND SUITS FILED/UNSEALED, JUDGMENTS AND SETTLEMENTS from Vol. 13 (April 1998) and Vol. 14 (July 1998) of the *False Claims Act and Qui Tam Quarterly Review*
- Excerpts from *The 1986 False Claims Act Amendments Tenth Anniversary Report*
- Executive Sumary and Table of Contents from *The 1986 False Claims Act Amendments: An Assessment of Economic Impact* by William L. Stringer

Qui Tam Statistics

(as reported by DOJ in October 1997)

Total Recoveries Near $2 Billion, Filings and Returns Hit Record Levels in FY '97

Total *qui tam* recoveries exceed $1.83 billion, with over 2,000 *qui tam* cases filed since the False Claims Act was amended in 1986. In fiscal year 1997 alone, a record 530 cases were filed and over $625 million was returned to the U.S. Treasury.

FY 1987:	33 cases	FY 1993:	131 cases
FY 1988:	60 cases	FY 1994:	221 cases
FY 1989:	95 cases	FY 1995:	279 cases
FY 1990:	82 cases	FY 1996:	363 cases
FY 1991:	90 cases	FY 1997:	530 cases
FY 1992:	119 cases		

Qui tam recoveries in cases pursued by DOJ:

FY 1988:	$355,000	FY 1993:	$173 million
FY 1989:	$15 million	FY 1994:	$379 million
FY 1990:	$40 million	FY 1995:	$244 million
FY 1991:	$72 million	FY 1996:	$127 million
FY 1992:	$134 million	FY 1997:	$625 million

DOJ has intervened in or otherwise pursued 267 cases and declined 1,009. The remainder are under investigation.*

Thirty-one million dollars has been recovered in cases declined by DOJ. The average recovery in all *qui tam* cases where there has been a recovery is $7.2 million, with $1.005 million as the average relator's award and $183,000 as the median relator's award. Relators' awards when DOJ intervened in or otherwise pursued the action, where shares have been determined, total $244 million (an average of 16% of recovery). Relators' awards in declined cases total $8.9 million (an average of 29%).

Health Care Fraud Accounts for Majority of New Cases

The percentage of *qui tam* cases involving HHS as the client agency is as follows:

FY 1987:	12%	FY 1995:	34%
FY 1988-92:	15% each year	FY 1996:	56%
FY 1993:	30%	FY 1997:	54%
FY 1994:	36%		

* *According to DOJ, these figures are not current and depend on reporting from the U.S. Attorneys' Offices.*

Top 1997 *Qui Tam* Recoveries

Company U.S. District Court	Allegations	Government Recovery	Relator Share
SmithKline Beecham Clinical Laboratories, Inc. ED PA	False billing of Medicare, Medicaid, CHAMPUS, and FEHBP for additional tests not needed or ordered, tests not performed, code jamming, and kickbacks	$325 million	Robert Merena, Charles Robinson, Jr., and Glenn Grossenbacher (shares not decided) Kevin Spear, Jack Dowden, and Berkeley Community Law Center $1.9 million (proposed settlement)
New York University Medical Center SD NY	Submitting false information in connection with indirect costs associated with federally sponsored research grants and contracts	$15.5 million	Emmanuel Roco $1.56 million
Teledyne, Inc., Allegheny Teledyne Incorporated, Teledyne Industries, Inc., Teledyne Electronic Systems, Inc., and Teledyne Systems Company, Inc. CD CA	Cross-charging work done for commercial customers resulting in inflated prices for military systems, failure to perform required tests	$13.95 million	Robert Giardini (share not decided)
OrNda Healthcorp CD CA	Fraudulent Medicare claims by hospitals through improper contracts and kickbacks	$12.65 million	James Montagano $2.34 million
Blue Shield of California ND CA	False claims by Medicare contractor, altering documents and obstructing HCFA audits	$12 million	Weldon Dodson $2.16 million
American Eurocopter Corporation, Eurocopter International, and Eurocopter France ED VA	Overcharges and illegal commissions in connection with foreign sale of helicopters	$10 million	Jeffrey Tribble, J. Wayne Trimmer, and James Buffington, Jr. $2.4 million
EmCare Inc. WD OK	Upcoding of Medicare, Medicaid, CHAMPUS, and FEHBP claims for emergency physician services	$7.75 million	Estate of Theresa Semtner $1.5 million
SPECO Corporation SD OH	Manufacturing faulty transmission parts for Army helicopters resulting in flight failures	$7.2 million	Brett Roby 23 percent (defendant in bankruptcy)

Top 1996 *Qui Tam* Recoveries

Company U.S. District Court	Allegations	Government Recovery	Relator Share
Laboratory Corporation of America Holdings SD NY MD NC D NM ED VA	False claims for medically unnecessary "add-on" tests submitted to Medicare, Medicaid, and CHAMPUS	$182 million	Andrew Hendricks William St. John LaCorte (shares not reported) Mary Downy $388,965 Geoffrey Zuccolo $625,400
Damon Clinical Laboratories, Inc. D MA D MA	Fraudulent billing of Medicare, Medicaid, and CHAMPUS by bundling medically unnecessary tests not knowingly ordered by doctors	$83.7 million	Jeanne Byrne $9 million Jack Dowden and Kevin Spear $1.46 million
FMC Corporation ND CA	Inflated military contracts including amounts for independent research and development (IR&D) and bid and proposal (B&P) projects	$13 million	Robert Neargarder $2.86 million
Corning Clinical Laboratories Inc. and Unilab Corporation (MetPath Inc.) D NJ	False billing of Medicare, Medicaid, and CHAMPUS for blood indices not ordered or medically necessary	$11 million	Kevin Spear and Jack Dowden $1.6 million
Spectra Laboratories, Inc. ND CA	Improper billing of Medicare, CHAMPUS, and FEHBP for end stage renal disease tests already reimbursed under composite rate	$10.1 million	Almario Aviles $1.5 million
Air Industries Corp. CD CA	Improperly tested and defective aircraft parts	$6.8 million	Dan McKay and Tony Danyal $1.53 million

Top 1996 *Qui Tam* Recoveries cont.

Company U.S. District Court	Allegations	Government Recovery	Relator Share
Medline Industries, Inc. ND IL	False invoices presented to Department of Veterans Affairs for products manufactured in non-designated countries	$6.4 million	Ralph Rybacki $1 million
Lockheed Martin Inc. (Martin Marietta Corporation) D MD	Overcharging DOD by underbidding contract, then boosting research and development costs	$5.3 million	Jerry Mayman $795,000
Ethyl Corporation and Ethyl Petroleum Additives, Inc. ED MO	False representations that additive packages met military standards	$4.75 million	Charles Duchek (share not reported)
Teledyne Industries, Inc. WD MO	Missing jet engine parts under Air Force repair contract, altering and destroying records	$4.75 million	Gerald Woodward $831,250
Hughes Aircraft Company, Inc. CD CA	Failure to perform tests on components used in military electronic equipment	$4.05 million	Margaret Goodearl, Ruth Aldred, and Taxpayers Against Fraud $891,000
Advanced Care Associates, Inc. ED PA	Falsification of documents concerning medical condition of Medicare beneficiaries, misrepresentations regarding charges and nature of lymphedema pumps	$4.03 million	Christopher Piacentile $604,500

Top 1995 *Qui Tam* Recoveries

Defendant, U.S. District Court	Allegations	Government Recovery	Relator Share
Lucas Western, Inc., Lucas Industries, Inc., and Lucas Industries plc D UT	False testing of military components, defective parts, and falsification of inspections	$88 million	Frederick Copeland $18.48 million
Blue Cross Blue Shield of Michigan D MD	Improper billing and submitting false documentation as fiscal intermediary for Medicare, inadequate audits of hospital cost reports	$27.6 million	Darcy Flynn $5.5 million
Accudyne Corp. and Alliant TechSystems, Inc. WD WI	Nonconforming military components and failure to properly test, noncompliance with environmental requirements	$12 million	John Fallon, Pam Carr, Kris Sheridan, Robert Bradley, Kelly Fallon, and Atlantic States Legal Foundation $2.64 million
Metpath, Inc. (Corning Clinical Laboratories Inc.) D MD	Submitting false claims for laboratory tests not performed to Medicare, Medicaid, and CHAMPUS	$8.6 million	Terry Fletcher $1.29 million
Modern Wholesale Drug Midwest, Inc. d/b/a Rugby Laboratories ND IL	Overcharging Department of Veterans Affairs for generic drugs	$7.5 million	Eileen Doran $1.05 million
General Electric Company SD OH	Failure to satisfy electrical bonding requirements for aircraft engines	$7.18 million	Ian Johnson $1.7 million
CSX Transportation, Inc. MD FL	Overcharging for materials used to maintain and repair railroad crossings	$5.9 million	David Nelson $1.18 million

ALLEGATION: SKIMMING HUD FUNDS FROM HOUSING PROJECTS

U.S. v. Woldiger et al. (ED NY No. __)

DOJ has filed a False Claims Act suit alleging that several individuals and contractors improperly skimmed funds from federally funded low income housing projects. According to DOJ, the defendants sought to fraudulently remove the equity from eight housing projects and steal Section 8 housing assistance payments intended for the benefit of tenants. Between 1990 and 1997, the projects received more than $52 million in HUD funds. The Government's investigation has also led to criminal indictments.

Abraham Woldiger, Abraham Taub, Peter Hoffman, and David Abrahamson established limited partnerships to purchase and manage housing projects in New York, New Jersey, Rhode Island, Pennsylvania, and Illinois. They also established related "identity of interest" (IOI) companies to provide construction, maintenance, and repair at the projects. The alleged scheme involved skimming equity by having the IOI contractors bill the projects' managing agents for repairs that were not performed. To the extent that any repairs were made, the employees who did the work were paid salaries far lower than the labor costs that were billed.

The individual defendants allegedly took thousands of dollars per month from the IOI contractors' bank accounts that, as owners of the projects, they could not lawfully take from project funds because the projects were all in non-surplus cash positions. The money was spent on such personal items as home mortgages, insurance, credit card bills, travel, and parochial school tuition for their children. Conducting the investigation were the FBI, HUD OIG, and Labor OIG. Handling the criminal case is Assistant U.S. Attorney Miriam Best. The civil case is being handled by Assistant U.S. Attorneys Gwen Pollak and Gail Matthews.

ALLEGATION: UNPERFORMED PHYSICIAN HOUSE CALLS

U.S. v. Yedidsion, M.D. (CD CA No. __)

In January 1998, DOJ announced that it filed a False Claims Act suit alleging that Beverly Hills doctor David Yedidsion falsely billed Medicare for home visits to patients who were deceased or in nursing homes. Yedidsion also allegedly billed for patients who lived out of state or were incarcerated in state mental institutions, as well as for patients residing in facilities that had barred him. According to DOJ, the lawsuit is believed to be the largest of its type in the nation. The Government estimates that Yedidsion, who in 1994 was the single largest biller of doctor home health services in California, submitted at least 1,600 false bills.

In a related criminal case, Dr. Yedidsion was indicted in February 1998 by a federal grand jury on charges of defrauding Medicare. If convicted on all 20 mail fraud counts, Yedidsion faces a maximum sentence of 100 years in prison. The matter was investigated by the HHS OIG and Postal Inspection Service. Assistant U.S. Attorney Wendy Weiss is handling the civil case and Assistant U.S. Attorney Maurice Suh the criminal action.

ALLEGATION: BOGUS DERMATOLOGY SERVICES

U.S. v. Finkel, M.D. *(D MA No. __)*

In January 1998, a False Claims Act suit was reported alleging that Boston doctor Richard Finkel falsely billed Medicare and private insurers for dermatology services not provided. Finkel's patients had weight loss concerns, but since weight loss advice is only minimally reimbursed, the doctor allegedly billed for such services as the destruction of skin lesions, regardless of whether the patients had the condition. According to the complaint, the doctor sprayed patients with liquid nitrogen, ostensibly to treat potentially cancerous lesions, without obtaining consent and from such a distance as to be ineffective. Finkel reportedly was earlier criminally convicted by a jury, sentenced to prison, and fined.

ALLEGATION: OVERBILLING FOR DIALYSIS

U.S. ex rel. Fox v. Frazier, M.D. et al. *(ED WA No. __)*

In January 1998, DOJ intervened in a *qui tam* suit alleging that a group of kidney doctors routinely overbilled Medicare, Medicaid, and private insurers for dialysis received in the inpatient ward at Sacred Heart Medical Center in Spokane. The suit was filed in 1995 by Dr. Stephen Fox, who formerly worked for Northwest Nephrology Associates. Northwest doctors allegedly charged for a higher level of care than patients needed by routinely marking two progress notes on patient charts. Allegations also center on poor care provided by a founding partner of the medical group. In addition to the civil case, criminal charges are reportedly being pursued. Representing the Government is Assistant U.S. Attorney Bill Batey.

ALLEGATION: DEFECTIVE NAVY TARGET PARTS

U.S. ex rel. Jordan v. Northrop Grumman Corporation *(CD CA No. 95-2985-ABC)*

In January 1998, DOJ intervened in a *qui tam* suit alleging that Northrop Grumman Corporation installed defective parts in manufacturing target drones for the Navy. The suit was filed in 1995 by Daniel Jordan, a Northrop employee. Northrop allegedly knew the drones contained substandard parts that failed to meet contract specifications and were faultily made by the company's suppliers. Target drones are used by the Navy to provide realistic aerial targets that simulate enemy air threats for gunnery and missile training exercises.

According to the suit, in 1991 Northrop transferred its target drone operation to a different site and began acquiring parts from outside vendors instead of manufacturing them in-house as done previously. A government investigation confirmed that 32 target drones failed during operations at the Navy's Point Mugu, California firing range from 1993 through 1995. Northrop had warranted that its drones would be free from all defects in material and workmanship for 12 months. The NCIS investigated the matter. The relator's counsel is Dean Pace of Pace and Rose (Los Angeles, CA). Assistant U.S. Attorney Howard Daniels and Dennis Phillips of the DOJ Civil Division are representing the Government.

ALLEGATION: UNDERPAYMENT OF ROYALTIES BY OIL COMPANIES

U.S. ex rel. Johnson, Jr., Martineck, Wright, Brock, Brian, and Project on Government Oversight v. Shell Oil Company, Amoco Oil Company, Burlington Resources Inc., Conoco Inc. et al. (ED TX No. 9:96CV66) (consolidated)

In February 1998, DOJ announced that it intervened in a *qui tam* suit alleging that several major oil companies knowingly undervalued oil extracted from public and Indian lands to reduce royalties they would have had to pay the Government and Indian nations under federal mineral contracts. Since 1988, the companies allegedly undervalued hundreds of millions of barrels of oil taken from three oil-producing areas: off-shore drilling in the Gulf of Mexico; oil sites in California; and on-shore drilling in New Mexico, Wyoming, and other western states. DOJ, which intervened as to four of the 14 companies named in the original suit, advised the court that it had not decided whether to join as to the others.

Oil production on federal and Indian lands is governed by mineral lease agreements between the Department of the Interior and private oil companies under the Federal Oil and Gas Royalty Management Act of 1982. By law, the companies must pay the United States and Indian tribes a percentage of the value of the oil as a royalty. The collection of royalties from companies leasing mineral rights is overseen by the Minerals Management Service of the Interior Department.

The lawsuit was brought by the not-for-profit Project on Government Oversight and several individuals in the industry including petroleum engineers, a petroleum business manager, and an independent oil and gas operator. Michael Havard of Provost & Umphrey Law Firm (Beaumont, TX) is representing the relators. The Government is represented by U.S. Attorney Michael Bradford, Assistant U.S. Attorney O. Kenneth Dodd, and Dodge Wells of the DOJ Civil Division.

ALLEGATION: MISCHARGING SPACE TECHNOLOGY COSTS

U.S. ex rel. Bagley v. TRW Inc. (CD CA No. CV-94-7755-RAP)

In February 1998, DOJ announced that it intervened in a *qui tam* suit alleging that TRW Inc. unlawfully boosted its profits on federal contracts through several related cost mischarging schemes. The suit was brought in 1994 by Richard Bagley, former director of financial control at TRW's Space & Technology Group in Redondo Beach, California. TRW allegedly falsely mischarged independent research and development (IR&D) and bid and proposal costs associated with its attempt to enter the space launch vehicle business. According to DOJ, the Government would not have otherwise reimbursed TRW because the company had exceeded the contractual ceiling on expenditures. Company engineers also allegedly misclassified work for TRW's automotive businesses as "long-range marketing" when in fact the work was IR&D, resulting in higher overhead rates paid under the contracts. TRW further allegedly mischarged for the cost of fabricating a prototype satellite solar array wing. The relator's counsel is Eric Havian of

Phillips & Cohen (San Francisco, CA). Representing the Government are Assistant U.S. Attorney David Ringnell and David Long and Vanessa Green of the DOJ Civil Division.

ALLEGATION: FALSE PRESCRIPTION DRUG CLAIMS

U.S. and State of Florida ex rel. Mueller v. Eckerd Corporation *(MD FL No. 95-2030-CIV-T-17C)*

In February 1998, DOJ and the State of Florida intervened in a *qui tam* suit alleging that Eckerd Corporation, trade named Eckerd Drug Stores and a wholly-owned subsidiary of J.C. Penney Co., defrauded Medicaid, CHAMPUS, and FEHBP by presenting fraudulent claims for the full quantities of medications prescribed while delivering only a portion of the medications to program beneficiaries. Eckerd allegedly made no attempt to credit back discrepancies to the Government, retaining excess profit and returning medication to inventory for resale when the balance of a partially filled prescription was not later claimed by a beneficiary. As a result of its scheme, Eckerd allegedly has improperly received over $11.5 million since 1986. The lawsuit was filed by Louis Mueller, an Eckerd pharmacist who worked as a "floater" in the Tampa Bay area. The relator is represented by Gary Takacs of James, Hoyer, Newcomer, Forizs, Smiljanich, PA (St. Petersburg, FL). Representing the Government are Assistant U.S. Attorney Jay Trezevant and Allie Pang of the DOJ Civil Division.

ALLEGATION: BILLING FOR SERVICES BY PHYSICIANS ON LEAVE

U.S. ex rel. Abbott-Burdick, Gridley, Koonz, and Salvo v. University Medical Associates and the Medical University of South Carolina *(D SC No. 3:96-1676-10)*

In February 1998, DOJ intervened in a *qui tam* suit alleging that the Medical University of South Carolina (MUSC) and University Medical Associates defrauded Medicare, Medicaid, and CHAMPUS/TRICARE by submitting claims for services purportedly performed by physicians at times when they were absent from MUSC. The suit was brought in 1996 by four former MUSC employees. According to DOJ, at issue are hundreds of false claims for reimbursement. In particular, the suit cites instances where physicians in the MUSC Department of Ophthalmology billed for services when they were on a leave of absence. The case is reportedly unrelated to the Government's ongoing "PATH" initiative under which authorities have been examining the billing practices of teaching hospitals throughout the country. Assistant U.S. Attorneys Deborah Barbier and Jennifer Aldrich are handling the matter for the Government.

ALLEGATION: IMPROPER PATERNITY TESTING

U.S. ex rel. Bennett v. Genetics & IVF Institute Inc. *(D MD No. JFM-95-1620)*

In March 1998, a *qui tam* suit was reported alleging that Genetics & IVF Institute Inc. charged the Virginia Division of Child Support Enforcement for services not provided. The company, which

has a multimillion dollar contract to perform paternity tests for the state, allegedly violated a contractual requirement that two tubes of blood be drawn from each individual tested. While the second tube was to be tested if the first test excluded the individual as the father, the company allegedly had decided to draw only a single tube even before the contract was awarded. The Federal Government reportedly pays 90 percent of Virginia's paternity testing costs. DOJ declined to intervene in the action. The suit was filed by David Bennett, who formerly worked as director of sales and marketing for the company. The relator's counsel is Robin Page West (Baltimore, MD).

<u>Borough of Seaside Heights</u>

In December 1997, DOJ announced that the Borough of Seaside Heights in New Jersey agreed to pay the Government **$160,652** to settle False Claims Act allegations in connection with Federal Emergency Management Agency disaster assistance. The Borough had requested funding for the repair and replacement of certain items and facilities it claimed were damaged as a result of the December 1992 Nor'Easter. Besides repair of holiday displays and volleyball courts, proposed work included tree replacement, debris pick-up, and sewer cleaning. The Borough admitted DOJ's allegations that either the work was not performed properly or the damage was not the result of the storm, and that false documents were presented pursuant to its application for disaster relief and Damage Survey Reports. Under the settlement, the Borough agreed to cooperate fully with the Government in investigating possible criminal violations. Handling the matter was Assistant U.S. Attorney Kimberly Guadagno of the District of New Jersey.

<u>Mediq Inc.</u>

In December 1997, it was reported that Mediq Inc. of Pennsauken, New Jersey agreed to pay the Government **$4.2 million** to settle False Claims Act allegations that a former subsidiary defrauded Medicare and other federal health care programs. Mediq Imaging Services Inc. allegedly billed for unnecessary tests and tests ordered through an improper arrangement with doctors. The unit was reportedly sold to a competitor in 1995.

<u>U.S. ex rel. HMO Health Plans v. San Luis Valley Regional Medical Center</u> (D CO No. __)

In January 1998, it was reported that San Luis Valley Regional Medical Center agreed to pay the Government **$265,000** to settle a *qui tam* suit alleging that the hospital routinely overbilled Medicare and Medicaid for blood tests. The lawsuit was filed by HMO Health Plans. According to DOJ, the Colorado hospital had a machine that automatically created a report called a histogram when blood tests were ordered. Federal programs were then charged for both the histogram and the blood tests. Assistant U.S. Attorney Lisa Christian represented the Government.

<u>U.S. ex rel. Nelson v. North Hudson Community Action Health Center and Palisades General Hospital</u> (D NJ No. __)

In January 1998, DOJ announced that North Hudson Community Action Health Center of New York (NHCAHC) and Palisades General Hospital of New Jersey (PGHNJ) agreed to pay the Federal Government and State of New Jersey **$145,000** to settle a *qui tam* suit alleging that they improperly entered into an agreement whereby NHCAHC was to refer patients to PGHNJ in exchange for the hospital lending the health center $300,000. (Under the Medicare Anti-Kickback Act, the referral of Medicare patients in exchange for remuneration of any type is prohibited.) Peter Nelson, a former NHCAHC executive director, filed the lawsuit. Investigating the matter was the New Jersey Joint State/Federal Health Care Fraud Task Force. Under the agreement, $25,000 will be paid to the State of New Jersey for Medicaid

claims. The relator's share was 17 percent of the remaining settlement amount or $20,400. Representing the Government were Assistant U.S. Attorney Janet Nolan and Marie-Therese Connolly of the DOJ Civil Division.

U.S. ex rel. Mays, III and State of Tennessee ex rel. Mays, III v. Paracelsus-Fentress County General Hospital, Inc., Paracelsus Healthcare Corporation, and Smith, M.D. (ED TN No. 3:94-CV-0134)

In January 1998, DOJ announced that a hospital company agreed to pay the Federal Government and State of Tennessee $3 million to settle a *qui tam* suit alleging Medicaid and Medicare fraud involving outpatient services that were not supervised by a physician and inpatient rehabilitation care for which there was inadequate physician involvement. The action was filed in 1994 by James Mays, III, a former counselor employed by the defendants. According to the lawsuit, Houston-based Paracelsus Healthcare Corporation admitted, treated, and discharged outpatients undergoing alcohol and drug rehabilitation at company clinics in Tennessee without any physician involvement. In addition, patients treated at a hospital inpatient substance abuse rehabilitation unit failed to receive the required number of physician visits under Tennessee's Medicaid regulations. The settlement further resolves claims that the Paracelsus hospital deceived the state regarding the frequency of inpatient physician visits performed. As part of the settlement, the hospital has agreed to implement a corporate integrity program. The relator's share was $599,817. The relator was represented by Ronald Attanasio of Hurley, Sharp & Attanasio (Knoxville, TN).

U.S. ex rel. Cullen, Jr. v. National Environmental Testing Inc. et al. (ND CA No. __)

In January 1998, DOJ announced that an environmental testing firm and its former parent corporation agreed to pay the Government $320,100 to settle a *qui tam* suit alleging the failure to properly test the level of hazardous substances in soil and water samples as required under contracts with the Army Corps of Engineers. The settlement resolves allegations against National Environmental Testing Inc. (NET) and its wholly-owned subsidiary, NET Midwest Inc. (both of Illinois), and the British corporation Ocean Group, plc, the former sole shareholder of NET. The suit was filed in 1996 by Thomas Cullen, Jr., a former division manager of NET Midwest's laboratory at Santa Rosa, California.

Employees of the Santa Rosa laboratory allegedly failed to follow mandatory analytical procedures in testing for hazardous substances in samples arising from environmental investigations and remedial actions at federal facilities. The laboratory served as the quality control facility used by the Corps to measure the effectiveness of the clean-up at hazardous waste sites for such solvents as benzene and toluene. The complaint alleged that employees failed to measure the contaminants by a scientific method, instead visually estimating levels. The EPA suspended the lab from federal contracting in March 1996, with the suspension ending later that year following a negotiated

compliance agreement. The case was investigated by the Army Criminal Investigative Command, Air Force Office of Special Investigations, NCIS, and EPA OIG. The relator's share was $62,700.

U.S. v. Chester Care Center, Bishop Nursing Home et al. *(ED PA No. 98-CV-139)*

In January 1998, Chester Care Center, Bishop Nursing Home, and several other entities agreed to pay the Government $500,000 to settle a False Claims Act suit alleging inadequate care for nursing home residents. Misconduct referenced in the consent order and judgment includes failure to provide adequate nutrition, adequate nursing care to residents with diabetes, adequate monitoring of water temperatures, adequate wound care, and adequate staffing, as required by state and federal law. The Chester agreement represents the second nursing home quality of care FCA settlement to date. *See* U.S. v. GMS Management-Tucker, Inc. et al., *6 TAF QR 31 (July 1996).*

Among the numerous issues addressed in the agreement are nutrition and wound care standards, resident safety, basic care, psychiatric services, medical care, nursing care, therapy services, quality assurance, and staff training. Under the settlement, defendants must comply with provisions of the Nursing Home Reform Act and certain protocols as well as adopt a corporate compliance program. The agreement further provides for appointment of a Monitor to oversee compliance with the consent order. Assistant U.S. Attorneys James Sheehan and David Hoffman handled the case.

U.S. ex rel. Sneed v. Pall Aeropower Corp. *(MD FL No. 93-1798-CIV-T-15A)*

In January 1998, Pall Aeropower Corp., formerly Pall Land and Marine Corporation, agreed to pay the Government $2.2 million to settle a *qui tam* suit alleging that it overcharged the Army for air filters for the AH-1 "Cobra" helicopter. The suit was brought in 1993 by a former Pall manager, Vern Sneed. While negotiating with the Army, Pall allegedly did not disclose manufacturing changes it intended to make that significantly reduced costs, as required under federal law. The case was investigated by the Army Criminal Investigative Command and DCIS. The relator's share was 17 percent or $374,000. The relator's counsel was Randall Reder (Tampa, FL). The Government was represented by Alan Kleinburd and Alice Valder Curran of the DOJ Civil Division.

U.S. ex rel. Alderman v. Weiss et al. *(CD CA CV 97-6734-RSWL)*

In February 1998, DOJ announced that a medical equipment supplier and its owner agreed to pay the Government $1.75 million to settle a *qui tam* suit alleging improper marketing of incontinence supplies for elderly patients. The suit was brought by Geraldine Alderman, a former employee of Nissim Institutional Providers, Inc. Nissim, several related corporations, owner-operator Howard Weiss, and employee Mendel Duchman agreed to the settlement, concluding a case that resulted in criminal penalties as well. Pursuant to the alleged scheme, Medicare was falsely billed for adult urinary incontinence supplies to nursing home patients across the country. According

to DOJ, saline solution, syringes, and lubricant were not provided as billed and were not medically necessary. The supplies were part of a package or "kit" which also included a free disposable diaper that served as an inducement to nursing homes to place orders for the kits.

In the earlier criminal prosecution, two of the related companies, Crown Ostomy, Inc. and Medi-Shield, Inc., pleaded guilty to wire fraud charges and each was ordered to pay a criminal fine of $75,000. Weiss and Nissim have also entered into a corporate integrity agreement with HHS, and four companies agreed to be permanently excluded from Medicare, Medicaid, and other federal health care programs. The matter was investigated by the HHS OIG and the Health Care Fraud Task Force for the Central District of California, which includes the FBI, Postal Inspection Service, California Bureau of Medi-Cal Fraud, and DCIS. The criminal case was initially investigated by the U.S. Attorney's Office for the Northern District of Florida prior to its transfer to Los Angeles. Assistant U.S. Attorney Consuelo Woodhead represented the Government on the civil side, and Assistant U.S. Attorney Kimberly Dunne handled the criminal action.

University of Pittsburgh / PATH Initiative

In March 1998, the University of Pittsburgh, 18 physician clinical practice plans allied with the School of Medicine, and UPMC Health System agreed to pay the Government $17 million to settle False Claims Act allegations of improper Medicare and Medicaid billings. The settlement arises from a self-audit undertaken pursuant to the federal PATH project, which reviews Medicare Part B payments for physicians at teaching hospitals. According to DOJ, this is the first PATH settlement that jointly resolves both Medicare and Medicaid billing issues. In this case, $3 million of the settlement is for Medicaid fraud.

The PATH audit found that physicians billed for services actually rendered by residents, as well as engaged in upcoding (billing for a level of evaluation and management services when the code level selected is not supported by sufficient documentation in medical records). Under the settlement, the clinical practice plans must adopt a five year corporate integrity agreement with HHS. According to DOJ, the 18 practice plans will soon consolidate into a single centralized practice plan to be named University of Pittsburgh Physicians. Assistant U.S. Attorney Robert Eberhardt of the Western District of Pennsylvania represented the Government.

U.S. ex rel. Werther v. Washington Consulting Group (ED VA No. __)

In March 1998, DOJ announced that Washington Consulting Group (WCG), a Maryland company, paid the Government $425,000 to settle a *qui tam* suit alleging that it knowingly charged false labor costs to numerous federal contracts. The suit was brought by Ellen Werther, a former WCG employee. According to DOJ, company employees altered time sheets to show that work was performed under federal contracts when it was not, and they also billed for unallowable costs. WCG performed such work for federal agencies as computer related design and statistical reports. While labor charges relating to seven federal entities were at issue in the

case, most of WCG's work last year was for the Federal Aviation Administration. The matter was investigated by the Defense Contract Audit Agency and the Department of Energy's OIG. The relator's share was 22 percent. The relator was represented by Margaret McGoldrick of Spiegel & McDiarmid (Washington, DC). The Government was represented by Marie-Therese Connolly of the DOJ Civil Division.

ALLEGATION: FALSE CERTIFICATIONS UNDER FOREIGN MILITARY SALES PROGRAM

U.S. ex rel. Tribble, Trimmer, and Buffington v. Aerospatiale General Aviation (*ED VA No. 98-471-A*)

In March 1998, DOJ intervened in a *qui tam* suit alleging that Aerospatiale General Aviation made false certifications in connection with the sale of trainer airplanes to Israel. (Aerospatiale General, a New York corporation with its principal place of business in Florida, is now known as Socata Aircraft.) The certifications arose under the Foreign Military Sales Program, supervised by the Defense Security Assistance Agency. Among the requirements for program funding is that the material or components furnished by the contractor be of U.S. manufacture, unless separately identified in the certification. According to the complaint, funding would not have been provided in this case had the Government known that the U.S. content did not equal the represented amount — over $6 million. Originally filed by the relators in 1994, the lawsuit alleges that the company retained the services of a commission agent in furtherance of the aircraft sale in violation of DSAA Guidelines, and that the 10 percent commission was included as part of the "U.S. content." The relator is represented by William Hardy of Kleinfeld, Kaplan and Becker (Washington, D.C.). The Government is represented by Assistant U.S. Attorney Gerard Mene.

ALLEGATION: UNNECESSARY SERVICES FOR NURSING HOME PATIENTS/DOUBLE BILLING BY TRANSPORTATION COMPANY

U.S. v. Medco Physicians Unlimited et al. (*ND IL No. 98C1622*)

In March 1998, DOJ filed a False Claims Act suit against Medco Physicians Unlimited and United Transportation Company alleging that they defrauded Medicare and Medicaid. Medco, which operates a community mental health center in Chicago, allegedly billed Medicare for medically unnecessary services and submitted claims for non-reimbursable expenses including a holiday dinner for the owner and 100 members of his family. According to DOJ, United Transportation double billed for services provided to Medco's patients, the majority of whom live in nursing homes. Pursuant to the scheme, United transported patients to Medco and then returned them to the nursing home later in the day. Although fully compensated by Medco for the transportation, United billed Medicaid for full reimbursement as well. Moreover, the defendants allegedly uprooted patients from their nursing homes to provide the same type of custodial care they received at the homes. Medicare does not pay for custodial care offered in a community mental health center or partial hospitalization program. The HHS OIG conducted the investigation. Assistant U.S. Attorney Christopher Tracy is handling the case.

ALLEGATION: PROVIDING FALSE INFORMATION TO NAVY IN CONNECTION WITH COMPUTER SALES

U.S. ex rel. Gundacker v. Unisys Corporation and Lockheed Martin Corporation (*D MN 4-96-113*)

In April 1998, a *qui tam* suit was reportedly unsealed alleging that Unisys Corporation and Lockheed Martin Corporation defrauded the Government by selling million dollar computers after deceiving the Navy that it would not be possible or practical to shift programs to standard commercial devices available at a much lower cost. The suit was brought by Erik Gundacker, a former company software engi-

neer. Unisys allegedly instructed employees to provide false information to persuade the Navy to buy unnecessary costly computer systems. The suit further alleges mischarging of labor and marketing costs, and the use of falsified rates in proposals. DOJ declined to intervene in the action. The relator's counsel is Dale Nathan of Nathan & Associates (Eagan, MN).

ALLEGATION: SOCIAL SECURITY FRAUD

U.S. v. Rubino (D MA CV 98-10561-RCL)

In May 1998, DOJ announced that it filed a False Claims Act suit against the Estate of Mary Rubino and its executors. From 1976 to 1996, Rubino allegedly fraudulently endorsed her husband's signature on the back of Social Security disability checks intended for him. According to DOJ, she never informed the Social Security Administration of her husband's death in 1976, even in response to an inquiry on that subject 20 years later. Ms. Rubino, who died in 1997, allegedly defrauded Social Security of approximately $149,000 in total. Handling the case is Assistant U.S. Attorney Julie Schrager.

ALLEGATION: UNDERPAYMENT OF OIL ROYALTIES

U.S. ex rel. Johnson, Jr., Martineck, Wright, Brock, Brian, and Project on Government Oversight v. Shell Oil Company, Texaco, Inc. et al. (ED TX No. 9:96CV66)

In May 1998, DOJ announced that it intervened in a *qui tam* suit alleging that Texaco, Inc. and six of its subsidiaries or affiliates knowingly undervalued oil extracted from federal and Indian lands to reduce royalties they would have had to pay the Government and Indian nations under mineral contracts. Texaco allegedly systematically ignored the rules for valuing oil, instead paying royalties on the basis of an improper lower value. According to DOJ, when a producer sells its oil to a corporate affiliate, as Texaco does, it is required to value the oil in accordance with regulatory "benchmarks" designed to replicate the competitive market price.

Oil production on federal and Indian lands is governed by mineral lease agreements between the Department of the Interior and private oil companies under the Federal Oil and Gas Royalty Management Act of 1982. By law, the companies must pay the United States and Indian tribes a percentage of the value of the oil as a royalty. The collection of royalties from companies leasing mineral rights is overseen by the Minerals Management Service of the Interior Department.

In February 1998, DOJ intervened as to four of the 14 companies named in the original lawsuit. The suit was brought by the not-for-profit Project on Government Oversight and several individuals in the industry including petroleum engineers, a petroleum business manager, and an independent oil and gas operator. Michael Havard of Provost & Umphrey Law Firm (Beaumont, TX) is representing the relators. The Government is represented by U.S. Attorney Michael Bradford, Assistant U.S. Attorney O. Kenneth Dodd, and Dodge Wells of the DOJ Civil Division.

ALLEGATION: FRAUDULENT MEDICAID BILLINGS BY PEDIATRICIAN

U.S. v. Mack, M.D. (SD TX No. H 98-1488)

In May 1998, DOJ filed a False Claims Act suit against Houston pediatrician William Mack alleging that he defrauded Medicaid and CHAMPUS by billing for unperformed ser-

vices. Dr. Mack was a provider under the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program for children "at risk" for health problems. The doctor allegedly failed to complete the mandated lab screening of blood samples and further noted "abnormal findings" to justify another billing for an office visit when the patient's medical file did not support such a notation. (Medicaid does not allow same day billing for office visits and EPSDT screens, with the exception of serious illness detected during the screening.) The complaint alleges a variety of other improper billings for unperformed services including strep tests and complete blood counts. Representing the Government is Assistant U.S. Attorney Joe Mirsky.

ALLEGATION: UNIVERSITY RESEARCH CONTRACT FRAUD

U.S. ex rel. Relator v. University of California
(ED CA No. __)

In May 1998, it was reported that a *qui tam* suit has been filed alleging that the University of California defrauded the Government on research contracts at several of its campuses. According to the lawsuit, filed in 1996, the university billed graduate student tuition to research contracts in a variety of fields. The university allegedly provided free tuition to attract top graduate students, particularly foreign nationals, and then used the federal contracts to cover the costs. Congressional investigators have reportedly undertaken a related inquiry into the university's billing practices. The relator is represented by Phillip Benson (Yorba Linda, CA).

U.S. ex rel. Pratt v. Alliant Techsystems Inc. and Hercules Inc. (*CD CA No. __*)

In March 1998, DOJ announced that two defense contractors agreed to pay the Government **$4.5 million** to settle a *qui tam* suit alleging they overcharged the Navy for labor costs on contracts implementing the Intermediate-Range Nuclear Forces (INF) Treaty. The suit against Alliant Techsystems Inc. of Hopkins, Minnesota and Hercules Inc. of Wilmington, Delaware was filed in 1995 by a former employee of the defendants, P. Robert Pratt. The 1987 INF Treaty permitted Soviet officials to inspect facilities at a defense plant in Utah that Hercules, and later Alliant, operated. Under contracts with the Navy, Hercules and Alliant could charge the Government for costs associated with monitoring the activities of the inspectors. DOJ intervened in allegations that the firms mischarged costs to Navy INF contracts but did not join as to allegations that they also mischarged time to other federal contracts. The case was investigated by DCIS and DCAA. The relator's share was $900,000.

Unisys Corporation and Lockheed Martin Corporation

In March 1998, DOJ announced that Unisys Corporation and Lockheed Martin Corporation agreed to pay the Government **$3.15 million** to settle allegations that Unisys sold spare parts at inflated prices to the Department of Commerce for the NEXRAD Doppler Radar System. Lockheed Martin succeeded Unisys on the contract for the NEXRAD System, which is used by the National Oceanic and Atmospheric Administration to probe weather fronts and provide information on storm circulation. According to DOJ, Unisys knew that it paid Concurrent Computer Corporation inflated prices for the spare parts when it passed on those prices to the Government. Unisys had obtained discounts from Concurrent on other items Unisys purchased at its own expense in exchange for agreeing to pay Concurrent the inflated prices at issue.

Separately, in 1997 DOJ filed a False Claims Act suit against Concurrent in Alexandria, Virginia. The suit alleged that Concurrent told the Government that it did not discount spare parts when, in fact, Concurrent had previously granted such discounts to Unisys. The case is scheduled for trial this summer. According to DOJ, Concurrent's FCA liability will be reduced by what the Government received from Unisys and Lockheed in this settlement.

U.S. ex rel. Richmond v. St. Anthony's Memorial Hospital (*SD IL No. 95-4160*)

In April 1998, DOJ announced that St. Anthony's Memorial Hospital in Illinois agreed to pay the Government **$228,500** to settle a *qui tam* suit alleging that it failed to refund Medicare overpayments it received for patients treated at the hospital. According to the suit, filed in 1995 by patient-accounts manager Dirk Richmond, St. Anthony's did not report the overpayments to Medicare as required by program rules. In addition to the settlement payment, the hospital and the HHS OIG entered into a corporate integrity agreement. The case was investigated by the HHS OIG and FBI. The relator's share was 20 percent or $45,700. The relator was represented by Ronald Osman and Timothy Keller of Ronald E. Osman & Associates, LTD (Marion, IL).

U.S. ex rel. Heard v. M/A-COM, Inc. (*D MA CV 92-11563*)

In April 1998, DOJ announced that M/A-COM, Inc., a division of AMP Incorporated,

agreed to pay the Government **$3 million** to settle a *qui tam* suit alleging that it failed to perform required quality tests on electronic components known as integrated microwave assemblies (IMAs) that were sold to other defense contractors. The suit was brought by James Heard, a former M/A-COM employee. According to DOJ, M/A-COM sold the IMAs to Westinghouse Electric Corp. and ITT Avionics for use in the Advanced Self-Protection Jammer system, which enables Navy and Air Force aircraft to identify and jam radar signals. M/A-COM was an independent company at the time but was later purchased by AMP Incorporated. The investigation was conducted by the Air Force Office of Special Investigations, NCIS, DCIS, and FBI. The relator's share was $600,000. The relator's counsel was Robert Vogel (Washington, D.C.). Representing the Government were Assistant U.S. Attorney Roberta Brown and David Cohen of the DOJ Civil Division.

U.S. ex rel. Frisco and Jones v. Home Americair of California, Inc. et al. (CD CA CV 93-7186-KMW)

U.S. ex rel. Penizotto v. Bates East Corporation and Cynthia Bates (CD CA CV 96-5824-KMW)

In April 1998, DOJ announced that a national franchisor of home oxygen equipment, three affiliates, and two individuals agreed to pay the Government **$5 million** to settle two *qui tam* suits alleging false Medicare claims. According to DOJ, Home Americair of California, Inc., its billing company, and two franchises, Florida Homecair and Bates East Corporation of Pennsylvania, engaged in a complex scheme to provide home oxygen equipment to Medicare beneficiaries who did not qualify for the service. In order to collect Medicare payments, the defendants submitted false medical information such as that relating to a patient's blood oxygen level. One suit was filed by a former franchisee of Home Americair, Terry Frisco, and a respiratory therapist, Darrell Jones. The case was consolidated with another *qui tam* case filed by Bates East sales representative Todd Penizotto. Of the total settlement amount, $4.15 million resolves the Frisco and Jones matter.

In addition to the settlement payment, Home Americair agreed to institute a corporate integrity program. The relators' share for Frisco and Jones was 23 percent or $960,250. Penizotto's share was $148,500. Frisco was represented by Michael Leslie of Caldwell, Leslie, Newcombe & Pettit (Los Angeles, CA), and Jones was represented by Robert Vogel (Washington, D.C.). Penizotto's counsel was Lisa Foster of Phillips & Cohen (San Diego, CA). Representing the Government were Assistant U.S. Attorney David Ringnell and Polly Dammann, Daniel Anderson, and Mina Rhee of the DOJ Civil Division.

U.S. v. Ruggiero (D NJ No. 98 1526)

In April 1998, DOJ announced that New Jersey businessman Frank Ruggiero agreed to pay the Government **$1.2 million** to settle a False Claims Act suit alleging improper claims to the U.S. Postal Service. Ruggiero, doing business as Septic Maintenance, allegedly submitted significantly more mail than he disclosed in his bulk mailing statements and received services for which he did not pay. In a related criminal case, Ruggiero agreed to the entry of a $1.2 million restitution order and to pay $400,000 immediately in satisfaction of the order. The Postal Inspection Service investigated the mat-

ter. Assistant U.S. Attorney Daniel Gibbons handled the civil case. Handling the criminal case was Assistant U.S. Attorney Carolyn Murray.

U.S. ex rel. Boisvert v. FMC Corporation *(ND CA No. C-86-20613)*

In April 1998, a jury returned a **$125 million** verdict in a *qui tam* case against FMC Corporation alleging safety problems in connection with the Bradley Fighting Vehicle. The final judgment reportedly will exceed $350 million, which would represent the highest *qui tam* recovery to date. The suit, filed in 1986 by former company engineer Henry Boisvert, alleged that FMC falsely represented that the amphibious vehicle had been extensively tested for swim operations when, in fact, it leaked in water. DOJ declined to intervene in the action. FMC, based in Chicago, sold its defense division last fall. The relator was represented by Phillip Svalya (Cupertino, CA), Allen Ruby of Ruby & Schofield (San Jose, CA), and J. David Black and Roy Bartlett of Jackson Tufts Cole & Black, LLP (San Jose, CA).

U.S. ex rel. Dorer v. Corning Life Sciences, Inc. *(D MD No. PJM-95-1589)*

In April 1998, Quest Diagnostics Incorporated, a national laboratory headquartered in New Jersey, agreed to pay the Government **$6.89 million** to settle a *qui tam* suit alleging false Medicare, Medicaid, and CHAMPUS billings. Quest Diagnostics is the successor of Corning Clinical Laboratories, formerly known as Metpath, Inc. The lawsuit, filed in 1995 by former company employee Donna Dorer, alleged that Corning performed and billed for lab tests not ordered by physicians. The Government's investigation identified billing violations by six Quest laboratories in Maryland, New Jersey, New York, Michigan, and Pennsylvania. In the settlement, Quest acknowledged that the practice of performing and billing for tests without appropriate prior or subsequent physician authorization is in violation of federal regulations. Quest further agreed to an amendment to a corporate integrity agreement previously entered into by Corning Clinical Laboratories. The relator's share was $1.156 million. The relator was represented by Robin Page West (Baltimore, MD) and Steve Simms of Greber & Simms (Baltimore, MD). Assistant U.S. Attorney Kathleen McDermott represented the Government.

U.S. ex rel. Relator v. Divers Institute of Technology *(WD WA No. __)*

In April 1998, DOJ announced that Divers Institute of Technology, which provides vocational and professional training for commercial divers, agreed to pay the Government **$2.41 million** to settle a *qui tam* suit alleging fraud in connection with federal financial assistance. According to DOJ, the suit also spurred a related criminal action in which the Institute pleaded guilty to making a false claim against the Department of Education, was ordered to pay a $250,000 fine, and was placed on probation for five years. In entering its plea, Divers Institute acknowledged that a former financial aid director had submitted fraudulent financial aid applications for an eight year period. The settlement agreement calls for the Institute to be sold in order to generate the proceeds necessary to pay the Government. The case was investigated by the Department of Education OIG and the FBI. Assistant U.S. Attorney Bob Westinghouse handled the criminal matter, and Assistant U.S. Attorney Dave Jennings the civil case.

U.S. ex rel. Crannage, Chinn, and Green and State of Illinois ex rel. Crannage, Chinn, and Green v. Omnicare, Inc., Home Pharmacy Services, Inc. et al. (SD IL No. 97-973-PER)

In April 1998, Home Pharmacy Services, Inc. agreed to pay the Federal Government and various state entities a total of **$5.3 million** to settle a *qui tam* suit alleging that it failed to properly credit the Illinois Department of Public Aid for returned medicines. The suit was brought by three former company employees, including two sisters. According to the lawsuit, Home Pharmacy supplied drugs and other pharmaceuticals to nursing home patients, and when the drugs were returned by nursing homes, it did not credit the account of the Department of Public Aid, which had originally paid for them. In a related criminal action, the president of the company pleaded guilty in June.

As part of the settlement, the corporate parent of Home Pharmacy, Omnicare, Inc. of Cincinnati, entered into a corporate integrity agreement with the HHS OIG. The matter was investigated by the Southern Illinois Health Care Fraud Task Force, which consists of DCIS, the Department of Labor, DEA, FBI, FDA, HHS, Illinois Department of Professional Regulation, Illinois State Police Medicaid Fraud Control Unit, Illinois Department of Public Aid, IRS, and Postal Inspection Service. The relators' share was $871,000. The relators were represented by Stephen Meagher of Phillips & Cohen (San Francisco, CA). The Government was represented by Assistant U.S. Attorneys Ranley Killian and Gerald Burke.

U.S. ex rel. Lissack v. Meridian Securities et al. (SD NY No. 95-Civ-1363)

In April 1998, it was reported that CoreStates Financial Corp. of Philadelphia agreed to pay the Government **$3.4 million** to settle a *qui tam* suit alleging that Meridian Securities, now owned by CoreStates, engaged in "yield burning" in the municipal bond market. Yield burning refers to the practice in which investment banks divert proceeds from bond transactions made on behalf of municipalities that should have gone to the Federal Government. The settlement is the first False Claims Act settlement in a yield burning case to date. The suit was brought by Michael Lissack, a former managing director of Smith Barney. Lissack was represented by John Phillips and Erika Kelton of Phillips & Cohen (Washington, D.C.). The Government was represented by Assistant U.S. Attorney Manvin Mayell.

U.S. ex rel. Colunga v. Hercules Inc. et al. (D UT No. 89-C-954)

In May 1998, it was reported that Hercules Inc. agreed to pay a total of **$55 million** to settle a *qui tam* suit alleging that its nuclear rocket inspection system was defective. The suit alleged poor quality control inspections for rocket motors during the production of several missile systems including the Trident, Pershing, and Titan. A former company inspector, Katherine Colunga, filed the suit in 1989. Hercules sold its aerospace division to Alliant Techsystems in 1995. DOJ declined to intervene in the action. The relator's share was 30 percent. The relator was represented by Lon Packard and Ron Packard of Packard, Packard & Johnson (Salt Lake City, UT; Palo Alto, CA) and Michael Thorsnes of Thorsnes, Bartolotta, McGuire & Padilla (San Diego, CA).

U.S. ex rel. Faw and Faw v. Brewton-Parker College, Georgia Baptist Convention et al. (SD GA No. CV 697-016)

In May 1998, it was reported that Brewton-

Parker College agreed to pay the Government **$4 million** to settle a *qui tam* suit alleging fraud in connection with various financial aid programs. According to the complaint, violations included crediting Pell Grant funds to student accounts with no eligibility, not following work-study program requirements, disbursing funds to citizens of foreign countries, failing to pay student loan, scholarship, and work-study monies owed, and falsifying documentation. The students for whom certain improper awards were made were predominantly athletes for Brewton-Parker. The complaint further alleged that the defendants consistently destroyed or altered evidence of the fraud. The suit was brought by Martha Faw, formerly the assistant director of financial aid at the college. The settlement is the largest *qui tam* recovery to date in Georgia, and Ms. Faw reportedly will donate most of her share back to the school for students who were wrongfully denied aid under the scheme. The relator's share was 20 percent or $800,000. The relator's counsel was Mike Bothwell (Roswell, GA). The Government was represented by Assistant U.S. Attorney James Coursey, Jr.

U.S. ex rel. Spear v. Mendez (ND CA No. C95-3369)

In May 1998, it was reported that Fausto Mendez, Jr., president of Medical Science Institute Inc., agreed to pay the Federal Government and State of California **$25,000** to settle a *qui tam* suit alleging improper billing by the clinical laboratory. The State, which filed a claim under California's False Claims Act, will receive $1,842 under the settlement. Mendez allegedly routinely billed Medicare for unnecessary complete blood counts and unnecessary manual white blood cell differential tests when automated tests had already been performed and billed. Under the agreement, Mendez reportedly will have no authority over billing or coding decisions involving any federal health care program for five years. The suit was brought by Kevin Spear, a former lab industry salesman. The relator's share was 17 percent. Phillips & Cohen (Washington, D.C.) represented the relator.

CSX Corp. and Cybernetics and Systems Inc.

In May 1998, it was reported that Cybernetics and Systems Inc., a CSX Corp. subsidiary, agreed to pay the Government **$28 million** to settle False Claims Act allegations involving student loan fraud. Cybernetics formerly operated a student loan servicing business in Jacksonville, Florida. While the Department of Education reimburses lenders if students default on loans, Cybernetics allegedly sought repayment from the Government on fraudulent claims and did not follow proper procedures. Resolution of the matter also included $2 million in criminal fines. Assistant U.S. Attorney Bonnie Glober of the Middle District of Florida handled the case.

U.S. v. Mount Zion Medical and Rehabilitation Center Inc. et al. (SD FL No. 95-2117-CIV)

In May 1998, it was reported that two physicians and a Florida medical center agreed to pay the Government **$2.6 million** to settle a False Claims Act suit alleging that they caused improper claims to be filed for clinical medical services and non-invasive diagnostic tests under Medicare. The claims involved non-rendered or medically unnecessary services. Mount Zion Medical and Rehabilitation Center reportedly has also agreed to be permanently excluded from federal health care programs, and the physicians have agreed to implement integrity provisions to ensure program compliance.

<u>*U.S. ex rel. Kready v. The University of Texas Health Science Center at San Antonio and The University of Texas Medical School at San Antonio*</u> *(WD TX No. SA96CA0123)*

In June 1998, the University of Texas Health Science Center at San Antonio (UTHSCSA) agreed to pay the Government $17.2 million to settle a *qui tam* suit alleging that UTHSCSA improperly submitted claims to Medicare, Medicaid, CHAMPUS, and the State Legalization Impact Assistance Grant program without possessing sufficient documentation to support those claims. UTHSCSA is a component of the University of Texas System, which is an agency of the State of Texas. According to the lawsuit, the University of Texas Medical School at San Antonio, a component of UTHSCSA, submitted claims for services that were purportedly personally provided by faculty physicians when the defendants' records did not support such claims. The suit was filed in 1996 by Benjamin Kready, former executive director of UTHSCSA's Medical Service Research and Development Plan, the practice plan of faculty physicians. The case moved to settlement notwithstanding that the HHS OIG discontinued its PATH (Physicians at Teaching Hospitals) audit of UTHSCSA last year.

In addition to the settlement payment, UTHSCSA has entered into an institutional compliance agreement with the HHS OIG. The case was investigated by the HHS OIG and DCIS. The relator's share was 15 percent or $2.58 million. The relator was represented by Marlene Martin and Curtis Cukjati of Cacheaux, Cavazos, Newton, Martin & Cukjati, L.L.P. (San Antonio, TX). The Government was represented by Assistant U.S. Attorney Winstanley Luke and Alan Kleinburd and Daniel Spiro of the DOJ Civil Division.

<u>*Levindale Hebrew Geriatric Center and Hospital, Inc.*</u>

In June 1998, DOJ announced that Levindale Hebrew Geriatric Center and Hospital, Inc., a hospital providing long-term nursing care in Baltimore, agreed to pay the Government $827,000 to settle False Claims Act allegations arising from a Medicare fraud scheme. The Government's investigation revealed that Levindale resubmitted denied reimbursement claims for room and board charges after recoding them as new claims for ancillary charges such as supplies. According to DOJ, Medicare paid Levindale for 75 improperly recoded and resubmitted claims. The hospital, which has since merged with Sinai Health Systems, Inc., acknowledged that its submission of claims for reimbursement was not consistent with Medicare regulations. As part of the settlement, Levindale entered into a corporate integrity agreement with the HHS OIG. The matter was investigated by the HHS OIG, FBI, and Blue Cross Blue Shield of Maryland through the Medicare Part A Fraud and Abuse Unit. Assistant U.S. Attorney Allen Loucks of the District of Maryland handled the matter.

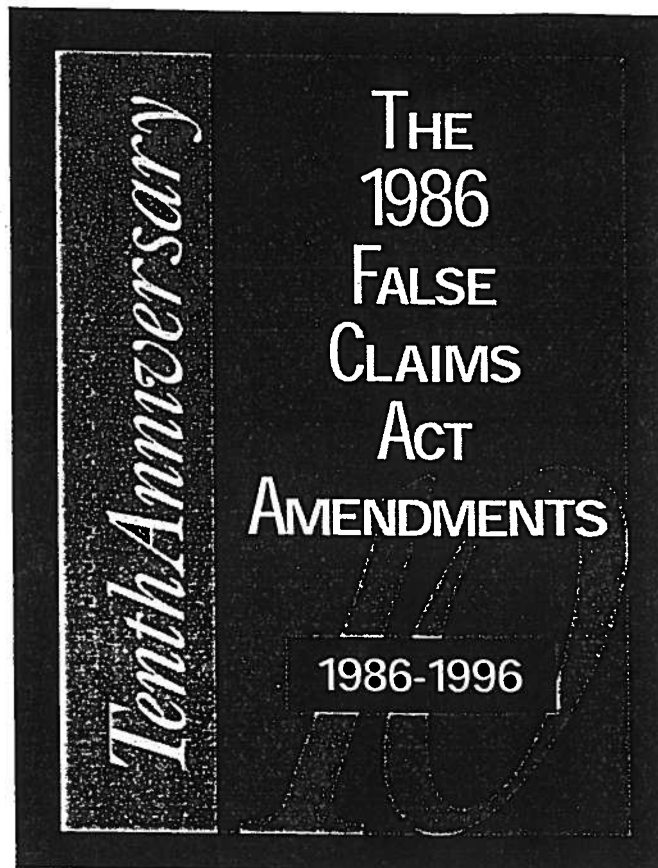
<u>*North Louisiana Rehabilitation Hospital, Horizon/CMS Healthcare Corporation, Continental Medical Systems, Inc., and Dr. Joseph Mitchell Smith*</u>

In June 1998, North Louisiana Rehabilitation Hospital (NLRH) and its Medical Director agreed to pay the Government $4.46 million to settle False Claims Act allegations that they defrauded Medicare. According to DOJ, NLRH increased its Medicare payments by admitting patients whose medical conditions did not warrant inpatient rehabilitation or who could not benefit from the rehabilitation

on account of their conditions. Medicare patients also were allegedly kept at the hospital longer than needed. The settlement is the largest health care fraud settlement ever reached in Louisiana.

NLRH and Medical Director Dr. Joseph Mitchell Smith further improperly assisted Dr. Rel Gray, who served as Program Director for General Medical Services, in concealing fraudulent Medicare billings. The alleged cover-up involved altering more than 600 closed hospital patient files to list Gray as a second medical attending physician when he was only a consultant. According to DOJ, Dr. Gray billed for services he did not render or that were not medically necessary. Gray was convicted of mail fraud in 1996 and served one year in prison.

Under the settlement, NLRH and its owners, Horizon/CMS Healthcare Corporation and Continental Medical Systems, Inc., agreed to pay $4,212,920. Dr. Smith agreed to pay $250,000. Horizon/CMS, Continental Medical, and NLRH have also entered into a corporate integrity agreement with the HHS OIG. The matter was investigated by the HHS OIG and FBI. U.S. Attorney Michael Skinner of the Western District of Louisiana and Marie O'Connell of the DOJ Civil Division handled the case.



THE 1986 FALSE CLAIMS ACT AMENDMENTS TENTH ANNIVERSARY REPORT

Taxpayers Against Fraud, The False Claims Act Legal Center
1220 19th Street, NW, Suite 501, Washington, DC 20036
Phone: (202) 296-4826 Fax: (202) 296-4838

INTRODUCTION

Benjamin Franklin is quoted as saying, "There is no kind of dishonesty into which otherwise good people more easily and frequently fall than that of defrauding the Government." Indeed, government estimates suggest that tens of billions of dollars are being fraudulently diverted from vital federal government programs annually. And the numbers could, in fact, be higher — the U.S. Department of Justice has estimated that up to 10% of the entire federal budget is being lost to fraud.

Congress sought to combat this growing problem through the False Claims Act Amendments of 1986. At its tenth anniversary, the amended False Claims Act (FCA or Act) has proven to be the most effective weapon available for fighting fraud against the Federal Government.

The cost of fraud against the Government stretches far beyond simply depleting the federal fisc, already crippled by record-breaking debt. It also can threaten the safety of the men and women who protect our nation's freedom when, for example, defense contractors lie about having performed required quality control tests on military equipment. It can hurt the elderly who rely on Medicare as their health care safety net when, for example, medical professionals lie to the Government about the care they are providing. It can even harm abused and neglected children when, for example, state agencies lie about how they are conducting federally funded social welfare and adoption programs. The list of victims of fraud against the Government goes on and on.

The 1986 FCA Amendments raised both the stakes and the risks of bilking the Federal Government. Most significantly, the Amendments rejuvenated the *qui tam* provisions that empower and encourage private citizens with evidence of fraud to sue the wrongdoer on behalf of the Government. As a result, more and more wrongdoers are being caught and made to pay for their illegal activities each year. In the long run, perhaps the greatest impact the Act will have is deterring fraud against the Government from being committed in the first place.

This Report describes the amended False Claims Act (31 U.S.C. §§ 3729-3733), its success over the past decade, and its expected growing impact into the future.

THE FALSE CLAIMS ACT: UPHOLDING THE INTEGRITY OF THE FISC

For over a century, the False Claims Act has been helping uphold the integrity of the federal fisc by safeguarding it from fraud. The law was passed in 1863 at the urging of President Abraham Lincoln, whose Union army was being routed by the rebels despite the rebels' inferior size and materials. This disturbing situation was attributed to war profiteers who were defrauding the Union by, for example, selling the army crates filled with sawdust instead of muskets, and selling it the same cavalry horses two and three times. Lincoln pushed for passage of a law that created incentives for private individuals to combat fraud against the Union and gave the Government an effective remedy against fraud. Thus, the False Claims Act of 1863 was born.

"Worse than traitors in arms are the men who pretend loyalty to the flag, feast and fatten on the misfortunes of the Nation while patriot blood is crimsoning the plains . . . ." Abraham Lincoln.

Under the original Act, citizens were deputized to be private attorneys general and were compensated for their work by receiving 50% of the money their lawsuits recovered for the Treasury. The Act provided for the assessment of double damages against defendants as well as a $2,000 civil penalty for every false claim submitted.

Lincoln adopted the *qui tam* concept from contemporary American statutes that, in turn, had incorporated the notion from Anglo-Saxon jurisprudence. *Qui tam* laws were common in the Middle Ages because there was no organized police force or system of government inspectors to maintain law and order. Instead, the public was enlisted through monetary incentives to police wrongdoing. The term "*qui tam*" stands for a longer Latin phrase that is translated as "he who brings an action for the king as well as for

Provisions in a law that permit private parties to sue on behalf of the Government are called "*qui tam*" provisions.

himself." This concept was carried over to the new colonies where the First Continental Congress enacted several statutes containing *qui tam* provisions.

Lincoln's law was successful at helping combat fraud against the Federal Government into the 20th century. Its *qui tam* provisions, however, underwent drastic amendment by Congress in 1943. The guaranteed 50% share was eliminated. Instead, the amended law gave the court discretion to award as little as nothing and at most 25% of the funds recovered. Further, a *qui tam* case was not permitted "whenever it shall be made to appear that such suit was based upon evidence or information in the possession" of the Government. As a result, even when someone, somewhere in the Government possessed the requisite information but was not acting on it, a *qui tam* case could not go forward. Thus, *qui tam* litigation became virtually nonexistent after the 1943 amendments.

While use of *qui tam* declined, fraud against the federal fisc grew. In 1980, the U.S. Department of Justice estimated that fraud was draining up to 10% of the entire federal budget. In 1985, 45 of the 100 largest defense contractors, including 9 of the top 10, were under investigation for multiple fraud offenses. Moreover, several of the largest defense contractors were convicted of criminal offenses. Misconduct was not limited to defense contractors, however. For instance, the Department of Health and Human Services nearly tripled the number of entitlement program fraud cases referred for prosecution in the mid-1980s. Yet, despite the

increased government resources directed at the problem, Department of Justice records indicated that most fraud referrals were unprosecuted. Public funds lost to fraud remained largely unretrieved.

The widespread reports that the Treasury was being repeatedly bilked, and that federal prosecutors alone could not keep up with the tide, led to a second round of Congressional amendments to the FCA in 1986. These amendments rejuvenated *qui tam* in several ways. For example, the bar against cases about which the Government possessed information was removed from the statute. The successful *qui tam* plaintiff was guaranteed at least 15%, and could receive as much as 30%, of the total recovery, as well as reasonable expenses and attorneys' fees. See "The Relator's Share" on page 10. And a special section was added to the Act which provides a series of protections to encourage citizens to step up to bat for the federal fisc. See "Legal Protections for Whistleblowers" on page 29. Moreover, the 1986 Amendments increased penalties for defrauding the Treasury and simplified proving a violation. See "The 1986 Amendments" on page 9.

The 1986 Amendments were sponsored by Senator Charles Grassley (R, Iowa) and Congressman Howard Berman (D, California) and signed into law by President Ronald Reagan. They received widespread bi-partisan support.

Since enactment of the 1986 Amendments, civil fraud recoveries have replenished over $3 billion to the U.S. Treasury. Over $1 billion of this amount has been returned thanks to the rejuvenated *qui*

Qui tam plaintiffs are often referred to as "relators": "Legal proceedings which are instituted ... on information and at the instigation of an individual who has a private interest in the matter, are said to be taken 'on the relation' *(ex relatione)* of such person, who is called the 'relator.'" Black's Law Dictionary. A *qui tam* case name is usually styled "United States ex rel. Relator v. Accused Wrongdoer".

tam provisions. For their part, *qui tam* relators who acted with the courage of their moral convictions and made these recoveries possible have received, on average, about 18% of the recoveries their cases produced.

A PUBLIC-PRIVATE PARTNERSHIP

Congress recognized that the Government alone, with its limited resources, was overmatched in the fight against rampant fraud. Thus, it designed the 1986 FCA Amendments to put into play a powerful public-private partnership for uncovering fraud against the federal fisc and obtaining the maximum recovery for the U.S. Treasury.

The amended Act provides a mechanism with built-in incentives for private citizens with evidence of fraud and their attorneys to commit their time and resources to supplement the Government's efforts. The Act compensates the private parties only if their efforts are successful, and then only in direct proportion to the extent of their contribution — certainly a prudent deal from the taxpayers' point of view.

With government resources continuing to shrink in this era of federal budget deficits, the FCA stands out as an important model of how the private sector can be efficiently and effectively recruited to join the public sector in combating a critical public problem.

THE CHRONOLOGY OF A TYPICAL *QUI TAM* CASE

CITIZEN DISCOVERS MISCONDUCT IN VIOLATION OF THE FALSE CLAIMS ACT

CITIZEN CONTACTS PRIVATE ATTORNEY

CITIZEN AND ATTORNEY FURTHER EVALUATE WHETHER ILLEGAL CONDUCT HAS OCCURRED

CITIZEN MAKES THE DECISION TO BRING A *QUI TAM* ACTION

CITIZEN AND ATTORNEY DRAFT A FCA COMPLAINT
AND FILE IT IN FEDERAL COURT UNDER SEAL

AND

CITIZEN PROVIDES ALL EVIDENCE TO THE GOVERNMENT

THE GOVERNMENT INVESTIGATES THE ALLEGATIONS IN THE SEALED COMPLAINT

THE GOVERNMENT DECIDES TO
INTERVENE IN THE LAWSUIT

CITIZEN AND PRIVATE ATTORNEY
HELP THE GOVERNMENT
PROSECUTE THE CASE

THE GOVERNMENT DECLINES TO
INTERVENE IN THE LAWSUIT

CITIZEN AND PRIVATE ATTORNEY
DECIDE WHETHER TO PROSECUTE
THE CASE THEMSELVES

DETERRENCE

"White collar crime" is not committed in the heat of passion. It is committed by informed actors who carefully calculate the steps necessary to obtain their monetary goals. Since "white collar crime" is committed after "rational" thought, economists have studied how best to deter it. One of the most well known deterrence models calls for laws that make it "irrational" to violate the law by increasing the likelihood that bad actors will be caught and by requiring violators to pay a steep price for their illegal actions. Many civil remedies against "white collar crime," including the False Claims Act, apply these principles of deterrence.

- The amended FCA *qui tam* provisions increase the likelihood that bad actors will be caught because they empower and encourage private citizens to come forward by, among other things:
    - protecting them from retaliation for blowing the whistle;
    - giving whistleblowers legal standing and a formal, active role in remedying FCA violations on behalf of the Government; and
    - entitling successful relators to receive between 15% and 30% of the funds their actions recover.
- The FCA hits bad actors with significant financial consequences:
    - three times the amount of damage done to the Government;
    - a civil fine of between $5,000 and $10,000 for each false claim; and
    - the *qui tam* relator's expenses and attorneys' fees.

TEN YEARS OF SUCCESS

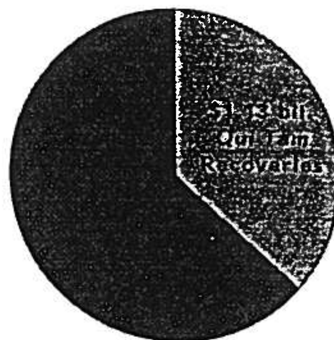
Congress reinvigorated the False Claims Act because widespread fraud against the Federal Government was going undetected and unremedied. The 1986 FCA Amendments have lived up to congressional expectations that a strong FCA and *qui tam* could return fraudulently diverted funds to the U.S. Treasury and help curb and deter fraudulent activity.

Since enactment of the 1986 Amendments, the Treasury has recovered over $3 billion through civil fraud cases. Of that amount, about one-third has been returned as a result of *qui tam* cases. These recoveries show that wrongdoers are being held accountable. They also show that the price of defrauding the Government is rising — the likelihood of being caught is increasing and the ensuing consequences are more severe.

"[W]hite collar fraud is becoming so pervasive and so increasingly sophisticated that only a coordinated effort between public law enforcers and private citizens will help us regain control of the millions or billions of dollars lost each year." Senator Charles Grassley, February 6, 1986.

"The recovery of over $1 billion demonstrates that the public-private partnership encouraged by the statute works and is an effective tool in our continuing fight against fraudulent use of public funds." Frank W. Hunger, Assistant Attorney General for the Civil Division, U.S. Department of Justice, October 18, 1995.

CIVIL FRAUD RECOVERIES SINCE 1986



TOTAL FRAUD RECOVERIES = $3.43 BILLION
FALSE CLAIMS ACT *QUI TAM* RECOVERIES = $1.13 BILLION

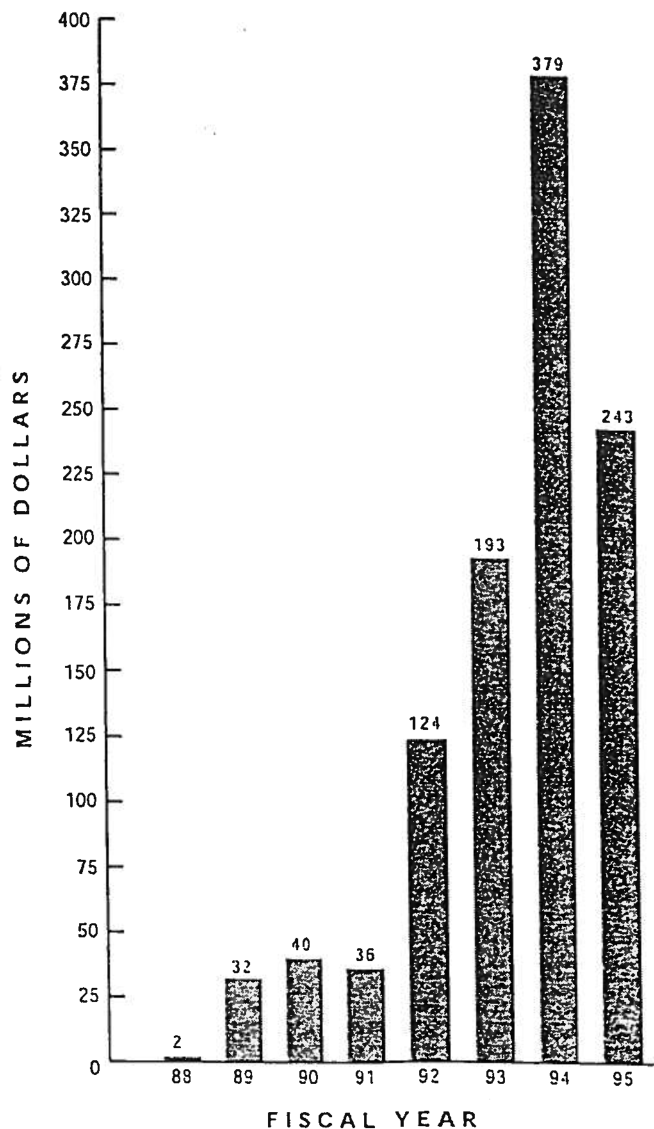
Source: U.S. Department of Justice (numbers for FY 1996 are incomplete)

"I think the amount of the proceeds recovered thus far as a result of *qui tam* suits well justifies the conviction of Senator Grassley and myself that ordinary Americans could achieve extraordinary results for their fellow taxpayers if we enlisted them to augment the Justice Department's efforts to combat fraud in Government contracting." Representative Howard Berman, September 9, 1993.

"This is a remarkable achievement for the taxpayers of this country." Frank W. Hunger, Assistant Attorney General for the Civil Division, U.S. Department of Justice. October 18, 1995.

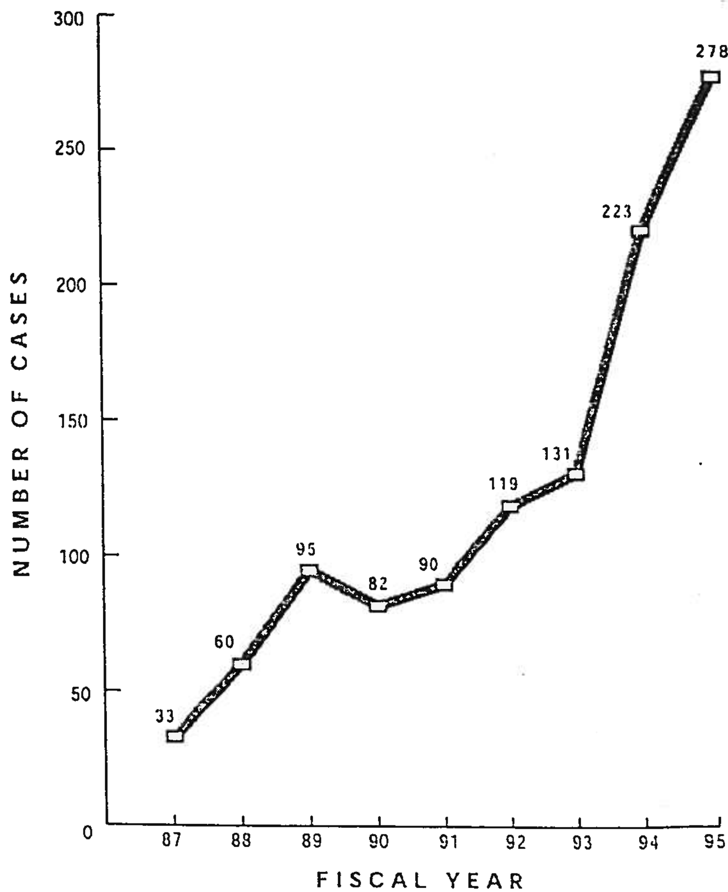
Qui tam recoveries have increased substantially since passage of the 1986 Amendments. In fiscal years 1994 and 1995 alone, over half a billion dollars was recovered by *qui tam* cases.

QUI TAM RECOVERIES SINCE THE 1986 AMENDMENTS



Source: *U.S. Department of Justice*

As the significance and effectiveness of the 1986 Amendments have become more widely recognized, more and more *qui tam* cases have been filed under the Act. The number of *qui tam* cases filed each year has jumped from 33 in fiscal year 1987, to 90 in fiscal year 1991, to over 200 in both fiscal years 1994 and 1995. A record 278 *qui tam* suits were filed in fiscal year 1995.



Source: U.S. Department of Justice

"In the face of sophisticated and widespread fraud, the Committee believes only a coordinated effort of both the Government and the citizenry will decrease this wave of defrauding public funds."
Senate Report on the 1986 False Claims Act Amendments.

"The *qui tam* amendments were intended to encourage private citizens to come forward with information about fraud against the federal government. Obviously they are working very well."
Frank W. Hunger, Assistant Attorney General for the Civil Division, U.S. Department of Justice, October 18, 1995.

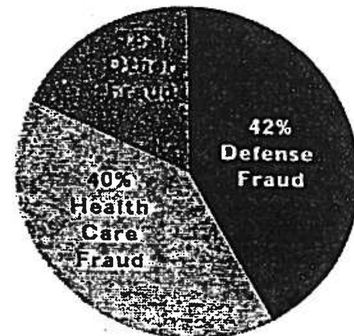
"Fraud permeates generally all Government programs ranging from welfare and food stamps benefits, to multibillion dollar defense procurements, to crop subsidies and disaster relief programs .... [C]hanges are necessary to halt the so-called 'conspiracy of silence' that has allowed fraud against the Government to flourish."
Senate Report on the 1986 False Claims Act Amendments.

The types of fraud addressed by *qui tam* cases have expanded from being predominantly Department of Defense contractor fraud to predominantly health care and other fraud.

TRENDS IN *QUI TAM* CASES BY SUBJECT AREA

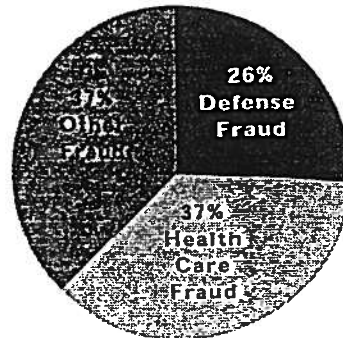
1994

Source: Number of qui tam settlements and DOJ interventions reported in the TAF 1994 False Claims Act & Qui Tam Year In Review



1995

Source: Number of qui tam settlements and DOJ interventions reported in the TAF False Claims Act & Qui Tam Quarterly Review, Vols. 1-4

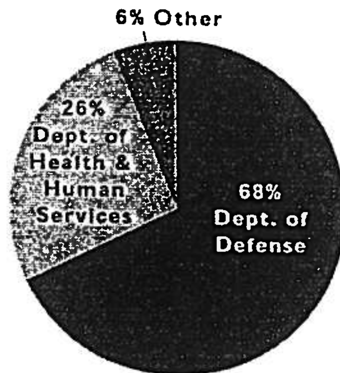


1996 (first half)

Source: Number of qui tam settlements and DOJ interventions reported in the TAF False Claims Act & Qui Tam Quarterly Review, Vols. 5-6

Of the $1.13 billion already recovered by *qui tam* cases, 68% involved the Department of Defense (DOD) as the client agency, 26% the Department of Health and Human Services (HHS), and 6% other agencies. Of the *qui tam* cases currently pending, about 38% involve DOD, 40% HHS, and 22% other agencies.

QUI TAM RECOVERIES SINCE THE 1986 AMENDMENTS BY TYPES OF FRAUD



Source:
U.S. Department of Justice

CURRENTLY PENDING *QUI TAM* CASES BY TYPES OF FRAUD

Source:
U.S. Department of Justice

While impressive, the numbers tell only part of the success story of the 1986 False Claims Act Amendments. The following summaries of some important *qui tam* cases help paint a more complete picture of the significant contribution the 1986 Amendments are making to the integrity of the U.S. fisc.

U.S. EX REL. KEETH V. UNITED TECHNOLOGIES CORP. — THE LARGEST *QUI TAM* RECOVERY TO DATE

The Sikorsky Aircraft Division of United Technologies Corp. (UTC) was accused of billing for work not yet performed on a helicopter contract with the U.S. military. The company was also accused of inflating material inventories used as a basis for these progress bills. According to the *qui tam* complaint, the inflated progress payments constituted interest free loans from the Government and resulted in additional debt service costs to the Government. The company was also accused of attempting to suppress disclosure of its improper accounting practices after entering the Department of Defense Voluntary Disclosure Program.

The Relator: Douglas Keeth was an executive vice president at UTC and a member at the voluntary disclosure team.

Resolution: UTC settled the case in March 1994 for $150 million.

U.S. EX REL. DOWDEN V. NATIONAL HEALTH LABORATORIES INC., METPATH, AND METWEST — THE LARGEST *QUI TAM* HEALTH CARE FRAUD RECOVERY TO DATE

National Health Laboratories (NHL), MetPath, and MetWest were accused of manipulating doctors into ordering unnecessary blood tests by including expensive cholesterol and iron tests in a package with a common, less expensive blood test known as SMAC. The SMAC test could not be ordered without also ordering the expensive tests. The labs were further accused of charging Medicare and Medicaid separately for the cholesterol and iron tests. Medicare and Medicaid paid for the tests believing that the doctors had ordered them for sound medical reasons.

The Relator: Jack Dowden was a sales manager at MetWest who was puzzled at how his competitor, NHL, could offer additional blood tests without charge. He identified the practice when he had a sample of his own blood sent to NHL for testing and was billed for one of the additional tests.

Resolution: NHL settled its portion of the case in December 1992 by agreeing to pay $111.4 million. MetPath and MetWest later settled for $39.8 million.

U.S. EX REL. COPELAND V. LUCAS WESTERN, INC. ET AL. — THE LARGEST *QUI TAM* RECOVERY TO DATE FOR THE SALE OF NON-COMPLIANT PARTS

Lucas Industries plc, a British industrial corporation, and two of its U.S. subsidiaries were sued for failing to test military parts properly and for knowingly selling defective parts to the Navy, Army, and Air Force. The case alleged

that the company falsified manufacturing inspections of a key component of the Navy's front-line carrier based fighter. The Justice Department claimed that 100% of the samples of that part contained major defects. Government inspection of the equivalent part for the Army's premier artillery system showed major defects in 100% of those samples as well. Investigators reportedly contended that the parts supplied by Lucas were responsible for engine fires, aborted missions, and system failures.

The Relator: Frederick Copeland was a machinist at Lucas Western, Inc., one of the defendants.

Resolution: The case settled in September 1995 for $88 million.

U.S. EX REL. DENONCOURT V. STATE OF NEW YORK ET AL. — THE LARGEST *QUI TAM* RECOVERY TO DATE FROM A STATE AND STATE AGENCIES FOR FRAUD IN A FEDERALLY FUNDED STATE-ADMINISTERED SOCIAL WELFARE PROGRAM

The State of New York, several state universities, and five state employees were accused of falsely billing the Federal Government for the training of social service workers. Instead of being used for social worker training, the federal funds allegedly were used for non-training costs, including a state summer camp.

The Relator: George Denoncourt is a former New York State Department of Social Services employee.

Resolution: In December 1994, the State and its co-defendants settled the case for about $27 million.

U.S. EX REL. URDA AND TAXPAYERS AGAINST FRAUD V. LINK FLIGHT SIMULATION CORP. AND SINGER CO. — THE FIRST $50 MILLION *QUI TAM* RECOVERY

As a sole source contractor not subject to competitive bidding, Link Flight Simulation Corp. was required to disclose fully and accurately all of its cost and pricing data to the Government. Instead of complying with this requirement, Link Flight allegedly padded its best internal cost estimates for military aircraft flight simulators by about 10% in the data it gave to the Government.

The Relator: Christopher Urda worked at Link Flight as a bids and pricing administrator when he learned of the alleged improper practice. He brought his knowledge to the attention of government authorities three times, but was rebuffed each time. He then filed a *qui tam* case. Taxpayers Against Fraud is a nonprofit public interest organization dedicated to combating fraud against the Federal Government through the promotion and use of the *qui tam* provisions of the False Claims Act.

Resolution: The defendants settled the case in July 1992 for $55.5 million.

U.S. EX REL. CONDIE V. UNIVERSITY OF UTAH, DR. JOHN NINNEMANN, AND THE BOARD OF REGENTS OF THE UNIVERSITY OF CALIFORNIA — THE FIRST SCIENTIFIC FRAUD FCA CASE PURSUED BY THE FEDERAL GOVERNMENT

Dr. John Ninnemann received funding from the National Institutes of Health for almost a decade for his research into the causes of immune system suppression after burn

injury. This *qui tam* case alleged that he falsified his research results to obtain that funding. It further claimed that the University of Utah, where Ninnemann initially worked, was aware of the falsifications because of an internal investigation, but characterized the problem as sloppy research rather than intentional falsification. The University of California, where Ninnemann subsequently worked, was charged with not monitoring Ninnemann as it had promised.

The Relator: J. Thomas Condie was a research assistant in Dr. Ninnemann's laboratory at the University of Utah.

Resolution: The Universities settled the claims in July 1994 for about $1.5 million.

DETERRENT EFFECT

In addition to recovering billions of dollars for the federal fisc, the 1986 Amendments have established a powerful deterrent to those contemplating fraud against the Government. Potential wrongdoers are now faced with the real risk of being caught — with those around them given strong incentives by the revitalized *qui tam* provisions to blow the whistle and with *qui tam* filings and recoveries increasing each year. And potential wrongdoers now face substantial financial consequences if caught. Surely, a large part of the success of the 1986 Amendments is their deterrent effect.

The Future

Congress enacted the 1986 False Claims Amendments to "enhance the Government's ability to recover losses sustained as a result of fraud against the Government" and to cover "all fraudulent attempts to cause the Government to pay out sums of money or to deliver property or services." With the passage of time, the public, the Government, and private attorneys continue to grow in their appreciation of the range of appropriate uses of the Act.

In the decade since passage of the 1986 Amendments, the predominant type of FCA case has shifted. Through the beginning of the 1990s, the clear majority of FCA cases filed and recoveries obtained involved Department of Defense contracts. In the 1990s, health care fraud overtook defense fraud as the top target of FCA cases. In the past few years, the Act has increasingly been used to remedy fraud in a broad variety of other federal program areas. See "Trends In *Qui Tam* Cases By Subject Area" on page 18. It is likely that the expansion of the effective use of the False Claims Act to protect the integrity of government programs will continue throughout the next decade and beyond. See "The False Claims Act — Into The Future" on page 34.

THIS SAMPLING CONTAINS EXAMPLES OF THE VARIETY OF RECENT, SUCCESSFUL FCA CASES. THESE CASES FORESHADOW THE BROAD RANGE OF FCA CASES IN THE FUTURE.

Subject Area/Case Name	Brief Description Of Allegations	Resolution
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM: U.S. v. Metro Construction Co. et al.	Contractor allegedly submitted false invoices for hauling sanitary landfill.	$1.4 million settlement
DEPARTMENT OF HOUSING & URBAN DEVELOPMENT (HUD) MORTGAGE INSURANCE PROGRAM: U.S. v. First Union Mortgage Corp.	Mortgage company accused of falsely certifying the eligibility of borrowers for federally insured mortgages.	$7 million settlement
DEPARTMENT OF TRANSPORTATION (DOT) RAIL HIGHWAYS CROSSING PROGRAM: U.S. ex rel. Nelson v. CSX Transportation, Inc.	Railroad company sued for violating financial terms of the railroad crossing signal installation program to inflate its profit.	$5.9 million settlement
ENVIRONMENTAL POLLUTION: U.S. ex rel. Davis and Dennison v. M/G Transport Services, Inc.	Towboat company that contracted to deliver coal to the Tennessee Valley Authority allegedly lied about pumping oily bilge, trash, and sewage into the river in violation of the Clean Water Act.	$4.6 million settlement
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA): U.S. v. Harris Corp.	Contractor accused of improperly obtaining confidential information to win a FEMA contract.	$1.6 million settlement
FEDERAL SOCIAL WELFARE PROGRAMS: U.S. ex rel. Denoncourt v. State of New York et al.	State and its agencies allegedly submitted false bills to the Federal Government for training social service workers.	$26.97 million settlement
INADEQUATE QUALITY OF NURSING HOME CARE: U.S. v. GMS Management-Tucker, Inc. et al.	Nursing home sued for certifying that its care met government standards, even though it provided inadequate nutrition and wound care to elderly residents.	$600,000 settlement
SCIENTIFIC RESEARCH: U.S. ex rel. Condie v. University of Utah, Dr. John Ninnemann, and the Board of Regents of the University of California	University researcher allegedly reported false research results to NIH to receive federal funding.	$1.575 million settlement

The first ten years of successes of the 1986 False Claims Act Amendments are a harbinger of the future successes of the Act. The billions of dollars that have already been recovered due to the amended FCA is just the beginning. Tens of billions of additional dollars are likely to be recovered in the coming decades, especially as more and more people learn of the existence of *qui tam*, and of its many uses. Indeed, the past few years have seen a dramatic rise in both the number of *qui tam* cases brought and the amount returned to the Treasury by *qui tam*. See "*Qui Tam* Cases Filed Since The 1986 Amendments" on page 17 and "*Qui Tam* Recoveries Since The 1986 Amendments" on page 16.

Moreover, besides replenishing the depleted federal fisc, the 1986 Amendments have introduced a powerful deterrent to those contemplating fraud against the Government by significantly increasing both the likelihood of being caught and the resulting price to be paid. See "Deterrence" on page 12. As *qui tam* becomes more widely known and used, potential wrongdoers will have growing reason not to attempt to defraud the Government. In fact, in the long run, the Act's deterrent effect will likely be its greatest contribution.

In short, a strong False Claims Act and *qui tam* are the taxpayers' best hope for ensuring that future bilking of the Federal Government will be diminished and that all funds fraudulently diverted from federal programs ultimately will be returned to the U.S. Treasury.

THE 1986 FALSE CLAIMS ACT AMENDMENTS:

AN ASSESSMENT OF ECONOMIC IMPACT

September 1996

WILLIAM L. STRINGER
THE KALORAMA CONSULTING GROUP, INC.
1930 18TH STREET, N.W., SUITE 24
WASHINGTON, D.C. 20009
202/588-8394

An Economic Study Commissioned By
Taxpayers Against Fraud, The False Claims Act Legal Center
1220 19th Street, N.W., Suite 501
Washington, D.C. 20036
202/296-4826

THE 1986 FALSE CLAIMS ACT AMENDMENTS: AN ASSESSMENT OF ECONOMIC IMPACT

EXECUTIVE SUMMARY

This paper examines the economic impact of the 1986 Amendments to the False Claims Act. The impacts examined are: (1) the additional cost savings by the US Government both currently and in the future, and (2) the deterrent effect of the Act's Amendments. To structure some insight into magnitudes of cost savings and deterrence resulting from the 1986 Amendments, the following are developed and analyzed: (1) an estimate of total fraud perpetrated against the US Government; (2) data relating to the number and amount of recoveries under the Act; (3) a theory for identifying the components of deterrence; and (4) a simulation of deterrence using a variety of plausible assumptions.

Among the conclusions reached in this paper are:

1. Total fraud recoveries since the 1986 Amendments can be expected to exceed $24 billion by FY 2006, with $21 billion of that amount coming in the next decade.

2. *Qui tam* recoveries are expected to equal between about $6.9 billion and $9.3 billion over the next ten years.

3. Deterrence of fraud due to the 1986 Amendments for their first ten years of existence (1986-1996) is estimated as between $147.9 billion and $295.8 billion, and for their second ten years of existence (1996-2006) is estimated as between $240.2 billion (23% of the fraud projected to be committed over that period) and $480.3 billion (46% of the fraud projected to be committed over that period), even assuming a conservative estimate of deterrent effect.

4. Deterrence of fraud due to the *qui tam* provisions of the amended Act for their first ten years of existence (1986-1996) is estimated as between $35.6 billion and $71.3 billion, and for their second ten years of existence (1996-2006) is estimated as between $105.1 billion and $210.1 billion, even assuming a conservative estimate of deterrent effect.

THE 1986 FALSE CLAIMS ACT AMENDMENTS: AN ASSESSMENT OF ECONOMIC IMPACT

TABLE OF CONTENTS

INTRODUCTION 1

MEASURING FALSE CLAIMS AGAINST THE US GOVERNMENT 3
- Data Issues 3
  - Measuring Fraud 3
  - The Cost of White Collar Crime 3
  - The Cost of Fraud Against the Government 5

THE THEORY OF FRAUD PERPETRATION AND DETERRENCE 11
- The Decision to Commit Fraud 11
- Deterrence: Shifting the Payoff-Expected Loss Tradeoff 15
- Measuring Deterrence 17

IMPACTS OF THE 1986 AMENDMENTS 20
- The Provisions Creating Direct and Deterrent Effects 21
- Direct Effects of the 1986 Amendments 23
  - *Qui Tam* Recoveries 23
  - Total Fraud Recoveries (Including *Qui Tam*) 26
  - Projecting Total Recoveries (Including *Qui Tam*) 27
  - Projecting *Qui Tam* Recoveries 29
- The Deterrent Effect 32
  - Projecting the Deterrent Effect of the Amended False Claims Act 33

SUMMARY AND CONCLUSIONS 37

BIBLIOGRAPHY 42

THE AUTHOR 46

THE AUTHOR

This paper was researched and written by William L. Stringer. Mr. Stringer is Senior Lecturer in Economics and Finance at the Fels Center of Government at the University of Pennsylvania in Philadelphia and is President of the Kalorama Consulting Group, Inc., a public policy research firm headquartered in Washington, D.C. The Kalorama Consulting Group and Mr. Stringer have researched various public policy questions for federal government agencies, public interest groups, state and local governments, Native American tribes and private corporations. The work has covered public policy questions in thirty states, among forty-one Native American tribes and with five countries.

Prior to forming the Kalorama Consulting Group, Mr. Stringer served as Chief Economist for the US Senate Committee on Budget, as Assistant to the Chairman of the Federal Home Loan Bank Board, and as Deputy and Acting Treasurer of New Jersey. He also served as Senior Vice President of the American Capital Group, a pubic financial advisory firm headquartered in Philadelphia, and was Vice President of Chambers Associates, a public policy consulting and lobbying firm located in Washington, D.C.

Mr. Stringer serves as Senior Consultant to the Institute for Higher Education Finance Policy, a non-profit consulting firm concerned with financing college education located in Washington, D.C. He also serves as Senior Consultant to the Tribal Development Group located in Washington, D.C. and Sovereignty Development Strategies located in New York. These two groups provide public policy guidance to American Indian Tribes and Organizations.

Mr. Stringer did his undergraduate work at the University of Kansas in Lawrence, Kansas and graduate work at Oklahoma State University in Stillwater, Oklahoma. He is the author of over thirty articles dealing with the Federal Budget and matters of public policy, finance and economics and has delivered numerous presentations at Universities and before various public interest groups and organizations. He is a member of the American Economics Association, the Southern Economics Association, and the Urban Land Institute.