False Claims Act - 2023 Year in Review

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The False Claims Act continues to be one of the most commonly used weapons in the government's enforcement arsenal to address various forms of fraud. This review highlights key developments from 2023 related to the FCA, including:

- The recovery by the government of nearly $2.7 billion in settlements and judgments in FCA cases in fiscal year 2023—$450 million more than the previous fiscal year's recovery but over $3 billion less than the recovery in 2021.
- The government continuing to prioritize the detection, investigation, and prosecution of fraud related to private equity investment in healthcare, cybersecurity requirements for government contractors, and COVID-19 relief programs like the Paycheck Protection Program.
- The government maintaining its traditional focus on targeting fraudulent billing schemes, holding the individuals behind corporate fraud accountable, and adopting policies to incentivize voluntary self-disclosure and cooperation.
- Continued judicial efforts to interpret the substantive elements of an FCA claim, including what it means for a claim to be "material" after the U.S. Supreme Court's landmark 2016 decision in Escobar.
- Significant judicial decisions regarding the standard the government must meet to dismiss an FCA case, the types of allegations sufficient to satisfy Rule 9(b)'s heightened pleading standard, what it means for a defendant to act "knowingly," and whether the FCA imposes an objective scienter standard, among many other issues.

In 2023, Haynes Boone represented healthcare providers, defense contractors, and individuals in FCA investigations and lawsuits. We successfully resolved matters before lawsuits were filed, negotiated favorable settlements at all stages, and defended our clients in active litigation and appeals. We also advised many healthcare providers and contractors regarding FCA compliance and other related issues.

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If you have any questions about the issues covered in this review, please let us know. We look forward to working with our friends and clients in 2024 and beyond.

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