

## False Claims Act - 2021 Year in Review

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February 7, 2022 Stacy Brainin, Bill Morrison, J. Nicholas Bunch, Andrew Guthrie, Jennifer Kreick, Neil Issar, Taryn McDonald, Wilson Miller

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**PRACTICES** Healthcare and Life Sciences, Litigation, False Claims Act and Qui Tam Defense

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In 2021, the COVID-19 pandemic continued to cast a pall over the nation's economic and healthcare landscapes. New laws were passed and several existing laws were renewed or extended to provide trillions of dollars of additional government funding to affected businesses and individuals. In the midst of this, the government maintained its focus on possible fraud associated with government funds, including violations of the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* ("FCA").

This Review highlights key developments from 2021 related to the FCA, including:

- The recovery by the government of more than \$5.6 billion in settlements and judgments in FCA cases in 2021
- The government prioritizing the detection, investigation, and prosecution of fraud related to COVID-19 relief programs and cybersecurity by several means, including the FCA
- The government returning to earlier standards regarding individual accountability and reliance on sub-regulatory guidance
- Continued judicial efforts to interpret the elements of an FCA claim, including "materiality," after the U.S. Supreme Court's landmark decision in *Escobar*
- Significant judicial decisions regarding the types of allegations sufficient to satisfy Rule 9(b)'s heightened pleading standard, what constitutes an original source for purposes of the public disclosure bar, and whether the FCA imposes an objective scienter standard, among many other issues.

In 2021, Haynes Boone's [Healthcare and Life Sciences Practice](#) 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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