Blog post july 7, 2016

Any person violating the FCA is liable to the United States for civil penalties of not less than $5,500 and not more than $11,000 per false claim submitted.

The civil penalties required by the federal FCA are set to increase for acts occurring on or after August 1, 2016. The penalty will increase to a minimum penalty of $10,781 and a maximum of $21,563. Prior to the upcoming 2016 adjustment the penalty amounts had not been raised for more than ten years. If the penalties seem severe, consider that the original FCA carried a civil penalty of $2,000.00 in 1863 when it was passed, which would equate to a penalty of roughly $38, 878.04 for each false claim after inflation.

Section 701 of the Bipartisan Budget Act of 2015, Public Law 114-74 (Nov. 2, 2015) requires that federal agencies publish regulations adjusting the amount of civil monetary penalties within the jurisdiction of each agency not later than July 1, 2016.

One of the more interesting questions in FCA litigation involves determining the number of claims for which defendants should be subject to civil penalties. While it is clear that multiple penalties are possible under the FCA, counsel should be aware that large penalty awards could be subject to challenge under the Eighth Amendment’s Excessive Fines Clause if disproportionate to the amount of the damages to the government.

The number of civil penalties in a given case is a question of fact for the jury to decide. Traditionally it was thought that courts lacked discretion to reduce the number of the penalties once a jury had made a finding but the Fourth Circuit Court of Appeals reached a different result in a 2013 case. In United States ex rel. Bunk v. Gosselin World Wide Moving, N.V., the Fourth Circuit found that the district court had authority to enter judgment against the defendant for something other than the 9,136 false claims found by the jury where the relator was willing to accept a remittitur to $24 million to bring the penalty within the constitutional limits of the Eighth Amendment’s Excessive Fines Clause.

<https://www.gpo.gov/fdsys/pkg/FR-2016-06-30/pdf/2016-15528.pdf>