Having Your Cake and Eating It Too—The (Un)Enforceability of Releases on Future Qui Tam Claims

Article By:

Todd P. Photopulos
Graham W. Askew

The Department of Justice reports that the United States has recovered over twenty billion dollars in settlements and judgments since Congress substantially strengthened the False Claims Act in 1986. These recoveries have come disproportionately at the expense of the healthcare industry. This article will provide a working knowledge of the significant cases addressing the issue of the enforceability of releases on future qui tam claims, then proceed to provide strategies for protecting members of the healthcare industry from future whistleblower claims.

Introduction

The qui tam provision of the False Claims Act (FCA) encourages private citizens to bring a civil action on behalf of the United States against persons who defraud the government. The term “qui tam” is an abbreviation for a Latin phrase that means he “who sues on behalf of the King as well as for himself.” The whistleblowing employee, called a “relator” in a qui tam action, must first file his or her complaint under seal, allowing the government time to decide if it wishes to intercede in the action before the complaint is served on the defendant. During this initial period of review by the government, the qui tam action may be settled and dismissed only with written consent by both the court and the Attorney General. To encourage insiders to come forward, the False Claims Act allows the successful whistleblower to recover attorneys’ fees and costs, as well as a share of the recovery, usually up to 30 percent of the award. If the government decides not to intervene following this initial review period, the whistleblower has the right to settle the claim.

The FCA is silent, however, regarding the whistleblower’s right to settle a potential qui tam claim prior to filing the claim in court. Doing so arguably prevents the government from becoming aware of the fraud and recovering a portion of the proceeds, which would flow entirely to the whistleblower. After all, according to that argument, the government is the party that was harmed by the fraud. The whistleblower just happened to be in the wrong place at the right time to take advantage of the claim. On the other hand, employers have an interest in finality when negotiating potential liability with their current and former employees and the payout to the employee would certainly act as a deterrent to future misconduct. Although relatively few jurisdictions have addressed the issue, most courts that have done so have found that releases for “yet-to-be-filed” qui tam claims...
are void as against public policy. This does not mean, however, that you cannot make strong arguments in support of the validity of such releases.

This article addresses the qui tam release dilemma and explores strategies to counter the difficulty in obtaining enforceable releases of future qui tam claims. The article first addresses the potential danger posed by qui tam lawsuits as reflected by numerous recent recoveries against healthcare entities. Next, the article provides a brief history of the qui tam provisions of the FCA, followed by an analysis of the significant cases addressing the issue of the enforceability of releases on future qui tam claims. Finally, this article provides strategies for protecting healthcare employers from future whistleblower claims.

**The Potential Danger**

The Department of Justice reports that the United States has recovered over $20 billion in settlements and judgments since Congress substantially strengthened the FCA in 1986. The rapid increase in qui tam recoveries against members of the healthcare industry shows no sign of stopping, as illustrated by the following significant qui tam settlements and judgments in fiscal year 2007:

1. $328 million from Bristol-Myers Squibb Company (BMS) and its generic division, Apothecon, to resolve a broad array of allegations involving illegal drug pricing and marketing activities. BMS and Apothecon paid an additional $187 million to state Medicaid programs based on the same allegations.
2. $311 million from four manufacturers of hip and knee surgical implant products—Zimmer, Inc., Depuy Orthopaedics, Inc., Biomet Inc., and Smith & Nephew, Inc.—to settle claims that from at least 2002 through 2006, these companies used consulting agreements with orthopaedic surgeons to induce the purchase of their devices.
3. $180 million from Aventis Pharmaceuticals, Inc., to resolve allegations that the company engaged in a scheme (a) to set and maintain fraudulent and inflated prices for its drug, Anzemet, “knowing that federal health care programs established reimbursement rates based on those prices,” and (b) to use the difference between the inflated prices reported and the actual prices charged to its customers to market, promote, and sell the drug. In addition, Aventis paid $10 million to several state governments based on the same allegations.
4. $155 million from Medco Health Solutions to settle allegations that Medco submitted false claims in connection with the mail order prescription drug benefit offered under the Federal Employee Health Benefits Program.
5. $100 million from Purdue Pharma and Purdue Frederick Company to settle allegations of fraud against Medicaid and other federal healthcare programs. The government alleged that Purdue fraudulently marketed OxyContin as a product less addictive and less subject to abuse and diversion than other pain medications.

As illustrated by these recoveries, a qui tam action under the FCA can be devastating to even the largest entities in the healthcare industry. A recent article published in the *New York Times* suggests that the largest FCA recovery to date may result from a currently pending lawsuit. The case, *U.S. ex rel. Fitzgerald v. Novation*, was filed in 2003 in federal court in Dallas and unsealed this year. The relator argues that improper sales practices, together with erroneous accounting, invisibly drain millions of dollars from programs like Medicare through overcharges or unauthorized uses. While whistleblower cases typically involve a handful of companies at most, this relator alleges systematic fraud across a whole network of companies—some with well-known names like Johnson & Johnson, Becton Dickinson, and Merck—and more than 7,000 healthcare institutions.
Evolution of the Whistleblower Provisions

Congress enacted the original FCA, sometimes referred to as “Lincoln’s Law,” in 1863 amid reports of widespread corruption and fraud in the sale of supplies and provisions to the United States government during the Civil War. According to a congressional investigation, roughly one-third of all military contract spending went to overcharges in the early months of the Civil War. This investigation uncovered defense contractors who resold the same horses two and three times to the United States cavalry, and who were paid for muskets but provided boxes filled with sawdust. Such rampant abuse caused entrepreneur James “Big Jim” Fisk to observe: “[You could] sell anything to the government at almost any price [if] you’ve got the guts to ask.”

When Lincoln’s Law was enacted, there was no Department of Justice. The district attorneys were not subject to the control of the Attorney General. The government lacked the effective means for coordinating its legal business. Accordingly, Lincoln’s Law “provided that fraud actions could be initiated by both government prosecutors and private citizens.” The qui tam provisions in the original FCA, therefore, resulted from both necessity and the magnitude of the problem at hand.

Since then, government enthusiasm for the qui tam provisions has fluctuated according to the perceived seriousness and extent of fraud against the government, and the degree to which whistleblowers “are seen as aiding the national investigation and prosecution of fraud.” For example, “[r]elators brought very few qui tam suits from the end of the Civil War to the 1930s and early 1940s primarily because of the Government’s limited economic role in the national economy.” In 1986, however, Congress amended the FCA into substantially its current form in response to widespread reports of government fraud during the Cold War. The amendments had the goals of “increas[ing] incentives, financial and otherwise, for private individuals to bring suits on behalf of the government,” and of “resolv[ing] [the] tension between encouraging people to come forward with information and preventing ‘parasitic lawsuits.’” In effect, the 1986 amendments put teeth back into the qui tam provisions of the FCA.

The False Claims Act Today

In its current form, the FCA provides the “primary vehicle” for the government’s prosecution of civil fraud and is one of the “major tools against healthcare fraud.”

The FCA has been used to pursue providers [that] file claims for services never rendered, [that] bill for unnecessary medical services as if they were necessary, [that] misrepresent the Medicare eligibility of patients, [that] include non-reimbursable items in Medicare cost reports, [that] misrepresent what services were provided, [that] falsify their credentials, and [that] conceal the existence of insurance which makes Medicare the secondary payer rather than the primary payer.

The damages and penalties set by the statute are considerable: treble damages plus a mandatory penalty of $5,500 to $11,000 per false claim. Although the FCA is thorough in many respects, it is silent regarding the whistleblower’s right to settle a potential qui tam claim prior to filing the claim in court. Relatively few jurisdictions have addressed the issue. The few courts that have addressed it generally have found that releases for yet-to-be-filed qui tam claims are void as against public policy. Nevertheless, courts have recognized exceptions to this general rule and been receptive to creative arguments posed by defense counsel. The following represents a collection of the leading cases on the issue from various jurisdictions across the nation.

U.S. ex rel. Green v. Northrop Corporation
Unfortunately for employers, *U.S. ex. rel. Green v. Northrop Corporation*\(^3^3\) consistently is cited by courts addressing the issue whether a pre-filing release of qui tam claims is void as against public policy. Northrop’s Advanced Systems Division had previously employed the whistleblower, Michael Green, as an investigator.\(^3^4\) After he was terminated, Green filed a wrongful discharge claim in state court alleging he had been fired for raising issues about Northrop’s billing practices.\(^3^5\) To settle the discharge claim, Northrop paid Green $190,000 in exchange for Green’s release of “any and all claims. . . under the law.”\(^3^6\) Nine months later, Green filed a qui tam action against Northrop in federal court under the FCA, raising the same billing issues he had asserted in the settled lawsuit.\(^3^7\) After the United States declined to intervene, the district court granted summary judgment, finding Green’s prior settlement agreement barred his right to recovery.\(^3^8\)

The Ninth Circuit reversed, finding that releases of qui tam claims prior to filing suit would undermine the central purpose of the FCA’s qui tam provisions—incentivizing insiders to blow the whistle on fraud against the government.\(^3^9\) The Ninth Circuit was concerned that employers would settle with whistleblowers for an amount less than they would have to pay as a result of a successful qui tam claim.\(^4^0\) Under the FCA, whistleblowers only keep up to 30 percent of the recovery.\(^4^1\) The court reasoned that if pre-filing releases were allowed, a rational employee would be willing to accept a settlement for less than the total liability because the whistleblower would not have to share the settlement with the government.\(^4^2\) Moreover, the government, the wronged party, would recover nothing.\(^4^3\)

The result reached by the Ninth Circuit Court of Appeals, if viewed in isolation, seems to make settlement with an outgoing employee virtually impossible. Even if the employee agrees to release any and every possible claim, that employee could deposit the settlement proceeds and file a qui tam claim under seal. It would be months, if not years, later before the suit is unsealed and the employer learns what has happened. In the meantime, witnesses disappear, documents are lost, and the employer’s ability to defend is impaired substantially. Thus, the rationale of *Green* encourages would-be plaintiffs to file qui tam actions against employers who, in good faith, understood all claims to be resolved. Even if the government declined to proceed with a particular case, the employee, under the rationale of *Green*, would be free to proceed with the FCA claim, including the potential for an additional 30 percent recovery plus reimbursement of attorneys’ fees and costs.\(^4^4\) The employer in *Green* would have benefited by including a representative and warranties section in its equities agreement for the plaintiff to disclose any known issues. This strategy is discussed below.

**U.S. ex rel. Hall v. Teledyne Wah Chang Albany**

Fortunately for employers, two years after *U.S. ex. rel. Green v. Northrop Corporation*, the Ninth Circuit reached a different conclusion regarding the enforceability of pre-filing releases of qui tam claims in *U.S. ex rel. Hall v. Teledyne Wah Chang Albany*.\(^4^5\) The *Hall* court’s exception, however, is narrowly applied to situations where the government has dually investigated and declined to intervene.\(^4^6\) Christopher Hall, an engineer involved in the manufacture of nuclear reactor components for defendant Teledyne, contended that Teledyne’s manufacturing process did not meet government specifications.\(^4^7\) In April 1990, Hall brought this concern to Teledyne management.\(^4^8\)

Teledyne investigated the matter and concluded that Hall’s concerns were unfounded.\(^4^9\) Nevertheless, in January 1991 Teledyne informed the Nuclear Regulatory Commission (NRC) of Hall’s concerns and Teledyne’s investigation.\(^5^0\) Later that same month, Hall
filed his own complaint with the NRC, again alleging Teledyne’s failure to meet specifications.\textsuperscript{51} In November 1991, the NRC informed Teledyne that after conducting its own investigation, the agency had determined that the nuclear reactor components met specifications.\textsuperscript{52}

Also in 1991, Hall initiated a state court action alleging a variety of employment-related offenses.\textsuperscript{53} In December 1993, Hall settled these claims with Teledyne and "executed a broadly worded general mutual release."\textsuperscript{54} In 1994, less than one year after entering into the release, Hall filed a qui tam action in federal district court with the same allegations—that Teledyne’s manufacturing process did not meet government specifications.\textsuperscript{55} The United States investigated, concluded the products met specifications, and declined to intervene.\textsuperscript{56}

The court distinguished this case from \textit{Green}, noting that the federal government was aware of Hall’s allegations and had investigated them prior to Hall’s settlement with Teledyne.\textsuperscript{57} Thus, in \textit{Hall}, there was no concern that the release would prevent the government from learning about the alleged fraud.\textsuperscript{58} Accordingly, \textit{Hall} requires that courts enforce a release if the defendant can prove that the federal government had full knowledge of the relator’s charges and had investigated the allegations before the release was executed.\textsuperscript{59}

\textbf{U.S. ex rel. DeCarlo v. Kiewit /AFC Enterprises}

In \textit{U.S. ex rel. DeCarlo v. Kiewit/AFC Enterprises}, the United States District Court for the Southern District of New York rejected a defendant’s creative argument in support of enforcing a pre-filing qui tam release.\textsuperscript{60} Although the court ultimately rejected the defendant’s argument, the case provides an example of how a defendant might circumvent precedent from other jurisdictions holding that pre-filing releases to qui tam claims are unenforceable.

The relator in \textit{DeCarlo} was a manager for the Hutchinson River Parkway Bridge Rehabilitation Project.\textsuperscript{61} After he was fired, DeCarlo filed a civil suit for wrongful termination.\textsuperscript{62} DeCarlo executed a stipulation of settlement with his former employer, releasing the defendant from:

\texttt{[A]ll actions, causes of action, suits, . . . controversies, agreements, . . . judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against the RELEASEE, the RELEASOR . . . ever had, now have or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this RELEASE.}\textsuperscript{63}

Despite the broad nature of the release, DeCarlo promptly filed a qui tam action against his former employer, alleging that the defendant submitted false claims for payments to the New York State Department of Transportation, the Federal Highway Administration, the United States Department of Labor, the United States Department of Transportation and other federal and state agencies.\textsuperscript{64}

The defendant argued, and DeCarlo did not contest, that the qui tam action fell within the scope of the release from the wrongful termination suit.\textsuperscript{65} DeCarlo urged the court, however, to rule that the pre-filing release of a qui tam claim was void as a matter of public policy where the agreement was entered into without the assent of the United States.\textsuperscript{66} The defendant, anticipating the court would
find a public policy issue with the pre-filing release, asked the court to “establish a ‘middle ground’ by barring a subsequent qui tam action in those cases in which the government ultimately declines to intervene.”

The court found DeCarlo’s argument persuasive. According to the court, “a promise is unenforceable if the interest in its enforcement is outweighed in the circumstances by a public policy harmed by enforcement of the agreement.” In the present case, the court held that serious public interests were at stake, namely, “the interest of the taxpayers and the government in recouping lost proceeds, and the public interest in the disclosure of fraudulent activity.” Ultimately, the court found that the generalized interest in settlement was heavily outweighed by the costs of eviscerating the FCA incentives to blow the whistle.

The court also rejected the defendant’s call to establish a “middle ground” where the government declines to intervene in the litigation. The court cited two reasons for its decision. First, the court reasoned that “the government’s decision not to participate in the qui tam action [was] not equivalent to a consent to voluntarily dismiss a claim against a defendant with prejudice.” In addition, “a relator would be less likely to bring a suit after a release if the action could be subsequently invalidated by the government’s decision not to intervene.”

**U.S. ex rel. Whitten v. Triad Hospitals**

In *U.S. ex rel. Whitten v. Triad Hospitals, Inc.*, the Eleventh Circuit Court of Appeals did not take the opportunity to hold that pre-filing releases to qui tam claims are unenforceable based on public policy concerns. Instead, the court credited the defendant’s argument that the case turned on a narrow contractual issue. The case is therefore an important illustration of how a defendant can circumvent the question of the enforceability of pre-filing releases to qui tam claims in even those jurisdictions most likely to find the enforceability of these agreements to run counter to public policy.

In *Whitten*, Quorum Health Resources, a hospital management company, supplied the Glen Brunswick Memorial Hospital Authority (Authority) with management services, including a chief executive officer (CEO) and chief financial officer (CFO), to manage the Authority’s day-to-day operation of its two hospitals. The relator was employed by the Authority as a compliance officer. In September 2000, the Authority terminated its relationship with Quorum, and a few months later, ended the relator’s employment. In January 2001, the relator entered into a severance agreement with the Authority containing a general release of all claims. Despite signing the severance and release agreement, the relator subsequently filed a qui tam action against Triad Hospitals, the successor to Quorum after a merger.

Providing a glimmer of hope to the healthcare industry, the Southern District of Georgia originally dismissed the action, finding that the release barred Whitten’s claim. Significantly, the Southern District of Georgia originally held that the agreement was enforceable and did not violate public policy. The Eleventh Circuit, however, reversed and remanded the claim, finding that under Georgia contract law, the language of the severance agreement released only the Authority, not Quorum. By ruling on this narrow contract issue, however, the Eleventh Circuit left open the issue of whether a pre-filing release of qui tam claims would be enforceable as a matter of public policy.

**U.S. ex. rel Gebert v. Transport Administrative Services**

In *U.S. ex. rel Gebert v. Transport Administrative Services*, the Eighth Circuit became the first Circuit
to hold that a pre-filing release was enforceable to bar a future qui tam claim.\textsuperscript{83} The court cautioned, however that its decision was extremely limited.\textsuperscript{84} Nevertheless, in light of the limited precedent supporting enforceability of such releases, the case probably should be included in any argument before a court that has not yet addressed the issue of the validity of a pre-filing release to qui tam claims.

In \textit{Gebert}, the husband and wife relators were terminated after their employer discovered that they may have misappropriated over $500,000 in company assets.\textsuperscript{85} The relators subsequently filed for bankruptcy.\textsuperscript{86} When their former employer filed claims against them for misappropriation, the relators countered with a claim for $1.2 million.\textsuperscript{87} The bankruptcy trustee, the relators, and the former employer then entered into a settlement in which the trustee and the relators released the former employer of all claims.\textsuperscript{88} At no point, however, did the relators list among their schedule of assets their potential FCA claim.\textsuperscript{89} The relators subsequently filed a qui tam lawsuit against their former employer.\textsuperscript{90} The Eighth Circuit, however, ruled that the release entered into during the bankruptcy proceedings barred the relators from bringing the qui tam claim.\textsuperscript{91} Moreover, the court found that the relators were judicially estopped from bringing the claim because they had failed to list their FCA claim in the schedule of assets before the bankruptcy court.\textsuperscript{92} The Eighth Circuit distinguished the Ninth Circuit's decision in \textit{Green}, finding that in the case before it, the interest in enforcing the parties' release outweighed other policy concerns because the release was entered into in the context of a bankruptcy proceeding. Unlike in \textit{Green}, it was not a general, independent release of a claim for money.\textsuperscript{93} Essentially, the court found that the public policy concerns addressed by \textit{Green} were not present because the claim belonged to the bankruptcy estate, not the relators, and the proceeds of the release would flow to the estate rather than to the relators.\textsuperscript{94}

\textit{U.S. ex rel. El-Amin v. George Washington University}

\textit{U.S. ex rel. El-Amin v. George Washington University} addresses the effect of pre-filing releases on future qui tam claims, providing further guidance on what public policy concerns courts may identify in such cases.\textsuperscript{95} The relator in \textit{El-Amin} was terminated from her position as a nurse anesthetist with the defendant hospital.\textsuperscript{96} A few months after her termination, the relator signed a Separation Agreement and Release.\textsuperscript{97} The release provided in relevant part:

Ms. El-Amin. . . releases and discharges forever any and all charges, complaints, demands, claims or causes of action (whether known or unknown) which she has or may have against the University, . . . including but not limited to any and all claims arising from or relating to her employment with the University or the termination thereof, and any claims arising under any federal, state, District of Columbia or other local law, relating to discrimination on account of race, color, religion, sex, national origin, age, marital status, disability or other illegal basis, including but not limited to the Age Discrimination In Employment Act of 1967. Ms. El-Amin further agrees not to sue or otherwise institute or. . . voluntarily participate in the prosecution of any complaints or charges against any person or entities released herein in any federal, state, District of Columbia or other court, administrative agency or other forum concerning any claims released herein.\textsuperscript{98}

After signing the release, the relator joined three other relators in filing a qui tam action against the defendant.\textsuperscript{99} The defendant cited the release and argued that the relator did not have the authority to prosecute a qui tam action against it.\textsuperscript{100} In response, the relator claimed that the release, which became effective after the filing of the qui tam complaint, was unenforceable as a matter of public policy.\textsuperscript{101}

The court held that for the release to bar the action it must encompass the relator's qui tam claims
Accordingly, the court held the release unenforceable because it violated several key public policy concerns of the False Claims Act. First, the court found that a qui tam complaint can be dismissed voluntarily “only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.”\textsuperscript{103} The effect of a release, the court reasoned, is similar to a negotiated settlement and voluntary dismissal.\textsuperscript{104} To allow a relator to release his or her claims against the defendant would amount, in substance, to a voluntary dismissal of the action without the court’s or the Attorney General’s written consent.\textsuperscript{105} The court found a second public policy consideration in 31 U.S.C. § 3730(b)(2), “which delineates the filing requirements of a qui tam complaint.”\textsuperscript{106}

\[\text{The False Claims Act mandates that a qui tam complaint be filed under seal for 60 days.}\textsuperscript{107}\text{The purpose of the 60 day seal requirement is to give the United States an adequate opportunity to determine whether the allegations in the complaint are already the focus of an investigation.}\textsuperscript{108}\text{This gives the government a chance to evaluate the merits of the suit and to decide whether it will intervene, and ensures the defendant is not prematurely alerted to the investigation.}\textsuperscript{109}\]

According to the court, “a release entered into during this 60-day window ‘would eviscerate’ the purposes for which Congress created the seal requirement.”\textsuperscript{110}

**Strategies for Uncertain Times**

Unfortunately for them, healthcare entities must assume that pre-filing releases of qui tam claims will be unenforceable. Although counsel may not be able to provide an ironclad guarantee that a final release is indeed final, counsel can take steps to undercut the ability of former employees to pursue a qui tam claim.

For instance, a release agreement should contain a representation and warranty section requiring that the employee confirm under oath that they have commenced no such action. Next, the representation and warranty section should require the employee to

- affirmatively disclose any and all compliance issues with specificity;
- describe how the employee has first-hand knowledge of the issue;
- identify to whom and when the issue was reported; and
- indicate why the employee feels these claims have not been cured.

Doing so forces the employee to disclose all known concerns and helps narrow the universe of possible claims. Although a release may not be effective, counsel will know what possible claims may exist, placing settlement negotiations on a more level field. If the former employee later asserts a qui tam claim on an undisclosed issue, these disclosures give counsel ammunition to attack the relator’s credibility.

Of course, if a qui tam suit is filed subsequently, the employer immediately should investigate whether the realtor had a bankruptcy case pending at the time the claim arose. If so, following the rationale of the Eighth Circuit in *Gebert*, defense counsel may be able to argue for judicial estoppel if the relator failed to list the claim in the bankruptcy schedule of assets. Although only the Eighth Circuit has addressed this issue in the qui tam context, multiple circuits have adopted the judicial
estoppel argument in traditional employment discrimination claims. Thus, although an employer may not be able to keep a disgruntled employee out of the courtroom, it may be able to make him think twice before filing suit.

Finally, an employer can argue that enforcing pre-filing releases in future qui tam claims is not a violation of public policy. This argument has been made, and ultimately rejected, in cases such as Green. However, employers can make strong public policy arguments that could be accepted in a jurisdiction that has not yet addressed the issue. For example, the employee barred from filing a qui tam claim by a release of all claims against an employer is hardly the only person who could file the FCA claim. Other employees, those not signing releases, would remain able to achieve the goals of the FCA without running afoul of contractual obligations. Further, enforcing a release that was entered into prior to the filing of a claim, unlike a post-filing settlement, cannot foreclose the government from suing on its own behalf.

Conclusion

The potential exposure under the qui tam provision of the FCA is significant. In light of recent cases addressing the issue, counsel cannot assure employers that a pre-filing release will prevent an employee from filing a qui tam claim. Nevertheless, as a part of any settlement agreement, employers should consider having former employees endorse a carefully drafted release that specifically addresses FCA qui tam claims. Arguments exist to support a court’s finding that such releases do not violate public policy. At the least, a well-drafted pre-filing release of qui tam claims may cause an employee to hesitate before bringing a qui tam action against his or her former employer.

4 Id.
6 Id.
10 Press Release, Department of Justice, Aventis Pays More Than $190 Million to Settle
September/07_civ_694.html.

11 Press Release, Department of Justice, Medco to Pay U.S. $155 Million to Settle False Claims Act

12 Press Release, United States Attorney’s Office Western District of Virginia, The Purdue Frederick
Company, Inc. and Top Executives Plead Guilty to Misbranding Oxycontin; Will Pay Over $600

13 Mary Williams Walsh, Blowing the Whistle, Many Times, N.Y. Times, Nov. 18, 2007.

14 No. 3:03 CV 1589 (N.D. Tex. filed July 15, 2003) (Complaint on file with the authors).

5 Id.

16 Id.


18 David Von Drehle, Rallying ‘Round the Flag, Wash. Post Mag., Apr. 9, 2006 at W10.


20 Von Drehle, at W10.

21 Harvinder S. Anand, Note, Competing Relators and Competing Objectives Under the False
Claims Act: Barring Subsequent Claims Should Look Beyond the Plain Language of Section

22 Id.

23 Id.

24 Id.

25 Id. at 93.

26 Id. at 94.

27 Id. at 95.


29 Id. at 96 (quoting False Claims Act Implementation: Hearing Before the Subcomm. On Admin.
Law and Gov. Relations of the House Comm. on the Judiciary, 101st Cong. 3 (1990) (statement of
Sen. Grassley)).

31 *Id.* (internal citations omitted).

32 *See id.* at 695; Adjustments to Penalties, 28 C.F.R. § 85.3 (2008).

33 59 F.3d 953 (9th Cir. 1995).

34 *Id.* at 956.

35 *Id.*

36 *Id.*

37 *Id.*

38 *Id.* at 957.

39 *Id.* at 963.

40 *Id.* at 965-66.

41 *Id.*

42 *Id.*

43 *Id.*


45 U.S. *ex rel.* Hall v. Teledyne Wah Chang Albany, 104 F.3d 230 (9th Cir. 1997).

46 *Id.* at 233.

47 *Id.* at 231.

48 *Id.*

49 50 *Id.*

51 *Id.*

52 *Id.* at 231-32.

53 *Id.* at 232.
54 Id.
55 Id.
56 Id.
57 Id. at 233.
58 Id.
59 Id.
61 Id. at 1041.
62 Id.
63 Id.
64 Id. at 1041-42.
65 Id. at 1043.
66 Id.
67 Id.
68 Id. at 1046 (quoting Town of Newton v. Rumery, 480 U.S. 386, 392 (1987)).
69 Id.
70 Id. at 1047 (citing United States ex rel. Green v. Northrop Corp., 59 F.3d 953, 969 (1995)).
71 Id.
72 Id.
73 Id.
75 Id.
76 Id. at 879.
77 Id. at 879-880.
78 Id.
79 Id.

80 Id. at 880, n.4.

81 Id.

82 Id. at 880-82.


84 Id. at 919.

85 Id. at 911-12.

86 Id. at 912.

87 Id.

88 Id.

89 Id.

90 Id.

91 Id. at 915-17.

92 Id. at 917-18.

93 Id. at 916-17.

94 Id.


96 Id., under Background.

97 Id.

98 Id.

99 Id.

100 Id. under Discussion, I.

101 Id.

102 Id. under Discussion, III.

103 Id. (quoting 31 U.S.C. § 3730(b)(1) (2007)).
104 Id.
105 Id.
106 Id.
107 Id.
108 Id.
109 Id. (internal citations omitted).

110 Id. (quoting United States ex rel. Longhi v. Lithium Power Techs., Inc., 481 F. Supp. 2d 815, 822 (S.D. Tex. 2007)).