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Behind the Seal: Why DOJ Investigations Drag On—and When They Shouldn't

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The federal False Claims Act (FCA) [1] is a powerful tool the U.S. Department of Justice (DOJ) uses to combat fraud and abuse in key industries, particularly the health care industry, which accounted for almost 60% of FCA settlements and judgments in 2024. [2] FCA cases typically begin with a whistleblower, known as a "relator," who suspects fraud is occurring and steps forward. Relators usually expect the government to quickly end the illegal conduct, while also hoping for a financial reward for bringing the conduct to light. [3] Yet FCA cases too often disappear behind DOJ's extension of the seal period, where they languish for months or years while the government investigates. For hospital and health care system defendants that have patients to serve and reputations to protect, the silence can be paralyzing, and the cost of ongoing legal fees oppressive. And if the time comes that the defendant must defend itself in court, key witnesses may be gone and critical documents may be lost. Such delay is not just a matter of docket management—it's a policy choice with real-world consequences. Unfortunately, there is little a defendant can do to shorten the timeframe, but recent court cases provide some potential remedies.

Legal Framework

The FCA prohibits any person or organization from "knowingly present[ing], or caus[ing] to be presented, a false or fraudulent claim for payment or approval." [4] Because FCA damages can be trebled and joined with per-claim penalties, [5] the risk of an unfavorable jury verdict can be catastrophic, particularly for hospitals because they submit so many claims to government payers.

When a relator initiates an FCA action in the name of the government, a "qui tam action," they file under seal. [6] DOJ then has 60 days to investigate and determine whether it will intervene and proceed with the action, [7] but it is common for the government to seek extensions of the seal period, typically in three- or six-month increments, to continue investigating the relator's claims. [8] There is no statutory limit on the number of extensions permitted, however, and courts rarely push back on the government's proffered reasons, which means diligence is not always required.

Extension Requests

Not much can be done in 60 days and qui tams often involve complex issues, especially in the health care industry. Such actions require detailed review by DOJ to determine whether they are ripe for intervention. Sometimes, relators have extensive firsthand knowledge and robust documentation to support their claims, but that is the exception rather than the rule. To assess the merit of the allegations and the relator's credibility, in addition to interviewing the relator, DOJ must obtain Medicare data (or other government payer data), conduct additional interviews, and research the legal accuracy of the relator's assertions. Parsing allegations, gathering and reviewing information and documents, and coordinating with various federal and state agencies [9] can be time intensive.

If DOJ believes there is merit to the relator's case, it will issue a civil investigative demand (CID) to obtain records, testimony, and/or interrogatory answers from the defendant. [10] Depending on the scope of the CID and the extent of information responsive to it, a defendant may need months to collect, review, and produce information. DOJ may also agree to a rolling production. Then, DOJ must review the documents to build its case before conducting interviews or obtaining sworn

testimony. Plus, there are times when defendants themselves slow down investigations. Finally, the government can negotiate a settlement while the case remains under seal.

Considering the above, it is no surprise that FCA cases often remain sealed from the public for a year or more before they are resolved. Nonetheless, we have seen firsthand instances where seal periods were extended for months or years with minimal government activity. These incidents, combined with the frequency of prolonged investigations, raise real concerns about the FCA process.

Room for Improvement in Progressing FCA Investigations

To reduce delays in FCA investigations, from the outset, the government should take care to craft a CID with a scope proportional to the needs of its investigation. In traditional litigation, opposing parties will object to overly broad or unduly burdensome requests, and they have access to a judge when an adversary refuses to be reasonable; however, recipients of a CID are not on a level playing field with the government and must initiate a district court action if they wish to seek judicial intervention. [11] Accordingly, government attorneys should evaluate the impact and burden that their investigative requests will place on a defendant. Notwithstanding the imbalance, counsel for CID recipients can and should attempt to narrow requests whenever possible.

As the investigation progresses, the government should endeavor to move intentionally forward toward a resolution. There are often valid reasons why investigations stall; for example, agents and attorneys juggle multiple investigations, some DOJ attorneys carry civil litigation or criminal dockets in addition to their FCA responsibilities, and CID recipients are not always prompt in producing documents. Nonetheless, FCA investigations should not routinely take a backseat to other law enforcement activities.

Finally, if and when investigations proceed to settlement negotiations, DOJ policies govern how the government can resolve FCA actions. [12] That framework is flexible and requires government attorneys to consider the seriousness of the violation, the scope of the conduct, and the public harm (or lack thereof). [13] There may be reasons to compromise or otherwise depart from the standard 2x multiplier that DOJ applies in FCA settlements. [14] Not every case is so egregious or so likely to deter others that an extreme penalty is warranted. Overall, there is ample opportunity for DOJ to implement minor changes that could result in a significant improvement in the timeliness of FCA investigations.

Judicial Oversight

Some courts have criticized DOJ for excessive delays in FCA investigations, occasionally while imposing hefty sanctions. A 2023 case from the Fifth Circuit, *United States ex rel. Aldridge v. Corporate Management, Inc.*, serves as a recent example. [15] The *Aldridge* case started in May 2007 as a sealed qui tam action. [16] Over the following eight years, DOJ requested and obtained 18 extensions of the seal period. [17] Even though defendants were informed of the investigation in March 2010, the government did not intervene until September 2015 and then filed an amended complaint in December 2015. [18] The alleged fraudulent conduct spanned from 2002 through 2013. [19]

The defendants moved to dismiss the case, arguing that the government's eight-year delay prejudiced them, but the district court denied that motion. [20] In January of 2020, nearly ten years after the defendants learned of the government's investigation, the district court held a nine-week jury trial. [21] After hearing from 25 witnesses, the jury found the defendants jointly and severally liable for roughly $10 million, which the district court trebled to over $32 million. [22]

On appeal, the Fifth Circuit upheld the jury's verdict but also held that the government's allegations did not relate back to the relator's original complaint. [23] The court then refused to apply the FCA's tolling provision under 31 U.S.C. § 3731(b)(2), finding that the government had not acted with due diligence in its investigation. [24] For example, in August 2011, in a sealed extension request memo that was unavailable to the defendants, an expert recommended intervention in the case, yet the government did not do so until late 2015, causing the Fifth Circuit to criticize the government's "incessant delay." [25] The Fifth Circuit also rebuked the district court's enabling of the government's "gamesmanship" by granting the seal extensions. [26] Ultimately, while the Fifth Circuit did not go so far as to dismiss the case, the failure to relate back cut off six years' worth of relevant damages, resulting in a reduction of over half of the judgment against the defendants. [27]

The *Aldridge* case underscores what can happen when the government delays, but a multi-million-dollar judgment after a decade of defending an FCA action is still a bitter pill for defendants to swallow. Numerous health care defendants have similarly experienced years-long delays but *without* the relief the *Aldridge* defendants received. For example, in a 2024 Texas case, a seller of pharmaceutical ingredients sought to leverage *Aldridge* to persuade the district court to dismiss the complaint or in the alternative to limit damages after the government obtained 15 seal extensions over seven-plus years before intervening. [28] The court, however, gave no relief to the defendant, finding that *Aldridge prospectively* urges the government to move more expeditiously but provides no *retroactive* relief. [29]

Nonetheless, in the past, other courts have been quicker to hold the government accountable. When Congress passed the FCA, it established a good cause requirement for seal extensions and expected courts to "weigh carefully any extensions." [30] One California federal court emphasized this congressional intent when it refused an extension request and unsealed a qui tam before the government was ready:

> When Congress amended the False Claims Act in 1986 to create the current statutory framework, it sought to foster more qui tam lawsuits. The Justice Department had expressed concern, however, that the filing of a lawsuit by a private party might "tip off" the subject of a criminal investigation. The sixty-day period during which the complaint would be sealed was intended as a compromise, allowing the government to complete its investigation and formulate and adopt a litigation strategy without seriously injuring the interests of the defendant. There is nothing in the statute or legislative history to suggest that, in evaluating requests for such extensions, the court should disregard the interests of the defendant and the public. Defendants have a legitimate interest in building their defense while the evidence is still fresh. The public has a right to monitor the activities of government agencies and the courts. [31]

As another example, after ten extensions over five years, a Pennsylvania federal court cautioned

other courts to be "wary of the ex parte nature of such requests, and the ease by which a case can slip into a comfortable routine of a request followed by another request: the results can amount to significant abuses of the statutory scheme." [32] Similarly, after several years, a Tennessee federal court refused a further extension and put the government on notice that in future qui tams, requests for extensions would "be met with significant scrutiny." [33]

Nonetheless, these examples are anomalous. There are hundreds of qui tam actions filed every year, and only a handful involve courts unsealing complaints before the government is ready. Recent FCA settlements with hospitals and health care systems demonstrate this. For example, in February 2025, a medical center in New York paid $29 million to resolve FCA claims first alleged in August 2016; the case remained under seal for over seven years. [34] Similarly, in September 2024, a health care company operating behavioral health facilities across the country agreed to pay almost $20 million to resolve FCA claims brought in a qui tam case filed in 2017 and a second filed in 2018; the exact number of seal extensions is unknown, but roughly 80 docket entries are sealed in both cases. [35] And in December 2024, a California hospital paid over $10 million to resolve allegations first made in an August 2020 qui tam complaint; close to 40 docket entries remain sealed. [36] These cases suggest that despite the public's interest in monitoring the activities of government agencies and FCA defendants' need to be able to defend themselves while the evidence is still fresh, the government's practices may have strayed from the original legislative intent behind the seal period.

Consequences of Delay

Repeat seal extensions can often be prejudicial to FCA defendants. In the health care space, hospitals, health care companies, and individual doctors can spend months or years unaware that they are the subject of an FCA investigation. Then, when served with a CID, they can speculate on the rationale behind the government's requests, but they never truly learn the extent of the government's investigation until the court unseals (or partially unseals) [37] the complaint at the government's request. Operating in the dark makes it difficult to gather and preserve rebuttal evidence and key witnesses may leave the company's employment while the government's investigation proceeds.

When a case is finally unsealed, the defendant is expected to defend itself against years-old allegations. By then, crucial evidence may be lost: emails deleted, employees departed, and institutional memory faded—and the defendant itself may have been acquired by another company. Even if there is complete overlap between what the government sought in a CID and what the defendant would want to use to defend itself—an unlikely proposition—a relator's qui tam complaint may include allegations that the government did not investigate, and the relator may elect to litigate those claims despite the defendant having no prior notice of them. [38] This means FCA defendants are often blindsided and expected to reconstruct their defenses from a distant past even when the government has elected to end its investigation.

There are also negative repercussions for the courts and the public. District court judges are often asked to grant seal extensions with little more than boilerplate justifications from the government. As noted, some courts have resisted such requests, but no court wants to end a valid government investigation prematurely because a government attorney is not advancing the investigation as

promptly as desired. On the other hand, no court wants to be seen as a rubber stamp for the executive branch, nor does it want to reduce transparency and erode public trust by enabling further delay. And every citizen has an interest in the government getting tax dollars back—preferably sooner rather than later. Overall, repeated delays in an FCA case create a structural imbalance, allowing the government to obtain substantial evidence to support its fraud claims at excessive cost to the defendant, all without giving the defendant an adequate opportunity to marshal its defenses in parallel. In fact, many defendants settle with the government simply because they can no longer afford to defend the investigation. [39] While some delay is understandable given the complexity of FCA investigations, numerous consecutive extensions should not be the norm.

A Path Forward

The FCA remains a vital tool in the fight against fraud and abuse. But the integrity of that tool depends on how it is wielded. Where the government knows it will not intervene, it should enter a declination notice promptly so that relators and defendants can begin to litigate or resolve the matters on their own terms. For seal extensions, judges should require substantive investigatory updates and articulated reasons for why more time is needed. With more transparency, the seal period can become a tool for focused inquiry and quicker recoveries for the government. Everyone benefits from methodical, efficient, and swift FCA investigations.

For hospital and health care system defendants, prolonged FCA investigations can drain resources, disrupt operations, and impact company morale, but they can take steps to protect themselves and mitigate the risks of lengthy DOJ investigations. It may sound tongue in cheek, but the most effective way to avoid challenges posed by lengthy FCA investigations is to avoid being subject to an investigation in the first place. Robust, proactive compliance programs that train employees, assess and monitor risks, and respond to complaints and detected offenses are critical to avoiding and defending against FCA allegations [40]. If a CID is received, the exact nature of the investigation may be unknown, but an entity's policies and procedures should trigger an internal investigation and the preservation of potentially useful information. Relevant to almost any investigation, copies of emails, billing records, and pertinent policies should be archived and key personnel interviewed while recollections remain fresh. Hospitals and health systems should also retain experienced outside counsel to guide the internal investigation and to liaison with DOJ to negotiate the scope and timeframe of a CID response. The FCA is not going away, and the chips will remain stacked against defendants, but there are ways to avoid self-inflicted wounds.

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1 31 U.S.C. §§ 3729–33.

2 The proportion of health care-related settlements and judgments was even higher in previous years. *See* U.S. Dep't of Justice, *Press Release, False Claims Act Settlements and Judgments Exceed $2.9 B in Fiscal Year 2024* (Jan. 15, 2025), https://www.justice.gov/archives/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024 (stating over $1.67 billion of the total $2.9 billion from FCA judgments pertained to health care).

3 31 U.S.C. § 3730(d) (describing how relators can receive between 15–30% of the proceeds of the action or settlement of the claim).

4 *Id.* § 3729(a)(1)(A).

5 *Id.* § 3729(a)(1)(G).

6 *Id.* § 3730(b)(2).

7 *Id.*

8 *Id.* § 3730(b)(3).

9 For example, in the health care context, DOJ often coordinates with the Department of Health and Human Services Office of Inspector General (HHS OIG), the Centers for Medicare & Medicaid Services, and state Medicaid Fraud Control Units.

10 31 U.S.C. § 3733. In some cases, in lieu of a CID, DOJ will use an administrative subpoena or obtain evidence from parallel criminal investigations.

11 The FCA permits objections to interrogatories and sworn testimony, but not to document requests, and the government may seek court intervention to enforce a CID whenever a recipient fails to comply. *See* 31 U.S.C. § 3733(f), (g), (h)(7), and (j)(1). While a recipient may petition a court to modify or set aside a CID, similar to a motion to quash a subpoena, *see id.* § 3730(j)(2) & (3), courts rarely grant those petitions. *See, e.g., False Claims Act: Organization's Response to a Civil Investigative Demand (CID)*, Practical Law Practice Note w-025-3514; *United States v. Markwood*, 48 F.3d 969, 976–77 (6th Cir. 1995).

12 Justice Manual, § 1-18.500, https://www.justice.gov/jm/1-18000-general-civil-settlement-principles (last visited June 16, 2025).

13 *Id.*

14 *Id.*

15 *Aldridge*, 78 F.4th 727 (5th Cir. 2023).

16 *Id.* at 734.

17 *Id.* at 735.

18 *Id.* at 734–35.

19 *Id.* at 734.

20 *Id.* at 736.

21 *Aldridge*, 78 F.4th at 736.

22 *Id.*; *see also* 31 U.S.C. § 3729(a) (subjecting an FCA violator to up to "3 times the amount of damages which the Government sustains because of the act of that person").
23 *Aldridge*, 78 F.4th at 743.
24 *Id.* at 745 (citing *Baldwin Cnty. Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984)).
25 *Aldridge*, 78 F.4th at 745.
26 *Id.* at 745–46.
27 *Id.* at 746–47.
28 *See United States ex rel. Hueseman v. Pro. Compounding Ctrs. of Am., Inc.*, No. SA-14-CV-00212-XR, 2024 WL 1979109 (W.D. Tex. May 3, 2024).
29 *Id.* at *6; *see also United States ex rel. Devarapally v. Ferncreek Cardiology, P.A.*, No. 5:17-CV-00616-FL, 2024 WL 2981184 (E.D.N.C. June 13, 2024) (denying cardiology practice's motion to unseal government's seal motions, which relied on *Aldridge*, despite a seal period that lasted four years).
30 S. Rep. No. 345, 99th Cong., 2d Sess. 23–24 (1986), reprinted in 1986 USCCAN 5266, 5288–89; *see also* 31 U.S.C. § 3730(b)(3).
31 *United States ex rel. Costa v. Baker & Taylor, Inc.*, 955 F. Supp. 1188, 1189–90 (N.D. Cal. 1997); *see also ACLU v. Holder*, 652 F. Supp. 2d 654, 665-66 (E.D. Va. 2009) (commenting on the congressional intent behind the FCA's seal period).
32 *United States ex rel. Brasher v. Pentec Health, Inc.*, 338 F. Supp. 3d 396, 401 (E.D. Pa. 2018).
33 *United States ex rel. Martin v. Life Care Ctrs. of Am., Inc.*, 912 F. Supp. 2d 618, 625–27 (E.D. Tenn. 2012); *see also United States ex rel. Smith v. Serenity Hospice Care, LLC*, No. CV 313-001, 2014 WL 4269063, at *4–5 (S.D. Ga. Aug. 28, 2014).
34 *See* U.S. Dep't of Justice, Press Release, *Saint Vincents Catholic Medical Centers of New York Agrees to Pay $29M to Resolve Alleged False Claims Act Violations* (Feb. 14, 2025), https://www.justice.gov/opa/pr/saint-vincents-catholic-medical-centers-new-york-agrees-pay-29m-resolve-alleged-false-claims.
35 *See* U.S. Dep't of Justice, Press Release, *Acadia Healthcare Company Inc. to Pay $19.85M to Settle Allegations Relating to Medically Unnecessary Inpatient Behavioral Health Services* (Sep. 26, 2024), https://www.justice.gov/archives/opa/pr/acadia-healthcare-company-inc-pay-1985m-settle-allegations-relating-medically-unnecessary.
36 *See* U.S. Dep't of Justice, Press Release, *California Hospital to Pay $10.25M to Resolve False Claims Allegations* (Dec. 12, 2024), https://www.justice.gov/archives/opa/pr/california-hospital-pay-1025m-resolve-false-claims-allegations.
37 Partial lifts of the seal permit defendants to assess the allegations and potentially settle them with the government and relators without requiring the government to file a complaint in intervention.
38 31 U.S.C. § 3733§ 3730(c)(3).
39 *See, e.g.*, Benjamin J. McMichael, et al., *A Constitutional False Claims Act*, 102 Wash. U. L. Rev. 677, 680 (2025) ("With individual FCA cases sometimes involving thousands, or tens of thousands, of individual claims, the treble damages and penalties add up quickly, providing obvious incentives for defendants to settle for the damages claims.").
40 HHS OIG, *General Compliance Program Guidance*, https://oig.hhs.gov/compliance/general-compliance-program-guidance/ (last visited Aug. 7, 2025)

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