

# GETNICK & GETNICK LLP

## The United States False Claims Act *Qui Tam* Whistleblower Law

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## The False Claims Act, 31 U.S.C. Sec. 3729 *ff*

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- ▶ Creates a civil cause of action for all types of fraud on the government
- ▶ Treble damages and penalties of \$5,500-\$11,000 per violation
- ▶ Liability may arise from:
  - ▶ Actual knowledge
  - ▶ Reckless disregard
  - ▶ Deliberate ignorance

## The False Claims Act *Qui Tam* Law

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- ▶ Action may be brought by the government or by a private citizen in the name of the government (the *qui tam* “relator”)
- ▶ Most relators have private legal representation
- ▶ Relator is entitled to receive 15-30% of the proceeds (with exceptions) plus attorneys fees and costs
- ▶ Plus action for employment retaliation

## A Short History

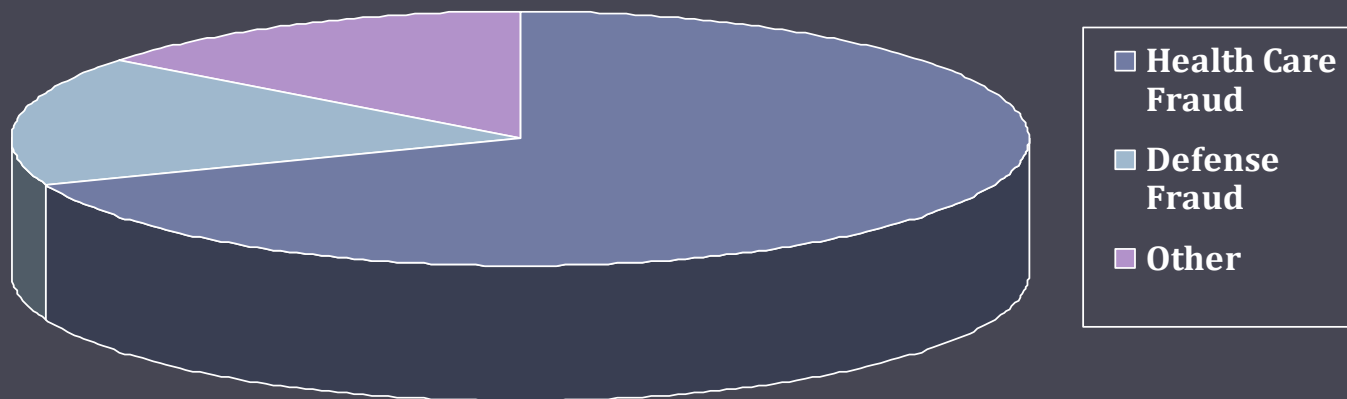
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- ▶ Passed by the Lincoln Administration in 1863.
  - ▶ The *qui tam* law is “firmly rooted in the American legal tradition.”
- ▶ Strengthened by President Reagan in 1986 and President Obama in 2009
  - ▶ The *qui tam* law is a “public-private partnership.”
- ▶ 29 States and the District of Columbia now have *qui tam* statutes.

# FCA Recoveries 1987-2011

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- ▶ Total: \$30.3 billion
  - ▶ \$21.0 billion qui tam
- ▶ Health Care Fraud: \$21.0 billion
  - ▶ \$15.8 billion qui tam
- ▶ Defense Fraud: \$4.9 billion
- ▶ Other: \$4.4 billion



## *Qui Tam* Procedure

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- ▶ Relator files Complaint **under seal** in federal or state court and serves the Complaint and statement of material facts on the DOJ and/or State AGs
- ▶ DOJ and/or State AGs and agencies investigate and government decides whether to intervene in the action or decline to do so
- ▶ Relator may proceed if the government declines
- ▶ Relator must have legal representation if proceeding without the government

## Checks and Balances

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- ▶ Cases are barred if the allegations are substantially the same as those:
  - ▶ on the public record
  - ▶ in an existing filed case
- ▶ Defendant may recover attorneys fees and costs from relator if case is “frivolous or vexatious”

more ...

## Checks and Balances (cont.)

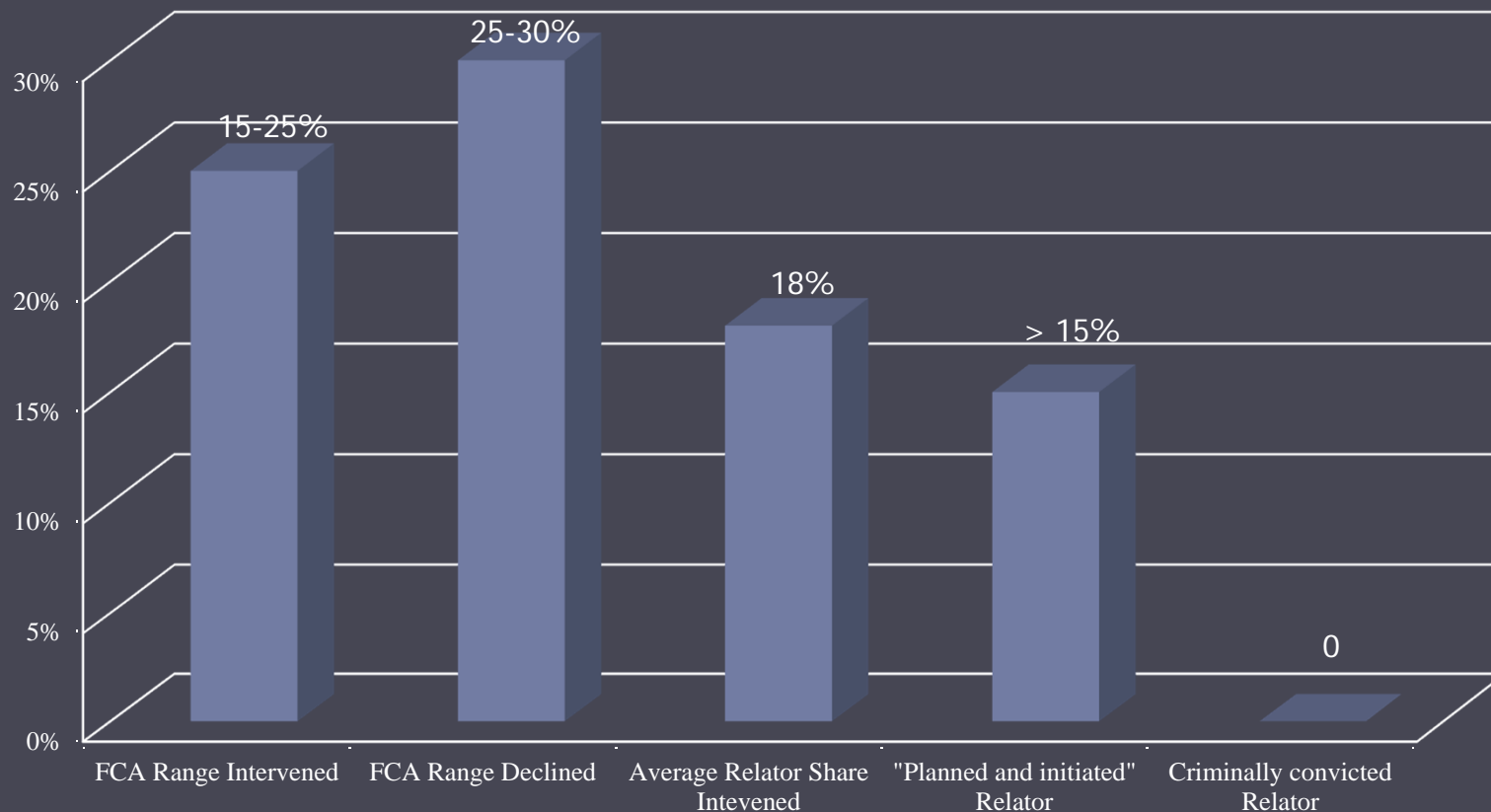
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- ▶ Relator who “planned and initiated” the violations may receive zero, in the court’s discretion
- ▶ Relator who is criminally convicted in relation to the violations must receive zero



# Relator Awards

Awards 1987-2011 total \$3.4B of \$21B recovered



## Potential Collateral Consequences

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- ▶ Criminal prosecution
- ▶ Corporate Integrity Agreements
- ▶ Class/shareholder/SEC/private insurer actions
- ▶ Exclusion from federal programs
- ▶ Foreign Corrupt Practices Act actions
- ▶ Cessation of conduct and deterrence

Pharmaceutical Company	Date Settled	Primary Fraud Alleged	Whistleblower/s	Criminal Fine	Civil Settlement	Total Recovery
GlaxoSmithKline	7/2/2012	Off-label promotion; kickbacks; failing to report safety data; pricing fraud	4 GSK employees, incl. Snr Marketing Manager and Regional VP	\$1 Billion	\$2 Billion	\$3 Billion
Pfizer	9/2/2009	Off-label promotion; kickbacks	Several Pfizer sales reps	\$1.3 Billion	\$1 Billion	\$2.3 Billion
Abbott Laboratories	5/7/2012	Off-label promotion; kickbacks	Several Abbott sales reps	\$800 Million	\$800 Million	\$1.6 Billion
Eli Lilly	1/15/2009	Off-label promotion; kickbacks	Several Eli Lilly sales reps	\$615 Million	\$800 Million	\$1.415 Billion
Merck	11/22/2011	Off-label promotion		\$ 321.6 Million	\$628.3 Million	\$950 Million
TAP Pharmaceuticals	10/3/2001	Marketing the spread; kickbacks	TAP V-P of Sales and HMO Medical Director	\$290 Million	\$585 Million	\$875 Million
GlaxoSmithKline	10/26/2010	Manufactured and sold adulterated drug products	GSK Global Quality Assurance Manager	\$150 Million	\$600 Million	\$750 Million
Serono	10/17/2005	Off-label promotion; kickbacks	5 Serono employees (Lab and Sales)	\$136.9 Million	\$567 Million	\$704 Million
Merck	2/7/2008	Concealing Best Price; kickbacks	Merck District Sales Manager/Physician		\$650 Million	\$650 Million
Allergan Inc.	9/1/2010	Off-label promotion; kickbacks	Allergan Managers and consultant	\$375 Million	\$225 Million	\$600 Million
AstraZeneca	4/27/2010	Off-label promotion; kickbacks	AstraZeneca sales rep		\$520 Million	\$520 Million
Bristol-Myers Squibb	7/28/2007	Off-label promotion; marketing the spread	Independent Pharmacy and others		\$515 Million	\$515 Million
Schering Plough	8/29/2006	Concealing Best Price; off-label promotion	3 Schering Plough sales reps	\$180 Million	\$255 Million	\$435 Million
Warner-Lambert	5/13/2004	Off-label promotion; kickbacks	Warner Lambert Medical Liaison	\$240 Million	\$190 Million	\$430 Million
Cephalon	9/29/2008	Off-label promotion; kickbacks	3 Cephalon sales representatives	\$50 Million	\$375 Million	\$425 Million
Novartis Pharmaceuticals	9/30/2010	Off-label promotion; kickbacks	Former sales representatives	\$185 Million	\$237.5 Million	\$422.5 Million
Abbott, B. Braun and Roxane Laboratories	12/7/2010	Marketing the spread	Independent pharmacy		\$421.1 Million	\$421.1 Million
Elan	7/15/10 & 12/15/10	Off-label promotion	Physician	\$100 Million	\$317.5 Million	\$417.5 Million

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