
Regulatory Oversight Podcast: FCA Uncovered: Mitigating Risk in the Regulatory Spotlight**Hosts: Stephen Piepgrass and Amy Williams****Guest: Jenelle Beavers and Rob Sayegh****Stephen Piepgrass:**

Welcome to another episode of *Regulatory Oversight*, a podcast that focuses on providing expert perspective on trends that drive regulatory enforcement activity. I'm Stephen Piepgrass, one of the hosts of the podcast and the leader of the firm's regulatory investigations, strategy and enforcement practice group. This podcast features insights from members of our practice group - including its nationally-ranked State Attorneys General Practice – as well as guest commentary from business leaders, regulatory experts and current and former government officials. We cover a wide range of topics affecting businesses operating in highly regulated areas.

Before we get started today, I want to remind all of our listeners to visit and subscribe to our blog at regulatoryoversight.com so you can stay up to date on developments and changes in the regulatory landscape.

Today, my colleague Amy Williams speaks with Jenelle Beavers and Rob Sayegh, from the global management consulting firm Alvarez and Marsal on the state false claims acts, the way those state acts are unique from their federal counterpart, and ways to avoid FCA risk.

Amy, a partner in our Regulatory Investigation Strategy and Enforcement Practice Group, has over 30 years of experience with a significant focus on False Claims Act issues.

She regularly represents financial institutions in FCA actions. Internal investigations and government investigations, and also handles state attorney general investigations and enforcement actions.

Jenelle is Managing Director of the Disputes and Investigations Practice at A & M, where she specializes in investigating allegations of fraud, false claims, and conflicts of interest. She also advises clients on compliance and preventive management in regulated industries. Prior to joining Alvarez and Marsal, Jenelle served with the civil fraud section of the US Department of Justice, leading large, complex investigations and litigation.

Rob is a senior director in the investigations practice of Alvarez and Marsal. Rob's expertise is in financial crimes compliance and investigations, and spans many areas like anti-money laundering, risk management, fraud mitigation, and more. Rob's career is marked by his time as an FBI special agent, where he led numerous investigations, honed his skills as an expert interviewer, and testified over 100 times in criminal court.

I know we are all looking forward to your discussion.

Amy Williams:

Thanks, Stephen, for that great introduction. And thank you to our guests, Jenelle, and Rob for joining us today. And with that, we're going to jump right in.

Janelle, can you just level-set our audience and explain quickly what are State False Claims Acts?

Jenelle Beavers:

Yeah, sure. Thanks, Amy. And thanks for having us on today. Sort of lay the groundwork for State False Claims Act statutes. Over 40 states have a False Claims Act Statute. And most of these statutes apply to healthcare fraud and non-healthcare fraud.

Like their federal counterpart, the statutes allow either the state attorney general or a whistleblower to file a complaint alleging that a company has submitted a false claim to the government, the state government in this case, or caused someone to submit a false claim. And, essentially, committed a fraud on the state government.

A claim in this context, like the federal statute, refers to a request to the government for something of value. Usually money. A request for a payment. And like the federal statutes, the state statutes require that a false claim be material and that the company have acted knowingly. Lots of similarities. Like the Federal False Claims Act, State False Claims Act can impose liability that's very costly. Up to three times damages. And, also, penalties.

In addition to damages and penalties, there can also be collateral implications and consequences. You could lose your ability to do business with the government or lose provider contracts. Lots of things at stake. Like with the federal statute, the state statutes, there are significant consequences and exposure in these cases.

I'm curious, Amy, in your experience, the ways. I've talked a little bit about how similar the state statutes are to the federal statute. Maybe you could talk a little bit about how they are unique or different from the federal statute.

Amy Williams:

Sure. And that is a great point. Because each state can have and some states do have unique provisions or coverage for their False Claims Act laws. And, certainly, if any company who is invested in or doing business with state governments should be familiar with the specific State False Claims Act that applies in the jurisdictions where they're active.

Just to give a couple of examples of the kinds of differences that we see with State False Claims Act statutes. In some states, State False Claims Act statute actually applies to alleged fraud directed at local cities and municipalities. In some states, it covers counties and county agencies. While in other states, it does not.

The Massachusetts False Claims Act statute, for example, is quite broad. And in addition to the sort of normal government entities that one thinks of typically when we're doing business with the government, a Massachusetts office of Attorney General can pursue claims fraud was directed at universities if they're state-owned. Or healthcare institutions if they're state-owned. That's one example of things to look out for.

Another are unique provisions that target different conduct. Or we might even say, target the lack of conduct. And I'm speaking here of the third-party beneficiary theory some states have baked into their statute. To use California as one example, California, it can be a violation of their statute if a company is the beneficiary of an inadvertent false claim. Subsequently learns about the falsity of the claim but then doesn't report it to the government.

This has been used, this particular provision, has been used to target affiliates or parents perhaps that are several levels removed from the actual sort of primary violator of the statute. And the concept behind what does it mean to be a beneficiary has been interpreted very broadly. For example, an affiliate who receives monthly management fees, that's deemed to be enough to potentially trigger the statute.

The concept there of sort of being removed from the conduct and yet having exposure for it to my mind brings concept to mind that's a little bit different. But one certainly I think of interest to our audience, can you talk about what you've been seeing in terms of private equity being targeted in FCA cases?

Jenelle Beavers:

Yeah. For sure. I think this is something that our listeners certainly should be thinking about to the extent that they are or work with private equity owners. As recently as February, DoJ has sort of publicly stated its intention to look at the role that PE firms and investors play in potentially facilitating fraud.

Really looking at this sort of – I guess broadening the scope of actors who could potentially be liable under the False Claims Act. I think those entities should be really paying attention to this. Because, particularly, when the DoJ speaks publicly, prosecutors are said taking a look and following those investigative priorities.

Given that, Amy, I'm curious if you're sitting in those shoes and you're in private equity, what do you think the best practices would be when you're thinking about these kinds of cases?

Amy Williams:

Sure. And PE firms who are active in managing the day-to-day operations of their portfolio companies should certainly make sure that they are in the loop on reporting that's coming from an audit or risk function of the portfolio company. And they need to make sure, again, that as issues are being found. They're not being ignored. But instead, they're being addressed and corrected moving forward.

And they should also be asking questions frankly whether you're actively involved or not, PE firms ought to be making sure that portfolio companies are adequately investing in risk and in compliance. Particularly, as those companies grow and maybe take on new lines of business or expand their geographic scope, it's important to make sure that the investment in compliance and reduction of risk is commiserate with the growth of the company. Those are some of our practical tips for PE investors.

Rob Sayegh:

Thank you, Amy. And thank you Jenelle and Amy for allowing me to participate on a very important topic. Just learning so much from both of you just sitting here listening. Jenelle, are there any particular industries where you see PE exposed and should be particularly concerned?

Jenelle Beavers:

Yeah, for sure. I mean, the first thing that comes to mind, maybe this is obvious to some of our listeners, is the healthcare industry. DoJ has specifically called out healthcare at the same time that they're talking about PE firms. And in addition to that, I think, historically, states have really been thoughtful and aggressive in prosecuting Medicaid fraud. Many states have Medicaid fraud control units who are regularly working on these types of cases. And I expect that they also would in the PE space. Really important to think about that.

There was actually a settlement about three years ago I think in 2021, the Massachusetts Attorney General settled a case for \$25 million that was paid in part by the sponsor to resolve claims related to a mental health center and some violations of the state's Medicaid program. There is precedent for relationship between State False Claims Act, private equity, and healthcare fraud.

Thinking about if you are an investor, a sponsor, thinking about revenue targets. Thinking about directing the health care providers and how they're conducting business. How you're thinking about operational efficiencies. How you're thinking about referrals and incentives. And thinking about the exposure that could go along with that. I think it's really something that people need to keep in mind.

Rob I know you have a lot of experience with government investigations. Tell us a little bit about what a company should expect if they receive an inquiry from the government.

Rob Sayegh: Thanks Jenelle. There's no one size fits all approach but there are a few things to keep in mind.

A company should first consider engaging legal counsel who specializes in FCA matters. Another step might be to conduct an internal investigation to assess the validity of the claims. This might include Reviewing relevant documents, interviewing employees and analyzing claims submitted during the established time period.

The government may request documents, and data as well.

Jenelle Beavers:

Yeah. I think that makes sense. I also think it's interesting sort of what you say about data and thinking about where it's kept, how it's used, and where it's held sort of internally is something that I think um particularly in the PE context is something that people can be thinking about because of how data can be used both in an investigation and then also for compliance purposes. And I think that's something that we think about in our office.

Rob Sayegh:

That's a terrific point, Janelle. And one that when you get there and you're physically boots on the ground at any company, where is the data maintained? Who maintains it? Who has access to it? Can it be easily manipulated? These are all things that I think a thorough investigation should and would demand to flush out.

Jenelle Beavers:

What are some positive factors that might be considered by the government during an investigation?

Rob Sayegh: It would be helpful to demonstrate the steps the company is currently taking to comply with relevant laws. A robust compliance program, documented policies and procedures, regular trainings and internal controls, all show that a company has been doing the work to comply and mitigate risk. There should be key personnel responsible for compliance and depending on the size of the company a hotline or other mechanism for employees to report ethics and compliance issues.

Ideally, you're not the subject of the investigation, but if you are, showing preventative management is important.

Amy Williams:

Rob and Janelle, thank you very much. You've certainly given our audience a lot to think about in areas that they can examine their own compliance structure and culture to make sure that, if counterparts to Rob come knocking on their door, they're ready with strong answers.

I want to thank Jenelle and Rob again for joining us today. And it's been a pleasure to talk with you all.

Jenelle Beavers:

Thanks so much.

Rob Sayegh:

Thank you so much, Amy. Thank you, Janelle.

Stephen Piepgrass:

Thank you, Amy, Janelle, and Rob for sharing your insights. I'm sure listeners like me enjoyed your candid remarks and invaluable perspectives. And thank you to our listeners for joining us. Don't forget to subscribe to this podcast on your preferred platform, be it Apple Podcasts, Google Play, Stitcher, or any other.

We look forward to having you join us next time.

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