

False Claims Act Applies to Local Governments

By G. Christopher Kelly

In a unanimous decision, the Supreme Court of the United States has ruled that municipalities and county governments are “persons” for purposes of the False Claims Act (“FCA”). The FCA is one of the principal recovery tools used by the government to seek reimbursement of money taken from the Medicare program by way of false statements or other fraudulent means. The decision in *United States ex rel. Chandler v. Cook County* means that the government, and private “whistleblowers”, can use the FCA to file suit against local government entities for fraud and false billing.

Historically, the FCA began as a method to control fraud by opportunists trying to charge the U.S. excessive amounts for materials during the Civil War. The FCA has come a long way and has widely expanded in scope since that time. In 1986, the Act was revamped to include higher penalties as well as other inducements to private citizens to encourage them to bring fraud to the attention of the government, or to “blow the whistle” on fraud.

The False Claims Act, now allows for private “whistleblowers” to recover money improperly paid by the government due to false claims or statements. The Act also allows these “whistleblowers” to be paid a percentage of what the government recovers; anywhere from 15 to 30%. Since the Act allows for the recovery of treble (three times) the actual loss incurred by the government, plus an additional penalty of up to \$11,000 per false claim made, the amounts owed to the government in these cases often reach into the millions of dollars, giving “whistleblowers” significant incentive to report fraud. Once properly reported, the whistleblower is known as a “relator” under the FCA, or one who has related the allegations of fraud to the government, including the local United State’s Attorney’s Office. The U.S. Attorney then has the opportunity to either take on the prosecution of the case himself, called “intervention”, or allow the relator to prosecute the case with his own private attorney.

The *Chandler* decision resolves a split of decisions across the country. Prior to the Supreme Court’s decision on this issue, District Courts and Circuit Courts of Appeal across the country had reached differing conclusions. That means that until this decision, there were jurisdictions in parts of the country where actions against municipalities were considered improper. More importantly, the United State’s Attorneys in those jurisdictions were unlikely to investigate, intervene, or ultimately prosecute those cases, and private attorneys familiar with the False Claims Act were unlikely to file cases against municipalities located in jurisdictions where the law was unfavorable. Since U.S. Attorneys and qualified private FCA attorneys in these jurisdictions were not interested in these cases, many claims either were not pushed (and therefore left “under seal”) or were not filed in the first place. This means that there could be many cases pending or impending against municipalities that will now be much more likely to be pursued by the U.S. Attorneys and private FCA attorneys across the country. In fact, the government has stated recently that there are nearly 140 qui tam suits pending against local governmental entities. Many of these suits may still be “under seal”, which means that the local government defendants may not even know that they are being investigated and sued.

But, since the decision in *Chandler* has resolved any question about the viability of these suits, they will likely begin to move forward against these municipal and county defendants.

The *Chandler* decision follows the Supreme Court's decision in *Vermont Agency of National Resources v. United States ex rel Stevens*. In *Stevens*, the Court held that States are sovereign and are not to be considered "persons", a term used in the FCA, unless Congress specifically indicates that States should be included. Until now, that decision, pertaining only to States, left open the issue of whether the FCA was applicable to municipalities or counties. The Defendants in *Chandler* argued that counties were not considered "persons" at the time the FCA was enacted, however the Supreme Court rejected that argument. Therefore, the state of the law is now clear: a State, absent Congress specifically revising the FCA to include States as "persons", can not be sued under the FCA, however a State's individual counties and municipalities are fair game for FCA prosecution.

As a result of the *Chandler* decision, there will likely be an increase in False Claims Act litigation against counties and municipalities. That fact should give these entities even more incentive to be vigilant in their efforts to comply with Federal and State laws and regulations.

The False Claims Act and the requirements of qualifying as a relator are complicated. Likewise, a Compliance Program requires a fact specific review of a company. Nothing in this article is intended to be legal advice on these or any other topics. For up to date, specific legal advice about the laws mentioned in this article or about your States' laws, you should consult an attorney.

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