



False Claims Act Amendments Increase Vulnerability of Government

Contractors by Baker Hostetler LLP. Reprinted with permission.

In recent years, enforcement and litigation of the False Claims Act (“FCA”) by the government and private plaintiffs has risen to levels not previously seen in the nearly 150-year history of the FCA. The magnitude and volume of FCA claims show no signs of abating in the near future and are likely to intensify. Companies that contract with the government or operate under government authorizations need to be more vigilant than ever to avoid an FCA claim.

In the last year alone, over 700 FCA matters were filed by the government and private plaintiffs. Over the past two years, the government has recovered almost \$7 billion from companies that allegedly overcharged or underpaid the government and from companies it believed to be engaged in unauthorized practices pursuant to previously obtained government approval. Large FCA settlements are the result of the government’s commitment over the last decade to zealously enforce the FCA, particularly with respect to the healthcare industry. Over 75 percent of the money recovered by the government in recent years has been from healthcare providers and pharmaceutical companies.

The overwhelming majority of FCA filings are made by qui tam plaintiffs—private citizens, often “whistle blowing” employees of companies doing business with the government, who file suits on behalf of the government and are awarded between 15 and 30 percent of any FCA settlement or judgment. Over 80 percent of FCA claims are filed by qui tam plaintiffs.

Recent changes to the FCA have expanded its scope and further empowered the government and private plaintiffs. Since May 2009, the FCA has been amended three times—under the Fraud Enforcement and Recovery Act of 2009, under the Patient Protection and Affordable Care Act of 2010 and under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The most significant changes to the FCA include the expansion of protections provided to whistle blowing employees who file qui tam suits against their employers, expansion of the definition of false claims, the narrowing of the definition of publicly disclosed informa-

Inside this issue:

False Claims Act	1
Tech Tip: Jury Verdicts	2
Videoconferencing	3
You and the Legal System	6
Upcoming CLE Opportunities	7
Calendar	8

Hamilton County Law Library

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Open Monday-Friday 8 - 4

[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

(Continued on page 4)

Tech Tip: Ohio Jury Verdicts via Westlaw — Searching help

By Julie Koehne, Assistant Law Librarian/Systems

The Westlaw Ohio Jury Verdict database contains verdict, judgment, settlement, arbitration and expert witness information compiled by jury verdict publishers. The summaries consist of information such as case type, geographical area where a case was tried, party names, attorneys' names, expert witnesses' names, factual information about the case, and verdict amounts. A document is a summary of a jury verdict, judgment, settlement or arbitration.

The screenshot shows the Westlaw search interface. At the top, there are navigation links: FIND & PRINT, KEYCITE, DIRECTORY, KEY NUMBERS, FORMFINDER, PEOPLE MAP, and EXPERT CENTER. Below these are tabs for different practice areas: Municipal Practitioner, Estate Planning Practitioner, Family Law Practitioner, Westlaw, and Ken. The 'Search' section is active, showing 'Selected Databases' with 'Ohio Jury Verdicts Combined (OH-JV)' selected. Below this are three search tabs: 'Terms & Connectors', 'Natural Language', and 'Template'. The 'Terms & Connectors' and 'Natural Language' tabs are circled in blue. The search form includes a 'Search Westlaw' button, a 'Key Terms' input field with a dropdown arrow, a 'Damages Range' dropdown menu set to 'Any amount', and a 'Verdict or Settlement Date' section with radio buttons for 'No Date restriction' (selected) and 'After', followed by a date input field 'MM/DD/YYYY'. A second 'Search Westlaw' button is at the bottom left.

With a Terms and Connectors search, you enter a query, which consists of key terms from your issue and connectors specifying the relationship between those terms. With Natural Language, you can retrieve documents by simply describing your issue in plain English.

Tip: To restrict your search to a particular party in a case, use a **TITLE** field search.

Use **ti(smith)** to retrieve documents where a person named Smith is a party.

Tip: To restrict your search to a particular type of injury, use a **SUMMARY** field search.

Use **su(spinal)** to retrieve documents dealing with spinal injuries.

Tip: To restrict your search to documents with a total verdict or non-verdict award in a certain dollar or other designated award range, use a **RANGE** field search. Dollar and other designated award ranges and corresponding field search terms are as follows:

Use **ra(VAL4)** to retrieve documents with a total award of \$300,000. See table below.

Total Award	RANGE Field Search Term		
\$0	VAL0	\$2,000,000 - 4,999,999	VAL7
\$1 - 49,999	VAL1	\$5,000,000 - 999,999,999	VAL8
\$50,000 - 99,999	VAL2	\$1,000,000,000 - 999,999,999,999	VAL9
\$100,000 - 199,999	VAL3	Confidential	VALC
\$200,000 - 499,999	VAL4	Equitable	VALE
\$500,000 - 999,999	VAL5	Unknown	VALU
\$1,000,000 - 1,999,999	VAL6		

Video Conferencing Offers Efficiencies, Opportunities, and Cost Savings

by Mary Jenkins, Law Librarian & Director

The Hamilton County Law Library has offered video conferencing services to its patrons since 2006. Employing simultaneous audio and video transmission, video conferencing allows multiple parties to connect with one another at a distance. There were several uses in the first year: Judges attended continuing education programs. Defense attorneys met with their incarcerated clients. Expert witnesses were consulted. Prosecuting and defense attorneys deposed witnesses. From its inception, the benefits of the service have been clear. It saves time and travel. It reduces expenses. It allows distribution of educational programming. It provides access to people with whom it might otherwise be difficult to meet.

Over the past few years, the Law Library's video conferencing equipment has been used by county personnel to create efficiencies. For example:

Hamilton County Common Pleas Court judges Nadine Allen, Norbert A. Nadel, and Robert P. Ruehlman have held mental health competency hearings via video conference. These hearings are frequently routine and quick. Judge Ruehlman comments, "This service saves money. It saves the deputies' time, it is convenient, and it's safer. The transport and housing of potentially dangerous offenders [from distant facilities] is eliminated. We could do this for all of these mental health competency hearings. It is easy and it's appropriate." Major Dale Menkhaus, Commander of the Sheriff's Court Services Division, concurs. He notes that the transport of inmates from other facilities often involves long trips by two officers, inmates' overnight or multi-night stays at the Justice

Center, security considerations, and significant expense. Expanded use of video conferencing is a positive development, from Court Services' perspective.

Pretrial and Community Transition Services uses video conferencing to participate in meetings. Wendy H. Niehaus, director, says, "We find the videoconferencing services offered by Hamilton County to be extraordinary. It is both cost and time saving as well as user-friendly. Our Statewide Veteran's Court Planning Team always feels welcomed and comfortable."

Several Common Pleas judges have conducted other types of court proceedings via video conference, allowing testimony from witnesses at a distance or those who are incarcerated. These uses of technology have permitted cases to be heard without the additional complications of transportation and delays. Judge Beth Myers offers this remark: "Using the video conferencing service for trial was a cost effective way for the parties to present live testimony of a witness who otherwise could not be present. We were able to transport the jurors and the Courtroom to the conference site upstairs with very little disruption. I will certainly use it again in an appropriate case."

Judges and magistrates in Hamilton County have access to regular continuing education seminars on-site at the Law Library, eliminating travel requirements and reducing time away from the courtroom. Hamilton County is one of a number of sites statewide for this educational series. Mary Jenkins, Hamilton County's law librarian, reports the emergence of a nationwide network

(Continued on page 5)

(Continued from page 1)

tion for purposes of the FCA's "public disclosure bar," expansion of the "original source" exception and authorization for the government to determine whether certain information is subject to the public disclosure bar. The recent FCA amendments also give the government greater access to information held by private companies.

Changes in state false claims laws have also fueled the growth of FCA claims. Fourteen states have their own False Claims acts, some of which have been amended during the last year to expand whistleblower protections and false claims causes of action. New York has expanded its FCA to allow qui tam plaintiffs to bring actions for tax fraud by some companies doing business with the state and has lowered the necessary degree of intent for tax fraud claims brought under the New York FCA. In contrast, the federal FCA continues to prohibit tax fraud claims.

Meanwhile, federal courts continue to wrestle with aggressive new legal arguments advanced by plaintiffs. In some instances, courts have attempted to limit the scope of the FCA, by, for example, rejecting implied false certification and collective knowledge claims made by the government. However, as additional legislative amendments are made to the FCA to override court decisions that limit the bounds of the FCA, companies will need to stay abreast of legislative and judicial developments.

Companies that directly or indirectly conduct business with the government, or whose products or services are sold subject to government approval, should ensure that their employees are informed about the FCA and establish internal procedures by which employees can address FCA-related concerns within the company before they file complaints with the government. Companies doing businesses with the government should also ensure that they have procedures in place for company management to respond to FCA-related concerns. In addition, companies should confirm that all representa-

tions made in the course of business are as accurate as possible and in compliance with both state and federal false claims acts.

FCA complaints filed by qui tam plaintiffs are sealed for at least 60 days—and can remain sealed for years—while the government investigates the claim and determines whether to intervene in a qui tam suit. Thus, it is critical for companies to take proactive measures to stay ahead of potential FCA claims, including obtaining partial seal lifts. This allows companies to investigate claims for themselves, negotiate settlements without unwanted publicity and avoid violating seal provisions in order to comply with disclosure requirements of the securities laws. Lastly, any company that may become subject to an FCA claim should avoid any retaliatory measures against employees who have filed claims and immediately seek counsel to determine its rights under the FCA and minimize the likelihood of government intervention.

For more information, please contact Jonathan B. New (jnew@bakerlaw.com) or 212.589.4650), John J. Carney (jcarney@bakerlaw.com or 212.589.4255), George A. Stamboulidis (gstamboulidis@bakerlaw.com or 212.589.4211), or Jason Cabico (jcabico@bakerlaw.com or 212.589.4687).

Strategic Priorities

Library staff and the Hamilton County Law Library Resources Board will engage this year in a SWOT analysis and determination of strategic priorities. If you have any comments about perceived strengths, weaknesses, opportunities, and threats, please contact Mary Jenkins mjenkins@cms.hamilton-co.org or Board chair James O'Reilly at your earliest convenience.

Continued from page 3)

of courts and state and local government offices willing to share their videoconferencing systems with each other. "We have connected expert witnesses in Cincinnati with a courtroom in South Dakota, for example. As judges and other county personnel have positive experiences with video conferencing, this trend of technology-facilitated legal proceedings will expand both locally and nationally."

(This article previously appeared in *Hello Hamilton County*, February 2011)

March 1: Revocation of Privileges for Unpaid Subscriptions

We have some subscribers whose library privileges are revoked, effective March 1, for nonpayment of 2011 subscriber fees. We don't want to lose you, but we've got to take that step. It's easy to remedy, though: Just pay your 2011 subscriber fees and we'll reinstate all your privileges. Call Mary Ann Sweeney at 513.946.5300 if you need more information.

Court Rules

You will find court rules for many jurisdictions on the Law Library's website at <http://www.hamilton-co.org/cinlawlib/resources/courtrules.html>. In addition to federal and state courts, we provide rules for most counties in Ohio. A collaborative effort of law librarians around the state, we either link to the court's website or we acquire paper copies, scan, and upload them. Periodically, librarians verify links and currency of the rules. If you come across rules that we don't have or if you see that an update is available, please contact Law Library staff.

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a Time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepard's, CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker Phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law and Aspen/LOISLaw treatises.

You and the Legal System: Landlord/Tenant Issues

The Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service, will present *You and the Legal System: Landlord/Tenant Issues* on Friday, March 18, 2011 at 12:00 noon at the Law Library.

We're pleased to announce that Ivan Tamarkin, a Cincinnati attorney (and law library subscriber) practicing primarily in real estate law and employment law, will be the speaker. There will be time for questions from the audience.

This program is free and open to the public. Attorneys are welcome to attend but please note that the session is intended primarily for the non-lawyer citizen. It will last one hour. Please pass the information along to clients and colleagues as desired.

Please call 513.946.5300 at the Hamilton County Law Library or email masweeney@cms.hamilton-co.org to reserve a seat.

Go Green and Get the News First!

Are you currently receiving the HCLL newsletter in print? Would you prefer an online version? HCLL subscribers who opt for the online version receive it before the print copy is mailed, plus the links for email and websites are active. We send out a summary via email each month with a link to the full text. To switch from print to online, just email

reference@cms.hamilton-co.org with a request to switch formats.

You and the Legal System: More Upcoming Programs

Free and open to the public.

All sessions are held at 12:00 noon at the Hamilton County Law Library, 6th floor, Cincinnati, Ohio. To register, call 513.946.5300.

April 15, 2011

Consumer Credit

Albert Brown, speaker

May 20, 2011

Estate Planning

Katrina Farley, speaker

June 17, 2011

Bankruptcy [tentative]

July 22, 2011

Mediation

Sherry Davies, speaker

August 19, 2011

Qualifying for Nursing Home Medicaid

Moshe Toron, speaker

This series is a collaboration between the Hamilton County Law Library and the Cincinnati Bar Association's Lawyer Referral Service.

Upcoming HCLLRB Meeting

The next meeting of the Hamilton County Law Library Resources Board will be Thursday April, 7 2011 at 1pm.

Landlord Tenant Resources

We suggest the following resources for your landlord tenant law research. Ask a librarian for additional guidance.

American law of landlord and tenant / Robert S. Schoshinski
1 KF589 .S34 1980-

Every landlord's legal guide / Marcia Stewart, Ralph Warner and Janet Portman
KF590.Z9 S74 2010

Every tenant's legal guide / Janet Portman and Marcia Stewart
KF590.Z9 P67 2009

First-time landlord : your guide to renting out a single-family home / Janet Portman, Marcia Stewart, and Michael Molinski
HD1394.5.U6 P67 2009

Friedman on leases / Milton R. Friedman
KF590 .F74 2004-

Landlord-tenant law from A to Z [in Ohio] / Ann K. Schooley, Amy Ashton Shaw
KFO117 .L35 2010 (CLE)

Landlord and tenant law in a nutshell / David S. Hill, Carol Necole Brown
KF590.Z9 H45 2011

Leases & rental agreements / Marcia Stewart & Ralph Warner & Janet Portman
KF590.Z9 S744 2009

Ohio Landlord Tenant Law (Matthew Bender)
KFO117 .W45

Renters' rights : the basics / Janet Portman and Marcia Stewart
KF590.Z9 P673 2009

Free CLEs in March and April

To register for any of these CLE events:
Contact Mary Ann at the law library or at 513.946.5300 or via email at masweeney@cms.hamilton-co.org.

Legal Implications of Social Media In the Workplace

Patricia Anderson Pryor of Taft, Stettinus & Hollister will discuss the legal implications of using social media in the workplace. Topics to be addressed include: employer's right to view employee and applicant social media sites, privacy interests, risks of discrimination claims, NLRB's current position, and other legal implications including defamation, misappropriation of trade secrets and harassment.

Thursday, March 31, 2011

12:30pm

1.0 of general Ohio CLE

Free to law library subscribers; \$50 for non-subscribers

Westlaw

Thursday, April 14

Two sessions:

12:30-1:30-Westlaw Basics/Search Tips

1:45-2:45– Westlaw: Focus on Secondary

Sources– OhJur, AmJur, Formfinder

Each session is approved for 1.0 hour of general Ohio CLE credit

Lexis

Tuesday, April 19

1:00-2:00– Lexis Search Tips/Strategies

Approved for 1.0 hour of general Ohio CLE credit

Upcoming Events

March 18: You and the Legal System: Landlord Tenant Issues

March 31: CLE: Legal Implications of Social Media in the Workplace

April 14: Westlaw CLEs (Two sessions)

Westlaw Basics/Search Tips

Focus on Secondary Sources– OhJur, AmJur, Formfinder

April 19: Lexis Search Tips and Strategies CLE



March 2011 Law Library Newsletter

INSIDE THIS MONTH

- False Claims Act
- Tech Tip: Jury Verdicts
- Videoconferencing
- Upcoming CLEs

ADDRESS CORRECTION REQUESTED

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