Insights

Dismissal of Non-Intervened Qui Tam Lawsuits

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A Department of Justice internal memo dated January 10, 2018 reflects a significant policy change regarding the DOJ's election to dismiss certain *qui tam* lawsuits in which the government declines to intervene. The Memo (a copy of which can be found here) notes that the number of *qui tam* actions filed under the False Claims Act has dramatically increased over the past several years, while the number of cases in which the government has intervened has remained relatively stable. The Memo encourages DOJ attorneys to evaluate whether going one step further and seeking dismissal of the lawsuit may better serve the government's interests. This is a step that the government has rarely taken in the past.

The False Claims Act authorizes the government to dismiss a *qui tam* lawsuit, even over the relator's objection. *See* 31 U.S.C. § 3730(c)(2)(A). The Act does not set forth specific grounds for dismissal. The Memo provides a non-exhaustive list of factors that the DOJ may consider as a basis for dismissal of a *quit tam* lawsuit:

- **Curbing meritless *qui tam* lawsuits**: The DOJ should consider moving to dismiss when an action is facially lacking merit or when, after concluding its investigation of the relator's allegations, the DOJ concludes that the case lacks merit.
- **Preventing parasitic or opportunistic *qui tam* lawsuits**: The DOJ should consider dismissal when an action duplicates an existing government investigation and adds no assistance or useful information to that investigation.
- **Preventing interference with agency policies and programs**: The DOJ should consider dismissing an action when it threatens to interfere with an agency's policies or the administration of an agency's programs.
- **Controlling litigation brought on behalf of the United States**: The DOJ should consider dismissal when it would protect the government's litigation prerogatives or ability to pursue or settle ongoing actions.
- **Safeguarding classified information and national security interests**: The DOJ should consider dismissal when doing so could safeguard classified information or lower a risk to national security, particularly in those cases involving intelligence agencies or military procurement contracts.
- **Preserving government resources**: The DOJ should consider dismissing an action when the government's expected costs (*e.g.* costs of monitoring or participating in ongoing litigation or of responding to discovery requests) are likely to exceed any expected gain.
- **Addressing egregious procedural errors**: The Department should consider moving to dismiss if there are problems with the action that make it difficult for the government to conduct a proper investigation.

The Memo notes that the DOJ may rely on multiple grounds for dismissal and that the factors listed above do not constitute an exhaustive list. Additionally, it may be appropriate in certain situations for the DOJ to seek partial dismissal of some defendants or claims. The Memo notes that the government will collect information on an annual basis regarding the number of *qui tam* actions dismissed upon motion by the United States. This will allow commonly targeted industries to monitor the new policy and the extent to which it is applied in the future.

If you have questions regarding HIPAA security or any health care matter, please contact Marc T. Quigley, Thomas J. Costakis, or your regular Krieg DeVault attorney.