

## DOJ Summarizes 2021 Settlements and Judgements

Richard P. Kusserow | February 10, 2022

### Key Points

- **Over \$5.6 Billion False Claims Act Settlements**
- **Vast majority of cases were initiated by whistleblowers**
- **FCA cases were primarily supported by underlying AKS violations**

The Department of Justice (DOJ) obtained more than \$5.6 billion in settlements and judgments from civil cases involving fraud and false claims in [Fiscal Year 2021](#), more than doubling the settlement amounts from 2020. This was the second-largest annual total recovery in False Claims Act (FCA) history.

Once again, the health care sector dominated the recovery landscape with \$5 of the \$5.6 billion related to matters involving the health care industry, including drug and medical device manufacturers, managed care providers, hospitals, pharmacies, hospice organizations, laboratories, and physicians. Half that amount was a \$2.8 billion agreement with Purdue Pharma to resolve “allegations that Purdue paid kickbacks to doctors, certain specialty pharmacies and an electronic health records developer to increase prescriptions” of certain Purdue products. Purdue is currently in bankruptcy proceedings, which raises questions as to whether and how much of the funds will be recovered. Without the Purdue figures, the results for 2021 would be at about the same level as 2020.

The vast majority of the other DOJ FCA cases were supported by Anti-Kickback Statute (AKS) violation allegations brought by Qui Tam Relators (Whistleblowers). While over \$1.6 billion of the settlements were attributable to lawsuits filed under the qui tam provisions, this figure was a major decline from the \$2.2 billion recovered in 2020 for the same types of allegations. The number of cases of this type declined from 672 filings in 2020 to 598 in 2021.

The DOJ noted that the tremendous levels of emergency funding arising from the COVID-19 crisis resulted in many fraud cases being investigated. The Paycheck Protection Program (PPP) under the CARES Act in March 2020 was a particular focus.

The big takeaway from the DOJ is that (a) the health care sector is the prime mover in producing significant FCA settlements, (b) DOJ depends heavily on Whistleblowers for their cases, and (c) the underpinnings for the FCA cases fall primarily upon the AKS. All this is a reminder that the number one health care sector enforcement priority for the DOJ and OIG remains focused on arrangements with referral sources.

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