

Health Law Institute  
False Claims Act Update 2018

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United States ex rel. Kasowitz Benson Torres LLP v. BASF Corp., et al.  
Civ. No. 16-2269, 2017 U.S. Dist. LEXIS 174594, 2017 WL 4803906  
(D.D.C., Oct. 23, 2017)

- The "Reverse" False Claim
- When does an company have an "obligation" to pay money to the government
  - Established vs. Contingent Obligations
- Reverse False Claims Act liability does not arise solely from failing to obey a law
- Failing to provide information under a statutory provision is not itself withholding of property of the government

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United States v. Peake.  
874 F.3d 65 (1st Cir. Oct. 23, 2017)

- Sealed qui tam and Brady

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United States of America, ex rel. Bahnsen  
v. Boston Scientific Neuromodulation Corp.,  
Civil Action No. 11-1210 (D.N.J. 12/15/2017)

- Denying Defendant's Motion for Summary Judgment
  - What Constitutes Knowledge in this Ambiguous World ?
  - (Dead) Letters to Carriers
  - Are Diagnostic Codes Material
- Claims of Breach of Confidentiality Against Whistleblowers
- Motions to Preclude (many) Experts



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United States ex rel. Bennett v. Biotronik, Inc.  
876 F.3d 1011 (9th Cir. Dec. 1, 2017)

- The "Government Action" Bar
- Determining when the government is a party to the action and the impact of partial intervention
- Multiple qui tam complaints



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United States ex rel. Lutz, et al. v. Berkely Heartlab, Inc., et al.  
(D. S.Car.)

- FCA trial subpoenas - nationwide service
- Need for testimony outweighs undue burden of compliance with subpoena
- Physician called as expert or fact witness
- Jury instructions regarding kickbacks



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United States ex rel Spay v. CVS Caremark Co.  
875 F.3d 746 (3d Cir. 2017)

- Government Knowledge Inference Defense
- Did pre-2009 FCA Require Materiality?
- Are Dummy Prescriber ID Numbers Material



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United States v. Luce  
873 F.3d 999 (7th Cir. Oct. 23, 2017)

- Application of the "Materiality" standard after Escobar
  - "Having a natural tendency to influence ... the payment or receipt of money..."
- Proximate cause requirement for government recovery
  - Limiting government recovery to injury that arose from the specific false claim



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U.S. ex rel. Stepe v. RS Compounding LLC, et al.  
2017 U.S. Dist. Lexis 198656 (M.D. Fla. 12/4/17)

- Usual and customary price "inflation"
- Individual and corporate knowledge and liability
- Equalizer Button



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United States ex rel. Groat v. Boston Heart Diagnostics,  
2017 WL 6327540 (D.D.C. Dec. 11, 2017)

- Diagnostic Laboratory's Obligation to Ensure Medical Necessity

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## Hot Topics

- Tax Law SEC. 13306, DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS
- 1/10/2018 Memorandum: Factors for Evaluating Dismissal Pursuant to 31 U.S.C. 3730 (c) (2) (A)
- 1/25/2018 Memorandum: Limiting Use of Agency Guidance Documents In Affirmative Civil Enforcement Cases

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