



The USDOJ Continues to Increase Its Fraud Enforcement Actions Related To COVID-19 Relief Benefits

Article
05.15.2023

Reprinted with permission from *Birmingham Medical News* (April 2023).

Fraud enforcement actions by the United States Department of Justice (USDOJ) continue to rise against companies and individuals related to their applications for and receipt of COVID-19 benefits. It appears that no type of entity is exempt from these enforcement actions. For example, as recently as March 21, 2023 the USDOJ announced a settlement with two Florida companies, Kingwood Orlando Reunion Resort LLC (Orlando Reunion) and Kingwood Crystal River Resort Corp. (Crystal River). Orlando and Crystal River agreed to pay \$325,000 to settle allegations that they violated the False Claims Act (FCA) and the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by providing false information in support of the Paycheck Protection Program (PPP) loan forgiveness application submitted by Crystal River.

Orlando Reunion and Crystal River, which are related but operate separate resorts, both received separate PPP loans. The United States alleged that Crystal River sought forgiveness of its PPP loan, in-part, by certifying that it used a portion of its PPP loan to pay wages of Crystal River employees, when in fact, some of the employees to whom it claimed to have paid wages were actually Orlando Reunion employees whom Crystal River did not employ or pay. As a part of the settlement, Crystal River and Orlando Reunion agreed to pay \$271,720 in damages under the FCA and \$53,280 in civil monetary penalties under FIRREA.

RELATED PROFESSIONALS

James A. Hoover

RELATED CAPABILITIES

Health Care

Health Care Business, Governance & Transactional

Health Care Compliance

Health Care Litigation

The USDOJ Continues to Increase Its Fraud Enforcement Actions Related To COVID-19 Relief Benefits

The settlement resolved a lawsuit filed under the qui tam or whistleblower provision of the FCA, which permits private parties to file suit on behalf of the United States for false claims and share in a portion of the government's recovery. The qui tam lawsuit was filed by the former Director of Human Resources for Kingwood resorts who will receive a total of approximately \$46,000 in connection with the settlement.

This latest settlement continues to exemplify the USDOJ's trend of COVID-19 fraud enforcement and encouraging whistleblowers to file FCA actions. The former Principal Deputy Assistant Attorney General Ethan Davis called the FCA "one of the most effective weapons in our arsenal" to combat fraud perpetrated against the government. This is because relators can receive between 15 to 30 percent of a successful FCA action, plus their attorneys' fees. FCA cases provide for up to treble damages to the United States as well as civil monetary penalties of up to \$25,000 per claim.

Over the past year, FCA activity in the COVID-19 arena has picked up significantly. On March 13, 2023, the USDOJ announced a settlement with two Michigan nonprofit organizations to settle allegations that the organizations violated the FCA by applying for and obtaining loans under the PPP for which they knew or should have known they were not eligible. In connection with the settlement, one charity paid \$115,265 and the other paid \$110,622 notwithstanding the fact both companies repaid their loan proceeds in full in December 2020.

Also, an Albany, New York-based nonprofit agreed to pay \$86,676 in damages and civil monetary penalties to resolve allegations that it violated the FCA by obtaining an inflated PPP loan.

Additionally, on February 1, 2023 the USDOJ announced a settlement with three California companies that agreed to pay a total of \$530,000 to settle allegations that they violated the FCA and the FIRREA by knowingly submitting false information in support of their PPP loan applications. A bakery in Palo Alto agreed to pay \$430,000 to settle allegations that it received and retained a duplicate PPP loan in 2020 and then later improperly sought and received forgiveness for the duplicate loan. Meanwhile, an industrial equipment supplier located in Santa Clara agreed to pay \$50,000 in civil penalties to settle allegations that it received and retained a duplicate loan, and a licensed general contractor located in Castro Valley agreed to pay \$50,000 in civil damages and penalties to settle allegations that it received and retained proceeds from a duplicate loan. Two of the companies also agreed to fully repay their loans as part of the settlements.

As is evident from enforcement actions in other industries, COVID-19 FCA enforcement actions are now another theory of recovery against health care companies and individuals. As with other theories of FCA recovery, health care companies must remain vigilant to maintain their compliance with local and federal rules and regulations, and ensure they actively follow an effective compliance program. This involves proactively identifying and mitigating risks including reviewing COVID-19 initial loan applications, benefits they may have received and any loan forgiveness applications.