

DOJ Relator Share Guidelines

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RELATOR'S SHARE GUIDELINES

Section 3730(d)(1) of the False Claims Act ("FCA"), 31 U.S.C. §§ 3729-33, provides that a qui tam relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent.

The legislative history suggests that the 15 percent should be viewed as the minimum award – a finder's fee – and the starting point for a determination of the proper award. When trying to reach agreement with a relator as to his share of the proceeds, or proposing an amount or percentage to a court, we suggest that you begin your analysis at 15 percent. Then consider if there are any bases to increase the percentage based on the criteria set forth below. Having done this, consider if that percentage should be reduced based on the second set of criteria. Of course, absent one of the statutory bases for an award below 15 percent discussed at the end of these guidelines, the percentage cannot be below 15 percent (or 25 percent if we did not intervene).

ITEMS FOR CONSIDERATION FOR A POSSIBLE INCREASE IN THE PERCENTAGE

1. The relator reported the fraud promptly.
2. When he learned of the fraud, the relator tried to stop the fraud or reported it to a supervisor or the Government.
3. The qui tam filing, or the ensuing investigation, caused the offender to halt the fraudulent practices.
4. The complaint warned the Government of a significant safety issue.
5. The complaint exposed a nationwide practice.

6. The relator provided extensive, first-hand details of the fraud to the Government.
7. The Government had no knowledge of the fraud.
8. The relator provided substantial assistance during the investigation and/or pretrial phases of the case.
9. At his deposition and/or trial, the relator was an excellent, credible witness.
10. The relator's counsel provided substantial assistance to the Government.
11. The relator and his counsel supported and cooperated with the Government during the entire proceeding.
12. The case went to trial.
13. The FCA recovery was relatively small.
14. The filing of the complaint had a substantial adverse impact on the relator.

ITEMS FOR CONSIDERATION FOR A POSSIBLE DECREASE IN THE PERCENTAGE

1. The relator participated in the fraud.
2. The relator substantially delayed in reporting the fraud or filing the complaint.
3. The relator, or relator's counsel, violated FCA procedures:
 - o Complaint served on defendant or not filed under seal
 - o the relator publicized the case while it was under seal
 - o statement of material facts and evidence not provided
4. The relator had little knowledge of the fraud or only suspicions.
5. The relator's knowledge was based primarily on public information.
6. The relator learned of the fraud in the course of his Government employment.
7. The Government already knew of the fraud.
8. The relator, or relator's counsel, did not provide any help after filing the complaint, hampered the Government's efforts in developing the case, or unreasonably opposed the Government's positions in litigation.
9. The case required a substantial effort by the Government to develop the facts to win the lawsuit.
10. The case settled shortly after the complaint was filed or with little need for discovery.
11. The FCA recovery was relatively large.

These items are not meant to be an exhaustive list of the criteria one should consider when trying to determine an appropriate award for a relator, but they do constitute many of the factors that routinely should be considered.

Finally, please note that section 3730(d)(1) limits the relator to no more than 10 percent of the proceeds when the complaint is based primarily on public information and that section 3730(d)(3) allows the court to reduce the percentage below 15 percent if the relator planned and initiated the fraud and requires the court to dismiss the relator if he is convicted for the actions giving rise to the submission of the false claims.