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DOJ scores first homegrown FCA settlement against a private equity firm

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I. The Aero Turbine settlement

On July 31, 2025, the Department of Justice announced a $1.75 million settlement (https://bit.ly/4lquCY7) with private equity ("PE") firm Gallant Capital Partners LLC and one of its defense industry portfolio companies, Aero Turbine Inc.

This may be the beginning of a new trend in DOJ-initiated FCA enforcement against the private equity industry.

The settlement resolved allegations that the companies violated the False Claims Act ("FCA") by knowingly failing to comply with certain cybersecurity obligations in a contract between Aero Turbine and the United States Air Force.

FCA cases premised on cybersecurity violations have grown at a rapid pace in recent years. In fact, the same day that DOJ announced the Aero Turbine settlement, it announced a $9.8 million settlement with Illumina Inc. based on alleged cybersecurity violations.

Although a modest resolution, the Aero Turbine case is most significant because it appears to be the first time that DOJ has obtained an FCA recovery against a PE firm in a *non-qui tam* case, i.e., an FCA case that was not initiated by a whistleblower lawsuit. When a whistleblower files a qui tam case, the DOJ is legally obligated to investigate the allegations.[1]

By naming PE firms in FCA suits, whistleblowers have spurred the government to pursue these investment managers. Yet, until July, DOJ had yet to obtain a recovery against a PE firm in a government-initiated FCA case.

Notably, Aero Turbine self-reported its alleged non-compliance to the government, a factor that likely mitigated the financial penalty. Nevertheless, it did not stop DOJ's pursuit of the PE firm. This may be the beginning of a new trend in DOJ-initiated FCA enforcement against the PE industry.

II. This is the latest chapter in DOJ's increasing scrutiny of the PE industry

The Aero Turbine settlement shows that DOJ is growing more serious about pursuing PE firms. DOJ has spent the last several years making clear that it will not hesitate to wield the FCA against the PE industry.

In 2020, then-Principal Deputy Assistant Attorney General Ethan Davis spoke before the U.S. Chamber of Commerce and warned that "[w]hen a private equity firm invests in a company in a highly-regulated space like health care or the life sciences, the firm should be aware of laws and regulations designed to prevent fraud. Where a private equity firm takes an active role in illegal conduct by the acquired company, it can expose itself to False Claims Act liability."

PE firms that become aware of potential malfeasance at a portfolio company and ignore it do so at their own peril.

And last year, Principal Deputy Assistant Attorney General Brian Boynton remarked: "I would like to emphasize the department's commitment to holding accountable third parties that cause the submission of false claims. These third parties can include private equity firms, among others."

Given that DOJ is now targeting PE firms outside of qui tam cases, these warnings amount to more than mere rhetoric. DOJ is backing up its threats with action.

This is the seventh PE settlement under the FCA since 2016 — meaning there have now been resolutions under both Republican and Democratic administrations. As PE firms continue to invest more in the healthcare and defense industries, the trend is expected to continue.

FCA recoveries in healthcare and defense cases have historically accounted for 78% of all FCA recoveries, largely reflecting the

Private Equity Firm	Year of Settlement	PE Settlement Figure	PE Firm Solely Liable for All or Part of Settlement?	Qui Tam?
Fortress Investment Group (https://bit.ly/4moEC5I)	2016	$8.86mm	No (Joint and Several Liability)	Yes
Riordan, Lewis & Hayden (https://bit.ly/3JgKKxZ)	2019	$21.05mm	No (Joint and Several Liability)	Yes
The Gores Group (https://bit.ly/45xiVJd)	2020	$1.5mm	Yes (Separate Entity Paid $10mm)	Yes
Ancor Capital Partners (https://bit.ly/41llrLF)	2021	$1.78mm	Yes (Portfolio Company Paid $13.5mm)	Yes
H.I.G. Capital (https://bit.ly/45kby9d)	2021	$19.95mm	Yes (Portfolio Company Agreed to Pay $4mm and Two Executives Agreed to Pay $5.05mm)	Yes
Belhealth Investment Partners (https://bit.ly/4fH8RlR)	2023	$9mm	No (Joint and Several Liability)	Yes
Gallant Capital Partners (https://bit.ly/4oEDEn4)	2025	$1.75mm	No (Joint and Several Liability)	No

fact that the government spends large sums on medical services and military might. So, these industries are not just magnets for PE investments, they are magnets for enforcement too.

Meanwhile, courts are increasingly embracing novel theories of FCA liability against PE firms. In the first case against a PE firm to go through summary judgment, a court in the District of Massachusetts found that a PE firm could face FCA liability to the extent it has the power to stop malfeasance at its portfolio company but fails to do so.[2]

Massachusetts' settlement with H.I.G. Capital confirms that states will not hesitate to use their own FCAs against PE firms in appropriate cases.

If DOJ can pursue cases against these financial managers based upon a strong jurisprudential foundation, that too will increase the frequency of these enforcement actions. Further, the “failure-to-stop-fraud” theory embraced by the District of Massachusetts is not a difficult fact pattern for the government to investigate and, if the facts support it, pursue.

Many PE firms have controlling stakes and board representations in their portfolio companies. PE firms that become aware of potential malfeasance at a portfolio company and ignore it do so at their own peril.

Against this backdrop, PE firms should now take the FCA seriously. The law provides for treble damages and substantial civil monetary penalties. An FCA case can easily create an existential threat to a company, especially a PE-owned company which already has substantial debt obligations.

The fact that the portfolio company may be overleveraged can also increase the odds that the PE firm owner finds itself a target. If the portfolio company has little cash to pay a settlement, the PE firm may have deeper pockets.

III. The PE firm may escape relatively unscathed

The PE industry may take solace, however, in the fact that Aero Turbine was a joint and several settlement liability, meaning that the PE firm and its portfolio company must jointly pay the $1.75 million figure. If Aero Turbine pays all of it, then the PE firm will have largely avoided financial harm — save for potential derivative exposure by virtue of any ownership stake it may have in Aero Turbine.

But that is not unusual. Of the seven PE/FCA settlements on record, four of them have involved such a joint and several settlement dynamic. While joint and several settlements may allow PE firms to effectively escape direct financial exposure, the approach is not without its benefits to the government.

By threatening both the PE firm and its portfolio company with an FCA action, DOJ can and will leverage a larger total settlement figure — even if the portfolio company ultimately pays all of it.

IV. The road ahead

Yet federal enforcement may only be one side of the story. In an FCA case against H.I.G. Capital, the federal government declined to intervene, but the Commonwealth of Massachusetts chose to do so, litigating the case on its own behalf. That is an unusual dynamic. It is rare that state enforcers take up a qui tam case while DOJ declines to do so. This confirms that states will not hesitate to use their own FCAs against PE firms in appropriate cases.

We may see more actions out of Massachusetts shortly. Earlier this year, the Massachusetts Legislature amended its FCA statute to create a new theory of FCA liability against investors and fund managers.

Under the amended Massachusetts FCA, PE firms, PE funds, and investors who own 10% or more in a portfolio company can be liable for the fraudulent conduct of the portfolio company if such parties learn of the fraud and fail to inform the operative Massachusetts governmental entity within 60 days of learning of the fraud.[3]

In effect, this penalizes PE firms and investors that fail to disclose malfeasance at the companies they own and manage. It is only a matter of time before Massachusetts wields this broad power. And if these amendments bear financial fruit, other state legislatures may include similar provisions in their FCA laws.

While Massachusetts is leading the charge, state oversight of PE firms is not limited to the Bay State. States from coast to coast have passed laws or are considering bills which seek to limit PE's growing role in healthcare. This also suggests that state governments are casting a jaundiced eye on the PE industry. When industries become subject of such widespread scrutiny, enforcement actions tend to follow.

V. Conclusion

As federal and state governments sharpen their approach to applying the FCA to PE firms and PE firms increase their investments in highly regulated industries, FCA enforcement actions against the PE industry are likely to become more common. Accordingly, PE firms would be well advised to take compliance at their portfolio companies seriously. Otherwise, they may find themselves in the government's sights.

Notes:

[1] *See* 31 U.S.C. § 3730(a) ("The Attorney General diligently shall investigate a violation [of the FCA]").

[2] *U.S. ex rel. Martino-Fleming v. S. Bay Mental Health Centers*, No. 15-CV-13065-PBS, 2021 WL 2003016 (D. Mass. May 19, 2021) ("H.I.G. had the power to fix the regulatory violations which caused the presentation of false claims but failed to do so."); *see also U.S. ex rel. Ebu-Isaac v. INSYS Therapeutics, Inc.*, No. 216CV07937JLSAJW, 2021 WL 3619958, at *11 (C.D. Cal. June 9, 2021) (denying PE firm's motion to dismiss).

[3] Mass. Gen. Laws, ch. 12, § 5B(a).

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