



32nd Annual

**WEST COAST
OUNCE OF
PREVENTION
SEMINAR**

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False Claims Act Trends and Emerging Issues

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Relators Go At It Alone

- Record year for *qui tam* recoveries where DOJ declined to intervene (\$1.15 billion)
- Record year for recoveries by Relators (\$598 million)
- DOJ obtained more than \$3.5 billion in settlements and judgments for fourth consecutive year



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Civil Penalties Set To Double

- Bipartisan Budget Act of 2015 enacts civil penalties Inflation Adjustment Improvement Act
- Penalty range to increase up to 150%
- Railroad Retirement Board – first federal agency to adjust FCA penalties for inflation



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A “Sample” of What’s To Come: Extrapolation

- Historically limited to calculating damages once liability has been established
- *United States ex rel. Martin v. Life Care Centers of America, Inc.* and proving liability through statistical analysis



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Ambiguous Terms: No Warning, No Knowing Falsity?

- *United States ex rel. Purcell v. MWI Corp.* (D.C. Cir. 2015) – reversing FCA jury verdict where regulation is ambiguous, and defendant’s interpretation was reasonable



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Implied Certification: High Court Set To Resolve Circuit Split

- *Universal Health Services v. United States ex rel. Escobar*
- Whether FCA allows an implied false certification theory of liability
- If so, whether regulation at issue must contain an explicit condition of payment to trigger liability

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