

When It Comes To Crop Insurance, The FCA Bears Fruit

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The federal crop insurance program is an often overlooked area of potential liability under the False Claims Act. The program, which is governed by a substantial body of regulatory law, is subject to intense oversight by the U.S. Department of Justice. The oversight is not entirely surprising given the program's cost: \$90 billion over the next decade, according to the Congressional Budget Office. Perhaps it is this cost that prompted the U.S. Department of Agriculture's Risk Management Agency to maintain and keep public a long list of DOJ prosecutions for fraud and violations of the False Claims Act. These prosecutions include criminal charges brought against North Carolina tobacco farmers, Texas peanut growers, and California fruit and vegetable producers for fraudulently filing claims against the USDA crop insurance program.

Recently, the Fireman's Fund Insurance Co. paid \$44 million, one of the largest settlements in the program's history, to settle False Claims Act allegations that it knowingly issued insurance policies that were ineligible under the U.S. Department of Agriculture's federal crop insurance program and falsified documents. The complaint alleged that from 1999 to 2002, the company knowingly issued federally reinsured crop insurance policies that were ineligible for federal reinsurance.



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The monetary penalties in these cases have been significant, in part because the False Claims Act provides for treble damages when liability is found. In November 2006, a Michigan family farm was found to have received \$704,640 in crop insurance indemnities to which it was not entitled. The court trebled that amount to award \$2,113,920 in damages and added a \$15,000 civil penalty. *U.S. v. Bli*, No. 00-10484 (E.D. Mich. 2006).

Similarly, in 2008, an Iowa man was accused of selling crop insurance policies to farmers and then engaging in improper conduct that allowed certain ineligible farmers to obtain and make claims against crop insurance policies. *United States v. Hawley*, 566 F. Supp. 2d 918 (N.D. Iowa 2008). That case was dismissed, but nevertheless demonstrates that the use of the False Claims Act in connection with prosecutions for crop insurance fraud is not new.

The government's use of the False Claims Act against farm insurance policy issuers is consistent with its prosecution of entities and individuals who defrauded other government-backed insurance programs. For

example, in 2013, a jury found State Farm guilty of violating the False Claims Act. State Farm was accused of defrauding the National Flood Insurance Program in connection with claims made after Hurricane Katrina. The jury found that State Farm escaped paying policyholder's wind damage claims by falsely blaming the damage on flood damage caused by storm surge, which is covered under the National Flood Insurance Program.

Enforcement actions against crop insurers should be expected to continue, especially as the Risk Management Agency continues to utilize data mining to detect fraud, waste and abuse. By using data mining, the agency can detect "anomalous" payments. If anomalous payments are received on claims at a rate or frequency higher than others in the same geographical area, then the insured (the farmer) is notified via a warning letter that his or her fields are subject to an inspection by the Farm Services Agency, which then notifies the RMA enforcement arm. See U.S. Government Accountability Office, GAO-12-256, *Crop Insurance: Savings Would Result from Program Changes and Greater Use of Data Mining* 25 (2012); see also Chad G. Marzen, *Crop Insurance Fraud and Misrepresentations: Contemporary Issues and Possible Remedies*, 37 *William & Mary Env'tl. L. & Pol. Rev.* 675, 683 (2013).

The trend of increased enforcement is unmistakable. The number of False Claims Act suits filed last year set an all-time record. The amount of money recovered by the federal government (\$5.7 billion) also set an all-time record. In fact, in each of the last three years, the federal government recovered more money under the False Claims Act than it ever has in any previous year. The fact that \$3.1 billion of that \$5.7 billion was recovered from financial institutions suggests that the government is increasingly looking to nontraditional industries (i.e., not government contractors or health care entities) for potential False Claims Act enforcement opportunities.

Increased enforcement means that insurers and policyholders must be careful to make sure that they are monitoring potential risk areas for the submission of false claims. An insurer promising that a policyholder will never have to pay a premium for crop insurance should raise some eyebrows. Similarly, a policyholder who is making claims that are inconsistent with the statistics on file with the RMA will likely attract government scrutiny. The key — as it is in the context of other industries facing potential False Claims Act liability (government contractors, health care entities and financial institutions) — is having a sound compliance and monitoring system in place as well as an open line of communication with the government.

The recent Fireman's Fund settlement and the government's focus on the crop insurance program is consistent with our earlier blog articles reporting on the government's expanding use of the False Claims Act to target companies in industries not accustomed to defending False Claims Act allegations. As we reported, settlements and judgments from nontraditional target companies, such as large financial institutions, constituted a significant amount of the government's recoveries in 2014. The Fireman's Fund settlement is an early indication that this trend is likely to continue in 2015 and beyond.

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