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False Claims Act Updates: History, Current Developments, and Possible Future Trends for FCA Focus and Enforcement

More than 150 years after it was enacted, the False Claims Act remains a powerful vehicle for public enforcement and private recovery—and for potential liability. Recent years have seen FCA case filings and enforcement continuing to trend upward, including a record-breaking 2024. This article provides an overview of the background of the FCA, describes key provisions and mechanics of the statute, and assesses the current status, and potential expanded focuses, of FCA enforcement actions.

Background

The FCA was established during the Civil War in 1863, in response to widespread fraud by government contractors, particularly those who sold faulty supplies and substandard provisions to the Union Army. It provided incentives to private citizens to bring suits on behalf of the U.S. government, through *qui tam* actions, and to share in any resulting financial recovery. The FCA created individual whistleblower rights for, in effect, bounty hunters for the government. Those individuals, the "relators" in the suits, obtain standing by taking on a partial assignment of a claim held by the government, and can make claims directly on the federal government's behalf.

In its original form, the FCA imposed liability on any person who knowingly submitted false claims

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INSIDE

Chambers USA 2025 Recognizes Quinn Emanuel

This year, 44 different Firm practices areas and 53 Firm attorneys were ranked by *Chambers* USA 2025. Antitrust (Plaintiff) and Intellectual Property were just two of the many practice areas where the firm ranked in Band 1. Our California and New York offices received the most rankings, with 10 different practice areas being recognized in each state.

Bill Price Receives Lifetime Achievement Award from California Legal Awards

Law.com has recognized Bill Price with its Lifetime Achievement Award at the California Legal Awards. This honor celebrates those whose work over the course of their notable legal careers has made a significant impact on the practice of law in California. Bill is founder and co-chair of the firm's National Trial Practice Group and has been with the firm for nearly three decades.

Quinn Emanuel Recognized by IAM Patent 1000 2025 Ranking

Quinn Emanuel has been recognized by IAM Patent 1000 in their 2025 rankings across eight jurisdictions with 27 recommended individuals – a testament to the depth and global reach of this Firm's patent litigation practice. Some of the Firm's standout achievements include gold rankings in the United States and Germany and recommended rankings in International, Japan, and Unified Patent Court jurisdictions.

to the United States for payment, and entitled relators to a portion of any recovery. But over time, after an initial period of activity, FCA enforcement waned. By World War II, the statute was little used, as criminal enforcement of fraudulent conduct became more prevalent, and Congress narrowed the FCA and reduced relators' share of recoveries. In the initial postwar decades, the FCA remained infrequently used.

In 1986, however, Congress revitalized and expanded the FCA, strengthening its whistleblower protections, raising penalty amounts, and authorizing the award of treble damages. Those changes reinvigorated the FCA, and since then the statute has been expanded further, including through the broadening of potential liability and strengthening of whistleblower rights in 2009 and 2010. In particular, the Affordable Care Act and Dodd-Frank Act increased FCA applicability to healthcare programs and increased incentives for relators. The civil penalty range also has continued to grow, including via inflation adjustment laws.

In its modern application, FCA enforcement has shifted increasingly, though not exclusively, toward healthcare and grants. Through the various enlargements of the incentives and applications of the FCA, Congress has expressed its intent to recover taxpayer dollars lost to fraud in a variety of federally funded programs—and to permit individual whistleblowers to share in those recoveries.

Key Provisions and Mechanics

The current version of the FCA imposes civil liability on anyone who knowingly engages in various fraudulent practices in connection with financial claims made upon the United States. The statute's provisions are broad, covering, among other things, the knowing submission of "a false or fraudulent claim for payment or approval," the knowing creation or use of a false record or statement to induce payment for a false claim, and the so-called "reverse" false claim of knowingly causing the government not to receive money owed, for example by concealing an obligation to pay.

Critically, scienter is broadly defined in the FCA context. "Knowingly" includes actual knowledge, deliberate ignorance, or reckless disregard of the truth by the individual or entity. No specific intent to defraud is required; a defendant who was reckless or sloppy about the truth of a claim can be held liable under the statute. A "claim" is also defined expansively, as any request for government money or property. In addition to authorizing treble damages for the amount of the government's loss, the FCA also authorizes inflation-adjusted civil penalties, which for 2025 increase to a minimum of more than $14,000 per claim and a maximum of nearly $29,000 per claim.

When a private individual files a civil complaint alleging an FCA violation on behalf of the U.S., the complaint is filed under seal for at least 60 days and initially is served on the government only; it is not unsealed or served on the defendant until ordered by the court. Once an FCA action is pending, no other relator can file a later case based on the same facts, and the relator must disclose all material evidence in his or her possession to the government. During the period when the action is sealed, the government decides whether to intervene. If the government does intervene, it takes primary responsibility for prosecuting the case; if not, the relator can proceed with the action in his or her own name.

The FCA also includes robust anti-retaliation protections. Any employee, contractor, or agent who is discharged, demoted, or otherwise discriminated against because of lawful acts in furtherance of an FCA action—*e.g.*, reporting fraud—is entitled to relief. Remedies for those types of retaliation can include, for example, reinstatement, double back-pay, and special damages.

Notably, there is a narrow statutory defense, although it is only partial: if a defendant self-reports and cooperates, including providing to the government all information known about the violation(s) within 30 days after discovering the relevant information, and before any criminal, civil, or administrative action commences, the court may reduce damages to double the actual loss.

Industry Focus and Current Events

Historically, FCA cases often involved defense contractors, consistent with the original aims of the statute. In recent decades, however, as noted, the healthcare and life sciences industries have been most targeted by FCA enforcement. Year after year, healthcare fraud, including fraudulent billing, kickbacks, drug marketing violations, and other similar conduct, accounts for the bulk of FCA filings and enforcement. In 2024, healthcare cases constituted more than 50% of total recoveries, including enforcement against hospitals, device makers, labs, pharmacies, providers of Medicare and Medicaid services, and doctors.

Over the past several years, the FCA has been an increasingly active enforcement tool, with recoveries in the billions of dollars and near-record levels of whistleblower litigation. Most recently, in 2024, DOJ statistics reflect the highest number of new *qui tam* matters ever on record, at nearly a thousand cases—a more than 25% increase over the prior highest number filed in any individual year. Non-*qui tam* FCA filings, *i.e.*, those brought directly by the government, also have trended upward in recent years, with the three highest annual numbers of non-*qui tam* matters filed in 2022, 2023, and 2024.

Recoveries are largely driven by *qui tam* suits, with more than 80% of the nearly $3 billion recovered in 2024 having resulted from *qui tam* actions. In those cases producing monetary damages, the vast majority of relator recoveries came from cases in which the government intervened. Although the percentages vary year by year, in general, relator-only cases produce vastly lower recovery totals as compared to FCA cases in which the government intervenes.

Healthcare continues to be a primary focus of FCA filings and recoveries; every year brings multi-million-dollar claims and settlements from hospitals and clinics for upcoding or billing for unnecessary services, and from drug and medical device companies for off-label promotion or kickback schemes. DOJ also recently has brought cases relating to cybersecurity compliance, in connection with entities failing to meet cybersecurity requirements set forth in government contracts.

Additionally, FCA filings are affected by occurrences and trends that impact government spending and collections. One such instance occurred recently; another may emerge as significant in the near future.

Since the COVID-19 crisis, there have been a number of FCA cases involving fraud in connection with pandemic relief and other stimulus. The Paycheck Protection Program (PPP) and other CARES Act funds spawned numerous FCA investigations and actions, and prompted the DOJ to intervene in and publicly announce several cases of improper double-dipping in relief funds and false certifications of PPP eligibility. Many of those cases are still playing out in court, and for a period of time they represented a significant increase and shift in FCA focus.

Most recently, public policy relating to the imposition of tariffs could create significant potential liability for companies and individuals—and for awards to relators—in connection with customs duties.

Use of the FCA in Connection with Tariffs

As tariff rates on foreign products have risen sharply in recent months, incentives for evasion have similarly increased. FCA enforcement is a way for the DOJ to attempt to reduce payment avoidance and fraud, and the relators' bar may also see an opportunity to bring cases that are both potentially lucrative and aligned with current government priorities.

Customs duties—that is, payments required to be made to the government in connection with imported goods—fall squarely within the ambit of the FCA. Avoidance of such required payments is covered by the FCA under the kind of "reverse" false claim described above, in which a defendant knowingly and improperly causes the government not to receive money it is owed. Traditionally, *qui tam* actions stemming from unmet customs obligations related to a handful of different types of schemes. One such genre of misconduct involves entities or individuals misrepresenting the country of origin of incoming products or their component parts.

Companies attempting to dodge tariffs might move goods to an intermediary country subject to lower tariff rates before transporting those products to the United States. Although the goods technically then arrive from the intermediary, such conduct nevertheless violates the statutory scheme for payment of duties. Tariff rates are charged based on where goods were most recently manufactured, not merely from what country they are most recently being shipped. Accordingly, this kind of mislabeling avoids antidumping duties or other tariffs, or artificially reduces tariff rates that apply to the falsely identified country of origin.

Importers may also violate the FCA by underreporting the true value of imported goods to avoid or reduce duties. Doing so can lower the required tariff payments because they are charged as a percentage of the overall import price. Importers may also misclassify products, sometimes as brazenly as by identifying products as something entirely different, or by misreporting the parts or components of a product, to cause the products to fall under a different, lower tariff rate.

Another potential method of tariff evasion with increased recent salience is the possibility of misreporting the *timing* of imports. Depending on the precise timing of the imposition of different tariff rates by the government, payment obligations could vary dramatically from one day to the next, costing—or saving—companies millions of dollars.

In sum, when tariff rates vary across countries, there are incentives to disguise or alter the actual country of origin fraudulently in favor of a country with lower rates—sometimes referred to as re-exportation, entrepot trade, or white-labeling. When tariff rates vary across products, there are incentives to misreport or mislabel the contents or component parts of imported products fraudulently, to make them appear to be subject to lower rates. Any tariff at all creates the incentive to underreport the overall value of goods, and substantial changes to tariff rates in relatively short periods of time can create incentives to misrepresent the timing of the relevant transactions.

Policy changes relating to import duties, regardless of any other benefits or drawbacks of the tariffs themselves, create pressures and incentives for companies to try to avoid additional costs, even through fraud or misrepresentations. Such changes similarly fuel the interests of relators and the relators' bar to bring cases based on any such fraud. Additionally, and perhaps more so than in the past, the recent tariff fluctuations may also incentivize honest market participants in affected industries to report wrongdoing by competitors, given the increasing disparity in financial effects of paying versus evading tariffs.

DOJ intervention rates in FCA cases historically have varied, but the recent trend is high intervention, and recoveries are greatly skewed toward cases in which the government intervenes. This pattern reflects a selective approach by the DOJ, with the government typically taking over cases it views as most meritorious or compelling. Given the current policy focus on tariffs and their enforcement, it would not be surprising if the DOJ were especially likely to intervene in, and focus on, FCA cases relating to customs duty violations.

Conclusion

FCA enforcement remains a meaningful and growing priority for the DOJ. Companies will need to maintain thoughtful and comprehensive compliance and training programs, especially in connection with healthcare ventures but also with respect to other areas of government contracting and payments.

Tariff policies, and in particular frequent changes in rates of tariffs and the countries to which they apply, present elevated compliance and regulatory considerations for companies navigating a shifting landscape with respect to trade and customs laws and enforcement. Although those challenges are not strictly new, the increased variance of tariff rates and the shifting applications of different rules to different countries creates an environment of heightened scrutiny, and potentially heightened motivations for evasion of payments to the government. As with any regulatory consideration, entities that discover potential FCA liability should carefully weigh the option of self-reporting.

Conversely, individuals who are aware of misconduct in connection with financial claims made to the government, or in connection with nonpayment of monies owed to the government, remain well positioned to bring FCA claims, including in an area of public policy that is a significant current government focus. FCA whistleblower activity may continue to increase in the coming months and years, and FCA claims relating to trade especially could see significant growth under the current geopolitical circumstances.

NOTED WITH INTEREST

Initial Prohibitions Under EU AI Act Take Effect

On February 2, 2025, the European Union's AI Act reached its first major milestone as prohibitions on "unacceptable risk" AI practices became legally binding across all 27 EU member states. These initial prohibitions target AI systems deemed to pose the greatest threats to fundamental rights, including subliminal manipulation techniques, exploitation of vulnerable groups, or social scoring systems.

The immediate implications are substantial: companies deploying AI systems with any EU nexus face potential penalties of up to €35 million or 7% of global annual turnover, whichever is higher, for violations. Both EU-based companies and U.S. entities offering AI services to EU users must take immediate action to ensure compliance, as the Act's extraterritorial reach extends to any AI system that affects individuals located in the EU.

The EU AI Act

The EU AI Act represents the world's first comprehensive regulatory framework for artificial intelligence, and it has followed a trajectory analogous to that of GDPR for personal data protection. After nearly four years of legislative development, the Act was formally adopted in May 2024.

The core of the Act is a risk-based regulatory approach that categorizes AI systems into four tiers based on their use cases: unacceptable risk (such as social scoring systems), high risk (such as employment-related AI), limited risk (such as chatbots), and minimal risk (such as spam filters).

The Act's phased implementation strategy reflects the complexity of regulating AI and the perceived urgency of addressing its most dangerous applications. Although the act will fully enter into force only in 2026, its application has been fast-tracked for AI systems that pose "unacceptable risks" to fundamental rights and democratic values.

The risk-based approach mirrors familiar regulatory frameworks in product safety and financial services, but with a notable difference: the AI Act's definitions of risk focus primarily on impacts of fundamental rights, rather than on physical or financial harm. An AI system falls into the "unacceptable risk" category not because it might malfunction, but because its design or intended use conflicts with values such as of human dignity, non-discrimination, and democratic governance.

Prohibited AI Practices

The AI Act's initial prohibitions target eight categories of AI systems, identified below. Save for narrow exceptions, these prohibitions are categorical and apply to both public and private entities. Moreover, Article 2(1) of the AI Act explicitly applies these rules to providers and deployers of AI systems regardless of their location, provided the output of the AI system is used within the EU. This means a U.S. company offering an AI service that EU residents can access faces the same compliance obligations as an EU-based competitor.

- **Subliminal Manipulation Beyond Awareness – Article 5(1)(a)**: AI systems that deploy "subliminal techniques beyond a person's consciousness" to distort behavior materially in ways that cause or are likely to cause physical or psychological harm.
- **Exploitation of Vulnerable Groups – Article 5(1)(b)**: AI systems that exploit vulnerabilities related to age, physical or mental disability, or social or economic situation.
- **Social Scoring by Public Authorities – Article 5(1)(c):** AI systems used to evaluate or classify people based on their social behavior or personal characteristics over time, leading to detrimental treatment that is either unrelated to the evaluated behavior or characteristics, or disproportionate to their behavior.
- **Risk Assessment Based on Profiling – Article 5(1)(d):** AI systems that assess or predict the risk of a person committing a criminal offense based solely on profiling or personality traits, except when used to augment human assessment of specific criminal conduct, based on objective facts linked to criminal activity.
- **Facial Recognition Databases Through Untargeted Scraping – Article 5(1)(e)**: AI systems that create or expand facial recognition databases by untargeted scraping of facial images from the internet or CCTV footage.
- **Emotion Recognition in Workplace and Educational Settings – Article 5(1)(f):** AI systems that infer emotions of individuals in workplace or educational institutions, except for medical or safety reasons.
- **Biometric Categorization Based on Sensitive Attributes – Article 5(1)(g)**: AI systems that use individuals' biometric data to infer sensitive details such as race, political opinion, or religious beliefs. There is a carve-out in this article for labeling or filtering of lawfully acquired biometric data for law enforcement purposes.
- **Real-time Remote Biometric Identification in Publicly Accessible Spaces – Article 5(1)(h):** AI systems for real-time remote biometric identification in publicly accessible spaces for law enforcement purposes, except in strictly limited cases.

Compliance Strategies and Enforcement Landscape

The enforcement architecture for the AI Act's prohibitions combines centralized EU oversight with decentralized national implementation, creating multiple venues for potential regulatory action. Each EU member state must designate at least one national competent authority with powers to investigate violations, demand information, conduct audits, and impose penalties. These authorities coordinate through the European AI Board, which ensures consistent interpretation and application across the EU.

As noted, the penalty structure involves maximum fines of €35 million or 7% of total worldwide annual turnover, whichever is higher. This calculation method particularly impacts large technology companies, where 7% of global revenue could result in multi-billion-Euro penalties.

Effective compliance is likely to require a systematic approach, beginning with AI system inventory and risk assessment. Companies should catalogue all AI systems that could affect EU residents, evaluate them against the prohibition categories, and document their analysis—ideally while taking care to maintain privilege over those evaluations. The evaluations should serve as compliance tools and as a potential defense in enforcement proceedings. Such reviews should focus on systems already in operation that could violate the new prohibitions. Red flags include systems that collect psychological or behavioral data, target specific demographic groups, make automated decisions affecting access to services, or process biometric information. Companies should thoroughly assess whether "borderline" systems fall within the prohibited categories, modify or discontinue those systems to the extent necessary to ensure compliance, and formulate clear legal reasoning as to why those systems are not prohibited.

Ensuring compliance may also require technical and organizational innovation. On the technical side, this may include designing systems with built-in safeguards against prohibited uses, implementing access controls, and maintaining audit logs. Organizationally, companies need clear governance structures, training programs, and escalation procedures for potential violations. The appointment of an AI compliance officer, although not explicitly required, may assist companies with significant AI operations.

Anticipated Developments

The activation of the AI Act's initial prohibitions marks the beginning, not the end, of the EU's AI regulatory journey. Specifically, the governance rules and obligations for general-purpose AI models become applicable on August 2, 2025, whereas on August 2, 2026, the EU AI Act will become generally applicable and requirements around "high-risk AI systems" will go into effect. These high-risk systems include those used in law enforcement, healthcare, education, critical infrastructure, and more. The most extended deadline applies to high-risk AI systems embedded in certain regulated products, which have an extended transition period until August 2, 2027. Notably, the EU is under substantial pressure to amend the AI Act or to delay its rollout, from both European AI businesses and the Trump administration. Regardless of the final form or timetable for the AI Act, companies that establish robust compliance frameworks now will be better positioned to address the full implementation of the AI Act, and any associated litigation. Q

PRACTICE AREA NOTES

White Collar Update:

Misleading But Not False: *Thompson v. United States* and Its Implications

Are "misleading" statements criminally enforceable as "false"? Not always, according to the Supreme Court's recent decision in *Thompson v. United States*, 145 S. Ct. 821, 825-26 (2025) ("*Thompson*")—the effects of which could ripple across federal prosecutions and enforcement actions, and statutory interpretation cases more generally.

In *Thompson*, the Court analyzed a conviction under 18 U.S.C. § 1014, which criminalizes "knowingly make any *false* statement of report… for the purpose of influencing in any way" the actions of certain regulators and entities, including lenders and financial institutions. The petitioner in *Thompson*, Patrick Thompson, was convicted under Section 1014 after representing that he had borrowed $110,000 from a bank—a fact that was technically true but that misleadingly omitted his two subsequent loans from the bank. Both the district court and the Court of Appeals for the Seventh Circuit sustained the conviction on the grounds that Section 1014 encompassed misleading statements and did not require literal falsity. The Supreme Court disagreed, unanimously holding that Section 1014 does not reach statements that are misleading but technically true.

Writing for the majority, Chief Justice Roberts drew a distinction between the word "false," used in Section 1014, and the word "misleading," which is not. Chief Justice Roberts explained that, despite the substantial overlap between the two terms, there is an important difference: a "false" statement is always untrue, but a "misleading" statement may or may not be untrue. In reaching his conclusion, Chief Justice Roberts explained that many other statutes, including those under Title 18, expressly prohibit *both* "false" and "misleading" statements; interpreting the former to necessarily include the latter would render such statutory language superfluous. By contrast, none of the predecessor provisions to Section 1014 used the word "misleading"; had Congress intended for Section 1014 to cover misleading statements as well as false ones, it would have done so expressly.

The precise impact of *Thompson* will play out in lower courts in the coming months. Although the direct effect of *Thompson* is limited to Section 1014, the opinion likely will have broad indirect effects on criminal prosecutions and government enforcement actions—and on statutory interpretation more generally.

First, *Thompson* will likely affect the interpretation of various other federal statutes that criminalize making "false" statements (as opposed to statements that are, more broadly, "false or misleading," "false or fraudulent," or "manipulative or deceptive"). For example, 18 U.S.C. § 1015 criminalizes "false" statements concerning naturalization, citizenship, and alien registry; 18 U.S.C. § 1020 criminalizes "false" statements related to highway projects; 18 U.S.C. § 1542 criminalizes "false" statements concerning U.S. passports; and 31 U.S.C. § 3729 prohibits "false" statements related to the payment of money or property to the government. *Thompson* provides a new defense to individuals and corporate entities facing prosecution and enforcement actions under these statutes.

Second, *Thompson* will likely affect statutory interpretation more broadly. Indeed, this pattern has already emerged in the three publicly available decisions applying the *Thompson* opinion. In *KBC Asset Management. NV v. Discovery Financial Services.*, which granted a motion to dismiss a civil securities fraud suit under 15 U.S.C. Section 78j(b) and Rule 10b-5(b), the Northern District of Illinois relied on *Thompson* to draw a distinction between a false statement (which "asserts facts that are untrue when the statement was made") and a misleading one (which may include a "literally true" statement that "implies something that is false"). No. 23-CV-06788, 2025 WL 976120, *4 (N.D. Ill. Mar. 31, 2025). *Thompson* also has been cited twice in cases interpreting the Video Privacy Protection Act ("VPPA"), 18 U.S.C. § 2710. In *Salazar v. Paramount Global*, the Sixth Circuit quoted *Thompson* in finding that "[c]ontext from the time of the [statute's] enactment" supported a restrictive interpretation of the phrase "goods and services" under the VPPA (just as the Supreme Court had found with respect to Section 1014). 133 F.4th 642, 651 (6th Cir. 2025). And in *Gardner v. Me-TV*

National Limited Partnership, the Seventh Circuit relied on *Thompson* to support a strict textualist reading of the VPPA, holding that "[t]he Supreme Court insist[ed] that it is the language—the only thing on which Congress and the President have agreed—that controls the meaning of legislation." 132 F.4th 1022, 1025 (7th Cir. 2025).

Although the precise, long-term implications of *Thompson* are unresolved, it is notable that the opinion is consistent with the general narrowing of fraud statutes throughout the 21st century. For example, the Court took a comparable approach in *Skilling v. United States*, which restricted the application of the honest services fraud statute, 18 U.S.C. § 1346, to bribery and kickback schemes, and not to undisclosed self-dealing. 561 U.S. 358, 409-11 (2010). More recently, the Court held that the right-to-control theory cannot form the basis of a conviction for wire fraud under 18 U.S.C. § 1343, as federal fraud statutes criminalize only schemes involving deprivation of traditional property interests. *Ciminelli v. United States,* 598 U.S. 306 (2023). *Thompson* represents the latest installment in this defendant-friendly trend.

Copyright Update:

D.C. Circuit: AI Cannot Be Author for Copyright Registration

The United States Court of Appeals for the District of Columbia Circuit recently issued a significant ruling involving the intersection of copyright and artificial intelligence: "the Copyright Act of 1976 requires all eligible work to be authored in the first instance by a human being."

Background

Dr. Stephen Thaler created a generative artificial intelligence named the "Creativity Machine," which itself made a picture titled "A Recent Entrance to Paradise." When Thaler submitted an application for a copyright registration for "A Recent Entrance to Paradise" to the U.S. Copyright Office, the Copyright Office denied his application because his application listed only the Creativity Machine as the work's author. The Copyright Office's rejection was based on the policy that "requires work to be authored in the first instance by a human being to be eligible for copyright registration."

Thaler challenged the ruling, conceding that his submission to the Copyright Office was generated by artificial intelligence, but arguing that the requirement for human authorship was "unconstitutional and unsupported by either statute or case law." The Copyright Office twice affirmed the denial of Thaler's copyright application, and the United States District Court for the District of Columbia subsequently affirmed the Copyright Office's denial. Thaler appealed to the D.C. Circuit.

D.C. Circuit Ruling

The D.C. Circuit's decision was consistent with those of the Copyright Office and the District Court. It affirmed the denial of Thaler's copyright application on the basis that the Copyright Act requires that all works to be authored by a human being "in the first instance."

The Court concluded that traditional tools of statutory interpretation indicate that the term "author" in the Copyright Act refers only to humans—not "machines." The Court focused on multiple provisions of the Copyright Act and determined that they used the term "author" in a way that indicates that authors could only be humans. For example, under 17 U.S.C. § 204(a), copyright transfers require a signature, which machines do not have. Similarly, the Court pointed out that the Copyright Act references an author's "nationality or domicile" (17 U.S.C. § 104(a)), an author's "widow or widower" (17 U.S.C. § 203(a)), and an author's "life" and "death" (17 U.S.C. § 302(a)). The Court reasoned that the Copyright Act, when read as a whole, makes "humanity a necessary condition for authorship."

Relatedly, the Court rejected Dr. Thaler's argument that a non-human author can be considered an author under the Copyright Act based upon a modern dictionary definition that suggests the "natural meaning" of "author" is not limited to human beings. The Court emphasized that it considers words in their statutory context and that when courts interpret statutory language they seek to discern how Congress used a word in the law.

The Court also concluded that this understanding is consistent with the interpretation of both the Copyright Office and Congress. The Court noted that "the Copyright Office consistently interpreted the word author to mean a human prior to the Copyright Act's passage," including when the Copyright Office "formally adopted the human authorship requirement in 1973." The Court also inferred that "Congress adopted the agency's longstanding interpretation of the word 'author' when it reenacted that term in the 1976 Copyright Act." In addition, in 1974, Congress created the National Commission on New Technological Uses of Copyrighted Works, which issued a final report in 1978 that stated that "the Commission believes that there is no reasonable basis for considering that a computer in any way contributes authorship to a work produced through its use."

The Court also rejected the argument that requiring human authorship impedes the protection of works made with artificial intelligence. The Court clarified that the "human authorship requirement does not prohibit copyrighting work that was made by or with the assistance of artificial intelligence." In fact, the Court pointed out that the Copyright Office had registered some works made with assistance from artificial intelligence.

However, it clarified that Thaler's dispute did not concern a disagreement about the extent to which artificial intelligence contributed to a human's work because Thaler identified the "Creativity Machine" as the only author of the work at issue. Finally, the Court noted that concerns about whether this rule would decrease the creation of original works are policy issues more appropriate for Congress than the federal courts.

Unanswered Questions and Takeaways

Although the D.C. Circuit reaffirmed that human authorship is necessary for a work to be eligible for a copyright registration, it did not address "the Copyright Office's argument that the Constitution itself requires human authorship of all copyrighted material" based upon the Intellectual Property Clause. Nor did it address Thaler's "argument that he is the work's author by virtue of making and using the Creativity Machine" because he had waived that argument before the U.S. Copyright Office. Future cases may address these kinds of issues.

The D.C. Circuit refrained from engaging in policymaking or establishing new legal standards regarding artificial intelligence. Conversely, it pointed out that the Copyright Office is studying the intersection of copyright law and artificial intelligence and that it is releasing recommendations based on that analysis.

In May 2025, the D.C. Circuit denied Thaler's request that his case be reheard *en banc*.

Class Action Update:

Australian Securities Class Actions: A Shifting Landscape

Historically, securities class actions have constituted at least 20% of all class actions filed in Australia. The attraction of securities class actions to plaintiff law firms and litigation funders alike stems from the inevitable pre-trial settlements in circumstances where respondents were aware of the uncertainties and risks of proceeding to judgment. Some of the perceived uncertainties and risks for respondents stemmed from the potential availability of market-based causation to plaintiffs as a method of establishing causally connected loss – a theory of causation that, until recently, had never been tested by the Australian courts. These conditions cultivated an environment in which Australian companies that were the subject of securities class actions were inclined to pay 'go-away' money to settle the proceedings before trial.

However, the landscape of securities class actions in Australia experienced a significant change in 2019 when the Federal Court of Australia delivered the first securities class action judgment in the landmark case of *TPT Patrol Pty Ltd as trustee for Amies Superannuation Fund v. Myer Holdings Ltd* [2019] FCA 1747 (*Myer*). *Myer* found in favor of the respondent, and since then, all five shareholder class actions that have proceeded to trial have had the same result. This series of recent judgments has triggered a sharp decline in the filing of new securities class actions in Australia, as respondents are emboldened to defend the case to trial, plaintiffs await further guidance to navigate the evidentiary hurdles set by the Courts, and litigation funders direct their capital to other types of class actions.

Reasons for Case Losses

The reason each of the securities class actions taken to trial in Australia produced a result favoring the respective respondents is case-specific. However, an overarching theme in at least four of these decisions is plaintiffs' failure to prove causation, loss, and damages. In circumstances where shareholders did not expect that these elements would be tested at trial, it suggests a potential failure to frame and lead their cases, which commenced during Australia's 'happy hunting' days of securities class actions.

Causation – Failure to Link Misconduct to Share Price Movement

For applicants to secure an award of damages, courts require proof that the alleged non-disclosure of material information to the market and/or misleading or deceptive conduct in fact caused the respondent's share price to be inflated artificially throughout the relevant period.

One of the overarching reasons why Australian shareholders have failed to secure an award for damages is their failure to establish a direct link between the pleaded breaches of the law and quantifiable economic loss suffered by shareholders as a result of the respondent's contraventions (*Myer*).

In circumstances where multiple pieces of information may influence share prices, isolating the impact of one misstatement or non-disclosure through expert evidence has proven challenging. To make matters more difficult, the decision of the Full Court of the Federal Court of Australia in the matter of *Zonia Holdings Pty Ltd v. Commonwealth Bank of Australia Limited (No 5)* [2024] FCA 477) (*CBA*) highlights that Courts will not 'strip out' the impact of confounding pieces of information so as to pinpoint the market reaction to the disclosure equivalent to the pleaded information. The onus remains on shareholders to do so through expert evidence.

Quantification of Loss – Flawed Expert Evidence

Once causation is established, shareholders must rely on forensic economic evidence to quantify the artificial inflation of the respondent's shares as a result of its contraventions of the law.

To quantify loss or damage, plaintiffs will typically submit expert evidence in the form of event study or fundamental valuation analyses. However, event study or fundamental valuation analyses are useful to the court only if the correct assumptions are made, the appropriate counterfactual questions are proffered, and if experts isolate the effect of components of alleged material information on a company's share price. It is fundamental flaws in these areas that have contributed to Australian shareholders' failure to secure an award for damages at trial in recent securities class actions. Specifically, shareholders have been unable to quantify any damage or loss at trial in circumstance where:

The counterfactual disclosure in their event study was flawed because it relied on hindsight analysis - that is, an assumption that the respondent ought to have disclosed the exact information that triggered a fall in its share price, despite it not being possible for the respondent to have known that information at the point in time it is alleged that it ought to have made disclosure to the market (*Crowley v. Worley Limited* (No 2) [2023] FCA 1613) (*Worley*);

They have taken an "all or nothing" approach to their event study resulting in a situation where they have introduced insufficient evidence to test alternative counterfactual disclosures the Court has deemed appropriate on the facts of the case (*Worley*). The recent judgments suggest that shareholders are strictly held to their pleaded case by the courts; and

They have failed to demonstrate the "economic equivalence" between the information that caused respondents' share price to decline on one hand (for example, that a regulator *was* commencing civil penalty proceedings against the respondent), and the information they say ought to have been disclosed at an earlier date on the other hand (for example, that there was a *possibility* that the regulator *would* commence civil penalty proceedings against the respondent) (*CBA*).

The recent case law makes plain that proving causation, loss, and damages in shareholder class actions in Australia is no easy task and requires nuanced expert evidence.

A Roadmap for Success

Despite the current circumstances, plaintiffs may yet rebound. The most recent judgment delivered by the Full Court of the Federal Court of Australia in *CBA* offers some helpful guidance for shareholders to navigate the complexities associated with proving their cases - particularly in cases where it is difficult to separate the effects on the respondent's share price of various pieces of bad news released around the same time.

Helpfully, the Full Court in *CBA* did not accept that it was "impossible to try and discern the contributions to the price drop referrable to the information that was substantially the same as the pleaded information," and opined that strict precision is not required. Rather, it suggested two types of information on which shareholders can rely to supplement expert evidence: (a) market reactions to the disclosure of qualitatively similar information by other listed companies; and (b) market reactions and commentary from brokers and analysts in response to the relevant disclosure. Although a departure from the mathematic rigor commonly expected in forensic economic analyses, this information would allow shareholders to provide at least a viable estimate of "the extent to which an observed price reaction to publicized 'bad news' can sensibly be attributed to the wrongdoing in question."

With this guidance, the Court provided its clearest indication of the pathway to success for Australian shareholders in securities class actions. Following this guidance, and preparing expert evidence appropriately, will further assist shareholders in future suits.

Quinn Emanuel Secures Significant Settlement Victory in a Summary Proceeding Against the New York Attorney General

In June 2023, the New York Attorney General initiated a summary proceeding pursuant to New York Executive Law § 63(12) against Centers Health Care, four of its affiliated nursing homes, and their owners and operators. Centers Health Care hired Quinn Emanuel to defend its affiliated nursing homes against the AG's 300+ page petition, which was accompanied by nearly 20,000 pages of supporting documents. The petition asserted eleven causes of action supported by allegations of a wide-ranging scheme of fraud the AG asserted was designed to extract "up front" profits and was marked by financial mismanagement and understaffing, leading to resident neglect at the nursing homes. Following an early preliminary injunction hearing, Quinn Emanuel persuaded Justice Melissa Crane of the New York Supreme Court, Commercial Division, to schedule the case in three stages: (1) motion to dismiss the petition, (2) motion for leave to conduct discovery, and (3) answering the petition on the merits—a significant and rare strategic win.

In November 2023, Quinn Emanuel moved to dismiss the majority of the AG's petition on several grounds. With respect to certain individual respondents, we argued that the AG resorted to group pleading claims against 27 individual respondents, but failed to describe in what conduct those individuals had engaged to warrant their inclusion in the lawsuit. The motion also argued that several of the claims were time-barred and otherwise addressed the infirmities in each of the AG's claims individually, principally arguing that (1) the AG's conversion-based claims rested on a fundamental misunderstanding of Medicaid reimbursements—*i.e.*, they cannot be converted absent a requirement when paid that they be used to confer a future benefit claims of conversion—and the AG had failed to trace the funds to the government; (2) the fraud-based claims failed to include required particularized allegations; (3) the AG's claims asserting violations of various healthcare regulations were barred by the Emergency Disaster Treatment Protection Act; and (4) the AG sought damages not available as a matter of law.

In February 2024, we further moved for leave to conduct discovery under C.P.L.R. § 408, arguing that the AG had cherry-picked only favorable evidence and should be required to turn over anything tending to exculpate the respondents. In parallel, we filed three Article 78 petitions against the New York Attorney General's Office, the New York State Executive Chamber, and the New York State Department of Health, seeking access records concerning matters of public health and policy relevant to respondents' defense to the petition.

In November 2024, after more than a year of hard-fought litigation on these multiple fronts, and on the eve of our filing a response and 100-page brief in opposition to the petition, the AG agreed to a settlement of $45 million—less than half the amount it had originally demanded, and nearly 80% of which will be put back into the nursing homes to be used towards improving resident care and staffing. The settlement also avoided the risks of a trial and significant potential additional costs. The settlement represents an important victory for Quinn Emanuel's Government and Regulatory Litigation and Health Care practices, demonstrating the power of creative strategy and aggressive litigation in creating incentives for settlement.

Quinn Emanuel Secures $300 Million Merger Victory in Landmark Delaware Specific Performance Case

Quinn Emanuel secured a landmark trial victory for Desktop Metal, obtaining an order of specific performance requiring Nano Dimension to complete its $300 million acquisition despite an activist investor's attempt to derail the deal. Chancellor McCormick described her opinion as "another victory for deal certainty," and it had a profound impact for our client, with its stock price doubling on the ruling. Nano executed the merger agreement in July 2024, and an activist fund seized control of Nano's board in December 2024, vowing to "suspend" the transaction. Time pressures were significant, with the merger set to expire March 2025 and Desktop facing cash shortages and potential bankruptcy, endangering both its critical 3D printing technology for missile defense and 700 employees.

The case advanced rapidly from complaint to trial, in just three months, because of what the Court called "Herculean" efforts by the Quinn team, including producing over 50,000 documents and taking and defending 22 depositions. The Court found "damning" evidence of Nano's breach, spotlighting its 38-day silence after the activist-nominated directors captured the board, followed by "made-for-litigation" objections to an agreement it had accepted pre-takeover. Internal communications uncovered by Quinn Emanuel revealed directors explicitly discussing using regulatory approvals to derail the merger, with one writing: "We need to make sure the most important things are covered and resolved…1. Minimize the board. 2. Suspend Yoav and the deal."

Following a two-day trial, the Court issued a 112-page opinion and ordered specific performance - Nano was directed to sign the required regulatory agreement within 48 hours and close the transaction. The Court also rejected all of Nano's counterclaims and defenses, invoking the prevention doctrine to estop Nano from raising conditions not satisfied as a result of its own breaches. Nano did not appeal, and the $300 million merger closed on April 2, 2025. Quinn Emanuel's victory in this expedited bet-the-company case demonstrates that Delaware courts will order specific performance of obligations under merger agreements even in the regulatory context. In her precedent-setting opinion, Chancellor McCormick reaffirmed bedrock principles of Delaware M&A law and applied them to regulatory approvals: stringent enforcement of "hell-or-high-water" covenants involving sensitive national security assets; application of the prevention doctrine to estop bad-faith regulatory delay; and confirmation that ordinary course compliance turns on parties' holistic pre-closing conduct. By compelling Nano to honor its commitments, the Court of Chancery sent an unmistakable message that, in Delaware, a deal remains a deal. For companies and counsel navigating the M&A landscape, Chancellor McCormick's opinion will undoubtedly be cited for years to come. Q

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