

**Smart In
Your World**

**It's More Than
a Tag Line**

Arent

Fox

Is

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Is

Finding Truth



**False
Claims
Act**

TO RENDER QUALITY HEALTH CARE WITH A SPECIAL FOCUS ON THE POOR AND THE VULNERABLE. In the late 19th century, a community of nuns dedicated to the care of the sick and the poor opened a small, 12-bed hospital in a city in the Northeast region of the United States. By 1900, just 30 years after it opened, the hospital was treating more than 1,500 patients with doctors performing 300 operations that year.

Over the course of the 20th century and beyond, the hospital grew into a major regional health care center. By 2008, the health care system was composed of a large medical center, a children's hospital, a nursing home, home health services, and nearly 30 ambulatory care and other clinical sites. With more than 1,400 physicians, 5,000 employees, including nurses and other health care providers, the health care system today serves close to 1,000 beds, treating more than 1.6 million patients.

Additionally, a major expansion of the health care system's facilities had been announced. More than ever, the health care system was fulfilling its mission to render quality health care with a special concern for the poor and underserved.

But in 2005, the health care system, its hospitals, its expansion and its mission were unexpectedly placed in serious financial and legal jeopardy.

CLAIMS OF FRAUD. That year, a so-called "whistleblower" had filed suit in federal court claiming that the hospital had violated the False Claims Act by improperly inflating its Medicare claims. Specifically, the whistleblower had alleged the hospital system had over-billed the government for "outlier payments," which are special Medicare payments made to hospitals that incur unusually high expenses when treating acutely ill patients who require extraordinary treatment or highly complex procedures, such as heart bypass surgeries that lead to complications.

In his suit, the whistleblower – a hospital consultant who had already sued numerous other hospitals making similar claims – sought \$75 million dollars plus penalties from the hospital.

Under the False Claims Act, a private citizen is permitted to sue individuals and entities for fraud on behalf of the government (a "qui tam" case). Once the lawsuit is filed, the federal government may decide to join the whistleblower in the lawsuit. If the defendant is found to have engaged in fraud or if the case settles, the whistleblower is entitled to be paid a percentage of the damages.

Thus, the whistleblower in the case stood to pocket millions of dollars for pressing his allegations against the hospital and health care system.

THE STAKES. The hospital's management was stunned by the suit and the allegations. For nearly 150 years, the hospital had dedicated itself to conducting its work in the most ethical manner, with fairness and honesty.

The suit threatened not only the health care system's good name and its reputation for integrity and excellence, but, more importantly, its financial ability to continue to serve its patients and those who depended on it for their health and well-being.

PRESENTING ITS FINDINGS. To defend itself against the allegations of fraud, the health system turned to Arent Fox, one of the most respected Medicare and Medicaid False Claims defense firms

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in the nation, a firm with a well-earned reputation for tackling the thorniest allegations of health care fraud around, aggressively but quietly defending its clients while simultaneously working to protect the client's reputation and preserve its confidentiality.

The lead attorney on the case was Arent Fox partner Linda Baumann, a nationally recognized authority in the field of health law.

With her years of experience, Linda knew immediately what was at stake for the client. Aside from legal liability that potentially ran into the tens of millions of dollars and the loss of its reputation, in a worst case scenario, the health care system potentially faced the dire consequence of exclusion from the Medicare program, which would likely mean the hospital would be forced to close its doors.

Linda and the Arent Fox health care legal team knew that despite their client's strong defenses, the plaintiffs have tremendous leverage in False Claims Act litigation. (In one notable case, after failing twice to convince a jury that the defendant hospital had violated the law, the government threatened to exclude the hospital from participation in federal health care programs. Since exclusion is a financial death sentence for health care providers, the hospital ultimately agreed to settle the case.) Under these circumstances, and depending on the specific facts at issue, reaching a settlement early on in False Claims Act litigation can be the most prudent course for a health care provider, assuming you are able to negotiate favorable settlement terms.

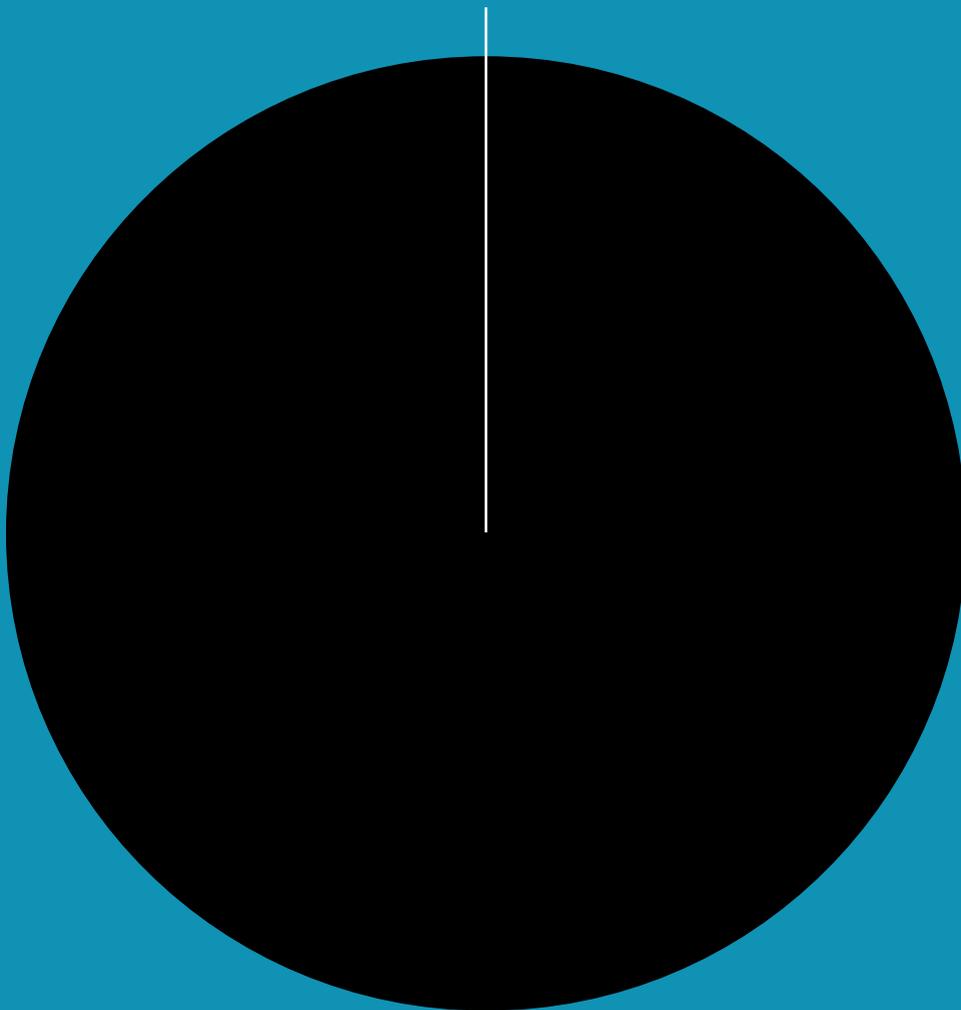
In this case, Linda looked to save the client tens of millions of dollars in liability, costs and fees, and prevent hospital personnel from having to divert their attention from providing quality patient care to engaging in litigation.

Linda and her team went to work to examine the charges and claims involved to show the US Justice Department and the whistleblower's counsel that the client had strong defenses it could assert to rebut allegations of Medicare reimbursement fraud. Arent Fox worked closely with the client in the painstaking collection and analysis of the hospital's policies, procedures, claims and other documents for the period when the improper billing of Medicare was alleged to have taken place. Using the information collected in conjunction with the complex formula Medicare uses to calculate outlier payments, Arent Fox attorneys presented their findings and defenses to government investigators, Justice Department lawyers and the whistleblower's counsel.

In light of the findings and defenses Linda and the Arent Fox team were able to establish, the whistleblower's law firm recognized that its chances of winning had been significantly reduced. Consequently, the whistleblower and his attorneys entered into negotiations with Arent Fox to settle the lawsuit with Justice Department oversight.

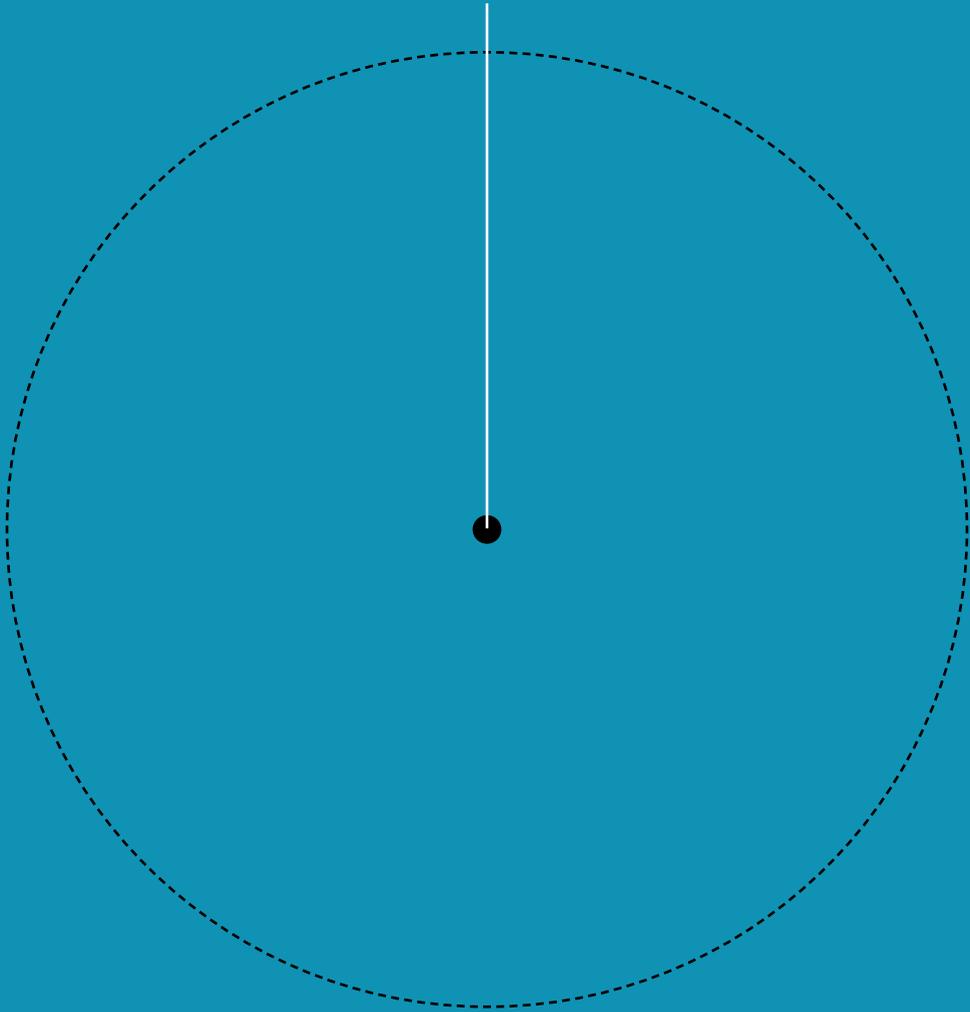
CONTINUING THE MISSION. In October 2008, Arent Fox's Linda Baumann and a team of attorneys from the firm's health care and litiga-

**THE WHISTLEBLOWER
SOUGHT \$75 MILLION
FROM THE HOSPITAL**



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**THE CASE WAS
SETTLED FOR
\$1.75 MILLION**



**Nothing
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tion groups finalized an extraordinarily favorable settlement agreement for their client. Indeed, the agreement negotiated by Arent Fox was one of the lowest amounts reportedly paid to the whistleblower in his various suits against other hospital systems.

Whereas the whistleblower had initially sought \$75 million plus penalties from the hospital, Arent Fox won a settlement for its client, which ended the case for a fraction of that amount: \$1.75 million. At the time of the settlement, Linda noted that “Our client was extremely pleased that we were able to settle the litigation for far less than any other hospital in an outlier case to date. While there have been numerous outlier cases, including a \$265 million settlement, the settlement in this case is by far the lowest.” Perhaps most importantly, the settlement agreement did not involve any admission of wrongdoing by the health care system. Nor did it require that the client enter into an expensive and burdensome corporate integrity agreement with the federal government, as is frequently required in False Claims Act cases.

While all of the other hospitals named in the same lawsuit ultimately settled the cases against them, the settlement amounts generally were far larger and the hospitals incurred substantial additional legal fees and disruption to their operations as a result of the ongoing litigation.

“Our client had devoted nearly 150 years of service to its patients with an emphasis on treat-

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ment of the poor,” Linda said. “Nothing was more important to them than making certain their good name and reputation remained intact. As the settlement recognized, our client maintains it did nothing improper. While our client would have preferred the case go to trial and have a court of law declare the hospital completely innocent of any improper activity, they recognized that litigating this type of case would have been extraordinarily costly and consumed an inordinate amount of the hospital’s resources. Moreover, the likelihood of success is very slim. (When one hospital tried to take this outlier case to trial, the government intervened in the case, and the hospital settled soon thereafter.) As a result, our client decided the most prudent course was to seek settlement to put the litigation behind them so they could again focus on their mission to serve the most vulnerable members of our society.”

Lowell Brown, chair of Arent Fox’s health law practice agreed. “In the area of False Claims defense work, often times the most important accomplishment is preventing the case from going to trial. Such was the case here. Demonstrating that our client had strong defenses to the whistleblower’s claims and negotiating a settlement that was acceptable to both the whistleblower and the government for a fraction of the amount they originally claimed was a monumental accomplishment by Linda and the Arent Fox team. This result enabled our client to settle the case at a remarkably low cost with its well-earned reputation for decency and integrity intact.”

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