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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 ("FCA")**. The program, which is governed by a substantial body of regulatory law, is subject to intense oversight by the U.S. Department of Justice. So much so that the U.S. Department of Agriculture's Risk Management Agency maintains and keeps 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 Company 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.

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 \$2,113,920 and added a \$15,000 civil penalty. *U.S. v. Bli*, No. 00-10484 (E.D. Mich. 2006).

Enforcement actions against crop insurers should be expected to continue, especially as the Risk Management Agency ("RMA") 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 Fireman's Fund settlement 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 non-traditional 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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