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To Ease Burden, DOJ Will Move to Dismiss 'Meritless' FCA Cases

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With 600 new whistleblower lawsuits filed under the False Claims Act (FCA) every year, the Department of Justice will ask judges to dismiss more cases when DOJ thinks they lack merit.

In a Jan. 10 internal memo, Michael Granston, director of the civil fraud section in the DOJ civil division, said "the department should consider moving to dismiss where a *qui tam* complaint is facially lacking in merit—either because relator's legal theory is inherently defective or relator's factual allegations are frivolous." The memo, which was sent to lawyers in the commercial litigation branch, also described six other factors that should be used as a basis for dismissal of whistleblower cases (e.g., they're "opportunistic").

Granston foreshadowed this development in an Oct. 30 speech at the Healthcare Enforcement Compliance Institute, where he said DOJ would try to get whistleblower complaints tossed when they don't have merit (RMC 11/6/17, p. 5).

Although DOJ has been empowered to seek dismissal of whistleblower cases under Sec. 3730(c)(2)(A) of the 1986 amendments to the FCA, that almost never happens. Either DOJ lawyers intervene, which means they take over FCA lawsuits, or they decline to intervene, and whistleblowers either drop the case or move ahead alone, although they still "stand in the shoes of the Attorney General," as Granston says.