

**FEDERAL BAR ASSOCIATION
2019 QUI TAM CONFERENCE
STATISTICAL SAMPLING & ALGORITHMS**

I. BASIC INTRODUCTION TO STATISTICAL SAMPLING [Tim Renjilian]

A. Goal of sampling

B. What can sampling be used to do?

II. REVIEW OF THE CURRENT STATE OF THE LAW ON SAMPLING [Andy Mao and Benjamin Mizer]

A. Sampling to prove FCA liability

1. There is a split of authority on whether sampling can be used to prove FCA liability.
2. *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016). Supreme Court has held permissibility of sampling depends “on the degree to which the evidence is reliable in proving or disproving the elements of the relevant cause of action.”
3. *United States ex rel. Michaels v. Agape Senior Community, Inc.*, 848 F.3d 330 (4th Cir. 2017). Did not provide the hoped-for guidance on use of sampling to prove liability.
4. *United States ex rel. Wall v. Vista Hospice Care, Inc.*, 2016 WL 3449833 (N.D. Tex. June 20, 2016). Court rejected extrapolation to prove the falsity of hospice claims.
5. *United States v. Life Care Centers of America, Inc.*, 114 F. Supp. 3d 549 (E.D. Tenn. 2014). Court permitted use of sampling to establish liability.
6. *United States ex rel. Ruckh v. Genoa Healthcare, LLC*, 2015 WL 1926417 (M.D. Fla. Apr. 28, 2015)

B. Sampling to prove damages

1. This is much more accepted in the case law.
2. *United States v. Rogan* (7th Cir.)
3. *United States ex rel. Crews v. NCS Healthcare of Ill., Inc.*, 460 F.3d 853 (7th Cir. 2006)
4. *United States ex rel. Loughren v. Unumprovident Corp.*, 604 F. Supp. 2d 259 (D. Mass. 2009)

5. *United States ex rel. Hockett v. Columbia/HCA Healthcare Corp.*, 498 F. Supp. 2d 25 (D.D.C. 2007)
6. *United States ex rel. Trim v. McKean*, 31 F. Supp. 2d 1308 (W.D. Okla. 1998)

III. THE MECHANICS OF SAMPLING [Tim Renjilian]

- A. What makes a good sample?
- B. How does sampling work?
- C. Types of samples
- D. Sampling dos and don'ts
- E. Pros and cons of sampling

IV. DISCUSSION OF *DAUBERT*/EXPERT CHALLENGES [All panelists]

- A. Legal challenges
- B. Practical challenges

V. REAL LIFE EXAMPLES (How sampling has been used in actual cases) [Andy Mao]

- A. *Life Care*
- B. Others

VI. ALTERNATIVES TO SAMPLING [Tim Renjilian]

- A. Tim will discuss a case where a different type of aggregate proof was acceptable to the parties

VII. QUESTIONS