

False Claims Act, Qui Tam, and Whistleblower Defense

Overview

Lawsuits brought under the federal False Claims Act, commonly known as whistleblower suits, are on the rise. The surge of qui tam cases has been accompanied by increased coordination between the civil and criminal divisions of the Department of Justice, which discuss qui tams in an effort to effectively collaborate. As a result, businesses face growing risks. Qui tam actions raise not just civil law issues, but potentially the specter of criminal accusations – especially in the current enforcement climate. It is vital that counsel be sensitive to these issues.

We have successfully defended False Claims Act/qui tam actions, including numerous dismissals of these cases in the early stages of litigation. Our clients are typically companies and executives in a wide variety of industries, including health care, government contractors, and educational institutions. We regularly assist clients involved in False Claims Act/qui tam cases involving hospice, telehealth, ophthalmology and other medical areas, government set-aside contracts, and initial coin offering (ICO) cryptocurrency fraud investigations, as a few examples. Amid the complex issues that arise in these proceedings, we are adept at persuading the government to decline to intervene in pending qui tam suits.

False Claims Act Experience

- Represented a hospice in an Anti-Kickback Statute and False Claims Act investigation. After 8 years, including an internal investigation, three CID and HIPAA subpoena responses, and two presentations to the DOJ contesting the government's allegations, the government closed its file and ended its investigation of and prosecution against the hospice.
- Defended a government contracting surety/bond company in a False Claims Act complaint alleging more than \$50 million in damages based on knowledge that a bonded defense contractor was ineligible to bid on Small Business Administration 8(a) program contracts and task orders. Motion to dismiss granted by the U.S. District Court for the Middle District of Florida.
- Defended an ophthalmology practice in an Anti-Kickback Statute and False Claims Act case alleging fraudulently billing Medicare for unnecessary cataract procedures. Motion to dismiss granted by the U.S. District Court for the Middle District of Florida.

- Defended a hospice in a False Claims Act case alleging more than \$350 million in government reimbursements for the provision of hospice care to ineligible patients. After responding to several subpoenas and making several presentations, the government declined to intervene in the matter, but the relator continued the action. Motion to dismiss granted by the U.S. District Court for the Middle District of Florida and affirmed by the Eleventh Circuit Court of Appeals. U.S. Supreme Court denied the relator's petition for certiorari.
- Represented an anesthesiology practice in a False Claims Act case alleging fraudulent billing of propofol to Medicare patients. After several presentations, the government declined to intervene in the matter, but the relator continued the action. Motion to dismiss granted by the U.S. District Court for the Middle District of Florida.
- Defended a safety net hospital in a False Claims Act case alleging violations of the Anti-Kickback Statute, Stark Law, and False Claims Act. After a presentation, the government declined to intervene in the matter, and the relator voluntarily dismissed her complaint.
- Defended a health information technology (HIT) company in a False Claims Act and Anti-Kickback Statute case alleging more than \$1 billion in damages resulting from the company fraudulently causing medical practices to improperly receive incentive payments through the Electronic Health Record (EHR) Incentive Program. Resolved without admitting liability for less than half of the settlement amounts for two other HIT developers involved in industrywide EHR investigations.
- Defended two specialty compound pharmacies and one of its owners in a False Claims Act and Anti-Kickback Statute case alleging more than \$50 million in fraud resulting from Medicare reimbursement requests for compounds that included medication without FDA approval. The government intervened in the matter. Resolved without admitting liability based on the pharmacies' and owner's ability to pay.
- Represented a state university in a False Claims Act case that alleged the university engaged in Medicare fraud. The government declined to intervene in the case after we presented it with evidence that included the results of a review of dozens of randomly sampled medical files and expert testimony.
- Represented an anesthesiology practice group in a False Claims Act case that alleged fraud in how it billed Medicare for various anesthesiology services it provided patients. The government declined to intervene in the matter.
- Represented owners of a variety of nursing homes and assisted living facilities, where the allegations involved improper referrals between hospitals and nursing homes.

Members of our financial services and insurance litigation practices counsel life, health, and property and casualty insurers and their affiliates regarding federal and state False Claim Act issues that affect their operations, and have defended them in suits brought under the federal False Claim Act and state false claims acts. In several, the amount in controversy exceeded \$100 million. Key matters include:

- Represented a national life insurer in a federal False Claims Act suit in the U.S. District Court for the Southern District of Florida, and on appeal in the Eleventh Circuit Court of Appeals.
- Defended a national life insurer's subsidiary in a Florida False Claims Act suit brought in the Florida courts alleging failure to report and collect state taxes.
- Defended a Florida False Claims Act suit brought in the Florida courts alleging overcharges under a state procurement contract.
- Advised and counseled several property/casualty insurers concerning allegations that they contravened the Florida False Claims Act in their calculation of residual insurance market assessments under the Florida insurance code or in reporting data from which assessments are determined.

Insights

05.11.2021

Record-Breaking SEC Whistleblower Awards Signal the Need for Robust Anti-Retaliation Policies

06.20.2018

The Hidden Cost of Settling a Qui Tam Claim

12.06.2016

Whistleblowers on Campus: DOJ Adds Research Universities to its False Claims Act Focus

03.25.2016

Florida Qui Tam Statute Applies to False Claims Made to State, not Local, Governments

03.21.2016

First District Tells Relators: Know Your Role in State Whistleblower Actions

12.23.2015

Record Mega-Settlements May Attract More Whistleblowers

12.23.2015

Circuits Split on Scope of Dodd-Frank Whistleblower Protection

08.05.2015

Kane v. Healthfirst and the 60-day Repayment Rule

11.05.2014

Talking to the Feds: Do's and Don'ts

07.02.2014

Employers Fight Back Against Whistleblowers

05.14.2014

New Commutation Guidance Presents Opportunities For Relief

03.24.2014

10 Tips for Managing Qui Tam Exposure

01.07.2013

Qui Tam Case Study: Dismissal Based on Whistleblower's Lack of Standing

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Related Capabilities

Practices

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- Litigation and Trials
- Discrimination
- Internal Investigations
- White Collar Crime & Government Investigations
- Labor & Employment

Industries

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- Securities & Investment Companies
- Property & Casualty Insurance

- Education