

False Claims Act

False Claims Act/Qui Tam Litigation & Civil Investigations

False Claims Act (“FCA”) and *qui tam* “whistleblower” lawsuits have increased dramatically over the past several years, posing serious challenges to government contractors and companies across a broad spectrum of regulated industries. When faced with these potentially crippling lawsuits, it is important to rely on experienced counsel who can help navigate the entire life cycle of these cases, from preliminary fact-gathering through trial or appeal. Our team has successfully defended clients during the investigative stage, often resulting in no claims being filed or favorable settlements that significantly reduce our clients’ exposure. In the event that a lawsuit is filed, defending these claims requires skillful and experienced counsel, since these lawsuits are fraught with pitfalls, and even a seemingly minor regulatory or billing oversight can present substantial liability exposure under state and/or federal FCA treble-damages and civil penalties provisions. For any government contractor or regulated entity, the potential for a government debarment can shut down a business entirely.

McCarter & English has a deep bench of multidisciplinary FCA lawyers with decades of government experience and expertise in government contracts, healthcare, antitrust, banking and financial services, employment, global trade, tax, and white collar defense and appellate practices who work closely with clients and outside experts to develop successful litigation strategies and defend “bet the company” civil and criminal cases. Our holistic approach focuses on developing comprehensive compliance programs to mitigate risk and reduce liability, advising boards and management with regard to internal investigations and government civil investigative demands, and aggressively representing our clients in the event that a case proceeds to litigation. Our team includes New Jersey’s former chief federal judge, former federal and state prosecutors, and experienced litigators who have handled FCA and *qui tam* cases in federal and state courts throughout the country. Our team of lawyers will vigorously defend your rights whether at trial, in the form of a procedural dismissal, or in a sensible early settlement. We keep our clients’ strategic goals in mind as we work to find efficient, preemptive resolutions that serve our clients’ business objectives.

Representative Matters

Overstock.com—Major Appellate Victory Reversing a \$7.3 Million Judgment

Secured an appellate victory on behalf of Overstock.com in the Delaware Supreme Court in a unique case involving Delaware escheat law and a *qui tam* action. The Court, sitting en banc, unanimously reversed a multi-million dollar false claim judgment entered against Overstock.com.

Global supplier of power coverage and storage technology—Successful defense on appeal following favorable settlement in *qui tam* related litigation

Successfully defended a favorable ruling on appeal before the Third Circuit on behalf of a global supplier of power coverage and storage technology. The underlying dispute derived from a *qui tam* suit filed under the False Claims Act claiming defective manufacturing of the backup power supply units to the United States ICBM Missile System. Initially, we conducted an internal investigation and, after a number of proffers to the government, successfully convinced the Department of Justice to close its criminal investigation of our client. The related civil *qui tam* action settled on the eve of trial for a small fraction of the \$33 million demanded by the Relator. Under the False Claims Act, the settlement technically entitled the Relator to an award of “reasonable” attorneys’ fees. McCarter, however, challenged the

amount claimed as excessive, and secured an order that nearly cut the requested fees in half.

Alerts

Know Your Supplier: Effective August 13, 2019, Certain Chinese Telecoms Banned From Federal Procurement, Government Contract & Export Controls Alert, August 12.2019

Universities Are Prime Targets for False Claims Act Liability, 12.15.2016

Articles

Boomerang: The False Claims Act Returns Post-COVID, Briefing Papers, 10.19.2022

Borrowers Beware: GAO Ramps Up Efforts to Root Out Fraud Among CARES Act Loan Recipients, Westlaw Journal, 4.20.2020

The Buy American–Hire American Executive Order: There Will Be Devils in the Details When Buying American, Government Contracts Alert, 4.19.2017

Universities Are Prime Targets for False Claims Act Liability, Pratt's Government Contracting Law Report, 4.1.2017

Litigation Strategies for Government Contracts, Aspatore Press, Thomson Reuters, 7.1.2011

Blogs

Prevention v. Cure: Supply Chain Hygiene Is the Key to Defending Enforcement, Service Contractor/Government Contracts Law Blog, August 31.2021

How the Truth Is False: Accurate Prescription Drug Event Data Can Trigger False Claims Act Liability, Government Contracts Law Blog, 5.11.2021

2020 False Claims Act Recoveries Were Down by One-Third in 2020. . . and That's Bad News for Federal Contractors, Government Contracts Law Blog, 1.19.2021

Honest Abe Would Demand "Objective Falsity" for FCA Liability. Will the Supreme Court?, Government Contracts Law Blog, 10.30.2020

Alutiiq False Claims Act Settlement Highlights Significant Government Contract Compliance Risks for Tribal, NHO, and ANC 8(a) Subsidiaries, Government Contracts Law Blog, 5.16.2019

Speaking Engagements

The False Claims Act: A Primer on Potential Liability and the Importance of a Proper Response, The National Contract Management Association, 3.8.2017

Webinars

False Claims Act Update, Public Contracting Institute, 9.23.2021

The False Claims Act, Guam Contractors Association, 5.12.2021

The False Claims Act: 2020 Hindsight and New Year Predictions, Public Contracting Institute, 12.16.2020

Working with Experts to Litigate Liability and Damages in False Advertising Cases, 10.27.2020

Quoted

A Circuit-By-Circuit Guide To FCA Suits After High Court Snub, Law360, 11.2.2022

SCOTUS Declines to Address Circuit Split on FCA “Objective Falsity,” Which May Spur Settlements, Law360, 2.23.2021

Raucous 2021 Awaits FCA Litigants after Low-Key Year, Law360, 1.25.2021

Top Government Contracts Cases to Watch in 2021, Law360, 1.4.2021

Top Government Contracts Cases of 2017, Law360, 12.21.17

Gov’t Contracts Cases to Watch in 2019, Law360, 1.1.2019

Ex-Employee Sues Pratt & Whitney Over Jet Engines, Star Tribune, August 21.2018

Top Gov’t Contracts Cases of 2018 so Far, Law360, 7.17.2018