

False Claims Act Defense

The False Claims Act is a federal law that is designed to fight suspected fraud in government programs and procurement. First enacted during the Civil War, the FCA has been continually amended since then to broaden its scope and increase the potential repercussions of fraud against the government.

About

In addition to the federal statute, more than half of all states have enacted state FCAs (and some local governments, such as the city of New York, also have false claims laws).

Whether at the federal, state or local level, FCA litigation is unique because private citizen “whistle-blowers”—who are often an employee or former employee of the target company—can initiate claims on behalf of the government. They do so in exchange for the potential of a reward set as a percentage of the government’s recovery. And the amounts recovered can be extraordinarily large. In recent years, the federal government alone has recovered billions of dollars per year in FCA judgments and settlements. With such significant potential exposure, and with courts permitting increasingly novel application of these laws, experienced counsel is a must.

Our FCA-focused team of more than 15 attorneys not only represents a diverse slate of clients in these state and federal civil lawsuits, but also in accompanying congressional and Office of Inspector General (OIG) investigations, criminal investigations and prosecutions, and regulatory agency enforcement proceedings. We work in partnership with our clients to achieve their ultimate goal at a reasonable cost, deploying our team to defend, litigate, try and settle federal and state FCA claims. We have experience with defending clients in the full range of industries that have been the focus of FCA claims: health care, pharmaceuticals, communications (including the federal Universal Service programs), defense, manufacturing, financial services and technology.

Some of our recent successes include the resolution of a state investigation related to price reporting for drugs supplied to beneficiaries of the Medicaid program, the favorable settlement of a three-year litigation concerning a contract to develop software for a California county, and dismissal—later affirmed by the Second Circuit—of a whistle-blower suit alleging fraudulent representations in connection with equipment supplied to the Defense Department.

Experience

- Defended several leading manufacturers of generic pharmaceuticals in dozens of actions brought by the U.S. Department of Justice and the attorneys general of more than 25 states alleging FCA, fraud and other claims in connection with pharmaceutical pricing. Achieved a favorable settlement of all actions before trial.
- Defending communications service providers in FCA investigations initiated by the Department of Justice and the Federal Communications Commission (FCC) Office of Inspector General relating to the FCC’s Universal Service programs.
- Defending the largest U.S. generic pharmaceutical company in multiple federal and state

investigations concerning the pricing and marketing of pharmaceutical products dispensed to Medicaid beneficiaries.

- Defending several India-based pharmaceutical companies in state investigations concerning the pricing and marketing of generic drugs dispensed to beneficiaries of government health care programs.
- Represented high-level executives of large health care companies in federal prosecutions concerning alleged payments of kickbacks to doctors and medical equipment distribution companies for patient referrals. In one case, the client was acquitted of all charges following a 10-week trial. In another, the court granted a motion for judgment of acquittal at the conclusion of the government's case in chief.
- Represented company executives at hearings before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce and informal interviews with committee staff arising out of or related to large-scale FCA litigation.
- Advising and representing corporations and government contractors in responding to subpoenas and informal requests for information from various federal and state government agencies, including the Department of Justice, the Office of the Inspector General for the Department of Health and Human Services, and the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce.
- Negotiating all types of federal, state and joint FCA settlements, including agreements that often accompany FCA settlements such as Corporate Integrity Agreements. We have negotiated settlements with the Department of Justice and the attorneys general of more than 25 states, including states that are very active in state FCA enforcement, including Texas, Florida and Massachusetts.
- Defended medical school and its affiliated hospitals in a federal FCA action alleging New York City hospitals defrauded Medicaid and Medicare programs by overcharging for services. Kelley Drye successfully moved to dismiss the complaint, and the Second Circuit unanimously affirmed the dismissal.

Our experience in conducting discovery in federal and state FCA cases includes:

- Conducting depositions of hundreds of state and federal government officials, including high-level officials from Centers for Medicare and Medicaid Services and the Office of the Inspector General for the Department of Health and Human Services.
- Conducting extensive internal investigations and pre-intervention discovery.
- Litigating privilege assertions, such as the deliberative process privilege, often used by the government to block discovery in FCA cases.
- Analyzing extensive government claims data, company sales transaction data and market share data.
- Negotiating confidentiality agreements with government agencies, relators and class action plaintiffs to protect clients' sensitive business information.
- Negotiating with government agencies in producing electronic data and documents.

Related Services

e-Discovery

Litigation

Government Contracts

Contacts

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