

False Claims Act Litigation

Managing Mounting Risks

False Claims Act litigation, including *qui tam* (whistleblower) actions, has increased exponentially since the 1986 amendments to the False Claims Act, and that trend has continued after the 2009 and 2010 amendments to the Act. The consequences to companies violating the False Claims Act can be significant: treble damages, as well as recently-increased civil penalties for each violation. In addition, False Claims Act matters are often part of parallel criminal investigations. A False Claims Act violation or criminal conviction can also bar the defendant from conducting future business with the U.S. government. Finally, regulations requiring federal contractors to disclose False Claims Act violations and create compliance and internal control regimes have triggered even more activity in this area.

Experienced Litigators, Aggressive Advocates, Effective Negotiators

Miller & Chevalier has long been a leader in defending False Claims Act and *qui tam* cases, with particular experience in both the defense and health care arenas. We have litigated numerous significant False Claims Act cases, including many actions initiated by *qui tam* plaintiffs. We have successfully resolved many large False Claims Act matters and disposed of many others through creative motions raising the full range of available defenses. Several of these cases are landmarks in the field. We are just as proud of having resolved many matters before they are ever filed or unsealed. This has involved undertaking internal investigations, convincing the government not to institute an action or intervene in a pending *qui tam* action, and occasionally making voluntary disclosures. In addition to deep litigation experience, our team includes lawyers who formerly served in government who regularly call upon this valuable experience to assist our clients.

We have successfully defended clients in False Claims Act actions involving a wide range of allegations, including failure to comply with quality assurance requirements, cost mischarging, fraudulent inducement, defective pricing, obstruction of federal audits, product substitution, worthless services, provider overpayments, false certifications, improper gratuities, bribery, kickbacks, small-, minority-, and women-owned business issues, and conflicts of interest. The industries we have served in this area include healthcare, defense, finance, information technology, education, construction, and transportation. In addition, we have filed *amicus* briefs in many precedent-setting cases in federal district courts and courts of appeals, as well as in the United States Supreme Court. We have handled numerous matters that included parallel criminal investigations.

We have experience with Inspector General inquiries, government audits, grand jury proceedings, suspension and debarment proceedings, global settlements, trials, and appellate proceedings. Indeed, the firm's depth and capacity in defending criminal and civil fraud cases from inception through trial not only enables us to spot and develop innovative litigation strategies, but to isolate, identify, and investigate the relevant issues in a False Claims Act action quickly and efficiently – always with an eye to bringing these often complex and potentially costly matters to an early and favorable resolution.

Our lawyers have designed, coordinated, and conducted internal investigations for a wide range of clients in connection with government actions, as well as assisted clients in establishing procedures to ensure compliance with applicable laws and government regulations. Because we recognize that companies doing business with government agencies have interests beyond current problems, we work closely with in-house counsel and internal auditors to improve compliance and establish procedures to mitigate risk and avoid problems in the future.

Miller & Chevalier lawyers speak and write frequently about the False Claims Act. Among other things, one of our lawyers is the co-editor of, and two of our lawyers are authors of the "Remedies" chapter in, the American Bar Association Section of Public Contract Law's book, *The False Claims Act and Government Contracts*.

REPRESENTATIVE ENGAGEMENTS

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- *United States ex rel. Soodavar v. Unisys Corporation*, 178 F. Supp. 3d 358 (E.D. Va. 2016). Represented Unisys Corporation in False Claims Act suit alleging worthless services and mischarging. Motion to dismiss granted in 2016.
- Currently represent a Fortune 100 company in connection with an internal investigation of protocols, processes, employees, and vendors implicated in a highly significant Department of Justice False Claims Act investigation in the airline industry.
- *United States ex rel. Saunders v. Unisys Corporation*, No. 1:12-cv-379 (E.D. Va.). Represented Unisys Corporation in False Claims Act suit alleging fraudulent labor charging.
- Currently represent major defense contractor in a False Claims Act investigation of allegations of collusive bidding and self-dealing in the award of subcontracts.
- *United States ex rel. Bender v. North American Telecommunications, Inc., et al.*, 686 F. Supp. 2d 46 (D.D.C. 2010) & 750 F. Supp. 2d 1 (D.D.C. 2010), *aff'd*, 499 Fed. App'x. 44 (D.C. Cir. 2013). Represented a former Lockheed Martin subsidiary in a False Claims Act case alleging false certifications in connection with a building maintenance contract. Motion to dismiss granted in 2010 and affirmed on appeal in 2013.
- Led a team defending False Claims Act and criminal false statement allegations against a Division I university following a well-publicized 2013 dawn raid by 54 agents of the Federal Bureau of Investigation, Departments of Education and Housing and Urban Development, and Illinois State Police. After considerable work, the Department of Justice closed the investigation with no charges filed.
- *United States ex rel. Greabe v. Blue Cross and Blue Shield Association*, No. 04-11355 (D. Mass). Represented the Blue Cross and Blue Shield Association in a False Claims Act suit alleging fraud in the performance of a Federal Employees Health Benefits Act contract with the U.S. Office of Personnel Management. Summary judgment granted in the Association's favor in 2010.
- *United States ex rel. Campbell v. Lockheed Martin*, No. 95-cv-549 (M.D. Fla.). Represented Lockheed Martin in a False Claims Act suit alleging fraudulent overbilling and defective pricing in connection with contracts with the Air Force for LANTIRN navigation and targeting systems. Settled in 2003.
- Drafted the successful argument in one of the leading implied certification cases in the Seventh Circuit, *U.S. ex rel. Bragg v. SCR*, part of the circuit split that led to the U.S. Supreme Court's grant of *certiorari* in *Universal Health Services v. U.S. ex rel. Escobar*.
- Served as part of a team that successfully defended two companies against False Claims Act "Buy American" allegations in *U.S. ex rel. Berkowitz v. Supply Saver Corporation*.
- Defended a former Chief Executive Officer in a Department of Justice and Department of Health & Human Services investigation of a Florida radiology clinic, its owners, and a related imaging clinic for alleged violations of the False Claims Act, Anti-Kickback Statute, and Stark Law. The corporate defendants paid a significant fine, but the Department of Justice declined to proceed against the former Chief Executive Officer.
- Represented a biotech company in an investigation of allegations by a former employee made to the company's Chief Executive Officer and board of directors detailing alleged false "named patient program" information provided to European clinical regulators.
- Provided compliance advice to the City of Chicago regarding its certification and decertification of Minority and Women-Owned Businesses, 2011-2015.
- *United States ex rel. Wilkins v. North American Construction Corp.*, 173 F. Supp. 2d 601 (S.D. Tex. 2001).

GOVERNMENT EXPERIENCE

- Assistant to the Solicitor General, U.S. Department of Justice
- Assistant United States Attorney, District of Columbia

- Assistant United States Attorney, Northern District of Illinois
- Assistant United States Attorney, Civil Division of the U.S. Attorney's Office for the District of Columbia
- Director, Office of International Affairs, U.S. Securities and Exchange Commission
- Trial Chief, Public Defender Service for the District of Columbia
- Senior Investigative Counsel, Special Committee on Investigations, U.S. Senate
- Chief, Special Litigation Division, Public Defender Service for the District of Columbia
- Senior Adviser for International Issues to SEC Chairman Arthur Levitt, U.S. Securities and Exchange Commission
- Deputy Director, Office of International Affairs, U.S. Securities and Exchange Commission
- Assistant Director, Office of International Affairs, U.S. Securities and Exchange Commission
- Assistant Chief Litigation Counsel, Division of Enforcement, U.S. Securities and Exchange Commission
- Assistant Federal Public Defender, Las Vegas, Nevada
- Appellate Deputy Public Defender, Nevada State Public Defender's Office
- Tax Assistant to the Solicitor General, U.S. Department of Justice
- Trial Attorney and Director of Training, Public Defender Service for the District of Columbia
- Supervising Attorney, Trial Division, Public Defender Service for the District of Columbia
- Staff Attorney, Appellate and Trial Divisions, Public Defender Service for the District of Columbia
- Legislative Assistant, U.S. House of Representatives