

## → False Claims Act

Wherever Government dollars are spent – whether for national defense, healthcare, acquisition of goods and services, small and disadvantaged businesses, transportation and infrastructure improvements, housing subsidies, grants or aid in emergencies – scrutiny follows. The False Claims Act, 31 U.S.C. §3729 et. seq., has become the primary weapon in the federal government’s arsenal to combat fraud, waste, and abuse.

Sheppard Mullin’s attorneys are among the nation’s leading specialists with respect to the False Claims Act and related qui tam whistleblower actions. The difference between a simple billing error, a civil False Claims Act prosecution and criminal indictment often depends upon counsel’s advocacy. Our attorneys have handled over 100 False Claims cases across the nation, through early investigation and resolution to complete defense verdicts at trial. Our team offers strong credibility because, while all reasonable efforts are made to resolve these matters as early in the process as possible, the qui tam bar and the Department of Justice (“DOJ”) understand that the firm has substantial trial experience, including the successful defense of False Claims Act actions in federal district court where the DOJ prosecuted the cases.

Our attorneys have many decades of experience defending False Claims Act cases relating to a wide range of industries including aerospace and defense, healthcare, financial institutions, GSA Federal Supply Schedule, telecommunications, and high technologies, among others. We understand the complex issues and legal theories that can form the basis of a False Claims Act investigation or legal action confronting our clients such as unlawful product substitution or mislabeling, labor and material mischarging, false cost reporting, defective products, false tests and inspections, false certifications, defective pricing, bid rigging, nonconformance to contract specifications, kickbacks, bribery and gratuities, country of origin rules, lack of medical necessity, upcoding or miscoding, billing for services not rendered, among many others.

We know how to work with clients to effectively strategize and implement False Claims Act settlement negotiations that involve statutory penalties, damages multipliers and attorney’s fees. The penalties for violating the federal False Claims Act are steep and currently can reach more than \$23,000 per claim. False Claims Act cases routinely settle for tens or even hundreds of millions of dollars. Those that violate the False Claims Act can also be at risk of federal agency suspension, debarment or program exclusion. Our attorneys are well versed in resolving complex False Claims Act matters.

We also use our decades of False Claims Act experience to keep our clients out of DOJ’s crosshairs. For example, we established a multi-disciplinary team to do just that. The Sheppard Mullin Organizational Integrity Group (OIG) helps companies and organizations defend threats to their organizational integrity by conducting table-top risk reviews and legal pre-mortems, performing holistic compliance review, and developing and implementing compliance programs that stick. Our OIG views legal problems broadly to help our clients focus on the underlying issues that can be the source of a legal problem – like a False Claims Act case – as well as the key to its solution. We identify the root causes of problems to craft solutions that are practical, effective, and sustainable. We develop solutions that address each organization’s unique risk profile and align with its mission, values, and obligations.

Sheppard Mullin's False Claims Act attorneys have defended federal and state False Claims Act investigations and litigations on behalf of government contractors, health care providers, manufacturers of pharmaceuticals and medical devices, commercial companies and financial institutions. We have defended False Claims Act investigations and litigations nationwide, including in Arizona, California, the District of Columbia, Florida, Georgia, Idaho, Kentucky, Illinois, Massachusetts, Minnesota, Missouri, New Mexico, Nevada, New York, Ohio, Tennessee, Texas, and Virginia. We also have extensive experience defending criminal and administrative investigations and litigation, which often accompany False Claims Act Investigations. Our experience includes:

- Civil, criminal, and administrative investigative subpoenas
- Grand jury investigations
- Search warrants
- Civil Investigative Demands (or "CIDs")
- False Claims Act litigation – including government initiated and qui tam whistleblower actions – throughout the country
- False Claims Act jury and bench trials
- Suspension, debarment, and program exclusion proceedings

## Experience

A few representative matters include:

- Successfully defended a Fortune 20 cybersecurity company in a \$1.4 billion False Claims Act qui tam matter, in which the U.S. government and California sought in excess of \$1.2 billion in damages and penalties. The case was one of the largest False Claims Act matters to proceed to trial and the largest involving the GSA Schedule. After 10 years of litigation and a four-week trial, the court awarded the government approximately 5% of the amount the government sought.
- Following 10 years of litigation and an eight-week trial, the U.S. Court of Federal Claims awarded Northrop Grumman Systems Corporation more than \$82 million in damages against the U.S. Postal Service relating to a contract for the production and installation of 102 Flats Sequencing System machines. Northrop filed suit under the Contract Disputes Act on the grounds that the Postal Service breached the contract by delaying and disrupting Northrop's performance and by improperly withholding payments that were owed to Northrop under the terms of the contract.
- Represented a home health organization in a multi-year False Claims Act litigation alleging forgery and non-compliance with Medicaid waiver program requirements through a successful partial dismissal of relator's claims, a successful partial motion for summary judgment, and a settlement of remaining claims for less than one tenth of one percent than the amount originally asserted.
- Represented a Skilled Nursing Facility (SNF) chain in response to False Claims Act and qui tam whistleblower allegations, a HIPAA administrative subpoena, and related internal investigation matters. The client avoided criminal prosecution and resolved certain disputes through administrative remedies and a favorable civil settlement.
- Represented a lending institution in a qui tam FCA action in which the whistleblower alleged false claims were submitted by the borrower and lender to the government as a result of improper loans obtained through

the Paycheck Protection Program. After a series of evidentiary presentations, we convinced whistleblower counsel to dismiss the qui tam action against the lender.

- Represented a multi-state coordinated care company that serves over 600,000 members with respect to analysis and preparation of a response to the Department of Justice Civil Investigative Demand and related False Claims Act investigation.
- Successfully settled a False Claims Act investigation in the Southern District of Texas into an ASC and medical practice litigation alleging that certain medical procedures were fraudulent and performed without the requisite medical necessity.
- Represented multiple pharmaceutical companies in False Claims Act litigation brought by the attorney general of the State of Texas related to drug pricing and drug marketing.
- Represented long-term home care provider in FCA suit filed by a former employee alleging that services were provided to patients without proper physician approvals.

Some of our most effective work, however, is on cases that never become public. Our attorneys work proactively with clients to develop and update compliance programs to detect and prevent problems before the threat of litigation even arises. Our attorneys can also audit compliance programs to identify actual or potential problems at a point in time when reasonable prophylactic, corrective, or curative steps can be taken.