The Eighth Annual National Institute on the Civil False Claims Act and Qui Tam Enforcement

June 2-4, 2010
Washington Marriott at Metro Center
Washington, DC

Presented by
The American Bar Association
Criminal Justice Section,
Health Law Section,
Section of Labor and Employment Law,
Section of Public Contract Law,
Young Lawyers Division,
and the ABA Center for Continuing Legal Education
in cooperation with the National Association of Medicaid Fraud Control Units
The Eighth Annual National Institute on the Civil False Claims Act and *Qui Tam* Enforcement

June 2-4, 2010 | Washington Marriott at Metro Center | Washington, DC

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**Program Description**

The Civil False Claims Act (FCA) is the fastest growing area of federal litigation, particularly because of its unique *qui tam* enforcement mechanism. Amendments in 2009 made this law even more powerful. The Eighth Annual National Institute will bring together experts from all areas—DOJ, state AG offices, federal agencies, leading defense and plaintiff firms—to discuss this ever-growing area of litigation and enforcement.

**Topics Covered:**
- Basics of liability, damages, and penalties under the FCA
- Detailed discussion of the 2009 Congressional amendments
- Ramifications of recent Supreme Court decisions
- Expansion of FCA enforcement through state *qui tam* laws and the importance of these laws
- Expansion of FCA to financial institutions and stimulus and TARP fund recipients
- Common procedural issues such as Rule 9(b), public disclosure and first to file
- Settlement strategies for defendants, *qui tam* relators and government
- Specialty sessions devoted to pharmaceutical, healthcare and procurement/grant cases
- Tax treatment of FCA settlements
- Ethical issues unique to FCA and *qui tam* enforcement

**Join Our Faculty that Includes:**
- DOJ Civil Division attorneys and AUSAs responsible for federal FCA cases
- State AGs who enforce state *qui tam* laws
- Leading *qui tam* relator attorneys
- Defense specialists
- Academics who study *qui tam* and FCA enforcement

**Who Should Attend:**
- Inside counsel for defense, healthcare, pharmaceutical, medical device, hospital, construction, oil and gas companies, and any other company that makes payments to, or receives funds from, federal or state governments
- State attorneys general and federal, state, and local agency attorneys
- Counsel who regularly represent healthcare, pharma, federal, or state contractors or grantees
- *Qui tam* attorneys who specialize in FCA litigation
- Plaintiff attorneys who hope to establish or expand their *qui tam* practices
- Criminal white collar defense lawyers who face *qui tam* relators in virtually every procurement or healthcare fraud investigation
- Counsel for public and private colleges and universities and other government grant recipients
**Program Agenda**

**Day One ■ Wednesday ■ June 2, 2010**

3:00 p.m. **Registration Begins**

<table>
<thead>
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<th>Time</th>
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<td>5:00 – 7:30 p.m.</td>
<td><strong>Fundamentals of the Civil False Claims Act and Qui Tam Enforcement</strong>&lt;br&gt;This optional introductory panel is intended for those who do not have broad experience with the Civil False Claims Act or qui tam enforcement or believe they would benefit from a discussion of the basics of the Act. This panel, conducted by the Institute co-chairs, will cover key terms and the basics of liability, damages, FCA procedure, and qui tam procedure. This panel will carefully explain the differences in FCA law and procedure before and after the 2009 amendments. There will be a lengthy question-and-answer period following the panel.</td>
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<td>7:30 p.m.</td>
<td><strong>Reception</strong>&lt;br&gt;Sponsored by FraudMail Alert, a publication of <em>Fried, Frank, Harris, Shriver &amp; Jacobson LLP</em></td>
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**Institute Co-Chairs**


**Day Two ■ Thursday ■ June 3, 2010**

7:00 a.m. **Registration**

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<td>8:30 a.m.</td>
<td><strong>Welcoming Remarks</strong>&lt;br&gt;<em>Institute Co-Chairs</em></td>
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<td>9:00 a.m.</td>
<td><strong>The Future of the False Claims Act: Fera and Beyond</strong>&lt;br&gt;The False Claims Act has undergone significant changes in the last year. In May 2009, the Fraud Enforcement Recovery Act (FERA) includes sweeping changes to the liability sections of the FCA, motivated in part by the Supreme Court’s watershed decision in <em>Allison Engine</em>. The healthcare amendments of 2010 have brought proposals for more amendments. This panel will discuss the political and legal landscape on which the FCA is enforced and what may be in store for the future.</td>
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10:00 a.m.  **Investigation of a False Claims Act Case**

In every FCA case, the government investigation is crucial because both the relator and the defense are seeking to influence the government intervention decision, and many cases are settled before any formal government action is started. This panel will discuss the various issues involved in this pre-filing government investigation, including issues of privilege, confidentiality, discovery and presentations by relator, the government and defense. The panel will also discuss corporate disclosure obligations during this period.

**Moderator:** Jamie Ann Yavelberg, Assistant Director, Commercial Litigation Branch, Civil Division, *U.S. Department of Justice*, Washington, DC

Stephen S. Cowen, King & Spalding LLP, Atlanta, GA
Barbara Van Gelder, Morgan, Lewis & Bockius, Washington, DC
Glenn Grossenbacher, Law Office of Glenn Grossenbacher, San Antonio, TX
Gina L. Simms, Assistant U.S. Attorney, *U.S. Attorney’s Office District of Maryland*, Greenbelt, MD
Robert L. Vogel, Vogel, Slade & Goldstein, LLP, Washington, DC

11:15 a.m.  **Break**

11:30 a.m.  **Recent Developments on Liability**

This panel will concentrate on developing liability issues in the past year, including the express and implied false certification cases, materiality and causation, presentment, and government knowledge.

**Moderator:** Jonathan Diesenhaus, Partner, Hogan & Hartson, LLP, Washington, DC

Thomas M. Bondy, Civil Division, Appellate Staff, *U.S. Department of Justice*, Washington, DC
Peter W. Chatfield, Phillips & Cohen LLP, Washington, DC
Alan Kleinburd, Assistant Director, Commercial Litigation Branch, Civil Division, *U.S. Department of Justice*, Washington, DC
Robert S. Salcido, Partner, Akin Gump Strauss Hauer & Feld LLP, Washington, DC

12:45 p.m.  **Luncheon – Keynote Speaker**

**Honorable Tony West.** Assistant Attorney General, Civil Division, *U.S. Department of Justice*, Washington, DC

The 2009 amendments, as well as the increasing interest of both Congress and the Supreme Court to FCA issues, have roiled this statutory centerpiece of the government’s antifraud efforts. The new Assistant Attorney General for the Civil Division will discuss his views of the importance and role of the False Claims Act in white collar law enforcement, the Department of Justice’s civil enforcement priorities in the coming year, and effect of the 2009 amendments to the law.

2:15 p.m.  **Recent Developments On Damages And Penalties**

The focus of this panel will be on the calculation and proof of FCA damages, particularly in cases where the damages are not easily ascertainable, as well as the assessment of civil penalties.

**Moderator:** Lesley Ann Skillen, Getnick & Getnick, New York, NY

Katherine A. Lauer, Partner, Latham & Watkins LLP, San Diego, CA
Kathleen McDermott, Partner, Morgan, Lewis & Bockius, LLP, Washington, DC
Sara McLean, Trial Attorney, Civil Division, *U.S. Department of Justice*, Washington, DC
Paul D. Scott, Law Offices of Paul D. Scott, P.C., San Francisco, CA
Sara Winslow, Assistant U.S. Attorney, *Northern District of California*, San Francisco, CA
3:30 p.m.    Break

3:45 p.m.    Breakout Sessions

A. FCA ENFORCEMENT AGAINST PHARMACEUTICAL AND DEVICE MANUFACTURERS AND HEALTH CARE PROVIDERS

This panel will review the unique issues that arise when the False Claims Act is used as a fraud and enforcement tool against pharmaceutical, device manufacturers, and other healthcare providers.

Moderator: Thomas S. Crane, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Boston MA and Washington, DC

Sanjay Bhambhani, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, DC

Sara Bloom, Assistant U.S. Attorney, Office of the U.S. Attorney, Boston, MA

Stephen Immelt, Hogan & Hartson, LLP, Baltimore, MD

Brian Kenney, Kenney & McCafferty, Plymouth Meeting, PA

Robert Patten, Assistant Attorney General, Office of the Attorney General, Medicaid Fraud Control Unit, Boston, MA

Robert M. Thomas, Jr., Thomas and Associates, Boston, MA

B. FCA ENFORCEMENT IN PROCUREMENT AND NONTRADITIONAL AREAS

Procurement cases remain one of the biggest sources of FCA litigation, but an increasing number of qui tam cases are filed involving other types of federal funding. This panel will discuss FCA enforcement in the procurement field as well as the unique nature of non-traditional FCA cases, especially those involving oil and gas, “reverse” false claims, and grants.

Moderator: Michal Tingle, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, DC

Craig King, Arent Fox LLP, Washington, DC

Paul W. Knoth, Associate Counsel, Office of the General Counsel, Office of Inspector General, U. S. Department of Defense, Arlington, VA

Fred Levy, McKenna Long & Aldridge LLP, Washington, DC

Vince McKnight, McKnight & Kennedy, LLC., Silver Springs, MD

Rebecca B. Ransom, Vice President and Assistant General Counsel-Litigation, Raytheon Company, Waltham, MA

5:15 p.m.    Adjourn

5:30 p.m.    Cocktail Reception

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Ober, Kaler, Grimes & Shriver
Patton Boggs LLP
Ropes & Gray LLP
Day Three ■ Friday ■ June 4, 2010

9:00 a.m.  Pretrial Procedure: Motions and Discovery Issues: Public Disclosure/Original Source; First to File; Rule 9(B); and Statute of Limitations

Every qui tam case that is not settled early involves a wide variety of pretrial motions and procedural issues. This panel will discuss both the strategy and timing of these motions and current case law, with special emphasis on Rule 9(b), summary judgment motions, and discovery.

**Moderator:** Frederick M. Morgan, Jr., Morgan Verkamp LLC, Cincinnati, OH

Douglas W. Baruch, Partner, Fried Frank Harris Shriver & Jacobson LLP, Washington, DC

Frederick H. Cohen, Principal, Goldberg Kohn, Chicago, IL

Roger S. Goldman, Latham & Watkins LLP, Washington, DC

George B. Henderson, Assistant U.S. Attorney, District of Massachusetts, Boston, MA

10:30 a.m.  Break

10:45 a.m.  State Qui Tam Enforcement

More than twenty-three states now have qui tam laws and the value of recoveries obtained under these laws is skyrocketing. Congress has recently passed legislation encouraging the remainder of the states to pass such laws. This panel will discuss the current and future course of state qui tam enforcement.

**Moderator:** Marc S. Raspanti, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, Philadelphia, PA

Michael I. Behn, Behn & Wyetzner, Chartered, Chicago, IL

Jeffrey S. Cahill, Senior Assistant Attorney General, Director, Medicaid Fraud Control Unit, Office of the Attorney General, Concord, NH

Charles Hobgood, Director, Medicaid Fraud Control Unit, Office of the North Carolina Attorney General, Raleigh, NC

Joan McPhee, Partner, Ropes & Gray LLP, Boston, MA

12:00 p.m.  Lunch on your own

1:00 p.m.  Breakout Sessions

**A. SETTLEMENT OF AN FCA HEALTHCARE CASE**

**Moderator:** Andy Mao, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, DC


S. Craig Holden, President and Chief Operating Officer, Ober, Kaler, Grimes & Shriver, P.C., Baltimore, MD

Gabriel L. Imperato, Managing Partner, Broad and Cassel, Ft. Lauderdale, FL

Timothy J. McInnis, McInnis Law, New York, NY

Robert Patten, Assistant Attorney General, Office of the Attorney General, Medicaid Fraud Control Unit, Boston, MA
B. SETTLEMENT OF AN FCA PROCUREMENT CASE

Moderator: Art Coulter, Trial Attorney, U.S. Department of Justice, Civil Division, Washington, DC

Pat Davis, Assistant Director, Civil Division, U.S. Department of Justice, Washington, DC

Josie C. Dristy, Assistant General Counsel, Acquisition Integrity, U.S. Department of the Navy, Washington, DC

James Kennell, Vice President & Assistant General Counsel, SAIC, McLean, VA

Scott A. Powell, Hare, Wynn, Newell & Newton, Birmingham, AL

Joseph D. West, Partner, Gibson Dunn & Crutcher LLP, Washington, DC

2:30 p.m.  Break

2:45 p.m.  Ethics Issues in Qui Tam Litigation

Because of the unique three-party process and the close relationship among the parties, qui tam litigation engenders a host of ethical issues. This panel will discuss the ethical issues from the relator, the defendant, and the government perspective.

Moderator: George C. Vitelli, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, DC

Brian Elmer, Senior Counsel, Crowell & Moring LLP, Washington, DC

Laurence J. Freedman, Patton Boggs LLP, Washington, DC

Ann Lugbill, Of Counsel, Murphy Anderson PLLC, Cincinnati, OH

Consuelo Woodhead, Senior Litigation Counsel, Office of the U.S. States Attorney for the Central District of California, Los Angeles, CA

4:00 p.m.  Adjourn

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See registration and order form for course materials and Audio CD Rom from this program.

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David W. Hilgers, Chair
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Please check one workshop for each day and time slot shown below.

Breakout Session I  ■  Thursday  ■  June 3  ■  3:45 p.m.
☐ A. FCA Enforcement Against Pharmaceutical and Device Manufacturers and Health Care Providers
☐ B. FCA Enforcement in Procurement and Nontraditional Areas

Breakout Session II  ■  Friday  ■  June 4  ■  1:00 p.m.
☐ A. Settlement of an FCA Healthcare Case
☐ B. Settlement of an FCA Procurement Case

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www.abacle.org/programs/n10hcf1.html

For additional information see the ABA-CLE calendar at www.abacle.org