

A low-angle, upward-looking photograph of a classical building's interior. The image shows the fluted shafts of several large columns and their ornate, acanthus-leaf capitals. Above the columns, a portion of a dome with a grid pattern is visible. The background is a bright blue sky with scattered white clouds. The overall composition is symmetrical and emphasizes the grandeur and scale of the architecture.

McGuireWoods

**FALSE CLAIMS ACT INVESTIGATIONS,
LITIGATION, AND ENFORCEMENT**

FALSE CLAIMS ACT INVESTIGATIONS, LITIGATION, AND ENFORCEMENT



McGuireWoods is a national leader in representing subjects of government fraud enforcement investigations and actions conducted under the guise of the federal False Claims Act (“FCA”) and state equivalents. Relying on that wealth of experience navigating such high-risk matters, time and again clients have called upon McGuireWoods when served with a Civil Investigative Demand (“CID”), subpoena, or complaint informing them they are the subject of a False Claims Act investigation or suit.

The False Claims Act is the government’s primary fraud enforcement tool and is used to recover billions of dollars every year. When fraud allegations arise, our experienced False Claims Act Investigations, Litigation and Enforcement Team leverages a storied history of helping corporate clients and individuals navigate the complexities of potentially-perilous investigations and enforcement actions and attain favorable resolutions. The multidisciplinary team includes numerous former federal prosecutors, including ones with extensive experience prosecuting False Claims Act cases at DOJ, and seasoned trial attorneys who have defended numerous fraud actions, all of whom have experience handling enforcement matters either in the healthcare or government contracting and procurement sectors. Representation of clients is also enhanced by combining this enforcement and litigation experience with McGuireWoods’ recognized regulatory experience in the healthcare, financial services, and government procurement sectors.

Our False Claims Act Investigations, Enforcement and Litigation Team includes members of our Government Investigations and White Collar Litigation Department, which includes former U.S. attorneys, more than a dozen federal prosecutors and other former enforcement officials, including a former Trial Attorney in the DOJ Civil Fraud Section, the office charged with prosecuting False Claims Act cases, and which has been recognized twice as a *Law360* Group of the Year; as well as members of the Healthcare and Defense, National Security and Government Contracting Departments, whose lawyers have been recognized by *Chambers USA*, *Best Lawyers in America*, *Legal Elite* and *Super Lawyers* as among the top legal service providers in the nation. The team, many of whom have significant experience working for the enforcement agencies that bring investigations and initiate litigation against our clients, maintains strong personal and professional relationships with investigating agencies and, as a result, we bring credibility to any representation.

This extensive experience, as well as our attorneys’ close relationships with prosecutors and regulators, provide unique insights into the government’s tactics and policy concerns. That insight is critical in helping to persuade prosecutors to decline to file a complaint or intervene in a *qui tam* (whistleblower) suit, dismiss a *qui tam* complaint outright, or take other actions that lead to a favorable outcome for a client.



HOW WE HELP

C-suites of Fortune 500 companies, senior executives, boards of directors and high-profile individuals rely on McGuireWoods to handle responses to fraud investigations from inception to resolution. We focus on minimizing the business and personal interruptions an investigation can cause. By developing strategies to reduce civil, criminal and administrative exposure, we help to navigate a cumbersome, time-consuming process while limiting the consequences of an investigation or action. More specifically, our experienced False Claims Act attorneys will:

Employ their close relationships with prosecutors to attempt to glean details about potentially under-seal matters and confidential investigations and limit the scope and breadth of discovery requests.

Formulate and execute a comprehensive internal investigation and defense strategy to quickly and efficiently learn the relevant facts and circumstances, so we can minimize risks and maximize the chances of a quick and favorable outcome for the client.

Confer with McGuireWoods premier regulatory attorneys to quickly master the relevant industry-specific legal regime, program and reimbursement rules, standards and practices.

Navigate ancillary risks and attendant negotiations such as corporate integrity or monitoring agreements and potential suspension and debarment actions or revocation from federal healthcare programs.

We also work closely with our Strategic Risk & Crisis Management Team to manage related issues, including board and shareholder relations, media inquiries and other crisis management matters.

Beyond responding to investigations and enforcement actions, we also advise clients regarding the unique ethical obligations of federal government contractors, such as preventing kickbacks, bribery and illegal gratuities, product substitution, false claims and false statements, and organizational conflicts of interest, as well as the need to comply with lobbying restrictions and procurement integrity principles. We assist clients in drafting codes of conduct and compliance policies, and in structuring corporate compliance programs to educate their employees about the added level of scrutiny applied to business dealings with the government. Upon request, we will conduct an internal investigation to address concerns in advance of any government knowledge, so that our clients stay ahead of possible problems.

OUR TEAM

Our False Claims Act Investigations, Litigation and Enforcement Team offers decades of substantial experience working for and with the relevant enforcement agencies.

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REPRESENTATIVE MATTERS

Healthcare Matters

- Represented an electronic medical record vendor in connection with a False Claims Act allegation in which a relator had alleged that the software purportedly caused an upcoding of medical claims. The initial representation involved coordinating the response to a DOJ Civil Investigative Demand. We subsequently provided a detailed, substantive presentation to the DOJ explaining that the concerns were without merit, which resulted in the DOJ deciding to decline intervention. The relator was then persuaded to voluntarily dismiss the case.
- Represented a mail order pharmacy in connection with allegations that it had engaged in improper marketing activities that allegedly violated statutes and gave rise to FCA liability. We identified legal arguments that demonstrated that the claims were without merit and were able to obtain a dismissal with prejudice, including as to the Government's right to pursue such claims in the future.
- Represented a significant physician practice that had a relationship with a local health system that was alleged to have been in violation of the Anti-Kickback Statute and the FCA. We conducted an internal investigation and provided a fulsome response to the DOJ's CID. We were ultimately successful in persuading the DOJ to decline to intervene in the litigation. We subsequently provided a substantive presentation to the relators' counsel and explained the factual and legal deficiencies in their theory of the case. The relators voluntarily dismissed their claims against our client and the health system.
- Represented a health insurance company in a contentious lawsuit that was filed in the Southern District of Texas. The plaintiff claims that she was discriminated against because of her disabilities (hearing loss, anxiety, and depression), age and gender. The plaintiff also alleged that our client failed to accommodate her disabilities and failed to engage in the interactive process. The plaintiff also alleged that our client terminated her employment in retaliation for plaintiff blowing the whistle on alleged violations of the federal False Claims Act. We successfully convinced the federal government to voluntarily dismiss its *qui tam* action against our client. We then successfully moved for summary judgment, where the District Court dismissed four of plaintiff's five remaining claims with prejudice. Plaintiff agreed to settle the remaining claim on extremely favorable, nonmonetary terms.
- Represented a telemedicine provider in a *qui tam* case investigated by the federal government based on alleged incorrect billing of services provided to Medicare patients.
- Represented a university as a plaintiff in recovering overcharges for student health insurance premiums under Virginia's Fraud Against Taxpayers Act. The case settled favorably a month before trial.
- Representing a health care services processing company in a multi-agency inspectors general investigation related to manufacturing issues allegedly in violation of contractual requirements implicating the False Claims Act and other aviation-related statutory requirements.
- Represented a medical device company executive in connection with a *qui tam* lawsuit alleging kickbacks and overcharging on Medicare-related payments.
- Resolved whistleblower allegations of improper charging of health insurance costs to government contracts, avoiding a *qui tam* lawsuit and addressing government concerns through contract modifications without penalty.



Procurement Matters

- Represented a client in a False Claims Act action based on a high-dollar government contract for hundreds of thousands of pieces of equipment, which the relator alleged were defective. McGuireWoods obtained a ruling from the Second Circuit adopting a new legal test under which a relator can enforceably release his right to bring an FCA claim on behalf of the government, so long as the government is made aware of the potential fraud. The Second Circuit went on to find, wholly in our client's favor, that the relator had not and could not adequately plead that the equipment our client delivered to the government was defective. This was a tremendous financial and precedent-setting victory.
- Jointly selected by two top defense contractors to defend their joint venture in a False Claims Act *qui tam* lawsuit alleging \$90 million in over-charging on national security aerospace contracts as a result of allegedly improper estimating practices, resulting in a full resolution and dismissal with prejudice from the DOJ and all relevant agencies on favorable settlement terms.
- Resolved a *qui tam* action with the DOJ relating to testing certifications on a \$250 million telecommunications system in Iraq under a U.S. Department of the Army contract, including full and complete resolution with the Army Suspension and Debarment Official with no administrative commitments.
- Representing a communications company in a multi-year False Claims Act investigation and litigation. A competitor in West Virginia alleges that our client fraudulently induced the award of a Broadband Technology Opportunities Program grant. After an investigation by the Department of Commerce's Office of Inspector General, the government declined to intervene. The case is currently in discovery.
- Secured a settlement with DOJ and the General Services Administration relating to allegations in a competitor-filed *qui tam* of non-compliance with specifications in a federal supply schedule contract.
- Investigated the false certification of Buy American Act compliance for products delivered to DOD and VA customers, which included a self-disclosure and favorable settlement terms with the DOJ.
- Represented a food service management company in *qui tam* action alleging that the company defrauded the National School Lunch Program by retaining rebates from vendors. Client prevailed on a motion to dismiss, which was later affirmed by the Third Circuit Court of Appeals.
- Representing a large construction company in a matter related to whistleblower allegations through counsel related to kickbacks and improper replacement of subcontractors on a federally-funded state airport construction contract.
- Representing an environmental remediation company on a criminal and civil False Claims Act matter arising out of alleged contractual non-compliance related to testing, sampling, and backfill requirements.
- Represented a client in *qui tam* action alleging defects in night vision goggles supplied to the U.S. Army. Client prevailed on a motion to dismiss, which was later affirmed by the Second Circuit Court of Appeals.



Financial Services Matters

- Defended a large bank in a *qui tam* suit alleging that its student lending affiliates violated various Department of Education regulations related to federally-guaranteed student loans. Client prevailed on a motion to dismiss, which was later affirmed by the Fourth Circuit Court of Appeals.
- Defended a large bank in a *qui tam* action alleging defects in the bank's underwriting of federally-guaranteed student loans and in seeking to collect on the guarantees. Client prevailed on a motion to dismiss, which was later affirmed by the Fifth Circuit Court of Appeals.
- Represented a large bank in a *qui tam* action alleging that it and other banks failed to return federal benefit payments made to deceased beneficiaries by the Social Security Administration, Veterans Affairs, and other federal agencies. Client prevailed on a motion to dismiss, which was later affirmed by the Fifth Circuit Court of Appeals.

INSIGHTS

The
FCA INSIDER
INSIGHTS AND UPDATES ON FALSE CLAIMS ACT LITIGATION

***The FCA Insider*, a False Claims Act blog published by a multi-disciplinary team of McGuireWoods' attorneys, aims to keep you abreast of False Claims Act developments. The blog provides insights and updates on False Claims Act litigation impacting a variety of industries — including healthcare, government contracts and financial services — and on developing rules, laws, guidance and DOJ settlements that *influence* the fraud and abuse landscapes.**

GOVERNMENT INVESTIGATIONS AND WHITE COLLAR LITIGATION GROUP

SUBJECT to INQUIRY
THE LATEST ON GOVERNMENT INQUIRIES AND ENFORCEMENT ACTIONS

***Subject to Inquiry* is a blog published by the Government Investigations and White Collar Litigation Department of McGuireWoods since 2010. The blog explores topics, trends and cases related to government enforcement investigations and actions.**

ABOUT OUR GOVERNMENT INVESTIGATIONS & WHITE COLLAR LITIGATION DEPARTMENT

The Government Investigations & White Collar Litigation Department at McGuireWoods is a nationally recognized team of more than 80 attorneys representing Fortune 100 and other companies and individuals in the full range of civil and criminal investigations and enforcement matters at both the federal and state level. Our senior team is comprised of a deep bench of former federal officials, including former U.S. Attorneys, more than a dozen federal prosecutors, and an Associate Counsel to the President of the United States. Strategically centered in Washington, our Government Investigations & White Collar Litigation is proud to be recognized as an elite practice, most recently honored by Chambers USA with a highly regarded nationwide ranking for Corporate Crime & Investigations, honored twice as White Collar Practice Group of the Year by Law360, and consistently ranked among the world's leading investigations firms on the Global Investigations Review 100 guide to top cross-border investigations practices. The Legal 500 United States, a premier list of the country's best law firms, also commended McGuireWoods for the "exceptional quality" of our powerhouse white collar litigation practice.

For more information about the breadth of the capabilities of the Government Investigations & White Collar Litigation Department, please contact department chair Jason H. Cowley at jcowley@mcguirewoods.com or at +1 704 343 2030.

ABOUT MCGUIREWOODS' HEALTHCARE DEPARTMENT

With more than 60 experienced, industry-focused lawyers, our national Healthcare Department is consistently ranked as one of the top U.S. healthcare practices. Our healthcare attorneys have the knowledge and experience that healthcare providers and insurers need to achieve compliance with federal and state-specific regulatory requirements. Our group advises clients on a full range of regulatory and policy issues enforced by the U.S. Government. Clients have recognized the value of our depth in regulatory, litigation and transactional matters, noting our "great commercial awareness" and have described us as "very skilled," "extremely knowledgeable, practical and accessible." Our healthcare group and individual lawyers from across the country are recognized by *Chambers USA*, *Best Lawyers in America*, *Legal Elite* and *Super Lawyers* as among the top legal providers in the nation.

ABOUT MCGUIREWOODS

McGuireWoods has 1,100 lawyers in 21 offices across the United States and other countries. Over its 187-year history, we have earned the loyalty of our many longstanding clients with deep understanding of their businesses and broad skills in complex regulatory and compliance matters, high-stakes disputes, and transactional matters. For more than a decade, McGuireWoods has been ranked on BTI Consulting Group's "Client Service 30" list of law firms serving Fortune 1,000 companies — elite firms singled out for client service excellence based on unprompted feedback from corporate counsel. Its full-service public affairs arm, McGuireWoods Consulting LLC, offers infrastructure and economic development, strategic communications and grassroots advocacy, and government relations solutions. For more information, visit www.mcguirewoods.com.

McGuireWoods

Nationwide highly regarded ranking for Corporate Crime & Investigations



Named to the “Client Service A-Team”



Ranked among the world’s top 100 firms for four consecutive years for our “heavyweight team of white-collar investigators that bring decades of high-stakes work experience”



Best Law Firms in Healthcare



Top Rankings in Healthcare



Named a Practice Group of the Year



Multiple partners named “White Collar, Regulatory & Compliance Trailblazers”



Multiple government investigations partners named “Lawyers of the Year”



One of the “Most Recommended Law Firms” 17 years in a row, a distinction shared with only 9 other firms



Nationwide ranking for corporate investigations and white collar criminal defense



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