

## Qui Tam/Whistleblower Defense

### Overview

Qui tam cases brought under the federal False Claims Act (commonly known as whistleblower suits) are on the rise. In 2013, the Department of Justice reviewed a record high of approximately 750 qui tam cases. There have been particular increases in the number of qui tam cases relating to the federal stimulus and to the off-label marketing of prescription drugs.

The surge of qui tam cases has been accompanied by increased coordination between the civil and criminal divisions of the Department of Justice, which discuss qui tams in an effort to effectively collaborate. As a result, businesses face growing risks. Qui tam actions raise not just civil law issues, but potentially the specter of criminal accusations — especially in the current enforcement climate. It is vital that counsel be sensitive to these issues.

### Representative Qui Tam Matters

- Represented a state university in a False Claims Act case that alleged the university engaged in Medicare fraud. The government declined to intervene in the case after we presented it with evidence that included the results of a review of dozens of randomly sampled medical files and expert testimony.
- Represented an anesthesiology practice group in a False Claims Act case that alleged fraud in how it billed Medicare for various anesthesiology services it provided patients. The government declined to intervene in the matter.
- Represented owners of a variety of nursing homes and assisted living facilities, where the allegations involved improper referrals between hospitals and nursing homes.

Members of our financial services and insurance litigation practice group counsel life, health, and property/casualty insurers and their affiliates regarding federal and state False Claim Act issues that affect their operations, and have defended them in suits brought under the federal False Claim Act and under state False Claims Acts. In several, the amount in controversy exceeded \$100 million. Key matters include:

- Represented a national life insurer in a federal False Claims Act suit in the U.S. District Court for the Southern District of Florida, and on appeal in the Eleventh Circuit Court of Appeals.
- Defended a national life insurer's subsidiary in a Florida False Claims Act suit brought in the Florida courts alleging failure to report and collect state taxes.
- Defended a Florida False Claims Act suit brought in the Florida courts alleging overcharges under a state procurement contract.
- Advised and counseled several property/casualty insurers concerning allegations that they contravened the Florida False Claims Act in their calculation of residual insurance market assessments under the Florida Insurance Code or in reporting data from which assessments are determined.

### All Insights



#### **Record-Breaking SEC Whistleblower Awards Signal the Need for Robust Anti-Retaliation Policies**

MAY 11, 2021

Last year saw a significant increase in whistleblower reports to the Securities and Exchange Commission (SEC). Given this environment, companies should analyze their compliance program to implement and communicate strong anti-retaliation policies.

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### Key Contacts

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