

→ 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 qui tam False Claims Act litigation, in which the U.S. government sought in excess of \$1.2 billion in damages and penalties. After 10 years of litigation and a four week trial, the Court awarded the government less than \$1.4 million in damages and statutory penalties.
- Represented a Fortune 50 company regarding a qui tam False Claims Act investigation of alleged improper billing, labeling, and dispensing practices concerning Medicare and Medicaid program reimbursement for OTC prescription drugs. After a series of evidentiary presentations, the team convinced the DOJ and whistleblower counsel to dismiss the action.
- Obtained summary judgment dismissing with prejudice a qui tam False Claims Act case filed in the U.S. District Court for the Central District of California concerning alleged improper billing practices by a healthcare laboratory.
- Obtained summary judgment dismissing with prejudice a qui tam False Claims Act case filed in the U.S. District Court for the District of Columbia alleging that an information technology solutions provider violated the False Claims Act by offering products for sale to the government that did not comply with the Trade Agreements Act, which was affirmed by the U.S. Court of Appeals for the District of Columbia Circuit.
- Obtained dismissal with prejudice of a qui tam False Claims Act case filed in the U.S. District Court for the District of Minnesota alleging violations of the False Claims Act in connection with sales to the government of information technology products.
- Obtained complete defense verdict after a 10-week jury trial for Fortune 100 defense contractor in a False Claims Act case prosecuted by DOJ that was recognized by the National Law Journal as one of the Top 10 Defense Verdicts that year.

- Obtained summary judgment on behalf of a government contractor in a False Claims Act case alleging \$2.4 billion in damages for fraud regarding contracts with the Coalition Provisional Authority in Iraq.
- Obtained summary judgment in a False Claims Act case involving alleged sales of computer products that were not compliant with the Trade Agreements Act, which was affirmed on appeal by the U.S. Court of Appeals for the District of Columbia Circuit.

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.