



## → David T. Fischer

### Special Counsel

2099 Pennsylvania Avenue, N.W.  
Suite 100  
Washington, DC 20006-6801

T: +1.202.747.3270

F: +1.202.747.3914

dfischer@sheppardmullin.com

David Fischer is special counsel in the Governmental Practice in the firm's Washington, D.C. office and a leader of its Organizational Integrity Group. He defends companies in criminal and civil investigations and litigation.

### Areas of Practice

For two decades, David has represented individuals and companies in complex commercial litigation and government and regulatory investigations. He represents healthcare and life sciences companies, government contractors, and other highly regulated business in government investigations, litigation, and trial. While his practice focuses on cases involving allegations of fraud in the government contracting and health care industries brought under the federal False Claims Act and state false claims laws, it extends to a broad range of both white-collar criminal and complex civil litigation matters. David has significant experience defending against investigations and litigation involving allegations under the False Claims Act, Anti-Kickback Statute, and similar anti-fraud statutes. He also regularly counsels clients seeking to develop and implement cost-effective and practical compliance and risk management programs.

David's significant matters include:

- Defense of a technology company in False Claims Act litigation involving the General Services Administration's multiple award schedules program;
- Trial, as second chair, the first indirect-purchaser antitrust case to proceed to trial on behalf of a health insurance company;
- Defense of medical device company in multiple False Claims Act litigation and investigations;
- Defense of a pharmaceutical company in antitrust litigation for alleged monopolization of a brand name drug product;
- Defense of a pharmaceutical company in False Claims Act litigation for alleged off-label marketing;
- Defense of a pharmaceutical company in RICO and Robinson-Patman litigation relating to coupon and discounting programs;
- Appeal for a non-profit organization before U.S. Court of Appeals for the Seventh Circuit seeking the right to litigate a False Claims Act matter;
- Representation of a pharmaceutical manufacturer in connection with federal and state investigations, litigation and qui tam False Claims Act actions involving Average Wholesale Price, Medicaid rebates arising out of pricing, and sales and marketing practices; and

- *Pro bono* appeal of a disable veteran before the U.S. Court of Appeals for Veterans Claims.

## Articles

- ChristianaCare Settlement Reveals FCA Pitfalls For Hospitals  
*Law360*, 02.14.2024
- Co-Author, "Feature Comment: Lessons Learned On The Second Anniversary Of *Universal Health Servs., Inc. v. U.S. ex rel. Escobar*," *The Government Contractor*, Vol. 60, No. 21, June 6, 2018
- Co-Editor, *The Antitrust Review*, 2004-2012
- "Digital Evidence in Competition Investigations: National Comparisons (United States)," *Concurrences Review*, November 2009
- "Dr. Miles: Will The Supreme Court Find a Cure?" *The Antitrust Source*, February 2007
- "Cardizem CD®, K-Dur®, Plavix® and OxyContin®: Have We Entered The Endgame of Antitrust Uncertainty Towards Pharmaceutical Patent Litigation Settlements?" *Health Lawyers Weekly*, Vol. 4, No. 48, American Health Lawyers Association, December 15, 2006

## False Claims Act Defense Blog Posts

- "Health Care Suits at Center Stage in DOJ's FCA Recovery Report for FY 2018," January 11, 2019
- "Supreme Court To Address False Claims Act Statute of Limitations," November 28, 2018
- "The Supreme Court Discusses When A Statute May Be Unconstitutionally Vague – Will It Be Extended to False Claims Act Cases?," May 11, 2018
- "DOJ's Blue Book Partially Unsealed," January 26, 2018
- "DOJ Formalizes Guidance for Government Dismissal of Unmeritorious Qui Tam Suits," January 25, 2018
- "Qui Tam Suits" rel="noopener noreferrer" href="https://www.organizationalintegrity.com/2017/11/dismiss-unmeritorious-qui-tam-suits/">"Change in Policy or Same Old Story? DOJ Suggests it Will Dismiss Unmeritorious *Qui Tam* Suits," November 3, 2017
- "DC Circuit Finds Government Failure to Seek Repayment is "Very Strong Evidence" of Non-Materiality In False Claims Act Case," March 1, 2017
- "HHS OIG Publishes Final Rule on Anti-Kickback Statute: Safe Harbors And Monetary Penalties," December 8, 2016

## Healthcare Law Blog Posts

- "Supreme Court Clarifies that Subjective (Not Objective) Knowledge of Falsity of Claim Dictates False Claims Act Liability," June 2, 2023
- "Supreme Court Hears Arguments on False Claims Act Scierter Standard," April 19, 2023
- "Health Law Policy Heading Into 2022 At The ABA Health Law Summit," December 13, 2021
- "The Department of Justice Delivers Some Good News to the Healthcare Industry: New False Claims Act Guidance Predicts More Challenges to Qui Tam Plaintiffs," January 29, 2018

## Media Mentions

Top 6 Gov't Contract Cases In 2nd Half Of 2021

*Law360*, 12.17.2021

Last Insurer Settles With Mylan In \$67M Antitrust Appeal

*Law360*, 05.04.2018

FCA Enforcement Under Sessions DOJ Offers More Of The Same

*Law360*, 11.21.2017

## Speaking Engagements

ABA False Claims Act and Qui Tam Trial Institute 2013, 2015 and 2019 (Co-founder, planning committee member and speaker in 2013; planning committee member in 2015; and planning committee member and trial faculty in 2019)

"What Circuits and District Courts the Relators and Defense Favor and Those They Try to Avoid," ACI's Life Sciences & Healthcare False Claims Litigation, May 22, 2018

"Substantive and Procedural Motions," District of Columbia Bar Association CLE Program Pre-Trial Skills Series, October 22, 2009, October 29, 2010, October 20, 2011, November 29, 2012, November 13, 2013, November 6, 2014, November 12, 2015 and November 29, 2016

"Damages: How Big or Small Is Your Case," ABA National False Claims Act and Qui Tam Trial Institute, June 6, 2013

"Reimbursement and False Claims Act Fundamentals," ABA Health Law Section, May 19, 2011 and February 7, 2013

"In-House Counsel Update," ABA Section of Antitrust Law Corporate Counseling Committee, June 2, 2011

"False Claims Act Changes and Challenges," Department of Energy Contractor Attorneys' Association's (DOECAA) Spring Conference, May 13, 2010

"The Government's Crackdown on Clinical Research Misconduct," Drug Information Association's Liability Risks in Clinical Trials Program, February 25, 2010

## Events

False Claims Act Mock Trial Institute 2024

January 17-19, 2024

## Memberships

Member, Board of Directors, Clarendon Child Care Center

Member, Editorial Advisory Board, *Competition Law360*, 2010-2011

## Practices

Governmental Practice

False Claims Act

Organizational Integrity Group

Healthcare

Litigation

White Collar Defense and Corporate Investigations

Antitrust and Competition

Government Contracts

Healthcare Enforcement

## Industries

Life Sciences

## Education

J.D., Georgetown University Law Center, 1999

B.A., Miami University, 1996

## Admissions

District of Columbia

Ohio

Virginia

U.S. Court of Appeals for the District of Columbia

U.S. Court of Appeals for Veterans Claims

U.S. Court of Appeals for the Sixth Circuit

U.S. District Court, District of Columbia

U.S. District Court, Southern District of Ohio