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June 8-10, 2016
Park Hyatt Hotel
Washington, DC



11th National Institute on the Civil False Claims Act and *Qui Tam* Enforcement

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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 11th Annual National Institute on the Civil False Claims Act and *Qui Tam* Enforcement will bring together experts from all areas—U.S. Department of Justice, state attorney general offices, federal agencies, leading defense and plaintiff firms—to discuss this ever-growing area of litigation and enforcement.



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Agenda

Wednesday, June 8, 2016

4:00 p.m. Registration Begins

5:00 p.m.–7:30 p.m. Fundamentals of the Civil False Claims Act and Qui Tam Enforcement

Daniel R. Anderson, John T. Boese, Joseph E. B. White

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 and 2010 amendments, as well as the fundamentals necessary to understand the Escobar case now before the US Supreme Court. Questions are strongly encouraged during the panel discussion, which comes with a detailed written primer on the False Claims Act.

7:30 p.m. Reception

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Thursday, June 9, 2016

7:30 a.m. Registration

8:30 a.m. Welcoming Remarks - Institute Co-Chairs:

Daniel R. Anderson, *U.S. Department of Justice*, Washington, DC
John T. Boese, *Fried, Frank, Harris, Shriver & Jacobson LLP*, Washington, DC
Joseph E. B. White, *Nolan Auerbach & White, P.L.*, Philadelphia, PA

9:00 a.m. Investigation of a False Claims Act Case

Thomas Corcoran, Erik Matheney, David Rosenbloom, Robert F. Muse
Moderator: Allison Cendali

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 intervention or complaint is filed. This panel will discuss the various issues involved in this pre-filing government investigation, including issues of privilege, confidentiality, discovery, and presentations by the relator, the government, and the defense. The role of investigators and the increased use of civil investigative demands during the investigative phase also will be discussed. The panel will also address corporate securities disclosure obligations during this period.

10:15 a.m. Break

Agenda (continued)

10:30 a.m. Recent Developments on Liability

Tom Greene, David W. Ogden, Gregg Shapiro, Steven Sharobem, Jennifer Verkamp, Michael Waldman, Jamie A. Yavelberg
Moderator: Jonathan L. Diesenhaus

This panel will concentrate on developing liability issues, including the determination of “falsity,” the express and implied false certification cases, materiality and causation, court interpretations of the *scienter* or “knowledge” requirement, and the developing law of “overpayment” liability after FERA.

12:15 p.m. Keynote Luncheon Speaker Deputy Attorney General Sally Quillian Yates

The Deputy Attorney General will speak about her September 9, 2015 Memorandum regarding individual accountability for wrongdoing. This Memorandum applies to criminal and civil actions, and it has particular relevance to enforcement and settlement of False Claims Act cases.

2:00 p.m. Recent Developments on Damages and Penalties

Douglas W. Baruch, Colin Huntley, Kirsten Mayer, L. Lin Wood
Moderator: Stephen Hasegawa

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.

3:15 p.m. Break

3:30 p.m. Breakout Sessions

A. FCA Enforcement Against Hospitals, Device and Pharmaceutical Companies and Other Health Care Industry Companies

Thomas S. Crane, Edward Crooke, Nola Hitchcock Cross, Robert Patten
Moderator: Sanford V. Teplitzky

This panel will review the unique issues that arise when the False Claims Act is used as a fraud and enforcement tool against hospitals, pharmaceutical and device manufacturers and other healthcare providers. The panel will discuss the increasing use of False Claims Act cases based on violations of the Anti-Kickback Statute and the Stark law as well as the “60 Day Overpayment Rule,” which can create FCA liability for the knowing failure to report and refund overpayments.

B. FCA Enforcement in Procurement and Nontraditional Areas

Marcia G. Madsen, Christopher Mead, Amanda Rocque, Michael Theis, Wayne Wisniewski
Moderator: Sara McLean

Procurement cases remain one of the biggest sources of FCA litigation, but an increasing number of *qui tam* cases involve other types of federal funding. This panel will discuss FCA enforcement in the procurement field, including defense cases and government-wide purchasing contracts administered by GSA. The panel will also explore non-traditional FCA cases, especially those involving federally insured mortgages and other loans, “reverse” false claims (such as for mineral royalties and custom duties), and grants.

Agenda (continued)

5:15 p.m. Adourn

5:30 p.m. Reception

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Friday, June 10, 2016

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

Laurence J. Freedman, Enu Mainigi, Robert McAuliffe, Keith Morgan, Marlan Wilbanks

Moderator: Matthew Organ

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.

10:30 a.m. Break

10:45 a.m. State *Qui Tam* Enforcement

Steven K. McCallister, Paul B. Murphy, Patrick O'Connell, Jay Speers

Moderator: Daniel Miller

Over twenty-three states now have *qui tam* laws, and the value of recoveries obtained under these laws is skyrocketing. Congress has 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.

11:45 a.m. Break

Agenda (continued)

12:00 p.m. A Look Back: The FCA from 1986 to 2016

John Boese, Brian Elmer, Neil Getnick and John Kolar will lead a panel discussion on how the FCA and *qui tam* enforcement have changed in the 30 years since the 1986 amendments have passed. Audience participation is encouraged.

Box lunches will be available for purchase.

1:00 p.m. Breakout Sessions

The vast majority of FCA cases which result in recoveries to the United States are resolved by negotiated settlements. Particularly in light of the recent Yates Memorandum, settlement of an FCA case has a number of unique and critical differences from settlement of the other civil litigation.

These two breakout panels will discuss FCA settlements from the early stages through settlement terms, including the scope of releases, use of mediation and tax consequences.

A. Settlement of an FCA Healthcare Case

Gabriel Imperato, Nicholas Paul, Lisa Re, Hon. Janice M. Symchych, Robert Thomas, Laura F. Laemmle-Weidenfeld
Moderator: Andy J. Mao

B. Settlement of an FCA Procurement Case

Stephen D. Altman, Art J. Coulter, Janet Goldstein, Rodney A. Grandon, Eric Havian, Eric Sitarchuk
Moderator: Barbara "Biz" Van Gelder

2:30 p.m. Break

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

Kathleen Clark, Andrew Schilling, Robert Vogel, Consuelo Woodhead
Moderator: David B. Wiseman




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 viewpoint of all three sides. From the government side, government counsel are routinely faced with ethical issues involving the interrelationship between the criminal, civil and administrative aspects of FCA cases and investigations. From the relator side, counsel must deal with the potential criminal exposure of their clients as well as defense arguments that whistleblowers do not have the right to obtain documents and other data relevant to their case. From the defense side, counsel is routinely faced with attorney client and privilege issues, as well as the problems of multiple representations. This panel will also include a discussion of the ethical problems with attorneys acting as *qui tam* relators and how courts are resolving those issues.

4:00 p.m. Adjourn

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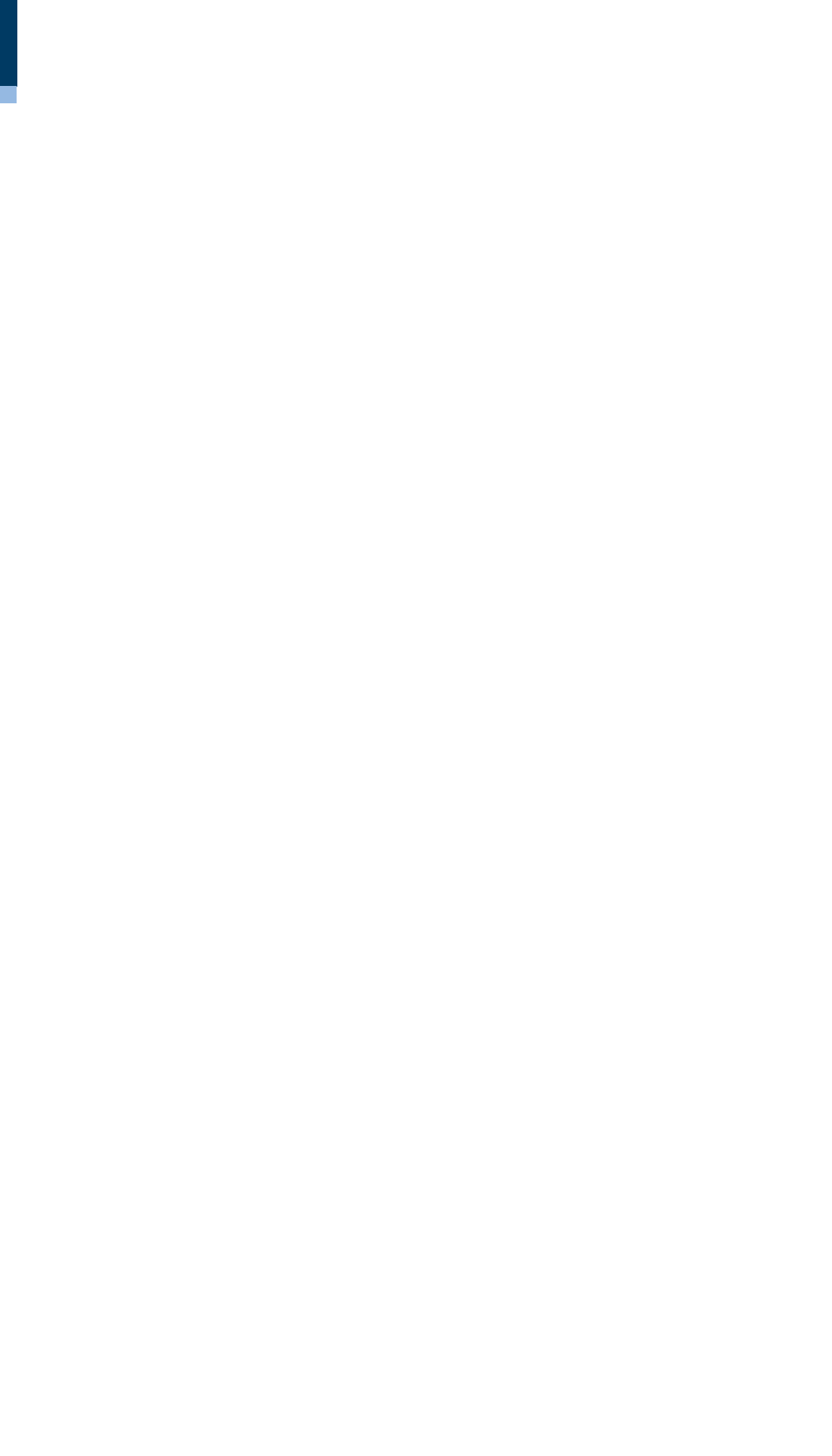
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