

**JANUARY 28–29, 2019 | THE PARK LANE HOTEL | NEW YORK CITY**

*6<sup>th</sup> Advanced Forum on*

# False Claims & Qui Tam Enforcement

**Prepare for the Expanding Reach of the FCA**



## Distinguished Co-Chairs:



*“I look forward to this conference every year. It provides valuable insight into how the various stakeholders analyze FCA issues – industry, prosecutors, and relator counsel.”*

**Catherine Kane Ronis**  
Vice President, **BAE Systems, Inc.**



*“ACI’s False Claims Act conference is as dynamic as its New York location – always an extraordinary mix of viewpoints of government lawyers, in-house counsel, defense bar, and whistleblowers’ counsel.”*

**Roderick L. Thomas**  
Partner, **Wiley Rein LLP**

## Keynote Address From:



**Stephen Cox**  
Deputy Associate Attorney General  
**United States Department of Justice**

## Insights from Government Enforcers:

**United States Department of Justice**  
**Stephen Cox**

*Deputy Associate Attorney General*

**Office of the United States Attorney, Office for the District of Columbia**  
**Darrell Valdez**

*Assistant United States Attorney*

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**United States Attorney’s Office, Eastern District of New York**  
**Richard Hayes**

*Deputy Chief, Civil Division*

**Whitman G.S. Knapp**

*Deputy Chief, Business & Securities Fraud Section*

**John Vagelatos**

*Chief, Affirmative Civil Enforcement*

**United States Attorney’s Office, District of Rhode Island**  
**Zachary A. Cunha**

*Chief, Civil Division*

Learn how to strengthen your compliance programs and internal systems from companies that have settled FCA cases. Take advantage of this opportunity to meeting leading decision-makers from:



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**The Boeing Company**  
**BAE Systems, Inc.**  
**Ditech Financial LLC**

**Fluor Corporation**  
**GE**  
**Mount Sinai Health System**  
**Northwell Health**  
**Pfizer, Inc.**

# Financial recoveries under the False Claims Act for fiscal 2018 so far amount to \$3.7 billion, thus, showing sustained and aggressive enforcement efforts by the government and *qui tam* relators alike.

ACI's 6th Advanced Forum on False Claims and *Qui Tam* Enforcement will focus on the latest enforcement and recovery efforts, with special emphasis on FCA activity affecting the following industry sectors:

- > Healthcare
- > Life Sciences and Pharmaceuticals
- > Defense & Aerospace
- > Financial Services
- > Technology and Communications
- > For-Profit Education

We will provide the latest guidance on how to protect your organization and clients from potentially astronomical penalties arising from Federal and State false claims litigation.

This year's conference will address recent developments, controversies, and challenges to help you prepare for the emerging legal paradigm governing this area of the law. We will examine such questions as:

- > What can we expect for Fiscal '19?
- > Where will government enforcement priorities lie?
- > Which industries are at greatest risk?
- > What can you do to prepare for the next wave of FCA enforcement and protect your client's interests?

...and help you find the clarity and conviction you need to face your industry's budding and unrelenting FCA challenges.

Be part of the only forum that the False Claims bar and government alike set their calendars by each year.

Our faculty is comprised of the "who's who" of the False Claims Bar and in-house counsel as well as government prosecutors and relators counsel. They will provide you with the insight you need to develop the critical skills required for your client's protection as well as your own advancement.

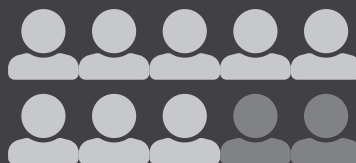
As an FCA stakeholder, you simply cannot afford to miss this industry-revered event.

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We hope to see you in NYC this January!

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“

*Well rounded coverage of emerging issues and practical considerations for false claims concerns.*

Assistant Attorney General, Nebraska  
Department of Justice

*Content and faculty were very good –  
took away some very practical tips.*

Senior Counsel, Johnson & Johnson

*Good mix of defense, plaintiff and  
industry perspectives.*

Senior Counsel, Huntington Ingalls Industries

”

Join the Conversation



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**The Honorable William G. Young**

*District Judge*

**United States District Court for the  
District of Massachusetts**

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*Senior Corporate Counsel, Litigation*

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## Day One

Monday, January 28, 2019

7:45

### Registration and Continental Breakfast

8:45

### Opening Remarks from Conference Co-Chairs

**Catherine Kane Ronis**  
Vice President  
BAE Systems, Inc.

**Roderick L. Thomas**  
Partner  
Wiley Rein LLP

9:00

### Keynote Address

**Stephen Cox**  
Deputy Associate Attorney General  
United States Department of Justice

9:30

### False Claims Act Enforcement State of the Union: The Politics and Policies of Enforcement

**Trina Fairley Barlow**  
Partner  
Crowell & Moring LLP

**Roderick L. Thomas**  
Partner  
Wiley Rein LLP

The volume of financial recoveries by the DOJ for fiscal year 2018 amount to a reported total of \$3.7 billion in FCA settlements to date. This session will explore how the False Claims Act continues to be one of the most powerful weapons to combat fraud against the government and how its application is evolving. Points of discussion will include:

- Analyzing the Trump Administration's policies and priorities relative to FCA enforcement
- Evaluating the significance of Senator Grassley's criticisms of recent case law interpreting *Escobar* and his efforts to reestablish the FCA as "the most effective tool to combat government fraud"
- Assessing other federal and state legislative activity
- Evaluating the DOJ's FCA reform efforts, including an initiative to award companies credits for implementing effective compliance and ethics programs

10:30

### In the Aftermath of *Escobar*: Determining Whether Regulatory Violations Are Material to Government Reimbursement

**Richard Hayes**  
Deputy Chief, Civil Division  
United States Attorney's Office,  
Eastern District of New York

**Kimberly Friday**  
Deputy Chief, Civil Division  
United States Attorney's Office,  
Northern District of California

**Michael Bishop**  
Executive Counsel,  
Global Investigations  
GE

**Steven Lehotsky**  
Senior Vice President &  
Chief Counsel  
U.S. Chamber Litigation Center

#### MODERATOR

**Craig Margolis**  
Partner  
Arnold & Porter

In the two years that have passed since the Supreme Court rendered its iconoclastic decision in *Universal Health Services v. Escobar*, Federal Courts have struggled with the applicability and interpretation of the *Escobar* materiality standard. As a result, practitioners grapple with the new standard of proof required for the implied certification theory of liability under the False Claims Act. This session will consider *Escobar*'s most recent progeny and dissect the evolving principles of materiality in the aftermath of this decision. Points of discussion will include:

- Interpreting the Ninth Circuit's materiality ruling in *Gilead Sciences* in view of *Escobar* and its progeny
- Anticipating the Solicitor General's recommendation
- Analyzing how materiality or lack thereof overturned extraordinary recoveries in *Trinity Industries* and *Salus Rehabilitation*
- Reconciling whether government intervention is material to the government's payment decision in the wake of *Genetech, Inc.* and *Prather*

11:30 Morning Coffee Break

11:45

### A Tale of Two Memos: Devising Strategies to Avoid Dismissal in View of the Granston and Brand Memoranda

**Matthew H. Solomson**  
Chief Legal Officer, Federal  
Government Solutions  
Anthem, Inc.

**Marcos E. Hasbun**  
Partner  
Zuckerman Spaeder LLP

It was the best of times, it was the worst of times...it was the epoch of belief, it was the epoch of incredulity...and so begins our story when in January 2018, two memos emerged from the Department of Justice, effectively providing False Claims Act defendants with novel tactics to avoid litigation. The Granston Memo outlined the DOJ's dismissal authority, while the Brand Memo discussed restrictions on the use of guidance documents by government litigators in an affirmative civil enforcement action. This panel will explore the recent uses of these memoranda by defense counsel and consider the possible impact on future actions.

- Understanding the Granston Memo's causes for dismissal
- Reviewing provisions of the Brand Memo which signify that guidance documents cannot create additional legal obligations
- Defining how the interaction between these two memoranda will impact the number of FCA and *Qui Tam* actions filed

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1:45

## The Dollars, Cents and Sense of FCA and Whistleblower Observation and Defense: Aligning Litigation Costs with Sound Business Practices and Compliance Mandates

Scott R. Landau  
Associate General Counsel  
Mount Sinai Health System

Catherine Kane Ronis  
Vice President  
BAE Systems, Inc.

Thomas W. Szromba  
Principal Senior Counsel –  
Litigation  
The Boeing Company

David J. Bird  
Senior Counsel  
Ditech Financial LLC

Don Yenovkian  
Senior Counsel  
Fluor Corporation

**MODERATOR:**  
Andrew S. Wein  
Shareholder  
Greenberg Traurig, LLP

Senior corporate counsel from some of the most targeted industries will discuss how they manage and minimize the risk of false claims litigation. These in-house attorneys will categorize the obstacles to resolving such complex challenges and also evaluate the economic considerations associated with these tasks as they seek not only to diminish reputational harm, but financial risk as well.

- Examining business perspectives on internal case assessment
- Analyzing settlement considerations, e.g., potential criminal exposure, future targeting, damages, litigation costs and individual liability in light of the Yates Memo
- Managing public relations optics and addressing reputational risk
- Deciding who should carry-out post filing investigations
- Streamlining the litigation management process

2:45 **FIRESIDE CHAT WITH RELATOR'S COUNSEL**

## From Initiating the Complaint to Government Intervention or Declination and Everything in Between

Colleen Kennedy  
Chief, Affirmative Litigation Unit  
United States Attorney's Office,  
Eastern District of California

Marc S. Raspanti  
Partner  
Pietragallo Gordon Alfano  
Bosick & Raspanti, LLP

The False Claims Act empowers the U.S. Government to identify and prosecute fraud. *Qui tam* relators, represented by counsel help investigate and prosecute these cases. This session will consider ways in which relators' counsel and government attorneys work together. Points of discussion will include:

- Analyzing how relators and the government combine their efforts to achieve faster and better results
- Distinguishing cases when the government intervenes from when the government does not intervene, and exploring the related impact on settlement
- Understanding pervasive concerns independent of the government's decision to intervene, e.g., relator releases, stolen documents and employment considerations

4:00

## Judicial Perspectives on Dismissals Granted Due to Lack of Specificity under Rule 9(b)

The Honorable William G. Young  
District Judge

United States District Court for the District of Massachusetts

**MODERATOR:**  
Peter Leininger  
Counsel  
King & Spalding LLP

A distinguished jurists with in-depth experience in False Claims and *Qui Tam* matters will examine decision-making practices in these cases and provide sage advice for both in-house attorneys and their outside counsel. Judge Young will discuss the impediments to resolving such complex contests and offer insights your most unyielding dilemmas.

- Reviewing recent cases where dismissals were granted for relator's failure to allege fraud with particularity

5:00 **INDUSTRY FOCUS ON FCA CHALLENGES**

## Champagne Roundtables

Cap off the first day of the conference as you network with your peers at industry-specific roundtables. Casually discuss the expansion of the reach of False Claims Act, new industries affect, and recent False Claims trends and developments.

- Healthcare, Life Sciences and Pharmaceuticals
- Technology and Communications
- Defense & Aerospace
- For-Profit Education
- Financial Services

6:00 **Conference Adjourns to Day Two**

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Course objective: Update on the False Claims Act and the latest enforcement actions. Prerequisite: None. Level of knowledge: Beginner/Intermediate. Teaching Method: Group-Live. Advanced Preparation: None. Delivery method: Group Live.

Please refer to the information in this brochure for outline, course content and objectives. Final approval of a course for CPE credits belongs with each states' regulatory board. Recommended CPE Credit: 3.5 hours for the main conference.

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## Day Two

Tuesday, January 29, 2019

8:45

### Co-Chair's Opening Remarks and Re-Cap of Day One

9:00 **A STUDY OF INTERVENTION**

### Understanding the Government's Evaluation of a *Qui Tam* Action

Zachary A. Cunha  
*Chief, Civil Division*  
United States Attorney's Office,  
District of Rhode Island

Darrell Valdez  
*Assistant United States Attorney*  
Office of the United State  
Attorney

**MODERATOR:**

Kirsten Mayer  
*Partner*  
Ropes & Gray LLP

When a relator files a False Claims Act case on behalf of the government, the DOJ must decide whether to decline or intervene. This session will examine the decision making process behind intervention and declination.

- Assessing the impact intervention has on relator's eventual recoveries, and review recent and impactful cases
- Understanding Section 370(C)(2)(A) of the FCA, which grants the attorney general the authority to dismiss a *Qui Tam* action over a relator's objection
- Reviewing the effect of government declination on the first-to-file bar

10:15 **PARALLEL INVESTIGATIONS**

### Assessing the Scope of Discovery and Preserving the Right Against Self-Incrimination

Whitman G.S. Knapp  
*Deputy Chief, Business & Securities Fraud Section*  
United States Attorney's Office,  
Eastern District of New York

David M. Eskew  
*Chief, Health Care & Government  
Fraud Unit*  
United States Attorney's Office,  
District of New Jersey

John Vagelatos  
*Chief, Affirmative Civil  
Enforcement*  
United States Attorney's Office,  
Eastern District of New York

Since 2012, the Holder Memo mandated collaboration between civil and criminal enforcement actions "to the fullest extent appropriate to the case and permissible by law". In response, defense counsel quickly turned their focus to discovery challenges resulting from parallel investigations. This panel will explore various stakeholder's perspectives on the obstacles and dilemmas resulting from parallel investigations.

- Reviewing the DOJ's recent policy advising against "piling on"
- Understanding the ramifications of the call for civil and criminal US Attorneys to coordinate with one another in parallel investigations in order to ensure fair outcomes proportionate to the wrongdoing at hand
- Assessing the administration's focus on streamlining the enforcement of the FCA

11:15 **Morning Coffee Break**

11:30

### Evaluating the Suitability of Statistical Sampling as a Means to Establish Liability Under the False Claims Act

Sean C. Cenawood  
*Partner*  
Dentons

Jacob Elberg  
*Chief, Health Care and Government Fraud Unit*  
United States Attorney's Office, District of New Jersey

The use of statistical sampling by the DOJ to prove violative behavior under the FCA is becoming increasingly popular. This session will explore the use of statistical methodology.

- Reviewing some courts aim to narrow the scope of the sampling methods
- Evaluating whether certain claims upon which relief is being sought was actually and knowingly false within the meaning of the False Claims Act
- Comparing recent rulings from various Districts
- Weighing in on the relator's ability to meet their burden of proof with or without the aid of statistical sampling

12:30 **Networking Luncheon**

1:45

### Effectively Negotiating False Claims Act Settlements: Developing Strategies to Reach a Favorable Agreement with the Government

Paul Kaufman  
*Vice President, Office of Legal  
Affairs*  
Northwell Health

J. Alex Ward  
*Partner*  
Morrison & Foerster LLP

The great majority of intervened False Claims Act cases, and a mounting number of non-intervened cases, are eventually resolved through negotiated settlements. This panel will address strategies employed by defense and relator's counsel to achieve favorable settlements in both intervened and non-intervened FCA cases.

- Evaluating key provisions in FCA settlement agreements to fit your company's circumstances
- Reviewing the implications of the recent tax reform law (Tax Cuts and Jobs Act of 2017) deductibility provisions on FCA settlements
- Understanding discounts provided when negotiating settlements and what the DOJ considers "cooperation"

2:45

### Beware of the Expanding Reach of the FCA: A Survey of New At-Risk Industries and Emerging Theories of Liability

Marcia G. Madsen  
*Partner*  
Mayer Brown LLP

David Nadler  
*Partner*  
Blank Rome

In the past twelve months, potential risk areas of FCA exposure have emerged in various industries – some of which are not traditional FCA targets. New DOJ policies in addition to an increasingly aggressive relators bar has the potential to meaningfully change the shape of FCA enforcement in 2019 and beyond. Join us as we discuss:



- Anticipating the *AseraCare* decision and its impact not only on hospice fraud prosecution, but False Claims cases more broadly
- Reviewing cases where a failure to implement cybersecurity measures led to False Claims liability for defense contractors
- Evaluating “new” vulnerable industries, e.g., private equity firms, tech and communications entities
- Assessing incipient theories of liability

3:45 **Afternoon Refreshment Break**

4:00

## Ethical Considerations for the FCA Litigator

**Cormac T. Conor**  
Member

Smith Pachter McWhorter PLC

**Maryana Zubok**

Senior Corporate Counsel, Litigation  
Pfizer, Inc.

**Andrew M. Genser**

General Counsel

Viking Global Investors LP

This session will provide you with best practices for managing effective internal investigations, as well as consider ethical dilemmas that arise during False Claims Act investigations.

5:00 **Conference Concludes**

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# False Claims & Qui Tam Enforcement

Prepare for the Expanding Reach of the FCA

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6<sup>th</sup> Advanced Forum on

# False Claims & Qui Tam Enforcement

Prepare for the Expanding Reach of the FCA

## New Features for the 2019 Conference Include:

### THINK TANK DISCUSSIONS ON ENFORCEMENT INITIATIVES, INCLUDING:

- > The future of False Claims filings in view of the Granston and Brand Memoranda
- > The Government's Evaluation of a *Qui Tam* Action
- > How to Reach a Favorable Agreement with the Government
- > New At-Risk Industries and Emerging Theories of Liability

### LITIGATION SPOTLIGHT SESSIONS ON:

- > The Materiality of Regulatory Violations to Government Reimbursement after *Escobar*
- > The Scope of Discovery and Preserving the Right Against Self-Incrimination
- > The Suitability of Statistical Sampling as a Means to Establish Liability
- > Dismissals on Grounds of Lack of Specificity under Rule 9(b)

### SPECIAL "PERSPECTIVE SESSIONS" FROM THE VIEWPOINTS OF THE:

- > Relator
- > Judiciary
- > U.S. Attorney's Office