

# Whistleblower Law

**Lieff  
Cabraser  
Heimann &  
Bernstein**

Attorneys at Law

“One of the nation’s  
premier plaintiffs’ firms”

*American Lawyer*

**Fraud Against the Government**

## The Brief

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### Among the nation's largest and most highly regarded plaintiffs' law firms

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125+ attorneys in offices in San Francisco, New York, Nashville, and Munich

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Assisted clients recover more than **\$129 billion** in verdicts and settlements since our founding in 1972.

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### Our fraud on the government cases include:

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General government contracts

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Medicare and health care

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Military and defense contracts

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Off-label prescription drug marketing

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Securities and financial industries

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Student loans and education funding

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### Recent False Claims Act case successes include:

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University of Phoenix - \$78.5 million settlement

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Office Depot - \$77.5 million settlement

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Sutter Health - \$46 million settlement

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*Best Lawyers & U.S. News has selected Lief Cabraser as national "Law Firm of the Year" six times.*

# Justice for Whistleblowers

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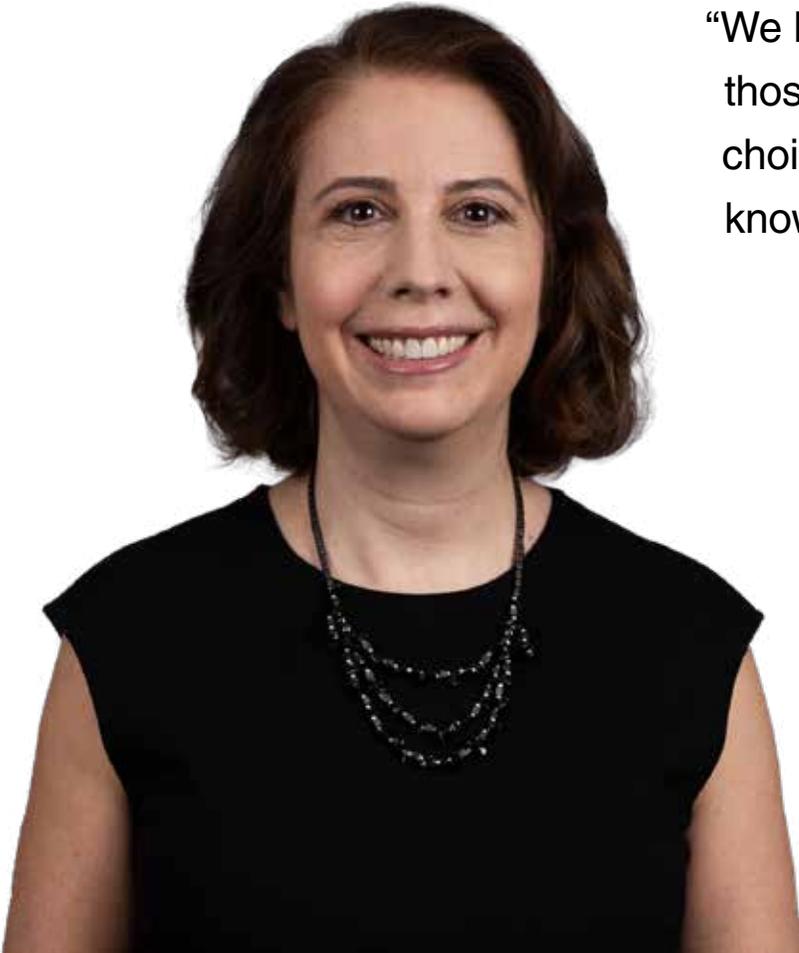
Lief Cabraser represents individuals and entities who have uncovered significant fraud against the government. We assist courageous whistleblowers in stopping such fraud and obtaining a portion of the damages awarded to the government for themselves. A successful relator is entitled to a percentage (ranging from 15 to 30 percent) of the recovery the government receives.

Many of our fraud-against-the-government cases are brought under federal or state False Claims Acts, which cover almost every type of fraud in which the government has paid money, or has been billed, based on fraudulent claims. In addition, we assist our clients in obtaining rewards for bringing violations of U.S. law, such as securities and health care statutes, to the government's attention.

### The Resources Necessary to Succeed

We possess the determination, experience, and skill to investigate complex Whistleblower/False Claims Act cases and take them to trial, if necessary. We also have a nationally recognized employment practice group, with committed lawyers who have helped change improper workplace practices and who understand the unique pressures whistleblowers face and issues relating to the threat of retaliation.

Our large team of lawyers is supported by financial, personnel, and technological resources unsurpassed by any other plaintiffs' law firm in the nation. We have repeatedly prevailed in high-stakes cases against many of the world's largest corporations.



“We have the privilege to challenge those processes, decisions, and choices that we and our clients know are just wrong.”

**Rachel J. Geman**

*Partner, Chair of Whistleblower/False Claims Act Practice Group, Employment Practice Group*

*Recognized by Super Lawyers and Best Lawyers as a top attorney*

## Top Rankings, Year after Year

The victories we have achieved for our clients place our litigators among the nation’s best. Over the past five years, we have been recognized in:

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*Benchmark Litigation Top 10 Plaintiff Firms*

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*Best Lawyers (including Lawyers of the Year)*

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*Best Lawyers/U.S. News Best Law Firms*

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*California Lawyer Attorneys of the Year*

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*Chambers USA (National Band 1 ranking)*

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*Daily Journal’s Top Practice Groups*

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*Daily Journal’s Top 100 Attorneys in California*

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*Law360 Most Feared Plaintiffs’ Law Firms*

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*Law360 Top 50 Firms for Litigation*

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*Lawdragon’s Top 500 Plaintiffs’ Lawyers*

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*Legal 500 (National Top Tier Rankings)*

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*Martindale Hubbell AV Preeminent Peer Review*

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*National Law Journal’s 100 Most Influential Lawyers in America*

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*National Law Journal’s Plaintiffs’ Hot List*

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*National Law Journal’s Plaintiffs’ Hot List Hall of Fame*

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*Super Lawyers (Including Top 100, Top 50 Female, and Top 10 Super Lawyers)*

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*Super Lawyers Business Edition (Antitrust, Commercial, and Securities Litigation)*

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# Remarkable Results

Result	Issue	Case
\$78.5 million	Student Loan Program Fraud	<b>U.S. ex rel. Hendow v. University of Phoenix</b> The settlement constitutes the largest settlement ever involving the U.S. Department of Education and the second-largest settlement ever in a False Claims Act case in which the federal government declined to intervene in the action.
\$77.5 million	General Government Contracting Fraud	<b>State of California ex rel. Sherwin v. Office Depot</b> The whistleblower suit brought under the California False Claims Act alleged that Office Depot overcharged cities, counties, and school districts across California for office and school supplies.
\$46 million	Healthcare & Insurance Fraud	<b>State of California ex rel. Rockville Recovery Associates v. Sutter Health</b> In addition to the monetary recovery, Sutter Health agreed to a comprehensive series of billing and transparency reforms, which California Insurance Commissioner Dave Jones called “a ground-breaking step in opening up hospital billing to public scrutiny.”
\$37 million	Military Contracting Fraud	<b>U.S. ex rel. Dye v. ATK Launch Systems</b> The whistleblower complaint alleged that ATK knowingly sold defective and potentially dangerous specialized flares to the U.S. armed forces.
\$21.75 million	General Government Contracting Fraud	<b>U.S. ex rel. Vosilla v. Avaya</b> The whistleblower complaint alleged that Avaya, Lucent and AT&T charged federal and state agencies for leasing and maintaining antiquated telephone communications systems that the public agencies no longer possessed and/or defendants no longer maintained.

**Additional Cases:** At any given time, we have approximately 20 cases under seal in courts across the nation.



“We stand with courageous whistleblowers in fighting against fraud that undermines essential government services and robs taxpayers.”

**Lexi J. Hazam**

*Partner, Whistleblower/False Claims Act, and Environmental Law Practice Groups, Chair of Personal Injury Practice Group*

# Relentless, Principled Advocacy

## Stopping High Default Rates on Student Loans

We obtained a record False Claims Act settlement against the University of Phoenix (“UOP”) that charged that UOP had violated the Higher Education Act (HEA) by providing improper incentive pay to its recruiters. The HEA prohibits schools whose students receive federal financial aid from paying their recruiters based on the number of students they enroll, in order to avoid creating an incentive to recruit unqualified students who are likely to default on their loans.

The complaint alleged that UOP defrauded the U.S. Department of Education by obtaining federal student loan and Pell Grant monies based on false statements of compliance with the HEA. In December 2009, the parties announced a **\$78.5 million** settlement.

The University of Phoenix case led to the adoption of new regulations to prevent recruitment misconduct by for-profit universities. For his outstanding work as Lead Counsel in this significant case, *California Lawyer* magazine recognized Lief Cabraser attorney Robert J. Nelson with the California Lawyer Attorney of the Year (CLAY) award.

## Ending Fraudulent Pricing of Office & School Supplies

In February 2015, the Court approved a **\$77.5 million** settlement with Office Depot to settle a False Claims Act lawsuit brought by a former Office Depot account manager. The City of Los Angeles and 18 other California cities, counties, and school districts intervened in the action to assert claims against Office Depot directly. Through the whistleblower, however, the action was on behalf of more than a thousand California public entities, mostly school districts.

The governmental entities purchased office supplies from Office Depot under a nationwide supply contract known as the U.S. Communities contract. Office Depot promised in the U.S. Communities contract to sell office supplies at its best governmental pricing nationwide. The complaint alleged that Office Depot repeatedly failed to give most of its California governmental customers the lowest price it was offering other governmental customers.

For their success in the Office Depot case, Robert Nelson and Lexi Hazam were recognized as Finalists for the California Consumer Attorney of the Year award.

# Securities & Financial Fraud Against the Government

**Lieff Cabraser** has a long and successful track record of winning tough, complex cases on behalf of investors against powerful corporations and corporate executives who have committed securities and financial fraud. We have tried two federal securities class actions to jury verdicts, prevailing in both, including a **\$170 million** verdict. Working with co-counsel, we have achieved verdicts, judgments, and settlements in excess of **\$6.1 billion** for our clients in securities and investor fraud cases.

Certain kinds of financial fraud cases can also be brought by whistleblowers under the False Claims Act and other statutes. In particular, the Dodd-Frank Wall Street Reform and Consumer Protection Act provides significant incentives and protections for whistleblowers who provide information on violations of federal securities and commodities exchange laws. These violations can include insider trading, accounting fraud, money laundering, bribing a foreign official, manipulating commodities prices, or manipulating currency exchange rates. Whistleblowers are also entitled to recover a share of monies owing to the government by virtue of tax fraud.

Today, we serve as co-counsel for the whistleblowers in an action against State Street Corporation, which serves as the contractual custodian for over 40% of public pension funds in the United States. As the contractual custodian, State Street is responsible for undertaking the foreign currency exchange (FX) transactions necessary to facilitate a customer's purchases or sales of foreign securities.

The complaint charges that State Street violated the California False Claims Act by systematically manipulating the timing of its execution and reporting of FX trades in order to enrich itself, at the expense of California custodial public pension fund clients, including the California Public Employees' Retirement System and the California State Teachers' Retirement System. The case is in the discovery stage after the trial court denied State Street's demurrer.

We are investigating multiple False Claims Act financial fraud cases and several cases have been filed that remain under seal.



*Benchmark Litigation* has rates Lief Cabraser year after year as one of the nation's top plaintiffs' law firms.



*Law 360* regularly recognizes Lief Cabraser as one of the most feared and respected plaintiff law firms in the U.S.

*Super Lawyers* recognizes the top attorneys surveyed in each state, chosen by their peers and through independent research.

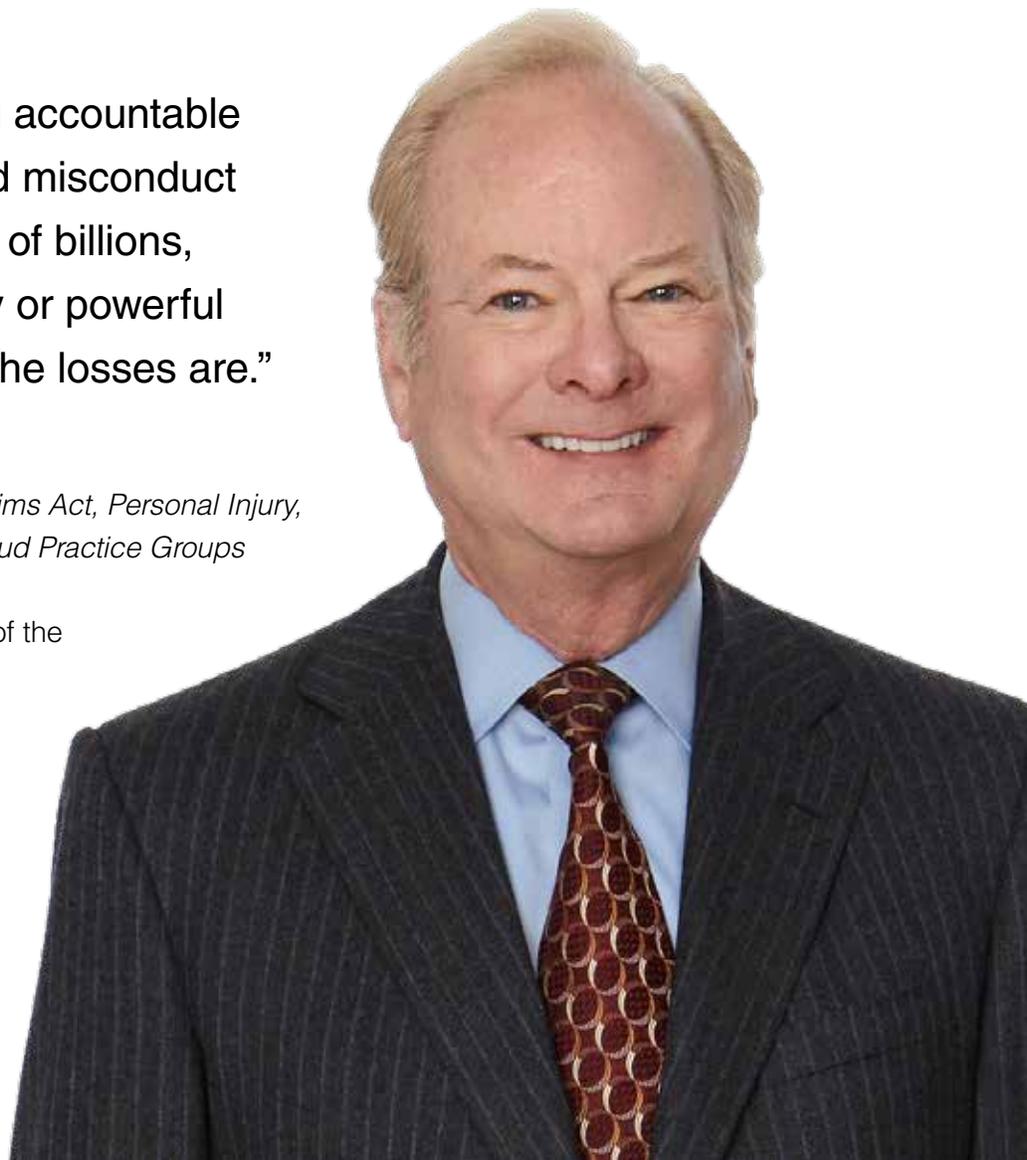


“Our passion is holding accountable those whose fraud and misconduct have robbed investors of billions, no matter how wealthy or powerful those responsible for the losses are.”

**Richard M. Heimann**

*Partner, Whistleblower/False Claims Act, Personal Injury, and Securities and Financial Fraud Practice Groups*

Recognized by *Law360* as one of the top 50 trial lawyers in the nation



# Medicare & Health Care Fraud Against the Government

**Many False Claims Act cases arise** in the \$2.5 trillion health care sector of our economy. Pharmaceutical and medical device companies have been held liable for significant damages for the fraudulent promotion of prescription drugs and devices purchased by the government through Medicare and other health care programs. Other examples of health care fraud include charging for unnecessary tests and procedures, double billing or charging for services not provided, providing kickbacks to physicians, and deceptive practices by hospice providers and nursing homes.

## Stopping Fraud by Pharmaceutical Companies

Lieff Cabraser has extensive experience in prosecuting claims against pharmaceutical companies for unlawful off-label marketing of prescription drugs, *e.g.* promoting drugs for unapproved uses without proof of their effectiveness.

Today, we are representing relators who have brought claims under the federal and state qui tam laws against Cephalon, Inc., a pharmaceutical company. The complaints allege that Cephalon has engaged in unlawful off-label marketing of certain drugs, largely through misrepresentations and kickbacks, causing the submission of hundreds of thousands of false claims for reimbursement to federal and state health care programs.

## Stopping Fraud by Hospital Chains

We represented whistleblower Rockville Recovery Associates in a suit against Sutter Health under the California Insurance Frauds Prevention Act. The Act is designed to prevent fraud against consumers of health insurance. The complaint charged that Sutter hospitals throughout California submitted fraudulent bills for anesthesia services to insurers and other payors.

We worked side-by-side with the California Department of Insurance, and achieved a **\$46 million** settlement on the eve of trial in November 2013. This is the largest award ever under the IFPA. In addition, Sutter Health agreed to a comprehensive series of billing and transparency reforms. For their outstanding work in the case, Robert Nelson and Nimish Desai were recognized as Finalists for the California Consumer Attorney of the Year award.

“Despite their vast resources, we take on the most powerful corporations in the United States and the world. Our attorneys make sure the truth is told and convince judges and juries that our client’s case is righteous.”

**Robert J. Nelson**

*Partner, Whistleblower/False Claims Act Practice Group;  
Recognized by Super Lawyers, Best Lawyers, and  
Benchmark Litigation as a top plaintiffs’ attorney*



## Ending Unlawful Conduct & Protecting False Claims Act Relators in the Workplace

Lieff Cabraser’s nationally-recognized employment lawyers have secured justice for employees and helped clients change the workplace in a wide variety of cases against some of the nation’s largest employers, including Walmart, Home Depot, IBM, Federal Express, and Smith Barney. We have recovered hundreds of millions of dollars in damages, back pay, and/or retirement benefits for workers.

Our Employment Practice Group is currently litigating precedent-setting class action lawsuits of national importance, including large gender discrimination cases against top Wall

Street firms, claims that many of the nation’s largest technology companies have fixed and suppressed high-tech workers’ wages, and claims involving improper wage deductions, as well as ERISA claims on behalf of employees and retirees for pension plan abuses.

We provide our False Claims Act clients with the knowledge of employment law and expertise on workplace issues that our employment attorneys possess. Our Qui Tam attorneys work closely with our employment attorneys in safeguarding our clients from retaliation by their employers.



**“Justice is about getting a remedy to right the wrong and fix the problem if possible.”**

**Wendy R. Fleishman**  
Partner, Whistleblower/False Claims Act and Personal Injury Practice Groups



**“Whistleblowers are a critical part of efforts to protect the public from fraud.”**

**Melissa Gardner**  
Partner, Whistleblower/False Claims Act and Personal Injury Practice Groups



**“We care for our clients, keep their best interests first and foremost, and assure they are educated and empowered so they can make informed decisions.”**

**Fabrice Vincent**  
Partner, Whistleblower/False Claims Act and Personal Injury Practice Groups



# Your Questions Answered

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You likely have many questions about the legal process and your individual case. We want you to be fully informed, so we are happy to answer them. If you have questions that are not answered here, please let us know.

## **1. What is the False Claims Act?**

The False Claims Act (FCA) is a federal law (31 U.S.C. Sections 3729 through 3733) that prohibits people from defrauding the federal government by knowingly presenting (or causing to be presented) a false or fraudulent claim to the government for payment. The FCA was designed to help U.S. taxpayers recover money stolen from the federal government.

The “*qui tam*” provision of the FCA allows a person or persons to act as a whistleblower and sue the wrongdoer on behalf of the U.S. government. In such cases, whistleblowers are referred to as “relators.” “*Qui tam*” comes from a Latin phrase meaning “he who sues for the king as well as for himself.” Typically, the whistleblower is or was employed by the company engaged in the wrongdoing. The FCA has express language forbidding retaliation by employers against whistleblowers.

## 2. Why was the FCA created?

In 1986, Congress recognized that the government, with its limited resources, could not on its own combat all of the fraud that was being perpetrated by contractors and those who receive payments from the government for services. Congress reinvigorated the FCA, a Civil War-era law, by strengthening its *qui tam* section to create incentives for private citizens to help the government fight fraud and recover monies owed to the government.

## 3. What are typical Whistleblower/False Claims Act cases?

False Claims Act cases involve a variety of government programs and/or contracts. Virtually any type of fraud in which the government has paid money, or has been billed for money, based on false claims will likely fall under the FCA. Many successful FCA cases have involved Medicare and military contracting fraud. Other successful cases have dealt with

federal funding for environmental, anti-terrorism, energy, farm, and education programs.

Here are some examples of frauds that have been prosecuted under the FCA:

- Billing the government for services and goods that were never rendered or delivered.
- Selling the government broken or untested equipment that fails to comply with contract specifications.
- Being overpaid by the government for a good or service and not reporting it.
- Skimming profits off the sale of municipal bonds.
- Mining or harvesting more natural resources from public lands than reported to the government.
- Lying to the government about the value of imported goods, or about where the goods came from.



“Our clients play the most important role in seeking justice by simply defending their rights – whether as employees, consumers, whistleblowers, or in countless other ways.”

**Nimish R. Desai**

*Partner, Whistleblower/False  
Claims Act Practice Group*

- Lying to the government about whether a contractor is a member of a minority group or a veteran.
- Billing the government for research that never occurred or was falsified.

Here are some examples that apply specifically to the field of health care:

- Performing and billing the government for unnecessary medical procedures in order to increase the amount of Medicare reimbursement.
- Charging the government twice for a service or good that only should have been billed once (double billing).
- Billing the government for brand name drugs where generic drugs were actually used.
- Using multiple billing codes on medical tests in order to increase government reimbursement for the test (unbundling).
- Lying to the government about the true wholesale price of prescription drugs in order to receive a greater reimbursement.
- Lying to the government by reporting – via billing codes – that a patient’s illness and costs were greater than they actually were (“upcoding”).
- Charging the government for work performed by a doctor that was actually performed by a nurse or resident intern.
- Unfairly billing by nursing homes to Medicare for certain services.
- Accepting unqualified patients or improperly revoking a patient’s hospice admission by hospice providers to take advantage of Medicare.

#### 4. Who can be a Relator?

Any person or entity that has evidence of a fraud occurring against federal contracts or programs can act as a relator under the False Claims Act. Anyone filing a lawsuit under the FCA’s *qui tam* provisions is known as a “relator.”

## Contact Lief Cabraser

If you would like to discuss a potential False Claims Act case, please call us toll-free at **1-800-541-7358** (San Francisco office, ask for attorney Lexi J. Hazam), **1-888-321-1510** (New York office, ask for attorney Rachel Geman), or **1-866-313-1973** (Nashville office, ask for attorney Mark P. Chalos).

More than one person or entity can jointly file a *qui tam* suit.

#### 5. What if someone else has already filed a FCA suit against the company I’m thinking of suing under the FCA?

If another person or the government has already filed a FCA suit based on the same fraud you’re aware of, it is possible your suit could be dismissed. This aspect of the FCA is sometimes called the “first to file” rule. That is why it is important to file your FCA suit as soon as possible.

#### 6. What are the benefits of exposing a Fraud Against the Government?

In addition to the benefit of helping to eliminate fraud on the government, there are important financial rewards. If a person who files a *qui tam* suit receives a favorable judgment or settlement in their case – thus allowing the government to recover money lost in the fraud – the person could receive 15 to 30 percent of the money that is recovered in the case. The government’s recovery could include up to three times the amount of money it paid out under the false claim, plus a penalty of \$5,500 to \$11,000 per false claim.

In order to be eligible to receive a portion of this payout, a person must have filed a *qui tam* suit.

Merely informing the government of the fraud is not enough under the FCA.

### **7. What should I do if I know about fraud against the government?**

Before you take any action, it is a good idea to consult an attorney who has experience handling False Claims Act cases and who can offer useful advice on how best to proceed and investigate your claims. If you decide to proceed with a *qui tam* case, your attorney can help you assemble as strong a case as possible. The more prepared you are before filing a suit, the higher your chance of success. It is also important not to discuss the fraud with anyone except your attorneys prior to filing your suit. If others hear of the fraud and file a *qui tam* suit before you, your suit is at risk of being dismissed. If the government discovers the fraud on its own and starts its own lawsuit or investigation before you file your *qui tam* suit, your suit will also be at risk for dismissal.

### **8. If I know about fraud, how quickly must I act? Is there a statute of limitations?**

Under the False Claims Act, a *qui tam* suit must be filed: 1) within six years from the date of the fraud; or 2) three years after the government knew or should have known about the fraud, and no later than 10 years after the fraud. Despite this lengthy period, the general rule is that the sooner you file your case, the better.

### **9. Would my employer know right away if I decided to file a *qui tam* suit or report their fraud to the government?**

Your employer should not know about the lawsuit and subsequent government investigation for at least several months or possibly even years. *Qui tam* suits are filed under seal and kept secret under the False Claims Act. Attorneys and government agents involved in investigating the allegations in a *qui tam* suit are not permitted to reveal any information about the suit while it's being

investigated. However, once the investigation is completed, the suit is made public and the employer/defendant is notified.

### **10. What role does the government play in a False Claims Act lawsuit?**

Once you have filed your *qui tam* suit under the False Claims Act, the government may decide to join your side in the suit. It is usually advantageous if the government decides to join your suit because your case will have the resources of the U.S. Department of Justice at its disposal. If the government declines to join you in your case, you can still proceed with it alone.

Working with experienced attorneys who have the capacity and experience to investigate and litigate complex cases from start to finish can increase the likelihood of the government joining your case, and is absolutely critical to the success of your case if the government declines intervention.

### **11. What are the remedies for False Claims Act violations?**

Those who violate the False Claims Act can be liable for three times the amount that the government was defrauded, plus penalties of \$5,500 to \$11,000 for each false claim. Each time the violator fraudulently billed the government counts as a separate claim. As a result, penalties can be an important component of an FCA claim.

### **12. What if I have information on a state being defrauded, as opposed to the federal government?**

Many states have their own version of the False Claims Act to discourage frauds against state and local governments. Among those states are: California, Delaware, Washington D.C., Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire,

New Jersey, New Mexico, New York, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, and Wisconsin. Some states have laws that mirror the federal FCA; others have laws limited to health care fraud; still others have unique provisions. It is important for your attorneys to be aware of these state-specific provisions.

### **13. What about tax fraud?**

The U.S. tax code has its own provisions that allow those exposing fraud to obtain a reward for reporting tax fraud. As with the False Claims Act, the IRS laws provide for Relators to be awarded 15 to 30 percent of the amount recovered, plus triple damages.

### **14. What about securities fraud and other types of financial fraud?**

The Dodd-Frank Wall Street Reform and Consumer Protection Act allows for any individual, or for two or more individuals acting jointly, to receive a reward if they provide the Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), or other agencies with information about violations of federal securities laws. Examples of securities laws violations that would fall into this category are insider trading, accounting fraud, bribing a foreign official (Foreign Corrupt Practices Act violations), and money laundering. In order to receive a reward, the information turned over by the Relator must lead to the government recovering \$1 million or more. If that requirement is met, the Relator can receive from 10 to 30 percent of the amount the government recovers.

These new Dodd-Frank whistleblower provisions also offer FCA-like protections against retaliation by employers.

Lieff Cabraser can provide valuable assistance for individuals considering being a Relator on securities or tax fraud. As with all False Claims Act suits, seeking an attorney's advice prior to

filing such a suit is highly recommended and can maximize your likelihood of success.

### **15. What are the risks associated with being a Relator? How would the False Claims Act protect me?**

Unfortunately, relators in FCA cases are commonly subject to retaliation. However, whistleblower protections have dramatically expanded in recent years due to the passage of new laws and pro-employee interpretations of existing law. One example is the explicit anti-retaliation provision under the False Claims Act. The degree of legal protection a Relator receives depends on the type of whistleblowing, the role of the Relator, and the type of company, among other issues.

### **16. How do I protect myself from retaliation for acting as a Relator?**

It is important that you seek legal advice early and meet with counsel. Lieff Cabraser has a nationwide, top-rated employment practice dedicated to protecting employees who have been treated unfairly, including being retaliated against by their employers for challenging illegal practices. Our False Claims Act and employment attorneys can advise you on whether and how to serve as a Relator and can protect you against retaliation.

### **17. Who can I contact for help in evaluating my case?**

Lieff Cabraser has an active False Claims Act practice representing Relators in both federal and state False Claims Act cases. Our attorneys are highly experienced and have a track record of success with such suits. We will review your claim for free and with no obligation. Please call us toll-free at **1-800-541-7358** (San Francisco office, ask for attorney Lexi J. Hazam), **1-888-321-1510** (New York office, ask for attorney Rachel Geman), or **1-866-313-1973** (Nashville office, ask for attorney Mark P. Chalos).

# Champions of Justice

**A strong, principled sense of social responsibility drives us.** We are committed to achieving justice for investors, consumers, employees, patients, and business owners; promoting safer products and fair competition; protecting our environment; assisting individuals blow the whistle on fraud; safeguarding the rights of patent and copyright holders; ensuring our right to privacy is preserved; and upholding the civil rights of citizens worldwide.

**Blending the highest quality legal skills** with deep financial resources, the firm has prevailed in complex cases involving the world's largest corporations. Many of our cases have resulted in landmark decisions and precedent-setting rulings, including:

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The Attorney General litigation against the tobacco industry

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Over \$15 billion in settlements with Volkswagen over its "Clean Diesel" emissions fraud

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Litigation against European banks and businesses to recover the assets of Holocaust victims and survivors

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A successful class action lawsuit against Walmart that reformed its pay procedures and employment practices

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The third-largest settlement ever in a stock-options backdating lawsuit

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Over \$1 billion in cash payments to homeowners in the Masonite defective siding and roofing cases

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A \$78.5 million settlement with the University of Phoenix, the largest settlement ever in a False Claims Act case involving the U.S. Department of Education

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Antitrust litigation against the world's leading manufacturers of TFT-LCDs for conspiring to fix prices that resulted in settlements totaling \$470 million

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Disclaimer: The outcome of your legal matter will depend upon the facts and applicable law of your case. Prior results do not guarantee a similar outcome.

## Lieff Cabraser Heimann & Bernstein

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