

Claims

False

**Lieff
Cabrer
Heimann &
Bernstein**
Attorneys at Law

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

American Lawyer

False Claims Act

The Brief

60+ attorneys

Offices in San Francisco, New York, and Nashville

Among the nation's largest plaintiffs' firms

Recovered over **\$85 billion** in verdicts and settlements for clients

Our False Claims Act practice includes cases involving fraud in:

Health care and medical billing services

Military and defense contracts

General government contracts

Student loans and education funding

Securities and financial industry

Recent successes in False Claims Act cases include:

University of Phoenix - \$78 million settlement

ATK Launch Systems - \$37 million settlement

Avaya, Lucent & AT&T - \$21.75 million settlement

Upholding the Public Interest

The False Claims Act prohibits people and companies from knowingly defrauding the federal government. Almost any type of fraud in which the government has paid money based on fraudulent claims likely falls under the statute. Violations can result in a judgement equal to three times the amount of the losses the U.S. government sustained, plus civil fines.

Some states also have similar state False Claims Act statutes to root out fraud against state governments. In addition, there are a number of recently-enacted or recently-strengthened statutes that reward and protect whistleblowers who bring misconduct involving violation of U.S. laws, such as the securities laws, to the government's attention.

Lieff Cabraser has applied its four decades of experience combating fraud and obtaining billions of dollars in recoveries for individuals in employment, securities, torts, and consumer cases to its growing and active False Claims

Act practice. We represent whistleblowers in a wide range of federal and state False Claims Act and other whistleblower cases.

We bring what it takes to achieve justice.

We possess the determination, experience, and skill to appropriately investigate complex matters and take them all the way through trial, if necessary. We also have a nationally recognized, long-established employment practice group, with committed lawyers who have helped change improper workplace practices and who understand the unique pressures whistleblowers face in the workplace setting.

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

“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 & Chair of False Claims Act Practice Group
Recognized by *Super Lawyers*, *Best Lawyers*, *Lawdragon*,
and *Benchmark Plaintiff* 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:

Benchmark Plaintiff

Best Lawyers

Best Lawyers/U.S. News Best Law Firms

California Lawyer Attorneys of the Year

Daily Journal’s Top Practice Groups

Daily Journal’s Top 100 Attorneys in California

Lawdragon’s Top 500 Plaintiffs’ Lawyers

Legal 500

Martindale Hubbell AV Preeminent Peer Review

National Law Journal’s 100 Most Influential Lawyers in America

National Law Journal’s Plaintiffs’ Hot List

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

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

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

Principled Advocacy, Extraordinary Results

University of Phoenix False Claims Act Case

We obtained a record whistleblower 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. This creates a risk of recruiting unqualified students who are more likely to default on their loans. High student default rates result in wasted federal funds and place tremendous and potentially life-long debt burdens on borrowers.

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 settlement constitutes the largest settlement ever involving the 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.

The University of Phoenix case led to new regulations that took away the so-called “safe harbor” provisions that for-profit universities relied on to justify their alleged recruitment misconduct. For his outstanding work as Lead Counsel and the significance of the case, *California Lawyer* magazine recognized Lief Cabraser attorney Robert J. Nelson with the California Lawyer Attorney of the Year (CLAY) Award.

ATK Launch Systems

We served as co-counsel for a whistleblower who alleged that ATK Launch Systems knowingly sold defective and potentially dangerous illumination flares to the United States military in violation of the federal False Claims Act. The specialized flares were used in nighttime combat, covert missions, and search and rescue operations. A key design specification set by the Defense Department required that these highly flammable and dangerous flares ignite only under certain conditions. The complaint alleged that the ATK flares at issue could ignite when dropped from a height of less than 10 feet – and, according to ATK’s own analysis, from as little as 11.6 inches – notwithstanding a contract specification that they be capable of withstanding a 10-foot drop. In April 2012, the parties reached a settlement valued at **\$37 million**, which will include the retrofit of tens of thousands of flares.

Avaya, Lucent & AT&T

We represented whistleblowers in litigation alleging that Avaya charged federal and state agencies for the lease, rental, and post-warranty maintenance of antiquated telephone communications systems and services that federal and state governmental agencies no longer possessed and/or were no longer maintained by defendants. In November 2010, the parties entered into a **\$21.75 million** settlement of the litigation.



Best Lawyers and U.S. News selected Lief Cabraser as the national “Law Firm of the Year” for plaintiffs in class actions and mass torts.

Contact Lief Cabraser
If you would like to discuss a potential whistle-blowing or retaliation concern, please call us toll-free at **1-800-541-7358** (San Francisco), or **1-888-321-1510** (New York). We will review your claim for free and with no obligation.



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

Rachel Geman

Partner, False Claims Act and
Employment Practice Groups
Recognized by *Super Lawyers*
and *Best Lawyers* as a top attorney

Protecting Employees and Ending Improper Conduct in the Workplace

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

Our employment lawyers are 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.

Our goal is not only to recover compensation for employees and job applicants who have suffered legal violations but also to require employers to comply with the law. We safeguard employees against retaliation, and understand the risks, and benefits, of exposing fraud or misconduct in the workplace.

Blowing the Whistle on Medicare and Health Care Fraud

Many False Claims Act lawsuits involve the field of health care. Pharmaceutical companies have been liable for significant damages and penalties for the fraudulent promotion of prescription drugs purchased by the government through Medicare and Medicaid programs. Other examples of health care fraud include kickbacks paid to physicians, false statements made to obtain payment for unnecessary tests and procedures, double billing of charges, and inappropriate practices by hospice providers and nursing homes in how they bill Medicare and Medicaid.

Remedying Fraud By Pharmaceutical Companies and Hospitals

Lieff Cabraser has extensive experience in prosecuting claims against pharmaceutical companies for knowingly marketing prescription drugs for unapproved uses without proof of their effectiveness.

We helped obtain a **\$142 million** jury verdict for the Kaiser Foundation Health Plan against Pfizer for fraudulent promotion of the prescription drug Neurontin. We also spearheaded groundbreaking and successful litigation against the largest hospital chains in California for charging low income and uninsured patients grossly inflated bills for medical care and wrongfully denying these patients discounted and free medical care under state law. Under the settlements, almost a million uninsured patients received refunds or bill adjustments, and millions benefited from dramatically reduced prices.

Assisting Whistleblowers in Stopping Health Care Fraud

Lieff Cabraser represents 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 charges that Sutter hospitals throughout California submit fraudulent bills for anesthesia services to insurers and other payors. Lieff Cabraser is working side-by-side with the California Department of Insurance, which has intervened in the action against Sutter, in this cutting-edge litigation.

Blowing the Whistle on Securities and Financial Fraud

Untangling the Real Story

Lieff Cabraser has a long and successful track record of winning tough, complex cases against powerful corporations and corporate executives who have committed securities and financial fraud.

In 2011, we settled a shareholders' derivative lawsuit against former Broadcom executives and co-founders, despite a federal judge throwing out the government's criminal case against the defendants arising from the same misconduct as the civil suit. With a total value of **\$197 million**, the settlement was the third-largest settlement ever in a stock options back dating lawsuit.

This year we achieved a **\$65 million** settlement in an action against AXA Rosenberg Group, LLC and its affiliates ("AXA") for losses investors suffered due to a multi-year coding error in AXA's computer-driven investment system. We worked with experts to analyze data obtained in discovery from AXA to show the negative financial impact of the error.

Assisting Whistleblowers in Stopping Fraud By Major Financial Institutions

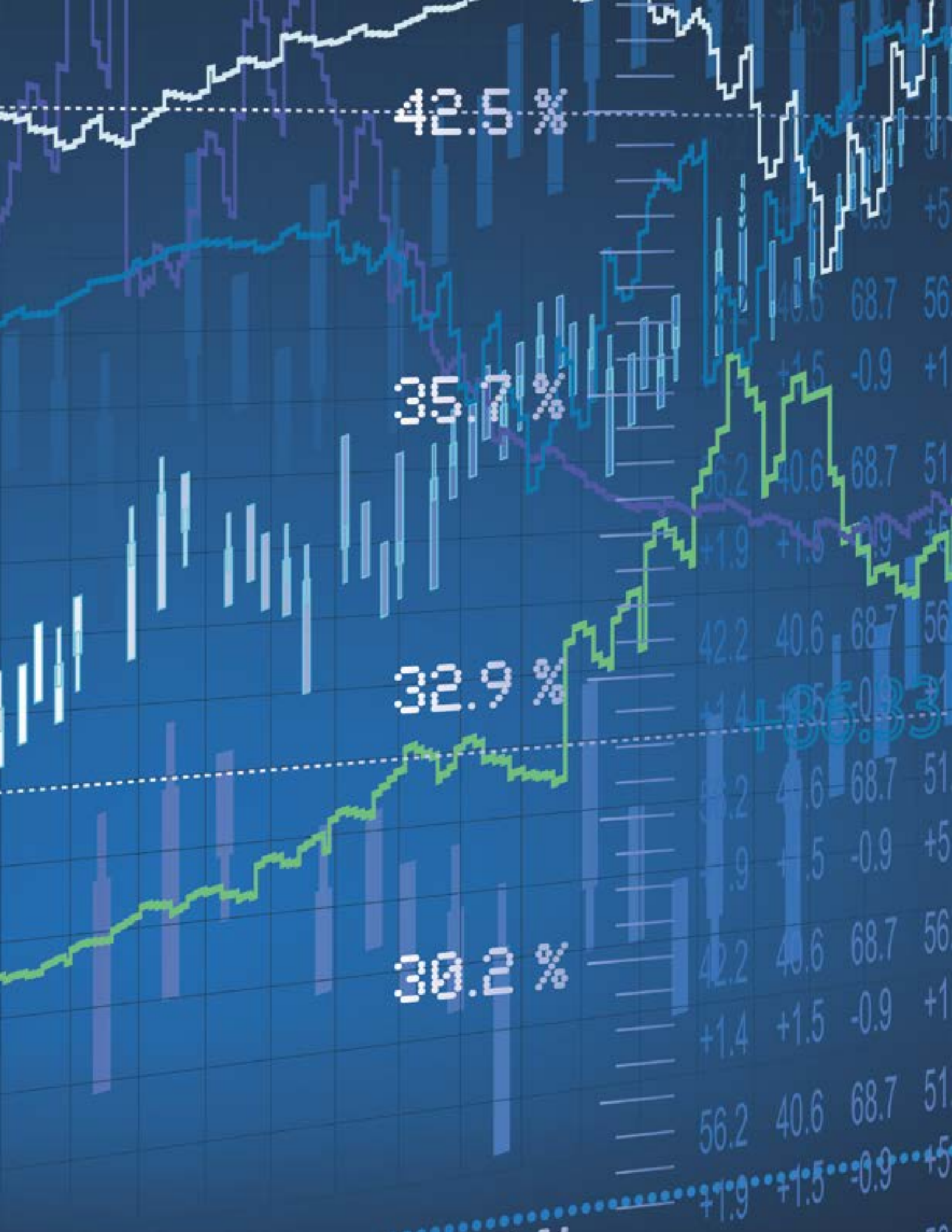
We bring the same expertise in uncovering and remedying financial fraud that we employ in our Securities and Financial Fraud practice group to our False Claims Act practice group. Lieff Cabraser is prosecuting two cases alleging financial fraud on a massive scale arising out of foreign currency exchange transactions that occurred when our clients purchased or sold foreign securities. In *State of California*

ex rel. Associates Against FX Insider Trading v. State Street Corp., the complaint charges that State Street Corporation, which serves as the contractual custodian for CalPERS and CalSTRS as well as 40% of public pension funds in the U.S., systematically manipulated the timing of foreign exchange trades in order to enrich itself, at the expense of public pension funds.

Lieff Cabraser is also counsel in *In re Bank of New York Mellon Corporation False Claims Act Foreign Exchange Litigation*, a California False Claims Act claim on behalf of the Los Angeles County Employees' Retirement Association Fund and nine other California municipal and county pension funds. The complaint charges that The Bank of New York Mellon Corporation charged false foreign exchange rates for over a decade, keeping for itself the difference between the false and actual price of each foreign exchange transaction.

Dodd-Frank Wall Street Reform and Consumer Protection Act

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 laws. Examples include insider trading, accounting fraud, money laundering, and bribing a foreign official. Whistleblowers can also recover a share of monies owing to the government by virtue of tax fraud. Contact a Lieff Cabraser attorney if you want to discuss such potentially improper conduct.



42.5 %

35.7 %

32.9 %

30.2 %

68.7 56
51
40.6
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31
+1.5
-0.9
+1
68.7 51
56
+1.9 +1.5 -0.9 +5
42.2 40.6 68.7 56
+1.4 +1.5 -0.9 +1
56.2 40.6 68.7 51
+1.9 +1.5 -0.9 +5

“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, False Claims Act Practice Group



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

Wendy R. Fleishman
Partner, False Claims Act and Mass Torts Practice Groups



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

Lexi Hazam
Partner, False Claims Act and Mass Torts Practice Groups

“We share our clients’ dedication to serving the public’s interest in combating frauds committed against government institutions and other entities.”

Marc Pilotin
Associate, False Claims Act Practice Group



“Whistleblower cases are critical to efforts to end fraudulent appropriation of funds from the public.”

Alison Stocking
Associate, False Claims Act and Employment 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, False Claims Act and Mass Torts Practice Groups

Your questions answered

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 people to act as whistleblowers 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 combat on its own all of the fraud that was being perpetrated by contractors and those who receive payments from the government for services. Congress rejuvenated 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 owing to the government.

3. What are typical 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 already 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.
- 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.
- Nursing home practices that unfairly bill Medicare for certain services.
- Hospice providers that accept unqualified patients or that improperly revoke a patient’s hospice admission to take advantage of Medicare.

4. Who can be a whistleblower?

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

6. What are the benefits of being a whistleblower?

In addition to the benefit of helping to eliminate fraud against 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 that 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 FCA 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 suit, the higher your chance of success. It is also important not to discuss the fraud with anyone but 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. Also, 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 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 whistleblower 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.



Every year since 2003, the *National Law Journal* has selected Lieff Cabraser as one of the nation's top plaintiffs' law firms.

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, Hawai'i, 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 whistleblowers to obtain a reward for reporting tax fraud. As with the False Claims Act, the IRS whistleblower provisions provide for whistleblowers 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 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 whistleblower must lead to the government recovering \$1 million or more. If that requirement is met, the whistleblower 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 whistleblower on securities or tax fraud. As with FCA suits, seeking an attorney's or tax 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 whistleblower? How would the False Claims Act protect me?

Unfortunately, whistleblowers 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 whistleblower receives depends on the type of whistleblowing, the role of the whistleblower, and the type of company, among other issues.

16. How do I protect myself from retaliation for whistleblowing?

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 whistleblower and can protect you against retaliation.

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

Lieff Cabraser has an active practice representing whistleblowers 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), or **1-888-321-1510** (New York).



Benchmark Plaintiff, published by the Legal Media Group, has rated Lieff Cabraser as one of the nation's top plaintiffs' law firms for antitrust, employment, and mass tort/product liability law.

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**Lieff Cabraser
Super Lawyers**

Published annually by *Thomson Reuters*, Super Lawyers constitute the top five percent of attorneys surveyed in each state, chosen by their peers and through independent research.

Champions of Justice

A fundamental drive to fight unfairness and achieve justice for our clients has characterized Lief Cabraser since our founding in 1972. With powerful determination, we have fought to promote safer products; ensure fair competition; advance the rights of consumers, employees, patients, investors, and business owners; safeguard the environment; and remedy civil rights violations of citizens worldwide.

Blending the highest quality legal skills and investigative acumen 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:

The Attorney General litigation against the tobacco industry

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

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

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

A \$54 million jury verdict against an auto manufacturer for failing to correct a known defect in millions of its vehicles

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

An award of \$203 million against Wells Fargo Bank for manipulating the processing of customer debit card purchases to maximize overdraft fees

Antitrust litigation against natural gas and electricity companies for manipulating prices in California resulting in settlements valued at \$1.3 billion

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.

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