

March 24 – 25, 2021 (EDT)  Virtual Conference

 **EARN CLE/ETHICS  
CREDITS**

8<sup>th</sup> Annual Advanced Forum on

# False Claims and *Qui Tam* Enforcement

Responding to the Expanding Reach of the FCA

## Fireside Chat with:



**Michael Granston**  
Deputy Assistant Attorney General, Civil Division  
U.S. Department of Justice

## Insights from Key Industry Stakeholders at:

- AECOM
- BAE Systems, Inc.
- Davita Healthcare
- Fresenius Medical Care North America
- GE Aviation
- Huntington Ingalls Industries, Inc.
- Johnson & Johnson
- Northrop Grumman
- Northwell Health
- Pfizer Inc.
- U.S. Bank

## Featuring a Special Pandemic Recovery Roundtable with:



**Erin Nealy Cox**  
United States Attorney  
Northern District of Texas



**Andrew E. Lelling**  
United States Attorney  
District of Massachusetts



**G. Zachary Terwilliger**  
United States Attorney  
Eastern District of Virginia



**Nicholas A. Trutanich**  
United States Attorney  
District of Nevada

## MODERATED BY:



**Brian D. Miller**  
Special Inspector General for  
Pandemic Recovery (SIGPR)  
U.S. Department of The Treasury

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In its yearly statistics for False Claims Act and fraud cases for fiscal year 2019, the DOJ reported that it recovered \$3 billion in final judgments and settlements, despite conspicuously less new *qui tam* and non-*qui tam* filings. These statistics also show a sustained and aggressive use of the False Claims Act by the government and *Qui Tam* relators alike.

In line with this, the DOJ announced in the fall of 2020 that the Civil Division will “energetically use every enforcement tool available to prevent wrongdoers from exploiting the COVID-19 crisis.” This thinking coincides with the continuing rising trend in government-initiated FCA actions leaving practitioners wondering:

- ▶ What will total recoveries amount to at the end of Fiscal '20?
- ▶ What can we expect for Fiscal '21?
- ▶ Where will government enforcement priorities lie?
- ▶ Which industries are at greatest risk?
- ▶ What can you do now to prepare for the next wave of FCA enforcement and protect your client’s interests?

This year’s *ACI’s Advanced Forum on False Claims and Qui Tam Enforcement* will address the underlying controversies and challenges posed by these questions.

Join us for in-depth discussions and analyses of the latest guidance, initiatives and enforcement statistics. This year’s forum will feature a faculty of senior government speakers.

The forum will also feature leading in-house counsel from industries most impacted by the expanding reach of the False Claims Act, including healthcare, pharmaceutical, defense, aerospace, tech & communication and financial services.

You will also hear directly from leading defense counsel and relators’ counsel, who have defended and settled these cases.

In addition, the event will offer unparalleled virtual networking opportunities which will allow you to stay safe, benchmark and engage with a wide range of practitioners from across the country.

**SECURE YOUR SPOT NOW**

## Reimagining the Way We Deliver Conferences

Our virtual conferences are the same conferences you have come to expect in person but transformed to a virtual format. The new virtual conference delivers the same access to a community of industry leaders we have spent decades building and nurturing. We invite you to be part of this community.



Immerse yourself in live presentations, panel discussions and benchmarking opportunities.



Engage in meaningful dialogue with attendees and speakers in an interactive format.



Expand your network and make new connections.

[View Demo](#)

## DOJ False Claims Act Recoveries in 2019



**\$3.1B**

Recovered due to False Claims Act lawsuits



**\$37.92B**

Recovered since 2010



**782**

New FCA cases filed in 2019



**72%**

Of all FCA recoveries were related to claims brought by whistleblower

### FCA RECOVERIES BY SECTOR BY DOLLARS RECOVERED



# Distinguished Faculty

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**Joseph "Jody" Hunt**  
Senior Counsel  
**Alston & Bird LLP**  
(Former Assistant Attorney General, Civil Division, United States Department of Justice)



**Gregg Shapiro**  
Special Counsel to Special Inspector General for Pandemic Recovery (SIGPR)  
**U.S. Department of The Treasury**

## GOVERNMENT



**Christopher Cooke**  
Special Counsel to Special Inspector General for Pandemic Recovery (SIGPR)  
**U.S. Department of The Treasury**



**Erin Nealy Cox**  
United States Attorney  
**Northern District of Texas**



**Michael Granston**  
Deputy Assistant Attorney General, Civil Division  
**U.S. Department of Justice**



**Rachael A. Honig**  
First Assistant U.S. Attorney  
**U.S. Attorney's Office**



**Andrew E. Lelling**  
United States Attorney  
**District of Massachusetts**



**G. Zachary Terwilliger**  
United States Attorney  
**Eastern District of Virginia**



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United States Attorney  
**District of Nevada**



**Brian D. Miller**  
Special Inspector General for Pandemic Recovery (SIGPR)  
**U.S. Department of The Treasury**



**John Vogelatos**  
Assistant United States Attorney, Criminal Division  
**United States Attorney's Office Eastern District of New York**

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**GE Aviation**



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**King & Spalding LLP**  
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Corporate Counsel, Litigation & Investigations  
**Northrop Grumman**



**Yvonne Cristovici**  
Vice President, Compliance Investigations and Audit  
**Davita Healthcare**



**Jacob T. Elberg**  
Associate Professor  
**Seton Hall University School of Law**  
(Former Chief, Health Care & Government Fraud Unit, U.S. Attorney's Office, District of New Jersey)



**Precious Murchison Gittens**  
Sr. Director,  
Compliance Investigations  
**Fresenius Medical Care North America**



**Gejaa T. Gobena**  
Partner  
**Hogan Lovells**



**Savaria B. Harris**  
Senior Counsel, Regulatory Law  
**Johnson & Johnson**



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Partner  
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**Heidi A. Wendel**  
Attorney At Law  
**Law Office of Heidi A. Wendel PLLC**



**Maryana Zubok**  
Assistant General Counsel  
**Pfizer Inc.**

Media Partner:



# Day One | March 24, 2021 (EDT)



8:15 1:1 Networking and Virtual Lobby

Make new connections, face-to-face. Enjoy a new interactive feature that will introduce you to fellow industry leaders for a quick conversation.

8:35

## Opening Remarks from the Co-Chair

 **Joseph "Jody" Hunt**, *Senior Counsel, Alston & Bird LLP*  
(Former Assistant Attorney General, Civil Division, United States Department of Justice)

8:45

## Investigating and Developing False Claims Act Cases in the Context of the CARES Act: Thinking Outside of the Box in Unprecedented Times

 **Erin Nealy Cox**, *United States Attorney, Northern District of Texas*

**Andrew E. Lelling**, *United States Attorney, District of Massachusetts*

**G. Zachary Terwilliger**, *United States Attorney, Eastern District of Virginia*

**Nicholas A. Trutanich**, *United States Attorney, District of Nevada*

**MODERATOR:**

**Brian D. Miller**, *Special Inspector General for Pandemic Recovery (SIGPR), U.S. Department of The Treasury*

The Special Inspector General for Pandemic Recovery is working with United States Attorneys to pursue those who defraud or abuse recovery programs under the CARES Act. A principal tool is the False Claims Act. This session will address how the United States Attorneys will be approaching enforcement of False Claims Act violations.



9:45 1:1 Networking / Break

Make new connections, face-to-face. Enjoy a new interactive feature that will introduce you to fellow industry leaders for a quick conversation.

10:15

## Mitigating False Claims Violations: Cooperation Credits One Year Later

 **Derek Adams**, *Partner, Potomac Law Group, PLLC*

**Rachael A. Honig**, *First Assistant U.S. Attorney, U.S. Attorney's Office, District of New Jersey*

**Jacob T. Elberg**, *Associate Professor, Seton Hall University School of Law*  
(Former Chief, Health Care & Government Fraud Unit, U.S. Attorney's Office, District of New Jersey)

At last year's conference, then Deputy Associate Attorney General Stephen Cox shed light on the USDOJ's cooperation incentives and conveyed that USDOJ is prepared to consider the nature and effectiveness of an organization's compliance system because a robust program may reveal a lack of scienter whereas a "paper tiger" program could show the opposite. Building on this, we will explore developments in cooperation credits and:

- Identify the types of cooperation that may reduce penalties and bases to assert entitlement to cooperation credit
- Analyze reductions in the damages multiplier and civil penalties and public acknowledgments of cooperation
- Ample time will be left for Q&A, so come prepared with your questions!

11:15

## The Impact of COVID-19 on False Claims and Qui Tam Enforcement

 **Christopher Cooke**, *Special Counsel to Special Inspector General for Pandemic Recovery (SIGPR), U.S. Department of The Treasury*

**Ethan Davis**, *Partner, King & Spalding LLP*  
(Former Acting Assistant Attorney General, Civil Division, U.S. Department of Justice)

**Scott R. Landau**, *Founding Partner, Abell Eskew Landau LLP*

**MODERATOR:**

**Rebecca C. Martin**, *Partner, Jones Day*

Ethan Davis, then Principal Deputy Assistant Attorney General for USDOJ's Civil Division, announced that the Civil Division will "energetically use every enforcement tool available to prevent wrongdoers from exploiting the COVID-19 crisis." He cited the False Claims Act as one of the most effective "weapons" in the Civil Division's armory, which he stated will be utilized against those who commit fraud linked to the array of coronavirus relief programs.

This session will detail the USDOJ's False Claims Act enforcement priorities to date, and consider trends and investigations that could develop from the coronavirus and related stimulus expenditures, including:

- Analyzing the risks of enforcement against companies that received COVID-19 relief funds under the CARES Act
  - » Representations, certifications and the retention of funds
  - » Strategies for mitigating these risks



12:15 1:1 Networking / Break

Make new connections, face-to-face. Enjoy a new interactive feature that will introduce you to fellow industry leaders for a quick conversation.

12:45

## Internal Investigations, In-Person and Remote: The Important Questions Many Forget – and How to Address Them

 **Michael Bishop**, *Global Chief Litigation Counsel, GE Aviation*

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

**Ann Claire Phillips**, *Senior Vice President, Chief Government Investigations Counsel, Chief Risk Officer, Legal, U.S. Bank*

**Gejaa T. Gobena**, *Partner, Hogan Lovells*

**MODERATOR:**

**Peter Leininger**, *Partner, King & Spalding LLP*

- Reviewing the impact of recent enforcement actions and settlements
  - » Right-sizing internal investigations
- Managing the scope internal investigations
- Pitfalls to avoid when identifying confidentiality and privilege red flags
- Best practices for investigations with former employees
- Lessons learned from remote document collection
- Considerations for recording interviews
  - » Identifying risks to preserving privilege
- Conducting remote investigations and remote interviews
  - » Interaction with law enforcement and data transfer challenges



1:45 1:1 Networking / Break

Make new connections, face-to-face. Enjoy a new interactive feature that will introduce you to fellow industry leaders for a quick conversation.

## FCA Retrospect for the Health Care and Life Sciences Industries

2:15

### The FCA and Nursing Homes: A Target Before and After the Pandemic

 Courtney Gilligan Saleski, Partner, DLA Piper

In recent years, USDOJ increased their efforts to thwart the fraud occurring in national nursing facilities. Prior to the pandemic, their target areas included improper care and billing at nursing homes/skilled nursing facilities. On March 3, 2020, Attorney General William Barr announced the launch of the Department's National Nursing Home Initiative, which will coordinate and enhance the civil and criminal efforts to pursue nursing homes that provide grossly substandard care to their residents.

*As industry appeals for additional relief, this session will consider how best to minimize the increasing risk of liability under the False Claims Act, before and after COVID-19.*

3:15

### Speaker Programs and Co-Pay Assistance Post-Novartis

 Savaria B. Harris, Senior Counsel, Regulatory Law, Johnson & Johnson

Marcos E. Hasbun, Partner, Zuckerman Spaeder LLP

Heidi A. Wendel, Attorney At Law, Law Office of Heidi A. Wendel PLLC

#### MODERATOR:

Christopher B. Harwood, Partner, Morvillo Abramowitz Grand Iason & Anello, P.C.

At the time of press, according to USDOJ, the government has collected over \$900 million from ten pharmaceutical companies for violations of the False Claims Act relating to the use of third-party foundations as kickback vehicles. Numerous settlements between USDOJ and pharmaceutical companies have revealed the details of federal investigations into alleged improper physician speaker programs and co-pay assistance.

*This session will review recent case law and enforcement trends and consider the circumstances and formats speaker programs can take place.*

4:00 Break

4:45

### View from the Relator's Bar: How to Avoid Turning Your Employees into Whistleblowers

 Pamela Coyle Brecht, Partner, Pitetragallo Gordon Alfano Bosick & Raspanti, LLP

Renée Brooker, Of Counsel, Finch McCranie LLP

- Studying strategies for seeking the government's intervention and dealing with government declination:
- How to present a strong case
- When to assist the government's investigation
- Deciding when to file and knowing what factors to consider when bringing a claim
- Figuring out what to do when the government declines and learning how the government can help in a declined case (obtaining information and statements of interest/amicus briefs)
- Considering when relators go it alone
  - » Resolving why more relators are pursuing declined cases



5:30

### Fireside Chat

 Michael Granston, Deputy Assistant Attorney General, Civil Division, U.S. Department of Justice

#### INTERVIEWED BY:

Joseph "Jody" Hunt, Senior Counsel, Alston & Bird LLP  
(Former Assistant Attorney General, Civil Division, United States Department of Justice)

6:00 Conference Adjourns to Day Two



## Who Will You Meet?

Unlike any other conference, ACI's Advanced Forum on False Claims & Qui Tam Enforcement brings everyone to the table. Benefit and benchmark during interactive think tank sessions from the viewpoints of the:

- ▶ U.S. Attorney's Office
- ▶ U.S. Department of The Treasury
- ▶ In-House Counsel
- ▶ Defense bar
- ▶ Relator

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

- ▶ AECOM
- ▶ BAE Systems, Inc.
- ▶ Davita Healthcare
- ▶ Fresenius Medical Care North America
- ▶ GE Aviation
- ▶ Huntington Ingalls Industries, Inc.
- ▶ Johnson & Johnson
- ▶ Northrop Grumman
- ▶ Northwell Health
- ▶ Pfizer Inc.
- ▶ U.S. Bank

“

*This conference provides a tremendous annual opportunity for attorneys from the government, relator and defense bar to gather, present and discuss trends and issues concerning the False Claims Act in a structured, intimate, and informal setting. ”*

Savaria B. Harris, Senior Counsel, Regulatory Law, Johnson & Johnson

“

*Year after year, this forum provides practitioners from all perspectives a unique opportunity to learn about and engage in an open and frank dialogue regarding the most important enforcement trends, case developments, and practice tips in the False Claims Act arena. ”*

Douglas W. Baruch, Partner, Morgan, Lewis & Bockius LLP

# Day Two | March 25, 2021 (EDT)



8:30 1:1 Networking and Virtual Lobby

Make new connections, face-to-face. Enjoy a new interactive feature that will introduce you to fellow industry leaders for a quick conversation.

8:45

## Co-Chair's Recap of Day One

9:00

SCOTUS WATCH

## Reevaluating the Government's Dismissal Authority Pursuant to the FCA

Sarah A. Maguire, Senior Counsel, Air Force Solutions, Intelligence & Security, **BAE Systems, Inc.**

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

In August of 2020, the Seventh Circuit created what is now the third standard for evaluation motions to dismiss, pursuant to the government's FCA dismissal authority. Now interpreting an apparent three-way split on the issue of dismissal authority, the FCA community is calling on the US Supreme Court to weigh in and resolve the puzzling incongruity. This session will outline the developments as they came down and offer best practices for preparing for the future, whether SCOTUS grants cert, or not.



10:00 1:1 Networking / Break

Make new connections, face-to-face. Enjoy a new interactive feature that will introduce you to fellow industry leaders for a quick conversation.

10:30

## Dissecting the Evolving Interpretation of the FCA's Materiality and Scierter Requirements

Marcia G. Madsen, Partner, **Mayer Brown LLP**

Kirsten V. Mayer, Partner, **Ropes & Gray LLP**

- Exploring the recent flurry of False Claims Act cases interpreting Escobar and its progeny
  - » Reviewing the circuit splits post-Escobar as they construe materiality and falsity
- Assessing the developing caselaw regarding the standard to prove causation between a false statement and subsequent damages
- Analyzing the Supreme Court's decision in the Cochise case
  - » Understanding the expansion of time for private suits under the False Claims Act

- Understanding the connection between Rule 9(b)'s particularity standard and the materiality requirement
- Evaluating courts decisions and factors considered before barring later-filed cases

11:30

AUDIENCE POLLING

## Town Hall Q&A Session with Targeted Industries: Expectations of In-House Counsel from Their Law Firm Partners

Jay Cox, Corporate Counsel, Litigation & Investigations, **Northrop Grumman**

Yvonne Cristovici, Vice President, Compliance Investigations and Audit, **Davita Healthcare**

Sarah Levitt, Corporate Vice President & Assistant General Counsel, **AECOM**

Maryana Zubok, Assistant General Counsel, **Pfizer Inc.**

Senior corporate counsel from 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 evaluate the economic considerations associated with these tasks as they seek not only to diminish reputational harm, but financial risk as well. Topics of discussion will include:

- Business perspectives on internal assessment of cases
- Determining best settlement strategies
- How external counsel can best serve companies
- Internal investigations: how to focus the investigations where they need to be focused

Ample time will be left for Q&A, so come prepared with your questions!



12:30 1:1 Networking / Break

Make new connections, face-to-face. Enjoy a new interactive feature that will introduce you to fellow industry leaders for a quick conversation.

1:15

## The Evolving Parallel Proceedings Landscape: Navigating Complexities, Avoiding Traps and Landmines

Gregg Shapiro, Special Counsel to Special Inspector General for Pandemic Recovery (SIGPR), **U.S. Department of The Treasury**

J.B. Perrine, Assistant General Counsel, **Huntington Ingalls Industries, Inc.**

Jennifer Short, Partner, **Kaiser Dillon PLLC**

- 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

2:15

## Winning Strategies for Reaching a Favorable Agreement with the Government

John Vagelatos, Assistant United States Attorney, Criminal Division, **United States Attorney's Office, Eastern District of New York**

Jason Mehta, Partner, **Bradley Arant Boult Cummings 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
- Understanding discounts provided when negotiating settlements and what the DOJ considers "cooperation"



3:15 1:1 Networking / Break

Make new connections, face-to-face. Enjoy a new interactive feature that will introduce you to fellow industry leaders for a quick conversation.

3:45

ETHICS

## Interactive Ethical Considerations for the FCA Litigator

Precious Murchison Gittens, Sr. Director, Compliance Investigations, **Fresenius Medical Care North America**

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.

4:45

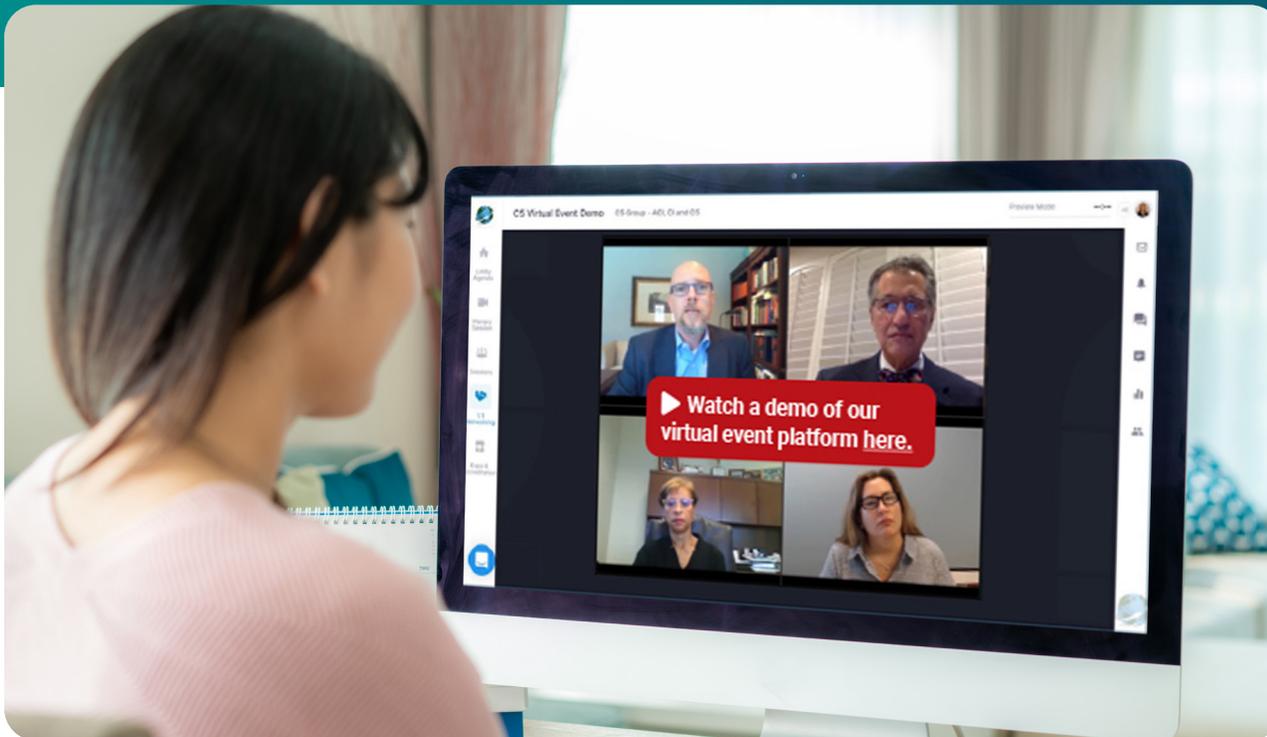
Conference Concludes

# Join Us Virtually this March!

As the current global situation continues to unfold, we understand that it may not be possible to attend our events in person.

At the same time, we also understand that collaboration is more vital than ever and for that, you can still rely on ACI to bring the industry together but in a different way. We are transforming quickly to ensure you can now connect virtually and continue to gain unparalleled access to market leading intelligence and to the facilitation of a global exchange of expertise.

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