False Claims Act/Qui Tam

Weil's lawyers help multi-national companies across industries navigate the complex litigation risks posed by the changing face of False Claims Act (FCA) legislation, as well as develop risk analysis, risk management, and compliance best practices to avoid litigation in the first place.

The Weil team brings extensive experience and a track record of success representing clients in litigation brought under federal and state FCA statutes.

Our lawyers – which include nationally recognized commentators on the False Claims Act, former government officials, a number of leading trial attorneys, and appellate practitioners – are well-versed in all aspects of FCA litigation and investigations, including lawsuits brought by qui tam relators, lawsuits where the government chose not to intervene, civil and criminal litigation brought by government agencies, and related government and internal investigations. Additionally, we have successfully handled FCA cases through all phases of litigation before federal and state trial and appellate courts, including the U.S. Supreme Court.

We have tried or supervised to trial both the prosecution and defense of FCA matters, resolved FCA cases on motion, engineered successful FCA settlements, counseled clients on significant internal investigations into FCA-related issues, and performed substantive due diligence in the context of M&A and other corporate transactions.

Our experience includes the application of all relevant statutory and non-statutory defenses, including the public disclosure bar, the first-to-file rule, the statute of limitations, the tax bar, and the government knowledge defense, among others.

We have obtained noteworthy victories for our clients, including a major decision from the U.S. Supreme Court that interpreted the public disclosure bar of the FCA and a high-profile win before the Appellate Division of the New York State Supreme Court that is one of the first appellate decisions interpreting the New York State FCA.

Finally, we have advised a number of companies on the development of compliance programs, so that they can take steps to avoid or limit FCA risk, and develop the best record possible to defend against any FCA claims that do arise.

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AIG

In August 2017, Weil obtained the complete dismissal with prejudice of a hybrid False Claims Act (FCA) and securities fraud qui tam complaint filed in the U.S. District Court for the Southern District of New York. The complaint brought seven claims against AIG, alleging violations of the federal and New York FCA and the federal securities laws: that AIG conspired to insure Mafia-controlled businesses in the 1980s, improperly accounted for its acquisition of an electrical contractor in the 1990s, and paid unreported commissions to another defendant for originating these transactions. Following briefing on the defendants' motions to dismiss, the Court issued an opinion dismissing all claims with prejudice. Calling the case “entirely frivolous … with no basis in fact or law,” the Court agreed with Weil's arguments that the plaintiff failed to plead any plausible Mafia conspiracy, failed to plead a false claim or statement under the FCA, lacked standing to bring the securities claims, and asserted time-barred claims. In November 2018, the Second Circuit Court of Appeals affirmed the district court's dismissal. Most recently, Weil succeeded in obtaining sanctions in the district court against the qui tam relator's counsel for the "entirely frivolous" allegations.

Farmers Insurance

In an industry-wide Medicare False Claims Act case, Weil obtained a major victory for Farmers Insurance in January 2016 when the U.S. District Court for the Western District of New York accepted a Magistrate Judge's June 2015 Report and Recommendation of dismissal with prejudice of all claims – worth several hundred million dollars – alleging that Farmers and more than a dozen other defendants violated the federal False Claims Act by allegedly failing to reimburse the government for payments made to Medicare beneficiaries as mandated by the Medicare Secondary Payer statute. In January 2017, the Second Circuit affirmed the dismissal. In February 2016, the Western District of New York accepted a separate Report and Recommendation of dismissal with prejudice of all claims in a parallel case, which was also affirmed by the Second Circuit in April 2017.

UnitedHealth Group

In one of the first actions brought under the New York State False Claims Act, Weil obtained the dismissal of all claims brought against UnitedHealth Group and its subsidiaries by three New York hospitals which, purporting to act as relators, alleged that UnitedHealth was depriving New York State of millions of dollars in healthcare surcharges by fraudulently underpaying hospitals and other medical facilities. Weil demonstrated that the Relators' allegations that UnitedHealth was underpaying providers were also being litigated in separate actions that had been ongoing for nearly a decade. The New York State Supreme Court dismissed the Relators’ complaint, concluding that the allegations forming the basis for the complaint were part of the public record and that the court, therefore, lacked subject matter jurisdiction under the public disclosure bar. The New York State Supreme Court also agreed that UnitedHealth had paid all surcharges it was obligated to pay and had made no false statements to the state. A four-judge Appellate Court panel unanimously affirmed the lower court's ruling, agreeing that the lower court lacked subject matter jurisdiction because of the public disclosure bar.
**Selected Representations**

**Schindler Elevator Corporation**

Weil has successfully represented Schindler Elevator Corp. in a long-running False Claims Act litigation in which a disgruntled former employee claimed that Schindler had failed to properly report or had falsely reported to the government the number of veterans it employs, as is required of federal contractors, and that Schindler was therefore liable for all sums it had been paid by the federal government, trebled. Plaintiff based his claim on information he received through Freedom of Information Act (FOIA) requests he submitted to the Department of Labor (DOL), asking for Schindler’s filings, as well as his personal work experience at Schindler. Schindler moved to dismiss the complaint, arguing that the suit was based on publicly disclosed information and therefore precluded by the FCA’s public-disclosure bar. The district court agreed and dismissed the suit, but the Second Circuit reversed, holding that responses to FOIA requests do not trigger the public-disclosure bar. The U.S. Supreme Court reversed the Second Circuit, holding in a precedential opinion that the public-disclosure bar applies to *qui tam* actions based on FOIA responses. Subsequently, on remand, Schindler moved for summary judgment on the relator’s remaining claims that the company filed false or inaccurate reports, arguing that he had not presented sufficient evidence to support his claims under the FCA. In September 2015, the Court granted Schindler’s motion in its entirety, holding that “the record is uniform and overwhelming that Schindler did not knowingly submit false…reports” to the DOL.

**Toyobo**

Weil served as lead counsel overseeing the defense of Toyobo, a major Japanese fiber manufacturer, in connection with False Claims Act litigation brought by the U.S. DOJ, class action litigation, multiple personal injury suits, and claims by multiple state attorneys general and foreign states, among others, relating to the performance of Toyobo’s Zylon fiber in bullet-resistant vests used by thousands of law enforcement agencies worldwide. In 2018, Weil negotiated a settlement of all remaining claims after securing a number of successful outcomes in the various lawsuits.

**Motors Liquidation Company**

Weil advised and counseled the General Motors estate with respect to a claim by *qui tam* relators seeking penalties and treble damages under the FCA. Relators allege false and fraudulent claims submitted in connection with the manufacture of generator sets for Navy destroyers. The original case was remanded by the Supreme Court in a hallmark FCA decision, *Allison Engine Co. v. United States ex rel. Sanders*, 553 U.S. 662 (2008). The case is one of the first to address the issue of retroactive application of FCA amendments enacted in the Fraud Enforcement Recovery Act of 2009. We also counseled the estate in a related mediation.

**Texas Data Control**

Weil defended and served as lead trial counsel for a joint venture consisting of several multinational data processors, including Computer Sciences Corporation, in FCA litigation brought by the Civil Division of the United States Attorney’s Office for the Northern District of Texas, the Department of Justice and the FDIC. Following a 3½ week jury trial, defendants were found not liable for the government’s $30 million claim, and were also awarded a $7 million verdict on their counterclaim for breach of contract against the FDIC. The FDIC subsequently settled the defendants’ claims for attorney’s fees, costs and interest for an additional $8 million.