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June 4-6, 2014
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Program Description

The Civil False Claims Act (FCA) is the fastest growing area of federal litigation, particularly because of its unique *qui tam* enforcement mechanism. Amendments in 2009 made this law even more powerful. The 10th Annual National Institute on the Civil False Claims Act and *Qui Tam* Enforcement will bring together experts from all areas—U.S. Department of Justice, state attorney general offices, federal agencies, leading defense and plaintiff firms—to discuss this ever-growing area of litigation and enforcement.

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Agenda

Wednesday, June 4, 2014

4:00 p.m. **Registration Begins**

5:00 p.m.–7:30 p.m. Fundamentals of the Civil False Claims Act and *Qui Tam* Enforcement

Daniel R. Anderson, John T. Boese, Joseph E. B. White

This optional introductory panel is intended for those who do not have broad experience with the civil False Claims Act or qui tam enforcement or believe they would benefit from a discussion of the basics of the Act. This panel, conducted by the Institute co-chairs, will cover key terms and the basics of liability, damages, FCA procedure, and *qui tam* procedure. This panel will carefully explain the differences in FCA law and procedure before and after the 2009 and 2010 amendments. Questions are strongly encouraged during the panel discussion, which comes with a detailed written primer on the False Claims Act.

7:30 p.m. **Reception**

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Thursday, June 5, 2014

7:30 a.m. **Registration**

8:30 a.m. **Welcoming Remarks - Institute Co-Chairs:**

John T. Boese, *Fried, Frank, Harris, Shriver & Jacobson LLP*, Washington, DC
Daniel R. Anderson, *U.S. Department of Justice,* Washington, DC
Joseph E. B. White, *Nolan Auerbach & White, P.A.*, Philadelphia, PA

9:00 a.m. **Investigation of a False Claims Act Case**

Robert K. DeConti, Thomas M. Greene, Pamela Johnston, Kathleen McDermott, John-David H. Thomas, Gerald W. Wilson, Jr.
Moderator: Colin M. Huntley

In every FCA case, the government investigation is crucial because both the relator and the defense are seeking to influence the government intervention decision, and many cases are settled before any formal government intervention or complaint is filed. This panel will discuss the various issues involved in this pre-filing government investigation, including issues of privilege, confidentiality, discovery, and presentations by the relator, the government, and the defense. The role of investigators and the increased use of civil investigative demands during the investigative phase also will be discussed. The panel will also address corporate securities disclosure obligations during this period.

10:30 a.m. **Break**

Agenda (continued)

10:45 a.m. **Recent Developments on Liability**

Peter Chatfield, David Chizewer, Michael D. Granston, Margaret Hutchinson, Kirsten Mayer, David W. Ogden
Moderator: Jonathan L. Diesenhaus

This panel will concentrate on developing liability issues, including the determination of "falsity," the express and implied false certification cases, materiality and causation, court interpretations of the *scienter* or "knowledge" requirement, and the developing law of "overpayment" liability after Federal Emergency Relief Administration.

12:15 p.m. **Keynote Luncheon Speaker - The Honorable Stuart F. Delery, Assistant Attorney General, Civil Division, *U.S. Department of Justice*, Washington, DC**

Stuart F. Delery was sworn in as the Assistant Attorney General for the Civil Division on August 5, 2013. He has led the Division since March 2012. Over $38 billion has been recovered under the FCA since the watershed FCA amendments of 1986, and over $8 billion of that amount has been recovered in the period in which Mr. Delery has been in charge of the Civil Division. Mr. Delery will look back on FCA enforcement during his time as both an Associate Deputy Attorney General and as Assistant Attorney General and he will look ahead to FCA enforcement priorities under the False Claims Act in the coming years.

2:00 p.m. **Recent Developments on Damages and Penalties**

Mark Hanna, Enu Mainigi, Claire Schenk, David Wiseman
Moderator: Loren Jacobson

The focus of this panel will be on the calculation and proof of FCA damages, particularly in cases where the damages are not easily ascertainable, as well as the assessment of civil penalties. The recent Fourth Circuit decision on the relationship between government loss and penalties will be a point of discussion.

3:15 p.m. **Break**

Agenda (continued)

3:30 p.m. **Breakout Sessions**

A. FCA Enforcement Against Hospitals, Pharmaceutical Companies and Other Health Care Industry Companies

Jaime L.M. Jones, Andy J. Mao, Tracy Hilmer, Marie Spencer, Marlan Wilbanks
Moderator: Sanford V. Teplitzky

This panel will review the unique issues that arise when the False Claims Act is used as a fraud and enforcement tool against hospitals, pharmaceutical and device manufacturers and other healthcare providers. The panel will discuss the increasing use of False Claims Act cases based on violations of the Anti-Kickback Statute and the Stark law. The panel will also look ahead to the use of the FCA in healthcare exchanges under the Affordable Care Act.

B. FCA Enforcement in Procurement and Nontraditional Areas

Jeremy L. Friedman, Frederic M. Levy, Marcia G. Madsen, Maria C. Swaby
Moderator: Sara McLean

Procurement cases remain one of the biggest sources of FCA litigation, but an increasing number of *qui tam* cases are filed involving other types of federal funding. This panel will discuss FCA enforcement in the procurement field, as well as the unique nature of non-traditional FCA cases, especially those involving oil and gas, "reverse" false claims, and grants.

5:15 p.m. **Adjourn**

5:30 p.m. **Cocktail Reception**

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Agenda (continued)

Friday, June 6, 2014

9:00 a.m. **Pretrial Procedure: Motions and Discovery Issues: Public Disclosure/Original Source: First to File; Rule 9(b); and Statute of Limitations**

Douglas W. Baruch, David L. Douglass, Robin Potter, Donald J. Williamson
Moderator: Frederick M. Morgan, Jr.

Every *qui tam* case that is not settled early involves a wide variety of pretrial motions and procedural issues. This panel will discuss both the strategy and timing of these motions and current case law, with special emphasis on Rule 9(b), summary judgment motions, and discovery.

10:30 a.m. **Break**

10:45 a.m. **State *Qui Tam* Enforcement**

James J. Breen, Robert Patten, John Potter, Marie Spencer
Moderator: Monica P. Navarro

More than twenty-three states now have *qui tam* laws, and the value of recoveries obtained under these laws is skyrocketing. Congress has recently passed legislation encouraging the remainder of the states to pass such laws. This panel will discuss the current and future course of state *qui tam* enforcement.

11:45 a.m. **Break**

12:00 p.m. **Lunch On Your Own**

1:00 p.m. **Breakout Sessions**

A. Settlement of an FCA Healthcare Case

Laurence J. Freedman, Gabriel Imperato, Robert Patten, Lisa Re, Lesley Ann Skillen
Moderator: Edward Crooke

B. Settlement of an FCA Procurement Case

Ralph Caccia, Rodney A. Grandon, John A. Kolar, Marc S. Raspanti, Robert L. Vogel
Moderator: Barbara Van Gelder

2:30 p.m. **Break**

Agenda (continued)

2:45 p.m. **Ethics in *Qui Tam* Litigation**

Ethics Credit

Kathleen Clark, Cleveland Lawrence III, David Rosenbloom, Consuelo Woodhead
Moderator: Daniel A. Spiro

Because of the unique three-party process and the close relationship among the parties, qui tam litigation engenders a host of ethical issues. This panel will discuss the ethical issues from the viewpoint of all three sides. From the government side, government counsel are routinely faced with ethical issues involving the interrelationship between the criminal, civil and administrative aspects of FCA cases and investigations. From the relator side, counsel must deal with the potential criminal exposure of their clients as well as defense arguments that whistleblowers do not have the right to obtain documents and other data relevant to their case. From the defense side, counsel is routinely faced with attorney client and privilege issues, as well as the problems of multiple representations. This panel will also include a discussion of the ethical problems with attorneys acting as *qui tam* relators and how courts are resolving those issues.

4:00 p.m. **Adjourn**

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