

FCA Litigation Defended by Robert Salcido

Robert Salcido has successfully defended multiple FCA actions against the government and relators resulting in the dismissal of the action.

A. Pleading Stage

Robert has been lead counsel in following actions resulted in dismissal of the action at the pleading stage.

- *United States ex rel. Graziosi v. Accretive Health, Inc.*: Represented The Methodist Health Care System in action alleging that it entered into contract with a billing company and conspired with it to provide medically unnecessary services. The district court dismissed the action under Fed. R. Civ. P. 9(b) and 12(b)(6). See *id.*, 2017 U.S. Dist. LEXIS 41076 (N.D. Ill. Mar. 22, 2017).
- *United States ex rel. Moore & Co., P.A. v. Majestic Blue Fisheries, LLC*: Represented defendants in an action where plaintiff contended that defendants misrepresented ownership and control of entities to obtain government licenses. The district court dismissed plaintiff's action because the alleged violation had no impact on government funds or property. See *id.*, 196 F. Supp. 3d 436 (D. Del. 2016).
- *United States ex rel. Portilla v. Riverview Post Acute Care Ctr.* Represented a skilled nursing facility (SNF) where the relator alleged that the SNF violated the FCA because, despite doctor's orders, the SNF failed to provide bed alarms and abdominal binders to residents. The district court dismissed the action, finding that there was no FCA violation because the failure to provide a bed alarm or abdominal binder would not change the government's reimbursement rate and hence any regulatory violation would not be material to the government's payment decision. See *id.*, 2014 U.S. Dist. LEXIS 44002 (D.N.J. Mar. 31, 2014).
- *United States ex rel. Westlund v. LabCorp*: Represented LabCorp in obtaining dismissal of *qui tam* case under Fed. R. Civ. P. 12(b)(6) and 9(b) where relator alleged LabCorp violated the FCA and Anti-Kickback Act. See *id.*, 2012 U.S. Dist. LEXIS 57050 (M.D. Fla. Apr. 24, 2012).
- *United States ex rel. Huey v. Summit Healthcare Ass'n, Inc., et al.*: Represented Brim Healthcare ("Brim"), a hospital management company where *qui tam* plaintiff alleged a hospital Brim managed received a substantial Medicare overpayment. The court granted Brim's motion to dismiss, ruling that it could not have "caused" the hospital to submit false claims or "conspired" with it because Brim's mere knowledge that another party may be committing fraud, without more, does not result in an FCA violation, let alone a conspiracy to violate the FCA. See *id.*, 2011 U.S. Dist. LEXIS 26740 at *21-*22 (D. Ariz. Mar. 2, 2011).
- *In re Natural Gas Royalties Qui Tam Litigation*: Represented ExxonMobil in a *qui tam* action alleging that more than 300 defendants undervalued the heating content and volume of gas. The district court dismissed the relator's action under the FCA public disclosure jurisdictional bar. The 10th Circuit affirmed the district court's ruling. Also represented a group of defendants that successfully moved the Court to award defendants' their attorney fees based upon the relator filing a frivolous action. See *id.*, 562 F.3d 1032 (10th Cir. 2009); 467 F. Supp. 2d 1117 (D. Wyo. 2006).
- *State of Indiana v. Franciscan Alliance, Inc.*: Represented Franciscan Alliance, Inc., in action where State filed action alleging violation of State FCA because a nurse failed to renew her nursing license. State agreed to walk away from action after reviewing motion to dismiss briefing. See *id.*, No. 1:18-cv-3556 (S.D. Ind. filed Nov. 14, 2018).

B. Summary Judgment

In actions that have made it past the pleading stage, Robert, as lead counsel, has successfully represented several defendants who obtained a Judgment against the government or the relator at the summary judgment stage, including:

- *United States ex rel. Lawson v. Aegis Therapies, Inc.*: Represented Aegis Therapies (a rehabilitation therapy company) and a Golden Living SNF where the government alleged that defendants provided medically unnecessary rehabilitation therapy. The district court granted defendants' summary judgment motion, finding that the government failed to prove that defendants' certification regarding medical necessity was objectively false. See *id.*, 2015 U.S. Dist. LEXIS 45221 (S.D. Ga. Mar. 31, 2015).
- *United States ex rel. Assoc. Against Outlier Fraud v. Huron Consulting Grp., Inc.*: Represented Huron Consulting Group in a qui tam action alleging that Huron caused St. Vincent's Catholic Medical Centers to inflate its charges to obtain an unlawfully excessive amount of Medicare outlier payments. At summary judgment, the court dismissed plaintiff's claim, ruling that there could be no FCA violation as a matter of law because the alleged practice—raising charges on the charge master, which resulted in the receipt of additional outlier payments—“was not forbidden by either regulation or standard practice.” See *id.*, 929 F. Supp. 2d 245 (S.D.N.Y. 2013).
- *United States of America ex rel. Jamison v. McKesson Corporation*: Represented Golden Living in an action where relator and government sued multiple defendants alleging that they violated the FCA because they knowingly created and operated a supply company in violation of Medicare Supplier Standards. The district court granted defendants' summary judgment motion regarding the Supplier Standards allegations, finding that the government's prior administrative proceedings demonstrated that the defendant supply company was entitled to payment. See *id.*, 784 F. Supp. 2d 664 (N.D. Miss. 2011).
- *United States v. Prabhu*: Represented defendant physician and multi-specialty group practice that the government accused of FCA violations. The district court dismissed all the government's claims on summary judgment. Ultimately, because the government's action lacked “substantial justification,” the government was ordered to pay defendants more than \$500,000 in legal fees. See *id.*, 442 F. Supp. 2d 1008 (D. Nev. 2006).

C. Trial

In cases that proceeded past summary judgment, Robert has successfully defended the action at trial, including:

- *United States of America ex rel. Jamison v. McKesson Corporation*: Represented Golden Living in FCA action where the government sued Golden Living's predecessor company, Beverly Enterprises (“Beverly”), for \$895 million alleging that Beverly had engaged in an unlawful kickback scheme with McKesson Corp. in violation of the Anti-Kickback Act and the FCA. After 14 days of trial, the court ruled that Beverly and McKesson did not violate the FCA or the Anti-Kickback Act because their business negotiations were fair, reasonable and conducted in good faith. See *id.*, 900 F. Supp. 2d 683 (N.D. Miss. 2012). This case was featured in Law360's article “Health Care MVP: Akin Gump's Robert Salcido,” where Mr. Salcido was selected as one of only four health care MVP's for 2012. Law360 also identified Akin Gump's health care practice as Health Practice Group of the Year in 2012, a distinction Akin Gump has enjoyed repeatedly since then.

- *United States ex rel. Ruckh v. Salus Rehab., LLC*: Represented defendants, operator of a chain of skilled nursing companies and a rehabilitation company, during a five-week FCA jury trial. Based upon the trial record, the district court reversed the jury verdict and entered judgment for defendants ruling that relator did not establish FCA materiality at trial as a matter of law. See *id.*, 304 F. Supp. 3d 1258 (M.D. Fla. 2018).

D. Appeal

Robert has argued or participated in multiple FCA appeals where the Court ordered or affirmed district court dismissal of FCA action, including:

- *United States ex rel. Jamison v. McKesson Corp.*: Represented Golden Living before the Fifth Circuit, which affirmed the district court's dismissal of the relator's action under the FCA public disclosure bar. See *id.*, 649 F.3d 322 (5th Cir. 2011).
- *United States ex rel. Assoc. Against Outlier Fraud v. Huron Consulting Grp., Inc.*: Represented Huron Consulting Group before the Second Circuit, which affirmed the district court's ruling granting summary judgment for defendants. See *id.*, 567 Fed. Appx. 44 (2d Cir. 2014).
- *United States ex rel. Harman v. Trinity Indus., Inc.*: Represented Trinity Industries in its appeal from a \$663 million FCA judgment. The Fifth Circuit reversed the trial court's verdict, finding that the relator failed to satisfy the FCA's materiality element. See *id.*, 872 F.3d 645 (5th Cir. 2017).