



AKIN GUMP
STRAUSS HAUER & FELDL P
Attorneys at Law

FALSE CLAIMS ACT PRACTICE



COUNSELING AND LITIGATION

Any company doing business with the U.S. government or receiving federal funds is at risk of a lawsuit alleging violations of the False Claims Act (FCA). The *qui tam* provisions of the statute, which allow private parties to bring FCA actions on behalf of the government and receive up to 30 percent of any recoveries, have fueled the number of FCA cases and the recoveries obtained in those cases. Moreover, recent congressional and media interest in health care and procurement fraud have increased the potential for FCA investigations and lawsuits.

Akin Gump Strauss Hauer and Feld LLP has extensive experience advising clients on the FCA and defending FCA lawsuits and related civil, criminal and congressional investigations. Our attorneys have assisted Fortune 500 and non-profit companies in more than 40 significant FCA matters. We routinely conduct internal investigations, respond to government and congressional investigations, defend lawsuits filed under the FCA, defend retaliation lawsuits brought by alleged whistleblowers, and seek to avert debarment and exclusion proceedings. We have written several books and articles on the FCA and speak frequently at industry conferences on the subject.

Our attorneys engaged in FCA practice include former U.S. Department of Justice and HHS Office of the Inspector General (OIG) attorneys, who have prosecuted many FCA cases. This government experience provides Akin Gump clients with invaluable insights into government strategy and decision-making in FCA litigation and lays the groundwork for effective negotiations with government officials.

There is no room for error in dealing with an investigation or lawsuit concerning fraud allegations. Akin Gump's team of dedicated attorneys have proven experience in handling the most complex and high-stakes FCA matters.



ENFORCEMENT LANDSCAPE

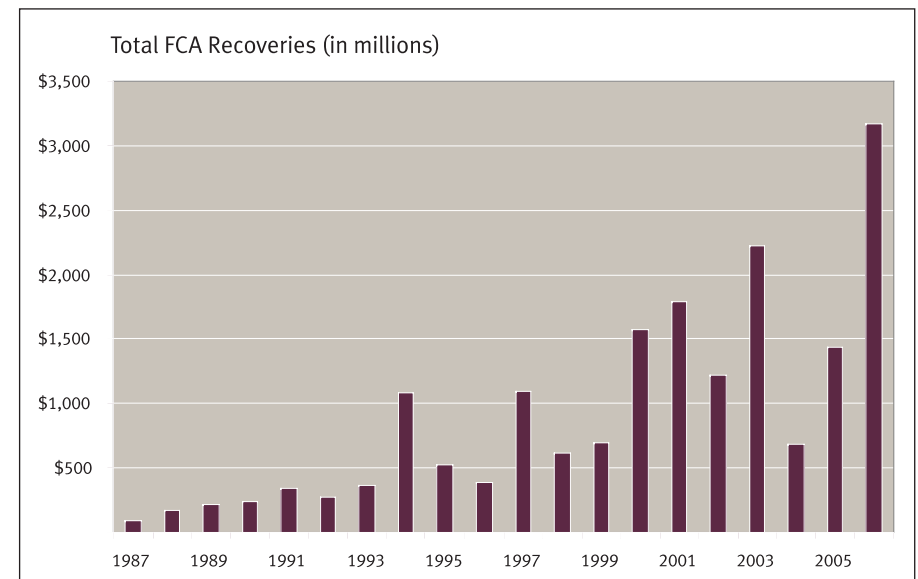
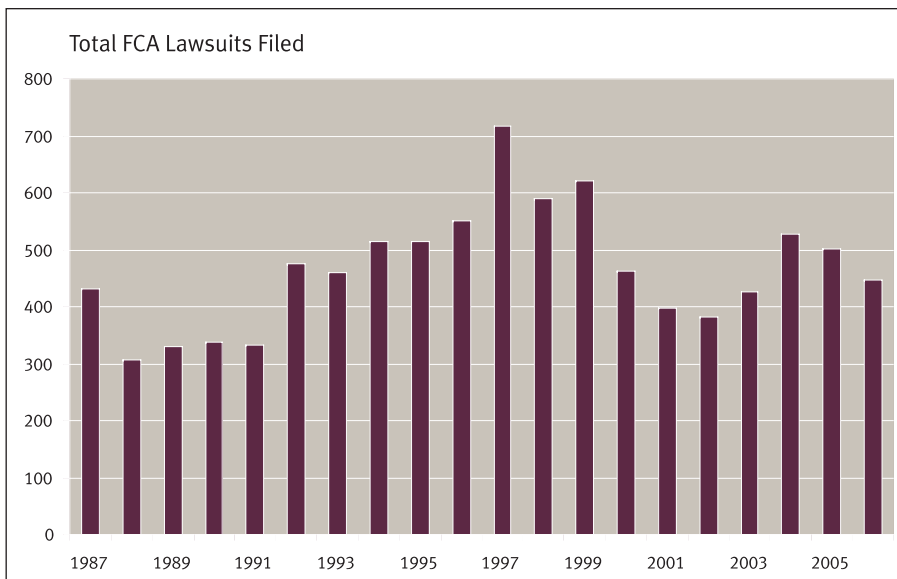
Since the federal FCA was reinvigorated by the 1986 amendments to the statute, the number of lawsuits asserted under the statute has remained relatively constant.

However, the dollar value of the cases has risen dramatically, reflecting the focus by the Department of Justice and increasingly sophisticated *qui tam* plaintiff's lawyers on cases with large potential recoveries.

Source: Civil Division, Department of Justice.

The increase in the dollar values at stake in FCA and *qui tam* matters lends even more importance to addressing these matters with experienced, effective counsel.

Moreover, the number of lawsuits asserted under state false claims statutes has begun to increase dramatically. Most states have equivalents of the federal FCA, and the incentives of the Deficit Reduction Act of 2005 will likely cause the remainder of the states to enact such statutes.



INDUSTRY AND AGENCY KNOWLEDGE



FCA cases frequently turn on the substantive requirements imposed by the statutes, regulations and contracts applicable to the particular industries that do business with the government. Akin Gump lawyers have extensive knowledge of and experience with those requirements and the government agencies that administer and interpret them. This deep industry and agency knowledge is crucial to our ability to provide efficient and effective representation in FCA matters. Here are a few of our areas of substantive expertise.

Health Care/Pharmaceutical

We have a core group of lawyers devoted exclusively to representing health industry clients. These lawyers have in-depth knowledge of this complex, highly regulated industry and the rapidly changing issues that confront it. The firm's health industry clients include hospital networks and health care systems, major academic medical centers, pharmaceutical companies, community and specialty hospitals, manufacturers of medical technology, home care companies, physician groups and specialty associations, practice management companies, insurance

companies, health maintenance organizations and other managed care entities, and lenders, investors, and underwriters involved in health industry transactions.

Akin Gump is active in the areas of Medicare and Medicaid reimbursement and coverage litigation and counseling, compliance investigations, health policy and regulatory advocacy, health industry mergers and acquisitions, private placements and other securities offerings, health regulatory support in financial restructurings, insurance licensure and related state regulatory matters, IRS audits and tax planning for tax-exempt organizations, approvals of new medical technologies, antitrust planning and litigation, and formation of managed care networks.

Government Contracts

Akin Gump has experience in every kind of issue that may arise in government procurements. We represent contractors, large and small, in nearly every industry involved in public business, ranging from major aerospace companies to construction companies to commercial item contractors.

Our lawyers help secure contract opportunities for our clients, assist them in performing contracts, and represent them when necessary in disputes. Our experience includes supply contracts (from simple commercial items to sophisticated weapons), service contracts (from monthly janitorial services to multiyear base operations contracts), research and development contracts (from limited application research to Strategic Defense Initiative weapons and strategic planning), construction contracts (from renovations to large structures and complex overseas projects), ADPE procurements (computer software, hardware and services, and telecommunications equipment and services), and grants and cooperative agreements.

Construction

Akin Gump's construction lawyers have managed complex projects and litigated disputes across the entire spectrum of public- and private-sector development and construction activity. Our construction lawyers represent clients on a wide range of issues related to the development of large-scale commercial and residential undertakings

and major infrastructure projects, including airports, highways and transit facilities, landfills, bridges, dams, tunnels, mines, power plants and pipelines. Our clients include contractors, engineers, developers, lenders, underwriters, project owners and independent sovereign states that are engaged in planning, financing and building projects throughout the United States and overseas.

Energy

Akin Gump's roots run deep in the energy industry. Since our founding in Texas more than a half-century ago, energy has been a vital part of our practice, and we have played an important role in hundreds of global development projects to address the world's energy needs. Today, Akin Gump is known for its sophisticated, diverse and full-service energy law practice, encompassing both transactional and regulatory matters. Our lawyers have represented virtually every major segment of the energy industry on issues ranging from energy policy to tax questions to environmental and land use challenges.



THE AKIN GUMP FCA TEAM

Our clients are in a prime position to defend themselves against any type of FCA investigation or litigation by tapping Akin Gump's resources. We have active practices in the jurisdiction where the Fraud Section of the Department of Justice is located — Washington, D.C. — and in the jurisdictions where many FCA filings occur — California, New York, Texas, Philadelphia and Washington, D.C. Our offices are staffed by teams of leading civil and criminal litigators, many with Department of Justice or U.S. Attorney's Office experience. Our lawyers are familiar with most federal district courts in the country and are experienced in litigating high-stakes matters that place a premium on skilled advocacy.

Our clients are supported firmwide by the depth and breadth of a multi-jurisdictional practice and the comprehensive intellectual capital of more than 900 lawyers. Our experience in the industries most often the subject of FCA and *qui tam* cases — government contracts, health care, pharmaceutical, construction and energy, among others — translates into a competitive edge for our clients. Furthermore, FCA cases are frequently accompanied by parallel criminal proceedings and/or congressional hearings and investigations. Our clients have access to Akin Gump's preeminent legislative and white-collar criminal defense practices, as well as to our lawyers with experience in the securities, employment and insurance issues that often arise in connection with an FCA case or investigation.

There is no substitute for dedicated lawyers with proven experience and the depth necessary to achieve successful results. The Akin Gump FCA defense team is a powerhouse that offers clients nationwide services across the entire spectrum of fraud litigation.

REPRESENTATIVE FCA CASES

Akin Gump attorneys have litigated dozens of FCA cases. In many of these cases, we have obtained dismissal at an early stage, thus sparing clients the costs of protracted discovery or trial. The following is a partial list of cases litigated by Akin Gump attorneys.

United States ex rel. Dye v. ATK Thiokol, Civ. No. 1:06CV39TS (D. Utah)

- Representation of defendant ATK Thiokol in intervened *qui tam* case alleging failure to test military flares in accordance with contract specifications. The lawsuit is ongoing.

Principal lawyers: Robert Huffman, Peter Hutt

Daewoo Engineering & Construction Co., Ltd., v. United States, Civ. No. 1:2002cv01914 (Fed. Cir.)

- Representation of Daewoo against government allegations of fraud and violations of the FCA and the anti-fraud provision of the Contract Disputes Act. The Court of Federal Claims entered judgment in favor of the government, awarding a \$10,000 FCA penalty and a \$50 million Contract Disputes Act penalty. We are handling the appeal to the Federal Circuit.

Principal lawyers: Paul Killian, Tom McLish

United States v. Prabhu, Civ. No. 2:04-cv-00589 (D. Nev.); decision at 442 F. Supp. 2d 1008 (D. Nev. 2006)

- Representation of defendant physician and multi-specialty group practice the government accused of FCA violations. The District Court dismissed all the government's claims on summary judgment. This case represents a rare instance in which defendants have prevailed against the government on summary judgment. Our attorneys are seeking fees to compensate defendants for the government's unjustified litigation.

Principal lawyer: Robert Salcido

United States ex rel. Sikkenga v. Regence Blue Cross Blue Shield of Utah, et al., Civ. No. 2-99CV0086K (D. Utah); decision at 472 F.3d 702 (10th Cir. 2006)

- Representation of defendant Regence in *qui tam* case alleging Regence, as Medicare Part B Carrier, improperly paid Medicare claims submitted by independent laboratory while knowing claims were improperly coded. The District Court dismissed the bulk of this case under Rules 12(b)(6) and 9(b), and the dismissals were upheld on appeal. On remand, the remainder of the claims were dismissed under Rule 9(b).

Principal lawyer: Robert Huffman

In re Natural Gas Royalties Qui Tam Litigation, Civ. No. 99-MD-1293 (D. Wyo); decision at 467 F. Supp. 2d 1117 (D. Wyo. 2006)

- Representation of ExxonMobil, Dynegy, Pioneer Natural Resources USA, Inc., Arkansas Oklahoma Gas Corporation and Woodward Pipeline in *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 case is currently pending on appeal.

Principal lawyers: Don Craven, Robert Salcido, Jerry Rothrock, Mike Swan

United States ex rel. Tiesinga v. Dianon Systems, Inc., Civ. No. 3:02-cv-01573 (D. Conn.); decision at 231 F.R.D. 122 (D. Conn. 2005)

- Representation of defendant Dianon Systems in a *qui tam* case alleging that Dianon submitted false claims for laboratory tests involving medically unnecessary antibodies. More than \$100 million in damages and civil penalties alleged. We obtained dismissal of government's complaint under Rule 9(b). The government filed an amended complaint, and the case is currently in litigation.

Principal lawyer: Robert Salcido

United States of America ex rel. Wright v. AGIP Petroleum Co., et al., Civ. No. 5:03-CV-264-DF (E.D. Texas)

- Representation of defendant Dynegy in *qui tam* suit alleging that, for royalty purposes, the largest companies in the natural gas industry have undervalued the natural gas produced from federal and Indian oil and gas leases since 1986. Discovery is ongoing.

Principal lawyers: Jerry Rothrock, Mike Swan

United States ex rel. Little and Morris v. Eni Petroleum Co., Inc., et al., Civ. No. 5:05-cv-01397-M (W.D. Okla.)

- Representation of defendant Murphy Oil Corporation in *qui tam* case alleging numerous oil companies failed to pay interest on royalty underpayments on oil and natural gas produced from federal and Indian oil and gas leases. A motion to dismiss is pending.

Principal lawyer: Jerry Rothrock

REPRESENTATIVE FCA CASES

United States ex rel. Sanders v. Allison Engine Company, Inc., et al., Civ. No. C-1-95-970 (S.D. Ohio); decision at 364 F. Supp. 2d 710 (S.D. Ohio 2003)

- Representation of defendant Allison in *qui tam* case alleging defective pricing in connection with contracts for provision of generator sets for Navy destroyers. More than \$200 million in damages and penalties was alleged. We won all defective pricing claims on summary judgment.

Principal lawyer: Peter Hutt

United States ex rel. Monahan, et al. v. Saint Barnabas Health Care System, Inc., et al., No. 2:02 CV05702 (JAG) (D. N.J.); *United States ex rel. Salvatori, et al., v. Community Medical Center, et al.*, (E.D. Pa.)

- Representation of Community Medical Center, Clara Maass Medical Center, Kimball Medical Center, Newark Beth Israel Medical Center, Saint Barnabas Medical Center, Irvington General Hospital, West Hudson Hospital and Union Hospital in two *qui tam* actions alleging that hospitals received excess Medicare outlier payments in violation of the FCA. The government intervened in the actions. The cases ultimately settled for \$265 million.

Principal lawyer: Robert Salcido

United States ex rel. Ward v. Commercial Metals Co., Civ. No. C-05-56 (S.D. Tex.)

- Representation of CMC Oil Corporation in *qui tam* action alleging that CMC's parent company fraudulently used CMC in order to avoid paying a judgment that the government obtained against CMC for violations of federal price controls. Case was dismissed under the FCA's public disclosure bar.

Principal lawyers: Jerry Rothrock, Mike Swan

United States ex rel. Wilkins v. North American Construction, et al., Civ. No. H-95-5614 (S.D. Tex. 1995); decision at 173 F. Supp. 2d 601 (S.D. Tex. 2001)

- Representation of defendant Weatherford International in *qui tam* case, joined by government, alleging request for equitable adjustment under Corps of Engineers drilling contract constituted false claim. Bulk of case dismissed under Rule 12(b)(6), remainder settled after mediation.

Principal lawyer: Peter Hutt

United States ex rel. Colunga v. Hercules, Civ. No. 89-C-954B (D. Utah); decisions at 929 F. Supp. 1418 (D. Utah 1996) & 1998 U.S. Dist. LEXIS 21811 (D. Utah 1998)

- Representation of defendant Hercules in *qui tam* case alleging failure to comply with quality assurance requirements of contracts to manufacture rocket motors. More than \$500 million in damages and penalties was alleged. Our attorneys settled the action before trial.

Principal lawyers: Robert Huffman, Peter Hutt

United States ex rel. Foust v. Group Hospitalization and Medical Services, Inc., Civ. No. 93-2285-NHJ (D.D.C.); decision at 26 F. Supp. 2d 60 (D.D.C. 1998)

- Representation of defendant in *qui tam* case brought by former government auditors alleging Blue Cross plan's failure to pass through provider discounts to federal employees. The case was dismissed under the FCA public disclosure bar on the ground that government auditors cannot qualify as "original sources."

Principal lawyer: Robert Huffman

United States ex rel. Lanni and Parslow v. Curative Health Services, No. 98 Civ. 2501 (RCC) (S.D.N.Y.)

- Representation of defendants Saint Margaret Mercy Health Care Center, Kimball Medical Center, Clara Maass Medical Center and Monmouth Medical Center in *qui tam* action alleging that the hospitals' contract with a vendor breached the FCA because it violated the anti-kickback law and resulted in excessive Medicare reimbursement. The hospitals were dismissed from the action without paying any money to the government.

Principal lawyer: Robert Salcido

United States v. Birman Managed Care, Inc., et al., Civ. No. 3:97-0893 (M.D. Tenn.)

- Representation of defendant Community Medical Center in a *qui tam* action alleging that the hospital upcoded pneumonia and septicemia cases. The government intervened in the action. The case settled for a small fraction of the damages alleged.

Principal lawyer: Robert Salcido

United States ex rel. Johnson v. Shell Oil, No. 96 CV 66 (E.D. Tex.)

- Representation of defendant Exxon in *qui tam* action alleging underpayment of royalties for federal oil. The action settled prior to trial.

Principal lawyer: Robert Salcido

United States ex rel. Pratt v. Alliant Techsystems, Civ. No. 95-4812 (C.D. Cal.)

- Representation of defendant Alliant in *qui tam* case alleging labor mischarging between fixed price and cost-reimbursement contracts. The defendant settled with the relator before significant litigation expenditures.

Principal lawyer: Robert Huffman

United States ex rel. Kohoutek v. Solid State Devices, Inc. et al., Civ. No. 95-2484 (C.D. Cal.)

- Representation of defendant Lockheed Martin in *qui tam* case alleging Lockheed Martin and other prime contractors failed properly to oversee tests and other procedures at a subcontractor's facilities. After extensive investigation, our attorneys persuaded the government that the facts alleged by the relator were incorrect. The Department of Justice declined to intervene and the relators voluntarily dismissed the case.

Principal lawyer: Robert Huffman

United States ex rel. Murphy v. Rockwell Space Operations Co. and Unisys Corp., Civ. No. H-94-1830 (S.D. Tex.)

- Representation of defendant Unisys in *qui tam* case alleging failures to provide software products to NASA for use in Space Shuttle program in accordance with contract requirements. More than \$45 million in damages and penalties was alleged. Part of the case was dismissed on summary judgment and the remainder was settled before trial.

Principal lawyer: Peter Hutt

United States ex rel. Hullinger v. Hercules, Inc., Civ. No. 92-CV0085S (D. Utah)

- Representation of defendant Hercules in *qui tam* case alleging mischarging of labor costs and misuse and loss of tooling. Our attorneys settled the intervened portion of the case on favorable terms, and settled the non-intervened portion of the case over government objection.

Principal lawyer: Robert Huffman

NON-PUBLIC FCA MATTERS

Akin Gump lawyers have resolved many FCA matters before they were ever filed or unsealed. This has involved undertaking internal investigations, convincing the government not to institute an action or intervene in a pending *qui tam* action, and occasionally making voluntary disclosures. The following is a partial list of such matters handled by Akin Gump attorneys.

- Representation of major government contractor in civil investigation into allegations of quality assurance deficiencies.
Principal lawyer: Robert Huffman
- Representation of private equity firm and its principals in an investigation regarding the funding of a health care company suspected of submitting false claims under Medicare.
Principal lawyer: David Zensky
- Representation of major health system in civil investigation alleging violation of FCA based upon alleged violations of the Stark Law and anti-kickback law.
Principal lawyer: Robert Salcido
- Representation of hospital in civil investigation alleging violation of the FCA based upon receipt of Medicare outlier payments.
Principal lawyer: Robert Salcido
- Representation of national skilled nursing facility alleging violation of FCA based upon alleged violation of anti-kickback law and supplier standards.
Principal lawyer: Robert Salcido
- Representation of hospital in matter involving allegations of fraudulent pricing. No lawsuit was instituted.
Principal lawyer: Peter Hutt

- Representation of hospital in voluntary disclosure to HHS OIG and U.S. Attorney's office. After investigation the hospital was only required to pay single damages.
Principal lawyer: Robert Salcido
- Representation of physician practice group in voluntary disclosure to HHS OIG. After investigation, the OIG closed the matter without requiring any repayment.
Principal lawyer: Robert Salcido
- Representation of major New Jersey health system in voluntary disclosure to fiscal intermediary and U.S. Attorney's office. After investigation the health system was only required to pay single damages.
Principal lawyer: Robert Salcido
- Representation of Indiana health system in voluntary disclosure to fiscal intermediary and U.S. Attorney's office. The health system was not required to make any repayment.
Principal lawyer: Robert Salcido
- Representation of national chain drug store in Department of Justice FCA investigation regarding allegations that pharmacy did not dispense full amount of medication that was billed to the government. Persuaded the Department of Justice not to file FCA lawsuit.
Principal lawyer: Robert Salcido

FCA AMICUS REPRESENTATIONS

The following is a partial list of amicus briefs filed by Akin Gump attorneys in important FCA cases.

***Rockwell Int'l Corp. v. United States*, No. 05-1272 (U.S. Supreme Court); decision at 127 S.Ct. 1397 (2007)**

- Filed amicus brief on behalf of the Washington Legal Foundation and the Allied Educational Foundation in support of petitioner on merits. Argued that the "original source" exception to the FCA public disclosure bar applies only to plaintiffs who qualify as the original source of the publicly disclosed information.
Principal lawyer: Peter Hutt

***United States ex rel. Schumer v. Hughes Aircraft Co.*, No. 95-1340 (U.S. Supreme Court); decision at 520 U.S. 939 (1997)**


- Filed amicus briefs on behalf of the Chamber of Commerce, Electronic Industries Association, National Security Industrial Association and Shipbuilders Council of America in support of petition for certiorari and on merits. Addressed whether harm to the public fisc is an essential element of a claim under the FCA, whether the "public disclosure" bar of the statute applies retroactively, and whether a disclosure of fraud to company employees is "public disclosure."
Principal lawyer: Peter Hutt

***United States ex rel. Schwedt v. Planning Research Corp.*, No. 95-829 (U.S. Supreme Court)**

- Filed amicus brief on behalf of National Security Industrial Association in support of petition for certiorari. Addressed whether the submission of a false claim is a prerequisite to imposition of liability under the FCA.
Principal lawyer: Peter Hutt

***United States ex rel. Fallon v. Accudyne Corp., et al.*, No. 96-1474 (7th Circuit); decision at 1996 U.S. App. LEXIS 26192 (7th Cir. 1996)**

- Filed amicus brief on behalf of Aerospace Industries Association of America, Electronic Industries Association, National Security Industrial Association and Shipbuilders Council of America in support of appeal. Addressed propriety of award of attorney's fees under FCA.
Principal lawyer: Peter Hutt



About Akin Gump Strauss Hauer & Feld LLP

Akin Gump is one of the leading international law firms. Founded in 1945, it numbers more than 900 attorneys in 15 offices. With a diversified practice that spans the full range of business, policy and individual legal issues, Akin Gump is valued worldwide for its political, legal and transactional strengths.

If you would like additional information about Akin Gump's False Claims Act practice, please contact:

Robert K. Huffman

T 202.887.4530
rhuffman@akingump.com

Peter B. Hutt II

T 202.887.4294
phutt@akingump.com

Robert S. Salcido

T 202.887.4095
rsalcido@akingump.com

Jerry E. Rothrock

T 202.887.4018
jrothrock@akingump.com

Akin Gump Strauss Hauer & Feld LLP

Robert S. Strauss Building
1333 New Hampshire Avenue, NW
Washington, DC 20036

T 202.887.4000
F 202.887.4288

Prior results do not guarantee similar future outcomes.