

ALI-ABA Video Law Review
The False Claims Act: Including New Proposed Amendments

April 30, 2008
Live Video Webcast

TABLE OF CONTENTS

	<u>Page</u>
PROGRAM SCHEDULE	ix
FACULTY PARTICIPANTS	xi
FACULTY BIOGRAPHIES	xiii
STUDY MATERIALS	
1. S. 2041 as reported out of U.S. Senate Judiciary Committee (April 2008)	1
2. H.R. 4854 (December 2007)	25
3. The False Claims Act	53
4. Relevant Case Citations	67
By Joseph (Jeb) E.B. White	
Common FCA Violations	69
Issues with Off-Label Cases	77
Impact of <i>Bly-Magee</i>	78
5. Legal Battlegrounds of the False Claims Act	81
By Asher Alavi	
Presentment "Requirement"	90
Rule 9(b) Pleading Issues	94
Conditions of Participation versus Payment	97
6. January 25, 2008, Letter: U.S. Department of Justice, Office of Legislative Affairs, to the Hon. Patrick J. Leahy, with Responses from former U.S. Attorney General Alberto Gonzales Regarding Government Oversight Following Questions Posed on July 25, 2007	109
Page 51 of Gonzales Testimony	161
7. February 21, 2008, Letter: U.S. Department of Justice, Office of Legislative Affairs, to the Hon. Patrick J. Leahy	179
8. February 27, 2008, Testimony: Michael Hertz before the U.S. Senate Committee on the Judiciary on February 27, 2008	199
9. April 2, 2008, Letter: U.S. Chamber of Commerce & Other Associations, to the Hon. Patrick J. Leahy & the Hon. Arlen Specter	205
10. February 27, 2008, Written Testimony in Opposition to S. 2041: Chamber of Commerce & U.S. Chamber Institute for Legal Reform	211
11. Settlement of Employment Disputes: A Checklist	257
By Robert B. Fitzpatrick	

12. <i>Qui Tam</i>: An AUSA’s Perspective	373
By Kathleen McDermott	
13. Appendix 1-Case Citations Mentioned In Seminar: The False Claims Act-Additional Materials	385
14. Appendix 2-Department of Justice Comments on Managers' Substitute Amendment to S.2041-Additional Materials	389

PROGRAM SCHEDULE
April 30, 2008

Program Schedule	Eastern	Central	Mountain	Pacific/Arizona	Alaska	Hawaii
National Teleseminar/Webcast	1200 pm	11:00 am	10:00 am	9:00 am	8:00 am	6:00 am
Adjournment	4:00 pm	3:00 pm	2:00 pm	1:00 pm	12:00 pm	10:00 am

Scope and Purpose

The **False Claims Act**, as well as its state counterparts, has led to significant high stakes litigation involving claims of fraud on the federal purse. A well organized relators' bar has been pressing innovative interpretations of the FCA, leading to numerous multi-million dollar judgments and settlements. For example, just in 2007 alone, there were settlements of \$5.3 million involving Oakland City University, \$7.6 million against Crane Company, \$8.5 million against Burlington, \$5.2 million against IBM & PriceWaterhouse Coopers; and \$515 million against Bristol-Myers. In 2006, there was a settlement of \$11.5 million against GE, and on and on.

Suggested Prerequisite: Some experience in government contacts, employment, whistleblowing or fraud law

Educational Objective: Maintenance of professional competence as a practitioner; provision of information on recent legal developments; development of proficiency in performance of intricate and complex legal tasks within a narrow area.

Level of Instruction: Intermediate.

Total 60-minute hours of instruction: 3.66; Total 50-minute hours of instruction: 4.4

Program

(All Times EDT)

12:00 Noon	The False Claims Act: Including New Proposed Amendments
	Discussion of Registrant Questions
4:00 p.m.	Adjournment

Includes a 20-minute break

ALI-ABA Video Law Review
The False Claims Act: Including New Proposed Amendments

Wednesday, April 30, 2008
Live Video Webcast

PLANNING CHAIR

Robert B. Fitzpatrick, Esquire
Robert B. Fitzpatrick, PLLC
1825 Connecticut Avenue, NW, Suite 640
Washington, DC 20009

FACULTY

Peter W. Chatfield, Esquire
Phillips & Cohen LLP
2000 Massachusetts Avenue, NW
Washington, DC 20036-1022

Laurence J. Freedman, Esquire
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037-1350

Kathleen McDermott, Esquire
Sonnenschein Nath & Rosenthal LLP
1301 K Street, NW, Suite 600E
Washington, DC 20005-7019

Joseph (Jeb) E.B. White, Esquire
Taxpayers Against Fraud, The False Claims
Act Legal Center
1220 19th Street, NW, Suite 501
Washington, DC 20036-2497

FACULTY BIOGRAPHIES

Planning Chair

Robert B. Fitzpatrick, Washington, D.C.

Robert B. Fitzpatrick, PLLC

Robert Brian Fitzpatrick is the principal in the law firm of Robert B. Fitzpatrick, PLLC in Washington, D.C. where he represents clients in employment law and employee benefits matters. Mr. Fitzpatrick has concentrated his practice in employment law disputes for over thirty-five years and has been described by the National Law Journal as being among the top employment lawyers in the country and by Washingtonian Magazine as "tops in employment law" in the Washington, D.C. area. He was also included in the 2006 edition of The Best Lawyers in America.

Mr. Fitzpatrick is an active member of the American Bar Association (ABA) and the District of Columbia Bar, being a frequent speaker at Bar meetings and a participant in the activities of several sections of the ABA and the D.C. Bar. He has been Co-Chairman of the ABA's Committee on Individual Employee Rights and Responsibilities of the Labor and Employment Law Section; Co-Chairman of the Steering Committee of the Labor Relations Section of the D.C. Bar; Chairman and founder of the D.C. Bar's Committee on Individual Employee Rights and Responsibilities; Chairman of the Federal Bar Association's Labor Law and Labor Relations Section; Chairman of the FBA's Committee on Equal Employment Opportunity; and Chair of the Employer-Employee Relations Committee of the Torts and Insurance Practice Section of the ABA. He has been a member of the Class Action Task Force of the Torts & Insurance Practice Section of the ABA and served as a member of the Long Range Planning Committee of ABA's Torts and Insurance Practice Section from 1993 to 1996. He is an active member of the Section of Dispute Resolution of the ABA and of the International Employment Law Committee of the International Law & Practice Section of the ABA. He has been the Chair of the Alternative Dispute Resolution Committee of the ABA's Section of Individual Rights and Responsibilities.

Faculty

Peter W. Chatfield, Washington, D.C.

Phillips & Cohen LLP

Peter W. Chatfield has handled a wide variety of qui tam cases since joining the firm in 1994. His practice has included pursuing fraud cases on behalf of whistleblowers against defense contractors, construction firms and healthcare providers. In the area of healthcare fraud, Mr. Chatfield has developed an expertise in Medicare cost-report fraud.

Mr. Chatfield graduated in 1986 from Yale Law School, where he was a Coker fellow and senior editor of the Yale Law Journal. He then served as a law clerk to the Honorable Alvin B. Rubin of the U.S. Court of Appeals for the Fifth Circuit.

From 1987 to 1994, Mr. Chatfield was associated with Williams & Connolly in Washington, D.C. His practice there centered on complex civil and commercial matters, including business torts and fraud, medical malpractice defense, civil RICO, products liability, and labor and employment matters.

Laurence J. Freedman, Washington, D.C.

Patton Boggs LLP

Larry Freedman brings almost 14 years of experience as a federal litigator to the Patton Boggs Health Care Practice. Mr. Freedman practices in the area of the False Claims Act and its qui tam (whistleblower) provisions. He specializes in health care fraud enforcement matters including complex civil litigation, government investigations, internal investigations and corporate compliance. He has particular expertise in global resolutions involving criminal and civil allegations, federal and state interests and multiple jurisdictions.

From 1997-2005, Mr. Freedman served as an Assistant Director in the Department of Justice's Fraud Section, Commercial Litigation Branch, Civil Division. During his tenure as an Assistant Director, he devoted his efforts exclusively to health care fraud matters pursued under the False Claims Act and its qui tam provisions, including matters premised on the antikickback statute, Stark laws (physician self-referral) and Food, Drug and Cosmetic Act violations. He supervised high-profile matters that yielded billions of dollars in federal recoveries involving significant health care providers including major pharmaceutical manufacturers, biotech and medical device companies, dialysis companies, rehabilitation hospitals, acute care hospital chains nursing home chains, and national clinical laboratory companies.

Before his appointment to Assistant Director, Mr. Freedman worked as a trial attorney in the Fraud Section, a position he held from 1991-1997. In this capacity he gained extensive experience in white collar investigations and complex civil litigation, often in joint criminal and civil matters, for federal agencies, including civil fraud actions and qui tam matters in the areas of defense procurement and health care fraud. Mr. Freedman achieved significant recoveries for the United States during this period. For example, he served as the lead civil counsel in "Operation LABSCAM," an effort to investigate and prosecute national independent clinical laboratories that resulted in almost \$600 million in civil settlements.

Mr. Freedman was awarded the Attorney General's "Exceptional Service" award, the highest award from the Attorney General. He also received the Attorney General's "Distinguished Service" award, the second highest award from the attorney general, and numerous other awards from the Department of Justice, the HHS Office of the Inspector General and the National Association of Medicaid Fraud Units.

While at the Department of Justice he taught a health care fraud course at the National Advocacy Institute and provided fraud training to Assistant U.S. Attorneys, FBI agents and supervisors, and other federal law enforcement personnel.

Before joining the Department of Justice, Mr. Freedman was an associate at a prominent Washington law firm. He clerked for the Hon. Richard J. Cardamone, United States Court of Appeals for the Second Circuit, upon his graduation from law school.

Professional Affiliations:

American Bar Association

American Health Lawyers Association

DC Bar, Litigation Section Steering Committee (Co-Chair, 2003-2005)
American Constitution Society

Kathleen McDermott , Washington, D.C.

Sonnenschein Nath & Rosenthal LLP

Katie McDermott is a Partner in Sonnenschein Nath & Rosenthal's Washington, D.C. Office and has been involved in enforcement and compliance matters affecting the health industry for over 15 years. Ms. McDermott represents medical device and pharmaceutical manufacturers, clinical research organizations, hospitals and health systems, long-term care providers, payors, and a host of other health care organizations in connection with a broad array of federal and State health care criminal and civil enforcement, compliance, litigation and regulatory matters. She has been recognized as a leading False Claims Act practitioner with both government and defense experience and is frequently invited to teach and comment on industry enforcement and compliance issues.

Katie served as an Assistant U.S. Attorney and Health Care Fraud Coordinator for the U.S. Attorney's Office in Maryland from 1991-1999, directing a multi-agency federal task force focused on health care fraud investigations and initiatives. She was involved in DOJ enforcement policy committees in Washington, including the Attorney General's Advisory Committee for Health Care Fraud and the FBI's Healthcare Fraud Working Group and is a recipient of the HHS-OIG Inspector General's Integrity Award for her work in government health care fraud matters.

Ms. McDermott currently serves as Co-Chair of the American Bar Association White Collar Crime False Claims Qui Tam Subcommittee, focusing on federal and State False Claims Act enforcement and litigation issues and as a Vice-Chair for the American Health Lawyers Fraud & Abuse Practice Group. She has been listed as a DC Super Lawyer in white collar matters and a top Washington DC attorney for defending whistleblowers suits and making corporate disclosures to the government.

Joseph (Jeb) E.B. White, Washington, D.C.

Taxpayers Against Fraud, The False Claims Act Legal Center

Mr. White is the Director of Legal Education & Programs at Taxpayers Against Fraud Education Fund, a public interest organization dedicated to combating fraud against the government through the promotion of the False Claims Act and its qui tam provisions. A graduate of the University of Pennsylvania and the Georgetown University Law Center, Mr. White regularly works with other qui tam attorneys, detailing the emerging case law through regular legal publications, educational seminars, and individual consultations. Mr. White launched the first legal website devoted to FCA qui tam counsel; established a moot court program; reinvigorated an amicus curiae brief program; and coordinated various educational programs, including the nation's largest annual conference on False Claims Act litigation. Mr. White has also filed amicus curiae briefs in state and federal courts across the country, supporting a broad interpretation of the False Claims Act. In addition to being a frequent lecturer at the George Washington University Health Care Corporate Compliance Program, he has also presented at several American Bar Association seminars, the National Law & Society meeting, and various national and state employment law conferences. With over a dozen published articles and two upcoming books, he has written extensively about health care fraud and whistleblower protections. In addition, as the Editor-in-Chief of the False Claims Act & Qui tam Quarterly Review, Mr. White manages the overall production of a 150+ page law journal devoted to False Claims Act litigation, which includes regular legislative updates, practitioner success stories, and recent judicial decisions. Prior to law school, Mr. White managed all on-site affinity promotions for Bank One, N.A. (now J.P. Morgan Chase), where he was the youngest officer-level employee. During his time at Georgetown Law, Mr. White was the Annual Review Editor-in-Chief of the Georgetown Journal of Gender and the Law, taught an introductory seminar on legal research and writing, and defended indigent clients as a member of the Georgetown Criminal Justice Clinic.