



David J. Levis

Partner

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David J. Levis is a partner in the Washington, DC office of O'Melveny & Myers and a member of the firm's White Collar Crime & Corporate Defense and Health Care practices. A recognized authority on False Claims Act-related issues, David focuses his practice on defending corporations and their key personnel from whistleblower qui tam actions under the False Claims Act, and civil and criminal enforcement actions based on the Anti-Kickback Statute and other provisions. David also represents corporations, institutions, and individuals in high-profile congressional investigations. He has achieved numerous victories for healthcare and financial services companies, as well as multinational corporations and not-for-profit organizations.

Before joining O'Melveny in February 2011, David served as a trial attorney with the Civil Division of the Department of Justice and held high-ranking investigative positions on two US House of Representatives committees. First as a DOJ trial attorney, and now in private practice, David has investigated and litigated dozens of False Claims Act matters in federal courts nationwide, many involving issues concerning Medicare Advantage, Part D, and Medicaid managed care, as well as defense procurement, GSA defective pricing allegations, and federally insured mortgages and mortgage-backed securities.

As Chief Oversight Counsel of the US House Committee on Energy and Commerce, David was responsible for oversight of federal agencies, departments, and programs within the Energy and Commerce Committee's broad jurisdiction, which includes health care, energy, environment, food and drug safety, consumer protection, auto safety, cyber security, privacy, and telecommunications. As senior investigative counsel for the

Admissions

Bar Admissions

District of Columbia
New York

Court Admissions

US Supreme Court
US Court of Appeals, Ninth and Eleventh Circuits
US District Court, District of Columbia, Southern District of Indiana, District of New Jersey, Eastern and Southern Districts of New York

Education

New York University, J.D., 1997
Amherst College, B.A., English, 1992
magna cum laude

Committee on Oversight and Government Reform, David served as lead counsel on several high-profile investigations concerning waste, fraud, abuse, and deficiencies in corporate governance.

In addition to his False Claims Act litigation and congressional investigations practice, David dedicates extensive time to pro bono work, supervising a Religious Freedom Restoration Act challenge to the US Bureau of Prisons that secured halal meals for Muslim inmates, serving on the Board of the Washington Lawyer's Committee for Civil rights, and advising O'Melveny associates on other cases for those most in need of legal help.

David has been recognized by *The Legal 500* as among the leading lawyers in the nation for Dispute resolution: White collar criminal defense and Healthcare: Health insurers. He earned his J.D. from New York University School of Law and his B.A. from Amherst College.

Experience

False Claims Act Experience

In Private Practice

- Defending a national managed-care organization in a *qui tam* False Claims Act investigation into compliance with Medicare Advantage regulations, including allegations related to inflated premiums resulting from inaccurate risk-adjustment submissions
- Defended an international biotechnology manufacturer in a *qui tam* False Claims Act investigation into kickback and off-label allegations (the US Department of Justice declined to intervene and the *qui tam* plaintiff dismissed the case with prejudice)
- Conducting an internal investigation into whistleblower allegations related to a national managed-care organization's compliance with Medicare Advantage regulations and the federal anti-kickback statute, which has led to disclosures to the US Department of Justice, the Centers for Medicare and Medicaid Services, the Office of the Inspector General of the US Department of Health and Human Services, and state regulatory and enforcement authorities
- Defending government services contractor in DOJ and US Postal Service OIG inquiry concerning alleged False Claims Act violations stemming from labor mapping requirements in national contract
- Defending fuel services company in DOJ investigation of defective pricing allegations and alleged False Claims Act violations relating to nationwide fuel contract
- Secured a landmark victory in an Eleventh Circuit appeal, affirming the district court's dismissal with prejudice of a *qui tam* False Claims Act suit alleging US\$ billions in fraud against a Medicare Advantage organization
- Counseled for-profit university in assessing potential False Claims Act risk from federally insured student loan program as part of pre-acquisition diligence
- Defended a healthcare insurer in a False Claims Act complaint alleging US\$1 billion in Medicare fraud; secured the dismissal of a *qui tam* complaint filed in the Central District of California in August 2013
- Defended a large national insurance carrier in a *qui tam* complaint alleging violations of the Medicare Secondary Payer statute

- Defended a national healthcare insurer in a *qui tam* complaint filed under the federal and California False Claims statutes alleging Medicare and Medicaid fraud, including securing the successful dismissal of the action on appeal to the 9th Circuit
- Defended two different financial institutions in several *qui tam* actions against a number of banks and loan servicers alleging false claims to the government concerning the purchase of mortgage-backed securities by the US Treasury
- Counseled technology company on potential False Claims Act exposure as part of due diligence prior to acquisitions
- Represented a global healthcare company in a False Claims Act investigation brought by the US Attorney's Office, resulting in a declination by DOJ and dismissal of the *qui tam* complaint by the relator
- Won a significant victory for a managed health care company when the district court granted a motion to dismiss a False Claims Act (FCA) complaint alleging US\$1 billion in Medicare fraud against the Medicare Advantage Organization and its co-defendants
- Represented major national loan servicer in two FCA *qui tam* actions seeking billions in damages and penalties, relating to government incentive payments received under the Treasury HAMP loan modification program

In Government

- Recovered US\$98.5 million from a global software company, resolving defective pricing allegations concerning GSA schedule contracts for software and related services. Largest civil settlement in the history of the Multiple Award Schedule program
- Recovered US\$41 million from a global bank, resolving allegations of false certifications concerning compliance with underwriting practices required for originating HUD-insured mortgages. Largest civil settlement in the history of the Federal Housing Administration
- Recovered US\$15 million from a Florida hospital and its physician owners, resolving alleged Medicare billing violations under the False Claims Act and the Anti-Kickback Statute
- Recovered US\$11.5 million from a technology company, resolving allegations of failure to implement mandatory quality-assurance processes in the manufacture of military safety-critical jet engine components

Congressional Investigations Experience

In Private Practice

- Representing social media app in House and Senate inquiries concerning data privacy and the use of de-identified consumer data
- Represented computer chip manufacturer in congressional investigation of industrywide security vulnerabilities
- Represented a leading technology company in Senate inquiry concerning overseas corporate structuring and tax practices
- Represented a former IRS official in connection with a Congressional and federal grand jury investigation related to tax treatment of non-profit organizations
- Represented Planned Parenthood Federation of America and its affiliates in multiple congressional investigations concerning allegations related to the facilitation of fetal tissue donation

- Represented a former Secretary of Commerce in connection with a House Oversight and Government Reform Committee inquiry concerning federal loan guarantees to renewable energy companies
- Represented a former EPA official in connection with a House Oversight and Government Reform Committee inquiry concerning Federal Records Act compliance and the preservation of e-mail communications
- Represented a financial services company in a congressional investigation involving a wireless broadband services provider that received a government loan to expand its operations and then filed for bankruptcy
- Counseled a managed care health insurance company in connection with Senate and House investigations related to Medicare, the Affordable Care Act and the private health insurance market
- Represented a major financial institution in connection with a congressional investigation into the bankruptcy of Solyndra, a solar panel manufacturer that received a government loan guarantee
- Represented a major financial institution in connection with a congressional inquiry concerning residential mortgage foreclosure activities that allegedly violated the Service Members Civil Relief Act

In Government

- The BP Deepwater Horizon oil spill, its potential causes, and impacts
- Business practices in the private health insurance market
- Regulation and safety of the food supply, including an outbreak of Salmonella in eggs
- Toyota, the effectiveness of the National Highway Traffic Safety Administration, and reported incidents of sudden unintended acceleration
- Causes and effects of the 2009 financial crisis, including the role of Alan Greenspan and other federal regulators; the collapse of Lehman Brothers; the public effects of various corporate executive compensation practices; and the events leading to the federal takeover of Fannie Mae and Freddie Mac
- The dissemination of misleading information about the death of Army Ranger Pat Tillman
- Allegations of serious misconduct by government officials within the Department of Justice, the Office of the Inspector General for the Department of State, the General Services Administration, and the Office of the Special Counsel
- White House violations of the Hatch Act and abuse of federal resources for partisan political gain

FCPA Experience

In Private Practice

- Conducted FCPA and anti-corruption risk assessment and developed compliance program for China-based life sciences company doing business with American firms
- Conducted an FCPA and anti-corruption compliance review of a China-based veterinary health company on behalf of its investor, an American pharmaceutical company

As a trial attorney with the Civil Division of DOJ, David took several False Claims Act cases through mediation or trial. David's work at DOJ was well-regarded: in 2003, he received a Special Commendation for his role in a landmark case against a national hospital chain, followed by an Award for Excellence in

2007 from the President's Commission on Integrity and Efficiency for his work in a precedent-setting defective pricing case against a major software company.

Prior to joining DOJ, David worked as an associate doing general business litigation at a New York law firm.

Professional Activities

Clerkship

- Honorable Colleen McMahon, US District Court, Southern District of New York

Member

- Edward Bennett Williams Inn of Court
- ABA Criminal Justice Section
- ABA Health Law Section
- AHLA Fraud and Abuse Practice Group Enforcement Committee
- American Health Lawyers Association
- Federal Judicial Conference of the Fourth Circuit

Speaker

- "Recent Liability Developments," American Bar Association's Virtual Civil False Claims Act and *Qui Tam* Enforcement Institute (December 2020)
- "Witness Preparation in Practice: The Top 5 Dos and Dont's for Preparing Senior Executive Witnesses," National Conference on Congressional Investigations (September 2019)
- "When Congress Investigates: Breaking Down the Nuts and Bolts of Congressional Investigations," Federal Bar Association Annual Meeting & Convention (September 2019)
- "Focus on Healthcare and Life Sciences: Recent Trends and Cases that are Affecting Future False Claims Suits," ACI's 5th Advanced Forum on False Claims and *Qui Tam* Enforcement (January 2018)
- "Managed Care Enforcement and Compliance," HCCA's 3rd Annual Healthcare Enforcement Compliance Institute (October 2017)
- "Deep-Dive into Healthcare False Claims: Analysis of Current Trends in False Claims Cases for MCOs," ACI's 8th Annual Advanced Forum on Managed Care Disputes and Litigation (May 2017)
- "Introduction to Fraud and Compliance for Industry Groups: Commercial, Medicare and Medicaid Manage Care Organizations," ABA's 27th Annual National Institute on Health Care Fraud (May 2017)
- "Managed Care Fraud Enforcement and Compliance," Healthcare Enforcement Compliance Institute (Oct. 2015)
- "Working Washington," 2015 Organization of International Investment General Counsel Conference (Oct. 2015)
- "False Claims Act Hot Topics: First to File, Public Disclosure, and Original Source," ABA 25th Annual National Institute on Health Care Fraud (May 2015)
- "Whistleblower Actions 2015 Webinar," Bridgeport Continuing Education (March 2015)
- "Managed Care Fraud," ABA Health Care Fraud 2014 National Institute (May 2014)

- “Managed Care Enforcement and Compliance,” HCCA 2014 Annual Puerto Rico Regional Conference (May 2014)
- “Risk Adjustment: Key Standards, Developments, and Risks in Medicare Advantage and Beyond,” American Health Lawyers Association (June 2013)
- “Collision at the Intersection of Managed Care and the Anti-Kickback Statute and False Claims Act,” American Health Lawyers Association and Health Care Compliance Association’s Fraud and Compliance Forum (Sept. 2011)
- “Critical Components for Structuring, Implementing and Conducting Audits and Internal Investigations to Avoid Liability and Whistleblowers’ Suits,” American Conference Institute’s 11th National Conference (April 2011); as well as various speeches over the past decade on civil enforcement and congressional oversight topics

Co-Author

- “Eleventh Circuit Issues Opinion Discussing Effect of Regulatory Ambiguity on Scierter,” healthlawyers.org, June 6, 2017 (with Amanda Santella)
- “United States ex rel. Wichansky v. Zoel Holding Co.: Federal District Court Considers Definition of ‘The Government’ under the FCA,” healthlawyers.org, December 17, 2014 (with Amanda Santella)
- “Preparing for Aggressive Congressional Investigations in 2013,” Corporate Counsel, June 6, 2012 (co-authored with Lee Blalack and Zachary Kaufman)
- “Is Sorrell the Death Knell for FDA’s Off-Label Marketing Restrictions?” Journal of Health & Life Sciences Law (Feb. 2012)

Honors & Awards

- Named to the Washington, DC *Super Lawyers* lists in the area of Criminal Defense and White Collar law (2014-2018)
- Recognized by *The Legal 500 US* for Healthcare (2015-2017, 2019)
- Recognized by *The Legal 500 US* for White-Collar Criminal Defense (2014, 2016 & 2019)

Languages

- French