

Fraud, Qui Tam, Civil RICO

Bird Marella attorneys have defended corporations and executives in many industries, including health care, financial services, hospitality, technology, military defense contractors, engineering, and a range of others - against allegations of fraud. In addition, we also pursue claims on behalf of individuals who have been defrauded.

Overview

Fraud claims are routinely alleged in business disputes, and we have decades of experience defending our clients and their reputations when such allegations are made against them. While such claims are easy to make, they are hard to prove, and we have succeeded in defeating such claims at every stage of a case, from the pleading stage through trial. As lawyers who only handle litigation matters, we have particular expertise in the rules and tools to dispose of fraud claims as quickly and efficiently as possible. Whistle-blower actions are increasingly prevalent and our experience includes defending clients in a number of high-exposure *qui tam* matters, including the defense of government contractors.

In numerous matters, we have persuaded the government to not seek criminal prosecutions or to intervene in whistleblower suits and, depending on circumstances, we have achieved civil settlements in false claims cases. We have also successfully defended various clients in Racketeer Influenced and Corrupt Organizations Act (RICO) claims arising under the Act's civil liability provisions.

Often civil fraud cases can become entangled with criminal investigations and charges. Bird Marella's deep white collar crime criminal practice, in areas such as health care fraud, securities fraud and government fraud, provides clients with uniquely focused and comprehensive counsel. We have earned a reputation with the bench and the bar as experienced trial attorneys who are able and willing to try cases when that is needed. This gives our arguments and advocacy particular credibility both in the courtroom and in negotiations to resolve complex state, federal and private litigation.

Experience

FALSE CLAIMS ACT, QUI TAM ACTIONS

Successfully Represented Global Contractor in High-Profile Qui Tam Trial: Secured victory for the world's largest plastic pipe manufacturer in a high-profile qui tam case brought by over 40 intervening government agencies seeking over \$2 billion in damages claims relating to alleged non-compliant PVC pipe. In a bellwether trial, successfully convinced the court to cap potential damages at \$2 million before the jury was ultimately unable to agree that any damages were owed, leading to a mistrial. We then successfully obtained an order granting judgment as a matter of law in favor of the client, which order was upheld on appeal to the Ninth Circuit.

Successfully represented a Fortune 500 GovTech company and its subsidiary in a California False Claims Act case alleging that the defendants defrauded the State by delivering a website that was not accessible to users who are blind. Plaintiffs sought damages in excess of \$60 million. After the defendants filed their motion for summary judgment, the matter was settled in principle for a small fraction of the claimed damages. Plaintiff's motion for approval of the settlement is pending.

Represented Fortune 500 testing laboratory in multiple matters, including indemnity actions brought by former national health plan co-defendants in a federal False Claim Act case against the testing laboratory based upon alleged improper risk adjustments. Bird Marella previously settled the underlying qui tam action in 2014, settled one of two indemnity cases in 2022, and is actively defending the company in the other.

Averted \$2 Billion Medicare Fraud Prosecution, Settled False Claims Charges: The government threatened to charge the client, the COO of the country's second-largest publicly traded hospital chain, with an alleged \$2 billion Medicare fraud and concurrent civil false claims act claim. After a thorough investigation and multiple presentations, the firm convinced the government that the client had not committed any fraud and the government dropped the criminal matter and negotiated a favorable civil settlement.

Won Dismissal of Federal and State FCA Claims: Lead counsel for mobile virtual network provider TruConnect, the fastest growing wireless Lifeline company in the United States, in a federal False Claims Act lawsuit filed in the U.S. District Court for the Central District of California. Won dismissal of all federal and state FCA claims without leave to amend. The relators' allegations threatened close to a half-billion dollars in damages.

Favorably Resolved Eight-Figure High-Profile FCA Lawsuit: Lead counsel for a global non-profit provider of AIDS/HIV healthcare, prevention services, and testing in a high-profile False Claims Act lawsuit seeking eight-figure damages. Plaintiffs/relators alleged violations of the federal anti-kickback laws governing payments for patient referrals. Successfully moved to dismiss virtually all claims in the relators' complaint, leaving only a narrow category of "claims for payments" relating to literally two patients, with very modest accompanying exposure. Case resolved favorably thereafter.

Defended Qui Tam Action Successfully for Renal Care Centers: We successfully represented a chain of kidney dialysis centers against qui tam allegations that the chain overcharged Medicare for drugs.

Favorably Settled FCA Case in Court of Appeal for CA Law Firm: Lead counsel for a prominent California law firm in a False Claims Act case of first impression, alleging the firm “fraudulently” induced its former client, a public agency, to disburse several million dollars in public funds. Bird Marella aggressively litigated the relator’s standing to pursue the case and obtained a writ of mandate from the California Court of Appeal, finding that the relator had a conflict of interest that precluded her from participating in agency decisions relating to the lawsuit. After filing summary judgment motions and persuading the Court of Appeal to stay all trial court proceedings, Bird Marella settled the case for a small fraction of the public funds at issue.

Convinced Government Against Filing Criminal Charges, Settled Qui Tam Claim: Represented an individual and several healthcare corporations that were targets of criminal investigations in several federal jurisdictions, as well as defendants in a parallel qui tam action. After several years of contentious proceedings, the firm persuaded the government in each jurisdiction not to criminally charge the individual client or his operating companies. Resolved the criminal case with a guilty plea by a defunct company and settled the civil qui tam on favorable terms.

Represented lead defendant, a national leader in the design and implementation of preventive care technology and health risk assessments, who was sued -- along with five national health plans -- by a former employee/whistleblower for purported violations of the federal False Claims Act. Successfully moved to dismiss the whistleblower's primary theory of liability (false certification), after which the client reached an agreement in principle with the whistleblower on a favorable settlement.

Thwarted False Claims Charges Against Reimbursement Consultant: We represented a cost report consultant threatened with criminal felony prosecution for alleged improper suppression of overpayment data. After a thorough factual and legal investigation, we had several contentious meetings with the government in which we argued that the consultant’s conduct was not illegal. The government reversed its intent to charge our client with several felonies and dropped the matter. We also persuaded the government not to name our client as a defendant in a parallel civil

False Claims Act suit.

FRAUD

Favorably Settled Multimillion-Dollar Fraud Suit for Cannabis Company: Represented the largest cannabis products distributor in California in a parallel federal action and AAA arbitration. Plaintiff alleged it was fraudulently induced to invest \$47 million as a result of the defendant's alleged failure to make certain financial disclosures and sought rescission of the parties' \$250 million merger agreement. Case settled on favorable terms pre-hearing.

Represented the largest car manufacturer in the United States and one of the largest in the world, and its automated vehicle subsidiary, in a fraud and breach of fiduciary duty action stemming from the company's \$70 million acquisition of a Lidar company in an arbitration before JAMS. Obtained an arbitration award in favor of the company on all alleged claims for fraud and breach of the employment agreement.

Averted Criminal Charges for Hotel Chief, Settled Civil Fraud Charges: Defended a hotel executive in parallel criminal and civil litigation involving two of the largest hotel brands in the world, in connection with the executive's launch of a new luxury division in competition with his former employer. After a federal grand jury investigation and filing of civil lawsuits alleging trade secrets misappropriation and computer fraud violations, convinced the government not to pursue criminal charges and negotiated a favorable civil settlement of all civil claims.

Resolved Parallel-Civil Charges for Medical Researcher: A senior scientist at a major pharmaceutical company faced parallel civil and criminal actions involving alleged violations of the federal Computer Fraud and Abuse Act and the Economic Espionage Act. In our representation of him, we obtained a “no charge” decision in the criminal investigation and the civil action settled on favorable terms thereafter.

Defended Tech Executive Jailed in China on Business Fraud Claim: The firm represented the chair of an electronics importing company who was arrested by the Chinese government for claims of financial fraud related to business contracts with a Chinese electronics manufacturer. Bird Marella secured the executive's release and resolved the international business dispute.

Reduced Risks in Brokerage Ponzi Scheme Mass Claims: The firm succeeded in forcing class / mass action claims into arbitration, which ultimately resulted in modest settlements or favorable awards in our representation of a regional brokerage firm. The matter arose out of the sale of limited partnership investments that allegedly were part of Ponzi schemes.

Dismissed Fraud Claims for Contractor on Summary Judgment, Upheld on Appeal: Served as lead counsel for a Fortune 100 engineering contractor in a breach of contract, negligence, and fraud action stemming from alleged delays in the construction of a Beverly Hills surgical center. The firm successfully obtained summary judgment on all claims after the plaintiff turned down a substantial settlement offer. Bird Marella handled the subsequent appeal before the California Court of Appeal and obtained an order affirming the summary judgment.

Settled Fraudulent Sales Claims Related to Recalled Product for Agricultural Producer: The firm served

as trial counsel for the nation's largest producer of sun-dried tomato products, in a jury trial concerning the fraudulent sale of thousands of gallons of adulterated olive oil, following a recall. We obtained a substantial settlement for the client midway through trial.

Prevailed in Defense of Fraud Claims in Real Estate Partnership Dispute: We represented a group of foreign business people accused of fraud and breach of fiduciary duty in connection with a series of real estate limited partnership investments. After contentious litigation involving more than 100 days of deposition, we prevailed on a motion to disqualify plaintiffs' counsel. Following substitution of new counsel, we succeeded in diverting the case to arbitration, at which our clients prevailed.

RICO

Achieved RICO Claims Dismissal as Part of Defense Win for Apparel Co.: We defended a leading apparel company in an action brought by former sales representatives alleging that they were defrauded on matters relating to compensation. The case was filed in federal court, but we prevailed on a contested motion to compel arbitration. We thereafter succeeded in having the RICO claims dismissed prior to evidentiary hearing, and then prevailed on the merits after hearing on the balance of the claims.

Won Summary Judgment for Corporation in RICO Claims by Creditors: The firm defended a nationally prominent company that promotes and sells corporations and corporate services against civil RICO claims. The claims were based on an allegation that the company conspired with clients in a scheme to defraud the clients' creditors. Our summary judgment motion was granted.

Obtained RICO Claims Dismissal for Corporate Executive: We prevailed on a motion to dismiss without

leave to amend civil RICO claims against a former corporate executive accused of failing to disclose material information in connection with the sale of his company.