



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

Representing Global Contractor in Large-Scale Qui Tam Action: The firm is defending a world-leading manufacturer of plastic pipe in a whistle-blower case alleging false claims concerning the production and advertising of its products. Several states and government entities are intervenors, but the United States declined to intervene in this matter.

Averted \$2 Billion Medicare Fraud Prosecution, Settled False Claims Charges: The government threatened to charge our 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, we convinced the government that our client had not committed any fraud and the government dropped the criminal matter and negotiated a favorable civil settlement.

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.

Convinced Government Against Filing Criminal Charges, Settled Qui Tam Claim: We represented an individual and several health care 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, we persuaded the government in each jurisdiction not to criminally charge our individual client or his operating companies. Instead, we resolved the criminal case with

a guilty plea by a defunct company, and settled the civil qui tam on favorable terms.

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

Averted Criminal Charges for Hotel Chief, Settled Civil Fraud Charges: In our defense of a hotel executive launching a new luxury division in competition with his former employer, we represented him in a federal grand jury investigation and civil lawsuits alleging trade secret as well as mail, wire and computer fraud violations. We convinced the government not to pursue criminal charges and negotiated a favorable civil settlement.

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 chairman

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. We were able to secure the release of the executive and resolve 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: We 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. We successfully obtained summary judgment on all claims after the plaintiff turned down a substantial settlement offer. We then handled the 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.