

# CRIMINAL JUSTICE SECTION

The Unified Voice of Criminal Justice



**And the White Collar Crime Southeast Region Subcommittee  
Present  
Qui Tam Litigation: A Practitioner's Symposium  
Friday, September 25, 2015  
Charlotte, North Carolina**

This seminar presents a panel of nationally recognized experts to discuss strategic considerations, recent developments and experienced viewpoints on qui tam and FIRREA litigation.

#### **Program**

**8:00 - 8:30:** Registration

**8:30 - 8:45: Introduction to Qui Tam Litigation and Seminar Topics**

The introduction will provide an overview of the qui tam process – from the investigation and filing of a complaint to the final resolution of the claims. This brief outline is intended to provide those in the audience with an outline of a qui tam case before panels discuss specific topics in detail.

Speaker(s): **James F. Wyatt, III**, Wyatt & Blake LLP, Charlotte, NC

**8:45 - 9:30: The Investigation of Potential Claims and the Filing of a Qui Tam Complaint**

This panel will discuss a number of topics relating to the investigation and filing of a qui tam complaint. Topics include determining who can be an appropriate relator; how to investigate a potential defendant and a relator's background; what information to gather to construct a well-pleaded qui tam complaint; typical federal and state claims to include in a qui tam complaint; Rule 9(b) considerations relating to the amount of detail to provide in a qui tam complaint; factors relating to where to file a complaint; the mechanics of filing a complaint under seal; the types of interactions relator's counsel should have with the government prior to filing a complaint; and the requirement for the presentation of a complaint and disclosure statement to the government prior to filing.

Moderator: **James F. Wyatt, III**, Wyatt & Blake, LLP, Charlotte, NC

Speakers: **Pamela Coyle Brecht**, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, Philadelphia, PA  
**Jonathan Ferry**, Assistant United States Attorney, Western District of North Carolina, Charlotte, NC

### **9:30 - 10:30: Post-Filing to Intervention: Strategic Considerations and Tasks**

This panel will discuss strategic considerations and tasks to be performed after a qui tam complaint is filed and prior to the government making an intervention decision. Topics include who conducts the post-filing investigation; document production and preservation issues; sharing of documents and information between the government, target(s) and relators' counsel; interviews of relators; relator assistance to the government; how to handle a whistleblower who is a current employee; strategies for obtaining a declination and/or decision to not intervene; conducting an internal investigation; the use of white papers and legal/factual presentations to the government; partial or full intervention and its consequences; extending the seal; how to interact with multiple relators; and financial statement disclosures

Moderator: **Anne M. Tompkins**, Cadwalader, Wickersham & Taft LLP, Charlotte, NC

Speakers: **Frederick Morgan**, Morgan Verkamp LLC, Cincinnati, OH

**Eric H. Cottrell**, Parker Poe Adams & Bernstein LLP, Charlotte, NC

**Wendy Weiss**, Managing Director, Navigant Consulting (former Chief, Civil Fraud Section, US Attorney's Office, Central District of California)

### **10:30-10:45: Break**

### **10:45 – 11:30: Litigation of Qui Tam Cases**

This panel will discuss various topics relating to the actual litigation of qui tam cases. Topics include motions to dismiss under Rule 9(b), public disclosure and first-to-file grounds; the difference between non-intervened or partially intervened proceedings; serving discovery on the government; statistical sampling and proof of damages; the government's role in cases where it has not intervened; the use of expert witnesses; and trial tactics/considerations.

Moderator: **Claire J. Rauscher**, Womble Carlyle Sandridge & Rice, Charlotte, NC

Speakers: **Paul Traina**, Engstrom Lipscomb & Lack, Los Angeles, CA

**Eric W. Sitarchuck**, Morgan, Lewis & Bockius LLP, Philadelphia, PA

**Art Coulter**, U.S. Department of Justice, Civil Division, Washington, DC

### **11:30 – 12:30: Global Settlements and Relator Share/Attorney Fee Issues**

This panel will discuss global settlements and relator share/attorneys' fee issues. Topics include terms of settlement agreements and standard DOJ provisions in settlement agreements; the scope of a release; damage calculations; corporate integrity agreements; private causes of action and retaliatory discharge claims; who has to approve the settlement and how they do it; the court's role in settlement approval; a relator's role in the settlement process and whether a settlement is "fair, adequate and

reasonable”; cost reports; relator shares; allocation of relator shares; first-to-file issues relating to relator shares and attorneys’ fees; calculation of attorneys’ fees; and inability to pay determinations.

Moderator: **Marc S. Raspanti**, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, Philadelphia, PA

Speakers: **Marc S. Raspanti**

**Thomas F. Carlucci**, Foley & Lardner LLP, San Francisco, CA

**Arthur Di Dio**, United States Department of Justice, Civil Division, Washington, DC

**12:30 – 1:15: Lunch with Guest Speaker Michael A. Morse**, Pietragallo Gordon Bosick & Raspanti, Philadelphia, PA

This speaker will discuss recent trends and developments in the law. His presentation will include a review of recent 4<sup>th</sup> Circuit case law; recent Supreme Court cases; new theories of liability and new defenses; decisions relating to Rule 9(b); recent cases in North Carolina; and first-to-file developments.

**1:15 – 2:00: Financial Services Industry Fraud: FIRREA and Dodd-Frank**

This panel will address financial services industry fraud. Topics include an explanation of FIRREA, including false claims that affect federally insured financial institutions; burdens of proof; the differences between FIRREA and qui tam cases; awards to whistleblowers; caps on such awards; and recent FIRREA cases.

Moderator: **Leticia Vandehaar**, Assistant United States Attorney, Newark, NJ

Speakers: **Daniel Ryan**, Assistant United States Attorney, Western District of North Carolina, Charlotte, NC

**Jordan A. Thomas**, Labaton Sucharow LLP, New York, NY

**Beth Moskow-Schnoll**, Ballard Spahr LLP, Wilmington, DE

**2:00 - 2:45: STARK/AKS**

This panel will discuss Stark/Anti-kickback issues. The topics include what financial arrangements violate Stark; voluntary disclosures and Stark; permissible and impermissible non-monetary compensation arrangements; and other related topics.

Moderator: **Spencer Pryor**, Alston & Bird LLP, Atlanta, GA

Speakers: **Alex Kriegsman**, Kriegsman PC, Sag Harbor, NY

**Gabriel Imperato**, Broad and Cassel, Ft. Lauderdale, FL

**G. Norman Acker III**, United States Attorney’s Office, Eastern District of North Carolina, Raleigh, NC

**2:45 - 3:00: Break**

**3:00 - 3:45: Parallel Proceedings: Criminal Investigations, Medicaid Proceedings, and Retaliatory Discharge**

This panel will discuss criminal investigations related to qui tam proceedings, Medicaid proceedings, and retaliatory discharge claims. Topics include the global resolution of both civil and criminal claims; the representation of individuals who are subjects or targets of a criminal investigation; discovery issues and the assertion of the 5<sup>th</sup> Amendment privilege; indemnity issues; and how Medicaid claims are resolved.

Moderator: **Richard Glaser, Jr.**, Parker Poe Adams & Bernstein LLP, Charlotte, NC

Speakers: **Mark T. Calloway**, Alston & Bird LLP, Charlotte, NC

**F. Edward Kirby, Jr.** Medicaid Investigations Division, North Carolina Department of Justice, Raleigh, NC

**Kelli H. Ferry**, United States Attorney's Office, Western District of North Carolina, Charlotte, NC

**3:45 - 4:30: SEC Whistleblowing Program**

The speaker will describe the practical application of the SEC whistleblowing program.

Speaker: **Mark Harrison**, Senior Counsel, Complex Financial Instruments, Division of Enforcement, Securities & Exchange Commission, Atlanta Regional Office

Place: Alston & Bird, LLP  
101 South Tryon Street, 37<sup>th</sup> Flr.  
Charlotte, NC 28280

**Registration information**

\_\_\_ \$175 Non Member  
\_\_\_ \$150 Section Member  
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## **Scholarships**

For more information on scholarships, email Carol Rose at [carol.rose@americanbar.org](mailto:carol.rose@americanbar.org).

## **MCLE Information**

CLE accreditation is being sought for this program on a limited basis. Specifically, the ABA will be seeking accreditation for this program in the Southeast regional states and CA, IL, NY, only. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for 6.25 CLE credit hours in 60-minute states, and 7.5 CLE credit hours in 50-minute states. This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, visit [www.americanbar.org/mcle](http://www.americanbar.org/mcle).

