



Taxpayers Against Fraud **22nd Annual Conference**

Oct. 26-28, 2022

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Conference Wi-Fi Information

Network Name: Marriott_CONFERENCE

Password: TAF2022

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Schedule Overview

Wednesday, Day 1 October 26

11:00 AM - 12:00 PM

Registration

12:00 - 1:20 PM

Lunch/Hot Topics & Trends

1:20 - 1:30 PM

Break

1:30 - 2:30 PM

Mediation & Settlement

2:30 - 2:45 PM

Break

2:45 - 3:45 PM

Implicit Bias Training

3:45 - 4:00 PM

Break

4:00 - 5:00 PM

Option 1: Antitrust & Fraud

Option 2: False Claims Act 101

Option 3: Procurement Fraud

5:15 - 6:00 PM

15th Annual Women's Reception

5:30 - 6:30 PM

TAF Reception

7:00 PM - Onward

Off-Site Dinner Reservations

Thursday, Day 2 October 27

8:00 - 9:00 AM

YLD Breakfast

9:00 - 9:15 AM

Welcome

9:15 - 10:30 AM

Pleading & Proving Knowledge

10:30 - 10:45 AM

Award

10:45 - 11:00 AM

Break

11:00 AM - 12:00 PM

Whistleblower Perspectives

12:00 - 12:15 PM

Award

12:15 - 1:15 PM

Lunch with Erika Kelton

1:15 - 2:15 PM

Option 1: IRS Developments

Option 2: Mitigating Criminal Risk

Option 3: Managed Care Fraud

2:15 - 2:30 PM

Award

2:30 - 2:45 PM

Break

2:45 - 3:45 PM

Option 1: SEC/CFTC Developments

Option 2: Data Driven Cases

Option 3: Public Disclosure Update

3:45 - 4:00 PM

Break

Thursday, Day 2 October 27 (cont.)

4:00 - 5:00 PM

Option 1: Cryptocurrency

Option 2: Paralegal Issues

Option 3: Litigation Funding

Option 4: Separation Agreements

Option 5: Attorneys' Fees

6:00 - 7:00 PM

Reception

7:00 - 10:00 PM

Masquerade Ball

Friday, Day 3 October 27

9:00 - 9:15 AM

Welcome/Closing

9:15 - 10:15 AM

Govt. Relationships

10:15 - 10:30 AM

Break

10:30 - 11:45 AM

Litigating Declined Cases

11:45 AM - 1:15 PM

Lunch/Mindfulness Toolkit

1:15 - 2:15 PM

Ethics

2:15 - 2:30 PM

Break

2:30 - 3:30 PM

Option 1: States of Opportunity

Option 2: Alternate Remedies

Option 3: Retaliatory Suits

4:00 PM - Onward

TAF Office Party

Schedule Details: Day 1

11:00 AM - 12:00 PM - Registration

12:00 - 1:20 PM - Hot Topics & Trends (Working Lunch)

Sponsored by: Nichols Kaster, PLLP

This panel will explore key case developments and trends, including important recent decisions and emerging fraud schemes.

Moderator: Claire Sylvia, Phillips & Cohen

Tejinder Singh, Sparacino PLLC

Jamie Yavelberg, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice

Nimish Desai, Lief Cabraser Heimann & Bernstein LLP

1:20 - 1:30 PM - Break

1:30 - 2:30 PM - Mediation and Settlement in False Claims Act Cases

The panel would cover when it makes sense to mediate FCA cases, both pre-intervention and post-litigation and discuss strategies for getting government, relator, and defendants to agree to mediate, as well as best practices for preparing for mediation. The panelists will also discuss terms to include in the settlement agreement to protect your client, common terms defendants attempt to add to settlements and how and when to compromise, common terms included in by the government and where they may be flexible, and how to manage multiple agreements within one case.

Moderator: David Lieberman, The Whistleblower Law Collaborative

Neeli Ben-David, U.S. Attorney's Office for the NDGA, Health Care Fraud Coordinator, Civil Division

Janel Quinn, The Employment Law Group

2:30 - 2:45 PM - Break

2:45 - 3:45 PM - Implicit Bias Mitigation with Dr. Bryant Marks

Presented by the TAF DEIJ Committee

After last year's discussion about identifying implicit bias and the impact it can have on our behavior, Dr. Marks and Lawanda Hodges (The Law Firm of Lawanda Hodges) will walk us through steps to address implicit bias and use interactive working groups to come up with recommendations for reduce bias.

3:45 - 4:00 PM - Break

4:00 - 5:00 PM - Breakouts

1. Antitrust and Fraud Enforcement

This panel will cover how antitrust violations can also form the basis of a whistleblower suit, the current legal landscape, and predictions for the future.

Moderator: Hamsa Mahendranathan, Constantine Cannon

Zac Arbitman, Feldman Shepard LLP

Charlene Fulmer, U.S. Attorney's Office for the EDPA, Deputy Affirmative Civil Chief

David Kovel, Kirby McInerney

Nico Herrera, Herrera Kennedy

Schedule Details: Day 1

4:00 - 5:00 PM - Breakouts

2. False Claims Act 101

A discussion of FCA basics and practical concerns, including how to evaluate a potential matter, common pitfalls to avoid, and best practices.

Moderator: Darth Newman, Law Offices of Darth Newman

Agatha Cole, Pollock Cohen

Lawanda Hodges, The Law Firm of Lawanda Hodges

Adam Katz, Assistant U.S. Attorney, U.S. Attorney's Office for the NDNY

3. Procurement Fraud

This panel will discuss fraud involving infrastructure, logistics, and procurement contracts, including Small Business Administration issues, Buy American Act, and Federal Acquisition Regulations, as well as role of various agencies in litigation and recent case law developments.

Moderator: Sarah Frazier, Law Office of Sarah Frazier

John McKnight, Sanford Heisler Sharp LLP

T.J. Parnham, U.S. Attorney's Office for the WDTX, Deputy Civil Chief

5:15 - 6:00 PM - 14th Annual Women's Cocktail Reception

Sponsored by: Morgan Verkamp LLC

5:30 - 6:30 PM - TAF Reception

Sponsored by: The Law Offices of Patrick J. O'Connell PLLC

7:00 PM - Onward - Off-Site Dinner Reservations

Schedule Details: Day 2

8:00 - 9:00 AM - Young Lawyers Division Breakfast

Sponsored by: Butler Wooten & Peak LLP and Getnick & Getnick LLP

8:00 - 9:00 AM - Breakfast

Sponsored by: Whistleblower Law Collaborative

9:00 - 9:15 AM - Welcome

9:15 - 10:30 AM - Strategies for Pleading and Proving Knowledge

This session would address strategies for pleading scienter, including developments in the case law applying the Supreme Court's decision in *Safeco* to False Claims Act cases, how to meet the *Safeco* standard, and how to adequately plead scienter regardless of *Safeco*, as well as developments involving scienter in cases involving the Anti-Kickback Statute.

Moderator: John Black, Black & Buffone

Ari Yampolsky, Constantine Cannon

Veronica Nannis, Joseph, Greenwald, and Laake

Brian LaMacchia, U.S. Attorney's Office for the District of Massachusetts

10:30 - 10:45 AM - Lifetime Achievement Award

10:45 - 11:00 AM - Break

11:00 AM - 12:00 PM - Whistleblower Perspectives

Hear from former whistleblowers as they give us a glimpse into their experiences before, during, and after their cases.

Moderator: Neil Getnick, Getnick & Getnick

Ann Marie Williams, Relator in *U.S. ex rel. Williams v. Reckitt Benckiser, Inc.*

Haley Haight, Relator in *U.S. ex rel. Haight v. Physician Partners of America*

Michael Bawduniak, Relator in *U.S. ex rel. Bawduniak v. Biogen Idec, Inc.*

12:00 - 12:15 PM - Whistleblower & Lawyers of the Year Awards

12:15 - 1:15 PM - Lunch with TAF Leadership, Erika Kelton & Jeb White

Sponsored by: Sanford Heisler Sharp, LLP

1:15 - 2:15 PM - Breakouts

1. Developments in the IRS Whistleblower Program

This panel will discuss significant developments and challenges involved in bringing claims under the IRS Whistleblower Program, including the organization of the Whistleblower Office, seeking information on the case status, the length of time to obtain an award, interpretations of relevant statutory terms, litigating a case in Tax Court, and key court decisions.

Moderator: Paul Scott, Law Offices of Paul Scott

Peggy Finerty, Getnick & Getnick

John Hinman, Director, IRS Office of the Whistleblower

Dean Zerbe, Zerbe, Miller, Fingeret, Frank, Jadav, & Hunziker LLP

Judge Lewis Carluzzo, U.S. Tax Court

Schedule Details: Day 2

1:15 - 2:15 PM - Breakouts

2. Assessing and Mitigating Relator's Criminal Risk

How to assess your client's potential criminal risks on the front end, when to bring in criminal counsel, what the steps will be, how common is immunity, and what happens if you don't get immunity for your client.

Julie Bracker, Bracker & Marcus
Mindy Sauter, Elliot Sauter PLLC

3. Tricky Business: How Managed Care Has Exploded Into A Hundreds of Billion Dollar Industry for Private Insurers, Intermediaries, and Vendors

A review of recent trends and caselaw in Medicare and Medicaid managed care, and an explanation of common schemes including cherry picking, risk adjustment, prior authorization, failure to properly audit, and the retention of overpayments.

Moderator: Eva Gunasekera, Tycko & Zavareei
Edward Crooke, Assistant Director, Civil Frauds, U.S. Department of Justice
Sara Vann, Assistant Attorney General, State of Georgia Medicaid Fraud Control Unit
Erica Hitchings, The Whistleblower Law Collaborative

2:15 - 2:45 PM - Public-Private Partnership Award

2:30 - 2:45 PM - Break

2:45 - 3:45 PM - Breakouts

1. Developments at the SEC & CFTC Whistleblower Offices

Hear from the heads of the SEC and CFTC Whistleblower Offices about developments in the law, effective submissions, and best practices in developing working relationships with their offices.

Moderator: Jason Zuckerman, Zuckerman Law
Rebecca Katz, Motley Rice
Sean McKessy, Phillips & Cohen
Chris Ehrman, Director of the Whistleblower Office, CFTC
Nicole Creola Kelly, Chief, SEC Whistleblower Office

2. Data Driven Cases

It's a big data world out there! FCA practitioners should consider both (a) using data to corroborate and augment their cases, building them in new and different ways, and (b) being prepared for the data-informed prospective relator: are they creating a narrative out of what is just statistical noise, or have they uncovered egregious fraud on the taxpayers with human consequences? This panel will explore data-driven cases and investigations, and how to avoid their pitfalls.

Moderator: Jonathan Kroner, Jonathan Kroner Law Office
Nathan Peak, Bracker & Marcus
David Coriell, U.S. Attorney's Office, Western District of New York
Rachel Geman, Lief Cabraser Heimann & Bernstein LLP

3. Public Disclosure Update

A round-up of recent public disclosure developments, including how courts are evaluating FOIA requests, outsider relators, and the impact of disclosure to an agency.

Moderator: Nico Herrera, Herrera Kennedy
Caroline Burgunder, U.S. Attorney's Office for the Eastern District of Michigan, Chief ACE Unit
Caitlyn Silhan, Waters Kraus

Schedule Details: Day 2

3:45 - 4:00 PM - Break

4:00 - 5:00 PM - Roundtable Breakouts

Smaller group discussions about critical topics in whistleblower practice.

1. Cryptocurrency (Facilitator: Sarah Chu, Sanford Heisler Sharp)
2. Financial Frauds (Facilitator: Bryan Wood, Pugsley Wood)
3. Paralegal Breakout (Facilitator: Staci Childress and Traci Smith, Morgan Verkamp)
4. Separation Agreements (Facilitator: Qiaojing Ella Zheng, Sanford Heisler Sharp)
5. Attorneys' Fees (Facilitator: Pat O'Connell, Law Offices of Patrick J. O'Connell)

6:00 - 7:00 PM - TAF Reception

Sponsored by: Tycko & Zavareei LLP

7:00 - 10:00 PM - TAF Masquerade Ball

Sponsored by: Kreindler & Associates

Schedule Details: Day 3

8:00 - 9:00 AM - Breakfast

Sponsored by: Jay Holland & Veronica Nannis of Joseph Greenwald & Laake, PA

9:00 - 9:15 AM - Closing

9:15 - 10:15 AM - Conscious Coupling: The Key to Productive Relationships Between the Government & the Relator Team

Best practices for partnering with the government in qui tam matters, including pre-filing disclosures/presentation of the case, what to expect during the investigation, how to collaborate after intervention and during litigation, and how to assist the government in mitigating the burden of discovery on the government.

Moderator: Renee Brooker, Tycko & Zavareei

Nathaniel Smith, Halunen Law

Dan Fruchter, U.S. Attorneys Office for the Eastern District of Washington, Assistant U.S. Attorney

Brian Hudak, U.S. Attorneys Office for the District of Columbia, Civil Chief

Abraham George, U.S. Attorney's Office for the District of Mass., Affirmative Civil Enforcement Chief

10:15 - 10:30 AM - Break

10:30 - 11:45 AM - Litigating Declined Cases

The panel will focus on unique aspects of litigation in False Claims Act cases after a case is declined, including working with the government, dealing with materiality arguments, and how to portray your client to the court.

Moderator: Jillian Estes, Morgan Verkamp

Ted Leopold, Cohen Milstein

Susan Gouinlock, Wilbanks & Gouinlock

Sam Buffone, Black & Buffone

Schedule Details: Day 3

11:45 - 1:15 PM - Lunch & Mindfulness for Whistleblower Lawyers: The Well-Being Toolkit

Sponsored by: Goldberg Kohn

Whistleblower law can be deeply rewarding, but it also has its stresses and challenges, even in the best of times. This interactive workshop equips lawyers and their clients with powerful, concrete tools for managing stress and anxiety, boosting positive emotions, and cultivating calm and focus, even under pressure. The program draws on mindfulness, cognitive behavioral therapy, and positive psychology.

1:15 - 2:15 PM - Ethics

This presentation will discuss the unique ethical and moral issues facing attorneys practicing in the whistleblower arena.

Moderator: Mark Hanna, Murphy Anderson

Lesley Ann Skillen, Getnick & Getnick

Noah Rich, Baron & Budd

2:15 - 2:30 PM - Break

2:30 - 3:30 PM - Breakouts

1. States of Opportunity

Federal programs get most of the attention, but state governments experience fraud on a massive scale as well, impacting not just the healthcare tag-along claims, but all manner of governments, contracts, benefits, and taxes. This session will cover recent unique and compelling state-law claims, unique features and opportunities of various state's laws, and best practices for working with state Attorney Generals.

Moderator: David Koenigsberg, Menz Bonner Komar & Koenigsberg

Candace Deisher, Virginia Attorney General's Office

Michael Behn, Behn & Wyetzner

Katrina King, Washington Attorney General's Office

2. Alternate Remedies

This panel will cover recent caselaw around alternate remedies, strategies for obtaining a share of an alternate remedy, and how courts consider whether government action should be considered an alternate remedy.

Moderator: Mitch Kreindler, Kreindler & Associates

Patricia Stamler, Hertz Schram

Nicolas Mendoza, Murphy Anderson

3. Shooting the Messenger: Strategies for Protecting a Relator from Retaliatory Suits

In addition to the anti-retaliation provisions contained in the federal and state False Claims Acts, there are other ways to defend against various defense tactics designed to discourage whistleblower from coming forward. This session would address strategies for defending against counterclaims involving taking documents, disclosure of confidential information, violation of contractual obligations, and breach of fiduciary duty, and potentially, how you can use discovery in those lawsuits to your advantage.

Nicholas Woodfield, The Employment Law Group

Rebekah Bailey, Nichols Kaster

Cory Fein, Cory Fein Law Firm

4:00 PM - Onward - TAF Office Party!

Taxpayers Against Fraud Awards

Public-Private Partnership Award

This award recognizes special accomplishments by government attorneys who have worked closely with relators' counsel to bring about extraordinary results on a case from the last year.

Lawyer of the Year

This award recognizes a TAF member who achieved outstanding results, overcome especially challenging circumstances, and/or brought change to an industry through their incredible efforts in the last year.

Whistleblower of the Year

This award recognizes a whistleblower who achieved outstanding results, overcome especially challenging circumstances, and/or brought change to an industry through their incredible efforts in the last year.

Lifetime Achievement Award

This award recognizes a TAF member who achieved outstanding results, overcome especially challenging circumstances, and/or brought change to an industry through their incredible efforts in the last year.

Award Nomination Process

The Public-Private Partnership Award, Whistleblower of the Year, Lawyer of the Year, and Lifetime Achievement Award are nominated by the general membership of TAF.

Once submitted, the TAF Conference & Member Education Committee (current members listed on Page 1 of this agenda) deliberate and vote on award recipients.

Public-Private Partnership Award

United States ex rel. James Landolt v. Mallinckrodt ARD LLC

The team of federal and state government lawyers who worked together to pursue the case against Mallinckrodt beautifully demonstrated the success that can be achieved when government agencies and offices work together and with relators and their counsel. The government team consisted of an outstanding coordinated effort among the Department of Justice, Civil Fraud Section; the Department of Justice, Commercial Litigation Branch, Corporate and Financial Litigation; the Department of Justice, Commercial Litigation Branch, Office of Foreign Litigation; the United States Attorneys' Office for the District of Massachusetts; the Attorney Generals' Offices for Florida and Wisconsin; the Department of Justice Federal Programs Branch; and the Department of Health and Human Services Office of Inspector General, Office of Counsel.

The combined efforts led to the announcement on March 7, 2022, that the United States, numerous states, the District of Columbia, and Puerto Rico of a civil False Claims Act settlement against Mallinckrodt plc and its subsidiary Mallinckrodt ARD LLC for nearly \$234 million, resolving allegations that it knowingly underpaid Medicaid rebates for its drug H.P. Acthar Gel (Acthar) from 2013 to 2020. In addition, Mallinckrodt entered into a five-year Corporate Integrity Agreement with HHS-OIG that accompanied the FCA civil settlement. That CIA contains several unique drug price transparency and monitoring provisions focused on Medicaid rebate practices. These will help ensure Mallinckrodt's future compliance with its rebate obligations.

This is also a case that spurred tangible and lasting change in the industry. As a result of the litigation and the settlement, Mallinckrodt began to report accurately Acthar pricing information as of June 2020. This reporting change is expected to result in annual savings to the Medicaid program of approximately \$100 million. Thus, the value to taxpayers of this public-private partnership far exceeds the settlement amount of \$234 million (which would have been far greater but for Mallinckrodt's bankruptcy).

The qui tam lawsuits alleged that Mallinckrodt had been misreporting pricing data to the Medicaid Drug Rebate Program (MDRP) to avoid paying inflation-based rebates after it dramatically increased Acthar's price. The company raised Acthar's price from approximately \$50 per vial in 2001 to nearly \$40,000 by 2020. The settlement of the allegations involving the Acthar Medicaid Drug Rebate Program also resolved allegations that remained from another qui tam action that alleged that Mallinckrodt engaged in co-pay assistance fraud.

The case was fought on multiple fronts – in various district courts and appellate courts, including a suit in which Mallinckrodt unsuccessfully sued CMS to avoid having to report Acthar's correct base AMP, and in bankruptcy court in Delaware after Mallinckrodt declared bankruptcy in October 2020.

Each of these fronts presented its own legal considerations and challenges and twists and turns. Throughout, the government team coordinated in a seemingly seamless fashion, and sought the input of relator's counsel, keeping them informed so that they could pursue a united and complementary strategy that protected not only the government's interest, but also addressed the concerns and rights of the relators.

The dedication, cooperation, and skill shown by the members of the government team was truly impressive. Throughout the litigation they demonstrated thoughtful communication, collaboration, and coordination with relators' counsel, and showed genuine respect to them and their client. For their extraordinary efforts, honored to recognize the team with the TAF Public-Private Partnership Award.

Public-Private Partnership Award

List of Government Attorneys for the Award

U.S. Department of Justice Civil Division, Commercial Litigation Branch, Fraud Section

- Augustine Ripa, Trial Attorney/Senior Counsel for Health Care Fraud
- Michael Hoffman, Trial Attorney

U.S. Attorney's Office for the District of Massachusetts, Civil Division

- (former) Gregg Shapiro, Assistant U.S. Attorney (and ACE Chief)
- Evan Panich, Assistant U.S. Attorney
- Raquelle L. Kaye, Assistant U.S. Attorney (Asset Recovery Unit)

U.S. Department of Justice Civil Division, Federal Programs Branch

- (former) Kevin Snell, Trial Attorney
- Jean Lin, Special Litigation Counsel

U.S. DOJ Civil Division, Commercial Litigation Branch, Office of Foreign Litigation

- Kiesha M. Minyard, Assistant Director

U.S. DOJ Civil Division, Commercial Litigation Branch, Corporate and Financial Litigation

- Mary Schmergel, Senior Trial Counsel

U.S. Department of Justice Civil Division, Appellate Staff

- Joshua M. Saltzman, Assistant Director

U.S. Department of Health and Human Services, Office of Counsel to the Inspector General

- Mary Riordan, Senior Counsel

U.S. Department of Health and Human Services, Office of Counsel to the Inspector General

- C. Ian Garland, Assistant Attorney General and Deputy Director - Civil Enforcement
Florida Attorney General's Office
- Matthew Vitale, Senior Assistant Attorney General,
Medicaid Fraud Control Unit, Florida Attorney General's Office
- Katie M. Wilson, Assistant Attorney General, Division of Legal Services
Medicaid Fraud Control and Elder Abuse Unit, State of Wisconsin Department of Justice
- Randy Glaser, Deputy Attorney General, Bureau of Medi-Cal Fraud and Elder Abuse
California Department of Justice
- Ian Marinoff, Assistant Attorney General, Managing Attorney
Medicaid Fraud Division, Massachusetts Attorney General's Office
- Stacy M. Race, First Assistant Attorney General, Health Care Fraud Division
Michigan Department of Attorney General
- Amy Steelman, Senior Deputy Attorney General, Nevada Attorney General's Office
- Ting Ting Tam, Special Assistant Attorney General, Medicaid Fraud Control Unit
New York Office of the Attorney General
- Christen Nedwick, Assistant Attorney General, Texas Office of the Attorney General
(now with Texas HHS)

Lawyers of the Year Award

GREENE_{LLP}

Tom Greene and his team at Greene LLP fought a ten-year battle against pharmaceutical giant Biogen, and secured the largest recovery ever in a declined False Claims Act qui tam case. As reflected by the 29.6% relators' share award by the government, Tom and his colleagues – Michael Tabb, Ryan P. Morrison, Tucker D. Greene, Simon Fischer, Eugenie Reich, and Kiel Green, along with their client, Michael Bawduniak – performed extraordinary work on behalf of the taxpayers. This case exposed an alleged kickback scheme and caused the defendant to write a check for nearly a \$1 billion under the FCA.

Beyond dollars and cents, this is a case worth spotlighting, particularly during a time in which our opponents are attacking the FCA and questioning the benefit of declined qui tam actions. In this case, Tom, his firm, and his client pushed forward without the government to pursue kickback claims against Biogen for nearly a decade.

The relator alleged that Biogen paid hundreds of its customers to provide consulting advice on topics it either could not use, or for which Biogen had all the information it required. Additionally, Biogen also allegedly paid hundreds of healthcare professionals to speak when there was no demand for presentations on Biogen's products and Biogen knew that its prospective speakers would likely never meet their minimum speaking requirements, and that Biogen knowingly compensated its speakers and consultants a rate significantly exceeding the fair market value for their services.

When the government declined to share any documentary evidence or interview notes with the relator post-declination, Tom and his team launched a Herculean discovery effort from scratch. Tom noted that "over the years, as we learned more and more and gained feedback from nationally renowned experts, we were confident that a jury would agree: the only reasonable explanation for this kind of activity by Biogen was its belief that the prescribers it paid would be more likely to prescribe their drugs."

Tom and his firm litigated the case alone, reviewing millions of documents, conducting dozens of depositions, and preparing the case for trial. In the ensuing years, Tom led this exceptional legal team through 100+ motions, including multiple motions to dismiss.

The court docket of nearly 700 entries provides a masterclass on how to proceed in a declined False Claims Act qui tam action. Ultimately, Biogen decided not to go to trial against Tom and his team, and decided to settle the action hours from opening arguments. The team's efforts resulted in terrific case law for future qui tams, hundreds of millions of dollars returned to the government, and the world put on notice that we can and will successfully proceed – with or without the government. TAF is honored to recognize Tom and his team at Greene LLP with the Lawyer of the Year award.

Whistleblower of the Year Award

Michael Bawduniak

Michael Bawduniak was the sole relator in United States ex rel. Bawduniak v. Biogen Idec, Inc., which resulted in the largest recovery in a non-intervened False Claims Act case in history, as well the largest relator share award in history of the FCA. But TAF is not recognizing him merely because his case resulted in a sizable recovery for the United States and various states. TAF is recognizing him because for more than a decade he kept fighting, persevering under difficult circumstances, and setting an example for others.



Like many whistleblowers, Mike first tried to change corporate behavior from the inside. In 2009, having received instructions from senior marketing officials to engage in new speaker and consultant program tactics which clearly sought to hold or increase the market share of Biogen's largest prescribers by paying them for consultation and speaking that the company did not need, Mike reported his kickback concerns to Biogen's internal compliance department, and addressed them with other Biogen executives directly. Biogen did respond, but not in the way he hoped: Mike was demoted from his managerial role, and Biogen's conduct, particularly with respect to regional consultant meetings, only escalated.

Mike struggled with the question of whether to file a False Claims Act for months. He feared the loss of his salary, stock options, career and the impact on his family that would likely occur if he was publicly disclosed as a whistleblower. Yet, while still uncertain as to whether he would actually file, Mike brought his concerns directly to the United States in November 2011. After telling his story to federal authorities and providing them with numerous documents that supported his contentions, Mike agreed to record phone calls and live conversations at the FBI's request. He gathered evidence under their supervision for two months. Only after working with the federal investigators to gather evidence that supported his claims did Mike decide to file an FCA action. This was the first of two difficult decisions TAF thinks should be recognized.

The other difficult decision came more than three years later, when the United States informed the District Court that it would not intervene. The decision to maintain the action was just as difficult as the decision to file, especially in the face of a large discovery effort that required Mike and his lawyers, Greene LLP, to start from scratch. Mike held on, year after year. After more than 100 motions filed, including multiple motions to dismiss, bitter fights over Biogen's efforts to shield compliance-related documents, and the company's invasive discovery efforts aimed at Mike's new employer, a settlement was reached only days before trial because of Mike's resolve and perseverance.

There is no question that if Mike turned back, a very significant harm to the public would have gone unchecked and unpunished. TAF is honored to recognize his courage and determination to do what is right with the Whistleblower of the Year award.

Lifetime Achievement Award

Marlan Wilbanks

Marlan Wilbanks has dedicated his career to combating fraud against the government. Marlan has been practicing exclusively in this area of law since 1997 when he filed his first FCA case. Since that time, he consistently has obtained successful outcomes for his clients and the government as demonstrated by the long list of recoveries obtained by him and his colleagues at Wilbanks Gouinlock.



Marlan and his team have developed a reputation for taking declined cases forward and achieving successful results, and Marlan has been a leader in creating the paradigm shift which has contributed to the relator's bar's willingness to pursue cases even without government intervention. Perhaps most notably, in 2015, he obtained an impressive \$450 million recovery in the non-intervened case against Davita. That was a record recovery on a non-intervened case which impacted the way our bar views these cases.

Marlan has also been a pioneer in developing good case law for relators in litigated matters. He and his firm have litigated attorney privilege matters and have expanded the law with regard to the use of the crime-fraud exception to gain access to critical evidence. In addition, Marlan has helped the relator's bar by building a positive rapport with attorneys for the states and the Department of Justice. He has relied on his relationships and experience to further the goals and effectiveness of the FCA by repeatedly lobbying with the top brass at DOJ and by speaking at more than 75 conferences across the country to promote the utility and value of the FCA.

Marlan has been an important supporter of TAF and goes out of his way to assist other relator's counsel by providing valuable insights based on his years of experience. He has devoted countless hours to the detailed explanations of tough legal issues, both on the listserv and one-on-one with the membership (and staff!).

Marlan has incentivized integrity not only through his work as an FCA attorney but also through his work in the community and with charitable organizations. He is the Chairman of the Board for Hope Thrives, an organization that provides free services to victims of child sexual abuse, including counseling and retreats for survivors of abuse. Three years ago, Marlan founded the Wilbanks Child Endangerment and Sexual Exploitation Clinic, which is a first of its kind in the nation. The University of Georgia School of Law operates the clinic which provides free legal services to the victims of child sexual abuse and their families. The clinic also trains prosecutors and judges with regard to the handling of child sexual abuse cases. Marlan also mentors and teaches classes on the FCA at Georgia State and University of Georgia Law School. Marlan also funds an orphanage and school in the Guntar region of India that serves 100 children.

Helping those in need and protecting those who have been harmed and abused are central qualities in being both a whistleblower attorney and a legal advocate for victims of child abuse. Marlan has dedicated his life and his career to fulfilling both of these roles with integrity. For these reasons, TAF is honored to give Marlan Wilbanks TAF's Lifetime Achievement Award.



**Thank you to those who have taken the Penny Pledge.
Your donations have allowed TAF to protect and
advance whistleblower laws over the years.**

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