

OUR PRACTICE

Government Enforcement and Investigations

Baker Donelson's Government Enforcement and Investigations Group represents corporations, management and other individuals in connection with government investigations, enforcement actions, internal investigations and white collar criminal prosecutions.

Our team has more than 100 lawyers, including former assistant U.S. attorneys in multiple districts, a former FBI agent, appointed special attorneys general for several states, and many former state and federal prosecutors.

The Group has experience across all aspects of criminal and civil enforcement actions, with substantive specialization in the areas of:

- **White Collar Crime.** Baker Donelson has decades' worth of experience representing individuals and corporations who are under investigation or otherwise entangled in the criminal process at all levels of prosecution – local, state or federal. Over the years, the Firm has successfully guided corporate entities, C-level officers, board members, senior executives, elected or appointed public officials, and a host of other professionals through complex criminal investigations. While each case presents its own set of unique facts yielding different strategies for our clients, our GEI group has had a number of successes in criminal litigation against the government. Some of our best successes have come in connection with representations of individuals or entities during which our attorneys have persuaded government prosecutors, during the investigatory phase of a criminal matter, from bringing criminal charges altogether. Other successes have come by closely examining the work of the investigators after litigation has commenced, resulting in pre-trial dismissals of criminal cases by courts. Finally, on the merits, we have had a number of successes by persuading juries and/or judges as to our clients' innocence; in other words, taking our clients' cases to trial and winning. Our GEI group is made up of a number of former prosecutors, former federal agents and former governmental counsel with decades of experience in working on white collar criminal matters. Our lawyers have received a number of accolades for their work on criminal matters, including recognition in *The Best Lawyers in America*, *Corporate Counsel*, *Chambers USA*, *Super Lawyers* and have been named to "Top Lawyers" lists in our respective markets. Additionally, several of our lawyers have been named Fellows of the American College of Trial Lawyers.
- **False Claims Act and related qui tam or whistleblower actions.** Federal False Claims Act threats can quickly turn into bet-the-company matters, since the statute authorizes punitive civil penalties and the imposition of treble damages, along with suspension, debarment or exclusion of businesses and individuals found liable. Our lawyers have experience with assisting clients in responding to Civil Investigative Demands, advising companies' boards of directors, conducting internal investigations, dealing with regulators and government attorneys, and litigating cases – by filing motions to dismiss, conducting discovery, filing motions for summary judgment, and, if required, trying cases to a jury. As these threats require immediate, focused attention, our attorneys work closely with their clients to determine the best pathways to address them within the client's budgetary constraints. Our team includes former federal and state prosecutors, civil and criminal, who work with clients in industries that are the most frequent targets for opportunistic whistleblowers (called *qui tam* plaintiffs or relators) who seek bounties for filing these suits in the name of the government. The team's familiarity with the nuances of these industries and the agencies involved is key to effectively handling the cases, since

convincing the government not to adopt or intervene in a *qui tam* case is critical to successfully addressing the threats. As these complex cases give many advantages to the plaintiffs and the government, clients must use attorneys who understand the nuances of the procedural rules and caselaw. Other threats can be associated with False Claims Act cases, including the threats of parallel criminal investigations, along with suits seeking treble damages under the bank fraud statutes called FIRREA. Baker Donelson's attorneys have effectively handled these cases for many years throughout the nation and are recognized by our peers for our successes.

- **Health care and pharmaceutical fraud.** Our Health Care Fraud team regularly responds to multi-faceted health care-related investigations, including those with criminal, civil and administrative implications, by government entities. Our ability to partner a significant collection of attorneys with government experience alongside our in-house regulatory specialists ensures that we have the knowledge and experience to help clients navigate the layers of potential risks. Our clients include some of the nation's largest hospital systems, individual long-term care facilities, pharmacy and lab chains, and smaller physician practice groups, among others. Clients benefit from the litigation and trial advocacy experience of the former prosecutors, agents and white collar defense attorneys, many of whom have decades of experience helping health care providers navigate the nuances and requirements of the Department of Justice (DOJ) and its agencies and contractors.
- **Securities, commodities and other financial sector fraud.** Our Securities Enforcement and Litigation team handles investigations and defense of public companies, investment advisors, broker-dealers, corporate officials and auditors before the SEC, FINRA and state enforcement agencies, and handles investigations, trials and resolutions with the DOJ and state attorneys general should criminal proceedings result. Our experience runs the gamut for these matters – we've represented brokers, dealers and executives in connection with government investigations where our clients were never charged; we've successfully resolved civil and criminal securities actions on behalf of our corporate and individual clients against both state and federal regulators; and we've achieved trial victories on behalf of our clients alleging securities violations before federal and state courts. We also assist clients with compliance issues in order to prevent and remediate violations. While dealing with whistleblowers is also often a part of the challenges in both internal and government-initiated investigations, our attorneys effectively guide clients through parallel proceedings that may start with an investigation and extend through agency action, prosecution, collateral licensing actions, derivative actions and class-action litigation.

Our lawyers are also skilled in dealing with most governmental and regulatory agencies, including:

- Department of Justice (DOJ)
- Department of Homeland Security (DHS)
- Department of Defense (DOD)
- Department of Health and Human Services (HHS)
- HHS Office of Inspector General (OIG)
- Department of Housing and Urban Development (HUD)
- Federal Deposit Insurance Corporation (FDIC)
- Federal Bureau of Investigation (FBI)
- Securities and Exchange Commission (SEC)
- Various States' Attorneys General Offices

Our Government Enforcement and Investigations Group handles all aspects of criminal and/or civil enforcement actions or other governmental investigations, including:

- **Negotiated resolution.** We assist clients in responding to grand jury, administrative or inspector general subpoenas; monitoring grand jury proceedings; and negotiating immunity, plea, settlement and corporate integrity agreements.
- **Trial practice.** Notwithstanding our experience in negotiating favorable resolutions, our team has tried hundreds of civil and criminal matters against governmental authorities. We have also handled appeals, and threats of suspension, debarment and exclusion.
- **Multiple forum investigations and litigation.** In many cases, an individual or company facing a government or grand jury investigation may, at the same time, face litigation for contractual or other civil claims. Our attorneys, with dozens of years of experience, work to limit client exposure in government investigations of employee wrongdoing and defend companies and executives in parallel proceedings involving agency litigation, civil lawsuits and criminal prosecutions. Lawyers on our team work to develop a global resolution of the cases or to respond to civil litigation while working to avoid indictment.

Our Group has also advised companies and courts in enforcement proceedings, including:

- **Internal investigations.** In some cases, the best defense may be for a client to conduct its own internal investigation – of whistleblower claims or allegations of employee wrongdoing, for example – and self-disclose those findings to government regulators. We have deep experience in conducting such investigations and have done so for small businesses and Fortune 500 companies alike. With our extensive governmental experience and contacts, our team has achieved favorable results for corporate clients in connection with the presentation of investigatory findings to governmental regulators.
- **Compliance programs.** The best defense against a government investigation is to have effective compliance policies in place. Our lawyers prepare and review compliance plans, advise on reimbursements under government contracts, plan responses on whistleblower issues and defend against debarment and exclusion from federal programs.



Case Studies

- **Baker Donelson Obtains Motion for Summary Judgment for Hospital Client - Health Care False Claims Act**



Representative Matters

- Represented a public official in connection with a state prosecution for allegedly misappropriating governmental goods and services. The government initially charged the public official client with five felony counts, seeking jail time and restitution in connection with its charges. After four years of litigation, and dozens of hours of court hearings, the case was recently dismissed for prosecutorial misconduct.
- Represented a former director of an international seafood company in connection with criminal antitrust investigation and parallel civil lawsuits. Criminal investigation yielded several criminal convictions, including individual corporate employee criminal convictions, as well as corporate felony convictions for antitrust violations. Our client, though targeted for criminal prosecution, was never criminally charged, nor named or found liable in any civil matter.
- Represented an international technology company and its principals in connection with an Export Control Act investigation. The government's case yielded multiple criminal convictions against individuals who had entered into business arrangements with clients. Though our clients were

targeted for criminal prosecution, the company and its principals were never criminally charged by the DOJ.

- Represented an international garment company and its principals in connection with criminal prosecution for Berry Amendment violations. Facing approximately a dozen years in prison and millions of dollars in criminal fines and restitution, after lengthy pretrial negotiations with the government, the individual defendants received a sentence of probation.
- Represented an offshore oil and gas producer in a federal criminal investigation and prosecution regarding an explosion on a company-owned platform. The explosion resulted in three fatalities, for which the company was criminally charged with multiple counts of manslaughter. After a multi-year investigation and prosecution, the company received a substantially reduced sentence – including a technical violation of environmental regulations and a minimal fine – and manslaughter counts were dismissed by the DOJ.
- Conducted an internal investigation for a multi-billion-dollar, publicly traded international technology corporation relating to allegations of criminal immigration practices. The investigation lasted less than six months and included an exhaustive review of tens of thousands of records and dozens of key witness interviews. A course of action was ultimately recommended to the client, who has not been criminally charged to this day.
- Represented more than a dozen former directors of a failed bank in connection with both civil, criminal and regulatory investigations. Representation is ongoing.
- Counseled a major defense contractor on a disclosure to the government of billing irregularities and successfully avoided False Claims Act liability.
- Defended a defense contracting business and its principal indicted under the Arms Export Control Act. A judgment of acquittal was entered in favor of the defendants and attorney's fees were awarded to the defendants.
- Represented a bank president in an OCC-negotiated resolution and three-week trial of a RICO case which resulted in a favorable verdict with no recovery.
- Represented an engineer indicted under the Economic Espionage Act based on allegations of trade secret theft. The case is pending.
- Represented a minority small business in Department of Energy and DOJ investigations into alleged False Claims Act and Truth in Negotiation Act violations. The client was cleared of all charges.
- Represented a defense contractor in an investigation by Air Force Office of Special Investigations of processes regarding over and above claims for aircraft parts.
- Represented a civilian employee of the Department of the Navy in the investigation of misuse of transportation funds. Settled for partial repayment without loss of employee's security clearance or job.
- Represented defendant in a federal perjury investigation. No indictment resulted.
- Represented civilian Navy officials in a DOJ investigation of improper communication of bid solicitation information.
- Represented a congressman and cabinet secretary in a U.S. House of Representatives Committee on Financial Services investigation, Federal Elections Commission review of records and Independent Counsel investigation of gifts. Won acquittal after trial with Washington co-counsel.
- Represented a partner of a Big Four accounting firm in a DOJ investigation of tax shelters and related civil suits by taxpayers. Settled civil cases and an investigation is pending.
- Won summary judgment in civil False Claims Act litigation by the DOJ alleging materially false certification by a HUD contractor of a "decent, safe, and sanitary" apartment complex.
- Represented an international construction company in a U.S. House of Representatives Government Operations subcommittee investigation of interactions with the State Department regarding a request for equitable adjustment for construction of an embassy in Indonesia and security/supply issues in construction of an embassy in London.

- Tried a qui tam False Claims Act case over three months resulting in a settlement after the court's draft opinion found only \$56,000 in contract damages and avoided suspension and debarment of the contractor and lead lab scientist.
- Conducted an internal investigation of a government-sponsored corporation regarding violations of lobbying rules and ethical standards. Following submission of our report, the regulator took no further action against the corporation.
- Represented a field warehouse company in a suit alleging RICO violations. A successful verdict was upheld by Fifth Circuit Court of Appeals.