

# Settling and Mediating False Claims Act Cases

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## Agenda

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When to initiate settlement discussions  
Use of mediation  
Roles of settlement participants  
Individual versus corporate defendants  
Calculating/negotiating settlement value  
Covered conduct and releases  
Publicity considerations  
Private payer concerns

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# Initiation of Settlement Discussions

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Who should initiate?

Typical decision points/settlement opportunities within a case

How to initiate

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# Roles of Settlement Participants

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Role of DOJ/USAO

- Levels of authority to resolve

Role of states/NAMFCU

Role of relator's counsel

Role of HHS-OIG

Role of defense counsel and client

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# Individual Versus Corporate Defendants

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Yates Memo implications for individuals

Settlement releases for individuals, corporations

Roles of counsel

Uniquely corporate concerns, e.g.:

- SEC filings
- Board authority/resolutions
- Impact on affiliates

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# Mediation and How It Can Help

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How mediation works

Benefits of third-party neutral vs parties alone

- Communicate to client in ways counsel may have difficulty
- Helps switch focus from litigating to compromising
- Good mediators skilled in settlement art
- If successful, a lot done in one day

Will DOJ agree to mediate?

Court-ordered versus voluntary

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## Valuation of the Case

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Statutory damages paradigm

Trial versus settlement damages

Quantitative pre-settlement preparation

Skilled know-how in healthcare, esp. payment/reimbursement structures

Potential for statistical sampling and extrapolation

Parties' highly divergent evaluations of damages

Impact of tax consequences defined by restitution/penalty allocation

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## Covered Conduct and Releases

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Only covered conduct is released

Only get release if pay

Timing of discussion

Second in importance only to dollar amount (maybe)

Includes conduct alleged in complaint/investigated, and time period

Arguments relating to liability, multi-defendant scenarios

Cold-comfort option

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## Settlement Publicity Considerations

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Pre-settlement disclosures by publicly traded entities

Government's press release

Press conferences

Unsealing/posting of qui tam complaint

Defendant responses

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## Collateral Private Payer Concerns

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Disclosure obligations of settlement to private payers

Potential audits/demands by private payers

Distinctions between federal program liability and private payer concerns.

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# Contact Information

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