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THE FALSE CLAIMS ACT WHISTLEBLOWER LITIGATION

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VOLUME I

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Foreword

Where to begin? Read the Table of Contents. Only a few may read this book from cover to cover, although doing so would prove highly worthwhile. Most will find themselves going to a particular chapter or section to gain insight when grappling with a specific issue. Whatever approach you take, my strong recommendation is to read the Table of Contents.

A law professor of mine always tried to impress upon us the importance of identifying issues, saying that the lawyer who has framed the issue to his or her advantage has gone a long way to winning the argument and eventually the case. After an historical overview of the False Claims Act (FCA), the 26-page detailed Table of Contents identifies and explores the key issues, from both a theoretical and practical perspective, that have confronted and will continue to challenge False Claims Act practitioners.

For example, faced with the argument that the False Claims Act *qui tam* provisions violate the “Take Care” clause of the U.S. Constitution, you may be drawn to the section headed “The *Qui Tam* Provisions of the False Claims Act Are Consistent with the Separation of Powers Doctrine of the Article II Take Care Clause.” That may now be a matter of law settled by the Supreme Court, but going back to those basics may help convince an Assistant United States Attorney to afford the whistleblower and his or her counsel the opportunity to assist in the document review and analysis, which may make all the difference in advancing and ultimately prevailing in the case.

And, failing to read the Table of Contents, the reader might never otherwise learn (other than reading about it here) that there is, in effect, a book within the book, providing detailed False Claims Act Model Jury Instructions. Again, reviewing such material may be put off by some until the case is nearing trial. And because the vast majority of cases are resolved prior to trial, perhaps that section never gets read by many. But jury instructions provide a road map of how to develop a litigation strategy along with building the evidence necessary to achieve a successful result. The model jury instructions section is invaluable in and of itself.

Even for those who don’t avail themselves of reading the Table of Contents at the outset, the title of Chapter 1 provides invaluable insight regarding what awaits: “Whistleblowers Fighting for What’s Right.” This book is written from that perspective. Although it will prove helpful to practitioners on both sides of the “v.,” the author leaves no doubt as to his point of engagement and perspective when it comes to the utility of the False Claims Act. And that brings us to the author himself.

Jim Helmer is what my dad used to call a lawyer’s lawyer. From my vantage point as the Chairman of Taxpayers Against Fraud (TAF), the leading national organization advocating for whistleblower laws and whistleblowers, and the TAF Education Fund, a sister membership organization numbering over 400 whistleblower lawyers, I have come to know this bar quite well. Jim Helmer, who is a recipient of TAF’s coveted Lifetime Achievement Award, is held in the highest esteem by his colleagues and for good reason.

Jim “rediscovered” the False Claims Act *qui tam* provision after it sat dormant for 40-odd years after World War II. He filed a *qui tam* lawsuit on behalf of a client in a military procurement FCA lawsuit *before* the revitalizing 1986 amendments to the statute. Indeed, because he had done so, when the time came for Congress to consider those amendments, Jim was in a perfect position to guide that legislative process. Not only did he testify at the relevant hearings, but also Congress adopted every one of his recommendations when amending the statute.

Jim then went on to become one of the leading and most successful practitioners in this area of the law, winning a succession of landmark cases. He also developed a broad and deep theoretical and practical knowledge of the statute and its implementation. And that is where this book comes in. Now in its eighth edition, Jim’s book, which started out as great, just keeps getting better. He helps the reader gain an understanding of the law, and he guides the reader on how to put it to good use, avoiding potential pitfalls, of which there are many.

To finish up on a personal note, I am honored and privileged to write this Foreword on behalf of a person of great integrity and accomplishment who has taken the time and effort to share his guidance in the form of this book, which will prove of great benefit and help to all who access it. Start out by reading the Table of Contents and the title of Chapter 1, and I promise you that everything will follow from there.

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