

Brooks Pierce Helps Secure Recovery for Taxpayers and Whistleblower in Key False Claims Act Case

March 27, 2019



Brooks Pierce partners D.J. O'Brien and Dan Smith served as local counsel and a key part of the litigation team for *United States ex rel. Thomas v. Duke University*, which recently settled for \$112.5 million in what is believed to be the largest recovery for research grant fraud in the history of the False Claims Act.

Erin Potts-Kant worked as a technician in the lab of Dr. William M. Foster in Duke University's Department of Pulmonary, Allergy and Critical Care Medicine. From 2005 through March 2013, Potts-Kant falsified and fabricated the results of experiments to produce reports favorable to the hypothesis being tested. These results were then submitted to the National Institutes of Health and the Environmental Protection Agency in order to receive new grant funding and continue the funding of previously awarded grants. The fraud was uncovered by Duke University in the spring of 2013.

Concerned about the extent of the fraud and how Duke University was responding, Joseph Thomas, a research analyst in the pulmonary division, decided to become a whistleblower. He hired Virginia law firm Gentry Locke and prepared a False Claims Act lawsuit, that was filed under seal and reported to the U.S. government. The government ultimately elected not to intervene, leaving the prosecution of the case to Thomas's private attorneys. The case was moved to the Middle District of North Carolina in 2017, and Thomas selected Brooks Pierce as his local counsel due to its deep experience handling False Claims Act cases and other complex federal litigation.

Following over 18 months of intense litigation—including more than 2 million pages of electronic documents; 52 depositions, almost all of which involved complex scientific matter; and a Rule 30(b)(6) deposition of the National Institutes of Health—the parties reached a settlement, which the court approved on March 25, 2019. Specifically, Duke University settled allegations that it had falsified or fabricated data or statements that had been submitted in connection with 30 federal research grants and agreed to pay \$112.5 million. While most of that will go back to the taxpayers, as the whistleblower in the case, Thomas will receive 30 percent (the largest recovery possible by statute). Duke University is also required to pay his attorneys' fees.