



## Lawrence S. Sher

Partner

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Larry is a skillful, zealous, creative, and accomplished litigator with more than 25 years of experience achieving exceptional results for clients in dynamic, high-stakes regulatory and commercial disputes across a wide range of industries, principally focused on government contracts and health care. He has tried several civil cases to judgment and consistently obtains outstanding results for clients on dispositive and other pivotal motions before federal and state courts and agencies, Administrative Law Judges, and arbitration tribunals.

Larry collaborates with clients and keenly focuses on their needs and priorities to achieve their key legal and business objectives. Larry's practice principally involves litigating or counseling clients to avoid litigation in the following areas:

- Government contract disputes, bid protests, Contract Disputes Act (CDA) claims and appeals
- State bid protests involving Medicaid managed care contracts
- Actions to obtain monetary judgments against the government in the U.S. Court of Federal Claims
- Civil False Claims Act violations and *qui tam* investigations and defense
- Health care-related litigation, administrative hearings and appeals

- Federal court actions to challenge or demand action by federal or state agencies
- Complex commercial disputes, both domestic and international
- Counseling on federal regulatory compliance issues

## Key Matters

*Some of the experience represented below may have been handled at a previous firm.*

### GOVERNMENT CONTRACTS

- Recovered nearly US\$2.0B as the lead attorney for a dozen health insurers in actions filed in the U.S. Court of Federal Claims against the United States for breach of statutory risk corridors payment obligations under the Affordable Care Act (ACA). Successfully appealed ACA risk corridors claims through the U.S. Court of Appeals for the Federal Circuit and the U.S. Supreme Court.
- Lead attorney representing several health insurers in actions filed in the U.S. Court of Federal Claims to recover hundreds of millions of Cost Share Reduction (CSR) payments owed by the United States under the ACA. Obtained multimillion judgments for CSRs owed to nations' largest publicly-operated health plan.
- Obtained 12(b)(6) dismissal of False Claims Act (FCA) action filed in U.S. District Court for the District of Columbia accusing government contracts supplier of violating the Trade Agreements Act. The D.C. Circuit Court of Appeals affirmed the dismissal.
- Obtained Rule 12(b)(6) dismissal of FCA action filed in U.S. District Court for the District of Columbia accusing chemical companies of wrongly failing to report risk information to the U.S. Environmental Protection Agency the relator alleged was required by the Toxic Substances Control Act.
- Co-lead counsel in two successful liability and damages trials in the U.S. Court of Federal Claims representing financial institutions against the U.S. government in breach of contract actions arising out of Congress' implementation of the Financial Institutions Reform, Recovery, and Enforcement Act legislation. Obtained multimillion dollar lost profits awards in both cases.
- Successfully defended and obtained affirmance of multi-million-dollar lost profits award for financial institution on appeal before the U.S. Court of Appeals for the Federal Circuit.
- Litigated numerous successful pre-and post-award bid protests on behalf of government contractors before the Government Accountability Office (GAO).
- Prevailed in multiple, successive pre- and post-award bid protests before the DC Contract Appeals Board on behalf of a District of Columbia Managed Care Organization (MCO) Insurer awarded the District's Managed Care Medicaid Contract valued at more than US\$8B over a five-year period.
- Successfully defended Blue Cross Blue Shield insurer in state-level bid protests and concurrent litigation in defense of the award of a US\$15B state Medicaid contract for the administration of employee health care services.
- Represented MCOs in state administrative appeals to recover millions of dollars in risk corridors and performance payments owed under state MCO contracts in D.C., CO and KS.
- Prosecution of state-level bid protests of Pennsylvania health care services Medicaid contract valued at more than US\$800M.
- Obtained emergency declaratory relief in U.S. Court of Federal Claims on behalf of government contractor against agency that attempted to override a stay of contract performance following a GAO bid protest.
- Successfully removed to federal court and obtained dismissal of numerous product liability tort actions against global manufacturing company based on the government contractor defense and federal officer removal.

- Successfully prosecuted Civilian Board of Contract Appeal on behalf of government contractor against the U.S. Department of Veteran's Affairs resulting in sanctions against the federal agency and the complete elimination of monetary penalties assessed against the contractor.
- Successfully defended size and status protests before the U.S. Small Business Association.
- Favorable resolution of IT contractor's multimillion-dollar wrongful termination claim against the District of Columbia government before the D.C. Contract Appeals Board.
- Successfully defended U.S. government contractor in European arbitration proceeding alleging breach of contract and warranty claims.
- Successfully prevailed on motion to dismiss a FCA *qui tam* action against a major defense contractor arising out of Iraqi logistical support contract.
- Defended client in FCA *qui tam* action alleging violations of price-reduction clause under government contract with General Services Administration.
- Prevailed on motion to dismiss for defense contractor in multidistrict federal class action alleging loss of confidential information following theft of government data.
- Successfully defended construction services contractor in government investigation regarding alleged improper multimillion-dollar contract award.
- Conduct internal company investigations regarding alleged FCA violations and counsel on related potential disclosure obligations.
- Counsel government contractors on their rights and obligations under teaming agreements, subcontracts and joint-venture agreements, and develop litigation avoidance strategies.
- Initiate and respond to Freedom of Information Act (FOIA) requests and related FOIA litigation.
- Successful commercial arbitrations on behalf of National Railroad Passenger Corporation against railroads and others regarding breaches of the parties' operating agreements.

## HEALTH CARE

- In 2023, obtained dismissal on summary judgment of Sherman Act antitrust claims asserted against regional health insurer filed in United States District Court, Eastern District of Louisiana.
- In 2022, obtained dismissal on motion to dismiss of all antitrust claims asserted against national health insurer filed in United States District Court, Eastern District of Tennessee. In 2023, obtained dismissal on summary judgment of plaintiffs' remaining state law tortious interference claims.
- In 2020, obtained and recovered nearly US\$2.0B in multiple judgments against the United States for breaches of statutory and contractual obligations under the ACA's risk corridors program on behalf of 11 national health insurers.
- Obtained US\$34M in two judgments in favor of nation's largest publicly operated health plan against the United States for breaches of statutory and contractual obligations related to the ACA's CSR program.
- Prevailed on motion to dismiss all claims against a national long-term care pharmacy in civil FCA *qui tam* action alleging Medicare and Medicaid fraud; defended dismissal affirmed on appeal by the Fourth Circuit.
- Successfully defended national rehabilitation therapy provider in FCA action that sought more than US\$2B in damages, including those based on statistical sampling.
- Successful prosecution and settlement of multimillion-dollar claim on behalf of MCO before D.C. Contract Appeals Board relating to breach of contract and equitable adjustment claims against the District under multiyear MCO contract.
- National litigation counsel for medical device manufacturer in multiple lawsuits to recover reimbursement for robotic exoskeleton device that enables paraplegics to walk.

- Obtained temporary restraining order (TRO) against the District of Columbia in federal court to prevent suspension of medical service providers for alleged fraud.
- Defended national health care provider in arbitration alleging fraudulent payments under Medicare Advantage plans.
- Represent pharmaceutical and medical device manufacturer in internal compliance and FCA investigations.
- Represented large retail pharmacy chain before the Federal Trade Commission concerning regulatory and data security matters.
- Recovered on summary judgment millions of dollars of Medicaid reimbursements for long-term acute care (LTAC) hospital that had been wrongfully withheld by state Medicaid agency.
- Defended hospital in action brought by the District of Columbia alleging breach of contract, misappropriation, breach of fiduciary duties and wrongful foreclosure.
- Prevailed on summary judgment for pharmaceutical manufacturer defeating a competitor’s challenge to Food and Drug Administration’s approval of company’s Abbreviated New Drug Approval (ANDA).
- Prosecuted breach of fiduciary duty, fraud, and advancement and indemnity claims in the U.S. District Court for the District of Delaware and the Delaware Chancery Court against public Canadian pharmaceuticals company concerning its acquisition of a U.S. pharmaceuticals company.
- Represented health services provider in American Health Lawyers’ Association arbitration.
- Represent health care providers and medical device manufacturers in administrative Medicare/Medicaid hearings and appeals.

## Recognitions

- “Recognized Practitioner Nationwide” in the area of Government Contracts by *Chambers USA*, 2020
- Nationally Ranked Government Contracts Practice by *The Legal 500 US*(2016–2020) – recognized for “leveraging expertise across a range of contracting matters, including False Claims Act, bid protests and litigation,” 2020
- Recognized and noted as a “Key Figure” for government contracts matters in “the life sciences and healthcare sectors” by *The Legal 500 US*, 2020
- Outstanding Achievement Award presented by The Washington Lawyer’s Committee for Civil Rights for Pro-Bono representation of prisoner in a federal civil rights case, Jun. 2011

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## Activities

Larry is a member of The Bar Association of DC’s Government Contracts Section.

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## Credentials

### EDUCATION

Larry received his J.D., *cum laude*, from the Washington College of Law at American University in 1989. He received his B.A., *cum laude*, from University of Massachusetts Amherst in 1986, where he graduated *Phi Beta Kappa* and was valedictorian in History.

## ADMISSIONS

- District of Columbia
- Colorado
- New York

## Related Insights & News

### SPEAKING ENGAGEMENTS

- “The Tok is Ticking: A Survey of the TikTok Ban and Other Recent Cybersecurity Requirements for Government Contractors,” W&S CLE program, Co-panelist, Sept. 19, 2023
- “Government Contracts and Bankruptcy: What Happens When Things Go South?,” American Bankruptcy Institute (ABI) Workshop, Co-panelist, Oct. 6, 2014

### PUBLICATIONS

- [“Enforceability of EULAs in Government Contracts: A Tale of Two Cases,”](#) W&S Investigations, Enforcement, & Compliance Alerts, Co-author, Feb. 8, 2024
- [“Final Rule Issued for Government Contractors’ Requirement to Hire Incumbent Contractor Service Employees,”](#) W&S Investigations, Enforcement, & Compliance Alerts, Co-author, Dec. 27, 2023
- [“New Construction at the Department of Labor: DOL’s Recent Renovations for the Davis-Bacon Act,”](#) W&S Investigations, Enforcement, & Compliance Alerts, Co-author, Dec. 14, 2023
- [“Biden Climate Push Expands With Contractor GHG Focus,”](#) Law360, Co-author, Nov. 8, 2023
- [“New Actions to Reduce Greenhouse Gas Emissions May Cost Contractors,”](#) W&S Investigations, Enforcement, & Compliance Alerts, Co-author, Nov. 2, 2023
- [“New DOJ Safe-Harbor Policy Incentivizes M&A Due Diligence on Government Contractors,”](#) W&S Investigations, Enforcement, & Compliance Alerts, Co-author, Nov. 1, 2023
- [“‘Safe, Secure and Trustworthy Artificial Intelligence.’ What the Biden Administration’s Latest Executive Order Could Mean for Government Contractors,”](#) W&S Investigations, Enforcement, & Compliance Alerts, Co-author, Oct. 31, 2023
- [“Sum Certainty: Federal Circuit Rules the CDA’s Requirement to Plead a ‘Sum Certain’ Damages Amount Is Not Jurisdictional,”](#) *Pratt’s Government Contracting Law Report Vol. 7, No. 10*, Oct. 2023
- [“Coming Soon: NIST Revision 3 Requirements for Defense Contractor Protection Of Controlled Unclassified Information,”](#) W&S Investigations, Enforcement, & Compliance Alerts, Co-author, Oct. 10, 2023
- [“Government Contractors: Advice for the Imminent Government Shutdown,”](#) W&S Investigations, Enforcement, & Compliance Alerts, Co-author, Sept. 29, 2023
- [“New Federal Ban Prohibits TikTok on Devices Used on Government Contracts,”](#) W&S Investigations, Enforcement, & Compliance Alerts, Co-author, Jun. 26, 2023
- [“U.S. Supreme Court Clarifies Subjective Knowledge Requirement for False Claims Act Violations,”](#) W&S Client Alert, Co-author, Jun. 5, 2023
- “Third Circuit Rules Office of the Inspector General Need Not Abide by Statutory Filing Deadlines in Whistleblower Retaliation Case,” Global Regulatory Enforcement Law Blog, Apr. 6, 2023
- “Small errors can be costly: Apt Research v. United States,” *Pratt’s Government Contracting Law Report Vol. 7, No. 7*, Jul. 2021

- “Government Contractors Can File Breach of Implied-in-Fact Contract Claims Against Agencies in the Procurement Context,” Firm Client Alerts, Mar. 11, 2021
- “How is disparate evaluation defined? The Federal Circuit adopts the Court of Federal Claims’ standard for evaluating disparate evaluation claims in bid protests,” Firm Client Alerts, Mar. 5, 2020
- “Where was it made? Changes for the pharmaceutical industry: Origin of the active pharmaceutical ingredient is not dispositive in sales to U.S. Government,” FC&S Legal, Jul. 23, 2018
- “Federal Court In Illinois Holds Insurer Must Cover Costs of Responding To DOJ Subpoena In A Health Care Fraud Investigation,” Firm Client Alerts, Jun. 1, 2018

## **EVENTS**

- America’s Health Insurance Plans’ (AHIP) National Conference on the Individual and Small Group Markets, Mar. 8, 2018

## **IN THE MEDIA**

- “Insurers, Regulators Say Risk Corridor Ruling Forces Government to ‘Honor Its Obligations,’” Best’s Insurance News & Analysis, Apr. 28, 2020
- “US Owes Anthem Units \$107M Over ACA Risk Promise: Suit,” Law360, Nov. 19, 2019
- “Obamacare Insurers Rack Up \$12.3B in Losses From Risk Program,” Bloomberg Government, Bloomberg BNA Health Care Daily Report, and Bloomberg BNA Daily Report for Executives, Nov. 16, 2017
- “Molina’s \$52M ACA Win & What’s Next,” Benefits Pro, Aug. 14, 2017
- “Lawrence Sher Talks About Molina’s \$52 Million ACA Win,” Corporate Counsel, Aug. 14, 2017
- “Judge Backs Health Insurer Molina in \$52M ACA Suit, but It’s Not the End,” Corporate Counsel, Aug. 8, 2017
- “In a rebuke to the GOP, a federal judge orders the government to pay Molina Health \$52 million in Obamacare funds,” Los Angeles Times, Aug. 7, 2017
- “Molina Healthcare Wins \$52M in ACA Risk Corridor Dispute,” Law360, Aug. 4, 2017
- “Feds Hope to Duck \$482M in ACA ‘Risk Corridor’ Payments,” Law360 by Jimmy Hoover, Feb. 2, 2017

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## **SEMINAR/CLE**

2024 Health Care & Life Sciences Summit

JUNE 4, 2024

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## **BLOG**

Enforceability of EULAs in Government Contracts: A Tale of Two Cases

FEBRUARY 8, 2024

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## **BLOG**

Final Rule Issued for Government Contractors’ Requirement to Hire Incumbent Contractor Service Employees

DECEMBER 27, 2023

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**BLOG**

New Construction at the Department of Labor: DOL's Recent Renovations for the Davis-Bacon Act

DECEMBER 14, 2023

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**BLOG**

New Actions to Reduce Greenhouse Gas Emissions May Cost Contractors

NOVEMBER 2, 2023

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**BLOG**

New DOJ Safe-Harbor Policy Incentivizes M&A Due Diligence on Government Contractors

NOVEMBER 1, 2023

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**BLOG**

"Safe, Secure and Trustworthy Artificial Intelligence:" What the Biden Administration's Latest Executive Order Could Mean for Government Contractors

OCTOBER 31, 2023

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**BLOG**

Be Prepared for CMMC Changes

OCTOBER 16, 2023

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**BLOG**

Coming Soon: NIST Revision 3 Requirements for Defense Contractor Protection Of Controlled Unclassified Information

OCTOBER 10, 2023

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**ARTICLE**

Sum Certainty: The Federal Circuit Rules the CDA's Requirement to Plead a "Sum Certain" Damages Amount Is Not Jurisdictional

OCTOBER 10, 2023

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**BLOG**

Government Contractors: Advice for the Imminent Government Shutdown

SEPTEMBER 29, 2023

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**BLOG**

New Federal Ban Prohibits TikTok on Devices Used on Government Contracts

JUNE 26, 2023

# Capabilities

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Government Program Fraud, False Claims Act & Qui Tam Litigation

Appellate & Critical Motions

Commercial Litigation & Disputes

Government Investigations, Enforcement & Compliance

Health Care

Government Contracts