

Mitchell S. Ettinger

Skadden

Partner, Washington, D.C.

Government Enforcement and White Collar Crime; Litigation



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Education

LL.B., Columbus School of Law,
Catholic University of America, 1983
B.S., Northern Arizona University, 1980

Bar Admissions

District of Columbia
Maryland

Associations

Fellow, American College of Trial
Lawyers

Government Service

Captain, United States
Air Force (Judge Advocate), 1984-88

Leader of Skadden's Washington, D.C. office, Mitchell S. Ettinger has more than 25 years of experience representing corporations and individuals in connection with federal and state grand jury investigations, complex civil litigation and matters before administrative agencies, including the Securities and Exchange Commission. Mr. Ettinger previously served as co-chair of the D.C. Litigation Group from 2009-2014.

As a former chief prosecutor for the United States Air Force in England and now as defense counsel, Mr. Ettinger has extensive trial experience in a wide variety of matters, and is a fellow in the American College of Trial Lawyers. While a judge advocate, Mr. Ettinger was the chief prosecutor for eight Air Force bases located in England and was responsible for handling felony trials throughout the European circuit. In this capacity, he tried numerous jury trials, including a capital murder case.

He has been involved in many high-profile matters, including representing Rosetta Stone in its trademark infringement suit against Google. The company's suit claimed that Google's AdWords advertising program and conduct infringed Rosetta Stone's trademarks, resulting in consumer confusion and contributing to software counterfeiting problems. The case, which was settled in October 2012, was highlighted in the 2012 *Financial Times* "US Innovative Lawyers" report. He also successfully defended Robert A. Altman in a jury trial arising from criminal charges brought by the Manhattan District Attorney's Office in connection with the Bank of Credit and Commerce International affair, and he served as an integral member of the defense team that represented President Clinton in connection with the sexual harassment lawsuit brought by Paula Jones.

Mr. Ettinger's scientific educational background has enabled him to develop particular skill in False Claims Act and *qui tam* actions. For example, he represented The Boeing Company in connection with a hotly contested *qui tam* action in which the government intervened regarding allegations that certain CH-47(D) Chinook helicopters sold to the Army contained defective transmission gears. Similarly, he successfully defended Koch Industries in connection with a multidistrict *qui tam* litigation involving allegations of natural gas mismeasurement from federal lands. He successfully defended Amerigroup Corporation and DeVry, Inc. in connection with False Claims Act allegations, obtaining dismissal of the actions on motions to dismiss.

Mr. Ettinger also has been involved in numerous health care related investigations and litigations. For example, he has defended companies accused of violating the Anti-Kickback Statute in criminal and civil matters, including allegations of improper compensation paid to hospital directors and the provision of travel and entertainment to health care providers. He also has defended allegations of False Claims Act violations premised on off-label promotion. He was a member of the team that represented Veloxis Pharmaceuticals A/S as plaintiff in a federal action against the Food and Drug Administration seeking to reverse the FDA's decision to delay approval of Veloxis' new drug Envarsus XR based on marketing exclusivity given to an earlier-approved competing drug.

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Mr. Ettinger also conducts internal investigations for the purpose of defending against criminal allegations, Securities and Exchange Commission investigations and suspension and debarment proceedings. He has extensive experience in areas involving the Foreign Corrupt Practices Act, health care fraud, procurement fraud and alleged violations of federal and state conflict of interest provisions, in matters involving simultaneous criminal, civil, administrative and congressional proceedings.

Mr. Ettinger has been selected for inclusion in *Chambers USA: America's Leading Lawyers for Business* and *The Best Lawyers in America*. He lectures on False Claims Act and FCPA issues, corporate compliance best practices and white collar defense techniques.

Publications

- “Cross-Border Investigations Update – January 2019,” *Skadden, Arps, Slate, Meagher & Flom LLP*, January 2019
- “DOJ Announces Revisions to Yates Memorandum Policy,” *Skadden, Arps, Slate, Meagher & Flom LLP*, December 10, 2018
- “Cross-Border Investigations Update – August 2018,” *Skadden, Arps, Slate, Meagher & Flom LLP*, August 2018
- “Revised FCPA Corporate Enforcement Policy,” *Harvard Law School Forum on Corporate Governance and Financial Regulation*, December 16, 2017
- “Cross-Border Investigations Update – November 2017,” *Skadden, Arps, Slate, Meagher & Flom LLP*, November 2017
- “Cross-Border Investigations Update – June 2016,” *Skadden, Arps, Slate, Meagher & Flom LLP*, June 2016
- “In *Escobar*, Supreme Court Upholds False Claims Act’s Implied Certification Theory,” *Skadden, Arps, Slate, Meagher & Flom LLP*, June 17, 2016
- “DOJ Adds Resources for FCPA Cases, Offers Incentives for Voluntary Disclosures,” *Skadden, Arps, Slate, Meagher & Flom LLP*, April 18, 2016
- “Supreme Court Decision in FCA Case Both a Win, Setback for Health Care Providers,” *Skadden, Arps, Slate, Meagher & Flom LLP*, June 1, 2015
- “Compliance With Most Favored Customer Clauses: Giving Meaning to Ambiguous Terms While Avoiding False Claims Act Allegations,” *Notre Dame Law Review Online*, Vol. 90, Issue 1, December 2014
- “Cross-Border Investigations Update” *Skadden, Arps, Slate, Meagher & Flom LLP*, October, 2014
- “Eleventh Circuit Addresses Scope of FCPA Coverage of Activity Involving State-Controlled Business Enterprises” *Skadden, Arps, Slate, Meagher & Flom LLP*, May 20, 2014
- “SEC and DOJ Release Highly Anticipated FCPA Resource Guide,” *Skadden, Arps, Slate, Meagher & Flom LLP*, November 19, 2012
- “How Companies Should Use New FCPA Guidance,” *Law360*, November 14, 2012
- “Pharma/Device Enforcement: A Year in Review,” *Skadden, Arps, Slate, Meagher & Flom LLP*, January 19, 2012
- “UK: Anti-Bribery Settlements,” *The Firm: Corporate Law in India*, July 30, 2011
- “UK Regulators Announce Significant Anti-Corruption Settlements,” *Skadden, Arps, Slate, Meagher & Flom LLP*, July 27, 2011
- “Pharma/Device Enforcement: A Year in Review,” *Skadden, Arps, Slate, Meagher & Flom LLP*, January 13, 2011
- “Sentencing Commission Adopts Significant Changes to Compliance Program Guidelines: Amendments Focus on Compliance Program Structure, Remediation and Self-Reporting,” *Skadden, Arps, Slate, Meagher & Flom LLP*, May 10, 2010
- “Beware FCPA Violations,” *Executive Counsel*, April/May 2010
- “Health Care Reform Legislation Includes Major Changes to Federal Health Care Fraud, Abuse and Compliance Laws,” *Skadden, Arps, Slate, Meagher & Flom LLP*, April 6, 2010
- “Final Health Care Reform Package Makes Sweeping Changes to U.S. Health Care System,” *Skadden, Arps, Slate, Meagher & Flom LLP*, March 30, 2010
- “Six Ways to Survive a Crisis,” *Corporate Board Member*, February 9, 2010