

## **The Haunting in the Cornfield: Relators' Qui Tam Claim Confirmed Dead by the Eighth Circuit**

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The Eighth Circuit Court of Appeals recently affirmed judgment against relators in a case alleging that a group of dairy farmers growing corn violated the False Claims Act by filing false insurance claims paid by the Federal Crop Insurance Corporation. In doing so, it held that a falsity in an insurance application does not constitute a false claim because it is not a claim for payment. It also found that the Supreme Court's ruling in *SuperValu* had no bearing on a scienter argument without evidence that the defendant had a culpable mental state.

### **Relators' Claims**

The relators' theory of liability hinged upon the type of corn grown by the dairy farmers. Specifically, whether the dairy farmers knowingly falsely certified in their insurance coverage applications their intention to grow the corn for grain when, in fact, they were growing part of it for silage to feed their cattle. Insurance coverage for revenue protection was available for grain, but not for silage.

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The corn grown by the dairy farmers was dual-purposed, and while the dairy farmers certified in their insurance applications that *all* the corn was planted for grain, they harvested only a portion of it as grain. The rest was harvested as silage. The relators' complaint alleged that the dairy farmers' certification was a false claim to obtain insurance payments.

## **Lower Court Proceedings**

After a nine-day bench trial, the district court found there was no FCA liability. While the district court found that the dairy farmers' certifications on their insurance applications were material false claims, it determined the dairy farmers did not act with the requisite knowledge to establish FCA liability.

## **On Appeal**

On appeal, the Eighth Circuit Court of Appeals affirmed that there was no FCA liability because the relators failed to prove the existence of a false claim, materiality, and knowledge.

## **No False Claim**

The Eighth Circuit disagreed with the lower court that relators established a false claim at all. Instead, it found that the insurance application certifications did not constitute a false claim for FCA liability because, by definition, a false claim requires a request or demand for payment. And the mere submission of an insurance application does not fall within that definition. Instead, the Eighth Circuit noted that the claim for payment occurs when the insured applies for benefits after a covered loss event occurs by way of an insurance claim form. Because the relators did not put forth any evidence at trial related to an insurance claim form, relators did not establish the foundational element for FCA liability: a false claim.

## **No Materiality**

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The Eighth Circuit went on to find that, even if an insurance claim form was filed and considered noncompliant, that noncompliance was not material to the claims getting paid because FCIC and those responsible for administering the federally sponsored insurance program conducted audits of the dairy farmers' crop and knew that only a portion of the corn was harvested as grain. Nonetheless, payments were still made on the dairy farmers' insurance claims.

## No Knowledge

Because the policy related to the insurability of corn was ambiguous and the dairy farmers' interpretation of the ambiguous policy was objectively reasonable, the Eighth Circuit found a lack of scienter. It rejected relators' argument that the recent Supreme Court decision in *United States ex rel. Schutte, v. SuperValu Inc.* had any bearing on the issue because there was no evidence elicited at trial suggesting that the dairy farmers had a culpable state of mind when they insured the corn as grain.

## Takeaways

- When the alleged falsity relates to insurance coverage, the Eighth Circuit does not consider there to be a claim for payment unless and until the covered party makes a claim under that insurance policy. An insurance application is not a claim for payment.
- The progeny of *SuperValu* will continue to develop. This case recognizes that an objectively reasonable interpretation of an ambiguous regulation or statute is still a viable defense on its own when there is no other evidence suggesting a culpable state of mind.
- This case reinforces the importance of materiality for any FCA claim, and when the government is aware of the alleged noncompliance, while not determinative, it is a key inquiry into

whether FCA liability can attach to a false claim.

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