

Third Circuit Holds that the Public Disclosure Bar Precludes Qui Tam Actions Based on Information Available on Publicly Accessible Databases

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In its recent unpublished decision, *United States ex rel. Stebbins v. Maraposa Surgical Inc.*, 2024 WL 4947274 (3d Cir. Dec. 3, 2024), the Third Circuit clarified that the public disclosure bar prevents whistleblower False Claims Act (FCA) *qui tam* actions arising from information gathered solely through publicly accessible databases.

As the Third Circuit explained, “[t]he FCA punishes the submission to the Government of fraudulent claims for payment under, for example, the Medicare and Medicaid programs.” *Id.* at *1. While the FCA encourages individuals, known as relators, to report government-related fraud by way of filing a *qui tam* suit, the public disclosure bar prevents a relator from bringing an FCA *qui tam* suit “if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed” in a “Federal report” or “from the news media” unless the relator is “an original source of the information.” 31 U.S.C. § 3730(e)(4)(A). In the Third Circuit, “the public disclosure bar applies if either Z (fraud) or both X (misrepresented facts) and Y (true facts) are publicly disclosed by way of a listed source.” *Stebbins*, 2024 WL 4947274, at *2 (quoting *U.S. ex rel. Zizic v. Q2Administrators, LLC*, 728 F.3d 228, 236 (3d Cir. 2013)).

In *United States ex rel. Stebbins v. Maraposa Surgical Inc. et al.*, despite having no affiliation whatsoever with the defendants, the relator filed a *qui tam* action alleging, *inter alia*, that the defendants fraudulently sought reimbursement for the arteriograms performed in a physician’s office, rather than a licensed ambulatory surgery center, which the relator asserted violates Pennsylvania’s regulations. Without deciding whether the defendants actually engaged in any wrongdoing, the Third Circuit held that the public disclosure bar prohibited the relator from proceeding with suit because the relator drew each piece of information supporting his FCA allegations from publicly disclosed databases.

First, the facts that the relator contended the defendants “misrepresented” to the government when submitting its claims for reimbursement (*i.e.*, that the arteriograms were performed at a medical office and not at an ambulatory surgery center) were available through publicly accessible databases. The payment database of the Centers for Medicare and Medicaid Services, which oversees the federally-funded Medicare and Medicaid health insurance programs, shows that the arteriograms for which the defendants sought reimbursement were performed at a medical office. Second, the “true facts” at

issue (*i.e.*, that Pennsylvania regulations require arteriograms to be performed at a properly licensed ambulatory surgery center), were likewise available through publicly accessible databases. Specifically, the defendant facility at issue is not listed as a licensed ambulatory surgery center in the Pennsylvania Department of Health's online database, and the Pennsylvania ambulatory surgical facility regulations at issue are published online. The Third Circuit thus affirmed the dismissal of the relator's *qui tam* action as precluded by the public disclosure bar "[b]ecause anyone could access this publicly available information about the transactions, anyone could file the same suit." *Id.* at *3.

This case exemplifies the important purpose of the public disclosure bar, which "seeks to strike a balance between encouraging private persons to root out fraud and stifling parasitic lawsuits." *Id.* at *1 (quoting *Zizic*, 728 F.3d at 235). A *qui tam* action cannot survive dismissal where, as in this case, the relator's allegations are solely pieced together from information that any individual could access through a series of publicly available databases even if there are no publicly disclosed allegations of fraud asserted or transactions that warrant an inference of fraud. *Id.* at *2.

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