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Felony Conviction Bars Whistleblower from Pursuing Qui Tam Case

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A relator convicted of criminal conduct is precluded from sharing in related FCA recoveries, irrespective of degree of culpability.

On July 16, a US Court of Appeals for the Ninth Circuit panel upheld the dismissal from a ***False Claims Act (FCA)*** suit of a qui tam relator who had been criminally convicted for his relatively limited role in the fraud underlying his FCA claims. The issue before the panel—whether dismissing a relator convicted of a crime related to alleged fraud is required under the FCA, even where his or her culpability is minimal—was one of first impression in the Ninth Circuit.

The relator, Carl Schroeder, filed his qui tam action against CH2M Hill (CH2M) and Washington River Protection Solutions, LLC in June 2009. His complaint alleged that the defendants engaged in a company-wide scheme to defraud the Department of Energy (DOE) by knowingly and systematically submitting false claims in connection with work performed under a contract for nuclear disposal services. Specifically, the relator alleged that CH2M submitted inflated claims by (1) billing for full shifts when employees had worked only partial shifts and (2) unnecessarily diverting work to overtime shifts to bill for time-and-a-half and double-time wages. Several months prior to filing the complaint, the relator had pleaded guilty to a violation of 18 U.S.C. § 286 for his role in submitting false time cards for work performed under the CH2M contract. Section 286 prohibits conspiracies to defraud the federal government.

The government intervened in August 2009 and shortly thereafter moved to dismiss the relator from the action pursuant to 31 U.S.C. 3730(d)(3) on the basis that he had been convicted of a crime related to the conduct underlying his FCA claims. Section 3730(d)(3) contains two clauses that limit the ability of a culpable relator to share in FCA recoveries. The first clause provides a court with discretion to limit a relator's share in recoveries where the relator "planned and initiated" the FCA violation, and the the second clause provides that a relator who is convicted for conduct arising from his or her role in the alleged FCA violation "shall be dismissed" from the action and "shall not receive any share of the proceeds."

Schroeder challenged the government's motion to dismiss him from the action, arguing that reading the statute to require dismissal of a relator whose culpability is limited and who has provided extensive assistance to the government would lead to “absurd results” in light of the FCA’s legislative intent and, further, could have a chilling effect on disclosures by parties involved in the fraud (i.e., those most likely to have firsthand knowledge of the conduct). In response, the government argued that interpreting the statute consistent with its plain meaning would not lead to absurd results, particularly where the relator was not merely peripherally involved and had not, contrary to his assertion, come forward voluntarily, but only cooperated with the government after a criminal investigation was launched, and he was fired by the defendant employer for his role in falsifying records (specifically, time cards).

The district court granted the government’s motion to dismiss, concluding that the statutory language was not ambiguous and clearly required dismissal where a relator is convicted of a crime related to the alleged FCA violations. In dicta, the court agreed with the government that the relator’s role was “not insubstantial” and observed that the relator had already been rewarded for his cooperation with the government in the form of sentencing and fine reductions.

Like the district court, the Ninth Circuit panel declined to second guess the legislature’s policy choices and rejected the relator’s argument that interpreting the statute consistent with its plain meaning would lead to absurd results. The court reasoned that the provision was in fact consistent with the FCA in so far as it helped the legislature strike a balance between precluding parasitic claims and encouraging proactive suits. The court also gave credence to the legitimate policy objective of preventing criminal wrongdoers from benefiting from the proceeds of their offenses.

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