

## Cook County Circuit Court in Illinois Dismisses 201 False Claims Act Lawsuits

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At a hearing yesterday, Cook County Circuit Judge James Snyder granted the State of Illinois' (State) Motion to Dismiss 201 Illinois **False Claims Act (FCA)** cases filed by the law firm of Stephen B. Diamond, PC (Relator) against out-of-state liquor retailers. The lawsuits alleged that the defendants were obligated to collect and remit sales tax on their internet sales of alcohol shipped to Illinois customers. The complaints admitted that the defendants lacked any physical presence in the state, and would not qualify for any Illinois liquor retail license, but nevertheless asserted a tax collection obligation for sales and a tax remission obligation for gallonage tax arising under the 21st Amendment of the US Constitution and the Supreme Court's decision in *Granholm v. Heald*, 544 U.S. 460 (2005).

In its motion to dismiss and at oral argument, the State relied upon the favorable standard for consideration of motions to dismiss False Claims Act cases filed by the State established by the Illinois Appellate Court in two prior cases: [\*State ex rel. Beeler, Schad & Diamond v. Burlington Coat Factory Warehouse Corp.\*](#), 369 Ill. App. 3d 507 (1st Dist. 2006) and [\*State ex rel. Schad, Diamond & Shedden, P.C. v. QVC, Inc.\*](#), 2015 IL App (1st) 132999 (Apr. 21, 2015). In both cases, the appellate court held that when the State moves to dismiss a *qui tam* action allegedly filed on its behalf, its motion should be granted absence evidence of "glaring bad faith" on the part of the State in moving to dismiss. The State argued that it had concluded that the Relator's claims were weak, based in part on the Relator's admission that the defendants lacked nexus. In response, the Relator argued that the State had acted in bad faith by relying on *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) and other commerce clauses nexus rulings and, according to the Relator, ignoring the 21st Amendment and *Granholm*, which the Relator alleged supplanted any nexus analysis (a point the State and the defendants vigorously disputed in briefing prior to argument).

After hearing argument, Judge Snyder ruled from the bench that the Diamond firm had failed to meet its burden of proving bad faith by the State in moving to dismiss the 201 lawsuits.

The Diamond firm will have 30 days from the date of entry of the Circuit Court's dismissal orders to either seek reconsideration or appeal from the trial court's ruling.

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