

Sixth Circuit Issues Split FCA Decision in Fracking Case

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In *US ex rel. Harper v. Muskingum Watershed Conservancy District*, a divided panel of the **Sixth Circuit** interpreted the 2010 amendments to the **False Claims Act (FCA)** and affirmed the district court's dismissal of relators' qui tam action filed under the FCA's reverse-false-claim and conversion provisions. Relators alleged that Muskingum Watershed Conservancy District (MWCD), by selling fracking rights to certain land and retaining the land, violated a 1949 deed, providing that the land would revert to the United States if MWCD stopped using the land for recreation, conservation, or reservoir-development purposes or if MWCD alienated or attempted to alienate any part of the land.

Judge Boggs, writing for the majority, determined that MWCD could be liable under the FCA's reverse-false-claim provision only if MWCD had an obligation to transmit property to the United States, that it improperly avoided the obligation, and that it did so knowingly. See 31 U.S.C. § 3729(a)(1)(G). Because, without a court stacking inferences, relators had failed to plead facts establishing both MWCD's awareness of its obligation to the United States and its violation of that obligation, relators' claim failed.

The majority further held that the FCA's conversion provision imposes civil liability on anyone who "has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered less than all of the money or property." See 31 U.S.C. § 3729(a)(1)(D). Because the relators failed to allege that MWCD knew that it was in violation of the deed restriction and thus possessed property belonging to the government, their claim failed. Judge Moore dissented, stating that she disagreed with the majority's conclusion that the complaint failed to satisfy Rule 8's pleading requirements. See Fed. R. Civ. P. 8.

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