

Sixth Circuit Hits the Brakes on District Court's FCA Ruling, Noting the FCA is not a Vehicle to Police Technical Compliance with Complex Federal Regulations

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On October 5, 2012, in *United States ex rel. Williams v. Renal Care Group, Inc.*, the Sixth Circuit ruled that a company that made efforts to comply with ambiguous industry regulations did not act with "reckless disregard" under the False Claims Act (FCA). The court also reaffirmed that the FCA is not meant to police companies' technical compliance with complex federal regulations. This decision comes less than a week after the Sixth Circuit's ruling in *United States ex rel. Brian Wall v. Circle C Construction, L.L.C.*, in which the same court reaffirmed that in certain circumstances, district courts have primary jurisdiction over FCA allegations premised on violations of the Davis-Bacon Act. *Williams* stands in contrast to the Sixth Circuit's broad interpretation of the FCA in *Circle C* and suggests that although courts are endorsing an ever-expanding array of FCA liability theories, there are limits on the reach of the statute.

In *Williams*, the Government alleged that Renal Care Group Inc. (RCG), a dialysis provider, and its wholly-owned subsidiary Renal Care Group Supply Company (RCGSC), a dialysis equipment supplier, violated the FCA by submitting improper claims for Medicare reimbursement. Specifically, the Government alleged that RCGSC was a "sham corporation" created by RCG for the sole purpose of increasing Medicare reimbursements under a law that prevented dialysis facilities, like RCG, from seeking such reimbursement. The district court agreed with the Government's argument, finding on summary judgement that RCGSC's Medicare reimbursement submissions were materially false claims. The district court found that

Authors

Roderick L. Thomas
Partner
202.719.7035
rthomas@wiley.law

Brandon J. Moss
Partner
202.719.7554
bmoss@wiley.law

Practice Areas

Government Contracts
Internal Investigations and False Claims Act

RCG created RCGSC for the sole purpose of receiving higher Medicare payments and, in doing so, acted with "reckless disregard" of the relevant Medicare laws. Consequently, the district court assessed FCA liability against RCGSC, RCG and their successor-in-interest Fresenius Medical Care Holdings and calculated trebled damages and statutory penalties at more than \$82 million.

On appeal, the Sixth Circuit rejected the district court's finding of FCA liability, stating that "[w]hy a business ought to be punished solely for seeking to maximize profits escapes us." As an initial matter, the court expressed skepticism at the district court's conclusion that RCGSC was ineligible for the relevant Medicare reimbursements—specifically noting that the relevant federal regulations governing which entities can claim reimbursement are ambiguous and that the lower court failed to explain why the defendants' actions were inherently improper. The court concluded that because the defendants' actions and corporate structure were not clearly in violation of the law, meaning their claims were not obviously false, whether they recklessly disregarded the relevant laws was relevant to whether FCA liability should attach.

Finding that RCG and RCGSC did not act with "reckless disregard" of the relevant Medicare statutes, the Sixth Circuit rejected the district court's determination that the defendants had the requisite knowledge to violate the FCA. While the Sixth Circuit did not articulate a specific definition of reckless disregard in reaching its conclusion, it did specifically note that Congress intended the prong to "target that defendant who has 'buried his head in the sand' and failed to make some inquiry into the claim's validity." Moreover, the court noted that Congress intended a "limited duty to inquire as opposed to a burdensome obligation," in that the inquiry need only be "reasonable and prudent under the circumstances." Accordingly, the Sixth Circuit looked to a variety of enumerated factors in concluding that the defendants did not act with reckless disregard, including defendants' consultation with legal counsel, their legal counsel's consultation with Medicare personnel, the defendants' adherence to industry practice and Medicare officials' awareness of the defendants' corporate structure. The court also noted the lack of evidence that the defendants acted with actual knowledge of the falsity of their submissions. As a result, the defendants could not be liable under the FCA.

The Sixth Circuit also reversed the district court's finding in favor of the Government on a second FCA count. There, the Government alleged that the defendants submitted false claims while knowing that RCGSC was a "billing conduit" that was "not in compliance" with relevant laws requiring RCGSC to meet particular standards for dialysis suppliers to receive reimbursement. On appeal, the defendants argued that the cited provision has an independent sanction and that the mere violation of a statutory condition of participation does not automatically render a claim materially false. Noting that the FCA "is not a vehicle to police technical compliance with complex federal regulations," the court granted summary judgment in the defendants' favor. Finally, the Sixth Circuit reversed and remanded the Government's non-FCA claims.

In contrast to the recent judicial trend of broadly interpreting when an entity can be found recklessly liable under the FCA, the Sixth Circuit's ruling acknowledges there are limits to when FCA liability can be hinged on a theory of reckless disregard—especially when a company is attempting to navigate a landscape of complex and technical regulations. Indeed, the court explicitly acknowledged that contractors need only engage in a "reasonable" investigation into a claim's validity to avoid a finding of reckless disregard. In doing so, the

court acknowledged that not every violation of a contractual or administrative provision is appropriately characterized as fraud against the Government. Of course, companies should be mindful that courts in other jurisdictions may adopt a broader view of reckless disregard. Nonetheless, this decision is helpful in articulating that a company should not find itself subject to FCA liability for simply failing to achieve 100% contractual or regulatory compliance—such a standard is unworkable, unfair and counter to the goals of the FCA.

The decision in *Williams* also gives companies helpful guideposts for what types of conduct may rebut an allegation of reckless disregard. The Sixth Circuit suggests that seeking clarification about ambiguous issues, following standard industry practices and interacting with government officials are all relevant factors when a court is deciding whether a company acted recklessly. Companies should take this opportunity to review their existing compliance procedures to ensure both that they have provisions in place to proactively resolve ambiguities in their Government contracts and that their practices are in line with relevant industry standards. Moreover, companies finding themselves the targets of FCA suits may want to flag any historical proactive measures they have taken to prevent the alleged FCA violations, as such measures could counsel away from a finding of reckless disregard.