

Roderick Thomas Comments on *Law 360*'s Biggest Government Contracts Decisions of 2019

Law360

July 10, 2019

Roderick L. Thomas, partner in Wiley Rein's White Collar Defense & Government Investigations Practice, was quoted in a July 2 article in *Law360* on three items that made the law news organization's list of the biggest government contracts decisions in 2019, thus far.

According to *Law360*, the U.S. Supreme Court reached a decision in June that expanded the type of "confidential" private business information that is exempt from disclosure under the Freedom of Information Act (FOIA). The case involved a South Dakota newspaper attempting to garner information from a local grocery store concerning the federal food stamp program. In a 6-3 decision, the court held that information that is "customarily and actually treated as private by its owner and provided to the government under an assurance of privacy" falls under the protection of FOIA's Exemption 4 for "confidential" private information.

Mr. Thomas said the decision should help strengthen the case for companies to push back against disclosure when an agency receives a FOIA request involving their documents and data. That, in turn, may serve to discourage qui tam False Claims Act (FCA) suits that are filed based on thin allegations in a complaint, where relators later try to "load up" an amended complaint with materials gathered through FOIA, said Mr. Thomas.

In another case regarding the FCA back in January, the U.S. government intervened in a decision by a Utah federal judge that had the potential to give realtors more leverage, while complicating

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cases for some defendants. According to *Law360*, the original complaint involved a pair of realtors who accused several colleges of paying incentives to recruiters for bringing students on board, in violation of the rules of participation for federal financial aid programs. While the government cited a section of the FCA it claimed "allows [a] relator to maintain the non-intervened portion of the action in the name of the United States," the Utah federal judge found that the government's stance was inconsistent with both the FCA and its actions in the case, and that claims against the colleges could not "have two masters."

According to Mr. Thomas, allowing parallel non-intervened claims to move forward would have essentially allowed relators to "ride on the coattails" of the government's suit in a situation where it has already concluded the allegations don't merit intervention.

Mr. Thomas also commented on how the Granston Memo – revealed in January 2018 by U.S. Department of Justice (DOJ) civil fraud chief Michael Granston to describe situations in which government attorneys should invoke the government's authority to dismiss FCA cases – is affecting FCA cases in the first half of 2019. According to *Law360*, Granston noted in a recent speech that more than 30 cases have been dismissed since his memo was issued.

That trend has been welcomed by FCA defendants, although given the hundreds of new qui tam cases filed each year, the view among those defendants and their attorneys is that the DOJ is still "not dismissing enough of these cases," Mr. Thomas said.

The article can be found here. (*subscription required*)