

Bollinger Shipyards Sinks False Claims Act Suit

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Bollinger Shipyards won an important victory for government contractors in October when the Eastern District of Louisiana dismissed the Government's \$400 million fraud suit against the Louisiana-based shipbuilder. Represented by Wiley Rein, Bollinger secured dismissal with prejudice of all claims under the False Claims Act (FCA) and common law fraud.

In 2011, after years of investigations by the U.S. Coast Guard and DOJ, the United States alleged that Bollinger made false statements and claims for payment on the Coast Guard's Deepwater Program, a massive long-term effort to update the Coast Guard's fleet and computer and communications systems. The Government alleged that Bollinger misled the Coast Guard by knowingly submitting false engineering data about the structural strength of Coast Guard cutters that Bollinger was lengthening from 110 feet to 123 feet and refurbishing.

The Government originally filed suit in the District of Columbia, but Bollinger successfully transferred the case to the Eastern District of Louisiana in April 2012. Bollinger then moved to dismiss the case, arguing, among other things, that the United States had failed to state a claim under the FCA or plead fraud with particularity. The court agreed, and earlier this year dismissed the complaint, but gave the Government leave to amend some of its claims.

In February 2013, the United States filed an amended complaint. Bollinger renewed its arguments that the complaint was pled improperly and still failed to adequately allege fraud. While that motion was pending, Bollinger scored a series of smaller victories in discovery disputes, culminating in sanctions against the United States

Authors

Mark B. Sweet
Partner
202.719.4649
msweet@wiley.law

and dismissal of more than \$100 million of damages claims in July 2013.

On October 21, 2013, the court granted Bollinger's second motion to dismiss, this time refusing to give the United States another chance to fix its allegations. In her decision, Judge Vance emphasized that for purposes of proving a "knowing" violation under the FCA, one must demonstrate that a person either "has actual knowledge of the information," "acts in deliberate ignorance of the truth or falsity of the information," or "acts in reckless disregard of the truth or falsity of the information." The Government alleged that Bollinger had made three calculations about the lengthened section's longitudinal strength, using what turned out to be incorrect inputs, and submitted only the highest calculation to the Coast Guard. The Government argued that this and other facts led to the inference that "Bollinger knowingly input false data . . . to obtain a false . . . result high enough to avoid further Coast Guard scrutiny and . . . review of the vessel's structural integrity." Judge Vance held that this inference was not reasonable. The three incorrect calculations suggest that Bollinger did not know the correct inputs, not that it knew the correct inputs, but nonetheless reported a result based on incorrect inputs.

Judge Vance wrote, "[t]he United States has failed to allege facts that allow the inference that Bollinger acted knowingly or with reckless disregard or deliberate ignorance of the truth. Because its First Amended Complaint lacks a plausible theory of fraudulent inducement of acceptance of delivery or of payment, the Court must dismiss the United States' FCA claims." This decision demonstrates that the requirement for the Government to prove a "knowing" violation of the FCA still has teeth, and that the fact that the Government may, in retrospect, be able to show that certain information it received was incorrect does not support an inference of an FCA violation.

The opinion is available [here](#).