

D.C. Circuit Appellate Court Vacates SAIC's False Claims Act Conviction

Written by Nick Sanders
Monday, 13 December 2010 08:47

On December 3, 2010, the Court of Appeals (D.C. Circuit) vacated an October, 2008, judgment by the U.S. District Court for the District of Columbia, which had found SAIC liable for False Claims Act violations and breach of contract. The Appellate Judges remanded the suit for a new trial, finding that the Government's theories of corporate "collective knowledge" were unpersuasive, and rejecting several of the Government's aggressive theories of damage quantification.

The violations allegedly occurred on two contracts with the Nuclear Regulatory Commission in the 1990s. In those contracts, SAIC provided technical assistance to the NRC rulemaking personnel regarding clearance, recycling and release of radioactive materials. In 1999, the NRC terminated SAIC's contracts, alleging that SAIC breached the contracts' conflict-of-interest (COI) prohibitions. In 2004, the Government brought suit under the False Claims Act, alleging that its invoices submitted under the two contracts—though accurate in every mathematical respect—were nonetheless tainted (and thus false) because SAIC obtained the contract through false pretenses and submitted false statements.

As Judge Richard Roberts opined in 2008—

SAIC's failure to disclose its potential conflicts of interest led to SAIC earning millions in income under a federal contract which SAIC might not have otherwise been eligible to be awarded. ... there was evidence that SAIC employees know of evidence not disclosed to the [NRC] and intentionally hid information from the NRC that would have suggested the appearance of a conflict of interest.

The D.C. District's 2008 opinion can be found [here](#).

According to **this [POGO](#) blog article**—

The jury found that SAIC knowingly submitted 60 false claims for payment and made 17 false statements, and therefore awarded the government \$1.97 million in damages, which are tripled to \$5.91 million under the False Claims Act. The jury also determined that SAIC breached its contract with the NRC and tacked on another \$78 in damages.

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Yes, it was the additional \$78 in damages that caused SAIC to appeal the jury verdict, not the additional \$577,500 in penalties associated with the allegedly false statements and claims. (Note: Sarcasm.) In any case, Judge Roberts denied SAIC's motion for a new trial or judgment notwithstanding the jury's verdict, and the company appealed.

[Here](#) is the appellate decision. [Here](#) is a nice summary by the top-notch law firm of Gibson Dunn.

According to the decision, SAIC argued as follows—

SAIC argued (1) that the government failed to prove that the company submitted false claims under an implied certification theory because the record contained no evidence that payment under the contract was expressly conditioned on SAIC's compliance with organizational conflict of interest obligations, (2) that the evidence precluded the jury from finding, as it did, that SAIC acted "knowingly" under the FCA when it submitted false claims and statements because SAIC's belief that it had no conflicts as defined by the applicable contractual provisions and regulations was reasonable, (3) that various jury instructions were erroneous and prejudicial, including an instruction that the jury could find that SAIC possessed knowledge based on the "collective knowledge" of its employees, and (4) that the government failed to prove that it suffered any damages from SAIC's false claims, and in the alternative that the district court's damages instruction was erroneous and prejudicial. The district court rejected each argument.

...

As SAIC compellingly points out, without clear limits and careful application, the implied certification theory is prone to abuse by the government and *qui tam* relators who, seeking to take advantage of the FCA's generous remedial scheme, may attempt to turn the violation of minor contractual provisions into an FCA action. In our view, however, instead of adopting a circumscribed view of what it means for a claim to be false or fraudulent, this very real concern can be effectively addressed through strict enforcement of the Act's materiality and scienter requirements.

As Gibson Dunn summarized—

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On appeal, the D.C. Circuit vacated the judgment against SAIC and remanded for a new trial. In so doing, the D.C. Circuit rejected the district court's "collective knowledge" instruction, which permitted the jury to find that SAIC acted with scienter even if no particular employee knew the company's claims were false. The court held that the so-called 'collective knowledge' theory is legally deficient because it permits 'a plaintiff to prove scienter by piecing together scraps of 'innocent' knowledge held by various corporate officials, even if those officials never had contact with each other or knew what others were doing in connection with a claim seeking government funds.' The theory, the court continued, 'provides an inappropriate basis for proof of scienter because it effectively imposes liability, complete with treble damages and substantial civil penalties, for a type of loose constructive knowledge that is inconsistent with the Act's language, structure, and purpose.'

The court also agreed with several of SAIC's other arguments, thereby raising the threshold for FCA plaintiffs--including *qui tam* relators--to succeed in future litigation. *First*, the D.C. Circuit rejected the government's sweeping damages theory as 'flawed' and instead adopted the benefit-of-the-bargain standard proposed by SAIC. At the government's urging, the district court had instructed the jury that it was barred from considering the value of the services that SAIC actually provided. That instruction 'compelled the jury to assess as damages the actual amount of payments the government made to SAIC.' The D.C. Circuit held that the government's 'automatic equation' of its payments with its damages was 'mistaken' because it 'essentially required the jury to assume that SAIC's service had no value even in the face of possible evidence to the contrary.' The court concluded that the 'proper measure of damages' was a 'benefit-of-the-bargain framework' that requires the government to prove 'that the performance [it] received was worth less than what it believed it had purchased.'

Second, the court rejected the government's theory that false *statements* constitute separate violations of the FCA even if they were not used to get a false

claim

paid. That theory, the court explained, 'rest[ed] on a misunderstanding of the FCA's structure' because knowingly false statements are 'separately actionable under FCA section 3729(a)(2) . . . only if' they are used to get a false claim paid.

With respect to the latter point made in the summary above, the Appellate Court agreed with SAIC's contention that "the government is entitled to no damages because it received the full value of the services covered by the contract." The Court decided that, "This automatic equation of the government's payments with its damages is mistaken." Under the

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“benefit-of-the-bargain” framework—

Because SAIC's services under its NRC contract had no ascertainable market price, the district court should instruct the jury to calculate the government's damages by determining the amount of money the government paid due to SAIC's false claims over and above what the services the company actually delivered were worth to the government.

To sum up, this is a significant decision in the complex, ever-changing world of False Claims Act litigation. While it likely won't affect the manner in which compliance professionals execute their day-to-day tasks, it might just let their attorneys breathe a bit easier.