



Government Contracts Advisory

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CONTACTS

For further information regarding the topic discussed in this update, please contact one of the professionals below, or the attorney or public policy advisor with whom you regularly work.

John G. Horan
202.496.7215

Jason N. Workmaster
202.496.7422

Timothy K. Halloran
202.496.7352

Fourth Circuit Issues Significant Opinion on “Government Knowledge Defense” in False Claims Act Case

Last week, the U.S. Court of Appeals for the Fourth Circuit issued its most recent pro-defense ruling in a civil False Claims Act (“FCA”) *qui tam* case, ***United States ex rel. Ubl v. IIF Data Solutions, Inc., et al., No. 09-2280***. At the appellate level, the case involved a number of challenges by Ubl, the *qui tam* relator, to the jury verdict in favor of the defendants that had followed an extensive trial in the U.S. District Court for the Eastern District of Virginia. The appellate court rejected all of these challenges—including, perhaps most significantly, Ubl’s assertion that the trial judge had improperly admitted certain evidence relating to the government’s knowledge of the facts and circumstances giving rise to the allegedly false claims. Consequently, the court’s opinion could be of value to future defendants seeking to rely upon what is commonly known as the “government knowledge defense” to an FCA claim. MLA served as co-counsel in the case, both at trial and in the appeal.

The *IIF* case involved allegations by Ubl that IIF had fraudulently induced the award of three separate GSA Schedule contracts and then had provided unqualified or under-qualified personnel to its main government customer, the National Guard Bureau (“NGB”), under task orders issued under those Schedule contracts. At the beginning of trial, Ubl asked the district court to preclude IIF from presenting any evidence regarding NGB’s satisfaction with the quality of the personnel IIF provided. Ubl argued that this evidence was inadmissible because only GSA had the contractual authority to alter the terms of IIF’s Schedule contracts. Thus, he asserted, the government knowledge defense would only be available to IIF if GSA employees had knowledge of the facts relating to IIF’s claims for payment. The trial judge rejected Ubl’s argument and allowed IIF to present evidence that demonstrated that NGB had been pleased with the work performed by specific IIF employees and with IIF’s work overall.

In the Fourth Circuit, Ubl renewed its argument regarding the admissibility of the NGB evidence. The court soundly rejected the argument and affirmed the trial court, finding:

Evidence that the government knew about the facts underlying an allegedly false claim can serve to distinguish between the knowing submission of a false claim, which generally is actionable under the FCA, and the admission of a claim that turned out to be incorrect, which generally is not actionable under the FCA. That is, “the government’s knowledge of the facts underlying an allegedly false record or statement can negate the scienter required for an FCA violation.”

We see no reason why the government’s knowledge would become irrelevant simply because the employees with the knowledge do not work for the particular agency that happens to pay

the contractor's invoices. The [NGB], an agency of the federal government, was IIF's customer, and IIF worked closely with [NGB] employees when performing its various contracts. Because IIF was working closely with the [NGB] on the very contracts that are the subject of this FCA action, we believe that the [NGB's] knowledge of IIF's performance under the contracts was relevant to the question of whether IIF acted with the requisite intent.

IIF, No. 09-2280, slip op. at 13 (4th Cir. Apr. 19, 2011) (citations omitted).

It is not uncommon for relators and sometimes even the government itself to argue that "government knowledge" is no defense to an FCA case or that only the knowledge of some select group of government employees is relevant to such a defense. The *IIF* ruling will provide great assistance to defendants in rebutting such arguments.

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