

Private Equity Firm Avoids Potential False Claims Act Liability in Dismissal from Whistleblower Suit Brought by Healthcare Portfolio Company Executive

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On October 15, 2025, the United States District Court for the District of Nebraska (the Court) dismissed Pharos Capital Group and its related investment funds (Pharos Capital) from a qui tam or whistleblower suit brought under the antiretaliation provision of the False Claims Act (31 U.S.C. § 3730(h)) (the FCA), against Pharos Capital and Charter Health Care Group (Charter), a portfolio company of Pharos Capital.^[1] The suit was brought by a former Charter executive (Plaintiff) who alleged he was fired in retaliation for raising concerns about potential billing fraud by Charter.

BACKGROUND

Charter is an integrated post-acute care provider offering hospice, home health, and transitional care services across the United States. Pharos Capital acquired a majority interest in Charter in 2018, at which time it appointed one of its employees as the new chief executive officer. Three Pharos Capital partners also served on Charter's board of directors.

Plaintiff served as chief executive officer of two home health and hospice services companies that Charter acquired in early 2021. Following the acquisition, Plaintiff entered into an employment agreement with Charter to serve as vice president of Charter's newly formed home health subsidiary and was subsequently promoted to vice president of operations later that year.

Plaintiff was terminated by Charter in early 2022 during a meeting where he alleged concerns regarding improper billing practices at Charter. Specifically, Plaintiff alleged that he had identified approximately ten thousand erroneous claims constituting an estimated \$15 million in potential overpayments. Plaintiff further alleged that his employment was terminated immediately by Charter's CEO at the meeting where he identified the potential overpayments and recommended that Charter submit a voluntary self-disclosure and refund the government for any overpayments identified by an independent third-party auditor.

Following the termination of his employment, Plaintiff filed suit against Charter, alleging that his termination constituted an unlawful retaliation by Charter in violation of the FCA. Pharos Capital was later joined to the suit, nearly a year after Charter filed for bankruptcy on the basis that Pharos Capital was also Plaintiff's employer, qualifying as either an integrated enterprise or joint employer with Charter pursuant to Section 3730(h) of the FCA.

DECISION

The Court found that Plaintiff failed to adequately allege an employer-employee relationship with Pharos Capital, which is a prerequisite to establishing misconduct under § 3730(h). Specifically, the Court applied the integrated-enterprise test^[2] to the FCA to determine that Pharos Capital did not constitute either an integrated enterprise or a joint employer with Charter, despite its alleged role on Charter's board of directors and assistance with formulating strategic initiatives for Charter.

The Court considered the following factors in support of its finding that Pharos Capital and Charter were separate corporate entities and that Pharos Capital was not an employer of Plaintiff for purposes of liability under the FCA whistleblower suit:

- **Separate Principal Places of Business.** Pharos Capital and Charter have separate headquarters located in different parts of the country.
- **Independent HR and Operations.** Pharos Capital and Charter have independent human resources departments and do not share any other significant operational resources.
- **Distinct Business Types.** Pharos Capital and Charter engage in different businesses, with distinct purposes and functions—Charter operates as a home health and hospice care provider, while Pharos Capital functions as a private equity firm.
- **Independent Contractual Arrangement and Employment Decisions.** Pharos Capital was not a party to Plaintiff's employment agreement with Charter, nor was Pharos Capital consulted on the alleged immediate and unprompted termination of Plaintiff's employment by the Charter CEO.
- **No Common Management.** The fact that three Pharos Capital partners sit on Charter's board of directors and the Charter CEO was previously employed by Pharos Capital was insufficient to constitute common management between Pharos Capital and Charter.

KEY TAKEAWAYS

As private equity firms continue to face increased FCA scrutiny at the federal and state level, the Court's dismissal of Pharos Capital as a party to Plaintiff's whistleblower suit presents a new limitation on similar plaintiffs' ability to draw from the "deep pockets" of private equity firms who otherwise operate as a distinct enterprise and pose no true control over the operations of a private equity firm's healthcare portfolio company. Although Plaintiff's claim in this particular case was not successful due to the specific facts at issue, the factors the Court considered are useful guidance for how overlap in personnel, management, and operations between private equity firms and their portfolio companies may be evaluated in future cases with similar fact patterns.

The case against Pharos Capital follows several other qui tam cases wherein private equity firms and their portfolio companies were defendants alleging violations of the FCA where factors around the degree of control and involvement the private equity firm exercised over its portfolio company were closely scrutinized.^[3] And not every private equity firm has escaped unscathed.^[4] These cases highlight the importance of safeguards related to private equity ownership of healthcare operating companies; utilizing firewalls when appropriate between the private equity firm and the operating company; and having a management team at portfolio companies that contract with the government that understands the requirements associated with being a government contractor.

If you have any questions regarding this or related subjects, or if you need assistance, please contact the authors of this article Baneé Pachuca (Partner, Houston), Matthew Graves (Partner, Washington, D.C.), Eric Knickrehm (Partner, Washington, D.C.), Meredith Heim (Associate, Chicago), Ryan Greenberg (Associate, Houston), or your Winston & Strawn relationship attorney. You can also visit our [Government Program Fraud, False Claims Act & Qui Tam Litigation Playbook](#); our [Government Program Fraud, False Claims Act & Qui Tam Litigation](#) practice webpage; our [Investigations, Enforcement & Compliance Alerts](#), or our [White Collar & Government Investigations](#) practice webpage.

[1] *Panowicz v. Charter Health Holdings, Inc.*, No. 65, 8:23-cv-000483 (D. Neb. Oct. 15, 2025). While Pharos was dismissed from Plaintiff's whistleblower suit following the Court's October 15 ruling, the case against Charter remains pending resolution of Charter's bankruptcy issues, which stayed all proceedings against Charter in January 2024.

[2] The integrated-enterprise test analyzes the distinct facts of a case under the following four factors to determine integrated-employer status: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial control.

[3] See, e.g., *Cho v. Surgery Partners, Inc.*, 30 F.4th 1035 (11th Cir. 2022); *Medrano & Lopez v. Diabetic Care Rx LLC, d/b/a Patient Care Am.*, No. 15-CV-62617 (S.D. Fla. Mar. 6, 2019); *Johnson v. Therakos, Inc.*, No. 12-cv-1454 (E.D. Pa. Nov. 19, 2020); *Ebu-Isaac v. Insys Therapeutics, Inc.*, No. 2:16-cv-07937 (C.D. Cal. June 5, 2023); *Mandalapu v. All. Family of Companies LLC*, No. 4:17-cv-00740 (S.D. Tex. July 9, 2021); *Martino-Fleming v. S. Bay Med. Health Ctrs.*, 540 F. Supp. 3d 103 (D. Mass. 2021).

[4] See U.S. DOJ Settlement Agreement with Aero Turbine, Inc. and Gallant Capital Partners, LLC (Jul. 31, 2025), available at <https://www.justice.gov/opa/media/1409651/dl>.

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