WINSTON & STRAWN LLP

NEWS

Winston "Insures" Complete Victory for AIG in FCA Case

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Winston & Strawn secured a victory for AIG and its affiliates in a watershed False Claims Act (FCA) case when the Second Circuit affirmed the Western District of New York's dismissal of the *qui tam* relator's complaint with prejudice. The case threatened to expand the reach of the FCA based on speculative allegations against AIG and other insurance industry participants.

The relator, Dr. Kent Takemoto, filed a *qui tam* action alleging that AIG and several other defendants violated the reverse false claims provision of the FCA by knowingly concealing and improperly avoiding their statutory obligations under the Medicare Secondary Payer Act to reimburse the federal government for "conditional" payments made on behalf of Medicare beneficiaries with whom the defendants allegedly reached a settlement, judgment, or award. The complaint alleged that (i) 17% of the U.S. population are Medicare beneficiaries, (ii) defendants issued settlements, judgments, or awards for claims involving Medicare beneficiaries, and (iii) defendants did not have adequate compliance programs in place to ensure compliance with the Medicare Secondary Payer Act. On this basis, the relator argued that each defendant must have had one or more reimbursement obligations that went unpaid. Defendants argued that the allegations were insufficient to state a claim under the FCA because, among other reasons, they did not support an inference of a specific reimbursement obligation on the part of any particular defendant.

After extensive briefing and oral argument, the Second Circuit affirmed the District Court's order finding that the relator failed to state a plausible claim for relief. In ruling in defendants' favor, the Second Circuit accepted the arguments made by the defendants that the relator's allegations were insufficient to establish the inference of any defendant's obligation.

Litigation Partner Suzanne Jaffe Bloom led the Winston team that secured this swift and complete victory for AIG and its affiliates. Ms. Bloom was supported by Benjamin Sokoly.

1 Min Read

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