

Winston Secures Another FCA Victory with Ruling That Relator Made False Claims

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Winston & Strawn secured another important victory for AIG in a False Claims Act (FCA) case when the Second Circuit affirmed the Western District of New York's dismissal of a *qui tam* relator's complaint with prejudice as a Rule 11 sanction. The Second Circuit's ruling guaranteed that AIG would not have to face the FCA claims alleged in the relator's proposed second amended complaint.

The relator, J. Michael Hayes, filed a *qui tam* action alleging that he had personal knowledge that more than 60 companies, most of which are liability insurance companies, routinely failed to satisfy their statutory obligations to reimburse Medicare. Despite his assertions of personal knowledge, and before the issue was joined, Hayes filed a motion for expedited discovery claiming that he needed discovery to determine which of the defendants were involved in the alleged scheme.

The magistrate judge ordered Hayes to show cause as to why he had not violated Rule 11 by asserting that he had personal knowledge of a scheme involving all defendants. In connection with his response to the order to show cause and a pending motion for Rule 11 sanctions, Hayes proposed a second amended complaint that would have added AIG, along with several other companies, as defendants.

Adopting the magistrate judge's report and recommendation, the District Court dismissed the operative complaint and denied Hayes leave to file the proposed second amended complaint as a Rule 11 sanction because Hayes had intentionally and repeatedly pled allegations for which he lacked personal knowledge. On appeal, Hayes argued that the deficiencies in his complaint resulted from confusion about "corporate complexities."

The Second Circuit rejected this explanation and accepted the defendants' argument that the District Court's finding of bad faith was not clearly erroneous. The Court also found that the District Court's denial of leave to file the proposed second amended complaint, which would have properly named AIG, was not an abuse of discretion, noting that Hayes should not be permitted to abandon earlier misrepresentations without consequence and that his proposed second amended complaint still includes defendants who may not be proper parties.

Defendants also argued, in the alternative, that the District Court's decision should be affirmed because Hayes did not satisfy the FCA's first-to-file rule and therefore the District Court lacked subject matter jurisdiction. In a separate opinion, the Second Circuit joined the D.C. Circuit in holding that the first-to-file rule is not jurisdictional and instead bears on the merits of whether a plaintiff has stated a claim. The Court then declined to consider whether Hayes

failed to satisfy the first-to-file rule, because it was affirming the District Court’s dismissal of the relator’s complaint with prejudice.

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

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