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Legal Updates

Supreme Court Tightens Rules Regarding Whistleblowers Who Qualify as “Original Sources” of Public Information in Litigation Under the False Claims Act

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The federal False Claims Act allows any person to file a *qui tam* lawsuit in the name of the United States to recover money obtained by government contractors by fraudulent means, and to keep a percentage of any money recovered. 31 U.S.C. §§ 3729-3733. Persons who file such lawsuits are called “relators” under the statute. The possibility that the False Claims Act might be abused by relators who file lawsuits based on information already publicly known caused Congress to enact a jurisdictional requirement that a relator be the “original source” of public information upon which any lawsuit is based. In *Rockwell International Corp. v. U.S.*, decided on March 27, 2007, the Supreme Court reversed a jury verdict in favor of a relator because he did not qualify as an “original source” of publicly known allegations. However, while disqualifying the relator from recovering, the Supreme Court affirmed the jury verdict in favor of the United States.

Background

James Stone was employed by Rockwell as an engineer at the Rocky Flats nuclear weapons plant in Colorado from 1980 until he was laid off in March 1986. In 1982, Stone wrote a memorandum predicting that Rockwell’s plan to dispose of toxic pond sludge by mixing it with cement to create “pondcrete” blocks would fail because the piping system to extract sludge from ponds would not adequately remove sludge, resulting in eventual disintegration of the pondcrete. After Stone was laid off, some “insolid” pondcrete blocks were discovered.

In June 1987, Stone contacted the Federal Bureau of Investigation (“FBI”) with allegations about environmental crimes at Rocky Flats. Stone provided the FBI with 2,000 documents including his 1982 memorandum predicting disintegration of the pondcrete blocks. In June 1989, the FBI raided the Rocky Flats facility based on a search warrant referring in part to insolid pondcrete blocks. Newspapers published the allegations included in the search warrant.

In July 1989, Stone filed a lawsuit against Rockwell under the False Claims Act alleging 26 environmental and safety issues at Rocky Flats, including his prediction that the piping system would not properly remove the sludge, leading to insolid pondcrete blocks. The government exercised its right to intervene in the lawsuit in November 1996. The government and Stone then filed an amended complaint which referred to leaky pondcrete blocks, but not specifically alleging that the piping system caused the insolid pondcrete.

By the time of trial, the government and Stone alleged that the insolid pondcrete was caused by an incorrect cement/sludge ratio used in pondcrete operations due to a new foreman who reduced the ratio of cement in the pondcrete blocks during the winter of 1986. These allegations were adopted as part of the trial court’s final pretrial order, and superseded all prior pleadings. During the trial, counsel for the government and Stone argued that the pondcrete blocks failed because the new foreman had reduced the ratio of cement in the pondcrete. The jury found against Rockwell solely with respect to the pondcrete allegations, and awarded \$1.39 million in damages which were trebled by statute.

The Ruling

In a 6-2 opinion authored by Justice Scalia, the Court noted that the False Claims Act defines an “original source” to be a person who “has direct and independent knowledge of the information on which the allegations are based. . . .” The Court ruled that Stone’s prediction that the piping system would cause insolid pondcrete blocks did not constitute “direct and independent knowledge” because it was only a prediction. The Court stated that Stone could not have had “direct and independent knowledge” because the discovery of the insolid pondcrete occurred after he was laid off.

In addition, the Court ruled that Stone did not have knowledge “of the information on which the allegations are based” because Stone’s final pretrial allegations differed from the allegations he originally made. The original allegations focused on inadequacy of the piping system, whereas the final pretrial allegations focused on the new supervisor’s change of the concrete/sludge ratio. The Court stated that “the term ‘allegations’ is not limited to the allegations of the original complaint.” Accordingly, the Court ruled that the allegations as amended in the final pretrial order were the basis for determining whether Stone was an original source of those allegations. The Court reasoned that otherwise an individual would be “free to plead a trivial theory of fraud for which he had some direct and independent knowledge and later amend the complaint to include theories copied from the public domain or from materials in the Government’s possession.” Accordingly, the Court ruled that there was no jurisdiction over Stone’s claim.

Finally, the Court affirmed the jury verdict in favor of the United States, ruling that “an action originally brought by a private person, which the Attorney General has joined, becomes an action brought by the Attorney General once the private person has been determined to lack the jurisdictional prerequisites for suit.”

Justices Stevens and Ginsburg dissented, reasoning that “a plain reading of the statute’s provisions. . . makes clear that it is the information underlying the publicly disclosed allegations, not the information underlying the allegations in the relator’s complaint (original or amended), of which the relator must be an original source.”

Significance

Government contractors have long been concerned about potential abuse of the False Claims Act because the financial rewards for individual relators may prompt filing of frivolous lawsuits. The Court’s ruling narrows the category of persons who qualify as an “original source” with respect to publicly known allegations, and therefore may deter filing of lawsuits in which it is unclear whether the individual relator so qualifies.

However, the Court’s ruling does not mean that government contractors should reduce their efforts to minimize their exposure to False Claims Act lawsuits. The Court’s ruling is limited to cases in which the individual relator’s allegations are based on publicly available information, and has no application to lawsuits which are based on non-public information. As demonstrated by the Court’s affirmance of the judgment in favor of the United States, the False Claims Act remains a powerful tool in the government’s efforts against contractor fraud.