

Government Contracts Blog

Posted at 1:27 PM on August 12, 2009 by Sheppard Mullin

New FCA Materiality Definition Enters Time Warp, Influences Interpretation of 1986 Statute

The civil False Claims Act (FCA) prohibits using false statements related to a false claim. (Other types of FCA liability include presenting a false claim, concealing an obligation to pay money to the government, and conspiring to violate the FCA.) In the [recent FCA amendments](#), Congress explicitly added materiality as an element of FCA false statement liability. Not surprisingly, it also adopted a weak, pro-plaintiff definition: materiality means “having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.”

Among the questions raised by the amendments are (1) whether courts will adopt the weak definition of materiality for non-false statement FCA cases, and (2) whether courts will retroactively apply the materiality definition to pending cases.

A recent Fifth Circuit opinion hints that the answers to both question are yes. Until last month, the Fifth Circuit had not defined materiality. In [United States ex rel. Longhi v. Lithium Power Technologies, Inc.](#), the contractor admitted that the natural tendency test was proper. However, the Fifth Circuit had previously flirted with interpreting the natural tendency test as requiring either outcome materiality or claim materiality, two positions which would make materiality harder to prove.

Outcome materiality requires proving that the false statement affected the government’s decision to pay, which is essentially the stricter “prerequisite to payment” definition of materiality. Claim materiality requires proving that the falsehood was material to the contractor’s claim of entitlement to receive money.

The government argued that the natural tendency test is unambiguous and easy to apply. In other words, the definition does not need its own definition. Taking a plain language approach, the Fifth Circuit looked to the Oxford English Dictionary and the Merriam-Webster Dictionary and agreed with the government that the natural tendency test should not be limited by an outcome or claim materiality requirement.

To support its decision, the Fifth Circuit looked to the recent FCA amendments as relevant evidence of Congress’s original intent in passing the 1986 FCA statute. The current Congress had the opportunity to add an outcome or claim materiality standard. Because Congress left

materiality defined in the simple “natural tendency” language, the court would not add an outcome or claim materiality test.

Although the Fifth Circuit’s decision makes it easier to prove materiality, there is a glimmer of hope for contractors: the court did not apply the amendments retroactively, and they were treated as no more important than decisions from sister circuits. Contractors can hope that future decisions continue to show restraint in applying the new FCA to pre-amendment conduct.

Authored by:

[Robbie Hurwitz](#)
(213) 617-5476
rhurwitz@sheppardmullin.com