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Aerospace & Defense Insights

Roadmap for False Claims Act enforcement in 2022

Jonathan Diesenhaus, Mike Mason, Matt Sullivan, Mike Theis, Stacy Hadeka, Rob Beecher, Claudia Pare, and Rebecca Umhofer

Through Aerospace & Defense Insights, we share with you the top legal and political issues affecting the aerospace and defense (A&D) industry. Our A&D industry team monitors the latest developments to help our clients stay in front of issues before they become problems, and seize opportunities in a timely manner.

The Federal Government recovered more than $5.6 billion in fiscal year (FY) 2021 from investigations and cases involving the False Claims Act (FCA). This is more than double the $2.2 billion recovered in FY 2020 and a sharp increase from the $3 billion recovered in FY 2019. With clear signals coming from the Biden administration that they intend to aggressively employ the FCA to combat fraud, and in particular will use it to enforce cybersecurity obligations, we expect aggressive FCA enforcement to continue. Below, we examine recent enforcement trends in the A&D industry sector and key FCA-related case law developments that could affect your business.

FCA enforcement continues in the A&D industry

The U.S. Department of Justice (DOJ) recovered more than $5.6 billion through settlements and judgments in civil cases involving alleged fraud and false claims against the government during FY 2021, which ended 30 September 2021. Although the majority of FCA recoveries continue to come from the health care industry, more than $185 million was recovered from companies operating in the A&D industry during FY 2021. As in the past, many of the cases that resulted in recoveries in FY 2021 were initiated by whistleblowers or *qui tam* relators. DOJ also continued to pursue FCA actions against individuals, including executives and owners.

Key FCA risk areas for A&D companies continue to include the provision of false pricing information and providing products or services that are "defective" because they do not comply with contractual or regulatory requirements. In addition, several cases resolved in 2021 involved allegations that prime contractors accepted kickbacks in exchange for awarding subcontracts to certain subcontractors. And a number of recent cases involved alleged misrepresentations about a contractor's or subcontractor's eligibility for certain set-aside contract programs. As discussed below, DOJ's Civil Cyber-Fraud Initiative underscores that A&D companies are also under continuing scrutiny related to compliance with cybersecurity obligations.

Federal FCA investigations resolved in FY 2021 that involved A&D companies and other government contractors include the following:[1]

1. This list captures the most significant settlements in the A&D industry but is not exhaustive. The listed settlement amounts do not include any related criminal fines.

Business	Allegations	Settlement amount
Military vehicle manufacturer	**Fraudulent inducement/defective pricing**: Fraudulently induced the U.S. Marine Corps to enter into a contract modification at inflated prices by creating fraudulent commercial sales invoices to justify the company's price.	US$50,000,000
Airline	**Defective services or products**: Provided falsified parcel delivery information to the U.S. Postal Service and accepted millions of dollars of payments to which the company was not entitled.	US$32,186,687
Defense contractor	**Fraudulent inducement/defective pricing**: Induced the government to award seven, noncompetitively bid contracts at inflated prices by proposing cost and pricing data for new parts and materials while planning to and in fact using less expensive recycled, refurbished, reconditioned, and/or reconfigured parts.	US$25,000,000
IT services provider	**Defective pricing**: Provided false information about commercial discounting practices during contract negotiations.	US$18,987,789
Telecommunications and internet service provider	**Kickbacks/Government set-aside contracts**: Accepted kickbacks from subcontractors in exchange for steering subcontracts to them; obtained protected competitor bid information in order to gain an advantage in bidding for certain task orders under a General Service Administration contract; and falsely informed the Department of Homeland Security (DHS) that certain subcontractors qualified as woman-owned small businesses.	US$12,772,843
Defense contractor	**Defective services or products**: Failed to maintain helicopters as required by Department of Defense (DoD) contract.	US$11,088,000
Electricity solutions provider	**Kickbacks/improper charges/overbilling**: Solicited and received kickbacks from multiple subcontractors; fraudulently included inflated estimates and improper costs in proposals; and overcharged federal agencies on energy saving contracts.	US$9,300,000
IT services provider	**Defective services or products**: Predecessor companies billed DHS for work performed by employees who lacked required job qualifications for the rate billed.	US$6,050,000
IT services provider	**Kickbacks/Government set-aside contracts**: Paid kickbacks to companies certified by the Small Business Administration (SBA) as eliegible for certain SBA set-aside contracts in exchange for those companies falsely representing that they would be performing at least 50% of the work on certain contracts.	US$4,800,000
Military parts manufacturer	**Defective services or products**: Sold ship parts to shipbuilders without disclosing modifications in violation of the Qualified Product List program, which governs the approval of products for use in military contracts.	US$4,500,000
Health services provider	**Kickbacks**: Accepted kickbacks in exchange for awarding subcontracts to certain subcontractors.	US$4,342,651
Civil engineering contractor	**Defective services or products**: Sold substandard concrete used to construct U.S. Navy airfields.	US$3,900,000
IT and government service provider	**Government set-aside contracts**: Awarded U.S. Army contracts set aside for service-disabled veteran-owned small businesses at a time when the company was not controlled by a service-disabled veteran.	US$1,120,000
Aerospace contractor	**Defective pricing**: Submitted contract proposals that included unapproved cost rates and charged federal agencies undisclosed affiliate fees on top of the company's own fees.	US$1,043,475
Defense contractor	**False certifications relating to domestic preferences**: Sold goods to the government pursuant to contracts containing domestic-preference requirements and improperly certified that the goods were of domestic origin when the goods were actually manufactured in Romania.	US$515,625
Oil and fuel analysis instrument company	**Government set-aside programs**: Falsely certified eligibility for Air Force Small Business Innovation Research program.	US$1,050,957
		US$185,607,070

The Department of Justice intensifies scrutiny of cybersecurity practices

On October 6, 2021, Deputy Attorney General Lisa O. Monaco of DOJ announced a Civil Cyber-Fraud Initiative through which DOJ will use the FCA to target cybersecurity-related fraud by government contractors and grant recipients.[2] This initiative is part of a Department-wide comprehensive cyber review ordered by Monaco in May. Although it does not impose new regulatory or legal requirements, it signals a new focus and prioritization of resources by DOJ to improve cybersecurity across the government, the public sector, and at key "industry partners."

In rolling out this initiative, DOJ has emphasized that civil enforcement will not wait for a cybersecurity breach – cases can be brought for failure to comply with contractual or regulatory requirements even in the absence of such a breach. Although government contractors have long been prime targets for FCA whistleblowers, this new DOJ initiative further elevates this risk.[3]

FCA claims relating to cybersecurity obligations could take many forms, but two recently modified regulatory requirements are noteworthy.

First, in addition to the safeguarding and cyber incident reporting requirements in Defense Federal Acquisition Regulation Supplement (DFARS) 252.204-7012, the Department of Defense (DoD) now requires contractors (through DFARS 252.204-7020) to complete a pre-award assessment of their compliance with cybersecurity controls identified in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171. This self-assessment is referred to as a "Basic Assessment." It results in a numerical score and must also identify a date by which the contractor will be fully compliant with NIST SP 800-171. Should the validity of a contractor's self-assessment be later questioned, a whistleblower could claim that false or reckless representations made in the self-assessment caused false claims to be made.

Significantly, a Basic Assessment may be followed by a government-led assessment – either a "Medium Assessment" or a "High Assessment" – after award. This could lead to disagreements about the degree to which the contractor is compliant with NIST SP 800-171, and such disagreements could give rise to FCA suits.[4]

Second, through the Cybersecurity Maturity Model Certification (CMMC) program, DoD anticipates the use of self-attestation, third-party certification, and government-led assessments for cybersecurity compliance. When such certification begins, it is possible that third-party certifiers or DoD may uncover inconsistencies between their own assessment of the contractor's security controls and the contractor's earlier Basic Assessment. Whistleblowers could point to such inconsistencies to allege a contractor caused false claims to be made by misrepresenting its security controls in order to win the contract.

The above DFARS clauses apply only to Controlled Unclassified Information (CUI) within the DoD supply chain. However, numerous government contracts contain contract-specific cybersecurity requirements, and noncompliance with these requirements could also give rise to FCA claims. Furthermore, the Federal Acquisition Regulation (FAR) clause 52.204-21 requires all contractors and subcontractors to apply specified safeguarding requirements when processing, storing, or transmitting Federal Contract Information (FCI) in or from covered contractor information systems.

We also expect additional government-wide cybersecurity standards and reporting requirements to be issued pursuant to EO 14028, which will increase the avenues for potential FCA claims. In addition, if proposals for new legislation and/or regulations that would strengthen cyber incident reporting obligations are implemented, the government will have new avenues for learning of cyber incidents.

2. *See Deputy Attorney General Lisa O. Monaco Announces New Civil Cyber-Fraud Initiative*, U.S. Dep't of Justice (Oct. 6, 2021), available at https://www.justice.gov/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-new-civil-cyber-fraud-initiative.
3. *See* John Hewitt Jones, DOJ expects whistleblowers to play 'significant role' in False Claims Act cases against contractors, FEDScoop (Oct. 13, 2021), available at https://www.fedscoop.com/doj-expects-whistleblowers-to-play-significant-role-in-false-claims-act-cases-against-contractors/.
4. Ron Ross, Victoria Pillitteri, Kelley Dempsey, Mark Riddle, & Gary Guissanie, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations, NIST SP 800-171 Rev. 2, (Feb. 2020), available at https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final.

Finally, it's important to note that the FCA imposes liability not only on a prime contractor or direct grant recipient, but it applies to any entity, including subcontractors, whose conduct causes a false claim to be presented to the United States for payment or approval. Although prime contractors or grant recipients typically submit claims for payment directly to the government on behalf of their subcontractors, a subcontractor that causes a prime contractor or recipient to present a false claim for payment can be held liable for FCA damages and penalties.[5]

Fact-intensive materiality inquiries may protract FCA litigation

An important predicate for liability under the FCA is that an alleged misrepresentation must be material to the government's payment decision. This past year marks the fifth anniversary of the Supreme Court's 2016 decision in *Universal Health Services, Inc. v. United States ex rel. Escobar*, in which the Court articulated the FCA's materiality requirement – that is, whether an alleged misrepresentation was capable of influencing the government's payment decision – requires a "demanding" and "rigorous" review that can consider government action in the face of the alleged or similar misrepresentations.[6]

At first, the *Escobar* decision, and its heightened materiality standard, appeared to transform the landscape of FCA enforcement. Case law developed rapidly in its wake, as lower courts grappling with its meaning and application treated similar scenarios differently. More recently, however, the case law has begun to approach an equilibrium – courts will take a "holistic"[7] view of the circumstances of each case, including government (in)action despite knowledge of alleged misconduct, and under which no single fact is dispositive. Because materiality thus is such a fact-intensive inquiry, it has proven to be an issue unlikely to be decided on a motion to dismiss or even, at least in some circumstances, at summary judgment. This is often true despite the Supreme Court's stated view that "materiality is [not] too fact intensive for courts to dismiss [FCA] cases on a motion to dismiss or at summary judgment."[8] Several cases from the past year are illustrative.

In *United States ex rel. Forman v. AECOM*, the Second Circuit reversed, in part, a lower court decision to grant a motion to dismiss an FCA claim.[9] The case involved claims made under a contract to provide maintenance and management support services to the United States Army in Afghanistan. The contract required AECOM to properly catalog data regarding labor hours and costs, so-called "man-hour utilization" rates, and acquisition and receipt of government property into various government tracking systems. The relator alleged AECOM falsely certified compliance with these obligations because it had overstated its man-hour utilization rate, improperly billed the government for labor not actually performed, and failed to properly track government property.

The lower court granted AECOM's motion to dismiss after concluding the relator had failed to adequately plead materiality. On appeal, the Second Circuit explained that no one question is dispositive on the question of materiality and that the inquiry is "holistic" and involves evaluating several factors including:

> (1) whether the government expressly designates compliance with a particular statutory, regulatory, or contractual requirement as a condition of payment; (2) the government's response to noncompliance with the relevant contractual, statutory, or regulatory provision; and (3) whether the defendants' alleged noncompliance was "minor or insubstantial."[10]

Applying these factors, the Second Circuit held the district court had erred in dismissing claims premised on the relator's allegations of improper billing activities in part because it erroneously considered

5. *See* 31 U.S.C. § 3729(a)(1); United States v. Bornstein, 423 U.S. 303, 309 (1976) ("It is settled that the Act . . . gives the United States a cause of action against a subcontractor who causes a prime contractor to submit a false claim to the Government.").
6. *Universal Health Servs., Inc. v. United States ex rel. Escobar (Escobar)*, 579 U.S. 176, 192-93, 195 n.6 (2016).
7. A "holistic" test "with no one factor being necessarily dispositive" was the First Circuit's gloss on its new mandate in the remanded case. *United States ex rel. Escobar v. Universal Health Servs., Inc.*, 842 F.3d 103, 109 (1st Cir. 2016).
8. *Escobar*, 579 U.S. at 195 n.6.
9. 19 F.4th 85, 110 (2d Cir. 2021).
10. *Id.* at 110.

material extrinsic to the complaint, including a Defense Contract Audit Agency report, in order to conclude the government had continued making payments despite knowledge of any alleged false representations.

The D.C. Circuit similarly reversed a district court's dismissal of a suit in another FCA manner. In *Cimino v. Int'l Bus. Machines Corp.*, the lower court had ruled that the relator failed to plausibly allege materiality in a situation where the defendant used an allegedly inaccurate audit of software license usage in a contract negotiation with the IRS. The lower court had noted that the IRS continued making payments pursuant to the agreement that was allegedly fraudulently induced after learning of the alleged fraud and even exercised options extending the agreement despite that knowledge.[11] In reversing, the D.C. Circuit explained the IRS could have continued to pay for "any number of reasons" that did not render the alleged fraud immaterial.[12] The court acknowledged that later evidence could demonstrate the alleged fraud was not material to the IRS, but that was "for another day."[13] In the same decision, however, the D.C. Circuit held that to prevail on a fraudulent inducement theory of liability (the only theory remanded for further litigation), the relator would have to show that the allegedly fraudulent inaccuracies in the audits supplied to the IRS were the "but for" cause of the agency awarding IBM the new contract.

In yet another important case on the issue of materiality, the Eleventh Circuit held that the "significance of continued payment may vary depending on the circumstances."[14] *Bibby* involved allegations by mortgage brokers that mortgage lenders were charging fees that were prohibited by the Department of Veterans Affairs (VA) regulations by bundling them with permitted fees while expressly certifying they charged only permissible fees.[15] The defendant moved for summary judgment, which the district court granted after noting "the stringent materiality standard espoused by the Supreme Court chokes the life out of Relators' case and mandates the end of this action."[16] In so ruling, the district court cited the fact that despite VA audits revealing the prohibited fees, the VA took no heightened action against the defendant other than requiring it to refund improper fees and continued to issue loans.[17]

The relators appealed, arguing – along with the government as amicus curiae – that the VA's continued payment "merit[ed] little weight because the payments were required by law."[18] The Eleventh Circuit agreed. Absent a dispute regarding the VA's actual knowledge of the defendant's violation of VA regulations, the court looked to the VA's reaction to that knowledge.[19] And while the court acknowledged that, under *Escobar*, the "government action relevant to the materiality inquiry is typically the payment decision," because the VA was statutorily bound to honor the payments, the "facts of this case" required the court to "cast [its] materiality inquiry more broadly" to consider "the full array of tools at the VA's disposal for detecting, deterring, and punishing false statements, and which of those it employed."[20] After "looking at the VA's behavior holistically," the court described a number of actions taken by the VA to address noncompliance with fee regulations, including releasing a circular to lenders on the consequences of noncompliance, implementing more audits, and requiring lenders to refund any improperly charged fees.[21] Because the VA "did take some enforcement actions" even though it "did not take the strongest possible action" against the defendant, sufficient evidence of materiality was present.[22] The ultimate determination of materiality was a question for the factfinder.[23]

In July 2021, Senator Grassley, and a bipartisan group of co-sponsors, proposed amending the FCA to make it more difficult and burdensome for

11. *Cimino v. Int'l Bus. Machines Corp.*, No. 13-CV-00907 (APM), 2019 WL 4750259, at *7 (D.D.C. Sept. 30, 2019), *aff'd* in part, *rev'd* in part and remanded *sub nom. United States ex rel. Cimino v. Int'l Bus. Machines Corp.*, 3 F.4th 412 (D.C. Cir. 2021).
12. *United States ex rel. Cimino v. Int'l Bus. Machines Corp.*, 3 F.4th 412, 423 (D.C. Cir. 2021).
13. *Id.*
14. *United States ex rel. Bibby v. Mortg. Invs. Corp.*, 987 F.3d 1340, 1350 (11th Cir. 2021), *cert. denied sub nom. Mortg. Invs. Corp. v. United States ex rel. Bibby*, 141 S. Ct. 2632 (2021).
15. *Id.* at 1343-45.
16. *United States ex rel. Bibby v. Mortg. Invs. Corp.*, Civ. Action No. 12-CV-4020-AT, 2019 WL 11637354, at *2 (N.D. Ga. July 1, 2019).
17. *Id.* at *26 (noting "rampant noncompliance" and the VA's "laissez faire attitude in dealing with the problem"), *29.
18. *Bibby*, 987 F.3d at 1350.
19. *Id.*
20. *Id.* (internal citations omitted).
21. *Id.* at 1350-52.
22. *Id.* at 1352.
23. *Id.*

defendants to argue the government or relator failed to prove materiality.[24] Senator Grassley has since introduced a "manager's amendment" to the bill, which now states: "In determining materiality, the decision of the Government to forego a refund or pay a claim despite actual knowledge of fraud or falsity shall not be considered dispositive if other reasons exist for the decision of the Government with respect to such refund or payment."[25] The Senate Judiciary Committee voted the bill out of conference on October 28, 2021, and it awaits a vote by the Senate.[26]

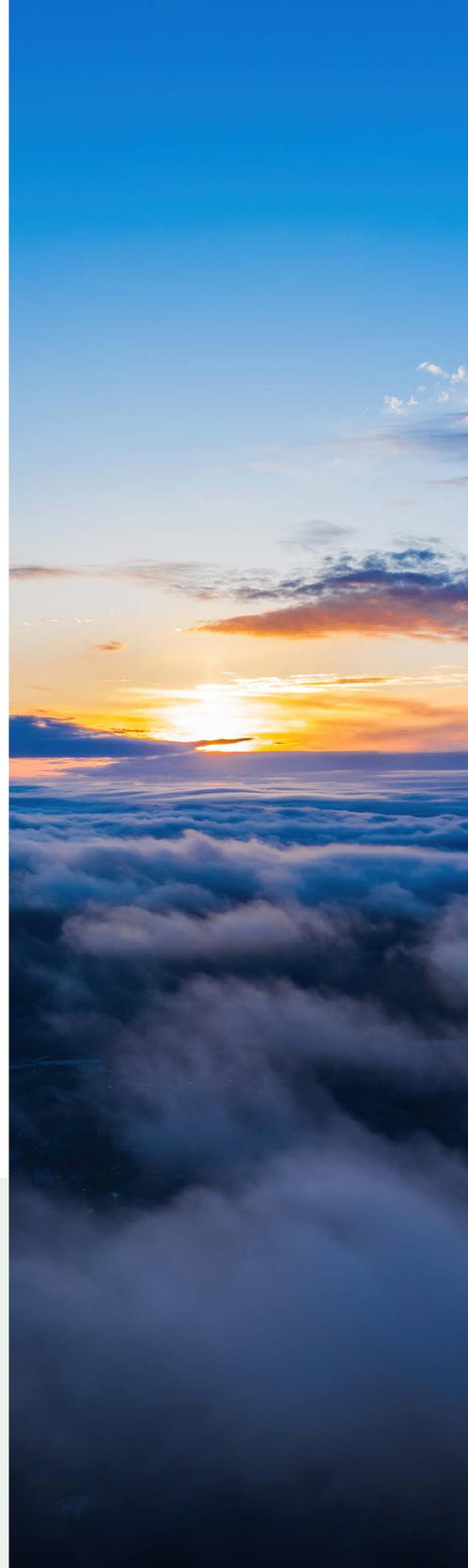
Absent legislative action, case developments from the past year reaffirm the extent to which materiality will remain a fact-intensive, case-by-case inquiry – and one that parties to FCA litigation may find resolved only late in the litigation process.

Courts examine interplay between FCA scienter requirement and ambiguous regulations

The Supreme Court's decision in *Safeco Ins. Co. of Am. v. Burr*,[27] has been widely applied by circuit courts to hold that a defendant does not "recklessly disregard [] the truth or falsity" of its claims for the purposes of FCA scienter when that defendant operates under an "objectively reasonable" interpretation of the prevailing regulatory scheme. But Safeco's application to the other portions of the FCA's scienter definition are still being debated by the lower courts. Two decisions handed down in 2021, the Seventh Circuit decision in *United States ex rel. Schutte v. Supervalu*[28] and the D.C. District Court decision in *United States ex rel. Morsell v. NortonLifeLock*,[29] highlight the diverging approach to how far Safeco's analysis extends.

In *Supervalu*, the Seventh Circuit lays out a two-part test for determining whether *Safeco* precludes a finding of "knowing" misconduct in the context of an ambiguous regulation: "whether

24. *See* S5776, 117 Cong. Rec. (Aug. 3, 2021), https://www.congress.gov/117/crec/2021/08/03/167/138/CREC-2021-08-03-pt1-PgS5726.pdf. Senator Grassley also proposed the same changes in the standalone "False Claims Act Amendment of 2021," introduced on July 22, 2021, as S.2428, https://www.congress.gov/117/bills/s2428/BILLS-117s2428is.pdf.
25. *Draft Copy of ALB21G65 FMS*, Senate Legis. Counsel, S.2428, 117 Cong. (Oct. 19, 2021), https://g7x5y3i9.rocketcdn.me/wp-content/uploads/2021/10/Managers-Amendment-pdf.
26. False Claims Amendments Act of 2021, S. 2428, 117th Cong. (2021-2022), Congress.gov, https://www.congress.gov/bill/117th-congress/senate-bill/2428/text?q=%7B%22search%22%3A%5B%22False+Claims+Act%22%5D%7D&r=1&s=1 (last visited on Dec. 1, 2021).
27. *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 47 (2007).
28. *United States ex rel. Schutte v. Supervalu Inc.*, 9 F.4th 455 (7th Cir. 2021).
29. *United States ex rel. Morsell v. NortonLifeLock, Inc.*, No. CV 12-800 (RC), --- F. Supp. 3d ----, 2021 WL 3363446 (D.D.C. Aug. 3, 2021) (reconsideration of previous order denying defendant's motion for summary judgment).



the defendant has a permissible interpretation of the relevant provision and whether authoritative guidance nevertheless warned it away from that reading." In doing so, the Seventh Circuit took a broad approach to whether the proffered interpretation was permissible, noting that the *Safeco* standard "tethered the objectively reasonable inquiry to the legal text, not its underlying policy," and rejected an argument that a "clear purpose" for a statute or regulation foreclosed any finding of ambiguity permitting an alternative, permissible interpretation.

The dissent in *Supervalu* sought to impose a limitation that, in order to foreclose any finding that it had acted "recklessly," the defendant must show that it held the objectively reasonable interpretation "at the time it submitted its false claim," expressing a concern that defendants would rely on an alternative interpretation that was manufactured post hoc as a way to avoid liability. The *Supervalu* majority characterizes its position as drawing a distinction between what the defendant "knows" versus what it "believes." As the majority's argument goes, if there is an objectively reasonable alternative interpretation of the applicable authority, even one not held by the defendant at the time the claim was submitted, then the defendant might "believe" that it was submitting a false claim, but it could not "know" it was doing so. In this way, the *Supervalu* majority supported its view that an objectively reasonable interpretation of the statute precluded a finding of FCA scienter under any of the additional textual prongs.

The recent *Norton*[30] decision by the U.S. District Court for the District of Columbia focused on the timing issue that surfaced in *Supervalu*. The court considered the extent to which an objectively reasonable belief, not held contemporaneous with the submission of the claim, could preclude a finding that the defendant acted "knowingly" under the FCA. The court held that neither *Safeco* nor related authority in the D.C. Circuit established that an identification and adoption of a reasonable interpretation after the fact could foreclose a finding of liability.[31]

A particularly noteworthy aspect of the court's analysis in *Norton* is its reconciliation of precedent that stated "subjective intent – including bad faith – is irrelevant when a defendant seeks to defeat a finding of knowledge based on its [objectively] reasonable interpretation of a regulatory term," with its own holding that a reasonable interpretation, discovered *post hoc* and not held at the time of the allegedly false claim, was also irrelevant to that finding. The opinion suggests that a defendant who adopts an objectively reasonable interpretation of an ambiguous regulation contemporaneous with the submission of a claim, and "hews" to that interpretation through the period covered by that claim, can avoid liability, even if that defendant also suspected the agency receiving the claim might not agree. Under the *Norton* standard, the questions are limited to the objective reasonableness of the defendant's proffered exculpatory interpretation and whether it was held at the time the claim was submitted. In this way, the *Norton* case appears to be in conflict with the *Supervalu* decision. To the *Supervalu* court, scienter is akin to a legal impossibility when a defendant's claims are in accord with an objectively reasonable interpretation of an ambiguous provision; to the District Court in *Norton* (as well as the *Supervalu* dissent and DOJ), an additional factual inquiry is necessary to determine if the defendant actually held that objectively reasonable belief at the time the claim was submitted. In Norton, the question of when the defendant adopted an objectively reasonable view of the regulation was found to be a question for the jury.[32]

Notwithstanding the concerns and contrary views raised in the *Supervalu* dissent or Norton, the prevailing view of courts across the country aligns with that of the *Supervalu* majority. Like the Seventh Circuit majority in *Supervalu*, every Court of appeal presented with the issue of whether and how *Safeco* applies to the FCA scienter element has held that it does, and in a manner consistent with *Supervalue*. Most recently, the Fourth Circuit agreed, holding that *Safeco*'s objectively reasonable standard applies to the FCA.[33]

Other circuit courts had previously relied on that fact that the FCA includes "reckless disregard" in the statutory definition of "knowing" to apply *Safeco* to the "reckless disregard" prong of FCA scienter.[34]

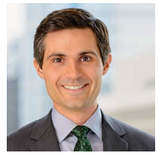
The practical implications of the analytical debate visible in the opinions in *Supervalu* and *Norton* are of great significance to individuals and corporations who operate every day in the context of complex and ambiguous government regulations. Under either view of the timing element, where the government fails to issue guidance clarifying an ambiguous provision, putative FCA defendants who identify and then act on objectively reasonable interpretations of such provisions can seek "safe harbor" under *Safeco*. But a decade after *Safeco*, other questions remain open including who bears the burden of proof, what types of evidence show that a defendant held an objectively reasonable belief at a particular point in time, and whether invoking the safe harbor triggers a waiver of the attorney-client privilege.

Next steps

Staying on top of these and other potential developments in FCA enforcement will help inform your company's compliance, internal investigation, and potential defense posture relating to FCA risk moving forward. Hogan Lovells stands ready to help you with our market-leading lawyers who have deep experience in FCA investigations and litigation and a deep understanding of the A&D industry.

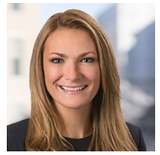
Jonathan Diesenhaus
Partner | Washington, D.C.
T: +1 202 637 5416
E: jonathan.diesenhaus@hoganlovells.com

Michael Mason
Partner | Washington, D.C.
T: +1 202 637 5499
E: mike.mason@hoganlovells.com



Matthew Sullivan
Partner | New York
T: +1 212 918 3084
E: matthew.sullivan@hoganlovells.com

Michael Theis
Partner | Denver
T: +1 303 899 7327
E: michael.theis@hoganlovells.com



Stacy Hadeka
Counsel | Washington, D.C.
T: +1 202 637 3678
E: stacy.hadeka@hoganlovells.com

Rob Beecher
Associate | Philadelphia
T: +1 267 675 4692
E: rob.beecher@hoganlovells.com

Claudia Pare
Senior Associate | Washington, D.C.
T: +1 202 637 6572
E: claudia.pare@hoganlovells.com

Rebecca Umhofer
Senior Knowledge Lawyer
Washington, D.C.
T: +1 202 637 6939
E: rebecca.umhofer@hoganlovells.com

30. *United States ex rel. Morsell v. NortonLifeLock, Inc.*, No. CV 12-800 (RC), --- F.Supp.3d ----, 2021 WL 3363446 (D.D.C. Aug. 3, 2021).
31. *Id.* at *9 (quoting *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, —— U.S. ——, 136 S. Ct. 1923, 1933 (2016), "culpability is generally measured against the knowledge of the actor at the time of the challenged conduct.").
32. Judge Contreras opinion is doubly noteworthy because of his familiarity with FCA litigation from his prior work as the Chief of the Civil Division of the Un
33. *See U.S. ex rel. Sheldon v. Allergan Sales, LLC*, --- F.4th ---- (2022), 2022 WL 211172 at *1 (4th Cir. Jan. 25, 2022).
34. *s United States ex rel. Streck v. Allergan, Inc.*, 746 F. App'x 101, 106 (3d Cir. 2018); *United States ex rel. McGrath v. Microsemi Corp.*, 690 F. App'x 551, 552 (9th Cir. 2017); *United States ex rel. Donegan v. Anesthesia Assocs. of Kan. City, PC*, 833 F.3d 874, 879–80 (8th Cir. 2016); *United States ex rel. Purcell v. MWI Corp.*, 807 F.3d 281, 284 (D.C. Cir. 2015).

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*Our associated offices
Legal Services Center: Berlin

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