

Professional Relators Under False Claims Act Find No Friends in Federal Government or Seventh Circuit

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Qui tam cases in American jurisprudence rely on a simple premise: help prevent nefarious actors from defrauding the government and Uncle Sam will compensate you for your efforts. With its roots in English law, the American version was adopted during the Civil War in light of alleged fraud by federal contractors skirting the proper procurement process. Our American cousin to this English theory was colloquially known as “Lincoln’s Law,” better known today as the False Claims Act (the “FCA”). The FCA permits private parties or “relators” to relate the matter to the Court by suing on behalf of the federal government against any contractor who issued to the government “a false or fraudulent claim of payment or approval.” [31 U.S.C. § 3729\(a\)\(1\)\(A\)](#). Should the government choose to intervene, the relator could see a payday ranging from 15 and 30 percent of the penalty collected in that action.

Under the “archetypal” *qui tam* FCA action – [as described in Americare, Inc.](#) – the plaintiff/relator is an “insider at a private company who discovers his employer has overcharged under a government contract.” However, healthcare *qui tam* cases have grown in popularity since the Lincoln Administration and do not follow this pattern. In healthcare cases, many different types of third parties linked to the transactions – from corporations to partnerships to groups of individuals – look to blow the whistle and collect their reward.

But what if the relator brings an action not because they stumble upon some suspect contracts but rather solely because it is a lucrative business practice? That is one of the issues raised in [United States v. UCB, Inc.](#). Here, the relator (Cimznhca, LLC) was a company formed for the sole purpose of [bringing a qui tam case](#) against UCB for allegedly paying physicians to prescribe and recommend Cimzia, a drug manufactured by UCB to treat Crohn's disease, purportedly leading to certain Medicare and Medicaid claims being tainted by kickbacks. Cimznhca's parent company, Venari Partners, had formed ten other companies for a similar purpose and those limited liability vehicles alleged "essentially identical violations of the False Claims Act via the Anti-Kickback Statute by dozens of defendants in the pharmaceutical and related industries across the country."

The federal government, when presented with the opportunity to intervene and proceed, instead filed a motion to dismiss the claims in the U.S. District Court for the Southern District of Illinois. The government noted in its motion that the conduct Cimznhca complained of was likely lawful and beneficial to the public. [The District Court](#), however, focused on to the Government's open disdain for the "relator's business model and litigation activities." Noting the government's decision whether to move forward on a relator's complaint must be rationally related to a valid government purpose, the District Court found "one could reasonably conclude that the proffered reasons for the decision to dismiss are perpetual and the Government's true motivation is animus towards the relator." It therefore denied the Government's motion for dismissal.

The Government appealed to the Court of Appeals for the Seventh Circuit, arguing its decision to dismiss the relator's action was well within its authority. On August 17, 2020, the Seventh Circuit agreed, and found that relators who use the FCA as "investment vehicles for financial speculators" should not be permitted to challenge conduct that the federal government has already deemed beneficial to the government and the public. The Seventh Circuit reversed the lower court's decision and remanded the action to the District Court with instructions to enter judgment for the defendants and dismiss the claims with prejudice as to the relator.

While this holding is clearly connected to the court's analysis of the merits of the relator's case, it provides helpful insights into the government's and the court's tolerance to turn the FCA into an investment vehicle for professional relators. We will continue to monitor this space and provide further updates as more courts deal with the growing field of professional relators.

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