Double or Treble Damages Under the False Claims Act?

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A False Claims Bulletin

The Seventh Circuit recently issued a significant decision concerning the proper statutory interpretation of damages under the False Claims Act (FCA) in United States v. Anchor Mortgage Corp..[1]

One issue in Anchor Mortgage was whether the district judge should have awarded double damages rather than treble damages. Under §3729(a)(2) of the FCA, a defendant may be eligible for reduced damages if the person who committed the violation furnished the government with all information known about the violation within 30 days after the date on which the defendant first obtained the information. The court in Anchor Mortgage noted, however, that the statute does not cap damages for every violation, and the reduced damages provision applies only to each specific claim that is submitted — it does not mitigate other false claims.[2] Thus, if defendants decide to come clean, they must do so within 30 days or face treble damages.

Additionally, the court was also called upon to determine whether for purposes of trebling, as required by the FCA, the calculation should be based on the gross loss or net loss suffered by the government. The court determined that precedent dictated that a net trebling approach to damages be applied to FCA cases.[3] In Anchor Mortgage the government sought to treble the loan proceeds owed first, and then subtract the sale price — resulting in damages of $332,229.15. By contrast, the defendants subtracted the sale price from the loan amount owed and then trebled the figure, resulting in damages of only $195,829.15. By adopting the defendants' "net trebling" approach, Anchor Mortgage represents a "victory" of sorts for defendants.

Current "Hot" FCA Case Update: Lance Armstrong

As mentioned in the January and February publications the False Claims Act case against Lance Armstrong continues to gain traction in the media.

The Department of Justice filed its complaint against Armstrong in the case U.S. ex rel. Floyd Landis v. Tailwind Sports Corp . The case was initiated by Armstrong's former teammate Floyd Landis under the whistleblower provisions of the FCA, and the government decided to intervene in February 2013.

The government seeks to recover more than $30 million paid by the U.S. Postal Service (USPS) as a sponsor of Armstrong's team. The government has alleged that Armstrong was unjustly enriched because he violated the sponsorship contract with the USPS by using steroids and other drugs to win the Tour de France. The government will have to prove, however, that it suffered an injury as a result of fraudulent payment. Armstrong's defense will likely be that the USPS reaped a benefit, far greater than the $30 million the team received, based on the sponsorship contract and brand association.

A trial in this case would not occur before 2014, so despite previously unsuccessful attempts a settlement could still occur. The financial stakes are certainly high; given the treble damages the government is entitled to — even under the net trebling approach.

Footnotes

1. F.3d --, 2013 WL 1150213 (7th Cir., Mar. 21 2013).

2. 31 U.S.C. §3729(a)(2).

3. 2013 WL 1150213.

4. Id.

5. Id.