

FCA Alert

Guidance on Emerging Trends in False Claims Act
Investigations and Litigation

PUBLISHED BY

Kelley Drye & Warren LLP
LITIGATION PRACTICE GROUP

Rejected Theories Of Liability Under The False Claims Act

By Nancy Lopez on June 22, 2014

In *United States of America and Brent M. Nelson v. Sanford-Brown, Limited, and Ultrasound Technical Services, Inc.*, Civil Docket No. 12-CV-775-JPS (E.D. Wisconsin June 13, 2014) the Eastern District Court of Wisconsin rejected theories of liability under the False Claims Act based on implied certification and an expanded definition of “conditions of payment.” The Court reminded the relator and the government that the FCA is not “a blunt instrument to police compliance with federal contracts, regulations and statutes.”

This case concerns claims against a for-profit higher education organization that provides career training programs in health care, criminal justice, and computer-related fields. The relator alleged that SB perpetrated fraud in connection with claims for federal subsidies under Title IV of the Higher Education Act. An institution is only eligible for participation in this program, and thereby eligible for these subsidies, if it complies with certain program participation requirements and the institution is required to enter into a “Program Participation Agreement.” See 20 U.S.C. §1094(a)(1)-(29).

An implied false certification theory of liability assumes that “every claim for payment submitted under Title IV constitutes an ‘implied certification’ of compliance with the PPA. The government argues that “[a] defendant’s nondisclosure, at the time payment is sought, of the fact that it failed to fulfill a previous promise upon which entitlement to payment is conditioned, is functionally equivalent to an explicit false representation or certification that it is entitled to payment.” Finding that the 7th Circuit has not adopted a theory of FCA liability based on implied false certification, the Court dismissed the relator’s claims for fraudulent certification.

A successful false claim in this context requires that the certification of compliance with statutory or regulatory requirements be a condition of or a prerequisite to government payment. The Court also rejected this theory because the Title IV restrictions were not conditions of payment. Conditions of participation were found insufficient to create liability.

New York

101 Park Avenue

New York, NY 10178-0002

Phone: (212) 808-7800

Fax: (212) 808-7897

Alt Fax: (212) 808-7898

Chicago

333 West Wacker

Chicago, IL 60606

Phone: (312) 857-7070

Fax: (312) 857-7095

Alt Fax:

Los Angeles

10100 Santa Monica Blvd.

Los Angeles, CA 90067

Phone: (310) 712-6100

Fax: (310) 712-6199

Alt Fax:

Washington, DC

Washington Harbour, Suite 400

Washington, DC 20007-5108

Phone: (202) 342-8400

Fax: (202) 342-8451

Alt Fax:

Parsippany

200 Kimball Drive

Parsippany, NJ 07054

Phone: (973) 503-5900

Fax: (973) 503-5950

Alt Fax:

Stamford

400 Atlantic Street

Stamford, CT 06901

Phone: (203) 324-1400

Fax: (203) 327-2669

Alt Fax:

Brussels

Rue Marie de Bourgogne

Brussels, Belgium

Phone: (32)(2) 646-1110

Fax: (32)(2) 640-0589

Alt Fax:

Copyright © 2014, Kelley Drye & Warren LLP. All Rights Reserved.

STRATEGY, DESIGN, MARKETING & SUPPORT BY

LEXBLOG