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Fourth Circuit Clarifies Applicability of FCA Public Disclosure Bar to Amended Complaints

In one of several decisions issued during 2016 addressing the False Claims Act's Public Disclosure Bar, 31 U.S.C. § 3730(e)(4), the Fourth Circuit in *United States ex rel. Lyle Beauchamp v. Academi Training Center, LLC* held that a determination as to whether the bar applies should be made on the basis of the qualifying public disclosures that exist at the time when the relator first pleads that the theory claimed to be barred, not at the time of the filing of any subsequent amended complaint.

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Background

Lyle Beauchamp and Warren Shepherd (the "Relators") were both security contractors with ACADEMI Training Center, Inc. ("Academi"). In 2005, Academi contracted with the U.S. Department of State to provide security services for officials and embassy workers stationed across the Middle East, under an agreement that required, among other things, that Academi submit marksmanship scores demonstrating that its personnel maintained a certain degree of proficiency with specific firearms. The Relators' initial sealed complaint, filed in April 2011, alleged that Academi submitted false reports and bills to the U.S. State Department for contractors employed in positions in which they did not actually work and defrauded the State Department by requesting payment for unissued equipment. In May 2011, Relators filed their first amended complaint adding new allegations of a fraudulent scheme by which Academi failed to qualify its contractors as sufficiently skilled marksmen and instead fabricated scorecards showing proficiency with firearms.

While the first-amended complaint was pending, two former Academi firearms instructors contacted Relators' counsel with additional information about the weapons qualification scheme and filed a separate wrongful termination suit against Academi, detailing Academi's failure to comply with the marksmanship testing requirements. *See Winston v. Academi Training Ctr. Inc.*, No. 1:12cv767, ECF No. 1 (E.D. Va. July 12, 2012). The *Winston* complaint, which was not filed as a *qui tam* action and therefore was publicly available, was the subject of a July 16, 2012 online news story published by Wired.com. On November 19, 2012, Relators filed a second amended complaint, which added paragraphs from the *Winston* complaint to expand the allegations as to the weapons qualification scheme.

Relying on *Rockwell International Corp. v. United States*, a 2007 Supreme Court case holding that the public disclosure bar applies to "the allegations in the original complaint *as amended*,"¹ the Eastern District of Virginia concluded that the most recent complaint – in this case the Second Amended Complaint – was the proper pleading to use to evaluate the applicability of the public-disclosure bar. The court then granted Academi's motion to dismiss based on the bar, finding that the Wired.com story qualified as a prior public disclosure.

¹ 549 U.S. 457 (2007) (emphasis in original).

Fourth Circuit's Holding

The Fourth Circuit reversed, holding that “the determination of when a plaintiff’s claims arise for purposes of the public-disclosure bar is governed by the date of the first pleading to particularly allege the relevant fraud and not by the timing of any subsequent pleading.”

In its opinion, the Fourth Circuit reasoned that the trial court had misapprehended the factual and legal basis of *Rockwell*. In *Rockwell*, relator’s amended complaint abandoned certain allegations for which he was the original source in favor of a wholly different fraud theory that had been publicly disclosed but not previously pled in the case. When the defendant moved to set aside the verdict based on the public disclosure bar, the *Rockwell* relator pointed to the abandoned claims in his original complaint to oppose application of the bar. The Fourth Circuit explained that it was against this factual backdrop that the *Rockwell* Court’s holding had to be understood, and that the district court here had too mechanically applied *Rockwell*’s language in concluding that “courts look to the amended complaint to determine jurisdiction.” Instead, the Fourth Circuit held that the district court should have evaluated the relevant fraud claim under the pleading that first alleged the fraud – in this case, the first amended complaint. Specifically, the Fourth Circuit found that allegations about the weapons qualification scheme had been first “particularly allege[d]” in the Relators’ first amended complaint, which predated the *Wired.com* article. The Fourth Circuit therefore held that the public disclosure bar was inapplicable.

Implications of the Court’s Decision

The Fourth Circuit’s decision in *Beauchamp* clarifies the application of *Rockwell*’s last pleading rule for the Fourth Circuit and establishes an approach that is consistent with the holdings of other Circuit Courts to have addressed the issue.

If you would like further information, please contact one of the attorneys in our [FCA practice](#) or the Ropes & Gray attorney who usually advises you.