

December 8, 2016

## Eighth Circuit Dismisses Interlocutory FCA Appeal for Lack of Jurisdiction

In this April 2016 decision, the Eighth Circuit held that it lacked jurisdiction to consider the appeal of a two-state agency seeking review of a denial of its motion for summary judgment. Below the two-state agency had argued that it was not a “person” subject to suit under the False Claims Act (“FCA”). 31 U.S.C. §§ 3729-3733. In dismissing the appeal, the Eighth Circuit held that there is a significant difference between determining whether an entity is a “person” for FCA purposes and whether the Eleventh Amendment provides immunity from suit.

**Attorneys**  
[John P. Bueker](#)  
[Kirsten Mayer](#)  
[David C. Soutter](#)

### Background

In 2014, Relator Eric Fields sued Bi-State Development Agency of the Missouri-Illinois Metropolitan District (“Bi-State”) and Eager Road Associates, LLC (“Eager Road”), alleging violations of the False Claims Act (“FCA”), 31 U.S.C. § 3730(b). Missouri and Illinois created Bi-State, a “body corporate and politic,” to construct and operate public transit systems and other public facilities in the St. Louis metropolitan region. *See* Mo. Rev. Stat. § 70.370. Fields, who had been an engineer with Bi-State from 2003-2012, claimed that Bi-State and Eager Road had made false claims to receive federal public-transit funds through the Department of Transportation and the Federal Transit Administration. Specifically, Fields alleged that in order to receive the federal funds, Bi-State falsely certified its compliance with both the Hatch Act, 5 U.S.C. § 7321-7326, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601.

Bi-State moved for summary judgment, arguing that it was not a “person” subject to suit under the FCA. In analyzing the question, the District Court employed the “arm of the state” test more typically used for evaluating claims of sovereign immunity under the Eleventh Amendment. Employing this mode of analysis, the District Court concluded that Bi-State should be considered a local-government entity rather than an arm of the state. Because local government entities qualify as “persons” under the FCA, the District Court denied Bi-State’s summary judgment motion. *See Cook City v. U.S. ex rel Chandler*, 538 U.S. 119, 122 (2003). Bi-State appealed.

### Eighth Circuit’s Holding

The Eighth Circuit determined that it did not have jurisdiction to hear the appeal. While the Court noted that it does have jurisdiction to hear interlocutory appeals of a district court’s denial of summary judgment based on sovereign immunity, it found that Bi-State had not made a claim of sovereign immunity before the District Court, but rather had argued only that it was not a “person” under the FCA. Notwithstanding that the District Court had used the same “arm of the state” analysis, which courts typically use to determine Eleventh Amendment immunity, citing *Vermont Agency of Natural Resources v. U.S. ex rel Stevens*, 529 U.S. 765, 779 (2000), the Eighth Circuit held that whether an entity falls under the scope of the FCA is a distinct question from whether the Eleventh Amendment provides immunity from suit. In particular, the Court noted that the burden of proof differs depending on the inquiry.

### Implications of the Court’s Decision

This case is one of a few this year in which the question of whether the defendant is a “person” susceptible to suit under the FCA is at issue in the litigation. The decision serves as important reminder about the differences between that question and questions of sovereign immunity.

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