

Third Circuit Holds Ambiguous Contract Precludes FCA Liability

The Third Circuit recently upheld summary judgment in favor of the defendant in *U.S. Dept. of Transp. ex rel. Arnold v. CMC Engineering*, a whistleblower suit alleging the defendant overbilled Pennsylvania's Department of Transportation ("PennDOT") in violation of the False Claims Act ("FCA"). The Third Circuit concluded that the defendant's contract with PennDOT was ambiguous, precluding any finding that the defendant knowingly submitted invoices at rates not justified by its employees' credentials. A copy of the court's decision can be found [here](#).

Procedural History

Relator August Arnold worked as an engineer for PennDOT, which engaged defendant CMC Engineering ("CMC") to provide inspectors for highway projects. Relator alleged that CMC misrepresented its employees' qualifications in order to invoice PennDOT at higher rates than the parties' agreement allowed. The district court granted summary judgment for CMC on two grounds. First, ambiguities in the contract between PennDOT and CMC meant that CMC could not knowingly have submitted false claims and was at worst negligent. Second, testimony by PennDOT employees led the court to invoke the "government knowledge inference," a doctrine that provides for an inference that defendant lacked the required scienter when there is government knowledge and approval of facts underlying an allegedly false claim.

On appeal, relator challenged both of the district court's grounds for summary judgment. First, he argued there was no contract ambiguity because CMC's interpretation implausibly relied on a catch-all provision permitting alternate equivalent credentials as a basis for billing at higher rates. Second, relator argued that the government knowledge doctrine was not Third Circuit law and should not apply when the knowledge and approval was attributable to PennDOT, a recipient of federal funds, but not the federal government itself.

The Third Circuit Decision

In affirming summary judgment, the Third Circuit agreed with the district court that the parties' contract was ambiguous and that the defendant's conduct had manifested a plausible interpretation of its obligations. Citing decisions from the D.C. and Eighth Circuits,¹ the court held that in light of this ambiguity, "there is no evidence from which a reasonable jury could find CMC 'knowingly' made a factually false claim or false certification, as defined under the FCA."

The Third Circuit was, however, critical of the district court's reliance on the government knowledge inference, observing that the doctrine had not yet been adopted by the Third Circuit, and there was no need to do so here. The court also agreed with relator that the doctrine was likely inapplicable where there was no evidence concerning knowledge on the part of the federal government, but only for an entity receiving federal funds.

Future Implications of *Arnold v. CMC Engineering*

The Third Circuit's decision in *Arnold v. CMC Engineering* has certainly made it more difficult for relators to proceed with FCA claims based on ambiguous obligations. Although the opinion did not address ambiguous statutory or regulatory language, similar reasoning should apply in those contexts. Finally, the Third Circuit's holding preserved the question of whether the Third Circuit will adopt the government knowledge inference

¹ *United States ex rel. K & R Ltd. P'ship v. Mass. Hous. Fin. Agency*, 530 F.3d 980, 984 (D.C. Cir. 2008); *United States v. Basin Elec. Power Coop.*, 248 F.3d 781, 805 (8th Cir. 2001).

doctrine under certain circumstances. We will continue to monitor developments in this evolving area of FCA jurisprudence.

If you have further questions about the implications of this decision, please consult your usual Ropes & Gray advisor or an attorney in our [False Claims Act](#) practice.