

CLIENT ALERT

Application of the *Spearin* Doctrine Entitles Contractor to Recover FCA Litigation Costs

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In *Tolliver Group, Inc v. U.S.* (Jan. 22, 2020), the Court of Federal Claims granted summary judgment in favor of a contractor who sought reimbursement of legal fees incurred in successfully defending against a False Claims Act (FCA) suit filed by a relator. The *qui tam* action arose from a defect in the original contract—the government was contractually obligated to provide certain technical data that it could not provide and the contractor was required to certify that its performance was in compliance with the technical data.

After the Fourth Circuit affirmed the dismissal of the FCA suit, the contractor submitted a claim to recover a portion of its legal fees, which the contracting officer denied. The Court of Federal Claims ruled in favor of the contractor under the *Spearin* doctrine, which provides that if the government supplies defective specifications, then a contractor may recover costs flowing from the government’s breach of the implied warranty that satisfactory performance will result from adherence to the contract specifications. One exception to the *Spearin* doctrine is that the warranty does not extend to third-party claims. However, the court held that a *qui tam* suit is not an excepted third-party claim, because “in *qui tam* litigation ‘it is the government, not the individual relator, who is the real plaintiff in the suit.’” The *Tolliver* decision illuminates a new basis for recovery of litigation costs after defending against *qui tam* actions.

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