

CLIENT ALERT

Defective Complaint Can Still Have Preclusive Effect Under FCA's First-to-File Bar

June 12, 2013

In *U.S. ex rel. Heineman-Guta v. Guidant Corp.* (May 31, 2013), the First Circuit weighed in on a jurisprudential split over the FCA's first-to-file bar between courts that hold that the earlier-filed complaint must meet Rule 9(b)'s particularity requirement for pleading fraud in order to have preclusive effect and those that do not. Affirming the dismissal of the relator's claims, the First Circuit joined the D.C. Circuit and other district courts in rejecting the application of Rule 9(b) to the first-to-file bar and holding that dismissal is appropriate so long as the earlier complaint put the government on sufficient notice to initiate an investigation into the alleged fraud.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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