

## CLIENT ALERT

### Dismissal, Says Who? Recent Seventh and Ninth Circuit Decisions Offer Competing Views on DOJ's Dismissal Authority under the False Claims Act, But Congress May Have the Last Word

Sep.18.2020

In the span of only two weeks last month, the U.S. Courts of Appeals for the [Seventh Circuit](#) and the [Ninth Circuit](#) became the first two Circuit Courts to issue decisions on lower court's denials of Government dismissal requests pursuant to its authority under the False Claims Act (FCA), 31 U.S.C. 3730(c)(2)(A). As discussed in greater detail in Crowell & Moring's Feature Comment in the Government Contractor entitled "You Win Some, You Lose Some: In Wake Of Ninth Circuit Defeat, The Government Gets A Big Win From Seventh Circuit Ruling Expanding Its Dismissal Authority Over FCA Qui Tam Actions" [available here](#), there is now further disagreement among the Courts and within the Government itself regarding the extent of the Government's dismissal authority under the FCA.

There are several key takeaways from the decisions and dialog between Congress and the Department of Justice for consideration when analyzing whether the Government will exercise its dismissal authority in a FCA action.

- The Seventh Circuit's decision in *United States v. UCB, Inc.*, 970 F.3d 835 (7th Cir. 2020) adds a third approach to the existing circuit split headlined by the D.C. Circuit in *Swift v. U.S.*, 318 F.3d 250 (D.C. Cir. 2003), and Ninth Circuit in *U.S. ex rel. Sequoia Orange Co. v. Baird-Neece Packing Corp.*, 151 F.3d 1139 (9th Cir. 1998) on how courts should assess the Government's statutory right to dismiss *qui tam* cases.
- *UCB* is favorable for defendants in that the Seventh Circuit agreed with the D.C. Circuit that the Government should have a nearly unassailable right to dismiss *qui tam* cases brought in the Government's name by relators.
- The Seventh Circuit complicated the Government's path to seek dismissal by requiring it to first intervene in the case, adding an administrative burden and requiring good cause for intervention when the Government seeks to dismiss after initially declining to intervene.
- Senator Chuck Grassley (R-Iowa), a vocal opponent of the view that the Government has unfettered dismissal authority, is said to be working on legislation to restrict the Government's right to dismiss *qui tam* actions, an action that could resolve the growing circuit split without intervention by the Supreme Court.

For additional commentary on these developments, see Crowell & Moring's Feature Comment in the Government Contractor [available here](#) or contact any of the attorneys in this alert.

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

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