

CLIENT ALERT

Earlier Complaint Fails 9(b), But Bars FCA Suit

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Addressing a question of first impression for it, the D.C. Circuit in *U.S. ex rel Batiste v. SLM Corp.* held that the FCA's "first-to-file" rule deprives the district courts of subject matter jurisdiction when a complaint filed earlier alleges "the same material elements of a fraudulent scheme," even if the earlier complaint did not meet the heightened standard of Rule 9(b). In so holding, the D.C. Circuit disagreed with the Sixth Circuit in *Walburn v. Lockheed Martin Corp.*, noting that nothing in the FCA incorporates Rule 9(b)'s particularity requirement into the first-to-file rule and that the earlier complaint was sufficient to allow the government to investigate the fraudulent scheme.

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

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