

CLIENT ALERT

FCA Defendant Wins Attorneys' Fees and the Government Gets Stuck with the Bill

August 23, 2017

In *United States ex rel. Wall v. Circle C Constr., LLC* (Aug. 18, 2017), the Sixth Circuit held that the defendant in a False Claims Act case brought by the government was entitled to recover nearly a half-million dollars in attorneys' fees under § 2412(d)(1)(D) of the Equal Access to Justice Act. The panel majority found that the government's original demand for damages (\$1.66 M) was substantially in excess of the judgment finally obtained (\$14,748) thus entitling the defendant, Circle C Construction, to the fees and other expenses related to defending against the government's excessive demand in a case based on Davis-Bacon Act violations of one of Circle C's subcontractors. Section 2412(d)(1)(D) of the Equal Access to Justice Act provides that in certain cases, defendants whose net worth falls below specified thresholds may recover costs associated with defending against an "excessive demand" by the government.

Finding the government's original demand unreasonable because it was not substantially justified, the Sixth Circuit cited its 2016 decision (previously reported [here](#)), in which it rejected the government's damages calculation and observed that the damages sought by the government were "fairyland" rather than actual. For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Brian Tully McLaughlin

Partner – Washington, D.C.

Phone: +1.202.624.2628

Email: bmclaughlin@crowell.com