

CLIENT ALERT

Fifth Circuit Affirms FCA Liability and Damages Under A Fraud-in-the-Inducement Theory

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On July 9, 2009, the Fifth Circuit affirmed the district court's grant of summary judgment for the government on both liability and damages in a False Claims Act ("FCA") case involving false statements made to induce the award of federal research grants under the Small Business Innovation Research ("SBIR") program. *United States ex rel. Longhi v. Lithium Power Tech., Inc.*, Nos. 08-20194, 08-20306, 2009 WL 1959259 (5th Cir. July 9, 2009). The district court had held that the government's fraudulent inducement theory was viable under the FCA "even if the statements on particular invoices submitted in connection with the project were true." *Id.* at *3. The Fifth Circuit agreed, reasoning that the otherwise true claims were actionable false claims because they were derived from the original fraudulent misrepresentations made to induce the grants. *Id.* at *7.

Notwithstanding that the research was performed satisfactorily by the defendants, the Fifth Circuit also affirmed the district court's holding that the government's damages were the total amounts paid to the defendants under the fraudulently induced grants - and therefore awarded treble damages without any offset for the value of the work done. The Fifth Circuit reasoned that the government received none of the benefit of its bargain because the SBIR program was designed to benefit only "eligible deserving small businesses," which the defendant was not.

The *Longhi* case could have far reaching implications, not only in cases involving alleged kickbacks, but also those involving special government programs such as those for small disadvantaged businesses, service disabled veterans, and women and minority owned businesses. Any material misstatement in securing eligibility for those programs could lead to FCA damages of three times the amount of money they received from the government under those programs even if the work they performed was acceptable and useful.

As the Fifth Circuit said, "The irony of this situation is not lost on the court. Lithium Power blatantly deceived the [government] and received funds that it was not entitled to. But it appears that the company then went on to successfully design and manufacture lithium-based batteries that the [government] found to be satisfactory. The Defendants ability to deliver on the hoped for 'ends,' however, does not justify the means it employed to receive the SBIR grants." *Id.* at *11.

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

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