

CLIENT ALERT

Fourth Circuit Declines to Address Use of Stat Sampling in FCA Cases

February 16, 2017

On February 14, the Fourth Circuit issued an opinion in *U.S. ex rel. Michaels v. Agape Senior Cmty. Inc.* on one of the two key issues that the district court had certified for interlocutory appeal under 28 U.S.C. § 1292(b): (1) whether the government possesses an unreviewable veto authority over proposed settlements and (2) whether statistical sampling is an appropriate methodology for establishing liability and damages in False Claims Act cases. On the first issue, the Fourth Circuit joined the Fifth and Sixth Circuits and held that the government has an unreviewable right to veto FCA settlements even after electing not to intervene. On statistical sampling, the district court had ruled that statistical sampling was not permissible because of the facts and available evidence in the case, but upon review, the Fourth Circuit determined that the appeal of that issue had been “improvidently granted” because the use of sampling is an evidentiary issue, not a pure question of law as required for interlocutory review. Accordingly, companies and FCA practitioners hoping for appellate-level guidance on the controversial issue of sampling will have to wait for another day.

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

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