

Client Alert

Fourth Circuit Enforces Employee's Pre-Filing Release of *Qui Tam* Action under the False Claims Act, Dismisses Suit

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The Fourth Circuit recently ruled that an employee who signed a general release of all federal, state and local claims in connection with his separation from his employer was subsequently barred from bringing a *qui tam* action under the False Claims Act (FCA). *United States ex rel. Radcliffe v. Purdue Pharma*, No. 09-1202, ___ F.3d ___ (4th Cir. 2010). The court held that where the federal government was aware of the fraudulent conduct prior to the filing of the *qui tam* action, the federal interest served by enforcing releases outweighed the need to provide incentives to individuals to bring *qui tam* claims.

This case related to Purdue Pharma's allegedly fraudulent marketing of the drug OxyContin to the government between 1996 and 2005. The relator in this case, Mark Radcliffe, was a former Purdue Pharma sales representative. During his employment, he contacted the federal government anonymously and disclosed concerns regarding Purdue Pharma's allegedly fraudulent marketing of OxyContin.

Subsequent to these disclosures, Radcliffe negotiated a separation agreement with the company that included a broad release of all federal, state and local claims. Nevertheless, after his separation, Radcliffe filed a *qui tam* action in 2005 relating to the marketing of OxyContin. Prior to the filing of the *qui tam* action, the Department of Justice had already begun an investigation into the alleged fraudulent activity. In 2007, the DOJ declined to intervene in the *qui tam* action.

Purdue Pharma argued that Radcliffe's release barred his claim and should be enforced because the government knew of the potential claim prior to the filing of the suit. Radcliffe disagreed, asserting that the release he executed upon his separation from Purdue Pharma violated public policy and, therefore, was unenforceable. Releases signed before the filing of a *qui tam* suit, he argued, would prevent potential relators from exposing potential violations of the FCA.

The Fourth Circuit held that the employment release, executed before the filing of the *qui tam* action, barred Radcliffe's claim. The court reasoned that when the government has no knowledge of a potential FCA violation prior to a relator filing a claim, enforcing a release would violate the public interest in bringing such claims to light. However, when the government is aware of allegations prior to the filing of the *qui tam* action, the "public policies supporting the private settlement of suits heavily favor the enforcement of a pre-filing release." As the DOJ had been investigating Purdue Pharma before the filing of the *qui tam* action, the Fourth Circuit enforced the release as a bar to Radcliffe's claim.

In *Radcliffe*, the Fourth Circuit joined other courts, including the Ninth and Tenth Circuits, in using a public policy balancing approach to determine that releases executed by employees are not presumptively invalid when used

by employers to bar FCA claims. This balance, these courts have reasoned, enables the government to conduct its own inquiry into fraud while allowing companies to settle *qui tam* claims prior to litigation.

For other articles by Crowell & Moring professionals regarding the validity of releases of *qui tam* claims under the False Claims Act, click [here](#) and [here](#). If you have any questions regarding waivers of *qui tam* claims, please contact any of the professionals listed to the left or your usual Crowell & Moring contact.

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

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