

CLIENT ALERT

Stand Up: Third Parties May Challenge False Claims Act Civil Investigative Demands

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In *General Medicine, P.C. v. United States*, No. 3:20-mc-00053, the District Court for the Southern District of Illinois held that a third party has standing to challenge a False Claims Act (FCA) civil investigative demand (CID) that is issued to another entity. In that case, General Medicine, a company that employs physicians and nurse practitioners, petitioned the Court to set aside certain CIDs that were issued under the FCA to nursing facilities for which General Medicine provided services. General Medicine was the target of the Government's investigation, and each of the CIDs sought information about General Medicine's practices and involvement with the facility. In its petition, General Medicine argued that the CIDs issued to the nursing facilities were not sufficiently specific under the requirements of the FCA, did not seek information relevant to an investigation, and were overbroad and harassing. General Medicine also asserted that the Government had not issued the CIDs in "good faith" because they sought information that the Government already had in its possession. In response, the Government denied General Medicine's points and argued that General Medicine lacked standing to bring a challenge under the FCA at all because it was not the recipient of the CIDs.

Finding that General Medicine had standing to bring the petition, the Court reasoned that while the FCA does not expressly state that a third party *may* bring a challenge, neither does the FCA *prohibit* a third party from doing so. The Court also noted that the Government failed to identify any other statute that "divests the Court of its authority to hear a third party's objections to a subpoena," particularly when a party's "legitimate interests" would be infringed, as a CID is ultimately an administrative subpoena "by another name."

While the petition was ultimately denied in *General Medicine*, the Court's decision confirms that third parties do have opportunities to challenge CIDs that seek the third party's information. The Government's authority to issue CIDs is broad, but not boundless, and the *General Medicine* determination offers third parties welcome support to challenge CIDs.

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

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