

CLIENT ALERT

Tenth Circuit Enforces Release of *Qui Tam* Claim under the False Claims Act

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Companies seeking to obtain a waiver or settlement of a *qui tam* action should carefully review the analysis in *United States ex rel. Ritchie v. Lockheed Martin Corp.*, 2009 WL 565517, ___ F.3d ___ (10th Cir. Mar. 6, 2009) to determine whether such agreements will be enforceable.

In *Ritchie*, the Tenth Circuit ruled that an employee who signed a general release of all federal, state and local laws in connection with her termination was subsequently barred from bringing a *qui tam* action against her former employer under the False Claims Act. In enforcing the release, the court held that the federal interest served by enforcing releases, signed after disclosure of the alleged fraud to the federal government, outweighed the need to provide incentives to individuals to bring *qui tam* claims.

In 2002, Ruth Ritchie, a Lockheed Martin employee, became concerned that Lockheed managers were falsifying records to increase incentive payments paid by the Air Force. Ritchie brought her concerns to Lockheed Martin's attention, and the company conducted an internal audit. Lockheed then briefed the Air Force and the Defense Contract Management Agency on the results of its investigation. As a result, the Defense Contract Audit Agency conducted its own investigation.

Ritchie subsequently alleged that Lockheed retaliated against her because of her whistleblowing activities. Ritchie and Lockheed settled these allegations prior to litigation, and Ritchie executed a separation agreement and general release. After signing the release, Ritchie filed a *qui tam* action alleging violations of the False Claims Act. The district court granted summary judgment to Lockheed Martin on Ritchie's claims.

In appealing the district court's ruling, Ritchie argued that (1) *qui tam* actions under the False Claims Act cannot be dismissed unless the court and the United States consent; and (2) federal policy precluded enforcement of the release. The Tenth Circuit rejected both arguments. First, the court stated that when a release precedes the filing of a *qui tam* action, the consent of the government and the court is not necessary to grant summary judgment.

In addressing the enforceability of the release, the Tenth Circuit noted the competing federal interests of encouraging individuals to bring *qui tam* actions and of settling *qui tam* claims prior to the filing of a lawsuit. The court held that releases of *qui tam* claims can be enforced, but only if the agreement is executed *after* the allegations of fraud have been disclosed to the government. Such a balance, the court reasoned, enables the government to conduct its own inquiry into fraud while allowing government contractors like Lockheed to settle *qui tam* claims prior to litigation.

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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