

Client Alert

The Spigot is Open: DOJ Reports First Civil Settlement for Paycheck Protection Program Fraud

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On January 12, 2021, the Department of Justice (DOJ) announced the first civil settlement resolving allegations of fraud involving loans issued pursuant to the Paycheck Protection Program (PPP). SlideBelts Inc., an internet retail company, and Brigham Taylor, the company's president and CEO, agreed to pay \$100,000 in penalties and damages to resolve alleged violations of the False Claims Act (FCA) and the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA). This settlement demonstrates DOJ's resolve to hold accountable those who exploit federal programs intended to help those in need during the COVID-19 Pandemic. This settlement also marks the first of what will undoubtedly be a long line of FCA recoveries in the months and years to come involving alleged misconduct in applying for PPP loans first authorized under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

According to the stipulated facts in the settlement, SlideBelts filed a petition for bankruptcy relief under Subchapter V of Chapter 11 of the Bankruptcy Code on August 25, 2019. However, the PPP application and SBA's interim final rules explicitly prohibit debtors in bankruptcy proceedings at the time of application or any time before the loan is disbursed from receiving PPP funds. Nevertheless, on April 3, 2020, SlideBelts submitted an application for a PPP loan for approximately \$300,000. A few days later, SlideBelts submitted a second PPP loan application to a second financial institution for \$350,000. Taylor and SlideBelts falsely certified on both applications that SlideBelts was not presently involved in any bankruptcy. When the first lender discovered that SlideBelts was in bankruptcy proceedings and rejected the PPP application for that reason, Taylor and SlideBelts applied for a third PPP loan at a different financial institution that same day, certifying a third time that SlideBelts was not presently involved in any bankruptcy. Ultimately, Taylor's false statements induced the second lender to disburse a \$350,000 PPP loan to SlideBelts.

The relatively straightforward facts of the SlideBelts case made this settlement a seeming slam dunk for the DOJ, as the false statements on the PPP applications clearly constituted false certifications of eligibility to obtain a PPP loan. While the government asserted that its potential claims totaled over \$4 million in damages and penalties, the relatively low \$100,000 settlement was driven by SlideBelts' and Taylor's financial condition, though notably that amount is in addition to the defendants' full repayment of the \$350,000 loan. The DOJ stands to collect a much larger sum, however, if SlideBelts defaults on its payment obligations, as SlideBelts entered into a \$2 million consent decree with DOJ. Either way, the message here is loud and clear: the government will aggressively pursue recoveries against companies and individuals for PPP fraud regardless of their financial status, government contracting experience, or relative size of the loan at issue.

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