

CLIENT ALERT

The Train Has Left the Station: Court Strikes Newly Added Claims

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On March 30, 2018, in *United States ex rel. Drennen v. Fresenius Medical Care Holdings Inc.*, a district judge in the District of Massachusetts granted the dialysis company’s motion to strike three common law counts that the government added when it intervened and filed its complaint more than six and a half years after the relator filed his *qui tam* complaint and one year after the completion of fact discovery. The court reasoned that although when the government intervenes in a suit while the complaint is under seal it is entitled to an “editor’s privilege” that allows it to revise the complaint freely before it is unsealed, it is a different matter when the government intervenes after the case has been unsealed because 31 USC § 3730(c)(3) requires the court’s permission and a showing of good cause. By intervening in the *Drennen* complaint at such a late stage, the government was “getting on a moving train” because the claims against Fresenius were already defined and extensive discovery related to those claims had already taken place. Finding that the late addition of the common law claims would prejudice the defendant, the court granted the motion to strike.

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

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