

Government Contracts Blog

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Meanwhile, Sixth Circuit Remains Firm On Rule 9(b) In False Claims Act Litigation

By [Christopher E. Hale](#)

This article continues discussion of Rule 9(b) in False Claims Act litigation from [Ninth Circuit Weakens Rule 9\(b\) in False Claims Act Litigation](#), also published today.

While the [Ninth Circuit has joined the minority position on fraudulent scheme complaints](#), the Sixth Circuit has reiterated the standard adopted in [Bledsoe II](#), requiring False Claims Act (“FCA”) relators to plead actual, representative examples of false claims to meet the particularity requirements of Rule 9(b) when alleging a fraudulent scheme. In a September 1, 2010 decision in [U.S. ex rel. SNAPP v. Ford Motor Co.](#), the Sixth Circuit again considered and affirmed dismissal of a *qui tam* suit on Rule 9(b) grounds. The Sixth Circuit had previously considered the case in 2008, but had remanded to the district court to decide whether the dismissal was warranted in light of [Bledsoe II](#).

The case was brought by an alleged minority-owned, small business (“Relator”) who claimed that Defendant was using Relator as a shell corporation to funnel payments to large, majority-owned businesses and, in the process, inflating the extent of Defendant’s dealings with small and minority-owned businesses in official reports to the Government. Relator alleged that the resulting exaggerations induced the Government to contract with Defendant. In light of these alleged “sham payments,” Relator claimed that had the Government been aware that Defendant was exaggerating its dealings with small and minority-owned businesses, it would not have permitted Defendant to act as prime contractor. Relator further claimed that, as a result, none of the payments made on those contracts would have been paid if not for Defendant’s alleged deceit.

The Sixth Circuit held that nothing in [Bledsoe II](#) saved the complaint from its failure to meet the particularity requirements of Rule 9(b). Although Relator listed specific examples of the contracts at issue, with identifying contract numbers, and amounts of payments alleged to have been made by the Government pursuant to those contracts, these did not constitute *claims to the Government for payment*. In again affirming dismissal, the court found that Relator still did not plead at least one claim with specificity.

While the court would not go so far as to decide the issue of whether a listing of contracts and payments could ever suffice to meet the requirement that an FCA complaint plead a false claim with particularity, its decision makes that possibility appear remote. Given the Ninth Circuit's recent adoption of the less stringent standard (requiring only "reliable indicia that lead to a strong inference that claims were actually submitted"), the differing standards applied by the Circuits appear ripe for consideration by the Supreme Court.

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