

Fourth Circuit clarifies False Claims Act public disclosure bar

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Introduction

In *United States ex rel Beauchamp v Academi Training* the Fourth Circuit recently reversed the dismissal of a False Claims Act complaint, explaining that the trial court had misapplied the public disclosure bar when it dismissed the relators' claims. The appellate court's opinion explained:

- recent (2010) statutory amendments;
- the manner in which an important pre-amendment Supreme Court precedent applies; and
- the proper application of the public disclosure bar to the facts at issue.

In short, when analysing the timing of the public disclosure that purportedly bars False Claims Act allegations, courts must focus on the pleading in which the relator first alleged the relevant fraud – not the most recent amendment to the complaint.

Facts

The *Beauchamp* relators alleged that their former employer, Academi Training, made several types of false claim related to a 2005 contract with the State Department under which Academi was "to provide security services for officials and embassy workers stationed across the Middle East". Relevant to the appeal, the relators' first amended complaint alleged that Academi had implemented a fraudulent scheme under which it "routinely failed to qualify its contractors on two of the required weapons – the M-240 and M-249 belt fed machine guns – and fabricated scorecards showing proficiency with these firearms for submission to the State Department".

After the first amended complaint was filed (and when it was under seal), other former Academi employees contacted relators' counsel with additional information regarding the alleged weapons qualification scheme. Those employees filed a separate wrongful termination lawsuit in which the scheme was described. That separate lawsuit generated press coverage, including a [Wired.com article](#).

The Department of Justice completed its investigation into the False Claims Act complaint and declined to intervene in the case. The complaint was then unsealed. The relators filed a second amended complaint in which they added non-False Claims Act claims and "expanded on the allegations as to the weapons qualification scheme by adding a number of paragraphs" from the other former employees' retaliation lawsuit.

Academi moved to dismiss the False Claims Act case based on, among other grounds, the public disclosure bar. The district court [accepted](#) Academi's argument that, under the Supreme Court's 2007 decision in *Rockwell Int'l v US*, "the public disclosure bar inquiry applied to 'the allegations in the original complaint as amended'" (meaning as most recently amended). The *Beauchamp* relators' second amended complaint was filed after the public disclosure of the alleged weapons qualification

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scheme, and allegations related to that scheme were included in that complaint (as they had been in the first amended complaint). The trial court determined "that the Wired.com article satisfies the public prong of the public disclosure analysis" and, as the relators were not "original sources" of those allegations, dismissed the claim.

Decision

The Fourth Circuit reversed the trial court's application of the public disclosure bar. The appellate opinion's background section included a helpful explanation of the 2010 amendments to the False Claims Act, which (among other things) "significantly chang[ed] scope of the public disclosure bar" by revising the language to make the bar an affirmative defence instead of a "jurisdiction-removing provision". The appellate opinion also describes the "public-disclosure bar['s] aims" – that is, "to strike a balance between encouraging private persons to root out fraud and stifling parasitic lawsuits" in which a relator, instead of plowing new ground, attempts to free-ride by merely reiterating previously disclosed fraudulent acts".

The Fourth Circuit explained why the Supreme Court focused on the final 'as amended' complaint in *Rockwell*. In that case, the relator was an original source with respect to the fraud allegations set out in its original complaint but "had abandoned th[ose claims] in favor of a wholly different fraud theory" set out in the amended complaint. The Supreme Court **focused** on the last pleading because that was the submission in which the relevant fraud had been pled for the first time; the court also performed "a claim-by-claim analysis" of when the allegations were made versus when the information was first disclosed.

In *Academi* the trial court failed to evaluate the weapons qualification claim relative to the first amended complaint, in which the claim was initially made. The appeals court explained that the second amended complaint "merely added further detail about a claim already alleged" – which is not precluded under the public disclosure bar. Thus, the Fourth Circuit rejected Academi's back-up argument that the additional details provided in the second amended complaint constituted the "first [pleading] that describes with specificity the weapons qualification scheme". To the contrary, the court parsed the first amended complaint and explained that the allegations made in that pleading were sufficient and that, as a result, "the public-disclosure bar does not apply here".

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