

Nelson Hardiman Prevails on False Claims Act “Whistleblower” Suit Alleging Anti-Kickback Violations

Nelson Hardiman attorneys [Mark Hardiman](#), [Lee Arian](#), and [Salvatore Zimmitti](#) recently obtained a complete dismissal of a federal False Claims Act “quit tam” lawsuit filed in the United States District Court of California against one of Nelson Hardiman’s health system clients charged with several violations of the federal False Claims Act (31 U.S.C. § 3729 (a)(1)).

The plaintiff-whistleblowers – otherwise known as qui tam “relators” – were a group of ambulance owners, managers, and marketers who alleged that the health system had engaged in and conspired to submit false and fraudulent records, statements and claims for payment to the Medicare Program. Specifically, the relators asserted that Nelson Hardiman’s client had offered/accepted kickbacks from an ambulance provider in violation of the federal Anti-Kickback Statute (“AKS”) and thus, pursuant to the Affordable Care Act (which makes any claim submitted for a service resulting from a violation of the AKS “false” for purposes of the False Claims Act) was liable under the False Claims Act for significant statutory damages, penalties, and costs of suit.

Nelson Hardiman filed a motion to dismiss the complaint, based primarily on the ground that the relators’ “kickback” theory was devoid of factual support and did not plead facts reasonably or plausibly suggesting that the health system ever offered or received any economic benefit, or any other “remuneration,” in exchange for or for the purposes of the referral of Medicare ambulance transports. Relators opposed the motion and argued that they had pleaded facts from which a kickback scheme could plausibly be inferred. The United States District Court disagreed and, as requested in Nelson Hardiman’s motion, dismissed the whistleblower complaint as to the health system as to each of the relators’ legal theories.

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