

Eight Years Later: “Speculative” and “Straightforward” FCA Allegations Against Walmart Dismissed

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by Donna Reuter

Walmart successfully ended eight years of protracted litigation under the False Claims Act (“FCA”) on June 4, 2021, when the Sixth Circuit affirmed dismissal of Medicare and Medicaid fraud allegations against the major retailer. The case was first filed in February 2013. See *United States ex rel. Sheoran v. Wal-Mart Stores E.*, No. 13-10568, 2019 U.S. Dist. LEXIS 140710, at *2 (E.D. Mich. Aug. 20, 2019).

The case was originally filed by Ashwani Sheoran, a former Walmart pharmacist. See *United States v. Wal-Mart Stores E., LP*, No. 20-2128, 2021 U.S. App. LEXIS 16763, at *2 (6th Cir. June 4, 2021). The basis for Sheoran’s allegations stemmed from observing a Michigan physician (and co-defendant) writing what Sheoran believed were improper prescriptions for high doses of opioid pain medications. *Id.* at *3. Sheoran alleged that filling those prescriptions violated the FCA and the Michigan Medicaid False Claims Act due to their purportedly excessive doses. *Id.* The case was finally unsealed in September 2018 after the United States government and the state of Michigan declined to intervene. In August 2019, Walmart’s motions to dismiss were granted. *Wal-Mart*, 2019 U.S. Dist. LEXIS 140710 at *14. Sheoran moved for reconsideration, which was denied. *United States v. Wal-Mart Stores E., LP*, No. 13-10568, 2020 U.S. Dist. LEXIS 177251, at *9 (E.D. Mich. Sep. 28, 2020). Sheoran then appealed.

On appeal, Sheoran argued that the district court granted the motions to dismiss in error; that it was error for the lower court to exclude his Medicaid False Claims Act claims in its summary of claims; and that the court abused its discretion by waiving oral argument on the motions. *Wal-Mart*, 2021 U.S. App. LEXIS 16763 at *4.

To establish a claim under the FCA, Sheoran was required to allege that “(i) the defendant presented a claim of payment to the government, (ii) the claim was false or fraudulent, (iii) the defendant knew it was false or fraudulent, and (iv) the false claim was material to the government’s payment.” *Id.* at *5. Because FCA claims necessarily involve allegations of fraud, a plaintiff must also meet the particularity requirements under Federal Rule of Civil Procedure 9(b) by alleging the “time, place, and content of

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the alleged misrepresentation . . . [;] the fraudulent scheme; the fraudulent intent of the defendants; and the injury resulting from the fraud.” *Id.* at *4–5 (internal quotations and citations omitted).

Focusing on particularity, the Sixth Circuit determined that Sheoran failed to sufficiently plead each of the four elements of an FCA violation.

First, the Court held Sheoran failed to allege that a claim for payment was presented to the government. *Id.* at *5. To support the claim, Sheoran submitted a document that listed all opioid payments with a \$1-2 copay. *Id.* at *6. Based on the low copay value, Sheoran argued that the government must have provided reimbursement through Medicaid or Medicare. *Id.* The Court rejected that assumption, noting that many other reasons could explain a low copay. *Id.* The Court concluded that alleging presentment effectively requires more than “mere speculation.” *Id.*

Second, the Court held Sheoran was unable to effectively plead that any of the alleged claims were “false or fraudulent.” *Id.* See 31 U.S.C. § 3729(a)(1)(A), (B). Although Sheoran had alleged the prescriptions were written for “high doses” of opioid pain medications that “would kill the person” if taken as prescribed, Sheoran provided no information about the patient’s medical history or needs to help the Court evaluate whether the doses were too high. *Id.* *7. Accordingly, the Court could not accept that falsity was supported.

Third, the Court held the pleadings failed to allege that Walmart “knowingly” presented false claims to the government. *Id.* In order to establish knowledge, a defendant must “know[] of, or ‘act[] in deliberate ignorance’ or ‘reckless disregard’ of, the fact that he is involved in conduct that violates a legal obligation to the United States.” *Id.* (internal quotations and citations omitted). The Court determined that Sheoran’s mere assumption that payment was submitted to the government was insufficient, and that the pleadings lacked allegations indicating that Walmart even suspected the claims were illegal, false, or fraudulent. *Id.*

Finally, the Court concluded that materiality was also insufficiently alleged. To meet this “demanding” standard, the alleged misrepresentation must have been “material” to the government’s decision to reimburse the claim. *Id.* at *8. The Court reasoned that if all of the claims had indeed been submitted to the government, the government had the same knowledge about the allegedly “high doses” and yet still paid those claims. *Id.* This evidence of payment was considered to be “very strong evidence that the requirements were not material.” *Id.* (citing *Universal Health Servs., Inc. v. United States*, 136 S. Ct. 1989, 2001 (2016)).

The Sixth Circuit summarily dismissed Sheoran’s remaining arguments. In regards to the denial of oral argument, the Court reasoned that “this was a straightforward FCA case that was properly decided on the briefs.” *Id.* at *12. Unfortunately for Walmart and its co-defendants, this “straightforward” case required eight years of protracted litigation and expense that finally concluded due to the FCA’s exacting pleading standard.

