

False Claims Act Anti-Retaliation Claim Levelled at PPP Recipient

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by Roxanna V Gonzalez

A former employee of Great Dane Petroleum Contractors, Inc. a full-service Pollutant Control and General Contractor based in Florida, alleged in a recently-filed lawsuit that the company misused nearly \$3 million in Paycheck Protection Program (“PPP”) funds. *See Rucker v. Great Dane Petroleum Contractors, Inc.*, No. 21-cv-207 (M.D. Fla. Mar. 10, 2021). As another wave of applications for PPP funds come in, employers must remain vigilant to ensure that PPP funds are used appropriately or risk similar lawsuits.

Amber Rucker, who was the personal assistant to Great Dane’s CFO, filed the complaint in United States District Court for the Middle District of Florida on March 10, 2021, under the federal False Claims Act (“FCA”), Florida’s Private Whistleblower Act, and Florida’s Public Whistleblower Act. Her PPP-specific allegations include misuse by approving employee leaves of absence while “keeping them on the books” and altering payroll records to reflect time not worked by employees. She also alleged that Great Dane paid bribes to procure contracts, allowed its principals to use the company credit card for personal expenses, misrepresented to its worker’s compensation insurance carrier that it was a drug-free workplace, illegally deducted inflated job costs to evade taxes, and allowed certain employees a grossly inflated per diem.

According to Rucker’s lawsuit, she repeatedly complained of the alleged illegal acts to Great Dane’s CFO and the President both verbally and in writing. She also claimed to object to such practices and refused to process fraudulent charges. Rucker claims that instead of investigating her allegations, Great Dane placed her on paid administrative leave shortly after her last complaint and terminated her in January 2021.

Rucker’s suit relies on the FCA’s anti-retaliation clause, which provides that:

Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in

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the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter.

13 U.S.C. § 3730(h). According to Rucker's Complaint, this provision prohibited Great Dane's decision to place her on paid administrative leave. Rucker is seeking to be reinstated, restitution for her lost wages, front pay, and compensatory damages.

Rucker's allegations are the latest—and surely not the last—in the increasing number of litigation and enforcement actions that have followed the Federal Government's response to the COVID-19 pandemic. For example, in December 2020, the Justice Department charged 57 people with trying to steal more than \$175 million in PPP funding. See Katie Benner, *Justice Dept. Announces Dozens of Fraud Charges in Small-Business Aid Program*, The New York Times (originally published Sept. 10, 2020, updated Dec. 9, 2020), <https://www.nytimes.com/2020/09/10/us/politics/ppp-fraud-coronavirus.html>. And just a month later, the Department of Justice charged six individuals with fraudulently obtaining approximately \$1.5 million in PPP loans on behalf of businesses based in Georgia and South Carolina. See Justice News (Jan. 28, 2021), <https://www.justice.gov/opa/pr/six-charged-connection-3-million-paycheck-protection-program-fraud-scheme>. As the Department of Justice continues to investigate allegations of misuse of PPP loans, companies that accepted PPP funds should ensure that those funds are used for the proper purposes and that any allegations of misuse are investigated without any retaliation.