

Judge Rejects FCA Settlement Deal: No Rubber Stamping and Bromides Won't Do

November 12, 2025 – FCA Now

by Chris DeLong

A recent decision by the U.S. District Court for the Northern District of California to reject a proposed \$57 million settlement in a False Claims Act (FCA) litigation highlights the unique challenges and complexities that surround the resolution of FCA cases—challenges that set them apart from ordinary civil litigation.

Background: The Tetra Tech Case

The settlement arises from a case about the Hunters Point Naval Shipyard in southeast San Francisco, which is a Superfund cleanup site due to radiological contamination. In the 1990s, the U.S. Navy agreed to convey the shipyard piecemeal as it was remediated to San Francisco to develop for residential or commercial purposes. From about 2005 to 2018, the defendant in the litigation, Tetra Tech EC, did remediation work on contracts worth approximately \$262 million. Whistleblowers (*qui tam* relators) filed a sealed complaint under the FCA in 2013. In 2019, the government filed a complaint-in-intervention alleging that the defendant, among other things, violated the False Claims Act by submitting soil samples for testing that were known to be clean, manipulating other testing data, and reporting these false results to the Navy.

Earlier this year, the government and Tetra Tech separately agreed to a \$40 million settlement a claim under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for remediation costs at the former Navy site. That included an agreed consent decree, which the court had already approved. That was just one of five counts against the defendant, however.

The government and Tetra Tech recently reached an agreement to settle the remaining four claims, including two counts under the FCA, a common law fraud count, and a breach of contract count, for \$57 million. The settlement allocated \$51.87 million to “soil fraud allegations” and \$5.13 million to “building scan fraud allegations.”

Court Scrutiny: More Than a Rubber Stamp

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Like ordinary civil litigations, the FCA allows resolution of claims under the statute and for the parties to seek dismissal of the claims. But the FCA also uniquely conditions voluntary dismissal of FCA claims on “written consent” from the court and the Department of Justice “and their reasons for consenting.” See 31 U.S.C. § 3730(b)(1). In addition, where a *qui tam* relator objects to a settlement reached between the government and the defendant, the FCA requires the court approve only settlements that are “fair, adequate, and reasonable under all the circumstances.” See 31 U.S.C. § 3730(c)(2)(B).

In this case, the government and the *qui tam* relators disagreed on the share of the proceeds due to the relators. But the government sought approval of the settlement despite the continuing dispute over the share. The court declined to approve the settlement on the current record, noting that the government’s justifications were vague and generic, and did not address the specific concerns raised by the case, such as the adequacy of the settlement considering the serious radiation remediation issues. The court emphasized that it cannot simply “rubber stamp” the government’s decision and must conduct a meaningful review.

Another layer of complexity in FCA cases is the determination of a *qui tam* relator’s share of the settlement. In this case, the *qui tam* relators sought a 23% share as a group, while the government proposed different allocations based on the nature of the allegations and invoked a statutory bar, the “first-to-file” rule, as to three the *qui tam* relators. The court found both sides’ proposals lacking in specificity and evidentiary support, directing the parties to provide detailed, claim-by-claim analyses addressing whether and what award should be made jointly or individually to each *qui tam* relator.

The Court directed the parties to file supplemental briefing to address these issues.

Takeaways: Why FCA Settlements Are Different

The Tetra Tech case is a vivid illustration of why FCA settlements are often not routine. Settling FCA cases can be complex for several reasons. Courts are called to provide a rationale for even a basic dismissal and, where a relator objects, may review settlements for reasonableness and fairness. Alleged frauds against the government run the gamut of potential public policy interests, from environmental safety (like in this case) to public health and welfare to national defense and security. The government’s interests in resolution of an FCA action may diverge from those of whistleblowers, inviting careful judicial balancing of those interests.