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New Orleans Federal Court Dismisses Relators' Improper Billing Claims against FEMA Temporary Housing Contractor Due to Insufficient Evidence

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by Jeremy Schlosser

On September 14, 2016, the United States District Court for the Eastern District of Louisiana granted a government contractor's summary judgment motion and dismissed a lawsuit brought against it by False Claims Act relators ("Relators") because Relators failed to identify evidence supporting the existence of a genuine issue of material fact regarding their claims that the contractor had improperly billed the Federal Emergency Management Agency ("FEMA") for work performed under a temporary housing services contract. *U.S. ex rel. Warder v. Shaw Group, Inc., et al.*, 2016 WL 4802783 (E.D. La. Sept. 14, 2016).

Relators were former employees of FEMA who alleged that Shaw Group, Inc. ("Shaw") had double- and triple-billed FEMA or billed FEMA for work not actually performed under its contract to "haul, install, maintain, and deactivate temporary housing units" signed with FEMA in the wake of Hurricanes Katrina and Rita. In response to these allegations, Shaw moved for summary judgment.

Shaw cited three grounds for its motion. First, it argued that there was no factual dispute that FEMA had authorized Shaw to perform the work for which it had billed FEMA, and thus Relators had failed to satisfy their evidentiary burden under Federal Rule of Civil Procedure 56 to preclude summary judgment. Second, Shaw claimed that the factual record did not support Relators' other allegations, namely: (1) that Shaw had submitted 374 instances of "possible" false trailer installation claims; (2) that a $1 million credit received by FEMA from Shaw reflected other false claims; and (3) that Shaw sent late or inadequately-supported invoices to FEMA. Third, Shaw asserted that the lawsuit was barred by the False Claims Act's public-disclosure bar because a 2008 Department of Homeland Security Office of Inspector General report – rather than Relators – was the original source of the bases for Relators' claims.

Relators filed an opposition brief to Shaw's motion in which they claimed to have identified two invoices and underlying documents evidencing Shaw's double billing for

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trailer transportation services, and pledged to produce additional evidence of Shaw's False Claims Act violations later in the proceedings. Shaw countered that Relators in their opposition had improperly raising a new dispute, as the complaint alleged only that Shaw had double billed for "trailer installation, deactivation, and maintenance done once," but not for trailer transportation. Shaw also noted that Relators had failed to demonstrate the authenticity of the documents underlying this claim. Finally, Shaw argued that its contract with FEMA authorized it to bill FEMA for moving the same trailer multiple times, and that the the factual record therefore did not support Relators' allegation.

Upon review of the parties' filings, the district court found no evidence to support Relators' allegations that Shaw had violated the False Claims Act. The court noted that Relators' papers had failed to dispute whether backup documentation provided by Shaw to FEMA– which supplemented the invoices identified by Relators – supported Shaw's argument that its trailer transportation billing was proper under the contract. Thus, the court found no basis to infer that Shaw had knowingly presented false claims to the government. Having reached this conclusion, the court found no need to address Shaw's contention that Relators' claims were barred under the False Claims Act's public-disclosure bar.