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Settlement Illustrates Continued Use of FCA to Combat PPP Fraud

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The trend of private parties suing businesses under the False Claims Act, 31 U.S.C. § 3729 *et seq* (“FCA”) for violating requirements of the Paycheck Protection Program (“PPP” or the “Program”) continues. Just recently, the Department of Justice (“DOJ”) issued a press release announcing its latest settlement in an FCA case involving Sextant Marine Consulting, LLC (“Sextant”) and a whistleblower named J. Bryan Quesenberry (“Relator”).

According to the settlement agreement (“Agreement”), Sextant is a Miami, Florida-based limited liability company providing duct cleaning services that sought PPP funds during the height of the pandemic. The PPP required borrowers to certify they would receive only one first draw loan before December 31, 2020. However, according to the Agreement, Sextant received two PPP loans in 2020 despite certifying it would receive only one: it received its first loan of $150,000.00 on May 8, 2020 and its second loan of nearly $170,000.00 on May 22, 2020.

Learning this, on September 18, 2020, the Relator filed suit under the *qui tam* provisions of the FCA, 31 U.S.C. § 3730(b). The government’s ensuing investigation led to the issuance of a civil investigative demand on May 12, 2021, which prompted Sextant to repay the second loan the same day. Ultimately, the parties signed the Agreement on September 29, 2021. Per the Agreement, Sextant will pay the government $30,000, which represents civil penalties and damages under the FCA and includes $8,490.55 in restitution for fees the Small Business Administration (“SBA”) paid to Wells Fargo bank for processing the second loan. The Agreement also stipulates that the Relator will receive 15%, or $4,500.00, of the settlement amount as his portion of the recovery for initiating the lawsuit.

Notably, the DOJ’s press release explains that this “matter remains under seal as to allegations against entities other than Sextant.” Thus, more news may be coming soon. Dorsey’s FCA Now blog will continue monitoring for new developments on this and other FCA cases involving alleged PPP fraud, so be sure to check out the FCA Now blog and

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