

"Shotgun Pleadings" Ineffective for FCA Claims

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by Leyla Bari

On April 21, 2022, the Northern District of Georgia granted a motion to dismiss a False Claims Act ("FCA") suit brought against ERMI LLC ("ERMI"), a medical device manufacturer, describing the complaint as a "shotgun pleading." This action was brought by Relator Elizabeth Cooley, ERMI's former chief compliance officer. Cooley alleged that ERMI, its CEO Dr. Thomas P. Branch, and other defendants defrauded federal insurance programs in violation of the FCA by overbilling tens of millions of dollars.

Specifically, Cooley's complaint alleged that ERMI billed the Government for equipment that was not medically necessary, was priced above market rates, or otherwise did not conform to government standards across five different fraud schemes. In addition, Cooley alleged that ERMI regularly provided cash and free equipment to clinicians who agreed to prescribe ERMI products to patients covered by federal health care programs, in violation of federal anti-kickback statutes. Cooley alleged ERMI fired her in retaliation for her attempts to resolve these compliance issues.

Cooley filed her initial complaint in October 2020, and the government declined to intervene in July 2021. Subsequently Cooley filed the amended complaint at issue in September 2021.

Defendants in the case moved to dismiss on the basis that Cooley's complaint had impermissibly bundled "multiple claims for relief and multiple theories of liability into single counts, and its allegations lump together multiple Defendants without distinguishing which ones engaged in what specific conduct." Judge Thomas W. Thrash Jr. agreed, reasoning that Cooley's amended complaint had all the cornerstones of a "shotgun pleading" making it "unclear which factual allegations are meant to support which legal theories, and which legal theories are meant to support which claims for relief."

Citing the higher pleadings standard for FCA claims found in Rule 9(b), the Court reasoned that to survive a motion to dismiss under the FCA, a plaintiff "must state with

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particularity the circumstances constituting fraud or mistake,” and instead of doing that, Cooley’s complaint “muddies the waters further by reciting the same conclusory, formulaic theories of liability” on at least eight counts. The court went on to add that “the shortcomings . . . do not end here. The Relator asserts all of her claims against multiple defendants but in some instances fails to differentiate the acts and omissions giving rise to each one’s liability.”

The court’s order emphasized that in the Eleventh Circuit these types of pleadings are ineffective because they are an “undue burden not only on defendants but also on courts,” wasting resources, unnecessarily broadening discovery, and clogging court dockets and harming the “public’s respect for the courts.” Given this view, the Court went on to explain “there is thus little tolerance for shotgun pleadings in this circuit.”

Despite this, the Court ruled that parties have a right to amend and ultimately gave Cooley 30 days from the April 21 order to cure the pleading deficiencies.

The Court’s opinion reminds plaintiffs that FCA pleadings should make sure to explain claims with specificity, and defendants of such claims that they can object to such muddy causes of actions and allegations.