

Alleged Environmental Violation/False Claims Act: U.S. District Court Considers Application of Implied False Certification Theory



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A United States District Court (Eastern District-Pennsylvania) (“Court”) addressed a *qui tam* action filed by Gary Cressman (“Cressman”) under the federal False Claims Act (“FCA”) in connection with an alleged environmental regulatory violation at a waste transfer station in Souderton, Pennsylvania. See *Gary Cressman v. Solid Waste Services, Inc. t/d/p/a J.P Macaro & Sons* 2018 WL1693349 (April 6, 2018).

Defendant Solid Waste Services, Inc. (“SWS”) is alleged to have submitted false claims for payment to various federal agencies with which it had service contracts without disclosing the alleged improper discharge of leachate.

Plaintiff Cressman and Defendant SWS filed Cross-Motions (“Motions”) for Summary Judgment.

In addressing the motions, the Court described SWS as providing:

. . . Integrated Solid Waste Services to the public, including the collection, transportation, disposal and recycling of residential, commercial, industrial and municipal non-hazardous solid waste.

The geographic area served included Pennsylvania. Customers include the United States Government. Various SWS divisions perform trash collection services for several federal agencies.

Plaintiff Cressman worked at SWS’s Souderton, Pennsylvania facility. This facility included a waste-transfer station (“TS”) permitted and regulated by the Pennsylvania Department of Environmental Protection (“DEP”). The

TS generates leachate whose collection and disposal is regulated by the state environmental agency. The TS leachate was collected and transported off site for treatment at a publicly-owned waste water treatment plant.

Cressman is described as having been a roll-off truck driver hired by SWS in 2011. His duties included trash collection services.

Cressman is stated to have observed the regulatory violation by the employees at the TS. The violations are described as the discharge of TSA leachate on a grassy area of SWS property.

Cressman reported his observations of the leachate discharge to DEP. This reporting triggered a subsequent inspection of the SWS property by agency representatives. The DEP representatives were stated to have interviewed the two employees about the discharge.

Cressman apparently conveyed to SWS personnel that the two employees statements were not consistent with his own observations. Further, he is stated to have advised SWS that the observations would be conveyed to other legal authorities. His observations were later provided to DEP. SWS subsequently terminated the two employees involved with the discharge.

DEP concluded that the violations related to the leachate discharge had been corrected. The agency assessed a civil penalty of \$37,000.00.

Plaintiff filed the *qui tam* Complaint 17 days after the penalty was assessed. The FCA claim was filed under what is described by the Court as an “implied false certification theory” of liability. The Court states that:

Generally, under this theory of liability, entity is liable for falsely representing itself as having complied with applicable regulations in connection with its submission of a claim or invoice for payment from federal funds.

The FCA’s *qui tam* provisions permit a private person to bring a civil action on behalf of the United States against any individual or company who has knowingly presented a false or fraudulent claim for payments to the United States. The statute imposes liability upon a person who knowingly presents or causes to be presented a false or fraudulent claim for payment or approval or who knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.

The Court states that two categories of FCA false claims are available to Plaintiffs. They include:

- A factually false claim
- A legally false claim

Cressman’s claim is characterized as a “legally false claim”.

A claim is legally false when a claimant knowingly falsely certifies that it complied with the statute or regulation, the compliance with which is a condition or precondition for a government of payment.

The Cressman claim is based on what is described as a “false certification theory liability”. This theory requires that the plaintiff establish that the defendant knowingly made a false claim for payment of federal funds from a federal agency without disclosing and is in violation of a regulation or law that affects its eligibility for payment and that is a precondition for payment by the government. It must be shown that if the Government had been aware of the defendant’s violation of the laws and regulations that are the bases of the plaintiff’s FCA claims it would not have paid the defendant’s claims.

A misrepresentation about compliance with a statutory, regulatory, or contractual requirement is required to be material to the Government’s payment decision in order to be actionable under the FCA. The Court cites a United States Supreme Court case describing the materiality requirement as being “demanding” and “rigorous.” Such material representation is defined as one that goes “to the very essence of the bargain.” See *Universal Health Services*, 136 S. Ct. 1989 (2016).

SWS stated that Cressman failed to make an evidentiary showing sufficient to establish the existence of elements necessary to the FCA cause of action based on an implied false certification theory of liability. The company argued that Cressman had not shown and could not show an alleged failure to disclose a February 25, 2013 Discharge Incident/Violation when it submitted invoices to the Federal Agency for waste removal services it performed for those agencies was material to SWS’s right to payment for those Federal Agencies. It further asserted that the violation was not connected in any way to the waste disposal services that were contracted to and performed for the Federal Agencies.

The Court notes that under the undisputed facts the February 25, 2013 Discharge Incident/Violation at the TS was not remotely related to SWS’s service contracts with the Federal Agencies. Instead, the SWS contractual relationship with the Federal Agencies was limited to picking up and transporting solid waste to various landfills for disposal. TS played no role in the provision of these services.

The Court determined Cressman presented no evidence that the Federal Agencies would not have paid SWS's services had they known of the February 25, 2013 Discharge Incident/Violations at the TS. No connection or nexus between the regulatory violation at the TS and the waste collection SWS performed for the Federal Agencies was identified.

Cressman contended that SWS's compliance with all federal environmental public safety laws was an express or implied condition of the company's waste removal service contracts with the Government. He argued that SWS:

. . . violated the FCA by submitting invoices to the Federal Agencies for payment without disclosing its violation of various environmental laws/regulations arising out of the February 25, 2013 Discharge Incident/Violation.

The Court concludes that Cressman "overstates the scope of existing law with respect to claims under the FCA, particularly with respect to the materiality requirement for any such claim."

SWS's Motion for Summary Judgment was granted.

A [copy of the opinion can be downloaded below](#).