

False Claims Act/Reverse-False-Claim: Federal Appellate Court Reviews Challenge to Conservancy District's Oil and Gas Leases



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The United States Court of Appeals for the Sixth Circuit (“Sixth Circuit”) addressed in a June 26th opinion a False Claims Act (“FCA”) challenge by two individuals to oil and gas leases entered into by the Muskingum Watershed Conservancy District (“MWCD”). See *United States of America, ex rel. Leatra Harper and Steven Jansto v. Muskingum Watershed Conservancy District*, 2018 WL 3153674.

The action attempted to invoke the reverse-false-claim provision of the FCA which imposes liability on any person who “knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government.”

The United States, via the two relators, filed a Complaint in a United States District Court (Northern District of Ohio) under the FCA regarding oil and gas leases entered into by MWCD. The MWCD was declared a flood-control project in 1939 as part of the Flood Control Act. Pursuant to that act, the Secretary of the Army paid the MWCD \$1,500,000 less expenses for “lands, easements, rights-of-way, and other property.”

In November 1939, the Ohio Attorney General held that the MWCD lacked authority to transfer property interests that were necessary to perform its charter purposes. However, from 2011 to 2014, the MWCD entered into several leases allowing private companies to extract oil, gas, and other minerals from the project properties, and as a result was paid millions of dollars. The relators alleged that the MWCD was improperly in possession of United States property. This was based on their conclusion that the leases violate the deed given by the United States to the MWCD.

The Sixth Circuit, in analyzing the claim, turned to a previous, similar case. In that case the court held to succeed on an FCA claim, the defendant must have “knowingly” concealed, avoided, or decreased payment to the government. “Knowingly” in this instance requires the defendant to be aware of both an obligation to the United States and of his or her violation of that obligation.

The Sixth Circuit held that the relator’s Complaint “failed to adequately plead awareness by MWCD that the leases violated an obligation to the United States.” The relators argued that their allegations could create an inference that the MWCD knew it was violating its obligation to the United States. However, the court held that “the mere possibility of misconduct” was insufficient. Further, the court noted that the relators did not attempt to amend their Complaint, nor did they point to any other facts pertaining to

MWCD's knowledge of their misconduct. Thus, the Sixth Circuit affirmed the United State District Court's decision to dismiss the Complaint.

[Acopy of the opinion](#) can be found here.