

Fifth Circuit Limits FCA Liability Due to Lack of “Materiality” in Highway Guardrails Case

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Earlier this week we released a [Health Care Enforcement Advisory](#) about a recent decision from the U.S. Court of Appeals for the Fifth Circuit that may have a significant impact on the element of “materiality” in False Claims Act (FCA) cases. A panel of judges on the Fifth Circuit overturned a district court decision after a jury found the defendant, Trinity Industries, Inc. (Trinity), liable under the FCA for changing its highway guardrail design without disclosing such changes to the Federal Highway Administration (“FHWA”). The Fifth Circuit decided as a matter of law that the case lacked the element of “materiality” required in FCA cases.

Joshua Harmon, a Trinity competitor, filed suit in the U.S. District Court for the Eastern District of Texas against Trinity under the *qui tam* provision of the FCA. The government declined to intervene in the case. At trial, the jury concluded that Trinity’s failure to disclose to FHWA changes to its guardrails caused Trinity to become ineligible for federal reimbursement, thereby resulting in false claims being submitted to the government. A final judgment was entered against Trinity for a staggering \$663.4 million. The district court then denied Trinity’s request for a new trial, which Trinity appealed to the Court of Appeals.

Following a hearing, the Fifth Circuit [issued a 40-page ruling](#) on September 29, 2017, in Trinity’s favor. In its decision, the Fifth Circuit cited a memorandum submitted by FHWA during discovery for trial in which the agency stated that there was “an unbroken chain of eligibility for Federal-aid reimbursement [for Trinity’s guardrails] [that] has existed since September 2, 2005, and the [guardrail system] continues to be eligible today.” The Fifth Circuit relied heavily on the government’s repeated conclusions that it had never been defrauded by Trinity and stated that the plaintiff failed to rebut the “very strong evidence” of FHWA’s continued payment for Trinity’s product. As a result, the court ruled that the alleged facts did not satisfy the element of materiality required in FCA cases.

The decision provides a useful tool in defending FCA cases involving the government’s continued payment for the items and services at issue.

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