

## **The False Claims Act: Surviving the Public Disclosure Bar Just Got Easier for Relators in the Ninth Circuit**

For all Native Corporations involved in government contracting or that otherwise receive payments from the government, a development out of the Ninth Circuit makes relators—i.e., whistleblowers—in False Claims Act (FCA) cases more likely to qualify as an original source under the FCA and thus their cases may survive the public disclosure bar.

The Ninth Circuit Court of Appeals, in *United States ex rel. Solis v. Millennium Pharm., Inc.*, 885 F.3d 623 (9th Cir. 2018), potentially gave new life to a whistleblower’s False Claims Act case against three drug makers—Schering-Plough Corporation, Merck & Co., and Millennium Pharmaceuticals, Inc.—alleging that the drugmakers offered kickbacks to physicians in exchange for them prescribing certain drugs and also alleged off-label claims. The federal District Court for the Eastern District of California dismissed the relator’s case as barred by the FCA’s public disclosure bar because the information was publicly disclosed prior to the filing of relator’s complaint and because the relator was not an “original source” of the information disclosed. The Ninth Circuit, however, disagreed. Instead, it vacated the decision and remanded the case because subsequent Ninth Circuit case law modified the applicable legal standard for determining whether a relator qualifies as an original source. The Ninth Circuit’s decision revives the relator’s case and gives him another opportunity to demonstrate to the District Court that he was the original source of the previously disclosed information.

This case provides an excellent example of the constantly shifting legal landscape as courts continue to grapple with, and decide, close issues in the FCA space. These shifting legal interpretations also demonstrate the importance for litigants to monitor nationwide legal decisions in the FCA space, as those decisions can impact active litigation. For additional information, click [here](http://www.arentfox.com/perspectives/alerts/surviving-public-disclosure-bar-just-got-easier-relators-ninth-circuit): <http://www.arentfox.com/perspectives/alerts/surviving-public-disclosure-bar-just-got-easier-relators-ninth-circuit>