

U.S. Supreme Court Says Government Can Dismiss Whistleblower Lawsuits

Whistleblowers have brought many qui tam law suits against providers based on the False Claims Act. Enforcers love them! Now the U.S. Supreme Court has decided, in *United States ex rel. Polansky v. Executive Health Resources* [No. 21-1052 (U.S. June 16, 2023)], that the Government may dismiss such suits over the objections of persons or relators who filed them. This case is important to providers because it may make it more difficult for whistleblowers to continue their qui tam lawsuits.

The False Claims Act authorizes private parties, known as relators, to sue on the Government's behalf. These suits, so-called qui tam actions or whistleblower suits, are brought in the name of the Government. If suits lead to recoveries, relators may receive up to thirty percent of monies recovered.

In this case, Jess Polansky, MD, MPH, a former employee of Executive Health Resources, claimed that the company engaged in a scheme to provide hospitals with certifications of inpatient status that did not comply with rules of the Medicare Program. When the Government moved to dismiss, Dr. Polansky's case had been ongoing for several years with, of course, expenditures of money and resources.

According to the Court, in order to file motions to dismiss such cases the Government must intervene in, i.e., be a party to, them. The Government can intervene at any point and can move to dismiss at any time. Before a whistleblower suit is dismissed, however, a hearing must be held during which the relator's or whistleblower's interests are considered.

"If the Government offers a reasonable argument for why the burdens of continued litigation outweigh its benefits, the court should grant the motion. And that is so even if the relator presents a credible assessment to the contrary," said the Court.

The Court went on to describe the rights of the parties in qui tam or whistleblower lawsuits as follows:

- If the Government intervenes in suits, the Government has the primary responsibility for prosecuting actions and is not bound by what relators do. Relators can, however, continue as parties; i.e., file motions, conduct discovery, etc.
- Courts may limit relators' participation in cases on the basis that it would, for example, interfere with the Government's prosecution of cases or cause defendants undue burden. If the Government intervenes in cases later, however, courts may not limit the status and rights of relators.
- Whether or not the Government proceeds with suits, it may prevent relators' discovery if it would interfere with the Government's investigation or prosecution of related legal matters.

This makes it clear that the Government can file motions to dismiss qui tam or whistleblower lawsuits and that such cases can be dismissed, even though relators or whistleblowers object.