

US Court of Appeals Rules Qualified Immunity Defense Not Permissible in False Claims Act Cases

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Bailey Glasser is pleased to announce that the US Court of Appeals for the Fourth Circuit has denied an appeal filed by two individual defendants, Jimmy Gianato and Gale Given, in a qui tam action brought by Bailey Glasser's client Citynet, LLC, against Mr. Gianato and Ms. Given, both state employees, and against Frontier West Virginia.

Citynet's complaint alleges that all the defendants knowingly and willfully defrauded the federal government's Broadband Technology Opportunities Program in violation of the False Claims Act (FCA). The Fourth Circuit's opinion holds that the state employee defendants are not entitled to assert a qualified immunity defense in a False Claims Act case. The Fourth Circuit's published opinion not only impacts the pending litigation, but also has application to False Claims Act cases generally.

Mr. Gianato and Ms. Given took an interlocutory appeal from the district court's ruling against them on qualified immunity, arguing that they should be shielded from participating in further proceedings before the district court. In response, Citynet argued that the district court's ruling that further facts were needed before ruling on immunity is not immediately appealable. Citynet also argued that persons violating the FCA cannot be protected by qualified immunity because they "knowingly perpetrated a fraud on the United States government." The Fourth Circuit vacated the district court's decision, holding that these individual defendants are not entitled to assert a qualified immunity defense in False Claims Act cases.

"We are thrilled with the ruling from the US Court of Appeals and look forward to holding these individuals to account, along with Frontier, as the case moves back to the district court," said Bailey Glasser founding partner Benjamin Bailey, who argued the case for Citynet in the Fourth Circuit. Bailey Glasser partner Rebecca Pomeroy is also part of the team representing Citynet, along with Nick Preservati of the Spilman Thomas and Battle, PLLC law firm.

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Practice Areas

Appellate Advocacy