

## UNDERSTANDING THE FOURTH CIRCUIT'S RULING ON THE FIRST-TO-FILE RULE IN FCA CASES

On February 14, 2025, the United States Court of Appeals for the Fourth Circuit (the "Court" or "Fourth Circuit") issued a significant ruling in *United States ex rel. Rosales v. Amedisys North Carolina*, clarifying how the first-to-file rule applies to *qui tam* actions under the False Claims Act ("FCA"). The Court determined that the first-to-file rule must be assessed on a claim-by-claim and defendant-by-defendant basis, considering all properly filed complaints.

### BACKGROUND OF THE CASE

Relator Rosales filed a *qui tam* action in June 2020 against a hospice care provider and its subsidiaries, alleging fraudulent conduct aimed at securing payments from Medicare and Medicaid. The defendant moved to dismiss Rosales's complaint under the first-to-file rule, citing an earlier *qui tam* complaint—the *Byers Complaint*—filed in 2014 and later consolidated with other complaints in 2019. Although the government declined to intervene, Byers and other relators filed a joint amended complaint on October 26, 2021, asserting five FCA claims, including one under the Anti-Kickback Statute.

Rosales amended her complaint on October 15, 2021, adding new defendants, reasserting her original four claims and incorporating a fifth claim under the Anti-Kickback Statute. After the government and the State of North Carolina declined to intervene, the district court dismissed Rosales's complaint under the first-to-file rule. The central issue before the Fourth Circuit was whether this dismissal was warranted.

### THE FOURTH CIRCUIT'S DECISION

The Fourth Circuit clarified that the first-to-file rule does not automatically preclude later FCA claims against a defendant. Instead, courts must evaluate each properly filed complaint and analyze claims on a case-by-case basis.

The Court's key findings included:

#### 1. Properly Filed Complaints Must Be Considered

The Court determined that the district court erred in limiting its review to the original complaint. The FCA does not prohibit amendments, and the Fourth Circuit joined other circuits that have held that courts must evaluate all properly filed complaints to determine when a specific claim was first raised.

#### 2. Claim-by-Claim Analysis

The Fourth Circuit emphasized that the first-to-file rule applies to individual claims rather than entire complaints. Courts must differentiate between genuinely new claims and recycled ones. For instance, if the original complaint alleges one breach and a subsequent complaint alleges the same breach plus another, the first may be barred, but the second must be evaluated separately.

#### 3. Defendant-by-Defendant Basis

The Court also held that the first-to-file rule must be analyzed on a defendant-by-defendant basis. In Rosales's case, her amended complaint named a different subsidiary and added a medical director and his private practice as defendants. The Fourth Circuit explained that if a prior complaint provides sufficient notice to the government about a fraudulent scheme involving related entities, new claims against additional subsidiaries may be barred. However, if a complaint alleges specific, geographically limited fraud that does not suggest a broader scheme, claims against different subsidiaries may not be precluded.

### PRACTICAL TAKEAWAYS

The Fourth Circuit's ruling clarifies that the first-to-file rule is not an automatic bar to all later FCA claims. Instead, courts must review all properly filed claims and assess each claim individually. This decision ensures that whistleblowers can still bring new and distinct allegations of fraud even if similar cases were filed previously.

For hospitals and health care systems facing FCA lawsuits, this ruling underscores the importance of carefully analyzing the scope of prior complaints when assessing the viability of new *qui tam* actions and whether there may be an avenue for early dismissal in litigation—an opportunity that could save critical hospital resources.

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