

THIRD CIRCUIT: PHARMACIST'S CLAIMS DO NOT SURVIVE PUBLIC DISCLOSURE BAR

The Third Circuit Court of Appeals¹ became the third federal appeals court in one week to issue an opinion regarding the False Claims Act's Public Disclosure Bar.² In a non-precedential opinion, the Third Circuit **affirmed the dismissal** of a pharmacist's allegations finding the allegations were based on public information for which the Relator was not the original source.

THE DECISION

The Relator alleged that pharmaceutical corporations rigged wholesale pricing of brand name pharmaceuticals. The district court dismissed these claims for want of jurisdiction under the Public Disclosure Bar.

In a four-page opinion, the Third Circuit affirmed the dismissal. It noted that the substantive allegations were not only the subject of a previous FCA action but substantially reiterated in the Congressional Record. These facts triggered the Public Disclosure Bar and, therefore, the Relator's claims could only have proceeded if he was an original source of the information.

The Court of Appeals held that he was not the original source but simply a pharmacist that aggregated publicly available information:

he discovered the widespread price inflation . . . "through his diligence," which amounted to an eyeball comparison of two publicly available price listings.

Finding he had no direct knowledge of any of the publicly available information, the court affirmed the district court's dismissal of the case.

HEALTH CARE TAKEAWAY

The flurry of decisions regarding the FCA's public disclosure bar in less than one week highlights how quickly the ground shifts in this complex legal environment. Counsel experienced in defending against government investigations and whistleblower claims must stay updated on the state of the law in each jurisdiction.

Should you have any questions regarding the False Claims Act or defense against government and whistleblower FCA actions, please contact:

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¹The Third Circuit is the federal appeals court for Pennsylvania, New Jersey and Delaware.

² The Third Circuit joined the **Fifth Circuit** and **Sixth Circuit** in issuing opinions regarding the FCA's public disclosure bar.