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False Claims Act

Straight Shooting Guards Mattered To Security Contract, Court Rules

BY DANIEL SEIDEN

The government may pursue its case that Triple Canopy Inc. provided security at an airbase in Iraq with security guards who failed to satisfy marksmanship qualifications, the U.S. Court of Appeals for the Fourth Circuit ruled (*United States v. Triple Canopy Inc.*, 4th Cir., No. 13-2191, 5/16/17).

“Guns that do not shoot are as material to the government’s decision to pay as guards that cannot shoot straight,” the court said.

Alleging that Triple Canopy knew its guards failed to satisfy a critical contractual requirement but nonetheless requested payment each month satisfies Supreme Court standards for a False Claims Act (FCA) case, the three-judge panel concluded.

The ruling stood by an earlier decision that pre-dated the Supreme Court’s adoption of the implied certification theory of liability in *Universal Health Servs., Inc. v. United States ex rel. Escobar*, which allows cases to proceed without broken express promises of compliance with contract requirements or statutes.

Triple Canopy had asked the Supreme Court to review the case, which instead issued the *Universal Health* decision, and sent Triple Canopy’s case back to the Fourth Circuit for review under the new *Universal Health* standards, Bob Rhoad and Matthew Turetzky, both with Sheppard Mullin Richter & Hampton LLP, Washington, told Bloomberg BNA.

The ruling here zeroed in on two key facts to allow the case to proceed—the fact the government elected not to renew Triple Canopy’s contract and subsequently intervened in the whistle-blower’s lawsuit, and the fact that “a security guard’s ability to shoot straight went to the very heart” of the contract, they said.

Falsifying Marksmanship Scorecards Whistle-blower and Triple Canopy supervisor Omar Badr asserted that the firm billed the government after falsifying the marksmanship scorecards for guards providing security at Al Asad Airbase in Iraq.

Triple Canopy asserted that the case fell short of Supreme Court standards, but the court disagreed, stating that seeking payments for guards that failed to meet a contractual responsibility constituted falsity under the FCA.

Triple Canopy’s omissions of contractual noncompliance were material to government payment decisions, said Judge Dennis W. Shedd.

The government’s decisions to stop doing business with Triple Canopy and join Badr’s case are evidence that Triple Canopy’s falsehood was material, the court found.

Judges G. Steven Agee and James A. Wynn Jr. joined in the decision.

Quinn Emanuel Urquhart & Sullivan LLP represented Triple Canopy. Day & Johns PLLC represented Badr. Charles W. Scarborough and others from the Justice Department represented the government.

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