

White and Williams Involved in Dismissal of Massachusetts False Claims Act Case

8.7.18

On August 7, 2018, the Supreme Judicial Court of the Commonwealth of Massachusetts (SJC) affirmed the dismissal of a Massachusetts False Claims Act (MFCA) case against firm client CenturyLink and a number of other telecommunications companies. In *Phone Recovery Services LLC v. Verizon of New England Inc., et al.*, the plaintiff is a venture-backed entity formed for the purpose of pursuing claims that telephone service providers have undercharged the 911 fees that are collected by law to fund the operations of 911 systems, and, as a result, fraudulently under-remitted such fees to the state entities that oversee the systems. The plaintiff alleges that the defendants under-charged and under-remitted to the Commonwealth of Massachusetts hundreds of millions of dollars during a relatively narrow window of time.

The defendants moved to dismiss the case on multiple bases, including that: (1) the 911 fees are a tax and the MFCA does not apply to claims involving taxes; and (2) Phone Recovery, as an entity and not a natural person, lacks standing. The Superior Court dismissed the complaint on the first ground, ruling that the fees are taxes and the MFCA claim therefore would not lie. Phone Recovery appealed.

On August 7, 2018, the SJC affirmed dismissal, but on the second ground. The court ruled that the MFCA permits only "individuals" to sue. Considering the term "individual" refers only to natural persons and since Phone Recovery is an entity and not a natural person, it lacked standing to sue. The court remanded the case to the Superior Court with directions that it enter judgment dismissing the case for lack of jurisdiction based on the lack of standing.

David Chaffin and Eric Hermanson are co-counsel for CenturyLink.