



Federal Court Finds False Claims Act Damages and Penalties Unconstitutionally Excessive

by Murad Hussain and Alex Potcovaru

On February 8, 2024, a Minnesota federal judge sharply reduced a \$487 million False Claims Act (FCA) trial verdict against ophthalmic supply company Precision Lens and its late co-founder Paul Ehlen, holding that the Eighth Amendment's Excessive Fines Clause required cutting the total by more than half. In 2023, a federal civil jury found that between 2006 and 2015, the defendants gave ophthalmologists gifts and other benefits to induce their use of Precision Lens' products when performing cataract surgeries covered by federal healthcare programs, and thereby violated the FCA by causing the doctors to submit nearly 65,000 Medicare and Medicaid claims for surgeries that were tainted by violations of the Anti-Kickback Statute. After the jury determined that the conduct resulted in roughly \$43 million in damages, the Department of Justice (DOJ) sought treble damages and statutory per-claim penalties under the FCA, bringing the total to over \$487 million in damages and penalties. In May 2023, Judge Wilhelmina M. Wright entered judgment against the defendants, but on February 8, partially granted their motion for post-judgment relief, focusing her analysis on the verdict's unconstitutionality under the Excessive Fines Clause. *U.S. ex rel. Fesenmaier v. Cameron-Ehlen Group Inc. et al.*, No. 13-cv-3003, 2024 WL 489708 (D. Minn. Feb. 8, 2024).

To begin, the court granted the defense motion for judgment as a matter of law regarding an alleged kickback to one physician and the 258 claims submitted in 2009 that supposedly stemmed from that kickback (the Riedel claims). This reduced the judgment by over \$4.5 million, consisting of treble damages and statutory penalties for each claim.

The defendants also attacked the overall damages and penalties verdict on numerous grounds. First, they objected to the method of calculating actual damages, but the court largely rejected this argument beyond the above-mentioned Riedel claims. Second, the defendants fought the calculation of statutory penalties, noting that the fines were essentially doubled due to the Medicare billing process that results in a single surgery producing two separate claims submissions—one for the facility overhead fee and one for the physician's professional fee, each of which then triggered its own statutory penalty. But the court rejected that argument, focusing on the FCA's statutory per-claim metric rather than adopting a per-service approach. Third, the defendants sought to exclude a handful of outlier claims, but the court determined that the jury had properly considered those claims and that, in any event, removing them would barely affect the verdict or the court's constitutional analysis.

Then came the court's \$260 million question: Did the FCA penalties imposed on defendants violate the Excessive Fines Clause of the Constitution? The court first noted that the Excessive Fines Clause applies to punitive civil penalties, that the amount owed by the defendants "consists substantially of penalties," and that the Excessive Fines Clause would therefore apply to the judgment

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at issue. Citing Eighth Circuit precedent, the court noted that “[a] punitive sanction violates the Excessive Fines Clause if it is ‘grossly disproportional to the gravity of a defendant’s offense.’” *U.S. v. Aleff*, 772 F.3d 508, 512 (8th Cir. 2014). To determine gross disproportionality, the court considered the range of factors identified by *Aleff*, including reprehensibility of the defendant’s conduct, harm to the victim, the ratio of punitive to actual damages, penalties in similar cases, legislative intent, and the defendant’s ability to pay. The court also emphasized the Supreme Court’s conclusions in *State Farm Mutual Auto Insurance Co. v. Campbell*, 538 U.S. 408 (2003), that an award of more than four times the amount of compensatory damages might be unconstitutional, and that already substantial levels of compensatory damages may reduce the constitutionally appropriate ratio even further.

Ultimately, the court analyzed the *Aleff* factors holistically. While “no single factor was determinative in reaching [its] conclusion,” the court held that damages in the case were constitutionally capped at just under \$217 million. This broke down into about \$43 million in actual “single” damages, \$86 million in treble damages less the single-damages base, and \$86 million in penalties (not including post-judgment interest, attorneys’ fees, or other taxable costs). The court highlighted that its revised judgment is five times the amount of actual damages in the case and that the ratio of punitive damages (i.e., penalties and treble damages less single-damages) to actual single-damages is exactly four to one.

On March 5, 2024, the defendants filed their notice of appeal to the U.S. Court of Appeals for the Eighth Circuit. The appeal will be closely watched for how the circuit court addresses these important constitutional questions.