

Fifth Circuit Affirms Dismissal of Whistleblower's \$219 million False Claims Act Suit

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Last month, the Fifth Circuit [affirmed the dismissal](#) of a whistleblower's \$219 million False Claims Act suit against a pharmaceutical company for alleged "off-label marketing."

The whistleblower had alleged that the company improperly marketed biliary stents for use in vascular procedures, violating the False Claims Act in three ways: (1) fraudulently inducing the Food and Drug Administration during the clearance process; (2) violating the Anti-Kickback Statute resulting in false certifications of compliance; and (3) falsely presenting claims ineligible for payment due to off-label use.

The district court dismissed the first two theories and permitted the third theory (false presentment) to go to a jury. Following a 12-day trial, the jury returned a verdict in favor of the pharmaceutical company last year.

On appeal, the whistleblower focused primarily on the lower court's dismissal of the first two theories and raised only minor arguments about the jury verdict. On May 31, the Fifth Circuit affirmed on all theories, finding no reversible error in the district court's rulings and refusing to revive the claims.