

Issar, Cardinal and Shugrue in Law360: How 9th Circ. Customs Ruling Is Affecting FCA Litigation

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PRACTICES False Claims Act and Qui Tam Defense, Government Contracts, Litigation

Earlier this year, the U.S. Court of Appeals for the Ninth Circuit held that individuals and companies that file False Claims Act lawsuits on behalf of the government can sidestep the otherwise exclusive jurisdiction of the U.S. Court of International Trade and pursue claims relating to customs violations in federal district court. As more of these types of cases are filed, we are likely to see a corresponding rise in settlements, like the \$12.4 million settlement announced by the Department of Justice [two weeks ago](#).

Haynes Boone attorneys [Neil Issar](#), [Jesse Cardinal](#) and [Davis Shugrue](#) authored an article for *Law360* with assistance from [Daniel Ramish](#) and [Ed Lebow](#) discussing the decision, its expected impact and more

Read an excerpt below.

On June 23, in *Island Industries v. Sigma Corp.*, the U.S. Court of Appeals for the Ninth Circuit held that individuals and companies that file False Claims Act lawsuits on behalf of the government can sidestep the otherwise exclusive jurisdiction of the U.S. Court of International Trade and pursue claims relating to customs violations in federal district court.

In addition to its potential impacts on future litigation and enforcement actions, this decision adds to the surge in recent discourse surrounding qui tam relators and the FCA.

The Ninth Circuit's Island Industries Decision

In *Island Industries*, a manufacturer of steel pipe fittings accused a competitor of importing pipe fittings from China and falsely describing them as couplings rather than welded outlets to avoid paying an anti-dumping customs duty.

The manufacturer filed a qui tam lawsuit in the U.S. District Court for the Central District of California. In September 2021, a jury found the defendant violated the FCA, and owed over \$8 million in penalties — tripled to over \$24 million under the FCA's treble damages provision — and over \$1.8 million in civil monetary penalties.

On appeal, a key issue was whether the federal district court had jurisdiction to hear this type of case — that is, a qui tam FCA action concerning the recovery of customs duties or customs fraud — or did it have to be brought before the CIT, a trial-level federal court with nationwide jurisdiction over certain questions related to international trade.

In particular, the CIT has exclusive jurisdiction over civil actions that arise out of an import transaction and are "commenced by the United States," as provided in Title 28 of the U.S. Code, Section 1582, to recover customs duties; and to impose civil penalties for making a false statement or an omission that deprives the government of customs duties, as provided in the Tariff Act of 1930.

The Ninth Circuit has long held that under these statutes the CIT retains exclusive jurisdiction over FCA actions concerning customs fraud when they are brought by the U.S. government.

In *Island Industries*, the Ninth Circuit finally addressed the other side of the coin: FCA actions concerning customs fraud that are brought by relators. The Ninth Circuit held that cases initiated by relators can be brought in federal district court and are not limited to the CIT because they are not commenced by the U.S.

So, at least for now, in the Ninth Circuit a private party can pursue FCA claims against a competitor in federal district court on behalf of the government even though the government could not bring those claims itself.

To read the full article from *Law360*, click [here](#).