United States ex rel. Heath v. Wisconsin Bell, Inc.

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92 F.4TH 654 (7TH CIR. 2023)

In *United States ex rel. Heath v. Wisconsin Bell, Inc.*, the Seventh Circuit addressed whether E-rate program reimbursements are subject to the False Claims Act ("FCA"), holding that genuine issues of fact precluded summary judgment on the elements of falsity, *scienter*, and materiality, and, as a matter of law, government funds are involved in the E-rate program.[1] Accordingly, since government funds are involved, fraudulent reimbursement requests under this program fall under the FCA's definition of "claims."[2] The Supreme Court granted certiorari[3] to address whether requests for reimbursement under the E-rate program constitute "claims" for purposes of the FCA.[4] The Supreme Court heard arguments in this case on November 4, 2024.[5] The Supreme Court issued a written opinion on February 21, 2025, affirming the Seventh Circuit and concluding that requests for reimbursement under the E-rate program do "qualify as 'claims' under the FCA."[6]

I. BACKGROUND

The E-rate program provides subsidies to allow schools and libraries "in rural or economically disadvantaged areas" to obtain affordable telecommunications services.[7] The Federal Communication Commission's (FCC) "'lowest-corresponding-price' rule" mandates that service providers in this program "offer schools and libraries 'the lowest price . . . charge[d] to non-residential customers who are similarly situated.'"[8]

Wisconsin Bell, a service provider and participant in the E-rate program, was "aware of the lowest-corresponding-price rule" since its implementation in the 1990s, but declined to ask for clarification on the rule

1. *See* United States ex rel. Heath v. Wisconsin Bell, Inc., 92 F.4th 654, 662, 664-65, 671 (7th Cir. 2023).
2. *See id.* at 666.
3. Wisconsin Bell, Inc. v. United States, 144 S. Ct. 2657 (2024) (mem.).
4. *Wisconsin Bell, Inc. v. United States, ex rel. Todd Heath*, SCOTUSBLOG, https://www.scotusblog.com/case-files/cases/wisconsin-bell-inc-v-united-states-ex-rel-todd-heath/ [https://perma.cc/5K37-88AC].
5. *Id.*
6. Wisconsin Bell, Inc. v. United States ex rel. Heath, 145 S. Ct. 498, 508 (2025).
7. *Heath*, 92 F.4th at 657 (citing Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56).
8. *Id.* at 658 (quoting 47 C.F.R. § 54.500).

and, until 2009, did not formulate any procedures for compliance.[9] Before 2009, Wisconsin Bell treated transactions with schools and libraries identically to transactions with other customers, "offer[ing] the highest prices 'whenever possible.'"[10] Wisconsin Bell began creating policies related to the E-Rate program in 2009, which were not finalized until 2011.[11]

In 2008, Todd Heath brought a *qui tam* action against Wisconsin Bell, alleging a violation of the FCA based on overcharges in violation of the E-rate program rules.[12] In 2015, Heath filed a second amended complaint, the parties conducted discovery, and the district court granted Wisconsin Bell's motion for summary judgment.[13]

II. ANALYSIS

The FCA is violated if a party "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval" that tends to influence a decision made by the government regarding how to use federal funds.[14] Accordingly, the elements of an FCA case are: (1) falsity, (2) *scienter*, (3) materiality, and (4) federal funds.[15] The Seventh Circuit analyzed each of these elements in turn.[16]

A. Falsity, Scienter, and Materiality

While the district court concluded that Heath did not present sufficient evidence to show falsity,[17] the circuit court found that there was a factual dispute with respect to this element because Heath's expert report showed that, accounting for factors including contract length, location, size, and distance from the provider, schools and libraries were charged higher rates, while other "non-residential customers" were charged less.[18] The court concluded that this showing, in combination with Wisconsin Bell's "admission that it had no methods or procedures in place to comply with the E-rate program" before 2009 and their reluctance to ask for an explanation of the program, created a genuine dispute over whether schools or libraries were charged higher rates in comparison to other similarly situated customers.[19]

The district court, relying on *United States ex rel. Schutte v. SuperValu Inc.*,[20] also found that Heath did not present sufficient evidence of knowledge,

9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.* at 659.
13. *Heath*, 92 F.4th at 659.
14. *Id.* (quoting 31 U.S.C. § 3729(a)(1)(A); Universal Health Servs., Inc. v. United States ex rel. Escobar, 579 U.S. 176, 193 (2016)).
15. *Id*. at 660.
16. *Id.*
17. *Id.* at 660 (citing United States ex rel. Heath v. Wisconsin Bell, Inc., 593 F. Supp. 3d 855, 860 (E.D. Wis. 2022)).
18. *Id.* 660-61.
19. *Heath*, 92 F.4th at 661-62.
20. United States ex rel. Schutte v. SuperValu Inc., 9 F.4th 455, 463-65 (7th Cir. 2021).

or *scienter*, because "Wisconsin Bell's interpretation of the lowest-corresponding-price rule . . . was 'objectively reasonable'" and aligned with the statutory and regulatory language.[21] However, after that ruling, the Supreme Court vacated the Seventh Circuit's *Schutte* decision,[22] finding that knowledge under the FCA means "knowledge and subjective beliefs," and is not an objective standard.[23] Under this standard, the court here found that Heath presented sufficient evidence for an inference of *scienter* because Wisconsin Bell knew about the lowest-corresponding-price rule but failed to set protocols for complying with it until 2009.[24] Wisconsin Bell also failed to explain how, without these protocols, it was possible to know whether it was complying with the rule, which presented an issue of fact regarding "whether Wisconsin Bell was acting with reckless disregard" of the risk that it was violating E-rate program rules.[25] The court also found a genuine dispute of material fact with respect to *scienter* even after Wisconsin Bell began to set E-rate policies in 2009, because Heath presented evidence that "overcharges increased from 2008 through 2010" and did not decrease until 2011, which could lead a factfinder to "reasonably infer that Wisconsin Bell acted in reckless disregard of whether" it was complying with the lowest-corresponding-price rule.[26]

Wisconsin Bell also argued that "Heath failed to demonstrate a factual dispute" with respect to materiality because payments were not "expressly" conditioned upon compliance with the lowest-corresponding-price rule, and the government continued to reimburse Wisconsin Bell after learning about Heath's allegations, but the court disagreed.[27] The court observed that it is relevant whether the government expressly states that a certain condition is required to receive a payment, but not dispositive.[28] Since the lowest-corresponding-price rule is important to the E-rate program, providers should have understood, even without having to expressly certify their compliance, that failure to comply with the rule "could influence reimbursement decisions."[29] The court also concluded that mere allegations are not equivalent to "actual knowledge of actual violations," and had the government known about "actual overcharges," it was "reasonable to infer" that it would not have continued to reimburse Wisconsin Bell.[30] Therefore, the court held that materiality "does not offer an alternative basis for affirming summary judgment."[31]

21. *Heath*, 92 F.4th at 663 (quoting *Heath*, 593 F. Supp. 3d at 861).
22. United States ex rel. Schutte v. SuperValu, Inc., 598 U.S. 739, 758 (2023).
23. *Heath*, 92 F.4th at 663 (quoting *Schutte*, 598 U.S. at 749).
24. *Id.* at 663.
25. *Id.* at 663-64.
26. *Id.* at 664.
27. *Id.*
28. *Id.* at 664 (quoting *Escobar*, 579 U.S. at 194).
29. *Heath*, 92 F.4th at 665.
30. *Id.*
31. *Id.*

B. *Involvement of Federal Funds*

The court next addressed Wisconsin Bell's argument that "any allegedly fraudulent claims for payment of subsidies under the E-rate program" do not constitute claims under the FCA because the money for the program comes from private parties, who pay fees to another private party who runs the program.[32] Therefore, "the government does not 'provide' the program's funds . . . and is not hurt by fraud in the program."[33] In *United States ex rel. Shupe v. Cisco Systems, Inc.*,[34] the Fifth Circuit dismissed a similar FCA case using the same logic.[35]

Here, the Seventh Circuit "decline[d] to follow *Shupe*," concluding that the reimbursement requests considered here are claims under the FCA.[36] While prior to 2009, the FCA's definition of a claim only included claims for which the government "provides any portion of the money which is requested or demanded," the current definition includes any claims for which the government "provides or has provided any portion" of the funds, as well as claims submitted to government agents.[37] The court then analyzed three avenues for application of the FCA to the current case.[38]

1. Funds Are Provided by the U.S. Treasury

Under the past and current definitions of "claim," if the "government provides 'any portion' of the money or property" at issue, regardless of the size of said portion, the FCA can apply.[39] Here, both Heath and the government demonstrated that under the E-rate program, in addition to receiving money from telecommunications providers, the Universal Services Administrative Company ("USAC") "receives funds directly from the U.S. Treasury," which Wisconsin Bell did not dispute.[40] Accordingly, some of the program's money "is comprised of government funds," so false claims submitted to the program fall under both the past and current definitions of a "claim" under the FCA.[41] The court noted that *Shupe* "acknowledged" that claims can fall under the FCA if "any portion" of the funds come from the government, however the court in *Shupe* seemed to be unaware that some of the money for the E-rate program came from the U.S. Treasury.[42]

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32. *Id.*
33. *Id.*
34. United States ex rel. Shupe v. Cisco Systems, Inc., 759 F.3d 379 (5th Cir. 2014).
35. *Heath*, 92 F.4th at 665-66 (citing *Shupe*, 759 F.3d).
36. *Id.* at 666.
37. *Id.* at 666-67 (quoting 31 U.S.C. § 3729(c) (2008); 31 U.S.C. § 3729(b)(2) (effective May 20, 2009)).
38. *Id.* at 667-71.
39. *Id.* at 667 (citing *Shupe*, 759 F.3d at 383).
40. *Id.*
41. *Heath*, 92 F4th at 667.
42. *Id.* (citing *Shupe*, 759 F.3d at 383-84).

2. The USAC is a Government Agent

The court next analyzed the portion of the FCA which includes claims submitted to an agent of the government, regardless of whether the money belongs to the U.S.[43] The court found the USAC, which "administers the E-rate program for the FCC," meets the criteria for a principal-agent relationship.[44] When the FCC created the USAC to manage the E-rate program, this was a manifestation from the United States of "assent for the USAC to act on [its] behalf."[45] By following the government's directions, the USAC also "manifested its consent" to the arrangement.[46] The court also rejected Wisconsin Bell's argument that the USAC is not a government agent because it "cannot alter the United States' legal obligations."[47] Since the USAC has the power "to bill contributing telecommunications companies," "collect contributions from them," and "distribute funds to eligible recipients,"[48] the USAC is able to "alter[] the relationships between the United States and third parties."[49] Further, the actions of the USAC are overseen by the FCC, a federal agency.[50] Therefore, the court found that "the USAC is an agent of the federal government," and claims submitted to it fall under the FCA's current definition of a "claim."[51]

3. The Government "Provided" the Funds

The court also concluded that "the federal government's role in establishing and overseeing the E-rate program" was enough to render the FCA applicable here.[52] Under the E-rate program, the FCC, as instructed by Congress, "collect[s] fees from telecommunication companies."[53] The FCC has the power to decide what portion of revenue these companies contribute to the program,[54] and the money is then held in the Universal Service Fund.[55] The USAC, created and supervised by the FCC, runs the E-rate program and manages these funds.[56] While the USAC makes the primary determinations regarding the distribution of funds, the FCC can review subsidy denials, as well as assist with "policy and interpretation questions" and debt collection.[57]

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43. *Id.* (quoting 31 U.S.C. § 3729(b)(2)(A)(i)).
44. *Id.* at 668 (citing United States ex rel. Kraus v. Wells Fargo & Co., 943 F.3d 588, 598 (2d Cir. 2019)).
45. *Id.*
46. *Id.*
47. *Heath*, 92 F4th at 668.
48. *Id.* (citing 47 C.F.R. § 54.702(b)).
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.*
53. *Heath*, 92 F.4th at 668 (citing 47 U.S.C. § 254(d) (2016)).
54. *Id.* (citing 47 C.F.R. § 54.709 (2022)).
55. *Id.*
56. *Id.*
57. *Id.* at 669 (citing 47 C.F.R. §§ 54.719(b), 54.702(c); ECF No. 111, 112, 113).

The FCA applies when "there is a 'sufficiently close nexus' between the defrauded entity or program and the federal government 'such that a loss to the former is effectively a loss to the latter,'" and the court determined that this nexus is present here.[58] While in other cases, government approval of funds, without the use of government money, was not enough to conclude that the government "provided" the funds, if the government significantly participates in the distribution of certain funds and is the source of the power over the funds, this is sufficient to render the FCA applicable.[59] Here, the court found that the government was significantly involved at "every step leading up to [the] funds being made available," and therefore the FCA applied.[60]

The Seventh Circuit went on to disagree with *Shupe*'s holding for three reasons.[61] First, the Fifth Circuit failed to realize that the E-rate program's money originates from the U.S. Treasury.[62] Second, since 2009, the definition of a claim includes claims sent to government agents, and the USAC acts as a government agent with respect to the E-rate program, and therefore the FCA applies to claims under the current definition.[63] Third, the involvement of Treasury funds "is a sufficient but not necessary basis for applying" the FCA.[64] The FCA "requires only that the federal government provide" the funds at issue, [65] which includes funds provided in an indirect manner as long as the government "maintain[s] an active role in [the] collection and distribution" of the funds.[66] Here, the court concluded that there was no factual dispute over whether money for the E-rate program came from the Treasury, and therefore as a matter of law government funds are involved in the E-rate program.[67]

III. CONCLUSION

The Seventh Circuit found that Heath provided sufficient evidence to demonstrate genuine issues of fact with respect to falsity, *scienter*, and materiality, and thus reversed and remanded the case to the district court.[68] Since it was not disputed that some of the funds for the program come from the U.S. Treasury, the court found as a matter of law that government funds are involved in the program.[69]

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58. *Id.* (quoting United States ex rel. Yesudian v. Howard Univ., 153 F.3d 731, 738-39 (D.C. Cir. 1998).
59. *Heath*, 92 F.4th at 669-70 (comparing Costner v. URS Consultants, Inc., 153 F.3d 667 (8th Cir. 1998), and Hutchins v. Wilentz, Goldman & Spitzer, 253 F.3d 176 (3d Cir. 2001) (FCA did not apply), with *Kraus*, 943 F.3d at 603 (FCA applied)).
60. *Id.* at 670.
61. *Id.* (citing *Shupe*, 759 F.3d 379).
62. *See id.*
63. *Id.*
64. *Id.*
65. *Heath*, 92 F.4th at 670 (citing *Kraus*, 943 F.3d at 602).
66. *Id.* at 671.
67. *Id.*
68. *Id.* at 662, 664-65, 671.
69. *Id.* at 671.