

January 18, 2020

DOJ Announces First False Claims Act Settlement with Borrower and its CEO for PPP Fraud

On January 12, 2021, the U.S. Attorney's Office for the Eastern District of California announced the first civil settlement with a borrower for allegedly committing fraud in obtaining a Paycheck Protection Program (PPP) loan, in violation of the False Claims Act (FCA) and the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA).¹ DOJ alleged that the borrower, SlideBelts Inc., and its president and CEO falsely stated in their PPP applications that the company was not "presently involved in any bankruptcy," which was a condition of PPP eligibility.² The settlement was for \$100,000, and the company also previously repaid the \$350,000 PPP loan.

Although DOJ has brought over 50 criminal prosecutions for PPP fraud, this is the first civil action, highlighting another tool available to DOJ to address alleged misconduct in connection with PPP loans. Private plaintiffs also may bring lawsuits on behalf of the government under the FCA, and a *qui tam* relator recently filed a claim under the FCA alleging that a borrower committed PPP fraud.³

DOJ's announcement comes as the PPP is reopening following Congress's recent infusion of \$284.5 billion into the program. DOJ's action underlines the importance of borrowers carefully reviewing PPP's eligibility criteria (which Congress has recently both expanded and narrowed⁴) and other restrictions before applying for a loan and later applying for forgiveness. Although the defendants in this case had actual knowledge of the falsity of their statements, it bears remembering that the False Claims Act also imposes liability where a defendant has been deliberately ignorant or has shown "reckless disregard" for the truth or falsity of his or her statements.⁵

The Settlement Agreement

SlideBelts Inc. manufactures fashion accessories and sells them on the internet. Brigham Taylor is President, CFO, and CEO of SlideBelts. In their settlement with the DOJ, the defendants did not concede liability, but they did "admit, acknowledge, and accept responsibility" for the facts recited:

- In August 2019, the company filed a Chapter 11 bankruptcy petition. While that bankruptcy proceeding was pending, the company applied to three different lenders for PPP loans.
- On April 3, 2020, the company submitted a PPP application for \$300,000 to a credit union in Sacramento, California, and on April 8, 2020, the company submitted another PPP application for

\$350,000 to a federally insured bank located in New Jersey. On both applications, in response to Question 1, the company answered falsely that it was not “presently involved in any bankruptcy.”

- On April 10, a manager at the credit union told the company by email that Question 1 had been answered incorrectly because the manager knew the company was in bankruptcy. Taylor responded that this was an “oversight,” but argued that SBA was “overreaching” by including a certification about pending bankruptcy in borrower applications.
- On April 14, Taylor repeated this argument and asked the credit union to approve the loan. The credit union declined based on the bankruptcy, as to which Taylor responded, “that does make sense. All good!”
- Three hours after this rejection, Taylor and SlideBelts submitted a third PPP application to a federally insured bank in Minnesota, making the same false statement regarding bankruptcy.
- Then, the New Jersey-based bank approved the PPP application and Taylor signed the note, although he knew from his earlier communications with the credit union that this second bank would not provide the PPP loan had it known that the company was in bankruptcy. By obtaining a PPP loan from the bank, the defendants also caused the bank to submit a false claim to SBA for \$17,500 in loan processing fees, which SBA paid.
- On April 22, after the bank distributed the loan proceeds to SlideBelts, Taylor wrote an email to the bank explaining that the company had “just realized that we may not have answered [Question 1] correctly since we filled out the application quickly and wanted to bring it to your attention.” Taylor disclosed that the company was in bankruptcy, but did not return the funds at this time.
- Instead, the company asked the bankruptcy court for retroactive approval of the PPP loan, and both the bank and SBA opposed the motion. SBA repeatedly advised the company to return the loan, which it finally did on July 8, 2020.

In the settlement, DOJ contends that the defendants are liable for damages and penalties totaling \$4,196,992 under FIRREA and the FCA, but agreed to settle for \$100,000.

We will continue to monitor developments affecting the PPP and other COVID-relief programs.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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- ¹ The DOJ press release is available here: <https://www.justice.gov/usao-edca/pr/eastern-district-california-obtains-nation-s-first-civil-settlement-fraud-cares-act>; and the settlement agreement is available here: <https://www.justice.gov/usao-edca/press-release/file/1352931/download>. The FIRREA allegations are based on violations of 18 U.S.C. § 1014, 15 U.S.C. § 645(a), 18 U.S.C. § 1001, 18 U.S.C. § 1343, and 18 U.S.C. § 1344. FIRREA permits the DOJ to sue for civil penalties for certain criminal offenses (including federal mail and wire fraud) affecting federally insured financial institutions.
- ² The SBA form states that if Question 1 is answered “Yes,” then the “loan will not be approved.” Additionally, the SBA’s Interim Rule of April 24, 2020 stated: “If the applicant or the owner of the applicant is the debtor in a bankruptcy proceeding, either at the time it submits the application or at any time before the loan is disbursed, the applicant is ineligible to receive a PPP loan.”
- ³ In *U.S. ex rel. Bucher v. Blaise Alexander Inc.*, a *qui tam* relator alleged that Blaise Alexander, Inc., a car dealership, violated the False Claims Act by falsely certifying that it was eligible for a PPP loan when it had more than 500 employees across 19 locations in Pennsylvania. The complaint further alleged that the company falsely certified that PPP funds would be used in a manner consistent with the requirements of the CARES Act. According to the relator, after spending PPP funds on payroll, the company required salespeople to pay back these funds by withholding their sales commissions. The case was voluntarily dismissed on December 7.
- ⁴ See our memo, “PPP Update: Latest COVID-19 Relief Legislation Includes Extension of Paycheck Protection Program and Establishes Second Draw Loans,” December 28, 2020, available at: <https://www.paulweiss.com/practices/transactional/finance/publications/ppp-update-latest-covid-19-relief-legislation-includes-extension-of-paycheck-protection-program?id=38990>.
- ⁵ Our primer on the FCA and its application to COVID-relief programs, including PPP, can be found here: <https://www.paulweiss.com/practices/litigation/white-collar-regulatory-defense/publications/false-claims-act-liability-in-the-age-of-covid-19?id=36918>.