

Brooks Pierce Partners Secure Win in False Claims Act Case

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Brooks Pierce partners Kearns Davis and D.J. O'Brien recently secured a significant win for Brooks Pierce client Caddell Construction Company, Inc. in a near decade-long lawsuit over the construction of barracks at Marine Corps Base Camp Lejeune in Jacksonville, North Carolina.

In 2011, the former president of operations at Pompano Masonry Corp., Rickey Howard, filed a False Claims Act suit alleging that Caddell and W.G. Yates & Sons Construction Co. subcontracted and conspired with Pompano to evade small business contracting rules.

Caddell and Yates had been joint awardees of a 2008 Navy contract for construction at Camp Lejeune. The contract required them to meet certain small business subcontracting goals. Howard alleged that Caddell and Yates conspired with Pompano to create a shell company to meet women-owned small business (WOSB) standards. Howard also accused Caddell and Yates of paying a premium to the shell company as a kickback to Pompano and said that, as part of the scheme, the shell company was included on monthly progress payment requests showing compliance with the small business requirements.

In 2014, Julian Marie Breslow, who owned Pompano, pled guilty to her role in creating and promoting the WOSB company to Caddell-Yates. The law firm representing her also pled guilty to assisting in the formation of the company.

U.S. District Judge Louise Wood Flanagan dismissed all claims in the case, *Howard v. Caddell Construction Company Inc. et al*, ruling that the individual subcontracting reports submitted by Caddell and Yates cannot be used as a predicate for a False Claims Act case as they are not specific demands for payments. In her ruling she quoted a Fourth Circuit case saying, "The standard...is not whether statements made to the government are related to a claim for payment or related to the same contract upon which payment is sought, but rather whether the statements are 'made as part of a false or fraudulent claim.'"

Judge Flanagan also said that once criminal charges were filed and the government was aware that the small business goals were not being met, it did not end its contract with Caddell and Yates, indicating these goals were likely not material to the contract.

The Navy scored the performance of Caddell and Yates under the Camp Lejeune project as "outstanding."

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