

# Jury Finds Plaintiff Failed to Prove He Engaged in Activity Covered by False Claims Act

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## Meet the Authors



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Finding the plaintiff did not meet his burden of proving he was terminated in retaliation for engaging in False Claims Act (FCA)-protected activity, a jury returned a verdict for the former employer, a subsidiary of a publicly traded life sciences company.

Jackson Lewis attorneys Donny English, Kathleen McGinley, and Liane Kozik defended the employer in the three-week jury trial.

### Background

A sales manager alleged that he was terminated in retaliation for making a complaint under the FCA. The employer maintained that the plaintiff did not make a FCA complaint and he was terminated due to poor sales performance after being suspended by two hospital systems for misconduct.

In order for the plaintiff to prevail on his FCA retaliation claim, he had to prove by a preponderance of the evidence that:

1. He engaged in FCA-protected activity designed to prevent one or more current or future FCA violations;
2. The decisionmaker(s) in his termination knew about the FCA-protected activity; and
3. He was terminated because of the FCA-protected activity.

### Jury Verdict

In delivering its verdict after deliberating for nearly two days, the Maryland jury found that the plaintiff did not meet his burden on the first element of the claim — whether he engaged in FCA-protected activity designed to stop a current or future violation of the FCA.

The defense emphasized that whether the plaintiff engaged in FCA-protected activity was not subject to many factual disputes. The jury heard and saw evidence that the plaintiff's complaint did not relate to any current or future false claim to the government for payment, as required by the FCA, since he reported only conduct from five years prior to his complaint. The jury also heard evidence that the plaintiff's motive for the complaint was to obtain a payout from the employer, rather than to report or prevent a current or future violation of the FCA. Additionally, the jury heard evidence that the plaintiff's complaint related solely to internal compliance and training issues, not to any false claim to the government for payment.

Both sides also presented evidence about the last two elements — whether any decisionmaker in the plaintiff's termination knew about his complaint and whether he was terminated because of his complaint.

### Takeaways

Often, whether a plaintiff engaged in protected activity is largely unchallenged or even is stipulated to by the time a case gets to trial. However, an experienced trial team carefully analyzing all possible avenues for success will seek to narrow trial issues that can confuse, craft practical jury instructions that anticipate confusing legal issues, eliminate evidentiary issues to ensure admission of key evidence, and develop key themes through discovery and trial that will resonate with the jury.

Please contact a member of the Trial and Appeals Practice Group with any questions.

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