

# Hogan Lovells obtains rare appellate ruling reversing district court's denial of motion to dismiss in False Claims Act suit

Global law firm Hogan Lovells obtained a rare ruling on interlocutory appeal from the United States Court of Appeals for the Ninth Circuit, which held that the district court should have dismissed a False Claims Act complaint at the outset for failure to plausibly plead the claims.

Hogan Lovells represented Nuance Communications (formerly known as J.A. Thomas & Associates, or JATA), a company that provides clinical documentation support and products for hospitals to help them ensure patient medical records capture the full severity of patients' conditions.

Integra Med Analytics, a data analytics company, brought a qui tam action under the False Claims Act, alleging that Providence Health & Services, certain affiliated hospitals, and JATA submitted false claims to Medicare that were coded for more lucrative secondary diagnoses than were supported by patients' actual medical conditions.

Integra based its complaint primarily on a statistical analysis of Medicare claims data that it said demonstrated Providence hospitals had submitted proportionally more claims with three higher paying diagnosis codes than other hospitals.

The district court ruled that the plaintiff's pleadings were sufficient to move forward to discovery, because it was plausible that the statistical outcome resulted from fraud. But the lower court certified this question for interlocutory

appeal.

The Hogan Lovells team petitioned the Ninth Circuit to accept the case on interlocutory appeal, and Hogan Lovells partner Jessica Ellsworth argued the case on appeal. The Defendants argued that the statistical analysis and other complaint allegations did not plausibly plead fraud, given the “obvious, alternative explanation” that the hospitals submitted more claims with these diagnoses because of work done by their clinical documentation improvement departments, with JATA, to capture all appropriate medical diagnoses, exactly as the Centers for Medicare and Medicaid Services had encouraged hospitals to do.

The Ninth Circuit agreed. It held that Integra failed to state a plausible claim for relief. In its decision, the Ninth Circuit noted that the plaintiffs’ allegations “do not eliminate an obvious alternative explanation—that Providence, with JATA’s assistance, was more effective at properly coding for better Medicare reimbursement than others in the healthcare industry.”

The Ninth Circuit reversed the district court’s order denying the Defendant’s motion to discuss, and remanded the case. It then denied Integra’s motion for rehearing en banc.

In addition to Ellsworth, the Hogan Lovells team included partners Jonathan Diesenhaus (Washington, D.C.) and Mike Maddigan (Los Angeles), and former associates Ben Field and Michael West.