

No. 20-781

In the Supreme Court of the United States

UNITED STATES OF AMERICA, ex rel.
CONCILIO DE SALUD INTEGRAL DE LOIZA, INC. ("CSILO")

Petitioners,

v.

J.C. REMODELING, INC. AND JOSE GARCIA-SUAREZ

Respondents

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the First Circuit**

PETITION FOR REHEARING

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TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE NO.</u>
TABLE OF AUTHORITIES	ii
PREAMBLE	1
PETITION FOR REHEARING.....	2-4
CONCLUSION.....	5-6

TABLE OF AUTHORITIES

Cases

<i>United States v. Anchor Mortg. Corp.,</i>	
711 F.3d 745 (7 th Cir. 2013)	5
<i>United States v. Eghbal,</i>	
548 F.3d 1281, 1285 (9 th Cir. 2008)	5
<i>United States v. Sci. Applications Int'l Corp.,</i>	
626 F.3d 1257 (D.C. Cir. 2010)	5
<i>United States ex rel Feldman v. van Gorp,</i>	
697 F.3d 78, 87-88 (2 nd Cir. 2012)	5
<i>United States v. United Techs. Corp.,</i>	
626 F.3d 313 (6 th Cir. 2010)	5

Other Authorities

S. Rep. No. 96-615, at 4 (1980)	3-4
S. Rep. No. 110-507 (2008)	4-5

PREAMBLE

Pursuant to Rule 44 of this Court, Concilio de Salud Integral de Loiza, Inc. (“CSILO” and/or “Petitioner”), respectfully petitions for a rehearing of the denial of the writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit (“First Circuit”) denying the appeal and affirming the orders of the United States District Court for the District of Puerto Rico (“District Court”) that excluded treble damages that were evidenced at trial.

The First Circuit opinion should be reversed by this Honorable Court because the Courts have ignored the congressional intent of allowing gross treble damages as a way to calculate damages pursuant to the False Claims Act (“FCA”), due to a lack of an applicable standard that accepts the tainted claim theory analysis.

Because the tainted claim theory standard is an important unsettled question of law that has not been interpreted by this Honorable Court, lower courts, such as the District Court here, unfortunately create instances of manifest injustice that prejudice the United States by excluding gross treble damages, thereby going against the spirit and intent of the FCA.

PETITION FOR REHEARING

On January 31st, 2018, after a week and a half trial, CSIRO convinced a jury that JC Remodeling, Inc. (“JCR”) and Jose Garcia-Suarez (“Garcia”) (jointly “Respondents”) violated the FCA because they made a false representation as to the existence of a fifteen (15) year manufacturer warranty.

Unfortunately, this victory was a hollow one because a week before the trial, the District Court committed a manifest injustice against the United States of America (“Government” and/or “USA”) by not allowing CSIRO to request four hundred and five thousand dollars (\$405,000.00) as gross treble damages (“Gross Treble Damages”).

In various instances before, during and after the trial, CSIRO renewed their objection as to the District Court’s erroneous ruling, reminding the District Court that CSIRO had always requested the Gross Treble Damages. CSIRO fruitlessly explained to the District Court that said Gross Treble Damages was the sum amount equal to three times the original Contract Price of one hundred thirty-five thousand dollars (\$135,000.00), which was the sum amount paid based on the false representations by Respondents.

CSIRO fruitlessly reminded the District Court that: a) the request of the Gross Treble Damages was proper because it was requested by CSIRO in their Complaint filed on November of 2014, 2) the request of the Gross Treble Damages was proper because it was requested by CSIRO in their First Amended Complaint filed on January 26, 2017, 3) the request of the Gross Treble Damages was proper because

the Respondents had knowledge and admitted that they received one hundred thirty five thousand dollars (\$135,000.00) during the pleading stage, discovery and trial, and 4) the request of the Gross Treble Damages was proper because all the evidence presented to the Jury to request them to find that the Respondents violated the FCA reflect that one hundred thirty five thousand dollars (\$135,000.00) was paid based on the Respondents' false representations.

Unfortunately, the District Court erroneously rejected all of CSILO's objections and requests because it was erroneously misled by the Respondents. Respondents misled the District Court into thinking that CSILO can only use one legal applicable standard: the benefit of the bargain analysis.

Even though CSILO rejected the benefit of the bargain analysis and unsuccessfully tried to persuade the District Court to allow the request of the Gross Treble Damages, the fact of the matter is that District Court erroneously deprived CSILO to be able to pursue its Gross Treble Damages under the tainted claim theory analysis because this legal standard is an important unsettled question of law that has not been interpreted by this Honorable Court.

The legislative history to the FCA explains why it offers no specific formula for damages:

No single rule can be, or should be, stated for the determination of damages under the Act ... [T]he courts should remain free to fashion measures of damages on a case-by-case basis. The Committee intends that the courts should be guided only by the principles that the United States' damages should be liberally measured to effectuate the remedial purposes of the Act, and that the United States should be afforded a full and complete recovery of

all its damages. S. Rep. No. 96-615, at 4 (1980) (reporting on S.1981, predecessor to S. 1562).

In 2008, Congress demonstrated that FCA claim could seek the “tainted claim theory” as an applicable legal standard. Congress understood that the Courts had been reading the damage provision of the FCA narrowly. Congress reiterated that the legislative goal is to assist the Government to recover all losses sustained because of the fraud:

F. Damages

The 1986 Amendments to the FCA created a system where damages are measured based on ``the amount of damages which the Government sustains because of the act of that person." After determining that amount, the damages are trebled. This provision was designed to provide courts flexibility to measure damages on a case-by-case basis to ensure the broad remedial goal of the Act. Despite this legislative goal, some courts have read the damage provision narrowly and have made it difficult for the Government to recover the true losses sustained because of the fraud, let alone include penalties to provide a deterrent effect.

For example, problems have occurred with certain medical providers who were sued for violating the FCA. These providers received payments from Medicare and Medicaid despite being disqualified from participating in the programs because they received kickbacks from referring physicians, but argued there were no damages when they provided services and sought reimbursement. While it may appear that there are no actual damages for simply seeking reimbursement when disqualified, the integrity of those Federal programs is seriously undermined by these practices which can cause overutilization of services, patient steering, and medical decisions made outside of the best interest of the patient.

To address problems that have occurred, this bill amends the damages provision in Section 3729(a) to a more

simplified approach that measures damages based on the amount of money or property "paid or approved because of the act of the defendant."

Part III titled "Section-by-Section Summary of the Bill", Section 2 titled "False Claims Generally" subsection F titled "Damages" of S. Rep. No. 110-507 (2008)

The need for rehearing can be illustrated by the fact that lower courts do not have a guiding applicable standard that supports the "tainted claim theory" under the FCA.

This Honorable Court should note that circuit splits have occurred because of the different interpretations as to how damages should be allowed to be measured and calculated. Such as for example the gross trebling damages approach that has been followed by the Ninth Circuit in the case of *United States v. Eghbal*, 548 F.3d 1281 (9th Cir. 2008), versus the net trebling damages approach that has been followed by the Second, Sixth, Seventh and D.C. Circuits in the cases of *United States ex rel Feldman v. van Gorp*, 697 F.3d 78 (2nd Cir. 2012), *United States v. United Techs. Corp.*, 626 F.3d 313, (6th Cir. 2010), *United States v. Anchor Mortg. Corp.*, 711 F.3d 745 (7th Cir. 2013) and *United States v. Sci. Applications Int'l Corp.*, 626 F.3d 1257 (D.C. Cir. 2010)).

If this Honorable Court rehears the case at bar, it can finally resolve this important unsettled question of law as to the FCA: whether or not lower courts can allow FCA Plaintiffs seek full gross treble damages remedies under the tainted claim theory analysis.

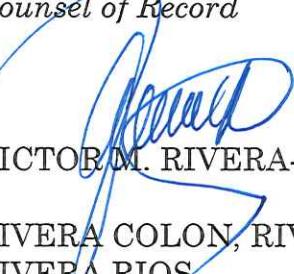
CONCLUSION

Based on the above, CSIRO respectfully requests this Court to grant the

petition for rehearing.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, this 19th of March, 2021.


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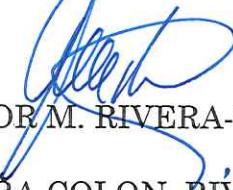
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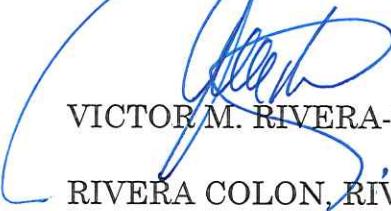
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.


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