

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

United States ex rel. Henry Roop v. Hypoguard USA, Inc., et al.

United States ex rel. Roop v. Hypoguard USA, Inc., 559 F.3d 818 (8th Cir. 2009) · No. No. 07-3781 · Decided March 17, 2009

SUMMARY

The Eighth Circuit affirmed dismissal with prejudice of a qui tam False Claims Act complaint against Hypoguard USA, Inc. for failure to plead fraud with the particularity required by Federal Rule of Civil Procedure 9(b). The court held that the district court did not abuse its discretion in denying pre-judgment and post-judgment leave to amend, concluding that the proposed amended complaint did not identify specific false Medicare reimbursement claims or adequately allege materiality and other FCA elements.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Chief Judge Loken; Judge John R. Gibson; Judge Murphy
JURISDICTION	Federal
DECIDED	March 17, 2009
DOCKET	No. 07-3781
DISPOSITION	affirmed
PROCEDURAL POSTURE	A qui tam relator appealed the dismissal with prejudice of his False Claims Act complaint for failure to satisfy Federal Rule of Civil Procedure 9(b), the denial of pre-judgment leave to amend, and the denial of a post-judgment motion to alter or amend the judgment and file a proposed amended complaint.
STANDARD OF REVIEW	Denial of leave to amend is reviewed for abuse of discretion; questions of futility are reviewed de novo. Post-judgment amendment decisions are reviewed under the standards governing post-judgment relief, while accounting for Rule 15(a)(2) considerations.
PRECEDENTIAL VALUE	published and precedential
PARTIES	United States ex rel. Henry Roop v. Hypoguard USA, Inc., et al.

TOPICS

motion to amend

motions to dismiss

pleadings

standard of review

appellate procedure

PRACTICE AREAS

civil procedure

False Claims Act

health law

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying pre-judgment leave to amend a False Claims Act complaint that concededly failed to plead fraud with the particularity required by Rule 9(b).
2. Whether the district court abused its discretion by denying Roop's post-judgment motion under Rules 59(e) and 60(b) to alter or amend the judgment and permit filing of a proposed First Amended Complaint.
3. What standards govern a post-judgment motion for leave to amend a complaint dismissed for failure to satisfy Rule 9(b).

HOLDINGS

1. The district court did not abuse its discretion in denying leave to amend because the proposed amendments described at the hearing would not cure the complaint's failure to plead the alleged False Claims Act fraud with particularity.
2. The district court properly denied Roop's post-judgment motion because post-judgment motions for leave to amend are disfavored, Roop had already received and improperly pursued pre-judgment leave to amend, failed to explain how the proposed pleading cured the deficiencies, and the proposed complaint in fact remained deficient.
3. The proposed First Amended Complaint did not satisfy Rule 9(b) because it failed to plead with particularity any false Medicare reimbursement claim, any material false certification or statement, or how the alleged product defects and FDA reporting violations influenced the government's payment decisions.

KEY QUOTATIONS

"To meet this standard and enable the defendant to respond "specifically and quickly," a complaint alleging fraud "must identify who, what, where, when, and how."" (822)

"plaintiffs do not enjoy "an absolute or automatic right to amend" a deficient FCA Complaint." (823)

"district courts in this circuit have considerable discretion to deny a post-judgment motion for leave to amend because such motions are disfavored, but may not ignore the Rule 15(a)(2) considerations that favor affording parties an opportunity to test their claims on the merits" (824)

FACTUAL BACKGROUND

Roop, a former Hypoguard sales specialist, alleged that defective blood glucose monitoring products and Hypoguard's failure to submit required FDA Medical Device Reporting reports caused distributors to submit fraudulent Medicare reimbursement claims. He did not identify specific false claims, statements, dates, actors, or

the alleged material connection between the FDA reporting failures and Medicare payment decisions. After the district court dismissed the complaint, Roop submitted a lengthy proposed amended complaint, but his supporting memorandum did not explain how it cured the Rule 9(b) deficiencies and the proposed pleading still did not identify particular false claims or material misrepresentations.

PROCEDURAL HISTORY

Roop filed a sealed False Claims Act complaint in the Northern District of Mississippi in March 2004. After the United States declined intervention, Hypoguard moved to dismiss and transfer venue. The case was transferred to the District of Minnesota, which dismissed the complaint with prejudice and denied leave to amend as futile. The district court later denied Roop's Rule 59(e) and Rule 60(b) motion seeking permission to file a proposed First Amended Complaint. The Eighth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- United States ex rel. Joshi v. St. Luke's Hosp., Inc., 441 F.3d 552, 555-59 (8th Cir. 2006)
- United States ex rel. Costner v. United States, 317 F.3d 883, 887-88 (8th Cir. 2003)
- United States ex rel. Lee v. Fairview Health Sys., 413 F.3d 748-50 (8th Cir. 2005)
- United States ex rel. SNAPP, Inc. v. Ford Motor Co., 532 F.3d 496, 506-07 (6th Cir. 2008)
- United States ex rel. Williams v. Martin-Baker Aircraft Co., 389 F.3d 1251, 1259 (D.C. Cir. 2004)
- Foman v. Davis, 371 U.S. 178, 182 (1962)
- Briehl v. General Motors Corp., 172 F.3d 623, 629 (8th Cir. 1999)
- Innovative Home Health Care, Inc. v. P.T.-O.T. Assoc. of the Black Hills, 141 F.3d 1284, 1286 (8th Cir. 1998)
- United States ex rel. Hebert v. Dizney, 2008 WL 4538308, at *4 (5th Cir. Oct. 10, 2008)
- Rosenzweig v. Azurix Corp., 332 F.3d 854, 865 (5th Cir. 2003)
- Parnes v. Gateway 2000, Inc., 122 F.3d 539, 550-51 (8th Cir. 1997)
- Bills v. United States Steel LLC, 267 F.3d 785, 788 (8th Cir. 2001)
- Mikes v. Straus, 274 F.3d 687, 697, 703 (2d Cir. 2001)
- United States ex rel. Hopper v. Anton, 91 F.3d 1261, 1266-67 (9th Cir. 1996)
- United States ex rel. Lee v. SmithKline Beecham, Inc., 245 F.3d 1048, 1053 (9th Cir. 2001)
- Hays v. Hoffman, 325 F.3d 982, 992 (8th Cir. 2003)
- MIF Realty L.P. v. Rochester Associates, 92 F.3d 752, 755 (8th Cir. 1996)