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New Case Lends Support to the Position that Public Universities Are Immune from False Claims Act Liability

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Public universities have a new case to add to their defense arsenal should they find themselves as a defendant in a False Claims Act (FCA) case. On April 11, 2017, in *United States et al v. Oregon Health and Sciences University*, an Oregon federal judge dismissed a FCA case that had been brought by a relator and where the government had intervened. In *Oregon Health and Sciences University*, a former Oregon Health and Sciences University (OHSU) employee had filed a qui tam action alleging FCA violations on federal research grants. The Government decided to intervene in the case and filed a complaint in intervention alleging FCA violations, a claim for payment by mistake, and a claim for unjust enrichment relating to federally-sponsored projects. In response, OHSU filed a motion to dismiss arguing that OHSU is "an arm of the State" and therefore not a "person" upon whom liability can be imposed under the FCA. The court granted the motion to dismiss.

In its decision, the court looked to previous cases involving OHSU where courts had determined that OHSU was entitled to sovereign immunity because of its nexus to the state of Oregon. Additionally, the court applied a five factor test set forth by the United States Court of Appeals for the Ninth Circuit for determining whether an entity is "an arm of the state" for purposes of sovereign immunity:

1. Whether a money judgment would be satisfied out of state funds;
2. Whether the entity performs central governmental functions;
3. Whether the entity may sue or be sued;
4. Whether the entity has the power to take property in its own name or only in the name of the state; and
5. The corporate status of the entity.

The court concluded that based on these factors and previous decisions regarding OHSU's status, that it was "an arm of the state." The Supreme Court has ruled that the definition of "person" for FCA liability purposes does not include states or arms of a state. Accordingly, the court dismissed the case against OHSU (but did grant plaintiffs leave to file an amended complaint on their unjust enrichment/payment by mistake claims to the extent they were not related to express contracts already addressed).

While this decision was at the district level and may still be appealed, public universities should evaluate the holding to determine whether they can use the principles in their own FCA cases. Doing so might reveal a powerful shield against the Government's FCA sword.