

Federal Employees Can Bring Qui Tam Suit, 5th Circ. Rules

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Law360, New York (August 1, 2012, 2:49 PM EDT) -- The Fifth Circuit said Tuesday that two federal auditors who uncovered \$19 million that [Royal Dutch Shell PLC](#) owed the U.S. in offshore drilling royalties could bring a whistleblower suit even though they discovered the alleged fraud in the course of their jobs.

Both Shell and the U.S. government had argued that the False Claims Act barred federal officials who uncover fraud as part of their official duties from bringing a qui tam lawsuit. But a three-judge appeals panel said unanimously that there was no basis for that limitation in the statute's text.

"Fine-tuning such exceptions would be based on little more than our perception of reasonable policy limits. The exceptions would not arise from the text of the act," U.S. Circuit Judge Leslie H. Southwick wrote for the panel.

"Not only would these new definitions take us beyond the 'ordinary or natural meaning' appropriate for undefined terms, they would commit us to a process of exposition in future cases," the judge wrote.

The appeals court's ruling reverses a lower court's decision, which found that the two auditors lacked standing to bring the suit and that their allegations could have been pieced together from public documents.

Sean Connelly of [Reilly Pozner LLP](#), who represents the pair of auditors, said Wednesday that the panel's opinion was thorough and brought the Fifth Circuit in line with other federal courts that have allowed "all persons to bring False Claims Act lawsuits when they learn of fraud that the government has chosen not to pursue."

"Our clients, Randy Little and Joel Arnold, have been steadfast and courageous in pursuing claims that could bring many millions of dollars in unpaid oil royalties to the federal government. We are hopeful their case now may proceed to the merits as quickly as possible," Connelly said.

A Shell attorney didn't immediately respond to requests for comment.

The auditors claim they found that Shell had defrauded the [U.S. Department of the Interior](#) by \$19 million between 2001 and 2005 by improperly deducting expenses to gather and store oil on a dozen offshore drilling platforms. The company did so in order to reduce the royalties it would owe the federal government, the plaintiffs allege.

Little and Arnold reported the findings to their superior, but the government didn't act, and so in 2006, they brought an ex-relator action, in which the government also declined to intervene, according to the complaint.

Both Shell and the government urged the Fifth Circuit to dismiss the lawsuit, arguing that allowing federal employees to be relators could create tension with the criminal conflict-of-interest statute and federal ethics regulations, and could even be an implied repeal of those provisions.

But the Fifth Circuit rejected those arguments, saying that even if those provisions were implicated, they would be addressed in another forum, and that to hold otherwise would interfere with the prerogatives of the legislative and executive branches.

The government had also contended that allowing federal fraud investigators to reap monetary rewards for themselves through a qui tam action would undermine their duties to investigate wrongdoing and the government's discretion to bring enforcement action.

But the Fifth Circuit rejected that argument too, holding that the government could still intervene to dismiss qui tam actions and come up with new ethics guidelines.

"The government has monetary and personnel constraints that do not enable it to pursue every lead or prosecute every wrongdoer. By nature, bureaucracies can be slow to act, and on occasion can fall victim to corruption or restrictive partisan agendas," Judge Southwick wrote.

"There is potential for governmental relators to prompt more agency responsiveness even when suits are not filed. Additionally, the prospect of monetary awards might provide public servants with additional incentives to ferret out fraud," she said.

The Fifth Circuit also found that the auditors' allegations weren't readily deduced from public disclosures.

Judges Leslie H. Southwick, Emilio M. Garza and Jerry E. Smith sat on the panel for the Fifth Circuit.

The plaintiffs are represented by Sean Connelly of Reilly Pozner LLP.

Shell is represented by Daniel M. McClure of [Fulbright & Jaworski LLP](#).

The case is Little et al. v. Shell Exploration & Production Co. et al., case number 11-20320, in the U.S. Court of Appeals for the Fifth Circuit.