

## 3rd Circ. Won't Revive FCA Suit Against Siemens

By Kelly Knaub

*Law360, New York (November 25, 2014, 5:20 PM ET)* -- The Third Circuit on Tuesday affirmed a grant of summary judgment given to a Siemens AG subsidiary in the whistleblower suit accusing it of overcharging the U.S. Department of Veterans Affairs for medical devices, saying the district court did not abuse its discretion.

Relator William Thomas — who filed the qui tam action against Siemens Medical Solutions USA Inc. accusing it of fraudulently omitting discounts that had been given to other customers in its bids to sell ultrasound and magnetic resonance equipment to VA — argued the district court had erred in concluding that he failed to produce enough evidence.

The appeals court, however, disagreed, the only evidence in the record shows that the pricing form for the equipment was ambiguous, that it was not uncommon for it to be completed incorrectly, that the VA accepted the forms and that the VA was aware that Siemens and Acuson Corp., which it acquired in 2000, offered higher discounts to commercial customers.

“Based on the record before us, no reasonable juror could conclude that SMS or Acuson made knowingly false statements to the VA,” the appeals court said.

The appeals court also rejected Thomas’ contention that the district court should have granted his motion to amend the complaint, saying the argument was meritless.

Thomas was hired by Siemens Medical Solutions in 2004, where he worked as senior national accounts manager for group purchasing organization contracts until he retired in 2008 in order to pursue the qui tam action.

Thomas filed suit in January 2009, alleging Siemens had failed to disclose steep discounts to private-sector customers on 20 contract bids from 2001 to 2004, and thus prevented VA from negotiating for similar discounts.

The government declined to intervene in the case but did submit a statement of interest stating that the information submitted by Siemens did not lead to VA accepting more than a “reasonable” price on the bids — the government standard for the type of contracts in the suit.

The bids at issue are used only to set a maximum price for equipment, and when actual purchases are made, VA's contract officers can negotiate a lower price, according to **the district court ruling**.

Representatives for Thomas and Siemens did not immediately respond to requests for comment Tuesday.

Thomas is represented by Howard D. Scher of Buchanan Ingersoll & Rooney PC and by Howard J. Bashman.

Siemens is represented by Erik Haas and Adam Blumenkrantz of Patterson Belknap Webb & Tyler LLP.

The case is U.S. ex rel. Thomas v. Siemens Medical Solutions USA Inc., case number 2:09-cv-04414, in the U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by Daniel Siegal. Editing by Patricia K. Cole.

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