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Rule 9(b) as a Gatekeeper for California Health Care Fraud Cases

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Rule 9(b) of the Federal Rules of Civil Procedure (FRCP) requires that in alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. This means the pleading must go beyond a bare assertion, or a general articulation of the problem—in contrast to notice pleading under Rule 8 of the FRCP. Rather, Rule 9(b) requires the pleader to allege the "who, what, when, where and how" of the fraud, often referred to as the "heightened pleading standard" implied by Rule 9(b), and the pleader must connect the alleged fraudster to the actual fraudulent acts. In other words, the pleader must state: (i) the name of the person(s) who committed the fraud; (ii) describe the specific acts or omissions; (iii) explain how the acts or omissions were fraudulent; and (iv) provide any other facts peculiarly within their knowledge.

Nevertheless, far too often complaints alleging fraud fail to be sufficiently specific, relying on the false hope that coloring the complaint with salacious generalized allegations of fraudulent conduct by the defendant will create enough proverbial "smoke" that the court will be persuaded to abide by the general or conclusory allegations. That approach is fraught with risk. The court might sua sponte dismiss the complaint for failure to meet the heightened pleading standards under Rule 9(b). Or, more typically, an attentive defense attorney will attack the case at the pleading stage and likely succeed.

Practical Application of FRCP Rule 9(b)

Rule 9(b) is especially important in False Claims Act (FCA) *qui tam* actions. Relators must provide "indicia of reliability" to support allegations of fraud and otherwise meet the "heightened pleading" standards implied by the rule. Courts consistently apply the particularity standard to ensure that whistleblower claims or claims by "outsiders" reporting fraud meet the heightened pleading requirements. A matter decided by District Court Judge Michelle Williams Court, U.S. District Court, Central District of California, in late June of this year in *Lifschutz v. Ghasseminejad,* 22-cv-05328, makes the point. Judge Court dismissed the relator's amended complaint for, among other things, failure to "plead a false statement or fraudulent course of conduct with particularity" in accordance with Rule 9(b).

Courtesy photo

Derrelle Janey of Olshan Frome Wolosky.

In pertinent part, Judge Court's decision emphasized the gatekeeping function of Rule 9(b):

Rule 9(b) requires a party alleging fraud to state with particularity the circumstances constituting fraud. To plead fraud with particularity, the pleader must state the false representations' time, place, and specific content. A pleader must identify the who, what, when, where, and how of the misconduct charged.[Doc. No. 189]

The broader context of the *Lifschutz* decision further underscores Judge Court's emphasis about respect for Rule 9(b). First, the relator in *Lifschutz* alleged a multi-defendant health care fraud scheme in which the defendants recruited patients by utilizing paid recruiters who solicited unsophisticated and elderly patients, often non-English-speaking, to give up their regular Medicare coverage by joining their hospice program in exchange for gifts, like diapers, walkers and scooters; they also promised expanded medical care. Many of these patients either never understood or were incapable of understanding that they were giving up their Medicare coverage and their doctors for hospice care. In and of themselves, such allegations portray an image of defendants who, colloquially, might be considered bad actors. However, mere allegations of bad acts are insufficient.

Rule 9(b) Does Not Wither Under Pressure

Second, the *Lifschutz* complaint takes place in an environment where the country is in a health care fraud crisis, particularly in California. In late June 2026 alone, the U.S. Department of Justice announced that its 2026 National Health Care Fraud Takedown task force charged 455 defendants for health care fraud schemes involving over $6.5 billion in false claims. Earlier this year, federal authorities, in Operation Never Say Die, arrested eight individuals in Southern California for health care fraud schemes that collectively defrauded Medicare and other programs of over $50 million.

Government prosecutors cannot combat fraud on their own. Qui tam relators (current or former employees, contractors, patients, or even competitors) can bring a civil claim in the name of the government and are incentivized because they share in a substantial portion of the recovery, sometimes as much as 30%.

Nevertheless, the import of Rule 9(b) to fraud cases, and here, health care fraud cases brought under the False Claims Act, such as *Lifschutz*, is that the law is first concerned with whether the pleader sufficiently and appropriately identifies the fraudulent conduct perpetuated by the defendant. Scandalous generalized allegations are not enough even in moments of crisis. In *Lifschutz*, the relator argued that a key individual defendant "must have known" about the alleged fraud because he held corporate officer titles at some of the entity defendants. However, this approach was defective because the relator never connected the individual defendant to a false claim or submission; *i.e.*, there was no particularized allegation connecting the defendant to the fraud. This is important because the Ninth Circuit is consistent that FCA complaints must, at minimum, provide particular details of a scheme to submit false claims paired with reliable indicia that lead to a strong inference that claims were actually submitted to satisfy Rule 9(b).

Moreover, even though the *Lifschutz* complaint contained section headers purporting to describe the specific role of individual defendants, in fact the relator merely made allegations of the fraudulent conduct as against groups of co-defendants. This is fatal under particularized pleading. Rule 9(b) does not allow a complaint to lump multiple defendants together; it requires plaintiffs to differentiate their allegations when suing more than one defendant and to inform each defendant separately of the allegations surrounding his alleged participation in the fraud.

Conclusion

Lifschutz offers many takeaways and lessons for practitioners prosecuting and defending fraud claims, both in the healthcare fraud context and more broadly. The relator filed the action three years before the complaint became unsealed. Once unsealed, a key defendant moved to dismiss the complaint largely for defects under Rule 9(b). Instead of responding to the motion, the relator amended as a matter of right; however, the relator then faced another motion to dismiss, resulting in Judge Court's decision. As a practical matter, the failure to plead in accordance with Rule 9 was uneconomical for the client and the lawyers involved. Pleading fraud is serious business and ought to be analyzed carefully.

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