Recent False Claims Act Decisions Send Important Reminders: It's Damages—Not a Windfall—but Penalties Can Still Be Significant

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The recent decision of the U.S. Supreme Court in *United States ex rel. Schutte v. SuperValu Inc.*, regarding scienter under the civil False Claims Act (FCA) has quite understandably been receiving a great deal of attention.[1] But a trio of other recent cases on the issue of FCA damages and penalties should not get lost in the shuffle. Indeed, given that there is far more caselaw on **liability** under the FCA than there is caselaw addressing FCA **damages and penalties**, these cases—*United States ex rel. Morsell v. NortonLifeLock, Inc.* (*Symantec*), *United States v. Honeywell International Inc.* (*Honeywell*), and *Yates v. Pinellas Hematology & Oncology, P.A.* (*Yates*)—are of particular significance.[2] *Symantec* and *Honeywell* drive home that, while the United States is entitled to treble damages under the FCA, the government is not entitled to a windfall, and settlement with other defendants must be fully taken into account. At the same time, however, *Yates* demonstrates that FCA penalties can be significant, and not improperly excessive, even if there has been relatively little actual damage to the United States.

Below, following a brief overview of the FCA, we address each case in detail, before noting the significant takeaways and considerations contractors will want to keep in mind in light of these recent decisions.

Background on the False Claims Act

The False Claims Act[3] was enacted in 1863 in response to congressional concerns of government contractor fraud during the Civil War.[4] In pertinent part, the statute imposes liability on any person who knowingly

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submits false claims to the government or causes another to submit false claims to the government, or knowingly makes a false record or statement in order for a false claim to be paid by the government.[5] When first enacted, an FCA violation made the defendant liable for double the government's damages plus a penalty of $2,000 for each false claim.[6] These provisions remained unchanged until 1986, when Congress amended the statute.[7] Congress increased the damages multiplier from double to treble to align the statute with earlier legislation that established treble damages for false claims related to Department of Defense contracts.[8] Civil penalties were also adjusted upward.[9]

Currently, the statute imposes "a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Public Law 104-410), plus 3 times the amount of damages which the government sustains because of the act of the person. …"[10] As of January 30, 2023, civil penalties are not less than $13,508, and not more than $27,018, per claim.[11] Notably, however, there is nothing in the FCA or its legislative history that "specifically bears on the question of how to calculate [FCA] damages."[12] Thus, case law is of critical importance, and it is because of this that particular attention should be given to the recent *Symantec*, *Honeywell*, and *Yates* decisions.

Symantec—Damages Cannot Be Speculative

Symantec involved a Multiple Award Schedule (MAS) contract that the U.S. General Services Administration awarded to Symantec in 2007.[13] As part of the contract negotiations, Symantec had disclosed its Commercial Sales Practices (CSP), including a description of the discounts and concessions offered to its commercial customers. Five years into the period of performance, a Symantec employee brought a *qui tam* suit[14] in the U.S. District Court for the District of Columbia (DDC) alleging the company had provided false CSP information and that, as a result, the government had paid higher prices under the MAS contract than it should have.[15]

The United States and the states of California and New York subsequently intervened in the case, and the plaintiffs filed an omnibus complaint. In the omnibus complaint, the United States presented three principal theories of falsity regarding Symantec's pricing disclosures under the MAS contract. First, the United States argued that because Symantec failed to disclose its best discounts and concessions offered to commercial customers, various invoices for payment under the MAS contract were "falsely inflated."[16] Second, the United States argued that because the CSP submissions that Symantec had made were materially false, the contract itself was fraudulently induced.[17] And, finally, the United States alleged the claims impliedly certified compliance with the CSP disclosures, as well as the MAS contract's Price Reductions Clause (PRC)[18] and Modifications Clause,[19] and that such compliance was material to the GSA's decision to pay.[20]

Following a bench trial, the DDC found Symantec liable under the following theories:

- Symantec knowingly submitted materially false CSP disclosures that fraudulently induced GSA to enter into the MAS contract.[21]
- Symantec knowingly made materially false implied certifications of compliance with the PRC and CSP requirements when submitting claims throughout the life of the contract.[22]
- Symantec knowingly made materially false statements related to claims for payment during the negotiation of the MAS contract, and through subsequent modifications that reaffirmed the initial, false CSP disclosures. [23]
- Symantec knowingly failed to offer the price reductions to which GSA was entitled under the PRC during the life of the MAS contract.[24]

To quantify damages under all of these liability theories, the government advanced two principal damages theories: (1) that, but for Symantec's false express and/or implied certifications regarding the accuracy of its CSP disclosures and compliance with the PRC, the government's discounts would have been higher;[25] and (2) that, had Symantec made accurate disclosures, the government would have been entitled to additional rebates.[26]

The DDC rejected entirely the government's discount-based approach. Under this approach, the government had tied its quantification of damages arising from the alleged fraudulent inducement of the MAS contract to subsequent alleged violations of the PRC; the government also tied its quantification of the alleged damage resulting from Symantec's false implied certification of compliance with the Modifications Clause to these alleged PRC violations.[27] The court found this approach highly problematic, stating:

> While the Court believes some harm occurred, the United States has made the strategic choice to tie its damages calculations to the PRC violations, leaving no way for the Court to disentangle the two. Determining how much of a discount GSA would have received had the CSP disclosures been complete and accurate [or had Symantec later notified GSA of their inaccuracy] would amount to little more than pulling a number out of thin air, and this the Court declines to do so.[28]

For similar reasons, the court also found that the government's discount-based calculation did not properly quantify any damages resulting from Symantec's

noncompliance with the PRC, stating: "Without knowing what discount GSA would have received as a result of the transactions that would have triggered the PRC when accounting for Symantec's reasonable interpretation, the Court cannot say with reasonable certainty what amount of damages was actually and proximately caused by Symantec's false implied certification with the PRC clause." [29] The court then concluded: "The Court recognizes the tension in its determination that the United States has met its burden on liability but not on damages with respect to the PRC discounts." However, given the "essentially punitive [] nature" of treble damages, it was "especially important to hold the United States to its burden of proving … damages rather than attempting to estimate them through numerical guesswork."[30]

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The government's rebates damages approach fared a little better with the court, but the court still did not award the government all of the damages it sought under this approach. Rather, the court found that, conservatively, the government would have received an additional 3 percent rebate, had Symantec properly disclosed its rebating programs.[31] The court then applied that 3 percent to a sales base of $11,877,224, calculated based upon the analysis prepared by Symantec's expert.[32] This contrasted sharply with the $281,552,189 base calculated by the government's expert. Applying the 3 percent figure to $11,877,224 resulted in a damages figure of $356,316.72.[33] The court then trebled that amount to determine FCA damages in the amount of $1,068,950.16.[34] This amount pales in comparison to the more than $1 billion that the government was originally seeking in damages.[35]

Honeywell—Settlement Offsets Must Be Fully Taken into Account

In 2008, the United States brought an FCA action against Honeywell in the DDC for $11.5 million in damages, trebled to $35 million, for providing materials used in allegedly defective bulletproof vests sold to the government. [36] The $11.5 million figure represented the full amount paid for the vests. The government alleged that Honeywell knew the bulletproof material degraded in hot conditions, but nonetheless represented the vests were "state-of-the-art ballistics technology."[37] At the same time, the government pursued FCA litigation and ultimately reached settlements worth $36 million with Armor Holdings, Inc., the manufacturer of the vests, and foreign suppliers, for their roles in manufacturing and supplying the vests to the federal government.[38]

Honeywell moved for summary judgment, arguing any damages sought should be reduced dollar-for-dollar (the *pro tanto* approach) by the prior settlement amounts, regardless of Honeywell's relative fault.[39] The government, instead, maintained that Honeywell should pay its proportionate share of damages, regardless of settlement amounts (the proportionate share approach).[40] The DDC agreed with the government, finding the *pro tanto* approach would allow Honeywell to "escape damages liability altogether" given the $36 million in settlement amounts were greater than the $35 million in treble damages sought.[41] Honeywell's request for interlocutory appeal was subsequently granted by the U.S. Court of Appeals for the D.C. Circuit (the DC Circuit).

As noted above, the text of the FCA does not explicitly detail how to calculate FCA damages.[42] At the outset of its analysis in the appeal, the DC Circuit stated the same holds true for settlement credits and joint liability—the text of the statute "makes no mention of either."[43] The DC Circuit noted, however, that a literal reading of the statute could suggest that, because a person is "liable for the damages sustained by the government based on that person's action, no offset for settling parties is allowed."[44] Yet, such a reading would conflict with (1) *United States v. Bornstein*, in which the U.S. Supreme Court applied joint and several liability, and (2) the common law principle that settlement with one party reduces the damages owed by other jointly liable parties. [45] Thus, having established the FCA text, along with historical context and precedent, did not provide an answer on whether the *pro tanto* rule should apply in FCA cases, the court looked to factors used by the U.S. Supreme Court in *McDermott, Inc. v. AmClyde*, where the proper settlement credit rule was determined in the analogous situation of an admiralty suit.[46]

Under the first *McDermott* factor—consistency with the relevant text and structure of the statute and precedent interpreting it—courts have consistently imposed joint and several liability without a right to contribution in FCA cases.[47] Thus, a "person who violates the FCA in a joint scheme may have to pay for all the government's trebled damages, and, even if that defendant is the least responsible party, it cannot force the other violators to pay their fair share."[48] The *pro tanto* rule aligns with these principles: A settling party could end up paying for all of the government's damages. The government's argument, citing *Vermont Agency of Natural Resources*

v. United States ex rel. Stevens,[49] that the proportionate share rule is more compatible with the punitive nature of FCA damages was found unpersuasive.[50] Instead, the DC Circuit emphasized Congress's intent in enacting the FCA to leave "the government in the driver's seat to pursue and punish false claims according to its priorities."[51] Applying the *pro tanto* rule, according to the court, would better effectuate that intent.[52] Thus, the first factor strongly favored the *pro tanto* approach.

The second *McDermott* factor—the promotion of settlement—was found inconclusive, particularly where either approach could arguably promote settlement.[53] The third *McDermott* factor—judicial economy—was found to clearly favor the *pro tanto* approach because it would not require an adjudication of comparative fault—instead courts would just need to determine which damages are common and how much has been paid by the settling parties.[54] The proportionate share approach, on the other hand, would require an adjudication of comparative fault, which "would introduce a new element into FCA litigation" and would require "summoning already settled third parties back into litigation for complex determinations of relative fault."[55]

All told, the DC Circuit held the *pro tanto* rule best comports with the purpose of the FCA and the joint and several liability applied to FCA claims, such that Honeywell was entitled to offset its common damages in the amount of the government's settlements from other parties. In Honeywell's case, that meant their damages were calculated at $0.[56]

Yates—Penalties Can Be Significant, Even When There Has Been Little Damage to the Government

Before the U.S. District Court for the Middle District of Florida, Pinellas Hematology & Oncology (Pinellas) was found to have violated the FCA by knowingly submitting 214 claims to Medicare attesting that the laboratory where tests were conducted had the required certifications, when, in truth, the laboratory did not.[57] Following a jury verdict finding the government suffered $755.54

in damages, Pinellas moved for remittitur, arguing the damages and statutory penalties mandated by the FCA constituted an excessive fine in violation of the Eighth Amendment.[58] The district court, despite acknowledging the amount was "very harsh," nonetheless held the $2,266.62 in trebled damages and $1,177,000 in statutory penalties did not violate the Eighth Amendment's prohibition on excessive fines.[59]

On appeal to the U.S. Court of Appeals for the Eleventh Circuit (Eleventh Circuit), Pinellas first argued that the proper measure of damages is the difference between the market value of the product that the U.S. received and the market value of the promised product.[60] Therefore, because Pinellas conducted the laboratory tests for which it billed Medicare, the U.S. received the benefit that it bargained for and suffered no damages by paying the fraudulent claims.[61] Noting "there is no set formula for determining the government's actual damages," the Eleventh Circuit conceded that Pinellas's formulation aligned with the U.S. Supreme Court's 1976 decision in *Bornstein*.[62] However, the court distinguished between products and services provided to the government, like in *Bornstein*, and the Medicare billing context, where products and services are not provided to the government.[63] This distinction warranted a different calculation. Thus, relying on precedent involving Medicare reimbursement claims, the Eleventh Circuit held that the proper measure of damages is the difference between what the United States paid and what it would have paid had Pinellas's claims been truthful—here, $755.54.[64]

The Eleventh Circuit then turned to whether the Eighth Amendment's Excessive Fine Clause applied to the FCA monetary award in the case.[65] The clause provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted"[66] and limits the ability of the government to extract payment as punishment for some offenses.[67] Because the United States is not a formal party in a non-intervened *qui tam* action, such cases "fall in a grey area" where it is not clear whether the clause should apply.[68] Thus, two questions were presented: (1) whether an FCA monetary award constitutes a "fine" for the purposes of the Eighth Amendment and (2) whether the United States imposes that fine in a non-intervened *qui tam* action.[69] The Eleventh Circuit answered the first question in the affirmative. A payment constitutes a fine so long as "it can only be explained as serving in part to punish."[70] Relying on the Supreme Court's 2000 decision in *Stevens*, the Eleventh Circuit held that FCA treble damages and statutory penalties constitute a fine because they are "punitive in nature."[71] Likewise, the Eleventh Circuit found that because a relator acts on behalf of the government and the government maintains considerable control over a non-intervened *qui tam* suit, the government is a real party in interest to the case, and any monetary award in such an action is imposed by the United States.[72]

The question remained whether the monetary award in the case was "grossly disproportional to the gravity of the defendant's offense" such that it violated the Eighth Amendment.[73] Although actual damages in the case were only $755.54, a judgment of $1.179 million was sought, which the Eleventh Circuit opined "may raise an eyebrow."[74] Nonetheless, the amount represented the lowest-possible sanction under the FCA because the district court imposed the minimum statutory penalty of $5,500 for the 214 violations and because treble damages are mandated by the statute.[75] Consequently, the award was afforded a "strong presumption of constitutionality."[76] When considering whether a fine is excessive, courts typically utilize three factors, including the harm caused by the defendant.[77] Pinellas attempted to equate the measure of its harm to the $755.54 in damages suffered by the government to support the argument the $1.179 million award was excessive.[78] The court rejected this assertion because "[f]raud harms the United States in ways untethered to the value of any ultimate payment" such as "diminution of the public's confidence in the government."[79] Thus, the monetary award against Pinellas—while "very harsh"—was not excessive in violation of the Eighth Amendment because it properly balanced the need to deter future fraud with the gravity of Pinellas's conduct.[80]

Key Takeaways and Considerations

The *Symantec*, *Honeywell*, and *Yates* decisions provide parties facing FCA liability with further guidance on how damages and penalties should be properly calculated in various contexts. While the holdings of these cases do not signal a seismic shift, they perhaps demonstrate a trend by courts to be skeptical of aggressive FCA damages theories—a positive takeaway for government contractors—even though penalties remain a significant issue. Specifically, it is worth noting:

- The *Symantec* case in particular may be of help to future FCA defendants facing aggressive damages calculations, such as the argument that the damages resulting from a fraudulently induced contract should be calculated as the full contract value. This is a complex area, however, and there are cases in which courts have adopted full-contract-value theories, so defendants will need to carefully assess their particular circumstances in the light of all of the relevant case law.[81]
- *Symantec* also reinforces that damages must be proven with reasonable certainty, particularly given the punitive nature of FCA damages.[82] In *Symantec*, the government's calculations failed to meet that burden because the measures were not apportioned between the different alleged acts of fraud, such that the court could not "disentangle" them to achieve reasonable certainty.[83] The court in *Symantec* also relied heavily on the defendant's expert to reduce the government's damages

calculation—i.e., from the use of a $281.5 million baseline, to just an $11.9 million baseline, which had the effect of reducing Symantec's treble damages by over $20 million.[84] This indicates that future defendants will want to carefully assess the use of experts, including the extent to which they ask their experts to develop alternative damages calculations (as opposed to simply noting potential problems with the government's damages calculations).

- It remains to be seen how *Honeywell* will impact settlement strategy in FCA cases involving multiple defendants. Going forward, though, it will be important for each defendant in an FCA case to closely monitor the settlements of other defendants to determine if an individual company's potential liability can be reduced (or even eliminated) by such prior settlements. Each defendant will also need to consider whether to hold out on settling, like Honeywell did, in the hope that any FCA liability will be offset by settlements with other defendants. This may, of course, be difficult to evaluate as a particular defendant often does not know if it is one of several defendants, particularly in *qui tam* cases, which are initially filed under seal.
- Because the settlement amount of $36 million in *Honeywell* exceeded the $35 million in treble damages the government sought against Honeywell, the DC Circuit in that case did not need to address whether *pro tanto* offsets are applied to single or treble damages, so contractors will want to continue to monitor the case law for further, future guidance on this issue.
- While *Yates* supports the argument that the Eighth Amendment's Excessive Fines Clause applies even in non-intervened FCA cases, it also indicates that defendants face an uphill battle in arguing that penalties assessed in a given case run afoul of that clause. That said, going forward, defendants will likely continue to rely on the factors established by *United States v. Bajakajian* in challenging the imposition of penalties: (1) whether the defendant is in the class of persons at whom the statute was principally directed; (2) how the imposed penalties compare to other penalties authorized by the legislature; and (3) the harm caused by the defendant.[85]At least in *Yates*, the court easily determined that factor one was satisfied because, "by submitting fraudulent claims, [Pinellas] is squarely in the FCA's crosshairs."[86] And the *Yates* court also held that FCA monetary awards compare favorably to other statutes, such as the Anti-Kickback Act that imposes $23,331 in penalties per violation.[87] Thus, future defendants relying on the Excessive Fines Clause likely will focus on the third factor—the magnitude of harm caused. In this respect, Pinellas's arguments serve as a potential warning that attempting to equate "harm" to "damages" is unlikely to be successful—other factors, like the harm caused to the public's confidence in the government, must be considered. PL

Endnotes

1. 143 S. Ct. 1391 (2023) (holding that the defendant's subjective knowledge of the falsity of its claims is relevant to determining whether the defendant acted with the scienter necessary to establish an FCA violation).
2. United States *ex rel.* Morsell v. NortonLifeLock, Inc., No. CV 12-800 (RC), 2023 WL 314506 (D.D.C. Jan. 19, 2023); United States v. Honeywell Int'l Inc., 47 F.4th 805 (D.C. Cir. 2022); Yates v. Pinellas Hematology & Oncology, P.A., 21 F.4th 1288, 1307 (11th Cir. 2021).
3. 31 U.S.C. § 3729 et seq.
4. *See* United States v. Bornstein, 423 U.S. 303, 309 (1976).
5. 31 U.S.C. § 3729(a)(1)(A)–(B). A cause of action under the FCA generally requires that "(1) there was a false statement or fraudulent course of conduct; (2) made or carried out with the requisite scienter; (3) that was material; and (4) that caused the government to pay out money or to forfeit moneys due (i.e., that involved a 'claim')." United States *ex rel.* Taylor v. Boyko, 39 F.4th 177, 188 (4th Cir. 2022) (internal quotations and citations omitted).
6. Act of Mar. 2, 1863, ch. 67, 12 Stat. 696 (1863).
7. *See* False Claims Amendments Act of 1986, Pub. L. No. 99-562, 100 Stat. 3153.
8. *See id.*; Department of Defense Reauthorization Act, Pub. L. No. 99-145, 99 Stat. 583 (1985).
9. *See* Pub. L. No. 99-562, 100 Stat. 3153.
10. 31 U.S.C. § 3729(a)(1)(A)–(B).
11. Civil Monetary Penalties Inflation Adjustments for 2023, 88 Fed. Reg. 5,776 (Jan. 30, 2023).
12. United States v. Bornstein, 423 U.S. 303, 314 (1976).
13. *See* United States *ex rel.* Morsell v. NortonLifeLock, Inc., No. CV 12-800 (RC), 2023 WL 314506, at *1 (D.D.C. Jan. 19, 2023). Symantec was the original contracting entity, but after a corporate reorganization, NortonLifeLock was the successor entity. While the case is styled "NortonLifeLock," the factual background in the decision focused on the original contracting entity, "Symantec."
14. The False Claims Act allows private individuals to file suit on behalf of the United States. 31 U.S.C. § 3730(b). In exchange, the party known as the *qui tam* relator, is entitled to receive between 15 and 30 percent of the government's recovery if the action is successful. *See id.* § 3730(d). When a *qui tam* suit is brought, the government may intervene in the case, or decline to do so. *See id.* § 3730(b)(2).
15. United States *ex rel.* Morsell v. Symantec Corp., 130 F. Supp. 3d 106 (D.D.C. 2015).
16. *NortonLifeLock*, 2023 WL 314506, at *50.
17. *Id.*
18. GSAM § 552.238-75, now at *id.* § 552.238-81. Under the PRC, the government may be entitled to reductions to the prices stated in an MAS contract in the event of changes to the contractor's commercial sales practices.
19. *Id.* § 552.243-72, now at *id.* § 552.238-82.
20. *See NortonLifeLock*, 2023 WL 314506, at *50.
21. *Id.* at *65–67.
22. *Id.* at *56–63.
23. *Id.* at *63–65.
24. *Id.* at *70.
25. *See id.* at *71.
26. *See id.* at *73.
27. *See id.* at *71.
28. *Id.*

29. *Id.* at *72.
30. *Id.*
31. *See id.* at *73.
32. *See id.*
33. *See id.*
34. *See id.*
35. Clearly unhappy with this result, the government has since filed a motion to modify the judgment, essentially asking for reconsideration of the court's damages calculation. At the time this article is going to press, that motion was still pending before the DDC.
36. United States v. Honeywell Int'l Inc., 502 F. Supp. 3d 427, 435 (D.D.C. 2020), *rev'd and remanded*, 47 F.4th 805 (D.C. Cir. 2022).
37. United States v. Honeywell Int'l Inc., 47 F.4th 805 (D.C. Cir. 2022).
38. *Honeywell*, 502 F. Supp. 3d at 477–80.
39. *Id.* at 477.
40. *Id.*
41. *Id.* at 485.
42. *See* United States v. Bornstein, 423 U.S. 303, 314 (1976).
43. United States v. Honeywell Int'l Inc., 47 F.4th 805, 812 (D.C. Cir. 2022).
44. *Id.* at 813.
45. *Id.*
46. *See* 511 U.S. 202 (1994).
47. *See Honeywell*, 47 F.4th at 817.
48. *Id.*
49. 529 U.S. 765 (2000).
50. *Honeywell*, 47 F.4th at 818 (arguing the proportionate share rule would allow a court to calibrate a party's punishment to its relative culpability, furthering the statute's punitive effect).
51. *Id.*
52. *Id.* (noting application of the *pro tanto* rule would not disturb the FCA's civil penalties, "which serve a punitive purpose and may in some cases even exceed the statutory damages").
53. *See id.*
54. *See id.* at 819.
55. *Id.*
56. *Id.*
57. *See* Yates v. Pinellas Hematology & Oncology, P.A., 21 F.4th 1288, 1296 (11th Cir. 2021).
58. *Id.* at 1294–97.
59. *Id.*
60. *Id.* at 1304.
61. *Id.*
62. *Id.* (citation omitted).
63. *See id.*
64. *Id.* at 1305.
65. *Id.* at 1306.
66. U.S. Const. amend. VIII.
67 *See* Austin v. United States, 509 U.S. 602, 609–10 (1993).
68. *Yates*, 21 F.4th at 1307.
69. *See id.*
70. *See Austin*, 509 U.S. at 610.
71. *See* Vt. Agency of Nat. Res. v. United States *ex rel.* Stevens, 529 U.S. 765, 784–86 (2000); *see also* Yates v. Pinellas Hematology & Oncology, P.A., 21 F.4th 1288, 1308 (11th Cir. 2021).
72. *See Yates*, 21 F.4th at 1309–13 (holding the "conclusion [that FCA monetary awards are fines] cannot be reconciled with the theory that such fines are not imposed by the United States simply because Congress ordered their imposition irrespective of the Executive's decision whether to intervene"). At oral argument, the government, as amicus curiae, agreed that the Excessive Fine Clause applied in the case. *Id.* at 1314.
73. United States v. Bajakajian, 524 U.S. 321, 334 (1998); *Yates*, 21 F.4th at 1314.
74. *Yates*, 21 F.4th at 1314.
75. *See id.*
76. *Id.*
77. *See Bajakajian*, 524 U.S. at 338–39.
78. *See Yates*, 21 F.4th at 1316.
79. *Id.* (citation omitted).
80. *See id.*
81. Two cases illustrate the point. First, in *United States ex rel. Longhi v. United States*, 575 F.3d 458 (5th Cir. 2009), the U.S. Court of Appeals for the Fifth Circuit held the government was entitled to damages equal to the full amount paid for the contracts at issue. There, the government paid $1,657,455 in connection with four grants under the Small Business Innovation Research (SBIR) program. *Id.* at 472. The government's benefit of the bargain, according to the Fifth Circuit, was to "award money to eligible deserving small businesses" under the program and that intangible benefit was lost due to the defendants' fraud. *Id.* at 473. Thus, because there was no tangible benefit to the government and the intangible benefit was impossible to calculate, it was appropriate to "value damages in the amount the government actually paid" to the defendants—the full contract value. *Id.*

Second, in *United States ex rel. Savage v. Washington Closure Hanford LLC*, No. 2:10-CV-05051-SMJ, 2017 WL 3667709 (E.D. Wash. Aug. 24, 2017), the court denied a motion for summary judgment on damages filed by defendant Washington Closure Hanford (WCH). WCH was alleged to have violated the FCA by knowingly misrepresenting the status of several subcontractors in breach of its contract with the Department of Energy. *Id.* at *1. WCH asserted that any damages should be calculated in accordance with the liquidated damages provisions of the contract. *Id.* at *4. The government countered that damages were properly calculated based on the total subcontract amounts, without any reference to the prime contract's liquidated damages provisions. *See id.* The court agreed with the government, holding that the government's damages were not limited by the prime contract's liquidated damages provisions. *See id.*
82. *See* United States *ex rel.* Morsell v. NortonLifeLock, Inc., No. CV 12-800 (RC), 2023 WL 314506, at *73 (D.D.C. Jan. 19, 2023).
83. *See id.* at *71.
84. *See id.* at *73.
85. *See* 524 U.S. 321, 338–39 (1998).
86. Yates v. Pinellas Hematology & Oncology, P.A., 21 F.4th 1288, 1315 (11th Cir. 2021).
87. *See id.* at 1315–16.