

Mahle Quoted in *Law360* Article Titled “Lack Of Clarity On FCA Pleading May Prompt Venue Shopping”

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Jake Mahle, a partner in the Vorys Cincinnati office, was quoted in a *Law360* article about the potential for “forum shopping” with False Claims Act (FCA) cases. According to the story, the U.S. Supreme Court has refused to address how much detail is needed in whistleblowers’ pleadings in FCA cases, which leaves a circuit court split on this issue that “defendants say encourages gamesmanship from relators seeking the most lenient standard.”

The story states:

“With the current prevalence of working from home, relators could, for example, look to establish a nexus to the Ninth Circuit — which has one of the most lenient pleading standards — though an accounts payable clerk involved in processing allegedly false claims who worked remotely from California while the employer was another state, he said.

Even if a defendant ultimately succeeds on summary judgment in a case initially allowed to move forward under a more lenient approach to Rule 9(b), a company can still face ‘enormous costs and expenditures of time and money related to what are essentially fishing expeditions,’ said Vorys Sater Seymour and Pease LLP partner Jacob Mahle.”

It also states:

“The high court didn’t explain why it turned down the three recent petitions, but beyond the justices abiding by the government’s request not to take the cases — as the government had also requested in a similar 2014 case — other potential factors may have included the specific facts involved.

Rule 9(b) determinations generally involve addressing a unique set of facts, which may not support a broad ruling, whereas the court is in a better position to rule on more clear-cut issues such as the extent of the government’s authority to dismiss whistleblower FCA cases, an issue the justices will determine this

term.

'You're very rarely going to have two truly analogous cases, especially at the pleading stage,' said Mahle of Vorys."

To read the entire article on the *Law360* website, [click here](#). (Subscription may be required).