IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA *ex rel.*	§	
CORI RIGSBY and KERRI RIGSBY	§	**RELATORS**
	§	
	§	
v.	§	**Civil No. 1:06CV433-HSO-RHW**
	§	
STATE FARM FIRE AND	§	
CASUALTY CO., *et al.*	§	**DEFENDANTS**

MEMORANDUM OPINION AND ORDER DENYING DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S MOTION TO ALTER OR AMEND JUDGMENT

BEFORE THE COURT is the Motion to Alter or Amend Judgment [1130] filed by Defendant State Farm Fire and Casualty Company ["State Farm"] pursuant to Federal Rule of Civil Procedure 59(e). This Motion is now fully briefed. After consideration of the Motion, the related pleadings, the record in this case, and relevant legal authorities, the Court finds that Defendant's Motion to Alter or Amend Judgment should be denied.

I. BACKGROUND

At the conclusion of the trial of this matter, the jury considered Relators Cori Rigsby and Kerri Rigsby's allegations that Defendant State Farm violated the following provisions of the False Claims Act, 31 U.S.C. §§ 3729, *et seq*. ["FCA"]: (1) 31 U.S.C. § 3729(a)(1) (1994) (knowingly presenting, or causing to be presented, to an officer or employee of the United States Government a false or fraudulent claim for payment or approval), as contained in Count I of the Amended Complaint [16]; and (2) 31 U.S.C. § 3729(a)(1)(B) (2009) (knowingly making, using, or causing to be

made or used, a false record or statement material to a false claim), as contained in Count II of the Amended Complaint [16]. The claims tried to the jury were limited to the flood insurance claim State Farm paid under Coverage A of the Standard Flood Insurance Policy ["SFIP"] which covered the property of Thomas and Pamela McIntosh located in Biloxi, Mississippi. *See* Mem. Op. [343], at pp. 2–3.[1]

On April 8, 2013, the jury returned a unanimous verdict finding that (1) State Farm knowingly presented, or caused to be presented, to an officer or employee of the United States Government, a false or fraudulent claim for payment or approval in connection with the McIntosh flood claim, and (2) that State Farm knowingly made, used, or caused to be made or used, a false record or statement material to a false or fraudulent claim in connection with the McIntosh flood claim. Special Verdict Form [1092] at 2–3. The jury concluded the Government suffered damages of $250,000.00 under the False Claims Act as a result of State Farm submitting a false flood claim for payment of flood policy limits on the McIntosh property. *Id.* at 2–3.

After the Court resolved the parties' post-trial Motions, the Court entered a Final Judgment on Relators' claims pursuant to Federal Rule of Civil Procedure 54(b). Final J. [1129] at 1–3. The Court awarded the United States of America trebled damages in the amount of $750,000.00 and a civil penalty in the amount of $8,250.00. *Id.* at 2. The Court awarded Relators 15% each, for a total of 30%, of the

[1]State Farm essentially satisfied the McIntoshes' SFIP claim by writing a check drawn on Government funds. *See* 44 C.F.R. Pt. 62 App. A, art. III(D)(1); *Grissom v. Liberty Mut. Fire Ins. Co.*, 678 F.3d 397, 402 (5th Cir. 2012).

foregoing proceeds awarded to the United States, plus their attorneys' fees, expenses, costs, and post-judgment interest. *Id.* at 2–3.

State Farm has filed the present Motion pursuant to Federal Rule of Civil Procedure 59(e) seeking a setoff or reduction of the amount of the Final Judgment corresponding to the amount of Relators' settlements with previously dismissed Defendants Forensic Analysis and Engineering Corp. ["FAEC"] and Haag Engineering Co. ["Haag"].[2] Mot. [1130] at 1. While State Farm was not privy to the amounts remitted in exchange for settlement and release of the claims against FAEC and Haag, State Farm asks the Court "to credit the Judgment for the amounts remitted by FAEC and Haag in their respective settlement agreements." *Id.* at 3. To the extent those settlements included payment of Relators' attorneys' fees, State Farm requests that those sums "be credited against the attorneys' fees award against State Farm." *Id.*

Relators respond that State Farm is judicially estopped from seeking setoff because State Farm successfully moved *in limine* before trial to exclude evidence regarding the settlements on grounds that they were irrelevant to any issue at trial.

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[2]State Farm cites two district court cases in support of its proposition that Rule 59(e) is the appropriate post-judgment vehicle to request setoff. Rebuttal [1136] at 2 (citing *Fox v. Barnes*, 2013 U.S. Dist. LEXIS 68723, *6 (N.D. Ill. 2013); *Miller v. Holzmann*, 563 F. Supp. 2d 54, 144 (D.D.C. 2008)). The Court does not find these cases persuasive. *Fox* was not an FCA case, but involved a jury verdict on a plaintiff's Eighth Amendment claim under 42 U.S.C. § 1983 and Illinois law, which are not applicable here. *Fox*, 2013 U.S. Dist. LEXIS 68723, at *14–*15. The particular Order [Doc. 490] upon which State Farm relies has been appealed to the United States Court of Appeals for the Seventh Circuit. *Fox v. Barnes*, Doc. 500, No. 1:09-cv-5453 (N.D. Ill. June 14, 2013). The appeal appears to remain pending. *Fox v. Barnes*, No. 13-2320 (7th Cir.). The district court's rulings in *Miller* were vacated in part and affirmed in part on appeal. *United States ex rel. Miller v. Bill Harbert Intern. Constr., Inc.*, 608 F.3d 871, 907 (D.C. Cir. 2010).

Relators' Resp. [1134] at 1. Relators have submitted copies of both settlement agreements and argue that the Final Judgment should not be reduced due to the FAEC settlement because "FAEC did not pay any money to the United States government or to the Relators." Relators' Resp. [1134] at 1. Relators further maintain that no reduction is appropriate on account of the Haag settlement because Haag did not play any role in adjusting the McIntosh claim and the Haag settlement encompassed "thousands of flood claims other than the McIntosh flood claim." *Id.* at 2. The United States has also filed a Response [1137] in opposition to State Farm's Motion, taking the position that no reduction is warranted because State Farm has not shown that the settlement between Relators and Haag released any liability related to the McIntosh property. Govt.'s Resp. [1137] at 1.

II. DISCUSSION

In a bankruptcy case State Farm has cited in support of its Motion, the Fifth Circuit held that a party seeking a setoff based upon a settlement bears the burden of proof "to show that the damages assessed against it have in fact and in actuality been previously covered." *In re Tex. Gen. Petroleum Corp.*, 52 F.3d 1330, 1340 (5th Cir. 1995) (quotation omitted); *see also* Mot. [1130] at 3. "If the nonsettling defendant is not a party to the settlement negotiations, however, he need only show that the plaintiff settled with another party the claim on which the nonsettling defendant is liable." *Tex. Gen. Petroleum Corp.*, 52 F.3d at 1340 (citation omitted). In that situation, "[t]he burden then shifts to the plaintiff to offer proof that the settlement does not provide him with a double recovery." *Id.* (citation omitted).

"The best way for a plaintiff to satisfy his burden is to offer as proof the written settlement, which should specifically stipulate the allocation of damages to each cause of action." *Id.* (citation omitted). If the plaintiff satisfies this burden, then "the ultimate burden of proof belongs to the nonsettling defendant." *Id.* (citation omitted).

A. The FAEC Settlement

Relators maintain that FAEC did not pay any money to either the United States or Relators. Relators' Resp. [1134] at 1; *see also* FAEC Settlement Agreement [1134-1]. State Farm does not dispute this contention in its Rebuttals [1136], [1138]. State Farm has not carried its burden with respect to the FAEC settlement, and the Court will deny State Farm's Motion as it pertains to FAEC.

B. The Haag Settlement

Under the Haag Settlement Agreement [1134-2], Haag agreed "to pay the total sum of $100,000.00" to the United States in return for Relators releasing and discharging Haag "from any civil monetary claim, demand, action, cause of action, and/or suit that Relators have or may have on behalf of the United States under the False Claims Act, 31 U.S.C. §§ 3729–3733, for the Covered Conduct." Haag Settlement Agreement [1134-2] at 3. The Agreement defines Covered Conduct "to include all conduct arising out of, concerning, or related to Hurricane Katrina flood claims submitted to the NFIP . . . ." *Id.* at 2. The Haag Settlement Agreement thus encompasses conduct much broader than the single McIntosh claim, the only claim presented to the jury in this case.

State Farm contends that because the Haag Settlement Agreement is not allocated with reference to individual claims, but instead "was structured as an undivided, lump sum," the damage award against State Farm should be reduced by the entire $100,000.00 settlement. Rebuttal [1136] at 6. In support of this proposition, State Farm relies upon *Grand Acadian, Inc. v. United States*, 105 Fed. Cl. 447, 507 n.80 (Fed. Cl. 2012), and *Miller v. Holzmann*, 563 F. Supp. 2d 54, 144 (D.D.C. 2008). *Id.* As this Court previously noted, the district court's rulings in *Miller* were vacated in part and affirmed in part on appeal. *United States ex rel. Miller v. Bill Harbert Intern. Constr., Inc.*, 608 F.3d 871, 907 (D.C. Cir. 2010). The portion of *Grand Acadian* upon which State Farm relies addressed the plaintiff's breach of contract claim against the United States and the United States' entitlement to a credit; this credit was not related to the FCA counterclaim the United States had pursued against the plaintiff. *See Grand Acadian, Inc.*, 105 Fed. Cl. at 507 n.80.

State Farm has not met its initial burden of showing that "the damages assessed against it have in fact and in actuality been previously covered." *Tex. Gen. Petroleum Corp.*, 52 F.3d at 1340. State Farm argues that at least a portion of Relators' settlement with Haag represents common damages with the McIntosh false claim, for which State Farm claims it and Haag would be jointly and severally liable. Rebuttal [1136] at 4. State Farm relies upon the presence of a conspiracy claim in this case to support its theory. *Id.* at 4–5 (citing *United States ex rel. Bunk v. Birkart Globistics GmbH & Co.*, 2010 U.S. Dist. LEXIS 119636, 25–26 (E.D. Va.

Nov. 10, 2010)).[3] However, at trial this Court granted in part and denied in part State Farm's *Ore Tenus* Motion for Judgment as a Matter of Law pursuant to Federal Rule of Civil Procedure 50 and dismissed Relators' conspiracy claim. Order [1087] at 2. Whether Haag and State Farm were co-conspirators with respect to the McIntosh claim was not a question presented to or decided by the jury. Nor were damages assessed against State Farm for any alleged conspiracy between it and Haag or any other Defendant, as the Court found that Relators had presented insufficient evidence that State Farm's alleged co-conspirators shared a specific intent to defraud the United States. *Id.*

Moreover, State Farm has not shown that, with respect to the Haag settlement, Relators or the United States "settled with another party the claim on which the nonsettling defendant is liable." *Tex. Gen. Petroleum Corp.*, 52 F.3d at 1340. State Farm asserted in the Second Amended Pretrial Order [1071] that "[t]he Haag Survey had nothing to do with the McIntosh flood claim and, in fact, was not even sent by Haag to State Farm until more than two weeks after the McIntosh flood claim was paid." 2d Am. Pretrial Order [1071] at 8–9. Haag similarly maintained in the Second Amended Pretrial Order that it "was not involved in the

[3] *Bunk* is not persuasive here. State Farm relies upon the district court's November 10, 2010, Memorandum Opinion in that case, which held that the Government's settlements with alleged co-conspirators entitled a non-settling co-conspirator defendant to a credit against any subsequent judgment as long as the settlement amount and judgment damages represented common damages. *Bunk*, 2010 U.S. Dist. LEXIS 119636, at *26. On appeal, however, the United States Court of Appeals for the Fourth Circuit vacated and remanded the district court's judgment in favor of the United States. *United States ex rel. Bunk v. Gosselin World Wide Moving*, 741 F.3d 390, 411 (4th Cir. 2013).

investigation or adjustment of the McIntosh flood claim" or "the McIntosh wind claim." *Id.* at 10. State Farm has not shown that the damages assessed against it "have in fact and in actuality been previously covered" by Relators or the United States through the Haag global settlement. *See Tex. Gen. Petroleum Corp.*, 52 F.3d at1340.

Even if State Farm had proved that some portion of the Haag settlement funds and the damages assessed against State Farm were common damages, the Court finds that State Farm has not met its ultimate burden of demonstrating it is entitled to a credit for the Haag settlement. State Farm faults Relators and the United States for not demonstrating which portion of the damages assessed for the McIntosh claim represent common damages with the Haag settlement. As noted earlier, the definition of Covered Conduct in the Haag Settlement Agreement is not limited to that involving the McIntosh claim, or even to that involving State Farm. Haag Settlement Agreement [1134-2] at 3. Even if the Haag Settlement Agreement were explicitly limited to Hurricane Katrina NFIP claims on State Farm written and adjusted flood policies, the number of State Farm NFIP claims resulting from Hurricane Katrina is information which would be in State Farm's possession. State Farm has resisted divulging such information throughout this litigation. Another problem with State Farm's common damages argument then is that neither Relators nor the United States possess the information to ascertain what percentage of the $100,000.00 settlement could potentially be attributed to the single McIntosh claim.

In sum, State Farm has not shown that Relators or the United States settled with Haag on the McIntosh claim. Nor has State Farm shown that the damages assessed against it and the $100,000.00 proceeds of the global Haag Settlement Agreement represent damages which have in fact and in actuality been previously covered. State Farm has not met its ultimate burden of demonstrating that is entitled to any reduction of the damages awarded against it. State Farm's Motion should be denied.

III. CONCLUSION

For the foregoing reasons, the Court concludes that State Farm's Motion [1130] should be denied. To the extent the Court has not addressed any of the parties' arguments, it has considered them and determined that they would not alter the result.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, Defendant State Farm Fire and Casualty Company's Motion to Alter or Amend Judgment [1130] pursuant to Federal Rule of Civil Procedure 59(e) is **DENIED**.

SO ORDERED AND ADJUDGED this 10th day of April, 2014.

s/ Halil Suleyman Ozerden
HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE