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File Name: 22a0014p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA *ex rel*. KATHLEEN A BRYANT,
Relator-Appellant,

v.

COMMUNITY HEALTH SYSTEMS, INC.; HERITAGE MEDICAL CENTER,
Defendants-Appellees.

No. 20-5460

UNITED STATES OF AMERICA *ex rel*. JAMES DOGHRAMJI, SHEREE COOK, and RACHEL BRYANT,
Relators-Appellants,

v.

COMMUNITY HEALTH SYSTEMS, INC. et al.,
Defendants-Appellees.

Nos. 20-5462/5469

UNITED STATES OF AMERICA *ex rel*. NANCY REUILLE,
Relator-Appellant,

v.

COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION et al.,
Defendants-Appellees.

No. 20-5463

UNITED STATES OF AMERICA *ex rel*. AMY COOK-RESKA,
Relator-Appellant,

v.

COMMUNITY HEALTH SYSTEMS, INC. et al.,
Defendants-Appellees.

No. 20-5637

Appeal from the United States District Court for the Middle District of Tennessee at Nashville.
Nos. 3:11-cv-00442; 3:14-cv-02195 (20-5460), 3:15-cv-00110 (20-5462/5463/5469), and 3:14-cv-02160 (20-5637)—Marvin E. Aspen, District Judge.

Argued: December 9, 2021

Decided and Filed: January 25, 2022

Before: MOORE, CLAY, and GIBBONS, Circuit Judges.

COUNSEL

ARGUED: David W. Garrison, BARRETT JOHNSTON MARTIN & GARRISON, LLC, Nashville, Tennessee, for Appellants James Doghramji, Sheree Cook, and Rachel Bryant. Patrick J. O'Connell, LAW OFFICES OF PATRICK J. O'CONNELL PLLC, Austin, Texas, for Appellants Nancy Reuille and Amy Cook-Reska. Michael L. Waldman, ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER, & SAUBER LLP, Washington, D.C., for Appellees Community Health Systems, Inc. et al. **ON BRIEF:** David W. Garrison, Seth M. Hyatt, BARRETT JOHNSTON MARTIN & GARRISON, LLC, Nashville, Tennessee, Daniel Berger, GRANT & EISENHOFER P.A., New York, New York, for Appellants James Doghramji, Sheree Cook, and Rachel Bryant. Patrick J. O'Connell, LAW OFFICES OF PATRICK J. O'CONNELL PLLC, Austin, Texas, for Appellants Nancy Reuille and Amy Cook-Reska. Michael L. Waldman, D. Hunter Smith, ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER, & SAUBER LLP, Washington, D.C., William M. Outhier, RILEY, WARNOCK & JACOBSON, PLC, Nashville, Tennessee, for Appellees Community Health Systems, Inc. et al. Mitchell R. Kreindler, KREINDLER & ASSOCIATES, Houston, Texas, for Appellant Kathleen Bryant.

OPINION

KAREN NELSON MOORE, Circuit Judge. Various relators in these consolidated cases sued Community Health Systems ("CHS") and others, alleging that CHS submitted fraudulent claims for medically unnecessary hospital admissions to federal public-health insurance programs, such as Medicaid and Medicare. Relators' counsel performed thousands of hours work in assisting the government with the investigation. Seven years ago, the relators, the government, and CHS entered into a settlement agreement, disposing of the underlying claims in the cases. The settlement agreement left undecided the allocation of attorney fees under the relevant provision of the False Claims Act ("FCA"), 31 U.S.C. § 3730(d). After settling with all

the relators, CHS now claims that the relators are not entitled to attorney fees because the FCA's first-to-file rule and public-disclosure bar precluded their claims. The district court agreed with CHS.

We hold that CHS cannot now rely on these separate provisions of the FCA as a last-ditch effort to deny attorney fees to the relators. After the global settlement reached pursuant to a collaborative process between the government and relators' counsel, we see no reason to apply the first-to-file and public-disclosure rules. We **REVERSE** the district court's judgment and **REMAND** with instructions to the district court to determine an award of reasonable attorney fees to relators' counsel.

I. BACKGROUND

Our previous opinion provides a background of the relevant proceedings. *United States ex rel. Doghramji v. Cmty. Health Sys., Inc.*, 666 F. App'x 410 (6th Cir. 2016). We highlight in greater detail the facts relevant to this appeal.

A. Overview of allegations against CHS

Federal public-health insurance programs, such as Medicare, reimburse hospitals for treating patients covered by those programs. *See, e.g.*, R. 1 (Case No. 3:11-cv-00442) (Doghramji Compl. ¶ 96) (Page ID #38); R. 2 (Case No. 3:14-cv-02160) (Cook-Reska Compl. ¶ 32) (Page ID #11). Hospitals receive different rates of reimbursement from federal programs depending on whether a patient receives inpatient or outpatient care. R. 1 (Case No. 3:11-cv-00442) (Doghramji Compl. ¶ 100) (Page ID #39). For example, if a hospital admits to the hospital a patient who enters through the emergency room, that patient receives inpatient care. *Id.* ¶ 97 (Page ID #38). If, however, a patient enters the emergency room, is treated, and is subsequently discharged, that patient has received outpatient care. Treating a patient in a hospital and monitoring the patient for a short period of time also qualifies as outpatient care. *Id.* ¶ 99 (Page ID #39).

Federal health-insurance programs reimburse hospitals at much higher rates for inpatient care than for outpatient care. *Id.* ¶ 100 (Page ID #39). Under these programs' regulations,

however, reimbursement is proper only for treatment that is "reasonable and necessary for the diagnosis or treatment of illness or injury." *See, e.g.*, 42 U.S.C. § 1395y(a)(1)(A). The plaintiffs in these actions (called "relators" in FCA cases) all alleged that CHS-owned hospitals admitted patients to inpatient care for medically unnecessary reasons and billed these federal health-insurance programs for inpatient services that should have been characterized as outpatient services. R.1-3 (Case No. 3:15-cv-00110) (Reuille Compl. ¶ 10) (Page ID #18–20); R. 2 (Cook-Reska Compl. ¶ 103) (Case No. 3:14-cv-02160) (Page ID #37–42); R. 115-5 (Case No. 3:11-cv-00442) (Plantz Compl. ¶ 193) (Page ID #1559); R. 1 (Case No. 3:14-cv-02195) (Bryant Compl. ¶ 2, 4) (Page ID #1–2); R. 1 (Case No. 3:11-cv-00442) (Doghramji Compl. ¶ 3) (Page ID #14). Because these actions constituted submissions of false claims to the Government, they violated the FCA. 31 U.S.C. § 3729(a)(1)(A).

On January 7, 2009, Nancy Reuille, a Case Management Supervisor at CHS-owned Lutheran Hospital, was the first in time to file her complaint against Lutheran and Community Health Systems Professional Services, a subsidiary of CHS. R. 1-3 (Case No. 3:15-cv-00110) (Reuille Compl. ¶ 9) (Page ID #17). Relator Amy Cook-Reska followed, filing a complaint against CHS and CHS-owned Laredo Medical Center on May 22, 2009. R. 2 (Case No. 3:14-cv-02160) (Page ID #1). Both Reuille and Cook-Reska alleged that hospital personnel were fraudulently billing for long post-outpatient-surgery observation periods that did not correspond with the actual observation time and designating short hospital stays as "inpatient" stays contrary to Medicare criteria. R. 1-3 (Case No. 3:15-cv-00110) (Reuille Compl. ¶ 10, 12) (Page ID #20–21); R. 2 (Case No. 3:14-cv-02160) (Cook-Reska Compl. ¶ 103) (Page ID #37–42). Apparently, Reuille and Cook-Reska were catching a glimpse of a larger problem. On February 11, 2010, Dr. Scott Plantz filed a complaint against CHS and over 100 of its subsidiary hospitals, alleging largely the same conduct. R. 115-5 (Case No. 3:11-cv-00442) (Plantz Compl.) (Page ID #1528–31). Relator Kathleen Bryant filed a similar complaint against CHS-owned Heritage Medical Center in July 2010. R. 1 (Case No. 3:14-cv-02195) (Bryant Compl.) (Page ID #1). Finally, a group of relators (the *Doghramji* relators) filed another FCA lawsuit against CHS and over 100

of its subsidiary hospitals in May 2011. R. 1 (Case No. 3:11-cv-00442) (Doghramji Compl.) (Page ID #1–5).[1]

B. The government investigation and settlement negotiations

In early 2011, the government informed the first four relators—Reuille, Cook-Reska, Plantz, and Bryant—that their claims had "triggered a nationwide investigation on the part of the U.S." *Cmty. Health Sys.*, 666 F. App'x at 411. "The Government encouraged these relators 'to work together on the cases and share any proceeds that might result.'" *Id.* Following the government's encouragement, the relators entered into a sharing agreement in April 2011. *Id.*

In February 2011, the *Doghramji* relators met with the U.S. Department of Justice and disclosed the result of an almost year-long investigation into CHS. *Id.* at 411–12. After the meeting, the *Doghramji* relators filed their FCA suit against CHS. The government then asked the *Doghramji* relators to "actively participate in its investigation" and partially unsealed the first four relator complaints to assist the *Doghramji* relators in their investigation. *Id.* at 412. For the next several years, all the relators worked together to assist the government in its prosecution of the claims against CHS:

> Counsel for relators thereafter engaged in a "collaborative effort" involving "bi-monthly calls with the Government." "The Government lawyers mapped out the investigation and assigned work to all relators' counsel in an organized manner," with "the majority of the assignments [being] made without regard to the individual complaint." At the Government's request, from 2011 to 2014 the [*Doghramji*] Relators' counsel organized and analyzed thousands of documents produced by CHS, drafted letters and memoranda related to these documents, created lists of witnesses, drafted outlines for questioning witnesses, and conducted extensive legal and factual research. All told, they calculated their work on the case at nearly 7,000 billable hours.

Id.

[1]After Bryant filed her complaint, two more relators filed FCA complaints against CHS. Neither are parties in this case. Bryan Carnithan is separately litigating fees in the Southern District of Illinois, and Thomas Mason separately settled a fee dispute with CHS. *United States ex rel. Carnithan v. Cmty. Health Sys., Inc.*, No. 3:11-cv-00312 (S.D. Ill. Apr. 14, 2011); *United States ex rel. Mason v. Cmty. Health Sys., Inc.*, No. 3-12-cv-00817 (W.D.N.C. Dec. 11, 2012).

In the spring of 2014, the *Doghramji* relators joined the original relators' sharing agreement. *Id.* Because the government had learned through preliminary settlement negotiations that CHS would require that all seven qui tam complaints be dismissed with prejudice, the *Doghramji* relators entered into the agreement upon the government's encouragement. *Id.*; R. 89 (Case No. 3:11-cv-00442) (Buschner Decl. ¶ 15) (Page ID #921).

In July 2014, the government intervened in each of the relators' actions, and on August 4, 2014, the government filed notices of settlement in each case. *Cmty. Health Sys.*, 666 F. App'x at 412. The global settlement agreement between the government, CHS, and all seven relators recited that CHS-owned hospitals submitted claims for "Medically Unnecessary Emergency Department Admissions" that "should have been billed as outpatient or observation services." R. 64 (Case No. 3:14-cv-02160) (Settlement Agreement at 1, 3) (Page ID #133, 135) (the "MUED Claims"). It also recited that one CHS-owned hospital, LMC, improperly submitted medically unnecessary inpatient procedures and engaged in an improper financial relationship that violated the Physician Self-Referral Law and the FCA. *Id.* at 5 (Page ID #137) (the "Laredo Claims").

In exchange for a payment exceeding $97 million (approximately $88 million of which stemmed from the MUED Claims and $9 million from the Laredo Claims), the settlement agreement provided that the government and the seven relators would dismiss all their claims against CHS. *Id.* at 6–7 (Page ID #138–39). The settlement agreement reserved the issue of allocation of attorney fees, providing in relevant part:

> All parties agree that nothing in this Paragraph or this Agreement shall be construed in any way to release, waive or otherwise affect the ability of CHS to challenge or object to Relators' claims for attorneys' fees, expenses, and costs pursuant to 31 U.S.C. § 3730(d).

Id. at 10 (Page ID #142).

The district courts where relators filed suit entered judgments in each of the relators' actions, dismissing all the relators, but retained jurisdiction over the allocation of attorney fees. R. 77 (Case No. 3:11-cv-00442) (8/14/2014 Order Dismissing *Doghramji* Compl.) (Page ID #645); R. 80 (Case No. 3:11-cv-00442) (9/3/2014 Order Granting Extension of Time to File Petition for Recovery of Attorney Fees) (Page ID #656); R. 41 (Case No. 3:14-cv-02195)

(9/4/2014 Order Dismissing Bryant Compl. ¶ 2–3) (Page ID #292); R. 1-4 (Case No. 3:15-cv-00110) (Joint Status Report Noting Dismissal of Reuille Compl. ¶ 4) (Page ID #47). After the district courts approved the settlement agreement, the government announced that it would award Plantz the relators' share for the MUED claims and Cook-Reska the relators' share for the Laredo Claims. R. 115-15 (Case No. 3:11-cv-00442) (Plantz Settlement Agreement) (Page ID #2760); R. 115-16 (Case No. 3:11-cv-00442) (Cook-Reska Settlement Agreement) (Page ID #2766). Pursuant to the government-encouraged share agreement into which the relators previously entered, the remaining relators all received a share of the Plantz award for their work on the MUED claims. App. at 17–25; R. 89 (Case No. 3:11-cv-00442) (Buschner Decl. ¶ 15) (Page ID #921–22). Some of the attorneys collected a percentage of the Plantz recovery as a contingency fee. App. at 34.

C. Procedural history of attorney-fees dispute

All relators' lawsuits were subsequently transferred to the Middle District of Tennessee for resolution of the attorney-fees dispute. *Cmty. Health Sys.*, 666 F. App'x at 412. In February 2015, the district court consolidated the cases and directed the parties to brief "whether all or some of the relators are precluded from recovery of attorneys' fees and costs by the first-to-file rule provided in 31 U.S.C. § 3730(b)(5) and/or by the public disclosure bar." *Id.* at 412–13.

The first round of litigation before this court involved the interpretation of the plain meaning of the settlement agreement. The district court interpreted the settlement agreement to preclude CHS from raising any first-to-file or public-disclosure challenge post-settlement. *Id.* at 413; *United States ex rel. Doghramji v. Cmty. Health Sys., Inc.*, 2015 WL 4662996, at *8 (M.D. Tenn. Aug. 6, 2015). We held that the language of the settlement agreement governing attorney fees was ambiguous and instructed the district court to consider extrinsic evidence to determine the intent of the parties. *Cmty. Health Sys.*, 666 F. App'x at 418. Judge Stranch concurred, emphasizing the vital role that the FCA plays in combatting health-care fraud and noting that the FCA's goals of recovering public moneys would not be served through rules that disincentivize relators and their attorneys from bringing qui tam actions. *Id.* at 419–20 (Stranch, J., concurring).

On remand, Magistrate Judge Holmes found, after thorough review of the extrinsic evidence, that the language in the Settlement Agreement "limit[ed] any challenges or objections to attorneys' fees to the grounds specifically listed in § 3730(d)." R. 89 (Case No. 3:14-cv-02195) (R. & R. at 49–50) (Page ID #734–35). After conducting its own review of the extrinsic evidence, the district court declined to adopt Judge Holmes's Report and found instead that CHS is "not precluded under the terms of the Settlement Agreement from asserting statutory bars to Relators' attorneys' fees." *United States ex rel. Doghramji v. Cmty. Health Sys., Inc.*, No. 3:11 C 442, No. 3:14 C 2160, No. 3:15 C 110, No. 3:14 C 2195, 2019 WL 4887190, at *29 (M.D. Tenn. Oct. 2, 2019).

In April 2020, the district court found that the FCA's first-to-file rule and public-disclosure bar preclude all the relators' claims for attorney fees under its interpretation of the section of the FCA governing attorney fees, 31 U.S.C. § 3730(d). *United States ex rel. Doghramji v. Cmty. Health Sys., Inc.*, No. 3:11 C 442, No. 3:14 C 2160, No. 3:15 C 110, No. 3:14 C 2195, 2020 WL 1640423, at *1 (M.D. Tenn. April 1, 2020). The relators appeal in this consolidated action.

II. ANALYSIS

The FCA subjects to civil liability "any person who knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval." 31 U.S.C § 3729(a)(1)(A). The statute contains two enforcement mechanisms. Through the first mechanism, the Attorney General may bring a civil action against a person violating § 3729 of the FCA. § 3730(a). Relevant here, a private person, called a relator, may bring a qui tam action for violation of the FCA "for the person and for the United States Government." § 3730(b)(1). "Because the scope of fraud against the government is much broader than the government's ability to detect it, the *qui tam* provisions allow the government to uncover fraud that it would not otherwise be able to discern." *United States v. Health Possibilities, P.S.C.*, 207 F.3d 335, 340 (6th Cir. 2000).

To incentivize private actors to bring qui tam actions, the FCA allows for the recovery of a share of government proceeds if the government successfully litigates or settles a claim that the relator originally brought. *See* § 3730(d)(1) and (2). When the government intervenes in a

relator's successful lawsuit, the relator is entitled to a portion of the proceeds and relator's counsel is entitled to reasonable expenses and attorney fees. § 3730(d)(1).

As a counterbalance to these incentives, the FCA also contains provisions that aim "to discourage opportunistic plaintiffs from bringing parasitic lawsuits whereby would-be relators merely feed off a previous disclosure of fraud." *Walburn v. Lockheed Martin Corp.*, 431 F.3d 966, 970 (6th Cir. 2005). Courts apply these statutory provisions, colloquially called the first-to-file rule and the public-disclosure bar, to protect the government from harms stemming from private opportunism. *See Health Possibilities*, 207 F.3d at 340. The central issue in this case is whether we should apply these statutory bars to limit awards of attorney fees seven years after a global, cooperative settlement between the government, relators, and defendants.

Because the settlement agreement incorporated § 3730(d) by reference, this case turns on statutory interpretation.[2] This appeal concerns (1) the application of § 3730(d)(1) to relators who received a share of the government proceeds of the settlement pursuant to their own sharing agreement and (2) the application of the first-to-file rule and public-disclosure bars to relators participating in a global settlement. We review de novo statutory interpretations of the FCA. *See United States ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 342 F.3d 634, 641 (6th Cir. 2003).

A. Requirement of a relator's share to recover attorney fees under § 3730(d)(1)

Section 3730(d)(1) describes the "bounty" to which the qui tam relator is entitled when the government intervenes in the relator's lawsuit. That section provides:

> If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or

[2]As explained in the procedural history, we previously remanded so that the district court could examine extrinsic evidence "to ascertain the parties' original understanding" of the terms of the Settlement Agreement. *Cmty. Health Sys.*, 666 F. App'x at 418. The district court examined the extrinsic evidence and found that the parties originally understood the agreement to preserve challenges to relators' entitlement to attorney fees. *Doghramji*, 2019 WL 4887190, at *17. The relators do not appear to challenge this determination. In discussing its extrinsic evidence opinion, however, the district court emphasized that it was interpreting only the terms of the agreement rather than the scope of § 3730(d): it did not "decide whether the first-to-file or public disclosure bars apply to some or all Relators' fee claims, or whether the Government's intervention in all Relators' cases entitles Relators to reasonable attorneys' fees." *Id.* The scope of this appeal is thus limited to the district court's subsequent decision, which interpreted § 3730(d) as a matter of law. *Cmty. Health Sys.*, 2020 WL 1640423, at *1, *5.

> settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. . . . Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

We first consider the relationship between the sentence governing the award to the relators of a portion of the government's proceeds, called the "relator's share," and the sentence governing the award of attorney fees to the relator. We decide whether the award of attorney fees is predicated on the award to the relators of the relator's share and, if so, whether the relators here received a relator's share as defined by the statute.

1. Section 3730(d)'s relator-share requirement

The next to the last sentence of § 3730(d)(1) provides the starting point for determining when a relator must be awarded attorney fees: "[a]ny such person shall also receive" reasonable attorney fees. To determine the referent of "any such person," we look generally to the "closest appropriate word." *In re Sanders*, 551 F.3d 397, 399 (6th Cir. 2008) (quoting Bryan A. Garner, *Garner's Modern American Usage* 523–24 (2003)). We therefore examine the immediately preceding sentence, which states that "[a]ny payment to a person under the first or second sentence of this paragraph shall be made from the proceeds." That sentence explains the source of the payment to the person mentioned in the first or second sentence.

Looking then, to the first sentence of § 3730(d)(1),[3] "[i]f the Government proceeds with an action brought by a person under subsection (b), such person shall . . . receive" a portion of the "proceeds of the action or settlement of the claim." "[S]uch person" is thus one who brings an action under § 3730(b), i.e., a private party. But our analysis does not end there. If the government proceeds with an action, then such person "shall"—i.e., will necessarily—receive between a fifteen and twenty-five percent share "of the proceeds of the action or settlement." § 3730(d)(1). The use of the word "shall" shows that Congress clearly envisioned the receipt of proceeds of the action or settlement to be inextricable from the government proceeding with the

[3]The second sentence of § 3730(d)(1) is not relevant to the issues governing this case.

person's action. Weaving the "person" back through the provisions of § 3730(d)(1), we conclude that "such [a] person," who (1) commenced an action in which the government intervenes and (2) receives a share of the proceeds from the action or settlement that follows, is entitled to attorney fees. The plain meaning of the statute thus provides that only persons who receive a relator's share may recover attorney fees.

Relators argue that they are entitled to attorney fees any time the government intervenes in an action. Bryant Br. at 25–26; Cook-Reska Br. at 29; Reuille Br. at 17; Doghramji Br. at 29. But this unlimited reading would suggest that relators are entitled to attorney fees, even if the lawsuit is ultimately unsuccessful. Such a result would run afoul of the presumption that a party must achieve a "degree of success" to recover attorney fees. *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 684 (1983). The link between the relator as the "person" bringing an action under subsection 3730(b) and the recovery of "the proceeds of the action or settlement of the claim" in § 3730(d)(1) solves this problem by presupposing the existence of a successful action or settlement that is linked to the relators' recovery of attorney fees.

That the "person" referred to in the first sentence of § 3730(d)(1) "shall also" receive reasonable attorney fees reinforces the conclusion that the receipt of a relator's share is necessary for an award of attorney fees. The word "also" presupposes the receipt of something in addition to the attorney fees. Logically, the phrase "shall also" means that the relators must have received a relator's share in order to be awarded attorney fees.

2. Receipt of the relator's share

Having determined that the receipt of a portion of the "proceeds of the action or settlement" is necessary for the recovery of attorney fees, we examine whether the relators here received a relator's share within the meaning of § 3730(d)(1).

The plain terms of § 3730(d)(1) require only the government's intervention and that payment to the relators come from the "proceeds of the action or settlement of the claim." All relators here received a portion of the proceeds of the global settlement agreement. Because both of these conditions were satisfied, the relators are entitled to attorney fees under § 3730(d)(1).

CHS argues that the relators did not receive a portion of the "proceeds of the action or settlement of the claim" as defined by § 3730(d)(1) because all the relators (apart from Plantz, who is not a party in this appeal) received a share of the MUED claim proceeds pursuant to a shared agreement, rather than directly from the government.[4] CHS Br. (Doghramji) at 34. But nothing in § 3730(d)(1) defines how the relator must obtain the relator's share or requires, either implicitly or explicitly, that the government directly transfer the proceeds to all the relators.

Finding no support in the text of § 3730(d)(1), CHS highlights district court cases—the only cases to have considered this issue—that have rejected an award of attorney fees when relators receive a portion of government proceeds pursuant to a private agreement. *See United States ex rel. Allstate Ins. Co. v. Millennium Lab'ys, Inc.*, 464 F. Supp. 3d 449, 454 (D. Mass. 2020); *United States ex rel. McNeil v. Jolly*, 451 F. Supp. 3d 657, 669 (E.D. La. 2020); *United States v. NextCare, Inc.*, No. 3:11CV141, 2013 WL 431828, at *2 (W.D.N.C. Feb. 4, 2013). These cases, which of course do not bind us, opined without much textual analysis that holding otherwise "would be inconsistent with the clear congressional intent in crafting limiting provisions in § 3730 designed to encourage lawsuits brought by insiders intending to expose fraud and discourage lawsuits brought by opportunistic plaintiffs in search of a payday." *Allstate*, 464 F. Supp. 3d at 454; *see also NextCare*, 2013 WL 431828, at *2. CHS echoes these policy concerns, arguing that allowing relators to recover attorney fees pursuant to private agreements between relators would result in the "infinite expansion of the pool of relators entitled to attorney's fees." CHS Br. (Doghramji) at 35.

The plain meaning of § 3730(d)(1), which again, does not by its text limit attorney fees to recovery directly from the government, would not encourage recovery by non-"insiders" or "opportunistic" plaintiffs. CHS overlooks that government intervention and successful settlement resulting in proceeds are prerequisites to recovering attorney fees under § 3730(d)(1), rendering the pool of possible relators significantly less than infinite.

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[4]Of the relators still litigating this case, only Cook-Reska received a relator's share directly from the government pursuant to a settlement agreement, and for the Laredo Claims only. R. 115-16 (Case No. 3:11-cv-00442) (Cook-Reska Settlement Agreement) (Page ID #2766). Cook-Reska's attorneys were already awarded fees from CHS for work performed on Laredo-specific non-MUED claims. R. 121 (Case No. 4:09-cv-01565, S.D. Tx.) (5/4/2015 Dist. Ct. Op. at 33–34, 52). In this case, Cook-Reska's attorneys seek fees for work performed in assisting with the litigation of the national MUED claims.

It is unclear, moreover, why a successful relator would contract away its share of proceeds to an "opportunistic" relator who raised a tag-along claim and did not contribute to the successful prosecution of the suit. Nor would an "opportunistic" relator contracting with another relator for a low sum be able to recover attorney fees without providing the number of hours the attorney spent on the matter and proving that the requested fees are reasonable. *See Gonter v. Hunt Valve Co.*, 510 F.3d 610, 616 (6th Cir. 2007).

Allowing relators to recover attorney fees when they receive portions of a settlement pursuant to privately negotiated agreements also comports with the realities of FCA litigation. FCA lawsuits often involve the complex allocation of work between whistleblowers and their attorneys, who may have varying degrees of information about the case. *See Cmty. Health Sys.*, 666 F. App'x at 420 (Stranch, J. concurring). Relators who enter into private agreements dividing the portion of the settlement proceeds among themselves can fairly allocate the "bounty" depending on each relator's contribution, allowing the government to focus on pursuing its claims against the defendant. Section 3730(d)(1) does not foreclose this allocation of resources. We hold that the relators here received a "portion of the proceeds" of the global settlement.

B. First-to-file rule and public-disclosure bar

We have concluded that relators have satisfied § 3730(d)(1)'s sole facial prerequisites: the receipt of a portion of the proceeds of a successful settlement and government intervention. CHS maintains that the relators are still not entitled to attorney fees because the FCA's other statutory provisions bar the relators' claims. *See, e.g.*, CHS Br. (Doghramji) at 22–24. Specifically, CHS argues that the first-to-file rule forecloses all relators' claims for attorney fees because Relator Plantz, with whom CHS already settled, was first to file a lawsuit against all the defendant hospitals. *See, e.g.*, CHS Br. (Bryant) at 15. CHS also contends that the public-disclosure bar independently forecloses the *Doghramji* relators' claims because their complaint was based upon information previously disclosed in a securities lawsuit against CHS. CHS Br. (Doghramji) at 47.

We briefly explain these statutory provisions. Section 3730(b)(5) mandates that "no person other than the Government may intervene or bring a related action based on the facts underlying the pending action." This "first-to-file" rule bars "successive plaintiffs from bringing related actions based on the same underlying facts." *Walburn*, 431 F.3d at 971 (quoting *United States ex rel. Lujan v. Hughes Aircraft Co.*, 243 F.3d 1181, 1187 (9th Cir. 2001)). The FCA's public-disclosure bar, now codified at § 3730(e)(4), requires that a court "shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed." In an FCA lawsuit, a relator must overcome the first-to-file rule and public-disclosure bar, or a district court will dismiss the case. *See, e.g.*, *United States ex rel. Poteet v. Medtronic, Inc.*, 552 F.3d 503, 511 (6th Cir. 2009), *abrogated on other grounds by United States ex rel. Rahimi v. Rite Aid Corp.*, 3 F.4th 813, 828–29 (6th Cir. 2021). We examine whether relators must overcome these statutory barriers before recovering attorney fees for work performed in connection with the global settlement.

1. Statutory text and legislative intent

Except in the "rare cases" when the plain language of a statute is inconsistent with legislative intent, we follow the text of the statute. *See United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989) (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982)). We therefore begin our analysis with the statutory text. Under § 3730(d)(1), "[i]f the Government proceeds with an action brought by a person under subsection (b), such person shall" be entitled to a relator's share "of the proceeds of the action or settlement of the claim" and subsequently, reasonable attorney fees from the defendant. Section 3730(d)(1) nowhere refers to the satisfaction of the first-to-file rule or the public-disclosure bar as conditions for the receipt of attorney fees.

The plain text of § 3730(d)(1) does not mention the statutory bars that CHS insists apply. Section 3730(d)(1) does apply to "an action brought by a person under subsection (b)." CHS argues that this reference to "subsection (b)" incorporates § 3730(b)(5)'s first-to-file bar. CHS Br. (Doghramji) at 42. The Supreme Court indeed has long held that when a statute incorporates one statute into another, it "bring[s] into the latter all that is fairly covered by the reference."

Panama R. Co. v. Johnson, 264 U.S. 375, 392 (1924). But we cannot say that subsection (d)(1)'s reference to subsection (b) fairly covers all of § 3730(b)'s subsections, including (b)(5). Section 3730(d)(1)'s reference to "subsection (b)" simply distinguishes qui tam actions by private parties from those actions that the Attorney General initiates under § 3730(a). It does not incorporate any of subsection (b)'s procedures, including the first-to-file rule. And the text of § 3730(d)(1) does not anywhere refer to § 3730(e) or a public-disclosure bar.

Following the text of the statute and allowing relators to proceed would not run contrary to the intent of Congress or produce an absurd result. *See Donovan v. FirstCredit, Inc.*, 983 F.3d 246, 254 (6th Cir. 2020). The FCA encourages and incentivizes citizens to prevent the defrauding of public funds. As the Committee on the Judiciary noted in its Senate Report recommending the passage of the 1986 version of the FCA:

> In the face of sophisticated and widespread fraud, the Committee believes only a coordinated effort of both the Government and the citizenry will decrease this wave of defrauding public funds. [The FCA] increases incentives, financial and otherwise, for private individuals to bring suits on behalf of the Government.

S. Rep. No. 99-345, at 2 (1986). Nowhere is such a "coordinated effort" more salient than when multiple relators each describe pertinent aspects of a broad-reaching fraud.

In fact, this case illustrates the absurdity of rote application of the first-to-file rule in complex global settlements. If multiple relators uncover multiple independent parts of the same complex scheme and the government uses the relators' collective resources to investigate the fraud, it would be unfair to allow solely the first relator's attorney to recover all the attorney fees because that relator discovered one part of the fraud first.

Of course, the first-to-file rule and public-disclosure bar aim to protect the government from plaintiffs who "feed off a previous disclosure of fraud." *Walburn*, 431 F.3d at 970. But the relators in this case differ from the proverbial "opportunistic plaintiffs" to which courts often refer. *See, e.g.*, *id.*; *Poteet*, 552 F.3d at 507. Relators and their counsel expended significant time and resources assisting the government in developing the claims against defendants. *See Cmty. Health Sys.*, 666 F. App'x at 412. Recognizing this, the government encouraged the relators to cooperate and divide the relators' share among themselves. *Id.* Because the

government recognized the relators' contributions, declining to apply the FCA's bars to attorney-fees recovery would not harm the government. To the contrary, allowing relators to recover attorney fees in a broad-reaching fraud such as this one would help the government by incentivizing multiple relators and their counsel to prosecute a case that the government may not be able to pursue on its own. *See id.* at 420 (Stranch, J., concurring) ("If both parties are not fairly compensated, there is no incentive for relators to run the risks of blowing the whistle or for attorneys to put in the significant time and make the large expenditures necessary to prove a case. This is especially true (and particularly complicated) in the massive fraud cases that frequently include a number of relators and their separate counsel.").

The text of § 3730(d) does not incorporate the first-to-file rule or public-disclosure bar. Rejecting the application of these bars here, when there is little risk of opportunism, tracks Congress's goal of encouraging collaboration between the government and the public to uncover fraud. We see nothing in the text or purpose of § 3730(d) that would bar relators' requests for attorney fees.

2. Jurisdictional arguments

Without a strong hook in § 3730(d)(1)'s text, CHS argues that both the first-to-file rule and the public-disclosure bar are jurisdictional. CHS Br. (Doghramji) at 37, 50.

We are not persuaded that the public-disclosure bar creates jurisdictional problems for relators. After the 2010 amendments to the FCA, the public-disclosure bar is no longer jurisdictional. *United States ex rel. Advocs. for Basic Legal Equal., Inc. v. U.S. Bank, N.A.*, 816 F.3d 428, 433 (6th Cir. 2016). Even when, as here, relators sued for conduct spanning both before and after the 2010 FCA amendments, we have rejected challenges to our jurisdiction based on the public-disclosure bar. *Id.* at 430, 433.

The first-to-file rule does not create a jurisdictional issue either. Although we have mentioned in passing that the first-to-file rule is "jurisdictional," we have never examined the basis for that designation. *See Walburn*, 431 F.3d at 970; *Poteet*, 552 F.3d at 516. "[I]ntervening Supreme Court decisions allow a panel of our court to revisit prior precedent." *Rahimi*, 3 F.4th at 829. Such intervening authority "need not be precisely on point, if the legal

reasoning is directly applicable." *Ne. Ohio Coal. for the Homeless v. Husted*, 831 F.3d 686, 720–21 (6th Cir. 2016). As multiple other circuits have noted, the Supreme Court in *Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter*, 575 U.S. 650 (2015), has subsequently "addressed the operation of the first-to-file bar on decidedly nonjurisdictional terms, raising the issue *after* it decided a nonjurisdictional statute of limitations issue." *United States v. Millenium Lab'ys, Inc.*, 923 F.3d 240, 249 (1st Cir. 2019) (quoting *United States ex rel. Heath v. AT&T, Inc.*, 791 F.3d 112, 121 n.4 (D.C. Cir. 2015)); *see also In re Plavix Mktg., Sales Pracs. & Prod. Liab. Litig. (No. II)*, 974 F.3d 228, 232 (3d Cir. 2020).

The Supreme Court's bright-line test distinguishing jurisdictional and claims-processing rules, moreover, confirms that the first-to-file rule is not jurisdictional. *See United States v. Kwai Fun Wong*, 575 U.S. 402, 409 (2015) ("[P]rocedural rules, including time bars, cabin a court's power only if Congress has 'clearly state[d]' as much." (quoting *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013))). Unlike § 3730(e)(1), which references the court's jurisdiction in its text, § 3730(b)(5) mentions nothing about the court's ability to hear a case. Had Congress intended to include a similar jurisdictional limitation in § 3730(b)(5), it would have included that provision under subsection (e). Accordingly, we hold that the first-to-file rule is not a jurisdictional limitation.

Even if both the first-to-file rule and public-disclosure bar raised questions about the district court's jurisdiction at the time the relators' filed their complaints, CHS raises these merits-based defenses too late. The district courts dismissed the underlying claims in the relators' cases pursuant to the settlement agreement. R. 64 (Case No. 3:14-cv-02160) (Settlement Agreement at 6–7) (Page ID #138–39). The only remaining claims concern attorney fees, which are "collateral to the judgment on the merits in the underlying case." *United States ex rel. Lefan v. Gen. Elec. Co.*, 397 F. App'x 144, 152 (6th Cir. 2010). "A party that has had an opportunity to litigate the question of subject-matter jurisdiction may not, however, reopen that question in a collateral attack upon an adverse judgment." *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.9 (1982)); *see also United States ex rel. Chiba v. Guntersville Breathables, Inc.*, 421 F. Supp. 3d 1241, 1254 (N.D. Ala. 2019) ("[Defendant]'s effort to invoke the § 3730(e) bars seeks to deny the Relators' prevailing party status. That issue

resolved when the parties settled the covered qui tam claims, the court dismissed the claims with prejudice, and the United States accorded Relators a share of the proceeds."). An attorney-fees dispute should not allow the litigants to revisit claims they settled and dismissed seven years ago. If CHS wished to challenge the district court's jurisdiction over the merits of relators' claims, it should have done so, rather than settling the case and dismissing the claims.

3. Cases applying first-to-file rule and public-disclosure bar

CHS also argues that both our caselaw and caselaw outside the circuit mandate application of the first-to-file rule and public-disclosure bar. CHS Br. (Doghramji) at 41–43, 49. We have required that a relator satisfy statutory and rule-based prerequisites post-settlement, however, only when the government contested relators' entitlement to settlement proceeds. We have never applied the first-to-file rule and public-disclosure bar when there was no reason to do so because the government, relators, and defendants all settled their claims together.

In all of the cases upon which CHS relies, either the defendant did not settle with the relators, the government contested the relators' share, or both. In *United States ex rel. Bledsoe v. Community Health Systems, Inc.*, we held that a relator could not recover a relator's share of a settlement between the government and a defendant "[a]bsent a valid complaint which affords [him] the possibility of ultimately recovering damages." 501 F.3d 493, 522 (6th Cir. 2007). Given that neither the government nor the defendant settled with the relator, we declined to award the relator proceeds because there was "no prospect for [the] relators to recover on their claims under any circumstances" absent compliance with Federal Rule of Civil Procedure 9(b). *Id.* But here, the relators already recovered on their claims. We need not ensure that the complaint would afford relators the "possibility" of recovering damages when the relators already recovered those damages through a settlement that both the government and defendants endorsed.

United States ex rel. Taxpayers Against Fraud v. General Electric Co., 41 F.3d 1032 (6th Cir. 1994) is likewise inapposite. The defendant in that case asked the court to reduce an award of attorney fees to the relators after the defendant settled with the government (but not relators). *Id.* at 1043. Among the many issues in the case, we noted that the district court should determine

on remand whether one of the co-relators "had standing" under the public-disclosure bar and to reduce the award of attorney fees if it did not. *Id.* at 1044. But, as discussed above, CHS cannot raise standing arguments after settling *with relators* and after the district court dismissed their claims.[5]

In the proceedings leading up to the appeal in *Taxpayers Against Fraud*, moreover, the government engaged in protracted litigation seeking to reduce or eliminate the relators' share of the settlement under pressure from the defendant. *Id.* at 1039–40. As in *Bledsoe*, we instructed the district court to ensure that one of the co-relators was entitled to settlement proceeds pursuant to the FCA's statutory provisions considering the government's and the defendant's resistance to awarding any of the relators a share of the proceeds.

CHS also refers us to other circuits that have applied the first-to-file rule and public-disclosure bar to post-settlement recovery of the relator's share and attorney fees, *Millenium Lab'ys*, 923 F.3d at 251; *United States ex rel. Merena v. SmithKline Beecham Corp.*, 205 F.3d 97, 106 (3d Cir. 2000) (Alito, J.); *Fed. Recovery Servs., Inc. v. United States*, 72 F.3d 447, 450 (5th Cir. 1995); *United States ex rel. Greenwald v. Kool Smiles Dentistry, PC*, No. 3:10-cv-1100 (JBA), 2018 WL 4356744, at *3 (D. Conn. Sept. 12, 2018).[6] In these cases, however, the defendants did not settle with the relators or the level of collaboration between the government and the relators present in this case was entirely absent. *Millenium Lab'ys*, 923 F.3d at 247–48 (district court dismissed relator's claims pursuant to settlement between government and defendant); *Merena*, 205 F.3d at 100 (dispute involved government contesting relator's share);

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[5]We do not interpret *Taxpayers Against Fraud*'s passing reference to "standing" as limiting our jurisdiction to hear this case. As discussed in the previous section, the public-disclosure bar is no longer jurisdictional, *see Advocs. for Basic Legal Equal.*, 816 F.3d at 433, and CHS may no longer challenge the district court's jurisdiction after the case was dismissed.

[6]CHS also relies on *United States ex rel. Felten v. William Beaumont Hospitals*, a district court case that interpreted our prior opinion in this case as "assum[ing] that a qui tam defendant can challenge the relators' entitlement to attorneys' fees under the first-to-file bar even after the parties enter into a settlement agreement." Nos. 2:10-cv-13440, 2:11-cv-12117, 2:11-cv-12515, 2:11-cv-14312, 2019 WL 9094425, at *4 (E.D. Mich. June 7, 2019); CHS Br. (Doghramji) at 40. The district court in *Felten* misunderstood our previous holding, which sought only to interpret the contract and did not interpret § 3730(d)(1) at all. In fact, we raised doubts about CHS's ability to raise first-to-file challenges if the contract was properly interpreted to contemplate only those restrictions in § 3730(d)'s text. *Cmty. Health Sys.*, 666 F. App'x at 418 ("If the preserved fee challenges are restricted to the limits contained in § 3730(d), it would be anomalous to interpret that section to incorporate limits [such as the first-to-file rule] that engulf the restriction.").

Fed. Recovery Servs., 72 F.3d at 449 (court dismissed relators before the government settled with defendant); *Greenwald*, 2018 WL 4356744, at *2 (relator seeking attorney fees received no relator share under the settlement and provided no documentation of any separate sharing agreements).

All of these cases show that courts apply the FCA's statutory bars when either defendants contest relators' claims or the government contests the relators' receipt of a share. In those circumstances, courts reasonably seek assurance that relators' complaints satisfy the FCA's prerequisites, and thus that relators are not mounting "parasitic lawsuits" aimed at taking advantage of the government or defendants. *Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 294–95 (2010). Here, however, in light of the global settlement between the government, the relators, and CHS, we do not need such assurance.

4. Risk of delay

Finally, CHS argues that requiring it to bring statutory FCA challenges before settlement would cause undue delay in settling any FCA case. CHS Br. (Doghramji) at 46. CHS's concern with delay is surprising given that it is still litigating the underlying merits of this case seven years after settlement. Under CHS's interpretation, parties still must decide whether the first-to-file rule and public-disclosure bar are satisfied at some point, either pre- or post-settlement. Our interpretation encourages parties to resolve efficiently disputes about attorney fees and statutory bars on the front-end, rather than years after settlement. In any case, if CHS were overly concerned with the time it takes to resolve attorney-fees disputes, it could choose to define more clearly the scope of attorney fees in its settlement agreement. To that end, CHS's concerns about delay do not persuade us.

* * *

The text of § 3730(d)(1) allows the relators to recover attorney fees in this case, and neither the rationales underlying the first-to-file rule and public-disclosure bar nor our precedent convinces us otherwise. One should not construe our holding, however, to permit a relator to recover attorney fees when the government enters a unilateral settlement with a defendant without any input from or collaborative effort among multiple relators. Such an interpretation

would lead to an "absurd result" that is "inconsistent with the legislative intent." *See Donovan*, 983 F.3d at 254 (quoting *Tenn. Prot. & Advoc., Inc. v. Wells*, 371 F.3d 342, 350 (6th Cir. 2004)).

But that is not what happened in this case. The government intervened in all the relators' cases, collaborated with all the relators, and encouraged the relators to share the bounty from the settlement with CHS. We are satisfied that the government found relators' claims worthy of prosecution. CHS would have us apply the first-to-file rule and public-disclosure bar to protect the government from opportunism of which we see no evidence. We decline to do so. Accordingly, we need not decide which relators were first to file or whether the *Doghramji* relators' complaint satisfied the public-disclosure bar, for those constraints are not relevant here.

III. CONCLUSION

All the relators in this case received a portion of the proceeds of the settlement, satisfying § 3730(d)(1)'s conditions to receive attorney fees. After a defendant settles with both the relators and the government, § 3730(d)(1) does not require us to apply the first-to-file rule or public-disclosure bar to claims for attorney fees. We **REVERSE** and **REMAND** with instructions for the district court to determine an award of reasonable attorney fees to relators' counsel.