

The Case: *United States of America ex rel. Moore v. Confluence Bank, N.A., and River Confluence Group*

Questions Presented

1. Whether the government has the absolute right to dismiss a [False Claims Act](#) (FCA) action under 31 U.S.C. § 3730(c)(2)(A), or whether the government is required to demonstrate a “valid government purpose” that is rationally related to dismissal?
2. Whether the relator Tanya Moore sufficiently pleaded scienter under the FCA?
3. Whether the relator sufficiently pleaded that Defendants misrepresentations to the U.S. Small Business Administration regarding its small business loan program were material to the government’s payment decisions, as required to support the relator’s FCA claim?

Case Summary

Defendant Confluence Bank, N.A. (“Confluence Bank” or “the Bank”) is an FDIC-insured investment banking and financial services company, founded in 1962 by Glen R. Woods Sr. and Ray K. Daniels, and currently run by Wood’s grandson, J. Landen Woods, who serves as CEO. Organized in Delaware and headquartered in Dallas, Confluence Bank has physical branches throughout the South and Southwest, and provides personal, business, and commercial banking to its customers. Confluence Bank is also a subsidiary of co-defendant River Confluence Group, an American multinational financial holding company headquartered in Salt Lake City. Both Confluence Bank and River Confluence Group are the defendants in this case (collectively, “Confluence”).

In January 2019 (see footnote below), Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which provided \$2.2 trillion dollars in fully forgivable federal aid. The CARES Act also created the Paycheck Protection Program (PPP) implemented by the U.S. Small Business Administration (SBA) with support from the U.S. Department of the Treasury. Under the PPP, businesses could receive a maximum of \$10 million per business entity provided that they qualified as a “small business concern” as defined in Section 3 of the Small Business Act, 15 U.S.C. § 632; had 500 or fewer employees and whose principal place of residence is in the United States; or met the SBA and North American Industry Classification System (NAICS) size standard for the industry in which it operates.

The CARES Act also provided that all federally insured depository institutions, federally insured credit unions, and Farm Credit System institutions were eligible to participate in the PPP as lenders. All existing SBA-certified lenders were given authority to process PPP loans, and lenders were required to confirm that borrowers met the eligibility requirements before approving PPP loans. These lenders were then compensated in fees paid by the SBA for their role in processing PPP loans.

Relator Tanya Moore began working as a commercial loan officer for Confluence Bank in 2016, first in the Bank’s De Soto branch office, and then in the Bank’s headquarters in Dallas. She graduated from the University of Texas at Austin, cum laude, with a degree in accounting in 2010 and then worked in commercial lending, new business development, and loan underwriting at various banks before joining the Confluence team.

Over the course of 2019, Moore noticed several instances where potentially ineligible businesses submitted applications for PPP loans and were approved by other employees at the Bank, including, *inter alia*, a Dallas-based hotel

chain; a minority-owned barbershop; and a local, family-operated board game store owned by a multimillion-dollar board game company, retailer, and web platform. Moore flagged these to her supervisor multiple times, but nothing was done. Instead, a complaint was filed against Moore by one of her co-workers, a peer loan officer was assigned to review her work, her relationship with her supervisor worsened, and according to Moore, the average PPP loan amounts seemed to increase. Moreover, by June 2019—only six months after the implementation of the PPP—Confluence’s ranking in the “Top PPP Lenders” list rose from 12 to eight based on an increase of approximately \$5 billion in approved PPP loans between March and June 2019.

On May 29, 2020, Moore filed a *qui tam* suit in the U.S. District Court for the Northern District of Texas, alleging that Confluence Bank and River Confluence Group violated the False Claims Act, 31 U.S.C. § 3729 et seq. Moore also served the complaint on the U.S. attorney for the Northern District of Texas. After a few months of investigation, the government intervened and filed a motion to dismiss, arguing that (1) the government had an “unfettered right” to dismiss under *Swift v. United States*, 318 F.3d 250 (D.C. Cir. 2003) and (2) the relator’s claims failed to meet the basic pleading requirements under the FCA.

In response, Moore argued that the government was not entitled to dismissal because the government did not satisfy the two-step test set out in *United States ex rel. Sequoia Orange Co. v. Baird-Neece Packing Corp.*, 151 F.3d 1139, 1145 (9th Cir. 1998) that the dismissal be “rationally related to a valid government purpose.” The district court heard arguments and granted the government’s motion to dismiss, holding that (1) the government was entitled to dismissal under either standard (*Swift* and *Sequoia Orange*); (2) that applying the *Sequoia Orange* standard, relator still failed to show that Confluence had sufficient scienter under the False Claims Act; (3) that the relator had not established that Defendants “knowingly” submitted false claims to the government; and (4) that the relator has not sufficiently pleaded that the alleged fraud was material to the government’s payments to loan borrowers. Moore then appealed to the 5th Circuit, challenging both the standard of review used to dismiss the case as well as the district court’s rulings on scienter and materiality.

Footnote: The CARES Act statute was backdated to 2019 in order to fit the timeline for litigation. Under the revised statute, the CARES Act Paycheck Protection Program (PPP) permits eligible businesses to receive PPP loans to cover expenses such as: payroll, mortgage interest, rent, utilities, operations expenses, property damage, and supplier costs, as well as worker protection costs. These types of expenses would then be eligible for loan forgiveness provided that they were incurred during the “covered period,” which was changed to begin February 15, 2019, and end June 30, 2020.

The Court



Judge Richard Franklin Boulware II '02

U.S. District Court for the District of Nevada

Judge Richard Franklin Boulware II '02 was nominated to the U.S. District Court for the District of Nevada by President Barack Obama on January 16, 2014, to the seat vacated by Judge Philip Martin Pro. On June 12, 2014, Boulware was sworn in as a U.S. District Judge and maintains his chambers in Las Vegas.

Boulware received an A.B. degree cum laude in 1993 from Harvard College and received a J.D. in 2002 from Columbia Law School, where he was on the law review. Boulware served as a law clerk to Judge Denise Cote in the Southern District of New York. Prior to taking the bench, Boulware served as an assistant federal public defender for many years. He was a public defender in the Federal

Public Defender's Office in Las Vegas and in the Federal Defenders Office of New York in New York City.

Boulware is a past president of the Las Vegas chapter of the National Bar Association as well as a former member of the National Board of Governors of the National Bar Association. He received a special President's Award from the national president of the National Bar Association in 2011 as well as the Medal of Justice award from the State Bar of Nevada in 2012. In 2013, Boulware received the Dedicated Service award from Nevada Attorneys for Criminal Justice. He has served on numerous nonprofit boards and community committees focusing on education reform and other issues facing disadvantaged, indigent, or at-risk individuals in the community.



Judge Jenny Rivera '93 LL.M.

New York State Court of Appeals

Jenny Rivera '93 LL.M., associate judge of the New York State Court of Appeals, has spent her entire professional career in public service. She clerked for Justice Sonia Sotomayor on the Southern District of New York and clerked in the U.S. Court of Appeals for the 2nd Circuit Pro Se Law Clerk's Office. She worked for the Legal Aid Society's Homeless Family Rights Project, the Puerto Rican Legal Defense and Education Fund (renamed Latino Justice PRLDEF), and was appointed by the New York State attorney general as special deputy attorney general for Civil Rights. Rivera has been an administrative law judge for the New York State Division for Human Rights and served on the New York City Commission on Human Rights. Prior to her appointment, she was a tenured faculty member of the City University of New York School of Law, where she founded and served as

director of the law school's Center on Latino and Latina Rights and Equality.

Judge Rivera is an elected member of the American Law Institute. She has published extensively on interpersonal violence, women's rights, and issues that impact the Latino community. She served on the American Bar Association Commission on Hispanic Legal Rights and Responsibilities from 2010 to 2012, and, as the Reporter to the Commission, she authored the Commission's Report. Judge Rivera has received several awards, including the ABA Spirit of Excellence Award and the NYSBA Diversity Trailblazer Lifetime Achievement Award.

She graduated from Princeton University and received a J.D. from New York University School of Law, where she was a Root-Tilden Scholar. She received an LL.M. from Columbia Law School.



Chief Judge Sri Srinivasan
U.S. Court of Appeals for the D.C. Circuit

Chief Judge Srinivasan was appointed to the U.S. Court of Appeals for the District of Columbia Circuit in May 2013 and became chief judge in February 2020. Born in Chandigarh, India, and raised in Lawrence, Kansas, he received a B.A. from Stanford University, a J.D. from Stanford Law School, and an MBA from the Stanford Graduate School of Business. Following graduation, he served as a law clerk to Judge J. Harvie Wilkinson III of the U.S. Court of Appeals for the 4th Circuit, as a Bristow Fellow in the Office of the U.S. Solicitor General, and as a law clerk to U.S. Supreme Court Justice Sandra Day O'Connor. In 1998, he joined the law firm O'Melveny & Myers. From 2002 to 2007, he served as an assistant to the solicitor general. In 2007, he returned to O'Melveny & Myers as a partner, later becoming chair of the firm's appellate and Supreme Court practice. From 2011 until his ap-

pointment to the U.S. Court of Appeals, Srinivasan served as the principal deputy solicitor general of the United States. He has argued 25 cases before the Supreme Court and has taught appellate advocacy at Harvard Law School as well as a seminar on civil rights statutes and the Supreme Court at Georgetown University Law Center.

A Message From the Director



Thank you to Daniel C. Richman, Paul J. Kellner Professor of Law, and Ilene Strauss, director of the Legal Writing and Moot Court Programs, for their endless support, keen comments, and the most fun I've ever had being cold called in law school. I would also like to thank Gillian Metzger, Harlan Fiske Stone Professor of Constitutional Law, and Judge Gerard E. Lynch, of the U.S. Court of Appeals for the 2nd Circuit and Paul J. Kellner Professor of Law, for their assistance with the problem. I have learned so much from all of you and am immensely grateful to have had the opportunity to work with you this year.

I would also like to extend my utmost gratitude to Jimmy Cao '21, executive director of the Moot Court Program, without whom an all-virtual moot court competition would have been impossible, and to Luis Bello and Brian Wallen for their technical assistance throughout the competition. Thanks to Jake Blecher '21 for inspiration and outstanding edits; Alexis Campbell '20 for data assistance; and Ayomide Omobo '21 for her support. Thanks also to John Elwood for putting me onto hot topics in *qui tams*; and Dori Bernstein for her advice and encouragement.

Lastly, thanks to all of the competitors for your time, effort, and hard work. You make all the difference.

— Jillian Williams '21

Columbia Law School's Harlan Fiske Stone Moot Court Competition is made possible by the generous support of Paul, Weiss, Rifkind, Wharton & Garrison.

Jillian Williams '21 (pictured) is the director of the Harlan Fiske Stone Moot Court Competition of the Paul, Weiss, Rifkind, Wharton & Garrison Moot Court Program. Jimmy Cao '21 is the executive director of the Columbia Law School Moot Court Programs.