

STONE MAGNANINI

COMPLEX LITIGATION

February 23, 2017

Patricia S. Connor, Clerk
United States Court of Appeals for the Fourth Circuit
Lewis F. Powell, Jr. United States Courthouse Annex
1100 East Main Street, Suite 501
Richmond, Virginia 23219-3517

Re: Federal Rule of Appellate Procedure 28(j) letter for *U.S. ex rel. Carter v. Halliburton Co.*, No. 16-1262 (calendared for argument March 22, 2017)

Dear Ms. Connor,

Defendants' Supplemental Letter from February 13, 2017 (the "Second Supplemental Letter") adds no value to the matter before this Court. The Second Supplemental Letter purports to alert the Court to *U.S. ex rel. Denis v. Medco Health Solutions, Inc.*, No. 11-cv-684 (D. Del. Jan. 5, 2017), in a clumsy effort to tar this appeal with an out-of-circuit non-controlling district court decision that follows the faulty reasoning of the district court in *Carter* which is the subject of this appeal. Moreover, *Denis* was reached absent guiding authority or support from within its own Circuit, and is soundly contradicted by the reasoned holding of the First Circuit in *United States ex rel. Gadbois v. PharMerica Corp.*, 809 F.3d 1(1st Cir. 2015), which was reinforced by the Supreme Court denying certiorari. *PharMerica Corp. v. United States ex rel. Gadbois*, 136 S. Ct. 2517 (2016).

Denis relies upon selective Supreme Court dicta, while omitting the Supreme Court's central holdings in this very case, which observed that—despite the potential for "practical problems"—unmeritorious earlier-filed actions do not and should not permanently bar those filed afterwards. *Kellogg Brown & Root Servs. v. United States ex rel. Carter*, 135 S. Ct. 1970, 1979 (2015) ("Why would Congress want the abandonment of an earlier suit to bar a later potentially successful suit that might result in a large recovery for the Government?"); *Gadbois*, 809 F.3d at 3 (1st Cir. 2015) ("[T]he Supreme Court handed down its decision in [*Carter*]...that, under the wording of the statute, 'an earlier suit bars a

later suit while the earlier suit remains undecided but ceases to bar that suit once it is dismissed.””).

Plaintiff believes that any additional substantive questions the Court may have are best addressed at oral argument, currently scheduled for March 22, 2017, instead of through unnecessary supplemental filings.

Respectfully submitted,

/s/ David S. Stone

David S. Stone
Stone & Magnanini LLP
100 Connell Drive, Suite 2200
Berkeley Heights, NJ 07922
Telephone: (973) 218-1111
Facsimile: (973) 2180-1106
dstone@stonemagnalaw.com

*Attorneys for Plaintiff-
Appellant/Relator Benjamin Carter*

cc: See attached Certificate of Service

CERTIFICATE OF SERVICE

The undersigned certifies that on February 23, 2017, I electronically filed the foregoing letter with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. All counsel of record in this case are registered CM/ECF users and will be served with the letter by the appellate CM/ECF system. A paper copy of the letter will be served on this date via First-Class Mail on the following:

Richard W. Sponseller
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314

Dated: February 23, 2017

/s/ David S. Stone
David S. Stone
Stone & Magnanini LLP
100 Connell Drive, Suite 2200
Berkeley Heights, NJ 07922
Telephone: (973) 218-1111
Facsimile: (973) 2180-1106
dstone@stonemagnalaw.com

*Attorneys for Plaintiff-
Appellant/Relator Benjamin Carter*