

Helping Draw the Line Against Improper “Self-Help Discovery”

Client:	A nonprofit health care system
Industry:	Health care
Area of Law:	White Collar
Venue:	Eastern District Court of Virginia
Result:	Total relief granted, resulting in the return of computers and data



“The Court concluded that the whistleblower’s actions constitute an unfair litigation tactic and a type of self-help discovery.” —From the Court Record

The emergence of “self-help discovery”—the surreptitious gathering of evidence outside the civil discovery process by someone who is party to current or anticipated litigation—is causing concern for courts and companies throughout the nation. In this precedent-setting case, Pillsbury did its part to clarify what constitutes improper conduct, protecting the rights of a nonprofit health care company.

Our client’s terminated former employee had obtained three computers containing company data and information from a former independent contractor (subject to confidentiality restrictions). He then provided that information to his attorneys, who used it to file a complaint under the False Claim Act’s qui tam provisions. The complaint accused our client of committing hundreds of millions of dollars of Medicare and Medicaid fraud.

Pillsbury’s defense team filed a motion arguing that the employee’s self-help discovery was unlawful and improper. The motion sought the return of the computers and data, the deletion of all company data in the possession of the former employee and his attorneys, and a protocol to examine the computers to determine the extent to which the former employee and his attorneys had already improperly mined that data.

The Court granted our client total relief, finding that the former employee and his attorneys engaged in impermissible self-help discovery, and had also acted in bad faith, likely prejudicing both the company and the proceedings themselves.

The judge’s ruling that an allegation of fraud does not justify or permit the retention of property belonging to the defendant represents a significant development in FCA jurisprudence.