

**UNITED STATES of America, ex rel. Alfred J. LONGHI, Jr.,
Plaintiff-Appellee,**

v.

UNITED STATES of America, Intervenor-Appellee,

v.

**Lithium Power Technologies, Inc.; Mohammed Zafar A. Munshi,
Defendants-Appellants.**

[Nos. 08-20194, 08-20306.](#)

United States Court of Appeals, Fifth Circuit.

July 9, 2009.

a. False or Fraudulent Statement

In the instant appeal, the Government alleges that the Defendants engaged in a fraudulent course of conduct by submitting false statements in the SBIR grant proposals. The Government does not allege that the Defendants submitted false claims for payment for each SBIR grant proposal. In certain cases, FCA liability may be imposed "when the contract under which payment is made was ⁴⁶⁸procured by fraud." [United States ex rel. Willard v. Humana Health Plan of Texas, Inc.](#), 336 F.3d 375, 384 (5th Cir.2003) (citing [Harrison](#), 176 F.3d at 787). This type of FCA claim is characterized as fraudulent inducement. Under a fraudulent inducement theory, although the Defendants' "subsequent claims for payment made under the contract were not literally false, [because] they derived from the original fraudulent misrepresentation, they, too, became actionable false claims." [United States ex rel. Laird v. Lockheed Martin Eng'g & Science Servs. Co.](#), 491 F.3d 254, 259 (5th Cir.2007) (citing [United States ex rel. Marcus v. Hess](#), 317 U.S. 537, 543-44, 63 S.Ct. 379, 87 L.Ed. 443 (1943)).^[5]

468