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Justice Department Recovers Nearly \$5 Billion in False Claims Act Cases in Fiscal Year 2012

Largest Annual Recovery in Department History Department Also Sets Records for Health Care and Mortgage Fraud Recoveries And Recoveries in Whistleblower Suits

The Justice Department secured \$4.9 billion in settlements and judgments in civil cases involving fraud against the government in the fiscal year ending Sept. 30, 2012, Tony West, Acting Associate Attorney General, and Stuart F. Delery, Principal Deputy Assistant Attorney General for the Civil Division, announced today. This figure constitutes a record recovery for a single year, eclipsing the previous record by more than \$1.7 billion, and brings total recoveries under the False Claims Act since January 2009 to \$13.3 billion – which is the largest four-year total in the Justice Department’s history and more than a third of total recoveries since the act was amended 26 years ago in 1986.

The False Claims Act is the government’s primary civil remedy to redress false claims for federal money or property, such as Medicare benefits, federal subsidies and loans and payments under contracts for goods and services, including military contracts. The 1986 amendments strengthened the act and increased incentives for whistleblowers to file lawsuits on behalf of the government, leading to more investigations and greater recoveries.

Most false claims actions are filed under the act’s whistleblower, or *qui tam*, provisions, which allow private citizens to file suits alleging false claims on behalf of the government. If the United States prevails in the action, the whistleblower, known as a relator, receives up to 30 per cent of the recovery. The department saw a record 647 *qui tam* suits filed last fiscal year and recovered a record \$3.3 billion in suits filed by whistleblowers during the same period.

The Justice Department’s 2012 efforts also included record recoveries for health care fraud, where recoveries topped \$3 billion for the first time in a single fiscal year, thereby besting the previous record which had been set in fiscal year 2011. Housing and mortgage fraud accounted for an unprecedented \$1.4 billion.

“Today’s announcement underscores the Obama Administration’s ongoing commitment to recover losses, to prevent fraud, to bring abuses to light, and to hold accountable those who violate the law and exploit some of the government’s most critical programs,” said Attorney General Eric Holder. “Thanks to the dedicated work of attorneys, investigators, analysts, and support staff at every level of the Justice Department – along with our state and local partners across the country – we have secured the largest annual recovery in the Department’s history. By aggressively investigating allegations of waste and pursuing those who would take advantage of the most vulnerable members of society, I’m confident that we will continue to build on this historic progress in the months and years ahead.”

“The Justice Department, using the False Claims Act, recovered nearly \$5 billion in taxpayer for false claims on the treasury, by far a record for any one year,” said Acting Associate Attorney General West. “This Administration’s commitment to fighting fraud in its many forms has led to the most successful four-year period in the department’s history. Vigorous enforcement of the False Claims Act not only protects taxpayer dollars; it also protects the integrity of important government programs on which so many of us rely.”

“Redressing fraud and abuse in government programs has been a top priority of the Department of Justice,” Principal Deputy Assistant Attorney General Delery said. “This success is also largely attributable to the brave individuals who initiate many of the investigations through whistleblower suits and to the Obama Administration’s efforts to coordinate enforcement efforts across government. While today we focus on federal recoveries, the cases successfully pursued by the Civil Division and the United States Attorneys throughout the country also returned billions of dollars to state Medicaid funds and homeowners threatened with foreclosure. In some cases, the individuals and corporations involved were also subject to criminal sanctions and were required to enter into corporate integrity agreements to prevent future misconduct.”

Health Care Fraud

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As noted, this year represents the second straight year in which the department has set a new record for recoveries under the False Claims Act for health care fraud. This steady, significant and continuing success can be attributed in part to the high priority placed by the administration on fighting health care fraud. In 2009, Attorney General Holder and Health and Human Services (HHS) Secretary Kathleen Sebelius announced the creation of an interagency task force, the Health Care Fraud Prevention and Enforcement Action Team (HEAT), to increase coordination and optimize criminal and civil enforcement. This coordination has yielded historic results: From January 2009 through the end of the 2012 fiscal year, the department used the False Claims Act to recover more than \$9.5 billion in federal health care dollars – also a record for any four-year period. Most of these recoveries relate to frauds against Medicare and Medicaid. For more information, go to StopMedicareFraud.gov, a web page jointly established by the Department of Justice and HHS that provides additional information on the government's efforts in this area.

Enforcement actions involving the pharmaceutical and medical device industry were the source of some of the largest recoveries this year. The department recovered nearly \$2 billion in cases alleging false claims for drugs and medical devices under federally insured health programs and, in addition, returned \$745 million to state Medicaid programs. These cases include recoveries from GlaxoSmithKline LLC (GSK) and Merck, Sharp & Dohme (Merck) – two of the three top settlements this year. These recoveries do not include a \$561 million False Claims Act settlement with Abbott Laboratories Inc., part of a \$1.5 billion global resolution (which will be reflected in FY 2013 numbers) (details at [Abbott Labs](#)).

GSK paid \$1.5 billion to resolve False Claims Act allegations that the company (1) promoted the drugs Paxil, Wellbutrin, Advair, Lamictal and Zofran for uses not approved by the Food and Drug Administration, known as off-label use, and paid kickbacks to physicians to prescribe those drugs as well as the drugs Imitrex, Lotronex, Flovent and Valtrex; (2) made false and misleading statements concerning the safety of the drug Avandia; and (3) reported false best prices and underpaid rebates owed under the Medicaid Drug Rebate Program. The \$1.5 billion in federal civil recoveries was part of a \$3 billion global settlement including criminal fines and forfeitures as well as state Medicaid recoveries, making GSK the largest health care fraud settlement in U.S. history. For details, go to [GSK settlement](#).

The department also recovered \$441 million, including interest, from Merck to resolve allegations that the company promoted the drug Vioxx for off-label use for relief of rheumatoid arthritis and that company representatives made inaccurate, unsupported or misleading statements about Vioxx's cardiovascular safety to increase sales, resulting in payments by federal health care programs. In addition, Merck paid nearly \$322 million in criminal fines and returned more than \$200 million to state Medicaid programs. For details, go to [Merck settlement](#).

Adding to its successes under the False Claims Act, the Civil Division, through its Consumer Protection Branch, and together with U.S. Attorneys across the country, obtained 14 criminal convictions and \$1.5 billion in criminal fines and forfeitures under the Food, Drug and Cosmetic Act (FDCA).

Mortgage and Housing Fraud

In addition to health care fraud, the department continued its aggressive pursuit of financial fraud, including fraud in the housing and mortgage industries that came to light in the wake of the financial crisis. In November 2009, President Obama established the Financial Fraud Enforcement Task Force to hold accountable the individuals and corporations who contributed to the crisis as well as those who would claim illegal advantage through false claims for funds intended to stimulate economic recovery. The task force is the broadest coalition of law enforcement, investigative, and regulatory agencies ever assembled to combat fraud. For more information on the efforts and results of the Financial Fraud Enforcement Task Force in mortgage and other financial fraud, go to StopFraud.gov.

In fiscal year 2012, the Task Force's efforts resulted in a landmark \$25 billion agreement between the federal government, the attorneys general of 49 states and the District of Columbia, on the one hand, and the nation's five largest mortgage servicers, on the other, to address mortgage loan servicing and foreclosure abuses. The five settling companies are the Bank of America Corporation, JP Morgan Chase & Co., Wells Fargo & Company, Citigroup Inc. and Ally Financial Inc. (formerly GMAC). Among its other provisions – which included significant relief for struggling homeowners – the settlement included resolutions under the False Claims Act that returned more than \$900 million to federal mortgage insurance programs, including programs designed to promote home ownership by families and veterans. In addition, the agreement provides substantial financial relief to homeowners and establishes significant new homeowner protections for the future. For details, go to [\\$25 billion agreement](#).

Other significant settlements to redress false claims in connection with federally insured mortgages include a \$202.3 million settlement with Deutsche Bank AG and its subsidiary MortgageIT Inc., a \$158.3 million settlement with Citibank subsidiary CitiMortgage Inc. and a \$132.8 million settlement with Flagstar Bank. For details, go to [Deutsche Bank/MortgageIT, CitiMortgage](#), and [Flagstar Bank](#).

Procurement Fraud

The department, with the assistance of other members of the Financial Fraud Enforcement Task Force, also achieved great success in the pursuit of procurement fraud, including fraud connected to the procurement of equipment and services for the military. In fiscal year 2012,

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the department recovered \$427 million in false claims for goods and services purchased by the government, bringing total recoveries for procurement fraud since January 2009 to \$1.7 billion.

The department recovered \$73 million in cases related to the wars in Iraq and Afghanistan. These cases include a \$37 million settlement with ATK Launch Systems Inc. to resolve allegations that ATK sold dangerous and defective illumination flares used by the Army and the Air Force for nighttime combat and for covert and search and rescue operations. In another wartime contracting case, Maersk Line Limited paid the United States \$31.9 million to resolve allegations that the company knowingly overcharged the Department of Defense to transport cargo to U.S. troops in Afghanistan and Iraq. For details on these settlements, go to [ATK](#) and [Maersk](#).

The department also recovered \$200 million from software manufacturer Oracle Corp. and Oracle USA in the largest False Claims Act settlement ever obtained under a General Services Administration contract. GSA negotiates contracts with private sector companies for the purchase of commonly used commercial goods and services by agencies throughout the government. As part of their contract to gain access to the vast federal marketplace, these companies agree to disclose the discounts given to their commercial customers and to pass along those discounts to the government. The \$200 million settlement with Oracle resolved allegations that the company overcharged the government by failing to disclose substantially lower prices offered to its commercial customers. For more details, go to [Oracle settlement](#).

Recoveries in Whistleblower Suits

As part of a commemoration of the 25th anniversary of the False Claims Act amendments, the department noted earlier this year the importance of the legislation providing the tools needed to combat fraud against the government, especially by strengthening the False Claims Act's *qui tam* provisions. In 1986, Senator Charles Grassley and Representative Howard Berman led successful efforts in Congress to amend the False Claims Act to, among other things, encourage whistleblowers to come forward with allegations of fraud. In 2009, Senator Patrick J. Leahy, chairman of the Senate Judiciary Committee, along with Senator Grassley and Representative Berman, championed the Fraud Enforcement and Recovery Act of 2009, which made additional improvements to the False Claims Act and other fraud statutes. And in 2010, the passage of the Affordable Care Act provided additional inducements and protections for whistleblowers and strengthened the provisions of the federal health care Anti-Kickback Statute.

The increased incentives for whistleblowers have led to an unprecedented number of investigations and greater recoveries. Of the \$4.9 billion in fiscal year 2012 recoveries, a record \$3.3 billion was recovered in whistleblower suits. In fiscal year 2012 alone, relators filed 647 *qui tam* suits. Of the nearly 8,500 *qui tam* suits filed since the 1986 amendments, nearly 2,200 were filed since January 2009. Looking at *qui tam* recoveries for the same periods, the department tallied \$24.2 billion since 1986, with nearly \$10.5 billion of that amount recovered from January 2009 through fiscal year 2012. Since 1986, whistleblowers have been awarded nearly \$4 billion, with \$439 million in awards in fiscal year 2012.

"The whistleblowers who bring wrongdoing to the government's attention are instrumental in preserving the integrity of government programs and protecting taxpayers from the costs of fraud," said Principal Deputy Assistant Attorney General Delery. "We are extremely grateful for the sacrifices they make to do the right thing."

Acting Associate Attorney General West and Principal Deputy Assistant Attorney General Delery also expressed their deep appreciation for the dedicated public servants who contributed to the investigation and prosecution of these cases. These individuals include attorneys, investigators, auditors and other agency personnel throughout the Civil Division, the U.S. Attorneys' Offices, HHS, Department of Defense and the many other federal and state agencies that contributed to the department's record recoveries this past year.

"The department's record recoveries this past year are a product of the tremendous skill and dedication of the people who worked on these cases and investigations," Mr. Delery said.

Related Material:

- [Principal Deputy Assistant Attorney General Stuart Delery Speaks at Pen and Pad Briefing Announcing Record Civil FY 2012 Recoveries](#)
- [Acting Associate Attorney General Tony West Speaks at Pen and Pad Briefing Announcing Record Civil FY 2012 Recoveries](#)

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