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Justice Department Recovers \$3.8 Billion from False Claims Act Cases in Fiscal Year 2013

Second Largest Annual Recovery in History Whistleblower Lawsuits Soar to 752

The Justice Department secured \$3.8 billion in settlements and judgments from civil cases involving fraud against the government in the fiscal year ending Sept. 30, 2013, Assistant Attorney General for the Civil Division Stuart F. Delery announced today. This dollar amount, which is the second largest annual recovery of its type in history, brings total recoveries under the False Claims Act since January 2009 to \$17 billion – nearly half the total recoveries since the Act was amended 27 years ago in 1986.

The Justice Department's fiscal year 2013 efforts recovered more than \$3 billion for the fourth year in a row and are surpassed only by last year's nearly \$5 billion in recoveries. As in previous years, the largest recoveries related to health care fraud, which reached \$2.6 billion. Procurement fraud (related primarily to defense contracts) accounted for another \$890 million – a record in that area.

"It has been another banner year for civil fraud recoveries, but more importantly, it has been a great year for the taxpayer and for the millions of Americans, state agencies and organizations that benefit from government programs and contracts," said Assistant Attorney General Delery. "The \$3.8 billion in federal False Claims Act recoveries in fiscal year 2013, plus another \$443 million in recoveries for state Medicaid programs, restores scarce taxpayer dollars to federal and state governments. The government's success in these cases is also a strong deterrent to others who would misuse public funds, which means government programs designed to keep us safer, healthier and economically more prosperous can do so without the corrosive effects of fraud and false claims."

The False Claims Act is the government's primary civil remedy to redress false claims for government funds and property under government contracts, including national security and defense contracts, as well as under government programs as varied as Medicare, veterans benefits, federally insured loans and mortgages, transportation and research grants, agricultural supports, school lunches and disaster assistance. In 1986, Congress strengthened the Act by amending it to increase incentives for whistleblowers to file lawsuits on behalf of the government, which has led 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 lawsuits alleging false claims on behalf of the government. If the government prevails in the action, the whistleblower, known as a relator, receives up to 30 percent of the recovery. The number of *qui tam* suits filed in fiscal year 2013 soared to 752 – 100 more than the record set the previous fiscal year. Recoveries in *qui tam* cases during fiscal year 2013 totaled \$2.9 billion, with whistleblowers recovering \$345 million.

Health Care Fraud

The \$2.6 billion in health care fraud recoveries in fiscal year 2013 marks four straight years the department has recovered more than \$2 billion in cases involving health care fraud. This steady, significant and continuing success

can be attributed to the high priority the Obama Administration has placed on fighting health care fraud. In 2009, Attorney General Eric Holder and Health and Human Services 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 2013 fiscal year, the department used the False Claims Act to recover \$12.1 billion in federal health care dollars. Most of these recoveries relate to fraud against Medicare and Medicaid. Additional information on the government's efforts in this area is available at StopMedicareFraud.gov, a webpage jointly established by the Departments of Justice and Health and Human Services.

Some of the largest recoveries this past fiscal year involved allegations of fraud and false claims in the pharmaceutical and medical device industries. Of the \$2.6 billion in federal health care fraud recoveries, \$1.8 billion were from alleged false claims for drugs and medical devices under federally insured health programs that, in addition to Medicare and Medicaid, include TRICARE, which provides benefits for military personnel and their families, veterans' health care programs and the Federal Employees Health Benefits Program. The department recovered an additional \$443 million for state Medicaid programs.

Many of these settlements involved allegations that pharmaceutical manufacturers improperly promoted their drugs for uses not approved by the Food and Drug Administration (FDA) – a practice known as “off-label marketing.” For example, drug manufacturer Abbott Laboratories Inc. paid \$1.5 billion to resolve allegations that it illegally promoted the drug Depakote to treat agitation and aggression in elderly dementia patients and schizophrenia when neither of these uses was approved as safe and effective by the FDA. This landmark \$1.5 billion settlement included \$575 million in federal civil recoveries, \$225 million in state civil recoveries and nearly \$700 million in criminal fines and forfeitures. In another major pharmaceutical case, biotech giant Amgen Inc. paid the government \$762 million, including \$598.5 million in False Claims Act recoveries, to settle allegations that included its illegal promotion of Aranesp, a drug used to treat anemia, in doses not approved by the FDA and for off-label use to treat non-anemia-related conditions. For details, see [Abbott](#), [Abbott sentencing](#), and [Amgen](#).

The department also settled allegations relating to the manufacture and distribution of adulterated drugs. For example, generic drug manufacturer Ranbaxy USA Inc. paid \$505 million to settle allegations of false claims to federal and state health care programs for adulterated drugs distributed from its facilities in India. The settlement included \$237 million in federal civil claims, \$118 million in state civil claims and \$150 million in criminal fines and forfeitures. For details, see [Ranbaxy](#).

Adding to its successes under the False Claims Act, the Civil Division's Consumer Protection Branch, together with U.S. Attorneys across the country, obtained 16 criminal convictions and more than \$1.3 billion in criminal fines, forfeitures and disgorgement under the Federal Food, Drug and Cosmetic Act (FDCA). The FDCA protects the health and safety of the public by ensuring, among other things, that drugs intended for use in humans are safe and effective for their intended uses and that the labeling of such drugs bears true, complete and accurate information.

In other areas of health care fraud, the department obtained a \$237 million judgment against South Carolina-based Tuomey Healthcare System Inc., after a four-week trial, for violating the Stark Law and the False Claims Act. The Stark Law prohibits hospitals from submitting claims to Medicare for patients referred to the hospital by physicians who have a prohibited financial relationship with the hospital. Tuomey's appeal of the \$237 million judgment is pending. If the judgment is affirmed on appeal, this will be the largest judgment in the history of the Stark Law. For the court's opinion, see [Tuomey](#).

The department also recovered \$26.3 million in a settlement with Steven J. Wasserman M.D., a dermatologist practicing in Florida, to resolve allegations that he entered into an illegal kickback arrangement with Tampa Pathology Laboratory that resulted in increased claims to Medicare. Tampa Pathology Laboratory previously paid

the government \$950,000 for its role in the alleged scheme. The \$26.3 million settlement is one of the largest with an individual in the history of the False Claims Act. For details, see [Wasserman](#).

Procurement Fraud

Fiscal year 2013 was a record year for procurement fraud matters. The department secured more than \$887 million in settlements and judgments based on allegations of false claims and corruption involving government contracts. Prominent among these successes was the department's \$664 million judgment against Connecticut-based defense contractor United Technologies Corp. (UTC). A federal court found UTC liable for making false statements to the Air Force in negotiating the price of a contract for fighter jet engines. In 2004, the department had won a smaller judgment after a three-month trial. Both sides appealed, but the government's arguments prevailed, resulting in the case being returned to the trial court to reassess damages. The \$664 million judgment, which UTC has appealed, is the largest judgment in the history of the False Claims Act and, if the appellate court affirms, will be the largest procurement recovery in history. For details, see [UTC](#).

The department also settled allegations of false claims with two companies in connection with their contracts with the General Services Administration (GSA) to market their products through the Multiple Award Schedule (MAS) program. To be awarded a MAS contract, and thereby gain access to the broad government marketplace, contractors must provide GSA with complete, accurate and current information about their commercial sales practices, including discounts afforded to their commercial customers. The government alleged that W.W. Grainger Inc., a national hardware distributor headquartered in Illinois, and Ohio-based RPM International Inc. and its subsidiary, Tremco Inc., a roofing supplies and services firm, failed to disclose discounts given to their commercial customers, which resulted in government customers paying higher prices. The department recovered \$70 million from W.W. Grainger in a settlement that also included allegations relating to a U.S. Postal Services contract and \$61 million from RPM International Inc. and Tremco. For details, see [Grainger, RPM/Tremco](#).

Other Fraud Recoveries

A \$45 million settlement with Japan-based Toyo Ink S.C. Holdings Co. Ltd. and its Japanese and United States affiliates (collectively Toyo) demonstrates the breadth of cases the department pursues. This settlement resolved allegations that Toyo misrepresented the country of origin on documents presented to the Department of Homeland Security's U.S. Customs and Border Protection to evade antidumping and countervailing duties on imports of the colorant carbazole violet pigment into the United States. These duties protect U.S. businesses by offsetting unfair foreign pricing and foreign government subsidies. For details, see [Toyo](#).

The False Claims Act also is used to redress grant fraud. In a significant case involving a grant from the Department of Education, Education Holdings Inc. (formerly The Princeton Review Inc.) paid \$10 million to resolve allegations that the company fabricated attendance records for thousands of hours of afterschool tutoring of students that was funded by the federal grant. For details, see [Education Holdings](#).

Recoveries in Whistleblower Suits

Of the \$3.8 billion the department recovered in fiscal year 2013, \$2.9 billion related to lawsuits filed under the *qui tam* provisions of the False Claims Act. During the same period, the department paid out more than \$345 million to the courageous individuals who exposed fraud and false claims by filing a *qui tam* complaint. (The average share paid to whistleblowers in fiscal year 2013 cannot be determined from these numbers because the awards paid to whistleblowers in one fiscal year do not always coincide with the fiscal year in which the case was resolved, and the fiscal year's recoveries may include amounts to settle allegations outside the whistleblower's complaint.)

Whistleblower lawsuits were in the range of three to four hundred per year from 2000 to 2009, when they began their climb from 433 lawsuits in fiscal year 2009 to 752 lawsuits in fiscal year 2013. Due to the complexity of fraud investigations generally, the outcomes of many of the *qui tam* cases filed this past fiscal year are not yet known, but the growing number of lawsuits filed since 2009 have led to increased recoveries. *Qui tam* recoveries exceeded \$2 billion for the first time in fiscal year 2010 and have continued to exceed that amount every year since. *Qui tam* recoveries this past fiscal year bring the department's totals since January 2009 to \$13.4 billion. During the same period, the department paid out \$1.98 billion in whistleblower awards.

“These recoveries would not have been possible without the brave contributions made by ordinary men and women who made extraordinary sacrifices to expose fraud and corruption in government programs,” said Assistant Attorney General Delery. “We are also grateful to Congress and its continued support of strengthening the False Claims Act, including its *qui tam* provisions, giving the department the tools necessary to pursue false claims.”

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, 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.

Assistant Attorney General Delery also expressed his deep appreciation for the dedicated public servants who investigated and pursued these cases. These individuals include attorneys, investigators, auditors and other agency personnel throughout the Justice Department's Civil Division, the U.S. Attorneys' Offices, the Departments of Defense and Health and Human Services, the various Offices of Inspector General and the many other federal and state agencies that contributed to the department's recoveries this past fiscal year.

“The department's continued success in recovering fraudulent claims for taxpayer money this past fiscal year is a product of the tremendous skill and dedication of the people who worked on these cases and investigations and continue to work hard to protect against the misuse of taxpayer dollars,” said Delery.