

## JUSTICE NEWS

### Department of Justice

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## Justice Department Recovers over \$3 Billion from False Claims Act Cases in Fiscal Year 2019

The Department of Justice obtained more than \$3 billion in settlements and judgments from civil cases involving fraud and false claims against the government in the fiscal year ending Sept. 30, 2019, Assistant Attorney General Jody Hunt of the Department of Justice's Civil Division announced today. Recoveries since 1986, when Congress substantially strengthened the civil False Claims Act, now total more than \$62 billion.

"The significant number of settlements and judgments obtained over the past year demonstrate the high priority this administration places on deterring fraud against the government and ensuring that citizens' tax dollars are well spent," said Assistant Attorney General Hunt. "The continued success of the department's False Claims Act enforcement efforts are a testament to the tireless efforts of the civil servants who investigate, litigate, and try these important cases as well as to the fortitude of whistleblowers who report fraud."

Of the more than \$3 billion in settlements and judgments recovered by the Department of Justice this past fiscal year, \$2.6 billion relates to matters that involved the health care industry, including drug and medical device manufacturers, managed care providers, hospitals, pharmacies, hospice organizations, laboratories, and physicians. This is the tenth consecutive year that the department's civil health care fraud settlements and judgments have exceeded \$2 billion. The amounts included in the \$2.6 billion reflect only federal losses, but in many of these cases the department was instrumental in recovering additional millions of dollars for state Medicaid programs.

In addition to combating health care fraud, the False Claims Act serves as the government's primary civil tool to redress false claims for federal funds and property involving a multitude of other government operations and functions. The Act helps to protect our military and first responders by ensuring that government contractors provide equipment that is safe, effective, and cost efficient; to protect American businesses and workers by promoting compliance with customs laws, trade agreements, visa requirements, and small business protections; and to protect other critical government programs ranging from the provision of disaster relief funds to farming subsidies.

In 1986, Congress strengthened the Act by increasing incentives for whistleblowers to file lawsuits alleging false claims on behalf of the government. These whistleblower, or *qui tam*, actions comprise a significant percentage of the False Claims Act cases that are filed. If the government prevails in a *qui tam* action, the whistleblower, also known as the relator, typically receives a portion of the recovery ranging between 15 and 30 percent. Whistleblowers filed 633 *qui tam* suits in fiscal year 2019, and this past year the department recovered over \$2.1 billion in these and earlier filed suits.

### Health Care Fraud

The department investigates and resolves matters involving a wide array of health care providers, goods, and services. The department's health care fraud enforcement efforts not only recover money for federal health care programs, such as Medicare, Medicaid, and TRICARE, but also help deter fraud schemes that put patients at risk and increase health care costs.

Reflecting the department's commitment to holding drug companies accountable for their role in the opioid crisis, two of the

largest recoveries involving the health care industry this past year came from opioid manufacturers. In one matter, as part of a global resolution of criminal and civil claims, Insys Therapeutics paid \$195 million to settle civil allegations that it paid kickbacks to induce physicians and nurse practitioners to prescribe Subsys for their patients. The kickbacks allegedly took the form of sham speaker events, jobs for the prescribers' relatives and friends, and lavish meals and entertainment. The government also alleged that Insys improperly encouraged physicians to prescribe Subsys for patients who did not have cancer, and lied to insurers about patients' diagnoses to ensure payment by federal healthcare programs. In another matter, Reckitt Benckiser Group plc paid a total of \$1.4 billion to resolve criminal and civil liability related to the marketing of the opioid addiction treatment drug Suboxone, which is a formulation of the opioid buprenorphine. As part of the resolution, RB Group paid \$500 million to the United States to resolve civil allegations that it directly or through subsidiaries promoted Suboxone to physicians who were writing prescriptions for uses that were unsafe, ineffective, and medically unnecessary; promoted Suboxone Film using false and misleading claims that it was less susceptible to diversion, abuse, and accidental pediatric exposure than other buprenorphine products; and took steps to delay the entry of generic competition in order to improperly control pricing of Suboxone.

The department also pursued other cases involving drug manufacturers. For example, Avanir Pharmaceuticals paid over \$95 million to resolve allegations that it paid kickbacks and engaged in false and misleading marketing to induce healthcare providers in long term care facilities to prescribe the drug Neudexta for behaviors commonly associated with dementia patients, which is not an approved use of the drug. The department also continued to investigate efforts by drug manufacturers to facilitate increases in drug prices by funding the co-payments of Medicare patients. Congress included co-pay requirements in the Medicare program, in part, to serve as a check on health care costs, including the prices that pharmaceutical manufacturers can demand for their drugs. This year, seven drug manufacturers – Actelion Pharmaceuticals US Inc., Amgen Inc., Astellas Pharma US Inc., Alexion Pharmaceuticals, Inc., Jazz Pharmaceuticals Inc., Lundbeck LLC, and US Worldmeds LLC – paid a combined total of over \$624 million to resolve claims that they illegally paid patient copays for their own drugs through purportedly independent foundations that the companies in fact treated as mere conduits.

The department also reported substantial recoveries involving a variety of other healthcare providers. Pathology laboratory company Inform Diagnostics, formerly known as Miraca Life Sciences Inc., paid \$63.5 million to resolve allegations that it paid kickbacks to referring physicians in the form of subsidies for electronic health records (EHR) systems and free or discounted technology consulting services. Greenway Health LLC, an EHR software vendor, paid over \$57 million to resolve allegations that it misrepresented the capabilities of its EHR product "Prime Suite" and provided unlawful remuneration to users to induce them to recommend Prime Suite to prospective new customers. Encompass Health Corporation (formerly known as HealthSouth Corporation), the nation's largest operator of inpatient rehabilitation facilities (IRFs), paid \$48 million to resolve allegations that some of its IRFs provided inaccurate information to Medicare to maintain their status as an IRF and to earn a higher rate of reimbursement, and that some admissions to its IRFs were not medically necessary.

## **Procurement Fraud**

In the past year, the department also pursued a variety of fraud matters involving the government's purchase of goods and services. For example, five South Korea-based companies – SK Energy Co. Ltd., GS Caltex Corporation, Hanjin Transportation Co. Ltd., Hyundai Oilbank Co. Ltd., and S-Oil Corporation – agreed to resolve allegations that they engaged in anticompetitive conduct targeting contracts to supply fuel to the U.S. military in South Korea and made false statements to the government in connection with their agreement not to compete. The United States Department of Defense paid substantially more for fuel supply services in South Korea than it would have absent collusion on the fuel supply contracts. In total, the five companies paid over \$162 million as part of the False Claims Act settlements.

The Civil Division entered into a \$34.6 million settlement with aluminum extrusion manufacturer Hydro Extrusion Portland Inc., formerly known as Sapa Profiles Inc. (SPI), to resolve SPI's civil liability for causing a government contractor to invoice NASA and the Department of Defense's Missile Defense Agency (MDA) for aluminum extrusions that did not comply with contract specifications. Government contractors purchased aluminum extrusions from SPI for use on rockets for NASA and missiles provided to the MDA. SPI provided those contractors with falsified certifications after altering the results of tensile tests designed to ensure the consistency and reliability of aluminum extrusions. Several of the rockets used by NASA crashed, resulting in the loss of the NASA payloads that they carried. SPI also resolved related criminal claims arising from the same

conduct.

The department recovered over \$27 million from Northrop Grumman Systems Corporation (NGSC) in a settlement resolving False Claims Act allegations related to two battlefield communications contracts with the United States Air Force. The settlement resolved allegations that NGSC billed the Air Force for labor hours purportedly incurred by individuals stationed in the Middle East who had not actually worked the hours claimed.

In separate settlement agreements with the Civil Division, American Airlines paid \$22 million and British Airways Plc/Iberia Airlines paid \$5.8 million to resolve allegations that they falsely reported the times they transferred possession of United States mail to foreign postal administrations or other intended recipients under contracts with the United States Postal Service (USPS). USPS contracted with the airlines to take possession of receptacles of United States mail at six locations in the United States or at various Department of Defense and Department of State locations abroad, and then timely deliver that mail to numerous international and domestic destinations.

The software development company Informatica LLC paid \$21.57 million to resolve allegations that it caused the government to be overcharged by providing misleading information about its commercial sales practices that was used in General Services Administration (GSA) contract negotiations. Informatica allegedly provided false information concerning its commercial discounting practices for its products and services to resellers, who then used that false information in negotiations with GSA for government-wide contracts. The false disclosures caused GSA to agree to less favorable pricing, and, ultimately, government purchasers to be overcharged.

### **Other Fraud Recoveries**

The number and variety of judgments and settlements announced during fiscal year 2019 reflect the diversity of fraud recoveries arising under the False Claims Act. For example, Duke University paid \$112.5 million to resolve allegations that it violated the False Claims Act by submitting applications and progress reports that contained falsified research on federal grants to the National Institutes of Health (NIH) and to the Environmental Protection Agency (EPA). Luke Hillier, the majority owner and former Chief Executive Officer of Virginia-based defense contractor ADS, Inc., paid \$20 million to settle allegations that he fraudulently obtained federal set-aside contracts reserved for small businesses that his company was ineligible to receive. In order to qualify as a small business, companies must satisfy defined eligibility criteria, including requirements concerning size, ownership, and operational control. The government alleged that Hillier caused ADS to falsely represent that it qualified as a small business concern and that, as a result of Hillier's representations, his company was awarded numerous small business set-aside contracts for which it was ineligible. The government previously resolved related claims against ADS for \$16 million and Charles Salle, the former general counsel of ADS, for \$225,000.

The department also continued its efforts to hold accountable those who seek to abuse their license to remove minerals from federal lands in exchange for the payment of an appropriate royalty. This past year, gas marketer B. Charles Rogers Gas Ltd. (BCR) and its owners paid over \$3.5 million to resolve allegations that they engaged in a scheme to reduce mineral royalty payments for natural gas removed from federal lands. Another individual who worked with BCR while employed as a gas supply manager at a natural gas distributor paid an additional \$800,000 to resolve his alleged role in the scheme.

In another matter, Omega Protein Corp. and Omega Protein, Inc. paid \$1 million to resolve allegations that it obtained a loan from the United States by falsely certifying compliance with federal environmental laws. A leading domestic producer of Omega-3 rich fish oil, protein-rich specialty fishmeal, and organic fish solubles, Omega allegedly certified to the Oceanic and Atmospheric Administration, an agency within the Department of Commerce, that it was complying with federal environmental laws while knowingly and unlawfully discharging pollutants and oil into U.S. waters.

North Greenville University (NGU) paid \$2.5 million to resolve allegations that it submitted false claims to the U.S. Department of Education. Title IV of the Higher Education Act (HEA) prohibits any institution of higher education that receives federal student aid from making incentive payments to student recruiters based on their success in securing student enrollment. The settlement resolves allegations that NGU compensated a student recruiting company based on the number of students who enrolled in NGU's programs, in violation of the prohibition on incentive compensation.

## Holding Individuals Accountable

The department continued its commitment to use the False Claims Act and other civil remedies to deter and redress fraud by individuals as well as corporations. In addition to the settlements with Luke Hillier and Charles Salle discussed above, the following are additional examples of recoveries involving individuals.

The department negotiated separate settlements with the individual owners of seven Osteo Relief Institutes for a total recovery from the owners and their clinics of more than \$7.1 million. The settlements resolved allegations that the defendants knowingly billed Medicare for medically unnecessary viscosupplementation injections and medically unnecessary knee braces. Viscosupplementation is a treatment for osteoarthritis, in which a doctor injects a gel-like fluid into a patient's knee joint to act as a lubricant and to supplement the natural properties of joint fluid. The government alleged that these clinics administered viscosupplementation injections to patients who did not need them, used multiple brands of viscosupplements successively on patients without clinical support, and used discounted viscosupplements reimported from foreign countries. The government also alleged that they provided unnecessary custom knee braces to patients.

In addition to negotiating a settlement with Vanguard Healthcare LLC for approximately \$18 million in allowed claims to resolve allegations of grossly substandard nursing home services, the department also pursued Vanguard's majority owner and CEO and Vanguard's former director of operations. These two individuals collectively paid \$250,000 to resolve allegations that five Vanguard-owned skilled nursing facilities submitted false claims to Medicare and Medicaid for nursing home services that were grossly substandard or worthless, including allegations that the facilities failed to administer medications as prescribed, failed to provide standard infection control or wound care, failed to take prophylactic measures to prevent pressure ulcers, and failed to meet basic nutrition and hygiene needs of their residents.

This year, the department also obtained a \$21 million settlement with a compounding pharmacy, Diabetic Care Rx LLC (which does business as Patient Care America), and a private equity firm, Riordan, Lewis & Haden Inc., (RLH) to resolve a lawsuit alleging that they submitted false claims to Tricare, the federal health care program for military members and their families, through their involvement in a kickback scheme to generate referrals of prescriptions for expensive pain creams, scar creams, and vitamins, regardless of patient need. At the same time as this settlement with Diabetic Care and RLH, the department secured settlements totaling over \$300,000 with Diabetic Care Rx's Chief Executive Officer and former Vice President of Operations. All of the settlements were based on the defendants' ability to pay.

## Recoveries in Whistleblower Suits

Of the \$3 billion in settlements and judgments reported by the government in fiscal year 2019, over \$2.1 billion arose from lawsuits filed under the *qui tam* provisions of the False Claims Act. During the same period, the government paid out \$265 million to the individuals who exposed fraud and false claims by filing these actions.

The number of lawsuits filed under the *qui tam* provisions of the Act has grown significantly since 1986, with 633 *qui tam* suits filed this past year – an average of more than 12 new cases every week.

"Whistleblowers continue to play a critical role identifying new and evolving fraud schemes that might otherwise remain undetected," said Assistant Attorney General Hunt. "Taxpayers have benefitted greatly from these individuals who are often required to make substantial sacrifices to bring these schemes to light."

In 1986, Senator Charles Grassley and Representative Howard Berman led the 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 and 2010, further improvements were made to the False Claims Act and its whistleblower provisions. Congress also included in the False Claims Act authority for the government to dismiss cases that do not advance the goal of fraud prevention, and during the past year the government made increasing use of this tool to help prioritize and protect the expenditure of government resources.

Finally, Assistant Attorney General Hunt expressed appreciation for the many dedicated public servants throughout the department's Civil Division and the U.S. Attorneys' Offices, as well as the agency Offices of Inspector General and the many other federal and state agencies that contributed to the department's False Claims Act recoveries this past fiscal year.

“The accomplishments announced today reflect the extraordinary efforts of the men and women throughout the government committed to protecting the federal fisc and the integrity of the government’s programs,” said Assistant Attorney General Hunt. “Having served many years in the Civil Division, I have witnessed the passion and dedication of the talented employees who have committed their careers to serving the American people and defending the interests of our great nation.”

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*Except where indicated, the government’s claims in the matters described above are allegations only and there has been no determination of liability. The numbers contained in this press release may differ slightly from the original press releases due to accrued interest.*

The year 2020 marks the 150th anniversary of the Department of Justice. Learn more about the history of our agency at [www.Justice.gov/Celebrating150Years](http://www.Justice.gov/Celebrating150Years).

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