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Justice Department Recovers \$2.4 Billion in False Claims Cases in Fiscal Year 2009; More Than \$24 Billion Since 1986

FY09 Recovery Is Second Largest on History

WASHINGTON - The United States secured \$2.4 billion in settlements and judgments in cases involving fraud against the government in the fiscal year ending Sept. 30, 2009, the Justice Department announced today. This represents the second largest annual recovery of civil fraud claims in history, and brings total recoveries since 1986, when Congress substantially strengthened the civil False Claims Act, to more than \$24 billion.

"Rooting out fraud and safeguarding taxpayers from illegal conduct are among the Justice Department's highest priorities," said Tony West, the Assistant Attorney General for the Civil Division. "I applaud the dedication of the public servants who investigate and prosecute fraud, and the courage of the many private citizens who risk their careers by reporting fraud."

Assistant Attorney General West continued, "The cases that the department pursued this year illustrate the government's commitment to maintaining the integrity of the health care system, ensuring that members of our military and law enforcement community are safe, and protecting consumers from fraudulent schemes. The extraordinary success of this public-private partnership goes far beyond the \$2.4 billion recovered to additional billions saved through deterrence and vigilance."

Assistant Attorney General West also commended the substantial efforts of the federal and state agencies that investigate and support these matters. "We are grateful for the dedication of other federal agencies and the state attorneys general and Medicaid Fraud Control Units. This cooperation allows us to bring all of our resources to bear in combating fraud against both the federal and state governments."

The government's partnership with private citizens in the fight against fraud was cemented in 1986, when Congress amended the False Claims Act, the United States' primary tool against government fraud. The amendments strengthened the act by, among other things, revising the statute's *qui tam* provisions, which were intended to encourage whistleblowers to come forward with allegations of fraud. The 1986 amendments reduced the barriers to citizens suing on behalf of the government and increased the incentives to filing such suits. Assistant Attorney General West paid tribute to the

amendments' sponsors, Senator Charles Grassley and Representative Howard L. Berman. "Without Congress' support in enacting this important legislation," the Assistant Attorney General explained, "recovering the billions of taxpayer dollars lost through fraud since 1986 would not have been possible."

Assistant Attorney General West further expressed his gratitude to Senators Grassley and Patrick J. Leahy and Representative Berman for their support of the Fraud Enforcement and Recovery Act of 2009, which made additional improvements to the False Claims Act and other fraud statutes. Noting that several courts had narrowed the scope of the False Claims Act, the Assistant Attorney General stated, "The 2009 amendments clarify the act and give the Justice Department a powerful tool in its efforts to pursue those who cause losses to the United States and harm to taxpayers."

Of the \$2.4 billion in settlements and judgments obtained in fiscal year 2009, nearly \$2 billion was recovered in lawsuits filed under the False Claims Act's *qui tam* provisions. These provisions authorize private persons, known as "relators," to file suit on behalf of the United States against those who have falsely or fraudulently claimed federal funds. Such cases run the gamut of federally funded programs, from Medicare and Medicaid to defense and other government procurement contracts, federally insured mortgage and other federal housing programs, disaster assistance loans, agricultural subsidies and more. Persons who knowingly make false claims for federal funds are liable for three times the government's loss plus a civil penalty of \$5,500 to \$11,000 for each claim. Relators recover 15 to 25 percent of the proceeds of a successful suit if the United States intervenes in the *qui tam* action, and up to 30 percent if the United States declines and the relator pursues the action alone. In fiscal year 2009, relators were awarded \$255 million. (This figure does not include relator shares awarded after Sept. 30, 2009.)

Fiscal year 2009 settlements include two records, both triggered by *qui tam* suits. In a record settlement of federal Medicaid claims, the state of New York and New York City agreed to pay the United States \$540 million. And in a record settlement in a General Services Administration defective pricing case, NetApp Inc. and NetApp U.S. Public Sector Inc. paid the government \$128.7 million.

A top priority for this administration is fighting health care fraud. On May 20, 2009, the Attorney General and the Secretary of the Department of Health and Human Services (HHS) announced the creation of a new interagency task force, the Health Care Fraud Prevention and Enforcement Team (HEAT), to increase coordination and optimize criminal and civil enforcement. These efforts not only protect the Medicare Trust Fund for seniors and the Medicaid program for the country's neediest citizens, they result in higher quality health care at a more reasonable price.

In fiscal year 2009, health care fraud recoveries reached \$1.6 billion, two-thirds of the year's total. The Department of Health and Human Services reaped the biggest recoveries, largely attributable to its Medicare and Medicaid programs. Recoveries were also made by the Office of Personnel Management, which administers the Federal Employees Health Benefits Program, the Department of Defense for its TRICARE insurance program and the Department of Veterans Affairs, among others.

The largest health care recoveries came from the pharmaceutical and medical device industries, which accounted for \$866.7 million in settlements, including Aventis Pharmaceuticals Inc., Bayer HealthCare LLC, Eli Lilly & Company and Quest Diagnostics Inc. and its subsidiary, Nichols Institute Diagnostics Inc. In addition to federal recoveries, these pharmaceutical and medical device fraud cases returned \$402 million to state Medicaid programs.

The Civil Division's investigation of the pharmaceutical industry is part of a department-wide effort. The Civil Division is pursuing allegations of a variety of schemes, including "off-label" marketing, which is the illegal promotion of drugs or devices that are billed to Medicare and other federal health care programs for uses that were neither found safe and effective by the Food and Drug Administration (FDA) nor supported by the medical literature; paying kickbacks to physicians, wholesalers and pharmacies to induce drug or device purchases; establishing inflated drug prices knowing that federal

health care programs use these prices to reimburse providers, then marketing the "spread" between the federal reimbursement and the provider's lower cost to induce drug purchases; and knowingly failing to report the company's true "best price" for a drug in order to reduce rebates owed to the Medicaid program.

Procurement fraud accounted for a quarter of fiscal year 2009 recoveries with \$608.4 million in settlements and judgments, including \$422 million attributable to Department of Defense contracts. Of that amount, \$59 million related to contracts in support of the wars in Iraq and Afghanistan, including two settlements with The Boeing Company totaling \$27 million and a \$26.3 million settlement with APL Limited. This brings settlements and judgments in procurement fraud cases involving the wars in Southwest Asia to a total of \$76 million, with many matters still pending.

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Civil Division

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