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Justice Department Recovers Over $2.2 Billion from False Claims Act Cases in Fiscal Year 2020

The Department of Justice obtained more than $2.2 billion in settlements and judgments from civil cases involving fraud and false claims against the government in the fiscal year ending Sept. 30, 2020, Acting Assistant Attorney General Jeffrey Bossert Clark 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 $64 billion.

"Even in the face of a nationwide pandemic, the department's dedicated employees continued to investigate and litigate cases involving fraud against the government and to ensure that citizens' tax dollars are protected from abuse and are used for their intended purposes," said Acting Assistant Attorney General Clark. "The continued success of the department's False Claims Act enforcement efforts are a testament to the dedication of the civil servants who pursue these important cases as well as to the fortitude of whistleblowers who report fraud."

Of the more than $2.2 billion in settlements and judgments recovered by the Department of Justice this past fiscal year, over $1.8 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. The amounts included in the $1.8 billion reflect only federal losses, and, in many of these cases, the department was instrumental in recovering additional tens of 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 support our military and first responders by ensuring that government contractors provide equipment that is safe, effective, and cost efficient; to safeguard 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 nutrition benefits for needy families.

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 672 *qui tam* suits in fiscal year 2020, and this past year the department recovered over $1.6 billion in these and earlier-filed suits.

Health Care Fraud

The department's health care fraud enforcement efforts restore funds to federal programs such as Medicare, Medicaid, and TRICARE, the health care program for service members and their families. But just as important, the department's vigorous pursuit of health care fraud prevents billions more in losses by deterring others who might otherwise try to cheat the system for their own gain. The department investigates and resolves matters involving a wide array of health care providers, goods, and services.

The largest recoveries in the past year came from the drug industry. For example, following years of litigation and multiple unsuccessful attempts to have the government's claims dismissed, Novartis Pharmaceuticals Corporation paid over $591 million to resolve claims that it paid kickbacks to doctors to induce them to prescribe its drugs. Novartis sales representatives, on the instruction of their managers, selected high-volume prescribers to serve as paid "speakers" to induce the prescribers to write Novartis prescriptions.

The department also continued to investigate efforts by drug manufacturers to protect high 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, two pharmaceutical manufacturers – Novartis and Gilead Sciences – paid a combined total of over $148 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 for these payments. In addition, four of the purportedly independent foundations paid a total of $13 million this year to resolve liability for their involvement in the kickback schemes. In August 2020, the department sued Teva Pharmaceuticals USA, Inc. and Teva Neurosciences, Inc., alleging that they conspired with two purportedly independent foundations to illegally subsidize Medicare co-pays for the drug Copaxone.

The department continued to pursue opioid-related fraud schemes. One of the largest opioid-related recoveries this past year was from Practice Fusion, Inc., a health information technology developer that accepted kickbacks from the opioid manufacturer Purdue Pharma in exchange for implementing clinical decision support alerts in its electronic health records (EHR) software that were designed to increase prescriptions for OxyContin, and caused its users to submit false claims for federal incentive payments by misrepresenting the capabilities of its EHR software. In addition, the $145 million Practice Fusion settlement reflects that complex EHR-related fraud schemes remain a focus of the Department's work.

Kickbacks in the healthcare industry are pernicious because of their potential to subvert medical decision-making. In addition to pursuing improper payments by drug manufacturers, the department resolved other schemes involving the willful solicitation or payment of illegal remuneration to induce the purchase of a good or service paid for by a federal health care program. For example, ResMed Corp., a durable medical equipment manufacturer, agreed to pay more than $37 million to resolve allegations that it paid kickbacks to suppliers, sleep labs, and other health care providers. The Oklahoma Center for Orthopaedic and Multi-Specialty Surgery, a specialty hospital in Oklahoma City, its part-owner and management company, an orthopedic physician group, and two physicians agreed to pay a total of over $72 million to resolve allegations that the hospital provided improper remuneration to the physician group in exchange for patient referrals. UTC Laboratories Inc. (RenRX) agreed to pay $41.6 million, and its three principals agreed to pay $1 million, to resolve allegations that they paid kickbacks in exchange for laboratory referrals for pharmacogenetic testing and for furnishing and billing for tests that were not medically necessary.

In addition to these recoveries, in March 2020, the department filed a complaint against medical device manufacturer SpineFrontier, Inc., its Chief Executive Officer, Dr. Kingsley Chin, and certain related entities and individuals, alleging that they paid kickbacks to spine surgeons in the form of sham "consulting" agreements to induce use of SpineFrontier surgical devices.

As in years past, the department also resolved a number of matters in which providers billed federal health care programs for medically unnecessary services or services not rendered as billed. For example, Universal Health Services paid $117 million to resolve allegations that its inpatient psychiatric hospitals and residential psychiatric and behavioral treatment facilities knowingly submitted false claims for inpatient behavioral health services that were not reasonable or medically necessary and/or failed to provide adequate and appropriate services to its patients. Additionally, Logan Laboratories, Inc., pain clinic Tampa Pain Relief Centers, Inc., and two of their former executives agreed to pay a total of $41 million to resolve allegations that they automatically ordered both presumptive and definitive urine drug tests for all patients at every visit, without any individualized determination that either test was medically necessary for the particular patients for whom the tests were ordered.

The department also pursued health care frauds arising under government contracts, as in the case of its $1.85 million settlement with Veterans Administration contractor Sterling Medical Associates for allegedly failing to offer timely appointments to veterans and falsifying wait times at Minnesota outpatient clinics.

Procurement Fraud

In the past year, the department also pursued a variety of other fraud matters involving the government's purchase of goods and services. For example, major federal contractors Bechtel National Inc., Bechtel Corporation, AECOM Energy & Construction, Inc., and their joint venture Waste Treatment Completion Company, LLC agreed to pay over $57 million to resolve allegations that they submitted false claims to the U.S. Department of Energy by charging inflated labor hours and by billing for work not actually performed to construct and maintain the Hanford Waste Treatment Plant.

In another case, QuantaDyn Corporation agreed to pay $37 million to resolve both its criminal and civil liability for engaging in a bribery scheme to steer government contracts for training simulators to the company. William T. Dunn Jr., the President and Chief Executive Officer of QuantaDyn, separately agreed to pay $500,000 to resolve his personal civil liability for the alleged scheme.

In some cases, the department pursued allegations that government contractors provided goods or services that did not comply with contract requirements. For example, Unitrans International, Inc. agreed to pay $27 million to resolve allegations that it fraudulently induced the Army and the U.S. Defense Logistics Agency (DLA) to award wartime contracts for food and trucks by falsely certifying compliance with United States sanctions against Iran. The agreement also resolved allegations that a company associated with Unitrans falsely represented construction progress on a warehouse to induce DLA to award the prime vendor contract to provide food to U.S. troops in Afghanistan. In another matter, Bradken Inc., a subsidiary of Hitachi Construction Machinery and a leading supplier of high-yield steel for naval submarines, paid over $10 million to resolve allegations that it produced and sold substandard steel components for installation on U.S. Navy submarines. The government alleged that Bradken produced castings that failed lab tests and did not meet the Navy's standards, and that its Director of Metallurgy falsified test results to hide the failures.

SK Engineering & Construction Co. Ltd., one of the largest engineering firms in South Korea, paid $7.8 million to settle False Claims Act claims arising out of a fraudulent scheme to obtain a large U.S. Army construction contract in South Korea by paying millions of dollars to an Army contracting official through a fake Korean construction company. The firm also entered into a plea agreement with the United States and paid over $60 million in criminal fines for the same misconduct.

Other Fraud Recoveries

The number and variety of judgments and settlements announced during fiscal year 2020 reflect the diversity of fraud recoveries arising under the False Claims Act. For example, Hybrid Tech Holdings LLC, Hybrid Technology LLC, and Ace Strength International LTD, agreed to pay $29 million to resolve allegations that they violated the False Claims Act by colluding to rig the bidding of an auction to purchase a non-performing loan from the U.S. Department of Energy.

This year, three states paid a total of over $24 million to resolve allegations that they violated the False Claims Act in their administration of the Supplemental Nutrition Assistance Program (SNAP), previously known as the Food Stamp Program. Although the federal government funds SNAP benefits, it relies on the states to determine whether applicants are eligible for benefits, to administer those benefits, and to perform quality control to ensure that eligibility decisions are accurate. The settlements resolved allegations that the states submitted false quality control data and information to the U.S. Department of Agriculture for which they received performance bonuses to which they were not entitled.

The department pursued fraud in connection with Public Assistance program funds that FEMA provided to institutional applicants, such as schools and universities, for the replacement of facilities damaged by Hurricane Katrina. For example, Xavier University of Louisiana agreed to pay $12 million to resolve allegations that it received excess disaster assistance funds that substantially exceeded the amounts it was entitled to receive under program rules. The settlement with Xavier was based on false and misleading repair estimates that were submitted on its behalf by AECOM and certain affiliates, which received more than $300 million from FEMA between 2005 and 2019 to serve as technical assistance contractors in support of FEMA's disaster response efforts. In July 2020, the department filed a complaint against AECOM and its affiliates for their role in the alleged scheme.

Linde GmbH, a multinational corporation that imports materials into the United States to build natural gas and chemical manufacturing plants, and its U.S. subsidiary, the importer of record, agreed to pay more than $22 million to resolve allegations that they knowingly made false statements on customs declarations to avoid paying duties owed on the

companies' imports, including in some instances antidumping and countervailing duties. Linde and its subsidiary allegedly misrepresented the nature, classification, and valuation of imported merchandise, as well as the applicability of free trade agreements.

The Scripps Research Institute agreed to pay $10 million to settle claims that it improperly charged NIH-funded research grants for time spent by researchers on non-grant related activities such as developing, preparing, and writing new grant applications, teaching, and engaging in other administrative activities.

Lakeway Regional Medical Center LLC agreed to pay $13.5 million to resolve allegations that it improperly obtained Federal Housing Administration insurance for a mortgage to develop a Texas hospital and used loan funds in violation of FHA requirements. Five other individuals and entities involved in the development project paid an additional $1.8 million for their part in the alleged scheme.

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. A number of corporate settlements required individuals, particularly senior executives or owners, to pay a portion of the settlement amount, as noted above. The following are additional examples of recoveries involving individuals.

Following a $260 million settlement with Health Management Associates, the department negotiated a $4.25 million civil settlement with Glenn A. Kline, D.O. and his surgical practice, Community Surgical Associates, to resolve civil allegations relating to illegal kickbacks received from two hospitals formerly operated by HMA. To secure Dr. Kline's referrals, HMA allegedly paid Dr. Kline in excess of the fair market value of his services and paid additional amounts to benefit his practice, Community Surgical Associates. These funding arrangements were allegedly structured to disguise payments that were, in actuality, payments for patient referrals rather than for legitimate services.

In connection with the department's litigation against SpineFrontier, six orthopedic surgeons agreed to pay a total of over $3.25 million to resolve allegations that they accepted kickbacks in the form of sham consulting fees from SpineFrontier and a third-party entity, Impartial Medical Experts, LLC, which was owned and controlled by the company's founder and CEO. The consulting payments were allegedly based on the number of times the surgeons used a SpineFrontier product in a given month, as opposed to the actual time they spent consulting. As part of the settlement agreements, each physician admitted to reporting and being paid for consulting hours in excess of actual or documented consulting time.

In another example, Texas doctor Bibi Sattar and her medical practice paid $210,000 to resolve allegations that she accepted kickbacks in the form of sham laboratory processing and handling fees in exchange for referring laboratory tests to True Health Diagnostics, LLC.

As part of a $4.25 million settlement, five individual shareholders of Dave O'Mara Contractor, Inc. (DOCI), an Indiana-based asphalt contractor, agreed to pay a total of nearly $2 million to resolve the United States' allegations that DOCI violated the False Claims Act by misrepresenting to the government the materials that were used to pave federally funded roads in the state of Indiana. Specifically, the government alleged that DOCI claimed that its hot mix asphalt mixture contained a sufficient amount of binder or glue to hold the mix together when, in fact, DOCI frequently failed to meet the minimal levels of binder required to properly pave the roads.

Recoveries in Whistleblower Suits

Of the $2.2 billion in settlements and judgments reported by the government in fiscal year 2020, over $1.6 billion arose from lawsuits filed under the *qui tam* provisions of the False Claims Act. During the same period, the government paid out $309 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 672 *qui tam* suits filed this past year – an average of nearly 13 new cases every week.

"Whistleblowers with insider information are critical to identifying and pursuing new and evolving fraud schemes that might otherwise remain undetected," said Acting Assistant Attorney General Clark. "These individuals often make

substantial sacrifices to bring these schemes to light, and our efforts to protect taxpayer funds continue to benefit from their actions."

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.

Pending Recoveries

The $2.2 billion in recoveries announced today do not include settlements totaling billions of additional dollars that are not yet final or did not become final before the end of the fiscal year. On Oct. 21, 2020, the department reached a resolution with Purdue Pharma that provides the United States with an allowed, unsubordinated, general unsecured bankruptcy claim of $2.8 billion to resolve allegations that Purdue caused false claims to be submitted to federal health care programs arising from its conduct in promoting and unlawfully inducing prescriptions of opioids. The settlement remains contingent on the inclusion of certain conditions in a chapter 11 plan of reorganization. Under a separate civil settlement, individual members of the Sackler family agreed to pay the United States $225 million arising from their alleged conduct in intensifying marketing efforts directed toward extreme, high-volume prescribers.

The department also concluded a multi-year investigation of Indivior plc related to its marketing of the opioid addiction treatment drug Suboxone. In July 2020, Indivior agreed to pay a total of $600 million, of which $300 million was paid to resolve civil allegations that Indivior promoted Suboxone to physicians who were writing prescriptions for uses that were unsafe, ineffective, and medically unnecessary and used false and misleading claims that it was less susceptible to diversion, abuse, and accidental pediatric exposure than other buprenorphine products. The global resolution was conditioned on the district court's acceptance of Indivior's criminal plea, which occurred in November 2020.

While these resolutions are not included in the total recoveries for fiscal year 2020, they are notable because they reflect significant work over the last year on opioid matters, one of the department's key priorities.

Acting Assistant Attorney General Clark expressed appreciation for all the work over the past year by the many public servants who continued to support the department's efforts to protect the public fisc: "I am grateful to all those in the 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 who worked tirelessly, often overcoming daunting challenges, to provide substantial benefits to the taxpayers."

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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.

Attachment(s):
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