

# - FACT SHEET -

## Taxpayers Against Fraud

### Examples of Cases the Department of Justice Declined that Whistleblowers and Their Private Attorneys Pursued to Settlement or Judgment

***United States ex rel. Pogue v. Diabetes Treatment Ctrs. of Am., Inc.*** This case was filed in March 1994 and was declined by DOJ in mid-1994. The whistleblower alleged DTCA violated the FCA by paying physicians as “medical directors” in exchange for referrals to its hospitals-within-hospitals. The case ultimately settled 15 years later in May 2009 with the defendant agreeing to pay \$26 million. Whistleblower attorneys incurred approximately 10,000 hours and \$1 million in up-front expenses during this process.

***United States ex rel. Hutcheson v. Blackstone Medical, Inc.*** This case was filed in May 2007 and was declined by DOJ in 2009. The whistleblower alleged Blackstone was paying doctors as “Medical Advisory Board” members as a form of kickbacks. The case ultimately settled in February 2012 for \$30 million, after whistleblower attorneys incurred approximately 3,500 hours and \$50,000 in up-front expenses.

***United States ex rel. Gonter v. Hunt Valve Co.*** This case was filed in April 2001 and declined by DOJ in March 2005. The whistleblower alleged that General Dynamics defrauded the federal government by accepting nonconforming submarine valves and valves for containment of low-level nuclear waste from the whistleblower’s employer. Ultimately the case settled for \$13 million in May 2005 after whistleblower attorneys incurred approximately 3,000 hours and \$75,000 in up-front expenses.

***United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Various Parties.*** The Florida-based whistleblower pharmacy Ven-A-Care filed multiple claims under the False Claims Act to expose Medicaid and Medicare fraud in the pharmaceutical industry. Ven-A-Care filed its first AWP action in 1995 (*U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.* (S.D. Fla. No. 95-1354-Civ)) and its second in 2000 (*U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Dey Inc. et al.* (D. Mass No. 00-10698)). Both of these federal cases joined claims against numerous drug makers, and Ven-A-Care also brought *qui tam* actions against the same defendants under the *qui tam* provisions of state false claims acts of Florida, California, and Texas to recover those states’ shares of improper Medicaid payments.

While Ven-A-Care’s Texas and Florida cases proceeded in state courts, its California state case was removed and consolidated with Ven-A-Care’s federal FCA actions in a Multi-District Litigation (MDL) proceeding in Boston federal court. All told these actions ultimately brought hundreds of millions in recoveries to taxpayers. In addition, Ven-A-Care

and its counsel assisted several states in pursuing non-*qui tam* actions returning tens of millions more to the state and federal governments.

In many of the *qui tam* actions, the federal government did not intervene and the whistleblower and their attorneys pursued the cases to settlement. For example, while the U.S. Department of Justice declined to intervene and proceed with Ven-A-Care's *qui tam* case against Schering Plough, Ven-A-Care and its counsel team developed the case over a period of twelve years and, working closely with the Attorneys General of Texas, California, and Florida, returned more than \$50 million to the United States by the end of 2009.

In their work advancing these and other recoveries, Ven-A-Care's legal team expended in excess of \$75 million in attorneys' time, and advanced more than \$15 million in litigation costs.