

- FACT SHEET -

Taxpayers Against Fraud

Examples of Cases in Which the Department of Justice Intervened after Substantial Time or Commitment of Resources by Whistleblowers and Their Attorneys

United States ex rel. Alderson v. Columbia/HCA Healthcare Corp.; United States ex rel. Schilling v. Columbia/HCA Healthcare Corp.; and United States ex rel. Alderson v. Quorum Health Group, Inc., et al. This case, originally filed in 1993 against HCA, Healthtrust and Quorum, involved allegations of cost report fraud and kickbacks. The case evolved into separate proceedings involving Quorum on the one hand, and HCA and Columbia (a company that had merged with HCA) on the other hand. In 1998, DOJ joined the Quorum case with the understanding that the whistleblower attorneys would play the lead role in prosecuting the case. DOJ also ultimately joined the Columbia/HCA litigation with the understanding that 30 full-time equivalent attorneys were required and that DOJ could provide only five, with the relators providing the majority of the attorney team which totaled six law firms and one individual lawyer. The Quorum matter settled in 2000 for \$85.7 million. The Columbia/HCA matter involving the whistleblower cost reporting claims settled in 2003 for \$631 million, after whistleblower attorneys had incurred over 66,000 hours and over \$29 million in expenses and attorney fees up-front.

United States ex rel. Tyson v. Amerigroup Ill., Inc. In August 2002 the Department of Justice declined to intervene in an FCA whistleblower action against Amerigroup that involved an allegation that the company defrauded the Medicaid program in the State of Illinois by not enrolling pregnant women in the program to avoid paying for costly care. Ultimately the State of Illinois intervened in March 2005 and DOJ intervened in October 2005 and the case went to trial. The whistleblower and his attorneys took the lead in pursuing the case and preparing for the trial, with the whistleblower attorneys incurring over 25,000 hours of legal work and \$2 million in out of pocket expenses for costs including experts, transcripts, and trial preparation. After a verdict, post-trial motions, and appeal, the case was settled for \$225 million in August 2008.

United States ex rel. Taylor v. Gabelli. In February 2001 a whistleblower filed a case under the FCA alleging fraud in the purchase of radio spectrum licenses. DOJ initially declined to intervene in December 2001 but ultimately requested to intervene in late March 2006. The case settled in June 2006 and the court approved a \$135 million settlement in July 2006. The whistleblower attorneys incurred over 19,000 hours and approximately \$8.7 million in fees and expenses.

United States ex rel. Shea v. Verizon Communications, Inc. Filed in January 2007, this *qui tam* case involved allegations that MCI/Verizon was submitting false claims for illegal surcharges on invoices submitted under two telecommunications contracts with the United States. DOJ intervened in 2011 and the case settled in February 2011 for \$93.5 million. In a memorandum opinion relating to this case, a district court judge noted that the whistleblower's role in this case included:

- “enabling the government to save enormous amounts of lawyer time, auditor time, and other staff time” by directing the government to prioritize and focus on two specific categories of surcharges that ultimately were the basis of over 80% of the recovery;
- spending an estimated hundreds of hours each year on the case and hiring FCA specialists who spent over 1,200 hours in attorney and paralegal time; and
- in conjunction with his counsel, providing extensive pre-filing research and analysis on what was legally allowed as surcharges on government contracts; helping the government draft proposed subpoena categories when informal discovery began; responding to all substantive arguments Verizon made denying its liability, including through a multi-hour 40-page power-point presentation to DOJ; and identifying an additional category of damages beyond those the government identified.

The judge further stated that “it is certainly more than likely that without this lawsuit, Verizon would have continued to overcharge the United States indefinitely, i.e., as long as it could get away with it.”

United States ex rel. Kammerer v. Omnicare, Inc. In March 2004 a whistleblower filed an FCA case against Omnicare, Inc., the nation's leading long-term care pharmacy provider. The case involved allegations that Omnicare dispensed and billed for different drug forms than the forms ordered by physicians to maximize Medicaid reimbursement, and that Omnicare violated a Medicaid billing rule requiring pharmacies to charge Medicaid no more than their “usual and customary charge to the general public.” The whistleblower filed the action on behalf of the federal government, the District of Columbia, and the 16 states in which Omnicare does significant business. While the federal government investigated and resolved the first claim, it declined in February 2007 to intervene in the claim involving the “usual and customary charge” billing rule.

The whistleblower spent close to a thousand hours and his counsel spent over 850 hours on the case, including work to convince states to participate. In late 2007 and early 2008, Massachusetts agreed to seek claims data from its Medicaid program and documents from Omnicare, with the understanding that the whistleblower would do the initial audit and document review. The whistleblower hired a software programmer to write a program to audit the claims and employed a data analyst full time for several months to do this work. The whistleblower presented his preliminary damage computations to the Massachusetts Attorney General's office in July 2008, and once this work established substantial evidence of damage to the state's Medicaid program, Massachusetts invested resources in its own audit and investigation, sharing the results with Michigan. Eventually Massachusetts and Michigan successfully negotiated settlements in September 2010 totaling \$21 million. This case was the first FCA case based on violations of the “usual and customary” rule, and

beginning in 2009 the annual work plans of the Inspector General of the U.S. Department of Health and Human Services have proposed audits of large pharmacy chains for compliance with this rule.

United States ex rel. Eckard v. GlaxoSmithKline. The relator in this case was a Global Quality Assurance Manager for GlaxoSmithKline who reported that the company was manufacturing and distributing drug products from its huge facility in Cidra, Puerto Rico – drug products that were contaminated with micro-organisms, super- or sub-potent, lacking the active ingredient, and/or otherwise adulterated. Based on the relator’s allegations, the Food and Drug Administration executed search warrants and seized billions of dollars of adulterated drugs, leading to the ultimate shut down of the plant. In October 2010, GSK resolved the relator’s *qui tam* action for \$600 million and paid an additional \$150 million criminal fine. The GSK subsidiary that operated the factory pled guilty to distributing adulterated product with intent to defraud and mislead.

The *qui tam* case was filed in February 2004 and was unsealed in July 2007, at which time the government filed a notice of non-intervention, while continuing to investigate the allegations. The government intervened when settlement was reached in October 2010. In this FCA case of first impression concerning manufacturing standards essential to ensuring drug quality, safety and efficacy, the relator and/or her counsel, in support of the government’s investigation and prosecution of the case: reviewed, organized and analyzed approximately 1.6 million pages of complex and technical documents produced by GSK; prepared legal, factual and technical memoranda, amounting to more than 1,200 pages of work product citing to more than 4,000 documents; managed the civil litigation in a non-intervened posture for almost three years after the case was unsealed, moving it forward while avoiding any conduct prejudicial to the government’s ongoing criminal investigation; and participated in the settlement negotiations and settlement strategies that led to the successful outcome. In total, relator’s counsel spent approximately 12,000 hours on the case, approximately 86% of which was spent directly and actively assisting the government. The relator, an expert in pharmaceutical Good Manufacturing Practices, who also has a degree in Chemistry and is formally trained to operate manufacturing equipment, translated complex scientific concepts into lay terms and contributed countless hours reviewing documents, interpreting and explaining their scientific and technical content and ramifications and suggesting follow up strategies. The expertise of the relator and her attorneys and their dedication to the pursuit of the case throughout its six year-plus history were essential to the ultimate \$750 million recovery.

United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Various Parties. Florida-based pharmacy Ven-A-Care filed cases against Abbott Laboratories, Dey Laboratories and Roxane Pharmaceuticals, in 1995, 1997, and 2000, respectively. In these cases, Ven-A-Care alleged that the pharmaceutical companies had inflated the average wholesale price of drugs and other price points beyond the actual sale price. The United States did not elect to intervene in these cases until 2006, after which Ven-A-Care’s counsel team continued to litigate alongside the DOJ lawyers, taking the lead where appropriate, and shouldering a substantial portion of the litigation costs.

However, during the many years these cases remained under seal pending the DOJ investigations, Ven-A-Care litigated companion state court *qui tam* cases with the assistance

of the Attorneys General of Texas, California, and Florida, each of whom had intervened and assigned several state lawyers to the trial teams. As with the cases in which the United States declined to intervene, Ven-A-Care pursued its Texas cases up to immediately before trial, and successfully negotiated state settlements. The litigation work product, including expert reports and depositions, was made available to assist in the United States decisions to intervene and in the subsequent litigation of the United States cases.

Ven-A-Care's Texas settlements included \$18 million from Dey, \$10 million from Roxane and \$28 million from Abbott, each of which included recoveries of the U.S. portion which was returned to the U.S. Treasury. The later U.S. settlements included \$280 million from Dey, \$280 million from Roxane, and \$126.5 million from Abbott. The United States made its intervention decisions after receiving the evidence and information provided by Ven-A-Care's successful litigation of its state cases.