

DOJ ANNOUNCES THAT 2014 SETS RECORD FOR FCA RECOVERIES AND WHISTLEBLOWER LAWSUITS

Yesterday, November 20, the Department of Justice ("DOJ") announced that the United States had recovered almost \$6 billion from False Claims Act ("FCA") litigation in 2014, marking the first time the DOJ has recovered more than \$5 billion in a single year.

With these recoveries, the DOJ reached several milestones. Not only was this the largest recovery year for the DOJ, but it makes 2014 the third consecutive year that the DOJ has announced record recoveries. The record recoveries were bolstered by over 700 whistleblower lawsuits filed on the government's behalf in 2014. Of the total \$5.69 billion recovered, almost \$3 billion was recovered in lawsuits filed by whistleblowers in qui tam actions under the FCA.

HEALTH CARE FRAUD ACTIONS

The announcement highlights the consistent pressure health care providers face defending against allegations of FCA violations. This year, the DOJ recovered \$2.3 billion from health care defendants, which is on par with last year's recovery of \$2.6 billion. Within the health care industry, pharmaceutical companies contributed the largest settlements, with Johnson & Johnson and its subsidiaries providing nearly half of the \$2.3 billion.

Other significant health care recoveries included the resolution of allegations of Anti-Kickback Statute violations at skilled nursing facilities, allegations of outpatient or observation services being billed as inpatient services inside a national hospital system, allegations of Stark Law violations related to referral incentives between physicians and a Florida-based hospital and allegations that one of the nation's largest home health providers billed for unnecessary services and violated the Anti-Kickback Statute.

Other Fraud Actions

Significant recoveries also came from the financial sector in lawsuits arising out of the housing and mortgage crisis. The nation's largest financial institutions, including Bank of America, JPMorgan Chase, SunTrust and U.S. Bank settled FCA lawsuits with the DOJ to the tune of \$3.1 billion. In keeping with past recovery statistics, DOJ settlements with government contractors for alleged FCA violations made up the smallest proportions of recoveries, coming in just under \$300 million.

PRACTICAL TAKEAWAY

This year's recovery announcement from the DOJ only serves to reinforce what health care providers have come to know from past announcements: there is no sign of FCA recovery actions slowing down. Not only does 2014 mark a significant year for the number of dollars recovered and whistleblower actions filed, but **the DOJ's test-case regarding 'reverse' false claims** is also proceeding in the Southern District of New York. **Commentators and experts have anticipated** that 'reverse' false claims act allegations (written into the law in 2009 and amended in 2010) have the potential to further expand what the DOJ calls its "continuous commitment year after year to pursue" FCA litigation.

The best means for defending against an FCA lawsuit starts before the filing of a lawsuit and begins with comprehensive compliance efforts. Actively working side-by-side with experienced health care counsel to navigate the statutory and regulatory environment and ensure sufficient safeguards are in place is the most efficient and reliable way to head off such claims.

Should you have any questions regarding False Claims Act actions, recoveries or developing compliance strategies, please contact:

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