
JUSTICE NEWS

Assistant Attorney General Stuart Delery Delivers Remarks at American Bar Association's 10th National Institute on the Civil False Claims Act and Qui Tam Enforcement

Washington, DC, United States ~ Thursday, June 5, 2014

Thank you, Dan [Anderson, Deputy Director, Frauds Section, Civil Division], for that kind introduction. And thank you to Dan and the other Co-Chairs of the National Institute on the Civil False Claims Act and *Qui Tam* Enforcement, Jack Boese and Jeb White, for inviting me to speak to you today. I also want to recognize my colleagues in the Department of Justice – including Joyce Branda, Michael Granston, Dan and the other DOJ speakers – for their contributions both to this event and to the department's continuing efforts to combat fraud against the government wherever it is found.

I have had the privilege of serving in the Justice Department since 2009. These five years have been a remarkable period for the department's enforcement of the False Claims Act. During that time, the government has recovered over \$17 billion in settlements and judgments in civil cases brought under the FCA. The government recorded the largest annual recovery ever – almost \$5 billion in fiscal year 2012 – and followed it up with the second-largest annual recovery ever – \$3.8 billion last year. In 2012, the government set a record for the most single-year recoveries in FCA cases involving health care fraud. In 2013, the government set a similar record for cases involving procurement fraud.

In 2011, many of you were with us in the Great Hall at the Justice Department when we celebrated the twenty-fifth anniversary of the 1986 amendments to the False Claims Act. Those amendments have played a critical role in transforming the FCA into what it is today – the most powerful tool the American people have to protect the government from fraud. Indeed, each of the past five years has seen a new record for the number of whistleblower complaints filed, and of course the commitment advocacy of relators has been central to our record-setting recoveries.

The False Claims Act was originally passed by Congress during the administration of President Abraham Lincoln in 1863 to help the government recover federal funds stolen through fraud by government contractors. During the Civil War, the law was used to recover monies from unscrupulous contractors who sold the Union Army decrepit horses and mules in ill health, faulty rifles and ammunition, and rancid rations and provisions. For more than three quarters of a century, it served as a strong check against fraudulent activity. But during World War II, a series of fundamental changes narrowed the FCA's scope and rendered it significantly less effective. By the early 1980s, the result was a virtual epidemic of scandals that rocked the defense contracting industry.

The 1986 amendments marked a turning of the tide for the False Claims Act, with their revitalization of the *qui tam* provisions and the establishment of trebled damages. Within the past five years, we have seen the continuation of that revitalization effort, as Congress enacted and President Obama signed important new legislation to strengthen the FCA. The Fraud Enforcement and Recovery Act of 2009 clarified the extent to which the FCA reaches fraud by those who do not deal directly with the federal government, and that businesses cannot knowingly keep government money that they never should have received. In 2010, the

Affordable Care Act strengthened the remedies available when medical providers pay illegal kickbacks in connection with services billed to federal health care programs.

As the head of the Justice Department's Civil Division, I have worked with a group of outstanding lawyers throughout the department to protect American taxpayers. Attorneys in the Civil Division handle a tremendous range of civil litigation in courts around the country. They litigate cases involving national security and immigration policy. They defend federal statutes, regulations, and programs, ranging from the Affordable Care Act to actions taken in response to the financial crisis.

But even among this vitally important work, many of the cases under the False Claims Act that we have brought along with our partners in the U.S. Attorney's offices stand out. Of course, the cases that garner the most media attention are those that involve the largest sums of money. Most recently they include the department's groundbreaking resolutions with Johnson & Johnson, for a total of \$2.2 billion in 2013, and GlaxoSmithKline, for a record \$3 billion in 2012.

But we routinely bring cases that are noteworthy not because they involved a billion-dollar recovery but because of the people they protected. Just last week, for example, the department announced a \$41 million settlement with Kings Daughter Medical Center in Kentucky to resolve allegations that its surgeons implanted cardiac stents in Medicare and Medicaid patients who did not need them, and then falsified the records in an attempt to justify the procedures.

We have pursued doctors who put patients at risk by performing unnecessary procedures to increase their bills, like a Florida dermatologist who performed thousands of unnecessary skin surgeries to further an illegal kickback scheme. We have cracked down on elder abuse in nursing homes, pursuing FCA cases against facilities that harm seniors by providing grossly deficient care that is then billed to the government.

And we have pursued cases involving fraud that threatens the safety and security of our active duty military servicemembers – the modern form of selling decrepit mules to the Union Army during the Civil War. The misconduct at issue in these cases ranges from overcharging for transporting military containers in Iraq and Afghanistan to selling dangerous and defective illumination for the Army and Air Force to use in nighttime combat, covert operations, and search and rescue missions.

In all of these areas, the dollars in particular cases may be dwarfed by our larger recoveries, but the impact on the lives of individual people is immeasurable.

Throughout this conference, you will hear from the expert speakers and panelists about the intricacies of the liability and damages arguments used in these and other cases. I want to convey a simpler message: the False Claims Act works.

It works because it is an effective tool to fight fraud across the full spectrum of federal programs and initiatives.

The FCA works because it provides powerful incentives for companies to do business the right way.

And the FCA works because it safeguards billions of dollars of taxpayer money, protecting health and safety, improving public confidence in government, and allowing key programs to function better.

The department's settlement with JPMorgan Chase earlier this year illustrates the ability of the FCA to address the full spectrum of fraud against the taxpayers. The Federal Housing Administration, which is part of the Department of Housing and Urban Development, and the Department of Veterans Affairs provide

insurance for qualifying home loans. Their programs help to give millions of Americans, including veterans and servicemembers, the opportunity to own a home. JPMorgan admitted to violating the False Claims Act by approving thousands of federally insured loans – knowing all the while that the loans did not meet the agencies underwriting requirements.

When such loans go bad, as many of these did, they cost taxpayers many millions of dollars; JPMorgan agreed to pay \$614 million to resolve the government's claims. We take pride in recovering that money for the U.S. Treasury. But we are also attacking conduct that put people into homes they could not afford, and that provided faulty mortgages that were packaged into fraudulent securities, at severe cost to the financial system and the housing market. We are committed to ensuring that those responsible for this conduct are held accountable.

But the value of the False Claims Act is not just in allowing the government to respond to fraud after it happens. It is also in preventing fraud from happening in the first place. And so the second reason I want to emphasize for why the FCA works is that the statute creates appropriate incentives for businesses to do the right thing.

The period since the 1986 amendments to the FCA has seen a tremendous push by industries doing business with the government to adopt effective compliance programs and to prioritize corporate ethics. The results have been a tremendous benefit not only to the government and the American public but also to companies that want to do business fairly and honestly, and want to know that they won't be put at a competitive disadvantage as a result because others are not playing by the rules.

We have made it a priority to continue to use the FCA to encourage the adoption of, and consistent adherence to, best practices.

That is why we have put a renewed emphasis on non-monetary remedial measures that will help us to prevent misconduct from happening again. That is what happened as part of our \$1.5 billion criminal and civil resolution in 2012 with Abbott Laboratories for conduct relating to its epilepsy drug Depakote. Working with the company and with our partners in Office of the Inspector General of the Department of Health and Human Services, we crafted a resolution designed to ensure high-level accountability for the company's compliance efforts. It imposes a term of probation for five years which requires Abbott to report any probable violations of the Food, Drug, and Cosmetic Act, and requires that its CEO personally certify compliance with this reporting requirement. It contains a corporate integrity agreement with the HHS-OIG that requires, among other things, Abbott's board of directors to review the efficacy of the company's compliance effort. And it demands that Abbott institute policies to ensure that its scientific research and publications foster increased understanding of scientific, clinical, or healthcare issues.

That is also why we have insisted on clear, public statements about the misconduct giving rise to False Claims Act violations. The impact of the cases we bring extends beyond the individuals and companies whose wrongdoing is at issue. We want others to understand what a defendant did, why it was unlawful, and how the conduct affected the government and the American public. That kind of transparency benefits the industry by clarifying the factual basis for the actions we take. And it benefits the American people by maximizing the impact of each dollar spent on fraud prevention and by prompting other companies to avoid the same pitfalls. We want each victory we achieve in fighting a single instance of fraud to deter others from following the same path.

And that is why we reward compliance by acknowledging when companies and individuals do the right thing and voluntarily disclose wrongdoing. We recognize that most companies doing business with the government

are trying to play by the rules, that navigating the contractual and regulatory landscape is not always easy, and that many companies and individuals do their best to get it right.

We want to make clear that the decision to come forward is the right one. When a company or individual acts responsibly by timely and voluntarily disclosing unlawful conduct, we will give serious consideration to that disclosure in deciding whether or how to pursue or resolve the matter. Likewise, we will credit actions taken once the government has started to investigate.

Of course, each case is unique, so there is no one formula for cooperation – just as there is no formula for the penalty for an FCA violation. But we are committed to working with industry to encourage a culture of compliance, to implement policies that can identify problems early, and to work together when fraud is found. The FCA provides a strong framework to promote this kind of anti-fraud cooperation.

But perhaps the most important reason why the False Claims Act works is that it has accomplished one of the core goals that President Lincoln referenced when it was first adopted: protecting the American people.

That protection comes from the billions of dollars in financial recoveries that the statute has made available, which have saved taxpayers from having to bear in full the costs of fraud. It also comes from restoring our confidence that government programs are functioning to benefit us, not to line the pockets of people who commit fraud.

In short, these cases protect the integrity of federal programs. They help to ensure that Medicare and Medicaid patients get care that is dictated by their medical needs and not care driven by the economic needs of providers. They help to ensure that the courageous entrepreneurs who run small and disadvantaged businesses are the ones who get the benefit of the laws designed to help them and are not themselves victimized by those falsely claiming such status. And they help to ensure that our military and law enforcement personnel receive the necessary equipment and support to perform their vital mission in keeping us all safe.

Again, I thank you all for inviting me here today, and I look forward to continuing to work with all of you in the future.

Thank you.

Civil Division

Updated September 17, 2014