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BOSICK & RASPANTI, LLP

Qui Tam Litigation HCCA 12th Annual Compliance Institute

Marc S. Raspanti, Esquire
Pietragallo Gordon Alfano Bosick & Raspanti, LLP
1818 Market Street
Suite 3402
Philadelphia, PA 19103
215- 320-6200
(f) 215-981-0082
www.pietragallo.com
msr@pietragallo.com

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- I. **TOP 10 FALSE CLAIMS ACT RECOVERIES.** See <http://www.taf.org>
1. Tenet Healthcare, formerly known as NME (\$900,000,000; July 2006)
 2. The Healthcare Company (HCA), formerly known as Columbia HCA (\$731,400,000; December 2000)
 3. HCA, formerly known as Columbia HCA and HCA – the Healthcare Company (\$631,000,000; June 2003)
 4. Serono Group (\$567,000,000; October 2005)
 5. Taketa-Abbott Pharmaceutical Products Inc. (\$559,483,560, October 2001)
 6. Abbott Labs (\$400,000,000; July 2003)
 7. Fresenius Medical Care of North America (\$385,000,000; January 2000)
 8. Amerigroup (\$334,000,000)
 9. Bristol Meyers Squibb (\$328,000,000)
 10. SmithKline Beecham Clinical Laboratories, Inc. (\$334,000,000; February 1997)
- II. **OVERVIEW OF RECOVERY AMOUNTS FOR FY 2006.** The United States obtained over \$3.166 billion in settlements and judgments in the fiscal year 2006, pursuing allegations of fraud against the federal government.

- a. This brings total recoveries since 1986, when Congress substantially strengthened the civil False Claims Act, to over \$20 billion. *See* http://www.usdoj.gov/opa/pr/2006/November/06_civ_783.html (Department of Justice November 21, 2006 Press Release); *See also* <http://www.taf.org>
 - b. As in the last several years, health care accounted for the lion's share of fraud settlements and judgments-\$1.1 billion in the FY 2005. *See* http://www.usdoj.gov/opa/pr/2005/November/05_civ_595.html (Department of Justice November 7, 2005 Press Release). Healthcare cases account for 78.5% of all FCA recoveries for FY 2005.
 - c. In 2006, the return on anti-fraud efforts has been rising – from about \$8 for every \$1 invested in health-related FCA enforcement activities, to \$15. *See* <http://www.taf.org>
- III. **NATIONAL PROSECUTIONS.** Healthcare fraud prosecutions are stretched in cities across the USA, particularly in Boston, New York City, Philadelphia, Washington DC, Miami, Los Angeles, and San Diego. *See* <http://www.taf.org/statistics.htm>
- IV. **STATE EFFORTS TO COMBAT HEALTHCARE FRAUD.** A growing number of states have passed false claims acts in order to prevent healthcare fraud.
- a. The states include California, Delaware, Florida, Hawaii, Illinois, Louisiana, Massachusetts, New Hampshire, New Mexico, Nevada, Tennessee, Texas, Virginia, Michigan, Indiana, Georgia, Oklahoma, New York, New Jersey, and Montana, and the District of Columbia. Some cities have done the same thing, such as New York City and Chicago. In addition to these, there are many states that have pending false claims legislation.
- V. **QUI TAM ACCOMPLISHMENTS: INITIATIVES BY ORDINARY CITIZENS ON BEHALF OF THE GOVERNMENT.** Of the \$3.166 billion, \$1.3 billion is associated with suits initiated by whistle-blowers under the False Claims Act's qui tam provisions. In fiscal year 2006, whistle-blowers were awarded \$190 million.
- a. Federal government recoveries from civil health care fraud over the 2000-2004 period totaled approximately \$7.3 billion, after deducting payments to whistleblowers, the net recoveries to the federal government amounted to \$6.64 billion over this period.
 - b. In FY 2005, 494 new matters were brought to the U.S. Department of Justice, of which 394, or about three-fourths, were *qui tam* cases. *See* Fraud Statistics-Overview: October 1, 1986-September 30, 2005. Civil Division, U.S. Department of Justice.

- VI. **THE BOTTOM LINE: TOTAL DEPARTMENT OF JUSTICE RECOVERIES.** The numbers are staggering. The total FCA recoveries since 1986 are, as previously stated, \$20 billion, and the FCA amount recovered where there is an associated qui tam case totals over \$9 billion.
- a. The FCA amount recovered by the Department of Justice in cases that it entered or otherwise pursued totals over \$8 billion, and the FCA amount recovered by relators in cases declined by the Department of Justice totals over \$373 million.
 - b. The relator's share of the rewards since 1986 totals over \$1.4 billion, and the total relator rewards in non-intervened cases is over \$145 million.
- VII. **EMERGING AREAS IN HEALTHCARE FRAUD.** There are many different hot areas associated with false claims acts and healthcare fraud.
- a. As for state false claims acts, the Omnibus Deficit Reduction Act of 2005 gives states attractive financial incentives to pass FCAs. Sixteen states currently have FCAs, and bills are pending in others. Texas was able to recover over \$37 million in 2005, and California over \$43 million.
 - b. Hurricane Katrina Fraud and Iraq War/Reconstruction fraud occurring.
 - c. Quality of care/nursing home fraud and Medicare part D fraud entering into the picture.
 - d. Several pharmaceutical fraud settlements have recovered hundreds of millions of dollars in only the past five years. There are cases pending involving pharmaceutical benefit management fraud.
- VIII. **WHY DO ORDINARY CITIZENS BECOME WHISTLEBLOWERS?** There are many reasons why an individual may choose to alert the government to fraud.
- a. His or her own individual concerns over ethics and morals.
 - b. The individual may have "quality of care" concerns or concerns of personal liability. If no one will listen and there is a poor compliance environment, the individual may be encouraged to take action by filing a qui tam suit.
 - c. Of course, there is also always a chance that the individual has a vendetta or is seeking the large monetary reward of being a whistleblower, and these may be tempting incentives for him or her to act.
- IX. **HOW TO AVOID A QUI TAM ACTION: THE ROAD TO AN EFFECTIVE COMPLIANCE PROGRAM.** In the event that someone is blowing the whistle, there are important things the company should not do in order to avoid a qui tam lawsuit.

- a. Do not create a “don’t ask, don’t tell” environment for your employee or fire him for being a suspected whistleblower. Making a potential whistleblower’s life miserable only makes the incentive for lawsuit grow.
 - b. Don’t ignore the potential whistleblower’s complaints or keep him in the dark about what’s going on – that will only cause agitation and frustration. Never shred, cover up, or alter documents.
 - c. Finally, don’t ignore compliance policies and procedures, and don’t hesitate to take corrective actions after being warned.
- X. **HOW TO FOSTER EMPLOYEE INPUT.** Instead of making any of the above mistakes, foster employee input at your company.
- a. Listen to your employee’s complaints and take them seriously, especially when fraud is suspected. Investigate the complaints and report your findings back to your employee – this will let him understand that you *are* taking his complaints seriously.
 - b. Always follow the established compliance policies and procedures, and empower your compliance officer. When bringing the issues to a conclusion, remember to listen to exit interviews and work closely with competent legal counsel.

All of these measures may help you avoid qui tam lawsuits.