

Litigation Update - Stepped Up Efforts Under the False Claims Act Lead to Large Recoveries

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In the first two weeks of September 2011, the United States Department of Justice announced three significant settlements under the False Claims Act, which will result in the government's recovery of nearly \$165 million.

Although the settling companies operate in the health care industry, the settlements demonstrate the Department's continuing reliance on the False Claims Act to recapture taxpayer dollars lost to fraud and abuse within any government funded program. In fact, in announcing these settlements, the Department specifically identified the False Claims Act as one of its most powerful tools in the effort to combat government fraud and abuse, and it noted that since January 2009, the Department's total recoveries under the Act exceed \$7.5 billion.

A summary of the three settlements follows:

- **Maxim Health Care Services, Inc. (Maxim).**¹ Maxim is one of the nation's leading providers of home health care services. It recently agreed to pay approximately \$150 million to settle criminal and civil charges stemming from an extensive, nationwide scheme by which the company allegedly: (a) submitted fraudulent claims for reimbursement for services that either were not rendered or are not reimbursable; (b) created fraudulent time cards to support those claims; (c) submitted claims for reimbursement through licensed offices for care that actually was provided through, and supervised by, offices that were operating without a license, and whose existence the company concealed from government investigators; and (d) created or modified documents regarding various administrative functions, including required training and qualifications of its caregivers. The settlement agreement also requires Maxim to retain and pay for an independent monitor to review the company's business operations and to file regular reports with the government regarding Maxim's ongoing compliance with federal and state health care laws and programs. The whistleblower in this case—a disabled recipient of Maxim's home health care services who discovered the company was billing the government for services it did not provide—will receive \$15 million as his share of the government's recovery.
- **TriWest Healthcare Alliance Corporation (TriWest).**² TriWest is a contractor to TRICARE, a health benefit plan covering uniformed military personnel, retirees, and their dependents. TriWest agreed to pay \$10 million to resolve civil charges stemming from its alleged failure to pass on the benefit of negotiated discounts to which TRICARE was entitled based on agreements between TriWest and certain providers. More specifically, TriWest allegedly submitted claims to TRICARE at rates that were higher than those

billed by the providers and failed to credit TRICARE the savings it was due. The whistleblowers in this case are four former TriWest employees. They will receive \$1.7 million as their share of the government's recovery.

- **Janzen, Johnston & Rockwell Emergency Medicine Management Services, Inc. (JJ&R).**³ JJ&R is a provider of billing services for physicians, hospitals, and other health care providers. It agreed to pay \$4.6 million to settle claims stemming from its alleged use of coding formulas that tended to generate claims for reimbursement at rates higher than appropriate for the services provided, or resulted in payments for services that were not reimbursable. The former employee-whistleblower will receive \$774,450 as her share of the government's recovery.

All three of these settlements resulted from qui tam actions, which are actions initiated by private individuals (here, a recipient of services or the former employees of the settling companies) under the False Claims Act. In each case, the whistleblower collected a significant amount of the recovered funds, as allowed under the Act.

If you have questions about the False Claims Act or any of the Department's priorities in this area, please visit the Health Litigation page on our Web site, or contact Brian Dillon (brian.dillon@lathropgpm.com, 612.632.3313) or Tom Johnson (thomas.johnson@lathropgpm.com, 612.632.3207).

¹ <http://www.justice.gov/opa/pr/2011/September/11-civ-1169.html>

² <http://www.justice.gov/opa/pr/2011/September/11-civ-1160.html>

³ <http://www.justice.gov/opa/pr/2011/September/11-civ-1129.html>

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