

Part VI. THE SUCCESS OF THE FALSE CLAIMS ACT IN UNCOVERING AND DETERRING FRAUD AGAINST THE GOVERNMENT

Using Citizens to Find Fraud

One of the most striking aspects of the impact of the modern False Claims Act is that the citizens have uncovered a cornucopia of hidden ingenious devious dishonesty undertaken by many of the largest most respected corporations in America. Ironically, when President Reagan signed the 1986 False Claims Act Amendments and spoke about stopping “Waste, Fraud and Abuse” no one expected it would be large corporate entities, not rogue criminals, who have been unmasked not by any diligent Federal investigator but by their own employees and business partners.

Acting Associate Attorney General Tony West recently summed up the impact of the Act:

“The False Claims Act is, quite simply, the most powerful tool we have to deter or redress fraud”. He also pointed out that “whistleblowers not only alert the Government to fraud, but they also provide a roadmap to evidence, saving the Government years of effort and millions in investigations costs.”++++

The cases, some \$5 billion, including Government initiated cases, in recoveries in 2012 alone, cover the pharmaceutical, healthcare, mortgage, financial and educational industries. The companies paying out these sums (see the table “Top 15 Recoveries to Date,”) read like a (dis)honor roll of American Corporations. In each case the unmasking of the fraud was done by an individual with specific knowledge of the contracts, subcontracts, kickbacks, product production, marketing and billing and false representations in the billing.

++++ “Acting Associate Attorney General Tony West Speaks at Pen and Pad Briefing.” *Justice News*. Department of Justice, Office of Public Affairs. 4 Dec 2012. Web. 7 Oct 2013.

TOP 15 RECOVERIES TO DATE####

<i>Company</i>	<i>Amount Case Was Settled for</i>	<i>Date</i>
<i>1. GlaxoSmithKline</i>	<i>2,000,000,000</i>	<i>Jul 2012</i>
<i>2. Pfizer</i>	<i>1,000,000,000</i>	<i>Sep 2009</i>
<i>3. Bank of America</i>	<i>1,000,000,000</i>	<i>Mar 2012</i>
<i>4. Tenet Healthcare</i>	<i>900,000,000</i>	<i>Jul 2008</i>
<i>5. Abbott</i>	<i>800,000,000</i>	<i>May 2012</i>
<i>6. HCA</i>	<i>731,000,000</i>	<i>Dec 2000</i>
<i>7. Merck</i>	<i>650,000,000</i>	<i>Jan 2008</i>
<i>8. HCA</i>	<i>631,000,000</i>	<i>Jun 2003</i>
<i>9. GlaxoSmithKline</i>	<i>600,000,000</i>	<i>Oct 2010</i>
<i>10. Serono Group</i>	<i>567,000,000</i>	<i>Oct 2005</i>
<i>11. TAP Pharmaceuticals Products</i>	<i>559,000,000</i>	<i>Oct 2001</i>
<i>12. New York State & New York City</i>	<i>540,000,000</i>	<i>Jul 2009</i>
<i>13. Astra Zeneca</i>	<i>520,000,000</i>	<i>Apr 2010</i>
<i>14. Ranbaxy Laboratories</i>	<i>500,000,000</i>	<i>Mar 2013</i>
<i>15. Schering Plough</i>	<i>435,000,000</i>	<i>Aug 2008</i>

Examples of Fraudulent Schemes Unearthed by Whistleblowers

CONSTRUCTION

The FCA has been used extensively to combat fraudulent kickbacks, bid rigging, and misuse of Government supplied contractor funds. The types of frauds exposed clearly echo some of the same situations that have been exposed by the Commission. Samples of those types of frauds are listed below:

"Top 30 False Claims Act Settlements of FY2012." TAF. Taxpayers Against Fraud Education Fund, 2012. 10 Oct. 2012. Web. 7 Oct. 2013.

CONTRACTOR KICKBACKS

- In *Crown Roofing Services*^{§§§§§} the defendant agreed to pay \$3 million to settle allegations that it made improper kickback payments to National Aeronautics and Space Administration (NASA) contracting officers in order to obtain contracts to supply roofing for the NASA Johnson Space Center in 2005. In that scheme the prime subcontracted part of the work to a firm owned by one of the NASA parties.
- In *Fluor Hanford LLC*^{*****} the company agreed to pay the federal Government \$1.1 million dollars to settle allegations that the company used federal funds to conduct lobbying to increase funding on the very contract paid for by the Government.

BID RIGGING

- In *Harbert Corporation et al*,⁺⁺⁺⁺⁺ Harbert Corporation and several affiliated companies agree to pay \$47 million to settle allegations that the companies submitted and caused others to submit false claims to the U.S. Agency for International Development for a contract to build a sewer in Egypt. The allegations were that the defendant entered into pay off agreements with other potential bidders who agreed to either bid high or not to bid at all.

OVERBILLING

- In *U.S. ex rel. Coleman v. Fluor Corp.*,⁺⁺⁺⁺⁺ the company paid \$12.5 million after a former finance manager at the company brought to light that the Government had been billed for luxury condos in Palm Springs, fine art collections including a Chippendale Chair and a Mercedes automobile.

^{§§§§§} *United States ex rel. Garrison and Gaona, Jr. v. Crown Roofing Services, Inc.* No. 4:07-cv-01018 (S. D. Tex., 2012)

^{*****} *United States ex rel. Rambo v. Fluor Hanford, LLC et al.*, No. cv-11-5037 (E.D. Wash., 2013)

⁺⁺⁺⁺⁺ *United States ex rel. Miller v. Bill Harbert Intern. Const. et al.*, 608 F.3d 871 (D.C. 2010)

⁺⁺⁺⁺ *False Claims Act & Qui Tam Quarterly Review Volume 40. TAF. TAF Education Fund, 2006. Web. 8 Oct 2013.*

- In *U.S. ex rel. Hudalla v. Walsh Construction Co.*,^{§§§§§§} an employee at the construction company alleged that the company, a general contractor, purposefully billed general work under the wrong category in order to fraudulently receive amounts over and above the billing categories maximum and to in effect double bill the Government for amounts already included in the total construction costs.

STATE ROAD CONTRACTS

- In *U.S. ex rel. Roederer v. Gohmann Asphalt and Construction Co.*,^{*****} a former asphalt crew supervisor alleged that the company deliberately engaged in a process known as “core swapping” in which samples of good high density asphalt were substituted for the actual low density and thus poor quality asphalt used on the road contracts. This resulted in higher compensation. The company paid \$8.2 million to settle the claims.

DANGEROUS CONSTRUCTION MATERIALS – THE BIG DIG

- Perhaps the most notorious FCA construction case in recent memory involved the Big Dig contractors who managed to build the I-93 tunnels under Boston in such a manner that the roof continues to fall on the cars in the tunnels and in one instance killed a driver. A number of cases were brought by both the Government itself and by various FCA Relators.
- In *Commonwealth of Massachusetts, et. al. v. Bechtel Corporation, et. al.*⁺⁺⁺⁺⁺ the United States intervened in a Qui Tam law suit filed by Daniel Johnston against a number of contractors and consulting firms including Bechtel and Parson Brinkerhoff for fraudulent billing and false certifications. The allegations were that the contractors failed to provide adequate oversight of the construction of the I-93 tunnel walls, the ceiling bolts, the work by the various contractors and the monitoring of the concrete used for the walls. The two main contractors agreed to pay more than \$407 million to the United States and to the Commonwealth of Massachusetts to settle criminal and civil allegations.

^{§§§§§§} *United States ex rel. Hudalla v. Walsh Construction Co.*, 2011 WL 6028315 (N.D. Ill., 2011).

^{*****} *United States ex rel. Roederer v. Gohmann Asphalt and Construction Co.*, Case No. 3:03CV375 (W. D. Ky., 2007).

⁺⁺⁺⁺⁺ *Commonwealth of Massachusetts, et. al. v. Bechtel Corporation, et. Al.*, Civil Action No. 04-1151 (Mass. Sup. Ct., 2006).

- In *United States ex rel. Johnston v. Aggregate Industries PLC. et al*,⁺⁺⁺⁺⁺ one of the contractors, working under the supervision of Bechtel and Parsons, Aggregate Industries Northeast Region, Inc. agreed to pay \$50 million and to provide an addition \$75 million in insurance coverage. Aggregate was alleged to have been involved in a fraudulent scheme to deliver adulterated concrete to the Big Dig. Aggregate had delivered 5,700 truckloads of concrete which turned out to include recycled concrete that was over ninety minutes old, adulterated with excess water or not batched correctly to be safely installed. The company allegedly falsified the concrete batch slips delivered to the Big Dig inspectors.

FAILURE TO TEST

There have been a wide variety of situations where products were not tested and did not meet requirements that were uncovered by insiders that would undoubtedly have gone undetected until it was too late and the product failed during Government service.

- In a Department of Defense case, this defense contractor produced flares that could ignite if dropped from only ten feet. The contractor was aware of this defect when it billed the Government for the flares.^{§§§§§§}
- In another Department of Defense case, the global telecommunications company gave misleading information concerning its design and building of an emergency response system in Iraq. A former manager came forward to show that it had certified that it had successfully tested the system when it had not done so. ^{*****}

FRAUDULENT MARKETING AND PROMOTION

There have been a number of cases where the company has marketed and promoted a prescription drug to treat diseases for which the drug was not approved by the Food and Drug Administration. This off-label promotion has caused not only large expenditures but also endangered patients.

⁺⁺⁺⁺⁺ *United States ex rel. Johnston v. Aggregate Industries et al*, Civil Action No. 06-11379-GAO (D. Mass., 2006).

^{§§§§§§} "ATK Launch Systems Inc. Settles False Claims Product Substitution Case for Nearly \$37 million." *Justice News*. Department of Justice, Office of Public Affairs. 23 Apr 2012. Web. 7 Oct 2013.

^{*****} "Alcatel-lucent Subsidiary Agrees to Pay U.S. \$4.2 million to Settle False Claims Act Allegations." *Justice News*. Department of Justice, Office of Public Affairs. 21 Sep 2012. Web. 7 Oct 2013.

- A medical device company agreed to pay \$30 million to settle an allegation that it paid kickbacks to surgeons in exchange for using the products in patients in procedures paid for by the Government. They gave surgeons sham consulting contracts and fake research grants and free travel and entertainment.
- In a Los Angeles case a hospital group paid \$16.5 million to settle allegations that it used recruiters to bring homeless individuals from skid row in Los Angeles to hospitals by ambulance for medically unnecessary treatment that was then billed to the Government program.
- A reimbursement specialist for a hospital group provided the Government a laundry list of frauds perpetrated by the group and filed a False Claims Act against an accounting firm which had advised six hospitals to set up reserve funds in case the inflated costs they were reporting were discovered in a Medicare audit. The accounting advisors settled for \$9 million,†††††††† while the hospital eventually settled multiple fraud allegations, brought forth by 30 whistleblowers, for a combined total of \$1.36 billion plus an additional \$108 million in criminal fines.#####

There have also been a wide variety of situations where the product was delivered and met the contract criteria but the method of production failed to meet contract standards.

FAILURE TO PROVIDE QUALITY SERVICE OR PRODUCT

- A Texas based pharmaceutical company paid \$48 million to resolve allegations that it caused false claims for a drug which had no FDA approval and the safety and efficacy of data for the drug was unproved.
- In a Department of Education case, the company paid \$10 million to settle allegations that it fabricated attendance records for a federal program for underprivileged children to seek payment for tutoring services that it did not provide to the children.
- A chemist and pharmaceutical manufacturing quality control expert at a pharmaceutical company discovered a factory with out of date equipment and bad management. She reported contaminated water and an unsterile facility to her employer and was fired. Three years later, \$2 billion worth of

†††††††† "KPMG Peat Marwick to Pay the United States over \$9 million." *Justice News*. Department of Justice, Office of Public Affairs. 23 Oct 2001. Web. 7 Oct 2013.

"Whistleblower Stories." *TAF*. Taxpayers Against Fraud Education Fund, 2013. Web. 7 Oct 2013.

pharmaceuticals were confiscated from the factory by the FDA. To settle FCA allegations that the company knew it was selling contaminated drugs, it agreed to pay \$750 million. \$\$\$\$\$\$\$

- A newly hired head researcher at one of the top ten generic pharmaceutical companies in the world, realized upon being hired that the company's quality control systems were in disarray. On a routine basis, the company had been using drugs made by competitors for testing trials. The FDA banned the company from importing drugs to the U.S., and the company settled the lawsuit for \$500 million. *****

\$\$\$\$\$\$\$\$ "Whistleblower Stories." *TAF*. Taxpayers Against Fraud Education Fund, 2013. Web. 7 Oct 2013.

***** "Whistleblower Stories." *TAF*. Taxpayers Against Fraud Education Fund, 2013. Web. 7 Oct 2013.