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Justice Department Recovers \$2 Billion for Fraud Against the Government in Fy 2007; More Than \$20 Billion Since 1986

WASHINGTON -- The United States obtained \$2 billion in settlements and judgments in the fiscal year ending September 30, 2007, pursuing allegations of fraud against the federal government, the Justice Department announced today. This brings total recoveries since 1986, when Congress substantially strengthened the civil False Claims Act, to more than \$20 billion.

"This year's outstanding recoveries in civil fraud cases demonstrate this administration's unwavering commitment to root out fraud against the government and to ensure that citizens' tax dollars are well spent," said Peter D. Keisler, Acting Attorney General and Assistant Attorney General for the Civil Division. "It also attests to the fortitude of whistleblowers who report fraud and the tireless efforts of the civil servants who investigate and prosecute these cases."

Mr. Keisler also paid tribute to Senator Charles Grassley of Iowa and Representative Howard L. Berman of California, who sponsored the 1986 amendments to the False Claims Act, the government's primary weapon to fight fraud against the government. "Without this important legislation strengthening the Act and, in particular, the qui tam provisions which give ordinary citizens the courage and protection to blow the whistle on those who defraud the government, such recoveries would not have been possible."

Of the \$2 billion, \$1.45 billion is associated with suits initiated by whistleblowers under the False Claims Act's qui tam provisions. These whistleblower provisions authorize individuals, known as "relators," to file suit on behalf of the United States against those who have falsely or fraudulently claimed federal funds. Such cases run the gamut of federally funded programs from Medicare and Medicaid to defense procurement contracts, disaster assistance loans, and agricultural subsidies. Persons who knowingly make false claims for federal funds are liable for three times the government's loss plus a civil penalty of \$5,500 to \$11,000 for each claim. Relators recover 15 to 25 percent of the proceeds of a successful suit if the United States intervenes in the qui tam action, and up to 30 percent if the United States declines and the relator pursues the action alone. In fiscal year 2007, whistleblowers were awarded \$177 million. (This figure does not include relator shares for fiscal year 2007 which have not yet been awarded or were awarded after September 30, 2007.)

As in the last several years, health care accounted for the lion's share of fraud settlements and judgments—\$1.54 billion. This number includes both whistleblower claims and those initiated by the United States in independent fraud investigations. Cases involving fraud against the Department of Health and Human Services reaped the biggest recoveries, largely attributable to its Medicare program and the federal/state Medicaid program, which funds health care for the needy. Recoveries were also obtained for the Office of Personnel Management, which administers the Federal Employees Health Benefits Program, the Department of Defense for its TRICARE insurance program, the Department of Veterans Affairs, and others.

The largest health care recoveries came from pharmaceutical companies and related entities. Settlements with Bristol-Myers Squibb Co., Aventis Pharmaceuticals, Inc., Medco Health Solutions, Inc., Purdue Pharma L.P. and Purdue Frederick Co., and InterMune, Inc. accounted for more than \$800 million of the \$1.5 billion. In addition to federal recoveries, pharmaceutical fraud cases returned \$264 million to state Medicaid programs.

The Civil Division's investigation of the pharmaceutical industry is part of a Department-wide effort. Typical allegations involve illegal promotion of drugs or devices and causing the government to pay for uses that were neither found by the Food and Drug Administration to be safe and effective, nor supported by the medical

literature, also known as “off-label” marketing; paying kickbacks to physicians, wholesalers, and pharmacies to induce drug or device purchases; establishing inflated drug prices knowing that federal health care programs use these prices to reimburse providers, then marketing the “spread” between the federal reimbursement and the provider’s lower cost to induce drug purchases; and failing to report the company’s true “best price” for a drug to reduce rebates owed to the Medicaid program.

Outside the health care arena, fraud against the Department of Defense accounted for \$48.4 million in settlements. In cases involving other agencies, Burlington Resources, Inc., a subsidiary of Conoco Phillips, paid the United States \$105.3 million based on claims that it had underpaid natural gas royalties to the Department of Interior. In a record General Services Administration settlement, Oracle Corporation paid the government \$98.5 million to resolve allegations that PeopleSoft, Inc. (acquired by Oracle in 2005) engaged in defective pricing of its software and services under the company’s multiple award schedule with GSA. And Mellon Bank, N.A. paid the United States \$34.6 million to settle claims that it violated its contract with the Internal Revenue Service to process individual income tax returns and payments.

The Department also achieved favorable verdicts after lengthy trials in two cases. The United States won a \$172 million judgment against Amerigroup, Illinois Inc. based on claims that Amerigroup’s HMO in Illinois illegally increased its profits by discriminating against pregnant women and individuals with pre-existing medical conditions when enrolling Medicaid-eligible applicants. Amerigroup is appealing the jury’s verdict. In the second case, the United States won a \$90 million judgment against several companies for conspiring to rig bids on contracts financed by the U.S. Agency for International Development for the construction of wastewater treatment facilities in Cairo, Egypt.

FACT SHEET: SIGNIFICANT RECOVERIES IN FISCAL YEAR 2007

Among the Department’s most significant settlements and judgments in fiscal year 2007 were: \$328 million from Bristol-Myers Squibb Company (BMS) and its generic division, Apothecon, to resolve a broad array of allegations involving illegal drug pricing and marketing activities. BMS and Apothecon paid an additional \$187 million to state Medicaid programs based on the same allegations. The civil settlement arises from seven qui tam actions and resolves allegations that (1) BMS and Apothecon set and maintained inflated prices knowing that federal health care programs used these prices for reimbursement, and then marketed the “spread”—the difference between the reported price and cost—to induce sales by increasing providers’ profits; (2) BMS paid kickbacks to doctors in the form of bogus consulting fees to induce them to purchase BMS’s drugs; (3) BMS paid kickbacks to wholesalers and retail pharmacies to induce purchases of generic products; (4) BMS promoted its atypical antipsychotic drug, Abilify, for juvenile use and to treat dementia related psychosis—uses that were not approved by the Food and Drug Administration; and (5) BMS violated the Medicaid Drug Rebate Act, 42 U.S.C. § 1396r-8, by reporting false “best prices” to the government for its drug Serzone, which resulted in BMS underpaying quarterly rebates owed to the Medicaid program. The six relators will share a \$52 million award plus additional amounts from the states.

For the original press release, see http://www.usdoj.gov/opa/pr/2007/September/07_civ_782.html

\$311 million from four manufacturers of hip and knee surgical implant products— Zimmer, Inc., Depuy Orthopaedics, Inc., Biomet Inc., and Smith & Nephew, Inc.—to settle claims that from at least 2002 through 2006 these companies used consulting agreements with orthopedic surgeons to induce the purchase of their devices. The government’s investigation revealed that the firms paid surgeons hundreds of thousands of dollars a year for consulting contracts and lavished them with trips and other expensive perquisites in exchange for using the companies’ products exclusively. In addition to the civil settlements, the four companies executed deferred prosecution agreements requiring new corporate compliance procedures and the appointment of federal monitors to review their compliance with these procedures.

For the original press release, see <http://www.usdoj.gov/usao/nj/press/files/pdf/files/hips0927.rel.pdf>

\$180 million from Aventis Pharmaceuticals, Inc. to resolve allegations that the company engaged in a scheme (1) to set and maintain fraudulent and inflated prices for its drug, Anzemet, knowing that federal health care programs established reimbursement rates based on those prices, and (2) to use the difference between the inflated prices reported and the actual prices charged to its customers to market, promote, and sell the drug. In addition, Aventis paid \$10 million to several state governments based on the same allegations. The relators

shared a \$33 million award.

For the original press release, see http://www.usdoj.gov/opa/pr/2007/September/07_civ_694.html

\$172 million judgment after trial against Amerigroup, Illinois Inc. finding that Amerigroup fraudulently skewed enrollment in its Medicaid HMO program by refusing to register pregnant women and by discouraging registration by individuals with pre-existing conditions. Amerigroup had entered into contracts with the Illinois Department of Public Health requiring the company to provide health care services to Medicaid eligible individuals in Illinois. In violation of these contracts, Amerigroup engaged in a cherry-picking scheme to ensure that those who enrolled in its HMO program represented a disproportionately healthy population of Medicaid-eligible individuals. As a result, Amerigroup reduced its medical losses and increased its profits. Amerigroup has appealed the judgment.

\$155 million from Medco Health Solutions, Inc. to settle allegations that Medco submitted false claims in connection with the mail order prescription drug benefit offered under the Federal Employee Health Benefits Program. The government alleged that Medco cancelled prescriptions it could not fill timely to avoid late penalties, shorted pills, and billed for pharmacy services it didn't provide. The government also alleged that Medco solicited kickbacks from pharmaceutical manufacturers to favor their drugs on Medco's formulary, and paid kickbacks to health plans to obtain business. The settlement resolved two qui tam lawsuits and a separate federal investigation prompted by Medco's disclosure to the government concerning billing problems for diabetic supplies. The relators received \$23.9 million as their award. Medco also entered into a corporate compliance agreement with the Department of Health and Human Services and the Office of Personnel Management.

For the original press release, see http://www.usdoj.gov/opa/pr/2006/October/06_civ_722.html

\$100.6 million (\$109 million including interest) from Purdue Pharma L.P. and Purdue Frederick Company, Inc. to settle allegations of fraud against Medicaid and other federal health care programs. The government alleged that Purdue fraudulently misbranded OxyContin as being less addictive and less subject to abuse and diversion than other pain medications. The civil settlement resolved allegations that, based on these misleading marketing claims, Purdue knowingly caused the submission of false claims for OxyContin that were not eligible for federal reimbursement. In addition, Purdue paid \$60 million to state Medicaid programs, forfeited \$276 million to the United States, set aside \$130 million to resolve private civil claims (with unclaimed amounts to revert to the United States), paid \$5.3 million to the Virginia Attorney General's Medicaid Fraud Control Unit to fund future health care fraud investigations, and paid \$20 million to fund the Virginia Prescription Monitoring Program. Finally, Purdue paid \$500,000 in criminal fines—the maximum allowed under the statute.

For the original press release, see http://www.usdoj.gov/usao/vaw/press_releases/purdue_frederick_10may2007.html

\$97.5 million (\$105.3 million including interest) from Burlington Resources, Inc., a subsidiary of Conoco Phillips, the third largest integrated energy company in the United States, to settle claims that Burlington underpaid royalties owed on natural gas produced under federal and Indian leases. The government alleged that Burlington systematically underreported the value of the natural gas it produced under onshore federal and Indian leases from March 1, 1988, to March 31, 2005, to reduce its obligation to pay royalties to the United States and Indian tribes.

For the original press release, see http://www.usdoj.gov/opa/pr/2007/August/07_civ_616.html

\$98.5 million from Oracle Corporation, in a record fraud settlement involving the General Services Administration (GSA), to resolve allegations that PeopleSoft Inc., which was acquired by Oracle in 2005, violated the False Claims Act. The allegations arose from a qui tam suit filed by a former employee of PeopleSoft, who alleged that PeopleSoft provided GSA with pricing disclosures for its software and related maintenance services that were not complete, accurate and current. As a result of the defective disclosures, federal agencies that purchased PeopleSoft software and services between March 17, 1997, and September 30, 2005, under the company's multiple award schedule with GSA, paid inflated prices. The relator received \$17.7 million as his statutory award.

For the original press release, see http://www.usdoj.gov/opa/pr/2006/October/06_odag_689.html

\$90 million judgment after trial against Harbert International, Inc.; Bill Harbert International Construction, Inc.; Bilhar International Establishment f/k/a Harbert International Establishment, a Liechtenstein company; and Harbert Corporation. Harbert Construction Services (U.K.) Ltd., a British company, and Elmore Roy Anderson are also liable for portions of the judgment. Following a seven-week trial, a jury found the defendants liable for conspiracy to rig bids on contracts to construct wastewater treatment facilities in Cairo, Egypt. These contracts were financed by the U.S. Agency for International Development. The jury found damages of \$34 million. Pursuant to the False Claims Act, the court trebled the amount of damages and added a \$10,000 penalty for each of 111 false claims. The final award was reduced by amounts previously received by the government in settlement with the defendants' co-conspirators: J. A. Jones Construction Company; Philipp Holzmann A.G., a German company; ABB SUSA, Inc.; Archirodon Group, Inc.; and Bilfinger + Berger Bauaktiengesellschaft, a German company. The relator's award has yet to be determined.

\$42.65 million to settle allegations of fraud against Maximus, Inc. in connection with claims to the Medicaid program. The District of Columbia Child and Family Services Agency (CFSA) hired Maximus to assist it in submitting claims to Medicaid for targeted case management services provided by the District to children in its foster care program. The United States alleged that Maximus caused CFSA to submit claims for every child in the foster care program whether or not targeted case management services had been provided to the child. Maximus also entered into a deferred prosecution agreement with the U.S. Attorney's Office. The relator, a former division manager with Maximus, received \$4.93 million as his share of the recovery.

For the original press release, see http://www.usdoj.gov/opa/pr/2007/July/07_civ_535.html

\$34.6 million from Mellon Bank, N.A., to resolve allegations that the bank violated the False Claims Act when in April, 2001, several of its employees hid and then destroyed approximately 77,000 individual income tax returns, together with approximately \$1.3 billion in tax payment checks, instead of processing the returns and checks as required by its Lockbox Depository Agreement with the Internal Revenue Service (IRS). Through a massive effort lasting more than a year, the IRS was able to obtain copies of the tax returns and replacement checks from most of the taxpayers. Although Mellon Bank had paid IRS for its costs and for interest on the destroyed tax revenue, the out-of-court settlement resolved the government's claim that the bank was liable for multiple damages and civil penalties under the False Claims Act.

For the original press release, see http://www.usdoj.gov/opa/pr/2007/June/07_civ_469.html

\$30.2 million from InterMune, Inc. to resolve allegations that InterMune marketed its drug, Actimmune, for uses not approved by the Food and Drug Administration resulting in federal health program losses. The government alleged that InterMune marketed Actimmune for idiopathic pulmonary fibrosis (IPF), a fatal disease that causes scarring of lung tissue. Although the company had failed to demonstrate Actimmune's efficacy for IPF, it nevertheless misled physicians and the public to believe that the drug trial had been successful. The relator received \$5.7 million as her share of the recovery. InterMune paid an additional \$6.7 million to state Medicaid programs.

For the original press release, see http://www.usdoj.gov/opa/pr/2006/October/06_civ_728.html

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