

Whistleblower News Review

December 27, 2015

2015 Year of the Whistleblower: Record \$3.5 Billion False Claims Recoveries

By ML McLaren

The Civil Division of the U.S. Department of Justice (DOJ) collected over \$3.5 billion in settlements and judgements from False Claims Act (FCA) civil cases in fiscal year 2015, with a whopping 81% of these recoveries driven by whistleblower (qui tam) lawsuits. The record annual whistleblower recovery amount was led by health care industry fraud FCA cases this year with a record high percentage of cases declined by the DOJ, subsequently pursued, and won by private attorneys.

FY2015 WHISTLEBLOWER REWARD AMOUNT KNOCKS OUT PRIOR 2011 HIGH

Whistleblowers had their best year yet regarding relators' (the term for whistleblowers in qui tam lawsuits) share awards recovered in FY2015, at \$597 million. Prior to 2015, the record annual award for qui tam cases stood at \$559 million in 2011.

According to Brian Mahany, "History seems to repeat itself and already there are signs of another economic downturn. Although the big bank settlements which skewed the numbers in 2014 are over for now, the next wave is coming."



The record qui tam relators' awards highlight the government's unwavering diligence in pursuing allegations of fraudulent activity regarding federal funds. DOJ reported 638 new cases filed under the FCA's whistleblower provisions in FY 2015 and \$2.8 billion of the total \$3.5 billion was recovered through qui tam case filings.

HEALTHCARE FRAUD CASES LEAD IN FALSE CLAIMS ACT RECOVERIES

Health care industry cases led the pack, making up more than half (\$1.9 billion) of the total federal FCA recoveries in FY2015. 423 new qui tam cases involved alleged health care fraud (66%) – demonstrating that whistleblowers reporting alleged fraud in the health care industry remains the driving force for recovering taxpayer funds through FCA claims. Whistleblowers collected just over \$330 million in rewards from FCA health care cases alone in FY2015.

Two individual whistleblowers jump-started a \$250 million FCA settlement with 450 of the nation's hospitals, recovering over \$223 million in FY 2015 through kickback settlements with Columbus Regional Healthcare System (\$35M), Adventist Health (\$118.7M) and Broward Hospital District (\$69.5M). Pharmaceutical settlements contributed over \$93 million with cases against AstraZeneca, Cephalon and Daiichi Sankyo.

In October 2014, DaVita Healthcare Partners agreed to settle with the U.S. government at \$389 million to resolve allegations of paying physicians for patient referrals. Later that year, DaVita reached another FCA settlement at \$450 million for allegedly billing Medicare for intentionally wasted drug vials.

The DOJ declined to intervene, yet the two whistleblowers responsible for reporting the alleged fraud pressed on and ended up winning the case when prosecutors demonstrated improper witness coaching and false witness testimony.

In fact, whistleblowers prevailed in a record number of DOJ-declined cases in FY2015, collecting total whistleblower rewards equaling a record \$334.6 million in DOJ-declined cases and recovering a total \$1.1 billion via the plaintiffs Bar.

NO INDICATION FALSE CLAIMS ACT QUI TAM TRIUMPHS ARE WANING

Though this year's \$3.5 billion recovery is down from 2014's high of \$5.781 billion, falling in fourth place behind the previous three years, FCA cases aren't waning and 2016 is already huge. Last year's numbers leaned heavily on the unusually high number of "too-big-to-fail" bank settlements. Attorney Brian Mahany, representative for the \$16.65 billion Bank of America settlement - the largest whistleblower case against a single defendant in U.S. history resulting in a \$170 million whistleblower reward – is more than familiar with the success of the whistleblower program in recovering U.S. government funds.



Brian Mahany

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FISCAL YEAR 2016 OFF TO A RECORD START IN FCA RECOVERIES

And consider that we are looking at fiscal year figures. Weeks after the close of FY2015, the DOJ reported two more substantial settlements – a \$265 million settlement with Millennium Health and the \$370 million Novartis agreement. So the ball is still rolling and 2016 is already off to a \$635 million dollar start in FCA recoveries.

Without the information provided by FCA whistleblowers, the U.S. government would have recovered a mere \$67 million

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of taxpayers' defrauded monies this year. Whistleblowers are continuing to report acts of fraud and attorneys are pursuing these cases whether the government intervenes or not. Recoveries from whistleblower cases continue to lead those of non-qui tam cases (\$2.9 billion to \$670 million) and the trend doesn't appear to be slowing. ■