# False Claims Act Enforcement Defense Perspective

Derk Van Raalte May 3, 2013

## False Claims Act

31 U.S.C.A. § 3729 (through 3731)

- (a) Liability for certain acts.--Any person who--
- (2) knowingly makes, ..., a false .. statement to get a .. claim paid .. by the Government;

is liable ... for a civil penalty of .. [up to] \$11,000, plus **3** times the [loss] amount ...

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### Cooper Health System pays \$12.6 million in false claims settlement

By Joe Green/South Jersey Times on January 24, 2013 at 7:00 PM, updated January 24, 2013 at 7:55 PM Print

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Washington Township Ambulance

Association is expanding it's transport services to include basic transportation to doctors appointments, nursing homes and more.Photo supplied

NEWARK — Cooper Health System has agreed to pay \$12.6 million to settle complaints alleging it paid outside doctors essentially to gain patient referrals.

Authorities, including the U.S. Attorney for New Jersey, said Cooper violated the federal and the state False Claims Act by paying physicians under so-called "consulting" and "compensation" agreements.

#### Abbott to Pay \$1.6 Billion to Settle Depakote Drug Allegations

- By Jef Feeley & Margaret Cronin Fisk May 8, 2012 12:01 AM ET
- Abbott Laboratories (ABT) said it reached an agreement to pay \$1.6 billion to settle federal and state claims resulting from an investigation into its epilepsy medication Depakote, the second-largest drug-marketing settlement in U.S. history.
- The company will pay \$800 million to resolve civil allegations split among federal and state governments, \$700 million for a criminal penalty, the Justice Department said in a statement. Abbott marketed the drug, approved for epilepsy, bipolar mania and migraine prevention, for unapproved uses including dementia, the U.S. said.

#### U.S. Joins Armstrong Ex-Teammate's False Claims Lawsuit

By Phil Mattingly & Tom Schoenberg - Feb 23, 2013 12:01 AM ET

The U.S. joined a lawsuit against Lance Armstrong brought by ex-teammate Floyd Landis that accuses the former champion cyclist of defrauding the government by using banned drugs while riding for the U.S. Postal Service.

The Justice Department yesterday joined the False Claims Act lawsuit. Landis alleges that Armstrong, his team manager Johan Bruyneel and team owner Tailwind Sports Corp. defrauded the U.S. government based on years of using banned substances in violation of the U.S. Postal Service's sponsorship agreements.

Feb. 22 (Bloomberg) -- The U.S. will join a lawsuit against Lance Armstrong that accuses the former champion cyclist of defrauding the government by using banned drugs while riding for the U.S. Postal Service, according to his lawyer. Dominic Chu reports on Bloomberg Television's "Money Moves." (Source: Bloomberg)

659 F.3d 295

(Cite as: 659 F.3d 295)



United States Court of Appeals,
Third Circuit,
UNITED STATES ex rel. Charles WILKINS; Daryl
Willis, Appellants

UNITED HEALTH GROUP, INCORPORATED; AmeriChoice; AmeriChoice of New Jersey, Inc.

> No. 10–2747. Argued March 24, 2011. Filed: June 30, 2011.

Background: Qui tam relators brought False Claims Act (FCA) action on behalf of United States against healthcare services company and subsidiaries, stemming from purported violations of Medicare Act. The United States District Court for the District of New Jersey, Robert B. Kugler, J., 2010 W.L. 1931134, dismissed action. Relators appealed. "There is a more expansive version of the express false certification theory called "implied false certification" liability which attaches when a claimant seeks and makes a claim for payment from the Government without disclosing that it violated regulations that affected its eligibility for payment. <u>Id.</u> Thus, an implied false certification theory of liability is premised "on the notion that the act of submitting a claim for reimbursement itself implies compliance with governing federal rules that are a precondition to payment."

[11][12] As several courts of appeals have held, however, the implied certification theory of liability should not be applied expansively, particularly when advanced on the basis of FCA allegations arising from the Government's payment of claims under federally funded health care programs. In particular, the Court of Appeals for the Second Circuit in *Mikes* recognized that the rationale behind *Ab—Tech* "does not fit comfortably into the health care context because the [FCA] was not designed for use as a blunt instrument to enforce compliance with all medical regulations—but rather only those regulations that are a precondition to payment...."

-- F.3d---, 2013 WL 1150213 (C.A.7 (IIL)) (Cite as: 2013 WL 1150213 (C.A.7 (IIL)))

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Only the Westlaw citation is currently available.

United States Court of Appeals,
Seventh Circuit.
UNITED STATES of America, Plaintiff-Appellee,
v.
ANCHOR MORTGAGE CORPORATION and John
Munson, Defendants-Appellants.

Nos. 10–3122, 10–3342, 10–3423, Argued Oct. 31, 2012. Decided March 21, 2013.

#### [6] United States 393 1 122

393 United States

393VIII Claims Against United States

393k120 Making or Presentation of False
Claims and Other Offenses Relating to Claims

393k122 k. Penalties and Actions Therefor.

Most Cited Cases

"Treble damages" against mortgage brokerage and its president under False Claims Act (FCA) for submitting false certifications when applying for federal guarantees of home mortgage loans meant "net trebling" of government's loss, rather than gross trebling, and thus amount to trebled was amount government paid on guaranty of particular loan, but only after that amount was reduced by the value of the loan's collateral. 31 U.S.C.A. 8 3729(a)(1).

\$1 m worth of procedures billed

\$1 m worth of procedures performed

Provider technical eligibility problem

Net Trebling:

Gross Trebling:

Slip Copy, 2012 WL 488256 (E.D.Va.) (Cite as: 2012 WL 488256 (E.D.Va.))

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Only the Westlaw citation is currently available.

United States District Court, E.D. Virginia, Alexandria Division. UNITED STATES of America ex rel. Kurt BUNK and Daniel Heuser, Plaintiffs/Relators,

BIRKART GLOBISTICS GMBH & CO., et al., Defendants.

United States of America ex rel. Ray Amnions, Plaintiff Relator,

> v. The Pasha Group, et al., Defendants.

Nos. 1:02cv1168 (AJT/TRJ), 1:07cv1198 (AJT/TRJ). Feb. 14, 2012.

For all of the above reasons, the Court concludes that the minimum mandated civil penalty of \$50,248,000 is grossly disproportional to the harm caused by the Defendants with respect to the 2001 DPM contract. The Court therefore concludes that the FCA, as applied to the Defendants based on the facts of this case, results in the imposition of an excessive fine in violation of the Eighth Amendment. For that reason, the Court refuses to impose that civil penalty.



