



## GOVERNMENT CONTRACTS HEALTHCARE

### JUSTICE DEPARTMENT RECOVERS \$3 BILLION IN FALSE CLAIMS ACT JUDGMENTS AND SETTLEMENTS FOR FY 2010

December 2010

Late last month, the U.S. Department of Justice (“DOJ”), Civil Division announced that it recovered over \$3.012 Billion in civil judgments and settlements under the False Claims Act (“FCA”) in FY 2010. This amount is an increase over FY 2009, in which DOJ recovered \$2.457 Billion under the FCA, and represents the second highest amount collected in any year since Congress overhauled the FCA in 1986. FY 2006 still remains the largest single year recovery (\$3.223 Billion). Once again, healthcare fraud accounted for the lion’s share of the FCA recoveries, with over \$2.5 Billion attributable to federal healthcare programs. DOJ noted several global settlements, each with the FCA portion of those settlements exceeding \$100 million, with pharmaceutical companies that contributed to DOJ’s overall success.

The increases in recoveries is a result of several enforcement initiatives aimed at prosecuting procurement fraud. In 2009, DOJ and the Department of Health and Human Services (“HHS”), announced the creation of a new interagency task force, the Health Care Fraud Prevention and Enforcement Action Team (“HEAT”) to increase criminal and civil enforcement in healthcare fraud. Additionally, the Administration established the Financial Fraud Enforcement Task Force in response to the housing market meltdown to investigate and pursue financial fraud primarily related to *Troubled Asset Relief Program* (“TARP”) and the *American Recovery and Reinvestment Act of 2009* (“ARRA”). According to DOJ, FCA recoveries in these cases accounted for \$327.2 million of the FY 2010 recoveries. These enforcement efforts follow the success of the Procurement Fraud Task Force formed in 2006, primarily to respond to war-related allegations of procurement fraud.

Notably, while FY 2010 represents a modest increase in FCA recoveries from the previous year, FCA enforcement activities and recoveries will almost certainly expand dramatically in the next several years. First, the effects of recent FCA legislative amendments have yet to be felt. In 2009, Congress expanded the reach of the FCA under the *Fraud Enforcement and Recovery Act of 2009* that legislatively overturned a number of judicial decisions limiting the FCA’s reach. In 2010, Congress again expanded the FCA by narrowing the FCA’s public disclosure bar as part of the *Patient Protection and Affordable Care Act*. Additionally, the Government enforcement efforts related to ARRA are still just beginning. This past summer, the Chairman of the Recovery, Accountability and Transparency Board testified before Congress that more than 350 criminal referrals related to the use of federal stimulus funds. There are undoubtedly a number of FCA investigations underway that will be unsealed over the coming months.

Two such major investigations have already produced results in the current fiscal year. Earlier this month, DOJ announced two significant FCA settlements in the healthcare area. First, on December 7, DOJ

announced that it had settled with three pharmaceutical companies for a total of \$421.2 Million to resolve defective pricing allegations that the companies inflated the data underlying the federal reimbursement rates for various products. On December 8, DOJ announced it had entered into a settlement with Kos Pharmaceuticals for \$41 Million to resolve alleged kickback and off-label marketing claims. The Government’s ongoing enforcement initiatives combined with the recent legislative amendments almost guarantees increased activity under the FCA in the coming years.

In light of the dramatically expanded net of the FCA and the increased governmental funding and focus on enforcement, any company receiving federal funds — especially those in targeted industries such as healthcare — must continually review and update their regulatory and corporate compliance plans. Comprehensive compliance plans that are implemented through effective training programs lead to a “culture of compliance” that will mitigate against the draconian consequences of investigations and lawsuits under the FCA and related legislation.

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