

## **Top 25 Largest Federal False Claims Act Cases (Top 25 Largest Fraud Cases)**

Below is a list of the top 25 or largest Federal False Claims Act cases in the United States. Under the federal False Claims Act, whistleblowers receive a reward or a percentage of the case for reporting fraud. There are over 25 False Claims Act fraud cases over \$250 million.

### **1. Tenet Healthcare: \$900,000,000**

In July 2006, Tenet Healthcare, a large chain of hospitals, paid \$900 million to settle allegations that it committed fraud by manipulating of outlier payments to Medicare, paid kickbacks, upcoded DRG codes, and engaged in bill padding. The whistleblowers received rewards exceeding \$150 million.

### **2. Eli Lilly: \$800,000,000**

In January 2009, Eli Lilly, a large pharmaceutical company paid a total of \$1.4 billion to settle civil and criminal charges it defrauded Medicare and Medicaid by “off-label” marketing of a popular drug Zyprexa. (Off-label marketing occurs when a pharmaceutical company obtains FDA approval for a specific use of a new drug, but then asks doctors to prescribe it for other uses which it did not seek or obtain FDA approval.) Here, the drug was approved by the FDA for treating schizophrenic or bipolar. However, the government alleged that Eli Lilly widely promoted the use of this drug to nursing homes patients to treat dementia, which is not an approved use by the FDA. It is illegal for pharmaceutical companies to suggest to treating physician that they prescribe drugs for uses other than that which the FDA has approved. Of the settlement, \$800 million was paid under the False Claims Act and \$515 million was a criminal penalty. The whistleblowers are eligible for up to 25% of the \$800 million civil recovery or up to \$200 million. (Note: In 2007, Joel Hesch warned of this type of fraud and wrote an article about the evils of “Drugging the elderly into silence” see <http://www.worldnetdaily.com/index.php?pageId=45118>.)

### **3. HCA The Healthcare Company: \$731,400,000**

In December 2000, after changing its name to “HCA The Healthcare Company” (formerly known as Columbia HCA), the largest for-profit hospital chain in the United States, settled a second False Claims Act case by paying \$731,400,000 to resolve allegations, including billing for lab tests that were not medically necessary or not ordered by physicians, upcoding, billing the government for advertising under the guise of “community education,” and billing for non-reimbursable costs incurred in the purchase of home health agencies around the country. The whistleblowers received \$150 million. The company also paid more than \$100 million in criminal fines, for a global settlement of \$840 million.

### **4. Merck: \$671,000,000**

In February 2008, Merck & Company (a pharmaceutical company) has paid \$671 million to resolve False Claims Act allegations that it failed to pay proper “rebates” to Medicaid under the Best Price statute and that it paid kickbacks to doctors. Under the Medicaid best price statute or rebate program, a pharmaceutical company is required to give Medicaid the same discount it gives its best customers. The three drugs involved were Zocor, Vioxx, and Pepcid. The whistleblowers are eligible for over \$115 million. (Note: Joel Hesch was one of the Department of Justice Attorneys working on the Pepcid portion of this case.)

#### **5. Pfizer: \$668,514,830**

In October 2009, Pfizer, Inc., a pharmaceutical giant, paid a record \$2.3 billion settlement, which included a criminal fine of \$1.3 billion for off-label marketing practices. The settlement also included \$668 million civil settlement under the FCA and \$331 million under state FCA laws. A total of six whistleblowers will split a federal reward of \$102 million for reporting the fraud.

#### **6. HCA: \$641,000,000**

In June 2003, HCA Inc. (formerly known as Columbia HCA – The Healthcare Company) paid the United States \$641 million to settle False Claims Act allegations that it paid kickbacks to physicians and included unallowable cost in its annual cost reports. Combined with the December 2000 settlement, the government has recovered \$1.7 billion from HCA. In this case, the whistleblowers received over \$115 million. (Note: Joel Hesch was one of the Department of Justice Attorneys working on the cost report portion of this case.)

#### **7. Serono: \$567,000,000**

In October of 2005, Serono paid \$704 million to settle a False Claims Act case involving Serostim, a human growth hormone product used to fight AIDS-related wasting. The fraud allegations included paying kickbacks to doctors and off-label marketing of the drug. The whistleblower received over \$50 million.

#### **8. TAP [Taketa-Abbott Pharmaceutical] Pharmaceutical Products Inc.: \$559,483,560**

In October 2001, TAP Pharmaceutical Products Inc. paid \$559 million to resolve False Claims Act allegations that it illegally gave kickbacks to doctors. It was alleged to have provided free samples with the understanding that doctors would bill Medicare and Medicaid \$500 per dose. The whistleblower received \$95 million.

#### **9. New York State and City: \$540,000,000**

In July 2009, the state of New York and New York City agreed to pay \$540 million to settle allegations that they submitted false claims to Medicaid for school-based health care services, such as speech therapy and transportation for school children eligible for Medicaid. The government alleged that most of the services were never provided.

#### **10. Bristol-Myers Squibb Company (BMS): \$515,000,000**

In September 2007, Bristol-Myers Squibb (BMS) and its wholly owned subsidiary, Apothecan, Inc., paid over \$515 million to settle False Claims Act allegations that it paid kickbacks, promoted off-label use drugs, and violated Medicaid's best price statute. The whistleblowers received \$50 million.

#### **11. Cephalon: \$425,000,000**

In November 2007, Cephalon, a biotech company, paid \$425 million to settle False Claims Act allegations that it engaged in "off-label" marketing of three FDA approved drugs: Actiq (a narcotic lollipop designed for pain control in cancer patients), Gabitril (an epilepsy medication), and Provigil (a narcolepsy medication). Of the \$425 million settlement, \$50 million is a criminal fine and \$375 million is to be paid as part of Medicare and Medicaid claims under the False Claims Act. The whistleblowers will receive rewards exceeding \$55 million.

**12. Abbott Labs: \$400,000,000**

In July 2003, Abbott Laboratories, Inc. paid \$400 million to resolve False Claims Act allegations relating to the sale of “enteral” products, which pump food into the stomach of patients who cannot digest meals. The whistleblower received approximately \$70 million.

**13. Fresenius Medical Care of North America: \$385,000,000**

In January 2000, Fresenius Medical Care of North America paid \$385 million to resolve False Claims Act allegations that it committed fraud relating to fictitious blood testing claims by LifeChem, Inc., paying kickbacks to dialysis facilities to obtain blood testing contracts for LifeChem, and submitting fraudulent claims to Medicare for intradialytic parenteral nutrition (a nutritional therapy provided to patients while on kidney dialysis). The whistleblower received \$65 million.

**14. Northrop Grumman: \$325,000,000**

In April 2009, Northrop Grumman paid \$325 million to settle False Claims Act allegations that a company it purchased (TRW) made defective parts for spy satellites that malfunctioned. The whistleblower received a reward of \$48.7 million.

**15. SmithKline Beecham Clinical Laboratories Inc.: \$325,000,000**

In March of 1997, SmithKline Beecham Clinical Laboratories Inc. paid \$325 million to settle False Claims Act allegations that it submitted false claims relating to lab tests which were either not medically needed or not performed, and that it paid kickbacks to doctors. The whistleblower likely received \$50 million.

**16. HealthSouth: \$325,000,000**

In December of 2004, HealthSouth Corporation paid \$325 million to settle False Claims Act allegations that it engaged in many schemes to defraud Medicare relating to providing rehabilitative medicine services. The whistleblower likely received \$50 million.

**17. National Medical Enterprises: \$324,200,000**

In June 1994, NME paid \$324 million to resolve False Claims Act allegations that it paid kickbacks to psychiatric and substance abuse hospitals in more than 30 states. (This company later changed its name to Tenet, which is paid \$900 million in a July 2006 settlement described earlier.) The whistleblowers received \$65 million.

**18. Hip and Knee Replacement Products: \$311,000,000**

In September 2007, four manufacturers of hip and knee surgical implant products (Zimmer, Inc., Depuy Orthopaedics, Inc., Biomet Inc., and Smith & Nephew, Inc.) agreed to pay \$311 million to resolve False Claims Act allegations that the companies used consulting agreements with orthopedic surgeons to induce the purchase of their devices. The whistleblower alleged that the companies paid surgeons hundreds of thousands of dollars a year for “consulting” contracts, which were disguised kickbacks. The whistleblower likely received \$50 million.

**19. Gambro Healthcare: \$310,000,000**

In December 2004, Gambro Healthcare paid \$310 million to settle False Claims Act allegations that it paid kickbacks to doctors, made false statements related to unnecessary tests and services, and that Gambro Supply was a sham durable medical equipment company. The whistleblower likely received \$50 million.

**20. Schering-Plough: \$292,969,482**

In July 2004, Schering-Plough, a pharmaceutical company, agreed paid \$292 million to resolve Medicaid fraud allegations, including that it failed to report its best price for Claritin. The whistleblowers received over \$30 million. The company also paid a criminal fine of \$52.5 million.

**21. AstraZeneca Pharmaceuticals: \$266,127,844**

In June 2003, AstraZeneca Pharmaceuticals LP paid \$266 million to resolve False Claims Act allegations that it engaged in giving doctors kickbacks and improperly marketed drugs, including Zoladex (a drug used in the treatment of prostate cancer). The whistleblower received \$47 million.

**22. St. Barnabas Hospitals: \$265,000,000**

In June 2006, St. Barnabas Healthcare, which is a non-profit chain of eight hospitals, paid \$265 million to settle False Claims Act claims that it committed fraud relating to “outlier” Medicare payments. This is an increased fee paid to hospitals over and above the normal DRG fee when they can show that their procedures are particularly difficult or complex. In that case, the hospital claimed over 40% of its Medicare payments from outliers, compared to a national average of 5%. The whistleblower likely received \$45 million.

**23. Quest Diagnostics Inc.: \$262,000,000**

In April 2009, Quest Diagnostics Incorporated (and its subsidiary, Nichols Institute Diagnostics (NID)) paid \$262 million under the False Claims Act plus a criminal fine of \$40 million for a total of \$302 to resolve allegations that it provided inaccurate and unreliable results related to its Advantage Chemiluminescence Intact Parathyroid Hormone Immunoassay, which is a medical device (i.e. test kit) that was used by laboratories throughout the country to measure parathyroid hormone (PTH) levels in patients. The whistleblower received a reward of \$45 million.

**24. Bayer Corporation: \$257,200,000**

In April 2003, Bayer Corp. paid \$257 million to resolve False Claims Act allegations that it did not give Medicaid its best price for drugs. The main allegations were based upon a scheme known as “lick and stick,” whereby a pharmaceutical company that sells a popular drug re-labels the product under a different name and then gives deep discounts to favorite customers, such as HMO chains, but does not report this discount to Medicaid. The whistleblower received \$34 million. The company also paid an additional criminal fine of \$5.5 million.

**25. Schering-Plough: \$255,000,000**

In August of 2006, Schering-Plough agreed to settle a False Claims Act case in connection with purported illegal sales and marketing programs for its drugs Temodar, which is used in the treatment of brain tumors and metastases, and Intron-A, which is used for treatment of superficial bladder cancer and hepatitis C. The settlement also involved claims involving best price violations for Claritin RediTabs, an

antihistamine, and K-Dur, used in treating stomach ulcers. The whistleblowers likely received \$40 million. The company also paid a criminal fine of \$180 million.

## **26. Amerigroup: \$225,000,000**

In August 2008, Amerigroup Insurance agreed to settle False Claims Act allegations by paying \$225 million to the U.S. and state of Illinois. Amerigroup was paid to operate a Medicaid managed care health plan in Illinois to provide health care to low income people. Under the contract, Amerigroup was required to enroll all eligible beneficiaries. The United States and Illinois alleged the company violated these requirements by refusing to enrolling unhealthy patients and pregnant women, who were more costly to treat. A year earlier, after a trial on the allegations, a jury had awarded the government \$334 million. During the appeal process, the parties agreed to the settlement. The whistleblower will receive a reward of \$56 million.

## **Other notable mentions:**

### **BankAmerica: \$187.5 million (state False Claims Act settlement)**

In 1998 BankAmerica Corp. paid \$187.5 million to settle allegations that it violated the California False Claims Act by keeping unclaimed bond proceeds from the state of California and more than 1,000 cities, counties and public agencies statewide. This is the largest state False Claims Act settlement. The whistleblower likely received over \$30 million.

Provided by: Joel D. Hesch, Esq.  
Author of "***Whistleblowing: A Guide to Government Reward Programs (How to Collect Millions of Dollars for reporting fraud)***"

Author of "***Reward: Collect Millions for Reporting Tax Evasion ((Your complete guide to the IRS Whistleblower Reward Program)***"

Mr. Hesch represents whistleblowers filing for rewards. Visit his website at:  
[www.HowToReportFraud.com](http://www.HowToReportFraud.com)

**November 2, 2009**