Novartis Whistleblower Cases Settle for over $422 Million

Law Firm Assists in Recovering Over $1.3 Billion in the Past Month.

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For the third time in one month, the national whistleblower law firm (http://www.whistleblowerfirm.com/) of Nolan & Auerbach, P.A. announces another substantial whistleblower recovery on behalf of their clients. Collectively, the cases have returned in excess of $1.3 billion to the US Treasury to reimburse America’s health care programs. Earlier this month, the firm represented two whistleblowers in a $600 million overall settlement with Allergan, Inc. and one whistleblower in the $300 million overall settlement with Forest Laboratories, Inc. and its subsidiary Forest Pharmaceuticals, Inc. Today marks the unsealing of its clients’ cases against pharmaceutical manufacturer Novartis Pharmaceuticals Corporation, which has agreed to pay $237.5 million to resolve civil allegations that it unlawfully promoted its drug Trileptal for unapproved uses and that it paid illegal kickbacks to physicians to induce them to prescribe other of the company’s drugs: Diovan, Exforge and Tekturna. In addition, the company has agreed to pay a $185 million criminal fine and to plead guilty to a misdemeanor charge of introducing misbranded drugs into interstate commerce. Nolan & Auerbach, P.A. represented three of the key whistleblowers in this case, which was brought under the qui tam, or whistleblower, provisions of the False Claims Act. (http://www.whistleblowerfirm.com/about-the-law/what-is-a-true-hero-of-this-fraud-fighting-story,” said founding partner Kenneth Nolan. “They risked their own careers and stood up for the American people.”

While a physician may prescribe a drug for a use other than one for which it is approved, the federal Food, Drug and Cosmetic Act prohibits a drug manufacturer from marketing or promoting a drug for non-approved uses. The Food & Drug Administration (FDA) only approved Trileptal for very specific uses, such as treatment of partial seizures in adults with epilepsy and as adjunctive therapy in the treatment of partial seizures in children ages four to sixteen. Novartis, however, marketed the drug to physicians for off-label uses, primarily for bipolar disorder and neuropathic pain. The whistleblowers estimated that 50% of the total sales were for these off-label uses. The whistleblowers also alleged that Novartis regularly provided illegal kickbacks to physicians who prescribed Trileptal for off-label uses. These alleged business practices caused federal and state government health care programs to pay millions of dollars for prescriptions which were ineligible for payment.

“Our clients are the true heroes of this fraud-fighting story,” said founding partner Kenneth Nolan. “They risked their own careers and stood up for the American people.”

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“We have a saying in our office, ‘As long as they had a prescription pad and were willing to prescribe our products, they qualified as Novartis speakers,’ said Jeremy Garrity. “The company’s illegal business practices were snowballing and nobody was stepping up to stop them. I had to do something.”

Novartis allegedly conducted a return-on-investment analysis of its kickback scheme. According to Mr. Garrity, he was specifically tasked with monitoring physician-speakers and making sure that they stayed “on message”. In addition, he tracked the prescription levels for physician-speakers and was required to tell underperformers that they would be removed from the speaking circuit unless they increased their prescriptions to a certain level.

“Illegal kickbacks improperly influence the prescribing habits of our health care providers,” said managing partner Marcella Auerbach. “We hope that this settlement sends a clear message that pharmaceutical companies cannot bribe their way into our medicine cabinets.”

Federal and State False Claims Acts allow private citizens with detailed knowledge of fraud to bring an action on behalf of the governments and to assist in the recovery of the governments’ stolen dollars. These statutes allow the government to recover three times the amount it was defrauded, in addition to civil penalties of $5,500 to $11,000 per false claim. Successful whistleblowers (http://www.whistleblowerfirm.com/) can receive between 15 and 30 percent of the governments’ recovery.
Novartis will pay the federal government $185 million to settle the criminal allegations and $149,241,306 to settle the civil allegations. The participating States will receive $88,258,694, as a result of a Medicaid State settlement. The whistleblowers will collectively receive $25,675,035, plus accrued interest, from the federal share of the settlement amount and a yet-to-be-announced share from the States.

The settlement was achieved through the coordinated efforts of the U.S. Justice Department, state attorneys general and other law enforcement entities including Medicaid Fraud Control Units, and the Office of Inspector General of the U.S. Department of Health and Human Services. Specifically, the federal government was represented by an exceptional team of government attorneys, including Assistant Directors Jamie Yavelberg and Patricia Davis, U.S. Justice Department, Civil Division, Commercial Litigation Branch; Trial Attorney Jessica Champa, U.S. Justice Department, Civil Division, Commercial Litigation Branch; U.S. Attorney Zane Memeger, U.S. Attorney's Office in the Eastern District of Pennsylvania; U.S. Attorney A. Brian Albritton, U.S. Attorney's Office in the Middle District of Florida; Civil Division Chief Margaret Hutchinson, U.S. Attorney's Office in the Eastern District of Pennsylvania; Assistant U.S. Attorneys Marilyn May, Jacqueline Romero and Paul Kaufman, U.S. Attorney's Office in the Eastern District of Pennsylvania; Assistant U.S. Attorneys Marilyn May, Jacqueline Romero and Paul Kaufman, U.S. Attorney's Office in the Eastern District of Pennsylvania; Assistant U.S. Attorney Randy Harwell, U.S. Attorney’s Office in the Middle District of Florida; and Assistant Inspector General for Legal Affairs Greg Demske, Office of Inspector General of the U.S. Department of Health and Human Services. The participating States were represented by an equally dedicated team of government attorneys, via the National Association of Medicaid Fraud Control Unit. State representatives included Ohio Medicaid Fraud Control Unit Director Keesha Mitchell, Ohio Assistant Attorney General Jason Helmandollar, Florida Assistant Attorney General Donna Rohwer, and New York Assistant Attorney General Randy Fox.

The whistleblowers’ cases are United States et al., ex rel. Austin et al. v. Novartis Pharmaceuticals Corporation, No. 8:03-CV-1551-T-30-TGW (M.D. Fla.) and United States et al., ex rel. Garrity v. Novartis Pharmaceuticals Corporation, No. 08-CV-2588 (E.D. Pa.).

Other Nolan & Auerbach, P.A. settlements this month include United States et al., ex rel. Beilfuss et al. v. Allergan, Inc., No. 08-CV-1883 TWT (N.D. Ga.) and United States et al., ex rel. Conrad et al. v. Forest Pharmaceuticals, Inc et al., No. 02-CV-11738-NG (D. Mass.).

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