

Testimony of
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Mr. Chairman, Ranking Member Specter, Members of the Committee: Thank you for inviting me to testify regarding our efforts under the False Claims Act, and to present the views of the Department of Justice on S. 2041, The False Claims Corrections Act of 2007. I appreciate having this opportunity to review with you the Department's experience with qui tam actions, or whistleblower suits, since the 1986 amendments, and the success of the False Claims Act generally in meeting the goal we all share: preventing and redressing fraud against the Government.

The Department of Justice is committed to the vigorous enforcement of the laws against those who perpetrate fraud to obtain money from the Government. The False Claims Act has been a very important civil statutory weapon against fraud. Since the Act was amended and liberalized in 1986, over \$20 billion has been recovered on behalf of taxpayers by the Civil Division working closely with the Offices of the United States Attorneys. The recoveries in the period before the amendments, as compared with the period after 1986, are illustrative of the overall effectiveness of the Act. In Fiscal Year 1986, the year prior to the amendments of the False Claims Act, the Department recovered \$54 million under the Act¹. Since then, we have seen a steady increase in recoveries, culminating in settlements and judgments of more than \$5 billion in just the past two years.

This remarkable accomplishment has been with the assistance of the qui tam provisions, which have augmented our resources to address fraud in connection with Government contracts and programs and which we continue vigorously to support. As this Committee well knows, the False Claims Act Amendments in 1986 substantially changed the qui tam provisions to encourage more citizens to report fraud, and to increase the Government's ability to recover its losses. Since the qui tam provisions of the False Claims Act were amended, there have been more than 5800 suits filed with the Department through Fiscal Year 2007. Indeed, of the \$20 billion recovered under the FCA since 1986, \$12.6 billion has been the result of qui tam actions.

We have encouraged the Department's litigators to make every effort to work cooperatively with relators to maximize the Government's recovery. The Department and its client agencies have dedicated enormous resources to the investigation and prosecution of these cases. We have advanced or supported legal arguments in courts throughout the nation, and at every level, that both vigorously enforce the liability provisions of the False Claims Act and advocate the rights of relators.

Several facts about the Department's experience with the qui tam provisions of the False Claims Act are noteworthy. First, the Act has been widely used to allege fraud in a broad range of agency programs and contracts. More than half of these cases, 3117 of the 5800 filed since the 1986 amendments, focus on fraud against government health care programs such as Medicare

and Medicaid. These health care fraud cases also are the largest source of dollars recovered in False Claims Act qui tam cases, representing \$9.1 billion, or more than 72 percent of the total \$12.6 billion in qui tam recoveries. Qui tam cases alleging fraud against the Department of Defense constitute about 20 percent of the qui tam cases filed under the Act since 1986, and about 13 percent of the qui tam recoveries (a total of \$1.6 billion).

While these two areas are predominant among various fraud schemes addressed by the Act since 1986, there are no government programs that are immune from possible fraud, as reflected by our caseload. Cases brought by the Department under the Act, including those initiated by whistleblowers, have recovered significant funds on behalf of the Department of Interior, the General Services Administration, the Department of Housing and Urban Development, the Department of Agriculture, the Department of Education, the Department of State, the Department of Energy, NASA, and more recently, the Department of Homeland Security, to name but a few. The following results from this past year illustrate the variety that exists in our pending case matters:

? Just this month, Merck & Company paid more than \$650 million to resolve allegations that it failed to remit legally-required rebates to Medicaid and other government health care programs and paid illegal remuneration to health care providers to induce them to prescribe the company's products.

? Bristol-Myers Squibb Company (BMS) and its generic division, Apothecan, paid over \$515 million to resolve a broad array of allegations involving illegal drug pricing and marketing activities.

? A judgment was obtained against Amerigroup Illinois, Inc. for \$334 million that included \$172 million for allegations under the False Claims Act relating to the federal share of Medicaid. A court determined that Amerigroup fraudulently skewed enrollment in its Medicaid HMO program by discouraging pregnant women and other potentially costly patients from joining.

? Medco Health Solutions, Inc. paid \$155 million to settle allegations that Medco submitted false claims in connection with the mail order prescription drug benefit offered under the Federal Employee Health Benefits Program. The government alleged that Medco cancelled prescriptions it could not fill timely to avoid late penalties, shorted pills, and billed for pharmacy services it didn't provide. The government also alleged that Medco solicited kickbacks from pharmaceutical manufacturers to favor their drugs on Medco's formulary, and paid kickbacks to health plans to obtain business.

? Oracle Corporation, in a record fraud settlement involving the General Services Administration (GSA), paid \$98.5 million to resolve allegations that PeopleSoft Inc., which was acquired by Oracle in 2005, violated the False Claims Act when it provided GSA with pricing disclosures for its software and related maintenance services that were not complete, accurate and current.

? Burlington Resources, Inc., a subsidiary of ConocoPhillips, the third largest integrated energy company in the United States, paid \$97.5 million to settle claims that Burlington underpaid royalties owed on natural gas produced under federal and Indian leases.

? Harbert International, Inc., Bill Harbert International Construction, Inc., Bilhar International Establishment f/k/a Harbert International Establishment, a Liechtenstein company, and Harbert Corporation were found liable after a seven-week trial and ordered to pay \$90 million. The defendants were found liable under the False Claims Act for conspiracy to rig bids on contracts to construct wastewater treatment facilities in Cairo, Egypt. These contracts were financed by the U.S. Agency for International Development.

? Maximus, Inc. paid \$42.65 million to settle allegations in connection with false claims it submitted to the District of Columbia's Medicaid program. The District of Columbia Child and Family Services Agency (CFSA) hired Maximus to assist it in submitting claims to Medicaid for targeted case management services provided by the District to children in its foster care program. The United States alleged that Maximus caused CFSA to submit claims for every child in the foster care program whether or not targeted case management services had been provided to the child. Maximus also entered into a deferred prosecution agreement with the U.S. Attorney's Office.

? Mellon Bank, N.A., paid \$34.6 million to resolve allegations that the bank violated the False Claims Act when in April, 2001, several of its employees hid and then destroyed approximately 77,000 individual income tax returns, together with tax payment checks, instead of processing the returns and checks as required by its Lockbox Depositary Agreement with the Internal Revenue Service (IRS).

? Last week, the 7th Circuit affirmed a \$64 million judgment against Peter Rogan, the CEO of an Illinois hospital, for paying doctors to refer patients to the hospital. After a bench trial, the district court found that Rogan had violated various prohibitions on the payment of compensation for referrals to federal health care programs.

Whistleblowers played an important role in many of these cases, and the 1986 qui tam amendments to the Act that strengthened whistleblower provisions have allowed us to recover losses to the federal fisc that we might not have otherwise been able to identify. Moreover, the qui tam provisions have had a more subtle and unquantifiable impact in our fight against fraud. In the wake of well-publicized recoveries attributable to qui tam cases, those who might otherwise submit false claims to the federal government are more aware than ever of the "watchdog" effect of the qui tam statute. We have no doubt that the Act has had the salutary effect of deterring fraudulent conduct.

As I indicated at the outset of my remarks, the Department continues to actively support the qui tam provisions of the Act by dedicating the resources necessary to investigate allegations to the fullest extent, by litigating the meritorious cases vigorously, and by ensuring that settlements reflect both the gravity of the violations and the loss to the Treasury. In addition to the efforts of relators, who often come forward at the risk of personal hardship, we believe that the success of the Act's qui tam provisions are in large part due to the efforts of the government attorneys, agents, auditors and other personnel charged with responsibilities under the statute, as the statistics bear out. We have now approximately 75 full-time attorneys in the Civil Division responsible for False Claims Act cases, as well as scores of Assistant United States Attorneys throughout the country. This is a highly professional, skilled and dedicated group of lawyers who are fully committed to the task at hand and who have elected to intervene in approximately one

in four of the qui tam suits filed since 1986. At the conclusion of those cases, and as required by the False Claims Act, the Department has paid awards to qui tam relators of \$2 billion since 1986. In Fiscal Year 2007 alone, the Department paid relator awards of more than \$177 million. And although the Department has declined to intervene in 75 to 80 percent of the qui tams that have been filed, only 2.6 percent of total recoveries since 1986 under the Act, or \$520 million, has been recovered in those cases where we have declined or otherwise not participated. This latter statistic reveals that the Department has been appropriately judicious in its review of qui tam matters and has been highly successful in intervening in those cases that have true merit. However, even in those cases in which we decline to intervene, the Department is often called upon to expend considerable resources by briefing legal issues at the request of the relator or the court, producing documents and witnesses from throughout the government, and otherwise ensuring that the False Claims Act is properly applied by relators and interpreted by courts.

We have reviewed carefully S. 2041. While the Administration is sympathetic to some of the proposed amendments, it cannot support the bill in its current form. Among our concerns are the proposals narrowing the public disclosure bar to permit those with no first hand knowledge beyond that available in the public domain to serve as relators, and permitting government employees to serve as relators in certain circumstances, which is unsound public policy as all government employees have an obligation to report fraud. Moreover, many provisions of S. 2041 deal with issues that have not yet been fully resolved by the courts. Our more detailed analysis is provided in our views letter and appendix which we have provided the Committee and which are attached to this testimony. However, as that letter and appendix make clear, and as I have indicated today, the False Claims Act and its qui tam provisions have proven to be an extremely effective weapon in the Government's fight against fraud and we see no pressing need for major amendments at this time.

These positions are more fully laid out in our views letter and appendix. We have provided the appendix to assist the Committee as it considers this legislation and to ensure that the corrections now being considered do not, in themselves, create additional obstacles to Government enforcement efforts.

Conclusion

Mr. Chairman, Ranking Member Specter, Members of the Committee: Let me restate my appreciation, and that of my colleagues in the Department of Justice, for this opportunity to comment on the success of the False Claims Act since enactment of the 1986 amendments, as well as our overall views on S. 2041. We appreciate the efforts that have been made by you and your staffs to further improve the False Claims Act. I reiterate the offer, contained in the views letter, to work with the Committee and its staff to find the best approach for furthering our common goal of fighting fraud against the public fisc.

I look forward to your questions. Thank you.

¹ This figure does not account for inflation.