



Department of Justice

STATEMENT

OF

**TONY WEST
ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION
DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

ENTITLED

**“PROTECTING AMERICAN TAXPAYERS:
SIGNIFICANT ACCOMPLISHMENTS AND ONGOING
CHALLENGES IN THE FIGHT AGAINST FRAUD”**

PRESENTED ON

JANUARY 26, 2011

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Chairman Leahy, Senator Grassley, and Members of the Committee, thank you so much for inviting me here to testify on the work of the Civil Division. I appreciate the opportunity to discuss the work of the Civil Division of the Department of Justice regarding combating fraud and securing the recovery of monies on behalf of American taxpayers. I am honored to appear before you on behalf of the Department, and along with my colleague and friend, Assistant Attorney General Lanny Breuer.

The Civil Division represents the United States, its agencies, Members of Congress, Cabinet officers and other Federal employees. The Division is made up of approximately 1,400 permanent employees, more than 1,000 of whom are attorneys. Each year, Division attorneys handle thousands of cases that collectively involve billions of dollars in claims and recoveries. In my capacity as Assistant Attorney General, I oversee much of the federal government’s civil litigation across the country, including many of the Department of Justice’s efforts to protect consumers and recapture billions of taxpayer dollars lost to fraud, like health care fraud, procurement fraud, and mortgage fraud.

OVERVIEW OF COMBATING FRAUD AND SECURING RECOVERIES ON BEHALF OF AMERICAN TAXPAYERS

The Department takes seriously its obligation to guard the United States Treasury. Over the last year, the Department has made significant strides in protecting taxpayer dollars – as well as the integrity of government programs that depend on those dollars – through aggressive civil enforcement actions aimed at rooting out waste, fraud, and abuse. For fiscal year 2010, the Civil Division secured \$3 billion in civil settlements and judgments in cases involving fraud against the government. This amount includes \$2.5 billion in health care fraud recoveries – the largest in history – and represents the second largest annual recovery of civil fraud claims. Moreover, amounts recovered under the False Claims Act since January 2009 have eclipsed any previous two-year period with \$6.8 billion in taxpayer dollars returned to federal programs and the Treasury. Recoveries since 1986, when Congress substantially strengthened the civil False Claims Act, now total more than \$28.8 billion.

HEALTH CARE FRAUD RECOVERIES

Fighting health care fraud is a priority for the Division. The evils of health care fraud are many – it undermines the judgment of health care professionals, deprives people of the treatment that they need, and, in many cases, can put patients' health and safety at risk. Fighting fraud committed against public health care programs is a top priority for the Obama Administration. On May 20, 2009, Attorney General Eric Holder and Kathleen Sebelius, Secretary of 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 coordination and optimize criminal and civil enforcement. These efforts not only protect the Medicare Trust Fund for seniors and the Medicaid program for the country's neediest citizens, they also help to maintain the integrity of services, and to prevent the costs of fraud from being

passed on to patients and taxpayers. The collaboration made possible by HEAT has led to extraordinary results. Since January 2009, the Civil Division, working with HHS, our partners in U.S. Attorneys' Offices around the country, and our state and federal colleagues, has opened more health care fraud cases, secured larger fines and judgments, and recovered more taxpayer dollars lost to health care fraud than in any other two-year period – more than \$8 billion.

The record health care fraud civil recoveries of \$2.5 billion in fiscal year 2010 made up 83 percent of the year's total civil fraud recoveries. HHS recovered the biggest amount, largely attributable to its Medicare and Medicaid programs. Recoveries were also made by the Office of Personnel Management, which administers the Federal Employees Health Benefits Program, the Department of Defense for its TRICARE insurance program and the Department of Veterans Affairs, among others.

From January 2009 through December 31, 2010, the Civil Division, together with the U.S. Attorneys' offices, set a two-year record for health care fraud enforcement efforts, recovering nearly \$5.4 billion in taxpayer funds under the False Claims Act from health care providers and others in the industry, and securing \$3 billion in fines, forfeitures, restitution, and disgorgement under the Food, Drug, and Cosmetic Act (FDCA).

In addition to the civil health care fraud recoveries, the Civil Division's Office of Consumer Protection Litigation (OCPL) brings civil and criminal actions for violations of the FDCA. Together with our partners in the U.S. Attorneys' Offices around the country, OCPL pursues such matters as the unlawful marketing of drugs and devices, fraud on the FDA, and the distribution of adulterated products. In fiscal year 2010, those efforts yielded more than \$1.8 billion in criminal fines, forfeitures, restitution, and disgorgement, the largest health care-related amount under the FDCA in department history.

A significant component of the Department's health care fraud caseload consists of cases alleging misconduct by manufacturers of pharmaceutical and device products. For example, in December of last year, we announced settlements totaling more than \$700 million with multiple pharmaceutical manufacturers resolving allegations that they had engaged in a scheme to report false and inflated prices for many of their pharmaceutical products, knowing that federal health care programs such as Medicare and Medicaid relied on those reported prices to set payment rates. In April of last year, we obtained a \$520 million settlement with AstraZeneca LP and AstraZeneca Pharmaceuticals LP to resolve allegations that marketing of the anti-psychotic drug Seroquel for uses not approved as safe and effective by the FDA caused false claims to be submitted to federal health care programs. In 2009, the Department announced the largest health care fraud settlement in its history in a case that arose from Pfizer's illegal promotion of several pharmaceutical products. Pfizer paid \$2.3 billion and pled guilty to misbranding the painkiller Bextra. In addition, a \$108 million settlement with The Health Alliance of Greater Cincinnati and one of its former member hospitals, The Christ Hospital, was the largest settlement ever under the health care Anti-Kickback Statute for the conduct of a single hospital.

Health care fraud that affects the health, safety, and well-being of Medicare and Medicaid beneficiaries is of paramount concern to the Department. In January 2010, the Department negotiated a \$24 million settlement to resolve allegations that a national chain of Small Smiles dental clinics was providing unnecessary dental services to children on Medicaid in order to maximize the company's Medicaid reimbursements. The services included unnecessary tooth extractions that resulted in healthy teeth being pulled and needless crowns and excessive root canals for baby teeth.

The Civil Division and the Criminal Division often work together in combating health care fraud. For instance, in October 2010, Assistant Attorney General Breuer and I jointly announced a crackdown on increasing fraud and abuse in the delivery of important mental health services provided under Medicare's Partial Hospitalization Program at Community Mental Health Centers in Florida.

The Department also leads an Elder Justice and Nursing Home Working Group, which focuses on health care fraud involving elderly patients, such as when a skilled nursing facility bills Medicare or Medicaid for deficient services. Such conduct not only wastes taxpayer dollars, but also threatens the health of some of our most vulnerable citizens. Last year, the Department announced criminal pleas and civil recoveries arising from our investigation of five nursing homes operated by Cathedral Rock, a Texas corporation, and its CEO. Our investigation found that these homes were staffed inadequately, that residents often did not receive their medications as prescribed, and that medical records were falsified to appear that the medications were given properly. The resolution of this case required that the homes institute a rigorous compliance program to ensure that this conduct is not repeated. Earlier this year, I personally launched the training that involved over 50 attorneys and investigators intended to hone their skills in this difficult enforcement area. This training is part of our emphasis in ensuring that our most vulnerable citizens receive the care for which Medicare and Medicaid pay.

STRONGER TOOLS FACILITATED THE CIVIL DIVISION'S RECORD RECOVERIES

Most of the cases resulting in recoveries were brought to the government by whistleblowers under the False Claims Act. In 1986, Ranking Member Charles Grassley and Representative Howard Berman led successful efforts in Congress to amend the False Claims Act to revise the statute's *qui tam* (or whistleblower) provisions, which encourage

whistleblowers to come forward with allegations of fraud. The changes enacted in 1986 made the record-setting recoveries of last year possible. Chairman Leahy, your strong support, together with that of Ranking Member Grassley and Representative Berman also led to the enactment of the Fraud Enforcement and Recovery Act of 2009, which made additional improvements to the False Claims Act and other fraud statutes. Among other important changes, FERA authorized delegation of the Attorney General's authority to issue civil investigative demands (CIDs), which has substantially increased the use of this critical investigative tool in health care and other fraud matters. For example, during just the fourth quarter of 2010, Department attorneys requested authority to issue over 500 CIDs, which is more than six times the number of CIDs requested during the two preceding years combined.

Of the \$3 billion in settlements and judgments obtained in fiscal year 2010, over \$2.4 billion was recovered in lawsuits filed under the False Claims Act's *qui tam* provisions. Under these provisions, whistleblowers (known as "relators") – many of whom face considerable personal risk in coming forward with allegations of fraud – are entitled to recover between 15 and 30 percent of the proceeds of a successful suit. In fiscal year 2010, relators were awarded \$386 million. Since 1986, when the *qui tam* provisions were strengthened by Congress, recoveries in *qui tam* cases have exceeded \$19 billion, and relators have obtained more than \$3.2 billion in awards.

The passage in March 2010 of the Affordable Care Act (ACA), which included additional provisions to aid the Government in redressing fraud on the nation's health care system and to promote incentives for whistleblowers to disclose fraud to the government, also provided the Civil Division with additional tools to combat fraud. Among many other changes, the ACA

amended the False Claims Act's public disclosure provision and strengthened the provisions of the federal health care Anti-Kickback Statute. *See, e.g., §§ 10104(j)(2) and 6402(f) of the ACA.*

I would be remiss if I did not also note the important contributions of the Inspectors General, and their highly talented staffs, to the Civil Division's False Claims Act recoveries. These results are a direct testament to the close working relationship that exists between the Civil Division and the IG community. In pursuing cases brought by whistleblowers as well as the Government, the Civil Division has relied extensively on the outstanding assistance provided by IG agents, auditors, and attorneys. This successful partnership remains a key to the Department's ability to combat fraud across the broad spectrum of government agencies and programs.

FINANCIAL FRAUD/MORTGAGE FRAUD

As millions of Americans continue to cope with the fallout of the housing crisis, the Department has made protecting America's consumers against mortgage fraud a top priority. The Department is devoting increased resources to better detect, deter, prosecute, and punish mortgage fraud. In November 2009, the President created the Financial Fraud Enforcement Task Force to bring together a coalition of federal agencies and regulators, along with state and local partners, to provide a broad enforcement effort to combat financial fraud. The Civil Division, in conjunction with its partners on the Task Force, is aggressively pursuing all manner of financial fraud schemes, including mortgage fraud, non-war related procurement fraud, and fraud involving the Troubled Asset Relief Program, the American Recovery and Reinvestment Act, and other economic stimulus funds. False Claims Act recoveries in these cases accounted for 11 percent of fiscal year 2010 recoveries, with \$327.2 million in settlements and judgments.

I co-chair the Task Force's Mortgage Fraud Working Group. In that capacity, the Civil Division coordinates with other state and federal officials to combat the mortgage fraud that has proliferated as a result of the current financial crisis and to help homeowners who have suffered from mortgage fraud. The increased enforcement efforts aimed at addressing fraud in the housing and mortgage industries have increased recoveries in this area from \$15 million in 2008 to more than \$53 million since January 2009.

On June 17, 2010, the Attorney General, along with other members of the Financial Fraud Enforcement Task Force, announced the results of a nationwide takedown, Operation Stolen Dreams, which targeted mortgage fraudsters throughout the country. Starting on March 1, 2010 and spanning three-and-a-half months, Operation Stolen Dreams involved 1,517 criminal defendants nationwide, including 525 arrests, representing an estimated loss of more than \$3 billion. Additionally, the operation resulted in 191 civil enforcement actions and the recovery of more than \$196 million.

One of the Mortgage Fraud Working Group's most important initiatives is to hold summits in those cities across the country that have been hit hard by mortgage fraud. Thus far, it has held summits in Miami, Florida; Phoenix, Arizona; Detroit, Michigan; Columbus, Ohio; Fresno, California; and Los Angeles, California. At these meetings, the Working Group highlights the issue of mortgage fraud while working with our partners at the state and local levels to better understand the mortgage fraud crisis and become increasingly effective in combating the problem.

The Civil Division participated in this operation, prosecuting criminal cases aimed at business opportunity fraud schemes that fraudulently promise consumers profits from operating their own business, but leave its victims financially worse off. The Civil Division has been

focusing on this type of financial fraud prosecution during my time as Assistant Attorney General, participating in Federal Trade Commission-coordinated law enforcement sweeps called Operation Short Change in 2009 and Operation Bottom Dollar in 2010. Since January 2009, OCPL's efforts have yielded convictions of 39 defendants and courts have imposed criminal penalties exceeding \$53.2 million for illegal activities in connection with such fraudulent schemes. During this same time period, 32 defendants were sentenced to some form of incarceration, receiving a total of more than 120 years.

PROCUREMENT FRAUD

Our commitment also extends to rooting out fraud in connection with the procurement of goods and services used by our military and civilian agencies, including fraud that affects our men and women fighting in Iraq and Afghanistan. Since January 2009, procurement fraud cases, including the non-war related procurement fraud recoveries I mentioned in connection with our financial fraud efforts, have accounted for over \$1.01 billion in recoveries – more than the Department's recoveries in 2007 and 2008 combined. The Department's recoveries since 2009 include more than \$718 million attributable to Department of Defense contracts.

Ensuring that our military and procurement systems are protected from fraud is vitally important. Using the False Claims Act, the Department is aggressively pursuing fraud in connection with the wars in Southwest Asia. During fiscal year 2010, the Civil Division recovered \$10.6 million in these cases. To date, settlements and judgments in procurement fraud cases involving the wars in Southwest Asia total \$152.2 million. Of this amount, \$129.7 million has been recovered since January 2009.

The Department has intervened in a case against Public Warehousing Company, a multi-billion dollar defense contractor that is alleged to have engaged in war profiteering on three

prime vendor contracts (for which it was paid \$9.8 billion) with the Defense Logistics Agency to supply food to U.S. troops in Kuwait, Jordan, and Iraq. At home, the Department is leading an investigation into companies, as well as individual executives, who manufacture and sell defective Zylon fabric used as the key ballistic material in bulletproof vests sold to the United States for use by federal, state, local, and tribal law enforcement agencies. Our investigation has revealed that these vests degraded quickly over time due to heat and humidity and were unfit for ballistic use. Thus far, the Department has obtained more than \$59 million in this effort, and our investigation continues today.

In addition to investigating and initiating cases that target procurement fraud, the Division also aggressively pursues counterclaims when fraudulent conduct surfaces in defensive matters. The Division handles defensive procurement cases when they are filed in the United States Court of Federal Claims. The Division has had substantial success in recent years in obtaining judgments and settlements stemming from fraud in such cases, which often involve inflated contractor damages claims. For example, in *Daewoo Engineering v. United States*, we collected approximately \$51 million in 2010 in settlement of fraud claims arising from a contract dispute concerning the construction of a road in Palau. The Division also recently settled for \$9 million fraud claims in *Securitas v. United States*, a case concerning security guard contracts for services at United States military installations in Germany.

INTERNATIONAL TRADE

Consistent with its mission to enforce civil penalties for violations of United States customs laws, the Civil Division has also obtained judgments for millions of dollars for importation fraud. For example, in *United States v. Matthews*, the United States Court of Appeals for the Federal Circuit affirmed a \$36.6 million judgment entered by the United States

Court of International Trade, including \$23.8 million in penalties, based on an importer's fraudulent scheme to transship Chinese silicon metal through South Korea and falsely declare the merchandise to be of Korean origin to evade more than \$12 million in special import duties on silicon metal from China. Similarly, the court of appeals affirmed another Court of International Trade judgment for over \$8 million, including a \$7.5 million penalty, against a California vegetable importer who used false invoices to understate the price of the vegetables to reduce import duties. We have also recovered millions of dollars through settlement, including a recovery of \$3.9 million in lost duties from a surety of an importer of Vietnamese catfish who fraudulently declared the catfish as grouper to evade special duties on catfish from Vietnam.

At this time, Mr. Chairman, I would be happy to address any questions you or Members of the Committee may have.