FCA SETTLEMENTS: A Practical Guide For Defense Counsel

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Settling False Claims Act ("FCA") cases presents a number of unique challenges. Over the course of settling literally hundreds of these cases, the Department of Justice ("DOJ") has developed standard terms and conditions, some of which reflect non-negotiable "policy" and some of which are better described as position preferences where there remains some negotiation flexibility. In *qui tam* cases, the rights and interests of the relator must also be considered in structuring either a complete or partial settlement. In preparing to settle a FCA case, defense counsel must understand the range of these issues and positions in order to develop an appropriate strategy and negotiate a satisfactory agreement.

There is, to our knowledge, no publicly available material setting forth DOJ's "policy" positions on settlement agreement terms and conditions. Nonetheless, from an examination of a number of the agreements that have been reached over the past ten years, as well as from our personal experience in the trenches of these negotiations, we have identified a number of the core issues with which all defense counsel should be familiar. While it is impossible to catalog all the permutations found in these settlements – which reflect the breadth and ingenuity of the cases brought under the FCA – we hope to provide some sense of some pitfalls and opportunities that lie in store when negotiating an FCA settlement.

In the first section of this paper, we address those terms and conditions that are always part of the negotiations with DOJ. In the second section of this paper, we address the additional issues that arise in *qui tam* cases. We have also attached *qui tam* statistics and a list of some recent False Claims Act settlements.

I. NEGOTIATING WITH DOJ

There are two major categories of concerns that must be considered in reaching an acceptable FCA settlement with DOJ. One is the scope of the settlement – what will the government actually release, or perhaps better stated, how much peace can the defendant buy? The other major concern is the amount of the settlement and the consideration given to the defendant's financial condition. In addition, however, DOJ insists on certain other mandatory terms and some optional clauses depending on the circumstances of the case.

A. Scope of the Settlement

One of the most important aspects of an FCA settlement is defining the scope of the release. This usually involves three elements: (a) the release clause, (b) the specific exclusions that DOJ requires, and (c) the recitals where the "covered conduct" is defined.

DOJ approaches settlement cautiously and will not provide the kinds of broad releases typical in commercial disputes such as "all claims, known or unknown, arising from or related to . . ." It recognizes that any given contract or project with the government may have multiple

compliance issues, and thus DOJ will normally take the position that it will release only those claims which have actually been asserted and for which it is receiving a settlement amount.

Defendants have a much different perspective. They come to the negotiation having experienced what often seems like an interminable audit and investigation of every conceivable violation from every conceivable angle. They have also been called upon to produce numerous documents and witnesses often going back many years. Thus, they can reasonably expect in settling to be "done" with a particular contract.

As these two interests inevitably conflict, what usually results is some compromise where the release extends to those matters that the government has actually investigated and reviewed. We will look first at the standard items that DOJ insists be excluded from FCA settlements and then look at the scope of the release. Finally, we will briefly look at some relatively unique aspects of global settlements in health care cases.

1. Standard Exclusions

It is easiest to begin with those claims that DOJ will insist it cannot (or will not) release. There literally is little or no ability to obtain release of the following:

- claims under Title 26 of the United States Code (tax code provisions);
- claims for breach of the settlement agreement;
- "except as otherwise stated in the agreement," administrative actions for suspension or debarment;
- "except as otherwise stated in the agreement," criminal violations;
- claims arising from deficient or defective products, including in some recent settlement agreements for "consequential damages;" and
- as if not confident of its own list of exclusions, a catch-all "any claims not specifically released herein."

In the health care context, this list is often expanded to include:

- claims for failure to deliver items or services;
- claims for mandatory exclusion under 42 U.S.C. § 1320a-7(a); and
- claims against any individual who becomes a target of a U.S. criminal investigation related to the "covered conduct."

This list of express exclusions is rarely contracted, but may be expanded depending on the circumstances of the case and the ancillary proceedings involved. Thus, for example, in the oil royalty litigation, there was an extensive list of exclusions addressing oil royalty calculation

issues that were not part of the settlement and remained to be resolved by the Department of the Interior. Similarly, in multi-defendant cases, it is common for DOJ to insist on a clause acknowledging that the release does not extend to any other defendant. In cases where the relator is not also settling any independent claims (or FCA claims in which the government has not joined), the relator's claims will also be excluded.

2. The Released Claims

As indicated above, DOJ will not accept a broad release but rather insists on defining the scope of the release through two components. First, it will identify specific statutory and other claims that it is releasing. Then, it seeks to define specified "covered conduct." The statutory claims that will typically be released include:

- The False Claims Act, 31 U.S.C. §§ 3729-3732;
- Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812;
- Contract Disputes Act, 41 U.S.C. §§ 601-613;
- Truth in Negotiations Act, 10 U.S.C. § 2306; and
- Civil Monetary Penalties Act, 42 U.S.C. § 1320a-7a.

In addition, DOJ will release its claims under the common law (although in some settlement agreements, only certain common law theories are identified). The release is also typically restricted to "monetary claims for damages."

Again, this list may be expanded when addressing FCA cases outside the usual procurement or health care fraud areas. Thus, for example, in any FCA case involving U.S. AID grant funds, defense counsel should insist on a release of claims under 22 U.S.C. § 2399b, which is a specific false claims provision contained in the Foreign Assistance Act, 22 U.S.C. §§ 2151-2450. Even better, is the language in the recent *Electrolux Home Products* settlement (October 2002) which released claims "under any other statute creating a cause of action for civil damages or penalties or the common law for the conduct alleged in Paragraph E."

DOJ, however, will not release claims under statutes, the primary enforcement for which is vested in another federal agency. This is the rationale for the standard tax code exclusion identified above, but also applies in areas such as securities enforcement and environmental laws. In such cases, defendants must reach separate agreements with the relevant agency. The language from *Electrolux* should eliminate the need for specific exclusions of these and other possible remedies.

3. Recitals – "Covered Conduct"

The second area in defining the scope of the release is agreeing on the "covered conduct." This covered conduct may be set forth in the release clause or, more typically in current practice, through the recitals.

Where the settlement arises from an already filed complaint – whether the relator's complaint or a government complaint in intervention – DOJ will seek to limit its release to those

claims actually asserted in the complaint. Nonetheless, there is some flexibility to expand the covered conduct to include matters that were clearly reviewed and considered in the course of the preceding audit or investigation. This is usually accomplished by identifying the claims asserted by the government during the course of its investigation, without specific reference to when and where.

As indicated above, DOJ will resist efforts to describe the "covered conduct" broadly, such as in terms of all claims under a contract. In one recent settlement (*Intertek Testing Services Environmental Laboratories* (March 2002)), however, the "covered conduct" included "tests and testing services during the period from 1989 to the present, which tests . . . were not done pursuant to contractual requirements." It is hard to imagine what claims based upon deficiencies in Intertek's testing would remain after that release. Where DOJ will not agree to a broader release, it may agree to provide a side letter in which it represents that based upon the evidence and other information that it has collected it has no intention of bringing a FCA action.

4. Global Settlements

In the federal procurement context, DOJ takes a hands-off approach to the issue of potential suspension or debarment. The procuring agencies seem to prefer to deal separately with their contractors, and frankly, FCA defendants should prefer to deal separately with their customers. DOJ is usually willing to provide a reasonable amount of time in which a defendant can negotiate with the relevant agency.

In the health care context, global settlements (albeit still excluding potential criminal liability) are much more common, perhaps because of the statutory requirement to consider mandatory and permissive exclusion.[2] Indeed, until recently, the Office of Inspector General for the Department of Health and Human Services ("HHS-OIG") would not approve a civil FCA settlement without the implementation of a Corporate Integrity Agreement ("CIA"). Although in the current administration, the HHS-OIG has retreated from insisting on a CIA in all cases, many recent agreements nonetheless contain a CIA, either directly or incorporated by reference. In these cases, the HHS-OIG is a signator of the FCA settlement.

For example, in *UPMC Presbyterian* (May 2002), the CIA is contained in the terms of the settlement agreement and includes reporting obligations and obligations to develop and maintain comprehensive written policies and procedures. The defendant also agrees to make its books and records available for inspection and "to assist" in arranging interviews of employees. Interestingly, the way the CIA provision is drafted, its breach would not appear to be a breach of the FCA settlement agreement. Rather, at least with respect to the timeliness of compliance, the provision includes liquidated damage penalties (ranging from $1,500 to $2,500 per day) for non-compliance. However, the provision also typically includes annual certification requirements that the compliance measures have been taken and remain in effect. In a recent press report, DOJ announced the filing of a FCA suit against Tenet HealthCare alleging in part that it had falsely certified to the government, pursuant to a CIA, that it was in compliance with the Medicare regulations when it allegedly knew it had not made the restitution required under an earlier settlement.[3]

B. Payment Terms and Financial Conditions

As in any settlement, the primary focus will be on reaching agreement on an appropriate settlement amount. In FCA cases, a primary motivation for defendants to settle is the potential of treble damages and penalties. Thus, even if the parties disagree vehemently concerning the

magnitude of the actual damage to the United States, the recognition that some liability may exist compels consideration of settlement. In settling, DOJ does not insist on treble damages, although it will not acknowledge any specific policy to settle for less than treble damages. It does insist that, at a minimum, the government must be compensated for its entire loss, and it usually strives for at least double damages. It also generally insists that full payment be received promptly, by wire transfer, after execution of the settlement.

In some cases, however, a defendant's ability to settle is complicated by its poor financial circumstances. In these cases, DOJ is usually willing to reach some agreement on special payment terms and other conditions. Indeed, it currently employs an economist full-time in order to evaluate such proposals. Some examples from recent settlements provide a taste for the types of payment terms DOJ has accepted:

- *Florida Medical Quality Assurance, Inc.* (June 2002). This settlement permitted monthly installments with 7% interest accruing on the unpaid balance. It also included certain specific lump sum payments that were contingent on expected receipts from specified contract events; *e.g.*, an award fee payment.

- *General American Life Insurance Co.* (June 2002). This settlement permitted a seventy day deferral, but incorporated a guarantee from the defendant's corporate parent.

- *Geriatrics Service Complex Foundation* (May 2002). This settlement provided for quarterly payments with 5% simple interest accruing on the unpaid balance. The defendant was required to provide a promissory note for the unpaid balance and put up collateral including a secured interest in the surrender value of a life insurance policy.

- *Intertek Testing Services Environmental Laboratories* (March 2002). This settlement provided for payment extended over 2 ½ years with 3% interest accruing on the unpaid balance. The interest rate would increase to 12% on any payment that defendant failed to make by its due date.

While there is significant flexibility in establishing an appropriate payment plan, it is important that the parties clearly define the terms. *Unisys v. United States*,[4] is an example of where DOJ and the defendant apparently did not make their intentions clear. There, the settlement agreement provided for a "contingency payment" that was to be calculated based upon a percentage of "net income." The contingency payments were due quarterly, but the agreement provided the fourth quarter payment could be adjusted so that the sum of all payments would equal what would be due had the payments been calculated on an annual basis. When Unisys' fourth quarter adjustment resulted in a negative quarterly contingency payment, the parties disputed whether this required DOJ to refund the amount by which the prior quarterly payments exceeded the amounts calculated on an annual basis. The court held for Unisys, but the dispute undoubtedly has made DOJ more cautious in spelling out precisely the terms of such deals.

Furthermore, as suggested by the examples provided above, in agreeing to special payment terms, DOJ will normally require some sort of security. In addition, it may require that defendant warrant the accuracy and completeness of the financial information that was provided to DOJ and on which DOJ relied in reaching the agreement. Thus, for example, in *Intertek Testing Services Environmental Laboratories* (March 2002), the settlement agreement included

both such a warranty and special remedies for any material nondisclosure. Specifically, DOJ would be permitted to either rescind the agreement or let it stand but collect the full settlement amount plus 100% of the value of the material nondisclosure. A "material nondisclosure" was defined as any nondisclosure or misrepresentation that would change by $250,000 or more the available insurance or estimated net worth of the defendant.

It has also become common, particularly in FCA settlements in the health care area, to include a series of clauses intended to improve the government's position should the defendant proceed to bankruptcy. Among these provisions are:

- A warranty that the defendant is not currently insolvent and that payment of the settlement amount will not make the defendant insolvent;

- Agreement that the settlement represents a contemporaneous exchange for new value and that defendant would not argue the payment could be avoided under 11 U.S.C. § 547.

These provisions also include terms seeking to establish the government's rights should a trustee avoid the settlement. In one recent case, for example, *Estate of Rogers* (March 2002), if a trustee in bankruptcy were nonetheless to avoid the $15.25 million settlement payment, the defendants agreed that any statute of limitations was waived and that "the United States has a valid claim against defendants in the amount of $30 million."

Analysis of whether any of these limitations would in fact be enforceable in or survive a bankruptcy proceeding is beyond the scope of this paper. DOJ's insistence on these provisions, however, suggests that defendants consult expert bankruptcy counsel when settling cases that may jeopardize their financial condition and ongoing operations.

C. Other Significant Terms

No discussion of FCA settlement agreements would be complete without discussion of some of the terms that DOJ will commonly require. First, is a mandatory clause (or in health care cases, a series of clauses) that addresses the allowability of costs related to the covered conduct and the settlement. In addition, there are other clauses DOJ considers when there remain ongoing investigations related to the same matter.

1. Cost Allowability

In every FCA settlement agreement, DOJ insists that there be a clause establishing the unallowability of certain costs. In federal procurement cases, DOJ has settled upon the following formulation:

> The company agrees that all costs "as defined in Federal Acquisition Regulation 31.205-47" incurred by or on behalf of the company, its officers, directors, agents, and employees in connection with (1) the matters covered by this settlement agreement; (2) the government's investigation of matters covered by this settlement agreement; (3) the company's investigation and defense of the matters covered by this settlement agreement;

> (4) corrective actions made in connection with the matters covered by this settlement agreement; (5) the negotiation of this settlement agreement; and (6) the payment made to the United States pursuant to this settlement agreement shall be unallowable costs for government contract accounting purposes. These amounts shall be separately accounted for by the company.

DOJ has never been able to provide a coherent explanation for its insistence on this clause, which addresses an issue authority for which is vested in the procuring agency, not DOJ. Furthermore, the subject is already covered by the applicable regulations, and the language of the clause raises the specter of imposing different or even inconsistent obligations. Nonetheless, DOJ remains adamant that the clause be included, unchanged, and has even objected to a relator-defendant settlement that failed to include the clause.[5]

Of particular concern in the cost allowability clause is the phrase "corrective actions," which is ambiguous and potentially far-reaching. Corrective action conceivably could include anything from reversing an accounting entry to development of new policies and requirements of new employee training. Certainly when negotiating to avoid administrative actions, a defendant will characterize the extent of its "corrective action" broadly, and much more broadly than apparently intended by this phrase. While DOJ will not permit any modification to the clause to define the meaning of the phrase, it will consider a side letter that elaborates on what activities are considered corrective action for purposes of the clause.

In the health care context, the allowability cost clause is much more elaborate. It includes provisions related to the future treatment of the unallowable costs and requirements to identify unallowable costs that had been previously submitted for reimbursement. Interestingly, however, these agreements provide support for the view that corrective action does not include adoption of overall compliance programs, even when established in connection with the investigation and litigation being settled. Thus, for example, in *Rotech Medical Corp.* (February 2002), the settlement agreement included a corporate integrity agreement. The costs of implementing this agreement were not considered unallowable except for the requirement to have an independent review conducted and the requirement to prepare and submit annual reports.

2. Ongoing Investigations or Cases

While DOJ usually resists efforts to include in settlement agreements any recitation or acknowledgement of defendant's cooperation, it will occasionally require continued cooperation. Such a request is rare, but can occur where the litigation continues as to other defendants.

More troubling is the attempt by DOJ to insist on waivers of specific constitutional rights. This trend began with *United States v. Halper*[6] which recognized the possibility that some FCA claims could be so punitive as to constitute punishment for purposes of precluding a subsequent criminal prosecution under the Double Jeopardy clause. *Austin v. United States*[7] recognized that large civil damage awards were subject to Excessive Fine protection under the Eight Amendment. While its practice is not uniform, DOJ will occasionally insist on a clause that requires the defendant to waive any defense it might have had in a criminal proceeding or other administrative action related to the covered conduct that is based in whole or part on the contention that either the double jeopardy clause of the Fifth Amendment or the excessive fines clause of the Eighth Amendment bars the remedy sought in that other action. *See, e.g. Mark Goldberg and Rancocas Valley Anesthesia Assoc.* (Nov. 2002).[8]

II. CASES INVOLVING A RELATOR

Adding a relator to the negotiation mix further complicates the settlement. Although there is some overlap, we will discuss separately the issues that arise when the government intervenes and those where the government has not intervened. Finally, we will briefly note some of the issues that arise in settling with a relator regardless of the government's intervention.

A. Where the Government Intervenes

Where the government has intervened in the *qui tam* case, all of the settlement issues discussed above remain to be dealt with. The complication that the relator presents in this process stems from his or her right to contest the settlement, his or her right to a share in the proceeds of the settlement, his or her right to attorneys' fees and the likelihood that he or she will have independent claims involving the defendants. We will discuss each of these issues in turn.

1. Relator's Authority to Object

The FCA provides:

> The government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate and reasonable under all the circumstances.[9]

At a minimum, this section provides the relator a right to a hearing, and some courts have held that there is an accompanying right for limited discovery with respect to the adequacy of the settlement.[10] The court has the discretion to refuse to accept a settlement and dismiss a case where it finds the amount of the settlement to be inadequate.[11] In fact, the United States opens itself to the possibility of sanctions if it tries to settle with a defendant without providing the required notice to the relator.[12] Nonetheless, although very rarely invoked, the FCA provides the government authority to dismiss an action without settling with a defendant when it is in the interests of the government to do so.[13]

In short, while negotiation of the amount of a FCA settlement will be primarily conducted with DOJ, defense counsel needs to be sensitive to the relator's right to object. This concern is most heightened in cases where the government's complaint in intervention has added claims in which the relator may not have a right to a share. While the amount of the relator's share and the allocation of the settlement amount among the different claims is not of direct concern to the defendant, it should insist that any settlement agreement contain a term in which the relator expressly acknowledges that the settlement is "fair, adequate, and reasonable under all the circumstances."

2. The Relator's Right to Attorneys' Fees

In most statutes that contain fee-shifting provisions, award of fees is usually dependent on the party prevailing in the litigation. The FCA, however, seemingly permits a relator to recover against a settling defendant "an amount for reasonable expenses which the court finds to have been necessarily incurred plus reasonable attorneys' fees and costs."[14] The government will usually take a hands-off position with respect to fees and prefers to negotiate a

settlement amount without regard to the defendant's liability for relator's attorney fees and reasonable costs. Defense counsel will usually accede to this approach unless the circumstances suggest that the relator's counsel intends to assert a claim for significant fees and costs. Under those circumstances, defense counsel may seek to negotiate the relator's fee claim at the same time as, and perhaps as part of, the negotiation of the underlying settlement.

It is beyond the scope of this paper to provide a comprehensive primer on all the issues that arise in negotiating fee awards under fee-shifting statutes. Nonetheless, we can offer a brief overview of some of the principal fee issues. First, courts in FCA cases – as in cases involving other fee-shifting statutes – tend to apply the "lodestar" approach.[15] Essentially, the "lodestar" approach requires determination of the "reasonable hours" spent on the matter and the "reasonable rates" from which to calculate the lodestar amount. This amount may then be adjusted downward (where the amount is disproportionate to the recovery) or upward (where the matter involved significant and complex issues).[16] Some of the specific issues to consider in negotiating fee recoveries include:

Reasonable Rates. Generally, courts will look to the rates that prevail in the community (read federal district) where the *qui tam* suit is brought. Thus, for example, in *U.S. ex rel. Coughlin v. IBM Corp.,*[17] the court determined that "reasonable fees" were those prevailing in the Northern District of New York even though relator's counsel were Washington, D.C. lawyers with significant *qui tam* experience. Indeed, if relator's counsel fails to prove that they have experience comparable to the attorneys that bill at the proffered rate, the requested rate may be significantly reduced. [18]

In some jurisdictions, such as the District of Columbia, disputes over the reasonableness of rates may be substantially lessened because of techniques developed in litigation under other fee-shifting statutes. Here, for example, the U.S. Attorney's office maintains what is referred to as the *Laffey* Matrix,[19] which provides rates for lawyers with various years of experience and for legal assistants.

Current vs. Historic Rates. It is often the case that there is a significant period of time between the filing of a *qui tam* suit, its unsealing and its final resolution. In other fee-shifting contexts, the Supreme Court has suggested the use of current rates instead of historic billing rates to compensate the lawyer for significant delay in payment.[20] Some courts have adopted this approach as a general rule, in part to avoid the time and effort to calculate the present value of historic rates.[21] Other courts permit this approach but caution that attorney rates may increase for reasons that are divorced from the time value of money.[22] Furthermore, courts have recognized that use of current billing rates can result in overcompensation of counsel.[23]

It is questionable whether use of current rates should even be permitted in FCA cases, where much of the delay has nothing to do with the defendant's conduct. While some time-value adjustment may be appropriate where the defendant has contributed to the delay in resolution, defense counsel should resist relator arguments for unquestioned application of current rates.

Reasonable Hours and Costs. Defense counsel should also review the justification for a fee demand to eliminate any hours that are not reasonable or chargeable under the law of the applicable jurisdiction. For example, hours spent fighting with DOJ over the amount of the relator's share of a settlement are not properly charged to a defendant.[24] Some jurisdictions permit charging for travel time spent working on a matter, but only at half the normal rate. And,

in the Second Circuit, the courts have traditionally not permitted recovery of the costs of computer research.[25]

Apportionment Among Defendants. In multi-defendant cases, there is a question concerning how the attorney fees and costs should be allocated among them. In one FCA case, the court held that because the underlying FCA liability was joint and several the attorney fees should be awarded jointly and severally as well.[26] In another FCA case, the court apportioned the fees using percentages that roughly tracked each defendant's share of the total settlement.[27] In other contexts, courts have noted that "there is no simple formula of universal applicability" for dividing an award of fees among joint defendants.[28] Whether the underlying liability is joint and several or not, apportionment of attorney fees and costs depends on consideration of a number of factors, such as

- The relative degree of culpability of the various defendants;[29]
- The time the plaintiff was forced to spend litigating against each respective defendant;[30]
- The relative active or passive role each defendant played;[31]
- The relative ability of the defendants to pay;[32] and
- Whether defendants are joint tortfeasors.[33]

In the end, a district court has considerable discretion "to make every effort to achieve the most fair and sensible solution possible."[34] Obviously, in negotiating with a relator, defense counsel will emphasize those factors that support a lower allocation of the fees and costs to his or her client.

3. Alternate Remedy Cases

Under the FCA,

> the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil monetary penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section.[35]

Most of the litigation concerning this provision has concerned the extent to which the relator may participate in or at least obtain a share of recovery obtained by the government in an ancillary proceeding. Perhaps the most infamous of these cases is *United States ex rel. Barajas v. Northrup Grumman.*[36] There the court held that, at least where an agreement with the Air Force avoiding suspension and debarment provided the government with an economic benefit and the relator could no longer pursue a separate FCA action, the Air Force agreement *could* be considered an alternate remedy. Under the language of the provision quoted above, a final determination that such an agreement was an "alternate remedy" might also expose the defendant to liability for attorneys' fees.

4. Partial Intervention and Settlement

Finally, in a number of cases, the government will intervene only with respect to some of the relator's allegations. The relator then remains to pursue the other claims independently. In addition, the relator may have employment law or retaliation claims under 31 U.S.C. § 3730(h). In these situations, settling with the United States may not cover all of the claims in the *qui tam* lawsuit. Obviously, a defendant may seek to engage the relator to resolve all of these matters at the same time, but it is frequently the case that the defendant may want to contest these other claims. Accordingly, in many settlements, the relator's unresolved claims will be a special exclusion from the scope of the settlement.

B. Where the Government Does Not Intervene

Simply because the government does not intervene does not remove the shadow that DOJ casts over the continued litigation including any potential settlement. Accordingly, we address first the scope of the government's right to object to a settlement when it has not intervened. We also address considerations involved in settling nuisance FCA cases.

1. The Government's Right to Object

With respect to *qui tam* actions, the FCA provides:

> The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.[37]

The scope of DOJ's power under this statutory clause remains unsettled in the case law. Both the Fifth and the Sixth Circuits have suggested that the clause essentially provides DOJ with veto power over the settlement, but neither case addressed what would happen if the relator and defendant simply abandoned the litigation in the face of an arbitrary DOJ refusal to approve a settlement.[38] Other courts, however, have rejected the notion that the United States can simply force an unwilling relator and unwilling defendant to continue to litigate a case in which the government declines to intervene. Thus, for example, the Ninth Circuit has limited DOJ's authority to exercise veto power over settlement to the period when the *qui tam* suit remains under seal. After the case is unsealed, DOJ's right is simply entitlement to a hearing to determine whether the settlement agreement is "fair and reasonable."[39] In another case, *United States ex rel. Summit v. Michael Baker Corp.,*[40] the court rejected the government's objection to defendant and relator settling and seeking to dismiss only the relator's § 3730(h) claim and abandoning the FCA claims which the relator acknowledged lacked merit. The district court simply dismissed the entire case.

Whatever the ultimate scope of DOJ's authority to object to the terms of a relator-defendant settlement agreement, it appears clear that it will have some right to evaluate the fairness of the deal. Specifically, DOJ's interest is in ensuring that any allocation of damages is not skewed to enhance the attorney's fees and employment claims in which it does not share at the expense of any government recovery under the FCA. In addition, these cases reflect the government's antagonism to broad releases. Thus, for example, in the Fifth Circuit case referred to above, one of the government's objections was to a provision in the settlement agreement that released, *inter alia*, any claims "which could have been asserted by the parties in this action, arising out of the transactions or occurrences that are the subject matter of this action."[41]

2. Nuisance Cases

Even DOJ recognizes that, in some instances, the FCA case is not worth any further time and effort. In our experience, this usually happens where the government witnesses and documents do not support the relator's claims. DOJ is understandably reluctant to consent to settlements where the relator receives some payment, but the United States does not (unless there is a legitimate employment law basis for the relator's recovery). Relators (and their counsel) may nonetheless have invested significant time and expense in pursuing the matter, and thus be unwilling to simply walk away (although it does happen). In such cases, it may make sense for the defendant to offer a nuisance amount to dispose of the matter and free itself from the continued burden of the litigation. Where the relator's lawyer is experienced and known to DOJ, he may be able to convince DOJ that the FCA case is sufficiently weak not to insist on a share of the proceeds.

In such cases, there are also factors for defense counsel to consider. First, where the government will not receive a share, DOJ will not agree to a release of its claims or to a dismissal with prejudice against the United States. It will insist on dismissal without prejudice, but does not object to dismissal with prejudice as to the relator. Defense counsel may also want the relator to warrant that he or she has no other information upon which to base a FCA case and agree not to provide assistance, except as required by law, to anyone (other than the United States) in the bringing or pursuit of an FCA case. Defendant can reasonably insist that in settling with a relator, even for a nuisance amount, that the relator not turn around, either directly or indirectly, and bring another suit, or assist someone else to do so.

In federal procurement-related cases, defense counsel should also insist that relator acknowledge, in the agreement, the weakness of the case. This can usually be accomplished with language expressly acknowledging there is no merit to the FCA allegations or that no evidence was discovered to support the FCA allegations. While obviously not determinative, these representations may be useful in assisting defendant to establish the allowability of its litigation costs. Under FAR 31.205-47(c)(2), a portion (not to exceed 80%) of the costs associated with *qui tam* actions where the government has not intervened may be allowable provided the Contracting Officer finds that "there was very little likelihood that the third party would have been successful on the merits."

C. Other Considerations in Relator Settlements

Whether the government has intervened or not, there are some specific terms that defense counsel should consider in settling with relators. Some of the more significant include:

Relator's Release. Generally, defense counsel should insist on the typical broad release from any and all liability, known and unknown, arising from the transaction(s) at issue. Defendant should also obtain specific releases of claims under § 3730(h) and any other retaliation claims. The relator will likely seek a reciprocal general release, so the defendant must consider what if any claims against relator it may have and may be relinquishing. Counsel should also be aware that some states, such as California, have special statutes that limit waivers of unknown claims "which if known must have materially affected his settlement . . ."[42] The relator and his or her counsel should acknowledge that they have read and understood this provision and knowingly waive the protection provided by that statute or other similar statute.

Stolen Documents. Relator undoubtedly has taken company documents and materials to support his or her claims. In settling, defense counsel should insist on the return of all such

material (both privileged and other) as a condition of the settlement. Defense counsel should also require representations concerning the extent or lack of any past disclosures of the information (*e.g.*, no disclosure beyond counsel) and warranties that there will be no future disclosure. In some cases involving particularly sensitive documents, defense counsel may want to consider obtaining a consent order requiring return of the material and prohibiting any subsequent dissemination.

Employment Considerations. Unless the relator never was an employee of the defendant or long ago separated, settlement may implicate a broad range of employment law issues that need to be considered with expert employment law counsel. For example, the relator may want certain protections against feared future retaliation, particularly if he or she is close to retirement. If part of the agreement involves separation, then issues such as future references and non-compete restrictions likely will be implicated. In short, careful thought must be given to these employment law issues that frequently involve their own set of public policy concerns and traps for the inexperienced.

ENDNOTES

[1] The authors gratefully acknowledge the assistance of our colleague, J. Catherine Kunz, in the preparation of this paper.

[2] 42 U.S.C. § 1320a-7(a) (mandatory exclusion) and § 1320a-7(b) (permissive exclusion).

[3] DOJ Press Release dated January 9, 2003 "United States Files Suit Against Tenet HealthCare Alleging False Claims Billing to Medicare."

[4] 48 Fed. Cl. 451 (2001).

[5] *See United States ex rel. Pratt v. Alliant Techsystems, Inc.*, 50 F. Supp. 2d 942 (C.D. Cal. 1998). Interestingly, the district court rejected this and DOJ's other objection (which included the scope of the release) and DOJ appealed. The parties then settled the dispute by agreeing to amend the settlement to include DOJ's then-current version of the cost allowability clause, leaving the scope of the release unchanged.

[6] 372 U.S. 435 (1989).

[7] 509 U.S. 602 (1993).

[8] *See also Eckerd Corp.* (May 2002).

[9] 31 U.S.C. § 3730(c)(2)(B).

[10] *United States ex rel. McCoy v. California Medical Review, Inc.*, 133 F.R.D. 143 (N.D. Cal. 1990).

[11] *See Gravitt v. General Electric Co.*, 680 F. Supp. 1162 (S.D. Ohio 1988).

[12] *United States ex rel. Smith v. Gilbert Realty Co.*, 34 F. Supp. 2d 527 (E.D. Mich. 1998).

[13] 31 U.S.C. § 3730(c)(2)(A); *United States ex rel. Sequoia Orange Co. v. Baird-Neese Packing Corp.*, 151 F.3d 1139 (9th Cir. 1998); *United States ex rel. Ridenour v. Kaiser-Hill Co. LLC*, 174 F. Supp. 2d 1147 (D. Colo. 2001).

[14] 31 U.S.C. § 3730(d)(1)&(2).

[15] *See Shaw v. AAA Engineering & Drafting, Inc.*, 213 F.3d 538, 544-45 (10th Cir. 2000).

[16] *See United States ex rel. Doe v. Pennsylvania Blue Shield*, 54 F. Supp. 2d 410, 414 (M.D. Pa. 1999); *United States v. Stern*, 818 F. Supp. 1521, 1522 (M.D. Fla. 1993).

[17] 992 F. Supp. 137 (N.D.N.Y. 1998).

[18] *See United States ex rel. Averback v. Pastor Medical Assoc. P.C.*, 224 F. Supp. 2d 342, 353-56 (D. Mass. 2002) (requested $325/hr. rate reduced to $175/hr.).

[19] This matrix is named after *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), where the court, based upon an extensive survey, determined the rates prevailing in the District. The U.S. Attorney's office has maintained the matrix by applying cost of living adjustments, and it is available on that office's website www.usdoj.gov/usao/dc/.

[20] *Missouri v. Jenkins*, 491 U.S. 274, 282-84 (1989) ("Clearly compensation received several years after the services were rendered . . . is not the equivalent to the same dollar amount received reasonably promptly as the legal services are performed, as would normally be the case with private billings").

[21] *See, e.g., Knight v. Alabama*, 824 F. Supp. 1022, 1029-30 (N.D. Ala. 1993).

[22] *See, e.g., Keenan v. Philadelphia*, 983 F.2d 459, 476 n.18 (3d Cir. 1992) ("The current rates may not track the time value of money as accurately as the market rate of interest would.

Furthermore, the current rates for any individual attorney may reflect other factors than the passage of time, such as an increase in skill.”).

23 *See Savoie v. Merchants Bank*, 166 F.3d 456, 464 (2d Cir. 1999).

24 *United States ex rel. Taxpayers Against Fraud v. General Electric Co.*, 41 F.3d 1032, 1043-47 (6th Cir. 1994).

25 *See Coughlin, supra,* 992 F. Supp. at 145.

26 *United States ex rel. Wiser v. Geriatric Psychological Services, Inc.*, 2001 WL 286838 (D. Md. Mar. 22, 2001).

27 *United States ex rel. Poulton v. Anesthesia Associates of Burlington, Inc.*, 87 F. Supp. 2d 351, 355 (D. Vt. 2000).

28 *Herbst v. Ryan*, 90 F.3d 1300, 1304 (7th Cir. 1996).

29 *See, e.g., Miller v. Moore*, 169 F.3d 1119, 1126 (8th Cir. 1999); *Koster v. Perales*, 903 F.2d 131, 139 (2d Cir. 1990); *Grendel’s Den, Inc. v. Larkin*, 749 F.2d 945, 959-60 (1st Cir. 1984); *Stavitsky v. Board of Elections*, 198 F. Supp. 2d 271, 274-75 (E.D.N.Y. 2002).

30 *See, e.g., Miller, supra*; *Grendel’s Den, supra*.

31 *See, e.g., Molnar v. Booth*, 229 F.3d 593, 605 (7th Cir. 2000); *Council for Periodical Distribs. Ass’ns v. Evans*, 827 F.2d 1483, 1487 (11th Cir. 1987).

32 *See, Grendel’s Den*, *supra*; *Poulton, supra*.

33 *See, e.g., Koster v. Perales, supra*, 903 F.2d at 138; *Dean v. Gladney*, 621 F.2d 1331, 134 (5th Cir. 1980).

34 *Herbst v. Ryan*, *supra*.

35 31 U.S.C. § 3730(c)(5).

36 258 F.3d 1004 (9th Cir. 2001).

37 31 U.S.C. § 3730(b)(1).

38 *Searcy v. Philips Electronics North American Corp.*, 117 F.3d 154 (5th Cir. 1997); *United States v. Health Possibilities, P.S.C.*, 207 F.3d 335 (6th Cir. 2000).

39 *United States ex rel. Killingsworth v. Northrop Grumman*, 25 F.3d 715 (9th Cir. 1994).

40 40 F. Supp. 2d 772 (E.D. Va. 1999).

41 *Searcy, supra*, 117 F.3d at 155; *but see, Pratt, supra*, 50 F. Supp. 2d at 945 (rejecting government objection to a release of all claims “asserted in paragraphs 8 through 19 of the . . . second amended complaint”).

42 § 1542, Civil Code of California.

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QUI TAM STATISTICS

October 1, 1986 - September 30, 2002

U.S. RECOVERIES IN QUI TAM CASES

FY	QUI TAM CASES FILED	RECOVERIES IN QUI TAM CASES U.S. INTERVENED IN OR OTHERWISE PURSUED	RECOVERIES IN QUI TAM CASES U.S. DECLINED	TOTAL RECOVERIES
1987	32			
1988	60	$355,000	$35,431	$390,431
1989	95	$15,111,719	$0	$15,111,719
1990	82	$40,483,367	$75,000	$40,558,367
1991	90	$69,705,771	$69,500	$69,775,271
1992	119	$134,099,447	$994,456	$135,093,903
1993	132	$171,438,383	$5,978,000	$177,416,383
1994	222	$379,646,074	$1,822,323	$381,468,397
1995	277	$245,463,627	$1,813,200	$247,276,827
1996	363	$124,565,203	$14,033,433	$138,598,636
1997	533	$622,746,381	$7,136,144	$629,882,525
1998	470	$432,748,410	$29,290,385	$462,038,795
1999	482	$454,268,984	$62,509,047	$516,778,031
2000	367	$1,205,714,254	$1,814,847	$1,207,529,101
2001	310	$1,164,484,050	$125,803,963	$1,290,288,013
2002	320	$1,046,037,295	$25,025,582	$1,071,062,877
TOTALS	**3954**	**$6,106,867,965**	**$276,401,311**	**$6,383,269,276**

RELATOR SHARE RECOVERIES

Relator share recoveries in cases U.S. intervened in or otherwise pursued	$917,332,010
Relator share recoveries in cases U.S. declined	$70,203,298
TOTAL	**$987,535,308**

This table reports only those amounts recovered by relators as their share of the Government's recovery in False Claims Act cases. In addition, relators have recovered hundreds of millions of dollars in subsection (h) and other personal claims.

RECOVERIES IN HEALTH AND HUMAN SERVICES AND DEFENSE DEPARTMENT CASES

	CASES FILED	UNITED STATES RECOVERY	RELATOR SHARE RECOVERY
Health and Human Services	1,981	$3,902,704,396	$583,951,705
Defense	1,199	$1,396,326,012	$247,785,712

INTERVENTION DECISIONS AND CASE STATUS

(as of December 16, 2002)

	ACTIVE	SETTLEMENT OR JUDGMENT	DISMISSED; NO RECOVERY	INACTIVE	UNCLEAR	TOTALS
U.S. Intervened or Otherwise Pursued	92	597	26	3	0	718
U.S. Declined	291	139	2,022	10	54	2,516
Under Investigation						801
						4,035

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False Claims Act Settlements

Date	*Settling Defendant*	*Jurisdiction*	*Settlement Amount*	*Special Terms*	*Subject*	*Description*
11/2001	Oneida Research, Inc.	N.D.N.Y.	$375,000.00		Procurement	Procurement (False testing)
11/14/2001	Lifescan, Inc.	N.D. Cal.	$15,000,000.00		Procurement	Procurement (Best price violation - VA)
12/14/2001	LaserGenics Corporation and Richard G. Schlecht	N.D. Cal.	$25,000.00		Grants	Grants (Attempt to receive duplicate grants under Small Business Innovation Research Program)
12/2001	NHC Healthcare Corp.	W.D. Mo.	$250,000.00		Health Care	Health Care (Billing for inadequate services)
12/3/2001	Union Oil Co. of California	E.D. Tex.	$21,500,000.00		Oil Royalties	Oil Royalties (Undervaluation of oil)
12/10/2001	Consolidated Rail Corporation (Conrail)	E.D. Pa.	$3,500,000.00		Railroad Fraud	Railroad (False reporting and underpaying for use of track owned by Amtrak)
12/17/2001	Lincare, Inc.	E.D. Cal.	$3,150,000.00		Health Care	Health Care (Improper billing for home oxygen therapy)
1/2002	Allina Health Systems	D. Minn.	$16,000,000.00		Health Care	Health Care (Upcoding; retention of overpayments; double billing)
1/2002	American Postal Workers Union	D. Md.	$2,200,000.00		Health Care	Health Care (Kickbacks; inflated claims)
1/2002	St. Mary's Hospital and Medical Center	D. Colo.	$1,200,000.00		Health Care	Health Care (Upcoding - pneumonia)

Date	Settling Defendant	Jurisdiction	Settlement Amount	Special Terms	Subject	Description
1/2002	Meyer, Marcus, O.D.	D. Colo.	$162,296.00		Health Care	Health Care (False claims for sensorimeter testing)
1/14/2002	Triad Hospitals, Inc.	N.D. Ala.	$428,343.00	Waiver of Fifth and Eighth Amendments Agreement that settlement is not punitive HHS-OIG will not seek exclusion	Health Care Fraud	Health Care (Claimed costs that were not reimbursable)
1/29/2002	Oglivy & Mather North America	D.D.C.	$1,840,000.00	Waiver of Fifth and Eighth Amendments, but see para. 13 Agrees that settlement is not punitive Agreement cannot be introduced in evidence except by the parties	Mischarging	Mischarging (ONDCP)
2/2002	Brown & Root Services Corporation	E.D. Cal.	$2,000,000.00		Contract Fraud	Contracts (Defective pricing)
2/2002	Poudre Valley Health Care, Inc.	D. Colo.	$952,302.00		Health Care	Health Care (PATH) (Medical service performed by residents and interns)
2/7/2002	Christus Health and Christus Health Gulf Coast	C.D. Cal.	$1,569,000.00	Waiver of Fifth and Eighth Amendments Agrees settlement is not punitive Agrees to cooperate in investigation of individuals	Health Care	Health Care (Failure to disclose overpayment)
2/11/2002	Rotech Medical Corporation	D. Del. (Bankr.)	$17,000,000.00	HHS releases claim for exclusion Waives Fifth and Eighth Amendments Agrees settlement not punitive Only named individuals are released and those are released only if they are not indicted Cooperation agreement	Health Care	Health Care (Overbilling)
2/14/2002	Hoag Memorial Hospital Presbyterian	W.D. Wash.	$305,000.00		Health Care	Health Care (Billing for experimental cardiac devices)
2/27/2002	St. Joseph's Hospital	C.D. Cal.	$1,569,000.00		Health Care	Health Care (Failure to disclose known overpayment of $798,000)

Date	Settling Defendant	Jurisdiction	Settlement Amount	Special Terms	Subject	Description
2/28/2002	Estate of William T. Rogers, et al.	E.D. Tenn.	$15,250,000.00	Waiver of Fifth and Eighth Amendments Agree that settlement is not punitive Agreement may not be avoided if bankruptcy is sought within 91 days		
3/2002	ESICORP Inc.	D.S.C.	$2,200,000.00		Contract Fraud	Contracts (Improper travel and living expense claims)
3/2002	Behavioral Therapy and Psychotherapy Center and James Rosen	D. Vt.	$35,000.00		Health Care	Health Care (Billing for service performed by an intern)
3/2002	The Medical Store Ltd. and Yankee Medical Inc.	D. Vt.	$95,000.00		Health Care	Health Care (Improper billing for durable medical equipment)
3/25/2002	Intertek Testing Services Environmental Laboratories, Inc.	N.D. Tex.	$8,741,000.00	Waiver of Fifth and Eighth Amendments	Improper Testing	Improper testing (Soil, air and liquid)
4/2002	Jackson General Hospital	S.D. W. Va.	$765,000.00		Health Care	Health Care (Stark and kickback)
4/2002	Lockheed Martin Services, Inc.	E.D. Va.	$530,000.00		Procurement	Procurement (Mischarging - employees failed to meet minimum requirements)
4/2002	Alpine Air Express, Inc.	D. Utah	$112,000.00		Subsidy Fraud	Subsidy (Substituted aircraft on service to small cities)
4/12/2002	PacifiCare Health Systems, Inc., et al.	D.D.C.	$87,274,242.00	OPM agrees not to suspend or debar	Health Care	Health Care - OPM (Failure to provide most favorable rates; secondary payor issues)
4/12/2002	Chromalloy Gas Turbine Corporation		$150,000.00		Product Substitution	Product Substitution (Improper certification of aircraft engine balancing tests)
4/18/2002	University Medical Center of Southern Nevada	D. Nev.	$1,163,488.00	OIG-HHS agrees not to exclude Contains integrity provisions	Health Care	Health Care (Upcoding - pneumonia)
4/18/2002	United Technologies Corporation, et al.	D. Conn.	$0.00	Settlement with relator only DOJ consents	Procurement	Procurement (Overhead calculation)

Date	Settling Defendant	Jurisdiction	Settlement Amount	Special Terms	Subject	Description
5/2002	DRS Photronics, Inc.	E.D.N.Y.	$2,500,000.00		Contract Fraud	Contracts (False certification of testing)
5/2002	Red Line HealthCare Corp.	D. Minn.	$6,100,000.00		Health Care	Health Care (Overcharging for durable medical equipment)
5/2002	Marycrest Health System	D. Colo.	$3,750,000.00		Health Care	Health Care (Kickbacks; self referral)
5/2002	National Heritage Insurance Co.		$0.00		Health Care	Health Care (Payments made that other insurance companies should have covered)
5/9/2002	Geriatrics Service Complex Foundation, Inc.	S.D. Fla.	$937,000.00	OIG-HHS agrees not to exclude	Health Care	Health Care (Annual cost reports)
5/10/2002	Fresenius Medical Care of North America	D. Mass.	$1,658,923.00		Health Care	Health Care (Billing for individuals in clinical study)
5/13/2002	Medical Center Emergency Services, P.C.	W.D. Okla.	$1,600,000.00		Health Care	Health Care (Upcoding)
5/22/2002	Scripps Memorial Hospital and Scripps Green Hospital	W.D. Wash.	$3,800,000.00		Health Care	Health Care (Billing for experimental cardiac devices)
5/23/2002	UPMC Presbyterian and UPMC Shadyside	W.D. Wash.	$1,500,000.00		Health Care	Health Care
5/24/2002	Eckerd Corporation	M.D. Fla.	$5,866,751.00		Health Care	Health Care (Submit claim for full value of prescription, but furnish only a portion to the customer)
5/24/2002	Wilcox Memorial Hospital of Kauai	D. Haw.	$1,521,428.82		Health Care	Health Care (Upcoding - pneumonia)
5/28/2002	Northwestern Human Services, Inc.	E.D. Pa.	$7,800,000.00	Payment to be reduced by fine in related criminal case Payment partially contingent on receipt of proceeds from insurance annuity contracts Waiver of Fifth and Eighth Amendments	Health Care	Health Care (Improper billing for mental health care)

Date	Settling Defendant	Jurisdiction	Settlement Amount	Special Terms	Subject	Description
6/2002	Palmetto General Hospital		$29,000,000.00		Health Care	Health Care (Submission of inflated bills for home health care)
6/2002	Saint Anthony's Health Center	S.D. Ill.	$2,000,000.00		Health Care	Health Care (Upcoding - pneumonia)
6/6/2002	American Medical Response, Inc.	D. Mass.	$20,000,000.00		Health Care	Health Care (Unnecessary ambulance service)
6/7/2002	Catholic Health Care West and Mercy Healthcare Sacramento	E.D. Cal.	$8,500,000.00		Health Care	Health Care (Unallowable costs)
6/10/2002	Barrish, Bryan G. and Giannini, Michael R.	E.D. Mo.	$2,053,427.00		Health Care	Health Care (Medically unnecessary incontinence supplies)
6/13/2002	Brotman Partners L.P.	C.D. Cal.	$9,750,000.00	Contains confidentiality provision for relator	Health Care	Health Care (Services performed in beds not licensed for rehabilitation)
6/17/2002	Saint Clare's Health Services	D.N.J.	$1,048,260.00		Health Care	Health Care (Submission of claims for inpatient stays when treatment was outpatient)
6/18/2002	Tenet Healthcare Corporation 139 hospitals		$17,000,000.00	Waiver of Fifth and Eighth Amendment rights	Health Care	Health Care (Unnecessary tests)
6/20/2002	Grossman & Associates and Grossman, Joel	S.D.N.Y.	$150,000.00		Contract Fraud	Contracts (EPA) (Inflated claim for expert)
6/20/2002	State of California and County of Los Angeles	N.D. Cal.	$73,300,000.00		Health Care	Health Care (Payments to minors not qualified for Medicaid)
6/24/2002	PSI Group, Inc.	N.D. Cal.	$962,500.00		Postal Fraud	Postal (False mailing of statements)
6/25/2002	General American Life Insurance Company	E.D. Mo.	$76,000,000.00	Defendant agrees not to seek new business with CMS for 5 years CMS and HHS will not exclude	Health Care	Health Care (Failure to process claims properly; false information re CMS)
6/27/2002	Alabama Quality Assurance Foundation and Florida Medical Quality Assurance, Inc.	M.D. Fla.	$838,832.00		Health Care	Health Care (Improper charging of time spent on peer review)

Date	Settling Defendant	Jurisdiction	Settlement Amount	Special Terms	Subject	Description
7/1/2002	Howard University Hospital and College of Medicine	D.D.C.	$1,805,902.00		Health Care	Health Care (PATH) (Faculty members did not provide services)
7/2002	Suburban Woods, LLC		$75,000.00		Health Care	Health Care (Inadequate services)
7/2002	Good Samaritan Hospital, Inc.	S.D. Fla.	$350,000.00		Health Care	Health Care (Misused pneumonia diagnosis code)
7/2/2002	McMahon Home Title Services and Joseph P. McMahon		$176,000.00		Housing Fraud	Housing (Property flipping)
7/17/2002	Tenet Healthcare Corporation	S.D. Fla.	$29,000,000.00		Health Care	Health Care (False claims for home health services; improper cost reports)
7/18/2002	Hackensack University Medical Center	D.N.J.	$4,228,731.00		Health Care	Health Care (Overbilling on inpatient pneumonia cases)
7/29/2002	Blue Cross of California and WellPoint Health Networks	C.D. Cal.	$9,250,000.00		Health Care	Health Care (Falsification of its performance of cost report audits for Medicare)
7/29/2002	IBC Advanced Technologies		$1,200,000.00	Final amount of settlement between $700,000 and $1.2 million will be determined by the level of IBC's gross income over the next five years	Mischarging	Mischarging (Under NISY research awards)
7/30/2002	Hewlett	D. Mass.	$7,000,000.00		Procurement	Procurement (Defective patient monitors, anesthesia gas modules and oxygen monitors; failure to investigate product failures)
8/2002	St. Francis Health Services of Morris, Inc. and Luverne Hoffman	D. Minn.	$1,680,000.00		Health Care	Health Care
8/1/2002	Lockheed Martin Corporation		$2,122,603.00		Mischarging	Mischarging (B&P costs)
8/15/2002	Hill, Richard and Lillie	N.D. Ill.	$33,770.00		Educational Aid Fraud	Educational Aid (False statements re household income)
8/20/2002	Naomi Heller & Associates, Inc.	C.D. Cal.	$440,000.00		Health Care	Health Care (Billing by uncertified units)

Date	Settling Defendant	Jurisdiction	Settlement Amount	Special Terms	Subject	Description
8/22/2002	Southcoast Hospital Group, Inc.	D. Mass.	$3,034,993.00		Health Care	Health Care (Upcoding - pneumonia)
8/22/2002	Sperbeck, William	D. Mass.	$135,000.00		Procurement	Procurement - DOT (Billing for employees who did not have specified education/experience)
9/3/2002	Galioto, Salvatore "Sam"	E.D. Mo.	$175,000.00		Health Care	Health Care (Supplying nursing home residents with unnecessary incontinence supplies)
9/6/2002	CHRISTUS Health Gulf Coast	S.D. Tex.	$220,000.00		Health Care	Health Care (Claims for non-recoverable costs)
9/12/2002	Boeing Company, The	S.D. Ohio	$19,000,000.00		Procurement	Procurement - DOD (Product substitution)
9/18/2002	Moysey, Douglas M.	E.D. Va.	$20,000.00			Employment (False information re residential status)
9/18/2002	Lockheed Martin Corporation and BAE Systems Controls	S.D. Ohio	$6,200,000.00		Product Substitution	Product Substitution (Did not meet contractual requirements)
9/19/2002	California Department of Education	N.D. Cal.	$3,300,000.00		Grants	Grants - ED (Payments to non-qualified recipients)
10/2002	Lafayette General Medical Center, Inc.		$365,000.00		Health Care	Health Care (Prospective payment system)
10/1/2002	Gentiva Health Services Inc.	E.D.N.Y.	$3,150,000.00		Health Care	Health Care (Cost reports)
10/4/2002	Electrolux Home Products, Inc.	W.D. Ark.	$687,781.77	Offset for amount tendered ($301,647.09)	Customs Fraud	Customs (Failure to declare value on items provided to overseas manufacturers - "assists")
10/4/2002	Pi Construction Corp.	S.D. Tex.	$1,690,000.00		Procurement	Procurement - SBA (False 8(a) certificate)
10/17/2002	General Hospital Center at Passiac and Hackensack University Medical Center	D.N.J.	$1,714,000.00		Health Care	Health Care (Experimental medical devices)

Date	Settling Defendant	Jurisdiction	Settlement Amount	Special Terms	Subject	Description
10/17/2002	Roger Williams Medical Center		$400,000.00		Health Care	Health Care (Upcoding - pneumonia)
10/17/2002	Beth Israel Deaconess Medical Center, et al.		$5,454,000.00		Health Care	Health Care (Experimental cardiac devices)
10/23/2002	Al-Shalchi, Dr. Najah	W.D. Tex.	$563,000.00		Health Care	Health Care (Services not provided)
10/28/2002	Pfizer Inc.	E.D. Tex.	$49,000,000.00		Health Care	Health Care (Medicaid rebate program; best prices for drugs - Lipitor; improper inducements)
10/31/2002	Venezia, David	D. Mass.	$55,000.00		Grants	Grants - ED (Dual claims for scholarship)
10/31/2002	Quality Care Centers of Massachusetts, Inc.	D. Mass.	$89,994.00		Health Care	Health Care (Submission of non-covered claims)
10/31/2002	Sandler, Scott H.	D. Mass.	$58,325.00		Health Care	Health Care (Unnecessary incontinence supplies)
11/1/2002	McLeod Regional Medical Center of the Pee Dee, Inc.	D.S.C.	$15,909,470.00		Health Care	Health Care (Kickbacks; Stark II)
11/18/2002	Dialysis Holdings, Inc.	D. Mass.	$4,102,098.00		Health Care	Health Care (Unnecessary lab tests)
11/18/2002	Rancocas Valley Anesthesia Associates, et al.	E.D. Pa.	$470,000.00		Health Care	Health Care (Overbilling for anesthesia time)
11/23/2002	K-3 Systems, Inc.	D. Conn.	$150,000.00		Grants	Grants (Performance reports)
12/2/2002	Outreach Programs, Inc.	S.D. Fla.	$600,000.00			Health Care (Unnecessary therapy services)
12/9/2002	Lovelace Health Systems		$24,500,000.00			Health Care (Cost reports-unallowable costs)
12/12/2002	Dianon Systems Inc.	D. Conn.	$4,800,000.00		Health Care	Improper charging for tests
12/18/2002	HCA Inc.	D.D.C.	$631,000,000.00		Health Care	
12/20/2002	Rapid City Regional Hospital	D.S.D.	$6,525,000.00		Health Care	Health Care (Stark)

Date	Settling Defendant	Jurisdiction	Settlement Amount	Special Terms	Subject	Description
12/20/2002	Columbia University	S.D.N.Y.	$5,100,000.00		Health Care	Health Care (Claims for services by doctors that were delivered by midwives, etc.)
12/30/2002	Woodbine Healthcare and Rehabilitation Centre	D. Mo.	$25,000.00		Health Care	Health Care (Service not provided)
12/31/2002	Raytheon Aircraft Company	D. Kan.	$3,990,000.00		Procurement	Procurement (Allocation of product liability insurance costs)
1/3/2003	ARV Assisted Living, Inc.	C.D. Cal.	$1,600,000.00		Health Care	Health Care (Cost reports)
1/7/2003	North American Construction Corporation	S.D. Tex.	$765,000.00		Procurement	Procurement (False claim for increased costs to perform contract)
1/15/03	Maury Regional Hospital	M.D. Tenn.	$2,000,000.00		Health Care	Health Care (Upcoding)