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American Health Lawyers Association
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June 14, 2011

Summary of *United States ex rel Williams v. Renal Care Group*

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In a ruling on May 26, 2011, the U.S. District Court for the Middle District of Tennessee held Fresenius Medical Care Holdings Inc., the successor-in-interest to Renal Care Group (RCG) and RCG Supply Company (RCGSC) (collectively, the Defendants) liable for $82,642,592 for False Claims Act (FCA) violations, payment under mistake of fact, and unjust enrichment. The court's opinion is significant in part because it rejected without much discussion Defendants' arguments based on "industry practice," Medicare knowledge of their corporate structure, Medicare reimbursement of their claims for more than six years, and their reliance upon Medicare's communication to their counsel that their corporate relationship was not unlawful.

RCG was the former parent corporation of RCGSC. RCG provided dialysis supplies to patients being treated in its facilities; RCGSC furnished such supplies to patients being cared for at home. The government charged that because RCG controlled RCGSC, the latter company was not eligible for higher Medicare reimbursement for the dialysis equipment it supplied to home-treated patients under the so-called Method II payment scheme. In a procedurally complicated ruling, the court agreed and granted summary judgment to the government.

A section of the Medicare law provided for payment of up to a 30% higher premium for dialysis equipment supplied to patients suffering from end-stage renal disease (ESRD) who received treatment at home. However, the statute made ineligible for this higher reimbursement "a supplier of home dialysis supplies that is not a provider of services, [or] a renal dialysis facility." In this case, the United States alleged that RCGSC's claims were ineligible for higher payments because RCG, a dialysis facility, actually controlled RCGSC and, as a dialysis facility, was statutorily prohibited from receiving the higher payment. The court found that RCG's president managed RCGSC; that it provided RCGSC's payroll, insurance, and email services; that the two companies shared office space without a lease between them; that RCGSC's funds were deposited daily in RCG's account, that RCG paid RCGSC's supply vendors; and that RCGSC supplied only RCG patients. On these facts, the court concluded that RCG controlled RCGSC.

In earlier proceedings on cross-motions for summary judgment, the United States sought judgment on part of its FCA claims and its unjust enrichment claim, while the Defendants requested judgment in their favor on all claims because, they argued, Medicare officials were aware of and approved their corporate structure and paid their claims for more than six years. Defendants also argued that their billings to Medicare were supported by "widespread industry practice" and specific advice of counsel. Moreover, the Defendants asserted that they lacked fraudulent intent and made no false material representation in their Medicare submissions. In granting summary judgment to the United States on its unjust enrichment claim, the court found that the Defendants acted in reckless disregard of the Medicare laws and regulations and, significantly, "failed to heed the advice of their counsel to maintain RCGSC as a separate office." In its earlier ruling, the court awarded the government the net reimbursement between the higher Method II payment amount and the lower Method I payment amount to which the Defendants were entitled during the period 1999-2005.

After this initial ruling, the Defendants filed an appeal, but the United States moved for clarification of the district court's order, which the lower court granted. The court explained that in its initial ruling, it had granted a partial ruling in favor of the government on the mistaken understanding that the United States. had abandoned its other claims in seeking summary judgment only on the unjust enrichment claim. On the facts found, the court explained that it would have granted the government summary judgment on all of its claims. The Sixth Circuit then dismissed Defendants' appeal for lack of jurisdiction and remanded the case to the district court.

The court's May 26, 2011, decision summarized in this alert concerned the United States' second motion for summary judgment and the Defendants' motion for reconsideration of the initial decision granting summary judgment on the unjust enrichment claim to the government. In its second summary judgment motion, the United States sought judgment on all of its claims, and an award of damages and penalties only on its FCA claims. The court granted the government's request. But the court granted the defendants' motion to reconsider only to the extent of reducing "the prior actual and untrebled damages award."

In its ruling, the court addressed three main points from the Defendants' motion to reconsider: (1) whether the Defendants knew that intent or recklessness were at issue in the initial motion decided by the court; (2) the appropriateness of summary judgment on FCA claims; and (3) whether material factual disputes existed with respect to damages such that a jury trial was necessary.

Defendants' Notice of Ruling on Intent or Recklessness

The Defendants claimed that issues of intent and/or recklessness were not at issue in the parties' first motions and, as such, the court could not render a decision on those issues. The court rejected that contention for essentially two reasons. First, in its initial motion, the government put the Defendants on notice that "issues of materiality and falsity" can be resolved on summary judgment. Second, the Defendants argued in response to that motion that they lacked the required intent and that based on the undisputed evidence, they were entitled to summary judgment on the issue of intent under FCA.

Appropriateness of Summary Judgment on FCA Claims

Despite their previous request for summary judgment against the government on the FCA claims, after remand from the Court of Appeals, the Defendants argued that summary judgment was not appropriate when deciding FCA claims. The court had no difficulty in rejecting this argument based on previous grants of summary judgment in FCA cases and Sixth Circuit affirmation of such rulings. Moreover, the court ruled that where, as here, the parties filed cross-motions for summary judgment, that "may be probative of the absence of any factual dispute."

The Defendants' main defense to the FCA allegations centered on their claim that government officials knew about the Defendants' business structure.

However, the court held that such facts do not automatically exonerate a party from FCA liability. In this case, a statute specifically stated that inpatient dialysis providers were not eligible for the higher reimbursement in connection with the sale of home dialysis equipment.

Existence of Material Factual Disputes and the Necessity for a Jury Trial on Damages

The Defendants' alleged that a factual dispute existed as to the measure of damages and the number of claims subject to recovery under FCA. The Defendants denied the figures submitted by the United States and asserted that the court erroneously adopted those figures. However, the Defendants admitted to the damage figures in response to a request for admission served by the United States. The court held that summary judgment may be based upon such an admission, and FCA damages are usually based upon the difference between what the government paid out as a result of a false claim and what the government should have paid out if it had known the true facts.

The Defendants also submitted new affidavits in an attempt to create a factual issue concerning the amount of damages. However, the court stated that evidence that should and could have been presented in the original summary judgment motion cannot be considered on a motion to reconsider, nor can a party submit evidence on a motion to reconsider that contradicts earlier submissions by that party. Because the Defendants did just that, the court did not consider their new submissions.

The last issue considered by the court concerned the appropriate means of calculating the penalties to be assessed against the Defendants. The court concluded that FCA penalties are to be assessed for each request for payment, as opposed to each false statement within a request. In the court's view, the relevant criterion to be used in determining penalties should be considered in the context of the goods or services being provided and billed. Here, the court found that each patient for which the Defendants demanded one or more payment represented a separate act for a demand or request for FCA liability, as opposed to the act of submission of claims for billing (which submissions were compilations of multiple claims) or the number of claims submitted per patient. On that basis, the court awarded $11,000 in penalty for each patient to whom Defendants made an equipment sale and requested Medicare reimbursement, for a total of $43,769,000.

Final Award

Based on its analysis, the court imposed $43,769,000 in FCA penalties plus $12,957,864 in damages, which was trebled to $38,873,592, for a total award to the government of $82,642,592.

*We would like to thank Matthew Fisher, Esquire (Mirick O'Connell DeMallie & Lougee LLP, Worcester, MA), and Hervé Gouraige, Esquire (Sills Cummis & Gross PC, Newark, NJ) for authoring this email alert.