

## Appendix 1 - Documented Partial History of DOJ FCA Misconduct

It is not reasonable for any court or for anyone to trust any actions, documents, or sworn or informal statements, documents or reports created by, generated by or presented by the U.S. Department of Justice's Civil Division's Civil Litigation Group's (DOJ) clerical staff, attorneys or management. The DOJ attorneys and management have a legally conclusive history of misconduct and blatantly violating the False Claims Act (FCA) statute<sup>1</sup> and other regulations, statutes and laws<sup>2</sup>.

It must be noted that a 11th Circuit Court of Appeals Judge, in a specific lawsuit's appeal, confirmed and quoted the District Judge when he stated clearly that the DOJ attorneys not only had (1) blatantly violated the statute by lying to the court but had also (2) attempted to use their lies to take advantage of their blatant violations of the statute and had (3) taken action specifically prohibited by regulations and the FCA statute without the prior written approval of the District Court.<sup>3</sup>

Federal District and Appellant Courts have formally documented the DOJ's history of affirmatively:

1. breaking the FCA statutes,
2. lying to the Courts about breaking the FCA statutes,
3. taking actions specifically prohibited by the FCA law,
4. presenting documents to the courts containing forged evidence<sup>4</sup>,
5. inducing "unacceptable waiver agreements" from filing FCA Plaintiffs and
6. engaging, with intent, in attempts and conspiracies necessary to accomplish (1) through (5).

The following findings of fact or conclusions of law have been made in other District Court or Appellant Court proceeding that have become final and shall be conclusive on the DOJ concerning their misconduct and illegal actions under the FCA.<sup>5,6</sup>

1. The DOJ cannot, but has attempted to<sup>7</sup>:
  - eliminate the restoration of identified proceeds, of the FCA action or settlement of the FCA claim, to the U.S. Treasury ( $\pm 85\%$  of the recovered proceeds) by falsely characterizing the nature of defendant's conduct.<sup>8</sup>
  - eliminate recovery of identified proceeds, of the FCA action or settlement of the FCA claim, to the qui tam filing Plaintiffs or relators ( $\pm 15\%$  of the recovered proceeds<sup>9</sup>) by falsely characterizing the nature of defendant's conduct.<sup>10</sup>
2. The DOJ cannot, but has attempted to foreclose the U.S. Treasury ( $\pm 85\%$ ) and the qui tam filing Plaintiffs or relators ( $\pm 15\%$ ) from receiving:
  - a share of any and all cash paid by defendants.<sup>11</sup>
  - a share of any claims abandoned by defendants.<sup>12</sup>
  - a share from a payment received from the defendant because the government classified the payment as "restitution" as opposed to "damages".<sup>13</sup>
3. The DOJ has knowingly taken actions and attempted to take actions specifically prohibited by the FCA statute.<sup>14,15</sup>
4. The DOJ has knowingly and intentionally demonstrated intent and taken actions and attempted to take actions of fraudulent misrepresentation<sup>16,17</sup>, fraudulent concealment<sup>18,19</sup> and fraudulent conversion<sup>20,21</sup> of proceeds of the FCA actions and settlements of the claims deliverable to the U.S. Treasury, including delivery of less than was owed to the U.S. Treasury ( $\pm 85\%$ ) and the filing Plaintiff (Relator) ( $\pm 15\%$ ) by statute and law<sup>22</sup>. These are documented, reverse false claims against the U.S. Treasury by the DOJ.

**SUMMARY:** It is not reasonable for any court or for anyone to trust any actions, documents, or sworn or informal statements, documents or reports created by, generated by or presented to the Courts, media or the public, by the DOJ.

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### ENDNOTES:

<sup>1</sup> 31 U.S.C §§ 3729 - 3733.

<sup>2</sup> Anticipatory Offense: A crime which has as its object a further crime, such as an attempt, a conspiracy, a solicitation, all of which are crimes in themselves.

<sup>3</sup> The 11th Circuit characterized the Government's arguments as "specious" (plausible but false) and as **an attempt "to take advantage of its blatant violations of the statute."** ...In a strongly worded opinion, **critical of the Government's handling of the case**, the appellate court concluded that the government's settlement with the defendant constituted an election to intervene in the lawsuit and that the estate of the deceased relator was entitled to 15 percent of the settlement. ...The court held that the Government's settlement with NEC constituted an election to intervene in the lawsuit and proceed with the action within the meaning of the False Claims Act. **...the settlement effectively terminated the lawsuit**, except for the determination of William's statutory share under 3730(d)(1) of between 15 and 25 percent (as well as attorneys' fees and expenses.) U.S. ex rel Neher, as Personal Representative of the Estate of Arthur P. Williams v. NEC Corp., No. 92-2854 (11th Cir. Apr. 28, 1995)

<sup>4</sup> Forged evidence is the fabrication or counterfeiting of evidence. The artful and fraudulent manipulation of physical objects, or **the deceitful arrangement of genuine facts** or things, in such a manner as **to create an erroneous impression or a false inference** in the minds of those who may observe them. Blacks Law Dictionary.

<sup>5</sup> Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. 31 U.S.C. § 3730(c) (5). Other

<sup>6</sup> A pleading which sets forth a claim for relief,...shall contain...(3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded. 28 USC Appendix 8.(A)(3) - Rules of Civil Procedure, Judiciary and Judicial Procedure, Section III, Pleadings and Motions, : General Rules of Pleading - (a) Claims for Relief.

<sup>7</sup> Anticipatory Offense: A crime which has as its object a further crime, such as an attempt, a conspiracy, a solicitation, all of which are crimes in themselves.

<sup>8</sup> The appellate court succinctly rejected the Government's argument, pointing out that such a rule would allow the Government to eliminate recovery for qui tam relators by simply characterizing the nature of the defendant's conduct. ...The Government attempted to foreclose qui tam relators from receiving a share from a payment received from the defendant because the government classified the payment as "restitution" as opposed to "damages". USA ex rel Covington, Sidicane v. Sisters of the Third Order of Saint Dominic of Hanford, California, d.b.a. - Sacred Heart Hospital, et. al., 61 F.3d 909, Unpublished Disposition, 1995 WL418311 (9th Cir. July 13, 1995)

<sup>9</sup> A qui tam plaintiff should receive between 15% and 20% of the proceeds... See 31 U.S.C. 3730(d)(1).

<sup>10</sup> Supra at Footnote 8. (The appellate court succinctly...)

<sup>11</sup> Based on (1) the plain meaning of the word "proceeds," (2) the terms of the settlement agreement, and (3) the representations of the parties, the Court concludes that the claims released (or abandoned) by Defendants are included in the proceeds of the settlement. ...In sum, the Court concludes that the \$... cash and the claims abandoned by Defendants should be included as the proceeds of the settlement. U.S.A. ex rel. Peter Jensen Thornton v. Science Applications International Corporation, et al., Order Awarding Statutory Share of Settlement And Denying Request For Attorney Fees, filed September 17, 1998, Civil Action No. 3:94-CV-0749-T (USDC-NDT Dallas)

<sup>12</sup> Ibid at Footnote 11. (Based on (1)...)

<sup>13</sup> Ibid at Footnote 11. (Based on (1)...)

<sup>14</sup> Supra a Footnote 3. (The 11th Circuit characterized...)

<sup>15</sup> The Government did not elect to intervene until after it had agreed with (defendant) on specific settlement terms to resolve all of the claims in the (plaintiffs') cases and long after the (date) agreement in principle had been negotiated. U.S.A. ex. rel. Robert J. Merena v. SmithKline Beecham Corp., SmithKline Beecham Clinical Laboratories, Inc., Judgment, dated April 8, 1998, Civil Action No. 93-5974, originally filed on July 23, 1997, In The U.S. District Court for the Eastern District of Pennsylvania. Footnote # 10.

<sup>16</sup> There is absolutely no evidence on the record before me, **beyond the unacceptable waiver argument**, to establish any allocation among various claims. The Relators repeatedly sought explanation from the Government, both informally and in discovery, as to the Government's allocation calculations. The Government's only response is, and always has been, that the calculations were based on rational estimates of losses and complex negotiations among various governmental agencies and that the parties and the court are bound to accept the Government's calculations. It seems to me to be almost a "trust us, we are not wrong, we are correct" attitude. **The Government tries, at a minimum, to require Relators to prove the allocations are in error without providing Relators with any discovery on the issue, although such discovery was requested. This I cannot accept.** I conclude on this issue, that the Relators are not bound by the allocations assigned by the Government as to the... and the... qui tam allegations. **It is the Government that attempts to reduce the individual and total qui tam award shares** by assigning particular values to various claims. Page 41. U.S.A. ex. rel. Robert J. Merena v. SmithKline Beecham Corp., SmithKline Beecham Clinical Laboratories, Inc., Judgement, dated April 8, 1998, Civil Action No. 93-5974, originally filed on July 23, 1997, In The U.S. District Court for the Eastern District of Pennsylvania.

<sup>17</sup> Fraudulent Misrepresentations - False and Fraudulent Representations: To amount to actionable "false and fraudulent representation", **they must have been as to existing fact or known by one making them from his superior knowledge, to have been untrue when made.** Burlison vs. Weis, Mo.App., 152 S.W.2d 201, 203. False and Fraudulent Statements: Crimes and Criminal Procedure, Fraud & False Statements - "Statements or entries generally - Whoever, in any matter within the jurisdiction of **any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry**, shall be fined not more than \$10,000 or imprisoned not more than five years, or both." 18 USC 47 § 1001.

<sup>18</sup> Supra at Endnote 16.

<sup>19</sup> Fraudulent Concealment - **The hiding or suppression of a material fact or circumstance which the party is legally or morally bound to disclose.** Acts relied on must be of an affirmative character and fraudulent. Fundunburks vs. Michigan Mutual Liability Co., 63 Mich. App. 405, 234 N.W.2d544, 547. The test of whether failure to disclose material facts constitutes fraud is the existence of **a duty, legal or equitable, arising from the relation of the parties; failure to disclose a material fact with intent to mislead or defraud under such circumstances being equivalent to an actual "fraudulent concealment"**. Fraudulent concealment justifying a rescission of a contract is the intentional concealment of some fact known to the party charged, which is material for the party injured to know to prevent being defrauded; **the concealment of a fact which one is bound to disclose being the equivalent of an indirect representation that such fact does not exist.**

<sup>20</sup> Supra at Endnote 16.

<sup>21</sup> Fraudulent Conversion - An unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner's rights. **Any unauthorized act which deprives an owner of his property** permanently or for an indefinite time. Unauthorized and wrongful exercise of dominion and control over another's personal property, to exclusion of or inconsistent with rights of owner. Catania v. Garage De Le Paix, Inc., Tex.Civ.App., 542 S.W.2d 239, 241.

<sup>22</sup> **It is the Government that attempts to reduce the individual and total qui tam award shares by assigning particular values to various claims.** Page 41. U.S.A. ex. rel. Robert J. Merena v. SmithKline Beecham Corp., SmithKline Beecham Clinical Laboratories, Inc., Judgement, dated April 8, 1998, Civil Action No. 93-5974, originally filed on July 23, 1997, In The U.S. District Court for the Eastern District of Pennsylvania.