

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF SOUTH CAROLINA

CA NO. 3:05-CV-02858 (MBS)

UNITED STATES OF AMERICA, ex rel.)	
MICHAEL K. DRAKEFORD, M.D.,)	
)	MEMORANDUM IN SUPPORT
Plaintiffs,)	OF UNITED STATES' MOTION
)	FOR ENTRY OF JUDGMENT
v.)	UNDER THE FALSE CLAIMS ACT
)	
TUOMEY d/b/a TUOMEY HEALTHCARE)	
SYSTEM, INC.)	
)	
Defendant.)	

On May 8, 2013, the jury returned a verdict finding that defendant Tuomey Healthcare System, Inc. ("Tuomey") violated the Stark Law, 42 U.S.C. § 1395nn, and the False Claims Act, 31 U.S.C. §§ 3729-33. The jury determined that Tuomey had submitted 21,730 false claims to the Medicare program, for which Medicare had paid \$39,313,065. Pursuant to section 3729(a) of the False Claims Act, the United States is entitled to entry of judgment in its favor upon Count I of the Second Amended Complaint (D.E. 151) in the total amount of \$237,454,195.¹

The False Claims Act provides that "[a]ny person who . . . knowingly presents, or causes to be presented, to an officer or employee of the United States Government . . . a false or fraudulent claim for payment or approval . . . is liable to the United States Government for a civil penalty of not less than [\$5,500] and not more than [\$11,000], plus 3 times the amount of damages which the Government sustains because of the act of that person" 31 U.S.C.

¹ As noted below, the judgment requested here is the minimum recovery authorized by law for Tuomey's violation of the False Claims Act. We recognize that the defendant's resources may be inadequate to fully satisfy this judgment and, accordingly, the government remains open to discussing a settlement, on appropriate terms, at a level below the amount of the judgment.

§ 3729(a); 28 C.F.R. § 85.3(a)(9) (raising penalty range pursuant to Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 104-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321). Once liability has been established, as here, the district court assesses the penalties and applies the treble damages multiplier. Cook County, Ill. v. U.S. ex rel. Chandler, 538 U.S. 119, 132 (2003).

In this case, the jury has determined that the Government incurred \$39,313,065 in damages as a result of Tuomey's knowing submission of claims to the Medicare program that violated the Stark Law. Accordingly, the United States is entitled by law to three times the amount of damages indicated by the jury, or \$117,939,195.

In addition, the United States is entitled by law to a civil penalty for each of the 21,730 false claims identified by the jury. See United States v. Bornstein, 423 U.S. 303, 313 (1976); United States v. Killough, 848 F.2d 1523, 1533 (11th Cir. 1988). Once the government has proven that one or more claims are false, the statute requires the Court to assess a penalty for each false claim for which the government seeks relief. See United States v. Hughes, 585 F.2d 284, 286 (7th Cir. 1978); Killough, 848 F.2d at 1533-34; see also United States ex rel. DRC v. Custer Battles, LLC, 2009 WL 3756343 (E.D. Va. Oct. 14, 2009) (citing United States v. Brown, 274 F.2d 107, 110 (4th Cir. 1960)), aff'd, 2011 U.S. App. LEXIS 19103 (4th Cir. Sept. 15, 2011) (per curiam) (unreported district and appellate court opinions attached as Exhibit 1 hereto). As the legislative history to the 1986 Amendments to the False Claims Act explains:

The imposition of this forfeiture is automatic and mandatory for each claim which is found to be false. The United States is entitled to recover such forfeiture solely upon proof that false claims were made, without proof of any damages. . . . A forfeiture may be recovered from one who submits a false claim even though no payments were made on the claim.

S. Rep. No. 345, 99th Cong., 2d Sess. at 8 (July 28, 1986), reprinted in 1986 U.S.C.C.A.N. 5266, 5273 (internal citation omitted). In this instance, in view of the number of claims at issue and the

defendant's status as a community hospital, the United States submits that the Court should assess a penalty of \$5,500 per false claim – the minimum amount set by law – for a total of \$119,515,000 in penalties.

Accordingly, the United States moves the Court to enter judgment in its favor on Count I of the Second Amended Complaint in the total amount of \$237,454,195 for treble damages plus statutory penalties at the minimum amount authorized by law.²

Respectfully submitted,

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² This paper addresses only the damages and penalties to which the United States is entitled under Count I of the Second Amended Complaint. We will file a separate paper addressing the United States' entitlement to judgment on the remaining causes of action under Count IV (payment by mistake) and Count V (unjust enrichment).