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DOJ Moves to Dismiss 11 FCA Suits With Same Relators Alleging Nurse Educators Are Kickbacks

By Nina Youngstrom

Instead of just bowing out, the Department of Justice (DOJ) on Dec. 17 asked federal courts around the country to dismiss 11 whistleblower lawsuits filed against pharmaceutical manufacturers that were “spearheaded by a professional relator” and funded by venture capital. DOJ doesn’t buy into the False Claims Act (FCA) allegations against the pharmaceutical manufacturers—that they used free nurse educators to induce physicians to prescribe their drugs in violation of the Anti-Kickback Act—and contends the whistleblowers got information for the lawsuits “under false pretenses,” according to motions to dismiss the complaints, which are largely driven by data gathering rather than information from insiders, such as executives and physicians, lawyers say.

“It’s a thunderbolt coming from the Department of Justice,” says former federal prosecutor David Schumacher, with Hooper, Lundy & Bookman in Boston. “It deals these cases a substantial blow. This is not an attractive fact pattern to DOJ, which traditionally wants to see true insiders” rather than “research firms,” he says. “The company was created for the purpose of being a relator, and they want human beings.”

But whistleblower attorney Peter Chatfield says FCA lawsuits shouldn’t necessarily be dismissed based on how information was obtained and by whom. “The one thing the False Claims Act recognizes is sometimes you need the help of rogues to catch rogues,” says Chatfield, although he isn’t saying that’s the case here. “Whistleblowers need not always be insiders or transparent about their motives. Context matters.”

The 11 complaints were filed against 38 defendants, including AstraZeneca Inc., Amgen LLC and Biogen, in seven judicial districts, “each raising substantially the same allegations under the FCA,” DOJ said in a memorandum of support to dismiss the complaint against Amgen. DOJ earlier this year declined to intervene in the lawsuits.

The case against AstraZeneca, for example, was filed on Sept. 1, 2017, by SCEF LLC and Lynne Levin-Guzman and Stanley Jean. DOJ said SCEF was created solely to serve as a relator in the case by Venari Partners LLC, which does business as National Healthcare Analysis Group (NHCA Group). NHCA Group is made up of limited liability companies that were formed by investors and former Wall Street investment bankers, according to the motion to dismiss the complaint against AstraZeneca.

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