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Hunting and Dining: Kickbacks to Physicians Led to \$43M Verdict in FCA Trial

By Nina Youngstrom

At the heart of the False Claims Act (FCA) trial of Cameron-Ehlen Group Inc., doing business as Precision Lens (PL), and its owner Paul Ehlen were tales of the pheasant hunting trips, swanky dinners and other goodies they bestowed on ophthalmologic surgeons. After six weeks, the government persuaded the jury that the treats were kickbacks to induce the ophthalmologic surgeons to order intraocular lenses (IOLs) distributed by the defendants, the U.S. Attorney's Office for the District of Minnesota said Feb. 28.^[1]

The jury concluded PL and Ehlen submitted \$43 million in false claims to Medicare because the IOLs, which are used in cataract surgery, were tainted by the kickbacks. The gut punch doesn't stop there: PL and Ehlen are facing penalties of \$400 million to \$800 million, highlighting the reason why many health care defendants settle cases, said attorney Allison DeLaurentis, with Goodwin in Philadelphia.

"The fact that it went to trial is one of the most interesting things about this case," she noted. "When parties settle False Claims Act cases, they negotiate the single damages and a multiplier. Because they went to trial, the government will pursue treble damages and statutory penalties."

The jury determined the kickbacks to physicians caused the submission of 64,575 false claims to Medicare from 2006 to 2015. When all is said and done, that amount will jump to more than \$120 million because of treble damages and per-claim penalties ranging from \$5,500 to \$11,000, depending on the year the conduct occurred and the claims were submitted, DeLaurentis said.

The case was set in motion in 2015 by a whistleblower, Kipp Fesenmaier, who worked for Sightpath Medical Inc., PL's corporate partner, according to the complaint in intervention filed by the Department of Justice (DOJ).^[2] The complaint alleged a scheme to pay kickbacks, primarily to ophthalmologists, to induce them to use products supplied by PL and Sightpath Medical. To hide their behavior, PL and Ehlen used a "slush fund" in part to pay for "lavish hunting and fishing trips with physicians."

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