

## NEIL THOMPSON AND DANIEL BIEURANCE, AS RELATORS FOR THE UNITED STATES V. WALGREEN CO.

### WALGREEN CO. PAYS \$9.9 MILLION TO SETTLE A MEDICAID FRAUD LAWSUIT

Walgreen Co., the giant retail pharmacy chain, has agreed to pay \$9.9 Million to settle a whistleblower lawsuit accusing it of Medicaid fraud. This is the third time that Walgreens is paying a multi-million dollar settlement on Medicaid fraud allegations.

#### THE FRAUD

According to their False Claims Act lawsuits, Walgreen pharmacists Neil Thompson and Dan Bieurance in Minnesota brought evidence to the government that in 1999, Walgreen's started a billing system for its pharmacies that was designed to cheat Medicaid on prescription charges.

It was done in relation to dual-eligible customers -- those legitimately on Medicaid who also maintained their private health insurance coverage. The insurance coverages required Walgreen to charge the insurance company a smaller amount for prescriptions, and a limited co-pay from the customer. When a person is allowed Medicaid coverage, the government always obtains an assignment of the person's rights under their private health insurance coverage. The government essentially takes over the citizen's rights under the coverage. This includes the common right to pay a smaller amount for co-pay on prescriptions.

Pharmacists Thompson and Bieurance claimed in their federal and state lawsuits that Walgreen should only have billed the Medicaid program the same limited co-pay on prescriptions that it would have normally billed the customer under the insurance plan. They alleged that Walgreen designed a software program and tutorial for its pharmacists that consistently overcharged Medicaid on these co-pays. They claimed that these overcharges occurred on hundreds of thousands of prescription sales for well over five years.

The \$9.9 Million settlement reached covers over-billings by Walgreen in the states of Minnesota, Massachusetts, Michigan and Florida.

When Neil Thompson and Dan Bieurance began with Walgreen, older, experienced pharmacy supervisors and managers instructed them on how to circumvent the Walgreen's dual-eligible software to make sure Medicaid was not being over-billed on the co-pays. However, both pharmacists claimed that by 2004, they were noticing that other pharmacists and technicians of Walgreen were using the program as directed by the company, resulting in the wrongful over-billing of Medicaid. They complained internally but were commanded to do the billing according to the software anyway. They then retained counsel experienced in the federal and state government False Claims Acts, and brought their whistleblower lawsuit in early 2005. The lawsuit stayed under seal (non-public), according to the False Claims Acts, and court orders, until the announcement of this settlement.

Whistleblowers Thompson and Bieurance and their attorneys will receive \$1,446,658. as their reward under the federal and state False Claims Acts. They are also entitled to receive attorney fees from Walgreen Co.

## STATE MEDICAID AGENCIES

Only Walgreen had the information necessary to reveal the correct, legal price established by the contracts of Walgreen with the insurance companies or related Pharmacy Benefit Manager Companies (PBMs). The states' Medicaid agencies likely did not have this information. The Medicaid program is jointly financed by the Federal and State governments, on approximately a 50-50 basis. It is administered by an agency in each state. Some state Medicaid agencies were aware of this wrongful billing potential, and directly addressed it in their rule making. Others have missed the fraud potential entirely.

## OTHER PHARMACY CHAINS DOING IT RIGHT

Neil Thompson, who is a licensed Minnesota lawyer, also worked for pharmacies of Snyder and Target in the past. These pharmacy chains billed Medicaid correctly on dual-eligible billing of Medicaid. Mr. Thompson and Mr. Bieurance also believe from communications with other pharmacists that Wal-Mart, K-Mart and Rite-Aid also likely bill Medicaid correctly on dual-eligible customers.

## THE RELATORS

Neil P. Thompson is uniquely qualified to observe and analyze fraud in the pharmaceutical industry, as a licensed attorney experienced with class action litigation involving pharmacy pricing and the Federal and State False Claims Acts, and a licensed pharmacist for 31 years, both as a pharmacy owner and working for over 130 different chain pharmacy locations. He also has important familiarity with the pharmacy field involving the nursing home, marketing and pharmacy benefit manager industries. He continues to work in a Walgreen pharmacy in Minneapolis, Minnesota, one mile from where he also has his law firm.

Daniel J. Bieurance has been a licensed pharmacist since 1996, when he received his pharmacy degree from the University of Wisconsin in Madison. Prior to that, he worked as a pharmacy technician for Walgreen for 3 years. After this False Claims Act case was started under court seal, he left Walgreen for another pharmacy position in Minnesota.

#### GOVERNMENT ATTORNEYS AND AGENTS

The government team on the investigation, negotiations and settlement was led by D. Gerald Wilhelm, Assistant United States Attorney in Minnesota and Amy Easton, Trial Attorney in the Department of Justice, Civil Division, in Washington, D.C., with assistance from Gretchen Wallace, Assistant Attorney General in Florida, Robert Patten, Assistant Attorney General in Massachusetts and Elizabeth Valentine, Assistant Attorney General in Michigan.

Special Agent Gary Nelson of the federal Health and Human Services Office of Inspector General, and Debie Tsuchiya, an investigator with the Minnesota Medicaid Fraud Control Unit, provided good assistance to the lawyers for the government in the investigation.

#### WALGREEN CO.

Walgreen Co., the nationwide retail pharmacy giant, operates with over 6000 stores across America. It markets itself as "The Pharmacy that America trusts." This is the third False Claims Act Medicaid fraud lawsuit that Walgreens has settled, each time for millions of dollars. (See the prior cases of *Lusitza v. Walgreen Co.* and *California by Relator Mueller v. Walgreen*

Corp.). In 2007, Walgreen had net sales of \$53 billion. It is headquartered in Deerfield, Illinois.

## THE FALSE CLAIMS ACTS

The original federal False Claims Act was made law by Abraham Lincoln and the Civil War Congress, to enlist citizen whistleblowers in the fight against fraudulent war industry profiteers. It empowers citizens by giving them a reward, and substantial legal rights against retaliation by employers. In its present form, the government and whistleblowers can recover up to three times the amount of the fraud, plus substantial penalties and attorney fees. Whistleblowers (who are called "relators" under the law) may recover from 15% to 30% of the amounts collected from the frauding corporation. At least 22 states have passed their own similar false claims acts, and many other states are in the process. The government has recovered billions of dollars against frauding corporations, especially since the 1986 amendments to the federal law. Important changes to the law are being considered by Congress, and would strengthen the ability of the government and honorable citizens to hold corporations committing fraud to account. Medicaid and Medicare fraud, along with military contracting fraud, are the largest areas for recoveries, but ethical citizens have exposed fraud in the education, environmental and transportation fields, and nearly all other areas of federal spending.

## THE LAWYERS

The lawyers representing the whistleblower/relators are Robert Christensen, James VanderLinden and Brian Wojtalewicz, all of whom are certified civil trial specialists. All three have over 30 years of trial lawyer experience, and have been voted Super Lawyers in surveys of Minnesota lawyers. See their website at <http://www.false-claims-act.com/>

Brian Wojtalewicz  
Wojtalewicz Law Firm, Ltd.  
Appleton, MN 56208  
1-800-377-1812  
[brian@wojtalewiczlawfirm.com](mailto:brian@wojtalewiczlawfirm.com)  
[wojtalewiczlawfirm.com](http://wojtalewiczlawfirm.com)

Robert P. Christensen, PA  
Advocates for Justice™  
St. Louis Park, MN 55416  
(612)333-7733  
[rpchristensen@visi.com](mailto:rpchristensen@visi.com)  
[rpcmnlaw.com](http://rpcmnlaw.com)

James G. VanderLinden  
LeVander & VanderLinden, P.A.  
St. Louis Park, MN 55416  
(952)767-6841  
[jim@vanderlindenlaw.com](mailto:jim@vanderlindenlaw.com)  
[vanderlindenlaw.com](http://vanderlindenlaw.com)