WHISTLEBLOWER LAW COLLABORATIVE

DURRELL LAW OFFICE
AND
THOMAS & ASSOCIATES

WellCare to Settle Civil Liabilities for $137.5 million

For Immediate Release

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BOSTON – APRIL 3, 2012 – Attorneys Suzanne E. Durrell and Robert M. Thomas, Jr. of the Whistleblower Law Collaborative (currently found at www.thomasandassoc.net) are pleased to announce that the United States, nine states, and several whistleblowers have reached an agreement to resolve civil fraud liabilities of defendant WellCare Health Plans, Inc. ("WellCare") under the False Claims Act, for $137.5 million. As part of the settlement, WellCare has entered into a Corporate Integrity Agreement with the HHS Office of the Inspector General, marking the final chapter in a lengthy investigation by multiple arms of federal and state law enforcement. Previously, in May 2009, WellCare resolved criminal liabilities by agreeing to pay $80 million as part of a Deferred Prosecution Agreement with the United States, and also resolved its potential liabilities to the Securities and Exchange Commission by entering into a consent judgment and agreeing to pay a civil penalty of $10 million. Today's civil fraud settlement concludes these related investigations, which were triggered by multiple whistleblower suits, including one brought by SF United Partners, the whistleblower clients of Ms. Durrell and Mr. Thomas.

"We are enormously pleased for our clients, who took considerable personal risk in coming forward to alert law enforcement of a variety of fraud schemes perpetrated by WellCare. This settlement, and the previous criminal deferred prosecution agreement, vindicate our clients' allegations that WellCare's defrauding of federal and state health insurance programs, most notably Medicare and Medicaid, was multi-faceted and systemic. The public interest has been advanced by this result, and we would like to specifically acknowledge the outstanding work of our colleagues in law enforcement in bringing this successful prosecution to a close. Allie Pang of the U.S. Department of Justice, Charles Harden of the Tampa, Florida U.S. Attorney's Office, and Richard Molot of the Connecticut U.S. Attorney's Office all showed considerable acumen and perseverance in leading these investigations, as did agents of the F.B.I. and the HHS/OIG, and the state enforcement team led by the National Association of Medicaid Fraud Control Units ("NAMFCU"), through attorneys Donna Rowher, formerly of the Florida Attorney General's Office, Jessica Harlan-York of the Indiana Attorney General's Office, and John Guthrie of the Ohio Attorney General's Office. We are grateful for the ways in which government law enforcement and multiple relators worked together to bring this complex case to the finish line."

We would also like to acknowledge the contribution of our former colleague, Rory Delaney, who assisted us in this successful case.

The SF United Partners whistleblower case was one of several brought against WellCare, a leading health management organization that provides and arranges for the provision of managed care services under government-sponsored healthcare programs. It operates a variety of Medicaid and Medicare plans, including prescription drug plans, pursuant to contracts with the federal and state governments. WellCare, as a health maintenance organization under contract with the government, was obligated by law and contract to deliver proper care to Medicare and Medicaid patients, and to spend the government's money in an honest, responsible, and efficient manner. Instead, the SF whistleblower complaint filed in 2007 alleged that starting as early as 2004, WellCare knowingly violated the law, its contracts, several provisions of the Federal and State False Claims Acts, and the Medicare and Medicaid Anti-Kickback Act by, among other things:

- overstating its expenses in delivering health care and underreporting its profit margin and Medical Loss Ratio (the percentage of premium per member per month that goes to actual health care as opposed to general sales and administrative expenses and profit);
- manipulating its Incurred But Not Reported (IBNR) (an actuarial estimate of claims which have not yet been reported or paid, but are likely to be incurred within a certain time frame);
- upcoding services, claims, and disease states and manipulating the Risk Adjusted Payment System (RAPS), which is used by CMS to calculate the per member per month (PMPM) premium paid to health plans such as WellCare (generally speaking, the sicker the patient, the higher the premium);
- failing to deliver services or denying services, for example, refusing access to specialists or to certain prescription medications, and rewarding providers who improperly denied covered services.;
- Dumping patients who became very sick (also known as 'train wrecks") and providers who failed to keep claims payments below WellCare's desired threshold
- offering and paying illegal remuneration and kickbacks to participating physicians;
- operating a sham Special Investigations Unit (SIU) that failed to perform its oversight responsibilities with respect to claims submitted to Medicare and Medicaid by providers and third party administrators, and claims associated with its Medicare Part D Prescription Drug Plan;
- and engaging in sales and marketing abuses.

Relator SF alleged that the company's misconduct caused the government to pay higher Medicare and Mediciad premiums per patient per month to the company than it should have, and that the company was using the premiums to increase profit rather than to provide patients with needed care.

"This was the fundamental fraud SF alleged: that, in essence, the company inflated the premiums it collected from the government and deflated what it paid out in claims for medical services,

thereby increasing its own profit margin at the expense of patients and the taxpayer", noted attorney Durrell.

Government health care programs such as Medicare and Medicaid rely on a managed care company's "medical loss ratio" (MLR) as an important measure of essential delivery of services; generally speaking, from those programs' perspectives, a higher MLR is better. While WellCare on the surface showed a desirably high MLR, the true "medical loss ratio" was lower and enhanced profitability over patient care. The company itself acknowledged in its SEC filings that a 1% increase in its true MLR would have reduced WellCare's earnings before income taxes by about $64.8 million in 2008, $53 million in 2007, $36.2 million in 2006, and $18.6 million in 2005, for a total of $172.6 million *after* income taxes. It also acknowledged in its 2007 restated 10-K that a correct accounting of IBNR would cause a decrease of 1.8% in its MLR, or $92.9 million.

Ironically, when Congress authorized private companies to act as managed health care organizations and offer Medicare and Medicaid plans, the hope was that it would decrease the cost of these cash strapped programs. Unfortunately, a Government Accounting Office Report in 2008 found that in fact, they were costing the government 12%-19% *more* than conventional Medicare.

"We now know part of the reason why" said attorney Thomas, "the taxpayers and patients were defrauded, and money was siphoned off to increase the company's bottom line."

As a whistleblower under the False Claims Act, Relator SF United Partners will receive 18.5% of the federal and state recoveries attributable to its portion of the case, which are scheduled to be paid in four installments over three years, unless WellCare elects to accelerate payment. In addition, if WellCare is acquired by a third party above a designated price, the company must pay an additional $35 million to the federal and state governments, because the settlement number of $137.5 million was based in part on ability-to-pay considerations. Should the $35 million contingency take place, several relators in the case, including SF United Partners, will receive an additional 18.5% of the $35 million.

This case is the latest in a string of health care fraud whistleblower settlements in which Bob Thomas and Suzanne Durrell have been involved as counsel for the whistleblowers, including Elan/Eisai ($214 million in 2011), Forest Labs ($330 million in 2010)(co-counsel), Pfizer ($2.3 billion in 2009), and Serono ($704 million in 2006).

For more information, contact:

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