

PHILADELPHIA, Oct. 23, 2013 /PRNewswire-USNewswire/ -- Berger & Montague, P.C., a nationally known full-spectrum civil litigation law firm with one of the largest and most successful whistleblower practices in the U.S, joined three other law firms in settling a whistleblower lawsuit against Omnicare, Inc. ("Omnicare"), the nation's largest provider of pharmacy services to nursing home patients. Under the agreement, Omnicare has agreed to pay the United States \$120 Million to resolve kickback and false-claims allegations brought by Donald Gale, an Ohio pharmacist who worked for the company from 1993 until 2010.

Mr. Gale sued Omnicare pursuant to the United States Civil False Claims Act. The agreement between Mr. Gale and Omnicare avoids a jury trial scheduled for Monday, October 28, but will not be final until it is approved by the Civil Division of the United States Department of Justice. Omnicare acknowledged the settlement in SEC filings this morning, indicating a material impact on the corporation.

Nursing homes are financially responsible for Part A patients' medical because Medicare pays a flat fee to the facility for all healthcare expenses, including prescription drugs. Mr. Gale's complaint alleges a kickback scheme called "swapping," asserting that Omnicare paid bribes to nursing home owners in the form of heavily-discounted prescription drugs for Medicare Part A patients. Omnicare allegedly provided, to hundreds of nursing homes across the country, steeply discounted prices that were substantially below the fair market value of the drugs, thus inducing the nursing homes to select Omnicare as their pharmacy provider. This conduct allegedly violated the Anti-Kickback Statute and the False Claims Act because Omnicare gave the discounts intending that the nursing homes would refer, or "swap," their non-Part A patients, most of whom participate in the Medicare Part D prescription-drug benefit program, to Omnicare. Omnicare then charged the government full price for their prescription drugs and other pharmacy services. The HHS Office of Inspector General has made clear since 1999 that swapping is prohibited by the Anti-Kickback Statute.

The False Claims Act, also called "Lincoln's Law," was first signed by President Lincoln in 1863. Amendments in 1986 made it the primary weapon of

the United States

against fraud and abuse by government contractors. The FCA permits a private citizen like Mr. Gale to bring a case in the name of

the United States

, and to recover a portion of any recovery. If the Justice Department approves the Omnicare settlement, Mr. Gale's share of the proceeds will be 25 to 30% of the federal recovery.

Daniel R. Miller, a shareholder at Berger & Montague and the firm's lead lawyer on the case, explained the seriousness of the allegations: "The delivery of pharmaceuticals to our elderly and our infirm is critical to their care, and we allege that Omnicare corrupted this system by bribing nursing home owners. Our client, Donald Gale, should be commended for bringing this practice into the light of day." Berger & Montague's

Shauna Itri

, who issued more than 75 subpoenas to nursing home owners as part of the investigation, continued: "No one is above the law. This litigation proves that one person really can make a difference."

The settlement resolves only federal claims relating to so-called per diem contracts. Omnicare faces the state per diem claims in another whistleblower lawsuit pending in the District of New Jersey

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*U.S. ex rel. Silver v. Omnicare, Inc., et al.*

, Case No. 1:11-cv-01326-NLH. Berger & Montague is lead counsel in that case. In addition to per diem claims, the

New Jersey

lawsuit alleges that Omnicare engaged in additional kickback related to fee-for-service contracts.

Berger & Montague's whistleblower practice group, which has recovered well over \$1 billion for federal and state governments over the course of the last decade, is committed to filing and litigating qui tam lawsuits under the federal and state False Claims Acts, the SEC whistleblower program, and the IRS whistleblower program.

Sherrie R. Savett

, Chair of the

*Qui Tam*

Practice Group and a member of the firm's Management Committee, stated that the settlement with Omnicare "underscores Berger & Montague's commitment to representing whistleblowers, and our intention to maintain our Qui Tam Practice Group as a major force in U.S. whistleblower representation."

## **Berger Montague, P.C. Announces That Omnicare, Inc. Agrees to Pay \$120 Million to Settle Kickback Allegations**

Written by Australian Business

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