

NEW YORK, Oct. 24, 2013 /PRNewswire/ -- Sanford Heisler LLP, a leading public interest law firm, teamed with three other law firms in settling a whistleblower (" *q*
ui tam
") lawsuit Omnicare, Inc. (NYSE:
[OCR](#)
), 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's
Wadsworth, Ohio
pharmacy from 1993 until 2010.

Mr. Gale sued Omnicare pursuant to the federal 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 week, indicating a material impact on the corporation.

Mr. Gale's complaint alleges Omnicare engaged in a form of kickback scheme known as "swapping." Omnicare paid nursing home owners kickbacks in the form of discounted prescription drugs for Medicare Part A inpatients. The nursing homes are financially responsible for Part A patients' medical care because Medicare pays a flat fee to the facility. Omnicare offered the nursing homes daily, "*per diem*" pricing. Mr. Gale claims that 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 full price for their prescription drugs and other pharmacy services. The HHS Office of Inspector General has made clear since 1999, when Medicare Part A services were converted to the "Prospective Payment system," that swapping is prohibited by the Anti-Kickback Statute. Mr. Gale's complaint alleges that the
per diem
pricing for hundreds of facilities was substantially below the fair market value of the goods

provided, and that this violated the Medicare Anti-Kickback Statute and the False Claims Act.

Omnicare has settled prior False Claims Act cases both for paying and receiving kickbacks, and since 2006, has operated under Corporate Integrity Agreements with the HHS Office of Inspector General.

Mr. Gale was the General Manager of one of Omnicare's pharmacies in Wadsworth, Ohio. His civil complaint was filed under seal in January 2010. The case was unsealed in 2011, after the U.S. Attorney for the Northern District of Ohio

elected not to intervene. This decision, which occurs in about 85% of False Claims Act cases, cleared the way for Mr. Gale to pursue the case on behalf of the taxpayers. The case has been vigorously litigated since early 2012.

The False Claims Act, also called "Lincoln's Law," was first signed by President Lincoln in 1863. Amendments to the law in 1986 made it the federal government's primary weapon against fraud and abuse by government contractors. The statute 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.

"This settlement stands as a powerful example of how the False Claims Act empowers Americans to help fight fraud on the government and American taxpayers. It shows that ordinary citizens who care about following the law and doing the right thing can make a difference," said Ross Brooks

, head of Sanford Heisler's False Claims Act practice and one of Mr. Gale's lawyers in the case.

"Mr. Gale has achieved a remarkable settlement on behalf of the United States, which he has asked the Justice Department to approve. This settlement," Brooks added, "should send a clear message to companies who would engage in government fraud that whistleblowers have the ability to go the distance when necessary to return defrauded taxpayer funds to the federal treasury." Brooks noted that this is one of the largest settlements of a *qui tam*

case in which the Justice Department declined to intervene.

Written by Australian Business

The False Claims Act creates a unique and powerful public/private partnership for the pursuit of fraud claims by whistleblowers. Mr. Gale's legal team worked in close coordination with attorneys of the Department of Justice's Civil Division in Washington and the Office of Northern District of Ohio United States Attorney

Steven M. Dettlebach

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The case remains pending until final resolution before United States District Judge James S. Gwin of the United States District Court for the Northern District of Ohio

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The legal team at Sanford Heisler LLP included Ross B. Brooks, Rolando G. Marquez and Michael D. Palmer in the firm's New York office. The Sanford Heisler team was co-counsel to attorneys from Morgan Verkamp, LLC, Calfee, Halter & Griswold LLP and Berger & Montague, PC.

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