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Drug company pays to settle fraud suit

Former sales rep gets cut of \$14M

BY ALAN COOPER

Chris Gobble thought he had found his dream job as a sales rep for Forest Pharmaceuticals Inc. working out of Glen Allen, just outside Richmond.

But he was bothered by what appeared to be violations of the company "Standards of Business Ethics and Conduct," which barred kickbacks and payments to physicians to prescribe Forest's products.

Gobble complained to a superior. He was fired, and he hired a lawyer who could see that somewhere up the line, the government was footing the bill for these questionable business practices.

Eight years after he first opposed the kickbacks, Gobble and two others will share \$14 million, their cut of Forest's \$313 million settlement with the U.S. Department of Justice in a False Claims Act and criminal charges.

More than \$148 million of that amount was directly related to complaints Gobble filed with the federal government and with 21 states, including Virginia.

In 2002, Gobble complained to a divisional manager that reps were paying physicians ostensibly to speak at luncheon programs for other doctors or to allow sales reps to follow the physicians during treatments to learn more about their practices.

But the physicians weren't speaking and the reps weren't following the physicians, Gobble reported on April 12 and again May 31.

Less than two weeks after the May 31 meeting with the manager, he was fired for what the manager said was an ethical violation by Gobble.

The manager told Gobble he violated company rules by paying for a golf outing for a client and purchasing non-medical gifts for doctors.

Gobble believed he had been fired in retaliation for his earlier complaints. He had paid for the outing and bought golf balls and other accessories only because he had been instructed to do so.

He began looking for a law firm to challenge what he viewed as an unfair termination.

After being rebuffed by several firms, he went to see Phil Marsteller, who recently moved his practice from Richmond to Middleburg.

Marsteller quickly saw the possibility of filing a major qui tam action under the False Claims Act. He believed he could prove the kickbacks and inducements to sell Forest's drugs inflated their cost to Medicaid and other government health programs.

He knew, however, that mounting such a lawsuit would require more legal firepower than he could bring to the fray.

Marsteller brought in Marlan B. Wilbanks from an Atlanta firm that specializes in qui tam litigation and Suzanne E. Durrell, a former chief of the civil division in the U.S. attorney's office in Boston, who had supervised qui tam litigation in the office before forming her own firm in 2003.

Because Forest operated nationally, the attorneys had their choice of venues in which to file the suit.

They selected Boston because the U.S. attorney's office, Justice Department and federal courts there had handled health care qui tam cases successfully and because of Durrell's continuing good relationship with government lawyers there.

"Our goal was to get the government to intervene," Marsteller said.

The Civil War-era False Claims Act was substantially amended in 1986 to provide more incentives for prospective plaintiffs and prosecutors to pursue fraud against the government. Plaintiffs get a percentage of the amount recovered by the government – 15 to 30 percent – plus their attorneys' fees.

The plaintiff – or relator in qui tam jargon – files the suit under seal alleging fraud on behalf of the government. The Justice Department reviews the case and pursues the action if it believes it has merit. If the government rejects the case, it is unsealed and the relator can attempt to make the case on his own.

Marsteller said acceptance of the case by the government usually is crucial because it has more resources to develop the allegations – including the possibility of criminal charges in



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addition to civil fraud claims. Relators seldom succeed if they are forced to go it alone.

Under the best of circumstances, substantial claims take time, and the seven years between the filing of Gobble's complaint in March 2003 and the official announcement of the settlement with Forest is hardly atypical.

Such a long timeframe is "a tremendous burden on a law firm," Marsteller said. "I couldn't have done it at all without the help" from the other firms and from the government lawyers and investigators who pursued the case.

Under the False Claims Act, the relator has to be the first to allege specific, non-public information about the fraud.

Gobble's case was complicated because he was not the first to file. Dr. Joseph Piacentile filed a complaint well before Gobble filed his suit, but Piacentile's allegations lacked the specificity of the Gobble complaint.

Such circumstances can result in litigation among relators over whether the first complaint was sufficiently detailed, but relators often agree, as was the case here, to split the 15 to 25 percent of the settlement the government allocates to the relators as a whole.

Marsteller would not say how the relators divided the money from the Forest settlement.

Gobble's complaint alleged that Forest marketed the antidepressant drugs Celexa and Lexapro largely through entertainment budgets provided to sales reps and the payment of unearned fees to doctors.

It described a system of measuring the "return on investment" in prescription sales from the kickbacks and illegal marketing.

The criminal complaint involving the drugs alleged that marketing was aimed at promoting prescription of the drugs for adolescents. The company emphasized one study that showed the drug was effective while failing to disclose that another study questioned the success of the drug with another test group.

Another aspect of the criminal settlement was not directly related to Gobble's complaint. It involved the distribution of Levotheroid, a drug used to treat hypothyroidism, without first obtaining the approval of the Food and Drug Administration.