

In Massive Victory for Whistleblower David Kester, USA and States, Novartis Pays \$390 Million to End Kickback Case

Washington, D.C. and New York (November 19, 2015): The U.S. Attorney for the Southern District of New York announced today that the United States and numerous states, including New York, will resolve for \$390 million a False Claims Act lawsuit against the Swiss drug manufacturer Novartis Pharmaceuticals Corporation brought by David M. Kester, a whistleblower jointly represented by the law firms Vogel, Slade & Goldstein, LLP of Washington, D.C., and Susman Godfrey LLP of New York, N.Y. Recently pharmacies Accredo Health Group and Bioscrip Corporation, also defendants in the case, paid \$60 million and \$15 million, respectively, to resolve Mr. Kester's allegations.

In the lawsuit, Mr. Kester claims that Novartis defrauded the Medicare and Medicaid programs by illegally paying kickbacks to pharmacies so that they would recommend to doctors and patients six of Novartis' specialty medications: the oncology medications Exjade, Gleevec and Tasigna, the organ transplant, immunosuppressant drug Myfortic, and the cystic fibrosis drugs TOBI and TOBI Podhaler. Because they can artificially trump up patient demand for a product, causing doctors to prescribe and patients to order medically unnecessary or unsuitable medications, kickbacks are illegal and Medicare and Medicaid do not pay for prescriptions tainted by them.

Among other things, the lawsuit accuses Novartis of paying pharmacies to recommend refills of these six drugs, which are exceedingly expensive, costing patients up to \$11,000 per monthly refill.

With the \$390 million payment from Novartis, Mr. Kester's lawsuit is the largest recovery to the Government ever in a False Claims Act lawsuit based solely on a kickback theory, yielding a total gross recovery of \$465 million for the taxpayers.

Mr. Kester is a former Novartis sales manager who brought this misconduct to the Government's attention rather than partake in what he felt to be a scam that harmed patients and defrauded health care insurers. He came forward while still employed at Novartis, and resigned about eighteen months later, shortly before this lawsuit became public. So-called "qui tam" provisions in the federal False Claims Act and analogous state false claims laws require the federal and state governments to pay whistleblowers like Mr. Kester rewards in the range of 15% to 30% of the government's recovery.

Mr. Kester said, "I am very proud of all of the lawyers at Vogel, Slade, and Goldstein, Susman Godfrey, the U.S. Attorney's Office for the Southern District of New York, other federal government offices, and the States who joined this case and stood up for patients with life threatening diseases. These patients and their caretakers are already overwhelmed by their diseases and any advice they receive from any clinician, including a pharmacy clinician, needs to be in the patient's best interest and not tainted by outside influence. This case took almost 4 years and was not easy, but I hope this settlement brings clarity to how the health care industry should interact with pharmacies."

SUSMAN GODFREY

Whistleblower lawyer Shelley R. Slade, counsel for Mr. Kester, stated “We believe that Mr. Kester exposed a new tactic by drug manufacturers to unlawfully pump up drug sales: paying kickbacks to pharmacies that recommend prescription refills. The Government’s vigorous prosecution of this case should make pharmaceutical companies think long and hard before embarking on any scheme – whether or not the subject of prior enforcement action – – that co-opts the medical judgment of health care professionals.”

Susman Godfrey partner [Bill Carmody](#) added, “This phenomenal result brings an end to an expensive fleecing of US taxpayers and shows why it is important to have individuals come forward who know about Medicare or Medicaid fraud.”

David Kester is represented by Shelley R. Slade, Janet L. Goldstein and Robert L. Vogel of Vogel Slade & Goldstein LLP, and Bill Christopher Carmody, [Arun Subramanian](#), [Shawn L. Raymond](#), [Matthew Berry](#), [James Hoke Peacock III](#), [Erica Harris](#), [Harry Susman](#), [Steven Shepard](#), [Andres Healy](#) and [Elisha Barron](#) of Susman Godfrey LLP.

The case is *U.S. ex rel. Kester et al. v. Novartis Pharmaceuticals Corp.*, case number 1:11-cv-08196, in the U.S. District Court for the Southern District of New York.