



Department of Justice

STATEMENT OF
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U.S. DEPARTMENT OF JUSTICE

BEFORE THE
SUBCOMMITTEE ON REGULATORY REFORM,
COMMERCIAL AND ANTITRUST LAW
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

FOR A HEARING ENTITLED
OVERSIGHT OF THE CIVIL DIVISION

PRESENTED

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Before the Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Committee on the Judiciary
United States House of Representatives

Concerning the Civil Division of the United States Department of Justice

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Chairman Marino, Ranking Member Johnson, and Members of the Subcommittee:

Thank you so much for inviting me here to testify on the work of the Civil Division of the Department of Justice. I have led the Civil Division since March 2 of this year, and I appreciate the opportunity to discuss the work of the Civil Division and its budget and resource needs for Fiscal Year 2016.

The Civil Division represents the United States, its agencies, Members of Congress, Cabinet officers and other Federal employees. Approximately 87 percent of its cases involve defending claims filed against the government. This litigation reflects the diversity of government activities, involving, for example, challenges to Acts of Congress and actions of the Executive; national security issues; benefit programs; energy policies; commercial issues such as contract disputes, banking, insurance, and patents; all manner of accident and liability claims; and enforcement of immigration laws. In fiscal year 2014, well over \$100 billion was at issue in defensive suits alone.

The Division also brings affirmative cases involving, for example, fraud, debt collection, and civil and criminal violations of consumer protection laws. This work plays a critical role in achieving the Attorney General's priority of combating waste, fraud, and abuse. Since 2009, the Civil Division, working with United States Attorneys across the country, has obtained more than \$33 billion in civil and criminal judgments and resolutions in affirmative cases. During that same period, the Civil Division, often in concert with the United States Attorneys, has used the False Claims Act to recover more taxpayer dollars lost to fraud – more than \$24 billion – than in any other comparable period. In fiscal year 2014, the government recovered more than \$5.7 billion, an all-time annual record, and the fifth straight fiscal year that the Department's False Claims Act recoveries exceeded \$3 billion. Similarly, the government's health care fraud recoveries since January 2009 are at an all-time high for any comparable period, with recoveries in each of the last five fiscal years exceeding \$2 billion. In fiscal year 2014, the government also recovered an unprecedented \$3.1 billion from banks and other financial institutions involved in making false claims.

The Division is made up of more than 1,300 permanent employees, including over 950 attorneys. Each year, Division attorneys handle tens of thousands of cases that collectively involve tens of billions of dollars in claims and recoveries. The Division confronts significant

policy issues, which often rise to constitutional dimensions, in defending and enforcing various federal programs and actions. The priorities of the Division include strengthening the security of our nation, protecting the health and safety of consumers, and pursuing fraud against the government and in the financial sector.

NATIONAL SECURITY

Defending the nation remains the highest priority of the Department of Justice. Although other parts of the Department have a more visible role in this effort, the actions of the Civil Division are no less vital to its success. Whether those actions entail the defense of national security laws and regulations, the enforcement of the nation's immigration laws, or the litigation of habeas petitions brought by known or suspected terrorists, Civil Division attorneys are dedicated to the protection of the American people.

The Division's efforts in recent years to defend national security have taken a number of different forms, including:

- Supporting efforts to counter the continuing threat of terrorism, the Civil Division has, among other things, successfully defended the validity of a cause of action against state sponsors of terror and also defended against *Bivens* lawsuits against law enforcement officers and high-level government officials arising out of efforts to protect national security.
- The Division's Office of Immigration Litigation has successfully prevented known or suspected terrorists from becoming naturalized citizens, defended against habeas corpus petitions seeking the release of known or suspected terrorists, and has sought to revoke the naturalizations of terrorists.
- The Civil Division has litigated cases relating to the security of our borders and our airports, defending against constitutional challenges to the restriction on photography at border points of entry, screening procedures for individuals entering the United States, and the maintenance of the No Fly List.
- The Division has continued to defend the actions of the military and law enforcement in numerous lawsuits and habeas petitions arising out of the detention of individuals at Guantanamo Bay and Bagram Air Force Base.
- The Division has responded to recent lawsuits relating to the government's bulk collection of telephony metadata, the collection of which permits National Security Agency (NSA) analysts, acting under strict controls imposed by the Foreign Intelligence Surveillance Court, to detect communications between foreign terrorists and their contacts located in the United States. The legality of the program continues to be litigated in district and appellate courts.

HEALTH AND SAFETY

The Civil Division has placed a special emphasis on pursuing conduct that threatens the health and safety of American consumers, including the misbranding or adulteration of drugs, the distribution of tainted food, and the sale of unsafe goods. The Division also prioritizes pursuing false claims that target federal health care programs and threaten the safety and well-being of our citizens. Although the most visible efforts of the Division in this area are those lawsuits that result in large monetary judgments or settlements, the impact of the Division's work cannot be measured solely in dollars and cents. It must also take into account the ability of the Division to prevent and deter the actions of those who seek to harm consumers and the healthcare system upon which they rely.

Fighting fraud against federal health care programs is a pivotal element of the Division's work to protect consumer health and safety. On May 20, 2009, the Attorney General and the Secretary of the Department of Health and Human Services (HHS) announced the creation of the Health Care Fraud Prevention and Enforcement Action Team (HEAT), to increase coordination and optimize criminal and civil enforcement among agencies. Through enforcement actions under the False Claims Act, and aided by the efforts of HEAT, the conclusion of fiscal year 2014 marked the fifth straight year the Department has obtained more than \$2 billion in health care fraud cases, amounting to \$14.5 billion in federal health care dollars that have been recovered from January 2009 through the end of the 2014 fiscal year.

A significant component of the Department's health care fraud case load consists of cases alleging misconduct by manufacturers of pharmaceuticals and medical devices, as well as hospitals and home health care providers. The pharmaceutical industry accounted for a substantial part of the \$2.3 billion in health care fraud recoveries in fiscal year 2014.

For example, in November 2013, the Department announced a \$2.2 billion civil and criminal settlement with Johnson & Johnson to resolve allegations by the government, including allegations that a Johnson & Johnson subsidiary unlawfully marketed a drug to control the behaviors of the nation's most vulnerable patients – including elderly nursing home residents, children, and individuals with mental disabilities – uses that the FDA had never approved. Because J&J marketed the drugs for uses not covered by federal health care programs, the company's promotion of the drugs caused physicians and other health care providers to submit hundreds of millions of dollars in alleged false claims against Medicare, Medicaid, TRICARE and other federal health care programs. In addition to the federal civil recovery of more than \$800 million, J&J paid more than \$575 million in civil claims to state Medicaid programs and \$485 million in criminal fines and forfeitures. Combined with the recoveries for the additional allegations, this \$2.2 billion global resolution of the government's claims is one of the largest health care fraud settlements in U.S. history.

As noted, the Department's success in combatting fraud against federal health care programs is not simply a matter of the money recovered; it extends to working with our partners to prevent future harm to the American people. In resolving alleged violations, the Civil Division has placed a renewed emphasis on the inclusion of non-monetary measures to prevent misconduct from recurring. We have done so by including such provisions in our agreements or by working with our client agencies to ensure compliance going forward. For example, in

addition to the criminal and civil resolutions, J&J executed a five-year Corporate Integrity Agreement with the Department of Health and Human Services Office of Inspector General that requires J&J to implement major changes to the way its pharmaceutical affiliates do business. Among other things, the agreement requires J&J to change its executive compensation program to permit the company to recoup annual bonuses and other long-term incentives from covered executives if they, or their subordinates, engage in significant misconduct.

The Division has also prioritized cases in which we are able to stop ongoing harm from continuing. For example, in the first four months of 2015 the Department secured permanent injunctions in four separate lawsuits against four companies and seven individuals to prevent the production, distribution, or use of adulterated or misbranded food, dietary supplements, and drugs.

The Division's efforts to protect consumer health have also prompted a focus on the safety of food products. The Division has undertaken a number of important efforts over the past two years to hold food processors accountable for the safety of consumers. In September 2014, the Division won a guilty verdict against three people associated with the Peanut Corporation of America in a case arising out of the sale and distribution of salmonella-tainted peanuts and peanut products. Evidence at trial showed that these individuals misled their customers about the presence of pathogens, most notably salmonella, in their food. Two other officials had previously entered guilty pleas, and we are awaiting sentencing for all five individuals. And in 2015 the Division has continued its focus on food safety, working with the United States Attorneys on criminal and civil cases to prevent the distribution of tainted foods, ranging from eggs to cantaloupe to cheese.

FINANCIAL FRAUD

The Civil Division's efforts to combat financial fraud are most directly focused on enforcement against those bad actors that either take advantage of vulnerable consumers – such as struggling homeowners – or wrongly deplete the federal fisc. However, as we saw from the financial crisis that began in 2008, the harm caused by such fraud often extends beyond the specific victim – whether a consumer, an investor, or the federal government. On a broader scale, such fraud jeopardizes investors, markets, and the economy as a whole. The Civil Division is dedicated to holding accountable those actors that threaten the integrity of our financial system.

That commitment has been demonstrated by the Civil Division's efforts to target multiple aspects of fraud that contributed to the 2008 financial crisis. One facet of that fraud involved actions by financial institutions to knowingly approve mortgages that did not meet federal requirements, putting people into homes that they could not afford. When these mortgages failed, the federal government was required to cover the losses – a practice that led to the depletion of the crucial FHA insurance fund. In the last year, the Civil Division, as part of a collective enforcement effort by President Obama's Financial Fraud Enforcement Task Force, and in combination with our partners in the U.S. Attorney's Offices, reached agreements with U.S. Bank, SunTrust, and MetLife that resulted in payments of over \$741 million. As part of these agreements, the financial institutions admitted the conduct that gave rise to the

investigations, including failing to carry out a quality control program that was effective in identifying non-compliant loans.

Another important type of financial fraud that contributed to the financial crisis was the fraudulent sale of mortgage-backed securities to investors. This conduct has been the focus of the work of the Task Force's Residential Mortgage-Backed Security Working Group; I am a co-chair of that Working Group. In November 2013, as a result of the Working Group's efforts, the efforts of the Civil Division, and the work of our enforcement partners in the U.S. Attorney Offices and elsewhere, JPMorgan agreed to what was, at the time, the largest settlement against a single entity in American history – \$13 billion – to resolve federal and state civil claims arising out of the packaging, marketing, sale and issuance of residential mortgage-backed securities. The settlement also required JPMorgan to provide significant relief to consumers in the housing market, including homeowners who were struggling to afford their mortgages. As a result of the efforts of the Working Group and the Department, the Department has more recently entered into settlement agreements with Citibank (for \$7 billion) and Bank of America (for \$16.65 billion), each of which featured record-setting civil penalties, relief for consumers, and acknowledgments by the banks as to their conduct.

The fraudulent conduct relating to the sale of financial instruments also included the knowing issuance of inflated ratings that misrepresented their true risks. In February of this year, the Civil Division, working with the U.S. Attorney's Office for the Central District of California, 19 states and the District of Columbia, secured a \$1.375 billion settlement in a suit filed against the credit rating agency Standard & Poor's Ratings Services (S&P) alleging that S&P engaged in a scheme to defraud investors in structured financial products. The lawsuit alleged that investors, many of them federally-insured financial institutions, lost billions of dollars on securities for which S&P issued inflated ratings that were falsely represented to be objective, independent, and uninfluenced by S&P's relationships with investment banks.

FRAUD IN GOVERNMENT CONTRACTS

The Civil Division plays a leading role in recovering money lost to fraud involving federal government contracts and grant programs. Since fiscal year 2014, the Department of Justice has secured more than \$385 million in settlements and judgments based on allegations of false claims and corruption involving government contracts. Although mortgage, housing and health care fraud dominated recoveries for fiscal year 2014, the Division has continued aggressively to pursue fraud in government procurement and other federal programs.

Significant recoveries include settlements with Supreme Group B.V., Lockheed Martin Integrated Systems, Hewlett-Packard Co., and the Boeing Co. The Dutch corporation, Supreme Group, and several of its subsidiaries paid \$146 million to settle alleged false claims for food and bottled water, fuel, and transportation in support of our troops in Afghanistan. In addition to the civil settlement, two Supreme Group companies pleaded guilty to major fraud in overcharging the United States for food and bottled water, and paid \$288.36 million in fines and restitution – a sum that includes the maximum criminal fine allowed. In another wartime contract matter, Lockheed Martin paid \$27.5 million to settle allegations that the company knowingly charged the Army for personnel lacking the qualifications required by contracts to support U.S. forces in Iraq and Afghanistan. Hewlett-Packard paid \$32.5 million to resolve claims involving a contract

for IT products and services with the U.S. Postal Service. And Boeing paid \$23 million to settle alleged false claims for labor on maintenance contracts for the C-17 Globemaster aircraft with the U.S. Air Force.

In addition, the government is pursuing lawsuits against a number of government contractors. Notably, these suits include claims against Kellogg, Brown & Root (KBR) and foreign subcontractors arising from claims in connection with KBR's contract with the U.S. Army to provide wartime logistical support. The government alleged that KBR employees took kickbacks in return for awarding subcontracts at inflated prices for services and equipment that were often deficient or not provided at all, as well as other false and inflated claims.

DEFENDING FEDERAL STATUTES AND PROGRAMS

The Civil Division is primarily responsible for defending the legality of statutes passed by Congress. Accordingly, the Civil Division has led the Department's response to a number of recent challenges on issues of national significance. The Civil Division defended the constitutionality of the Affordable Care Act, which was ultimately upheld in major part by the Supreme Court in 2012. Subsequent to that decision, the Division has handled numerous additional lawsuits relating to individual provisions of the Act. The Civil Division is also currently defending against constitutional and statutory challenges to Section 215 of the USA PATRIOT Act. Under the authority of this statute, and with strict controls imposed by the Foreign Intelligence Surveillance Court, the government operates a telephony metadata bulk collection program as part of its efforts to fight terrorism. The Civil Division has also led the defense of constitutional challenges to the Adam Walsh Act, which imposes registration requirements on sex offenders; the Protection of Lawful Commerce in Arms Act, which immunizes firearms manufacturers or sellers from qualified civil liability actions; the Professional and Amateur Sports Protection Act, which prohibits states from authorizing private gambling on sporting events; the Emergency Medical Treatment and Active Labor Act, which requires certain hospitals to provide emergency medical treatment without regard to a patient's ability to pay; and many other statutes. The Division is currently defending against a challenge to the constitutionality of the federal debt ceiling.

The Civil Division also defends the interpretations of statutes and the policies and actions of the Executive Branch. In that role, the Division has handled numerous high-profile lawsuits, including the availability of tax credits under the Affordable Care Act through insurance exchanges set up by the federal government on behalf of a State. As another example, the Division is currently defending a challenge to a decision by the Financial Stability Oversight Council to designate MetLife as a nonbank financial company subject to Federal Reserve supervision and enhanced prudential standards under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

PROTECTING THE FEDERAL FISC

The Civil Division represents the United States, including its officers and agents, in suits for money damages. In 2014 alone, the Division's work has helped the government to avoid

billions of dollars in damages sought by obtaining favorable judgments or negotiating settlements for less than the full amount of a plaintiff's claim.

Currently, for example, the Civil Division is defending against claims relating to the government's actions in 2008 and 2009 to address the economic crisis. In one case, the Civil Division is defending a class action on behalf of shareholders of the American International Group (AIG), who are seeking tens of billions of dollars based on allegations relating to the government's 2008 rescue of AIG. Division lawyers represented the government during a two-month trial in this matter last fall. Similarly, the Civil Division is representing the government in multiple lawsuits brought by shareholders of Fannie Mae and Freddie Mac challenging the government's actions in connection with conservatorships of those entities.

DEFENDING IMMIGRATION ACTIONS

The Civil Division defends and prosecutes civil immigration matters in federal court. The Division's Office of Immigration Litigation represents the government in cases in the federal courts of appeals challenging determinations that an individual is subject to removal from the United States or is not eligible for some form of relief that would allow him or her to remain in the United States. These cases represent approximately 11 percent of all cases filed in federal appellate courts, with the Division handling nearly 6,000 new filings in fiscal year 2014 alone. For example, the Division has successfully defended the application of the statutory terrorism-related bars against relief from removal.

The Office of Immigration Litigation also litigates significant challenges to the lawfulness of the government's practices in enforcing the immigration laws. For example, the Office coordinates all litigation defending the expedited removal statute, 8 U.S.C. § 1225, which permits immigration officials to remove expeditiously certain recent unlawful entrants apprehended near the border.

PRESIDENT'S BUDGET REQUEST

The President's FY 2016 request for the Civil Division seeks 1,360 positions (968 attorneys) and \$326,009,000, including increases for pursuing health care fraud, enforcing our immigration laws, and improving our litigation support services. This request consists of the resources required to maintain the superior legal representation services that have yielded such tremendous success. We hope the House and Senate will fully fund Civil's FY 2016 request.

At this time, Mr. Chairman, I would be happy to address any questions you or Members of the Subcommittee may have.