



Department of Justice

STATEMENT OF

**CHAD A. READLER
ACTING ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION
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 CONCERNING

OVERSIGHT OF THE CIVIL DIVISION

PRESENTED

June 8, 2017

Statement of Chad A. Readler
Acting Assistant Attorney General
Civil Division
U.S. Department of Justice
Before the Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Committee on the Judiciary
U.S. House of Representatives
June 8, 2017

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

Thank you very much for inviting me here to testify on the work of the Civil Division (the Division) of the Department of Justice (the Department). I have led the Division since January 30 2017, and I appreciate the opportunity to discuss the work of the Division and its budget and resource needs for Fiscal Year (FY) 2018.

The 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 intellectual property; all manner of accident and liability claims; and enforcement of immigration laws. In FY 2016, well over \$1 trillion 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 1986, the Division, working with United States Attorneys across the country, has returned tens of billions of dollars to the federal treasury through civil and criminal judgments and resolutions in affirmative cases. This amount includes more than \$53.6 billion recovered by the Division and the United States Attorneys under the False Claims Act. Last year alone, the government recovered more than \$4.7 billion under the Act—the seventh straight year that the Department has recovered more than \$3 billion of taxpayer funds. Similarly, in each of the last seven fiscal years the government's health care fraud recoveries have equaled or exceeded \$2 billion. In addition, in FY 2016, the government recovered more than \$6.6 billion from banks and other financial institutions making false statements and claims.

The Division is currently made up of more than 1,350 employees, including over 1,000 attorneys. Each year, Division attorneys handle tens of thousands of cases that collectively involve 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. 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, litigating and defending of the U.S. Government's immigration actions, defending restrictions placed on assets and activities within the United States of individuals or entities tied to foreign terrorist organizations, or the litigation of habeas petitions brought by known or suspected terrorists, 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 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 terrorists, suspected terrorists, or aliens of unknown backgrounds pending further review, and sought to revoke the naturalizations of known or suspected terrorists, violent criminals, and human rights abusers.
- The Division has defended against district court challenges and immigration-related appeals involving aliens who have engaged in or committed terrorist activities, espionage, and atrocities, and helped train hundreds of Assistant United States Attorneys; and over 3,000 agents assigned to the Federal Bureau of Investigation's (FBI) Joint Terrorism Task Forces.
- The Division has litigated cases relating to the security of our borders, aviation system, and the homeland; defending against constitutional challenges to screening procedures for individuals entering the United States, the government's No-Fly List and Selectee List used for screening airline passengers and crew, broader uses of the government's terrorist watchlists used for border and security screening, and the restriction on photography at border points of entry.
- Similarly, the Division has also defended litigation filed against government agencies charged with ensuring the safety and security of the U.S. financial system, as well as the integrity of the U.S. economic sanctions program.
- The Division has continued to defend habeas petitions arising out of the detention of individuals at Guantanamo Bay.

- The Division is also currently defending against constitutional and statutory challenges to the activities of the National Security Agency, including pursuant to Section 702 of the Foreign Intelligence Surveillance Act under which the government may collect, subject to supervision by the FISA court, certain communications of non-U.S. persons located outside the United States.
- The Division represents the agencies of the U.S. Intelligence Community in the protection of national security information in several different settings, including claims raised under Freedom of Information Act (FOIA) and discovery requests made in civil litigation, as well as through enforcement of prepublication review requirements on persons who had access to classified information.
- The Division also handles litigation concerning military personnel policies, including lawsuits challenging the implementation of policies that opened combat positions to women, as well as challenges to existing statutory male-only draft registration requirements.
- The Division has also pursued affirmative claims against government contractors and others that failed to abide by national security related restrictions, or who violated immigration and customs rules.

HEALTH AND SAFETY

The 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 effect of the Division's work preventing and deterring 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. The Department's Health Care Fraud Prevention and Enforcement Action Team (HEAT) increases coordination and optimizes criminal and civil enforcement among agencies. Through enforcement actions under the False Claims Act, and aided by the efforts of HEAT, the conclusion of FY 2016 marked the seventh straight year the Department has obtained \$2 billion or more in health care fraud recoveries. All told, the Department has recovered more than \$34 billion in federal health care dollars since 1986.

A significant component of the Department's health care fraud case load has historically consisted of cases alleging misconduct by manufacturers of pharmaceuticals and medical devices, as well as hospitals and home health care providers.

The pharmaceutical industry continues to account for a substantial part of the Division's health care fraud recoveries. For example, in January 2017, Shire Pharmaceuticals agreed to pay

\$350 million to settle federal and state False Claims Act allegations that it, and the company it acquired in 2011, Advanced BioHealing (ABH), employed kickbacks and other unlawful methods to induce clinics and physicians to use or overuse its product “Dermagraft,” a bioengineered human skin substitute approved by the FDA for the treatment of diabetic foot ulcers. Similarly, in March 2016, Olympus entered into a \$623.2 million settlement to resolve criminal charges and civil claims for paying kickbacks to doctors, including consulting payments, foreign travel, lavish meals, millions of dollars in grants and free endoscopes, to induce the purchase of its equipment. The settlement included \$310.8 million to settle civil claims under the federal and various state False Claims Acts to resolve the company’s liability to government health care programs. In June 2016, the Department announced a \$67 million settlement with Genentech Inc. and OSI Pharmaceuticals to resolve allegations that they made misleading statements about the effectiveness of the drug Tarceva to treat non-small cell lung cancer.

Some of the Division’s largest recoveries in the past year, however, were from other sectors of the healthcare industry. For example, in October 2016, Tenet Healthcare, a major U.S. hospital chain, agreed to pay \$368 million to resolve civil claims relating to a scheme to defraud the United States and to pay kickbacks in exchange for patient referrals. The settlement with Tenet was part of a \$514 million global resolution that resolved both civil and criminal liability. The same month, Lifecare Centers of America, a company that owns and operates skilled nursing facilities, paid \$145 million to resolve allegations that it caused skilled nursing facilities to submit false claims to federal healthcare programs for rehabilitation therapy services that were not reasonable, necessary or skilled. The Division also spearheads the Elder Justice Initiative, which coordinates and supports law enforcement efforts to combat elder abuse, neglect, and financial exploitation by maintaining an information bank of Elder Justice related materials, funding medical reviewers to assist Department attorneys in pursuing nursing home cases, and coordinating nationwide investigations of skilled nursing facilities.

The Division’s efforts to protect consumer health have also prompted a focus on the unlawful sale of certain dietary supplements. In November 2015, the Department and its federal partners announced that they had pursued civil and criminal cases against more than 100 makers and marketers of dietary supplements. Those actions, including federal cases in 18 states, resulted from a year-long effort to focus enforcement resources in an area of the dietary supplement market that has been causing increasing concern among health officials nationwide. In each of the cases, the Department or one of its federal partners has alleged the sale of supplements that contain ingredients other than those listed on the product label or the sale of products that make health or disease treatment claims that are unsupported by adequate scientific evidence.

FINANCIAL FRAUD

The Division’s efforts to combat financial fraud have most directly focused on enforcement against those bad actors that either take advantage of vulnerable consumers or wrongly deplete the federal fisc. And 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 Division is dedicated to holding accountable those actors that threaten the integrity of our financial system.

That commitment has been demonstrated by the 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 Division, as part of a collective enforcement effort with our partners in the U.S. Attorney's Offices, has recovered nearly \$1.7 billion – the second highest annual recovery in this area. As part of the settlement agreements, the financial institutions admitted the conduct that gave rise to the government's investigations.

The Department has continued its pursuit of claims under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) arising out of the packaging, marketing, sale and issuance of residential mortgage-backed securities, or RMBS. In January 2017, Deutsche Bank agreed to settle federal and state civil claims for \$7.2 billion, Credit Suisse agreed to settle similar claims for \$5.2 billion, and Moody's agreed to resolve federal and state investigations into its ratings practices for nearly \$864 million. In prior years, the Department reached resolutions with JPMorgan (\$13 billion), Bank of America (\$16.6 billion), Citibank (\$7 billion), Goldman Sachs (\$5 billion), and Morgan Stanley (\$2.6 billion).

The Division remains committed to aggressive investigation and prosecution of corporate wrongdoing, including the Department's policy of ensuring individual accountability. That policy recognizes that one of the most effective ways to deter corporate wrongdoing is by holding to account the individuals responsible for the corporate malfeasance.

The Division also continues to prioritize cases where it can prevent ongoing harm. In September 2016, for example, as part of an ongoing effort to dismantle international mass-mailing fraud schemes, the Department, along with the U.S. Postal Inspection Service, the Department of the Treasury's Office of Foreign Asset Control, and other law enforcement agencies, announced wide-ranging enforcement actions. The actions included criminal charges, economic sanctions, seizure of criminal proceeds, and civil injunction lawsuits. This effort disrupted mass-mailing schemes that collectively have defrauded millions of elderly and vulnerable victims across the United States out of hundreds of millions of dollars. The actions were part of a broader effort to attack fraud schemes targeting older Americans and other vulnerable populations that involve individuals and entities across the globe, including Canada, France, India, the Netherlands, Singapore, Switzerland, Turkey, and the United States.

OTHER FRAUD RECOVERIES

Although healthcare and financial fraud recoveries have remained predominant during this period, the Division has continued to aggressively pursue fraud wherever it is found in Federal Government contracts, grants, and programs.

For example, the Division recovered \$125 million from several companies under contract to design and build the Waste Treatment Plant (WTP) at DOE's Hanford Site near Richland,

Washington. The settlement resolved allegations that the companies violated the False Claims Act by charging DOE for deficient nuclear quality materials, services, and testing. The Division also settled with CA, Inc. for \$45 million for allegedly overcharging government agencies for information technology. In April 2017, the United States obtained a \$31 million judgment against Eric C. Conn, a lawyer who represented claimants seeking Social Security disability benefits, and his law firm, for violating the False Claims Act by submitting fraudulent medical records to prevail on disability appeals and by submitting false claims forms to obtain fees from the Social Security program.

The Department also resolved claims against BP Exploration and Production Inc. (BP) under the False Claims Act for \$82.6 million in connection with the April 2010 Deepwater Horizon/Macondo Well explosion and oil spill in the Gulf of Mexico. The government, through the Department of the Interior, leases portions of the Outer Continental Shelf to companies like BP that explore for and develop oil and gas resources. In exchange for the lease, the holders pay royalties based on the volume of oil or gas produced from the wells. Program regulations applicable to exploration of the Outer Continental Shelf require well operators to maintain a “safe drilling margin.” The settlement resolved allegations that BP’s reports to the government about drilling margin concealed the company’s improper drilling, which left the well in a fragile state and contributed to the blowout. Resolution of the government’s civil fraud claim was part of a more than \$20 billion two-settlement package that included a federal consent decree and a related state settlement. The federal decree secured, among other things, civil penalty and natural resources damage recoveries. The Gulf States were party to that decree and also to the companion settlement between the Gulf States and BP that resolved state claims for economic damages.

And the Division recovered more than \$50 million in customs fraud during the last year. U.S. Customs and Border Protection collects duties on imports of foreign goods to protect U.S. manufacturers from unfair competition abroad by leveling the playing field for domestic products. Importers who seek an unfair advantage by knowingly evading or reducing their obligation to pay these duties are subject to damages and penalties under the False Claims Act. These recoveries both address lost duties and safeguard U.S. markets. For example, in April 2016, the Division settled for \$15 million allegations that Z Galleries avoided paying duties on wooden bedroom furniture imported from China by misclassifying the furniture.

In addition to these and other recoveries, the Division represents the government in a number of lawsuits alleging fraud that were either initiated or continued in FY 2016. For example, the Division continues to litigate claims against Kellogg, Brown & Root (KBR) and foreign subcontractors in connection with KBR’s contract with the U.S. Army to provide wartime logistical support. The government has 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. The Division is currently litigating claims against DynCorp International Inc., alleging that the contractor knowingly submitted inflated claims in connection with a State Department contract to train Iraqi police. In addition, the Department joined a qui tam lawsuit which alleges that Inchcape Shipping Services Holdings Limited and certain of its subsidiaries knowingly overbilled the U.S. Navy to supply goods and services to ships at ports throughout the world. The Division is also

continuing to pursue against IT contractor Symantec claims similar to those that it settled with CA, Inc.

DEFENDING FEDERAL STATUTES AND PROGRAMS

The Division has primary responsibility for defending the constitutionality of statutes passed by Congress. Accordingly, the Division has led the Department's response to a number of recent challenges on issues of national significance. For example, the Division has defended a constitutional challenges to the recently enacted International Megan's Law, which imposes travel notification requirements on sex offenders; the Telephone Consumer Protection Act; the Digital Millennium Copyright Act; 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; the nondisclosure provisions of the National Security Letter statutes and of the USA FREEDOM Act; as well as many other statutes. The Division has also successfully defended protections for service members under the Military Lending Act from predatory lending practices. The Division has also defended several facial constitutional challenges to the America Invents Act of 2012, which comprehensively reformed the patent laws, as well as the Lanham Act's prohibitions against registering disparaging and scandalous trademarks.

The 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 in recent constitutional and statutory challenges to the President's Executive Orders and in appellate and district court proceedings that challenge agency rulemaking efforts. The Department also routinely defends decisions by the Food and Drug Administration concerning the approval of generic drugs, ensuring that there are incentives for developing new products and that there can be price competition for safe and effective medicines.

PROTECTING THE FEDERAL FISC

The Division represents the United States, including its officers and agents, in suits for money damages. In 2015, 2016, and 2017 to date, 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 Division is defending against claims relating to the government's actions in 2008 and 2009 to address the economic crisis. In one case, the Division defended the United States in a class action on behalf of shareholders of the American International Group (AIG), who sought tens of billions of dollars based on allegations relating to the government's 2008 rescue of AIG. After the trial court concluded that the shareholders were not entitled to compensation, but that the government had nevertheless acted unlawfully, appeals and cross appeals were taken. The court of appeals recently vacated the trial court's decision, holding that the shareholders lacked standing to bring their claims. Similarly, the 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. The Division is also defending the United States against claims for more than \$8.3 billion sought by insurance companies seeking payment under the risk corridors provision of the Affordable Care Act. The Division is also defending a series of claims brought by auto dealers

whose dealership agreements were terminated when General Motors and Chrysler declared bankruptcy. Finally, in its bankruptcy litigation practice, the Division protects the United States' fiscal interests by ensuring that government claims are paid in accordance with the priority scheme of the bankruptcy code. The Division is currently protecting the United States' financial interests in numerous bankruptcy cases filed by energy companies that suffered losses related to the recent drop in energy prices.

DEFENDING IMMIGRATION ACTIONS

The 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 10 percent of all cases filed in federal appellate courts, with the Division handling more than 4,800 new filings in FY 2016 and more than 3,000 to date in FY 2017.

The Office of Immigration Litigation also handles immigration cases at the district court level in all of the 94 federal district courts nationwide on behalf of several agencies and has primary responsibility for handling appeals arising from immigration-related cases in the district courts. These include the Department of Homeland Security and HHS in cases involving a wide range of complex immigration matters, the Department of State in cases involving passports and visas, the Department of Labor in employment-related labor certification programs, and the FBI on immigration-related national security matters, including denaturalization and other actions involving known or suspected terrorists, violent criminals, fraudsters, and human rights abusers. The Office of Immigration Litigation has also defended numerous cases brought by known or suspected terrorists and convicted criminals attempting to acquire immigration benefits, circumvent admissions procedures, thwart removal, or avoid mandatory detention pending removal.

The Office of Immigration Litigation also handles class action cases challenging critical policies and programs relating to the Federal Government's interpretation, administration and enforcement of immigration law.

PRESIDENT'S BUDGET REQUEST

The President's FY 2018 request for the Division seeks 1,140 positions (833 attorneys) and \$291,750,000, including an increase for immigration litigation. 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 the Division's FY 2018 request.

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