US Can't Reap Fees From Clinic's $1.6M FCA Settlement

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Summary

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Body

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In December, U.S. Magistrate Judge Ted E. Bandstra **recommended** that the deal between MCCI Group Holdings LLC and relator Marc Osheroff should be scuttled because MCCI objected to the U.S. Department of Justice's demand, but U.S. District Judge Robert N. Scola Jr. said Friday that the settlement must be enforced because the extra provisions aren't essential terms of the deal.

Judge Scola also axed the provisions - which would have stated that MCCI wasn't released from any federal tax claims as a result of the settlement and that MCCI couldn't charge any of its legal costs back to the government - saying they were boilerplate meant to insulate the government from any kind of contingency and weren't germane to the case. Osheroff's suit alleged that MCCI and others used gifts to induce clinic patients to enroll in Medicare Advantage plans.

″The parties reached agreement on all essential terms at the mediation and memorialized them,″ Judge Scola said. ″The parties' meeting of the minds on these essential terms - payment of money in exchange for mutual releases, no admission of liability and dismissal - was sufficient to form a binding and enforceable agreement.″

Now, Osheroff and MCCI must complete and execute their final settlement documents and send them to the federal government for review, Judge Scola said. Upon reviewing the documents, the government will tell the court if it consents to a dismissal.

Jonathan Kroner, an attorney for Osheroff, told Law360 on Monday that he was pleased by Judge Scola's ″thoughtful and well-reasoned″ order.

In December 2010, Osheroff sued insurer Humana Inc. and several affiliates, including clinic CAC-Florida Medical Centers LLC, as well as Pasteur Medical Group LLC and MCCI. The qui tam suit was unsealed in October 2011, after the U.S. declined to intervene. Osheroff and MCCI tentatively agreed to settle prior to Judge Scola's dismissal of claims against the other defendants.

Osheroff, who owns several medical office buildings in the Miami area and planned to open competing clinics, claims the defendants conspired to induce patients to enroll in Medicare Advantage plans - under which Humana and the clinics share the profits - by offering them improper benefits including free transportation, meals, massages and salon services.

The Justice Department approved the $1.6 million settlement between Osheroff and MCCI, but when the holistic medical center refused to accept the government's extra provisions, Judge Bandstra said that ″a binding settlement agreement between relator and MCCI was not reached due to the failure to meet the condition precedent that the agreement be approved by the attorney general.″

Jonathan Kroner

Judge Scola said the magistrate judge's finding conflated two issues - whether the parties agreed on all essential terms and had a binding agreement, and whether the government would allow the claims to be dismissed based on the settlement agreement.

He said that under the law, the government must consent to a dismissal, but isn't required to consent to a settlement.

″The two are not one and the same. Even assuming, without deciding, that the government has a right to approve or disapprove of voluntary dismissal, it does not follow that the government's consent is required for a binding settlement to be formed,″ Judge Scola said.

An attorney for MCCI did not immediately respond to a request for comment Monday.

Osheroff is represented by Jonathan Kroner of the Jonathan Kroner Law Office and Wm. Paul Lawrence II, Charles Siegle, Loren Jacobson and Jennifer L. McIntosh of Waters & Kraus LLP.

MCCI is represented by Jose Alfredo de Armas of Armas & Borron LLP.

The case is U.S. ex rel. Osheroff v. MCCI Group Holdings LLC, case number 1:10-cv-24486, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Ciaran McEvoy. Editing by Andrew Park.