

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, ex :
rel. ROBERT J. MERENA, :
Plaintiff : CIVIL ACTION
v. :
SMITHKLINE BEECHAM CORPORATION, :
SMITHKLINE BEECHAM CLINICAL :
LABORATORIES, INC., :
Defendants : No. 93-5974

UNITED STATES OF AMERICA, ex :
rel. GLENN GROSSENBACHER, and :
CHARLES W. ROBINSON, JR., : CIVIL ACTION
Plaintiffs :
v. :
SMITHKLINE BEECHAM CLINICAL :
LABORATORIES, INC., : No. 95-6953
Defendant :

UNITED STATES OF AMERICA, ex :
rel. KEVIN J. SPEAR, THE :
BERKLEY COMMUNITY LAW CENTER, : CIVIL ACTION
JACK DOWDEN, :
Plaintiffs :
v. :
SMITHKLINE BEECHAM :
LABORATORIES, INC., : NO. 95-6551
Defendant :

UNITED STATES OF AMERICA, ex :
rel. WILLIAM ST. JOHN :
LACORTE, :
Plaintiff : CIVIL ACTION
v. :
SMITHKLINE BEECHAM CLINICAL :
LABORATORIES, INC., :
Defendant : No. 96-7768

UNITED STATES OF AMERICA, ex	:	
rel. JEFFREY SCOTT CLAUSEN,	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
SMITHKLINE BEECHAM CLINICAL	:	
LABORATORIES, INC.,	:	Nos. 97-1186
Defendant	:	
	:	

UNITED STATES OF AMERICA, ex	:	
rel. DONALD MILLER,	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
SMITHKLINE BEECHAM CLINICAL	:	
LABORATORIES, INC.,	:	No. 97-3643
Defendant	:	
	:	

MEMORANDUM AND ORDER

VanARTSDALEN, S.J.

July 31, 2003

The basic issue presently before the court in these six separate suits brought pursuant to the "qui tam" provisions of the False Claims Act, 31 U.S.C. §§ 3729-33, is whether relators LaCorte, Clausen, and Miller are barred by 31 U.S.C. § 3730(b)(5) from seeking a share of the \$325,000,000 settlement that the United States Government (the "government") reached with the defendants.

The first three above-captioned qui tam actions (Civ. Nos. 93-5974, 95-6953, and 95-6551) were filed by relators Merena, Robinson, and Spear. The government negotiated the settlement with the defendants on behalf of itself and those three relators, and those relators expressly consented to the terms of the settlement agreement. Merena, Robinson, and Spear

have since agreed among themselves as to how they will divide the "relator's share," which is that portion of the settlement that the government will, as required by statute, share with the private-individual plaintiffs (or "relators" as they are called in qui tam actions) who provided the government with the false-claims information that led to the settlement. The amount of the relator's share in this case has yet to be determined, but there is no dispute among Merena, Robinson, and Spear as to the fairness and adequacy of the settlement or as to their respective rights to receive a portion of the relator's share.

Relators LaCorte, Clausen, and Miller filed their qui tam actions against the defendants (Civ. Nos. 96-7768, 97-1186 and 97-3643) long after Merena, Robinson, and Spear filed suit. LaCorte, Clausen, and Miller each contend that the terms of the settlement agreement have the effect of settling, and thereby releasing the defendants of liability for, some or all of their claims against the defendants. They each further contend that they should be awarded a portion of the relator's share for their settled claims, and that they have the right to litigate their claims against the defendants to the extent that those claims were not settled.

Not surprisingly, relators Merena, Robinson, and Spear vigorously object to any portion of the relator's share being awarded to LaCorte, Clausen, or Miller. They object primarily on the ground that they were the first to file their qui tam suits against the defendants, and that it was the false claims

allegations in their complaints, not LaCorte, Clausen, or Miller's allegations, that led to the government's recovery in this case. The defendants, SmithKline Beecham Corporation and SmithKline Beecham Clinical Laboratories, Inc., ("SBCL")¹ take the position that the settlement agreement was intended to settle and release all claims in the LaCorte, Clausen, and Miller suits, and that those suits are barred by § 3730(b)(5) from proceeding any further.

I. Background

a. Facts and Procedural History

The relators who filed these six qui tam suits against SBCL are:

<u>Action Name</u>	<u>Relators</u>	<u>Date Filed</u>	<u>Court</u>
1. "Merena"	Robert J. Merena	11/12/1993	E.D. Pa.
2. "Robinson"	Charles W. Robinson, Glenn Grossenbacher	12/15/1993	W.D. Tex. (transferred to E.D. Pa. on 11/3/1995)
3. "Spear"	Kevin J. Spear, The Berkley Community Law Center, and Jack Dowden	2/13/1995	N.D. Cal. (transferred to E.D. Pa. on 10/13/1995)
4. "LaCorte"	Dr. William St. John LaCorte	4/22/1996	E.D. La. (transferred to E.D. Pa. on 11/2/1996)
5. "Clausen"	Jeffrey Scott Clausen	9/3/1996	N.D. Ga. (transferred to

¹ Hereinafter, the only defendant referenced will be SBCL, as SBCL is the only defendant named as a party to the settlement agreement.

			E.D. Pa. on 2/1/1997)
6. "Miller"	Donald Miller	7/15/1996	M.D. Fla. (transferred to E.D. Pa. on 5/27/1997)

SBCL is a Delaware corporation with corporate headquarters in Collegeville, Pennsylvania. SBCL owns and operates, among other things, a nationwide system of clinical laboratories, which perform a wide range of tests on blood and other specimens. In general, all six qui tam suits allege that SBCL employed a complex variety of fraudulent schemes that enabled it to bill the government for and receive payment on false claims for medically unnecessary laboratory tests. SBCL allegedly billed several state and federal programs for these false claims, most notably, the federal Medicare and Medicaid programs. To the extent required for a decision on the pending issues, the relators' specific false claims allegations are set forth in more detail infra.

The complaints in the Merena, Robinson, and Spear suits were filed under seal and served only on the government, and in all three suits, the government, with the express consent of those relators, filed several motions to extend the time to keep those cases under seal.² I granted several extensions of the

² See infra, at part I(b), for a discussion of the proper procedure for filing a qui tam action under the False Claims Act. There is no dispute that all six qui tam actions were filed in compliance with the procedure of 31 U.S.C. § 3730(b).

seal in the Merena case (the Robinson and Spear cases were not transferred to this court until the fall of 1995) because it was clear that the government needed additional time to investigate Merena's false claims allegations and to begin fashioning a basis for settlement discussions with SBCL. Indeed, it was clear early in the Merena action that the government's investigation would be time-consuming and complex given the large number of documents to be reviewed and witnesses to be interviewed. Furthermore, the United States Attorney's Office for the Eastern District of Pennsylvania had created a special task force to investigate the Merena (and apparently also the Robinson) allegations, and, in light of the nationwide scope of the investigation and the potentially far-reaching civil and criminal consequences that might ensue, I was persuaded that there was "good cause shown," see 31 U.S.C. § 3730(b)(3), to keep the Merena case under seal.

On February 28, 1995, I ordered, on the government's unopposed motion, that the seal in the Merena case be partially lifted for a copy of Merena's complaint to be provided to SBCL so that the government and SBCL could begin settlement discussions. By letter dated August 25, 1995, the United States Attorney's Office for the Eastern District of Pennsylvania sent to SBCL's counsel a sixteen-page "framework for settlement" for the claims in the Merena suit. SBCL's counsel responded on September 16, 1995, with a thirty-seven-page, detailed letter of its position on the Merena allegations and its basis for settlement negotiations. The Robinson and Spear suits, as noted, were

transferred to this court in the fall of 1995, upon the joint motion of the government and those relators, in order to facilitate the negotiation and settlement process. On February 22, 1996, I entered an order partially lifting the seal in the Robinson and Spear suits solely for disclosure of those complaints to SBCL.

On September 26, 1996, the government, SBCL, and relators Merena, Robinson, and Spear all signed a fully executed document entitled "Settlement Agreement and Release" (the "Settlement Agreement"). SBCL agreed to pay the government (and several states) \$325,000,000 to release itself from then-present and future liability for the false-claims allegations and conduct described in the Settlement Agreement. On September 27, 1996, the government filed with the court formal notice of its election to intervene in the Merena, Robinson, and Spear actions. On October 2, 1996, a court order established certain procedures for setting up an escrow account pending confirmation of certain aspects of the Settlement Agreement not relevant to any pending issue. On February 24, 1997, the parties filed the Settlement Agreement with the court as a matter of record. I formally approved the Settlement Agreement and dismissed the Merena, Robinson, and Spear actions with prejudice. I retained jurisdiction, however, to enforce the terms of the Settlement Agreement and to resolve any issue regarding the award of attorney's fees and costs. Jurisdiction was also retained to resolve any issue that might arise regarding the relator's share.

Thereafter, LaCorte, Clausen, and Miller, having learned of the Settlement Agreement (and having consulted with the government's attorneys), agreed to transfer their cases to this district and to submit to the jurisdiction of this court for the express purpose of deciding whether the Settlement Agreement settled any of their claims. As noted, LaCorte, Clausen, and Miller each filed suit prior to the date on which the government formally entered into the Settlement Agreement with SBCL (i.e., prior to September 26, 1996), and the government had been served with the LaCorte, Clausen, and Miller complaints prior to that date. In addition, before LaCorte, Clausen, and Miller agreed to transfer their cases to this court, the government filed notice with the courts in which those cases were then pending of its election to "intervene in part." The government takes the position that it will intervene as to each claim in the LaCorte, Clausen, and Miller cases that was settled by the terms of the Settlement Agreement; the government will not intervene in those cases (at least not at the present time) as to the claims that were not settled.

On April 1, 1997, I entered a procedural order to permit LaCorte, Miller, and Clausen an opportunity to file legal memoranda addressing whether their claims were settled and whether their claims are barred by 31 U.S.C. § 3730(b)(5).³ All

³ Section 3730(b)(5) provides:

When a person brings [a qui tam action], no person other than the Government may

other parties to these six cases have filed legal memoranda in response to the issues raised by LaCorte, Clausen, and Miller, and on June 16, 1997, all parties participated at oral argument on the pending issues. Notably, the April 1st procedural order was entered following a conference on the record on March 31, 1997, with counsel for all parties. At that conference, it was agreed that the issues currently before the court should be limited to just two: (1) whether the terms of the Settlement Agreement settle and release LaCorte, Clausen, and Miller's qui tam claims; and (2) whether those relators' claims are barred by § 3730(b)(5)-- if their claims are barred, they are precluded from receiving a portion of the relator's share for their settled claims.

Clausen and Miller contend that all of their claims were settled and are not barred by § 3730(b)(5), and that they are both entitled to a portion of the relator's share. LaCorte contends that some of his claims were settled and are not barred by § 3730(b)(5), and that he is also entitled to a portion of the relator's share. He further contends that some of his claims were not settled and that he is entitled to litigate those claims.⁴

intervene or bring a related action based on the facts underlying the pending action.

⁴ LaCorte, Clausen, and Miller also suggest that, if their claims were settled, they may wish to object to the terms or amount of the Settlement Agreement. For the reasons discussed infra, Clausen and Miller's claims, and all of LaCorte's settled claims, are barred by § 3730(b)(5). Thus, the issue of whether

To decide the two issues before me, the parties agree that I need not: (1) consider any facts pertaining to the negotiations that led to the Settlement Agreement;⁵ (2) rely on the date on which the Settlement Agreement was purportedly reached in principle (according to Merena, Robinson, and Spear, the Settlement Agreement was reached in principle on February 9, 1996, which was before LaCorte, Clausen, and Miller filed their qui tam complaints in district court); or (3) address qui tam jurisdictional issues other than the application of § 3730(b)(5), despite the fact that the provisions of §§ 3730(e)(3)-(4) might bar LaCorte, Clausen, and Miller from proceeding with their actions. Finally, the parties agree that the proper method for determining whether LaCorte, Clausen, and Miller's claims were settled is to compare the terms of the Settlement Agreement with the allegations set forth in LaCorte, Clausen, and Miller's

they would have standing to object to the terms or amount of the Settlement Agreement is effectively moot, as they are not entitled to a seek a portion of the relator's share for their settled claims.

⁵ SBCL and relators Merena, Robinson, and Spear cite in their submissions several statements by AUSA James Sheehan which were made at a conference on the record on September 19, 1996. Mr. Sheehan stated in open court that the government did not rely on any information provided by LaCorte, Clausen, and Miller in reaching the Settlement Agreement. That issue, however, is not presently before me, and should that issue ever become relevant, it would appear to require a detailed factual determination after full evidentiary submissions. Indeed, it must be noted that at the March 31st conference, the parties requested that the number of issues presently before the court be narrowed to two, as all parties (except perhaps LaCorte, Clausen, and Miller) preferred to have a ruling on LaCorte, Clausen, and Miller's right to seek a portion of the relator's share without the court conducting what would very likely be a lengthy evidentiary hearing.

complaints.

b. Qui tam suits under the False Claims Act

The False Claims Act ("FCA"), 31 U.S.C. §§ 3729-33, as the Court of Appeals explained in United States ex rel. Stinson, Lyons, Gerlin & Bustamente, P.A. v. Prudential Ins., 944 F.2d 1149, 1152-54 (3d Cir. 1991), was originally adopted in 1863 to combat rampant fraud by Civil War defense contractors. See also United States ex rel. Springfield Terminal Ry. v. Quinn, 14 F.3d 645, 649-51 (D.C. Cir. 1994). A important part of the FCA scheme since inception has been the whistle-blower, or qui tam, provisions, which authorize a private individual (a relator) to file a civil suit to recover damages from those alleged to have defrauded the government through, among other things, the submission for payment of a false or fraudulent claim. Throughout the FCA's history, the qui tam provisions have tried to encourage whistle-blowers to file suit by promising them a portion of the government's recovery in the case while trying (with varying degrees of success) to discourage the filing of "opportunistic" suits by plaintiffs with no genuinely valuable information to contribute to the government's efforts to combat fraud. See United States ex rel. Springfield Terminal Ry., 14 F.3d at 651 ("The history of the FCA qui tam provisions demonstrates repeated congressional efforts to walk a fine line between encouraging whistle-blowing and discouraging opportunistic behavior.").

In 1986, Congress substantially amended the FCA because

it was clear that fraud on the government by the nation's largest defense contractors and others was as pervasive and detrimental as ever, and the qui tam provisions were not substantially aiding the government's enforcement efforts. See S.Rep. No. 99-345, at 2-8 (1986), reprinted in 1986 U.S.C.C.A.N. 5266. It has been widely acknowledged that the primary aim of the 1986 amendments to the qui tam provisions was to "encourage more private enforcement suits," United States ex rel. Stinson, 944 F.2d at 1154 (quoting S.Rep. No. 99-345, at 23-24 (1986), reprinted in 1986 U.S.C.C.A.N. 5266), as Congress "increased monetary awards [for relators], adopted a lower burden of proof, and allowed the qui tam plaintiff to remain a party in the action even if the Government intervenes." Id. The "principal intent" of the 1986 amendments was to strike a proper balance between the "almost unrestrained permissiveness" that prior to 1943 allowed a relator to base a qui tam action on information gleaned from public sources (e.g., a government criminal indictment), and the "restrictiveness of post-1943 cases, which precluded suit even by original sources" of previously undisclosed, valuable false-claims information. See id.

Thus, under the qui tam provisions as amended in 1986, a relator may file a civil action "for the person and for the United States Government" against those alleged to have knowingly submitted false or fraudulent claims in violation of 31 U.S.C. § 3729. See 31 U.S.C. § 3730(b). A qui tam suit must be filed in camera and remain under seal for at least sixty days, during

which time "[a] copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government." § 3730(b)(2). The government is then required to investigate the claims and decide, ideally within this initial sixty-day period, whether it will intervene in the action. See id. The qui tam complaint may not be served on the defendant until the court so orders. See id. The government may "for good cause shown" move to extend the seal on the complaint beyond the initial sixty-day period. See § 3730(b)(3). During the time that the complaint remains under seal, the government shall elect either to proceed with and conduct the action or notify the court that it declines to take over the action, in which case the relator has the right to conduct the action. See § 3730(b)(4)(A)-(B).

A relator who complies with the requirements for bringing a qui tam action and provides information that helps the government to secure a recovery, either with or without governmental intervention in the suit, is entitled to a relator's share, which can be as much as thirty percent of the recovery in a suit that the government declines to take over. See § 3730(d). The relator may also recover from the defendant "reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs," regardless of whether the government took over the relator's action. See § 3730(d)(1)-(2).

Pursuant to the 1986 amendments, there are four so-

called "jurisdictional bars," see United States ex rel. Stinson, 944 F.2d at 1152 n.3, set forth at §§ 3730(e)(1)-(4), which embody a large part of Congress's latest effort "to walk a fine line between encouraging whistle-blowing and discouraging opportunistic behavior." United States ex rel. Springfield Terminal Ry., 14 F.3d at 651. Two of those jurisdictional bars have some relevance to the issues presently before me.

First, a court lacks jurisdiction over a qui tam action if the relator's complaint is based upon allegations or transactions that were "public[ly] disclos[ed]" before the relator filed suit. See § 3730(e)(4)(A). The only exception to this rule is that a qui tam suit based upon "publicly disclosed" allegations or transaction may proceed if the relator is "an original source" of that publicly disclosed information. See § 3730(e)(4)(A); see also United States ex rel. Springfield Terminal Ry., 14 F.3d at 651. An "original source" is "an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information."⁶ § 3730(e)(4)(B); see also United States ex rel.

⁶ SBCL and relators Merena, Robinson, and Spear, repeatedly suggest in their submissions that the LaCorte, Clausen, and Miller complaints are based upon "publicly disclosed" allegations and transactions. In particular, SBCL seeks to establish, through a variety of exhibits attached to its Memorandum of Law, that it "publicly disclosed" the existence of the Merena, Robinson, and Spear suits in its 1994 and 1995 Annual Reports. LaCorte, in response, claims that he reported SBCL's fraudulent

Stinson, 944 F.2d at 1160-61. Second, a court lacks jurisdiction over a qui tam action that "is based on allegations or transactions which are the subject of a civil suit or administrative civil money penalty proceeding in which the Government is already a party." § 3730(e)(3).⁷

activities to a member of the United States House of Representative in November of 1992, and that he is an "original source" of his allegations. All parties agreed at the March 31st conference (when they agreed to adopt the April 1st procedural order) that the issues currently before the court do not include or require a determination as to whether the LaCorte, Clausen, and Miller complaints are based upon "publicly disclosed" allegations or transactions, or whether those relators are "original sources." The parties also have not been afforded an opportunity to brief and argue those issues. Therefore, the jurisdictional issues of §§ 3730(e)(3)-(4), although perhaps very relevant, are not properly before me and will not be addressed at this time.

⁷ The jurisdictional bar of § 3730(e)(3) is likewise not an issue presently before me. It is worth noting, however, that at oral argument on the pending issues, the parties were asked whether the LaCorte, Clausen, and Miller suits might be barred by § 3730(e)(3). At that time, all parties agreed that § 3730(e)(3) is inapplicable, as it does not bar a qui tam suit until the government becomes a "formal party" by intervening in the suit. On July 2, 1997, however, relators Merena, Robinson, and Spear submitted to the court a letter in which they expressed the view that § 3730(e)(3) does not require "formal intervention" before the government becomes a "party" within the meaning of § 3730(e)(3), and that, therefore, I should apply § 3730(e)(3) to bar LaCorte, Clausen, and Miller's claims.

The record reflects that the government did not formally intervene in the Merena action until September 27, 1996, the day after the Settlement Agreement was reached. It is clear, however, that at least as early as August 25, 1995, the government did "proceed with the [Merena] action," did "conduct the [Merena] action," and took over "the primary responsibility for prosecuting the [Merena] action," within the meaning of 31 U.S.C. § 3730(b)(4)(A) and § 3730(c)(1). The government also investigated, took over primary responsibility for, and proceeded with the Robinson and Spear actions at least as early as November 3, 1995, the date on which both of those suits had been transferred to this court. Based on this record, it is clear that the government was a de facto party to all three cases

II. Analysis

Miller and Clausen contend-- and all other parties agree-- that the terms of the Settlement Agreement settle all of Miller's claims in Civ. No. 97-3643 and all of Clausen's claims in Civ. No. 97-1186. Therefore, as far as Miller and Clausen's claims are concerned, I need only address whether those claims are barred by § 3730(b)(5). If their claims are barred by § 3730(b)(5), Miller and Clausen are not entitled to seek a portion of the relator's share for their settled claims.

LaCorte contends that only some of his claims were

before either LaCorte, Clausen, or Miller filed suit. However, because it did not "formally intervene" at an earlier time, the government contends that it was not a "party" within the meaning of § 3730(e)(3), and that § 3730(e)(3) cannot be applied to the three later-filed actions.

While I am inclined to rule based on the facts in this case that the government was a "party" within the meaning of § 3730(e)(3), that issue is not before me at the present time. At the March 31, 1997, conference, it was agreed that the issues currently before the court are limited, and they do not include § 3730(e)(3).

I note, nevertheless, that if the LaCorte, Clausen, and Miller suits were not otherwise barred from proceeding by § 3730(b)(5) or § 3730(e)(4), the government's interpretation of § 3730(e)(3) would work to the significant financial detriment of relators Merena, Robinson, and Spear, all of whom presumably had little leverage to compel the government to intervene formally in their suits at an earlier time, and all of whom, presumably in the spirit of cooperation, acquiesced to the government's repeated motions to keep their cases under seal. Conceivably, fewer relators will be willing to file suit if they fear that their relator's share may be substantially diminished because the government has adopted the policy that it will not become a "formal party" to a complex suit until after the matter has been settled. More likely, relators will continue to file qui tam actions but they will feel compelled to protect their financial interest by vigorously opposing any motion by the government to keep the case under seal beyond the initial 60-day period.

settled.⁸ The "claims" in LaCorte's complaint are not numbered separately, but LaCorte contends that the numbered allegations in his complaint can be divided into five, separate claims. He argues that the allegations he designates as Claim 1, part of Claim 2, Claim 3, and Claim 4 were not settled by the Settlement Agreement, but that the remainder of Claim 2 and Claim 5 were settled.⁹ The other parties do not seriously challenge LaCorte's attempt to divide the allegations in his complaint into five claims, and thus I will adopt the view that LaCorte's complaint presents five claims.¹⁰ SBCL contends that all five claims were settled. The government and relators Merena, Robinson, and Spear contend that Claim 1, Claim 3, and Claim 4 were not settled, but that all of Claim 2 and Claim 5 were settled.

All parties agree, therefore, that part of Claim 2 and all of Claim 5 were settled. Because there is no dispute over those claims, I need only address whether they are barred by § 3730(b)(5). As to Claim 1, the remainder of Claim 2, Claim 3, and Claim 4, the parties dispute whether they were settled.

a. The claims that LaCorte contends have not been settled

⁸ It is undisputed that LaCorte's allegations concern false claims that were allegedly made during the time-period covered by the terms of the Settlement Agreement's release.

⁹ LaCorte stated in his opening memorandum that he was uncertain whether Claim 5 was settled. At oral argument and in his reply memorandum, however, LaCorte's conceded that Claim 5 was settled.

¹⁰ SBCL views the allegations in Claim 3 and Claim 4 as comprising essentially one claim, but I will consider those two claims separately.

According to his complaint, Dr. William St. John LaCorte resides in Louisiana and serves as an attending physician at several nursing homes in the New Orleans area. See LaCorte Complaint, at ¶ 2. In that capacity, he allegedly discovered that SBCL submitted false claims to the Medicaid and Medicare programs. LaCorte alleges that the nursing homes contract with SBCL to perform tests on specimens from the nursing home residents pursuant to orders submitted by the attending nursing home physicians. SBCL bills Medicare and Medicaid directly for the tests that they are asked to perform. When SBCL bills Medicare and Medicaid, it is required to use an American Medical Association's Physician's Current Procedural Terminology ("CPT") code to identify the tests performed.

LaCorte contends that the following claims set forth in his complaint were not settled by the Settlement Agreement:

Claim 1: Complete Blood Count Claim.

LaCorte alleges that when he submitted to SBCL an order form for a routine Complete Blood Count ("CBC") test, SBCL regularly performed, and billed Medicare and Medicaid at an additional cost for, a platelet and differential white blood cell count test, even though he had not ordered that additional test. See LaCorte Complaint, at ¶¶ 11-13. When LaCorte brought this fact to SBCL's attention, he was allegedly told by SBCL that the platelet and differential white blood cell count test "is automatically performed when the CBC box on the [SBCL] requisition form is checked." Id., at ¶¶ 15, 50a, 51a.

Claim 2: Substitution of More Extensive Chemistry Profiles

LaCorte alleges that when he submitted to SBCL an order for a standardized Sequential Multi-Analysis ("SMA")¹¹ blood chemistry "profile"¹² or "panel," SBCL regularly performed more extensive blood chemistry profiles than ordered, and billed Medicare and/or Medicaid for the extra, unordered tests. See LaCorte Complaint, at ¶¶ 17-31. Specifically, when an SMA panel was ordered by a physician-- in particular, panel SMA-18, which is a panel of 18 tests--, SBCL allegedly substituted one of several different profiles or panels, which are known by the SBCL tradenames Chem 22, Chem 22S, Chemzyme, and Chemzyme Plus. Using its wrongfully substituted tradename profiles, SBCL allegedly billed the government for unordered tests by submitting a claim for a "19-plus" (i.e., 19 or more) test profile rather than a mere 18-test profile. Using this scheme, SBCL allegedly

¹¹ An SMA is a series of blood tests performed on a single laboratory machine. In his submissions to the court, LaCorte contends that his complaint sets forth allegations regarding "SMAC" chemistry profiles. According to Paragraph H of the Preamble to the Settlement Agreement, "SMAC" might refer to "Serial Multichannel Automated Chemistry" test profiles; relators Merena, Robinson, and Spear, however, seem to define "SMAC" as "Simultaneous Multiple Analyzer Computerized." Regardless of what LaCorte and the other parties mean by "SMAC," and regardless of whatever difference, if any, that there is between an SMA profile and a SMAC profile, a review of LaCorte's complaint reveals no reference to "SMAC" tests. I will consider only those tests and profiles which are expressly mentioned in LaCorte's complaint.

¹² A "profile" is a group of individual blood chemistry tests that SBCL offers to physicians at a lower priced option than if the tests are ordered, performed, and billed individually.

performed unordered tests for ionized calcium, triglycerides, magnesium, iron, iron binding capacity, and blood lipoprotein. See id., at ¶¶ 23-25. These additional tests performed by SBCL under its tradename panels were allegedly billed to Medicare under separate CPT codes (i.e., CPT codes separate from the codes used for the SMA panels that were ordered), resulting in a higher cost to Medicare than would have been incurred had only the tests that were ordered been performed. Id., at ¶ 28.

Claim 3: Unauthorized Testing as Part of a Screening Program

LaCorte alleges that SBCL employees (presumably sales representatives) went to the nursing homes where LaCorte worked and drew blood and urine specimens from the nursing-home patients so that SBCL could perform CBC, hematology, urinalysis, and blood chemistry tests on the specimens without physician authorization. These unauthorized tests allegedly included entire chemistry panels performed on the specimens without physician authorization. See LaCorte Complaint, at ¶ 33-34. SBCL allegedly performed these tests as part of a phony "screening program" that it conducted at the nursing homes.

Claim 4: Unauthorized Testing as Part of An Annual Audit Program

LaCorte alleges that SBCL sent its employees (presumably sales representatives) to nursing homes for the ostensible purpose of "auditing" the tests that were being ordered by the nursing home physicians so that SBCL could ensure that those tests were being performed by its laboratories. LaCorte alleges that what SBCL employees actually did during

these so-called "audits" was examine patient medical charts so that it could collect information concerning screening tests and chemistry panels. See LaCorte Complaint, at ¶ 40. SBCL then used the information gathered to fabricate computer-generated requisition forms that fraudulently authorized SBCL to perform unordered test and/or more extensive tests than had been previously ordered. SBCL allegedly billed Medicare and Medicaid for these fraudulent tests. See id., at ¶¶ 42-44.

b. The terms and scope of the Settlement Agreement

(i) Express terms of the Settlement Agreement

Paragraph A of the Preamble to the Settlement Agreement provides that "this Agreement addresses the United States' civil claims against SBCL based on the conduct described in Preamble Paragraphs H through Q below including the conduct alleged in [the Merena, Robinson, and Spear complaints]." Paragraphs H through Q of the Preamble, which set forth the false claims conduct and allegations that are covered by the Settlement Agreement, provide, in pertinent part:

H. WHEREAS, the United States contends that SBCL violated federal statutes and/or common law doctrines, in connection with the marketing, sale, pricing and billing of its testing for serum ferritin (Current Procedural Terminology ("CPT") 82728), gamma glutamyl transpeptidase ("GGT") (CPT 82977), triglycerides ("Trig") (CPT 84478), serum iron (CPT 83545/83540), high-density lipoprotein cholesterol ("HDL") (83718), low-density lipoprotein cholesterol ("LDL") (CPT 83720), total iron binding capacity ("TIBC") (CPT 83550/83555), and serum magnesium tests (CPT 83735/83750) when performed routinely in conjunction with SBCL's ChemZyme and/or ChemZyme Plus profiles, or other SBCL chemistry profiles that included serial multichannel automated chemistry ("SMAC") tests (CPT

80002-80019 and codes G0058-60); these services were billed by and paid to SBCL;

. . .

K. WHEREAS, the United States contends that SBCL violated federal statutes and/or common law doctrines in connection with its calculations of and billing for Complete Blood Count ("CBC"), one or more additional indices (CPT 85029/85030), when these indices were not ordered by doctor-clients; these services were billed by and paid to SBCL;

. . .

P. WHEREAS, the United States contends that SBCL violated federal statutes and/or common law doctrines in connection with allegations not specified in Preamble Paragraphs H through O above but which are set forth in the Civil Actions referenced in Preamble Paragraph A; these allegations resulted in tests that were billed by and paid to SBCL;

Q. WHEREAS, the United States contends that the practices described in Preamble Paragraphs H though [sic] P resulted in the submission of false claims actionable under the False Claims Act, 31 U.S.C. § 3729, et seq., between January 1, 1989, and September 16, 1996, to the Medicare program, the Railroad Retirement Medicare program, the CHAMPUS program, the Federal Employees Health Benefits Program, and the Medicaid programs in the states listed in Preamble Paragraph G above, which enabled SBCL to improperly collect federal Medicare payments, Railroad Retirement Medicare program payments, CHAMPUS payments, Federal Employees Health Benefits Program payments, and Medicaid program payments from the states listed in Preamble Paragraph G above;

Paragraph 2 of the "Terms and Conditions" of the Settlement Agreement provides that, in exchange for SBCL's payment of \$325,000,000, the United States Government releases SBCL "from **any** civil or administrative monetary **claims** (including recoupment claims) that **the United States has or may have** under the False Claims Act ... **for the conduct** described in Paragraphs H through Q of the Preamble above including that **alleged in the**

Civil Actions [(i.e., the Merena, Robinson, and Spear complaints)] with respect to the claims submitted or caused to be submitted [to the government] during the relevant time period [of January 1, 1989, through September 16, 1996]." Settlement Agreement, p.9, ¶ 2 (emphasis added).¹³

(ii) Scope of the Settlement Agreement

A settlement agreement is interpreted under the same principles that apply to ordinary contract interpretation. See In re Columbia Gas Sys., 50 F.3d 233, 241 (3d Cir. 1995) ("Interpreting a settlement agreement presents a question of contract law[.]"). "Federal law controls the interpretation of a contract entered pursuant to federal law when the United States is a party." Kennewick Irrigation Dist. v. United States, 880 F.2d 1018, 1032 (9th Cir. 1989) (citing United States v. Seckinger, 397 U.S. 203, 209-10 (1970)). For guidance in interpreting a contract pursuant to federal law, a court must look to "general principles for interpreting contracts." Id.; see also United States v. Brekke, 97 F.3d 1043, 1049-50 n.7 (8th Cir. 1996) ("ordinary principles of contract interpretation apply" to the interpretation of a settlement agreement that settled civil claims under False Claims Act), cert. denied, 117 S.Ct. 1281 (1997).

¹³ The "Terms and Conditions" also provide at paragraph 3 that the government does not release SBCL from a variety of claims described in that paragraph (including any potential criminal liability). No party to the present proceeding contends that LaCorte, Clausen, or Miller's claims fall within the claims that were expressly "not released" by paragraph 3.

It is generally accepted that the objective in construing contract language is to "determine and to effectuate the intention of the parties." In re Columbia Gas Sys., 50 F.3d at 241; see also 4 Samuel Williston, Williston on Contracts § 600 (1961) ("[T]he guiding principle, polestar or lodestar of interpretation, whatever the form or nature of the instrument, is always the same: To ascertain the will, or intent, of the [parties]."). The court's task is not to reveal the subjective intention of the parties "but what their words would mean in the mouth of a normal speaker of English, using them in the circumstances in which they were used.'" Halderman v. Pennhurst St. Sch. & Hosp., 901 F.2d 311, 319 (3d Cir.) (punctuation marks omitted) (quoting Oliver Wendell Holmes, The Theory of Legal Interpretation, 12 Harv. L.Rev. 417, 419 (1899)), cert. denied, 498 U.S. 850 (1990).¹⁴

Turning to the terms of the Settlement Agreement, it is clear that the government released SBCL from any claim under the FCA that the government "has or may have ... for the conduct described in Paragraphs H through Q of the Preamble." See Settlement Agreement, at p.9, ¶ 2. The release also covers any FCA claim that the government "has or may have ... for the

¹⁴ Neither the government nor SBCL has expressed any interest in submitting extrinsic or parol evidence to support their respective interpretations of the Settlement Agreement. In addition, although it is not a matter of record, it is evident from the statements made at oral argument that the government and SBCL negotiated and drafted the terms of the Settlement Agreement.

conduct ... alleged in [the Merena, Robinson, and Spear complaints]." Id. With respect to the Merena, Robinson, and Spear complaints, it is clear that the Settlement Agreement is intended to release SBCL from claims that are the same as, or are encompassed by, the "allegations" set forth in those three complaints. A review of those complaints reveals that Merena, Robinson, and Spear's false-claims allegations are pled both generally and with particularity. Therefore, as far as the present issues are concerned, if LaCorte's allegations are the same as or are encompassed by either the generalized or particularized allegations set forth in the Merena, Robinson, and Spear complaints, LaCorte's claims were settled by the Settlement Agreement.

The government rightly contends that it did not release SBCL from any and all claims that may arise for the time-period covered by the Settlement Agreement; indeed, it is clear from the terms used that such a broad-based release was not intended. Nevertheless, SBCL clearly obtained a release that offers enough latitude to cover a variety of claims that fall within the relevant time period. The government settled with SBCL all "conduct alleged in" (i.e., the "allegations" in) the Merena, Robinson, and Spear complaints. Furthermore, the release is clearly intended to extend to claims beyond those expressly alleged in the Merena, Robinson, and Spear complaints, as the release includes claims that the government did not know existed at the time the Settlement Agreement was reached: namely, claims

that the government "may have" against SBCL. Based on these terms, SBCL rightly contends that the Settlement Agreement is intended to resolve all claims that the government (or any qui tam relator) has or may have which are either the same as or encompassed by the generalized and particularized allegations set forth in the Merena, Robinson, and Spear complaints.¹⁵

c. Do the terms of the Settlement Agreement settle LaCorte's claims?

LaCorte's Claim 1

SBCL argues that Spear's Amended Complaint sets forth essentially the same allegation regarding CBC tests that LaCorte makes in Claim 1, and that Claim 1 was settled given Spear's CBC

¹⁵ In its opening memorandum, SBCL argued that the language in Preamble Paragraph P broadly releases all present and future claims that are "in connection with" (which SBCL interpreted loosely to mean "in any way remotely related to") the conduct described in Preamble Paragraphs H through Q, and all present and future claims "in connection with" the allegations in the Merena, Robinson, and Spear complaints. See SBCL's Memorandum, at p.16. SBCL's interpretation of the "in connection with" language in Preamble Paragraph P is rejected.

Preamble Paragraph P provides: "the United States contends that SBCL violated federal statutes and/or common law doctrines in connection with allegations not specified in Preamble Paragraphs H through O above but which are set forth in the [Merena, Robinson, and Spear complaints]." Clearly, "in connection with" is used in that sentence, as the government suggests, to mean that SBCL violated the law "by virtue of" or "due to" the allegations set forth in the Merena, Robinson, and Spear complaints. See United States' Memorandum, at p.8.

In its reply memorandum and at oral argument, SBCL seemed to abandon its reliance on the "in connection with" language of Preamble Paragraph P, and instead adopted the (correct) view that I should determine the proper scope of the Settlement Agreement's release based on "whatever subject-matter breadth or narrowness the plain language" of Preamble Paragraphs H through O and the allegations in the Merena, Robinson, and Spear complaints "encompass."

allegation. Spear alleged that,

when physicians ordered a "complete blood count" or CBC, defendant routinely and improperly charged government insurance programs for both the CBC test and for unordered and medically unnecessary additional CBC indices. As a result, defendant received millions of dollars that otherwise would not have been paid.

See Spear's Amended Complaint, at ¶ 6. Spear further alleged that SBCL "routinely billed government health insurance programs for unordered blood tests." See id., at ¶ 7; see also ¶¶ 25-29.

I agree that Spear's broad allegations regarding billing for additional, unnecessary blood tests when a physician ordered a CBC panel encompasses LaCorte's CBC allegations. Although LaCorte's CBC claim differs to the extent that LaCorte focuses exclusively on the unnecessary addition of differential white blood cell count and platelet tests, Spear's allegation sets forth the essential, material elements of LaCorte's claim, and Spear's allegations are broad enough to release SBCL from LaCorte's more specific factual contentions. Claim 1, therefore, was settled and released by the Settlement Agreement.¹⁶

LaCorte argues that Claim 1 was not settled because

¹⁶ Although SBCL does not make the argument, it appears that the conduct described in Paragraph K of the Preamble to the Settlement Agreement also settled Claim 1. Paragraph K provides: "the United States contends that SBCL violated federal statutes and/or common law doctrines in connection with its calculations of and billing for Complete Blood Count ("CBC"), one or more additional indices (CPT 85029/85030), when these indices were not ordered by doctor-clients...." Although the particulars of Claim 1-- namely, overbilling for platelet and differential white blood cell count tests-- are not expressly mentioned in Paragraph K, the false claims allegation settled by Paragraph K is broad enough to settle Claim 1.

"[t]he performance of unauthorized differentials and platelet counts is not mentioned in the Preamble Paragraphs by name or CPT Code." See LaCorte's Memorandum in Support of Claim to Settlement Proceeds, at p.10. LaCorte's fails, however, to read the Settlement Agreement's release with the proper breadth, which is to release narrower claims that are effectively subsumed by any of the more broad allegations set forth in the Merena, Robinson, and Spear complaints.

The government also contends that Claim 1 was not settled. The government argues that, because Fed. R. Civ. P. 9(b) requires that averments of fraud and the circumstances constituting fraud be plead with particularity, this court should read the Settlement Agreement so that it releases only those averments in the Merena, Robinson, and Spear complaints that were plead with particularity.¹⁷ Nothing in the record, however, even arguably suggests that this interpretation of the Settlement Agreement is an accurate reflection of what the parties to the Settlement Agreement intended. Indeed, the only objectively reasonable interpretation based on the language used in the Settlement Agreement is that the government and SBCL intended to settle the full scope of the averments, or allegations, in the Merena, Robinson, and Spear complaints. Some of those allegations were pleaded in broad terms, some were pleaded with particularity. No language in the Settlement Agreement supports

¹⁷ The government also makes this argument in support of its contention that LaCorte's Claim 3 and Claim 4 were not settled.

the government's contention that the parties intended to settle only those averments that were pled with particularity. Furthermore, the complaints were never formally served on the defendant for the defendant to challenge the specificity of the allegations; the seal was lifted and the complaints were provided to SBCL solely for the government and SBCL to begin settlement discussions. Finally, the government failed to exercise its option to intervene earlier in the Merena, Robinson, and Spear suits and file amended complaints that set forth only the particularized allegations that the government intended to have settled. Therefore, SBCL properly contends that the Settlement Agreement released all allegations, both general and specific, in the Merena, Robinson, and Spear complaints. For these reasons, I find that Claim 1 was settled.

LaCorte's Claim 2

LaCorte argues that Claim 2 was not settled insofar as some of the specific laboratory tests mentioned in his complaint are not mentioned in Preamble Paragraph H of the Settlement.¹⁸

¹⁸ LaCorte concedes that Claim 2 was settled by Preamble Paragraph H insofar as he alleged that SBCL submitted false claims for tests for triglycerides, magnesium, iron, iron binding capacity, and blood lipoprotein. See LaCorte's Opening Memorandum, at p.12. Notably, both the government and SBCL-- the two parties that negotiated and drafted the Settlement Agreement-- agree that Claim 2 was settled in its entirety, and relators Merena, Robinson, and Spear, the only other parties to the Settlement Agreement, also agree that Claim 2 was settled. Since all parties to the agreement contend that Claim 2 was settled by the Settlement Agreement, there is little room for LaCorte to contend that Claim 2 was not settled. As a rule of contractual interpretation, a court should afford great, if not absolute, deference to the unanimous and reasonable interpretation given to

In particular, LaCorte contends that the Settlement Agreement does not release his allegation that SBCL fraudulently billed the government for a 19-test profile when he ordered only an 18-test profile, and insofar as he alleged that SBCL performed unnecessary tests for ionized calcium. See LaCorte's Opening Memorandum, at p.12. LaCorte contends that the allegations in the Merena, Robinson, and Spear complaints do not settle Claim 2 because those complaints do not specifically mention ionized calcium or the so-called 19-test profiles. See id.

The terms of the Settlement Agreement release SBCL from any claim the government (or a qui tam relator) has or may have for "the conduct described in" Paragraphs H through Q of the Preamble. See Settlement Agreement, p.9., ¶ 2. LaCorte concedes that the conduct described in Preamble Paragraph H covers almost all of his claim, but contends that the Settlement excludes two tests not specifically mentioned. The release is, however, broader than LaCorte contends, and it covers all claims, including claims that the government did not know of at the time it entered into the release, that are encompassed by the "conduct described in" Paragraph H.

a contract's language by all parties to the contract. See 17A C.J.S. Contracts § 325(1)(a) (1963); Parish v. Legion, 450 F.2d 821, 827 (9th Cir. 1971). The parties to the Settlement Agreement are certainly in the best position to know what was intended by the language used (or at least in a much better position than LaCorte, who was not a party). Applying this principle, I find that Claim 2 was settled in its entirety. I will, nevertheless, in the interest of fully addressing LaCorte's contentions, analyze whether Claim 2 was settled by the terms of the Settlement Agreement.

The conduct described in Paragraph H generally releases any claim that concerns SBCL's "marketing, sale, pricing and billing of its testing" for a variety of tests that were "performed routinely in conjunction with SBCL's ChemZyme and/or ChemZyme Plus profiles, or other SBCL chemistry profiles that included serial multichannel automated chemistry ("SMAC") tests (CPT 80002-80019 and codes G0058-60)." While tests for ionized calcium and the so-called 19-test profile are not expressly mentioned in Paragraph H, it is clear that Claim 2, which turns on SBCL's alleged substitution of its tradename profiles to enable itself to submit unordered claims for additional tests, is encompassed by the conduct described in Paragraph H. As I have already noted, particular tests need not be actually identified in the Settlement Agreement for the material elements of the allegations that encompass those claims to be deemed settled.

In addition, Merena and Robinson correctly point out that their amended complaints contain very broad allegations regarding SBCL's fraudulent billing and marketing for blood chemistry profiles. Like LaCorte, Merena alleged that SBCL's fraudulent scheme consisted of "unbundling" submitted tests and billing the government separately for a series of tests that should have been billed together. Specifically, paragraph 214 of Merena's Amended Complaint sets forth the following, broad false-claims allegation:

214. By expanding and manipulating its test profiles, performing tests that are not medically necessary, and improperly billing for tests that should have been part

of an automated test profile, SBCL has knowingly presented numerous false and fraudulent claims for payment by the government.

LaCorte's more narrow allegations regarding tests for ionized calcium, and his so-called 19-test profile allegation, are clearly encompassed by Merena's allegation. See also Merena's Amended Complaint at ¶¶ 208-213, 215; Robinson's Amended Complaint, at ¶ 7(A)-(B). For these reasons, Claim 2 was settled.

LaCorte's Claim 3

LaCorte alleges that SBCL employees, while allegedly performing phony "screening programs" at nursing homes, drew blood and urine specimens from nursing home patients and then performed, and billed the government for, CBC, hematology, urinalysis, and blood chemistry tests on the specimens without physician authorization. These unauthorized tests allegedly included entire chemistry panels performed on the specimens without physician authorization. The government, and Merena, Robinson, and Spear contend that Claim 3 was not settled.

Insofar as LaCorte contends that SBCL submitted false claims for CBC, hematology, and blood chemistry tests, Claim 3 is settled by the allegations in Spear's complaint. For example, Spear alleged at paragraph 7 of his complaint:

(a) Defendant routinely billed ... for unordered blood tests. By providing and billing for blood test data that was neither ordered by a physician nor required by the patient's medical condition, defendant's actions were [illegal].

(b) Because the illicitly billed blood tests were not

compelled by a patient's condition, defendant made, or caused to be made, claims for medically unnecessary blood tests.

LaCorte seeks to distinguish Claim 3 by contending that, unlike Spear's allegations, his allegation revolves around SBCL's allegedly phony screening programs, and the fact that SBCL employees entered nursing homes with the intention of taking blood samples that would enable SBCL to submit false claims. These factual distinctions, however, do not place Claim 3 outside the scope of the Settlement Agreement's release of all false-claims allegations that are encompassed by the general allegations in Spear's complaint. Spear alleged that SBCL fraudulently billed the government for a wide-variety of unauthorized blood tests, and Spear's allegations are clearly broad enough to encompass LaCorte's allegation that SBCL submitted false claims for CBC, hematology, and blood chemistry tests.

However, insofar as LaCorte alleged in Claim 3, at paragraphs 32-38 and 50e of his complaint, that SBCL submitted false claims for urinalysis tests, the Settlement Agreement does not release Claim 3. There is no allegation in either the Merena, Robinson, or Spear complaints, or in Preamble Paragraphs H through Q, that releases LaCorte's claim that SBCL submitted false claims for urinalysis tests.

SBCL argues that LaCorte's urinalysis test allegation was settled by the following language or "allegation" in Merena's Amended Complaint:

74. [SBCL] has engaged in a number of complex, wide-ranging and longstanding schemes to defraud and deceive [Medicare] and other federally funded health insurance programs. These schemes include, but are not limited to, the following....

See SBCL's Memorandum, at p.37 n.42. SBCL concedes that the Settlement Agreement incorporates no allegations that directly address the submission of fraudulent urinalysis claims, but SBCL argues that LaCorte's allegation concerning SBCL's use of its "screening programs" to defraud Medicare is encompassed by Merena's very general contention in paragraph 74 regarding various "unalleged" schemes by SBCL to defraud Medicare.

While it is true that the release covers claims that are encompassed by generalized allegations in Merena's complaint, paragraph 74 sets forth an "allegation" (it is more like a preface to an allegation than an allegation itself) that is so broad it is practically and legally meaningless. Indeed, SBCL's reading of the Settlement Agreement, if accepted, would leave few, if any, potential claims unsettled, as it is virtually certain that any false-claims allegations that may hereafter be made against SBCL will fall within the category of "complex, wide-ranging and longstanding schemes to defraud and deceive" the government. The release was certainly not intended to cover all claims that fall within that overly broad and vague category. Thus, the language in paragraph 74 of Merena's Amended Complaint cannot be construed to release LaCorte's allegation that SBCL submitted false claims for urinalysis tests. Accordingly, Claim 3 (paragraphs 32-38 and 50e of LaCorte's Complaint) was not

settled insofar as LaCorte alleges that SBCL submitted false claims for urinalysis tests.

LaCorte's Claim 4

LaCorte alleges that SBCL sent its employees to nursing homes to perform phony "audits" so that SBCL could examine patients' medical charts and gather information regarding screening tests and blood chemistry panels. SBCL allegedly used the information gathered to fabricate computer-generated requisition forms that fraudulently authorized SBCL to perform unordered tests and/or to perform more extensive tests than had been previously ordered.

SBCL argues that Claim 4 is settled by Spear and Robinson's allegations regarding fraudulent billing for blood chemistry tests. I agree. Robinson alleged that SBCL submitted false claims by "designing and implementing its standard chemistry profiles, its clinical laboratory requisition forms, and its related practices and procedures in a manner calculated to promote unnecessary chemical testing...." Robinson's Amended Complaint, at ¶ 8(A). Spear alleged that SBCL "routinely billed government health insurance programs for unordered blood tests," and that SBCL provided and billed for "blood test data that was neither ordered by a physician nor required by the patient's medical condition[.]" Spear's Amended Complaint, at ¶ 7(a). Spear further alleged that SBCL made "claims for medically unnecessary blood tests." Id., at ¶ 7(b).

While Robinson did not allege that SBCL wrongfully

collected data from nursing homes or fabricated computer-generated orders, Robinson's allegations encompass the allegations in Claim 4. In particular, the thrust of Robinson's complaint is that SBCL billed the government for medically unnecessary blood chemistry tests that were not ordered by physicians. That is precisely what LaCorte contends in Claims 4: that SBCL submitted false claims for blood chemistry tests that the nursing-home patients did not need performed and were not ordered by the attending physicians. The fact that Robinson's claim turns on the allegedly deceptive nature of SBCL's order forms whereas LaCorte's claim turns on SBCL's fraudulent auditing schemes does not place Claim 4 outside the scope of the Settlement Agreement's release. In addition, Spear's general allegation regarding SBCL's submission of claims for unordered, medically unnecessary blood tests also brings Claim 4 within the scope of the release, despite the immaterial factual distinction between the LaCorte and Spear allegations as to how SBCL allegedly positioned itself to perpetrate the fraud.

Finally, for the reasons discussed supra in connection with LaCorte's Claim 2, the conduct described in Paragraph H of the Preamble to the Settlement Agreement generally releases any claim that involves SBCL's "marketing, sale, pricing and billing of its testing" for a variety of blood chemistry tests that were "performed routinely in conjunction with SBCL's ChemZyme and/or ChemZyme Plus profiles, or other SBCL chemistry profiles that included serial multichannel automated chemistry ("SMAC") tests

(CPT 80002-80019 and codes G0058-60)." In my view, Claim 4 is also encompassed by the general terms of the release effected by Paragraph H.

In summary, all of LaCorte's claims in Civ. No. 96-7768 were settled with the exception of that portion of Claim 3 that pertains to SBCL's alleged submission of false claims for unordered and medically unnecessary urinalysis tests.¹⁹

d. Are LaCorte, Clausen, and Miller's claims barred by § 3730(b)(5)?

Section 3730(b)(5) provides:

When a person brings [a qui tam action], no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

All parties agree that § 3730(b)(5) bars LaCorte, Clausen, and Miller from seeking a portion of the relator's share to be awarded from the \$325,000,000 settlement if any of those actions is "a related action based on the facts underlying the pending" Merena, Robinson, and Spear actions.²⁰ The critical issue is to

¹⁹ Pursuant to its notice of election to "intervene in part," it would appear that the government has, at this point, formally intervened in the Clausen and Miller actions, and in the LaCorte action as to the claims that were settled. No party has suggested that the government's election to intervene as to the settled claims renders § 3730(b)(5) inapplicable as a bar to LaCorte, Clausen, and Miller's suits.

²⁰ No party has suggested that § 3730(b)(5) is inapplicable because the Merena, Robinson, and Spear actions arguably are no longer "pending" actions (those actions were dismissed with prejudice on February 24, 1997). Because LaCorte, Clausen, and Miller filed suit before the Merena, Robinson, and Spear actions were dismissed, I find that § 3730(b)(5) applies. Moreover, the Merena, Robinson, and Spear actions are currently "pending" insofar as I retained jurisdiction to enforce the terms of the

determine what is "a related action based on the facts underlying the pending action." Only three cases have touched upon this issue directly, none of which were decided by an appellate court.²¹

SBCL, the government, and Merena, Robinson, and Spear rely on two of those cases to support their view of the correct interpretation of the statute. The first is Erickson v. American Inst. of Biological Sciences, 716 F. Supp. 908 (E.D. Va. 1989), where the court, in dicta, opined that § 3730(b)(5) "establishes a first in time rule," and thus "[t]he qui tam complaint filed first blocks subsequent qui tam suits based on the same underlying facts." Id., at 918. The Erickson court expressed the view that § 3730(b)(5) is a first-in-time rule because that interpretation would prevent the government from receiving a "double recovery" for the same underlying facts. See id. Thus, the Erickson court offered the following test for applying § 3730(b)(5): "A subsequently filed qui tam suit may continue only

Settlement Agreement and to decide relator's share and attorney's fees issues.

²¹ Notably, I find that § 3730(b)(5) is "jurisdictional" in nature, as its application presents a threshold issue regarding the court's ability to hear a later-filed qui tam action. While § 3730(b)(5) is not one of the express "jurisdictional bars" set forth at §§ 3730(e)(1)-(4), the practical effect of § 3730(b)(5)'s "bar" is that a court lacks jurisdiction to hear, and must dismiss, an action that is a "related action based on the facts underlying the pending action." See Hyatt v. Northrop Corp., 1989 U.S. Dist. LEXIS 18941 (C.D. Cal, Dec. 27, 1989) (dismissing with prejudice claims barred by § 3730(b)(5)). The relator who files a suit that is barred pursuant to § 3730(b)(5) is forever precluded from proceeding with an action that is based on the barred claims.

to the extent that it is (a) based on facts different from those alleged in the prior suit and (b) gives rise to a separate and distinct recovery by the government." Id.

The other case those parties rely on is Hyatt v. Northrop Corp., 1989 U.S. Dist. LEXIS 18941, at *2 (C.D. Cal. Dec. 27, 1989), where the court held that § 3730(b)(5) "bars qui tam actions based on matters subject to earlier filed qui tam suits." (emphasis added). More specifically, the court ruled that, under § 3730(b)(5), the relators who filed the most recent qui tam actions "are barred from litigating or claiming any reward in connection with the issues which are the subject of" two earlier-filed qui tam actions that were then-pending before the court. See id. (emphasis added). Thus, the Hyatt court interpreted § 3730(b)(5) broadly, and held that it bars later-filed claims that reiterate, or overlap with, the "issues" or "matters" that are the subject of an earlier-filed action. The Hyatt court applied this interpretation to bar 62 counts or "allegations" in the later-filed qui tam complaint which the court determined were generally encompassed by, or overlapped with, allegations in the two earlier-filed complaints. See id., at *3-16. Notably, there was no dispute among the parties in Hyatt over the "proper" interpretation of § 3730(b)(5), and, consequently, the Hyatt court's analysis of the proper scope of § 3730(b)(5) was perfunctory. See id. In addition, the Hyatt court did not consider the different standard articulated earlier that same year in Erickson.

The government seems to urge that I adopt a hybrid of the Erickson and Hyatt standards. The government contends that § 3730(b)(5) should bar a later-filed qui tam action if an earlier-filed action "alleges all of the material elements of the fraudulent transaction," and if the later-filed action will not lead to a "separate and distinct recovery for the government." See United States' Memorandum of Law, at pp.4-7. In the government's view, § 3730(b)(5) should bar a later-filed action if, as the Hyatt court essentially ruled, the "material elements of the fraudulent transaction," or the "allegations" (but not strictly the "facts"), of the later-filed complaint were set forth in an earlier-filed complaint. The government also embraces the Erickson test insofar as it requires the court to determine whether the later-filed action will produce a "separate and distinct recovery for the government." SBCL and relators Merena, Robinson, and Spear generally agree with the government's interpretation of § 3730(b)(5), and they urge that § 3730(b)(5) be considered a strict "first-to-file" rule that bars any later-filed qui tam action that is based on the allegations set forth in a pending action.

In contrast, LaCorte, Clausen, and Miller argue that "related action based on the facts underlying the pending action" must be interpreted to mean that a later-filed action is barred only if it is based on "facts that are identical to" to the facts alleged in a pending action. Those relators seize upon language from the legislative history which suggests that § 3730(b)(5) was

enacted to preclude "class actions or multiple separate suits based on identical facts and circumstances." S.Rep. No. 99-345, at 25 (1986), reprinted in 1986 U.S.C.C.A.N. 5266, 5290. Thus, LaCorte contends that "only `parasitic' qui tam complaints that are derived from existing actions are barred." LaCorte's Memorandum, at p.17 (see also Clausen's Memorandum, at p.9). In addition, Miller contends that his claims are based upon personal knowledge that he obtained while employed as a manager of one of SBCL's laboratories, and that the "facts" he alleges are unique, as they involve geographical areas and time-periods that are different than those alleged in the Merena, Robinson, and Spear suits; LaCorte makes a similar "personal knowledge" contention.

A recent decision from this court, United States ex rel. Dorsey v. Doctor Warren E. Smith Comm. Mental Health, Civ. No. 95-7446 (E.D. Pa. June 25, 1997) (Ditter, J.), which was decided after the parties filed their briefs, supports the "identical facts" interpretation of § 3730(b)(5). In Dorsey, the court cited both the Erickson test and the above-quoted language from the Senate Report and held that relator Dorsey's later-filed qui tam complaint was not barred by § 3730(b)(5) because Dorsey's "facts" were "not identical to" the facts in an earlier-filed complaint, and they "would not lead to a double recovery" for the government. See Dorsey, slip op., at p.10.

Turning first to the plain language of § 3730(b)(5), see, e.g., New Rock Asset Partners v. Preferred Entity Advancements, 101 F.3d 1492, 1498 (3d Cir. 1996) (statutory

interpretation "begins with the plain language of the statute"), I find that the phrase "related action based on the facts underlying the pending action" does not lend itself to a narrow interpretation that bars only "identical suits" based on "identical facts." The "facts underlying" a pending action are, as the plain meaning of "underlying" suggests, the "fundamental, basic, foundational, or essential" facts asserted in the pending action. They are the broad underpinnings upon which the cause of action is built. Likewise, a straightforward reading of the phrase "related action" does not suggest the narrow meaning of "identical action"; read in the context of the sentence in which it is used, it more broadly refers to an action that has a "relation to" the pending action because it is "based on" the essential or material facts of (i.e., the facts underlying) the pending action. Therefore, a "related action based on the facts underlying the pending action" is a later-filed action that alleges the same essential or material facts as the pending action.

The "facts underlying" a qui tam action (or any action for that matter) are not merely the details regarding the time and place of the alleged fraud (e.g., I was a doctor at a nursing home in New Orleans in 1992 when I discovered that SBCL knowingly submitted false claims); they are, as the plain meaning of "facts underlying" more broadly suggests, the allegations regarding the material elements of a fraudulent transaction which will support a claim for relief under the FCA (e.g., I have personal knowledge

that SBCL knowingly submitted false claims and received payment for unordered CBC tests). See, e.g., Wilkins ex rel. United States v. State of Ohio, 885 F. Supp. 1055, 1059-60 (S.D. Ohio 1995) (discussing material elements of a claim under § 3729(a)(1)). Therefore, I find that Congress intended § 3730(b)(5) to bar a later-filed action if it alleges the same material elements of a fraudulent transaction which are alleged in the pending action. Accordingly, to determine whether a later-filed qui tam action is barred by § 3730(b)(5), I must compare each later-filed complaint with the pending complaints and determine whether the later-filed complaints allege the same material elements of the fraudulent transaction.

In addition to the plain language of § 3730(b)(5), I am mindful of the objectives to be served by the 1986 amendments to the qui tam provisions: "to encourage more private enforcement suits" while discouraging "opportunistic behavior"; and "to have the qui tam suit provision operate somewhere between the almost unrestrained permissiveness" that prevailed prior to 1943, when relators could file suit and recover based on information already known by the government, "and the restrictiveness of the post-1943 cases, which precluded suit even by original sources" of undisclosed, genuinely valuable false-claims information. See United States ex rel. Stinson 944 F.2d at 1154; see also United States ex rel. Springfield Terminal Ry., 14 F.3d at 651 ("The 1986 amendments [to the FCA] ... must be analyzed in the context of the[] twin goals of rejecting suits which the government is

capable of pursuing itself, while promoting those which the government is not equipped to bring on its own."). In light of these objectives, I agree with Erickson's view that § 3730(b)(5) was intended to establish a first-to-file rule.²² See 716 F. Supp. at 918; see also United States ex rel. Stinson, 944 F.2d at 1176 n.5 (Scirica, J., dissenting) ("[O]nce an eligible relator has brought an action, no other private party can bring an action based on the same information. See § 3730(b)(5). This situation creates a potential 'race to the courthouse' among eligible relators, but such a race may also spur the prompt reporting of fraud."); Cooper v. Blue Cross & Blue Shield of Fla., 19 F.3d 562, 567 (11th Cir. 1994) (dictum) ("[O]nce one suit has been

²² I reject, however, Erickson's "separate and distinct recovery" test because it seems to further complicate the already difficult task of applying § 3730(b)(5). In my view, Erickson impermissibly reads into § 3730(b)(5) the requirement that a qui tam claim "give rise to a separate and distinct recovery" when there is no such language or requirement in § 3730(b)(5); that section only requires that a court determine whether an action is barred because it is a "related action based on the facts underlying the pending action." Moreover, it is unclear what meaning should be given to "gives rise to a separate and distinct recovery for the government." In the present case, there is but one settlement fund and only one recovery for the government, but there were three cases (Merena, Robinson, and Spear) as well as a lengthy investigation that gave rise to the government's recovery. In the context of the FCA, there would be literally thousands of potential separate false claims (e.g., each separate false overbilling), each of which under the FCA gives rise to a separate and distinct recovery to the government with a civil penalty of not less than \$5,000 and no more than \$10,000 plus treble damages. See § 3729. Therefore, I am not convinced that the additional analysis of whether a later-filed suit will produce a "separate and distinct recovery for the government" assists the court in analyzing whether a later-filed action is a "related action based on the facts underlying the pending action."

filed by a relator or by the government, all other suits against the same defendant based on the same kind of conduct would be barred. See [] § 3730(b)(5).").

LaCorte, Clausen, and Miller object to § 3730(b)(5) being viewed as a first-to-file rule; they believe it will discourage potential relators from filing suit because of the possibility that the relator's suit might be barred by an earlier-filed action that has yet to be unsealed and publicly disclosed. A strict first-to-file interpretation, however, serves Congress's goal of encouraging relators to file qui tam actions as soon as they learn of a fraud on the government. If relators feel compelled to file suit promptly, the government will be able to investigate promptly and bring about a speedy recovery of the money that has been stolen from the federal fisc.

The basic objective of the qui tam provisions is, after all, to enable the government, through private enforcement, to restore stolen money to the federal fisc. See S.Rep. No. 99-345, at 1 (1986), reprinted in 1986 U.S.C.C.A.N. 5266 ("The purpose of [the 1986 FCA amendments] is to enhance the Government's ability to recover losses sustained as a result of fraud against the Government."); United States ex rel. Findley v. FPC-Boron Employees' Club, 105 F.3d 675, 685 (D.C. Cir. 1997) ("From its inception, the qui tam provisions of the FCA were designed to inspire whistle-blowers to come forward promptly with information concerning fraud so that the government can stop it and recover ill-gotten gains."). That objective is best served if relators

are encouraged to "race to the courthouse." United States ex rel. Stinson, 944 F.2d at 1176 n.5 (Scirica, J., dissenting).

The prompt reporting of fraud is essential to the effectiveness of the qui tam scheme and to the government's ability to recover under the FCA: as time passes, witnesses, documents, the stolen funds, and even the defrauders themselves disappear, making it far more difficult for the government to recover if the fraud is not promptly reported. Moreover, as the present case demonstrates, when fraud is reported promptly, the government is able to use the relator's allegations as a starting point for a wide-ranging investigation and uncover additional fraudulent acts beyond those reported by the relator in the qui tam complaint. The more fraud that the government uncovers through its own investigative efforts, the greater the recovery for the federal fisc.

I reject as unpersuasive the contention that relators will not come forward, and that lawyers will not take qui tam cases, if § 3730(b)(5) is viewed as a first-to-file rule. Relators have always borne the risk that their decision to report fraud might go unrewarded. For example, a relator's suit might not produce a recovery because a jury might find in favor of the defendant; or a relator's suit might be barred by § 3730(e)(4), even though the relator sincerely believed that his or her allegations had not been publicly disclosed and that he or she was an "original source." Moreover, recovery under the qui tam provisions is not and never has been guaranteed to a relator

merely because the relator's suit is not jurisdictionally barred by §§ 3730(e)(3)-(4). In short, the qui tam provisions are, and always have been, a "nothing ventured nothing gained" proposition, and the first-to-file rule will not discourage relators (or their lawyers) from filing suit. The potential for a substantial monetary award in the event of a recovery should continue to induce relators with valuable information to come forward.²³

As a first-to-file rule, § 3730(b)(5) permits only the relator who filed first and who alleged all of the material elements of a fraudulent transaction to have a claim to the relator's share in the event of a successful recovery. Should a later-filed action allege the same material elements of a fraudulent transaction that was settled and released by a settlement agreement, the later-filed action is subject to dismissal. Section 3730(b)(5) thus ensures that the government is not required to share with multiple relators the proceeds of a settlement or judgment that stemmed from a single allegation of fraud.

If, as in the present case, the first-filed qui tam action is concluded by settlement, no relator other than the first-to-file would have any claim to the relator's share from

²³ Moreover, as part of the FCA scheme, an employee may file suit and recover "all relief necessary to make the employee whole" if his or her employer retaliates against the employee/relator for filing or proceeding with a qui tam action. See § 3730(h).

the settlement. Even if the settlement encompasses a wider spectrum of activities than what was alleged in the original qui tam complaint, a later-filing relator is barred by § 3730(b)(5) from seeking a portion of the relator's share if the government's recovery stemmed from the allegations reported in the first-filed action and its investigation of the first-filed action. In other words, if a later-filed action makes allegations not contained in the first-filed complaint but which are encompassed by the terms of the settlement agreement, the later-filing relator is not entitled to seek a portion of the relator's share awarded in the settled case. Section 3730(b)(5) also bars the later-filing relator from intervening in the pending action to seek a portion of the relator's share. See United States ex rel. Burr v. Blue Cross & Blue Shield, 153 F.R.D. 172, 174 (M.D. Fla. 1994) (suggesting that § 3730(b)(5) bars an attempt to intervene in qui tam action by relator who had brought a prior, albeit narrower, action raising similar allegations against the defendant).

LaCorte, Clausen, and Miller contend that I should rely on the legislative history to interpret the phrase "related action based on the facts underlying the pending action," but I find that the legislative history is unhelpful. The "section-by-section" analysis in the Senate Report addressing § 3730(b)(5) provides, in its entirety:

Subsection (b)(5) of section 3730 further clarifies that only the Government may intervene in a qui tam action. While there are few known instances of multiple parties intervening in past qui tam cases, United States v. Baker-Lockwood Manufacturing Co., 138

F.2d 48 (8th Cir. 1943), the Committee wishes to clarify in the statute that private enforcement under the civil False Claims Act is not meant to produce class actions or multiple separate suits based on identical facts and circumstance.

S.Rep. No. 99-345, at 25 (1986), reprinted in 1986 U.S.C.C.A.N. 5266, 5290. LaCorte, Clausen, and Miller seize upon the last few words of the above-quoted paragraph to argue that § 3730(b)(5) bars a later-filed suit only if it is "based on identical facts and circumstances." In my view, if Congress had intended § 3730(b)(5) to bar only later-filed actions based on "identical facts and circumstances," it would have imparted that meaning by using the word "identical" somewhere in the statute. In any event, it is difficult to ascertain what the Senate Report is intended to explain. In addition to arguably supporting LaCorte, Clausen, and Miller's interpretation of the statute, the "multiple separate suits based on identical facts and circumstance" language can be viewed as merely explaining that § 3730(b)(5) bars intervention in a pending qui tam action in accordance with the terms of Fed. R. Civ. P. 24(b)(2). See United States ex rel. Precision Co. v. Koch Indus., 31 F.3d 1015, 1017-18 (10th Cir. 1994). In short, I find that the Senate Report's analysis of § 3730(b)(5) does not provide clear support for any particular interpretation of the statutory language at issue here, and as the Third Circuit Court of Appeals found in United States ex rel. Stinson, the legislative history of the 1986 amendments is not a particularly valuable resource for an interpreting court:

The bill that eventuated in the 1986 amendments underwent substantial revisions during its legislative path. This provides ample opportunity to search the legislative history and find some support somewhere for almost any construction of the many ambiguous terms in the final version.

944 F.2d at 1154.

Finally, it is arguable that my interpretation of § 3730(b)(5) might tend to blur the distinction between § 3730(b)(5) and § 3730(e)(3), which bars an action "based upon allegations or transactions which are the subject of a civil suit ... in which the government is already a party." While § 3730(b)(5) bars a related action based on the facts underlying a pending qui tam action, § 3730(e)(3) bars an action based on allegations or transactions that are the subject of suit in which the government is a party. It has been suggested that § 3730(e)(3) has a broader meaning than § 3730(b)(5). See Dorsey, slip op., at p.11; see also John T. Boese, Civil False Claims & Qui Tam Actions, at 4-63 (Supp. 1994) (suggesting that there is some difference between the prohibition in § 3730(e)(3) and § 3730(b)(5) because "[t]he limitation in (b)(5) relates only to the specific facts underlying the pending action."). At oral argument on the parties' motions, however, no party was able to suggest any meaningful substantive difference between the two subsections, and, frankly, I am unable to ascertain any practical difference between the two.²⁴

²⁴ Assuming that § 3730(e)(3) should be construed more broadly than § 3730(b)(5), it is clear in the present record that the "allegations and transactions" set forth in the Settlement

Applying the above principles to determine whether LaCorte, Clausen, and Miller's claims are barred by § 3730(b)(5),²⁵ I find that:

(1) LaCorte's qui tam claims (excluding that portion of Claim 3 which pertains to urinalysis testing) are barred by § 3730(b)(5) because the material elements of the fraudulent transactions alleged in LaCorte's complaint were settled by the terms of the Settlement Agreement. See Analysis, supra;

(2) LaCorte is not barred by § 3730(b)(5) from proceeding with that portion of Claim 3 (the allegations set forth at paragraphs 32-38 and 50e of LaCorte's Complaint) which pertains to SBCL submitting false claims for urinalysis testing, as the material elements of that fraudulent transaction were not settled by the terms of the Settlement Agreement, and they are not the same as those set forth in the Merena, Robinson, and Spear complaints;

(3) Clausen's qui tam claims are barred by § 3730(b)(5) because, as Clausen contends, the material elements of the fraudulent transactions alleged in his complaint were settled by

Agreement and in the Merena, Robinson, and Spear complaints bar the LaCorte (excluding his urinalysis claim), Clausen, and Miller claims.

²⁵ As the parties acknowledged at oral argument, the Robinson and Spear actions could also be barred by § 3730(b)(5) given that Merena's action was pending when Robinson and Spear filed suit. However, since Merena, Robinson, and Spear have agreed among themselves that they each have a right to a portion of the relator's share, it is unnecessary to decide whether Robinson or Spear's claims are barred by § 3730(b)(5).

Paragraph H of the Preamble to the Settlement Agreement.²⁶ See Clausen's Memorandum, at p.7-8; and

(4) Miller's qui tam claims are barred by § 3730(b)(5) because, as Miller contends, the material elements of the fraudulent transactions alleged in his complaint were settled by the terms the Settlement Agreement.²⁷ See Miller's Amended Notice of Position, at pp.2-6.

III. Conclusion

Clausen and Miller's qui tam claims were settled by the terms of the Settlement Agreement. LaCorte's claims were also settled, except for that portion of Claim 3 (paragraphs 32-38 and 50e of LaCorte's Complaint) as it pertains to SBCL's submission of false claims for urinalysis tests. Pursuant to § 3730(b)(5), LaCorte, Clausen, and Miller are barred from seeking a portion of the relator's share of the \$325,000,000 settlement for their settled claims.

An appropriate order follows.

²⁶ In addition, I agree with SBCL that the material elements of the fraudulent transactions alleged in Clausen's complaint are the same as those alleged in the Merena and Robinson complaints. See SBCL's Memorandum, at pp.22-24.

²⁷ I recognize the conundrum that LaCorte, Clausen, and Miller faced in contending that some or all of their claims were settled by the Settlement Agreement and yet not barred by § 3730(b)(5). Had I accepted their "identical facts" interpretation of § 3730(b)(5), it is clear that they would be entitled to seek a portion of the relator's share for their settled claims.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, ex :
rel. ROBERT J. MERENA, :
Plaintiff : CIVIL ACTION
v. :
SMITHKLINE BEECHAM CORPORATION, :
SMITHKLINE BEECHAM CLINICAL :
LABORATORIES, INC., :
Defendants : No. 93-5974
:

UNITED STATES OF AMERICA, ex :
rel. GLENN GROSSENBACHER, and :
CHARLES W. ROBINSON, JR., : CIVIL ACTION
Plaintiffs :
v. :
SMITHKLINE BEECHAM CLINICAL :
LABORATORIES, INC., : No. 95-6953
Defendant :
:

UNITED STATES OF AMERICA, ex :
rel. KEVIN J. SPEAR, THE :
BERKLEY COMMUNITY LAW CENTER, : CIVIL ACTION
JACK DOWDEN, :
Plaintiffs :
v. :
SMITHKLINE BEECHAM :
LABORATORIES, INC., : NO. 95-6551
Defendant :
:

UNITED STATES OF AMERICA, ex :
rel. WILLIAM ST. JOHN :
LACORTE, :
Plaintiff : CIVIL ACTION
v. :
SMITHKLINE BEECHAM CLINICAL :
LABORATORIES, INC., :
Defendant : No. 96-7768
:
:

UNITED STATES OF AMERICA, ex :
rel. JEFFREY SCOTT CLAUSEN, :
Plaintiff ; CIVIL ACTION
v. :
SMITHKLINE BEECHAM CLINICAL :
LABORATORIES, INC., : Nos. 97-1186
Defendant :
:

UNITED STATES OF AMERICA, ex :
rel. DONALD MILLER, :
Plaintiff ; CIVIL ACTION
v. :
SMITHKLINE BEECHAM CLINICAL :
LABORATORIES, INC., : No. 97-3643
Defendant :
:

O R D E R

For the reasons set forth in the accompanying Memorandum, it is ORDERED that:

(1) Civil Action No. 97-1886 (the Clausen action) and Civil Action No. 97-3643 (the Miller action) are DISMISSED pursuant to 31 U.S.C. § 3730(b)(5); and

(2) Civil Action No. 96-7768 (the LaCorte action) is likewise DISMISSED pursuant to 31 U.S.C. § 3730(b)(5) except that the allegations in LaCorte's Complaint at paragraphs 32-38 and 50e, insofar as they allege that SmithKline Beecham Clinical Laboratories, Inc., submitted false claims to the government for urinalysis tests, are DISMISSED WITHOUT PREJUDICE to LaCorte's ability to litigate those allegations and to move to retransfer the remainder of Civil Action No. 96-7768 to the District Court

for the Eastern District of Louisiana.

BY THE COURT:

Donald W. VanArtsdalen, S.J.

July 31, 2003