

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 :
BERKELEY 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.

Relators Robert J. Merena, Glenn Grossenbacher, et al., and Kevin Spear, et al. (collectively the "Consolidated Plaintiffs") are qui tam plaintiffs in a case filed against Defendant SmithKline Beecham Clinical Laboratories ("SBCL") for violations of the False Claims Act, 31 U.S.C. §§ 3729-3730. The United States government has intervened in this matter as well. The Consolidated Plaintiffs and the United States reached an agreement in principle with Defendant in early 1996, and the settlement funds were disbursed to the United States on February 24, 1997. Three additional qui tam actions were filed against SBCL by William St. John LaCorte, M.D. (96-cv-7768), Donald Miller (97-cv-3643), and Jeffrey Scott Clausen (97-cv-1186)

(collectively the "Additional Plaintiffs"). I found that the claims raised by the Miller and Clausen Plaintiffs were already settled in the earlier settlement agreement, and therefore I dismissed them (filed document #57). Similarly, I dismissed two out of three of Additional Plaintiff LaCorte's claims as they too had been previously settled. The Additional Plaintiffs have filed motions to stay "to await resolution of the determination of the shares of and ... prohibit[] the United States from distributing any portion of the settlement proceeds to any relators" pending the resolution of their appeals. See LaCorte Motion to Stay, p. 5 (filed document #67).

Additionally, the Consolidated Plaintiffs and Additional Plaintiff LaCorte have filed motions to deem interest or to segregate settlement funds for the purpose of earning interest on the funds disbursed from SBCL to the United States on February 24, 1996. They seek to have 25% of the gross settlement amount, which is the maximum amount potentially payable to them as qui tam plaintiffs, invested in some type of interest-bearing account or instrument pending the appeal of my dismissal of the Additional Plaintiffs' claims and pending the resolution of their motions for stay.

Discussion

A. Segregation of Funds and Interest

The False Claims Act says that qui tam plaintiffs must share in any recovery. 31 U.S.C. § 3730(d)(1). The share qui tam plaintiffs may receive can range from 10 to 25 percent of the

gross proceeds recovered depending on the value of their individual contributions to the successful prosecution or settlement of the case. Id. Any payment to a qui tam plaintiff shall be made from the proceeds, and qui tam plaintiffs shall receive reasonable expenses, attorney's fees and costs. Id.

The False Claims Act does not, however, address what the government should do with any proceeds between the time the government receives proceeds from a defendant and the time it disburses those proceeds to any qui tam plaintiffs. Likewise, the act does not specify exactly how long the government has within which to disburse the proceeds to the qui tam plaintiffs. Moreover, the False Claims Act does not direct the government on what course of conduct it must take in the event motions for stay are filed or during the pendency of the appeal and resolution of such issues. Specifically, the statute does not direct the government to deposit or invest the proceeds in an interest-bearing account or instrument.

The Consolidated Plaintiffs argue that in such situations the government holds the funds in trust for the qui tam plaintiffs, and that as a result, their handling of the funds is governed by 31 U.S.C. § 1321 and 31 U.S.C. § 9702. Section 1321 identifies 94 trust funds for which the United States government acts as a fiduciary. These include, among others, a fund for the preservation of the birthplace of Abraham Lincoln, the Library of Congress gift fund, personal funds for federal prisoners, and funds for the estates of deceased Army personnel.

Id. This list does not include monies received by the government for the successful prosecution or settlement of qui tam law suits or more generally for the recovery of money by the government in any other type of law suit. Section 9702 specifically relates to money held in trust by the government and states that all such money must be invested in Government obligations and shall earn interest at an annual rate of at least five percent. Sections 1321 and 9702, therefore, work together, but neither applies to this case. This section specifically relates to money held in trust by the government, but the proceeds in this qui tam action are not held in trust.

A fiduciary duty may not be forced upon someone. United States v. Kensington Hospital, 760 F. Supp. 1120, 1130 (E.D. Pa. 1991). Such a duty must be assumed either explicitly through an agreement or implicitly through actions. Id. It is not enough to show that a plaintiff reposed his or her trust in a defendant. Id. The defendant must also have accepted the fiduciary relationship. Id. A duty of loyalty does not automatically rise to a fiduciary duty. Id.

The False Claims Act does not refer expressly to monies recovered in cases brought pursuant to it as funds to be held in trust, nor does the act characterize the money as such. Nowhere in the statute is the term "trust" used. When the United States intervened in this case pursuant to the False Claims Act it did not expressly accept a fiduciary duty to hold the qui tam plaintiffs' shares in trust. Moreover, the statute does not

impose such a duty even in the absence of an express agreement by the United States.

In some cases, however, a trust relationship may be implied. Id. For instance, a fiduciary duty may be implied when one has reposed a great deal of trust and confidence in another who exercises domination and influence over a person or the property of that person. Id. At 1131. Although the United States presently has dominion and control over the settlement proceeds, in fact, most of the settlement funds actually belong to the government. As a result, I do not think it is appropriate to characterize the government's relationship to its own money as that of a trust relationship.

Because the False Claims Act does not characterize any proceeds recovered as a trust and because the government neither expressly nor impliedly accepted a fiduciary duty to the qui tam plaintiffs, I do not think there is sufficient basis for the imposition of a trust relationship.

The Consolidated Plaintiffs pose another argument in favor of deeming interest and of segregating the proceeds for the purpose of earning interest. They argue that the appeal process may be lengthy, and that there have already been numerous delays as they have continually been cooperative of the United States' requests to extend various stages of the litigation process including the government's exercising its right to intervene in the case. They contend that the government is causing, and may continue to cause, additional delays. The Consolidated

Plaintiffs further contend that there may be lengthy delays as a result of the Additional Plaintiffs' appeals, and that as a result of these delays the Consolidated Plaintiffs will continue to lose large sums of interest on the funds presently held by the government.¹ While this undoubtedly may be true, the False Claims Act just does not give qui tam plaintiffs the right to earn interest on their share of the proceeds during any such periods. Therefore, the United States may not be compelled to segregate these funds or to invest the funds in an interest-bearing account or instrument. There simply is no basis for an award of pre-judgment interest to be found in the claims of either the Consolidated Plaintiffs or of Additional Plaintiff Dr. LaCorte.

B. Motions to Stay

In the exercise of its sound discretion, a district court has broad power to stay proceedings pending the outcome of a related matter. See Bechtel Corp. V. Local 215, Laborers' Int'l Union of North America, 544 F.2d 1207, 1215 (3d Cir. 1976); Balfour v. Gutstein, 547 F. Supp. 147, 148 (E.D. Pa. 1982); I.J.A., Inc. V. Marine Holdings, Ltd., 524 F. Supp. 197, 198 (E.D. Pa. 1981).

I find no showing for any reason for granting the Additional Plaintiffs' motions for stay. This matter should be

¹In the short time before the settlement proceeds were disbursed to the United States government, they were held in an interest-bearing escrow account and earned nearly \$9,000,000.00 in interest.

promptly litigated, and I see no reason to hold up the resolution of the shares of the Consolidated Plaintiffs while the present appeals of the Additional Plaintiffs are pending.

It is conceivable that the Third Circuit Court of Appeals may even find that the Rule 54(b) appeals are not even ripe for review. Consequently, the resolution of that issue may continue indefinitely resulting in additional delays for the Consolidated Plaintiffs. The Consolidated Plaintiffs and the Additional Plaintiffs are all free to move at any time for a hearing before the court for the purpose of determining the amount of judgment for each qui tam plaintiff.

Conclusion

The False Claims Act does not grant qui tam plaintiffs any right to earn interest on any funds recovered either by successful prosecution or settlement of a case brought pursuant to the act. The United States has not accepted a fiduciary duty as to the shares of qui tam plaintiffs, nor does the act characterize the proceeds as money which must be held in trust which would suggest that the United States would be required to invest the proceeds in an interest-bearing account. Therefore, the motions to deem interest and to segregate settlement funds for the purpose of earning interest will be denied.

Moreover, I see no reason to delay the determination of the shares of the qui tam plaintiffs pending the appeal of the Additional Plaintiffs' dismissals. Therefore, the motions for stay filed by the Additional Plaintiffs also will be denied.

An appropriate Order follows.

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v. :
SMITHKLINE BEECHAM CORPORATION, :
SMITHKLINE BEECHAM CLINICAL :
LABORATORIES, INC., :
Defendants : No. 93-5974
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UNITED STATES OF AMERICA, ex :
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LABORATORIES, INC., : No. 95-6953
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UNITED STATES OF AMERICA, ex	:	
rel. DONALD MILLER,	:	
Plaintiff	:	CIVIL ACTION
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v.	:	
	:	
SMITHKLINE BEECHAM CLINICAL	:	
LABORATORIES, INC.,	:	No. 97-3643
Defendant	:	
	:	

ORDER

For the reasons set forth in the accompanying Memorandum, it is ORDERED that the Motion of Consolidated Plaintiffs to Deem Interest or To Segregate Settlement Funds for the Purpose of Earning Interest is DENIED. Likewise, it is ORDERED that Relator William St. John LaCorte, M.D.'s Motion to Deem Interest or to Segregate Settlement Funds for the Purpose of Earning Interest is also DENIED.

It is FURTHER ORDERED that the Motions for Stay filed by the Additional Plaintiffs are DENIED.

BY THE COURT,

Donald W. VanArtsdalen, S.J.

October 27, 1997