

IN THE UNITED STATES DISTRICT COURT
 IN AND FOR THE DISTRICT OF SOUTH CAROLINA

CA NO. 3:05-CV-02858 (MBS)

UNITED STATES OF AMERICA, ex rel.)	
MICHAEL K. DRAKEFORD, M.D.,)	
)	
Plaintiffs,)	
)	
v.)	MOTION TO CORRECT
)	THE JUDGMENT
TUOMEY d/b/a TUOMEY HEALTHCARE)	
SYSTEM, INC.)	
)	
Defendant.)	

In an opinion and order dated September 30, 2013, this Court granted the United States’ motion for entry of judgment in its favor under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, and disposed of the remaining post-trial motions. Order and Op. (Sept. 30, 2013) (D.E. 881). The Court directed that judgment be entered “on the jury verdict of \$39,313,065.00.” *Id.* at 25. The Court further directed that the Clerk of the Court “enter judgment under the FCA in the amount of \$237,454,195.00.” *Id.* The judgment entered by the Clerk provides, in pertinent part, that:

the plaintiff, United States of America ex rel. Michael L. Drakeford, M.D., recover from the defendant Tuomey d/b/a Tuomey Healthcare System, Inc., the amount of Thirty-Nine Million, Three Hundred Thirteen Thousand, Sixty-Five and 00/100 dollars (\$39,313,065.00), plus postjudgment interest at the rate of .10%, along with costs, as well as Two Hundred Thirty-Seven Million, Four Hundred Fifty-Four Thousand, One Hundred Ninety-Five and 00/100 dollars (\$237,454,195.00) on the False Claims Act claims.

D.E. 882.

As the Court’s opinion correctly observes, the \$39,313,065 found by the jury to represent the total value of the false claims filed by Tuomey, and reimbursed by the Medicare program, is

the United States' single damages amount for purposes of determining the United States' False Claims Act recovery. Order and Op. at 16. The Court's opinion also correctly observes that the United States is entitled to treble the amount of those damages, as well as to statutory penalties. Id. at 1. Thus, the total amount that the United States is entitled to recover in this case for the False Claims Act violation is \$237,454,195. The judgment as entered, however, appears to afford the United States an additional \$39,313,065. The inclusion of this additional amount appears to be a clerical error. Accordingly, the United States respectfully suggests that the checked box on the judgment be corrected to read as follows:

the plaintiff, United States of America ex rel. Michael K. Drakeford, M.D., recover from the defendant Tuomey d/b/a Tuomey Healthcare System, Inc., the amount of Two Hundred Thirty-Seven Million, Four Hundred Fifty-Four Thousand, One Hundred Ninety-Five and 00/100 dollars (\$237,454,195.00) on the False Claims Act claims, plus postjudgment interest at the rate of .10%, along with costs.

Pursuant to the Local Rules, counsel for the United States has consulted counsel for Tuomey regarding this motion. Counsel for Tuomey has advised that, without waiving any rights to challenge the judgment by appeal or otherwise, Tuomey does not oppose the correction of the judgment as requested by the United States.

Although Tuomey has already filed a notice of appeal from the judgment in this Court (D.E. 883), it does not appear that the notice has yet been docketed by the Court of Appeals. Accordingly, pursuant to Fed. R. Civ. P. 60(a), this Court retains authority to correct the clerical error in the judgment. The United States therefore respectfully requests that the Court amend the judgment as soon as possible, before the appeal is docketed in the Court of Appeals.

Respectfully submitted,

STUART F. DELERY
Assistant Attorney General

/s/ G. Norman Acker, III
G. NORMAN ACKER, III
Special Attorney and
Assistant United States Attorney
Eastern District of North Carolina
310 New Bern Ave., Suite 800
Raleigh, NC 27601
Telephone: (919) 856-4530
Facsimile: (919) 856-4820
E-mail: norman.acker@usdoj.gov

/s/ Tracy L. Hilmer
MICHAEL D. GRANSTON
TRACY L. HILMER
Attorneys, Civil Division
United States Department of Justice
Post Office Box 261, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-0474
Facsimile: (202) 514-0280
E-mail: tracy.hilmer@usdoj.gov

Attorneys for the United States

CERTIFICATE OF SERVICE

I hereby certify on this 2nd day of October, 2013, I served a copy of the foregoing upon the below-listed counsel of record electronically through the Court's electronic case filing system or by placing a copy of the same in the U.S. Mails, addressed as follows:

Kevin M. Barth, Esq.
Ballenger Barth & Hoefler, LLP
205 North Irby Street
P.O. Box 107
Florence, SC 29503

Sandra L.W. Miller, Esq.
Womble Carlyle Sandridge and Rice
550 S Main Street
Suite 400
Greenville, SC 29601

James M. Griffin, Esq.
Lewis, Babcock & Griffin, LLP
P. O. Box 11208
Columbia, SC 29211

Daniel M. Mulholland, III, Esq.
Horty, Springer & Mattern, P.C.
4614 Fifth Avenue
Pittsburgh, PA 15213

E. Bart Daniel, Esq.
Attorney at Law
7 State Street
P. O. Box 856
Charleston, SC 29402

Matthew R. Hubbell, Esq.
Attorney at Law
7 State Street
Charleston, South Carolina 29401

/s/ Tracy L. Hilmer
Tracy L. Hilmer