



Department of Justice

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TUESDAY, SEPTEMBER 1, 2015
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KMART CORPORATION PAYS \$1.4 MILLION TO RESOLVE FALSE CLAIMS ACT ALLEGATIONS IN CONNECTION WITH DRUG MANUFACTURER COUPONS AND GAS DISCOUNTS

WASHINGTON – KMART Corp. (Kmart), a discount department store chain that operates approximately 780 in-store pharmacies throughout the United States, Puerto Rico and the U.S. Virgin Islands, has paid the United States \$1.4 million to resolve allegations that it violated the False Claims Act by using drug manufacturer coupons and gasoline discounts as improper Medicare beneficiary inducements, the Justice Department announced today.

“The United States will continue to pursue retail pharmacies that improperly attempt to influence a beneficiary’s choice of pharmacy,” said Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department’s Civil Division. “The government will not permit pharmacies to use improper business tactics to solicit business that does nothing to improve the quality of healthcare received by Medicare beneficiaries and increases the costs of the Medicare program.”

The settlement resolves allegations that Kmart violated the False Claims Act by providing illegal inducements to beneficiaries of the Medicare program. The government alleged that from June 2011 to June 2014, Kmart knowingly and improperly influenced the decisions of Medicare beneficiaries to bring their prescriptions to Kmart pharmacies by permitting the Medicare beneficiaries to use drug manufacturer coupons to reduce or eliminate prescription co-pays that they otherwise would be obligated to pay. Federal law prohibits a person from offering beneficiaries of certain federal health programs, such as Medicare, remuneration that is intended to influence the beneficiary’s choice of provider. The government alleged that Kmart’s conduct caused the Medicare beneficiaries to seek expensive, brand name drugs in lieu of cheaper generic drugs, which caused the government’s costs to increase without any medical benefit to the beneficiary. The government also alleged that Kmart improperly encouraged Medicare beneficiaries to bring their prescriptions to Kmart pharmacies by offering them varying levels of discounts on the purchase of gasoline at participating gas stations based on the number of prescriptions that they filled at Kmart pharmacies.

The settlement resolves allegations in a lawsuit filed by Joshua Leighr, a former Kmart pharmacist, under the *qui tam*, or whistleblower provisions of the False Claims Act. The act authorizes private parties, such as Mr. Leighr, to sue for fraud on behalf of the United States and to share in any recovery. Mr. Leighr will receive approximately \$248,500 of the settlement.

This settlement illustrates the government's emphasis on combating health care fraud and marks another achievement for the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative, which was announced in May 2009 by the Attorney General and the Secretary of Health and Human Services. The partnership between the two departments has focused efforts to reduce and prevent Medicare and Medicaid financial fraud through enhanced cooperation. One of the most powerful tools in this effort is the False Claims Act. Since January 2009, the Justice Department has recovered a total of more than \$24.9 billion through False Claims Act cases, with more than \$15.9 billion of that amount recovered in cases involving fraud against federal health care programs.

This case was investigated jointly by the Civil Division's Commercial Litigation Branch, the U.S. Attorney's Office of the Western District of Missouri, the Department of Health and Human Services' Office of Inspector General and the U.S. Postal Service's Office of Inspector General.

The claims settled by today's agreement are allegations only and there has been no determination of liability.

The case is captioned *U.S. ex rel. Leighr v. Kmart Sears Holding Corporation and Kmart Corporation*, Case No. 4:13cv00988-DGK (W.D. Missouri).

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15-1072

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