

Justice Dept., Flayed by Judge, Abandons Fraud Case Against Nursing Home Operator

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BY C. RYAN BARBER

The U.S. Justice Department on Wednesday moved to abandon fraud allegations against HCR ManorCare Inc., a leading national provider of nursing homes, after a judge struck a key witness and scolded prosecutors for bringing a case she described as a “waste of money.”

The government rarely walks away from big-ticket disputes, and the move to drop the False Claims Act case in Virginia against ManorCare was sure to be seen as a blemish. ManorCare faced tens of millions of dollars in liability for alleged fraud in reimbursements for unnecessary therapy services.

The move followed a decision by a federal magistrate judge, Theresa



U.S. Justice Department headquarters in Washington, D.C.

Carroll Buchanan, to exclude the testimony of a government witness about billing records. Buchanan questioned the credibility of the witness, and the Justice Department’s

belated disclosure of handwritten notes. Buchanan said at a recent hearing that she was “appalled” by the government’s conduct in the case against ManorCare.

"I don't think this case should have ever been brought," Buchanan said at the hearing, according to a transcript.

The Justice Department was not immediately reached Thursday for comment about its move to end the case. ManorCare's lawyers at Reed Smith declined to comment. ManorCare's attorneys told the Justice Department they do not intend to seek fees or expenses from the government as part of the deal to end the case, according to court records.

The two sides said they'd update the court on Nov. 17 about the agreement. A summary judgment hearing in the case had been scheduled for Nov. 9. U.S. District Judge Claude Hilton in Alexandria on Thursday paused the litigation.

In April 2015, the Justice Department inserted itself into the whistleblower suit in U.S. District Court for the Eastern District of Virginia.

"The Department of Justice is committed to ensuring that health care providers who pressure their employees to provide

medically unnecessary services to Medicare beneficiaries and Tri-care recipients solely to increase their own profits are held accountable," a DOJ lawyer said at the time.

The government has devoted increasing resources to pursue FCA cases, according to a report from Gibson, Dunn & Crutcher. The Justice Department last year said it recovered nearly \$5 billion under the FCA.

The original whistleblower claims were filed in Alexandria federal court in 2009. Attorneys for two whistleblowers at the heart of the case were not immediately reached for comment Thursday.

Court filings Wednesday indicate the lawyers for the whistleblowers were displeased the government and ManorCare had reached a resolution ending the case. Jeffrey Downey, representing one of the whistleblowers, said he intends to request a hearing to argue the deal "is not fair, adequate or reasonable."

"Allowing dismissal without such a hearing involving judi-

cial review would render the approval provisions of the FCA meaningless," Downey wrote in a court filing.

The Reed Smith team had pushed for the dismissal of the case or, alternatively, the exclusion of the chief government witness. "At this point it hardly matters if DOJ is dishonest or incompetent, or both," ManorCare's lawyers wrote in a brief last month.

The Justice Department had urged Buchanan to let the government take certain steps to salvage the case, but the judge was not so inclined. She called the case a "huge waste of money" and a "house of cards" that rested on the testimony of an unreliable witness.

"I understand the Department of Justice's inclination to try to somehow repair this, but I don't think that this is reparable," Buchanan said during the Oct. 27 hearing.

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