

Guthrie Healthcare Medicare Fraud Suit Tossed

By **Richard Vanderford**

Law360, New York (September 2, 2011) -- A Pennsylvania federal judge on Thursday threw out a whistleblower suit brought by a former employee accusing Pennsylvania hospital network Guthrie Healthcare System Inc. of Medicare and Medicaid fraud over its referral relationship with an affiliated clinic.

The former general counsel at Guthrie, Rodney Repko, claimed the company illegally paid its Guthrie Clinic PC division millions of dollars to generate referrals for the hospital that were later reimbursed by the federal government.

Repko's suit accused both Guthrie organizations of several violations of the False Claims Act and claimed they received hundreds of millions in money from the federal government they did not deserve.

U.S. District Judge James M. Munley, though, said that the allegations Repko brought forward had already been revealed, which bars the suit from going forward.

"The court finds that the relator's claims are based on publicly disclosed information," he said.

There is "ample evidence that defendants had referral relationships between the [Guthrie Clinic] and the other defendants," Judge Munley said.

The FCA allows private whistleblowers with insider knowledge to help the federal government recover money lost to fraud by paying them a percentage. It has a provision, however, that bars suits based on public information to stop fake whistleblowers from culling information from public documents to try to collect a reward.

In Repko's case, some of the allegations were revealed in lawsuits filed prior to Repko's 2004 complaint, Judge Munley said.

Other allegations Repko made cannot go forward because he first revealed the information to the government while negotiating a plea bargain on financial crimes charges against him, Judge Munley said.

The FCA requires that to be considered an original source of information, a relator like Repko has to voluntarily inform the government about any alleged fraud.

"He did not provide this information voluntarily, as the statute requires, but as a requirement of his plea bargain," Judge Munley said.

“A defendant in a federal case should not be able to profit from information he had to supply as a condition of his plea bargain,” he said.

Repko left Guthrie in 1998 and filed his suit in 2004, according to Judge Munley. Government lawyers who examined the case earlier declined to take over, leaving Repko to try to prosecute it himself.

“We're pleased with the ruling,” said David W. Marston Jr., one of Guthrie's attorneys.

Though the case was thrown out at the dismissal phase, Marston said Guthrie would have won on the merits had the case progressed that far.

“Guthrie stands by its organization, its setup. The structure of everything, we believe, is totally lawful,” he said.

An attorney for Repko did not immediately respond to a request for comment.

Repko is represented by Louis J. Sinatra and Mark B. Schoeller of Offit Kurman PA and Ronald V. Santora of Bresset & Santora LLC.

Guthrie is represented by Eric W. Sitarchuk and David W. Marston Jr. of Morgan Lewis & Bockius LLP.

The case is U.S. ex rel. Repko v. Guthrie Clinic PC et al., case number 3:04-cv-01556, in the U.S. District Court for the Middle District of Pennsylvania.

--Editing by Kat Laskowski.

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