

Relator Strikes Twice Against Walgreens

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by Vanessa J. Szalapski

For those who pay close attention to FCA settlements, the [January 22 press release](#) from the United States Attorney for the Southern District of New York of a \$60 million settlement against Walgreens related to its Prescription Savings Club (“PSC”) program should not come as a complete surprise. In an [earlier press release](#), almost two years ago to the day, the Southern District of New York announced a \$50 million settlement with Walgreens for paying kickbacks to induce beneficiaries of government healthcare programs under its PSC program to fill their prescriptions at Walgreens’ pharmacies. The prior 2017 action was filed by relator Marc D. Baker and then settled after the government intervened. But the [2017 settlement agreement](#) did not release all claims, indicating the \$50 million price tag was just a down payment for a final resolution down the road. The non-released claims, however, remained unknown because that portion of the agreement was redacted.

Two years later, we finally know the claims plaintiffs’ reserved and what appears to be the resolution of Baker’s qui tam action against Walgreens. That is, to resolve Baker’s complaint against Walgreen’s PSC program, the Department of Justice announced a \$60 million settlement with Walgreens, because Walgreens “submit[ed] claims to Medicaid programs of 39 states and the District of Columbia (collectively, “States”) in which the prices it identified as the usual and customary (“U&C”) prices for certain prescription drugs that it sold through the PSC program were higher than the prices it charged for those drugs pursuant to the PSC program and thereby . . . obtaining more money in reimbursements from the States’ Medicaid programs for sales of such drugs than it was entitled to receive.” This time the [2019 settlement agreement](#) is unredacted, revealing the language—the last sentence of paragraph six in both agreements—that was presumably redacted in the 2017 agreement. Together, Walgreens will have paid \$110 million in settlements as a result of Relator Baker’s claims.

The saying goes that lightning never strikes the same place twice, but that’s not the case when a relator reserves claims in a settlement agreement. It just may take a while—in this case, two years—for the bolt to strike the second time.

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