

## CASE PROFILE

### Abbott Laboratories' Motion Against U.S. Dept. of Justice

*DOJ accused of failing to meet preservation obligations in class action case*

#### KEY INFORMATION

<b>Reference No.:</b>	Civil Action 01-CV-12257-PBS
<b>Date:</b>	June 4, 2009
<b>Court:</b>	U.S. District Court for the District of Massachusetts
<b>Judge:</b>	U.S. Magistrate Judge Patti B. Saris
<b>Sector:</b>	Pharmaceutical
<b>Type:</b>	Class Action Pricing Fraud Dispute

#### CASE SUMMARY

In *In re Pharmaceutical Industry Average Wholesale Price Litigation*, Abbott Laboratories Inc. ("Abbott") and dozens of other drug manufacturers are defending themselves against claims that they defrauded Medicare and Medicaid, from 1991 to 2001, by selling their drugs to pharmacies and health care providers below the prices set for government rebates, which violated the False Claims Act.

In this motion, Abbott seeks sanctions against the U.S. Department of Justice ("DOJ"), claiming it did not implement any litigation holds until 2007, 11 years after the investigation was filed. Abbott also claims that the DOJ neglected its duty to preserve evidence during this period, stating that "The record in this case compels a finding that the Government has spoliated, on a massive scale, evidence critical to a fair adjudication of this case." Abbott alleges that hundreds of relevant emails that the DOJ should have preserved were lost.

Abbott claims the DOJ's actions significantly prejudiced it in making its defense, and asked the court to impose monetary sanctions; to order the construction of evidentiary gaps in Abbott's favor; and to deny damage recovery related to any alleged false claim where the government has been found to have spoliated payment data.

#### OUTCOME

The judge has not yet made a ruling on the motion. However, this case raises the question of when duty is triggered in the context of False Claims Act. If the court rules in favor of Abbott, it will greatly enhance the limited due process rights of False Claims Act defendants by subjecting the government and *qui tam* relators to sanctions if they fail to preserve all relevant documents.

It also reemphasizes the importance for companies and government entities to have litigation hold and document retention and review policies in place and be ready to implement in a timely manner. Regardless of the ruling, the government, just as any other litigant, has a duty to preserve evidence and will be sanctioned if spoliation is found.

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