

Report on Medicare Compliance Volume 28, Number 16. April 29, 2019

Duke's \$112M Settlement: A Tale of a Whistleblower and His Brother

By Theresa Defino

Duke University's recent \$112.5 million false claims settlement over research misconduct was the result of a confluence of events that brought together an embezzling lab technician and a pair of brothers — one her coworker and the other an attorney who specializes in False Claims Act (FCA) cases.

The historic settlement is also unusual because the government never intervened in the whistleblower's complaint, except for purposes of settlement. It was initiated by attorney John Thomas in 2013 on behalf of his younger brother, Joe, and the Department of Justice (DOJ) conducted its own investigation and helped broker the settlement, but didn't take over the case. And Joe Thomas didn't uncover the fraud. He learned what Erin Potts-Kant had done because he was privy to Duke's own investigation of her misdeeds.

In an interview with *Report on Research Compliance*, RMC's sister publication, the Thomas brothers shared highlights of the six-year journey leading up to the settlement and the damage done by Potts-Kant. They also expressed their hope it results in some soul-searching by universities about how to better manage grant funds and an examination of a culture Joe Thomas said is built on "misaligned motives."

The settlement, more than 10 times larger than the previous record amount for fraud based on data fabrication, should serve as a cautionary tale. "I don't think this case is going to be the last case of this kind. I think there are going to be others, unfortunately," said John Thomas, a partner with Healy Hafemann Magee in Savannah, Georgia.

Duke Did Not Admit Liability

In its March 25 announcement, DOJ said the \$112.5 million settlement "resolves allegations that between 2006 and 2018, Duke knowingly submitted and caused to be submitted claims to the NIH and to the Environmental Protection Agency that contained falsified or fabricated data or statements in 30 grants, causing" NIH and EPA "to pay out grants funds they otherwise would not have." John Thomas said of the 30, only one was from the EPA.

Duke denied the allegations in the settlement. Joe Thomas got \$33.75 million of the settlement amount, which he shares with his brother and his firm and two other sets of attorneys.

The DOJ statement doesn't mention former Duke lab worker Potts-Kant, but the lawsuit names her as the alleged perpetrator of the fraud in her capacity as a clinical research coordinator in the Pulmonary, Asthma and Critical Care Division of Duke University Medical Center; she later admitted to fabricating the data, a pattern that began a year after her hiring in 2005. Duke was also named in the suit.

Although it was the basis of the suit, research misconduct wasn't the thread that started the unraveling of Potts-Kant's life. It was the discovery "sometime between November 2012 and March 2013" that Potts-Kant had embezzled a total of \$25,000 from Duke by submitting falsified receipts for "scientific equipment and supplies."

The lab where Potts-Kant worked was conducting "airway physiology studies for a variety of different groups of

people that were interested in having a mouse model” to test airway responsiveness and hyper-responsiveness to certain triggers, Joe Thomas explained. Apparently she alone operated a machine called the flexiVent, and her work wasn’t checked by others.

Joe Thomas was hired in 2008, and for the first four years he worked in the Cell Biology Department; in February 2012, he moved to a lab of the pulmonary division as a laboratory research analyst. A year later, as Potts-Kant faced embezzlement charges, the pulmonary division began reviewing data created by Potts-Kant that was used in grant applications, progress reports, publications and redoing some experiments. Joe Thomas was part of this review. Until then, Joe Thomas had limited interaction with Potts-Kant.

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