

\$78.5 Million Settlement In Whistleblower Lawsuit Against University of Phoenix

SACRAMENTO, Calif.--([BUSINESS WIRE](#))--Attorneys for two whistleblowers formerly employed by the University of Phoenix, the nation's largest for-profit university, announced a \$78.5 million settlement today of the whistleblowers' False Claim Act lawsuit against the University.

The lawsuit, filed in March 2003, alleged that the University had defrauded the U.S. Department of Education by obtaining federal student loan and Pell Grant monies from the federal government based on false statements of compliance with the Higher Education Act. That Act prohibits universities receiving federal student aid monies from making incentive payments to recruiters based "directly or indirectly" on the number of students they recruit or enroll.

The University of Phoenix, which denied the whistleblowers' allegations, previously paid \$9.8 million to the Department of Education in 2004 to resolve administrative claims that it was paying improper incentive compensation to its recruiters. Those administrative proceedings were triggered by the allegations of the whistleblowers in this case.

The \$78.5 million settlement includes \$11 million as statutory attorneys' fees and costs, which will be paid to the attorneys for the whistleblower plaintiffs. A jury trial in the case was set to begin in March 2010 before federal district judge Garland Burrell in Sacramento. Although Judge Burrell had previously dismissed the lawsuit, the Ninth Circuit Court of Appeals in 2007 reinstated all claims after concluding that the whistleblowers' allegations of fraud, if proven true, could make the University of Phoenix liable to reimburse the Department of Education for hundreds of millions of dollars in student aid funds.

The federal government did not formally intervene as a party, although the Department of Justice filed several legal briefs and participated in several court hearings in support of the whistleblower plaintiffs during the seven-year litigation.

"The settlement is a huge victory for taxpayers and the federal government," according to Robert J. Nelson, lead attorney for the whistleblower plaintiffs. "This settlement sends a clear message to the for-profit education industry compliance with the Higher Education Act's incentive compensation ban must be achieved," said Nelson.

According to Michael Rubin of Altshuler Berzon LLP in San Francisco, who also represented the whistleblowers, "This settlement fully resolves our claims that the University of Phoenix's compensation structure violated the Higher Education Act. The case raised many novel issues, and would likely have been appealed no matter who won at trial. Now it's up to the Department of Education, working with the education community, to develop clear regulations going forward so no one will question what compensation is allowed and what is prohibited."

"The Higher Education Act prohibits colleges and universities whose students receive federal financial aid from paying their recruiters based on the number of students enrolled, which creates

a risk of encouraging recruitment of unqualified students,” explained Nancy Krop, another lawyer on the trial team. “This case focused a powerful spotlight on that law, and how Congress meant it to be applied.”

Adds attorney Cliff Palefsky of McGuinn, Hillsman & Palefsky, LLP, who also represented the whistleblowers, “The discovery and legal theories we developed in this case will help the Department of Education tighten up its regulations regarding incentive compensation. We expect the size of this settlement to deter other institutions from trying to circumvent the letter and spirit of the law as well.”

Background on the Litigation

This action involves a claim under the False Claims Act, a federal statute that permits whistleblowers to sue on behalf of the government for fraud committed against the government and to share in the recovery if the suit is successful.

The University denied the lawsuit’s allegations, and in 2005 the trial judge dismissed the action on the ground that the University’s certifications of compliance with the Higher Education Act did not constitute false claims under the False Claims Act. In 2007, the Ninth Circuit reversed that ruling. The case then returned to the trial court. At that time, Nancy Krop and Daniel Bartley, the original attorneys for the whistleblowers, brought in a trial team of attorneys from the highly regarded law firms of Lieff Cabraser Heimann & Bernstein, LLP, Altshuler Berzon LLP and McGuinn, Hillsman & Palefsky, LLP, to assist in the litigation.

The settlement is believed to be among the largest settlement ever of a False Claims Act fraud case in which the government declined to intervene as a party plaintiff.

The case settled after the trial team reviewed over a million pages of documents, took or defended close to 40 depositions, and had retained several experts. The case was set to be tried in March 2010. “We were trial ready,” said Nelson.

The case is entitled *United States of America ex rel. Mary Hendow and Julie Albertson v. University of Phoenix*; Civil Action No. 2:03-cv-00457-GEB-DAD (E.D. Cal.).