

## **Alabama Fellow Frohsin & Associate Fellow Jim Barger Settle Largest Medicare Hospice Case in U. S. History**

Alabama Fellow Henry I. Frohsin and Associate Fellow James F. Barger, Jr. of Frohsin & Barger, LLC in Birmingham settled a near \$25 million hospice fraud *qui tam* case under the federal False Claims Act. The agreement reached with SouthernCare, Inc. – one of the nation’s largest hospice providers – is the largest Medicare hospice fraud settlement in the nation and is the largest False Claims Act *qui tam* settlement of any kind in Alabama. Headquartered in Birmingham, Alabama, SouthernCare operates approximately 99 locations that provide hospice services in 15 states. The company has over 2,500 employees and provides home hospice care for over 5500 patients.

Henry Frohsin is a veteran prosecutor and former First Assistant United States Attorney, well known for having tried myriad complex federal criminal prosecutions including high-profile Ku Klux Klan and civil rights prosecutions. He has also tried many white collar criminal and civil cases as a private attorney and is the former head of litigation for one of the largest law firms in the Southeast. Jim Barger is a nationally-recognized trial lawyer whose legal writing is frequently cited in treatises, court pleadings, and journals, including *Alabama Law Review*, *Boston University Law Review*, *Cardozo Law Review*, and *Columbia Law Review*, and has helped shape the professional and academic discourse regarding False Claims Act *qui tam* litigation.

As a trail team, the two are best known for their highly-publicized defense of wrongfully-accused Iranian-American, Alex Latifi, for which they earned the distinction of being the only attorneys in the country to win an international Arms Export Control Act (AECA) and International Traffic in Arms Regulations (ITAR) case at trial during the Patriot Act-era. In the process, they also became the only attorneys in Alabama ever to receive an award of attorneys’ fees from the federal court against the government in a criminal case. In 2008, the two formed their current law firm joined by J. Elliott Walthall and former federal prosecutor, Ron Brunson, to concentrate on fighting government fraud and abuse through the *qui tam* provisions of the False Claims Act.

The *qui tam* suit against SouthernCare brought by Frohsin & Barger on behalf of a former nurse alleged that the company submitted false Medicare claims to the government for patients treated at its hospice facilities. Hospices provide palliative care – any form of medical care or treatment that concentrates on reducing the severity of a disease’s symptoms – to patients who decide to forego curative care of their illness. Medicare beneficiaries are entitled to hospice care if they have a terminal prognosis of six months or less to live. The *qui tam* charges alleged that SouthernCare was submitting false claims for hospice care for patients who were not eligible for such care. Pursuant to the settlement agreement, SouthernCare denied any wrongdoing.

In coordination with Frohsin & Barger, the investigation was jointly handled by the U. S. Attorney’s office in the Northern District of Alabama, the U. S. Attorney’s office for the Northern District of Georgia, the Civil Division of the Department of Justice, the Department of Health & Human Services, the Office of Inspector General, and the FBI. David E. Nahmias,

United States Attorney for the Northern District of Georgia, explained that the fraudulent claims also potentially endangered patients, stating, “Falsely admitting people to hospice care who did not qualify for the benefit exposed these patients to potential harm and contributes to the soaring costs of health care for everyone.”

“We were not talking about good faith mistakes here,” says Jim Barger. “This lawsuit involved allegations of systematic fraud. Obviously, estimating life expectancy is not an exact science, but when you bill taxpayers for years and years for patients who have never had a legitimate terminal diagnosis and when you aggressively market your services by telling people who aren’t dying that you’ll clean their house and wash their dishes on the Government dime, then that’s a real problem.

Frohsin also commended the courage of the whistleblowers saying their actions will bring more corporate fraud to light. “It is always extremely gratifying to right the wrongs of corporate excess because in this kind of fraud – and it is clearly epidemic – it is the American taxpayer who bears the brunt of the damage,” said Frohsin. “Cases like this - and the media attention they receive - are a beacon to other potential whistleblowers who can help fight fraud. Lawbreaking companies in the Healthcare industry and other industries, who would not have been held accountable at all without the courage of whistleblowers, often pay triple damages and other penalties under the False Claims Act.”

Frohsin and Barger praised the work of the governments’ investigative team in reaching the SouthernCare settlement. “The federal and state prosecutors on this case represent the highest calling of public service. “If it had not been for Lloyd Peeples and the rest of the government team, we would not be announcing today’s landmark settlement.”