The Gordian Knot of ADR in FCA Cases: Untangling Conflicting Interests of Multiple Parties

American Health Lawyers Association
2016 Physicians and Hospitals Law Institute

February 8, 2016
Presenters

- Maria Greco Danaher
  - Ogletree Deakins
- Nancy F. Lesser
  - PAX ADR
- Michael E. Paulhus (moderator)
  - King & Spalding LLP
- Michelle Zingaro
  - S.D. Texas U.S. Attorney’s Office
Agenda

• Discussion of unique features present in FCA cases complicating mediation.
  — Relevant parties to the mediation (DOJ, agencies, states, relator)
  — Potential divergence of interest among parties
    — §3729 claims v. §3730(h) retaliation claims
    — Relator’s share percentage
    — Relator’s attorney’s fees
    — Dollar recovery in present case v. legal principles applicable to all cases
Agenda

• Discussion of unique features present in FCA cases complicating mediation.
  – Non-Monetary Complexities
    – Covered Conduct
    – Releases
  – CIAs
  – Treatment of individuals—Post Yates Memorandum
Agenda

• Where are the leverage points on each side?

• What is the neutral’s approach to maximize prospects of a successful FCA resolution?

• Professional and ethical duties of counsel and the neutral where the relator is participating in the ADR proceeding along with the government and the defendant?
Presenter—Contact Information

Maria Greco Danaher
Shareholder
Ogletree Deakins
One PPG Place, Suite 1900
Pittsburgh, PA 15222
(412) 394-3390
maria.danaher@ogletreedeakins.com

Michael E. Paulhus
Partner
King & Spalding LLP
1180 Peachtree St., NE
Atlanta, GA 30309-3521
(404) 572-2860
mpaulhus@kslaw.com
Nancy F. Lesser
Principal
Pax ADR
2101 L Street, N.W., Suite 800
Washington, D.C. 20037
(202) 775-8100
lesser@paxadr.com

Michelle Zingaro
Assistant United States Attorney
United States Attorney’s Office for the Southern District of Texas
1000 Louisiana, Suite 2300
Houston, Texas 77002
(713) 567-9512
Michelle.Zingaro@usdoj.gov
Special Thanks to

Ray Kolls
Managing Director
Berkeley Research Group, LLC
1800 M Street NW, Second Floor
Washington, DC 20036
(202) 480-2686 (direct)
(980) 297-3192 (mobile)
rkolls@thinkbrg.com

Geoff Drucker
Senior Manager, Dispute Resolution Service
American Health Lawyers Association
1620 Eye Street, NW, 6th Floor
Washington, DC 20006-4010
(202) 833-6945
GDrucker@healthlawyers.org

Vice Chair for Education & Programs
AHLA ADR Affinity Group: