

## Florida Judge Awards Gilead Sciences \$131M Judgment

by Michael A. Mora

### What You Need to Know

- An Am Law 200 firm represented Gilead Sciences Inc. in a federal court in Florida.
- Gilead proved over a dozen claims, including under the federal and Florida RICO Acts that experts said could deter future alleged fraud.
- The federal judge entered a \$131 million final default judgment in Gilead's favor.

Good news for attorneys of an Am Law 200 firm that represented Gilead Sciences Inc., after a federal judge in Florida entered a nine-figure final default judgment in their client's favor.

Geoffrey Potter, a partner at Patterson Belknap Webb & Tyler in New York, was among the attorneys who represented the plaintiff, Gilead.



Geoffrey Potter



Joshua Kipnees

Gilead sued the defendants, which consisted of several healthcare clinics, pharmacies, prescribers, and lab testing facilities, for their alleged scheme to steal millions of dollars from Gilead's medication assistance program or MAP.

"We are pleased with the judge's order, and it supports our efforts to continue to make sure our free drug program is available to the people who need it," Gilead said, through a spokesperson. "Gilead will continue to monitor and take appropriate action to protect public safety and deter those who seek to exploit the integrity of the program."



Gilead a biopharmaceutical company located in Foster City, California.

(Credit: Jason Doby/ALM)

Former attorneys for Baikal Marketing Group Inc., Arsen Bazylenko, Tatiana Rozenblyum, Priority Health Medical Center, and Nick Myrtil did not respond to a request for comment. As the litigation progressed, the defendants went pro se and asserted their Fifth Amendment right against self-incrimination.

Gilead was the first company to develop FDA-approved therapies that protect individuals at risk of being exposed to HIV,

but have not yet contracted the virus, according to court documents. And Gilead's MAP, which is consistent with the federal government's 340B Drug Pricing Program, provides eligible uninsured persons with free medication to help protect them from becoming infected with HIV, the documents state.

However, starting in 2019, the clinic and pharmacy defendants submitted a significantly disproportionate number of redemptions, court documents allege. Gilead allegedly discovered "massive, multilevel, and interconnected conspiracies to engage in fraudulent conduct." The biopharmaceutical company later estimated that the alleged fraudulent activity exceeded \$43 million.

In November 2020, Gilead filed a lawsuit alleging that the defendants participated in a massive fraud scheme, court documents show.

It alleged the scheme included fraudulently enrolling patients in MAP, purchasing already-dispensed medication back from enrollees for resale, performing sham wellness checks on patients and using their credentials to improperly write prescriptions, and submitting fraudulent redemptions, among other tactics.

In April, U.S. District Judge Aileen M. Cannon granted a

temporary restraining order against certain defendants and froze their assets. Cannon, who sits on the Southern District of Florida bench, determined Gilead plausibly alleged violations of the federal and Florida RICO Acts.

As a result, Cannon entered final default judgments against certain defendants on counts related to fraud and the Lanham Act, among others. Gilead then sought damages as calculated under the out-of-pocket rule, as it provided "ample evidence" in the form of affidavits, testimony and reimbursement records.

Now, Cannon found in the order that Gilead paid \$43.8 million in connection with over 21,900 reimbursements to members of the conspiracy and under the federal and Florida RICO Acts, and as a result, ruled that Gilead is entitled to judgment against the defendants of three times this amount.

The court's judgment holds Baikal Marketing Group, Bazylenko and Rozenblyum jointly and severally liable for



**U.S. District Judge  
Aileen M. Cannon  
of the Southern  
District of Florida.**

Courtesy photo

\$131,400,000, according to the federal district court order.

However, since Cannon did not enter final default judgment on the federal and Florida RICO claims against Priority Health and Myrtil—due to improper service of the first amended complaint in which the RICO counts were first asserted—they are jointly and severally liable under the non-RICO counts for only \$43,800,000 of the total, per the order.

Jason Mehta and Natalie Adams, are former federal prosecutors and are now partners who specialize, in part, in healthcare fraud litigation at Foley & Lardner in Tampa. They are not involved in the litigation, but recognized the meaningfulness of Gilead for taking the matter into its own hands.

"It is helpful now for companies to have counsel who know how to use sophisticated statutes on their own," Adams said. "They don't need to wait for the government to rescue them or prosecute these cases on their behalf."

Mehta added: "When you see a judgment like this one for \$131 million, that's really meaningful and in some respects, it is as powerful or nearly as powerful as criminal prosecution."