

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
October 2008 Grand Jury

UNITED STATES OF AMERICA,
Plaintiff,
v.
ADEKUNLE RAFIU SHITTU,
aka "Cooley," and
KIM JEANETTE SHITTU,
Defendants.

CR No.
I N D I C T M E N T
[18 U.S.C. § 1349: Conspiracy
to Commit Health Care Fraud;
18 U.S.C. § 1347: Health Care
Fraud; 18 U.S.C. § 2(b):
Causing an Act to be Done; 18
U.S.C. § 982(a)(7): Criminal
Forfeiture]

The Grand Jury charges:

COUNT ONE

[18 U.S.C. § 1349; 18 U.S.C. § 2(b)]

A. GENERAL ALLEGATIONS

At all times relevant to this Indictment:

The Medicare Program

1. The Medicare Program ("Medicare") was a federal health care program providing benefits to individuals who were over the age of 65 or disabled. Medicare was administered by the Centers

Jch: jch

1 for Medicare and Medicaid Services ("CMS"), a federal agency
2 under the United States Department of Health and Human Services.
3 Medicare was a "health care benefit program" as defined by
4 Title 18, United States Code, Section 24(b).

5 2. Medicare was subdivided into several parts, including
6 Medicare Part A and Medicare Part B. Medicare Part A covered
7 inpatient care in hospitals, skilled nursing facilities, hospice
8 care, and home health care. Medicare Part B covered physician's
9 services and outpatient care, including an individual's access to
10 durable medical equipment ("DME"), such as orthotic devices,
11 motorized wheelchairs, hospital beds, air mattresses, and trapeze
12 bars.

13 3. Motorized wheelchair accessories were another type of
14 DME. Motorized wheelchair accessories included, but were not
15 limited to, adjustable and detachable arm rests, positioning and
16 safety belts, pelvic straps, reclining backs, acid lead
17 batteries, tubes for pneumatic drive, seat cushions, captain's
18 chairs, and tire pressure tubes (collectively "wheelchair
19 accessories").

20 4. Individuals who qualified for Medicare benefits were
21 referred to as Medicare "beneficiaries." Each beneficiary was
22 given a unique Medicare identification number.

23 5. DME companies, pharmacies, physicians, and other health
24 care providers that provided services to Medicare beneficiaries
25 were referred to as Medicare "providers." In order to
26 participate in Medicare, providers were required to submit an
27 application in which the providers agreed to comply with all
28 Medicare-related laws and regulations. If Medicare approved a

1 provider's application, Medicare assigned the provider a Medicare
2 "provider number."

3 6. A health care provider with a Medicare provider number
4 could submit or cause the submission of claims to Medicare either
5 directly or through a billing company, to obtain reimbursement
6 for services rendered to beneficiaries.

7 7. Medicare would generally pay reimbursement for DME only
8 if the DME was prescribed by the beneficiary's physician, the DME
9 was medically necessary to the treatment of the beneficiary's
10 illness or injury, and the DME companies provided the DME in
11 accordance with Medicare guidelines and regulations, including
12 Local Coverage Determinations ("LCDs"), which governed whether a
13 particular item or service would be reimbursed by Medicare.

14 8. CMS contracted with Durable Medical Equipment Regional
15 Carriers ("DMERCS") to issue LCDs and process claims for
16 reimbursement submitted by DME suppliers. Two of the DMERCs that
17 processed and paid Medicare DME claims in Southern California
18 were Noridian and Cigna.

19 9. In order to bill Medicare for services rendered, a
20 provider submitted a claim form (Form 1500) to Noridian or Cigna.
21 When a Form 1500 was submitted, usually in electronic form, the
22 provider certified: (1) that the contents of the form were true,
23 correct, and complete; (2) that the form was prepared in
24 compliance with the laws and regulations governing Medicare; and
25 (3) that the contents of the claim were medically necessary.

26 10. A Medicare claim for reimbursement was required to set
27 forth, among other things, the beneficiary's name and unique
28 Medicare identification number, the equipment or medicine

1 provided to the beneficiary, the date that the equipment or
2 medicine was provided, the cost of the equipment or medicine, and
3 the name and unique physician identification number of the
4 physician who prescribed or ordered the equipment or medicine.

5 The Defendants

6 11. Defendant ADEKUNLE RAFIU SHITTU ("SHITTU") was Chief
7 Executive Officer and Chief Financial Officer of Kimco Medical
8 Supply, Inc. ("Kimco"), a DME supply company. Defendant ADEKUNLE
9 SHITTU was also Chief Financial Officer and a contracted managing
10 employee of K & K Medical Supply, Inc. ("K & K"), another DME
11 supply company.

12 12. Defendant KIM JEANETTE SHITTU ("KIM SHITTU") was
13 Secretary of Kimco, and Chief Executive Officer and Secretary of
14 K & K.

15 13. Kimco was a Medicare provider with a Medicare Provider
16 number, and purportedly provided, among other things, motorized
17 wheelchairs, wheelchair accessories, hospital beds, and other DME
18 to Medicare beneficiaries. Kimco's offices were located at 577
19 North D Street, Suite 113, San Bernardino, California, within the
20 Central District of California.

21 14. K & K was a Medicare provider with a Medicare Provider
22 number, and purportedly provided, among other things, motorized
23 wheelchairs, wheelchair accessories, hospital beds, and other DME
24 to Medicare beneficiaries. K & K's offices were located at 17410
25 Foothill Boulevard, Suite C, Fontana, California, within the
26 Central District of California.

27

28

1 B. THE OBJECT OF THE CONSPIRACY

2 15. Beginning in approximately September 2005, and
3 continuing to approximately October 2008, in San Bernardino
4 County, within the Central District of California, and elsewhere,
5 defendants ADEKUNLE SHITTU and KIM SHITTU, and others known and
6 unknown to the Grand Jury, knowingly and intentionally combined,
7 conspired, and agreed to execute a scheme and artifice to defraud
8 as to material matters a health care benefit program affecting
9 commerce, that is, Medicare, and to obtain, by means of
10 materially false and fraudulent pretenses, representations, and
11 promises, and the concealment of material facts, money and
12 property owned by, and under the custody and control of, said
13 health care benefit program, in connection with the delivery of
14 and payment for health care benefits, items, and services, in
15 violation of Title 18, United States Code, Section 1347.

16 C. THE MANNER AND MEANS OF THE CONSPIRACY

17 16. The object of the conspiracy was carried out, in
18 substance, as follows:

19 a. Defendant ADEKUNLE SHITTU incorporated Kimco in
20 the State of California, listing himself as Kimco's Chief
21 Executive Officer and Chief Financial Officer, and listing
22 defendant KIM SHITTU as Kimco's Secretary.

23 b. Defendant ADEKUNLE SHITTU submitted an application
24 to Medicare and obtained a Medicare provider number.

25 c. Defendant KIM SHITTU incorporated K & K in the
26 State of California, listing herself as K & K's Chief Executive
27 Officer and Secretary, and listing defendant ADEKUNLE SHITTU as K
28 & K's Chief Financial Officer.

1 d. Defendant KIM SHITTU submitted an application to
2 Medicare and obtained a Medicare provider number.

3 e. Co-conspirators known and unknown to the Grand
4 Jury obtained beneficiaries' Medicare information by theft, by
5 recruiting beneficiaries with promises of free DME, or by other
6 means.

7 f. Defendants ADEKUNLE SHITTU and KIM SHITTU, and
8 other co-conspirators known and unknown to the Grand Jury,
9 obtained beneficiaries' Medicare information from co-conspirators
10 known and unknown to the Grand Jury.

11 g. Defendants ADEKUNLE SHITTU and KIM SHITTU, and
12 other co-conspirators known and unknown to the Grand Jury, used
13 the beneficiaries' Medicare information to prepare false and
14 fraudulent documents to support claims to Medicare for services
15 that were not medically necessary to the beneficiaries.

16 h. Defendants ADEKUNLE SHITTU and KIM SHITTU, and
17 other co-conspirators known and unknown to the Grand Jury, did
18 not provide the beneficiaries with motorized wheelchairs,
19 wheelchair accessories, hospital beds, and other DME, or supplied
20 the beneficiaries with motorized wheelchairs, wheelchair
21 accessories, hospital beds, and other DME that they well knew
22 were not medically necessary to the beneficiaries.

23 i. Defendants ADEKUNLE SHITTU and KIM SHITTU, through
24 Kimco, submitted and caused to be submitted claims to Medicare
25 falsely representing that Kimco had supplied Medicare
26 beneficiaries with motorized wheelchairs, wheelchair accessories,
27 hospital beds, and other DME that purportedly had been prescribed
28 by certain physicians as being medically necessary when, in truth

1 and fact, as defendants ADEKUNLE SHITTU and KIM SHITTU well knew,
2 (i) those physicians had not prescribed or ordered the DME; (ii)
3 the DME was not medically necessary, and/or (iii) the DME was
4 never actually delivered to the beneficiaries.

5 j. Defendants ADEKUNLE SHITTU and KIM SHITTU filed
6 and caused to be filed approximately \$2,804,654 worth of false
7 and fraudulent Medicare claims on behalf of Kimco, resulting in
8 Medicare payments of approximately \$1,972,843.

9 k. Defendants ADEKUNLE SHITTU and KIM SHITTU, through
10 K & K, submitted and caused to be submitted claims to Medicare
11 falsely representing that K & K had supplied Medicare
12 beneficiaries with motorized wheelchairs, wheelchair accessories,
13 hospital beds, and other DME that purportedly had been prescribed
14 by certain physicians as being medically necessary when, in truth
15 and fact, as defendants ADEKUNLE SHITTU and KIM SHITTU well knew,
16 (i) those physicians had not prescribed or ordered the DME; (ii)
17 the DME was not medically necessary, and/or (iii) the DME was
18 never actually delivered to the beneficiaries.

19 l. Defendants ADEKUNLE SHITTU and KIM SHITTU filed
20 and caused to be filed approximately \$762,849 worth of false and
21 fraudulent Medicare claims on behalf of K & K, resulting in
22 Medicare payments of approximately \$544,233.

23

24

25

26

27

28

COUNTS TWO THROUGH SIX

[18 U.S.C. §§ 1347, 2(b)]

17. The Grand Jury re-alleges and incorporates by reference the allegations of paragraphs one through fourteen of the Indictment.

A. THE SCHEME TO DEFRAUD

18. Beginning in approximately September, 2005, and continuing to approximately October, 2008, in San Bernardino County, within the Central District of California, and elsewhere, defendants ADEKUNLE SHITTU and KIM SHITTU, together with others known and unknown to the Grand Jury, knowingly, willfully, and with intent to defraud, executed a scheme and artifice: (a) to defraud a health care benefit program, namely Medicare, as to material matters in connection with the delivery of and payment for health care benefits, items, and services; and (b) to obtain money from Medicare by means of material false and fraudulent pretenses and representations and the concealment of material facts in connection with the delivery of and payment for health care benefits, items, and services.

19. The fraudulent scheme operated, in substance, in the manner described in the allegations in paragraph sixteen of this Indictment, which allegations are realleged and incorporated as though fully set forth herein.

B. THE EXECUTION OF THE FRAUDULENT SCHEME

20. On or about the dates set forth below, within the Central District of California and elsewhere, defendants ADEKUNLE SHITTU and KIM SHITTU, together with others known and unknown to the Grand Jury, for the purpose of executing and attempting to

1 execute the fraudulent scheme described above, knowingly and
2 wilfully submitted and caused to be submitted to Medicare the
3 following false and fraudulent claims for payment:
4

<u>COUNT</u>	<u>MEDICARE BENEFICIARY</u>	<u>DME PROVIDER</u>	<u>CLAIM NUMBER</u>	<u>DATE CLAIM SUBMITTED</u>	<u>CLAIM AMOUNT</u>
TWO	A.P.	K & K	107341876102000	12/07/2007	\$5,865
THREE	G.C.	KIMCO	108007818183000	01/07/2008	\$5,865
FOUR	M.C.	K & K	108007871525000	01/07/2008	\$5,865
FIVE	M.A.	KIMCO	108112891413000	04/21/2008	\$5,865
SIX	T.A.	KIMCO	108112891415000	04/21/2008	\$5,865

16
17
18 //
19 //
20 //

COUNT SEVEN

[18 U.S.C. § 982(a)(7), 21 U.S.C. § 853,
and 28 U.S.C. § 2461(c)]

21. The Grand Jury hereby realleges and incorporates by reference Counts One through Six of this Indictment as though fully set forth herein, for the purpose of alleging forfeiture, pursuant to the provisions of Title 18, United States Code, Section 982(a)(7).

22. Counts One through Six of this Indictment allege acts or activities constituting federal health care fraud offenses pursuant to Title 18, United States Code, Section 1347. Pursuant to Title 18, United States Code, Section 982(a)(7), upon conviction of a federal health care fraud offense, defendants ADEKUNLE SHITTU and KIM SHITTU shall forfeit to the United States of America:

a. All right, title, and interest in any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such offense; and

b. A sum of money equal to the total amount of gross proceeds derived from such offense.

23. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1) and 28 U.S.C. § 2461(c), a defendant so convicted shall forfeit substitute property, up to the value of the amount described in paragraph twenty-two, if, by any act or omission of said defendant, the property described in paragraph twenty-two, or any portion thereof, cannot be located upon the exercise of

1 due diligence; has been transferred, sold to, or deposited with a
2 third party; has been placed beyond the jurisdiction of this
3 court; has been substantially diminished in value; or has been
4 commingled with other property that cannot be divided without
5 difficulty.

6
7
8 A TRUE BILL

9
10 151
11 Foreperson

12
13 THOMAS P. O'BRIEN
14 United States Attorney

15 *David Goodman, Dist. U.S. Atty*
16 *Deputy Chief, Criminal Division, for:*

17 CHRISTINE C. EWELL
18 Assistant United States Attorney
19 Chief, Criminal Division

20 KIRK OGROSKY
21 Deputy Chief
22 Fraud Section, Criminal Division
23 United States Department of Justice

24 YVONNE GARCIA
25 Assistant United States Attorney

26 JOSEPH C. HUDZIK
27 Special Trial Attorney
28 Fraud Section, Criminal Division
United States Department of Justice

1 due diligence; has been transferred, sold to, or deposited with a
2 third party; has been placed beyond the jurisdiction of this
3 court; has been substantially diminished in value; or has been
4 commingled with other property that cannot be divided without
5 difficulty.

6
7
8 A TRUE BILL

9
10 Foreperson

11
12
13 THOMAS P. O'BRIEN
United States Attorney

14 *Daniel J. Goodman, Asst. U.S. Atty.*
15 *Deputy Chief, Criminal Division, for:*

16 CHRISTINE C. EWELL
Assistant United States Attorney
17 Chief, Criminal Division

18 KIRK OGROSKY
Deputy Chief
19 Fraud Section, Criminal Division
United States Department of Justice

20 YVONNE GARCIA
21 Assistant United States Attorney

22 JOSEPH C. HUDZIK
Special Trial Attorney
23 Fraud Section, Criminal Division
United States Department of Justice