

SETTLEMENT AGREEMENT

I. PARTIES

1. This agreement is entered into by and among the United States of America (the "United States"), acting through its Department of Justice and the Office of Inspector General of the United States Department of Health and Human Services ("HHS-OIG"); Ronald I. Wells, the relator in United States ex rel. Ronald I. Wells v. Huntleigh Technology PLC, et al., Civil Action 95-95 (D.N.J.) ("the Qui Tam action"); and Jalopy Shoppe, Inc. d/b/a Mediserv, Inc.; Jimmy E. Mehaffey as President of Mediserv ("Mehaffey"); and Breathco, Inc., hereinafter collectively referred to as "the Company."

II. RECITALS

2. The United States contends in the Qui Tam action that it has certain civil and administrative monetary claims and causes of action against the Company predicated upon the False Claims Act, as amended, 31 U.S.C. §§ 3729-3733, the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, as well as under common law, for those claims for payment submitted by the Company to the Medicare Program from January 1, 1989 until December 31, 1994, that sought reimbursement under HCPCS E0652 for pneumatic compressors.

3. The Company denies liability under the False Claims Act as well as under common law theories. The Company contends that it complied with all laws, regulations and manual provisions and that it believed that the lymphedema pump at issue qualified for the HCPCS E0652. Neither this Agreement nor the payment made hereunder shall constitute or be construed as an admission of any liability or wrongdoing by the Company.

4(a) The parties desire to reach an agreement that would settle, compromise, resolve issues and disputes between them based on claims for lymphedema pumps submitted by the Company in order to avoid the uncertainty, burden and expense of litigation and in consideration of the Company's payment to the United States and the United States' agreement to release its claims against the Company as herein provided.

(b) The settlement is based upon a review by the United States of financial information provided by the Company and an analysis based upon this information of the Company's ability to pay a judgment or settlement.

III. TERMS OF THE AGREEMENT

In accordance with the mutual covenants and agreements herein, and with full authority to enter into this Agreement and to be bound thereby, the parties agree as follows:

5. Contemporaneous with the execution of this Settlement Agreement, the Company shall electronically transfer to the United States, pursuant to instructions provided by the United States Attorney's Office for the District of New Jersey, one million three hundred fifty thousand dollars and no cents (\$1,350,000.00) ("the Settlement Amount").

6. Upon receipt of the amount set forth in Paragraph 5, and in consideration of the covenants and payments set forth herein, the United States, for itself and on behalf of its Medicare intermediaries/carriers and other agents or assigns, hereby waives, releases and forever discharges, and promises to refrain from instituting, prosecuting or maintaining any civil monetary claim, action, or suit, or any administrative monetary proceeding against the Company, its current or former shareholders, officers, directors, agents, employees, predecessors, successors, transferees, and assigns for any and all claims which the United

States now has or may hereafter acquire against the Company arising under the False Claims Act, 31 U.S.C. §§ 3729-3733, as amended; the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or common law theories of payment by mistake, unjust enrichment, breach of contract and fraud for the following conduct concerning the Medicare claims for payment specified in Paragraph 2: receiving payment for compressors that were not delivered or were not medically necessary; misrepresenting the proper charge of the compressor, the place of the sale of the compressor, and/or that the compressor met the description of HCPCS E0652. Notwithstanding any other provision to the contrary, the United States does not release in this Agreement and expressly reserves claims against any defendant in the Qui Tam action or any supplier or manufacturer of lymphedema pumps, other than the Company.

7. The Company agrees for itself, its predecessors, successors, assigns, present and former directors, officers, and shareholders, acting in their capacity as such, to refrain from asserting any cause of action or demand (including recoupment claims), and from filing or causing to be filed any civil or administrative action, at law or in equity, against Huntleigh Technology plc or HNE Healthcare, Inc., or any of their predecessors, successors, parents, subsidiaries, assigns, or present or former directors, officers, employees, or shareholders, relating to the submission of claims for reimbursement for the Flowplus system under the Medicare program or any other federal or federally-funded state health program.

8. Upon execution of this Agreement, the Company will implement the Corporate Integrity Agreement as set forth in Exhibit A and incorporated herein by reference.

9. Effective on full execution of this Agreement and payment of the amount set forth in Paragraph 5, the Office of Inspector General of HHS agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the Medicare program or State health care programs (as defined in 42 U.S.C. § 1320a-7(h)) against the Company, its current or former owners, parent, shareholders, officers, directors, agents, employees, affiliates, subsidiaries, predecessors, successors, transferees, and assigns under 42 U.S.C. § 1320a-7(b) (permissive exclusion) for the conduct specified in Paragraph 6.

10. The Relator agrees that the settlement of claims against the Company in this case is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). The United States agrees to pay Wells, or his heirs, assigns, or his successors eighteen percent (18%) of all payments received by the United States from the Company in connection with this Settlement.

11. In consideration of the agreements and payments set forth herein, and upon the full execution of this Agreement, the Parties hereto shall execute and, in a timely manner, file with the court a stipulation for dismissal of the qui tam action with prejudice as to the Company for the conduct specified in Paragraph 6.

12. Pursuant to 31 U.S.C. § 3730(d), the Company agrees to pay Getnick & Getnick, Counsellors at law, fifty-five thousand dollars (\$55,000) contemporaneous with the

execution of the Settlement Agreement, in full satisfaction of all claims for attorneys' fees and litigation expenses.

(a) Upon dismissal of the Qui Tam Action as to the Company, Wells, for himself, his heirs, successors, and assigns, as releasors, will release and will be deemed to have released and forever discharged the Company, its predecessors, successors, parents, subsidiaries, affiliates, assigns, agents, and present and former directors, officers, employees and shareholders, as releasees, from all actions, causes of action, suits, debts, dues, sums of money, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims (including claims for attorneys' fees and litigation expenses under 31 U.S.C. § 3730(d)), and demands whatsoever, in law, admiralty or equity, which against the releasees, the releasors ever had, now have or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this release.

(b) Upon dismissal of the Qui Tam Action as to the Company, the Company, for itself, its predecessors, successors, parents, subsidiaries, affiliates, assigns, agents, and present and former directors, officers, employees and shareholders, as releasors, will release and will be deemed to have released and forever discharged Wells, his heirs, successors and assigns, as releasees, from all actions, causes of action, suits, debts, dues, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this release.

13. On receipt by the relator of his share of the payment identified in Paragraph 5 pursuant to Paragraph 10, Relator, for himself, his heirs, successors, and assigns, will release and will be deemed to have released and forever discharged the United States from any claims arising from or relating to the filing of the Qui Tam Action as against the Company or, pursuant to 31 U.S.C. § 3730(d)(1) for a share of any proceeds received from the Company, except as to any obligations that the United States has to Wells under Paragraph 10 of this Agreement.

14. This Agreement does not resolve or in any manner affect any claims that United States has or may have against the Relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

15. For government contracting purposes and for Medicare, Medicaid, CHAMPUS, VA and FEHBP program reimbursement purposes, the Company agrees to treat as unallowable costs all costs (as defined in the Federal Acquisition Regulations ("FAR") §31.205.47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395 et seq. and §§ 1396 et seq., and the regulations promulgated thereunder) incurred by or on behalf of the Company and/or its current or former officers, directors, agents, employees, shareholders, parent, subsidiaries, divisions, predecessors and successors in connection with (a) the Government's investigations and the Company's investigations and defense of the matters covered by this Agreement; (b) the negotiation of this Agreement; (c) any corrective action undertaken by the Company for the Released Acts during the relevant period; and (d) the payments made to the United States provided for in this Agreement. These amounts shall be separately estimated and accounted for by the Company, and the Company will not charge

such costs directly or indirectly to any contracts with the United States or any State Medicaid program, or to any cost report, cost statement, or information statement submitted by the Company or any of its subsidiaries to the Medicare, Medicaid, CHAMPUS, VA or FEHBP programs. The Company agrees further that within 60 days it will identify to applicable Medicare and CHAMPUS fiscal intermediaries, carriers, and/or contractors, and Medicaid fiscal agents any unallowable costs (as defined in this paragraph) included in payments sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements or information reports already submitted by the Company or any of its subsidiaries, and will request that such cost reports, cost statements or information reports, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Any payments due after the adjustments have been made shall be paid to the United States at the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by the Company or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this paragraph) on the Company's, or any of its subsidiaries', cost reports, cost statements or information reports. Nothing in this Agreement shall constitute a waiver of the rights of HHS, or any Medicare or CHAMPUS fiscal intermediary or contractor, or any Medicaid fiscal agent, to examine or reexamine the unallowable costs described in this paragraph.

16. The Company hereby agrees that it will waive and will not assert any defense which may be based in whole or in part on the Double Jeopardy or Excessive Fine Clauses of the Constitution or the holding or principles set forth in United States v. Halper,

490 U.S. 435 (1989), and agrees that the amounts paid under this Agreement are not punitive in effect or in nature in any criminal prosecution based on conduct specified in Paragraph 6. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the amounts paid hereunder for the purposes of any proceeding under Title 26 of the Internal Revenue Code.

17. Each person who signs this Agreement in a representative capacity warrants that he or she is duly authorized to do so.

18. This Agreement constitutes the full and complete agreement among the parties.

19. This Agreement shall become final and binding only upon signing by each respective party hereto.

20. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

21. Nothing in this Agreement is intended to settle any liability the Company has or may have under the Internal Revenue Laws, Title 26 of the United States Code; under the Federal Criminal Code, Title 18 of the United States Code, or any of the criminal laws of the United States; any obligations created by this Agreement; or relieve the Company from any causes of action for the delivery of deficient or defective products, or any express or implied warranties.

22. Any civil action brought by the United States to enforce this Agreement may be brought in the United States District Court for the District of New Jersey or in any other court having personal jurisdiction over the Company. In the event such a civil action is


brought in the United States District Court for the District of New Jersey, the Company hereby waives any defense or claim based on venue or the court's lack of personal jurisdiction over any of the Company.

23. A declaration of invalidity of any one or more provisions by a court shall not affect the validity of the remainder of the Settlement Agreement.

UNITED STATES OF AMERICA

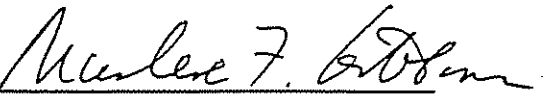
FAITH S. HOCHBERG
United States Attorney

Dated: 5/22/97

By: 

JANET S. NOLAN
Asst. U.S. Attorney
District of New Jersey

Dated: 5/19/97

By: 

MARLENE F. GIBBONS
Civil Division
U.S. Department of Justice

U.S. DEPT. OF HEALTH
AND HUMAN SERVICES

Dated: _____

By: _____

LEWIS MORRIS
Assistant Inspector General
Office of the Inspector General

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FAITH S. HOCHBERG
United States Attorney

Dated: _____

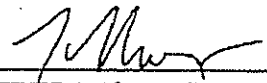
By: _____
JANET S. NOLAN
Asst. U.S. Attorney
District of New Jersey

Dated: _____

By: _____
MARLENE F. GIBBONS
Civil Division
U.S. Department of Justice

U.S. DEPT. OF HEALTH
AND HUMAN SERVICES

Dated: 5/21/97

By: 
LEWIS MORRIS
Assistant Inspector General
Office of the Inspector General

THE COMPANY

JALOPY SHOPPE INC. D/B/A
MEDISERV, INC.

Dated: _____

By: _____
JIMMY E. MEHAFFEY

BREATHCO, INC.

Dated: _____

By: _____
JIMMY E. MEHAFFEY

JIMMY E. MEHAFFEY

Dated: _____

By: _____
JIMMY E. MEHAFFEY
Individually as President of
Mediserv

Approved as to form:

REED SMITH SHAW & McCLAY

Dated: 5-21-97

By: Kathleen H. McGuan
KATHLEEN H. MCGUAN, Esq.

THE COMPANY

JALOPY SHOPPE INC. D/B/A
MEDISERV, INC.

Dated: _____

By: Jimmy E. MehaFFEY
JIMMY E. MEHAFFEY 5/21/97

BREATHCO, INC.

Dated: _____

By: _____
JIMMY E. MEHAFFEY

JIMMY E. MEHAFFEY

Dated: _____

By: _____
JIMMY E. MEHAFFEY
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By: _____
KATHLEEN H. MCGUAN, Esq.

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JIMMY E. MEHAFFEY

BREATHCO, INC

Dated: _____

By: *Jimmy E. Mehafeey*
JIMMY E. MEHAFFEY
5/2/97

JIMMY E. MEHAFFEY

Dated: _____

By: _____
JIMMY E. MEHAFFEY
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JIMMY E. MEHAFFEY

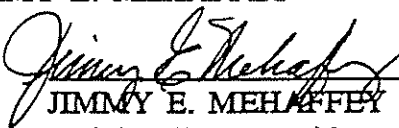
BREATHCO, INC.

Dated: _____

By: _____
JIMMY E. MEHAFFEY

JIMMY E. MEHAFFEY

Dated: _____

By:  _____
JIMMY E. MEHAFFEY
Individually as President of
Mediserv *1/21/97*

Approved as to form:

REED SMITH SHAW & McCLAY

Dated: _____

By: _____
KATHLEEN H. MCGUAN, Esq.

THE RELATOR

Dated: 5-21-97

RONALD I. WELLS

By: Ronald I. Wells
RONALD I. WELLS

Approved as to form:

GETNICK & GETNICK

Dated: _____

By: _____
NEIL V. GETNICK, ESQ.

THE RELATOR

Dated: _____

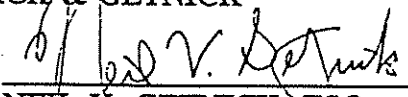
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By: _____
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By: 
NEIL V. GETNICK, ESQ.