

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is made between the United States of America, acting through its Department of Justice (the "Department of Justice"), and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"); the TRICARE Management Activity ("TMA") (formerly the Office of the Civilian Health and Medical Program of the Uniformed Services ("Office of CHAMPUS")), the United States Department of Defense, through its General Counsel, TMA; the United States Office of Personnel Management ("OPM"), which administers the Federal Employees Health Benefits Program ("FEHBP") (collectively, the "United States"); the Personal Representative of the Estate of Relator Theresa Semtner ("Relator"); and Spectrum Emergency Care, Inc. ("Spectrum Emergency Care"), Coordinated Health Services, Inc. ("CHS"), Synergion, and the entities listed in Attachment A (collectively "Spectrum"); (collectively in all, the "Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. At relevant times, Spectrum Emergency Care was a

contract management company that, through itself and affiliates, provided physician services management to hospital emergency departments. On or about October 1, 1997, Spectrum Health Services, Inc. sold all issued and outstanding stock of Spectrum Emergency Care to EmCare, Inc. ("EmCare").

B. This Agreement addresses the United States' civil claims against Spectrum based on the conduct alleged in *United States ex rel. Semtner v. EPBS*, No. 94-617-(C) (W.D. Okla.), involving emergency room services performed by Spectrum and billed by Emergency Physicians Billing Service ("EPBS") on behalf of Spectrum (the "Covered Conduct"). Spectrum represents and warrants, in this connection, that, after investigation of Spectrum's records and after obtaining billing information for Spectrum that was maintained by EPBS, it is not aware of any emergency room services performed after 1994 that were billed on behalf of Spectrum by EPBS.

C. The United States contends that the Covered Conduct resulted in the submission of claims that are actionable under the False Claims Act, 31 U.S.C. §§ 3729-3733 and common law.

D. The United States also contends that it has certain administrative claims against Spectrum under the provisions for permissive exclusion from the Medicare, Medicaid and other

Federal health care programs, 42 U.S.C. § 1320a-7(b) and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

E. Spectrum denies the contentions of the United States in paragraphs B through D above and in the United States' Amended Complaint in *United States ex rel. Semtner v. EPBS*, No. 94-617-(C) (W.D. Okla.).

F. The Parties mutually desire to settle these disputes.

TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Spectrum agrees to pay the United States and the states of Arkansas, Louisiana, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, West Virginia, New Hampshire and Texas (collectively the "Participating States") the collective sum of three million, one hundred forty-five thousand, four hundred ninety-four dollars (\$3,145,494). Spectrum agrees to make separate payments of this collective sum as follows: two million, seven hundred sixty-three thousand, nine hundred and

against Spectrum, the amount of \$125,000 on or before the date of payment of the United States' settlement share to the United States.

4. Dismissal and Release. Subject to the exceptions in paragraph 9 below, in consideration of this Agreement and conditioned upon Spectrum's payment in full of the United States' Settlement Share, within five days after the Relator's receipt of the payment set forth in paragraph 7 hereof, the United States will move to dismiss with prejudice its claims against Spectrum in the Amended Complaint in *United States ex rel. Semtner v. EPBS*, No. 94-617-(C) (W.D. Okla.) subject to the terms of this Agreement, and hereby agrees to release and discharge Spectrum and any of its current or former shareholders, officers, directors, employees, subsidiaries, predecessors, successors, affiliates and assigns, from any civil or administrative monetary claims the United States now has or may have under the False Claims Act, 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, or the common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud, for the Covered Conduct.

5. Administrative Waiver. (a) Subject to the exceptions in

paragraph 9 below and as reserved in this paragraph, in consideration for the obligations of Spectrum under this Agreement, conditioned upon Spectrum's payment in full of the United States' Settlement Share, the OIG-HHS agrees to refrain from instituting, directing or maintaining any administrative claim or any action seeking permissive exclusion of Spectrum from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)), pursuant to 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Spectrum from the Medicare, Medicaid or other federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) for the Covered Conduct.

(b) In consideration for the obligations of Spectrum under this Agreement, conditioned upon Spectrum's payment in full of the United States' Settlement Share, the TMA agrees to refrain from instituting, directing, or maintaining any administrative claims or any action seeking exclusion from the TRICARE Program against Spectrum under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in paragraph 9 below and as reserved in this paragraph. The TMA expressly reserves authority to exclude

Spectrum from the Tricare program under 31 C.F.R. §§ 199.9(f)(1)(i)(A), (f)(1)(i)(B), (f)(1)(i)(D), and (f)(1)(iii), based upon the Covered Conduct.

(c) In consideration of the obligations of Spectrum set forth in this Agreement, conditioned upon Spectrum's payment in full of the Settlement Amount, OPM agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the FEHBP against Spectrum under 5 U.S.C. § 8902a or 5 C.F.R. Part 970 for the Covered Conduct, except if excluded by the OIG-HHS pursuant to 42 U.S.C. § 1320a-7(a). Nothing in this Paragraph precludes OPM from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 9, below.

6. Relator agrees that the settlement between the United States and Spectrum in this action is fair, adequate and reasonable pursuant to 31 U.S.C. § 3730(c)(2)(B).

7. Pursuant to 31 U.S.C. § 3730, the United States will pay Relator's share, in the amount of \$552,781, within a reasonable time after the United States' receipt of full payment of the United States' Settlement Share from Spectrum. Relator will provide the United States with wire transfer information to

allow relator's share to be paid by wire transfer. The United States shall not be obligated to pay Relator unless and until the United States receives full payment of the United States' Settlement Share from Spectrum.

8. In exchange for the United States' payment to Relator of the above-noted share, Relator hereby releases and discharges any and all claims Relator might bring against the United States relating to the Covered Conduct, and this Agreement, under 31 U.S.C. § 3730(d).

9. Exceptions to the Release Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this release and Agreement are any and all:

a. any civil, criminal, or administrative claims that may arise under Title 26, United States Code, Internal Revenue Code, or Internal Revenue Service regulations or under securities laws;

b. Claims for defective or deficient services;

c. Claims relating to obligations created by this Agreement;

d. Claims against entities or persons other than Spectrum, including those currently named as defendants in *United States ex rel. Semtner v. EPBS*, No. 94-617-(C) (W.D. Okla.), and

other clients of EPBS;

e. Claims for any action seeking exclusion from the Medicare program or Federal health programs (as defined in Title 42 U.S.C. §1320a-7b(f)) pursuant to 42 U.S.C. § 1320a-7(a) (mandatory exclusion); and

f. any criminal liability.

10. Concurrent with the execution of this Settlement Agreement, the Parties shall execute a motion to be filed with the Court within five days after Relator's receipt of the payment set forth in paragraph 7 of the Agreement. The motion will request that the Court enter an order to dismiss with prejudice the claims against Spectrum in *United States ex rel. Semtner v. EPBS*, No. 94-617-(C) (W.D. Okla.). The Parties will exert all best efforts to obtain the dismissal with prejudice of the claims against Spectrum consistent with this Agreement.

11. In consideration of the mutual promises and obligations of this Agreement, Relator hereby releases and discharges Spectrum from any civil monetary claims, known or unknown, which Relator asserts or could have asserted under the False Claims Act, common law, the Program Fraud Civil Remedies Act, or any other statute creating causes of action for civil damages for the Covered Conduct.

12. Unallowable Costs. It is agreed that 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. § 1395-1395ddd (1997) and § 1396-1396v (1997); and the regulations promulgated thereunder) incurred by or on behalf of Spectrum in connection with (a) the matters covered by this Agreement; (b) the government's audits and civil and criminal investigations of the allegations which are the subject of this Agreement; (c) any of Spectrum's investigation, defense and corrective actions with respect to matters specifically covered by this Agreement; (d) the negotiation of this Agreement; and (e) the payments made to the United States, the Participating States and the Relator pursuant to this Agreement; shall be unallowable costs for government contract accounting purposes and for purposes of seeking reimbursement from either the Medicare or Medicaid Programs. Spectrum shall account separately for these costs for government contract accounting purposes and for purposes of seeking reimbursement from the Medicare and Medicaid Programs. Any sums owed by Spectrum to the United States for payments made to Spectrum by Medicare and/or Medicaid (federal share) for costs that are unallowable (as defined in this paragraph) shall be paid by Spectrum to HHS at HHS' direction.

13. Waiver of Double Jeopardy Defense. With respect to the Covered Conduct, Spectrum hereby waives any defenses it may have to any criminal prosecution, which defenses may be based in whole or in part on the Double Jeopardy or Excessive Fines Clause of the Constitution or the holding or principles set forth in United States v. Halper, 490 U.S. 435 (1989), and Austin v. United States, 113 S. Ct. 2801 (1993), and agrees that the amounts paid under this Agreement are not punitive in nature or effect for purpose of such criminal prosecution. 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 purposes of the Internal Revenue Code, Title 26 of the United States Code.

15. Venue for Enforcement, Interpretation or Dispute Resolution. Should any action to enforce or interpret this Agreement, or to resolve any dispute hereunder be required, the Parties acknowledge the jurisdiction of the federal courts and agree that venue for any such action shall be in the United States District Court for the Western District of Oklahoma.

16. Capacity to Execute Agreement. Each Party signing this Agreement in a representative capacity represents that he or she is duly authorized to do so.

17. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the matters contained herein, and may not be modified except by a writing signed by all Parties hereto.

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


19. Effective Date. This Agreement is effective on the date of signature of the last signatory to the Agreement.

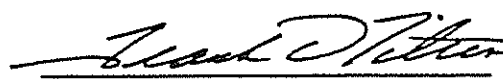
UNITED STATES OF AMERICA

for Alan E. Kleumbrod Dated: July 17, 1998
LAURIE A. OBEREMBT
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice,

L Morris Dated: 6/29/98
LEWIS MORRIS
Assistant Inspector General,
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

_____ Dated: _____
ROBERT D. SEAMAN
General Counsel
TRICARE Management Activity
United States Department of Defense

 Dated: 6/29/98
J. David Cope
Debarring Official
Office of the Inspector General
United States Office of Personnel
Management

 Dated: 6/29/98
Frank D. Titus
Assistant Director for Insurance
Programs
United States Office of Personnel
Management

RELATOR

_____ Dated: _____
Cheryl A. Vaught
Vaught & Conner, P.L.L.C.
Attorneys for Relator

Spectrum


By: _____ Dated: _____
Scott Roloff

_____ Dated: _____
ROBERT D. SEAMAN
General Counsel
TRICARE Management Activity
United States Department of Defense

_____ Dated: _____
J. David Cope
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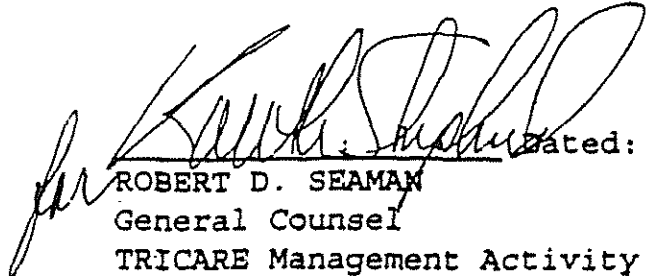
_____ Dated: _____
Frank D. Titus
Assistant Director for Insurance
Programs
United States Office of Personnel
Management

RELATOR

 Dated: 6/29/98
Cheryl A. Vaught
Vaught & Conner, P.L.L.C.
Attorneys for Relator

Spectrum

By: _____ Dated: _____
Scott Roloff


Dated: 6/25/98
ROBERT D. SEAMAN
General Counsel
TRICARE Management Activity
United States Department of Defense

_____ Dated: _____
J. David Cope
Debarring Official
Office of the Inspector General
United States Office of Personnel
Management

_____ Dated: _____
Frank D. Titus
Assistant Director for Insurance
Programs
United States Office of Personnel
Management

RELATOR

_____ Dated: _____
Cheryl A. Vaught
Vaught & Conner, P.L.L.C.
Attorneys for Relator

Spectrum

By: _____ Dated: _____
Scott Roloff

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Dated: _____

ROBERT D. SEAMAN
General Counsel
TRICARE Management Activity
United States Department of Defense

Dated: _____

J. David Cope
Debarring Official
Office of the Inspector General
United States Office of Personnel
Management

Dated: _____

Frank D. Titus
Assistant Director for Insurance Programs
United States Office of Personnel
Management

RELATOR

Dated: _____

Cheryl A. Vaught
Vaught & Conner, P.L.L.C.
Attorneys for Relator

SPECTRUM EMERGENCY CARE, INC.
COORDINATED HEALTH SERVICE, INC.
SYNERGON

By: Scott W. Roloff Dated: 7/22/98
Scott Roloff

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SPECTRUM (other than Spectrum Emergency Care, Inc., Coordinated Health Service, Inc., and Synergon)

By: *Ruth E. Kim* Dated: *July 21, 1998*
Ruth E. Kim