

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America ("United States"), acting through the Civil Division of the United States Department of Justice and the United States Attorney for the Middle District of Tennessee; Knox Community Hospital ("Knox"); and the qui tam relator, Barry Steeley ("Relator") (the United States and all of the foregoing persons or entities are hereafter collectively referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

A. Knox is a provider of hospital services located at 1330 Coshocton Road, Mt. Vernon, Ohio 43050.

B. Knox submitted or caused to be submitted, claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg for the inpatient treatment of Medicare beneficiaries.

C. On or around August 25, 1997, the Relator filed a qui tam complaint under seal alleging violations of the False Claims Act by Knox in the case styled United States ex rel. Barry

Steelev v. [UNDER SEAL], et al., Civil Action No. 3:97-0893 (M.D. Tenn.) (UNDER SEAL) (the "Qui Tam Action").

D. The United States contends that Knox submitted or caused to be submitted claims for payment to Medicare.

E. Medicare payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's "principal diagnosis," as determined by the hospital.

F. The Medicare Program relies upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes contained in International Classification of Diseases, 9th Revision, Clinical Modification ("ICD-9-CM").

G. The United States investigated the allegations in the Qui Tam Action regarding inpatient payment claims submitted to Medicare by Knox for patients with the principal diagnosis codes for Diagnostic Related Group (DRG) 79 (respiratory infections & inflammations age > 17 W CC), 127 (heart failure and shock), 296 (nutritional & misc metabolic disorders age > 17. w/ cc), and 416 (septicemia age > 17).

H. Based on its investigation, the United States contends that it has certain civil claims against Knox under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines as more specifically identified in

Paragraph 4 below, for engaging in the following alleged conduct during the period from March 1, 1994 through March 30, 1998 (the "Covered Period"): Knox submitted or caused to be submitted claims to Medicare with the principal diagnosis codes for DRG 79 (respiratory infections & inflammations age > 17 W CC) that were not supported by the corresponding medical records (hereinafter referred to as the "Covered Conduct"). The United States alleges that, as a result of these claims, Knox received payments from Medicare to which it was not entitled.

I. Knox has provided documents and information in response to the United States' investigation of the Covered Conduct, including patient files for which claims were submitted to the Medicare Program with the principal diagnosis codes for DRG 79 (respiratory infections & inflammations age > 17 W CC). Knox represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

J. Knox does not admit the contentions of the United States as set forth in Paragraph H above and as set forth in the Qui Tam Action.

K. To avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, 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. Knox shall pay to the United States \$309,000 (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice. Knox shall pay \$150,000 by electronic funds transfer by no later than three o'clock (3:00) p.m. on the effective date of this Agreement, and shall pay an additional \$159,000 no later than one year after the effective date of this Agreement. Within a reasonable time after receipt of each of Knox's payments under this Paragraph, the United States will provide Relator's counsel with notice via facsimile of each of the payments.

2. Knox shall cooperate fully and in good faith with the United States in the administrative, civil or criminal investigation or prosecution of any person concerning the Covered Conduct, and concerning similar matters involving other hospitals and others in connection with the Qui Tam Action, by providing accurate, truthful, and complete information whenever, wherever, to whomever and in whatever form the United States reasonably may request. Upon reasonable notice, Knox shall make reasonable efforts to facilitate access to, and encourage the cooperation of, its directors, officers, and employees for interviews and

testimony, consistent with the rights and privileges of such individuals, and shall furnish to the United States, upon reasonable request, all non-privileged documents and records in its possession, custody or control relating to the Covered Conduct.

3. Knox releases the United States and each of its agencies, officers, agents, employees, and contractors and their employees and Relator from any and all claims, causes of action, adjustments, and set-offs of any kind arising out of or pertaining to the Covered Conduct, including the investigation of the Covered Conduct and this Agreement.

4. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of Knox set forth in this Agreement, and conditioned upon Knox's payment in full of the Settlement Amount (in the manner described in Paragraph 1 above), and subject to Paragraph 12, below (concerning bankruptcy proceedings commenced within 91 days of any payment under this Agreement), the United States (on behalf of itself, its officers, agents, and its agencies and departments), agrees to release Knox, and each of its predecessors, successors, assigns, affiliates, employees and current and former officers, directors and trustees (all of the foregoing collectively referred to as the "Knox Released Parties") from any civil or administrative monetary claim the United States 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. The United States expressly reserves any claims against any entities and individuals other than the Knox Released Parties.

5. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Knox and the Relator) are any and all of the following:

(1) Any civil, criminal, or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);

(2) Any criminal liability;

(3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory and permissive exclusion from Federal health care programs;

(4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(5) Any claims based upon such obligations as are created by this Agreement;

(6) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by Knox; and

(7) Any claims based on a failure to deliver items or services billed.

6. Knox waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy or Excessive Fines Clause of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Knox agrees that this Agreement is not punitive in purpose or effect. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

7. The Settlement Amount that Knox must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above, shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary, or any state payer, related to the Covered Conduct; and Knox agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

8. Knox agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Knox, its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement,

(2) the United States' audit(s) and investigation(s) of the matters covered by this Agreement,

(3) Knox's investigation, defense, and any corrective actions undertaken in direct response to the United States' audit(s) and investigation in connection with the matters covered by this Agreement (including attorney's fees),

(4) the negotiation and performance of this Agreement, and

(5) the payment Knox makes to the United States pursuant to this Agreement and any payments that Knox may make to Relator, including costs and attorneys fees,

are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA), and Federal Employees Health Benefits Program (FEHBP).

(All costs described or set forth in this Paragraph 8(a) are hereafter, "unallowable costs").

(b) Future Treatment of Unallowable Costs: These unallowable costs shall be separately estimated and accounted for by Knox, and Knox shall not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Knox or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Knox further agrees that within 90 days of the effective date of this Agreement, it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA, and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Knox or any of its subsidiaries, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Knox agrees that the United States, at a minimum, shall be entitled to recoup

from Knox any overpayment plus applicable interest as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or request for payment.

Any payment due after the adjustments have been made shall be paid to the United States pursuant to 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 Knox or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Knox or any of its subsidiaries' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

9. This Agreement is intended to be for the benefit of the Parties, and their successors and assigns, only and by this instrument the Parties do not release any claims against any other person or entity (other than the Knox Released Parties). This agreement is not intended to be for the benefit of Birman Managed Care, Inc., Birman & Associates, Inc., and David N. Birman, MD, and by this instrument the United States does not release any claims against Birman Managed Care, Inc., Birman & Associates, Inc., and David N. Birman, MD.

10. Knox agrees that it shall not seek payment for any of

the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. Knox waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

11. Knox warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(A)(ii)(I), and will remain solvent following its payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Knox, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Knox was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

12. If, within 91 days of the effective date of this Agreement, Knox commences, or a third party commences, any case,

proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, (a) seeking to have any order for relief of Knox's debts, or seeking to adjudicate Knox as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Knox or for all or any substantial part of Knox's assets, Knox agrees as follows:

a. Knox's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Knox will not argue or otherwise take the position in any such case, proceeding, or action that: (i) Knox's obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) Knox was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments made to the United States hereunder; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Knox.

b. If Knox's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States for itself and on behalf of the Relator, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against Knox for the claims that would otherwise be

covered by the releases provided in Paragraph 4, above. Knox agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Knox from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 42 U.S.C. Section 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that Knox will not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) that Knox will not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding which are brought by the United States within 180 calendar days of written notification to Knox that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the effective date of this Settlement Agreement; and (iii) the United States has a valid claim against Knox in the amount of \$2,343,156, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Knox acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration

provided in this Agreement.

13. After this Agreement is executed and Knox's initial payment of \$150,000 is received by the United States, the United States and Relator will notify the United States District Court for the Middle District of Tennessee that (a) the United States is partially intervening in the Qui Tam Action with respect to claims against Knox related to the Covered Conduct; (b) notwithstanding such intervention, the Parties have reached a settlement; and (c) pursuant to this settlement the Parties have stipulated that: (i) the Relator dismisses all claims in the Qui Tam Action with prejudice as to him, and (ii) the United States dismisses with prejudice only those claims in the Qui Tam Action related to the Covered Conduct against Knox, and the claims in the Qui Tam Action unrelated to the Covered Conduct are dismissed without prejudice as to the United States.

14. In consideration of the obligations of Knox set forth in this Agreement, conditioned upon Knox's payment in full of the Settlement Amount (in the manner described in Paragraph 1 above) and the amount identified in paragraph 17, Relator, and/or Relator's Counsel, agrees to release the Knox Released Parties from any and all actions, suits, debts, sums of money, claims and demands whatsoever, in law or equity, that the Relator and/or Relator's Counsel has or may have against the Knox Released Parties for any matter, cause or thing whatsoever from the

beginning of the world until the effective date of this Agreement, including, but not limited to, any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733. Relator expressly reserves any claims against any entities and individuals other than the Knox Released Parties.

15. Within a reasonable time after the United States receives each of Knox's payments to the United States, Relator shall receive from the United States a payment amounting to 17% of the payment made by Knox. It is expressly understood and agreed that the United States in no way promises, guarantees, nor is liable to Relator for the collection or payment of any funds pursuant to this Agreement or the payment of any Relator's share payments except as provided herein for funds actually collected and received by the United States.

16. On receipt of the payment described in Paragraph 15 above, Relator shall release and shall be deemed to have released and forever discharged the United States, its officers, agents, and employees from any liability arising from the filing of the complaint in the Qui Tam Action as against Knox, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from Knox, and in full satisfaction and settlement of claims under this Agreement. The Relator agrees and confirms that this Agreement is fair, adequate, and

reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

17. Knox and the United States shall bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement. Conditioned upon receipt of \$12,017 from Knox, in addition to the settlement amount described in Paragraph 15, the Relator, for himself and for his heirs, successors, attorneys, agents and assigns, agrees to release the Knox Released Parties from any liability to Relator arising from the filing of the Qui Tam Action, or under 31 U.S.C. § 3730(d), for expenses and attorney's fees and costs.

18. Knox represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. The Relator represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

20. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the United States District Court for the Middle District of Tennessee.

21. This Agreement constitutes the complete agreement

between the Parties. This Agreement may not be amended except by written consent of the Parties.

22. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

23. The undersigned individuals signing this Agreement on behalf of Knox represent and warrant that they are authorized to execute this Agreement on behalf of Knox. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement. The individuals signing this Agreement on behalf of the Relator represent and warrant that they are authorized by Relator to execute this Agreement.

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

25. This Agreement is binding on the successors, transferees, and assigns of the Parties.

26. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

DATED: February 22, 2002

BY: 

WILLIAM L. DENEKE
Assistant United States
Attorney
Office of the
United States Attorney
Middle District of Tennessee

DATED: _____

BY: _____

ROBERT J. MCAULIFFE
Trial Attorney
Civil Division
U.S. Department of Justice

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

WILLIAM L. DEMENE
Assistant United States
Attorney
Office of the
United States Attorney
Middle District of Tennessee

FEB 20 2002

DATED: _____

BY: _____

Robert McAuliffe
ROBERT J. MCAULIFFE
Trial Attorney
Civil Division
U.S. Department of Justice

KNOX HOSPITAL

DATED: 2-26-02

BY: [Signature]
Kris M. Davisy, Esq.
Schottenstein Zox & Dunn
The Kensington Center
41 South High Street
Suite 2600
Columbus, OH 43215-6106


Counsel for
Knox Community Hospital

DATED: 07/26/02

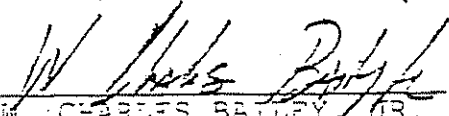
BY: [Signature]
Administrator
Knox Community Hospital

RELATOR BARRY STEELEY

DATED: 02/21/02


BARRY STEELEY

DATED: 02/21/2002

BY: 
W. CHARLES BAILEY, JR.
Greber & Simms
Suite 702
Twenty South Charles
Street
Baltimore, Maryland 21201

Counsel for Relator
Barry Steeley