

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,
ex rel. RICHARD S. BUCKMAN,

Plaintiff,

v.

RURAL METRO CORPORATION
and DONLOCK, LTD.,

Defendants.

3:CV-99-1883

(Judge McClure)

Filed Electronically

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by the United States of America, acting through the United States Attorney's Office for the Middle District of Pennsylvania, and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the United States); Richard S. Buckman (Relator); and Rural Metro Corporation, through its authorized representatives (collectively referred to as "the Parties").

I. PREAMBLE

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

A. Rural Metro Corporation (Rural Metro) operates ambulance companies throughout the United States. Rural Metro routinely transports patients by ambulance to and from homes, emergency rooms, physician offices, dialysis

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centers, and nursing homes.

B. Richard S. Buckman (Relator) is a resident of the Commonwealth of Pennsylvania. In October of 1999, Relator filed a *qui tam* action, styled *United States of America, ex rel. Richard S. Buckman v. Rural Metro Corporation and DonLock, Ltd.*, Case No. 3:CV-99-1883, in the United States District Court for the Middle District of Pennsylvania, pursuant to the provisions of 31 U.S.C. §§ 3729-3733 (hereinafter "the Civil Action").

C. The United States contends that Rural Metro submitted, or caused to be submitted, claims for payment for ambulance services to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg. The United States contends that it has certain civil claims, as specified in Paragraph 3 in Section II below, against Rural Metro for engaging in the following conduct: from January 1, 1997 through December 10, 1998, Rural Metro submitted, or caused to be submitted, approximately 7,400 claims to its Medicare Carrier for ambulance services in Pennsylvania that were not medically necessary and/or lacked adequate documentation of medical necessity, as self-disclosed in RURAL/METRO CORPORATION SELF-ASSESSMENT FINDINGS FOR DONLOCK, LTD. JANUARY 7, 2000 (hereinafter referred to as the "Covered Conduct"). The United States contends that Rural Metro's knowing submission of these claims to its Medicare Carrier constituted a violation of the False Claims Act, 31 U.S.C. § 3729(a).

D. The United States also contends that it has certain administrative claims against Rural Metro for engaging in the Covered Conduct, as specified in Paragraph 4 in Section II below.

E. This Agreement is neither an admission of liability by Rural Metro nor a concession by the United States that its claims are not well founded.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties have reached a full and final settlement pursuant to the Terms and Conditions below.

II. 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. Rural Metro agrees to pay to the United States \$1,560,200.00 (Settlement Amount) no later than three (3) business days after the Effective Date of this Agreement. Rural Metro agrees to pay the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office. A Stipulation of Dismissal, as described in Paragraph 17 below, will be filed after payment has been received by the United States Attorney's Office.
2. Contingent upon the United States receiving the Settlement Amount

from Rural Metro, and as soon as feasible after receipt thereof, the United States agrees to pay Relator his share pursuant to 31 U.S.C. § 3730 by paying \$156,020.00 to "Lenahan & Dempsey IOLTA Account" by electronic funds transfer.

3. Subject to the exceptions in Paragraphs 4 and 5 below, in consideration of the obligations of Rural Metro set forth in this Agreement, conditioned upon Rural Metro's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Rural Metro, its officers, directors, employees, and agents, from any civil or administrative monetary claim the United States has or may have for the Covered Conduct 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, and fraud.

4. In consideration of the obligations of Rural Metro set forth in this Agreement and conditioned upon Rural Metro's full payment of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Rural Metro under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud,

kickbacks, and other prohibited activities), for the Covered Conduct, except as reserved in Paragraph 5 below and reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Rural Metro, its officers, directors, employees, or agents from the Medicare, Medicaid, or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 5 below.

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 Rural Metro and the Relator) are the following:
 - a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
 - b. Any criminal liability;
 - c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
 - d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
 - e. Any liability based upon such obligations as are created by this

Agreement;

f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and

g. Any liability for failure to deliver goods or services due.

6. The Relator agrees that this Agreement is fair, adequate, and reasonable pursuant to 31 U.S.C. § 3730(b) and that he shall not object to the terms of the Agreement in any forum. Conditioned upon receipt of his Relator's share, pursuant to Paragraph 2, above, Relator, for himself individually, and for his heirs, successors, agents, and assigns, fully and finally releases, waives, and discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1), from any claims arising from the filing of the Civil Action, and from any other claims for a share of the Settlement Amount, and in full settlement of any claims Relator may have under this Agreement. This Agreement does not resolve or in any manner affect any claims the 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.

7. Conditioned upon receipt of the payment described in Paragraph 2, the Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, agrees to release Rural Metro, its officers, agents, and employees, from

any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

8. Rural Metro waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Rural Metro 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.

9. Rural Metro fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Rural Metro has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. The Settlement Amount 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 Rural Metro shall not resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

11. Rural Metro agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 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 Rural Metro, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (1) the matters covered by this Agreement,
- (2) the United States' audit(s) and investigation of the matters covered by this Agreement,
- (3) Rural Metro's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and investigation(s) 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 Rural Metro makes to the United States pursuant to this Agreement.

However, nothing in this Paragraph 11.a. affects the status of costs that are not allowable based on any other authority applicable to Rural Metro. (All costs described or set forth in this Paragraph 11.a. are hereafter, "unallowable costs").

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Rural Metro, and Rural Metro 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 Rural Metro or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Rural Metro 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 and FEHBP fiscal agents, any unallowable costs (as defined in Paragraph 11.a.) 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 Rural

Metro or any of its subsidiaries or affiliates, 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. Rural Metro agrees that the United States, at a minimum, shall be entitled to recoup from Rural Metro any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments 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 Rural Metro or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Rural Metro or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Rural Metro's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

12. This Agreement is intended to be for the benefit of the Parties and Rural Metro's officers, directors, employees, and agents, only. The Parties do not

release any claims against any other person or entity, except to the extent specifically provided by this Agreement.

13. Rural Metro waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

14. Rural Metro 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)(B)(ii)(I), and shall 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 Rural Metro, 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 Rural Metro was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

15. Except as expressly provided to the contrary in this Agreement, each

Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Rural Metro represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

17. Upon receipt of the payments described in Paragraphs 1 and 2, above, the United States and the Relator shall promptly sign and file in the Civil Action (3:CV-99-1883) a Joint Stipulation of Dismissal. The Relator will dismiss all counts (Counts One, Two, Three, Four, and Five) set forth in his complaint with prejudice. The United States will dismiss with prejudice Count Two of the Relator's complaint as it pertains to claims for reimbursement from the Medicare program, and without prejudice as to Counts One, Three, Four, and Five of Relator's complaint and as to Count Two of the Relator's complaint as it pertains to claims for reimbursement from the Medicaid program.

18. 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 Pennsylvania.

19. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

20. The individuals signing this Agreement on behalf of Rural Metro represent and warrant that they are authorized by Rural Metro to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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


22. This Agreement is binding on Rural Metro and Relators' successors, transferees, heirs, and assigns.

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


24. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

FOR THE UNITED STATES OF AMERICA

Dated: 6/21/05



THOMAS A. MARINO
United States Attorney
Middle District of Pennsylvania

Dated: 6/15/05

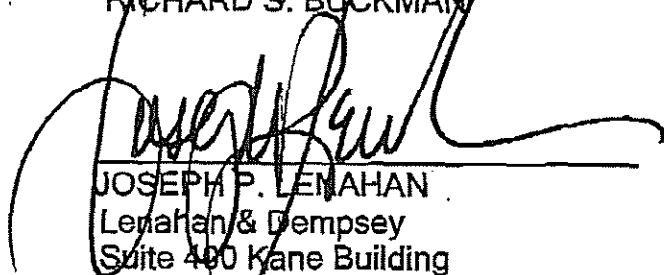

LEWIS MORRIS
Chief Counsel to the Inspector General
Office of Inspector General
United States Department of Health and
Human Services

FOR RELATOR

Dated: 06-01-05

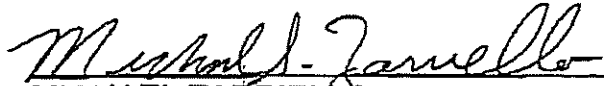

RICHARD S. BUCKMAN

Dated: 6-1-05


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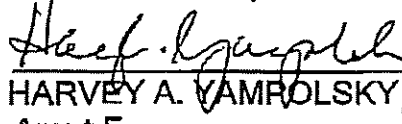
FOR RURAL METRO CORPORATION

Dated: 06-07-05



MICHAEL ZARRIELLO
Chief Financial Officer
Rural Metro Corporation

Dated: 6/3/05



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