

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and the United States Attorney for the Southern District of Florida and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"), (singularly and collectively, the "United States"), Edward Turner (the "Relator"), the State of Florida, and the University of Miami doing business as ("d/b/a") the University of Miami Hospitals and Clinic/Sylvester Comprehensive Cancer Center ("UMHC/SCCC") and Anne Bates Leach Eye Hospital ("Anne Bates") (hereafter UMHC/SCCC and Anne Bates are referred to collectively as the "University of Miami") through their authorized representatives (hereinafter "the Parties").

II. PREAMBLE

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

- a. UMHC/SCCC is a hospital operating in Miami-Dade County, Florida.
- b. Anne Bates is a hospital operating in Miami-Dade County, Florida.
- c. Relator is an individual resident of the State of Florida. On March 15, 2000, the Relator filed a qui tam action in the United States District Court for the Southern District of Florida captioned *United States of America ex rel. Edward Turner, Plaintiffs v. Public Health Trust of Miami-Dade County, Florida d/b/a Jackson Memorial Hospital, et al.*, Case No. 01-0009-CIV-KING (hereinafter "the Civil Action").
- d. The United States and the State of Florida contend that the University of

Miami caused to be submitted claims for payment to the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. Sections 1396-1396v (Medicaid).

- e. The United States contends that it has certain civil claims, as specified in Paragraph 3 below, against the University of Miami, for engaging in the following conduct: during the period from January 1, 1996, to December 31, 2002, with respect to claims filed on behalf of Anne Bates, and during the period from January 1, 1998, to December 31, 2002, with respect to claims filed on behalf of UMHC/SCCC, the University of Miami submitted claims for a 510 facility fee in connection with services provided to Medicaid recipients at Anne Bates and UMHC/SCCC that were not eligible for payment of facility fees under the provisions of the Medicaid program (hereinafter referred to as the "Covered Conduct").
- f. The United States also contends that it has certain administrative claims, as specified in Paragraph 6 below, against the University of Miami for engaging in the Covered Conduct.
- g. The State of Florida contends that it has certain civil claims, as specified in Paragraph 5 below, against the University of Miami, for engaging in the Covered Conduct.
- h. The University of Miami denies the contentions of the United States and the State of Florida as set forth in Paragraphs e, f, and g above. This Agreement is neither an admission of liability by the University of Miami

nor a concession by the United States or the State of Florida that their claims are not well founded.

- i. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. The University of Miami agrees to pay to the United States and the State of Florida the sum of \$3,891,848 (the "Settlement Amount") and to pay the Relator \$4,000 for attorney's fees and costs. Each of the payments shall be made as specified in sub-paragraphs a, b, and c below no later than five (5) business days after the Effective Date of this Agreement or receipt of the wire transfer instructions, whichever occurs last.

- a. The University of Miami agrees to pay \$2,197,739 of the Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States.

- b. The University of Miami agrees to pay \$1,694,109 of the Settlement Amount to the State of Florida by electronic funds transfer pursuant to written instructions to be provided by the State of Florida.

- c. The University of Miami agrees to pay attorney's fees of \$4,000 and costs to the Relator by electronic funds transfer pursuant to written instructions to be provided by the Relator's counsel.

2. Contingent upon the United States receiving the Settlement Amount from the University of Miami, the United States agrees to pay \$395,593 to the Relator pursuant to

electronic wiring instructions provided by the Relator's counsel.

3. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of the University of Miami in this Agreement, conditioned upon the University of Miami making full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release the University of Miami and each and any of its current and former divisions, subsidiaries, predecessors, successors, assignees, transferees, employees, trustees, officers, administrators, (the "Released Entities and Individuals") 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. Sections 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. Section 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. Sections 3801-3812, or under the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud.

4. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of the University of Miami in this Agreement and conditioned upon the University of Miami's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release the University of Miami and the Released Entities and Individuals from any civil monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

5. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of the University of Miami in this Agreement, conditioned upon the University of Miami making full payment of the Settlement Amount, the State of Florida (on behalf of itself, its officers, agents, agencies and departments) agrees to release the University of Miami and the Released

Entities and Individuals from any civil or administrative monetary claim the State of Florida has or may have under Sections 68.03, 409.913 or 409.920, Florida Statutes, or under the common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud for the Covered Conduct.

6. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against the University of Miami and/or its current and former officers, directors, trustees, administrators, employees and each and any of its divisions, subsidiaries, predecessors, successors, assignees, or transferees from Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

7. 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 the University of Miami and Relator) are the following claims of the United States and the State of Florida:

- a. Any civil, criminal or administrative liability arising under Title 26, U.S.C. (Internal Revenue Code),
- b. Any criminal liability,
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory 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,
- g. Any liability for failure to deliver goods or services due; and
- h. Any liability of individuals, including officers and employees except to the extent released in Paragraphs 3, 4, and 5 above.

8. Conditioned upon receipt of the payment described in Paragraph 2 above, the Relator, for himself individually, and for his heirs, successors, agents and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. Section 3730, including 31 U.S.C. Sections 3730(b), (c), (c)(5); (d) and (d)(1), from (1) the filing of the Civil Action, (2) any other claims for a share of the Settlement Amount, (3) any claims the Relator may have under this Agreement and (4) any recovery obtained or to be obtained by the United States or the State of Florida based upon conduct, of any entity, similar in nature to the Covered Conduct and occurring prior to the Effective Date. This Agreement does not resolve or in any manner affect any claims the United States has or may have against the Relator arising under the Internal Revenue Code or any claims arising 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. Section 3730(c)(2)(B).

9. Conditioned upon receipt of the payment described in Paragraph 1.c, the Relator, for himself and for his heirs, successors, attorneys, agents and assigns, agrees to release the University of Miami and the Released Entities and Individuals from any liability to the Relator arising from the filing of the Civil Action, or under 31 U.S.C. Section 3730(d) for attorney's fees

and costs.

10. Subject to paragraph 7, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release the Relator (including his heirs, successors, attorneys, agents and assigns) from liability, if any, arising from the Covered Conduct or the investigation or filing of the Civil Action.

11. Subject to paragraph 7, the State of Florida (on behalf of itself, its officers, agents, agencies and departments) agrees to release the Relator (including his heirs, successors, attorneys, agents and assigns) from liability, if any, arising from the Covered Conduct or the investigation or filing of the Civil Action.

12. The University of Miami waives and will not assert any defenses the University of Miami may have to any criminal prosecution or administrative proceeding 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. The University of Miami 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 Code.

13. The University of Miami fully and finally releases the United States and the State of Florida, their agencies, employees, servants and agents and the Relator and the Relator's counsel, from any claims (including attorney's fees and costs of every kind and however denominated), which the University of Miami has asserted, could have asserted, or may assert in

the future against the United States, the State of Florida, and their agencies, employees, servants and agents, and the Relator and the Relator's counsel related to the Covered Conduct and the United States and the Relator's investigation and prosecution thereof.

14. The Settlement Amount will 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 the University of Miami 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.

15. The University of Miami agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulations ("FAR") 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. Sections 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the University of Miami, 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 civil investigation(s) of the matters covered by this Agreement,
- (3) the University of Miami's investigation, defense and corrective

actions undertaken in response to the United States audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees and costs),

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

(5) the payments the University of Miami makes to the United States and the State of Florida pursuant to this Agreement and any payments that the University of Miami makes to the Relator, including attorney's fees and costs.

However, nothing in this Paragraph affects the status of costs that are not allowable based on any other authority applicable to the University of Miami. (All costs described or set forth in this Paragraph 13.a are hereafter, "unallowable costs").

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for in non-reimbursable cost centers by the University of Miami and the University of Miami 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 the University of Miami or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: The University of Miami 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 Paragraph 13.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 statements, or payment requests already submitted by the University of Miami or any of its subsidiaries or affiliates and shall request and agree, that such cost reports and statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. The University of Miami agrees that the United States, at a minimum, shall be entitled to recoup from the University of Miami any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost reports, cost statements, information reports, 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 right to disagree with any calculations submitted by the University of Miami or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in Paragraph 13.a) on the University of Miami 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 the books and records of the University of Miami to determine that no unallowable costs have been claimed in

accordance with the provisions of this Paragraph.

16. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other natural person or entity, except to the extent expressly provided for in this Agreement.

17. The University of Miami 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 payers based upon the claims defined as Covered Conduct.

18. Except as expressly provided to the contrary in this Agreement, each Party will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

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

21. 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 will be the United States District Court for the Southern District of Florida.

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

23. Upon receipt of the payments described in Paragraph 1. above, the United States and the Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal

with Prejudice of the Civil Action as against the University of Miami pursuant to the terms of the Agreement in the form attached hereto as Exhibit 1.

24. The individuals signing this Agreement on behalf of the University of Miami represent and warrant that they are authorized to execute this Agreement. The individual(s) signing this Agreement on behalf of the Relator represent and warrant that they are authorized by the Relator to execute this Agreement. The United States and the State of Florida's signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

26. This Agreement is binding on the University of Miami and its successors, transferees, heirs and assigns.

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

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

29. Any notices required under this Agreement shall be directed to the following persons.

On behalf of the University of Miami:

Stephen J. Immelt
111 South Calvert Street, Suite 600
Baltimore, MD 21202
Tel. (410) 659-2757

Cynthia Augustyn
Associate General Counsel
University of Miami
P.O. Box 016960 (R 79)
Miami, Florida 33101
Tel. (305) 243-5500

On behalf of the United States, its Agencies, Departments and Divisions:

Mark Lavine
Assistant U.S. Attorney
U.S. Attorney's Office
99 N.E. 4th Street, Suite 300
Miami, Florida 33132
Tel. (305) 961-9303

On behalf of the Relator:

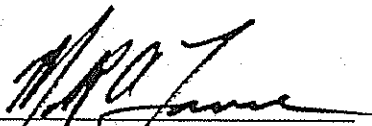
William Blechman
Kenny Nachwalter
1100 Miami Center
201 South Biscayne Blvd.
Miami, FL 33131-4327
Tel. (305) 373-1000

On behalf of the State of Florida:


Andrea Anido
Assistant Attorney General
Medicaid Fraud Control Unit
Athens Building, Suite A200
8405 N.W. 53rd Street
Miami, FL 33166
Tel. (305) 513-3200

THE UNITED STATES OF AMERICA

DATED: 4/22

BY: 
Mark Lavine
Assistant United States Attorney
United States Attorney Office

DATED: 3/31/05

BY: 
Lewis Morris
Chief Counsel to the Inspector General
Office of Counsel to the Inspector General
United States Department of
Health and Human Services

THE STATE OF FLORIDA

DATED: _____

BY: _____

George LeMieux
Deputy Attorney General
Office of the Attorney General
State of Florida

On behalf of the State of Florida:

Andrea Anido
Assistant Attorney General
Medicaid Fraud Control Unit
Athens Building, Suite A200
8405 N.W. 53rd Street
Miami, FL 33166
Tel. (305) 513-3200

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

Mark Lavine
Assistant United States Attorney
United States Attorney Office

DATED: _____

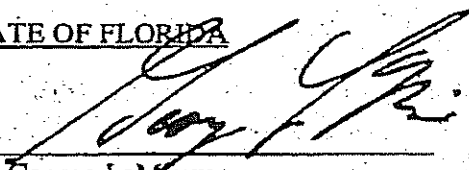
BY: _____

Lewis Morris
Chief Counsel to the Inspector General
Office of Counsel to the Inspector General
United States Department of
Health and Human Services

THE STATE OF FLORIDA

DATED: 4/13/05

BY: _____


George LeMeux
Deputy Attorney General
Office of the Attorney General
State of Florida

UNIVERSITY OF MIAMI

DATED: 4/18/05 BY: *Robert L. Flake*
Robert L. Flake
Vice President, General Counsel and Secretary

DATED: 4/14/05 BY: *Alan J. Fish* ALAN J. FISH
VICE PRESIDENT
Alan Fish BUSINESS SERVICES
Vice President for Business Services.

DATED: 4/22/05 BY: *Stephen J. Immelt*
Stephen J. Immelt
Attorney for University of Miami

RELATOR

DATED: _____ BY: _____
Edward Turner, Relator

DATED: _____ BY: _____
William J. Blechman
Attorney for Relator

DATED: _____

BY: _____

Robert L. Blake
Vice President, General Counsel and Secretary

DATED: _____

BY: _____

Alan Fish
Vice President for Business Services.

DATED: _____

BY: _____

Stephen J. Immelt
Attorney for University of Miami

RELATOR

DATED: 3-14-08

BY: Edward W. Turner

Edward Turner, Relator

DATED: _____

BY: _____

William J. Blechman
Attorney for Relator

UNIVERSITY OF MIAMI

DATED: _____

BY: _____

Robert L. Blake
Vice President, General Counsel and Secretary

DATED: _____

BY: _____

Alan Fish
Vice President for Business Services.

DATED: _____

BY: _____

Stephen J. Immelt
Attorney for University of Miami

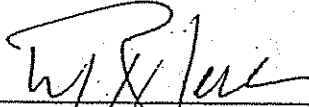
RELATOR

DATED: _____

BY: _____

Edward Turner, Relator

DATED: 3-21-05

BY:  _____

William J. Blechman
Attorney for Relator