

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 on behalf of the Office of Inspector General (OIG-HHS) of the United States Department of Health and Human Services (HHS) (collectively the "United States"); the West Virginia Department of Health and Human Resources (WVDHHR), Bureau for Medical Services on behalf of The West Virginia Medicaid Program (Medicaid) (collectively "the State of West Virginia"); Group II Medical Supports, L.L.C. (Group II); and Hugh Keatley (Keatley) (hereinafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

A. Group II was a West Virginia Limited Liability Company with its primary business location in Raleigh County, West Virginia. At all relevant times, Group II was a durable medical equipment supplier with a primary focus on the delivery and maintenance of group II pressure reducing support surfaces (group II mattresses). At certain relevant times, Group II also conducted business in Ohio, Pennsylvania, Maryland, Virginia, Kentucky, New Jersey, North Carolina, South Carolina, Tennessee, Georgia, Florida, Texas and Arizona.

B. Keatley is a private citizen of West Virginia with his primary residence at 526 Highland Drive, Beckley, West Virginia 25801. From on or about June 6, 2003, Keatley was a principal in Group II and played an active role in its management.

C. The United States contends that Keatley and others submitted or caused to be submitted claims by Group II for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg; and the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v.

D. The United States contends that it has certain civil claims, as specified in Paragraph 5 below, against Keatley for engaging in the following conduct:

From June of 2003, and continuing through February of 2004, Keatley and others engaged in a scheme to defraud Medicare and Medicaid by misrepresenting diagnoses, completing false Statements of Ordering Physician, creating false Monthly Patient Information Update Sheets, and causing Group II to submit false claims for reimbursement to Medicare and Medicaid. These claims involved HCPCS code E0277 (alternating pressure mattress); HCPCS code E0277-KX (specific requirements found in the documentation section of the medical policy have been met and evidence of this is available in the supplier's records) and HCPCS code E0277-MS (maintenance and service of the alternating pressure mattress).

In addition, the United States contends that it has certain civil claims, as specified in Paragraph 5 below, against Group II for engaging in the following conduct:

From December of 1997 and continuing through February of 2004, Group II and others engaged in a scheme to defraud Medicare and Medicaid by misrepresenting diagnoses, completing false Statements of Ordering Physician,

creating false Monthly Patient Information Update Sheets, and causing Group II to submit false claims for reimbursement to Medicare and Medicaid. These claims involved HCPCS code E0277 (alternating pressure mattress); HCPCS code E0277-KX (specific requirements found in the documentation section of the medical policy have been met and evidence of this is available in the supplier's records) and HCPCS code E0277-MS (maintenance and service of the alternating pressure mattress).

(hereinafter referred to as the "Covered Conduct.")

E. The United States also contends that it has certain administrative claims against Group II and Keatley for engaging in the Covered Conduct, as specified in Paragraph 6 below,

F. The State of West Virginia contends that it has certain civil and administrative claims against Group II and Keatley for engaging in the Covered Conduct, as specified in Paragraph 7 below.

G. This Agreement is neither an admission of liability by Group II and Keatley nor a concession by the United States or the State of West Virginia that their claims are not well founded.

H. 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. Group II and Keatley jointly and severally agree to pay the United States the amount of \$1,000,000 ("Settlement Amount") as follows:

A. Group II and Keatley agree to make a lump sum payment of \$255,000 by electronic funds transfer pursuant to written instructions to be provided by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of West Virginia, no later than five days after the Effective Date of this Agreement.

B. Group II and Keatley agree to make a lump sum payment of \$745,000 by electronic funds transfer no later than 90 days after the Effective Date of this Agreement.

2. In the event that Group II and Keatley fail to pay any amount due pursuant to Paragraph 1 within five (5) business days of the date upon which such payment is due, Group II and Keatley shall be in default of their payment obligations ("Default"). The United States will provide written notice of the Default, and Group II and Keatley shall have an opportunity to cure such Default within five (5) business days from the date of receipt of the notice. Notice of Default will be delivered to James M. Brown, Brown & Levicoff PLLC, P.O. Box 5039, Beckley, WV 25802-5039, or to such other representative as Group II and Keatley shall designate in advance in writing. If Group II and Keatley

fail to cure the Default within five (5) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal and interest balance). Group II and Keatley shall consent to a Consent Judgment in the amount of the unpaid balance, and the United States, at its sole option, may: (a) offset the remaining unpaid balance from any amounts due and owing to Group II or Keatley by any department, agency, or agent of the United States at the time of the Default; or (b) exercise any other rights granted by law or in equity, including the option of referring such matters for private collection. Group II and Keatley agree not to contest any offset imposed and not to contest any collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court. Group II and Keatley shall pay the United States all reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses.

3. As part of the consideration for this Agreement, Group II and Keatley agree to forego and forever waive any and all rights to submit claims for group II mattresses placed and/or serviced by Group II after February 2004 but not billed to Medicare, which Group II estimates to be in the amount of \$106,468.

4. As part of the consideration for this Agreement, Group II and Keatley agree to forego and forever waive any and all rights to submit claims for patients for whom group II mattresses were placed and serviced but who would qualify for some healthcare benefit other than a group II mattress, which Group II estimates to be in the amount of \$561,270.

5. Subject to the exceptions in Paragraph 8 below, in consideration of the obligations of Group II and Keatley set forth in this Agreement, conditioned upon Group II and Keatley's full payment of the Settlement Amount, and subject to Paragraph 19 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Group II and Keatley 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, and fraud, for the Covered Conduct. No individuals other than Keatley are released by this Agreement.

6. In compromise and settlement of the rights of OIG-HHS to exclude Group II and Keatley pursuant to 42 U.S.C. § 1320a-7(b)(7), Group II and Keatley agree to be permanently excluded

under this statutory provision from Medicare, Medicaid, and all other Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f). Such exclusion shall have national effect and shall also apply to all other federal procurement and nonprocurement programs. Federal health care programs shall not pay Group II, Keatley, or anyone else for items or services, including administrative and management services, furnished, ordered, or prescribed by Group II or Keatley in any capacity while Group II and Keatley are excluded. This payment prohibition applies to Group II and Keatley, anyone who employs or contracts with Group II or Keatley, and any hospital or other provider where Group II or Keatley provide services. The exclusion applies regardless of who submits the claims or other request for payment.

Group II and Keatley shall not submit or cause to be submitted to any Federal health care program any claim or request for payment for items or services, including administrative and management services, furnished, ordered, or prescribed by Group II or Keatley during the exclusion. Violation of the conditions of the exclusion may result in criminal prosecution, and the imposition of civil monetary penalties and assessments. Group II and Keatley further agree to hold the Federal health care programs, and all federal beneficiaries and/or sponsors, harmless from any financial responsibility for items or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the effective

date of the exclusion. Group II and Keatley waive any further notice of the exclusion and agree not to contest such exclusion either administratively or in any state or federal court. This exclusion shall be effective upon the Effective Date of this Agreement.

7. Subject to the exceptions in Paragraph 8 below, in consideration of the obligations of Group II and Keatley set forth in this Agreement, conditioned upon Group II and Keatley's full payment of the Settlement Amount, and subject to Paragraph 19 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the State of West Virginia (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Group II and Keatley from any civil or administrative monetary claim the State of West Virginia has or may have under state law and the common law theories of payment by mistake, unjust enrichment, and fraud, for the Covered Conduct. No individuals other than Keatley are released by this Agreement.

8. 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 Group II and Keatley) 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 exclusion from Federal health care programs;

d. Any liability to the United States (or its agencies), or the State of West Virginia (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;

h. Other than Keatley, any liability of individuals; and

i. Any licensing matters.

9. Group II and Keatley waive and will not assert any defenses they 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 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. 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.

10. Group II and Keatley fully and finally release the United States, its agencies, employees, servants, and agents, and the State of West Virginia, its agencies, employees, servants and agents, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) which Group II and Keatley have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, or the State of West Virginia, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' and State of West Virginia's investigation and prosecution thereof.

11. Group II has provided financial disclosure statements to the United States. Keatley provided a sworn financial disclosure statement, signed by him on March 31, 2006, to the United States. (These financials statements are hereinafter "the Financial Statements.") The United States has relied on the

accuracy and completeness of the Financial Statements in reaching this Agreement. Group II and Keatley jointly warrant that the Financial Statements are complete, accurate, and current. In the event the United States learns of asset(s) in which Group II or Keatley had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or in the event the United States learns of any misrepresentation by Group II or Keatley on, or in connection with, the Financial Statements, and in the event such nondisclosure or misrepresentation changes the estimated net worth set forth on the Financial Statements by \$50,000 or more, the United States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct; or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Group II and Keatley previously undisclosed. Group II and Keatley agree not to contest any collection action undertaken by the United States pursuant to this provision.

12. In the event that the United States, pursuant to Paragraph 11, above, opts to rescind this Agreement, Group II and Keatley agree not to plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that (1) are filed by the United States within 120 calendar days of written notification to Group II and Keatley that this Agreement has been

rescinded, and (2) relate to the Covered Conduct, except to the extent these defenses were available on January 1, 2006.

13. 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, Medicaid, or any State payer, related to the Covered Conduct; and Group II and Keatley agree not to resubmit to any Medicare carrier or intermediary, Medicaid, or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

14. Group II and Keatley agree 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 Group II or Keatley 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 and criminal investigation(s) of the matters covered by this Agreement,

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

(4) the negotiation and performance of this Agreement,

(5) the payment Group II and Keatley make to the United States pursuant to this Agreement including costs and attorneys fees, (All costs described or set forth in this Paragraph 14.a are hereafter, "unallowable costs").

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Group II and Keatley, and Group II and Keatley 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 Group II and Keatley to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Group II and Keatley further agree that within 90 days of the Effective Date of this Agreement they 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 Group II or Keatley 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. Group II and Keatley agree that the United States, at a minimum, shall be entitled to recoup from Group II and Keatley 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 Group II and Keatley on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Group II and Keatley's 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 Group II and Keatley's books and records to determine that

no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

15. Group II and Keatley agree to cooperate fully and truthfully with the United States and State of West Virginia's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Group II and Keatley will encourage, and agree not to impair, the cooperation of current members, employees and sales representatives of Group II, and use their best efforts to make available, and encourage the cooperation of former members, employees and sales representatives of Group II for interviews and testimony, consistent with the rights and privileges of such individuals. Group II and Keatley also agree to furnish to the United States complete and unredacted copies of all documents, reports, memoranda of interviews, and records in their possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that has been performed by their counsel or other agent, and waive any rights or privileges that otherwise may apply to such production.

16. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 17 below.

17. Group II and Keatley waive and shall not seek payment for any of the health care billings covered by this

Agreement or any other group II mattresses placed or serviced by Group II from any health care beneficiaries or recipients or their parents, sponsors, legally responsible individuals or third party payers.

18. Group II and Keatley warrant that they have reviewed their respective financial situation and that they currently are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent following payment of the Settlement Amount made to the United States pursuant to this Agreement. 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 Group II and Keatley, 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 Group II or Keatley was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

19. If, within 91 days of the Effective Date of this Agreement or any payment made under this Agreement, Group II or

Keatley commence, 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 Group II or Keatley's debts, or seeking to adjudicate Group II or Keatley as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Group II or Keatley or for all or any substantial part of their assets, Group II and Keatley agree as follows:

a. Group II and Keatley's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Group II and Keatley will not argue or otherwise take the position in any such case, proceeding, or action that: (i) their obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) either Group II or Keatley were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment 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 them.

b. If Group II or Keatley'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, at its sole option, or the State of West Virginia, at its sole option, may rescind their respective releases in this Agreement, and bring any civil and/or

administrative claim, action, or proceeding against Group II and Keatley for the claims that would otherwise be covered by the releases provided in Paragraphs 5, 6, and 7 above. Group II and Keatley agree that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude him from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 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 they will not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) that they 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 that are brought by the United States within 120 calendar days of written notification to Group II and Keatley that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on January 1, 2006; and (iii) the United States has a valid claim against Group II and Keatley jointly and severally in the amount of \$25.2 million, 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. Group II and Keatley acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

20. 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.

21. Group II and Keatley represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

22. 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 West Virginia.

23. The individuals signing this Agreement on behalf of Group II and Keatley represent and warrant that they are authorized by Group II and Keatley to execute this Agreement. The United States and the State of West Virginia signatories represent that they are signing this Agreement in their official capacities and that they are authorized 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 Group II's and Keatley's respective successors, transferees, heirs, and assigns.

26. This Agreement is subject to public disclosure.

27. The "Effective Date" of this Agreement shall be the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

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

STATE OF WEST VIRGINIA


DATED: 5/2/06

BY: _____

Nancy V. Atkins
NANCY V. ATKINS
Commissioner, Bureau for
Medical Services,
West Virginia Department of
Health and Human Resources and
West Virginia Medicaid

THE UNITED STATES OF AMERICA


DATED: 5/12/06

BY: 
CAROL A. CASTO
Assistant United States Attorney

DATED: _____

BY: _____
KEITH E. DOBBINS
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 4/27/06

BY: 
GREGORY E. DEMSKE
Assistant Inspector General
for Legal Affairs
Office of Inspector General
United States Department of
Health and Human Services

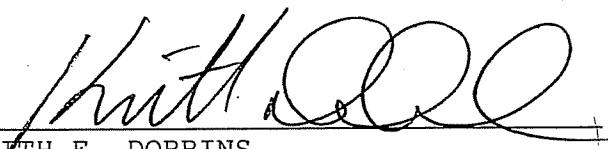
THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

CAROL A. CASTO
Assistant United States Attorney

DATED: April 24, 2006 BY: _____



KEITH E. DOBBINS
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

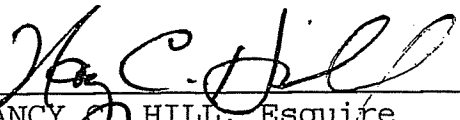
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BY: _____

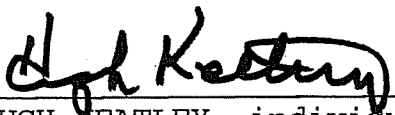
GREGORY E. DEMSKE
Assistant Inspector General
for Legal Affairs
Office of Inspector General
United States Department of
Health and Human Services


Group II Medical Supports, L.L.C.

DATED: April 25, 2016 BY: 
HUGH KEATLEY
as principal of Group II

DATED: April 26, 2016 BY: 
NANCY C. HILL, Esquire
Counsel for Group II

Hugh Keatley

DATED: April 25, 2016 BY: 
HUGH KEATLEY, individually

DATED: April 26, 2016 BY: 
NANCY C. HILL, Esquire
Counsel for Hugh Keatley