

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and among the United States of America, acting through the United States Department of Justice and the United States Attorney’s Office for the District of New Jersey, and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) (collectively the “United States”), the State of New Jersey, acting through the Department of Law and Public Safety, New Jersey Attorney General’s Office (“New Jersey”), Elizabeth Negron (the “Relator”), Progressive Casualty Insurance Company, and Progressive Garden State Insurance Company (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Progressive Casualty Insurance Company is an Ohio corporation with its principal places of business located at 6300 Wilson Mills Road, Cleveland, Ohio 44143, and Progressive Garden State Insurance Company (together with Progressive Casualty Insurance Company, “Progressive”) is a New Jersey corporation with its principal place of business located at 820 Bear Tavern Road, Suite 305, West Trenton, New Jersey 08628. Progressive, along with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, are referred to herein as the Progressive Entities.

B. On January 28, 2014, the Relator filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States and New Jersey, ex rel. Elizabeth Negron v. Progressive Casualty Insurance Company, et al.*, No. 14-CV-577, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b), and the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1, *et seq.* (the “Civil Action”). The Civil Action alleged that the

Progressive Entities allowed Medicare and Medicaid beneficiaries to select a “health first” automobile insurance policy that caused health care providers to submit medical claims to Medicare and Medicaid in violation of secondary payor laws.

C. The United States and New Jersey contend that the Progressive Entities caused to be submitted claims for payment to: (a) the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”); and (b) the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w-5, N.J. Stat. Ann. § 30:4D-1, *et seq.*, and Family Health Care Coverage Act, P.L. 2005, c. 156 (collectively, “Medicaid”).

D. The United States and New Jersey contend that they have certain civil claims against the Progressive Entities arising from the Progressive Entities causing to be submitted false claims to Medicare and Medicaid during the period from March 19, 2009, through January 26, 2017.

Specifically, certain of the Progressive Entities offered automobile insurance policyholders (“Auto Policyholders”) “health first” insurance policies which designated the Auto Policyholder’s health insurance carrier as the primary payor for medical claims that arose in connection with an automobile accident. Certain of the Progressive Entities maintained an online web portal to process applications for these policies. Via the web portal, and other means, including through independent insurance agents, certain of the Progressive Entities permitted Auto Policyholders in New Jersey, including policyholders who either: (1) were Medicare and Medicaid beneficiaries at the time the policy was issued; or (2) later became Medicare or Medicaid beneficiaries while their Progressive policy was in force, to elect a “health first” automobile insurance policy even though the Progressive Entities could not decline to make primary payment as to those Medicare and Medicaid beneficiaries because of the “health first” election. Under the Medicare Secondary Payer

Act, 42 U.S.C. § 1395y, *et seq.*, and Medicaid regulations, 42 C.F.R. § 433.135, *et seq.*, it is impermissible for policies to designate Medicare or Medicaid as the primary payor for automobile accident-related medical claims.

Many of these Auto Policyholders in New Jersey, as well as other claimants on their “health first” Progressive insurance policies, were Medicare or Medicaid beneficiaries and incurred medical claims in connection with an automobile accident. Because of the “health first” Progressive insurance policies which designated the Progressive Entities as the secondary payer, Medicare and Medicaid improperly paid for claims for these policyholders and other claimants that the Progressive Entities should have paid. This occurred in a variety of ways: (1) when medical claims were submitted to the Progressive Entities for payment and the Progressive Entities either denied or failed to pay the claims because of the “health first” option, causing the claims to be submitted to Medicare or Medicaid; and (2) when providers submitted claims directly to Medicare or Medicaid, which these programs paid, and the Progressive Entities failed to repay them as required by law. As a consequence, Medicare or Medicaid paid claims for medical care which the Progressive Entities should have paid.

Due to this conduct, the United States and New Jersey contend that the Progressive Entities knowingly caused false claims to be submitted to Medicare and Medicaid.

The conduct set forth in this Paragraph D is referred to below as the “Covered Conduct.”

E. The Settlement Agreement is neither an admission of liability by the Progressive Entities nor a concession by the United States or New Jersey that their claims are not well founded. The Progressive Entities deny the allegations and contentions of the United States, New Jersey, and the Relator as set forth in this Agreement and in the Civil Action.

F. The Relator claims entitlement under 31 U.S.C. § 3730(d), N.J. Stat. Ann. § 2A:32C-7, and N.J. Stat. Ann. § 2A:32C-8 to a share of the proceeds of the Settlement Agreement and to the Relator's reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of the Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. The Progressive Entities shall pay the following sums:

(a) \$1,380,000 (one million three hundred eighty thousand dollars) to the United States (for Medicare and the federal share of New Jersey Medicaid) plus interest at a rate of 2.25 percent per annum from September 12, 2017, through the day prior to payment no later than 15 business days after the Effective Date of the Agreement, pursuant to written instructions to be provided by the Office of the United States Attorney for the District of New Jersey; and

(b) \$620,000 (six hundred twenty thousand dollars) to the State of New Jersey (for the state share of New Jersey Medicaid) plus interest at a rate of 2.25 percent per annum from September 12, 2017, through the day prior to payment no later than 15 business days after the Effective Date of the Agreement, pursuant to written instructions to be provided by New Jersey.

The total of these sums, \$2,000,000 (two million dollars) plus interest, shall hereafter be referred to as the "Settlement Amount."

2. Conditioned upon the United States and New Jersey receiving the Settlement Amount from the Progressive Entities and as soon as feasible after receipt:

(a) the United States shall pay to the Relator, through her legal counsel and by electronic funds transfer to an escrow account, thirty-percent (30%) of the Settlement Amount actually recovered under this Agreement; and

(b) New Jersey shall pay shall pay to the Relator, through her legal counsel and by electronic funds transfer to an escrow account, thirty-percent (30%) of the Settlement Amount actually recovered under this Agreement.

3. No later than 15 business days after the Effective Date of the Agreement, the Progressive Entities shall pay \$212,700 (two hundred twelve thousand seven hundred dollars) to the Relator as payment for attorney's fees and \$180,000 (one hundred eighty thousand dollars) for costs and expenses in connection with the Civil Action, pursuant to written instructions provided to the Progressive Entities by the Relator's counsel.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon the Progressive Entities' full payment of the Settlement Amount, the United States and New Jersey release the Progressive Entities from any civil or administrative monetary claim that the United States or New Jersey has 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 Medicare Secondary Payer Act, 42 U.S.C. § 1395y or related regulations, 42 C.F.R. Part 411; Medicaid Secondary Payer regulations, 42 C.F.R. 433.135; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; N.J.A.C. § 11:3-14.5; the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1; and the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and conditioned upon the Progressive Entities' full payment of the Settlement Amount, the Relator, for herself and for her

heirs, successors, attorneys, agents, and assigns, releases the Progressive Entities from any civil monetary claim the Relator has on behalf of the United States or New Jersey for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1, or the Medicare Secondary Payer Act, 42 U.S.C. § 1395y.

6. Notwithstanding the releases given in Paragraph 4 of the Agreement, or any other term of the Agreement, the United States and New Jersey each specifically reserves and does not release the following claims, to the extent each has such claims:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal, civil, or administrative liability arising under New Jersey's revenue codes;
- c. Any criminal liability;
- d. Except as explicitly stated in the Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- e. Any liability to the United States or to New Jersey (or any of their agencies) for any conduct other than the Covered Conduct;
- f. Any liability based upon obligations created by the Agreement; and
- g. Any liability of individuals.

7. The Relator and her heirs, successors, attorneys, agents, and assigns shall not object to the Agreement but agree and confirm that the Agreement is fair, adequate, and reasonable under all the circumstances under 31 U.S.C. § 3730(c)(2)(B) and N.J. Stat. Ann. § 2A:32C-6. Conditioned upon the Relator's receipt of the payments described in Paragraph 2 and 3, the Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and

forever discharge the United States and New Jersey, and its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, N.J. Stat. Ann. § 2A:32C-6, and N.J. Stat. Ann. § 2A:32C-7, and from any claims to a share of the proceeds of the Agreement.

8. Upon receipt of the payments described in Paragraphs 1, 2, and 3, the Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases the Progressive Entities from any liability to the Relator arising from the filing of the Civil Action, under 31 U.S.C. § 3730(h) and N.J. Stat. Ann. § 2A:32C-10, and under 31 U.S.C. § 3730(d) and N.J. Stat. Ann. § 2A:32C-8 for expenses or attorney's fees and costs arising from the filing of the Civil Action.

9. The Progressive Entities waive and shall not assert any defenses they 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, the Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of the Agreement constitutes an agreement by the United States or New Jersey concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code, or New Jersey's revenue codes.

10. The Progressive Entities fully and finally release the United States and New Jersey, and their agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the Progressive Entities have asserted, could have asserted, or may assert in the future against the United States or New

Jersey and their agencies, officers, agents, employees, and servants, related to the Covered Conduct and the investigation and prosecution thereof.

11. The Progressive Entities fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the Progressive Entities have asserted, could have asserted, or may assert in the future against the Relator, related to the Civil Action and the Relator's investigation and prosecution thereof.

12. 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 or Medicaid carrier or intermediary or any state payer, related to the Covered Conduct; and the Progressive Entities agree not to resubmit to any Medicare or Medicaid 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.

13. The Progressive Entities agree to the following:

a. Unallowable Costs Defined: 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. §§ 1395-13951ddc-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the Progressive Entities, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by the Agreement;
- (2) the audit(s) and civil investigation(s) of the matters covered by the Agreement;
- (3) The Progressive Entities' investigation, defense, and corrective actions undertaken in response to the audit(s) and civil

investigation(s) in connection with the matters covered by the Agreement (including attorney's fees);

- (4) the negotiation and performance of the Agreement; and
- (5) the payment the Progressive Entities make to the United States and to New Jersey pursuant to the Agreement and any payments that the Progressive Entities may make to the Relator, including costs and attorney's fees;

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by the Progressive Entities, and the Progressive Entities 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 Progressive Entities 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 Progressive Entities further agrees that within 90 days of the Effective Date of the Agreement they 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 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 the Progressive Entities or any of their 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. The Progressive Entities agree that the United States or any State Medicaid program, at a minimum, shall be entitled to recoup from the Progressive Entities 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 and New Jersey pursuant to the direction of the Department of Justice and/or the affected agencies. The United States and New Jersey reserve their rights to disagree with any calculations submitted by Progressive or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on the Progressive Entities or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in the Agreement shall constitute a waiver of the rights of the United States and New Jersey to audit, examine, or re-examine the Progressive Entities' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of the Paragraph.

14. The Agreement is intended to be for the benefit of the Parties and the Progressive Entities only. The Parties do not release any claims against any other person or entity, except to the extent provided in Paragraph 15 (waiver for beneficiaries) below.

15. The Progressive Entities agree that they waive and shall not seek payment for any of the health care billings covered by the Agreement from any health care beneficiaries or their

parents, sponsors, or legally responsible individuals based upon the claims defined as Covered Conduct. Nothing in this Agreement shall limit the Progressive Entities' ability to seek payment or reimbursement from third party payors for health care billings covered by the Agreement, pursuant to a right of subrogation, contribution, indemnification or similar right to reimbursement provided for under applicable law or under the terms of the policies issued by the Progressive Entities.

16. Upon receipt of the payments described in Paragraph 1, 2, and 3 above, the United States, New Jersey, and the Relator shall promptly sign and file in the Civil Action a joint stipulation under Fed. R. Civ. P. 41(a)(1) dismissing all claims against the Progressive Entities in the Civil Action. Such dismissal shall be: (a) with prejudice to the Relator, the United States, and New Jersey as to the Covered Conduct; and (b) with prejudice to the Relator, and without prejudice to the United States and New Jersey, as to all other claims or allegations in the Civil Action.

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

18. Each party and signatory to the Agreement represents that it freely and voluntarily enters into the Agreement without any degree of duress or compulsion.

19. The Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to the Agreement is the United States District Court for the District of New Jersey. For purposes of construing the Agreement, the Agreement shall be deemed to have been drafted by all Parties to the Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

21. The undersigned represent and warrant that they are fully authorized to execute the Agreement on behalf of the persons and entities indicated below.

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

23. The Agreement is binding on the Progressive Entities' successors, transferees, heirs, and assigns.


24. The Agreement is binding on the Relator's successors, transferees, heirs, and assigns.

25. All parties consent to the disclosure of the Agreement, and information about the Agreement, to the public.

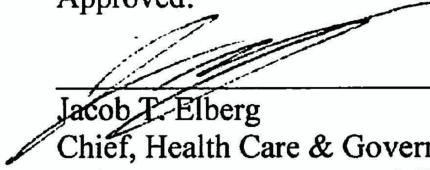
26. The Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

ON BEHALF OF THE UNITED STATES OF AMERICA

Dated: 11/14/2017

By: 
Bernard J. Cooney
Assistant United States Attorney
District of New Jersey

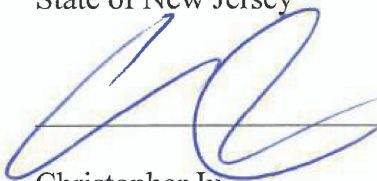
Approved:


Jacob T. Elberg
Chief, Health Care & Government Fraud Unit
United States Attorney's Office
District of New Jersey

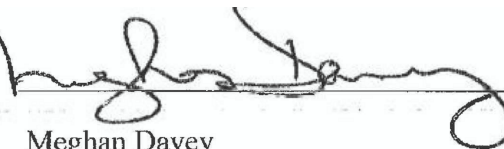
ON BEHALF OF THE STATE OF NEW JERSEY

Christopher S. Porrino
Attorney General
State of New Jersey

Dated: 11/3/17


By: 
Christopher Iu
Acting Insurance Fraud Prosecutor
Office of the Attorney General of New Jersey

Dated: 11/8/17

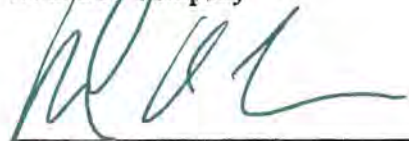
By: 
Meghan Davey
Director
Medicaid Program

ON BEHALF OF DEFENDANT
PROGRESSIVE GARDEN STATE INSURANCE COMPANY

Dated: 10/26/2017


By: 
Karen A. Kosuda
Assistant Secretary of Progressive Garden State
Insurance Company

Dated: 10/27/17


By: 
Michael K. Loucks, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
*Counsel to Progressive Garden State Insurance
Company*

ON BEHALF OF DEFENDANT
PROGRESSIVE CASUALTY INSURANCE COMPANY

Dated: 10/26/2017


By: 
Christina L. Crews
Assistant Secretary of Progressive Casualty
Insurance Company

Dated: 10/27/17

By: 
Michael K. Loucks, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
*Counsel to Progressive Casualty Insurance
Company*

ON BEHALF OF RELATOR ELIZABETH NEGRON

Dated: 10/30/17

By: 
Elizabeth Negron

Dated: 10/30/17

By: 
Jeremy E. Abay, Esq.
Sachs Weston Diamond LLC
Counsel to Relator Elizabeth Negron