

SETTLEMENT AGREEMENTI. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the United States Department of Justice, and on behalf of the Department of Health and Human Services ("HHS"), including its Office of Inspector General ("OIG-HHS") and Health Care Financing Administration ("HCFA") (collectively the "United States"); Linda T. and Brentley N. Hicks; Lynn M. Bultena; and Susan L. Howell (collectively "the Relators"); and Highmark, Inc., d/b/a Xact Medicare Services (hereafter referred to collectively as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

A. Highmark Inc. ("Highmark") is a Pennsylvania nonprofit corporation resulting from the consolidation on December 6, 1996, of Veritus Inc. d/b/a Blue Cross of Western Pennsylvania, and Medical Services Association of Pennsylvania d/b/a Pennsylvania Blue Shield ("PBS") (collectively referred to herein as the "Consolidated Corporations").

B. PBS, during the relevant time periods, contracted with HHS to perform services as the Medicare Part B carrier for Pennsylvania and other areas.

C. On April 5, 1996, Linda and Brent Hicks filed a suit in the United States District Court for the Middle District of Pennsylvania on behalf of the United States against PBS, United

States ex rel. Does I and II v. PBS, No. 4:96 CV-611, alleging that PBS violated the False Claims Act, 31 U.S.C. §§3729-3733. On June 21, 1996, Lynn M. Bultena filed suit in the United States District Court for the Eastern District of Pennsylvania on behalf of the U.S. against PBS, U.S. ex rel. Bultena v. Medical Services Association of Pennsylvania, No. 96-CV-4430(JPF), also alleging that PBS violated the False Claims Act, 31 U.S.C. §§3729-3733.

On July 12, 1996, the Hicks filed a second suit in the United States District Court for the Middle District of Pennsylvania on behalf of the United States against PBS, United States ex rel. Does I and II v. PBS, No. 4:96 CV-1303, alleging that PBS violated the False Claims Act, 31 U.S.C. §§3729-3733. On January 24, 1997, Susan L. Howell filed a suit in the United States District Court for the Eastern District of Pennsylvania on behalf of the United States against PBS, U.S. ex rel. Howell v. PBS, No. 97-CV-0518, alleging that PBS violated the False Claims Act, 31 U.S.C. §§3729-3733.

D. The United States contends that PBS submitted or caused to be submitted false claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. § 1395, and contends that it has or may have certain claims against PBS under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or common law doctrines, as described below, for engaging in the following conduct during the period from 1988 through 1996: 1) failing to properly process Medicare Secondary Payor ("MSP") claims, or failing to take

appropriate action to recover mistaken MSP payments; 2) obstructing the Carrier Performance Evaluation Program; 3) failing to recover overpayments resulting from Series 700 errors and misrepresenting to HCFA the impact of those Series 700 errors; 4) failing to implement Medicare Carrier Manual § 4270 requirements for the screening of End Stage Renal Disease lab claims; 5) inappropriately using force codes following the adjustment of claims to by-pass electronic audits or edits; and 6) any other conduct alleged in the qui tam suits described in Paragraph C above (hereinafter referred to as the "Covered Conduct").

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

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Highmark will pay to the United States thirty-eight million, five hundred thousand dollars (\$38,500,000.00) (the "Settlement Amount"), by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Middle District of Pennsylvania, within ten (10) days following the effective date of this Agreement.

2. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Highmark set forth in this Agreement, the United States (on behalf of itself, its officers, agents, agencies and departments) and the Relators agree to release Highmark together with its current and former Consolidated Corporations, each of its direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners, affiliates, and the successors and assigns of any of them from any civil or administrative monetary claim the United States or the Relators have 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 common law theories, including payment by mistake, unjust enrichment, breach of contract and fraud; or any other statute creating causes of action for civil damages or penalties for submitting or causing to be submitted claims to the government based on the Covered Conduct. No individuals are released by this Agreement, except to the extent specifically provided herein.

3. In consideration of the obligations of Highmark set forth in this Agreement, conditioned upon Highmark's payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the Medicare or Medicaid programs against Highmark together with its current and former Consolidated Corporations, each of its direct and indirect subsidiaries, brother or sister corporations,

divisions, current or former owners, affiliates, and the successors and assigns of any of them under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct, except as reserved in Paragraph 4, below.

4. 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 Consolidated Corporations) are any and all of the following:

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

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

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

(d) Any claims based upon such obligations as are created by this Agreement, including those created by the Corporate Integrity Agreement referenced in Paragraph 5 of this Agreement;

(e) Any claims raised or that might be raised by any of the Relators under the anti-retaliation provisions of the False Claims Act, 31 U.S.C. § 3730(h);

(f) Any claims by the Relators for expenses, attorney's fees and costs pursuant to 31 U.S.C. § 3730(d)(1);

(g) Any claims against any other person or entity, including any joint tortfeasors.

5. Highmark has entered into a Corporate Integrity Agreement with HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. Highmark will immediately upon execution of this Agreement implement its obligations under the Corporate Integrity Agreement.

6. Highmark, together with its current and former Consolidated Corporations, each of its direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners, affiliates, and the successors and assigns of any of them fully and finally releases the United States, its agencies, employees, servants, and agents, the Relators and their attorneys from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Highmark has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, and the Relators and their attorneys related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. Highmark agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997) and 1396-1396v(1997), and the regulations promulgated thereunder) incurred by or on behalf of Highmark, its direct or indirect subsidiaries, brother or sister corporations, divisions, current or former owners, or Consolidated Corporations, and the

present or former officers, directors, employees, shareholders, and agents of the foregoing in connection with: (1) the matters covered by this Agreement, (2) the Government's civil and criminal investigations, including related audit work, of the matters covered by this Agreement, (3) Highmark's investigation, defense, and corrective actions undertaken in response to the Government's and civil and criminal investigations, including related audit work, in connection with the matters covered by this Agreement (including attorney's fees and any grand jury proceedings), (4) costs associated with implementing the additional requirements of the Corporate Integrity Agreement referenced herein, but excluding the costs associated with continuing the preexisting Integrity Program of the Consolidated Corporations, (5) the negotiation of this Agreement, (6) the payments made pursuant to this Agreement, (7) any payments to the Relators for attorney's fees and costs under the False Claims Act, (8) Highmark's investigation, defense and settlement of any claims by the Relators based on retaliation in violation of the False Claims Act, and (9) any payments to the Relators based on claims of retaliation for protected conduct under the False Claims Act, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA) and Federal Employee Health Benefits Program (FEHBP) (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by Highmark, and Highmark will 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 Highmark or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

Highmark further agrees that within sixty days of the effective date of this Agreement it will identify to the HCFA, and to applicable 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 Highmark or any of its subsidiaries, and will 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. Highmark agrees that the United States will be entitled to recoup from Highmark any overpayment 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 Highmark or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this paragraph) on

Highmark or any of its subsidiaries' cost reports, cost statements or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

8. Highmark covenants to cooperate fully and truthfully with the United States' investigation of individuals and entities not specifically released in this Agreement, for the Covered Conduct. Upon reasonable notice, Highmark will make reasonable efforts to facilitate access to, and encourage the cooperation of, its directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals, and will furnish to the United States, upon reasonable request, all non-privileged documents and records in its possession, custody or control relating to the Covered Conduct.

9. This Agreement is intended to be for the benefit of the Parties, and any other entities specifically mentioned, only, and by this instrument the Parties do not release any claims against any other person or entity, including any joint tortfeasors.

10. Highmark agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. Highmark waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

11. Highmark and the Relators represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

12. 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 Middle District of Pennsylvania.

13. This Agreement and the attached Corporate Integrity Agreement, which is incorporated herein by reference, constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only Highmark and OIG-HHS must agree in writing to modification of the Corporate Integrity Agreement, pursuant to the terms of that Agreement.

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

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

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

17. Within ten days after the effective date of this Settlement Agreement and receipt of the Settlement Amount, subject to the terms of this Agreement, the United States shall execute and, in a timely manner, file with the relevant courts notices of dismissal of the above-referenced qui tam actions with prejudice (with the exception of the personal claims of Susan Howell under 31 U.S.C. § 3730(h), and any claims by the Relators for expenses, attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d)(1)), with the United States District Court for the Middle District of Pennsylvania retaining jurisdiction to resolve any disputes arising under this Agreement and to enforce this Agreement.

18. Upon fulfillment of the conditions in paragraph 1 above, the United States shall pay Linda and Brent Hicks, in satisfaction of any and all rights held by them pursuant to 31 U.S.C. § 3730(d) for an award from the proceeds of this settlement, the amount of \$2,520,000, by electronic funds transfer pursuant to written instructions provided by their counsel. Upon fulfillment of the conditions in paragraph 1 above, the United States shall pay Lynn M. BuItena, in satisfaction of any and all rights held by him pursuant to 31 U.S.C. § 3730(d) for an award from the proceeds of this settlement, the amount of \$2,880,000, by electronic funds transfer pursuant to written instructions provided by his counsel. Upon fulfillment of the conditions in paragraph 1 above, the United States shall pay Susan L. Howell, in satisfaction of any and all rights held by her pursuant to 31 U.S.C. § 3730(d) for an award from the proceeds of this settlement, the amount of \$576,000, by

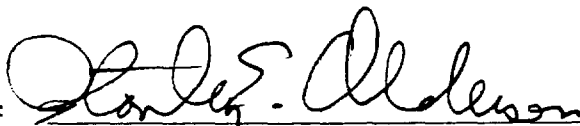
electronic funds transfer pursuant to written instructions provided by her counsel.

19. Upon fulfillment of the conditions in paragraphs 1 and 18 above, Linda and Brent Hicks, Lynn M. Bultena, and Susan L. Howell hereby release the United States, its agencies, employees, servants, and agents from any liability, whether known or suspected or claimed, arising from this matter, including any claims to a share of the proceeds of this settlement pursuant to 31 U.S.C. § 3730(d). The above Relators and their counsel agree that the settlement is fair, adequate and reasonable and further agree that they will refrain from objecting to the terms of the settlement in any forum.

20. This Settlement Agreement shall be binding upon the parties, their successors and assigns.

THE UNITED STATES OF AMERICA

DATED: 8/14/98

BY: 
STANLEY E. ALDERSON
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice

DATED: _____

BY: _____
ANNE K. FIORENZA
Assistant United States Attorney
Middle District of Pennsylvania

DATED: 8/13/98

BY: 

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

HIGHMARK Inc.

DATED: _____

BY: _____

JOHN S. BROUSE
President and Chief Executive
Officer
5th Avenue Place, Suite 1714
Pittsburg, PA 15222

DATED: _____

BY: _____

W. JAY DeVECCHIO
KATHLEEN E. KARELIS
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2505
Counsel for Highmark Inc.

DATED: _____

BY: _____

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

HIGHMARK Inc.

DATED: August 11, 1998

BY: _____

John S. Brause
JOHN S. BRAUSE
President and Chief Executive
Officer
5th Avenue Place, Suite 1714
Pittsburg, PA 15222

DATED: August 12, 1998

BY: _____

Kathleen E. Karelis
W. JAY DEVECCHIO
KATHLEEN E. KARELIS
Crowell & Moring LLP
1801 Pennsylvania Avenue, N.W.
Washington, DC 20004-2505
Counsel for Highmark Inc.

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Salmanson & Falcao

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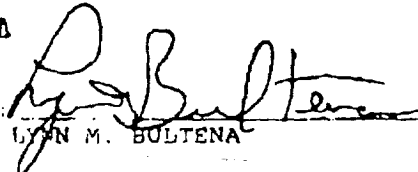
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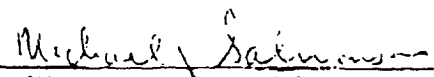
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LYNN M. BOLTENA

DATED: 8/11/98

BY: 
LYNN M. BOLTENA

DATED: 8/11/98

BY: 
MICHAEL J. SALMANSON
Salmanson & Falcao, *LLC*
1429 Walnut St., Suite 900
Philadelphia, PA 1902
Attorney for relator Lynn Boltena

LINDA T. AND BRENTLEY N. HICKS

DATED: _____

BY: _____
LINDA T. HICKS

DATED: _____

BY: _____
BRENTLEY N. HICKS

DATED: _____

BY: _____
RITA GRANT NDIRIKA
Gardner, Carton & Douglas
1301 K. St., N.W.
Washington, DC 20005
Counsel for Linda and Brent Hicks

DATED: _____

BY: _____
JAMES WEST
105 North Front Street
Harrisburg, PA 17101
Counsel for Linda and Brent Hicks

LYNN M. BULTENA

DATED: _____

BY: _____
LYNN M. BULTENA

DATED: _____

BY: _____
MICHAEL J. SALMANSON
Salmanson & Falcao
1429 Walnut St., Suite 900
Philadelphia, PA 1902
Attorney for relator Lynn Bultena

LINDA T. AND BRENTLEY N. HICKS

DATED: 8/12/98

BY: Linda T. Hicks
LINDA T. HICKS

DATED: 8/12/98

BY: Brentley N. Hicks
BRENTLEY N. HICKS

DATED: 8/12/98

BY: Rita Grant Ndirika
RITA GRANT NDIRIKA
Gardner, Carlton & Douglas
1301 K St., N.W.
Washington, DC 20005
Counsel for Linda and Brent Hicks

DATED: 8/12/98

BY: James West
JAMES WEST
105 North Front Street
Harrisburg, Pa 17101
Counsel for Linda and Brent Hicks

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SUSAN L. HOWELL

DATED: August 12, 1998

BY: Susan L. Howell
SUSAN L. HOWELL

DATED: Aug. 12, 1998

BY: Norman E. Greenspan
NORMAN E. GREENSPAN
Blank, Rome, Comisky & McCauley LLP
~~Four Penn Center Place~~ One Logan
Philadelphia, PA 19103 Square
Counsel for Susan Howell