

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America ("United States"), acting through the Civil Division of the United States Department of Justice, the United States Attorney for the Middle District of Tennessee, and the Office of Inspector General of the Department of Health and Human Services ("OIG-HHS"); Saint Luke Hospital West ("St. Luke West"); and the qui tam relator, Barry Steeley ("Relator") (the United States and all of the foregoing persons or entities are hereafter collectively referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

A. St. Luke West is a provider of hospital services located at 7380 Turf Way Road, Florence, Kentucky.

B. The United States contends that St. Luke West submitted or caused to be submitted, claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg for the inpatient treatment of Medicare beneficiaries.

C. On or around August 25, 1997, Barry Steeley (the "Relator") filed a qui tam complaint under seal alleging violations of the False Claims Act by St. Luke West in the case styled United States ex rel. Barry Steeley v. Birman Managed Care, Inc., et al., Civil Action No. 3:97-0893 (M.D. Tenn.) (the "Qui Tam Action").

D. Medicare payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's "principal diagnosis," as determined by the hospital.

E. The Medicare Program relies upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.¹

F. The United States investigated the allegations in the Qui Tam Action regarding inpatient payment claims submitted to Medicare by St. Luke West for patients with the principal diagnosis codes for Diagnostic Related Group (DRG) 79 (respiratory infections & inflammations age > 17 w/ cc).

G. This Agreement governs the Relator's claims against St. Luke West based on the conduct alleged in the Qui Tam Action, and the civil claims the United States contends that it has against St. Luke West under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines as more specifically identified in Paragraph 4 below, for engaging in the following alleged conduct during the period from October 1, 1996 through February 10, 1998 (the "Covered Period"): St. Luke West submitted or caused to be submitted claims to Medicare with the principal diagnosis codes for DRG 79 (respiratory infections & inflammations age > 17 w/ cc) that were not supported by the corresponding medical records. The United States alleges that, as a result of these claims, St. Luke West received payments from Medicare to which it was not entitled. The conduct referenced in this paragraph is hereinafter referred to as the "Covered Conduct."

H. St. Luke West has provided documents and information in response to the United States' investigation of the Covered Conduct, including patient files for which

¹ International Classification of Diseases, 9th Revision, Clinical Modification ("ICD-9-CM").

claims were submitted to the Medicare Program for patients with the principal diagnosis codes for DRG 79 (respiratory infections & inflammations age > 17 w/ cc). St. Luke West represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

I. St. Luke West does not admit the contentions of the United States or the Relator as set forth in Paragraph G above and/or as set forth in the Qui Tam Action.

J. 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. Not later than ten (10) days after St. Luke West's receipt of notice from the United States of the execution of this Agreement by all Parties, St. Luke West shall pay to the United States \$75,000 (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

2. St. Luke West agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement in connection with the Covered Conduct, and concerning similar matters involving other hospitals and others in connection with the Qui Tam Action. Upon reasonable notice, St. Luke West shall encourage, and agrees not to impair, the cooperation of its directors,

officers, and employees, and shall use its best efforts to make available, and encourage the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. St. Luke West agrees to furnish to the United States complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct which it has undertaken.

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

4. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of St. Luke West set forth in this Agreement, conditioned upon St. Luke West's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, and its agencies and departments referenced above in Paragraph 3), agrees to release St. Luke West and each of its predecessors, successors, assigns and affiliates (all of the foregoing collectively referred to as the "St. Luke West Released Parties") 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,

breach of contract and fraud, for the Covered Conduct. The United States expressly reserves any claims against any entities and individuals other than the St. Luke West Released Parties.

5. The OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against St. Luke West, and/or its officers, directors, and employees 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-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

6. 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 St. Luke West and the Relator) are any and all of the following:

- (1) Any civil, criminal, or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (2) Any criminal liability;
- (3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- (4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- (5) Any liability based upon such obligations as are created by this Agreement;

(6) Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by St. Luke West;

(7) Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

(8) Any liability based on a failure to deliver items or services billed; and

(9) Any liability of individuals, including officers and employees.

7. St. Luke West waives and will not assert any defenses it 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 or Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. St. Luke West agrees that this Agreement is not punitive in purpose or effect. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

8. The Settlement Amount that St. Luke West must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above, shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary, or any state payer, related to the

Covered Conduct; and St. Luke West agrees not to resubmit to any Medicare 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.

9. St. Luke West agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation (FAR) 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 St. Luke West, 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 investigations(s) of the matters covered by this Agreement,
- (3) St. Luke West's investigation, defense, and any corrective actions undertaken in direct response to the United States' audit(s) and investigation in connection with the matters covered by this Agreement (including attorney's fees),
- (4) the negotiation and performance of this Agreement, and
- (5) the payment St. Luke West makes to the United States pursuant to this Agreement and any payments that St. Luke West may make to Relator, including costs and attorneys fees.

However, nothing in this Paragraph 9 affects the status of costs that are not allowable based on any other authority applicable to St. Luke West. (All costs described or set forth in this Paragraph 9(a) are hereafter, "unallowable costs").

(b) Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by St. Luke West, and St. Luke West 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 St. Luke West or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: St. Luke West 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 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 St. Luke West or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. St. Luke West agrees that the United States, at a minimum, shall be entitled to recoup from St. Luke West 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 payment 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 St. Luke West or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on St. Luke West 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.

10. This Agreement is intended to be for the benefit of the Parties, and their successors and assigns, only and by this instrument the Parties do not release any claims against any other person or entity (other than the St. Luke West). This agreement is not intended to be for the benefit of Birman Managed Care, Inc., Birman & Associates, Inc., and David N. Birman, M.D., and by this instrument the United States does not release any claims against Birman Managed Care, Inc., Birman & Associates, Inc., and David N. Birman, M.D.

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

12. After this Agreement is executed and the Settlement Amount is received by the United States, the United States and Relator will notify the United States District

Court for the Middle District of Tennessee that (a) the Parties have reached a settlement; and (b) pursuant to this settlement the Parties have stipulated that: (i) the Relator dismisses all claims in the Qui Tam Action with prejudice as to him, and (ii) the United States dismisses with prejudice only those claims in the Qui Tam Action related to the Covered Conduct against St. Luke West, and the claims in the Qui Tam Action unrelated to the Covered Conduct are dismissed without prejudice as to the United States.

13. In consideration of the obligations of St. Luke West in this Agreement, conditioned upon St. Luke West's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release St. Luke West Released Parties from any civil monetary claim the United States has or may have for the conduct alleged in the Qui Tam Action under the False Claims Act, 31 U.S.C. §§ 3729-3733.

14. Conditioned upon receipt of Two Thousand Six Hundred Dollars (\$2,600) from St. Luke West for attorney's fees and costs under 31 U.S.C. § 3730(d), Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release St. Luke West Released Parties from any liability to Relator arising from the filing of the Qui Tam Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

15. Conditioned upon St. Luke West's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to 17% of the Settlement Amount. The United States shall pay Relator this amount within a reasonable time after St. Luke West pays the Settlement Amount. It is expressly understood and agreed that the United States in no way promises, guarantees, nor is liable to Relator for

the collection or payment of any funds pursuant to this Agreement or the payment or any Relator's share payments except as provided herein for funds actually collected and received by the United States.

16. On receipt of the payment described in Paragraph 15 above, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730 in connection with this Qui Tam Action, or arising from the filing of the Qui Tam Action, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1) in connection with this Qui Tam Action. The relator agrees and confirms that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

17. Except as provided in Paragraph 14, the Parties shall bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. St. Luke West represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the United States District Court for the Middle District of Tennessee.

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

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

22. The undersigned individuals signing this Agreement on behalf of St. Luke West represent and warrant that they are authorized to execute this Agreement on behalf of St. Luke West. 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. The Relator represents that he has the capacity to execute this Agreement, and that he has read it in its entirety.

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

24. This Agreement is binding on the successors, transferees, and assigns of the Parties.

25. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
ELLEN BOWDEN MCENTYRE
Assistant United States Attorney
Office of the
United States Attorney
Middle District of Tennessee


DATED: _____

BY: _____
ROBERT J. MCAULIFFE
Trial Attorney
Civil Division
U.S. Department of Justice


DATED: 8 July 2004

BY: Larry J. Goldberg
LARRY J. GOLDBERG
Assistant Inspector General for Legal
Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and
Human Services

SAINT LUKE HOSPITAL WEST

DATED: 5/28/04 BY: 
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614-227-2300

Counsel for Saint Luke Hospital West

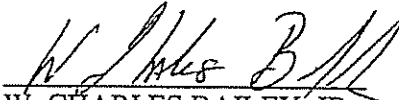
DATED: 5/24/04 BY: 
NANCY KREMER
Senior Vice President
Saint Luke Hospital West

RELATOR BARRY STEELEY

DATED: 05/20/04


BARRY STEELEY

DATED: 5-20-2004

BY: 
W. CHARLES BAILEY, JR.
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Barry Steeley