

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting by and through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"), the Office of Personnel Management ("OPM"), which administers the Federal Employee Health Benefits Program ("FEHBP"), and TRICARE Management Activity ("TMA"), formerly known as the Office of the Civilian Health and Medical Program of the Uniformed Services ("OCHAMPUS") (collectively the "United States"); and CVS Corporation ("CVS"). Collectively, all of the above will be referred to as "the Parties."

I. PREAMBLE

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

1. CVS is a national retail pharmacy operating approximately 4,100 stores in the United States. In 1997, CVS acquired, by merger, Revco Drugstores, Inc. ("Revco"), thereby assuming all of the assets and liabilities of Revco.
2. Revco and CVS submitted or caused to be submitted prescription claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396v, in Alabama, Connecticut, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia (hereinafter referred to as the "States"). Revco and CVS also submitted or caused to be submitted prescription claims for payment to FEHBP, 5 U.S.C. §§ 8901-8914, and TRICARE, 10 U.S.C. §§ 1071-1109.
3. On September 27, 1996, Marion Tucker Altman, Jr., in his individual capacity and as a

relator on behalf of the United States, filed an amended complaint, under seal, in the United States District Court for the District of South Carolina, under the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730. That *qui tam* suit is captioned United States ex rel. Altman v. [Defendants], and docketed as Case No. 2 96 1005 2 (D.S.C.)(Under Seal)("Lawsuit"). The Relator alleges in the Lawsuit that Revco violated the False Claims Act by billing the United States for partially-filled prescriptions as if they were full prescriptions. The United States alleges that CVS is liable for the conduct of Revco. The United States also contends that it sustained damages between January 1, 1988 and June 1, 1997 because Revco and CVS knowingly submitted claims to the United States and to the States to receive full payment for prescriptions that were partially-filled and delivered to customers who were participants of the Medicaid, FEHBP, and TRICARE programs. The conduct specified above in this paragraph is hereinafter referred to as the "Covered Conduct." The United States also contends that it has certain administrative claims against Revco and CVS for the Covered Conduct under the provisions for permissive exclusion from the Medicaid and other federal health care programs, 42 U.S.C. §1320a-7(b), the provisions for civil monetary penalties, 42 U.S.C. §1320a-7a, the provisions for exclusion from TRICARE, 32 C.F.R. §199.9, and the provisions for exclusion from FEHBP, 5 U.S.C. §8902a and 5 C.F.R. Part 970.

4. CVS, on behalf of CVS and Revco, denies the allegations that are set forth in Paragraph 3 above, and denies that it is liable under the False Claims Act, 31 U.S.C. §§ 3729-3733, or any other federal or state law or regulation, for the knowing submission of claims to the Medicaid, FEHBP and TRICARE programs or any other third-party payor for partially-

filled prescriptions, as if they were full prescriptions.

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

II. 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:

A. OBLIGATIONS OF CVS

6. Payment to the United States: CVS agrees to pay to the United States \$4 million, which includes all claims for interest ("Settlement Amount"). \$1,641,829 of the Settlement Amount represents payment to resolve CVS's federal liability for Revco's alleged submission of prescription claims for partially-filled prescriptions as if they were full prescriptions to the United States prior to CVS's acquisition of Revco. The United States, in consultation with the States who will be executing separate agreements with CVS concerning the Covered Conduct, will determine the distribution of the Settlement Amount to the United States, States, and other parties.
7. Manner and Method of Payment: The payment provided for in Paragraph 6 above shall be by electronic transfer pursuant to instructions provided by the United States.
8. Integrity Agreement: CVS has entered into a Corporate Integrity Agreement ("CIA") with the OIG-HHS. That CIA is incorporated into this Agreement by reference. Consistent with the terms of the CIA, CVS will, upon execution of the CIA, implement

its obligations thereunder.

B. OBLIGATIONS OF THE UNITED STATES

9. In consideration of the obligations of CVS under this Settlement Agreement and subject to the exceptions from release (Paragraph 13), and conditioned upon payment in full of the Settlement Amount, the United States shall release and forever discharge CVS and each and any of its divisions, subsidiaries, predecessors, successors, assignees, transferees, and each of their current or former directors, officers and employees from any civil or administrative monetary claims that 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; the common law theories of unjust enrichment, payment by mistake, common law fraud, breach of contract, or any other statute or regulation creating causes of action for civil damages or civil penalties for submitting or causing to be submitted claims to the United States for the Covered Conduct.
10. In consideration of the obligations of CVS set forth in this Agreement, conditioned upon CVS's payment in full of the Settlement Amount, and subject to Paragraph 13 below, OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320b-7(f)) against CVS and each and any of its divisions, subsidiaries, predecessors, successors, assignees 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 13 below, and as reserved in this Paragraph. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude CVS and each and any of its divisions, subsidiaries, predecessors, successors, assignees, transferees and each of their current or former directors, officers and employees, from the Medicare, Medicaid or other Federal health care programs under 42 U.S.C. § 1320a-7(a)(mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 13 below.

11. In consideration of the obligations of CVS set forth in this Agreement, conditioned upon CVS's payment in full of the Settlement Amount, and subject to Paragraph 13 below, TMA agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion or suspension from the TRICARE programs against CVS and each and any of its divisions, subsidiaries, predecessors, successors, assignees, and transferees, and each of their current or former directors, officers and employees under 32 C.F.R. § 199.9, or initiating any action seeking debarment under 32 C.F.R. Part 25 (non-procurement) or 48 C.F.R. Subpart 9.4 (procurement) for the Covered Conduct, except as reserved in Paragraph 13 below, and as reserved in this Paragraph. TMA expressly reserves authority to exclude CVS and each and any of its divisions, subsidiaries, predecessors, successors, assignees, and transferees, and each of their current or former directors, officers and employees from the TRICARE program under 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), (f)(1)(i)(D), and

(f)(1)(iii), based upon the Covered Conduct. Nothing in this Paragraph precludes TMA from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 13 below.

12. In consideration of the obligations of CVS set forth in this Agreement, conditioned upon CVS's payment in full of the Settlement Amount, and subject to Paragraph 13 below, OPM agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the FEHBP program against CVS and each and any of its divisions, subsidiaries, predecessors, successors, assignees, and transferees, and each of their current or former directors, officers and employees under 5 U.S.C. § 8902a or 5 C.F.R. Part 970 for the Covered Conduct, except as reserved in Paragraph 13 and except if excluded by the OIG-HHS pursuant to 42 U.S.C. § 1320a-7(a). Nothing in this Paragraph precludes OPM from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 13 below.
13. Specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including CVS) 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. Any criminal liability;
 - c. Any administrative liability except as explicitly released in this Agreement, including mandatory exclusion from Federal health care programs;
 - d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; or
 - e. Any claims based upon such obligations as are created by this Agreement.

C. MISCELLANEOUS PROVISIONS

14. CVS waives and will not assert any defenses CVS 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 the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in Hudson v. United States, 522 U.S. 93 (1997), and Austin v. United States, 509 U.S. 602 (1993). The United States and CVS agree that the amount that CVS has agreed to pay under the terms of this Agreement is not punitive in effect or nature for purposes of such criminal prosecution or administrative action. Nothing in this paragraph or any provision in this agreement constitutes a characterization of the Settlement Amount for purposes of the Internal Revenue Code, Title 26, U.S. Code.
15. The Settlement Amount that CVS must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph II (A) above will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare, Medicaid, TRICARE, or FEHBP carrier or intermediary or any State payer, related to the Covered Conduct, and CVS agrees not to resubmit to any Medicare, Medicaid, TRICARE, or FEHBP 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.
16. Unallowable Costs: CVS 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. §§ 1395-1395ggg and 1396-1396v, and the regulations promulgated thereunder) incurred by or on behalf of CVS, in connection with:

- a. the matters covered by this Agreement,
- b. the United States' investigation of the matters covered by this Agreement;
- c. CVS's investigation, defense, and corrective actions undertaken in response to the United States' investigation in connection with the matters covered by this Agreement (including attorney's fees and the obligations undertaken pursuant to the Corporate Integrity Agreement incorporated in this Settlement Agreement);
- d. the negotiation of this Agreement; and
- e. the payment made pursuant to this Agreement

are unallowable costs on Government contracts and under Medicare, Medicaid, TRICARE, the Veterans Affairs Program ("VA") and FEHBP (hereafter, "unallowable costs").

17. CVS 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 CVS or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.
18. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any person or entity except those identified in paragraph II(B)(9)-(12).
19. CVS 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. CVS waives any causes of action against these beneficiaries or their parents or sponsors based

upon the claims for payment covered by this Agreement.

20. The United States and CVS will bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement. CVS represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.
21. This Agreement is governed by the laws of the United States. The Parties agree that, should any action to enforce or interpret this Agreement, or to resolve any dispute hereunder be required, the Parties acknowledge exclusive jurisdiction of the federal courts and agree that venue for any such action shall be the United States District Court for South Carolina except that disputes arising under the CIA incorporated herein by reference shall be resolved exclusively under the provisions set forth in the CIA.
22. This Agreement and the CIA which is incorporated herein by reference constitute the complete agreement between the United States and CVS. This Agreement may not be amended except by written consent of the Parties except only that CVS and OIG-HHS must agree in writing to modification of the CIA.
23. A separate agreement between the United States, CVS, and the Relator entitled the "Relator Agreement," shall set forth the rights and responsibilities of the United States, CVS, and Relator concerning the resolution of the allegations against Revco in United States ex rel. Altman vs. [Defendants] and docketed as Case No. 2 96 1005 2 (D.S.C.)(Under Seal).
24. The undersigned individuals signing this Agreement on behalf of CVS represent and warrant that they are authorized 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.

25. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.
26. The Parties agree that they will execute and deliver all such other documents and instruments as may be necessary and appropriate to effectuate the terms of the Settlement Agreement.
27. This Agreement is effective on the date of signature of the last signatory to the Agreement, and is binding on successors, and transferees, heirs and assigns.

THE UNITED STATES OF AMERICA

6/22/01
DATE

Allie Pang
ALLIE PANG
Commercial Litigation Branch
Civil Division
U.S. Department of Justice

5/31/01
DATE

Lewis Morris
LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health & Human Services

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Civil Division
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LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health & Human Services

6-15-2001
DATE

for *Robert L. Shepherd* *Deputy General Counsel*
ROBERT L. SHEPHERD
Deputy General Counsel
TRICARE Management Activity

May 16, 2001
DATE

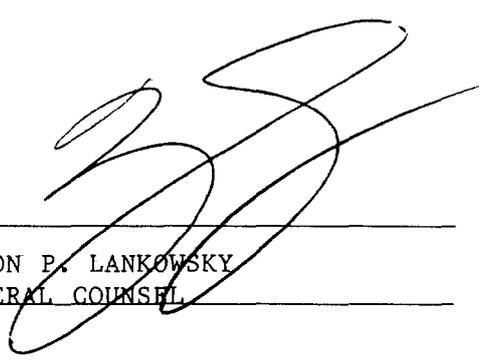
Abby L. Bloch
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Assistant Director for Insurance Programs
U.S. Office of Personnel Management

May 9, 2001
DATE

E. Jeremy Hutton
E. JEREMY HUTTON
Assistant Inspector General for Legal Affairs
U.S. Office of Personnel Management

CVS CORPORATION

07/17/01
DATE

By: 
Title: ZENON P. LANKOWSKY
GENERAL COUNSEL

DATE

By: _____

Title: _____

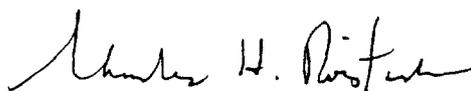
DATE

By: _____

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7/03/01

DATE



CHARLES H. ROISTACHER
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