

## 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 Department of Health and Human Services (HHS) (collectively the "United States"); John W. Daley, III (Daley); Thomas Wappel (Wappel); Brian Witek and Richard Witek (collectively "the Witeks"); and Jeffrey Sharp and John Klaczak (hereafter referred to as "the Parties"), through their authorized representatives.

### II. PREAMBLE

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

A. Thomas Wappel is an individual residing in Frankfurt, Illinois, an officer of Consolidated Medical Transport, Inc. ("Comed"), an Illinois corporation, and co-owner of Daley's Medical Transport, Inc. d/b/a Bud's Ambulance Service (EIN 36-4438931) ("Bud's Ambulance Service"); John W. Daley, III is an individual residing in Beecher, Illinois and co-owner of Bud's Ambulance Service; Brian T. Witek is an individual residing in Lake Forest, Illinois, a former owner of defendant Comed, and current president of Midwest Medical Services (EIN 36-4403265) ("Midwest"); and Richard Witek, is an individual residing in Burlington, Wisconsin, and former officer of Comed.

B. Jeffrey Sharp and John Klaczak (the "relators") are residents of the State of Illinois. On October 4, 1996, the relators filed a qui tam action in the United States District Court for the Northern District of Illinois captioned United States ex rel. John Klaczak and Jeffrey Sharp v. Consolidated Medical Transport, Inc., et al., Case No. 96 C 6502 (hereinafter "the Civil Action.") The relators were employed as paramedics and operations personnel at

Comed. The United States intervened in the Civil Action on June 23, 1999, and filed the United States' Complaint on October 25, 1999 (hereinafter "the United States' Complaint").

C. The United States contends that Daley, Wappel, and the Witek ("Settling Defendants") 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.

D. The United States contends that it has certain civil claims, as specified in Paragraph 2 below, against the Settling Defendants for engaging in the following conduct during the period from October 1, 1994 through December 31, 1996: the Settling Defendants caused Comed and its predecessor companies, including Tower Ambulance Service, Inc. and Daley's Ambulance Service, Ltd., to submit claims to Medicare for nonemergency ambulance transportation services provided to Medicare beneficiaries in the State of Illinois that were not medically necessary (hereinafter referred to as the "Covered Conduct").

E. The United States also contends that it has certain administrative claims, as specified in Paragraph 4 below, against the Settling Defendants for engaging in the Covered Conduct.

F. The defendants deny liability for the acts alleged in the United States Complaint. This Agreement is neither an admission of liability by the Settling Defendants nor a concession by the United States that its claims are not well founded.

G. 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. Daley agrees to pay to the United States \$75,000, Wappel agrees to pay to the United States \$75,000, and the Witekhs agree to jointly pay the United States \$312,500 (the "Settlement Amounts"). The United States agrees to pay 22 percent of the Settlement Amounts received from the Settling Defendants (\$101,750) to the relators collectively. The foregoing payments shall be made as follows:

a. Daley, Wappel, and the Witekhs agree to pay the full Settlement Amounts to the United States by certified or cashier's checks made payable to the "U.S. Department of Justice" and delivered to the United States Attorney's Office for the Northern District of Illinois, 219 S. Dearborn Street, 5th Floor, Chicago, Illinois 60604. Daley, Wappel, and the Witekhs each agree to make this payment no later than the Effective Date of this Agreement.

b. Contingent upon the United States receiving the Settlement Amounts from Daley, Wappel, and the Witekhs as soon as feasible after receipt, the United States agrees to pay \$101,750 to relators collectively by electronic funds transfer.

2. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of the Settling Defendants in this Agreement, conditioned upon the Settling Defendants' full payment of the Settlement Amounts, and subject to Paragraph 18 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release the Settling Defendants from any civil or administrative monetary claim the United States has or may have 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 Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of the Settling Defendants in this Agreement, conditioned upon the Settling Defendants' full payment of the Settlement Amounts, and subject to Paragraph 19 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, agree to release the Settling Defendants from any civil monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733 arising from the Covered Conduct or the conduct alleged in the Civil Action.

4. In consideration of the obligations of the Settling Defendants in this Agreement and the Corporate Integrity Agreements (CIAs) incorporated by reference (Exhibits A and B), conditioned upon the Settling Defendants' full payment of the Settlement Amounts, and subject to Paragraph 18 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against the Settling Defendants under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 5 below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude any of the Settling Defendants from Medicare, Medicaid, and 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 the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 5, below.

5. 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 Settling Defendants and relators) are the following claims of the United States:

- 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) 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; and
- g. Any liability for failure to deliver goods or services due.

6. Conditioned upon receipt of the payment described in Paragraph 1.b, the relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, agree 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 the Covered Conduct, as alleged in the Civil

Action, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1). The relators agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

7. Conditioned upon receipt of the payment described in Paragraph 1.b, the relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, agree to release the Settling Defendants, their officers, agents, and employees, from any liability to relators arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

8. Daley, Wappel, and Bud's Ambulance Service have entered into a CIA with OIG-HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. The Witeks and Midwest have entered into a CIA with OIG-HHS, attached as Exhibit B, which is incorporated into this Agreement by reference. The Settling Defendants shall immediately upon execution of their respective CIAs implement their obligations under their CIAs.

9. The Settling Defendants have provided sworn financial disclosure statements (Financial Statements) to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. The Settling Defendants warrant that the Financial Statements are complete, accurate, and current. If the United States learns of asset(s) in which any of the Settling Defendants had an interest at the time of this Agreement which were not disclosed in the Financial Statements, or if the United States learns of any misrepresentation by any of the Settling Defendants on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$7500 or more, the United States may at its option: (a) rescind this Agreement and reinstate its suit based on the Covered Conduct,

or (b) let the Agreement stand and collect the full Settlement Amounts plus one hundred percent (100%) of the value of the net worth of Daley and/or Wappel and/or the Witekhs previously undisclosed. The Settling Defendants agree not to contest any collection action undertaken by the United States pursuant to this provision.

10. In the event that the United States, pursuant to Paragraph 9 above, opts to rescind this Agreement, the Settling Defendants 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 which (a) are filed by the United States within 120 calendar days of written notification to the Settling Defendants that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement.

11. The Settling Defendants waive and will not assert any defenses that any of the Settling Defendants 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, this Agreement bars a remedy sought in such criminal prosecution or administrative action. The Settling Defendants agree 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 Amounts for purposes of the Internal Revenue laws, Title 26 of the United States Code.

12. The Settling Defendants fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and

expenses of every kind and however denominated) which any of the Settling Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

13. The Settling Defendants fully and finally release the relators, for themselves and for their heirs, successors, attorneys, agents, and assigns from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which any of the Settling Defendants have asserted, could have asserted, or may assert in the future against the relators, for themselves and for their heirs, successors, attorneys, agents, and assigns related to the Civil Action and the investigation and prosecution thereof.

14. The Settlement Amounts will 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 Settling Defendants shall not resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

15. The Settling Defendants 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 the Settling Defendants, their 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 investigation(s) of the matters covered by this Agreement and any criminal investigation of this matter,

(3) the Settling Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil or 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 payments that Settling Defendants make to the United States pursuant to this Agreement and any payments that the Settling Defendants may make to relators, including costs and attorneys fees, and

(6) the negotiation of, and obligations undertaken pursuant to the CIA to:

(i) Retain an independent review organization to perform annual reviews as described in Section III of the Settling Defendants' respective CIAs; and

(ii) prepare and submit reports to the OIG-HHS.

However, nothing in this Paragraph 15.a.(6) that may apply to the obligations undertaken pursuant to the CIAs affects the status of costs that are not allowable based on any other authority applicable to the Settling Defendants. (All costs described or set forth in this Paragraph 15.a. are hereafter, "unallowable costs").

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by the Settling Defendants, and the Settling

Defendants 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 any of the Settling Defendants or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: The Settling Defendants 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 any of the Settling Defendants and 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 Settling Defendants agree that the United States, at a minimum, shall be entitled to recoup from the Settling Defendants 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 the Settling Defendants or any of their subsidiaries or affiliates on the effect of inclusion of unallowable costs

(as defined in this Paragraph) on the Settling Defendants or any of their subsidiaries or affiliates' 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 any of the Settling Defendants' books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

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. The Settling Defendants waive and shall not seek payment 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.

18. The Settling Defendants warrant that they have reviewed their 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 to the United States of the Settlement Amount. 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 the Settling Defendants, 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 any of the Settling Defendants was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

19. If within 91 days of the Effective Date of this Agreement or of any payment made hereunder, any Settling Defendant commences, 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 such Settling Defendant's debts, or seeking to adjudicate the Settling Defendant as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for any Settling Defendant or for all or any substantial part of any of the Settling Defendant's assets, Settling Defendant agrees as follows:

a. The Settling Defendant's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and the Settling Defendant will not argue or otherwise take the position in any such case, proceeding, or action that: (i) the Settling Defendant's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) the Settling Defendant was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to the Settling Defendant.

b. If the Settling Defendant'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, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against each such Settling Defendant for the claims that would otherwise be covered by the releases

provided in Paragraphs 2-4 above. Each Settling Defendant agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude any Settling Defendant from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that each such Settling Defendant will not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) the Settling Defendant 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 which are brought by the United States within 120 calendar days of written notification to Daley and/or Wappel and/or the Witek that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) the United States has a valid claim against the Settling Defendant in the amount of \$27,000,000 plus penalties and interest, 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. Each Settling Defendant acknowledges that their agreement in this Paragraph is provided in exchange for valuable consideration provided in this Agreement.

20. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

21. The Settling Defendants represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

22. The relators represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

23. 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 Northern District of Illinois, except that disputes arising under the CIAs shall be resolved exclusively under the dispute resolution provisions in the CIAs.

24. This Agreement and CIAs constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties except that only Settling Defendants and OIG-HHS must agree in writing to modification of the CIAs.

25. Upon receipt of the payments described in Paragraph 1.a and 1.b above, the United States shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal with prejudice of the claims for the Covered Conduct, and the relators shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal with prejudice of all claims against the Settling Defendants, pursuant to the terms of the Agreement.

26. The individuals signing this Agreement on behalf of Settling Defendants represent and warrant that they are authorized by Settling Defendants to execute this Agreement. The individual(s) signing this Agreement on behalf of the relators represent and warrant that they are authorized by relator to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

28. This Agreement is binding on the Settling Defendants' successors, transferees, heirs, and assigns.

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

30. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

**DEFENDANTS**

*Thomas Wappel*  
THOMAS WAPPEL

12/6/2004  
DATE

*Julian Solotorovsky*  
JULIAN SOLOTOROVSKY  
Counsel for Thomas Wappel  
Kelley, Drye & Warren  
333 W. Wacker Drive  
Chicago, IL 60606


12/15/04  
DATE



**DEFENDANTS**

  
\_\_\_\_\_  
JOHN W. DALEY, III

12-6-04  
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\_\_\_\_\_  
WILLIAM ZIEGELMÜLLER  
Counsel for John W. Daley, III  
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12/16/04  
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**DEFENDANTS**

  
\_\_\_\_\_  
RICHARD WITEK

3/22/05  
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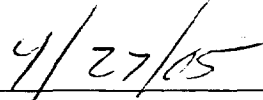
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UNITED STATES

PATRICK J. FITZGERALD  
United States Attorney



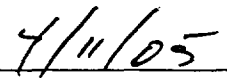
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Chief Counsel to the Inspector General  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services



DATE

**RELATORS**

*John Klaczar*  
**JOHN KLACZAR**

12-31-04  
DATE

*Jeff Sharp*  
**JEFF SHARP**

12-20-04  
DATE

*Sidney R. Berger*  
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