

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is made between the United States of America, acting through the Department of Justice (the "Department of Justice"), and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"); the TRICARE Management Activity ("TMA") (formerly the Office of the Civilian Health and Medical Program of the Uniformed Services ("OCHAMPUS")), through its General Counsel; the Office of Personnel Management ("OPM"), which administers the Federal Employees Health Benefits Program ("FEHBP") (collectively, the "United States"); the Personal Representative of the Estate of Relator Theresa Semtner ("Relator"); Medical Consultants, Inc. d/b/a Emergency Physicians Billing Service ("EPBS") and J.D. McKean, Jr., M.D. ("McKean"); (hereinafter 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. The United States District Court for the Western District of Oklahoma issued a Memorandum Opinion on November 20, 1998, in *United States ex rel. Semtner v. EPBS*, No. 94-617-(C)

(W.D. Okla.) ("the *Semtner* case"), holding that EPBS and McKean had violated the False Claims Act, 31 U.S.C. §§ 3729-3733, by submitting false claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg (1997), the TRICARE Program, 10 U.S.C. §§ 1071-1106; the FEHBP, 5 U.S.C. §§ 8901-8914, and the Medicaid Program, 42 U.S.C. §§ 1396-1396v (1997).

B. This Agreement addresses the United States' civil and administrative claims against EPBS and McKean based on the conduct alleged in the *Semtner* case up to the date of the Agreement (the "Covered Conduct").

C. The United States also contends that it may have certain administrative claims against EPBS and McKean under the provisions for permissive exclusion from the Medicare, Medicaid and other Federal health care programs, 42 U.S.C. § 1320a-7(b), the provisions for exclusion from the TRICARE program, 32 C.F.R. § 199.9, the provisions for exclusion from the FEHBP, 5 U.S.C. § 8902a or 5 C.F.R. Part 970, and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

D. EPBS and McKean deny the contentions of the United States in Paragraph C above.

E. The Parties mutually desire to settle these disputes.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and 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. EPBS and McKean agree to pay the United States and the states listed in Exhibit A the collective sum of \$15,000,000.00 (the "Total Amount"). McKean agrees to sign a promissory note in the amount of \$10 million to secure that portion of the Total Amount, attached as Exhibit B. EPBS and McKean agree to make separate payments aggregating up to the Total Amount as follows: \$12,955,748.30 to the United States (the "United States' Settlement Share") and \$2,044,251.70 to the States (the "States' Settlement Share"), with the States listed in Exhibit A (the "Affected States"). Payment of the United States' Settlement Share and the States' Settlement Share will be made by EPBS and McKean as follows: \$5 million within five business days of execution of the Agreement (the "First Payment Date"), with \$2,955,748.30 paid to the United States, and \$2,044,251.70 to the States in payment of the States' Settlement Share, to be paid into an escrow account as agreed to by EPBS, McKean and the

States; with payment of the remaining portion of the United States' Settlement Share to be made in "Installment Payments" by EPBS and McKean according to the following schedule: \$2 million payment to be made on or before April 30, 2000; \$2 million payment to be made on or before August 31, 2000; \$2 million payment to be made on or before December 31, 2000; \$1 million payment to be made on or before December 31, 2001; \$1 million payment to be made on or before December 31, 2002; \$1 million payment to be made on or before December 31, 2003; \$1 million payment to be made on or before December 31, 2004; plus interest on the Installment Payments compounded annually at the rate of the one-year Treasury Bill as published on the First Payment Date, accruing from January 1, 2000. Payment of the United States' Settlement Share by EPBS and McKean shall be governed by this Agreement and payments will be made by electronic funds transfer in accordance with instructions to be provided by the United States. Separate settlement agreements will be negotiated and executed between EPBS and McKean and the Affected States, with payment instructions as to the States' Settlement Share to be provided by Ellyn Sternfield, Esq. on behalf of the Affected States.

(a) TMA agrees that upon execution of this Agreement, TMA

will lift the suspension of EPBS and begin processing all non-suspended claims submitted after the date of execution of the Agreement in the regular course of business.

(b) TMA, EPBS and McKean agree that upon execution of this Agreement, TMA will use its best efforts to process the claims that it has suspended, with the amount to be paid by TMA to EPBS to equal 88% of the amount that would have been paid by TMA had it processed the suspended claims without review of the coding, and with respect to the suspended claims, for claims for care prior to fiscal year 1999, TMA will waive application of edits concerning deductibles, third party liability and other health insurance, and will process based on 1998 profiles. TMA may further adjust its payments to reflect adjustments for any of the suspended claims that were inadvertently processed prior to the effective date of this Agreement. This adjustment by TMA, in the aggregate, shall not exceed \$10,000. Further, EPBS waives any administrative appeal rights for any of the suspended claims.

2. Corporate Integrity Agreement. EPBS has entered into a Corporate Integrity Agreement ("CIA") with OIG-HHS; attached as Exhibit C, which is incorporated into this Agreement by reference. EPBS will implement its obligations under the CIA in accordance with the terms of the CIA.

3. Dismissal and Release. Subject to the exceptions in Paragraphs 12, 18 and 19 below, in consideration of the obligations set forth in this Agreement and conditioned upon EPBS and McKean's payment in full of the United States' Settlement Share and relator's attorney's fees and costs as specified below in paragraph 8, within five days after the Relator's receipt of the first payment set forth in Paragraph 10 hereof, (i) the United States will move to dismiss with prejudice the claims against EPBS and McKean in the Semtner case subject to the terms of this Agreement and as described more fully in Paragraph 13 of this Agreement; and (ii) the United States hereby releases and discharges EPBS, McKean and any current or former employees, officers, directors, successors and predecessors of EPBS, as well as the following EPBS shareholders, Bobby M. Asbell, the 1989 Joseph D. McKean, Jr. Revocable Family Trust and Shane R. McKean, from any civil or administrative monetary claims the United States now 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, including claims (as described above) against EPBS and

McKean for the Covered Conduct which are based on their affiliation with Presbyterian Emergency Physicians, Inc. and Midwest Emergency Physicians, Inc.

4. Administrative Waiver. (a) Subject to the exceptions in Paragraph 12 below and as reserved in this Subparagraph 4(a), in consideration of the obligations of EPBS and McKean under this Agreement, conditioned upon EPBS and McKean's payment in full of the United States' Settlement Share and the States' Settlement Share, and subject to Paragraphs 18 and 19 (concerning bankruptcy proceedings) and Paragraph 5 (concerning McKean's obligations with respect to ownership interest in EPBS), below, OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)), against EPBS 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. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude EPBS 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 12, below.

(b) In consideration of the obligations of EPBS and McKean under this Agreement, conditioned upon EPBS and McKean's payment in full of the United States' Settlement Share, the TMA agrees to refrain from instituting, directing, or maintaining any administrative claims or any action seeking exclusion from the TRICARE Program against EPBS under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph 12 below and as reserved in this Subparagraph 4(b). The TMA expressly reserves authority to exclude EPBS from the TRICARE program under 32 C.F.R. §§ 199.9(f)(1)(i)(A) and (f)(1)(iii) (mandatory exclusion), based upon the Covered Conduct. Nothing in this Paragraph precludes the TMA from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 12, below.

EPBS and McKean acknowledge that the TRICARE (CHAMPUS) regulation does not specifically allow billing services (such as EPBS) to directly submit TRICARE claims under their own "provider number." Under the TRICARE Regulation and Policy Manual, billing services may submit TRICARE claims for providers, if the actual provider number for the provider of care is used and the billing

service is authorized by the provider to sign the claim on behalf of the provider. EPBS recognizes that TMA, under its regulation, must require future claims to be submitted under the provider numbers of the actual providers of services (e.g., emergency department physicians).

(c) In consideration of the obligations of EPBS and McKean set forth in this Agreement, conditioned upon EPBS and McKean's payment in full of the United States' Settlement Share, OPM agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the FEHBP against EPBS under 5 U.S.C. § 8902a or 5 C.F.R. Part 970 for the Covered Conduct, 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 12, below.

5. Exclusion of McKean. In compromise and settlement of the rights of OIG-HHS to exclude McKean pursuant to 42 U.S.C. § 1320a-7(b) (7) for the Covered Conduct, McKean agrees to be excluded under this statutory provision for a period of fifteen (15) years. This period is to commence on the effective date of the Agreement, and McKean waives any further notice of the

exclusion. McKean agrees not to contest such exclusion either administratively or in any State or Federal court. If McKean submits or causes the submission of claims while excluded, McKean is subject to the imposition of additional civil monetary penalties and assessments. McKean represents and agrees that unless and until he is reinstated into participation in Federal health care programs (including the FEHBP), McKean does not intend to and will not: (a) hold a direct or indirect ownership interest of five percent or more in any entity that submits claims for payment to any Federal health care program; (b) own a whole or part interest in any mortgage, deed of trust, note or other obligation secured by any such entity or any of the property or assets thereof, in which whole or part interest is equal to or exceeds five percent of the total property and assets of such an entity; or (c) be an officer, director, partner, agent, or managing employee of any such entity.

Specifically excepted from the above prohibitions are the following:

(1) McKean may be the beneficiary of a trust which owns a maximum of 40% of the outstanding shares of EPBS stock, as described below;

(2) McKean or the McKean Family Trust may continue to own

interest in any loan made in whole or in part by McKean or the McKean Family Trust to EPBS on or before June 10, 1999, and

(3) McKean or the McKean Family Trust may enter into future loan agreements with EPBS for the sole purpose of funding settlement payments described in Paragraph 1 of this Agreement. Such loan agreements shall consist of commercially reasonable terms and any interest rate applied to such loans shall not exceed the market rate of interest.

(4) McKean may maintain personal and corporate offices, unrelated to EPBS, in buildings owned by McKean or the McKean Family Trust which are also occupied by EPBS. McKean may not utilize or share telephone services (other than hardware telephone lines and cables) or other services utilized or operated by EPBS. McKean shall have 120 days after the date of this Agreement to relocate his current office to an office segregated from offices occupied by EPBS.

(5) McKean or the McKean Family Trust may make payments on behalf of EPBS in satisfaction of the Agreement.

(6) McKean may continue to lease properties to EPBS if such properties are being leased by EPBS from McKean on the date of execution of the Agreement. Such leases may be renewed, with terms and rates similar to those in existence on the date of

execution of the Agreement.

(7) McKean may continue to license software to EPBS that are licensed to EPBS on the date of execution of the Agreement.

McKean further agrees to hold the Federal programs and all the Federal programs' beneficiaries and/or sponsors harmless from any financial responsibility for services reimbursable by federal health care programs furnished to such beneficiaries and/or sponsors while McKean is excluded. McKean specifically waives his rights under any statute or regulation to payment for services rendered that are reimbursable by federal health care programs from Medicare, Medicaid, TRICARE, the United States Department of Veteran Affairs or OPM during the subject exclusion. Nothing in this provision shall affect McKean's right to participate in the Medicare program as a Medicare program beneficiary. Upon completion of the exclusion period, McKean may apply for reinstatement in accordance with 42 C.F.R. § 1001.3001.

McKean represents that the McKean Family Trust is currently the majority owner of EPBS. McKean agrees that within 180 days of the execution of this Agreement, (a) the McKean Family Trust will place no more than 40% of EPBS stock in a trust as described in a letter from the Office of Counsel to the OIG to Todd Taylor, dated May 21, 1999 (attached as Exhibit D); and (b) all other

shares of EPBS stock, except for those shares already held by persons other than McKean or the McKean Family Trust as of June 10, 1999, shall be sold to third parties unrelated to McKean or the McKean Family Trust as agreed to by the Parties, with Bobby Asbell being permitted to receive up to an additional 3% of EPBS stock. McKean further agrees that he will not transfer his ownership interest in EPBS to an immediate family member or to a member of his household (as those terms are defined in 42 U.S.C. §§ 1320a-7(j)(1) and (2)). As of the date of execution of this Agreement, McKean also represents that he has no management or operation responsibilities with regard to EPBS. Except as otherwise provided, McKean agrees that he will not maintain any employment, agency, financial, or management relationship with EPBS while he is excluded from participation in the Federal health care programs. On or before the date of execution of the Agreement, McKean agrees to resign from EPBS as CEO of EPBS and from any other positions at EPBS. EPBS may pay to McKean, for a period of no more than three years from his resignation from EPBS, severance benefits at the level of his current salary and benefits from EPBS. EPBS shall not pay severance benefits to McKean from funds received, directly or indirectly, from federal or state health care programs.

McKean shall report to the OIG, at the contact provided in the CIA, within 180 days of the execution of this Agreement, that he and the McKean Family Trust have fully divested himself and itself of all ownership interest in EPBS stock and the identity(s) of the individuals and/or entities to whom such interest has been transferred. If McKean has not fully divested himself of his ownership interest in EPBS within 180 days of the execution of this Agreement, then EPBS shall be excluded from participation in Medicare, Medicaid, and all other Federal health care programs under the same terms and statutory provisions and conditions as specified above with respect to the exclusion of McKean. If EPBS is so excluded, the duration of the exclusion period for EPBS shall be fifteen (15) years, beginning the 181st day following the execution of this Agreement.

6. EPBS and McKean have provided sworn financial disclosure statements as well as other financial information ("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. EPBS and McKean warrant that the Financial Statements are thorough, accurate, and complete. EPBS and McKean further warrant that they do not own or have an interest in any assets which have not been disclosed

in the Financial Statements, and that EPBS and McKean have made no misrepresentations on, or in connection with, the Financial Statements. In the event the United States learns of asset(s) in which EPBS and McKean had an interest at the time of this Agreement which were not disclosed in the Financial Statements, or in the event the United States learns of a misrepresentation by EPBS and McKean on, or in connection with, the Financial Statements, and in the event such nondisclosure or misrepresentation changes the collective estimated net worth of EPBS and McKean set forth on the Financial Statements by five hundred thousand dollars (\$ 500,000) or more, the United States may at its option rescind this Agreement and reinstate its suit upon the underlying claims described in Paragraph B.

7. In the event that the United States, pursuant to Paragraph 6, above, opts to rescind this Agreement, EPBS and McKean expressly 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 (1) are filed by the United States within thirty (30) calendar days of written notification to EPBS and McKean that this Agreement has been rescinded, and (2) relate to the Covered Conduct, except to the extent these defenses were

available on the date the *Semtner* case was filed.

8. EPBS and McKean agree to pay Relator, in full and final satisfaction of all claims against EPBS and McKean for Relator's expenses, attorneys' fees and costs related to Relator's action in the *Semtner* case against EPBS and McKean, the amount of \$1,000,000 on or before the First Payment Date of the United States' Settlement Share.

9. Relator agrees that the settlement between the United States and EPBS and McKean in this action is fair, adequate and reasonable pursuant to 31 U.S.C. § 3730(c)(2)(B).

10. Pursuant to 31 U.S.C. § 3730, the United States will pay to Relator a share of 25% (the "Relator's share"), within a reasonable time after the United States' receipt of the United States' Settlement Share from EPBS and McKean, in *pro rata* payments, plus *pro rata* interest at the rate specified in Paragraph 1, within a reasonable time after the receipt by the United States of the First and Installment Payments of the United States' Settlement Share from EPBS and McKean. Relator will provide the United States with wire transfer information to allow the Relator's share to be paid by wire transfer. The United States shall not be obligated to pay Relator her respective *pro rata* share unless and until receipt by the United States of the

respective First and Installment Payments of the United States' Settlement Share from EPBS and McKean.

11. In exchange for the United States' payment to Relator of the Relator's share, Relator hereby releases and discharges any and all claims Relator might bring against the United States relating to the Covered Conduct, and this Agreement, under 31 U.S.C. § 3730(d).

12. Exceptions to the Releases. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement and the releases provided herein are:

- a. any civil, criminal, or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- b. claims for defective or deficient medical services;
- c. claims relating to obligations created by this Agreement;
- d. claims against entities or persons, including any current or former clients of EPBS, other than EPBS, McKean and any current or former employees, officers, directors, predecessors and successors, and the following EPBS shareholders, Bobby M. Asbell, the 1989 Joseph D. McKean, Jr. Revocable Family

Trust and Shane R. McKean;

e. except as explicitly stated in the Agreement, any administrative liability to agencies other than OIG-HHS, TMA, and OPM, and mandatory exclusion from Federal health care programs;

f. any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; and

g. any criminal liability.

13. Concurrent with the execution of this Settlement Agreement, the Parties shall execute a motion to be filed with the Court within five days after Relator's receipt of the Relator's first share payment described in Paragraph 10 of this Agreement. The motion will request that the Court enter an order to dismiss with prejudice the claims against EPBS and McKean in the *Semtner* case, subject to the terms of this Agreement. The Parties will exert all best efforts to obtain the dismissal with prejudice of the claims against EPBS and McKean consistent with this Agreement.

14. In consideration of the mutual promises and obligations of this Agreement, Relator hereby releases and discharges EPBS and McKean from any claims, known or unknown, which Relator asserts or could have asserted under the False Claims Act or any other statute or common law theory of any kind whatsoever creating causes of action for the Covered Conduct.

15. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the amounts paid hereunder for purposes of the Internal Revenue Code, Title 26 of the United States Code.

16. EPBS and McKean agree that they will not seek payment directly to EPBS and McKean for any of the health care billings covered by this Agreement from any Federal health care beneficiaries or their parents or sponsors. EPBS and McKean waive any causes of action they may have against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement. Such agreement in Paragraph 16 shall not affect the rights of any EPBS client or of EPBS when acting solely as a billing agent for its clients.

17. Waiver of Double Jeopardy Defense. With respect to the Covered Conduct, EPBS and McKean hereby waive any defenses they may have to any criminal prosecution, which defenses may be based in whole or in part on the Double Jeopardy or Excessive Fines Clause of the Constitution or the holding or principles set forth in United States v. Halper, 490 U.S. 435 (1989), and Austin v. United States, 509 U.S. 602 (1993), and agree that the amounts paid under this Agreement are not punitive in nature or effect for purpose of such criminal prosecution or administrative action.

18. In the event EPBS and/or McKean commence, or a third party commences, within 91 days of any payment under this Agreement, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of EPBS and/or McKean's debts, or seeking to adjudicate EPBS and/or McKean as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for EPBS and/or McKean or for all or any substantial part of EPBS' and/or McKean's assets, EPBS and McKean agree as follows:

a. any payment under this Agreement may not be avoided pursuant to 11 U.S.C. § 547; and

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

19. In the event EPBS and/or McKean (the "Bankruptcy Debtor")

commence, or a third party commences, any case, proceeding, or other action (i) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of the Bankruptcy Debtor's debts, or seeking to adjudicate the Bankruptcy Debtor as bankrupt or insolvent, or (ii) seeking appointment of a receiver, trustee, custodian or other similar official for the Bankruptcy Debtor or for all or any substantial part of the Bankruptcy Debtor's assets, EPBS and McKean agree as follows:

a. The United States shall hold a valid, allowed, liquidated, noncontingent, undisputed claim against the Bankruptcy Debtor only for \$25 million, less payments received pursuant to this Agreement, in any case, proceeding, or other action described in the first clause of Paragraph 19;

b. In the event that the Bankruptcy Debtor's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of any 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 the Bankruptcy Debtor for the claims that would otherwise be covered by the releases provided in Paragraphs 3-4, above, with Relator retaining

all rights and interests under 31 U.S.C. § 3730;

c. If the United States chooses to rescind the releases in accordance with Paragraph 19.b, the EPBS and McKean agree that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude EPBS 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 19, and that EPBS and McKean will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to such automatic stay; (ii) EPBS and McKean will not seek relief under 11 U.S.C. § 105 to enjoin or restrain the United States from pursuing such claims, actions or proceedings; (iii) EPBS and McKean 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 thirty (30) calendar days of written notification to EPBS and McKean that the releases herein have been rescinded pursuant to this Paragraph 19, except to the extent such defenses were available on the date the Semtner case was filed;

d. EPBS and McKean will not (a) oppose any attempt by the United States, including, but not limited to, a motion filed by the United States seeking relief from the automatic stay imposed by 11 U.S.C. § 362, to recover, either through set off or recoupment, monies owed by EPBS and McKean to the United States (either under this Agreement or otherwise) against any monies owed by the United States to EPBS and McKean or (b) seek relief under 11 U.S.C. § 105 to enjoin or restrain the United States from exercising these rights.

20. EPBS and McKean further agree that the express waivers set forth in Paragraphs 18 and 19 are in consideration for the final settlement of the United States' claims against them in the *Semtner* action and as provided in this Agreement. Any payments made by the Bankruptcy Debtor (described above) to and received by the United States will be credited toward the liability of either EPBS or McKean, whichever is not the Bankruptcy Debtor. If, prior to, or during the pendency of any case, proceeding, or other action described in Paragraphs 18 and 19, the United States' Settlement Share is paid to the United States in full, the United States will not claim additional monies in connection with this Agreement.

21. Venue for Enforcement, Interpretation or Dispute Resolution. Should any action to enforce or interpret this

Agreement, or to resolve any dispute hereunder, be required, the Parties acknowledge the jurisdiction of the federal courts and agree that venue for any such action shall be in the United States District Court for the Western District of Oklahoma, except that any disputes arising out of the CIA shall be resolved exclusively in the manner set forth in the CIA.

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

23. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the matters contained herein, and may not be modified except by a writing signed by all Parties hereto, except that only EPBS and OIG-HHS must agree in writing to modification of the CIA, pursuant to the terms of the CIA.

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

25. Binding Nature of Agreement. This Agreement is binding on all successors, heirs, assigns and transferees of the Parties.

26. Effective Date. This Agreement is effective on the date of signature of the last signatory to the Agreement.

UNITED STATES OF AMERICA

Laurie A. Oberembt Dated: 9/23/99

LAURIE A. OBEREMBT
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

_____ Dated: _____

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

_____ Dated: _____

ROBERT L. SHEPHERD
Deputy General Counsel
TRICARE Management Activity
United States Department of Defense

_____ Dated: _____

E. JEREMY HUTTON
Assistant Inspector General for Legal
Affairs
Office of the Inspector General
United States Office of Personnel
Management

UNITED STATES OF AMERICA

Dated: _____

LAURIE A. OBEREMBT
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

Dated: 9/24/99

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

Dated: _____

ROBERT L. SHEPHERD
Deputy General Counsel
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Civil Division
United States Department of Justice

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



Dated: 9-23-99

ROBERT L. SHEPHERD
Deputy General Counsel
TRICARE Management Activity
United States Department of Defense

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Office of Inspector General
United States Department of
Health and Human Services

_____ Dated: _____

ROBERT L. SHEPHERD
Deputy General Counsel
TRICARE Management Activity
United States Department of Defense

 Dated: April 24, 1999
E. JEREMY HUTTON
Assistant Inspector General for Legal
Affairs
Office of the Inspector General
United States Office of Personnel
Management

Frank D. Titus

Dated: 9/24/99

FRANK D. TITUS

Assistant Director for Insurance Programs
United States Office of Personnel
Management

RELATOR

_____ Dated: _____

Cheryl A. Vaught
Vaught & Conner, P.L.L.C.
Attorneys for Relator

Emergency Physicians Billing Service

Scott R. Stuchlik

Dated: 9-27-99

President & CEO

J.D. McKean, Jr., M.D.

J. McKean, Jr. *Individually*

Dated: 9-27-99

Todd Taylor

Dated: 9-27-99

Todd Taylor, Esq.

Crowe & Dunlevy

1800 Mid-America Tower

20 North Broadway

Oklahoma City, OK 73102-8273

Counsel for EPBS and J.D. McKean, Jr.,

M.D.

_____ Dated: _____
FRANK D. TITUS
Assistant Director for Insurance Programs
United States Office of Personnel
Management

RELATOR

Cheryl A. Vaught Dated: 9/24/99
Cheryl A. Vaught
Vaught & Conner, P.L.L.C.
Attorneys for Relator


Emergency Physicians Billing Service

_____ Dated: _____

J.D. McKean, Jr., M.D.

_____ Dated: _____

_____ Dated: _____
Todd Taylor, Esq.
Crowe & Dunlevy
1800 Mid-America Tower
20 North Broadway
Oklahoma City, OK 73102-8273
Counsel for EPBS and J.D. McKean, Jr.,
M.D.


Dated: 9/27/99
John Hargrave, Esq.
Edmonds, Cole, Hargrave, Givens & Witzke,
A Professional Corporation
One North Hudson, Suite 200
Oklahoma City, OK 73102
Counsel for J.D. McKean, Jr., M.D.