

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America ("United States"), acting through the United States Department of Justice and the United States Attorney's Office for the Southern District of Florida and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"), and FMC Hospital Ltd , d/b/a Florida Medical Center (the "Hospital") (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. Hospital is a corporation licensed under the State of Florida that operates an acute care hospital located in Fort Lauderdale, Florida.
- B. The United States contends that the Hospital 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. Medicare payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's "principal diagnosis," as set forth by the hospital.
- D. The Medicare program relies upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.¹
- E. The United States conducted an investigation into inpatient payment claims submitted to Medicare by the Hospital with the principal diagnosis of ICD-9 codes 482.89

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

(pneumonia due to "other specified bacteria") and 482.83 (pneumonia due to gram negative bacteria).

F. The United States contends that it has certain civil claims against the Hospital 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 3 below, for engaging in the following alleged conduct during the period 1993 through 1997, inclusive: Hospital submitted or caused to be submitted claims to Medicare with the principal diagnosis codes of ICD-9 482.89 and 482.83, that were not supported by the corresponding medical records (hereinafter referred to as the "Covered Conduct"). The United States alleges that, as a result of these claims, the Hospital received payments to which it was not entitled.

G. The United States also contends that it has certain administrative claims against Hospital under the provisions for permissive exclusion from Medicare, Medicaid, and other Federal health care programs, 42 U.S.C. § 1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

H. The Hospital expressly denies the contentions of the United States as set forth in Paragraph F and G above. Specifically, Hospital contends that any payments improperly received by Hospital were the result of mere oversight or clerical error. Hospital further expressly denies that there was any knowing or deliberate intent to defraud the United States or otherwise obtain improper payments.

I. 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. The Hospital agrees to pay to the United States a total of four hundred forty-three thousand, four hundred and sixty-six dollars (\$443,466), plus interest accruing at a simple rate of 5% per annum from May 13, 2002 through and including the Payment Date (the "Settlement Amount") as follows: Hospital agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of Florida. The Hospital agrees to make this electronic funds transfer within fourteen (14) business days after the Effective Date of this Agreement and receipt of written electronic funds transfer instructions, whichever occurs last. The "Payment Date" shall be the date that Hospital actually sends the Settlement Amount to the United States by electronic funds transfer.

2. Except as provided in Paragraph 4 below, the Hospital fully and finally releases the United States, HHS, and each of their agencies, officers, agents, employees, and contractors (and their employees), from any and all claims, causes of action, adjustments, and set-offs of any kind arising out of or pertaining to the Covered Conduct including the investigation of the Covered Conduct and this Agreement.

3. Subject to the exceptions in paragraph 5 below, in consideration of the obligations of the Hospital set forth in this Agreement, conditioned upon the Hospital's payment in full of the Settlement Amount, and subject to paragraphs 11 and 12, below (concerning bankruptcy proceedings commenced within 91 days of the date of any payment under this Agreement), the

United States (on behalf of itself, its officers, agents, and its agencies and departments) will and hereby does release the Hospital, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions, affiliates, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them, 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, conversion, breach of contract and fraud, for the Covered Conduct.

4. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion 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-7a (Civil Monetary Penalties Law), 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), against Hospital, and its officers, directors, employees, and agents for the Covered Conduct. The Hospital does not waive and expressly reserves the right to pursue any and all defenses that the Hospital may have, by statute, common law, or otherwise, against the United States, its agencies, employees, servants, and agents resulting from the United States' pursuit of administrative action seeking exclusion against the Hospital as a result of or related to the Covered Conduct, and all claims in direct response to such administrative action, if any.

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 Hospital) 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 otherwise stated in this Agreement, any administrative liability, including mandatory 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 claims 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;
- (7) Any liability for failure to deliver goods or services due; and
- (8) Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of the Hospital) who are indicted, charged or convicted, or who enter into a plea agreement related to the Covered Conduct.

6. The Hospital 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 or Excessive Fines Clause of the Constitution, this settlement bars a remedy sought in such criminal prosecution or administrative action. The Hospital agrees that this settlement is not punitive in purpose or effect for purposes of such criminal prosecution or administrative action. 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.

7. The Settlement Amount that the Hospital 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, related to the Covered Conduct; and the Hospital agrees not to resubmit to any Medicare carrier or intermediary any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

8. The Hospital agrees to the following:

a. Unallowable Costs Defined: 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 and official program directives promulgated thereunder) incurred by or on behalf of the Hospital, or its current and former parent corporations, each of their direct and indirect subsidiaries, division, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them, in connection with:

(1) the matters covered by this Agreement,

(2) the Government's audit(s) and civil investigation(s) of the matters covered by this Agreement,

(3) the Hospital's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees),

(4) the negotiation and performance of this Agreement, and

(5) the payments made pursuant or ancillary to this Agreement, including any costs and attorneys' fees,

are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program ("VA"), and FEHBP (Federal Employee Health Benefits Program). (All costs described or set forth in this Paragraph are hereafter, "unallowable costs").

b. Future Treatment of Unallowable Costs: These unallowable costs will be separately determined and accounted for in non-reimbursable cost centers by the Hospital, and the Hospital 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 the Hospital or any of its current and former parent corporations, each of their direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: The Hospital further agrees that within 90 days of the effective date of this Agreement it will 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 report, cost statements, information reports, or payment requests already submitted by the Hospital or any of its current and former parent corporations, each of their direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns along with the current and former employees, officers and directors of any of them, and will request, and agree, that such cost reports, cost statements, information reports or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. The Hospital agrees that the United States, at a minimum, will be entitled to recoup from the Hospital 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. If the Hospital fails to identify such costs in past filed cost reports in conformity with this Paragraph, the United States may seek an appropriate penalty or other sanction in addition to the recouped amount.

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 Hospital or any of its current and former parent corporations, each of their direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them, on the effect of inclusion of unallowable costs (as defined in this Paragraph) on the cost reports, cost statements, or information reports of the Hospital or any of its current or former parent corporations, each of their direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them. 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.

9. This Agreement is intended to be for the benefit of the Parties only, including the Hospital (together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions, affiliates, predecessors, successors and assigns, along with the current and former employees, officers, directors of any of them) and by this instrument the Parties do not release any claims against any other person or entity.

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

11. The Hospital expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3), and will remain solvent following its payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to the Hospital, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

12. In the event the Hospital commences, or a third party commences, within 91 days of any payment of the Settlement Amount, 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 Hospital's debts, or seeking to adjudicate Hospital as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Hospital or for all or any substantial part of Hospital's assets, Hospital agrees as follows:

a. The Hospital's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Hospital will not argue or otherwise take the position in any such case, proceeding or action that: (i) Hospital's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Hospital was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United 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 Hospital.

b. In the event that any of the Hospital's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers

under the Bankruptcy Code, and to the extent the avoided obligation is not otherwise fulfilled by third parties (in which case the payment by the third party would be considered a payment of the Settlement Amount), the United States, at its sole option and upon 30 days' written notice and opportunity to cure such deficiency, may rescind the releases in this Agreement as to the Hospital, and bring any civil and/or administrative claim, action or proceeding against the Hospital for the claims that would otherwise be covered by the releases provided in Paragraph 3, above. If the United States chooses to do so, the Hospital agrees that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude the Hospital from participation in 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 the Hospital will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; and (ii) the Hospital 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 one hundred eighty (180) calendar days of written notification to the Hospital that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the effective date of this Settlement Agreement.

c. The Hospital acknowledges that its agreements in this paragraph are provided in exchange for valuable consideration provided in this Agreement.

13. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. The Hospital represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

15. 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 Southern District of Florida.

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

17. The undersigned individuals signing this Agreement on behalf of the Hospital, represent and warrant that they are authorized to execute this Agreement on behalf of that entity. 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.

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

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

20. This Agreement is binding on successors, transferees, heirs, and assigns.

21. Any notices required under this Agreement shall be directed to the following persons:

On behalf of the Hospital:

Christi R. Sulzbach (or her successor)
General Counsel and Executive Vice President
Tenet Healthcare Corporation
Legal Department
3820 State Street
Santa Barbara, California 93105

On behalf of the United States, its agencies, departments and divisions:

Michael F. Hertz (or his successor)
Director, Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 261
Ben Franklin Station
Washington, D.C. 20044

THE UNITED STATES OF AMERICA

DATED: 1/17/03

BY: Mark A. Lavine
MARK A. LAVINE
Assistant United States Attorney
Southern District of Florida

DATED: 1/9/03

BY: Michael F. Hertz
MICHAEL F. HERTZ
JOYCE R. BRANDA
DIANA YOUNTS
Civil Division
U.S. Department of Justice

DATED: _____

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

On behalf of the United States, its agencies, departments and divisions:

Michael F. Hertz (or his successor)
Director, Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 261
Ben Franklin Station
Washington, D.C. 20044

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

MARK A. LAVINE
Assistant United States Attorney
Southern District of Florida

DATED: _____

BY: _____

MICHAEL F. HERTZ
JOYCE R. BRANDA
DIANA YOUNTS
Civil Division
U.S. Department of Justice

DATED: 1/13/03

BY: _____


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

HOSPITAL

DATED: 5/23/02

BY: 
JOEL M. BERGENEELD
CEO

DATED: 5/21/02

BY: 
NICOLA T. HANNA
GIBSON, DUNN & CRUTCHER LLP
Counsel for HOSPITAL