

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 Center for Medicare and Medicaid Services (CMS) and its predecessor, the Health Care Finance Administration (HCFA) (collectively the "United States"); Matthew J. Sisler, the relator in this cause of action; the State of Montana, and its agencies, officers, and employees (hereinafter collectively referenced as "the State of Montana"); and Healthy Mothers, Healthy Babies--The Montana Coalition, and its agents, officers, directors, employees, and insurers (hereinafter collectively referenced as "HMHB"); by and through their authorized representatives. Throughout the remainder of this document when referred to on a collective basis, these individual and entities are referred to as "the Parties".

II. PREAMBLE

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

A. HMHB, a defendant in this case, is a Montana organization operating under state not-for-profit laws. Defendant State of Montana, acting through its Department of Public Health and Human Services (DPHHS) and its predecessors, the Department of Health and Environmental Sciences (DHES) and the Department of Social and Rehabilitative Services (SRS), contracted with HMHB to provide services as an independent contractor. As a relator and pursuant to the False Claims Act (FCA), Matthew J. Sisler filed an Amended Qui Tam Complaint under seal on or about June 2, 2000 against HMHB and the State of Montana, among others, alleging that the Defendants had violated the FCA (a copy of this complaint is attached hereto as Exhibit A). This Amended Qui Tam Complaint is filed in the United States District Court for the District of Montana and docketed as CV 99-125-M-DWM (hereinafter referenced as "the Civil Action"). The United States elected to intervene in the Civil Action, and the Complaint of the United States was filed under seal on or about October 25, 2000. A copy of this complaint is attached hereto as Exhibit B. The Amended Complaint of the United States was filed on October 4, 2002, and is attached hereto as Exhibit C.

B. The United States alleges that the State of Montana and HMHB submitted or caused to be submitted to the Medicaid Program (Medicaid), 42 U.S.C. § 1396(b), claims for payment in violation of both the FCA and common law. The common law

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claims include; but are not limited to, fraud, unjust enrichment, negligent misrepresentation, and payment under mistake of fact. The State of Montana and HMHB deny the contentions and allegations in the Amended Complaint of the United States, the initial Complaint of the United States, and the Relator's Amended Complaint and Complaint.

C. The United States alleges that it has certain civil claims against the State of Montana and HMHB, based upon the conduct described in the Amended Complaint of the United States, including the following alleged conduct during the period from May 1, 1990 to July 1, 2001 (hereinafter referred to as the "Covered Conduct"):

The State of Montana submitted claims for Medicaid outreach monies to HCFA based upon representations that private contributors had made donations to HMHB to help the State of Montana pay its share of the outreach costs, which were submitted to HCFA/CMS by the State of Montana as eligible for federal matching.

Section 3729 of Title 31 of the U.S. Code creates liability for a person who knowingly presents or causes to be presented to an employee of the United States a false or fraudulent claim for payment or approval. See 31 U.S.C. § 3729(a)(1). The statute defines the terms "knowing" and "knowingly". First, no proof of specific intent to defraud is required. If a person, with respect to information, (1) has actual knowledge of the information, (2) acts in deliberate ignorance of the truth or falsity of the information, or (3) acts in reckless disregard of the truth or falsity of the information, that person has acted knowingly with respect to the requirements of the False Claims Act.


Since 1966, 42 U.S.C. § 1396b has authorized payment to states for medical assistance programs, which is termed federal financial participation (FFP). FFP also allows state government to access federal funds for certain administrative costs like Medicaid outreach programs. In order for a state to receive FFP, a state must submit expenditure reports to HCFA/CMS, which represent allowable costs under the Medicaid program. States must assure HCFA/CMS that allowable Medicaid expenditures reported to HCFA/CMS were paid by the state through permissible sources of state funding. Upon such assurance, HCFA/CMS would provide the FFP associated with the reported allowable Medicaid expenditures.

In order for a provider-related donation to be considered as a permissible source of State funding, provider-related donations must not have a direct or indirect relationship to Medicaid payments. Under 42 C.F.R. § 433.54, provider-related donations will be determined to have no direct or indirect relationship to Medicaid

  
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payments if those donations are not returned to the individual provider, the provider class, or related entity under a hold harmless provision or practice. Furthermore, that same section of the C.F.R. defines a hold harmless practice as one where the amount of the payment received is positively correlated ... to the amount of the donation or the State (through its contractor) receiving the donations provides for any payment, offset, or waiver that guarantees to return any portion of the donation to the provider. 42 C.F.R. § 433.54(c)(1)&(3).

In May 1990, the State of Montana, by and through its Department of Health and Environmental Sciences, and HMHB entered into a contract for the latter to conduct a statewide "Baby Your Baby" campaign. The contractual relationship between the State of Montana and HMHB with respect to the Baby Your Baby program, and its successor, the Montana's Child program, extended from May 1990 to June 2001. Federal Financial Participation (FFP) allows state government to access federal funds for Medicaid outreach programs. The FFP program, among others, is administered by the Center for Medicare and Medicaid Services ("CMS"), an agency of the United States.

Although there were some variations in the pattern over time, HMHB executed the scheme in the following manner. In response to a sales representative from a Montana-based television station, local businesses and non-profit organizations that advertised their products and/or services on the television station would make payments to the television station allegedly to pay for advertisements. Local businesses, the vast majority of whom had no knowledge of HMHB and/or its programs, would make payments to a television station to purchase air time to advertise their own products and services. The television stations would bundle the payments from their advertisers and forward them to HMHB, which would forward the payments to the State representing to the State (which would, in turn, represent to HCFA) that the monies constituted a permissible source of State funding, which could be used to satisfy the State's share of matchable Medicaid outreach expenditures/costs. HMHB would then return to the television stations the exact amount of money generated from the advertisers. To summarize, it is alleged that the advertisers received air time to advertise their products or services in return for their payments. The television stations provided advertising services to HMHB, a contractor with the State of Montana charged with providing a set of medical assistance programs pursuant to a state statute, took the advertisers' money, forwarded it to HMHB, and then, in return, received a check from HMHB for the exact amount sent to HMHB. The advertisers paid for and received only advertising for their own goods and services. The television stations were repaid by HMHB the exact amount of money collected from the advertisers. The State of Montana did not have to pay anything for the Medicaid outreach expenditures/costs reported to HCFA/CMS for

  
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FFP. HCFA/CMS paid the federal share of the Medicaid outreach expenditures/costs reported by the State of Montana. HMHB used this scheme throughout the 1990s in order to leverage federal funds from HCFA. The United States contends that the described payments did not constitute bonafide provider-related donations as defined by the applicable statute and regulations.

In addition, in March 1993, in correspondence with the State of Montana, where HMHB requested that the State seek federal funds for monies it received, Defendant HMHB mischaracterized contributions from the Annie Casey Foundation as matchable donations when, in fact, they were private monies earmarked for a project which did not constitute outreach through the Medicaid program. As a result, the State of Montana sought and received federal funds from HCFA which were not matchable under the applicable federal statute and regulations.

D. The United States alleges also that it has certain administrative claims against the State of Montana and HMHB for engaging in the Covered Conduct. The State of Montana and HMHB specifically deny this contention.

E. This Agreement is neither an admission of liability by the State of Montana and HMHB nor a concession by the United States that its claims are not well founded. The Parties agree that they have executed this Settlement Agreement to compromise disputed claims. Neither the Settlement Agreement, the negotiations for settlement, nor the execution of the Settlement Agreement will be offered, or admissible, as evidence of liability in any civil or administrative proceeding. The State of Montana and HMHB expressly deny any liability whatsoever for any of the claims or conduct set forth in either the Amended Qui Tam Complaint, the Complaint of the United States or the Amended Complaint of the United States (Exhibits A, B and C, attached).

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties have reached a full and final settlement pursuant to the Terms and Conditions below.

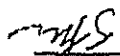
III. TERMS AND CONDITIONS

A. In consideration of the releases set forth in this Settlement Agreement and the promises of the parties therein, the State of Montana and HMHB agree to pay to the United States a total of \$288,000 (Two Hundred Eighty-Eight Thousand Dollars and no/100ths)(the "Settlement Amount"). The State of Montana agrees to pay \$152,500 (One Hundred Fifty-Two Thousand Five Hundred Dollars and no/100ths) to the United

  
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States pursuant to this settlement. HMHB agrees to pay \$135,500 (One Hundred Thirty-Five Thousand Five Hundred Dollars and no/100ths) to the United States pursuant to this settlement. HMHB agrees to pay the settlement amount by check issued to the United States of America and delivered by March 19, 2003. The State of Montana agrees to pay the settlement amount by electronic funds transfer no later than March 19, 2003 pursuant to written instructions to be provided by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Montana no later than March 14, 2003.

B. HMHB further agrees to pay a total of \$12,000 (Twelve Thousand Dollars) to the Relator, Matthew J. Sisler, for expenses, attorney fees, and costs. In consideration of this payment, Mr. Sisler agrees to execute a Joint Stipulation For Dismissal With Prejudice of, inter alia, his Amended Qui Tam Complaint in CV 99-125-M-DWM (Exhibit A). HMHB agrees to forward this payment to Mr. Sisler by check within five days of receipt of notice that the United States has possession of the Joint Stipulation For Dismissal With Prejudice executed by Mr. Sisler.

C. Subject to the exceptions herein, in consideration of the obligations of the State of Montana and HMHB set forth in this Agreement, conditioned upon the State of Montana and HMHB's full payment of the Settlement Amount, and subject to Paragraphs M & N below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release the State of Montana and HMHB and their employees, officers, agencies, and directors from any civil monetary claim or cause of action which the United States has or may have with respect to any of the Covered Conduct, or any of the conduct or claims set forth in the Amended Complaint of the United States 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, negligent misrepresentation, or fraud.

D. 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 State of Montana and HMHB) are the following:

- (1) Any civil, criminal or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- (2) Any criminal liability;

  
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(3) Except as explicitly 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) or the Relator for any conduct other than: (i) the Covered Conduct and (ii) the conduct referenced in Article III, Paragraph C, above;

(5) Any liability based upon such obligations as are created by this Agreement;

E. CMS will not pursue its administrative remedies, including either penalties or offsets, against either defendant for the covered conduct described in this Agreement and in the amended complaint of the United States.

F. HMHB waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, this Settlement Agreement bars a remedy sought in such criminal prosecution or administrative action. HMHB agrees that this Settlement Agreement is not punitive in purpose or effect. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

G. In consideration of the promises of the Parties set forth in this Settlement Agreement, the State of Montana and HMHB release the United States, its agencies, employees, servants, and agents and the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which the State of Montana and HMHB have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, and the Relator related to the Covered Conduct and the United States' investigation and prosecution thereof.

H. In consideration of the promises of the Parties set forth in the Settlement Agreement, and timely payment of the funds as set forth in Article III, Paragraphs A and B, above, the State of Montana fully and forever releases and discharges HMHB from any civil or administrative monetary claim, liability, or cause of action, including, but not limited to, claims for common law, contractual or statutory indemnity and/or contribution,

  
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that the State of Montana has or may have with respect to the Covered Conduct, or any of the conduct or claims set forth in the Amended Qui Tam Complaint, the Complaint of the United States or the Amended Complaint of the United States, or for any claims that could have been raised in the Civil Action. This release expressly includes all items set forth in the revised draft report of the agreed upon procedures engagement of the fiscal years 2000 and 1999 Montana's Child program attached to and referenced in the September 20, 2002 letter from Walt Berry, Manager of the Audit Services for the Quality Assurance Division of the Montana Department of Public Health and Human Services to Mike Cooney, Executive Director of Healthy Mothers, Healthy Babies - The Montana Coalition.

I. In consideration of the promises of the parties set forth in the Settlement Agreement, and timely payment of the funds as set forth in Article III, Paragraphs A and B, above, HMHB fully and forever releases and discharges the State of Montana from any civil monetary claim, liability or cause of action, including, but not limited to, claims for common law, contractual and/or statutory indemnity and/or contribution, that HMHB has or may have with respect to the Covered Conduct, or any of the conduct or claims set forth in the Amended Qui Tam Complaint, the Complaint of the United States or the Amended Complaint of the United States, or for any claims that could have been raised in the Civil Action.

J. Conditioned upon receipt of the payment described in Article III, Paragraph B, the Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730, or arising from the filing of the Civil Action, including 31 U.S.C. §§ 3730(b), (c), (d), and (d)(1), and for a share of the proceeds of the Civil Action, for a share of the Settlement Amount, and for a share of the proceeds of any proceeding involving an "alternate remedy" as that term is used in 31 U.S.C. § 3730(c)(5). The Relator agrees and confirms that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

Conditioned upon receipt of the payment described in Article III, Paragraph B, the Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases the State of Montana and HMHB from any claim or cause of action the Relator has or may have with respect to any of the conduct or claims set forth in the Complaint of the United States, the Amended Complaint of the United States or the Amended Qui Tam Complaint of the Relator, or for any claims that could have been raised in the Civil Action, including any liability or claim under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

  
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K. The Settlement Amount will not be decreased as a result of the denial of claims for payment now being withheld from payment from either Defendant; and the State of Montana and HMHB shall not resubmit to any payor any previously denied claim related to the covered conduct, and shall not appeal any such denials of claims.

L. The State of Montana and HMHB agree that all costs (as defined in the Federal Acquisition Regulations (FAR) § 31.205-47 and in Title's 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 State of Montana and HMHB, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs":


- (1) the negotiation and performance of this Agreement; and
- (2) the payments the State of Montana and HMHB make to the United States and the Relator pursuant to this Agreement, including any costs and attorneys fees.

M. The State of Montana and HMHB agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, the State of Montana and HMHB will encourage, and agree not to impair, the cooperation of its directors, officers, and employees and use its best efforts to make available, and encourage the cooperation of former directors, officers and employees for interviews and testimony, consistent with the rights and privileges of such individuals. The State of Montana and HMHB agree also to furnish to the United States complete and un-redacted copies of all nonprivileged documents in its possession, custody, or control concerning the Covered Conduct provided that neither the State of Montana nor HMHB has any obligation under this agreement to provide copies of documents already provided to the United States in the course of the Civil Action.

N. 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.

O. HMHB 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 548(a)(1)(B)(ii)(I), and will remain solvent following its payments to the United States and the Relator of the Settlement Amount. Further, HMHB warrants that, in evaluating whether to execute this Agreement, it (a) has intended that the mutual promises, covenants, and obligations set

  
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forth constitute a contemporaneous exchange for new value given to HMHB, within the meaning of 11 U.S.C. § 547(c)(1); and (b) concludes that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, HMHB warrants 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 HMHB was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

P. If, within 91 days of the effective date of this Agreement, HMHB 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 HMHB's debts, or seeking to adjudicate HMHB as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for HMHB or for all or any substantial part of HMHB's assets, HMHB agrees as follows:

(1) HMHB's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and HMHB will not argue or otherwise take the position in any such case, proceeding, or action that: (i) HMHB's obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) HMHB was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments made to the United States and the Relator 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 HMHB.

(2) If HMHB'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 and/or the Relator, at the sole option of either or both, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against HMHB for the claims that would otherwise be covered by the releases provided in Article III, Section C, above. HMHB agrees that (i) any such claims, actions, or proceedings brought by the United States and/or the Relator (including any proceedings to exclude HMHB from participation in Medicaid, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. Section 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that HMHB will not argue or otherwise contend that the claims, actions, or proceedings of either or both the United States and/or the Relator are subject to an automatic stay; (ii)

  
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that HMHB 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 and/or the Relator within thirty calendar days of written notification to HMHB that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the date of the filing of the Relator's Complaint; and (iii) the United States and the Relator have a valid claim against HMHB, and either or both the United States and/or the Relator 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.

(3) HMHB acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

Q. Upon receipt of the payment described in Article III, Paragraph A above, the United States shall promptly sign and file a Joint Stipulation of Dismissal With Prejudice of the Amended Complaint of the United States and the Amended Complaint of the Relator.

R. 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.

S. The State of Montana, HMHB, the United States, and the Relator represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

T. 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 District of Montana.

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

V. The Individuals signing this Agreement on behalf of the State of Montana and HMHB represent and warrant that they are authorized by the State of Montana and HMHB to execute this Agreement. The United States signatory represents that he is signing this Agreement in his official capacity and that he is authorized by the

  
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United States to execute this Agreement.

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

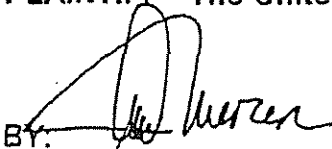
X. This Agreement is binding on the successors, transferees, heirs, and assigns of HMHB and the Relator.

Y. All parties consent to the disclosure of this Agreement and information about this Agreement by the State of Montana, HMHB, the Relator, and/or the United States.

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

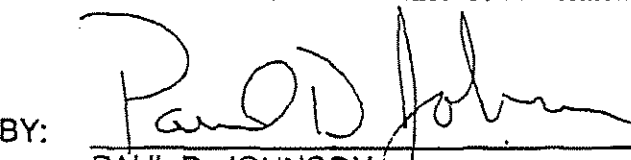
**PLAINTIFF - The United States of America**

DATED: March 18, 2003

BY:   
WILLIAM W. MERCER  
U.S. Attorney for the District of Montana  
Attorney for Plaintiff United States

**DEFENDANT - The State of Montana**

DATED: March 13, 2003


BY:   
PAUL D. JOHNSON  
Assistant Attorney General  
Attorney for the State of Montana

**DEFENDANT - Healthy Mothers,  
Healthy Babies -The Montana  
Coalition**

  
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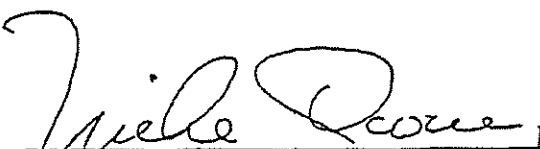
  
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DATED: March 13, 2003

BY:   
MIKE COONEY  
Executive Director

RELATOR - Matthew J. Sisler

DATED: March 17 2003

BY:   
MATTHEW J. SISLER  
Relator

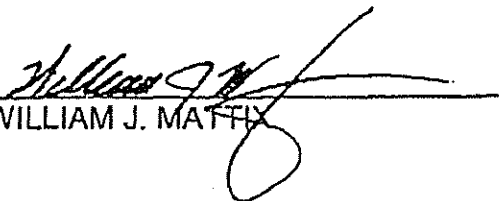
MONTANA DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES

DATED: March 13, 2003

BY:   
GAIL GRAY, Director

INSURANCE CO. - Chubb Insurance Group

DATED: March 11, 2003

BY:   
WILLIAM J. MATTIX

  
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