

## 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") and TRICARE Management Activity ("TMA") (formerly the Office of Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS") (collectively the "United States"); The Physicians' Pain & Rehabilitation Specialists of Georgia, P.C. ("PPRS"); The Physicians' Medical Services Corporation ("PMSC"); Russell J. Rizor ("RJR"); Randy F. Rizor, M.D. ("RFR"); John G. Porter, M.D. ("Porter"); Charles A. MacNeill, Jr., M.D. ("MacNeill") and Efrim Moore, M.D. ("Relator") (hereafter referred to collectively as "the Parties"), by and through their authorized representatives.

### II. PREAMBLE

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

1. PPRS is a multi-site physician practice specializing in the practice of pain management. From October 1995 through September 2001, PMSC provided comprehensive management services to PPRS.

2. Relator is a physician who is a resident of Georgia where he is engaged in the practice of pain management medicine. On February 17, 2000, Relator filed a qui tam action in the United States District Court for the Northern District of Georgia captioned, *United States of America ex rel. Dr. Efrim C. Moore v. The Physicians' Pain & Rehabilitation Specialists of Georgia, P.C. (PPRS); The Physicians' Medical Services Corporation; Russell J. Rizor; Dr. Randy F. Rizor; Dr. John G. Porter; Dr. Charles A. MacNeill, Jr.; Columbia/HCA Healthcare Corp.; Metropolitan Hospital; Northlake Surgical Center, Inc.; Barrow Medical Center; Marietta Surgical Center; and Atlanta Outpatient Surgery Center, Inc.*, Civil Action No. 1:00-cv-0427-CAP (hereinafter "the Civil Action.") Relator was employed as a pain management specialist by PPRS from July 1998 through February 1999.

3. The United States contends that PPRS and PMSC 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 and the TRICARE Program (also known as the Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS")), 10 U.S.C. §§ 1071-1110.

4. The United States contends that it has certain civil claims, as specified in Paragraph 4 below, against PPRS,

PMSC, RJR, RFR, Porter, and MacNeill for engaging in the following conduct during the period from 1996 to 1999: (i) submitting claims to Medicare for certain procedures, myelograms and arthrograms, when, in fact, other procedures were performed; and (ii) submitting Medicare claims for both the technical and professional components of fluoroscopy, when neither PPRS nor PMSC owned the fluoroscope used to provide the service, and, therefore, could not bill for the technical component (hereinafter referred to as the "Covered Conduct").

5. The United States also contends that it has certain administrative claims, as specified in Paragraphs 5 and 6 below, against PPRS, PMSC, RJR, RFR, Porter, MacNeill for engaging in the Covered Conduct.

6. PPRS, PMSC, RJR, RFR, Porter and MacNeill deny the allegations in Paragraphs 3, 4 and 5 above. This Agreement is neither an admission of liability by PPRS, PMSC, RJR, RFR, Porter, or MacNeill, nor a concession by the United States that its claims are not well founded.

7. 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. Immediately upon execution of this Agreement by all Parties, PPRS agrees to pay to the United States the sum of \$900,000.00 (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the United States.

2. Contingent upon the United States receiving the Settlement Amount from PPRS, the United States agrees to pay \$162,000.00 to Relator by electronic funds transfer pursuant to written instructions to be provided by Relator's counsel, no later than fifteen (15) days from the date of receipt of the Settlement Amount from PPRS.

3. Upon Relator's execution of this Settlement Agreement, PPRS will pay Relator's counsel by electronic funds transfer pursuant to written instructions provided by Relator's counsel the total amount of \$41,688.00 for expenses and attorney's fees and costs.

4. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of PPRS, PMSC, RJR, RFR, Porter and MacNeill in this Agreement, and conditioned upon PPRS' full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) hereby fully releases PPRS and PMSC, and their officers, directors,

employees, agents, and affiliates; and RJR; RFR; Porter; and MacNeill, from any civil or administrative monetary claims 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, breach of contract, and fraud, for the Covered Conduct.

5. In consideration of the obligations of PPRS, PMSC, RJR, RFR, Porter, and MacNeill in this Agreement and the Corporate Integrity Agreement ("CIA") incorporated herein by reference, conditioned upon PPRS' full payment of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against PPRS, PMSC, RJR, RFR, Porter and MacNeill 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 7 below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude PPRS, PMSC, RJR, RFR, Porter and

McNeill from the Medicare, Medicaid, or other Federal health care program 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 7, below. Except as explicitly stated in this Agreement, no other individuals are released from exclusion liability.

6. In consideration of the obligations of PPRS, PMSC, RJR, RFR, Porter and MacNeill set forth in this Agreement, conditioned upon PPRS' full payment of the Settlement Amount, TMA hereby agrees to release and refrain from instituting, directing, or maintaining any administrative action against PPRS and PMSC, and any of their officers, directors, employees, agents, and affiliates; RJR; RFR; Porter; and MacNeill, including but not limited to any action seeking exclusion from the TRICARE program under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph 7, below, and as reserved in this Paragraph. Nothing in this Paragraph precludes TMA or the TRICARE Program from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 7 below.

7. 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 PPRS and PMSC) 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.

8. In consideration of the obligations of PPRS, PMSC, RJR, RFR, Porter and MacNeill set forth in this Agreement, conditioned upon the receipt of the payments described in

Paragraphs 2 and 3 above, 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 in connection with this Civil Action, or arising from the filing of the Civil Action, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1) in connection with this Civil Action. 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).

9. In consideration of the obligations of PPRS, PMSC, RJR, RFR, Porter and MacNeill set forth in this Agreement, conditioned upon the receipt of the payments described in Paragraphs 2 and 3 above, Relator freely and voluntarily, for himself, and for his heirs, successors, attorneys, agents, and assigns, hereby fully releases and discharges PPRS and PMSC and each of their past, current and future parents, subsidiaries and affiliated companies, and each of their past, current and future officers, directors, agents, attorneys, and employees, and RJR, RFR, Porter and MacNeill, and each of their heirs, successors, attorneys and assigns of and from any and all debts, obligations, claims, demands, judgments or causes of action of any kind whatsoever, known or unknown, in tort, contract, by statute or on



any other basis, for equitable relief, compensatory, punitive, or other damages, expenses (including attorneys' fees), reimbursements of costs of any kind, including but not limited to, any and all claims, demands, rights and/or causes of action of any kind that he may now have, may claim to have or may hereafter claim to have arising out of any act or omission from the beginning of time until the date of this Agreement.

10. In consideration of Relator's execution of this Agreement, PPRS, PMSC, RJR, RFR, Porter, and MacNeill, freely and voluntarily, for themselves collectively and individually, their heirs, successors, attorneys, agents and assigns, and any past, current and future officers, directors, agents, attorneys and employees of PPRS and PMSC, and each of PPRS's and PMSC's past, current and future parents, subsidiaries and affiliated companies, hereby fully release and discharge Relator, and his heirs, successors, assigns, attorneys and agents, of and from any and all debts, obligations, claims, demands, judgments or causes of action of any kind whatsoever, known or unknown, in tort, contract, by statute or on any other basis, for equitable relief, compensatory, punitive, or other damages, expenses (including attorneys' fees), reimbursements of costs of any kind, including but not limited to, any and all claims, demands, rights and/or causes of action of any kind, that they may now have, may claim

to have or may hereafter claim to have arising out of any act or omission from the beginning of time through the date of this Agreement.

11. PPRS has entered into a CIA with OIG-HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. PPRS will immediately upon execution of this Agreement implement its obligations under the CIA.

12. PPRS, PMSC, RJR, RFR, Porter and MacNeill waive and will not assert any defenses PPRS, PMSC, RJR, RFR, Porter and MacNeill 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 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. PPRS, PMSC, RJR, RFR, Porter and MacNeill 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 Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

13. PPRS, PMSC, RJR, RFR, Porter, and MacNeill, 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 PPRS, PMSC, RJR, RFR, Porter, and MacNeill, 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.

14. The Settlement Amount 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 PPRS and PMSC 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. PPRS and PMSC agree to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations (FAR) 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 PPRS and/or PSMC, their

present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs":

- (1) the matters covered by this Agreement,
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) PPRS' and PMSC's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil 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 payment PPRS and/or PMSC make to the United States pursuant to this Agreement and any payments that PPRS and/or PMSC may make to Relator, 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 CIA; and
  - (ii) prepare and submit reports to the OIG-HHS. The costs identified above are unallowable costs on

Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP).

(All costs described or set forth in this Paragraph 15(a) are hereafter, "unallowable costs"). Nothing in this Paragraph affects the status of costs that are not allowable based on any other authority applicable to PPRS and/or PSMC.

(b) Future Treatment of Unallowable Costs: Where applicable, unallowable costs will be separately determined and accounted for by PPRS and PMSC, and PPRS and PMSC 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 PPRS and/or PMSC or any of their subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment (if applicable): PPRS and PMSC further agree 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 reports, cost statements, information reports, or payment requests already submitted by PPRS and PMSC or any of its subsidiaries or affiliates, 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. PPRS and PMSC agree that the United States, at a minimum, shall be entitled to recoup from PPRS and PMSC 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 PPRS and PMSC or any of their subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on PPRS and PMSC or any of their subsidiaries' 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 PPRS' and PMSC's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

16. PPRS and PMSC 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.

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

18. PPRS, PMSC, RJR, RFR, Porter, and MacNeill represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. 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 Georgia, except that disputes arising

under the CIA shall be resolved exclusively under the dispute resolution provisions in the CIA.

20. This Agreement and the CIA which is incorporated herein by reference constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only PPRS and OIG-HHS must agree in writing to modification of the CIA.

21. Upon receipt of the payments described in Paragraphs 1, 2, and 3 above, the United States shall within five (5) days sign and file in the Civil Action a Notice of Intervention and Stipulation of Dismissal with prejudice as to the Covered Conduct alleged in the Civil Action and without prejudice as to the remaining claims in the Civil Action, and Relator shall within five (5) days sign and file in the Civil Action a Stipulation of Dismissal with prejudice of the Civil Action pursuant to the terms of the Agreement.

22. The individuals signing this Agreement on behalf of PPRS and PMSC represent and warrant that they are authorized by PPRS and PMSC to execute this Agreement. The individual(s) signing this Agreement on behalf of RJR, RFR, Porter, MacNeill and Relator represent and warrant that they are authorized 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.

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

24. This Agreement is binding on PPRS' and PMSC's successors, transferees, heirs, and assigns.

25. PPRS, PMSC, RJR, RFR, Porter, MacNeill and Relator consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

26. 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 Agreement.

THE UNITED STATES OF AMERICA

WILLIAM S. DUFFEY, JR.  
UNITED STATES ATTORNEY

DATED: 11/24/03

BY: *Amy Berne Kaminshine*  
AMY BERNE KAMINSHINE  
Assistant United States Attorney

DATED: 11/20/03

BY: *Larry J. Goldberg*  
LARRY J. GOLDBERG  
Assistant Inspector General  
For Legal Affairs  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
LAUREL C. GILLESPIE  
Deputy General Counsel  
TRICARE Management Activity  
United States Department of Defense

[signatures continued on next page]

26. 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 Agreement.

THE UNITED STATES OF AMERICA

WILLIAM S. DUFFEY, JR.  
UNITED STATES ATTORNEY

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

AMY BERNE KAMINSHINE  
Assistant United States Attorney

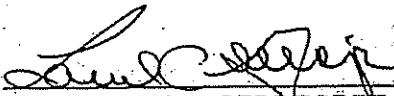
DATED: \_\_\_\_\_

BY: \_\_\_\_\_

LARRY J. GOLDBERG  
Assistant Inspector General  
For Legal Affairs  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

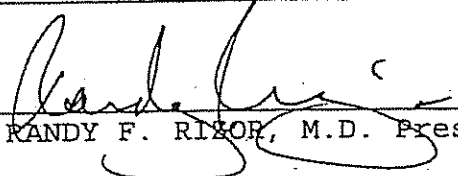
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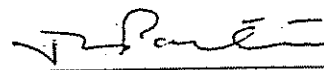
  
LAUREL C. GILLESPIE  
Deputy General Counsel  
TRICARE Management Activity  
United States Department of Defense

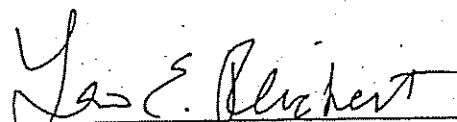
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THE PHYSICIANS' PAIN & REHABILITATION SPECIALISTS OF GEORGIA, P.A.

DATED: 11/18/03 BY:   
RANDY F. RIZOR, M.D. President

THE PHYSICIANS' MEDICAL SERVICES CORPORATION

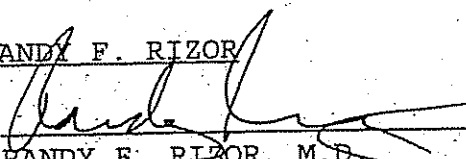
DATED: 11/18/03 BY:   
JOHN G. PORTER, M.D.  
President

DATED: 11-21-03 BY:   
LEO E. REICHERT  
PARKER HUDSON RAINER & DOBBS, LLP  
Counsel for The Physicians' Pain &  
Rehabilitation Services, P.C. and  
The Physicians' Medical Services  
Corporation

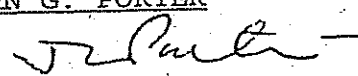
RUSSELL J. RIZOR

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
RUSSELL J. RIZOR

DR. RANDY F. RIZOR

DATED: 11/18/03 BY:   
RANDY F. RIZOR, M.D.

DR. JOHN G. PORTER

DATED: 11/18/03 BY:   
JOHN G. PORTER, M.D.

[signatures continued on next page]

THE PHYSICIANS' PAIN & REHABILITATION SPECIALISTS OF GEORGIA, P.A.

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
RANDY F. RIZOR, M.D. President

THE PHYSICIANS' MEDICAL SERVICES CORPORATION

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
JOHN G. PORTER, M.D.  
President

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
LEO E. REICHERT  
PARKER HUDSON RAINER & DOBBS, LLP  
Counsel for The Physicians' Pain &  
Rehabilitation Services, P.C. and  
The Physicians' Medical Services  
Corporation

DATED: 11/18/03 BY: \_\_\_\_\_  
RUSSELL J. RIZOR  
RUSSELL J. RIZOR

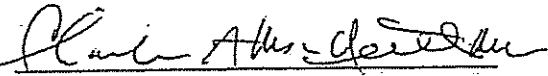
DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
DR. RANDY F. RIZOR  
RANDY F. RIZOR, M.D.

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
DR. JOHN G. PORTER  
JOHN G. PORTER, M.D.

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DR. CHARLES A. MACNEILL, JR.

DATED: 11/18/03

BY:   
CHARLES A. MACNEILL, JR., M.D.

RELATOR

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
EFRIM MOORE, M.D.

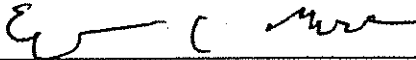
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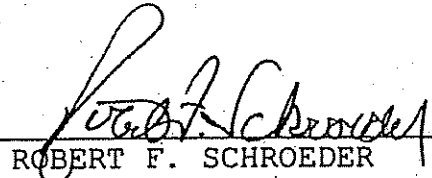
BY: \_\_\_\_\_  
ROBERT F. SCHROEDER  
LAW OFFICE OF  
ROBERT F. SCHROEDER, PC  
Counsel for Relator

DR. CHARLES A. MACNEILL, JR.

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
CHARLES A. MACNEILL, JR., M.D.

RELATOR

DATED: 19 Nov. 2003 BY:   
EFRIM MOORE, M.D.

DATED: 11/19/03 BY:   
ROBERT F. SCHROEDER  
LAW OFFICE OF  
ROBERT F. SCHROEDER, PC  
Counsel for Relator