

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is entered into by and among the United States of America, acting through the United States Department of Justice and on behalf of the U.S. Postal Service (“USPS”) (collectively the “United States”), Bobby Blizzard (“Relator”), and Beam Bros. Trucking, Inc. (BBT), Gerald Beam, and Garland Beam, through their authorized representatives. BBT, Gerald Beam, and Garland Beam are hereinafter collectively referred to as “Beam.” The United States, Relator, and Beam are hereafter collectively referred to as the “Parties” and each individually as a “Party.”)

RECITALS

- A. BBT is a trucking company located in Mt. Crawford, Virginia.
- B. Gerald Beam and Garland Beam are shareholders of Beam Bros. Holding Corp., which is the sole owner of BBT.
- C. In 2010, Bobby Blizzard filed a *qui tam* action in the United States District Court for the District of New Jersey against BBT captioned *United States ex rel. Doe v. Beam Bros. Trucking, Inc.*, Civil Action No. 10-657, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”).
- D. The United States contends that it has certain civil claims against Beam for the period 2008 through 2014 arising from BBT using Voyager Cards to pay for fuel on the following USPS Highway Route Contract (HCR) contracts when those contracts did not allow for the use of a Voyager Card to pay for fuel: 101B3, 117PT, 170CK, 170L6, 192Y7, 207GE, 207NE, 245L3, 254AQ, 275WT and 753DE. That conduct is referred to below as the “Covered Conduct.”

E. This Settlement Agreement is neither an admission of liability by Beam nor a concession by the United States that its claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Beam shall pay to the United States \$1,025,000 (One Million and Twenty-Five Thousand Dollars) (the "Settlement Amount"), by electronic funds transfer pursuant to written instructions to be provided by the U.S. Attorney's Office for the District of New Jersey. Beam shall pay the Settlement Amount no later than ten (10) business days after the Effective Date of this Agreement.

2. BBT and Relator will resolve Relator's claim under 31 U.S.C. § 3730(h) and Relator's claim for expenses, attorneys' fees and costs pursuant to a separate written agreement or, in the absence of an agreement, as may be ordered by the Court.

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Beam's full payment of the Settlement Amount, the United States releases Beam from any civil or administrative monetary claim the United States has for the Covered Conduct under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109; the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; any statutory provision creating a cause of action for civil

damages or civil penalties which the Civil Division of the Department of Justice has actual or present authority to assert and compromise pursuant to 28 C.F.R. Pt. 0, Subpart I, 0.45(d); or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 5 below, and conditioned upon Beam's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Beam from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

5. Notwithstanding the releases given in paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in the Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals except as otherwise released by the United States in Paragraph 3 of this Agreement;

- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

6. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). In connection with this Settlement Agreement and the Civil Action, Relator and his heirs, successors, attorneys, agents, and assigns agree that neither this Agreement, any intervention by the United States in the Civil Action in order to dismiss the Civil Action, nor any dismissal of the Civil Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar Relator from sharing in the proceeds of this Agreement. Moreover, the United States and Relator and his heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that Relator should receive of any proceeds of the settlement of his claim(s).

7. Beam waives and shall not assert any defenses Beam may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth

Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. 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.

8. Beam fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Beam has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

9. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Beam, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement and any plea agreements;
- (2) the United States' audit(s) and civil and criminal investigation(s) of the matters covered by this Agreement;
- (3) Beam's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and criminal investigation(s) in connection with the

matters covered by this Agreement (including attorney's fees);

- (4) the negotiation and performance of this Agreement and any plea agreement;
- (5) the payment Beam makes to the United States pursuant to this Agreement and any payments that Beam may make to Relator, including costs and attorneys fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Beam and Beam shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Beam shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Beam or any of its subsidiaries or affiliates from the United States. Beam agrees that the United States, at a minimum, shall be entitled to recoup from Beam any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Beam's books and records and to disagree with any calculations submitted by Beam or any of its subsidiaries or

affiliates regarding any Unallowable Costs included in payments previously sought by Beam, or the effect of any such Unallowable Costs on the amount of such payments.

10. This Agreement is intended to be for the benefit of the Parties only.

11. Upon receipt of the payment described in Paragraph 1, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1). With the exception of Relator's claim under 31 U.S.C. § 3730(h) and Relator's claim for expenses, attorneys' fees and costs under 31 U.S.C. § 3730(d), the claims asserted against BBT in the Civil Action shall be dismissed with prejudice to Relator, and with prejudice to the United States with respect to the Covered Conduct, but otherwise without prejudice to the United States.

12. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. Each Party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

14. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

16. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

18. This Agreement is binding on Beam's successors, transferees, heirs, and assigns.

19. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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

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

THE UNITED STATES OF AMERICA

DATED: _____ BY: _____
Gregory Pearson
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

Frances Bajada
Assistant U.S. Attorney
United States Attorney's Office
District of New Jersey

DEFENDANT

DATED: _____ BY: _____
Michael Gill
Beam Bros. Trucking, Inc.

DATED: _____ BY: _____
Gerald Beam

DATED: _____ BY: _____
Garland Beam

DATED: _____ BY: _____
Michael Gill
Hancock, Daniel, Johnson & Nagle, P.C.
Counsel for Beam Bros. Trucking, Inc., Gerald Beam,
and Garland Beam

RELATOR

DATED: _____ BY: _____
Bobby Blizzard

DATED: _____ BY: _____
Timothy J. McInnis
McInnis Law
Counsel for Relator