

SETTLEMENT AGREEMENT

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”) (collectively, the “United States”) and St. Mary Medical Center (“SMMC”), through their authorized representatives.

PREAMBLE

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

- A. SMMC is a private, not-for-profit, acute-care hospital located in Langhorne, PA, that provides clinical inpatient and outpatient services to patients in Bucks County and the Philadelphia metropolitan area.
- B. This settlement follows a voluntary disclosure by SMMC. SMMC has voluntarily disclosed that it submitted or caused to be submitted non-covered claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh.
- C. The United States contends that it has certain civil causes of action, as specified in Paragraph 4, below, against SMMC for engaging in the following conduct: Submission of non-covered claims to Medicare for “One-day” inpatient admissions (i.e. claims bearing an admission date followed by a discharge date one day later) for dates of service from October 1, 2001 through September 30, 2007.

The conduct described in this Paragraph is hereinafter referred to as the “Covered Conduct.”

D. The United States also contends that it has certain administrative claims, as specified in Paragraphs 3 and 4 below, against SMMC for engaging in the Covered Conduct.

E. SMMC denies any liability for the claims specified in the Covered Conduct or under Paragraph C of this Preamble.

F. 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.

TERMS AND CONDITIONS

1. SMMC agrees to pay to the United States \$3,283,725. This payment shall be made within thirty (30) business days from the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the U.S. Attorney’s Office for the Eastern District of Pennsylvania.

2. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of SMMC in this Agreement and conditioned upon SMMC’s full payment of the Settlement Amount, and subject to Paragraph 12, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release SMMC from any civil or administrative monetary claim the United States has or may have for the Covered Conduct 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, and fraud. No individuals are released by this agreement.

3. In consideration of the obligations of SMMC in this Agreement and conditioned upon SMMC's full payment of the Settlement Amount, and subject to Paragraph 12, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against SMMC, 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 4 below, and as reserved in this Paragraph. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude SMMC from Medicare, Medicaid, and 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 claims have been reserved in Paragraph 4, below.

4. 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 SMMC) 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 to the United States (or its agencies) for any claims submitted to Medicaid described in Paragraph C above including, but not limited to, claims made to Medicaid for Medicare co-payments or deductibles for beneficiaries who are dual-eligibles, i.e., enrolled in both Medicare and Medicaid;

f. Any liability based upon such obligations as are created by 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; and

h. Except as explicitly stated in this Agreement, any liability of individuals, including officers and employees.

5. SMMC waives and shall not assert any defenses it 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.

6. SMMC fully and finally releases 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 SMMC 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.

7. The Settlement Amount 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, or any state payor, related to the Covered Conduct; and SMMC shall not resubmit to any Medicare carrier or intermediary or any state payor any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

8. SMMC agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of SMMC, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on government contracts and under the Medicare, Medicaid, TRICARE, and FEHBP Programs:

(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) investigative, defense, and corrective actions undertaken by SMMC 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, and

(5) the payment SMMC makes to the United States pursuant to this Agreement, including any costs and attorneys fees.

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for in nonreimbursable cost centers by SMMC, and SMMC shall 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 SMMC or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: SMMC further agrees that within 90 days of the Effective Date of this Agreement they shall 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 SMMC or any of their subsidiaries or

affiliates, and shall 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. SMMC agrees that the United States, at a minimum, shall be entitled to recoup from them 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 SMMC or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on SMMC or any of its subsidiaries or affiliates' 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 the facility's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

9. This Agreement is intended to be for the benefit of the Parties only and the Parties do not release any claims against any other person or entity, except as explicitly stated in this Agreement.

10. SMMC waives 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.

11. SMMC warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to SMMC, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant 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 SMMC was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

12. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, SMMC 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 SMMC' debts, or seeking to adjudicate SMMC as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for SMMC or for all or any substantial part of SMMC's assets, SMMC agrees as follows:

a. SMMC's obligations under this Agreement may not be avoided pursuant

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

b. If SMMC'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, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against SMMC for the claims that would otherwise be covered by the releases provided in Paragraphs 2 - 4, above. SMMC agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude SMMC 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 proceedings described in the first clause of this Paragraph, and SMMC shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) SMMC shall 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 that are brought by the United States within 60 calendar days of written notification to SMMC that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of the Agreement; and (iii) the United States has a valid

claim against SMMC in the amount of \$5,709,771 or for penalties at its election, and the United States 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.

c. SMMC acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

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

14. SMMC 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 is the United States District Court for the Eastern District of Pennsylvania.

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 individuals signing this Agreement on behalf of SMMC represent and warrant that they are authorized by SMMC 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.

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

electronic copies of physical documents, including but not limited to facsimiles, .pdf images, .tiff images, and other, similar electronic formats.

19. This Agreement is binding on the successors, transferees, heirs, and assigns of SMMC.

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). In accordance with Paragraph 18 above, facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

(Continued on next page)

THE UNITED STATES OF AMERICA

DATED: 12-22-10 BY:




ZANE DAVID MEMEGER
United States Attorney

DATED: 12/23/2010 BY:



MARGARET L. HUTCHINSON
Assistant United States Attorney
Chief, Civil Division

DATED: 12/25/2010 BY:



PAUL W. KAUFMAN
Assistant United States Attorney

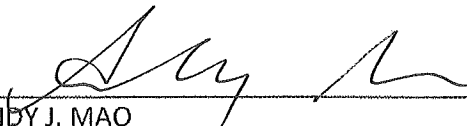
THE UNITED STATES OF AMERICA (Cont.)

TONY WEST
Assistant Attorney General

DATED:

12/20/10

BY:



ANDY J. MAO
Senior Counsel for Health Care Fraud and
Elder Justice
Commercial Litigation Branch, Civil Division
United States Department of Justice

THE UNITED STATES OF AMERICA (Cont.)

DATED:

12/21/10

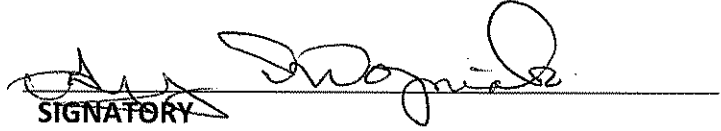
BY:



GREGORY E. DEMSKE
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

St. Mary Medical Center

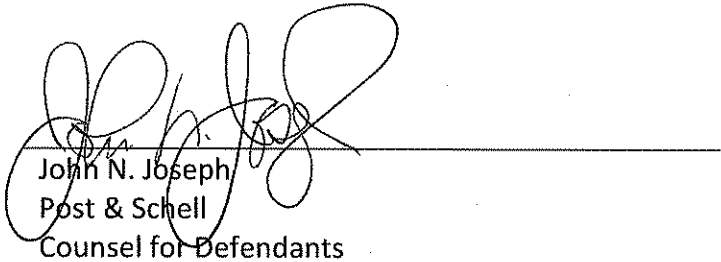
DATED: December 16, 2010 BY:



SIGNATORY

Gregory T. Wozniak
St. Mary Medical Center
President and CEO

DATED: December 17, 2010 BY:



John N. Joseph
Post & Schell
Counsel for Defendants