

SETTLEMENT AGREEMENT

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 Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS); the Defense Health Agency (DHA), acting on behalf of the TRICARE program (collectively, the "United States"), the State of Florida, acting through the Florida Office of the Attorney General ("Florida"), Mori, Bean and Brooks, PA ("MBB") and Thomas Heyck ("Relator") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Mori, Bean and Brooks, PA is a radiology practice in the Jacksonville, Florida area. MBB treats Medicare and Medicaid patients in its practice.

B. On April 27, 2018, Thomas Heyck filed a qui tam action in the United States District Court for the Middle District of Florida captioned United States ex rel. Thomas Heyck v. Mori, Bean & Brooks, P.A. Case No. 3:18-cv-590-J-39PDB, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). Mr. Heyck alleged that MBB had engaged in a years-long scheme to perform radiology reads while outside the United States, which is prohibited for the Medicare and Medicaid programs. 42 U.S.C. § 1395y(a)(4).

C. The United States and Florida contend that MBB submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll ("Medicare") and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 ("Medicaid").

D. The United States and Florida contend that each has certain civil claims against MBB arising from the interpretation of radiological images performed outside the United States during the period from April 27, 2012 through February 5, 2019. Starting in 2006, MBB sent

radiologists to Madrid, Spain; Mumbai, India; and Sydney, Australia to interpret images during night hours for emergency room visits to Jacksonville hospitals. For most of these interpretations, MBB billed Medicare and Medicaid for the work of the overseas doctor. For a minority of cases, MBB attempted to perform a second read hours or days later and bill Medicare for the work of the second radiologist, even though in many instances the patient had already been discharged from the emergency room by the time the second read was conducted. That conduct is referred to below as the "Covered Conduct."

E. This Settlement Agreement is neither an admission of liability by MBB nor a concession by the United States or Florida that the 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. MBB shall pay to the United States and Florida a total of \$1,490,515.20 (Settlement Amount) and interest on the Settlement Amount at a rate of 0.75% from October 23, 2020, to the Effective Date of this Agreement, of which \$779,223.39 is restitution, no later than 45 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Middle District of Florida.

2. Conditioned upon the United States receiving the Settlement Amount from MBB and as soon as feasible after receipt, the United States shall pay \$252,475.93 plus applicable interest to Relator by electronic funds transfer.

3. MBB shall pay to the Relator \$69,409.73, for costs, expenses and attorneys' fees pursuant to 31 U.S.C. § 3730(d), no later than 45 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by Relator's counsel.

4. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon MBB's full payment of the Settlement Amount, the United States releases MBB from any civil or administrative monetary claim the United States has 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.

5. Subject to the exceptions in Paragraph 8 below, and conditioned upon MBB's full payment of the Settlement Amount, the State of Florida releases MBB from any civil or administrative monetary claim the state of Florida has for any claims submitted or caused to be submitted to the state Medicaid Program or its contracted Managed Care Organizations (MCO) as a result of the Covered Conduct. Nothing in the Agreement precludes the State of Florida from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8.

6. Conditioned upon MBB's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, fully and finally releases MBB and its current and former directors, officers, shareholders, employees, and representatives from any and all manner of claims arising under, or arising from the filing of the Civil Action, or from any past activities and actions of MBB, and from any civil monetary claim the relator has or may have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733 or any similar federal or state statute.

7. Notwithstanding the releases given in Paragraph 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 this Agreement, any administrative liability, including mandatory or permissive 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 obligations created by this Agreement;
- f. Any liability of individuals.

8. Notwithstanding the releases given in Paragraph 5 of this Agreement, or any other term of this Agreement, the following claims of Florida are specifically reserved and are not released:

- a. Any criminal, civil, or administrative liability arising under state revenue codes;
- b. Any criminal liability;
- c. Any civil administrative liability, that any person or entity, including MBB, has or may have to the State or to the individual consumers or state program payors under any statute, regulation, or rule not expressly covered by the release in Paragraph 5 above, including, but not limited to, any and all of the following claims: (i) State or federal antitrust violations; and (ii) claims

involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

- d. Any liability to the State of Florida for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from the State of Florida's Medicaid program;
- g. Any liability for expressed or implied warranty claims or other claims for defective or deficient products and services, including quality of goods and services;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- i. Any liability for failure to deliver goods or services due; and
- j. Any liability of individuals.

9. 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). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

10. Conditioned upon Relator's receipt of the payment described in Paragraph 3, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, fully and finally releases MBB, and its current and former directors, officers, shareholders, employees, and representatives from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs, relating to such individuals' employment or association with MBB.

11. MBB waives and shall not assert any defenses MBB 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.

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

13. MBB fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that MBB has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof, and from any and all manner of claims arising under, or arising from the Civil Action, or from any and all past activities and actions of the Relator, and from any claim MBB has or may have under the False Claims Act, 31 U.S.C. §§ 3729-33, or any similar federal or state statute.

14. 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 contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and MBB agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

15. MBB agrees to the following:

a. Unallowable Costs Defined: 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. §§ 1395-1395III-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of MBB, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (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) MBB'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; and
- (5) the payment MBB makes to the United States pursuant to this Agreement and any payments that MBB may make to Relator, including costs and attorneys' fees

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by MBB, and MBB 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 MBB or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: MBB further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid 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 MBB or any of its 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. MBB agrees that the United States and/or Florida, at a minimum, shall be entitled to recoup from MBB 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 and/or Florida pursuant to the direction of the Department of Justice, the Office of the Attorney

General of Florida, and/or the affected agencies. The United States and Florida reserve the right to disagree with any calculations submitted by MBB or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on MBB 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 and/or State of Florida to audit, examine, or re-examine MBB's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

16. MBB agrees to cooperate fully and truthfully with any investigation by the United States and/or Florida of individuals and entities not released in this Agreement. Upon reasonable notice, MBB shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall 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.

17. 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, except to the extent provided for in Paragraph 18 (waiver for beneficiaries paragraph), below.

18. MBB agrees that it 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.

19. Upon receipt of the payments described in Paragraph 1 and 3, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action with prejudice pursuant to Rule 41(a)(1).

20. Except as otherwise provided 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.

21. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

22. 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 Middle District of Florida. 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.

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

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

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

26. This Agreement is binding on MBB's successors, transferees, heirs, and assigns.

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

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

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

THE UNITED STATES OF AMERICA

DATED: 10/29/20

BY:


SEAN KEEFE

Assistant United States Attorney
Middle District of Florida

DATED: 11/02/2020

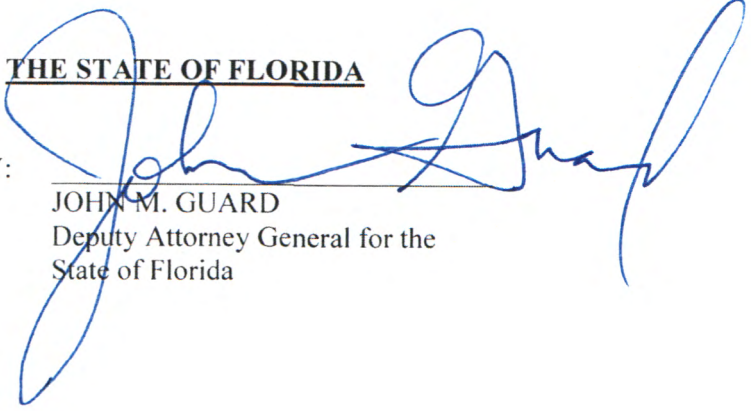
BY:


LISA M. RE

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

THE STATE OF FLORIDA


DATED: 10/29/20 BY:




JOHN M. GUARD
Deputy Attorney General for the
State of Florida

Mori, Bean & Brooks, P.A. - DEFENDANT

DATED: 10/26/2020

BY: 
KRISHNA D. THIRUMALA, MD
for Mori, Bean & Brooks, P.A.

DATED: 10/26/2020

BY: 
PAUL M. THOMPSON
Counsel for Mori, Bean & Brooks, P.A.

Thomas Heyck - RELATOR

DATED: 10/28/2020

BY: Thomas Heyck, MD
THOMAS HEYCK, RELATOR

DATED: 10/27/20

BY: Shauna Itri
SHAUNA ITRI
Counsel for Thomas Heyck