

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 the United States Department of Health and Human Services (collectively the “United States”) and Jeffrey Rosenbaum, Esq., and Rosenbaum & Associates (collectively “Rosenbaum”), through their authorized representatives (collectively “the Parties”).

RECITALS

A. Jeffrey Rosenbaum, Esq., is a licensed attorney and principal at Rosenbaum & Associates, a law firm specializing in plaintiffs’ personal injury cases and located at 1818 Market Street, Suite 3200, in Philadelphia, Pennsylvania.

B. The Medicare Secondary Payer provisions of the Social Security Act, 42 U.S.C. § 1395y, authorize Medicare to make conditional payments with respect to a medical item or service when a primary plan “has not made or cannot reasonably be expected to make payment with respect to such item or service promptly (as determined in accordance with regulations).” 42 U.S.C. § 1395y(b)(2)(B)(i). When a primary plan makes a payment for medical items or services conditionally paid by Medicare, “the beneficiary or other party must reimburse Medicare within 60 days.” 42 C.F.R. § 411.24(h). A primary plan includes an insurance company, a worker’s compensation carrier, and a tortfeasor, among others.

When an entity fails to reimburse Medicare, the United States can recover the conditional medical payments from attorneys and others who received payments. Specifically, the United States can recover from “any entity that has received payment from a primary plan or from the proceeds of a primary plan’s payment to any entity.” 42 U.S.C. § 1395y(b)(2)(B)(iii); *see also* 42 C.F.R. § 411.24(g) (providing a right of action to recover payments from “any entity, including a

beneficiary, provider, supplier, physician, *attorney*, State agency or private insurer that has received a primary payment”) (emphasis added).

B. The United States contends that it has certain civil claims against Rosenbaum arising from debts that Rosenbaum owes to the United States pursuant to the Medicare Secondary Payer provisions of the Social Security Act, 42 U.S.C. § 1395y, during the period from May 10, 2011 through March 2, 2017, in connection with medical treatment received by the following nine personal injury plaintiffs for whom Rosenbaum received payments from insurance companies, worker’s compensation carriers, and tortfeasors:

- MaryAnn Aleva (CMS demand letter March 23, 2016)
- Anna Deluca (CMS demand letter January 11, 2016)
- Joyce Gatling-Myers (CMS demand letter March 2, 2017)
- Louis Grayson (CMS demand letter September 20, 2016)
- Sarah Greene (CMS demand letter August 19, 2015)
- John Murphy (CMS demand letter May 10, 2011)
- Regina Porter (CMS demand letter July 30, 2015)
- Robert Sasaman (CMS demand letter July 4, 2011)
- Shelsea Strickland (CMS demand letter March 22, 2016).

At least one of the above-listed plaintiffs filed a Chapter 7 bankruptcy petition after Rosenbaum received a payment, and before Rosenbaum transmitted proceeds from that payment to satisfy the Medicare Secondary Payer debt owed in connection with the bankrupt plaintiff(s).

C. The conduct in paragraph B is referred to as the Covered Conduct.

D. 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. Rosenbaum shall pay to the United States \$28,000 (the “Settlement Amount”), of which \$28,000 is restitution, by electronic funds transfer pursuant to written instructions to be

provided by the United States Attorney's Office for the Eastern District of Pennsylvania no later than thirty (30) days after the Effective Date of this Agreement. If Rosenbaum fails to pay the Settlement Amount within this 30-day period, then interest on the Settlement Amount shall accrue, retroactively, at a rate of 7% per annum from the Effective Date of this Agreement.

2. Rosenbaum agrees that within 60 days of the Effective Date of this Agreement, if it has not already done so, it will designate a person or persons responsible for paying Medicare Secondary Payer debts and will train the person(s) on how to ensure that such debts are timely and properly paid. Rosenbaum further agrees to review periodically, and at least once every six months, any outstanding Medicare Secondary Payer debts with the designated person or persons to ensure compliance and timely submission of payments to the Centers for Medicare and Medicaid Services (or its contractor).

3. Rosenbaum acknowledges that its failure to submit timely repayment of Medicare Secondary Payer debts may result in its liability for the wrongful retention of a government overpayment pursuant to the False Claims Act, 31 U.S.C. §§ 3729(a)(1)(D), (G), and other applicable law.

4. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Rosenbaum's full payment of the Settlement Amount, the United States releases Rosenbaum from any civil or administrative monetary claim the United States has for the Covered Conduct under the Medicare Secondary Payer Provisions of the Social Security Act, 42 U.S.C. § 1395y.

5. Notwithstanding the release 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 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; and
- e. Any liability based upon obligations created by this Agreement.

6. Rosenbaum waives and shall not assert any defenses Rosenbaum 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.

7. Rosenbaum 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 Rosenbaum 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.

8. 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 Rosenbaum, and 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) Rosenbaum'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 Rosenbaum makes to the United States pursuant to this Agreement,

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 Rosenbaum, and Rosenbaum 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, Rosenbaum shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Rosenbaum or any of its subsidiaries or affiliates from the United States. Rosenbaum agrees that the United States, at a minimum, shall be entitled to recoup from Rosenbaum 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 Rosenbaum's books and records and to disagree with any calculations

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

9. Rosenbaum agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Rosenbaum 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. Rosenbaum further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

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

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

12. 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.

13. 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 Eastern District of Pennsylvania. 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.

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

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

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

17. This Agreement is binding on Rosenbaum's successors, transferees, heirs, and assigns.


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

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

20. The duration of this Agreement will be three years from the Effective Date.

THE UNITED STATES OF AMERICA

DATED: 6/18/18

BY: 

GREGORY B. DAVID
Assistant United States Attorney
Chief, Civil Division

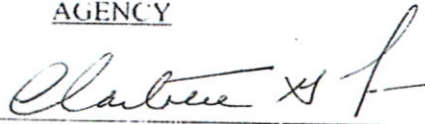
DATED: 6/18/18

BY: 

MICHAEL S. MACKO
Assistant United States Attorney

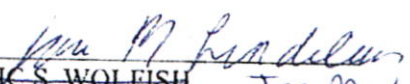
AGENCY

DATED: 6/8/2018

BY: 

CHARLOTTE G. FOSTER
Associate Regional Administrator
Division of Financial Management & Fee for Service
Operations, CMS Region III

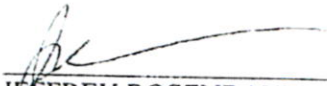
DATED: 6/7/18

BY: 
~~ERIC S. WOLFISH~~ Jan M. Lundelius


Assistant Regional Counsel Chief Counsel
United States Department of Health and Human Services
Office of the General Counsel, Region III

ROSENBAUM

DATED: 6/11/18

BY: 
JEFFREY ROSENBAUM, ESQ.

DATED: 6/11/18

BY: 
ROSENBAUM & ASSOCIATES
by Jeffrey Rosenbaum, Esq., Principal