

INDEX

Example Cases

The following index is based on cases cited in the Spreadsheet cited by the *amici curie* Chamber of Commerce, et al., in *Cochise Consultancy and the Parson Corporation v U.S. ex rel. Billie Joe Hunt*. See *Chamber Amici* Brief, p. 16. The Chamber Amici claimed that between 2004-2013 there were 278 cases that remained pending in district court for over three years after the United States declined to intervene, that resulted in zero recoveries. However, based on a review of the docket sheets available on Pacer regarding these cases, it is evident that the delay on these cases was based on numerous factors, unrelated to the statute of limitations or any prejudice a defendant may have experienced due to the delay. For example, in one case the length was due in part to a stay caused by bankruptcy, which the Chamber did not account for in their argument. In the second case the length was due in part to Defendants requested and stipulating to 13 extensions, a stay, and a mediation postponement. The docket sheets from the original Electronic Case Files for which this index was prepared are also printed below.

1. US; States of Florida; Montana ex rel Watine, Robert MD v Cypress Health Systems Florida Inc et al
2. US ex rel Bane, Ben v Breathe Easy Pulmonary Services Inc; Premier Cardio Pulmonary Medical Inc et al

(RCx),CLOSED

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA (Western Division – Los Angeles)
CIVIL DOCKET FOR CASE #: 2:02-cv-03562-TJH-RC**

USA et al vs ICT College et al
Assigned to: Judge Terry J. Hatter, Jr
Referred to: Magistrate Judge Rosalyn M. Chapman
Demand: \$0
Cause: 31:3729 False Claims Act

Date Filed: 05/01/2002
Date Terminated: 12/15/2006
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: U.S. Government Plaintiff

Plaintiff

United States of America

represented by **Vipal J Patel**
AUSA – Office of US Attorney
Dayton Ohio Division
200 West 2nd Street
Dayton, OH 45402-1443
937-225-2910
Email: vipal.patel@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

State Of California

by and on behalf of Qui Tam Plaintiffs

represented by **Pauline W Gee**
CAAG – Office of Attorney General of
California
Correctional Law Section
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P O Box 944255
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916-445-4533
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Plaintiff

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represented by **Alan Michael Goldberg**
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Richard J Kellum
Legal Group
South Tower
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Los Angeles, CA 90010

213-384-7717
TERMINATED: 04/20/2006
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Akop Kuyumdzhyan

represented by **Alan Michael Goldberg**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Neil C Newson
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard J Kellum
(See above for address)
TERMINATED: 04/20/2006
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Santo S Durso

represented by **Alan Michael Goldberg**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Neil C Newson
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard J Kellum
(See above for address)
TERMINATED: 04/20/2006
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

ICT College
a business entity form unknown

represented by **Kirk G Downing**
Kirk G Downing Law Offices
9454 Wilshire Boulevard, Suite 600
Beverly Hills, CA 90212
323-935-3517
Email: kirk@downinglaw.us
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ATTORNEY TO BE NOTICED

Neil C Newson
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

K C You
Ph.D an individual

represented by **Kirk G Downing**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Siamak Dabiri
an individual

represented by **Neil C Newson**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Joel Greenman
an individual

represented by **Neil C Newson**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Ronald E Glousman MD
an individual

represented by **Neil C Newson**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Phil Singer
an individual

represented by **Neil C Newson**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/01/2002	1	COMPLAINT filed Summons(es) issued referred to Discovery Rosalyn M. Chapman (jag) (Entered: 05/06/2002)
02/25/2004	27	NOTICE of United States election to decline intervention filed by USA; lodged order (lc,) (Entered: 03/03/2004)
02/25/2004	28	NOTICE OF ELECTION TO DECLINE INTERVENTION filed by State of California (lc,) (Entered: 03/03/2004)
03/02/2004	30	ORDER by Judge Terry J. Hatter Jr: The seal is lifted from 1) Complaint 1 , 2) Notices of election by the United States and the State of California to decline intervention 27 28 and this order which shall be served by the relators on all defendants unless dismissed; all other contents of court file as of the date of this order shall remain under seal and not served on defendants or otherwise made public; all pleadings and papers filed or lodged after the date of this order shall Not be sealed, unless ordered by the court; parties shall serve all pleadings, motions, orders and other papers filed or lodged on the USA and State of California to attention of respective attorneys(lc,) (Entered: 03/03/2004)
03/23/2004	31	NOTICE OF MOTION AND MOTION of Richard J Kellum to Withdraw as Attorney for plaintiffs Santo S Durso, Thomas Kepner, Akop Kuyumdzhyan. ; memorandum; declaration of Richard J Kellum, Patricia Tobar filed by plaintiffs attorney Richard J Kellum ; submission date of 4/19/04; Lodged order. (lc,) Modified on 3/26/2004 (lc,). (Entered: 03/26/2004)
11/30/2004	<u>32</u>	Substitution of Attorney filed. Substituting attorney Neil C Newson for Akop Kuyumdzhyan in place and stead of Akop Kuyumdzhyan pro per by Judge Terry J. Hatter Jr. (yc,) (Entered: 12/02/2004)
11/30/2004	<u>33</u>	Substitution of Attorney filed. Substituting attorney Neil C Newson for Thomas Kepner in place and stead of by Judge Terry J. Hatter Jr. (yc,) (Entered: 12/02/2004)
11/30/2004	<u>34</u>	Substitution of Attorney filed. Substituting attorney Neil C Newson for Santo S Durso in place and stead of by Judge Terry J. Hatter Jr. (yc,) (Entered: 12/02/2004)
01/13/2005	<u>35</u>	MINUTES by Judge Terry J. Hatter Jr: You are hereby notified that this action has been placed on calendar before the Honorable TERRY J. HATTER, JR for dismissal for lack of prosecution pursuant to local rule 12 on 2/28/2005 at 10am. YOU ARE FURTHER NOTIFIED that a written response why the action should not be dismissed must be filed no later the 2/22/2005.Court Reporter: Not Reported. (yc,) (Entered: 01/18/2005)

02/03/2005	36	DECLARATION IN OPPOSITION to hearing regarding dismissal of action for lack of prosecution filed by Defendants <u>35</u> (lc,) (Entered: 02/04/2005)
02/03/2005	37	PROOF OF SERVICE Executed by plaintiffs United States Of America, State Of California, Thomas Kepner, Akop Kuyumdzhy, Santo S Durso, upon ICT College upon Paola Gutierrez, receptionist, person in charge, on behalf of KC You designated agent, served on 1/24/2005, by no cited statute, answer due 2/13/2005; on defendant K C You, individual served on 1/24/2005, answer due 2/13/2005. The Summons and Complaint were served by substituted service, no cited statute, upon Paola Gutierrez, receptionist, personal in charge for both defendants. Due Dilligence declaration none. Original Summons not returned. (lc,) (Entered: 02/04/2005)
02/28/2005	<u>38</u>	MINUTES by Judge Terry J. Hatter Jr: The defendant answer or motion for default will be filed no later than 3/28/2005 Court Reporter: Leandra Amber. (yc,) (Entered: 03/04/2005)
03/17/2005	39	ANSWER to Complaint – (Discovery) 1 filed by defendants ICT College, K C You.(yc,) (Entered: 03/21/2005)
03/17/2005	40	CERTIFICATION of Interested Parties filed by Defendants ICT College, K C You. (yc,) (Entered: 03/21/2005)
03/17/2005	41	STATEMENT related cases filed by Defendants ICT College, K C You (yc,) (Entered: 03/24/2005)
04/29/2005	<u>42</u>	ORDER by Judge Terry J. Hatter Jr., Set Hearings: Final Pretrial Conference set for 11/14/2005 10:00 AM before Honorable Terry J. Hatter Jr.(yc,) (Entered: 05/02/2005)
11/10/2005	43	NOTICE of Settlement filed by defendants Ronald E Glousman MD, Phil Singer, ICT College, K C You, Siamak Dabiri, Joel Greenman. (jp,) (Entered: 11/21/2005)
03/21/2006	<u>44</u>	MINUTES OF IN CHAMBERS ORDER by Judge Terry J. Hatter Jr: Counsel are notified a Status Report must be filed no later than MAY 10, 2006, as to the status of this case. (yr,) (Entered: 03/21/2006)
04/20/2006	45	STATUS REPORT filed by Richard J. Kellum, Esq., Former Associate Attorney of the Legal Group, which was the Former Attorney of Record for Qui Tam Plaintiffs Thomas Kepner, Akop Kuyumdzhy, and Saanto S. Durso; Declaration of Richard J. Kellum; Request of Richard J. Kellum, Esq. to be Removed from the Case and from Service List. (gk,) (Entered: 05/02/2006)
04/20/2006	46	DECLARATION of ALAN M. GOLDBERG regarding non-representation of parties. (yl,) (Entered: 05/02/2006)
08/04/2006	<u>47</u>	MINUTES OF IN CHAMBERS ORDER held before Judge Terry J. Hatter Jr:Counsel are hereby notified that a Status Report must be filed with this court no later than August 31, 2006 as to the status of this case (ys,) (Entered: 08/04/2006)
09/13/2006	<u>48</u>	MINUTES held before Judge Terry J. Hatter Jr: YOU ARE FURTHER NOTIFIED that a written response why the action should not be dismissed must be filed no later than 10/10/2006.Court Reporter: Not Reported. (yc,) (Entered: 09/15/2006)
10/11/2006		Set Hearings: Show Cause Hearing set for 10/16/2006 10:00 AM before Judge Terry J. Hatter Jr. (yc,) (Entered: 10/11/2006)
10/16/2006	<u>49</u>	MINUTES OF Show Cause Hearing held before Judge Terry J. Hatter Jr, Based upon the statement made today on the record, the court will continue this matter to 12/18/2006 10:00 AM before Judge Terry J. Hatter Jr.Court Reporter: Tanya Durant. (yc,) (Entered: 10/17/2006)
12/05/2006	50	NOTICE OF MOTION AND MOTION to enforce settlement agreement; Memorandum of points and authorities and declaration of Diony Martins in support filed by defendants Ronald E Glousman MD, Phil Singer, ICT College, Siamak Dabiri, Joel Greenman. Motion set for hearing on 12/18/2006 at 10:00 AM before Judge Terry J. Hatter Jr. (yc,) (Entered: 12/11/2006)
12/08/2006	51	NOTICE of Change of Address by Kirk G Downing attorney for Defendants ICT College, K C You, changing address to Kirk G Downing Law Offices, 9454 Wilshire Boulevard, Suite 600, Beverly Hills, CA 90212. Filed by defendants ICT College and

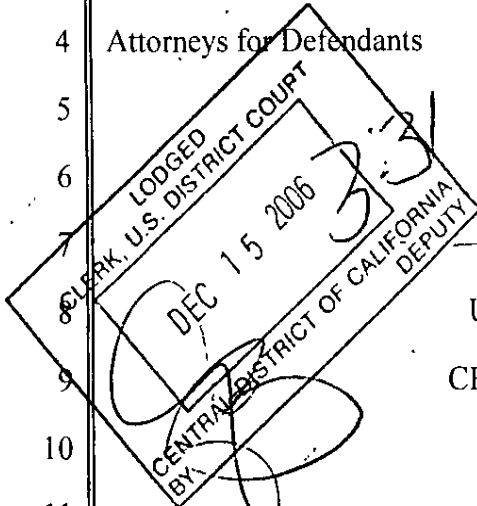
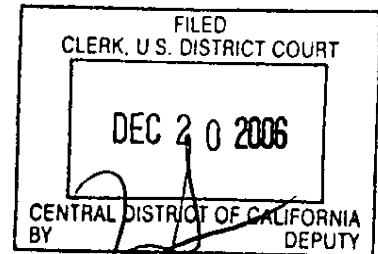
		KC You (ak,) (Entered: 12/12/2006)
12/08/2006		FAX number for Attorney Kirk G Downing is 323-935-0410. (ak,) (Entered: 12/12/2006)
12/08/2006	54	OPPOSITION to MOTION for Order for enforce settlement agreement; Memorandum of points and authorities and declaration of Diony Martins in support 50 filed by defendants ICT College and K.C. You, Ph, D. (yc,) (Entered: 12/26/2006)
12/08/2006	55	DECLARATION of Kirk G Downing re MOTION for Order for enforce settlement agreement; Memorandum of points and authorities and declaration of Diony Martins in support 50 filed by defendants ICT College, K C You. (yc,) (Entered: 12/26/2006)
12/15/2006	<u>52</u>	JUDGMENT upon courts granting plaintiffs MOTION for Order for enforce settlement agreement 50 ; judgment entered in favor of plaintiffs and against defendants jointly and severally in the principal amount of \$25,000.00 with interest to accrue at legal rate until judgment is satisfied by Judge Terry J. Hatter Jr (MD JS-6, Case Terminated).(lc,) (Entered: 12/18/2006)
12/20/2006	<u>53</u>	STIPULATION AND ORDER by Judge Terry J. Hatter Jr:It is hereby stipulated by the parties to this action, That the instant action be dismissed with prejudice. (yc,) (Entered: 12/26/2006)

NEIL C. NEWSON BAR NO. 41497
NEIL C. NEWSON & ASSOCIATES
9465 Wilshire Boulevard, Suite 330
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(310) 278-7555 (310) 278-4310

Attorneys for Defendants

Priority _____
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JS-6 _____
JS-2/JS-3 _____
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ORIGINAL



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, AND
STATE OF CALIFORNIA, By and on
Behalf of Qui Tam Plaintiffs, THOMAS
KEPNER, AKOP KUYUMDZHYAN
and SANTO S. DURSO,

Plaintiffs

CASE NO.: CV 02-3562 TJH (Rcx)

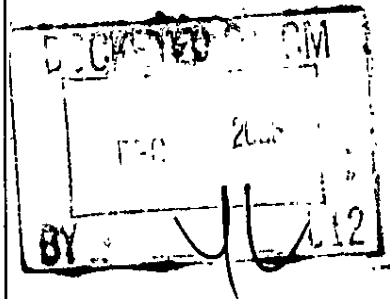
HON. TERRY J. HATTER

STIPULATION TO DISMISS ACTION

vs.

ICT COLLEGE, a Business Entity Form
Unknown; K.C. YOU, Ph.D., an
individual; JOHN J. WILK, an individual;
JOEL GREENMAN, an individual;
SIAMAK DABIRI, an individual; PHIL
SINGER, an individual,

Defendants.



It is hereby stipulated by the parties to this action, by and through their respective attorneys of record, that the instant action be dismissed, with prejudice. It is further stipulated that a signature obtained by telefacsimile shall have the same force and effect as an original signature.

Dated: December 14, 2006

NEIL C. NEWSON & ASSOCIATES

NEIL C. NEWSON, ESQ.
Attorney for Plaintiffs

IT IS SO ORDERED

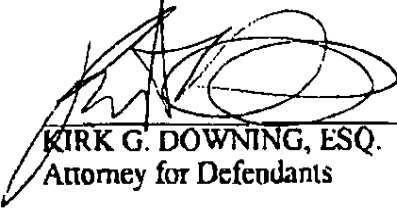
Dated: DEC 20 2006
Terry J. Hatter, Jr.
United States District Judge

TOTAL P.02

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Dated: December 14, 2006

LAW OFFICES OF KIRK G. DOWNING

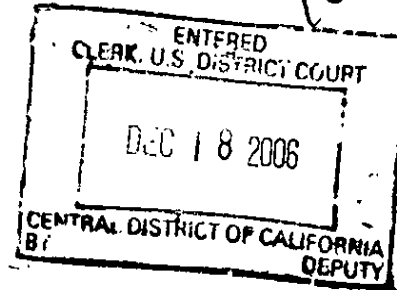
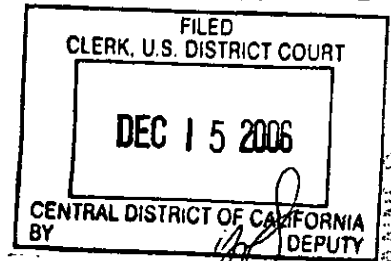

KIRK G. DOWNING, ESQ.
Attorney for Defendants

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Pro Se Workfile DL
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(310) 278-7555

Recovery Cases 007

ORIGINAL

Priority ☒
 Send ☒
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 JS-8/JS-6 ☒
 JS-2/JS-3 ☐
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SCANNED

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY F.R.C.P. RULE 77(c)

United States District Court
 Central District of California
 Western Division

UNITED STATES OF AMERICA, *et al.*,

CV 02-3562 TJH (RCx)

Plaintiffs,

v.

ICT COLLEGE, *et al.*,

Defendants.

Order
 and
 Judgment

The Court has considered Plaintiffs' motion to enforce the settlement agreement, together with the moving papers.

It is Ordered that the motion be, and hereby is, Granted.

It is further Ordered, Adjudged and Decreed that judgment be, and hereby is, entered in favor of Plaintiffs against the Defendants, jointly and severally, in the sum of twenty-five thousand dollars (\$25,000.00), with interest to accrue at the legal rate until the judgment is satisfied.

Date: December 14, 2006

Terry J. Haller Jr.
 Senior United States District Judge

CC: Fiscal

52

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:03-cv-08135-WHP**

U.S.A v. Van Gorp, et al
Assigned to: Judge William H. Pauley, III
Demand: \$0
Cause: 31:3729 False Claims Act

Date Filed: 10/14/2003
Date Terminated: 08/03/2010
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: U.S. Government Plaintiff

Plaintiff

United States of America
ex rel, Daniel Feldman

represented by **Scott B. Goldshaw**
Salmanson Goldshaw, P.C.
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Fax: (215) 640-0596
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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Salmanson Goldshaw, P.C.
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PRO HAC VICE
ATTORNEY TO BE NOTICED

V.

Defendant

Wilfred Van Gorp

represented by **Nina Minard Beattie**
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PRO HAC VICE
ATTORNEY TO BE NOTICED

Defendant

Cornell University Medical College

represented by **Tracey Ann Tiska**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert Brian Black
(See above for address)
ATTORNEY TO BE NOTICED

Miscellaneous

Daniel Feldman
Relator

represented by **Michael Joseph Salmanson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Scott B. Goldshaw
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/14/2003	1	COMPLAINT filed. Summons issued and Notice pursuant to 28 U.S.C. 636(c). FILING FEE \$ 150.00 RECEIPT # 488054. (gmo) (Entered: 10/16/2003)
10/14/2003		Magistrate Judge Debra C. Freeman is so designated. (gmo) (Entered: 10/16/2003)
04/23/2007	19	ORDER,The United States having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C.\$3730(b)(4)(B), the Court Ordered that, the complaint shall be unsealed, and service upon defendants by the relator is authorized. The Government's Notice of Election to Decline Intervention shall be served by the plaintiff-relator upon defendants only after service of the complaint. The seal shall be lifted as to all other matters occurring in this action after the date of this Order. (Signed by Judge William H. Pauley III on 4/10/2007) (kj) (Entered: 04/26/2007)
04/23/2007	20	ENDORSED LETTER addressed to Judge William H. Pauley from Andrew D. O'Toole dated 11/13/03 re: Counsel writes to request that the November 7th Order be sealed nunc pro tunc, and that the complaint and the documents submitted with the complaint, this Court's orders and all other filings in this action remain under seal until 12/18/03, and until further order of the Court. The Government also respectfully requests that the initial pretrial conference in this matter be adjourned sine die and rescheduled after the Government has made its decision with respect to intervention. ENDORSEMENT: Application granted in part. All materials in this case will be filed under seal. The initial pre-trial conference will be held on 2/20/03 at 9:30 a.m. So Ordered. (Signed by Judge William H. Pauley III on 11/19/03) (jco) DOCUMENT

		ORIGINALLY FILED UNDER SEAL. DOCUMENT UNSEALED AS PER ORDER DATED 4/23/07, DOCUMENT NUMBER 19. (Entered: 04/26/2007)
04/23/2007	21	MOTION for Michael J. Salmanson to Appear Pro Hac Vice. Document filed by United States of America.(jco) (Entered: 04/26/2007)
05/01/2007		CASHIERS OFFICE REMARK on 21 Motion to Appear Pro Hac Vice in the amount of \$25.00, paid on 04/23/2007, Receipt Number 613036. (jd) (Entered: 05/01/2007)
05/01/2007	22	ORDER granting 21 Motion for Michael J. Salmanson to Appear Pro Hac Vice on behalf of plaintiff Daniel Feldman. (Signed by Judge William H. Pauley III on 4/25/07) (dj) (Entered: 05/01/2007)
05/01/2007		Transmission to Attorney Admissions Clerk. Transmitted re: 22 Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (dj) (Entered: 05/01/2007)
05/03/2007	<u>23</u>	FILING ERROR – ELECTRONIC FILING IN NON-ECF CASE – WAIVER OF SERVICE RETURNED EXECUTED. Wilfred Van Gorp waiver sent on 4/26/2007, answer due 6/25/2007; Cornell University Medical College waiver sent on 4/26/2007, answer due 6/25/2007. Document filed by United States of America. (Goldshaw, Scott) Modified on 5/4/2007 (lb). (Entered: 05/03/2007)
05/03/2007	<u>24</u>	FILING ERROR – ELECTRONIC FILING IN NON-ECF CASE – NOTICE OF CHANGE OF ADDRESS by Scott B. Goldshaw on behalf of United States of America. New Address: Salmanson Goldshaw, PC, Two Penn Center, Suite 1230, 1500 JFK Blvd., Philadelphia, PA, USA 19102, 215-640-0593. (Goldshaw, Scott) Modified on 5/4/2007 (lb). (Entered: 05/03/2007)
05/04/2007		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT – NON-ECF CASE ERROR. Note to Attorney Scott B. Goldshaw to MANUALLY RE-FILE Document WAIVER OF SERVICE RETURNED EXECUTED and NOTICE OF CHANGE OF ADDRESS, Document No. 23-24. This case is not ECF. (lb) (Entered: 05/04/2007)
05/09/2007	25	WAIVER OF SERVICE RETURNED EXECUTED. Cornell University Medical College waiver sent on 4/30/2007, answer due 6/29/2007. Document filed by United States of America. (tro) (Entered: 05/10/2007)
05/09/2007	26	WAIVER OF SERVICE RETURNED EXECUTED. Wilfred Van Gorp waiver sent on 4/30/2007, answer due 6/29/2007. Document filed by United States of America. (tro) (Entered: 05/10/2007)
05/09/2007	27	NOTICE OF CHANGE OF ADDRESS by Scott B. Goldshaw on behalf of United States of America. New Address: Two Penn Center, Suite 1230, 1500 JFK. Blvd., Philadelphia, PA, USA 19102, (215) 640-0593 (215) 640-0596- Fax goldshaw@salmangold.com. (tro) (Entered: 05/10/2007)
06/27/2007	29	ENDORSED LETTER addressed to Judge William H. Pauley from Brian Black dated 6/18/07 re: Counsel for defendant requests that Brian Black, the undersigned, be permitted to appear in his stead; Mr. Black is fully familiar with this matter. ENDORSEMENT: So Ordered. (Signed by Judge William H. Pauley III on 6/19/07) (js) (Entered: 07/03/2007)
07/06/2007	<u>30</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Cornell University Medical College.(Black, Robert) Modified on 7/16/2007 (lb). Modified on 8/1/2007 (Rivera, Jazmin). (Entered: 07/06/2007)
07/06/2007	<u>31</u>	REPORT of Rule 26(f) Planning Meeting.(Black, Robert) Modified on 7/16/2007 (lb). Modified on 8/1/2007 (Rivera, Jazmin). (Entered: 07/06/2007)
07/12/2007	35	STIPULATION AND ORDER: IT IS HERBEY STIPULATED AND AGREED, by and between the undersigned attorneys, that defendants' time to answer or otherwise respond to the complaint in the above-captioned action shall be extended to and including July 13, 2007. SO ORDERED: (Signed by Judge William H. Pauley III on 07/06/07) (dcr) (Entered: 07/18/2007)
07/13/2007	<u>32</u>	ANSWER to Complaint. Document filed by Wilfred Van Gorp.(Beattie, Nina) Modified on 7/16/2007 (lb). Modified on 8/1/2007 (Rivera, Jazmin). (Entered: 07/13/2007)

07/13/2007	<u>33</u>	ANSWER to Complaint. Document filed by Cornell University Medical College.(Tiska, Tracey) Modified on 7/16/2007 (lb). Modified on 8/1/2007 (Rivera, Jazmin). (Entered: 07/13/2007)
07/16/2007	34	SCHEDULING ORDER: Fact Discovery shall be completed by 1/31/2008; Expert Discovery due by 3/28/2008. The parties shall submit by a joint pre-trial order due by 4/30/2008. Pretrial Conference set for 5/9/2008 at 11:30 AM before Judge William H. Pauley III. (Signed by Judge William H. Pauley III on 7/13/07) Copies Mailed By Chambers.(tro) (Entered: 07/18/2007)
07/24/2007	36	ORDER DESIGNATING CASE TO ECF STATUS: The Clerk of Court is directed to designate this action ECF nunc pro tunc. All subsequent Orders of this Court shall be issued through the ECF system. The parties shall make all filings via the ECF system and promptly provide this Court with courtesy copies of all filed papers. Within thirty (30) days of this Order, all counsel shall register as filing users in accordance with the Southern District's Procedures for Electronic Case Filing. (Signed by Judge William H. Pauley III on 7/17/07) Copies Mailed By Chambers.(tro) (Entered: 07/25/2007)
07/24/2007		Case Designated ECF. (tro) (Entered: 07/25/2007)
07/24/2007	37	SCHEDULING ORDER: Status Conference currently scheduled for 6/22/2070 at 11:45 a.m. is adjourned until 7/13/2007 at 11:15 AM in Courtroom 11D, 500 Pearl Street, New York, NY 10007 before Judge William H. Pauley III. (Signed by Judge William H. Pauley III on 6/21/2007) Copies mailed by chambers.(jar) (Entered: 07/25/2007)
11/19/2007	<u>38</u>	STIPULATED PROTECTIVE ORDER...regarding procedures to be followed that shall govern the handling of confidential material.... (Signed by Judge William H. Pauley III on 11/19/07) (tro) (Entered: 11/20/2007)
01/29/2008	<u>39</u>	SCHEDULING ORDER: Fact Discovery due by 3/14/08. Expert Discovery due by 5/16/2008. Joint Pretrial Order due by 6/13/2008. Final Pretrial Conference set for 7/11/2008 at 10:00 AM before Judge William H. Pauley III. (Signed by Judge William H. Pauley, III on 1/28/07) (tro) (Entered: 01/29/2008)
03/04/2008	<u>44</u>	ENDORSED LETTER addressed to Judge William H. Pauley from Michael Salmanson dated 2/26/08 re: Request to extend discovery. ENDORSEMENT: Application granted. Discovery is extended until 4/18/08. Expert discovery shall be completed by 6/20/08. The parties shall submit a joint pretrial order by 7/11/08. The Court will hold a final pretrial conference on 8/8/08 at 10:00 am. (Expert Discovery due by 6/20/2008. Joint Pretrial Order due by 7/11/2008. Final Pretrial Conference set for 8/8/2008 at 10:00 AM before Judge William H. Pauley III.) (Signed by Judge William H. Pauley, III on 2/29/08) (cd) (Entered: 03/04/2008)
04/10/2008	<u>45</u>	ENDORSED LETTER addressed to Judge WilliamH. Pauley from Tracey Tiska dated 4/2/08 re: Request that the pretrial conference set for 8/8 be moved to another date. ENDORSEMENT: Application granted. The conference is adjourned until 8/15/08 at 10:00 am. (Pretrial Conference reset for 8/15/2008 at 10:00 AM before Judge William H. Pauley III.) (Signed by Judge William H. Pauley, III on 4/7/08) (cd) (Entered: 04/10/2008)
05/02/2008	<u>46</u>	ENDORSED LETTER addressed to Judge William H. Pauley III from Tracey A. Tiska dated 4/24/2008 re: counsel writes to request a one-month extension of the 6/20/2008 discovery deadline. The parties propose that the deadline for completion of expert discovery by 7/21/2008, and the deadline for the submission of the joint pre-trial order be 8/1/2008. The Court has already set the pre-trial conference for 8/15/2008 at 10:00 a.m. ENDORSEMENT: Application Granted. (Signed by Judge William H. Pauley, III on 4/30/2008) (jp) (Entered: 05/02/2008)
06/12/2008	<u>47</u>	ENDORSED LETTER addressed to Judge William H. Pauley III from Tracy A. Tiska dated 5/23/2008 re: Requesting that the Court overrule Relator's objections to the interrogatories and compel a substantive response. ENDORSEMENT: This Court will hold a discovery conference on July 18, 2008 at 10:00 a.m. (Signed by Judge William H. Pauley, III on 6/3/208) (jpo) (Entered: 06/12/2008)
07/01/2008	<u>50</u>	ENDORSED LETTER addressed to Judge William H. Pauley from Tracey A. Tiska and Michael J. Salmanson dated 5/23/08 re: Counsel writes to jointly raise a discovery dispute that has arisen with respect to Cornells Second set of interrogatories (the

		Interrogatories). A copy of which is attached to this letter for the courts reference. ENDORSEMENT: The court will hold a discovery conference on July 18, 2008 at 10:00 a.m., (Discovery Hearing set for 7/18/2008 at 10:00 AM before Judge William H. Pauley III.) (Signed by Judge William H. Pauley, III on 6/3/08) (mme) (Entered: 08/15/2008)
07/22/2008	<u>48</u>	SCHEDULING ORDER: For the reasons set forth on the record, the Relator's objections to Defendant's interrogatories are sustained. The parties shall submit any pre-motion letters by August 5, 2008. This Court will hold a pre-motion conference on August 15, 2008 at 10:00 a.m., in lieu of the final pre-trial conference currently set for that time. The deadline for submission of the joint pre-trial order is adjourned until a date to be determined. (Signed by Judge William H. Pauley, III on 7/21/2008) (jfe) (Entered: 07/22/2008)
08/06/2008	<u>49</u>	ENDORSED LETTER addressed to Judge William H. Pauley from Michael J. Salmanson dated 7/8/08 Counsels jointly write to raise a discovery dispute regarding the production of certain declarations. Counsels hope that the court will add this item to the discovery conference to be held on July 18, 2008. ENDORSEMENT: This court will hold a discovery conference on August 15, 2008 in conjunction with the pre-motion conference set for that time. (Signed by Judge William H. Pauley, III on 8/4/08) (mme) (Entered: 08/06/2008)
08/15/2008	<u>51</u>	SCHEDULING ORDER: Relator shall conduct a two-hour deposition of Dr. Walton-Louis by 9/15/08. Relator's application to strike Dr. Berman's declaration is denied. The parties shall serve and file any motions in limine addressed to experts by 9/15/08. The parties shall serve and file any responses by 10/14/08. The parties shall serve and file any replies by 10/24/08. This Court will hear Oral Argument and hold a Status Conference on 11/20/2008 at 11:30 AM before Judge William H. Pauley III. (Signed by Judge William H. Pauley, III on 8/15/08) (tro) (Entered: 08/18/2008)
09/15/2008	<u>52</u>	FILING ERROR – ELECTRONIC FILING FOR NON-ECF DOCUMENT (PROPOSED ORDER) – MOTION in Limine to <i>Exclude Defendants' Expert Testimony</i> . Document filed by Daniel Feldman.(Goldshaw, Scott) Modified on 9/16/2008 (jar). (Entered: 09/15/2008)
09/15/2008	<u>53</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – MEMORANDUM OF LAW in Support re: <u>52</u> MOTION in Limine to <i>Exclude Defendants' Expert Testimony</i> .. Document filed by Daniel Feldman. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7)(Goldshaw, Scott) Modified on 9/16/2008 (jar). (Entered: 09/15/2008)
09/15/2008	<u>54</u>	MOTION in Limine to <i>Preclude the Testimony of Relator's Expert</i> . Document filed by Wilfred Van Gorp, Cornell University Medical College. Return Date set for 11/20/2008 at 11:30 AM.(Beattie, Nina) (Entered: 09/15/2008)
09/15/2008	<u>55</u>	MEMORANDUM OF LAW in Support re: <u>54</u> MOTION in Limine to <i>Preclude the Testimony of Relator's Expert</i> .. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Beattie, Nina) (Entered: 09/15/2008)
09/15/2008	<u>56</u>	DECLARATION of Dr. Robert A. Bornstein in Support re: <u>54</u> MOTION in Limine to <i>Preclude the Testimony of Relator's Expert</i> .. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Beattie, Nina) (Entered: 09/15/2008)
09/15/2008	<u>57</u>	DECLARATION of Dr. Marlene Oscar Berman in Support re: <u>54</u> MOTION in Limine to <i>Preclude the Testimony of Relator's Expert</i> .. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Beattie, Nina) (Entered: 09/15/2008)
09/15/2008	<u>58</u>	DECLARATION of Emily Reisbaum in Support re: <u>54</u> MOTION in Limine to <i>Preclude the Testimony of Relator's Expert</i> .. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B (Pt. 1 of 4), # <u>3</u> Exhibit B (Pt. 2 of 4), # <u>4</u> Exhibit B (Pt. 3 of 4), # <u>5</u> Exhibit B (Pt. 4 of 4), # <u>6</u> Exhibit C (Pt. 1 of 5), # <u>7</u> Exhibit C (Pt. 2 of 5), # <u>8</u> Exhibit C (Pt. 3 of 5), # <u>9</u> Exhibit C (Pt. 4 of 5), # <u>10</u> Exhibit C (Pt. 5 of 5), # <u>11</u> Exhibit D, # <u>12</u> Exhibit E (Pt. 1 of 2), # <u>13</u> Exhibit E (Pt. 2 of 2), # <u>14</u> Exhibit F and G)(Beattie, Nina) (Entered: 09/15/2008)

09/15/2008	<u>59</u>	ORDER: Counsel for the parties jointly requested clarification of this Court's August 15, 2008, Scheduling Order permitting Realtor to conduct a two-hour deposition of Dr. Walton-Louis. Relator is permitted to serve a subpoena duces tecum on Dr. Walton-Louis to obtain documents which bear on her testimony and the prior declaration she submitted to defense counsel. (Signed by Judge William H. Pauley, III on 9/15/08) (tro) (Entered: 09/16/2008)
09/15/2008		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - NON-ECF DOCUMENT ERROR. Note to Attorney Scott Goldshaw to E-MAIL Document No. <u>52</u> Proposed Order to judgments@nysd.uscourts.gov. This document is not filed via ECF. Then re-file Motion in Limine. (jar) (Entered: 09/16/2008)
09/15/2008		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Note to Attorney Scott Goldshaw to RE-FILE Document <u>53</u> Memorandum of Law in Support of Motion. ERROR(S): Link supporting documents to correctly re-filed motion. (jar) (Entered: 09/16/2008)
09/16/2008	<u>60</u>	MOTION in Limine <i>To Exclude Defendants' Expert Testimony</i> . Document filed by Daniel Feldman. Return Date set for 11/20/2008 at 11:30 AM.(Goldshaw, Scott) (Entered: 09/16/2008)
09/16/2008	<u>61</u>	MEMORANDUM OF LAW in Support re: <u>60</u> MOTION in Limine <i>To Exclude Defendants' Expert Testimony</i> .. Document filed by Daniel Feldman. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7)(Goldshaw, Scott) (Entered: 09/16/2008)
10/14/2008	<u>62</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - MEMORANDUM OF LAW in Opposition re: <u>54</u> MOTION in Limine <i>to Preclude the Testimony of Relator's Expert</i> .. Document filed by Daniel Feldman. (Attachments: # <u>1</u> Declaration of Michael J. Salmanson, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2, # <u>4</u> Exhibit 3, # <u>5</u> Exhibit 4, # <u>6</u> Exhibit 5, # <u>7</u> Exhibit 6, # <u>8</u> Exhibit 7, # <u>9</u> Exhibit 8, # <u>10</u> Exhibit 9, # <u>11</u> Exhibit 10, # <u>12</u> Exhibit 11, # <u>13</u> Exhibit 12)(Salmanson, Michael) Modified on 10/15/2008 (jar). (Entered: 10/14/2008)
10/14/2008	<u>63</u>	JOINT MEMORANDUM OF LAW in Opposition re: <u>60</u> MOTION in Limine <i>To Exclude Defendants' Expert Testimony</i> .. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Attachments: # <u>1</u> Certificate of Service)(Tiska, Tracey) (Entered: 10/14/2008)
10/14/2008	<u>64</u>	DECLARATION of Tracey A. Tiska in Opposition re: <u>60</u> MOTION in Limine <i>To Exclude Defendants' Expert Testimony</i> .. Document filed by Cornell University Medical College. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Certificate of Service)(Tiska, Tracey) (Entered: 10/14/2008)
10/14/2008		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Note to Attorney Michael Salmanson to RE-FILE Document <u>62</u> Memorandum of Law in Opposition to Motion. ERROR(S): Each Supporting Document must be filed individually. Use event type Declaration in Support found under Other Answers. (jar) (Entered: 10/15/2008)
10/15/2008	<u>65</u>	MEMORANDUM OF LAW in Opposition re: <u>54</u> MOTION in Limine <i>to Preclude the Testimony of Relator's Expert</i> .. Document filed by Daniel Feldman. (Salmanson, Michael) (Entered: 10/15/2008)
10/15/2008	<u>66</u>	DECLARATION of Michael J. Salmanson in Support re: <u>65</u> Memorandum of Law in Opposition to Motion. Document filed by Daniel Feldman. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12)(Salmanson, Michael) (Entered: 10/15/2008)
10/24/2008	<u>67</u>	REPLY MEMORANDUM OF LAW in Support re: <u>60</u> MOTION in Limine <i>To Exclude Defendants' Expert Testimony. with Certificate of Service</i> . Document filed by Daniel Feldman. (Salmanson, Michael) (Entered: 10/24/2008)
10/24/2008	<u>69</u>	REPLY AFFIRMATION of Emily Reisbaum in Support re: <u>54</u> MOTION in Limine <i>to Preclude the Testimony of Relator's Expert</i> .. Document filed by Wilfred Van Gorp,

		Cornell University Medical College. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B – C, # <u>3</u> Exhibit D – H)(Beattie, Nina) (Entered: 10/24/2008)
10/24/2008		***STRICKEN DOCUMENT. Deleted document number 68 from the case record. The document was stricken from this case pursuant to <u>76</u> Endorsed Letter. (tve) (Entered: 02/25/2009)
11/24/2008	<u>70</u>	SCHEDULING ORDER: re defendants motion for summary judgment: Motion due by 1/9/2009. Response due by 2/6/2009. Reply due by 2/18/2009. Oral Argument set for 3/13/2009 at 11:30 AM before Judge William H. Pauley III. Status Conference set for 3/13/2009 at 11:30 AM before Judge William H. Pauley III. (Signed by Judge William H. Pauley, III on 11/24/08) Copies sent by chambers(cd) (Entered: 11/25/2008)
12/08/2008	<u>71</u>	TRANSCRIPT of proceedings held on 11/20/08 before Judge William H. Pauley, III. (pl) (Entered: 12/15/2008)
12/19/2008	<u>72</u>	MEMORANDUM & ORDER denying <u>54</u> Motion in Limine; granting in part and denying in part <u>60</u> Motion in Limine. (Signed by Judge William H. Pauley, III on 12/19/08) (ae) (Entered: 12/19/2008)
12/29/2008	<u>73</u>	ENDORSED LETTER addressed to Judge William H. Pauley from Emily Reisbaum dated 12/23/08 re: Therefore, defendants request permission to submit one joint memorandum of 40 pages. ENDORSEMENT: Application granted in part. Defendants may submit one joint brief of 35 pages in length. (Signed by Judge William H. Pauley, III on 12/24/08) (pl) (Entered: 12/29/2008)
02/06/2009	<u>74</u>	ENDORSED LETTER addressed to Judge William H. Pauley III from Tracey A. Tiska dated 1/28/2009 re: The parties respectfully request a slight modification to the current briefing schedule and for a clarification of Your Honor's prior order. Relator's counsel requests a short extension to file his response on Tuesday, February 10, instead of Friday, February 6. Defendants' counsel respectfully request that the due date for their reply brief be extended from Wednesday, February 18 to Tuesday, February 24 because of the school vacation schedules. Therefore the parties respectfully request that relator be permitted to file an opposition brief of the same length as defendants' brief in support of their summary judgment motion (35 pages). ENDORSEMENT: Application granted. So Ordered. (Signed by Judge William H. Pauley, III on 2/6/2009) (jfe) (Entered: 02/09/2009)
02/24/2009	<u>75</u>	ENDORSED LETTER addressed to Judge William H. Pauley, III from Tracey A. Tiska dated 2/17/2009 re: Defendants' request permission to submit one joint reply memorandum of 15 pages. ENDORSEMENT: Application granted. SO ORDERED. (Signed by Judge William H. Pauley, III on 2/24/2009) (tve) (Entered: 02/25/2009)
02/24/2009	<u>76</u>	ENDORSED LETTER addressed to Judge William H. Pauley, III from Eva L. Dietz dated 2/12/2009 re: Counsel writes on behalf of both defendants to submit a revised request to file Exhibit BBBB attached to the Declaration of Tracey A. Tiska under seal and also seeks leave to file Exhibit H of the Declaration of Emily Reisbaum as well as the memorandum of law in support of the Motion to Preclude under seal and to replace the "public version" of these papers currently on the public electronic docket with redacted versions. ENDORSEMENT: Applications granted. The materials identified above may be filed under seal. Defendants may withdraw and re-file redacted copies on ECF and unreacted copies under seal of Docket # 68. The Clerk shall strike docket #68 from the docket sheet and allow refile as requested by Defendants. Defendants may also withdraw and file under seal Exhibit H to Docket # 69. SO ORDERED. (Signed by Judge William H. Pauley, III on 2/24/2009) (tve) Modified on 2/25/2009 (tve). Modified on 3/9/2009 (tve). (Entered: 02/25/2009)
02/24/2009	<u>77</u>	SEALED DOCUMENT placed in vault.(rt) (Entered: 02/25/2009)
03/03/2009	<u>78</u>	SEALED DOCUMENT placed in vault.(jri) (Entered: 03/03/2009)
03/03/2009	<u>79</u>	ENDORSED LETTER addressed to Judge William H. Pauley from Heather K. McShain dated 2/25/2009 re: The government respectfully renews its request that the Court: (1) order a new briefing scheduled that will allow the government 30 days, until 3/16/2009, to file a Statement of Interest, and that defendants be permitted thirty days after receipt of the government's Statement of Interest in which to file a response; and (2) adjourn the 3/13/2009 date for oral argument to a date following defendants

		submission of their response to the government's Statement of Interest. ENDORSEMENT: Application granted. This Court will hold oral argument on 5/8/2009 at 11:00 a.m. SO ORDERED. (Signed by Judge William H. Pauley, III on 3/3/2009) (tve) Modified on 3/4/2009 (tve). (Entered: 03/04/2009)
03/05/2009	<u>80</u>	ENDORSED LETTER addressed to Judge William H. Pauley from R. Brian Black dated 2/25/09 re: Request on behalf of both defendants to file a confidential document under seal in connection with defendants' reply memorandum in support of their joint motion for summary judgment, as well as file a redacted "public version" of the reply memorandum et al. ENDORSEMENT: Application granted. Defendant may file their reply and Exhibit A under seal, and a redacted version on ECF. (Signed by Judge William H. Pauley, III on 3/5/09) (cd) (Entered: 03/06/2009)
03/11/2009	81	SEALED DOCUMENT placed in vault.(jri) (Entered: 03/11/2009)
03/11/2009	<u>82</u>	REPLY MEMORANDUM OF LAW in Support re: <u>54</u> MOTION in Limine to Preclude the Testimony of Relator's Expert.. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Tiska, Tracey) (Entered: 03/11/2009)
03/11/2009	<u>83</u>	DECLARATION of Emily Reisbaum in Support re: <u>54</u> MOTION in Limine to Preclude the Testimony of Relator's Expert.. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H)(Tiska, Tracey) (Entered: 03/11/2009)
03/11/2009	<u>84</u>	CERTIFICATE OF SERVICE of Defendants' Reply Memorandum Of Law In Further Support Of Their Motion To Preclude The Testimony Of Relator's Expert, Dr. Brian Kimes And Declaration Of Emily Reisbaum. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Tiska, Tracey) (Entered: 03/11/2009)
03/11/2009	<u>85</u>	RULE 56.1 STATEMENT. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Tiska, Tracey) (Entered: 03/11/2009)
03/11/2009	<u>86</u>	MOTION for Summary Judgment. Document filed by Wilfred Van Gorp, Cornell University Medical College.(Tiska, Tracey) (Entered: 03/11/2009)
03/11/2009	<u>87</u>	MEMORANDUM OF LAW in Support re: <u>86</u> MOTION for Summary Judgment.. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Tiska, Tracey) (Entered: 03/11/2009)
03/11/2009	<u>88</u>	DECLARATION of Dr. Wilfred G. Van Gorp in Support re: <u>86</u> MOTION for Summary Judgment.. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Tiska, Tracey) (Entered: 03/11/2009)
03/11/2009	<u>89</u>	DECLARATION of Tracey A. Tiska in Support re: <u>86</u> MOTION for Summary Judgment.. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D part 1, # <u>5</u> Exhibit D part 2, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J, # <u>12</u> Exhibit K, # <u>13</u> Exhibit L, # <u>14</u> Exhibit M, # <u>15</u> Exhibit N, # <u>16</u> Exhibit O, # <u>17</u> Exhibit P, # <u>18</u> Exhibit Q, # <u>19</u> Exhibit R, # <u>20</u> Exhibit S, # <u>21</u> Exhibit T, # <u>22</u> Exhibit U part 1, # <u>23</u> Exhibit U part 2, # <u>24</u> Exhibit U part 3, # <u>25</u> Exhibit V, # <u>26</u> Exhibit W, # <u>27</u> Exhibit X, # <u>28</u> Exhibit Y, # <u>29</u> Exhibit Z, # <u>30</u> Errata AA, # <u>31</u> Exhibit BB, # <u>32</u> Exhibit CC, # <u>33</u> Exhibit DD, # <u>34</u> Exhibit EE, # <u>35</u> Exhibit FF, # <u>36</u> Exhibit GG, # <u>37</u> Exhibit HH, # <u>38</u> Exhibit II, # <u>39</u> Exhibit JJ, # <u>40</u> Exhibit KK, # <u>41</u> Exhibit LL, # <u>42</u> Exhibit MM, # <u>43</u> Exhibit NN, # <u>44</u> Exhibit OO, # <u>45</u> Exhibit PP, # <u>46</u> Exhibit QQ, # <u>47</u> Exhibit RR, # <u>48</u> Exhibit SS, # <u>49</u> Exhibit TT, # <u>50</u> Exhibit UU, # <u>51</u> Exhibit VV part 1, # <u>52</u> Exhibit VV part 2, # <u>53</u> Exhibit WW, # <u>54</u> Exhibit XX part 1, # <u>55</u> Exhibit XX part 2, # <u>56</u> Exhibit XX part 3, # <u>57</u> Exhibit XX part 4, # <u>58</u> Exhibit YY, # <u>59</u> Exhibit ZZ, # <u>60</u> Exhibit AAA, # <u>61</u> Exhibit BBB, # <u>62</u> Exhibit CCC, # <u>63</u> Exhibit DDD, # <u>64</u> Exhibit EEE, # <u>65</u> Exhibit FFF, # <u>66</u> Exhibit GGG, # <u>67</u> Exhibit HHH, # <u>68</u> Exhibit III, # <u>69</u> Exhibit JJJ, # <u>70</u> Exhibit KKK, # <u>71</u> Exhibit LLL, # <u>72</u> Exhibit MMM, # <u>73</u> Exhibit NNN, # <u>74</u> Exhibit OOO, # <u>75</u> Exhibit PPP, # <u>76</u> Exhibit QQQ, # <u>77</u> Exhibit RRR, # <u>78</u> Exhibit SSS, # <u>79</u> Exhibit TTT, # <u>80</u> Exhibit UUU, # <u>81</u> Exhibit VVV, # <u>82</u> Exhibit WWW, # <u>83</u> Exhibit XXX, # <u>84</u> Exhibit YYY, # <u>85</u> Exhibit ZZZ, # <u>86</u> Exhibit AAAA, # <u>87</u> Exhibit BBBB, # <u>88</u> Exhibit CCCC, # <u>89</u> Exhibit DDDD)(Tiska, Tracey) (Entered: 03/11/2009)

03/11/2009	<u>90</u>	CERTIFICATE OF SERVICE of Rule 56.1 Statement, Motion for Summary Judgment, Memorandum of Law, Declaration of Dr. Wilfred G. Van Gorp, and Declaration of Tracey A. Tiska. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Tiska, Tracey) (Entered: 03/11/2009)
03/11/2009	<u>91</u>	REPLY MEMORANDUM OF LAW in Support re: <u>86</u> MOTION for Summary Judgment.. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Tiska, Tracey) (Entered: 03/11/2009)
03/11/2009	<u>92</u>	DECLARATION of Dr. Wilfred G. Van Gorp in Support re: <u>86</u> MOTION for Summary Judgment.. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Tiska, Tracey) (Entered: 03/11/2009)
03/11/2009	<u>93</u>	DECLARATION of Tracey A. Tiska in Support re: <u>86</u> MOTION for Summary Judgment.. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Tiska, Tracey) (Entered: 03/11/2009)
03/11/2009	<u>94</u>	CERTIFICATE OF SERVICE of Reply Memorandum of Law, Declaration of Dr. Wilfred G. Van Gorp, and Declaration of Tracey A. Tiska. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Tiska, Tracey) (Entered: 03/11/2009)
03/16/2009	<u>95</u>	BRIEF re: <u>86</u> MOTION for Summary Judgment. <i>Statement of Interest of the United States</i> . Document filed by United States of America.(McShain, Heather) (Entered: 03/16/2009)
03/16/2009	<u>96</u>	CERTIFICATE OF SERVICE of Statement of Interest of the United States served on Counsel for Relator and Defendants on March 16, 2009. Service was made by Federal Express. Document filed by United States of America. (McShain, Heather) (Entered: 03/16/2009)
04/15/2009	<u>97</u>	NOTICE of Defendants' Response To The Statement Of Interest Of The United States Of America. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Tiska, Tracey) (Entered: 04/15/2009)
04/24/2009	<u>98</u>	ENDORSED LETTER addressed to Judge William H Pauley from Michael Salmanson dated 4/20/09 re: Request that the Court formally grant Relator's request to: (1) file a redacted version of its papers in response to Defendants' Motion for Summary Judgment on the electronic docket; and (2) file the unredacted version of the papers under seal. ENDORSEMENT: Application granted. (Signed by Judge William H. Pauley, III on 4/23/09) (cd) (Entered: 04/24/2009)
04/24/2009	<u>99</u>	FILING ERROR – DEFICIENT DOCKET ENTRY (See document #102) – AMENDED REPLY MEMORANDUM OF LAW in Opposition re: <u>86</u> MOTION for Summary Judgment. <i>REDACTED with Certificate of Service</i> . Document filed by Daniel Feldman. (Salmanson, Michael) Modified on 4/27/2009 (jar). (Entered: 04/24/2009)
04/24/2009	<u>100</u>	COUNTER STATEMENT TO <u>85</u> Rule 56.1 Statement. Document filed by Daniel Feldman. (Salmanson, Michael) (Entered: 04/24/2009)
04/24/2009	<u>101</u>	DECLARATION of Michael J. Salmanson in Opposition re: <u>86</u> MOTION for Summary Judgment.. Document filed by Daniel Feldman. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R)(Salmanson, Michael) (Entered: 04/24/2009)
04/24/2009	<u>102</u>	REPLY MEMORANDUM OF LAW in Opposition re: <u>86</u> MOTION for Summary Judgment. <i>REDACTED with Certificate of Service</i> . Document filed by Daniel Feldman. (Salmanson, Michael) (Entered: 04/24/2009)
05/04/2009	103	SEALED DOCUMENT placed in vault.(jri) (Entered: 05/04/2009)
12/07/2009	<u>104</u>	MEMORANDUM & ORDER denying <u>86</u> Motion for Summary Judgment. For the reasons set forth in this Memorandum & Order, Defendants' motion for summary judgment is denied. The parties are directed to appear for a conference on 12/21/09 at 11:00 a.m. (Signed by Judge William H. Pauley, III on 12/7/09) (tro) (Entered: 12/07/2009)

		12/08/2009)
12/18/2009	<u>105</u>	JOINT MOTION for Reconsideration. Document filed by Wilfred Van Gorp, Cornell University Medical College.(Black, Robert) (Entered: 12/18/2009)
12/18/2009	<u>106</u>	MEMORANDUM OF LAW in Support re: <u>105</u> JOINT MOTION for Reconsideration.. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Black, Robert) (Entered: 12/18/2009)
12/22/2009	<u>107</u>	SCHEDULING ORDER: (1) Plaintiff shall file his opposition to Defendants' motion for reconsideration by January 8, 2010; (2) Defendants shall file any reply by January 15, 2010; (3) The parties shall submit a joint pre-trial order by March 26, 2010; and, (4) The Court will hold a final pre-trial conference on April 9, 2010 at 10:00 a.m. The Court will consider Defendants' motion for reconsideration on submission. SO ORDERED. (Signed by Judge William H. Pauley, III on 12/21/2009) (tve) (Entered: 12/23/2009)
01/08/2010	<u>108</u>	REPLY MEMORANDUM OF LAW in Opposition re: <u>105</u> JOINT MOTION for Reconsideration. <i>with Certificate of Service</i> . Document filed by Daniel Feldman. (Attachments: # <u>1</u> Exhibit Exhibits 1, 2 and 3)(Salmanson, Michael) (Entered: 01/08/2010)
01/15/2010	<u>109</u>	REPLY MEMORANDUM OF LAW in Support re: <u>105</u> JOINT MOTION for Reconsideration.. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Tiska, Tracey) (Entered: 01/15/2010)
03/23/2010	<u>110</u>	ENDORSED LETTER addressed to Judge William H. Pauley from Tracey Tiska dated 3/12/10 re: Request that the date for filing the pretrial order be adjourned three weeks after a decision is rendered on defendants' motion for reconsideration. ENDORSEMENT: Application granted. (Signed by Judge William H. Pauley, III on 3/22/10) (cd) (Entered: 03/23/2010)
04/12/2010	<u>111</u>	SCHEDULING ORDER NO. 15: Upon the request of both parties, the final pre-trial conference scheduled for 4/9/2010 is adjourned until 5/21/2010 at 11:15 AM before Judge William H. Pauley III. (Signed by Judge William H. Pauley, III on 4/9/2010) (tro) (Entered: 04/12/2010)
05/03/2010	<u>112</u>	NOTICE of Change of firm Name and Email Addresses. Document filed by Cornell University Medical College. (Tiska, Tracey) (Entered: 05/03/2010)
05/03/2010	<u>113</u>	MEMORANDUM AND ORDER denying <u>105</u> Motion for Reconsideration. For the further set forth in this Order, Defendants' motion for reconsideration is denied. SO ORDERED. (Signed by Judge William H. Pauley, III on 5/3/2010) (tve) (Entered: 05/03/2010)
05/06/2010	<u>114</u>	SCHEDULING ORDER NO. 16: The final pre-trial conference scheduled for 5/21/2010 at 11:15 a.m. is adjourned until 6/9/2010 at 2:00 p.m. before Judge William H. Pauley III. (Signed by Judge William H. Pauley, III on 5/6/2010) (tro) (Entered: 05/07/2010)
06/09/2010	<u>115</u>	SCHEDULING ORDER NO. 17: Jury selection and trial will begin on July 12, 2010. The parties shall file any motions in limine by June 21, 2010. The parties shall file any oppositions by June 28, 2010. The parties shall file any replies by July 2, 2010. The parties shall submit briefing on what constitutes a "claim for payment" for purposes of assessing statutory damages by July 2, 2010. Finally, the parties shall submit proposed voir dire, a brief summary of the case, a joint request to charge, and proposed verdict sheet by July 2, 2010. (Signed by Judge William H. Pauley, III on 6/9/2010) (jfe) (Entered: 06/10/2010)
06/21/2010	<u>116</u>	MOTION in Limine <i>to Exclude Certain Evidence at Trial</i> . Document filed by Daniel Feldman.(Salmanson, Michael) (Entered: 06/21/2010)
06/21/2010	<u>117</u>	MEMORANDUM OF LAW in Support re: <u>116</u> MOTION in Limine <i>to Exclude Certain Evidence at Trial</i> . <i>with Certificate of Service</i> . Document filed by Daniel Feldman. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12 Part 1, # <u>13</u> Exhibit 12 Part 2, # <u>14</u> Exhibit 12 Part 3, # <u>15</u> Exhibit 13, # <u>16</u> Exhibit 14, # <u>17</u> Exhibit 15)(Salmanson, Michael) (Entered: 06/21/2010)

		06/21/2010)
06/21/2010	<u>118</u>	MOTION in Limine <i>To Exclude Exhibits And Testimony</i> . Document filed by Wilfred Van Gorp, Cornell University Medical College. (Attachments: # <u>1</u> Certificate of Service)(Tiska, Tracey) (Entered: 06/21/2010)
06/21/2010	<u>119</u>	MEMORANDUM OF LAW in Support re: <u>118</u> MOTION in Limine <i>To Exclude Exhibits And Testimony</i> .. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Tiska, Tracey) (Entered: 06/21/2010)
06/21/2010	<u>120</u>	DECLARATION of Tracey A. Tiska in Support re: <u>118</u> MOTION in Limine <i>To Exclude Exhibits And Testimony</i> .. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Attachments: # <u>1</u> Exhibit A)(Tiska, Tracey) (Entered: 06/21/2010)
06/23/2010	121	TRANSCRIPT of proceedings held on June 9, 2010 2:00 p.m. before Judge William H. Pauley, III. (ajc) (Entered: 06/23/2010)
06/28/2010	<u>122</u>	REPLY MEMORANDUM OF LAW in Opposition re: <u>118</u> MOTION in Limine <i>To Exclude Exhibits And Testimony. with Certificate of Service</i> . Document filed by Daniel Feldman. (Salmanson, Michael) (Entered: 06/28/2010)
06/28/2010	<u>123</u>	MEMORANDUM OF LAW in Opposition re: <u>116</u> MOTION in Limine <i>to Exclude Certain Evidence at Trial</i> .. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Tiska, Tracey) (Entered: 06/28/2010)
06/28/2010	<u>124</u>	DECLARATION of Tracey A. Tiska in Opposition re: <u>116</u> MOTION in Limine <i>to Exclude Certain Evidence at Trial</i> .. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Attachments: # <u>1</u> Exhibit A–D, # <u>2</u> Exhibit E–F)(Tiska, Tracey) (Entered: 06/28/2010)
07/01/2010	<u>128</u>	MOTION for Vivianne Stapp to Appear Pro Hac Vice. Document filed by Wilfred Van Gorp.(mro) (Entered: 07/07/2010)
07/02/2010	<u>125</u>	REPLY MEMORANDUM OF LAW in Support re: <u>116</u> MOTION in Limine <i>to Exclude Certain Evidence at Trial. with Certificate of Service</i> . Document filed by Daniel Feldman. (Attachments: # <u>1</u> Exhibits 16 – 20)(Salmanson, Michael) (Entered: 07/02/2010)
07/02/2010	<u>126</u>	REPLY MEMORANDUM OF LAW in Support re: <u>118</u> MOTION in Limine <i>To Exclude Exhibits And Testimony</i> .. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Tiska, Tracey) (Entered: 07/02/2010)
07/02/2010	<u>127</u>	DECLARATION of Tracey A. Tiska in Support re: <u>118</u> MOTION in Limine <i>To Exclude Exhibits And Testimony</i> .. Document filed by Wilfred Van Gorp, Cornell University Medical College. (Attachments: # <u>1</u> Exhibit a)(Tiska, Tracey) (Entered: 07/02/2010)
07/07/2010	<u>129</u>	ENDORSED LETTER addressed to Judge William H. Pauley III from Tracey A. Tiska dated 6/28/10 re: counsel for defendant respectfully requests permission to bring in electronic equipment that is not provided by the court's courtroom technology department. Specifically, we are requesting permission for the individuals, listed in this letter to bring electronic devices to the courthouse on July 9, 2010 through the end of the trial. ENDORSEMENT: Application denied for failure to comply with standing order M10–468 dated Feb. 18, 2010. (Signed by Judge William H. Pauley, III on 7/7/10) (pl) Modified on 7/7/2010 (pl). Modified on 7/7/2010 (pl). Modified on 7/7/2010 (pl). Modified on 7/8/2010 (ae). (Entered: 07/07/2010)
07/07/2010	<u>130</u>	ENDORSED LETTER addressed to Judge William H. Pauley III from Michael J. Salmanson dated 6/28/10 re: counsel for plaintiff respectfully requests permission for the individuals listed in this letter, to bring the following electronic equipment that is not provided by the court's technology department to the courthouse on July 12, 2010 through the end of trial. ENDORSEMENT: Application denied for failure to comply with standing order M10–468 dated Feb. 18, 2010. (Signed by Judge William H. Pauley, III on 7/7/10) (pl) (Entered: 07/07/2010)
07/08/2010	<u>131</u>	MEMORANDUM AND ORDER: For the foregoing reasons, relator's motions in limine are granted in part and denied in part, Defendants' motions in limine are denied

		in part, and decision on the balance of the parties' motions in limine is reserved until trial. So Ordered. (Signed by Judge William H. Pauley, III on 7/8/2010) (js) (Entered: 07/08/2010)
07/09/2010		CASHIERS OFFICE REMARK on <u>128</u> Motion to Appear Pro Hac Vice in the amount of \$25.00, paid on 07/01/2010, Receipt Number 907905. (jd) (Entered: 07/09/2010)
07/12/2010	<u>132</u>	ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION, granting <u>128</u> Motion for Viviann Stapp to Appear Pro Hac Vice. Additional relief as set forth in this Order. (Signed by Judge William H. Pauley, III on 7/12/10) (pl) (Entered: 07/12/2010)
07/14/2010	<u>133</u>	AMENDED JOINT PRETRIAL ORDER: Pursuant to Rule 6A of the Court's Individual Practices, trial counsel for the parties in the above captioned action respectfully submit this pre-trial order, as set forth in this Order. Document filed by Wilfred Van Gorp, Cornell University Medical College, Daniel Feldman.(jpo) (Entered: 07/15/2010)
07/16/2010	<u>134</u>	ORDER: This Court has already determined the measure of damages as a matter of law, so that issue will not be before the jury. Accordingly, Relator's request is denied, as set forth in this Order. (Signed by Judge William H. Pauley, III on 7/16/2010) (jpo) (Entered: 07/16/2010)
07/19/2010	<u>135</u>	LETTER addressed to Judge William H. Pauley, III from R. Brian Black dated 7/17/10 re: Counsel requests that the Court inform the jury on Monday that: "In a False Claims Act case, the Government has the option to intervene as a party or to decline to intervene. Because the Government may have decided not to intervene for any number of reasons, you should draw no inferences from the fact that the Government has declined to intervene in this case." Document filed by Wilfred Van Gorp, Cornell University Medical College. (dj) (Entered: 07/20/2010)
07/19/2010	<u>136</u>	LETTER addressed to Judge William H. Pauley III from Michael J. Salmanson dated 7/18/10 re: counsel writes in response to Mr. Black's letter of July 17, 2010 in regard to two issues which have arisen. Document filed by United States of America.(dj) (Entered: 07/20/2010)
07/23/2010	<u>137</u>	LETTER addressed to Judge William H. Pauley, III from R. Brikan Black dated 7/21/10 re: Counsel for defendant writes on behalf of Defendants Cornell University and Dr. Wilfred van Gorp to request that the Court strike and direct the jury not to consider testimony by Relator regarding what he has referred to as "the incident" between himself and Dr. van Gorp's former partner. Document filed by Cornell University Medical College, Wilfred Van Gorp.(pl) (Entered: 07/23/2010)
07/23/2010	<u>138</u>	JURY VERDICT FORM.(mro) (Entered: 07/23/2010)
07/23/2010	<u>139</u>	LETTER addressed to Judge William H. Pauley, III from R. Brian Black dated 7/21/10 re: Defendants write in regards to the Court's draft Jury Charge. Defendants offer substitutions and additions as set forth in this letter. Document filed by Cornell University Medical College, Wilfred Van Gorp.(ae) (Entered: 07/23/2010)
07/30/2010	<u>140</u>	STATEMENT OF DAMAGES. Document filed by Daniel Feldman. (Attachments: # <u>1</u> Affidavit Declaration of Michael J. Salmanson with Exhibits)(Salmanson, Michael) (Entered: 07/30/2010)
08/03/2010	<u>141</u>	JUDGMENT #10,1328 in favor of United States of America against Cornell University Medical College, and Wilfred Van Gorp in the amount of \$ 887,714.00. (Signed by Judge William H. Pauley, III on 8/3/10) (Attachments: # <u>1</u> notice of right to appeal)(ml) (Entered: 08/03/2010)
08/11/2010	<u>142</u>	AMENDED JUDGMENT # 10,1328 amending <u>141</u> Judgment, in favor of United States of America against Cornell University and Wilfred Van Gorp, jointly and severally, in the amount of \$ 887,714.00. (Signed by Judge William H. Pauley, III on 8/11/10) (Attachments: # <u>1</u> NOTICE OF RIGHT TO APPEAL)(ml) (Entered: 08/12/2010)
08/12/2010	<u>143</u>	ENDORSED LETTER addressed to Judge William H. Pauley III from Tracey A. Tiska dated 8/10/2010 re: Defendants respectfully request permission to file their supporting brief after the August 31 deadline for the motion. Defendants Opening Brief served by September 16 (16 days after the August 31 motion filing date);

		Relator's Opposition Brief served by October 8; and Defendants Reply Brief served by October 20. ENDORSEMENT: APPLICATION GRANTED. SO ORDERED. (Signed by Judge William H. Pauley, III on 8/12/2010) (jmi) (Entered: 08/13/2010)
08/13/2010	<u>144</u>	NOTICE OF APPEAL from <u>142</u> Amended Judgment,. Document filed by Cornell University Medical College, Wilfred Van Gorp. Filing fee \$ 455.00, receipt number E 911890. (nd) (Entered: 08/16/2010)
08/16/2010		Transmission of Notice of Appeal to the District Judge re: <u>144</u> Notice of Appeal. (nd) (Entered: 08/16/2010)
08/16/2010		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>144</u> Notice of Appeal. (nd) (Entered: 08/16/2010)
08/16/2010		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>120</u> Declaration in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>134</u> Order, Set Deadlines/Hearings,, <u>127</u> Declaration in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>126</u> Reply Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>141</u> Judgment, <u>85</u> Rule 56.1 Statement filed by Wilfred Van Gorp, Cornell University Medical College, <u>58</u> Declaration in Support of Motion,, filed by Wilfred Van Gorp, Cornell University Medical College, <u>69</u> Reply Affirmation in Support of Motion, filed by Wilfred Van Gorp, Cornell University Medical College, <u>92</u> Declaration in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>124</u> Declaration in Opposition to Motion, filed by Wilfred Van Gorp, Cornell University Medical College, <u>44</u> Endorsed Letter, Set Deadlines/Hearings,,,, <u>66</u> Declaration in Support, filed by Daniel Feldman, <u>123</u> Memorandum of Law in Opposition to Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>84</u> Certificate of Service Other, filed by Wilfred Van Gorp, Cornell University Medical College, <u>132</u> Order on Motion to Appear Pro Hac Vice, <u>60</u> MOTION in Limine <i>To Exclude Defendants' Expert Testimony</i> . filed by Daniel Feldman, <u>130</u> Endorsed Letter,, <u>64</u> Declaration in Opposition to Motion, filed by Cornell University Medical College, <u>115</u> Scheduling Order,, <u>97</u> Notice (Other) filed by Wilfred Van Gorp, Cornell University Medical College, <u>59</u> Order, <u>79</u> Endorsed Letter, Set Hearings,,,,, <u>50</u> Endorsed Letter, Set Hearings,,,,, <u>125</u> Reply Memorandum of Law in Support of Motion filed by Daniel Feldman, <u>67</u> Reply Memorandum of Law in Support of Motion filed by Daniel Feldman, <u>33</u> Answer to Complaint filed by Cornell University Medical College, <u>75</u> Endorsed Letter, <u>137</u> Letter, filed by Wilfred Van Gorp, Cornell University Medical College, <u>96</u> Certificate of Service Other filed by United States of America, <u>70</u> Scheduling Order, <u>105</u> JOINT MOTION for Reconsideration. filed by Wilfred Van Gorp, Cornell University Medical College, <u>55</u> Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>72</u> Order on Motion in Limine, <u>106</u> Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>83</u> Declaration in Support of Motion, filed by Wilfred Van Gorp, Cornell University Medical College, <u>90</u> Certificate of Service Other, filed by Wilfred Van Gorp, Cornell University Medical College, <u>63</u> Memorandum of Law in Opposition to Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>101</u> Declaration in Opposition to Motion, filed by Daniel Feldman, <u>143</u> Endorsed Letter,, <u>108</u> Reply Memorandum of Law in Opposition to Motion filed by Daniel Feldman, <u>54</u> MOTION in Limine <i>to Preclude the Testimony of Relator's Expert</i> . filed by Wilfred Van Gorp, Cornell University Medical College, <u>128</u> MOTION for Viviann Stapp to Appear Pro Hac Vice. filed by Wilfred Van Gorp, <u>30</u> Rule 7.1 Corporate Disclosure Statement filed by Cornell University Medical College, <u>47</u> Endorsed Letter, Set Deadlines/Hearings,, <u>109</u> Reply Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>87</u> Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>133</u> Proposed Pretrial Order, filed by Daniel Feldman, Wilfred Van Gorp, Cornell University Medical College, <u>61</u> Memorandum of Law in Support of Motion, filed by Daniel Feldman, <u>49</u> Endorsed Letter, Set Hearings,, <u>144</u> Notice of Appeal filed by Wilfred Van Gorp, Cornell University Medical College, <u>140</u> Statement of Damages filed by Daniel Feldman, <u>74</u> Endorsed Letter, Set Deadlines/Hearings,,,,, <u>113</u> Order on Motion for Reconsideration, <u>65</u> Memorandum of Law in Opposition to Motion filed by Daniel Feldman, <u>100</u> Counter Statement to Rule 56.1 filed by Daniel Feldman, <u>39</u> Scheduling Order, <u>45</u> Endorsed Letter, Set

		Deadlines/Hearings,, <u>136</u> Letter, filed by United States of America, <u>95</u> Brief filed by United States of America, <u>104</u> Order on Motion for Summary Judgment, <u>117</u> Memorandum of Law in Support of Motion,, filed by Daniel Feldman, <u>112</u> Notice (Other) filed by Cornell University Medical College, <u>38</u> Protective Order, <u>73</u> Endorsed Letter, <u>119</u> Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>111</u> Scheduling Order, <u>56</u> Declaration in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>121</u> Transcript, <u>131</u> Order on Motion in Limine,,, <u>31</u> Rule 26(f) Discovery Plan Report, <u>86</u> MOTION for Summary Judgment. filed by Wilfred Van Gorp, Cornell University Medical College, <u>122</u> Reply Memorandum of Law in Oppisition to Motion filed by Daniel Feldman, <u>94</u> Certificate of Service Other filed by Wilfred Van Gorp, Cornell University Medical College, <u>135</u> Letter,, filed by Wilfred Van Gorp, Cornell University Medical College, <u>76</u> Endorsed Letter,,,, <u>98</u> Endorsed Letter, <u>129</u> Endorsed Letter,, <u>48</u> Scheduling Order,, <u>82</u> Reply Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>51</u> Scheduling Order,, <u>46</u> Endorsed Letter, Set Deadlines/Hearings,,,, <u>80</u> Endorsed Letter,, <u>116</u> MOTION in Limine <i>to Exclude Certain Evidence at Trial</i> . filed by Daniel Feldman, <u>89</u> Declaration in Support of Motion,,,,,, filed by Wilfred Van Gorp, Cornell University Medical College, <u>32</u> Answer to Complaint filed by Wilfred Van Gorp, <u>107</u> Scheduling Order, Set Motion and R&R Deadlines/Hearings,, <u>102</u> Reply Memorandum of Law in Oppisition to Motion filed by Daniel Feldman, <u>118</u> MOTION in Limine <i>To Exclude Exhibits And Testimony</i> . filed by Wilfred Van Gorp, Cornell University Medical College, <u>91</u> Reply Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>93</u> Declaration in Support of Motion, filed by Wilfred Van Gorp, Cornell University Medical College, <u>142</u> Amended Judgment, <u>88</u> Declaration in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>139</u> Letter, filed by Wilfred Van Gorp, Cornell University Medical College, <u>57</u> Declaration in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>114</u> Scheduling Order, <u>110</u> Endorsed Letter, were transmitted to the U.S. Court of Appeals. (nd) (Entered: 08/16/2010)
08/17/2010	<u>145</u>	TRANSCRIPT of proceedings held on July 12, 13, 14, 15, 19, 2010 before Judge William H. Pauley, III. (bw) (Entered: 08/17/2010)
08/17/2010	<u>146</u>	MOTION for Attorney Fees <i>Notice of Motion</i> . Document filed by Daniel Feldman.(Salmanson, Michael) (Entered: 08/17/2010)
08/17/2010	<u>147</u>	MEMORANDUM OF LAW in Support re: <u>146</u> MOTION for Attorney Fees <i>Notice of Motion</i> .. Document filed by Daniel Feldman. (Attachments: # <u>1</u> Declaration of Michael Salmanson with Exhibits)(Salmanson, Michael) (Entered: 08/17/2010)
08/17/2010	<u>148</u>	SUPERSEDEAS BOND # 0528322 in the amount of \$ 985,363.00 posted by Cornell University Medical College, Wilfred Van Gorp. (dt) (Entered: 08/18/2010)
08/17/2010	<u>149</u>	TRANSCRIPT of proceedings held on July 20, 21, 22, 2010 before Judge William H. Pauley, III. (ja) (Entered: 08/19/2010)
08/25/2010	<u>150</u>	MOTION for New Trial., MOTION for Judgment as a Matter of Law. Document filed by Cornell University Medical College, Wilfred Van Gorp.(Tiska, Tracey) (Entered: 08/25/2010)
08/26/2010	<u>151</u>	MEMORANDUM OF LAW in Opposition re: <u>146</u> MOTION for Attorney Fees <i>Notice of Motion</i> .. Document filed by Cornell University Medical College, Wilfred Van Gorp. (Tiska, Tracey) (Entered: 08/26/2010)
08/26/2010	<u>152</u>	MOTION to Stay <i>An Award Of Attorneys' Fees, Costs And Expenses</i> . Document filed by Cornell University Medical College, Wilfred Van Gorp.(Tiska, Tracey) (Entered: 08/26/2010)
08/26/2010	<u>153</u>	MEMORANDUM OF LAW in Support re: <u>152</u> MOTION to Stay <i>An Award Of Attorneys' Fees, Costs And Expenses</i> .. Document filed by Cornell University Medical College, Wilfred Van Gorp. (Tiska, Tracey) (Entered: 08/26/2010)
09/02/2010	<u>154</u>	REPLY MEMORANDUM OF LAW in Support re: <u>146</u> MOTION for Attorney Fees <i>Notice of Motion</i> ., <u>152</u> MOTION to Stay <i>An Award Of Attorneys' Fees, Costs And Expenses</i> .. Document filed by Daniel Feldman. (Attachments: # <u>1</u> Supplemental Declaration of Michael J. Salmanson with Exhibit A)(Salmanson, Michael) (Entered: 09/02/2010)

		09/02/2010)
09/08/2010	<u>155</u>	RESPONSE to Motion re: <u>152</u> MOTION to Stay <i>An Award Of Attorneys' Fees, Costs And Expenses</i> .. Document filed by Daniel Feldman. (Salmanson, Michael) (Entered: 09/08/2010)
09/16/2010	<u>156</u>	MEMORANDUM OF LAW in Support re: <u>150</u> MOTION for New Trial. MOTION for Judgment as a Matter of Law.. Document filed by Cornell University Medical College, Wilfred Van Gorp. (Tiska, Tracey) (Entered: 09/16/2010)
09/16/2010	<u>157</u>	DECLARATION of Tracey A. Tiska in Support re: <u>150</u> MOTION for New Trial. MOTION for Judgment as a Matter of Law.. Document filed by Cornell University Medical College, Wilfred Van Gorp. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I part 1, # <u>10</u> Exhibit I part 2, # <u>11</u> Exhibit I part 3, # <u>12</u> Exhibit I part 4, # <u>13</u> Exhibit I part 5, # <u>14</u> Exhibit I part 6, # <u>15</u> Exhibit I part 7, # <u>16</u> Exhibit J, # <u>17</u> Exhibit K, # <u>18</u> Exhibit L, # <u>19</u> Exhibit M)(Tiska, Tracey) (Entered: 09/16/2010)
09/20/2010		***DELETED DOCUMENT. Deleted document number <u>158</u> Sealed Document. The document was incorrectly filed in this case. (cb) (Entered: 09/23/2010)
09/23/2010	<u>158</u>	ENDORSED LETTER addressed to Judge William H. Pauley, III from R. Brian Black dated 9/16/2010 re: All parties respectfully request that the Court stay determination of Relator's pending motion for attorney fees, Dkt. No. 146, until defendants' post-trial motion is decided. If the parties' joint request is granted, Defendants withdraw their motion for a stay, Dkt. No. 152, as moot. ENDORSEMENT: Application granted. The Clerk of Court is directed to terminate Docket Entry No. 152. So Ordered. (Signed by Judge William H. Pauley, III on 9/23/2010) (jfe) Modified on 9/27/2010 (jfe). (Entered: 09/27/2010)
10/04/2010	<u>159</u>	NOTICE OF CHANGE OF ADDRESS by Nina Minard Beattie on behalf of Wilfred Van Gorp. New Address: Brune & Richard LLP, One Battery Park Plaza, 34th Floor, New York, New York, 10004,. (Beattie, Nina) (Entered: 10/04/2010)
10/08/2010	<u>160</u>	MEMORANDUM OF LAW in Opposition re: <u>150</u> MOTION for New Trial. MOTION for Judgment as a Matter of Law. <i>with Certificate of Service</i> . Document filed by Daniel Feldman. (Salmanson, Michael) (Entered: 10/08/2010)
10/20/2010	<u>161</u>	REPLY MEMORANDUM OF LAW in Support re: <u>150</u> MOTION for New Trial. MOTION for Judgment as a Matter of Law.. Document filed by Cornell University Medical College, Wilfred Van Gorp. (Attachments: # <u>1</u> Reply Declaration of Tracey A. Tiska, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C part 1, # <u>5</u> Exhibit C part 2)(Tiska, Tracey) (Entered: 10/20/2010)
12/09/2010	<u>162</u>	MEMORANDUM AND ORDER: For reasons further set forth in said Order, Defendants' motion for judgment as a matter of law pursuant to FRCP 50(b) or, alternatively, for a new trial pursuant to FRCP 59 is denied. ORDER denying <u>150</u> Motion for New Trial; denying <u>150</u> Motion for Judgment as a Matter of Law. (Signed by Judge William H. Pauley, III on 12/9/10) (db) (Entered: 12/09/2010)
12/13/2010	<u>163</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – SUPPLEMENTAL MOTION for Attorney Fees Costs and Expenses with Declaration and Certificate of Service. Document filed by Daniel Feldman.(Salmanson, Michael) Modified on 12/14/2010 (ka). (Entered: 12/13/2010)
12/14/2010		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT – DEFICIENT DOCKET ENTRY ERROR. Note to Attorney Michael Joseph Salmanson to RE-FILE Document <u>163</u> SUPPLEMENTAL MOTION for Attorney Fees Costs and Expenses with Declaration and Certificate of Service. ERROR(S): Filing Error of Declaration of Michael J. Salmanson. Declaration must be filed individually. Use event code Declaration(non-motion) located under Other Answers. (ka) (Entered: 12/14/2010)
12/14/2010	<u>164</u>	SUPPLEMENTAL MOTION for Attorney Fees <i>Costs and Expenses with Certificate of Service</i> . Document filed by Daniel Feldman.(Salmanson, Michael) (Entered: 12/14/2010)
12/14/2010	<u>165</u>	DECLARATION of Michael J. Salmanson re: <u>164</u> SUPPLEMENTAL MOTION for Attorney Fees <i>Costs and Expenses with Certificate of Service</i> .. Document filed by

		Daniel Feldman. (Salmanson, Michael) (Entered: 12/14/2010)
02/08/2011	<u>166</u>	First Supplemental ROA Sent to USCA (Index). Notice that the Supplemental Index to the record on Appeal for <u>144</u> Notice of Appeal filed by Wilfred Van Gorp, Cornell University Medical College USCA Case Number 10-3297, 3 Copies of the index, Certified Supplemental Clerk Certificate and Certified Docket Sheet were transmitted to the U.S. Court of Appeals. (tp) (nd). (Entered: 02/09/2011)
02/09/2011	<u>167</u>	MEMORANDUM AND ORDER: Motion practice over prevailing party fees is too often a time consuming endeavor requiring counsel and the Court to sift through minutiae. And it is always ancillary to the main event- a merits determination of the lawsuit. This motion is no exception. While the fee application has been pruned, this Court cannot help but wonder whether everyone's time might have been better spent. Relator Daniel Feldman's Motion for Attorneys' Fees, Costs and Expenses is granted in part and denied in part. Feldman's attorneys are awarded \$602,898.63 in attorneys' fees and \$25,862.15 in costs. Feldman is awarded his reasonable expenses in the amount of \$3,121.47. The Clerk of Court is directed to terminate the motion pending at docket entries #146 and #164. (Signed by Judge William H. Pauley, III on 2/9/2011) (js) (Entered: 02/09/2011)
02/14/2011		Second Supplemental ROA Sent to USCA (Electronic File). Certified Supplemental Indexed record on Appeal Electronic Files for <u>167</u> Order on Motion for Attorney Fees, <u>159</u> Notice of Change of Address filed by Wilfred Van Gorp, <u>154</u> Reply Memorandum of Law in Support of Motion, filed by Daniel Feldman, <u>158</u> Endorsed Letter, <u>161</u> Reply Memorandum of Law in Support of Motion, filed by Wilfred Van Gorp, Cornell University Medical College, <u>163</u> SUPPLEMENTAL MOTION for Attorney Fees <i>Costs and Expenses with Declaration and Certificate of Service</i> filed by Daniel Feldman, <u>153</u> Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>165</u> Declaration filed by Daniel Feldman, <u>160</u> Memorandum of Law in Opposition to Motion filed by Daniel Feldman, <u>151</u> Memorandum of Law in Opposition to Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>156</u> Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>146</u> MOTION for Attorney Fees <i>Notice of Motion</i> . filed by Daniel Feldman, <u>147</u> Memorandum of Law in Support of Motion filed by Daniel Feldman, <u>148</u> Bond filed by Wilfred Van Gorp, Cornell University Medical College, <u>162</u> Order on Motion for New Trial, Order on Motion for Judgment as a Matter of Law, <u>155</u> Response to Motion filed by Daniel Feldman, <u>164</u> SUPPLEMENTAL MOTION for Attorney Fees <i>Costs and Expenses with Certificate of Service</i> . filed by Daniel Feldman, <u>166</u> Supplemental ROA Sent to USCA - Index, <u>157</u> Declaration in Support of Motion, filed by Wilfred Van Gorp, Cornell University Medical College, <u>152</u> MOTION to Stay <i>An Award Of Attorneys' Fees, Costs And Expenses</i> filed by Wilfred Van Gorp, Cornell University Medical College, <u>150</u> MOTION for New Trial MOTION for Judgment as a Matter of Law filed by Wilfred Van Gorp, Cornell University Medical College USCA Case Number 10-3297, were transmitted to the U.S. Court of Appeals. (tp) (Entered: 02/14/2011)
03/10/2011	<u>168</u>	NOTICE OF APPEAL from <u>167</u> Memorandum and Order. Document filed by Cornell University Medical College, Wilfred Van Gorp. Filing fee \$ 455.00, receipt number E 931673. (nd) (Entered: 03/10/2011)
03/10/2011		Transmission of Notice of Appeal to the District Judge re: <u>168</u> Notice of Appeal. (nd) (Entered: 03/10/2011)
03/10/2011		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>168</u> Notice of Appeal. (nd) (Entered: 03/10/2011)
03/10/2011		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>168</u> Notice of Appeal filed by Wilfred Van Gorp, Cornell University Medical College, <u>120</u> Declaration in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>134</u> Order, Set Deadlines/Hearings,, <u>127</u> Declaration in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>126</u> Reply Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>141</u> Judgment, <u>85</u> Rule 56.1 Statement filed by Wilfred Van Gorp, Cornell University Medical College, <u>58</u> Declaration in Support of Motion,, filed by Wilfred Van Gorp, Cornell University Medical College, <u>69</u> Reply Affirmation in Support of Motion, filed by Wilfred Van

Gorp, Cornell University Medical College, 92 Declaration in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, 124 Declaration in Opposition to Motion, filed by Wilfred Van Gorp, Cornell University Medical College, 44 Endorsed Letter, Set Deadlines/Hearings,,66 Declaration in Support, filed by Daniel Feldman, 123 Memorandum of Law in Opposition to Motion filed by Wilfred Van Gorp, Cornell University Medical College, 84 Certificate of Service Other, filed by Wilfred Van Gorp, Cornell University Medical College, 132 Order on Motion to Appear Pro Hac Vice, 60 MOTION in Limine To Exclude Defendants' Expert Testimony. filed by Daniel Feldman, 130 Endorsed Letter,, 64 Declaration in Opposition to Motion, filed by Cornell University Medical College, 115 Scheduling Order,, 97 Notice (Other) filed by Wilfred Van Gorp, Cornell University Medical College, 59 Order, 79 Endorsed Letter, Set Hearings,,,,, 50 Endorsed Letter, Set Hearings,,,,, 125 Reply Memorandum of Law 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Medical College, 101 Declaration in Opposition to Motion, filed by Daniel Feldman, 143 Endorsed Letter,, 108 Reply Memorandum of Law in Opposition to Motion filed by Daniel Feldman, 54 MOTION in Limine to Preclude the Testimony of Relator's Expert. filed by Wilfred Van Gorp, Cornell University Medical College, 128 MOTION for Viviann Stapp to Appear Pro Hac Vice. filed by Wilfred Van Gorp, 30 Rule 7.1 Corporate Disclosure Statement filed by Cornell University Medical College, 47 Endorsed Letter, Set Deadlines/Hearings,, 109 Reply Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, 87 Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, 133 Proposed Pretrial Order, filed by Daniel Feldman, Wilfred Van Gorp, Cornell University Medical College, 61 Memorandum of Law in Support of Motion, filed by Daniel Feldman, 49 Endorsed Letter, Set Hearings,, 144 Notice of Appeal filed by Wilfred Van Gorp, Cornell University Medical College, 140 Statement of Damages filed by Daniel Feldman, 74 Endorsed Letter, Set Deadlines/Hearings,,,,, 113 Order on Motion for Reconsideration, 65 Memorandum of Law in Opposition to Motion filed by Daniel Feldman, 100 Counter Statement to Rule 56.1 filed by Daniel Feldman, 39 Scheduling Order, 45 Endorsed Letter, Set Deadlines/Hearings,, 136 Letter, filed by United States of America, 95 Brief filed by United States of America, 104 Order on Motion for Summary Judgment, 117 Memorandum of Law in Support of Motion,, filed by Daniel Feldman, 112 Notice (Other) filed by Cornell University Medical College, 38 Protective Order, 73 Endorsed Letter, 119 Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, 111 Scheduling Order, 56 Declaration in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, 121 Transcript, 131 Order on Motion in Limine,, 31 Rule 26(f) Discovery Plan Report, 86 MOTION 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MOTION in Limine To Exclude Exhibits And Testimony. filed by Wilfred Van Gorp, Cornell University Medical

		<p>College, <u>91</u> Reply Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>93</u> Declaration in Support of Motion, filed by Wilfred Van Gorp, Cornell University Medical College, <u>142</u> Amended Judgment, <u>88</u> Declaration in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>139</u> Letter, filed by Wilfred Van Gorp, Cornell University Medical College, <u>57</u> Declaration in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>114</u> Scheduling Order, <u>110</u> Endorsed Letter, <u>167</u> Order on Motion for Attorney Fees, <u>159</u> Notice of Change of Address filed by Wilfred Van Gorp, <u>154</u> Reply Memorandum of Law in Support of Motion, filed by Daniel Feldman, <u>158</u> Endorsed Letter, <u>161</u> Reply Memorandum of Law in Support of Motion, filed by Wilfred Van Gorp, Cornell University Medical College, <u>163</u> SUPPLEMENTAL MOTION for Attorney Fees Costs and Expenses with Declaration and Certificate of Service filed by Daniel Feldman, <u>153</u> Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>165</u> Declaration filed by Daniel Feldman, <u>160</u> Memorandum of Law in Opposition to Motion filed by Daniel Feldman, <u>151</u> Memorandum of Law in Opposition to Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>156</u> Memorandum of Law in Support of Motion filed by Wilfred Van Gorp, Cornell University Medical College, <u>146</u> MOTION for Attorney Fees Notice of Motion. filed by Daniel Feldman, <u>147</u> Memorandum of Law in Support of Motion filed by Daniel Feldman, <u>148</u> Bond filed by Wilfred Van Gorp, Cornell University Medical College, <u>162</u> Order on Motion for New Trial, Order on Motion for Judgment as a Matter of Law, <u>155</u> Response to Motion filed by Daniel Feldman, <u>164</u> SUPPLEMENTAL MOTION for Attorney Fees Costs and Expenses with Certificate of Service. filed by Daniel Feldman, <u>166</u> Supplemental ROA Sent to USCA – Index, <u>157</u> Declaration in Support of Motion, filed by Wilfred Van Gorp, Cornell University Medical College, <u>152</u> MOTION to Stay An Award Of Attorneys' Fees, Costs And Expenses filed by Wilfred Van Gorp, Cornell University Medical College, <u>150</u> MOTION for New Trial MOTION for Judgment as a Matter of Law filed by Wilfred Van Gorp, Cornell University Medical College were transmitted to the U.S. Court of Appeals. (nd) (Entered: 03/10/2011)</p>
03/14/2011	<u>169</u>	SUPERSEDEAS BOND # 0528330 in the amount of \$ 701,390.00 posted by Cornell University Medical College, Wilfred Van Gorp. (dt) (Entered: 03/14/2011)
03/18/2011	<u>170</u>	JOINT STIPULATION. IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned attorneys for all parties to this action, that the record on appeal shall be supplemented with the following materials: 1. All exhibits admitted during the course of the trial (as listed in attached Appendix A); 2. Transcript of pre-trial hearing on July 18, 2008; 3. Transcript of pre-trial hearing on May 8, 2009; and 4. Defendants' post-trial letter submission, dated July 30, 2010. IT IS FURTHER STIPULATED AND AGREED that Defendant Cornell University shall maintain custody of the documents referenced above until the Court of Appeals for the Second Circuit requests them. (Signed by Judge William H. Pauley, III on 3/18/2011) (rjm) (Entered: 03/18/2011)
03/24/2011	171	TRANSCRIPT of proceedings held on 7/18/2008 before Judge William H. Pauley, III. (ab) (Entered: 04/06/2011)
09/26/2012	<u>172</u>	MANDATE of USCA (Certified Copy) as to <u>144</u> Notice of Appeal filed by Wilfred Van Gorp, Cornell University Medical College, <u>168</u> Notice of Appeal filed by Wilfred Van Gorp, Cornell University Medical College USCA Case Number 10-3297(L), 11-0975(con). Ordered, Adjudged and Decreed that the judgment of the District Court is AFFIRMED in accordance with the opinion of this court. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 09/26/2012. (nd) (Entered: 09/26/2012)
10/17/2012	<u>173</u>	CORRECTED MANDATE of USCA (Certified Copy) as to <u>144</u> Notice of Appeal filed by Wilfred Van Gorp, Cornell University Medical College, <u>168</u> Notice of Appeal filed by Wilfred Van Gorp, Cornell University Medical College USCA Case Number 10-3297(L), 11-0975(con). Ordered, Adjudged and Decreed that the judgment of the District Court is AFFIRMED in accordance with the opinion of this Court. Plaintiff/Relator Daniel Feldman is entitled to an additional award of \$107,172.00 in attorney's fees and \$1,044.20 in costs, supplementing the Original Fee Award granted by the District Court. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 10/17/2012. (nd) (Entered: 10/17/2012)

10/23/2012	<u>175</u>	SATISFACTION OF JUDGMENT re: doc #167 and doc #173 in the amount of \$631,882.25 and \$108,216.20. Judgment satisfied on 10/23/2012. Document filed by United States of America.(lmb) Modified on 10/26/2012 (lmb). (Entered: 10/26/2012)
10/25/2012	<u>174</u>	SATISFACTION OF JUDGMENT re: <u>142</u> Amended Judgment, entered In favor of United States of America Against Cornell University Medical College, In favor of United States of America Against Wilfred Van Gorp in the amount of \$\$891,614.78. Judgment satisfied on 10/25/2012. Document filed by United States of America.(cd) (Entered: 10/26/2012)
11/05/2012	<u>176</u>	STIPULATION OF SETTLEMENT AS TO RELATOR'S SHARE. The United States agrees that Relator shall be awarded \$267,484.43 out of the Payment made by the Defendants to the United States. The United States will make this payment within a reasonable time after this Stipulation has been executed by the Relator and so-ordered by the Court. Relator agrees that this settlement is fair, adequate, and reasonable under all circumstances, and will not challenge the Stipulation pursuant to 31 U.S.C. § 3730(c)(2)(B), and expressly waives the opportunity for a hearing on any such objection, pursuant to 31 U.S.C. § 3730(c)(2)(B). On receipt of this \$267,484.43 payment, Relator, for himself, his heirs, successors, and assigns, will release and will be deemed to have released and forever discharged the United States from any claims pursuant to 31 U.S.C. § 3730(d)(1) for a share of the proceeds of the Payment. The Relator hereby releases any and all claims, of whatever kind, against the United States arising out of or relating to the above-captioned action, and as further set forth. (Signed by Judge William H. Pauley, III on 10/26/2012) (rjm) (Entered: 11/05/2012)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :
ex rel. DANIEL FELDMAN, :

Plaintiff, :

-against- :

WILFRED VAN GORP and CORNELL :
UNIVERSITY MEDICAL COLLEGE, :

Defendants. :

-----X

WILLIAM H. PAULEY III, District Judge:

The issues in the above-entitled action having been brought on for trial before the Honorable William H. Pauley III, United States District Judge, and a jury on July 22, 2010, having returned a verdict in favor of the Plaintiff finding liability on the Continuation Renewals for Years Three, Four, and Five, it is,

ORDERED, ADJUDGED AND DECREED: That the Court awards damages as follows:

It is **ORDERED** that for the Year Three Continuation Renewal, judgment is entered against the Defendants Wilfred van Gorp and Cornell University Medical College jointly and severally for the amount of actual damages, \$109,109, which this Court trebles under the False Claims Act to equal \$327,327, plus a civil penalty of \$10,000; and

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>8/3/10</u>
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03 Civ. 8135 (WHP)

FINAL JUDGMENT

It is **ORDERED** that for the Year Four Continuation Renewal, judgment is entered against the Defendants Wilfred van Gorp and Cornell University Medical College jointly and severally for the amount of actual damages, \$115,379, which this Court trebles under the False Claims Act to equal \$346,137.00, plus a civil penalty of \$11,000; and

It is **ORDERED** that for the Year Five Continuation Renewal, judgment is entered against the Defendants Wilfred van Gorp and Cornell University Medical College jointly and severally for the amount of actual damages, \$60,750, which this Court trebles under the False Claims Act to equal \$182,250, plus a civil penalty of \$11,000; and

The total damages are \$855,714 in actual damages for monies paid out by reason of the false claims, plus \$32,000 in civil penalties, for a total of \$887,714 plus post-judgment.

The Court retains jurisdiction over any motion by Relator for attorney's fees, costs, and expenses.

Dated: August 3, 2010
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

Counsel of Record:

Scott B. Goldshaw, Esq.
Salmanson Goldshaw, P.C.
Two Penn Center
1500 J.F.K. Boulevard, Suite 1230
Philadelphia, PA 19102
Counsel for Relator

Nina Minard Beattie, Esq.
Brune & Richard LLP
80 Broad Street, 30th Floor
New York, NY 10004
Counsel for Defendant Wilfred van Gorp

Tracey Ann Tiska, Esq.
R. Brian Black, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022
Counsel for Defendant Cornell University Medical College

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

Date:

In Re:

-v-

Case #: ()

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$450.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. **No personal checks are accepted.**

Ruby J. Krajick, Clerk of Court

by: _____

, Deputy Clerk

APPEAL FORMS

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

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-V-
-----X

NOTICE OF APPEAL

civ. ()

Notice is hereby given that _____
(party)
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the _____ day of _____, _____.
(day) (month) (year)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

() _____ - _____
(Telephone Number)

Note: You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 1

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

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-V-
-----X

**MOTION FOR EXTENSION OF TIME
TO FILE A NOTICE OF APPEAL**

civ. ()

Pursuant to Fed. R. App. P. 4(a)(5), _____ respectfully
(party)
requests leave to file the within notice of appeal out of time. _____
(party)
desires to appeal the judgment in this action entered on _____ but failed to file a
(day)
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

FORM 2

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

-----X

-V-

-----X

**NOTICE OF APPEAL
AND
MOTION FOR EXTENSION OF TIME**

civ. ()

1. Notice is hereby given that _____ hereby appeals to
(party)
the United States Court of Appeals for the Second Circuit from the judgment entered on _____.
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time

(party)
respectfully requests the court to grant an extension of time in
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, _____ states that
(party)
this Court's judgment was received on _____ and that this form was mailed to the
(date)
court on _____
(date)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

FORM 3

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

-----X
-V-
-----X

AFFIRMATION OF SERVICE

civ. ()

I, _____, declare under penalty of perjury that I have
served a copy of the attached _____

upon _____

whose address is: _____

Date: _____
New York, New York

(Signature)

(Address)

(City, State and Zip Code)

APPEAL FORMS

U.S.D.C. S.D.N.Y. CM/ECF Support Unit

5
Recovery Cases 035

Revised: May 4, 2010

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/5/12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.*
DANIEL FELDMAN,

Plaintiff,

v.

WILFRED VAN GORP and CORNELL
UNIVERSITY,

Defendants.

No. 03 Civ. 8135 (WHP)

**STIPULATION OF SETTLEMENT AS
TO RELATOR'S SHARE**

WHEREAS, on or about October 13, 2003, relator Daniel Feldman (the "Relator") filed a complaint in the above-captioned action on behalf of the United States of America (the "United States" or the "Government"), against defendants Wilfred Van Gorp and Cornell University ("Defendants") pursuant to 31 U.S.C. § 3730 ("the Complaint");

WHEREAS, on or about April 23, 2007, the Government notified the parties that it declined to take over the action;

WHEREAS, the plaintiff continued to prosecute the action on behalf of the Government and prevailed at trial;

WHEREAS, on August 11, 2010, this Court entered an amended final judgment according to which Defendants were liable to the Government for \$887,714, plus post-judgment interest;

WHEREAS, on September 26, 2012, the United States Court of Appeals for the Second Circuit issued its mandate, having affirmed this Court's judgment;

WHEREAS, on October 19, 2012, Defendants paid the Government \$891,614.78, including post-judgment interest, in full satisfaction of this Court's judgment (the "Payment"); and

WHEREAS, the United States and the Relator mutually desire to make a full, complete, and final settlement of Relator's share of the Judgment Amount pursuant to 31 U.S.C. § 3730(d)(1).

ACCORDINGLY, in reliance upon the representations contained herein and in consideration of the mutual promises, covenants and obligations in this Stipulation of Settlement as to Relator's Share (the "Stipulation") and the resolution of the claims set forth below, and for good and valuable consideration, receipt of which is by each acknowledged, the United States and the Relator stipulate and agree as follows:

Terms and Conditions

1. The United States agrees that Relator shall be awarded \$267,484.43 out of the Payment made by the Defendants to the United States. The United States will make this payment within a reasonable time after this Stipulation has been executed by the Relator and so-ordered by the Court.

2. Relator agrees that this settlement is fair, adequate, and reasonable under all circumstances, and will not challenge the Stipulation pursuant to 31 U.S.C. § 3730(c)(2)(B), and expressly waives the opportunity for a hearing on any such objection, pursuant to 31 U.S.C. § 3730(c)(2)(B).

3. On receipt of this \$267,484.43 payment, Relator, for himself, his heirs, successors, and assigns, will release and will be deemed to have released and forever discharged the United States from any claims pursuant to 31 U.S.C. § 3730(d)(1) for a

share of the proceeds of the Payment. The Relator hereby releases any and all claims, of whatever kind, against the United States arising out of or relating to the above-captioned action.

4. Specifically excluded and reserved from those claims released under Paragraph 3 above is any dispute, claim, or defense which may arise or has arisen between the Relator and the Defendants regarding attorneys' fees or claims of the Relator under 31 U.S.C. § 3730(d)(1).

5. This Stipulation, together with all of the obligations and terms hereof, shall inure to the benefit of and shall bind assigns, successors-in-interest, or transferees of the United States and the Relator.

6. Each of the party signatories to this Stipulation represents that he or she has the full power and authority to enter into this Stipulation.

7. This writing constitutes the entire agreement of the United States and the Relator with respect to the subject matter of this Stipulation and may not be modified, amended or terminated except by a written stipulation signed by the United States and Relator specifically referring to this Stipulation, and so-ordered by the Court.

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

10. This Stipulation shall become final, binding, and effective only upon the signatures of the United States and the Relator and subsequent entry by the Court.

11. This Stipulation shall be governed by the laws of the United States. The Relator and the Government agree that the exclusive jurisdiction and venue for any

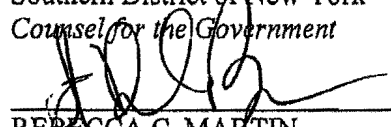
dispute arising under this Stipulation shall be the United States District Court for the Southern District of New York.

In Witness Whereof, the parties, through their duly authorized representatives, hereunder set their hands.

Dated: New York, NY
October 23, 2012

PREET BHARARA
United States Attorney
Southern District of New York
Counsel for the Government

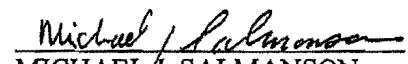
By:


REBECCA C. MARTIN
JEAN-DAVID BARNEA
Assistant United States Attorneys
86 Chambers Street, 3rd floor
New York, NY 10007


Dated: Philadelphia, PA
October 23, 2012

SALMANSON GOLDSHAW, P.C.
Counsel for the Relator

By:


MICHAEL J. SALMANSON
2 Penn Center, Suite 1230
1500 JFK Boulevard
Philadelphia, PA 19102

SO ORDERED:


The Honorable William H. Pauley
United States District Judge

Dated:

Oct. 26, 2012

**U.S. District Court
Eastern District of Louisiana (New Orleans)
CIVIL DOCKET FOR CASE #: 2:05-cv-00952-KDE-SS**

Gegenheimer et al v. Nepveux et al
Assigned to: Chief Judge Kurt D. Engelhardt
Referred to: Magistrate Judge Sally Shushan
Cause: 31:3729 False Claims Act

Date Filed: 03/28/2005
Date Terminated: 01/14/2009
Jury Demand: Plaintiff
Nature of Suit: 370 Other Fraud
Jurisdiction: Federal Question

Plaintiff

Glen Gegenheimer
USA ex rel

represented by **Christopher Colin Johnston**
Gachassin Law Firm
200 Corporate Blvd. Suite 103
P.O. Box 80369
Lafayette, LA 70508
337-235-4576
Email: chris@gachassin.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Christy Gegenheimer
USA ex rel

represented by **Christopher Colin Johnston**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Olsen Albert Nepveux, Jr

represented by **Stephen O. Scandurro**
Scandurro & Layrisson, L.L.C.
607 St. Charles Ave.
Suite 100
New Orleans, LA 70130
504-522-7100
Email: steve@scanlayr.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Nepveux & Nepveux, L.L.C.
TERMINATED: 01/14/2008

Defendant

Bank One Trust Company, N.A.
*as Trustee for the Nepveux Reversionary
Medical Expense Trust*
TERMINATED: 11/13/2007

Recovery Cases 040

Defendant**JP Morgan Chase Bank**

as successor in interest of Bank One Trust Company, N.A.

represented by **Harry Joseph Philips , Jr.**

Taylor, Porter, Brooks & Phillips LLP
450 Laurel Street, 8th Floor (70801)
P. O. Box 2471
Baton Rouge, LA 70821-2471
(225) 387-3221
Fax: (225) 346-8049
Email: skip.philips@taylorporter.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mary Aminthe Broussard

Taylor, Porter, Brooks & Phillips LLP
450 Laurel Street, 8th Floor (70801)
P. O. Box 2471
Baton Rouge, LA 70821-2471
225-387-3221
Email:
Aminthe.Broussard@taylorporter.com
ATTORNEY TO BE NOTICED

Interested Party**United States of America**

represented by **Sharon Denise Smith**

U. S. Attorney's Office (New Orleans)
650 Poydras St.
Suite 1600
New Orleans, LA 70130
504-680-3000
Email: sharon.d.smith@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cross Claimant**Olsen Albert Nepveaux, Jr**

represented by **Stephen O. Scandurro**

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Cross Defendant**JP Morgan Chase Bank**

as successor in interest of Bank One Trust Company, N.A.

represented by **Harry Joseph Philips , Jr.**

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mary Aminthe Broussard

(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

Olsen Albert Nepveaux, Jr

represented by **Stephen O. Scandurro**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Counter Defendant

Christy Gegenheimer
USA ex rel

represented by **Christopher Colin Johnston**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/28/2005	<u>1</u>	COMPLAINT against all defendants (Filing fee \$ 250.) filed by all plaintiffs.(tbl,) (Entered: 04/04/2005)
12/07/2006	<u>24</u>	MOTION for Partial Dismissal of Relators' Claims by United States of America. Motion set for 9:30 AM 1/3/07 before Judge Kurt D. Engelhardt. (Attachments: # 1 Memorandum in Support # <u>2</u> Exhibit)(tbl,) Notice of Hearing added on 12/7/2006 (tbl,). Modified on 12/7/2006 (tbl,). (Additional attachment(s) added on 1/5/2009: # <u>4</u> Memorandum in Support) (cab). (Entered: 12/07/2006)
12/11/2006	<u>26</u>	NOTICE of Election to Decline Intervention by United States of America. (tbl) (Entered: 12/18/2006)
12/13/2006	<u>27</u>	ORDER granting that Complaint be unsealed. Signed by Judge Kurt D. Engelhardt on 12/13/06. (tbl) (Entered: 12/18/2006)
12/18/2006	<u>28</u>	EXPARTE/CONSENT MOTION to Continue Hearing on Motion for Partial Dismissal of Relators' Claims by Glen Gegenheimer, Christy Gegenheimer. (tbl) (Entered: 12/20/2006)
12/20/2006	<u>29</u>	ORDER granting <u>28</u> MOTION to Continue Hearing filed by Christy Gegenheimer, Glen Gegenheimer re <u>24</u> MOTION to Dismiss. Motion Hearing set for 1/17/2007 09:30 AM before Judge Kurt D. Engelhardt. Signed by Judge Kurt D. Engelhardt on 12/20/06.(tbl) (Entered: 12/20/2006)
01/03/2007	<u>30</u>	SUPPLEMENTAL AND AMENDED COMPLAINT with Jury Demand against Olsen Albert Nepveaux, Jr, Nepveaux & Nepveaux, L.L.C., Bank One Trust Company, N.A. filed by Glen Gegenheimer, Christy Gegenheimer.(tbl) (Entered: 01/03/2007)
01/03/2007	31	Summons Issued as to Olsen Albert Nepveaux, Jr, Nepveaux & Nepveaux, L.L.C., Bank One Trust Company, N.A.. (tbl) (Entered: 01/03/2007)
01/05/2007	<u>32</u>	Memorandum in opposition to the motion for partial dismissal by Glen Gegenheimer, Christy Gegenheimer. (cms,) (Entered: 01/08/2007)
01/10/2007	<u>33</u>	MOTION to Continue <i>Hearing</i> by United States of America. Motion Hearing set for 1/31/2007 09:30 AM before Judge Kurt D. Engelhardt. (Attachments: # <u>1</u> Proposed Order) (Smith, Sharon) (Entered: 01/10/2007)
01/10/2007	<u>34</u>	ORDER granting <u>33</u> Motion to Continue Hearing on Motion for Partial Dismissal of Relators' Claims. Hearing set 1/31/2007 at 9:30 AM before Judge Kurt D. Engelhardt. Signed by Judge Kurt D. Engelhardt on 1/10/07. (tbl) (Entered: 01/11/2007)
01/17/2007	<u>35</u>	EXPARTE/CONSENT MOTION <i>FOR AN ORDER UNSEALING THE MOTION BY THE</i>

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		<i>UNITED STATES FOR PARTIAL DISMISSAL OF RELATORS CLAIMS</i> by United States of America. (Attachments: # 1 Proposed Order)(Smith, Sharon) (Entered: 01/17/2007)
01/19/2007	36	ORDER granting 35 Motion to Unsel Motion for Partial Dismissal. Signed by Judge Kurt D. Engelhardt on 1/19/07. (tbl) (Entered: 01/24/2007)
01/24/2007	37	DISREGARD -- DUPLICATE -- SEE DOCUMENT 38 -- EXPARTE/CONSENT MOTION for Leave to File <i>Supplemental Memorandum in Support of Motion for Partial Dismissal</i> by United States of America. (Attachments: # 1 Proposed Order for leave to file supplemental memo# 2 Memorandum in Support # 3 Exhibit 1 part 1# 4 Exhibit 1 part 2# 5 Exhibit 1 part 3)(Smith, Sharon) Modified on 1/29/2007 (tbl,). (Entered: 01/24/2007)
01/24/2007	38	EXPARTE/CONSENT MOTION for Leave to File <i>Supplemental Memorandum in Support of Motion for Partial Dismissal</i> by United States of America. (Attachments: # 1 Proposed Order for Motion for Leave to File Supplemental Memorandum in Support of Motion for Partial Dismissal# 2 Proposed Pleading - Supplemental Memorandum in Support of Motion for Partial Dismissal# 3 Exhibit 1 part 1 to Supplemental Memo# 4 Exhibit 1 part 2 to Supplemental Memo# 5 Exhibit 1 part 3 to Supplemental Memo)(Smith, Sharon) Modified on 1/29/2007 (tbl,). (Entered: 01/24/2007)
01/26/2007	39	ORDER granting 38 Motion for Leave to File Supplemental Memorandum in Support of Motion for Partial Dismissal of Relators' Claims. Signed by Judge Kurt D. Engelhardt on 1/26/07. (tbl) (Entered: 01/29/2007)
01/26/2007	40	Supplemental Memorandum filed by United States of America in Support of 24 MOTION for Partial Dismissal of Relators' Claims. (Attachments: # 1 Exhibit 1 part 1# 2 Exhibit 1 part 2# 3 Errata 1 part 3)(tbl) (Entered: 01/29/2007)
01/31/2007	41	Minute Entry for proceedings held before Judge Kurt D. Engelhardt : Motion Hearing held on 1/31/2007 re 24 MOTION to Dismiss filed by United States of America. (Court Reporter Karen Ibos.) (tbl) (Entered: 02/01/2007)
02/21/2007	42	EXPARTE/CONSENT MOTION to Dissolve Writs of Attachment and Sequestration by United States of America. (Attachments: # 1 Proposed Order)(Smith, Sharon) (Entered: 02/21/2007)
03/05/2007	43	ORDER granting 42 Motion to Dissolve Writs of Attachment and Sequestration. Signed by Judge Kurt D. Engelhardt on 3/5/07. [3 cc US Marshal] (tbl) (Entered: 03/07/2007)
06/25/2007	44	ORDER TO SHOW CAUSE as to Plaintiffs re defendants Olsen Albert Nepveaux, Jr., Nepveaux & Nepveaux, LLC and Bank One Trust Company, NA. Signed by Judge Kurt D. Engelhardt on 6/25/07.(tbl) (Entered: 06/25/2007)
07/23/2007	45	Request of Summons Issued as to Olsen Albert Nepveaux, Jr, Nepveaux & Nepveaux, L.L.C., Bank One Trust Company, N.A. filed by Glen Gegenheimer, Christy Gegenheimer re 1 Complaint. (cab) (Entered: 07/23/2007)
07/23/2007	46	Summons Re-Issued as to Olsen Albert Nepveaux, Jr, Nepveaux & Nepveaux, L.L.C., Bank One Trust Company, N.A.. (cab) (Entered: 07/23/2007)
07/26/2007	47	MOTION to Dismiss Case <i>for Failure to Serve Timely</i> by Olsen Albert Nepveaux, Jr. Motion Hearing set for 8/15/2007 09:30 AM before Judge Kurt D. Engelhardt. (Attachments: # 1 Memorandum in Support # 2 Notice of Hearing)(Scandurro, Stephen) (Entered: 07/26/2007)
07/31/2007	48	SUMMONS Returned Executed; Olsen Albert Nepveaux, Jr served on 7/24/2007, answer due 8/13/2007. (Attachments: # 1 Exhibit # 2 Exhibit)(Johnston, Christopher) (Entered: 07/31/2007)

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07/31/2007	49	SUMMONS Returned Executed; Bank One Trust Company, N.A. served on 7/25/2007, answer due 8/14/2007. (cab) (Entered: 07/31/2007)
07/31/2007	50	SUMMONS Returned Executed; Nepveaux & Nepveaux, L.L.C. served on 7/24/2007, answer due 8/13/2007. (cab) (Entered: 07/31/2007)
08/01/2007	51	RESPONSE/MEMORANDUM in Opposition filed by all plaintiffs re 47 MOTION to Dismiss Case <i>for Failure to Serve Timely</i> . (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit)(Johnston, Christopher) (Entered: 08/01/2007)
08/07/2007	52	EXPARTE/CONSENT MOTION for Leave to File <i>Reply Memorandum</i> by Olsen Albert Nepveaux, Jr. (Attachments: # 1 Proposed Order # 2 Proposed Pleading)(Scandurro, Stephen) Modified on 8/8/2007 to edit text (cab,). (Entered: 08/07/2007)
08/10/2007	53	ORDER granting 52 Motion for Leave to File Reply Memorandum. Signed by Judge Kurt D. Engelhardt on 8/9/07. (tbl) (Entered: 08/10/2007)
08/10/2007	54	REPLY to Response to Motion filed by Olsen Albert Nepveaux, Jr re 47 MOTION to Dismiss Case <i>for Failure to Serve Timely</i> . (tbl) (Entered: 08/10/2007)
11/06/2007	55	ORDER and REASONS denying 47 Motion to Dismiss Case for Failure to Serve Timely. Signed by Judge Kurt D. Engelhardt on 11/6/07. (tbl) (Entered: 11/06/2007)
11/13/2007	56	ANSWER to Amended Complaint by JPMorgan Chase Bank.(Philips, Harry) Modified on 11/14/2007 (tbl,). (Entered: 11/13/2007)
12/03/2007	57	ANSWER to Amended Complaint by Olsen Albert Nepveaux, Jr.(Scandurro, Stephen) (Entered: 12/03/2007)
12/21/2007	58	ORDERED that on or before January 18, 2008, plaintiff shall obtain a responsive pleading or preliminary default on said defendant. Failure to do so shall result in the DISMISSAL of said defendant, for failure to prosecute, without any further notice. Signed by Judge Kurt D. Engelhardt on 12/21/07.(cab) (Entered: 12/27/2007)
01/09/2008	59	EXPARTE/CONSENT MOTION to Dismiss Party by Glen Gegenheimer, Christy Gegenheimer, Nepveaux & Nepveaux, L.L.C.. (Attachments: # 1 Proposed Order) (Johnston, Christopher) Modified on 1/10/2008 (tbl,). (Entered: 01/09/2008)
01/10/2008	60	Correction of Docket Entry by Clerk re 59 MOTION to Dismiss Party. Filing attorney did not select Nepveaux & Nepveaux, L.L.C. as a filer. Clerk added filer. (tbl) (Entered: 01/10/2008)
01/14/2008	61	ORDER granting 59 Motion to Dismiss Party Nepveaux & Nepveaux, L.L.C.. Signed by Judge Kurt D. Engelhardt on 1/2/08. (cab) (Entered: 01/14/2008)
01/23/2008	62	NOTICE - Scheduling Conference set for 2/26/2008 11:45 AM before courtroom deputy by telephone, by Clerk.(cab) (Entered: 01/23/2008)
02/26/2008	63	SCHEDULING ORDER: Final Pretrial Conference set for 11/20/2008 09:45 AM & Jury Trial set for 12/8/2008 08:30 AM before Judge Kurt D. Engelhardt. Signed by Judge Kurt D. Engelhardt on 2/26/2008. (Attachments: # 1 Pretrial Notice Form)(caa,) (Entered: 02/27/2008)
03/06/2008	64	ORDER - Settlement Conference set for 11/4/2008 03:30 PM before Magistrate Judge Karen Wells Roby. Signed by Judge Karen Wells Roby. (NEF Judge Engelhardt) (cms,) (Entered: 03/06/2008)
03/27/2008	65	COUNTERCLAIM and CROSSCLAIM against JP Morgan Chase Bank filed by Olsen Albert Nepveaux, Jr.(Scandurro, Stephen) Modified on 3/28/2008 to edit text (cab,). (Entered: 03/27/2008)

Recovery Cases 044

03/27/2008	66	COUNTERCLAIM and CROSS-CLAIM against Christy Gegenheimer filed by Olsen Albert Nepveaux, Jr.(Scandurro, Stephen) Modified on 3/28/2008 to edit text (cab,). (Entered: 03/27/2008)
06/27/2008	67	ANSWER to 66 Counterclaim by Christy Gegenheimer.(Johnston, Christopher) (Entered: 06/27/2008)
06/27/2008	69	ORDER OF RECUSAL. Magistrate Judge Karen Wells Roby recused. Case reassigned to Magistrate Judge Sally Shushan for all further proceedings. Signed by Magistrate Judge Karen Wells Roby on 6/26/08.(cab) (Entered: 06/30/2008)
06/30/2008	68	Correction of Docket Entry by Clerk re 67 Answer to Counterclaim ; Document's signature line is blank. All future documents must reflect either an original signature or an electronic signature of the filing attorney following the format 's/(attorney name)'. No further action is necessary. (cab) (Entered: 06/30/2008)
07/01/2008	70	ORDER canceling Settlement Conference set for 11/4/2008 3:30 PM; undersigned has recused herself - matter allotted to another Magistrate Judge. Signed by Magistrate Judge Karen Wells Roby on 7/1/08.(rll,) (NEF to DJ Engelhardt, MJ Shushan) (Entered: 07/01/2008)
09/29/2008	71	ANSWER to 65 Crossclaim Filed By Olsen Albert Nepveaux, Jr. by JP Morgan Chase Bank.(Philips, Harry) (Entered: 09/29/2008)
09/29/2008	72	**DEFICIENT** MOTION for Summary Judgment by JP Morgan Chase Bank. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Statement of Contested/Uncontested Facts Statement of Material Facts Not in Dispute, # 4 Memorandum in Support, # 5 Proposed Order)(Philips, Harry) Modified on 9/30/2008 (cab). (Entered: 09/29/2008)
09/30/2008	73	MOTION for Summary Judgment by JP Morgan Chase Bank. Motion Hearing set for 10/22/2008 09:30 AM before Judge Kurt D. Engelhardt. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Memorandum in Support, # 4 Statement of Contested/Uncontested Facts, # 5 Notice of Hearing, # 6 Proposed Order)(Philips, Harry) (Entered: 09/30/2008)
10/09/2008	74	**DEFICIENT** MOTION to Continue <i>Hearing on Motion for Summary Judgment Filed by JP Morgan Chase Bank As Successor of Bank One Trust Co. and of the Trial on the Merits</i> by Glen Gegenheimer, Christy Gegenheimer. (Attachments: # 1 Proposed Order) (Johnston, Christopher) Modified on 10/10/2008 (gec,). (Entered: 10/09/2008)
10/10/2008	75	EXPARTE/CONSENT MOTION to Continue <i>Hearing of Motion For Summary Judgment Filed By JP Morgan Chase Bank as Successor of Bank One Trust Co. and of the Trial on the Merits</i> by Glen Gegenheimer, Christy Gegenheimer. (Attachments: # 1 Proposed Order, # 2 Exhibit Certificate of Service)(Johnston, Christopher) (Entered: 10/10/2008)
10/14/2008	76	ORDER granting 75 MOTION to Continue 73 MOTION for Summary Judgment : Motion Hearing reset for 11/12/2008 before Judge Kurt D. Engelhardt. The hearing shall be without oral argument unless otherwise ordered. IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT the request that the trial on the merits be continued from December 8, 2008, is DENIED as stated herein. Signed by Judge Kurt D. Engelhardt on 10/14/08.(cab) (Entered: 10/14/2008)
10/22/2008	77	ORDER Settlement Conference set for 11/13/2008 09:30 AM before Magistrate Judge Sally Shushan. Signed by Magistrate Judge Sally Shushan.(ecm,) (Entered: 10/22/2008)
11/03/2008	78	MEMORANDUM filed by Glen Gegenheimer, Christy Gegenheimer re 75 MOTION to Continue <i>Hearing of Motion For Summary Judgment Filed By JP Morgan Chase Bank as Successor of Bank One Trust Co. and of the Trial on the Merits</i> . (Attachments: # 1 Statement of Contested/Uncontested Facts)(Johnston, Christopher) (Entered: 11/03/2008)

Recovery Cases 045

11/05/2008	<u>79</u>	EXPARTE/CONSENT Second MOTION to Continue <i>Uncontested Motion to Continue Hearing of Motion for Summary Judgment Filed By JP Morgan Chase Bank as Successor of Bank One Trust Co. and of the Trial on the Merits</i> by Glen Gegenheimer, Christy Gegenheimer. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Proposed Order)(Johnston, Christopher) (Entered: 11/05/2008)
11/12/2008	<u>80</u>	ORDERED that Plaintiffs' uncontested motion to continue the November 12, 2008 hearing and December 8, 2008 trial <u>79</u> is GRANTED. IT IS FURTHER ORDERED that: 1) Trial of all issues shall commence during the week of May 18, 2009. Unless otherwise ordered, the trial shall begin on Monday at 8:30 a.m. 2) The pre-trial conference scheduled to be held on November 20, 2008, is continued until Thursday, May 7, 2009, at 10:45 a.m. The parties' pre-trial order must be submitted to chambers no later than Tuesday, May 5, 2009, at 5:00 p.m. 3) The deadline for amendments shall not be re-opened. Counsel for Plaintiffs shall re-calculate all other pre-trial deadlines in accordance with the following as stated herein. Signed by Judge Kurt D. Engelhardt on 11/12/08.(cab) (Entered: 11/12/2008)
11/13/2008	<u>81</u>	Minute Entry for proceedings held before Magistrate Judge Sally Shushan: Settlement Conference held on 11/13/2008. Settlement discussions are ongoing. (ijg,) (Entered: 11/13/2008)
11/21/2008	<u>82</u>	ORDER Resetting Hearing on <u>73</u> MOTION for Summary Judgment : Motion Hearing reset for 1/28/2009 09:30 AM before Judge Kurt D. Engelhardt. Signed by Judge Kurt D. Engelhardt on 11/21/08.(cab) (Entered: 11/24/2008)
01/14/2009	<u>83</u>	Minute Entry for proceedings held before Magistrate Judge Sally Shushan: Following discussions among the parties, the case has settled. (ijg,) (Entered: 01/14/2009)
01/14/2009	<u>84</u>	ORDER DISMISSING CASE. Signed by Judge Kurt D. Engelhardt on 1/14/09.(cab) (Entered: 01/14/2009)
03/03/2009	<u>85</u>	EXPARTE/CONSENT Consent MOTION to Dismiss by JP Morgan Chase Bank. (Attachments: # <u>1</u> Proposed Order Judgment of Dismissal)(Philips, Harry) (Entered: 03/03/2009)
03/04/2009	<u>86</u>	ORDER granting <u>85</u> Motion to Dismiss. Signed by Judge Kurt D. Engelhardt on 3/4/09. (cab) (Entered: 03/05/2009)

PACER Service Center			
Transaction Receipt			
01/28/2019 10:02:12			
PACER Login:	kk0155:2581181:0	Client Code:	200
Description:	Docket Report	Search Criteria:	2:05-cv-00952-KDE-SS
Billable Pages:	6	Cost:	0.60

**MINUTE ENTRY
SHUSHAN, M.J.
JANUARY 14, 2009**

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

GLEN GEGENHEIMER, ETAL

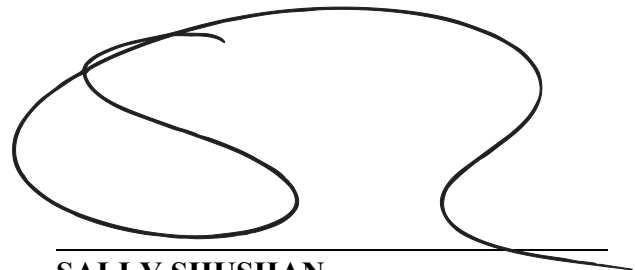
CIVIL ACTION

versus

NO: 05-952-KDE-SS

OLSEN ALBERT NEPVEAUX, JR., ET AL.

Following discussions among the parties, the above-captioned case has settled. The U.S. District Judge's chambers have been notified. Counsel and the parties are thanked for their cooperation in amicably resolving this matter.

A large, stylized handwritten signature in black ink, appearing to read 'SALLY SHUSHAN', is written over a horizontal line.

**SALLY SHUSHAN
United States Magistrate Judge**

MJSTAR: 01:45

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

GLEN GEGENHEIMER, ETAL

CIVIL ACTION

versus

NO: 05-952-KDE-SS

OLSEN ALBERT NEPVEAUX, JR., ET AL.

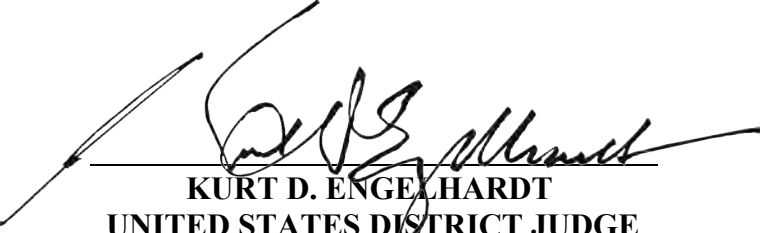
ORDER OF DISMISSAL

The Court having been advised by counsel for the parties that all of the parties to this action have firmly agreed upon a compromise,

IT IS ORDERED that the action be and it is hereby dismissed without costs and without prejudice to the right, upon good cause shown, to reopen the action or to seek summary judgment enforcing the compromise if settlement is not consummated within a reasonable time. The Court retains jurisdiction for all purposes, including enforcing the settlement agreement entered into by the parties.

COUNSEL ARE REMINDED THAT, if witnesses have been subpoenaed, EVERY WITNESS MUST be notified by counsel not to appear.

New Orleans, Louisiana, this 14th day of January, 2009.


**KURT D. ENGELHARDT
UNITED STATES DISTRICT JUDGE**

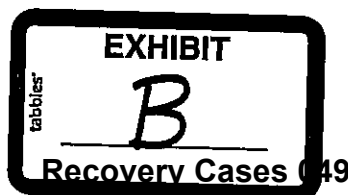
Settlement Agreement

It is hereby agreed between JPMorgan Chase Bank, N.A., as successor in interest of Bank One Trust Company, N.A. acting in its capacity as Trustee of the Nepveaux Reversionary Medical Expense Trust ("Trustee") and the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services ("HHS-CMS") that the HHS-CMS Medicare Secondary Payer (MSP) recovery claim against the Trustee for recovery of conditional payments made by Medicare with respect to items and services furnished to Olsen A. Nepveaux, Beneficiary HICN 437-74-9614A shall be satisfied under the following terms:

1. Full payment is to be made to Medicare in the amount of One Hundred Eighty Thousand, Seven Hundred Thirty and 12/100 (\$180,730.12) within 30 days of the date this agreement is signed by all parties. Payment shall be made by official check made payable to "Medicare" and mailed to the following address (along with a copy of this settlement agreement to ensure proper crediting of the payment): CMS OFM FSG, Mail Stop C3-14-00, 7500 Security Blvd., Baltimore, MD 21244-1850, Attention: Barbara Wright/Suzanne Kalwa.
2. The beneficiary's estate and all other parties waive all administrative and judicial appeal rights, and any right to waiver of recovery pursuant to 42 U.S.C. 1395gg.
3. In consideration of the payment made pursuant to this settlement agreement, HHS-CMS releases the Trustee, Olsen A. Nepveaux, Jr., and Fidelity and Guaranty Insurance Underwriters, Inc. ("F&G") from any further liability for the conditional payments made by Medicare with respect to items and services furnished to Olsen A. Nepveaux, Beneficiary HICN 437-74-9614A.
4. This Agreement is neither an admission of liability, wrongdoing or fault, on the part of the Trustee, Nepveaux or F&G nor a concession by HHS-CMS that its claim is not well founded.

Notwithstanding any other provision herein, this settlement agreement specifically does not release:

1. Any claim arising under criminal law;
2. Any criminal, civil, or administrative claims, rights, or defenses arising under Title 26, United States Code (Internal Revenue Code);
3. Any claims, rights or defenses arising under 31 U.S.C. §§ 3729 et seq. (False Claims Act); 31 U.S.C. § 3801, et seq. (Program Frauds Civil Remedies Act); 42 U.S.C. §§ 1320a-7a (Civil Monetary Penalties Statute), or any common law cause of action for fraud;



4. Any contribution or indemnity claims against entities or individuals other than the parties released by this Settlement Agreement;
5. Any obligations created by this Settlement Agreement;
6. Any claims, rights or defenses not specifically released or relinquished in this Settlement Agreement.

Each party who signs this agreement in a representative capacity warrants that he or she is duly authorized to do so. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

For the Trustee:

For HHS-CMS


Print Name, Address & Title of Signatory:

Gerald Walters
Office of Financial Management/Financial
Services Group

MATTHEW M. TUCKER
Name

Dated: _____

VP - Asst Gen Coun
Title

1717 MAIN STREET
Address 25000

Dated: 2/7/07


4. Any contribution or indemnity claims against entities or individuals other than the parties released by this Settlement Agreement;
5. Any obligations created by this Settlement Agreement;
6. Any claims, rights or defenses not specifically released or relinquished in this Settlement Agreement.

Each party who signs this agreement in a representative capacity warrants that he or she is duly authorized to do so. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

For the Trustee:

For HHS-CMS

Print Name, Address & Title of Signatory:



Gerald Walters
Office of Financial Management/Financial
Services Group

Name

Dated: 2/9/07

Title

Address

Dated: _____

Settlement Agreement, JPMorgan Chase Bank, N.A., et al.
Page 2 of 2

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA, <u>ex rel</u>	:	CIVIL ACTION NO. 05-0952
GLEN AND CHRISTY GEGENHEIMER,	:	
	:	SECTION "N"
VERSUS	:	
	:	JUDGE KURT D. ENGELHARDT
OLSEN ALBERT NEPVEAUX, JR., ET AL	:	MAGISTRATE "1"
		MAG. SALLY SHUSHAN

MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF DEFENDANT JPMORGAN CHASE BANK
AS SUCCESSOR IN INTEREST OF BANK ONE TRUST COMPANY, N.A.

NOW INTO COURT, through undersigned counsel, comes JPMorgan Chase Bank, as successor in interest of Bank One Trust Company, N.A. ("Chase"), solely in its capacity as Trustee of the Nepveaux Reversionary Medical Expense Trust, and moves this Court to render summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure for the reasons more fully set forth in the attached Memorandum in Support of Motion for Summary Judgment and Statement of Uncontested Facts.

In support of its motion, Chase hereby formally files and introduces into evidence and into the record of this proceeding the following exhibits:

Exhibit A – Nepveaux Reversionary Medical Expense Trust Agreement

Exhibit B – Settlement Agreement between JP Morgan Chase Bank, N.A. as successor in interest of Bank One Trust Company, N.A. acting in its capacity as Trustee of the Nepveaux Reversionary Medical Trust and the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

WHEREFORE, JPMorgan Chase Bank, as successor to Bank One Trust Company, N.A., in its capacity as Trustee of the Nepveaux Reversionary Medical Expense Trust prays that this motion be granted and that summary judgment be entered in its favor dismissing all of the

plaintiffs' claims with prejudice at their cost and dismissing the crossclaim of defendant Olsen Albert Nepveaux, Jr. with prejudice at his cost.

Respectfully submitted,

TAYLOR, PORTER, BROOKS & PHILLIPS LLP

By /s/ Harry J. Philips, Jr.
Harry J. Philips, Jr., #2047
M. Aminthe Broussard #29106
451 Florida Street, 8th Floor
P.O. Box 2471
Baton Rouge, LA 70801/70821
Phone: (225) 387-3221
Fax: (225) 346-8049
*Attorneys for JP Morgan Chase Bank as
successor in interest of Bank One Trust
Company, N.A*

- CERTIFICATE -

I hereby certify that on September 30, 2008 I electronically filed the foregoing with the Clerk of Court for the United States District Court, Eastern District of Louisiana, using the electronic case filing system of the Court. Notice of this filing will be sent to Christopher C. Johnston and Stephen O. Scandurro by operation of the court's electronic filing system.

/s/ Harry J. Philips, Jr.
HARRY J. PHILIPS, JR.

1051610

NEPVEAUX REVERSIONARY MED
EXP TR
2005.12.12
12

NEPVEAUX REVERSIONARY MEDICAL EXPENSE TRUST AGREEMENT

STATE OF LOUISIANA

PARISH OF JEFFERSON

BE IT KNOWN, that on this 11th day of December, 1995,

BEFORE the undersigned Notary and competent witnesses personally came and appeared:

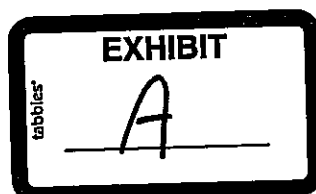
THE SETTLOR

FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC., through its duly authorized representative, with a mailing address of 100 Light Street, Baltimore, Maryland 21202 (hereinafter called the "Settlor").

The term Trustee shall refer to the original Trustee as well as any successor or alternate, and any other trustee or co-trustee whether one or more. The original Trustee hereby accepts his appointment and agrees to be bound by the provisions of this Trust Instrument.

Settlor declares that it desires to avail itself of the provisions of the laws of Louisiana, and particularly the provisions of the Louisiana Trust Code, La. R.S. §9:1721 *et seq.*, as the same exists or may be hereafter be amended, and, to that end, it irrevocably donates, transfers, gives, conveys and delivers in trust to the Trustee upon the terms and conditions more fully set forth below, the sum set forth in Article III herein. This property, including any other property as may be received by the Trustee, shall be held and administered by the Trustee upon the following terms and conditions.

Page 1 of 10



ARTICLE I: BENEFICIARY AND NAME OF TRUST

Section 1. Beneficiary. The sole beneficiary of this trust shall be Olsen A. Nepveaux, Sr., appearing through Susan Nepveaux Barnes. Curatrix of Olsen A. Nepveaux, Sr. (hereinafter called the "Beneficiary").

Section 2. Name. The name of this Trust shall be "Nepveaux Reversionary Medical Expense Trust Agreement."

ARTICLE II: THE PARTIES

Beneficiary claims worker's compensation benefits and medical expenses as a result of an accident which took place on June 24, 1983, at or near Metairie, Louisiana ("Accident"). The Beneficiary and Settlor have reached a compromise settlement of this claim. Among other things, the settlement requires that certain payments be made for costs of medical care arising out of the claims for the Accident, said payments falling within the meaning of Section 104 of the Internal Revenue Code (the "Code"). Settlor has agreed to provide for funds to be deposited into this Trust out of which such medical costs are to be paid. Beneficiary and Settlor have agreed that the amount of funds available at any time in the Trust is limited to the amount initially deposited into the Trust, plus any payments that the Settlor is obligated to pay into the Trust prior to said time, plus any accumulated interest income that the Trust may have earned at that time.

ARTICLE III

Section 1. Transfer into Trust. Settlor hereby transfers FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00) to the Trustee to be held under the terms of this Agreement.

- A. The Trustee is authorized to make a distribution of THIRTY THOUSAND DOLLARS AND NO CENTS (\$30,000.00) to checking account # 11016 - 13775 at First National Bank of Commerce for use by Susan Nepveaux Barnes, as Curatrix of Olsen A. Nepveaux, Sr., to pay for medical expenses incurred by Olsen A. Nepveaux, Sr. The curatrix will be required to submit an itemization of all allowable expenses paid from this account to the Trustee to receive reimbursement as provided for in Article IV, Section 2 of this Agreement.

Section 2. Additional Payments. Settlor will cause to be paid the following additional amounts to Trustee during the lifetime of the Beneficiary to be held under the terms of this Agreement:

- A. Payable to the First NBC Trust Group, as Trustee of the Reversionary Medical Expense Trust:

Beginning on January 1, 1996 - \$23,833.33/month (\$286,000/year) for the life of Olsen A. Nepveaux, Sr. compounding annually at 2.5% (First Compounding Payment - January 1, 1997)

- i. A portion of the above referenced monthly payment amount will be received by the Trust through two annuity payments from Allstate Life Insurance Company. These two annuity payments of \$14,583.33/month (\$175,000/year) and \$6,250/month (\$75,000/year) represent a combined payment into the Trust of \$20,833.33/month (\$250,000/year) for the life of Olsen A. Nepveaux, Sr. from the Allstate Life annuities.
- ii. The remaining portion of the above referenced monthly payment amount, beginning at \$3,000/month (\$36,000/year), will be received by the Trust through annuity payments from Fidelity & Guaranty Life Insurance Company as outlined in Schedule A, attached hereto.

- B. Beginning on November 1, 1996 - \$10,000/year (paid annually) for the life of Olsen A. Nepveaux, Sr., increasing by

\$2,500 every 5 years (First Increase -
November 1, 2001)

- C. Payable on November 1, 2000 (if Olsen A. Nepveux, Sr. is living)- \$25,000
- Payable on November 1, 2005 (if Olsen A. Nepveux, Sr. is living)- \$50,000
- Payable on November 1, 2010 (if Olsen A. Nepveux, Sr. is living)- \$75,000
- Payable on November 1, 2015 (if Olsen A. Nepveux, Sr. is living)- \$150,000
- Payable on November 1, 2018 (if Olsen A. Nepveux, Sr. is living)- \$300,000
- Payable on November 1, 2021 (if Olsen A. Nepveux, Sr. is living)- \$500,000

Settlor has the right to fund its liability to make such periodic payments through the purchase of annuity policies from FIDELITY & GUARANTY LIFE INSURANCE COMPANY.

Section 3. Location of Payments. Settlor shall make payments required by Section 2 of this Article to the Trustee at 210 Baronne Street, New Orleans, Louisiana 70112.

ARTICLE IV: USE OF TRUST INCOME AND PRINCIPAL

Section 1. Purpose of Distributions. Trust Principal and Income shall be used for:

- A. The payment of medical expenses for the Beneficiary resulting from the Accident identified in Article II of this Agreement.
- B. It is the intent of this Trust that all future medical care for the benefit of Olsen A. Nepveux, Sr. will be provided by professionals or facilities licensed by the State of Louisiana to provide said services at a level not less than that prescribed by Olsen A. Nepveux, Sr.'s attending physicians.

Section 2. Distribution of Proceeds. Upon presentation by or on behalf of the Beneficiary of an approved invoice, bill, charge or expense being claimed by Beneficiary that is reasonably related to the Accident or conditions or disabilities caused by the Accident, the Trustee shall be authorized to pay from the Trust directly to the medical provider, or to the Beneficiary upon presentation of proof that he has previously paid said expense. such sums as will be necessary to

pay said expense. For purposes of this Trust, said approval can be in the form of a letter from a physician stating that the expense being claimed is reasonably related to the above accident, or can be an approval of said expense by the Beneficiary or someone designated by the Beneficiary with authority to approve said expense including, but not limited to, SUSAN NEPVEAUX BARNES, acting in her capacity as the Curatrix of Olsen A. Nepveaux, Sr. Upon receipt of such letter or approval, the Trustee need not investigate nor look beyond this approval nor require any further documentation or certification. Payments shall be made from Trust income first with principal second only after income has been exhausted.

Section 3. Medical Expenses. For the purposes of this Trust "medical expenses" means amounts paid for:

- A. The diagnosis, cure, mitigation, treatment, or prevention of injury, disability or disease, or for the purpose of affecting any structure or function of the body;
- B. Medical expenses include, but are not limited to, charges for: ambulance hire, prostheses, hospitalization, prescription drugs, nursing services, laboratory fees, physician's services, psychologist's services, therapy treatment, equipment and devices, evaluations and diagnostic services, attendant care services, medical supplies and certain home operating expenses necessary to maintain the facility in which Beneficiary is currently living.

Section 4. Termination. This Trust shall terminate no later than 180 days after the death of the Beneficiary. All payments into the Trust as defined in Article III, Section 2 shall cease at the time of the Beneficiary's death. Expenses and medical costs incurred during the life of the Beneficiary must be submitted to the Trustee no later than 180 days after the death of the Beneficiary. The Trustee, after payment of all medical costs and other allowable expenses submitted, and after receiving written notice by the succession representative for the estate of Olsen A. Nepveaux, Sr. that all medical costs and other allowable expenses have been paid, shall

distribute 66.67% of the remaining sums available in the Trust to the Settlor and 33.33% of the remaining sums available in the Trust to Susan Nepveaux Barnes.

ARTICLE V: THE TRUSTEESHIP

Section 1. Fiduciary Powers. The Trustee may perform every act reasonably necessary to administer the Trust. The Trustee and any subsequent Trustee shall have and may exercise all of the powers of Trustee as expressly or impliedly conferred upon Trustees under applicable laws and jurisprudence of Louisiana as may exist at present and in the future.

Section 2. Trustee's Discretion. The Trustee shall have full authority and discretion to determine if any payment is required or allowed by the provisions of this Agreement. The Trustee may serve without bond.

Section 3. Reporting. The Trustee shall provide a full accounting to the Settlor and the Beneficiary of the payments received into the Trust, and all disbursements made out of the Trust, on a semi-annual basis or any other frequency that is mutually agreeable to the Settlor, the Beneficiary and the Trustee.

Section 4. Responsibility. The Trustee shall be responsible only for reasonable care, diligence, and business prudence in the administration of this trust, and is relieved from all liability and responsibility in connection with the administration of this trust, except any such liability and responsibility as may result from the Trustee's bad faith in the administration of this trust, or from the Trustee's gross negligence or gross misconduct, provided however that nothing contained herein shall relieve the Trustee of his duty of loyalty to the beneficiaries.

Section 5. Compensation and Expenses.

- A. Compensation shall be paid to Trustee for serving as Trustee in accordance with Schedule B attached hereto.
- B. All reasonable and necessary Trust expenses shall be paid from the Trust income first, with principal second, only after income has been exhausted in accordance with the fee schedule agreed upon.
- C. Tax Liability: Any taxes owed shall be paid by the Trust. It is understood that the Trust shall pay taxes from the trust income first, with principal second.

ARTICLE VI: GENERAL PROVISIONS

Section 1. Spendthrift. The interest of the Beneficiary shall be subject to the maximum spendthrift restraints permitted by Louisiana law. Therefore, voluntary and involuntary alienation by the Beneficiary shall be prohibited, to the maximum extent permitted under Louisiana law.

Section 2. Irrevocable Trust. This Trust is irrevocable and neither the Settlor, the Beneficiary nor the Trustee has any power to change any term of this Agreement unless agreed to in writing by all parties to this Agreement.

Section 3. Applicable Law. The Trust has its situs in Louisiana and all questions concerning its construction and administration shall be determined by reference to the laws of the State of Louisiana.

Section 4. Resignation and Removal of Trustee. Any Trustee serving hereunder from time to time may resign by giving one hundred twenty (120) days written notice to Settlor and to the Beneficiary, which notice shall be hand-delivered or sent by certified mail. The Trustee may be removed from office at any time if agreed to jointly by the Settlor and the Beneficiary upon giving

thirty (30) days written notice of such removal to the Trustee by the Settlor and Beneficiary, jointly, said notice to be hand-delivered or sent by certified mail. In either case, a successor Trustee shall be appointed by the court having jurisdiction over Olsen A. Nepveaux, Sr.'s interdiction, upon the application of the Settlor and the Beneficiary. Any successor Trustee shall have the same privileges and obligations as the Trustee originally named.

WITNESSES:

FIDELITY AND GUARANTY INSURANCE
UNDERWRITERS, INC.

BY: _____

ITS: _____

NOTARY PUBLIC

ACCEPTANCE OF DONATION IN TRUST
AND APPOINTMENT AS TRUSTEE

STATE OF LOUISIANA

PARISH OF JEFFERSON

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified,
and in the presence of the undersigned competent witnesses, personally came and appeared:

Timberly J. Austin (hereinafter "Appearer"), represented herein by its duly authorized
officer, who, after being duly sworn, did depose and say that:

Appearer was named as Trustee of the "NEPVEAUX REVERSIONARY MEDICAL
EXPENSE TRUST AGREEMENT," which Trust Instrument was executed by Fidelity and
Guaranty Insurance Underwriters, Inc., Settlor, on Dec. 11, 1995.

Appearer does hereby accept the donation made in the said Trust on behalf of the
beneficiary and the Trust created by the said Trust Instrument referred to hereinabove and
acknowledges receipt of the property delivered to it as Trustee, as stated in the Trust instrument,
and Appearer accepts the Trust conferred upon it as Trustee, and Appearer will faithfully discharge
the office of Trustee in accordance with law and with the terms, provisions, and conditions set forth
in the Trust Instrument.

IN WITNESS WHEREOF, Appearer has executed this document on this 11th day of
December, 1995.

WITNESSES:

FIRST NBC TRUST GROUP, Trustee

Vivian D. [Signature]

BY Timberly J. Austin, VP & TO
Authorized Officer

H. V. [Signature]

William E. [Signature]
NOTARY PUBLIC

STATE OF LOUISIANA

PARISH OF JEFFERSON

AND NOW, UNTO THESE PRESENTS, intervenes Olsen A. Nepveaux, Sr. ("Beneficiary"), appearing herein through Susan Nepveaux Barnes, Curatrix of Olsen A. Nepveaux, Sr., Joan Evans, as Undercurator, Christy Lea Nepveaux and Olsen A. Nepveaux, Jr., to acknowledge, confirm and ratify the terms and provisions of the "Nepveaux Reversionary Medical Expense Trust Agreement" before the undersigned Notary Public in the presence of the undersigned two competent witnesses on the 11 day of December, 1995.

WITNESSES:

OLSEN A. NEPVEAUX, SR.

Myle B. Lichaw

By: Susan Nepveaux Barnes
SUSAN NEPVEAUX BARNES, Curatrix of the
Estate of Olsen A. Nepveaux, Sr.

Yvonne B. Vitiani

William E. Lichaw

By: Joan Evans
JOAN EVANS, Undercurator of the
Estate of Olsen A. Nepveaux, Sr.

Cheryl Bryant

Myle B. Lichaw

By: Christy Lea Nepveaux
CHRISTY LEA NEPVEAUX

Yvonne B. Vitiani

Myle B. Lichaw

By: Olsen A. Nepveaux, Jr.
OLSEN A. NEPVEAUX, JR.

Yvonne B. Vitiani

William E. Lichaw
NOTARY PUBLIC

SCHEDULE A
 PAYMENTS INTO REVERSIONARY MEDICAL TRUST
 OLSEN A. NEPVEAUX
 DATE OF BIRTH: 08/02/1947

YEAR	MONTHLY PAYMENTS INTO TRUST FROM ALLSTATE (ANNUALIZED)	MONTHLY PAYMENTS INTO TRUST FROM USF&G (ANNUALIZED)	TOTAL MONTHLY PAYMENTS INTO TRUST (ANNUALIZED)	ANNUAL PAYMENTS INTO TRUST FROM USF&G	LUMP SUM PAYMENTS INTO TRUST FROM USF&G	TOTAL PAYMENTS INTO TRUST PER YEAR
IMMEDIATE					\$50,000	\$50,000
1	\$250,000	\$36,000	\$286,000	\$10,000		\$296,000
2	\$250,000	\$43,428	\$293,428	\$10,000		\$303,428
3	\$250,000	\$50,856	\$300,856	\$10,000		\$310,856
4	\$250,000	\$58,284	\$308,284	\$10,000		\$318,284
5	\$250,000	\$65,712	\$315,712	\$10,000	\$25,000	\$350,712
6	\$250,000	\$73,808	\$323,808	\$12,500		\$336,408
7	\$250,000	\$82,104	\$332,104	\$12,500		\$344,604
8	\$250,000	\$90,300	\$340,300	\$12,500		\$352,800
9	\$250,000	\$98,496	\$348,496	\$12,500		\$360,996
10	\$250,000	\$107,544	\$357,544	\$12,500	\$50,000	\$420,044
11	\$250,000	\$116,592	\$366,592	\$15,000		\$381,592
12	\$250,000	\$125,640	\$375,640	\$15,000		\$390,640
13	\$250,000	\$134,688	\$384,688	\$15,000		\$399,688
14	\$250,000	\$144,684	\$394,684	\$15,000		\$409,684
15	\$250,000	\$154,680	\$404,680	\$15,000	\$75,000	\$494,680
16	\$250,000	\$164,676	\$414,676	\$17,500		\$432,176
17	\$250,000	\$174,672	\$424,672	\$17,500		\$442,172
18	\$250,000	\$185,676	\$435,676	\$17,500		\$453,176
19	\$250,000	\$196,680	\$446,680	\$17,500		\$464,180
20	\$250,000	\$207,684	\$457,684	\$17,500	\$150,000	\$625,184
21	\$250,000	\$218,688	\$468,688	\$20,000		\$488,688
22	\$250,000	\$230,688	\$480,688	\$20,000		\$500,688
23	\$250,000	\$243,048	\$493,048	\$20,000	\$300,000	\$813,048
24	\$250,000	\$255,228	\$505,228	\$20,000		\$525,228
25	\$250,000	\$267,408	\$517,408	\$20,000		\$537,408
26	\$250,000	\$280,836	\$530,836	\$22,500	\$500,000	\$1,053,336
27	\$250,000	\$294,264	\$544,264	\$22,500		\$566,764
28	\$250,000	\$307,692	\$557,692	\$22,500		\$580,192
29	\$250,000	\$321,120	\$571,120	\$22,500		\$593,620
	\$7,250,000	\$4,731,456	\$11,981,456	\$465,000	\$1,150,000	\$13,596,456

- \$250,000/YEAR (PAID MONTHLY) COMING FROM ANNUITY PAYMENTS FROM ALLSTATE LIFE

- WITH THE EXPECTATION ONLY OF THE IMMEDIATE PAYMENT OF \$50,000 TO ESTABLISH THE TRUST, ALL FUTURE PERIODIC PAYMENTS DETAILED ABOVE WILL ONLY BE PAID TO THE TRUST IF OLSEN NEPVEAUX IS LIVING AT THE TIME EACH PAYMENT IS DUE.

PREPARED BY:
 KENNETH H. WELLS ASSOCIATES, INC.
 11/7/95

First Commerce Corporation Trust Group

• City National Bank, Baton Rouge
 • First National Bank of Lafayette, Lafayette
 • First National Bank of Lake Charles, Lake Charles
 • First National Bank of Commerce, New Orleans
 • Rapides Bank & Trust, Alexandria

Administration of Testamentary and Living Trusts Fee Schedule

Trustee and Account Administration Fee

Charge on Market Value of Securities Portfolio	
- First \$100 Thousand	\$11.50 per \$1,000
- Next \$400 Thousand	\$ 6.00 per \$1,000
- Next \$500 Thousand	\$ 1.50 per \$1,000
- Over \$1 Million	\$ 1.00 per \$1,000
\$1,500 Minimum Trustee and Account Administration Fee	

Other Fees

Individual Asset Management (Waived for investments in the Marquis Funds.)

An additional advisory fee will be assessed for holding and/or managing assets other than those invested in the Marquis Funds based on the market value of the assets as follows:

- First \$1,000,000	\$ 5.50 per \$1,000
- Over \$1,000,000	\$ 2.50 per \$1,000

Real Estate, Notes and Mortgages

Oil, Gas and Other Mineral Property

Fees covering the administration of these assets are set forth in separate Fee Schedules.

Disbursements

Each disbursement by check or transfer in excess of six per quarter \$ 10

Preparation of Tax Returns

A reasonable charge will be made for the preparation of form 1041 and any other return required to be filed by the trustee.

Fee as Successor Trustee

A reasonable fee will be charged to cover the review of records and prior trust accountings.

Fee on Termination of Account

A reasonable fee will be charged to cover the transfer of account records and distribution of assets, subject to a minimum termination fee of \$500 per account.

Life Insurance Trust or Unfunded Trusts

There is a \$100 annual fee for unfunded life insurance trusts which are to be used for future donations or testamentary pour overs. For those containing a Crummey provision, there is a charge of \$25.00 for each donation made.

The fees shown in this schedule are representative of charges appropriate under typical circumstances. The actual fees applied to specific accounts may vary from this schedule. Fees listed do not include counsel fees or out-of-pocket disbursements. Fees for unusual or special services will be based on an appraisal of the services rendered. Our fees are subject to change without prior notice.

Fees will be prorated and assessed on a quarterly basis.

Member FDIC

10/93

SCHEDULE "B"

Settlement Agreement

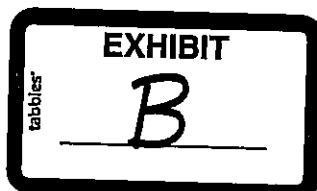
It is hereby agreed between JPMorgan Chase Bank, N.A., as successor in interest of Bank One Trust Company, N.A. acting in its capacity as Trustee of the Nepveaux Reversionary Medical Expense Trust ("Trustee") and the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services ("HHS-CMS") that the HHS-CMS Medicare Secondary Payer (MSP) recovery claim against the Trustee for recovery of conditional payments made by Medicare with respect to items and services furnished to Olsen A. Nepveaux, Beneficiary HICN 437-74-9614A shall be satisfied under the following terms:

1. Full payment is to be made to Medicare in the amount of One Hundred Eighty Thousand, Seven Hundred Thirty and 12/100 (\$180,730.12) within 30 days of the date this agreement is signed by all parties. Payment shall be made by official check made payable to "Medicare" and mailed to the following address (along with a copy of this settlement agreement to ensure proper crediting of the payment): CMS OFM FSG, Mail Stop C3-14-00, 7500 Security Blvd., Baltimore, MD 21244-1850, Attention: Barbara Wright/Suzanne Kalwa.
2. The beneficiary's estate and all other parties waive all administrative and judicial appeal rights, and any right to waiver of recovery pursuant to 42 U.S.C. 1395gg.
3. In consideration of the payment made pursuant to this settlement agreement, HHS-CMS releases the Trustee, Olsen A. Nepveaux, Jr., and Fidelity and Guaranty Insurance Underwriters, Inc. ("F&G") from any further liability for the conditional payments made by Medicare with respect to items and services furnished to Olsen A. Nepveaux, Beneficiary HICN 437-74-9614A.
4. This Agreement is neither an admission of liability, wrongdoing or fault on the part of the Trustee, Nepveaux or F&G nor a concession by HHS-CMS that its claim is not well founded.

Notwithstanding any other provision herein, this settlement agreement specifically does not release:

1. Any claim arising under criminal law;
2. Any criminal, civil, or administrative claims, rights, or defenses arising under Title 26, United States Code (Internal Revenue Code);
3. Any claims, rights or defenses arising under 31 U.S.C. §§ 3729 et seq. (False Claims Act); 31 U.S.C. § 3801, et seq. (Program Frauds Civil Remedies Act); 42 U.S.C. §§ 1320a-7a (Civil Monetary Penalties Statute), or any common law cause of action for fraud;

Settlement Agreement, JPMorgan Chase Bank, N.A., et al.
Page 1 of 2



Recovery Cases 066

4. Any contribution or indemnity claims against entities or individuals other than the parties released by this Settlement Agreement;
5. Any obligations created by this Settlement Agreement;
6. Any claims, rights or defenses not specifically released or relinquished in this Settlement Agreement.

Each party who signs this agreement in a representative capacity warrants that he or she is duly authorized to do so. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

For the Trustee:

For HHS-CMS


Print Name, Address & Title of Signatory:

Gerald Walters
Office of Financial Management/Financial
Services Group

MATTHEW M. JONES
Name

Dated: _____

VP - Asst Gen Coun
Title

1717 MAIN STREET
Address 20000

Dated: 2/7/07

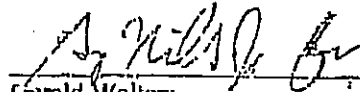
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For the Trustee:

For HHS-CMS

Print Name, Address & Title of Signatory:



Gerald Walters
Office of Financial Management/Financial
Services Group

Name

Dated: 2/7/07

Title

Address

Dated: _____

Settlement Agreement, JPMorgan Chase Bank, N.A., et al.
Page 2 of 2

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA, <u>ex rel</u>	:	CIVIL ACTION NO. 05-0952
GLEN AND CHRISTY GEGENHEIMER,	:	
	:	SECTION "N"
VERSUS	:	
	:	JUDGE KURT D. ENGELHARDT
OLSEN ALBERT NEPVEAUX, JR.,	:	
NEPVEAUX AND NEPVEAUX, L.L.C. AND		MAGISTRATE "1"
BANK ONE TRUST COMPANY, N.A. AS		
TRUSTEE FOR THE NEPVEAUX		MAG. SALLY SHUSHAN
REVERSIONARY MEDICAL EXPENSE		
TRUST		

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF JPMORGAN CHASE BANK
AS SUCCESSOR IN INTEREST OF BANK ONE TRUST COMPANY, N.A.**

MAY IT PLEASE THE COURT:

This matter is before the Court on a motion for summary judgment filed by JPMorgan Chase Bank, as successor in interest of Bank One Trust Company, N.A. ("Chase" or "Trustee"), solely in its capacity as Trustee of the Nepveaux Reversionary Medical Expense Trust. Plaintiffs assert only a single claim against Chase, alleging a violation of the Medicare Secondary Payer Act ("MSPA"). This claim was previously dismissed by this Court without prejudice because the plaintiffs lacked standing. The plaintiffs continue to lack standing to bring an MSPA claim against Chase and the claim should now be dismissed with prejudice. Additionally, in a separate agreement, the United States of America, through its Department of Health and Human Services, fully resolved its claim against Trustee to the satisfaction of the government. Now that the real parties in interest have settled this claim, there are no genuine issues of material fact and Chase is entitled to summary judgment as a matter of law, dismissing the final claim against it as well as the crossclaim of defendant Olsen Albert Nepveaux, Jr.

I. FACTS AND PROCEDURAL HISTORY

Plaintiffs, Christy and Glen Gegenheimer, purported to bring this action on behalf of decedent Olsen Albert Nepveaux, Sr., their father and father-in-law, respectively. Mr. Nepveaux died on January 4, 2005. He had suffered a severe brain injury in an accident at work in 1983. A lawsuit filed in connection with the accident resulted in a structured settlement of all claims, in part through the creation of a medical trust fund called The Nepveaux Reversionary Medical Expense Trust (the "Trust"). Bank One Trust Company (now Chase) served as Trustee.

Under the terms of The Nepveaux Reversionary Medical Expense Trust Agreement ("Trust Agreement"), when an approved invoice, bill, charge or expense related to Mr. Nepveaux's medical treatment for conditions arising from his work-related accident was presented, the Trustee was to either pay the medical provider directly or reimburse the beneficiary for any previously paid expense. A copy of the Trust Agreement is attached to plaintiffs' original complaint¹ and to this motion as Exhibit A.

According to the terms of the Trust Agreement, the Trust terminated upon Mr. Nepveaux's death. The resolution of the claim asserted in this lawsuit is the only outstanding and unresolved issue for the Trustee.

According to Plaintiffs' Amended Complaint, in February of 2004, Mr. Nepveaux was enrolled as a beneficiary in Medicare by his son, Olsen Nepveaux, Jr.² Throughout that year and until his death, as Mr. Nepveaux required the services of health care providers, Medicare paid some of the expenses which, if bills had been properly presented to the Trustee, would have been paid out of funds maintained by the Trust, as required by the provisions of the MSPA. It is undisputed that the reason these expenses were paid by Medicare and not the Trust was that, for

¹ Doc. 1, Exhibit A.

² Doc. 30.

those providers, through no action of the Trustee, Medicare was listed as the primary payer, rather than the Trust. The Trustee had nothing to do with this designation. Thus, some claims for Mr. Nepveaux's care were submitted to Medicare rather than the Trust, and Medicare made those payments.

In February of 2007, Chase and the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS" or "Medicare") entered into a Settlement Agreement ("Settlement Agreement") by which, in its capacity as Trustee, Chase reimbursed the Medicare program in an amount representing the value of services paid by Medicare that were properly payable from Trust assets. The Settlement Agreement provides, *inter alia*, that "[t]he beneficiary's estate and all other parties waive all administrative and judicial appeal rights, and any right to waiver of recovery pursuant to 42 U.S.C. 1395gg." A copy of the Settlement Agreement is attached as Exhibit B.

Plaintiffs filed the instant suit in March of 2005, acting as relators in False Claims Act claims against Mr. Nepveaux's son, Olsen Albert Nepveaux, Jr. and his company, Nepveaux & Nepveaux, L.L.C.³ Plaintiffs also alleged violations of the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b)(3)(A), against Chase, Olsen Nepveaux, Jr. and Nepveaux & Nepveaux, L.L.C.

The United States of America declined to intervene in the suit, notice of which was entered into the record in December of 2006.⁴ As a result of the Settlement Agreement, any claims regarding payments made by Medicare for Mr. Nepveaux's treatment were fully and finally compromised and settled, and no parties, including the Gegenheimers, have any right to recovery.

³ Nepveaux & Nepveaux, L.L.C. was voluntarily dismissed from the suit. Doc. 61.

⁴ Doc. 26.

Plaintiffs allege only a single claim against Chase; that it violated the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b)(3)(A), (“MSPA”) for “failure to pay for all medical expenses” during the time period in which Medicare paid for Mr. Nepveaux’s care. On December 7, 2006, the United States moved this Court to dismiss the MSPA claims because plaintiffs lacked standing to assert them.⁵ On January 31, 2007, this Court granted the motion, dismissing the plaintiffs’ MSPA claims against Chase without prejudice.⁶ Plaintiffs did not appeal the dismissal and have not sought to amend their complaint. Over eighteen months have passed since this Court’s order dismissing the claim without prejudice and plaintiffs have not taken any action which would give them standing to bring the claim.⁷ The sole claim against Chase is ripe to be dismissed with prejudice.

II. LAW AND ARGUMENT

A. Standard for Summary Judgment.

Under Fed. R. Civ. P. 56, summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; instead, the requirement is that there be no genuine issue of material fact.¹⁰

⁵ Doc. 24.

⁶ Doc. 41.

⁷ On March 27, 2008, Defendant Olsen Albert Nepveaux, Jr. filed a crossclaim against Chase alleging that, if any violations of law are established, that Chase acted in a fiduciary capacity and would have breached those obligations and contract. Doc. 65. If this Court grants this motion, the crossclaim should be dismissed as moot. *See* Sec. II.D., *infra*.

¹⁰ *See, e.g., Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S.Ct. 2505, 2509-2510, 91 L.Ed.2d 202 (1986); *Taylor v. Principal Financial Group, Inc.*, 93 F.3d 155, 161 (5th Cir.), cert denied, 117 S.Ct. 586, 136 L.Ed.2d 515 (1996).

B. The Medicare Secondary Payer Act claim should be dismissed with prejudice.

In 1980, Congress enacted MSPA legislation, requiring Medicare to serve as the secondary payer when a beneficiary has overlapping insurance coverage. 42 U.S.C. § 1395y(b). Under the MSPA, when a Medicare beneficiary suffers an injury covered by a group health plan or liability, workers' compensation, automobile, or no-fault insurance, Medicare conditionally pays for the beneficiary's medical expenses. 42 U.S.C. § 1395y(b)(2)(B)(i). If the beneficiary receives a settlement from the primary insurer, Medicare is entitled to reimbursement from the beneficiary for its conditional outlays. 42 U.S.C. § 1395y(b)(2)(B)(ii).

This statutory scheme applies here as the Trust is considered the primary source of payment of Mr. Nepveaux's medical expenses. The MSPA contains a private cause of action, 42 U.S.C. § 1395y(b)(3)(A), but plaintiffs must have standing.⁸ In response to the Government's motion, this Court has already found that the plaintiffs lack standing and dismissed this claim without prejudice. Plaintiffs have done nothing in over a year and a half to establish standing to bring this claim. Therefore, this claim should be dismissed with prejudice and Chase should be dismissed from this suit.

C. Plaintiffs have no right of recovery against Chase as Trustee under any alternative theory.

a. The Government has already recovered in this case.

Under the MSPA, the government has an independent right of recovery of sums paid by Medicare that are properly payable from other sources.⁹ In February of 2007, Medicare and Chase entered into a Settlement Agreement by which, in its capacity as Trustee, and from Trust

⁸ *Brooks v. Blue Cross and Blue Shield of Florida Inc.*, 116 F.3d 1364, 1375 (11th Cir. 1997); *Wheeler v. Travelers Insurance Co.*, 22 F.3d 534, 537 (3d Cir. 1994); *Frazer v. CNA Insurance Co.*, 374 F.Supp.2d 1067, 1076-77 (N.D. Ala. 2005).

⁹ 42 U.S.C. § 1395y(b)(2)(B)(ii); *Zinman v. Shalala*, 67 F.3d 841, 844-45 (9th Cir. 1991); *see also*, 42 C.F.R. 411.24(b).

proceeds, Chase reimbursed the Medicare program in an amount representing the value of services paid by Medicare that were properly payable from Trust assets. As a result, any obligation owed to Medicare by the Trust for such payments has been extinguished and any potential claim against Chase is moot.

b. The Settlement Agreement contains a waiver of recovery.

In its capacity as Trustee, Chase entered into the Settlement Agreement with Medicare whereby it reimbursed the program in an amount representing the agreed value of services paid by Medicare that were properly payable from trust assets. That payment, and the compromise resulting therefrom, served to relieve Chase, as trustee, from any further liability for such payments or charges. The Settlement Agreement provides that “[t]he beneficiary’s estate and all other parties waive all administrative and judicial appeal rights, and any right to waiver of recovery pursuant to 42 U.S.C. 1395gg.” A copy of the Settlement Agreement is attached as Exhibit B.

The terms of the Settlement Agreement are clear and unambiguous, with an express waiver of any right to recovery in this case. Significantly, even if the Settlement Agreement could not otherwise expressly bar this claim, the Gegenheimers are not the legal representatives of Mr. Nepveaux’s estate and have no standing to recover against Chase. Even if the Gegenheimers are able to remove the administrator of Mr. Nepveaux’s estate and substitute themselves, they still have no right of recovery because no party has any such right under the express terms of the Agreement. Regardless of whether plaintiffs ever represent the estate, the Settlement Agreement prevents further recovery by “the beneficiary’s estate and all other parties,” so plaintiffs can never have any right to recovery against Chase.

c. Plaintiffs have no right of recovery under any other theory.

This Court's January 31, 2007 Order demonstrates that plaintiffs do not have standing nor any right of action under any theory. Recent cases establish that the MSPA is not a *qui tam* action. See, e.g., *Medalie v. Bayer Corp.*, 510 F.3d 828, 830 (8th Cir. 2007); *United Seniors Association, Inc. v. Philip Morris USA*, 500 F.3d 19, 24-25 (1st Cir. 2007); *Stalley v. Catholic Health Initiatives*, 509 F.3d 517, 527 (8th Cir. 2007). Even if the MSPA was a *qui tam* action, which might otherwise entitle plaintiffs to assert this claim, such actions by definition mean that the party represents government. *Stalley v. Catholic Health Initiatives*, 509 F.3d 517, 521 (8th Cir. 2007). In this case, the government, through CMS, has already settled, granting Chase a release from further liability on the matter. Any debt to the government has been extinguished. The Gegenheimers therefore have no right of action under any theory and their claim against Chase should be dismissed with prejudice.

D. The Crossclaim should be dismissed as moot.

On March 27, 2008, Defendant Olsen Albert Nepveux, Jr. filed a crossclaim against Chase alleging that, if any violations of law are established, that Chase acted in a fiduciary capacity and would have breached those obligations and contract against him, as court-appointed administrator of his father's estate.¹⁰ This crossclaim should be dismissed because the claim upon which it is based, the MSPA, has already been dismissed without prejudice by this court since plaintiffs lacked standing to bring the claims. Over eighteen months have passed since this Court's order dismissing the claim without prejudice and plaintiffs have not taken any action which would give them standing to bring the claim. Plaintiffs' claims should be dismissed with prejudice and the crossclaim should be dismissed as moot.

¹⁰ Doc. 65.

WHEREFORE, JPMorgan Chase Bank, as successor to Bank One Trust Company, N.A., in its capacity as Trustee of the Nepveaux Reversionary Medical Expense Trust prays that this motion be granted and that summary judgment be entered in its favor dismissing all of the plaintiffs' claims with prejudice at their cost and dismissing the crossclaim of defendant Olsen Albert Nepveaux, Jr. with prejudice at his cost.

Respectfully submitted,
TAYLOR, PORTER, BROOKS & PHILLIPS LLP

By /s/ Harry J. Philips, Jr.
Harry J. Philips, Jr., #02047
M. Aminthe Broussard #29106
451 Florida Street, 8th Floor
P.O. Box 2471
Baton Rouge, LA 70801/70821
Phone: (225) 387-3221
Fax: (225) 346-8049
*Attorneys for JP Morgan Chase Bank as
successor in interest of Bank One Trust
Company, N.A.*

- CERTIFICATE -

I hereby certify that on September 30, 2008 I electronically filed the foregoing with the Clerk of Court for the United States District Court, Eastern District of Louisiana, using the electronic case filing system of the Court. Notice of this filing will be sent to Christopher C. Johnston and Stephen O. Scandurro by operation of the court's electronic filing system.

/s/ Harry J. Philips, Jr.
HARRY J. PHILIPS, JR.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA, <u>ex rel</u> GLEN AND CHRISTY GEGENHEIMER,	:	CIVIL ACTION NO. 05-0952
	:	
VERSUS	:	SECTION "N"
	:	
OLSEN ALBERT NEPVEAUX, JR., NEPVEAUX AND NEPVEAUX, L.L.C. AND BANK ONE TRUST COMPANY, N.A. AS TRUSTEE FOR THE NEPVEAUX REVERSIONARY MEDICAL EXPENSE TRUST	:	JUDGE KURT D. ENGELHARDT
	:	MAGISTRATE "1"
		MAG. SALLY SHUSHAN

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

NOW INTO COURT, through undersigned counsel, comes defendant, JPMorgan Chase Bank, as successor in interest of Bank One Trust Company, N.A., which hereby submits that, for the purposes of its motion for summary judgment filed herewith, that there is no genuine dispute as to the following material facts:

1. Plaintiffs, Christy and Glen Genenheimer, brought this action on behalf of decedent Olsen Albert Nepveaux, Sr., their father and father-in-law, respectively.
2. Mr. Nepveaux died on January 4, 2005. He had suffered a severe brain injury in an accident at work in 1983.
3. A lawsuit filed in connection with the accident resulted in a structured settlement of all claims, in part through the creation of a medical trust fund called The Nepveaux Reversionary Medical Expense Trust (the "Trust"). Bank One Trust Company (now Chase) served as Trustee.
4. Under the terms of The Nepveaux Reversionary Medical Expense Trust Agreement, when an approved expense related to Mr. Nepveaux's medical treatment for conditions arising from his work-related accident was presented, the Trustee was to either pay the medical provider directly or reimburse the beneficiary for any previously paid expense.

5. The Trust terminated upon Mr. Nepveaux's death in 2005.
6. Sometime in 2004, Mr. Nepveaux was enrolled as a beneficiary in Medicare.
7. Throughout that year and until his death, as Mr. Nepveaux required the services of health care providers, Medicare paid some of the expenses which, if bills had been presented to the Trustee, should have been paid out of funds maintained by the Trust.
8. The reason these expenses were paid by Medicare and not the Trust was that, for those providers, Medicare was listed as the primary payer, rather than the Trust.
9. In February of 2007, Chase and the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services ("Medicare") entered into a Settlement Agreement by which, in its capacity as Trustee, Chase reimbursed the Medicare program in an amount representing the value of services paid by Medicare that were properly payable from Trust assets.
10. The Settlement Agreement provides that "[t]he beneficiary's estate and all other parties waive all administrative and judicial appeal rights, and any right to waiver of recovery pursuant to 42 U.S.C. 1395gg."
11. Plaintiffs filed the instant suit in March of 2005, acting as relators in False Claims Act claims Olsen Albert Nepveaux, Jr. and Nepveaux & Nepveaux, L.L.C., and also alleged violations of the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b)(3)(A), ("MSPA") against Chase, Olsen Albert Nepveaux, Jr., and Nepveaux & Nepveaux, L.L.C.
12. The United States of America declined to intervene in the suit.
13. On December 7, 2006, the United States moved this Court to dismiss the MSPA claims because plaintiffs lacked standing to assert them.

14. On January 31, 2007, this Court granted the motion, dismissing the plaintiffs' MSPA claims against Chase without prejudice. Plaintiffs did not appeal the dismissal.

Respectfully submitted,
TAYLOR, PORTER, BROOKS & PHILLIPS LLP

By /s/ Harry J. Philips, Jr.
Harry J. Philips, Jr., #02047
M. Aminthe Broussard #29106
451 Florida Street, 8th Floor
P.O. Box 2471
Baton Rouge, LA 70801/70821
Phone: (225) 387-3221
Fax: (225) 346-8049
*Attorneys for JP Morgan Chase Bank as
successor in interest of Bank One Trust
Company, N.A.*

- CERTIFICATE -

I hereby certify that on September 30, 2008 I electronically filed the foregoing with the Clerk of Court for the United States District Court, Eastern District of Louisiana, using the electronic case filing system of the Court. Notice of this filing will be sent to Christopher C. Johnston and Stephen O. Scandurro by operation of the court's electronic filing system.

/s/ Harry J. Philips, Jr.
HARRY J. PHILIPS, JR.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA, <u>ex rel</u>	:	CIVIL ACTION NO. 05-0952
GLEN AND CHRISTY GEGENHEIMER	:	
	:	SECTION "N"
VERSUS	:	
	:	JUDGE KURT D. ENGLEHARDT
OLSEN ALBERT NEPVEAUX, JR., ET AL	:	MAGISTRATE "1"
	:	
	:	MAG. SALLY SHUSHAN

NOTICE OF HEARING

TO:

Christopher C. Johnston
Johnston Law Firm, LLC
11816 Sunray Avenue, Suite A
Baton Rouge, LA 70816

Stephen O. Scandurro
Scandurro & Layrisson, LLC
607 St. Charles Avenue
New Orleans, LA 70130

PLEASE TAKE NOTICE that the Motion for Summary Judgment on Behalf of Defendant JPMorgan Chase Bank as Successor in Interest of Bank One Trust Company, N.A. will be brought for hearing before the Honorable Kurt D. Engelhardt on the **22nd** day of **October, 2008, at 9:30 a.m.**

TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P

By: /s/ Harry J. Philips, Jr.

Harry J. Philips, Jr., #2047
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P.O. Box 2471
Baton Rouge, LA 70801/70821
Phone: (225) 387-3221
Fax: (225) 346-8049
Attorneys for JPMorgan Chase Bank, N.A.

- CERTIFICATE -

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/s/ Harry J. Philips, Jr.
HARRY J. PHILIPS, JR.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA, <u>ex rel</u>	:	CIVIL ACTION NO. 05-0952
GLEN AND CHRISTY GEGENHEIMER,	:	
	:	SECTION "N"
VERSUS	:	
	:	JUDGE KURT D. ENGELHARDT
OLSEN ALBERT NEPVEAUX, JR.,	:	
NEPVEAUX AND NEPVEAUX, L.L.C. AND	:	MAGISTRATE "1"
BANK ONE TRUST COMPANY, N.A. AS	:	
TRUSTEE FOR THE NEPVEAUX	:	MAG. SALLY SHUSHAN
REVERSIONARY MEDICAL EXPENSE	:	
TRUST	:	

ORDER

The foregoing Motion for Summary Judgment considered,

IT IS HEREBY ORDERED that the Motion for Summary Judgment filed by defendant, JPMorgan Chase Bank, as successor in interest of Bank One Trust Company, N.A., be and it is hereby **GRANTED**, and that all claims against it are dismissed, with prejudice, in their entirety.

Baton Rouge, Louisiana, this _____ day of _____, 2008.

JUDGE, UNITED STATES MIDDLE DISTRICT COURT

FILED

SEP 20 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGE JAMES F. HOLDERMAN
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA,)
ex rel. DAVID M. KAMMERER,)
et al.,)
Plaintiffs,) CIVIL ACTION NO. 04C-2074
v.)
OMNICARE, INC.)
Defendant.)

STIPULATION OF DISMISSAL

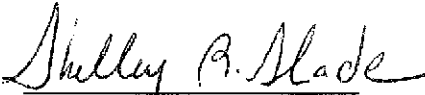
Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure and the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b)(1), the Relator, David M. Kammerer, and defendant, Omnicare, Inc., hereby stipulate to the voluntary dismissal with prejudice of the following claims asserted by Kammerer in the above-entitled matter against Omnicare, Inc.: i) all claims asserted on behalf of the State Plaintiffs, with the exception of the claims asserted on behalf of the Commonwealth of Massachusetts and the State of Michigan, which are the subject of separate Stipulations of Dismissal being filed concurrently; and ii) all claims asserted on behalf of the United States that are based on Omnicare's conduct with regard to the Medicaid programs of states other than Massachusetts and Michigan, which are also the subject of separate Stipulations of Dismissal being filed concurrently. This dismissal is without prejudice as to the United States or the various State Plaintiffs apart from Massachusetts and Michigan.

Relator has obtained the written consent of the United States and the State Plaintiffs

whose claims are dismissed without prejudice pursuant to this Stipulation.

Respectfully submitted,

DAVID M. KAMMERER,

BY: 

SHELLEY R. SLADE

(Appearing Pro Hac Vice)

ROBERT L. VOGEL

(Appearing Pro Hac Vice)

Vogel, Slade, & Goldstein, LLP

1718 Connecticut Ave., N.W.,

Seventh Floor

Washington, D.C. 20009

Tel. No. 202-537-5900

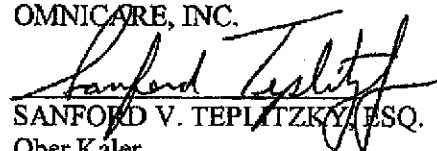
Fax No. 202-537-5905

sslade@vsg-law.com

rvogel@vsg-law.com

Attorneys for Relator

OMNICARE, INC.

BY: 

SANFORD V. TEPLITZKY, ESQ.

Ober Kaler

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Baltimore, MD 21202-1643

Tel. No. 410-347-7364

Fax No. 443-263-7564

teplitzky@ober.com

DATED: September 20, 2010

FILED

SEP 20 2010

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGE JAMES F. HOLDERMAN
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA et al.,) Civil Action No. 04C-2074
ex rel. DAVID M. KAMMERER,)
) James F. Holderman
Plaintiffs,) Chief Judge
)
vs.)
)
OMNICARE, INC.)
)
Defendant.)

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, the State of Michigan, the Relator, David M. Kammerer, and defendant, Omnicare, Inc. hereby stipulate to the voluntary dismissal with prejudice of all claims asserted on behalf of the State of Michigan against Omnicare, Inc. The United States assents to a dismissal with prejudice of all claims asserted on behalf of the United States for the federal share of damages to the Michigan Medicaid program resulting from the Covered Conduct, as set forth in a Settlement Agreement executed on behalf of the State of Michigan, the Relator, and the defendant.

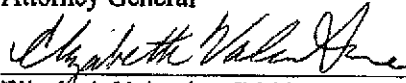
Respectfully submitted,

FOR THE STATE OF MICHIGAN:

DATED: September 17, 2010

BY:

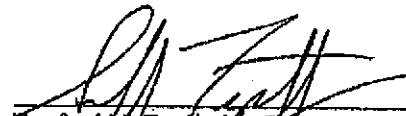
Michael A. Cox
Attorney General


Elizabeth Valentine (P28872)
Assistant Attorney General
Health Care Fraud Division
2860 Eyde Parkway
East Lansing, MI 48823
517-241-6500

FOR THE DEFENDANT:

DATED: September 17, 2010


BY:


Sanford A. Teplitzky, Esq.
Ober Kaler
120 East Baltimore Street, Ste 800
Baltimore, MD 21202

FOR THE RELATOR:

DATED: September 16, 2010

BY:


Shelley Slade, Esq.
Vogel, Slade & Goldstein, LLP
5225 Wisconsin Avenue, NW, Suite 502
Washington, DC 20015

CASES/2007-03-1525/STP.DISMISAL.100915

FILED

SEP 20 2010

JUDGE JAMES F. HOLDERMAN
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA et al.,
ex rel. DAVID M. KAMMERER;

Plaintiffs

vs.

OMNICARE, INC.

Defendant

Civil Action No. 04C-2074

James F. Holderman
Chief Judge

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, the Commonwealth of Massachusetts, the Relator, David M. Kammerer, and defendant, Omnicare, Inc. hereby stipulate to the voluntary dismissal with prejudice of all claims asserted on behalf of the Commonwealth of Massachusetts against Omnicare, Inc. The United States assents to a dismissal with prejudice of all claims asserted on behalf of the United States for the federal share of damages to the Massachusetts Medicaid program resulting from the Covered Conduct, as set forth in a Settlement Agreement executed on behalf of the Commonwealth of Massachusetts, the Relator, and the defendant.

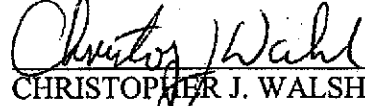
Respectfully submitted,

FOR THE COMMONWEALTH:

DATED: September 17, 2010

BY:

MARTHA COAKLEY
Attorney General


CHRISTOPHER J. WALSH
Assistant Attorney General
Medicaid Fraud Division
One Ashburton Place, Room 1813
Boston, MA 02108

FOR THE DEFENDANT:

DATED: September , 2010

BY:

Sanford V. Teplitzky, Esq.
Ober Kaler
120 East Baltimore Street, Ste 800
Baltimore, MD 21202

FOR THE RELATOR:

DATED: September , 2010

BY:

Shelley Slade, Esq.
Vogel, Slade & Goldstein, LLP
5225 Wisconsin Avenue, NW, Suite 502
Washington, DC 20015

Respectfully submitted,

FOR THE COMMONWEALTH:

MARTHA COAKLEY
Attorney General

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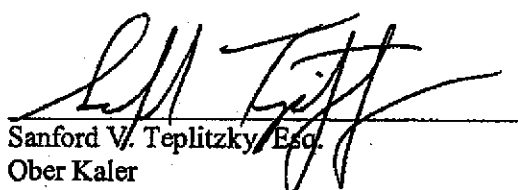
BY:

CHRISTOPHER J. WALSH
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Medicaid Fraud Division
One Ashburton Place, Room 1813
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Boston, MA 02108

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DATED: September , 2010

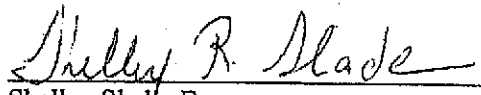
BY:

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Ober Kaler
120 East Baltimore Street, Ste. 800
Baltimore, MD 21202

FOR THE RELATOR:

DATED: September ^{16th} /_n, 2010

BY:


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5225 Wisconsin Avenue, NW, Suite 502
Washington, DC 20015



U.S. Department of Justice

*United States Attorney
Northern District of Illinois*

Patrick J. Fitzgerald
United States Attorney

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219 South Dearborn Street, 5th Floor
Chicago, Illinois 60604
(312) 353-5300*

FOR IMMEDIATE RELEASE
TUESDAY NOVEMBER 14, 2006
www.usdoj.gov/usao/iln

PRESS CONTACTS:
AUSA Linda Wawzenski (312) 353-1994
AUSA/PIO Randall Samborn (312) 353-5318

**OMNICARE, INC. TO PAY \$49.5 MILLION TO UNITED STATES AND
43 STATES TO SETTLE MEDICAID PRESCRIPTION DRUG FRAUD ALLEGATIONS**

CHICAGO – The United States and 43 states will receive \$49.5 million from Omnicare, Inc., of Covington, Kentucky, to settle Medicaid prescription-drug-fraud claims initiated by two whistleblowers, federal and state officials announced today. Omnicare, the largest provider of pharmacy services to skilled nursing facilities and assisted living communities in the United States, allegedly substituted different versions of prescribed drugs (such as tablets for capsules) solely to significantly increase the cost and profit rather than for any legitimate medical reason. The settlement covers Omnicare's submission of reimbursement claims to Medicaid programs in 43 states for three prescription drugs from April 2000 through 2005: Ranitidine (generic Zantac), Fluoxetine (generic Prozac) and Buspirone (generic Buspar).

The settlement, which was filed today in U.S. District Court in Chicago, was announced by Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois; Daniel R. Levinson, Inspector General, U.S. Department of Health and Human Services; Michael Cleary, Special Agent-in-Charge of the U.S. Food and Drug Administration, Office of Criminal Investigations, in Chicago;

and Robert D. Grant, Special Agent-in-Charge of the Chicago Office of the Federal Bureau of Investigation. Also today, one of the two whistleblower lawsuits that initiated the case was unsealed, and, together, the cases yielded the largest-ever settlement of a federal health care fraud case in the Northern District of Illinois.

The case also marks the first time that a United States Attorney's Office has joined forces with the National Association of Medicaid Fraud Control Units (NAMFCU), to conduct a joint health care fraud investigation. NAMFCU is an organization of 49 state Medicaid Fraud Control Units and provides a forum for sharing information and improving the quality of investigations. In this case, agents from the FBI, the FDA Office of Criminal Investigations, and the Health and Human Services Department's Office of Inspector General joined forces with state attorneys general and investigators from Illinois, Massachusetts, Ohio, Pennsylvania, North Carolina, and Florida. In addition, each of the 43 states in which Omnicare operated during the relevant time period provided electronic claims data and other information to the investigative team.

"The health care industry should be wary of manipulating federal and state programs in this manner because, under the federal False Claims Act and its state counterparts, those who are caught face the prospect of triple damages plus significant additional penalties and attorneys fees," Mr. Fitzgerald said. "With significant civil deterrents such as these, and the increasing willingness of corporate insiders to report fraud, companies that cheat federal and state governments risk, at a minimum, potentially crippling financial losses."

Inspector General Levinson, of HHS, said: "Investigating Medicaid prescription drug fraud is a top priority for the U.S. Department of Health and Human Services, Office of Inspector General. We will continue to work closely with Medicaid Fraud Control Units around the country to

investigate and prosecute those who engage in schemes to illegally profit from and defraud the Medicaid program at the expense of vulnerable beneficiaries.”

The officials noted that Omnicare did not admit liability as part of the settlement.

Under the agreement, within 10 business days Omnicare will pay the United States slightly more than \$29,641,000 as the federal share of settlement and it will pay a total of approximately \$19,858,782 to be apportioned among the participating state Medicaid programs. Separate settlement agreements establish the amounts owed to each state. The State of Illinois, for example, will receive a net of \$2,568,762.

The universal federal settlement covers allegations that, for each of the three drugs, Omnicare improperly switched Medicaid patients from a cheaper version of the drug to a more expensive version solely to increase its reimbursement rate. Medicaid patients were given Ranitidine capsules instead of the cheaper tablets, Fluoxetine tablets instead of the cheaper capsules, and two 7.5-mg. tablets of Buspirone instead of the cheaper, single 15-mg. tablet. Those switches increased prices substantially while adding no medical benefit and violating federal and state regulations. For example, by substituting Ranitidine capsules for the 150-mg. tablets that were prescribed between December 15, 2000 and April 1, 2001, Omnicare was able to charge Illinois Medicaid \$79.80 instead of \$17.10 per 60 tablet prescription for a difference of \$62.70.

Omnicare made some of these switches without specifically informing the prescribing doctor of the change in drug form, sometimes falsely telling the physician that the new version of the drug would be cheaper for the payer, and other times suggesting some undefined patient benefit from the new form of the drug. Nevertheless, according to the allegations, Omnicare’s sole reason for each

switch was to increase the amount of reimbursement it would receive from Medicaid for each prescription.

While capsules and tablets generally function in the same way when they enter the body, both federal Food and Drug Administration law and state statutes provide that the different dosage forms of the same compound are not considered the same. Therefore, pharmacists cannot switch customers between capsule and tablet forms of a medication without a direct order from a physician. State and federal regulations permit a pharmacist to switch between medications (such as from a name brand to a similarly formulated, equally effective generic drug) for a Medicaid beneficiary only if two conditions are met: first, that the replacement drug is considered therapeutically and pharmaceutically equivalent, and secondly, that the unit price for the replacement drug is *less* than the unit price for the medication originally prescribed.

Medicaid is a joint federal–state program that provides health care benefits for certain groups, primarily low-income and disabled persons. The federal involvement in Medicaid includes providing matching funds and ensuring that states comply with minimum standards in the administration of the program. The federal share of states’ Medicaid payments, known as the Federal Medical Assistance Percentage (FMAP), is based on each individual state’s per capita income compared to the national average. Among the states, the FMAP is at least 50 percent, and in some instances, as high as 83 percent. In Illinois, the FMAP or federal share is 50 percent.

As part of the settlement, Omnicare has also entered into a compliance agreement with the Department of Health and Human Services that is designed to prevent this type of drug switch in the future. The compliance agreement will be in effect for five years.

Both individuals, or so-called “relators,” who initiated the case by filing their own separate lawsuits, will receive a share of the settlement from both the United States and the states that have their own whistleblower statutes. One relator, Bernard Lisitza, will receive \$6,443,204, and relator David Kammerer will receive \$792,593 as their respective shares of the federal and state settlements.

Mr. Lisitza, a licensed pharmacist who worked as a supervisor at Jacobs HealthCare Systems, an Omnicare facility in Des Plaines, Illinois, is represented by Michael Behn, of Behn & Wyetzner, Chartered, in Chicago. Mr. Kammerer, the former director of Medicaid reimbursement at Omnicare’s headquarters in Kentucky, is represented by Charles Atkins, of Weisser & Wolf in Cincinnati, and Shelley Slade, of Vogel & Slade in Washington, D.C.

The United States was represented by assistant United States attorney Linda A. Wawzenski, deputy chief of the U.S. Attorney’s Office civil division. Omnicare was represented by Sanford Teplitzky, of Ober, Kaler, Grimes & Shriver in Baltimore, Maryland.

The case is *United States et al., ex rel. Bernard Lisitza v. Omnicare, Inc.*, 01 C 7433, and *United States et al., ex rel. David Kammerer v. Omnicare, Inc.*, 04 C 2074 (N.D. Ill.). The Lisitza case was unsealed today, while the Kammerer case remains under seal.

Under the federal False Claims Act, defendants may be liable for triple the amount of actual damages and civil penalties between \$5,500 and \$11,000 for each violation. Individual whistleblowers may be eligible to receive between 15 and 30 percent of the amount of any recovery.

#####

United States District Court
Northern District of Illinois - CM/ECF LIVE, Ver 6.2.2 (Chicago)
CIVIL DOCKET FOR CASE #: 1:04-cv-02074

USA ex rel David Kammerer, et al. v. Omnicare, Inc.
Assigned to: Honorable James F. Holderman
Demand: \$0
Case in other court: USDC N Dist Ohio, 03cv7504
Cause: 31:3729 False Claims Act

Date Filed: 03/19/2004
Date Terminated: 09/21/2010
Jury Demand: Both
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: U.S. Government Plaintiff

Plaintiff

United States of America

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Plaintiff**David M Kammerer**

individually

represented by **Michael Charles Rosenblat**

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V.

Defendant**Omnicare, Inc.**

represented by **Sanford Teplitzky**

Ober Kaler Grimes & Shriver
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Baltimore, MD 21202-1643
(410) 347-7364

Date Filed	#	Docket Text
03/19/2004	73	COMPLAINT, dated 08/28/03 transferred from the Northern District of Ohio, 03 cv 7504. (psm,) (Entered: 04/13/2012)
03/19/2004	74	ORDER, dated 8/28/03 transferred from the Northern District of Ohio, 03 cv 7504. (psm,) (Entered: 04/16/2012)
03/19/2004	75	RESTRICTED DOCUMENT (Document not scanned), transferred from the Northern District of Ohio, 03 cv 7504. (psm,) (Entered: 04/16/2012)
03/19/2004	76	RESTRICTED DOCUMENT (Document not scanned), transferred from the Northern District of Ohio, 03 cv 7504. (psm,) (Entered: 04/16/2012)
03/19/2004	77	RESTRICTED DOCUMENT (Document not scanned), transferred from the Northern District of Ohio, 03 cv 7504.(psm,) (Entered: 04/16/2012)
03/19/2004	78	ORDER, dated 10/30/03 transferred from the Northern District of Ohio, 03 cv 7504. (psm,) (Entered: 04/16/2012)

Recovery Cases 098

03/19/2004	79	RESTRICTED DOCUMENT (Document not scanned), transferred from the Northern District of Ohio, 03 cv 7504. (psm,) (Entered: 04/16/2012)
03/19/2004	80	RESTRICTED DOCUMENT (Document not scanned), transferred from the Northern District of Ohio, 03 cv 7504. (psm,) (Entered: 04/16/2012)
03/19/2004	81	ORDER, dated 3/16/04 transferred from the Northern District of Ohio, 03 cv 7504. (psm,) (Entered: 04/16/2012)
03/19/2004	82	RESTRICTED DOCUMENT (Document not scanned), transferred from the Northern District of Ohio, 03 cv 7504. (psm,) (Entered: 04/16/2012)
03/19/2004	83	FIRST AMENDED COMPLAINT, dated 3/17/04 transferred from the Northern District of Ohio, 03 cv 7504. (psm,) (Entered: 04/16/2012)
04/02/2004	84	RESTRICTED DOCUMENT (Document not scanned). (psm,) (Entered: 04/16/2012)
05/21/2004	85	RESTRICTED DOCUMENT (Document not scanned). (psm,) (Entered: 04/16/2012)
06/17/2004	86	RESTRICTED DOCUMENT (Document not scanned). (psm,) (Entered: 04/16/2012)
06/17/2004	87	MINUTE entry before Honorable Charles P. Kocoras: United States' and State Plaintiffs' unopposed ex parte motion for an extension of time to November 29, 2004 to consider election to intervene is granted. Enter order. (psm,) (Entered: 04/16/2012)
06/17/2004	88	ORDER. Signed by the Honorable Charles P. Kocoras on 6/17/2004.(psm,) (Entered: 04/16/2012)
10/22/2004	89	RESTRICTED DOCUMENT (Document not scanned). (psm,) (Entered: 04/16/2012)
10/22/2004	90	MINUTE entry before Honorable Charles P. Kocoras: United States' and State Plaintiffs' unopposed ex parte motion to partially unseal the complaint in these cases is granted. Enter Order. (psm,) (Entered: 04/16/2012)
10/22/2004	91	ORDER. Signed by the Honorable Charles P. Kocoras on 10/22/2004.(psm,) (Entered: 04/16/2012)
11/29/2004	92	RESTRICTED DOCUMENT (Document not scanned). (psm,) (Entered: 04/16/2012)
11/29/2004	93	MINUTE entry before Honorable Charles P. Kocoras: United States' and State Plaintiffs' unopposed ex parte motion for an extension of time to consider election to intervene is granted to November 29, 2005. Enter order. (psm,) (Entered: 04/16/2012)
11/29/2004	94	ORDER. Signed by the Honorable Charles P. Kocoras on 11/29/2004.(psm,) (Entered: 04/16/2012)
02/08/2005	95	SECOND AMENDED COMPLAINT (Attachments: # 1 2nd Amd Cmpl Part 2).(psm,) (Entered: 04/16/2012)
02/09/2005	96	RESTRICTED DOCUMENT (Document not scanned). (psm,) (Entered: 04/16/2012)
02/11/2005	97	RESTRICTED DOCUMENT (Document not scanned).(psm,) (Entered: 04/16/2012)
02/11/2005	98	MINUTE entry before Honorable Charles P. Kocoras: Relator's motion to lift seal partially is granted. Enter order. (For further detail see attached order.) (psm,) (Entered: 04/16/2012)
02/11/2005	99	ORDER. Signed by the Honorable Charles P. Kocoras on 2/11/2005.(psm,) (Entered: 04/16/2012)
02/25/2005	100	RESTRICTED DOCUMENT (Document not scanned). (psm,) (Entered: 04/16/2012)
02/25/2005	101	MINUTE entry before Honorable Charles P. Kocoras: Relator's motion to lift seal

Recovery Cases 099

		partially is granted. Enter Order. (psm,) (Entered: 04/16/2012)
02/25/2005	102	ORDER. Signed by the Honorable Charles P. Kocoras on 2/25/2005.(psm,) (Entered: 04/16/2012)
10/17/2005	103	RESTRICTED DOCUMENT (Document not scanned). (psm,) (Entered: 04/16/2012)
10/17/2005	104	MINUTE entry before Honorable Charles P. Kocoras: United States' and State Plaintiffs' unopposed ex parte motion for an extension of time to consider election to intervene (actually a motion to partially lift seal) is granted. Enter order. (For further detail see attached order.) (psm,) (Entered: 04/16/2012)
10/17/2005	105	ORDER. Signed by the Honorable Charles P. Kocoras on 10/17/2005.(psm,) (Entered: 04/16/2012)
11/29/2005	106	RESTRICTED DOCUMENT (Document not scanned.) (psm,) (Entered: 04/16/2012)
11/29/2005	107	MINUTE entry before Honorable Charles P. Kocoras: United States' and State Plaintiffs' unopposed ex parte motion for an extension of time to May 31, 2006 to consider election to intervene, is granted. Enter order. (For further detail see attached order.) (psm,) (Entered: 04/16/2012)
11/29/2005	108	ORDER. Signed by the Honorable Charles P. Kocoras on 11/29/2005.(psm,) (Entered: 04/16/2012)
04/19/2006	109	RESTRICTED DOCUMENT (Document not scanned.)(psm,) (Entered: 04/16/2012)
04/19/2006	110	MINUTE entry before Honorable Charles P. Kocoras: Motion of Relator to lift partially the seal on the Second Amended Complaint is granted. Enter Order. (For further detail see separate order.) (psm,) (Entered: 04/16/2012)
04/19/2006	111	ORDER. Signed by the Honorable Charles P. Kocoras on 4/19/2006.(psm,) (Entered: 04/16/2012)
05/31/2006	112	RESTRICTED DOCUMENT (Document not scanned.) (psm,) (Entered: 04/16/2012)
05/31/2006	113	MINUTE entry before Honorable Charles P. Kocoras: United States' and State Plaintiffs' unopposed ex parte motion for an extension of time to February 28, 2007 to consider election to intervene, is granted. Enter order. (For further detail see separate order.) (psm,) (Entered: 04/16/2012)
05/31/2006	114	ORDER. Signed by the Honorable Charles P. Kocoras on 5/31/2006.(psm,) (Entered: 04/16/2012)
06/12/2006	115	RESTRICTED DOCUMENT (Document not scanned.) (psm,) (Entered: 04/16/2012)
07/21/2006	116	RESTRICTED DOCUMENT (Document not scanned.) (psm,) (Entered: 04/16/2012)
08/11/2006	117	RESTRICTED DOCUMENT (Document not scanned.) (psm,) (Entered: 04/16/2012)
08/15/2006	118	RESTRICTED DOCUMENT (Document not scanned.)(psm,) (Entered: 04/16/2012)
02/14/2007	1	RESTRICTED DOCUMENT (Document not scanned.) (psm,) (Entered: 09/27/2010)
02/28/2007	2	RESTRICTED DOCUMENT (Document not scanned.) (psm,) (Entered: 09/27/2010)
02/28/2007	3	MINUTE entry before Honorable James F. Holderman: ENTER ORDER: The United States declines to intervene. (For further detail see separate order.) Telephoned notice. (psm,) (Entered: 09/27/2010)
02/28/2007	4	ORDER signed by the Honorable James F. Holderman on 2/28/2007.(psm,) (Entered: 09/27/2010)

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02/28/2007	5	RESTRICTED DOCUMENT (Document not scanned.) (psm,) (Entered: 09/27/2010)
02/28/2007	6	MINUTE entry before Honorable James F. Holderman:ENTER ORDER: The joint motion of the plaintiff States of Delaware, Hawaii, Louisiana, Massachusetts, New Mexico, Texas and the District of Columbia for extension of time (until 8/31/2007) to investigate while case remains under seal is granted. (For further detail see separate order.) Telephoned notice, (psm,) (Entered: 09/27/2010)
02/28/2007	7	ORDER signed by the Honorable James F. Holderman on 2/28/2007.(psm,) (Entered: 09/27/2010)
02/28/2007	8	MINUTE entry before Honorable James F. Holderman: Plaintiffs' motion for leave to file third amended complaint is granted. Telephoned notice. (psm,) (Entered: 09/27/2010)
03/09/2007	9	THIRD AMENDED complaint against Omnicare, Inc. (psm,) (Entered: 09/27/2010)
03/09/2007	10	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/27/2010)
08/31/2007	11	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/27/2010)
08/31/2007	12	MINUTE entry before Honorable James F. Holderman:State plaintiffs' ex parte unopposed motion for an extension of time to consider election to intervene is granted. ENTER ORDER: It is ordered that the governmental plaintiffs have until and including February 28, 2008 to intervene. Further, the case shall remain under seal until February 28, 2008. (For further detail see separate order.) Telephoned notice. (psm,) (Entered: 09/27/2010)
08/31/2007	13	ORDER signed by the Honorable James F. Holderman on 8/31/2007.(psm,) (Entered: 09/27/2010)
09/14/2007	14	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/27/2010)
02/27/2008	15	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/27/2010)
02/27/2008	16	MINUTE entry before Honorable James F. Holderman:State plaintiffs' unopposed ex parte motion for an extension of time to consider election to intervene is granted. ENTER ORDER: It is ordered that the governmental plaintiffs shall have until and including August 28, 2008 to intervene in the above-captioned action or to notify the court that they decline to do so. Further, the complaint and all other filings shall remain under seal until and including 2008. (For further detail see separate order.) Telephoned notice. (psm,) (Entered: 09/27/2010)
02/27/2008	17	ORDER signed by the Honorable James F. Holderman on 2/27/2008.(psm,) (Entered: 09/27/2010)
08/21/2008	18	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/27/2010)
08/21/2008	19	MINUTE entry before Honorable James F. Holderman: State plaintiffs' unopposed ex parte motion for an extension of time to consider election to intervene is granted. Enter Order. It is ordered that the governmental plaintiffs shall have until and including 8/28/2008 to intervene in this matter. It is further ordered that the complaint and all other filings shall remain under seal until and including 8/28/2008. (For further detail see separate order.) Mailed notice. (psm,) (Entered: 09/27/2010)
08/21/2008	20	ORDER signed by the Honorable Matthew F. Kennelly on 8/21/2008.(psm,) (Entered: 09/27/2010)
08/29/2008	21	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/27/2010)
09/02/2008	22	MINUTE entry before Honorable James F. Holderman:ENTER CORRECTED ORDER: It is hereby ordered that the governmental plaintiffs shall have until and including

		February 28, 2009 to intervene in the above-captioned actions; the complaint and all other filings shall remain under seal until and including February 28, 2009. (For further detail see separate order.) Telephoned notice (psm,) (Entered: 09/27/2010)
09/02/2008	23	CORRECTED ORDER signed by the Honorable James F. Holderman on 9/2/2008.(psm,) (Entered: 09/27/2010)
02/26/2009	24	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/27/2010)
02/26/2009	25	MINUTE entry before Honorable James F. Holderman:State Plaintiffs' unopposed ex parte motion for an extension of time to consider election to intervene is granted. ENTER ORDER: It is ordered that the governmental plaintiffs shall have until and including August 28, 2009 to intervene in the above-entitled action or to notify the court. Further, the complaint and all other filing shall remain under seal until and including August 28, 2009. (For further detail see separate order.) Telephoned notice. (psm,) (Entered: 09/27/2010)
02/26/2009	26	ORDER signed by the Honorable James F. Holderman on 2/26/2009.(psm,) (Entered: 09/27/2010)
07/31/2009	27	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/28/2010)
07/31/2009	28	MINUTE entry before Honorable James F. Holderman:ENTER ORDER: It is ordered that the parties shall serve all pleadings and motions filed in this action including supporting memoranda, upon New Mexico as provided in 27-14-8(D), New Mexico Statutes Annotated, 2978 (as amended).(For further detail see separate order.) Mailed notice. (psm,) (Entered: 09/28/2010)
07/31/2009	29	ORDER signed by the Honorable James F. Holderman on 7/31/2009.(psm,) (Entered: 09/28/2010)
08/11/2009	30	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/28/2010)
08/11/2009	31	ORDER signed by the Honorable James F. Holderman on 8/11/2009.(psm,) (Entered: 09/28/2010)
08/11/2009	32	RESTRICTED DOCUMENT (document not scanned.)(psm,) (Entered: 09/28/2010)
08/11/2009	33	ORDER signed by the Honorable James F. Holderman on 8/11/2009.(psm,) (Entered: 09/28/2010)
08/26/2009	34	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/28/2010)
08/26/2009	35	MINUTE entry before Honorable James F. Holderman: ENTER ORDER: The State of Indiana declines to intervene. (For further detail see separate order.) Telephoned notice. (psm,) (Entered: 09/28/2010)
08/26/2009	36	ORDER signed by the Honorable James F. Holderman on 8/26/2009.(psm,) (Entered: 09/28/2010)
08/28/2009	37	RESTRICTED DOCUMENT (document not scanned.)(psm,) (Entered: 09/28/2010)
08/28/2009	38	MINUTE entry before Honorable James F. Holderman:State Plaintiffs' unopposed ex parte motion for an extension of time to consider election to intervene is granted. ENTER ORDER: It is ordered that the governmental plaintiffs shall have until and including December 28, 2009 to intervene in the above entitled action or to notify the court. Further, the complaint and all other filing shall remain under seal until and including December 28, 2009. (For further detail see separate order.) Telephoned notice. (psm,) (Entered: 09/28/2010)
08/28/2009	39	ORDER signed by the Honorable James F. Holderman on 8/28/2009.(psm,) (Entered: 09/28/2010)

		09/28/2010)
08/28/2009	40	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/28/2010)
08/28/2009	41	MINUTE entry before Honorable James F. Holderman:State Plaintiffs' unopposed ex parte application for partial lifting of the seal is granted. ENTER ORDER. (For further detail see separate order.) Telephoned notice. (psm,) (Entered: 09/28/2010)
08/28/2009	42	ORDER signed by the Honorable James F. Holderman on 8/28/2009.(psm,) (Entered: 09/28/2010)
09/01/2009	43	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/28/2010)
09/01/2009	44	MINUTE entry before Honorable James F. Holderman:ENTER ORDER: The State of Montana declines to intervene. (For further detail see separate order.)Telephoned notice. (psm,) (Entered: 09/28/2010)
09/01/2009	45	ORDER signed by the Honorable James F. Holderman on 9/1/2009.(psm,) (Entered: 09/28/2010)
09/02/2009	46	RESTRICTED DOCUMENT (document not scanned.)(psm,) (Entered: 09/28/2010)
09/02/2009	47	MINUTE entry before Honorable James F. Holderman: ENTER ORDER: The State of Delaware declines to intervene. (For further detail see separate order.) Telephoned notice. (psm,) (Entered: 09/28/2010)
09/02/2009	48	ORDER signed by the Honorable James F. Holderman on 9/2/2009.(psm,) (Entered: 09/28/2010)
12/22/2009	49	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/28/2010)
12/22/2009	50	MINUTE entry before Honorable James F. Holderman:State Plaintiffs' unopposed ex parte motion for an extension of time to consider election to intervene is granted. ENTER ORDER: It is ordered that the governmental plaintiffs shall have until and including February 26, 2010 to intervene in the above-entitled action or to notify the court. Further, the complaint and all other filings shall remain under seal until and including February 26, 2010. (For further detail see separate order.) Telephoned notice. (psm,) (Entered: 09/28/2010)
12/22/2009	51	ORDER signed by the Honorable James F. Holderman on 12/22/2009.(psm,) (Entered: 09/28/2010)
02/09/2010	52	RESTRICTED DOCUMENT (document not scanned.)(psm,) (Entered: 09/28/2010)
02/26/2010	53	RESTRICTED DOCUMENT (document not scanned.)(psm,) (Entered: 09/28/2010)
02/26/2010	54	MINUTE entry before Honorable James F. Holderman:State Plaintiffs' unopposed ex parte motion for an extension of time to consider election to intervene is granted. ENTER ORDER: It is ordered that the governmental plaintiffs shall have until and including April 27, 2010 to intervene in the above-entitled action or to notify the court. Further, the complaint and all other filings shall remain under seal until and including April 27, 2010. (For further detail see separate order.) Telephoned notice. (psm,) (Entered: 09/28/2010)
02/26/2010	55	ORDER signed by the Honorable James F. Holderman on 2/26/2010.(psm,) (Entered: 09/28/2010)
04/27/2010	56	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/28/2010)
04/27/2010	57	MINUTE entry before Honorable James F. Holderman:State Plaintiffs' unopposed ex parte motion for an extension of time to consider election to intervene is granted. ENTER ORDER: It is ordered that the governmental plaintiffs shall have until and including June

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		28, 2010 to intervene in the above-entitled action or to notify the court. Further, the complaint and all other filings shall remain under seal until and including June 28, 2010. (For further detail see separate order.) Telephoned notice. (psm,) (Entered: 09/28/2010)
04/27/2010	58	ORDER signed by the Honorable James F. Holderman on 4/27/2010.(psm,) (Entered: 09/28/2010)
06/28/2010	59	RESTRICTED DOCUMENT (document not scanned.)(psm,) (Entered: 09/28/2010)
06/28/2010	60	MINUTE entry before Honorable James F. Holderman: State Plaintiffs' unopposed ex parte motion for an extension of time to consider election to intervene is granted. ENTER ORDER: It is ordered that the governmental plaintiffs shall have until and including August 27, 2010 to intervene in the above-entitled action or to notify the court. Further, the complaint and all other filings shall remain under seal until and including August 27, 2010. (For further detail see separate order.) Telephoned notice. (psm,) (Entered: 09/28/2010)
06/28/2010	61	ORDER signed by the Honorable James F. Holderman on 6/28/2010.(psm,) (Entered: 09/28/2010)
08/26/2010	62	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/28/2010)
08/26/2010	63	MINUTE entry before Honorable James F. Holderman: State Plaintiffs' unopposed ex parte motion for an extension of time to consider election to intervene is granted. ENTER ORDER: It is ordered that governmental plaintiffs shall have until and including September 14, 2010 to intervene in the above-captioned action or to notify the court that they decline to do so. Further, the complaint and all other filings shall remain under seal until September 14, 2010. (For further detail see separate order.) Telephoned notice. (psm,) (Entered: 09/28/2010)
08/26/2010	64	ORDER signed by the Honorable James F. Holderman on 8/26/2010.(psm,) (Entered: 09/28/2010)
09/14/2010	65	RESTRICTED DOCUMENT (document not scanned.) (psm,) (Entered: 09/28/2010)
09/14/2010	66	MINUTE entry before Honorable James F. Holderman: State plaintiffs' unopposed ex parte motion for an extension of time to consider election to intervene is granted. ENTER ORDER: It is ordered that governmental plaintiffs shall have until and including September 24, 2010 to intervene in the above-captioned action or to notify the court that they decline to do so. Further, the complaint and all other filings shall remain under seal until September 24, 2010. (For further detail see separate order.) Telephoned notice. (psm,) (Entered: 09/28/2010)
09/14/2010	67	ORDER signed by the Honorable James F. Holderman on 9/14/2010.(psm,) (Entered: 09/28/2010)
09/20/2010	68	STIPULATION of Dismissal. (psm,) (Entered: 09/28/2010)
09/20/2010	69	STIPULATION of Dismissal. (psm,) (Entered: 09/28/2010)
09/20/2010	70	STIPULATION of Dismissal. (psm,) (Entered: 09/28/2010)
09/20/2010	72	ORDER OF DISMISSAL and Unsealing signed by the Honorable James F. Holderman on 9/20/2010.(psm,) (Entered: 09/28/2010)
09/21/2010	71	MINUTE entry before Honorable James F. Holderman: ENTER ORDER OF DISMISSAL AND UNSEALING: It is ordered that all claims asserted on behalf of the Commonwealth of Massachusetts and the State of Michigan against defendant, Omnicare, Inc. are dismissed with prejudice; all claims asserted on behalf of the United States for the federal share of damages to the Massachusetts and Michigan Medicaid programs resulting

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from the Covered Conduct, as set forth in : 1) A Settlement Agreement executed on behalf of the Commonwealth of Massachusetts, the Relator, and the defendant; 2) A Settlement Agreement executed on behalf of the State of Michigan, the Relator, and the defendant, are dismissed with prejudice; in addition to the dismissal with prejudice of all claims asserted on behalf of Massachusetts and Michigan as noted above, all claims asserted by the Relator on behalf of the United States and all other states are dismissed with prejudice; all claims of the United States for the federal share of damages for all states other than Massachusetts and Michigan for the state share of damages are dismissed without prejudice. It is further ordered that the complaints, stipulations and orders in this matter shall be unsealed; all other papers and pleadings filed in this matter shall remain sealed. (For further detail see separate order.) Mailed notice. (psm,) (Entered: 09/28/2010)

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01/24/2019 15:18:09			
PACER Login:	kk0155:2581181:0	Client Code:	200
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Billable Pages:	8	Cost:	0.80

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA et al.,)	Civil Action No. 04C-2074
<i>ex rel.</i> DAVID M. KAMMERER;)	
)	James F. Holderman
)	Chief Judge
Plaintiffs)	
)	
)	
vs.)	
)	
)	
OMNICARE, INC.)	
)	
)	
Defendant)	

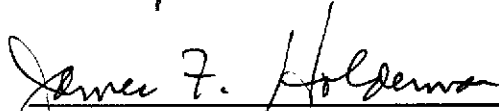
ORDER OF DISMISSAL AND UNSEALING

This Court, having considered the Stipulation of Dismissal filed by the Commonwealth of Massachusetts and the defendant, Omnicare, Inc.; the Stipulation of Dismissal filed by the State of Michigan and the defendant, Omnicare, Inc.; and the Stipulation of Dismissal filed by Relator David M. Kammerer and the defendant, Omnicare, Inc., hereby orders as follows: all claims asserted on behalf of the Commonwealth of Massachusetts and the State of Michigan against defendant, Omnicare, Inc. are dismissed with prejudice; all claims asserted on behalf of the United States for the federal share of damages to the Massachusetts and Michigan Medicaid programs resulting from the Covered Conduct, as set forth in: 1) A Settlement Agreement executed on behalf of the Commonwealth of Massachusetts, the Relator, and the defendant; 2) A Settlement Agreement executed on behalf of the State of Michigan, the

Relator, and the defendant, are dismissed with prejudice; in addition to the dismissal with prejudice of all claims asserted on behalf of Massachusetts and Michigan as noted above, all claims asserted by the Relator on behalf of the United States and all other states are dismissed with prejudice; all claims of the United States for the federal share of damages for all states other than Massachusetts and Michigan are dismissed without prejudice; all claims of all states other than Massachusetts and Michigan for the state share of damages are dismissed without prejudice.

It is further ordered that the complaints, stipulations and orders in this matter shall be unsealed; all other papers and pleadings filed in this matter shall remain sealed.

SO ORDERED THIS 20th DAY OF September, 2010.



JAMES F. HOLDERMAN
CHIEF JUDGE

II.C
III.1.c,d,f
III.4
III.8
III.10.a,b
III.21
III.24

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA <i>et al.</i> ,)	
<i>ex rel.</i> BERNARD LISITZA,)	
)	
Plaintiffs,)	No. 01 C 7433
)	
v.)	Chief Judge Holderman
)	
OMNICARE, INC.)	
Defendant.)	
)	
UNITED STATES OF AMERICA <i>et al.</i> ,)	
<i>ex rel.</i> DAVID KAMMERER,)	
)	
Plaintiffs,)	No. 04 C 2074
)	
v.)	Chief Judge Holderman
)	
OMNICARE, INC.)	
)	
Defendant)	

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) (collectively the “United States”); Omnicare, Inc. (“Omnicare”); Bernard Lisitza (“Relator Lisitza”) and Relator David Kammerer, through their authorized representatives (hereafter referred to as “the Parties”).

II. Preamble

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

A. Omnicare is currently the largest provider of pharmacy services to long-term care facilities in the United States, operating in 47 states and the District of Columbia.

B. Relator Bernard Lisitza is an individual resident of the State of Illinois. On September 26, 2001, Relator filed a *qui tam* action in the United States District Court for Northern District of Illinois captioned *United States et al. ex rel. Bernard Lisitza, v. Omnicare, Inc.*, No. 01 C 7433 (hereinafter “the Civil Action”). During a portion of the relevant time period, Relator worked for an Omnicare-owned facility in Illinois. Simultaneous with the entry of this Agreement, the United States has intervened in one of the claims in this Civil Action, which claim is the subject of this Agreement.

C. Relator David Kammerer is an individual resident of the state of Ohio. Relator Kammerer has a *qui tam* case pending under seal in the Northern District of Illinois captioned *United States ex rel. David Kammerer v. Omnicare, Inc.*, No. 04 C 2074. During a portion of the relevant time period, Kammerer was an employee of Omnicare.

D. The United States contends that Omnicare submitted or caused to be submitted claims for payment to the Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396v.

E. The United States contends that it has certain civil claims, as specified in Paragraphs 2, 3, and 4, below, against Omnicare for engaging in the following conduct (hereinafter referred to as the “Covered Conduct”):

i. From April 1, 2000 through December 31, 2005, Omnicare improperly switched its Medicaid patients who were prescribed Ranitidine (generic Zantac) 150 mg or 300 mg tablets to the capsule form of the drug. This switch occurred because of Federal Upper Limits (“FULs”) that had been placed on the tablet form of Ranitidine by the Centers for Medicare and Medicaid Services

(“CMS”). As a result of engaging in this switching behavior, Omnicare received reimbursement amounts from Medicaid that were higher than it was entitled to receive.

ii. From January 1, 2002 through December 31, 2005, Omnicare improperly switched its Medicaid patients who were prescribed Fluoxetine (generic Prozac) 10 mg or 20 mg capsules to the tablet form of the drug. As a result of engaging in this switching behavior, Omnicare received reimbursement amounts from Medicaid that were higher than it was entitled to receive.

iii. From April 1, 2001 through December 31, 2005, Omnicare improperly switched its Medicaid patients who were prescribed Buspirone (generic Buspar) 15 mg dosage strength to two 7.5 mg dosages. As a result of engaging in this switching behavior, Omnicare received reimbursement amounts from Medicaid that were higher than it was entitled to receive.

F. The United States also contends that it has certain administrative claims, as specified in Paragraph 2 and 5, below, against Omnicare for engaging in the Covered Conduct.

G. This Agreement is not an admission of liability by Omnicare, nor is it evidence of any valid claim. Omnicare denies the United States’ contentions. The Parties agree that no provision of this Agreement nor any consideration exchanged pursuant to this Agreement constitutes an admission by Omnicare that it engaged in or violated any law in connection with the Covered Conduct described above or otherwise.

H. 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.

I. This Preamble is an integral part of this Agreement and binds the parties in the same way as the remainder of this Agreement.

III. Terms and Conditions

1. Omnicare agrees to pay to the United States and the Participating States, collectively \$49.5 million (the “Settlement Amount”). The Settlement Amount is to be paid to the United States and the Participating States, as follows:

a. Omnicare and the United States agree that the sum of \$29,641,217.37 represents the Federal Share (the “Federal Settlement Amount”). Omnicare agrees to pay the Federal Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the U.S. Attorney’s Office for the Northern District of Illinois. Omnicare agrees to make this electronic funds transfer no later than 10 business days from the Effective Date of this Agreement.

b. Omnicare and the Participating State Medicaid programs agree that the sum of \$19,858,782.63 represents the States’ share (the “State Settlement Amount”) under terms and conditions agreed upon by Omnicare and the Participating States (the “State Settlement Agreement”). The State Settlement Amount shall be paid to an escrow account pursuant to the State Settlement Agreement no later than 10 business days from the Effective Date of this Agreement.

c. Contingent upon the United States receiving the Federal Settlement Amount from Omnicare and as soon as feasible after receipt, the United States agrees to pay \$5,278,876.82 to Relator Lisitza by electronic funds transfer pursuant to instructions provided by Michael I. Behn of Behn & Wyetzner, Chartered, (“Counsel for Relator Lisitza”), and to pay \$649,366.64 to Relator Kammerer by electronic funds transfer pursuant to instructions provided by Shelley Slade of Vogel & Slade, LLP, (“Counsel for Relator Kammerer”).

d. Contingent upon the States receiving the State Settlement Amount from Omnicare and as soon as feasible after receipt, the States agree to pay \$1,164,327.83 to Relator Lisitza by electronic funds transfer pursuant to instructions provided by Counsel for Relator Lisitza and to pay \$143,226.61 to Relator Kammerer by electronic funds transfer pursuant to instructions provided by Counsel for Relator Kammerer.

e. Omnicare further agrees to pay Counsel for Relator Lisitza \$950,000 for expenses and attorney's fees and costs pursuant to instructions provided by Counsel for Relator Lisitza. Payment shall be made within 10 business days from the Effective Date of this Agreement.

f. Omnicare further agrees to pay Relator Kammerer \$500,000 for expenses and attorney's fees and costs incurred in connection with claims based on the Covered Conduct pursuant to instructions provided by Counsel for Relator Kammerer, within ten business days of the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 6, below, in consideration of the obligations of Omnicare in this Agreement, conditioned upon Omnicare's full payment of the Federal and State Settlement Amounts, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Omnicare, its subsidiaries, divisions, affiliates (including any entity in which Omnicare has at least a 50% ownership interest) ("Omnicare Released Parties"), from any and all civil or administrative monetary claims 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. (See Attachment A for

list of Omnicare Released Parties). No individuals are released by this Agreement by the United States.

3. Subject to the exceptions in Paragraph 6, below, in consideration of the obligations of Omnicare in this Agreement, conditioned upon Omnicare's full payment of the Federal and State Settlement Amounts, and the amounts referenced in paragraph 1.e above, Relator Lisitza, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release the Omnicare Released Parties and Omnicare's current and former officers, directors, employees and agents, from any and all civil monetary claims the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

4. Subject to the exceptions in Paragraph 6, below, in consideration of the obligations of Omnicare in this Agreement, conditioned upon Omnicare's full payment of the Federal and State Settlement Amounts, and the amounts referenced in paragraph 1.f above, Relator Kammerer, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release the Omnicare Released Parties, and Omnicare's current and former officers, directors, employees and agents, from any and all civil monetary claims the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

5. In consideration of the obligations of Omnicare in this Agreement and the Corporate Integrity Agreement (CIA) entered into between OIG-HHS and Omnicare, conditioned upon Omnicare's full payment of the Federal and State Settlement Amounts, the 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 the Omnicare Released Parties 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 6, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Omnicare 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 the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 6, below.

6. 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 Omnicare and Relators) 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;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability of individuals, including officers and employees.

7. Relator Lisitza and his heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and 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) and, conditioned upon receipt of Relator Lisitza's share, Relator Lisitza, for himself individually, and for his heirs, successors, agents, and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730 in the Civil Action; from any claims arising from the filing of the Civil Action; and from any other claims for a share of the Federal Settlement Amount; and in full settlement of any claims Relator Lisitza may have under this Agreement against the United States. This Agreement does not resolve or in any manner affect any claims the United States has or may have against Relator Lisitza arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

8. Relator Kammerer and his heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and 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) and, conditioned upon receipt of Relator Kammerer's share, Relator Kammerer, for himself individually, and for his heirs, successors, agents, and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims for a share of the Federal Settlement Amount arising from 31 U.S.C. § 3730, the filing of *United States ex rel. Kammerer v. Omnicare, Inc.*, No. 04 C 2074 (N.D. Ill. E.D.) or otherwise. This Agreement does not resolve or in any manner affect any claims the United States has or may have against Relator Kammerer arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

9. a. Conditioned upon receipt of all payments described in Paragraph 1, Relator Lisitza, for himself, and for his heirs, successors, attorneys, agents, and assigns, agrees to release the Omnicare Released Parties and its current and former officers, directors, agents, and employees, from any and all liability arising from the Covered Conduct, and under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

b. Omnicare, its current and former officers, directors, agents, and employees, agree to release Relator Lisitza, his heirs, successors, attorneys, agents, and assigns, from any liability arising from the Covered Conduct, and under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

10. a. Conditioned upon receipt of all payments described in Paragraph 1, Relator Kammerer, for himself, and for his heirs, successors, attorneys, agents, and assigns, agrees to release the Omnicare Released Parties and its current and former officers, directors, agents, and employees, from any and all liability arising: (i) from the Covered Conduct, (ii) from the conduct alleged in the First and Second Causes of Action in his Second Amended Complaint, and (iii) under 31 U.S.C. § 3730(d) and state law for expenses and attorney's fees and costs incurred in connection with Relator Kammerer's claims in the First and Second Causes of Action in his Second Amended Complaint, and his claims in those portions of the Fourth Cause of Action that pertain to the conduct described in the First and Second Causes of Action. This release does not cover any claims Relator Kammerer may have for additional expenses and attorney's fees and costs incurred in connection with the claim in the Third Cause of Action in his Second Amended Complaint, and those state claims in the Fourth Cause of Action that pertain to the conduct described in the Third Cause of Action.

b. Omnicare, its current and former officers, directors, agents, and employees, agree to release Relator Kammerer, his heirs, successors, attorneys, agents, and assigns, from any liability

arising from the Covered Conduct, and under 31 U.S.C. § 3730(d), for expenses or attorney's fees and costs incurred in connection with Relator Kammerer's claims based on the Covered Conduct.

11. Omnicare waives and shall not assert any defenses Omnicare 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. Omnicare is specifically not waiving any other defenses it may have. 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.

12 Omnicare 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) that Omnicare has 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.

13. 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 payer, related to the Covered Conduct; and Omnicare 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.

14. Omnicare agrees to the following:

a. Unallowable Costs Defined: if applicable, 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. §§ 1395-1395ggg and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Omnicare, 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 Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (1) the matters covered by this Agreement;
- (2) the United States’ audit(s) and civil and/or criminal investigation(s) of the matters covered by this Agreement;
- (3) Omnicare’s investigation, defense, and corrective actions undertaken in response to the United States’ audit(s) and civil and/or any criminal 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 Omnicare makes to the United States pursuant to this Agreement and any payments that Omnicare 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.

However, nothing in this Paragraph 14.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable

to Omnicare. (All costs described or set forth in this Paragraph 11.a. are hereafter “unallowable costs.”)

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: If applicable, Omnicare 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 Omnicare 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. Omnicare agrees that the United States, at a minimum, shall be entitled to recoup from Omnicare 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.

If applicable, 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 Omnicare or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Omnicare 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 Omnicare's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

15. Omnicare agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Omnicare 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. Omnicare agrees to furnish to the United States complete and unredacted copies of all 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 its counsel or other agent, unless such material is covered by a valid claim of privilege.

16. 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 17, below.

17. Omnicare 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.

18. Omnicare warrants that it has reviewed its financial situation and that it currently is 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 Omnicare, 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 to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to that Omnicare was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

19. 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.

20. Omnicare represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

21. Relators Lisitza and Kammerer represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

22. 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 Northern District of Illinois, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions in the CIA.

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

24. Upon receipt of all payments described in Paragraph 1 above, the United States and Relator Lisitza shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal with prejudice of the Covered Conduct counts in the Civil Action pursuant to the terms of the Agreement. Relator Lisitza shall also promptly dismiss with prejudice any remaining claims in the Civil Action not addressed in this Agreement. Upon receipt of all payments described in Paragraph 1 above, the United States and Relator Kammerer shall promptly sign and file a Joint Stipulation of Dismissal with prejudice of all Counts in the First and Second Causes of Action, and all claims in the Fourth Cause of Action (“Medicaid Fraud in States with Private Right of Action”) that are based on the conduct described in the First and Second Causes of Action, of the Second Amended Complaint in *United States ex rel. Kammerer v. Omnicare, Inc.*, No. 04 C 2074 , pending under seal in the Northern District of Illinois, pursuant to the terms of the Agreement.

25. The individuals signing this Agreement on behalf of Omnicare represent and warrant that they are authorized by Omnicare to execute this Agreement. The individuals signing this Agreement on behalf of Relators Lisitza and Relator Kammerer represent and warrants that they are authorized by the respective Relators 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.

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

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

28. This Agreement is binding on Relator Lisitza's and Relator Kammerer's respective successors, transferees, heirs, and assigns.

29. All Parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

30. 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: _____
LINDA A. WAWZENSKI
Assistant United States Attorney
Northern District of Illinois

DATED: _____

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

Omnicare, Inc. - DEFENDANT

DATED: _____

BY: _____
Omnicare, Inc. Representative

DATED: _____

BY: _____
SANFORD V. TEPLITZKY
Counsel for Omnicare
Ober Kaler Grimes & Shriver
120 East Baltimore Street
Baltimore, MD 21202-1643
(410) 347-7364

Bernard Lisitza - RELATOR

DATED: _____

BY: _____
BERNARD LISITZA

DATED: _____

BY: _____
MICHAEL I. BEHN
Counsel for Bernard Lisitza
Behn & Wyetzner, Chartered
55 W. Wacker Drive
Suite 950
Chicago, Illinois 60601
(312) 629-0000

DAVID KAMMERER - RELATOR

DATED: _____

BY: _____
DAVID KAMMERER

DATED: _____

BY: _____
SHELLEY SLADE
Counsel for David Kammerer
Vogel & Slade. LLP
5225 Wisconsin Avenue, N.W., Suite 502
Washington, D.C. 20015
(202) 537-5900

**U.S. District Court
District of South Carolina (Columbia)
CIVIL DOCKET FOR CASE #: 3:08-cv-03724-CMC**

Knight v. Reliant Hospice Inc et al
Assigned to: Honorable Cameron McGowan Currie
Cause: 31:3729 False Claims Act

Date Filed: 11/07/2008
Date Terminated: 03/06/2012
Jury Demand: Plaintiff
Nature of Suit: 151 Contract: Recovery
Medicare
Jurisdiction: Federal Question

Plaintiff

Alisha Knight
United States of America ex rel

represented by **Alexandre N MacClenahan**
MacClenahan Law Firm
819 E North Street
Greenville, SC 29601
864-382-3340
Fax: 864-331-3058
Email: alex@macclenahanlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Peter D Protopapas
Rikard and Protopapas LLC
PO Box 5640
1329 Blanding Street
Columbia, SC 29250
803-978-6111
Email: pdp@rplegalgroup.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William Jonathan Harling
Harling and West
PO Box 2485
Lexington, SC 29071
803-957-0889
Email: jharling@harlingandwest.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Movant

USA

represented by **Jennifer J Aldrich**
US Attorneys Office (Cola)
1441 Main Street
Suite 500
Columbia, SC 29201

Recovery Cases 128

803-929-3000
Fax: 803-733-5966
Email: jennifer.aldrich@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Movant**Ahava Hospice Inc**

represented by **Darryl D Smalls**
Suspended
803-727-6288
Fax: 803-708-1831
Email: darryl.smallslaw@live.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Movant**Laten Inc**

represented by **Darryl D Smalls**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Movant**Charles Sloan**

represented by **Darryl D Smalls**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**Reliant Hospice Inc**

represented by **Louis H Lang**
Callison Tighe and Robinson
PO Box 1390
Columbia, SC 29202-1390
803-256-2371
Fax: 803-256-6431
Email: louislang@callisontighe.com
TERMINATED: 12/19/2011
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nekki Shutt
Burnette Shutt and McDaniel PA
PO Box 1929
Columbia, SC 29202
803-850-0912
Fax: 803-904-7910
Email: nshutt@burnetteshutt.law
TERMINATED: 12/19/2011
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Reliant Medical Products Inc

TERMINATED: 01/05/2012

represented by **Louis H Lang**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Nekki Shutt

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant

Consolo Services Group LLC

TERMINATED: 11/23/2010

Defendant

Tammy McDonald

represented by **Tammy McDonald**

162 Country Oak Road

Lexington, SC 29073

(803) 260-1593

PRO SE

Kristin M Simons

SC Attorney General's Office

PO Box 11549

Columbia, SC 29211

803-734-3761

Email: ksimons@scag.gov

TERMINATED: 11/30/2011

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Daryl G Hawkins

Daryl G Hawkins Law Office

1331 Elmwood Avenue

Suite 305

Columbia, SC 29201

803-733-3531

Fax: 803-799-9202

Email: dgh@dghlaw.net

TERMINATED: 11/30/2011

ATTORNEY TO BE NOTICED

Defendant

David McDonald

TERMINATED: 01/05/2012

represented by **William Wharton Watkins , Sr**

William W Watkins Law Office

PO Box 7365

Columbia, SC 29202

803-782-0925

Fax: 803-667-3187

Email: wwwatkins@sc.rr.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/07/2008	1	COMPLAINT against Reliant Hospice Inc, Reliant Medical Products Inc, Consolo Services Group LLC (Filing fee \$ 350 receipt number 1798099.), filed by Alisha Knight. (Attachments: # 1 Exhibit A - Disclosure of Original Source Information)(cbru,) (Entered: 11/10/2008)
11/07/2008	2	Local Rule 26.01 Answers to Interrogatories by Alisha Knight.(cbru,) (Entered: 11/10/2008)
11/10/2008	4	***DOCUMENT E-MAILED 1 Complaint, 2 Local Rule 26.01 Answers to Interrogatories to Alisha Knight (cbru,) (Entered: 11/10/2008)
11/21/2008	5	CERTIFICATE OF SERVICE by Alisha Knight re 1 Complaint, 2 Local Rule 26.01 Answers to Interrogatories (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Protopapas, Peter) (Entered: 11/21/2008)
01/06/2009	9	***DOCUMENT E-MAILED 8 Ex Parte Order, Terminate Motions to Jennifer Aldrich, AUSA (cbru,) (Entered: 01/06/2009)
09/18/2009	13	***DOCUMENT E-MAILED 12 Order on Ex Parte Motion to Jennifer J Aldrich. (ssam,) (Entered: 09/18/2009)
02/05/2010	18	***DOCUMENT E-MAILED 17 Ex Parte Order, Terminate Motions to Jennifer Aldrich (cbru,) (Entered: 02/05/2010)
05/17/2010	21	***DOCUMENT E-MAILED 20 Ex Parte Order, Terminate Motions to Jennifer Aldrich (cbru,) (Entered: 05/17/2010)
05/26/2010	23	SEALED MOTION by Alisha Knight, Reliant Hospice Inc. Response to Motion due by 6/14/2010 (Attachments: # 1 Proposed Order Clean Copy, # 2 Proposed Order Red Line Version)No proposed order(Lang, Louis) (Entered: 05/26/2010)
05/27/2010	24	SEALED ORDER granting 23 SEALED MOTION filed by Reliant Hospice Inc, Alisha Knight. Signed by Honorable Cameron McGowan Currie on 5/27/2010. (ssam,) (Entered: 05/27/2010)
05/27/2010	25	***DOCUMENT E-MAILED 24 Sealed Order to Peter D Protopapas, Louis H Lang (ssam,) (Entered: 05/27/2010)
06/16/2010	26	STATUS REPORT <i>AND REQUEST FOR CONDITIONAL ORDER OF DISMISSAL</i> by USA. (Attachments: # 1 Proposed Order)(Aldrich, Jennifer) (Entered: 06/16/2010)
06/16/2010	27	ORDER DISMISSING CASE without costs and without prejudice to the right of either party, upon good cause shown within sixty (60) days, to reinstate the action if settlement is not consummated. Signed by Honorable Cameron McGowan Currie on 6/16/2010. (cbru,) (Entered: 06/16/2010)
06/16/2010	28	***DOCUMENT E-MAILED 27 Order Dismissing Case(60 Day Settlement Order), Order Dismissing Case(60 Day Settlement Order) to counsel of record (cbru,) (Entered: 06/16/2010)
08/11/2010	29	MOTION for Extension of Time <i>for Conditional Dismissal Order</i> by USA. Response to Motion due by 8/30/2010 Proposed order is being emailed to chambers with copy to opposing counsel(Aldrich, Jennifer) (Entered: 08/11/2010)
08/12/2010	30	TEXT ORDER granting 29 Motion for Extension of Time: The time to consummate the settlement pursuant to the conditional dismissal order is extended to September 15, 2010 to allow the parties to finalize and execute the written agreements necessary to

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		consummate the complete settlement. Signed by Honorable Cameron McGowan Currie on 8/12/2010.(cbru,) (Entered: 08/12/2010)
08/12/2010	31	***DOCUMENT E-MAILED 30 Order on Motion for Extension of Time to counsel of record (cbru,) (Entered: 08/12/2010)
09/15/2010	32	MOTION for Extension of Time <i>to consummate settlement</i> by Reliant Hospice Inc. Response to Motion due by 10/4/2010 Proposed order is being emailed to chambers with copy to opposing counsel. Filing corrected for event type(cbru,) (Entered: 09/15/2010)
09/15/2010	33	***DOCUMENT E-MAILED 32 MOTION for Extension of Time (NEF for refiled entry) to counsel of record (cbru,) (Entered: 09/15/2010)
09/15/2010	34	TEXT ORDER granting 32 Motion for Extension of Time <i>to consummate settlement</i> . Signed by Honorable Cameron McGowan Currie on 9/15/2010.(cbru,) (Entered: 09/15/2010)
09/15/2010	35	***DOCUMENT E-MAILED 34 Order on Motion for Extension of Time to counsel of record (cbru,) (Entered: 09/15/2010)
10/15/2010	36	First MOTION to Reopen Case by USA. Response to Motion due by 11/1/2010 No proposed order(Aldrich, Jennifer) (Entered: 10/15/2010)
10/15/2010	37	NOTICE of Election to Decline Intervention against all Defendants by USA. Filing corrected for event type. (ssam,) (Entered: 10/15/2010)
10/15/2010	38	***DOCUMENT E-MAILED 37 Notice to counsel of record (ssam,) (Entered: 10/15/2010)
10/18/2010	39	TEXT ORDER REOPENING CASE, Order to Unseal Case: The Government's motion to reopen this action (Dkt. No. 36) is granted. In light of the Government's election to decline intervention (Dkt. No. 37) the seal is lifted. Due to the age of this action, the court directs that: (1) service be completed and proofs of service on all Defendants be filed no later than November 9, 2010; and (2) a copy of this order be served with the complaint. The parties are forewarned that NO EXTENSIONS OF TIME TO ANSWER WILL BE ALLOWED and the parties will be expected to conclude discovery and complete briefing on all dispositive motions in time for the matter to proceed to TRIAL IN THE FALL OF 2011. Motions granted: 36 First MOTION to Reopen Case filed by USA. (Service due 11/9/10) Signed by Honorable Cameron McGowan Currie on 10/18/2010. (cbru,) (Entered: 10/18/2010)
10/18/2010	40	***DOCUMENT E-MAILED 39 Order Reopening Case, Order to Unseal Case, Set Deadlines, Terminate Motions to counsel of record (cbru,) (Entered: 10/18/2010)
11/08/2010	41	Summons Issued as to Reliant Hospice Inc. (cbru,) (Entered: 11/08/2010)
11/08/2010	42	Summons Issued as to Reliant Medical Products Inc. (cbru,) (Entered: 11/08/2010)
11/08/2010	43	Summons Issued as to Consolo Services Group LLC. (cbru,) (Entered: 11/08/2010)
11/09/2010	44	SUMMONS Returned Executed by Alisha Knight. Reliant Hospice Inc served on 11/8/2010, answer due 11/29/2010. (Attachments: # 1 Affidavit Proof of Service upon Reliant Hospice)(Protopapas, Peter) (Entered: 11/09/2010)
11/09/2010	45	SUMMONS Returned Executed by Alisha Knight. Reliant Medical Products Inc served on 11/8/2010, answer due 11/29/2010. (Attachments: # 1 Affidavit Proof of Service upon Reliant Medical Products)(Protopapas, Peter) (Entered: 11/09/2010)
11/09/2010	46	SUMMONS Returned Executed by Alisha Knight. Consolo Services Group LLC served on 11/8/2010, answer due 11/29/2010. (Attachments: # 1 Affidavit Proof of Service upon

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		Consolo)(Protopapas, Peter) (Entered: 11/09/2010)
11/23/2010	47	NOTICE of Voluntary Dismissal of <i>Consolo Services Group LLC</i> by Alisha Knight (Protopapas, Peter) Modified to edit text on 11/23/2010 (cbru,). (Entered: 11/23/2010)
11/29/2010	49	ANSWER to 1 Complaint, by Reliant Hospice Inc, Reliant Medical Products Inc.(Lang, Louis) (Entered: 11/29/2010)
11/29/2010	50	Local Rule 26.01 Answers to Interrogatories by Reliant Hospice Inc, Reliant Medical Products Inc.(Lang, Louis) (Entered: 11/29/2010)
11/30/2010	52	CONFERENCE AND SCHEDULING ORDER: Rule 26 Report due by 1/4/2011, Amended Pleadings due by 2/28/2011, Plaintiffs ID of Expert Witness due by 3/28/2011, Defendants ID of Expert Witnesses Due by 4/25/2011, Records Custodian Affidavit due by 4/25/2011, Discovery due by 6/20/2011, Motion in Limine due by 11/14/2011, Motions due by 7/5/2011, Rule 26(a)(3) Disclosures due by 9/12/2011, Jury Selection Deadline 12/5/2011, ADR Statement due by 7/29/2011, Mediation Due by 8/29/2011. Signed by Honorable Cameron McGowan Currie on 11/30/2010. (cbru,) (Entered: 11/30/2010)
01/04/2011	54	Joint Rule 26(f) Report and Answers to LR 26.03 Interrogatories by Alisha Knight, Reliant Hospice Inc, Reliant Medical Products Inc.(Lang, Louis) Modified to edit text on 1/4/2011 (cbru,). (Entered: 01/04/2011)
02/28/2011	57	MOTION to Amend/Correct 1 Complaint, by Alisha Knight. Response to Motion due by 3/17/2011 (Attachments: # 1 Exhibit proposed Amended Complaint)No proposed order(Protopapas, Peter) (Entered: 02/28/2011)
02/28/2011	58	SUPPLEMENT <i>Certificate of Consultation</i> by Alisha Knight to 57 MOTION to Amend/Correct 1 Complaint. Filing corrected for event type (cbru,) (Entered: 02/28/2011)
03/14/2011	60	RESPONSE in Opposition re 57 MOTION to Amend/Correct 1 Complaint, Response filed by Reliant Hospice Inc, Reliant Medical Products Inc.Reply to Response to Motion due by 3/24/2011 (Lang, Louis) (Entered: 03/14/2011)
03/24/2011	61	REPLY to Response to Motion re 57 MOTION to Amend/Correct 1 Complaint, Response filed by Alisha Knight. (Attachments: # 1 Affidavit of Tiffany Stamps, # 2 Affidavit of Lois Wilkerson)(Protopapas, Peter) (Main Document 61 replaced on 3/24/2011) (cbru,). (Entered: 03/24/2011)
03/25/2011	62	First MOTION for Extension of Time to <i>Disclose Experts</i> by Alisha Knight. Response to Motion due by 4/11/2011 No proposed order(Protopapas, Peter) (Entered: 03/25/2011)
03/25/2011	63	TEXT ORDER granting 62 First MOTION for Extension of Time to <i>Disclose Experts</i> filed by Alisha Knight: The motion for extension of the parties' expert witness deadlines is granted with the express understanding that no other scheduling order deadlines will extended as a result of this extension. The parties shall ensure that complete expert disclosures are made by the new deadlines and shall schedule any necessary expert depositions sufficiently in advance of the discovery deadline to ensure that no further delays result. (Plaintiffs ID of Expert Witness due by 4/28/2011, Defendants ID of Expert Witnesses Due by 5/25/2011). Directed by Honorable Cameron McGowan Currie on 3/25/2011. (ssam,) (Entered: 03/25/2011)
04/04/2011	64	TEXT ORDER: The court hereby lifts the seal on all documents previously filed under seal or ex parte in this action. Signed by Honorable Cameron McGowan Currie on 4/4/2011. (cbru,) (Entered: 04/04/2011)
04/04/2011	65	OPINION AND ORDER granting in part and denying in part 57 MOTION to

		Amend/Correct <u>1</u> Complaint (Amended Pleadings due by 4/11/2011) Signed by Honorable Cameron McGowan Currie on 4/4/2011. (cbru,) (Entered: 04/04/2011)
04/11/2011	66	AMENDED COMPLAINT against Reliant Hospice Inc, Reliant Medical Products Inc, Tammy McDonald, David McDonald, filed by Alisha Knight. (Protopapas, Peter) (Entered: 04/11/2011)
04/12/2011	68	DELETION OF DOCKET ENTRY NUMBER 67 Reason: Document is a duplicate of entry #66. Modified filing date to that of original filing: N/A Response due date modified to that of original filing: N/A (cbru,) (Entered: 04/12/2011)
04/12/2011	69	Summons Issued as to Tammy McDonald. (cbru,) (Entered: 04/12/2011)
04/12/2011	70	Summons Issued as to David McDonald. (cbru,) (Entered: 04/12/2011)
04/25/2011	72	ANSWER to 66 Amended Complaint by Reliant Hospice Inc, Reliant Medical Products Inc.(Lang, Louis) (Entered: 04/25/2011)
04/25/2011	73	PLAINTIFF'S ID OF EXPERT WITNESSES by Alisha Knight. (Attachments: # 1 Exhibit A - Expert Report, # 2 Exhibit B - Expert CV)(Protopapas, Peter) Modified to edit text on 4/25/2011 (cbru,). (Entered: 04/25/2011)
05/04/2011	75	MOTION to Quash by Ahava Hospice Inc, Laten Inc, Charles Sloan. Response to Motion due by 5/23/2011 Proposed order is being emailed to chambers with copy to opposing counsel(Small, Darryl) Modified to add filers listed on document on 5/4/2011 (cbru,). (Entered: 05/04/2011)
05/04/2011	77	SUMMONS Returned Executed by Alisha Knight. Tammy McDonald served on 4/25/2011, answer due 5/16/2011. (Attachments: # 1 Affidavit Proof of Service Tammy McDonald)(Protopapas, Peter) (Entered: 05/04/2011)
05/04/2011	78	SUMMONS Returned Executed by Alisha Knight. David McDonald served on 5/4/2011, answer due 5/25/2011. (Attachments: # 1 Proof of Service on David McDonald) Filing corrected for event type (cbru,) (Entered: 05/04/2011)
05/09/2011	79	TEXT ORDER finding as moot 75 Motion to Quash: The motion to quash the deposition of Charles Sloan has been mooted. After conferring with moving counsel, Plaintiff may serve new subpoena(es). Any dispute as to the conduct of deposition(s) or other discovery should be brought to the court's attention by teleconference prior to filing a motion. Signed by Honorable Cameron McGowan Currie on 5/9/2011. (cbru,) (Entered: 05/09/2011)
05/10/2011	80	Deficiency Notification (Prior notifications sent via e-mail)In Re Document Number:75 - Document not converted to PDF in accordance with Standard Filing Preference #2. Any response due is based on the filing date of the original document. (cbru,) (Entered: 05/10/2011)
06/17/2011	86	ANSWER to 66 Amended Complaint by David McDonald (pro se). (Attachments: # 1 Certificate of Service, # 2 Envelope)(cbru,) (Entered: 06/20/2011)
06/20/2011	85	SUA SPONTE ORDER (Status Report due by 6/30/2011) Signed by Honorable Cameron McGowan Currie on 6/20/2011. (cbru,) (Entered: 06/20/2011)
06/21/2011	91	ORDER directing defendant McDonald to notify Clerk in writing of any address changes. Signed by Magistrate Judge Joseph R McCrorey on June 21, 2011. (kbos) (Entered: 06/21/2011)
06/21/2011	92	***DOCUMENT MAILED 91 Order to Notify of Address Change placed in U.S. Mail to David McDonald (kbos) (Entered: 06/21/2011)

07/05/2011	94	MOTION for Summary Judgment by Reliant Medical Products Inc. Response to Motion due by 7/22/2011 (Attachments: # 1 Memo in Support Memorandum in Support of Motion for Summary Judgment)No proposed orderMotions referred to Joseph R McCrorey.(Lang, Louis) (Entered: 07/05/2011)
07/06/2011	95	CERTIFICATE OF SERVICE by Reliant Medical Products Inc re 94 MOTION for Summary Judgment (Lang, Louis) (Main Document 95 replaced on 7/8/2011 with corrected signature as provided by the filing user) (kbos). (Entered: 07/06/2011)
07/11/2011	96	ROSEBORO ORDER directing clerk to forward summary judgment explanation to the opposing party and directing that party to respond in 34 days. Response due to 94 MOTION for Summary Judgment, Response to Motion due by 8/15/2011. Signed by Magistrate Judge Joseph R McCrorey on July 11, 2011. (kbos) (Entered: 07/11/2011)
07/11/2011	97	***DOCUMENT MAILED 96 Roseboro Order, placed in U.S. Mail to Tammy & David McDonald (kbos) (Entered: 07/11/2011)
07/15/2011	98	MOTION for Entry of Default of <i>Defendant Tammy McDonald</i> by Alisha Knight. Response to Motion due by 8/1/2011 (Attachments: # 1 Exhibit Declaration, # 2 Certificate of Service)No proposed orderMotions referred to Joseph R McCrorey. (Protopapas, Peter) (Entered: 07/15/2011)
07/22/2011	100	RESPONSE in Opposition re 94 MOTION for Summary Judgment Response filed by Alisha Knight.Reply to Response to Motion due by 8/1/2011 (Attachments: # 1 Exhibit Affidavit of Tiffany Stamps, # 2 Exhibit Relator Statement, # 3 Exhibit 30(b)6 Deposition Reliant Medical, # 4 Certificate of Service on pro se defendants)(Protopapas, Peter) (Main Document 100 replaced on 7/26/2011 with corrected pdf provided by filing user) (kbos). (Entered: 07/22/2011)
08/08/2011	101	NOTICE of Appearance by Kristin Jo McArthur on behalf of Tammy McDonald (McArthur, Kristin) (Main Document 101 replaced on 8/10/2011 with corrected pdf provided by filing user) (kbos). (Entered: 08/08/2011)
08/08/2011	102	MOTION to Set Aside Default <i>Entry</i> by Tammy McDonald. Response to Motion due by 8/25/2011 (Attachments: # 1 Exhibit Exhibits to Motion for Relief of Default)No proposed orderMotions referred to Joseph R McCrorey.(McArthur, Kristin) (Main Document 102 replaced on 8/9/2011 with corrected pdf provided by filing user) (kbos). (Entered: 08/08/2011)
08/25/2011	104	RESPONSE in Opposition re 102 MOTION to Set Aside Default <i>Entry</i> Response filed by Alisha Knight.Reply to Response to Motion due by 9/6/2011 (Protopapas, Peter) (Entered: 08/25/2011)
09/02/2011	105	RESPONSE in Support re 102 MOTION to Set Aside Default <i>Entry</i> Response filed by Tammy McDonald. (Attachments: # 1 Affidavit of Def Tammy McDonald in Support of Def Tammy McDonald Motion to Set Aside Default)(McArthur, Kristin) (Entered: 09/02/2011)
09/08/2011	107	MOTION for Sanctions of <i>Defendants Reliant Hospice, Inc. and Tammy McDonald</i> by Alisha Knight. Response to Motion due by 9/26/2011 No proposed orderMotions referred to Joseph R McCrorey.(Protopapas, Peter) (Entered: 09/08/2011)
09/08/2011	108	CERTIFICATE OF SERVICE by Alisha Knight re 107 MOTION for Sanctions of <i>Defendants Reliant Hospice, Inc. and Tammy McDonald</i> (Protopapas, Peter) (Entered: 09/08/2011)
09/12/2011	109	<i>Plaintiffs</i> RULE 26(a)(3)PRETRIAL DISCLOSURES by Alisha Knight. Objections to PreTrial Disclosures due by 9/29/2011 (Protopapas, Peter) (Entered: 09/12/2011)

09/12/2011	110	RULE 26(a)(3)PRETRIAL DISCLOSURES by Reliant Medical Products Inc. Objections to PreTrial Disclosures due by 9/29/2011.(Lang, Louis) (Entered: 09/12/2011)
09/12/2011	111	RULE 26(a)(3)PRETRIAL DISCLOSURES by Reliant Hospice Inc. Objections to PreTrial Disclosures due by 9/29/2011.(Lang, Louis) (Entered: 09/12/2011)
09/12/2011	112	CERTIFICATE OF SERVICE by Alisha Knight re 109 Pretrial Disclosures (Protopapas, Peter) (Entered: 09/12/2011)
09/12/2011	113	<i>Tammy McDonald</i> RULE 26(a)(3)PRETRIAL DISCLOSURES by Tammy McDonald. Objections to PreTrial Disclosures due by 9/29/2011.(Hawkins, Daryl) (Entered: 09/12/2011)
09/13/2011	115	CERTIFICATE OF SERVICE by Reliant Hospice Inc re 111 Pretrial Disclosures (Lang, Louis) (Entered: 09/13/2011)
09/13/2011	116	CERTIFICATE OF SERVICE by Reliant Medical Products Inc re 110 Pretrial Disclosures (Lang, Louis) (Entered: 09/13/2011)
09/13/2011	117	CERTIFICATE OF SERVICE by Tammy McDonald re 113 Pretrial Disclosures (Hawkins, Daryl) (Entered: 09/13/2011)
09/16/2011	118	MOTION to Strike <i>Defendant Tammy McDonald's Rule 26(a)3 Disclosures</i> by Alisha Knight. Response to Motion due by 10/3/2011 (Attachments: # 1 Exhibit Tammy McDonald discovery requests)No proposed orderMotions referred to Joseph R McCrorey. (Protopapas, Peter) (Entered: 09/16/2011)
09/19/2011	119	CERTIFICATE OF SERVICE by Alisha Knight re 118 MOTION to Strike <i>Defendant Tammy McDonald's Rule 26(a)3 Disclosures</i> MOTION to Strike <i>Defendant Tammy McDonald's Rule 26(a)3 Disclosures</i> (Protopapas, Peter) (Entered: 09/19/2011)
09/21/2011	120	RESPONSE in Opposition re 107 MOTION for Sanctions of <i>Defendants Reliant Hospice, Inc. and Tammy McDonald</i> Response filed by Tammy McDonald.Reply to Response to Motion due by 10/3/2011 (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C) (Hawkins, Daryl) (Entered: 09/21/2011)
09/26/2011	121	<i>Plaintiff's Objections to 110 Reliant Hospice Rule 26(a)(3)(A) disclosures</i> OBJECTIONS by Alisha Knight. (Protopapas, Peter) Modified on 9/27/2011 to add linkage (kbos). (Entered: 09/26/2011)
09/26/2011	122	<i>Plaintiff's Objections to 111 Reliant Medical's Rule 26(a)(3)(A) Pretrial Disclosures</i> OBJECTIONS by Alisha Knight. (Protopapas, Peter) Modified on 9/27/2011 to add linkage (kbos). (Entered: 09/26/2011)
09/26/2011	123	<i>Plaintiff's Objections to 113 Tammy McDonald's Rule 26(a)(3)(A) Pretrial Disclosures</i> OBJECTIONS by Alisha Knight. (Protopapas, Peter) Modified on 9/27/2011 to create linkage (kbos). (Entered: 09/26/2011)
09/26/2011	126	OBJECTIONS by Tammy McDonald to 109 Pretrial Disclosures. (Hawkins, Daryl) (Entered: 09/26/2011)
09/26/2011	127	OBJECTIONS by Reliant Hospice Inc, Reliant Medical Products Inc to 109 Pretrial Disclosures. (re-filed to correct event type) (kbos) (Entered: 09/27/2011)
09/27/2011	128	DELETION OF DOCKET ENTRY NUMBER 125 Reason: duplicate of doc. 127 (kbos) (Entered: 09/27/2011)
09/27/2011	129	<i>Certificate of Service for</i> OBJECTIONS by Reliant Hospice Inc, Reliant Medical Products Inc to 109 Pretrial Disclosures. (Lang, Louis) (Entered: 09/27/2011)

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10/03/2011	131	RESPONSE in Opposition re 118 MOTION to Strike <i>Defendant Tammy McDonald's Rule 26(a)3 Disclosures</i> MOTION to Strike <i>Defendant Tammy McDonald's Rule 26(a)3 Disclosures</i> Response filed by Tammy McDonald.Reply to Response to Motion due by 10/14/2011 (McArthur, Kristin) (Entered: 10/03/2011)
10/03/2011	132	REPLY to Response to Motion re 107 MOTION for Sanctions of <i>Defendants Reliant Hospice, Inc. and Tammy McDonald</i> Response filed by Alisha Knight. (Attachments: # 1 Exhibit Doctor's note, # 2 Exhibit unsigned settlement agreement, # 3 Exhibit Email from Daryl Hawkins, # 4 Exhibit signed settlement agreement)(Protopapas, Peter) (Entered: 10/03/2011)
10/11/2011	133	NOTICE of Hearing on Motions: re 102 MOTION to Set Aside Default, 98 MOTION for Entry of Default of Defendant Tammy McDonald, 94 MOTION for Summary Judgment, 118 MOTION to Strike Defendant Tammy McDonald's Rule 26(a)3 Disclosures, 107 MOTION for Sanctions of Defendants Reliant Hospice, Inc. and Tammy McDonald: Motion Hearing set for 10/25/2011 at 10:00 AM in Columbia # 8, Matthew J. Perry Court House, 901 Richland St, Columbia before Magistrate Judge Joseph R McCrorey. (ttil,) (Entered: 10/11/2011)
10/14/2011	134	REPLY to Response to Motion re 118 MOTION to Strike <i>Defendant Tammy McDonald's Rule 26(a)3 Disclosures</i> MOTION to Strike <i>Defendant Tammy McDonald's Rule 26(a)3 Disclosures</i> Response filed by Alisha Knight. (Protopapas, Peter) (Entered: 10/14/2011)
10/19/2011	135	CERTIFICATE OF SERVICE by Alisha Knight re 134 Reply to Response to Motion to Strike 26(a)(3) Disclosures of Tammy McDonald (Protopapas, Peter) (Entered: 10/19/2011)
10/25/2011	136	Minute Entry. Proceedings held before Magistrate Judge Joseph R McCrorey: Motion Hearing held on 10/25/2011 re 94 MOTION for Summary Judgment ; 98 MOTION for Entry of Default of Defendant Tammy McDonald, 102 MOTION to Set Aside Default Entry, 107 MOTION for Sanctions of Defendants Reliant Hospice, Inc. and Tammy McDonald, 118 MOTION to Strike; Oral Arguments; ORAL ORDER taking under advisement 94 Motion for Summary Judgment; taking under advisement 98 Motion for Entry of Default; taking under advisement 102 Motion to Set Aside Default; taking under advisement 107 Motion for Sanctions; taking under advisement 118 Motion to Strike Court Reporter Courtsmart. (ttil,) (Entered: 10/26/2011)
11/07/2011	137	MOTION to Withdraw as Attorney (<i>Law Office of Daryl G. Hawkins, LLC</i>) by Tammy McDonald. Response to Motion due by 11/28/2011 No proposed orderMotions referred to Joseph R McCrorey.(Hawkins, Daryl) (Entered: 11/07/2011)
11/08/2011	138	ORDER and REPORT AND RECOMMENDATION that Reliant Medical's motion for summary judgment be denied; Knight's motion for entry of default be denied; Tammy McDonald's motion for relief from entry of default be granted; and Knight's motion to strike be denied. ALSO RECOMMENDED that Knight's motion for sanctions be denied in part and granted in part. ORDERED that Tammy McDonald's deposition be taken on or before December 2, 2011, and that McDonald provide Knight with discovery responses, re 107 MOTION for Sanctions of <i>Defendants Reliant Hospice, Inc. and Tammy McDonald</i> filed by Alisha Knight, 98 MOTION for Entry of Default of <i>Defendant Tammy McDonald</i> filed by Alisha Knight, 102 MOTION to Set Aside Default Entry filed by Tammy McDonald, 118 MOTION to Strike <i>Defendant Tammy McDonald's Rule 26(a)3 Disclosures</i> filed by Alisha Knight, 94 MOTION for Summary Judgment filed by Reliant Medical Products Inc, Objections to R&R due by 11/28/2011. Signed by Magistrate Judge Joseph R McCrorey on November 8, 2011. (kbos) (Entered: 11/08/2011)

11/08/2011	139	***DOCUMENT MAILED 138 REPORT AND RECOMMENDATIONS placed in U.S. Mail to David McDonald (kbos) (Entered: 11/08/2011)
11/14/2011	140	MOTION in Limine by Alisha Knight. Response to Motion due by 12/1/2011 No proposed orderMotions referred to Joseph R McCrorey.(Protopapas, Peter) (Entered: 11/14/2011)
11/15/2011	141	NOTICE of Hearing on 137 MOTION to Withdraw as Attorney (Law Office of Daryl G. Hawkins, LLC): Motion Hearing set for 11/30/2011 at 10:00 AM in Columbia # 8, Matthew J. Perry Court House, 901 Richland St, Columbia before Magistrate Judge Joseph R McCrorey. PLEASE NOTE: Defendant Tammy McDonald is directed to be present at hearing.(ttil,) (Entered: 11/15/2011)
11/15/2011	142	***DOCUMENT MAILED 141 Notice of Hearing on Motion to withdraw placed in U.S. Mail to Tammy McDonald and David McDonald (ttil,) (Entered: 11/15/2011)
11/22/2011	143	OBJECTION to 138 Report and Recommendations by Reliant Medical Products Inc.Reply to Objections due by 12/6/2011 (Lang, Louis) (Entered: 11/22/2011)
11/23/2011	144	RESPONSE in Opposition re 140 MOTION in Limine Response filed by Tammy McDonald.Reply to Response to Motion due by 12/5/2011 (Hawkins, Daryl) (Entered: 11/23/2011)
11/28/2011	145	RESPONSE in Opposition re 140 MOTION in Limine Response filed by Reliant Hospice Inc, Reliant Medical Products Inc.Reply to Response to Motion due by 12/8/2011 (Lang, Louis) (Entered: 11/28/2011)
11/29/2011	147	DELETION OF DOCKET ENTRY NUMBER Doc. 146, Pretrial Brief Reason: pretrial briefs are not to be filed absent an order of the court Modified filing date to that of original filing: 11/28/11 (kbos) (Entered: 11/29/2011)
11/29/2011	148	CERTIFICATE OF SERVICE by Reliant Hospice Inc, Reliant Medical Products Inc re 145 Response in Opposition to Motion (Lang, Louis) (Entered: 11/29/2011)
11/29/2011	149	MOTION to Withdraw as Attorney by Reliant Hospice Inc. Response to Motion due by 12/16/2011 (Attachments: # 1 Memo in Support Memo in Support of Motion to Withdraw)No proposed orderMotions referred to Joseph R McCrorey.(Lang, Louis) (Entered: 11/29/2011)
11/30/2011	150	Minute Entry. Proceedings held before Magistrate Judge Joseph R McCrorey: Motion Hearing held on 11/30/2011 re 137 MOTION to Withdraw as Attorney (Law Office of Daryl G. Hawkins, LLC) filed by Tammy McDonald; Oral Order granting 137 Motion to Withdraw as Attorney; defendant Tammy McDonald will continue in case pro se. Court Reporter Courtsmart. (ttil,) (Entered: 11/30/2011)
12/01/2011	152	TEXT ORDER unreferring case. Magistrate Judge Joseph R McCrorey no longer assigned to case. Signed by Honorable Cameron McGowan Currie on 12/1/2011. (cbru,) (Entered: 12/01/2011)
12/01/2011	154	CASE MANAGEMENT ORDER (Supplemental Trial Information due by 12/16/2011) Signed by Honorable Cameron McGowan Currie on 12/1/2011. (cbru,) (Entered: 12/01/2011)
12/01/2011	156	NOTICE of Hearing: Jury Selection set for 1/12/2012 09:30 AM in Columbia # 2, Matthew J. Perry Court House, 901 Richland St, Columbia before Honorable Cameron McGowan Currie (cbru,) (Entered: 12/01/2011)
12/01/2011	157	NOTICE of Hearing: Pretrial Conference set for 1/5/2012 10:00 AM in Columbia # 2, Matthew J. Perry Court House, 901 Richland St, Columbia before Honorable Cameron

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		McGowan Currie. (cbru,) (Entered: 12/01/2011)
12/01/2011	158	***DOCUMENT MAILED 157 Notice of Hearing, 154 Order, Set Deadlines, 152 Order, 156 Notice of Hearing placed in U.S. Mail to David McDonald, Tammy McDonald (cbru,) (Entered: 12/01/2011)
12/07/2011	160	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of hearing on motion for summary judgment held on 10-25-11, before Judge Joseph R. McCrorey. Court Reporter/Transcriber CourtSmart/Potocki, Telephone number/E-mail 843-723-2208/potockidebra@bellsouth.net. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Parties have 7 calendar days from the filing of the transcript to file with the court a Notice of Intent to Request Redaction.. Redaction Request due 12/28/2011. Redacted Transcript Deadline set for 1/9/2012. Release of Transcript Restriction set for 3/6/2012. (dpotocki,) (Entered: 12/07/2011)
12/08/2011	161	OPINION AND ORDER RULING ON REPORT AND RECOMMENDATIONS for 138 Report and Recommendations; granting in part and denying in part 107 Motion for Sanctions filed by Alisha Knight; denying 98 Motion for Entry of Default filed by Alisha Knight; granting 102 Motion to Set Aside Default filed by Tammy McDonald; denying 118 Motion to Strike filed by Alisha Knight; denying 94 Motion for Summary Judgment filed by Reliant Medical Products Inc. Signed by Honorable Cameron McGowan Currie on 12/8/2011. (cbru,) (Entered: 12/08/2011)
12/08/2011	162	ANSWER to 66 Amended Complaint by Tammy McDonald. <i>Filed per Order #161</i> (cbru,) (Entered: 12/08/2011)
12/08/2011	163	***DOCUMENT MAILED 161 Order Ruling on Report and Recommendations,, 162 Answer to Amended Complaint placed in U.S. Mail to Tammy McDonald, David McDonald (cbru,) (Entered: 12/08/2011)
12/12/2011	164	Mail Returned for insufficient postage. Addressee: David McDonald. Document Returned: 161 Order Ruling on Report and Recommendations, 162 Answer to Amended Complaint. Documents to be re-mailed. (Attachments: # 1 Envelope) (cbru,) Modified to edit text on 12/12/2011 (cbru,). (Entered: 12/12/2011)
12/12/2011	165	***DOCUMENT RE-MAILED 161 Order Ruling on Report and Recommendations,, 162 Answer to Amended Complaint placed in U.S. Mail to David McDonald (cbru,) (Entered: 12/12/2011)
12/16/2011	167	Letter from Peter D. Protopapas. (Protopapas, Peter) (Entered: 12/16/2011)
12/16/2011	168	REPLY by Reliant Hospice Inc, Reliant Medical Products Inc to 154 Order, Set Deadlines. (Lang, Louis) (Entered: 12/16/2011)
12/19/2011	170	NOTICE of Hearing: Jury Trial set for 1/30 - 2/2/2012 09:30 AM in Columbia # 2, Matthew J. Perry Court House, 901 Richland St, Columbia before Honorable Cameron McGowan Currie. The parties are directed to refer to this court's website at www.scd.uscourts.gov to review Judge Currie's jury information located in the "Form Orders and Operational Orders" link, which can be found in the "District Judges" section. (cbru,) (Entered: 12/19/2011)
12/19/2011	171	TEXT ORDER: No opposition has been filed to the motion to withdraw as counsel for Defendant Reliant Hospice, Inc. ("Reliant Hospice") (Dkt. No. 149). The motion to withdraw is, therefore, granted. After providing a copy of this order to Reliant Hospice, withdrawing counsel shall have no further obligation to the court in regard to the representation of Reliant Hospice. Reliant Hospice is reminded that it will be

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		held in default unless an appearance by substitute counsel is made on or before December 29, 2011. No extensions of this deadline will be granted. In the event of default, all allegations and claims against this Defendant will be deemed proven, leaving only issues relating to damages for trial. The Clerk of Court and all parties are advised that the mailing addresses for Tammy McDonald and David McDonald shall serve as the service addresses for Reliant Hospice until new counsel for Reliant Hospice appears or a substitute address is provided. Reliant Hospice is forewarned that it must keep the court and opposing parties/counsel informed of the address for service of documents relating to this action. (Notice of Attorney Appearance due by 12/29/2011) Motions granted: 149 MOTION to Withdraw as Attorney. Signed by Honorable Cameron McGowan Currie on 12/19/2011. (cbru,) (Entered: 12/19/2011)
12/19/2011	173	***DOCUMENT MAILED 171 Set Deadlines, Terminate Motions, Order,,,,,,,,,,,,, 170 Notice of Hearing, placed in U.S. Mail to Tammy McDonald, David McDonald (cbru,) (Entered: 12/19/2011)
12/27/2011	174	NOTICE of Appearance by William Wharton Watkins, Sr on behalf of David McDonald (Watkins, William) (Entered: 12/27/2011)
12/27/2011	175	Local Rule 26.03 Answers to Interrogatories by David McDonald.(Watkins, William) (Entered: 12/27/2011)
12/28/2011	176	CONSENT to Jurisdiction by US Magistrate Judge by Alisha Knight. (ssam,) (Entered: 12/28/2011)
01/03/2012	177	MOTION for Sanctions by Alisha Knight. Response to Motion due by 1/20/2012 No proposed order(Protopapas, Peter) (Entered: 01/03/2012)
01/03/2012	178	TEXT ORDER: As no attorney has made an appearance on behalf of Defendant Reliant Hospice, Inc., that Defendant is now in default. See Dkt. No. 171. This leaves only the issue of damages for trial as to this Defendant. Signed by Honorable Cameron McGowan Currie on 1/3/2012. (cbru,) (Entered: 01/03/2012)
01/03/2012	179	Clerk's ENTRY OF DEFAULT as to Reliant Hospice Inc (cbru,) (Entered: 01/03/2012)
01/03/2012	180	***DOCUMENT MAILED 178 Order, 179 Clerk's Entry of Default placed in U.S. Mail to Reliant Hospice Inc at addresses for Tammy McDonald and David McDonald per Order #171 (cbru,) (Entered: 01/03/2012)
01/03/2012	181	TEXT ORDER: The parties are reminded that Pretrial Briefs are due on January 5, 2012. As the court has scheduled a pretrial conference for the same date, and as Plaintiff has indicated an intent to move for transfer to the non-jury docket, the court will delay the deadline for filing proposed jury instructions until January 12, 2012. The remainder of the pretrial brief must, however, be filed on the original deadline of January 5, 2012. The issue of whether the matter should be tried jury or non-jury will be addressed at the pretrial conference. Signed by Honorable Cameron McGowan Currie on 1/3/2012. (cbru,) (Entered: 01/03/2012)
01/03/2012	182	***DOCUMENT MAILED 181 Order,, placed in U.S. Mail to Tammy McDonald (cbru,) (Entered: 01/03/2012)
01/04/2012	183	TRIAL BRIEF by David McDonald. (Watkins, William) (Entered: 01/04/2012)
01/05/2012	184	Minute Entry. Proceedings held before Honorable Cameron McGowan Currie: Pretrial Conference held on 1/5/2012. Plaintiff has settled case as to all claims against Defendants David McDonald and Reliant Medical Products, Inc.; court to issue Rubin order as to those defendants and allow parties to consummate settlement on or before June 17, 2012. Reliant Hospice, Inc. is in default and the only issue for trial is damages. Plaintiff is to file a Motion for Summary Judgment re: the

		issue of damages no later than 1/17/2012; Response to the Motion for Summary Judgment will be due on 2/4/2012. Tammy McDonald is the other remaining defendant. Plaintiff dismisses Violations of False Claims Act and Civil Conspiracy causes of action without prejudice against Tammy McDonald, leaving only Piercing the Corporate Veil cause of action for non-jury trial as to Tammy McDonald. Defendant Tammy McDonald does not consent to trial before Magistrate Judge. Bench Trial set for Plaintiff and Defendant Tammy McDonald for 3/12-13/2012 at 9:30 AM before Judge Currie. Pretrial Briefs will be due two weeks prior to the start of the trial, on 2/27/2012. Court cancels Jury Selection set for 1/12/2012 and Jury Trial set for 1/30-2/2/2012. (Motion for Summary Judgment re: damages due by 1/17/2012, Response to Motion for Summary Judgment due by 2/4/2012, Pretrial Briefs due by 2/27/2012). Court Reporter Dan Mayo. (ssam,) (Entered: 01/05/2012)
01/05/2012	185	ORDER DISMISSING CASE as to all claims against defendants Reliant Medical Products, Inc. and David McDonald without costs and without prejudice to the right of either party, upon good cause shown on or before June 17, 2012, to reinstate the action if settlement is not consummated. Signed by Honorable Cameron McGowan Currie on 1/5/2012. (ssam,) (Entered: 01/05/2012)
01/05/2012	187	NOTICE of Cancellation of Hearing: Jury Selection set for 1/12/2012 09:30 AM <u>AND</u> Jury Trial set for 1/30 - 2/2/2012 09:30 AM (ssam,) (Entered: 01/05/2012)
01/05/2012	188	NOTICE of Hearing: Bench Trial on claim of Piercing the Corporate Veil as to Defendant Tammy McDonald set for 3/12-13/2012 09:30 AM in Columbia # 2, Matthew J. Perry Court House, 901 Richland St, Columbia before Honorable Cameron McGowan Currie. (ssam,) (Entered: 01/05/2012)
01/05/2012	189	***DOCUMENT MAILED 185 Order, 187 Notice of Cancellation of Hearing, 188 Notice of Hearing, 184 Pretrial Conference, Set Deadlines placed in U.S. Mail to Tammy McDonald (ssam,) (Entered: 01/05/2012)
01/05/2012	190	TEXT ORDER: Plaintiff's counsel and Ms. McDonald shall meet with chambers staff on Wednesday, February 29, 2012, at 10:00 a.m. to conduct the required meeting for marking and exchanging exhibits. Each side shall bring with them the original and two copies of their exhibit list, proposed exhibits, and copies of designated portions of depositions. Unless advised otherwise, the meeting shall be in Courtroom #2. (Meeting to mark and exchange exhibits to be held 2/29/2012 at 10:00 AM in Courtroom #2, Matthew J. Perry Court House, 901 Richland St, Columbia, South Carolina). Directed by Honorable Cameron McGowan Currie on 1/5/2012. (ssam,) (Entered: 01/05/2012)
01/05/2012	191	***DOCUMENT MAILED 190 Order placed in U.S. Mail to Tammy McDonald (ssam,) (Entered: 01/05/2012)
01/17/2012	193	MOTION for Summary Judgment <i>against Reliant Hospice, Inc.</i> by Alisha Knight. Response to Motion due by 2/3/2012 (Attachments: # 1 Memo in Support, # 2 Exhibit A - Stamps Affidavit, # 3 Exhibit B - depo excerpt, # 4 Exhibit C - Wilkerson Affidavit, # 5 Exhibit D - depo excerpt, # 6 Exhibit E - Declaration of Lott, # 7 Certificate of Service)No proposed order(Protopapas, Peter) (Entered: 01/17/2012)
02/23/2012	197	TEXT ORDER finding as moot 140 Motion in Limine; finding as moot 177 Motion for Sanctions. Signed by Honorable Cameron McGowan Currie on 2/23/2012.(cbru,) (Entered: 02/23/2012)
02/24/2012	198	***DOCUMENT MAILED 197 Order on Motion in Limine, Order on Motion for Sanctions placed in U.S. Mail to Tammy McDonald (cbru,) (Entered: 02/24/2012)
02/24/2012	199	TEXT ORDER denying 193 MOTION for Summary Judgment <i>against Reliant</i>

		<i>Hospice, Inc.:</i> Plaintiff's motion for summary judgment as to damages against Reliant Hospice, Inc. ("Reliant Hospice") is denied without prejudice. Plaintiff seeks to recover ALL sums paid to Reliant Hospice by the government from 2006 to 2010 under a theory that Reliant Hospice's receipt of kickbacks as to some claims rendered it ineligible for compensation as to any claims, thus rendering all claims fraudulent. Plaintiff cites only a single district court decision in support of this "blanket" damages theory. See Dkt. No. 193-1 at 5-6 (discussing United States v. Rogan, 459 F.Supp. 2d 692, 714 (E.D. Ill. 2006)). Plaintiff also fails to proffer evidence of the actual certifications signed on behalf of Reliant Hospice, or even of the form of those certifications, leaving an evidentiary gap as to whether the certifications were sufficiently broad to support the damages theory allowed in Rogan. Absent stronger legal and evidentiary support, the court declines to award damages under the blanket damages theory advanced by Plaintiff. The court will, therefore, proceed with the non-jury trial currently scheduled for March 12, 2012 which will resolve the veil-piercing claim asserted against Tammy McDonald, and will set the issue of damages for a jury trial in the term set to begin on May 17, 2012, Reliant Hospice, though in default, may appear and defend for purposes of jury selection and the damages trial, but may do so ONLY THROUGH COUNSEL. (Jury Selection Deadline 5/17/2012) Signed by Honorable Cameron McGowan Currie on 2/24/2012. (cbru,) Modified to edit text to correct typographical error on 2/24/2012 (cbru,). (Entered: 02/24/2012)
02/24/2012	200	***DOCUMENT MAILED 199 Order, Set Deadlines, Terminate Motions,,,,,,,,,,,,,,,,, placed in U.S. Mail to Tammy McDonald (cbru,) (Entered: 02/24/2012)
02/27/2012	201	TRIAL BRIEF by Alisha Knight. (Attachments: # 1 Witness List, # 2 Exhibit List, # 3 Certificate of Service)(Protopapas, Peter) Modified to edit text on 2/27/2012 (cbru,). (Entered: 02/27/2012)
03/01/2012	203	Minute Entry. Proceedings held before Magistrate Judge Joseph R McCrorey: Settlement Conference held on 3/1/2012. Parties Tammy McDonald (pro se) and Reliant Hospital present. Settlement between the parties agreed upon, defendant McDonald advised of binding nature of settlement. Court Reporter CourtSmart. (kbos) (Entered: 03/01/2012)
03/06/2012	205	CONFESSION OF JUDGMENT of <i>Tammy McDonald</i> by Alisha Knight. (Attachments: # 1 Confession of Judgment, # 2 Amended Complaint, # 3 Certificate of Service) (Protopapas, Peter) (Main Document 205 replaced on 3/6/2012) (cbru,) (Entered: 03/06/2012)
03/06/2012	206	CONFESSION OF JUDGMENT of <i>Reliant Hospice</i> by Alisha Knight. (Attachments: # 1 Confession of Judgment, # 2 Amended Complaint, # 3 Certificate of Service)(Protopapas, Peter) (Main Document 206 replaced on 3/6/2012) (cbru,) (Entered: 03/06/2012)
03/06/2012	207	JUDGMENT in favor of Alisha Knight against Reliant Hospice Inc, Tammy McDonald (cbru,) (Entered: 03/06/2012)
03/06/2012	208	***DOCUMENT MAILED 207 Judgment placed in U.S. Mail to Tammy McDonald (cbru,) (Entered: 03/06/2012)

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Billable Pages:	13	Cost:	1.30

UNITED STATES DISTRICT COURT

for the

District of South Carolina

United States of America ex rel. Alisha Knight,)

Plaintiff)

v.)

Reliant Hospice, Inc. and Tammy McDonald,)

Defendants)

Civil Action No. 3:08-3724-CMC

JUDGMENT IN A CIVIL ACTION

It is adjudged that (*check one*):

☒ the plaintiff, United States of America ex rel. Alisha Knight, recover from the defendant, Reliant Hospice, Inc., the amount of One Million, Five Hundred Thousand and 00/100 dollars (\$1,500,000.00), plus postjudgment interest at the rate of .18 %.

☒ the plaintiff, United States of America ex rel. Alisha Knight, recover from the defendant, Tammy McDonald, the amount of Twenty-Five Thousand and 00/100 dollars (\$25,000.00), plus postjudgment interest at the rate of .18 %.

☐ other:

This action (*check one*):

☐ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

☒ came before the Court, the Honorable Cameron McGowan Currie, US District Judge, presiding, on confessions of judgment.

Date: March 6, 2012

LARRY W. PROPES, CLERK OF COURT

s/Charles L. Bruorton

Signature of Clerk or Deputy Clerk

FILED

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

2007 MAR 29 P 1:56

U.S. 27

UNITED STATES OF AMERICA)
ex rel. JANIT ORTIZ-BISCHOFF, and)
JANIT ORTIZ-BISCHOFF) Civil Action No.: 3:05 CV 1864 - MRK
Plaintiffs,)
v.)
LUCA GABRIELE,) March 27, 2007
Defendant)

STIPULATION OF DISMISSAL

The plaintiff Janit Ortiz-Bischoff and the defendant Luca Gabriele, having held private settlement negotiations subsequent to the service of the Complaint and prior to the defendant having filed his Answer, have reached a mutually agreeable settlement of all claims raised in the complaint. Therefore, pursuant to Fed. R. Civ. P. 41(a)(1), plaintiff submits this Stipulation of Dismissal and hereby voluntarily dismisses this action without prejudice and contingent upon the defendant's compliance with all obligations required of his as set forth in Settlement Agreement attached hereto and incorporated by reference.

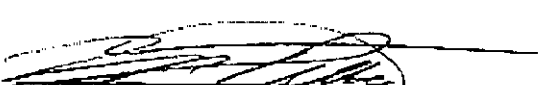
For the plaintiff JANIT ORTIZ-BISCHOFF

CONNECTICUT LEGAL SERVICES, INC.

BY 

Frederic S. Brody, Federal Bar No. 15510
Attorney for Plaintiff Janit Ortiz-Bischoff
20 Summer Street
Stamford, Connecticut 06901
Telephone: (203)348-9216
Facsimile: (203)348-2589
Email: rbrody@connlegalservices.org

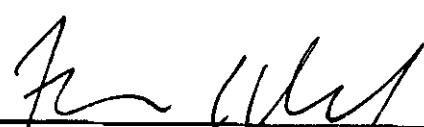
For the defendant LUCA GABRIELE


Louis P. Pittocco, Federal Bar No. 12705
Attorney for Defendant Luca Gabriele
90 Greenwich Avenue
Greenwich, Connecticut 06830
Telephone: (203)869-2282
Facsimile: (203)869-7151
Email: lpittocco@conversent.net

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on March 27, 2007, a copy of the foregoing was sent via first class mail, postage prepaid, to all counsel and pro se parties of record, as follows:

Louis P. Pittocco, Esquire
90 Greenwich Avenue
Greenwich, Connecticut 06830


Frederic S. Brody, Federal Bar No. 15510

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

FILED

2007 MAR 29 P 1:56

UNITED STATES OF AMERICA)
ex rel. JANIT ORTIZ-BISCHOFF, and)
JANIT ORTIZ-BISCHOFF)
Plaintiffs,)
v.)
LUCA GABRIELE,)
Defendant)

Civil Action No.: 3:05 CV 1864 (MRK)

March ~~27~~, 2007

STIPULATION SETTLING ACTION

The above entitled action was commenced on December 1, 2005 in the United States District Court for the District of Connecticut.

The plaintiff Janit Ortiz-Bischoff, by her Complaint, alleges she leased a residential apartment from the defendant Luca Gabriele utilizing Section 8 rental assistance. Ms. Ortiz-Bischoff claims the defendant owes her various sums by reason of the defendant demanding and receiving rent payments in addition to the plaintiff's portion of the rent as determined by Section 8 and failing to return plaintiff's security deposit. The defendant, having appeared through counsel, has not filed an Answer to the Complaint.

On various dates prior to February 16, 2007, the plaintiff Janit Ortiz-Bischoff and the defendant Luca Gabriele held private settlement negotiations. The parties reached mutually agreeable settlement of all claims raised in the complaint. The sum and substance of said settlement is hereinafter set forth.

THEREFORE, it is hereby stipulated and agreed by and between the plaintiff Janit-Ortiz Bischoff and the defendant Luca Gabriele, through their respective counsel, that:

1. The defendant Luca Gabriel shall and does stipulate judgment in favor of the plaintiff Janit Ortiz-Bischoff and agree to pay her in the amount of Twenty Thousand Dollars (\$20,000.00) compensatory damages, plus the sum of Five Thousand Dollars (\$5,000.00) for her attorney's fees, which is agreed to be a reasonable settlement of the claims made in the Complaint. Statutory interest shall accrue upon any amount not paid in accordance with this Settlement and the defendant shall be responsible for reasonable attorneys' fee incurred in any action to recover unpaid damages or fees.

2. Payment of the aforesaid sums shall be made as follows: Ten Thousand Dollars (\$10,000.00) upon the execution of this Agreement; Ten Thousand Dollars (\$10,000.00) fifteen (15) days from the date of execution of this Agreement; and Five Thousand Dollars (\$5,000.00) forty-five (45) days from the date of execution of this Agreement. All sum to be paid in good funds.

3. The plaintiff Janit Ortiz-Bischoff will withdraw the current action without prejudice once final payment is made by defendant per paragraph 2 above. This judgment will be satisfied only by the delivery of the sums set forth in paragraph 2 above.

4. The plaintiff Janit Ortiz-Bischoff, her heirs, executors or assigns, and the defendant Luca Gabriel, his heirs, executors and assigns, release each other and their heirs, executors and assigns from any and all claims of any kind or type whatsoever, known or unknown, which they may have one against the other once payment is made and the action is withdrawn.

5. The Complaint in this action shall be dismissed without prejudice and without further cost to either party.


SO STIPULATED:

Dated: March , 2007

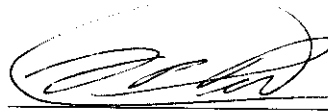
For the plaintiff JANIT ORTIZ-BISCHOFF

CONNECTICUT LEGAL SERVICES, INC.

BY


Frederic S. Brody, Federal Bar No. 15510
Attorney for Plaintiff Janit Ortiz-Bischoff
20 Summer Street
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For the defendant LUCA GABRIELE


Louis P. Pittocco, Federal Bar No. CT 12705
Attorney for Defendant Luca Gabriele
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Greenwich, Connecticut 06830
Telephone: (203)869-2282
Facsimile: (203)869-7151
Email: lpittocco@conversent.net

COURT ORDER

SO ORDERED:

Reviewed and approved on , 2007.

MARK R. KRAVITZ
UNITED STATES DISTRICT JUDGE

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CLOSED

**U.S. District Court
District of Connecticut (New Haven)
CIVIL DOCKET FOR CASE #: 3:05-cv-01864-MRK**

Ortiz-Bischoff -v- Gabriele
Assigned to: Judge Mark R. Kravitz
Case in other court: 05mc350
Cause: 31:3729 False Claims Act

Date Filed: 12/01/2005
Date Terminated: 03/27/2007
Jury Demand: None
Nature of Suit: 990 Other
Jurisdiction: Federal Question

Plaintiff

USA
ex rel Janit Ortiz-Bischoff

represented by **William A. Collier**
U.S. Attorney's Office-HFD
450 Main St. Room 328
Hartford, CT 06103
860-947-1101
Fax: 860-240-3291
Email: william.collier@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Janit Ortiz-Bischoff

represented by **Frederic S. Brody**
Connecticut Legal Services, Inc.-Stamford
20 Summer St.
Stamford, CT 06901-2304
203-348-9216
Fax: 203-348-2589
Email: rbrody@connlegalservices.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Luca Gabriele

represented by **Louis P. Pittocco**
90 Greenwich Ave.
Greenwich, CT 06830
869-2282
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/01/2005	<u>4</u>	COMPLAINT against Luca Gabriele (Filing fee \$ 250.) , filed by Janit Ortiz-Bischoff. (Attachments: # <u>1</u> Exhibit A & B# <u>2</u> Exhibit C, D & E)(S-Kolesnikoff, D.) (Entered: Recovery Cases 150)

		12/07/2005)
09/15/2006	12	Notice of Election to Decline Intervention by USA. (S-Brown, S.) Modified on 9/28/2006 (S-Brown, S.). (Entered: 09/18/2006)
09/21/2006	13	Order Unsealing Documents 4 Complaint, 12 Notice of Election to Decline Intervention and 13 Order Unsealing Documents; ALL Documents filed Prior to Date of this Order shall REMAIN SEALED, ALL Documents filed AFTER date of this Order shall be public (S-Brown, S.) Modified on 9/28/2006 (S-Brown, S.). (Entered: 09/25/2006)
09/25/2006		Docket Entry Correction re 4 Complaint; docket entry #4 previously sealed, unsealed 9/25/06 (Brown, S.) (Entered: 09/25/2006)
10/05/2006		USM #285, Complaint, Notice of Lawsuit and Request for Waiver received and delivered to USM for service (Brown, S.) (Entered: 10/05/2006)
01/18/2007	14	SUMMONS Returned Executed by USA. Luca Gabriele served on 12/21/2006, answer due 1/10/2007. (Pesta, J.) (Entered: 01/18/2007)
03/26/2007	16	NOTICE of Appearance by Louis P. Pittocco on behalf of Luca Gabriele (Rodko, B.) (Entered: 03/30/2007)
03/27/2007	15	ORDER OF DISMISSAL. The parties have reported that this action has been settled in full. Rather than continue to keep the case open on the docket, the Clerk is directed to administratively close the file without prejudice to reopening on or before April 27, 2007. If the parties wish to file a stipulation of dismissal (for approval by the court or simply for inclusion in the courts file), they may do so on or before April 27, 2007. The dates set forth in this order may be extended for good cause pursuant to a motion filed in accordance with Local Rule 7. Signed by Judge Mark R. Kravitz on 3/27/2007. (Carotenuto, R.) (Entered: 03/27/2007)
03/29/2007	17	STIPULATION of Dismissal of Case by USA, Janit Ortiz-Bischoff, Luca Gabriele. (Rodko, B.) (Entered: 03/30/2007)
03/29/2007	19	STIPULATION Settling Action by Janit Ortiz-Bischoff, Luca Gabriele. (Rodko, B.) (Entered: 03/30/2007)
03/30/2007	18	ORDER: granting 17 STIPULATION of Dismissal of Case filed by Luca Gabriele, Janit Ortiz-Bischoff, USA. Signed by Clerk on 3/30/07. (Rodko, B.) (Entered: 03/30/2007)

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