

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and among the United States of America, acting through its Department of Justice and on behalf of the Office of Inspector General of the United States Office of Personnel Management ("OPM-OIG"); Andrea Kessler ("Relator"); and the following entities, which shall be referred to collectively as "Defendants": the American Postal Workers Union, AFL-CIO ("APWU"), National Health Services, Inc. ("NHS"), a corporation organized under the laws of the State of Wisconsin, and United Payors & United Providers, Inc. ("UP&UP"), now doing business as BCE Emergis Corporation, a corporation organized under the laws of the State of Delaware. Collectively all of the above will be referred to as "the Parties."

### PREAMBLE

A. The APWU is a national labor union with headquarters located in Washington, D.C. Among other things, the APWU owns and operates the American Postal Workers Union Health Plan ("APWU Health Plan"), which is a health benefits plan under contract with OPM under the Federal Employees Health Benefits Program. NHS provides managed care services, including case management, utilization review, and pre-certification, to health care benefit plans and insurers. From 1993 to 1997, the APWU Health Plan and NHS entered into contracts for cost containment services, and in 1993 and 1994, the APWU Health Plan and NHS contracted for the APWU Health Plan to provide case management system enhancement services to NHS. UP&UP has developed a network of preferred health care providers ("PPO") who agree to provide

services at a fixed or reduced rate to health benefits plans that contract with UP&UP. UP&UP acts as an intermediary between these health care providers and the health benefits plans. From 1993 to 1998, the APWU Health Plan and UP&UP entered into a contract for access to UP&UP's PPO network and, under the contract, UP&UP reimbursed the APWU Health Plan for the administrative costs associated with implementing the contract. BCE Emergis purchased NHS and UP&UP in March 2000.

On or about October 19, 1998, Relator filed a qui tam action in the United States District Court for the District of Maryland entitled United States ex rel. Andrea Kessler v. APWU, et al., Civil Action No. CCB-98-3547, alleging that the Defendants violated the False Claims Act, 31 U.S.C. §§ 3729-3733. After the filing of the qui tam action, the United States investigated the contracts between the APWU Health Plan and NHS and the contracts between the APWU Health Plan and UP&UP. Based on the investigation, the United States alleges that the APWU Health Plan and NHS knowingly inflated the cost containment contracts with improper payments. Furthermore, the APWU Health Plan paid the NHS contracts with off formula funds and then applied the improper payments from NHS to supplement the APWU Health Plan's formula expenses. The United States also alleges that the APWU Health Plan and UP&UP knowingly inflated the PPO contract with improper payments. Furthermore, the APWU Health Plan paid the UP&UP contract with claims funds and then applied the improper payments from UP&UP to supplement the APWU Health Plan's formula expenses.

B. The United States asserts, based upon the conduct alleged in Paragraph A, that it has certain claims and causes of action against the APWU, NHS and UP&UP

predicated upon the False Claims Act, 31 U.S.C. §§ 3729-3733, and the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, as well as under common law, arising out of the inflated payments and improper payments described in Paragraph A.

C. The Defendants expressly deny the allegations contained in Paragraph A. The Parties agree that this Agreement does not constitute evidence or constitute an admission by any person or entity with respect to any issue of law or fact, that this Agreement shall not be construed as an admission by any person or entity with respect to any issue of law or fact, and that this Agreement is a compromise of disputed claims.

D. The Parties mutually desire to reach a full and final compromise of all civil claims that the United States has or may have against the APWU, NHS or UP&UP based on the conduct alleged in Paragraph A of this Preamble and further wish to avoid the delay, expense, inconvenience and uncertainty of protracted litigation of these claims.

#### TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations in this Agreement, and for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. The Defendants agree to pay to the United States the sum of \$2,193,000.00 (Two million, one hundred ninety-three thousand dollars)("Settlement Amount"), in the following manner:

A. The APWU shall pay the amount of \$335,000.00 (Three hundred thirty-five thousand dollars) to the United States. This amount shall be electronically transferred pursuant to instructions provided by the U.S. Department of Justice no later than on or before January 22, 2002.

B. The APWU agrees to repay the United States the additional amount of \$908,000.00 (Nine hundred eight thousand dollars) by means of an offset to its annual service charge, which is calculated by OPM on the APWU Health Plan's Annual Accounting Statement, at a rate of \$227,000.00 (Two hundred twenty-seven thousand dollars) per year for four years or \$18,916.67 (Eighteen thousand, nine hundred sixteen dollars and sixty-seven cents) per month for forty-eight months. The offset referred to in this paragraph will be effectuated by a monthly reduction of \$18,916.67 in the service charge that the APWU would otherwise be entitled to receive beginning with the service charge for calendar year 2002.

C. NHS and UP&UP shall pay the amount of \$950,000.00 (Nine hundred fifty thousand dollars) to the United States. This amount shall be electronically transferred pursuant to instructions provided by the U.S. Department of Justice no later than on or before January 22, 2002.

D. It is expressly understood that the Defendants' obligations under this Agreement are separate and distinct as to each defendant and that one defendant's failure or inability to abide by any requirement or obligation under this Agreement, including any payment obligation hereunder, shall not vitiate or otherwise alter or affect

the protections, terms and conditions of this Agreement as it applies to any other defendant.

E. The APWU shall pay the amount of \$13,500.00 (Thirteen thousand five hundred dollars) to Andrew Grosso, Esquire. NHS and UP&UP shall pay the amount of \$6,500.00 (Six thousand five hundred dollars) to Andrew Grosso, Esquire. These amounts represent full and final payment of attorneys fees under 31 U.S.C. § 3730 (d) based upon the conduct described in Paragraph A of the Preamble.

2. Subject to the conditions specified in Paragraph 3 below, upon receipt of their respective contributions as described in Paragraph 1 above, the United States will release and will be deemed to have released the APWU, NHS and UP&UP, and each of their parents, affiliates, divisions, or subsidiaries, successors and assigns, and each of their present or former directors, officers, employees, agents, and shareholders from any civil or administrative monetary claims (including recoupment claims) that the United States has or may have under the False Claims Act, 31 U.S.C. § 3729 et seq. (as amended), the Truth in Negotiations Act, 10 U.S.C. § 2306a, the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 et seq., the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, or under common law theories of payment by mistake, unjust enrichment, breach of contract and fraud for the conduct described in Paragraph A of the Preamble with respect to claims submitted to OPM. The United States further releases and agrees to forego any administrative action by OPM, including suspension and debarment, for the conduct described in Paragraph A of the Preamble with respect to claims submitted to OPM.

3. The United States specifically does not release the APWU, NHS and UP&UP or any other entity or individual under this Agreement from (a) any criminal, civil or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code); (b) any liability to the United States, or any agencies thereof, for any conduct other than that identified in Paragraph A of the Preamble; (c) any obligations created by this Agreement; (d) any potential criminal liability based upon the conduct described in Paragraph A of the Preamble; and (e) any express or implied warranty claims or other claims for defective or deficient services, not covered by Paragraph A, including claims relating to quality of goods and services.

4. The APWU, NHS and UP&UP each hereby agrees that it will waive and will not assert any defense, which may be based in whole or in part on the Double Jeopardy Clause of the Constitution or the holding or principles set forth in United States v. Halper, 490 U.S. 435 (1989), in any criminal prosecution.

5. The Relator asserts that the settlement of claims in the Civil Action is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). The United States agrees to pay Andrea Kessler the sum of \$394,740.00 (Three hundred ninety-four thousand seven hundred and forty dollars) within a reasonable time after receipt by the United States of the payments specified in Paragraphs 1 (A) and (C). On receipt of this payment, and the payment of the attorney's fees specified in Paragraph 1 (E), the Relator, her heirs, attorneys, successors, and assigns, will release and will be deemed to have released and to have forever discharged: the United States from any claims arising from or relating to the

filing of the Civil Action, or, pursuant to 31 U.S.C. § 3730 (d)(1), for a share of the proceeds of the settlement of claims under this Agreement; the APWU, NHS and UP&UP, and each of their parents, affiliates, divisions, or subsidiaries, successors and assigns, and each of their present or former directors, officers, employees, agents, and shareholders from any claims that she has or may have that arise under or relate to any of the allegations in the Civil Action and/or the facts or conduct described in Paragraph A, including any claim for attorney's fees and/or other costs; and the APWU, the APWU Health Plan, their parents, affiliates, divisions, or subsidiaries, successors and assigns, and their present or former directors, officers, employees, agents, and shareholders from any claims that she or her counsel has or may have that arise from or relate to her employment with the APWU Health Plan. This Agreement does not resolve, or in any manner affect, any claims the United States has or may have against the Relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement. The APWU, NHS and UP&UP will release Andrea Kessler, her heirs, successors, and assigns, from any claims that they have or may have that arise under or relate to any of the allegations in the Civil Action and/or the facts or conduct described in Paragraph A, and any other claims or causes of action that they have or may have that arise under or relate to, in any manner whatsoever, Ms. Kessler's employment with the APWU Health Plan or the bringing of the instant qui tam action.

6. After this Agreement is executed and the payments described in Paragraphs 1 (A) and (C) have been received by the United States, and the payments described in Paragraph 1 (E) have been received by Andrew Grosso, Esquire, the United States and

the Relator will notify the Court that all Parties have stipulated that the Civil Action be dismissed with prejudice as to the Relator and that claims relating to the conduct described in Paragraph A of the Preamble above be dismissed with prejudice as to the United States.

7. For government contracting purposes, it is agreed that all costs (as defined in the Federal Acquisition Regulations 31.205.47) incurred by or on behalf of the APWU, NHS and UP&UP, and each of their parents, affiliates, divisions, or subsidiaries, successors and assigns, and each of their present or former directors, officers, employees, agents, and shareholders in connection with (1) the matters covered by this Agreement; (2) the Government's audit and investigation of the matters covered by this Agreement; (3) the APWU's, NHS's and UP&UP's investigation, defense, and corrective actions; (4) the negotiation and performance of this Agreement; and (5) the payments made to the United States provided for in this Agreement, shall be unallowable costs for Government contracting and accounting purposes. These amounts shall be separately accounted for by the APWU, NHS and UP&UP and will not be charged to any Government contract.

8. This Agreement shall be binding upon the Parties, their successors, assigns, and heirs.

9. The undersigned officer of the APWU has the authority under the APWU's Constitution to conduct and settle litigation on behalf of the APWU and to sign this Agreement. The undersigned officers of NHS and UP&UP are authorized by their respective Boards of Directors to execute this Agreement on behalf of their



organizations. The undersigned United States signatories represent that they are signing this Agreement in their official capacities.

10. This Agreement shall become final and binding only upon signing by each respective party hereto.

11. This Agreement may not be changed, altered, or modified, except in writing signed by all undersigned parties. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all parties.

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

13. The Parties have executed six identical copies of this Agreement, each of which shall be deemed an original of this Agreement.

14. This Agreement is effective on the date of the last signatory to it.

THE UNITED STATES OF AMERICA

THOMAS M. DIBIAGO  
United States Attorney

By: Roann Nichols  
ROANN NICHOLS  
Assistant United States Attorney  
District of Maryland

Dated: 1/17/02

OFFICE OF PERSONNEL MANAGEMENT

By: Abby L. Block Dated: January 16, 2002  
ABBY L. BLOCK  
Assistant Director for Insurance  
Programs

THE AMERICAN POSTAL WORKERS UNION

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
WILLIAM BURRUS  
President  
American Postal Workers Union, AFL-CIO

NATIONAL HEALTH SERVICES, INC.

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
MONIQUE MERCIER  
Authorized Representative

UNITED PAYORS & UNITED PROVIDERS

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
MONIQUE MERCIER  
Secretary

RELATOR

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
ANDREA KESSLER, Relator

By: \_\_\_\_\_ Dated: \_\_\_\_\_

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THOMAS M. DIBIAGO  
United States Attorney

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
ROANN NICHOLS  
Assistant United States Attorney  
District of Maryland

**OFFICE OF PERSONNEL MANAGEMENT**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
ABBY L. BLOCK  
Assistant Director for Insurance  
Programs

**THE AMERICAN POSTAL WORKERS UNION**

By: William Burrus Dated: January 16, 2007  
WILLIAM BURRUS  
President  
American Postal Workers Union, AFL-CIO

WILLIAM BURRUS  
President  
American Postal Workers Union, AFL-CIO

NATIONAL HEALTH SERVICES, INC.

By: Monique Mercier  
MONIQUE MERCIER  
Authorized Representative

Dated: January 16<sup>th</sup>, 2002

UNITED PAYORS & UNITED PROVIDERS / BCE Emergis Corporation

By: Monique Mercier  
MONIQUE MERCIER  
Secretary

Dated: January 16<sup>th</sup>, 2002

RELATOR

By: \_\_\_\_\_  
ANDREA KESSLER, Relator

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
ANDREW GROSSO  
Counsel for Relator

Dated: \_\_\_\_\_

OFFICE OF PERSONNEL MANAGEMENT

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
ABBY L. BLOCK  
Assistant Director for Insurance  
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MONIQUE MERCIER  
Authorized Representative

UNITED PAYORS & UNITED PROVIDERS

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
MONIQUE MERCIER  
Secretary

RELATOR

By: *Andrea Kessler* Dated: 1/16/02  
ANDREA KESSLER, Relator

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
ANDREW GROSSO  
Counsel for Relator

**OFFICE OF PERSONNEL MANAGEMENT**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
ABBY L. BLOCK  
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MONIQUE MERCIER  
Authorized Representative

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MONIQUE MERCIER  
Secretary

**RELATOR**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
ANDREA KESSLER, Relator

By: Andrew Grosso Dated: 1/16/02  
ANDREW GROSSO  
Counsel for Relator