

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
<i>ex rel.</i> LINDA TROMBETTA,	)	
LINDA FREEMAN, and JAMES	)	
FREEMAN,	)	
	)	
Plaintiff,	)	No. 96 C 226 & 99 C 151
	)	consolidated
	)	
v.	)	Judge Gottschall
	)	
	)	
EMSCO BILLING SERVICES, INC.,	)	
NATIONAL EMERGENCY SERVICES,	)	
INC., NES HOLDINGS, INC.,	)	
ROBERT D. TETIK, and	)	
BONNIE L. TETIK,	)	
	)	
Defendants.	)	

CONSENT JUDGMENT

I. PARTIES

This Consent Judgment 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”), the State of Illinois, acting through the Illinois Attorney General, the State of Maine, acting through the Maine Attorney General, defendants EMSCO Billing Services, Inc., EMSCO Management Services, Inc., NES Holdings, Inc., NES Midwest, Inc., NES Healthcare Services, Inc., National Healthcare Services, Inc., and National Emergency Services, Inc. (collectively “the Corporate Defendants”), and Allan Rappaport (“Rappaport”) (the Corporate Defendants and Rappaport are collectively referred to as the “Settling Defendants”) and relators

Linda Trombetta (“Trombetta”) and Linda Freeman and James Freeman (the “Freemans”) (“Relators Trombetta and the Freemans are collectively referred to as “Relators”), (hereafter collectively referred to as “the Parties”) through their authorized representatives.

## II. PREAMBLE

As a preamble to this Consent Judgment, the Parties agree to the following:

A. Defendant EMSCO Billing Services, Inc. is an Illinois corporation that had its principal place of business in Hinsdale, Illinois; defendant NES Holdings, Inc., the parent corporation of defendant EMSCO Billing Services, Inc., is a Delaware corporation with its principal place of business in Raleigh, North Carolina; and defendant National Emergency Services, Inc., an affiliate of NES Holdings, is an Illinois corporation with its principal place of business in Raleigh, North Carolina. Among other things, EMSCO Billing Services, Inc., NES Holdings, Inc., and National Emergency Services, Inc., were, at all times mentioned in Paragraphs D and H below, engaged in the business of providing hospital emergency room staffing and/or billing services.

B. Relators are residents of the State of Illinois. Relators Linda Trombetta and Linda Freeman are former employees of EMSCO Billing Services, Inc., where they served as billing supervisors.

C. Relator Trombetta first filed a *qui tam* complaint in the United States District Court for the Northern District of Illinois on January 11, 1996, captioned *United States of America ex rel. Linda Berlin v. EMSCO Billing Services, Inc., et al.*, No. 96 C 226, and on December 21, 2001 filed a first amended complaint (“the *Trombetta* suit”).

D. The *Trombetta* suit alleged that the Settling Defendants violated the federal False Claims Act, 31 U.S.C. §§ 3729-3733, and the Illinois Whistleblower Reward and Protection Act, 740 ILCS 175/1 (“IWRPA”) at varying times from at least 1990 through 1999 by submitting or causing to be submitted claims for payment to the Medicare Program (“Medicare”), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg, and to the Medicaid Program (“Medicaid”), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v, in the states of Illinois and Maine. The *Trombetta* suit alleges (1) that the Settling Defendants submitted or caused to be submitted inflated claims for reimbursement to the Illinois Department of Public Aid (“IDPA”), which administers Medicaid in the State of Illinois, by upcoding the CPT codes pertaining to the level of service provided by hospital emergency room physicians, and to Medicare, by upcoding the CPT codes pertaining to the level of service provided by hospital emergency room physicians to Medicaid or Medicare patients in Illinois; and (2) that the Settling Defendants submitted or caused to be submitted inflated claims for reimbursement to Maine Medicaid, which administers Medicaid in the State of Maine, by upcoding the CPT codes pertaining to the level of service provided by hospital emergency room physicians to Medicaid patients in Maine.

E. The Freemans filed their *qui tam* complaint in the United States District Court for the Northern District of Illinois on January 12, 1999, captioned *United States of America ex rel. Linda and James Freeman v. NES Holdings, Inc., et al.*, No. 99 C 151 (“the *Freeman* suit”). The *Freeman* suit alleged that certain Corporate Defendants violated provisions of the federal False Claims Act from at least 1993 through 1999 by submitting or causing to be submitted claims for payment to Medicaid in the State of Illinois. Also on January 12, 1999, Linda Freeman and

James Freeman filed a complaint under the *qui tam* provisions of the IWRPA, in the Circuit Court of Cook County, Illinois, captioned *State of Illinois ex rel. Linda and James Freeman v. NES Holdings, Inc., et al.*, No. 99 L 408 (“the Illinois suit”), in which they alleged that certain Corporate Defendants’ conduct violated the provisions of the IWRPA at varying times from at least 1993 through 1999 by submitting or causing to be submitted claims for payment to Medicaid in the State of Illinois.

F. The United States intervened in part of the *Trombetta* suit on December 17, 2001, and intervened in part of the *Freeman* suit on March 8, 2002. The part of the *Freeman* suit as to which the United States did not intervene was dismissed by the Court on March 15, 2002. The part of the *Trombetta* suit as to which the United States did not intervene remains pending in the *Trombetta* suit. The Relators’ federal claims as to which the United States intervened are referred to as the “Intervened Claims” and the Relators’ claims as to which the United States declined to intervene are referred to as the “Declined Claims.”

G. The United States filed its complaint in this action on March 4, 2002 against EMSCO Billing Services, Inc., National Emergency Services, Inc., NES Holdings, Inc. (collectively “the Federal Corporate Defendants”), Robert D. Tetik and Bonnie L. Tetik (the “United States’ Complaint”). The United States’ Complaint alleges that the Federal Corporate Defendants and the Tetiks submitted or caused to be submitted claims for payment to Medicare, and to the Medicaid programs in the states of Illinois and Maine.

H. The United States contends that it has certain civil claims against the Federal Corporate Defendants and the Tetiks under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or the common law for engaging in the following conduct (“the Covered

Conduct”): (1) During the period from October 1, 1994, through December 31, 1997, defendants submitted or caused to be submitted inflated claims for reimbursement to the IDPA, which administers Medicaid in the State of Illinois, and to Medicare, by upcoding the visit codes pertaining to the level of service provided by hospital emergency room physicians to Medicaid or Medicare patients in Illinois; and, (2) During the period of January 1, 1995, through December 31, 1996, defendants submitted or caused to be submitted inflated claims for reimbursement to Maine Medicaid, which administers Medicaid in the State of Maine, by upcoding the visit codes pertaining to the level of service provided by hospital emergency room physicians to Medicaid patients in Maine.

I. The United States also contends that it has certain administrative claims, as specified in Paragraph 6 below, against the Federal Corporate Defendants and the Tetiks for engaging in the Covered Conduct.

J. The State of Illinois intervened in the Illinois suit and filed its own complaint on February 28, 2002 (the “State of Illinois’ Complaint”). The State of Illinois’ Complaint alleges that the State of Illinois has certain civil claims against certain defendants under the IWRPA for engaging in the Covered Conduct relating to submission of claims to IDPA.

K. The *Trombetta* suit, the *Freeman* suit, the United States’ Complaint, the State of Illinois’ Complaint, and the Illinois suit are collectively referred to as the “Civil Actions.”

L. The State of Maine has not intervened in any of the Civil Actions or filed its own complaint regarding the Covered Conduct. The State of Maine, however, is aware of the allegations contained in the Civil Actions.

M. The Settling Defendants contend that their actions and coding and billing practices, characterized herein as the Covered Conduct, were at all times appropriate and lawful and did not result in any violations of federal or state law, regulations, common law or equitable doctrines. Furthermore, the Settling Defendants specifically deny and affirmatively contest all the allegations made in the Civil Actions.

N. This Consent Judgment is neither an admission of liability by the Settling Defendants nor a concession by the United States, State of Illinois, State of Maine, or Relators that their claims were not well-founded.

O. 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.

### III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. The Corporate Defendants agree to pay to the United States (a) one million seven thousand eight dollars (\$1,007,008) for the Intervened Claims (the “Intervened Claims Settlement Amount”) and (b) one hundred forty thousand nine hundred seventy two dollars (\$140,972) for the Declined Claims (the “Declined Claims Settlement Amount”). The total amount of one million one hundred forty seven thousand nine hundred eighty dollars (\$1,147,980) is referred to herein as the “Combined Settlement Amount.” The United States agrees to pay 17.5% of the Intervened Claims Settlement Amount to the Relators pursuant to

their joint instructions and pursuant to the schedule set forth in this Paragraph below. The United States agrees to pay 27.5% of the Declined Claims Settlement Amount to Linda Trombetta pursuant to her instruction and pursuant to the schedule set forth in this Paragraph below. The Settling Defendants further agree to pay counsel for Linda Trombetta three hundred forty thousand dollars (\$340,000) (“Trombetta Attorneys Fees and Costs”) and to pay counsel for Linda and James Freeman ninety thousand dollars \$90,000 (“Freeman Attorneys Fees and Costs”), respectively for expenses and attorneys’ fees and costs (the “Combined Attorneys Fees and Costs”).

a. Judgment is entered in favor of the United States and the State of Illinois against the Settling Defendants, in the amount of one million one hundred forty seven thousand nine hundred eighty dollars (\$1,147,980.00). This amount includes post-judgment interest at the annual rate of 1.29% for the payment period described at paragraph 1.b below.

b. The Corporate Defendants shall pay the Combined Settlement Amount to the United States by electronic funds transfers pursuant to written instructions to be provided by the United States Attorney’s Office, Northern District of Illinois. The Corporate Defendants agree to make these electronic funds transfers as follows: twelve equal monthly payments of \$95,665, with the first payment paid on 15<sup>th</sup> day after the Effective Date of this Consent Judgment and the remaining monthly payments paid no later than the same day of each subsequent month, unless the payment date falls on a Saturday, Sunday, or federal holiday, in which case the payment shall be made on the last business day prior to the payment date. The phrase "business day" shall mean any day that is not a Saturday, Sunday, or federal holiday. The entire balance of the Combined Settlement Amount or any portion thereof, due to the United

States and the State of Illinois under this Consent Judgment, may be prepaid at any time, without penalty. In the event the Corporate Defendants fail to make any of the monthly payments described in this Paragraph within five (5) business days of the time period described herein, the full unpaid amount of the Combined Settlement Amount shall immediately become due and owing, plus five (5%) percent interest on the full unpaid amount of the Combined Settlement Amount accruing as of the date the payment was due but not paid.

c. Upon receipt by the United States of each of the monthly payments set forth in Paragraph 1(b) above, the United States agrees to pay: (i) \$14,685 of the monthly Intervened Claims Settlement Amount, to the Relators pursuant to their joint instructions; (ii) \$3,230 of the monthly Declined Claims Settlement Amount, to Linda Trombetta pursuant to her instruction ; (iii) \$20,915 to the State of Illinois; and (iv) \$195 to the State of Maine. As a result of these payments, the Combined Settlement Amount will be distributed as follows: (1) \$176,220 to Relators; (2) \$38,760 to Linda Trombetta; (3) \$250,980 to State of Illinois; (4) \$2,340 to State of Maine; and (5) \$679,680 to the United States. If the Corporate Defendants should fail to make all or part of any payment to the United States (reduced payment), then, without waiving or prejudicing--and while expressly reserving--any rights, claims, and remedies the United States has or may have, any payments from the United States to the Relators, State of Illinois, and State of Maine will be reduced in proportion to the reduced payment received by the United States.

d. On December 30, 2003, Settling Defendants deposited into an escrow for the benefit of Linda Trombetta \$170,000 of the Trombetta Attorneys Fees and Costs by electronic fund transfer. The Settling Defendants shall deposit into an escrow for the benefit of

Linda Trombetta the remaining \$170,000 of the Trombetta Attorneys Fees and Costs within five days of the entry of this Consent Judgment, by electronic funds transfer. In the event the Settling Defendants fail to make this payment within three (3) business days of the time period described herein, the full amount of the Trombetta Attorneys Fees and Costs shall immediately become due and owing, plus five (5%) percent interest on the full unpaid amount of the Trombetta Attorneys Fees and Costs, which interest shall begin to accrue as of the date the payment was due but not paid.

e. On December 30, 2003, the Corporate Defendants deposited into an escrow for the benefit of Linda and James Freeman \$90,000 for the Freeman Attorneys Fees and Costs by electronic funds transfer.

f. The payments described in Paragraphs 1.d. and 1.e. above, have been or shall be deposited into interest bearing escrow account pursuant to the escrow agreement entered into among Relators' counsel and counsel for Settling Defendants. Upon the Effective Date of this Consent Judgment, the escrow amounts may be distributed to the Relators pursuant to their instructions. If the effective date of this Consent Judgment is not on or before June 1, 2004 ("delayed completion date") and if the Settling Defendants or their counsel, within fifteen (15) calendar days after the delayed completion date, file with the Court in this consolidated action a written notice that the Settling Defendants are rescinding this Consent Judgment because of the delayed completion date, then the payments made into the escrow accounts shall be returned to the Settling Defendants and this Consent Judgment shall be deemed null and void.

g. The Corporate Defendants' obligations under this Consent Judgment are joint and several. Each of the Corporate Defendants is responsible in full for any payment that is due from the Corporate Defendants under this Consent Judgment.

2. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of the Corporate Defendants set forth in this Consent Judgment, conditioned upon the Corporate Defendants' payment in full of the Combined Settlement Amount and subject to Paragraph 19 below (concerning bankruptcy proceedings commenced within 91 days of any payment under this Consent Judgment), the United States, on behalf of itself, its officers, agents, agencies, and departments, agrees to release the Federal Corporate Defendants, their successors, parents, affiliates, divisions, subsidiaries, and all of their current and former officers, directors, and employees, excluding Robert D. Tetik and Bonnie Tetik, from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, or the common law or equitable theories of payment by mistake of fact, unjust enrichment, and fraud for the Covered Conduct.

3. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of the Corporate Defendants set forth in this Consent Judgment, conditioned upon the Corporate Defendants' payment in full of the Combined Settlement Amount, and subject to Paragraph 19 below (concerning bankruptcy proceedings commenced within 91 days of any payment under this Consent Judgment), the State of Illinois, on behalf of itself, its officers, agents, agencies, and departments agrees to release the Corporate Defendants, their successors, parents, affiliates, divisions, subsidiaries, and all of their current and former officers, directors, and employees,

excluding Robert D. Tetik and Bonnie Tetik, from any civil monetary claim the State of Illinois has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Illinois Whistleblower Reward and Protection Act, 740 ILCS 175/1, or the common law or equitable theories of payment by mistake of fact, unjust enrichment, and fraud for claims submitted to the IDPA for the Covered Conduct.

4. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of the Corporate Defendants set forth in this Consent Judgment, conditioned upon the Corporate Defendants' payment in full of the Combined Settlement Amount, and subject to Paragraph 19 below (concerning bankruptcy proceedings commenced within 91 days of any payment under this Consent Judgment), the State of Maine, on behalf of itself, its officers, agents, agencies, and departments agrees to release the Corporate Defendants, their successors, parents, affiliates, divisions, subsidiaries, and all of their current and former officers, directors, and employees, excluding Robert D. Tetik and Bonnie Tetik, from any civil monetary claim the State of Maine has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Maine False Claims Act, 22 M.R.S.A. § 15, or the common law or equitable theories of payment by mistake of fact, unjust enrichment, and fraud for claims submitted to the Maine Medicaid for the Covered Conduct.

5. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of the Settling Defendants set forth in this Consent Judgment, conditioned upon their payment in full of the Combined Settlement Amount and the Combined Attorneys Fees and Costs and subject to Paragraph 19 below (concerning bankruptcy proceedings commenced within 91 days of any payment under this Consent Judgment), Relators, for themselves and for their heirs,

successors, attorneys, agents, and assigns, agree to release the Settling Defendants, their successors, parents, affiliates, divisions, subsidiaries, and all of their current and former officers, directors, and employees, excluding Robert D. Tetik and Bonnie Tetik, from any civil monetary claim the Relators have or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733, or the IWRPA for the Covered Conduct, and from any claims that Relators asserted or could have asserted in the *Trombetta* suit, the *Freeman* suit, or the Illinois suit.

6. Notwithstanding any term of this Consent Judgment, including the releases provided in Paragraphs 2-5, specifically reserved and excluded from the scope and terms of this Consent Judgment as to any entity or person are any and all of the following:

- a. Any civil, criminal, or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Consent Judgment, any administrative liability, including mandatory and permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Consent Judgment;
- f. Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of the Corporate Defendants) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted, charged, or convicted, or who enter into a plea agreement related to the Covered Conduct;
- g. Any civil or criminal liability of Robert D. Tetik or Bonnie L. Tetik.
- h. Any state criminal liability the Corporate Defendants have or may have to the State of Illinois;

- i. Any civil or administrative liability that Corporate Defendants have or may have under any Illinois state statute, regulation, or rule not covered by the release in Paragraph 3 of this Consent Judgment;
- j. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and
- k. Any liability for failure to deliver goods or services due.

7. Conditioned upon receipt of all payments described in Paragraph 1, the Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, agree to release the United States, the State of Illinois, the State of Maine, their officers, agents, and employees, from (i) any claims arising from or relating to 31 U.S.C. § 3730, or arising from the filing of the *Trombetta* suit, the *Freeman* suit, or the *Illinois* suit, including 31 U.S.C. §§ 3730(b), (c), (d), and (d)(1), and 740 ILCS 175/1 *et seq.*; (ii) any share of the proceeds of the Civil Actions; and (iii) any share of the Combined Settlement Amount. The Relators agree and confirm that this Consent Judgment is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and 740 ILCS 175/4.

8. Conditioned upon receipt of the Combined Attorneys Fees and Costs payments described in Paragraph 1, the Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, agree to release the Settling Defendants, their successors, parents, affiliates, divisions, subsidiaries, and all of their current and former officers, agents, and employees, excluding Robert D. Tetik and Bonnie Tetik, from any liability to Relators arising from 31 U.S.C. § 3730(d), for expenses or attorneys' fees and costs.

9. EMSCO Billing Services, Inc., EMSCO Management Services, Inc., NES Holdings, Inc., NES Midwest, Inc., NES Healthcare Services, Inc., National Healthcare Services,

Inc., and National Emergency Services, Inc. have provided financial statements and/or other financial information (“Financial Statements”) to the United States in connection with the settlement described in this Consent Judgment. The United States, State of Illinois, State of Maine, and Relators (collectively “Releasers”) have relied on the accuracy and completeness of those Financial Statements and other financial information in reaching this Consent Judgment. The Corporate Defendants warrant that, to the best of their knowledge and belief, the Financial Statements and other financial information so provided were complete, accurate, and current. If any of the Releasers learn of any asset(s) in which any of the Corporate Defendants had an interest at the time of this Consent Judgment that was not disclosed to the United States or the Relators or was misrepresented in the Financial Statements or in other financial information received by the United States or Relators from the Corporate Defendants, and if such nondisclosure or misrepresentation increases the estimated net worth of any of the Corporate Defendants by \$75,000 or more, the United States may at its option: (a) rescind this Consent Judgment and reinstate the Civil Actions based on the Covered Conduct; or (b) let the Consent Judgment stand and collect the full Combined Settlement Amount plus one hundred percent (100%) of the increase in the net worth of the Corporate Defendants that was undisclosed or misrepresented. Corporate Defendants agree not to contest the right of the United States to pursue a collection action pursuant to this provision.

10. In the event that the United States, pursuant to Paragraph 9 above, opts to rescind this Consent Judgment, such rescission will be on behalf of all Releasers, and the Settling Defendants agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims

that (a) are filed by the Releasors within 90 calendar days of written notification to the Settling Defendants that this Consent Judgment has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Consent Judgment.

11. The Settling Defendants waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses 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 Consent Judgment bars a remedy sought in such criminal prosecution or administrative action. The Settling Defendants agree that this Consent Judgment is not punitive in purpose or effect. Nothing in this Paragraph or any other provision of this Consent Judgment constitutes an agreement by the United States, the State of Illinois, or the State of Maine concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

12. The Corporate Defendants fully and finally release the United States, State of Maine, State of Illinois, their agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that they have asserted, could have asserted, or may assert in the future against these parties, their agencies, employees, servants, and agents, related to the Covered Conduct and the investigation and prosecution thereof. The Settling Defendants fully and finally release the Relators, their heirs, successors, agents, and assigns, and their attorneys from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that they have asserted, could

have asserted, or may assert in the future against the Relators or their attorneys related to the Covered Conduct and the Relators and their attorneys' investigation and prosecution thereof.

13. The Combined 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 the Corporate Defendants 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. The Corporate Defendants agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the Corporate Defendants, their 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 Consent Judgment;
- (2) the United States' audits and civil and any criminal investigation(s) of the matters covered by this Consent Judgment;
- (3) The Settling Defendants' investigation(s), defense, and corrective actions undertaken in response to the United States' audits and civil and any criminal investigation(s) in connection with the matters covered by this Consent Judgment (including attorney's fees);
- (4) the negotiation and performance of this Consent Judgment;

- (5) the payments the Corporate Defendants make to the United States pursuant to the Consent Judgment and any payments that the Corporate Defendants may make to Relators, including costs and attorneys fees; and

(All costs described or set forth in this Paragraph 14.a. are hereafter referred to as “Unallowable Costs.”)

b. Future Treatment of Unallowable Costs: These Unallowable Costs shall be separately determined and accounted for by the Corporate Defendants, and the Corporate Defendants 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 the Corporate Defendants or any company owned or controlled by the Corporate Defendants to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: The Corporate Defendants further agree that within 90 days of the Effective Date of this Consent Judgment they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA, and FEHBP fiscal agents, any Unallowable Costs (as defined in Paragraph 14.a.) 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 the Corporate Defendants or any of their companies, 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. The Corporate Defendants agree that the United States, the State of Illinois, and the State of

Maine, at a minimum, shall be entitled to recoup from Corporate Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously submitted cost reports, information reports, cost statements, or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies, or if applicable, to the State of Illinois pursuant to the direction of the Office of the Illinois Attorney General or the State of Maine pursuant to the direction of the Office of the Maine Attorney General. The United States, the State of Illinois, and the State of Maine reserve their rights to disagree with any calculations submitted by the Corporate Defendants or any of their companies, subsidiaries, or affiliates on the effect of inclusion of Unallowable Costs (as defined in Paragraph 14.a.) on the Corporate Defendants' cost reports, cost statements, or information reports. Nothing in this Consent Judgment shall constitute a waiver of the rights of the United States, the State of Illinois, or the State of Maine to examine or reexamine the unallowable costs described in Paragraph 14.a.

15. The Settling Defendants agree to cooperate fully and truthfully with the Releasers' investigation of individuals and entities not released in this Consent Judgment. Upon reasonable notice, the Settling Defendants shall encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall use their 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. The Settling Defendants agree to furnish to the Releasers complete and unredacted copies of all documents, reports, memoranda of interviews, and records in their possession, custody, or

control concerning any investigation of the Covered Conduct that they have undertaken, or that has been performed by their counsel or other agent, unless such documents or records are privileged. The United States, State of Illinois, and Relators reserve their right to object to any claims of privilege by the Settling Defendants.

16. This Consent Judgment is intended to be for the benefit of the Parties and the individuals and entities released only.

17. The Corporate Defendants agree that they waive and shall not seek payment for any of the health care billings covered by this Consent Judgment 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. The Parties expressly warrant that, in evaluating whether to execute this Consent Judgment, the Parties (a) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to the Settling Defendants, within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Settling Defendants were or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

19. In the event that any of the Settling Defendants or their subsidiaries (“the Bankruptcy Debtor”) commences, or a third party commences, within 91 days of any payment

under this Consent Judgment, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, (a) seeking to have any order for relief of the Bankruptcy Debtor's debts, or seeking to adjudicate the Bankruptcy Debtor as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for the Bankruptcy Debtor or for all or any substantial part of the Bankruptcy Debtor's assets, the Settling Defendants agree as follows:

a. The Settling Defendants' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Settling Defendants shall not plead, argue, or otherwise take the position in any such case, proceeding, or action that (i) any obligation under this Consent Judgment may be avoided under 11 U.S.C. § 547; (ii) the Bankruptcy Debtor was insolvent at the time this Consent Judgment was entered into or became insolvent as a result of the payments made to the Releasers hereunder; or (iii) the mutual promises, covenants, and obligations set forth in this Consent Judgment do not constitute a contemporaneous exchange for new value given to the Settling Defendants.

b. In the event that any case, proceeding, or other action described in the first clause of Paragraph 19 is commenced and the Settling Defendants do not, or are unable to, honor the payment obligations hereunder, (i) the Releasers may assert in any such case, proceeding or other action the full alleged amount of their claim against the Bankruptcy Debtor under the False Claims Act and other federal statutes and/or common law doctrines and/or the IWRPA, and said amount shall not in any way be limited to the Combined Settlement Amount set forth in Paragraph 1 or any amount set forth in Paragraph 19, and (ii) Settling Defendants agree that the United States and State of Illinois shall hold a valid, allowed, liquidated, non-

contingent, undisputed claim against the Bankruptcy Debtor for at least \$1,147,980, less payments received by the United States and State of Illinois pursuant to this Consent Judgment; that Trombetta and her counsel hold a valid, liquidated, non-contingent, undisputed claim against the Bankruptcy Debtor for \$340,000 for Attorneys Fees and Costs less payments received by Trombetta and her counsel, and that Freeman and her counsel hold a valid, liquidated, non-contingent, undisputed claim against the Bankruptcy Debtor for \$90,000 for Attorneys Fees and Costs less payments received by Freeman and her counsel, in any case, proceeding, or other action described in the first clause of Paragraph 19, though to the extent consistent with Subparagraph 19.b. (i) above, this provision does not deprive the Settling Defendants of the right to contest any amount of the Releasers' claims in excess of the Combined Settlement Amount or Combined Attorneys Fees and Costs;

c. If and to the extent that Bankruptcy Debtor's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of any avoidance powers under the Bankruptcy Code, the United States, State of Illinois, State of Maine, or Relators (with the consent of the United States), at their sole option, may rescind the releases in this Consent Judgment, and bring any civil and/or administrative claim, action or proceeding against the Bankruptcy Debtor for the claims that would otherwise be covered by the releases provided in Paragraphs 2-5, above, with the Relators retaining all rights and interests under 31 U.S.C. § 3730.

d. If any of the Releasers choose to rescind the releases in accordance with Paragraph 19.c., the Settling Defendants agree that (i) any such claims, actions or proceedings brought by the Releasers (including any proceedings to exclude any of Settling Defendants from

participation in Medicare, Medicaid or other federal health care programs) are not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of Paragraph 19, and that the Settling Defendants shall not plead, argue, or otherwise contend that the Releasors’ claims, actions, or proceedings are subject to an automatic stay; (ii) Settling Defendants shall not seek relief under 11 U.S.C. § 105 to enjoin or restrain the Releasors from pursuing such claims, actions, or proceedings; (iii) Settling Defendants shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding which are brought by the Releasors within 90 calendar days of written notification to Settling Defendants that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the date that the Civil Actions were filed; and (iv) will not dispute, subject to all remaining applicable defenses, that the United States may assert a claim against the Settling Defendants in the amount of \$30,806,022, as well as an additional \$11,000 penalty for every false claim submitted to the United States, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

e. The Settling Defendants further agree that the express waivers and agreements set forth in this Paragraph are in consideration for the final settlement of the United States’, State of Illinois’, State of Maine’s, and Relators’ claims against them concerning the Covered Conduct. Any payments made by the Bankruptcy Debtor (described above) to and received by the United States shall be credited toward the liability of any of the other Settling Defendants. If, prior to, or during the pendency of any case, proceeding, or other action

described in the first clause of Paragraph 19, the Combined Settlement Amount is paid to the United States in full, the United States will not claim additional monies in connection with this Consent Judgment.

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

21. Settling Defendants represent that this Consent Judgment is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

22. This Consent Judgment 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 Consent Judgment shall be the United States District Court for the Northern District of Illinois and this Court shall retain continuing jurisdiction to enforce the terms of this Consent Judgment.

23. This Consent Judgment constitutes the complete agreement between the Parties. This Consent Judgment may not be amended except by written consent of the Parties and the Court.

24. Upon entry of this Consent Judgment, the claims against the Settling Defendants in the *Trombetta* suit, *Freeman* suit, and United States' complaint shall be dismissed with prejudice.

25. Within seven days of entry of this Consent Judgment, Relators Linda and James Freeman and the State of Illinois shall promptly sign and file in the *Illinois* suit a Joint

Stipulation of Dismissal with prejudice of that action pursuant to the terms of the Consent Judgment.

26. The individuals signing this Consent Judgment on behalf of Settling Defendants represent and warrant that they are authorized by Settling Defendants to execute this Consent Judgment. The individual(s) signing this Consent Judgment on behalf of the Relators represent and warrant that they are authorized by Relators to execute this Consent Judgment. The United States, State of Illinois, and State of Maine signatories represent that they are signing this Consent Judgment in their official capacities and that they are authorized to execute this Consent Judgment.

27. This Consent Judgment may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

28. This Consent Judgment is binding on the Settling Defendants' successors, transferees, heirs, and assigns.

29. All parties consent to the United States', State of Illinois', and State of Maine's disclosure of this Consent Judgment, and information about this Consent Judgment, to the public.

30. This Consent Judgment is effective on the date it is signed and entered by the district court ("Effective Date").

THE UNITED STATES OF AMERICA

PATRICK J. FITZGERALD  
United States Attorney

DATED:

BY: \_\_\_\_\_

PATRICK JOHNSON  
Assistant United States Attorney  
Northern District of Illinois  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 353-4156

DATED:

BY:

LARRY J. GOLDBERG  
Deputy Assistant Inspector General  
For Legal Affairs  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General

DATED:

BY:

Assistant Attorney General  
State of Illinois  
100 West Randolph Street  
12th Floor  
Chicago, Illinois 60601  
(312) 814-3796

BARRY S. MARAM  
Director, Illinois Department of Public Aid

BY:

\_\_\_\_\_  
Barry S. Maram  
Director, Illinois Department of Public Aid  
201 South Grand Avenue East  
Springfield, Illinois 62763  
(217) 782-7755

THE STATE OF MAINE

Maine Attorney General

DATED:

BY:

\_\_\_\_\_  
Assistant Attorney General  
Director, Healthcare Crimes Unit  
6 State House Station  
Augusta, ME 04333-0006  
(207) 287-3120

BY:

\_\_\_\_\_  
Marc Fecteau  
Director  
Surveillance and Utilization Review  
Maine Department of Human Services

EMSCO BILLING SERVICES, INC.

DATED: BY: \_\_\_\_\_

EMSCO MANAGEMENT SERVICES, INC.

DATED: BY: \_\_\_\_\_

NATIONAL EMERGENCY SERVICES, INC.

DATED: BY: \_\_\_\_\_

NES HOLDINGS, INC.

DATED: BY: \_\_\_\_\_

NES MIDWEST, INC.

DATED: BY: \_\_\_\_\_

NES HEALTHCARE SERVICES, INC.

DATED: BY: \_\_\_\_\_

NATIONAL HEALTHCARE SERVICES , INC.

DATED: BY: \_\_\_\_\_

DR. ALAN RAPPAPORT.

DATED: BY: \_\_\_\_\_

DATED: \_\_\_\_\_

EMSCO  
Inc.; NES  
Healthcare  
Services, Inc.; NES  
Rappaport

\_\_\_\_\_  
FREDERICK ROBINSON  
Counsel for EMSCO Billing Services, Inc.;  
Management Services, Inc; NES Midwest,  
Healthcare Services, Inc.; National  
Services, Inc.; National Emergency  
Holdings, Inc.; and Dr. Alan

RELATOR LINDA TROMBETTA

DATED: BY: \_\_\_\_\_

DATED: \_\_\_\_\_

RELATORS LINDA AND JAMES FREEMAN

DATED: BY: \_\_\_\_\_

DATED: \_\_\_\_\_

UNITED STATES DISTRICT COURT

ENTER:

JUDGE JOAN B. GOTTSCHALL  
United States District Judge

DATED: