



Wisconsin Physicians Service Insurance Corporation  
1717 W. Broadway—P.O. Box 8190—Madison, WI 53708



THE EPIC LIFE INSURANCE COMPANY  
A WPS Company

EPIC LIFE INSURANCE COMPANY

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March 31, 2004

Second Request

Michael Brady  
City of Milwaukee  
200 E. Wells Street  
Milwaukee, WI 53202

Dear Mr. Brady:

In 1997 WPS, on behalf of both our ASO and risk business, commenced in a group recovery effort against Fresenius National Medical Care, Inc, formerly National Medical Care, Inc (“NMC”). WPS, along with several other insurers, was able to negotiate a gross settlement of \$25 million. The settlement has been deemed reasonable by our counsel under the following circumstances:

- The settlement has been achieved without resort to filing a lawsuit. Litigation is by its nature expensive and uncertain. The expense entails not only attorneys’ fees, which could be expected to well exceed \$1 million in the event the case was tried, but also the internal cost to each company of monitoring the case and complying with discovery and other case obligations.
- The settlement amount of \$25 million is a reasonable and satisfactory recovery given the uncertainties of proof in the case. Meeting the burden of proof of damages, which depends on the analysis of huge volumes of data, and the application of that data to selected clinical records, poses many legal and logistical challenges. We simply do not know whether we would be successful in convincing a court that we had met the burden of proving substantial damages with the specificity and certainty required by the case law. While meeting such a burden is certainly possible, it is by no means assured.
- The claim period we examined was 1990 through September 1996. We chose this period because it essentially corresponded with the period that was the subject of NMC’s settlement with the federal government. This is also the period prior to Fresenius’s acquisition of NMC. We felt that we were more likely to obtain a resolution without litigation if we focused on the same period that had been covered by the federal government. The draw back to the use of this period is that the claims are relatively old, making retrieval of information difficult, which would have made discovery compliance even more cumbersome and burden of proof even

more of a challenge. We do not feel that pursuing claims after September 30<sup>th</sup> 1996 would have been beneficial for two reasons: (1) new Fresenius management would have resisted resolution challenging conduct under it's watch; (2) Fresenius entered into a corporate integrity agreement with the federal government as part of the settlement (which covered only the period through 1996), rendering the discovery of overpayment issues after that period would be less likely and not cost effective. Therefore we have concluded that the release of all claims payments to NMC entities through the period November 30, 1999 is reasonable and was and is necessary to obtain the settlement that we did.

In order for WPS to obtain your portion of the settlement, we must first have a notarized signed release from your company. I have included the required documents for your review and signature. After legal fees, your company's portion of the settlement will be approximately \$10,308.10.

Should you have questions regarding this matter, I can be reached at (608) 221-7593.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy Kominiaak", enclosed within a hand-drawn oval.

Tracy Kominiaak RN  
Medical Investigative Specialist  
Special Investigation Unit