

**IN THE CIRCUIT COURT OF ROANE COUNTY, WEST VIRGINIA**

**If You Are or Were a West Virginia Nationwide Auto Policyholder or a Passenger in the Vehicle of a West Virginia Nationwide Auto Policyholder, and Were Involved in an Accident,**

**You Could Get a Payment From a Proposed Class Action Settlement.**

*The Circuit Court authorized this Notice. It is not from a lawyer. You are not being sued.*

- A proposed Settlement has been reached in a class action lawsuit involving Nationwide insurance companies.<sup>1</sup> The Settlement Class claims that Nationwide auto policyholders and their passengers in West Virginia were not provided with the uninsured motorist (“UM”) and underinsured motorist (“UIM”) coverage they were entitled to. Nationwide denies that it did anything wrong, but it has agreed to settle the Lawsuit in order to avoid the expense and inconvenience of litigation.
- This Lawsuit could affect you if you are or were a Nationwide policyholder or a passenger in the vehicle of a Nationwide policyholder who was injured in an accident or suffered property damage from an accident from April 11, 1993 through January 31, 2007. There are some additional qualifications you must meet in order to be a Settlement Class Member. (See Question 10 below).
- If the proposed Settlement is approved and you are a Settlement Class Member, you could receive a significant sum of money if you submit a Claim Form as described in this Notice. The estimated value of the proposed Settlement is a minimum of \$75 million. Even if you are not sure you are a Settlement Class Member, you should fill out a Claim Form and send it in so that it can be determined if you qualify.
- In addition to submitting a claim, Settlement Class Members have different rights and options under the proposed Settlement. Your rights could be affected whether you act or do not act.

**Your rights and options – and the deadlines to exercise them – are explained in this Notice. Please read this Notice carefully.**

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<sup>1</sup>“Nationwide” includes (for purposes of the proposed Settlement) Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, Nationwide Property and Casualty Insurance Company, and Nationwide Assurance Company (formerly Colonial Insurance Company of Wisconsin).

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS PROPOSED SETTLEMENT</b>		
<b>You May:</b>		<b>Due Date:</b>
Submit a Claim Form	The only way to get a payment.	<b>Postmarked on or before August 24, 2009.</b>
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Nationwide about the legal claims in this case.	<b>Postmarked on or before May 26, 2009.</b>
Object	Write to the Court about what you do not like about the proposed Settlement. You must stay in the Settlement Class to object.	<b>Postmarked on or before May 26, 2009.</b>
Go to a Hearing	Ask to speak in Court about the fairness of the proposed Settlement. You must stay in the Settlement Class to appear in Court.	<b>Postmarked on or before May 26, 2009.</b>
Do Nothing	Get no payment. Give up rights.	N/A

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## BASIC INFORMATION

### 1. Why did I get this Notice?

You received this Notice because Nationwide's records indicate that you may be a Settlement Class Member. If you are a Settlement Class Member, you may be entitled to a payment.

The Court said that you should be sent this Notice because you have the right to know about this class action lawsuit and how it may affect you. The Court has not approved the proposed Settlement yet. If the Court approves the proposed Settlement and resolves any objections or appeals, a neutral administrator (the "Claims Administrator") will make payments to Settlement Class Members.

The Court in charge of the case is the Circuit Court of Roane County, West Virginia. The case is known as *Nationwide Mutual Insurance Co. v. O'Dell, et al.*, No. 00-C-37 (the "Lawsuit" or "Action").

### 2. Why is this a class action?

In a class action lawsuit, one or more people called "Class Representatives" (in this case, George O'Dell and Stacy O'Dell) sue on behalf of people who have similar claims. The people together are a class or class members. The Court must decide if it will allow the lawsuit to proceed as a class action. If it does, the Court then decides the lawsuit for everyone in the class. The Court in this Lawsuit previously approved these claims to proceed as a class action, and has preliminarily approved the claims to proceed as a class action on behalf of the "Settlement Class" (defined below) for settlement purposes only. In this case, the Class Representatives brought counterclaims and a complaint asserting the class action. The Class Representatives are therefore called the Counterclaim Plaintiffs/Plaintiffs in the Lawsuit.

### 3. What is this Lawsuit about?

West Virginia law requires insurance companies to make reasonable offers of different amounts of UM and UIM coverage to their policyholders. If an insurance company does not, then the company must increase UM and UIM coverage to match a policyholder's liability policy limits for no additional charge.

Settlement Class Members say that Nationwide did not make reasonable offers of different amounts of UM and UIM coverage to its policyholders, and that Nationwide therefore breached its insurance contracts by failing to provide at no charge the additional UM and UIM coverage that Settlement Class Members were entitled to. Nationwide says that it made a reasonable offer of UM and UIM coverage to Settlement Class Members that Settlement Class Members refused. Settlement Class Members also claim that Nationwide's conduct violated the West Virginia Unfair Trade Practices Act and violated Nationwide's duty of good faith and fair dealing to its insureds.

**4. What does Nationwide say about the Lawsuit?**

Nationwide says that it did not do anything wrong, and that it is not responsible for any of the claims made in the Lawsuit. Nationwide says that it filed this Lawsuit to ask the Court to determine whether or not its UM/UIM offerings complied with West Virginia law. Nationwide believes that it was legally entitled to ask this of the Court. Nationwide says that it did not do anything wrong in seeking the Court's opinion.

**5. Has the Court decided who is right in the Lawsuit?**

The Court has decided that Nationwide's 1999 mass mailing of offers of UM and UIM coverage to the Class Representatives was not in compliance with West Virginia law. The Court has not yet decided whether or not that led to a breach of Nationwide's contracts with its policyholders. The Court has also not yet decided whether or not Nationwide violated the West Virginia Unfair Trade Practices Act and the duty of good faith and fair dealing to its insureds.

**6. Why is there a proposed Settlement?**

Both sides believe their claims or defenses would have won in this Lawsuit. However, the Court has not decided in favor of either side. Instead, both sides agreed to a proposed Settlement to avoid the risk, delay and expense of continuing the Lawsuit. This way, Settlement Class Members will be eligible to receive compensation.

The Class Representatives, on their own behalf and on behalf of all Settlement Class Members, have entered into a "Settlement Agreement" with Nationwide. The Court has preliminarily approved this Settlement Agreement. The Class Representatives and Class Counsel think the proposed Settlement is best for all Settlement Class Members. This Notice summarizes the terms of the Settlement Agreement, your rights and obligations under the Settlement Agreement, and the process by which the Court will determine whether or not to finally approve the Settlement Agreement.

**7. What does it mean if I am a Settlement Class Member?**

If you are a Settlement Class Member, the decisions made by the Court in this Lawsuit will apply to you unless you exclude yourself from the Settlement Class. (See Questions 15 to 17 below about what it means to exclude yourself, and how to do it.) If you stay in the Settlement Class and the Court approves the proposed Settlement, you cannot sue Nationwide on your own for the claims in this Lawsuit and/or the Released Claims (defined in Appendix A). It also means that you can seek payment under the proposed Settlement.

**8. Can I file my own lawsuit or demand?**

As part of the Court's preliminary approval of the proposed Settlement entered on February 10, 2009, the Court entered an injunction/stay order that prohibits other lawsuits for the

claims made in this Lawsuit.

However, if you properly exclude yourself from this Lawsuit you can file your own lawsuit. To submit a request for exclusion from the Settlement Class you must follow the procedures set forth in this Notice (See Questions 15 to 17).

**IMPORTANT: The summary above is a simplified version of the Court’s Stay Order that is contained in Appendix B to this Notice. The Stay Order controls your legal rights and obligations.**

**9. What if I think other companies or people are responsible for my injuries or property damage?**

The proposed Settlement only applies to Nationwide, its policyholders, and those covered by Nationwide automobile insurance policies. If you think a person or company other than Nationwide owes you money or other benefits because of your injuries or property damage, you should file your own lawsuit against that person or company before time runs out. Time may run out because there is a legal time period (known as the “statute of limitations”) for filing a lawsuit. You should consult your own lawyer about the amount of time you have to file a lawsuit.

**WHO IS COVERED BY THE PROPOSED SETTLEMENT?**

**10. Am I part of the Settlement Class?**

**IMPORTANT: The summary below explains who is in the Settlement Class. It is a simplified summary of the Class definition adopted by the Court that is contained in Appendix C to this Notice. The Court’s Class definition controls whether or not you are a Settlement Class Member. You should complete and return the attached Claim Form even if you are not sure that you qualify as a Settlement Class Member. The Court has established a process for determining whether or not you qualify. You may also contact Class Counsel (See Question 20).**

*You may be a Settlement Class Member and eligible for a Settlement Payment if:*

- a. You are or were a West Virginia Nationwide auto policyholder, or a passenger in the vehicle of a West Virginia Nationwide auto policyholder, **AND**
- b. You were injured or suffered property damage in an accident that occurred from April 11, 1993 through January 31, 2007; **AND**
- c. The driver who caused your injury or property damage was an uninsured motorist (UM) or underinsured motorist (UIM). (This means that the driver either had no liability insurance or too little liability insurance to pay for all of your injuries or property damage); **AND**

- d. You submitted a claim for UM or UIM coverage to Nationwide and were:
  - i. Denied that coverage by Nationwide (you are a Settlement Class Member even if Nationwide put your claim on “hold” until the outcome of this Lawsuit), **OR**
  - ii. Provided UM or UIM coverage that was less than the liability coverage on the policy that applied to your claim; **OR**,
- e. You did not submit a UIM claim after being told or because you believed that you did not have UIM coverage through Nationwide for the injuries or property damage you suffered in the accident.

Even if you meet the above requirements, you may not qualify as a Settlement Class Member if:

- a. The owner of the insurance policy that applies to your claim (which could be you or someone else), signed a UM or UIM rejection form that complied with West Virginia law. By signing the form the right to UM or UIM coverage equal to or greater than liability coverage was given up; **OR**
- b. You made a UM or UIM claim, the policy that applied to your claim provided some amount of UM or UIM coverage, and you settled your claim for less than the full UM or UIM coverage limits of the policy; **OR**
- c. You did not make a claim for UM or UIM coverage within the Class Period (April 11, 1993 to January 31, 2007), even though the policy that applied to your claim provided some amount of UM or UIM coverage; **OR**
- d. You made or had the right to make a UIM claim against Nationwide, but:
  - i. You did not make a liability claim against the wrongdoer (the negligent driver in the accident) before the date that this Court granted preliminary approval of this proposed Settlement (February 10, 2009), **OR**,
  - ii. You made a liability claim against the wrongdoer, but you did not file a lawsuit against the wrongdoer before February 10, 2009 after having been denied any money by the wrongdoer’s insurance company; **OR**
- e. You sued the wrongdoer for your injuries or property damage and:
  - i. You did not win your suit, **OR**
  - ii. You obtained a final judgment against the wrongdoer for less than the wrongdoer’s available liability insurance coverage; **OR**

- f. You made or had the right to make a UM or UIM claim against Nationwide, and the policy that applied to your claim had “stated”<sup>2</sup> or “prior reformed”<sup>3</sup> UM or UIM coverage limits equal to or greater than that same policy’s liability coverage limits, **OR**
- g. You made or had the right to make a UM or UIM claim against Nationwide, but:
  - i. You had other UM or UIM coverage available to you under a non-Nationwide policy that you had to exhaust before you could recover anything under the Nationwide policy, and you settled your claim under the non-Nationwide policy for less than the full coverage limits of that policy, **OR**
  - ii. You filed a lawsuit to recover UM or UIM benefits under that non-Nationwide policy and did not obtain a judgment or verdict equal to or greater than the full coverage limits of that policy; **OR**
- h. You excluded yourself from this class action Lawsuit by either:
  - i. Opting out of the Trial Class previously certified by the Court (although you may opt back in by filing a Claim Form in response to this Notice); **OR**
  - ii. Filing your own separate lawsuit against Nationwide prior to February 10, 2009 for the purpose of obtaining UM or UIM coverage, where there was no coverage stated on the policy, or where the amount of the coverage was in dispute<sup>4</sup>; **OR**
- i. Your claim was released in writing prior to February 10, 2009, and you were represented by an attorney who was aware of potential deficiencies regarding the UM/UIM selection/rejection form that applied to your claim, and/or was aware of this Lawsuit; **OR**
- j. After your auto accident, but before February 10, 2009, Nationwide increased at no charge the UM or UIM coverage limits under the policy that applied to your claim to match the liability limits under the same policy. If coverage limits were increased in this way, any claims you may have had against Nationwide under this Lawsuit will be dismissed if the proposed Settlement is approved. However, this

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<sup>2</sup>“Stated” limits are those coverage limits shown on the “Declaration pages” of the applicable policy at the time of the accident or incident. “Declaration pages” are provided to policyholders and list what coverages the policyholder has.

<sup>3</sup>“Prior reformed” limits are limits that were increased by Nationwide at no charge before the date of the Settlement Agreement (February 9, 2009) to match stated liability limits.

<sup>4</sup>Any Settlement Class Member who is a named party or has intervened in this Lawsuit before the date of preliminary approval of the proposed Settlement (February 10, 2009), and any person who “opted in” to the Trial Class pursuant to the Court’s Order filed on September 4, 2007, is not excluded from the Settlement Class under this provision.

dismissal will not affect your right to pursue any existing claims that you may have against Nationwide.

#### **11. What is the Claims Submission Process?**

To be eligible for a Settlement payment, you must submit a signed Claim Form postmarked no later than August 24, 2009. A separate Claim Form must be submitted for each separate accident or incident for which you seek a Settlement payment.

The Claims Administrator will send you a letter acknowledging receipt of your Claim Form and requesting copies of relevant records that you may have in your possession (except medical records). The Claims Administrator will then also let you know if more information is required in order for your claim(s) to be processed.

If Nationwide believes that you do not qualify as a Settlement Class Member and/or that the claim identified in your Claim Form is not included in the Settlement Class, Nationwide must notify the Claims Administrator and Class Counsel and provide the reason(s) for its position in writing. If this happens, the Claims Administrator will notify you of Nationwide's position and the reason(s) for its position.

If you then wish to contest Nationwide's position, you may have the issue determined by the Class Qualification Panel. The Panel is made up of three independent and impartial West Virginia attorneys. Class Counsel may assist you in having the issue determined by the Class Qualification Panel.

The procedures and time frames that govern seeking review by the Class Qualification Panel will be provided to you by the Claims Administrator as appropriate.

### **THE TERMS AND VALUE OF THE PROPOSED SETTLEMENT**

#### **12. What is the value of the proposed Settlement?**

The proposed Settlement provides both monetary (money) and non-monetary relief as outlined below.

The Parties estimate that the money relief made available to potential Settlement Class Members under the Settlement Agreement, including attorneys' fees and costs, has a value of over \$75 million based upon:

- a. Nationwide's analysis regarding the estimated number of eligible Settlement Class Members as identified through its Settlement Class Member identification search; and
- b. Actuarial evaluation of the value of Settlement Class Members' claims.

In the event that \$75 million is not enough money for Settlement Class Member payments and attorneys' fees and costs, Nationwide will pay additional money so that all Settlement Class Members are paid in full.<sup>5</sup> If \$75 million is more than enough money for Settlement Class Member payments and attorneys' fees and costs, Nationwide will donate five percent (5%) of the extra money to a charity or non-profit organization agreed upon by Nationwide and Class Counsel and approved by the Court.

Nationwide will also pay all reasonable expenses of administering and distributing the proposed Settlement.

### **13. What does the proposed Settlement provide?**

The monetary and non-monetary benefits are summarized below. The complete proposed Settlement terms are contained in the Settlement Agreement. You can review the Settlement Agreement at the Court. You can also obtain a copy of the Settlement Agreement or information about the terms of the Settlement Agreement by contacting the Claims Administrator or visiting the website as set forth below.

#### **Monetary (Money) Benefits**

Qualifying Settlement Class Members must submit Claim Forms to be eligible to receive the money benefits of the proposed Settlement.

- **A separate Claim Form must be submitted for each separate accident or incident for which monetary relief is sought.**
- **Your completed Claim Form must be submitted to the Claims Administrator at P.O. Box 850, Hurricane, WV 25526, sent by First Class Mail, postage prepaid, postmarked no later than August 24, 2009.<sup>6</sup>**
- **If you believe that you may be a Settlement Class Member, you should not fail to submit a Claim Form because you are unable to provide all the information requested in the Claim Form. The Claims Administrator will contact you if**

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<sup>5</sup>Class Counsel have agreed that they will not apply for and will give up the right to any attorneys' fees and costs from such additional sums, except that, as explained in the Settlement Agreement, Class Counsel will be permitted to petition the Court for an additional award of attorneys' fees and costs of up to one-third (1/3) of the amount by which the money relief obtained by "Challenged Settlement Class Members" caused the total amount of money relief to exceed \$75,000,000. "Challenged Settlement Class Members" are those Settlement Class Members who submit Claim Forms and whose class member eligibility is challenged by Nationwide, who are determined to be Settlement Class Members by the Class Qualification Panel established under the Settlement Agreement.

<sup>6</sup>Claims may be submitted by any interested person on behalf of a deceased Settlement Class Member's estate. Before any funds will be distributed, the Court must approve the party submitting such a claim as the proper party to receive distribution of funds. In addition, when necessary, estates deemed entitled to benefits under the settlement must be reopened before such benefits will be paid. If a minor is a Settlement Class Member, Court approval of the final distribution to that Settlement Class Member, according to applicable West Virginia rules, will be required. Claims may also be submitted by any interested person on behalf of an incapacitated Settlement Class Member. Before any funds will be distributed, the Court must approve the party submitting such a claim as the proper party to receive distribution of funds.

**additional information is needed.**

People who submit a Claim Form as provided in this Notice and qualify as a Settlement Class Member will have a choice between two types of money benefits:

**“General Relief” or “Claims Adjustment Relief”**

(However, except for limited circumstances, any Settlement Class Members who settled with an insured wrongdoer for less than 80% of the wrongdoer’s available liability insurance limits will not be eligible for General Relief. Those Settlement Class Members will only be eligible for Claims Adjustment Relief.)

**A. General Relief**

A General Relief payment will be:

- The amount of the UM or UIM per person or single limit reformed limits<sup>7</sup>,
- Minus any UM or UIM payments Nationwide has already paid the Settlement Class Member for the injuries or damages suffered in the accident or incident,
- Plus 10% simple interest per year from the date of the accident or incident until the date that Nationwide provides the General Relief payment to the Claims Administrator for forwarding to the Settlement Class Member,
- Minus the Settlement Class Member’s share of attorneys’ fees and costs (1/3 or 33.33% of the General Relief payment, or such other percentage approved by the Court),
- Minus Medicare and Medicaid liens and/or other liens for medical bills or other expenses paid to or on behalf of a Settlement Class Member related to the accident or incident.

The formula is:

Applicable reformed UM/UIM limits – prior UM/UIM payments made + 10% simple interest per year x .6667 (or such other percentage approved by the Court) – Medicare/Medicaid/other liens = General Relief Payment

Example:

For example, if the applicable reformed UIM limits are \$50,000, the Settlement Class Member was previously paid \$20,000 by Nationwide, the interest period

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<sup>7</sup>“Reformed limits” meaning UM/UIM limits matching the per person or single-limit liability limits of the policy that applies to the Settlement Class Member’s UM/UIM claim.

is five years, and there are Medicare/Medicaid/other liens of \$0, the General Relief payment would be \$30,000. This is calculated as follows:

$$\begin{aligned} \$50,000 - \$20,000 &= \$30,000, + \text{interest of } \$15,000 \\ &= \$45,000, \times .6667 = \$30,000, - \$0 = \$30,000. \end{aligned}$$

*A Settlement Class Member's Right to Accept or Reject the General Relief Payment:*

The Claims Administrator will inform Settlement Class Members who have submitted Claim Forms and who are entitled to General Relief of the amount of their payments and of their right to:

- a. Accept the General Relief payment. In this case, the Settlement Class Member will be entitled to additional interest. The interest will cover the time from the date of the initial determination of the Settlement Class Member's General Relief payment through the date Nationwide provides the payment to the Claims Administrator for forwarding to the Settlement Class Member; or
- b. Reject the General Relief payment, and have his or her claim valued by adjustment (as provided below); or
- c. Reject the General Relief payment and opt out of the Settlement Class and keep the Settlement Class Member's right to sue individually.

**B. Claims Adjustment Relief**

Under Claims Adjustment Relief, a qualified Settlement Class Member's claim will be adjusted by an Independent Adjuster. Independent Adjusters will be qualified by experience and training to adjust property and casualty claims in West Virginia. They will have no past, present or likely future connection with Nationwide or its counsel, the Class Representatives, or Class Counsel. The appointed Independent Adjuster will investigate the claim and determine the value of the claim.

A Claims Adjustment Relief payment will be:

- The amount of the UM/UIM bodily injury or property damage claim as determined by the Independent Adjuster in accordance with the Settlement Agreement,
- Minus any UM or UIM payments Nationwide has already paid the Settlement Class Member for the injuries or damages suffered in the accident or incident,
- Plus 10% simple interest per year from the date of the accident or incident until the date that Nationwide provides the Claims Adjustment Relief payment to the Claims Administrator for forwarding to the Settlement Class Member,

- Minus the Settlement Class Member’s share of attorneys’ fees and costs (1/3 or 33.33% of the Claims Adjustment Relief payment, or such other percentage approved by the Court),
- Minus Medicare and Medicaid liens and/or other liens for medical bills or other expenses paid to or on behalf of a Settlement Class Member related to the accident or incident.

The amount of the adjusted UM/UIM bodily injury or property damage claim minus prior payments will be “capped” at three times the UM/UIM per person or single limit reformed limits applicable to the claim, before adding interest to it.

The formula for determining a Claims Adjustment Relief payment is:

The lesser of:

- Adjusted UM/UIM damages claim amount – prior UM/UIM payments made **OR**
- Three times reformed UM/UIM limits,

Plus 10% simple interest x .6667 (or such other percentage approved by the Court) – Medicare/Medicaid/other liens.

Examples:

If a) the adjusted damages are determined to be \$100,000, b) applicable reformed UIM limits are \$50,000, c) the Settlement Class Member was previously paid \$20,000 by Nationwide, d) the interest period is five years, and e) there are Medicare/Medicaid/other liens of \$0, the Claims Adjustment Relief payment would be \$80,000. Because the adjusted damages are less than three times reformed limits, this is calculated as follows:

Adjusted damages of \$100,000 – \$20,000 = \$80,000, + interest of \$40,000 = \$120,000, x .6667 = \$80,000, – \$0 = \$80,000.

Under the same scenario, except assuming adjusted damages are determined to be \$300,000, the Claims Adjustment Relief payment would be \$150,000. Since the adjusted damages (less the prior \$20,000 UIM payment) are greater than three times reformed limits, this is calculated as follows:

Three times reformed limits of \$50,000 = \$150,000, + interest of \$75,000 = \$225,000, x .6667 = \$150,000, – \$0 = \$150,000.

A Settlement Class Member’s Right to Accept or Reject the Claims Adjustment Relief

Payment:

Following the adjustment process, the Claims Administrator will inform Settlement Class Members entitled to Claims Adjustment Relief of the amount of their payment and their right to:

- a. Accept the Claims Adjustment Relief payment. In this case, the Settlement Class Member will be entitled to additional interest. This interest will cover the time from the date of the initial determination of the Settlement Class Member's Claims Adjustment Relief payment through the date Nationwide provides the payment to the Claims Administrator for forwarding to the Settlement Class Member; or
- b. Accept the General Relief payment previously offered (if the Settlement Class Member is entitled to choose General Relief), with interest through the date that the Claims Administrator previously offered the General Relief payment to the Settlement Class Member; or
- c. Reject both the Claims Adjustment Relief payment and the previously offered General Relief payment (if any) and opt out of the Settlement Class, keeping the Settlement Class Member's right to sue individually.

**Equitable (Non-Money) Benefits**

Background

Nationwide sent mass mailings in 1993 and 1999 attempting to give policyholders the opportunity to select or reject additional UM or UIM coverage. After those mailings, Nationwide denied or failed to pay certain UM or UIM claims because Nationwide assumed that the person filing the claim rejected the additional UM or UIM coverage offered in the 1993 and 1999 mailings on purpose. Nationwide thought this because these people did not return the forms included in the 1993 and 1999 mass mailings within 30 days of receiving the mailings.

Non-Monetary Benefits of the Proposed Settlement

Going forward, as part of the proposed Settlement, the Court will order that Nationwide should not assume that a person filing a claim received an effective offer of additional UM/UIM coverage just because he or she did not return the form included in the 1993 or 1999 mass mailings within 30 days of receiving those mailings. Nationwide also cannot assume that that person rejected the offer on purpose by failing to return the form.

In addition, as part of the proposed Settlement, Nationwide says that, as of January 31, 2007, it no longer denies any UM or UIM claim based on the contention that

its 1993 or 1999 mass mailings were valid offers of optional levels of UM/UIM coverage as required by West Virginia law.

Further, as part of the proposed Settlement, Nationwide sent a mass mailing in 2007 to all its current West Virginia auto policyholders. The mass mailing gave policyholders an opportunity to buy or not buy different amounts of UM and UIM insurance coverage. This opportunity is required by West Virginia law. Policyholders could select UM and UIM coverage by filling out and sending in a form. The UM and UIM coverage that a policyholder chose became effective immediately once Nationwide received the form back.

During the course of the 2007 mailing, Nationwide provided UM and UIM coverage equal to each policyholder's liability coverage limits even if the policyholder did not pay for that much UM/UIM coverage. Nationwide did this until it received a policyholder's form back or until 30 days after a policyholder received the 2007 mass mailing, whichever was earlier. However, Nationwide only provided additional UM/UIM coverage if a policyholder's UM and UIM limits were NOT already equal to or greater than their liability coverage limits. If they were already equal to or greater, then the policyholder's UM and UIM limits remained in effect.

## RELEASE OF RIGHTS AND DISMISSAL OF LAWSUIT

### 14. What am I giving up if I remain a Settlement Class Member?

If you remain in the Lawsuit you give up all the claims covered in this Lawsuit and Settlement against Nationwide and its related entities. This means you are releasing Nationwide, and you will be bound by that release. You cannot sue Nationwide for the same claims.

This also means that your heirs or anyone who legally represents you, now or in the future, also give up their claims as covered in this Lawsuit and Settlement. They cannot sue Nationwide and its related entities for these claims.

**IMPORTANT: The full Release, attached as Appendix A to this Notice, will control your legal rights. You should read it very carefully, and contact the Claims Administrator or Class Counsel if you have any questions.**

**If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class according to the steps in this Notice, you will be bound by the proposed Settlement, including the Release and dismissal with prejudice,<sup>8</sup> whether or not you submit**

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<sup>8</sup>A lawsuit dismissed "With Prejudice" means that the lawsuit cannot be re-filed.

**a Claim Form.<sup>9</sup>**

**EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT**

*If you do not want to seek monetary relief from this proposed Settlement, but you want to keep the right to sue Nationwide on your own about the legal issues released and dismissed by this proposed Settlement, then you must take steps to get out of this Lawsuit.*

**15. Can I get out of the proposed Settlement?**

Yes. You can get out of the proposed Settlement and the Settlement Class. This is called excluding yourself from—or is sometimes referred to as “opting out” of—the Settlement Class.

If you exclude yourself, the statute of limitations (which is the time period within which a lawsuit must be filed) may continue to run. This means you may run out of time to file your own lawsuit about any claims you may have against Nationwide that are the subject of the Lawsuit. If you decide to exclude yourself, you are encouraged to talk to a lawyer (at your own expense) about the time you have to file your own lawsuit.

**16. How do I exclude myself from the proposed Settlement?**

To exclude yourself from the Settlement Class, you must make your request in writing. Your request for exclusion must contain the following:

- a. The name of the case - “Nationwide West Virginia UM/UIM Settlement;”
- b. Your full name;
- c. The applicable Nationwide policy number (if known);
- d. Your mailing address;
- e. You must say that you want to be excluded from the Settlement Class; and
- f. Your signature (or the signature of your authorized representative)

A separate request for exclusion must be submitted by each person requesting exclusion.

Any written request for exclusion must be sent by First-Class Mail, postage prepaid, **and postmarked no later than May 26, 2009**, and addressed to the Claims Administrator at:

Claims Administrator  
WV Nationwide UM/UIM Class Action  
P.O. Box 850  
Hurricane, WV 25526

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<sup>9</sup>If this Notice is not mailed to your last known address (as provided in the Settlement Agreement) and you do not submit a Claim Form or make some other written inquiry or submission, you will not be bound by the proposed Settlement.

**If you do not exclude yourself by the deadline and you do not submit a Claim Form in time, you will not be able to exclude yourself and you will be bound by the Court's rulings.**

**17. If I exclude myself, can I get any money from the proposed Settlement?**

If you exclude yourself, you cannot get money from the proposed Settlement.

**OBJECTING TO THE PROPOSED SETTLEMENT**

**18. How do I object to the proposed Settlement?**

You may remain a member of the Settlement Class and object to the proposed Settlement if you do not exclude yourself. You may object to any aspect of the proposed Settlement, including:

- Final certification of the Settlement Class
- The fairness, reasonableness, or adequacy of the proposed Settlement
- The adequacy of the representation by the Class Representatives or by Class Counsel
- The request of Class Counsel for fees, costs and expenses and awards to the Class Representatives

Your objection must be in writing and include:

- a. The name of the case—"Nationwide West Virginia UM/UIM Settlement;"
- b. Your name;
- c. Your policy number (if known);
- d. Your address and telephone number;
- e. A statement of your objection(s), as well as the specific reasons for each objection, including any legal authority you wish to bring to the Court's attention;
- f. A statement indicating if you intend to appear at the Fairness Hearing; and
- g. A list of witnesses whom you may call by live testimony and copies of any documents or papers that you plan to submit.

**Your objection must be sent by First-Class Mail, postage prepaid, and be postmarked no later than May 26, 2009. You must file your objection with the Court at the following address:**

Circuit Court of Roane County  
Roane County Courthouse  
P.O. Box 122  
Spencer, WV 25276

**You must also mail a copy of your objection to:**

Class Counsel

Scott S. Segal  
Victor S. Woods  
The Segal Law Firm  
810 Kanawha Blvd., East  
Charleston, WV 25301

Nationwide's Counsel

John Marino  
Fowler White Boggs PA  
50 North Laura Street, Suite 2200  
Jacksonville, FL 32202

Judge Nibert

The Honorable David W. Nibert  
Mason County Courthouse  
200 Sixth Street  
Point Pleasant, WV 25550

If you do not follow these procedures and submit your objection by the deadline, the Court will not hear your objection.

**19. What is the difference between excluding and objecting?**

Objecting is telling the Court that you do not like something about the proposed Settlement. You can only object if you stay in the Settlement Class. If the Court approves the proposed Settlement, you will have the same rights and obligations under the proposed Settlement as any other Settlement Class Member. You may also submit a Claim Form even if you object to the proposed Settlement.

Excluding yourself from the Settlement Class means that the proposed Settlement no longer applies to you. You cannot receive monetary relief under the proposed Settlement or object to the proposed Settlement.

**THE LAWYERS REPRESENTING YOU — CLASS COUNSEL**

**20. Do I have lawyers in this Lawsuit and how will they get paid?**

Yes. The Court has appointed the following lawyers and law firms (“Class Counsel”) to represent you and other Settlement Class Members:

The Segal Law Firm  
A Legal Corporation  
Scott S. Segal  
Victor S. Woods  
Samuel A. Hrko  
810 Kanawha Blvd., East  
Charleston, WV 25301  
(304) 344-9100

Berger & Montague  
A Legal Corporation  
Peter R. Kahana  
Steven L. Bloch  
1622 Locust Street  
Philadelphia, PA 19103

Wiseman Law Office  
Todd S. Wiseman  
7000 Grand Central Avenue  
Vienna, WV 26105  
(304) 428-3006

Ralph E. Troisi  
317 Garrison Lane  
Waverly, WV 26184  
(304) 679-5179

The Merlin Law Group  
A Legal Corporation  
William F. Merlin, Jr.  
777 S. Harbour Island Blvd., Suite 950  
Tampa, FL 33602

At the Fairness Hearing (discussed in Question 22 below), the Court will decide if it should approve the proposed Settlement. It will also decide whether or not to approve Class Counsel’s request for \$25,000,000 in attorneys’ fees and costs. This represents one-third of the estimated minimum of \$75,000,000 that will be made available to Settlement Class Members under the proposed Settlement.

Class Counsel will also ask the Court to approve payments of \$50,000 to each of the Class Representatives for their services. The fees and payments will pay Class Counsel and the Class Representatives for investigating the facts and litigating the Lawsuit, negotiating the proposed Settlement, and monitoring Settlement Class Members’ rights during approval and administration of the proposed Settlement. Nationwide has agreed not to oppose these payments.

**21. Should I get my own lawyer?**

Since the Court has appointed Class Counsel to represent you and other Settlement Class Members, you do not have to get a lawyer to represent you in the Lawsuit. However, you can hire your own lawyer, at your expense, if you wish.

## THE COURT'S FAIRNESS HEARING

### **22. When and where will the Court decide whether to approve the proposed Settlement?**

The Court will hold a Fairness Hearing at 1:00 p.m., **on June 25, 2009**, at the Roane County Circuit Court, Roane County Courthouse, 200 Main Street, Spencer, WV, 25276. At this hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate and if it should be approved. If there are objections, the Court will also consider them. The Court will also consider whether to approve the request by Class Counsel for attorneys' fees and reimbursement of expenses and for payments to the Class Representatives.

Persons who have followed the procedures described below may appear and be heard by the Court. After the hearing, the Court will decide whether to approve the proposed Settlement. It is not known how long these decisions will take.

### **23. Do I have to come to the hearing?**

No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send a timely and proper objection, the Court will consider it whether or not you attend the hearing. You may also pay your own lawyer to attend, but it is not required.

### **24. May I speak at the hearing? How do I appear in the Lawsuit?**

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must notify the Court and Parties in writing. This is called a Notice of Intent to Appear. Your Notice of Intent to Appear must contain:

- a. The name of the case - "Nationwide West Virginia UM/UIM Settlement";
- b. "Notice of Intent to Appear";
- c. Your full name, address, telephone number, and signature; and
- d. If counsel will appear on your behalf, the counsel's full name, address, telephone number, and bar number.

**Your Notice of Intent to Appear must be sent by First-Class Mail, postage prepaid, and be postmarked no later than May 26, 2009. You must file your Notice of Intent to Appear by sending it to the same addresses listed in Question 18 of this Notice. You cannot speak at the hearing if you exclude yourself from the Settlement Class.**

## WHAT IF I DO NOTHING?

### **25. What happens if I do not do anything at all?**

If you are a Settlement Class Member and you do nothing, you will get no money from

the proposed Settlement. Unless you exclude yourself, you will be bound by the proposed Settlement if it is approved by the Court, including the release and dismissal with prejudice.

### **TAX CONSEQUENCES**

**26. Could there be tax consequences?**

Yes. Part or all of the money payments described above could be taxable to you. Those tax consequences may vary, depending upon your individual circumstances. You should consult your own tax advisor regarding any tax consequences of the proposed Settlement. You may have tax reporting obligations if you get a payment from the Lawsuit.

### **CONFIDENTIALITY**

**27. Will my social security number, medical information, and other personal information be kept confidential?**

Yes. The Court has ordered that names, addresses, social security numbers, policy numbers, accident, medical, income and other information are confidential. No person, other than individuals employed by Nationwide, or to whom Nationwide has expressly permitted access, shall be allowed access to any information except:

- a. Class Counsel, and attorneys, consultants and clerical personnel employed by Class Counsel, and/or agents or employees of any such persons or entities.
- b. The Claims Administrator, and personnel employed by the Claims Administrator, including Independent Adjusters, and/or agents or employees of any such persons or entities.
- c. The Class Qualification Panel and/or the Lien Resolution Administrator, and/or agents or employees of any such persons or entities.
- d. Such other persons as the Court may order after hearing and notice to all counsel of record.

**GETTING MORE INFORMATION**

**28. What if I have questions or want more information?**

All questions concerning this Notice, the Claim Form attached to this Notice, and any other questions and requests for information should be addressed as follows:

Claims Administrator  
WV Nationwide UM/UIM Class Action  
P.O. Box 850  
Hurricane, WV 25526

Information is also available by calling toll-free to 1-877-562-7599, or online at

**[www.WVNationwideClassAction.com](http://www.WVNationwideClassAction.com)**

**Please do not write or telephone the Court or Nationwide for information about the proposed Settlement or this Lawsuit. All inquiries should be directed to the Claims Administrator as indicated above.**

**Honorable David W. Nibert, Chief Judge  
Roane County Circuit Court**

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## **APPENDIX A - RELEASE<sup>10</sup>**

**(If you have a question about this Release, contact Class Counsel or consult an attorney).**

The Counterclaim Plaintiffs/Plaintiffs, Class Representatives and all other Settlement Class Members (except Settlement Class Members to Whom Mail Notice is Not Effectuated and those Settlement Class Members who are recognized by the Court as excluded from the Settlement Class) hereby expressly acknowledge and agree, on their own behalf and on behalf of each of their respective heirs, trustees, executors, administrators, principals, beneficiaries, representatives, agents, and present and former officers, directors, employees, insureds, attorneys, contractors, predecessors, successors, parent companies, subsidiaries, divisions, affiliates, and assigns, and/or anyone claiming through them or acting or purporting to act for them or on their behalf, that they release and discharge the Released Parties (as defined below) of and from all Released Claims (as defined below) and shall not now or hereafter initiate, maintain, or assert against any of the Released Parties, either directly or indirectly, derivatively, on their own behalf, on behalf of the Settlement Class, or on behalf of any other person or entity any right, liability, claim, or cause of action arising out of or relating to the Released Claims.

“Released Parties” means collectively Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, Nationwide Property and Casualty Insurance Company, and Nationwide Assurance Company (formerly Colonial Insurance Company of Wisconsin), and each and all of their present and former affiliates, related companies, parent companies, subsidiaries, predecessors, successors or assigns, whether or not named herein, and each and all of their respective past, present or future officers, directors, associates, stockholders, controlling persons, representatives, employees, attorneys, accountants, financial or investment advisors or agents, insurers, heirs, executors, trustees, general or limited partners or partnerships, personal representatives, estates or administrators.

“Released Claims” mean and include:

- any and all rights, claims for relief or causes of action pursuant to any theory of recovery,<sup>11</sup>

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<sup>10</sup>Capitalized terms in this Release shall have the defined meaning provided in this Release, the Notice, and/or the Settlement Agreement.

<sup>11</sup>Such claims for relief and causes of action include, by example and without limitation, claims for breach of contract, breach of the duty of good faith and fair dealing, negligence, bad faith, willful and wanton conduct, breach of statutory duties, actual or constructive fraud, intentional or negligent misrepresentations, fraudulent inducement, outrageous conduct, statutory and consumer fraud, breach of fiduciary duty or quasi-fiduciary duty, unfair or deceptive business or trade or insurance acts or practices, insurance premium overcharges or a refund or

including but not limited to claims based in contract or tort, common law or equity, and federal, state, or local law, statute, ordinance, rule or regulation, whether known or unknown, alleged or not alleged in the Lawsuit, suspected or unsuspected, contingent or matured,

- which the Counterclaim Plaintiffs/Plaintiffs, Class Representatives or any Settlement Class Member (except Settlement Class Members to Whom Mail Notice is Not Effectuated and those Settlement Class Members who are recognized by the Court as excluded from the Settlement Class) had, now have, or may in the future have with respect to any conduct, act, omission, fact, matter, transaction, or oral or written statement or occurrence prior to the Final Order and Judgment entered in the Lawsuit,
- involving, based on, arising out of, related to, or in any way connected with, directly or indirectly, covered auto accidents or incidents that occurred during the Class Period where Nationwide denied and/or failed to provide UM or UIM coverage, or provided UM or UIM coverage with limits less than the stated bodily injury or property damage liability limits of the policy, absent a legally-compliant waiver of the optional coverages required to be offered under West Virginia Code § 33-6-31(b), including instances where Nationwide relied upon its 1993 or 1999 mass mailings and/or Non-Compliant Waivers of UM/UIM Coverage.<sup>12</sup>

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rebate of premiums, anticipatory repudiation, restitution, rescission, disgorgement, reformation, injunctive or declaratory relief, claims for compensatory, consequential, and punitive or exemplary damages, damages based on statutory violations, remedies, or penalties, damages in excess of actual damages, damages for physical or bodily injury, or other injuries to person, property, or psyche, damages for emotional distress or mental anguish, lost wages, loss of income, attorneys' fees, interest, costs, penalties, and any other damages.

<sup>12</sup> "Non-Compliant Waiver of UM/UIM Coverage" refers to a selection/rejection form which purports to give up an insured's right to UM/UIM coverage in amounts required to be offered under West Virginia Code § 33-6-31(b), but which does not comply with West Virginia law.

## **APPENDIX B – STAY ORDER**

All Settlement Class Members (except Settlement Class Members to Whom Mail Notice is Not Effectuated), unless and until they have been recognized by the Court as excluded from the Settlement Class, are hereby preliminarily enjoined: (i) from filing, commencing, prosecuting, intervening in, or participating as a plaintiff, claimant or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of action or the facts and circumstances relating thereto, in the Lawsuit and/or the Released Claims; (ii) from filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any Settlement Class Members who have not been recognized by the Court as excluded from the Settlement Class (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in the Lawsuit and/or the Released Claims; and (iii) from attempting to effect an opt out of a class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in the Lawsuit and/or the Released Claims.

The Stay Order shall expire ten (10) business days after submission of a request for exclusion, as indicated by the postmark date of such request submitted to the Claims Administrator, as to any Settlement Class Member who submits a timely, written request for exclusion from the Settlement Class complying with this Order. To the extent not otherwise tolled by the pendency of this Lawsuit, the statute(s) of limitation applicable to any claim subject to the Stay Order shall be tolled from the entry of this Order until the expiration of the Stay Order as to such claim.

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## APPENDIX C – CLASS DEFINITION

All persons who were:

- (i) an insured or Definitional Insured<sup>13</sup> under a Nationwide West Virginia auto insurance policy;
- (ii) involved in a covered auto accident or incident during the Class Period<sup>14</sup>;
- (iii) injured by or suffered property damage by the acts of, an uninsured motorist (“UM”) or underinsured motorist (“UIM”) in the accident or incident; and
- (iv) denied or not provided<sup>15</sup> UM or UIM coverage for the accident or incident by Nationwide, or provided UM or UIM coverage for the accident or incident by Nationwide with limits less than the stated<sup>16</sup> bodily injury (“BI”) or property damage (“PD”) liability limits of the policy, where Nationwide lacked a legally-compliant waiver of the optional coverages required to be offered under West Virginia Code § 33-6-31(b), including instances where Nationwide relied upon its 1993 or 1999 mass mailings and/or a Non-Compliant Waiver of UM/UIM Coverage.<sup>17</sup>

The following claims are not included in the Settlement Class or within the scope of the proposed settlement:

1. Claims where the right to UIM coverage or additional UM/UIM coverage equal to liability limits was waived by the signing of a compliant (complying with West

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<sup>13</sup>“Definitional Insured” means a person, except a bailee for hire and any person specifically excluded by a restrictive endorsement to the applicable insurance policy, using the subject motor vehicle with the consent of the named insured or his or her spouse or resident of the named insured’s household (“resident relative”), and any person occupying a vehicle that is owned by a named insured, is a substitute or replacement vehicle (as defined by the applicable insurance policy) of the named insured, or is a non-owned vehicle being driven by the named insured, the spouse of the named insured, or a resident relative of the named insured, that is not furnished for that person’s regular use.

<sup>14</sup>“Class Period” means April 11, 1993 through January 31, 2007.

<sup>15</sup>Reference to Nationwide denying or not providing coverage based upon the 1993 or 1999 mass mailings and/or non-compliant waivers includes, without limitation, circumstances where the insured or Definitional Insured (i) never filed a UIM claim where the subject policy provided no stated UIM coverage, and/or (ii) was subjected to Nationwide putting decisions regarding their claims on “hold” pending the outcome of this litigation.

<sup>16</sup>“Stated” policy limits are those coverage limits reflected on the declaration pages of the applicable policy at the time of the subject accident or incident.

<sup>17</sup>“Non-Compliant Waiver of UM/UIM Coverage” refers to a selection/rejection form which purports to give up an insured’s right to UM/UIM coverage in amounts required to be offered under West Virginia Code § 33-6-31(b), but which does not comply with West Virginia law.

Virginia law) selection/rejection form giving up the right to the UIM coverage and/or additional UM/UIM coverage;

2. Claims where the applicable policy provided stated UM/UIM BI coverage, and the claimant settled for less than the stated UM/UIM BI limits;
3. Claims where the applicable policy provided stated UM/UIM PD coverage, and the claimant settled for less than the stated UM/UIM PD limits;
4. Claims where the applicable policy provided stated UM/UIM BI coverage at the time of the accident or incident, and the claimant did not make a claim for UM/UIM BI coverage within the Class Period;
5. Claims where the applicable policy provided stated UM/UIM PD coverage at the time of the accident or incident, and the claimant did not make a claim for UM/UIM PD coverage within the Class Period;
6. Claims for UIM BI coverage where the claimant did not assert a BI liability claim against the purported underinsured motorist prior to the date of Preliminary Approval of the settlement, or asserted such claim and failed to bring a civil action prior to such date after having been denied any money by the purported underinsured motorist's liability insurer;
7. Claims for UIM PD coverage where the claimant did not assert a PD liability claim against the purported underinsured motorist prior to the date of Preliminary Approval of the settlement, or asserted such claim and failed to bring a civil action prior to such date after having been denied any money by the purported underinsured motorist's liability insurer;
8. Claims for UIM BI coverage where the claimant brought a BI liability action against the purported underinsured motorist and in which there was a final judgment for the purported underinsured motorist, or in which the claimant obtained a final judgment for less than the purported underinsured motorist's available liability insurance limits;
9. Claims for UIM PD coverage where the claimant brought a PD liability action against the purported underinsured motorist and in which there was a final judgment for the purported underinsured motorist, or in which the claimant obtained a final judgment for less than the purported underinsured motorist's available liability insurance limits;
10. UIM BI claims where the stated or prior reformed<sup>18</sup> UIM BI limits of the

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<sup>18</sup>“Prior reformed” limits are coverage limits for either UM BI, UM PD, UIM BI and/or UIM PD that were increased by Nationwide at no charge prior to February 10, 2009 to match the insured's stated liability limits under

applicable policy were equal to or greater than the stated BI liability limits of the same policy;

11. UIM PD claims where the stated or prior reformed UIM PD limits of the applicable policy were equal to or greater than the stated PD liability limits of the same policy;
12. UM BI claims where the stated or prior reformed UM BI limits of the applicable policy were equal to or greater than the stated BI liability limits of the same policy;
13. UM PD claims where the stated or prior reformed UM PD limits of the applicable policy were equal to or greater than the stated PD liability limits of the same policy;
14. Claims where the claimant had primary UM/UIM coverage under another policy and settled the claim without exhausting that coverage, or brought an action to obtain payment under such coverage and failed to obtain a judgment or verdict in an amount equal to or greater than the applicable limits of such primary UM/UIM coverage;
15. The claims of persons who have Constructively Opted Out<sup>19</sup> of the Settlement Class, and of persons who opted out of the Trial Class<sup>20</sup> previously certified in connection with this Action who do not withdraw their opt outs by submitting a Claim Form; and
16. Claims released in writing prior to the date of Preliminary Approval (February 10, 2009) by a claimant who was represented by counsel who was aware of (i) potential deficiencies regarding the pertinent selection/rejection form and/or 1993 or 1999 mass mailing, or (ii) the Action.

Excluded from the Settlement Class are (i) Nationwide, any entity in which Nationwide has a controlling interest, and all employees of Nationwide who were involved in the negotiation or preparation of the settlement of this Action, (ii) members of the judiciary of West Virginia who were involved in the adjudication of this matter, and (iii) Class Counsel and their employees.

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the applicable policy. “Prior reformed” limits are different from reformed UM/UIM coverage limits provided for in the Agreement.

<sup>19</sup>“Constructively Opting-Out” means the filing of a separate civil action prior to February 10, 2009 for the purpose of securing uninsured or underinsured motorist coverage, where there is no coverage stated on the policy, or where there is coverage stated on the policy but the amount of the coverage is in dispute.

<sup>20</sup>“Trial Class” means the trial class previously certified in the Lawsuit pursuant to the Court’s Order of September 4, 2007.