

IN THE CIRCUIT COURT OF ROANE COUNTY, WEST VIRGINIA

**NATIONWIDE MUTUAL INSURANCE COMPANY,
Plaintiff/Counterclaim Defendant,**

v.

**Civil Action No. 00-C-37
(Judge David W. Nibert)**

**GEORGE G. O'DELL, JR. and STACY McKOWN O'DELL,
Defendants/Counterclaim Plaintiffs.**

and

**CHAD DAVID KENNY and BOBBIE DAWN KENNY,
Plaintiffs,**

v.

**NATIONWIDE MUTUAL INSURANCE COMPANY,
Defendant.**

and

**GEORGE G. O'DELL, JR. and STACY McKOWN O'DELL,
Plaintiffs,**

v.

**NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,
NATIONWIDE PROPERTY AND CASUALTY INSURANCE COMPANY,
and NATIONWIDE ASSURANCE COMPANY (formerly known as
COLONIAL INSURANCE COMPANY OF WISCONSIN),
Defendants.**

SETTLEMENT AGREEMENT

This Settlement Agreement, submitted pursuant to Rule 23 of the West Virginia Rules of Civil Procedure, is entered into on the 9th day of February, 2009, between Defendants and Counterclaim Plaintiffs/Plaintiffs George G. O'Dell, Jr. ("O'Dell") and Stacy McKown O'Dell ("McKown") (collectively, the "O'Dells" or the "Class Representatives"), individually and on behalf of others similarly situated, and Plaintiff/Counterclaim Defendant Nationwide Mutual

Insurance Company and Defendants Nationwide Mutual Fire Insurance Company, Nationwide Property and Casualty Insurance Company, and Nationwide Assurance Company (formerly Colonial Insurance Company of Wisconsin) (collectively, “Nationwide”). The aforesaid persons and entities are collectively referred to herein as “the Parties.”

Recitals

WHEREAS, Nationwide Mutual Insurance Company (“Nationwide Mutual”) began this lawsuit by filing a declaratory judgment action against the O’Dells individually, seeking the Court’s decision that Nationwide made a commercially reasonable offer of underinsured motorist (“UIM”) coverage to O’Dell, and that O’Dell knowingly and intelligently waived that coverage by failing to respond to 1993 and 1999 mass mailings of offers of uninsured motorist (“UM”) and UIM coverage pursuant to West Virginia Code Sections 33-6-31 and 33-6-31d, and that, as a result, the O’Dells had no UIM coverage for injuries they suffered in an accident on April 22, 2000.

WHEREAS, the O’Dells, at first individually, and later as representatives of classes of Nationwide insureds similarly situated, denied that Nationwide Mutual made such commercially reasonable offers, and filed counterclaims against Nationwide Mutual alleging that it breached its contracts of insurance with insureds by failing to provide UM and/or UIM coverage, and that Nationwide Mutual’s conduct violated the West Virginia Unfair Trade Practices Act and Nationwide Mutual’s duty of good faith and fair dealing to its insureds.

WHEREAS, a Trial Class was certified, and a notice program pursuant to that certification was approved by the Court on August 30, 2007.

WHEREAS, the Parties have engaged in much arm’s-length negotiation and numerous mediation sessions and have now agreed to a settlement of all their claims arising out of this

Action.

WHEREAS, the Class Representatives seek to represent the Settlement Class defined below under Rule 23(b)(3) of the West Virginia Rules of Civil Procedure.

WHEREAS, the Parties agree that all Settlement Class Members shall have the right to exclude themselves (“Opt Out”) from the Settlement Class under Rules 23(d) and 23(c)(2) of the West Virginia Rules of Civil Procedure, as provided in this Settlement Agreement.

WHEREAS, this Settlement Agreement is based upon, in part: (1) identification of potential class members and other data produced by Nationwide to Class Counsel, and representations related thereto; (2) data and representations in public filings and in discovery responses by Nationwide Mutual in this and other cases; and (3) statistical and actuarial analyses.

WHEREAS, Class Counsel have performed their own thorough investigation of the facts and law surrounding this Action, including extensive formal and informal discovery in addition to statistical and actuarial analysis, and have adequately assessed the merits of the Parties’ respective claims and defenses.

WHEREAS, based on the foregoing, and on the analysis of the benefits which this Settlement Agreement makes available to the Settlement Class and the litigation risks inherent in this Action in the event this Settlement Agreement is not consummated, Class Counsel consider it to be in the best interests of the Settlement Class to enter into this Settlement Agreement, and consider this Settlement Agreement to be fair, reasonable and adequate.

WHEREAS, Nationwide, while not admitting and expressly denying any liability or wrongdoing, has concluded that it is in its best interests to settle this Action on the terms set forth herein in order to avoid litigation expense, risk, inconvenience and interference with its ongoing business operations.

WHEREAS, the Parties agree that, by entering into this Settlement Agreement, no Party shall be deemed to have admitted in any way any claims or contentions made by any other Party, nor to have diminished in any way the validity of any claim or contention asserted by any Party with respect to this Action.

NOW, THEREFORE, the Parties have agreed to settle all claims in this matter on the following terms and conditions, subject to the Court's approval (and appellate review, if any) that this Settlement Agreement is a fair, reasonable and adequate settlement under West Virginia Rule of Civil Procedure 23(e):

Section 1. Definitions

For purposes of this Settlement Agreement, the following definitions shall apply:

1.01. “**Action**” means Nationwide Mutual Insurance Company v. George G. O’Dell, Jr. and Stacy McKown O’Dell, Civil Action No. 00-C-37, which is pending in the Circuit Court of Roane County, West Virginia.

1.02. “**Adjusted UM/UIM Damages Claim Amount**” means the total amount of personal injury, wrongful death and/or property damages that a Claimant would be legally entitled to recover from the uninsured or underinsured motorist, excluding interest, less, in the case of a UIM claim, the underinsured motorist’s liability policy limits¹ or the available allocation of those underlying liability limits in the event that multiple claimants made multiple claims against either a single limit policy or a policy with per person/per occurrence limitations that did not allow for the payment of per person limits to each claimant.

1.03. “**Claimant**” means any person who timely completes and sends a Claim Form to the Claims Administrator as set forth herein.

¹Unless deducting the underinsured motorist’s available liability policy limits would

1.04. “**Claim Form**” means the “West Virginia Nationwide UM/UIM Class Action Settlement Claim Form” that Claimants must sign and submit to assert a claim for monetary relief as provided for in this Settlement Agreement, in a form which shall be agreed to by the Parties and approved by the Court.

1.05. “**Claims Adjustment Relief**” means the monetary relief a Claimant may be entitled to after adjustment of his or her claim under the provisions of this Settlement Agreement.

1.06. “**Claims Adjustment Relief Settlement Payment**” means the Settlement Payment to which a Claimant may be entitled under Claims Adjustment Relief.

1.07. “**Claims Administrator**” means the third party class action settlement administration firm retained by Nationwide and approved by the Court from time to time to fulfill the functions of the “Claims Administrator” under this Settlement Agreement. The Parties shall mutually agree upon the selection of a Claims Administrator to recommend to the Court.

1.08. “**Claims Excluded From the Settlement Class Based Upon Prior Reformed Coverage**” means claims that are not included in the Settlement Class due to having “prior reformed” limits, i.e., coverage limits for either UM BI, UM PD, UIM BI and/or UIM PD that were increased by Nationwide prior to the date of this Settlement Agreement to match the insured’s stated liability limits under the applicable policy. “**Persons Excluded From the Settlement Class Based Upon Prior Reformed Coverage**” refers to persons with “Claims Excluded From the Settlement Class Based Upon Prior Reformed Coverage”. “Prior reformed” limits are different from reformed UM/UIM coverage limits provided for in this Settlement Agreement.

1.09. “**Class Counsel**” means THE SEGAL LAW FIRM, L.C. (Scott S. Segal, Victor

result in a double deduction.

S. Woods, Samuel A. Hrko), BERGER AND MONTAGUE, P.C. (Peter R. Kahana, Steven L. Bloch), THE WISEMAN LAW OFFICE (Todd S. Wiseman), Ralph E. Troisi, and THE MERLIN LAW GROUP (William F. Merlin, Jr.). “Class Counsel” at one time also included William E. Kiger, deceased, who was a member of Class Counsel prior to his death.

1.10. “**Class Definition Elimination Rule**” or “**Elimination Rule**” refers to any one of the numbered paragraphs of the Settlement Class definition which describe claims not included in the Settlement Class.

1.11. “**Class Period**” means April 11, 1993 through January 31, 2007.

1.12. “**Class Qualification Panel**” means the three-member panel of impartial West Virginia attorneys established and appointed pursuant to this Settlement Agreement to hear a Claimant’s contest of (a) Nationwide’s position that the Claimant does not qualify as a Settlement Class Member and/or that the claim identified in the Claimant’s Claim Form is not included in the Settlement Class due to the fact that the Claimant’s claim fails to meet the Settlement Class definition; and/or (b) Nationwide’s position that the Claimant does not qualify for General Relief. Class Counsel and Nationwide shall each appoint one member of the Class Qualification Panel, who shall be from the judicial circuit encompassing Roane County, West Virginia. The two members appointed by Class Counsel and Nationwide shall jointly appoint the third member of the Class Qualification Panel, who may be from any judicial circuit in West Virginia. All appointments to the Class Qualification Panel shall be subject to the Court’s approval.

1.13. “**Constructively Opting-Out**” means the filing of a separate civil action prior to the Preliminary Approval of the Settlement Agreement 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. A “Constructive Opt-Out” is someone who has constructively opted out. Chad and Bobbie Kenny, persons who intervened in and are named parties in the Action as of the date of Preliminary Approval, and persons who “opted in” to the Trial Class pursuant to the Court’s Order filed on September 4, 2007, shall not be deemed Constructive Opt Outs.

1.14. “**Court**” means the Circuit Court of Roane County, West Virginia, before which the Action is pending.

1.15. “**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.

1.16. “**Effective Date**” and “**Final Approval**” mean the date this settlement becomes final by the occurrence of all of the following events:

- a. This settlement is approved in all respects by the Court as required by West Virginia Rule of Civil Procedure 23;
- b. Entry of a Final Order and Judgment; and
- c. Either (i) the time for appeal or to seek permission to appeal from the Court’s approval of this settlement and entry of the Final Order and Judgment has expired; (ii) if appealed, approval of this settlement and the

Final Order and Judgment have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review; (iii) no objection is received prior to the entry of the Final Order and Judgment; (iv) all objections received prior to the entry of the Final Order and Judgment have been withdrawn; or (v) otherwise as mutually agreed to by the Parties.

1.17. “**Fairness Hearing**” means the hearing to be conducted by the Court under West Virginia Rule of Civil Procedure 23(e) to consider the fairness, adequacy and reasonableness of this Settlement Agreement and the proposed settlement, and to consider Class Counsels’ motion for approval of fees and reimbursement of expenses.

1.18. “**General Relief**” means the monetary relief a Claimant may be entitled to without adjustment of his or her claim as set forth in this Settlement Agreement.

1.19. “**General Relief Settlement Payment**” means the Settlement Payment to which a Claimant may be entitled under General Relief.

1.20. “**Group 1 Potential Settlement Class Members**” means potential Settlement Class Members identified by Nationwide’s Class Member Identification Search (i) whose applicable policy included UIM or UM coverage with limits less than the stated liability coverage, and (ii) who made a UIM or UM claim and received the full stated UIM or UM limits under the applicable policy.

1.21. “**Independent Adjuster**” means the person or persons from time to time agreed to and appointed by the Parties to investigate Claimants’ claims and/or adjust claims of Claimants who seek Claims Adjustment Relief.

1.22. “**Lien Resolution Administrator**” means the person or persons from time to time agreed to by the Parties and appointed by the Court to fulfill the functions of the “Lien Resolution Administrator” under this Settlement Agreement.

1.23. “**Mail Notice**” means the Notice of Proposed Class Action Settlement and Fairness Hearing, in a form which shall be agreed to by the Parties and approved by the Court, to be sent by first-class mail to potential Settlement Class Members as set forth in this Settlement Agreement, including instances when a Notice of Proposed Class Action Settlement and Fairness Hearing and/or a Claim Form are sent to potential Settlement Class Members in response to an inquiry.

1.24. “**Nationwide**” means collectively the Plaintiff and Counterclaim Defendant in the Action, Nationwide Mutual Insurance Company, and Defendants in the Action, Nationwide Mutual Fire Insurance Company, Nationwide Property and Casualty Insurance Company, and Nationwide Assurance Company (formerly Colonial Insurance Company of Wisconsin).

1.25. “**Nationwide’s Class Member Identification Search**” or “**Nationwide’s Class Member Identification Process**” refers to the search that Nationwide conducted beginning in 2004 of its claims, policy and other internal records and information to attempt to identify potential members of the Settlement Class.

1.26. “**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.

1.27. “**Notice Expert**” means the person or persons from time to time agreed to by the Parties and appointed by the Court to fulfill the functions of the “Notice Expert” under this

Settlement Agreement.

1.28. “**Notice Period**” means the period commencing on the first date Mail Notice is mailed to potential Settlement Class Members by the Claims Administrator and continuing through the deadline for submission of Claim Forms.

1.29. “**Person**” means natural or legal persons, entities, governmental units and organizations of any kind.

1.30. “**Preliminary Approval**” means the Court’s preliminary approval of this Settlement Agreement pursuant to West Virginia Rule of Civil Procedure 23.

1.31. “**Publication Notice**” means the approved summary notice to be published as set forth in this Settlement Agreement in a form which shall be agreed to by the Parties and approved by the Court. “Publication Notice” shall also include the creation and maintenance of an internet website regarding the settlement.

1.32. “**Settlement Class**” means the Rule 23(b)(3) Non-Mandatory, Opt-Out Monetary Relief Class, defined as follows:

All persons who were (i) an insured or Definitional Insured under a Nationwide West Virginia auto insurance policy; (ii) involved in a covered auto accident or incident during the Class Period; (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 provided² UM or UIM coverage for the accident or incident by Nationwide, or provided UM or UIM

²The Parties agree that such 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

coverage for the accident or incident by Nationwide with limits less than the stated 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. 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 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

Nationwide putting decisions regarding their claims on “hold” pending the outcome of this

- 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;

litigation.

10. UIM BI claims where the stated or prior reformed³ UIM BI limits of the 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 of the Settlement Class, and of persons who opted out of the Trial Class previously certified in connection with this Action who do not withdraw

³“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 the date of this Settlement Agreement to match the insured’s stated liability limits under the applicable policy. “Prior reformed” limits are different from reformed UM/UIM coverage limits provided for in this Settlement Agreement.

their opt outs by submitting a Claim Form; and

16. Claims released in writing prior to the date of Preliminary Approval 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.

1.33. “**Settlement Class Member**” or “Class Member” means any named counterclaim plaintiff or Class Representative and any member of the Settlement Class who does not validly and timely elect exclusion from the Settlement Class as provided in the Court’s Order of Preliminary Approval and as accepted by the Court, and each of their respective heirs, trustees, executors, administrators, principals, beneficiaries, agents, attorneys, predecessors, successors, and assigns, and/or anyone claiming through them or acting or purporting to act for them or on their behalf.

1.34. “**Settlement Class Members to Whom Mail Notice is Not Effectuated**” means persons to whom Mail Notice is not effectuated in accordance with this Settlement Agreement, and who do not submit a Claim Form or make some other written inquiry or submission regarding the settlement to the Claims Administrator, the Court or counsel for the Parties following commencement of the Notice Period. Mail Notice shall be deemed “effectuated” if directed as set forth in Section 5 below.

1.35. “**Settlement Payment**” means the monetary relief a Claimant may be entitled to

under the provisions of this Settlement Agreement under either General Relief or Claims Adjustment Relief.

1.36. “**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.

1.37. “**Third-Party Lien**” means a valid and enforceable lien, subrogation claim, or other right to payment relating to medical treatment or lost wages that is held by any person or entity including, but not limited to, healthcare providers, employers, insurers and/or governmental entities besides federal Medicare and West Virginia Medicaid.

1.38. “**Trial Class**” means the trial class previously certified in the Action pursuant to the Court’s Order of September 4, 2007.

1.39. “**2007 Mass Mailing**” means the mass mailing that Nationwide conducted pursuant to the Amended Order Approving The Mass Mailing Procedure Designed By Nationwide To Partially Settle Equitable Relief Claims And To Close The Class, entered by the Court on August 2, 2007.

Section 2. Denial of Liability

2.01. Nationwide has agreed to enter into this Settlement Agreement without any express or implied acknowledgment, in any way, of any fault or liability to anyone, including the Counterclaim Plaintiffs, Class Representatives and the Settlement Class. Nationwide has concluded that settlement, on the terms set forth in this Settlement Agreement, is in its best interests and the best interests of its insureds, taking into account, among other things, the inconvenience, distraction, delay, expense and disruption associated with further litigation of the Action.

2.02. Throughout the course of the Action, and otherwise at all times, Nationwide has

denied all allegations of wrongdoing or liability whatsoever asserted and/or which could have been asserted in the Action. Nationwide continues to do so and neither this Settlement Agreement, nor anything contained in this Settlement Agreement, or offered and exchanged between counsel as negotiated and/or leading to this Settlement Agreement, may be used or construed by any Party, Settlement Class Member, person or entity as an admission of wrongdoing or liability by Nationwide in any way whatsoever.

Section 3. Certification of Settlement Class

3.01. The Parties stipulate to certification of the Settlement Class solely for the purpose of effectuating the proposed settlement of the Action pursuant to the terms and conditions of this Settlement Agreement.

3.02. Solely for the purpose of implementing the terms of this Settlement Agreement and effectuating the proposed settlement, the Parties stipulate that the Court may enter an Order of Preliminary Approval certifying the Settlement Class, appointing the Class Representatives as representatives of the Settlement Class, and appointing Class Counsel as counsel for the Settlement Class. Solely for the purpose of implementing this Settlement Agreement and effectuating the proposed settlement, Nationwide stipulates that the Class Representatives are adequate representatives of the Settlement Class. The Class Representatives agree that they will not opt out of the proposed settlement on their behalf or on behalf of any person or entity for which they would have the authority to request exclusion.

3.03. Nationwide does not consent to certification of the Settlement Class for any purpose other than to effectuate the settlement of the Action pursuant to the terms and conditions set forth in this Settlement Agreement. In the event that this Settlement Agreement is terminated

pursuant to its terms or for any other reason, or the Effective Date for any reason does not occur, the order certifying the Settlement Class shall be vacated, and the Action shall proceed as though the Settlement Class had never been certified, without prejudice to any party to either support or oppose class certification.

Section 4. Preliminary Approval

4.01. Upon execution of this Settlement Agreement, the Parties shall jointly support this Settlement Agreement in its entirety and as a unitary whole in the Court and in any appellate court, and counsel for the Parties shall submit this Settlement Agreement to the Court and move the Court for one or more orders:

- (A) Preliminarily certifying the Settlement Class for settlement purposes.
- (B) Finding that the proposed settlement is sufficient to warrant sending of notice to the potential members of the Settlement Class preliminarily certified for settlement purposes.
- (C) Scheduling the Fairness Hearing to be held on such date as the Court may direct, to consider the fairness, reasonableness and adequacy of the proposed settlement and whether it should be approved by the Court, and to consider Class Counsels' motion for approval of attorneys' fees and reimbursement of expenses.
- (D) Appointing a Claims Administrator.
- (E) Appointing or providing for the appointment of a Lien Resolution Administrator.
- (F) Directing that: (1) the Claims Administrator cause the Mail Notice and a

Claim Form to be distributed by first-class mail, in an envelope bearing the return address of the Claims Administrator, not later than thirty (30) days following the Court's approval of the Mail Notice, to the last known addresses of (i) persons previously identified as potential Settlement Class Members and who were mailed the class action trial notice, (ii) any persons who were eliminated from the group the class action trial notice was mailed to based upon allegedly valid written waivers, (iii) persons who registered or opted out in response to the class action trial notice, and (iv) persons identified as potential Settlement Class Members based upon the ongoing records search pertaining to Nationwide affiliated companies other than Nationwide Mutual Insurance Company, together with a self-addressed, postage paid envelope for Claimants to use to return the Claim Form; (2) the Claims Administrator send a follow-up contact by first-class mail in writing in a form agreed to by the Parties and approved by the Court following final approval of the Settlement (but no later than thirty (30) days prior to the Claims Deadline as set forth in Section 8.02)⁴ to persons who are sent the Mail Notice and do not return a Claim Form or request exclusion from the Settlement Class on or before the Fairness Hearing; (3) Nationwide provide reasonably available electronic data that was compiled in connection with identification of potential class members to the Claims Administrator in order to allow for the Claim Forms

⁴The Parties agree that in the event this deadline is not met by the Claims Administrator, the Claims Deadline for persons who are sent the follow-up contact shall be extended to thirty

required to be mailed to potential Settlement Class Members to be pre-populated with available identification information (e.g., name, address, date of loss, policy number and claim number); (4) addresses be run through the NCOA database and updated accordingly prior to mailing; and (5) any mailings returned with a forwarding address be re-mailed to the forwarding address provided, and any mailings returned without a forwarding address be address traced by the Claims Administrator utilizing the Lexis/Nexis All-Find service, or another service customarily used in the settlement administration process, and remailed if an additional address is identified.

- (G) Appointing a Notice Expert for purposes of formulating a publication notice plan and directing the same to publish the Publication Notice as approved by the Court within fifteen (15) days of commencement of the Notice Period, including the creation and maintenance of an internet website regarding the settlement.
- (H) Finding that distribution of the Mail Notice and Publication Notice, and the maintenance of the internet website, as approved by the Court, is reasonable and the best practicable notice under the circumstances; is reasonably calculated to apprise potential members of the Settlement Class of the pendency of the Action and of their right to object to or exclude themselves from the proposed settlement; constitutes due, adequate and sufficient notice to all persons entitled to receive notice; and meets the

(30) days after the mailing of such follow-up contact, which writing shall so inform the recipient

requirements of due process, the West Virginia Rules of Civil Procedure, the West Virginia and United States Constitutions, and any other applicable rules or law.

- (I) Directing the Claims Administrator to rent a post office box to be used for receiving requests for exclusion, Claim Forms, objections, notices and any other communications, and providing that only the Court, the Clerk of the Court, the Claims Administrator, and their employees and designated agents shall have access to this post office box.
- (J) Requiring the Claims Administrator to file proof by affidavit of distribution of the Mail Notice, and requiring proof by affidavit of publication of the Publication Notice to be filed, as approved by the Court, at or before the Fairness Hearing.
- (K) As to potential Settlement Class Members who wish to exclude themselves from the Settlement Class: (1) requiring each such potential Settlement Class Member to submit to the Claims Administrator an appropriate written request for exclusion, postmarked no later than sixty (60) days following commencement of the Notice Period, without the necessity of additional service by such potential Settlement Class Member on counsel for the Parties; (2) requiring the written request for exclusion to include: (a) a reference to the Action; (b) the Settlement Class Member's name; (c) the applicable Nationwide policy number (if known); (d) the Settlement Class Member's mailing address; (e) the Settlement Class

of the extension of time to submit a Claim Form.

Member's expression of his or her desire to opt out or be excluded from the Settlement Class; and (f) the Settlement Class Member's signature or the signature of an authorized representative of the Class Member.

- (L) Permitting persons who previously opted out of the Trial Class in accordance with the requirements of the class action trial notice who have not Constructively Opted Out to withdraw their opt outs by filing a Claim Form and otherwise following the procedures for submitting claims as set forth in this Settlement Agreement.
- (M) Providing that any Settlement Class Member to whom Mail Notice is effectuated as directed by the Court, or who submits a Claim Form or some other written inquiry or submission regarding the settlement to the Claims Administrator, the Court or counsel for the Parties, and who does not submit a timely and valid written request for exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments entered by the Court.
- (N) Providing that no person other than a member of the Settlement Class who has not opted out shall be entitled in any way to contest the approval of the terms and conditions of the Settlement Agreement or the Judgment to be entered thereon, and/or the approval of Class Counsels' motion for approval of fees and reimbursement of expenses, and that no member of the Settlement Class shall be entitled in any way to contest the approval of the terms and conditions of the Settlement Agreement or the Judgment to be entered thereon, and/or the approval of Class Counsels' motion for

approval of fees and reimbursement of expenses, except by filing and serving written objections in accordance with the provisions of this Settlement Agreement, and further providing that any Class Member who does not submit a timely, written objection shall be deemed to have waived all such objections and shall, therefore, be bound by all proceedings, orders and judgments in this Action, which shall be preclusive in all pending or future lawsuits or other proceedings.

- (O) Providing that any Settlement Class Member who wishes to object to the approval of this Settlement Agreement and/or Class Counsels' motion for approval of fees and reimbursement of expenses may appear at the Fairness Hearing and show cause why the Settlement Agreement should not be approved as fair, reasonable and adequate and why Judgment should not be entered thereon, and/or why Class Counsels' motion for approval of fees and reimbursement of expenses should not be granted; and requiring that each such Settlement Class Member shall serve on Class Counsel and Counsel for Nationwide and file with the Clerk of the Court, and provide a courtesy copy to the Court, not later than sixty (60) days following commencement of the Notice Period, a statement of the objection, as well as the specific reasons for each objection, including any legal support the Settlement Class Member wishes to bring to the Court's attention and any evidence the Settlement Class Member wishes to introduce in support of his or her objection, or be forever barred from objecting.

- (P) Requiring any Settlement Class Member who files and serves a written objection and who intends to make an appearance at the Fairness Hearing, either in person or through personal counsel, in order to object to the fairness, reasonableness or adequacy of this Settlement Agreement and/or Class Counsels' motion for approval of fees and reimbursement of expenses, to file with the Clerk of the Court and serve on Class Counsel and Counsel for Nationwide, and provide a courtesy copy to the Court, a notice of intention to appear at the Fairness Hearing, not later than sixty (60) days following commencement of the Notice Period.
- (Q) Directing Nationwide's Counsel and Class Counsel to promptly furnish each other copies of any and all objections that come into their possession.
- (R) Authorizing use and disclosure by Nationwide and Class Counsel of such information as is contemplated and necessary to effectuate the terms of this Settlement Agreement and protect the confidentiality of the names and addresses and other confidential information of persons insured by Nationwide.
- (S) Containing any additional provisions that may be necessary to implement and administer the terms of this Settlement Agreement.

4.02. The Parties shall cooperate, assist, and undertake all reasonable actions to accomplish the above submission.

Section 5. Notice to Settlement Class Members

5.01. The Mail Notice and a Claim Form shall be mailed by the Claims Administrator

by first class mail, at a minimum, to (i) persons previously identified as potential Settlement Class Members and who were mailed the class action trial notice, (ii) any persons who were eliminated from the group the class action trial notice was mailed to based upon allegedly valid written waivers, (iii) any other persons who registered or opted out in response to the trial notice and (iv) any persons who make an inquiry and provide sufficient information to allow the mailing of a Mail Notice. The Mail Notice shall also be provided to additional persons identified as potential Settlement Class Members based upon the ongoing records search pertaining to Defendants Nationwide Mutual Fire Insurance Company, Nationwide Property and Casualty Insurance Company, and Nationwide Assurance Company (formerly Colonial Insurance Company of Wisconsin).

5.02. Mail Notices directed to Group 1 Potential Settlement Class Members shall contain an insert in a form to be agreed upon by the Parties and approved by the Court informing each such potential Settlement Class Member that, based upon preliminary review conducted to date, it appears likely that such person is a Settlement Class Member.

5.03. The Publication Notice shall also be published as directed by the Court, which shall include maintaining an internet website regarding the settlement.

5.04. The Mail Notice and the Publication Notice shall inform Persons Excluded From the Settlement Class Based Upon Prior Reformed Coverage that they are not Settlement Class Members.

5.05. Printing and mailing of the Mail Notice, and the publication of the Publication Notice, will be settlement administration expenses which shall be paid by Nationwide as provided herein.

5.06. The Mail Notice shall be addressed to potential Settlement Class Members' last

known address. Addresses shall be run through the NCOA database and updated accordingly prior to mailing. Any mailings returned with a forwarding address shall be remailed to the forwarding address provided. Any mailings returned without a forwarding address shall be address traced by the Claims Administrator utilizing the Lexis/Nexis All-Find service, or another service customarily used in the settlement administration process, and remailed if an additional address is identified.

5.07. Settlement Class Members to Whom Mail Notice is Not Effectuated shall not be deemed to have released claims against Nationwide based upon the class action settlement of the Action as set forth in this Settlement Agreement.

Section 6. Fairness Hearing

6.01. On the date set by the Court for the Fairness Hearing, the Class Representatives and Nationwide shall jointly request that the Court review any petitions or objections to the Settlement Agreement which have been timely filed, and to conduct such other proceedings (including the taking of testimony, receipt of legal memoranda and hearing of arguments from the Parties or others with standing at the Fairness Hearing), as the Court may deem appropriate under the circumstances.

6.02. The Class Representatives and Nationwide shall jointly request the Court to enter a Final Order and Judgment:

- (A) Finding that the Court has personal jurisdiction over the Parties and all Settlement Class Members and that the Court has subject matter jurisdiction to approve this Settlement Agreement;
- (B) Approving the settlement set forth in this Settlement Agreement, and

directing the Parties and their counsel to comply with and consummate the terms of this Settlement Agreement.

- (C) Certifying the Settlement Class for settlement purposes.
- (D) Finding that Class Counsel and the Class Representatives have adequately represented the Settlement Class.
- (E) Finding that the terms of this Settlement Agreement are fair, reasonable and adequate and in the best interest of the Parties and the Settlement Class.
- (F) Providing that each Settlement Class Member shall be bound by this Settlement Agreement as provided herein, including the release contained herein.
- (G) Finding that the Notice Plan, including the Mail Notice, Publication Notice, and the notice methodology implemented pursuant to this Settlement Agreement (i) constitute the best practicable notice; (ii) constitute notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, their right to object to or exclude themselves from the proposed settlement and to appear at the Fairness Hearing to be held by the Court, and their right to seek monetary relief as provided in this Settlement Agreement; (iii) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) satisfy the requirements of Rule 23 of the West Virginia Rules of Civil Procedure, meet all applicable requirements of Due Process under the West Virginia and United States

Constitutions, and otherwise satisfy all requirements of applicable law.

- (H) Approving the requests for exclusion which have been timely and properly submitted as set forth in this Settlement Agreement and the Court's Order of Preliminary Approval.
- (I) Dismissing the Action against Nationwide, on the merits and with prejudice only as to the Released Claims (as defined below), with costs to be awarded solely as provided in this Settlement Agreement, and entering final Judgment thereon that provides res judicata and preclusive effect on the Released Claims as provided herein, with a finding that there is no just reason to delay enforcement or appeal.⁵ It is expressly understood that such dismissal shall, without limitation, be without prejudice as to the claims of (1) members of the Trial Class that are not encompassed by the Settlement Class, including but not limited to the claims of Persons Excluded From the Settlement Class Based Upon Prior Reformed Coverage and/or Constructive Opt Outs; (2) Settlement Class Members to Whom Mail Notice is Not Effectuated; and (3) Settlement Class Members who are recognized by the Court as excluded from the Settlement Class.
- (J) Providing that, upon the Effective Date, the Class Representatives and all Settlement Class Members (except Settlement Class Members to Whom Mail Notice is Not Effectuated and those Settlement Class Members who

⁵The Parties shall preserve the rights of parties who have intervened or otherwise been joined in the Action prior to the date of Preliminary Approval, including but not limited to Chad David Kenney or Bobbie Dawn Kenney, to continue to pursue their individual claims by further order of the Court in the event that the same do not qualify for or are excluded from the Settlement Class.

are recognized by the Court as excluded from the Settlement Class), whether or not they return a Claim Form within the time and in the manner provided for, shall be barred from asserting any Released Claims against Nationwide, and any such Settlement Class Members shall have released any and all Released Claims against Nationwide.

- (K) Barring and enjoining all 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) from (i) filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) 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 Action and/or the Released Claims; (ii) organizing members of the Settlement Class who have not been excluded from the Settlement Class into a separate class for purposes of pursuing as a purported class action any lawsuit or administrative, regulatory, arbitration, or other proceeding (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 Action and/or the Released Claims.
- (L) Approving Class Counsels' requests for attorneys' fees and reimbursement

of expenses.

- (M) Permanently enjoining and prohibiting Nationwide from denying or failing to pay, in whole or in part, any UM or UIM claim based upon the contention that the failure of the applicant or a named insured to return the form mailed by Nationwide in its 1993 or 1999 mass mailings to the insurer, within the time periods specified by statute, creates a presumption that such person received an effective offer and that such person exercised a knowing and intelligent rejection of such offer, and finding that Nationwide has represented to the Court that as of January 31, 2007, Nationwide ceased denying or failing to pay, in whole or in part, any UM or UIM claim based upon the contention that Nationwide's 1993 or 1999 mass mailings were valid offers of optional levels of UM/UIM coverage as required by West Virginia Code Sections 33-6-31 and 33-6-31d.
- (N) Determining that this Settlement Agreement and the settlement provided for in this Settlement Agreement, and any proceedings taken pursuant thereto, are not, and should not in any event be offered or received as evidence of, a presumption, concession, or an admission of liability by Nationwide; provided, however, that reference may be made to this Settlement Agreement and the proposed settlement provided for in this Settlement Agreement in such proceedings as may be necessary to effectuate or enforce the provisions of this Settlement Agreement.
- (O) Authorizing the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this

Settlement Agreement as (i) shall be consistent in all material respects with the Final Order and Judgment and (ii) do not limit the rights of Settlement Class Members.

- (P) Without affecting the finality of the Final Order and Judgment for purposes of appeal, reserving and retaining jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Settlement Agreement and the Final Order and Judgment, and for any other necessary purposes.

Section 7. Ancillary Equitable Relief

7.01. Nationwide represents that pursuant to the Amended Order Approving The Mass Mailing Procedure Designed By Nationwide To Partially Settle Equitable Relief Claims And To Close The Class, entered by the Court on August 2, 2007:

- (A) it provided persons who were West Virginia named insureds at the time of a mass mailing that it conducted in 2007 (“the 2007 mass mailing”), with an opportunity to re-evaluate their decision to purchase or reject optional levels of UIM and UM insurance coverage, by mailing to them by certified mail, return receipt requested, or by subsequent delivery in person, an Important Notice and selection/rejection forms offering optional coverages and levels of coverage as required by West Virginia Code Sections 33-6-31 and 33-6-31d.
- (B) coverage selected by a named insured pursuant to the 2007 mass mailing became effective immediately upon Nationwide’s receipt of a

selection/rejection form.

- (C) until a named insured either returned a selection/rejection form indicating what coverage he or she desired, or until 30 days after receipt by a named insured of the 2007 mass mailing Important Notice and selection/rejection forms, whichever was earlier, Nationwide provided coverage in the amounts required to be offered under West Virginia Code Section 33-6-31(b), unless a named insured's stated limits were greater than those amounts, in which case the stated limits remained in effect. If the coverages required to be offered under West Virginia Code Section 33-6-31(b) were greater than a named insured's stated limits, Nationwide provided the increased coverage at no charge for that period of time.

7.02. Nationwide agrees to the entry of an order enjoining and prohibiting Nationwide from denying or failing to pay, in whole or in part, any UM or UIM claim based upon the contention that the failure of the applicant or a named insured to return the form mailed by Nationwide in its 1993 or 1999 mass mailings to the insurer, within the time periods specified by statute, creates a presumption that such person received an effective offer and that such person exercised a knowing and intelligent rejection of such offer. Nationwide hereby represents to the Court that as of January 31, 2007, Nationwide ceased denying or failing to pay, in whole or in part, any UM or UIM claim based upon the contention that Nationwide's 1993 or 1999 mass mailings were valid offers of optional levels of UM/UIM coverage as required by West Virginia Code Sections 33-6-31 and 33-6-31d. The Parties agree that all of Nationwide's insureds, including those who opt out of the Settlement Class, are intended third-party beneficiaries of this ancillary injunctive relief enjoining and prohibiting Nationwide from denying or failing to pay,

in whole or in part, any UM or UIM claim based upon the contention that the failure of the applicant or a named insured to return the form mailed by Nationwide in its 1993 or 1999 mass mailings to the insurer, within the time periods specified by statute, creates a presumption that such person received an effective offer and that such person exercised a knowing and intelligent rejection of such offer.

7.03. The Parties agree that every part of the above-described equitable relief has substantial value that should be taken into consideration in the determination of the fairness, reasonableness and adequacy of this settlement and fair and reasonable attorneys' fees and expenses.

7.04. Nationwide further agrees to review its 2007 Mass Mailing and take corrective measures as it deems necessary to correct any discovered deficiencies, including providing new mailings to individual insureds as appropriate.

Section 8. Claims Administration Procedure

8.01. Nationwide shall retain a Claims Administrator as approved by the Court at its own expense to send, receive and process communications to or from potential Settlement Class Members (except as otherwise permitted in Section 14.01), including the mailing of the Mail Notice and Claim Forms and other communications, the publication of the Publication Notice, and the creation and maintenance of an internet website regarding the settlement, as set forth herein. The costs of the class qualification process and the claims adjustment process outlined herein, and all other administrative processes contained herein, including agreed upon compensation for the Class Qualification Panel, Independent Adjusters and Lien Resolution Administrator, and including the costs and expenses associated with any guardian *ad litem* that

the Court deems it necessary to appoint to protect the interests of any Settlement Class Member, shall be paid by Nationwide. Class Counsel shall have the right to approve Nationwide's selection of a Claims Administrator, but shall not unreasonably withhold such approval.

8.02. Any Settlement Class Member who does not sign and submit a Claim Form postmarked on or before sixty (60) days after the Fairness Hearing (the "Claims Deadline") shall be barred from recovering a Settlement Payment. The claims of such 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) shall be extinguished by the Final Order and Judgment entered in this Action.

8.03. To be eligible for a Settlement Payment, Claimants must timely submit a signed Claim Form and be members of the Settlement Class. A separate Claim Form must be submitted for each separate accident or incident for which settlement relief is sought. If a Claim Form is not signed, the Claims Administrator shall notify the Claimant of this deficiency and provide the Claimant a reasonable opportunity to cure the deficiency. If the Claimant does not cure this deficiency within the reasonable time allotted, the Claims Administrator may reject the Claim Form.

8.04. After receiving a Claim Form from a Claimant, the Claims Administrator shall send a letter to the Claimant by first class mail confirming receipt of the Claim Form, and enclosing a form requesting available documents and/or records in the Claimant's possession (excluding medical records) pertaining to the Claimant's claim, which form shall be agreed to by the Parties.

8.05. Upon receipt, the Claims Administrator shall provide copies of the Claim Forms, together with any documents and/or records submitted by the Claimant, to Class Counsel and

Nationwide. A “Claim Form Submission” means a Claim Form together with such documents as may be provided by a Claimant in response to the request for documents and/or records sent pursuant to Section 8.04 above.

8.06. Should Nationwide believe that a Claim Form Submission (together with any additional information and/or documents available to Nationwide) does not provide sufficient information to determine whether a Claimant is a Settlement Class Member and/or whether the claim identified in the Claim Form is included in the Settlement Class, Nationwide may, within thirty (30) days of receipt of the Claim Form Submission sent by the Claims Administrator, request in writing that the Claims Administrator seek additional information and/or documents or records from the Claimant, and specify what additional information should be sought. Nationwide may also request that an appointed Independent Adjuster further investigate the claim and obtain additional information and/or records, either initially or within thirty (30) days of receipt from the Claims Administrator of the Claimant’s response to the request for additional information. The appointed Independent Adjuster shall obtain the additional information and/or records, and/or advise that the same are not available, within a reasonable period of time given the circumstances of the claim. Any additional information and/or records obtained by the Claims Administrator and/or Independent Adjuster shall be provided to both Nationwide and Class Counsel.

If some or all of a Claimant’s claim information and/or records have been lost, destroyed or are unavailable to the Claimant, the Claimant may, in response to a request for additional information and/or records by Nationwide or at any time during the claims process, submit an affidavit or verification under penalty of perjury:

(A) stating that the Claimant believes he or she was involved in an accident or

- incident with what he or she believes was an uninsured or underinsured motorist;
- (B) stating that the Claimant believes he or she may be legally entitled to recover additional damages (i.e., damages not already compensated) from Nationwide for bodily injury and/or property damage as a result of the accident or incident; and
 - (C) containing a description of the Claimant's damages and losses, as well as other known information relating to the claim.

8.07. Should Nationwide believe that a claim identified in a Claim Form Submission is not included in the Settlement Class, Nationwide shall, within sixty (60) days of receipt of the Claim Form Submission sent by the Claims Administrator, within sixty (60) days of being provided additional information and/or documents or records, if any, obtained by the Claims Administrator or by an Independent Adjuster if requested by Nationwide, or within sixty (60) days after the Effective Date, whichever is later, so notify the Claims Administrator and Class Counsel and provide the reason(s) for its position in writing, with copies of available documentation supporting its assertion of ineligibility. If Nationwide does not so notify the Claims Administrator and Class Counsel, the claim shall be assumed to be eligible for the Settlement Class. Nationwide may not raise litigation defenses (such as statutes of limitations, standing or other litigation defenses), in contesting eligibility for the Settlement Class. Nationwide may only contest eligibility for the Settlement Class on the basis that the Claimant fails to meet the class definition set forth above. Reasonable extensions of the time periods set forth in this paragraph may be agreed to by Nationwide and Class Counsel as circumstances may warrant. If unable to agree, Nationwide may request an extension, upon showing of good cause, from the Court.

8.08. Nationwide agrees that all Group 1 Potential Settlement Class Members who

timely submit a Claim Form and who are qualified Settlement Class Members shall be eligible for General Relief for any claims identified in their Claim Form(s) that are included in the Settlement Class.

8.09. If Nationwide timely contests a Claimant's eligibility as provided above, the following procedure shall apply:

- (A) The Claims Administrator shall notify the Claimant and Class Counsel in writing of Nationwide's written assertion(s) that the claim identified in a Claim Form is not included in the Settlement Class and the reason(s) for that (those) assertions, and provide the Claimant and Class Counsel with a copy of any written selection/rejection form relied upon by Nationwide in support of its assertion of ineligibility. Such written notification shall inform the Claimant that the Claimant may request, on their own or through Class Counsel, written documentation supporting the assertions of ineligibility. Class Counsel may independently request such documentation, which to the extent available shall be promptly provided by Nationwide.
- (B) If the Claimant (acting through Class Counsel or otherwise) does not timely contest Nationwide's assertion of ineligibility the claim shall not be deemed within the Settlement Class.
- (C) If the Claimant (acting through Class Counsel or otherwise) wishes to contest Nationwide's assertion of ineligibility, the Claimant must notify the Claims Administrator in writing of the objection to Nationwide's assertion of ineligibility and request review by the Class Qualification

Panel, which notice may be effectuated by use of a form to be agreed upon by the Parties and enclosed with the notification required by subsection (A) above. The form shall be signed and include the reasons for the objection. The written notification requesting review by the Class Qualification Panel, or a written request for documents supporting the assertion(s) of ineligibility, must be postmarked within sixty (60) days of the date that the Claims Administrator mails the letter notifying the Claimant and Class Counsel of Nationwide's assertion of ineligibility. If documentation supporting the assertion(s) of ineligibility is requested, the written notification requesting review by the Class Qualification Panel must be postmarked no later than sixty (60) days after Nationwide mails such documentation (or a notification that the same is not available) to the Claimant and/or Class Counsel who made the request.

- (D) Upon receipt of a request from a Claimant (acting through Class Counsel or otherwise) for review by the Class Qualification Panel, the Claims Administrator shall submit the claim to the Class Qualification Panel, and send copies of all relevant documents (if not previously provided) to the Class Qualification Panel, Nationwide, Class Counsel and the Claimant.
- (E) In the event that the Claimant (acting through Class Counsel or otherwise) obtains additional relevant information or records not previously provided to Nationwide, such information shall be provided to Nationwide in order to allow Nationwide to reevaluate its position in light of the additional information or records.

- (F) Within ninety (90) days after receipt of a Claimant's Notice and the relevant documents from the Claims Administrator as provided above, or within any reasonable extension of said ninety (90) days granted by the Class Qualification Panel for good cause shown, Nationwide (through counsel or otherwise), and the Claimant (through Class Counsel or otherwise) may, at their option, submit written presentations to the Class Qualification Panel regarding their respective positions regarding the claim. Class Counsel shall have the right to submit written presentations to and represent Claimants in any hearings before the Class Qualification Panel.
- (G) The Class Qualification Panel shall notify the Claimant, Claims Administrator, Nationwide and Class Counsel in writing, following the period for written submissions and any hearing held by the Class Qualification Panel, of their determination as to whether the Claimant is a Settlement Class Member and eligible to receive a Settlement Payment for the subject claim. The Class Qualification Panel may hold a hearing prior to making its determination. The Class Qualification Panel's determination shall be based upon written submissions and/or relevant documentation submitted to it and evidence or matters presented during a hearing, if any.
- (H) The Class Qualification Panel shall apply and abide by West Virginia insurance law in making its decisions.
- (I) The Class Qualification Panel's determination as to whether a Claimant is

a Settlement Class Member and eligible to receive a Settlement Payment for the subject claim shall be final and conclusive; provided, that the Parties shall have the right to seek relief from the Court, which the Parties agree shall be binding, final and non-appealable, if a Party contends that the Class Qualification Panel has applied the eligibility provisions of this Settlement Agreement in a clearly erroneous manner contrary to the plain meaning and/or intentions of the Parties.

- (J) The Class Qualification Panel shall not have authority to determine the amount of a Settlement Payment. That determination shall be made in accordance with the provisions set forth below.

8.10. The Parties agree that in determining eligibility, the Class Qualification Panel shall apply the Settlement Class definition in accordance with the plain and reasonable meaning of the language of that definition.

8.11. The Class Qualification Panel may seek guidance from the Parties. If the Parties cannot mutually agree on such guidance, the Parties agree that the Court shall resolve the disagreement, and that the Court's resolution shall be final and non-appealable.

8.12. For any person who timely submits a Claim Form, the statute(s) of limitation as to the claims of such persons shall be tolled until sixty (60) days following (i) the date, if any, that such person opts out of the Settlement Class, (ii) the date, if any, by which such person was required, but failed to contest Nationwide's assertion that the person was not eligible to be in the Settlement Class; (iii) the person's receipt of the Class Qualification Panel's notification, if any, that the Panel has ruled the person ineligible to be in the Settlement Class, or (iv) receipt of a final ruling adverse to the Claimant, if any, by the Court if relief is sought from the Court

regarding the Class Qualification Panel's application of the eligibility provisions as set forth above regarding such a determination of ineligibility, whichever is later.

Section 9. Monetary Relief To Be Paid By Nationwide

9.01. Nationwide shall pay a Settlement Class Member's qualifying settlement claim entitled to payment under this Settlement Agreement in full as and when due under the terms of this Settlement Agreement. Should Nationwide not do so, the Settlement Class Member shall have the option of either: (i) seeking to enforce the terms of the settlement; or (ii) rescinding the settlement as to the Settlement Class Member's claims and pursuing his or her claims against Nationwide, in which case the Settlement Class Member's claims shall not be deemed released by the settlement and Final Order and Judgment and the statute(s) of limitation applicable to the Settlement Class Member's claims shall remain tolled until such rescission.

9.02. Nationwide shall also promptly pay all reasonable expenses of administering the settlement and distributing Settlement Payments as provided in the Settlement Agreement. If Nationwide objects to the reasonableness of any such expense, the Parties shall abide by the Court's decision on such objection, which the Parties agree shall be final and non-appealable.

9.03. Nationwide shall also pay, within ten (10) business days of the Effective Date, the Class Representatives an incentive award of up to fifty thousand dollars (\$50,000) each, as approved by the Court, in addition to any Settlement Payment each may be entitled to as provided herein, to reflect the significant length of time this Action has been pending, the complexity of the Action and their diligent pursuit of the Action.

Section 10. Value of Settlement, Attorneys' Fees and Cy Pres

10.01. The Parties agree, based upon information provided by Nationwide, that the monetary relief made available to potential Settlement Class Members under this Settlement Agreement, including attorneys' fees and costs, has a value reasonably estimated to be in excess of seventy-five million dollars (\$75,000,000), based upon: (a) Nationwide's documented analysis regarding the estimated number of eligible Class Members as identified to date through its Class Member Identification Search; and (b) actuarial evaluation of the value of said Class Members' claims.

10.02. Nationwide shall pay Class Counsels' attorneys' fees and costs, as awarded by the Court, up to twenty-five million dollars (\$25,000,000), which represents one-third (1/3) of the seventy-five million dollar (\$75,000,000) estimate of the minimum value of monetary relief made available to potential Settlement Class Members under this Settlement Agreement. Nationwide shall not challenge, or in any manner attempt to undermine, Class Counsels' application for approval of attorneys' fees and costs of up to twenty-five million dollars (\$25,000,000).

10.03. In the event that seventy-five million dollars (\$75,000,000) is insufficient to pay the qualifying Settlement Payments and attorneys' fees and costs provided for under this Settlement Agreement, Nationwide shall pay any and all additional sums necessary to pay Settlement Class Members' qualifying Settlement Payments in full under the terms of this Settlement Agreement.

10.04. Class Counsel shall not seek an award of attorneys' fees and costs in excess of twenty-five million dollars (\$25,000,000); provided, that should the aggregate amount of monetary relief obtained by Settlement Class Members under the settlement exceed \$75,000,000

(inclusive of attorneys' fees and costs), Class Counsel shall 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 monetary relief obtained by Challenged Settlement Class Members caused the aggregate amount of such monetary relief to exceed \$75,000,000, and Nationwide shall not challenge, or in any manner attempt to undermine, Class Counsel's application for approval of such additional attorneys' fees and costs, except as to the accuracy of any calculations submitted by Class Counsel in support of their petition. "Challenged Settlement Class Members" are those potential Settlement Class Members who submit Claim Forms and whose class-member eligibility is contested by Nationwide, but who are ultimately determined to be Settlement Class Members by the Class Qualification Panel.

10.05. If the amount of monetary relief (inclusive of attorneys' fees and costs) paid by Nationwide under this settlement is less than \$75,000,000, Nationwide shall not be entitled to a refund of any attorneys' fees and costs paid pursuant to the terms of this Settlement Agreement. Moreover, in such event, Nationwide shall pay by donation five percent (5%) of the difference between the amount of monetary relief paid (inclusive of attorneys' fees and costs) and \$75,000,000 to a charity or non-profit organization mutually agreed upon by Nationwide and Class Counsel. Nationwide and Class Counsel shall determine and agree upon the amount, if any, of the cy pres donation that may be due under this section. If Nationwide and Class Counsel are unable to agree, the issue shall be mediated. If the issue is then not resolved at mediation, a resolution may be sought from the Court, which the Parties agree shall be final and non-appealable.

10.06. Every Claimant receiving a Settlement Payment under the terms of this Settlement Agreement shall share equally in paying attorneys' fees and costs by having his or her

Settlement Payment reduced by one-third (1/3), or such other percentage for attorneys' fees and costs as may be awarded by the Court.

10.07. Nationwide shall pay the attorneys' fees and costs, as awarded by the Court, to Class Counsel within ten (10) business days of the Effective Date, **provided, however**, that if the settlement is approved by the Court and it enters a final order and judgment thereon notwithstanding the existence of timely filed objections that have not been subsequently withdrawn, then, in that event, Nationwide shall deposit attorneys' fees and costs, as awarded by the Court, into a federally-insured escrow account selected by Class Counsel and approved by Nationwide (which approval shall not be unreasonably withheld) within ten (10) business days of the Court's entry of the order awarding such attorneys' fees and costs, to be held until the expiration of the appeal period pertaining to the Court's Order, or until any appeal filed within the applicable appeal period by such objectors is finally dismissed or the settlement and Final Order and Judgment have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review, **and further provided, however**, that should anyone attempt to appeal final approval of the settlement within the applicable appeal period regardless of the fact that they did not make (or later withdrew) a timely objection, attorneys' fees and costs previously paid by Nationwide to Class Counsel shall be returned by Class Counsel and deposited into a federally-insured escrow account selected by Class Counsel and approved by Nationwide (which approval shall not be unreasonably withheld) within ten (10) business days of receipt of notice of any filing within the applicable appeal period attempting to commence an appeal, and held in escrow until the appeal is finally dismissed or the settlement and Final Order and Judgment have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance has

become no longer subject to further appeal or review.

Section 11. Settlement Payments

Lien Resolution Administrator

11.01. The Lien Resolution Administrator selected by the Parties and approved by the Court shall be responsible for the following in connection with the execution of this Settlement Agreement:

- (A) Establishing procedures and protocols for obtaining and verifying information necessary for discharging the responsibilities set forth below, subject to approval by the Parties. The Parties agree that the Lien Resolution Administrator is authorized to contact federal Medicare, West Virginia Medicaid, holders of potential Third-Party Liens (with the consent of the Claimant), and Claimants and/or their individual counsel directly as required to obtain any necessary information and/or documentation. Nationwide shall also identify to the Lien Resolution Administrator any Third-Party Liens known to it.
- (B) Identifying and reaching resolution of all liens that have been or may be asserted by federal Medicare (Part A and Part B), West Virginia Medicaid and/or Third-Party Liens (with the consent of the Claimant), with respect to each Claimant entitled to a Settlement Payment under this Settlement Agreement. Nothing herein is intended to create a right of reimbursement where none would otherwise exist under applicable state and federal law.
- (C) As to each Claimant entitled to a Settlement Payment under this Settlement Agreement, determining whether any federal Medicare lien,

West Virginia Medicaid lien and/or Third-Party Lien is being asserted as to such Claimant and, where any such lien is determined to exist, the amount proposed to be paid to resolve such lien. The Claims Administrator shall not disburse any Settlement Payment to any Claimant without either: (1) obtaining confirmation from the Lien Resolution Administrator that the Claimant is not subject to any lien by federal Medicare or West Virginia Medicaid, and/or any Third-Party Lien that the Claimant has authorized the Lien Resolution Administrator to satisfy; or (2) withholding from the Claimant's Settlement Payment the amount(s) proposed by the Lien Resolution Administrator to resolve such lien(s). The Claims Administrator shall remit any funds so withheld to the appropriate authority upon receipt of written authorization from the subject Claimant to make such payment.

- (D) Nationwide shall provide to the Lien Resolution Administrator, upon a request for the same by the Lien Resolution Administrator, information and documents regarding Claimants that are relevant to federal Medicare, West Virginia Medicaid and/or Third-Party liens, to the extent the same are reasonably available to Nationwide.
- (E) Notwithstanding anything herein to the contrary, in the event a Claimant withholds consent for the Lien Resolution Administrator to investigate and/or resolve an identified potential Third-Party Lien, then the amount of such lien(s) shall be deposited with the Court and set off from the Claimant's Settlement Relief Payment, with notification of such action

being provided to the Claimant and the affected Third-Party Lienholder.

General Relief Settlement Payments

11.02. Except as provided below in this section, a Claimant who timely submits a valid Claim Form and who qualifies as a Settlement Class Member entitled to settlement relief shall have the option of seeking one of two forms of monetary relief: “General Relief” or “Claims Adjustment Relief”. However, except as otherwise provided in this Settlement Agreement, any Claimant who settled with an insured tortfeasor for less than eighty percent (80%) of the tortfeasor’s liability limits applicable to the claim, or less than eighty percent (80%) of the available allocation of the tortfeasor’s liability limits where multiple claimants made multiple claims against either a single limit policy or a policy with per person/per occurrence limitations that did not allow for the payment of per person limits to each claimant, shall not be eligible for General Relief and shall be limited to Claims Adjustment Relief as provided below. In the event that a Claimant settled with more than one insured tortfeasor in connection with a claim, such Claimant shall qualify for General Relief if he, she or it obtained eighty percent (80%) or more of the available liability limits of at least one of the insured tortfeasors.

11.03. Within the time period for Nationwide to challenge the eligibility of a Claimant to be included in the Settlement Class as set forth in Section 8 above, or within thirty (30) days after the determination by the Class Qualification Panel that a Claimant is an eligible member of the Settlement Class if such a challenge was made by Nationwide, whichever occurs later, Nationwide shall notify the Claims Administrator and Class Counsel as to whether it contends that the Claimant is not entitled to General Relief and provide the reason(s) for its position in writing, with copies of available documentation supporting such assertion. If Nationwide does not so notify the Claims Administrator and Class Counsel, the claim shall be eligible for General

Relief.

For every Claimant entitled to General Relief, Nationwide shall, after being provided with the Lien Resolution Administrator's certification as to whether any federal Medicare, West Virginia Medicaid and/or Third-Party lien is being asserted as to such Claimant and, where any such lien is determined to exist, the amount proposed to be paid to resolve such lien, promptly calculate the General Relief Settlement Payment that the Claimant would be entitled to if the Claimant chose that payment option, with interest initially being calculated up to the date of such determination.

11.05. If Nationwide contends that a Claimant is not entitled to General Relief, the following procedure shall apply:

- (A) The Claims Administrator shall notify the Claimant and Class Counsel in writing of Nationwide's written assertion(s) that the Claimant is ineligible for General Relief, and the reason(s) for that (those) assertion(s), and provide the Claimant and Class Counsel with copies of any documentation submitted by Nationwide supporting such assertion(s). Such written notification shall inform the Claimant that the Claimant may request, on their own or through Class Counsel, written documentation supporting the assertions of ineligibility for General Relief. Class Counsel may independently request such documentation, which shall be promptly provided by Nationwide to the extent available.
- (B) If the Claimant (acting through Class Counsel or otherwise) does not timely contest Nationwide's assertion of ineligibility for General Relief, the Claimant shall be limited to Claims Adjustment Relief.

- (C) If the Claimant (acting through Class Counsel or otherwise) wishes to contest Nationwide's assertion of ineligibility for General Relief, the Claimant must notify the Claims Administrator in writing of the objection to Nationwide's assertion and request review by the Class Qualification Panel, which notice may be effectuated by use of a form to be agreed upon by the Parties and enclosed with the notification required by subsection (A) above. The form shall be signed and include the reasons for the objection. The written notification requesting review by the Class Qualification Panel, or a written request for documents supporting the assertion(s) of ineligibility for General Relief, must be postmarked within sixty (60) days of the date that the Claims Administrator mails the letter notifying the Claimant and Class Counsel of Nationwide's assertion of ineligibility for General Relief. If documentation supporting the assertion(s) of ineligibility for General Relief is requested, the written notification requesting review by the Class Qualification Panel must be postmarked no later than sixty (60) days after Nationwide mails such documentation (or a notification that the same is not available) to the Claimant and/or Class Counsel who made the request.
- (D) Upon receipt of a request from a Claimant (acting through Class Counsel or otherwise) for review by the Class Qualification Panel, the Claims Administrator shall submit the claim to the Class Qualification Panel, and send copies of all relevant documents (if not previously provided) to the Class Qualification Panel, Nationwide, Class Counsel and the Claimant.

- (E) In the event that the Claimant (acting through Class Counsel or otherwise) obtains additional relevant information or records not previously provided to Nationwide, such information shall be provided to Nationwide in order to allow Nationwide to reevaluate its position in light of the additional information or records.
- (F) Within ninety (90) days after receipt of a Claimant's Notice and the relevant documents from the Claims Administrator as provided in the preceding subsection, or within any reasonable extension of said ninety (90) days granted by the Class Qualification Panel for good cause shown, Nationwide (through counsel or otherwise) and the Claimant (through Class Counsel or otherwise) may, at their option, submit written presentations to the Class Qualification Panel regarding their respective positions regarding the claim. Class Counsel shall have the right to submit written presentations to and represent Claimants in any hearings before the Class Qualification Panel.
- (G) The Class Qualification Panel shall notify the Claimant, Claims Administrator, Nationwide and Class Counsel in writing, following the period for written submissions and any hearing held by the Class Qualification Panel, of their determination as to whether the Claimant is eligible for General Relief. The Class Qualification Panel may hold a hearing prior to making its determination. The Class Qualification Panel's determination shall be based upon written submissions and/or relevant documentation submitted to it, and evidence or matters presented during a

hearing, if any.

- (H) The Class Qualification Panel shall apply and abide by West Virginia insurance law in making its decisions.
- (I) The Class Qualification Panel's determination as to whether a Claimant is eligible for General Relief shall be final and conclusive; provided, that the Parties shall have the right to seek relief from the Court, which the Parties agree shall be binding, final and non-appealable, if a Party contends that the Class Qualification Panel has applied the terms of this Settlement Agreement in a clearly erroneous manner contrary to the plain meaning and/or intentions of the Parties.

11.06. A Claimant's General Relief Settlement Payment shall be a payment in the amount of the applicable UM or UIM per person or single limit reformed limits ("reformed limits" meaning limits matching the liability limits of the policy applicable to the Claimant's UM/UIM claim), less any prior UM or UIM payments for the subject bodily injuries or property damage previously made to the Settlement Class Member by Nationwide, plus 10% simple interest per year from the date of the accident or incident until the date that Nationwide provides a Claimant's General Relief Settlement Payment to the Claims Administrator for forwarding to the Claimant in accordance with the terms of this Settlement Agreement. The Settlement Class Member's share of attorneys' fees and costs (in the amount of one-third - or 33.33% - of the General Relief Payment, or such other percentage as may be approved by the Court) shall be subtracted from the General Relief Payment. Federal Medicare and/or West Virginia Medicaid liens, as well as any Third-Party Liens that the Claimant has authorized to be satisfied or, if such authorization is withheld by the Claimant, have been deposited with the Court, shall also be

subtracted. Accordingly, the formula for determining the amount of a General Relief Settlement Payment to a Claimant, including subtraction of attorneys' fees and costs, shall be:

Applicable reformed UM/UIM limits – prior UM/UIM payments made + 10% simple interest x .6667 (or such other percentage approved by the Court) – Medicare/Medicaid/Third Party liens.

11.07. Upon calculating the amount of a Claimant's General Relief Settlement Payment as set forth above (with interest being calculated up to the date of such calculation), Nationwide shall forthwith provide such initial calculation of the Claimant's General Relief Settlement Payment, together with proof of stated policy limits, any prior payments made by Nationwide and any liens proposed to be deducted from the Claimant's General Relief Settlement Payment, to Class Counsel, whereupon Class Counsel shall promptly provide written notification of any objection to such calculation. In the event that Class Counsel do not object to Nationwide's calculation of the Claimant's General Relief Settlement Payment, the Claims Administrator shall promptly inform the Claimant entitled to General Relief, by first class mail, of the Claimant's General Relief Settlement Payment. In the event that Class Counsel timely object to Nationwide's calculation of a Claimant's General Relief Settlement Payment, Class Counsel and Nationwide shall make reasonable efforts to resolve the matter, including the exchange of pertinent information if requested. If the matter cannot be resolved, the matter shall be submitted to the Court, whose decision in the matter shall be final, conclusive, binding, and non-appealable.

The Claims Administrator shall include in the notification letter to the Claimant a description of the options set forth in Section 11.08 below, and shall enclose an Acceptance or

Rejection of General Relief Settlement Payment form in a form to be agreed upon by the Parties, for the Claimant to complete and return in a self-addressed, stamped envelope to advise the Claims Administrator which of the options the Claimant selects. The Claims Administrator's notification letter shall also inform the Claimant that in order to have his or her claim adjusted, the Claimant must sign and return to the Claims Administrator a confidential release authorizing Independent Adjusters to obtain medical records, medical bills, lost wages, lost income and other relevant information about the claim. These records shall remain confidential and shall be viewed only by Independent Adjusters, the Claims Administrator, the Claimant, Class Counsel, Nationwide and its counsel, and others permitted by the Court to do so. The Court shall order the destruction of confidential information when the administration of the settlement is completed and closed.

11.08. Upon being provided with the initial calculation of his, her or its General Relief Settlement Payment, a Claimant shall have the right to:

- (A) accept the General Relief Settlement Payment, in which case the Claimant shall be entitled to additional interest covering the period of time from the initial calculation of the Claimant's General Relief Settlement Payment through the date Nationwide provides the payment to the Claims Administrator for forwarding to the Claimant; or
- (B) reject the General Relief Settlement Payment, and have his, her or its claim valued by adjustment as provided for herein; or
- (C) reject the General Relief Settlement Payment and opt out of the Settlement Class by providing written notice thereof to the Claims Administrator.

11.09. For a Claimant who accepts the General Relief Settlement Payment, upon receipt

by the Claims Administrator of the Claimant's properly executed acceptance form, the Claims Administrator shall send Nationwide and Class Counsel a copy of the Claimant's acceptance form. Within thirty (30) days of receipt of the Claimant's acceptance form by Nationwide, Nationwide shall provide the General Relief Settlement Payment to the Claims Administrator, with interest being paid through the date Nationwide provides the General Relief Settlement Payment to the Claims Administrator for forwarding to the Claimant. The Claims Administrator shall then promptly send appropriate payments to the Claimant and lien creditors (if any) by first-class mail.

Claims Adjustment Relief Settlement Payments

11.10. The Claims Administrator shall refer claims to an Independent Adjuster for investigation and adjustment as follows:

- (A) For a Claimant who elects to have his, her or its claim valued by adjustment, upon receipt by the Claims Administrator of the Claimant's form electing evaluation by adjustment; and
- (B) For Claimants who are only entitled to Claims Adjustment Relief, within thirty (30) days of the Effective Date, or within thirty (30) days after final determination, if any, that a Claimant is only eligible for Claims Adjustment Relief (whether by expiration of the time for a Claimant to challenge Nationwide's assertion of such limitation, or by the Class Qualification Panel's issuance of a final decision following such challenge), whichever occurs later.

Independent Adjusters shall be agreed to by the Parties and qualified by experience, training and

licensure to adjust property and casualty claims in West Virginia, and shall have no past, present or likely future connection with Nationwide or its counsel, the Class Representatives, or Class Counsel.

11.11. Upon referral of a claim by the Claims Administrator, Independent Adjusters shall investigate the claim, determine the Adjusted UM/UIM Damages Claim Amount applicable to the claim, and provide such determination to the Claims Administrator, Nationwide and Class Counsel. Upon being provided with the Adjusted UM/UIM Damages Claim Amount pertaining to a claim by the Independent Adjuster and obtaining the Lien Resolution Administrator's certification as to whether any federal Medicare, West Virginia Medicaid and/or Third-Party lien is being asserted as to such Claimant and, where any such lien is determined to exist, the amount proposed to be paid to resolve such lien, Nationwide shall promptly calculate the Claim Adjustment Relief Settlement Payment that the Claimant is entitled to, with interest initially being calculated up to the date of such calculation.

11.12. For a Claimant who did not obtain a judgment against the uninsured or underinsured motorist reflecting the Claimant's damages, the Independent Adjuster shall determine the Adjusted UM/UIM Damages Claim Amount based upon the full amount of the Claimant's personal injury, wrongful death and/or property damages, uncapped by reformed or other policy limits. If the Independent Adjuster determines that some or all of a Claimant's records have been lost, destroyed or are unavailable, the Independent Adjuster shall provide the Claimant with an affidavit or verification form in which the Claimant can describe his or her damages as well as other known information relating to the claim, which the Claimant shall sign under penalty of perjury to have the information therein considered by the Independent Adjuster, and the Independent Adjuster may rely on such an affidavit or verification in determining the

amount of the Claimant's damages as he or she deems appropriate.

11.13. For a Claimant who obtained a judgment against the uninsured or underinsured motorist of which Nationwide had knowledge and did not contest prior to entry of the judgment, the Independent Adjuster shall calculate the Adjusted UM/UIM Damages Claim Amount based upon the uncollected portion of the Claimant's judgment, uncapped by reformed or other policy limits.

11.14. A Claimant's Claims Adjustment Relief Settlement Payment shall be the Adjusted UM/UIM Damages Claim Amount as determined by the Independent Adjuster, less any prior UM/UIM payments for bodily injury or property damage previously made to the Claimant by Nationwide⁶, plus ten percent (10%) simple interest from the date of the accident or incident until the date that Nationwide provides a Claimant's Claims Adjustment Relief Settlement Payment to the Claims Administrator for forwarding to the Claimant. However, the amount of the Adjusted UM/UIM Damage Claim Amount less prior UM/UIM payments made to the Claimant by Nationwide may not exceed (or will be "capped" at) three (3) times the applicable UM/UIM BI or PD per person or single limit reformed limits applicable to the claim, before adding interest to it. In other words, after subtracting prior UM/UIM payments, but before calculation of interest, a Claimant's Claims Adjustment Relief Settlement Payment shall be "capped" at three (3) times reformed limits. The Settlement Class Member's share of attorneys' fees and costs (in the amount of one-third - or 33.33% - of the Claims Adjustment Relief Payment, or such other percentage approved by the Court) shall be subtracted from the Claims

⁶Unless deducting UM/UIM payments previously made by Nationwide would result in a double deduction. For instance, if the uncollected portion of a Claimant's judgment against the uninsured or underinsured motorist already reflects, in determining the "uncollected" portion of the judgment, the deduction of UM/UIM payments previously made by Nationwide, such prior UM/UIM payments shall not be deducted again.

Adjustment Relief Payment. Federal Medicare and/or West Virginia Medicaid liens, as well as any Third-Party Liens the Claimant has authorized to be satisfied or, if such authorization is withheld by the Claimant, have been deposited with the Court, shall also be subtracted. Accordingly, the formula for determining the amount of a Claims Adjustment Relief Settlement Payment to a Claimant, including subtraction of attorneys' fees and costs, shall be:

The lesser of (i) Adjusted UM/UIM Damages Claim Amount – prior UM/UIM payments made or (ii) three times reformed UM/UIM limits, + 10% simple interest \times .667 (or such other percentage approved by the Court) – Medicare/Medicaid/Third-Party liens.

11.15. Upon calculating the amount of a Claimant's Claims Adjustment Settlement Relief Payment as set forth above (with interest being calculated up to the date of such calculation), Nationwide shall forthwith provide such initial calculation of the Claimant's Claims Adjustment Settlement Relief Payment, together with proof of stated policy limits, any prior payments made by Nationwide and liens proposed to be deducted from the Claimant's Claims Adjustment Settlement Relief Payment, to Class Counsel, whereupon Class Counsel shall promptly provide written notification of any objection to such calculation. In the event that Class Counsel do not object to Nationwide's calculation of the Claimant's Claims Adjustment Settlement Relief Payment, the Claims Administrator shall promptly inform the Claimant, by first class mail, of the Claimant's Claims Adjustment Settlement Relief Payment. In the event that Class Counsel timely object to Nationwide's calculation of a Claimant's Claims Adjustment Settlement Relief Payment, Nationwide and Class Counsel shall make reasonable efforts to resolve the matter, including the exchange of available pertinent information if requested. If the

matter cannot be resolved, the matter shall be submitted to the Court, whose decision in the matter shall be final, conclusive, binding, and non-appealable.

The Claims Administrator shall include in the notification letter (i) a description of the options set forth in Section 11.16 below; and (ii) an enclosed Acceptance or Rejection of Claims Adjustment Relief Settlement Payment form in a form to be agreed upon by the Parties, for the Claimant to complete and return in a self-addressed, stamped envelope to advise the Claims Administrator which of the options the Claimant selects.

11.16. Upon being provided with the initial calculation of his, her or its Claims Adjustment Settlement Relief Payment, the Claimant shall have the right to:

- (A) discuss and/or negotiate any unclear or disputed matters concerning the Adjusted UM/UIM Damages Claim Amount with the Independent Adjuster, which if utilized by the Claimant shall result in:
 - (1) if the discussion and/or negotiation between the Claimant and the Independent Adjuster results in an increase in the Adjusted UM/UIM Damages Claim Amount, then the Adjustment Settlement Relief Payment shall be recalculated and the Claimant shall have the right to choose between the options set forth in subsections (B)-(D) below, or
 - (2) if the discussion and/or negotiation between the Claimant and the Independent Adjuster does not result in an increase in the Adjusted UM/UIM Damages Claim Amount, then the Claimant shall have the right to choose between the options set forth in subsections (B)-(D) below;

- (B) accept the Claims Adjustment Settlement Relief Payment, in which case the Claimant shall be entitled to additional interest covering the period of time from the initial calculation of the Claimant's Claims Adjustment Settlement Relief Payment through the date Nationwide provides the payment to the Claims Administrator for forwarding to the Claimant; or
- (C) accept the General Relief Settlement Payment previously offered (if the Claimant is entitled to choose General Relief), without additional accumulated interest; or
- (D) reject both the Claims Adjustment Relief Settlement Payment and the previously offered General Relief Settlement Payment and opt out of the Settlement Class by providing written notice thereof to the Claims Administrator.

11.17. For a Claimant who accepts the Claims Adjustment Relief Settlement Payment, upon receipt by the Claims Administrator of the Claimant's properly executed acceptance, the Claims Administrator shall send Nationwide and Class Counsel a copy of the Claimant's acceptance, and within thirty (30) days of receipt of the same by Nationwide, Nationwide shall provide the Claims Adjustment Relief Settlement Payment to the Claims Administrator, with interest being paid through the date Nationwide provides the Claims Adjustment Relief Settlement Payment to the Claims Administrator for forwarding to the Claimant. The Claims Administrator shall then promptly send appropriate payments to the Claimant and lien creditors (if any) by first-class mail.

11.18. For a Claimant who is eligible for General Relief and who elects to accept the previously offered General Relief Settlement Payment, upon receipt by the Claims Administrator

of the Claimant's properly executed acceptance form, the Claims Administrator shall send Nationwide and Class Counsel a copy of the Claimant's acceptance form, and within thirty (30) days of receipt of the same by Nationwide, Nationwide shall promptly provide the General Relief Settlement Payment to the Claims Administrator in the amount previously offered, without additional accumulated interest, for forwarding to the Claimant. The Claims Administrator shall then promptly send appropriate payments to the Claimant and lien creditors (if any) by first-class mail.

Section 12. Termination of Settlement

12.01. Within ten (10) business days of the occurrence of any of the following events, Nationwide or Class Counsel shall have the right, to be exercisable within their sole discretion, to terminate this Settlement Agreement by sending written notification of such election to the other:

- (A) If the Court does not approve this Settlement Agreement, or if, on appeal, the Court's approval is reversed or modified in any way materially adverse to the interests of one or more of the Parties; or
- (B) If the Court materially alters any terms of this Settlement Agreement; or
- (C) If the Order of Preliminary Approval or the Final Order and Judgment are not entered by the Court, or one or both are reversed or materially modified on appeal, or otherwise fail for any reason; or
- (D) If the Effective Date does not occur for any reason.

12.02. Nationwide agrees that it shall not remove or attempt to remove the Action to federal court based upon the filing of the O'Dells' Fourth Amended Answer, Amended Counterclaims and Complaint in conjunction with this Settlement Agreement. This Settlement

Agreement shall be terminated immediately upon the filing of any such motion by Nationwide to remove the Action to federal court, whether in response to the filing of the Fourth Amended Answer, Amended Counterclaims and Complaint or otherwise.

12.03. If the proposed settlement shall fail for any reason or if this Settlement Agreement shall be terminated by Nationwide or Class Counsel as provided above:

- (A) This Settlement Agreement shall have no further force or effect, and shall not be used in this Action or in any other action or proceeding for any purpose, and any order or judgment entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated and all proceedings that have taken place with regard to this Settlement Agreement shall be without prejudice to the rights and contentions of the Parties hereto or any of the putative Class Members in this Action;
- (B) This Settlement Agreement and all negotiations, proceedings and documents prepared and statements made in connection with this Settlement Agreement shall be without prejudice to any Party and shall not be admissible or offered into evidence in any action or proceeding, and shall not be deemed, asserted or construed to be an admission or confession by any Party or any other person or entity of any fact, matter or proposition of law, and shall not be used or asserted in any other manner or for any purpose;
- (C) The Parties agree that they shall promptly file a joint motion with the Court to vacate all orders entered pursuant to the terms of this Settlement Agreement;

- (D) The Parties shall be restored to their respective positions existing immediately prior to the execution of this Settlement Agreement, including certification of the Trial Class; and
- (E) The Fourth Amended Answer, Amended Counterclaims and Complaint shall automatically be deemed withdrawn and never filed; provided that such withdrawal of the Fourth Amended Answer, Amended Counterclaims and Complaint shall be without prejudice to the right of Class Representatives to seek leave of Court to refile the same, in which case Nationwide shall retain any rights to remove the Action to federal court.

12.04. The Parties acknowledge that there is no provision allowing any Party to terminate or void the Settlement Agreement and proposed settlement based upon how many persons may qualify as Settlement Class Members or opt out of the Settlement Class.

Section 13. Confidentiality

13.01. The names, addresses, social security numbers, policy numbers, accident, medical, income and other information which may be compiled by Nationwide, Class Counsel, the Claims Administrator, Independent Adjusters, the Class Qualification Panel and/or the Lien Resolution Administrator, or agents or employees of any such persons or entities, pursuant to this Settlement Agreement, and the data processing and other record-keeping procedures and materials to be used in identifying potential members of the Settlement Class and effectuating the Parties' other obligations hereunder ("Information"), are represented by Nationwide to constitute confidential information. The protections contained herein for the protection of the confidentiality of Information shall be made known by footnote or otherwise to Settlement Class

Members and potential Settlement Class Members in communications to them. The confidentiality of the Information shall be protected by entry by the Court of an agreed protective order.

13.02. 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 Nationwide's counsel, and attorneys, consultants and clerical personnel employed by Class Counsel or Nationwide's counsel, and/or agents or employees of any such persons or entities;
- (B) The Claims Administrator and Independent Adjusters, and personnel employed by the Claims Administrator or 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; and
- (D) Such other persons as the Court may order after hearing and notice to all counsel of record.

13.03. At no time, except pursuant to order of the Court after hearing upon notice to all counsel of record and the affected Settlement Class Member or potential Settlement Class Member, shall any Information be made known or available to any person, other than individuals described in the preceding paragraph.

Section 14. Communications With Settlement Class Members

14.01. Other than as provided in this Settlement Agreement, communications relating to the Action or this proposed settlement with potential Settlement Class Members shall be handled through Class Counsel and the Claims Administrator; provided, however, that nothing in this Settlement Agreement shall be construed to prevent Nationwide from communicating orally, electronically, or in writing with potential Settlement Class Members in the ordinary course of business on matters unrelated to the Action or this proposed settlement. Nothing set forth herein shall be interpreted to prevent Class Counsel from fulfilling their obligations to Class Members.

Section 15. Release of Claims

15.01. As of the Effective Date, 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 of and from all Released Claims 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.

15.02. “Released Parties” means Nationwide as defined in this Settlement Agreement,

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.

15.03. “Released Claims” mean and include any and all rights, claims for relief or causes of action pursuant to any theory of recovery,⁷ 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 Action, 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, omissions, facts, matters, transactions, or oral or written statements or occurrences prior to the Final Order and Judgment entered in the Action involving, based on, arising out of, related to, or in any way connected with, directly or indirectly, covered auto

⁷Such 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 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,

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.

15.04. In connection with this Release, the Counterclaim Plaintiffs/Plaintiffs, Class Representatives, and the 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) acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the matters released herein. Nevertheless, the Counterclaim Plaintiffs/Plaintiffs, Class Representatives, and the 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) acknowledge that a portion of the consideration received herein is for a release with respect to future damages and complaints, whether resulting from known injuries and consequences or from unknown injuries or unknown consequences of known or unknown injuries and state that it is the intention of the Counterclaim Plaintiffs, Class Representatives, and the Settlement Class Members to fully, finally, and forever settle and release all matters, known or otherwise, and all claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action) constituting Released

property, or psyche, damages for emotional distress or mental anguish, lost wages, loss of

Claims.

15.05. Nothing in this Release shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed herein.

15.06. Nothing in this Release shall be deemed to alter a Settlement Class Member's contractual rights to make a claim for benefits that shall become payable in the future pursuant to the express written terms of a policy issued by Nationwide; provided, however, that this provision shall not entitle a Settlement Class Member to assert claims which constitute Released Claims.

Section 16. Tolling

16.01. Without limiting any rights that a member of the Trial Class may otherwise have, the statute(s) of limitation and/or repose pertaining to the claims of Trial Class Members that are not encompassed by the Settlement Class, including but not limited to the claims of Persons Excluded From the Settlement Class Based Upon Prior Reformed Coverage, and/or Constructive Opt Outs who voluntarily dismissed their claims against Nationwide without prejudice, shall be tolled from the date the O'Dells filed their "Motion to File Second Amended Answer and Counterclaims Against Nationwide Mutual Insurance Company" until sixty (60) days after the entry of the Final Order and Judgment.

16.02. Without limiting any rights that an opt out from the Settlement Class may otherwise have, the statute(s) of limitation and/or repose as to the claims of any person who opts out of the Settlement Class shall be tolled from the date the O'Dells filed their "Motion to File Second Amended Answer and Counterclaims Against Nationwide Mutual Insurance Company" until sixty (60) days after the entry of the Final Order and Judgment.

income, attorneys' fees, interest, costs, penalties, and any other damages.

Section 17. Miscellaneous Provisions

17.01. The headings and captions contained in this Settlement Agreement are for reference purposes only and in no way define, extend, limit, describe, or affect the scope, intent, meaning, or interpretation of this Settlement Agreement.

17.02. This Settlement Agreement shall be construed, enforced, and administered in accordance with the laws of West Virginia.

17.03. This Settlement Agreement is not, and shall not be offered in evidence as, an admission of liability, Nationwide having denied any such liability.

17.04. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Settlement Agreement, and the Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement as set forth in this Settlement Agreement.

17.05. The Parties and their counsel express no opinion concerning the tax consequences of this proposed settlement to individual Settlement Class Members and make no representations, warranties or other assurances regarding such tax consequences. No opinion, representations, warranties, or other assurances shall be deemed to have been made by the Parties or their counsel with respect to such tax consequences by virtue of this Settlement Agreement or by effectuating this settlement, and the Parties and their counsel shall not be held liable for any such tax consequences that may occur. The Mail Notice shall direct Settlement Class Members to consult their own tax advisors regarding any tax consequences of the proposed settlement, including any payments or benefits provided hereunder, and any tax reporting obligations they may have with respect thereto. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is

understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

17.06. Nothing contained in this Settlement Agreement or in any proceedings concerning the settlement or the Action shall in any way affect Nationwide's rights to seek contribution, indemnity or any other relief from any person or entity not a party to the Action. All such rights and remedies are specifically retained and preserved.

17.07. In the event that there are any developments in the effectuation and administration of this Settlement Agreement that are not dealt with by the terms of this Settlement Agreement, then such matters shall be dealt with as agreed upon by the Parties, and, failing agreement, as shall be ordered by the Court.

17.08. Except as otherwise stated in this Settlement Agreement, this Settlement Agreement constitutes the entire agreement between and among the Parties with respect to the settlement of the Action. This Settlement Agreement shall not be construed more strictly against one Party than another merely because of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations resulting in this Settlement Agreement, all Parties have contributed substantially and materially to the preparation of this Settlement Agreement. This Settlement Agreement supersedes all prior negotiations and agreements (except as otherwise stated in this Settlement Agreement) and may not be modified or amended except by a writing signed by the Parties or their respective counsel.

17.09. This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Signatures exchanged by telecopy or electronic transmission shall be deemed original signatures.

17.10. The Parties shall execute all documents and perform all acts reasonably necessary and proper to effectuate the terms of this Settlement Agreement.

17.11. Each Party to this Settlement Agreement warrants that he, she, or it is acting upon his, her, or its independent judgment and upon the advice of his, her, or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Settlement Agreement.

17.12. The Parties have previously conducted voluminous discovery in this Action. Nationwide shall make additional confirmatory discovery available to Class Counsel as reasonably necessary to effectuate this Settlement Agreement. All discovery provided by any party to the Action previously identified as confidential under the Court's protective order(s) shall be kept confidential except as specifically agreed by the Parties to support the settlement or as otherwise required by law or ordered by the Court.

17.13. The Claims Administrator or any Party or Claimant may request a reasonable extension of any deadlines set forth in this Settlement Agreement for good cause. The Parties shall attempt in good faith to agree upon any such requested reasonable extensions. If unable to agree, reasonable extensions may be sought from the Court for good cause shown.

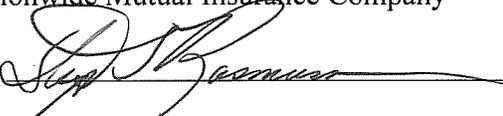
17.14. The Parties agree to work in good faith to finalize and seek approval of this Settlement Agreement and other customary settlement documents and exhibits as contemplated by this Settlement Agreement.

Dated: February 9, 2009.

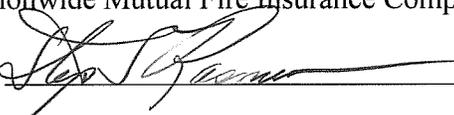
[Signature Pages to Follow]

AGREED TO ON BEHALF OF NATIONWIDE BY:

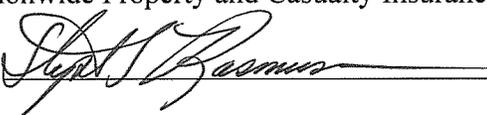
Nationwide Mutual Insurance Company

By:  _____
Its: President and Chief Operating Officer

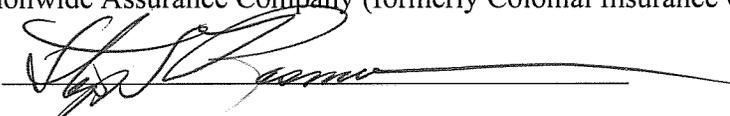
Nationwide Mutual Fire Insurance Company

By:  _____
Its: President and Chief Operating Officer

Nationwide Property and Casualty Insurance Company

By:  _____
Its: Chairman

Nationwide Assurance Company (formerly Colonial Insurance Company of Wisconsin)

By:  _____
Its: Chairman

Counsel for Nationwide:

John P. Marino
FOWLER WHITE BOGGS P.A.

Walter M. Jones III
MARTIN & SEIBERT, L.C.

AGREED TO ON BEHALF OF NATIONWIDE BY:

Nationwide Mutual Insurance Company

By: _____

Its: _____

Nationwide Mutual Fire Insurance Company

By: _____

Its: _____

Nationwide Property and Casualty Insurance Company

By: _____

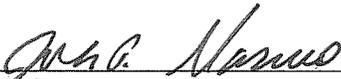
Its: _____

Nationwide Assurance Company (formerly Colonial Insurance Company of Wisconsin)

By: _____

Its: _____

Counsel for Nationwide:



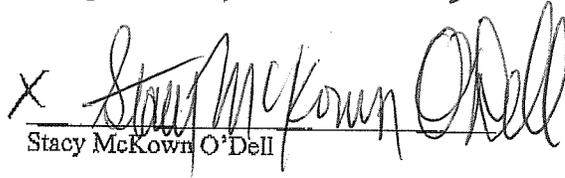
John P. Marino
FOWLER WHITE BOGGS P.A.



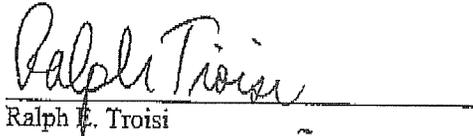
Walter M. Jones III
MARTIN & SEIBERT, L.C.

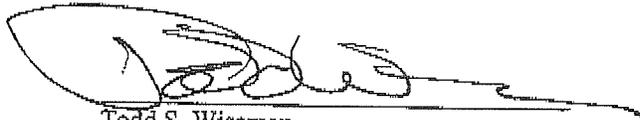
AGREED TO ON BEHALF OF THE SETTLEMENT CLASS BY:

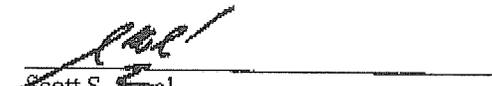

George G. O'Dell, Jr.

X 
Stacy McKown O'Dell

Counsel for Class Representatives and Proposed Settlement Class:


Ralph E. Troisi


Todd S. Wiseman
THE WISEMAN LAW OFFICE


Scott S. Segal
THE SEGAL LAW FIRM, L.C.

Peter R. Kahana
BERGER AND MONTAGUE, P.C.

AGREED TO ON BEHALF OF THE SETTLEMENT CLASS BY:

George G. O'Dell, Jr.

Stacy McKown O'Dell

Counsel for Class Representatives and Proposed Settlement Class:



Ralph E. Troisi



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AGREED TO ON BEHALF OF THE SETTLEMENT CLASS BY:

George G. O'Dell, Jr.

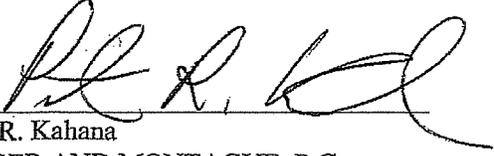
Stacy McKown O'Dell

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THE SEGAL LAW FIRM, L.C.



Peter R. Kahana
BERGER AND MONTAGUE, P.C.