

FILED
MAY 30 2008
By PATRICK E. DUFFY, CLERK
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA DIVISION

<p>NOLA GREENO,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-vs-</p> <p>ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY, an Iowa Corporation, AMCO INSURANCE COMPANY, an Iowa corporation, DEPOSITORS INSURANCE COMPANY, an Iowa corporation, NATIONWIDE INSURANCE COMPANY OF AMERICA, a California corporation, ALLIED GROUP, INC., an Iowa corporation and NATIONWIDE MUTUAL INSURANCE COMPANY, an Ohio corporation,</p> <p style="text-align: center;">Defendants.</p>	<p>CAUSE NO. CV-06-113-M-DWM</p> <p style="text-align: center;">PRELIMINARY APPROVAL ORDER</p>
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This matter is before the Court upon the Parties' Motion(s) for Preliminary Approval of Proposed Stipulation of Class Action Settlement. Having reviewed the record, heard argument of counsel, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that the Parties' Motion(s) for Preliminary Approval of Proposed Stipulation of Class Action Settlement (dkt # 126) is GRANTED as follows:

Preliminary Approval of the Proposed Settlement

1. The Court has jurisdiction over the subject matter of this action, and over the Parties and the Settlement Class (as defined below).
2. The Court preliminarily approves the proposed settlement and finds that: (a) the proposed settlement resulted from extensive arm's-length negotiations and was concluded only after Class Counsel had duly investigated the issues raised by Plaintiff's claims; (b) the proposed settlement of this action makes available valuable consideration commensurate with the alleged harm; and (c) the proposed settlement evidenced by the Stipulation is sufficiently fair,

reasonable and adequate to warrant providing notice of this action and the proposed settlement to the Settlement Class Members and holding a full hearing on the proposed settlement.

3. Capitalized terms used in this Preliminary Approval Order (this "Order") that are not otherwise defined in this Order shall have the meanings assigned to them in the Stipulation.

Certification of the Settlement Class

4. For purposes of settlement of this action and pursuant to Federal Rule of Civil Procedure 23, this action is certified as a class action on behalf of the following Settlement Class:

Policy holders, their family members, and other identifiable insureds who purchased or were otherwise insured under a Nationwide/Allied personal automobile insurance policy or policies issued or renewed in the State of Montana, and who (a) were injured in a motor vehicle (including motorcycle or motor homes) accident; (b) were insured by Nationwide/Allied under one or more Medical Payments (MPC), Uninsured Motorist (UM), or Underinsured Motorist (UIM) coverages priced on a per vehicle basis; (c) did not receive the stacked benefit of all of those MPC, UM, or UIM coverages; and (d) on or after January 1, 1998, were entitled to stacked MPC, UM, or UIM coverage or additional stacked MPC, UM, or UIM coverages from Nationwide/Allied.

Excluded from the Settlement Class are: (i) Nationwide/Allied, any entities in which Nationwide/Allied has a controlling interest, and all of their legal representatives, heirs and successors; and (ii) members of the judiciary. Also excluded from the Settlement Class are individual MPC, UM, or UIM claims that are at issue in litigation filed and pending as of May 30, 2008 other than this Lawsuit.

The Court expressly reserves the right to determine, should the occasion arise, whether the above-captioned action may continue to be certified as a class action for purposes other than settlement, and Nationwide/Allied retains all rights to assert that this action may not be certified as a class action except for settlement purposes.

5. As used in this Order and as defined in the Stipulation, "Nationwide/Allied" means the named defendants in the Lawsuit, Allied Property and Casualty Insurance Company,

AMCO Insurance Company, Depositors Insurance Company, Nationwide Insurance Company of America, Allied Group, Inc. and Nationwide Mutual Insurance Company, and each and all of their present and former affiliates, related companies, parent companies, subsidiaries, predecessors, successors or assigns, whether or not named herein, including without limitation, Nationwide Mutual Fire Insurance Company, and Nationwide Property and Casualty Insurance Company, 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.

6. For the sole purpose of serving as class representative for the proposed Settlement Class (as defined above) Nola Greeno is designated as the representative of the Settlement Class for the purpose of seeking approval of the settlement of this action, and is referred to herein as the "Class Representative."

7. Counsel for Nola Greeno is hereby approved as counsel for the Settlement Class for purposes of seeking approval of the settlement of this action, and are referred to herein as "Class Counsel." Class Counsel are as follows:

Lawrence A. Anderson
Attorney at Law
#18 Sixth Street North, Suite 200
P.O. Box 2608
Great Falls, Montana 59403-2608

Rex Palmer
Attorney at Law
Attorneys Inc. P.C.
301 W. Spruce
Missoula, Montana 59802

8. Fed.R.Civ.P. 23(a) establishes four prerequisites for every class action: (1) the class must be so numerous that joinder of all members is impracticable; (2) there must be questions of law or fact common to the class; (3) the claims or defenses of the representative parties must be typical of the claims or defenses of the class; and (4) the representative parties must fairly and adequately protect the interests of the class. To determine whether the prerequisites of Rule 23(a) are satisfied, a court must engage in a rigorous analysis, *General Telephone Company Of the Southwest v. Falcon*, 457 U.S. 147, 161 (1982), though an extensive evidentiary showing is not required. *Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975). A court must have sufficient information “to form a reasonable judgment on each requirement.” *Id.* In making its determination, a court must accept as true the substantive allegations of the class claim, *id.* at 901 n. 17, and does not examine the merits of the case. *Id.* at 901. As established below and as required by *General Telephone*, the Court engaged in a rigorous analysis and finds that the requirements of the Federal Rules of Civil Procedure and any other applicable law have been met.

Class Size

9. Rule 23(a)(1) requires that the members of the class are so numerous that separate joinder of each member is impracticable. The Class Representative need not give an exact estimate of class size; only a reasonable estimate is required. *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993). While not impossible, it would be impracticable to join even 100 to 150 people as plaintiffs. Here, the Settlement Class contains thousands of members, thereby rendering joinder impracticable. Thus, the numerosity requirement is satisfied.

Commonality

10. The prerequisite of commonality requires the existence of at least one question of law or fact common to the class. Fed.R.Civ.P. 23(a)(2). Here, the claims of the Class Representative are uniform with respect to the claims of the Settlement Class Members to the extent that they relate to Nationwide/Allied's alleged failure to provide stacked coverage benefits under Medical Payments ("MPC"), Uninsured Motorist ("UM"), and/or Underinsured Motorist ("UIM") coverages in accordance with Montana law. The requirements under Rule 23(a)(2) are minimal, *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998), and this common question is sufficient.

Typicality

11. Rule 23(a)(3) requires that the claims or defenses of the class representative are typical of the claims or defenses of each member of the settlement class. In the Ninth Circuit, the test of typicality is whether the Class Members have the same or similar injury, whether the action is based on conduct which is not unique to the Class Representative, and whether the Class Members have been injured by the same course of conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Typicality does not refer to the specific facts from which a claim arose or to the specific relief sought. *Id.* So long as the named representative's claim arises from the same course of conduct that forms the basis of the class claims, and is based upon the same legal theory, differences between the claims or defenses of the class and the class representative will not render the named representative's claim atypical. *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1321 (9th Cir. 1982).

Here, the Class Representative is an insured of one of the Nationwide/Allied affiliates who, like the other members of the Settlement Class, paid multiple premiums for MPC, UM,

and/or UIM coverages because she had more than one vehicle insured by Nationwide/Allied. She therefore stands in the same position as the Settlement Class Members vis-à-vis Nationwide/Allied. The claims of the Class Representative and the Settlement Class Members all seek to obtain stacked coverage benefits provided under Medical Payments (“MPC”), Uninsured Motorist (“UM”), and/or Underinsured Motorist (“UIM”) on all such claims during the Class Period. Thus, the typicality requirement is satisfied.

Adequate Representation

12. The named plaintiff must fairly and adequately protect the interests of the class. Fed.R.Civ.P 23(a)(4). This, in turn, consists of two requirements: (a) the named plaintiff's counsel must be qualified, experienced, and generally able to conduct the proposed litigation, and (b) the named plaintiff must not have any interest antagonistic to those of the class. *Securities & Exchange Commission v. Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 291 (2d Cir. 1992). Here, Class Counsel are experienced in class action and insurance litigation and are able to properly conduct this Lawsuit. Additionally, while some aspects of the Class Representative's claims may differ from Class Members', she has no interests that are adverse to the class. Therefore, she is an adequate representative and the prerequisites of Fed.R.Civ.P 23(a)(4) is satisfied.

Rule 23(b)(3)

13. The Parties have jointly moved for certification of the Settlement Class under Subsection (b)(3) of Rule 23 of the Federal Rules of Civil Procedure. For certification under Rule 23(b)(3), common questions must predominate over individual interests. *Amchem Prods., Inc. v. Windsor*, 117 S. Ct. 2231 (1997). The predominance requirement is more demanding than the commonality requirement of Rule 23(a). *Id.* Implicit in the satisfaction of the

predominance test is the notion that the adjudication of common issues will help achieve judicial economy. *Zinser v. Accufix Research Institute, Inc.*, 253 F.3d 1180, 1189 (9th Cir. 2001) (quoting *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.1996)). Predominance is determined by weighing the significance of common issues, not by counting their numbers. *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 627 (5th Cir. 1999). Here, common questions predominate over individual interests. The most significant aspect of this case is Nationwide/Allied's alleged failure to stack coverage benefits provided under Medical Payments ("MPC"), Uninsured Motorist ("UM"), and/or Underinsured Motorist ("UIM") coverages in accordance with Montana law, and this question is common to all. Thus, the predominance of common questions is satisfied.

14. Rule 23(b)(3) also requires that class representation is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to these issues include: (a) the interests of members of the settlement class in individually controlling the prosecution or defense of separate actions; (b) the impracticability or inefficiency of prosecuting or defending separate actions; (c) the extent and nature of any litigation concerning these claims already commenced; and (d) the desirability of concentrating the litigation of the claims in the particular forums. *Zinser v. Accufix Research Institute, Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001). Finally, because superiority is assessed in the context of a proposed class settlement, the Court need not consider manageability issues that might be presented in this case. *See Amchem Prods., Inc. v. Windsor*, 117 S. Ct. 2231, 2248 (1997).

Under the circumstances presented, proceeding through certification of the Settlement Class is superior to other alternatives for fair and efficient adjudication of the controversy. The Settlement Class will receive notice of their rights, resolution of their claims, and payment more

efficiently and quickly than separate individual actions would provide. There does not appear to be any significant individual litigation of the claims covered by this lawsuit and the proposed settlement. Moreover, concentrating the claims in this forum and under the review procedures contemplated by the proposed settlement will yield more consistent treatment of claims possessed by Settlement Class Members. Finally, any difficulties that may have existed in litigating or trying the claims in this lawsuit are obviated by the proposed settlement.

15. Based on the foregoing, the Court certifies the Settlement Class as a Rule 23(b)(3) class, and directs that notice and an opportunity to be heard be provided as set forth below.

Fairness Hearing

16. A hearing (the “Fairness Hearing”) will be held on October 9, 2008, at 1:30 p.m., in the Russell Smith Courthouse, Missoula, Montana to determine:

- (a) whether certification of the Settlement Class should be reaffirmed in conjunction with final approval of the proposed settlement;
- (b) whether the proposed settlement of this action should be approved as fair, reasonable and adequate;
- (c) whether this action should be dismissed on the merits and with prejudice pursuant to the terms of the proposed settlement;
- (d) whether Settlement Class Members should be bound by the release set forth in the Stipulation;
- (e) whether Class Counsels’ application for an award of attorneys’ fees and expenses should be approved; and
- (f) whether the Class Representative’s application for incentive awards should be approved.

Pre-Hearing Notice to Settlement Class Members

17. The appointment of a “Settlement Administrator,” as agreed in the Stipulation, is approved for purposes of providing notice, administering requests for exclusion and other communications with Settlement Class Members, and otherwise administering the proposed settlement pursuant to the Stipulation and the Order(s) of this Court.

18. Pursuant to the terms of the Stipulation, Nationwide/Allied shall cause, through the Settlement Administrator, the Mail Notice, together with the Claim Form, to be provided to potential Settlement Class Members, and such other notice to be provided, as set forth below.

(a) **The Mail Notice.** Within 60 days of the entry of this Order or such other time as the court may provide, the Settlement Administrator shall mail the Mail Notice, together with the Claim Form, substantially in the forms filed with this Court to Settlement Class Members, at their last known address of record, who are identified by a reasonable search of Nationwide/Allied’s available electronic records as set forth in the Stipulation.

(b) **Notice by Publication.** Publication Notice will be provided by publishing as a ¼ page ad in Section “A”, on three consecutive Sundays, in the following newspapers (1) *Billings Gazette*, (2) *Great Falls Tribune*, (3) *Helena Independent Record*, (4) *The Missoulian*, (5) *Butte Standard*, (6) *Daily Interlake* and (7) *Bozeman Daily Chronicle*. The Publication Notice will be timed to reasonably correlate with the mailing of the Mail Notice. Publication of the Publication Notice will be arranged by the Settlement Administrator in coordination with counsel for the Parties. The Publication Notice shall be published substantially in the form filed with this Court.

(c) **Notice to Federal and State Officials.** Nationwide/Allied shall provide notice to federal and state officials as provided in the Class Action Fairness Act, 28 U.S.C. § 1715.

19. **Internet Notice.** Nationwide/Allied will establish and maintain, through the Settlement Administrator, a website with downloadable Claim Forms and hyperlinks to the Mail Notice, Stipulation, and such other documents the Parties shall reasonably agree upon, as well as frequently asked questions and responses thereto, as the Parties shall reasonably agree upon. The website will remain operational and accessible through the end of the Notice Period.

20. **Toll Free Number.** Nationwide/Allied will establish and maintain, through the Settlement Administrator, a toll free number which will provide recorded responses for frequently asked questions to assist Class Members and will allow Class Members to request a Mail Notice and Claim Form, which number will remain operational through the end of the Notice Period and which will be updated upon the occurrence of significant events in the settlement administration.

21. **Re-mailing and Additional Notice.** In the event that a Mail Notice to a Settlement Class Member is returned to the Settlement Administrator, the Settlement Administrator shall resend the Mail Notice to the forwarding address, if one is provided by the United States Postal Service. If a forwarding address is not provided by the United States Postal Service, the Settlement Administrator shall attempt to locate a more current address for the Class Member and thereafter redeliver the Mail Notice as appropriate.

22. **Post Office Box.** The Settlement Administrator shall rent a post office box, at Nationwide/Allied's expense, to be used for receiving requests for exclusion, objections, notices of intention to appear, and any other settlement-related communications. Only the Settlement

Administrator, Class Counsel, Nationwide/Allied and its counsel, the Court, and its designated agents shall have access to this post office box, except as otherwise provided in the Stipulation.

23. **Proof of Mailing and Publication.** At or before the Fairness Hearing to be conducted by this Court, the Settlement Administrator shall file with the Court a proof of mailing of the Mail Notice and publication of the Publication Notice.

24. The Settlement Administrator shall promptly furnish Class Counsel and counsel for Nationwide/Allied with copies of any and all written objections, requests for exclusion, and notices of intention to appear.

25. Having considered, among other factors, (a) the cost of giving notice by various methods, (b) the resources of the parties, (c) the stake of each Settlement Class Member, and (d) the possibility that certain Settlement Class Members might desire to exclude themselves from the Settlement Class or appear individually, the Court finds that notice given in the form and manner provided in this Order is the best practicable notice and is reasonably calculated, under the circumstances, to apprise the Settlement Class Members (i) of the pendency of the Lawsuit, (ii) of their right to exclude themselves from the Settlement Class and the proposed settlement, (iii) that any judgment, whether favorable or not, will bind all Settlement Class Members who do not request exclusion, and (iv) that any Settlement Class Member who does not request exclusion may object to the settlement and, if he or she desires, enter an appearance personally or through counsel. The Court further finds that the Mail Notice and the Publication Notice are written in plain English and are readily understandable by Settlement Class Members.

Exclusion/Opt Out from Settlement Class

26. Any Settlement Class Member who wishes to be excluded from the Settlement Class must timely submit a written request for exclusion (a/k/a Opt Out) to the Settlement Administrator in the manner set forth below.

(a) Any written request for exclusion must contain the following: (i) the Settlement Class Member's name, and any former names under which the Settlement Class Member may have been insured by Nationwide/Allied; (ii) the Settlement Class Member's policy number or last four digits of the Settlement Class Member's Social Security Number; (iii) the Settlement Class Member's address; (iv) the Settlement Class Member's expression of the desire to opt out or be excluded from the Settlement Class; and (v) the Settlement Class Member's signature or the signature of an authorized representative of the Settlement Class Member. A separate request for exclusion must be submitted by each person or entity requesting exclusion.

(b) Any written request for exclusion must be sent by first-class mail, postage prepaid, and postmarked no later than sixty (60) days after mailing of the Mail Notice, and addressed to the Settlement Administrator at the address identified in the Mail Notice and the Publication Notice.

27. At or before the Fairness Hearing to be conducted by this Court, the Settlement Administrator shall file with the Court (under seal or as may otherwise be ordered by the Court to protect personal information) a list identifying all persons or entities who timely submitted written requests to be excluded from the Settlement Class complying with this Order.

28. If the proposed settlement is approved by the Court, any Settlement Class Member who has not submitted a timely, written request for exclusion from the Settlement Class complying with this Order and the Mail Notice shall be bound by all proceedings, orders and

judgments by the Court, as well as the Release set forth in the Stipulation, even if the Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Release set forth in the Stipulation.

Objections

29. Any Settlement Class Member who has not excluded himself, herself, or itself from the Settlement Class may submit a written objection for the Court's consideration, including without limitation, objections to the final certification of the Settlement Class, the fairness, reasonableness, or adequacy of the proposed settlement, the adequacy of the representation by the Class Representative or by Class Counsel, the request of Class Counsel for fees and expenses or the compensation to the Class Representative, in the manner set forth below.

(a) Each objection must be in writing and include: (i) a prominent identifying reference to the case as follows "Greeno v. Nationwide/Allied, Cause No. CV-06-113-M-DWM"; (ii) the Settlement Class Member's name; (iii) the Settlement Class Member's policy number or last four digits of the Settlement Class Member's Social Security Number; (iv) the Settlement Class Member's address; (v) a statement of each objection being made; (vi) a statement indicating whether the Settlement Class Member intends to appear at the Fairness Hearing to be held by the Court; and (vii) a list of witnesses whom the Settlement Class Member may call by live testimony and copies of any documents or papers that the Settlement Class Member plans to submit.

(b) The Settlement Class Member shall file the written objection(s) with the Court and serve copies upon the following:

Class Counsel

Lawrence A. Anderson
Attorney at Law
#18 Sixth Street North, Suite 200
P.O. Box 2608
Great Falls, Montana 59403-2608

Nationwide/Allied's counsel

Edward K. Cottrell, Esq.
Fowler White Boggs Banker P.A.
50 N. Laura Street, Suite 2200
Jacksonville, FL 32202

Any such written objections must be submitted with the Court and served upon Class Counsel and Nationwide/Allied's counsel identified above postmarked no later than sixty (60) days after commencement of the Notice Period. The above identified Class Counsel shall provide copies of any written objections received to all other Class Counsel. The Settlement Administrator shall file any written objection(s) with the Court at or before the Fairness Hearing to be considered by this Court.

30. Any Settlement Class Member who does not timely file and serve a written objection complying with the terms of this Order and the Mail Notice shall be deemed to have waived, and shall be foreclosed from raising, any objection(s) to the settlement, and any untimely objection(s) shall be barred.

Appearances at the Fairness Hearing

31. Any Settlement Class Member who does not timely file and serve a Notice of Intent to Appear complying with this Order and the Mail Notice shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

Preliminary Injunction (the "Stay Order")

32. All Settlement Class Members are hereby preliminarily enjoined from commencing any lawsuit or proceeding concerning the claims and issues being litigated and proposed for resolution in this Lawsuit, except that this Stay Order shall cease to apply to individual claims of persons who have submitted a timely Request for Exclusion as provided in

this Order ten (10) days after such exclusion request is submitted (as determined by postmark date).

Other Provisions

34. This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (a) the proposed settlement is not finally approved by the Court, or does not become final pursuant to the terms of the Stipulation; or (b) the proposed settlement is terminated in accordance with the Stipulation or does not become effective as provided by the terms of the Stipulation for any other reason. In such event, the proposed settlement and Stipulation shall become null and void and be of no further force and effect, and neither the Stipulation nor any filings or orders made in connection with the proposed settlement, shall be used or referred to for any purpose whatsoever in this or any other action or proceeding.

35. Nationwide/Allied shall retain the right to communicate with and respond to inquiries from Settlement Class Members and persons who are sent the Mail Notice orally, electronically, or in writing, and it may do so through any appropriate representatives, including, without limitation, in the following respects:

(a) During the period following the date of this Order, Nationwide/Allied may continue to communicate with potential Settlement Class Members in the ordinary course of business, including processing and responding to all inquiries or complaints, notwithstanding the fact that certain complaints may originate with Settlement Class Members or persons who are sent the Mail Notice and may concern claims that otherwise could be eligible for relief under the proposed settlement.

(b) Communications by Nationwide/Allied (and its counsel) or Class Counsel about the proposed settlement with the Settlement Class as a whole (or a substantial sub-group thereof) shall be made jointly to the extent possible. However, the foregoing shall not restrict Plaintiff's counsel's ability to engage in privileged communications and other advice or respond to inquiries by Settlement Class Members regarding the settlement.

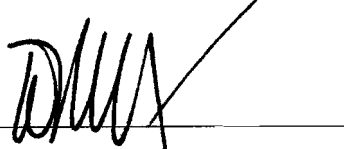
36. This Order shall not be construed or used as an admission, concession, declaration or finding by or against Nationwide/Allied of any fault, wrongdoing, breach or liability, or of the appropriateness of certifying a class for litigation purposes. Nor shall this Order be construed or used as an admission, concession, declaration or finding by or against Plaintiff or the Settlement Class Members that their claims lack merit or that the relief requested in their pleadings is inappropriate, improper or unavailable, or as a waiver by any party of any defenses or claims he, she or it may have. Other than for purposes to enforce this Order or the Stipulation, if finally approved, neither this Order nor the Stipulation (or any communications or proceedings in connection therewith) shall be offered or received in evidence in this action or any other action or proceeding, or be used or asserted in any way as an admission, concession or evidence of any matter whatsoever.

37. No discovery with regard to the proposed settlement or the Stipulation shall be permitted as to any of the parties to the Stipulation, or by any Settlement Class Members or other parties, other than as may be directed by the Court upon a proper showing seeking such discovery by motion properly noticed and served in accordance with the governing rules of

procedure.

38. The Court may continue the Fairness Hearing without further written notice.

Dated this 30 day of May, 2008.



Donald W. Molloy, District Judge
United States District Court

