

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MONTANA  
MISSOULA DIVISION

**FILED**  
OCT 29 2008  
By PATRICK E. DUFFY, CLERK  
DEPUTY CLERK, MISSOULA

<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><b>FINAL ORDER AND JUDGMENT APPROVING CLASS ACTION SETTLEMENT</b></p>
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WHEREAS, the Parties have entered into a Stipulation of Class Action Settlement filed March 31, 2008, (the "Stipulation"), to settle the class action claims asserted in *Nola Greeno v. Allied Property and Casualty Insurance Company, et al.*, United States District Court, District of Montana, Case No. CV-06-113-M-DWM pending before this Court; and

WHEREAS, the Court entered an Order dated May 30, 2008, (the "Preliminary Approval Order"), certifying a class in this action in connection with the preliminarily approved settlement; ordering notice to potential class members through Mail Notice and Publication Notice; providing those persons with an opportunity either to exclude

themselves from the Settlement Class or to object to the proposed settlement; and scheduling a Fairness Hearing; and

WHEREAS, the Court held a Fairness Hearing on October 9, 2008, to determine whether to finally approve the proposed settlement; and

WHEREAS, the Parties have complied with the Preliminary Approval Order and the Court finds that the Stipulation is fair, adequate, and reasonable, and that it should be finally approved.

NOW THEREFORE, based on the submissions of the Parties and Settlement Class Members, any objections, any testimony adduced at the Fairness Hearing, the pleadings on file, and the argument of counsel, the Court hereby finds, and it is hereby ORDERED, ADJUDGED AND DECREED, as follows:

**1. Incorporation of Defined Terms.** Except where otherwise noted, all capitalized terms used in this Order and in Appendix "A" hereto shall have the meanings set forth in Appendix "A" hereto.

**2. Jurisdiction.** The Court has personal jurisdiction over all Settlement Class Members and has subject matter jurisdiction over this action for the purposes of approving the Stipulation, granting final certification of the Settlement Class, settling and releasing all claims arising out of the transactions alleged in the action or the Released Claims, and dismissing this action on the merits and with prejudice.

**3. Final Settlement Approval.** As established below, the terms and provisions of the Stipulation, including all amendments and related settlement documents, have been entered into at arms' length and in good faith and are hereby fully and finally approved as fair, reasonable and adequate as to each of the Parties, including the Settlement Class, and

are consistent and in compliance with all requirements of due process, the Federal Rules of Civil Procedure, and any other applicable rules or law and are in the best interests of the Parties and the Settlement Class Members. The Parties and their respective counsel are hereby directed to implement and consummate the Stipulation according to its terms and provisions.

Specifically, the Court finds that the Stipulation is “fair, reasonable, and adequate” pursuant to applicable rules and case law. *See* Rule 23, *Fed.R.Civ.P.*; *Stanton v. Boeing Co.*, 327 F.3d 938, 959 (9<sup>th</sup> Cir. 2003) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9<sup>th</sup> Cir. 1998)); *E.g.*, *Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9<sup>th</sup> Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983); *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9<sup>th</sup> Cir. 1977); *In re Warner Communications Securities Litigation*, 618 F.Supp. 735, 740 (S.D.N.Y. 1985), *aff’d*, 798 F.2d 35 (2d Cir. 1986).

To determine that the Stipulation is fair, reasonable, and adequate, the Court applied the following factors when reviewing the Stipulation: (1) the strength of plaintiffs’ case; (2) the complexity, expense, and likely duration of the litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the stage of the proceedings, including the status of discovery; (6) the respective opinions of the participants, including class counsel and the class representative; and (7) the reaction of the class members. *See Officers for Justice*, 688 F.2d at 625.

The claims resolved by this settlement raise complex issues involving an extensive factual background and a variety of legal issues. The Parties have litigated this class action over a number of years, and absent this resolution are likely to continue litigating these issues for an extended period of time. Both sides obviously believe they are correct on the merits of their

claims and defenses, but each side has a difficult burden to establish their positions and the outcome is far from certain for both sides.

The settlement requires Nationwide/Allied to automatically reopen the MPC, UM, or UIM claims of all Class Members who meet the criteria set forth in the Stipulation and provides a process by which Class Members whose MPC, UM, or UIM claims are not subject to automatic review as set forth in the Stipulation can submit a Claim Form in order to be entitled to additional review of their claim. Cash payments up to full stacked benefits, plus interest, will be made on valid claims as provided in the Stipulation.

Moreover, notice of the proposed settlement was provided to over twenty-four thousand potential Class Members, to the U.S. Attorney General, and to the Attorney General and Insurance Department for the state of Montana. Published notice was also provided in seven publications targeted to reach Class Members across the State. In response to this extensive notice campaign, no substantive objection was submitted. The lack of objection to the settlement thus further supports its approval.

Finally, the Parties and their counsel strongly support this settlement. After extensive arms-length negotiations involving the class representative and her counsel, a resolution was arrived at with unanimous consent. The settlement will likewise serve the public interest by bringing immediate relief to Class Members and resulting in the dismissal this action.

In sum, "there is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits. . . ." *Van Bronkhurst v. Safeco Corp.*, 529 F.2d 943, 950 (9<sup>th</sup> Cir. 1976). After careful review of the settlement, the submissions of the Parties, and the record, the Court finds that the settlement is free from collusion and is fair, reasonable, and adequate. Accordingly, the settlement set forth in the Stipulation is approved.

**4. The Settlement Class.** The Settlement Class that this Court previously certified in its Preliminary Approval Order is hereby finally certified pursuant to Federal Rule of Civil Procedure 23. The "Settlement Class" consists of:

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.

**5. Exclusions/Opt Outs.** A list of those persons or entities who have timely excluded themselves from the Settlement Class (opt outs), and who therefore are not bound by this Final Order and Judgment, is attached hereto as Appendix "C," which is incorporated herein and made a part hereof for all purposes.

**6. Federal Rule of Civil Procedure 23.** 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. *See Blackie v. Barrack*, 524

F.2d 891, 901 (9<sup>th</sup> 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.

**7. Numerosity/Class Size.** 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. *See Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993). Here, the Settlement Class contains thousands of members, thereby rendering joinder impracticable. Thus, the numerosity requirement is satisfied.

**8. Commonality.** The prerequisite of commonality requires the existence of at least one question of law or fact common to the class. *See 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 (9<sup>th</sup> Cir. 1998), and this common question is sufficient.

**9. Typicality.** 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. *See Hannon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9<sup>th</sup> 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. *See Jordan v. County of Los Angeles*, 669 F.2d 1311, 1321 (9<sup>th</sup> 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.

**10. Adequacy of Representation.** The named plaintiff must fairly and adequately protect the interests of the class. *See 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. *See 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) are satisfied.

**11. Predominance.** 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. *See 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. *See 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. *See 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.

**12. Superiority.** 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. *See Zinser v. Accufix Research Institute, Inc.*, 253 F.3d 1180, 1190 (9<sup>th</sup> 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.

**13. Notice Plan.** The Court finds that the Notice Plan, including distribution of the Mail Notice and the publication of the Publication Notice, in accordance with the terms of the Stipulation and this Court's Preliminary Approval Order, and as explained in the declarations filed at or before the Fairness Hearing:

- a) constituted the best practicable notice;
- b) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Lawsuit, their right to object or to exclude themselves from the proposed settlement and to appear at the Fairness Hearing held by this Court, and their right to seek monetary relief as provided in the Stipulation;

c) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and

d) met all applicable requirements of due process and applicable law.

**Other Provisions**

**14. Binding Effect.** The terms of the Stipulation and of this Final Order and Judgment shall be forever binding on the Class Representative and all other Settlement Class Members, as well as their heirs, representatives, executors and administrators, successors and assigns, and those terms shall have res judicata and full preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons or entities, to the extent those claims, lawsuits or other proceedings involve matters that were or could have been raised in this action or are otherwise encompassed by the Release described in the next paragraph of, and attached as Appendix “B” to, this Final Order and Judgment.

**15. Release.** Upon the Effective Date, the Release attached hereto as Appendix “B” (“Release”) shall be valid and binding against the Class Representative and all Settlement Class Members who have not been recognized as excluded from the Settlement Class in Appendix “C” of this Final Order and Judgment.

**16. Bar to Asserting Released Claims.** Upon the Effective Date, the Class Representative and all Settlement Class Members who have not been 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 the Released Parties, and such Class Representative and Settlement Class Members shall have released any and all Released Claims against the Released Parties.

**17. Permanent Injunction.** All Settlement Class Members who have not timely excluded themselves from the Settlement Class (and therefore are not listed on Appendix “C” hereto) are hereby permanently barred and enjoined from (a) filing, commencing, prosecuting, intervening in, or participating (as a class member 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 this Lawsuit and/or the Released Claims; (b) collecting or attempting to collect from, or taking negative credit action against, any Released Party for any claims within the scope of the Released Claims; (c) 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 this Lawsuit and/or the Released Claims; and (d) taking any action inconsistent with the Release attached hereto as Appendix “B.”

**18. Enforcement of Settlement.** Nothing in this Final Order and Judgment or any order entered in connection herewith shall preclude any action to enforce the terms of this Final Order and Judgment or the Stipulation.

**19. Attorneys’ Fees and Expenses.** Class Counsel are hereby awarded attorneys’ fees and costs as set forth below. Lawrence A. Anderson, Attorney at Law and Rex Palmer, Attorneys Inc. P.C. are awarded a total collective payment of attorneys’ fees, costs, and expenses in the amount of \$775,000; Nationwide/Allied may fulfill its payment obligation as

set forth in the Stipulation or as otherwise agreed by the foregoing counsel and Nationwide/Allied. Nationwide/Allied shall make payment of the foregoing amounts awarded within thirty (30) days of the occurrence of the Effective Date according to the terms of the Stipulation.

**20. Incentive Award.** The Class Representative, Nola Greeno, is hereby awarded \$5,000 as compensation for her time and effort in connection with the litigation of this matter, which payment will be separate from and will not diminish any Settlement Payments or other relief provided to Settlement Class Members. Nationwide/Allied shall make payment of the foregoing amounts awarded within thirty (30) days of the occurrence of the Effective Date according to the terms of the Stipulation.

**21. No Other Payments.** Paragraphs 19 and 20 of this Final Order and Judgment cover, without limitation, any and all claims for attorneys' fees and expenses, costs or disbursements incurred by Class Counsel or any other counsel representing the Class Representative and/or Settlement Class Members, or incurred by the Class Representative and/or the Settlement Class Members, in connection with or related in any manner to this action, the settlement of this action, the administration of such settlement, and/or the Released Claims except to the extent otherwise specified in this Final Order and Judgment and the Stipulation. Nationwide/Allied shall not be liable to the Class Representative, Class Counsel, the Settlement Class Members, or any other counsel for any additional attorneys' fees or expenses.

**22. Modification of Stipulation.** The parties are hereby authorized, without needing further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Stipulation and all Exhibits thereto as (a) shall be

consistent in all material respects with the Final Order and Judgment and (b) do not limit the rights of the Settlement Class Members.

**23. Retention of Jurisdiction.** The Court shall have exclusive and continuing jurisdiction over the implementation, interpretation and execution of the Stipulation; of any orders and this Final Order and Judgment entered by this Court; and/or of the conduct or the policies and procedures described herein, with respect to all parties hereto and all beneficiaries hereof, including all Settlement Class Members.

**24. No Admissions.** Neither this Final Order and Judgment, nor the Stipulation (nor any other document referred to herein, nor any action taken to negotiate, effectuate and implement the Stipulation) is, may be construed as, or may be used as an admission or concession by or against the Released Parties as to the validity of any claim or any actual or potential fault or liability. Additionally, neither the Stipulation nor any negotiations, actions, or proceedings related to it, shall be offered or received in evidence in any action or proceeding against any party hereto or any of the Released Parties in any court, administrative agency or other tribunal for any purpose whatsoever, except to enforce the provisions of this Final Order and Judgment and the Stipulation; provided, however, that this Final Order and Judgment and the Stipulation may be filed and used in any action, arbitration or other proceeding against or by the Released Parties to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

**25. No Representations Regarding Taxes.** The Court finds that the parties and their counsel have expressed no opinions concerning the tax consequences of the settlement

to Settlement Class Members and have made no representations, warranties or other assurances regarding any such tax consequences. No opinions, representations, warranties, or other assurances shall be deemed to have been made by the parties or their counsel with respect to any such tax consequences by virtue of the Stipulation or by effectuating the settlement, and the parties and their counsel shall not be responsible or liable for any such tax consequences that may occur.

**26. Dismissal of Action.** This action, including all of the individual and class claims included therein, is hereby dismissed on the merits and with prejudice against the Class Representative and all other Settlement Class Members, without fees or costs to any party except as specifically provided in this Final Order and Judgment.

**27. Continuing Jurisdiction.** Without affecting the finality of this Final Order and Judgment, the Court reserves continuing and exclusive jurisdiction over all matters relating to the administration, implementation, effectuation and enforcement of this Final Order and Judgment.

Signed this 29<sup>th</sup> day of October, 2008, at the courthouse for the United States District Court for the District of Montana, Missoula Division.

  
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Donald W. Molloy, District Judge  
United States District Court