

IN THE DISTRICT COURT OF
NUECES COUNTY, TEXAS
148TH JUDICIAL DISTRICT

Yolanda Garza, individually and
on behalf of others similarly situated,

Plaintiff,

v.


Cause No. 02-06322-E

Nationwide Mutual Insurance Company,
Nationwide Property and Casualty Insurance
Company, and Nationwide General Insurance
Company,

Defendants.

NOTICE OF FILING
STIPULATION OF CLASS ACTION SETTLEMENT

Plaintiff Yolanda Garza, together with the proposed intervening class representatives Acuna, P.T., Gerald H. Bemis, Sr., D.C., Mark J. Eavenson, D.C., d/b/a Multi-Care Specialists, P.C., and Macaela Cashman, (collectively the "Named Plaintiffs"), and with the consent of Defendants Nationwide Mutual Insurance Company, Nationwide Property and Casualty Insurance Company, and Nationwide General Insurance Company, give notice of the filing of the attached Stipulation of Class Action Settlement.

CLERK OF COUNTY
DISTRICT COURTS
NUECES COUNTY, TEXAS
BY  DPT
2007 OCT 29 PM 4:06
FILED-PATSY FENEZ

Respectfully submitted,

FEAZELL & TIGHE, L.L.P.



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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing was sent by U.S. Mail to counsel listed below on this 29th day of October, 2007.

Attorney



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STIPULATION OF CLASS ACTION SETTLEMENT

This Stipulation of Class Action Settlement (“Stipulation”) is entered into by, between, and among (1) Yolanda Garza, Acuna, P.T., Gerald H. Bemis, Sr., D.C., Mark J. Eavenson, D.C., d/b/a Multi-Care Specialists, P.C., and Macaela Cashman (the “Named Plaintiffs”), on behalf of themselves and as putative representatives of the Settlement Class (collectively, “Plaintiffs”), and (2) Nationwide/Allied. Plaintiffs and Nationwide/Allied are collectively referred to as “the Parties.”

This Stipulation is entered into to effect a full and final settlement and dismissal with prejudice of all claims that have been, could have been, may be, or could be alleged or asserted now or in the future against Nationwide/Allied in the Lawsuits on the terms set forth below, subject to the approval of the Courts.

RECITALS

WHEREAS, on or about December 9, 2002, a putative national class action complaint was filed by Yolanda Garza, a Nationwide insured, against Nationwide Mutual Insurance Company, Nationwide Property and Casualty Insurance Company, and Nationwide General Insurance Company in the District Court of Nueces County, Texas, Cause No. 02-06322-E (the “Garza Action”). The Garza Action remains pending and asserts claims arising out of and related to the alleged payment for medical charges based upon a reasonableness and/or usual and customary (“UCR”) bill review of her medical providers’ charges covered under a no-fault insurance policy – all as more fully set forth in the complaints and other filings in the Garza Action; and

WHEREAS, on or about October 27, 2003, a putative national class action was filed by medical provider Mark J. Eavenson, D.C., d/b/a Multi-Care Specialists, P.C., pursuant to an assignment of benefits provided by an individual covered under a policy of insurance issued by AMCO Insurance Company, against AMCO Insurance Company and Allied Property and

Casualty Insurance Company in the Circuit Court, Third Judicial Circuit, in and for Madison County, Illinois, Case No. 03 L 1469 (the "Eavenson Action"). The Eavenson Action remains pending and asserts claims arising out of and relating to the alleged payment for medical charges based upon application of a Preferred Provider Organization ("PPO") discount recommended to be applied by CorVel Corporation pursuant to a PPO agreement between it and the plaintiff – all as more fully set forth in the complaints and other filings in the Eavenson Action; and

WHEREAS, on or about September 14, 2004, a putative national class action was filed by medical providers Gerald H. Bemis, Sr., D.C., and Mark J. Eavenson, D.C., d/b/a Multi-Care Specialists, P.C., pursuant to assignments of benefits provided to them by individuals covered under policies of insurance issued by AMCO Insurance Company, against AMCO Insurance Company, Allied Property and Casualty Insurance Company, and Nationwide Mutual Insurance Company in the Circuit Court, Third Judicial Circuit, in and for Madison County, Illinois, Case No. 04 L 1006 (the "Bemis Action"). On or about September 16, 2005, leave was granted to add Acuna P.T. as an additional plaintiff in the Bemis Action pursuant to an assignment of benefits provided to it by Yolanda Garza. The Bemis Action remains pending and asserts claims arising out of and related to the alleged payment for medical charges based upon a reasonableness and/or usual and customary ("UCR") bill review of the medical providers' charges covered under a no-fault insurance policy – all as more fully set forth in the complaints and other filings in the Bemis Action; and

WHEREAS, on or about May 23, 2005, a putative national class action was filed by Macaela Cashman, an AMCO Insurance Company insured, against AMCO Insurance Company, Allied Property and Casualty Insurance Company (misnomered "Allied Insurance Company"), and Nationwide Insurance Company of America (Nationwide Insurance Company of America was subsequently dismissed) in the Superior Court of Arizona, County of Pima, which was subsequently removed pursuant to the Class Action Fairness Act and remains pending in the

United States District Court for the District of Arizona, Case No. CIV-05-415-TUC-RCC (the “Cashman Action”). The Cashman Action asserts claims arising out of and related to the alleged payment for medical charges based upon a reasonableness and/or usual and customary (“UCR”) bill review of the medical providers’ charges covered under a no-fault insurance policy – all as more fully set forth in the complaints and other filings in the Cashman Action; and

WHEREAS, the Named Plaintiffs have brought the foregoing Lawsuits on behalf of themselves and putative classes of Nationwide/Allied insureds, and their medical providers (i) who made claims for payment or reimbursement of medical and rehabilitative expenses covered under personal injury protection, medical payments, workers compensation, or other no-fault or first party medical benefit coverages (collectively “Medical Expense Coverage”) provided under insurance policies issued by a Nationwide/Allied company; (ii) whose medical bills were submitted to an Audit which recommended payment of less than the full amount of the submitted medical bills, and (iii) who received less than the full amount of the submitted medical bills under a policy where the coverage limits for Medical Expense Coverage benefits were not exhausted; and

WHEREAS, the Lawsuits allege generally that one or more of the Nationwide/Allied companies failed to pay their insureds and/or their insureds’ medical providers the amounts required under the insureds’ Medical Expense Coverage coverages under their applicable policies of insurance; and

WHEREAS, the Lawsuits allege generally that one or more of the Nationwide/Allied companies based their payment of Medical Expense Coverage claims, in whole or in part, on Audit recommendations from Audit Vendors provided to Nationwide/Allied in electronic and/or paper form, as well as recommendations from one or more Audit Vendors who entered into negotiated or contractual agreements with medical providers (sometimes called PPO agreements) to accept reduced payments for the services rendered (collectively “Vendor Reports”), which

Vendor Reports, the Lawsuits allege, improperly recommended a reduced payment of medical bills; and

WHEREAS, Nationwide/Allied deny the Lawsuits' allegations; deny that they have engaged in any wrongdoing; deny that Vendor Reports systemically or otherwise improperly recommended reduced payment of medical bills; and maintain that they consistently have acted in accordance with their insurance policies and all governing laws and regulations; and

WHEREAS, the Named Plaintiffs and their respective counsel and Nationwide/Allied and its counsel have conducted a thorough examination and investigation of the facts and law relating to the matters set forth in the Lawsuits, conducted extensive settlement negotiations, and reached this Stipulation at arms' length in order to conclusively resolve these disputes without the uncertainty, expense, and delay of further litigation pursuant to the terms set forth in this Stipulation; and

WHEREAS, Nationwide/Allied has negotiated with the Named Plaintiffs through each of their respective counsel both jointly and independently, including a joint settlement conference in December 2006 during which the general structure of the proposed settlement was agreed upon, and through subsequent discussions leading to the execution of a term sheet on or about January 23, 2007, and after submission of a notice of termination served on or about March 27, 2007 by Named Plaintiffs Gerald H. Bemis, Sr., D.C., and Mark J. Eavenson, D.C., d/b/a Multi-Care Specialists, P.C., additional direct discussions with their current counsel leading to the execution of the term sheet by all current Plaintiffs' Counsel on or about May 8, 2007.

WHEREAS, the Named Plaintiffs and their respective counsel have both jointly and independently communicated and negotiated with Nationwide/Allied and its counsel; and

WHEREAS, the Named Plaintiffs and their respective counsel have independently examined and evaluated the benefits to be obtained under the terms of this Stipulation; have independently evaluated and considered the risks associated with the continued prosecution of

the respective Lawsuits and the likelihood of success on the merits of the respective Lawsuits; and believe that, after considering all the circumstances, the proposed settlement set forth in this Stipulation is fair, reasonable, adequate, and in the best interests of the Named Plaintiffs and the Settlement Class.

NOW, THEREFORE, in consideration of the mutual terms, covenants and agreements set forth in this Stipulation, subject to preliminary and final approval by the Courts, the Parties agree as follows:

Section 1. Definitions

1.01 "Audit" means a medical/fee review audit of medical bills.

1.02 "Audit Vendor" means a person, firm or entity that performed Audits for Nationwide/Allied.

1.03 "Bemis Action" has the meaning defined in the Recitals.

1.04 "Cashman Action" has the meaning defined in the Recitals.

1.05 "Claim Forms" means collectively the Insured's Claim Form and the Provider Claim Form as defined in Section 6, and attached as Exhibits 5 and 6 to this Stipulation.

1.06 "Class Counsel" means the attorneys identified in Section 3.02 who may be approved by the Courts to represent the Settlement Class.

1.07 "Class Member" or "Settlement Class Member" means any Named Plaintiff and any member of the Settlement Class who does not validly and timely elect exclusion from the Settlement Class as determined by the Courts, and 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.

1.08 "Class Period" means the period from December 1, 1992 through the date of the Preliminary Approval Order issued by the court in the Cashman Action.

1.09 "Class Representatives" means the Named Plaintiffs, individually, and as representatives of the Settlement Class.

1.10 "Complaints" means all Complaints filed by or on behalf of the Plaintiffs at any time in the Bemis Action, the Eavenson Action, the Garza Action and the Cashman Action.

1.11 "Courts" means the courts presiding over the Garza Action and the Cashman Action.

1.12 "Covered Claims" has the meaning defined in Section 6.

1.13 "Covered States" has the meaning defined in Section 3.

1.14 "Eavenson Action" has the meaning defined in the Recitals.

1.15 "Effective Date" has the meaning defined in Section 13.

1.16 "Fairness Hearings" means the final settlement approval hearings to be conducted by the Courts in connection with the determination of the fairness, adequacy, and reasonableness of the proposed settlement as set forth in this Stipulation in accordance with the applicable procedural rules and other applicable law.

1.17 "Final Orders and Judgments" means the Orders to be entered by the Courts, in the forms attached as Exhibits 7 and 8, or such other forms as are mutually agreeable to the Parties, approving the proposed settlement as set forth in this Stipulation as fair, adequate, and reasonable and in the best interests of the Settlement Class as a whole, as well as Nationwide/Allied, in accordance with the applicable procedural rules and other applicable law, and making such other findings and determinations as the Courts deem necessary and appropriate to effectuate the terms of this Stipulation.

1.18 "Final Settlement" means when each of the following events has occurred: (a) this Stipulation is approved in all respects by the Courts; (b) entry is made of Final Orders and

Judgments by the Courts; and (c) the time for the filing of appeals has expired, or, if appealed, approval of the settlement and judgments have been affirmed in all respects by the appellate court(s) of last resort to which such appeal(s) have been taken and such affirmance has become final and no longer subject to further appeal or review of any kind.

1.19 “Garza Action” has the meaning defined in the Recitals.

1.20 “Insured’s Claim Form” has the meaning defined in Section 6.

1.21 “Lawsuits” mean collectively the Garza Action, Cashman Action, Bemis Action, and Eavenson Action.

1.22 “Mail Notice” means the Notice of Proposed Class Action Settlement and Fairness Hearings, attached as Exhibit 3 to this Stipulation, as approved by the Courts to be sent to Settlement Class Members as set forth in Section 4.

1.23 “Medical Expense Coverage” has the meaning defined in the Recitals.

1.24 “Named Plaintiffs” has the meaning defined in the Recitals.

1.25 “Nationwide/Allied” means the named defendants in the Lawsuits, Nationwide Mutual Insurance Company, Nationwide Property and Casualty Insurance Company, Nationwide General Insurance Company, Allied Property and Casualty Insurance Company, Allied Insurance and AMCO 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 Nationwide Mutual Fire Insurance Company, Nationwide Insurance Company of America, Nationwide Life Insurance Company, Nationwide Assurance Company f/k/a Colonial Insurance Company, Nationwide Indemnity Company, Nationwide Corporation, Nationwide Insurance, Nationwide Affinity Insurance Company of America, National Casualty Company, Nationwide International Underwriters, Nationwide Lloyds, Depositors Insurance Company, CalFarm Insurance Company, Colonial County Mutual Insurance Company, Farmland Mutual Insurance Company, Lone Star General Agency, Inc., Allied Group, Inc.,

Allied General Agency Company, Colonial Insurance Company of California, Colonial Insurance Company of Wisconsin, Titan Indemnity Company, Titan 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, heirs, executors, trustees, general or limited partners or partnerships, personal representatives, estates or administrators.

1.26 “Notice Plan” means collectively the Mail Notice, the Publication Notice, and the notice methodology described in Section 4.

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

1.28 “Opt-Out Period” means the period for potential Settlement Class Members to submit a valid request for exclusion to the Settlement Administrator as set forth in Section 5.

1.29 “Parties” has the meaning defined in the Recitals.

1.30 “Plaintiffs” has the meaning defined in the Recitals.

1.31 “Plaintiffs’ Counsel” means counsel of record for the respective Plaintiffs in the Lawsuits, as indicated on the signature pages of this Stipulation.

1.32 “Preliminary Approval Orders” mean the Courts’ preliminary approvals of the proposed settlement as set forth in this Stipulation in the forms of the proposed Preliminary Approval Orders attached as Exhibits 1 and 2 to this Stipulation.

1.33 “Publication Notice” means the approved summary notice to be published as set forth in Section 4 in the form attached as Exhibit 4 to this Stipulation.

1.34 “Released Claims” has the meaning defined in Section 11.

1.35 “Released Parties” has the meaning defined in Section 11.

1.36 "Settlement Administrator" means the third-party class action administration firm selected by Nationwide/Allied and approved by Class Counsel as set forth in Section 4.

1.37 "Settlement Class" has the meaning defined in Section 3.

1.38 "Settlement Documents" means this Stipulation, the Mail Notice, the Publication Notice, the Claim Forms, the Preliminary Approval Orders, and the Final Orders and Judgments.

1.39 "Settlement Payment" has the meaning defined in Section 6.

1.40 "Stipulation" means this Stipulation of Class Action Settlement.

1.41 "Vendor Reports" has the meaning defined in the Recitals.

Section 2. Denial of Liability

2.01 Nationwide/Allied has agreed to enter into this Stipulation without any express or implied acknowledgment, in any way, of any fault or liability to anyone, including the Plaintiffs. Nationwide/Allied has concluded that settlement, on the terms set forth in this Stipulation, 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 Lawsuits.

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

