

IN THE CIRCUIT COURT OF MILLER COUNTY, ARKANSAS

PHILLIP ALEXANDER, CYNDI  
ALEXANDER, EDWIN NELSON,  
BRUCE SCHAFFROTH, AND DIANA  
SCHAFFROTH, INDIVIDUALLY  
AND AS CLASS REPRESENTATIVES  
ON BEHALF OF ALL SIMILARLY  
SITUATED PERSONS

*Plaintiffs,*

vs.

NATIONWIDE MUTUAL INSURANCE  
COMPANY, NATIONWIDE MUTUAL  
FIRE INSURANCE COMPANY, AMCO  
INSURANCE COMPANY, ALLIED  
PROPERTY AND CASUALTY INSURANCE  
COMPANY, DEPOSITORS INSURANCE  
COMPANY, NATIONAL CASUALTY  
COMPANY, NATIONWIDE INSURANCE  
COMPANY OF AMERICA, NATIONWIDE  
AFFINITY INSURANCE COMPANY OF  
AMERICA, NATIONWIDE PROPERTY  
AND CASUALTY INSURANCE COMPANY,  
NATIONWIDE LLOYDS, NATIONWIDE  
INSURANCE COMPANY OF FLORIDA,  
NATIONWIDE INDEMNITY COMPANY,  
SCOTTSDALE INDEMNITY COMPANY,  
SCOTTSDALE SURPLUS LINES  
INSURANCE COMPANY, AND  
SCOTTSDALE INSURANCE COMPANY

*Defendants.*

CASE NO. CV-2009-120-3

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FINAL ORDER AND JUDGMENT APPROVING SETTLEMENT, CERTIFYING  
CLASS FOR SETTLEMENT PURPOSES, AWARDED CLASS COUNSEL  
ATTORNEYS' FEES, AWARDED CLASS REPRESENTATIVE INCENTIVE FEES,  
AND DISMISSING ACTION WITH PREJUDICE

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On this day, the Court considered the Joint Motion for Final Approval of Stipulation of Settlement (“Joint Motion for Final Approval”), Plaintiffs’ Brief in Support of the Joint Motion for Final Approval, Class Counsel’s Application for Attorneys’ Fees and Reimbursement of Costs

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Related to the Stipulation of Settlement and Request for Fee Awards for Class Representatives

(“Class Counsel’s Application for Fees”), and Plaintiffs’ Submission of Evidence in Support of Joint Motion for Final Approval, Plaintiffs’ Brief in Support of Joint Motion for Final Approval, and Class Counsel’s Application for Fees (“Plaintiffs’ Submission of Evidence”).

The Joint Motion for Final Approval requests (a) certification of the class for settlement purposes only; (b) final approval of the Proposed Settlement preliminarily approved by this Court on March 20, 2009, and memorialized in the Stipulation of Settlement and Order Preliminarily Approving Class Settlement; and (c) dismissal with prejudice of Plaintiffs’ claims against Defendant Nationwide (as that term is defined in paragraph 17 of the Stipulation of Settlement). Class Counsel’s Application for Fees requests that this Court award attorneys’ fees and reimbursement of expenses to Class Counsel and incentive awards to the Class Representatives in connection with this Action. In connection with the Joint Motion for Final Approval and Class Counsel’s Application for Fees, the Court considered, among other things, said pleadings, all exhibits and affidavits thereto, Plaintiffs’ Brief in Support of Joint Motion for Final Approval of Stipulation of Settlement, all exhibits and attachments thereto, Plaintiffs’ Submission of Evidence, all exhibits and attachments thereto, Plaintiffs’ Exhibits 1 – 14 which were admitted into evidence for all purposes at the Fairness Hearing, all pleadings filed in this matter, and arguments of counsel.

WHEREAS Plaintiffs and Nationwide have executed and filed a Stipulation of Settlement (the “Stipulation”) with the Court on March 19, 2009; and

WHEREAS the Stipulation is hereby incorporated by reference in this Order and all terms defined in the Stipulation will have the same meanings in this Order; and

WHEREAS the Court, on March 20, 2009, entered the Order Preliminarily Approving Class Settlement ("Preliminary Approval Order"), preliminarily approving the Stipulation, preliminarily certifying, for settlement purposes only, this Action as a class action, and scheduling a hearing for July 27, 2009 at 9:00 a.m. ("Settlement Approval Hearing") (a) to determine whether the Proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate and should be finally approved by the Court; (b) to determine whether a final judgment should be entered herein; and (c) to consider Class Counsels' Application for Fees and incentive awards for Class Representatives; and

WHEREAS, the Court ordered that the Individual Notice and Claim Form, in the forms attached to the Stipulation of Settlement as Exhibits "2" and "3", be mailed by the Administrator, Epiq Systems, Inc. ("Epiq"), by first-class mail, postage prepaid, on or before May 19, 2009 (the "Notice Mailing Date") to all potential Settlement Class Members whose names were ascertained by Nationwide through a reasonable search of its electronic records at their last known address with address updating and verification where reasonably available, and that the internet website and a 1-800 number be implemented on or before the Notice Mailing Date; and

WHEREAS the parties have satisfactorily demonstrated that such Individual Notice was mailed in accordance with the terms of the Preliminary Approval Order; and

WHEREAS, in accordance with the Individual Notice, the Settlement Approval Hearing was duly held before this Court on July 27, 2009; and

WHEREAS, at the Settlement Approval Hearing, the Court considered (a) whether certification for settlement purposes only was appropriate under Rule 23; (b) the fairness,

reasonableness and the adequacy of the Stipulation; and (c) the fairness and reasonableness of Class Counsels' application for attorneys' fees under applicable law; and

WHEREAS, at the Settlement Approval Hearing, in connection with its consideration of

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(a) whether certification for settlement purposes only was appropriate under Arkansas Rule of Civil Procedure 23; (b) the fairness, reasonableness, and adequacy of the Stipulation and Proposed Settlement; and (c) the fairness and reasonableness of Class Counsel's Application for Fees under applicable Arkansas law, the Court fully considered all objections that were filed in this matter and fully considered any argument of objectors or objectors' counsel present at the Settlement Approval Hearing; and

WHEREAS, at the Settlement Approval Hearing, the Court fulfilled its duty to independently evaluate the fairness, reasonableness, and adequacy of the Stipulation and Class Counsels' Application for Attorneys' Fees by considering not only the pleadings and arguments of Plaintiffs, Class Counsel and Nationwide, but also by rigorously and independently evaluating the Stipulation and Class Counsels' Application for Fees on behalf of the absent class members, and as such, the Court considered any argument that could reasonably be made against approval of the Stipulation and Class Counsels' Application for Attorneys' Fees, even if such argument was not actually presented to the Court by pleading or oral argument; and

WHEREAS, by performing this independent analysis of the Joint Motion for Final Approval and Class Counsels' Application for Fees, the Court has considered and protected the interests of all absent Settlement Class Members under Rule 23; and

WHEREAS, the Individual Notice and Detailed Notice described the Settlement Class and advised Settlement Class Members of the method by which a Settlement Class Member could

request exclusion from the Settlement Class and pursue an independent legal remedy against Nationwide; and

WHEREAS, all Settlement Class Members had the absolute right to opt out and pursue an individual lawsuit against Nationwide; and

WHEREAS, any Settlement Class Member who failed to request exclusion under the terms of the Individual Notice and Detailed Notice voluntarily waived the right to pursue an independent remedy against Nationwide; and

WHEREAS, the Individual Notice and Detailed Notice advised Settlement Class Members of the method by which a Settlement Class Member could properly file objections and request to be heard at the July 27, 2009, Settlement Approval Hearing.

NOW, THEREFORE, the Court, having read and considered all submissions made in connection with the Joint Motion for Final Approval and Class Counsels' Application for Fees, and having reviewed and considered the files and records herein, and all other evidence submitted, finds and concludes as follows:

1. The definitions and terms set forth in the Stipulation are hereby adopted and incorporated into this Order.

2. The Complaint filed in this Action alleges that Nationwide violated applicable laws in resolving claims for Structural Loss of certain insureds by improperly failing to include in the adjustment of such homeowners' claims an amount to cover payments for General Contractor's Overhead and Profit ("GCOP"), and Nationwide denies those allegations.

3. On or about July 27, 2009, Plaintiffs and Nationwide applied to the Court for final approval of the terms of the Proposed Settlement and for the entry of this Final Judgment. In support of that application, Plaintiffs submitted, among other things, evidence concerning the

dissemination and adequacy of Class Notice, evidence regarding the names of potential Settlement Class Members who have submitted requests for exclusion from the Settlement Class, evidence regarding the negotiation of the Stipulation, evidence regarding the fairness, reasonableness, and adequacy of the substantive terms of the Stipulation, and evidence regarding the fairness, reasonableness and adequacy of Class Counsel's Application for Fees. In Support of the Joint Motion for Final Approval, Plaintiffs submitted a Brief in Support of Joint Motion for Final Approval, setting forth extensive argument and authority along with various Exhibits attached thereto. Class Counsel's Application for Fees contained both extensive argument and authority and various exhibits attached thereto.

4. Plaintiffs offered into evidence at the Settlement Approval Hearing the following evidence in support of the Joint Motion for Final Approval and Class Counsel's Application for Fees:

EXHIBIT #	DESCRIPTION
1	AFFIDAVIT OF PHILLIP ALEXANDER
2	AFFIDAVIT OF CYNDI ALEXANDER
3	AFFIDAVIT OF EDWIN NELSON
4	AFFIDAVIT OF BRUCE SCHAFFROTH
5	AFFIDAVIT OF DIANA SCHAFFROTH
6	AFFIDAVIT OF MICHAEL ANGELOVICH
7	AFFIDAVIT OF JASON ROSELIUS
8	AFFIDAVIT OF JOHN GOODSON
9	AFFIDAVIT OF MICHAEL BURRAGE
10	AFFIDAVIT OF CAMERON AZARI
11	ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT
12	STIPULATION OF SETTLEMENT
13	AFFIDAVIT OF GEOFFREY P. MILLER
14	DECLARATION OF JAMES L. GIBSON

The Court admitted Plaintiffs' Exhibits 1 through 14 into evidence for all purposes.

5. As part of its Preliminary Approval Order, the Court certified for settlement purposes a Settlement Class defined as follows:

Each and every Person who:

- (a) was insured under a homeowners' insurance policy that was issued by Nationwide; and
- (b) suffered a Covered Loss, (as defined in paragraph 9 of the Stipulation);
- (c) excluding:
  - (i) any claims which were the subject of any lawsuit filed during the Class Period alleging causes of action related to any Released Claims;
  - (ii) any claims for which Nationwide received an executed release during the Class Period; and
  - (iii) Nationwide, all present or former officers and/or directors of Nationwide, Neutral Evaluators, Class Counsel and their immediate family, any member of the Arkansas Judiciary and their immediate family, Nationwide's counsel of record and their immediate family, and all Persons who make a timely election to be excluded from the Settlement Class.

6. The Court hereby affirms this definition of the Settlement Class for purposes of this Final Judgment and certifies this Action, for settlement purposes only, as a Class Action. In so doing, the Court finds, for settlement purposes only, that the Action meets all the requirements of Rule 23 of the Arkansas Rules of Civil Procedure, due process and all other applicable rules and law and can therefore be certified as a class action, because: (1) the Settlement Class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact – *i.e.*, whether Nationwide owed an amount to cover a payment for GCOP for claims involving three or more Trades – that are common to the Settlement Class and predominate over any individual questions; (3) the claims of the representative Plaintiffs are typical of the claims of the Settlement Class; (4) the representative Plaintiffs and Class Counsel will fairly and adequately protect the

interests of the Settlement Class; and (5) a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy.

7. Plaintiffs and Nationwide have entered into the Stipulation, which has been filed with the Court and is incorporated herein by reference. The Stipulation provides for the settlement of this Action with Nationwide on behalf of the representative Plaintiffs and the members of the Settlement Class, subject to final approval by the Court. The Stipulation provides that, in exchange for the releases described in the Stipulation and this Final Judgment, Nationwide will provide a total Settlement Consideration consisting of (a) cash GCOP payments to all qualifying members of the Settlement Class, (b) an amount not to exceed \$32,000,000 in attorneys' fees, costs, and expenses payable to Class Counsel; and (c) Nationwide's agreement to pay notice and administration costs.

8. On March 20, 2009, the Court held a Preliminary Approval Hearing to consider the preliminary approval of the Stipulation, approved the Class Notice and method of notification for potential Settlement Class Members, and directed that Class Notice of the Proposed Settlement and of the Settlement Approval Hearing be disseminated in accordance with the terms of the Stipulation and the Preliminary Approval Order.

9. On July 24, 2009, the parties provided evidence that the Individual Notice, Detailed Notice and website which informed members of the Settlement Class of the terms of the Proposed Settlement, of their opportunity to request exclusion from the Settlement Class, and of their opportunity to object to the terms of the Stipulation, were disseminated in accordance with the Preliminary Approval Order.

10. Specifically, the Court received and admitted an affidavit from Cameron Azari, an employee of the Administrator, setting forth the scope and results of the notice campaign.

11. Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Individual Notice and Detailed Notice as disseminated to members of the Settlement Class in accordance with provisions of the Preliminary Approval Order, was the best notice practicable under the circumstances to all members of the Settlement Class. Accordingly, the Individual Notice and Detailed Notice as disseminated are finally approved as fair, reasonable and adequate. The Court finds and concludes that due and adequate notice of the pendency of this Action and of the Stipulation has been provided to members of the Settlement Class, and the Court further finds and concludes that the notice program described in the Preliminary Approval Order and completed by the parties complied fully with the requirements of Arkansas Rule of Civil Procedure 23, the requirements of due process under the Arkansas and United States Constitutions, and the requirements of any other applicable rules or law. The Court further finds that the notice campaign undertaken concisely and clearly states in plain, easily understood language:

- a. the nature of the action;
- b. the definition of the class certified;
- c. the class claims, issues or defenses;
- d. that a Settlement Class Member may enter an appearance and participate in person or through counsel if the member so desires;
- e. that the Court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and
- f. the binding effect of the class judgment on Settlement Class Members.

12. Having admitted and reviewed the Affidavit of Cameron Azari concerning the success of the notice campaign, the Court finds that it is unnecessary to afford a new opportunity to request exclusion to individual Settlement Class Members who had an earlier opportunity to

