

STEPHEN R. STEINBERG, individually and on behalf of all others similarly situated,

V.

Defendant.

SETTLEMENT AGREEMENT

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This settlement agreement (the "Settlement Agreement") is made and entered into as of the date set forth on the signature pages hereto by and through (a) Counsel for Plaintiff (on behalf of himself and each Settlement Class Member as defined in this Settlement Agreement) in *Steinberg v. Nationwide Mut. Ins. Co.*, pending in the United States District Court for the Eastern District of New York, Civ. No.: 05-CV-03340 (ADS) (ARL) ("*Steinberg IP*"), and *Steinberg v. Nationwide Mut. Ins. Co.*, Index No. 05-7557, pending in New York State Supreme Court, Suffolk County ("*Steinberg I*") (*Steinberg I* and *Steinberg II* are collectively referred to as the "Steinberg Actions"); and (b) Counsel for Defendant. The Parties intend this Settlement Agreement to fully, finally, and forever resolve, discharge, and settle the Released Claims, and all matters related to the Steinberg Actions, according to the terms and conditions set forth below. Capitalized terms shall have the meaning defined in Section 2 herein.

1. Recitals

WHEREAS, on October 13, 1999, Plaintiff, individually and as part of a class similarly situated, commenced *Steinberg I* in the Supreme Court of the State of New York, Suffolk County;

WHEREAS, on November 24, 1999, Defendant removed *Steinberg I* to the Eastern District of New York, and the Court on April 6, 2000 denied the motion for remand, *Steinberg v. Nationwide Mut. Ins. Co.*, 99 CV 7725, 91 F. Supp. 2d 540 (E.D.N.Y. 2000);

WHEREAS, on September 4, 2004 the Court granted Plaintiff's motion for class certification in *Steinberg I*, *Steinberg v. Nationwide Mut. Ins. Co.*, 99 CV 7725, 224 F.R.D. 67 (E.D.N.Y. 2004);

WHEREAS, on December 30, 2004, the United States Court of Appeals for the Second Circuit ruled that the Court had no subject-matter jurisdiction over *Steinberg I*, *Steinberg v.*

Counsel for Plaintiff



Counsel for Nationwide



Nationwide Mut. Ins. Co., No. 04-8018-cv (2d Cir. Dec. 30, 2004), and on March 16, 2005 the Court remanded *Steinberg I* to state court;

WHEREAS, on July 15, 2005 Plaintiff filed *Steinberg II* in federal court and on March 7, 2006 the Court held that it had subject-matter jurisdiction over *Steinberg II* pursuant to the Class Action Fairness Act of 2005 ("CAFA");

WHEREAS, on November 14, 2006 the Court granted Plaintiff's motion for class certification in *Steinberg II*, and on December 18, 2006 defined the class period to commence on July 15, 1999;

WHEREAS, on February 20, 2007, the United States Court of Appeals for the Second Circuit denied Defendant's petition for interlocutory appeal under Fed. R. Civ. P. 23(f);

WHEREAS, *Steinberg II* alleges, in pertinent part, that Defendant improperly took deductions for "betterment" from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies issued by Defendant;

WHEREAS, Defendant denies and continues to deny all material allegations of wrongdoing, and further maintains that *Steinberg II* does not satisfy the requirements for a class action and that a class action could not and should not be certified or maintained other than for purposes of settlement as provided in this Settlement Agreement;

WHEREAS, Plaintiff believes that the claims asserted in *Steinberg II* have substantial merit; however, Plaintiff and Class Counsel recognize and acknowledge the risks associated with the continued prosecution and possible appeal of this complex and time-consuming litigation, as well as the likelihood of success on the merits and believe that the proposed settlement is fair, reasonable, adequate, and in the best interests of all Settlement Class Members; and

WHEREAS, Defendant, while denying wrongdoing of any kind whatsoever, and believing that the defenses raised in *Steinberg II* have substantial merit, and without admitting liability, nevertheless has agreed to enter into this Settlement Agreement to avoid further burden and expense of protracted litigation and to be completely free of any further controversy with respect to the claims that have been asserted or could have been asserted.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, through their respective Counsel, that in consideration of the promises and mutual covenants set forth in this Settlement Agreement and the entry by the Court of a Final Approval Order and Judgment, *Steinberg II* shall be finally and fully resolved, settled, and compromised upon and subject to the following terms and conditions:

2. Definitions

As used in this Settlement Agreement, the following terms have the meanings specified below:

"Agreement" or "Settlement Agreement" means this Settlement Agreement, including all Exhibits hereto.

"Betterment" or "Betterment Charge(s)" refers to any adjustment of benefits paid by any of the Nationwide Entities on a collision or comprehensive automobile insurance claim that was based upon an amount identified as "betterment" on a repair estimate.

"Claim" means a request by Plaintiff or a member of the Settlement Class for a benefit under this Settlement Agreement.

"Claimants" mean those members of the Settlement Class who submit a timely, valid, accurate, and properly completed Claim Form.

"Claim Form" means that form attached to or accompanying the Individual Notice, pursuant to which Settlement Class Members may elect to participate in this Settlement. The Claim Form is attached hereto together with the Individual Notice as Exhibit 3.

"Claim Resolution Process" means the procedures described in Section 11 of this Settlement Agreement for the presentation, evaluation, and resolution of Claims.

"Class Benefit" means the total value of this settlement, including all monetary amounts, benefits and consideration made available to all Settlement Class Members in the form of opportunity, cash or its equivalent by the Settling Defendants under the Settlement, as set forth pursuant to this Settlement Agreement, but after the Court's Final Approval Order and Judgment. The Class Benefit also includes all other benefits incident to or resulting from the Settlement, including the value of the equitable relief, if any, awarded by the Court.

"Class Counsel" or "Plaintiff's Counsel" means:

Robert J. Axelrod, Esquire
Pomerantz Haudek Block Grossman and Gross LLP
100 Park Avenue
New York, NY 10017-5516

"Class Period" means the period of time from January 1, 1993 until the Preliminary Approval Date.

"Class Representative" means Stephen R. Steinberg, individually, and as a representative of the Settlement Class.

"Complaint(s)" means all Complaints filed by the Plaintiff at any time in or under the Civil Action Number cited in the caption above.

"Counsel for Nationwide" or "Defendants' Counsel" means:

Craig A. Cohen, Esquire
Michael R. Nelson, Esquire
Nelson, Levine, de Luca & Horst, LLC

Counsel for Plaintiff



Counsel for Nationwide



518 Township Line Road – Suite 300
Blue Bell, PA 19422
P: (215) 358-5162 F: (215) 358-5101

“Court” means the United States District Court for the Eastern District of New York where *Steinberg II* is before the Honorable Arthur D. Spatt.

“Defendant(s)” means the Nationwide Entities as defined herein.

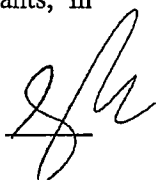
“Effective Date” means the date on which the Court’s Final Approval Order and Judgment becomes Final.

“Fairness Hearing,” “Final Fairness Hearing,” “Final Settlement Approval Hearing” or “Settlement Approval Hearing” means the settlement approval hearing to be conducted by the Court in connection with the determination of the fairness, adequacy, and reasonableness of this Settlement Agreement in accordance with the applicable Federal Rules of Civil Procedure and other applicable law.

“Final” means, with respect to the Final Approval Order and Judgment, that the Final Approval Order and Judgment is entered by the Court and the time for appeal from such Final Approval Order and Judgment has lapsed (including, without limitation, any extension of time for the filing of any appeal that may result by operation of law or order of the Court) with no notice of appeal having been filed, or if an appeal is filed, the day that the Final Order and Judgment is affirmed, all appeals are dismissed, and no further appeals to, or discretionary review in, any court remains.

“Final Approval Order and Judgment” means the Order to be entered by the Court, substantially in the form attached hereto as Exhibit 2, or such other form as is mutually agreeable to the Parties, approving this Settlement Agreement as fair, adequate, and reasonable and in the best interests of the Settlement Class as a whole, as well as the Settling Defendants, in

Counsel for Plaintiff 

Counsel for Nationwide 

accordance with the applicable Federal Rules of Civil Procedure and other applicable law, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Settlement Agreement.

"Individual Notice" means the Court-approved notice that is mailed to members of the Settlement Class, substantially in the form attached hereto as Exhibit 3.

"Legally Authorized Representative" means an administrator/administratrix or executor/executrix of a deceased Settlement Class Member's estate, a guardian, conservator, or next friend of an incapacitated Settlement Class Member or any other legally appointed person or entity responsible for handling the business affairs of a Settlement Class Member.

"Nationwide" or "Nationwide Entity(ies)" means named defendant Nationwide Mutual Insurance Company, along with all of its present and former affiliates, related companies, parent entities, subsidiaries, predecessors, successors or assigns, 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, whether or not named herein, plus each and all of their subsidiary, predecessor and successor companies, including Motor Club of Iowa Insurance Company, AMCO Insurance Company, Nationwide Agribusiness Insurance Company, Nationwide Mutual Fire Insurance Company, Colonial County Mutual Insurance Company, Allied Property and Casualty Insurance Company, Nationwide Indemnity Company, Depositors Insurance Company, Nationwide Assurance Company, Nationwide General Insurance Company, Discover Financial Services Auto & Home, Nationwide Insurance Company of America, Nationwide Affinity Insurance Company of America, Nationwide Property and Casualty Insurance Company, and

Nationwide Insurance Company of Florida, plus each and all their subsidiary, predecessor and successor companies.

"Neutral Evaluator" means a neutral third-party approved by the Court as provided below, to serve as a binding arbiter(s) of any disagreements that might arise concerning the type of proof or documentation required to make a Claim under the terms of the Settlement Agreement.

"Notice" means, collectively, the communications by which the Settlement Class is notified of the existence and terms of the Settlement.

"Notice Date" means the date upon which Individual Notice is first mailed to the Settlement Class.

"Objection Date" shall have the meaning assigned to that term in Section 14.4-14.8 of this Settlement Agreement.

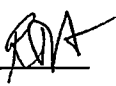
"Opt-Out Deadline" means the last day for members of the Settlement Class to file with the Settlement Administrator a statement that they wish to be excluded from this Settlement.


"Person" means any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity.

"Plaintiff" means Stephen R. Steinberg.

"Preliminary Approval" or "Preliminary Approval Order" means the Court's preliminary approval of this Settlement Agreement in substantially the form attached hereto as Exhibit 1.

"Preliminary Approval Hearing" means the hearing that the Court, in its discretion, may conduct to consider preliminary approval of the Proposed Settlement as provided below.

Counsel for Plaintiff 

Counsel for Nationwide 

"Released Claims" means all claims, causes of action, demands, rights or liabilities for damages, in contract, in tort, under any statute or regulation, and/or derived directly or indirectly from any statute, or claims under federal, state, local or other laws, including, but not limited to claims for extra-contractual damages, exemplary (punitive) damages, policy or premium proceeds, consequential losses or damages, interest, equitable relief, declaratory relief, injunctive relief (however described or defined), known or unknown, fixed or contingent, that Plaintiff and the Settlement Class now has asserted, could have asserted, or may in the future assert *and* referring or relating in any way to the utilization of "Betterment or Betterment Charges" in determining the amount paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies issued by the Nationwide Entities.

The Released Claims include, but are not limited to:

- (a) the release of all matters alleged in the Plaintiff's Complaint in *Steinberg II*, including but not limited to the actions pleaded therein, namely breach of contract;
- (b) the release of any and all claims, demands, rights, liabilities, manners of actions and causes of action of every nature and description, arising out of or related in any way to said Released Claims against the Nationwide Entities, including those at issue in *Steinberg I*.

"Released Parties" means the Nationwide Entities, as defined herein.

"Request for Exclusion" means a request to be excluded from the Settlement Class, submitted in accordance with instructions provided in the Notice.

"Settlement" or "Proposed Settlement" means the settlement contemplated by the terms, conditions, and provisions set forth in this Settlement Agreement, including all Exhibits hereto.

"Settlement Administrator" or "Claims Administrator" means the firm approved by the Court to administer the Settlement Class and Settlement Notice.

"Settlement Agreement" or "Agreement" means this Settlement Agreement, including all Exhibits hereto.

"Settlement Agreement Date" means the date as of which the Settling Parties enter into this Settlement Agreement.

"Settlement Class" means:

All persons who:

- (a) were insured under an automobile insurance policy that was issued by any of the settling Nationwide Entities, consisting of Nationwide Mutual Insurance Company, Motor Club of Iowa Insurance Company, AMCO Insurance Company, Nationwide Agribusiness Insurance Company, Nationwide Mutual Fire Insurance Company, Colonial County Mutual Insurance Company, Allied Property and Casualty Insurance Company, Nationwide Indemnity Company, Depositors Insurance Company, Nationwide Assurance Company, Nationwide General Insurance Company, Discover Financial Services Auto & Home, Nationwide Insurance Company of America, Nationwide Affinity Insurance Company of America, Nationwide Property and Casualty Insurance Company, and Nationwide Insurance Company of Florida;
- (b) suffered a loss to an automobile in the United States that:
 - 1. occurred within the Class Period;
 - 2. was determined by a settling Nationwide Entity or by a court or arbitrator of competent jurisdiction to be covered by the collision and/or comprehensive coverage of an automobile insurance policy issued by a settling Nationwide Entity; and
 - 3. resulted in a payment by a settling Nationwide Entity during the Class Period that included an adjustment of the amount paid based upon a "betterment" charge designated on a repair estimate.
- (c) excluding:
 - 1. any claims related to the issue of "Betterment" that have been previously discharged or released; and
 - 2. all present or former officers and/or directors of any Nationwide Entity, Neutral Evaluators, Class Counsel, Nationwide's counsel of record, and all persons who make a timely and valid election to be excluded from the Settlement Class in accordance with the provisions of the Individual Notice and/or Summary Notice.

The Parties have agreed upon this definition for the Settlement Class solely for settlement purposes.

"Settlement Class Member" means any Person satisfying the requirements necessary to be a member of the Settlement Class.

"Settlement Consideration" means the total consideration made available to Settlement Class Members.

"Settling Defendants" means the Nationwide Entities as defined herein.

"Settling Parties" or **"Parties"** means, collectively, the Plaintiff, on behalf of himself and each Settlement Class Member, and the Nationwide Entities as defined herein.

"Summary Notice" means the Court-approved notice to be published, substantially in the form attached hereto as Exhibit 4.

3. Denial of Liability

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 Plaintiff herein, or each other. Nationwide has concluded that settlement, on the terms hereinafter set forth, is in its best interests, taking into account, among other concerns, the inconvenience, distraction, delay, and expense associated with further litigation and in an attempt to quell all controversy and to avoid additional and costly expenses, including but not limited to disruption of its business practices and also the burdensome, disruptive and costly litigation necessary to defend this action.

Throughout the course of this litigation, and otherwise at all times, Nationwide has denied all allegations of wrongdoing or liability whatsoever asserted and/or which could have been asserted in this action. Nationwide continues to do so and neither this Settlement

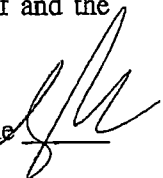
Agreement, nor anything contained herein, or offered and exchanged between counsel as negotiated and/or leading to this Settlement Agreement, shall be construed as an admission or concession by Nationwide of the truth of any of the allegations in the Steinberg Actions, or of any liability, fault, or wrongdoing of any kind on the part of Nationwide. This Settlement Agreement shall not be offered or received in evidence in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, as an admission or concession of liability or wrongdoing of any nature on the part of Nationwide. In the event the Settlement Agreement is not finally approved for any reason, Nationwide shall retain the right to object to the maintenance of the Steinberg Actions and/or any other case as a class action and to contest the Steinberg Actions and/or any other case on any ground.

Nationwide agrees, solely for the purpose of this Settlement Agreement and its implementation, and subject to final Court approval at the Fairness Hearing, that Civil Action Number **05-CV-033409**, as above-captioned, shall proceed as a class action consistent with this Settlement Agreement. However, if such settlement does not result in Final Settlement or if Nationwide withdraws from this Agreement, then Nationwide retains all its legal and equitable rights and defenses to object to the maintenance of the action as a class action and to the claims of Plaintiff.

4. Investigation of Claims and Position of Settlement

Class Counsel have conducted an investigation relating to Plaintiff's claims, as presented and as pleaded, including the underlying events and transactions alleged in Plaintiff's Complaints. In connection therewith, the Parties and their counsel have conducted an analysis of the alleged claims and the relevant legal principles as applied in and by the laws of the several states involved in this proposed class action. Based upon such investigation, Plaintiff and the

Counsel for Plaintiff 

Counsel for Nationwide 

Settlement Class, acting through Class Counsel, believe that this settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class Members.

5. Compensation to Settlement Class Members

5.1 The consideration supporting this Agreement shall include the payment as set forth below to Settlement Class Members who timely submit valid Claim Forms. The amounts paid to such Settlement Class Members shall be fifty percent (50%) of the "betterment" charge appearing on the final repair estimate serving as the basis for payment to the Settlement Class Member by a settling Nationwide Entity on a collision or comprehensive automobile insurance claim.

5.2 The consideration supporting this Agreement shall also include the following equitable relief to benefit Settlement Class Members: Defendants Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company shall be required for a period of five (5) years from the date of the Final Approval Order, upon the usual and customary course of seeking approval and/or re-approval of automobile insurance policy forms submitted for review and approval to a state insurance department and/or state insurance commissioner, which Defendants represent amounts to approximately five (5) such policy forms per year, to incorporate language in those forms (1) explicitly providing that Betterment may be considered in the determination of actual cash value with regard to first-party collision and comprehensive claims; (2) stipulating that if the repair or replacement of a vehicle results in Betterment, no coverage will be provided for such Betterment; and (3) defining "Betterment" as an increase in value of a vehicle or any of its parts as a result of replacing certain parts damaged in a loss.

5.3 The equitable relief described in Section 5.2 does not require Defendants Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company to

submit insurance policy forms for review and approval to a state insurance department for the sole purpose of incorporating the above policy language describing "Betterment."

6. Preliminary Approval of Settlement

6.1 As soon as is practicable following execution of this Agreement, the Parties hereto shall jointly apply to the Court for entry of a Preliminary Approval Order substantially in the form set forth in Exhibit 1 that will, among other things:

- (a) preliminarily approve this Settlement Agreement;
- (b) preliminarily certify the Settlement Class, as defined herein, for settlement purposes and designate Plaintiff as the class representative;
- (c) approve Plaintiff's Class Counsel as asserted herein;
- (d) preliminarily approve this Settlement Agreement as sufficiently fair and reasonable to warrant sending notice to the Settlement Class preliminarily certified for settlement purposes;
- (e) stay consideration of all other motions and deadlines pending in the action;
- (f) determine that distribution of the Individual Notice and Summary Notice as described herein is reasonable and the best practicable notice under the circumstances; is reasonably calculated to apprise Settlement Class Members of the pendency of the Action and their right to object or opt-out of the Proposed Settlement; constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and meets the requirements of the Federal Rules of Civil Procedure, and due process requirements under the United States Constitution;
- (g) direct that Nationwide and the Claims Administrator, Epiq Systems, Inc., cause the Individual Notice to be distributed by first class mail, postage prepaid, bearing the return address of Epiq Systems, Inc. within thirty (30) days after Preliminary Approval of the Proposed Settlement to all reasonably identifiable Settlement Class Members addressed in care of and to the last known address maintained by Nationwide;
- (h) prescribe a period of time during which, and the method by which, Settlement Class Members may receive and respond with a completed Claim Form and/or serve written objections;
- (i) require each potential Settlement Class Member who wishes to exclude himself, herself, or itself from the Settlement Class to submit to the Administrator a written

request for exclusion postmarked not later than sixty (60) days after the Notice Date;

- (j) schedule a final hearing, upon notice to Settlement Class Members, regarding final approval of the fairness, reasonableness and adequacy of the proposed Agreement, the dismissal of this action on the merits with prejudice, and Class Counsel's request for attorneys' fees and reimbursement of expenses and for the reimbursement of same; and
- (k) find that the Parties have complied fully with the notice provisions of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

6.2 Preliminary certification of the Settlement Class and appointment of the Class Representative and Class Counsel by the Court shall be binding only with respect to the Proposed Settlement. In the event that the Proposed Settlement is not consummated for any reason, whether due to a termination of this Settlement Agreement in accordance with its terms, a failure or refusal of the Court to approve the Proposed Settlement, or a reversal or modification of the Court's approval of the Proposed Settlement on appeal, or any other reason, then (a) the Court shall vacate the certification of the Settlement Class, (b) the Parties shall litigate the Action as though this Settlement Agreement had never been entered into and the Settlement Class had never been certified, and (c) Nationwide will retain all of its legal and equitable rights and defenses to object to the maintenance of the action as a class action and to the claims of Plaintiff.

6.3 Upon the Preliminary Approval of this Settlement Agreement and the Proposed Settlement as provided in Section 6.1, all proceedings in the Action shall be stayed until further order of the Court; provided, however, that the parties may conduct such limited proceedings as may be necessary to implement the Proposed Settlement or to effectuate the terms of this Settlement Agreement.

7. Claims Administrator

7.1 The Parties agree to recommend to the Court that Epiq Systems, Inc. be designated as "Claims Administrator." The Claims Administrator shall (i) administer the payment to all Claimants; (ii) oversee the provision of Notice to the Settlement Class; (iii) process Claim Forms; (iv) provide instructions to Nationwide during the claims process; (v) oversee, audit, and confirm the issuance of payments to the Claimants; and (vi) provide a certification to the Court regarding the administration and processing of claims and the issuance of the payments to the Claimants as set forth herein.

7.2 The Claims Administrator shall be paid by Nationwide for services rendered pursuant to this Settlement Agreement. Nationwide shall pay the reasonable costs of administering the Settlement, once Preliminary Approval is granted by the Court. Such costs include, without limitation, the reasonable costs of notifying the Settlement Class Members, preparing the Individual Notice and Claim Forms, mailing of the Individual Notice and Claim Forms, publication of the Summary Notice, processing the claims, and costs associated with the services of the Claims Administrator to undertake any duties required to assist in the management of this Proposed Settlement, including, but not limited to, fees associated with the establishment of an automated toll free telephone number to answer frequently asked questions, live operators to respond to questions, and the establishment of a website concerning the Proposed Settlement.

7.3 Nationwide agrees to provide information that it has available in electronic format, which is reasonably necessary for the identification of Settlement Class Members, providing notice to Settlement Class Members and administering the Settlement as contemplated by this Settlement Agreement. Nationwide shall bear its own costs in providing such information.

8. Notice to Settlement Class Members

8.1 As soon as practicable after the Preliminary Approval of the Proposed Settlement as provided in Section 6.1, Nationwide shall initiate a search of its reasonably available electronic data to ascertain the name and last known address of each potential Settlement Class Member. Thereafter, the Claims Administrator shall send a copy of the Individual Notice and a Claim Form, by first-class mail, to each potential Settlement Class Member for whom Nationwide ascertains a name and an address through that search. Nationwide and the Claims Administrator shall use their best efforts to complete the mailing of the Individual Notice and Claim Form to potential Settlement Class Members within thirty (30) days after the Preliminary Approval of the Proposed Settlement as provided herein. The Individual Notice will be approved as to form and content by the Court and be substantially in the form attached hereto as Exhibit 3 unless otherwise modified by agreement of the Parties and approved by the Court. The mailing to the Settlement Class Members that contains the Individual Notice will also include a copy of the Claim Form, in a format substantially similar to Exhibit 3.

8.2 If any Individual Notice and/or Claim Form mailed to any potential Settlement Class Member in accordance with the procedure set forth above is returned to the Claims Administrator as undeliverable, then the Claims Administrator shall, to the extent it is reasonably able to locate a current address for the potential Settlement Class Member, re-send the returned Individual Notice and/or Claim Form to the potential Settlement Class Member by first-class mail. The Claims Administrator will promptly log each Individual Notice and/or Claim Form that is returned as undeliverable and provide copies of the log to Nationwide and Class Counsel as requested.

8.3 In addition to the Individual Notices mailed in accordance with the procedure set forth above, the Claims Administrator shall establish a website and post the Settlement

Agreement and the Individual Notice on the website. The Individual Notice and Claim Form will also be available to all potential Settlement Class Members by request to the Claims Administrator, who shall send via first class United States Mail either or both of these documents as requested from the Claims Administrator by any potential Settlement Class Member.

8.4 In addition, the Claims Administrator shall provide for notice by publication in *USA Today*. Notice by publication shall consist of a Summary Notice, in a form substantially similar to that attached hereto as Exhibit 4. The Summary Notice will identify a procedure for requesting the Individual Notice and Claim Form from the Claims Administrator, who shall send via first class United States Mail either or both of these documents as requested from the Claims Administrator by any potential Settlement Class Member.

8.5 Nationwide will pay all of the costs of the mailing of the Individual Notice and Claim Form to all potential Settlement Class Members for whom Nationwide is able to ascertain a name and address through the efforts described in this Section including the costs of printing and reproducing the Individual Notice and Claim Form and the cost of mailing the Individual Notice and Claim Form to such potential Settlement Class Members. Nationwide will pay the costs of the address searches and re-mailings described above. Furthermore, Nationwide shall pay all of the costs of mailing the Individual Notice and Claim Form to potential Settlement Class Members who contact the Claims Administrator and request copies of those materials, and shall pay all of the costs of publishing the Summary Notice.

9. Final Approval Order and Judgment

9.1 After the completion of the mailing of notice and the expiration of the deadlines for seeking exclusion from the Class and filing objections, Class Counsel will file a motion seeking the

Court's final approval of the Proposed Settlement at a Final Fairness Hearing to be held at a time, date, and location that will be stated in the Individual Notice and Summary Notice, and in the Order preliminarily approving the Proposed Settlement. The parties shall cooperate in requesting that the Court hold the Final Fairness Hearing no earlier than ninety (90) days after the Notice Date. Plaintiff shall request the Court to enter a Final Approval Order and Judgment substantially in the form attached hereto as Exhibit 2, which provides for:

- (a) Granting final approval of this Settlement Agreement and the fairness, reasonableness and adequacy of its terms as generally called for by the Federal Rules of Civil Procedure and substantive law, and directing its consummation pursuant to its terms;
- (b) Finding that Class Counsel and Plaintiff have adequately represented the Settlement Class;
- (c) Permanently barring and enjoining every Settlement Class Member, and their respective heirs, executors, administrators, successors, and assigns, and all others claiming by, through or under them, from instituting, claiming, prosecuting in a judicial forum, either directly or indirectly, any other action in any court asserting any Released Claims as defined above;
- (d) Finding that the mailing of the Individual Notice, publication of the Individual Notice on the website approved by the Court, and publication of the Summary Notice in *USA Today* was the best practicable notice and satisfies the requirements of the Federal Rules of Civil Procedure and the requirements of due process under the United States Constitution; and
- (e) Dismissing this action on the merits, with prejudice and with all costs taxed to be paid;
- (f) Dismissing with prejudice the Released Claims against the Nationwide Entities, or any of its parent entities, affiliates, subsidiaries, predecessors, successors or assigns, and each and all of their respective past, present or future officers, directors, associates, stockholders, controlling persons, representatives, employees, attorneys, financial or investment advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, personal representatives, estates or administrators;
- (g) Reserving jurisdiction over this action, including jurisdiction to oversee all further proceedings concerning the administration and consummation of the agreements embodied herein; and

- (h) Providing for such other and further provisions consistent with the terms of this Settlement Agreement to which the parties hereto may consent, consistent with Exhibit 2.

9.2 In addition to seeking approval of the Proposed Settlement, the motion described in this Section shall request the appointment of a Neutral Evaluator to serve as arbiter of any disagreements that arise in the claims administration process, as provided in Section 11.7, below. To assist the Court in the appointment of the Neutral Evaluator, Class Counsel and Counsel for Nationwide agree that the Neutral Evaluator shall be retired Philadelphia Court of Common Pleas Judge Mary D. Colins.

9.3 After the appointment of the Neutral Evaluator, Class Counsel and the Claims Administrator shall maintain the name and address of the Neutral Evaluator for distribution to Settlement Class Members upon request. Neither Nationwide, nor Plaintiff nor any of the parties' counsel shall be liable for any act or omission of the Neutral Evaluator.

9.4 Defendant shall pay all costs associated with any services of the Neutral Evaluator. Under no circumstances shall Class Counsel, Plaintiff, or the Settlement Class be liable for any costs or expenses associated with the Neutral Evaluator.

10. Stay of Proceedings in *Steinberg I*, Dismissal of Action in *Steinberg II* and Release of Claims

10.1 Until the Effective Date, the Parties agree that none of the Parties or their respective counsel shall pursue litigation proceedings in *Steinberg I*, and the Parties and their respective counsel shall not subsequently argue that such Parties or counsel failed to comply with their litigation obligations in any respect by reason of such suspension of litigation efforts following the Effective Date.

10.2 Upon the Effective Date, Plaintiff, all Settlement Class Members, and their heirs, trustees, executors, administrators, principals, beneficiaries, assigns and successors will be bound

by the Final Approval Order and Judgment and conclusively deemed to have fully released, acquitted and forever discharged, to the fullest extent permitted by law, all of the Released Parties from the Released Claims, and agree not to institute, maintain, or assert any claims against the Released Parties on the Released Claims.

10.3 Upon entry of the Final Approval Order and Judgment, *Steinberg II* will be dismissed with prejudice as to the Nationwide Entities and Plaintiff, individually and on behalf of the Settlement Class, and will release all the Released Parties from all of the Released Claims. The provisions of any state, federal, municipal, local or territorial law or statute (including, but not limited to, that of the District of Columbia) providing in substance that releases shall not extend to claims, demands, injuries, and/or damages that are unknown or unsuspected to exist at the time a settlement agreement is executed and/or approved by a court are hereby expressly, knowingly, and voluntarily waived by and on behalf of Plaintiff and all members of the Settlement Class. Without limiting the foregoing in any way, Plaintiff, on behalf of himself and all members of the Settlement Class, expressly waives all rights under Section 1542 of the California Civil Code, realizing and understanding that Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

10.4 The parties shall cooperate with each other in dismissing *Steinberg I*, pending in the New York Supreme Court, as encompassed within the Settlement Class certified by the Final Approval Order and Judgment.

11. Submission of Claims by Settlement Class Members

11.1 Settlement Class Members who do not timely request exclusion from the

Settlement Class will be provided an opportunity to submit Claim Forms requesting payments calculated in accordance with Section 5, above. Claim Forms shall be included with the Individual Notices mailed to Settlement Class Members. In addition, the Claims Administrator will provide Claim Forms to Settlement Class Members upon request. Claim Forms may be submitted on behalf of deceased or incapacitated Settlement Class Members by their Legally Authorized Representative(s).

11.2 To be considered for payment, a Claim Form must be completed and documented in accordance with Section 11.3, mailed to the address specified in the Claim Form, and postmarked no later than sixty (60) days from the Notice Date. Claim Forms will not be considered for payment if they are postmarked more than sixty (60) days after the Notice Date.

11.3 To be considered for payment, a Claim Form must, to the best of the Settlement Class Member's ability, supply all information requested on the face of the Claim Form, including the name and current address of the Settlement Class Member, the approximate date of the loss, the policy number, the claim number, the dollar amount that Nationwide paid in response to the claim, and the amount of the "betterment" adjustment, if any, applied to the claim. The Claim Form must contain a notarized signature of the Settlement Class Member or their legally authorized representative, affirming the claim.

11.4 Claim Forms that are timely mailed to the correct address of the Claims Administrator shall be processed as follows: Within one hundred and twenty (120) days after the Claim Form Submission Date, but in no event prior to ten (10) days after the date that the Court enters the Final Approval Order and Judgment, the Claims Administrator shall make a determination and issue payment, if any, due in response to each Claim Form timely submitted by a Settlement Class Member. In making each such determination, the Claims Administrator shall consider any information provided to it by either the Settlement Class Member and/or Nationwide, including data reports generated by Nationwide and the Settlement Class Member's

actual claim file. If the Claims Administrator's determination of the payment, if any, due in response to a particular claim is based in whole or in part on any deficiency in the information provided in the Claim Form, then the Claims Administrator shall identify such deficiency in a written notice to both Counsel for Nationwide and the Settlement Class Member and allow the Settlement Class Member the opportunity to correct the deficiency. The Claims Administrator, in addition to advising the Settlement Class Member of his, her, or its right to cure the deficiency, shall also advise the Settlement Class Member of his, her, or its right to submit additional evidence in support of their claim. Such evidence may include, but is not limited to vehicle repair estimates showing that a deduction for Betterment was taken.

11.5 A Settlement Class Member who objects to the Claims Administrator's determination of his, her, or its claim, if any, must so notify the Claims Administrator within thirty (30) days after the date that the Claims Administrator mailed the determination and claim payment to the Settlement Class Member. The Settlement Class Member must provide a written and signed statement setting forth the basis for his, her or its objection. Any objection that is not postmarked within that thirty (30) day period shall be waived.

11.6 Upon the timely submission of an objection pursuant to Section 11.5, the Claims Administrator, Nationwide, and the objecting Settlement Class Member shall have thirty (30) days to attempt to resolve the objection by agreement. At the end of this thirty (30) day period, the Claims Administrator shall provide the objecting Settlement Class Member written notice of its decision regarding the objection and inform the objecting Settlement Class Member of his, her or its right to submit the claim to a Neutral Evaluator.

11.7 A Settlement Class Member who is unable to resolve his, her, or its written and signed objection through agreement may mail a copy of that objection and a copy of his, her, or its Claim Form to the Claims Administrator and to a Neutral Evaluator within thirty (30) days after the

date that the Claims Administrator mailed its decision regarding the objection. The Claims Administrator shall forward a copy of all objections to Nationwide and Class Counsel. Any such objection that is not postmarked within that thirty (30) day period shall be waived. The Claims Administrator and/or Nationwide and/or Class Counsel shall have thirty (30) days after receipt to respond in writing, with a copy to each other, to an objection submitted to a Neutral Evaluator. The Neutral Evaluator shall issue a decision with respect to each such objection within sixty (60) days after his/her receipt of the Claims Administrator's response. The decision of the Neutral Evaluator shall be binding and not subject to appeal.

12. Communications with Settlement Class Members

The Individual Notice and the Summary Notice shall list the name and address of Class Counsel and the name, address and telephone number of the Claims Administrator. Communications with potential Settlement Class Members regarding the Proposed Settlement shall be handled through the Claims Administrator, or Class Counsel if required. In the event that Nationwide or its counsel receives any communications from potential Settlement Class Members regarding the Proposed Settlement, those communications shall be relayed to the Claims Administrator, or Class Counsel if deemed appropriate.

13. Attorneys' Fees and Costs

13.1 Class Counsel's entitlement, if any, to an award of attorneys' fees, costs, and/or expenses will be determined by the Court. Nationwide and Class Counsel did not negotiate the amount of any such fees, costs, or expenses until they resolved all other material elements of the Proposed Settlement.

13.2 Class Counsel will file a motion with the Court prior to the Final Settlement Approval Hearing requesting an award of attorneys' fees, costs, and expenses payable to Class

Counsel in a total amount not to exceed Two Million Seven Hundred and Fifty Thousand (\$2,750,000.00) Dollars. At the Final Settlement Approval Hearing, Class Counsel will ask the Court to issue an order awarding attorneys' fees, costs, and expenses up to, but not exceeding this amount. Defendant agrees to pay Class Counsel such an award of attorneys' fees, costs and expenses not to exceed this amount. The compensation to which Settlement Class Members are entitled pursuant to Section 5 shall not be reduced in any way by Defendant's payment of this amount to Class Counsel.

13.3 All Court-approved attorneys' fees and accrued interest are payable to Class Counsel within fifteen (15) days after the Final Approval and Judgment Date.

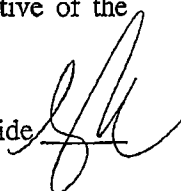
13.4 In the event that either (i) the Effective Date does not occur; (ii) the Final Approval Order and Judgment is not entered or is reversed in its entirety; (iii) the Order awarding attorneys' fees and costs is denied or is reversed in its entirety; or (iv) this Settlement Agreement is canceled or terminated for any other reason, Class Counsel shall have no entitlement to any attorneys' fee or expense award from Defendant.

13.5 Defendant otherwise reserves all of its rights with respect to any Petition by Class Counsel for attorneys' fees, costs or expenses.

14. Procedure for Opting Out or Otherwise Seeking Exclusion from the Settlement Class, or for Objecting

14.1 Settlement Class Members who wish to exclude themselves (opt-out) from the Settlement Class must submit a written Request for Exclusion. To be effective, such a request must include the Settlement Class Member's name and address, a clear and unequivocal statement that the Settlement Class Member wishes to be excluded (opt-out) from the Settlement Class, and the signature of the Settlement Class Member or, in the case of a Settlement Class Member who is deceased or incapacitated only, the signature of the Legally Authorized Representative of the

Counsel for Plaintiff 

Counsel for Nationwide 

Settlement Class Member. The request must be mailed to the Claims Administrator at the address provided in the Individual and Summary Notice and must be postmarked no later than sixty (60) days after the Notice Date.

14.2 The Claims Administrator shall promptly log each Request for Exclusion that it receives and provide copies of the log and all such Requests for Exclusion to Defendant and Class Counsel as requested.

14.3 Class Counsel agree not to represent, encourage, solicit or otherwise assist, in any way whatsoever, including but not limited to referrals to other counsel, any person requesting exclusion from the Settlement Class.

14.4 Settlement Class Members who do not request exclusion from the Settlement Class may object to the Proposed Settlement. Settlement Class Members who choose to object to the Proposed Settlement must file written notices of intent to object. Any Settlement Class Member may appear at the Final Settlement Approval Hearing, in person or by counsel, and be heard to the extent allowed by the Court, applying applicable law, in opposition to the fairness, reasonableness and adequacy of the Proposed Settlement, and on the application for an award of attorneys' fees and costs. The right to object to the Proposed Settlement must be exercised individually by an individual Settlement Class Member, not as a member of a group or subclass and, except in the case of a deceased, minor, or incapacitated Settlement Class Member, not by the act of another person acting or purporting to act in a representative capacity.

14.5 To be effective, a notice of intent to object to the Proposed Settlement must:

- (a) Contain a heading that includes the name of the case and case number;
- (b) Provide the name, address, telephone number and signature of the Settlement Class Member filing the objection;
- (c) Provide evidence that the Objector is a Settlement Class Member, including but not limited to a copy of the repair estimate containing an

adjustment of the amount paid based on a betterment charge for a loss to an automobile that occurred during the Class Period;

- (f) Indicate the specific reasons why the Settlement Class Member objects to the Proposed Settlement;
- (e) Be filed with the Clerk of the Court not later than sixty (60) days after the Notice Date;
- (f) Be served on Class Counsel by first-class mail, postmarked no later than sixty (60) days after the Notice Date;
- (g) Contain the name, address, bar number and telephone number of the objecting Settlement Class Member's counsel, if represented by an attorney. If the Settlement Class Member is represented by an attorney, he/she or it must comply with all applicable laws and rules for filing pleadings and documents in the United States District Court for the Eastern District of New York; and
- (h) State whether the Objector intends to appear at the Final Settlement Approval Hearing, either in person or through counsel.

14.6 In addition to the foregoing, a notice of intent to object must contain the following information, if the Settlement Class Member or his/her or its attorney requests permission to speak at the Final Settlement Approval Hearing:

- (a) A detailed statement of the specific legal and factual basis for each and every objection;
- (b) A list of any and all witnesses whom the Objector may call at the Settlement Approval Hearing, with the address of each witness and a summary of his or her proposed testimony; and
- (c) A detailed description of any and all evidence the Objector may offer at the Settlement Approval Hearing, including photocopies of any and all exhibits which the Objector may introduce at the Settlement Approval Hearing.

14.7 Any Settlement Class Member who does not file a timely notice of intent to object in accordance with this Section shall waive the right to object or to be heard at the Settlement Approval Hearing and shall be forever barred from making any objection to the Proposed Settlement. Settlement Class Members who object to the Proposed Settlement shall remain

Settlement Class Members, and have voluntarily waived their right to pursue an independent remedy against Defendant. To the extent any Settlement Class Member(s) objects to the Proposed Settlement, and such objection is overruled in whole or in part, such Settlement Class Member(s) will be forever bound by the Judgment of the Court.

14.8 At least seven (7) days before the Settlement Approval Hearing, Class Counsel shall provide Defendants with a copy of each notice of intent to object received by Class Counsel.


15. Confidentiality

15.1 The following constitutes highly confidential and proprietary business information of Defendant (the "Proprietary Information"): (a) the names, addresses, policy numbers, and other data concerning Settlement Class Members compiled by Defendant in effectuating the Proposed Settlement; and (b) the electronic data processing and other record keeping procedures and materials to be utilized by Defendant in identifying the Settlement Class Members and effectuating Defendant's other obligations under the Settlement Agreement and/or the Proposed Settlement. The confidentiality of all Proprietary Information shall be protected from disclosure by Class Counsel to any persons other than those described below.

15.2 No person(s) other than Defendant's counsel and clerical/administrative personnel employed by Defendant, Class Counsel, and clerical/administrative personnel employed by Class Counsel, the Claims Administrator and such other persons as the Court may order, after hearing on notice to all counsel of record, shall be allowed access to any Proprietary Information.

15.3 Within 30 days after the Effective Date, Class Counsel shall return to Defendant all Proprietary Information and copies thereof in their possession, custody, or control. Within 45 days after the Effective Date, Class Counsel shall deliver a letter to Nationwide confirming

Counsel for Plaintiff 

Counsel for Nationwide 

their compliance with this paragraph. In the event that any Proprietary Information or documents have already been destroyed, Class Counsel will include in that letter the name and address of the person(s) who destroyed the Proprietary Information and/or documents.

15.4 Neither Class Counsel nor Plaintiff shall make any statements to the media about the Settlement Agreement or the Proposed Settlement, except to refer media inquiries to the public Court record or through a press release mutually agreed upon by the parties.

15.5 Sections 15.1 through 15.4 are of the essence of the agreement stated herein. In the event that any of those provisions is stricken or modified by the Court, either Party may terminate the Settlement Agreement.

16. Disapproval or Termination of the Proposed Settlement

16.1 Within fourteen (14) business days after notice of the occurrence of any of the following events, the Parties shall have the right, exercisable at their sole discretion, to terminate this Settlement Agreement by delivering written notification of such election to the other party, if:

- (a) The Court, or any appellate court(s), rejects, denies approval, disapproves, or materially modifies the Settlement Agreement or any portion of this Settlement Agreement, including, but not limited to, the terms of the Settlement Class relief, the provisions relating to notice, the definition of the Settlement Class, and the Released Claims;
- (b) The Court, or any appellate court(s), does not enter or completely and unconditionally affirm any portion of the Settlement Agreement, Preliminary Approval Order, or Final Approval Order and Judgment that is material;
- (c) The number of Persons who exclude themselves (opt-out) from the Settlement Class by filing Requests for Exclusion equals or exceeds four percent (4%) of the potential Settlement Class Members;
- (d) Any action asserting Released Claims or similar claims is allowed to be prosecuted by another court, notwithstanding this Settlement Agreement and the Orders provided for herein; or

- (e) Any material financial obligation is imposed upon Defendant in addition to and/or greater than those specifically accepted by Defendant in this Settlement Agreement.
- (f) The Parties, in their sole and exclusive discretion and without limitation or condition, determines in good faith that the Proposed Settlement would not be effective to conclude finally all of the Released Claims intended to be finally resolved by this Settlement Agreement.

16.2 The option to withdraw from and terminate this Settlement Agreement under this Section must be exercised no later than fourteen (14) business days after notice of the event prompting the right to terminate. With regard to the Parties' right to withdraw from this Settlement Agreement pursuant to subparagraph 16.1(f), notice of a Party's intention to withdraw must be given to the other Party and the Court no later than thirty (30) days before the Final Approval Hearing. A Party's notice of withdrawal under subparagraph 16.1(f) shall be binding on all Parties upon mailing.

16.3 If the proposed Settlement Agreement shall fail for any reason other than a breach by one of the parties:

- (a) This Settlement Agreement and the Proposed Settlement shall have no further force or effect, and all proceedings that have taken place with regard to this Settlement Agreement and the Proposed Settlement shall be without prejudice to the rights and contentions of the parties hereto and any of the putative Settlement Class Members;
- (b) This Settlement Agreement, all of its provisions (including, without limitation, any provisions regarding class certification), and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of any of the parties, each of whom shall be restored to their respective positions existing immediately before settlement negotiations and the execution of this Settlement Agreement;
- (c) This Settlement Agreement, any provision of this Settlement Agreement (including without limitation the provisions regarding class certification), and the fact of this Settlement Agreement having been made, shall not be admissible or entered into evidence for any purpose whatsoever;
- (d) Any judgment or order entered after the date of this Settlement Agreement, including, without limitation, any order certifying the

Settlement Class, will be vacated and will be without any force or effect. The parties hereto agree that they will promptly file a joint motion with the Court to vacate all orders entered pursuant to the terms of this Settlement Agreement; and

- (e) The parties hereby agree that they will not thereafter argue or raise a claim or defense, including, but not limited to, waiver, estoppel and other similar or related theories, that the Settlement Agreement and related pleadings and filings, any provision of this Settlement Agreement (including without limitation the provisions regarding class certification), the fact of this Settlement Agreement having been made, and any settlement negotiations preclude Nationwide from opposing certification or the claims in the Litigation or any other proceeding.

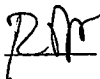
This Section shall survive any termination of this Settlement Agreement.

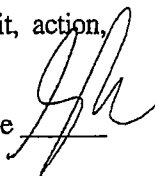
17. Retention of Records

The Claims Administrator and Defendant shall retain all returned Individual Notices, Claim Forms, and correspondence relating thereto, for a period of up to three (3) years after the Effective Date. After this time, the Claims Administrator and Defendant may destroy documentary records that they have in their possession. Nothing in this Settlement Agreement shall be construed to require the Claims Administrator and Defendant to retain records beyond their respective discretionary record retention policies.

18. Continuing Jurisdiction

Except as otherwise provided in this Settlement Agreement, it is expressly agreed and stipulated that the United States District Court for the Eastern District of New York shall have exclusive jurisdiction and authority to administer, interpret, and enforce the terms of this Settlement Agreement, and to consider, rule upon, and issue a final order with respect to suits, whether judicial, administrative, or otherwise, which may be instituted by an Person, individually or derivatively, with respect to this Settlement Agreement. Each Party and Settlement Class Member who has not opted-out of this Settlement Agreement hereby irrevocably submits to the exclusive jurisdiction and venue of the United States District Court for the Eastern District of New York for any suit, action,

Counsel for Plaintiff 

Counsel for Nationwide 

proceeding, case, controversy, or dispute relating to this Settlement Agreement and/or the negotiation, performance or breach of this Settlement Agreement. The Parties shall urge the Court to include the provisions of this Section in its Final Approval Order and Judgment approving this Settlement Agreement.

19. Cooperation

The Parties and their undersigned counsel agree to undertake their best efforts and to cooperate with each other to effectuate this Settlement Agreement and the terms of the Proposed Settlement, including taking all steps and efforts contemplated by this Settlement Agreement, and any other reasonable steps and efforts which may become necessary by order of the Court or otherwise.

20. Entire Settlement Agreement; Amendment

20.1 Except as otherwise provided, this Settlement Agreement, including its Exhibits, contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties, and the Settlement Agreement is not subject to any condition not provided for herein. This Settlement Agreement supersedes any prior agreements or understandings by or between Plaintiff, Defendant, Settlement Class Members, Defendants' Counsel, and Class Counsel regarding the subject matter of this Settlement Agreement. This Settlement Agreement shall be binding upon and inure to the benefit of the settling parties hereto (including members of the Settlement Class) and their respective heirs, executors, attorneys, administrators, successors and assigns, upon any corporation, partnership or other entity into or with which any settling party hereto may merge, combine or consolidate, and upon all other Persons claiming any interest in the subject matter hereof through any of the parties hereto, including any Settlement Class Member. As used in the preceding sentence and

elsewhere throughout this Settlement Agreement, "including" shall mean including without limitation.

20.2 This Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties. Amendments and modifications may be made without additional notice to Settlement Class Members unless such notice is required by the Court.

20.3 In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendants' and Plaintiff's counsel, on behalf of the parties, mutually elect in writing to proceed as if such invalid, illegal, and unenforceable provision had never been included in this Agreement.


21. Governing Law

This Settlement Agreement, and all exhibits relating to this Settlement Agreement, shall be subject to, governed by, construed in light of, and enforced pursuant to the laws of the State of New York, excluding its choice of law rules. Any orders of judgments entered by the Court in conjunction with the proceedings relating to or arising out of this Settlement Agreement shall be construed and enforced, and all issues relating to the preclusive effect of such orders or judgments shall be determined by, the laws of the United States relating to the construction, enforcement, and preclusive effect of orders and judgments entered by the District Courts of the United States of America.

22. Basis for Injunction

To the extent permitted by law, this Settlement Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or

Counsel for Plaintiff 

Counsel for Nationwide 

other proceeding which may be instituted, prosecuted or attempted in breach of this Settlement Agreement.

23. Counterparts

This Settlement Agreement may be executed in counterparts, each of which shall constitute an original.

24. Successors and Assigns

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto (including members of the Settlement Class) and their respective heirs, executors, attorneys, administrators, successors and assigns and upon any corporation, partnership or other entity into or with which any settling party hereto may merge, combine or consolidate. As used in the preceding sentence and elsewhere throughout this Settlement Agreement, "including" shall mean including without limitation. Notwithstanding the above, a Party may not assign, delegate, or otherwise transfer any of its, his, or her rights or obligations under this Settlement Agreement to a non-party that is not a successor or affiliate, without: (a) in the case of the Defendant, the consent of Class Counsel; and (b) in the case of Plaintiff, the consent of counsel for Defendants.

25. Force Majeure

The Parties shall not be liable for any delay or non-performance of their obligations under this Settlement Agreement arising from any act of God, governmental act, act of terrorism, war, fire, flood, earthquake, explosion, or civil commotion. The performance of the Parties' obligations under this Section, to the extent affected by the delay, shall be suspended for the period during which the cause, or the Parties' substantial inability to perform arising from the cause, persists.

26. Waiver

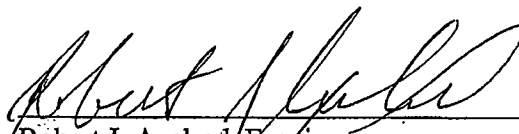
The waiver by any party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

27. Authority

Each Person signing this Settlement Agreement on behalf of a Party represents that he or she has been duly authorized and empowered to execute this Settlement Agreement on behalf of each such respective Party and to bind them to the terms hereof.

IN WITNESS WHEREOF, the parties to the Agreement have caused this Agreement to be executed, by their duly authorized attorneys, this 12th day of November 2008.

POMERANTZ HAUDEK BLOCK GROSSMAN
AND GROSS LLP

 11-25-08
Robert J. Axelrod, Esquire
Attorney for Plaintiff

NELSON LEVINE de LUCA and HORST LLC


 11/22/08
Craig A. Cohen, Esquire
Michael R. Nelson, Esquire
Attorney for Defendants

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

STEPHEN R. STEINBERG, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

NATIONWIDE MUTUAL INSURANCE
COMPANY,

Defendant.

Civ. No.: 05-CV-03340 (ADS) (ARL)

**ORDER CONDITIONALLY CERTIFYING SETTLEMENT
CLASS, AND PRELIMINARILY APPROVING PROPOSED SETTLEMENT**

Upon review and consideration of the Settlement Agreement dated _____, 2008 and the exhibits thereto which have been filed with the Court, and having been fully advised, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The Settlement Agreement is hereby incorporated by reference in this Order and all terms defined in the Settlement Agreement will have the same meanings in this Order.
2. The Court has jurisdiction over this Action and over each of the Parties and Settlement Class Members.
3. The terms of the Settlement Agreement, including the exhibits, are preliminarily approved, subject to further consideration at the Final Settlement Hearing provided for below. The Court finds that the settlement terms embodied in the Settlement Agreement fall within the range of reasonableness to warrant approval, such that notice of the Settlement (in the forms presented to the Court as exhibits to the Settlement Agreement) should be disseminated to Settlement Class Members as provided for in this Order.

4. For purposes of determining whether the terms of the Settlement Agreement should be finally approved as fair, reasonable and adequate, the following Settlement Class is conditionally certified for settlement purposes only:

all persons who:

- (a) were insured under an automobile insurance policy that was issued by any of the settling Nationwide Entities, consisting of Nationwide Mutual Insurance Company, Motor Club of Iowa Insurance Company, AMCO Insurance Company, Nationwide Agribusiness Insurance Company, Nationwide Mutual Fire Insurance Company, Colonial County Mutual Insurance Company, Allied Property and Casualty Insurance Company, Nationwide Indemnity Company, Depositors Insurance Company, Nationwide Assurance Company, Nationwide General Insurance Company, Discover Financial Services Auto & Home, Nationwide Insurance Company of America, Nationwide Affinity Insurance Company of America, Nationwide Property and Casualty Insurance Company, and Nationwide Insurance Company of Florida;
- (b) suffered a loss to an automobile in the United States that:
 - 1. occurred within the Class Period;
 - 2. was determined by a settling Nationwide Entity or by a court or arbitrator of competent jurisdiction to be covered by the collision and/or comprehensive coverage of an automobile insurance policy issued by a settling Nationwide Entity; and
 - 3. resulted in a payment by a settling Nationwide Entity during the Class Period that included an adjustment of the amount paid based upon a "betterment" charge designated on a repair estimate.
- (c) excluding:
 - 1. any claims related to the issue of "Betterment" that have been previously discharged or released; and
 - 2. all present or former officers and/or directors of any Nationwide Entity, Neutral Evaluators, Class Counsel, Nationwide's counsel of record, and all persons who make a timely and valid election to be excluded from the Settlement Class in accordance with the provisions of the Individual Notice and/or Summary Notice.

5. Specifically, the Court finds that the Settlement Class satisfies the requirements of numerosity, commonality, typicality, and adequacy pursuant to Fed. R. Civ. P. 23(a), and the predominance and superiority requirements of Fed. R. Civ. P. 23(b).

6. Plaintiff is preliminarily appointed as representative of the Settlement Class (“Class Representative”), and the following attorney for Plaintiff is preliminarily appointed as counsel for the Settlement Class (“Class Counsel”) under Fed. R. Civ. P. 23(g)(2)(A): Robert J. Axelrod, Esquire, and his firm, Pomerantz Haudek Block Grossman and Gross LLP.

7. The following sets forth the claims, issues and defenses that the Court preliminarily orders shall be treated on a class basis pursuant to Fed. R. Civ. P. 23(e):

A. Whether the provisions in Nationwide’s automobile insurance contracts are unambiguous;

B. Whether the provision concerning “comprehensive coverage” in Nationwide’s automobile insurance contracts permit it to take a “Betterment” adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies;

C. Whether the provision concerning a “deductible” in Nationwide’s automobile insurance contracts permit it to take a “Betterment” adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies;

D. Whether the provision concerning “Actual Cash Value” in Nationwide’s automobile insurance contracts permit it to take a “Betterment” adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies;

E. Whether Nationwide took a "Betterment" adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies of the Settlement Class;

F. Whether Nationwide's taking of a "Betterment" adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies of the Settlement Class constitutes a breach of such insurance policy;

G. Whether Nationwide utilizes national guidelines to take a "Betterment" adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies of the Settlement Class; and

H. Whether Nationwide coached, trained, and otherwise required appraisers to take a "Betterment" adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies of the Settlement Class as a matter of corporate policy.

8. If final approval of the Settlement Agreement is not granted, this Order, including the above description of the Settlement Class and the preliminary appointment of the Settlement Class Representative and Settlement Class Counsel, shall be automatically vacated. If the Settlement Agreement is terminated or is disapproved in whole or in part by this Court, any appellate court and/or any other court of review, the Settlement Agreement and the fact that it was entered into shall not be offered, received or construed as an admission or as evidence for any purpose, including the "certifiability" of any class.

9. Pending a final determination whether the Settlement Agreement should be approved as fair, reasonable, and adequate, neither Plaintiff nor any potential Settlement Class Member, whether directly, indirectly, representatively or in any other capacity, shall start, join, continue, litigate or participate in or accept any benefit or relief from any other lawsuit, arbitration,

or administrative or regulatory proceeding against Nationwide that is based on, relates to, or involves any of the claims, facts, circumstances, or subject matters of this Action or the Settlement Agreement.

10. The Court finds that the Notice of Proposed Settlement, the Summary Notice, and the Claim Form, which are included as exhibits to the Settlement Agreement, provide appropriate notice to the Settlement Class. These notices provide members of the Settlement Class with sufficient information to make informed decisions regarding their options in this action and the effect of the Settlement on their rights, and constitute the best practicable notice under the circumstances. The Court therefore approves the Notice and Summary Notice as proposed.

11. As soon as practicable after the entry of this Order, Nationwide shall perform a search of its reasonably available electronic data to ascertain the name and last known address of each potential Settlement Class Member. Thereafter, the Claims Administrator shall send a copy of the Individual Notice and a Claim Form by first-class mail to each potential Settlement Class Member for whom Nationwide ascertains a name and an address through that search. Nationwide and the Claims Administrator shall use their best efforts to complete the mailing of the Individual Notice and Claim Form to potential Settlement Class Members within thirty (30) days after the entry of this Order.

12. If any Individual Notice and/or Claim Form mailed to any potential Settlement Class Member is returned to the Claims Administrator as undeliverable, then the Claims Administrator shall, to the extent it is reasonably able to locate a current address for the potential Settlement Class Member, re-send the returned Individual Notice and/or Claim Form to the potential Settlement Class Member by first-class mail. The Claims Administrator will promptly log each Individual Notice and/or Claim Form that is returned as undeliverable and provide copies of the log to Nationwide and Class Counsel as requested.

13. The Claims Administrator shall establish a website and post the Settlement Agreement and the Individual Notice on the website.

14. Upon request, Nationwide and the Claims Administrator shall provide Class Counsel with such reasonable access to the notice process as they need to monitor compliance with this Order.

15. In addition, the Claims Administrator shall provide for notice by publication in *USA Today*. Notice by publication shall consist of the Summary Notice.

16. Prior to the Final Settlement Hearing, Class Counsel and/or Nationwide shall file with the Court a declaration confirming (a) dissemination of the Individual Notice; (b) establishment of the website; and (c) notice by publication in accordance with the terms of this Order.

17. The costs of providing and confirming the dissemination of Class Notice, notice by publication and establishment of the website shall be borne by Nationwide as set forth in the Settlement Agreement.

18. Settlement Class Members who wish to exclude themselves from the Settlement Class must submit written requests for exclusion complying with the provisions of and containing the information requested by the Individual Notice, Summary Notice and the Agreement. To be effective, such a request must be sent by first-class mail to the Claims Administrator at the address provided in the Individual Notice and Summary Notice, and postmarked not later than sixty (60) days after the Notice Date.

19. The Claims Administrator shall promptly log each Request for Exclusion that it receives and provide copies of the log and all such Requests for Exclusion to Nationwide and Class Counsel as requested.

20. Settlement Class Members who submit timely and valid requests for exclusion

shall be excluded from the Settlement Class. Such persons shall have no rights under the Settlement Agreement, shall not share in any distribution of funds under the Settlement Agreement, and shall not be bound by the Settlement Agreement or by any Final Approval Order and Judgment approving the Settlement Agreement.

21. All members of the Settlement Class who do not request exclusion in the manner set forth in the Individual Notice, Summary Notice and the Settlement Agreement shall be bound by any Final Approval Order and Judgment entered pursuant to the Settlement Agreement, and shall be barred and enjoined, now and in the future, from asserting any of the Released Claims, as defined in the Settlement Agreement, against any Released Parties, as defined in the Settlement Agreement. Upon entry of a Final Approval Order and Judgment approving the Settlement Agreement, all members of the Settlement Class shall be conclusively deemed to have fully and finally released all of the Released Parties from any and all Released Claims.

22. Settlement Class Members who do not request exclusion from the Settlement Class may object to the Proposed Settlement. A Settlement Class Member who chooses to object to the Proposed Settlement ("Objector") must file a written notice of intent to object. To be effective, a notice of intent to object to the Proposed Settlement must:

- (a) Contain a heading which includes the name of the case and case number;
- (b) Provide the name, address, telephone number and signature of the Settlement Class Member filing the objection;
- (c) Provide evidence that the Objector is a Settlement Class Member, including but not limited to a copy of the repair estimate containing an adjustment of the amount paid based on a betterment charge for a loss to an automobile that occurred during the Class Period;
- (d) Indicate the specific reasons why the Settlement Class Member objects to the Proposed Settlement;
- (e) Be filed with the Clerk of the Court not later than sixty (60) days after the Notice Date;

- (f) Be served on Class Counsel by first-class mail, postmarked no later than sixty (60) days after the Notice Date;
- (g) Contain the name, address, bar number and telephone number of the objecting Settlement Class Member's counsel, if represented by an attorney. If the Settlement Class Member is represented by an attorney, he/she or it must comply with all applicable laws and rules for filing pleadings and documents in the United States District Court for the Eastern District of New York; and
- (h) State whether the Objector intends to appear at the Final Settlement Approval Hearing, either in person or through counsel.

The right to object to the Proposed Settlement must be exercised individually by an individual Settlement Class Member, not as a member of a group or subclass and, except in the case of a deceased, minor or incapacitated Settlement Class Member, not by the act of another person acting or purporting to act in a representative capacity.

23. Any Settlement Class Member may appear at the Settlement Approval Hearing, in person or by counsel, and be heard to the extent allowed by the Court, applying applicable law, in opposition to the fairness, reasonableness and adequacy of the Proposed Settlement, and on the application for an award of attorneys' fees and costs. In addition to the above information, a notice of intent to object must contain the following additional information, if the Settlement Class Member or his/her or its attorney requests permission to speak at the Settlement Approval Hearing:

- (d) A detailed statement of the specific legal and factual basis for each and every objection;
- (e) A list of any and all witnesses whom the Objector may call at the Settlement Approval Hearing, with the address of each witness and a summary of his or her proposed testimony; and
- (f) A detailed description of any and all evidence the Objector may offer at the Settlement Approval Hearing, including photocopies of any and all exhibits which the Objector may introduce at the Settlement Approval Hearing.

24. The Court will hold a Final Settlement Hearing to consider the fairness, reasonableness, and adequacy of the Settlement Agreement at _____, on _____ 2009, in Courtroom 1020 of the United States District Court for the Eastern District of New York, Long Island Courthouse, 1020 Federal Plaza, Central Islip, New York 11722. During the Final Settlement Hearing, the Court will consider whether the Settlement Agreement, including the proposed award of attorneys' fees, costs and expenses to Class Counsel and Mr. Steinberg, should be approved as fair, reasonable, and adequate, and whether the Court should enter the proposed Final Approval Order and Judgment approving the Settlement Agreement and dismissing this Action, as to Nationwide, on the merits, with prejudice, and without leave to amend. Upon a showing of good cause, the Settlement Approval Hearing may be postponed, adjourned or rescheduled by order of the Court without further notice to the members of the Settlement Class.

25. The Settlement Agreement is hereby preliminarily approved as fair, reasonable, adequate, and in the best interest of the Settlement Class Members. However, it is not to be deemed an admission of liability or fault by Nationwide or by any other person, or a finding of the validity of any claims asserted in the litigation, of any wrongdoing or of any violation of law by Nationwide, or an admission by Nationwide that the Action is or should be certified as a class. The Settlement Agreement and any documents, attachments or other materials submitted to the Court in furtherance of the Proposed Settlement described in the Settlement Agreement, shall not be offered or received in evidence in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, as an admission or concession of liability or wrongdoing of any nature on the part of Nationwide. In the event the Settlement Agreement is not finally approved for any reason, Nationwide shall retain the right to object to the maintenance of the

Action and/or any other case as a class action and to contest the Action and/or any other case on any grounds.

26. The period of time by which Settlement Class Members may respond with a completed Claim Form and/or serve written objections is as set forth in the Settlement Agreement.

27. The Court finds that the Parties have complied fully with the notice provisions of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

28. Upon a showing of good cause, the Court may extend any of the deadlines set forth in this Order without further notice to the Settlement Class.

29. It is hereby ordered that this Action shall be stayed pending further proceedings in connection with the effectuation of the Proposed Settlement as described in the Settlement Agreement.

IT IS SO ORDERED.

Dated:

JUDGE ARTHUR D. SPATT
United States District Judge

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

STEPHEN R. STEINBERG, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

NATIONWIDE MUTUAL INSURANCE
COMPANY,

Defendant.

Civ. No.: 05-CV-03340 (ADS) (ARL)

**FINAL ORDER AND JUDGMENT APPROVING SETTLEMENT, CERTIFYING
CLASS FOR SETTLEMENT PURPOSES, AWARDING CLASS COUNSEL
ATTORNEYS' FEES AND DISMISSING ACTION WITH PREJUDICE**

On this _____ day of _____, 2008, the Court considered the Motion for Final Approval of the Settlement Agreement ("Motion for Final Approval") and Class Counsel's Application for Attorneys' Fees and Reimbursement of Costs Related to the Settlement Agreement ("Class Counsel's Application for Fees"). The 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 _____, and memorialized in the Settlement Agreement; and (c) dismissal with prejudice of Plaintiff's claims against Defendant Nationwide Mutual Insurance Company and its affiliates and related companies (as set forth below). Class Counsel's Application for Fees requests that this Court award attorney's fees and reimbursement of expenses in connection with this Action. In connection with the Motion for Final Approval and Class Counsel's Application for Fees, the Court considered said pleadings, all exhibits and affidavits thereto, Plaintiff's Brief in Support of Motion for Final Approval of Settlement Agreement, all exhibits and attachments thereto,

argument of counsel, and the testimony of _____ regarding the Notice campaign. Appearing on behalf of Plaintiff and the Settlement Class were Robert J. Axelrod of the law firm of Pomerantz Haudek Block Grossman and Gross LLP ("Class Counsel"), and appearing on behalf of Defendant Nationwide Mutual Insurance Company were Craig A. Cohen and Michael R. Nelson of the law firm of Nelson Levine de Luca and Horst LLC.

WHEREAS, Plaintiff Stephen R. Steinberg and Defendant Nationwide Mutual Insurance Company, through their respective counsel, executed and filed a Settlement Agreement with the Court on _____, 2008; and

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

WHEREAS, the Court, on _____, entered the Order Preliminarily Approving Class Settlement ("Preliminary Approval Order"), preliminarily approving the Settlement Agreement, conditionally certifying, for settlement purposes only, this Action as a class action, and scheduling a hearing for _____ 2009 at _____ .m. ("Final Settlement Hearing") (a) to determine whether the Proposed Settlement of the Action on the terms and conditions provided for in the Settlement Agreement 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 Counsel's Application for Fees; and

WHEREAS, the Court ordered that the Individual Notice, in the form attached to the Settlement Agreement as Exhibit 3 be mailed by the Claims Administrator by first-class mail, postage prepaid, on or before _____ (the "Notice Date") to all potential

Settlement Class Members whose names were ascertained by Nationwide Mutual Insurance Company through a search of its reasonably available electronic data at their last known address with address updating and verification where reasonably available, that an Internet website be established on which the Settlement Agreement and Individual Notice were to be posted and a toll-free telephone number be established on or before the Notice Date; and that the Claims Administrator shall provide for notice by publication in *USA Today* consisting of a Summary Notice in a form substantially similar to that attached as Exhibit 4 to the Settlement Agreement; and

WHEREAS, the parties have satisfactorily demonstrated that such Individual Notice was mailed, that the website and toll-free telephone number were established, and that notice by publication was effectuated in accordance with the terms of the Preliminary Approval Order; and

WHEREAS, in accordance with the Individual Notice, Summary Notice and Settlement Agreement, the Final Settlement Hearing was duly held before this Court on _____ 2009; and

WHEREAS, at the Final Settlement Hearing, the Court considered (a) whether certification for settlement purposes only was appropriate under Federal Rule of Civil Procedure 23; (b) the fairness, reasonableness and the adequacy of the Settlement Agreement; and (c) the fairness and reasonableness of Class Counsel's application for attorneys' fees under applicable law; and

WHEREAS, at the Final Settlement Hearing, the Court fulfilled its duty to independently evaluate the fairness, reasonableness, and adequacy of the Settlement Agreement and Class Counsel's Application for Attorney's Fees by considering not only the pleadings and

arguments of Plaintiff, Class Counsel, and Defendant, but also by rigorously and independently evaluating the Settlement Agreement and Class Counsel's Application for Fees; and

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

WHEREAS, the Individual Notice and Summary Notice advised Settlement Class Members of the method by which a Settlement Class Member could request exclusion from the Settlement and pursue an independent legal remedy against Defendant and/or the Released Parties (as defined below); and

WHEREAS, all Settlement Class Members had the absolute right to opt out and pursue an individual lawsuit against Defendant and/or the Released Parties; and

WHEREAS, any Settlement Class Member who failed to request exclusion under the terms of the Individual Notice and Summary Notice voluntarily waived the right to pursue an independent remedy against Defendant and/or the Released Parties; and

WHEREAS, the Individual Notice and Summary Notice advised Settlement Class Members of the method by which a Settlement Class Member could file proper and valid objections and request to be heard at the Final Settlement Hearing; and

WHEREAS, no Settlement Class Member who filed valid objections appeared and requested to be heard at the _____, 2009 Final Settlement Hearing;

NOW, THEREFORE, the Court, having read and considered all submissions made in connection with the Motion for Final Approval and Class Counsel's 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 Settlement Agreement are hereby adopted and incorporated into this Order.

2. The Court has jurisdiction over the subject matter of this Action, the Parties, and Settlement Class Members.

3. The Complaint filed in this action alleges, in pertinent part, that Nationwide Mutual Insurance Company improperly took deductions for "betterment" from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance issued by Nationwide; and Nationwide Mutual Insurance Company denies those allegations.

4. On or about _____, 2009, Plaintiff and Nationwide Mutual Insurance Company 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, Plaintiff 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 fairness, reasonableness, and adequacy of the substantive terms of the Settlement Agreement, and evidence regarding the fairness, reasonableness and adequacy of Class Counsel's Application for Attorneys' Fees and reimbursement of costs and expenses. In support of the Motion for Final Approval, Plaintiff submitted a Brief in Support of Motion for Final Approval, setting forth extensive argument and authority along with various Exhibits attached thereto. Class Counsel's Application for Attorneys' Fees and Reimbursement of Costs and Expenses contained both extensive argument and authority and various exhibits attached thereto.

5. Plaintiff offered into evidence at the Final Settlement Hearing the following evidence: the Settlement Agreement and all Exhibits thereto, all Exhibits attached to the Motion for Final Approval, all Exhibits attached to Plaintiff's Brief in Support of Motion for Final Approval, and all Exhibits attached to Class Counsel's Application for Fees. The Court admitted such exhibits into evidence for all purposes. The Court also accepted the live testimony of [insert] on the issue of the notice campaign.

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

all persons who:

- (a) were insured under an automobile insurance policy that was issued by any of the settling Nationwide Entities, consisting of Nationwide Mutual Insurance Company, Motor Club of Iowa Insurance Company, AMCO Insurance Company, Nationwide Agribusiness Insurance Company, Nationwide Mutual Fire Insurance Company, Colonial County Mutual Insurance Company, Allied Property and Casualty Insurance Company, Nationwide Indemnity Company, Depositors Insurance Company, Nationwide Assurance Company, Nationwide General Insurance Company, Discover Financial Services Auto & Home, Nationwide Insurance Company of America, Nationwide Affinity Insurance Company of America, Nationwide Property and Casualty Insurance Company, and Nationwide Insurance Company of Florida;
- (b) suffered a loss to an automobile in the United States that:
 - 1. occurred within the Class Period;
 - 2. was determined by a settling Nationwide Entity or by a court or arbitrator of competent jurisdiction to be covered by the collision and/or comprehensive coverages of an automobile insurance policy issued by a settling Nationwide Entity; and
 - 3. resulted in a payment by a settling Nationwide Entity during the Class Period that included an adjustment of the amount paid based upon a "betterment" charge designated on a repair estimate.
- (c) excluding:

1. any claims related to the issue of "Betterment" that have been previously discharged or released; and
2. all present or former officers and/or directors of any Nationwide Entity, Neutral Evaluators, Class Counsel, Nationwide's counsel of record, and all persons who make a timely and valid election to be excluded from the Settlement Class in accordance with the provisions of the Individual Notice and/or Summary Notice.

7. The Court hereby affirms this definition of the Settlement Class for purposes of this Final Approval Order and 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 Federal Rules of Civil Procedure and due process 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 Mutual Insurance Company acted unlawfully by taking "betterment" deductions from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance issued by Nationwide — that are common to the Settlement Class and predominate over any individual questions; (3) the claims of the representative Plaintiff are typical of the claims of the Settlement Class; (4) the representative Plaintiff and Class Counsel will fairly and adequately protect the interests of the Settlement Class; (5) the common issues predominate; and (6) a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy.

8. The following sets forth the claims, issues and defenses that the Court orders shall be treated on a class basis pursuant to Fed. R. Civ. P. 23(e):

A. Whether the provisions in Nationwide's automobile insurance contracts are unambiguous;

B. Whether the provision concerning “comprehensive coverage” in Nationwide’s automobile insurance contracts permit it to take a “Betterment” adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies;

C. Whether the provision concerning a “deductible” in Nationwide’s automobile insurance contracts permit it to take a “Betterment” adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies;

D. Whether the provision concerning “Actual Cash Value” in Nationwide’s automobile insurance contracts permit it to take a “Betterment” adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies;

E. Whether Nationwide took a “Betterment” adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies of the Settlement Class;

F. Whether Nationwide’s taking of a “Betterment” adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies of the Settlement Class constitutes a breach of such insurance policy;

G. Whether Nationwide utilizes national guidelines to take a “Betterment” adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies of the Settlement Class; and

H. Whether Nationwide coached, trained, and otherwise required appraisers to take a “Betterment” adjustment from amounts paid for the repair of vehicles insured under

collision or comprehensive automobile insurance policies of the Settlement Class as a matter of corporate policy.

9. Plaintiff and Defendant have entered into the Settlement Agreement, which has been filed with the Court and is incorporated herein by reference. The Settlement Agreement provides for the settlement of this action on behalf of the representative Plaintiff and the members of the Settlement Class, subject to final approval by the Court. The Settlement Agreement provides that, in exchange for the releases described in the Settlement Agreement and this Final Approval Order and Judgment, Defendant shall provide a total Settlement Consideration consisting of (a) cash payments to all qualifying members of the Settlement Class, (b) an amount not to exceed Two Million, Seven Hundred and Fifty Thousand (\$2,750,000.00) Dollars in attorney's fees, costs, and expenses; (c) a requirement that for a period of five (5) years from the date of the Final Approval Order, Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company, upon the usual and customary course of seeking approval and/or re-approval of automobile insurance policy forms submitted for review and approval to a state insurance department and/or state insurance commissioner, will incorporate language in those forms providing that Betterment will be considered in the determination of actual cash value with regard to first-party collision and comprehensive claims, stipulating that if the repair or replacement of a vehicle results in Betterment, no coverage will be provided for such Betterment, and defining "Betterment" as an increase in value of a vehicle or any of its parts as a result of replacing certain parts damaged in a loss; and (d) Nationwide Mutual Insurance Company's agreement to pay notice and administration costs.

10. Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Individual Notice by mail, Summary Notice by Publication, and the posting of the Settlement Agreement and the Individual Notice on a website, 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 by mail, Summary Notice by Publication, and the posting of the Settlement Agreement and the Individual Notice on a website 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 Settlement Agreement 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 Federal Rule of Civil Procedure 23 and the requirements of due process under the United States Constitution.

11. The evidence before the Court clearly supports a finding that the Settlement Agreement was entered into in good faith between Plaintiff Steinberg and Nationwide Mutual Insurance Company.

12. The Court finds that the Settlement Agreement is the result of a good faith arm's length negotiation by the parties hereto. In addition, the Court finds that approval of the Settlement Agreement and the Proposed Settlement embodied therein will result in substantial savings in time and resources to the Court and the litigants and will further the interests of justice. Further, the Court finds that the Settlement Agreement is fair, reasonable and adequate to members of the Settlement Class based on discovery, due diligence, and the absence of material objections.

13. The settlement of the action on the terms and conditions set forth in the Settlement Agreement is approved and confirmed in all respects as fair, reasonable, and adequate under Federal Rule of Civil Procedure 23, and in the best interest of the Settlement Class and Settlement Class Members, especially in light of the benefits to the Settlement Class and the costs and risks associated with the complex proceedings necessary to achieve a favorable result through pre-trial proceedings, class certification proceedings, trial and appeals.

14. A review of the following factors supports a finding that the Settlement is fair and adequate:

- (1) the complexity, expense and likely duration of the litigation;
- (2) the reaction of the class to the settlement;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the risks of establishing liability;
- (5) the risks of establishing damages;
- (6) the risks of maintaining the class action through the trial;
- (7) the ability of the defendants to withstand a greater judgment;
- (8) the range of reasonableness of the settlement fund in light of the best possible recovery;
- (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

D'Amato v. Deutsche Bank, 236 F.3d 78, 86 (2d Cir. 2001) (citations and internal quotation marks omitted).

15. The Court finds that Pomerantz Haudek Block Grossman & Gross LLP has fairly and adequately represented the interests of the Settlement Class and satisfied the

requirements of Fed. R. Civ. P. 23(g).

16. Timely requests for exclusion were submitted by _____ potential members of the Settlement Class and those potential Settlement Class Members (identified in Exhibit A hereto) are excluded from the Settlement Class. All other potential members of the Settlement Class are adjudged to be members of the Settlement Class and are bound by this Final Order and Judgment and by the Settlement Agreement and the Proposed Settlement embodied therein, including the releases provided for in the Settlement Agreement and this Final Order and Judgment.

17. All provisions and terms of the Settlement Agreement are hereby finally approved in all respects. The parties to the Settlement Agreement are hereby directed to consummate the Settlement Agreement in accordance with its terms.

18. This action is dismissed in its entirety on the merits, with prejudice and without leave to amend, and all members of the Settlement Class are forever barred and permanently enjoined from starting, continuing, or participating in, litigating or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative or regulatory proceeding or order based on or relating to the claims, facts or circumstances alleged in this action and/or the Released Claims against the Released Parties, as provided for in the Settlement Agreement.

19. Class Counsel's request for fees and expenses, all to be paid by Nationwide Mutual Insurance Company, is fair, reasonable and adequate under the Court's analysis of the *Goldberger* factors applied to a percentage of the common fund or common benefit approach. The Court approves the request by Stephen R. Steinberg, Esq. for attorneys' fees in

the amount of \$_____, to be allocated from the total amount of attorneys' fees approved, for his initial role as counsel in *Steinberg I* contained in Class Counsel's request.

20. Under applicable law, the Court has the discretion to award fees based on a percentage of the common fund or common benefit made available to the Settlement Class after considering the following *Goldberger* factors. "1) the time and labor expended by counsel; 2) the magnitude and complexities of the litigation; 3) the risk of the litigation; 4) the quality of representation; 5) the requested fee in relation to the settlement; and 6) public policy considerations." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000).

21. The Court adopts Class Counsel's analysis of the *Goldberger* factors as set forth in Class Counsel's Application for Fees to support the Court's award of _____Dollars.

22. The applicable law regarding attorney's fees in a class action against a private entity, such as Nationwide Mutual Insurance Company, does not require or mandate that the Court determine and award attorney's fees based on a lodestar analysis when the defendant has agreed to pay attorney's fees as part of a common fund or common benefit settlement. Further, the Court may consider the total value of the common fund or common benefit made available to the Settlement Class for purposes of calculating attorney's fees. The Court is not required to consider only the benefit claimed by Settlement Class Members when evaluating a class action settlement against a private entity, such as Nationwide Mutual Insurance Company, who has agreed to pay attorney's fees in addition to claims-related benefits. Nationwide Mutual Insurance Company shall pay such fees to Class Counsel pursuant to the terms of the Settlement Agreement.

23. The Court appoints Mary D. Colins as the Neutral Evaluator to carry out the duties and responsibilities set forth in the Settlement Agreement. The Neutral Evaluator shall be discharged upon the Court's approval of the Final Report of Distribution. Neither Plaintiff, nor Nationwide Mutual Insurance Company, nor the parties' counsel shall be liable for any act or omission of the Neutral Evaluator.

24. As soon as reasonably possible after the completion of all payments to Settlement Class Members eligible for payment pursuant to the Settlement Agreement, the parties shall file with the Court a final report (together with a proposed order approving such report and discharging the Neutral Evaluator) indicating that distribution in accordance with the terms of the Settlement Agreement and the Court's prior Orders have been completed.

25. The Court shall have exclusive jurisdiction and authority to administer, interpret, and enforce the terms of the Settlement Agreement, and to consider, rule upon, and issue a final order with respect to suits, whether judicial, administrative, or otherwise, which may be instituted by an Person, individually or derivatively, with respect to the Settlement Agreement. Each Settlement Class Member who has not opted-out of the Settlement Agreement shall submit to the exclusive jurisdiction and venue of the United States District Court for the Eastern District of New York for any suit, action, proceeding, case, controversy, or dispute relating to the Settlement Agreement and/or the negotiation, performance or breach of the Settlement Agreement.

26. Without in any way affecting the finality of this Final Approval Order and Judgment, this Court shall retain continuing jurisdiction over this Litigation for purposes of:

- A. Enforcing the Settlement Agreement and the Proposed Settlement;
- B. Hearing and determining any application by any party to the Settlement Agreement for a settlement bar order; and
- C. Any other matters related or ancillary to any of the foregoing.

IT IS SO ORDERED THIS DAY OF , 2009.

Dated:

JUDGE ARTHUR D. SPATT
United States District Judge

EXHIBIT 3

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

A Class Action Settlement Involving Nationwide Insurance Will Provide Cash Payments to Persons Insured (or Who Were Insured) Who Qualify.

A Court authorized this Notice. This is not a solicitation from a lawyer.

- A settlement has been preliminary approved in a class action lawsuit that alleges Nationwide Mutual Insurance Company improperly took deductions and/or adjustments for “betterment” from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies issued by Nationwide, from January 1, 1993 to [date of Preliminary Approval Order].
- If you are or were insured under a collision and/or comprehensive automobile insurance policy issued by a Nationwide Entity (as described below) from January 1, 1993 to the [date of Preliminary Approval Order] and received a payment under the policy that included an adjustment of the amount paid based upon a “betterment” charge designated on a repair estimate, you may be eligible for a payment if you qualify and submit a valid claim form.
- Your legal rights are affected whether you act or don’t act. **Please read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

SUBMIT A CLAIM FORM	The way to get a payment if you qualify. You must fill out and return the attached Claim Form by first class mail, postmarked no later than ____.
ASK TO BE EXCLUDED	Get no payment. The only option that allows you to individually sue Nationwide over the claims resolved by this settlement.
OBJECT	Write to the Court about why you don’t agree with the settlement.
GOTO A HEARING	The Fairness Hearing will be held on ____, 200_ at ____ at which the federal court judge will make a final decision as to whether the Settlement is fair to all members of the Settlement Class. If you wish, you may attend the hearing and ask to speak in Court about the settlement.
DO NOTHING	Get no payment and give up your rights.

- These rights and options — and the deadlines to exercise them — are explained in this Notice.

- This settlement will resolve all claims against Nationwide that are part of the lawsuit. The Court in charge of this case still has to decide whether to approve the settlement. Payments will only be made if the Court approves the settlement, and any appeals are resolved. Please be patient.

BASIC INFORMATION

1. Why Did I Receive this Notice Package?

The United States District Court for the Eastern District of New York authorized this Notice because you have a right to know about a proposed settlement of this class action, including the right to claim money, and about all of your options, before the Court decides whether to give “final approval” to the settlement. If the Court approves the settlement, payment will be made to everyone who submits a valid claim form and qualifies. This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who may be eligible for them, and how to get them.

Judge Arthur D. Spatt in the United States District Court for the Eastern District of New York is overseeing this lawsuit. The case is known as *Steinberg v. Nationwide Mutual Insurance Company*, Civil No. 05-CV-033409 (E.D.N.Y.) (ADS)(ARL). The person who sued Nationwide Mutual Insurance Company (sometimes called “the Defendant”) is named Stephen R. Steinberg (sometimes called “the Plaintiff”).

An earlier filed lawsuit, *Steinberg v. Nationwide Mutual Insurance Company*, Index No. 05-7557, involving the same claim for an earlier period is pending in the New York Supreme Court, Suffolk County. The proposed settlement will resolve both actions and include the period alleged in the earlier filed lawsuit. The procedural history of the actions is described in the Settlement Agreement.

2. What is this Lawsuit About?

This lawsuit claimed that Nationwide Mutual Insurance Company improperly took deductions and/or adjustments for “betterment” from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies issued by Nationwide. Nationwide denies all claims of wrongdoing.

3. What is a Class Action, and Why is This Case a Class Action?

In a class action, one or more people, called class representatives, sue on behalf of others with similar legal claims. All of these people together are called a class or class members. One court resolves the issues for all class members, except for those who specifically ask to be excluded from the class, since the wrong that was alleged by the class representatives applies equally to all class members. This case was filed as a class action because it was believed that Nationwide’s method of applying betterment adjustments to collision or comprehensive automobile insurance claims resulted in a number of policyholders receiving less than they were entitled under their insurance contracts.

The following represents the claims, issues, and defenses that the Court preliminarily ordered shall be treated on a class basis:

! Whether the provisions in Nationwide’s automobile insurance contracts are unambiguous;

! Whether the provision concerning “comprehensive coverage” in Nationwide’s automobile insurance contracts permit it to take a “Betterment” adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies;

! Whether the provision concerning a "deductible in Nationwide's automobile insurance contracts permit it to take a "Betterment" adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies;

! Whether the provision concerning "Actual Cash Value" in Nationwide's automobile insurance contracts permit it to take a "Betterment" adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies;

! Whether Nationwide took a "Betterment" adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies of the Settlement Class;

! Whether Nationwide's taking of a "Betterment" adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies constitutes a breach of such insurance policy;

! Whether Nationwide utilizes national guidelines to take a "Betterment" adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies of the Settlement Class; and

! Whether Nationwide coached, trained, and otherwise required appraisers to take a "Betterment" adjustment from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies of the Settlement Class as a matter of corporate policy,

4. Why is There a Settlement?

The Court did not decide in favor of the Plaintiff or in favor of Nationwide. Instead, both sides agreed to settle. That way, they avoid the costs and uncertainty of proceeding toward a trial, and the affected people who qualify will get compensation. The Class Representative and the attorneys for the class, who have substantial experience in class action cases, believe the settlement is best for all Settlement Class Members.

WHO IS IN THE SETTLEMENT?

5. How Do I Qualify to Participate in the Settlement?

You may be a member of the Settlement Class if from January 1, 1993 to the Preliminary Approval Date, you are or were insured under a collision and/or comprehensive automobile insurance policy issued by any of the insurers identified below, and received a payment under the policy that included an adjustment of the amount paid based upon a "betterment" charge designated on a repair estimate.

Policyholders with the following insurance companies (the "Nationwide Entities") may be included in the Settlement Class:

Nationwide Mutual Insurance Company, Motor Club of Iowa Insurance Company, AMCO Insurance Company, Nationwide Agribusiness Insurance Company, Nationwide Mutual Fire Insurance Company, Colonial County Mutual Insurance Company, Allied Property and Casualty Insurance Company, Nationwide Indemnity Company, Depositors Insurance Company, Nationwide Assurance Company, Nationwide General Insurance Company, Discover Financial Services Auto & Home, Nationwide Insurance Company of America, Nationwide Affinity Insurance Company of America, Nationwide Property and Casualty Insurance Company, and Nationwide Insurance Company of Florida.

6. Are There Exceptions to Being Included?

You are not a Settlement Class Member if any claim you may have had related to the issue of "betterment" was previously discharged or released. In addition, you are not a Settlement Class Member if you are or were an officer or director of a Nationwide Entity, the Neutral Evaluator, counsel for the Parties, or if you make a timely and valid election to be excluded.

7. What Do I Do If I Am Still Not Sure If I Am Included?

If you are unsure whether you are included in the Settlement Class, please call the toll free telephone number at the bottom of this page for information.

SETTLEMENT BENEFITS: WHAT YOU GET IF YOU QUALIFY AS A SETTLEMENT CLASS MEMBER, AND HOW TO GET IT

8. What Does the Settlement Provide?

All Settlement Class Members who timely submit a valid Claim Form shall be eligible to receive a monetary payment equal to fifty percent (50%) of the "betterment" charge appearing on the final repair estimate serving as the basis for the payment to you on your collision or comprehensive automobile insurance claim.

9. Are There Any Other Benefits of the Settlement?

In addition to the cash benefits/refunds paid to Settlement Class Members as described above, Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company have agreed that for a period of five (5) years from the date of the Final Settlement Order, they will, as they seek approval and/or re-approval of automobile insurance policy forms submitted for review and approval to a state insurance department and/or state insurance commissioner, incorporate language in those forms providing that Betterment will be considered in the determination of actual cash value with regard to first-party collision and comprehensive claims, stipulating that if the repair or replacement of a vehicle results in Betterment, no coverage will be provided for such Betterment, and defining "Betterment" as an increase in value of a vehicle or any of its parts as a result of replacing certain parts damaged in a loss.

10. How Do I Get a Cash Payment?

To receive a cash payment, you must complete and return the Claim Form, a copy of which is included with this Notice. The Claim Form requires you to confirm your identity, provide your name and address, the location of the loss (if known), the approximate date of the loss, the policy number, the claim number, the dollar amount that Nationwide paid in response to the claim, and the amount of the "betterment" adjustment, if any, applied to the claim. The Claim Form must contain your notarized signature or the notarized signature of your legally authorized representative, affirming the claim.

You may also obtain a Claim Form online by visiting [insert website address], or by calling 866-840-0342.

After you have completed the Claim Form, it must be mailed to:

Steinberg v. Nationwide Settlement
PO Box 4540
Portland, OR 97208-4540

The Claim Form *must be postmarked by [insert date]*.

11. If I Do Not Return the Claim Form, Will I Still Get Benefits?

You must complete and return the Claim Form by [insert date] to be eligible for monetary benefits under this settlement.

12. When Do I Get My Payment?

Payments to eligible Settlement Class Members will be made no more than 160 days from the Notice Date. Please be patient.

13. What Am I Giving Up to Get a Payment or Stay in the Settlement Class?

Unless you specifically exclude yourself using the process described below, you are staying in the Settlement Class, and that means that you can't individually sue a settling Nationwide Entity over the claims settled in this case. It also means that all of the Court's orders will apply to you and legally bind you. If you submit a Claim Form, or simply stay in the Class, you will agree to "release and discharge" all settling Nationwide Entities. The Settlement Agreement describes the released claims. A complete copy of the Settlement Agreement can be obtained at [insert].

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this Settlement, but you want instead to keep the right to individually sue a settling Nationwide Entity about the issues in this case, then you must take steps to get out. This is called excluding yourself from — or is sometimes referred to as "opting out" of — the Settlement Class.

14. How Do I Get Out of the Settlement?

If you wish to be excluded from the Settlement Class, you must send in a Request for Exclusion by mail stating: (1) your name and address, and (2) a statement that you wish to be excluded from the Settlement Class. The Request for Exclusion must bear your signature or, if you are incapacitated, the signature of your legally authorized representative. Requests for Exclusion must be postmarked no later than _____, 2008. The request for exclusion must be mailed to:

Steinberg v. Nationwide Exclusions
PO Box 4277
Portland, OR 97208-4277

By choosing to be excluded you will not share in the Settlement, and may maintain any claim you have against the Defendant by filing your own lawsuit at your own expense.

15. If I Don't Exclude Myself, Can I Sue Nationwide for the Same Thing Later?

No. Unless you exclude yourself, you give up any right to sue Nationwide individually for the claims that this settlement resolves.

16. If I Exclude Myself, Can I Get a Payment from this Settlement?

No. If you exclude yourself, you may not submit a claim form to ask for payment, and you will not receive any settlement benefits even if you otherwise qualify as a Settlement Class Member.

THE LAWYERS REPRESENTING YOU

17. Do I Have a Lawyer in this Case?

The Court has appointed Robert J. Axelrod of Pomerantz Haudek Block Grossman and Gross LLP to represent you and other Settlement Class Members as "Class Counsel."

You do not have to pay Class Counsel. If you want to be represented by your own lawyer, and have that lawyer appear in court for you in this case, you must hire one at your own expense.

18. How Will the Lawyers be Paid?

If the Court approves the proposed Settlement, Class Counsel will apply to the Court for an award of attorneys' fees and reimbursement of expenses in an amount not to exceed \$2,750,000.00. Class Counsel may also include a request by Stephen R. Steinberg for an award of attorneys' fees for his role as counsel in the earlier filed case before Class Counsel appeared in the action. Any such request will be inclusive of the above amount. The attorneys' fees sought would compensate the lawyers for their efforts in achieving

the Settlement for the benefit of the Settlement Class, and for their risk in undertaking this representation on a contingency basis over a multi-year period. The award of attorneys' fees and reimbursement of expenses as approved by the Court shall be paid directly by Nationwide. Your payment from this Settlement will not be reduced in any way as a result of the award of attorneys' fees or reimbursement of expenses.

OBJECTING TO THE SETTLEMENT

You can tell the Court if you don't agree with the Settlement, or some parts of it.

19. How Do I Tell the Court That I Don't Believe the Settlement Is Fair, Reasonable and Adequate?

Only Settlement Class Members may object to the Settlement by filing a written objection with the United States District Court for the Eastern District of New York. Objections must be filed no later than [insert]. A copy of any objection must also be served on Robert J. Axelrod of Pomerantz Haudek Block Grossman and Gross LLP, 100 Park Avenue, New York, NY 10017-5516, postmarked by [insert].

You cannot both request exclusion from and object to the Settlement. Only Settlement Class Members may object to the Settlement. The objection must include:

- (1) A heading that includes the name of the case and case number;
- (2) Your name, address, telephone number and signature;
- (3) The specific reasons why you object to the Proposed Settlement;
- (4) If you are represented by an attorney, the name, address, bar number and telephone number of your attorney; and
- (5) A statement of whether you intend to appear at the Final Settlement Approval Hearing, either in person or through counsel.

If you intend to appear at the Final Settlement Approval Hearing, the objection must also include:

- (1) Documentary proof of membership in the Settlement Class;
- (2) A detailed statement of the specific legal and factual basis for each and every objection;
- (3) A list of any and all witnesses whom you may call at the Final Settlement Approval Hearing, with the address of each witness and a summary of his or her proposed testimony; and
- (4) A detailed description of any and all evidence you may offer at the Final Settlement Approval Hearing, including photocopies of any and all exhibits which you may introduce at the Final Settlement Approval Hearing.

Any Settlement Class Member who does not make and serve their written objection in the manner prescribed above will be deemed to have waived any objections.

THE COURT'S FAIRNESS HEARING

19. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Fairness Hearing in the United States District Court for the Eastern District of New York (Courtroom 1020), Long Island Courthouse, 100 Federal Plaza, Central Islip, New York 11722-4438, on [insert date] at [insert time], to determine whether the Settlement is fair, reasonable and adequate. The Court may also consider the application for attorneys' fees and reimbursement of costs and expenses, and may also make other rulings incidental to the Settlement.

If there are any timely objections received by the Court, the Court will consider them. The Court may listen to people who have asked to speak at the hearing.

Attendance at the hearing is not necessary; however, any Settlement Class Member having filed an objection and indicated a desire to speak may be allowed to do so. Settlement Class Members who support the proposed Settlement do not need to be present at the hearing or take any action to indicate their approval, as Class Counsel will be present to address any questions or concerns raised by the Court.

We do not know how long it will take the Court, following the Final Settlement Hearing, to approve the Settlement.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do nothing, but are a Settlement Class Member, you will get no payment from this Settlement. But, unless you exclude yourself, you won't be able to sue Nationwide individually or a settling Nationwide Entity for the claims resolved in this case.

GETTING MORE INFORMATION

21. How Do I Get More Information on this Settlement?

Complete copies of the pleadings, orders, and other Court documents in this case may be examined and copied at any time during regular office hours at the offices of the Clerk of the United States District Court, Eastern District of New York, Long Island Courthouse, 100 Federal Plaza, Central Islip, New York 11722-4438. The case name is *Steinberg v. Nationwide Mutual Insurance Company*, Civil Action No. 05-CV-33409.

Certain documents and information may also be available on the Internet at [insert website address].

If you have any questions concerning any matter raised in this Notice, please visit the website at [insert website address], or call 866-840-0342.

DO NOT CALL OR WRITE THE CLERK OF THE COURT OR THIS COURT FOR INFORMATION OR ADVICE.

Dated: _____

**By Order of the United States
District Court for the Eastern District of
New York**

CLAIM FORM
STEINBERG v. NATIONWIDE SETTLEMENT
(Please Print Clearly)

☐ I would like a payment from the Nationwide Settlement. I am a current policy holder:
Yes ☐ No ☐

First Name:

Last Name:

Mailing Address:

City: State:

Zip:

Phone Number: - -

Location of Loss (If Known):

Policy Number (If Known):

Claim Number (If Known):

Dollar Amount Paid by Nationwide: \$,.

Amount of Betterment Adjustment Applied to Claim: \$,.

I hereby affirm, under penalty of perjury, that I was or am a policyholder of a Nationwide Entity, and that the information provided above is true and correct to the best of my knowledge and belief.

Signature: _____ Date: _____

State of _____)

County of _____)

SUBSCRIBED AND SWORN to and before me this _____ day of _____,

My Commission Expires _____

NOTARY PUBLIC

(Seal)

**** RETURN BEFORE [insert date]****
**** TO: Steinberg v. Nationwide Settlement**
P.O. BOX 4540
PORTLAND, OR 97208-4540

YOUR FAILURE TO SUBMIT THIS CLAIM BY THE DEADLINE MAY CAUSE YOUR CLAIM TO BE REJECTED AND PREVENT YOU FROM RECEIVING ANY PAYMENT IN CONNECTION WITH THIS SETTLEMENT.

DO NOT MAIL OR DELIVER YOUR CLAIM TO THE COURT OR TO ANY OF THE PARTIES OR THEIR ATTORNEYS. SUBMIT YOUR CLAIM *ONLY* TO THE CLAIMS ADMINISTRATOR.

EXHIBIT 4

Nationwide Insurance Policyholders: A Proposed Class Action Settlement May Affect Your Rights

A Settlement has been proposed in a class action lawsuit involving Nationwide Mutual Insurance Company and several affiliated companies. The name of the case is *Steinberg v. Nationwide Mutual Insurance Company*, Civil No. 05-CV-033409 (ADS) (ARL) ("*Steinberg II*"). An earlier filed lawsuit, *Steinberg v. Nationwide Mutual Insurance Company*, Index No. 05-7557 ("*Steinberg I*"), involving the same claim for an earlier period is pending in the New York Supreme Court, Suffolk County. The proposed settlement will resolve both actions and include the period alleged in the earlier filed lawsuit. The proposed settlement will also include additional defendants.. This notice is a summary of your rights. To get a complete summary of this lawsuit, visit [website] or call [telephone number].

What is This Case About?

The lawsuit claims that Nationwide Mutual Insurance Company improperly took deductions and/or adjustments for "betterment" from amounts paid for the repair of vehicles insured under collision or comprehensive automobile insurance policies issued by Nationwide, from January 1, 1993 to the present.

Nationwide denies all claims of wrongdoing and agreed to the Proposed Settlement to avoid the further expense, inconvenience and burden of this lawsuit.

Who is a Class Member?

You may be a member of the Settlement Class if:

- From January 1, 1993 to the present, you are or were insured under a collision and/or comprehensive automobile insurance policy issued by Nationwide Mutual Insurance Company, Motor Club of Iowa Insurance Company, AMCO Insurance Company, Nationwide Agribusiness Insurance Company, Nationwide Mutual Fire Insurance Company, Colonial County Mutual Insurance Company, Allied Property and Casualty Insurance Company, Nationwide Indemnity Company, Depositors Insurance Company, Nationwide Assurance Company, Nationwide General Insurance Company, Discover Financial Services Auto & Home, Nationwide Insurance Company of America, Nationwide Affinity Insurance Company of America, Nationwide Property and Casualty Insurance Company, and/or Nationwide Insurance Company of Florida; and
- You received a payment under the policy that included an adjustment of the amount paid based upon a "betterment" charge designated on a repair estimate.

What Are the Terms of the Proposed Settlement?

All Settlement Class Members who timely submit a valid Claim Form shall be eligible to receive a monetary payment equal to fifty percent (50%) of the "betterment" charge appearing on the final repair estimate serving as the basis for payment to the qualified Settlement Class Member by any of the insurance companies identified above on a collision or comprehensive automobile insurance claim.

In addition, Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company have agreed that for a period of five (5) years from the date of the Final Approval Order, Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company, at their sole discretion, upon the usual and customary course of seeking approval and/or re-approval of automobile insurance policy forms submitted for review and approval to a state insurance department and/or state insurance commissioner, will incorporate language in those forms providing that Betterment will be considered in the determination of actual cash value with regard to first-party collision and comprehensive claims, stipulating that if the repair or replacement of a vehicle results in Betterment, no coverage will be provided for such Betterment, and defining "Betterment" as an increase in value of a vehicle or any of its parts as a result of replacing certain parts damaged in a loss.

Who Represents Me?

The Court has appointed Robert J. Axelrod of Pomerantz Haudek Block Grossman and Gross LLP to represent you and other Settlement Class Members as "Class Counsel." You may have your own attorney as you wish. However, you will be responsible for your attorney's fees and expenses.

If the Court approves the proposed Settlement, Class Counsel will apply to the Court for an award of attorneys' fees and reimbursement of expenses in an amount not to exceed \$2,750,000.00. Class Counsel may also include a request by Stephen R. Steinberg, Esq. for an award of attorneys' fees for his role as counsel in *Steinberg I* before Class Counsel appeared in that action. Any such request by Mr. Steinberg will be inclusive of the above amount. Your payment from this Settlement will not be reduced in any way as a result of the award of attorneys' fees or reimbursement of expenses.

What Are My Rights?

- If you wish to remain a member of the Settlement Class, you do not have to do anything. You will be bound by all this Court's orders. This means you cannot sue any of the insurance companies identified above for any of the claims in the Proposed Settlement.
- You can file a Claim for monetary benefits if you remain in the Settlement Class. To make a claim you must complete a Claim Form and mail it to the Claims Administrator as explained in the full Notice. Your Claim Form must be postmarked by [insert date].
- If you do not wish to be a member of the Settlement Class, you must sign and send a letter asking to be excluded as outlined in the full Notice. The letter must be postmarked no later than [insert date].
- You or your lawyer can tell the Court if you do not like this Proposed Settlement or some part of it if you do not exclude yourself. To object or comment, you must send a letter that is postmarked no later than [insert date], as contained in the full Notice.

For complete information on how to file a claim, exclude yourself or object, visit [insert website] or call [insert number] to get the full Notice.

Will the Court Approve the Proposed Settlement?

The Court will hold a Final Settlement Approval Hearing to determine if the Proposed Settlement is fair, reasonable and adequate, and to consider the motion for attorneys' fees and expenses on [insert date] at [insert time] in the United States District Court for the Eastern District of New York, Long Island Courthouse, Courtroom 1020, 100 Federal Plaza, Central Islip, New York 11722-4438.

For More Information and to obtain the full Notice or a Claim Form **Visit:** [insert website] **or Call**
[insert telephone number]