

YUNG HSIU SHU,

Plaintiff,

vs.

NATIONWIDE MUTUAL FIRE
INSURANCE COMPANY; TITAN
INDEMNITY COMPANY; AND
VICTORIA FIRE & CASUALTY
COMPANY,

Defendants.

IN THE COURT OF COMMON PLEAS OF

FAYETTE COUNTY, PENNSYLVANIA

CIVIL ACTION - CLASS ACTION

NO. 3517 OF 2008, G.D.

JUDGE JOSEPH M. GEORGE, JR.

SETTLEMENT AGREEMENT

Yung Hsiu Shu, on behalf of himself and as class representative, through his attorneys, Radcliffe & DeHaas, L.L.P., and the defendants, Nationwide Mutual Fire Insurance Company, Titan Indemnity Company, and Victoria Fire & Casualty Company, through their attorneys, Smith, Gambrell & Russell, LLP, set forth the following:

WHEREAS, *Shu* brought *this Action* alleging that *Nationwide* provided to its policyholders single motor vehicle policies providing stacked *UM/UIM Coverage* identical to non-stacked *UM/UIM Coverage* in violation of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. §§1701, *et seq.* ("MVFRL"); and

WHEREAS, *the Parties* agree that, should *this Action* not be resolved, litigation would probably continue for several more years; and

WHEREAS, *Nationwide* has denied any liability; and

WHEREAS, *the Parties*, after engaging in litigation for over six (6) years, agree that there are significant legal issues that have been contested throughout *this Action*; and

WHEREAS, in view of the significant legal issues, *the Parties* have agreed to compromise and settle *this Action*; and

WHEREAS, *the Parties* hereby agree that *this Action*, and all matters and claims arising out of or related to the allegations or subject matter of the First Amended Complaint, shall be settled, discontinued, ended and dismissed on the merits, with prejudice, upon the terms and conditions set forth herein; and

WHEREAS, *the Parties* agree that if this Settlement Agreement is not approved or consummated, *the Parties* shall return to the same legal positions they were in prior to the execution of this Settlement Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the sufficiency of which is acknowledged by *the Parties*, and subject to approval of the *Court*, with the intent to be legally bound, *the Parties* hereto agree as follows:

1. Definitions. As used in this Settlement Agreement, the following terms shall have the meanings set forth below:

- (a) "Administrator" shall mean an entity selected by *Nationwide*, and approved by *Class Counsel* and the *Court*, who shall perform the functions assigned to the *Administrator* by this Settlement Agreement.
- (b) "Appeal Expiration Date" shall mean one of the following dates:
 - (i) thirty-one (31) days after the *Settlement Approval Date* if no appeal is taken; or
 - (ii) if an appeal is taken, thirty-one (31) days after the dismissal with prejudice of any appeal of the settlement approval order by the *Court*.
- (c) "Applicable Nationwide Policy" shall mean any *Nationwide Policy* which provides *UM/UM Coverage* for at least one (1) *Coverage Period*.
- (d) "Average Premium Difference" shall equal the following amount: \$12 per *Coverage Period*.
- (e) "Class Counsel" shall mean William M. Radcliffe, Esquire, of Radcliffe & DeHaas, L.L.P., of Uniontown, Pennsylvania.
- (f) "Court" shall mean the Court of Common Pleas of Fayette County, Pennsylvania.
- (g) "Coverage Period" shall mean one hundred eighty (180) consecutive days as a *Nationwide Named Insured* during the *Settlement Class Period*.
- (h) "Defense Counsel" shall mean John P. Marino, Esquire, and Lindsey R. Trowell, Esquire, of Smith, Gambrell & Russell, LLP.

- (i) "Individual Distribution Amount" for each *Qualifying Settlement Class Member* shall be the *Average Premium Difference* times their number of *Coverage Periods*.
- (j) "Mailed Notice" shall mean the notice and claim form attached hereto as Exhibit "A," as approved by the *Court*, sent by first class United States mail, postage prepaid, to the last known address to all persons who were *Nationwide Named Insureds* during the *Settlement Class Period* which is not returned to sender.
- (k) "Nationwide" shall mean the defendants, Nationwide Mutual Fire Insurance Company, Titan Indemnity Company, and Victoria Fire & Casualty Company.
- (l) "Nationwide Named Insured" shall mean each person who is listed as a first named insured on an *Applicable Nationwide Policy*. "Nationwide Policy" shall mean any motor vehicle policy covering only one (1) vehicle, including motorcycle and commercial policies, issued by *Nationwide* pursuant to MVFRL.
- (m) "Potential Settlement Class Member(s)" shall mean: (1) all persons who were *Nationwide Named Insureds* during the applicable *Settlement Class Period*; and (2) who, pursuant to this Settlement Agreement, were sent *Mailed Notice*. However, a *Potential Settlement Class Member* shall not include any employees of *Nationwide*, or any entities in which *Nationwide* has a controlling interest.
- (n) "Prothonotary" shall mean the Prothonotary of the Court of Common Pleas of Fayette County.
- (o) "Qualifying Settlement Class Member(s)" shall mean a *Settlement Class Member* who timely files a claim form pursuant to paragraph 3(b)(x) of this Settlement Agreement.
- (p) "Residual Funds" shall mean the total sum of all checks pursuant to paragraph 8(c) herein which are not cashed within one hundred fifty (150) days of the check date.
- (q) "Settlement Approval Date" shall mean the date that the *Court* renders final approval of this Settlement Agreement.

- (r) "Settlement Class Member(s)," a/k/a "Settlement Class," shall mean each *Potential Settlement Class Member* who does not file a timely valid exclusion pursuant to the terms of this Settlement Agreement.
- (s) "Settlement Class Period" shall mean: as to Nationwide Mutual Fire Insurance Company, the time period from October 1, 2003, through and including the date of the preliminary settlement approval order entered by the *Court* pursuant to paragraph 3(b) herein; as to Titan Indemnity Company and Victoria Fire & Casualty Company, the time period from January 1, 2009, through and including the date of the preliminary settlement approval order entered by the *Court* pursuant to paragraph 3(b) herein.
- (t) "Shu" shall mean the class representative, Yung Hsiu Shu.
- (u) "[T]he Parties" shall mean *Shu* and *Nationwide*.
- (v) "[T]his Action" shall mean the case entitled Yung Hsiu Shu v. Nationwide Mutual Fire Insurance Company, et al., filed at No. 3517 of 2008, G.D., in the Court of Common Pleas of Fayette County, Pennsylvania, Civil Division.
- (w) "Total Coverage Periods" shall mean the total number of *Coverage Periods* for all *Nationwide Named Insureds* during the applicable *Settlement Class Period*, and shall be no less than 25,031 *Coverage Periods*.
- (x) "UM/UIM Coverage" shall mean stacked uninsured and underinsured motorist coverage as set forth in the *Applicable Nationwide Policy*.

2. Class Certification. With the intent to be legally bound hereby and in consideration of the complete and final settlement of *this Action*, and under the terms and conditions set forth herein, *the Parties* agree to request that the *Court* certify the following class for settlement purposes: all *Nationwide Named Insureds*, for the *Settlement Class Period*, as defined in this Settlement Agreement, who were named insureds under a *Nationwide Policy* issued subject to MVFRL; who had only one vehicle insured under the *Nationwide Policy*; who paid for stacked *UM/UIM Coverage*; and who did not file a timely valid exclusion pursuant to the terms of this Settlement Agreement.

3. Initial Approval Procedures.

- (a) Within twenty (20) days after Pennsylvania Insurance Department approval of the non-monetary consideration as set forth in paragraph 7 herein, pursuant to Pa.R.Civ.P. 1714(a), *the Parties* shall present in Motions Court a request that the *Court* schedule a Final Settlement Approval Hearing within one hundred sixty (160) days of that date and grant preliminary approval of the settlement, and certify a settlement class as set forth herein.
- (b) At the time the Final Settlement Approval Hearing is requested, *the Parties* shall request that the *Court* enter a preliminary settlement approval order which will include the following provisions:
 - (i) Preliminarily certifying the proposed settlement class as described in paragraph 2 herein;
 - (ii) Appointing *Shu* as class representative for settlement purposes, and William M. Radcliffe, Esquire, as *Class Counsel* for the *Settlement Class*;
 - (iii) Approving the manner of notifying the *Nationwide Named Insureds* of the proposed settlement as set forth in paragraph 4 herein;
 - (iv) Providing as follows:
 - a. That any *Potential Settlement Class Member* may request exclusion by submitting a request for exclusion to the *Administrator* postmarked no later than forty-five (45) days before the date of the Final Settlement Approval Hearing as that date is established in the preliminary settlement approval order (without regard to any subsequent postponement or delay of the Final Settlement Approval Hearing by the *Court*);
 - b. That a person may not opt-out on behalf of another *Potential Settlement Class Member*; and
 - c. That at least fifteen (15) days prior to the Final Settlement Approval Hearing, the *Administrator* shall file with the *Prothonotary* a list of all requests for exclusion and send copies to *Class Counsel* and *Defense Counsel*.

- (v) Approving the form of the *Mailed Notice* attached hereto as Exhibit "A";
- (vi) Requiring any attorneys other than *Class Counsel* retained for the purpose of objecting to the proposed settlement to file with the *Prothonotary* and serve on *Class Counsel* and *Defense Counsel* a Praecipe for Appearance at least forty-five (45) days prior to the Final Settlement Approval Hearing (without regard to any subsequent postponement or delay of the Final Settlement Approval Hearing by the *Court*);
- (vii) Providing that only a *Settlement Class Member* may be entitled to contest the approval of the terms and conditions of this Settlement Agreement, and may only do so by filing written objections with the *Prothonotary* specifying the basis for such objections at least forty-five (45) days prior to the Final Settlement Approval Hearing (without regard to any subsequent postponement or delay of the Final Settlement Approval Hearing by the *Court*). An objector may be required to appear at the Final Settlement Approval Hearing by the *Court*. Further providing that any *Settlement Class Member* who does not submit a timely objection or whose objection is overruled, will, therefore, be bound by all proceedings, orders and judgments in *this Action*, which will preclude pending or future lawsuits or claims;
- (viii) Providing that only a *Settlement Class Member* who timely objects to the approval of this Settlement Agreement may appear at the Final Settlement Approval Hearing and show cause why such Settlement Agreement should not be approved as fair, reasonable and adequate and why judgment should not be entered thereon;
- (ix) Authorizing the use and disclosure by *Nationwide* to *Class Counsel* of such information as is contemplated and necessary to effectuate the terms and conditions of this Settlement Agreement and protecting the confidentiality of such information; and
- (x) That any *Settlement Class Member* who wants to seek monetary compensation pursuant to this Settlement Agreement must return his/her claim form to the *Administrator* postmarked at least forty-five (45) days

prior to the Final Settlement Approval Hearing (without regard to any subsequent postponement or delay of the Final Settlement Approval Hearing by the Court).

4. Notice and Duties of the Administrator.

- (a) As soon as practical after the Court issues a preliminary settlement approval order but no later than forty-five (45) days after issuance of such order, the Administrator shall send by first class United States mail, postage prepaid, to all persons who were *Nationwide Named Insureds* during the *Settlement Class Period* the *Mailed Notice*, as approved by the Court. *Nationwide* shall provide the Administrator with all available necessary information to facilitate the mailing of the *Mailed Notices*. *Nationwide* represents that the information it is to supply to the Administrator to facilitate the *Mailed Notice* will be prepared based upon the best available electronic data in *Nationwide's* records and with the appropriate due diligence. The Administrator shall utilize the national change of address service through the United States Postal Service to obtain corrected mailing addresses for *Mailed Notices* that are returned as undeliverable as addressed and resend those *Mailed Notices* as soon as possible.
- (b) *Nationwide* or the Administrator will notify *Class Counsel* in writing forty-five (45) days after issuance of the preliminary settlement approval order as to the number of *Nationwide Named Insureds* and the *Total Coverage Periods* for all *Nationwide Named Insureds*.
- (c) No later than fifteen (15) days before the Final Settlement Approval Hearing, the Administrator shall file with the Prothonotary an affidavit confirming that the *Mailed Notice* was sent as required by this Settlement Agreement and the Court's preliminary settlement approval order, indicating the dates such *Mailed Notices* were sent.
- (d) No later than ninety (90) days after the *Appeal Expiration Date*, *Nationwide* or the Administrator shall also provide *Class Counsel* and *Defense Counsel* with a list of the *Qualifying Settlement Class Members* and the *Coverage Periods* for each, which shall be filed under seal with the Prothonotary. The Administrator

shall also send copies of claim forms received to *Class Counsel* or *Defense Counsel* upon request.

- (e) No later than fifteen (15) days before the Final Settlement Approval Hearing, the *Administrator* shall prepare and serve on *Class Counsel* and *Defense Counsel* a report identifying each *Potential Settlement Class Member* who has submitted a timely and valid request for exclusion. All persons who submit a request for exclusion shall not be entitled to receive any monetary relief pursuant to the settlement and will not be *Settlement Class Members* and will not be bound by the terms of this Settlement Agreement.
- (f) All costs incurred with regard to the *Mailed Notice*, including mailing, printing and all costs of the *Administrator*, shall be paid by *Nationwide*.
- (g) The *Administrator* shall determine, based upon the information provided by *Nationwide* and subject to the approval of *Class Counsel* and *Defense Counsel*, the amount(s) owed to *Qualifying Settlement Class Members* and send to any *Qualifying Settlement Class Member* their payment pursuant to the terms of this Settlement Agreement and any required IRS income tax notifications.

5. Final Settlement Approval Hearing. At the Final Settlement Approval Hearing set by the *Court* pursuant to paragraph 3(a) herein, *the Parties* shall request that the *Court* enter an order:

- (a) Approving the settlement set forth in this Settlement Agreement without material alteration, and directing *the Parties* to comply with and consummate the terms of this Settlement Agreement.
- (b) Confirming the appointment of William M. Radcliffe, Esquire, as *Class Counsel* and *Shu* as class representative for the *Settlement Class*.
- (c) Confirming the certification of the *Settlement Class*.
- (d) Finding that the terms of this Settlement Agreement and specifically the payments set forth in paragraph 9 herein are fair and reasonable.
- (e) Providing that each member of the *Settlement Class* shall be bound by this Settlement Agreement and all orders and judgments entered in connection with this Settlement Agreement.

- (f) Finding that the *Mailed Notice* approved by the *Court* satisfies the requirements of Pa.R.Civ.P. 1712 and the requirements of due process under the Pennsylvania and United States Constitutions.
- (g) Finding that all further claims by *Shu* and *Settlement Class Members* are barred and released as set forth in paragraph 10 herein.
- (h) Marking the case settled, discontinued and ended.

6. Monetary Consideration. *Nationwide* will pay to each *Qualifying Settlement Class Member* his/her *Individual Distribution Amount* and will pay attorney's fees, costs and the incentive payment as set forth in paragraph 9 herein.

7. Non-Monetary Consideration. *Nationwide* will seek to obtain Pennsylvania Insurance Department approval to revise the *UM/UIM Coverage* language in the *Nationwide Policies* to permit stacking in a manner satisfactory to *Class Counsel* and *Nationwide*. The proposed revisions to the *UM/UIM Coverage* language in the *Nationwide Policy* are set forth in Exhibit "B" attached hereto. *Nationwide* will notify *Class Counsel* in writing within fourteen (14) days of Pennsylvania Insurance Department approval. In the event approval from the Pennsylvania Insurance Department is not obtained, this Settlement Agreement shall be null and void pursuant to paragraph 12(o) herein. The proposed revisions to the *UM/UIM Coverage* set forth in Exhibit "B," or the Pennsylvania Insurance Department's approval or rejection of the proposed revisions set forth in Exhibit "B," shall not prohibit *Nationwide* from making future revisions, and/or seeking the Pennsylvania Insurance Department's approval of future revisions to its *Nationwide Policy*, including but not limited to additional or further revisions to the *UM/UIM Coverage*.

Upon approval by the Pennsylvania Insurance Department of the proposed revisions to the *UM/UIM Coverage* set forth in Exhibit "B," or substantially similar agreed to and approved revisions to the *UM/UIM Coverage*, *Nationwide* shall incorporate and implement such revisions in *Nationwide Policies* no later than three hundred sixty-five (365) days after the *Settlement Approval Date*.

8. Distribution of Settlement Funds. *Nationwide* will distribute the settlement funds as follows:

- (a) Within thirty (30) days following the *Appeal Expiration Date*, attorney's fees, attorney costs, and the incentive payment shall be paid as set forth in paragraph 9 herein.
- (b) Within one hundred twenty (120) days following the *Appeal Expiration Date*, the *Individual Distribution Amount* shall be paid to each *Qualifying Settlement Class Member*.
- (c) All checks issued pursuant to subparagraph (b) shall be payable to the *Qualifying Settlement Class Member* and mailed by the *Administrator* to the address on the claim form. The check, if not cashed within one hundred fifty (150) days of the check date, shall be void.
 - (i) When a *Qualifying Settlement Class Member* is deceased and a payment is due to that *Qualifying Settlement Class Member*, upon receipt of proper notification and documentation, the settlement payment will be made to the Administrator/Administratrix or Executor/Executrix of such *Qualifying Settlement Class Member's* estate as appointed by the appropriate court; and
 - (ii) When a *Qualifying Settlement Class Member* has been declared bankrupt, or is the subject of an open and ongoing bankruptcy proceeding, and a payment is due to the *Qualifying Settlement Class Member*, upon receipt of proper notification and documentation, the settlement payment will be made to such *Qualifying Settlement Class Member* in accordance with the applicable U.S. Bankruptcy Code laws.
- (d) *The Parties* shall attempt in good faith to resolve any issues as to the amount to be paid to a *Qualifying Settlement Class Member*. Any such issues *the Parties* are unable to resolve will be resolved by the *Court*.
- (e) Pursuant to Pa.R.Civ.P. 1716(b), any *Residual Funds* shall be paid by *Nationwide* to the Pennsylvania Interest on Lawyers Trust Account Board within two hundred seventy (270) days of the last date of distribution of the settlement funds as set forth in paragraph 8(b) herein.

9. Fees and Costs. Within thirty (30) days after the *Appeal Expiration Date*, *Nationwide* shall make the following payments:

- (a) To *Class Counsel*, attorney's fees (separate and apart from the *Individual Distribution Amount*) not to exceed \$95,000, subject to approval by *the Court*.
- (b) To *Shu*, the sum of \$2,500 (separate and apart from the *Individual Distribution Amount*), to compensate *Shu* for his services as class representative.
- (c) To *Class Counsel*, costs incurred (separate and apart from the *Individual Distribution Amount*) by *Class Counsel* to and until the conclusion of this litigation, in an amount not to exceed \$5,000.

10. Release. As of the *Appeal Expiration Date* and in consideration of the relief made available as set forth in this Settlement Agreement, *Shu* and *Settlement Class Members*, pursuant to this Settlement Agreement and the approval of the settlement by the *Court*, shall be deemed to have fully and lawfully released, discharged and acquitted *Nationwide*, all affiliated, associated and inter-related companies, and their stockholders, agents, officers, directors, employees, attorneys, insurers, trustees, predecessors and assigns from all claims, liabilities, causes of action, costs, attorneys' fees, demands for recovery of any and all damages, equitable relief, declaratory relief, and injunctive relief that have been claimed, could have been claimed, or arose out of the conduct related to the allegations set forth in Count I of the First Amended Complaint in *this Action*, including, but not limited to, all contractual claims, extra-contractual claims, claims in tort, claims for punitive damages, all premium claims, and all damages under any statute or regulation including, but not limited to, the MVFRL, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§201-1, *et seq.*, and any other statute, regulation or guideline which have been asserted or could have been asserted by *Shu* and/or any *Settlement Class Members*, whether the nature and extent of those claims and damages is known or may yet to be known, such that all claims of *Shu* and the *Settlement Class Members* shall be forever barred and precluded with prejudice by this settlement and the approval of same by the *Court*, having the same preclusive effect as if the claims of *Shu* and each *Settlement Class Member* had been fully and completely litigated to a full and final

adjudication. Notwithstanding the above, this release does not affect any claims for insurance benefits made by *Shu* and/or any *Settlement Class Members* under any applicable *Nationwide Policy*.

11. *Nationwide Representations.* *Nationwide* understands that *Class Counsel* is relying upon *Nationwide's* representations as to the accuracy and completeness of its discovery responses, and the accuracy of other information provided to *Class Counsel* by *Nationwide* in entering into this Settlement Agreement. If *Nationwide* should discover any material errors in the information supplied to *Class Counsel* or the *Administrator*, it will promptly notify *Class Counsel* in writing.

12. *Miscellaneous Provisions.*

- (a) *Class Counsel* and *Defense Counsel* who sign this Settlement Agreement each represent that they are authorized to execute this Settlement Agreement and to effectuate this Settlement Agreement on behalf of their respective clients on the terms and conditions stated herein.
- (b) All matters not specifically covered by the provisions of this Settlement Agreement shall be resolved by agreement of *Class Counsel* and *Defense Counsel*, or, if they cannot agree, by referral to the *Court*. The *Court* shall have exclusive jurisdiction of all matters arising out of the interpretation of this Settlement Agreement.
- (c) This Settlement Agreement represents an integrated document negotiated and agreed to between *the Parties* and shall not be amended, modified or supplemented, nor shall any of its provisions be deemed to be waived, unless by written agreement signed by the respective attorneys for *the Parties*.
- (d) This Settlement Agreement has been drafted jointly by *the Parties* and is not to be construed against any party.
- (e) This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Photocopies of fully executed copies of this Settlement Agreement may be treated as originals. Signatures transmitted electronically shall be deemed original signatures.
- (f) Pennsylvania law shall govern this Settlement Agreement and any documents prepared or executed pursuant to this Settlement Agreement.

- (g) Except as expressly provided in this Settlement Agreement, *Nationwide* shall bear no other expenses, costs, damages or attorneys' fees alleged or incurred by *Potential Settlement Class Member(s)*, *Qualifying Settlement Class Member(s)*, *Shu*, and/or the *Settlement Class* or by any of their attorneys, experts, advisors, agents or representatives.
- (h) *Nationwide* has indicated its intent to vigorously contest every claim in *this Action*. *Nationwide* maintains that it has consistently acted in accordance with the governing policies and governing laws at all times and vigorously denies all of the material allegations in *this Action*. *Nationwide* nonetheless has concluded that it is in its best interests that *this Action* be settled on the terms and conditions set forth in this Settlement Agreement. *Nationwide* has reached this conclusion after considering the factual and legal issues in *this Action*, the substantial benefits of a final resolution of *this Action*, the expense that would be necessary to defend *this Action* throughout trial and through any appeals that might be taken, the benefits of disposing of protracted and complex litigation, and the desire of *Nationwide* to conduct its business unhampered by the distractions of continued litigation.
- (i) *The Parties* agree that to the fullest extent permitted by law, neither this Settlement Agreement nor the settlement, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the settlement: (1) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim, or of any wrongdoing or liability of *Nationwide*; (2) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of *Nationwide* in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal, other than in such proceedings as may be necessary to consummate or enforce this Settlement Agreement, the settlement or the final judgment entered in connection with this Settlement Agreement, except that *Nationwide* may file this Settlement Agreement and/or the final judgment in any action or proceeding that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement,

judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

- (j) *The Parties* and their counsel express no opinion concerning the tax consequences of this proposed settlement to *Potential Settlement Class Member(s)*, *Qualifying Settlement Class Member(s)*, *Shu*, and/or the *Settlement Class* and make no representations, warranties or other assurances regarding such tax consequences. No opinions, representations, warranties, or other assurances shall be deemed to have been made by *the Parties* or their counsel with respect to such tax consequences by virtue of this Settlement Agreement or by effectuating this settlement, and *the Parties* and their counsel shall not be held liable for any such tax consequences that may occur. The *Mailed Notice* will direct *Nationwide Named Insureds* to consult their own tax advisors regarding any tax consequences of the proposed settlement, including any payments or benefits provided hereunder, and any tax reporting obligations they may have with respect thereto. Each *Nationwide Named Insureds'* tax obligations, and the determination thereof, are the sole responsibility of the *Nationwide Named Insured*, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual *Nationwide Named Insured*.
- (k) Nothing contained in this Settlement Agreement or in any proceedings concerning the settlement of *this Action* shall in any way affect *Nationwide's* rights to seek contribution, indemnity or any other relief from any person or entity not a party to *this Action* except *Settlement Class Members*. All such rights and remedies are specifically retained and preserved.
- (l) This Settlement Agreement contains the entire agreement between *the Parties* and supersedes any prior agreements or understandings between them. All terms of this Settlement Agreement are contractual and not mere recitals and shall be construed as if drafted by all parties to this Settlement Agreement. The terms of this Settlement Agreement are and shall be binding upon, and shall inure to the benefit of, each of the parties to this Settlement Agreement, their agents, attorneys, employees, successors and assigns, and upon all other persons claiming any interest in the subject matter of this Settlement Agreement through any of *the Parties*, including any *Nationwide Named Insured*.

- (m) This Settlement Agreement may be modified only by a written instrument signed by or on behalf of *the Parties* to this Settlement Agreement or their successors in interest.
- (n) All discovery in *this Action* is stayed without prejudice until the Final Settlement Approval Hearing.
- (o) If, for any reason, the Pennsylvania Insurance Department Approval, pursuant to paragraph 7 above, is not obtained by August 31, 2015 (unless *the Parties* agree in writing to an extension), or the *Court* fails to grant preliminary settlement approval of this Settlement Agreement as provided herein, or the *Court* fails to grant final approval to this Settlement Agreement, or the approval of the order and judgment is reversed or rendered void as a result of an appeal, then: (1) this Settlement Agreement shall be considered null and void; (2) neither this Settlement Agreement nor any of the related negotiations shall be of any force or effect; and (3) *the Parties* to this Settlement Agreement shall stand in the same position, without prejudice, as if this Settlement Agreement had not been entered into by *the Parties*.
- (p) *The Parties* agree to keep these settlement discussions and the terms of the proposed settlement confidential, except that the terms and other information may be disclosed as necessary to request preliminary approval of the settlement, or as otherwise required by law or the *Court*.
- (q) *The Parties* agree that they shall not discuss or reference the Settlement Agreement in any advertising or marketing publication, any press release, social media post, or any other written or electronic communication used to promote Plaintiffs or Plaintiffs' Counsel. This shall not apply to communications authorized under the Settlement Agreement made for the purpose of effectuating the *Mailed Notice* plan or other terms of the Settlement Agreement. The sole remedies for any alleged violation of this section shall be to file a lawsuit asserting a claim for injunctive relief and/or specific performance, and as a condition precedent to such a lawsuit, a pre-suit cease and desist letter shall be provided to all *Parties* at least 30 days prior to filing such a lawsuit. The venue of any such lawsuit shall be in the state courts of Fayette County, Pennsylvania, and *the Parties* hereby waive their right to a jury trial. The prevailing party or

parties of any such lawsuit shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party or parties.

- (r) The service of papers and notices under this Settlement Agreement shall be made upon *Shu* and the *Settlement Class* by serving such papers on:

William M. Radcliffe, Esquire
RADCLIFFE & DeHAAS, L.L.P.
2 West Main Street, Suite 700
Uniontown, PA 15401

- (s) The service of papers and notices under this Settlement Agreement shall be made upon *Nationwide* by serving such papers on:

Lindsey R. Trowell, Esquire
John P. Marino, Esquire
SMITH, GAMBRELL & RUSSELL, LLP
50 North Laura Street, Suite 2600
Jacksonville, FL 32202

IN WITNESS WHEREOF, the undersigned, being duly authorized, have caused this Settlement Agreement to be executed this 14th day of April, 2015.



Witness

RADCLIFFE & DeHAAS, L.L.P.

BY


Attorneys for Plaintiffs



Witness

SMITH, GAMBRELL & RUSSELL, LLP

BY


Attorneys for Defendants

YUNG HSIU SHU,

Plaintiff,

vs.

NATIONWIDE MUTUAL FIRE
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Defendants.

IN THE COURT OF COMMON PLEAS OF

FAYETTE COUNTY, PENNSYLVANIA

CIVIL ACTION - CLASS ACTION

NO. 3517 OF 2008, G.D.

JUDGE JOSEPH M. GEORGE, JR.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

IF YOU (I) WERE A NAMED INSURED FROM OCTOBER 1, 2003, THROUGH _____, 2015, UNDER A POLICY ISSUED BY THE DEFENDANT, NATIONWIDE MUTUAL FIRE INSURANCE COMPANY, SUBJECT TO THE PENNSYLVANIA MOTOR VEHICLE FINANCIAL RESPONSIBILITY LAW, 75 Pa.C.S.A. §§1701, *et seq.* (HEREINAFTER "MVFRL"); OR (II) WERE A NAMED INSURED FROM JANUARY 1, 2009 THROUGH _____, 2015, UNDER A POLICY ISSUED BY THE DEFENDANTS, TITAN INDEMNITY COMPANY OR VICTORIA FIRE & CASUALTY COMPANY (NATIONWIDE MUTUAL FIRE INSURANCE COMPANY, TITAN INDEMNITY COMPANY AND VICTORIA FIRE & CASUALTY COMPANY ARE HEREINAFTER COLLECTIVELY REFERRED TO AS "NATIONWIDE"), SUBJECT TO MVFRL; (III) WHO HAD ONLY ONE VEHICLE INSURED UNDER THE NATIONWIDE POLICY; (IV) WHO PAID FOR STACKED UNINSURED/UNDERINSURED (HEREINAFTER "UM/UIM") COVERAGE, THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS WHETHER YOU ACT OR DON'T ACT.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Submit a Claim Form	The only way to get a payment. Claim Forms must be postmarked no later than _____, 2015.
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Nationwide about the legal claims in this case. Requests for Exclusion must be postmarked no later than _____, 2015.
Object	File written objections with the Court. Objections must be postmarked no later than _____, 2015.
Do Nothing	Get no payment. Give up rights.

BASIC INFORMATION

WHY DID I GET THIS NOTICE?

During the Class Period, you were (i) a Nationwide named insured from October 1, 2003, through _____, 2015, by a policy issued through the defendant, Nationwide Mutual Fire Insurance Company, subject to MVFRL; or (ii) a Nationwide named insured from January 1, 2009, through _____, 2015, by a policy issued through the defendants, Titan Indemnity Company and Victoria Fire & Casualty Company, subject to MVFRL; (iii) who had only one vehicle insured under the Nationwide policy; and (iv) who paid for stacked UM/UIM coverage.

The Court directed that you be sent this Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves the settlement and after any objections and appeals are resolved, a neutral administrator (the "Administrator") approved by the Court will make the payments that the settlement allows.

The Court in charge of the case is the Court of Common Pleas for Fayette County, Pennsylvania, and the case is known as *Yung Hsiu Shu v. Nationwide Mutual Fire Insurance Company, et al.*, No. 3517 of 2008, G.D. (hereinafter the "Lawsuit"). The person who sued is called the Plaintiff, and the companies he sued, Nationwide, are called the Defendants.

WHAT IS THIS LAWSUIT ABOUT?

The Lawsuit claims that Nationwide improperly charged single vehicle UM/UIM stacked policyholders for identical coverage that is provided to single vehicle UM/UIM policyholders who paid for non-stacked coverage. Nationwide denies these claims and denies any wrongdoing. The Court has made no ruling on the merits of the claims or defenses made in the Lawsuit.

The Court has certified this Lawsuit to proceed as a class action. If the settlement is not approved, the Court will have to decide the merits of the Lawsuit.

WHY IS THIS A CLASS ACTION?

In a class action, one or more people called class representatives sue on behalf of people who they believe have similar claims. All of these people are a class or class members. One court resolves the issues for all class members, except for those who exclude themselves from the class. In the Lawsuit, the "Class Representative" is the named Plaintiff, *Yung Hsiu Shu*. This Lawsuit is being presided over by Judge Joseph M. George, Jr., of the Court of Common Pleas for Fayette County, Pennsylvania (referred to in this Notice as the "Court").

WHY IS THERE A SETTLEMENT?

Both sides believe their claims or defenses would have won in this Lawsuit. However, the Court has not decided in favor of the Plaintiff or Defendants. Instead, both sides agreed to a settlement. That way, they and the Settlement Class Members avoid the risk, delay, and expense of continuing the Lawsuit, and the Settlement Class Members will be eligible to receive compensation. The Plaintiff, on his own behalf and on behalf of all Settlement Class Members, has entered into a "Settlement Agreement" with Nationwide, which has been preliminarily approved by the Court. The Class Representative and Class Counsel think the settlement is best for all Settlement Class Members. This Notice summarizes the terms of the Settlement Agreement, your rights and obligations under the Settlement Agreement, and the process by which the Court will determine whether or not to enter a final approval of the Settlement Agreement.

CAN I FILE MY OWN LAWSUIT OR DEMAND?

Not unless you follow the procedures set forth in this Notice to submit a request for exclusion from the Settlement Class.

WHO IS COVERED BY THE SETTLEMENT

You are a member of the "Settlement Class" covered by the settlement if you fall within the following class definition adopted by the Court:

All Pennsylvania Nationwide Named Insureds from October 1, 2003, through _____, 2015, with the defendant, Nationwide Mutual Fire Insurance Company, or from January 1, 2009 through _____, 2015, with the defendants, Titan Indemnity Company or Victoria Fire & Casualty Company, who were named insureds under a Nationwide Policy issued subject to MVFRL; who had only one vehicle insured; and who paid for stacked UM/UIM coverage.

Excluded from the Settlement Class is Nationwide, any entities in which Nationwide has a controlling interest, and all of their legal representatives, heirs and successors.

Also excluded are any claims resolved and/or discharged or released prior to _____, 2015.

A search of Nationwide's records identified you as a potential member of the Settlement Class. Unless you exclude yourself from the Settlement Class, you will be deemed to be a "Settlement Class Member" and subject to the settlement.

THE SETTLEMENT BENEFITS -- WHAT YOU GET

Settlement Class Members who do not submit a timely and complete request for exclusion from the Settlement Class will be eligible to receive the following Individual Distribution Amount by submitting a timely and properly completed claim form in conformance with the instructions and procedures set forth in this Notice.

Your completed claim form must be submitted to the Administrator at *Shu v. Nationwide*, c/o Strategic Claims Services, 600 North Jackson Street, Suite 3, Media, PA 19063, sent by First Class Mail, postage prepaid, postmarked no later than _____, 2015. A claim form is enclosed.

MONETARY BENEFITS. Settlement Class Members who timely submit a completed and signed claim form will be eligible for \$12 per Coverage Period (one hundred eighty (180) consecutive days as a named insured from October 1, 2003 through _____, 2015, with the defendant, Nationwide Mutual Fire Insurance Company, or from January 1, 2009 through _____, 2015, with the defendants, Titan Indemnity Company or Victoria Fire & Casualty Company, when their Nationwide policy covered only a single vehicle with stacked UM/UIM coverage).

NON-MONETARY BENEFITS. Nationwide has also agreed, beginning, no later than three-hundred sixty-five days (365) after the *Settlement Approval Date* to revise its uninsured/underinsured motorist policy language so that its single vehicle automobile insurance policies issued in Pennsylvania with stacking will provide additional coverage to Nationwide policyholders in certain situations.

Any disputes regarding whether a payment is owed on a claim and/or the amount of a payment on a claim will initially be negotiated among Class Counsel and Nationwide (through its counsel). If an agreement cannot be reached, the parties will submit the disputed claim to the Court.

No interest, costs, attorneys' fees or other extra-contractual payments, except as expressly provided for in the Settlement Agreement, shall be payable with respect to any Individual Distribution Amount, and Settlement Class Members waive any claim to such interest, costs, attorneys' fees, or other extra-contractual payments.

RELEASE OF YOUR RIGHTS AND DISMISSAL OF THE LAWSUIT

IF YOU DO NOT EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS ACCORDING TO THE STEPS IN THIS NOTICE, YOU WILL BE BOUND BY THE SETTLEMENT, INCLUDING THE RELEASE AND DISMISSAL WITH PREJUDICE, WHETHER OR NOT YOU SUBMIT A CLAIM FORM.

If the settlement receives final approval from the Court, the Plaintiff and all Settlement Class Members who are not recognized by the Court as excluded from the Settlement Class, and any person claiming through or on behalf of the Plaintiff and all such Settlement Class Members, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have, fully, finally, and forever released, relinquished and discharged the following:

As of the Appeal Expiration Date and in consideration of the relief made available as set forth in the Settlement Agreement, Shu and the Settlement Class Members, pursuant to the Settlement Agreement and the approval of the settlement by the Court, shall be deemed to have fully and lawfully released, discharged and acquitted Nationwide, all affiliated, associated and inter-related companies, and their stockholders, agents, officers, directors, employees, attorneys, insurers, trustees, predecessors and assigns from all claims, liabilities, causes of action, costs, attorneys' fees, demands for recovery of any and all damages, equitable relief, declaratory relief, and injunctive relief that have been claimed, could have been claimed, or arose out of the conduct related to the allegations set forth in the First Amended Complaint in this Action, including, but not limited to, all contractual claims, extra-contractual claims, claims in tort, claims for punitive damages, all premium claims, and all damages under any statute or regulation including, but not limited to, the MVFRL, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§201-1, *et seq.*, and any other statute, regulation or guideline which have been asserted or could have been asserted by Shu and/or any Settlement Class Members, whether the nature and extent of those claims and damages is known or may yet to be known, such that all claims of Shu and the Settlement Class Members shall be forever barred and precluded with prejudice by this settlement and the approval of same by the Court, having the same preclusive effect as if the claims of Shu and each Settlement Class Member had been fully and completely litigated to a full and final adjudication. Notwithstanding the above, this release does not affect any claims for insurance benefits made by Shu and/or any Settlement Class Members under any applicable Nationwide policy.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want the Individual Distribution Amount from this settlement, but you want to keep the right to sue Nationwide, on your own, about the legal issues released and dismissed by this settlement, then you must take steps to get out of the Settlement Class. This is called excluding yourself -- or is sometimes referred to as "opting out" of the Settlement Class.

To exclude yourself from the Settlement Class, you must make your request in writing. A request for exclusion must contain the following: (1) a prominent identifying reference to the case as follows: "*Shu v. Nationwide, No. 3517 of 2008, G.D.*;" (2) your name; (3) your address; (4) the applicable Nationwide policy number; (5) an expression of your desire to opt out or be excluded from the Settlement Class; and (6) your signature or the signature of an authorized representative.

Your written request for exclusion must be sent by First Class Mail, postage prepaid, and postmarked no later than _____, 2015, and must be addressed to the Administrator at: *Shu v. Nationwide*, c/o Strategic Claims Services, 600 North Jackson Street, Suite 3, Media, PA 19063.

If you do not comply with these procedures within the deadline for requesting exclusion set forth above, you will lose any opportunity to exclude yourself from the Settlement Class and your rights will be determined by the Settlement Agreement and the Court's orders.

THE LAWYERS REPRESENTING YOU - CLASS COUNSEL

DO I HAVE A LAWYER IN THIS CASE?

The Court has appointed the law firm of RADCLIFFE & DeHAAS, L.L.P. to represent you and the other Settlement Class Members. These lawyers are called "Class Counsel." You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

HOW WILL THE LAWYERS BE PAID?

You will not be charged for the services of Class Counsel. As part of the consideration provided to you and the other Settlement Class Members, Nationwide will pay Class Counsel's fees, costs and expenses separate and apart from the Individual Distribution Amount being made available to Settlement Class Members.

Class Counsel will ask the Court to approve payment in the amount of \$95,000 to them for attorneys' fees, and up to \$5,000 for costs and expenses. Class Counsel will also ask the Court to approve payment of \$2,500 to Yung Hsiu Shu for his services as Class Representative. The fees and payments would pay Class Counsel and the Class Representative for investigating the facts and litigating the Lawsuit, as well as negotiating the settlement and monitoring your rights during approval and administration of the settlement. Nationwide has agreed not to oppose these payments. These amounts will not come out of the funds for payments to Settlement Class Members. The Court may award less than the amount requested.

OBJECTING TO THE SETTLEMENT

You may remain a member of the Settlement Class and object to the settlement. If you do not exclude yourself from the Settlement Class, you may object to any aspect of the proposed settlement. Each objection must be in writing and include: (1) a prominent identifying reference to the case as follows "*Shu v. Nationwide, Case No. 3517 of 2008, G.D.*;" (2) your name; (3) your address; (4) the applicable Nationwide policy number; and (5) a statement of each objection being made; and (6) your signature or the signature of an authorized representative.

You must file your objection with the Court, and send copies by First Class Mail, postage prepaid, to Class Counsel and counsel for Nationwide postmarked no later than _____, 2015, as follows:

Address For Filing With Court

Prothonotary's Office
Court of Common Pleas
Fayette County, Pennsylvania
61 East Main Street
Uniontown, PA 15401

Class Counsel

William M. Radcliffe, Esq.
Radcliffe & DeHaas, L.L.P.
2 W. Main St., Ste. 700
Uniontown, PA 15401

Counsel for Nationwide

John P. Marino, Esq.
Lindsey R. Trowell, Esq.
Smith, Gambrell & Russell, LLP
50 North Laura St., Ste. 2600
Jacksonville, FL 32202

If you do not comply with these procedures, including the deadline for submitting written objections, you will lose any opportunity to have your objection considered by the Court at the Fairness Hearing or to otherwise contest the approval of the proposed settlement or to appeal from any orders or judgments entered by the Court in connection with the proposed settlement.

THE COURT'S FAIRNESS HEARING

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a Fairness Hearing at _____ .m. on _____, 2015, in Courtroom 5 of the Fayette County Courthouse, 61 East Main Street, Uniontown, Pennsylvania 15401. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Persons who have followed the procedures described herein may appear to be heard by the Court. The Court may also decide whether to approve Class Counsel's fees, costs and expenses and award to the Class Representative as negotiated in the settlement. After the hearing, the Court will decide whether to approve the settlement. It is not known how long these decisions will take.

DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions the Court may have. However, if you file a timely and proper objection, the Court may require you to attend the hearing.

WHAT IF I DO NOTHING?

If you do nothing, you will get no money from the settlement. But, unless you exclude yourself, you will be bound by the settlement if it is approved by the Court, including the release and dismissal with prejudice.

TAX CONSEQUENCES

The Individual Distribution Amount described above could have tax consequences for you. Those tax consequences may vary depending upon your individual circumstances. You should consult your own tax advisor regarding any tax consequences of the settlement, including any payments or benefits provided under the settlement, and any tax

reporting obligations you may have with respect thereto. The parties make no representations, and assume no responsibility, with respect to any tax consequences that may occur.

GETTING MORE INFORMATION

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by writing to the Administrator at Shu v. Nationwide, c/o Strategic Claims Services, 600 North Jackson Street, Suite 3, Media, PA 19063; or go to the website at www.strategicclaims.net, where you will find out about the settlement, documents concerning the settlement, a claim form, plus other information to help you determine whether you are a Settlement Class Member and whether you are eligible for a Settlement Payment.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR NATIONWIDE FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT. ALL INQUIRIES SHOULD BE DIRECTED TO THE ADMINISTRATOR AS INDICATED ABOVE.

**HONORABLE JOSEPH M. GEORGE, JR.
JUDGE OF THE COURT OF COMMON PLEAS
FAYETTE COUNTY, PENNSYLVANIA**

[TO BE INCLUDED AS PERFORATED PAGE ATTACHED TO THE NOTICE]

CLAIM FORM

INSTRUCTIONS: Please complete this form (print or type only), sign and mail it to Shu v. Nationwide, c/o Strategic Claims Services, 600 North Jackson Street, Suite 3, Media, PA 19063. Do not send any documentation to support your claim at this time.

THIS CLAIM FORM MUST BE POSTMARKED NO LATER THAN _____, 2015, OR YOU WILL NOT BE ELIGIBLE FOR MONETARY BENEFITS.

I hereby state that the following is true and correct:

(a) I was a named insured on a motor vehicle policy issued by (i) the defendant, Nationwide Mutual Fire Insurance Company, between October 1, 2003 and _____, 2015, or (ii) the defendants, Titan Indemnity Company and Victoria Fire & Casualty Company between January 1, 2009 and _____, 2015;

(b) the policy was issued with stacked uninsured/underinsured motorist coverage;

(c) the subject policy was in effect for at least one coverage period (180 consecutive days); and

(d) the subject policy number is _____ (provide if available).

(e) No rights or claims asserted by this claim form have been previously settled, resolved, discharged or released.

(f) No rights or claims asserted by this claim form have been assigned or otherwise transferred.

I swear or affirm that the foregoing is true and correct to the best of my knowledge and belief.

Settlement Class Member (Your Signature)

Settlement Class Member (Print Your Name)

Current Street Address

City, State, Zip Code

Phone Numbers, home/cell

E-mail Address (if any)

EXHIBIT B¹

Uninsured Motorist Coverage

*If you purchased 'Uninsured Motorists-Bodily Injury Stacked' coverage, this exclusion does not apply to **bodily injury** suffered while **occupying** or struck by a **motor vehicle** owned by **you** or a **relative** that is insured for Uninsured Motorists coverage under any policy issued by **us** or any affiliated company.*

Underinsured Motorist Coverage

*If you purchased 'Underinsured Motorists-Bodily Injury Stacked' coverage, this exclusion does not apply to **bodily injury** suffered while **occupying** or struck by a **motor vehicle** owned by **you** or a **relative** that is insured for Underinsured Motorists coverage under any policy issued by **us** or any affiliated company.*

¹ The headings in this exhibit are not part of the proposed policy revision.