Honorable Judge Catherine Shaffer
Noted for Hearing: May 25, 2012
*Without Oral Argument*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

Dr. DAVID KERBS, individually and on behalf of the class of similarly situated persons and entities,

Plaintiffs,

vs.

SAFECO INSURANCE COMPANY OF ILLINOIS, INC. and SAFECO OF AMERICA INSURANCE COMPANY (a/k/a "SAFECO AUTO" and/or "SAFECO OF AMERICA"), foreign insurance companies,

Defendants.

**Case No.: 10-2-17373-1 SEA**

**PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS -WIDE SETTLEMENT**



BRESKIN | JOHNSON | TOWNSEND PLLC
1111 Third Avenue, Suite 2230
Seattle, Washington 98101 Tel: 206-652-8660

## TABLE OF CONTENTS






BRESKIN | JOHNSON | TOWNSEND PLLC
1111 Third Avenue, Suite 2230
Seattle, Washington 98101 Tel: 206-652-8660

Plaintiff David Kerbs moves the Court for an Order that provides the following relief:

1. Grants Preliminary Approval of the Class Settlement agreed to by the parties;

2. Permits Diane Osborne to intervene in the action as a Plaintiff-Intervenor;

3. Certifies a settlement class consisting of a Policyholder subclass, a Claimant/Patient subclass and a Provider subclass with regard to Washington provider bills that were reduced by Defendants during the class period based on UCR85 reductions;

4. Appoints David Breskin and Breskin Johnson & Townsend as Settlement Class Counsel and Ms. Osborne and Dr. Kerbs as representatives of the settlement subclasses;

5. Directs that Notice be sent to the Class in the form proposed by the parties pursuant to their settlement agreement and attached as **Attachment A** to the proposed order;

6. Sets dates for class members to exercise their right to exclude themselves from the settlement class and/or to object to the settlement; and

7. Approves the claim form to be submitted by class members to be paid pursuant to the terms of settlement in the form proposed by the parties pursuant to their settlement agreement and attached as **Attachment B** to the proposed order.[1]

## I. FACTS

### A. Summary of the Case

Because of the extensive motions practice in the case, the Court is very familiar with the facts of the case and claims. So a brief summary of the case is provided. This action was filed by Plaintiff, Dr. David Kerbs, in May 2010 against Defendants Safeco Insurance Company of Illinois and Safeco Insurance Company of America ("Safeco"). In the lawsuit, he alleges that Safeco failed to pay its insured's reasonable medical expenses under the insured's Personal Injury Protection ("PIP") policy as required by RCW 48.22.005. It did so by improperly reducing Washington health care provider bills submitted under the PIP policy using UCR 85

[1] The Defendant Safeco Insurance Companies will be filing their own pleading in support of preliminary approval.



BRESKIN | JOHNSON | TOWNSEND PLLC
1111 Third Avenue, Suite 2230
Seattle, Washington 98101 Tel: 206-652-8660

reductions. A "UCR 85 reduction" is a reduction that is based on an amount that represents the 85th percentile of Ingenix MDR database charges in the provider's geographic area.

Plaintiff brought this lawsuit on his behalf and on behalf of a class of similarly situated Washington providers whose bills were reduced by Safeco using UCR85 reductions. He alleged that Safeco's practices were unfair and deceptive under the Washington Consumer Protection Act ("CPA") and breached a common law contract with providers. He also alleged a Declaratory Judgment Act claim that Safeco's practices violated RCW 48.22.005 and WAC regulations relating to fair claims handling practices and a claim for unjust enrichment.

In July 2010, Safeco Answered the Complaint denying the Plaintiff's claims and alleging various affirmative defenses. In September 2010, Plaintiff took initial discovery from Safeco in the form of interrogatories, requests for production and the deposition of a Safeco claims adjuster and two CR 30(b)(6) representatives. Plaintiff then moved for class certification. Safeco moved to continue the hearing on the class certification motion and moved for summary judgment. The parties entered a stipulated briefing schedule on the motions. In November 2010, the Court granted in part and denied in part Safeco's summary judgment motion and dismissed Plaintiff's breach of contract and unjust enrichment claims.

In December 2010, Plaintiff filed a motion to amend the Complaint to correct the name of one of the Defendant companies and to extend the time period applicable to the class claims from May 2008 to May 2006. The Court granted the motion and in January 2011, Safeco moved to dismiss the Amended Complaint. On January 14, 2011, the Court denied the motion and in February 2011, Safeco filed a notice of motion for discretionary review of the order and moved this Court for certification of the issues in its January 14 for immediate review. The Court denied Safeco's motion, but subsequently granted Safeco's motion to continue the hearing on Plaintiff's motion for class certification and for partial summary judgment.

In the meantime, the parties engaged in extensive discovery. Plaintiff took additional fact witness depositions, propounded interrogatories and document requests. Plaintiff also



BRESKIN | JOHNSON | TOWNSEND PLLC
1111 Third Avenue, Suite 2230
Seattle, Washington 98101 Tel: 206-652-8660

moved to compel discovery and for a protective order setting a reasonable fee for health care providers when responding to Safeco's discovery requests. Safeco propounded interrogatories and document requests on Dr. Kerbs. It deposed Dr. Kerbs twice and Dr. Kerbs responded to multiple sets of interrogatories and document production requests.

In March 2011, Safeco moved a second time to dismiss the Amended Complaint. Plaintiff moved to strike the motion. On March 23, the Court of Appeals Commissioner denied Safeco's motion for discretionary review of the Court's January 14 order denying its motion to dismiss. On April 1, this Court granted Plaintiff's motion to strike Safeco's second motion to dismiss. On April 21, Safeco moved for discretionary review of the Court's April 1 order.

On April 4, the Court granted in part and denied in part Plaintiff's motion for class certification. It certified the unfair practice CPA claims for trial on behalf of a class of Washington providers whose bills were reduced using UCR 85 reductions from May 13, 2006 to March 31, 2011. A two-phase trial plan was adopted: the first phase would adjudicate the liability issues and the second phase damages. The Court appointed Dr. Kerbs as Class Representative and David E. Breskin of Breskin Johnson & Townsend as Class Counsel. A trial date of October 24, 2011 was set for the liability phase of the trial.

On April 15, Safeco moved for a stay and on April 18, it moved to certify the April 4 order for review. On May 2, the Court denied the motions. Safeco then moved for discretionary review of the order. On July 26, the Court of Appeals Commissioner denied review.

On August 9, Plaintiff moved for approval of a form of notice to be sent to the Class informing them of the pendency of the action. On August 25, before the Court ruled on Plaintiff's motion, Safeco moved to modify the Commissioner's ruling denying review of the certification order and this Court continued its consideration of Plaintiff's motion for approval of the form of class notice pending the appellate court's ruling on Safeco's motion to modify. Safeco's motion to modify is still pending before the Washington Court of Appeals.



BRESKIN | JOHNSON | TOWNSEND PLLC
1111 Third Avenue, Suite 2230
Seattle, Washington 98101 Tel: 206-652-8660

In the meantime, on May 6, 2011, Plaintiff moved for a partial summary judgment of liability on his unfair CPA practice claims. He also asked for a determination that class members were third party beneficiaries under the PIP policy or had received equitable assignments of the insured's PIP benefits when submitting their bills to Safeco to be paid.

On June 3, the Court denied Plaintiff's motion but granted his request that class members were third-party beneficiaries when submitting their bills to Safeco to be paid under the PIP policy. The Court also granted Dr. Kerbs request that he received an equitable assignment of the insured's rights under the PIP policy. It denied without prejudice the request of other class members for a similar determination pending submission of evidence of the insured's intent or expectation that PIP benefits would be assigned to providers when submitting their bills to Safeco to be paid. Safeco moved for reconsideration of these determinations. On June 22, 2011, the Court denied the motion.

In May 2011 and again in July 2011, the parties served witness disclosures and additional discovery ensued until early September 2011. Plaintiff propounded interrogatories and document requests and took additional fact and expert witness depositions. Safeco served 34 discovery subpoenas on health care providers, took the deposition of one of the provider witnesses and took the deposition of Plaintiff's expert, Dr. Foreman. Safeco also filed motions to exclude witnesses and compel discovery that were denied by the Court. Plaintiff arranged for Safeco's deposition of seven additional witnesses. Plaintiff also subpoenaed various insurance companies for deposition, including American Family Insurance, which moved to quash the subpoena. The Court denied the motion and two auto insurers were deposed.

On August 17, Plaintiff moved to continue the October 24 trial date to November 28 to permit notice to be sent to the class and give class members the opportunity to opt-out of class before trial. The Court granted Plaintiff's motion and re-set the trial for November 28 and subsequently denied Safeco's motion to continue the trial further. Plaintiff also moved for revision of the Court's June 3 order denying equitable assignments to class members and



BRESKIN | JOHNSON | TOWNSEND PLLC
1111 Third Avenue, Suite 2230
Seattle, Washington 98101 Tel: 206-652-8660

submitted new evidence in support of the motion. The motion was noted for September 9, but was continued to the first day of trial and is still pending before this Court.

On September 23, 2011, Plaintiff served on Defendants an ER 408 offer of settlement in connection with the parties, upcoming, October 21 mediation with JAMS mediator, Thomas Harris. On October 3, Safeco removed the case to federal court asserting that Plaintiff's September 23 settlement offer disclosed an amount in controversy of more than $5 million and federal court jurisdiction under the Class Action Fairness Act ("CAFA").

On October 6, Plaintiff moved for remand of the case to this Court and for sanctions. On October 7, Safeco moved the federal court to dismiss the case under the federal court's pleading standard. The federal court stayed the motion to dismiss pending resolution of Plaintiff's motion for remand and extensive briefing on the motion for remand ensued. In the meantime, the Washington Court of Appeals stayed further proceedings on Safeco's motion to modify the Commissioner's denial of Safeco's motion for discretionary review of the class certification order pending a determination by the federal court of its jurisdiction over the case.

On October 21, the parties mediated all day with mediator Harris, but could not reach a settlement. On December 1, 2011 the federal court granted Plaintiff's motion for remand and sanctions. On December 9, Plaintiff filed his motion for an award of fees pursuant to the court's December 1 order. On December 12, Safeco filed a petition with the Ninth Circuit requesting an expedited review under CAFA of the December 1 remand order and a stay of proceedings.

On January 11, 2012, the District Court awarded Plaintiff fees on his motion. On February 9, Safeco filed an appeal of the court's order. On February 28, the Ninth Circuit denied Safeco's motion for permission to appeal the remand order. On March 1, Safeco filed a motion for en banc review of the order denying it permission to appeal under CAFA. On April 30, 2012, the Ninth Circuit denied en banc review of the remand order.

In the meantime, Plaintiff moved to continue the trial date because of the delay caused by removal to the federal court and the trial date was reset for June 18, 2012. Also, the Ninth



BRESKIN | JOHNSON | TOWNSEND PLLC
1111 Third Avenue, Suite 2230
Seattle, Washington 98101 Tel: 206-652-8660

Circuit directed the parties to participate in mediation with Ninth Circuit mediator, Chris Goelz. Extensive settlement discussions then ensued with Mr. Goelz and at his urging between Class Counsel and Safeco's counsel. As a result, the parties reached a settlement on April 25 and agreed to a form of notice to be sent to the Class and the claim form to be used by members to obtain the benefits provided under the agreement. A written agreement was entered into by the parties thereafter. *See,* **Ex. 1** to Declaration of David Breskin ("Breskin Decl."). The settlement is subject to approval by this Court under CR 23(e) and will terminate all other proceedings.

**B. The Terms of Settlement**

The settlement of the case will involve three subclasses to ensure that full relief is provided: (1) a subclass of policyholders; (2) a subclass of claimants (patients that are not policyholders) and (3) Washington health care providers. The parties are requesting that the Court certify a settlement class consisting of these three subclasses as part of its order granting preliminary approval of the settlement. The policyholder and patient/claimant subclasses are necessary to ensure full relief because it is possible that either the policyholder or the patient paid the provider for the UCR85 reductions taken by Safeco and would be entitled to recoup the payment they made through the claims process established by the settlement agreement.

In exchange for a release of claims and dismissal of the action, Safeco will provide the following non-monetary and monetary benefits to the subclasses:

1. It will implement and continue for five years use of the new "FAIR Health database instead of the Ingenix MDR database that was the subject matter of the lawsuit.

2. It will publicize its practices through its website.

3. It will inform policy holders of its practices before initial purchase and renewal.

4. It will inform providers of its practices who contact Safeco about coverage.

5. Upon submission of the agreed upon claim form, it will pay 80% of the amount of UCR 85 reductions taken to either the provider or to the policy holder or claimant (to the extent they paid the provider) up to a total amount of $1.9 million.



BRESKIN | JOHNSON | TOWNSEND PLLC
1111 Third Avenue, Suite 2230
Seattle, Washington 98101 Tel: 206-652-8660

6. It will pay a class representative fee in the total amount not to exceed $17,500. Class Counsel is proposing the fee be distributed with the Court's approval $16,500 to Dr. Kerbs, in recognition of his efforts in the case on behalf of Washington providers, and $1,000 to Ms. Osborne, in recognition of her efforts on behalf of Washington policy holders and claimants.

7. It will pay attorney fees and incurred costs not to exceed $900,000 to Class Counsel.

8. It will agree to a clarification of how future claims will be handled with regard to its continuing practices that permits Safeco to use of the new FAIR Health database in paying PIP claims but does not bar future claims by providers, policyholders and/or claimants.

## II. LEGAL ARGUMENT

CR 23(e) provides:

> (e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

### A. Preliminary Approval Should Be Granted.

CR 23(e) contemplates a two-step approval process. The first step is preliminary approval subject to notice to the class and class member objections and exclusions. The second step is final approval and entry of judgment consistent with the terms of the settlement at which time the court considers any objections filed by class members. Approval of a class action settlement is within the trial court's discretion and should be granted when the terms are "fair, adequate and reasonable." *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178 (2001).

Preliminary approval of the settlement in this case should be granted because the terms of the settlement are fair, adequate and reasonable when considered in light of settlements in similar cases. First, the settlement in this case provides non-monetary benefits in terms of Safeco's switch to the new "FAIR Health" database that was created by New York universities



BRESKIN | JOHNSON | TOWNSEND PLLC
1111 Third Avenue, Suite 2230
Seattle, Washington 98101 Tel: 206-652-8660

and does not suffer from the conflict of interest that existed with the Ingenix MDR database. [2] Second, Safeco has agreed to provide new disclosures of its practices. Other settlements in similar cases have not provided non-monetary relief. For example, in *Coffell v. Allstate Ins. Co.*, Judge Downing approved settlement of similar claims arising from Allstate's practice of reducing PIP claims down to the 85th percentile of the Ingenix MDR database. The *Allstate* settlement did not provide non-monetary relief. [3]

Safeco has also agreed to monetary benefits provided to class members that are more generous than benefits provided to similar claimants in other class actions involving similar claims. For example, in the *Allstate* case, Judge Downing approved a settlement that permitted Washington health care providers to recover 70% of the reductions made, whereas the settlement in this case permits recovery of 80% of the reductions. *See,* Breskin Decl. **Ex. 2** at 7.

*Pickett, supra.* at 188-189, states the criteria for approving a class settlement, stating:

> The criteria generally utilized to make this determination include: the likelihood of success by plaintiffs; the amount of discovery or evidence; the settlement terms and conditions; recommendation and experience of counsel; future expense and likely duration of litigation; recommendation of neutral parties, if any; number of objectors and nature of objections; and the presence of good faith and the absence of collusion. 2 HERBERT B. NEWBERG & ALBA CONTE, NEWBERG ON CLASS ACTIONS § 11.43 "General Criteria for Settlement Approval" (3d ed. 1992).

These criteria show that preliminary approval should be granted. First, even though at the point of settlement Plaintiff had a substantial likelihood of success on the merits, Safeco's persistent appeals and motions practice would render future litigation very expensive and the likely duration of the case indefinite. Because the loss experienced by individual providers is likely to be small, extensive delay before judgment was entered would significantly diminish the value of their claim. Accordingly, the likely duration of the litigation before final judgment could be entered is a significant factor weighing in favor of settlement. Breskin Decl. at ¶ 5.

---

[2] *See, e.g., McCoy v. Health Net, Inc.*, 569 F.Supp.2d 448, 464 (D.N.J. 2008) discussing value to nationwide class action settlement of change from reliance on Ingenix database.

[3] *See,* Mot. for Approval of Settlement, Breskin Decl. **Ex. 2**.Similar class action settlements approved by this court against MetLife Ins. Co. and USAA also did not include non-monetary relief of the type here. Breskin Decl. ¶ 3.



BRESKIN | JOHNSON | TOWNSEND PLLC
1111 Third Avenue, Suite 2230
Seattle, Washington 98101 Tel: 206-652-8660

Second, the case was settled only after it was intensely litigated for almost two years. The parties had engaged in extensive discovery through interrogatories, document requests and deposition of fact and expert witnesses. There was significant, if not unprecedented, motions practice. These facts also weigh in favor of preliminary approval, because they indicate that the parties and their counsel were fully informed of the facts and could appropriately weigh the risks and benefits of continued litigation. Breskin decl. at ¶6. Finally, Class counsel, who has represented class members in similar cases, recommends the settlement in light of the above considerations and the fact that the prior settlements in similar cases, like the *Allstate, Metlife* and *USAA* cases, produced less favorable settlements for class members. Breskin decl. at ¶ 5.

Subject to Court approval, the settlement calls for payment of a class representative fee of $17,500 and attorney fees and costs of $900,000. Class representative fees between $15,000 and $20,000 have been routinely approved by federal courts, where as here, the class representative has engaged in extensive discovery and participated in motions practice by filing declarations.[4] A class representative fee of less than $2,000 is regarded as reasonable where the class member has not engaged in extensive discovery or motions practice. Here Dr. Kerbs was deposed twice, answered multiple sets of written discovery and filed declarations in support of and/or in opposition to motions filed in the case. Breskin Decl. at ¶7.

The lodestar method is used to calculate a reasonable attorney fee under the CPA.[5] The lodestar fee is calculated by multiplying the reasonable number of hours expended by the attorney's reasonable hourly rate. *Id.* The fee may be adjusted upward or downward based on the risk inherent in taking the case and/or the quality of the services provided. *Id.* In our case, Class Counsel incurred around $30,300 in costs and $665,000 in fees calculated by using an hourly rate of $495 per hour. *See,* Breskin Decl. at ¶8 and records attached as **Exhibit 3**. These fees and costs are reasonable in connection with the CPA claims and certification of those claims. Breskin Decl. at ¶9. The proposed hourly rate for Class Counsel is reasonable because

[4] *See, Garner v. State Farm Mut. Auto Ins. Co.*, 2010 U.S. Dist. LEXIS 49477 (N.D. Cal.2010) at fn.8.
[5] *See, Bowers v. TransAmerican Ins. Co.*, 100 Wn.2d 581, 595, 598-601 (1983).



BRESKIN | JOHNSON | TOWNSEND PLLC
1111 Third Avenue, Suite 2230
Seattle, Washington 98101 Tel: 206-652-8660

of prior fee awards and reasonable increases since those fee awards were made.[6] Counsel anticipates expending an additional $15,000 in fees in order to complete the notice and final approval process and to ensure class members receive the benefits of the settlement after a final judgment is entered. Breskin Decl. at ¶11. Accordingly, at time of final approval, Class Counsel's reasonable lodestar fee will be around $685,000.

A significant reason for the large expenditure of fees was Safeco's unprecedented motions practice in this Court, the Court of Appeals, the Federal District Court and the Ninth Circuit. The Court is very aware of this motions practice. The amount of fees incurred is also the product of the extensive discovery undertaken and responded to. Breskin Decl. at ¶9.

Plaintiff's other counsel, Mr. Houck and Mr. Kornfeld, report incurring a total of around $13,000 in costs and around $270,000 in fees, calculated using the same hourly rate of $495 per hour. The total costs for all counsel are then $43,300 and the lodestar fee is $950,000. As costs incurred must be reimbursed or paid, the lodestar fee amount requested is no more than $856,700 and is therefore $94,300 below the actual lodestar fee incurred of $950,000.[7]

In the *Allstate* case, Judge Downing approved a fee award in 2007 of $630,000 in a case that did not involve the same extensive motions practice or discovery. Breskin Decl. at ¶12. The fee requested in this case of $856,700 is reasonable in comparison and should be granted preliminary approval subject to notice to the class members and any objection by them.

**B. Permissive Intervention of Ms. Osborne to Effectuate Full Relief**

Diane Osborne should be allowed to intervene as a Plaintiff and representative of the policyholder and claimant subclasses, so that full relief is afforded. She is an appropriate

[6] For example, in 2010, almost two years ago, this Court granted counsel an award of reasonable fees incurred on a discovery motion in which the fees were calculated using an hourly rate of $450 per hour. The $495 rate used today represents only about a 4.5% increase per year over the past two years. Breskin Decl. at ¶10.

[7] A 50% multiplier for Class Counsel's fees would also be proper because of the risks inherent in the case when it was brought and the fact that Counsel's fee was a contingency fee. *See, Bowers*, 100 Wn.2d at 598-601 (1983). But a multiplier is unnecessary because the lodestar amount already exceeds the fee award requested by $90,500.



BRESKIN | JOHNSON | TOWNSEND PLLC
1111 Third Avenue, Suite 2230
Seattle, Washington 98101 Tel: 206-652-8660

representative because Dr. Kerbs treated her and her bills were reduced using UCR 85 reductions. She is knowledgeable of the practices and the issues involved. Breskin Decl. at ¶13.

CR 24(b)(2) allows for permissive intervention "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." [8]

As a Safeco insured, Ms. Osborne clearly has an interest in the parties' proposed settlement that provides both non-monetary relief to policy holders and claimants and monetary relief that ensures that health care providers who have claims against Safeco for reductions taken to their bills are compensated. Ms. Osborne's bill for treatment by Dr. Kerbs was reduced using UCR85 reductions. She has an interest in this case in making sure that Dr. Kerbs' claim for reimbursement of those reductions is satisfied so that she does not have to pay them. Her request for intervention is timely as trial of the action has not yet begun, no judgment has been entered and the parties have only recently reached settlement of the claims. Accordingly, the Court should exercise its discretion by permitting Ms. Osborne to intervene.

**C. Certification of Settlement Subclasses**

As discussed above, in order to ensure complete relief is provided, the Court should certify a settlement class that consists of three subclasses. The decision to grant certification of the proposed subclasses is within the Court's discretion and the requirements of CR 23 are applied less stringently when a request is made for certification of a settlement class than a litigation class because the claims need not be proven. *See, e.g., Pickett, supra.* Here, the Court certified a litigation class and found that the requirements of CR 23(a) and (b)(3) were met. The requirements of CR 23(a) and (b)(3) are met with regard to the proposed settlement subclasses.

[8] Washington courts liberally construe CR 24 in favor of intervention. *See, Columbia Gorge Audubon Soc'y v. Klickitat County,* 98 Wn. App. 618, 623 (1999). Whether to permit permissive intervention under CR 24(b)(2) is within the discretion of the trial court and will only be reversed upon a clear showing of abuse of discretion. *See, Ford v. Logan,* 79 Wn.2d 147, 150 (1971)."An abuse of discretion exists only when no reasonable person would take the position adopted by the trial court." *Board of Regents v. Seattle,* 108 Wn.2d 545, 557 (1987).



BRESKIN | JOHNSON | TOWNSEND PLLC
1111 Third Avenue, Suite 2230
Seattle, Washington 98101 Tel: 206-652-8660

The same common issues of fact and law exist and each of the proposed subclasses is estimated to have over 1000 potential members making joinder impracticable. Breskin Decl. ¶ 14. Under CR 23(b) (3), common issues predominate with regard to the claims of the subclasses because liability need not be proven and the claims process created by the settlement makes resolution of the claims manageable. A similar process was approved by Judge Downing in *Allstate. See,* Breskin Decl. **Ex. 2**. As discussed, the reason for the subclasses is to ensure that policy holders and patients who paid the provider for the UCR85 reductions are able to recoup their payments.

**D. Appointment of Class Counsel and Class Representatives**

The Court already determined that Mr. Breskin and Breskin Johnson & Townsend are adequate litigation class counsel. Accordingly, they will be able to adequately represent the settlement classes. Dr. Kerbs was found to be an adequate representative of the subclass of providers. Ms. Osborne is an adequate representative of the policy holder and claimant subclasses because she is a Safeco insured whose bill was reduced using a UCR85 reduction, she is knowledgeable about the claims and she has no interests that are in conflict with the interests of the subclasses she seeks to represent. CR 23(a)(4).

**E. The Proposed Form of Class Notice is Appropriate**

The form of proposed notice is similar to the notice provided in the *Allstate* case approved by Judge Downing. *See,* Mot. for Approval, Breskin Decl. **Ex. 2**.

**F. Dates for Class Member Objections and Exclusions**

Plaintiff proposes that class members receive 30 days notice in which to exercise their rights to object to the settlement and/or seek exclusion. Thirty days is the usual amount of time provided and sufficient because the vast majority of class members are health care providers who are familiar with the issues and will be able to respond promptly. The proposed notice period is also similar to the period approved by Judge Downing in *Allstate. See,* **Ex. 2** at 8.

**G. The Proposed Claim Form is Appropriate**

The claim form is similar to the claim form approved by Judge Downing as well. *Id.*



BRESKIN | JOHNSON | TOWNSEND PLLC
1111 Third Avenue, Suite 2230
Seattle, Washington 98101 Tel: 206-652-8660

## V. CONCLUSION

For the above stated reasons, Plaintiff requests that the Court grant Plaintiff's motion to approve settlement.

DATED the 17th day of May , 2012.

BRESKIN JOHNSON & TOWNSEND PLLC

By: */s/David E. Breskin*
David E. Breskin, WSBA No.10607
1111 Third Avenue, Suite 2230
Seattle, WA 98101
Telephone: 206.652.8660

*Attorneys for Plaintiffs*

## CERTIFICATE OF SERVICE

I, Sylvia Louise Rollins, hereby certify that a true copy of the foregoing was served this 17th day of May, 2012, to the following attorneys of record in the manner indicated below:

*/s/ Sylvia Louise Rollins*
Sylvia Louise Rollins, Legal Assistant

**Attorneys for Plaintiff**

William Houck #13324
Houck Law Firm PS
4045 262nd Avenue SE
Issaquah, WA 98029
Phone 425 392 7118
Email: houcklaw@gmail.com
[X] via Court ECF *if opted in, and if not, then:*
[X] via email
[ ] via messenger
[ ] via US Mail
[ ] via Fax

Robert Kornfeld #10669
Robert B. Kornfeld Inc., P.S.
3724 Lake Washington Blvd NE
Kirkland WA 98033
Phone 425-893-8989
Email rob@kornfeldlaw.com
dawn@kornfeldlaw.com
[X] via Court ECF *if opted in, and if not, then:*
[X] via email
[ ] via messenger
[ ] via US Mail
[ ] via Fax

**Attorneys for Defendant**

John M. Silk
901 Fifth Avenue, Suite 1700
Seattle, WA 98164
WILSON SMITH COCHRAN DICKERSON
Tel: 206.623.4100 Fax: 206.623.9273
E-mail: Silk@wscd.com jay@wscd.com
[X] via Court ECF *if opted in, and if not, then:*
[X] via email
[ ] via messenger
[ ] via US Mail
[ ] via Fax

Russell R. Yager *(pro hac vice)*
David P. Blanke *(pro hac vice)*
Marc Fuller *(pro hac vice)*
Manuel G. Berrelez *(pro hac vice)*
A. Johnson (pro hac vice)
Vinson & Elkins, L.L.P.
E-mail: ryager@velaw.com
E-mail: dblanke@velaw.com
E-mail: mfuller@velaw.com
E-mail: mberrelez@velaw.com
E-mail: ajohnson@velaw.com
[X] via Court ECF *if opted in, and if not, then:*
[X] via email
[ ] via messenger
[ ] via US Mail
[ ] via Fax