

IN THE CIRCUIT COURT FOR THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

FRANK C. BEMIS & ASSOCIATES d/b/a  
BEMIS CHIROPRACTIC, individually and on  
behalf of others similarly situated,

Plaintiff,

v.

THE CINCINNATI INSURANCE COMPANY  
and CINCINNATI CASUALTY COMPANY,

Defendants.

No. 05 L 178

**CLASS ACTION SETTLEMENT AGREEMENT**

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This Class Action Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into as of May 29, 2009, and is between and among Defendants, The Cincinnati Insurance Company and Cincinnati Casualty Company, (“Defendants”), on the one hand, and the Class Plaintiff (as defined in Paragraph 1.6), Frank C. Bemis & Associates d/b/a Bemis Chiropractic, on behalf of itself and the Settlement Class (as defined in Paragraphs 1.16 and 4), on the other hand. This Settlement Agreement memorializes the settlement between the parties (the “Settlement”).

## I. RECITALS

A. On February 15, 2005, Plaintiff Dr. Frank C. Bemis & Associates, Chiropractors, S.C. filed an original complaint against Defendants, captioned as *Frank C. Bemis & Associates d/b/a Bemis Chiropractic v. The Cincinnati Insurance Company and Cincinnati Casualty Company*, No. 05-L-178 (the “Action” or the “Lawsuit”). Class Plaintiff later filed an amended complaint. The amended complaint alleges claims of statutory fraud, common law fraud and unjust enrichment. The Lawsuit is brought individually and on behalf of a putative class of all licensed healthcare providers who received partial payment based on a PPO discount taken by Defendants.

B. The Class Plaintiff has contended and continues to contend that all allegations and claims asserted in the Action are meritorious. Lead Class Counsel has collectively conducted several years of factual investigation and discovery into the matters alleged in this Action. Among other things, Lead Class Counsel has obtained documents in discovery from Defendants and others. The named plaintiff and its office personnel in the Action were required to expend significant time attending to discovery matters in the Action. Additionally, Lead Class Counsel have researched and thoroughly analyzed the legal issues raised by the Action.

C. Defendants believe, contend and will continue to contend that the Class Plaintiff’s factual and legal allegations are incorrect, without merit, and specifically deny all liability to the Class Plaintiff and the Settlement Class. Defendants believe, contend and will continue to contend that their actions at all times complied with the law. Defendants have raised a number of defenses to the asserted claims and will vigorously defend this Litigation in the event the Settlement is not approved by the Court. By making this Settlement, Defendants do not admit any liability, error or wrongdoing.

D. After extensive litigation and discovery, Defendants and the Class Plaintiff, on its own behalf and on behalf of the Settlement Class as defined herein, have agreed to settle the Action to avoid the risk and uncertainty inherent in any litigation. To that end, the parties have agreed on a provisional Settlement Class. Accordingly, as soon as practicable after the execution of this Agreement, Class Plaintiff will move the Court to certify the Settlement Class. Class Plaintiff will also seek to have Frank C. Bemis & Associates d/b/a Bemis Chiropractic appointed as the representative of the Settlement Class, and LakinChapman, LLC, 300 Evans Avenue, Wood River, IL 62095-0229, appointed as class counsel (“Lead Class Counsel”), and Campbell & McGrady as co-class counsel (“Additional Counsel”).

E. Settlement negotiations have taken place between Lead Class Counsel and Defendants' counsel. In addition, Lead Class Counsel and Defendants' Counsel have had in-person settlement meetings and numerous settlement-related telephone calls and conferences. This Settlement Agreement, subject to the approval of the Court, contains all the terms of the Settlement agreed to between Defendants and the Class Plaintiff individually and on behalf of the Settlement Class.

F. Class Counsel and Additional Counsel believe that, based on their investigation and analysis, they are in a position to fashion appropriate class relief by settlement with Defendants.

G. The parties wish to memorialize the complete and full terms of the Settlement. The parties propose to settle the claims in accordance with the terms, provisions and conditions of this Settlement Agreement as set forth below, which Class Counsel and Additional Counsel believe are fair, reasonable and adequate, and beneficial to and in the best interests of Class Plaintiff and the Settlement Class.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Settling Parties hereby agree as follows:

## II. DEFINITIONS

1. **Key Definitions.** The following definitions apply to this Agreement:

1.1 The "**Action**" or "**Lawsuit**" means the civil action captioned *Frank C. Bemis & Associates d/b/a Bemis Chiropractic v. The Cincinnati Insurance Company and Cincinnati Casualty Company*, No. 05-L-178, as amended, which was filed on February 15, 2005, in the Circuit Court for the Third Circuit, Madison County, Illinois.

1.2 "**Additional Counsel**" means Timothy F. Campbell of the law firm Campbell & McGrady.

1.3 "**Aggregate Cap**" means the maximum potential liability Defendants shall pay under any circumstances to the Settlement Class as set forth in paragraph 6.4.

1.4 "**Class Counsel**" means Additional Counsel and Lead Class Counsel.

1.5 "**Class Period**" means the time period from February 15, 2000, until the time this Settlement Agreement receives preliminary approval from the Court.

1.6 "**Class Plaintiff**" means the named Plaintiff in the Action.

1.7 “**Court**” means the Circuit Court for the Third Judicial Circuit, Madison County, Illinois.

1.8 The “**Effective Date**” means the date on which a Final Order (as defined below) is entered by the Court approving this Settlement without modification unless expressly agreed to by Defendants and Class Plaintiff.

1.9 “**Final Order**” or “**Final Settlement**” means the termination of the Action after the occurrence of each of the following events:

(a) This Settlement Agreement is approved in all respects by the Court; and

(b) An Order and Final Judgment of dismissal with prejudice is entered against Class Plaintiff and all Settlement Class Members who do not opt out and (i) there were no objectors; or (ii) if there were objectors the time for the filing of any appeals has expired or, if there were appeals, approval of the Settlement and judgment has been affirmed in all respects by the appellate court of last resort to which such appeals have been taken and such affirmances are no longer subject to further appeal or review.

1.10 “**Lead Class Counsel**” means LakinChapman, LLC.

1.11 “**Long-Form Notice**” means the notice of Settlement (in a form substantially similar to that mutually agreed upon by the Settling Parties) and approved by the Court that provides the Class (as defined in Paragraph 4) with such notice as required by 735 ILCS 5/2-803. Subject to Court approval, the Long-Form Notice shall be in a form substantially similar to the proposed form attached as Exhibit A.

1.12 “**Released Claims**” means those claims released in Paragraph 12 of this Agreement by the Settlement Class.

1.13 “**Released Persons**” means Defendants, The Cincinnati Insurance Company and Cincinnati Casualty Company, their respective predecessors and successors in interest, and any of Defendants’ present or former shareholders, subsidiaries, divisions, parent companies, affiliates, officers, directors, employees, representatives, attorneys or assigns, as well as any person acting or purporting to act on their behalf. Released Persons also include the PPO administrator(s), network(s), third-party administrator(s), or other entities through which Defendants applied PPO discounts, including, but not limited to, CorVel Corporation.

1.14 “**Request Form**” means the form Settlement Class Members are required to complete and submit for payment under this Settlement Agreement. Subject to Court approval, the Request Form shall be substantially similar to the form attached as Exhibit B.

1.15 “**Request For Additional Claim Information**” is a form that Cincinnati may require a Settlement Class Member to submit if it appears that additional information is necessary to determine the viability, propriety or amount of a claim. Subject to Court approval, the Request for Additional Claim Information shall be substantially similar to the form attached as Exhibit C.

1.16 “**Settlement Class**” means the class defined in Paragraph 4 of this Agreement but does not include any members of the Class who opt out of the Class in accordance with the procedures specified herein. “**Settlement Class Member**” means a member of the Class who does not opt out of the Class in accordance with the procedures set forth herein.

1.17 “**Settling Parties**” means the Class Plaintiff, all Settlement Class Members who do not exclude themselves from the Settlement, and Defendants.

### **III. TERMS AND CONDITIONS OF SETTLEMENT**

2. **Benefit to Plaintiff.** Class Plaintiff, Lead Class Counsel, and Additional Counsel have concluded, under the circumstances and considering the pertinent facts and applicable law, that it is in Class Plaintiff’s best interests and in the best interests of the Settlement Class to enter into this Settlement Agreement to avoid the uncertainties of litigation and to ensure a benefit to Class Plaintiff and all members of the Settlement Class. Class Plaintiff, Lead Class Counsel, and Additional Counsel consider this Settlement Agreement to be fair, reasonable, and adequate and in the best interests of the members of the Settlement Class.

3. **No Admission of Liability.** By entering into this Agreement, the Settling Parties agree that Defendants and the Released Persons are not admitting any liability to the Class Plaintiff, the Settlement Class or any other person or entity. Defendants and the Released Persons expressly deny all such liability. Defendants’ sole motivation for entering into this Settlement Agreement is to dispose expeditiously of the disputed and doubtful claims that have been asserted against them in the Action by settlement and compromise rather than incur the expense and uncertainty of protracted litigation. No portion of this Agreement may be admitted into evidence in any action, except as required to enforce this Agreement and/or to cease or enjoin other litigation.

4. **Class Definition.** Class Plaintiff shall propose, and Defendants shall join or not oppose, for settlement purposes only, that the Court certify a settlement class under 735 ILCS 5/2-801 and 5/2-802 of the Illinois Code of Civil Procedure, defined as:



All licensed healthcare providers in Illinois whose reimbursement for medical services relating to the treatment of an Illinois workers compensation claimant was reduced by or on behalf of The Cincinnati Insurance Company and Cincinnati Casualty Company pursuant to a PPO discount from February 15, 2000 through [the date of preliminary approval]

5. **Defendants' Obligations.** Defendants shall provide the following benefits to the Settlement Class:

5.1 **Cash Payments to Settlement Class Members.** As described in Paragraph 6 below, each Settlement Class Member will have the opportunity to receive a cash payment of ninety percent (90%), subject to the aggregate cap, of the total PPO discounts taken with respect to the Settlement Class Member by or on behalf of Defendants during the Class Period.

5.2 **Costs of Administration.** In addition to the monetary relief and Affirmative Relief provided herein, Defendants shall pay all costs of any Long-Form Notice relating to this Settlement and the necessary and reasonable costs of administering the processing of claims, disbursement of consideration and other administrative expenses, including, but not limited to, postage charges for mailing the notice, printing costs, telephone charges, and such other charges as may be approved by the parties subject to further approval by the Court. In the event this Agreement receives preliminary but not final approval, and expenses are incurred by Defendants, payment of those expenses shall remain the sole obligation of Defendants.

5.3 **Attorneys' Fees and Incentive Awards.** In addition to the monetary and Affirmative Relief provided herein, Defendants will pay Class Counsel's attorneys' fees and expenses, as set forth in Paragraph 9, and an Incentive Award to Class Plaintiff, as set forth in Paragraph 10.

6. **Cash Payments to Settlement Class Members.** Settlement Class Members may make a claim under the Settlement for a cash payment as described below.

6.1 **Documentary Support Category.** To make a claim for PPO discounts taken by Defendants during the Class Period, a Settlement Class Member must: (1) provide their name and address; and (2) submit documentation of the PPO discount(s) taken by Defendants (*e.g.*, explanation of review, explanation of payment, explanation of benefits, or other similar document received from Defendants or anybody acting on Defendants' behalf) evidencing a PPO discount on a medical services bill or bills paid by Defendants for treatment rendered in Illinois to a workers' compensation patient between February 15, 2000 and the date of preliminary approval of this Settlement Agreement.

**6.2 Deductions for Payments from Other Sources.** Payments under this Settlement Agreement to any Settlement Class Member shall be reduced by any amounts the Settlement Class Member received from any source whatsoever with respect to the services rendered by the Settlement Class Member for which a PPO reduction was take by or on behalf of Defendants.

Cincinnati shall have no liability to pay any individual Settlement Class Member's claim where the Settlement Class Member has received the full amount billed by the Settlement Class Member for medical services, whether the payment is from Cincinnati or any other source whatsoever.

If it appears that any Settlement Class Member has, on a claim submitted to Cincinnati for payment pursuant to this Settlement, received a payment from any source whatsoever in addition to the amount Cincinnati paid or caused to be paid, Cincinnati shall have the right to request additional information about any such payments. Any such information request shall first be made on a form substantially similar to the Request For Additional Claim Information form attached as Exhibit C. In the event the Settlement Class Member's submission of a completed Request For Additional Claim Information form does not fully resolve questions regarding the claim's viability, Cincinnati shall have the right to seek additional information and/or to reject the claim as may be warranted. Any claim rejected under this paragraph shall be subject to the Claim Processing Procedures set forth in paragraph 6.3.

**6.3 Request Form Requirement and Claim Processing Procedure.** Settlement Class Members' claims shall be made and processed as follows:

(a) To make a claim under the Settlement, a Settlement Class Member must complete and submit a Request Form, substantially in the form attached as Exhibit B, and must comply with the instructions on the Form including providing all required information and/or documentation, as applicable.

(b) Each Settlement Class Member must submit the Request Form to Defendants or the Settlement Administrator by the deadline specified in the Long-Form Notice and Publication Notice unless such period is extended by order of the Court. The deadline shall not be sooner than 80 days after the anticipated Effective Date. A Request Form submitted by United States Mail shall be deemed to have been submitted when posted, if received with a timely postmark on the envelope and if mailed by first-class mail. In all other cases, the Request Form shall be deemed to have been submitted when actually received by the Settlement Administrator.

(c) The Settlement Administrator hired by Defendants in accordance with Paragraph 15 shall review the Request Forms and applicable documentation and determine, in accordance with this Agreement, whether and in what amount each claim should be allowed, subject to review by Class Counsel, Defendants and the Court as set forth below.

(d) Request Forms that do not meet the above submission requirements will be rejected and will not result in a payment. Prior to rejection of a Request Form, the Settlement Administrator shall notify Lead Class Counsel and Defendants' counsel of the deficiencies in the rejected Request Form. Lead Class Counsel shall have the right, but not the obligation, to confer with Defendants' counsel regarding deficiencies in a rejected Claim Form that Lead Class Counsel considers to be formal or technical defects in the completed Request Form. Lead Class Counsel and Defendants' counsel may agree to direct the Settlement Administrator to waive such deficiencies in the Request Form. If Lead Class Counsel and Defendants' counsel are unable to agree that deficiencies should be waived, Lead Class Counsel shall have the right, but not the obligation, to petition the Court for such a waiver. If Lead Class Counsel and Defendants' counsel are unable to agree that deficiencies should be waived, and Lead Class Counsel elects not to petition the Court for such a waiver, the Settlement Administrator shall communicate with the submitting Settlement Class Member in an effort to remedy any curable deficiencies in the Request Form. The Settlement Class Member shall have ten (10) days from the date the Settlement Administrator communicates with the Settlement Class Member to attempt to remedy any curable deficiencies in the Request Form in the manner specified by the Settlement Administrator. In the event that the Settlement Class member is unable to timely remedy the deficiencies in the Request Form, the Settlement Administrator's deficiency determination shall be final.

(e) Defendants shall be allowed to audit and challenge any claims made under this Agreement and to verify independently any and all information provided on or with any Request Form. Following such audit, Defendants may propose that the Settlement Administrator reject a Request Form on the grounds that the Request Form does not comply with this Settlement Agreement. In such event, Defendants will so advise Lead Class Counsel and the Settlement Administrator. The Settlement Administrator in turn shall promptly notify in writing each Settlement Class Member whose Request Form Defendants propose be rejected in whole or in part, setting forth the reasons why, and shall indicate in such notice that the Settlement Class Member whose claim is to be rejected has the right to a review by the Court if the Settlement Class Member so desires and complies with the requirements of subparagraph (g) below.

(f) After all Settlement Class Members have been given an opportunity to remedy any curable deficiencies in their Request Forms, the Settlement Administrator shall notify, in a timely fashion and in writing, each Settlement Class Member whose Request Form the Settlement Administrator proposes to reject in whole or in part, setting forth the reasons why.

(g) If any Settlement Class Member whose claim has been rejected in whole or in part desires to contest such rejection, the Settlement Class Member must, within twenty (20) days after the date of mailing of the notice required in subparagraph (f) above, serve on the Settlement Administrator a notice and statement of reasons indicating the Settlement Class Member's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If the dispute concerning the claim cannot be otherwise resolved, Lead Class Counsel shall thereafter present the Settlement Class Member's notice and statement of contest to the Court for review and decision. As a convenience to the Parties and the Court, Lead Class Counsel may combine Settlement Class Members' notices and statements of contest into a single submission, or series of submissions, for the Court's review and decision. The Settlement Class and/or the Settlement Class Members shall have the burden of proving by a preponderance of the evidence that the rejected claim(s) meet the terms and conditions of this Settlement Agreement and should be paid. Subject only to paragraph 9, the parties are to bear their own costs and attorney fees in resolving disputes as to whether claims comply with the terms and conditions of this Settlement Agreement. Subject only to paragraph 9, Defendants are not responsible for any costs or fees incurred by the Settlement Class, a Settlement Class Member or Class Counsel as a result of the denial of a claim for any reason.

**6.4 Limitation on Total Cash Payments.** Notwithstanding anything to the contrary herein, Defendants will, under no circumstances, be required to make aggregate cash payments to Settlement Class Members pursuant to Paragraph 6.1 (or otherwise under this Agreement) in excess of three million five hundred thousand dollars (\$3,500,000) (the "Aggregate Cap"). In the event that claims of Settlement Class Members made pursuant to Paragraph 6.1 would otherwise require Defendants to make aggregate cash payments in excess of the Aggregate Cap, the Settlement Administrator will reduce proportionately the cash payments to each of the Settlement Class Members so that the aggregate of such payments does not exceed the Aggregate Cap.

**6.5 Distribution of and Terms Applicable to Cash Payments.** Not later than one hundred twenty (120) days after the Effective Date or the claim deadline, whichever occurs last, Defendants shall begin providing the above-referenced benefits. Each Settlement Class Member is responsible for notifying

Defendants, or the Settlement Administrator, as applicable, of a change in address, telephone number, or name.

**6.6 Distribution of Funds: Checks Not Cashed Within Six (6) Months.** If a check is issued to a Settlement Class Member and the check is not cashed within six (6) months, then it shall be null and void and there shall be no further obligation to make payment to such Settlement Class Member. Such funds shall revert to a charity designated by Lead Class Counsel. Defendants will attempt to re-mail any checks that are returned by the U.S. Postal Service. All funds from checks sent to Settlement Class Members by Defendants that remain undeliverable shall also revert to a charity designated by Lead Class Counsel.

**7. Cessation of Litigation Activity.** Immediately upon execution of this Agreement, Class Plaintiff, Lead Class Counsel, Additional Counsel, and Defendants agree to cease all litigation activity in the Action (other than any activity to implement and/or enforce this Settlement Agreement), and to request the Court to stay all motions or other pre-trial matters and to continue any hearing or trial settings until each of the conditions precedent to the Settling Parties' obligations to proceed to consummate the Settlement provided for herein has been satisfied or waived.

**8. Class Certification.** The Court's certification of the Settlement Class shall not be deemed to be the adjudication of any fact or issue for any purpose other than the accomplishment of the settlement provisions set forth herein and shall not be considered as law of the case, *res judicata*, or collateral estoppel in this or any other proceeding unless the Settlement receives final approval and the Final Order approving the terms of this Settlement Agreement are entered. In the event the Settlement provided for herein is not accomplished according to all the terms of this Agreement, the Court's certification order shall be null and void and shall be vacated, and thereafter no class will remain certified; provided that, thereafter Class Plaintiff, Lead Class Counsel, and Additional Counsel may seek certification of a class in the Action, and Defendants may oppose such certification on any grounds.

**9. Application for Attorneys' Fees and Expenses.** After resolving all material terms of the class relief, the parties for the first time began negotiating attorneys' fees and expenses. After arms-length negotiations, Defendants agreed to pay and Class Counsel, including Additional Counsel, agreed to accept \$770,000.00 in attorneys' fees and expenses. Class Counsel, including Additional Counsel, will seek approval from the Court for an aggregate award of attorneys' fees and actual expenses (including their court costs) in a total amount not to exceed \$770,000.00. Defendants will not oppose Class Counsel and Additional Counsel's application for an award of up to \$770,000.00. Class Counsel and Additional Counsel agree not to seek or accept an amount of fees and expenses in excess of \$770,000.00. Subject to Court approval, Defendants will pay or cause to be paid to Class Counsel and Additional Counsel such fees and expenses as may be awarded by the Court, up to a maximum of \$770,000.00. Any fees and expenses awarded to Class Counsel, including Additional Counsel, shall be paid separately from (and in addition to) any monetary relief provided to Settlement Class Members pursuant

to Paragraph 6, costs of administration as provided in Paragraph 5.2, and any Incentive Awards awarded by the Court pursuant to Paragraph 10. Any fees and expenses awarded to Class Counsel, including Additional Counsel, shall be paid in accordance with written instructions from Lead Class Counsel, within ten (10) days after the Effective Date, or in the event the Court has not yet awarded attorneys' fees as of the Effective Date, within ten (10) days of such award.

10. **Incentive Award.** After resolving all material terms of the class relief, the parties for the first time began negotiating an award for Class Plaintiff. Defendants agreed to pay and Class Plaintiff agreed to accept an amount of no more than \$5,000.00 as a service payment and as incentive for serving as class representative. Class Counsel will apply to the Court for a class representative service and incentive award to Class Plaintiff in the Action ("Service and Incentive Award Application"). The Service and Incentive Award Application will seek an award of not more than \$5,000.00 to Class Plaintiff. Defendants agree not to oppose, directly or indirectly, any Service and Incentive Award Application seeking no more than \$5,000. Any Service and Incentive Award awarded to Class Plaintiff shall be paid by Defendants separately from (and in addition to) any monetary relief provided to Settlement Class members pursuant to Paragraph 6, costs of administration as provided in Paragraph 5.2, and any attorneys' fees and expenses awarded by the Court pursuant to Paragraph 9. Any Service and Incentive Award awarded to Class Plaintiff shall be paid by Defendants in accordance with written instructions from Lead Class Counsel, within ten (10) days after the Effective Date.

11. **Dismissal.** Upon the Effective Date, the Class Plaintiff, Lead Class Counsel and Additional Counsel shall move to dismiss the Action with prejudice.

12. **Release of Released Persons.** Upon the Effective Date, for and in consideration of the terms and undertakings herein, the adequacy, sufficiency and fairness of which are acknowledged, all members of the Settlement Class who have not excluded themselves from the Settlement Class will release the Released Persons (as defined in Paragraph 1.13) from all claims against Released Persons relating to or arising out of PPO discounts taken by Defendants on medical bills involving Illinois workers compensation claims during the Class Period, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated that, as of the date that the final judgment is entered, arise out of or are related in any way to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged, asserted, described, set forth, or referred to in the Action.

The failure of any Settlement Class Member to claim or obtain any relief made available shall not affect the releases herein. As to any Settlement Class Member who otherwise would be entitled to receive benefits under this Settlement Agreement and who for any reason fails to submit a Request Form by the deadline established by the Court, all rights of such Settlement Class Member to receive benefits in this Action shall lapse and be forfeited. Defendants shall not be required to remit any additional consideration

to claiming Settlement Class Members on account of forfeiture by any Settlement Class Member.

**13. Form of Notice to Settlement Class Members.**

**13.1 Long-Form Notice.** The Class Plaintiff and Defendants agree that, if the Court authorizes the Long-Form Notice to be disseminated to the Settlement Class Members as provided for in this Agreement, Defendants or the Settlement Administrator, as applicable, will mail the Long-Form Notice substantially in the form of Exhibit A hereto, via first class mail to all Illinois medical providers identified on the most recent Century list. Prior to the mailing, Defendants or the Settlement Administrator, as applicable, will provide a copy of the Century list to Lead Class Counsel. It is agreed, subject to approval of the Court, that there shall be a single mailing of the Long-Form Notice to all Illinois medical providers identified on the Century list. Defendants shall pay all costs of providing and mailing of the Long-Form Notice, as provided herein. Except for internet notice set forth in Paragraph 13.2, Defendants shall have no other obligation to provide notice of this Settlement Agreement to Settlement Class Members.

**13.2 Internet Notice.** The Settlement Administrator or Defendants shall maintain an Internet website ([www.pposettlements.com](http://www.pposettlements.com)) that shall include, at minimum, downloadable copies of the Long-Form Notice, the Settlement Agreement, and the Request Form. This provision is for notice only. Under no circumstances are Request Forms to be capable of being submitted electronically. It is not the Parties' intention that Request Forms be submitted electronically. No such submission will be paid.

**14. Receipt of Mail.** Defendants or the Settlement Administrator shall be responsible for obtaining a United States Post Office Box, for the purpose of receiving Request Forms, requests for exclusion, and objections. Defendants or the Settlement Administrator shall also be responsible for giving notice of the receipt of any requests for exclusion by promptly providing complete copies to Lead Class Counsel.

**15. Settlement Administration.** Defendants, upon consultation with Lead Class Counsel, may select and hire a third-party administrator to perform services to effectuate the terms of this Settlement Agreement (the "Settlement Administrator"). Within thirty (30) days after the Effective Date, and on a monthly basis thereafter until the conclusion of the settlement claims period, Defendants and the Settlement Administrator, as applicable, shall provide Lead Class Counsel with a report setting forth the steps undertaken by Defendants to discharge their obligations under this Agreement, and the activities performed by the Settlement Administrator relating to the administration of the terms of this Settlement Agreement. Lead Class Counsel, upon request, may inspect the books and records relating to the administration of the terms of this Settlement Agreement.

16. **Court Submission.** Lead Class Counsel, Additional Counsel, and Defendants' counsel will submit this Settlement Agreement and the exhibits hereto, along with such other supporting papers as may be appropriate, to the Court for preliminary approval of this Settlement Agreement. If the Court declines to grant preliminary approval of this Settlement Agreement and to order notice of hearing with respect to the proposed Settlement Class, or if the Court declines to grant final approval to the foregoing after such notice and hearing, this Settlement Agreement will terminate as soon as the Court enters an order unconditionally and finally adjudicating that this Settlement Agreement will not be approved. In the event the Court grants preliminary approval of this Settlement Agreement, the parties will request that the Court enter a scheduling order setting the dates by which Class Members must opt out of the Settlement, submit Request Forms, and file any objections, as well as schedule the final fairness hearing in this matter.

17. **Final Judgment.** The Settling Parties agree that the Settlement is expressly conditioned upon dismissal with prejudice of the Action and entry of a Final Order as defined in Paragraph 1.9 of this Agreement. The Settling Parties will jointly submit a proposed Final Order prior to the fairness hearing.

18. **Integration Clause.** This Settlement Agreement contains a full, complete, and integrated statement of each and every term and provision agreed to by and among the Settling Parties and supersedes any prior writings or agreements (written or oral) between or among the Settling Parties, which prior agreements may no longer be relied upon for any purpose. This Settlement Agreement shall not be orally modified in any respect and can be modified only by the written agreement of the Settling Parties. In the event a dispute arises between the Settling Parties over the meaning or intent of this Agreement, the Settling Parties agree that prior drafts, notes, memoranda, discussions or any other oral communications or documents regarding the negotiations, meaning or intent of this Agreement shall not be offered or admitted into evidence. Class Plaintiff, Lead Class Counsel, and Additional Counsel acknowledge that, in entering into this Settlement Agreement, they have not relied upon any representations, statements, actions, or inaction by Defendants or their counsel that are not expressly set forth herein.

19. **Headings.** Headings contained in this Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.

20. **Governing Law.** The contractual terms of this Agreement shall be interpreted and enforced in accordance with the substantive law of the State of Illinois.

21. **Arbitration.** By participating in this Settlement, Defendants and some members of the Settlement Class may be waiving their existing rights to arbitration involving the Released Claims as defined in Paragraph 1.12. By participating in the Settlement, neither Defendants nor members of the Settlement Class are waiving any rights to pursue arbitrations involving claims other than the Released Claims or from seeking to compel arbitration of similar claims that may arise in the future.



22. **Mutual Interpretation.** The Settling Parties agree and stipulate that this Agreement was negotiated on an “arms’-length” basis between parties of equal bargaining power. This Agreement has been drafted jointly by Lead Class Counsel and counsel for Defendants. Accordingly, this Agreement shall be neutral, and no ambiguity shall be construed in favor of or against any of the Settling Parties.

23. **Notice.** Except as otherwise specifically provided herein, whenever any written notice is required by the terms of this Agreement, it shall be deemed effective on the date received, addressed as follows:

If to the Class Plaintiff or Settlement Class, to:

Robert W. Schmieder II  
LAKINCHAPMAN, LLC  
300 Evans Avenue, P.O. Box 229  
Wood River, Illinois 62095  
(618) 254-1127

If to Defendants to:

Daniel G. Litchfield  
LITCHFIELD CAVO LLP  
303 West Madison Street  
Suite 300  
Chicago, Illinois 60606  
(312) 781-6669

24. **Counterpart Execution.** This Agreement may be executed in any number of counterparts and will be binding when it has been executed and delivered by the last signatory hereto to execute a counterpart. A facsimile signature shall be deemed to constitute an original signature for purposes of this Agreement. After execution of counterparts by each designated signatory, the Parties agree to furnish each other with a composite conformed copy of this Agreement reflecting all counterpart signatures.

25. **Binding Upon Successors.** This Agreement shall be binding upon and inure to the benefit of the Settling Parties hereof and their representatives, heirs, successors, and assigns.

26. **Severability.** In the event 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 not affect any other provisions if the Settling Parties and their counsel mutually elect by written stipulation to be filed with the Court within twenty (20) days to proceed as if such invalid, illegal, or unenforceable provisions had never been included in this Agreement.

27. **Continuing Jurisdiction.** Without affecting the finality of the Final Order, the Court shall retain continuing jurisdiction over the Action and the Settling Parties, including all members of the Settlement Class, the administration and enforcement of the Settlement, and the benefits to the Settlement Class hereunder, including for such purposes as supervising the implementation, enforcement, construction, and interpretation of this Settlement Agreement, the order preliminarily approving the Settlement, and the Final Judgment, and hearing and determining an application by Class Counsel and for an award of attorneys' fees and reimbursement of costs and expenses. Any dispute or controversies arising with respect to the interpretation, enforcement, or implementation of this Settlement Agreement shall be presented by motion to the Court.

The undersigned parties have executed this Agreement as of the date first above written.

CLASS PLAINTIFF

DEFENDANTS



Dr. Frank C. Bemis & Associates,  
Chiropractors, S.C.

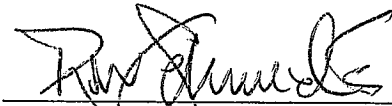
The Cincinnati Insurance Company and  
Cincinnati Casualty Company

Dated: 5/29/09

Dated: \_\_\_\_\_

CLASS COUNSEL

COUNSEL FOR DEFENDANTS



LAKINCHAPMAN, LLC  
300 Evans Avenue  
P.O. Box 229  
Wood River, IL 62095-0229  
(618) 254-1127

LITCHFIELD CAVO LLP  
303 West Madison Street  
Suite 300  
Chicago, Illinois 60606  
(312) 781-6669

Dated: \_\_\_\_\_

Timothy Campbell  
CAMPBELL & McGRADY  
3017 Godfrey Road, P.O. Box 505  
Godfrey, Illinois 62035  
(618) 466-8600

Dated: 5/29/2009

27. **Continuing Jurisdiction.** Without affecting the finality of the Final Order, the Court shall retain continuing jurisdiction over the Action and the Settling Parties, including all members of the Settlement Class, the administration and enforcement of the Settlement, and the benefits to the Settlement Class hereunder, including for such purposes as supervising the implementation, enforcement, construction, and interpretation of this Settlement Agreement, the order preliminarily approving the Settlement, and the Final Judgment, and hearing and determining an application by Class Counsel and for an award of attorneys' fees and reimbursement of costs and expenses. Any dispute or controversies arising with respect to the interpretation, enforcement, or implementation of this Settlement Agreement shall be presented by motion to the Court.

The undersigned parties have executed this Agreement as of the date first above written.

CLASS PLAINTIFF

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Dr. Frank C. Bemis & Associates,  
Chiropractors, S.C.

Dated: \_\_\_\_\_

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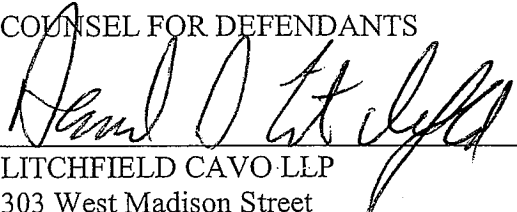
Dated: \_\_\_\_\_

DEFENDANTS

  
\_\_\_\_\_  
The Cincinnati Insurance Company and  
Cincinnati Casualty Company

Dated: 5/30/09

COUNSEL FOR DEFENDANTS

  
\_\_\_\_\_  
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Suite 300  
Chicago, Illinois 60606  
(312) 781-6669

Dated: 5/30/09