

IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT

ST. CLAIR COUNTY, ILLINOIS

DALE FISCHER, D.C. d/b/a LEBANON )  
CHIROPRACTIC, LEBANON )  
CHIROPRACTIC CLINIC, P.C., individually )  
and on behalf of all others similarly situated, )

Plaintiff, )

v. )

CONTINENTAL LOSS ADJUSTING )  
SERVICES, INC., CONTINENTAL )  
CASUALTY COMPANY, CONTINENTAL )  
INSURANCE COMPANY and CNA )  
FINANCIAL CORPORATION, )

Defendants. )

CASE NO.: 05-L-0103

**CLASS ACTION SETTLEMENT AGREEMENT**

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This Class Action Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into as of February 22, 2010, and is between and among Defendants Continental Loss Adjusting Services, Inc.,<sup>1</sup> Continental Casualty Company, Continental Insurance Company, CNA Financial Corporation, and the other CNA insurance companies, parents, subsidiaries, affiliates and sister or related companies, including those entities identified on Exhibit 1 (collectively “CNA”), on the one hand, and the Settlement Class Plaintiffs (as defined in Paragraph 1.5) Dale Fischer, D.C. d/b/a Lebanon Chiropractic (“Fischer”), and Lebanon Chiropractic Clinic, P.C. (“Lebanon”), on behalf of themselves and the Settlement Class (as defined in Paragraphs 1.13 and 4), on the other hand. This Settlement Agreement memorializes the settlement between the parties (the “Settlement”) in connection with the claims asserted in *Fischer v. Continental, et al.*, No. 05-L-103, pending in the Circuit Court for the Twentieth Judicial Circuit, St. Clair County, Illinois (the “Action” or the “Lawsuit”).

## I. RECITALS

On February 15, 2005, Fischer filed an original complaint in the Lawsuit, and Lebanon later joined the Lawsuit as an additional plaintiff along with Fischer. The complaint alleged claims of statutory fraud, breach of contract, and unjust enrichment. The Lawsuit was 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 CNA.

A. The Settlement Class Plaintiffs have contended and continue 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 CNA. Fischer and Lebanon, and their office personnel, 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.

B. CNA believes that Settlement Class Plaintiffs’ factual and legal allegations are incorrect and without merit, and CNA specifically denies all liability to the Settlement Class Plaintiffs and the Settlement Class. CNA has raised a number of defenses to the merits of the claims asserted and will vigorously defend this Litigation in the event the Settlement is not approved by the Court. Further, CNA believes that the proposed classes in the Action should not be certified. CNA objects to class certification, and reserves those objections in connection with this Settlement. CNA will take no part in the Settlement Class Plaintiffs’ motion for settlement class certification as described herein.

C. After extensive litigation and discovery, CNA and Settlement Class Plaintiffs, on their 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

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<sup>1</sup> Continental Loss Adjusting Services, Inc. was dissolved in January of 2001.

litigation. Accordingly, as soon as practicable after the execution of this Agreement, Settlement Class Plaintiffs will move the Court to certify the Settlement Class. Settlement Class Plaintiffs will also seek to have Fischer and Lebanon appointed as representatives of the Settlement Class, and LakinChapman, LLC, 300 Evans Avenue, Wood River, IL 62095-0229, appointed as class counsel (“Lead Settlement Class Counsel”).

D. Arm’s-length settlement negotiations have taken place between Lead Settlement Class Counsel and CNA’s counsel, both through in-person meetings and extensive telephone conferences. This Settlement Agreement, subject to the approval of the Court, contains all the terms of the Settlement agreed to between CNA and the Settlement Class Plaintiffs individually and on behalf of the Settlement Class.

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

F. The parties agree that this litigation was adversarial, hard fought, highly disputed, and conducted at arm’s length by experienced and able counsel on both sides.

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 Settlement Class Plaintiffs and the Settlement Class.

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

## II. DEFINITIONS

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

1.1 The “**Action**” or “**Litigation**” means the civil action captioned *Fischer v. Continental, et al.*, No. 05-L-103, pending in the Circuit Court for the Twentieth Judicial Circuit of Illinois, as amended, which was originally filed on February 15, 2005.

1.2 “**Additional Counsel**” means Timothy F. Campbell and the law firm Campbell & McGrady, and Robert Sprague and the law firm Sprague & Urban.

1.3 “**Approval Order**” means an order by the Court approving this Settlement following the Fairness Hearing and dismissing the Action with prejudice against Class Plaintiffs and all Settlement Class Members who do not opt out.

1.4 “**Agreement**” or “**Settlement Agreement**” or “**Settlement**” means this Class Action Settlement Agreement and the Exhibits attached hereto, which are incorporated herein by reference.

1.5 “**Claim**” means the timely submission of a complete and acceptable Claim Form submitted by a member of the Settlement Class.

1.6 “**Claim Form**” means the document substantially in the form as attached hereto as Exhibit 2, and which shall be completed and timely submitted by members of the Settlement Class pursuant to paragraph 6.3 as a precondition to receiving any money from the Settlement Class Fund.

1.7 “**Class Counsel**” means Lead Class Counsel and Additional Counsel.

1.8 “**Class Members**” or “**Class**” or “**Settlement Class**” means all persons who are members of the Settlement Class.

1.9 “**Class Notice**” or “**Notice**” means the document substantially in the form as attached as Exhibit 3, and which will be mailed to Class Members pursuant to a preliminary approval of this Settlement by the Court pursuant to paragraph 17 below.

1.10 “**Class Period**” means the period from February 15, 1995 through the date that this Settlement Agreement receives preliminary approval from the Court.

1.11 “**CNA**” means Continental Loss Adjusting Services, Inc.; Continental Casualty Company; Continental Insurance Company; CNA Financial Corporation; every other CNA entity identified on Exhibit 1; and each of the foregoing's predecessors and successors in interest, each of their present or former subsidiaries, divisions, parent companies, sister or related companies, affiliates, officers, directors, lawyers, agents, employees, and each and every person acting or purporting to act on their behalf.

1.12 “**CNA Counsel**” means Michael McCluggage and Brent Austin, Wildman, Harrold, Allen & Dixon LLP.

1.13 “**Court**” means the Circuit Court for the Twentieth Judicial Circuit, St. Clair County, Illinois.

1.14 “**Effective**” means that all of the following events have occurred: (1) this Settlement Agreement is fully executed by all the parties; (2) the Court preliminarily certifies a class for settlement purposes only as provided for in paragraph 4; (3) the Court enters an order of preliminary approval as provided for

in paragraph 17; (4) the Court conducts a Fairness Hearing and enters an Approval Order as provided for in paragraphs 17-18 below; and (5) the Approval Order and Settlement become Final.

1.15 “**Effective Date**” or “**Effective Date of the Settlement**” means the first date on which all of the events required in paragraph 1.14 have taken place.

1.16 “**Final**” means:

(a) If no timely appeal has been taken from the Court or from any other order by the Court in this matter and no timely motion to reconsider or similar motion has been filed before the Court, when all periods of time for any person to seek any form of appeal, reconsideration or other form of review have expired; or

(b) If any such appeal, reconsideration or other form of review is undertaken, when any such appeal, reconsideration or other form of review shall have been fully resolved, the Approval Order shall have been affirmed in all respects, and the time for any further appeal, reconsideration or other form of review shall have expired.

(c) A motion for relief from judgment or other collateral attack on the judgment in another lawsuit shall not be considered to be “reconsideration or other form of review” for the purposes of determining whether the Approval Order in this case has become “Final.” However, a motion for relief from judgment filed within 30 days of the date the Court enters the Approval Order shall be considered “reconsideration or other form or review” for the purposes of determining whether the Approval Order in this case has become “Final.”

1.17 “**Fairness Hearing**” means the hearing before the Court at which the Court considers:

(a) Whether this Settlement Agreement, including the Exhibits to this Agreement, should be approved as fair, adequate, and reasonable;

(b) Whether an Approval Order as set forth in paragraph 1.3 should be entered and the Action be dismissed with prejudice against the Class Plaintiffs and all members of the Settlement Class;

(c) Whether the application of Class Counsel for payment of attorneys’ fees, costs and expenses should be approved;

(d) Whether any application for payment of an incentive award to the Class Representatives should be approved; and,

(e) Any other matters addressed by the Court.



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

1.19 “**Released Claims**” means those claims released in paragraph 13 of this Agreement by Fischer, by Lebanon, and by each member of the Settlement Class.

1.20 “**Releasee**” or “**Releasees**” means CNA and each PPO administrator(s), network(s), third-party administrator(s), bill review vendor(s), or other entities through which CNA applied PPO discounts or reductions on Fischer's, Lebanon's, and the Settlement Class's medical bills.

1.21 “**Settlement Administrator**” means the person or organization selected by CNA that is responsible for sending the Class Notice and administering payments from the Settlement Class Fund, as described in paragraph 16.

1.22 “**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.

1.23 “**Settlement Class Counsel**” means Additional Counsel and Lead Class Counsel.

1.24 “**Settlement Class Plaintiffs**” means Fischer and Lebanon, the named plaintiffs in the Action.

1.25 “**Settling Parties**” means Fischer, Lebanon, all other Settlement Class Members who do not exclude themselves from the Settlement, and CNA.

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

2. **Benefit to Plaintiffs.** Settlement Class Plaintiffs, Lead Class Counsel, and Additional Counsel have concluded, under the circumstances and considering the pertinent facts and applicable law, that it is in Settlement Class Plaintiffs' 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 Settlement Class Plaintiffs and all members of the Settlement Class. Settlement Class Plaintiffs, 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 CNA and the Releasees are not admitting any liability to the Settlement Class Plaintiffs, the Settlement Class, or any other person or entity, and CNA and the Releasees expressly deny any and all such liability. CNA's sole motivation for entering

into this Settlement Agreement is to dispose expeditiously of the claims that have been asserted against it in the Action by settlement and compromise rather than incur the expense and uncertainty of protracted litigation. No portion of this Agreement (or its contents or terms, or summaries thereof) 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.** Settlement Class Plaintiffs shall propose, and CNA shall 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 who, from February 15, 1995 through the date that this Settlement Agreement receives preliminary approval from the Court (the Class Period), 1) submitted a bill to CNA for medical services relating to the treatment of an occupationally ill or injured worker whose workers' compensation claim is governed by Illinois law; and 2) received less than the amount submitted due to PPO reductions or discounts taken by or on behalf of CNA on the bill.

5. **CNA's Obligations.** Upon the Settlement becoming Effective and subject to all the other terms of this Agreement, including in particular paragraphs 6, 7, 9 and 10, CNA shall provide the following benefits to the Settlement Class, and only the following benefits:

5.1 **Monetary Relief to Settlement Class Members.** As described in paragraph 6 below, each Settlement Class Member will have the opportunity to receive a cash payment equal to one hundred percent (100%) of the total PPO discounts taken from the Settlement Class Member by or on behalf of CNA during the Class Period.

5.2 **Future Conduct Relief to Settlement Class Members.** As described in paragraph 7 below, CNA will make certain changes to its handling of workers' compensation PPO claims from the Effective Date until January 1, 2012.

5.3 **Costs of Administration.** In addition to the monetary relief and future conduct relief provided herein, CNA shall pay all costs of any 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. Such expenses will not reduce the limitation in paragraph 6.4 of this Agreement. In the event this Agreement receives preliminary but not final approval, and expenses are incurred by CNA, payment of those expenses shall remain the sole obligation of CNA.

5.4 **Attorneys' Fees and Incentive Awards.** CNA will pay Class Counsel's attorneys' fees and expenses, as set forth in Paragraph 9, and an Incentive Award to Class Plaintiffs, as set forth in Paragraph 10.

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

6.1 **Claim Form Submission.** Subject to the following subparagraphs, upon the timely submission of an appropriate and complete Claim Form, CNA will refund the PPO reductions or discounts taken by (or on behalf of) CNA on applicable charges identified in the Claim Form.

6.2 **Deductions for Prior Refunds Applicable to All Payments.** Payments to Settlement Class Members may be reduced by any PPO discount refunds previously paid or provided by CNA or at CNA's direction, upon written proof that establishes to Lead Class Counsel's reasonable satisfaction that a previous refund has been paid or provided to the Settlement Class Member. It is understood and agreed that claims will only be paid for PPO reductions or discounts, and not for other reductions that may have been taken on a bill (e.g., reasonable and customary charge reductions).

6.3 **Claim 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 Claim Form substantially in the form attached as Exhibit 2 hereto, and must comply with the instructions on the Claim Form including providing all required information. The Claim Form shall be sent to the Settlement Class in accordance with paragraph 14.

(b) The Settlement Class Member shall provide at least the following information in a Claim Form: Its name, address, phone number, and tax identification number (TIN); and itemization of all applicable charges for which PPO reductions or discounts purportedly were taken. Such itemization must be accomplished by submitting a copy of the explanation of review(s) ("EOR") that itemizes charges, discounts or reductions, and the reasons therefore, or by submitting any other materials received from CNA or the bill review company that itemizes charges, discounts or reductions, and the reasons therefore, sufficient to ascertain the specific charges billed, their dates, the patient for whom the services were provided, and the specific PPO reductions or discounts taken by or on behalf of CNA.

(c) CNA shall have the right to investigate and challenge such claims if CNA believes there is a good faith basis to do so, as set forth

below.

(d) The Settlement Class Member must submit the Claim Form to the Settlement Administrator by the deadline specified in the Notice unless such period is extended by order of the Court. The deadline shall not be sooner than 80 days after the date on which the Notice and Claim Form is mailed by the Settlement Administrator. A Claim Form submitted by United States Mail shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail. In all other cases, the Claim Form shall be deemed to have been submitted when actually received.

(e) For each Settlement Class Member who submits a valid Claim Form, CNA shall pay the above refund as to any PPO reductions or discounts identified in the claim form (the "Payment Amount"). To the extent reductions or discounts were taken for other reasons, no payments shall be made as to those amounts. CNA shall issue checks to each Settlement Class Member who submitted a valid Claim Form for the Payment Amount subject to the limitation in paragraph 6.4.

(f) Claim Forms that do not meet the above submission requirements may be rejected. Rejections shall be communicated to the Settlement Class Member in writing by CNA or the Settlement Administrator in accordance with subparagraph (g) below. The Settlement Class Member shall have until the deadline in paragraph 6.3(d) or ten (10) days from the postmark on the rejection communication to the Settlement Class Member, whichever is greater, to remedy the curable deficiencies in the Claim Form in the manner specified by the communication.

(g) CNA shall also be allowed to audit and challenge any claims made under this Agreement and to verify independently any and all information provided on the Claim Form to ensure consistency with CNA's records. Following such audit, CNA may propose to reject a Claim Form on the grounds that the person or entity that submitted the Claim Form is not a Settlement Class Member, or the Claim Form contains false, inaccurate, incomplete, or fraudulent information. In such event, CNA will so advise Lead Class Counsel. Each Settlement Class Member whose Claim Form CNA or the Settlement Class Administrator proposes to reject in whole or in part, shall be notified, in a timely fashion and in writing, 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 (i) below.

(h) After all Settlement Class Members have been given an opportunity to remedy any curable deficiencies in their Claim Forms, each Settlement Class Member whose Claim Form CNA or the Settlement

Administrator still propose to reject, in whole or in part, shall be notified, in a timely fashion and in writing, setting forth the reasons why.

(i) 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 (g) above, serve 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.

**6.4 Limitation on Total Cash Payments.** Notwithstanding anything to the contrary herein, CNA will, under no circumstances, be required to make aggregate cash payments pursuant to paragraphs 5.1, 5.4, 6, 9 and 10 in excess of four million two hundred fifty thousand dollars (\$4,250,000) (the "Aggregate Cap"). After first deducting payments made by CNA pursuant to paragraphs 5.4, 9 and 10 from the Aggregate Cap, the remainder of the Aggregate Cap (the "Remaining Cap") shall be used to issue payment to Settlement Class Members who submit a valid Claim Form.

(a) In the event that claims of Settlement Class Members would otherwise require CNA to make aggregate cash payments in excess of the Remaining Cap, CNA will reduce proportionately the cash payments to each of the Settlement Class Members so that the aggregate of such cash payments does not exceed the Remaining Cap.

(b) In the event that the aggregate cash payments made on claims of Settlement Class Members falls below the Remaining Cap, CNA shall retain the difference.

**6.5 Distribution of and Terms Applicable to Cash Payments.** Not later than forty-five (45) days after the Effective Date, CNA shall begin providing the above-referenced benefits. Each Settlement Class Member is responsible for notifying the Settlement Administrator of a change in address, telephone number, or name.

**6.6 Distribution of Funds: Checks Not Cashd Within Six (6) Months.** If a Settlement Class Member receives a Cash Payment 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. CNA will attempt to re-mail any checks that are returned to it by the U.S. Postal Service. Funds relating to checks sent to Settlement Class Members that become null and void pursuant to this provision shall be donated to Doctors Without Borders. This provision is not intended to and shall not limit or modify in any way the provisions of paragraph 6.4.

7. **Future Conduct Relief to Settlement Class Members.** Immediately upon the Effective Date, CNA shall make the following changes to its handling of workers' compensation PPO claims, for the time periods specified:

7.1 **Increase Client and Injured Worker Awareness.** Until January 1, 2012, and working through its producers (e.g., agents and brokers), CNA agrees that it will continue its efforts, to the extent possible and allowed by law, to educate its workers' compensation insureds and its Illinois workers' compensation claimants about the availability and benefits of utilizing Illinois workers' compensation participating providers in the PPO networks used by CNA for treatment of covered workers' compensation injuries. Such efforts may include, to the extent allowed by law, the education of CNA workers' compensation insureds about the availability and advantages of the use of PPO providers through literature provided to CNA workers' compensation insureds either in hard copy, electronically or web site postings, the continued maintenance and provision of electronic provider listings including PPO providers, continued efforts to educate CNA workers' compensation claims adjusters on the availability and advantages of using PPO providers, and the coordination with PPO networks used by CNA to increase usage of providers within the networks.

7.2 **Panel of Physicians.** Until January 1, 2012, and working through its producers (e.g., agents and brokers), CNA agrees to advise its Illinois workers' compensation insureds – either through hard copy literature, electronic communications or web site postings – of the possibility of establishing a Panel of Physicians in accordance with 820 ILCS § 305(a) and to reasonably assist insureds who seek to establish such a panel.

7.3 **Additional Disclosure.** CNA agrees that the Notice of Settlement to be sent to Illinois providers shall contain a disclosure along the following general lines: "While CNA encourages its Illinois workers' compensation insureds and injured claimants to utilize PPO providers to the extent allowed by law, no financial incentives to patients who are covered by a workers' compensation program have been provided to encourage them to seek treatment from participating providers."

8. **Settlement Class Certification.** The Court's certification of the Settlement Class shall not be deemed 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 becomes Effective. The Settlement and Settlement Class certification shall not be deemed in any way an admission by CNA of any fact or issue, or that any class can or should be certified. In the event the Settlement is not accomplished according to all the terms of this Agreement, or does not become Effective for any reason, the Court's certification order shall be null and void and shall be vacated, and thereafter no class will remain certified; provided that, thereafter Settlement Class Plaintiffs, Lead Class Counsel, and Additional Counsel may seek certification of a class in the Action, and CNA may oppose such certification on any grounds. It is understood and agreed that CNA reserves all of its objections to class certification and takes no part in any motion for certification of the Settlement Class.

9. **Application for Attorneys' Fees and Expenses.** Having first agreed to the above terms regarding the total class benefit, CNA and Class Counsel then addressed the issue of attorneys' fees. After arms-length negotiations, CNA agreed to pay and not object to the payment to Class Counsel of attorneys' fees, costs and expenses, in addition to all other relief provided herein, in an amount not to exceed \$1,062,500, and CNA shall have no obligation to any lawyer in excess of that amount. Class Counsel shall seek no greater amount from CNA. That \$1,062,500 shall be deducted from the Aggregate Cap described in paragraph 6.4 above. Payment shall be made according to written instructions from Lead Class Counsel within ten (10) days of the Effective Date. Class Counsel shall defend, indemnify and hold harmless CNA against and with respect to any liens, claims, or demands for fees or expenses made by any attorney or law firm, or their predecessors, successors or assigns relating in any way to the Action, the Settlement, or the matters subject to the Release in paragraph 13.

10. **Incentive Awards.** Having first agreed to the above terms regarding the total class benefit, CNA and Class Counsel then addressed the issue of class representative incentive award. After arm's-length negotiations, CNA agreed to pay and not object to the payment by Class Counsel to Fischer and Lebanon collectively an incentive award of not more than \$5,000, in addition to all other relief provided herein. Neither Fischer, Lebanon, nor Class Counsel shall seek any greater amount. The \$5,000 shall be deducted from the Aggregate Cap described in paragraph 6.4 above. Payment shall be made within ten (10) days of the Effective Date.

11. **Cessation of Litigation Activity.** Immediately upon execution of this Agreement, Settlement Class Plaintiffs, Lead Class Counsel, Additional Counsel, and CNA 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. Within forty-five (45) days of the Effective Date, Class Counsel, Fischer, and Lebanon, and all those acting through or on behalf of them, shall return to CNA all documents produced by CNA, or certify to the destruction of such documents.

12. **Dismissal with Prejudice.** At the Fairness Hearing, the Settlement Class Plaintiffs, Lead Class Counsel, and Additional Counsel shall move to dismiss the Action with prejudice.

13. **Release.** For and in consideration of the terms and undertakings herein, the sufficiency and fairness of which are acknowledged, all members of the Settlement Class who have not excluded themselves from the Settlement Class, as well as Fischer and Lebanon individually, will fully, completely and comprehensively release the Releasees (as defined in paragraph 1.20) from any and all claims that were or might have been brought against the Releasees relating in any way to PPO reductions or discounts in Illinois 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 directly or indirectly alleged, asserted, described, set forth, or referred to in the Action.

It is the intention of the Settlement Class, as well as Fischer and Lebanon individually, to provide as full and comprehensive a release as possible.

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 Claim 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. CNA shall not be required to remit any additional consideration to claiming Settlement Class Members on account of forfeiture by any Settlement Class Member.

14. **Notice to Settlement Class Members.** CNA or the Settlement Administrator, as applicable, will mail a Notice substantially in the form of Exhibit 3 hereto, together with the Claim Form described in Paragraph 1.6 above, via first class mail to each Settlement Class Member as defined in Paragraph 4 and as identified by the most recent Century list. Prior to the mailing, CNA or the Settlement Administrator, as applicable, will create a list of all such Class Members and provide a copy to Lead Class Counsel. It is agreed, subject to approval of the Court, that there shall be a single mailing to each such Settlement Class Member as set forth herein. CNA shall pay all costs of providing and mailing of the Long-Form Notice, as provided herein. The Settlement Administrator shall also maintain an internet website ([www.pposettlements.com](http://www.pposettlements.com)) that shall include, at a minimum, copies of the Settlement Agreement, the Notice, and the Claim Form.

15. **Receipt of Mail.** CNA shall be responsible for obtaining a United States Post Office Box, for the purpose of receiving Request Forms, requests for exclusion, and objections. CNA shall also be responsible for giving notice of the receipt of any such



requests for exclusion or objections by providing complete copies to Lead Class Counsel promptly.

16. **Settlement Administration.** CNA may select and hire a third-party Settlement Administrator to perform services to effectuate 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. The parties have agreed to Rust Consulting serving as Settlement Administrator.

17. **Court Submission.** Lead Class Counsel, Additional Counsel, and CNA 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. The Settling Plaintiffs shall, on their own, move for Settlement Class Certification contemporaneously with the motion for preliminary approval of the Settlement. 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 enter the Approval Order 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 Claim Forms, and file any objections, as well as schedule the Fairness Hearing in this matter.

18. **Approval Order, Dismissal With Prejudice and Effectiveness.** The Settling Parties agree that the Settlement is expressly conditioned upon entry of the Approval Order, dismissal with prejudice of the Action, and the Settlement becoming Effective. The Settling Parties will jointly submit a proposed Approval Order prior to the Fairness Hearing.

19. **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 negotiation, meaning or intent of this Agreement shall not be offered or admitted into evidence. Class Plaintiffs, 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 CNA or their counsel that are not expressly set forth herein.

20. **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.

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

22. **Arbitration.** By participating in this Settlement, CNA and some members of the Settlement Class may be waiving their existing rights to arbitration involving the Released Claims as defined in paragraph 1.19. By participating in the Settlement, neither CNA 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.

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

24. **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 Plaintiffs or Settlement Class, to:

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

If to CNA, to:

Brent R. Austin  
WILDMAN, HARROLD, ALLEN & DIXON LLP  
225 W. Wacker Drive  
Chicago, IL 60606  
(312) 201-2000

25. **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, CNA agrees to furnish Fischer and Lebanon with a composite conformed copy of this Agreement reflecting all counterpart signatures.


26. **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.

27. **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.

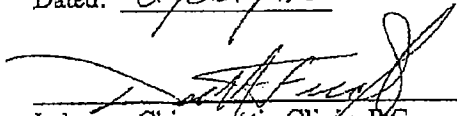
The undersigned parties have executed this Agreement as of the date first above written.

SETTLEMENT CLASS PLAINTIFFS

CNA

  
Dale Fischer, D.C. d/b/a Lebanon  
Chiropractic, in his own capacity

Dated: 2/22/10

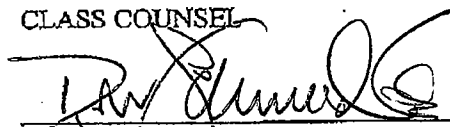
  
Lebanon Chiropractic Clinic, P.C. -  
Signature By Dale Fischer, D.C. on  
behalf of Lebanon.

Dated: 2/23/10

\_\_\_\_\_  
Lawrence Boysen  
Senior Vice President & Corporate Controller,  
CNA Financial Corporation

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

CLASS COUNSEL

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

Dated: 2/23/2010

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

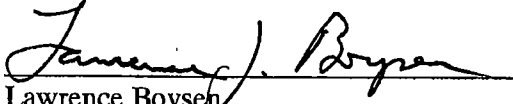
Robert Sprague and  
SPRAGUE & URBAN  
26 East Washington Street  
Belleville, IL 62220

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

SETTLEMENT CLASS PLAINTIFFS

CNA

\_\_\_\_\_  
Dale Fischer, D.C. d/b/a Lebanon  
Chiropractic, in his own capacity

  
Lawrence Boyse  
Senior Vice President & Corporate Controller,  
CNA Financial Corporation

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

Dated: 2/22/2010

\_\_\_\_\_  
Lebanon Chiropractic Clinic, P.C. –  
Signature By Dale Fischer, D.C. on  
behalf of Lebanon

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

CLASS COUNSEL

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

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

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

Robert Sprague and  
SPRAGUE & URBAN  
26 East Washington Street  
Belleville, IL 62220

**Exhibit 1**

Alexsis, Inc.
American Casualty Company of Reading, Pennsylvania
Boston Old Colony Insurance Company
Buckeye Union Insurance Company (The)
CNA Casualty of California
CNA ClaimPlus, Inc.
CNA Financial Corporation
CNA Lloyds of Texas
Columbia Casualty Company
Commercial Insurance Company of Newark, N.J.
Continental Assurance Company
Continental Casualty Company
Continental Corporation (The)
Continental Insurance Company (The)
Continental Insurance Company of New Jersey (The)
Continental Lloyds Insurance Company
Encompass Home and Auto Insurance Company
Encompass Independent Insurance Company
Encompass Insurance Company of America
Encompass Insurance Company of Massachusetts
Encompass Property and Casualty Company
Fidelity and Casualty Company of New York (The)

