

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 03-21296-CIV-MORENO

RICK LOVE, M.D., *et al.*,

Plaintiffs,

vs.

BLUE CROSS AND BLUE SHIELD
ASSOCIATION, *et al.*,

Defendants.

**ORDER APPROVING SETTLEMENT AMONG CERTAIN BLUE PARTIES AND
PHYSICIANS, PHYSICIAN GROUPS, AND PHYSICIAN ORGANIZATIONS,
CERTIFYING CLASS, AND DIRECTING ENTRY OF FINAL JUDGMENT**

The Court having reviewed and considered the Joint Motion for Final Approval of Settlement Concerning Claims Against Certain Blue Parties dated October 30, 2007 in the action styled Love, et al. v. Blue Cross Blue Shield Ass'n, et al., (formerly Thomas, et al. v. Blue Cross Blue Shield Ass'n, et al.), Case No. 03-21296-CIV-MORENO/SIMONTON (the "Action"), and having reviewed and considered the terms and conditions of the proposed settlement (the "Settlement") as set forth in the settlement agreement dated April 27, 2007 (the "Settlement Agreement"), as amended by the Court's Order dated July 16, 2007,¹ a copy of which has been submitted to the Court, and having reviewed and considered the applications of Class Counsel for an award of attorneys' fees and expenses and for an award of fees to Representative Plaintiffs and Representative Plaintiffs in Other Actions, and the Court having held a Settlement Hearing after being satisfied that notice to the Class had been provided in accordance with the Court's Order Preliminarily Approving Proposed

¹ Capitalized terms used in this Order that are not otherwise defined herein have the meaning assigned to them in the Settlement Agreement.

Settlement Among Certain Blue Parties and Physicians, Physician Groups, and Physician Organizations, Setting Form and Content of Notice to the Class, and Scheduling Settlement Hearing entered on May 31, 2007 (the “Preliminary Approval Order”), and the Court having taken into account the objections submitted prior to the Settlement Hearing in accordance with the provisions of the Preliminary Approval Order and the presentations and other proceedings at the Settlement Hearing, and having considered the Settlement in the context of all prior proceedings in this Action, the Court makes the following FINDINGS:

A. The Court has jurisdiction over the subject matter of the Action pursuant to 28 U.S.C. §§ 1331 and 1367, and all acts within the Action, and over all the parties to the Action, and all Class Members.

B. The Class conditionally certified in the Preliminary Approval Order has been appropriately certified, for settlement purposes, under Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure.

1. Certification for settlement purposes is appropriate under Rule 23(a) because: (i) the Class is so numerous that joinder of all Class Members is impracticable; (ii) there are questions of law or fact common to the Class; (iii) the claims or defenses of the Representative Plaintiffs are typical of the claims of the Class; and (iv) the Representative Plaintiffs will fairly and adequately protect the interests of the Class.

2. Certification for settlement purposes is appropriate under Rule 23(b)(2) because the Blue Parties have acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

3. Certification for settlement purposes is appropriate under Rule 23(b)(3) because questions of law or fact common to all Class Members predominate over any questions affecting only individual Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. In making this determination, the Court has considered the interest of the Class Members in individually controlling the prosecution of separate actions and the extent and nature of any litigation concerning this controversy already commenced by Class Members. The Court notes that because certification of the Class is in connection with the Settlement rather than litigation, it need not consider the desirability of concentrating the litigation of the claims in this particular forum or the manageability presented by certification of the nationwide class proposed in the Complaint in the Action. See Strube v. American Equity Investment Life Ins. Co., 226 F.R.D. 688 (M.D. Fla. 2005) (citing Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620 (1997)).

C. Class Counsel has fairly and adequately represented the Class for purposes of entering into and implementing the Settlement.

D. Notice to the putative Class Members and other potentially interested Persons has been provided in accordance with the notice requirements specified by the Court in the Preliminary Approval Order. Such notice: (i) constituted the best notice to putative Class Members that was practicable under the circumstances; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise putative Class Members of the pendency and nature of the Action, their right to object and to appear at the Settlement Hearing or to exclude themselves from the Class and the Settlement, and the binding effect of a class judgment; (iii) was reasonable and constituted due, adequate, and sufficient notice to Persons entitled to be provided with notice; and (iv) fully complied

with the requirements of due process and the Federal Rules of Civil Procedure.

E. The Court has held a hearing to consider the fairness, reasonableness, and adequacy of the Settlement, has been advised of all objections to the Settlement and has given fair consideration to such objections.

F. The Settlement is the product of good faith, arm's length negotiations between the Representative Plaintiffs and the Signatory Medical Societies and their counsel, on one hand, and the Blue Parties and their counsel, on the other hand.

G. The Settlement, as provided for in the Settlement Agreement, is in all respects fair, reasonable, adequate, is not the product of collusion between the Parties, and is otherwise proper and in the best interests of the Class. In reaching this conclusion, the Court has considered a number of factors, including: (i) an assessment of the likelihood that the Representative Plaintiffs and/or the Class would prevail at trial; (ii) the range of possible recovery available to such plaintiffs as a result of such a trial; (iii) the consideration provided to the Class Members pursuant to the Settlement, as compared to the range of possible recovery discounted for the inherent risks of litigation; (iv) the complexity, expense, and possible duration of such litigation in the absence of a settlement; (v) the nature and extent of any objections to the Settlement; and (vi) the stage of proceedings at which the Settlement was reached. See Sterling v. Stewart, 158 F.3d 1199, 1203 n.6 (11th Cir. 1998) (citing Bennett v. Behring Corp., 737 F.2d 982, 986 (11th Cir. 1984)).

H. A list of those putative Class Members who or which have timely and properly elected to Opt-Out of the Class and the Settlement and who therefore are not bound by the Settlement, the provisions of the Settlement Agreement, this Order, and the Judgment has been submitted to the Court as an exhibit to the Declaration of Jenny Penning sworn to on November 8,

2007 and as supplemented in her affidavit of November 16, 2007 (D.E. No. 1127). A copy of such exhibit is attached as Exhibit A hereto. All Class Members (as permanently certified below) shall be subject to all of the provisions of the Settlement, the Settlement Agreement, this Order, and the Judgment.

I. The bar order provisions of this Order, which prohibit the assertion of certain claims against the Blue Parties and other Released Parties, as set forth below, are a condition of the Settlement and a significant component of the consideration afforded to the Blue Parties in the Settlement, and these provisions are reasonable under the circumstances.

J. The dismissal with prejudice and entry of Judgment contemplated by the Settlement and this Order will dispose of fewer than all of the claims at issue, or parties to, this Action. The Court finds that there is no just reason for delay in entering judgment in the form attached hereto (the "Judgment") dismissing the Action with prejudice as to the Blue Parties and that entry of the Judgment to that effect, as directed below, is warranted under Rule 54(b) of the Federal Rules of Civil Procedure.

K. Pursuant to Exhibit H of the Settlement Agreement, the number of opt-outs within the State of Minnesota was 21.872% of the total number of putative Class Members within the State of Minnesota. Blue Cross and Blue Shield of Minnesota duly and timely gave notice to Class Counsel of its election to reduce the amount of its Settlement Fund Payment and Attorneys' Fees payable. The amount of Blue Cross and Blue Shield of Minnesota's Settlement Fund Payment is \$5,050,685.00 and the reduced Settlement Fund Amount is \$130,184,386.00. The amount of Blue Cross and Blue Shield of Minnesota's Attorneys' Fees payable is \$1,931,144.00 and the reduced Unopposed Amount of Attorneys' Fees is \$49,776,407.00.

On the basis of the foregoing findings and the submissions and proceedings referred to above,

NOW THEREFORE, IT IS HEREBY ORDERED ADJUDGED AND DECREED:

Certification of the Class and Approval of Settlement

1. The Settlement and the Settlement Agreement are hereby approved as fair, reasonable, adequate, and in the best interests of the Class, and the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure have been satisfied. **The objections to the Settlement and the Settlement Agreement are overruled and denied in all respects except for the provisions made in paragraph 23, below.**

2. The Court having found that each of the elements of Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied, for purposes of settlement only, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3), solely with respect to the Blue Parties, as well as the other Released Parties, the Action is permanently certified as a class action on behalf of the following Persons (collectively, the “Class” and each member of the Class a “Class Member”):

Any and all Physicians, Physician Groups and Physician Organizations who provided Covered Services to any Plan Member or services to any individual enrolled in or covered by a Plan offered or administered by any Person named as a defendant in the Complaint or by any other primary licensee of the BCBSA or by any of their respective current or former subsidiaries or Affiliates, in each case from May 22, 1999 through May 31, 2007, and as to Independence Blue Cross, AmeriHealth HMO, Inc., Keystone Health Plan East, Inc. and La Cruz Azul de Puerto Rico, through July 16, 2007. The Class shall exclude: (i) all Persons who, in accordance with the terms of this Agreement, execute a timely request for exclusion (Opt-Out) from the Class; and (ii) the Blue Parties, their Affiliates and any of their officers, directors and employees.

The putative Class Members identified on the list submitted to the Court (and attached hereto as an exhibit) as having timely and properly elected to Opt-Out of the Class and the Settlement are hereby excluded from the Class and shall not be entitled to any of the monetary or other benefits afforded to the Class under the Settlement Agreement.

3. For purposes of the Settlement only, Representative Plaintiffs are appointed as representatives of the Class and Class Counsel are appointed and designated as counsel to the Class.

4. Notwithstanding the certification of the foregoing Class, the appointment of Representative Plaintiffs as representatives of the Class, and the appointment and designation of Class Counsel as counsel for the Class for purposes of effecting the Settlement, if this Order is reversed on appeal or the Settlement Agreement is terminated or is not consummated for any reason, the foregoing certification of the Class, appointment of the Representative Plaintiffs as representatives for the Class, and appointment and designation of Class Counsel as counsel for the Class shall be void and of no further effect and the Parties to the Settlement and/or any Blue Party terminating its participation in the Settlement Agreement in accordance with its terms, shall be returned to the status each occupied before entry of this Order, without prejudice to any legal argument that any of the Parties to the Settlement Agreement might have asserted but for the Settlement Agreement.

Release and Injunctions Against Released Claims

5. Upon the Effective Date, the “Released Parties,” which shall include the Blue Parties and each of their present and former parents, divisions and Affiliates and each of their respective current or former officers, directors, employees, agents, insurers and attorneys (and the

predecessors, heirs, executors, administrators, legal representatives, successors and assigns of each of the foregoing), and all Persons who provided claims processing services, software, proprietary guidelines or technology to the Blue Parties, their subsidiaries or Affiliates, and those contracted agents processing claims on their behalf (including, without limitation, NASCO), together with each such Person's predecessors or successors (but only to the extent of such Person's services and work was done pursuant to contract with the Blue Parties or their subsidiaries or Affiliates), but excluding all Delegated Entities, shall be released and forever discharged by the Signatory Medical Societies and all Class Members, and by their respective current and former officers, directors, employees, attorneys, heirs, executors, administrators, agents, legal representatives, professional corporations, partnerships, assigns and successors, but only to the extent claims are derived by contract or operation of law from the claims of Class Members (collectively, the "Releasing Parties"), from any and all causes of action, judgments, liens, indebtedness, costs, damages, obligations, attorneys' fees, losses, claims, liabilities, and demands of whatever kind, source, or character whether arising under any federal or state law, which (consistent with the Parties' understanding of the settlements in Shane) includes, but is not limited to, Racketeer Influenced and Corrupt Organizations Act, antitrust and other statutory and common law claims, intentional or non-intentional, (each a "Claim"), arising on or before the Effective Date, that are, were, or could have been asserted against any of the Released Parties by reason of, arising out of, or in any way related to any of the facts, acts, events, transactions, occurrences, courses of conduct, business practices, representations, omissions, circumstances, or other matters referenced in the Action, or addressed in the Settlement Agreement, whether any such Claim was or could have been asserted by any Releasing Party on its own behalf or on behalf of other Persons, or to the business practices that are the subject of Section 7 of the

Settlement Agreement. This includes, without limitation and as to Released Parties only, any aspect of any fee for service claim submitted by any Class Member to the Blue Plans, and any claims of any Class Member related to or based upon any Capitation agreement between the Blue Plans and any Class Member or other Person or entity, or the delay, nonpayment, or amount of any Capitation payments by the Blue Plans, and any allegation the Blue Parties have conspired with, aided and abetted, or otherwise acted in concert with other managed care organizations, other health insurance companies, Delegated Entities, and/or other third parties with regard to any of the facts, acts, events, transactions, occurrences, courses of conduct, business practices, representations, omissions, circumstances, or other matters related to the Action, or with regard to the Blue Parties' liability for any other demands for payment submitted by any Class Member to such other managed care organizations, health insurance companies, Delegated Entities, and/or other third parties.

6. Except for Claims for damages against Defendants in the Action that are not Parties, relating to providing Covered Services to Blue Plans' Plan Members in connection with the BlueCard Program and other similar national account delivery programs governed by BCBSA (including but not limited to NASCO-to-NASCO arrangements), the Releasing Parties are deemed to have forever abandoned and discharged any and all Claims that exist now or that might arise in the future against any other Persons which Claims arise from, or are based on, conduct by any of the Released Parties that occurred on or before the Effective Date and are, or could have been, alleged in the Complaint, whether any such Claim was or could have been asserted by any Releasing Party on its own behalf or on behalf of other Persons. This Order does not relieve any Person or entity that is not a Released Party from responsibility for its own conduct or conduct of other Persons who are not Released Parties, or preclude any Representative Plaintiff from introducing any competent and

admissible evidence to the extent consistent with Sections 14 and 16 of the Settlement Agreement.

7. Any Claims released or discharged pursuant to Sections 13.1(a) and 13.1(b) of the Settlement Agreement, subject to the exception regarding Retained Claims contained in Section 13.6 of the Settlement Agreement, shall be referred to collectively as “Released Claims.”

8. Notwithstanding the foregoing, the Releasing Parties are not deemed to have released claims for payment (each a “Retained Claim” and, collectively, the “Retained Claims”) for Covered Services provided to Plan Members prior to or on the Effective Date as to which, as of the Effective Date: (i) no claim with respect to such Covered Services has been submitted to a Blue Plan, provided that the applicable period for filing such claim has not elapsed; or (ii) a claim with respect to such Covered Services has been filed with a Blue Plan but such claim has not been finally adjudicated by the Blue Plan. For purposes of clause (ii), above, final adjudication shall mean completion of the Blue Plan’s internal appeals process. In the event that a claim referred to in clause (ii) is finally adjudicated less than thirty (30) days prior to the Effective Date, such claim shall constitute a Retained Claim if a Physician seeks relief under Section 7.10 of the Settlement Agreement not later than ninety (90) days after notice of such final adjudication, but otherwise such claim shall constitute a Released Claim. Disputes relating to Retained Claims shall be resolved exclusively pursuant to the appropriate remedial provisions of the Settlement Agreement.

9. The Releasing Parties are permanently enjoined from: (i) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits from any lawsuit, arbitration, administrative or regulatory proceeding, or order in any jurisdiction based on any or all Released Claims against one or more Released Parties; (ii) instituting, organizing class members in, joining with class members in, amending a pleading in, or

soliciting the participation of class members in, any action or arbitration, including but not limited to a purported class action, in any jurisdiction against one or more Released Parties based on, involving, or incorporating, directly or indirectly, any or all Released Claims; and (iii) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits from any lawsuit, arbitration, administrative or regulatory proceeding, or order in any jurisdiction based on an allegation that an action of the Blue Parties, which is in compliance with the provisions of the Settlement Agreement, violates any legal right of any Class Member.

10. Upon the Effective Date and through the Termination Date, the Releasing Parties and each of them shall be deemed to have agreed and covenanted not to sue or prosecute, institute or cooperate in the institution, commencement, filing, or prosecution of any suit or proceeding against any Released Party, in any forum (i) any Retained Claim or (ii) any Compliance Dispute (whether or not asserted), which respectively shall be asserted and pursued only pursuant to Sections 12 and 13.6 of the Settlement Agreement. This agreement and covenant (as set forth in Section 13.7 of the Settlement Agreement) shall not apply to: (i) any claims that arise within twenty (20) days before the Termination Date that could not reasonably be presented or resolved pursuant to the procedures set forth in the Settlement Agreement; provided that any such claim shall be prosecuted on an individual basis only and not otherwise; or (ii) any remedy under a state or federal law or applicable regulation elected by a Physician pursuant to Section 7.29(m) of the Settlement Agreement.

11. Notwithstanding any other provision of this Order or the Settlement Agreement (including, without limitation, Section 13.2), nothing in this Order or the Settlement Agreement shall be deemed to in any way impair, limit, or preclude the Releasing Parties' rights to

enforce any provision of the Settlement Agreement, or any court order implementing the Settlement Agreement, in a manner consistent with the terms of the Settlement Agreement.

12. Except as provided in Section 13.1 of the Settlement Agreement, nothing in this Order or the Settlement Agreement prevents the Representative Plaintiffs and the Class from pursuing claims to hold any Person that is not a Released Party liable for damages caused by that Person's conduct in a conspiracy involving any Released Party.

13. If any Releasing Parties pursue claims against any Person for damages allegedly caused by any Released Party, any finding, judgment, opinion, or other result from such proceeding under any circumstances (i) shall not be deemed, construed, or asserted as a finding, judgment, opinion, or result against any Released Party; (ii) shall not be deemed, construed, or asserted as res judicata, collateral estoppel, or similar doctrines against any Released Party; and (iii) shall not be admitted or considered as evidence against or used for any purpose against any Released Party in any judicial, administrative, regulatory, arbitration proceeding, or any other forum.

14. The Action shall be dismissed with prejudice as to Released Parties, and a Judgment Dismissing Certain Blue Parties with Prejudice (the "Judgment") shall be entered in form attached as Exhibit 1 hereto, which shall constitute a final judgment on the merits to which the principles of res judicata shall apply to the fullest extent of the law as to the Released Parties.

15. The Parties stipulate that the affected Blue Parties shall suffer irreparable harm if a Releasing Party takes action inconsistent with Sections 13.1, 13.2, 13.3, 13.4 and/or 13.7 of the Settlement Agreement, and that in that event the affected Blue Parties may seek an injunction from the Court as to such action without further showing of irreparable harm.

16. With respect to all Released Claims, the Releasing Parties and each of them

are deemed to have expressly and unconditionally waived and relinquished to the fullest extent permitted by law: (a) the provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which provides:

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

and (b) any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Class Member and each Signatory Medical Society may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are the subject matter of the provisions of Section 13 of the Settlement Agreement, but each such Class Member and each Signatory Medical Society is deemed to have expressly and unconditionally waived and fully, finally, and forever settled and released, upon the entry of this Order, any known or unknown, suspected or unsuspected, contingent or non contingent Claim, with respect to the subject matter of the provisions of Section 13 of the Settlement Agreement, whether or not concealed or hidden, without regard to the discovery or existence of such different or additional facts.

17. All Persons who are, have been, could be, or could have been alleged to be joint tortfeasors, co-tortfeasors, co-conspirators, or co-obligors with the Released Parties or any of them respecting the Released Claims or any of them, are hereby, to the maximum extent permitted by law, barred and permanently enjoined from making, instituting, commencing, prosecuting,

participating in, or continuing any Claim, claim-over, cross-claim, action, or proceeding, however denominated, regardless of the allegations, facts, law, theories, or principles on which they are based, in this Court or in any other court or tribunal, against the Released Parties or any of them with respect to the Released Claims, including without limitation equitable, partial, comparative, or complete contribution, set-off, indemnity, or otherwise, whether by contract, common law, or statute, arising out of or relating in any way to the Released Claims. All such claims are hereby fully and finally barred, released, extinguished, discharged, satisfied, and made unenforceable to the maximum extent permitted by law, and no such claim may be commenced, maintained, or prosecuted against any Released Party. Any judgment or award obtained by a Class Member against any such Person shall be reduced by the amount or percentage, if any, necessary under applicable law to relieve any Released Party of all liability to such Person on such barred claims. Such judgment reduction, partial or complete release, settlement credit, relief, or setoff, if any, shall be in an amount or percentage sufficient under applicable law as determined by the Court to compensate such Person for the loss of any such barred claims against any Released Party. Where the claims of a Person who is, has been, could be, or could have been alleged to be a joint tortfeasor, co-tortfeasor, co-conspirator, or co-obligor with a Released Party respecting the Released Claims have been barred and permanently enjoined by this Order, the claims of Released Parties against that Person respecting those Released Claims are similarly fully and finally barred, released, extinguished, discharged, satisfied, and made unenforceable to the maximum extent permitted by law.

18. In contemplation of the dismissal with prejudice of all claims that would constitute Released Claims as to the Blue Parties or any other Released Party pursuant to this Order, all proceedings are stayed as to the Blue Parties or any other Released Party who is a defendant in

any action brought by or on behalf of Class Members that asserts any claim that as of the date of this Order would constitute a Released Claim that that has been, or will in the future, be designated as a tag-along action or consolidated with the Provider Track actions under MDL Docket No. 1334 (the “Tag-Along Actions” (a list of such pending Tag-Along Actions is attached as Exhibit N to the Settlement Agreement)), provided, however, that this stay in contemplation of dismissal shall not apply to any such action to the extent that a named plaintiff in such action has timely elected to Opt-Out of the Settlement and the Class.

19. In accordance with the terms of the Settlement Agreement, and except as set forth in Exhibit O to the Settlement Agreement with respect to BCBSA, the Releasing Parties and Class Counsel are barred from pursuing discovery against the Released Parties in the Action and in any action brought by or on behalf of Class Members that asserts any claim that as of the date of this Order would constitute a Released Claim. It is the intent of the Parties to limit, to the maximum extent appropriate under law, further discovery burdens on the Released Parties in the Action. Accordingly, Persons not released by this Order will be permitted to obtain discovery from the Released Parties in the Action and in any action brought by or on behalf of Class Members that asserts any claim that as of the date of this Order would constitute a Released Claim that has been, or will in the future be assigned to this Court under Case No. 03-21296-CIV-MORENO or MDL Docket No. 1334 only upon first moving the Court for leave to obtain said discovery and demonstrating (a) good cause for said discovery and (b) that such discovery cannot be reasonably obtained from any other source.

20. In addition to the restrictions on discovery from Released Parties discussed above, and notwithstanding any of the other provisions of this Order, the Released Parties shall have

no obligation to preserve documents and evidence with respect to Released Claims, including any obligations under the Agreed Order for Preservation of Records as entered in and applicable to the Action, and the Releasing Parties and Class Counsel shall not pursue any spoliation claims or other actions or sanctions against a Released Person with respect to documents or evidence related to the Released Claims. This Order does not relieve any Party from their obligations under the Agreed Order for Preservation of Records as entered in and applicable to Solomon, *et al.* v. Blue Cross and Blue Shield Ass'n, *et al.*, Case No. 03-22935-CIV-MORENO/SIMONTON.

Applications for Attorneys' Fees and Representative Plaintiff Fees

21. The Court has reviewed the application for an award of fees and expenses submitted by Class Counsel and the exhibits, memoranda of law, and other materials submitted in support of that application. The Court recognizes that in the Settlement Agreement the Blue Parties have agreed not to oppose an award of fees and expenses to Class Counsel up to \$49,776,407, to be paid by the Blue Plans up to that amount. This agreement is in addition to the monetary consideration and other benefits to be provided to Class Members under the Settlement Agreement. On the basis of its review of the foregoing, the Court hereby awards fees and expenses to Class Counsel in the aggregate amount of \$49,776,407.

22. The Court has also reviewed the application for a fee award to Representative Plaintiffs and Representative Plaintiffs in Other Actions. The Court recognizes that in the Settlement Agreement the Blue Parties have agreed not to oppose an award of fees up to Seven Thousand Five Hundred Dollars (\$7,500.00) for each Representative Plaintiff and each Representative Plaintiff in Other Actions, to be paid by the Blue Parties up to that amount. This agreement is in addition to the monetary consideration and other benefits to be provided to Class Members under the Settlement

Agreement. On the basis of its review of the foregoing, the Court hereby awards a fee of \$7,500 to each Representative Plaintiff and each Representative Plaintiff in Other Actions.

23. **Approval of this Settlement is contingent upon the parties allocating \$995,528.14 of the attorneys' fees fund to be divided between the following law firms: (1) Gordon, Thomas, Honeywell, Malanca, Peterson and Daheim, LLP; (2) Reich and Binstock; and (3) Lowenberg, Lopez & Hansen.** These law firms are collectively referred to as "Washington Counsel." Washington Counsel filed the Objection to the Settlement Agreement and Motion for Attorneys' Fees (D.E. No. 1005) on September 28, 2007 (the "Washington Counsel Objection"). The Washington Counsel Objection asks this Court to award a portion of the attorneys' fees to Washington Counsel to compensate Washington Counsel for conferring material benefit to the Love class. The Court has the equitable authority to award attorneys' fees to non-designated counsel who prosecute a parallel state court action as long as they confer material benefit to the class. In re Horizon/CMS Health Care Corp. Securities Litigation, 3 F. Supp. 2d 1208, 1215 (D.N.M. 1988); Smith v. Tower Loan, 216 F.R.D. 338, 367-69 (S.D. Miss. 2003); Dubin v. E.F. Hutton Group, Inc., 878 F. Supp. 616, 618, 620 (S.D.N.Y. 1995). The Court finds that Washington Counsel conferred material benefit to the Love class because of Washington Counsel's prosecution of two state cases in Washington state: Tacoma Orthopaedic Surgeons, Inc. v. Regence and Franciscan Medical Group v. Premera. In these lawsuits, Washington Counsel (a) invalidated arbitration clauses in all provider contracts, (b) successfully argued three appeals, (c) defeated motions for summary judgment, and (d) achieved class certification in the Franciscan Medical Group lawsuit. This Court holds that these litigation successes conferred a material benefit to the Love class by pressuring Regence and Premera to settle the Love lawsuit. The Love settlement releases those claims by the class members in both

Tacoma Orthopaedic Surgeons, Inc. and Franciscan Medical Group. Those class members in the Tacoma Orthopaedic Surgeons, Inc. and Franciscan Medical Group cases account for two percent of the class members in this Love settlement. This Court therefore holds that the Washington Counsel law firms should receive two percent of the attorneys' fees fund. Two percent of \$49,776,407 equals \$995,528.14. Washington Counsel is not entitled to a multiplier of its lodestar and costs because Washington Counsel decided not to economize work by permitting the transfer of the Tacoma Orthopaedic Surgeons and Franciscan Medical Group cases to the multi-district litigation in Miami. The Washington Counsel firms shall divide the \$995,528.14 among the three constituent law firms according to agreement of the Washington Counsel law firms. The Love plaintiff firms shall divide the remaining \$48,780,878.86 among the Love plaintiff firms according to agreement of the Love plaintiff firms.

Other Provisions

24. Neither the Settlement, nor the Settlement Agreement nor any provision therein, nor any negotiations, statements, or proceedings in connection therewith shall be construed as, or be deemed to be evidence of, an admission or concession on the part of any of the Representative Plaintiffs, the Signatory Medical Societies, Class Counsel, any members of the Class, the Blue Parties, or any other Person of any liability or wrongdoing by them, or that the claims and defenses that have been, or could have been, asserted in the Action are or are not meritorious, and this Order, the Settlement, the Settlement Agreement, or any such communications shall not be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Representative Plaintiffs, the Signatory Medical Societies, any Class Member, the Blue Parties, or any other Person

has or has not suffered any damage; provided, however, that the Settlement Agreement, this Order, and the Judgment to be entered thereon may be filed in any action by the Blue Parties or any Released Party seeking to enforce the Settlement Agreement, this Order or the Judgment by injunctive or other relief or to assert defenses, including but not limited to res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The terms of the Settlement Agreement and of this Order and the Judgment shall be forever binding on, and shall have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings that are subject to the release and other prohibitions that are set forth in this Order that are maintained by, or on behalf of, the Releasing Parties or any other Person subject to those provisions of this Order.

25. The following Persons or entities are hereby granted limited immunity from liability for their actions under the Agreement, except for any willful misconduct or gross negligence: the Billing Dispute External Reviewer; the Independent Review Organization or Organizations (and members and agents, if any); the Class Compliance Dispute Facilitator (and agents, if any); the Blue Compliance Dispute Facilitator (and agents, if any); and the Compliance Dispute Officer (and agents, if any), including individual Compliance Dispute Facilitators and/or Compliance Dispute Officers selected in accordance with Section 12.7 of the Agreement.

26. In the event that the Effective Date cannot occur, or the Settlement Agreement is canceled or terminated by Plaintiffs or by all Blue Parties in accordance with the terms and provisions of the Settlement Agreement, then this Order and the Judgment shall be rendered null and void and be vacated and all orders entered in connection therewith by this Court shall be rendered null and void, subject to Section 14.6 of the Settlement Agreement. In the event any individual Blue

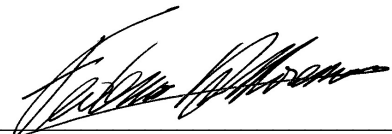
Party terminates its participation in the Settlement Agreement in accordance with its terms and provisions, then this Order and the Judgment and all orders entered in connection therewith, shall be rendered null and void as to the terminating Blue Party.

Entry of Judgment; Continuing Jurisdiction

27. This Court will enter Judgment in a separate Order as to certain Defendant Blue Plans, which dismisses all released Claims with prejudice as to the Blue Plans pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

28. Without in any way affecting the finality of this Order and the Judgment, this Court hereby retains jurisdiction as to all matters relating to (a) the interpretation, administration, and consummation of the Settlement Agreement and (b) the enforcement of the injunctions in this Order.

DONE AND ORDERED in Chambers at Miami, Florida, this 19th day of April, 2008.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:
Counsel of Record