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Summons Issued SEA 25433

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN GABRIEL, RUTH BJORKLUND, and
LAUREN GUSTAFSON-OMER each on his
and her own behalf and on behalf of similarly
situated persons,

Plaintiffs,

v.

NATIONWIDE LIFE INSURANCE
COMPANY, an Ohio Corporation,

Defendant.

NO. **C09-0508**JCC

COMPLAINT (CLASS ACTION)



09-CV-00508-CMP

I. PARTIES

1. Plaintiff John Gabriel is a citizen of Washington state and a resident of Seattle, Washington. Mr. Gabriel purchased health insurance coverage from Nationwide Life Insurance Company in Seattle, King County, Washington. Mr. Gabriel purchased the insurance coverage for himself.

2. Plaintiff Ruth Bjorklund is a citizen of Washington state and a resident of Bainbridge Island, Washington. Mrs. Bjorklund purchased health insurance

ORIGINAL

1 coverage from Nationwide Life Insurance Company in Bainbridge Island, Kitsap
2 County, Washington. Mrs. Bjorklund purchased the coverage for herself, her husband,
3 her teenage son and her adult disabled daughter.

4 3. Lauren Gustafson-Omer is a citizen of Washington state and a
5 resident of Seattle, Washington. Ms. Gustafson-Omer purchased health insurance
6 coverage from Nationwide Life Insurance Company in Seattle, King County,
7 Washington. Ms. Gustafson-Omer purchased the coverage for herself.

8 4. Nationwide Life Insurance Company ("Nationwide") is an Ohio
9 company authorized and licensed to provide life and disability insurance in the state of
10 Washington. Prior to August 27, 2008, Nationwide was not authorized or licensed to
11 provide health insurance in the state of Washington. As of August 27, 2008,
12 Nationwide was authorized and licensed to provide certain limited fixed-indemnity
13 health insurance in the state of Washington. Nationwide's headquarters are in Dublin,
14 Ohio.

15 **II. JURISDICTION AND VENUE**

16 5. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1332(a) and
17 § 1367 because there is diversity of citizenship and the amount in controversy related to
18 Plaintiff Bjorklund's claims exceeds \$75,000. Venue is proper because most of the acts
19 or omissions occurred in the district and the named plaintiffs and many of the
20 proposed plaintiff class members reside in the district.

21 **III. NATURE OF THE CASE**

22 6. Defendant unfairly and deceptively sold an unauthorized health
23 insurance plan or plans to Washington residents, without having obtained the required
24 approval for the health insurance plan(s) from the Washington state Insurance
25 Commissioner.

1 August 27, 2008, where the plan(s) were not approved by the
2 Washington Office of the Insurance Commissioner.

3 10. *Size of Class:* Plaintiffs estimate that the proposed class includes
4 at least 468 members, based upon information provided by Nationwide to the
5 Washington Office of the Insurance Commissioner. The Plaintiff class is so numerous
6 that, when combined with other relevant factors, joinder of all members is
7 impracticable.

8 11. *Common Questions of Fact and Law:* There are questions of law
9 and fact that are common to all class members. The common questions of fact and law
10 include (but are not limited to): (1) whether defendant sold unauthorized health
11 insurance plan(s) in the state of Washington; (2) whether defendant's actions violated
12 the Washington State Consumer Protection Act, RCW 19.86 *et seq.*; (3) whether persons
13 who purchased the unauthorized health plan(s) are entitled to (a) rescission of the
14 plan(s) and refund of all premiums paid, and/or (b) reformation of the health plan(s)
15 in compliance with the Washington State Insurance Code and coverage of all claims for
16 medical expenses and costs incurred that would have been covered had the health
17 plan(s) properly complied with state law; and (4) whether proposed class members are
18 entitled to other damages causally related to defendant's unfair and deceptive acts.

19 12. *Class Representative:* The claims of the named Plaintiffs are
20 typical of the claims of the class as a whole resulting from defendant's sale of
21 unauthorized health insurance plan(s). The named Plaintiffs will fairly represent and
22 adequately protect the interests of the class members because each of them have been
23 subjected to the same practices as other class members and suffered similar injuries.
24 The named Plaintiffs do not have interests antagonistic to those of other class members
25 as to the issues in this suit.
26

1 comprehensive health insurance coverage for her family. Mr. Bjorklund, a self-
2 employed building contractor, does not have health insurance through his work.

3 18. In 1999, Mrs. Bjorklund retired from her job as a librarian. She
4 maintained her family's comprehensive health insurance coverage under COBRA and
5 then converted the coverage into an individual health plan through Group Health
6 Cooperative.

7 19. Mrs. Bjorklund continued to work as a paid caregiver to Lily, her
8 disabled daughter. She was employed by the Special Needs Trust established for Lily,
9 which was administered by Wells Fargo Bank. Her employment was later transferred
10 to Risk Management Strategies.

11 20. In September 2006, Mrs. Bjorklund was contacted by Art
12 Candland, a representative of Risk Management Strategies.

13 21. Mr. Candland told Mrs. Bjorklund that she and her family were
14 eligible for health insurance through Nationwide because of her employment with Risk
15 Management Strategies.

16 22. Mrs. Bjorklund enrolled her family in the Nationwide health
17 insurance plan. On or about September 19, 2006, Mrs. Bjorklund submitted her
18 application for enrollment in the Nationwide health insurance plan.

19 23. Mrs. Bjorklund's Nationwide health insurance was effective as of
20 October 1, 2006.

21 24. Mrs. Bjorklund arranged for her comprehensive coverage through
22 Group Health Cooperative to be discontinued. On or about October 1, 2006, Mrs.
23 Bjorklund discontinued her family's coverage from Group Health Cooperative.

24 25. Mrs. Bjorklund paid Nationwide approximately \$6,000 per year in
25 premiums for the insurance plan.

1 26. On May 28, 2007, Mrs. Bjorklund was diagnosed with a brain
2 tumor. Her physicians recommended immediate surgery.

3 27. Mrs. Bjorklund contacted Nationwide to submit a claim for
4 coverage for the needed surgery. Only at that time did she discover that the
5 Nationwide plan was a "fixed-indemnity plan" and was not "creditable coverage."

6 28. Mrs. Bjorklund incurred more than \$135,000 in uncovered medical
7 expenses.

8 29. Many – if not most – of Mrs. Bjorklund's medical expenses would
9 have been covered if Nationwide had sold Mrs. Bjorklund a health plan that complied
10 with Washington law.

11 **B. John Gabriel**

12 30. John Gabriel purchased health insurance from Nationwide on or
13 about January 1, 2007.

14 31. Mr. Gabriel timely paid his premiums, but did not incur any
15 uncovered medical expenses.

16 32. Mr. Gabriel seeks rescission of the unauthorized health insurance
17 plan and a return of the premiums he paid.

18 **C. Lauren Gustafson-Omer**

19 33. Lauren Gustafson-Omer purchased health insurance from
20 Nationwide.

21 34. Ms. Gustafson-Omer timely paid her premiums.

22 35. On November 18, 2006, Ms. Gustafson-Omer was in an automobile
23 accident. As a result of the accident she incurred extensive injuries requiring
24 immediate hospitalization and medical treatment.

25 36. At the hospital, Ms. Gustafson-Omer learned that the insurance
26 she purchased was not comprehensive coverage. She discovered that the Nationwide

1 policy was a "fixed indemnity" plan and would only provide a small flat payment
2 towards her extensive medical costs.

3 37. Ms. Gustafson-Omer paid out-of-pocket for some of her medical
4 expenses.

5 38. Many of Ms. Gustafson-Omer's medical bills would have been
6 covered if Nationwide had sold Mrs. Gustafson-Omer a health plan that complied with
7 Washington law.

8 **D. Nationwide's Authorization to Sell Health Insurance in Washington
9 State.**

10 39. Prior to August 27, 2008, Nationwide was not authorized to sell
11 any type of health insurance coverage in Washington state.

12 40. On August 27, 2008, the Washington Office of the Insurance
13 Commissioner authorized Nationwide to sell certain limited fixed-indemnity health
14 insurance plans in Washington state.

15 41. The August 27, 2008 approval did not extend to Nationwide's
16 existing unauthorized health plans. Thus, the health plans sold to Plaintiffs continued
17 to be unauthorized in Washington state.

18 **VI. CLAIMS FOR RELIEF**

19 **A. First Claim—Illegal Contract.**

20 42. Plaintiffs re-allege paragraphs 1-41 above.

21 43. Defendant sold Plaintiffs and all members of the proposed class
22 unauthorized health insurance plan(s), in violation of Washington insurance law.
23 Plaintiffs and other similarly situated persons are entitled to either (a) rescission of the
24 illegal contract(s) and return of the insurance premiums paid; or (b) reformation of the
25 illegal contract(s) to comply with the mandatory minimum benefits and coverage
26 required under Washington law.

B. Second Claim—Violation of the Washington Consumer Protection Act.

44. Plaintiffs re-allege paragraphs 1-43 above.

45. Defendant’s sale of unauthorized health insurance plan(s) constitutes unfair and deceptive act(s) under the Washington Consumer Protection Act, pursuant to RCW 19.86.170. Under the Act, Plaintiffs and other similarly situated persons are entitled to damages, injunctive relief, treble damages (up to ten thousand dollars each) and attorneys’ fees and costs.

VII. RELIEF SOUGHT:

46. THEREFORE, Plaintiffs request that this Court:

(a) Certify that this action may proceed as a class action on behalf of:

All Washington residents who purchased fixed-indemnity health insurance plan or plans from defendant between April 16, 2003 and August 27, 2008; and

All Washington residents who purchased fixed-indemnity health insurance plan or plans from defendant since August 27, 2008, where the plan(s) were not authorized by the Washington Office of the Insurance Commissioner.

(b) Declare that Defendant’s unauthorized health insurance plans were and are illegal contracts;

(c) Declare that Defendant’s actions as alleged herein violate the Washington Consumer Protection Act;

(d) Order Defendant to (a) rescind the unauthorized health insurance plans and refund all premiums improperly received from members of the proposed class, including interest and treble damages; or, at the option of any class member, (b) reform the unauthorized health insurance plans to comply with the mandatory benefits required under the Washington Insurance Code, permit class

1 members to submit claims for medical services, costs and other expenses that would
2 have been covered;

3 (e) Order payment of all other expenses causally related to
4 defendant's unfair and deceptive acts;


5 (f) Order treble damages up to \$10,000 for each CPA violation;

6 (g) Order defendant to pay to Plaintiffs' attorneys' reasonable
7 fees and costs; and

8 (h) Order any other relief that is appropriate.

9 DATED: April 15, 2009.

10 SIRIANNI YOUTZ
11 MEIER & SPOONEMORE

12 

13 Eleanor Hamburger (WSBA # 26478)
14 Richard E. Spoonemore (WSBA #21833)
15 Attorneys for Plaintiffs