

The Honorable Jerome J. Leveque

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

LORI E. DAVIS-BAILEY, an individual; and
LORRAINE and DOUG BACON, husband
and wife; and TONY BAMONTE, an
individual, individually and on behalf of
themselves and all persons similarly situated,

Plaintiffs,

v.

AMERICAN MEDICAL RESPONSE
NORTHWEST, INC., an Oregon corporation;
JERRY LUECK and JANE DOE LUECK,
husband and wife, and the marital community
composed thereof; RANDY STROZYK and
JANE DOE STROZYK, husband and wife,
and the marital community composed thereof,

Defendants.

Case No. 05-2-05871-9

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
FINAL ORDER AND JUDGMENT
APPROVING CLASS ACTION
SETTLEMENT

The Plaintiffs' Motion for Final Order Approving Class Action Settlement and Entry of Final Judgment came on for hearing on December 3, 2010. Having considered the evidence, relevant pleadings, and arguments of Counsel, and the class action

1 settlement approval factors set forth in *Pickett v. Holland America Line-Westours, Inc.*
2 145 Wn.2d 178, 188-89 (2001), the Court makes the following:
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4 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5 1. This class action was commenced almost five years ago on December 13, 2005. It
6 involved claims by over 12,000 residents of the City of Spokane that AMR had not
7 correctly charged them for their ambulance transports between January 1, 1999 and
8 October 31, 2005 as provided by two ambulance service contracts between the City of
9 Spokane and AMR covering those time periods.
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11 2. In summary, the Plaintiffs alleged that they and all Class Members were either
12 charged by AMR for certain emergency medical services for which AMR was not
13 permitted to charge or that they were overcharged by AMR for ambulance transport
14 services between December 1, 1999 and December 31, 2005. The Plaintiffs further
15 alleged that as a result, AMR collected from Class Members or persons who paid on their
16 behalf, more than AMR was lawfully entitled to receive for the services that AMR
17 provided to class members.
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19 3. In more specific summary, the Class Representatives alleged that a five year
20 ambulance services contract was entered between the City of Spokane and AMR in 1998
21 and another in October 2003, for the benefit of Spokane residents. They alleged that
22 under these contracts, when a Spokane Fire Department paramedic rode in with the
23 patient during transport to a hospital or other facility by an AMR ambulance, AMR was
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1 required to charge for ambulance transport services at a Basic Life Support (BLS)
2 transport rate and could not charge the higher Advanced Life Support (ALS) transport
3 rate or ALS Mandate transport rate. They alleged that AMR, contrary to the terms of the
4 contracts, charged Class Members the higher ALS or ALS Mandate transport rates for
5 transports during which a Spokane Fire Department paramedic had ridden in with the
6 patient. They also alleged that AMR breached the 1998 contract by charging and
7 collecting amounts for which it was not permitted to charge. The Class Representatives
8 also alleged that they and the class members are third party beneficiaries of the City of
9 Spokane's contracts and are entitled to recover payments not authorized by these
10 contracts. The Class Representatives also alleged that AMR's billing practices
11 constituted unfair and deceptive practices in violation of the Consumer Protection Act,
12 RCW 19.86.020. The Class Representatives also alleged that the amounts collected by
13 AMR that were either not allowed or that were in excess of the amounts allowed under
14 the contracts with the City of Spokane resulted in the unjust enrichment of AMR.
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19 4. In summary, AMR alleged in response that any claims arising under its contracts
20 with the City of Spokane had been resolved through refunds directed by the City of
21 Spokane and denied any liability to Plaintiffs under these contracts. The Plaintiffs denied
22 that AMR had resolved with the City of Spokane all issues arising under its contracts
23 with the City. The Plaintiffs sought recovery of all charges not permitted under the
24 contracts that were collected by AMR, plus prejudgment interest, treble damages,
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1 permanent injunctive relief, costs, and an award of reasonable attorneys' fees. AMR
2 denied all liability to the Class Representatives or to class members.

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4 5. The claims and defense were hotly disputed and were extensively litigated by
5 both sides from the outset of the case until the proposed settlement was reached during
6 jury selection. The litigation and discovery process required to prepare this case for trial
7 was lengthy, complicated and extraordinarily time consuming for both sides and for the
8 Court.

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10 6. In addition to the customary litigation tasks of discovery and preparation to try the
11 liability, damages and injunctive claims of the thousands of potential Plaintiffs, in this
12 case, considerable additional effort was required to be able to identify the Plaintiff class
13 members in the first place. In order to identify their clients, Class counsel had to obtain
14 (after considerable litigation) and analyze multipage patient care records of both the
15 Spokane SFD and of AMR concerning over 19,000 transports over the six year class
16 period. That was necessary just to identify which persons who were transported in
17 Spokane by AMR during the class period qualified for membership under the class
18 definitions.

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20 7. During the lengthy discovery and pre-trial phase of the case, the parties engaged in
21 two unsuccessful formal mediations using two highly experienced, skilled mediators,
22 Gary Bloom and John Riseborough. The parties also engaged in numerous informal
23 settlement discussions periodically from the very beginning of the case. On the eve of
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1 trial, during the jury selection process after the Court had made several interlocutory
2 dispositive rulings, the parties agreed upon settlement terms that could be presented to the
3 Court for approval under CR 23.
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5 8. This Court has been assigned to this case since the suit was commenced as a Class
6 Action on December 13, 2005. *See* Complaint (Clerk's Side #1). Accordingly, the Court
7 is well aware of the procedural history of the case. This history is well documented in the
8 court files of this case (more than 600 docket entries to date). The significant
9 benchmarks and rulings in the case are summarized below.
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11 9. On June 2, 2006, the Class was certified by the Order Granting Class Certification.
12 Clerk's Side #66. The subclass definitions have undergone various iterations over the
13 course of this litigation. This Court's Order Denying Motion for Decertification (Clerk's
14 Side #370), accurately described the history of the Class Certification Orders in this case.
15 AMR opposed entry of this interlocutory order and it would be subject to appellate
16 review after entry of final judgment if the settlement were not approved. As stated
17 therein, the Subclasses are now defined as:
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21 **THE CLASS** is composed of all persons who meet the criteria of any of
22 the following Subclasses:

23 **SUBCLASS A-1:** Those persons who were City of Spokane residents
24 between December 1, 1999 and October 31, 2003, and who were
25 transported by an AMR ambulance within the City of Spokane to a
treatment facility, who were charged by AMR for ambulance transport at
ALS rates (including, but not limited to, rates designated by AMR as ALS
Mandate) when a Spokane Fire Department paramedic had accompanied

1 such City resident in the AMR ambulance in transit to the care facility (a
2 "Spokane Fire Department Paramedic Ride in") and for whom any portion
3 of the transport charge, in excess of the rate allowed under the ambulance
4 services contract between the City of Spokane and AMR, was paid by, or
5 for the benefit of, such person or turned over by AMR to a collection
6 agency. Plaintiff Lori E. Davis Bailey¹ is a member of and a representative
7 of Subclass A-1 ("**SUBCLASS A-1**"); **AND**

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9 **SUBCLASS A-2:** Those persons who were City of Spokane residents
10 between December 1, 1999 and October 31, 2003, and who were
11 transported by an AMR ambulance within the City of Spokane to a
12 treatment facility, and who were charged by AMR for either an IV start or
13 EKG monitoring and for whom the Spokane Fire Department's Medical
14 Incident Report indicated that either an IV or an EKG (or ECG) had been
15 started or monitored by a Spokane Fire Department paramedic and there
16 had been a Spokane Fire Department Paramedic Ride in with such
17 transport, and for whom all or any portion of the charge for IV or EKG (or
18 ECG) start or monitoring was paid by, or for the benefit of, such person or
19 turned over by AMR to a collection agency. Plaintiff Lori E. Davis Bailey
20 is a member of and a representative of Subclass A 2 ("**SUBCLASS A-2**")
21 (All members of Subclass A-2 are also members of Subclass A-1); **AND**

22 **SUBCLASS B:** Those persons who were City of Spokane residents
23 between November 1, 2003, and October 31, 2005, and who were
24 transported within the City of Spokane by an AMR ambulance to a
25 treatment facility, and who were charged ALS transport rates (including,
but not limited to, rates designated by AMR as ALS Mandate) by AMR for
transport when there had been a Spokane Fire Department Paramedic Ride
In and for whom all or any portion of the transport charge in excess of the
transport rate allowed under the ambulance services contract between the
City of Spokane and AMR, was paid by, or for the benefit of, such person
or turned over by AMR to a collection agency. Plaintiffs Doug and
Lorraine Bacon are members of and representatives of Subclass B
("**SUBCLASS B**"); **AND,**

¹ Since this litigation commenced five years ago, Lori Davis-Bailey has remarried and changed her name to Lori Hardin. However, to avoid confusion due to the numerous references to her by her former name, she is referred to herein as Lori Davis-Bailey.

1 **SUBCLASS C:** Those persons who were City of Spokane residents
2 between April 1, 2002 and June 30, 2005 and who were transported within
3 the City of Spokane by an AMR ambulance to a treatment facility without a
4 Spokane Fire Department Paramedic Ride In and for whom AMR did not
5 provide ALS level services or procedures, but who were charged by AMR
6 for transport at the City of Spokane's then applicable ALS contract rate,
7 which was designated by AMR as "ALS Mandate" (billing code Q3019)
8 and for whom all or any portion of the transport charge in excess of the
9 transport rate allowed under the ambulance services contract between the
City of Spokane and AMR, was paid by, or for the benefit of, such person
or turned over by AMR to a collection agency. No member of Subclass C is
a member of Subclasses A or B. Plaintiff Tony Bamonte is a member of
and a representative of Subclass C ("**SUBCLASS C**").

10 *Id.* at 5-6.

11 10. The Third Amended Class Action Complaint for Monetary Damages and
12 Injunctive Relief ("Third Complaint") was filed on September 9, 2008 (Clerk's Side
13 #289). In it, Plaintiffs asserted three causes of action arising from AMR's billing
14 practices involving Spokane residents during the Class Period of December 1, 1999
15 through December 31, 2005. The Third Complaint alleged causes of action for breach of
16 contract, violations of the Consumer Protection Act, RCW 19.86.020 and restitution for
17 unjust enrichment. The Defendants' Answer to the Third Amended Class Action
18 Complaint for Monetary Damages and Injunctive Relief ("Defendants' Third Answer")
19 (Clerk's Side #301) was filed October 31, 2008. The Defendants denied all liability
20 under each of the three causes of action and asserted numerous affirmative defenses,
21 including the voluntary payment doctrine as a defense to the contract and unjust
22 enrichment claims.
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1 11. On March 27, 2009 the Court entered the Order Denying Motion for
2 Decertification of Subclasses (Clerks Side # 370), and the Order Granting In Part
3 Plaintiffs' Cease and Desist Motion (Clerk's Side # 369). AMR's motion for discretionary
4 review of the Order denying decertification was denied by Division Three of the Court of
5 Appeals. However, that order and the other interlocutory certification orders remained
6 subject to appellate review after entry of final judgment if the settlement were not
7 approved.
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10 12. On May 15, 2009, the Court entered the Order Clarifying Previous Ruling Re:
11 Effect of Prior Payments Made by AMR to Class Members and Their Payors (Clerk's
12 Side #377). That Order provided in part:
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14 The Class Members will be allowed to present evidence to the trier of fact
15 of their claims for damages, prejudgment interest, and treble damages
16 notwithstanding any pre-trial payments made by AMR to them or to their
17 private or governmental third party payors. The effect, if any, of any pre-
18 trial payments made by AMR to any Class Members or their private or
19 governmental third party payors upon the Class Members' claims will be
20 determined by the Court after the trial, but prior to entry of final judgment.

21 AMR opposed entry of this interlocutory order and it would be subject to appellate
22 review after entry of final judgment if the settlement were not approved.

23 13. On December 14, 2009, mailing and publication of the initial, court approved
24 Class Notice was commenced. A list of persons opting out is on file in this case.
25 (Clerk's Side #582) Each of the opt-outs is identified by name in the Final Judgment and
is excluded from the Final Judgment.

1 14. Trial of the case was scheduled to commence on September 7, 2010. Pre-trial
2 proceedings and a pre-trial evidentiary hearing commenced on that date.

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4 15. The Court made a number of oral rulings on pre-trial motions that had not yet
5 been entered as written orders of the Court by the time the proposed settlement was
6 reached. The Defendants objected to the rulings and have the right to appeal such rulings
7 at the appropriate time if the settlement does not become final and if written orders are
8 entered.
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10 16. In summary, in these oral rulings, the Court orally ruled in favor of the class, on
11 the following issues:

- 12
- 13 a. Class Members' status as third party beneficiaries under the City contracts;
 - 14 b. AMR's liability for breach of contract;
 - 15 c. The measure of contract damages for those persons who paid (or had paid
16 for them) any portion of AMR's erroneous charges was the difference between the
17 erroneous amount charged and the amount permitted by the City contracts;
 - 18 d. The appointment of a "special master" to determine the amount of any
19 contract damages that may have been sustained by any particular Class Member;
 - 20 e. AMR's burden of proving that any Class Member was not entitled to
21 recovery under a breach of contract claim under the voluntary payment doctrine;
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1 f. AMR's billing actions and omissions regarding amounts charged in excess
2 of the amounts permitted by the City ambulance contracts constituted unfair or deceptive
3 acts and omissions in the conduct of trade and commerce that affected the public interest;

4 g. The Class Representatives' entitlement to discovery sanctions, including
5 costs and attorneys' fees incurred in connection with certain discovery disputes (the
6 amount to be determined after trial regardless of which side prevailed at trial); and,
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8 h. The Class Members' reliance upon AMR's billing communications and that
9 there was a rebuttable presumption in favor of the Class that AMR's acts and omissions
10 were a proximate cause of injury under the Consumer Protection Act and that AMR had
11 the burden of proving that its acts and omissions had not been a proximate cause of
12 injury.
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15 17. The Court did not rule on several issues, reserving those issues for the jury. These
16 issues included:
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18 a. Whether any Class Member's contract claims were defeated by the
19 Voluntary Payment Doctrine; and,
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21 b. Whether AMR's erroneous charges were the proximate cause of injury
22 under the Consumer Protection Act.

23 18. The Court reserved two issues for determination after trial:

24 a. The effect, if any, that payments made by any Class Members' third party
25 payors would have upon any recovery by class members; and,

1 b. Whether any Class Member was entitled to prejudgment interest on any
2 amounts paid to AMR.
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4 19. At the time the proposed settlement was reached, the issues of whether the Class
5 Members would be entitled to any injunctive relief, or treble damages under the
6 Consumer Protection Act had not been decided. Moreover, the parties had not yet
7 completed their summary judgment arguments and the Court had not yet ruled upon the
8 merits of the Class Members' claims for restitution under claims of unjust enrichment.
9

10 20. Depending on the outcome of the trial, if a trial had been completed, it is possible
11 that Defendants would have appealed one or more of the pretrial rulings made by the
12 Court and described above. These include: (1) the Court's ruling denying Defendants'
13 Motion to Decertify, (2) the Court's ruling denying Defendants' Motion for Summary
14 Judgment Regarding Contract Claims on the questions of Plaintiffs' capacity as third
15 party beneficiaries and recoverable damage, and (3) the Court's ruling denying
16 Defendants' Motion for Summary Judgment Regarding the Consumer Protection Act on
17 the questions of whether AMR's charges exceeding limitations in City contracts were an
18 "unfair and deceptive act" and whether such acts were the proximate cause of injury. At
19 the time settlement was reached, the outcome of the issues this Court had not yet ruled
20 upon was uncertain. The ultimate outcome of the trial and post trial proceedings was
21 uncertain. The ultimate appellate outcome of the case overall and of the multiple trial
22 court rulings, both made and to be made was uncertain.
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1 21. After pre-trial proceedings, but before a jury was chosen, the parties reached a
2 settlement of the action subject to final approval by the Court. On September 16, 2010,
3 the proposed settlement was read into the record of the case and it was preliminarily
4 approved by the Court for the purpose of sending notice to the Class of the proposed
5 settlement. The terms of settlement read into the record are:
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8 **a.** This action shall be dismissed with prejudice and without attorneys fees
9 and costs, and no other or further Court orders on the substance of the claims and
10 defenses in this action shall be entered.

11 **b.** Plaintiffs (consisting of the named plaintiffs and all class members) release
12 all claims, including without limitation all claims for attorneys fees and costs
13 against all Defendants.

14 **c.** The settlement agreement is made without admission of liability by any
15 party.

16 **d.** AMR shall resume and complete refunds for transports of Subclass A-1, B,
17 and C class members based on the Robinson spreadsheets submitted to the Court
18 as Defendants' Trial Exhibits Nos. D-260 (Final Refund Schedules); D-289
19 (Subclass A-1 and B Additional Refund Schedules); and D-291 (Subclass C
20 Additional Refund Schedules). For Subclass C, the 298 transports of disputed
21 subclass members (including class representative, Anthony Bamonte) shall be
22 included in AMR's refunds.

23 **e.** AMR shall pay refunds for services provided to Subclass A-2 class
24 members based on the Robinson spreadsheet submitted to the Court as Defendants'
25 Trial Exhibit No. D-292 (Subclass A-2 Refund Schedules). The refund amount
shown on that spreadsheet, and to be paid by AMR, is limited to the amount paid
to AMR for EKG monitoring or IV starts, not the amount charged.

f. Any good faith dispute over the identity of any class member or payor shall
be submitted on written submission only, to a mutually acceptable third party (or
court-appointed) at AMR's sole expense, for a binding, non-appealable decision.

g. Refund payments shall be distributed by AMR to the individual or entity
who/that paid AMR's charges (e.g., individuals, insurance companies or Medicare)
with verification satisfactory to Plaintiffs and to the Court.

h. AMR shall calculate and pay interest, pursuant to the July 8, 2009,
stipulation of the parties (filed with the Court on July 20, 2010; Clerk's Side
#475), at the statutory 12% rate on refunds for amounts paid by and refunded to

1 class members, but not for insurance or Medicare or other third party payments.
2 AMR's interest calculations are subject to verification by Plaintiffs and approval
3 by the court before payment.

4 **i.** Interest payments provided for herein shall be made with refund payments
5 to the class members. Interest payments that are not cashed or returned as
6 undeliverable are subject to treatment as unclaimed funds as described in
7 paragraph k.

8 **j.** The envelopes containing the refund and interest payments to class
9 members shall state, "AMR Class Action Settlement."

10 **k.** The amount of any returned, undeliverable or uncashed refund checks from
11 refunds made in the 2006 round and all subsequent rounds of refunds, shall be
12 accounted for by AMR to Plaintiffs and the Court, and paid to the City of Spokane
13 EMS fund or equivalent, per Court order. Such funds are to be used for emergency
14 medical services traditionally paid for by such fund or special account.

15 **l.** AMR shall take responsibility for administration of the refund process,
16 including funding class notice.

17 **m.** AMR shall pay the class representatives Lori E. Davis-Bailey, Doug and
18 Lorraine Bacon (collectively), and Anthony Bamonte, incentive awards of \$2,500
19 under the principles approved in *In re Cont'l Rl. Sec. Litig.*, 962 F.2d 566,571 (7th
20 Cir. 1992), as at least partial compensation for their time and efforts expended on
21 behalf of the class.

22 **n.** AMR shall make assurances, under an agreed order, that it has adjusted any
23 accounts in collection to prevent any further attempts to collect overcharges
24 identified in the Robinson spreadsheets submitted as Defendants' Trial Exhibits
25 Nos. D-260 (Final Refund Schedules); D-289 (Subclass A-1 and B Additional
Refund Schedules); D-291 (Subclass C Additional Refund Schedules); and D-292
(Subclass A-2 Refund Schedules).

o. AMR shall pay Plaintiffs' attorneys fees and costs in the total amount of
\$945,000 paid directly to Reed & Giesa P.S. The funds shall be Reed & Giesa
funds upon receipt, and the firm shall not be required to obtain further Court
approval before depositing such funds into a firm non-trust account or releasing
them from any such account.

p. This settlement agreement is expressly subject to approval by the Court. If
all of the terms and conditions of this settlement agreement are not approved in
full (i) by the Spokane County Superior Court or (ii) on any appellate review of a
Court order regarding the settlement agreement, the settlement agreement will be
null and void and have no legal effect.

1 q. If the entire settlement agreement, as proposed herein, is approved by the
2 Court, and sustained after any appeal, within 30 days, AMR shall deliver payment
3 of all amounts specified herein to all payees, including class counsel.

4 r. The Spokane County Superior Court shall retain jurisdiction of this matter
5 to enforce the terms of this settlement agreement.

6 22. On October 12, 2010, this Court entered the Stipulation and Order Approving
7 Settlement Notice and Method of Providing Notice to Class Members.

8 23. The court approved class settlement notice was mailed, via first class United
9 States Mail, postage prepaid, to the last known address of each member of the class who
10 had not previously opted out on October 18, 2010. Several thousand notices were
11 returned as undeliverable for a variety of reasons. A schedule of returned notices has
12 been filed. Pursuant to the Stipulation and Order Approving Settlement Notice and
13 Method of Providing Notice to Class Members, Class Counsel caused the Settlement
14 Notices to be remailed to any forwarding addresses that were provided by the US Post
15 Office up to November 11, 2010. Individual mailing of notice to class members' last
16 known addresses was the best notice practicable under the circumstances.

17 24. The deadline to serve and file any objections to the proposed settlement was
18 November 18, 2010. No objections to the proposed settlement were served upon Class
19 Counsel or upon the Defendants' counsel. No class member has sought to intervene. After
20 the Settlement Notice was mailed, one class member did serve upon Class Counsel a
21 request to opt-out. However, the time period for opting out had expired and that request
22 was untimely and without effect. All persons who had not timely opted out are class
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1 members for all purposes and are bound by this Final Order and Judgment Approving
2 Class Action Settlement.

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4 25. Voluntary conciliation and settlement are the preferred means of dispute
5 resolution. The settlement serves that salutary purpose.

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7 26. At the time of the settlement, discovery had closed. Both sides were sufficiently
8 informed concerning the underlying facts and legal issues in the case to be able to make
9 intelligent and reasonable evaluations regarding the risks, costs and delay of continued
10 litigation versus the immediate, certain benefits of settlement.

11
12 27. The Class Representatives undertook a weighty responsibility in undertaking to
13 represent the class and taking the vanguard role in this case on behalf of others. They
14 were each deposed (some more than once), were required to answer written discovery
15 and produce documents and they assisted Class Counsel in the prosecution of the case.
16 An incentive fee of \$2,500 each, to Ms. Davis-Bailey, Tony Bamonte, and the Bacons
17 collectively, will at least partially compensate these Class Representatives for their time,
18 efforts and responsibilities and is fair and reasonable compensation. These amounts are
19 approved and awarded by the Court and are to be paid to them by AMR under the
20 settlement.
21

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23 28. The settlement terms that require AMR to (a) complete full refunds to all class
24 members who paid AMR directly, their proportionate shares of any amounts
25 overcharged, plus interest on such amounts; (b) complete full refunds of any

1 overcharges paid by the class members' third party payors; and (c) adjust any accounts in
2 collection to prevent any further attempts to collect overcharges from any class members
3 with delinquent accounts, further the beneficial purpose, to the extent reasonably
4 practicable, of returning the class members to economic positions and circumstances
5 similar to those they would have occupied had no overcharges been assessed.

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8 29. Payment of any unclaimed funds to the City of Spokane EMS fund or similar
9 fund, will further the beneficial purpose of ensuring full relinquishment by AMR of any
10 overcharges in the event any refund checks remain uncashed by any class member or
11 their respective third party payors after becoming stale.

12
13 30. Both Class Counsel and Defendants' counsel have substantial experience handling
14 complex commercial litigation and class action litigation. Counsel for both sides have
15 agreed to and recommend approval of the settlement.

16
17 31. At least four major tasks remained to be completed at the trial court level
18 including the jury trial, post trial master proceedings, post trial proceedings for a
19 determination of treble damages and injunctive relief, and the effect, if any of AMR's pre-
20 trial refunds to certain third party payors and post trial proceedings regarding Plaintiffs'
21 attorneys fees, assuming the Plaintiffs prevailed. Lengthy appellate proceedings after
22 entry of final judgment were almost a certainty. The future costs and expenses incurred
23 by both sides, and the judicial resources necessary to resolve the case through a litigated
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1 conclusion would have been substantial. Those costs and expenses are avoided by the
2 settlement.

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4 32. The settlement reflects yielding by both sides of their highest expectations and the
5 acceptance of a compromise that was finally negotiated at arm's length by experienced
6 counsel on the eve of trial after prior, unfruitful formal and informal settlement efforts.

7
8 33. With respect to the settlement term providing for an award of attorneys fees and
9 costs to Class Counsel the Court further **FINDS AND CONCLUDES:**

10 a. Reed & Giesa P.S. served as Class Counsel in this case. Mr. Reed, who
11 served as lead counsel until approximately late 2007 and Mr. Giesa who served as lead
12 counsel thereafter, have had substantial experience in handling class action and complex
13 litigation on behalf of both plaintiffs and defendants.

14
15 b. In support of the motion to approve the settlement, Class Counsel have
16 filed time records that sufficiently describe the general nature of the work performed, the
17 identity of the time keeper, the number of hours recorded and both the historical and
18 current hourly rates of these professionals. Although Class Counsel redacted entries that,
19 in their opinion, may have revealed or led to the revelation of privileged communications
20 or their thought processes, mental impressions, strategies, and tactical decisions, the
21 redacted time records, taken as a whole, provide reasonably sufficient information to
22 permit the Court to determine that the fees awarded pursuant to the settlement fall within
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1 the range of a reasonable lodestar attorneys fee amount determined under the formula
2 approved in *Bowers v. Transamerica*, 100 Wn.2d 581 (1983).

3
4 c. Both of the City contracts involved in this case provided for an award of
5 attorneys fees, costs and expenses to the prevailing party. In addition, RCW 19.86.090
6 requires that the court award fees and costs to a prevailing plaintiff.

7
8 d. Through September 16, 2010, the date the proposed settlement was
9 reached, Class Counsel had advanced costs and expenses in this case in the amount of
10 \$60,609.99.

11 e. This Court has looked at the time records submitted by Class Counsel. In
12 addition, this Court is aware of the substantial efforts of the attorneys for both sides in
13 this case. The hours recorded by the various professionals representing the class in
14 connection with this case up through the date of settlement, and the historical hourly rates
15 at the time the services were provided were:
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<u>D. Roger Reed (Attorney):</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
	56.00	240.00	\$13,440.00
	371.85	255.00	\$94,821.75
	273.60	265.00	\$72,504.00
	30.60	275.00	\$8,415.00
	16.00	290.00	\$4,640.00
	10.50	300.00	\$3,150.00
		Subtotal	\$196,970.75
 <u>John P. Giesa (Attorney):</u>			
	2.80	240.00	\$672.00
	18.20	255.00	\$4,641.00

1	170.50	265.00	\$45,182.50
2	108.10	275.00	\$29,727.50
3	222.00	290.00	\$64,380.00
4	435.60	300.00	\$130,680.00
5	583.70	325.00	\$189,702.50
		Subtotal	\$464,985.50

Timothy J. Giesa (Attorney):

7	65.40	275.00	\$17,985.00
8		Subtotal	\$17,985.00

Aaron D. Goforth (Attorney):

10	7.20	165.00	\$1,188.00
11	15.50	175.00	\$2,712.50
12	16.20	190.00	\$3,078.00
13	0.50	200.00	\$100.00
14	65.40	225.00	\$14,715.00
15	8.10	250.00	\$2,025.00
		Subtotal	\$23,818.50

Robin Lynn Haynes (Attorney):

17	157.60	80.00	\$12,608.00
18	14.90	85.00	\$1,266.50
19	339.90	95.00	\$32,290.50
20	53.60	120.00	\$6,432.00
21	302.40	125.00	\$37,800.00
22	1032.00	140.00	\$144,480.00
23	915.10	165.00	\$150,991.50
24	747.30	190.00	\$141,987.00
		Subtotal	\$527,855.50

Adam P. Tait (Attorney):

25	807.10	120.00	\$96,852.00
	743.00	125.00	\$92,875.00
		Subtotal	\$189,727.00

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Allisyn K. Hartman (Paralegal):

22.80	90.00	\$2,052.00
967.80	95.00	\$91,941.00
60.80	105.00	\$6,384.00
335.30	110.00	\$36,883.00
157.80	120.00	\$18,936.00
97.90	125.00	\$12,237.50
	Subtotal	\$168,433.50

Tara J. Nichols (Paralegal):

8.00	95.00	\$760.00
17.80	105.00	\$1,869.00
185.80	110.00	\$20,438.00
165.10	120.00	\$19,812.00
401.60	125.00	\$50,200.00
	Subtotal	\$93,079.00

Peter A. Evans (Law Clerk):

749.60	85.00	\$63,716.00
16.00	90.00	\$1,440.00
29.50	95.00	\$2,802.50
598.72	100.00	\$59,872.00
228.50	110.00	\$25,135.00
	Subtotal	\$152,965.50

Rachel L. Kaufman (Law Clerk):

489.80	85.00	\$41,633.00
	Subtotal	\$41,633.00

TOTAL \$1,877,453.25

f. The foregoing summary does not include the time spent by Class Counsel in this case after the date of settlement. The value of the hours recorded by the various professionals up to the date of settlement, if valued at their current hourly rates would be:

	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
<u>D. Roger Reed</u>	758.55	300.00	\$227,565.00
<u>John P. Giesa</u>	1540.90	325.00	\$500,792.50
<u>Timothy J. Giesa</u>	65.40	275.00	\$17,985.00
<u>Aaron D. Goforth</u>	112.90	250.00	\$28,225.00
<u>Robin Lynn Haynes</u>	3562.80	190.00	\$676,932.00
<u>Adam P. Tait</u>	1550.10	125.00	\$193,762.50
<u>Allisyn K. Hartman</u>	1642.40	125.00	\$205,300.00
<u>Tara J. Nichols</u>	778.30	125.00	\$97,287.50
<u>Peter A. Evans</u>	1622.32	110.00	\$178,455.20
<u>Rachel L. Kaufman</u>	489.80	85.00	\$41,633.00
	TOTAL		\$2,167,937.70

g. Both the historical and current hourly rates set forth in the foregoing paragraphs are reasonable for professionals having comparable skill and experience who are practicing before the Spokane County Superior Court in complex litigation such as this case.

h. The time spent on the quantum meruit cause of action was inconsequential in comparison to the time spent on the class certification, contract and consumer protection issues. These issues were intertwined. A substantial portion of the time spent was on tasks that is not practicably or reasonably segregable between the claims at this

1 juncture of the case, such as written discovery, deposition and document discovery,
2 discovery disputes, transactional document and patient record and data organization,
3 review and analysis, class identification and certification issues, damages ascertainment
4 and quantification issues, analysis and cross checking of AMR data, appellate practice,
5 pre trial motion procedural and dispositive motion practice, trial preparation, informal
6 settlement negotiations, mediation, witness and exhibit preparation, and pre trial
7 evidentiary proceedings.
8

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10 i. Since the case settled, it is neither necessary nor appropriate for the Court
11 to determine that the Plaintiffs would or would not have ultimately prevailed upon any of
12 their claims. It is sufficient that at the time of settlement, the Plaintiffs had substantially
13 prevailed on an interlocutory basis on the majority of the issues on which the court had
14 ruled. The settlement itself is a successful result on the class claims. It is not necessary or
15 appropriate in order to determine a reasonable fee award at this juncture, to make any
16 specific reduction in the hours recorded by the Plaintiffs' attorneys for unsuccessful
17 claims.
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21 j. Since the settlement fee amount is approximately less than half of the value
22 of the gross time expended by Plaintiffs' counsel, elimination of specific recorded time
23 entries for efforts that may have been duplicated or otherwise not compensable is
24 unnecessary because the overall reduction is already sufficiently large to encompass any
25 such concerns.

1 k. Class Counsel undertook this representation on a contingent fee basis.
2 Payment of a fee was contingent upon success. The Class Representatives' fee
3 agreements provided in relevant part that the Plaintiffs' attorneys would be entitled to the
4 greater of any court awarded attorneys fees or 33 1/3% of the value of the total recovery
5 before any appeal was filed or 40% after any appeal was filed. Although AMR had filed
6 two appeals at the time the proposed settlement was reached percentage contingency fee
7 is inapplicable because the Court approves the fee and expense award provided for in the
8 settlement.
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11 l. The amount of fees awarded under the settlement is well within the range
12 of the reasonable value of Class Counsel's time calculated under the lodestar approach,
13 whether the historical or current hourly rates are used. Under these circumstances, a
14 determination of whether an enhancement multiplier for the factors of risk and quality of
15 work should be awarded is not necessary to determine the reasonableness of the fee
16 award under the settlement.
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19 m. The award of \$945,000 for Plaintiffs' attorneys fees and costs as provided
20 by the settlement is well within range for fees and costs that would be reasonable and
21 necessary to achieve the results obtained at the stage the case was in when the results
22 were obtained. This award will serve and promote the beneficial purpose of encouraging
23 private enforcement of the Consumer Protection Act.
24
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1 Based upon the foregoing, it is **HEREBY FINALLY ORDERED:**

2 A. The above described terms of the settlement, taken as a whole, are fair,
3 adequate and reasonable with respect to all concerned. The settlement is expressly
4 authorized and approved by the Court. The parties are authorized and ordered to take
5 such actions as are necessary to carry out the terms of the settlement.
6

7 B. The Court authorizes and approves the payment of \$945,000 to Class
8 Counsel by AMR for attorneys fees and reimbursement of expenses advanced. The funds
9 shall be Reed & Giesa funds upon receipt, and the firm shall not be required to obtain
10 further Court approval before depositing such funds into a firm non-trust account or
11 releasing them from any such account.
12

13 C. On or before January 13, AMR shall pay, by wire transfer, 1) \$7,500 into
14 Class Counsel's trust account, in payment of the Class Representatives' incentive
15 payments and such amounts may be disbursed to them immediately, and 2) \$945,000 into
16 Class Counsel's account in payment of the fees and costs award under the settlement. On
17 or before January 31, 2010, AMR shall complete refund payments to all class members
18 (including any due to the class representatives) and to any third party payors if no appeal
19 has been taken. If any appeal is taken, then these payment requirements shall be stayed
20 until the Final Order and Judgment is affirmed and a final mandate issues from the
21 appellate court. In the event that this Final Order is reversed, vacated or modified in any
22 respect, then the payment provisions in this paragraph shall be void and have no effect.
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1 D. Within 120 days from the date AMR makes the first refund payment to
2 Class members and/or their third party payors after entry of this Final Order and
3 Judgment, it shall file a Declaration with the court accurately identifying by payee, check
4 number (or other payment method) and amount of any refund that was tendered to any
5 payee at any time, that remains unclaimed (or check uncashed). AMR shall pay the total
6 of any such unclaimed funds by check made payable "To the CITY OF SPOKANE EMS
7 FUND ONLY" , subject to right of claw back, for checks exceeding \$5000 that are
8 cashed after the 120 day deadline. In the event such fund is not longer maintained at that
9 time, AMR shall obtain further order of the court with respect to disposition of such
10 unclaimed funds.
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14 E. The Plaintiffs (consisting of the named plaintiffs and all class members) are
15 hereby deemed to have released all claims against defendants arising from the allegations
16 in this action, including without limitation all claims for attorneys fees and costs.
17

18 F. The Court will retain jurisdiction in accordance with the terms of the
19 settlement agreement to ensure satisfaction of all terms of the settlement.
20

21 Based upon the foregoing, the Court hereby enters **FINAL JUDGMENT** as
22 follows:

23 This entire action and specifically all claims of the Class Representatives and
24 Class Members in this action are hereby dismissed with prejudice and without costs or
25

1 fees (except as expressly provided above) to any party. This FINAL JUDGMENT shall
2 not apply to the following people, each of whom timely opted out of this Class Action:
3

- | | | |
|----|--------------------------------------|----------------------------------|
| 4 | Flora Johns | Phyllis Lanzi |
| 5 | Tressia Anderson for Henry Anderson | Betty Gillespie for Gilbert Hunt |
| 6 | Jeanette Jackson for Fred Jackson | Mary Mathis |
| 7 | Maribel Sullivan | Wayne Sams |
| 8 | Evelyn Maly | Darwin Dick Smith |
| 9 | Margaret Reagan | Helen Raun for Chester E. Raun |
| 10 | Susan Frigeri-Roffini | Carolyn Wall for Fern Wall |
| 11 | Jody Morse | Madeline Hively |
| 12 | MaryAnn Korhonen PR for Cheryl Welch | Martha Cassel |
| 13 | Hilton Brodie | Herman Smith |
| 14 | Michelle J. Sparks | Cara Cooper |
| 15 | Francoise Kuester | Barbara J. Fitzgerald |
| 16 | Harold E. Amundson | Dorothy Horrell |
| 17 | Alice E. VanHoff | Raymond Norman |

18 The Court retains jurisdiction to ensure compliance with the terms of the foregoing
19 Order and the terms of the settlement.

20 DATED this ___ day of December, 2010.

21 _____
22 The Honorable Jerome LeVeque

23 PRESENTED BY:

24 REED & GIESA, P.S.

25 SHORT CRESSMAN & BURGESS

John P. Giesa, WSBA #6147
Robin Lynn Haynes, WSBA #38116
Attorneys for Plaintiffs

Paul J. Dayton, WSBA #12619
Leslie C. Clark, WSBA #36164
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