

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOHN SMITH,)	
individually and on behalf of a class,)	
)	07 C 3616
Plaintiff,)	
)	Judge Kendall
v.)	Magistrate Judge Nolan
)	
MID-STATES EXPRESS, INC. and)	
MID-STATES EXPRESS INC.)	
EMPLOYEE HEALTH PLAN,)	
)	
Defendants.)	

CLASS ACTION SETTLEMENT AGREEMENT

This CLASS ACTION SETTLEMENT AGREEMENT (“Settlement Agreement”) is entered into by and between John Smith in the above-captioned Action for himself and on behalf of the Settlement Class, on the one hand, and the Defendants, Mid-States Express, Inc. (“Mid-States”) and Mid-States Express Inc. Employee Health Plan (“Plan”), on the other.

RECITALS

WHEREAS, John Smith commenced the above-captioned Action by filing a complaint on June 27, 2007, asserting various claims for relief under the Employee Retirement Income Security Act of 1974, as amended, against the Defendants, all of which claims are disputed by all those named and unnamed; and

WHEREAS, the Parties have engaged in extensive, arm’s-length negotiations with regard to the possible settlement of the Action; and

WHEREAS, the Parties desire to promptly and fully resolve and settle with finality all of the Released Claims against the Defendants asserted by John Smith for himself and on behalf of the Settlement Class; and

WHEREAS, Mid-States has agreed to provide the funds for this Settlement in accordance with the terms stated herein;

NOW, THEREFORE, the Parties, in consideration of the promises, covenants and agreements herein described, and for other good and valuable consideration, acknowledged by each of them to be satisfactory and adequate, and subject to approval of the Court, do hereby mutually agree as follows:

1. DEFINITIONS

As used in this Settlement Agreement, capitalized terms and phrases not otherwise defined have the meanings provided below:

1.1 “Action” shall mean the action captioned as *John Smith v. Mid-States Express, Inc. and Mid-States Express, Inc. Employee Health Plan*, No. 07 C 3616, United States District Court for the Northern District of Illinois (Judge Virginia Kendall).

1.2 “Affiliate” shall mean: any entity which owns or controls, is owned or controlled by, or is under common ownership or control with, a Person. For purposes of this definition, “control” shall mean the possession, directly or indirectly, of the power whether or not exercised to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise.

1.3 “Agreement Execution Date” shall mean: the date on which this Settlement Agreement is fully executed, as provided in Section 13.12 below.

1.4 “Class Counsel” shall mean Edelman, Combs, Lattuner & Goodwin, LLC.

1.5 “Class Notice” shall mean: the form of notice appended to the form of the Preliminary Approval Order.

1.6 “Complaint” shall mean: the Amended Complaint filed in the Action on December 18, 2007.

1.7 “Court” shall mean: the United States District Court for the Northern District of Illinois or any court adjudicating any issues in the above-captioned case.

1.8 “Defendants” shall mean: Mid-States and the Plan, and any other Person named as a defendant in this Action.

1.9 “Effective Date” shall mean: the date on which the Final Order becomes Final in accordance with Section 1.12.

1.10 “ERISA” shall mean: the Employee Retirement Income Security Act of 1974, as amended, including all regulations promulgated thereunder.

1.11 “Fairness Hearing” shall have the meaning set forth in Section 2.2.3.

1.12 “Final” shall mean: with respect to any judicial ruling or order, that the period for any appeals, petitions, motions for reconsideration, rehearing or certiorari or any other proceedings for review (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that there has occurred a full and final disposition of any such Review Proceeding without a reversal or modification, including the exhaustion of proceedings in any remand and/or subsequent appeal after remand. Notwithstanding any other provision hereof, the Final Order shall be deemed Final without regard to whether: (i) the Court has entered an order regarding the award of legal fees and

expenses; (ii) any order referred to in (i) above, if entered, has become Final; or (iii) any order referred to in (i) is reversed or modified on appeal.

1.13 “Final Order” shall have the meaning set forth in Section 2.3.

1.14 “Medical Provider Claims” shall mean all outstanding claims by medical providers for services rendered to Plan Participants and their beneficiaries between June 27, 2001 and August 1, 2008.

1.15 “Mid-States” shall mean: Mid-States Express Inc., each of its Affiliates, each of its past or present predecessors and Successors-In-Interest, subsidiaries, assigns, Representatives, officers, owners, directors, agents or employees.

1.16 “Parties” shall mean: John Smith and the Defendants.

1.17 “Person” shall mean: an individual, partnership, corporation, governmental entity or any other form of entity or organization.

1.18 “Plaintiffs” shall mean: John Smith and each member of the Settlement Class.

1.19 “Plan” shall mean the Mid-States Express, Inc. Employee Health Plan as it existed before August 1, 2008.

1.20 “Preliminary Approval Order” shall have the meaning set forth in Section 2.2.1.

1.21 “Plan Participants” shall mean participants in the Mid-States Express, Inc. Employee Health Plan from June 27, 2001 to August 1, 2008, as well as their covered beneficiaries under the Plan.

1.22 “Preliminary Motion” shall have the meaning set forth in Section 2.2.1.

1.23 “Released Claims” shall have the meaning set forth in Section 3.1.

1.24 “Released Parties” shall have the meaning set forth in Section 3.1.

1.25 “Releases” shall mean the releases set forth in Sections 3.1, 3.2, and 3.3.

1.26 “Representatives” shall mean: attorneys, agents, directors, officers, owners and employees.

1.27 “Settlement” shall mean: the settlement to be consummated under this Settlement Agreement pursuant to the Final Order.

1.28 “Settlement Agreement” means this Class Action Settlement Agreement.

1.29 “Settlement Class” shall mean all persons who were participants in or beneficiaries of the Plan at any time between June 27, 2001 and August 1, 2008 and who do not opt out of the Settlement.

1.30 “Settlement Fund” shall have the meaning set forth in Section 7.1.

1.31 “Successor-In-Interest” shall mean: a Person’s estate, legal representatives, heirs, successors or assigns, including successors or assigns that result from corporate mergers or other structural changes.

2. CONDITIONS TO THE SETTLEMENT

This Settlement shall be contingent upon each of the following conditions in Sections 2.1 through 2.3 having been satisfied or waived:

2.1 Condition #1: Class Certification for Purposes of Settlement. The Court shall have certified this Action as a class action for settlement purposes pursuant to Rule 23(a)(1)-(4), 23(b)(3) and 23(e) of the Federal Rules of Civil Procedure, with John Smith as the named Class Representative, with Class Counsel as counsel for John Smith and the Settlement Class as an opt-out class. If the Settlement does not become Final, the Defendants will not be deemed to have consented to the certification of any class, and the agreements and stipulations in this Settlement Agreement concerning class definition, class period, or class certification shall not be used as evidence or argument to support class certification, class definition, or any class period, and the Defendants will retain all rights to oppose class certification, including certification of a class identical to that provided for in this Settlement Agreement for any other purpose.

2.2 Condition #2: District Court Approval. The Settlement shall have been approved by the Court in accordance with the following steps:

2.2.1 Motion for Preliminary Approval of Settlement and of Notices. The Parties will cooperate in good faith and, by no later than November 3, 2008, the Parties will file a joint motion (“Preliminary Motion”) with the Court for an order preliminary certifying a settlement class, approving issuance of the Class Notice, and preliminarily approving the Settlement (the “Preliminary Approval Order”).

2.2.2 Issuance of Class Notice. As ordered by the Court in its Preliminary Approval Order, the Parties shall cause the Class Notice to be disseminated to the Settlement Class. The Parties will seek to set the Fairness Hearing sixty (60) business days from the mailing of the Class Notice to the Settlement Class.

2.2.3 The Fairness Hearing. The Court shall have conducted a hearing at which it will consider whether the Settlement is fair, reasonable, and adequate (“Fairness Hearing”). On or after the Fairness Hearing the Court shall have determined: (i) whether to enter judgment finally approving the Settlement (which judgment is referred to herein as the “Final Order”); (ii) whether this Action satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23(a) and 23(b)(3); (iii) what legal fees and costs should be awarded to Class Counsel as contemplated by Article 9 of this Settlement Agreement; and (iv) such other matters as this Settlement Agreement contemplates and the Court may deem just and proper. The Parties agree to support entry of the Final Order as contemplated by clause (i) of this Section 2.2.3; however, the Defendants agree not to take any position, and are not required to take any position, with respect to the matters described in clause (iii) of this Section 2.2.3. The Parties covenant and agree that they will reasonably cooperate with one another in obtaining

the Final Order as contemplated hereby at the Fairness Hearing and will not do anything inconsistent with obtaining the Final Order.

2.3 Condition #3: Finality of Final Order. The Final Order is the Order or Judgment entered by the Court approving the Settlement Agreement. The Final Order shall be deemed to be Final for purposes of this Settlement Agreement by becoming Final in accordance with Section 1.12 above.

3. RELEASES

3.1 Plaintiff's and Settlement Class' Release of the Released Parties. In consideration of the promises, covenants and agreements herein described, including but not limited to Mid-States' performance under Section 7 of this Agreement, and Subject to Section 3.3 below, upon the Effective Date, John Smith, on behalf of himself and the Settlement Class, shall be deemed to have, and by operation of the Final Order shall have, fully, finally, and forever released, relinquished, and discharged, and shall forever be enjoined from prosecution of, all Defendants and any Person that at any time served as a named or functional fiduciary or a trustee of the Plan, as well as any Representatives of Defendants or any such Person, including but not limited to their attorneys, agents, directors, officers, owners and employees (the "Released Parties") from any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees, and costs whether arising under local, state, or federal law, whether by statute, contract, common law, or equity, whether brought in an individual, representative, or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated that have been, could have been, or could be brought by John Smith, and/or by any member of the Settlement Class, and arise out of or are related in any way to the acts, omissions, facts, matters, transactions, or occurrences that have been alleged or referred to in the Action, including but not limited to, claims based on: (a) breach of ERISA fiduciary duties to the Plan, to John Smith, to the Settlement Class, and to the other participants and beneficiaries of the Plan; (b) ERISA prohibited transactions related to the Plan; (c) failure to use Plan Participants' contributions in a manner consistent with the terms of the Plan and ERISA; and (d) claims that would be barred by principles of res judicata had the claims asserted in the Action been fully litigated and resulted in a final judgment or order; and (e) any and all other claims asserted in the Complaint (collectively, "Released Claims"). Nothing in this Settlement Agreement releases claims or defenses by Plaintiff or the Settlement Class against Medical Providers for the Medical Providers' non-performance of duties set forth in Section 10.2 of this Settlement Agreement.

3.2 Defendants' Release of Claims Against John Smith, the Settlement Class, and Class Counsel. Subject to Section 3.3 below, upon the Effective Date, the Defendants shall be deemed to have, and by operation of the Final Order shall have, fully, finally, and forever released, relinquished, and discharged, and shall forever be enjoined from prosecution of John Smith, the Settlement Class, and Class Counsel from any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees and costs, whether arising under local, state, or federal law, whether by statute, contract, common law, or equity, whether brought in an individual, representative, or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated that have been, could have been, or could be brought by

the Defendants and arise out of or are related in any way to the acts, omissions, facts, matters, transactions, or occurrences that have been alleged or referred to in the Action, or the method and manner of the distribution of the Settlement Fund.

3.3 Persons and Claims Not Released. The settlement shall not release, bar or waive any ERISA Section 502(a)(1)(B) claim for vested benefits by any participant or beneficiary of the Plan where such claims are unrelated to any matter asserted in this Action, or any claim that cannot be released as a matter of law. Plaintiff and the Settlement Class do not, by entering into this Settlement Agreement, waive any right to challenge any denial of coverage or benefits under the Plan.

4. COVENANTS

The Parties covenant and agree as follows:

4.1 Covenants Not to Sue.

4.1.1 In consideration of the promises, covenants and agreements herein described, including but not limited to Mid-States' performance under Section 7 of this Agreement, John Smith covenants and agrees on his own behalf, and on behalf of the Settlement Class: (i) not to file against any Released Party any additional claim based on or arising from any Released Claim, or refile the claim brought in this Action; and (ii) that the foregoing covenants and agreements shall be a complete defense to any such claims against any of the respective Released Parties.

4.1.2 Mid-States covenants and agrees: (i) not to file against John Smith, the Plaintiffs, or Class Counsel any claim released under Section 3.2; and (ii) that the foregoing covenants and agreements shall be a complete defense to any such claims against John Smith, any of the respective Plaintiffs, or Class Counsel.

4.2 Cooperation To Publish Notice.

4.2.1 List Of Plan Participants and Beneficiaries. Mid-States shall provide to Class Counsel, or to any third party that the Parties choose to disseminate Class Notice, in the form of an electronic spreadsheet or database, within a reasonable time period following entry of the Preliminary Approval Order, the names and last known addresses (to the extent available from existing Plan records) of Plan Participants and beneficiaries to whom the Class Notice is to be sent pursuant to the Preliminary Approval Order. Mid-States shall have no obligation to attempt to locate any Plan Participant or beneficiary.

4.2.2 Supplemental Notice. If existing Plan records do not include the names and last known addresses of all Plan Participants and beneficiaries to whom the Class Notice is to be sent pursuant to the Preliminary Approval Order, the Parties will agree on a supplemental method of disseminating notice of this Class Action Settlement, such as by newspaper or website publication.

5. REPRESENTATIONS AND WARRANTIES

5.1 John Smith's Representations and Warranties.

5.1.1 John Smith represents and warrants that he has not assigned or otherwise transferred any interest in any Released Claims against any Released Party, and further covenants that he will not assign or otherwise transfer any interest in any Released Claims.

5.1.2 Pursuant to Articles 3 and 4, John Smith represents and warrants that he shall have no surviving claim or cause of action against any of the Released Parties with respect to the Released Claims against them.

5.2 Parties' Representations and Warranties. The Parties, by and through their Representatives, each represent and warrant:

5.2.1 That they are voluntarily entering into this Settlement Agreement as a result of arm's length negotiations among their counsel; that in executing this Settlement Agreement they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any Person representing any Party to this Settlement Agreement. Each of the Parties assumes the risk of mistake as to facts or law; and

5.2.2 That they or their Representatives have carefully read the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each Person executing this Settlement Agreement on behalf of each of the Parties. Each of the Parties further represents and warrants to each other that he, she, it, or his/her/its Representatives has made such investigation of the facts pertaining to the Settlement, this Settlement Agreement and all of the matters pertaining thereto, as he, she, or it deems necessary.

5.3 Signatories' Representations and Warranties. Each individual executing this Settlement Agreement on behalf of any other Person does hereby personally represent and warrant to the other Parties that he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal whom such individual represents or purports to represent.

6. NO ADMISSION OF LIABILITY

The Parties understand and agree that this Settlement Agreement embodies a compromise settlement of disputed claims, and that nothing in this Settlement Agreement, including the furnishing of consideration for this Settlement Agreement, shall be deemed to constitute any finding of fiduciary status under ERISA or wrongdoing by any of the Defendants, or give rise to any inference of fiduciary status under ERISA or wrongdoing or admission of wrongdoing or liability in this or any other proceeding. This Settlement Agreement and the payments made hereunder are made in compromise of disputed claims and are not admissions of any liability of

any kind, whether legal or factual. Moreover, the Defendants specifically deny any such liability or wrongdoing. Neither the fact nor the terms of this Settlement Agreement shall be offered or received in evidence in any action or proceeding for any purpose, except: (i) in an action or proceeding arising under this Settlement Agreement or arising out of or relating to the Preliminary Approval Order or the Final Order; or (ii) in an action or proceeding where the Releases provided pursuant to this Settlement Agreement may serve as a bar to recovery.

7. CASH COMPONENT REPRESENTING RELIEF TO SETTLEMENT CLASS

7.1 The Settlement Fund.

7.1.1 On July 22, 2008, Mid-States made an initial payment of \$250,000, to a Settlement Fund held by Group Administrators, Ltd., which the parties have directed Group Administrators to use to pay Medical Provider Claims, at a discounted rate.

7.1.2 Beginning Friday, August 8, 2008, and by or on every Friday thereafter, until such time as all Medical Provider Claims have been satisfied, Mid-States has made or will make a payment of \$25,000 into the Settlement Fund. The Parties recognize that from time to time, business circumstances may prevent Mid-States from making a weekly payment, and that such failure to make a payment by Friday of the week will not be considered a breach of the Agreement, so long as the payment is made before the quarterly statement of Settlement Fund activity of the Settlement Fund is due to Class Counsel pursuant to Section 10.4 of the Agreement. Such payment shall continue until all Medical Provider Claims have been satisfied or the Settlement Agreement terminates, whichever is earlier.

7.1.3 Group Administrators will continue to use the funds that Mid-States deposits into the Settlement Fund to negotiate and pay outstanding Medical Provider Claims until all such claims are satisfied or the Settlement Agreement terminates.

7.1.4 If, after all Medical Provider Claims have been satisfied, contributions made by Plan participants have not been used toward the payment of Medical Provider Claims, such unused contributions will be returned to the Plan participants.

7.2 Individual Relief to Named Plaintiff John Smith. The following relief will be provided to Plaintiff Smith within 30 days of the Effective Date of this Settlement Agreement, and will be in full settlement of all claims that he has and/or could have asserted in the Action.

7.2.1 An amount between \$3,000 and \$5,000, as determined by the Court, for Mr. Smith's service as Class representative, by check made payable to Mr. Smith, to be reported on a Form 1099;

7.2.2 \$8,528.35 plus any interest at the post-judgment rate of 9%, but only if OSF Healthcare System so charges, to satisfy the judgment entered against Plaintiff Smith and his wife in the Circuit Court of Peoria County, Case No. 07 SC 1010, by check made payable to OSF Healthcare System; and

7.2.3 \$9,442.14 to pay covered medical claims known to have been incurred by the Smiths as of June 11, 2008 and any additional covered medical claims incurred

before August 1, 2008 that may have been submitted by medical providers as of the date that the Court enters the Final Order approving the settlement.

8. NOTICE AND ADMINISTRATION COSTS.

8.1 Expenses of Services of Group Administrators. Fees and costs incurred by Group Administrators in negotiating, processing, and resolving Medical Provider Claims and/or providing settlement administration services as directed by the Parties, shall be paid from the Settlement Fund.

8.2 Expenses of Providing Notice to the Settlement Class. To the extent that fees or costs are incurred by any other third party selected by the Parties to provide settlement administration services (including, but not limited to, providing notice pursuant to Section 4.2 above), Mid-States shall pay the reasonable costs of such administrative services.

9. ATTORNEYS' FEES, COSTS AND EXPENSES

9.1 Application for Attorneys' Fees and Costs. Class Counsel may apply to the Court for an award of attorneys' fees and costs in an amount to be determined by the Court, not to exceed \$60,000, to be paid by Mid-States. Defendants will not take any position on Class Counsel's application for fees and costs to the extent the request does not exceed \$60,000. The Parties acknowledge and agree that the Defendants shall have no authority, control, or liability in connection with the award of Class Counsel's attorneys' fees and costs.

9.2 Disbursement of Attorneys' Fees and Costs. Class Counsel may at any time apply for and receive an award of attorneys' fees and costs in such amounts as the Court approves. Such award shall be paid to Class Counsel in three installments, each in an amount equal to one third (1/3) of the total award of attorneys' fees and costs. The first installment will be paid within 30 days of the Court's Final Approval of the Settlement; the second installment will be paid within 60 days of the Court's Final Approval of the Settlement; and the third installment will be paid within 90 days of the Court's Final Approval of the Settlement. This provision shall apply notwithstanding timely objections thereto, the potential for appeal therefrom, or collateral attack thereof.

10. NON-MONETARY SETTLEMENT TERMS

10.1 Termination of Self-Funded Plan. As part of the Settlement of the claims asserted in this Action, and in further consideration for the Releases of John Smith and the Settlement Class, Mid-States agrees to terminate the Plan by September 1, 2008, and replace it with a fully insured plan.

10.2 Release Of Claims By Medical Providers. Pursuant to correspondence to Medical Providers jointly prepared by the Parties, Medical Providers who accept a discounted payment must, as a condition of receiving a discounted payment, agree to:

10.2.1 Release any claims, dismiss any pending cases against Plan Participants, undertake and make best efforts to vacate any judgments against them, and cease all collection efforts;

10.2.2 Request that any Plan Participants' debts previously reported to credit reporting agencies be deleted from the Plan Participants' credit reports; and

10.2.3 Voluntarily refund any money paid by Plan Participants above and beyond their liability (deductible/coinsurance).

10.3 Refunds to Class Members. Class members who claim that they have made payments above and beyond their liability (deductible/coinsurance) that were not refunded by the medical provider will be given an opportunity to submit a claim for such refund by Defendants. The Parties will agree on a reasonable procedure for providing such opportunity, and for review and approval of such claims by Group Administrators.

10.4 Reporting to Class Counsel. If the Court grants Final Approval of the Settlement, within ten (10) days of such approval, Defendants will instruct Group Administrators to provide Class Counsel, on a quarterly basis, a statement of the activity of the Settlement Fund (including the amount of funds deposited into the account, the amount of funds paid out of the account, and the value of Medical Provider Claims that remain outstanding).

10.5 Letter Provided To Class Members. Mid-States agrees to provide to each Settlement Class Member, a copy of the letter attached hereto as Addendum A.

11. RESERVATION OF RIGHTS UPON OBJECTION BY U.S. DEPARTMENT OF LABOR.

11.1 Mid-States will notify the United States Department of Labor of the terms of this Settlement Agreement. Defendants reserve the right to withdraw from and terminate the Settlement Agreement if the United States Department of Labor objects to the terms of the Settlement Agreement, or finds them to be in violation of the law.

12. TERMINATION OF THE SETTLEMENT AGREEMENT

12.1 Termination. Automatic termination of this Settlement Agreement, thereby making the Settlement Agreement null and void, will occur under the following circumstances:

12.1.1 If the Court declines to approve the Settlement and if such order declining approval has become Final, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the date that any such order becomes Final.

12.1.2 If the Court issues an order modifying the Settlement Agreement, and if, within thirty-one (31) business days after the date of any such ruling, or, within thirty-one (31) business days after the date of the Court's order following a motion for reconsideration of any such ruling, whichever is later, the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Court or the Parties, then provided that no appeal is then pending from either such ruling, this Settlement Agreement shall automatically terminate, and thereupon become null and void.

12.1.3 If the Seventh Circuit reverses the Court's order approving the Settlement, and if within thirty-one (31) business days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Court or by the Parties then, provided that no appeal is then pending from such ruling this Settlement Agreement shall automatically terminate, and thereupon become null and void.

12.1.4 If the Supreme Court of the United States reverses a Seventh Circuit order approving the Settlement, and if within thirty-one (31) business days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Court or by the Parties then this Settlement Agreement shall automatically terminate, and thereupon become null and void.

12.1.5 If any or all of the conditions of Article 2 of this Settlement Agreement are not fully satisfied or waived in accordance with their terms and on the timetables set forth in that Article, then this Settlement Agreement shall terminate, and thereupon become null and void.

12.2 Consequences of Termination of the Settlement Agreement. If the Settlement Agreement is terminated and rendered null and void for any reason specified in Article 2, the following shall occur:

12.2.1 Any amounts that Mid-States has already contributed to the Settlement Fund, which have not been disbursed to Medical Providers, shall be returned to Mid-States by Group Administrators upon Mid-States' request.

12.2.2 The Action shall for all purposes with respect to the Parties revert to its status as of the Agreement Execution Date, including a lifting of any stay of the Action.

12.2.3 All provisions of this Settlement Agreement shall be null and void except as otherwise provided herein. Neither the fact nor the terms of this Settlement Agreement shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding arising under this Settlement Agreement.

13. MISCELLANEOUS PROVISIONS

13.1 Governing Law. This Settlement Agreement shall be governed by the laws of the State of Illinois without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

13.2 Severability. The provisions of this Settlement Agreement are not severable.

13.3 Amendment. Before entry of the Final Order, the Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of the Final Order, the Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Parties, and approved by the Court.

13.4 Waiver. The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving Party. The waiver by any Party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

13.5 Construction. None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

13.6 Principles of Interpretation. The following principles of interpretation apply to this Settlement Agreement.

13.6.1 Headings. The headings of this Settlement Agreement are for reference purposes only and do not affect in anyway the meaning or interpretation of this Settlement Agreement.

13.6.2 Singular and Plural. Definitions apply to the singular and plural forms of each term defined.

13.6.3 Gender. Definitions apply to the masculine, feminine, and neuter genders of each term defined.

13.6.4 References to a Person. References to a Person are also to the Person's permitted successors and assigns.

13.6.5 Terms of Inclusion. Whenever the words "include," "includes" or "including" are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

13.7 Further Assurances. Each of the Parties agrees, without further consideration and as part of finalizing the Settlement hereunder, that they will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this Settlement Agreement.

13.8 Notices. Any notice, demand or other communication under this Settlement Agreement (other than the Class Notice, Summary Notice, or other notices given at the direction of the Court) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the recipients set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier.

IF TO JOHN SMITH:
Francis Greene
Edelman, Combs, Lattuner & Goodwin, LLC
120 LaSalle Street, Suite 1800
Chicago, Illinois 60603

IF TO DEFENDANTS:
Alison B. Willard
Morgan Lewis & Bockius LLP
77 W. Wacker, Fifth Floor
Chicago, IL 60601

Any Party may change the address at which it is to receive notice by written notice delivered to the other Parties in the manner described above.

13.9 Entire Agreement. This Settlement Agreement contains the entire agreement among the Parties relating to this Settlement. It specifically supersedes any settlement terms or settlement agreements relating to the Defendants that were previously agreed upon orally or in writing by any of the Parties.

13.10 Counterparts. This Settlement Agreement may be executed by exchange of faxed or electronically transmitted (.pdf) executed signature pages, and any signature transmitted by facsimile or .pdf for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

13.11 Binding Effect. This Settlement Agreement binds and inures to the benefit of the Parties, their assigns, heirs, administrators, executors and successors.

13.12 Agreement Execution Date. The date on which the final signature is affixed below shall be the Agreement Execution Date.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below.

JOHN SMITH:

DEFENDANTS:

Mid-States Express, Inc. and Mid-States Express, Inc. Employee Health Plan

By: _____
John Smith

By: _____
Bruce Hartmann

Date: _____

Date: _____

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Any Party may change the address at which it is to receive notice by written notice delivered to the other Parties in the manner described above.

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IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below.

JOHN SMITH:

DEFENDANTS:
Mid-States Express, Inc. and Mid-States Express, Inc. Employee Health Plan

By: John K. Smith
John Smith

By: _____
Bruce Hartmann

Date: 12-2-08

Date: _____

Any Party may change the address at which it is to receive notice by written notice delivered to the other Parties in the manner described above.

13.9 Entire Agreement. This Settlement Agreement contains the entire agreement among the Parties relating to this Settlement. It specifically supersedes any settlement terms or settlement agreements relating to the Defendants that were previously agreed upon orally or in writing by any of the Parties.

13.10 Counterparts. This Settlement Agreement may be executed by exchange of faxed or electronically transmitted (.pdf) executed signature pages, and any signature transmitted by facsimile or .pdf for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

13.11 Binding Effect. This Settlement Agreement binds and inures to the benefit of the Parties, their assigns, heirs, administrators, executors and successors.

13.12 Agreement Execution Date. The date on which the final signature is affixed below shall be the Agreement Execution Date.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below.

JOHN SMITH:

DEFENDANTS:

Mid-States Express, Inc. and Mid-States Express, Inc. Employee Health Plan

By: _____
John Smith

By:  _____
Bruce Hartmann

Date: _____

Date: 12/2/08