

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

HOLLY JOHNSON, SABRINA
TIMMINS, ELAINE SCHERER, ELMIRA
HOBBS, DANIEL ROGERS, TRINA
HAWTHORNE, BRIAN MARBLE,
MONTE BELL, JILL HODGE, TRAVIS
JOHNSON, JOANGELA PULLEY, and
TAMMI DOOLEY, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

AMERICAN FAMILY INSURANCE
COMPANY; AMERICAN FAMILY
MUTUAL INSURANCE COMPANY, S.I.;
AMERICAN STANDARD INSURANCE
COMPANY OF OHIO; PERMANENT
GENERAL ASSURANCE
CORPORATION; PERMANENT
GENERAL ASSURANCE
CORPORATION OF OHIO; THE
GENERAL AUTOMOBILE INSURANCE
COMPANY, INC.,

Defendants.

CASE NO: 24SL-CC00378

Division 8

FILED

MAR 20 2024

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

PRELIMINARY APPROVAL ORDER

WHEREAS, Plaintiffs Sabrina Timmins ("Timmins"), Holly Johnson ("Johnson"), Elaine Scherer ("Scherer"), Elmira Hobbs ("Hobbs"), Daniel Rogers ("Rogers"), Trina Hawthorne ("Hawthorne"), Brian Marble ("Marble"), Monte Bell ("Bell"), Jill Hodge ("Hodge"), Travis Johnson ("Johnson"), and Tammi Dooley ("Dooley") (together, "Plaintiffs") assert claims against Defendants American Family Insurance Company ("AmFam"), American Family Mutual Insurance Company, S.I. ("AmFam Mutual"), American Standard Insurance Company of Ohio ("American Standard"), Permanent General Assurance Corporation

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("Permanent General"), Permanent General Assurance Corporation of Ohio ("Permanent General of Ohio ("Permanent General of Ohio"), and The General Automobile Insurance Company, Inc. ("The General") (together, "Defendants") breach of contract and related claims based on Plaintiffs' allegations that Defendants systematically underpay insureds on auto insurance claims by basing total loss auto claims payments on valuation reports produced by Audatex in which a typical negotiation deduction ("TND") has been applied to the advertised list price of at least one comparable vehicle.

WHEREAS, the Parties stipulate to Settlement Classes, pending preliminary and final approval by the Circuit Court of St. Louis County, Missouri, defined *infra* paragraph 4:

WHEREAS, the Plaintiffs, as members and representatives of the Settlement Classes, and Defendants have entered into a "Settlement Agreement and Release" (the "Agreement"), which memorializes the Parties' negotiated and agreed-upon settlement as between them and proposed Settlement Classes, subject to the approval of the Court ("the Settlement").

WHEREAS, the Parties have filed a *Joint Motion for Preliminary Approval of Class Action Settlement* with the Court.

NOW THEREFORE, upon careful consideration of the *Joint Motion for Preliminary Approval of Class Action Settlement*, and after reviewing the Agreement and making an independent judicial investigation into the allegations and defenses of the parties, and for good cause shown, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Under Missouri Supreme Court Rule 52.08, the Agreement and the Settlement are approved preliminarily as fair, reasonable and adequate to the Settlement Classes as defined in the Agreement, subject to further consideration at the Final Approval Hearing described in Paragraph 13 of this Order.

2. The definitions in the Agreement are incorporated by reference into this Order (with capitalized terms in the Agreement).

3. Plaintiffs and Defendants have executed the Agreement to settle and resolve the Litigation as between them and the proposed Settlement Classes, subject to approval of the Court.

4. Upon review of the *Joint Motion for Preliminary Approval of Proposed Class Action Settlement*, this Court preliminarily certifies, under Missouri Supreme Court Rule 52.08, the following class of persons as settlement classes (together, the "Settlement Classes"):

The Wisconsin Class. All Wisconsin citizens insured by American Family Insurance Company who made a first-party claim on a policy of automobile insurance issued by American Family Insurance Company to a Wisconsin resident where, from April 13, 2016 through the date an order granting class certification is entered, American Family Insurance Company determined that the vehicle was a total loss and based its claim payment on an appraisal report from Audatex where a typical negotiation deduction ("TND") was applied to at least one comparable vehicle.

The Kansas Class: All Kansas citizens insured by American Family Insurance Company who made a first-party claim on a policy of automobile insurance issued by American Family Insurance Company to a Kansas resident where, from April 13, 2017 through the date an order granting class certification is entered, American Family Insurance Company determined that the vehicle was a total loss and based its claim payment on an appraisal report from Audatex where a typical negotiation deduction was applied to at least one comparable vehicle.

The Missouri Class. All Missouri citizens insured by Defendants who made a first-party claim on a policy of automobile insurance issued by American Family Insurance Company or American Family Mutual Insurance Company, S.I. to a Missouri resident where, from April 13, 2012 through the date an order granting class certification is entered, American Family Insurance Company or American Family Mutual Insurance Company, S.I. determined that the vehicle was a total loss and based its claim payment on an appraisal report from Audatex where a typical negotiation deduction was applied to at least one comparable vehicle.

The Georgia Class. All Georgia citizens insured by Defendants who made a first-party claim on a policy of automobile insurance issued by American Standard Insurance Company of Ohio to a Georgia resident where, from April 7, 2016, through the date an order granting class certification is entered, American Standard Insurance Company of Ohio determined that the vehicle was a total loss and based its claim payment on an appraisal report from Audatex where a typical negotiation deduction was applied to at least one comparable vehicle.

The Ohio Class. All Ohio citizens insured by Defendants who made a first-party claim on a policy of automobile insurance issued by American Family Insurance Company to an Ohio resident where, from April 21, 2017, through the date an order granting class certification is entered, American Family Insurance Company determined that the vehicle was a total loss and based its claim payment on an appraisal report from Audatex where a typical negotiation deduction was applied to at least one comparable vehicle.

The Illinois Class. All Illinois citizens insured by Defendants who made a first-party claim on a policy of automobile insurance issued by American Family Insurance Company to an Illinois resident where, from

April 21, 2013, through the date an order granting class certification is entered, American Family Insurance Company determined that the vehicle was a total loss and based its claim payment on an appraisal report from Audatex where a typical negotiation deduction was applied to at least one comparable vehicle.

The Arizona Class. All Arizona citizens insured by Defendants who made a first-party claim on a policy of automobile insurance issued by American Family Insurance Company to an Arizona resident where, from April 21, 2017 through the date an order granting class certification is entered, American Family Insurance Company determined that the vehicle was a total loss and based its claim payment on an appraisal report from Audatex where a typical negotiation deduction was applied to at least one comparable vehicle.

The Virginia Class. All Virginia citizens insured by Defendants who made a first-party claim on a policy of automobile insurance issued by The General to a Virginia resident where, from August 11, 2018 through the date an order granting class certification is entered, The General determined that the vehicle was a total loss and based its claim payment on an appraisal report from Audatex where a typical negotiation deduction was applied to at least one comparable vehicle.

The Mississippi Class. All Mississippi citizens insured by Defendants who made a first-party claim on a policy of automobile insurance issued by Permanent General to a Mississippi resident where, from April 11, 2019 through the date an order granting class certification is entered, Permanent General determined that the vehicle was a total loss and based its claim payment on an appraisal report from Audatex where a typical negotiation deduction was applied to at least one comparable vehicle.

The Court finds as to the Settlement Classes that:

- a. Each Settlement Class is so numerous that joinder of all members is impracticable.
 - b. There are questions of law or fact common to each Settlement Class that predominate over questions of law or fact common to each Settlement Class that predominate over questions affecting only individual members of the Settlement Classes.
 - c. Plaintiffs' claims are typical of those of the members of the Settlement Classes.
 - d. Plaintiffs and Class Counsel will fairly and adequately represent and protect the interests of the members of the proposed Settlement Classes.
 - e. Certification of the Settlement Classes as proposed is a superior and appropriate method for the fair and efficient adjudication of the controversies between the Settlement Classes and Defendants.
 - f. Defendants will pay Settlement Class Members who submit a valid claim a portion of the Settlement Amount proportional to the amount of the TNDs applied by Defendants in relation to the Settlement Class Member's total loss claim.
5. For this preliminary approval, and for all matters relating to the Settlement and the Litigation, the Court appoints Plaintiffs as Class Representatives of the Settlement Class and Martin L. Daesch of OnderLaw, LLC, Edelsberg Law, P.A., Shamis & Gentile, P.A., Normand PLLC, and Jacobson Phillips PLLC as Counsel for the Settlement Classes ("Class Counsel") until further order of the Court. The Court also appoints those Settlement

Administrations as the Claims Administrator.

6. By this Order, the Court exercises subject-matter and personal jurisdiction over the Settlement Classes to evaluate the final certification of the Settlement Classes and the fairness and adequacy of the Settlement.

7. The Mail Notice, Email Notice, Mail Reminder, Email Reminder, Long-Form Notice, and Claim Form, as set forth in **Exhibits 1-4, 7-8**, to the Agreement, are approved.

8. The Mail Notice in a form substantially the same as that set forth in **Exhibit 2** to the Agreement shall be mailed by the Settlement Administrator via U.S. Mail. Such mailing shall be made within the timeframe provided by the Agreement. The Email Notice in a form substantially the same as that set forth in **Exhibit 3** to the Agreement shall be emailed by the Settlement Administrator within the timeframe provided by the Agreement. The Long-Form Notice in a form substantially the same as that set forth in **Exhibit 4** to the Agreement shall be posted on the Settlement Website and emailed to Settlement Class Members upon their request. At a date and time selected by the Settlement Administrator, the Claims Administrator shall send separate Reminder Notices (by U.S. mail and email) in a form substantially the same as that set forth in **Exhibits 7 and 8**. Before initiating Class Notice, the Claims Administrator will create an informational website providing information and documents concerning the Settlement, and enable Settlement Class Members to submit a Claim online. The Electronic Claim Form in a form substantially the same as that set forth in **Exhibit 1** to the Agreement, which will be pre-filled, shall be made available on the Settlement Website for Settlement Class Members to submit the claim online.

9. The Agreement contemplates a notice methodology that protects the interests of the Parties and the Settlement Classes and provides the best notice practicable under the circumstances and is reasonably calculated to apprise the Settlement Class Members of the pendency of the Litigation and proposed Settlement, the Agreement, and their right to opt out and exclude themselves from or object to the proposed Settlement. In addition, the Court finds the notice methodology is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice of the proposed Settlement and meets all requirements of law, including, but not limited to, Missouri Supreme Court Rule 52.08 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the Missouri Constitution.

10. Prior to the Final Approval Hearing, Class Counsel shall cause the Settlement Administrator to serve and file a sworn statement of a person with knowledge, evidencing compliance with this Order concerning the mailing and emailing of the Class Notice.

11. Any person falling within the definition of the Settlement Classes may, upon request, be excluded or "opt-out" from their Settlement Class. In the event a Settlement Class member wishes to be excluded from the Settlement and not to be bound by this Agreement, that person must sign and mail a notice of intention to opt-out of the Settlement to the Settlement Administrator. The notice must be postmarked on or before the last day of the deadline to request exclusion from the Settlement set forth in the Agreement. Any member of the Settlement Classes who timely and properly requests

exclusion in compliance with these requirements will thereafter be excluded from the Settlement Class, not become a Settlement Class Member, will not have any rights under the Settlement, will not be entitled to receive a Settlement Class Payment, and will not be bound by the Agreement or the Final Approval Order. Any members of the Settlement Classes who fail to submit a valid and timely opt-out request shall be bound by all terms of the Agreement and the Final Approval Order, regardless of whether they have requested to be opted-out from the Settlement. If the Insured submits the request for exclusion, they shall be deemed to have opted out of the Settlement with respect to that policy, and the Insured shall not be entitled to a payment under the Settlement.

12. Any Settlement Class Member who wishes to object to the Settlement, Class Counsel's application for Class Counsel Fees or Service Awards for the Plaintiffs, or to appear at the Final Approval Hearing and show cause, if any, why the Settlement should not be approved as fair, reasonable, and adequate to the Settlement Classes, or why a final judgment should not be entered thereon, may do so. A valid objection must include:

- a) the name of the Action;
- b) the objector's full name, address and telephone number;
- c) all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- d) the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;

e) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;

f) the number of times in which objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that objector filed the objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years;

g) any and all agreements that relate to the objection or the process of objecting-whether written or oral-between objector or objector's counsel and any other person or entity;

h) the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

i) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;

j) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

k) the objector's signature (an attorney's signature is not sufficient).

The Parties must file any briefs in response to any objection on or before 10 days prior to the date of the Final Approval Hearing. Class Counsel and/or Defendants may conduct

limited discovery on any objector consistent with the Missouri Rules of Civil Procedure. Any Settlement Class Member who does not make his or her objections in the manner and by the Objection Deadline shall be deemed to have waived any objection(s), and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court.

13. A hearing (the "Final Approval Hearing") shall be held before the undersigned at 9:00 am., on August 19, 2024, at Division 8, St. Louis County Courtroom 8, St. Louis, Missouri.

At the Final Approval Hearing, the Court will consider: (a) the fairness, reasonableness, and adequacy of the Settlement; (b) the entry of any final order or judgment with respect to the Settlement Classes; (c) the application for incentive awards for the services rendered by Plaintiffs as the Class Representatives of the Settlement Classes; (d) the application for attorneys' fees and for reimbursement of expenses by Class Counsel; and (e) other related matters. The Final Approval Hearing may be postponed, adjourned or continued by the Court without further notice to the Settlement Class.

14. All other events contemplated under the Agreement to occur after entry of this Order and before the Final Approval Hearing shall be governed by the Agreement and the Class Mail Notice, to the extent not inconsistent with this Order. Class Counsel and Defendants' Counsel shall take such further actions as required by the Agreement.

15. The Parties shall be authorized to make nonmaterial changes to the Class Notice if Class Counsel and Defendants' Counsel agree.

16. All claims against and motions in the Litigation, other than such as may be necessary to carry out the terms and conditions of the Agreement or the responsibilities related

or incidental thereto, are stayed and suspended until further order of this Court.

17. The "Released Claims" of the Plaintiffs as against the "Released Persons," all as defined in the Agreement, other than such as may be necessary to carry out the terms and conditions of the Agreement or the responsibilities related or incidental thereto, are stayed and suspended until further order of this Court.

18. If Final Approval of the Settlement does not occur, or if the Settlement is rescinded or terminated, the Settlement and all proceedings had in connection therewith shall be null and void and without prejudice to the rights of the Parties before the Settlement was executed and made, and all Orders issued for the Settlement shall be vacated.

19. Neither the Agreement, nor any act performed or document executed pursuant to or in furtherance of the Agreement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or Settlement Class members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

20. The Parties expressly reserve all rights and defenses to all claims and causes of action and waive no such rights or defenses if the Agreement is not approved or fails to become effective for any reason.

IT IS SO ORDERED

DATE: 3/20/2024



HONORABLE DEAN WALDEMER