

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, 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,

CASE NO: 24SL-CC00378

Plaintiffs,

FILED
08/19/24
JOAN M. GILMER
CIRCUIT CLERK
ST. LOUIS COUNTY, MO

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.



**FINAL ORDER APPROVING SETTLEMENT AND JUDGMENT OF DISMISSAL
WITH PREJUDICE**

The Court preliminarily approved the class action Settlement in this case on March 20, 2024. Since that time, the Parties have completed the Notice process and now seek final approval of the Settlement Agreement and Release dated March 8, 2024 (the “Agreement”). Through a motion for final approval of class settlement, the Parties seek, among other things, that the Court: (1) grant final certification of the Settlement Class; (2) approve the Agreement as fair, reasonable, and adequate; (3) rule that the Notice process was reasonable and the best practicable under the circumstances. The Named Plaintiffs also seek a class representative service award and an award of attorneys’ fees and costs, which Defendants do not oppose. A hearing was held on both motions on August 19, 2024. For the reasons stated below, the motion is granted.

WHEREAS, Sabrina Timmins, Holly Johnson, Elaine Scherer, Elmira Hobbs, Daniel Rogers, Trina Hawthorne, Brian Marble, Monte Bell, Jill Hodge, and Tammi Dooley (the “Named Plaintiffs”), and Defendants, American Family Insurance Company, American Family Mutual Insurance Company, S.I., American Standard Insurance Company of Ohio, Permanent General Assurance, Permanent General Assurance Corporation of Ohio, and The General Automobile Insurance Company, Inc. (together, “Defendants”), have executed and filed the Agreement with the Court; and

WHEREAS, all capitalized terms used herein shall have the same meaning as set forth in the Agreement and are hereby incorporated by reference, and this Order incorporates by reference the definitions in the Agreement; and

WHEREAS, the Court, on March 20, 2024, entered the Order Re: Preliminary Approval of Settlement and Approval of Notice of Pendency of Settlement of Class Action to Class Members (“Preliminary Approval Order”), preliminarily approving the Proposed Settlement and conditionally certifying this Action, for settlement purposes only, as a class action; and

WHEREAS, Sabrina Timmins, Holly Johnson, Elaine Scherer, Elmira Hobbs, Daniel Rogers, Trina Hawthorne, Brian Marble, Monte Bell, Jill Hodge, and Tammi Dooley were approved in the Preliminary Approval Order as the Class Representatives; and

WHEREAS, the Court, as part of its Preliminary Approval Order, directed that a plan for disseminating notice of the settlement (“Notice Plan”) be implemented, and scheduled a hearing to be held on August 19, 2024, to determine whether the Proposed Settlement should be finally approved as fair, reasonable and adequate; and

WHEREAS, Plaintiffs, Defendants, and Class Counsel have satisfactorily demonstrated to the Court that the Notice Plan was followed; and

WHEREAS, a Final Settlement Hearing was held on August 19, 2024, at which all interested persons were given an opportunity to be heard, and all objections to the settlement, if any, were duly considered;

NOW, THEREFORE, the Court, having read and considered all submissions made in connection with the Proposed Settlement, and having reviewed and considered the files and records herein, and upon the Hearing held on August 19, 2024, finds and concludes as follows:

1. The Complaint filed in this Action alleges generally that Defendants improperly failed to pay Actual Cash Value (“ACV”) when adjusting certain total loss claims in Missouri, Wisconsin, Kansas, Georgia, Ohio, Illinois, Arizona, Virginia, and Mississippi due to their use of a “typical negotiation adjustment” when using the comparable methodology to calculate ACV.

2. As part of the Preliminary Approval Order, the Court certified the Settlement Classes, for settlement purposes only, defined as follows:

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 a 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 Automobile Insurance Company, Inc. (“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 Assurance Corporation of Ohio (“Permanent General of Ohio”) 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.

3. The Court hereby affirms these definitions of the Settlement Classes for purposes of this Final Judgment.

4. For purposes of Settlement, the Named Plaintiffs possess standing and the proposed Settlement Classes are adequately defined and ascertainable. The Settlement Classes are adequately defined because the class definitions are clear and precise, are based on objective criteria, and, because they only include insureds who claim to have suffered a harm redressable under Missouri law, so it is not overbroad.

5. For purposes of settlement only, the Classes are sufficiently numerous, there are questions of law and fact common to the Settlement Classes (including whether the insurance policies were breached by failure to pay ACV) and the Named Plaintiffs’ claims are typical of the Settlement Classes. In addition, both the Named Plaintiffs and Class Counsel are adequate representatives of the Settlement Classes and have fairly and adequately protected and will continue to protect the interests of the Settlement Classes. Thus, the requirements to certify a class prescribed by the Missouri Rules of Civil Procedure are satisfied as to the Settlement Classes for

purposes of a settlement class, although Defendants do not concede, and this Court does not address, whether these requirements would have been satisfied for purposes of a litigation class.

6. For purposes of settlement only, the Settlement Classes are certifiable under the Missouri Rules of Civil Procedure because common issues predominate over individual issues and class treatment is superior to other alternatives for adjudicating the claims at issue.

7. The Named Plaintiffs and Defendants have entered into the Agreement which has been filed with the Court. The Agreement provides for the Settlement of this Action with Defendants on behalf of the Named Plaintiffs and the Settlement Class Members, subject to approval by the Court of its terms. The Court scheduled a hearing to consider the approval of the Settlement and directed that the Class Notice be disseminated in accordance with the terms of the Preliminary Approval Order.

8. In accordance with the terms of the Settlement and the Preliminary Approval Order, the parties implemented the Notice Plan approved by the Court. Defendants' counsel and Class Counsel have confirmed to the Court that the Parties complied with the Notice Plan.

9. The Court hereby finds that the Notice Plan and the Class Notice constituted the best notice practicable under the circumstances, and constituted valid, due and sufficient notice to members of the Settlement Classes, complied with constitutional due process, and with Missouri rules of civil procedure.

10. Plaintiffs and Defendants have applied to the Court for final approval of the terms of the Proposed Settlement and for the entry of this Final Judgment. Pursuant to the Class Notice, a hearing was held before this Court, on August 19, 2024, to determine whether the Proposed Settlement of the Action should be finally approved as fair, reasonable, and adequate, and whether the Final Judgment approving the Settlement and dismissing all claims in the Action on the merits, with prejudice and without leave to amend should be entered.

11. The Court hereby finds that approval of the Agreement and the Settlement embodied therein will result in substantial savings of time and money to the Court and the litigants and will further the interests of justice.

12. The Court hereby finds that the Proposed Settlement is the result of good faith arm's length negotiations by the Parties thereto, and is fair, reasonable, and adequate.

NOW, THEREFORE, GOOD CAUSE APPEARING THEREFOR, IT IS ORDERED, ADJUDGED AND DECREED THAT:

13. The Court possesses jurisdiction over the subject matter of this Action, the Named Plaintiffs, the Settlement Class Members, Defendants, the Releasing Parties and the Released Persons.

14. Zero (0) Settlement Class Members have filed requests for exclusion. All Settlement Class Members are therefore bound by this Final Judgment and by the Agreement and the Settlement embodied therein, including the Releases.

15. All provisions and terms of the Settlement are hereby found to be fair, reasonable and adequate as to the Settlement Class Members and the Named Plaintiffs, and all provisions and terms of the Settlement are hereby finally approved in all respects.

16. The Parties are hereby directed to consummate the Settlement in accordance with its terms.

17. The Class Claims in this Action are dismissed in their entirety, on the merits, with prejudice and without leave to amend, and the Releasing Parties and each Settlement Class Member, including Plaintiff are hereby held to have fully released, waived, relinquished, and discharged all the Released Persons from all the Released Claims, to the fullest extent possibly

allowed by the law, and shall be enjoined from continuing, instituting or prosecuting any legal proceeding against the Releasees relating in any way whatsoever to the Released Claims.

- a. The term “Settlement Class Member”, as used in this order, shall mean any member of any Settlement Class. Any person who submits a valid and timely written request to be excluded from the Settlement Classes shall not be a Settlement Class Member.
- b. The term “Releasing Parties”, as used in this order, shall mean (i) the Named Plaintiffs and the Settlement Class Members, their present and former spouse(s), their present and former lessors, their present and former lienholders, any present and former co-owners of the subject total loss vehicles; and (ii) all of the foregoing’s predecessors-in-interest, successors-in-interest, assigns, personal representatives, attorneys, officers, stockholders, employees, agents, partners, insurers, reinsurers, underwriters, beneficiaries, directors, Legally Authorized Representatives (in their capacity as a Legally Authorized Representative), including executors and administrators; and/or past, present and future parent, subsidiary and affiliated corporations, and any other person or entity who could or might assert any claim under or through any of the foregoing.
- c. The term “Released Persons”, as used in this order shall mean the Defendants and any of their present, former and future direct and indirect parent companies, subsidiaries, affiliates, agents, divisions, predecessors, successors, and members; and (ii) all of the aforementioned’s respective present, former, and future agents, assigns, attorneys, directors, employees,

officers, contractors, members, shareholders, and policyholders or legal representatives thereof.

- d. The term “Released Claims”, as used in this Order shall mean a general release through the date that the Court enters the Preliminary Approval Order of any claims, causes of action, Unknown Claims, rights, demands, allegations, actions, suits or causes of action of whatever kind or nature, debts, liens, liabilities, agreements, contracts, interests, costs, expenses, attorneys’ fees, losses or damages (whether actionable, actual, consequential, statutory, punitive, or treble), whether arising in law or equity, known or unknown, arising out of or relating to Plaintiff and the Settlement Class Members’ automotive property damage claims to any Released Persons, including (i) the allegations that were or could have been asserted by the Plaintiff or the Settlement Class Members in any of the Lawsuits (including any iteration of the complaints in those Lawsuits) or the Consolidated Action; (ii) the Released Persons’ handling, valuation, or adjustment of the aforementioned automotive property damage claims and/or coverage, including claims for bad faith; (iii) the total loss payments, including but not limited to breach of any written or oral agreement or insurance contract or any similar act; waiver; estoppel; any tortious injury, including any intentional or negligent acts; agent negligence; failure to procure coverage or misconduct; punitive damages; treble damages; statutory damages, regulatory claims; claims for violation of any state Consumer Protection Act or any similar act; claims for violation of any state

insurance code or regulatory provisions; misrepresentation; and/or any claim for attorneys' fees and expenses; arising on or before the date hereof, which the Releasing Parties had or have alleged by the Plaintiffs in any Lawsuit or Consolidated Action, for themselves or on behalf of the Settlement Class, that relate in any way whatsoever to any Lawsuit or Consolidated Action's claims related to total loss payment. The Released Claims do not include any claims arising out of bodily injuries to the Plaintiff and/or Settlement Class Members.

18. As of the Effective Date, by operation of the entry of the Final Judgment, each Settlement Class Member shall be deemed to have fully released, waived, relinquished and discharged, to the fullest extent permitted by law, all Released Claims that the Releasing Parties may have against all the Released Persons.

19. It is hereby determined that the Notice Plan and the Class Notice constituted the best notice practicable under the circumstances to all members of the Settlement Classes and is therefore finally approved as reasonable. Due and adequate notice of the pendency of this Action and of the Settlement has been provided to all the Settlement Class Members, and this Court hereby finds that the Class Notice complied fully with the requirements of due process, the Missouri Rules of Civil Procedure and all other applicable laws.

20. The Agreement, the Settlement and this Final Judgment are not to be deemed admissions of liability or fault by Defendants, or a finding of the validity of any claims in the Action or of any wrongdoing or violation of law by Defendants. The Agreement and Settlement are not a concession by the Parties and, to the extent permitted by law, neither this Final Judgment nor the Settlement, nor any of its terms or provisions, nor any of the negotiations or proceedings

connected with it, shall be utilized or offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding, for any purpose including to establish any liability or admission by any of the Released Persons, except in any proceedings brought to enforce the Agreement or the Final Judgment or otherwise with the written consent of Defendants at its sole discretion. Nor may this Agreement be construed in any fashion as precedent for any matter similar to the instant one, or used as evidence of any kind, by any person or entity, in any action or proceeding against the Released Persons, as this Agreement has been entered into based on the particular facts of this matter alone. However, Defendants may use the Agreement or the exhibits thereto, and the Settlement, and/or any related document, in any action that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion relating to the Released Claims set out in the Agreement.

21. Class Counsel agree that any representation, encouragement, solicitation or other assistance, including, but not limited to, referral to other counsel, of any opt-out or any other person seeking to litigate with any of the Released Persons over any of the Released Claims or to represent any form of opt-out class, could place Class Counsel in an untenable conflict of interest with the Class. Accordingly, Class Counsel and their respective firms agree (only to the extent that it is otherwise not violative of any applicable rules governing the practice of law) not to represent, encourage, solicit or otherwise assist, in any way whatsoever (including, but not limited to referrals to other counsel) any opt out or any form of opt-out class, except that referring such person to the Notice or suggesting to any such person the option of obtaining separate counsel, without specifically identifying options for such counsel, shall be permitted.

22. Neither Defendants nor Class Counsel shall be responsible in any way for any attorneys' lien submitted by any prior counsel for any of the Settlement Class Members, nor shall any attorneys' lien be created by any of the efforts by the Parties to effectuate any of the terms of this Agreement.

23. The Court has considered the request for a Class Representative Award, and hereby approves and awards the Named Plaintiffs, Sabrina Timmins, Holly Johnson, Elaine Scherer, Elmira Hobbs, Daniel Rogers, Trina Hawthorne, Brian Marble, Monte Bell, Jill Hodge, and Tammi Dooley, the amount of \$5,000.00 each, to be paid by Defendants in accordance with the terms of the Settlement Agreement.

24. The Court has considered Class Counsel's request for an Attorneys' Fees award for the prosecution of this action, and hereby approves an Attorneys' Fees and costs award in the amount of \$5,460,000.00, to be paid by Defendants in accordance with the terms of the Settlement Agreement.

25. Nothing in terms of the Settlement Agreement or this Order shall create any payment obligations beyond those specified in the Settlement Agreement. Defendants' payment obligations shall be deemed satisfied upon the tender and mailing of a check payable for at least 90 days, backed by sufficient funds. In the event that a check is uncashed after 90 days, no amounts shall be deemed to escheat to any person or government entity.

26. This Final Judgment is a final order in the Action within the meaning and for the purposes of the Missouri Rules of Civil Procedure as to all claims among Defendants on the one hand, and the Named Plaintiff, Class Representatives and all Settlement Class Members, on the other, and there is no just reason to delay enforcement or appeal.

27. The Clerk of this Court is directed to enter a judgment of dismissal and close this case.

28. Without in any way affecting the finality of this Final Judgment, this Court shall retain continuing jurisdiction over this Action for purposes of:

- A. Enforcing this Final Judgment, the Agreement and the Settlement;
- B. Hearing and determining any application by any Party to the Settlement for a settlement bar order; and
- C. Any other matters related or ancillary to any of the foregoing.

IT IS SO ORDERED.

August 19, 2024

SO ORDERED:



Judge Division 14
Div. 14 for Div. 08

Circuit Court Judge