

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND**

**THE CONDOMINIUMS AT
NORTHPOINTE ASSOCIATION, and
CHRISTINA ERMIDIS, for themselves
individually and on behalf of all others
similarly situated,**

Plaintiffs,

-vs-

**STATE FARM FIRE & CASUALTY
COMPANY,**

Defendants.

CASE NO. 1:16-CV-01273

JUDGE CHRISTOPHER A. BOYKO

**DECLARATION OF ERIK D.
PETERSON IN SUPPORT OF
UNOPPOSED MOTION FOR FINAL
APPROVAL AND PLAINTIFFS'
MOTION FOR SERVICE AWARDS
TO CLASS REPRESENTATIVES AND
AWARDS OF ATTORNEYS' FEES,
COSTS AND EXPENSES TO CLASS
COUNSEL**

Pursuant to 28 U.S.C. § 1746, I, Erik D. Peterson, state that I am an attorney duly licensed to practice in the Commonwealth of Kentucky and the State of California, as well as multiple federal circuit courts of appeals and district courts. I have appeared as counsel, admitted pro hac vice, for Plaintiffs The Condominiums at Northpointe Association and Christina Ermidis (“Plaintiffs”) in the above-captioned matter. I further declare as follows:

1. This Declaration is submitted in support of Plaintiffs’ motions for final approval, service award to Class Representatives and awards of attorneys’ fees, costs, and expenses to Class Counsel.

2. I am the founder and owner of Erik Peterson Law Offices, PSC, located in Lexington, Kentucky. Following my graduation from the University of Kentucky College of Law,

I served as a law clerk to Hon. Gregory F. Van Tatenhove in the United States District Court for the Eastern District of Kentucky. Since completing my clerkship over fourteen years ago, my practice has focused solely on class action and insurance litigation in trial and appellate courts around the country. I have been described as “an experienced class action litigator.” *Hicks v. State Farm Fire & Cas. Ins. Co.*, 2021 U.S. Dist. LEXIS 227148, at *10 (E.D. Ky. Nov. 8, 2021).

3. As it relates specifically to labor depreciation class actions, I have been lead or co-lead counsel in more than sixty putative and certified class actions, both pending and resolved, in state or federal courts in Alabama, Arizona, Connecticut, Nebraska, Kentucky, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Washington, and Wisconsin. These cases have been against a wide variety of property insurers, from small regional insurers to national insurers like State Farm Fire & Casualty Company. I have also consulted with groups of plaintiffs’ counsel in other labor depreciation class actions in which I do not represent the litigants.

4. I have argued labor depreciation class action appeals before the Nebraska Supreme Court and the Sixth Circuit Court of Appeals and have served as counsel in numerous cases setting important precedent related to labor depreciation and class certification of labor depreciation actions. *See, e.g., Hicks v. State Farm Fire and Cas. Co.*, 965 F.3d 452 (6th Cir. July 10, 2020) (affirming class certification); *Hicks v. State Farm Fire & Cas. Co.*, 751 Fed. Appx. 703 (6th Cir. 2018) (holding labor depreciation improper under Kentucky law); *Arnold v. State Farm Fire & Cas. Co.*, 268 F. Supp. 3d 1297 (S.D. Ala. 2017) (holding labor depreciation improper under Alabama law); *Donofrio v. Auto-Owners (Mut.) Ins.*, 2020 U.S. Dist. LEXIS 53830 (S.D. Ohio March 26, 2020) (holding labor depreciation improper under Ohio law); *Cedarview Mart, LLC v. State Auto Prop. & Cas. Co.*, 2021 U.S. Dist. LEXIS 60871, at *5 (N.D. Miss. Mar. 30, 2021)

(holding labor depreciation improper under Mississippi law). I am counsel of record in all labor depreciation cases currently pending in the Fifth, Sixth, Ninth, and Eleventh Circuits. And, I am counsel of record in the vast majority of labor depreciation cases that have been filed nationwide.

5. For these reasons, I consider myself a national subject matter expert for plaintiffs' labor depreciation class actions. Only a handful of law firms pursue these cases on a national scale.

6. This Declaration sets forth a brief summary of the background of this lawsuit, particularly the settlement negotiations that ultimately led to the proposed settlement and the basis upon which Class Counsel recommend that the Court approve the settlement. The following recitation is not all-inclusive but rather is intended to illustrate how settlement negotiations were structured, and the analysis that Class Counsel incorporated in agreeing to a settlement on behalf of the proposed settlement classes. I believe that these facts demonstrate that the settlement is fair, reasonable, and adequate, and should be approved by the Court.

Brief History of the Litigation

7. This consolidated action and proposed settlement involve allegations that Defendant breached the terms of its property insurance policies with Plaintiffs and other class members by wrongfully depreciating labor costs and other non-material items when adjusting property loss claims.

8. On April 22, 2016, the case was initiated in the Ohio Court of Common Pleas, Cuyahoga County, by Charles Cranfield ("Cranfield") against State Farm Fire & Casualty Company (the "Defendant"). State Farm timely removed the Action to this Court on May 26, 2016. Plaintiff Cranfield alleged that State Farm improperly depreciated the estimated cost of labor and other nonmaterial costs necessary to complete repairs to insured property when it calculated and issued actual cash value ("ACV") claim payments to class members for structural

damage losses suffered under their property insurance policies. Plaintiff Cranfield asserted a claim for breach of contract on behalf of himself and a class of the State Farm policyholders who received ACV payments for structural damage to an Ohio structure where the estimated costs of nonmaterial items were depreciated.

9. State Farm moved to dismiss Plaintiff Cranfield's complaint in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6). State Farm also moved to certify to the Ohio Supreme Court the question whether Ohio law permits insurers to include nonmaterial costs in the calculation of depreciation in determining ACV. On December 2, 2016, the Court granted State Farm's motion to certify and issued an order of certification to the Ohio Supreme Court. Dkt. 18. On February 22, 2017, the Ohio Supreme Court declined to answer the question certified by this Court, and Plaintiff Cranfield move to re-open this case.

10. On November 26, 2018, this Court granted State Farm's motion to dismiss for failure to state a claim. Plaintiff Cranfield appealed, and on March 23, 2020, the Sixth Circuit reversed, holding that State Farm may not deduct the cost of labor and other nonmaterial depreciation when determining ACV under an insurance policy that does not expressly provide for such deductions.

11. Cranfield filed a first amended complaint on July 15, 2020, on behalf of himself and an asserted class of State Farm insureds without limitation as to the type of policy, and without excluding those who ultimately received payment of replacement cost benefits ("RCBs"). State Farm moved to dismiss the amended complaint as barred by the contractual limitations period in Cranfield's policy, and also moved to strike the class allegations purporting to include potential members whose claims are similarly barred. While that motion was pending, Cranfield requested leave to further amend his complaint to add The Condominiums at Northpointe Association

(“Northpointe”) as a plaintiff. The Court granted Cranfield’s motion for leave to amend over State Farm’s objection. The Court further denied as moot State Farm’s motion to dismiss and motion to strike class allegations. State Farm then filed a motion to dismiss the second amended complaint, which Plaintiffs’ opposed and the Court denied.

12. On March 10, 2021, Cranfield and Northpointe moved for class certification, asking this Court to certify an asserted class of all State Farm policyholders who either (i) received an ACV payment where estimated labor and other non-material costs had been depreciated, or (ii) would have received such a payment but for that depreciation. Plaintiffs also sought to appoint a non-party, Christina Ermidis (“Ermidis”), as an additional class representative.

13. On August 2, 2021, the Court denied Plaintiffs’ motion for class certification without prejudice. See Dkt. 135. It held that Northpointe’s policy was not part of the asserted class definition in the original complaint and that both Cranfield’s and Northpointe’s “vulnerability to a limitations defense prevents them from satisfying claim typicality” under Rule 23. *Id.* at 10. The Court also concluded that individual issues predominated over common questions, including due to the variety of policies covered by the asserted class definition, the distinctions between insureds who received only ACV payments compared with those who sought RCBs, and the fact-finding necessary to determine the amount of non-material depreciation applied to any claim and whether any policyholder was underpaid as a result. *See id.* at 10, 12.

14. Notwithstanding this ruling, the Court granted Plaintiffs leave to file a further amended complaint adding Ms. Ermidis as a plaintiff and also stated that it would “entertain a renewed motion for class certification, which would be most appropriate following the ruling on Defendant’s pending Motion for Summary Judgment.” *Id.* at 14.

15. Plaintiffs have engaged in extensive factual discovery on both the merits and class

certification. Plaintiffs obtained thousands of documents and several large data sets, and have deposited multiple State Farm representatives.

16. After Plaintiffs filed their fourth amended complaint adding Ermidis as a plaintiff and State Farm answered, the parties jointly moved to stay the case to pursue mediation, which motion the Court granted on October 7, 2021.

The Settlement Process

17. Prior to engaging in settlement negotiations, the parties completed extensive discovery, including interrogatories, document requests, numerous depositions, and Defendant's internal and third-party statewide claims and estimating data. This detailed data analysis well positioned the parties to engage in meaningful settlement negotiations.

18. Beginning in the fall of 2021, the parties agreed that they should devote their resources toward attempting to resolve this case on a class-wide basis instead of continuing to engage in time consuming and expensive litigation.

19. The parties agreed to use Michael N. Ungar of Ulmer & Berne as a private mediator to facilitate settlement discussions. In order to facilitate the parties' settlement negotiations on several contentious issues, the parties participated in a full-day mediation sessions with Mr. Ungar on December 13, 2021, February 11, 2022, March 21, 2022, and April 26, 2022. While the parties made substantial progress towards resolution, several contentious unresolved issues remained. Following the conclusion of their mediation session with Mr. Ungar on April 26, 2022, the parties continued their difficult negotiations and eventually reached an agreement in principle to settle these cases on a class-wide basis, with Northpointe and Ermidis as Representative Plaintiffs. The parties further agreed that State Farm and Cranfield would resolve separately from the class settlement the individual claims asserted by Cranfield. Yet even then the parties continued direct

discussions in an effort to bridge the gap on remaining class relief issues, primarily surrounding the class period and relief for potentially untimely claims. Ultimately the parties were able to reach agreement on all aspects of class relief.

20. Consistent with ethical standards for class action settlements, only after relief to the proposed class was agreed, did Plaintiffs' counsel begin to negotiate the service awards, attorneys' fees, and costs, subject to the Court approval process set forth in Federal Rule of Civil Procedure 23(e). Because these fees will be paid separately by the Defendant and will not reduce the recovery to the class or be subsidized by the same, Defendant was incentivized to negotiate and pay as little in fees and litigation expenses as possible.

21. Because of the timing of negotiations for fees and costs in comparison to the class relief, there are no "red flags" concerning the manner in which the class action settlement negotiations were conducted. *See* NEWBERG ON CLASS ACTIONS § 13:54 (5th ed. Dec. 2022 Update) ("The concern is also greater when the value of the settlement fund and the fees were negotiated simultaneously, as that could indicate that some of the class's fund was traded off for greater fees.").

22. Because the Court does not approve any attorneys' fees and costs until the final fairness hearing, the foregoing recitation is not intended to set forth a complete justification of any amounts of attorneys' fees and costs. Rather, the foregoing recitation is set forth only to show that the class action settlement negotiations were conducted at arms' length through a mediation conducted by Mr. Ungar, between experienced class action lawyers and structured in accordance with the highest ethical standards so as to avoid conflicts of interest between putative class counsel and the putative class members.

The Settlement Terms

23. The proposed Settlement provides the Defendant must pay the following amounts to the following categories of Class Members who submit complete and timely claim forms, subject to the applicable policy limits and deductibles of the Class Members' policies, and subject to Defendant's right to challenge or reduce these amounts under the Settlement Agreement:

Group A: Settlement Claimants with Homeowners Policies Who Previously Received ACV Payments And Did Not Receive Full RCBs. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), (ii) received an ACV payment from which estimated Non-Material Depreciation was initially deducted, and (iii) did not subsequently recover all available depreciation through payments of replacement cost benefits ("RCBs"), will be equal to 100% of the estimated Non-Material Depreciation that was initially deducted from the ACV payment and was not yet recovered through payments of RCBs, plus 50% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially deducted from the ACV payment and was not yet recovered through payments of RCBs, plus simple interest at 3.5% on those additional amounts to be paid from the date of the initial ACV payment through the date of Final Approval.

Group B: Settlement Claimants with Homeowners Policies Who Previously Received Full RCBs After Initially Receiving an ACV Payment. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), (ii) received an ACV payment from which estimated Non-Material Depreciation was initially deducted, and (iii) subsequently recovered all available depreciation through payments of RCBs will be equal to simple interest at 3.5% on the amount of estimated Non-Material Depreciation initially applied but subsequently recovered, plus simple interest at 3.5% on 50% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially applied but subsequently recovered, calculated from the date of the initial ACV payment through the final replacement cost payment.

Group C: Settlement Claimants with Homeowners Policies Who Would Have Received an ACV Payment But For Application of Non-Material Depreciation. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), and (ii) did not receive an ACV payment due to the application of estimated Non-Material Depreciation, shall be equal to 100% of the portion of the estimated Non-Material Depreciation that the Settlement Class Member did not receive as an ACV payment solely because the application of Non-Material Depreciation caused the calculated ACV figure to drop below the applicable deductible, plus simple interest at 3.5% on those amounts to be paid from the date of the initial ACV payment through the date of Final Approval.

Group D: Settlement Claimants with Non-Homeowners Policies. The Claim Settlement Payments to Claimants who fit within the Class Definition but who submitted insurance claims under a State Farm structural damage policy other than a State Farm Homeowners Policy (specifically, policies other than forms FP-7955, FP-7954, FP-7956, or FP-7933), shall be equal

to 50% of the amount that would otherwise be calculated above in Groups A, B, and C if the Claimant had submitted a claim under a State Farm Homeowners Policy

Settlement ¶ 6.4.

24. In addition to the class relief, Defendant has agreed to pay administration costs and, if court approved, service awards to the named Plaintiffs and attorneys' fees and expenses. Unlike in many settlements, the payment of fees, expenses, and a service award will not reduce the value of the putative class members' recoveries. Thus, these amounts are an additional benefit to the class.

25. The amount of payments to be made available to Class Members will vary. Based on modeling using statewide claims data spreadsheets produced by Defendants, the average potential claim recovery for homeowner claims with "still withheld" amounts of Non-Material Depreciation is believed to be approximately \$1,103.24. Based upon analysis of proprietary depreciation data from Xactanalysis® reports for Defendant's Ohio property claims included in the Settlement, Plaintiffs' counsel estimates that the aggregate amount to be made available to class members for payment on a claims-made basis is at least \$10,000,000, not including the interest portion of the payments to Class Members, attorneys' fees, litigation expenses, administration costs, and the class representative service award.

26. Based on my extensive experience in handling more than 60 labor depreciation cases, including cases against this defendant, as one of Plaintiffs' counsel I strongly believe this is an excellent result for the putative class, particularly given the many risk factors discussed below.

Service Award and Class Counsel Fees and Expenses

27. After the proposed settlement terms for the putative class were agreed, the parties then negotiated proposed attorneys' fees/costs and a class representative service award.

28. Pursuant to the parties' agreement, Defendants have agreed to pay, subject to Court approval, an amount no greater than \$4,004,000 in attorneys' fees and litigation expenses, and an amount no greater than \$7,500, each, for Plaintiffs' class representative service awards. Plaintiffs' counsel estimate the aggregate value of the relief made available to the class is in excess of \$10,000,000 (exclusive of interest payments), plus costs of administration (estimated to be approximately \$150,000), attorneys' fees and expenses (\$4,004,000), for a total aggregate value in excess of \$14,154,000. Thus, the attorneys' fees to be sought are at most 28.6% of the aggregate value. *See, e.g., Johnson v. Midwest Logistics Sys.*, 2013 U.S. Dist. LEXIS 74201, at *18 (S.D. Ohio May 25, 2013) (one-third fee award is "consistent with the general fee awards in class action cases"); *Blasi v. United Debt Servs., LLC*, 2019 U.S. Dist. LEXIS 198201, at *23 (S.D. Ohio Nov. 15, 2019) (quoting *Rotuna v. W. Customer Mgmt. Grp., LLC*, 2010 U.S. Dist. LEXIS 58912 (N.D. Ohio June 15, 2010)) ("Courts readily approve the percentage-of-the-fund method when a plaintiff obtains an exceptional result and avoids extended litigation time and costs.").

Factors Supporting Approval of the Settlement

29. Both at the time suit was filed and when the settlement was being negotiated, the risk of the Class recovering nothing was substantial. *Hicks v. State Farm Fire & Cas. Co.*, 751 Fed. Appx. 703, 710 (6th Cir. 2018) (the "substantial weight of authority" is in favor of insurers in labor depreciation class actions). While labor depreciation litigation classes have been initially certified for contractual claims, no labor depreciation class action has ever gone to trial or faced the issue of decertification.

30. Assuming *arguendo* that class certification could have been obtained and sustained over any Rule 23(f) appeals or decertification motions, Plaintiffs' next hurdle would be to establish class-wide liability and class-wide damages. After the Sixth Circuit's decision in *Perry v. Allstate*

Indemn. Co., 953 F.3d 417 (6th Cir. 2020), Plaintiffs' counsel had a high level of confidence in establishing contractual liability for the claims that were timely under the suit limitations clauses at issue. Defendant, however, has not conceded this point.

31. Defendant retained experienced class action defense attorneys in Jake Kahn, Joseph Cancila, Allison Siebeneck and their team at Riley Safer Holmes & Cancila LLP, and Karl Bekeny and his team at Tucker Ellis LLP, who have defended labor depreciation class action claims in many jurisdictions around the country. Absent settlement, defense counsel would have continued to put forward multiple, discrete grounds for avoiding both liability and class certification.

32. At the time of settlement (and of execution of this declaration), other carriers are actively litigating, and have not settled, their Ohio labor depreciation cases.

33. This settlement was not reached until Plaintiffs' counsel had conducted extensive pre- and post-suit analysis and investigation; conducted thorough discovery; consulted with experts about the Defendant's liability, the appropriate calculation of class relief, and other novel and difficult issues raised; thoroughly researched the law and facts; assessed the risks of prevailing at both the trial court and appellate levels; and engaged in lengthy mediation of all the foregoing disputes.

34. There were several factors in the risk assessment process that had to be considered. These complexities and factors included the following considerations:

a. Plaintiffs' counsels' risk assessment had to consider the risk of losing at the class certification, liability or damages stages. For example, the Court may not have certified a class, or not certified as broad of a class as sought by the Plaintiffs' counsel. This raises the major risk of class members, or categories of them, receiving no relief.

b. Plaintiffs' counsel's risk assessment also had to account for considerations associated with increasing common fund attorneys' fees and costs. Even if the Class prevailed upon certification as well as the liability and damages stages at one or more trials, Plaintiffs' counsel would likely have to incur substantial further non-recoverable costs for, *e.g.*, e-discovery, non- testifying expert witnesses, jury consultant fees, etc. These costs would be set off against any recovery.

c. Experience shows that as time goes by, more putative class members cannot be located to receive their award; die; or otherwise are denied participation in their recovery due to various factors. Further delays simply increase this unacceptable risk of non-recovery by absent class members.

35. Based upon these factors and considerations, Plaintiffs' counsel deem the amount of class recovery, and the terms hereof under the Settlement to warrant final approval.

Reasonableness of Class Counsels' Request for Attorneys' Fees and Costs

36. As noted above, Class Counsel seek, and Defendant agreed to pay subject to Court approval, an amount no greater than \$4,004,000 in attorneys' fees and litigation expenses. Accordingly, Class Counsel seek this amount in attorneys' fees, litigation costs, and expenses.

37. The parties spent substantial time analyzing and confirming the aggregate value of the proposed settlement. In making their aggregate estimates, the parties had access to estimating software data, as well as claims payment data from Defendants' claims system. Based on this analysis, Class Counsel estimate the aggregate value of the relief made available to the class at to be at least \$10,000,000 (exclusive of interest payments, costs of administration (estimated by the Administrator to be \$150,000), service awards, and attorneys' fees and expenses (\$4,004,000)). None of these additional amounts will reduce the amounts made available to class members.

38. All the foregoing amounts, both to be made available to the class and to be paid separately by Defendants, total at least \$14,154,000 in the aggregate exclusive of interest payments. Plaintiffs' requested attorneys' fees and litigation expenses reflect less than 28.6% of the aggregate total.

39. This percentage falls well within the range of reasonableness for class action settlements in the Sixth Circuit. Further, this percentage is consistent with other claims made labor depreciation class action settlements that have received final approval by federal and state courts.

40. During the fee, costs, and service award negotiations in this case, Defendant was highly incentivized to aggressively negotiate to pay as little as possible because fees, costs, and service awards were to be paid on an "over and above" basis, i.e., they would not reduce the funds available to the class and would be funded by new, additional monies from Defendants.

41. My co-counsel and I are qualified to handle this litigation. Our collective work on other labor depreciation class action litigation enhanced the result we were able to efficiently achieve here. Recently, the Northern District of Ohio held as much in the Ohio labor depreciation class action captioned *Stevener v. Erie Ins. Co.*, No. 20-cv-603 (N.D. Ohio), in which I was lead counsel. Attached to this declaration at **Exhibit A** is an excerpt from the Final Approval/Fairness Hearing Transcript filed in *Stevener* on September 1, 2022, wherein the court concluded that my extensive prior work and expertise in other labor depreciation class actions allowed me and my co-counsel to more efficiently litigate and settle the action, and also supported use of the percentage-of-the-fund approach to calculate the attorneys' fees awarded in that case.

42. Class Counsel have vigorously represented the interests of the class on a contingent fee basis. Our representation of the subject classes necessarily limited our ability to undertake other complex litigation, and we have devoted significant resources to these cases.

43. All firms have taken an active role in pursuing this litigation and achieving this settlement.

44. Class Counsel pursued this case on a contingency fee basis, with zero assurance of any recovery. From the beginning, Defendant's counsel defended the case with vigor.

45. The case involved substantial risk, both in terms of the legal issues presented but also in the form of time and expense investment by Class Counsel. For a small firm like mine, a bad result on a case such as this can be devastating. Moreover, the significant time required to obtain the result here for the class prevented me from taking on other cases that traditionally generate significant fees for my firm. Nonetheless, my firm and my co-counsel invested the time and money necessary to vigorously prosecute the case.

46. The value of the benefit rendered to the classes, the fact that the services were undertaken on a contingent basis, the complexity and risks of the litigation, counsels' willingness to pursue the small, negative value claims at issue on a class basis, and the professional skill and standing of the lawyers representing the class and the Defendant all support approval of the requested award of attorneys' fees and expenses.

47. Going forward, Class Counsel will continue to incur costs and the expenditure of attorney time. For instance, Class Counsel will spend time associated with responding to inquiries from members of the Class. Additionally, Class Counsel will ensure that the claims settlement administration process is completed.

Service Awards for Plaintiffs

48. Defendant agreed to pay (if court approved) service awards to Plaintiffs in an amount not exceeding \$7,500 each. This amount represents a fair payment for Plaintiffs' services as class representatives.

49. Plaintiffs regularly communicated with Class Counsel, provided documents to assist Class Counsel in pursuing discovery, reviewed documents, assisted and participated in settlement negotiations, and generally acted in a fashion that was consistent with class representatives of the highest ethical standards. Plaintiffs were aware of their duties as class representative and took them seriously. Plaintiffs answered questions when posed by counsel and Plaintiffs made themselves available as needed.

50. Plaintiffs obtained a Settlement that makes available to the Class an estimated value in excess of \$14,154,000, exclusive of interest only payments to Class Members. Their willingness to serve as class representatives was critical to the litigation.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Erik D. Peterson
erik@eplo.law
July 18, 2023

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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|---------------------------|---|---------------------------|
| TIMOTHY STEVENER, et al., |) | |
| |) | Case No. 5:20-cv-603-PAB |
| Plaintiffs, |) | |
| |) | Cleveland, Ohio |
| vs. |) | Friday, August 19, 2022 |
| |) | Courtroom 16A, 10:27 a.m. |
| ERIE INSURANCE COMPANY, |) | |
| et al., |) | FINAL APPROVAL/ |
| |) | FAIRNESS HEARING |
| Defendants. |) | |
| _____ |) | |

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE PAMELA A. BARKER,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:

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(Appearances continued on Page 2)

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Proceedings reported by machine shorthand; transcript
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13 (330) 670-7440

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1 resources.

2 The Court will now return -- I'm sorry -- will now
3 turn to the proposed attorney fee award of \$1,155,000.

4 The Court first finds that it is appropriate to use
5 the percentage-of-the-fund approach. The Court is persuaded
6 that class counsel's extensive prior work and expertise in
7 labor depreciation cases allowed them to be more efficient
8 in this case and thus, a lodestar approach might not
9 adequately compensate counsel for the result achieved
10 herein.

11 In addition, the Court does note that class counsel
12 undertook the representation on a contingent fee basis and
13 advanced significant labor and expenses to litigate this
14 case.

15 Further, the Settlement Agreement provides an
16 excellent result for class members that return claim forms.

17 In calculating the percentage of the fund, the Court
18 finds that the benefit to the class includes the total
19 amount available to the class rather than the amount
20 actually distributed to class members. The Court finds that
21 it is appropriate given the substantial benefit provided to
22 class members and the fact that the claims process in this
23 case was neither overly burdensome nor confusing.

24 The proposed attorneys' fee award here of \$1,155,000
25 constitutes 19.3 percent of the total benefit to the class,

1 including the attorneys' fees and costs. Excluding
2 attorneys' fees and cost, the proposed fee of \$1,155,000
3 constitutes 24.5 percent of the total benefit to the class.

4 The Court finds that plaintiffs' proposed attorneys'
5 fee award is reasonable. In light of the contingent nature
6 of the action, the risks of complex litigation, its quality
7 of the legal services rendered, the benefits obtained for
8 the settlement class, the fees awarded in similar actions,
9 the reaction of the settlement class, and the absence of
10 objections, the Court hereby awards class counsel attorneys'
11 fees and expenses in the total amount of \$1,155,000 payable
12 by defendants pursuant to the terms of the agreement.

13 And the Court also awards service awards in the amount
14 of \$7,500 each to representative plaintiffs
15 Timothy Stevener, Carol Stevener, and Adam Gibler payable by
16 defendants pursuant to the terms of the agreement.

17 In conclusion, the Court fully and finally approves
18 the amended Settlement Agreement located at Document Number
19 36-1, the release provisions of that agreement, the
20 dismissal with prejudice of the claims asserted against
21 defendants, and finds that the settlement is in all respects
22 fair, reasonable, and adequate to the settlement class.

23 The Court will issue an order and final judgment
24 granting final approval forthwith.

25 Anything further?