

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

DONALD ARMON, SR.,)	
)	
Plaintiff,)	
)	
vs.)	
)	Case No. 1016-CV38265
UNITED FINANCIAL CASUALTY)	
COMPANY d/b/a)	Division No. 17
PROGRESSIVE INSURANCE)	
COMPANY,)	
)	
Defendant.)	

**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT AND
RELEASE, CONDITIONALLY CERTIFYING A SETTLEMENT CLASS, APPROVING
THE FORM, ADEQUACY AND MANNER OF NOTICE TO THE SETTLEMENT
CLASS, APPOINTING CLASS ADMINISTRATOR, DIRECTING NOTICE TO THE
SETTLEMENT CLASS AND SETTING A HEARING ON THE FINAL APPROVAL OF
THE PROPOSED CLASS ACTION SETTLEMENT AND RELEASE AND ANY
APPLICATION FOR ATTORNEY'S FEES AND COSTS**

The Plaintiffs and Defendant have entered into a CLASS ACTION SETTLEMENT AND RELEASE (“Settlement Agreement”). The Court has reviewed and considered the terms of the Settlement Agreement, the pleadings submitted by counsel and the reasons underlying the Settlement Agreement contemplated thereby, and the appropriateness of certification of the Settlement Class. The Court determines, preliminarily, without prejudice to the rights of Settlement Class Members to object to the Settlement, the following: that all the requirements of Rule 52.08 of the Missouri Rules of Civil Procedure have been satisfied with respect to the maintenance of this action as a Class Action for the purpose of considering and acting on the Settlement Agreement; that the terms of the Settlement Agreement are fair, adequate and reasonable and that they have been negotiated at arms’ length and without collusion; that certification of a Settlement Class, conditioned upon final approval of the Settlement Agreement,

is appropriate; that the form, content and method of the Notices by mail will adequately inform absent Settlement Class Members of their rights; and, that such Notice constitutes the best practicable notice under the circumstances and comports with due process.

IT IS HEREBY ORDERED:

1. **Class Certification.** This action is certified as a Class Action on behalf of the Settlement Class, as defined in the Settlement Agreement, under Rule 52.08(a) and 52.08(b)(3) of the Missouri Rules of Civil Procedure for the purpose of considering and acting on the proposed Settlement. For Settlement purposes, this action shall be maintained as a Class Action on behalf of a class comprised of the following:

All individual persons, corporations, partnerships, associations and other entities that insured a vehicle during the class period January 1, 2006 to the present under a "Missouri Commercial Auto Policy," Form 6912 issued by any Progressive related company, and who suffered a "total loss" to said vehicle, as defined in Form 6912, and who recovered from Defendant for such loss an amount that was less than the "Stated Amount" for said vehicle, minus any applicable deductible. Excluded are persons who have lawsuits pending against, or who have settled their claims against, Progressive for the same or similar claims as set forth herein, Progressive employees and members of the judiciary.

2. **Class Representatives.** The Court approves for settlement purposes Mr. Donald Armon, Sr., as Class Representatives in this case

3. **Class Counsel.** The Court approves The Meyers Law Firm and The Klamann Law Firm as Counsel to represent the Class in this action.

4. **Proposed Settlement.** The Proposed Settlement between the Plaintiff and the Defendant appears, upon preliminary review, to be within the range of reasonableness and accordingly shall be submitted to the Class Members for their consideration and for a hearing.

5. **Hearing.** A hearing shall be held on **December 6, 2013, at 2:00 p.m.** to determine the lawfulness, reasonableness, adequacy and fairness of the Settlement Agreement, whether the Settlement Agreement should be finally approved, whether an Order and Judgment granting Final Judicial Approval should be entered thereon, and whether Class Members should be bound by the Release set forth in the Settlement Agreement. At that time or as soon thereafter as practicable, the Court will also consider and rule upon all proper and timely objections, if any, to the proposed Settlement Agreement, any pending disputes as to settlement allocations, and any pending Applications for Attorneys' fees and for reimbursement of costs, and any objections thereto, all subject to the following:

- (a) Objections by Class Members (persons who do not properly and timely exclude themselves from the Settlement Class) to the proposed Settlement Agreement will be considered only if submitted in writing and mailed to Settlement Administrator as set forth herein and in the Notice of Preliminary Approval of Settlement Agreement and Dismissal of Class Action.
- (b) At the hearing, Settlement Class Members (persons who do not properly and timely opt out and exclude themselves from the Settlement Class) may be heard orally in support of or in opposition to the proposed Settlement and/or any Application for Attorneys' fees and/or reimbursement of costs, provided such persons submit a timely written notice of the objection. Such notice shall state:
 - (i) the objector's full name, address, telephone number and e-mail address, (ii) information identifying the objector as a Settlement Class Member; (iii) a written statement of all grounds for the objection accompanied by any legal support for the objection; (iv) the identity of all counsel representing the objector; (v) the identity of all counsel representing the objector who will appear at the Final Approval Hearing; (vi) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; (vii) a statement confirming whether the objector intends to testify at the Final Approval Hearing; and (viii) the objector's notarized signature or the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such authorization). To be timely, written notice of an objection in appropriate form must be filed with the Circuit Court of Jackson County, Missouri, Independence, Missouri no later than thirty (30) days after the first bulk mailing of the initial Class Notice, and served therewith upon both of the

following: Co-Class Counsel Marty Myers, The Meyers Law Firm, LC, 503 One Main Plaza, 4435 Main Street, Kansas City, MO 64111 and counsel for the Defendants, Brian Fries, Lathrop & Gage LLP , 2345 Grand Boulevard, Suite 2200, Kansas City, Missouri 64108-2618;

- (c) Class Counsel and counsel for the Defendant shall file or otherwise provide to the Court copies of all written objections, opt-out notices (“Withdrawal Statements”), and other material pertinent to the subject-matter of the hearing on final approval of the Settlement Agreement in a timely fashion so as to enable the Court to give due consideration to such matters and the arguments pertaining thereto before and/or at the time of the hearing. Counsel for the Class and for the Defendant should be prepared at the hearing to respond to objections, if any, filed by Settlement Class Members and to provide other information, as appropriate, bearing on whether or not the proposed Settlement Agreement, Applications, and distribution of settlement proceeds should be approved.

6. **Notice.** The mailing of Notice as ordered herein constitute the best Notice practical under the circumstances to the Settlement Class; and such Notices comport with due process and are due and sufficient notice for all purposes to all persons entitled thereto.

7. **Settlement Administration and Notice.** Consistent with the Parties’ Settlement Agreement, the Court hereby appoints Rust Consulting, Inc. as Settlement Administrator for the purpose of carrying out the mandates of this Order and the Settlement Agreement applicable to the Settlement Administrator. Class Counsel and Defendant shall work to provide necessary assistance to the Settlement Administrator who in turn shall use reasonable efforts to cause to be mailed, by first class mail, postage prepaid, to identifiable Settlement Class Members a Notice in substantially the same form as Exhibit B to Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement and Release, Conditional Certification of Settlement Class, Approval of Form, Adequacy, and Manner of Notice to Settlement Class, Appointment of Class Administrator, and to Set Hearing on Final Approval of The Proposed Class Action Settlement and Release and on Any Application for Attorneys’ Fees and Costs. This notice shall be mailed

to Settlement Class Members who can be reasonably identified through an examination of Defendant's records heretofore provided to Class Counsel by Defendant.

Further, Class Counsel and/or the Settlement Administrator shall rent a post office box for the return of undeliverable notices and for the receipt of opt-out forms ("Withdrawal Statements"), and for other communications from the Settlement Class; and Class Counsel or the Settlement Administrator shall mail to Counsel for Defendant exemplar copies of all Notices sent by the Settlement Administrator, all written objections, and all Withdrawal Statements.

8. **Exclusion.** Settlement Class Members shall have 30 days from the initial sending of class notice in which to request that they be excluded from the Settlement Class ("opt out"). In order to opt out from the Settlement, Settlement Class Members must timely mail, U.S. mail, 1st Class, postage paid, a written notice of intent to withdraw ("Withdrawal Statement") to the Claims Administrator. If class members do not timely mail a Withdrawal Statement in accord with this Order, they will not be able to withdraw from the Settlement Agreement and will be included in the Settlement and bound by it. A person wishing to withdraw must sign a statement ("Withdrawal Statement") which includes the following language:

I understand that I am requesting to be excluded from the class action settlement in Armon v. Progressive and that I will receive no money from the Settlement approved by the Preliminary and/or Final Orders entered into by the Court or the Settlement Agreement entered into by Plaintiff and Defendants.

9. **List of Class Members.** Class Counsel or the Settlement Administrator will file with the Clerk and provide to counsel for Defendant an Affidavit identifying the persons to whom Notice has been mailed and who have not timely requested exclusion. Class Counsel is authorized to respond to inquiries from Settlement Class Members concerning the Settlement and the status of the case.

10. **Payment of Funds to Settlement Administrator.** Pursuant to the Class Action Settlement Agreement and Release, Defendant is ordered to pay the reasonable costs of hiring Rust Consulting, Inc. as Settlement Administrator for the purpose of carrying out the mandates of this Order and the Settlement Agreement applicable to the Settlement Administrator.

11. **Payment of Settlement Class Funds.** Within 10 days of the Court entering an Order finally approving the Settlement Agreement, Progressive shall transfer to the Settlement Administrator the Total Payment Fund, less any court approved attorney's fees and costs. The settlement administrator shall promptly thereafter issue checks to class members in their proportionate amount of the Payment Fund as set forth in Paragraph 3(a)(i) and mail them to claimants. Each settlement check will bear a legend stating that the check will be not be paid more than 90 days after issuance. Each check so mailed shall contain the following statement over the place on the back reserved for endorsement by the payee: "In full satisfaction and release of all claims respecting any total loss payments as provided in paragraph __ of the judgment in Armon v. United Financial Casualty Company d/b/a Progressive Insurance Company, No. 1016-CV38265 in the Circuit Court for Jackson County, Missouri."

12. **Termination of Settlement.** This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (i) the proposed Settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Settlement Agreement; or (ii) the proposed Settlement is terminated in accordance with the Settlement Agreement or does not become effective as required by the terms of the Settlement Agreement for any other reason. In such event, the proposed Settlement and the Settlement

Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor this Order, shall be used or referred to for any purpose whatsoever.

IT IS SO ORDERED.

9-30-13

DATE

Jack Goate

JUDGE