

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

A. This Settlement Agreement and Release (“Agreement”) is entered into, by and between Plaintiff Donald Armon, Sr. (“Plaintiff”), individually and on behalf of the Plaintiff Settlement Class defined in paragraph 2(b) below, and defendant United Financial Casualty Company d/b/a Progressive Insurance Company (“Progressive”), as defined below.

RECITALS

B. On December 20, 2010, Dennis Lagares filed a class action petition for damages against Progressive in the Circuit Court of Jackson County, Missouri. Donald Armon, Sr. was subsequently substituted as plaintiff in the action entitled *Donald Armon, Sr. v. United Financial Casualty Company d/b/a Progressive Insurance Company*, No. 1016-CV38265 (“*Armon* action”).

C. The last amended petition in the *Armon* action alleges that Progressive customers who are insured under Commercial Auto Policies in Missouri, based upon Form 6912, entered into valued policy contracts, or in the alternative, that the policy contract was ambiguous and was breached by Progressive when it failed to pay the insured the Stated Amount for the insureds’ total loss claims.

D. Progressive denies and disputes Plaintiff’s claims and allegations, denies any wrongdoing whatsoever, and maintains that its Commercial Auto Policy is not a valued policy, is a clear and unambiguous policy, and that in all total loss situations, Progressive paid the insureds the appropriate amounts under the clear and unambiguous terms of the policy.

E. During the action’s pendency, the parties have conducted substantial investigation and discovery pertaining to Plaintiff’s claims, have briefed numerous factual and legal issues, and have fully analyzed and evaluated the merits of those claims and of this Agreement as it impacts all parties, including members of the Settlement Class.

F. After negotiation and during mediation, the Parties agreed on the basic terms of a settlement. Plaintiff and his counsel believe settlement of Plaintiff’s claims on the terms and conditions set forth in this Agreement is fair, just, equitable, and in the best interests of the members of the Settlement Class.

G. This Agreement is not, and may not be construed or used as an admission or concession by or against any party on any point of fact or law, or of any alleged fault, wrongdoing or liability whatsoever. The same is true of any document referred to or prepared in connection with this Agreement or any action taken to effectuate this Agreement.

AGREEMENTS

Now, therefore, in consideration of the foregoing recitals and the mutual promises set forth below, the parties agree as follows:

1. **Recitals:** The above Recitals are true and correct and, are incorporated herein.
2. **Parties:** The following parties are governed by this agreement:
 - a. **Progressive:** "Progressive" and "Progressive related companies" includes United Financial Casualty Company, Progressive Casualty Insurance Company, Progressive Preferred Insurance Company, Artisan and Truckers Casualty Company, and any and all Progressive-related insurance companies which paid total loss claims in Missouri under a Commercial Auto Policy based upon Progressive Form 6912 during the defined Settlement Class period.
 - b. **Plaintiff and Settlement Class:** Plaintiff includes Donald Armon, Sr., and any class members in the defined Settlement Class, as set forth below:

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.

3. **Settlement Consideration from Progressive.** Progressive provides the following consideration for this Agreement:
 - a. **Payment Fund.** Progressive will pay a total amount of \$2,500,000 in complete and full satisfaction and settlement for the entire approved proposed Settlement Class, and payment of any approved attorney's fees and litigation costs. Subject to the court's approval, these funds shall be distributed as follows:
 - i. **Class Payment:** After the amount of court approved attorney's fees and costs is deducted from the Payment Fund, each class member who does not opt out of the

settlement shall receive a proportionate distribution of its potential recovery amount from the remaining Payment Fund.

- ii. **Attorney's Fees.** Class counsel will seek court approval to be paid a total amount of \$995,774.84 for attorney's fees plus \$10,562.98 for reimbursement of litigation costs and expenses, recognizing that this is complete and full payment of all counsel involved in the case, and any counsel who may claim any attorney's lien in the *Armon* action. The court approved amount for attorney's fees and costs shall be deducted from the Total Payment Fund of \$2,500,000 before pro-rata class distribution shares are determined and paid.
- (a) This paragraph is severable from the remainder of the terms of this Agreement. The Agreement shall be fully effective even if the court awards attorney fees of less than \$995,774.84.
 - (b) Except as expressly provided in this paragraph, each party shall bear its own costs and attorneys' fees in the *Armon* action and in implementing, monitoring, and enforcing this Agreement.
 - (c) Progressive will not pay attorneys' fees or costs to Plaintiff or to any Settlement Class member or to any attorney who may represent one or more of them except as expressly provided in this paragraph.
 - (d) Progressive will pay the sum provided in this paragraph by no more than three checks as directed by class counsel. Each law firm shall provide Progressive a W-9 form showing its EIN. Plaintiff and each of their attorneys agree that delivery of those checks will fully discharge Progressive's liability under this paragraph.
 - (e) Progressive will send the checks in payment of sums due under this paragraph within 10 days after the Effective Date of this Agreement as provided in paragraph 7 below, or after it receives a completed W-9 form from all law firms, whichever occurs later.

- iii. To the extent there are any uncashed checks and therefore are funds from the Payment Fund remaining after 90 days post-payment, the remaining balance of the Payment Fund will be distributed to a charity as approved by the Court and as set forth in paragraph 6(c).
 - b. **Costs of Class Notice and Settlement Administration.** Progressive will pay the reasonable costs of hiring a third party class settlement administrator to, which are estimated to be approximately \$20,000.:
 - i. send or make available class notice (which may take the form of a full notice, or a short-form notice directing the class member to a website if approved by the Court); and
 - ii. administer or oversee payment of the Payment Fund to the class members and the preparation, service and filing of information regarding the payment process.
4. **Settlement Consideration From Plaintiff And Settlement Class**
- a. **Dismissal of Action.** Upon final approval of this Agreement and the Settlement, a judgment shall be entered dismissing the complaint in the *Armon* action with prejudice, with each party to bear its own costs. The judgment shall be substantially similar in form to Exhibit A to this Agreement.
 - b. **Release.** As of the Effective Date of this Agreement, Plaintiff and each Settlement Class member who has not opted out of the class, acknowledges full satisfaction of, and fully, finally and forever releases, settles and discharges the Released Parties of and from all Settled Claims.
 - i. For purposes of this paragraph, "Released Parties" means and includes (i) United Financial Casualty Company, (ii) Progressive Casualty Insurance Company, (iii) Progressive Preferred Insurance Company, (iv) Artisan and Truckers Casualty Company, (v) any other insurance company that is related to or affiliated with United Financial Casualty Company or any other Progressive related insurance company, (vi) each parent, subsidiary, affiliate, predecessor, and successor of any Progressive related entity, and (vii) each officer, director, insurer, employee, agent, and attorney of each released corporation.

- ii. For purposes of this paragraph, “Settled Claims” means and includes any and all claims, actions, causes of action, offsets or liabilities, which Plaintiff or any Class member has had, now has, or may in the future have arising out of or connected in any way with any total loss payment to the Settlement Class member relating to Progressive Form 6912 during the Settlement Class Period.
- iii. As of the Effective Date of this Agreement, Plaintiff, and each Class member who has not opted out, waives and relinquishes, to the fullest extent permitted by law the benefits of any state or federal statutes or rules of law providing that a general release does not extend to claims which the releaser does not know or suspect to exist in his or her favor at the time of executing the release.
- iv. The release stated in this paragraph shall be and remain effective despite any discovery by Plaintiff or any Settlement Class Member of facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the release.

5. Settlement Implementation Procedure

- a. **Preliminary Approval:** After execution of this Settlement Agreement by all Parties, the Parties shall jointly move the court for entry of a Preliminary Approval Order, which by its terms shall address the following:
 - i. Preliminarily approve the terms of the Settlement Agreement for purposes of issuing the Class Notice;
 - ii. Certify the proposed Settlement Class;
 - iii. Approve the contents of the Class Notice and the method of disseminating the same; set forth an opt-out and objection procedure for any Settlement Class members; and
 - iv. Schedule a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the proposed Settlement and the applications for an award of Class Counsel Fees and Expenses, and to consider whether the Court should issue a Final Approval Order.
 - v. The Parties shall use their best efforts, consistent with the terms of this Settlement Agreement, to obtain Preliminary

and Final Approval Orders. In the event that the Court fails to issue the Preliminary Approval Order or fails to issue the Final Approval Order, the Parties agree to use their best efforts consistent with this Settlement Agreement, to cure any defect(s) identified by the Court excluding the amount of economic considerations. If any defects cannot be cured in order to secure preliminary and/or final approval by the Court, then the Settlement Agreement is void and all parties are restored to their former positions pre-settlement.

- b. Sending of Class Notice.** Progressive will employ a third party class settlement administrator, at its expense and with court approval, to send class notice.
- i. Upon entry of and in accordance with the order granting Preliminary Approval, the settlement administrator will send either a full class notice or a summary class notice such as a postcard to each class member for which Progressive has a current address, depending upon the form of Notice approved by the Court;
 - ii. The settlement administrator will use the U.S. Postal Service's National Change of Address database and/or similar databases to try to locate a current address for each Class Member whose mailed notice is returned as undeliverable.
- c. Opt-Outs.** Class members will be given a period of at least 30 days from the initial sending of class notice in which to request that they be excluded from the Plaintiff Class ("opt out"). In order to opt out from the 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. All Withdrawal Statements must be received by the Settlement Administrator no later than forty-five (45) days after the date the Court enters an order preliminarily approving the Class Action Settlement and Release. If class members do not timely mail a Withdrawal Statement in accord with the Notice and Preliminary Approval 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.

d. Objections by Settlement Class Members:

- i. Each Settlement Class Member wishing to object to the Settlement shall submit a timely written notice of the objection as directed in the Notice and Preliminary Approval Order. 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 Martin M. Meyers, 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.
- ii. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Member's objections to the Settlement Agreement, in accordance with such Class Member's due process rights.

- e. **Final Approval.** A hearing on final approval of this Agreement shall be scheduled for a date at least 60 days after the date class notice is first sent. Plaintiff will file a timely motion for final approval of the settlement, final certification of the settlement

Class, and the award of attorneys' fees and litigation costs provided for in this Agreement. The motion will seek entry of an order finally approving class settlement and certifying the Class in a form substantially similar to Exhibit B and entry of final judgment in a form substantially similar to Exhibit A.

6. Settlement Class Payment Administration

- a. Plaintiff will employ a third party class settlement administrator with court approval, to administer, review, and verify the implementation of the Notice provisions of this Agreement as well as to report to the court concerning the payments provided for by any court orders.
- b. Within 10 days of the "Effective Date," Progressive shall transfer to the settlement administrator the Total Payment Fund, less any court approved attorney's fees. 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."
- c. To the extent that checks otherwise payable to claimants are undeliverable or uncashed after more than 90 days, the settlement administrator shall advise Progressive's counsel of the amount, who will advise plaintiff's counsel. Plaintiff's counsel will notify Defendant's counsel of an appropriate Charitable institution(s) where payment of the remaining funds may be paid, subject to court approval.

7. Effective Date: Effective Date of this Agreement shall be the first date on which all of the following events have occurred:

- a. The parties and their attorneys have executed this Agreement.
- b. The court has granted preliminary approval to the settlement and directed mailing of class notice as provided in paragraph above.

- c. The court has entered an order finally approving this Agreement and a final judgment as provided in paragraph 5(e) above, has been entered.
- d. The time for appeal from the judgment has finally and fully lapsed, without any appeal having been taken, or any appeal filed has been finally resolved by affirmance of the judgment or dismissal of the appeal.

8. General Provisions

- a. **No Admission of Liability.** The Parties agree that this Settlement is made to resolve a disputed claim and that by entering into this Settlement they are not making any admission that any of the allegations raised in the *Armon* action are true. This Settlement Agreement, and related documents hereto, are not, and shall not at any time be construed or deemed to be, or to evidence any admission against or concession by Progressive with respect to any wrongdoing, fault, acknowledgment of contract ambiguity or uncertainty, unlawful act or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Approval Order as contemplated herein. This provision shall survive the expiration or voiding of the Settlement Agreement.
- b. **Confidentiality.** The parties recognize that due to the nature of a class action settlement, certain information will be presented to the court and the Settlement Class to approve the settlement. Other than such necessary information, however, neither the parties nor their counsel will disclose any information regarding this case to any other party. Further, the terms of the Court's previously entered Protective Order will remain in effect as it relates to any discovery information in this case. Neither party nor their attorneys shall issue a press release about this settlement nor shall either party or any attorney for a party send this Agreement or any written summary of its terms to any publication or other media.
- c. **Voiding Of Settlement Agreement If Settlement Not Approved.** This Settlement Agreement is entered into only for purposes of settlement. In the event that the Final Approval Order is not entered, or if an appeal is taken therefrom and results in anything other than a complete affirmance of the Final Approval Order, then this Settlement Agreement is canceled, and no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of

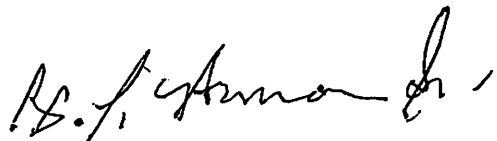
the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the *Armon* action and the Parties shall be restored to their prior rights positions as if the Settlement Agreement had not been entered into.

- d. **Integration Clause.** This Agreement constitutes the entire agreement between the parties with respect to settlement of the *Armon* action. This Agreement supersedes all prior negotiations and agreements. It may not be modified or amended except by a writing signed by all parties to this Agreement.
- e. **Counterparts.** This Agreement may be signed in one or more counterparts. The parties to this Agreement will execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement.
- f. **Authority.** Each party to this Agreement warrants that he, her, or it is acting on his, her, or its own independent judgment and on the advice of his, her, or its own counsel and not in reliance on any warranty or representation, express or implied, of any nature or kind of any other party.
- g. **Choice of Law.** This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of Missouri. This Agreement is jointly drafted and shall not be construed against any party on the ground that the agreement or any part of it was drafted by one party rather than any other.

Signatures

Plaintiff:

Dated: September 13, 2013.



Donald Armon, Sr.

Plaintiff's Attorneys:

Dated: September 13, 2013.

THE KLAMANN LAW FIRM, PA

By 
Andrew Schermerhorn

Dated: September 13, 2013.

THE MEYERS LAW FIRM, LC

By 
Martin M. Meyers

Dated: September 13, 2013.

UNITED FINANCIAL CASUALTY
COMPANY d/b/a PROGRESSIVE
INSURANCE COMPANY,
PROGRESSIVE CASUALTY
INSURANCE COMPANY,
PROGRESSIVE PREFERRED
INSURANCE COMPANY and ARTISAN
AND TRUCKERS CASUALTY
COMPANY

By: _____
Its _____

Defendant's Attorneys:

Dated: September 13, 2013.

LATHROP & GAGE, LLP

By _____
Brian C. Fries