

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE**

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

**ORDER FINALLY APPROVING CLASS ACTION SETTLEMENT, CERTIFYING
SETTLEMENT CLASS, APPROVING CLASS REPRESENTATIVE AWARD,
AWARDING ATTORNEYS' FEES, DIRECTING PAYMENT OF ATTORNEYS' FEES
AND EXPENSES AND DIRECTING ENTRY OF JUDGMENT**

Plaintiffs' motion for an order finally approving class action settlement and for other relief duly came on for hearing on December 6, 2013, before the Honorable Jack R. Grate, Jr., Judge of the above-entitled court. Martin M. Meyers of The Meyers Law Firm and Andrew Schermerhorn of The Klamann Law Firm appeared on behalf of plaintiff. Brian Fries of Lathrop & Gage LLP appeared on behalf of defendant United Financial Casualty Company and other Progressive related companies ("Progressive").¹ The Court has previously reviewed Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Release, and issued its Preliminary Approval Order. Defendant joined in Plaintiff's motion insofar as it sought approval of the class action settlement and certification of the settlement class and did not oppose the request for approval of class representative awards or the award of attorney fees. The Court has also reviewed Plaintiff's Motion for Final Approval of Class Action Settlement and Release. Defendant again joined in Plaintiff's motion insofar as it sought approval of the class

¹ "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.

action settlement and certification of the settlement class and did not oppose the request for approval of the class representative award or the award of attorneys' fees.

Based on the oral and written argument and evidence presented in connection with the motion, the Court makes the following findings of fact with respect to consideration of the proposed settlement currently before the Court:

FINDINGS

A. The consideration to be given to the settlement class under the terms of the Settlement Agreement and Release an addendum thereto (hereinafter the "Settlement Agreement and Release") is a reasonable amount considering the strengths and weaknesses of the claims asserted in this action. A class settlement need not obtain 100% of the damages or other relief initially sought in order to be fair and reasonable; rather, the public interest is served by a voluntary settlement in which both sides give ground in the interest of avoiding litigation. Here, class members will receive approximately 44 percent (%) of their maximum potential pre-interest damages. That is a reasonable compromise of the claims given the risks, delays, and costs of litigating the case through final judgment. The terms of the settlement are fair, adequate and reasonable and in the best interests of the class.

B. The settlement was reached through arms-length, adversary bargaining between the parties, and during mediation with The Honorable Jay Daugherty. There has been no collusion between the parties in reaching the settlement.

C. Before entering into the settlement, the parties engaged in sufficient investigation, discovery, and briefing regarding the claims Plaintiff alleges to allow counsel to act knowledgeably in negotiating the settlement and to allow the Court to act intelligently in weighing its fairness.

D. There has been no opposition to the proposed settlement by members of the settlement class. No class members presented any objections in writing or orally at the fairness hearing. The Court's role is not to determine whether other terms of settlement might be

preferable, but whether those which the parties reached are fair and reasonable and in the class's best interests.

E. At all times, including during negotiation of the settlement and its presentation to the Court, the settlement class has been adequately represented by competent counsel ("Class Counsel"), experienced in litigating class actions. Class Counsel have recommended to the Court that the proposed settlement be approved. Class Counsel have exercised skill and experience in representing the class and have adequately represented and protected the interests of the class in the action.

F. The Class Action Settlement Agreement and Release provides for Progressive to make a total payment of \$2,612,687.81. The Settlement Agreement and Release provides for defendant to pay Class Counsel's reasonable attorneys' fees and costs out of the \$2,612,687.81 in an amount approved by the Court. Class Counsel seeks reimbursement of \$10,562.98 in litigation expenses and an award of attorneys' fees in the amount of \$1,040,849.93. The sum requested represents 40% of the amount payable to the settlement class. The sum is based on the contingency fee agreement between Plaintiff and Class Counsel and was disclosed to Class Members in the Class notice.

G. Plaintiff Donald Armon, Jr., has, at all times, fairly and adequately represented the class. The Settlement Agreement provides that defendant shall pay plaintiff Donald Armon, Sr., from the total of \$2,612,687.81, \$25,000 as a payment in recognition of the time and effort he expended in investigating and prosecuting this case. This payment is reasonable recompense for the efforts of plaintiff Armon on behalf of the class members.

H. Final certification of the settlement class is appropriate under Mo. R. Civ. P. 52.08. The class satisfies subsection (a)'s four requirements. The class is so numerous, including approximately 626 persons, to make joinder impracticable. There are questions of law and fact common to the settlement class. The named plaintiff appears to have fairly and adequately protected the interests of the class and appears to have claims typical of those held by class members. The settlement class meets Mo. R. Civ. P. 52.08(b)(3)'s requirements at least for

settlement purposes. Certifying the case for settlement as a class action is superior to other available means for resolving the controversy. With entry of this order, all of the class' claims will be resolved at once without the necessity of further litigation. The amount most class members will recover under the settlement or could recover through further litigation is so small as to make individual litigation uneconomical. Class members have shown no interest in individually controlling the prosecution of separate actions, and no other suits raising similar claims against defendant appear to have been filed in this state's courts. There will be no difficulty in managing this case as a class for settlement purposes and it is desirable to concentrate all class members' claims in this forum for expeditious resolution by this settlement.

I. Class notice has been sent in accordance with this Court's September 30, 2013 Order Preliminarily Approving Class Action Settlement. The class notice sent in this case reasonably informed class members of the essential features of this action, the terms of the proposed settlement, the class certification, and their rights with respect thereto.

J. The method of service of class notice to class members by regular mail at addresses shown on Defendant's computer records and use of change of address databases on returned mail was the best notice practicable under the circumstances and was reasonably calculated to communicate actual notice of the litigation and the proposed settlement to class members.

K. The class settlement administrator, Rust Consulting, Inc., duly sent class notice to class members in the manner directed by this Court's September 13, 2013 Order Preliminarily Approving Class Action Settlement.

L. Class members were given an adequate opportunity to opt out of this action. The names and addresses of those who chose to are as follows:

- (1) James Bledsoe, 120 Wabash Ave, Kansas City, Missouri 64124;
- (2) Clifford Ricketts, 5434 Tracy, Kansas City, Missouri 64110,
- (3) Janice Lancaster, 1809 Palmer Street, West Plains, Missouri 65775; and
- (4) Jerry Woodcock, 22520 Factory Road, Summersville, Missouri 65571.

ORDER

Based on the foregoing findings and good cause appearing,

1. The settlement class is certified under Mo. R. Civ. P. 52.08(a) & (b)(3). The class is defined as follows:

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. The persons listed in Paragraph L of this order validly opted out of the class defined in the preceding paragraph. They are not members of the class. They are not bound by this order or the judgment to be entered based upon it. They may not participate in the settlement which this order approves.

3. The Settlement Agreement And Release is hereby approved as fair and reasonable. The terms of the Settlement Agreement And Release are incorporated herein by reference. A copy of the Settlement Agreement And Release, without exhibits, is attached as Exhibit A.

4. Plaintiffs are awarded their reasonable attorney fees in the amount of \$1,040,849.93, and reimbursement of litigation costs and expenses of \$10,562.98, which defendant shall pay within 10 days of the Court entering this order.

5. The payment of the \$25,000 class representative award to plaintiff Donald Armon, Sr. is approved. Defendant shall pay the award to plaintiff within 10 days of the Court entering this Order.

6. A judgment of dismissal of this action with prejudice shall be entered. The judgment shall bind each member of the settlement class, except the persons listed in Paragraph L of this Order. The judgment shall operate as a full release and discharge of claims by each member of the class, except the persons listed in Paragraph L of this Order, in accordance with paragraph 4 of the Settlement Agreement and Release.

7. Notice of entry of this order and the ensuing judgment of dismissal shall be given to Class Counsel on behalf of plaintiffs and the class. It shall not be necessary to send notice of entry of this order or the ensuing judgment of dismissal to individual members of the class. The time for any appeal by class members who timely objected shall run from entry of the order and judgment.

8. After entry of the judgment of dismissal, the Court shall retain jurisdiction over the construction, interpretation, implementation, and enforcement of the Settlement Agreement And Release and to supervise and to adjudicate any disputes arising from or in connection with distribution of funds under that agreement.

9. After 90 days after payment of the Settlement Fund, any Funds remaining shall be paid to a Charitable Organization with Court approval. Within 180 days after this order and the ensuing judgment, Rust Consulting, Inc. shall serve and file with the Court an affidavit certifying that class members have been paid the amounts to which they are entitled under the Settlement Agreement and Release.

IT IS SO ORDERED.

12-6-13
DATE



JUDGE JACK GRATE, JR.