

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

NORMA HAWKER,)	
individually and on behalf of all)	
other Ohio residents similarly situated,)	
)	
)	
)	
)	Case No.: 21-CV-002169
)	
Plaintiff,)	
)	
v.)	Judge: JULIE LYNCH
)	
PEKIN INSURANCE CORPORATION)	
)	
)	
)	
Defendant.)	

**PLAINTIFF’S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Pursuant to Rule 23(E)(1)-(2) of the Ohio Rules of Civil Procedure, Plaintiff Norma Hawker, on behalf of herself and the proposed Settlement Class, (“Plaintiff”) respectfully moves for an order certifying a settlement class solely for purposes of preliminarily approving a settlement agreement, and further ordering preliminary approval in accordance with the terms and conditions set forth in the proposed preliminary approval order, attached as Exhibit A to the Settlement Agreement filed concurrently herewith.

Defendant Pekin Insurance Corporation, (“Defendant”) will not oppose this motion for approval of a settlement.¹ For purposes of preliminarily approving the Settlement Agreement only, Plaintiff seeks certification of a Settlement Class defined as follows:

“Ohio Settlement Class” means, except for Exclusions, all policyholders under any Personal Lines or Commercial Lines insurance policy issued by Pekin, who made: (a) a Structural Loss claim for property located in the State of Ohio during the applicable Class Periods as defined in Section 2.12; and (b) that resulted in an ACV Payment from which Nonmaterial Depreciation was withheld, or that would have resulted in an ACV Payment but for the withholding of Nonmaterial Depreciation causing the loss to drop below the applicable deductible.

See Settlement Agreement ¶ 2.33.

The Settlement Class excludes: (i) policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting Nonmaterial Depreciation within the text of the policy form, endorsement or rider (*i.e.*, by express use of the words “depreciation” and “labor”); (ii) policyholders who received one or more ACV Payments for claims, but not replacement cost value payments, that exhausted the applicable limits of insurance; (iii) policyholders whose claims were denied or abandoned without ACV Payment; (iv) Defendant and its officers and directors; (v) members of the judiciary and their staff to whom this action is assigned and their immediate families; and (vi) Class Counsel and their immediate families (collectively, “Exclusions”). Settlement Agreement ¶ 2.32.

The Class Period mean the following time periods:

For Ohio Pekin policyholders, Structural Loss claims whose first structural damage payment (or notification of claim below deductible) was issued on or after February 13, 2018 to March 19, 2020.

Settlement Agreement ¶ 2.12.

¹ As Paragraphs 1.8-1.9 of the Settlement makes clear, however, Defendant denies liability and absent settlement intends to contest each and every claim and cause of action, including whether any aspect of this lawsuit is appropriate for certification as a litigation class.

Also, for purposes of preliminarily approving the Settlement Agreement, Plaintiff further requests that she be appointed class representative, and that the undersigned counsel be appointed as counsel for the class. In support of their motion, Plaintiff states and shows as follows:

1. To satisfy the requirements of Rule 23(E) for class certification, a proposed settlement class must satisfy the four requirements stated in Rule 23(A)—that is, numerosity, commonality, typicality, and adequacy of representation—as well as one of the three bases for class certification stated in Rule 23(B). Because the request for class certification arises in the context of a settlement, however, the Court need not analyze whether trial would present intractable management problems. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997). Here, all requirements necessary for preliminary approval of a settlement class are satisfied.

2. Numerosity under Rule 23(A)(1) is satisfied for the proposed settlement classes because counsel estimate that notice will be issue for hundreds of claims at issue or potentially at issue. Defendant has greater than 100 claims at issue.

3. Commonality under Rule 23(A)(2) is satisfied for the proposed settlement classes because there are questions of law or fact common to all members of the proposed classes including but not limited to the single, predominating question presented—whether Defendant can withhold labor as depreciation under Defendant’s property insurance policies. Plaintiff’s entitlement to prejudgment interest also presents a common issue.

4. Typicality under Rule 23(A)(3) is satisfied for the proposed settlement classes because Plaintiff made a claim under Defendant’s standard-form insurance policy, and Defendant withheld labor or other non-materials in making an actual cash value payment to them. The proposed class representative’s claims arose from the underpayment of her actual cash value claim, and her claim is identical in all respects to the claims of the putative class.

5. Adequacy under Rule 23(A)(4) is satisfied for the proposed settlement class because Plaintiff has fairly and adequately represented and protected the interests of the putative class. Plaintiff has no interest that conflicts with those of the class. Further, Plaintiff retained experienced counsel competent and experienced in class action and insurance litigation.

6. As required by Rule 23(B)(3), questions of law or fact common to class members of the proposed settlement classes predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Predominance is satisfied because, *inter alia*, the predominating question in this lawsuit for purposes of settlement class certification remains whether labor can be withheld as depreciation under Defendant's policies. Superiority is satisfied for the settlement classes because of, *inter alia*, the thousands of small value claims at issue, and the interests of the parties and judicial economy favor settlement.

7. A proposed settlement agreement should be preliminarily approved so long as the moving parties demonstrate that the court will "likely be able to" grant final approval to the settlement.

8. Pursuant to Rule 23(E)(3), Plaintiff states that the only agreement at issue is the Class Action Settlement Agreement attached as an Exhibit to the Memorandum filed concurrently herewith.

9. Under Rule 23(E)(2), a proposed settlement can be approved based upon adequacy of representation considerations, the existence of arms-length negotiations and the terms of the settlement in the context of adequacy, the risks of the litigation, fairness to the putative class amongst themselves and in terms of distribution of class member claims and in terms of the

attorneys' fees. These factors largely mirror the factors analyzed by the Sixth Circuit. *In re Packaged Ice Antitrust Litig.*, No. 17-2137, 2018 WL 4520931, at *6 (6th Cir. May 24, 2018).

10. As more fully set forth in the accompanying Memorandum and supporting Declarations, the Settlement is appropriate for preliminary approval. In summary, for Class Members who submit claim forms, the Settlement will result in 100% net recovery of withheld Nonmaterial Depreciation for Class Members who still have outstanding labor withheld from their prior ACV claim payments, plus \$25.00. For Class Members for whom all Nonmaterial Depreciation that was withheld from ACV Payments was subsequently paid, the Settlement will result in a \$25.00 payment.²

11. The proposed settlement class does not include any policyholder that is not eligible for a payment under this Settlement Agreement. In exchange for payment, the class members will release claims limited to the subject matter of this lawsuit and without giving up any claims or arguments unrelated to the subject matter of this lawsuit (the systemic practice of withholding of nonmaterial depreciation). All unrelated matters will continue to be adjusted and handled by Defendant in the ordinary course.

12. The settlement was reached through arms-length settlement negotiations which took place during a mediation before court-appointed mediator Mary Barley-McBride, as attested to by Plaintiff's counsel in the accompanying Declarations.

WHEREFORE, for these reasons and those set forth in the accompanying Memorandum of Law and accompany Declarations of Plaintiff's counsel, Plaintiff respectfully moves for an

² The Settlement provides that in the event Class Members' interest payments would exceed \$100,000.00, then each such applying and participating Class Member would receive a pro-rated share of that \$25 interest payment, such that total interest payments would not exceed \$100,000.00.

order consistent with the proposed preliminary approval order attached as Exhibit A to the Settlement Agreement, filed concurrently herewith.

Respectfully submitted,

/s/ Stephen G. Whetstone
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed and served via the Court's electronic filing system which will send electronic notices of same to all counsel of record on this the 28th day of September 2021.

/s/ Stephen G. Whetstone