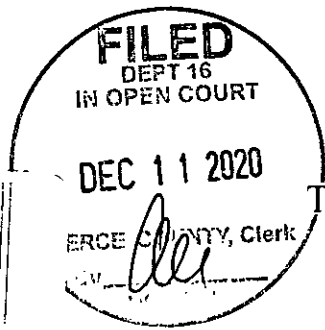
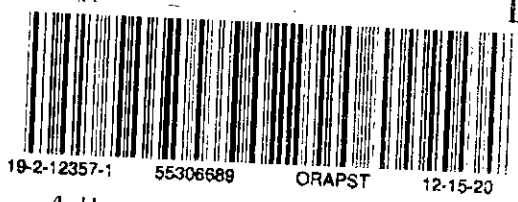


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The Honorable ELIZABETH MARTIN

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

LANCE MILLER,

Plaintiff,

v.

MUTUAL OF ENUMCLAW
INSURANCE COMPANY and
ENUMCLAW PROPERTY AND
CASUALTY INS COMPANY,

Defendant.

NO. 19-2-12357-1

FINAL ORDER APPROVING
SETTLEMENT AND JUDGMENT OF
DISMISSAL WITH PREJUDICE

THIS MATTER comes before the Court for final approval of the Stipulation of Settlement, also sometimes referred to as the Agreement, submitted on August 3rd, 2020, by the Motion for Order Preliminarily Approving Settlement, Approving Notice to Class Members, and Setting Date for Settlement Fairness Hearing. The Parties have appeared through their respective counsel.

WHEREAS, Plaintiff, LANCE MILLER, on behalf of himself and the proposed Settlement Class, and Defendants, MUTUAL OF ENUMCLAW INSURANCE COMPANY and ENUMCLAW PROPERTY AND CASUALTY INSURANCE COMPANY ("MOE"), have executed and filed a Stipulation of Settlement with the Court on August 3rd, 2020; and

WHEREAS, all capitalized terms used herein shall have the same meaning as set forth in the Agreement and are hereby incorporated by reference; and

1 WHEREAS, the Court, on August 14th, 2020 entered the Preliminary Approval Order,
2 preliminarily approving the Proposed Settlement; and

3
4 WHEREAS, LANCE MILLER was appointed the Class Representative; and

5 WHEREAS, the Court, as part of its Preliminary Approval Order, directed that a plan for
6 disseminating notice of the Settlement (“Notice Plan”) be implemented, and scheduled a hearing
7 to be held December 11th, 2020 to determine whether the Proposed Settlement should be
8 approved as fair, reasonable and adequate; and

9
10 WHEREAS, Defendants and Class Counsel have satisfactorily indicated to the Court that
11 the Notice Plan was followed; and

12 WHEREAS, a final approval hearing was held on December 11th, 2020 at which all
13 interested persons were given an opportunity to be heard, and all objections to the Settlement, if
14 any, were duly considered;

15
16 NOW, THEREFORE, the Court, having read and considered all submissions made in
17 connection with the Proposed Settlement, and having reviewed and considered the files and
18 records herein, finds and concludes as follows:

19 1. The Complaint filed in this Action alleges generally that, in breach of the Policies,
20 Defendants improperly failed to pay the Plaintiff and Settlement Class Members (as hereinafter
21 defined) for diminished value with respect to uninsured and underinsured motorist property
22 damage coverage (“UMPD”) claims.

23
24 2. On August 14, 2020, the Court preliminarily certified the above-entitled matter as
25 a settlement Class Action, defining the Settlement Class as follows:

26
27 All insureds of MOE with Washington policies issued in Washington
28 State between November 25, 2013 and August 14, 2020 where the
insured's vehicle damages were covered under the policy's

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underinsured/uninsured motorist ("UMPD ") coverage, MOE paid a claim, in whole or part, under such coverage, and,

1. The repair estimates on the vehicle (including any supplements) totaled at least \$1,000; and
2. The vehicle was no more than six years old (model year plus five years) and had less than 90,000 miles on it at the time of the accident; and
3. The vehicle suffered structural (frame) damage and/or deformed sheet metal and/or required body or paint work.

Excluded from the Class are (a) claims involving leased vehicles or total losses, (b) the assigned judge, the judge's staff and family.

3. The Court hereby re-affirms this definition for purposes of this Final Judgment.

4. The Court certifies the Settlement Class in this Action, for settlement purposes only, under Wash. R Civ. P. 23(a) and (b)(3), and, in so doing, finds that, for settlement purposes only, the requirements for maintaining a class action, at the settlement stage, have been met.

5. The Class Representative has entered into the Agreement which has been filed with the Court. The Agreement provides for the Settlement of this Action with Defendants on behalf of the Class Representative and the Settlement Class Members, subject to approval by the Court of its terms. The Court scheduled a hearing to consider the approval of the Settlement and directed that the Notice be disseminated in accordance with the terms of the Preliminary Approval Order.

6. In accordance with the terms of the Settlement and the Preliminary Approval Order, the Parties implemented the Notice Plan approved by the Court. Defendants' counsel and Class Counsel have confirmed to the Court that the Parties complied with the Notice Plan.

1 7. The Court hereby finds that the Notice Plan and the Notice constituted the best
2 notice practicable under the circumstances, and constituted valid, due and sufficient notice to
3 members of the Settlement Class.
4

5 8. The Class Representative and Defendants have applied to the Court for final
6 approval of the terms of the Proposed Settlement and for the entry of this Final Judgment.
7 Pursuant to the Class Notice, a hearing was held before this Court, on December 11, 2020, to
8 determine whether the Proposed Settlement of the Action should be finally approved as fair,
9 reasonable, and adequate, and whether the Final Judgment approving the Settlement and
10 dismissing all claims in the Action on the merits, with prejudice and without leave to amend
11 should be entered.
12

13 9. The Court hereby finds that approval of the Agreement and the Settlement
14 embodied therein will result in substantial savings of time and money to the Court and the
15 litigants and will further the interests of justice.
16

17 10. The Court hereby finds that the Proposed Settlement is the result of good faith
18 arm's length negotiations by the Parties thereto.
19

20 11. The Court hereby finds the terms of the Settlement are fair, reasonable and
21 adequate.
22

23 NOW, THEREFORE, GOOD CAUSE APPEARING THEREFOR, IT IS ORDERED,
24 ADJUDGED AND DECREED AS FOLLOWS:
25

26 12. The Court possesses jurisdiction over the subject matter of this Action, the Class
27 Representative, the Settlement Class Members, Defendants, and the Released Persons.
28

1 13. Two Class Members have submitted requests for exclusion, namely: Cleo
2 Brennan and Rosemarie Priest. All remaining Class Members are therefore bound by this Final
3 Judgment and by the Agreement and the Settlement embodied therein.
4

5 14. All provisions and terms of the Settlement are hereby found to be fair, reasonable
6 and adequate as to the Settlement Class Members and the Class Representative, and all
7 provisions and terms of the Settlement are hereby finally approved in all respects.
8

9 15. The Parties are hereby directed to consummate the Settlement in accordance with
10 its terms.

11 16. This Action is dismissed in its entirety, on the merits, with prejudice and without
12 leave to amend, and all members of the Settlement Class and their respective heirs, predecessors,
13 successors, assigns, family members, personal representatives, attorneys, officers, stockholders,
14 employees, executors, administrators, insurers, reinsurers, underwriters, directors and/or past,
15 present and future parent, subsidiary and affiliated corporations, and any other person or entity
16 who could or might assert any claim under or through any of the foregoing, shall be forever
17 barred and permanently enjoined from asserting, either directly or indirectly, individually, or in a
18 representative capacity or on behalf of or as part of a class, and whether under State or Federal
19 statutory or common law, any Released Claim against any Released Person.
20
21

22 17. As of the Effective Date, by operation of the entry of the Final Judgment, each
23 Settlement Class Member shall be deemed to have fully released, waived, relinquished and
24 discharged, to the fullest extent permitted by law, all Released Claims and Unknown Claims that
25 the Settlement Class Members may have against all the Released Persons.
26

27 18. "Released Claims" means and includes any and all claims for relief or causes of
28 action, Unknown Claims, known claims, rights, demands, actions, suits, debts, liens, contracts,

1 liabilities, agreements, interest, fees, costs, expenses or losses, including but not limited to claims
2 based in contract or tort, common law or equity, and federal, state, or local law, statute,
3 ordinance, or regulation, and any other claims for relief and/or remuneration whatsoever,
4 including, but not limited to, all claims arising out of the Defendants' handling or administering
5 of claims for UMPD Coverage or UIM property damage; claims for bad faith; claims for UMPD
6 Coverage or UIM property damage; claims for diminished value or stigma; breach of any written
7 or oral agreement or insurance contract or any similar act; waiver; estoppel; any tortious injury,
8 including any intentional or negligent acts; agent negligence; failure to procure coverage or
9 misconduct; punitive damages; treble damages; statutory damages; regulatory claims; claims for
10 violation of the Washington Consumer Protection Act or any similar act; claims for violation of
11 the Washington Insurance Fair Conduct Act or any similar act; misrepresentation; and/or any
12 claim for attorneys' fees and expenses; arising on or before the Effective Date, which the
13 Releasing Parties had, have, may have in the future, or which are or could have been alleged by
14 the Plaintiff in the Action, for himself and on behalf of the Class, that relate in any way
15 whatsoever to the Action.

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19 19. "Released Persons" means the Defendants, as defined in the Agreement, and any
20 of its business entities or divisions, heirs, predecessors, successors, assigns, officers,
21 stockholders, insurers, reinsurers, underwriters, directors, agents, employees and/or independent
22 contractors, attorneys-in-fact, and/or any other person or entity who could or might be subject to
23 any liability under or through any of the foregoing.

24
25 20. "Unknown Claims" means claims arising out of facts found hereafter to be other
26 than or different from the facts now believed to be true, relating to any matter covered by this
27 Stipulation, as to any of the Released Claims.
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21. It is hereby determined that the Notice Plan and the Notice constituted the best notice practicable under the circumstances to all members of the Settlement Class and is therefore finally approved as reasonable. Due and adequate notice of the pendency of this Action and of the Settlement has been provided to all the Settlement Class Members, and this Court hereby finds that the Class Notice complied fully with the requirements of due process, the Washington Code of Civil Procedure, and all other applicable laws.

22. Within thirty (30) days after the Effective Date, Class Counsel shall, upon request, destroy or return to Defendants all Confidential Information and copies thereof in their possession, custody, or control and delete any electronic copies of Confidential Information. Within forty-five (45) days after the Effective Date, Class Counsel shall deliver a letter to Defendants confirming their compliance with this paragraph -- including a description of steps taken to assure the deleted material cannot be recovered or restored. In the event that any Confidential Information or documents have already been destroyed, Class Counsel will include in that letter the name and address of the person(s) who destroyed the Confidential Information and/or documents.

23. Also, in furtherance of this confidentiality provision, Class Counsel and the Class Representative agree not to make any statements to the media or in any public forum, orally or in writing, about the Action, or the Stipulation, other than statements which are fully consistent with the Stipulation and the Class Notice.

24. Class Counsel agree that any representation, encouragement, solicitation or other assistance, including but not limited to referral to other counsel, of or to any Opt Outs or any other person seeking to litigate with Defendants over any of the claims covered under the

1 Release in this matter could place Class Counsel in an untenable conflict of interest with the
2 Class.
3

4 25. Accordingly, Class Counsel and their respective firms agree (only to the extent
5 that it is otherwise not violative of any applicable rules governing the practice of law) not to
6 represent, encourage, solicit or otherwise assist, in any way whatsoever (including, but not
7 limited to referrals to other counsel) any Opt Out except that referring such person to the Notice
8 or suggesting to any such person the option of obtaining separate counsel, without specifically
9 identifying options for such counsel, shall be permitted under the terms of this provision.
10

11 Additionally, Class Counsel and their respective firms agree (only to the extent that it is
12 otherwise not violative of any applicable professional rules) not to represent, encourage, solicit
13 or otherwise assist, in any way whatsoever, any Opt Out or any other person who seeks to
14 represent any form of opt-out class, or any other person, in any subsequent litigation that person
15 may enter into with Released Persons regarding the Released Claims or any related claims,
16 except that suggesting to any such person the option of obtaining separate counsel, without
17 specifically identifying options for such counsel, shall be permitted.
18

19 26. Neither this Final Judgment, the Stipulation, nor any of its terms or provisions,
20 nor any of the negotiations or proceedings connected with it, shall be construed as an admission
21 or concession by Defendants of the truth of any of the allegations made in the Action, or of any
22 liability, fault, or wrongdoing of any kind whatsoever on the part of Defendants. To the extent
23 permitted by law, neither this Final Judgment, the Stipulation, nor any of its terms or provisions,
24 nor any of the negotiations or proceedings connected with it, shall be offered as evidence or
25 received in evidence in any pending or future civil, criminal, or administrative action or
26 proceeding, to establish any liability or admission by Defendants, except in any proceedings
27
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1 brought to enforce the Stipulation and except that any Released Persons may file this Order in
2 any action that may be brought against them in order to support a defense or counterclaim based
3 on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or
4 reduction, or any other theory of claim preclusion or issue preclusion or similar defense or
5 counterclaim. Neither this Final Judgment, the Stipulation, nor any pleading or other paper
6 related in any way to this Stipulation, nor any act or communication in the course of negotiating,
7 implementing or seeking approval of the Stipulation, shall be deemed an admission by
8 Defendants that certification of a class or subclass is appropriate in any other litigation, or
9 otherwise shall preclude Defendants from opposing or asserting any argument it may have with
10 respect to certification of any class(es) or subclass(es) in any proceeding, or shall be used as
11 precedent in any way as to any subsequent conduct of Defendants, except as set forth in the
12 Stipulation.
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16 27. The Court has considered the request for a Class Representative award, and
17 hereby approves and awards the Class Representative, LANCE MILLER, the amount of
18 \$7,500.00, to be paid by Defendants within fourteen (14) days after the Effective Date.
19

20 28. The Court has considered Class Counsel's request for an attorneys' fees and costs
21 award for the prosecution of this action, and hereby makes an award in the amount of
22 \$346,500.00 for fees, and \$6,000.00 in costs.
23

24 29. The sums set forth in Paragraphs 27 and 28 above shall be paid in accordance
25 with the Stipulation, and out of the sources set forth therein.
26

27 30. This Final Judgment is a final order in the Action within the meaning and for the
28 purposes of Rules 23(e), 41, and 54 of the Washington Rules of Civil Procedure as to all claims
among Defendants on the one hand, and the Class Representative and all Settlement Class

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1 Members, on the other, and there is no just reason to delay enforcement or appeal. Without in
2 any way affecting the finality of this Final Judgment, this Court shall retain continuing
3 jurisdiction over this Action for purposes of:
4

- 5 A. Enforcing this Final Judgment, the Agreement and the Settlement;
- 6 B. Hearing and determining any application by any Party to the Settlement
7 for a settlement bar order; and
- 8 C. Any other matters related or ancillary to any of the foregoing.

9 IT IS SO ORDERED.

10 DONE IN OPEN COURT this 11th day of December, 2020.

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14 ELIZABETH MARTIN
Superior Court Judge

15
16 Presented by:
17 Law Offices of Stephen M. Hansen, P.S.
18
19 *s/Stephen M. Hansen*

20 STEPHEN M. HANSEN, WSBA #15642

21 SCOTT P. NEALEY
22 Law Office of Scott P. Nealey
23 71 Stevenson Street, Suite 400
San Francisco CA 94105

24 Attorneys for Plaintiffs

Copy Received; Approved for Entry:

Davis Wright Tremaine LLP

s/Steven P. Caplow

25 STEVEN P. CAPLOW, WSBA #19843
26 Of Attorneys for Defendant

