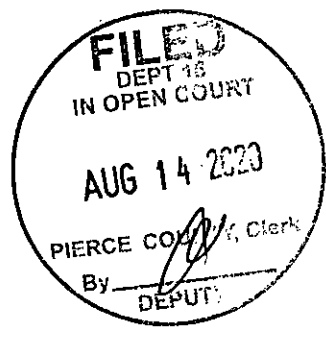


0175
3456
8/18/2020

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

**ORDER PRELIMINARILY APPROVING
SETTLEMENT AND DIRECTING
NOTICE TO CLASS**

~~PROPOSED~~

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"), all acting by and through their respective counsel, have agreed, subject to Court approval following sending of the Class Notice to the Settlement Class and a hearing, to settle this Action upon the terms and conditions

1 in the Stipulation of Settlement, also sometimes referred to as the Agreement, filed with the
2 Court on August 3rd, 2020; and
3

4 The Parties have made an application pursuant to Wash. R. Civ. P. 23 for preliminary
5 approval of the Settlement of this Action, as set forth in the Agreement; and
6

7 The Court has read and considered the Agreement and the exhibits thereto and has read
8 and considered all other papers filed and proceedings had herein, and is otherwise fully
9 informed, and with good cause appearing,

10 IT IS HEREBY ORDERED AS FOLLOWS:

11 1. This Preliminary Approval Order incorporates by reference the definitions in the
12 Agreement.

13 2. The Court has jurisdiction over the subject matter of this Action and over all
14 Parties to this Action, including the Named Plaintiff, all Settlement Class Members and
15 Defendant.
16

17 3. The Court certifies the Settlement Class, for settlement purposes only, defined as
18 follows:

19 All insureds of Commerce West Insurance Company with Washington policies issued in
20 Washington State between November 25, 2013 and August 14, 2020 where the insured's
21 vehicle damages were covered under the policy's underinsured/uninsured motorist
22 ("UMPD ") coverage, MUTUAL OF ENUMCLAW INSURANCE COMPANY or
23 ENUMCLAW PROPERTY AND CASUALTY INSURANCE COMPANY paid, in
24 whole of part, a claim under such coverage, and,

25 a. The repair estimates on the vehicle (including any supplements)
26 totaled at least \$1,000; and

27 b. The vehicle was no more than six years old (model year plus
28 five years) and had less than 90,000 miles on it at the time of the
accident; and

c. The vehicle suffered structural (frame) damage and/or deformed
sheet metal and/or required body or paint work.

0176
3456
8/18/2020

0177
3456
8/18/2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

4. For purposes of determining whether the terms of the Proposed Settlement should be finally approved as fair, reasonable and adequate, and contingent upon the Settlement being finally approved, Plaintiff LANCE MILLER is appointed as Class Representative, and the following counsel are designated as counsel for the Class ("Class Counsel"):

Scott P. Nealey
Law Office of Scott P. Nealey
71 Stevenson Street, Suite 400
San Francisco, California 94105

Stephen M. Hansen
Law Offices of Stephen M. Hansen, P.S.
1821 Dock Street, Suite 103
Tacoma, WA 98402

5. If final approval of the Proposed Settlement is not obtained, or if Final Judgment as contemplated herein is not granted, this Order shall be vacated *ab initio* and the Parties shall be restored without prejudice to their respective litigation positions prior to the date of this Order of Preliminary Approval.

6. Pending final determination of whether the Proposed Settlement should be approved, all proceedings in the Action shall be stayed until further order of the Court, except such proceedings as may be necessary either to implement the Proposed Settlement or to comply with or effectuate the terms of the Stipulation of Settlement.

7. Within sixty (60) days after the entry of this Order, the Claims Administrator shall send a copy of the Individual Notice and a Claim Form (or Claim Forms if a Class Member has multiple claims), pre-printed with the Class Member's name and most recent address, the date of the loss, and the vehicle make, model, and year, by first-class mail, to each Person on the

8/18/2020 3456 0178

1 Updated Settlement Class List. Prior to any mailing the Claims Administrator shall update all
2 addresses on the Class List by running the addresses thereon through the National Change of
3 Address Data Base. In furtherance of this Paragraph, the Court appoints ND Legal
4 Administration as the Claims Administrator for this matter.
5

6 8. The Court preliminarily finds that the dissemination of the Individual Notice and
7 Claim Form under the terms and in the format provided for in this Order and the Stipulation of
8 Settlement constitutes the best notice practicable under the circumstances, and is due and
9 sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the
10 requirements of due process, the Washington Rules of Civil Procedure and all other applicable
11 laws.
12

13 9. A hearing (the "Final Settlement Hearing") shall be held on **December 11, 2020,**
14 **2020 at 9:00 o'clock a.m., Courtroom 833,** as set forth in the Individual Notice, to determine
15 whether the Proposed Settlement of this Action (including the payment of attorneys' fees and
16 costs to Class Counsel) should be approved as fair, reasonable, and adequate, and to determine
17 whether final judgment approving the Proposed Settlement and dismissing all claims asserted in
18 this Action on the merits, with prejudice and without leave to amend, should be entered. The
19 Final Settlement Hearing may be postponed, adjourned or rescheduled by order of the Court
20 without further notice to the Class Members.
21

22 10. Objections to the Settlement shall be heard, and any papers or briefs submitted in
23 support of said objections shall be considered, by the Court (unless the Court in its discretion
24 shall otherwise direct) only if they comply with the objection procedures set forth in the
25 Stipulation of Settlement and Notice. Specifically, members of the Class who have not
26 previously opted out of the Class must file a notice of intent to object to the Settlement. To be
27
28

8/18/2020 3456 0179

1 effective, a notice of intent to object to the Settlement must: (1) contain a heading that includes
2 the name of the case and case number; (2) provide the name, address, telephone number and
3 signature of the Class Member filing the objection; (3) be filed with the Clerk of the Court not
4 later than thirty (30) days before the Final Settlement Hearing; (4) be served on Class Counsel
5 and counsel for the Defendant at the addresses below by first-class mail, postmarked no later
6 than thirty (30) before the Final Settlement Hearing; (5) contain the name, address, bar number
7 and telephone number of the objecting Class Member's counsel, if represented by an attorney.
8
9 Class Members represented by an attorney must comply with all applicable laws and rules for
10 filing pleadings and documents in the Court; and state whether they intend to appear at the Final
11 Settlement Hearing, either in person or through counsel.
12

13
14 11. In addition to the foregoing, a notice of intent to object must contain the following
15 information, if the Class Member or his/her attorney requests permission to speak at the Final
16 Settlement Hearing: (1) a detailed statement of the specific legal and factual basis for each and
17 every objection; and (2) a detailed description of any and all evidence the Objector may offer at
18 the Final Settlement Hearing, including photocopies of any and all exhibits which may be
19 introduced at the Final Settlement Hearing. Any individual or entity who objects, must submit
20 themselves or itself to discovery pursuant to the Stipulation of Settlement, under the timelines
21 specified therein.
22

23 12. Settlement Class Members who wish to exclude themselves from the Settlement
24 Class must prepare a written request for exclusion, postmarked no later than thirty (30) days
25 before the Final Settlement Hearing, which shall be sent to the Claims Administrator. Written
26 requests for exclusion must be signed and include the individual's name, address, and telephone
27 number, and expressly state the desire to be excluded from the Settlement Class. Requests for
28

1 exclusion must be exercised individually by the Class Member, not as or on behalf of a group,
2 class, or subclass, except that such exclusion requests may be submitted by a Class Member's
3 Legally Authorized Representative.
4

5 13. All Class Members who do not opt out of the Class shall be bound by any
6 Approval Order and Final Judgment entered pursuant to the Stipulation of Settlement, and shall
7 be barred and enjoined, now and in the future, from asserting any and all of the Released Claims,
8 as defined in the Stipulation of Settlement, against the Released Persons, as defined in the
9 Stipulation of Settlement, and any such Class Member shall be conclusively deemed to have
10 released any and all such Released Claims.
11

12 14. Class Counsel agree that any representation, encouragement, solicitation or other
13 assistance, including but not limited to referral to other counsel, of or to any Opt Outs or any
14 other person seeking to litigate with Defendant over any of the claims covered under the Release
15 in this matter could place Class Counsel in an untenable conflict of interest with the Class.
16 Accordingly, Class Counsel and their respective firms agree (only to the extent that it is
17 otherwise not violative of any applicable rules governing the practice of law) not to represent,
18 encourage, solicit or otherwise assist, in any way whatsoever (including, but not limited to
19 referrals to other counsel) any Opt Out except that referring such person to the Notice or
20 suggesting to any such person the option of obtaining separate counsel, without specifically
21 identifying options for such counsel, shall be permitted under the terms of this provision.
22 Additionally, Class Counsel and their respective firms agree (only to the extent that it is
23 otherwise not violative of any applicable professional rules) not to represent, encourage, solicit
24 or otherwise assist, in any way whatsoever, any Opt Out or any other person who seeks to
25 represent any form of opt-out class, or any other person, in any subsequent litigation that person
26
27
28

8/18/2020 3456 0180

8/18/2020 3456 0181

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

may enter into with Released Persons regarding the Released Claims or any related claims, except that suggesting to any such person the option of obtaining separate counsel, without specifically identifying options for such counsel, shall be permitted.

15. The Settlement fits within the parameters necessary for potential final approval, and is therefore hereby preliminarily approved, but is not to be deemed an admission of liability or fault by Defendant or by any other person, or a finding of the validity of any claims asserted in the Action or of any wrongdoing or of any violation of law by Defendant. The Settlement is not a concession and shall not be used as an admission of any fault or omission by Defendant or any other person or entity. Neither the terms or provisions of the Stipulation of Settlement, nor any related document, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action nor proceeding, to establish any liability or admission by Defendant except in any proceedings brought to enforce the Stipulation of Settlement, except that the Released Persons may file this Order in any action that may be brought against any of them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim.

16. Upon motion of any party, the Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Class.

17. Pending final determination as to whether the Proposed Settlement should be approved, no Class Member shall commence, prosecute, pursue, or litigate any Released Claims against any Released Person, whether directly, representatively, or in any capacity, and

8/18/2020 3456 0182

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

regardless of whether any such Class Member has appeared in the Action.

Based upon the above, IT IS SO ORDERED.

DONE IN COURT this 14 day of August, 2020.


ELIZABETH MARTIN
Superior Court Judge

Presented by:

Law Offices of STEPHEN M. HANSEN, P.S.

/s/
STEPHEN M. HANSEN, WSBA #15642
Of Attorneys for Plaintiff

Copy Received; Approved as to Form
and Content:

DAVIS WRIGHT TREMAINE LLP

/s/ STEVEN P. CAPLOW
As authorized 08/11/2020

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

