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

VASYL YERMAKOVYCH,

Plaintiff,

v.

AMERICAN FAMILY INSURANCE
COMPANY,

Defendant.

No. 21-2-09966-8 SEA

**ORDER GRANTING PRELIMINARY
APPROVAL, APPOINTING CLASS
REPRESENTATIVE AND COUNSEL**

Before the Court is the Parties’ Stipulated Motion for Preliminary Approval (the “Preliminary Approval Motion”). The Court has considered the Preliminary Approval Motion, together with its supporting declarations and exhibits.

This Court has reviewed the Parties’ Conditional Settlement Agreement (“Agreement”), as well as the files, records, and proceedings to date in this matter.¹

Based on this Court’s review of the Agreement and all of the files, records, and proceedings herein, the Court concludes, upon preliminary examination, that the Agreement and Settlement appear fair, reasonable, and adequate, and within the range of reasonableness for preliminary settlement approval, and that a hearing should and will be held after notice to the Class (as defined in Paragraph B below) to confirm that the Agreement and Settlement

¹ For purposes of this Order, capitalized terms used below shall have the meaning ascribed to them in the Preliminary Approval Motion, unless otherwise defined.

1 are fair, reasonable, and adequate and to determine whether the Settlement should be
2 approved and final judgment entered in this action based upon the Agreement.

3 IT IS HEREBY ORDERED THAT:

4 **A. Preliminary Approval of Proposed Settlement.**

5 The Agreement is preliminarily approved as fair, reasonable, and adequate and
6 within the range of reasonableness for preliminary settlement approval. The Court finds
7 that: (a) the Agreement resulted from extensive arm's length negotiations; and (b) the
8 Agreement is sufficient to warrant notice of the Settlement to persons in the Class and a full
9 hearing on the approval of the Settlement.
10

11 **B. Class Certification For Settlement Purposes Only.**

12 Pursuant to Washington Superior Court Civil Rule 23(c), the Court conditionally
13 certifies, for settlement purposes only, the following Classes:

14 **Typical Negotiation Settlement Class** - All persons and entities within the
15 State of Washington that have made first-party property damage claims under
16 contracts of automobile insurance with American Family Mutual Insurance
17 Company that provided for payment of the actual cash value of the
18 policyholder's vehicle (less any applicable deductible) in the event of total
19 loss, and (1) where policyholders experienced a total loss of their insured
20 vehicle covered under such policy, (2) where such claims for total loss were
21 evaluated using the Autosource valuation system which took deductions for
22 "typical negotiation", (3) where such claims were settled and paid using the
23 amount determined in the Autosource valuation which took those deductions;
24 and (4) where such claims were paid to the policyholder or a lienholder
25 without the parties agreeing to use, and using, an alternative appraisal process
26 described in the policyholder's policy.

Excluded from the Class are (a) the assigned judge, the judge's staff and
family, and AmFam employees, (b) claims where the total loss was on a "non-
owned" vehicle (where no insured has any ownership interest or rights in the
vehicle, including but not limited to leased vehicles), and (c) claims where the
insured submitted written evidence supporting a different valuation, and the
amount of that different valuation was paid by AmFam to settle the total loss.

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Condition Adjustment Settlement Class – All persons and entities within the State of Washington that have made first-party property damage claims under contracts of automobile insurance with American Family Mutual Insurance Company that provided for payment of the actual cash value of the policyholder’s vehicle (less any applicable deductible) in the event of total loss, and (1) where policyholders experienced a total loss of their insured vehicle covered under such policy, (2) where such claims for total loss were evaluated using the Autosource valuation system which adjusted the value of their vehicle and/or comparable vehicles to based on the condition of the vehicle (3) where such claims were settled and paid using the amount determined in the Autosource valuation which took those deductions; and (4) where such claims were paid to the policyholder or a lienholder without the parties agreeing to use, and using, an alternative appraisal process described in the policyholder’s policy.

Excluded from the Class are (a) the assigned judge, the judge's staff and family, and AmFam employees, (b) claims where the total loss was on a "non-owned" vehicle (where no insured has any ownership interest or rights in the vehicle, including but not limited to leased vehicles), and (c) claims where the insured submitted written evidence supporting a different valuation, and the amount of that different valuation was paid by AmFam to settle the total loss.

The Court finds that the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a) are satisfied for settlement purposes. The Court also finds that the predominance, manageability, and superiority requirements of Rule 23(b)(3) are satisfied for settlement purposes.

Accordingly, the Court orders as follows:

1. Plaintiff is appointed Class Representatives; and
2. Plaintiff’s Counsel are hereby appointed and designated as counsel for the above-described Class and are authorized to act on behalf of the members of the Class.

C. Fairness Hearing.

1 A final approval hearing (the “Fairness Hearing”) shall be held before the Honorable
2 Matthew Williams on TBD. Courtroom 3A, as set forth in the Notice to the Class, to
3 determine whether the Agreement is fair, reasonable, and adequate and should be approved.
4 Papers in support of final approval of the Agreement, the incentive award to Plaintiff, and
5 Class Counsel’s application for an award of attorneys’ fees, costs and expenses (the “Fee
6 Application”) shall be filed with the Court according to the schedule set forth in Paragraph
7 M below. The Final Settlement Approval Hearing, and all dates provided for herein, may,
8 without further notice to the Class, be continued or adjourned by order of this Court. After
9 the Fairness Hearing, the Court may enter a settlement order and final judgment in
10 accordance with the Agreement that will adjudicate the rights of the Class Members with
11 respect to the Released Claims being settled. The scope of the Released Claims shall be that
12 set forth in ¶23 of the Settlement Agreement.
13

14 **D. Class Notice.**

15 Class Notice shall be sent within forty-five (45) days following entry of this Order.
16 KCC shall serve as Claim Administrator.
17

18 **E. Mail Notice.**

19 The Claims Administrator will provide mail notice to persons in the Class for whom
20 the Defendant possesses mailing addresses. Mail Notice will be sent via first-class mail to
21 the most recent mailing address as reflected in reasonably available insurance records of the
22 Defendant. Skip tracing shall be performed by the Claims Administrator for all returned
23 mail.
24

25 **F. Findings Concerning Class Notice.**

1 The Court finds that the foregoing program of Class Notice and the manner of its
2 dissemination is the best practicable notice under the circumstances and is reasonably
3 calculated to apprise the Class of the pendency of this action and their right to object to or
4 exclude themselves from the Class. The Court further finds that the Class Notice program is
5 reasonable, that it constitutes due, adequate, and sufficient notice to all persons entitled to
6 receive notice and that it meets the requirements of due process and Civil Rule 23. The
7 Court hereby approves the Notice in substantially the same form as that attached as Exhibit
8 Two to the Declaration of Mark A. Trivett filed in support of the Preliminary Approval
9 Motion.
10

11 **G. Administration.**

12 The Court confirms that it is appropriate for the Defendant to provide the
13 information necessary to provide the notice contemplated herein and to administer the
14 settlement, including names, addresses, and personal identifying information.
15

16 **H. Exclusion from the Class.**

17 Persons in the Class will possess the right to opt out by sending a written request to a
18 designated address within forty-five (45) days after the Notice Mailing Date. All Class
19 Members who do not opt out in accordance with the terms set forth herein will be bound by
20 all determinations and judgments in this action. Exclusion requests must contain the
21 person's name, address, telephone number, and signature, and must include the following
22 statement: "I request to be excluded from the class settlement in *Yermakovich v. American*
23 *Family Insurance Company*, Case No. 21-2-09966-8." Not later than 15 days from the
24 exclusion deadline, the Claims Administrator shall file with the Court a declaration that
25 provides copies of all exclusion requests received.
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I. Objections and Appearances.

Any person in the Class who has not timely submitted a valid request for exclusion from the Class, and thus is a Class Member, may object to the proposed Settlement and appear at the Final Approval Hearing to argue that the proposed Settlement should not be approved and/or to oppose the application of Class Counsel for an award of attorneys' fees and the incentive award to the named Plaintiffs.

1. In order to object to the Settlement, a Class member must make any objection in writing and file it with the Court and serve on all Parties no later than fourteen (14) days before the final approval hearing. The objection must include the person's name, address, telephone number, and signature, and must set forth, in clear and concise terms, the legal and factual arguments supporting the objection. Any objections that are not timely filed and mailed shall be forever barred.

J. Further Papers In Support Of Settlement And Fee Application.

Class Counsel's Motion for Attorneys' Fees and the Motion for Final Approval shall be filed within thirty (30) days of the Exclusion/Objection Deadline as provided in Paragraph M.

K. Effect of Failure to Approve the Agreement.

In the event the Agreement is not approved by the Court, or for any reason the Parties fail to obtain a Final Judgment as contemplated in the Agreement, or the Agreement is terminated pursuant to its terms for any reason, then the following shall apply:

1. All orders and findings entered in connection with the Agreement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;
2. The conditional certification of the Classes pursuant to this Order shall be vacated automatically and void; no doctrine of waiver, estoppel, or preclusion shall be asserted in any litigated certification proceedings in the Action;
3. The Agreement and its existence shall be inadmissible to establish any fact or any alleged liability of the Defendant for the matters alleged in this action or for any other purpose; and
4. Nothing contained in this Order is, or may be construed as, any admission or concession by or against the Defendant or Plaintiffs on any point of fact or law.

L. Timeline.

ACTION	DATE
Preliminary Approval Order Entered	At the Court's Discretion
Notice Mailing Date	Within 45 days following entry of the Preliminary Approval Order
Claim Form Submission Date	No more than 120 days after mailing of Individual Notice.
Exclusion/Objection Deadline	45 days after Notice Mailing Date

1	Claims Administrator's Filing of Exclusion Requests	15 days after Exclusion/Objection Deadline
2	Plaintiff's Counsel's Fee Motion Submitted	30 days after Exclusion/Objection Deadline
3		
4	Final Approval Brief and Response to Objections	30 days after Exclusion/Objection Deadline
5	Final Approval Hearing / Noting Date	Between 105-120 days of entry of the Preliminary Approval Order
6		
7	Final Approval Order Entered	At the Court's Discretion

8
9
10 The Fairness Hearing is scheduled on March 10, 2023 at 1:30 pm in Courtroom 3A at
11 the Maleng Regional Justice Center, 401 4th Ave N, Kent, WA.

12 **IT IS SO ORDERED**

13
14 DATED this _____ day of _____, 2022.

15
16
17 _____
18 Judge Matthew Williams

19
20 **PRESENTED BY:**

21 BADGLEY MULLINS TURNER PLLC

22 *s/ Mark A. Trivett*

23 Mark A. Trivett, WSBA #20597

24 Duncan C. Turner, WSBA #20597

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Seattle, WA 98155

25 Telephone: (206) 621-6566

26 Email: mtrivett@badgleymullins.com

[PROPOSED] ORDER GRANTING PRELIMINARY
APPROVAL, APPOINTING CLASS REPRESENTATIVE
AND COUNSEL - 8

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King County Superior Court
Judicial Electronic Signature Page

Case Number: 21-2-09966-8
Case Title: YERMAKOVYCH vs AMERICAN FAMILY INS CO
Document Title: ORDER RE PRELIMINARY APPROVAL OF CLASS
Signed By: Matt Williams
Date: November 07, 2022



Judge: Matt Williams

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: EB84B7853CB038BA5F09ED31155B8D18BB90ECE2
Certificate effective date: 1/3/2022 3:22:29 PM
Certificate expiry date: 1/3/2027 3:22:29 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Matt Williams:
dD/50zst7BGdnINZt8fBPA=="