

IN THE SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF KING

VASYL YERMAKOVYCH, on behalf of
himself and all other similarly situated,

Plaintiffs,

v.

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY,

Defendant.

NO. 21-2-09966-8

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement” or “Settlement”) is made by and between plaintiff VASYL YERMAKOVYCH (“Plaintiff”), on behalf of himself and all others similarly situated, and defendant, AMERICAN FAMILY MUTUAL INSURANCE COMPANY, (“AmFam” or “Defendant”), by and through their respective counsel, subject to the following terms and conditions.

RECITALS

WHEREAS, on July 28, 2021, Plaintiff filed a Class Action Complaint for Breach of Contract, violation of the Washington Consumer Protection Act, common law bad faith, and breach of the implied covenant of good faith and fair dealing, which is now pending in the King County Superior Court (the “Court”), designated as Case No. 21-2-09966-8 (the “Action” or “Lawsuit”); and

WHEREAS, Plaintiff and the Settlement Class Members (as hereinafter defined) each were insured under automobile insurance policies issued by Defendant, and had their first party (comprehensive, collision, and/or UIM PD) personal lines automobiles adjusted to be total losses by AmFam, and received an Autosource vehicle valuation from AmFam which contained either an adjustment to the purchase price to account for “typical negotiation” or an adjustment to the value of their vehicles to account for the physical “condition” of their vehicles;

WHEREAS, the Action alleges generally, that, in breach of the Policies, Defendant improperly failed to pay the Plaintiff and Settlement Class Members (as hereinafter defined) fully for their total loss claims, including by adjusting the value of comparable automobiles to reflect a “condition” adjustment; and

WHEREAS, the Parties have agreed that, subject to the provisions of paragraph ____, Plaintiff will file an amended complaint to (a) assert claims related to typical negotiation adjustments in addition to condition adjustments; and (b) add a typical negotiation adjustment subclass; and

WHEREAS, the Plaintiff, through counsel, while believing that the claims asserted in the Action have substantial merit, examined the benefits to be obtained under the terms of the Settlement contemplated by the Agreement, considered the risks and delay associated with the continued prosecution and possible appeal of this Action and the likelihood of success on the

merits of the Action, and believe that, in consideration of all the circumstances, the Settlement is fair, reasonable, adequate, and in the best interests of the Plaintiff, Typical Negotiation Settlement Class Members, and Condition Adjustment Settlement Class Members (as hereinafter defined); and

WHEREAS, Defendant believes it has numerous merits and class defenses, and further maintains that it has consistently acted in accordance with governing laws at all times and denies wrongdoing of any kind whatsoever, and without admitting liability, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation, and to be completely free of any further controversy with respect to the Released Claims (defined at paragraph 23).

NOW, THEREFORE, IT IS HEREBY AGREED by and between the Parties, through their respective counsel, that the Action be settled and compromised as between the Plaintiff and the Settlement Class Members (as hereinafter defined), and Defendant upon approval of the Court after hearing as provided for in this Agreement, on the following terms and conditions:

I. DEFINITIONS

In addition to the foregoing, the following terms shall have the meanings set forth below:

1. "Claim" means a request by Plaintiff or a Settlement Class Member, or their Legally Authorized Representatives (as defined in Paragraph 17), for a benefit under the Settlement.
2. "Claimant[s]" mean those Settlement Class Members or their Legally Authorized Representative, who submit a timely Claim Form.
3. "Claim Form" means the colored form (or forms for those with more than one total loss in the Class) attached to or accompanying the Individual Notice, pursuant to which

Settlement Class Members may elect to participate in this Settlement. The Claim Form is attached hereto as Exhibit "A."

4. "Claim Form Submission Date" means the date set by the Court to be at least 100 days from the date the first class notice is mailed.

5. "Claims Administrator" means the firm approved by the Court to administer all aspects of the Settlement. The Parties agree to jointly recommend to the Court that _____ be appointed as the Claims Administrator.

6. "Class Counsel" means the following attorneys who represent the Named Plaintiff and the Settlement Class Members:

Mark A. Trivett
Badgley Mullins Turner PLLC
19929 Ballinaer Way NE, Suite 200
Seattle, WA 98155

Duncan C. Turner
Badgley Mullins Turner PLLC
19929 Ballinaer Way NE, Suite 200
Seattle, WA 98155

Daniel R. Whitmore
Law Offices of Daniel R. Whitmore
6840 Fort Dent Way, Suite 210
Tukwila, WA 98188

7. "Class Member(s)" or "Settlement Class Member(s)" mean any person, persons, entity, or entities falling within either the Typical Negotiation Settlement Class or the Condition Adjustment Settlement Class.

8. "Class Period" means the period from August 2, 2015 to the date of Preliminary Approval of the Settlement reflected in this Agreement.

9. "Class Representative" means Vasyl Yermakovych and/or any other person(s) named by the Court as a Class Representative of one or both of the Typical Negotiation Settlement Class or the Condition Adjustment Settlement Class.

10. "Defendant," "American Family," and "AmFam" mean American Family Mutual Insurance Company.

11. "Deficient Claim Form" means a Claim Form that is not signed, not truthful, or incomplete.

12. The "Effective Date" of this Agreement, shall be fourteen (14) days after the later of:

- (1) The expiration of the time to appeal the Final Approval Order and Judgment (as defined in paragraph 14 below) with no appeal having been filed; or
- (2) If an appeal is filed, then the later of: (a) the termination of such appeal on terms that affirm the Final Approval Order and Judgment or dismiss the appeal with no material modification to the Final Approval Order and Judgment; and (b) the expiration of the time to obtain any further appellate review of the Final Approval Order and Judgment.

13. "Eligible Class Member" is a Settlement Class Member who has submitted a Valid Claim Form and whose eligibility has not been challenged by the Defendant within ninety (90) days of the Claim Form Submission Date.

14. "Final Approval Order and Judgment" means the Order to be entered by the Court, substantially in the form and substance as Exhibit "B," or such other form as is mutually agreeable to the Parties, approving this Settlement as fair, adequate, and reasonable and in the best interests of the Typical Negotiation Settlement Class and the Condition Adjustment Settlement Class in accordance with the applicable Washington Rules of Civil Procedure and/or other applicable law.

15. "Final Approval Hearing" means the hearing at which final approval of the Settlement in this matter is sought. The parties will request that such hearing be set within 30 days of the deadline for Eligible Class Members to opt-out of this Settlement.

16. "Individual Notice" means the notice that the Settlement has been preliminarily approved, in substantially the same form and with substantially the same content as Exhibit "C" hereto, to be sent to Class Members by first-class mail, with reasonable tracing and remailing by the settlement administrator of any returned mail.

17. "Legally Authorized Representative" means an administrator/administratrix or executor/executrix of a deceased Potential Class Member's estate, a guardian, or conservator of an incapacitated Potential Class Member or any other legally appointed person or entity responsible for handling the financial affairs of a Class Member, and/or the spouse or domestic partner of any Class Member provided they can provide reasonable documentation to show their rights to submit a claim.

18. "Notice Date" means the date by which Individual Notice is to be first mailed to Class Members.

19. "Objection" means a written objection to the Proposed Settlement by those who do not opt out and that is filed with the clerk of the Court no later than fifteen (15) days before the Final Approval Hearing.

20. "Opt Out" means any Person who sends a written communication requesting exclusion from this Settlement. Any Opt Outs must be post-marked no later than forty-five (45) days after the Notice Date.

21. "Parties" means, collectively, Vasyl Yermakovych, on behalf of himself and all others similarly situated, and AmFam.

22. "Preliminary Approval Order" means the Court's preliminary approval of this Settlement in substantially the same form and content as the one attached hereto as Exhibit "D."

23. "Released Claims" means a general release through the date that the Court enters the Preliminary Approval Order of any claims, rights, demands, actions, causes of action, suits, Unknown Claims (as defined in paragraph 30), debts, liens, contracts, liabilities, agreements, interest, costs, expenses, losses, or damages (whether actionable, consequential, treble, statutory and/or punitive or exemplary or other), whether arising in law or equity, known or unknown, arising out of or relating to Plaintiff and Settlement Class Members' automotive property damage claims to AmFam, including (i) the allegations that were or could have been asserted by the Plaintiff or the Settlement Class Members in this Lawsuit (including in the current complaint and the forthcoming amended complaint); (ii) Defendant's handling, valuation, or adjustment of the aforementioned automotive property damage claims and/or coverage, including claims for bad faith; (iii) the total loss payments, including but not limited to breach of any written or oral agreement or insurance contract or any similar act; waiver; estoppel; any tortious injury, including any intentional or negligent acts; agent negligence; failure to procure coverage or misconduct; punitive damages; treble damages; statutory damages, regulatory claims; claims for violation of the Washington Consumer Protection Act or any similar act; claims for violation of the Washington Insurance Fair Conduct Act or any similar act; misrepresentation; and/or any claim for attorneys' fees and expenses; arising on or before the date hereof, which the Releasing Parties had or have alleged by the Plaintiff in the Action, for himself and on behalf of the Settlement Class, that relate in any way whatsoever to the Action's claims related to total loss payment. The Released Claims do not include any claims arising out of bodily injuries to the

Plaintiff and/or Settlement Class Members including any causes of action, damages, liens, sub-rogation interests, or claims for attorney's fees and costs, arising therefrom.

24. "Releasees" means each of: (i) the Defendant and any of its present, former, and future direct and indirect affiliates, agents, divisions, predecessors, parent companies, subsidiaries, members, and successors; and (ii) all of the aforementioned's respective present, former, and future agents, assigns, attorneys, directors, employees, officers, contractors, members, shareholders, and policyholders.

25. "Releasing Parties" means: Plaintiff and the Class Members, their present and former spouse(s), any present and former co-owners of the subject total loss vehicle: as well as all of the foregoing's predecessors-in-interest, successors-in-interest, assigns, personal representatives, attorneys, officers, stockholders, employees, agents, partners, insurers, reinsurers, underwriters, beneficiaries, directors, Legally Authorized Representatives (in their capacity as a Legally Authorized Representative), including executors and administrators; and/or past, present and future parent, subsidiary and affiliated corporations, and any other person or entity who could or might assert any claim under or through any of the foregoing.

26. "Settlement Classes" refers to the Typical Negotiation Settlement Class and the Condition Adjustment Settlement Class collectively.

27. Typical Negotiation Settlement Class means the Class described as follows:

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 took deductions for "typical negotiation", (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-owed" 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.

28. Condition Adjustment Settlement Class means the Class described as follows:

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-owed" 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.

29. "Maximum Liability Amount" or "MLA" means the amount of \$2,238,355. This figure shall be AmFam's maximum potential settlement liability, inclusive of class member

compensation, attorneys' fees and expenses, named plaintiff incentive fees, and notice and administration costs.

30. "Unknown Claims" are any Claims arising out of new facts or facts found hereafter to be other than or different from the facts now known during the Class Period.

31. "Valid Claim Form" means a Claim Form timely submitted by a Class Member who has not requested exclusion from the Settlement, or submitted on behalf of such Class Member by that Class Member's Legally Authorized Representative, on paper or via the Settlement website established by the Claims Administrator, that complies with the instructions on the Claim Form, includes the signature of the Class Member or his or her Legally Authorized Representative, and that affirms that the answers to each of the following questions are true and correct to the best of the Class Member's knowledge, as set forth in Exhibit "A" hereto:

1. At the time the vehicle was declared a total loss by American Family, did you own (and not lease, rent, or borrow) the vehicle declared a total loss by American Family?)

YES _____ NO _____ I DON'T KNOW _____

2. After American Family declared the vehicle a total loss, did you or somebody acting for you (e.g. attorney, appraiser, public adjuster) submit documentation disputing American Family's valuation?

YES _____ NO _____ I DON'T KNOW _____

3. If you answered "YES" to Question 2, did American Family increase its property damage settlement offer based your documentation or alternative valuation?

YES _____ NO _____ I DON'T KNOW _____

II. CLAIMS PROCEDURE AND PAYMENT

32. In order to receive payment under this Settlement, Class Members must submit a Valid Claim Form postmarked, or submitted on the web-site, by a date no later than one hundred twenty (120) days after the date set by which mailing of the notice is to be completed.

33. Deficiency notices will be sent by the Claims Administrator within fourteen (14) days after the Claim Form Submission Date to Claimants who have submitted Deficient Claim Forms (*i.e.* any claim form that is not a Valid Claim Form). Any Deficient Claim Forms shall be subject to having the deficiencies corrected by Claimants within thirty (30) days of date of the deficiency notice. Upon proper completion and return, such Deficient Claim Forms shall be considered Valid Claim Forms. Forms that are not returned within one hundred twenty (120) days after the date by which mailing of the notice is to be complete, or where the returned claim form remains a Deficient Claim Form will be considered invalid. A copy of the Valid Claim Forms will be submitted to the Defendant at the end of the deadline for returning corrected claim forms. If the Deficient Claim Forms that have been timely resubmitted and are not challenged by the Defendant within sixty (60) days of the deadline for returning Deficient Claim Forms, these Claimants become Eligible Class Members and payment will be sent to them by the settlement administrator within twenty (20) days after the deadlines to challenge such claims have expired, but in no event prior to thirty (30) days after the Effective Date.

34. A Claimant who submits a Valid Claim Form will be presumed not to be eligible to receive payment under this Settlement if:

(a) AMFAM submits proof that the claim does not fall within the Settlement Classes; or

(b) the insured:

- Answers “NO” or provided no answer to question 1 (in ¶31);
- Does not provide an answer to question 2 (in ¶31);
- Answers “YES” to question 2 (in ¶31), and does not answer question 3 (in ¶31); or
- Answers “YES” to question 3 (in ¶31).

Defendant shall provide notice to Class Counsel, within forty-five (45) days after the close of the Claim Form Submission Date, if it believes that any Claimant who has submitted a Claim Form is ineligible to receive payment. Class Counsel and Defendant shall have thirty (30) days from such notice to reach an agreement on the eligibility determination of the Claimant and if no agreement is reached the determination shall be submitted to the Superior Court for resolution, whose decision will be final and non-appealable.

35. Claimants who have submitted a Deficient Claim Forms shall not be entitled to any payment under this Settlement.

36. In the event of a dispute over a Claimant's eligibility under the settlement or whether a claimant submitted a Valid Claim Form, the Claimant shall bear the burden of proving they submitted a Valid Claim Form and fall within the class definition. In any instance in which Defendant disputes a Claimant's eligibility on the basis that the Claimant's answer to either of question 2 or question 3 in paragraph 31 was incorrect, Defendant shall produce a copy of all documents or records in which Defendant's objection is based. Defendant shall have twenty (20) days from the date a Claimant is determined, as provided in this Paragraph, by the Court or by the Parties to be an Eligible Class Member, to send payment to them, but in no event earlier than thirty (30) days after the Effective Date.

37. Each Claimant who submits a Valid Claim Form and falls within the Settlement Class will receive a settlement payment calculated as follows:

Claimant Award = $(CTND/TRA) * \text{Net MLA}$, where

- CTND is the sum of the individual Claimant's typical negotiation discount plus the sum of any negative condition adjustment (as reported to American Family by Autosource) to the individual Claimant's valuation less any positive condition

adjustment (as reported to American Family by Autosource) to the individual Claimant's valuation.

- TRA shall equal the sum of: (a) the typical negotiation adjustments for all Class Members (before the exclusion of any individuals in accordance with paragraphs 34 and 36) as reported to American Family by Autosource; and (b) the negative condition adjustments for all Class Members (before the exclusion of any individuals in accordance with paragraphs 34 and 36) as reported to American Family by Autosource, less (c) the positive condition adjustments reported to American Family by Autosource.
- Net MLA is the Maximum Liability Amount minus the total of: Class Counsel's fees and expenses, any Class Representative incentive fee, any amounts paid or owed to the Settlement Administrator including all costs associated with the notice and settlement administration costs and fees.

38. As set forth herein, Defendant agrees not to oppose a request for, and to pay Vasyl Yermakovych \$5,000 for his service as the Class Representative, if approved by the Court. This payment shall be due fourteen (14) days after the Effective Date.

39. The Releasing Parties fully understand and intend, upon advice of counsel, that, pursuant to this Agreement, the payments set forth above shall be the only payment any or all of them will ever receive from the Released Parties relating in any way whatsoever to the Action and the Policies and as to any and all possible claims related to and/or associated with any of the foregoing.

40. If, after all checks have been disbursed to Eligible Class Members, there are checks that have not been cashed within sixty (60) days of the check's date, or are returned as undeliverable, and no deliverable address can be identified through reasonable efforts, Defendant may stop payment on those uncashed checks. If an Eligible Class Member requests that the Claims Administrator reissue a check within 60 days of the date on the original settlement check, or a new address is located on a returned check within the same 60 days, or an Eligible Class Member contacts the Claims Administrator or a Party within 180 days after the date on the

original settlement check and states that they did not receive a check, the Claims Administrator shall issue a replacement check with another 60-day expiration date. If the replacement check has not been cashed by this expiration date, the Claims Administrator shall stop payment on the uncashed check, and the payment to the Eligible Class Member shall be deemed as having never been made. Uncashed checks will not be subject to the applicable escheat laws and will not be considered as residual funds under 23(f) or any other law or otherwise subject to the doctrine of *cy pres* or its equivalent.

III. CLAIMS ADMINISTRATOR.

41. The Parties agree to recommend that the Court appoint _____ as Claims Administrator, who will be designated as the "Claims Administrator." The Claims Administrator shall (i) oversee the provision of Notice to the Settlement Classes; (ii) oversee identification of addresses for any returned mail; (iii) process Claim Forms which are mailed or submitted electronically on the settlement website; (iv) contact by mail Settlement Class Members who submitted a Deficient Claim; (v) process any cured Claim Forms; (vi) send those forms to Defendant for payment or challenge; (vi) forward inquiries and questions to Class Counsel with copies to Christopher Assise; (vii) establish a website for the submission of electronic claims and make relevant documents and updates on the status of the settlement available to Class Members; (viii) provide a certification to the Court regarding the administration and processing of Claims and, the issuance of payments to the Claimants as set forth herein; and (ix) issue checks for Valid Claims.

42. The Claims Administrator shall be paid by AmFam for services rendered pursuant to this Agreement. Such costs include, without limitation, the reasonable costs of notifying the Settlement Class; the reasonable costs of updating the addresses of Class Members from the

National Change of Address Data Base and "True Trace" or similar program; preparing the Individual Notice and Claim Forms; mailing of the Individual Notice and Claim Forms; processing the claims; costs associated with the services of the Claims Administrator to undertake any duties required to assist in the management of this Settlement, and any other costs incurred by the Claims Administrator including, but not limited to, establishment of a website concerning the Settlement and providing for online submission of Claim Forms.

IV. NOTICE AND ADMINISTRATION OF SETTLEMENT.

43. No later than forty-five (45) days after the Preliminary Approval of this Settlement, the Claims Administrator shall have sent to each Settlement Class Member, by first-class mail, a copy of the Individual Notice and a Claim Form or Claim Forms. Prior to any mailing, the Claims Administrator shall update all addresses by running the addresses thereon through the National Change of Address Data Base and "True Trace" or similar program. The Individual Notice will be approved as to form and content by the Court and be in the form attached hereto as Exhibit "C" unless otherwise modified by agreement of the Parties and approved by the Court.

44. If any Individual Notice and/or Claim Form mailed to any Class Member in accordance with the procedure set forth above is returned to the Claims Administrator as undeliverable, then the Claims Administrator shall re-send the returned Individual Notice and/or Claim Form to the Class Member by first-class mail to any forwarding address provided by the United States Postal Service or an address reasonably obtainable via a search of address update databases. The Claims Administrator shall promptly log each Individual Notice and/or Claim Form that is returned as undeliverable and provide copies of the log to Defendant and Class Counsel as requested.

45. No later than forty (40) days prior to the Claim Form Submission Date, the Claims Administrator shall issue or distribute reminder post-cards to Settlement Class Members which identify the Claim Form Submission Date, and provide Settlement Class Members' claim identification number and personal identification number "PIN", and the settlement website address and Claim Administrator's mailing address. The Claims Administrator is not required to investigate or obtain new addresses for undeliverable postcards.

46. A website for the Settlement administration will be established by the Claims Administrator wherein the Individual Notice and Claim Form, Agreement, approval papers, and any further necessary information, will be made available to the Updated Settlement Classes by the Claims Administrator. The website shall provide for the filling in and submission of claims electronically.

47. Neither Defendant, nor Plaintiff, nor any of their counsel, shall be liable for any act, or failure to act, of the Claims Administrator.

V. DECEASED CLASS MEMBERS.

48. Where a Class Member is deceased and a payment is due to that Class Member, the Settlement Payment may be made to such Class Member's Legally Authorized Representative or spouse or domestic partner if the Legally Authorized Representative or spouse or domestic partner is not otherwise able to cash the initial Settlement Payment.

VI. COMMUNICATIONS WITH THE CLASSES.

49. The Individual Notice shall list Class Counsel's addresses, telephone numbers and e-mail addresses. Other than as provided for in this Agreement, communications relating to the Action or this Settlement with Persons receiving Individual Notices and Class Members shall be handled through Class Counsel. Neither Class Counsel, nor anyone acting on behalf of Class

Counsel shall initiate any communications with Class Members prior to the Claim Form Submission Date except when necessary to answer Class Member questions. Nothing in this paragraph shall prohibit Class Counsel from explaining Notice materials or assisting in completing Claim Forms in response to Class Member requests. Nothing in this Agreement shall be construed to prevent Defendant, its employees, agents or representatives from communicating with Class Members in the ordinary course of business.

VII. ATTORNEYS' FEES, CLASS REPRESENTATIVE FEES, AND COSTS.

50. Attorneys' fees and costs were not fully negotiated or discussed by Class Counsel and Defendant, nor agreed upon until all other material terms of the settlement were resolved. Class Counsel shall submit their fee and cost request, and any request for fees for the Class Representative for his service as Class Representative, to the Court. Defendant agrees not to oppose a fee request that does not exceed 25% of the Maximum Liability Amount, and a request, for documented costs actually incurred by Class Counsel. Class Counsel shall request a Class Representative fee for Plaintiff Vasyl Yermakovych of \$5,000. Solely for the purposes of establishing attorneys' fees, nothing in this agreement, shall prohibit plaintiffs' counsel from arguing that a common benefit was created and/or advocating any other legal argument in favor of their attorneys' fees. Defendant shall have no obligation to pay more than \$5,000 as the Class Representative fee. Any attorneys' fees and costs, and any Class Representative fee, awarded by the Court will be paid to Class Counsel and Plaintiff, respectively, no later than fourteen (14) days after the Effective Date. Such payment shall be made by a check or wire issued to Law Offices of Daniel R. Whitmore Trust Account, unless other delivery instructions are provided to Defendant's counsel in writing by Class Counsel.

51. The amounts set forth in Paragraph 49 shall constitute all the sums the Defendant shall ever pay to Class Counsel as attorneys' fees or expenses. Defendant shall have no responsibility for and shall have no liability whatsoever with respect to the allocation among Class Counsel and/or any other Person who may assert a claim thereto, of any attorneys' fees, costs, or expenses that the Court may award. Class Counsel and/or the Class Representatives agree in all events that they will neither ask for nor receive or accept any more than the maximum amount of fees and/or costs set forth in Paragraph 49 above.

**VIII. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL
CANCELLATION OR TERMINATION OF AGREEMENT.**

52. The Plaintiff, Settlement Class Members, and Defendant consent to the entry of a Final Approval Order and Judgment in the form attached as Exhibit "B."

53. Within twenty (20) business days after notice of the occurrence of any of the following events, the Parties shall individually have the right to terminate this Settlement by delivering written notification to the other:

- (1) The Court or any appellate court declines to provide preliminary approval of this Agreement, or declines to enter or materially modifies the contents of the Preliminary Approval Order in the form agreed to by the Parties, or the Preliminary Approval Order is vacated, reversed or modified in any material respect on any appeal or other review or in a collateral proceeding occurring prior to the Effective Date, provided, however that any order or change concerning the Class Representative fee or attorney's fees and costs shall not entitle the Plaintiff or the Settlement Class Members to terminate this settlement;
- (2) The Court or any appellate court declines to provide Final Approval of this Agreement, or declines to enter or materially modifies the contents of the Final Approval Order and Judgment in the form agreed to by the Parties, provided, however that any order or change concerning the Class Representative fee or attorney's fees and costs shall not entitle the Plaintiff or the Settlement Class Members to terminate this settlement;
- (3) The Court's Final Approval order and Judgment is vacated, reversed or modified in any material respect on any appeal or other review or in a collateral proceeding occurring prior to the Effective Date, provided, however that any order or change concerning the Class Representative fee or attorney's fees and costs shall not entitle the Plaintiff or the Settlement Class Members to terminate this settlement;

- (4) The Effective Date does not occur for some other reason;
- (5) The Court refuses to certify the Settlement Classes and/or materially modifies the definitions of the Settlement Classes;
- (6) Any federal or state authorities object to or require material modification to the Agreement; or
- (7) If the amount or number of Class Members that opt out exceeds the number or amount specified in Exhibit E.

If Defendant exercises its right of termination pursuant to this Paragraph 52, this Agreement shall be null and void and of no force and effect.

54. If the proposed Settlement is terminated in accordance with Paragraph 52, or fails for any other reason (except for a breach by one of the Parties):

- (1) This Settlement shall have no further force or effect, and all proceedings that have taken place with regard to this Settlement shall be without prejudice to the rights and contentions of the Parties hereto and any of the Settlement Class Members;
- (2) This Settlement and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of any of the Parties, each of whom shall be restored to their respective positions existing immediately before the execution of this Settlement;
- (3) This Settlement, provisions of this Settlement, and the fact of this Settlement having been made shall not be admissible or entered into evidence in this or any other action or proceeding for any purpose whatsoever;
- (4) Any judgment or order entered after the date of this Settlement will be vacated and will be without any force or effect. The Parties hereto agree that they will promptly file a joint motion with the Court to vacate all orders entered pursuant to the terms of this Settlement; and
- (5) The Parties hereby agree that they will not, in this or any other action or proceeding, thereafter argue or raise a claim or defense, including, but not limited to, waiver, estoppel and other similar or related theories, that the Settlement, this Agreement, and all pleadings, filings, and orders related in any way to the Settlement, any provision of this Settlement, the fact of this Settlement having been made, and any settlement negotiations preclude Defendant from opposing certification or the claims in the Action or in any other proceeding. The Parties further agree that, to the extent permitted by law, neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected therewith, shall be offered as evidence, received in evidence or used as

precedent in any pending or future civil, criminal, administrative, arbitration, or other dispute resolution action or proceeding, to establish any liability or admission by Defendant, except in any proceedings brought to enforce the Agreement.

This Section shall survive any termination of this Agreement and Settlement.

55. Upon the preliminary approval of this Settlement by the Court, as evidenced by entry of the Preliminary Approval Order, 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 Settlement or to comply with or effectuate the terms of this Agreement.

56. In the event that any of the events or conditions described above are not met or do not occur, this entire Agreement shall become null and void, except that the Parties shall have the option to agree in writing to waive the event or condition and proceed with this Settlement, in which case the Effective Date shall be deemed to have occurred on the date of said written agreement, or a date otherwise specified in said written agreement.

IX. OBJECTIONS AND REQUESTS FOR EXCLUSION.

57. Settlement Class Members who wish to exclude themselves from the Settlement Classes must serve a written request for exclusion, postmarked no later than forty-five (45) days after the Notice Date, which shall be sent to the Claims Administrator. Written requests for exclusion must be signed and include the individual's name, address, and telephone number, and expressly state the desire to be excluded from the Settlement Classes. Requests for exclusion must be exercised individually by the Class Member, not as or on behalf of a group, class, or subclass, except that such exclusion requests may be submitted by a Class Member's Legally Authorized Representative.

58. Settlement Class Members who do not opt out may object to the Proposed Settlement. Settlement Class Members who choose to object to the Settlement must file their

objection in accordance with Paragraphs 56-59. Any Class Member may appear at the Final Approval Hearing, in person or by counsel, and be heard to the extent allowed by the Court, in opposition to the fairness, reasonableness and adequacy of the Settlement, and on the application for an award of attorneys' fees and costs. The right to object to the Settlement must be exercised individually by an individual Class Member, not as a member of a group or subclass and, except in the case of a deceased, minor, or incapacitated Class Member, not by the act of another person acting or purporting to act in a representative capacity.

59. To be effective, a notice of intent to object to the Settlement must:

- (1) Contain the name of the case and case number;
- (2) Provide the name, address, telephone number and signature of the Class Member filing the objection;
- (3) Be filed with the Clerk of the Court not later than fourteen (14) days before the Final Approval Hearing;
- (4) Contain the name, address, bar number and telephone number of the objecting Class Member's counsel, if represented by an attorney. If the Class Member is represented by an attorney, he/she or it must comply with all applicable laws and rules for filing pleadings and documents in this Court;
- (5) State whether the Objector intends to appear at the Final Approval Hearing, either in person or through counsel;
- (6) Contain a detailed statement of the specific legal and factual basis for each and every objection; and
- (7) Contain a detailed description of any and all evidence the Objector may offer at the Final Settlement Hearing, including photocopies of any and all exhibits which the Objector may introduce at the Final Approval Hearing.

60. Any Class Member who does not file a timely objection in accordance with this Section shall waive the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement, or from filing or having standing to appeal any judgement or Orders issued by the Court. Settlement Class Members who object to

the Settlement shall remain Settlement Class Members. To the extent any Settlement Class Member(s) objects to the Settlement, and such objection is overruled in whole or in part, such Settlement Class Member(s) will be forever bound by the judgment of the Court.

X. REPRESENTATION OF OPT OUTS.

61. Class Counsel agree that any representation, encouragement, solicitation or other assistance, including, but not limited to, referral to other counsel, of any Opt Out or any other person seeking to litigate with any of the Releasees over any of the Released Claims or to represent any form of opt-out class, could place Class Counsel in an untenable conflict of interest with the Class. Accordingly, Class Counsel and their respective firms agree (only to the extent that it is otherwise not violative of any applicable rules governing the practice of law) not to represent, encourage, solicit or otherwise assist, in any way whatsoever (including, but not limited to referrals to other counsel) any Opt Out except that referring such person to the individual Notice or suggesting to any such person the option of obtaining separate counsel, without specifically identifying options for such counsel, shall be permitted under the terms of this provision. Additionally, Class Counsel and their respective firms agree (only to the extent that it is otherwise not violative of any applicable professional rules) not to represent, encourage, solicit or otherwise assist, in any way whatsoever, any Opt Out or any other person who seeks to represent any form of opt-out class, or any other person, in any subsequent litigation that person may enter into with Releasees regarding the Released Claims or any related claims, except that suggesting to any such person the option of obtaining separate counsel shall be permitted under the terms of this provision.

XI. CONFIDENTIALITY AGREEMENT

62. The following constitutes highly confidential and proprietary business information of Defendant (the "Confidential Information"): (a) the names, addresses, policy numbers, and other data concerning any insured or former insured of Defendant; (b) the electronic data processing and other record keeping procedures and materials to be utilized by Defendant in identifying the Settlement Class Members and in otherwise effectuating Defendant's other obligations under the Settlement; and (c) any documents produced by Defendant to Plaintiff in this Action that have been stamped confidential. The confidentiality of all Confidential Information shall be protected from disclosure by Class Counsel to any persons other than those described below.

63. No person(s) other than Defendant, Defendant's counsel, Class Counsel, and clerical/administrative personnel employed by Class Counsel, the Claims Administrator and such other persons as the Court may order, after hearing on notice to all counsel of record, shall be allowed access to any Confidential Information.

64. Within ninety (90) days after all settlement checks have been distributed, Class Counsel and Claims Administrator shall return, upon request, to Defendant all Confidential Information and copies thereof in their possession, custody, or control and delete any electronic copies of Confidential Information.

65. In furtherance of this confidentiality provision, Class Counsel and the Class Representatives agree not to make any statements to the media or in any public forum, orally or in writing, about the Action, or this Settlement, other than statements which are fully consistent with this Agreement and the Class Notice.

XII. DISMISSAL OF ACTION, RELEASES AND COVENANTS NOT TO SUE.

66. Upon the Court's final approval of this Agreement and the Settlement set forth herein, the Final Approval Order and Judgment Order shall be entered providing for the dismissal of the Action, with prejudice and without leave to amend.

67. Upon Final Approval of this settlement, and as of the Effective Date, by operation of the entry of the Final Approval Order and Judgment, the Releasing Parties and each Settlement Class Member, including Plaintiff, shall be held to have fully released, waived, relinquished and discharged all the Releasees from all the Released Claims, to the fullest extent possible allowed by law, and shall be enjoined from continuing, instituting or prosecuting any legal proceeding against the Releasees relating in any way whatsoever to the Released Claims, except that Defendant shall not be released from its obligations to carry out the terms of this Agreement.

XIII. AMENDED COMPLAINT

68. As soon as practicable after execution of this Agreement, Plaintiff will file (or, if necessary, seek leave to file) an amended complaint. Defendant will not oppose any request for leave to file an amended complaint that makes only the changes assert claims related to typical negotiation adjustments on behalf of a typical negotiation adjustment sub-class. In the event that the proposed Settlement is terminated in accordance with Paragraph 52, Plaintiff shall withdraw the amended complaint. If, after withdrawal of the amended complaint, Plaintiff either re-files it or seeks leave to re-file it, Defendant will not oppose that effort based on timeliness of the re-filing. Further, the Parties agree that if successfully re-filed, the amended complaint's effective date, for purposes of statutes of limitation analysis, shall be when it was first disclosed to Defendant's Counsel during settlement negotiations.

XIV. DENIAL OF LIABILITY AND NO PRECEDENTIAL VALUE.

69. Were it not for this Settlement, Defendant would have contested each and every claim in the Action. Defendant maintains that it has consistently acted in accordance with governing laws at all times. Defendant denies all the material allegations set forth in the Action. Defendant has nonetheless concluded that it is in its best interest that the Action be settled on the terms and conditions set forth in this Agreement. Defendant has reached this conclusion after considering the factual and legal issues in the Action, the substantial benefits of a final resolution of the Action, the expense that would be necessary to defend the Action through trial and any appeals that might be taken, the benefits of disposing of protracted and complex litigation, and the desire of Defendant to conduct its business unhampered by the distractions of continued litigation.

70. As a result of the foregoing, Defendant enters into this Agreement without in any way acknowledging any fault, liability, or wrongdoing of any kind. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendant of the truth of any of the allegations made in the Action, or of any liability, fault, or wrongdoing of any kind whatsoever on the part of Defendant in this or any other action or proceeding.

71. To the extent permitted by law, neither the Settlement, nor this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in this Action or any pending or future civil, criminal, administrative, arbitration, or other dispute resolution action or proceeding, to establish any liability or admission by Defendant except in any proceedings brought to enforce the Agreement.

72. Neither this Agreement, nor any pleading or other paper related in any way to this Agreement, nor any act or communication in the course of negotiating, implementing or seeking approval of this Agreement, shall be deemed an admission by Defendant that certification of a class is appropriate in any other litigation, or otherwise shall preclude Defendant from opposing or asserting any argument it may have with respect to certification of any class(es) or subclass(es) in any proceeding, or shall be used as precedent in any way as to any subsequent conduct of Defendant except as set forth herein.

XV. MISCELLANEOUS PROVISIONS.

73. The Parties hereto agree to defend this Agreement against objections made to final approval of the Settlement or in any appeal of the Final Approval Order and Judgment or collateral attack on the Agreement or Final Judgment.

74. The undersigned counsel represent that they are fully authorized to execute and enter into the terms and conditions of this Agreement on behalf of their respective clients.

75. Except as otherwise provided, this Agreement contains the entire agreement between the Parties hereto, and supersedes any prior agreements or understandings between them. All terms of this Agreement are contractual and not mere recitals, and shall be construed as if drafted by all Parties hereto. The terms of this Agreement shall bind each of the Parties hereto, as well as their agents, attorneys, employees, successors and assigns, and all other Persons claiming any interest in the subject matter hereof through any of the Parties hereto, including any Settlement Class Member.

76. This Agreement may be amended or modified only by a written instrument signed by counsel for all parties hereto. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

77. This Agreement shall be subject to, governed by, construed, and enforced pursuant to the laws of the State of Washington.

78. The exhibits to this Agreement are an integral part of the Settlement and are hereby incorporated into and made a part of this Agreement.

79. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement.

80. This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned counsel.

81. This Agreement may be executed in counterparts, each of which shall constitute an original.

82. The Parties will request that the Court retain continuing jurisdiction for the specific purpose of any suit, action; proceeding or dispute arising out of or relating to this Agreement and the Proposed Settlement embodied herein, and maintain jurisdiction over all Settlement Class Members. Specifically, the Court shall retain jurisdiction for purposes of: (a) implementation, enforcement, and administration of the Settlement, including any releases in connection therewith; (b) resolution of any disputes concerning Settlement Class membership or entitlement to benefits under the terms of the Settlement; (c) all Parties hereto, "for the purpose of enforcing and administering the Settlement and the Action until each and every act agreed to be performed by the Parties has been performed pursuant to this Agreement; and (d) other matters related to the foregoing.

83. Titles of sections to this Agreement are illustrative only and are neither binding on the Parties nor to be considered any part of the drafting history or other means of interpreting this Agreement.

IN WITNESS HEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the date it is executed by all of the undersigned.

[SIGNATURES ON FOLLOWING PAGE]

By: _____
VASYL YERMAKOVYCH

Bryce H. Tolefree

On behalf of:

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY

APPROVED AS TO FORM AND SUBSTANCE:

Dated: _____

Mark A. Trivett
Badgley Mullins Turner PLLC
19929 Ballinger Way NE, Suite 200
Seattle, WA 98155

Dated: _____

Duncan C. Turner
Badgley Mullins Turner PLLC
19929 Ballinger Way NE, Suite 200
Seattle, WA 98155

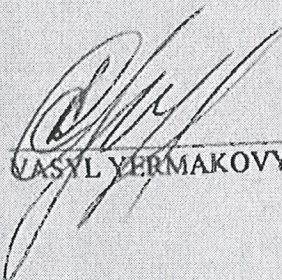
Dated: _____

Daniel R. Whitmore
Law Offices of Daniel R. Whitmore
6840 Fort Dent Way, Suite 210
Tukwila, WA 98188

Dated: _____

Christopher M. Assise
Sidley Austin LLP
One South Dearborn St
Chicago IL 60603

By


OKSYL YERMAKOVYCH

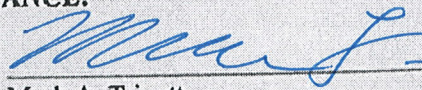
Bryce H. Tolefree

On behalf of:

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY


APPROVED AS TO FORM AND SUBSTANCE:

Dated: 9/20/22



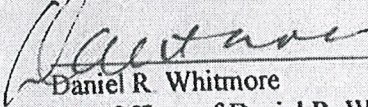
Mark A. Trivett
Badgley Mullins Turner PLLC
19929 Ballinger Way NE, Suite 200
Seattle, WA 98155

Dated: 9/20/22



Duncan C. Turner
Badgley Mullins Turner PLLC
19929 Ballinger Way NE, Suite 200
Seattle, WA 98155

Dated: 9-12-2022



Daniel R. Whitmore
Law Offices of Daniel R. Whitmore
6840 Fort Dent Way, Suite 210
Tukwila, WA 98188

Dated: _____

Christopher M. Assise
Sidley Austin LLP
One South Dearborn St
Chicago IL 60603