

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

FILED

JUL 08 2022

CLERK OF CIRCUIT COURT #66
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

STAUNTON LODGE NO. 177, A.F. & A.M.,)
individually and on behalf of all)
others similarly situated,)
)
Plaintiff,)
)
vs.)
)
PEKIN INSURANCE COMPANY,)
)
Defendant.)

Case No. 2020-L-001297

**AMENDED ORDER GRANTING MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFYING
SETTLEMENT CLASS, DIRECTING CLASS NOTICE, AND
SCHEDULING A FINAL APPROVAL HEARING**

Upon review and consideration of Motion for Preliminary Approval of Class Action Settlement of Plaintiff Staunton Lodge No. 177, A.F. & A.M., (the "Representative Plaintiff"), with Defendant Pekin Insurance Company ("Pekin" or the "Defendant")¹, including the parties' Stipulation and Settlement Agreement signed by The Representative Plaintiff and the Defendant in April 2022 (the "Agreement") and all exhibits thereto, and having been fully advised of the particulars, it is HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. **Settlement.** The Representative Plaintiff and the Defendant have negotiated a proposed settlement of the Representative Plaintiff's claims in this action, individually and on behalf of a class of policyholders of the Defendant and Farmers Automobile Insurance Association ("Farmers"), described below as the Settlement Class, to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims against the Released Persons

¹ Pekin also includes The Farmers Automobile Insurance Association and their affiliates, who are bound by the terms of the parties' settlement and this Judgment.

as set forth in the Agreement. The Court has carefully reviewed the Agreement, as well as the files, records, and proceedings to date in this matter. The terms and conditions in the Agreement are incorporated here as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the same definitions that are in the Agreement.

2. **Preliminary Approval.** The Agreement entered into, by and among the Representative Plaintiff and the Defendant, was negotiated at arm's length and is approved on a preliminary basis as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing.

3. **Settlement Class Relief.** The proposed Claim Settlement Payments to Class Members and the settlement consideration, as identified in Sections 4, 6, and 7 of the Agreement, is approved on a preliminary basis as fair, reasonable, and adequate.

a. The "Settlement Class" shall be defined as: All policyholders under any commercial or personal lines property insurance policy issued by Pekin or Farmers, who made: (a) a Structural Loss claim for property located in the State of Illinois during the applicable Class Periods as defined below; and, (b) that resulted in an ACV Payment from which Nonmaterial Depreciation was withheld, or that would have resulted in an ACV Payment but for the withholding of Nonmaterial Depreciation causing the loss to drop below the applicable deductible.

b. Excluded from the Settlement Class are:

Policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting the Nonmaterial Depreciation within the text of the policy form, endorsement or rider, *i.e.*, by express use of the words "depreciation" and "labor";

Policyholders who received one or more ACV payments for claims, but not replacement cost value payments, that exhausted the applicable limits of insurance;

Policyholders whose claims were denied or abandoned without ACV payment;

Defendant, Farmers, and their officers and directors;

Members of the judiciary and their staff to whom this action is assigned and their immediate families; and,

Class counsel and their immediate families.

c. The "Class Period" includes only policyholders whose loss accrued on or after September 10, 2018 and who provided notice of loss to Pekin or Farmers on or before July 30, 2020.

4. **Preliminary Certification of Settlement Class.** For settlement purposes only, the

Court makes the following determinations as to certification of the Settlement Class:

a. The Court preliminarily certifies the Settlement Class for purposes of settlement only, under 735 ILCS 5/2-801;

b. The Settlement Class is so numerous that joinder of all members is impracticable;

c. There are questions of law or fact common to the members of the Settlement Class, which common questions predominate over any questions affecting only individual members;

d. The Representative Plaintiff is capable of fairly and adequately protecting the interests of the members of the Settlement Class, in connection with the Agreement; and

e. The class action is an appropriate method for the fair and efficient adjudication of the controversy.

5. **Designation of Class Representative.** The Representative Plaintiff is designated as the representative of the Settlement Class for the purpose of seeking approval of and administering the Settlement Agreement.

6. **Designation of Class Counsel** David T. Butsch and Christopher E. Roberts of Butsch Roberts & Associates LLC, T. Joseph Snodgrass of Snodgrass Law LLC, and Christopher J. Petri and Christopher W. Byron of Byron Carlson Petri & Kalb, LLC as Class Counsel for the Settlement Class for the sole purpose of the Settlement.

7. **Final Approval Hearing.** A hearing regarding final approval of the Settlement (“Final Approval Hearing”) will be held at 9:00 a.m. on October 6, 2022, in the Circuit Court of Madison County, Illinois before the Honorable Judge Christopher Threlkeld, to determine, among other things: (i) whether final judgment should be entered resolving and approving the proposed Settlement of the Representative Plaintiff’s and the Settlement Class’ claims against the Defendant in the Action as fair, reasonable, and adequate; (ii) whether the Representative Plaintiff’s and Settlement Class’ claims against the Defendant in the Action should be dismissed, with prejudice, pursuant to the Agreement; (iii) whether the Settlement Class Members should be bound by the Release set forth in the Agreement; and (iv) whether the application of Class Counsel for an award of attorneys’ fees and expenses, and for a proposed service award to the Representative Plaintiff, should be approved and in what amount. The Final Approval Hearing may take place, at the sole discretion of the Court, via telephone or video conference so as to allow the Final Approval Hearing to proceed despite limitations on in-court hearings related to the COVID-19 pandemic. Any Class Member, who files a notice of intent to appear, shall be provided with information required to access a telephonic or video hearing.

8. **Class Notice.**

8.1 The Court approves the methods of providing notice to Class Members as described in the Agreement, including the Class Notice, attached as Exhibit B to the Agreement, and the manner of providing notice to Class Members described in Section 5 of the Agreement. The Court finds that notice as described in the Agreement is reasonably calculated, under all the circumstances, to apprise Class Members of the pendency of this Action, the terms of the Agreement, and their right to object to the Settlement or to exclude themselves from the Settlement Class. The Court further finds that the Class Notice, the Settlement website, and the other forms of notice described in the Agreement are reasonable, constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and meet all legal requirements, including the requirements of ILCS 5/2-801 and Due Process.

8.2 The Class Notice, in the form and content of Exhibit B to the Settlement Agreement, shall be mailed, by the Settlement Administrator, not less than seventy-five

(75) days before the Final Approval Hearing regarding the Settlement, in the manner described in the Agreement.

8.3 No later than the posting of the Class Notice, the Settlement Administrator shall establish a website containing copies of the Agreement and Exhibits, the Preliminary Approval Order, the Class Notice, Claim Form, Spanish translations of the Class Notice and Claim Form, and such other documents and information about the Settlement as Class Counsel and Defendant's Counsel agree upon. The Claim Form shall be available to download or print from the Settlement website, and signed, scanned, completed copies of the Class Form may be uploaded on the Settlement website. The Settlement website shall have a Uniform Resource Locator which identifies the Settlement website as www.IL.propertydepreciationsettlement.com, or such other URL as Class Counsel and the Defendant's Counsel agree upon. The Settlement website shall not include any advertising and shall not bear any logos or trademarks of the Defendant other than those appearing in the Agreement. The Settlement website shall cease to operate, and the Administrator shall remove all information from the Settlement website, no later than the Final Accounting as set forth in section 7.11 of the Agreement. Ownership of the Settlement website URL shall be transferred to the Defendant within ten (10) days after operation of the Settlement website ends.

8.4 No later than the posting of the Class Notice, the Administrator shall establish a toll-free, interactive, voice response phone number, with script recordings of information about this Settlement, including information about the Claim Form, utilizing the relevant portions of the Class Notice and Claim Form. At the Defendant's option, the Administrator may also provide live operators during select times to answer certain basic questions about the Settlement. The Administrator shall send the Class Notice and Claim Form, or Spanish translations of both, upon request, to any Class Members. The phone number shall remain open and accessible through the Claim Deadline and allow for Class Members to leave recorded messages. Except for requests for the Class Notice or Claim Form, the Administrator will promptly advise Class Counsel of recorded messages left by Class Members, concerning the Action and/or the Settlement, or direct any Class Members with questions, that cannot be answered, to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

8.5 Settlement Class Members may submit Claim Forms in the form attached to the Agreement, as Exhibit C, requesting a Claim Settlement Payment in accordance with the terms of the Agreement. To be considered valid and timely, a Claim Form must be materially complete, signed by or on behalf of the Class Member, and either: (a) mailed to the Administrator's address, as specified in the Claim Form, and postmarked by November 22, 2022; or (b) uploaded on the settlement website by November 22, 2022 ("Claim Deadline"). Claim Forms may be submitted on behalf of deceased or incapacitated Class Members only by Legally Authorized Representatives, with written evidence of authority.

8.6 No later than 30 days before the Claim Deadline, the Administrator shall mail a postcard reminder in the form attached to the Agreement as Exhibit D (the "Postcard Notice") with information regarding the Claim Deadline, the Settlement website address,

and how to request a copy of the Claim Form. The Postcard Notice will be mailed to each Class Member who has not submitted a Claim Form and who has not timely and properly excluded themselves.

8.7 Class Counsel and the Defendant's Counsel, as jointly agreed, along with the Administrator, are authorized, prior to mailing, to complete any omitted information and to make any non-substantive revisions to the Claim Form and Class Notice, as necessary, that do not materially reduce the rights of Class Members in order to fulfill the purposes of the Settlement. The font size, layout, and other presentation elements of the Claim Form and Class Notice may be adjusted to accommodate printing and mailing considerations.

9. **Settlement Administrator.** The Court approves and authorizes the Defendant to retain JND Legal Administration, as the Administrator, to implement the terms of the Agreement, and authorizes and directs the Administrator to (a) mail the Class Notice, the Claim Form, and the Postcard Notice; (b) establish the interactive, voice response, phone line system; (c); establish the Settlement website; (d) receive and process Claim Forms; and, (e) carry out such other responsibilities as are provided for in the Agreement or as may be agreed to by Class Counsel and the Defendant, all according to and as provided in the Agreement.

10. **Exclusion from the Settlement Class.** Any Class Member who wishes to be excluded from the Settlement Class must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement website, a request for exclusion postmarked no later than September 6, 2022 ("Opt Out Deadline"), which is no less than thirty (30) days before the Final Approval Hearing.

10.1 To be valid, the request for exclusion must: (a) identify the case name; (b) identify the name and address of the Class Member; (c) be personally signed by the Class Member requesting exclusion; and (d) state a desire to be excluded from the Settlement Class, such as "I hereby request that I be excluded from the proposed Settlement Class in the Staunton Lodge Class Action" Except for deceased or incapacitated Class Members, for whom Legally Authorized Representatives may act with written evidence of authority, Class Members must request exclusion individually and not through another acting on their behalf, and mass or class opt outs are prohibited.

10.2 A Class Member who desires to opt out must take timely affirmative written action, pursuant to this Order and the Agreement, even if the Class Member desiring to opt

out (a) files or has filed a separate action against any of the Released Persons, or (b) is or becomes a putative or actual class member in any other class action filed against any of the Released Persons. The Administrator shall provide Class Counsel and the Defendant's Counsel a list of all timely requests for exclusion not less than ten (10) days before the Final Approval Hearing.

10.3 Except for Class Members who timely submit a valid request for exclusion from the Settlement Class, all other Class Members will be deemed to be Class Members for all purposes under the Agreement, and upon the Effective Date will be bound by its terms, including, but not limited to, the Releases in Section 9 of the Agreement and Final Judgment approving the Settlement.

10.4 If the proposed Settlement is finally approved, any Class Member who has not submitted a timely, written, request for exclusion, from the Settlement Class, shall be bound by the Final Judgment and all subsequent proceedings, orders, and judgments in this Action, even if he or she has pending, or subsequently initiates, litigation against the Defendant or any Released Persons relating to any of the Released Claims as defined in the Agreement.

10.5 If the proposed Settlement is finally approved, any Class Member, who has not submitted a timely, written, Request for Exclusion, from the Settlement Class, shall be bound by the Judgment and all subsequent proceedings, orders, and judgments, even if he or she has pending, or subsequently initiates, litigation against the Defendant or any Released Persons relating to any of the Released Claims as defined in the Agreement.

11. **Objections and Appearances.** Any Class Member, who does not submit a valid request for exclusion from the Settlement Class and who complies with the requirements of this Order and the Agreement, may object to the proposed Settlement. Any Class Member, who wishes to object to the Settlement, must do so in writing, filed with the Clerk of Court, and a mail a copy to the Administrator, at the address in the Class Notice and on the Settlement website, a written statement of objection, in accordance with the requirements set forth below and in the Agreement, postmarked no later than September 6, 2022 ("the Objection Deadline"), which is no less than thirty (30) days before the Final Approval Hearing.

11.1 A valid written objection must include: (a) the case name and number; (b) the name and address of the objecting Class Member and of counsel, if represented; and (c) the basis for the objection. These requirements shall also be set forth in the Class Notice and on the Settlement website.

11.2 Subject to approval of the Court, any Class Member, who files and serves a timely written objection, may appear, in person or by counsel, at the Final Approval Hearing, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Class Member: (a) files with the Clerk of the Court, by the Objection Deadline, a notice of intention to appear at the Final Approval Hearing, and (b) mails copies of the notice to the Administrator, at the address set forth in the Class Notice and on the Settlement website. The notice must include copies of any papers, exhibits, or other evidence that the objecting Class Member will present to the Court in connection with the Final Approval Hearing. Any Class Member, who does not file a notice of intention to appear in accordance with the deadlines and other requirements of this Order and the Agreement, shall not be entitled to appear at the Final Approval Hearing.

11.3 Any Class Member, who fails to object to the Settlement in the manner described in this Order, shall be deemed to have waived any objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

12. **Releases.** If the Settlement is finally approved, all Releasing Persons, including the Representative Plaintiff and each Class Member, shall, by operation of the Final Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged the Defendant, and all other Released Persons, from any and all claims, Unknown Claims, actions, causes of action, suits, debts, sums of money, payments, obligations, reckonings, promises, damages, interest, penalties, attorney's fees and costs, liens, judgments, and demands of any kind whatsoever that each Releasing Person has, or may have had, prior to the Effective Date of the Final Judgment and arising from a loss during the Class Periods, whether *ex contractu* or *ex delicto*, debts, liens, contracts, liabilities, agreements, attorneys' fees, costs, penalties, interest, expenses, or losses (including actual, consequential, statutory, extra-contractual and punitive or exemplary damages), and whether arising under, or based on contract, extra-contractual or tort theories, at law or in equity, or federal, state or local law, statute, ordinance, rule or regulation, whether asserted individually or in a representative capacity, whether past or present, mature or

not yet mature, that the Representative Plaintiff or Class Members have, or may have had, against any of the Released Persons that relate to, concern, arise from, or pertain in any way to:

- 12.1.1 Depreciation or Nonmaterial Depreciation (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Nonmaterial Depreciation) in the adjustment and/or payment of any Covered Loss;
- 12.1.2 any and all claims that were, or could have been, brought pertaining to the calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Depreciation or Nonmaterial Depreciation in the adjustment and/or payment of any Covered Loss;
- 12.1.3 the allegations and claims contained in the Action concerning the alleged systematic practice of deducting Depreciation or Nonmaterial Depreciation through the use of estimating software. (Section 12.1 through Section 12.3 are collectively referred to as the "Released Claims").
- 12.1.4 "Released Persons" means, individually and collectively, (a) Pekin, Farmers and all independent adjusting companies acting for Pekin or Farmers; and (b) all of the past and present Affiliates, successors and predecessors in interest, assigns, acquirers, divisions, representatives, heirs, officers, directors, shareholders, agents, managing agents, employees, attorneys, auditors, accountants, brokers, surplus lines brokers, underwriters, advisers, insurers, co-insurers, re-insurers, consultants, vendors, independent contractors, and legal representatives of the Persons listed in subsection (a).
- 12.1.5 The Released Claims do not include claims under any coverages other than for loss or damage to structures or buildings. Further, the Released Claims do not apply to Class Members' claims for replacement cost benefits under Structural Loss insurance claims that are made after the date of Preliminary Approval and determined pursuant to the terms and conditions of policies of insurance. Further, this release only applies to claims arising under insurance policies issued by Defendant or Farmers.

13. Attorneys' Fees and Expenses, and Case Contribution Awards. The Representative Plaintiff and Class Counsel shall not seek an award of attorneys' fees and reasonable litigation expenses in this Action in a total amount that exceeds \$1,500,000. Class Counsel and the Representative Plaintiff agree not to seek service awards that exceed \$10,000 to the Representative Plaintiff, Staunton Lodge No. 177, A.F. & A.M., for its work and assistance in

this Action. The Defendant agrees not to oppose applications for attorneys' fees and expenses and for a service award that do not exceed the foregoing amounts.

14. **Preliminary Injunction.** In order to protect the continuing jurisdiction of the Court, and to effectuate this Order, the Agreement, and the Settlement, all Class Members, who do not timely exclude themselves from the Settlement Class, and anyone acting, or purporting to act on their behalf, are preliminarily enjoined from directly or indirectly (a) filing, commencing, prosecuting, maintaining, intervening in, or participating in (as parties, class members or otherwise), any new or existing action or proceeding before any court or tribunal regarding any Released Claims against any of the Released Persons; and (b) organizing any Class Members into a separate class for purposes of pursuing, as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a new or pending action), based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims.

15. **Service of Papers.** Class Counsel and the Defendant's Counsel shall promptly furnish to each other any objections or requests for exclusion that they receive and shall file such objections with the Court on or before the Final Approval Hearing, unless such documents already appear on the Court's docket.

16. **Termination of Settlement.** This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the proposed Settlement is not finally approved by the Court, or Final Judgment is not entered or does not become Final, or the Effective Date does not occur; or (b) the Settlement Agreement is terminated, pursuant to the terms of the Agreement, for any reason. In such event, and except as provided therein, the

proposed Settlement and Agreement shall have no further force or effect, and all proceedings that have occurred, with regard to the Agreement and the Proposed Settlement, shall be without prejudice to the rights and contentions of the Parties and any Class Members; the preliminary certification of the Settlement Class for settlement purposes shall be automatically vacated; all communications and documents related to the Settlement will be subject to Illinois Rules of Evidence and all other applicable settlement and negotiation privileges; this Order and other orders, entered by the Court pursuant to the Agreement, will be treated as vacated, *nunc pro tunc*; the Agreement and the Court's orders, including this Order, shall not be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification.

17. **Use of Order Following Termination of Settlement.** This Order shall be of no force and effect, if the Settlement does not become Final, and shall not be construed or used as an admission, concession, or declaration, by or against the Defendant, of any fault, wrongdoing, breach, or liability, or by or against the Representative Plaintiff or Class Members that their claims lack merit or that the relief requested in this Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses.

18. **Stay.** All proceedings in the Action (as defined in the Agreement), as to the claims of the Representative Plaintiff against the Defendant, are stayed, except as necessary to effectuate the terms of the Settlement.

19. **Necessary Steps.** The Court authorizes and directs the Parties to take all other necessary and appropriate steps to implement the Settlement as set forth in the Agreement.

So Ordered:



Hon. Christopher Threlkeld

Date:

