

NICKEY L. MARSH

CIVIL SUIT NO. 2002-787

VERSUS

FOURTH JUDICIAL DISTRICT COURT

USAGENCIES CASUALTY INSURANCE  
COMPANY

PARISH OF MOREHOUSE

**PRELIMINARY APPROVAL ORDER**

THIS COURT has reviewed the SETTLEMENT AGREEMENT between the parties dated \_\_\_\_\_, 2009 (including the documents and exhibits incorporated therein; as well as the Motion for Preliminary Approval of Proposed Settlement and other relevant pleadings on file in this action, and finds that it is appropriate at this time to grant the Motion for Preliminary Approval of Proposed Settlement and give preliminary approval to the SETTLEMENT AGREEMENT, as set forth below. Terms written in all capital letters shall have the meaning assigned to them in the SETTLEMENT AGREEMENT, which is attached to this Order.

IT IS HEREBY ORDERED THAT:

- (a) The SETTLEMENT CLASS is preliminarily certified for settlement purposes only pursuant to Louisiana Code of Civ. Pro. art 952 as follows:

All persons who, from August 24, 1996 to [date of the PRELIMINARY APPROVAL ORDER], (a) were issued a private passenger automobile insurance policy issued by USAgencies in the State of Louisiana, (b) made a first-party property damage claim for physical damage to the insured vehicle, (c) were informed by USAgencies that the vehicle had been declared a total loss, and (d) received payment for the totaled vehicle that was reduced by a "detail/prep" adjustment. Officers, directors and employees of USAgencies and members of the COURT and their immediate families are not part of the SETTLEMENT CLASS.

It is acknowledged by USAgencies that the members of the SETTLEMENTCLASS are among those persons whose claims were contained within that "pool of claims" previously identified in this proceeding (approximately 9,000 more or less) from which the "random sample" was drawn. The total number of person in this SETTLEMENT CLASS is approximately 3,021.



PLAINTIFF is designated as CLASS REPRESENTATIVE and the following attorneys

as CLASS COUNSEL:

J.R. Whaley  
NEBLETT, BEARD, AND ARSENAULT  
P.O. Box 1190  
Alexandria, LA 71309-1190

Travis M. Holley  
TRAVIS M. HOLLEY & ASSOCIATES  
1302 Leavell Avenue  
Bastrop, LA 71220-3226

- (b) This preliminary certification and all actions associated with preliminary certification are undertaken on the condition that the certification and all actions associated with certification shall be automatically vacated if the SETTLEMENT AGREEMENT is terminated or is subsequently disapproved in whole or in part by the COURT, any appellate court and/or any other court of review, or if any of the PARTIES invoke their right to revoke the SETTLEMENT AGREEMENT, in which event the SETTLEMENT AGREEMENT and the fact that it was entered into shall not be offered, received or construed as an admission or as evidence for any purpose including the certifiability of any class.
- (c) The SETTLEMENT AGREEMENT is approved as sufficiently fair and reasonable to warrant sending notice to the SETTLEMENT CLASS preliminarily certified for settlement purposes.
- (d) Analytics, Inc. is hereby appointed as NOTICE ADMINISTRATOR.
- (e) The form of the MAILED NOTICE is approved and the NOTICE ADMINISTRATOR is directed to cause the MAILED NOTICE to be distributed by first class mail, postage prepaid, bearing the return address of the CLASS COUNSEL, within twenty-one (21) days within the date of this Order.
- (f) The PUBLISHED NOTICE is approved, and it is ordered that, if the number of MAILED NOTICES returned after the second mailing as undeliverable after the additional efforts to obtain delivery as set forth in the SETTLEMENT AGREEMENT have been undertaken exceeds 10% of the 3,021 MAILED

NOTICES originally sent, then USAgencies shall have the right, in its sole discretion, to exercise the option of requiring the PUBLISHED NOTICE. If USAgencies exercises that right, the PUBLISHED NOTICE shall be published in accordance with the NOTICE PLAN attached to the Settlement Agreement, unless that requirement is waived by Defendant, in its sole discretion. Such publication shall be completed by no later than seventy (70) calendar days from the date of this Order.

- (g) Distribution of the CLASS NOTICE, as set forth in the SETTLEMENT AGREEMENT, including the MAILED NOTICE and PUBLISHED NOTICE and the implementation of the NOTICE PLAN as described in the SETTLEMENT AGREEMENT, are reasonable and the best practicable notice under the circumstances; are reasonably calculated to apprise the SETTLEMENT CLASS members of the proposed settlement of the ACTION and of their right to object or opt out of the proposed settlement; constitute due, adequate, and sufficient notice to all SETTLEMENT CLASS members; and meet the requirements of the Louisiana Code of Civil Procedure, and requirements of due process under the Louisiana and United States Constitutions;
- (h) Each potential SETTLEMENT CLASS member who wishes to exclude himself, herself, or itself from the SETTLEMENT CLASS is directed to submit to the CLASS COUNSEL a written request for exclusion postmarked no later than ninety-eight (98) calendar days after the date of this in the form prescribed in the Settlement Agreement;
- (i) No later than twenty-one (21) calendar days after the date of this Order, CLASS COUNSEL shall establish a neutral website whose home page is in the form attached to the SETTLEMENT AGREEMENT, and provide and staff a toll-free telephone number to respond to questions of SETTLEMENT CLASS MEMBERS. CLASS COUNSEL shall maintain the website and telephone number for at least ninety (90) calendar days after the expiration of the period for submitting CLAIM FORMS.

- (j) Any potential SETTLEMENT CLASS MEMBER who does not submit a timely, written request for exclusion from the SETTLEMENT CLASS according to the procedure required in the SETTLEMENT AGREEMENT will be bound by all proceedings, orders and judgments in the ACTION, including the FINAL APPROVAL ORDER AND JUDGMENT, even if such member of the SETTLEMENT CLASS has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by this AGREEMENT;
- (k) Consideration of all motions pending in this ACTION is stayed;
- (l) A FINAL APPROVAL HEARING to consider the fairness, reasonableness, and adequacy of the proposed settlement is hereby set for \_\_\_\_\_;
- (m) The CLAIM FORM attached to the SETTLEMENT AGREEMENT is approved for distribution to members of the SETTLEMENT CLASS, and must be postmarked no later than thirty (30) calendar days after the date of the FINAL APPROVAL ORDER AND JUDGMENT, after which date CLAIM FORMS shall be deemed untimely and invalid;
- (n) The NOTICE ADMINISTRATOR is directed to file proof of mailing of the MAILED NOTICE and CLASS COUNSEL is directed to file a list of all persons who have timely excluded themselves from the SETTLEMENT CLASS, at or before the FINAL APPROVAL HEARING;
- (o) All members of the SETTLEMENT CLASS are preliminarily enjoined, unless and until they have timely excluded themselves from the SETTLEMENT CLASS,
  - (i) from filing, commencing, prosecuting, intervening in, or participating as plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in this ACTION and/or the RELEASED CLAIMS; (ii) from filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any members of the SETTLEMENT CLASS who have not timely excluded themselves (including by

seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in this ACTION and/or the RELEASED CLAIMS; and (iii) from attempting to effect an opt-out of a class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in this ACTION and/or the RELEASED CLAIMS;

- (p) Each member of the SETTLEMENT CLASS who has not submitted a timely request for exclusion from the SETTLEMENT CLASS and who wishes to object to the fairness, reasonableness, or adequacy of this AGREEMENT or the proposed settlement, or to the attorneys' fee (the "OBJECTOR"), shall provide to CLASS COUNSEL and Counsel for Defendant and shall file with the Court no later than ninety-eight (98) calendar days after the date of this Order, a statement of the objection, as well as the specific legal and factual reasons, if any, for each objection, including any support the OBJECTOR wishes to bring to the Court's attention and all evidence OBJECTOR wishes to introduce in support of his or her objection in compliance with Paragraph 27 (o) of the SETTLEMENT AGREEMENT, or be forever barred from objection;
- (q) Any attorney hired by the OBJECTOR at the OBJECTOR'S expense for the purpose of objecting to the AGREEMENT or to the proposed settlement, or to the attorneys' fee or to the class representative incentive award, shall serve CLASS COUNSEL and Counsel for Defendant and shall file with the Clerk of the Court a notice of appearance no later than ninety-eight (98) calendar days after the date of this Order;
- (r) Each OBJECTOR who attends to appear at the FINAL APPROVAL HEARING, either in person or through counsel hired at the OBJECTOR's expense, must serve CLASS COUNSEL and Counsel for USAgencies, and file with the

COURT, a notice of appearance no later than ninety-eight (98) calendar days after the date this Order.

- (s) CLASS COUNSEL is directed to rent a post office box in Baton Rouge, Louisiana, to be used for receiving requests for exclusion, objections, notices of intention to appear, CLAIM FORMS, and any other communications, and only the CLASS COUNSEL and counsel for USAgencies shall have access to this post office box; and
- (t) CLASS COUNSEL shall within three (3) calendar days after receipt, furnish Counsel for USAgencies with copies of each objection, written request for exclusion, notice of intention to appear, CLAIM FORM, or other communications that come into its possession (except as expressly provided otherwise in the SETTLEMENT AGREEMENT).

All proceedings in the ACTION are hereby stayed until further order of the Court; provided, however, that the parties may conduct such limited proceedings as may be necessary to implement the AGREEMENT.

THUS DONE AND SIGNED in Bastrop, Morehouse Parish, Louisiana, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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DISTRICT JUDGE