

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

BRETT WAGNER, individually and on behalf of all others similarly situated,)	Case No.: CI20-10735
Plaintiff,)	
)	
)	
)	
SAFECO INSURANCE COMPANY OF ILLINOIS,)	
)	
)	
Defendant.)	
)	
)	

ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT

WHEREAS Plaintiff Brett Wagner (“Plaintiff”), individually and as Class Representative on behalf of a proposed Settlement Class, and Defendant Safeco Insurance Company of Illinois (together, "Safeco" or "Defendants") all acting by and through their respective counsel, have agreed, subject to Court approval, to settle this Action upon the terms and conditions stated in the Settlement Agreement and Release:

NOW, THEREFORE, based upon the Agreement, upon all of the files, records, and proceedings herein, statements of counsel, and it appearing to the Court that a hearing should be held to determine whether the Proposed Settlement described in the Agreement should be finally approved as fair, reasonable, and adequate.

IT IS HEREBY ORDERED THAT:

1. The Agreement (including Exhibits) is hereby incorporated by reference in this Order, and all terms defined in the Agreement will have the same meanings in this Order.
2. This Court has personal jurisdiction over all Settlement Class Members because the Settlement Class Members are defined as persons to whom Nebraska Automobile Insurance

Policies were issued by Defendant.

3. The Court preliminarily approves the Agreement (including Exhibits), finding that the Proposed Settlement is sufficiently fair, reasonable, and adequate to warrant providing notice to the Settlement Class.

4. For purposes of determining whether the terms of the Proposed Settlement should be finally approved as fair, reasonable and adequate, the following Settlement Class is preliminarily certified for settlement purposes only:

All Nebraska policyholders who were insured for private-passenger auto physical damage coverage by Safeco Insurance Company of Illinois ("Safeco") who suffered a first-party loss of a covered leased vehicle at any time during the Class Period, whose claims were adjusted by Safeco as a total-loss claim, and whose claim resulted in a Total Loss Claim Payment by Safeco, and who were not paid Full Sales Tax (7% of the actual cash value of the Class Member's Adjusted Vehicle Value);

Per the Settlement Agreement "Releasing Persons" means: (a) Plaintiff; and (b) Settlement Class Members in the Claims and Policy Data who do not otherwise timely opt-out of the Settlement Class (whether or not such members submit claims) and their respective present, former or subsequent assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, agents, employees and anyone working on their behalf. Accordingly, only those insureds in the claims and policy data will be in the list of those provided notice and only those in the notice list will potentially have their claims released by virtue of membership in the class. "Releasing Persons shall also include any policyholders of Safeco who submit a valid Claim Form, Electronic Claim Form, or Electronic Blank Claim Form and their respective present, former or subsequent assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, agents, employees and anyone working on their behalf.

5. The Court preliminarily finds that the terms of the Settlement Agreement are fair, adequate, and reasonable. In so finding, the Court has considered several factors in making such finding, including: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risk of establishing liability; (5) the risk

of establishing damages; (6) the risk of maintaining a class action; (7) the ability of the defendant to withstand a greater judgment; (8) the reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation.

6. Plaintiff is preliminarily appointed as representative of the Settlement Class (“Class Representative”), and the following attorneys are preliminarily appointed as counsel for the Settlement Class (“Class Counsel”):

NORMAND PLLC
Amy L. Judkins, Esq.
3165 McCrory Place, Suite 175
Orlando, FL 32803
Tel: (407) 603-6031
Fax: (888) 974-2175
E-mail: amy.judkins@normandpllc.com

LEVY CRAIG LAW FIRM
Shane C. Mecham, Esq.
4520 Main Street, Suite 1600
Kansas City, Missouri 64111
Tel: (816) 474-8181
Fax: (816) 382-6606
E-mail: smecham@levycraig.com

7. The Parties have prepared the forms of the Class Notice, which are affixed as Exhibits 2-10 to the Settlement Agreement. The Court has carefully reviewed the forms and hereby approves the Class Notice as to form and content, and directs that forms be without material alteration from those attached to the Agreement unless otherwise modified by agreement of the Parties and approved by the Court. The Court directs that the Class Notices be sent to the Persons described and in the manner set forth in paragraphs 7 to 13, *inter alia*, of the Agreement and, for Notices returned undelivered, directs the Settlement Administrator to follow the procedures set out in the Agreement.

8. The Court directs the Settlement Administrator to initiate and maintain the website as set forth in paragraphs 7 to 11 of the Agreement, and to post thereon the Settlement Agreement, Long-Form Notice, Claim Form, Electronic Claim Form, Preliminary Approval Order, and frequently asked questions, as set forth in the Agreement, and to maintain the website for 180 days after the Claims Submission Deadline.

9. Within 10 days of entry of this Order, Defendant shall provide the last-known physical mailing address and any and all email addresses it possesses for potential Settlement Class members. The Settlement Administrator shall run physical mailing addresses through the National Change of Address Database (“NCOA”) to attempt to obtain a more current name and/or physical mailing address for each potential Settlement Class Member. Within 30 days of entry of this Order, the Settlement Administrator shall send a copy of the Mailed Notice by first-class mail to the Settlement Class members.

10. Defendant shall send 5 emails notices as outlined in the settlement agreement with the timing of the emails to be determined by the Class Administrator in accordance with best practices to best effectuate notice to each Class Member.

11. If any mailed Notice and/or Claim Form mailed to any potential Settlement Class Member is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly log each Notice and/or Claim Form that is returned as undeliverable and provide copies of the log to Defendant and Class Counsel upon request. If the mailing is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the mailing to that address. For the remaining returned mailings, the Settlement Administrator will use reasonable efforts to attempt to obtain a new address and those mailings shall be forwarded to any new address obtained through such a search. If any Notice is returned as undeliverable a

second time, no further mailing shall be required. The Court finds that the procedures set forth herein constitute reasonable and the best practicable notice under the circumstances and an appropriate and sufficient effort to locate current addresses of Settlement Class Members.

12. The Court preliminarily finds that the notice provided to potential Settlement Class Members (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and of their right to object or to exclude themselves from the Proposed Settlement; and (iii) is reasonable and constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice.

13. Potential Settlement Class Members who wish to exclude themselves from the Settlement Class must submit timely, written requests for exclusion as set forth in the Agreement and Class Notice. To be effective, such a request must include the Settlement Class Member's name and address, a clear and unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class, and the signature of the Settlement Class Member or his or her Legally Authorized Representative. The request must be mailed to the Administrator at the address provided in the Mailed and Emailed Notice and must be postmarked no later than 30 days after the Mailed Notice Date. Requests for exclusion must be exercised individually by the Settlement Class Member or his or her Legally Authorized Representative, and not as or on behalf of a group, class, or subclass.

14. No later than 10 days before the Final Approval Hearing, the Settlement Administrator shall file proof of mailing of the Notice, along with the Opt-Out List, which shall be a list of all Persons who timely and properly requested exclusion from the Settlement Class, and an affidavit or declaration attesting to the accuracy of the Opt-Out List.

15. Potential Class Members who submit timely and valid requests for exclusion in the

manner set forth in the Notice and the Agreement shall be excluded from the Settlement Class. Such Persons shall have no rights under the Proposed Settlement, shall not share in any distribution of funds under the Proposed Settlement, and shall not be bound by the Proposed Settlement or by any Final Order and Judgment approving the Proposed Settlement.

16. All Settlement Class Members who do not submit a timely, written request for exclusion in the manner set forth in the Notice and Agreement shall be bound by any Final Order and Judgment entered, even if such Settlement Class Members never received actual notice of this Action or this Proposed Settlement, or never submitted a claim pursuant to the Proposed Settlement. If final approval of the Proposed Settlement is granted, they shall be barred, now and in the future, from asserting any of the Released Claims, as defined in the Agreement, against any Released Persons, as defined in the Agreement.

17. Settlement Class Members who do not request exclusion from the Settlement Class may object to the Proposed Settlement. Settlement Class Members who choose to object to the Proposed Settlement must file with the Court and mail to the Class Administrator written notices of intent to object or intervene, as described in the Agreement and below. Any Settlement Class Member who has timely filed an objection in compliance with the Agreement and this Order may appear at the Final Approval Hearing, in person or by counsel, and be heard to the extent allowed by the Court. The right to object to the Proposed Settlement must be exercised individually by an individual Settlement Class Member or his or her attorney or his or her Legally Authorized Representative, and not as a member of a group, class, or subclass.

18. To be timely, any objection or motion to intervene must be postmarked and mailed to the Settlement Administrator, or filed with the Court, no later than thirty (30) days prior to the Final Approval Hearing. Any untimely objection or motion to intervene may not be considered, at

the discretion of the Court.

19. A notice of intent to object to the Proposed Settlement should also:

- (a) Contain a heading which includes the name of the case and case number;
- (b) Provide the name, address, telephone number, and signature of the Settlement Class Member filing the objection;
- (c) Indicate the specific reasons why the Settlement Class Member objects to the Proposed Settlement;
- (d) Contain the name, address, bar number, and telephone number of the objecting Settlement Class Members' counsel, if represented by an attorney. If the Settlement Class Member is represented by an attorney, he or she must comply with all applicable rules of the Court; and
- (e) State whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either in person or through counsel.

A lack of substantial compliance with these requirements may result in the objection not being considered by the Court.

20. In addition, a notice of intent to object should contain the following additional information, if the Settlement Class Member or his/her or its attorney requests permission to speak at the Final Approval Hearing:

- (a) A detailed statement of the specific legal and factual basis for each objection;
- (b) A list of any and all witnesses whom the Settlement Class Member may seek to call at the Final Approval Hearing, with the address of each witness and a summary of his or her proposed testimony;
- (c) A detailed description of any and all evidence the Settlement Class Member may seek to offer at the Final Approval Hearing, including photocopies of any and all exhibits which the objector may seek to introduce at the Final Approval Hearing;
- (d) A list of any legal authority the Settlement Class Member will present at the Final Approval Hearing; and
- (e) Documentary proof of membership in the Settlement Class.

21. Settlement Class Members have the right to exclude themselves from the Proposed Settlement and pursue a separate and independent remedy against Defendant by complying with the exclusion provisions set forth herein. Settlement Class Members who object to the Proposed

Settlement shall remain Settlement Class Members, and waive their right to pursue an independent remedy against Defendant. To the extent any Settlement Class Member objects to the Proposed Settlement, and such objection is overruled in whole or in part, such Settlement Class Member will be forever bound by the Final Order and Judgment of the Court.

22. The Court directs the Settlement Administrator to rent a post office box to be used for receiving requests for exclusion, objections, notices of intention to appear, and any other settlement-related communications, and provides that only the Settlement Administrator, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise expressly provided in the Agreement or by further order of the Court. The Court also directs the Settlement Administrator promptly to furnish Class Counsel and Counsel for Defendant copies of any and all objections, written requests for exclusion, motions to intervene, notices of intention to appear, or other communications that come into its possession, as set forth in the Agreement.

23. The Court approves the claims submission process as set forth in the Agreement, including the Claim Form(s) and Electronic Claim Form proposed by the Parties, and finds the claim submission process to be fair and reasonable. The Court directs the Parties and Settlement Administrator to initiate the claims' process as set forth in the Agreement, including a deadline to submit a claim thirty (30) days after the mailing or emailing of notice. Claims submitted after such date shall be deemed untimely.

24. The Court will hold a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the Proposed Settlement on 2-25-22 at 12:00. During the Final Approval Hearing, the Court will consider whether the proposed settlement described in the Agreement should be approved as fair, reasonable, and adequate, and whether the Court should

enter the proposed Final Order and Judgment approving the Proposed Settlement and dismissing this Action on the merits, with prejudice. The Court will also consider the amount of any Attorneys' Fee Award and whether to make, and the amount of, any Incentive Award to the Class Representative. The Final Approval Hearing may be postponed, adjourned, or rescheduled by order of the Court without further notice to Settlement Class Members other than on the settlement website, and the Court's docket.

25. The Court confirms the following schedule (which the court, upon showing of good cause, may extend any of the deadlines):

#	Action	Deadline
1	Website Notice Posted by Settlement Administrator	Thirty (30) days after entry of the Preliminary Approval Order ("PAO")
2	Deadline for Settlement Administrator to mail out direct mail notice ("Notice Date")	Thirty (30) days after entry of the Preliminary Approval Order
3	Deadline for Settlement Class Members to opt-out of the Agreement	Thirty (30) days prior to the Final Approval Hearing
4	Deadline for submission of Notice of Intent to object to agreement	Thirty (30) days prior to the Final Approval Hearing
5	Deadline for Settlement Class Members to file claims.	Thirty (30) days after Fairness Hearing
6	Deadline for Class Counsel to file their Motion for Final Approval of the Settlement, application for attorneys' fees, costs and expenses, and for a service award for Plaintiff.	Fifteen (15) days prior to final Fairness Hearing
7	Deadline for Settlement Administrator to file proof of completion of Notice, along with complete and accurate Opt-Out list	Ten (10) days before Final Hearing

8	Fairness Hearing	4-15-22 at 9:20 a.m. (at least 105 days after entry of Preliminary Approval Order ("PAO"))
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26. The Court stays all proceedings in this Action until further Order of the Court, except that the Parties may conduct such limited proceedings as may be necessary to implement the Proposed Settlement or to effectuate the term of the Agreement.

DONE AND ORDERED in chambers in the District Court of Douglas County, Nebraska, this 30th day of November, 2021.



JEFFREY T. LUX
DISTRICT COURT JUDGE

Copies finished to:
Counsels of Record