

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI**

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CAROLE LITMAN, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

STATE AUTO PROPERTY AND  
CASUALTY INSURANCE COMPANY,

Defendant.

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Case No. 24SL-CC07058

Division 1

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**PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, AND SCHEDULING A  
FINAL APPROVAL HEARING**

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Pursuant to Missouri Supreme Court Rule 52.08, Plaintiff Carole Litman (“Plaintiff”), on behalf of herself and the proposed Settlement Class, respectfully moves for an order certifying the proposed class solely for purposes of settlement, and further ordering preliminary approval of the settlement in accordance with the terms and conditions set forth in the proposed preliminary approval order attached as Ex. A to the settlement agreement (“Settlement” or “SA”) filed with this Motion.<sup>1</sup>

1. Defendant State Auto Property and Casualty Insurance Company (“State Auto” or “Defendant”) does not oppose this motion for approval of a settlement.<sup>2</sup> The Settlement was

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<sup>1</sup> All capitalized terms used in this Motion that are not otherwise defined have the meanings ascribed to them in the Settlement.

<sup>2</sup> However, State Auto does not join in, approve of, or admit Plaintiff’s allegations or averments of fact or law contained in this motion or in any accompanying memoranda or submissions. As Paragraph 1.9 of the Settlement makes clear, State Auto denies every allegation of liability, wrongdoing and damages, is not objecting to settling the case to achieve final resolution of the issues on fair and just compromise terms, and believes it has substantial factual and legal defenses to all claims and class allegations asserted in this case that it will continue to pursue in the event the settlement is not approved.

reached through extensive arm's-length settlement negotiations. *See* Ex. A, Declaration of Erik D. Peterson; Ex. B, Declaration of Christopher E. Roberts.

2. For purposes of preliminarily approving the Settlement only, Plaintiff seeks certification of the following Settlement Class:

All Class Members who during the Class Period: (1) were issued property policies in Missouri by State Auto Property and Casualty Insurance Company, State Auto Mutual Insurance Company, or Meridian Insurance Company; (2) made a structural damage claim under Coverage A or Coverage B of the Class Member's policy; (3) a Symbility and/or Xactimate estimate was used in determination of the payment; and, (4) 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.

SA ¶ 2.30. The "Class Period" is from June 15, 2012, through October 31, 2022. SA ¶ 2.11. A copy of the Settlement is attached as Exhibit 1 to the Declaration of Erik D. Peterson. *See* Ex. A, Declaration of Erik D. Peterson, Decl. Ex. 1.

The Settlement Class excludes: (a) 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"; (b) Policyholders who received one or more ACV Payments for a claim that exhausted the applicable limits of insurance; (c) Policyholders whose claims were denied or abandoned without an ACV Payment for any reason other than that the ACV Payment was not made solely because the withholding of Nonmaterial Depreciation caused the loss to drop below the applicable deductible; (d) Policyholders where no Xactimate and/or Symbility estimate was generated by State Auto; (e) State Auto and its officers and directors; (f) Members of the judiciary and their staff to whom this Action is assigned and their immediate families; and (g) Class Counsel and their immediate families. SA ¶¶ 2.31.1-2.31.7.

3. For purposes of preliminarily approving the Settlement, Plaintiff requests that she be appointed class representative and that the undersigned counsel be appointed as class counsel.

4. A proposed settlement class is properly certified when it meets the requirements of Rule 52.08(a) and the requirements of Rule 52.08(b)(1), (2) or (3). Rule 52.08(a) requires that the class be sufficiently numerous (numerosity), that questions of law or fact are common to the class (commonality), that the claims or defenses of the class representative are typical of the claims or defenses of the class (typicality), and the class representative will adequately represent the interests of the class (adequacy). MO. S. CT. R. 52.08(a)(1)-(4). Plaintiff seeks to certify a Rule 52.08(b)(3) class for settlement purposes, which further requires that “questions of law or fact common to the members of the class predominate over any questions affecting only individual members” (predominance) and that a class action be “superior to other available methods for the fair and efficient adjudication of the controversy” (superiority). MO. S. CT. R. 52.08(b)(3). Here, all requirements necessary for preliminary approval of a settlement class are satisfied.

5. Numerosity under Rule 52.08(a)(1) is satisfied for the proposed Settlement Class because there are thousands of class members.

6. Commonality under Rule 52.08(a)(2) is satisfied for the proposed Settlement Class because there are questions of law or fact common to all members of the proposed class, including but not limited to the single, predominating question presented: whether Defendant can withhold Nonmaterial Depreciation under its property insurance policies. In addition to the Nonmaterial Depreciation withholdings themselves, Class Members’ entitlement to prejudgment interest also presents a common question.

7. Typicality under Rule 52.08(a)(3) is satisfied for the proposed Settlement Class because Plaintiff and the putative class members made claims under their standard-form insurance

policies, and Defendant withheld Nonmaterial Depreciation in making ACV Payments to them. Plaintiff's claims arose from the underpayment of her ACV claim, and her claims are identical in all material respects to the claims of the putative class.

8. Adequacy under Rule 52.08(a)(4) is satisfied for the proposed Settlement Class because: (1) Plaintiff has fairly and adequately represented and protected the interests of the putative class; (2) Plaintiff is a member of the proposed class; (3) Plaintiff's interests are perfectly aligned with the proposed class, as she seeks to maximize everyone's recovery of compensatory damages and prejudgment interest resulting from Defendant's allegedly improper withholding of Nonmaterial Depreciation from ACV Payments; and (4) Plaintiff retained counsel competent and experienced in class action and insurance litigation.

9. As required by Rule 52.08(b)(3), questions of law or fact common to members of the proposed Settlement Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Predominance is satisfied because the predominating question in this lawsuit for purposes of settlement class certification remains whether Nonmaterial Depreciation can be withheld under Defendant's property insurance policies. Superiority is also satisfied because of the thousands of small value claims at issue, and the interests of the parties and judicial economy favor settlement.

10. Pursuant to Rule 52.08(e), "[a] class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." *Id.* A class action settlement may be approved as fair, reasonable, and adequate based upon the following considerations: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely

duration of further litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel. *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 266 (Mo. App. 2011). Among these, "[t]he most important consideration in determining if a settlement is fair, reasonable, and adequate is the strength of the plaintiffs' case on the merits balanced against the offered settlement." *Id.*

11. As more fully set forth in the accompanying Memorandum of Law and supporting Declarations, the Settlement is appropriate for preliminary approval. In summary, the Settlement provides the following categories of relief:

**Class Members With Still Withheld Nonmaterial Depreciation.** Subject to the terms, limits, conditions, coverage limits, and deductibles of policies, Claim Settlement Payments for members of the Settlement Class who timely file valid and completed Claim Forms by the Claims Deadline shall be equal to 90% of the Nonmaterial Depreciation that was withheld from ACV Payments and not subsequently paid, 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, plus simple interest of 5% from the first day of January of the year when the loss was reported through December 31, 2024; and

**Class Members Without Still Withheld Nonmaterial Depreciation.** Subject to the terms, limits, conditions, coverage limits, and deductibles of policies, members of the Settlement Class who timely file valid and completed Claim Forms by the Claims Deadline for whom all Nonmaterial Depreciation that was withheld from ACV Payments was subsequently paid in full, payment shall be according to the below schedule:

<b>Amount of released Nonmaterial Depreciation:</b>	<b>Settlement Payment:</b>
\$1 - \$5,000	\$25
\$5,001 - \$10,000	\$50
\$10,001 - \$20,000	\$100
\$20,001 - \$40,000	\$200
\$40,001 - \$60,000	\$300
\$60,001 - \$80,000	\$400
Greater than \$80,000	\$500

SA ¶¶ 4.1.1-4.1.2.

12. As set forth further in the Settlement, upon the Effective Date, Class Members will release claims limited to the subject matter of this lawsuit (*i.e.*, the practice of withholding of Nonmaterial Depreciation) and without giving up any claims or arguments unrelated to the subject matter of this lawsuit. All unrelated matters will continue to be adjusted and handled by State Auto in its ordinary course of business.

13. As the requirements of Rule 52.08 are satisfied, the Court should preliminarily approve the Settlement.

WHEREFORE, for these reasons and those set forth in the accompanying Memorandum of Law and Declarations of Plaintiff's counsel, Plaintiff requests that the Court grant Plaintiff's Motion for Preliminary Approval of Class Settlement and certify the class for settlement purposes, direct that class notice be issued, and schedule a hearing date for final approval of the Settlement.

December 31, 2024

/s/Christopher E. Roberts  
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*Attorneys for Plaintiff and  
Proposed Class Representative*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed and served via the Court's electronic filing system, which will send electronic notices of same to all counsel of record on this 31st day of December, 2024.

/s/Christopher E. Roberts