

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

JEAN HECKMANN, ERIC )  
LaFOLLETTE and CAMILLE )  
LaFOLLETTE, individually and on )  
behalf of others similarly situated, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
LIBERTY MUTUAL FIRE )  
INSURANCE COMPANY, )  
 )  
Defendant. )

Case No.: 2:14-CV-04147-NKL

**FINAL ORDER AND JUDGMENT APPROVING SETTLEMENT, AWARDING CLASS  
COUNSEL LITIGATION COSTS AND OTHER EXPENSES, AWARDING  
REPRESENTATIVE PLAINTIFFS INCENTIVE FEES, AND DISMISSING ACTION  
WITH PREJUDICE**

On this 24th day of August, 2018, the Court considered Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement, Award of Attorney Costs and Expenses, and Approval of Representative Plaintiffs’ Incentive Awards, Doc. 293, Suggestions in Support, Doc. 294, and Supplemental Suggestions in Support, Doc. 295 (“Motion for Final Approval”).

The Court, having read and considered the Stipulation, exhibits thereto, and the Suggestions submitted in support, having received evidence in advance of and at the hearing, and having heard argument by counsel, now makes the following findings:

**FINDINGS OF FACT**

1. Eric and Camille LaFollette filed, on behalf of themselves and all others similarly situated, this Litigation alleging that Liberty Mutual Fire Insurance Company (“Liberty”) breached its contracts with insureds by wrongfully applying the insureds’ deductibles when adjusting claims

under Coverage A and/or B at actual cash value, under homeowners insurance policy HO 03 (Edition 04 91). Liberty has maintained throughout this litigation that it has at all times paid claims properly and has consistently acted in accordance with the governing laws and regulations of Missouri and each State in which it does business.

2. After class certification, class notice was sent to 5,596 potential class members, notifying them of the Litigation.

3. After litigation between the Parties and arms-length negotiations between Class Counsel and counsel for Liberty, with the assistance of the Special Master, the Parties have reached a settlement that provides substantial benefits to the Class, in return for a release and dismissal of claims against Liberty.

4. Plaintiffs and Liberty executed and filed a Stipulation of Settlement and exhibits thereto (the “Stipulation”) dated March 23, 2018.

5. The Stipulation is hereby incorporated by reference in this Final Judgment, and the definitions and terms set forth in the Stipulation are hereby adopted and incorporated into this Final Judgment.

6. On March 23, 2018, Plaintiffs filed with the Court the Stipulation and exhibits thereto along with a motion for preliminary approval of the Settlement.

7. The Court, on April 10, 2018, entered the Order Preliminarily Approving Class Settlement (“Preliminary Approval Order”), preliminarily approving the Stipulation, and scheduling a hearing for August 24, 2018 at 10:00 a.m. to consider final approval of the Settlement and other actions described in the Preliminary Approval Order and the Stipulation (“Final Approval Hearing”).

8. As part of its Preliminary Approval Order, the Court certified for settlement

purposes only a class (“Class”) defined as follows:

All persons who received an ACV payment, directly or indirectly, from Liberty Mutual Fire Insurance Company for physical loss or damage to their dwelling or other structures located in the state of Missouri arising under policy Form HO 03 (Edition 04 91) and endorsements, such payments arising from losses that occurred from April 8, 2004 to August 1, 2016, where a deductible was applied to the ACV payment for the person’s dwelling or other structure (Coverage A and/or B).

Excluded from the Class are: (1) All persons who submitted a claim for and received a replacement cost payment from Liberty Mutual Fire Insurance Company under Coverage A and/or B; (2) All persons whose payment(s) plus the amount of any deductible applied was less than \$2,500; (3) All persons whose claim(s) were caused by earthquake; (4) Liberty Mutual Fire Insurance Company and its affiliates, officers, and directors; (5) Members of the judiciary and their staff to whom this action is assigned; and (6) Class Counsel.

9. As part of the Preliminary Approval Order, the Court approved an individual Class Notice and Claim Form, which provided Class Members with notice of the Settlement and Stipulation. In accordance with the Stipulation, the Class Notice also explained the opportunity for Class Members to file objections to the Settlement or to exclude themselves from the Settlement. The Court also approved the establishment of a website and automated toll-free telephone number regarding the Settlement.

10. The Court ordered the Class Notice and Claim Form, in the form attached to the Stipulation as Exhibits 2 and 3, be mailed by the Administrator, Garden City Group, by first-class mail, postage prepaid, on or before May 25, 2018 (the “Notice Mailing Date”) to all potential Class Members who originally received notice of the Litigation, with supplementation of addresses as described in the Stipulation.

11. On or about July 27, 2018, Plaintiffs moved the Court for final approval of the terms of the Settlement and for the entry of this Final Judgment. In support of that Motion, Plaintiffs submitted, among other things, evidence concerning the dissemination and adequacy of Class Notice, evidence regarding the names of potential Class Members who timely submitted requests

for exclusion from the Settlement, evidence regarding the negotiation of the Stipulation, evidence regarding the fairness, reasonableness, and adequacy of the terms of the Stipulation, and evidence regarding the fairness, reasonableness and adequacy of Class Counsel's request for costs and expenses. Plaintiffs also submitted Suggestions in Support of Motion for Final Approval and Supplemental Suggestions, which set forth extensive argument and authority along with various exhibits.

12. In accordance with the Preliminary Approval Order, the Final Approval Hearing was held before this Court on August 24, 2018.

13. Class Counsel has filed with the Court a declaration from a representative of Garden City Group who was retained as the independent third-party settlement administrator for the Settlement. Garden City Group has declared that the mailing of the Court-approved Class Notice and Claim Form was completed on May 24, 2018. The Class Notice and Claim Form were mailed via first class U.S. mail to 5,596 potential Class Members. Garden City Group received individual Class Notices and Claim Forms returned as undeliverable and without forwarding addresses. Pursuant to the Stipulation, Garden City Group attempted to obtain updated addresses for these potential Class Members and remailed 271 Class Notices and Claim Forms to an updated address. A total of 246 Class Notices and Claim Forms were ultimately undeliverable. The Court finds that the percentage of Class Notices and Claim Forms that were ultimately undeliverable (approximately 5%) is reasonable. As of August 13, 2018, Garden City Group had received one (1) valid and timely Request for Exclusion and zero (0) late requests. Additionally, Garden City Group had received zero (0) timely or late Objections as of August 13, 2018.

14. The Parties and the Administrator have satisfactorily demonstrated that the Class Notice and Claim Form were mailed in accordance with the Stipulation and Preliminary Approval

Order.

15. The Settlement provides substantial monetary benefits to Class Members who timely submit completed Claim Forms. The monetary liability of Liberty for settlement payments to Class Members, attorneys' litigation costs and other expenses, and Court-approved incentive awards to the Representative Plaintiffs is \$400,000. The claims procedure established under the Stipulation is uniform and fair, and provides Class Members with the opportunity to receive settlement payments as described in the Stipulation.

16. All Persons who wished to be excluded from the Settlement were provided an opportunity to request exclusion as described in the Class Notice and the Stipulation. The Court finds that the individual interests of the one (1) Class Member who sought exclusion from the Class is preserved and no Class Member was precluded from being excluded from the Class if he or she so desired. The Class Member who timely and properly excluded himself from the Settlement is identified in the attached Exhibit "1".

17. Class Members who did not timely file and serve an objection in writing to the Stipulation, to the entry of this Final Judgment, or to Class Counsel's request for litigation costs and other expenses and incentive awards, in accordance with the procedure set forth in the Class Notice and mandated in the Preliminary Approval Order, are deemed to have waived any such objection through any appeal, collateral attack, or otherwise.

18. At the Final Approval Hearing, the Court considered, among other matters described herein, (a) whether certification for settlement purposes only was appropriate under Rule 23 of the Federal Rules of Civil Procedure; (b) the fairness, reasonableness and the adequacy of the Stipulation; and (c) the fairness and reasonableness of Class Counsel's request for costs and expenses and for incentive awards for the Representative Plaintiffs under applicable law. The

Court independently evaluated not only the pleadings, evidence, and arguments of Plaintiffs, Class Counsel and Liberty, but also rigorously and independently evaluated the Stipulation, Class Counsel's request for costs and expenses and for incentive awards for the Representative Plaintiffs, and as such, the Court considered arguments that could reasonably be made against approval of the Stipulation and Class Counsel's request for costs and expenses and for incentive awards for the Representative Plaintiffs, even if such arguments were not actually presented to the Court by pleading or oral argument.

19. On the basis of the matters presented in this Litigation and the provisions of the Stipulation, the Court is of the opinion that the Settlement is a fair, reasonable and adequate compromise of the claims against Liberty. In considering a number of factors, the Court finds that:

a. The liability issues in this Action and the suitability of this Litigation for certification of a litigation class have been vigorously contested;

b. This Settlement has the benefit of providing substantial benefits to Class Members now, without further litigation, under circumstances where the liability issues and the suitability of this Litigation for certification of a litigation class are still vigorously contested among the Parties;

c. The Settlement is clearly a byproduct of adversary litigation between the Parties, and not a result of any collusion on the part of Class Counsel or Liberty; and

d. Class Counsel's request for an award of litigation costs and other expenses and incentive awards for the Representative Plaintiffs is reasonable, fair, and in all respects consistent with the terms of the Stipulation.

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT AND THOSE ORAL FINDINGS OF FACT ARTICULATED AT THE FAIRNESS HEARING

REFERENCED HEREIN, THE COURT HEREBY MAKES THE FOLLOWING CONCLUSIONS:

### CONCLUSIONS OF LAW

1. This Court has jurisdiction over Plaintiffs, Liberty, and members of the Class; venue is proper, and the Court has subject matter jurisdiction, including without limitation, jurisdiction to approve the Stipulation, to grant final certification of the Class, to settle and release all claims arising out of the Litigation, and to enter this Final Judgment and dismiss this Action on the merits and with prejudice.

2. The Stipulation provides for the settlement of this Litigation with Liberty by the Representative Plaintiffs on behalf of the members of the Class. The Stipulation provides that, in exchange for the releases described in the Stipulation and this Final Judgment, Liberty will provide substantial consideration consisting of settlement payments to all members of the Class who submit eligible claims, as described in the Stipulation.

3. The Court concludes that, for settlement purposes only, the Class meets all the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process under the United States Constitution, and all other applicable rules and law, and the Class this Court previously preliminarily certified in its Preliminary Approval Order is hereby finally certified as a settlement class action. In connection with the class certification ruling, the Court specifically finds as follows: the Class Members are ascertainable and too numerous to be joined; questions of law and fact are common to all Class Members and predominate over any questions affecting only individual members; the Representative Plaintiffs' claims are typical of those of the Class; the Representative Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of the Class for purposes of entering into and implementing the Settlement; and Class Counsel meets the standard for appointment.

4. The parties have provided evidence that the Class Notice and Claim Form were disseminated in accordance with the Preliminary Approval Order and Stipulation, all of which informed members of the Class of the terms of the Proposed Settlement, of their opportunity to request exclusion from the Class, and of their opportunity to object to the terms of the Stipulation.

5. Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Class Notice and Claim Form were mailed to potential members of the Class in accordance with provisions of the Preliminary Approval Order, and together with the automated toll-free telephone number and settlement website: (i) constituted the best notice practicable; (ii) was reasonably calculated to apprise potential members of the Class of their right to object to exclude themselves from the Settlement and to appear at the Final Approval Hearing, and their right to seek monetary relief; (iii) was sent following the initial notice to the class, which was sent in December 2016; (iv) was reasonable and constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice; and (v) met all requirements of the Federal Rules of Civil Procedure and the requirements of due process under the Missouri and United States Constitutions, and requirements of any other applicable rules or law. The Court further finds that the notice campaign undertaken concisely and clearly states in plain, easily understood language:

- a. The nature of the action;
- b. The definition of the class certified;
- c. The class claims, issues or defenses;
- d. That a Class Member may object to the settlement;
- e. That a Class Member may enter an appearance and be heard at the Final Approval Hearing in person or through counsel;
- f. That the Court will exclude from the Class any member who timely requests exclusion, stating when and how members may elect to be excluded;

- g. The date and time of the Final Approval Hearing; and
- h. The binding effect of a Final Judgment on Class Members.

6. Having admitted and reviewed the evidence at the Final Approval Hearing concerning the success of the notice campaign, the Court finds that it is unnecessary to afford a new opportunity to request exclusion to Class Members who had an earlier opportunity to request exclusion but did not do so.

7. The Final Approval Hearing and the evidence before the Court clearly support a finding that the Stipulation was entered into in good faith, after arm's length negotiations between Plaintiffs and Liberty, and the Court does hereby so find.

8. The Court finds that approval of the Stipulation and the Settlement embodied therein will result in substantial savings in time and resources for the Court and the litigants and will further the interests of justice. Further, the Court finds that the Stipulation is fair, reasonable and adequate to members of the Class based on discovery, due diligence, and the absence of material objections sufficient to deny approval.

9. The settlement of the Litigation on the terms, conditions, and limitations set forth in the Stipulation is approved and confirmed in all respects as fair, reasonable, and adequate and in the best interest of the Class and Class Members, especially in light of the benefits made available to the Class and the costs and risks associated with the continued prosecution, trial and possible appeal of this complex litigation.

10. A review of the following factors supports a finding that the Settlement is fair, reasonable and adequate:

- a. The strength of the case for the plaintiffs on the merits, balanced against the amount offered in the settlement;
- b. The defendant's overall financial condition and ability to pay;

- c. The complexity, length and expense of further litigation; and
- d. The amount of opposition to the settlement.

*Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988) (citing *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975)).

11. Although the notice campaign was highly successful and resulted in notice being mailed to 5,596 potential Class Members, no Class Members filed objections to the Stipulation of Settlement. The lack of opposition by a well-noticed Class strongly supports the fairness, reasonableness, and adequacy of the Settlement.

12. The Court, in evaluating the fairness, reasonableness, and adequacy of the Settlement, considered all objections that were filed or that could have been raised by any Class Member. After considering all such possible objections, the Court finds that the Stipulation and Settlement are fair, reasonable, and adequate under federal law and the *Grunin* factors.

13. The claims process as set forth in the Stipulation is fair, reasonable and adequate to both Class Members and Liberty. Any Class Member who does not submit a Claim Form in compliance with the claims process set forth in the Stipulation or, alternatively, who does not request exclusion from the Class in accordance with the Stipulation, is forever barred from asserting a Released Claim against a Released Person in any other action or proceeding.

14. Class Counsel's requests for \$240,000 in attorneys' litigation costs and other expenses and for Representative Plaintiffs' incentive awards of \$10,000 total, to be paid by Liberty as part of the Settlement, are fair, reasonable and adequate.

NOW, THEREFORE, GOOD CAUSE APPEARING THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The objections to the Stipulation of Settlement, if any, are hereby overruled.
2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, final certification of

the Class is confirmed for the purpose of the Settlement, in accordance with the Stipulation.

3. Timely requests for exclusion were submitted by one (1) potential member of the Class and this potential Class Member (identified in Exhibit “1” hereto) is excluded from the Class. All other members of the Class are adjudged to be members of the Class and are bound by this Final Judgment and by the Stipulation and the Settlement embodied therein, including the releases provided for in the Stipulation and this Final Judgment.

4. All provisions and terms of the Stipulation are hereby finally approved in all respects. The parties to the Stipulation are hereby directed to consummate the Stipulation in accordance with its terms.

5. The Motion for Final Approval is GRANTED and the Parties to the Stipulation are directed to consummate the terms of the Stipulation.

6. This Final Judgment shall be immediately entered as to all claims in the Litigation between Plaintiffs, on behalf of themselves and the Class, and Liberty. The Court expressly determines that there is no just reason for delay in entering this Final Judgment.

7. Pursuant to Rule 23(a) and (g) of the Federal Rules of Civil Procedure, Plaintiffs Jean Heckmann, Eric LaFollette, and Camille LaFollette are appointed as the Representative Plaintiffs for the Class, and the following counsel are appointed as counsel for the Class:

Derrick L. Morton  
Douglas A. Terry  
Nelson, Terry, Morton  
DeWitt & Paruolo  
P.O. Box 138800  
Oklahoma City, Oklahoma 73113

David L. Steelman  
Steelman, Gaunt & Horsefield  
901 Pine Street, Suite 110  
P.O. Box 1257  
Rolla, Missouri 65402

Thomas H. Hearne  
Hearne & Pivac  
2733 E. Battlefield, No. 301  
Springfield, Missouri 65804

8. Upon the entry of this Final Judgment, the Representative Plaintiffs and each Class Member shall be conclusively deemed to have fully released and discharged, to the fullest extent permitted by law, any and all of the Released Persons from all of the Released Claims, all as defined in the Stipulation, and shall be conclusively bound by this Final Judgment under the doctrines of res judicata, collateral estoppel, and claim and issue preclusion.

9. “Released Claims” means and includes all known and Unknown Claims, rights, demands, actions, causes of action, suits, debts, liens, liabilities, attorneys’ fees, costs, penalties, interest, expenses, or losses (including actual, consequential, statutory, extra-contractual and/or punitive or exemplary damages), of whatever kind or nature, arising from or in any way related to application of a deductible to an actual cash value payment in connection with a Covered Loss, which were or could have been asserted by Plaintiffs, on behalf of themselves and/or on behalf of the Class, or by any Class Member, whether based on contract, extra contractual, or tort theories, common law equity, or federal, state or local law, statute, ordinance, rule or regulation (including but not limited to claims for bad faith or vexatious refusal to pay). Released Claims do not include any claim for enforcement of the Stipulation of Settlement and/or Final Judgment.

10. “Released Persons” means Liberty Mutual Fire Insurance Company and its past or present subsidiaries, parents, affiliates, successors and predecessors in interest, assigns, acquirers, divisions, representatives, officers, directors, shareholders, agents, managing agents, employees, attorneys, auditors, accountants, brokers, underwriters, adjustors, advisers, insurers, co-insurers, re-insurers, and/or consultants.

11. In order to protect the continuing jurisdiction of the Court and to protect and effectuate this Final Judgment, the Court permanently and forever bars and enjoins Plaintiffs, all Class Members, and anyone acting on their behalf, from filing, commencing, prosecuting,

intervening in, or participating in (as parties or class members) any action in any federal or state court or before any other tribunal or forum of any kind, asserting any Released Claims against the Released Parties (except as necessary before the Court to enforce the terms of the Stipulation). Any person who knowingly violates this injunction will be liable for the costs and attorneys' fees incurred by Liberty or any of the Released Parties as a result of such violation.

12. Proprietary Information of Liberty shall be protected from disclosure and handled in accordance with the terms of the Stipulation, and Class Counsel shall destroy or return all Proprietary Information in their possession, custody, or control as set forth in the Stipulation.

13. The Court awards Class Counsel the total sum of \$240,000 in attorneys' litigation costs and other expenses. In addition, the Court awards to the Representative Plaintiffs the total incentive amount of \$10,000 (\$5,000 for Heckmann, and \$5,000 for Eric and Camille Lafollette jointly). The Court hereby finds that these amounts are fair and reasonable.

14. As set forth in the Stipulation, Class Counsel may file a supplemental application with the Court for payment of unsatisfied litigation costs or other expenses from any Residual Funds remaining in the Class Settlement Fund after payment of all amounts set forth herein. Any Residual Funds remaining in the Class Settlement Fund following the Court's ruling on any supplemental application for unsatisfied litigation costs or other expenses from Class Counsel shall be disposed of in such manner as may be approved by the Court after hearing the views and suggestions of the parties.

15. Payments to eligible Class Members shall be made in the amounts, within the time periods, and in the manner described in the Stipulation.

16. The Litigation is dismissed in its entirety on the merits, with prejudice and without leave to amend.

17. Without in any way affecting the finality of this Final Judgment, this Court shall retain exclusive continuing jurisdiction over this Action for purposes of:

- a. Enforcing the Stipulation and the Settlement;
- b. Hearing and determining any application by any party to the Stipulation for a settlement bar order;
- c. Distribution of any Residual Funds remaining in the Class Settlement Fund; and
- d. Any other matters related or ancillary to any of the foregoing.

s/ Nanette K. Laughrey  
NANETTE K. LAUGHREY  
United States District Judge

Dated: August 24, 2018  
Jefferson City, Missouri

**Heckmann, et al. v. Liberty Mutual Fire Insurance Company**

**Timely Requests for Exclusion**

Unique ID	Name	City	State
1003758	DOUGLAS VANMETER	HARRISON	AR