

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT CLEVELAND**

**THE CONDOMINIUMS AT  
NORTHPOINTE ASSOCIATION, and  
CHRISTINA ERMIDIS, for themselves  
individually and on behalf of all others  
similarly situated,**

**Plaintiffs,**

**-vs-**

**STATE FARM FIRE & CASUALTY  
COMPANY,**

**Defendant.**

**CASE NO. 1:16-CV-01273**

**JUDGE CHRISTOPHER A. BOYKO**

**PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

---

Pursuant to Rule 23(e)(1)-(2) of the Federal Rules of Civil Procedure and the parties' Settlement Agreement, Plaintiffs The Condominiums at Northpointe Association and Christina Ermidis ("Plaintiffs"), individually and on behalf of a Settlement Class, respectfully move the Court for an order certifying this case as a class action solely for purposes of settlement, and further ordering final approval in accordance with the terms and conditions set forth in the proposed Final Approval Order. Defendant State Farm Fire and Casualty Company (referred to herein as "State Farm" or "Defendant") will not oppose this motion for final approval of the Settlement.<sup>1</sup>

In support of this unopposed Motion, Plaintiffs submit the following:

---

<sup>1</sup> As Paragraphs 1.13-1.14 of the Settlement make clear, however, Defendant denies liability and absent settlement intends to contest each and every claim and cause of action, including whether any aspect of this lawsuit is appropriate for certification as a litigation class.

1. To satisfy the requirements of Rule 23(e) for class certification, a proposed settlement class must satisfy the four requirements stated in Rule 23(a)—that is, numerosity, commonality, typicality, and adequacy of representation—as well as one of the three bases for class certification stated in Rule 23(b). Because the request for class certification arises in the context of a settlement, however, the Court need not analyze whether trial would present intractable management problems. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997). Here, all requirements necessary for approval of a settlement class are satisfied.

2. Numerosity under Rule 23(a)(1) is satisfied for the proposed settlement class because the class includes thousands of potential Settlement Class Members.

3. Commonality under Rule 23(a)(2) is satisfied for a 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—*i.e.*, whether Defendant is permitted to withhold nonmaterial depreciation from ACV payments under Defendant’s Ohio insurance policies.

4. Typicality under Rule 23(a)(3) is satisfied for the proposed settlement class because Plaintiffs made claims under one of Defendant’s standard-form insurance policies, and Defendant withheld nonmaterial depreciation in making an actual cash value payment to Plaintiffs. The proposed class representatives’ claims arose from the underpayment of their ACV claims, and their claims relating to the issue of nonmaterial depreciation are identical in all respects to the claims of the putative class.

5. Adequacy under Rule 23(a)(4) is satisfied for the proposed settlement class because Plaintiffs have fairly and adequately represented and protected the interests of the putative class.

Plaintiffs have no interest that conflicts with those of the class. Further, they retained experienced counsel competent and experienced in class action and insurance litigation.

6. As required by Rule 23(b)(3), questions of law or fact common to class 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, *inter alia*, the predominating question in this lawsuit for purposes of settlement class certification remains whether nonmaterial depreciation can be withheld from ACV payments under Defendant's policies. Superiority is satisfied for a settlement class because of, *inter alia*, the thousands of small value claims at issue and the interests of the parties and judicial economy favor settlement.

7. Pursuant to Rule 23(e)(3), Plaintiffs state that the only agreement at issue is the proposed Class Action Settlement Agreement filed on February 17, 2023. Dkt. 157-1.

8. Under Rule 23(e)(2), a proposed settlement can be approved based upon adequacy of representation considerations, the existence of arms-length negotiations and the terms of the settlement in the context of adequacy, the risks of the litigation, fairness to the putative class amongst themselves and in terms of distribution of class member claims and in terms of the attorneys' fees. These factors largely mirror the factors analyzed by the Sixth Circuit. *In re Packaged Ice Antitrust Litig.*, 2018 U.S. App. LEXIS 13882, at \*14 (6th Cir. May 24, 2018).

9. As more fully set forth in the accompanying Memorandum and supporting Declarations, the Settlement is appropriate for final approval. In summary, the proposed Settlement here provides that, for Class Members who timely submit claim forms, the Settlement will result in 100% net recovery of withheld Nonmaterial Depreciation and 50% of Overhead and Profit Depreciation for homeowner Class Members who still have outstanding depreciation withheld

from their prior ACV claim payments, plus simple interest of 3.5% per annum. For Class Members for whom all Nonmaterial Depreciation that was withheld from ACV Payments was subsequently paid, the Settlement will result in payment of interest of 3.5% per annum for the withholding period. Finally, Class Members who were not covered by a homeowners policy will receive 50% of the foregoing amounts. No payments to class members will be reduced by attorneys' fees or costs.

10. Attorneys' fees, costs, class notice, and claims administration costs are to be paid separately by Defendant and will not reduce the amount of any Class Member's recovery.

11. The proposed settlement class does not include any policyholder that is not eligible for a payment under this Settlement Agreement. In exchange for payment, the class members will release claims limited to the subject matter of this lawsuit and without giving up any claims or arguments unrelated to the subject matter of this lawsuit (depreciation of any kind on claims within the class period). All unrelated matters will continue to be adjusted and handled by Defendant in the ordinary course.

12. The settlement was reached through arms-length settlement negotiations, as attested to by Class Counsel in the accompanying Declarations.

WHEREFORE, for these reasons and those set forth the accompanying Memorandum, Plaintiffs respectfully move for entry of an order consistent with the proposed Final Approval Order previously filed with the Court. Dkt. 157-1, PageID.6594-6607.

*s/Patrick J. Perotti*

---

Patrick J. Perotti, Esq. (0005481)  
Dworken & Bernstein Co., L.P.A.  
60 South Park Place  
Painesville, Ohio 44077  
Phone: (440) 352-3391  
Fax: (440) 352-3469  
Email: pperotti@dworkenlaw.com

James A. DeRoche, Esq. (0055613)  
Garson Johnson LLC  
2900 Detroit Avenue  
Van Roy Building 2nd Floor  
Cleveland, OH 44113  
Phone: (216) 696-9330  
Fax: (216) 696-8558  
Email: [jderoche@garson.com](mailto:jderoche@garson.com)

R. Eric Kennedy, Esq. (0006174)  
Daniel P. Goetz, Esq. (0065549)  
Weisman, Kennedy & Berris Co., L.P.A.  
2900 Detroit Avenue  
Van Roy Building, Second Floor  
Cleveland, Ohio 44113  
Phone: (216) 781-1111  
Fax: (216) 781-6747  
Email: [ekennedy@weismanlaw.com](mailto:ekennedy@weismanlaw.com)  
Email: [dgoetz@weismanlaw.com](mailto:dgoetz@weismanlaw.com)

Erik D. Peterson (pro hac vice)  
Erik Peterson Law Offices, PSC  
249 E. Main Street, Suite 150  
Lexington, Kentucky 40507  
Phone: (800) 614-1957  
Email: [erik@eplo.law](mailto:erik@eplo.law)

Stephen G. Whetstone, Esq. (0088666)  
Whetstone Legal, LLC  
P.O. Box 6  
2 N. Main Street, Unit 2  
Thornville, Ohio 43076  
Phone: (740) 974-7730  
Fax: (614) 829-3070  
Email: [steve@whetstonelegal.com](mailto:steve@whetstonelegal.com)

*Counsel for Plaintiffs and  
the Proposed Class*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed and served via the Court's ECF filing system which will send electronic notices of same to all counsel of record on this the \_\_\_\_ day of July, 2023.

*s/Patrick J. Perotti*

---

Patrick J. Perotti, Esq. (0005481)  
DWORKEN & BERNSTEIN CO., L.P.A.  
pperotti@dworkenlaw.com  
*Co-counsel for Plaintiffs*