

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

BELLE MEADE OWNERS ASSOCIATION, )  
INC., )  
 )  
Plaintiff, )  
 )  
v. ) No. 3:22-CV-00123-JRG-DCP  
 )  
THE CINCINNATI INSURANCE )  
COMPANY, *et al.*, )

**ORDER**

Plaintiff Belle Meade Owners Association, Inc. (“Plaintiff”), individually and on behalf of a Settlement Class, and Defendants, The Cincinnati Insurance Company (“CIC”), The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd. (“CGU”), and Cincinnati Specialty Underwriters Insurance Company (individually and collectively, “Defendants”), have agreed to settle this litigation pursuant to the terms and conditions stated in a Stipulation and Settlement Agreement dated December 5, 2023 (the “Agreement”). [Doc. 54-1]. Plaintiff filed an Unopposed Motion for Preliminary Approval of Class Action Settlement with the Court on December 5, 2023 (the “Motion”). [Doc. 54]. Upon review and consideration of the Motion and the Agreement, the record in these proceedings, the representations and recommendations of counsel, and the requirements of law, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

1. **Settlement.** Plaintiff and Defendants have negotiated a proposed settlement of Plaintiff’s claims in this action, individually and on behalf of a class of policyholders of Defendants, described below as the Settlement Class, to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims against the Released Persons,

as set forth in the Agreement. The Court has carefully reviewed the Agreement, including exhibits, as well as the files, records, and proceedings to date in this matter. The terms and conditions in the Agreement are incorporated here as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the same definitions that are in the Agreement.

2. **New Defendants.** The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd., and Cincinnati Specialty Underwriters Insurance Company (collectively, “New Defendants”) were added as defendants to the Amended Complaint in this Action solely for purposes of the Settlement and subject to the terms and conditions of the Agreement. New Defendants shall be deemed to be “Defendants,” as defined in the Agreement, solely for purposes of implementing the Agreement, and no answer or other response to the Amended Complaint need be filed by Defendants. If the Final Judgment is not entered or does not become Final, or the Effective Date does not occur, or the Agreement is terminated, the addition of New Defendants under the Amended Complaint shall be void *ab initio* so that New Defendants will be as if they were never added as defendants to the Action, and the Parties shall be restored without prejudice to their respective litigation positions prior to entry of this Order.

3. **Preliminary Approval.** The Agreement entered into, by and among Plaintiff and Defendants, was negotiated at arm’s length, with the assistance of former Magistrate Judge Stephen C. Williams during a mediation session, and is approved on a preliminary basis as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing.

4. **Preliminary Certification of Settlement Class.** For settlement purposes only, the Court makes the following determinations as to certification of the Settlement Class:

4.1 Pursuant to Fed. R. Civ. P. 23(a) and (b)(3), the Court preliminarily certifies a Settlement Class for purposes of settlement only, defined as follows:

“Settlement Class” means all policyholders under any residential or commercial property insurance policy issued by Defendants, who had: (a) a Structural Loss that was a Covered Loss for property in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin during the applicable Class Periods; and (b) that resulted in an ACV Payment 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, but excluding:

- (a) policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting 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 only made a roof damage claim that arose under a roof surface payment endorsement or similar policy provision, which were paid based on a schedule and not by deducting Depreciation;
- (c) policyholders who received one or more ACV Payments that exhausted the applicable limits of insurance;
- (d) policyholders whose claims were denied or abandoned without ACV Payment;
- (e) Defendants and their 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.

“Class Periods” mean the following time periods:

- (h) For policyholders of all Defendants with Structural Loss claims in Arizona, California, Illinois, Kentucky, Ohio, Tennessee, Texas, Vermont, Virginia, or Washington, dates of loss on or after April 8, 2020 and on or before May 31, 2022;
- (i) For policyholders of all Defendants with Structural Loss claims in Wisconsin, dates of loss on or after April 8, 2021 and on or before May 31, 2022;
- (j) For policyholders of all Defendants except CGU with Structural Loss claims in Missouri, dates of loss on or after April 8, 2012 and on or before May 31, 2022;

4.2 For policyholders of CGU with Structural Loss claims in Missouri, dates of loss on or after April 8, 2020 and on or before May 31, 2022.

4.3 Class Members are reasonably ascertainable, and are so numerous that joinder of all members is impracticable;

4.4 There are questions of law or fact common to the members of the Settlement Class;

4.5 The claims of Plaintiff are typical of the claims of other Class Members;

4.6 Plaintiff is capable of fairly and adequately protecting the interests of the members of the Settlement Class in connection with the Agreement;

4.7 Common questions of law and fact predominate over questions affecting only individual members of the Settlement Class; and

4.8 The class action is an appropriate method for the fair and efficient adjudication of the controversy.

5. **Settlement Class Relief.** The proposed Claim Settlement Payments to Class Members and the settlement consideration, as identified in Sections 4, 6, and 7 of the Agreement, are approved on a preliminary basis as fair, reasonable, and adequate.

6. **Appointment of Class Representative.** Plaintiff is appointed as the representative of the Settlement Class for the purpose of seeking final approval of and administering the Settlement Agreement.

7. **Appointment of Class Counsel.** The law firms of Erik Peterson Law Offices, PSC; McWherter Scott Bobbitt PLC; and Snodgrass Law LLC are appointed as Class Counsel for the Settlement Class for the sole purpose of the Settlement.

8. **Final Approval Hearing.** A hearing regarding final approval of the Settlement

(“Final Approval Hearing”) will be held at **9:00 a. m. on Monday, May 13, 2024**, at the United States Courthouse, Courtroom 400, 220 West Depot Street, Suite 200, Greeneville, Tennessee, to determine, among other things: (i) whether the Agreement should be approved as fair, reasonable, and adequate; (ii) whether this Action should be certified as a class action for settlement purposes only; (iii) whether this Action should be dismissed with prejudice pursuant to the Agreement; (iv) whether Class Members should be bound by the provisions in the Agreement and Final Judgment, including the Releases set forth in the Agreement; (v) whether Class Members (who have not opted out), whether acting individually or together, should be permanently enjoined from instituting, maintaining, prosecuting, suing, asserting or cooperating in any action or proceeding, whether new or existing, against any of the Released Persons for any of the Released Claims; (vi) whether the application of Class Counsel for an award of attorneys’ fees, costs, and expenses, and for a proposed service award to Plaintiff, should be approved and in what amounts; and (vii) objections, if any, made to the Proposed Settlement or any of its terms.

The Final Approval Hearing may take place, at the sole discretion of the Court, via telephone or video conference. Any Class Member who files an objection that includes a notice of intent to appear shall be provided with information required to access a telephonic or video hearing.

Upon a showing of good cause, the Final Approval Hearing may be postponed, adjourned, or rescheduled by the Court without further notice to the Class Members. Any rescheduled date for the Final Approval Hearing will be posted on the Settlement website.

All briefs and materials in support of an order for final approval and judgment and for a service award to the Plaintiff and payment to Class Counsel for attorneys’ fees, expenses, and costs shall be filed with this Court no less than seven (7) days prior to the Final Approval Hearing.

9. **Class Notice**

9.1 Within fifteen (15) days after entry of this Order, Defendants shall conduct a reasonable search of their records and provide to the Administrator the following information for each Person reasonably believed to be a potential Class Member, if reasonably available: full name, last known mailing address, date of Covered Loss during the Class Period, policy number, claim number for the Covered Loss, as well as any other information reasonably required to administer the Settlement. Prior to mailing the Class Notice and Claim Form, the Administrator will run these addresses through the National Change of Address Database for a more current name and/or address for each potential Class Member.

9.2 Not less than seventy-five (75) days before the Final Approval Hearing, the Administrator shall mail to all potential Class Members a Class Notice and Claim Form, in the form and content of Exhibits B and C to the Agreement, in the manner described in the Agreement.

9.3 No later than the mailing of the Class Notice, the Administrator shall establish a website containing copies of the Agreement and exhibits, the Preliminary Approval Order, the Class Notice, the Claim Form, and such other documents and information about the Settlement as Class Counsel and Defendants' Counsel agree upon (the "Settlement website"). The Settlement website shall have a Uniform Resource Locator that identifies the internet address as [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com), or such other URL as Class Counsel and Defendants' Counsel agree upon. A blank Claim Form shall be available to download or print from the Settlement website. In addition, the Settlement website will have the capability for Class Members to upload a .pdf or other static image of a completed and signed Claim Form. The Settlement website shall not include any advertising and shall not bear any logos or trademarks of Defendants other than those appearing in the Agreement. The Settlement website shall cease to

operate, and the Administrator shall remove all information from the Settlement website, no later than the Final Accounting as set forth in the Agreement.

9.4 No later than the mailing of the Class Notice, the Administrator shall establish a toll-free interactive voice response phone number, with script recordings of information about this Settlement, including information about the Claim Form. At Defendants' option, the Administrator may also make available live operators during select times to answer certain basic questions about the Settlement. The Administrator shall mail the Class Notice and Claim Form upon request to any potential Class Members. The phone number shall remain open and accessible through the Claim Deadline and permit Class Members to leave recorded messages. Except for requests for the Class Notice or Claim Form, the Administrator will promptly advise Class Counsel of recorded messages left by Class Members concerning the Action or the Settlement, or direct any Class Members with questions that cannot be answered to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

9.5 No later than 45 days before the Claim Deadline, the Administrator shall mail a postcard reminder in the form attached to the Agreement as Exhibit D (the "Postcard Notice") with information regarding the Claim Deadline, the Settlement website address, and how to request a copy of the Claim Form, to each potential Class Member who has not submitted a Claim Form and who has not timely and properly opted out.

9.6 The Court approves the foregoing methods of providing notice to Class Members, as further described in the Agreement, and finds that the procedures set forth in the preceding paragraphs constitute reasonable and best notice practicable under the circumstances to apprise Class Members of the pendency of this Action, the terms of the Agreement, and their right to object to the Settlement or to exclude themselves from the Settlement Class, and are an

appropriate and sufficient effort to locate current addresses of Class Members such that no additional efforts to do so shall be required. The Court further finds that the Class Notice, Postcard Notice, Settlement website, and establishment of an automated toll-free telephone number, as described in the Agreement, are reasonable, constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and meet all legal requirements, including Federal Rule of Civil Procedure 23, the Due Process Clause of the United States Constitution, and any other applicable rules or laws.

9.7 Potential Class Members may submit Claim Forms in the form attached to the Agreement as Exhibit C, requesting a Claim Settlement Payment in accordance with the terms of the Agreement. To be considered valid and timely, a Claim Form must be materially complete, signed by the Class Member or their Legally Authorized Representative, and either: (a) mailed to the Administrator's address as specified in the Claim Form and postmarked by **July 12, 2024** ("Claim Deadline"); or (b) uploaded to the Settlement website on or before 12:00 p.m. (midnight) Eastern Daylight Time on the Claim Deadline. Claim Forms may be submitted on behalf of deceased or incapacitated Class Members only by Legally Authorized Representatives with written evidence of authority.

9.8 At or before the Final Approval Hearing, Class Counsel shall file an affidavit or declaration from the Administrator confirming that Class Notice has been issued in accordance with this Preliminary Approval Order and the Agreement, confirming the timely mailing of notices concerning the Settlement required by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, *et seq.*, and identifying Persons who submitted timely and valid requests for exclusion.

9.9 Class Counsel and Defendants' Counsel, as jointly agreed, along with the



Administrator, are authorized, prior to mailing, to complete any omitted information and to make any non-substantive revisions to the Claim Form and Class Notice, as necessary, that do not materially reduce the rights of Class Members in order to fulfill the purposes of the Settlement. The font size, layout, and other presentation elements of the Claim Form and Class Notice may be adjusted to accommodate printing and mailing considerations.

10. **Settlement Administrator.** The Court approves and authorizes Defendants to retain JND Legal Administration as the Administrator to implement the terms of the Agreement, and authorizes and directs the Administrator to (a) mail the Class Notice and Claim Form; (b) establish the interactive voice response toll-free phone line; (c) establish the Settlement website; (d) receive and process Claim Forms; and (e) carry out such other responsibilities as are provided for in the Agreement or as may be agreed to by Class Counsel and Defendants' Counsel. The fees and expenses of the Administrator and all costs of notice and Administration shall be the sole responsibility of Defendants.

11. **Exclusion from the Settlement Class.** Any Person who wishes to be excluded from the Settlement Class must mail to the Administrator, at the address listed in the Class Notice and on the Settlement website, a written request for exclusion pursuant to instructions in the Agreement and postmarked no later than 30 days prior to the Final Approval Hearing (the "Opt-Out Deadline").

11.1 To be valid, the request for exclusion must: (a) identify the case name; (b) identify the name and address of the Class Member; (c) be personally signed by the Class Member requesting exclusion or their Legally Authorized Representative; and (d) state a desire to be excluded from the Settlement Class, such as "I hereby request to be excluded from the proposed Settlement Class in the Belle Meade insurance class action." Except for deceased or incapacitated

Class Members for whom Legally Authorized Representatives may act with written evidence of authority, Class Members must request exclusion individually and not through another acting on their behalf, and mass or class opt outs are prohibited.

11.2 The Administrator shall provide Class Counsel and Defendants' Counsel a list of all timely requests for exclusion not less than ten (10) days before the Final Approval Hearing. All Class Members who do not request exclusion in the manner set forth in the Agreement shall be bound by the Final Judgment and all proceedings, orders, and judgments in the Action, which will have preclusive effect in all pending or future lawsuits or other proceedings.

12. **Objections and Appearances.** Any Class Member who does not submit a valid request for exclusion from the Settlement Class may object to the proposed Settlement by filing with the Court, and mailing to the Administrator, a written objection in accordance with the Agreement, postmarked no less than 30 days before the Final Approval Hearing (“the Objection Deadline”).

12.1 A valid objection must be in writing and contain the following information (a) the case name and number; (b) the name and address of the objecting Class Member and of counsel, if represented; (c) specific reasons for the Class Member's objection; and (d) whether the objecting Class Member intends to appear at the Final Approval Hearing, in person or through counsel.

12.2 An objection must include the following additional information if the objecting Class Member or his/her attorney intends to appear at the Final Approval Hearing: (a) a detailed statement of the specific reasons for each objection; (b) the name and address of any witnesses the objecting Class Member may call at the hearing with a summary of their testimony; and (c) a description of any documents the objecting Class Member may present to the Court at

the hearing.

12.3 Any Class Member who fails to object to the Settlement in the manner described in this Order shall be deemed to have waived any objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

13. **Releases.** If the Settlement is finally approved, all Releasing Persons, including Plaintiff and each Class Member, shall, by operation of the Final Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged Defendants and all other Released Persons from any and all claims, Unknown Claims, actions, causes of action, allegations, suits, debts, sums of money, payments, obligations, reckonings, promises, damages, interest, penalties, attorney's fees and costs, liens, judgments, and demands of any kind whatsoever that each Releasing Person has or may have had prior to the Effective Date and arising from a loss during the Class Periods, whether *ex contractu* or *ex delicto*, debts, liens, contracts, liabilities, agreements, attorneys' fees, costs, penalties, interest, expenses, or losses (including actual, consequential, statutory, extra-contractual and punitive or exemplary damages), and whether arising under or based on contract, extra-contractual or tort theories, at law or in equity, or under federal, state, or local law, statute, ordinance, rule or regulation, whether asserted individually or in a representative capacity, whether past or present, mature or not yet mature, known or unknown, that Plaintiff or any Class Members have or may have had against Defendants or any other Released Persons that relate to, concern, arise from, or pertain in any way to:

13.1.1 Nonmaterial Depreciation, including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, or withholding of Nonmaterial Depreciation, in the adjustment or payment of any Covered Loss;

13.1.2 any and all claims that were or could have been brought pertaining to the calculation, deduction, determination, inclusion, modification, omission, or withholding of Nonmaterial Depreciation in the adjustment or payment of any Covered Loss;

13.1.3 the allegations and claims contained in the complaint and amended complaint in the Action concerning the alleged systematic practice of deducting Nonmaterial Depreciation from payments for a Covered Loss through the use of estimating software; or

13.1.4 any alleged conspiracy in connection with the matters described in subsections 13.1.1 – 13.1.3.

(“Released Claims” and “Releases”).

Provided, however, that Released Claims do not include: (a) any claims that are not a Structural Loss; (b) claims for replacement cost benefits for a Covered Loss that are made after the date of Final Judgment and determined pursuant to the terms and conditions of policies of insurance; (c) claims arising after the Effective Date or outside the Class Periods; (d) claims for valuation or payment of a Covered Loss that are not related to the withholding of Nonmaterial Depreciation from an ACV Payment; (e) Class Members’ rights and obligations under this Agreement; and (f) claims of potential Class Members who timely and properly submit a request for exclusion from the Settlement Class in accordance with this Agreement.

14. **Filings in Advance of Final Approval Hearing.** Not less than seven (7) days prior to the Final Approval Hearing, Class Counsel shall file with the Court a motion seeking the Court’s final approval of the Settlement and entry of Final Judgment in the form and content attached to the Agreement as Exhibit E. Defendants, in their sole discretion, may also file a brief in support of final approval of the Settlement. Class Counsel shall file any motion concerning requests for attorneys’ fees, costs, expenses, and service award at or before the motion seeking final approval of the Settlement and entry of Final Judgment. Finally, at or before the Final Approval Hearing, Class Counsel shall file with the Court proof from the Administrator of the mailing of the Class

Notice, the Claim Form, and the Postcard Notice, and identifying Class Members who have timely excluded themselves from the Class (opted out) or objected to the Settlement.

15. **Preliminary Injunction.** In order to protect the continuing jurisdiction of the Court and to effectuate this Order, the Agreement, and the Settlement, Plaintiff, all Class Members who do not properly and timely exclude themselves from the Settlement Class, and all Releasing Persons are preliminarily enjoined from directly or indirectly: (i) filing, commencing, prosecuting, maintaining, intervening in, or participating in any other action or proceeding before any court or tribunal regarding any Released Claims against any Released Persons; or (ii) organizing any Class Members into a separate class for purposes of pursuing as a purported class action any lawsuit regarding any Released Claims against any Released Persons.

16. **Termination of Settlement.** This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the proposed Settlement is not finally approved by the Court, or Final Judgment is not entered or does not become Final, or the Effective Date does not occur; or (b) the Agreement is terminated pursuant to its terms for any reason. In such event, the proposed Settlement and Agreement shall have no further force or effect, and all proceedings that have occurred with regard to the Agreement and the Proposed Settlement shall be without prejudice to the rights and contentions of the Parties and any Class Members; the preliminary certification of the Settlement Class for settlement purposes shall be automatically vacated; all communications and documents related to the Settlement or administration of the Settlement shall not be admissible or entered into evidence, referenced or cited for any purpose whatsoever and shall not be subject to discovery; this Order and other orders entered by the Court pursuant to the Agreement will be vacated *nunc pro tunc*; the Agreement and

this Order shall not be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification.

17. **Use of Order Following Termination of Settlement.** This Order shall be of no force and effect if the Settlement does not become Final and shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability, or by or against Plaintiff or Class Members that their claims lack merit or that the relief requested in this Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses they may have. Nothing in the foregoing paragraph, however, shall prohibit the offering or receipt of the Agreement into evidence in support of Court approval of same, to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion, or to enforce the Agreement after Court approval.

18. **Stay.** Except as necessary to effectuate the terms of the Settlement, all proceedings in the Action (as defined in the Agreement) as to the claims of Plaintiff against Defendants are stayed, including Defendants' requirement to file an answer or other response to the Amended Complaint.

19. **Necessary Steps.** The Court authorizes and directs the Parties to take all other reasonably necessary and appropriate steps to implement the Settlement as set forth in the Agreement and this Order.

20. **Extensions of Deadlines.** Upon a showing of good cause, the Court may extend any of the deadlines set forth in this Order without further mailed notice to potential Class Members. Any change to the Final Approval Hearing or the Claim Deadline will be posted on the

Settlement website.

So ordered.

ENTER:

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s/J. RONNIE GREER  
UNITED STATES DISTRICT JUDGE