

SUPERIOR COURT FOR THE STATE OF WASHINGTON
PIERCE COUNTY

ARLENE BALL, individually and as the
representative of all persons similarly situated,

Plaintiff,

v.

COMMERCE WEST INSURANCE COMPANY,

Defendant.

No. 19-2-08244-1

STIPULATION OF SETTLEMENT AND SETTLEMENT AGREEMENT

This Stipulation of Settlement and Settlement Agreement (“Agreement” or “Stipulation”) is made by and between plaintiff ARLENE BALL (the “Named Plaintiff”), the Court named class representative, on behalf of herself and all others similarly situated, and defendant, COMMERCE WEST INSURANCE COMPANY, (hereinafter “CWIC” or “Defendant”), by and through their respective counsel, subject to the following terms and conditions.

RECITALS

WHEREAS, on May 29, 2019, the Named Plaintiff filed a Class Action Complaint for Breach of Contract (the "Complaint"), which is now pending in the Pierce County Superior Court (the "Court"), designated as Case No. 19-2-08244-1 (the "Action"); and

WHEREAS, Plaintiff and Settlement Class Members (as hereinafter defined) have each owned a vehicle that was involved in a collision, was insured under automobile insurance policies issued by Defendant, and suffered a covered uninsured or underinsured motorist property damage loss (the "Settlement Class Members' UMPD Claims");

WHEREAS, the Settlement Class Members' UMPD Claims resulted in a covered loss as defined by the Policies to the vehicles involved in those incidents;

WHEREAS, the Action alleges generally, that, in breach of the Policies, Defendant improperly failed to pay the Plaintiff and Settlement Class Members (as hereinafter defined) for diminished value with respect to UMPD Claims; and

WHEREAS, the Plaintiff, through counsel, while believing that the claims asserted in the Action have substantial merit, examined the benefits to be obtained under the terms of the Settlement contemplated by the Stipulation (the "Settlement"), considered the risks and delay associated with the continued prosecution and possible appeal of this Action and the likelihood of success on the merits of the Action, and believe that, in consideration of all the circumstances, the Settlement is fair, reasonable, adequate, and in the best interests of the Plaintiff and Settlement Class Members (as hereinafter defined); and

WHEREAS, Defendant believes it has numerous merits and class defenses, and further maintains that it has consistently acted in accordance with governing laws at all times and denies wrongdoing of any kind whatsoever, and without admitting liability, has nevertheless agreed to enter into this Stipulation to avoid further expense, inconvenience and the distraction of

burdensome and protracted litigation, and to be completely free of any further controversy with respect to the claims which were asserted or could have been asserted in the Action; and

NOW, THEREFORE, IT IS HEREBY AGREED by and between the Parties, through their respective counsel, that the Action be settled and compromised as between the Plaintiff, the Settlement Class Members (as hereinafter defined), and Defendant upon approval of the Court after hearing as provided for in this Stipulation, on the following terms and conditions:

I. DEFINITIONS

In addition to the foregoing, the following terms shall have the meanings set forth below:

1. "Accidents" means the automobile accidents that Class Members were involved in with uninsured, underinsured or hit and run motorists and that gave rise to the diminished value property damage claims that are the subject of this litigation.
2. "Action" means the above-captioned lawsuit, Case No. 19-2-08244-1, venued in the Pierce County Superior Court.
3. "Claim" means a request by Plaintiff or a Settlement Class Member for a benefit under the Settlement.
4. "Claimant[s]" mean those Settlement Class Members who submit a timely and Valid Claim Form.
5. "Claim Form" means that form attached to or accompanying the Individual Notice, pursuant to which Class Members may elect to participate in this Settlement. The Claim Form is attached hereto as Exhibit "A."
6. "Claim Form Submission Date" means a date not later than forty-five (45) days after the Final Settlement Hearing.

7. "Claims Administrator" means the firm approved by the Court to administer all aspects of the Settlement. The Parties agree to jointly recommend to the Court that CPT Group be appointed as the Claims Administrator.

8. "Class Counsel" means the following attorneys who represent the Named Plaintiff and the other Class Members:

Stephen M. Hansen
Law Offices of Stephen M. Hansen, P.S.
1821 Dock Street, Suite 103
Tacoma, WA 98402

Scott P. Nealey
Law Office of Scott P. Nealey
71 Stevenson Street, Suite 400
San Francisco, California 94105

9. "Class Period" means the period from May 29, 2013 to the date of Preliminary Approval of the Settlement reflected in this Stipulation.

10. "Class Representative" means ARLENE BALL, the Named Plaintiff and/or any other person(s) named by the Court as a Class Representative.

11. "UMPD Coverage" means the insurance coverage provided by Defendant to Plaintiff and the Class Members under the Washington automobile insurance policies issued by Defendant to Plaintiff and the Class Members.

12. "Court" means the Superior Court in and for Pierce County, where this Action is pending before the Honorable Shelly K. Spier.

13. "Defendant" means COMMERCE WEST INSURANCE COMPANY, also referred to herein as CWIC.

14. "Deficient Claim Form" means a claim form that is not signed by the Claimant, where the Claimant's name is not legibly printed on the form, or where the questions have not all been answered.

15. The "Effective Date" of this Stipulation, shall be the first date after which all the following events and conditions have been met or occurred:

- (1) All parties have executed this Stipulation;
- (2) The Court has, by entry of the Preliminary Approval Order, preliminarily approved this Stipulation, the Settlement set forth herein and the method for providing notice to the Class; and
- (3) The Court has entered the Final Judgment, finally approving the Settlement, and releasing the Released Persons from the Released Claims and dismissing with prejudice, and without leave to amend, the Action and all claims asserted therein and the Final Approval Order And Judgment is fully enforceable and beyond appeal.

16. "Eligible Class Member" is a Settlement Class Member who has submitted a Valid Claim Form and whose eligibility has not been challenged by the Defendant within ninety (90) days of the Claim Form Submission Date.

17. "Final" means, with respect to the Final Approval Order and Judgment, that the Final Approval Order and Judgment is entered by the Court and the time for appeal from such Final Approval Order and Judgment has lapsed (including, without limitation, any extension of time for the filing of any appeal that may result by operation of law or order of the Court) with no notice of appeal having been filed, or if an appeal is filed, the day that the Final Approval Order and Judgment is affirmed, all appeals are dismissed, and no further appeals to, or discretionary review in, any court remains.

18. "Final Approval Order and Judgment" means the Order to be entered by the Court, substantially in the form attached hereto as Exhibit "B" or such other form as is mutually

agreeable to the Parties, approving this Settlement as fair, adequate, and reasonable and in the best interests of the Settlement Class as a whole in accordance with the applicable Washington State Superior Court Civil Rules and/or other applicable law, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Settlement, with the Court retaining jurisdiction over the Settlement and its administration, as set forth in the Final Approval Order and Judgment.

19. "Final Settlement Hearing" means the hearing at which final approval of the Settlement in this matter is sought.

20. "Individual Notice" means the notice that the Settlement has been preliminarily approved, in substantially the same form and with substantially the same content as Exhibit "C" hereto, to be sent to Class Members by first-class mail.

21. "Legally Authorized Representative" means an administrator/ administratrix or executor/executrix of a deceased Potential Class Member's estate, a guardian, conservator, or next friend of an incapacitated Potential Class Member or any other legally appointed person or entity responsible for handling the business affairs of a Class Member.

22. "Notice" means, collectively, the communications by which Potential Class Members are notified of the existence and terms of the Settlement.

23. "Notice Date" means the date upon which Individual Notice is first mailed to Potential Class Members.

24. "Objection" means a written objection to the Proposed Settlement by those who do not opt out which is received no later than thirty (30) days before the Final Settlement Hearing.

25. "Opt Out" means any Person who sends a written communication requesting exclusion from this Settlement, which communication is received no later than thirty (30) days before the Final Settlement Hearing.

26. "Parties" means, collectively, the Class Representative, on behalf of herself and all others similarly situated, and CWIC.

27. "Person" means any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity.

28. "Preliminary Approval Order" means the Court's preliminary approval of this Settlement in substantially the form attached hereto as Exhibit "D."

29. "Policies" means the automobile insurance policies issued by Defendant which, at the time of the Class Members' UMPD claims, insured their respective vehicles.

30. "Released Claims" means and includes any and all claims for relief or causes of action, Unknown Claims, known claims, rights, demands, actions, suits, debts, liens, contracts, liabilities, agreements, interest, fees, costs, expenses or losses, including but not limited to claims based in contract or tort, common law or equity, and federal, state, or local law, statute, ordinance, or regulation, and any other claims for relief and/or remuneration whatsoever, including, but not limited to, all claims arising out of the Defendant's handling or administering of claims for UMPD Coverage or UIM property damage; claims for bad faith; claims for UMPD Coverage or UIM property damage; claims for diminished value or stigma; breach of any written or oral agreement or insurance contract or any similar act; waiver; estoppel; any tortious injury, including any intentional or negligent acts; agent negligence; failure to procure coverage or misconduct; punitive damages; treble damages; statutory damages; regulatory claims; claims for violation of the Washington Consumer Protection Act or any similar act; claims for violation of

the Washington Insurance Fair Conduct Act or any similar act; misrepresentation; and/or any claim for attorneys' fees and expenses; arising on or before the Effective Date hereof, which the Releasing Parties had, have, may have in the future, or which are or could have been alleged by the Plaintiff in the Action, for herself and on behalf of the Settlement Class, that relate in any way whatsoever to the Action.

31. "Released Persons" means the Defendant and any of its business entities or divisions, heirs, predecessors, successors, assigns, officers, stockholders, insurers, reinsurers, underwriters, directors, agents, employees and/or independent contractors, attorneys-in-fact, and/or any other person or entity who could or might be subject to any liability under or through any of the foregoing.

32. "Releasing Parties" means Plaintiff, the Settlement Class Members, their heirs, predecessors, successors, assigns, family members, personal representatives, attorneys, officers, stockholders, employees, executors, administrators, insurers, reinsurers, underwriters, directors and/or past, present and future parent, subsidiary and affiliated corporations, and any other person or entity who could or might assert any claim under or through any of the foregoing.

33. "Settlement" means the settlement contemplated by the terms, conditions, and provisions set forth in this Stipulation including all exhibits hereto.

34. "Settlement Class" means the Class described as follows:

All insureds of CWIC with Washington policies issued in Washington State, where the insured's vehicle's property damages were covered under their Uninsured/Underinsured Motorist coverages, and

(1) The repair estimates on the vehicle (including any supplements) totaled at least \$1000; and

(2) The vehicle was no more than six years old (model year plus five years) and had less than 90,000 miles on it at the time of the accident; and

(3) The vehicle suffered structural (frame) damage and/or deformed sheet metal and/or required body of paint work.

Excluded from the Class are (a) Claims involving leased vehicles or total losses, (b) employees of the Defendants, (c) the assigned judge, the judge's staff and family, and (d) accidents occurring before May 29, 2013.

35. "Settlement Class List" means the class notice list furnished to Class Counsel by the Defendant after the date of preliminary approval. The Settlement Class List shall be updated as provided in Paragraph 42 (the "Updated Settlement Class List").

36. "Settlement Fund" means the amount of \$362,160.00.

37. "Settlement Class Member" means any Person who is included within the definition of the Settlement Class and that Person's Legally Authorized Representative.

38. "Stipulation" means this Stipulation of Settlement, including all exhibits hereto.

39. "UMPD Coverage" means the insurance coverage provided by Defendant to Settlement Class Members for uninsured and underinsured motorist property damage coverage.

40. "Unknown Claims" means claims arising out of facts found hereafter to be other than or different from the facts now believed to be true, relating to any matter covered by this Stipulation, as to any of the Released Claims.

41. "Updated Settlement Class" shall mean the individuals listed on the "Updated Settlement Class List."

42. "Updated Settlement Class List" means the Settlement Class List updated to include any additional claims through the date of preliminary approval.

43. "Updated Settlement Fund" means the Settlement Fund of \$362,160.00 plus any additional amount determined to be necessary to be added to the Settlement Fund between the time of the initial calculation and date preliminary approval is ordered. This additional amount is

calculated by adding \$800 per claim for any claims on the Updated Settlement Class List beyond the 503 claims identified as of the time of this agreement.

44. "Valid Claim Form" means a timely Claim Form submitted by a Class Member who has not requested exclusion from the Settlement (or submitted on behalf of such Class Member by that Class Member's Legally Authorized Representative), that is filled out on paper, and which can also be obtained via the Settlement website established by the Claims Administrator, that includes the Class Member's printed name and the signature of the Class Member or his or her Legally Authorized Representative, and that affirms under oath, that the answers to each of the following questions pursuant to the instructions on the Claim Form are true and correct, as set forth in Exhibit "A" hereto.

- (1) Before the accident date listed above, had your vehicle been involved in any other accident while you owned the vehicle? (Yes, ___ No, ___ I don't know ___);
- (2) Before you owned the vehicle, had it been involved in any other accident? (Yes, ___ No, ___ I don't know ___);
- (3) At the time of the accident, did you lease your vehicle (as opposed to owning it?) (Yes, ___ No, ___ I don't know ___); and
- (4) Since the accident date listed above, have you filed bankruptcy or been discharged from bankruptcy? (Yes, ___ No, ___ I don't know ___).

II. CLAIMS PROCEDURE AND PAYMENT

45. In order to receive payment under this Settlement, Class Members must submit a Valid Claim Form postmarked by a date no later than forty-five (45) days after the final approval hearing date in the Notice.

46. Deficiency notices will be sent by the Claims Administrator within thirty (30) days after the Claim Form Submission Date to Claimants who have submitted Deficient Claim

Forms. Any Deficient Claim Forms shall be subject to having the deficiencies corrected by Claimants within sixty (60) days of date of the deficiency notice. Upon proper completion and return, such Deficient Claim Forms shall be considered Valid Claim Forms. Forms that are not timely returned, or are returned but still contain deficiencies, will be considered invalid. The Valid Claim Forms will be submitted to the Defendant at the end of the deadline for returning corrected claim forms. If the Valid Claim Forms are not challenged by the Defendant within ninety (90) days of receipt, these Claims become Eligible Class Members and payment will be sent to them by the Defendant within twenty (20) days after the deadlines to challenge such claims have expired but in no event prior to thirty (30) days after the Effective Date.

47. A Claimant who submits a Valid Claim Form where the Claimant answers "yes" to question (1) or (2), will receive one-half of the payment on their claim. A Claimant will also receive one-half payment if Defendant's electronic records show that the vehicle was in a prior accident.

48. A Claimant who submits a Valid Claim Form will not be eligible to receive payment under this Settlement if:

- (a) if the Claimant answers "yes" to question (3);
- (b) if Defendant presents sufficient proof from its files that (i) the vehicle was leased; (ii) the repair estimates on the vehicle did not total at least \$1,000; (iii) the vehicle was a total loss; (iv) the vehicle had more than 90,000 miles on it at the time of the accident; or (v) the claim was limited to (1) glass repair or replacement; (2) tire replacement, (3) sound systems repair or replacement, or (4) any combination of (1), (2) and (3) only.

Defendant shall provide notice to Class Counsel, within ninety (90) days after the close of the Claim Form Submission Date, if it believes that a Claimant who has submitted a Claim Form is ineligible to receive payment or is eligible for reduced payment under this Settlement by

making a challenge to the Claim. Class Counsel and Defendant shall have thirty (30) days from such notice to reach an agreement on the eligibility determination of the Claimant and if no agreement is reached the determination shall be submitted to the Superior Court for resolution, whose decision will be final and non-appealable. Likewise, with respect to Claimants who have submitted a Deficient Claim Form, Defendant shall provide notice to Class Counsel within ninety (90) days of the deadline for returning corrected claim forms if it believes a Claimant is ineligible to receive payment or is eligible for reduced payment under this Settlement by making a challenge to the Claim. Class Counsel and Defendant shall have thirty (30) days from such notice to reach an agreement on the eligibility determination of the Claimant and if no agreement is reached the determination shall be submitted with all other eligibility disputes to the Superior Court for resolution, whose decision will be final and non-appealable. Defendant shall have thirty (30) days from the date a Claimant is determined, as provided in this Paragraph, by the Court or by the Parties to be an Eligible Class Member, to send payment to them, but in no event earlier than thirty (30) days after the Effective Date.

49. Payment to Class Members (“Settlement Payment”) shall be calculated as follows:

(1) Defendant will use the total amount of payments under the UMPD Coverage as shown on the Updated Settlement Class List (excluding payments to Opt Outs), as the "Total Repair Cost Payments." The individual amounts listed as having been paid for each Class Member on that list shall be considered the "Individual Class Member Repair Cost Payment."

(2) Each Eligible Class Member shall receive a Settlement Payment from Defendant to be calculated as follows:

(The amount of the Updated Settlement Fund) - [minus] attorneys' fees and costs awarded to Class Counsel pursuant to Paragraph 61 and Class Representatives service fees pursuant to Paragraph 61)

x (multiplied by)

(Individual Class Member Repair Cost Payment divided by the Total Repair Cost Payments), except in the case of Class Members whose vehicles were in a prior accident, in which case the Settlement Payment will be one-half the product of the above formula.

The Settlement Fund shall be \$362,160.00. If there are more than 503 UMPD claims that satisfy the Class definition as of the date of preliminary approval of the Settlement (the Updated Settlement Class List), the amount of the Settlement Fund shall be increased by \$800 per each additional UMPD claim beyond 503 claims (the "Updated Settlement Fund"), as set forth in Paragraph 43.

(3) Defendant may deduct from the amount derived by the calculation in subsection (2) above (and will receive full credit for) any and all past payments for diminished value to Class Members who have submitted a timely Valid Claim Form.

(4) The Parties expressly acknowledge and understand that the Updated Settlement Class List is controlling.

(5) The amounts paid to each Settlement Class Member who submits a Valid Claim Form shall be Defendant's only payment obligations under this Settlement (with the sole exception of the Class Representative fee described in Paragraph 50), and these claims will be paid as made, with no fund being created.

50. As set forth below, Defendant agrees to pay ARLENE BALL \$7,500.00 for her service as Class Representative within fourteen (14) business days after the Effective Date.

51. The Releasing Parties fully understand and intend, upon advice of counsel, that, pursuant to this Agreement, the payments set forth above (except the service award to the Class Representative as set forth in Paragraph 50 above) shall be the only payment any or all of them will ever receive from the Released Parties relating in any way whatsoever to the Action and the Policies and as to any and all possible claims related to and/or associated with any of the foregoing.

52. If, after all checks have been disbursed to Eligible Class Members, there are checks that have not been cashed within sixty (60) days of the check's date, or are returned as undeliverable, and no deliverable address can be identified through the process set forth in in this

Agreement, the Claims Administrator will stop payment on those uncashed checks, and the payment to the Eligible Class Member shall be deemed as having never been made. (If an Eligible Class Member requests the Claims Administrator to reissue a check within the above 60-day period, the Claims Administrator shall issue a replacement check with a 60-day expiration date. If the replacement check has not been cashed by this expiration date, the Claims Administrator will stop payment on the uncashed check, and the payment to the Eligible Class Member shall be deemed as having never been made.) Uncashed checks will be subject to the applicable escheat laws and will not be considered as residual funds under Washington Civil Rule 23(f) or any other law or otherwise subject to the doctrine of *cy pres* or its equivalent.

III. CLAIMS ADMINISTRATOR.

53. The Parties agree to recommend to the Court CPT Group be appointed as Claims Administrator, which will be designated as the "Claims Administrator." The Claims Administrator shall (i) oversee the provision of Notice to the Class; (ii) oversee identification of addresses for any returned mail, and remaining notice, (iii) process Claim Forms; (iv) contact Settlement Class Members by mail, whose Forms are deficient to obtain a cured form, (v) process any cured Claim Forms, (vi) send those forms to Defendant for challenge or payment (vi) forward inquiries and questions to Stephen Hansen and Scott Nealey; and (vii) provide a certification to the Court regarding the administration and processing of claims and, in the event that the Claims Administrator issues checks, the issuance of the payments to the Claimants as set forth herein,

54. The Claims Administrator shall be paid by CWIC for services rendered pursuant to this Agreement. Such costs include, without limitation, the reasonable costs of notifying the Settlement Class Members; the reasonable costs, after Defendant have cross checked the class

list addresses for current or more up to date addresses in their own databases, of updating the addresses of Settlement Class Members from the National Change of Address Data Base and "True Trace"; preparing the Individual Notice and Claim Forms; mailing of the Individual Notice and Claim Forms; processing the claims; and costs associated with the services of the Claims Administrator to undertake any duties required to assist in the management of this Settlement, including, but not limited to, fees associated with the establishment of an automated toll free telephone number to answer frequently asked questions and the establishment of a website concerning the Settlement and providing for online submission of claim forms.

IV. NOTICE AND ADMINISTRATION OF SETTLEMENT.

55. No later than sixty (60) days after the Preliminary Approval of this Settlement, the Claims Administrator shall have sent a copy of the Individual Notice and a Claim Form (or Claim Forms if a Class Member has multiple claims), pre-printed with the Class Member's name and most recent address as determined below in this Paragraph and Paragraphs 54 and 56, the date of the loss, and the vehicle make, model, and year, by first-class mail, to each Person on the Updated Settlement Class List. Prior to any mailing the Claims Administrator shall update all addresses on the Class List by running the addresses thereon through the National Change of Address Data Base and "True Trace". Defendant and the Claims Administrator shall use their best efforts to complete the mailing of the Individual Notice and Claim Form to each Person on the Updated Settlement Class List, as soon as possible, but no later than sixty (60) days after the Preliminary Approval of the Settlement as provided herein. The Individual Notice will be approved as to form and content by the Court and be in the form attached hereto as Exhibit "C" unless otherwise modified by agreement of the Parties and approved by the Court. The mailing

to the Settlement Class Members that contains the Individual Notice will also include a copy of the Claim Form, attached hereto as Exhibit "A."

56. If any Individual Notice and/or Claim Form mailed to any Person on the Class List in accordance with the procedure set forth above is returned to the Claims Administrator as undeliverable, then the Claims Administrator shall re-send the returned Individual Notice and/or Claim Form to the Class Member by first-class mail to any forwarding address provided by the United States Postal Service. The Claims Administrator will promptly log each Individual Notice and/or Claim Form that is returned as undeliverable and provide copies of the log to Defendant and Class Counsel as requested.

57. A website for the Settlement administration will be established by the Claims Administrator wherein the Individual Notice and Claim Form, Stipulation, approval papers, and any further necessary information, will be made available to the Updated Settlement Class by the Claims Administrator.

58. Neither Defendant, nor Plaintiff, nor any of their counsel, shall be liable for any act, or failure to act, of the Claims Administrator.

V. DECEASED, MINOR AND BANKRUPT CLASS MEMBERS.

59. Where a Class Member is deceased and a payment is due to that Class Member, the Settlement Payment may be made to such Class Member's Legally Authorized Representative if the Legally Authorized Representative is not otherwise able to cash the initial Settlement Payment. Where a Class Member has been declared bankrupt, or is the subject of an open and ongoing bankruptcy proceeding, and a payment is due to the Class Member, upon receipt of proper notification and documentation after the Class Member having checked the Bankruptcy box on the Claim Form, the Settlement Payment will be made to the bankruptcy

trustee, the Class Member or as otherwise directed in accordance with applicable U.S. Bankruptcy Code laws.

VI. COMMUNICATIONS WITH THE CLASS.

60. The Individual Notice shall list Class Counsel's addresses, telephone numbers and e-mail addresses. Other than as provided for in this Stipulation, communications relating to the Action or this Settlement with Persons receiving Individual Notices and Settlement Class Members shall be handled through Class Counsel. Neither Class Counsel, nor anyone acting on behalf of Class Counsel: shall initiate any communications with Settlement Class Members prior to the Claim Form Submission Date except when necessary to answer Settlement Class Member questions; determine bankruptcy status; or assist in completing Deficient Forms. Nothing in this Stipulation shall be construed to prevent Defendant, its employees, agents or representatives from communicating with Settlement Class Members in the normal course of their business operations.

VII. ATTORNEYS' FEES, CLASS REPRESENTATIVE FEES, AND COSTS.

61. Attorneys' fees and costs have not been fully negotiated by Class Counsel and Defendant, and were not negotiated or discussed until all other material terms of the settlement were resolved. Class Counsel will submit their fee and cost request, and any request for fees for the Plaintiff for his service as Class Representative, to the Court, and Defendant agrees not to oppose a fee request that does not exceed a sum equal to Twenty Three and One-Third Percent (23.33%) of the Updated Settlement Fund and a cost request that does not exceed \$5,260.00, as well as a Class Representative fee for Plaintiff ARLENE BALL of \$7,500.00. Any attorneys' fees and costs, and any Class Representative fees, awarded by the Court will be paid to Class Counsel and Plaintiff, respectively, no later than fourteen (14) business days after the Effective

Date. Such payment shall be made by a check or wire issued to Law Offices of Stephen M. Hansen, P.S. Trust Account, unless other delivery instructions are provided to Defendant's counsel in writing by Class Counsel.

62. The amounts set forth in Paragraph 61 shall constitute all the sums the Defendant shall ever pay to Class Counsel as attorneys' fees or expenses. Defendant shall have no responsibility for and shall have no liability whatsoever with respect to the allocation among Class Counsel and/or any other Person who may assert a claim thereto, of any attorneys' fees, costs, or expenses that the Court may award. Class Counsel and/or the Class Representatives agree in all events that they will neither ask for nor receive or accept any more than the maximum amount of fees and/or costs set forth in Paragraph 61 above. Any award by the Court or any appellate court of attorneys' fees and costs, or Class Representative fees, to be paid by Defendant in excess of the maximum award agreed upon herein, shall not be executed upon in any fashion by Class Counsel and/or the Class Representatives.

**VIII. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL
CANCELLATION OR TERMINATION OF STIPULATION.**

63. The Plaintiff, Settlement Class Members, and Defendant consent to the entry of a Final Approval Order and Judgment in the form attached as Exhibit "B."

64. Within twenty (20) business days after notice of the occurrence of any of the following events, the Defendant shall have the right, exercisable at its sole discretion, to terminate this Settlement by delivering written notification of such election to Class Counsel if:

- (1) The Court, or any appellate court(s), rejects, denies approval, disapproves the Settlement or any portion of this Settlement, including, but not limited to, the terms of the Settlement, Class relief, the provisions relating to notice, and the Released Claims;
- (2) The Court, or any appellate court(s), does not enter or completely and unconditionally affirm any portion of the Settlement, Preliminary Approval Order, or Final Approval Order and Judgment; or

(3) Any financial obligation is imposed upon Defendant in addition to and/or greater than those specifically accepted by Defendant in this Settlement.

(4) In the event that 5% or more of Settlement Class Members file valid and timely requests for exclusion.

If Defendant exercises its right of termination pursuant to this Paragraph 64, this Stipulation shall be null and void and of no force and effect.

65. If the proposed Settlement shall fail for any reason other than a breach by one of the Parties:

(1) This Settlement shall have no further force or effect, and all proceedings that have taken place with regard to this Settlement shall be without prejudice to the rights and contentions of the Parties hereto and any of the Settlement Class Members;

(2) This Settlement, all of its provisions and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of any of the Parties, each of whom shall be restored to their respective positions existing immediately before settlement negotiations and the execution of this Settlement;

(3) This Settlement, any provision of this Settlement and the fact of this Settlement having been made, shall not be admissible or entered into evidence for any purpose whatsoever;

(4) Any judgment or order entered after the date of this Settlement will be vacated and will be without any force or effect. The Parties hereto agree that they will promptly file a joint motion with the Court to vacate all orders entered pursuant to the terms of this Settlement; and

(5) The Parties hereby agree that they will not thereafter argue or raise a claim or defense, including, but not limited to, waiver, estoppel and other similar or related

theories, that the Settlement and related pleadings and filings, any provision of this Settlement the fact of this Settlement having been made, and any settlement negotiations preclude Defendant from opposing certification or the claims in the Action or in any other proceeding. The Parties further agree that, to the extent permitted by law, neither this Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected therewith, shall be offered as evidence, received in evidence or used as precedent in any pending or future civil, criminal, or administrative action or proceeding, to establish any liability or admission by Defendant, except in any proceedings brought to enforce the Agreement.

This Section shall survive any termination of this Stipulation and Settlement

66. Upon the preliminary approval of this Settlement by the Court, as evidenced by entry of the Preliminary Approval Order, all proceedings in the Action shall be stayed until further order of the Court, except such proceedings as may be necessary either to implement the Settlement or to comply with or effectuate the terms of this Stipulation.

67. In the event that any of the events or conditions described above are not met or do not occur, this entire Stipulation shall become null and void, except that the Parties shall have the option to agree in writing to waive the event or condition and proceed with this Settlement, in which case the Effective Date shall be deemed to have occurred on the date of said written agreement, or a date otherwise specified in said written agreement.

IX. OBJECTIONS AND REQUESTS FOR EXCLUSION.

68. Settlement Class Members who wish to exclude themselves from the Settlement Class must prepare a written request for exclusion, postmarked no later than thirty (30) days before the Final Settlement Hearing, which shall be sent to the Claims Administrator. Written

requests for exclusion must be signed and include the individual's name, address, and telephone number, and expressly state the desire to be excluded from the Settlement Class. Requests for exclusion must be exercised individually by the Class Member, not as or on behalf of a group, class, or subclass, except that such exclusion requests may be submitted by a Class Member's Legally Authorized Representative.

69. Settlement Class Members who do not request exclusion may object to the Proposed Settlement. Settlement Class Members who choose to object to the Settlement must file written notices of intent to object in accordance with Paragraphs 70 and 71. Any Class Member may appear at the Final Settlement Hearing, in person or by counsel, and be heard to the extent allowed by the Court, applying applicable law, in opposition to the fairness, reasonableness and adequacy of the Settlement, and on the application for an award of attorneys' fees and costs. The right to object to the Settlement must be exercised individually by an individual Class Member, not as a member of a group or subclass and, except in the case of a deceased, minor, or incapacitated Class Member, not by the act of another person acting or purporting to act in a representative capacity.

70. To be effective, a notice of intent to object to the Settlement must:

- (1) Contain a heading that includes the name of the case and case number;
- (2) Provide the name, address, telephone number and signature of the Class Member filing the objection;
- (3) Be filed with the Clerk of the Court not later than thirty (30) days before the Final Settlement Hearing;
- (4) Be served on Class Counsel and counsel for the Defendant by first-class mail, postmarked no later than thirty (30) days prior to the Final Settlement Hearing;

(5) Contain the name, address, bar number and telephone number of the objecting Class Member's counsel, if represented by an attorney. If the Class Member is represented by an attorney, he/she or it must comply with all applicable laws and rules for filing pleadings and documents in this Court; and

(6) State whether the Objector intends to appear at the Final Settlement Hearing, either in person or through counsel.

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

(1) A detailed statement of the specific legal and factual basis for each and every objection; and

(2) A detailed description of any and all evidence the Objector may offer at the Final Settlement Hearing, including photocopies of any and all exhibits which the Objector may introduce at the Final Settlement Hearing.

72. All objectors shall make themselves available to be deposed by any Party in the county of the objector's residence within seven (7) days of service of his, her, or its timely written objection.

73. Any Class Member who does not file a timely notice of intent to object in accordance with this Section shall waive the right to object or to be heard at the Final Settlement Hearing and shall be forever barred from making any objection to the Settlement. Settlement Class Members who object to the Settlement shall remain Settlement Class Members, and have voluntarily waived their right to pursue an independent remedy against Defendant. To the extent any Settlement Class Member(s) objects to the Settlement, and such objection is overruled in whole or in part, such Settlement Class Member(s) will be forever bound by the Judgment of the Court.

X. REPRESENTATION OF OPT OUTS.

74. Class Counsel agree that any representation, encouragement, solicitation or other assistance, including, but not limited to, referral to other counsel, of any Opt Out or any other person seeking to litigate with any of the Released Persons over any of the Released Claims or to represent any form of opt-out class, could place Class Counsel in an untenable conflict of interest with the Class. Accordingly, Class Counsel and their respective firms agree (only to the extent that it is otherwise not violative of any applicable rules governing the practice of law) not to represent, encourage, solicit or otherwise assist, in any way whatsoever (including, but not limited to referrals to other counsel) any Opt Out except that referring such person to the individual Notice or suggesting to any such person the option of obtaining separate counsel, without specifically identifying options for such counsel, shall be permitted under the terms of this provision. Additionally, Class Counsel and their respective firms agree (only to the extent that it is otherwise not violative of any applicable professional rules) not to represent, encourage, solicit or otherwise assist, in any way whatsoever, any Opt Out or any other person who seeks to represent any form of opt-out class, or any other person, in any subsequent litigation that person may enter into with Released Persons regarding the Released Claims or any related claims, except that suggesting to any such person the option of obtaining separate counsel, without specifically identifying options for such counsel, shall be permitted under the terms of this provision.

XI. CONFIDENTIALITY AGREEMENT.

75. The following constitutes highly confidential and proprietary business information of Defendant (the "Confidential Information"): (a) the names, addresses, policy numbers, and other data concerning any insured of Defendant, including but not limited to those

on the Class List; (b) the electronic data processing and other record keeping procedures and materials to be utilized by Defendant in identifying the Settlement Class Members, the Settlement Class List of insureds and in otherwise effectuating Defendant' other obligations under the Settlement; and (c) any documents produced by Defendant to Plaintiff in this Action that have been stamped confidential. The confidentiality of all Confidential Information shall be protected from disclosure by Class Counsel to any persons other than those described below.

76. No person(s) other than Defendant's counsel, Class Counsel, and clerical/administrative personnel employed by Defendant's counsel or Class Counsel, the Claims Administrator and such other persons as the Court may order, after hearing on notice to all counsel of record, shall be allowed access to any Confidential Information.

77. Within thirty (30) days after the Effective Date, Class Counsel shall, upon request, destroy or return to Defendant all Confidential information and copies thereof in their possession, custody, or control and delete any electronic copies of Confidential Information. Within forty-five (45) days after the Effective Date, Class Counsel shall deliver a letter to Defendant confirming their compliance with this Paragraph including a description of steps taken to assure the deleted material cannot be recovered or restored. In the event that any Confidential Information or documents have already been destroyed, Class Counsel will include in that letter the name and address of the person(s) who destroyed the Confidential Information and/or documents.

78. Also in furtherance of this confidentiality provision, Class Counsel and the Class Representatives agree not to make any statements to the media or in any public forum, orally or in writing, about the Action, or this Stipulation, other than statements which are fully consistent with this Stipulation and the Class Notice.

XII. DISMISSAL OF ACTION, RELEASES AND COVENANTS NOT TO SUE.

79. Upon the Court's final approval of this Stipulation and the Settlement set forth herein, the Final Judgment shall be entered providing for the dismissal of the Action, with prejudice and without leave to amend, which includes the release by the Plaintiff, the Releasing Parties and the Settlement Class Members, and including their past, present or future agents, legal representatives, trustees, parents, relatives, estates, heirs, executors and administrators, of all Released Claims against all Released Persons.

80. Upon Final Approval of the Settlement, and as of the Effective Date, by operation of the entry of the Final Judgment, the Releasing Parties and each Settlement Class Member, including Plaintiff, and including their past, present or future agents, legal representatives, trustees, parents, relatives, estates, heirs, executors and administrators, upon final approval of the Settlement, shall be held to have fully released, waived, relinquished and discharged all the Released Persons from all the Released Claims, to the fullest extent possible allowed by law, and shall be enjoined from continuing, instituting or prosecuting any legal proceeding against the Released Persons relating in any way whatsoever to the Released Claims, except that Defendant shall not be released from its obligations to carry out the terms of this Stipulation.

XIII. DENIAL OF LIABILITY / NO PRECEDENTIAL VALUE.

81. Were it not for this Settlement, Defendant would have contested each and every claim in the Action. Defendant maintains that it has consistently acted in accordance with governing laws at all times. Defendant denies all the material allegations set forth in the Action. Defendant has nonetheless concluded that it is in its best interest that the Action be settled on the terms and conditions set forth in this Stipulation. Defendant has reached this conclusion after considering the factual and legal issues in the Action, the substantial benefits of a final resolution

of the Action, the expense that would be necessary to defend the Action through trial and any appeals that might be taken, the benefits of disposing of protracted and complex litigation, and the desire of Defendant to conduct its business unhampered by the distractions of continued litigation.

82. As a result of the foregoing, Defendant enters into this Stipulation without in any way acknowledging any fault, liability, or wrongdoing of any kind. Neither this Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendant of the truth of any of the allegations made in the Action, or of any liability, fault, or wrongdoing of any kind whatsoever on the part of Defendant.

83. To the extent permitted by law, neither this Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding, to establish any liability or admission by Defendant except in any proceedings brought to enforce the Stipulation and except that Released Parties may file this Order in any action that may be brought against them in order 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 issue preclusion or similar defense or counterclaim.

84. Neither this Stipulation, nor any pleading or other paper related in any way to this Stipulation, nor any act or communication in the course of negotiating, implementing or seeking approval of this Stipulation, shall be deemed an admission by Defendant that certification of a class or subclass is appropriate in any other litigation, or otherwise shall preclude Defendant

from opposing or asserting any argument they may have with respect to certification of any class(es) or subclass(es) in any proceeding, or shall be used as precedent in any way as to any subsequent conduct of Defendant except as set forth herein.

XIV. MISCELLANEOUS PROVISIONS.

85. The Parties hereto agree to defend this Stipulation against objections made to final approval of the Settlement or in any appeal of the Final Judgment or collateral attack on the Stipulation or Final Judgment.

86. The undersigned counsel represent that they are fully authorized to execute and enter into the terms and conditions of this Stipulation on behalf of their respective clients.

87. Except as otherwise provided, this Stipulation contains the entire agreement between the Parties hereto, and supersedes any prior agreements or understandings between them. All terms of this Stipulation are contractual and not mere recitals, and shall be construed as if drafted by all Parties hereto. The terms of this Stipulation are and shall be binding upon each of the Parties hereto, their agents, attorneys, employees, successors and assigns, and upon all other Persons claiming any interest in the subject matter hereof through any of the Parties hereto, including any Settlement Class Member.

88. This Stipulation may be amended or modified only by a written instrument signed by counsel for all parties hereto. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

87. This Stipulation shall be subject to, governed by, construed, and enforced pursuant to the laws of the State of Washington.

89. The exhibits to this Stipulation are an integral part of the Settlement and are hereby incorporated into and made a part of this Stipulation.

90. To the extent permitted by law, this Stipulation may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Stipulation.

91. This Stipulation shall be deemed to have been executed upon the last date of execution by all the undersigned counsel.

92. This Stipulation may be executed in counterparts, each of which shall constitute an original.

93. The Parties will request that the Court retain continuing jurisdiction for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Stipulation and the Proposed Settlement embodied herein, and maintain jurisdiction over all Settlement Class Members. Specifically, the Court shall retain jurisdiction for purposes of: (a) implementation, enforcement, and administration of the Settlement, including any releases in connection therewith; (b) resolution of any disputes concerning Settlement Class membership or entitlement to benefits under the terms of the Settlement; (c) enforcing and administering the Settlement and the Action until each and every act agreed to be performed by the Parties has been performed pursuant to this Stipulation; and (d) other matters related to the foregoing.

94. Titles of sections to this Agreement are illustrative only and are neither binding on the Parties nor to be considered any part of the drafting history or other means of interpreting this Stipulation.

95. Paragraphs 1 through 95 are material provisions of the agreement stated herein. In the event that any of those provisions is stricken or modified by the Court, either Party may terminate the Settlement.

IN WITNESS HEREOF, the undersigned, being duly authorized, have caused this Stipulation to be executed on the dates shown below and agree that it shall take effect on the date it is executed by all of the undersigned.

SIGNATURES ON FOLLOWING PAGE]

By: _____
ARLENE BALL

On behalf of:
CWIC Insurance Company

APPROVED AS TO FORM AND SUBSTANCE:

Dated: _____

Stephen M. Hansen
Law Offices of Stephen M. Hansen, P.S.
1821 Dock Street, Suite 103
Tacoma, WA 98402

Dated: _____

Scott P. Nealey
Law Office of Scott P. Nealey
71 Stevenson Street, Suite 400
San Francisco, California 94105

Dated: _____

Gavin W. Skok
Fox Rothschild LLP
1001 4th Ave., Suite 4500
Seattle, WA 98154