

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

DAVID EWIGMAN, on behalf of himself and)
all others similarly situated,)
)
Plaintiff,)
v.) Cause No. 2216-CV03559
)
1ST AUTO & CASUALTY INSURANCE)
COMPANY,)
)
Defendant.)

Settlement Agreement and Release

This Settlement Agreement and Release (“Settlement” or “Agreement”),¹ dated as of the date of last signature for this Agreement, is entered into by Plaintiff David Ewigman, individually and on behalf of the Settlement Class, and Defendant 1st Auto & Casualty Insurance Company (“1st Auto ” or “Defendant”). Plaintiff, together with the Settlement Class, and 1st Auto are each individually a “Party” and are collectively the “Parties.” The Parties hereby agree to the following terms in full settlement of the Action, subject to Final Approval, as defined below.

I. Recitals

1. On February 15, 2022, Plaintiff filed this putative class action alleging that 1st Auto underpaid its insureds on certain auto insurance claims by excluding Sales Tax from the payment it makes when it declares the vehicle a total loss despite the fact the 1st Auto policy arguably contains an explicit promise to pay “applicable” Sales Tax.

2. On June 1, 2022, Defendant filed its Motion to Dismiss and Answer.

¹ All capitalized terms herein have the meanings ascribed to them in Section II or various places defined in the Agreement.

3. On June 20, 2022, Plaintiff filed its Response in Opposition to Defendant's Motion to Dismiss.

4. On July 5, 2022, Defendant filed its Reply in Support of its Motion to Dismiss.

5. On January 31, 2023, the Parties mediated the Action with mediator Benjamin Newman and ultimately agreed to the material terms of a settlement.

6. The Parties and their counsel have investigated the facts and issues raised in the Action, and have sufficient information to evaluate settlement and this Agreement.

7. Defendant denies the validity of any allegations made in the Action or any liability with respect thereto, and specifically denies that any applicable rule, statute, regulation, or law requires any supplemental disclosure or any other settlement consideration, but have agreed to the Settlement set forth herein to avoid delay and the substantial burden, expense, risk, inconvenience, and distraction of litigation, and to fully and finally resolve the Action and any claims that could have been made in the Action.

8. Counsel for Plaintiff and counsel for Defendant have engaged in arm's length negotiations concerning settlement of the Action. After confidential settlement negotiations, including those taking place during a formal mediation proceeding, the Parties have reached an agreement providing for the settlement of the Action on the terms and subject to the conditions set forth below. The Parties did not discuss Attorneys' Fees and Costs or any potential Service Award until they first agreed on the substantive terms of this settlement.

9. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Releasing Parties (definitions below). The Parties intend this Agreement to bind Plaintiff, Defendant, and all Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure, as follows.

II. Definitions

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

1. “Action” means *David Ewigman v. 1st Auto & Casualty Insurance Company*, Case No. 2216-CV03559.

2. “Automobile Insurance Policy” means a Missouri policy of insurance issued by 1st Auto in effect during the Class Period and providing first-party private-passenger automobile physical damage coverage.

3. “Claim Form” means the Court-approved claim form, which may be electronic or physical paper, that a Settlement Class member must complete, sign, and submit to the Settlement Administrator to be considered for payment under the Settlement.

4. “Claim Form Submission Process” means the process by which Settlement Class members will submit Claim Forms either by mail or electronically, which will then be reviewed for timeliness and completeness by the Settlement Administrator.

5. “Claims Deadline” means the date by which Claim Forms must be dispatched for purposes of being considered timely. The Claims Deadline shall be 15 calendar days after the Final Approval Hearing.

6. “Class Counsel” means:

Martin L. Daesch
Jesse B. Rochman
Craig W. Richards
ONDERLAW, LLC

110 E. Lockwood, 2nd Floor
St. Louis, MO 63119

Rachel Dapeer
DAPEER LAW, P.A.
20900 NE 30th Ave, Suite 417
Aventura, Florida 33180

Andrew J. Shamis
SHAMIS & GENTILE, P.A.
14 NE 1st Avenue, Suite 705
Miami, Florida 33132

Scott Edelsberg
Christopher Gold
EDELSBERG LAW, P.A.
20900 NE 30th Ave., Suite 417
Aventura, FL 33180

7. “Class Counsel Fees” shall mean any Court-awarded attorneys’ fees payable by 1st Auto separate and apart from the Settlement Amount payable to the Settlement Class Members.

8. “Class Data” means all relevant information of a Covered Total Loss Claim used to determine the amount to pay each Settlement Class Member.

9. “Class Period” means Covered Total Loss Claims insured by 1st Auto for the period from October 18, 2012 through May 5, 2022.

10. “Class Representative” means David Ewigman.

11. “Confidential Information” means the names, addresses, policy numbers, and all data provided by 1st Auto relating to potential Settlement Class members, and any other proprietary business information of 1st Auto.

12. “Court” means the Circuit Court of Jackson County in the State of Missouri.

13. “Covered Total Loss Claim” means any first-party private passenger auto property damage claim determined to constitute a Total Loss to an insured automobile that (a) occurred within the Class Period, (b) relates to an owned or leased vehicle, (c) was determined by 1st Auto

or by a court or arbitrator of competent jurisdiction to be covered by an Automobile Insurance Policy issued by 1st Auto, and (d) resulted in a Total Loss Claim Payment in the state of Missouri.

14. “Effective Date” means the fifth business day after the Court has entered, without material change, the Final Approval Order and judgment.

15. “Electronic Claim Form” means the Court-approved electronic (not paper) claim form that a Settlement Class Member must submit electronically to be considered for payment under the Final Settlement, which shall be substantially in the form as Exhibit D.

16. “Eligible Settlement Class member” means a Settlement Class member who timely submits a Claim Form in accordance with the Claim Form submission requirements in this Agreement.

17. “Final Approval” means the date that the Court enters the Final Approval Order.

18. “Final Approval Hearing” is the hearing held before the Court wherein the Court will consider granting final approval to the Settlement and further determine the amount of fees awarded to Class Counsel and the amount of any Service Award to the Class Representative.

19. “Final Approval Order” means the final order that the Court enters granting Final Approval to the Settlement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the Motion for Final Approval. Final Approval Order also includes the orders, which may be entered separately, determining the amount of fees awarded to Class Counsel and the amount of any Service Award to the Class Representative.

20. “1st Auto” means 1st Auto & Casualty Insurance Company.

21. “Notice” means each of the notices that the Parties will ask the Court to approve in connection with the Motion for Preliminary Approval of the Settlement.

22. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Short-Form Notice a/k/a Mailed Notice or Email Notice and Long Form Notice, (all defined herein below), which shall be substantially in the forms as Exhibits A-C, respectively,

23. “Objection Deadline” means the period that begins the day after the earliest date on which Notice is first distributed, and that ends no later than 30 days before the Final Approval Hearing. The Objection Deadline shall appear in the Notices.

24. “Opt-Out Deadline” means the last day of period that begins the day after the earliest date on which Notice is first distributed, and that ends no later than 30 days before the Final Approval Hearing. The Opt-Out Deadline will be specified in the Notices.

25. “Plaintiff” means David Ewigman together with the Settlement Class.

26. “Policyholder” means the named insured under a 1st Auto automobile policy.

27. “Preliminary Approval” means the date that the Court enters, without material change, an order preliminarily approving the Settlement, substantially in the form of the exhibit attached to the Motion for Preliminary Approval.

28. “Preliminary Approval Order” means the order granting Preliminary Approval of this Settlement.

29. “Releases” means all the releases contained in Section IX hereof.

30. “Released Claims” means only the claims for Sales Tax that arise out of or relate to Total Loss Claims in the Class Period and as identified in the operative Complaint.

31. “Releasees” or “Released Parties” means Defendant and all members, affiliates, subsidiaries, parents, managers, officers, directors, and shareholders of Defendant.

32. “Releasing Parties” means Plaintiff and all Settlement Class Members, and each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by entireties, agents, attorneys, and all those who claim through them or on their behalf.

33. “Sales Tax,” “State and Local Sales Tax,” or “Tax,” means the sales tax collected or assessed by the State of Missouri and any of its counties, cities, or political subdivisions when a vehicle is leased, purchased, or sold.

34. “Service Award” means any Court-ordered payment to Plaintiff for serving as Class Representative, which is in addition to any payment due Plaintiff as a Settlement Class Member.

35. “Settlement Administrator” means Simpluris. Class Counsel and 1st Auto may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally.

36. “Settlement Administration Costs” means all costs and fees of the Settlement Administrator regarding notice and settlement administration.

37. “Settlement Class” means all insureds, under any Missouri automobile insurance policy issued by 1st Auto and its subsidiaries or related insurance companies with the same operative policy language covering a vehicle with auto physical damage coverage for comprehensive or collision loss where such vehicle was declared a total loss, who made a first-party claim for total loss, and whose claim was adjusted as a total loss, and who was not paid the applicable sales tax, during the class period defined by October 18, 2012 through May 5, 2022, and who are mailed class notices and do not timely opt out from the settlement class.

38. “Settlement Class Member” means any member of the Settlement Class who has not opted-out of the Settlement, has submitted a timely and valid Claim Form, and is entitled to receive a Settlement Class Member Payment.

39. “Settlement Class Member Payment” means the cash distribution that will be made by 1st Auto to each Settlement Class Member who submits a valid and timely claim that is approved by the Settlement Administrator.

40. “Settlement Amount” means the amount in cash that 1st Auto agreed to pay Settlement Class Members who timely submit a claim under the Settlement. Defendant estimates the total exposure under the Settlement Amount will be \$788,220.00.

41. “Settlement Website” means the website that the Settlement Administrator will establish as a means for Settlement Class members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, access to a downloadable printable Claim Form, information on how to submit an electronic Claim Form online, Motion for Preliminary Approval, Preliminary Approval Order, and such other documents as the Parties agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website and the Settlement Website shall remain online for 90 days following the Claims Deadline. The URL of the Settlement Website shall be www.autolosstaxsettlement.com, or such other URL as Class Counsel and 1st Auto agree upon in writing. Ownership of the Settlement Website URL shall be transferred to 1st Auto within 10 days of the date on which operation of the Settlement Website ceases.

42. “Total Loss” means an insured vehicle that sustained damage, was the subject of a covered first-party property damage claim submitted to 1st Auto, and for which 1st Auto issued a Total Loss Claim Payment.

43. “Total Loss Claim Payment” means a first-party property damage claim payment made by 1st Auto under 1st Auto's Automobile Insurance Policy for a vehicle determined to be a total loss.

III. Settlement Consideration

44. Subject to approval by the Court, 1st Auto has agreed to the following Consideration:

a. pay Settlement Class Members who submit a valid claim sales tax at the average rate of 7.76% of the adjusted vehicle value determined at the time of loss explained in detail in Section VIII hereinbelow;

b. pay, separate and apart from the Settlement Amount to Settlement Class Members, all Settlement Administration Costs;

c. pay, separate and apart from the Settlement Amount to Settlement Class Members, the Class Representative any Court-awarded Service Award;

d. pay Class Counsel, separate and apart from the Settlement Amount to Settlement Class Members, any Court-awarded Class Counsel Fees of up to \$177,349.50; and

45. Class Counsel has agreed not to seek reimbursement of its litigation costs and expenses from 1st Auto or the Settlement Class. 1st Auto shall not be responsible for any other payments under this Agreement.

IV. Settlement Approval

46. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for an order granting Preliminary Approval of this Settlement. The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed upon by Class Counsel and 1st Auto. The Motion for Preliminary Approval shall, among other things,

request that the Court: (1) approve the terms of the Settlement as within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class for settlement purposes only; (3) approve the Notice Program and Claim Form procedures set forth herein and approve the form and content of the Notices and Claim Form for the Settlement; (4) approve the procedures set forth herein below for Settlement Class members to exclude themselves from the Settlement Class or to object to the Settlement; (5) stay the Action pending Final Approval of the Settlement; and (6) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, 1st Auto, and counsel for 1st Auto, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's application for Class Counsel Fees and for a Service Award to the Class Representative.

V. Settlement Administrator

47. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph hereafter and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program and distributing the Settlement Class Member Payments as provided herein.

48. The duties of the Settlement Administrator, in addition to other responsibilities that are described in the preceding paragraph and elsewhere in this Agreement, are as follows:

a. Use the name and address information for Settlement Class members provided by 1st Auto in connection with the Notice Program approved by the Court, for the purpose of distributing the Mailed Notice, and to fulfill the requirements associated with Email Notice and Long Form Notice;

b. Process Claim Forms and oversee the Claim Form Submission Process as described more fully hereinbelow;

c. Establish and maintain a post office box for requests for exclusion or objections from the Settlement Class;

d. Establish and maintain the Settlement Website;

e. Respond to any mailed Settlement Class member inquiries;

f. Process all requests for exclusion from the Settlement Class;

g. Provide weekly reports to Class Counsel and 1st Auto that summarize the number of requests for exclusion received that week, the total number of exclusion requests received to date, the number of objections received that week, the total number of objections received to date, and other pertinent information;

h. In advance of the Final Approval Hearing, prepare an affidavit to submit to the Court confirming that the Notice Program was completed, describing how the Notice Program was completed, providing the names of each Settlement Class member who timely and properly requested exclusion from the Settlement Class or served objections, detailing the number of Claim Forms that were timely and validly submitted, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;

i. Distribute Settlement Class Member Payments by check to Settlement Class Members;

j. Provide to 1st Auto a detailed list of Settlement Class Members who submitted timely and valid Claim Forms that are entitled to payment, along with the amount of the Settlement Class Member Payment due each Settlement Class Member and instruct 1st Auto to send the

Settlement Administrator the funds necessary to deliver Settlement Class Member Payments in the form of checks to all Settlement Class Members.

k. Invoice 1st Auto for payment of Settlement Administration Costs, as provided in this Agreement; and

l. Any other settlement-administration-related function at the instruction of Class Counsel and 1st Auto, including, but not limited to, verifying that the Settlement Amounts has been distributed.

VI. Notice to Settlement Class Members

49. As soon as practicable after Preliminary Approval of the Settlement, at the direction of Class Counsel and 1st Auto's Counsel, the Settlement Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class members may exclude themselves from or "opt-out" of the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the means by which Settlement Class members may submit Claim Forms and the date upon which Claim Forms must be submitted; a date by which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class members may access this Agreement, the Electronic Claim Form, and other related documents and information. Class Counsel and 1st Auto shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order.

50. The Notice shall include the opt-out procedures. A Settlement Class member may opt-out of the Settlement Class at any time on or before the Opt-Out Deadline, provided the optout

notice is postmarked no later than the Opt-Out Deadline. Any Settlement Class member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement.

51. The Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for Class Counsel Fees and/or Service Award for the Class Representative. Objections to the Settlement, to the application for fees and/or to the Service Award must be mailed to the Clerk of the Court, Class Counsel, 1st Auto's counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the Opt-Out Deadline, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

52. For an objection to be considered by the Court, the objection must also set forth:

- a. the name of the Action;
- b. the objector's full name, address and telephone number;
- c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- d. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- e. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

f. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;

g. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

h. the objector's signature (an attorney's signature is not sufficient). Class Counsel and/or 1st Auto may conduct limited discovery on any objector consistent with the Missouri Rules of Civil Procedure.

53. Notice shall be provided to Settlement Class members and shall include the following:

a. Long-form Notice, which will be posted on the Settlement Website and emailed to Settlement Class Members who so request;

b. Short-form Notice, which will be sent in two ways (1) via postcard, pre-paid postage, with a detachable claim form that is pre-filled with the claimant's information and served by direct mail to the policy or last known address of the insured, including skip trace mailing for any undelivered mail ("Mailed Notice") and (2) via email, only to any class member email address maintained and included in the Claims Financial System (1st Ottomation) ("Email Notice").

i. Email Notice shall be sent to each Settlement Class Member, whose email address is maintained in 1st Ottomation, on one occasion and shall include a hyperlink to the Claim Form on the Settlement Website. The Claim Form on the website shall be prepopulated;

ii. Mailed Notice shall be sent on one occasion and on dates suggested by the Settlement Administrator; and

- iii. Settlement Class members, for whom the Defendant maintains physical addresses and Email addresses, shall be sent both Mailed Notice and Email Notice.

54. 1st Auto will make available to Class Counsel and the Settlement Administrator the Class Data, which will include the list of Settlement Class members. The Class Data shall be provided to Class Counsel's no later than 14 days of the Preliminary Approval Order. 1st Auto will bear the expense of extracting the Class Data.

55. The Settlement Administrator shall, within 21 days of Preliminary Approval, mail to all such Settlement Class members Mailed Notice.

56. For any postcards returned as undeliverable, the Settlement Administrator shall make a reasonable effort to locate a current mailing address for the Settlement Class Members whose postcards were returned (such as by running addresses of returned checks through the National Change of Address Database) to effectuate delivery of such postcards. For any such recipients for whom updated addresses are found, the Settlement Administrator shall make only one additional attempt to re-mail.

57. The Settlement Website shall be established and live no later than 10 days after Preliminary Approval and shall contain important information and documents, including an online Claim Form and ability to submit the Claim Form via the Settlement Website.

58. The Settlement Administrator shall retain a record of all such Notice procedures and provide periodic updates to the Parties during the Notice Period.

59. The Notice Program shall be completed no later than 60 days before the Final Approval Hearing.

60. All costs related to the Notice Program shall be paid by 1st Auto.

61. Within the provisions set forth in this Section VI, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and 1st Auto.

VII. Final Approval Order and Judgment

62. Plaintiff's Motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiff shall file his Motion for Final Approval of the Settlement, inclusive of Class Counsel's application for attorneys' fees, and for a Service Award for the Class Representative, no later than 15 days before the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument, as needed, on Plaintiff's Motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees, and for the Service Award for the Class Representative. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to Class Counsel's application for attorneys' fees, or the Service Award application, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement.

63. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and final judgment thereon, and whether to approve Class Counsel's request for attorneys' fees and Service Award.

Such proposed Final Approval Order shall, among other things:

- b. Determine that the Settlement is fair, adequate and reasonable;
- c. Finally certify the Settlement Class for settlement purposes only;
- d. Determine that the Notice Program satisfied Due Process requirements;
- e. Bar and enjoin all Releasing Parties from asserting any of the Released Claims; bar and enjoin all Releasing Parties from pursuing any Released Claims against 1st Auto or its

affiliates at any time, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;

f. Release 1st Auto and the Released Parties from the Released Claims; and

g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including 1st Auto, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

VIII. Claim Form Submission, Calculation and Distribution of Settlement Class Member Payments, Non-Monetary Consideration and Residual Funds

64. To receive a Settlement Class Member Payment, Settlement Class members must submit Claim Forms by the Claim Deadline. Each known Settlement Class Member for whom 1st Auto has a mailing address will receive a Claim Form as part of their Mailed Notice. To be eligible for the Settlement Class Member Payment, each Settlement Class member submitting a Claim Form by mail shall be required to sign a paper Claim Form and dispatch it in the mail with a postmark by the Claim Deadline. Thereafter, upon receipt, the Settlement Administrator will evaluate the Claim Form to make sure it was timely received and signed. Settlement Class members may also submit Claim Forms via the Email Notice that will be emailed to them on one occasion. Settlement Class members may alternatively submit Claim Forms online electronically at the Settlement Website, www.autolosstaxsettlement.com, or a mutually agreed upon domain. The Settlement Website will include a button to "Submit a Claim" which will allow Settlement Class members to upload claims forms online. Electronic Claim Forms must be submitted by the Claim Deadline and Settlement Class members will be asked to verify their identity online. Settlement Class members who submit valid and timely Claim Forms shall be entitled to Settlement Class Member Payments in the full amount of the taxes they are owed. There will be no deductions prior to distribution.

65. The calculation of the Settlement Amount contemplated by this section shall be done by Class Counsel and 1st Auto for the purpose of compensating Settlement Class Members. The methodology provided for herein will be applied to the data as consistently, sensibly, and conscientiously as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computations.

66. The Parties have agreed 1st Auto shall pay Settlement Class Members Sales Tax at the average rate of 7.76% of the adjusted vehicle value, which was agreed to at the time of the total loss.

67. Insureds, as used in the Settlement Class definition, will include all insureds with leased or owned vehicles in the Settlement Class.

68. As soon as practicable, but no later than 45 days from the Effective Date, 1st Auto shall send the Settlement Amount to the Settlement Administrator necessary to pay the full amount of the Settlement Class Member Payments.

69. All Settlement Class Members who submit completed Claim Forms by the Claims Deadline will be entitled to a payment and shall automatically receive their payment by check issued by the Settlement Administrator within 45 days following the Claims Deadline.

70. In the event of any complications arising in connection with the issuance or cashing of a check, other than the Settlement Class Member's failure to timely deposit or cash the check, the Settlement Administrator shall provide written notice to Class Counsel and 1st Auto's Counsel. Absent specific instructions from Class Counsel and 1st Auto's Counsel, the Settlement Administrator shall proceed to resolve the dispute using its best practices and procedures to ensure that the funds are fairly and properly distributed to the Settlement Class Member entitled to the Settlement Class Member Payment.

71. For any returned checks, the Settlement Administrator shall make a reasonable effort to locate a current mailing address for the Settlement Class Members whose checks were returned (such as by running addresses of returned checks through the NCOA database) to effectuate delivery of such checks. For any such recipients for whom updated addresses are found, the Settlement Administrator shall make only one additional attempt to re-mail or re-issue a Settlement Class Member Payment to the updated address. Notwithstanding the above, should a Settlement Class Member change his or her address from that provided on the Claim Form from the date they submitted their Claim up until 60 days after the Effective Date and not update his or her address with the Settlement Administrator, such Settlement Class Member may not receive payment.

72. As part of the Settlement, Defendant agrees to pay the average sales tax on total loss vehicles at the time of loss based on the Adjusted Vehicle Value or the vehicle, without requiring the policyholder to provide proof that the policyholder purchased a replacement vehicle and without regard to whether the vehicle is leased or owned. Defendant reserves the right to change their practices in the event of a change in Missouri law, a change in the state of Missouri's fees charged incidental to the transfer of ownership of motor vehicles titled and/or registered in Missouri or appropriate changes in the terms of the applicable insurance policies.

IX. Releases

73. Plaintiff and Settlement Class Members shall provide a release to Defendant and all members, affiliates, managers, officers directors, and shareholders of Defendant (collectively, "Releasees" or "Released Parties"), of claims for any and all costs associated with replacing a total loss vehicle, including but not limited to, sales tax, title transfer fees and registration transfer fees that arise out of or relate to Total Loss Claims in the Class Period, no later than 30 days following

issuance of a final and non-appealable Court order approving the Settlement, thereafter the Court will dismiss the action with prejudice.

74. Each Settlement Class Member is barred and permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Released Claims against 1st Auto in any forum, action, or proceeding of any kind whatsoever.

X. Payment of Attorneys' Fees and Service Award

75. 1st Auto agrees not to oppose Class Counsel's request for attorneys' fees of up to \$177,349.50. The attorneys' fees request, which shall be paid by 1st Auto separately from the Settlement Amount, is equal to 22.5% of the Settlement Amount. Any award of attorneys' fees to Class Counsel shall be payable separate and apart from the Settlement Amount available to Settlement Class Members, thereby ensuring that the Settlement Class Members receive 100% of their claimed losses. The Parties agree that the Court's refusal to approve, in whole or in part, any award for attorneys' fees shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

76. Provided that Plaintiff has provided 1st Auto with payee instructions and a completed IRS Form W-9 at least 7 days before the Effective Date, then within 7 days of the Effective Date, 1st Auto shall pay a designated Class Counsel firm the attorneys' fees awarded by the Court by check sent overnight delivery. Class Counsel shall be solely responsible for distributing each Class Counsel firm's allocated share of such fees to that firm. 1st Auto shall have no responsibility for any allocation, and no liability whatsoever to any person or entity claiming any share of the funds to be distributed for payment of attorneys' fees, costs, or expenses or any other payments not specifically described herein.

77. Class Counsel will ask the Court to approve a Service Award to the Plaintiff in the amount of \$5,000.00. The Service Award is to be paid by the Settlement Administrator to the Class Representative within 14 days of the Effective Date. The Service Award shall be paid to the Class Representative in addition to Class Representative's Settlement Class Member Payment insofar as the Class Representative timely submits a valid Claim Form. 1st Auto agrees not to oppose Class Counsel's request for a Service Award. The Parties agree that the Court's refusal to approve a Service Award, in whole or in part, shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

78. The Parties represent they negotiated and reached agreement regarding attorneys' fees and the Service Award, only after reaching agreement on all other material terms of this Settlement.

XI. No Admission of Liability

79. Defendant denies any fault, violation of any applicable statute, regulation or ordinance, wrongdoing, or liability to Plaintiff or the Settlement Class Members for monetary damages or other relief, but believes that the proposed settlement herein is desirable in order to avoid the further significant burden, expense, risk, and inconvenience of protracted litigation, and the distraction and diversion of its personnel and resources. Neither this Agreement nor the negotiations concerning it or any settlement negotiations may be used, offered, or admitted as evidence of liability or for any purpose or filed with the Court for any reason.

80. Class Counsel believes that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel

fully investigated the facts and law relevant to the merits of the claims, conducted significant informal discovery, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class members.

81. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of doubtful and disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of liability, nor an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

82. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiff or Settlement Class members, or of any wrongdoing or liability of the Defendant; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Defendant, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

83. In addition to any other defenses Class Counsel may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement 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 that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained herein.

XII. Miscellaneous Provisions

84. Effect of Judicial Non-Approval of Settlement: If the Settlement Agreement does not receive final and non-appealable Court approval, Defendant shall not be obligated to make any payments or provide any other monetary or non-monetary relief to Plaintiff or the Settlement Class Members, any attorneys' fees or expenses to Class Counsel, or any Service Award to Plaintiff.

85. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

86. Binding Effect. This Agreement shall be binding upon, and inure to for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

87. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

88. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have met and conferred in good faith to resolve the dispute.

89. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

90. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

91. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Missouri, without regard to the principles thereof regarding choice of law.

92. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

93. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against 1st Auto or its affiliates at any time, including during any appeal from the Final Approval Order and judgment.

94. Notices. All notices to counsel provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

Notices to Plaintiff:

Scott Edelsberg
EDELSBERG LAW, P.A.
20900 NE 30th Ave., Suite 417
Aventura, FL 33180
scott@edelsberglaw.com

Notices to Defendant:

Jacqueline Longfellow
Baker Sterchi Cowden & Rice LLC
1200 Main St. Ste 2200
Kansas City, MO 64105
jlongfellow@bakersterchi.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice program.

95. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and counsel for 1st Auto and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

96. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

97. Authority. Class Counsel (for the Plaintiff and the Settlement Class Members), and counsel for 1st Auto (for 1st Auto), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiff and 1st Auto to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or

she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

98. Agreement Mutually Prepared. Neither 1st Auto nor Plaintiff, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

99. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. 1st Auto has provided and is providing information that Plaintiff reasonably requests to identify Settlement Class members and the alleged damages they incurred. Both Parties recognize and acknowledge that they reviewed and analyzed data for a subset of the time at issue and that they used extrapolation to make certain determinations, arguments, and settlement positions. The Parties agree that this Settlement is reasonable and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

100. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

Dated: _____

David Ewigman
Plaintiff

Dated: _____

Andrew Shamis, Esq.
Shamis & Gentile P.A.
Class Counsel

Dated: _____

1st Auto & Casualty Insurance Company

By: Elina Walsh
ITS Senior Vice President
Defendant

Dated: _____

Jacqueline Longfellow, Esq.
Baker Sterchi Cowden & Rice LLC
Counsel for 1st Auto