

**IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS**

GENTES TRUST #1 and GENTES TRUST #2,)
Individually, and on behalf of all)
others similarly situated,)
)
Plaintiffs,)
)
vs.)
)
FRONTIER-MT CARROLL MUTUAL)
INSURANCE,)
)
Defendant.)

Case No. 2022-LA-000269

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT, CERTIFICATION OF
SETTLEMENT CLASS, AND SCHEDULING A FINAL APPROVAL HEARING**

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I. INTRODUCTION

The Settlement Agreement reached between Plaintiffs Gentes Trust #1 and Gentes Trust #2 (“Plaintiffs”), on behalf of itself and the proposed Settlement Class, and Defendant Frontier-Mt Carroll Mutual Insurance (“Frontier”), is attached as Exhibit 1 (the “Settlement” or “SA”) to the Declaration of Christopher E. Roberts, filed concurrently herewith (“Roberts Decl.”).¹

Plaintiffs respectfully submit this unopposed² motion seeking the Court’s preliminary approval of this Settlement under 735 ILCS 5/2-806 so that notice of the Settlement can be disseminated to the Class and the Final Approval Hearing scheduled. At the Final Approval Hearing, the Court will have before it additional submissions in support of the Settlement, as well as any objections that may be filed, and will be asked to determine whether, in accordance with 735 ILCS 5/2-806, the Settlement “is fair, reasonable, and in the best interest of all who will be affected by it, including absent class members.” *Lee v. Buth-Na-Bodhaige, Inc.*, 2019 IL App (5th) 180033 (2019).³

The proposed Settlement here is made on behalf of a class of Illinois Frontier policyholders. For Class Members who timely submit valid claim forms, and for whom there remains some Labor Depreciation still withheld from an ACV claim payment (Category A claims), their proposed settlement payments will be equal to 112.5% of the Labor Depreciation still withheld from their

¹ All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Settlement, attached as Exhibit 1 (“Ex.”) to the Roberts Declaration, filed with this memorandum.

² As Section 15 of the Settlement makes clear, however, Frontier denies each and every allegation of liability, wrongdoing and damages, and believes they have substantial factual and legal defenses to the claims and class allegations.

³ Unless otherwise noted, all internal citations and footnotes are omitted and all emphasis is added.

respective “actual cash value” (“ACV”) payments (or that would have resulted in an ACV Payment but for the Labor Depreciation withholding to cause the loss to fall below the deductible).

For all Class Members who submit claim forms and for whom all Labor Depreciation that was previously withheld from ACV claim payments but was subsequently repaid in full before this settlement (*i.e.*, through receipt of replacement cost benefits) (Category B claims), they will receive a payment depending on the amount of Labor Depreciation withheld and the length of time the Labor Depreciation was withheld as detailed in this memorandum and the Settlement Agreement.

As discussed below, the proposed Settlement was reached through arm’s-length negotiations and will result in a significant recovery for the Settlement Class. Accordingly, the Settlement warrants the Court’s preliminary approval and Plaintiffs respectfully request that the Court enter the proposed Preliminary Approval Order attached as Exhibit A to the Settlement Agreement.

II. BACKGROUND AND PROCEDURAL HISTORY

A. This Lawsuit And Illinois Law Concerning Labor Depreciation

Plaintiffs allege that Frontier violated Illinois law by breaching the terms of its standard-form property insurance policies with Plaintiffs and other class members by wrongfully depreciating labor costs when adjusting property loss claims.

On July 24, 2020, the Illinois Appellate Court for the Fifth District issued an opinion in *Sproull v. State Farm Fire and Casualty Company*, 2020 IL App (5th) 180577, addressing the propriety of deducting nonmaterial depreciation from ACV payments when adjusting claims for structural losses.

On October 2, 2020, the defendant in *Sproull* filed a Petition for Leave to Appeal with the Illinois Supreme Court, asking the Supreme Court to review the Illinois Appellate Court’s decision in that case. On November 18, 2020, the Illinois Supreme Court accepted the Petition for Leave to Appeal in *Sproull*.

On September 23, 2021, the Illinois Supreme Court issued its ruling in favor of the policyholder-plaintiff, finding that State Farm could not depreciate labor in calculating ACV. *Sproull v. State Farm Fire & Cas. Co.*, 2021 IL 126446, ¶¶ 54-55. The *Sproull* court explained:

[W]e conclude that plaintiff has offered a reasonable interpretation of “actual cash value” and “depreciation.” State Farm has also offered a perfectly reasonable interpretation of the policy. However, because we find that the policy is ambiguous and the insured has offered a reasonable interpretation of it, we are required to construe the policy against the insurer.... The appellate court correctly concluded:

“Where Illinois’s insurance regulations provide that the ‘actual cash value’ of an insured, damaged structure is determined as ‘replacement cost of property at time of loss less depreciation, if any,’ and the policy does not itself define actual cash value, only the property structure and materials are subject to a reasonable deduction for depreciation, and depreciation may not be applied to the intangible labor component.”

Id. at ¶ 54.

Plaintiffs filed the instant suit on February 28, 2022. Plaintiffs alleged Frontier violated its standard-form insurance policies that it issued to Plaintiffs and the putative class members by withholding labor costs as depreciation from policyholders’ ACV payments. On May 6, 2022, Frontier moved to dismiss the case or stay the litigation pending appraisal. The parties fully briefed and argued Frontier’s motion. The Court later denied Frontier’s motion on August 8, 2022.

Plaintiffs’ counsel then worked with Frontier’s counsel to obtain the class data for the class members. Roberts Decl. ¶¶ 18-25. Frontier’s counsel obtained claims data for putative class members and persons who were also not in the putative class during the relevant time period. *Id.* at ¶ 20. This data, included among other items, the amount of labor depreciation withheld (if any)

from each policyholder's claim. Frontier obtained this information from its in-house adjusters and independent adjusters. *Id.* at ¶¶ 21-25. In addition, for policyholders who recouped all Labor Depreciation, the data produced also identified the number of months the Labor Depreciation was withheld from the policyholder's ACV payment. *Id.* at ¶ 25. Moreover, to ensure the accuracy of the data, Frontier has agreed to attested to the accuracy of the data collection process and labor depreciation estimation and will provide an affidavit to this effect.

B. Settlement Negotiations

The parties began settlement negotiations after obtaining the class data. The parties held extensive arm's length negotiations over a period of months. *Id.* at ¶¶ 26-37. After months of settlement negotiations, the parties reached a settlement. *See id.* Moreover, as the service award, fees, and expenses will be *paid separately* by Frontier and will *not* reduce the recovery to the Class or be subsidized by the same, Frontier was incentivized to negotiate and pay for as little fees and litigation expenses as possible. *Id.* at ¶ 27.

The Roberts Declaration, filed concurrently with this Memorandum, confirms the history of settlement negotiations for this lawsuit and the timing and structure of the parties' settlement negotiations. *Id.* at ¶¶ 12-39.

III. SUMMARY OF SETTLEMENT TERMS

A. The Class

The "Settlement Class" is defined as:

All policyholders (or their lawful assignees) under any commercial or property lines property insurance policy issued by Frontier who made: (a) a Structural Loss claim for property located in the State of Illinois during the applicable Class Periods as defined in Section 2.11; and, (b) that resulted in an ACV Payment from which Labor Depreciation was withheld, or that would have resulted in an ACV Payment but for the withholding of Labor Depreciation causing the loss to drop below the applicable deductible.

SA ¶ 2.29.

The Settlement Class excludes: (i) policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting Labor Depreciation within the text of the policy form, endorsement or rider (*i.e.*, by express use of the words “depreciation” and “labor”); (ii) policyholders who received one or more ACV Payments for claims, but not replacement cost value payments, that exhausted the applicable limits of insurance; (iii) policyholders whose claims were denied or abandoned without ACV Payment; (iv) Frontier and its officers and directors; (v) members of the judiciary and their staff to whom this action is assigned and their immediate families; and (vi) Class Counsel and their immediate families (collectively, “Exclusions”). SA ¶¶ 2.30.1-2.31.6.

The “Class Period” includes only policyholders whose loss accrued between February 28, 2020 and September 17, 2021, and who submitted timely notice of their loss. SA ¶ 2.11. The Settlement Class does not include any policyholder that is not eligible for a payment under the Settlement Agreement.

B. Class Members’ Recovery Under The Settlement

The proposed Settlement provides Frontier shall pay the following amounts to two categories of Class Members:

1. Category A: subject to the terms, limits, conditions, coverage limits, and deductibles of policies, Claim Settlement Payments to Settlement Class Members who timely file valid Claim Forms by the Claims Deadline will be equal to 112.5% of the still unrecovered Labor Depreciation that was withheld from their respective ACV Payments (or that would have resulted in an ACV Payment but for the Labor Depreciation withholding to cause the loss to fall below the deductible) for which there remains some amount of outstanding Labor Depreciation on the claim; and
2. Category B: Class Members who had Labor Depreciation initially withheld from their ACV Payments, but who later recovered all outstanding Labor Depreciation through the claim process, will receive an interest payment calculated by multiplying (a) the total Labor Depreciation amount initially withheld by (b) a percentage rate, determined by the number

of months the withheld Labor Depreciation was withheld (as reflected in column “T” of the spreadsheet produced by Frontier on February 24, 2023), according to the following schedule:

<u>Number of Months Labor Depreciation Amounts Initially Withheld</u>	<u>Percentage of Total Labor Depreciation Amounts Initially Withheld</u>
0-4	2.5%
5-9	5%
10+	10%

SA ¶ 4.1.1-4.1.2. Attorneys’ fees, costs and a service award as may be approved by this Court will not reduce any Class Member’s individual payments. SA ¶ 13.2.

Based upon analysis of the electronic claims data produced by Frontier in this case, the average principal withholding for Category A claims is estimated to be greater than \$1,700.00. Roberts Decl. ¶ 33. Of course, this number is derived from the mean withholding, and almost all Category A claims will be higher or lower. *Id.* For Category B claims, this category is for Settlement Class Members who recovered all outstanding Labor Depreciation through the claim process (*i.e.*, “interest only” claimants), the estimated average award under the Settlement for interest only claimants will be approximately \$60.40. *Id.* at ¶ 34 Again, this number is derived from the mean, and almost all Category B claims will be higher or lower, and will depend on the amount of Labor Depreciation withheld and the length of time said Labor Depreciation was withheld. *Id.*

C. The Release Of Claims

In return for these payments, Plaintiffs and the Class Members will provide Frontier a release narrowly tailored to the subject matter of this dispute—*i.e.*, the systemic practice of withholding of Labor Depreciation from ACV payments utilizing claim estimating software. All

other unrelated disputes concerning an individual claim will continue to be handled in the ordinary course. *See* SA ¶ 9.1.

D. Attorneys' Fees, Costs, And A Service Award

Plaintiffs' counsel will seek as attorneys' fees and litigation costs and expenses, and Frontier has agreed to pay if court approved, an amount no greater than \$250,000.00. SA ¶¶ 4.1.3, 13.1. Class Members' recoveries will not be reduced or enhanced by the amounts of attorneys' fees, costs or litigation expenses paid. *See id.* at ¶ 13.2.

Additionally, Plaintiffs will also seek and Frontier has agreed to pay service awards in the amount of \$10,000.00 to the Representative Plaintiffs Gentes Trust #1 and Gentes Trust #2 (\$5,000 for each representative). *See id.* ¶¶ 4.1.4, 13.6.

E. The Class Notice And Claims Administration

Frontier will separately pay for settlement and claims administration. *See* SA ¶ 4.1.5. All Class Members will be given direct-mailed notice of the terms of the proposed Settlement at least seventy-five days prior to the Final Approval Hearing. *See id.* ¶¶ 5.1-5.3.

Prior to mailing of the Class Notice by the Administrator through the United States Postal Service, the Administrator will run all Class Members' names and addresses through a commercial database. *Id.* at ¶ 5.2. Notice will also be published on the internet on a settlement website. *Id.* at ¶ 5.6. A reminder postcard notice will also be issued prior to the expiration of the claims deadline. *Id.* at ¶ 5.5. Claim forms may be mailed or uploaded to the settlement website. *Id.* at ¶¶ 5.6, 6.2.

IV. THE SETTLEMENT CLASS IS CERTIFIABLE UNDER 735 ILCS 5/2-801.

The proposed Settlement comes prior to formal class certification and seeks to certify a class simultaneous with a settlement, commonly referred to as a "settlement class." The Illinois provisions governing class certification, 735 ILCS 5/2-801 *et seq.*, are patterned after Federal

Rules of Civil Procedure 23. *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill.2d 100, 125 (2005); *Lee v. Buth-Na-Bohaige, Inc.*, 2019 IL App (5th) 180033, ¶ 14 n.1. “Given the relationship between these two provisions, federal decisions interpreting Rule 23 are persuasive authority with regard to the question of class certification in Illinois.” *Avery*, 216 Ill.2d at 125.

Under section 2-801, a class may be certified where the proponent establishes the existence of the following four prerequisites: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of fact or law common to the class that predominate over any questions affecting only individual members; (3) adequacy of representation; and (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy. *Id.*; *Lee*, 2019 IL App (5th) 180033, ¶ 53. “Generally, the trial court should err in favor of maintaining class actions.” *Walszak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 673 (2d Dist. 2006); *see also Byer Clinic and Chiropractic, Ltd. v. Kapraun*, 2016 IL App (1st) 143733, ¶ 13 (same).

When analyzing a proposed settlement class under the federal corollary, the Court must first ensure that the proposed class meets the requirements of Fed. R. Civ. P. 23(a) and (b)(3), with the exception that the Court need not consider, in analyzing a proposed settlement class, whether trial would present intractable management problems. *See generally* NEWBERG ON CLASS ACTIONS § 13:12 (5th ed.) (Dec. 2021 Update) (hereafter “NEWBERG”); Wright and Miller, 7B FEDERAL PRACTICE AND PROCEDURE § 1797.2 (3d ed.) (April 2020 Update) (citing *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997)).

While the Supreme Court reiterated that a trial court must conduct a “rigorous analysis” to confirm that the requirements of Rule 23 have been met, *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011), the requisite “rigorous analysis” of the record and consideration of the merits must be focused on and limited to the question whether the class certification requirements

have been established and, here, in the context of a proposed settlement class. *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 851-52 (6th Cir. 2013). Permissible inquiry into the merits of plaintiffs’ claims at the class certification stage is limited, and district courts may not turn the class certification proceedings into a dress rehearsal for the trial on the merits. *Id.* at 851-52. Illinois decisions are in accord as “the circuit court should not turn the approval hearing into a trial on the merits.” *Lee*, 2019 IL App (5th) 180033, ¶ 56.

Here, as demonstrated below, even under a “rigorous analysis,” the requirements for class certification are easily met for the proposed *settlement* class. This is because courts have certified labor depreciation *litigation* classes: “Courts in jurisdictions where labor depreciation has been found to be unlawful have *uniformly found that common issues predominate* in cases challenging insurers’ depreciation of labor costs” and have certified *litigation* classes. *Hicks v. State Farm Fire and Cas. Co.*, 2019 WL 846044 (E.D. Ky. Feb. 21, 2019) (emphasis added), *aff’d* 965 F.3d 452 (6th Cir. July 10, 2020).⁴

Furthermore, numerous courts have recently certified several depreciation *settlement* classes in the process of granting final approval of labor depreciation class settlements. For example, on February 5, 2021, the U.S. District Court for the Middle District of Tennessee granted final class certification of labor depreciation settlement classes involving Tennessee, Mississippi and Ohio policyholders and final approval of settlement in two separate but related cases

⁴ *E.g.*, *Mitchell v. State Farm Fire & Cas. Co.*, 954 F.3d 700 (5th Cir. 2020); *Stuart v. State Farm Fire & Cas. Co.*, 910 F.3d 371 (8th Cir. 2018); *Arnold v. State Farm Fire & Cas. Co.*, No. 17-00148, 2020 WL 6879271 (S.D. Ala. Nov. 23, 2020); *Green v. Am. Modern Home Ins. Co.*, No. 4:14-04074 (W.D. Ark. Aug. 24, 2016); *McCain v. Baldwin Mut. Ins. Co.*, No. 2010-901266 (Montgomery Cty., Ala., Oct. 18, 2016), *rev’d due to inadequacy of representative*, 260 So.3d 801 (Ala. 2018) (hereinafter “*McCain Order*”); *Farmers Union Mut. Ins. Co. v. Robertson*, 370 S.W.3d 179 (Ark. 2010); *McLaughlin v. Fire Ins. Exchange*, No. 1316-CV11140 (Jackson Cty., Mo. July 12, 2017).

captioned, *Holmes v. LM Ins. Corp.*, No. 19-00466 and *Northside Church of Christ v. Ohio Security Ins. Co.*, No. 20-00184 (M.D. Tenn. Feb. 5, 2020) (*Holmes* Dkt. 84; hereinafter “*Holmes Order*”).⁵

A. The Settlement Meets The Requirements Of 735 ILCS 5/2-801.

I. Numerosity

“Section 801(1) requires that the number of plaintiffs be numerous, but also that joinder of plaintiffs in one individual action be impracticable.” *Phillips v. Ford Motor Co.*, No. 99-L-1041, 2003 WL 23353492, at *2 (Ill. Cir. Ct., Ill. Cty. Sept. 15, 2003). “Where there are a number of potential claimants, and the individual amount claimed by each is small, making redress on an individual level difficult, if not impossible, Illinois courts have been particularly receptive to proceeding on a class action basis.” *Id.*

While “there is no magic number that clearly defines numerosity,” *Smith v. Ill. Cent. R.R. Co.*, 363 Ill. App. 3d 944, 954 (5th Dist. 2005), *rev. on other grounds* 223 Ill.2d 441 (2006), where there are likely more than 40 class members, numerosity is presumptively satisfied. NEWBERG §

⁵ See also, e.g., *Schulte v. Liberty Ins. Corp.*, No. 3:19-cv-00026 (S.D. Ohio May 20, 2021); *Arakoni v. Memberselect Ins. Co.*, No. 1:20-cv-000092 (N.D. Ohio March 3, 2021); *Koester v. USAA Gen. Indem. Co.*, No. 19-02283 (W.D. Tenn. Sept. 4, 2020); *Oglesby v. Erie Ins. Co.*, No. 19-02361 (W.D. Tenn. Aug. 4, 2020); *Wade v. Foremost Ins. Co.*, No. 18-02120-JPM (W.D. Tenn. July 6, 2020) (hereinafter “*Wade Order*”); *Halford v. Mid-Century Ins. Co.*, No. 19-01077-JPM (W.D. Tenn. July 6, 2020); *Stuart v. State Farm Fire & Cas. Co.*, No. 4:14-cv-4001 (W.D. Ark. June 2, 2020) (hereinafter “*Stuart Order*”); *Baker v. Farmers Group, Inc.*, et. al, No. CV--17-03901-PHX-JJT, DE 70 (D. Ariz. Sept. 25, 2019); *Braden, et al. v. Foremost Ins. Co. Grand Rapids*, No. 4:15-cv-04114-SOH, DE 119 (W.D. Ark. Oct. 9, 2018); *Larey v. Allstate Prop. & Cas. Ins. Co.*, No. 4:14-cv-04008-SOH, DE 79 (W.D. Ark. Feb. 9, 2018); *Brown v. Homesite Group Inc. d/b/a Homesite Home Ins.*, No. 4:14-cv-04026-SOH, DE 58 (W.D. Ark. April 7, 2017); *Goodner v. Shelter Mut. Ins. Co.*, Case No. 4:14-cv-04013-SOH, DE 73 (W.D. Ark. June 6, 2017); *Green v. Am. Modern Home Ins. Co.*, et. al, Case No. 4:14-cv-04074-SOH, DE 94 (W.D. Ark. June 1, 2017); *Adams v. Cameron Mut. Ins. Co.*, No. 2:12-cv-02173-PKH, DE 52 (W.D. Ark. Aug. 27, 2015); *Hawker v. Pekin Ins. Co.*, No. 21-cv-002169 (Ct. of Common Pleas, Franklin Cty., Ohio Feb. 25, 2022). To Plaintiffs’ counsels’ knowledge, every labor depreciation *settlement* class has been certified.

3:12. Based upon data review and extrapolation, the attorneys estimate that class notice will issue for over 400 claims at issue or potentially at issue. Roberts Decl. ¶ 33-34. Numerosity is easily satisfied. *See, e.g., Cruz v. Unilock Chicago*, 383 Ill. App. 3d 752, 767-68 (2d Dist. 2008) (holding existence of 80 to 90 potential class members “certainly supports a finding of numerosity”); *Smith*, 363 Ill. App. 3d at 955 (finding numerosity satisfied where record showed potential claimant number in the hundreds); *Phillips*, 2013 WL 23353492, at *2 (“The Court finds that there is a large number of plaintiffs, potentially thousands of individuals, that the joinder of such a large number in one action is impractical, and that individualized litigation would be a waste of scarce judicial resources On the other hand, addressing the common issues in one litigation would aid judicial administration.”).

2. Commonality And Predominance

“To satisfy the commonality requirement, it must be shown that ‘successful adjudication of the purported class representatives’ individual claims will establish a right of recovery in other class members.” *Walczak*, 365 Ill. App. 3d at 674. “As long as there are questions of fact or law common to the class and these predominate over questions affecting only individual members of such class, the statutory requisite is met.” *Ramirez v. Midway Moving and Storage, Inc.*, 378 Ill. App. 3d 51, 54 (1st Dist. 2007); *see also, e.g., Lee v. Allstate Life Ins. Co.*, 361 Ill. App. 3d 970, 975-76 (2d Dist. 2005) (holding common questions of law and fact predominated as to plaintiffs’ claim against insurer for breach of contract where members of proposed nationwide class all entered into same type of Allstate insurance contract with the same or similar terms in question and all members became subject to the same alleged misconduct). “A common question may be shown when class members are aggrieved by the same or similar conduct or a pattern of conduct,” as is the case here. *Phillips*, 2013 WL 23353492, at *2. “The fact that the class members’

recoveries may be in varying amounts which must be determined separately does not change the fact that the common questions are predominant.” *Id.*

Here, Plaintiffs contend that the seminal disputed issue is the same one recently addressed by the Illinois Supreme Court—*i.e.*, a property insurer may not withhold a portion of repair labor as depreciation when calculating ACV. *Sproull*, 2021 IL 126446, ¶¶ 54-55. This same issue has repeatedly been identified by federal courts as “a common question well suited to class wide resolution.” *Stuart v. State Farm Fire & Cas. Co.*, 910 F.3d 371, 375 (8th Cir. 2018); *see also Hicks*, 965 F.3d at 459 (“Plaintiffs’ claims share a common legal question central to the validity of each of the putative class member’s claims: whether State Farm breached Plaintiffs’ standard-form contracts by deducting labor depreciation from their ACV payments.”); *Arnold v. State Farm Fire & Cas. Co.*, No. 17-00148, 2020 WL 6879271, at *5 (S.D. Ala. Nov. 23, 2020) (“[C]ommonality is easily satisfied” where “overarching issue ... is whether State Farm breached its agreements with policyholders by improperly withholding labor depreciation All of the policies ... cover property located in Alabama, and thus Alabama law applies uniformly.”); *Mitchell v. State Farm Fire & Cas. Co.*, 327 F.R.D. 552, 561 (N.D. Miss. 2018) (“The proposed class members, all of whom purchased insurance coverage from State Farm, each have a claim concerning the issue of whether State Farm breached its policy by depreciating labor costs in calculating actual cash value payments.... [C]ommonality is met.”), *aff’d by* 954 F.3d 700 (5th Cir. 2020). Indeed, “[t]his common question, posed in the context of [Frontier’s] uniform claim handling practices, ‘will yield a common answer for the entire class that goes to the heart of whether [Defendants] will be found liable under the relevant laws.’” *Hicks*, 2019 WL 846044, at *4, *aff’d by* 965 F.3d at 458-59 (6th Cir. 2020).

Moreover, regardless of whether Frontier concedes that this issue was resolved by the Illinois Supreme Court's decision in *Sproull* as it relates to Frontier's particular policy forms, it is black-letter law that conceded or otherwise resolved legal issues still satisfy the predominance inquiry such that a class action remains an appropriate means of adjudicating the case. *Hicks*, 965 F.3d 458-59 (rejecting insurer's argument that commonality cannot be satisfied where the common liability question concerning labor depreciation was already answered in plaintiffs' favor); *In re Nassau Cnty. Strip Search Cases*, 461 F.3d 219, 228 (2d Cir. 2006) ("Even resolved questions continue to implicate the 'common nucleus of operative facts and issues' with which the predominance inquiry is concerned."); *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 299 (1st Cir. 2000) ("the fact that an issue has been resolved on summary judgment does not remove it from the predominance calculus"); NEWBERG § 4:51 ("the fact that an issue is conceded or otherwise resolved does not mean that it ceases to be an 'issue' for the purposes of predominance analysis"). Simply put, "resolved issues bear on the key question that the analysis seeks to answer: whether the class is a legally coherent unit of representation by which absent class members may fairly be bound." *In re Nassau*, 461 F.3d at 228.

Accordingly, courts repeatedly find that common issues predominate in cases challenging insurers' withholding of labor costs as depreciation under the terms of standard-form insurance policies. *Mitchell*, 954 F.3d at 711-12 (district court did not abuse its discretion in finding predominance where overarching issue was whether insurer breached its contracts by depreciating labor costs); *Stuart*, 910 F.3d at 375-78 ("It was not an abuse of discretion for the district court to conclude that plaintiffs' [labor depreciation] claims share a common, predominating question of law" that is "well suited to classwide resolution"); *Hicks*, 2019 WL 846044, at 5-6 ("Courts in jurisdictions where labor depreciation has been found to be unlawful have uniformly found that

common issues predominate in cases challenging insurers' depreciation of labor costs."); *Arnold*, 2020 WL 6879271, at *8 ("in jurisdictions where labor depreciation is unlawful, as is the case here, courts have uniformly found that common questions predominate in cases challenging insurers' depreciation of labor costs"); *Farmers Union Mut. Ins. Co. v. Robertson*, 370 S.W.3d 187 (Ark. 2010) ("[t]he requirement that the common issue[s] predominate is ... satisfied" because "whether Appellant was able to depreciate labor pursuant to the contractual terms of its policies would be the same and require the same proof").

Finally, in addition to the labor withholdings themselves, class members' entitlement to statutory prejudgment interest also presents a common issue. Commonality is thus easily satisfied.

3. *The Adequacy Of Representation*

"The adequate representation requirement ensures that all class members receive proper, efficient, and appropriate protection of their interests in the prosecution of the claims." *Kapraun*, 2016 IL App (1st) 143733, ¶¶ 9, 12. Adequacy under section 2-801 is satisfied where a proposed class representative: (1) is a member of the class sought to be certified; (2) does not seek relief that is potentially antagonistic to non-represented members of the class; (3) has the desire and ability to prosecute the claim vigorously on behalf of itself and other class members. *Id.* ¶ 9. Additionally, "[t]he attorney for the representative party 'must be qualified, experienced and generally able to conduct the proposed litigation.'" *CE Design Ltd. v. C&T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶ 16.

Here, Plaintiffs are member of the proposed class and their interests are perfectly aligned with the proposed class, as they seek to maximize everyone's recovery of compensatory damages and prejudgment interest resulting from Frontier's allegedly improper withholding of labor costs as depreciation in the calculation of ACV. *See Phillips*, 2003 WL 23353492, at *8 (finding

proposed class representatives adequate where “no conflicting interests exist between Plaintiffs and the Plaintiff Classes as it is clear ... that the representatives herein and Class members share common objectives and legal and factual positions.”). Furthermore, Plaintiffs retained experienced counsel. Plaintiffs’ Counsel are putative or certified class counsel in many labor depreciation class actions, including in *Sproull, supra*, and have decades of experience in insurance, class actions and complex litigation. See *Phillips*, 2003 WL 23353492, at *8 (finding plaintiffs’ counsel adequate where they “regularly engaged in major complex litigation of the size, scope, and complexity similar to this case and have successfully prosecuted many and varied class actions They have the experience and sophistication that the Plaintiffs and Class members lack....”). The adequacy requirement is therefore satisfied.

4. *The Appropriateness Of Remedy*

In deciding whether a class action is the appropriate method for the fair and efficient adjudication of the litigation, the Court “considers whether a class action can best secure economies of time, effort, and expense or accomplish the other ends of equity and justice that class actions seek to obtain. *Ramirez*, 378 Ill. App. 3d at 56. “Where the first three requirements for class action certification have been satisfied,” as is the case here, “the fourth requirement may be considered fulfilled as well.” *Id.*

But even if this were not the case, the appropriateness requirement would still be satisfied as Illinois courts have repeatedly recognized that a class action is a particularly appropriate way of resolving a number of relatively small claims. See *Miner v. Gillette Co.*, 87 Ill.2d 7, 18 (1981) (“the object of the class action procedure is to adjudicate a large number of very small claims in one proceeding”); *Aguilar v. Safeway Ins. Co.*, 221 Ill. App. 3d 1095, 1102 (1st Dist. 1991) (“a class action is an appropriate way of disposing of a number of relatively small claims”).

The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.

Phillips, 2003 WL 23353492, at *9.

The instant case presents classic small, negative value claims, and class members have no interest in individual litigating this issue. As such, “the negative value nature of the claims in this case establishes superiority of the class action.” *Mitchell*, 327 F.R.D. at 564; *see also Arnold*, 2020 WL 6879271, at *10; *Hicks*, 2019 WL 846044, at *6 (finding superiority where spreadsheet data of supplemental labor depreciation payments made by State Farm as part of its Kentucky labor depreciation refund program demonstrated majority of policyholders were paid less than \$1,000, with a significant portion paid less than the filing fee for commencing an action in state court); *accord Phillips*, 2003 WL 23353492, at *9 (holding “that a class action is an appropriate method for the fair and efficient adjudication of this controversy for all parties” because “[i]ndividual lawsuits for small amounts would be too expensive, and absent a class action, individual lawsuits run a substantial likelihood of inconsistent adjudications.”).

Accordingly, all the requirements of 735 ILCS 5/2-801 are satisfied. The next step is for the Court to analyze whether the proposed settlement warrants preliminary approval.

V. THE SETTLEMENT MERITS PRELIMINARY APPROVAL.

A. The Court Should Grant Preliminary Approval Because The Settlement Satisfies The Requirements Of 735 ILCS 5/2-806 And Illinois Supreme Court Precedent.

“There exists a strong public policy in favor of settlement and the avoidance of costly and time-consuming litigation.” *Lebanon Chiropractic Clinic, P.C. v. Liberty Mut. Ins. Co.*, 2016 IL App (5th) 150111-U, ¶ 41. In Illinois, any action brought as a class action must not be settled

except with the approval of the Court and, unless excused for good cause shown, on notice as the Court may direct. 735 ILCS 5/2-806.

Notably, “[t]he standard for class settlement approval is not whether the parties could have done better—the standard is whether the compromise was fair, reasonable, and adequate.” *Lebanon Chiropractic*, 2016 IL App (5th) 150111-U, ¶ 50. In making this determination, the Court evaluates the following factors on a case-by-case basis: (1) the strength of plaintiffs’ case balanced against the money and relief offered in the settlement; (2) the defendant’s ability to pay; (3) the complexity, length, and expense of further litigation; (4) the amount of opposition to the settlement; (5) the class members’ reaction to the settlement; (6) the opinion of competent counsel; and (7) the stage of proceedings and amount of discovery completed. *Lee*, 2019 IL App (5th) 180033, ¶56.

“In considering these factors, the circuit court should not turn the approval hearing into a trial on the merits.” *Id.* at ¶54; *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶45 (“Given that a settlement is a compromise, a trial court is not to judge the legal and factual questions by the criteria employed in a trial on the merits. Rather, the standard used to evaluate the settlement is whether the agreement is fair, reasonable, and adequate.”). To do so would defeat the purpose of the compromise, such as avoiding the determination of hotly contested issues and dispensing with expensive and wasteful litigation. *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). Instead, the Court need only apprise itself of the facts necessary to reach “an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated and ... an educated estimate of the complexity, expense, and likely duration of such litigation” absent the proposed compromise. *Lee*, 2019 IL App (5th) 180033, ¶ 57.

“Where the procedural factors support approval of a class settlement, there is a presumption that the settlement is fair, reasonable, and adequate.” *Lebanon Chiropractic*, 2016 IL App (5th), ¶ 42. As set forth in detail below, consideration of the foregoing factors supports preliminary approval here.

B. The Settlement Achieves An Excellent Result For The Proposed Settlement Class, Particularly Given The Expense, Duration And Uncertainty Of Continued Litigation.

1. Likelihood Of Success On The Merits And The Range Of Possible Recovery

This factor analyzes whether there were risks that the class would not be certified or if certified, potentially decertified. It also analyzes whether the class, if certified, would be able to establish liability or damages, and whether there were risks. The Court then weighs these risks against the amount and form of relief in the settlement. *See City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990).

Before considering the likelihood of establishing class-wide liability or damages, the first consideration is whether this Court would have granted class certification of a litigation class. While numerous labor depreciation litigation classes have been initially certified for contractual claims (as referenced, supra, in Arg. § IV), no labor depreciation class action has ever gone to trial or faced the issue of decertification. Roberts Decl. ¶ 40.

Assuming *arguendo* that class certification could have been obtained and sustained over any appeals or decertification motions, the next hurdle would be to establish class-wide liability and class-wide damages. *Id.* at ¶ 30. Labor depreciation class actions pending throughout the United States have resulted in decidedly mixed results concerning liability, with the majority resulting in no recovery. *Hicks v. State Farm Fire & Cas. Co.*, 751 Fed. Appx. 703, 710 (6th Cir. 2018) (the “substantial weight of authority” is against successfully establishing liability in labor

depreciation class action); *see also GMAC*, 236 Ill. App. 3d at 496 (“GMACM’s position in this lawsuit is not without authority and, thus, the risk does exist that the class will recover nothing if the case proceeds to trial. Again, the terms of the settlement must be measured within this context.”).

Nevertheless, after the Illinois Supreme Court’s unanimous September 23, 2021 decision in *Sproull*, holding that labor costs may not be depreciated in the calculation of ACV pursuant to the replacement cost less depreciation methodology where the policy itself does not define ACV, Plaintiffs’ counsel had a high level of confidence in establishing contractual liability for the claims at issue. *Sproull*, 2021 IL 126446, ¶ 54. Frontier, however, has not conceded this point. Roberts Decl. ¶ 30.

The potential recovery by eligible Class Members of 112.5% of the outstanding Labor Depreciation withheld from their ACV payments reflects the strong value of these claims.⁶ Additionally, the proposed Settlement provides that Class Members who had Labor Depreciation initially withheld from their ACV payments, but who later recovered all outstanding Labor Depreciation through the claim process, are eligible to receive a one-time payment based on the length of time the Labor Depreciation was withheld and the amount of Labor Depreciation withheld.⁷ The release is narrowly tailored to the subject matter of the lawsuit. Finally, Frontier

⁶ Settlements in which class members are entitled to receive 100% or more of their claimed damages are both rare and exceptional. *See, e.g., Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1062 (D. Minn. 2010) (holding settlement in which “Settlement Class Members who file timely and otherwise valid claims will receive 100% of their claimed damages—a *percentage almost unheard of in class-action litigation*” supported class counsel’s fee request).

⁷ “The essence of a settlement is compromise and the court cannot reject a settlement solely because it does not provide a complete victory to plaintiffs.” *Lebanon Chiropractic*, 2016 IL App (5th) 150111-U, ¶ 47; *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 228 (N.D. Ill. 2016) (discussing same principle; approving class settlement that provides less than full recovery by plaintiffs because “[a] \$52.50 recovery in the hand is better than a \$500 or \$1,500 recovery that must be chased through the [] courts”).

has agreed to pay a service award, attorneys' fees, case expenses, settlement administration costs, on top of Class Members' recoveries. These terms are very favorable and support preliminary approval of the Settlement.

2. *Frontier's Ability To Pay*

The negotiated recovery for the proposed Class was *not* reduced based upon Frontier's "ability to pay" because Frontier, by all appearances, is a financially secure entity. Roberts Decl. ¶ 46. Accordingly, this factor supports preliminary approval of the proposed Settlement.

3. *The Complexity, Length And Expense Of Further Litigation*

This factor requires the Court to compare the immediate benefits and risks of the proposed settlement against the mere possibility of future relief given the uncertainties of protracted and expensive litigation. "In this respect, '[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush.'" *Jenkins v. Trustmark Nat. Bank*, 300 F.R.D. 291, 303 (S.D. Miss. 2014). Indeed, "[i]f the Court approves the Agreement, the present lawsuit will come to an end and Class Members will realize [] immediate [] benefits as a result. If the Court denies approval, however, protracted litigation would likely ensue."). *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) (granting final approval of class settlement).

Class actions have a well-deserved reputation for being inherently complex. *See Adams v. Jewel Cos., Inc.*, 63 Ill.2d 336, 347-48 (1976) ("The fact that a class action is complex in nature or the number of claims is substantial may be anticipated in many class actions."). Labor depreciation class actions are particularly complex and slow moving. For example, the labor depreciation lawsuit *Stuart, supra*, Argument Section IV, was filed on January 2, 2014 and remained pending in the Western District of Arkansas for over six years (and after an Eighth Circuit decision). *Stuart*, Case No. 4:14-4001 (W.D. Ark.). Similarly, the *Hicks* litigation, *supra*,

Argument Section IV, was filed on February 28, 2014, and remains pending in the Eastern District of Kentucky, just shy of its eighth-year anniversary. During the summer of 2020, the Sixth Circuit resolved the insurer's *second* interlocutory appeal in *Hicks*. *See generally Hicks*, 965 F.3d 452. The *Sproull* case remains pending after over six years of litigation.

The instant lawsuit thus could have continued for several additional years in trial and appellate courts absent settlement. Experts in the areas of claims handling and data manipulation would have been disclosed as experts. Both sides retained experienced class action attorneys. Given the foregoing, and because the settlement provides significant monetary relief for class members now, as opposed to potential relief in the future, the Court should find that this factor supports preliminary approval of the settlement. *See Schulte*, 805 F. Supp. 2d at 586 (“Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation.”).

4. *The Amount Of Opposition And The Reaction Of Class Members To The Proposed Settlement And The Opinions Of Class Counsel.*

While the amount of opposition and the reaction of class members to the proposed settlement are typically discussed together when evaluating a proposed class settlement,⁸ neither factor can be determined upon preliminary approval (prior to the dissemination of notice). That said, at the preliminary approval stage, all the named parties and their counsel agree that the settlement is fair, adequate, and reasonable. The opinion of competent counsel supports approval of the proposed Settlement. *See Shaun Fauley*, 2016 IL App (2d) 150236, ¶ 22; *see also Korshak*, 206 Ill. App. 3d at 974 (trial court properly “relied upon the opinion of competent trial counsel who approved the agreement”); *In re AT&T Mobility Wireless Data Serv. Sales Litig.*, 789 F. Supp.

⁸ *See GMAC*, 236 Ill. App. 3d at 497; *Korshak*, 206 Ill. App. 3d at 973.

2d 935, 965 (N.D. Ill. 2011) (granting final settlement approval based, in part, on the opinions of “highly competent” counsel); 2 MCLAUGHLIN ON CLASS ACTIONS § 6:16 (18th ed. Oct. 2021 Update) (hereinafter “MCLAUGHLIN”) (“The recommendation of experienced class counsel that a proposed settlement is in the best interest of the class is entitled to great weight.”).

Plaintiffs’ Counsel, who are putative or certified class counsel in labor depreciation class actions and have decades of experience in insurance, class actions and complex litigation, strongly recommend the settlement. *See* Roberts Decl. ¶¶ 4-11, 45-47. As one commentator explains:

What counts in favor of the settlement is that experienced counsel—particularly counsel experienced in class action litigation—have reached it and are proposing it. . . . [T]hat is, if experienced counsel reached this settlement, the court may trust that the terms are reasonable in ways that it might not had the settlement been reached by lawyers with less experience in class action litigation.

NEWBERG § 13:59. Finally, Plaintiffs, knowing that the proposed Settlement will result in a 112.5% recovery of still-withheld Labor Depreciation for eligible Class Members, plus a payment for those Class Members who have already received previously withheld Labor Depreciation, likewise strongly recommends the settlement.

5. *The Lack Of Fraud Or Collusion*

A strong initial presumption of fairness attaches to a proposed settlement when it is shown to be the result of arm’s length negotiations conducted by experienced Plaintiffs’ counsel as is the case here. *See, e.g., Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001) (“a settlement proposal arrived at after arms-length negotiations by fully informed, experienced and competent counsel may be properly presumed to be fair and adequate”); *Hispanics United of DuPage Cty. v. Village of Addison, Ill.*, 988 F. Supp. 1130, 1150 n.6 (N.D. Ill. 1997) (“A strong initial presumption of fairness attaches to the proposed settlement when it is shown to be the result of this type of a negotiating process.”).

The presumption in favor of settlement is warranted here as there is no indicia of fraud or collusion. Settlement negotiations only occurred after the parties engaged in significant informal discovery. The negotiations themselves were conducted at arm's-length over the course of multiple months.⁹ *See* Roberts Decl. ¶¶ 26-30.

6. *The Stage Of Proceedings And The Amount Of Discovery*

The Court's consideration of the stage of proceedings and the nature and extent of discovery in evaluating the fairness of a settlement is focused on whether the parties have obtained sufficient information to evaluate the merits of competing positions. *See Korshak*, 206 Ill. App. 3d at 974 ("The stage of the proceedings at which settlement is reached is important because it indicates the extent to which the trial court and counsel were able to evaluate the merits of the case and assess the reasonableness of the settlement."). While this proposed Settlement comes at a relatively early stage in these proceedings, "[t]hat a case is settled early does *not* establish that the class was ill-represented or that the settlement was the product of collusion." *Schulte*, 805 F. Supp. 2d at 588. As the *Schulte* court recognized:

Early dispute resolution is salutary, and we should not encourage the unnecessary expense, delay, and uncertainty caused by lengthy litigation when the parties are prepared to compromise. Nor should we hold ... that a prompt settlement necessarily suggests a failure to prosecute or defend the action with due diligence and reasonable prudence. To the contrary, an early resolution may demonstrate that the parties and their counsel are well prepared and well aware of the strength and weaknesses of their positions and of the interests to be served by an amicable end to the case.

Id. at 589.

The reasoning in *Schulte* applies with equal force here. First, the stage of these proceedings should not be considered in a vacuum as Plaintiffs' counsel are both well prepared and aware of

⁹ *See* NEWBERG § 13:2 ("Fees should not be negotiated between class counsel and defendant's counsel until after a settlement of the class's claims has been agreed upon.").

the strength and weaknesses of the parties' respective positions, having successfully represented the policyholder before the Illinois Supreme Court in *Sproull, supra*, as well as policyholders in numerous other labor depreciation putative and certified class actions both in Illinois and elsewhere throughout the United States. *See, e.g., Schulte*, 805 F. Supp. 2d at 588 (granting final approval of class action settlement despite early stage of proceedings where class counsel conducted a great deal of independent research to evaluate plaintiffs' claims). Second, the parties engaged in substantial class-wide discovery which included Frontier's production of data regarding all claims during the relevant class period, prior to reaching the proposed Settlement. *See Roberts Decl.* ¶¶ 26-30. Third, and equally important, "the focus of this litigation appears to be more on the legal than factual issues, and there is no indication that formal discovery would have assisted the parties in devising the Proposed Settlement Agreement." *In re AT&T Mobility Wireless Data Serv. Sales Litig.*, 270 F.R.D. 330, 350 (N.D. Ill. 2010) (granting preliminary approval of proposed class action settlement despite lack of formal discovery).

In sum, Plaintiffs' counsel "had all the information necessary to evaluate the merits of the parties' legal positions and the probable course of future litigation" such that they could effectively represent the proposed Class. *Korshak*, 206 Ill. App. 3d at 974; *see also Schulte*, 805 F. Supp. 2d at 588 (granting final approval of class action settlement despite that no formal discovery was conducted where parties conducted months of arm's-length negotiations and class counsel engaged in substantial informal discovery). "This is not the sort of case where the [early stage of the proceedings or] absence of formal discovery suggests collusion or that the class counsel otherwise failed to get the best agreement possible for their class." *Id.* Accordingly, this factor weighs in favor of preliminary approval.

C. Plaintiffs' Forthcoming Motion Requesting Attorneys' Fees, Costs, and A Service Award Falls Within The Range Of Reasonableness Sufficient To Allow Preliminary Approval And Notice To The Class.

The Settlement Agreement provides that Plaintiffs' counsel will seek as attorneys' fees, costs and litigation expenses, and Frontier has agreed to pay if Court approved, an amount no greater than \$250,000. Class Members' recoveries will not be reduced by the amounts of attorneys' fees, costs, or litigation expenses paid. Plaintiffs will also seek total service awards in the amount of \$10,000, which if approved, will not reduce the Class Members' recoveries.

Under the Settlement Agreement, and pursuant to 735 ILCS 2/803 and 2/806, Class Members will receive notice that fees, costs, and litigation expenses will be sought, and will be provided information about how they can object, assuming the Court preliminarily approves the Settlement. Plaintiffs' counsel will then file a motion for fees and expenses pursuant to both the Settlement Agreement and 735 ILCS 2/806. In turn, this Court will then award the attorneys' fees, costs, and service awards, if any, that it determines appropriate assuming the Settlement is finally approved.

Although attorneys' fees and costs are analyzed only at the final approval stage, Plaintiffs' counsel will properly seek fees based upon a percentage of the amounts made available to the class on a claims made basis. At that time, Plaintiffs' counsel will demonstrate that they are seeking a reasonable percentage of the amounts to be made available to the class. *See, e.g., Landmark & Funk, P.C. v. Skinder-Strauss Associates*, 639 Fed. Appx. 880, 884 (3d Cir. 2016) (citing *Boeing v. Van Gemert*, 444 U.S.472, 480-81 (1980)). The percentage methodology is the preferred methodology in federal and state courts for calculating fees. *See Ryan v. City of Chicago*, 274 Ill.App.3d 913, 925 (1st Dist. 1995) ("Percentage analysis approach eliminates the need for

additional major litigation and further taxing of scarce judicial resources which occurred here as a result of plaintiffs' request for attorneys' fees."').¹⁰

Assuming preliminary approval of the settlement is granted, Plaintiffs' counsel will show upon final approval that the attorneys' fees sought here are fully consistent with comparable cases. Specifically, the requested fees are consistent with several final class action approval orders from state and federal courts in similar labor depreciation class action settlements.

Further, Plaintiffs' counsel will also show that the percentage to be sought here is generally below that approved by federal and state courts. In Illinois, such awards commonly fall between a lower end of 20% and an upper end of 50%. *See, e.g., Price v. Philip Morris, Inc.*, No. 00-L-112, 2003 WL 22597608, at *28 (Ill. Cir. Ct., Madison Cty. Mar. 21, 2003) (collecting Illinois state and federal cases approving class counsel fee awards within 20-50% of common fund), *rev. on other grounds by* 219 Ill.2d 182 (2005); *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1252 (N.D. Ill. 1993) (court's independent "research of the case law supports the conclusion that fee awards typically range from 20% to 50% of the fund"). Plaintiffs' counsel will demonstrate when submitting their anticipated motion concerning fees and litigation expenses (assuming preliminary approval) that their request will be closer toward the lower end, rather than the higher end of these benchmarks. *See generally Clark v. Gannett Co., Inc.*, 2018 IL App (1st) 172041 (leaving undisturbed trial court's award of \$5,382,000 to class counsel for attorneys' fees and expenses, representing a fee of 39% of the total settlement); *Ryan*, 274 Ill.3d at 922 (affirming fee award of 33 1/3% of the common fund as a whole).

¹⁰ *See also Brundridge v. Glendale Fed. Bank, F.S.B.*, 168 Ill.2d 235, 243-44 (1995) ("One of the major flaws of the lodestar doctrine is that it creates a disincentive for early settlement of disputes. An attorney who believes that fees will be based on the number of hours devoted to the litigation may be hesitant to settle the matter at an early stage in the proceeding.").

Here, pursuant to the parties' agreement, Frontier has agreed to pay, subject to Court approval, an amount no greater than \$250,000.00 in attorneys' fees and litigation expenses. The parties estimate the aggregate value of the relief made available to the class for payment on a claims made basis is approximately \$715,787.00, plus attorneys' fees and expenses that are paid over and above these amounts of \$250,000.00. Thus, attorneys' fees sought are approximately 25.9% of the aggregate value of the proposed settlement amounts made available to the putative class, without accounting for the representative service awards or the cost of settlement administration (\$250,000/\$965,787).¹¹ See Roberts Decl. ¶¶ 33-34, 39. This is within the range of reasonableness for fee awards in Illinois. *Clark*, 2018 IL App (1st) 172041; *Ryan*, 274 Ill.3d at 922.

Finally, because the attorneys' fees will not reduce any class member's recovery and the attorneys' fees are to be paid "*over and above* the settlement costs and benefits with no reduction of class benefits," agreements between plaintiffs' and defense counsel as to the amount to fees "*are encouraged*, particularly where the attorneys' fees are negotiated separately and only after all the

¹¹ Both the United States Supreme Court and Illinois state courts hold that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980); *Ryan*, 274 Ill.3d at 922 (same); see also MCLAUGHLIN § 6:24 ("Most Circuits to address the question hold that in a common fund case ... attorneys' fees should be calculated as a percentage of the *total funds made available* through counsel's efforts, *whether claimed or not*." (citing cases)). Further, precedent supports applying the selected percentage to the total benefit to the class before separately deducting litigation costs and expenses from the fund. See, e.g., *In re Target Corp. Customer Data Sec. Breach Litig.*, 892 F.3d 968, 976 (8th Cir. 2018) ("the district court acted within its discretion when it included notice and administrative expenses in its calculation of the total benefit to the class"); *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 282-285 (6th Cir. 2016) (holding percentage-of-fund approach properly focuses on the total benefit made available to class; "[w]hen conducting a percentage of the fund analysis, ... [a]ttorney's fees are the numerator and the denominator is the dollar amount of the Total Benefit to the class (which includes the 'benefit to class members,' the attorney's fees and may include costs of administration)"); MCLAUGHLIN § 6:24.

terms have been agreed to between the parties.” *Manners v. Am. Gen. Life Ins. Co.*, No. 3-98-0266, 1999 WL 33581944, *28-30 (M.D. Tenn. Aug. 11, 1999); *Bailey v. AK Steel Corp.*, No. 1:06-468, 2008 WL 553764, at *1 (S.D. Ohio Feb. 28, 2008) (“courts are especially amenable to awarding negotiated attorneys’ fees and expenses in a reasonable amount where that amount is in *addition to and separate from* the defendant’s settlement with the class”). Indeed, courts have held that these “over and above” fee requests are entitled to a “presumption of reasonableness.” *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 322-33 (W.D. Tex. 2007); *see also Cole v. Collier*, No. 14-1698, 2018 WL 2766028, at *13 (S.D. Tex. June 8, 2018) (“When the amount of fees is agreed upon, is separate and apart from the class settlement, and has been negotiated after the other terms have been agreed, the attorneys’ fee is presumed to be reasonable.”)

Finally, the payment of a service award to the representative plaintiffs are “not atypical in class action cases and serve[s] to encourage the filing of class action suits.” *GMAC*, 236 Ill. App. 3d at 497 (favorably citing *Bryan v. Pittsburgh Plate Glass Co.*, 59 F.R.D. 616 (W.D. Pa. 1973) for award of \$17,500 to class representative)). The service award of \$5,000 for each Plaintiff sought here is consistent with those approved in other labor depreciation class actions. *See, e.g.*, Final Order and Judgment at ¶ 40, *Mitchell v. State Farm Fire & Cas. Co.*, No. 17-00170-MPM-RP (N.D. Miss. Feb. 25, 2021) (*Mitchell* Dkt. 249) (awarding \$15,000 service award to class representative in Mississippi labor depreciation class action); *Wade* Order at ¶ 22 (approving \$15,000 service award in labor depreciation class action); *Stuart* Order at 14, ¶ 13 (awarding each class representative in labor depreciation class action a service award of \$9,500).

Further, the proposed representatives, Gentes Trust #1 and Gentes Trust #2 obtained a settlement that provided Class Members over 100% of their Labor Depreciation withheld and interest payments for those Class Members who recouped their Labor Depreciation from Frontier.

Plaintiffs' willingness to serve as class representatives, to stay updated on the case, and to provide necessary information and records, was critical to the litigation. Because this Court will fully analyze the appropriateness and amount of the service award at the final approval hearing, the proposed service award in the Settlement Agreement does not provide grounds for delaying the grant of preliminary approval.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court preliminarily approve the Settlement. In order to comply with the notice requirements, as well as to allow sufficient time after notice for class members to decide whether to opt out of the class or to object to the settlement, Plaintiff further requests that the Court schedule a final fairness hearing no sooner than 105 days from the date of preliminary approval. *See* SA ¶ 3.2.1.

Dated: May 24, 2023

By: /s/ Christopher E. Roberts
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CERTIFICATE OF SERVICE

The undersigned certifies that on the 24th day of May, 2023, he caused a copy of the foregoing to be filed via the Court's electronic filing system, and served upon the following counsel via email:

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/s/ Christopher E. Roberts _____

EXHIBIT 1

**IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS**

GENTES TRUST #1 and GENTES TRUST #2,)
Individually, and on behalf of all)
others similarly situated,)
)
Plaintiff,) Case No. 2022-LA-000269
)
vs.)
)
FRONTIER-MT CARROLL MUTUAL)
INSURANCE,)
)
Defendant.)

**DECLARATION OF CHRISTOPHER E. ROBERTS IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT,
CERTIFICATION OF SETTLEMENT CLASS, AND SCHEDULING A FINAL
APPROVAL HEARING**

I, Christopher E. Roberts, hereby declare as follows, pursuant to Section 1-109 of the Illinois Code of Civil Procedure:

1. This Declaration is submitted in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement, Certification of Settlement Class, and Scheduling a Final Approval Hearing.

2. I am over the age of 18 years, am of sound mind and am otherwise competent to make this declaration. I have personal knowledge of the matters asserted in this Declaration.

3. I represent Plaintiffs Gentes Trust #1 and Gentes Trust #2 in the above-captioned matter. This matter concerns the propriety of Defendant Frontier-Mt. Carroll Mutual Insurance’s (“Frontier”) practice of applying depreciation to labor costs, when calculating a policyholder’s Actual Cash Value (“ACV”) payment(s). I am unaware of any other active litigation against Frontier in Illinois involving the issues presented by this case.

Biographical Information

4. I am a partner with the firm of Butsch Roberts & Associates LLC. I am submitting this declaration in support of Plaintiffs' motion for preliminary approval of settlement in the above-entitled action. I am a member in good standing of the Illinois Bar and I have never been the subject of any disciplinary proceeding. In addition to being admitted to Illinois, I am also licensed to practice in the States of Missouri and Kansas. Furthermore, I am admitted to practice before The United States Court of Appeals for the Eighth Circuit, the United States Court of Appeals for the Ninth Circuit, the United States Court of Appeals for the Tenth Circuit, the United States District Court for the Northern District of Illinois, the United States District Court for the Southern District of Illinois, the United States District Court for the Eastern District of Missouri, the United States District Court for the Western District of Missouri, the United States District Court for the District of Kansas, the United States District Court for the Southern District of Texas, the United States District Court for the Northern District of Texas and the United States District Court for the Eastern District of Michigan.

5. I am a 2009 graduate of the University of Missouri-Kansas City School of Law, where I received my Juris Doctor degree. I was admitted to the Missouri Bar in 2009, the Illinois Bar in 2010 and the Kansas Bar in 2010.

6. I frequently speak to members of the Missouri Bar on class action practice and consumer law-related issues. I spoke most recently in 2022 at the Solo and Small Firm Conference sponsored by The Missouri Bar about class action practice and procedure.

7. In addition, I am a frequent contributor to the American Bar Association on class action-related issues. I am the author of a chapter in the 2018, 2020 and 2021 books published by the American Bar Association about class action law from each Circuit Court of Appeals. The

2022 edition will soon be published. The chapter I authored in each publication focuses on class action jurisprudence in the Eighth Circuit Court of Appeals. I have also written multiple articles on class action-related issues that have been published by the American Bar Association.

8. I have been appointed to serve as class counsel in numerous cases, including, but not limited to: *Staunton Lodge No. 177, A.F. & A.M. v. Pekin Insurance Company*, Case No. 2020-L-001297, Circuit Court of Madison County, Illinois (labor depreciation class action); *Martin v. Wakefield & Associates, Inc.*, Case No. 19SL-AC12801-01, Circuit Court of St. Louis County (FDCPA class action); *Harding and Moore v. Wakefield & Associates, Inc.*, Case No. 18SL-AC26348-01, Circuit Court of St. Louis County (FDCPA class action); *Maierhoffer v. Blitt & Gaines, P.C.*, Case No. 17SL-CC04297, Circuit Court of St. Louis County (FDCPA class action); *Harris v. Wakefield & Associates, Inc.*, Case No. 1722-CC11907, Circuit Court of the City of St. Louis (FDCPA class action); *Moore v. Family Dollar Stores, Inc.*, No. 14-01542-JAR (E.D. Mo. 2016); *Wallach v. Federal Financial Group LLC*, Circuit Court of St. Louis County, No. 15SL-CC01040-01; *Kissel v. Liberty Acquisitions Servicing, LLC*, Case No. 1411-CC00504, Circuit Court of St. Charles County (FDCPA class action); *Lewis v. Spinnaker Resorts, Inc.*, Circuit Court of Christian County, No. 14AF-CC00413-01; *Harbison v. Litow & Pech, P.C.*, Circuit Court of St. Louis County, No. 12SL-CC03776-01 (FDCPA class action); *Lemay v. Rocket Lawyer, Inc.*, Circuit Court of St. Louis County, No. 11SL-CC04557. In addition, I performed substantial work on *In re: Life Time Fitness Telephone Consumer Protection Act (TCPA) Litigation*, No. 14-MD-2564, 2015 WL 77337334 (D. Minn. 2015) affirmed by *In re: Life Time Fitness, Inc., Tel. Consumer Protection Act (TCPA) Litig.*, 847 F.3d 619 (8th Cir. 2017). My law partner, David T. Butsch, was named as the class counsel from our firm in this case.

9. Butsch Roberts & Associates LLC is an AV rated law firm which began operating under my law partner, David T. Butsch, on November 1, 2008. The firm specializes in complex civil litigation, with an emphasis on consumer class litigation. The two members of the firm, David T. Butsch and Christopher E. Roberts, have a combined litigation experience of more than 40 years.

10. Our firm is familiar with the laws and rules applicable to this case. Our firm is prepared to prosecute this case on behalf of the plaintiffs and the putative class and dedicate the resources necessary to do so. Our firm has participated in numerous cases involving the issue of labor depreciation.

11. This Declaration sets forth a brief summary of the background of this lawsuit, particularly the settlement negotiations that ultimately led to the proposed settlement and the basis upon which Plaintiffs' counsel recommend that the Court preliminarily approve the settlement. The following recitation is not all-inclusive but rather, it is intended to illustrate how settlement negotiations were structured, and the analysis that Plaintiffs' counsel incorporated in agreeing to a settlement on behalf of the putative class. I believe that these facts demonstrate that the settlement is fair, reasonable, and adequate, and should be preliminarily approved by the Court.

Brief History of the Litigation

12. Plaintiffs Gentes Trust #1 and Gentes Trust #2 (collectively "Plaintiffs") allege that Defendant Frontier violated Illinois law by breaching the terms of their standard-form commercial property insurance policies with Plaintiffs and other class members by wrongfully depreciating labor costs when adjusting property loss claims.

13. On February 28, 2022, Plaintiffs filed this putative class action alleging that Frontier improperly depreciated the estimated cost of labor necessary to complete repairs to

insured property when it calculated and issued actual cash value (“ACV”) claim payments to them and other class members for structural damage losses suffered under their property insurance policies. Plaintiffs asserted claims on behalf of themselves and a class of Frontier policyholders who received ACV payments from Frontier for loss or damage to a business or other structures located in Illinois where the estimated cost of labor was depreciated.

14. On July 24, 2020, the Illinois Appellate Court for the Fifth District issued an opinion in *Sproull v. State Farm Fire and Casualty Company*, 172 N.E.3d 1186 (Ill. App. Ct. 2020) addressing the propriety of deducting nonmaterial depreciation from ACV payments when adjusting claims for structural losses. The *Sproull* court ruled favorably for the policyholder.

15. On October 2, 2020, the defendant in *Sproull* filed a Petition for Leave to Appeal with the Illinois Supreme Court, asking the Supreme Court to review the Illinois Appellate Court’s decision in that case. On November 18, 2020, the Illinois Supreme Court accepted the Petition for Leave to Appeal in *Sproull*.

16. On September 23, 2021, the Illinois Supreme Court issued its ruling in *Sproull*. The Illinois Supreme Court held:

[W]e conclude that plaintiff has offered a reasonable interpretation of ‘actual cash value’ and ‘depreciation.’ State Farm has also offered a perfectly reasonable interpretation of the policy. However, because we find the policy is ambiguous and the insured has offered a reasonable interpretation of it, we are required to construe the policy against the insurer. . . .

Where Illinois’s insurance regulations provide that the “actual cash value” of an insured, damaged structure is determined as “replacement cost of property at time of loss less depreciation, if any,” and the policy does not itself define actual cash value, only the property structure and materials are subject to a reasonable deduction for depreciation, and depreciation may not be applied to the intangible labor component.

Sproull v. State Farm Fire and Cas. Co., 184 N.E.3d 203, 221 (Ill. 2021).

17. On May 6, 2022, Frontier filed a motion to dismiss the case or to stay the case pending appraisal. The parties fully briefed and argued Frontier's motion. The Court denied Frontier's motion on August 8, 2022.

Discovery

18. Following the denial of Frontier's motion to dismiss, I and Frontier's counsel began working on obtaining class-wide data for claims made during the class period of February 28, 2020 through September 17, 2021.

19. This process took a period of months as I understood Frontier needed to obtain claims data from its own adjusters as well as independent adjusters.

20. Eventually, Frontier produced the claims data available to it for all claims made during the class period. Some of the data included persons who were not class members because, for example, labor costs were not depreciated from their claim.

21. Frontier was able to obtain .esx files for 432 claims. I understand that an .esx file is a file generated from a claims estimating software frequently used by Frontier which is called Xactimate. An .esx file can show the amount of labor depreciation withheld from a particular claim. Of the 432 claims, 49.3% of the total withheld depreciation was attributable to labor costs.

22. For 88 claims Frontier was unable to obtain an .esx file. To determine the amount of labor depreciation for these files, Frontier applied a percentage of 49.3% of the total labor depreciation withheld from the 432 claims with .esx files to the total depreciation applied to these 88 claims.

23. Frontier's data showed that there were 359 claims during the class period in which Labor Depreciation was withheld from an ACV payment and not recovered by the policyholder. I refer to these class members as Category A.

24. Frontier's data also showed that there were 85 claims during the class period in which Labor Depreciation was withheld from an ACV payment that was later fully recovered by the policyholder. I refer to these class members as Category B or interest-only class members.

25. Frontier's data also showed the amounts of Labor Depreciation withheld from each policyholder and, for interest-only class members, the number of months it took for Frontier to pay the withheld Labor Depreciation to the policyholder.

Settlement Negotiations

26. After receiving the class-wide data, the parties began settlement discussions in early January 2023. The parties continued their negotiations through February 2023 and agreed to the basic terms of a settlement. The parties then negotiated the specific terms of the settlement agreement and formally agreed to those terms in April 2023.

27. Because the service award, fees, and expenses will be *paid separately* by Frontier and will *not* reduce the recovery to the Class or be subsidized by the same, Frontier was incentivized to negotiate and pay for as little fees and litigation expenses as possible. There was no collusion and all negotiations were performed via arm's-length negotiations.

28. Because the Court does not approve any attorneys' fees and costs until the final fairness hearing, the foregoing recitation is not intended to set forth a complete justification of any amounts of attorneys' fees and costs. Rather, the foregoing recitation is set forth only to show that the class action settlement negotiations were conducted at arms' length and structured in accordance with the highest ethical standards so as to avoid conflicts of interest between putative class counsel and the putative class members.

29. Since reaching an agreement on all material terms associated with the Settlement, the parties have worked diligently to formally consummate their agreement via a written

Settlement Agreement, which has now been completed and executed, and is submitted as part of Plaintiffs' preliminary approval submission.

30. A true and accurate copy of the executed settlement agreement is attached as **Exhibit A** to this affidavit.

The Settlement Terms

31. The proposed settlement consists of the following class:

All policyholders (or their lawful assignees) under any commercial or property lines property insurance policy issued by Frontier who made: (a) a Structural Loss claim for property located in the State of Illinois during the applicable Class Periods as defined in Section 2.11; and, (b) that resulted in an ACV Payment from which Labor Depreciation was withheld, or that would have resulted in an ACV Payment but for the withholding of Labor Depreciation causing the loss to drop below the applicable deductible.

Settlement Agreement ("SA") ¶ 2.29

32. Each member of the Settlement Class who submits a valid claim will receive significant relief under the terms of the settlement. Each such class member who has not recovered their Labor Depreciation will receive **112.5%** of the Labor Depreciation that was withheld from their respective ACV payments and which remains outstanding. In addition, each interest-only class member will receive a percentage of their Labor Depreciation withheld.

33. Frontier's data showed that the 359 Category A class members had a total principal amount of \$631,691.56 that was unrecovered. After adding the additional 12.5% amount the Category A class members will receive, the total amount is \$710,653.00. This amounts to an average of over \$1,700.00. Of course, as this is an average, almost all Category A claims will be higher or lower than this amount.

34. Frontier's data for the 85 Category B class members also shows that each class member will receive an average of \$60.40. Thus, this totals \$5,134.00. Of course, as this is an average, almost all Category B claims will be higher or lower than this amount.

35. In addition, Frontier has agreed to pay up the cost of class settlement administration costs. SA ¶ 4.1.4. Atticus Administration, LLC ("Atticus") has agreed to serve as the Administrator of this settlement. Atticus has advised me that they estimate the total cost to administer this settlement will be approximately \$14,000.00.

36. Unlike in many settlements, the payment of fees, expenses, and service awards will not reduce the value of the putative class members' recoveries. *See id.* at ¶ 13.2. Thus, these amounts are an additional benefit to the class.

37. Plaintiffs' counsel strongly believe this is an excellent result for the putative class, particularly given the many risk factors discussed below.

Service Award and Class Counsel Fees and Expenses

38. Pursuant to the parties' agreement, Frontier agreed to pay, subject to Court approval, an amount no greater than \$250,000.00 in attorneys' fees and litigation expenses and amounts no greater than \$10,000 collectively to the class representatives Gentes Trust #1 and Gentes Trust #1.

39. I estimate the aggregate value of the relief made available to the class for payment on a claims made basis, without accounting for the costs of settlement administration and the class representative service award, to be approximately \$965,787.00. Thus, attorneys' fees and litigation expenses sought are approximately 25.9% of the aggregate value of the proposed settlement benefits (excluding administration costs and class representative service awards) made available to the putative class (\$250,000/\$965,787).

Factors Supporting Approval of the Settlement

40. The risk at the time of suit and settlement was and remains substantial. *Hicks v. State Farm Fire & Cas. Co.*, 751 Fed. Appx. 703, 710 (6th Cir. 2018) (the “substantial weight of authority” is in favor of insurers in labor depreciation class actions). While labor depreciation litigation classes have been initially certified for contractual claims, no labor depreciation class action has ever gone to trial or faced the issue of decertification. In addition, there has been a recent decision wherein one federal district court denied a motion for class certification of a litigation class in a labor depreciation case despite prior rulings finding labor depreciation impermissible under the applicable policy language. *See, e.g., Cranfield v. State Farm Fire & Cas. Co.*, No. 1:16-CV-1273, 2021 WL 3376283, at *1 (N.D. Ohio Aug. 2, 2021) (denying motion for litigation class certification despite Sixth Circuit decision finding labor depreciation to be impermissible under the applicable policy language). Thus, certification of a litigation class here was not a guarantee.

41. Frontier retained experienced litigators in this matter. Absent settlement, defense counsel would have continued to put forward several grounds for avoiding both liability and class certification.

42. Assuming *arguendo* that class certification could have been obtained and sustained over any appeals or decertification motions, the next hurdle would be to establish class-wide liability and class-wide damages.

43. After the Illinois Supreme Court’s unanimous September 23, 2021 decision holding that labor costs may not be depreciated in the calculation of ACV pursuant to the replacement cost less depreciation methodology where the policy itself does not define ACV, Plaintiffs’ counsel had and continue to have a high level of confidence in establishing contractual liability for the

claims at issue. Frontier, however, has not conceded this point. Frontier still disputed breach and damages prior to settlement, as well as whether a litigation class could be certified.

44. This settlement was not reached until Plaintiffs' counsel had conducted extensive pre- and post-suit analysis and investigation, thoroughly researched the law and facts, and assessed the risks of prevailing at both the trial court and appellate levels. Plaintiffs' counsel have been prosecuting labor depreciation class actions in Illinois since 2016.

45. Plaintiffs' counsels' analysis leads to the conclusion that the proposed settlement is a fair and reasonable result for the putative class. In the end, the risk assessment process conducted by Plaintiffs' counsel resulted in the conclusion that the proposed settlement is the best result for the class. This is true for several reasons, including the risk of losing at the class certification, liability, or damages stages. For example, the Court may not have certified a class, or certified as broad of a class, as sought by Plaintiffs' counsel. Additionally, Plaintiffs' counsel's risk assessment also had to account for considerations associated with increasing common fund attorneys' fees and costs. Even if the class prevailed upon certification as well as the liability and damages stages at one or more trials, Plaintiffs' counsel would likely have to incur substantial non-recoverable costs for, *e.g.*, e-discovery, non- testifying expert witnesses, jury consultant fees, etc. These costs would be set off against any recovery. Moreover, Plaintiffs' counsel's risk assessment had to account for the time value of money, as well as the continued likelihood that as time goes by, more putative class members will be difficult to locate in the claims administration process or pass away.

46. Further, the negotiated recovery for the proposed Class was *not* reduced based upon Frontier's "ability to pay." Plaintiffs' counsel has no information indicating that Frontier was not financially secure.

47. Based upon these and other factors and considerations, Plaintiffs' counsel deem the amount of class recovery under the Settlement to warrant preliminary approval.

48. Attached hereto as **Exhibit B** is a table comprised of recent (June 1, 2017 through January 12, 2023) labor depreciation class action settlements wherein: (1) the courts granted final certification of labor depreciation settlement classes; and (2) the attorneys' fees and costs awards approved for each settlement were based upon a percentage of the value of total benefits made available to the policyholder-classes on a "claims-made" basis. This chart is inclusive of all such state or federal class action settlements involving labor depreciation that have reached final approval of which Class Counsel is aware.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 24, 2023

/s/ Christopher E. Roberts
Christopher E. Roberts
croberts@butschroberts.com

EXHIBIT A

**IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS**

GENTES TRUST #1 and GENTES TRUST #2,)
individually, and on behalf of all)
others similarly situated,)

Plaintiffs,)

Case No. 2022-LA-000269

vs.)

FRONTIER-MT CARROLL MUTUAL)
INSURANCE,)

Defendant.)

**COMBINED STIPULATION AND SETTLEMENT AGREEMENT AMONG
PLAINTIFFS GENTES TRUST #1 AND GENTES TRUST #2 AND THE DEFENDANT,
FRONTIER-MT CARROLL MUTUAL INSURANCE**

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**IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS**

GENTES TRUST #1 and GENTES TRUST #2,)	
Individually, and on behalf of all)	
others similarly situated,)	
)	
Plaintiffs,)	Case No. 2022-LA-000269
)	
vs.)	
)	
FRONTIER-MT CARROLL MUTUAL)	
INSURANCE,)	
)	
Defendant.)	

IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs Gentes Trust #1 and Gentes Trust #2 (the “Representative Plaintiffs” as defined below) and Defendant Frontier-Mt Carroll Mutual Insurance (“Frontier” as defined below), and the Settlement Class as defined herein, in consideration of the promises and covenants set forth in this Stipulation and Settlement Agreement (“Agreement”) and, upon entry by the Court of an order of Final Judgment in the lawsuit captioned *Gentes Trust #1 and Gentes Trust #2 v. Frontier-Mt Carroll Mutual Insurance*, Madison County, Illinois, Case No. 2022-LA-000269 (the “Action”), and the matters raised by Representative Plaintiffs in the Action against Defendant are settled, compromised, and dismissed on the merits and with prejudice on the terms and conditions set forth in this Agreement.

1.0 RECITALS

1.1 On February 28, 2022, the Representative Plaintiffs filed the Action against Frontier, alleging that it improperly deducted labor depreciation from actual cash value payments when adjusting claims for structural losses under Frontier policies. The Representative Plaintiffs alleged claims on behalf of a class of Frontier insureds with

structural loss claims in Illinois for breach of contract, declaratory relief, and for violating Illinois statutes governing fair claims handling practices.

1.2 On May 6, 2022, Frontier filed a Motion to Dismiss or Compel Appraisal and Stay Litigation Pending Appraisal. The Court denied Frontier's motion on July 13, 2022.

1.3 The Parties in the Action then engaged in informal discovery, including Frontier producing claims data for the putative class members.

1.4 After the Parties engaged in informal discovery and had extensive discussions to ensure the class data produced by Frontier was complete, the Parties engaged in extensive arm's-length settlement discussions. The Parties eventually reached the terms of a settlement which are contained in this Agreement.

1.5 Class Counsel have significant experience with labor depreciation claims, having represented insureds in numerous putative class actions. Based on this experience, Class Counsel believe that the Representative Plaintiffs' claims and allegations relating to labor depreciation asserted in the Action have significant merit. Class Counsel recognize and acknowledge, however, that prosecuting such claims through further fact and expert discovery, class certification, dispositive motions, trial, and appeals will involve considerable uncertainty, time, and expense.

1.6 Class Counsel have concluded that it is in the best interests of the Settlement Class that the claims asserted by the Representative Plaintiffs against Frontier in the Action be resolved on the terms and conditions set forth in this Agreement. After extensive consideration and analysis of the factual and legal issues presented in the Action, Class Counsel have reached the conclusion that the substantial benefits that Class Members will receive as a result of this Settlement are a very good result in light of the risks and uncertainties of continued litigation, the time and expense

that would be necessary to prosecute the Action through class certification, trial and any appeals that might be taken, and the likelihood of success at trial.

1.7 Frontier denies, and continue to deny, each and every allegation of liability, wrongdoing, and damages, as they believe they have substantial factual and legal defenses to all claims and class allegations relating to labor depreciation in the Action. Frontier has always maintained, and continue to maintain, that they have acted in accordance with all applicable agreements and governing law. Nonetheless, Frontier has concluded that because the continuation of the claims and allegations in the Action would be protracted and expensive, it is desirable that such claims be fully and finally settled on a class-wide basis (without any admission of fault or liability) in the manner and upon the terms set forth in this Agreement.

1.8 Without admitting any liability or wrongdoing, Frontier agrees to the terms of this Agreement, provided that Final Judgment approving the Settlement is entered and all Released Claims are settled, compromised, and released, in order to resolve all issues relating to Labor Depreciation that were asserted, or that could have been asserted, in the Action.

2.0 DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms shall be defined as follows:

2.1 “Action” means the lawsuit captioned *Gentes Trust #1 and Gentes Trust #2 v. Frontier-Mt Carroll Mutual Insurance*, filed in the Circuit Court of Madison County, Illinois, Case No. 2022-LA-000269.

2.2 “ACV Payment” means an actual cash value payment made on an insurance claim for a Structural Loss, calculated by estimating the replacement cost value of covered damage, and subtracting depreciation, including Labor Depreciation, and any applicable deductible.

2.3 “Administrator” means Atticus Administration LLC, a third-party administrator retained by Defendant to assist in administering and implementing the Settlement.

2.4 “Agreement,” “Proposed Settlement” and “Settlement” means this Stipulation and Settlement Agreement, including all corresponding exhibits.

2.5 “Claim Form” means the Court-approved claim form, without material change from Exhibit C, that a Class Member must submit to be considered eligible for a Claim Settlement Payment under the Settlement as provided in Sections 6 and 7.

2.6 “Claim Settlement Payment” means the sole payment to which a Class Member filing a valid and timely Claim Form may be entitled, as described in Section 6.

2.7 “Claim Deadline” means the date by which the Claim Forms must be postmarked in order to be considered timely, as further provided in Section 6.

2.8 “Class Counsel” means individually and collectively, the attorneys and law firms approved and appointed by the Court to represent the Settlement Class, including:

David T. Butsch
Christopher E. Roberts
Butsch Roberts & Associates LLC
231 S. Bemiston Ave., Suite 260
Clayton, MO 63105
Tel: (314) 863-5700
Fax: (314) 863-5711
butsch@butschroberts.com
roberts@butschroberts.com

Christopher W. Byron
Christopher J. Petri
Byron Carlson Petri & Kalb, LLC
411 St. Louis Street
Edwardsville, IL 62025
Tel: (618) 655-0600
Fax: (618) 655-4004
cwb@bcpldaw.com
cjp@bcpldaw.com

2.9 “Class Member” means any Person who (a) is included within the definition of the Settlement Class and (b) does not timely and properly request exclusion from the Settlement Class, as provided in Section 10.

2.10 “Class Notice” means the notice mailed to potential Class Members of the preliminary approval of this Agreement and of the proposed Settlement, as provided in Section 5, in substantially the same form as Exhibit B.

2.11 “Class Period” includes only policyholders whose loss accrued between February 28, 2020 and September 17, 2021, and who submitted timely notice of their loss.

2.12 “Court” means the Circuit Court of Madison County, Illinois.

2.13 “Covered Loss” means a first party insurance claim for Structural Loss, as defined below, that (a) occurred during the Class Period, and (b) resulted in an ACV Payment by Frontier, or would have resulted in an ACV Payment but for the deduction of Labor Depreciation.

2.14 “Defendant’s Counsel” means:

Thomas A. Gamache
Leahy, Eisenberg & Fraenkel, Ltd.
33 West Monroe Street, Suite 1100
Chicago, Illinois 60603
Tel: 312-368-4554
tag@lefltd.com

2.15 “Effective Date” shall be the first date on which all of the following conditions have occurred:

- (a) all Parties have executed this Agreement;
- (b) no party has terminated the Agreement;
- (c) the Court has entered the Preliminary Approval Order substantially the same as the attached Exhibit A;
- (d) the Court has entered a Final Judgment substantially the same as the attached Exhibit E, approving this Agreement and the Proposed Settlement, releasing all of the Released Persons from all of the Released Claims, and dismissing the Action with prejudice and without leave to amend; and,
- (e) the Final Judgment has become Final.

2.16 “Frontier” means Frontier-Mt Carroll Mutual Insurance.

2.17 “Final” when referring to a judgment or order means that:

(a) the time has expired to file an appeal with no such appeal having been filed; or

(b) if an appeal has been filed, (i) the judicial ruling or order has been affirmed without modification and with no further right of review, or (ii) such appeal has been denied or dismissed with no further right of review, in all cases so as to permit the implementation of the Proposed Settlement in accordance with and without material change to this Agreement.

2.18 “Final Approval Hearing” means a hearing to consider final approval of the Proposed Settlement and entry of Final Judgment, as provided in Sections 3.3 and 12.

2.19 “Final Judgment” means the order and judgment to be entered by the Court substantially the same in form and content as Exhibit E without material change (as determined by the Defendant or Class Counsel), adopting this Agreement, approving the Settlement as fair, reasonable, adequate, and in the best interests of the Class Members, and fully and finally disposing of all claims asserted in the Action against Frontier. If the Frontier or the Representative Plaintiffs contend there is a material change, then such parties shall immediately seek to terminate this Agreement as provided for herein.

2.20 “Labor Depreciation” means any costs depreciated by Frontier or its independent adjusters from an actual cash value payment that are attributable to labor costs. For purposes of this Agreement: (A) For claims in which an .esx file was available to counsels, the amount of “Labor Depreciation” withheld from an ACV payment is reflected in column “AI” of the spreadsheet produced by Frontier on February 24, 2023; (B) For claims in which no .esx file was available to counsels, the amount of “Labor Depreciation” is calculated as 49.3% of the total withheld depreciation. (This percentage reflects the proportionate share of labor depreciation to total withheld depreciation from those claims in which an .esx file was available.)

2.21 “Legally Authorized Representative” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Class Member’s estate, a guardian, conservator, attorney-in-fact, or next friend of an incapacitated Class Member or any other legally appointed Person or entity responsible for the handling of the business affairs of a Class Member, in all cases as established by written evidence of a Legally Authorized Representative’s authority. However, any named insured is a Legally Authorized Representative for claims under that named insured’s policy without any further written evidence of authority.

2.22 “Parties” means the Representative Plaintiffs and Frontier.

2.23 “Person” means any natural person, individual, corporation, limited liability company, association, partnership, trust, or any other type of legal entity.

2.24 “Preliminary Approval” means the Preliminary Approval Order substantially the same in form and content as Exhibit A without material change (as determined by the Defendant or the Plaintiff) to be entered by the Court, as provided in Section 3.2. If any Party reasonably contends there is a material change, then such Party may immediately move to set aside the Preliminary Approval Order and terminate this Agreement as provided for herein prior to the issuance of Class Notice.

2.25 “Released Claims” means the claims released by Final Judgment, as defined in Section 9.1.

2.26 “Released Persons” means, individually and collectively, (a) Frontier and all independent adjusting companies acting for Frontier, and (b) all past and present affiliates, successors and predecessors in interest, assigns, acquirers, divisions, representatives, officers, directors, shareholders, agents, managing agents, employees, attorneys, auditors, accountants, brokers, surplus lines brokers, underwriters, advisers, insurers, co-insurers, re-insurers,

consultants, vendors, independent contractors, and legal representatives of the Persons listed in subsection (a).

2.27 “Releasing Persons” mean the Representative Plaintiffs, all Class Members who do not properly and timely opt out of the Settlement Class, and their respective spouses, family members, executors, representatives, administrators, guardians, wards, heirs, attorneys-in-fact, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf.

2.28 “Representative Plaintiffs” means Plaintiff Gentes Trust #1 and Gentes Trust #2, individually and as representatives of the Settlement Class.

2.29 “Settlement Class” means all policyholders (or their lawful assignees) under any commercial or personal lines property insurance policy issued by Frontier who made: (a) a Structural Loss claim for property located in the State of Illinois during the applicable Class Periods as defined in Section 2.11; and, (b) that resulted in an ACV Payment from which Labor Depreciation was withheld, or that would have resulted in an ACV Payment but for the withholding of Labor Depreciation causing the loss to drop below the applicable deductible.

2.30 Excluded from the Settlement Class are:

2.30.1 Policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting the Labor Depreciation within the text of the policy form, endorsement or rider, *i.e.*, by express use of the words “depreciation” and “labor”, including FMC Endorsements CL 05H 08 20, CL 05F 08 20, and CL 05D 08 20;

2.30.2 Policyholders who received one or more ACV Payments for claims, but not replacement cost value payments, that exhausted the applicable limits of insurance;

2.30.3 Policyholders whose claims were denied or abandoned without ACV Payment;

2.30.4 Frontier and its officers and directors;

2.30.5 Members of the judiciary and their staff to whom this action is assigned and their immediate families; and,

2.30.6 Class Counsel and their immediate families.

2.33 “Structural Loss” means physical damage to a home, building, manufactured home, condo, rental dwelling, or other structure in Illinois while covered by any Personal Lines or Commercial Lines insurance policy issued by Frontier.

2.36 “Unknown Claim” is defined in Section 9.2.

3.0 CONDITIONS

3.1. The Settlement is expressly contingent upon the satisfaction in full of the material conditions set forth below, including all other terms and conditions of this Agreement.

3.2. **Condition No. 1: Approval.** The Settlement must be approved by the Court in accordance with the following steps:

3.2.1 **Motion for Preliminary Approval.** After good faith consultation with the Defendant’s Counsel, Class Counsel will file with the Court a motion for preliminary approval by April 27, 2023. The motion for preliminary approval shall include a Preliminary Approval Order, a Class Notice, Claim Form, a Postcard Notice, and a Final Judgment, all substantially in form and content as Exhibits A-E. The Parties shall take reasonable steps to secure expeditious entry by the Court of the Preliminary Approval Order and shall request that the Court schedule a Final Approval Hearing no earlier than one-hundred and five (105) days after entry of the Preliminary Approval Order.

3.2.2 **Settlement Class Certification.** Pursuant to the motions for preliminary and final approval of the proposed Settlement, the Representative Plaintiffs shall seek orders (preliminary and final, respectively) certifying the Settlement Class pursuant to 735 ILCS § 5/2-801 *et seq.*, for purposes of this Settlement only.

3.2.3 **Entry of Preliminary Approval Order.** The Court shall enter a Preliminary Approval Order substantially similar in form and content as Exhibit A, which shall, among other things:

- a. Certify the Settlement Class for purposes of settlement, approve the Representative Plaintiffs as the class representative of the Settlement Class, and appoint Class Counsel, pursuant to Illinois Statute 735 ILCS 5/2-801 *et seq.*;
- b. Preliminarily approve the Settlement as fair, reasonable and adequate and approve selection of the Administrator;
- c. Order the issuance of Class Notice to Class Members pursuant to this Agreement, and determine that such Notice complies with all requirements, including, but not limited to, Illinois Statute 735 ILCS 5/2-801 *et seq.* and the Due Process Clause of the United States Constitution;
- d. Schedule a date and time for a Final Approval Hearing to determine whether the Settlement should be finally approved by the Court;
- e. Require persons within the Settlement Class who wish to exclude themselves to submit an appropriate and timely written request for exclusion by the opt out deadline in the Preliminary Approval Order, and advise that a failure to do so shall bind those Class Members who remain in the Settlement Class;
- f. Require Class Members who wish to object to the Settlement to submit a timely written objection by an objection deadline in the Preliminary Approval Order, and advise that a failure to do so shall prevent those Class Members from objecting to the Settlement;
- g. Require any Class Member who objects to the Settlement and wishes to appear at the Final Approval Hearing to file a notice of intent to appear;
- h. Provide that the Final Approval Hearing may take place, at the sole discretion of the Court, via telephone or video so as to allow the Final Approval Hearing to proceed despite any limitations on in-court hearings related to the COVID-19 pandemic and provide that any Class Member who files a notice of intent to appear shall be provided with information necessary to access the telephone or video hearing;
- i. Order that the Class Notice and Claim Form be sent to Class Members and set the Claim Deadline;
- j. Preliminarily enjoin all Class Members, unless and until they have timely and properly excluded themselves from the Settlement Class, from (i) filing, commencing, prosecuting, maintaining, intervening

in, or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction, individually or as a class action on behalf of any Class Members who have not timely excluded themselves, based on or arising from the Released Claims; and (ii) attempting to effect an opt-out class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on or arising from the Released Claims;

- k. Authorize the Parties to take all necessary and appropriate steps to implement the Settlement as set forth in this Agreement; and
- l. Such additional provisions as provided in Exhibit A as necessary to implement this Agreement and the Settlement, and to issue related orders to effectuate the preliminary approval of the Settlement Agreement.

3.3 Final Approval Hearing. In connection with the motion for preliminary approval, the Parties shall request that the Court schedule and conduct a Final Approval Hearing not less than one-hundred and five (105) days after entry of the Preliminary Approval Order, at which time it will consider whether the Settlement is fair, reasonable, and adequate pursuant to 735 ILCS 5/2-801 *et seq.* Class Counsel, after good faith consultation with counsel for Frontier, shall request that, at or after the Final Approval Hearing, the Court: (i) enter the Final Judgment, granting final approval of the Settlement and dismissing with prejudice the claims of the Representative Plaintiffs and the Settlement Class in this Action; (ii) determine the attorneys' fees and expenses that should be awarded to Class Counsel as contemplated in the Agreement; and (iii) determine the service awards, if any, that should be issued to the Representative Plaintiffs, as contemplated by the Agreement.

3.4 Condition No. 2: Finality of Judgment. The Court shall enter a Final Judgment substantially similar in form and content as Exhibit E, as described in Section 12, the Final Judgment must become Final, and the Effective Date must occur.

4.0 SETTLEMENT CONSIDERATION

4.1 In compromise of disputed claims and in consideration of this Agreement, as well as additional consideration described in this Agreement, the Parties have agreed that Frontier will pay the following, subject and pursuant to the terms of this Agreement, in exchange for a release of the Released Persons of Released Claims, entry of Final Judgment as contemplated herein, and dismissal with prejudice of the Action:

4.1.1 LABOR DEPRECIATION + INTEREST PAYMENTS:

Pursuant to Section 6.4, subject to the terms, limits, conditions, coverage limits, and deductibles of policies, Claim Settlement Payments to Settlement Class Members who timely file valid Claim Forms by the Claims Deadline will be equal to 112.5% of the still unrecovered Labor Depreciation that was withheld from their respective ACV Payments (or that would have resulted in an ACV Payment but for the Labor Depreciation withholding to cause the loss to fall below the deductible) for which there remains some amount of outstanding Labor Depreciation on the claim; and

4.1.2 INTEREST ONLY PAYMENTS:

Pursuant to Section 6.5, Class Members who had Labor Depreciation initially withheld from their ACV Payments, but who later recovered all outstanding Labor Depreciation through the claim process, will receive an interest payment calculated by multiplying (a) the total Labor Depreciation amount initially withheld by (b) a percentage rate, determined by the number of months the withheld Labor Depreciation was withheld (as reflected in column "T" of the spreadsheet produced by Frontier on February 24, 2023), according to the following schedule:

<u>Number of Months Labor Depreciation Amounts Initially Withheld</u>	<u>Percentage of Total Labor Depreciation Amounts Initially Withheld</u>
0-4	2.5%
5-9	5%
10+	10%

4.1.3 Subject to the conditions set forth in this Agreement, attorneys' fees and reasonable litigation expenses totaling \$250,000.00 to Class Counsel;

4.1.4 Subject to the conditions set forth in this Agreement, a service award, of \$10,000.00 to the Representative Plaintiffs.

4.1.5 The costs of Class Notice and settlement administration, as provided in this Agreement; and

4.2 Until such time as the foregoing payments are made, all sums to be paid by Frontier shall remain under the control and ownership of Frontier, the Administrator, or their independent contractors. Neither Class Members nor any other Person shall have any right to, or ownership or expectation interest in, Claim Settlement Payments or any other sums unless and until timely and eligible claims of Class Members have been submitted and checks in payment of same have been issued and timely negotiated by Class Members, as described in this Agreement.

5.0 NOTICE

5.1 **Class Notice.** As soon as practicable after Preliminary Approval of the Proposed Settlement, but in any event no more than seven (7) days after the filing of the Motion for Preliminary Approval, Frontier shall conduct a reasonable search of its records and provide to the Administrator for each Person reasonably believed to be a potential Class Member, the following information, if reasonably available: name, last known mailing address, date of Covered Loss during the Class Periods, policy number, claim number for the Covered Loss.

5.2 The Administrator shall mail a copy of the Class Notice and Claim Form in a form and content substantially similar to Exhibits B and C, by first-class U.S. Mail, to each potential Class Member identified by the Defendant. Prior to mailing, the Administrator shall run the addresses one time through the National Change of Address database in order to obtain any updated addresses for potential Class Members.

5.3 The Administrator shall complete mailing of the Class Notice and Claim Form to potential Class Members not less than seventy-five (75) days prior to the Final Approval Hearing. Any material change(s) to the Class Notice or Claim Form agreed to by the Parties, after entry of the Preliminary Approval Order, must be approved by the Court prior to mailing.

5.4 If a Class Notice and Claim Form sent to any potential Class Member is returned as undeliverable, the Administrator will promptly log such return as undeliverable and provide copies of the log to the Defendant and Class Counsel as requested. If the mailing is returned to the Administrator with a forwarding address, the Administrator will forward the mailing to that address. For other returned mailings, the Administrator will run the name and address one time through a single commercial database (*e.g.*, Accurint) chosen by the Administrator, and should the commercial database show a more current address, the Administrator shall re-mail the returned Class Notice and Claim Form to the more current address. If a more current mailing address cannot be found by searching the commercial database referenced in the preceding sentence, the Administrator shall send one message to the last known e-mail address as contained in Defendant's records (when available) for such Class Member and attempt to contact such Class Member to obtain a current address. If a more current address cannot be found through either of the two methods described above, then no further efforts to locate or to find a more current address for Class Members is required.

5.5 **Postcard Notice.** No later than 30 days before the Claim Deadline, the Administrator shall mail a postcard reminder in the form attached as Exhibit D (the "Postcard Notice") with information regarding the Claim Deadline, the Settlement Website address, and how to request a copy of the Claim Form. The Postcard Notice will be mailed to each Class Member who has not submitted a Claim Form and who has not timely and properly excluded themselves.

5.6 **Settlement Website.** No later than the posting of the Class Notice, the Settlement Administrator shall establish a website containing copies of the Agreement and Exhibits, the Preliminary Approval Order, the Class Notice, Claim Form, and such other documents and information about the Settlement as Class Counsel and Frontier's Counsel agree upon. The Claim

Form shall be available to download or print from the Settlement website. A signed, completed, and scanned Claim Form may also be uploaded and submitted on the Settlement Website.

5.6.1 The Settlement Website shall use a Uniform Resource Locator that identifies the internet address as www.Frontierdepreciationsettlement.com, or such other URL as Class Counsel and Frontier's Counsel agree upon. The Settlement website shall not include any advertising and shall not bear or include any logos or trademarks of Frontier other than those appearing in the Agreement. The Settlement website shall cease to operate and the Administrator shall remove all information from the Settlement website no later than the Final Accounting as described in Section 7.

5.7 **Toll-free Number.** No later than the posting of the Class Notice, the Administrator shall establish a toll-free interactive voice response phone number, with script recordings of information about the Settlement, including information about the Claim Form, utilizing relevant portions of the Class Notice and Claim Form. The Administrator shall send the Class Notice and Claim Form, upon request of any Class Members. The phone number shall remain open and accessible through the Claim Deadline and allow for Class Members to leave recorded messages and also provide for live operators during select times to answer certain basic questions about the Settlement. Except for requests for the Class Notice or Claim Form, the Administrator will promptly advise Class Counsel of recorded messages left by Class Members concerning the Action and/or the Settlement, or direct any Class Members with questions that cannot be answered, to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

5.8 The Parties agree that the foregoing procedures are reasonable and the best practicable notice under the circumstances, and are an appropriate and sufficient effort to locate

current addresses for Class Members such that no additional efforts to do so shall be required. Upon reasonable request, the Administrator shall advise Class Counsel and Frontier's Counsel of the progress of the notice program to monitor compliance with this Agreement.

6.0 SUBMISSION OF CLAIM FORMS

6.1 Claim Forms mailed to Class Members shall be pre-populated with the Class Member's name, current address, and the date of Covered Loss, to the extent feasible, if such information is reasonably available.

6.2 To be considered valid and timely, a Claim Form must be materially complete, signed by or on behalf of the Class Member, and mailed to the Administrator's address as specified in the Claim Form, postmarked by the Claim Deadline, which shall be forty-five (45) days after the scheduled date of the Final Approval Hearing. Signed and completed Claim Forms may also be scanned and uploaded on the Settlement Website by the Claim Deadline or sent to the Administrator via e-mail. Claim Forms may be submitted on behalf of deceased or incapacitated Class Members by Legally Authorized Representatives, with written evidence of authority.

6.3 The Claim Form will reasonably request of Class Members such information as described on the attached Exhibit C. To be eligible for a Claim Settlement Payment, Class Members must, on or with the Claim Form:

- 6.3.1 Affirm that they have not assigned the claim for the Covered Loss upon which the ACV Payment was calculated, other than an interest that may be held by a mortgagee;
- 6.3.2 Confirm that the pre-populated contact information contained on the Claim Form is correct, or, if necessary update, correct, or provide additional information;
- 6.3.3 If the Class Member under the Covered Loss is deceased or incapacitated, include written evidence that the Person submitting the Claim Form is the Legally Authorized Representative of the Class Member.

The Claim Form will not require that a Class Member sign under penalty of perjury or be notarized.

6.4 Class Members, who timely submit a materially complete Claim Form, and for whom there remains some amount of outstanding Labor Depreciation on the claim, shall be paid a Claim Settlement Payment equal to 112.5% of the outstanding Labor Depreciation.

6.5 Class Members who timely submit a materially complete Claim Form, but for whom all outstanding Labor Depreciation that was withheld from ACV Payments was subsequently paid, shall be paid interest as described in Section 4.1.2 above.

6.6 The foregoing Claim Settlement Payments are the only payments to which Class Members will be entitled under the Proposed Settlement. Any rights to Claim Settlement Payments under this Agreement shall inure solely to the benefit of Class Members and are not transferable or assignable, unless the insurance claim was assigned by the Class Member before the date of Preliminary Approval in the ordinary course to a contractor who performed, or intends to perform, repair or replacement work to which the insurance claim relates. Provided, however, that any such assignee submits written evidence of such an assignment must agree in writing to indemnify the Defendant for any loss should the assignor-policyholder later dispute payment to the assignee-contractor before payment will be made to the assignee.

6.7 The opportunity to submit Claim Forms for Claim Settlement Payments and other obligations incurred by Frontier, pursuant to this Agreement, shall be in full and final disposition of the Action, and in full consideration for the release of any and all Released Claims as against any and all Released Persons, regardless of whether or not a Class Member receives a Class Notice, submits a Claim Form, or timely negotiates a Claim Settlement Payment check.

7.0 CLAIMS ADMINISTRATION AND PAYMENTS

7.1 **Claims Determinations.** The settlement administrator shall pay 112.5% of outstanding “Labor Depreciation” to all class members who fall within Sections 4.1.1 / 6.4. The settlement administrator shall pay the respective percentages that apply to the withheld “Labor Depreciation” to all class members who fall within Sections 4.1.2 / 6.5.

7.2 The Administrator shall notify, in writing, those Class Members who submit an untimely Claim Form that their claim is denied and will not be processed further. The Administrator’s determination of whether a Claim Form was timely submitted shall be final, binding, not reviewable by the Neutral Evaluator, and not appealable, and may not be the basis for an objection.

7.3 The Administrator shall notify, in writing, those Class Members who submit a timely but materially deficient Claim Form that they have thirty (30) days to correct the deficiency. The notice will identify the deficiency and state that any response must be postmarked within thirty (30) days of the date of the notice of the deficiency.

7.4 The Administrator will weekly update Class Counsel and Frontier’s Counsel on the claims process and provide, a list of: (a) Class Members who submitted Claim Forms; (b) the amount of the Claim Settlement Payment, if any, owing to each; (c) if no Claim Settlement Payment is owing, a brief explanation why; (d) a list of Class Members who have opted out of or have objected to the Settlement. The Administrator must advise Frontier as to how much is being paid, to each individual Class Member, so that Frontier can assign specific amounts to specific claim files.

7.5 **Funding.** Within the later of (a) ten (10) days after the Effective Date or (b) thirty (30) days after the final determinations of Claim Settlement Payments described in Section 7.4, the Defendant shall send to the Administrator adequate funds for deposit to an account

established by the Administrator to pay Claim Settlement Payments. In no event shall Frontier be liable to pay Claim Settlement Payments before that time.

7.6 **Checks.** Within ten (10) days of receipt of funds described in Section 7.5, the Administrator shall mail to each Class Member who timely submitted an eligible Claim Form, as determined above, a settlement check for the Claim Settlement Payment to which each Class Member is entitled. The Administrator shall use addresses used to send the Class Notice, subject to any updates received from Class Members on Claim Forms or otherwise.

7.7 Checks shall be issued in the names of Class Members as reflected on the Defendant's records, and shall state on their face that they expire and are void 120 days from the date of issuance, after which the Administrator may close the account. Prior to the expiration of checks, Class Members may request replacement checks be issued by the Administrator if they lose or misplace their original check. In the event any check issued pursuant to this Agreement is uncashed, returned and the payee cannot be located, or expires or becomes void, the Administrator will follow their standard escheatment procedures for the State of Illinois.

7.8 **Final Accounting.** Within thirty (30) days after completion of the escheatment procedures pursuant to Section 7.7 and all claims have been resolved, including claims disputed by Class Members, the Administrator shall provide a final accounting to the Parties.

7.9 **Taxes.** Frontier and the Administrator will comply with all federal, state, and local tax reporting obligations in connection with the payments made to the Representative Plaintiffs (service award) and Class Counsel. Settlement Class members payments shall not be reported as taxable income by Frontier or the Administrator. Frontier and the Administrator are not obligated to compute, estimate, or pay any taxes on behalf of, and are not liable for any taxes

owed by, the Representative Plaintiffs, Class Counsel, or any Class Member as a result of the payments contemplated by the Settlement.

7.10 **Information Available to Class Counsel.** Class Counsel shall have the right to interact directly with the Administrator regarding the administration of the Settlement.

8.0 COVENANTS, REPRESENTATIONS AND WARRANTIES

8.1 **Covenants Not to Sue.** The Representative Plaintiffs and Class Members covenant and agree:

- 8.1.1 not to file, commence, prosecute, maintain, intervene in, or participate in (as parties, class members or otherwise) any action in any jurisdiction based on or relating to any of the Released Claims, or the facts and circumstances relating thereto, against any of the Released Persons;
- 8.1.2 not to organize or to solicit the participation of Class Members in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action in any jurisdiction) based on or relating to any of the Released Claims or the facts and circumstances relating thereto; and,
- 8.1.3 that the foregoing covenants and this Agreement shall be a complete defense to any of the Released Claims asserted against any of the Released Persons.

8.2 The Representative Plaintiffs represent and warrant that they are the sole and exclusive owner of their Released Claims and that they have not assigned or otherwise transferred any interest in any Released Claims against any Released Persons, and further covenant that they will not assign or otherwise transfer any interest in their Released Claims.

8.3 The Representative Plaintiffs represent and warrant that, after entry of Final Judgment, they have no surviving claim or cause of action against any of the Released Persons with respect to any of the Released Claims.

8.4 The Representative Plaintiffs and Class Counsel represent and warrant that there are no outstanding liens or claims against the Action, and acknowledge that the Representative

Plaintiffs and Class Counsel will be solely responsible for satisfying any liens or claims asserted against the Action.

8.5 The Parties, and each of them on his, her, or its own behalf only, represent and warrant that they are voluntarily entering into the Agreement as a result of arms-length negotiations among their counsel; that in executing the Agreement, they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing the Agreement by representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any person representing any Party. Each of the Parties assumes the risk of mistake as to facts or law.

9.0 RELEASES

9.1. **Released Claims.** Upon the Effective Date, Releasing Persons, including the Representative Plaintiffs and each Class Member, shall, by operation of the Final Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged Frontier and all other Released Persons from any and all claims, Unknown Claims, actions, causes of action, suits, debts, sums of money, payments, obligations, reckonings, promises, damages, interest, penalties, attorney's fees and costs, liens, judgments, and demands of any kind whatsoever that each Releasing Person has or may have had prior to the Effective Date and arising from a loss during the Class Period, whether *ex contractu* or *ex delicto*, debts, liens, contracts, liabilities, agreements, attorneys' fees, costs, penalties, interest, expenses, or losses (including actual, consequential, statutory, extra-contractual and punitive or exemplary damages),

and whether arising under, or based on, contract, extra-contractual or tort theories, at law or in equity, or under federal, state or local law, statute, ordinance, rule or regulation, whether asserted individually or in a representative capacity, whether past or present, mature or not yet mature, that the Representative Plaintiff or Class Members have or may have had against any of the Released Persons that relate to, concern, arise from, or pertain in any way to:

- 9.1.1 Depreciation of Labor costs (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of labor costs as depreciation) in the adjustment and/or payment of any Covered Loss;
- 9.1.2 any and all claims that were or could have been brought, whether based upon contract, statute, regulation, or tort, pertaining to the calculation, deduction, determination, inclusion, modification, omission, and/or withholding of the depreciation of Labor Costs in the adjustment and/or payment of any Covered Loss;
- 9.1.3 the allegations and claims contained in the complaint in the Action concerning the alleged systematic practice of deducting Labor Depreciation through the use of estimating software;

(“Released Claims”). This release does not apply to any coverages other than for loss or damage to structures or buildings. For example, this release does not encompass any claims for additional living expenses or contents. Further, this release does not apply to Class Members’ claims for replacement cost benefits under Structural Loss insurance claims that are made after the date of Preliminary Approval and determined pursuant to the terms and conditions of policies of insurance. This release only applies to claims arising under insurance policies issued by Frontier.

9.2 **Unknown Claims.** The Representative Plaintiffs, for themselves and on behalf of Class Members, explicitly acknowledge that Unknown Claims, within the scope of Released Claims, could possibly exist and that any present losses may have been underestimated in amount or severity. The Representative Plaintiffs or any Class Member may hereafter discover facts other than or different from those that it knows or believes to be true with respect to the subject matter

of the Released Claims, or the law applicable to such claims may change. Nonetheless, the Representative Plaintiffs and each Class Member expressly agree that they shall have irrevocably waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent, claims with respect to all Released Claims, including Unknown Claims within the scope of the Released Claims. Further, the Representative Plaintiffs and Class Members agree and acknowledge that they are bound by this Agreement, including by the Releases, and that all of their claims in the Action asserted against the Defendant shall be dismissed, with prejudice, and released, without regard to subsequent discovery of different or additional facts or subsequent changes in the law, and regardless of whether unknown losses or claims exist or whether present losses may have been underestimated in amount or severity, and even if they never received actual notice of the Settlement or received a Claim Settlement Payment. The Parties acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

9.3 Provided, however, that the Released Claims do not include: (a) claims arising after the Effective Date or outside the Class Period; (b) claims for valuation or payment of a Covered Loss under any residential homeowners, manufactured home, condo, dwelling or rental property insurance policies issued by the Defendant that are not related to the withholding of payment as Labor Depreciation; (c) Class Members' rights and obligations under this Agreement; and (d) the rights of potential Class Members who timely and properly submit a request for exclusion from the Settlement Class in accordance with this Agreement.

9.4 The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Agreement, including, but not limited to, enforcement of the releases

contained in the Agreement, and to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Agreement and Final Judgment.

10.0 REQUESTS FOR EXCLUSION

10.1 A person within the Settlement Class who wishes to opt out of the Settlement Class must do so in writing. Any Class Member who does not opt out of the Settlement Class in the manner described herein shall be deemed to be a Class Member and shall be bound by all proceedings, orders, and judgments.

10.2 In order to opt out, a person within the Settlement Class must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement website, a request for exclusion postmarked no later than the opt out deadline of thirty (30) days before the Final Approval Hearing, as identified in the Preliminary Approval Order. The request for exclusion must: (a) identify the case name; (b) identify the name and address of the Class Member; (c) be personally signed by the Class Member requesting exclusion; and, (d) state a desire to be excluded from the Settlement Class, such as “I hereby request to be excluded from the proposed Settlement Class in the Frontier Class Action.” Persons must request exclusion individually, and mass or class opt outs are prohibited.

10.3 A Class Member, who desires to opt out, must take timely affirmative written action pursuant to Section 10.2, even if the Class Member desiring to opt out (a) files or has filed a separate action against any of the Released Persons, or (b) is or becomes a putative or actual class member in any other class action filed against any of the Released Persons. The Administrator shall provide Class Counsel and Frontier’s Counsel a list of all timely requests for exclusion as set forth in this Section

10.4 Any Class Member, who timely and properly opts out of the Settlement Class, shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under or be affected by the Agreement; (c) gain any rights by virtue of the Agreement; or, (d) be entitled to object to any aspect of the Settlement.

11.0 OBJECTIONS

11.1 **Overview.** Any Class Member who does not submit a valid request for exclusion may object to the Settlement by complying with the procedures and deadlines in this Agreement. The Class Notice and Settlement website will identify the requirements to assert a valid written objection.

11.2 **Filing.** Any Class Member who wishes to object to the Settlement must do so in a writing, filed with the Clerk of Court, and a copy mailed to the Administrator at the address identified in the Mail Notice and on the Settlement website, postmarked no later than the objection deadline of thirty (30) days before the Final Approval Hearing, as identified in the Preliminary Approval Order. To be valid, a written objection must include: (a) the case name and number; (b) the name and address of the objecting Class Member and of counsel, if represented; and, (c) the basis for the objection.

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

11.4 **Appearance.** Subject to approval of the Court, any Class Member who files and serves a timely written objection in accordance with this Section, may appear, in person or by

counsel, at the Final Approval Hearing, whether it is held in the courtroom or via telephone or video conference, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Class Member: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the objection deadline; and (b) mails copies of the notice to Class Counsel and the Defendant's Counsel identified in Section 2 of this Agreement, postmarked by the objection deadline. The notice must include copies of any papers, exhibits, or other evidence that the objecting Class Member will present to the Court in connection with the Final Approval Hearing. Any Class Member who does not file a notice of intention to appear in accordance with the Agreement shall not be entitled to appear at the Final Approval Hearing.

12.0 FINAL JUDGMENT

12.1 Not less than ten (10) days before the Final Approval Hearing, the Administrator will provide Class Counsel and Frontier's counsel with an affidavit or declaration attesting that Class Notice has been disseminated and published in accordance with the Preliminary Approval Order and this Agreement, confirming the timely mailing of notices concerning the Settlement identifying Persons who submitted timely and valid Requests for Exclusion. Class Counsel shall file the affidavit(s) or declaration(s) with the Court before the Final Approval Hearing.

12.2 Prior to the Final Approval Hearing, Class Counsel will file a motion seeking the Court's final approval of the Settlement and entry of Final Judgment, in the form and content attached as Exhibit E, without material change, which:

- 12.2.1 Approves the Settlement as described in this Agreement and directs the Parties and counsel to comply with and consummate the terms of this Agreement;
- 12.2.2 Confirms certification of the Settlement Class for settlement purposes only;

- 12.2.3 Finds that Class Counsel and the Representative Plaintiffs have adequately represented and protected the interests of the Settlement Class;
- 12.2.4 Finds that the terms of this Agreement are fair, reasonable, and adequate and in the best interests of the Settlement Class;
- 12.2.5 Provides that each Class Member shall be bound by the provisions of this Agreement and the Final Judgment, including the Releases set forth in Section 9;
- 12.2.6 Finds that the Class Notice, the establishment of an automated toll-free interactive voice response phone system, the Settlement website, internet advertising, and the Postcard Notice were reasonable, the best notice practicable under the circumstances, and satisfy the requirements of the Illinois Rules of Civil Procedure, due process under the United States Constitution, and the requirements of any other applicable rules or law;
- 12.2.7 Finds that all notices concerning the Settlement required have been sent and that the Defendant has fully complied with the notice requirements;
- 12.2.8 Dismisses all claims in the Action by the Representative Plaintiffs and Class Members against the Defendant on the merits and with prejudice, and entering Final Judgment thereon;
- 12.2.9 In order to protect the continuing jurisdiction of the Court and to effectuate this Agreement and the Final Judgment, permanently enjoins Class Members who have not opted out, and anyone acting or purporting to act on their behalf, from filing, commencing, prosecuting, intervening in, maintaining, or participating in (as parties, class members, or otherwise) any new or existing action or proceeding before any court or tribunal regarding any Released Claims against any Released Persons, and from organizing any Class Members into a separate class for purposes of pursuing as a purported class action any lawsuit regarding any Released Claims against any Released Persons, and provides that any person in violation of the injunction may be subject to sanctions, including payment of reasonable attorneys' fees incurred in seeking enforcement of the injunction;
- 12.2.10 Approves payment of attorneys' fees and litigation expenses to Class Counsel and service awards to the Representative Plaintiffs, in both respects not exceeding the maximum amounts identified in this Agreement;
- 12.2.11 Reserves continuing jurisdiction of the Court over all matters relating to the administration, consummation, enforcement, construction and interpretation of the Settlement, this Agreement, and the Final Judgment;

12.2.12 Holds that there is no just reason for delay and that the Final Judgment shall be final and appealable, irrespective of the Court's continuing jurisdiction over administration of the Settlement; and

12.2.13 Contains such additional provisions as provided in Exhibit E as necessary to implement this Agreement and the Settlement.

12.3 **Effect of Final Judgment.** Upon entry of Final Judgment:

12.3.1 the Agreement shall be the exclusive remedy for all Class Members, except those who have properly submitted a Request for Exclusion (opted out) in accordance with the terms and provisions hereof; and

12.3.2 except as set forth in this Agreement, the Released Persons shall not be subject to liability or expense for any of the Released Claims to any Class Member(s).

12.4 Except for persons who timely and properly send a request for exclusion in accordance with Section 10, all Class Members will be deemed to be members of the Settlement Class and, upon entry of the Final Judgment, will have received full and final redress and relief for the Released Claims in Section 9, including, but not limited, to any refund, reimbursement, restitution, or damages for the conduct covered by the release, and will be bound by the terms of this Settlement regardless of whether they receive Claim Settlement Payments or any other relief.

12.5 The Defendant will not oppose final approval of the proposed Settlement in the form of the Final Judgment attached as Exhibit E and may, in its sole discretion, file a memorandum in support of final approval of the Proposed Settlement.

12.6 If final approval of the Settlement is not granted, or this Agreement is terminated or rendered void, the certification of the Settlement Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class for trial purposes in this or any other action can be or have been satisfied. In that event, Frontier reserves and shall have all rights to challenge certification of a class action for trial purposes in the Action or in any other action, on all available grounds as if no Settlement Class had been certified.

12.7 Upon compliance of the terms of this settlement Class Counsel, on behalf of the Representative Plaintiffs, shall file a satisfaction of judgment with the Court.

13.0 ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

13.1 The total of all applications for attorneys' fees and reasonable litigation expenses by Class Counsel and any other person on behalf of Class Members shall not exceed \$250,000.00. Class Counsel agree that the amount of such fees and expenses awarded shall fully compensate them for all work and expenses in this Action for the claims asserted before and after entry of Final Judgment. Frontier agrees not to oppose or otherwise object to an application by Class Counsel for, and Class Counsel agree not to seek, an award of attorneys' fees and expenses in this Action that does not exceed the foregoing total amounts.

13.2 The amount of attorneys' fees, costs and expenses to be awarded by this Court will not reduce the award to any Class Member.

13.3 Within seven (7) days after the Effective Date, the Defendant shall pay to the Administrator funds for the amount of attorneys' fees and expenses awarded by the Court (not to exceed the amounts identified in Section 13.1), and the Administrator shall pay such funds by wire transfer to an account as directed by Butsch Roberts & Associates LLC who shall distribute it to Class Counsel.

13.4 Except as expressly provided in this Agreement, Frontier is not liable or responsible for any other expenses, costs, damages, or fees incurred by any other person, including, but not limited to, the Representative Plaintiff, any Class Member, any person who objects to the Settlement or excludes themselves from the Settlement Class, or any of their attorneys, experts, advisors, investigators, agents, or representatives. Any award of attorneys' fees and expenses by the Court, as provided in this Section 13, will be in complete satisfaction of any and all claims for

attorneys' fees and expenses that the Representative Plaintiffs, Class Members, Class Counsel, or any other person or their counsel has or may have against the Defendant arising out of or in connection with this Action, the Released Claims, or this Settlement.

13.5 The Representative Plaintiffs, the Settlement Class, and Class Counsel hereby waive, discharge and release Frontier from any and all other claims for attorneys' fees, by lien, statute, or otherwise for legal services in connection with this Action upon payment of the amounts set forth in Section 13.1. Frontier shall not be responsible for and shall have no liability whatsoever with respect to the allocation, distribution, or apportionment of any award of attorneys' fees and expenses among Class Counsel or any other person who may assert a claim thereto. Once payment is made pursuant to Section 13.1 above, the Defendant will not be subject to any claims for additional payments to Class Counsel or any attorney who is or was a member of, partner of, or otherwise associated with any of the firms representing the Representative Plaintiffs, the Settlement Class, or any Class Member. Class Counsel shall defend, hold harmless, and indemnify the Defendant and Defendant's Counsel from and against any claims, damages, liabilities, causes of action, liens, and expenses, including reasonable attorneys' fees and expenses, resulting from any action or proceeding involving the payment or apportionment of the award of attorneys' fees and expenses in this Action, to, or among the Representative Plaintiffs, Class Counsel, or any attorney or firm that alleges to have provided services to the Representative Plaintiffs.

13.6 In addition to the Claim Settlement Payments that may otherwise be due, Frontier agrees to pay the Representative Plaintiffs Gentes Trust #1 and Gentes Trust #2, a service award of \$10,000.00 (\$5,000.00 each), by check delivered or wire transfer to Class Counsel's trust account within seven (7) days after the Effective Date. The Representative Plaintiffs shall each

provide the Administrator with a completed W-9 form within seven (7) days after entry of Final Judgment.

14.0 TERMINATION RIGHTS

14.1 Within twenty (20) days after notice of the occurrence of any of the following events, either Frontier or the Representative Plaintiffs shall have the right, exercisable in their absolute discretion, to terminate this Agreement and the Settlement by delivering written notice of such election to Class Counsel, if:

- 14.1.1 The Court, or any appellate court(s), rejects, denies approval, disapproves, or modifies the Agreement, Preliminary Approval Order, or Final Judgment in a manner that the Defendant, in its sole judgment and discretion, and in good faith, believes to be material;
- 14.1.2 The Court, or any appellate court(s), does not completely and unconditionally enter or affirm any portion of the Agreement, Preliminary Approval Order, or Final Judgment in a manner that the Defendant, in its sole judgment and discretion, in good faith, believes to be material;
- 14.1.3 Any regulatory agency objects to or challenges any of the terms of the Agreement in a way that the Defendant, in its sole judgment and discretion, believes to be materially adverse to the Defendant's interests;
- 14.1.4 The number of Persons who exclude themselves from the Settlement Class exceeds 20% of the total potential Class Members;
- 14.1.5 The Representative Plaintiffs opt out of the Settlement Class or objects to the Settlement or this Agreement;
- 14.1.6 The total of all awards of attorneys' fees and costs in this Action to any person, including Class Counsel, the Representative Plaintiff, the Settlement Class, or any other person, exceeds the maximum amount set forth in Section 13.1;
- 14.1.7 Any Person is allowed to intervene in this Action to assert claims against the Defendant based on Structural Loss claims in states other than Illinois; or
- 14.1.8 A financial obligation is imposed upon the Defendant in addition to or greater than those expressly set forth in this Agreement.

14.2 If an option to terminate this Agreement and the Settlement arises, the Representative Plaintiffs or Frontier are not required to exercise their/its option to terminate.

14.3 If the Agreement fails for any reason, or if this Agreement is terminated by the Representative Plaintiffs or Frontier pursuant to Section 14.1:

14.3.1 This Agreement and the Proposed Settlement shall have no further force or effect, and all proceedings that have occurred with regard to this Agreement and the Proposed Settlement shall be without prejudice to the rights and contentions of the Parties and any Class Members;

14.3.2 This Agreement and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of the Parties, each of whom shall be restored to their respective positions existing immediately before the execution of this Agreement;

14.3.3 This Agreement, and the fact of this Agreement having been made, shall not be admissible or entered into evidence for any purpose whatsoever and shall not be subject to discovery;

14.3.4 Any judgment or order entered in the Action relating to this Agreement or the Settlement, including, without limitation, any order certifying the Settlement Class, shall be automatically vacated *nunc pro tunc*, without the requirement of any motion or further order of the Court, and will be without any force or effect;

14.3.5 The Parties shall not thereafter argue or raise a claim or defense, including, but not limited to, waiver, estoppel, or any other similar or related theories, based on the Agreement (including without limitation the provisions regarding class certification) and related pleadings and orders, the fact of this Agreement having been made, or that any settlement negotiations preclude the Defendant from opposing class certification or the claims in the Action or any other proceeding.

14.4 Section 14.3 shall survive the termination of this Agreement.

15.0 DENIAL OF LIABILITY

15.1 Frontier enters into this Agreement without admitting, conceding or acknowledging any fault, liability, or wrongdoing of any kind. This Agreement or the negotiations or proceedings connected with it shall not be construed as an admission or concession by Frontier of the truth of

any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind on the part of Frontier. In the event the Effective Date does not occur, or this Agreement is terminated, or the Proposed Settlement is not finally approved for any reason, Frontier shall retain the right to object to the maintenance of the Action or any other proceeding as a class action and to contest the Action or any other case on any ground.

15.2 This Agreement, the negotiations leading to the Settlement, administration of the Settlement, and any pleadings, motions, or other document related in any way to the Agreement (excluding any orders entered by the Court) shall not be offered into evidence in the Action: (a) in support of or in opposition to a motion to certify a contested class against Frontier; or (b) as an admission or concession of liability or wrongdoing by Frontier.

16.0 COMMUNICATIONS

16.1 Any inquiries to Frontier from Class Members regarding the Settlement will be directed to Class Counsel or the Administrator. Nothing herein shall preclude Frontier or its agents from discussing matters unrelated to the Settlement with their present, former or prospective policyholders or customers or from communicating with their agents and employees concerning the existence, terms, and implementation of the Settlement, orally or in writing, and they may do so through any appropriate means.

16.2 If any media organization contacts any Party or its counsel seeking information or a statement regarding the Settlement, in the absence of a response agreed upon by all Parties, no information will be provided in response to such inquiries except to the extent such information appears as part of the public record.

17.0 MISCELLANEOUS

17.1 Frontier shall provide Class Counsel with an affidavit from a representative of Frontier providing that the information provided to Class Counsel was a good faith estimate of the value of the class claims, based in fact, and derived from the information in Frontier's files.

17.2 The Administrator, Class Counsel and Frontier shall retain copies or images of all returned Class Notices, Claim Forms, and correspondence relating thereto, for a period of one (1) year after the Final Accounting. Thereafter the Administrator, Class Counsel and Frontier may destroy such documents they have in their possession. Nothing in this Agreement shall be construed to require the Administrator, Class Counsel or the Defendant to retain records beyond their respective, discretionary, record retention policies.

17.3 The Parties and their counsel agree to undertake their best efforts and to cooperate with each other to effectuate this Agreement and the terms of the proposed Settlement, including taking all steps and efforts contemplated by this Agreement, and any other reasonable steps and efforts that may become necessary by order of the Court or otherwise. The Parties further agree to cooperate in respect to reasonable, agreed extensions to the timetable hereunder, subject to such Court approval as may be required.

17.4 The terms and conditions set forth in this Agreement, including documents referenced herein and all attached exhibits, contains the entire and exclusive agreement of the Parties hereto and supersede any prior agreements, negotiations, representations, or understandings between them, and may not be contradicted or supplemented by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement and all attached exhibits constitute the complete and exclusive statement of its terms as between the Parties and that no extrinsic evidence may be introduced in any proceeding concerning the terms

of the proposed Settlement. Prior or contemporaneous representations not contained in this Agreement shall be of no force or effect.

17.5 All terms of this Agreement are contractual and not mere recitals and shall be construed as if drafted by all Parties hereto. The terms of this Agreement are and shall be binding upon each of the Parties, upon each of 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, including any Class Member. Provided, however, that except as expressly provided in this Agreement, this Agreement is not intended to and does not confer upon any other person or entity any rights or remedies.

17.6 This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties, and any amendments or modifications shall be presented to the Court for approval. Amendments and modifications may be made without additional notice to the potential Class Members unless such notice is required by the Court.

17.7 This Agreement shall be governed by the laws of the State of Illinois.

17.8 The exhibits to this Agreement are integral parts of the Settlement and are hereby incorporated and made a part of this Agreement.

17.9 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 which may be instituted, prosecuted or attempted in breach of this Agreement.

17.10 Nothing contained in this Agreement or in any proceedings concerning the Settlement shall in any way affect the Defendant's rights to seek contribution, indemnity or any other relief from any person or entity not a party to the Action. All such rights and remedies of the Defendant are specifically retained and preserved.

17.11 Unless otherwise noted, all references to “days” in this Agreement shall be to calendar days. In the event any deadline under this Agreement is a weekend or legal holiday, such deadline shall be on the first business day thereafter.

17.12 The waiver by any Party of any breach of this Agreement will not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

17.13 As used herein, the plural of any defined term includes the singular thereof, and the singular of any defined term includes the plural thereof, as the context may require.

17.14 This Agreement may be executed in counterparts, each of which shall constitute an original. This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned Parties or counsel.

17.15 This Agreement may be executed by electronic or handwritten signature.

17.16 The Parties agree that the statute of limitations and/or Frontier’s Limitation of Action provisions will be tolled and not enforced by the Parties and/or any Court as it respects any Class Member whose claim expire during the Administration of this Settlement.

REPRESENTATIVE PLAINTIFFS:

Dated this ___ day of April 2023

Gentes Trust #1

Marian Brown

By: _____

Title: _____
Trustee

Signature: _____
DocuSigned by: Marian Brown /13/2023
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Dated this ___ day of April 2023

Gentes Trust #2

Marian Brown


By: _____

Title: _____
Trustee

Signature: _____
DocuSigned by: Marian Brown /13/2023
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CLASS COUNSEL:

Dated this ____ day of April, 2023

DocuSigned by:
 4/12/2023
8A4D3EA6C6DA463...

David T. Butsch #06205434
Christopher E. Roberts #6302857
Butsch Roberts & Associates LLC
231 S. Bemiston Ave., Suite 260
Clayton, MO 63105
Tel: (314) 863-5700
Fax: (314) 863-5711
butsch@butschroberts.com
roberts@butschroberts.com

Christopher W. Byron #6230810
Christopher J. Petri #6257456
Byron Carslon Petri & Kalb, LLC
411 St. Louis Street
Edwardsville, IL 62025
Tel: (618) 655-0600
Fax: (618) 655-4004
cwb@bcpldaw.com
cjp@bcpldaw.com

DEFENDANT:

Frontier-Mt Carroll Mutual Insurance

Dated this 14th day of April, 2023

By: 
Signature

C.E.O.
Title

Larry Cook
Printed name

COUNSEL FOR DEFENDANT:

Dated this 17 day of April, 2023

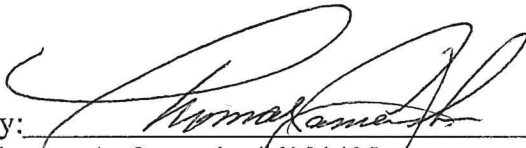
By: 
Thomas A. Gamache #6281435
Leahy, Eisenberg & Fraenkel, Ltd.
33 West Monroe Street, Suite 1100
Chicago, Illinois 60603
Tel: (312) 368-4554
tag@lefltd.com

EXHIBIT A

EXHIBIT A

**IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS**

GENTES TRUST #1 and GENTES TRUST #2,)	
individually, and on behalf of all)	
others similarly situated,)	
)	
Plaintiffs,)	Case No. 2022-LA-000269
)	
vs.)	
)	
FRONTIER-MT CARROLL MUTUAL)	
INSURANCE,)	
)	
Defendant.)	

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFYING
SETTLEMENT CLASS, DIRECTING CLASS NOTICE, AND
SCHEDULING A FINAL APPROVAL HEARING**

Upon review and consideration of Motion for Preliminary Approval of Class Action Settlement of Plaintiffs Gentes Trust #1 and Gentes Trust #2, (the “Representative Plaintiffs”), with Defendant Frontier-Mt Carroll Mutual Insurance (“Frontier” or the “Defendant”), including the parties’ Stipulation and Settlement Agreement signed by the Representative Plaintiffs and Frontier in April 2023 (the “Agreement”) and all corresponding exhibits, and having been fully advised of the particulars, it is **HEREBY ORDERED, ADJUDGED and DECREED** as follows:

1. **Settlement.** The Representative Plaintiffs and Frontier have negotiated a proposed settlement of the Representative Plaintiffs’ claims in this action, individually and on behalf of a class of policyholders of Frontier, described below as the Settlement Class, to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims against the Released Persons as set forth in the Agreement. The Court has carefully reviewed the Agreement, as well as the files, records, and proceedings to date in this matter. The terms and conditions in

the Agreement are incorporated here as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the same definitions that are in the Agreement.

2. **Preliminary Approval.** The Agreement entered into, by and among the Representative Plaintiffs and Frontier, was negotiated at arm's length and is approved on a preliminary basis as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing.

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

a. The "Settlement Class" shall be defined as: All policyholders (or their lawful assignees) under any commercial or personal lines property insurance policy issued by Frontier who made: (a) a Structural Loss claim for property located in the State of Illinois during the applicable Class Periods as defined below; and, (b) that resulted in an ACV Payment from which Labor Depreciation was withheld, or that would have resulted in an ACV Payment but for the withholding of Labor Depreciation causing the loss to drop below the applicable deductible.

b. Excluded from the Settlement Class are:

Policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting the Labor Depreciation within the text of the policy form, endorsement or rider, *i.e.*, by express use of the words "depreciation" and "labor", including FMC Endorsements CL 05H 08 20, CL 05F 08 20, and CL 05D 08 20;

Policyholders who received one or more ACV Payments for claims, but not replacement cost value payments, that exhausted the applicable limits of insurance;

Policyholders whose claims were denied or abandoned without ACV Payment;

Frontier and its officers and directors;

Members of the judiciary and their staff to whom this action is assigned and their immediate families; and,

Class counsel and their immediate families.

- c. The “Class Period” includes only policyholders whose loss accrued between February 28, 2020 and September 17, 2021, and who submitted timely notice of their loss.

4. **Preliminary Certification of Settlement Class.** For settlement purposes only, the

Court makes the following determinations as to certification of the Settlement Class:

- a. The Court preliminarily certifies the Settlement Class for purposes of settlement only, under 735 ILCS 5/2-801;
- b. The Settlement Class is so numerous that joinder of all members is impracticable;
- c. There are questions of law or fact common to the members of the Settlement Class, which common questions predominate over any questions affecting only individual members;
- d. The Representative Plaintiffs are capable of fairly and adequately protecting the interests of the members of the Settlement Class, in connection with the Agreement; and
- e. The class action is an appropriate method for the full and efficient adjudication of the controversy.

5. **Designation of Class Representatives.** The Representative Plaintiffs are designated as the representatives of the Settlement Class for the purpose of seeking approval of and administering the Settlement Agreement.

6. **Designation of Class Counsel** David T. Butsch and Christopher E. Roberts of Butsch Roberts & Associates LLC and Christopher J. Petri and Christopher W. Byron of Byron Carlson Petri & Kalb, LLC as Class Counsel for the Settlement Class for the sole purpose of the Settlement.

7. **Final Approval Hearing.** A hearing regarding final approval of the Settlement (“Final Approval Hearing”) will be held at :00 .m. on 2023 [at least 105 days after preliminary approval], in the Circuit Court of Madison County, Illinois before the Honorable Judge Dennis R. Ruth, to determine, among other things: (i) whether final judgment

should be entered resolving and approving the proposed Settlement of the Representative Plaintiffs' and the Settlement Class' claims against the Defendant in the Action as fair, reasonable, and adequate; (ii) whether the Representative Plaintiffs' and Settlement Class' claims against the Defendant in the Action should be dismissed, with prejudice, pursuant to the Agreement; (iii) whether the Settlement Class Members should be bound by the Release set forth in the Agreement; and (iv) whether the application of Class Counsel for an award of attorneys' fees and expenses, and for a proposed service award to the Representative Plaintiffs, should be approved and in what amount. The Final Approval Hearing may take place, at the sole discretion of the Court, via telephone or video conference so as to allow the Final Approval Hearing to proceed despite limitations on in-court hearings related to the COVID-19 pandemic. Any Class Member, who files a notice of intent to appear, shall be provided with information required to access a telephonic or video hearing.

8. Class Notice.

8.1 The Court approves the methods of providing notice to Class Members as described in the Agreement, including the Class Notice, attached as Exhibit B to the Agreement, and the manner of providing notice to Class Members described in Section 5 of the Agreement. The Court finds that notice as described in the Agreement is reasonably calculated, under all the circumstances, to apprise Class Members of the pendency of this Action, the terms of the Agreement, and their right to object to the Settlement or to exclude themselves from the Settlement Class. The Court further finds that the Class Notice, the Settlement website, and the other forms of notice described in the Agreement are reasonable, constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and meet all legal requirements, including the requirements of ILCS 5/2-801 and Due Process.

8.2 The Class Notice, in the form and content of Exhibit B to the Settlement Agreement, shall be mailed, by the Settlement Administrator, not less than seventy-five (75) days before the Final Approval Hearing regarding the Settlement, in the manner described in the Agreement.

8.3 No later than the posting of the Class Notice, the Settlement Administrator shall establish a website containing copies of the Agreement and Exhibits, the Preliminary Approval Order, the Class Notice, Claim Form, and such other documents and information

about the Settlement as Class Counsel and Defendant's Counsel agree upon. The Claim Form shall be available to download or print from the Settlement website, and signed, scanned, completed copies of the Class Form may be uploaded on the Settlement website. The Settlement website shall have a Uniform Resource Locator which identifies the Settlement website as www.frontierdepreciationsettlement.com, or such other URL as Class Counsel and the Defendant's Counsel agree upon. The Settlement website shall not include any advertising and shall not bear any logos or trademarks of the Defendant other than those appearing in the Agreement. The Settlement website shall cease to operate, and the Administrator shall remove all information from the Settlement website, no later than the Final Accounting as set forth in section 7.8 of the Agreement. Ownership of the Settlement website URL shall be transferred to the Defendant within ten (10) days after operation of the Settlement website ends.

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

8.5 Settlement Class Members may submit Claim Forms in the form attached to the Agreement, as Exhibit C, requesting a Claim Settlement Payment in accordance with the terms of the Agreement. To be considered valid and timely, a Claim Form must be materially complete, signed by or on behalf of the Class Member, and either: (a) mailed to the Administrator's address, as specified in the Claim Form, and postmarked by [45 days after Final Approval Hearing]; or (b) uploaded on the settlement website by [same date] ("Claim Deadline"). Claim Forms may be submitted on behalf of deceased or incapacitated Class Members only by Legally Authorized Representatives, with written evidence of authority.

8.6 No later than 30 days before the Claim Deadline, the Administrator shall mail a postcard reminder in the form attached to the Agreement as Exhibit D (the "Postcard Notice") with information regarding the Claim Deadline, the Settlement website address, and how to request a copy of the Claim Form. The Postcard Notice will be mailed to each Class Member who has not submitted a Claim Form and who has not timely and properly excluded themselves.

8.7 Class Counsel and the Defendant's Counsel, as jointly agreed, along with the Administrator, are authorized, prior to mailing, to complete any omitted information

10.3 Except for Class Members who timely submit a valid request for exclusion from the Settlement Class, all other Class Members will be deemed to be Class Members for all purposes under the Agreement, and upon the Effective Date will be bound by its terms, including, but not limited to, the Releases in Section 9 of the Agreement and Final Judgment approving the Settlement.

10.4 If the proposed Settlement is finally approved, any Class Member who has not submitted a timely, written, request for exclusion, from the Settlement Class, shall be bound by the Final Judgment and all subsequent proceedings, orders, and judgments in this Action, even if he or she has pending, or subsequently initiates, litigation against the Defendant or any Released Persons relating to any of the Released Claims as defined in the Agreement.

10.5 If the proposed Settlement is finally approved, any Class Member, who has not submitted a timely, written, Request for Exclusion, from the Settlement Class, shall be bound by the Judgment and all subsequent proceedings, orders, and judgments, even if he or she has pending, or subsequently initiates, litigation against the Defendant or any Released Persons relating to any of the Released Claims as defined in the Agreement.

11. **Objections and Appearances.** Any Class Member, who does not submit a valid request for exclusion from the Settlement Class and who complies with the requirements of this Order and the Agreement, may object to the proposed Settlement. Any Class Member, who wishes to object to the Settlement, must do so in writing, filed with the Clerk of Court, and a mail a copy to the Administrator, at the address in the Class Notice and on the Settlement website, a written statement of objection, in accordance with the requirements set forth below and in the Agreement, postmarked no later than [REDACTED] (“the Objection Deadline”), which is no less than thirty (30) days before the Final Approval Hearing.

11.1 A valid written objection must include: (a) the case name and number; (b) the name and address of the objecting Class Member and of counsel, if represented; and (c) the basis for the objection. These requirements shall also be set forth in the Class Notice and on the Settlement website.

11.2 Subject to approval of the Court, any Class Member, who files and serves a timely written objection, may appear, in person or by counsel, at the Final Approval Hearing, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Class Member: (a) files with the Clerk of the Court, by the Objection Deadline, a notice of intention to appear at the Final Approval Hearing, and (b) mails copies of the notice to the Administrator, at the address set forth in the Class Notice and on the Settlement website. The notice must include copies

of any papers, exhibits, or other evidence that the objecting Class Member will present to the Court in connection with the Final Approval Hearing. Any Class Member, who does not file a notice of intention to appear in accordance with the deadlines and other requirements of this Order and the Agreement, shall not be entitled to appear at the Final Approval Hearing.

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

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

12.1.1 Depreciation or Labor Costs (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Labor Depreciation) in the adjustment and/or payment of any Covered Loss;

- 12.1.2 any and all claims that were, or could have been, brought pertaining to the calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Depreciation of Labor Costs in the adjustment and/or payment of any Covered Loss;
- 12.1.3 the allegations and claims contained in the Action concerning the alleged systematic practice of deducting Labor Depreciation through the use of estimating software. (Section 12.1 through Section 12.3 are collectively referred to as the “Released Claims”).
- 12.1.4 “Released Persons” means, individually and collectively, (a) Frontier and all independent adjusting companies acting for Frontier, and (b) all past and present affiliates, successors and predecessors in interest, assigns, acquirers, divisions, representatives, officers, directors, shareholders, agents, managing agents, employees, attorneys, auditors, accountants, brokers, surplus lines brokers, underwriters, advisors, insurers, co-insurers, re-insurers, consultants, vendors, independent contractors, and legal representatives of the Persons listed in subsection (a).
- 12.1.5 The Released Claims do not include claims under any coverages other than for loss or damage to structures or buildings. Further, the Released Claims do not apply to Class Members’ claims for replacement cost benefits under Structural Loss insurance claims that are made after the date of Preliminary Approval or outside the Class Period and determined pursuant to the terms and conditions of policies of insurance. Further, this release only applies to claims arising under insurance policies issued by Frontier.

13. **Attorneys’ Fees and Expenses, and Case Contribution Awards.** The Representative Plaintiffs and Class Counsel shall not seek an award of attorneys’ fees and reasonable litigation expenses in this Action in a total amount that exceeds \$250,000.00. Class Counsel and the Representative Plaintiffs agree not to seek service awards that exceed \$10,000 in total to the Representative Plaintiffs, Gentes Trust #1 and Gentes Trust #2, for their work and assistance in this Action. The Defendant agrees not to oppose applications for attorneys’ fees and expenses and for a service award that do not exceed the foregoing amounts.

14. **Preliminary Injunction.** In order to protect the continuing jurisdiction of the Court, and to effectuate this Order, the Agreement, and the Settlement, all Class Members, who do not timely exclude themselves from the Settlement Class, and anyone acting, or purporting to

act on their behalf, are preliminarily enjoined from directly or indirectly (a) filing, commencing, prosecuting, maintaining, intervening in, or participating in (as parties, class members or otherwise), any new or existing action or proceeding before any court or tribunal regarding any Released Claims against any of the Released Persons; and (b) organizing any Class Members into a separate class for purposes of pursuing, as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a new or pending action), based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims.

15. **Service of Papers.** Class Counsel and the Defendant's Counsel shall promptly furnish to each other any objections or requests for exclusion that they receive and shall file such objections with the Court on or before the Final Approval Hearing, unless such documents already appear on the Court's docket.

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

Evidence and all other applicable settlement and negotiation privileges; this Order and other orders, entered by the Court pursuant to the Agreement, will be treated as vacated, *nunc pro tunc*; the Agreement and the Court's orders, including this Order, shall not be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification.

17. **Use of Order Following Termination of Settlement.** This Order shall be of no force and effect, if the Settlement does not become Final, and shall not be construed or used as an admission, concession, or declaration, by or against the Defendant, of any fault, wrongdoing, breach, or liability, or by or against the Representative Plaintiffs or Class Members that their claims lack merit or that the relief requested in this Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses.

18. **Stay.** All proceedings in the Action (as defined in the Agreement), as to the claims of the Representative Plaintiff against the Defendant, are stayed, except as necessary to effectuate the terms of the Settlement.

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

So Ordered: _____
Hon. Dennis R. Ruth

Date: _____

EXHIBIT B

EXHIBIT B

Gentes Trust #1 and Gentes Trust #2 v. Frontier-Mt Carroll Mutual Insurance
Case No. 2022-LA-000269
Circuit Court for the Third Judicial Circuit of Madison County, Illinois

A class action settlement involving certain Illinois property insurance structural damage claims may provide payments to those who qualify.

- A proposed settlement has been reached in a class action about whether Frontier-Mt Carroll Mutual Insurance properly deducted labor depreciation when adjusting certain insurance claims in Illinois.
- You may be eligible for a payment if you qualify and timely submit a valid claim form.
- Your legal rights are affected whether you act or don't act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	The only way to get a payment.
ASK TO BE EXCLUDED	You get no payment. This is the only option that allows you to individually sue the Insurer over the claims resolved by this settlement.
OBJECT	Write to the Court about why you don't agree with the settlement.
GO TO A HEARING	Ask to speak in Court about the settlement.
DO NOTHING	You get no payment. You give up rights.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. If it does, and if any appeals are resolved in favor of the settlement, then money will be distributed to those who timely submit claims and qualify for payment. Please be patient.

EXHIBIT B

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EXHIBIT B

BASIC INFORMATION

1. Why was this notice issued?

A Court authorized this notice because you have a right to know about a proposed settlement of this class action, including the right to claim money, and about your options regarding this settlement before the Court decides whether to give “Final Approval” to the settlement. If the Court approves the parties’ Settlement Agreement, and if any appeals are resolved in favor of the settlement, then payments will be made to those who qualify and timely submit a valid claim. This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who may be eligible for them, and how to get them.

The Circuit Court for the Third Judicial Circuit of Madison County, Illinois is overseeing this class action. The case is called *Gentes Trust #1 and Gentes Trust #2 v. Frontier-Mt Carroll Mutual Insurance*, Case No. 2022-LA-000269. The trusts that sued are called the “Plaintiffs,” and the company they sued is called the “Defendant.”

2. What companies are part of the settlement?

The settlement includes Defendant Frontier-Mt Carroll Mutual Insurance.

3. What is this lawsuit about?

The lawsuit claims that Frontier-Mt Carroll Mutual Insurance improperly deducted depreciation attributable to the estimated costs of labor from insureds’ actual cash value payments when adjusting some insurance claims in Illinois. Frontier maintains that it paid claims reasonably and appropriately and denies all allegations that it acted wrongfully or unlawfully.

4. Why is this a class action?

In a class action, one or more persons, organizations or trusts called “Class Representatives” (in this case, Gentes Trust #1 and Gentes Trust #2) sued on behalf of others who have similar claims. All of those included are a “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

5. Why is there a settlement?

The Court did not decide in favor of the Plaintiffs or the Defendant and has not found that the Defendant did anything wrong. Instead, both sides agreed to settle. That way, the parties avoid the cost of litigation, a trial and, potentially, an appeal, and the people and organizations who qualify will get compensation. The Class Representatives and their attorneys think the settlement is best for all Class Members. The settlement does not mean that the Defendant did anything wrong, no trial has occurred, and no merits determinations have been made.

WHO IS IN THE SETTLEMENT?

To see if you are eligible for benefits from this settlement, you first have to determine if you are a Class Member.

6. How do I know if I am part of the settlement?

If you received this Notice, then you have been identified as someone who is likely to be a member of the Class. The Class includes: All policyholders under any Commercial or Personal Lines property insurance policy issued by Frontier, who made a Structural Loss claim for property located in the State of Illinois during the applicable Class Periods, that resulted in an ACV Payment from which Labor Depreciation was withheld, or that would have resulted in an ACV Payment but for the withholding of Labor Depreciation causing the loss to drop below the applicable deductible.

A Structural Loss means physical damage to a home, building, manufactured home, condo, rental dwelling, or other structure in Illinois while covered by any Personal Lines or Commercial Lines insurance policy issued by Frontier.

“Covered Loss” means a first party insurance claim for Structural Loss, as defined above, that (a) occurred during the Class Period, and (b) resulted in an ACV Payment by Frontier, or would have resulted in an ACV Payment but for the deduction of Labor Depreciation.

“Labor Depreciation” means any costs depreciated by Frontier or its independent adjusters from an actual cash value payment that are attributable to labor costs. For purposes of the Settlement: (A) For claims in which an .esx file was available to counsels, the amount of “Labor Depreciation” withheld from an ACV payment is reflected in column “AI” of the spreadsheet produced by Frontier on February 24, 2023; (B) For claims in which no .esx file was available to counsels, the amount of “Labor Depreciation” is calculated as 49.3% of the total withheld depreciation. (This percentage reflects the proportionate share of labor depreciation to total withheld depreciation from those claims in which an .esx file was available.)

The Class Period means the following time-period:

For Illinois policyholders of Frontier-Mt Carroll Mutual Insurance, with Structural Loss claims with dates of loss between February 28, 2020, and September 17, 2021, and who submitted timely notice of their loss.

7. Are there exceptions to being included in the Class?

Excluded from the Class are: (a) policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting deduction of Labor Depreciation within the text of the policy form, endorsement or rider, *i.e.*, by express use of the words “depreciation” and “labor”; (b) policyholders who received one or more ACV payments that exhausted the applicable limits of insurance; (c) policyholders whose claims were denied or abandoned without ACV payments; (d) Frontier and its officers and directors; (e) members of the judiciary and their staff to whom this action is assigned and their immediate families; and (f) Class Counsel and their immediate families (collectively, “Exclusions”).

8. I’m still not sure I’m included.

If you are not sure whether you are included in the Class, you may call the toll free number 1-
 with questions or visit www.Frontierdepreciationsettlement.com.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

9. How much will settlement payments be?

Class Members who complete and sign a claim form and timely mail it to the proper address, or submit the claim form by uploading it on the settlement website, may be eligible for a payment. Under the settlement, Frontier has agreed to pay Class Members who timely submit valid claims, determined as follows:

(a) for Class Members to whom all Labor Depreciation has not been paid (which is a majority of Class Members), 112.5% of the net estimated Labor Depreciation that was withheld from ACV Payments and not subsequently paid. This is calculated by determining the total amount of outstanding withheld Labor Depreciation and multiplying that figure by 1.125. The average claim payment for these Class Members is estimated to be \$1,722.06. If you fall in this group, your claim will most likely be different (lower or higher) than this amount and dependent upon your own claim;

and,

(b) for Class Members who recovered all outstanding Labor Depreciation through the claim process with Frontier, a one-time payment ranging from 2.5% to 10% of the total amount of labor depreciation initially withheld depending on the length of time said amount was withheld. If labor depreciation costs were withheld for 0-4 months, you will receive 2.5% of the amount initially withheld; if withheld for 5-9 months you will receive 5% of the amount of Labor Depreciation initially withheld; and, if withheld for 10 months or more, you will receive 10% of the amount of Labor Depreciation initially withheld. The average claim for these “interest only” Class Members is approximately \$60.40, but your payment will be dependent upon the amount of labor depreciation withheld and the length of time said Labor Depreciation was withheld.

You **must submit a claim form** in order to determine whether you are eligible for and the amount of your settlement payment. If you do not, you will not receive a settlement payment. For additional details on the payment terms, please see the Settlement Agreement, which is available at www.Frontierdepreciationsettlement.com, or call toll free 1- [REDACTED].

HOW TO GET A PAYMENT—SUBMITTING A CLAIM FORM

10. How can I get a payment?

To find out whether you are eligible for a payment, you must complete and sign a claim form truthfully, accurately, and completely, to the best of your ability. **You must mail the completed claim form to the following address, postmarked no later than [REDACTED], [REDACTED]:**

[REDACTED] Settlement
PO Box [REDACTED]
[REDACTED]

You can also upload to the settlement website at www.Frontierdepreciationsettlement.com a signed, scanned copy of a completed claim form before midnight Eastern Daylight Time on [REDACTED], [REDACTED]. A copy of the claim form was mailed with this Notice. You may obtain an

additional claim form by calling the Settlement Administrator at [redacted] or visiting www.Frontierdepreciationsettlement.com. If you sign a claim form as the representative of a deceased or incapacitated Class Member, you must also submit written proof that you are the legally authorized representative. If you are a contractor to whom an insurance claim was properly assigned by a policyholder, you must submit written proof of the assignment with the filed claim form.

11. When will I get my payment?

If the Court grants Final Approval of the settlement, and if any appeals are resolved in favor of the settlement, then payments will be mailed to eligible Class Members after the claims administration process is completed. This process can take time, so please be patient.

12. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are staying in the Class, and that means you can't individually sue Frontier over the claims settled in this case relating to deduction of Labor Depreciation from payments for Covered Losses. It also means that all of the Court's orders will apply to you and legally bind you.

If you submit a Claim Form, or if you do nothing and stay in the Class, you will agree to release all Released Claims against all Released Persons. "Released Claims" and "Released Persons" are defined in the Settlement Agreement, which you can request by calling [redacted] or view at: www.Frontierdepreciationsettlement.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement, and/or if you want to keep the right to individually sue about the issues in this case, then you must take steps to get out of the settlement. This is called excluding yourself from—or "opting out" of—the Class.

13. How do I get out of the settlement?

To exclude yourself from the settlement, you must mail a letter saying that you want to be excluded from the *Gentes Trust #1 and Gentes Trust #2 v. Frontier-Mt Carroll Mutual Insurance*, Case No. 2022-LA-000269 settlement. Your letter must include your full name, address, and be signed. You must also include a clear statement that you wish to be excluded from the settlement class. You must mail your request for exclusion postmarked by [redacted] [insert date], [redacted] to:

[redacted] Settlement
PO Box _____

More instructions are in the Settlement Agreement available at: www.Frontierdepreciationsettlement.com. You cannot exclude yourself by phone, by email, or on the website. The right to exclude yourself from the proposed settlement must be exercised individually, not as a member of a group and, except for a deceased or incapacitated Class Member, not by another person acting or purporting to act in a representative capacity. If you request exclusion on behalf of a deceased or incapacitated Class Member, you must also submit written proof that you are the legally authorized representative.

14. If I don't exclude myself, can I sue the Insurance Company for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Frontier for the claims that this settlement resolves. You must exclude yourself from the Class to individually sue Frontier over the claims resolved by this settlement. Remember, the exclusion deadline is [insert date],

15. If I exclude myself, can I get a payment from this settlement?

No. If you exclude yourself from the settlement, do not submit a Claim Form to ask for a payment.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court appointed the following law firms to represent you and other Class Members as Class Counsel:

David T. Butsch
Christopher E. Roberts
BUTSCH ROBERTS & ASSOCIATES LLC
231 S. Bemiston Ave., Suite 260
Clayton, MO 63105
Tel: (314) 863-5700
Fax: (314) 863-5711
butsch@butschroberts.com
roberts@butschroberts.com

Christopher W. Byron
Christopher J. Petri
BYRON CARSLON PETRI & KALB, LLC
411 St. Louis Street
Edwardsville, IL 62025
Phone: (618) 655-0600
Fax: (618) 655-4004
cwb@bcpldaw.com
cjp@bcpldaw.com

You do not have to pay Class Counsel. If you want to be represented by your own lawyer, and potentially have that lawyer appear in court for you in this case, you may hire one at your own expense.

17. How will the lawyers and Class Representatives be paid?

Class Counsel will ask the Court for up to \$250,000.00 for attorneys' fees and reasonable litigation expenses, and will ask the Court to award the Class Representatives \$10,000 in total for their efforts in prosecuting this case (called a service award). Frontier agreed not to oppose the request for fees, expenses, and service awards up to these amounts. The Court may award less than these amounts. Frontier will pay these fees, expenses, and service awards in addition to amounts due to

Class Members. These payments will not reduce the amount distributed to Class Members. Frontier will also separately pay the costs to administer the settlement.

OBJECTING TO THE SETTLEMENT

You can tell the Court if you don't agree with the settlement or some part of it.

18. How do I tell the Court if I don't agree with the settlement?

If you don't want the Court to approve the settlement you must file a written objection with the Court and send a copy to the Settlement Administrator by the deadline noted below. You should include the name of the cases (*Gentes Trust #1 and Gentes Trust #2 v. Frontier-Mt Carroll Mutual Insurance*, Case No. 2022-LA-000269), your full name, address, telephone number, your signature, the specific reasons why you object to the settlement, and state whether you intend to appear at the Final Approval Hearing in person or through counsel. If you have a lawyer file an objection for you, he or she must follow all local rules and you must list the attorney's name, address, and telephone number in the written objection filed with the Court.

If you intend to appear at the Final Approval Hearing to object to the settlement, you must also provide the Court with your written objection a detailed statement of the specific legal and factual reasons for each objection, a list of any witnesses you may call at the hearing with each witness's address and summary of the witness's testimony, and a description of any documents you may present to the Court at the hearing. You or your lawyer may appear at the Final Approval Hearing if you have filed a written objection as provided above. (See the section on the "Court's Final Approval Hearing" below). The right to object to the Proposed Settlement must be exercised individually by an individual Class Member, not as a member of a group and, except in the case of a deceased or incapacitated Class Member, not by another person acting or purporting to act in a representative capacity. If you file an objection as the representative of a Class Member, you must also submit written proof that you are the legally authorized representative.

File the objection with the Clerk of the Court at the address below by [insert date]. Note: You may send it by mail, but it must be received and filed by the Clerk by this date.	And mail a copy of the objection to the Administrator at the following address so that it is postmarked by [insert date]:
Court	Administrator
Clerk of Court [insert address]	[redacted] Settlement PO Box _____ _____

19. What's the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class or the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you. If you object, and the Court approves the settlement anyway, you will still be legally bound by the result.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

20. When and where will the Court decide whether to approve the settlement?

The Court has scheduled a Final Approval Hearing at [insert time] __.m., on [insert date], at the Circuit Court Third Judicial Circuit, Madison County, Illinois, [address], Courtroom _____, [city], Illinois. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them at that time. The Court may listen to people who have asked to speak about their objection. The Court may also decide how much to award Class Counsel for fees and expenses for representing the Class and how much to award the Class Representatives as service awards. At or after the hearing, the Court will decide whether to approve the settlement. It is not known how long this decision will take. Check the settlement website before to make sure the hearing hasn't been rescheduled, or to see whether the Court has scheduled the hearing to proceed by video conference or teleconference only, instead of in person.

21. Do I have to come to the hearing?

You are not required to attend, and Class Counsel will answer any questions that the Court may have. If you wish to attend the hearing, you may come at your own expense. You may also pay your own lawyer to attend, but it's not necessary, unless you choose to have a lawyer appear on your behalf to object to the settlement.

22. May I speak at the hearing?

If you submitted a proper written objection to the settlement, you or your lawyer acting on your behalf may speak at the Final Approval Hearing. You cannot speak at the Hearing if you exclude yourself.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you'll get no payment from this settlement. But, unless you exclude yourself from the settlement, you won't be able to individually sue for the claims resolved in this case.

GETTING MORE INFORMATION

24. How do I get more information about the settlement?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. If you have questions or if you want to request a copy of the Settlement Agreement, which provides more information, call 1-_____ or visit www.Frontierdepreciationsettlement.com.

PLEASE DO NOT CALL OR WRITE THE COURT, THE JUDGE OR HIS STAFF, OR THE INSURANCE COMPANY OR ITS COUNSEL FOR INFORMATION OR ADVICE ABOUT THE SETTLEMENT

EXHIBIT C

EXHIBIT C

CLASS ACTION SETTLEMENT CLAIM FORM

Name: _____

Address: _____

IMPORTANT: You have been identified as a claimant who is likely a Class Member. If you are a Class Member and fail to submit this claim form, then you will receive nothing but still be bound by the settlement. *If* you are a Class Member and you submit this Claim Form, then you will receive a check. Only those insureds who fall within the definition of “Class Member” in the accompanying Class Notice will receive a check, and not all who receive the Class Notice are Class Members. There is no cost to you submit a claim form.

The records of Frontier – Mt Carroll Mutual Insurance indicate that you might be a member of the Class in the case named *Gentes Trust #1 and Gentes Trust #2 v. Frontier-Mt Carroll Mutual Insurance*, Case No. 2022-LA-000269, Circuit Court for the Third Judicial Circuit of Madison County, Illinois. However, information in Frontier’s records need to be reviewed to determine whether you are in fact a member of the Class, and if so, how much money you may be entitled to receive.

Please read the accompanying Class Notice before you complete this Claim Form. To participate in this Settlement, your Claim Form must be completed to the best of your ability, signed, and then: (1) mailed and postmarked by [DATE] to [ADDRESS]; (2) scanned or photographed and uploaded at www.Frontierdepreciationsettlement.com; OR (3) e-mailed to [E-MAIL ADDRESS].

Frontier’s records reflect that the following claim may be at issue:

Policy Number:	XXXXXXXXXXXX
Claim Number:	XXXXXXXXXXXX
Date of Loss:	X/X/20XX
Address of Insured Premises:	XXXXXXXXXXXX

This Claim Form applies only to the Covered Loss listed above. If you had more than one Covered Loss during the Class Period, then you may receive separate Claim Form(s) for those losses, and you must complete and mail those Claim Form(s) to be eligible for payment on those losses.

Please do not call Frontier or your insurance agent to discuss this lawsuit or this Claim Form. You may, however, continue to call Frontier or your agent regarding any other insurance matters.

If you have any questions, please visit www.Frontierdepreciationsettlement.com, or call

COMPLETE THE FOLLOWING QUESTIONS IF THEY APPLY:

1. Please provide your current mailing address **only if** the address listed above is not correct.

2. ***Leave this section blank if all of the named policyholders are alive and capable of completing this form.*** If *all* of the named policyholders for the claim identified above are either dead or incapable of completing this form, and you are submitting this Claim Form as the legally authorized representative, please state how and when you became the legally authorized representative and provide a copy of any documentation you may have supporting the fact that you are the legally authorized representative

3. ***Leave this section blank if you have not signed a contract giving your insurance claim to someone else.*** If you have signed a contract giving your insurance claim to someone else (an “assignment”), please attach a written copy of the contract or the insurance claim was assigned to you and you are the contractor, please list the name and address of the contractor person to whom the insurance claim was assigned, when, and why, unless clearly identified in the attached contract. An assignment is a written agreement allowing another party, like a roofer or contractor, to recover and keep your insurance benefits.

SIGN AND DATE YOUR CLAIM FORM:

I wish to make a claim associated with the class action settlement, and all information provided above is true and correct to the best of my knowledge.

Signature

Print Name

Date

MAIL YOUR CLAIM FORM OR SUBMIT YOUR CLAIM FORM ONLINE:

Once signed, this Claim Form and any attachments must be:

(1) scanned or photographed, and uploaded on or before [date] at the website:
www.Frontierdepreciationsettlement.com;

OR

(2) postmarked on or before [DATE], and mailed to:

Gentes Trust #1 and Gentes Trust #2 v. Frontier-Mt Carroll Mutual Insurance Notice
Administrator
c/o TBD
[address]

OR

(3) e-mailed to [e-mail address]

CLAIMS ADMINISTRATION:

Please be patient. If you qualify for payment under the Settlement, a Settlement Check will be mailed to you. If you do not qualify, a letter will be mailed to you explaining why.

EXHIBIT D

IMPORTANT NOTICE – You are receiving this because you are likely a member of a class action lawsuit involving Frontier-Mt Carroll Mutual Insurance and you have not submitted a claim form. If you **FAIL** to submit a claim form and you are a Class Member, then you will **LOSE** your right to seek payment(s) that may be made available to you under the settlement.

You were previously mailed a court-authorized Notice explaining that you may be a Class Member in a class action settlement regarding depreciation of estimated labor costs in making actual cash value claim payments under insurance policies. **Our records indicate that you have not submitted a Claim Form or request for exclusion.**

This is only a reminder. For more information regarding the proposed Settlement, including who's included in the settlement class and important deadlines, please review the Notice or the settlement website at www.Frontierdepreciationsettlement.com, or call [REDACTED].

In order to receive any monetary benefits from the settlement, you **MUST** complete a Claim Form and mail it to the following address or upload and scan the form to www.Frontierdepreciationsettlement.com:

[REDACTED]
[REDACTED]
[REDACTED]

If you did not receive or no longer have the Notice or Claim Form, you may request that they be mailed to you by calling the phone number below or download them at www.Frontierdepreciationsettlement.com. You may also call with any questions you have about the proposed Settlement. Please do not call your insurance company or your insurance agent to discuss this lawsuit or whether to file a claim form.

IN ORDER TO PARTICIPATE IN THIS SETTLEMENT, YOUR CLAIM FORM MUST BE SUBMITTED OR POSTMARKED OR SUBMITTED ELECTRONICALLY NO LATER THAN [DEADLINE].

EXHIBIT E

EXHIBIT E

**IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS**

GENTES TRUST #1 and GENTES TRUST #2,)	
individually, and on behalf of all)	
others similarly situated,)	
)	
Plaintiffs,)	Case No. 2022-LA-000269
)	
vs.)	
)	
FRONTIER-MT CARROLL MUTUAL)	
INSURANCE,)	
)	
Defendant.)	

**[PROPOSED] ORDER AND FINAL JUDGMENT GRANTING FINAL APPROVAL TO
CLASS ACTION SETTLEMENT**

The claims of the Representative Plaintiffs, Gentes Trust #1 and Gentes Trust #2, (the “Representative Plaintiffs”) against the Defendant, Frontier-Mt Carroll Mutual Insurance, (“Frontier” or the “Defendant”), have been settled, individually and on behalf of a class of policyholders of Frontier, pursuant to the Stipulation and Settlement Agreement signed by the Parties in March 2023 (the “Agreement”). On **XXXXXX, 2023**, the Court granted preliminary approval of the proposed class action settlement set forth in the Agreement (the “Settlement”) and provisionally certified the Settlement Class for settlement purposes only.

On **XXXXXX**, 2023, the Court held a duly noticed final approval hearing to consider: (1) whether the terms and conditions of the Agreement are fair, reasonable and adequate; (2) whether judgment should be entered for the claims of the Representative Plaintiffs, including the claims of Class Members who have not requested exclusion from the Settlement Class; and (3) whether, and in what amount, to award attorneys’ fees and expenses to Class Counsel and a service award to the Representative Plaintiffs.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. The terms and conditions of the Agreement, which were attached to the motion for preliminary approval filed with the Court, are hereby incorporated as though fully set forth in this Judgment, and unless otherwise indicated, capitalized terms in this Judgment shall have the meanings attributed to them in the Agreement.

2. The Court has personal jurisdiction over the Representative Plaintiffs, the Defendant, and Class Members. Venue is proper and the Court has subject matter jurisdiction to approve the Agreement including all exhibits thereto, and the Court has jurisdiction to enter this Judgment. Without in any way affecting the finality of this Judgment, the Court retains jurisdiction as to all matters relating to administration, consummation, enforcement, construction, and interpretation of the Agreement and of this Judgment. Further, the Court retains jurisdiction to protect, preserve, and implement the Agreement, including, but not limited to, enforcement of the releases contained in the Agreement, and to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Agreement.

3. The Settlement was negotiated at arm's length, by experienced counsel who were fully informed of the facts and circumstances of this Action and of the strengths and weaknesses of their respective positions. The Settlement was reached after the Parties had engaged in extensive and multiple settlement negotiation sessions after exchanging complete class member data regarding the amounts of costs withheld from actual cash value payments and the dates of withholding. Counsel for the Parties were, therefore, well positioned to evaluate the benefits of the Settlement, considering the risks and uncertainties of continued litigation, the time and expense that would be necessary to prosecute the Action through class certification, trial and any appeals that might be taken, and the likelihood of success.

4. The Court finds that the prerequisites for a class action under 735 ILCS 5/2-801 have been satisfied, for settlement purposes, in that: (a) the number of Class Members is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Settlement Class, which common questions predominate over any questions affecting only individual members; (c) the Representative Plaintiffs and Class Counsel have, and will continue to, fairly and adequately represented the interests of the Settlement Class for purposes of the Settlement; and (d) a class action is an appropriate method for the fair and efficient adjudication of the controversy. Accordingly, and pursuant to 735 ILCS 5/2-801, this Court hereby finally certifies the Settlement Class.

5. Pursuant to 735 ILCS 5/2-801, the Court hereby finally certifies the Settlement Class for settlement purposes only, as identified in the Settlement Agreement, defined as follows:

- a. "Settlement Class" means: All policyholders (or their lawful assignees) under any commercial or personal lines property insurance policy issued by Frontier, who made: (a) a Structural Loss claim for property located in the State of Illinois during the applicable Class Periods as defined below; and, (b) that resulted in an ACV Payment from which Labor Depreciation was withheld, or that would have resulted in an ACV Payment but for the withholding of Labor Depreciation causing the loss to drop below the applicable deductible.

- b. Excluded from the Settlement Class are:

Policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting Labor Depreciation within the text of the policy form, endorsement or rider, *i.e.*, by express use of the words "depreciation" and "labor", including FMC Endorsements CL 05H 08 20, CL 05F 08 20, and CL 05D 08 20;

Policyholders who received one or more ACV payments for claims, but not replacement cost value payments, that exhausted the applicable limits of insurance;

Policyholders whose claims were denied or abandoned without ACV payment;

Frontier and its officers and directors;

Members of the judiciary and their staff to whom this action is assigned and their immediate families; and,

Class counsel and their immediate families.

c. The “Class Period” includes only policyholders whose loss accrued between February 28, 2020 and September 17, 2021, and who submitted timely notice of their loss.

6. Pursuant to 735 ILCS 5/2-801 the Court appoints David T. Butsch and Christopher

E. Roberts of Butsch Roberts & Associates LLC and Christopher J. Petri and Christopher W. Byron of Byron Carlson Petri & Kalb, LLC as Class Counsel for the Settlement Class.

7. The Court also designates Representative Plaintiffs Gentes Trust #1 and Gentes Trust #2 as the representatives of the Settlement Class.

8. The Court makes the following findings with respect to Class Notice to the Settlement Class:

a. The Court finds that the Class Notice, the establishment of an automated toll-free, interactive, voice response phone system, and the Settlement website, all as provided for in the Settlement Agreement and the Preliminary Approval Order, (i) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the Settlement, their right to object or to exclude themselves from the Settlement, and their right to appear at the Final Approval Hearing; (ii) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and (iii) complied fully with all legal requirements, including the requirements of 735 ILCS 5/2-801, the United States Constitution, the Rules of this Court, and any other applicable law.

b. Class Counsel has filed with the Court an affidavit from Atticus Administration LLC Administration, the independent third-party Administrator for the Settlement, establishing that the Class Notice and Claim Form were mailed to Class Members on XXXXX, 2023, the Settlement website was established on XXXXXX, 2023, and the telephone line available for Class Members to call was available beginning XXXXX, 2023. Adequate notice was given to the Settlement Class in compliance with the Settlement Agreement and the Preliminary Approval Order.

9. Persons who wished to be excluded from the Settlement Class were provided an opportunity to request exclusion as described in the Class Notice and on the Settlement website.

The Court finds that the individual interests of the persons who timely sought exclusion from the

Settlement Class are preserved and that no person was precluded from being excluded from the Settlement Class if desired. Those persons who timely and properly excluded themselves from the Settlement Class are identified in the attached Exhibit 1.

10. Defendant has complied with all notice obligations in connection with the proposed Settlement.

11. XXXXX objections to the Settlement were filed.

12. Class Members, who did not timely file and serve an objection in writing to the Settlement Agreement, to the entry of this Judgment, to Class Counsel's application for fees, costs, and expenses, or to the service awards to the Representative Plaintiff, in accordance with the procedure set forth in the Class Notice and mandated in the Preliminary Approval Order, are deemed to have waived any such objection through any appeal, collateral attack, or otherwise.

13. The terms and provisions of the Agreement, including all Exhibits thereto, have been entered into in good faith and, pursuant to 735 ILCS 5/2-801, are hereby fully and finally approved as fair, reasonable, adequate as to, and in the best interests of, Class Members. The Court hereby enters judgment approving and adopting the Settlement and the Agreement.

14. Pursuant to 735 ILCS 5/2-801, the Court hereby awards Class Counsel attorneys' fees and reasonable litigation expenses in the total amount of Two Hundred Fifty Thousand dollars (\$250,000.00), payable by the Defendant pursuant to the terms of the Agreement. The Court also awards service awards in the amount of \$10,000.00 in total to the Representative Plaintiffs Gentes Trust #1 and Gentes Trust #2, payable by the Defendant pursuant to the terms of the Agreement. The Defendant shall not be responsible for and shall not be liable with respect to the allocation among Class Counsel or any other person who may assert a claim thereto of attorneys' fees and expenses awarded by the Court.

15. The terms of the Agreement, including all Exhibits thereto, and of this Judgment, shall be forever binding on, and shall have *res judicata* and preclusive effect in and on, all Released Claims by the Representative Plaintiffs and each Class Member, who did not timely and properly exclude itself, himself or herself from the Settlement Class, as well as each of their respective heirs, beneficiaries, administrators, successors, and assigns, and all other Releasing Persons.

16. The Releases set forth in Section 9 of the Settlement Agreement are incorporated herein, in all respects, and are effective as of the entry of this Judgment. The Released Persons are forever released, relinquished, and discharged by the Releasing Persons, including all Class Members who did not timely exclude themselves from the Settlement Class, from all Released Claims (as that term is defined below and in the Agreement).

a. Although the definitions in the Agreement are incorporated in, and are a part of this Judgment, for avoidance of doubt and ease of reference, some of those definitions are repeated as follows:

- i. “ACV Payment” means an actual cash value payment made on an insurance claim for a Structural Loss, calculated by estimating the replacement cost value of covered damage, and subtracting depreciation, including Labor Depreciation, and any applicable deductible.
- ii. “Covered Loss” means a first party insurance claim for Structural Loss, as defined below, that (a) occurred during the Class Period, and (b) resulted in an ACV payment by Frontier, or would have resulted in an ACV payment but for the deduction of Labor Depreciation.
- iii. “Labor Depreciation” means any costs depreciated by Frontier or its independent adjusters from an actual cash value payment that are attributable to labor costs. For purposes of this Settlement, (A) For claims in which an .esx file was available to counsels, the amount of “Labor Depreciation” withheld from an ACV payment is reflected in column “AI” of the spreadsheet produced by Frontier on February 24, 2023; (B) For claims in which no .esx file was available to counsels, the amount of “Labor Depreciation” is calculated as 49.3% of the total withheld depreciation. (This percentage reflects the proportionate share of labor depreciation to total withheld depreciation from those claims in which an .esx file was available.)

- iv. “Effective Date” means the first date on which all of the following conditions have occurred: (a) all Parties have executed this Agreement; (b) no party has terminated the Agreement; (c) the Court has entered the Preliminary Approval Order; (c) the Court has entered a Final Judgment, approving the Agreement and the Proposed Settlement, releasing all of the Released Persons from all of the Released Claims and dismissing the Action with prejudice and without leave to amend; and, (e) the Final Judgment has become Final.
- v. “Final” means, with respect to a judgment or order that: (a) the time has expired to file an appeal with no such appeal having been filed; or (b) if an appeal has been filed, (i) the judicial ruling or order has been affirmed without modification and with no further right of review, or (ii) such appeal has been denied or dismissed with no further right of review, in all cases so as to permit the implementation of the Proposed Settlement in accordance with and without material change to this Agreement.
- vi. “Released Persons” means, individually and collectively, (a) Frontier and all independent adjusting companies acting for Frontier, and (b) all past and present affiliates, successors and predecessors in interest, assigns, acquirers, divisions, representatives, officers, directors, shareholders, agents, managing agents, employees, attorneys, auditors, accountants, brokers, surplus lines brokers, underwriters, advisors, insurers, co-insurers, re-insurers, consultants, vendors, independent contractors, and legal representatives of the Persons listed in subsection (a).
- vii. “Releasing Persons” means the Representative Plaintiffs, all Class Members who do not properly and timely opt out of the Settlement Class, and their respective spouses, family members, executors, representatives, administrators, guardians, wards, heirs, attorneys-in-fact, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf.
- viii. “Structural Loss” means physical damage to a house, building, manufactured house, condo, farm/ranch, rental dwelling, or other structure in Illinois while covered by a Personal Lines or Commercial Lines insurance policy, issued by Frontier.

b. The Representative Plaintiffs, and each Class Member, shall, by operation of the Final Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged Frontier and all other Released Persons from any and all claims, Unknown Claims, actions, causes of action, suits, debts, sums of money, payments, obligations, reckonings, promises, damages, interest, penalties, attorney’s fees and costs, liens,

judgments, and demands of any kind whatsoever that each Releasing Person has, or may have had, prior to the Effective Date, and arising from a loss during the Class Periods, whether *ex contractu* or *ex delicto*, debts, liens, contracts, liabilities, agreements, attorneys' fees, costs, penalties, interest, expenses, or losses (including actual, consequential, statutory, extra-contractual and punitive or exemplary damages), and whether arising under or based on contract, extra-contractual or tort theories, at law or in equity, or federal, state or local law, statute, ordinance, rule or regulation, whether asserted individually or in a representative capacity, whether past or present, mature or not yet mature, that the Representative Plaintiff or Class Members have, or may have, had against any of the Released Persons that relate to, concern, arise from, or pertain in any way to (the "Released Claims"):

- i. Depreciation or Labor Costs (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Labor Depreciation) in the adjustment and/or payment of any Covered Loss;
 - ii. any and all claims that were or could have been brought, whether based upon contract, statute, regulation or tort, pertaining to the calculation, deduction, determination, inclusion, modification, omission, and/or withholding of the depreciation or Labor Costs in the adjustment and/or payment of any Covered Loss;
 - iii. the allegations and claims contained in the complaint in the Action concerning the alleged systematic practice of deducting Labor Depreciation through the use of estimating software.
 - iv. The Released Claims do not include claims under any coverages other than for loss or damage to structures or buildings. Further, the Released Claims do not apply to Class Members' claims for replacement cost benefits under Structural Loss insurance claims that are made after the date of Preliminary Approval or outside the class period and determined pursuant to the terms and conditions of policies of insurance. Further, this release only applies to claims arising under insurance policies issued by Frontier.
- c. In agreeing to the foregoing Releases, the Representative Plaintiffs, for itself and on behalf of Class Members, explicitly acknowledges that Unknown Claims could possibly

exist and that any present losses may have been underestimated in amount or severity. The Representative Plaintiffs, or any Class Member, may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the Released Claims or the law applicable to such claims may change. Nonetheless, the Representative Plaintiff and each Class Member expressly agree that he/she/they shall have irrevocably waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent, claims with respect to all Released Claims. Further, the Representative Plaintiffs and Class Members agree and acknowledge that they are bound by the Settlement Agreement, including by the Releases, and that all of their claims in Action asserted against the Defendant shall be dismissed, with prejudice, and released, without regard to subsequent discovery of different or additional facts or subsequent changes in the law, and regardless of whether unknown losses or claims exist, or whether present losses may have been underestimated in amount or severity, and even if they never received actual notice of the Settlement or never received a Claim Settlement Payment. The Parties acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

d. This Judgment does not release and determine: (a) claims arising after the Effective Date; (b) claims for valuation or payment of a Covered Loss under any property insurance policies issued by the Defendant that are not related to the withholding of payment for Labor Depreciation; (c) Class Members' rights and obligations under this Agreement; and, (d) the rights of potential Class Members who timely and properly submit a request for exclusion from the Settlement Class in accordance with this Agreement.

e. The Representative Plaintiffs and Class Counsel have represented and warranted that there are no outstanding liens or claims against the Action and have acknowledged that the Representative Plaintiffs and Class Counsel will be solely responsible for satisfying any liens or claims asserted against the Action.

f. The Representative Plaintiffs and each Class Member is deemed to agree and acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

g. The Agreement shall be the exclusive remedy for all Class Members with regards to the Released Claims.

17. Neither the Agreement, the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein, nor this Judgment, nor any of its terms and provisions, nor any pleadings, motions, or other document related in any way to the Agreement shall be:

a. Construed as an admission or concession by the Defendant of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind by the Defendant or any Released Persons;

b. Offered or admitted into evidence in the Action, or in any other proceeding, in support of, or in opposition to, a motion to certify a contested class against the Defendant or any Released Persons;

c. Offered or admitted into evidence in the Action, or in any other proceeding, as an admission or concession of liability or wrongdoing by the Defendant or any Released Persons;

d. Offered or received in evidence in any action or proceeding, against the Defendant or any Released Persons, in any court, administrative agency, or other tribunal for any purpose

whatsoever, other than to enforce or otherwise effectuate the Settlement Agreement (or any agreement or order relating thereto), including the Releases or this Judgment.

18. If the Effective Date does not occur, this Judgment shall automatically be rendered null and void and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void.

19. This Judgment and the Agreement (including the Exhibits thereto) may be filed in any action against, or by, any Released Person in order to support any argument, defense or counterclaim, including, without limitation, those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

20. The Representative Plaintiffs and all Class Members, and their respective spouses, family members, executors, representatives, administrators, guardians, wards, heirs, attorneys-in-fact, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, have released the Released Claims as against the Released Persons, and are, from this day forward, hereby permanently barred and enjoined from filing, commencing, prosecuting, intervening in, maintaining, or participating in (as parties, class members or otherwise), any new or existing action or proceeding, before any court or tribunal, regarding any Released Claims against any Released Persons, and from organizing any Class Members into a separate class for purposes of pursuing, as a purported class action, any lawsuit regarding any Released Claims against any Released Persons, and any person in violation of this injunction may be subject to sanctions, including payment of reasonable attorneys' fees incurred in seeking enforcement of the injunction.

21. The Released Claims of Representative Plaintiffs Gentes Trust #1 and Gentes Trust #2, individually, and on behalf of the Settlement Class, are hereby settled, compromised, and resolved as to the Defendant without fees (including attorneys' fees) or costs to any party except as otherwise provided in this Judgment.

22. The Parties are hereby directed to implement and consummate the Settlement, according to its terms and provisions, as may be modified by Orders of this Court. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Agreement, as may be modified by the Preliminary Approval Order or this Judgment.

23. Upon completion of all the terms of the Agreement, Plaintiffs shall file a satisfaction of judgment.

24. The Court hereby enters Final Judgment, as described herein, and expressly determines that there is no just reason for delay. Without impacting the finality of this Judgment, the Court shall retain jurisdiction over the construction, interpretation, consummation, implementation, and enforcement of the Agreement and this Judgment, including jurisdiction to enter such further orders as may be necessary or appropriate.

So Ordered: _____
Hon. Dennis R. Ruth

Date: _____

EXHIBIT B

TABLE OF LABOR DEPRECIATION “CLAIMS MADE” CLASS SETTLEMENTS

Case Name & Case No.	Venue	Estimated Amount of Total Monetary Benefit To Be Made Available To Class¹	Percentage of Fees & Costs Awarded²	Amount of Fees & Costs Awarded	Date of Final Approval Order
<i>Fox v. American Family Ins. Co.</i> 1:20-cv-1991	N.D Ohio	\$1,941,619	26%	\$679,567	Jan. 12, 2023
<i>Cedarview Mart, LLC v. State Auto Property & Casualty Co.</i> 3:20-cv-0107	N.D. Miss.	\$3,764,000.00	22%	\$1,129,722.00	Nov. 7, 2022
<i>Staunton Lodge No. 177, A.F. & A.M v. Pekin Ins. Co., No.</i> 2020-L-1297	Ill. Cir. Ct., Third Judicial Cir, Madison Cty.	\$6,916,100.00	21.7%	\$1,500,000.00	Oct. 6, 2022
<i>Arnold v. State Farm Fire and Casualty Co.</i> 2:17-cv-148	S.D. Alabama	\$38,810,000.00	22%	\$8,595,000.00	Oct. 4, 2022
<i>Stevener v. Erie Ins. Co. and Erie Ins. Exchange</i> 20-cv-603	N.D. Ohio	\$5,974,285.00	19.3%	\$1,155,000.00	Aug. 19, 2022
<i>Donofrio v. Auto-Owners</i>	S.D. Ohio	\$8,885,111.00	19.5%	\$1,740,000.00	July 22, 2022

¹ The “total monetary benefit” is inclusive of the value of the amount of unrecovered nonmaterial depreciation and interest, attorneys’ fees and expenses, service awards, and settlement administrative costs.

² The percentage of attorneys’ fees awarded in these cases were based on the “total benefit” made available to the class as discussed, *supra*, n.1.

<i>(Mutual) Ins. Co., No. 3:19-cv-00058</i>					
<i>Huey v. Allstate Veh. And Prop. Ins. Co., No. 4:19-cv-153</i>	N.D. Miss.	\$1,481,208.00	23%	\$336,000.00	May 26, 2022
<i>Republic Roofing & Restoration v. National Sec. Fire & Cas. Co. No. 2:19-cv-02518</i>	W.D. Tenn.	\$2,686,954.37	21%	\$609,603.00	May 26, 2022
<i>Shields, et al. v. Metropolitan No. 1:19-cv-00222</i>	N.D. Miss.	\$8,495,308.00	22%	\$1,895,876.00	May 25, 2022
<i>Helping Hands Home Improvement, LLC v. Selective Ins. Co. of South Carolina, et al. No. 20-cv-00092</i>	M.D. Tenn.	\$4,207,073.00	23.8%	\$999,000.00	May 9, 2022
<i>Hicks v. State Farm Fire & Cas. Co., No. 14-cv-00053</i>	E.D. Ky.	\$7,760,000.00	24.5%	\$1,900,000.00	Apr. 28, 2022
<i>Hawker v. Pekin Ins. Co., No. 21-cv-002169</i>	Ohio Ct. of Common Pleas, Franklin Cty.	\$3,417,000.00	24.1%	\$833,100.00	Feb. 25, 2022
<i>Schulte v. Liberty Ins.</i>	S.D. Ohio	\$20,078,000.00	17.08%	\$3,431,259.79	May 20, 2021

<i>Corp.</i> , No. 3:19-cv-00026					
<i>Arakoni v. Membersselect Ins. Co.</i> , No. 1:20-cv-000092	N.D. Ohio	\$230,000.00	23.9%	\$55,000.00	Mar. 3, 2021
<i>Mitchell v. State Farm Fire & Cas. Co.</i> , No. 17-00170	N.D. Miss.	\$11,559,000.00	18.9%	\$2,190,000.00	Feb. 25, 2021
<i>Holmes v. LM Ins. Corp.</i> , No. 19-00466 and <i>Northside Church of Christ v. Ohio Security Ins. Co.</i> , No. 20-00184	M.D. Tenn.	\$10,144,000.00	18.3%	\$1,863,665.88	Feb. 5, 2020
<i>Koester v. USAA Gen. Indem. Co.</i> , No. 19-02283	W.D. Tenn.	\$4,163,000.00	18.7%	\$780,000.00	Sept. 4, 2020
<i>Stuart v. State Farm Fire & Cas. Co.</i> , No. 4:14-cv-4001	W.D. Ark.	\$11,757,954.06	27.7%	\$3,257,954.06	June 2, 2020
<i>Baker v. Farmers Group, Inc.</i> , No. CV--17-	D. Ariz.	\$672,500.00	18.5%	\$120,500.00	Sept. 25, 2019

03901-PHX-JJT					
<i>Braden, et al. v. Foremost Ins. Co. Grand Rapids, No. 4:15-cv-04114-SOH</i>	W.D. Ark.	\$3,827,000.00	22.2%	\$850,000.00	Oct. 9, 2018
<i>Larey v. Allstate Prop. & Cas. Ins. Co., No. 4:14-cv-04008-SOH</i>	W.D. Ark.	\$1,662,500.00	24.8%	\$412,500.00	Feb. 9, 2018
<i>Goodner v. Shelter Mut. Ins. Co., Case No. 4:14-cv-04013-SOH</i>	W.D. Ark.	\$25,529,071.00	23.8%	\$6,086,160.63	June 6, 2017
<i>Green v. American Modern Home Ins. Co., et. al, Case No. 4:14-cv-04074-SOH</i>	W.D. Ark.	\$3,281,795.00 (exclusive of settlement administrative costs to be paid separately by defendant)	24.9%	\$820,448.66	June 1, 2017