

**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.	)	

**PLAINTIFFS’ UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF A  
CLASS SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, AND  
SCEHEDUING A FINAL APPROVAL HEARING**

Pursuant to 735 ILCS 5/2-801 and 735 ILCS 5/2-806, Plaintiffs Gentes Trust #1 and Gentes Trust #2 (collectively “Plaintiffs”), on behalf of themselves and the proposed Settlement Class, respectfully move for an order certifying the proposed Class solely for purposes of preliminarily approving a settlement agreement, and further ordering preliminary approval in accordance with the terms and conditions set forth in the proposed preliminary approval order attached to the Settlement Agreement (“SA”) filed concurrently with the memorandum in support of this motion.

Defendant Frontier-Mt Carroll Mutual Insurance (“Defendant” or “Frontier”) will not oppose this motion for approval of a settlement.<sup>1</sup> For purposes of preliminarily approving the Settlement Agreement only, Plaintiffs seek certification of the following Settlement Class defined as follows:

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<sup>1</sup> 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 all claims and class allegations relating to Labor Depreciation in this case.

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. Also, for purposes of preliminarily approving the Settlement Agreement, Plaintiffs further request that they be appointed class representatives, and that the undersigned counsel be appointed as counsel for the class. In support of their motion, Plaintiffs state and show as follows:

1. To satisfy the requirements of 735 ILCS 5/2-801 for class certification, a proposed settlement class must satisfy 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. Here, all requirements necessary for preliminary approval of a settlement class are satisfied.

2. Numerosity under section 5/2-801(1) is satisfied for the proposed settlement class because the parties' counsel estimate that notice will be issued for over 400 claims at issue or potentially at issue.

3. Commonality under section 5/2-801(2) is satisfied for the proposed settlement class because there are questions of law or fact common to all members of the proposed class that predominate over any individualized issues, including but not limited to the single, predominating question presented: whether Frontier can withhold labor as depreciation under its property insurance policies. In addition to the labor withholdings themselves, class members' entitlement to statutory prejudgment interest also presents a common issue.

4. Adequacy under section 5/2-801(3) is satisfied for the proposed settlement class because: (1) Plaintiffs have fairly and adequately represented and protected the interests of the putative class; (2) Plaintiffs are members of the proposed class; (3) Plaintiffs' interests are perfectly aligned with the proposed class, as it seeks 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 "actual cash value;" and, (4) Plaintiffs retained experienced counsel competent and experienced in class action and insurance litigation.

5. The appropriateness of the remedy under section 5/2-801(4) is satisfied for the proposed class because “[w]here 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.” *Ramirez v. Midway Moving and Storage, Inc.*, 378 Ill. App. 3d 51, 56 (1st Dist. 2007). Additionally, this factor is satisfied for the settlement class because of, *inter alia*, the thousands of small value claims at issue, and the interests of the parties and judicial economy favor settlement.

6. Plaintiffs state that the only agreement at issue is the Class Action Settlement Agreement, attached to the memorandum in support of this motion as Exhibit 1.

7. Pursuant to 735 ILCS 5/2-806, “[a]ny action brought as a class action under Section 2-801 of this Act shall not be compromised or dismissed except with the approval of the court and, unless excused for good cause shown, upon notice as the court may direct.” *Id.* A class settlement may be approved as fair, reasonable, and adequate based upon the following considerations: (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 v. Buth-Na-Bodhaige, Inc.*, 2019 IL App (5th) 180033, ¶56 (2019).

8. As more fully set forth in the accompanying memorandum and supporting declaration, the Settlement is appropriate for preliminary approval. In summary, the Settlement provides the following categories of relief:

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

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.

9. As set forth further in the Settlement Agreement, upon the Effective Date, Class Members will release claims limited to the subject matter of this lawsuit (*i.e.*, the systemic practice of withholding of nonmaterial depreciation) and without giving up any claims or arguments unrelated to the subject matter of this lawsuit. All unrelated matters will continue to be adjusted and handled by Frontier in the ordinary course.

10. As set forth in the corresponding memorandum and supporting declaration, the Settlement was reached through arm’s-length settlement negotiations.

WHEREFORE, for these reasons and those set forth in the accompanying Memorandum of Law and Declaration of Plaintiffs’ counsel, Plaintiffs respectfully move for an order consistent

with the proposed preliminary approval order attached to the Settlement Agreement, a copy of which will be submitted to chambers in Word format.

Dated: May 24, 2023

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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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