

The Honorable BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GENE ACHZIGER, individually and as the  
representative of all persons similarly situated,

NO. 3:14-CV-05445 BHS

Plaintiff,

FINAL ORDER APPROVING  
SETTLEMENT AND JUDGMENT AND  
DISMISSAL WITH PREJUDICE

vs.

IDS PROPERTY CASUALTY INSURANCE  
COMPANY,

Defendant.

THIS MATTER comes before the Court for final approval of the Stipulation of Settlement, also sometimes referred to as the Agreement, submitted on January 10, 2020 with the Motion for Order Preliminarily Approving Settlement, Approving Notice to Class Members, and Setting Date for Settlement Fairness Hearing. [Dkt #148]. The parties have appeared telephonically through their respective counsel.

WHEREAS, Plaintiff, Gene Achziger, on behalf of himself and the proposed Settlement Class, and Defendant, the IDS PROPERTY CASUALTY INSURANCE COMPANY, have executed and filed a Stipulation of Settlement with the Court on January 10, 2020; and

WHEREAS, all capitalized terms used herein shall have the same meaning as set forth in the Agreement and are hereby incorporated by reference; and

1 WHEREAS, the Court, on January 14, 2020, entered the Preliminary Approval Order,  
2 preliminarily approving the Proposed Settlement [Dkt #150]; and

3 WHEREAS, Gene Achziger was appointed the Class Representative; and

4  
5 WHEREAS, the Court, as part of its Preliminary Approval Order, directed that a plan for  
6 disseminating notice of the Settlement ("Notice Plan") be implemented, and scheduled a hearing  
7 to be held to determine whether the Proposed Settlement should be approved as fair, reasonable  
8 and adequate; and

9 WHEREAS, Defendant and Class Counsel have satisfactorily indicated to the Court that  
10 the Notice Plan was followed; and

11  
12 WHEREAS, a final approval hearing was held at which all interested persons were given  
13 an opportunity to be heard, and all objections to the Settlement, if any, were duly considered;

14 NOW, THEREFORE, the Court, having read and considered all submissions made in  
15 connection with the Proposed Settlement, and having reviewed and considered the files and  
16 records herein, finds and concludes as follows:

17  
18 The Complaint filed in this Action alleges generally that, in breach of the Policies,  
19 Defendant improperly failed to pay the Plaintiffs and Settlement Class Members (as hereinafter  
20 defined) for diminished value with respect to comprehensive, collision, uninsured and  
21 underinsured motorist property damage coverage claims.

22  
23 On January 14, 2020, the Court granted preliminary approval of a class action settlement  
24 with the class defined as follows:

25 All insureds of IDS PROPERTY CASUALTY Insurance Company with  
26 Washington policies issued in Washington State, [April 4, 2008 – March  
27 12, 2020] where the insured's vehicle damages were covered under the  
28 comprehensive/collision and/or underinsured/uninsured motorist  
("UMPD ") coverages, and

1 1. The repair estimates on the vehicle (including any supplements)  
2 totaled at least \$1,000; and

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

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

8 Excluded from the Class are a) claims involving leased vehicles or total  
9 losses, b) employees of IDS, c) the assigned judge, the judge's staff and  
10 family, d) claims which did not involve an uninsured or underinsured  
11 motorist where the in force policy contained an exclusion for diminished  
12 value (Amendment AMWA 13a-d).

13 The Court hereby re-affirms this definition for purposes of this Final Judgment, as well as  
14 its earlier preliminary class certification.

15 The Class Representative has entered into the Agreement which has been filed with the  
16 Court. The Agreement provides for the Settlement of this Action with Defendant on behalf of  
17 the Class Representative and the Settlement Class Members, subject to approval by the Court of  
18 its terms. The Court scheduled a hearing to consider the approval of the Settlement and directed  
19 that the Notice be disseminated in accordance with the terms of the Preliminary Approval Order.

20 In accordance with the terms of the Settlement and the Preliminary Approval Order, the  
21 parties implemented the Notice Plan approved by the Court. Defendant's counsel and Class  
22 Counsel have confirmed to the Court that the Parties complied with the Notice Plan.

23 The Court hereby finds that the Notice Plan and the Notice constituted the best notice  
24 practicable under the circumstances, and constituted valid, due and sufficient notice to members  
25 of the Settlement Class.

26 The Class Representatives and Defendant have applied to the Court for final approval of  
27 the terms of the Proposed Settlement and for the entry of this Final Judgment. Pursuant to the  
28

1 Class Notice, a hearing was held before this Court, on June 22, 2020, to determine whether the  
2 Proposed Settlement of the Action should be finally approved as fair, reasonable, and adequate,  
3 and whether the Final Judgment approving the Settlement and dismissing all claims in the Action  
4 on the merits, with prejudice and without leave to amend should be entered.  
5

6 The Court hereby finds that approval of the Agreement and the Settlement embodied  
7 therein will result in substantial savings of time and money to the Court and the litigants and will  
8 further the interests of justice.

9 The Court hereby finds that the Proposed Settlement is the result of good faith arm's length  
10 negotiations by the Parties thereto.  
11

12 The Court hereby finds the terms of the Settlement are fair, reasonable and adequate.

13 NOW, THEREFORE, GOOD CAUSE APPEARING THEREFOR, IT IS ORDERED,  
14 ADJUDGED AND DECREED AS FOLLOWS:

15 The Court possesses jurisdiction over the subject matter of this Action, the Class  
16 Representatives, the Settlement Class Members, Defendant, and the Released Persons.  
17

18 Two Class Members, Vassil Dimitrov and Ellen K. Stehouwer, have filed requests for  
19 exclusion. All remaining Class Members are therefore bound by this Final Judgment and by the  
20 Agreement and the Settlement embodied therein.

21 All provisions and terms of the Settlement are hereby found to be fair, reasonable and  
22 adequate as to the Settlement Class Members and the Class Representatives, and all provisions  
23 and terms of the Settlement are hereby finally approved in all respects.  
24

25 The Parties are hereby directed to consummate the Settlement in accordance with its terms.

26 This Action is dismissed in its entirety, on the merits, with prejudice and without leave to  
27 amend, and all members of the Settlement Class and their respective heirs, predecessors,  
28

1 successors, assigns, family members, personal representatives, attorneys, officers, stockholders,  
2 employees, executors, administrators, insurers, reinsurers, underwriters, directors and/or past,  
3 present and future parent, subsidiary and affiliated corporations, and any other person or entity  
4 who could or might assert any claim under or through any of the foregoing, shall be forever  
5 barred and permanently enjoined from asserting, either directly or indirectly, individually, or in a  
6 representative capacity or on behalf of or as part of a class, and whether under State or Federal  
7 statutory or common law, any Released Claim against any Released Person.  
8

9 As of the Effective Date, by operation of the entry of the Final Judgment, each Settlement  
10 Class Member shall be deemed to have fully released, waived, relinquished and discharged, to  
11 the fullest extent permitted by law, all Released Claims and Unknown Claims that the Settlement  
12 Class Members may have against all the Released Persons.  
13

14 “Released Claims” means and includes any and all claims for relief or causes of action,  
15 Unknown Claims, known claims, rights, demands, actions, suits, debts, liens, contracts,  
16 liabilities, agreements, interest, fees, costs, expenses or losses, including but not limited to claims  
17 based in contract or tort, common law or equity, and federal, state, or local law, statute,  
18 ordinance, or regulation, and any other claims for relief and/or remuneration whatsoever,  
19 including, but not limited to, all claims arising out of the Defendant’ handling or administering  
20 of claims for comprehensive/collision and/or UIM PD Coverage or comprehensive/collision  
21 and/or UIM PD property damage; claims for bad faith; claims for diminished value or stigma;  
22 breach of any written or oral agreement or insurance contract or any similar act; waiver;  
23 estoppel; any tortious injury, including any intentional or negligent acts; agent negligence;  
24 failure to procure coverage or misconduct; punitive damages; treble damages; statutory damages;  
25 regulatory claims; claims for violation of the Washington Consumer Protection Act or any  
26  
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1 similar act; claims for violation of the Washington Insurance Fair Conduct Act or any similar  
2 act; misrepresentation; and/or any claim for attorneys' fees and expenses; arising on or before the  
3 date hereof, which the Releasing Parties had, have, may have in the future, or which are or could  
4 have been alleged by the Plaintiff in the Action, for himself and on behalf of the Class, that relate  
5 in any way whatsoever to the Action.  
6

7 "Released Persons" means the Defendant, as defined in the Agreement, and any of their  
8 past, present or future subsidiaries, controlled, affiliated, related and/or parent corporations,  
9 business entities or divisions, heirs, predecessors, successors, assigns, officers, stockholders,  
10 insurers, reinsurers, underwriters, directors, agents, employees and/or independent contractors,  
11 attorneys-in-fact, and/or past, present and future parent, subsidiary and affiliated corporations  
12 and/or any other person or entity who could or might be subject to any liability under or through  
13 any of the foregoing.  
14

15 "Unknown Claims" means claims arising out of facts found hereafter to be other than or  
16 different from the facts now believed to be true, relating to any matter covered by this  
17 Stipulation, as to any of the Released Claims.  
18

19 It is hereby determined that the Notice Plan and the Notice constituted the best notice  
20 practicable under the circumstances to all members of the Settlement Class and is therefore  
21 finally approved as reasonable. Due and adequate notice of the pendency of this Action and of  
22 the Settlement has been provided to all the Settlement Class Members, and this Court hereby  
23 finds that the Class Notice complied fully with the requirements of due process, the Washington  
24 Code of Civil Procedure, and all other applicable laws.  
25

26 Within thirty (30) days after the Effective Date, Class Counsel shall return, upon request,  
27 to Defendant all Confidential Information and copies thereof in their possession, custody, or  
28

1 control and delete any electronic copies of Confidential Information. Within forty-five (45) days  
2 after the Effective Date, Class Counsel shall deliver a letter to Defendant confirming their  
3 compliance with this paragraph -- including a description of steps taken to assure the deleted  
4 material cannot be recovered or restored. In the event that any Confidential Information or  
5 documents have already been destroyed, Class Counsel will include in that letter the name and  
6 address of the person(s) who destroyed the Confidential Information and/or documents.  
7

8 Also in furtherance of this confidentiality provision, Class Counsel and the Class  
9 Representatives agree not to make any statements to the media or in any public forum, orally or  
10 in writing, about the Action, or the Stipulation, other than statements which are fully consistent  
11 with the Stipulation and the Class Notice.  
12

13 Class Counsel agree that any representation, encouragement, solicitation or other  
14 assistance, including but not limited to referral to other counsel, of or to any Opt Outs or any  
15 other person seeking to litigate with Defendant over any of the claims covered under the Release  
16 in this matter could place Class Counsel in an untenable conflict of interest with the Class.  
17

18 Accordingly, Class Counsel and their respective firms agree (only to the extent that it is  
19 otherwise not violative of any applicable rules governing the practice of law) not to represent,  
20 encourage, solicit or otherwise assist, in any way whatsoever (including, but not limited to  
21 referrals to other counsel) any Opt Out except that referring such person to the Notice or  
22 suggesting to any such person the option of obtaining separate counsel, without specifically  
23 identifying options for such counsel, shall be permitted under the terms of this provision.  
24

25 Additionally, Class Counsel and their respective firms agree (only to the extent that it is  
26 otherwise not violative of any applicable professional rules) not to represent, encourage, solicit  
27 or otherwise assist, in any way whatsoever, any Opt Out or any other person who seeks to  
28

1 represent any form of opt-out class, or any other person, in any subsequent litigation that person  
2 may enter into with Released Persons regarding the Released Claims or any related claims,  
3 except that suggesting to any such person the option of obtaining separate counsel, without  
4 specifically identifying options for such counsel, shall be permitted.  
5

6 Neither this Final Judgment, the Stipulation, nor any of its terms or provisions, nor any of  
7 the negotiations or proceedings connected with it, shall be construed as an admission or  
8 concession by Defendant of the truth of any of the allegations made in the Action, or of any  
9 liability, fault, or wrongdoing of any kind whatsoever on the part of Defendant. To the extent  
10 permitted by law, neither this Final Judgment, the Stipulation, nor any of its terms or provisions,  
11 nor any of the negotiations or proceedings connected with it, shall be offered as evidence or  
12 received in evidence in any pending or future civil, criminal, or administrative action or  
13 proceeding, to establish any liability or admission by Defendant, except in any proceedings  
14 brought to enforce the Stipulation and except that any Released Persons may file this Order in  
15 any action that may be brought against them in order to support a defense or counterclaim based  
16 on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or  
17 reduction, or any other theory of claim preclusion or issue preclusion or similar defense or  
18 counterclaim. Neither this Final Judgment, the Stipulation, nor any pleading or other paper  
19 related in any way to this Stipulation, nor any act or communication in the course of negotiating,  
20 implementing or seeking approval of the Stipulation, shall be deemed an admission by Defendant  
21 that certification of a class or subclass is appropriate in any other litigation, or otherwise shall  
22 preclude Defendant from opposing or asserting any argument they may have with respect to  
23 certification of any class(es) or subclass(es) in any proceeding, or shall be used as precedent in  
24 any way as to any subsequent conduct of Defendant, except as set forth in the Stipulation.  
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1 The Court has considered the request for a Class Representative award, and hereby  
2 approves and awards the Class Representative, Gene Achziger, the amount of \$10,000, to be paid  
3 by Defendant within fourteen (14) days after the Effective Date.  
4

5 The Court has considered Class Counsel's request for an attorneys' fees and costs award of  
6 for the prosecution of this action, and hereby makes an award in the amount of \$1,303,150.00 in  
7 fees and \$50,065.46 in costs.

8 The sums set forth in Paragraphs 27 and 28 above shall be paid in accordance with the  
9 Stipulation, and out of the sources set forth therein.  
10

11 This Final Judgment is a final order in the Action within the meaning and for the purposes  
12 of FRCP 23(e), 41, and 54 as to all claims among Defendant on the one hand, and the Class  
13 Representatives and all Settlement Class Members, on the other, and there is no just reason to  
14 delay enforcement or appeal. Without in any way affecting the finality of this Final Judgment,  
15 this Court shall retain continuing jurisdiction over this Action for purposes of:  
16

- 17 A. Enforcing this Final Judgment, the Agreement and the Settlement;  
18 B. Hearing and determining any application by any Party to the Settlement for a  
19 settlement bar order; and  
20 C. Any other matters related or ancillary to any of the foregoing.  
21

22 IT IS SO ORDERED.

23 DONE this 22nd day of June, 2020.

24  
25  
26 

27 BENJAMIN H. SETTLE  
28 United States District Judge

1 Presented by:

2 Law Offices of STEPHEN M. HANSEN, P.S.

3 /s/ Stephen M. Hansen

4 STEPHEN M. HANSEN, WSBA #15642

5 /s/ Scott P. Nealey

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