

EXHIBIT A

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

SEAN ROSE and JAIME ROSE,	x	
	:	
Plaintiffs,	:	Case No. 2:19-cv-00977-GJP
	:	
v.	:	
	:	
THE TRAVELERS HOME AND MARINE	:	
INSURANCE COMPANY,	:	
	:	
Defendant.	:	
	x	

JOINT DECLARATION OF CLASS COUNSEL ANTHONY DIULIO AND KENNETH J. GRUNFELD IN SUPPORT OF PLAINTIFFS’ UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

We, Anthony DiUlio and Kenneth J. Grunfeld, do hereby declare and state as follows:

1. Anthony DiUlio is a partner at the law offices of Wheeler, DiUlio & Barnabei, P.C. Kenneth J. Grunfeld is a partner at the law offices of Golomb & Honik, P.C. We are counsel of record for Plaintiffs Sean and Jaime Rose. We are both licensed to practice in the Commonwealth of Pennsylvania, the United States District Court for the Eastern District of Pennsylvania, and other jurisdictions. We have personal knowledge of all the facts stated herein and, if called to testify as witnesses, we could and would competently testify to them.

2. This declaration is made in support of the Plaintiff’s Unopposed Motion for Final Approval of the Class Action Settlement.

3. The Settlement provides substantial relief to the Settlement Class and the terms of the Settlement are fair, adequate, and reasonable. The monetary and practice change relief under the Settlement represents a substantial benefit to the Settlement Class and is reasonable given the

procedural posture and complexity of this litigation and the barriers that stand between now and any final litigated judgment in favor of Plaintiffs and the Settlement Class.

Settlement Negotiation

4. The parties engaged in protracted, arms' length negotiations. The parties' first in-person mediation occurred on June 14, 2019 before Magistrate Judge Hey. At that time, the parties could not reach a settlement, but significant progress was made, and the parties met again on July 11, 2019, September 6, 2019, October 30, 2019, and November 20, 2019, ultimately reaching agreement on all key terms of the settlement, subject to finalizing the Settlement Agreement.

5. The parties executed the Settlement Agreement on January 10, 2020, memorializing the agreement reached subject to Preliminary Approval and Final Approval as required by Federal Rule of Civil Procedure 23.

Settlement Terms

6. During the course of almost a year of settlement negotiation, a significant amount of data relevant to the proposed settlement was exchanged between the parties. Plaintiffs' Class Counsel had personal access to key Travelers claims personnel who responded to specific inquiries about policy provisions, Travelers' claims process, including the investigations and evaluations undertaken, the contents and collection of claim file materials, and how and when claim decisions are made. In exchange, the Plaintiffs provided additional materials regarding the Roses' damages and anecdotal documents from other potential class members and other carriers' claims processes for comparison. Much was uncovered through this thorough process, helping to shape Plaintiff Class Counsel's understanding of the scope of the case and assisting us to make a thorough determination regarding the fairness and adequacy of settlement.

7. The Class Notice constitutes sufficient notice to persons entitled to receive it, and satisfies all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the constitutional requirement of due process. As the Declaration of Cameron Azari demonstrates, Travelers has reliable mailing and email addresses for the Settlement Class.

8. Travelers has agreed to pay Settlement Class Counsel reasonable attorneys' fees of \$1,900,000 subject to court approval. *See* Agreement at ¶ 60. This amount was hotly contested and agreed upon only after significant, arms'-length negotiation. This amount is reasonable in light of the amounts at stake here and the efforts untaken in this Civil Action.

Final Approval Is Warranted

9. Because of all the information exchanged, Plaintiffs' Class Counsel had an informed view of the strengths and weaknesses of case, the risks of continued litigation, and an appreciation for the remarkable value this settlement delivers to the Settlement Class when evaluated in this context.

10. The continued litigation of this matter will require (and has already required) substantial resources. There would be a significant amount of work to be done, including motion practice, formal fact discovery, class certification, expert discovery and dispositive motions. The risk of loss of any class action is very real. Plus, all of these matters would require significant time and expense to the Plaintiffs and the Class. Plaintiffs' Class Counsel is confident in these claims but recognize the possibility that the Plaintiffs and the Class could end up with nothing. Class Counsel has received and responded to over 100 calls from class members during the claims.

11. Both sides' counsel are qualified and competent class actions litigators, well-positioned to evaluate the strengths and weaknesses of continued litigation, as well as the reasonableness of the Settlement.

12. Settlement Class Counsel is well-equipped to handle a case like this one. Golomb & Honik P.C. has successfully handled national, regional, and statewide class actions, as well as other complex mass or multi-party actions, throughout the United States in both federal and state courts, including: *Refund Anticipation Loan Litigation*, No.1:12-cv-02949 (N.D. Ill. 2012); *Spinelli v. Capital One Services*, No. 08-cv-132 (M.D. Fla. 2008); *Kardonick v. JP Morgan Chase & Co.*, No. 10-cv-23235 (S.D. Fla. 2010); *In re Discover Payment Protection Plan Marketing & Sales Practices Litigation*, MDL No. 2217 (N.D. Ill. 2011); *Esslinger v. HSBC Bank USA, Inc.*, No. 2:10-cv-03213 (E.D. Pa. 2010); *In re Bank of America Credit Protection Marketing & Sales Practices Litigation*, No. 3:11-md-02269 (N.D. Cal. 2011); *In re Budeprion XL Marketing & Sales Litigation*, MDL No. 2107 (E.D. Pa. 2012); *In re Checking Account Overdraft Litigation*, MDL No. 2036 (2009); *Mattel Lead Paint Class Action*, MDL No. 1897 (2007); *David v. American Suzuki Motor Corp.*, No. 08-CV-22278 (2007); *Cullen et al. v. Whitman Medical Corporation d/b/a Whitman Education Group, Inc., et al.*, 197 F.R.D. 136 (E.D. Pa. 2000); and *Whisnant, et al. v. General Chemical Corp., et al.* No. 99-12286, Court of Common Pleas of Delaware County, Pa., 1999. See G&H Firm Resume, attached to Class Counsel's Fee brief at D.E. # 53-2. Wheeler, DiUlio & Barnabei specialize in insurance property damage cases like this one. Specifically, Mr. DiUlio and his office have handled thousands of first party insurance claims over its 25 plus years in the industry. Since July of 2016, Wheeler, DiUlio & Barnabei, P.C. has handled an estimated 20 plus cases against Travelers alone. *Donahue v. Travelers*, Philadelphia CASE NO.: 171000673, *Douglas v. Travelers*, Philadelphia Case No.: 160204199, *Hood v. Travelers*, Chester County, Case Number 2015-03398-MJ, *Maziekas v. Travelers*, Eastern District of PA, No. 19-2704, *Napier v. Travelers*, Philadelphia Common Pleas 151003448, *Winder v. Travelers*, Eastern District of PA,

15-4939. *See* WDB Firm Resume, at D.E. # 53-2. Together, Settlement Class Counsel were well-aligned to handle this matter.

13. The decision on the structure and amounts paid to Settlement Class Members was not undertaken lightly. Timely breach of contract claims are the most valuable claims in the class. Nevertheless, claims outside that period, “Statutory Period Claims,” warrant consideration in those jurisdictions where a Settlement Class Member could potentially bring an extracontractual claim in the absence of a timely contractual claim, and should require less administration to receive it. In terms of how much money Settlement Class Members with timely breach of contract claims should be paid, the most significant consideration given is how much was their loss. Data exchange and research netted a number of other considerations. Settlement Class Counsel factored in the amount of the Settlement Class Members’ Rot Damage sublimit. Most Settlement Class Members have a \$5,000 sublimit applicable to Rot Damage and are restricted to recover only up to a maximum of \$2,375 under the Settlement Agreement. Settlement Class Members with sublimits applicable to Rot Damage greater than \$5,000, which includes Settlement Class Members with business policies, can potentially recover up to \$3,750 under the Settlement Agreement. *See* Settlement Agreement at ¶ 50. Another important consideration is whether a Settlement Class Member would provide supporting documentation. Under the Settlement Agreement, supporting documentation potentially can be almost anything reasonably evidencing Rot Damage to property, regardless of whether or not work has been completed. *Id.*

14. In a claims-made settlement like this one, there is no risk in a reduction to the amounts eligible Settlement Class Members will receive regardless of a potentially high claims rate. Based on Settlement Class Counsel’s experience and communications with the Settlement Administrator, we are confident the total amount that Travelers will end up paying Settlement Class Members

will be well in excess of \$2,250,000, the Payment Floor. But we nevertheless negotiated a Payment Floor as security in the unlikely event of a low claims rate.

15. Commonality, typicality and predominance are met here. The Roses' home was insured by Travelers. They suffered losses as a result of rot damage to their property. They filed an insurance claim with Travelers and their claim was denied. They have submitted a claim form in the settlement.

16. Mr. and Mrs. Rose, the proposed class representatives, have interests that are coextensive with, and not antagonist to, the interests of the Class because they have an equally great interest in the relief offered by the Settlement, and there are no diverging interests between the proposed class representatives and the Class.

17. This Settlement provides the best vehicle for Class Members to receive the relief to which they are entitled in a prompt and efficient manner without further delay. Absent certification, potential class members would lack incentive to pursue individual claims due to the relatively small individual amounts at issue.

The Objections Should be Denied

18. On May 22, 2020, Class Counsel spoke to objector Mr. Rockefeller on the phone. He said that he was frustrated that Travelers "lied" to him about coverage that he had, and he suffered significant damages that were never paid for by Travelers. He understood that his claim was not within the Policy Period and had accordingly received a Claim Form B, which he filed to recover \$150.00 as part of the settlement. *Id.* Mr. Rockefeller understands why the amount he received was based not on the damages he suffered, but rather was limited because of the fact that the time he had to bring a breach of contract coverage action had elapsed when this class action was filed.

19. Class Counsel sent objector Mr. Azzolina a letter on May 22, 2020 seeking to talk to him about his objection. On June 4, 2020, Kasia Azzolina, Mr. Azzolina’s wife, called Class Counsel and expressed her frustration with the defendant for denying their claim. Mrs. Azzolina understood why the settlement compensation was limited to \$150.00 based on the time her claim was denied. Nevertheless, she simply wanted her concerns to be heard by the Court. The Azzolinas have filed Claim Form B to receive \$150.00 as part of the settlement.

20. On June 11, 2020, Class Counsel spoke to objector Mrs. King on the phone. She explained that she never received any coverage for this loss and she has not had it repaired to date. She has never gotten an estimate of the amount of damages and is unable to place a value on her loss. She did not file a claim using Claim Form A after receiving notice of the settlement. She is going to obtain an estimate of the damage and attend the hearing by phone.

21. Class Counsel has communicated to Mr. Rockefeller, the Azzolinas and Mrs. King and told each of them about the Final Approval Hearing taking place on June 23, 2020. Each have been provided with a copy of the Court’s Order (D.E. # 57) from June 8, 2020 which includes dial-in information for the hearing. In addition, the Court’s Order was added to the Settlement Website and the dial-in information for the hearing has been added to be displayed prominently on the home page of the website.

We declare, under the penalty of perjury, that the foregoing is true and correct. Executed this 12th day of June, 2020, in Philadelphia, Pennsylvania.

BY: <u> /s/ Anthony DiUlio </u> ANTHONY DiULIO, ESQUIRE BY:	BY: <u> /s/ Kenneth J. Grunfeld </u> Kenneth J. Grunfeld, Esquire
<i>Attorneys for Plaintiffs and the Proposed Class</i>	