

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	

DECLARATION OF PLAINTIFFS’ CLASS COUNSEL KENNETH J. GRUNFELD AND ANTHONY DIULIO IN SUPPORT OF CLASS COUNSEL’S REQUEST FOR REASONABLE ATTORNEYS’ FEES AND INCENTIVE AWARD

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

1. Kenneth J. Grunfeld is a partner at the law offices of Golomb & Honik, P.C. Anthony DiUlio is a partner at the law offices of Wheeler, DiUlio & Barnabei, 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 Class Counsel’s Request for Reasonable Attorneys’ Fees and Incentive Award.
3. The request for attorneys’ fees should be granted because the Settlement achieved by Class Counsel provides substantial relief to the Settlement Class and the terms of the Settlement are fair, adequate, and reasonable. The Settlement consists of valuable cash payments of substantial

amounts to Settlement Class Members who submit valid and timely claims, as well as significant practice changes for Travelers' policyholders. It is a tremendous result for the Settlement Class.

4. Similarly, the request for the Incentive Award should be granted because the Class Representatives, Mr. and Mrs. Rose, were actively involved in this litigation and aided in its resolution, spending significant time gathering information and meeting and communicating with Class Counsel.

Settlement Negotiations

5. 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.

6. The parties met again in person on July 11, 2019 and spoke to Judge Hey again on August 26, 2019. The next in person meeting occurred on September 6, 2019, followed by another call with Judge Hey on September 11, 2019. After multiple exchanges, another call with Judge Hey was conducted on October 11.

7. On October 30, 2019, another in-person meeting before Judge Hey was conducted. This time, mostly all of the substantive issues regarding class-wide relief and the process of claim filing were resolved.

8. The parties agreed to meet in person again, this time in New York City, on November 20, 2019. At that meeting, the parties resolved all the remaining issues, including attorneys' fees and costs.

9. 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.

10. On February 4, 2020, this Court granted Preliminary Approval of the Settlement Agreement. *See* D.E. # 48.

Settlement Terms

11. During the course of almost a year of settlement negotiation, a significant amount of data was exchanged between the parties. For example, among other things, claim information and aggregated data regarding the proposed Class was provided to Plaintiffs and Class Counsel. Perhaps even more significantly, Plaintiffs' Class Counsel had personal access to key claims personnel of Defendants, who responded to specific inquiries about policy language, interpretation and implementation, the claims process, including the investigation and evaluations undertaken, the contents and collection of claims materials, and how and when decisions are made. *See, e.g.*, Counsel Decl. for Preliminary Approval at ¶ 9. In exchange, the Plaintiffs provided additional information regarding the Roses' damages and anecdotal information from other potential class members and other carriers' claims processes for comparison. *Id.* 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. For example, Plaintiffs' Class Counsel learned that ultimately, the total class will number approximately 32,245 insurance claims based on current estimates. 21,932 of these fit into the Policy Period category, of which 1,580 are business insurance claims, and 10,313 fit into the Statutory Period category, of which 658 are business insurance claims.

12. Further, as a part of the Agreement, Travelers has implemented a change in practice to pay claims for Rot Damage and "not to apply the long-term seepage/leakage provision if the seepage/leakage and resulting damage were unknown to all insureds and hidden within the walls or ceilings or beneath the floors or above the ceilings of a structure." *See* Agreement at ¶ 59. We

have reviewed certain written communications to confirm that the practice changes contemplated as part of the consideration given for the Settlement have been implemented by Defendants, thus protecting current and future policyholders from the losses that are at issue in this Civil Action.

Id. While the parties have not estimated the monetary value of the practice change and Settlement Class Counsel will not attempt to “monetize” its value as part of this settlement, the impact of the change is significant and provides important value to the Settlement Class.

13. The Class Notice plan 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. Defendants have reliable mailing and email addresses for the Settlement Class. There will be a high reach rate achieved thorough the Notice plan. The language of the proposed Notice has been carefully negotiated during numerous arms-length meetings and is plain and easy to understand. The Notice also advises Settlement Class Members that they may object to these requests by May 13, 2020, and provides instructions on how to do so.

14. The parties have agreed to use Epiq Class Action & Claims Solutions, Inc. (“Epiq”) as the Settlement Administrator. Settlement Class Counsel has worked with Epiq in the past and can attest to their experience and professionalism.

15. As part of the notice process, and subject to this Court’s Order granting preliminary approval (*See* D.E. # 50), class counsel has:

- regularly communicated with the Court-appointed Settlement Administrator (Epiq Class Action & Claims Solutions, Inc.),
- modified the original dates of notice and the dates triggered off of notice with the Court and Travelers’ counsel to account for, first, a ransomware attack on Epiq’s computer systems, and second, the widespread impact of the global COVID pandemic,

- audited and analyzed the scope, demographics and breakdowns within the data of the Settlement Class Members,
- reviewed the language and content of the Notice materials,
- reviewed and edited the official settlement website (www.rosesettlement.com),
- reviewed the final, unpopulated Claim Forms A and B,
- negotiated the process and scripts for the automated telephone line (1-866-977-0336) and the call center, and
- conferred regarding the strategy and process for providing notice and compiling claims information for Settlement Class Members

16. It is anticipated that Settlement Class Counsel will continue to devote significant resources to monitoring the claims administration process, responding to inquiries from Settlement Class Members, moving for Final Approval, appearing and presenting at the final approval hearing, assisting or auditing individual Settlement Class Members with process-based concerns or specific challenges leading up to or through the claims-making procedure, and other tasks going forward. In addition, Settlement Class Counsel will closely monitor and track the deadline for Settlement Class Members to opt out or object to the settlement, and report these findings to the Court.

17. Defendants have also agreed to separately pay all costs reasonably incurred by the Settlement Administrator as well as an Incentive Award to the Roses and attorneys' fees and costs to Plaintiffs' Class Counsel. This is a significant added benefit to the Settlement Class as these costs will not reduce the amounts that will be paid to the Settlement Class.

18. Defendants have agreed to pay Settlement Class Counsel reasonable attorneys' fees of \$1,900,000.00 subject to court approval. *See* Agreement at ¶ 60. This amount includes any and all actual out-of-pocket expenses in the case incurred by Settlement Class Counsel. 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.

19. Defendants have also agreed not to oppose the request for a reasonable Incentive Award to be paid jointly to class representatives Mr. and Mrs. Rose in an amount not to exceed \$10,000. The Incentive Award compensates the Roses for their time and effort in the action, for their participation in the Settlement process, and for the risks they undertook in prosecuting this Civil Action.

The Requested Attorneys' Fees and Incentive Award are Appropriate

20. Settlement Class Counsel requests that this Court approve the request for reasonable attorneys' fees in the amount of \$1,900,000 and an Incentive Award in the amount of \$10,000. The requested fees were separately negotiated and will be paid apart from relief awarded to the class. That means that the fee will not reduce the amount of money that the Settlement Class will receive. As such, the requested fee award should be evaluated and deemed reasonable pursuant to the "percentage of the fund" framework.

21. Furthermore, this Agreement provides substantial value to a Settlement Class that numbers in the tens of thousands, its resolution required the skills of two law firms with substantial experience in cases like this one, and the underlying dispute concerned a matter that was both complex and novel.

22. Based on the information known to Settlement Class Counsel, with the help of the Settlement Administrator, Class Counsel can predict the estimated value of the Settlement at this time to be well within the range of reasonableness on a grand scale and on a per Settlement Class Member basis. The most significant consideration as to what each Settlement Class Member may receive is when the claim was filed to ensure that it is timely and appropriate. *See* Settlement Agreement at ¶ 27.

23. A number of factors have been considered in determining how much money Settlement Class Members who file Policy Period Claims will be paid. The most significant consideration in this category is how much was their loss. Other considerations included the amount of the Settlement Class Member's rot damage sublimit and whether the Settlement Class Member is willing to provide supporting documentation of their loss.

24. The amounts that Travelers may be responsible for are uncapped; that is, there is no maximum amount of exposure for Defendant. However, as security in the unlikely event of an extremely low claims rate, the parties have negotiated a "Payment Floor" so, if the amount Travelers ultimately has to pay does not exceed \$2,250,000 in the aggregate, the amounts to be paid on valid Policy Period Claims will be increased proportionally up to the \$2,250,000 Payment Floor. *See* Agreement at ¶ 52. Even though Settlement Class Counsel is confident the total amount that Travelers will end up paying Settlement Class Members will be well in excess of the Payment Floor, creating a floor (and no cap) guards against the risk of a low claims rate while not limiting any Settlement Class Members' potential recovery, a fantastic safeguard for the Class.

25. Based on the known data regarding the Settlement Class Members' policies and Settlement Class Counsel's extensive experience handling claims-made settlements, Class Counsel can estimate the amount Settlement Class Members will receive based on two metrics: (i) the amounts that Policy Period Claimants will submit as Claimed Rot Damage and (ii) the claims rates within the various categories. Based on this analysis, Settlement Class Counsel predicts that Settlement Class Members will receive somewhere in the range of \$9-12 million as a result of the Settlement. *See* Analysis Chart, attached to Class Counsel's Memorandum in Support of Reasonable Attorney's Fees as Exhibit B.

26. Further, the practice change relief assures policyholders and Settlement Class Counsel that the allegations at issue in the Civil Action have been remedied. Agreement at ¶ 59. Travelers has agreed to implement a practice change for similar homeowners, and business insurance policies. Settlement Class Counsel has reviewed certain written communications and can confirm that this practice change was implemented. The impact of the practice change is significant and provides important value to the Settlement Class. In fact, the forward-looking benefits conferred by the practice change will have a tremendous impact worth potentially tens of millions of dollars in coverage for future insureds.

27. The Notice provides a deadline of May 13, 2020 for Settlement Class Members to object to the requests for attorneys' fees and Incentive Award. As of this filing, no objections to the Agreement have been received. If any objections are received, they will be addressed by Settlement Class Counsel and the Settlement Administrator in the Motion for Final Approval.

28. 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. Golomb and Honik 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. Wheeler, DiUlio & Barnabei specialize in insurance property damage cases like this one. Combining these firms' expertise and resources to litigate this nationwide class action makes sense, and given their status as boutique firms with relatively few attorneys enabled Settlement Class Counsel to work efficiently and effectively.

29. Despite both firms' extensive experience in this field, the complexity and novelty of this litigation was substantial, and necessitated a corresponding effort. In fact, Settlement Class Counsel could not identify any other prior reported class action involving the same theory or facts.

Even before this matter was filed, Class Counsel engaged in significant investigation and research of the facts and litigated a “test” case in order to properly frame the theories of recovery. The matter required time-consuming, complex analysis that mixed legal theories with mathematical and financial analysis and involved significant confirmatory discovery from Travelers.

30. In fact, in the thirteen months since Settlement Class Counsel filed this case, Counsel’s extensive time and effort has included the following:

- investigated the facts and law relating to Plaintiffs’ claims before initiating this case;
- drafted a well-pleaded Complaint and Amended Complaint;
- met and conferred with Defendants’ counsel at the start of the case;
- negotiated a protective order relating to the use of the confidential documents and information produced by Travelers in this case,
- reviewed materials, researched precedent, investigated allegations to understand Travelers’ positions and negotiate resolution;
- prepared multiple lengthy mediation statements, reports and proposals;
- attended multiple meetings and mediations and participated in several follow-up conferences with Travelers’ counsel and internal clients;
- negotiated the details of a comprehensive Settlement Agreement over a period of many months and drafted the Settlement Agreement;
- prepared the exhibits to the Settlement Agreement (including the Class Notice, Claim Forms, and proposed Preliminary Approval Order);
- prepared a motion for Preliminary Approval of the Settlement;
- modified the Preliminary Approval Order in light of events outside the parties’ control;
- regularly communicated with the Settlement Administrator to ensure a smooth notice and claims process following the Court’s preliminary approval order;
- reviewed the language and content of the settlement website, FAQs, long form Notice, and the scripts for the automated 1-800 telephone number;

- responded to Class Members who contacted Class Counsel directly or who were forwarded to Class Counsel by the Settlement Administrator;
- communicated with the named Plaintiffs throughout the litigation; and
- prepared the present Declaration and accompanying Motion for Attorneys' Fees and Incentive Award.

31. In addition, Settlement Class Counsel will devote further time and effort, among other things, preparing a motion for Final Approval of the Settlement, appearing at the Final Approval Hearing, responding to ongoing inquiries from Class Members going forward, addressing any disputes relating to submitted claims, responding to and compiling objections and/or opt-outs (if there are any), monitoring the claims processing and overseeing the distribution of settlement payments by the Settlement Administrator.

32. Given the multifaceted issues that Settlement Class Counsel would have faced had this case not settled, litigating this case through to its conclusion would have exhausted a number of years and untold resources, well beyond the substantial time and effort that Class Counsel spent achieving this Agreement. Further litigation would inevitably require Class Counsel to, among other things, defend a motion to dismiss, followed by substantial, formal fact discovery, including depositions and the production, extraction, and analysis of various data from Travelers and potentially other third parties. Both parties would then have to brief class certification, which likely would require expert disclosures and additional depositions, and dispositive motions would probably be filed.

33. Every stage of a protracted lawsuit brings with it the very real prospect of the Plaintiffs being foreclosed from some or any recovery at all as a result of summary judgment or other motions practice. While Plaintiffs and Class Counsel remain committed to their claims, they are also pragmatic that there is no guarantee of success and that substantial obstacles exist at the summary judgment, class certification, and trial phases.

34. The risk of nonpayment was significant not just for the Plaintiffs and the Class, but for Settlement Class Counsel as well, who took on tremendous risk in litigating this matter on behalf of Plaintiffs. Settlement Class Counsel handled this case on a contingent-fee basis and were not guaranteed to recover any money despite their already-substantial investment of time, personnel, and resources. In fact, Class Counsel have not received any payment for their efforts to this date.

35. Settlement Class Counsel's risk is compounded by the fact that there was a chance that Travelers could have been successful in defending this claim. Travelers has consistently maintained that it had the right to deny rot damage claims and has raised a number of affirmative defenses to the Complaint to provide support for that position. If this action had proceeded through litigation, this would have been a hotly contested issue, and both sides likely would have retained testifying expert witnesses who would have disagreed about the implications of such coverage decisions. Moreover, Travelers certainly would have opposed certification of a class for litigation purposes in this case.

36. Despite substantial efforts performed to reach a settlement while shouldering the risk required to bring this case, Settlement Class Counsel's recovery is actually far less than what would commonly be negotiated in the private market. Attorneys entering into standard contingency fee agreements usually recover somewhere in the neighborhood of 33-40% of the recovery, along with costs and expenses; however, Settlement Class Counsel's requested award constitutes only 17% of the estimated total value of the Settlement, an objectionably reasonable outcome for all parties.

37. Finally, the Settlement in this Civil Action provides first-of-a-kind relief for the insurance practices at issue in connection with rot damage coverage. As noted above, Plaintiffs are unaware of any other case against Travelers or any other insurance company relating to rot damage coverage successfully resolved on a class-wide basis.

38. Plaintiffs' requested Incentive Award of \$10,000 in total is likewise reasonable and well-deserved given the risks they undertook and the valuable efforts they provided to help shepherd this case from inception to resolution. First, the Roses continue to insure their home with Travelers; bringing this lawsuit subjected them to potential financial, reputational, and personal risks, including, among other things, retaliation (in the form of termination of the customer relationship) which could have been misinterpreted by other creditors as a negative inference.

39. The Roses also expended significant time and effort on behalf of the class. Among other things, they gathered information during the investigation of claims and reviewed and produced documents; met with class counsel in person, assisted with the drafting and approval of the complaint; and attended mediations and assisted in class-wide settlement. While the class litigation only lasted a year, the damage to the Roses' home occurred in August of 2018, so they have been living with this case for a long time.

40. Finally, the Roses themselves befitted as a Settlement Class Members and have dedicated themselves to pursue the Civil Action for not just themselves but for the benefit of the Settlement Class as a whole. The Roses themselves are receiving just a tiny fraction of this Settlement. But without their actions in protecting the class, there would have been no case, the Settlement Class Members would have received nothing, a Travelers' policyholders might have experienced the same potential lack of coverage for years in the future.

We declare, under the penalty of perjury, that the foregoing is true and correct. Executed this 28th day of April, 2020, in Philadelphia, Pennsylvania.

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