

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SEAN ROSE and JAIME ROSE,
Plaintiffs,

v.

THE TRAVELERS HOME AND
MARINE INSURANCE COMPANY,
Defendant.

CIVIL ACTION
NO. 19-977

ORDER

This action is pending before this Court as a putative class action (the “Civil Action”). Following consideration of Plaintiffs’ unopposed Motion for Preliminary Approval of Class Action Settlement, the supporting memorandum of law (ECF No. 46) and declarations (ECF Nos. 46-12 to 46-15) and the proposed Class Action Settlement Agreement and Release and the Exhibits attached thereto (ECF Nos. 46-1 to 46-11) (the “Settlement Agreement”), and good cause appearing, it is **ORDERED** that the motion is **GRANTED** as follows:

1. This Order incorporates by reference the definitions in the Settlement Agreement and all terms defined therein shall have the same meaning in this Order as set forth in the Settlement Agreement.

2. The Court finds that it has subject matter jurisdiction over the Civil Action pursuant to 28 U.S.C. § 1332(d)(2) because there is diversity of citizenship between Plaintiff and some members of the proposed Class and Defendants and the amount in controversy exceeds \$5 million. The Court therefore finds that it has jurisdiction to approve and enforce the Settlement Agreement, all of its exhibits and all Orders that have been entered or which may be entered pursuant thereto. The Court

also finds that it has personal jurisdiction over the Parties and, for purposes of consideration of the proposed Settlement, over each of the members of the Settlement Class defined below (after they have been provided notice) and that venue is proper in this District pursuant to 28 U.S.C. § 1391.

3. The Court preliminarily finds that the requirements for class certification under Rule 23(a) and (b) of the Federal Rules of Civil Procedure are satisfied for the reasons set forth in the Plaintiffs' Motion for Preliminary Approval. For purposes of the settlement, the Court finds that the proposed Class is ascertainable and that the requirements of numerosity, commonality, typicality and adequacy of representation are satisfied. The Court further finds preliminarily that, for purposes of the settlement, there are predominant common questions of fact or law. The Court further finds preliminarily that the settlement is a superior means of resolving the Class Members' claims rather than individual suits.

4. For settlement purposes only, the Court grants conditional certification of the following "Class":

All homeowners, condominium and business insurance policyholders of Travelers who satisfy the following requirements: (a) the policyholder made a claim for Structural Damage to an Insured Structure located in the United States of America under a Policy; (b) the claim falls within the Settlement Class Period; (c) the Policy included Rot Remediation Coverage; (d) the claim included Rot Damage; and (e) the Rot Damage portion of the claim was denied by Travelers. The Class will not include policyholders whose insurance claims, as of the date of the Preliminary Approval Order: (f) remain open according to Travelers' records; (g) are the subject of an assignment of rights to payment by the policyholder to any third party; (h) are the subject of a pending lawsuit, other than the Civil Action; (i) are the subject of a final judgment in a lawsuit against Travelers or release executed by the policyholder in favor of Travelers; and/or (j) are the subject of an ongoing or completed appraisal proceeding under the terms of an appraisal provision in a Policy. In the event that a person or entity has made more than one insurance claim with Travelers satisfying

requirements (a) through (e) above, and one or more of those claims fall within exclusions (f) through (j) above but one or more other claims are not excluded, that person or entity will be a Class Member only with respect to those insurance claims that do not fall within exclusions (f) through (j) above.

5. The Court appoints Sean Rose and Jaime Rose as Settlement Class Representatives for settlement purposes only.

6. The Court appoints Epiq Class Action & Claims Solutions, Inc., an experienced class action settlement administration firm, as the Settlement Administrator, responsible for performing the obligations of the Settlement Administrator under the Settlement Agreement.

7. The Court appoints Plaintiffs' counsel, Anthony DiUlio, Esq., Wheeler, DiUlio & Barnabei, and Kenneth J. Grunfeld, Esq., Golomb & Honik, as Settlement Class Counsel for settlement purposes only.

8. The Court appoints Joseph F. Hoag, P.E. as the Neutral Evaluator solely for purposes of performing the functions set forth in Paragraph 49 of the Settlement Agreement.

9. The Court preliminarily approves the Settlement Agreement as fair, adequate and reasonable and preliminarily approves the terms of the Settlement Agreement.

10. The Court hereby approves on a preliminary basis the compensation to the participating Settlement Class Members provided for in the Settlement Agreement. It appears to the Court on a preliminary basis that the settlement amounts and terms are fair, adequate and reasonable as to all Class Members when balanced against the probable outcome of further litigation relating to class certification, liability and

damages issues. It further appears that counsel for the Parties at this time are able to reasonably evaluate their respective positions. It further appears to the Court that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be presented by the further prosecution of the Civil Action. It also appears that the Settlement has been reached as the result of intensive, serious and non-collusive, arms'-length negotiations with the assistance of the Magistrate Judge.

11. The Court approves the form and content of the proposed Settlement E-mail Notice, Settlement Cover Letter and Settlement Long-Form Notice attached as Exhibits D, E and F to the Settlement Agreement. The Court also approves the Claim Forms attached as Exhibits A and B to the Settlement Agreement.

12. The Court finds that the distribution of the Settlement E-mail Notice, Settlement Cover Letter and Settlement Long-Form Notice substantially in the manner and form set forth in the Settlement Agreement and this Order, together with the establishment of the settlement website, meets the requirements of due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The Court directs the Settlement Administrator to send the Settlement E-mail Notice, Settlement Cover Letter and Settlement Long-Form Notice as provided in the Settlement Agreement.

13. The Settlement Cover Letter and Settlement Long-Form Notice shall be sent by the Settlement Administrator by first-class, postage-prepaid U.S. mail to the Potential Class Members no later than 30 days after the date of this Order. If any mailing is returned undeliverable, the Settlement Administrator shall make a

reasonable effort to find an updated address for the Class Member and promptly re-mail the documents to the new address. In the event that any mailing is returned as undeliverable a second time, no further mailing shall be required. For those Potential Class Members for whom Travelers is able to provide an email address, the Settlement E-mail Notice shall be emailed by the Settlement Administrator to those Potential Class Members within 30 days after the date of this Order.

- a. Following the entry of this Order, the Parties, working with the Settlement Administrator, are permitted by mutual agreement to make changes in the font, format and content of the Settlement Cover Letter, Settlement Long-Form Notice, Settlement E-mail Notice and Claim Forms that do not materially alter the substance of those documents. Such changes can only be made before the class notice documents are first mailed/e-mailed documents must be approved by the Court.

14. All costs of notice and administration, including those associated with providing notice to the Settlement Class as well as in administering the terms of the Settlement, shall be paid by Defendant as set forth in the Agreement. In the event the Agreement is not approved by the Court, or otherwise fails to become effective, neither the Roses (unless they intentionally withdraw from the Civil Action or the Settlement at their discretion), nor Class Counsel, nor the Settlement Class Members shall have any obligation to Defendant for such costs and expenses.

15. Any Class Member may opt out of the Settlement by mailing an opt-out request as instructed in the Settlement Long-Form Notice, postmarked no later than 60 days after the date of this Order. All opt-out requests must be submitted as provided in

the Settlement Long-Form Notice. In accordance with the Settlement Agreement, any Class Member who submits a valid and timely opt-out request shall not be a Settlement Class Member, shall be barred from participating in the Settlement, shall have no right to object to the Settlement and shall receive no benefit from the Settlement. Class Members who have not submitted a valid and timely opt-out request shall be bound by all determinations of the Court, the Settlement Agreement (including but not limited to the Releases therein) and any Final Approval Order. If a Final Approval Order is entered approving the settlement, all Settlement Class Members who have not made timely, written requests for exclusion shall be conclusively deemed to have fully and finally released all of the Released Persons from any and all Released Claims.

16. To object to the Settlement or any part of it, a Class Member must mail a valid notice of objection (“Objection”) to the Clerk of Court, United States District Court for the Eastern District of Pennsylvania, James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106, and/or file an Objection or motion to intervene with the Clerk of Court no later than 60 days after the date of this Order. For an Objection to be valid, it must include all of the following: (a) contain a heading which includes the name of the case and case number; (b) provide the name, address, telephone number, and signature of the Class Member filing the objection; (c) indicate the specific reasons why the Class Member objects to the proposed settlement; (d) contain the name, address, bar number, and telephone number of the objecting Class Member’s counsel, if represented by an attorney; and (e) state whether the objecting Class Member intends to appear at the final approval hearing, either in person or through counsel. If the Class Member is represented by an attorney, he or she must comply with all applicable

rules of the Court. In addition, a notice of intent to object must contain the following information, if the Class Member or his or her attorney requests permission to speak at the final approval hearing: (f) a detailed statement of the legal and factual basis for each and every objection; (g) a list of any and all witnesses whom the Class Member may seek to call at the final approval hearing, with the address of each witness and a summary of his or her proposed testimony (whether any such testimony is allowed will be in the discretion of the Court, in accordance with the rules of the Court); (h) a detailed description of any and all evidence the Class Member may offer at the final approval hearing, including photocopies of any and all exhibits which the objector may seek to introduce at the final approval hearing (whether any such evidence is admitted or otherwise considered will be determined by the Court, in accordance with the rules of the Court); (i) a list of any legal authority the Class Member will present at the final approval hearing; and (j) documentary proof of membership in the Class.

17. Any Class Member who fails to submit to the Clerk of Court timely written objections and/or file a motion to intervene with the Clerk of Court in the manner specified in the Settlement Agreement and Settlement Long-Form Notice shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Any Class Member who fails to submit a timely written objection in accordance with the Settlement Agreement (as specified in Paragraph 16 above) may not be heard to oppose the Settlement at the final approval hearing unless otherwise ordered by the Court.

18. Settlement Class Members have the right to exclude themselves from the Settlement and pursue a separate and independent remedy against Travelers by

complying with the exclusion provisions set forth herein. Settlement Class Members who object to the Settlement shall remain Settlement Class Members and have voluntarily waived their right to pursue an independent remedy against Travelers. To the extent any Settlement Class Member objects to the Settlement, and such objection is overruled in whole or in part, such Settlement Class Member will be forever bound by the Final Order and Judgment of the Court.

19. The Court further finds that the Class Action Fairness Act notice to be provided by the Settlement Administrator on behalf of Travelers pursuant to the Settlement Agreement, as will be verified in the declaration of the Settlement Administrator, is in compliance with 28 U.S.C. § 1715(b), and that the Class Action Fairness Act Notice will be given more than 90 days prior to any order of final approval, in accordance with 28 U.S.C. § 1715(d).

20. A Final Approval Hearing is scheduled for **Thursday, June 4, 2020 at 10:00 a.m.** in Courtroom 11-A, 11th floor of the United States District Court for the Eastern District of Pennsylvania, James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106 to determine all necessary matters concerning the settlement, including: (a) whether the proposed settlement of the Civil Action on the terms and conditions provided for in the Settlement Agreement is fair, adequate and reasonable and should be finally approved by the Court; (b) whether a Final Approval Order, as provided in the Settlement Agreement, should be entered herein; (c) whether the compensation to the participating Settlement Class Members contained in the Settlement Agreement should be approved as fair, adequate, and reasonable to the participating Settlement Class Members; and (d) to make, in the Court's discretion an

award of attorneys' fees and costs to Settlement Class Counsel (subject to the provisions of Paragraph 60 of the Settlement Agreement) and an Incentive Award, if any, to the Settlement Class Representatives (subject to the provisions of Paragraph 60 of the Settlement Agreement).

21. Settlement Class Counsel shall file any papers in support of their requested award of attorneys' fees and expenses and the Settlement Class Representatives' Incentive Award on or before **Friday, March 20, 2020**.

22. Counsel for the Parties shall serve and file any response to any objections to the Settlement and a Motion for Final Approval on or before **Monday, May 4, 2020**.

23. The Settlement Agreement is not a concession or admission and shall not be used against Travelers or any of the Released Parties as an admission or indication with respect to any claim of any fault or omission by Travelers or any of the Released Parties. In the event the Settlement does not become effective in accordance with the terms of the Settlement Agreement, or the Settlement Agreement is not finally approved, or is terminated, canceled or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated and the Parties shall revert to their respective positions as of before entering into the Settlement Agreement. Whether or not the Settlement Agreement is finally approved, neither the Settlement Agreement, nor any document, statement, proceeding or conduct related to the Settlement Agreement, nor any reports or accounts thereof, shall in any event be:

- a. Construed as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or

admission by Travelers or any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage; or

- b. Disclosed, referred to or offered or received in evidence against any of the Released Parties in any further proceeding in the Civil Action or in any other civil, criminal or administrative action or proceeding, except for purposes of settling the Civil Action pursuant to the Settlement Agreement and by the Parties for purposes of enforcing the Settlement Agreement.

24. Pending the final approval hearing, all proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement and this Order, are stayed.

25. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the settlement which are not materially inconsistent with either this Order or the terms of the Settlement Agreement.

26. To facilitate administration of the Settlement Agreement pending final approval, the Court hereby enjoins all Settlement Class Members from filing or prosecuting any claims, suits or administrative proceedings regarding claims released by the Settlement Agreement unless and until such Settlement Class Members have submitted valid opt-out requests.

27. The Court orders the following schedule for further proceedings:

- a. The Settlement Administrator will e-mail the Settlement E-mail Notice and mail the Settlement Cover Letter and Settlement Long-form Notice to the Potential Class Members on or before **Thursday, March 5, 2020**.
- b. Settlement Class Counsel shall file any papers in support of their requested award of attorneys' fees and expenses and the Settlement Class Representatives' Incentive Award on or before **Friday, March 20, 2020**.
- c. Opt-out requests, objections and claim forms must be postmarked no later than **Saturday, April 4, 2020**.
- d. The Settlement Administrator will file a declaration of compliance regarding completion of notice, and the number and names of opt outs, on or before **Monday, May 4, 2020**.
- e. The Parties will file a motion for Final Approval and supporting documents thereto and respond to objections on or before **Monday, May 4, 2020**.
- f. The final approval hearing will be held on **Thursday, June 4, 2020 at 10:00 a.m.**

28. The Court reserves the right to adjourn or continue the date of the final approval hearing and all dates set forth above per the Settlement Agreement without further notice to Settlement Class Members, except on the settlement website and the Court's docket on PACER, <http://ecf.paed.uscourts.gov>, with notice to those who have filed timely and valid objections stating an intent to appear at the final approval hearing. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

SO ORDERED this 4th day of February, 2020.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.