

SUPERIOR COURT FOR THE STATE OF WASHINGTON

PIERCE COUNTY

RYAN STIER, individually and as the
representative of all persons similarly situated,

Plaintiff,

v.

PEMCO MUTUAL INSURANCE
COMPANY AND PEMCO INSURANCE
COMPANY,

Defendants.

No. 18-2-08153-5

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between plaintiff RYAN STIER (the “Plaintiff”), on behalf of himself and all others similarly situated, and defendants, PEMCO MUTUAL INSURANCE COMPANY, and PEMCO INSURANCE COMPANY (collectively “PEMCO” or “Defendants”), by and through their respective counsel, subject to the following terms and conditions.

RECITALS

WHEREAS, on May 17, 2018, Plaintiff filed a Class Action Complaint alleging breach of contract and violation of the Washington Consumer Protection Act, (the “Complaint”), which was certified as a Class Action on February 14, 2020 with a written certification order entered on April 10, 2020 (“the Class”) and is currently pending in the Pierce County Superior Court (the “Court”), designated as Case No. 18-2-08153-5 (the “Action”); and

WHEREAS, Plaintiff and Class Members were insureds under automobile insurance policies issued by PEMCO (the Policies), and had their vehicles adjusted to be total losses by PEMCO, and received a vehicle valuation from PEMCO which was based upon an Autosource valuation which contained a discount for “typical negotiation” under their first party (comprehensive, collision, and/or UMPD) coverages;

WHEREAS, the Action alleges generally, that, in breach of the Policies, and in violation of WAC 284-30-391, RCW 19.86 *et seq.* and its duty of good faith and fair dealing, Defendants improperly failed to pay the Plaintiff and Class Members fully for their total loss claims through taking a discount for “typical negotiation”; and

WHEREAS, the Plaintiffs, through counsel, while believing that the claims asserted in the Action have substantial merit, examined the benefits to be obtained under the terms of the contemplated Settlement, considered the risks and delay associated with the continued prosecution and appeals of this Action and the likelihood of success on the merits of the Action, and believe that, in consideration of all the circumstances, the Settlement is fair, reasonable, adequate, and in the best interests of the Plaintiff and Class Members; and

WHEREAS, Defendants believe they have numerous defenses having substantial merit including class defenses, and would otherwise have prevailed on appeal of their request for review of the Class Certification Order, and further maintain that they have consistently acted in

accordance with governing laws at all times and deny wrongdoing of any kind whatsoever, and without admitting liability, have nevertheless agreed to enter into this Settlement to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation, and to be completely free of any further controversy with respect to the claims which were asserted or could have been asserted in the Action; and

NOW, THEREFORE, IT IS HEREBY AGREED by and between the Parties, through their respective counsel, that the Action be settled and compromised as between the Plaintiff, the Class Members, and Defendants upon approval of the Court after hearing as provided for in this Agreement, on the following terms and conditions:

I. DEFINITIONS

In addition to the foregoing, the following terms shall have the meanings set forth below:

1. "Claim" means a request by Class Representative or a Class Member for a benefit under the Settlement.
2. "Claimant[s]" mean those Class Members who submit a timely and Valid Claim Form.
3. "Claim Form" means that form attached to or accompanying the Individual Notice, pursuant to which Class Members may elect to participate in this Settlement. The Claim Form, which shall be printed on blue or green paper for visibility and easy identification, The Claim Form is attached hereto as **Exhibit "A."**
4. "Claim Form Submission Date" means a date not later than one hundred (100) days after mailing of the Individual Notice and Claim Form.

5. "Claims Administrator" means the firm approved by the Court to administer all aspects of the Settlement. The Parties agree to jointly recommend to the Court that JND Legal Administration shall be appointed as the Claims Administrator.

6. "Class Counsel" means the following attorneys who represent the Class Representative and Class Members:

Stephen M. Hansen
Law Offices of Stephen M. Hansen, P.S.
1821 Dock Street, Suite 103
Tacoma, WA 98402

Scott P. Nealey
Law Office of Scott P. Nealey
71 Stevenson Street, Suite 400
San Francisco, California 94105

7. "Class Period" means the period from May 17, 2012 to April 30, 2020 as reflected on the July 10, 2020 spreadsheet provided by PEMCO to Class Counsel.

8. "Class Representative" means RYAN STIER, the Plaintiff and person named by the Court as the Class Representative.

9. "Defendant" or "Defendants" means PEMCO Mutual Insurance Company and/or PEMCO Insurance Company ("PEMCO").

10. "Deficient Claim Form" means a claim form that is not signed by the Claimant, stating that they "affirm that the responses I have provided above are true and correct, to the best of my knowledge," or where the Claimant's name is not legibly printed, or where the questions have not all been answered.

11. The "Effective Date" of this Agreement shall be the first date after which all the following events and conditions have been met or have occurred:

(a) All parties have executed this Agreement;

(b) The Court has, by entry of the Preliminary Approval Order, preliminarily approved this Agreement, the Settlement set forth herein and the method for providing notice to the Class; and

(c) The Court has entered the Final Approval Order and Judgment, finally approving the Settlement, and releasing the Released Persons from the Released Claims and dismissing with prejudice, and without leave to amend, the Action and all claims asserted therein and the Final Approval Order And Judgment is fully enforceable and beyond appeal.

12. "Class Member" shall mean those persons, including Legally Authorized Representatives, that are members of the Settlement Class.

13. "Eligible Class Member" is a Class Member who has submitted a Valid Claim Form and whose Claim or eligibility has not been successfully challenged by the Defendants.

14. "Final" means, with respect to the Final Approval Order and Judgment, that the Final Approval Order and Judgment is entered by the Court and the time for appeal from such Final Approval Order and Judgment, if standing for an appeal exists in any objector, has lapsed (including, without limitation, any extension of time for the filing of any appeal that may result by operation of law or order of the Court) with no notice of appeal having been filed, or if an appeal is filed, the day that the Final Approval Order and Judgment is affirmed, all appeals are dismissed, and no further appeals to, or discretionary review in, any court remains.

15. "Final Approval Order and Judgment" means the Order to be entered by the Court, substantially in the form attached hereto as **Exhibit "B"** or such other form as is mutually agreeable to the Parties, approving this Settlement as fair, adequate, and reasonable and in the best interests of the Settlement Class as a whole in accordance with the applicable Washington

Rules of Civil Procedure and/or other applicable law, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Settlement, with the Court retaining jurisdiction over the Settlement and its administration, as set forth in the Final Approval Order and Judgment.

16. "Final Settlement Hearing"/"Final Approval Hearing" means the hearing at which final approval of the Settlement in this matter is sought.

17. "Individual Notice" means the notice that the Settlement has been preliminarily approved, in substantially the same form and with substantially the same content as **Exhibit "C"** hereto, to be sent to Class Members by first-class mail.

18. "Legally Authorized Representative" means an administrator/administratrix or executor/executrix of a decedent's estate, a guardian, conservator, or next friend of an incapacitated person or any other legally appointed person or entity responsible for handling the business affairs of a person, and/or the spouse or domestic partner of any person that otherwise is a member of the Settlement Class.

19. "Notice" means, collectively, the communications by which Class Members are notified of the existence and terms of the Settlement and their ability to file a claim, along with the provided claim form(s).

20. "Notice Date" means the date upon which Individual Notice is first mailed to Class Members.

21. "Objection" means a written objection to the Settlement by those who do not opt out which is served no later than fourteen (14) days before the Final Settlement Hearing and meets the other conditions as otherwise specified in this Agreement.

22. "Opt Out" means any person who sends a written communication requesting exclusion from this Settlement, which communication is received no later than fourteen (14) days before the Final Settlement Hearing.

23. "Parties" means, collectively, RYAN STIER the Class Representative, on behalf of himself and all others similarly situated, and PEMCO.

24. "Preliminary Approval Order" means the Court's preliminary approval of this Settlement in substantially the form attached hereto as **Exhibit "D."**

25. "Released Claims" means and includes, whether known or unknown, any and all claims for relief or causes of action, claims, rights, demands, actions, suits, debts, liens, contracts, liabilities, agreements, interest, fees, costs, expenses or losses, including but not limited to claims based in contract or tort, common law or equity, and federal, state, or local law, statute, ordinance, administrative code, or regulation, and any other claims for relief and/or remuneration whatsoever, including, but not limited to, all claims arising out of the Defendants' handling or administering of claims for coverage for total loss payments; including claims for bad faith; claims for the amounts of total loss payments; breach of any written or oral agreement or insurance contract or any similar act; waiver; estoppel; any tortious injury, including any intentional or negligent acts; agent negligence; failure to procure coverage or misconduct; punitive damages; treble damages; statutory damages; regulatory claims; claims for violation of the Revised Code of Washington or similar statutes; claims for violation of the Washington Consumer Protection Act or any similar act; claims for violation of the Washington Insurance Fair Conduct Act or any similar act; misrepresentation; and/or any claim for attorneys' fees and expenses; arising on or before the date hereof, which the Releasing Parties had or could have

alleged in the Action that relate in any way whatsoever to the Action's claims related to total loss payment.

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

27. "Releasing Parties" means Plaintiff, the Class Representative, the Class Members, their heirs, predecessors, successors, assigns, family members, personal representatives, attorneys, officers, stockholders, employees, executors, administrators, insurers, reinsurers, underwriters, directors and/or past, present and future parent, subsidiary and affiliated corporations, lienholders, financing companies, gap insurers, and any other person or entity who could or might assert any claim under or through any of the foregoing.

28. "Settlement" means the settlement contemplated by the terms, conditions, and provisions set forth in this Agreement including all exhibits hereto.

29. "Settlement Class" means the class described of the following persons:

All PEMCO insureds with Washington policies issued in Washington State, who received compensation for the total loss of their own vehicles under their First Party Coverages (Comprehensive, Collision, and UIM) and received a total loss valuation from PEMCO based upon an "Autosource" report including deductions for "typical negotiation."

Excluded from the Settlement Class are (a) the assigned judge, the judge's staff and family, (b) PEMCO employees, (c) claims for accidents with dates of loss occurring before May 17, 2012 and after

April 30, 2020 and (d) claims where only one PEMCO Autosource report was obtained, and it did not take a “typical negotiation” discount.

The Parties agree that the Settlement Class shall consist of a class of no greater than 21,276 claims, and shall be a subset of the claims listed in the spreadsheet provided by PEMCO in response to Plaintiff’s discovery requests on July 10, 2020. The Parties shall reasonably cooperate to identify the final members of the Settlement Class to reach a final class number. In identifying the Settlement Class, the Parties agree that the following group of potential claims on the spreadsheet shall not be included in the Settlement Class: (a) those persons with claims where PEMCO obtained a single Autosource valuation and the data provided by Autosource (contained in the July 10, 2020 spreadsheet provided by Defendants in response to Plaintiff’s discovery requests) evidences that no Typical Negotiation Amount was applied, which the Defendants currently estimate as 905 claims; and (b) those persons with claims with a loss date occurring before May 17, 2012, which the Parties currently estimate as 53 claims. Any disputes as to the class membership shall be resolved by Judge Paris Kallas (Ret.).

30. “Settlement Class List” means the class notice list to be furnished to Class Counsel and the Claims Administrator by the Defendants after removal of those claims from the spreadsheet as described in paragraph 29 or otherwise not falling within the Settlement Class.

31. “Settlement Fund” means the virtual common fund of \$14,110,030.44.

32. “TNA” or “Typical Negotiation Amount” shall mean the following:

(a) the amount identified as to each individual claim on the July 10, 2020 spreadsheet in Column AY (“TypicalNegotiationAmount”);

(b) if no amount is identified for any individual claim on the July 10, 2020 spreadsheet in Column AY:

(i) the amount identified as the typical negotiation deduction on the most recent Autosource valuation contained in PEMCO's file for that individual claim that contains a typical negotiation deduction; if no Autosource valuation in PEMCO's file for that individual claim contains a typical negotiation deduction, the typical negotiation amount shall be zero (\$0); or

(ii) at PEMCO's sole discretion, and in lieu of reviewing any individual claim file, 8.14% of the of the amount identified on Column AZ ("AvgMrktValueLast") as shown on the supplemental November 24, 2020 spreadsheet for that individual claim.

33. "Valid Claim Form" means a timely Claim Form submitted by a Class Member who has not requested exclusion from the Settlement, on paper or via the Settlement website established by the Claims Administrator, signed (electronically or on the paper form) by the Class Member, stating that they "affirm that the responses I have provided above are true and correct, to the best of my knowledge" and where all questions on the claim form have been answered with a "Yes", "No", or "I don't know", as set forth in **Exhibit "A"** hereto.

II. CLAIMS PROCEDURE AND PAYMENT

34. In order to receive payment under this Settlement, Class Members must submit a Valid Claim Form postmarked or received online by a date no later than one hundred (100) days after the date of mailing of the Individual Notice.

35. Deficiency notices will be sent by the Claims Administrator within thirty (30) days after the Claim Form Submission Date to Claimants who have timely submitted Deficient Claim Forms, identifying the deficiency and providing the Claim Form to be corrected. Any Deficient Claim Forms shall be subject to having the deficiencies corrected and timely returned

by Claimants within forty-five (45) days of date of the deficiency notice. Upon proper completion and timely return, such Deficient Claim Forms shall be considered Valid Claim Forms. Claim Forms that are not timely returned, or are returned but still contain deficiencies, will be considered invalid.

36. The Claims Administrator shall submit the Valid Claim Forms as they are received to the Defendants. Defendants shall have up to sixty (60) days after the Claim Form Submission Date to challenge any Claim (Challenge Process). If the Valid Claim Forms are not challenged by the Defendants within sixty (60) days after the Claim Form Submission Date, these Claims become Eligible Class Members and payment will be sent to them by the Defendants within thirty (30) days after the deadlines to challenge such claims have expired, but in no event prior to thirty (30) days after the Effective Date.

37. A Claimant who submits a Valid Claim Form will not be eligible to receive payment, or will receive a reduced payment under this Settlement, if as part of the Challenge Process, PEMCO shows that:

(a) the Class Member exercised his or her right to an appraisal or received a valuation performed by an agreed neutral third party, in which case that Class Member shall not be entitled to receive any payment. A Class Member's indication on the Claims Form that the Class Member exercised his or her right to an appraisal or paid on a valuation performed by an agreed neutral third party by answering the question "yes" shall be conclusive proof and no further proof by PEMCO shall be required;

(b) the Class Member received from PEMCO a total loss payment equal to or greater than the valuation from an expert or public adjuster submitted by the Class Member or someone acting on the Class Member's behalf. A Class Member's indication

on the Claims Form that such a valuation was submitted, by answering the question “yes,” will result in no payment to the Class Member if PEMCO can show it paid an amount equal to or greater than the valuation submitted. ;

(c) the Class Member received from PEMCO a total loss payment that was equal to or greater than the Autosource valuation with TNA, if any, as defined under Paragraph 32, added back in, in which case that Class Member shall not be entitled to receive any payment; or

(d) the Class Member received from PEMCO a total loss payment that was greater than the amount of the Autosource valuation with a TNA, if any, as defined under Paragraph 32, but less than that Autosource valuation with the TNA added back in, in which case the Class Member shall only be entitled to receive a payment equal to the difference between what was paid as the total loss payment and the Autosource valuation with the TNA added back in. (For example, if the Autosource valuation was \$9,000, with TNA identified as \$1,000, and PEMCO identifies that it paid \$9,500 as the total loss valuation, the Class Member would be entitled to receive a payment of \$500, which reflects the difference between the amount PEMCO paid and the Autosource valuation with the TNA added back in. As further example, if under the same Autosource valuation identified above of \$9,000, with TNA identified as \$1,000, PEMCO identifies that it paid the Class Member \$10,000, the Class Member would not be entitled to any payment.)

Defendants shall provide notice to Class Counsel within sixty (60) days after the Claim Form Submission Date, if they believe that any Claimants who have submitted a Valid Claim Form are ineligible to receive payment, or should receive a reduced

payment. The Parties are to discuss any challenge raised by PEMCO and whether such Claim Form is excludable under the Settlement and shall have thirty (30) days from such notice to reach an agreement on the eligibility determination of the Claimant. In the event that the Parties cannot agree, the Parties shall present any dispute for resolution by the Superior Court for Pierce County in a single motion. Other than as to the unanticipated event of such a motion being made, the matter will be final after final approval. Defendants shall have thirty (30) days from the date a Claimant is determined eligible, as provided in this Paragraph, by the Court or by the Parties to be an Eligible Class Member, to send payment to them, but in no event earlier than thirty (30) days after the Effective Date.

38. Other than when payments are successfully challenged in whole or part under Paragraph 37, resulting in no payment or a partial payment, Payment to Class Members (“Settlement Payments”) shall be equal to that TNA amount, if any, as defined under Paragraph 32, after a proportionate deduction for attorneys’ fees, costs, and any class representative bonus. (For example, if costs, Class Counsel fees, and the Class Representative service award are paid as specified herein in full, individual awards will be reduced by 27.3862%.) Any portion of the Settlement Fund that is not paid as a Settlement Payment, as Class Counsel fee, costs, or as a Class Representative fee, will remain the property of Defendants and will not be subject to the applicable escheat laws, not be considered as residual funds under CR 23(f) or any other law, and not otherwise subject to the doctrine of *cy pres* or its equivalent.

39. As set forth below, Defendants agree not to oppose a request for, and to pay RYAN STIER \$10,000.00 for his service as Class Representative if approved by the Court, within fourteen (14) business days after the Effective Date.

40. The Releasing Parties fully understand and intend, upon advice of counsel, that, pursuant to this Agreement, the payments set forth above (except the service fee to the Class Representative as set forth in Paragraph 39 above) shall be the only payment any or all of them will ever receive from the Released Parties relating in any way whatsoever to the Action and the Policies and as to any and all possible claims related to and/or associated with any of the foregoing.

41. If, among all checks that have been disbursed to Eligible Class Members, there are checks that have not been cashed within sixty (60) days of the check's date, or are returned as undeliverable, and no deliverable address can be identified through reasonable efforts, Defendants may stop payment on those uncashed checks, and the payment to the Eligible Class Member shall be deemed as having never been made; provided, however, that if a new address is located on a returned check, or an Eligible Class Member contacts the Settlement Administrator, Class Counsel or Defendants within sixty (60) days of the date that payment, if any, was originally sent and establishes that they did not receive a check or requests a reissuance of the check, Defendants shall issue a replacement check. If the replacement check has not been cashed within sixty (60) days of the check's date, Defendants may stop payment on the uncashed check, and the payment to the Eligible Class Member shall be deemed as having never been made. Uncashed checks will remain the property of Defendants and will not be subject to the applicable escheat laws, not be considered as residual funds under CR 23(f) or any other law, and not otherwise subject to the doctrine of *cy pres* or its equivalent.

III. CLAIMS ADMINISTRATOR.

42. The Parties agree to recommend to the Court that JND Legal Administration shall act as the Claims Administrator, and shall be designated as the "Claims Administrator." The

Claims Administrator shall: (i) oversee the provision of Individual Notices to the Class; (ii) oversee identification of addresses for any returned mail, and remaining notice; (iii) process Claim Forms which are mailed or submitted electronically on the settlement website; (iv) contact Class Members by mail, whose Claim Forms are deficient to attempt to obtain a cured form; (v) process any cured Claim Forms; (vi) send Claim Forms to Defendants for challenge or payment; (vi) forward inquiries and questions to Class Counsel; (vii) establish a website for the submission of electronic Claim Forms and make relevant documents and updates on the status of the settlement available to Class Members; (viii) provide a certification upon completion of the claims process to the Court regarding the administration and processing of claims and, the issuance of the payments to the Claimants as set forth herein; and (ix) issue checks for valid claims.

43. PEMCO shall incur and be solely responsible for the costs of Claims administration. Such costs include, without limitation, the reasonable costs of notifying the Class Members; the reasonable costs, after having cross checked the Settlement Class List addresses for current or more up to date addresses in their own databases, of updating the addresses of Class Members from the National Change of Address Data Base, "True Trace", or equivalent service; preparing the Individual Notice and Claim Forms; mailing of the Individual Notice and Claim Forms; processing the Claims; and costs associated with the services of the Claims Administrator to undertake any duties required to assist in the management of this Settlement, including, but not limited to, sending and processing deficiency notices and correspondence, and establishment of a website concerning the Settlement and providing for online submission of Claim Forms.

IV. NOTICE AND ADMINISTRATION OF SETTLEMENT.

44. No later than sixty (60) days after the Preliminary Approval of this Settlement, the Claims Administrator shall have sent a copy of the Individual Notice and a Claim Form (or Claim Forms if a Class Member has multiple claims), pre-printed with the Class Member's name and most recent address as determined below in this Paragraph and Paragraphs 42 and 43, the date of the loss, and the vehicle make and year, by first-class mail, to each Class Member. Prior to any mailing the Claims Administrator shall update all addresses on the Settlement Class List by running the addresses thereon through the National Change of Address Data Base, "True Trace", or equivalent service. Defendants and the Claims Administrator shall use their best efforts to complete the mailing of the Individual Notice and Claim Form to each Class Member on the Settlement Class List as soon as possible, but no later than sixty (60) days after the Preliminary Approval of the Settlement as provided herein. The Individual Notice will be approved as to form and content by the Court and be in the form attached hereto as **Exhibit "C"** unless otherwise modified by agreement of the Parties and approved by the Court. The mailing to the Class Members that contains the Individual Notice will also include a copy of the Claim Form (or Claims Forms if an individual has multiple qualifying claims) attached hereto as Exhibit "A."

45. If any Individual Notice and/or Claim Form mailed to any Class Member in accordance with the procedure set forth above is returned to the Claims Administrator as undeliverable, then the Claims Administrator shall re-send the returned Individual Notice and/or Claim Form to the Class Member by first-class mail to any forwarding address provided by the United States Postal Service. The Claims Administrator will promptly log each Individual Notice and/or Claim Form that is returned as undeliverable and provide copies of the log to Defendants and Class Counsel as requested.

46. A website for the Settlement administration will be established by the Claims Administrator wherein the Individual Notice and Claim Form, Agreement, approval papers, and any further necessary information, will be made available to the Settlement Class by the Claims Administrator. The website shall provide for the filling in and submission of Claim Forms electronically.

47. Neither Defendants, Released Parties, Plaintiff, nor any of their counsel, shall be liable for any act, or failure to act, of the Claims Administrator.

V. DECEASED CLASS MEMBERS.

48. Where a Class Member is deceased and a payment is due to that Class Member, the Settlement Payment may be made to such Class Member's Legally Authorized Representative.

VI. COMMUNICATIONS WITH THE CLASS.

49. The Individual Notice shall list Class Counsel's addresses, telephone numbers and e-mail addresses. Other than as provided for in this Agreement, communications relating to the Action or this Settlement with Class Members receiving Individual Notices and Class Members shall be handled through Class Counsel. Neither Class Counsel, nor anyone acting on behalf of Class Counsel shall initiate any communications with Class Members prior to the Claim Form Submission Date except when necessary to answer a specific Class Member's question(s) or to provide specific assistance in completing Deficient Claim Forms. Nothing in this Agreement shall be construed to prevent Defendants, their employees, agents or representatives from communicating with Class Members in the normal course of their business operations.

VII. ATTORNEYS' FEES, CLASS REPRESENTATIVE FEES, AND COSTS.

50. Attorneys' fees and costs were not fully negotiated or discussed by Class Counsel and Defendants, nor agreed upon until all other material terms of the settlement were resolved, and then were discussed only with the mediator. Class Counsel will submit their fee and cost request, and any request for fees for the Plaintiff for his service as Class Representative, to the Court. Class Counsel will not ask the Court for attorneys' fees in any amount beyond 27% of the Settlement Fund and out-of-pocket costs of up to \$44,502.63. Class Counsel will request a Class Representative fee for Plaintiff RYAN STIER of \$10,000.00. Any attorneys' fees and costs, and any Class Representative fees, awarded by the Court will be paid to Class Counsel and Plaintiff, respectively, no later than fourteen (14) days after the Effective Date. Such payment shall be made by a check or wire issued to Law Offices of Stephen M. Hansen, P.S. Trust Account, unless other delivery instructions are provided to Defendants' counsel in writing by Class Counsel.

51. The amounts set forth in Paragraph 50 shall constitute all the sums the Defendants shall ever pay to Class Counsel as attorneys' fees, costs, or expenses. Defendants shall have no responsibility for and shall have no liability whatsoever with respect to the allocation among Class Counsel and/or any other person who may assert a claim thereto, of any attorneys' fees, costs, or expenses that the Court may award. Class Counsel and/or the Class Representatives agree in all events that they will neither ask for nor receive or accept any more than the maximum amount of fees and/or costs set forth in Paragraph 50 above. Any award by the Court or any appellate court of attorneys' fees and costs, or Class Representative fees, to be paid by Defendants in excess of the maximum award agreed upon herein, shall not be executed upon in any fashion by Class Counsel and/or the Class Representatives.

**VIII. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL,
CANCELLATION OR TERMINATION OF AGREEMENT.**

52. The Plaintiff, Class Members, and Defendants consent to the entry of a Final Approval Order and Judgment in the form attached as **Exhibit “B.”**

53. Within twenty (20) business days after notice of the occurrence of any of the following events, the Defendants shall have the right, exercisable at their sole discretion, to terminate this Settlement by delivering written notification of such election to Class Counsel if:

(a) The Court, or any appellate court(s), rejects, denies approval, disapproves the Settlement or any portion of this Settlement, including, but not limited to, the terms of the Settlement, Class relief, the provisions relating to notice, and the Released Claims;

(b) The Court, or any appellate court(s), does not enter or completely and unconditionally affirm any portion of the Settlement, Preliminary Approval Order, or Final Approval Order and Judgment; or

(c) Any financial obligation is imposed upon Defendants in addition to and/or greater than those specifically accepted by Defendants in this Settlement.

(d) In the event that 5% or more of Class Members opt out or file requests for exclusion.

If Defendants exercise their right of termination pursuant to this Paragraph 53, this Settlement shall be null and void and of no force and effect.

54. If the Settlement shall fail for any reason other than a breach by one of the Parties:

(a) This Settlement shall have no further force or effect, and all proceedings that have taken place with regard to this Settlement shall be without prejudice to the rights and contentions of the Parties hereto and any of the Class Members;

(b) This Settlement, all of its provisions and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of any of the Parties,

each of whom shall be restored to their respective positions existing immediately before settlement negotiations and the execution of this Settlement;

(c) This Settlement, any provision of this Settlement and the fact of this Settlement having been made, shall not be admissible or entered into evidence for any purpose whatsoever;

(d) Any judgment or order entered after the date of this Settlement will be vacated and will be without any force or effect. The Parties hereto agree that they will promptly file a joint motion with the Court to vacate all orders entered pursuant to the terms of this Settlement; and

(e) The Parties hereby agree that they will not thereafter argue or raise a claim or defense, including, but not limited to, waiver, estoppel and other similar or related theories, that the Settlement and related pleadings and filings, any provision of this Settlement the fact of this Settlement having been made, and any settlement negotiations preclude Defendants from opposing certification or the claims in the Action or in any other proceeding. The Parties further agree that, to the extent permitted by law, neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected therewith, shall be offered as evidence, received in evidence or used as precedent in any pending or future civil, criminal, or administrative action or proceeding, to establish any liability or admission by Defendants, except in any proceedings brought to enforce the Agreement.

This Section shall survive any termination of this Agreement and Settlement.

55. Upon the preliminary approval of this Settlement by the Court, as evidenced by entry of the Preliminary Approval Order, all proceedings in the Action shall be stayed until

further order of the Court, except such proceedings as may be necessary either to implement the Settlement or to comply with or effectuate the terms of this Agreement.

56. If any of the events or conditions described above are not met or do not occur, this entire Agreement shall become null and void, except that the Parties shall have the option to agree in writing to waive the event or condition and proceed with this Settlement, in which case the Effective Date shall be deemed to have occurred on the date of said written agreement, or a date otherwise specified in said written agreement.

IX. OBJECTIONS AND REQUESTS FOR EXCLUSION.

57. Class Members who wish to exclude themselves from the Settlement Class must prepare a written request for exclusion, which must be received by the Claims Administrator no later than fourteen (14) days before the Final Settlement Hearing. Written requests for exclusion must be signed and include the individual's name, address, and telephone number, and expressly state the desire to be excluded from the Settlement Class. Requests for exclusion must be exercised individually by the Class Member, not as or on behalf of a group, class, or subclass, except that such exclusion requests may be submitted by a Class Member's Legally Authorized Representative.

58. Class Members who do not opt out may object to the Settlement. Class Members who choose to object to the Settlement must file an Objection in accordance with Paragraphs 21 and 57 through 60. Any Class Member may appear at the Final Settlement Hearing, in person or by counsel, and be heard to the extent allowed by the Court, applying applicable law, in opposition to the fairness, reasonableness and adequacy of the Settlement, and on the application for an award of attorneys' fees and costs. The right to object to the Settlement must be exercised individually by an individual Class Member, not as a member of a group or subclass and, except

in the case of a deceased, minor, or incapacitated Class Member, not by the act of another person acting or purporting to act in a representative capacity.

59. To be effective, an Objection to the Settlement must:

- (a) Contain a heading that 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) Be filed with the Clerk of the Court not later than fourteen (14) days before the Final Settlement Hearing;
- (d) Be served on Class Counsel and counsel for the Defendants no later than fourteen (14) days prior to the Final Settlement Hearing;
- (e) Contain the name, address, bar number and telephone number of the objecting Class Member's counsel, if represented by an attorney. If the Class Member is represented by an attorney, they must comply with all applicable laws and rules for filing pleadings and documents in this Court; and
- (f) State whether the objector intends to appear at the Final Settlement Hearing, either in person or through counsel.

60. In addition to the foregoing, an Objection must contain the following information, if the Class Member or representing attorney requests permission to speak at the Final Settlement Hearing:

- (a) A detailed statement of the specific legal and factual basis for each and every objection; and

(b) A detailed description of any and all evidence the objector may offer at the Final Settlement Hearing, including photocopies of any and all exhibits which the objector may introduce at the Final Settlement Hearing.

61. All objectors shall make themselves available to be deposed by any Party in the county of the objector's residence within seven (7) days of service of the objector's timely Objection.

62. Any Class Member who does not file a timely Objection in accordance with this Section shall waive the right to object or to be heard at the Final Settlement Hearing and shall be forever barred from making any objection to the Settlement, or from filing or having standing to appeal any judgment or Orders issued by the Court. Class Members who object to the Settlement shall remain Class Members, and have voluntarily waived their right to pursue an independent remedy against Defendants. To the extent any Class Member(s) objects to the Settlement, and such objection is overruled in whole or in part, such Class Member(s) will be forever bound by the Judgment of the Court.

X. REPRESENTATION OF OPT OUTS.

63. Class Counsel agree that any representation, encouragement, solicitation or other assistance, including, but not limited to, referral to other counsel, of any Opt Out or any other person seeking to litigate with any of the Released Persons over any of the Released Claims or to represent any form of opt-out class, could place Class Counsel in an untenable conflict of interest with the Class. Accordingly, Class Counsel and their respective firms agree (only to the extent that it is otherwise not violative of any applicable rules governing the practice of law) not to represent, encourage, solicit or otherwise assist, in any way whatsoever (including, but not limited to referrals to other counsel) any Opt Out except that referring such person to the

Individual Notice or suggesting to any such person the option of obtaining separate counsel, without specifically identifying options for such counsel, shall be permitted under the terms of this provision. Additionally, Class Counsel and their respective firms agree (only to the extent that it is otherwise not violative of any applicable professional rules) not to represent, encourage, solicit or otherwise assist, in any way whatsoever, any Opt Out or any other person who seeks to represent any form of opt-out class, or any other person, in any subsequent litigation that person may enter into with Released Persons regarding the Released Claims or any related claims, except that suggesting to any such person the option of obtaining separate counsel, without specifically identifying options for such counsel, shall be permitted under the terms of this provision.

XI. CONFIDENTIALITY AGREEMENT.

64. The following constitutes highly confidential and proprietary business information of Defendants (the "Confidential Information"): (a) the names, addresses, policy numbers, and other data and personally identifiable information concerning any insured of Defendants, including but not limited to those on the Settlement Class List; (b) the electronic data processing and other record keeping procedures and materials to be utilized by Defendants in identifying the Class Members, the Settlement Class List of insureds and in otherwise effectuating Defendants' other obligations under the Settlement; and (c) any documents produced by Defendants to Plaintiff in this Action that have been stamped confidential or by the document's nature or content is commonly recognized or understood to contain confidential or proprietary business information. The confidentiality of all Confidential Information shall be protected from disclosure by Class Counsel to any persons other than those described below.

65. No person(s) other than Defendants' counsel, Class Counsel, and clerical/administrative personnel employed by Class Counsel, the Claims Administrator and such other persons as the Court may order, after hearing on notice to all counsel of record, shall be allowed access to any Confidential Information.

66. Within thirty (30) days after the Effective Date, Class Counsel shall return, upon request, to Defendants all Confidential Information and copies thereof in their possession, custody, or control and delete any electronic copies of Confidential Information.

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

XII. DISMISSAL OF ACTION, RELEASES AND COVENANTS NOT TO SUE.

68. Upon the Court's final approval of this Agreement and the Settlement set forth herein, the Final Approval Order and Judgment shall be entered providing for the dismissal of the Action, with prejudice and without leave to amend, which includes the release by the Plaintiff, the Releasing Parties and the Class Members, and including their past, present or future agents, legal representatives, trustees, parents, relatives, estates, heirs, executors and administrators, of all Released Claims against all Released Persons.

69. Upon Final Approval of the Settlement, and as of the Effective Date, by operation of the entry of the Final Approval Order and Judgment, the Releasing Parties and each Class Member, including Plaintiff, and including their past, present or future agents, legal representatives, trustees, parents, relatives, estates, heirs, executors and administrators, upon final approval of the Settlement, shall be held to have fully released, waived, relinquished and

discharged all the Released Persons from all the Released Claims, to the fullest extent possible allowed by law, and shall be enjoined from continuing, instituting or prosecuting any legal proceeding against the Released Persons relating in any way whatsoever to the Released Claims, except that Defendants shall not be released from its obligations to carry out the terms of this Agreement.

XIII. DENIAL OF LIABILITY /NO PRECEDENTIAL VALUE.

70. Were it not for this Settlement, Defendants would have continued to contest each and every claim in the Action. Defendants maintain that they have consistently acted in accordance with governing laws at all times. Defendants deny all the material allegations set forth in the Action. Defendants have nonetheless concluded that it is in their best interest that the Action be settled on the terms and conditions set forth in this Agreement. Defendants have reached this conclusion after considering the factual and legal issues in the Action, the substantial benefits of a final resolution of the Action, the expense that would be necessary to defend the Action through trial and any appeals that might be taken, the benefits of disposing of protracted and complex litigation, and the desire of Defendants to conduct their business unhampered by the distractions of continued litigation.

71. As a result of the foregoing, Defendants enter into this Agreement without in any way acknowledging any fault, liability, or wrongdoing of any kind. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendants of the truth of any of the allegations made in the Action, or of any liability, fault, or wrongdoing of any kind whatsoever on the part of Defendants.

72. To the extent permitted by law, neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding, to establish any liability or admission by Defendants except in any proceedings brought to enforce the Agreement and except that Released Parties may file this Order in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

73. Neither this Agreement, nor any pleading or other paper related in any way to this Agreement, nor any act or communication in the course of negotiating, implementing or seeking approval of this Agreement, shall be deemed an admission by Defendants that certification of a class or subclass is appropriate in any other litigation, or otherwise shall preclude Defendants from opposing or asserting any argument they may have with respect to certification of any class(es) or subclass(es) in any proceeding, or shall be used as precedent in any way as to any subsequent conduct of Defendants except as set forth herein.

XIV. MISCELLANEOUS PROVISIONS.

74. The Parties hereto agree to defend this Agreement against objections made to final approval of the Settlement or in any appeal of the Final Approval Order and Judgment or collateral attack on the Agreement or Final Approval Order and Judgment.

75. The undersigned counsel represent that they are fully authorized to execute and enter into the terms and conditions of this Agreement on behalf of their respective clients.

76. Except as otherwise provided, this Agreement contains the entire agreement between the Parties hereto, and supersedes any prior agreements or understandings between them. All terms of this Agreement are contractual and not mere recitals, and shall be construed as if drafted by all Parties hereto. The terms of this Agreement are and shall be binding upon each of the Parties hereto, their agents, attorneys, employees, successors and assigns, and upon all other persons claiming any interest in the subject matter hereof through any of the Parties hereto, including any Class Member.

77. This Agreement may be amended or modified only by a written instrument signed by counsel for all parties hereto. Amendments and modifications may be made without additional notice to the Class Members unless such notice is required by the Court.

78. This Agreement shall be subject to, governed by, construed, and enforced pursuant to the laws of the State of Washington.

79. The exhibits to this Agreement are an integral part of the Settlement and are hereby incorporated into and made a part of this Agreement.

80. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement.

81. This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned Parties.

82. This Agreement may be executed in counterparts, each of which shall constitute an original.

83. The Parties will request that the Court retain continuing jurisdiction for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this

Agreement and the Settlement embodied herein, and maintain jurisdiction over all Class Members. Specifically, the Court shall retain jurisdiction for purposes of: (a) implementation, enforcement, and administration of the Settlement, including any releases in connection therewith; (b) resolution of any disputes concerning Settlement Class membership or entitlement to benefits under the terms of the Settlement that are not otherwise subject based on the Parties' prior agreement to be resolved by Judge Paris Kallas (Ret.); (c) enforcing and administering this Agreement; and (d) other matters related to the foregoing.

84. Titles of sections to this Agreement are illustrative only and are neither binding on the Parties nor to be considered any part of the drafting history or other means of interpreting this Agreement.

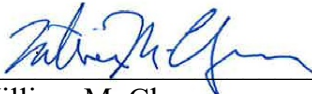
85. Paragraphs 1 through 84 are material provisions of the Agreement stated herein. In the event that any of those provisions is stricken or modified by the Court, either Party may terminate the Settlement.

IN WITNESS HEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

SIGNATURES ON FOLLOWING PAGE]

By: _____
RYAN STIER

PEMCO Mutual Insurance Company, on its own
behalf and as successor-by-merger to PEMCO
Insurance Company

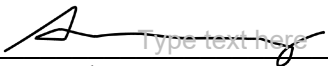
By:  _____
William M. Clumpner
V.P. & General Counsel

APPROVED AS TO FORM AND SUBSTANCE:

Dated: _____

Stephen M. Hansen
Law Offices of Stephen M. Hansen, P.S.
1821 Dock Street, Suite 103
Tacoma, WA 98402

Dated: December 7, 2020

 _____
Type text here
Scott P. Nealey
Law Office of Scott P. Nealey
71 Stevenson Street, Suite 400
San Francisco, California 94105

Dated: _____

Harrigan Leyh Farmer & Thomsen, LLP

Randall Thomsen, WSBA #25310
999 Third Ave., Suite 4400
Seattle, WA 98104
Attorneys for PEMCO Mutual Insurance Company
and PEMCO Insurance Company