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**MONTANA ELEVENTH JUDICIAL DISTRICT COURT,
FLATHEAD COUNTY**

MARGARET A. FERGUSON,
individually and on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

**SAFECO INSURANCE COMPANY
OF AMERICA and SAFECO
INSURANCE COMPANY OF
ILLINOIS,**

Defendants.

Cause No. DV 04-628B

Judge: Katherine R. Curtis

**FINAL APPROVAL ORDER AND
JUDGMENT**

The Court issued a Preliminary Approval Order on February 9, 2015 certifying the Settlement Class, preliminarily approving a class settlement on the terms and conditions set forth in the Stipulation of Settlement ("Stipulation") submitted by the Parties, and approving the notice forms and a program for notice to the Class Members. On May 5, 2015 the Court conducted a Final Approval Hearing pursuant to Rule 23(e) M.R.Civ.P. The Court, having reviewed and considered all papers filed in connection with the *and Amended Motion* for Final Approval of the Stipulation of Settlement, including the Stipulation and all exhibits attached thereto, and having heard the presentation of counsel appearing on these matters, it is hereby ORDERED as follows:

1. The Court has jurisdiction over the subject matter of this Action and jurisdiction over the Parties, including the Settlement Class.
2. The capitalized terms used in this Final Approval Order and Judgment shall have the same meaning as defined in the Stipulation of Settlement (“Stipulation”).

Approval of Settlement

3. The Court hereby approves the Stipulation, including the plans for implementation and distribution of relief to the Class Members. The Court finds that the settlement reached in this case meets the legal standard for approval because it is fair, reasonable, and adequate. The settlement is a result of a mediation conducted by former Montana Supreme Court Justice Jim Regnier. The settlement was reached after vigorous litigation over a period of more than 10 years in which the class was well represented by the Class representative, Margaret Ferguson, and Class Counsel.
4. The Settlement provides genuine and substantial compensatory relief to approximately 2,485 Class Members in the form of timely cash payments, including (a) the payment of the full amount certified to the Court to be the excess subrogation to be reimbursed to Class Members, (b) interest thereon at 10% through December 31, 2012, (c) an account to pay the claims of Class Members heretofore not located, and (d) an additional cash recovery on Class Members’ claims for attorneys’ fees and to resolve other issues in the case.
5. The Court finds the allocations and procedures for payments in the Stipulation are fair and reasonable as among class members. The Court finds all terms of the Stipulation are in the best interests of the class and that no meritorious objection has been presented

thereto. The Court finds that residual funds are to be distributed in conformance with Rule 23(i) M.R.Civ.P.

6. The Parties shall effectuate the Stipulation in accordance with its terms. The Stipulation and all of its terms and provisions shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.
7. The Court has considered all objections presented to the Settlement, including the objection filed with the Court by William Smith.¹ The Court finds these objections do not warrant disapproval of the Stipulation, and they are hereby overruled.

Settlement Class

8. For purposes of the Settlement and this Final Approval Order and Judgment, the Court hereby certifies the following Settlement Class: Each and every person within the Class Period who: (a) was insured in Montana under an auto insurance policy issued by Safeco Insurance Company of America or Safeco Insurance Company of Illinois (hereinafter, "Safeco"); and (b) who, as a result of an automobile accident, suffered losses covered by such policy; and (c) received payments under the coverages of such policy; and (d) with respect to whom Safeco recovered from a third party subrogation for all or some of such payments, excluding the following individuals: (i) Officers, directors, employees, and agents of Safeco, Garden City Group, and/or their immediate families; (ii) Class Counsel, Safeco's counsel of record in the Action and judicial officers of the Court to which this

¹Mr. Smith is not a class member because Safeco did not receive subrogation with respect to his claim. (Mr. Smith was erroneously sent a notice form in 2011 because Safeco had mistakenly included in its mailing some 159 people with respect to whom Safeco had paid and not received subrogation.) Because Safeco has established that Mr. Smith does not meet element "(d)" of the class definition (below), and because Mr. Smith has acknowledged in his filing that he has no knowledge regarding this element, the Court finds he is not a class member and has no standing or basis to object.

case is assigned; and (iii) any Persons who make a timely election to be excluded from the Settlement Class provided in this Stipulation.

9. The Settlement Class has met the prerequisites for class certification under Rule 23M.R.Civ.P. because, as described by the Court in its prior class certification ruling, the class is so numerous that joinder of all members is impracticable; there are questions of law or fact common to the class; the claim of the class representative Margaret Ferguson is typical of the class claims; the class representative and her attorneys have fairly and adequately protected and advanced the interests of the class. The Settlement Class is appropriately certified because questions of law and fact common to members of the class predominate over any questions affecting only individual members, and a class action settlement is superior to other available methods for fair and efficient adjudication and resolution of the controversy.
10. The Settlement Class shall include all members of the Settlement Class who did not submit timely and valid requests to be excluded from the Settlement Class pursuant to Rule 23(c) M.R.Civ.P.
11. All persons who have not made timely objections to the Stipulation in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

Notice to Class Members

12. The Court finds that the plan for notice, set forth in paragraphs 21-26 of the Stipulation was effectuated pursuant to the Preliminary Approval Order, and was both reasonable and the best practicable under the circumstances. The Court finds that the notice was reasonably calculated to apprise the Class Members of the pendency of the Action, of the

terms of the Proposed Settlement, of Class Counsel's request for attorney's fees and of the right to opt-out of the Proposed Settlement or object to the settlement terms and/or fee request, and that the notice plan constituted due, adequate, and sufficient notice to all persons entitled to receive such Notice, and meets the requirements under the Montana Rules of Civil Procedure and the requirements of due process under the Montana and United States Constitutions.

Effectuation of Settlement

13. Safeco shall mail payments to Class Members and Class Counsel via check within the time periods set forth in the Stipulation.
14. Upon the Effective Date, members of the Settlement Class who did not validly and timely opt-out shall, by operation of this Final Approval Order and Judgment, have fully, finally and forever released, relinquished and discharged Safeco from all claims that were or could have been asserted in the Action against the Released Persons, as specified in paragraph 30 of the Stipulation.
15. All members of the Settlement Class who did not validly and timely opt-out are hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Stipulation.
16. The terms of the Stipulation and this Final Approval Order and Judgment shall have maximum res judicata, collateral estoppel, and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises,

attorney's fees, costs, interest or expenses which were or could have been asserted in the Action.

17. Nothing contained in the Stipulation nor this Order, nor any negotiations, statements, proceedings in connection with the settlement of this Action shall be construed or deemed to be evidence of an admission or concession on the part of any of the parties, class counsel, or any other person, of any liability or wrongdoing by any of them, or of any lack of merit to the claims or defenses.
18. On or any time after the Effective Date, Safeco may withdraw all deposited funds, including any accrued interest, from the two accounts established in response to the Court's October 4, 2010 Order.

Attorney's Fees, Costs and Expenses to Class Counsel

19. Class Counsel have moved the Court for an assessment of fees and costs and expenses in the amount of \$1,588,721.00, which is one third (1/3) of the total settlement. The motion for attorney's fees is unopposed by Safeco or by any class member.
20. Class Counsel undertook this litigation on a contingency basis under contingency fee contract with the class representative calling for a fee of forty percent (40%) of the recovery increasing to fifty-percent (50%) in the event of an appeal. Class Counsel fairly and adequately represented the interests of the class. The Court finds the rationale for the fee application presented by class counsel to be well taken, including the analysis of market rate for this type of contingent litigation and comparable fees. The lode-star cross check as described by class counsel also fully supports the amounts hereby approved. In view of the size of the recovery, the complexity of the case, the extensive litigation over a period of 10 years, including an appeal to the Montana Supreme Court, in view of the

time spent, costs advanced, delay in payment, and the risk of non-recovery undertaken by class counsel, and in view of the fact that no objection to the fee request has been presented, the Court finds that a fee of ~~7,500,000~~ ^{33 1/3%} (\$1,588,721.00) should be paid to Class Counsel in the manner set forth in the Stipulation. _{KRC}

21. The Court further grants Class Counsel's application for an Incentive Award for Margaret A. Ferguson in the amount of \$7,500.00. These amounts are to be paid in accordance with the Stipulation.

Dismissal

22. The above-captioned Action is hereby dismissed in its entirety with prejudice. Except as otherwise provided in this Final Approval Order and Judgment, the parties shall bear their own costs and attorney's fees. There is no just reason to delay enforcement or appeal of this Order.

Dated this 5th day of May, 2015

By: Katherine R. Curtis
KATHERINE R. CURTIS
District Judge

A. Kerner
J. Serok
A. McHarvey
C. Matovich
D. Duffley
B. Murphy

emailed 5/5/15