


01/29/2015

MONTANA ELEVENTH JUDICIAL DISTRICT COURT,
FLATHEAD COUNTY

CLERK OF DISTRICT COURT
2015 FEB -9 AM 11:29
FILED
BY _____
DEPUTY 

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

PRELIMINARY APPROVAL
ORDER

Plaintiffs have moved under Montana Rule of Civil Procedure 23 for an Order: (1) certifying a Settlement Class; (2) preliminarily approving a class settlement on the terms and conditions set forth in the Stipulation of Settlement ("Stipulation"), and (3) approving the forms and a program for class Notice. The terms capitalized in this Order and not defined shall have the meanings ascribed to them in the Stipulation. The Court, having reviewed and considered all papers filed in connection with the Motion, including the Stipulation and all exhibits attached thereto, and hearing 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.

2. For settlement purposes only, this action will be maintained as a class action under Montana Rule of Civil Procedure 23 on behalf of the Class, as set forth in the

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

3. The Settlement Class has met the prerequisites for class certification under Rule 23 M.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 claims 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 resolution of the controversy through settlement. Specifically, in light of the agreement to settle the Action and the resulting elimination of individualized issues that may otherwise have precluded

certification in the case, the prerequisites to class certification under Mont. R. Civ. Pro. 23 have been satisfied.

4. The Court hereby appoints the following attorneys as Class Counsel for the Settlement Class:

Allan M. McGarvey
McGarvey, Heberling, Sullivan & Lacey, PC
345 1st Avenue East
Kalispell, MT 59901

Alan J. Lerner
Lerner Law Firm
P.O. Box 1158
128 Second Street East
Kalispell, MT 59903

Judah M. Gersh
Viscomi and Gersh, PLLP
121 Wisconsin Ave.
Whitefish, MT 59937

5. If the Stipulation is not finally approved by the Court or for any reason does not become effective or is terminated, the Settlement Class shall be decertified, all parties' rights to litigate and all class issues will be restored to the same extent as if the Stipulation had never been entered into. Further, no party shall be permitted to assert that another party is estopped from taking any position regarding class certification or the merits of the case.

6. Margaret A. Ferguson is appointed as the Class Representative for the Settlement Class.

7. The Court finds that the Stipulation is sufficiently fair and reasonable to warrant sending Notice of the settlement to Class Members and making appropriate further consideration at a hearing to be held pursuant to the Notice.

8. A Final Approval Hearing shall be held on May 5, 2015 at 1:00 o'clock p.m. before the undersigned. The date of the Final Approval Hearing will be included in the Notice. The purpose of the Final Approval Hearing will be to: (a) determine whether the proposed Stipulation is fair, reasonable, and adequate and should be finally approved; (b) determine whether an order and judgment should be entered dismissing the claims of the Settlement Class and bringing the litigation of those claims to a conclusion, and (c) consider other settlement-related matters, including appropriate attorneys' fees and costs. The Court may adjourn, continue, and reconvene the Final Approval Hearing pursuant to oral announcement without further notice to the Class Members, and the Court may consider and grant final approval of the Stipulation with or without minor modification and without further notice to Class Members.

9. The Court appoints Garden City Group, Inc. to serve as the Settlement Administrator.

10. The Court has reviewed the proposed notice forms and the notice documents attached as Exhibits B and C to the Stipulation. The Court approves as to form the notice and also approves the method of directing the notice to the Class Members as set forth in paragraphs 11 and 12 below.

11. The Court directs that Garden City Group shall use their best efforts to cause the Notice set forth in paragraph 22 of the Stipulation to be mailed and published as described in Paragraphs 21-26 of the Stipulation.

12. The Court approves the form of the Notice as set forth in paragraph 22 of the Stipulation and concludes that the distribution of the Notice and implementation of the Notice plan as described in paragraphs 21 through 26 of the Stipulation is both reasonable

and the best practicable under the circumstances. The Court further finds that the Notice is reasonably calculated to apprise the Class Members of the pendency of this case and of the right to object or opt-out of the Settlement, and that the Notice constitutes 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.

13. Prior to the Final Approval Hearing, counsel for the Defendants shall file with the Court an affidavit from a representative of Garden City Group confirming that the plan for disseminating notice has been accomplished in accordance with the provisions of paragraphs 11 and 12 above.

14. Each Class Member who wishes to exclude himself or herself from the Settlement Class must submit a written request for exclusion postmarked not later than April 21, 2015, with the instructions set forth in the Notice. Any Class Member who does not timely submit a written request for exclusion will be bound by the terms of the Stipulation, and in the event it is approved by the Court and becomes effective, will be bound by any and all proceedings, orders, and judgments in the Action.

15. Class Members who do not request exclusion may submit a written objection to the Stipulation or other settlement-related matters (including attorneys' fees) on or before April 21, 2015. Any Class Member who has not requested exclusion may also attend the Final Approval Hearing in person or through counsel, and if the Class Member has submitted written objections, may pursue those objections. No Class Member shall be entitled to contest the Stipulation in writing or at the Final Approval Hearing unless the Class Member

has served and filed copies of its objections, together with any supporting papers and any notice of appearance from counsel, as set forth in the Notice and Stipulation.

16. To be effective, a notice of intent to object to the Settlement must be filed no later than April 21, 2015, and must contain the following information: (a) a heading which includes the name of the action and the case number; (b) the full name, address, telephone number, and signature of the Class Member or his counsel; (c) the specific reasons why the Class Member objects to the Proposed Settlement; (d) a list of other cases in which the Class Member or his counsel has appeared, either as an objector or counsel for an objector; and (e) if the Class Member is represented by counsel, any filing must comply with all applicable Court rules.

17. If a Class Member objecting to the Proposed Settlement intends to request permission to speak at the Final Approval Hearing, the submission must contain the following: (a) a detailed statement of the specific legal and actual basis for each objection being asserted; (b) a list of any and all witnesses whom the objecting Class Member may call at the hearing, with the address of each witness and a summary of the proposed testimony; and (c) a detailed description of any evidence, with copies of all exhibits attached, that the objecting Class Member may offer at the hearing and proof of membership in the Settlement Class.


18. If the Stipulation is not approved by the Court or for any reason does not become effective, the Stipulation will be regarded as nullified. Certification of the Settlement Class for settlement purposes will be vacated and the steps and actions taken in connection with the proposed Settlement shall become void and have no further force or

effect. In such event, the parties and their counsel shall take any and all steps as may be appropriate to restore the pre-settlement status of the case.

19. 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.

20. The Court retains jurisdiction over this Action and all matters regarding the Stipulation.

Dated this 9th day of February, 2015.


KATHERINE R. CURTIS
District Judge

2/9/2015 