

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JHAZEL BLACK, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

USAA CASUALTY INSURANCE  
COMPANY,

Defendant.

CIVIL ACTION

FILE NO.: 1:21-cv-01363-LMM

COMPLAINT - CLASS ACTION

JURY DEMAND

**PRELIMINARY APPROVAL ORDER**

This matter came before the Court on June 14, 2023 upon Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement. ([Doc. 51](#)). The unopposed motion seeks, among other things, that the Court (1) certify the proposed class for settlement purposes; (2) grant preliminary approval of the Class Action Settlement Agreement; (3) direct notice to the settlement class; and (4) set a final fairness hearing.

Plaintiff, Jahazel Black, on behalf of herself and the proposed Settlement Class, and USAA Casualty Insurance Company ("USAA CIC"), have agreed, subject to Court approval following sending of the Class Notice to the Settlement Class and a hearing, to settle this Action upon the terms and conditions in the Class

Action Settlement Agreement dated June 14, 2023 (the “Settlement Agreement” or the “Agreement”), which together with the Exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice upon the terms and conditions set forth therein. The Court has read and considered the Settlement Agreement; and

WHEREAS, good cause has been shown, and the Court having considered the record and arguments of counsel, and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

1. Terms and phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

2. The Parties have moved the Court for an order approving the settlement of the Action in accordance with the Settlement Agreement, which together with the documents incorporated therein, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice, and the Court having read and considered the Settlement Agreement and having heard the parties and being fully advised in the premises, hereby gives its preliminary approval to the Settlement Agreement in its entirety subject to the Final Fairness Hearing referred to in Paragraph 28 of this Order for purposes of deciding whether to grant final approval to the said Settlement Agreement. This finding is not to be deemed an admission of

liability or fault by USAA CIC or by any other Person, or a finding of the validity of any claims asserted in the Action or of any wrongdoing or of any violation of law by USAA CIC. USAA CIC shall retain all rights to assert that the Action may not be certified as a class action except for settlement purposes. Neither the 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 the Released Persons 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 the Released Persons, except that USAA may file this Order in any action that may be brought against it in order to support a defense 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.

**I. Settlement Class Certification and Preliminary Approval**

3. The Court finds that the Court possesses jurisdiction over the subject matter of this Action and over all Parties to this Action, including the Named Plaintiff and all Settlement Class Members.

4. The Court has made a preliminary inquiry into the requirements of Fed. R. Civ. P. 23(a) and (b)(3). The Court briefly addresses each factor and for purposes of settlement, finds that the proposed Settlement Class is suitable for class treatment.

5. For purposes of settlement, the Named Plaintiff possesses standing and the proposed settlement Class is adequately defined and ascertainable. The Class is adequately defined because the class definition is clear and precise, is based on objective criteria, and, because it only includes insureds who also suffered redressable harm, it is not overbroad. Thus, for purposes of settlement, the threshold requirements for class certification-standing, adequate definition, and ascertainability are satisfied.

6. For purposes of settlement, the Class is sufficiently numerous (comprised of over a thousand members), there are questions of law and fact common to the Settlement Class (including whether the insurance policies were breached by failure to pay TAVT), and Plaintiff's claims are typical of the Settlement Class. In addition, both Plaintiff and Class Counsel are adequate representatives of the Settlement Class. Thus, the requirements to certify a class prescribed by [Fed. R. Civ. P. 23\(a\)](#) are satisfied as to the Settlement Class for purposes of settlement.

7. The Court further finds that the Settlement Class satisfies each of the requirements of [Fed. R. Civ. P. 23\(b\)\(3\)](#), specifically, that: the class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the representative party are typical of the claims of the class; the representative party will fairly and adequately protect the interests

of the class; common questions of law or fact predominate over questions affecting individual members; and a class action is a superior method for fairly and efficiently adjudicating the action.

8. Plaintiff Jahazel Black is appointed Class Representative. The following lawyers are appointed as Class Counsel.

HALL & LAMPROS LLP  
Christopher B. Hall  
Gordon Van Remmen  
300 Galleria Parkway  
Suite 300  
Atlanta, GA 30339

SHAMIS & GENTILE, P.A.  
Andrew Shamis, Esq.  
14 NE 1<sup>st</sup> Avenue  
Suite 1205  
Miami, FL 33132

EDELSBERG LAW  
Scott Edelsberg, Esq.  
Christopher Gold, Esq.  
20900 NE 30<sup>th</sup> Avenue  
Suite 417  
Aventura, FL 333180

LINDSEY & LACY, PC  
W. Thomas Lacy  
Georgia Bar No. 431032  
200 Westpark Drive, Suite 280  
Peachtree City, GA 30269

9. For purpose of settlement only, the Court certifies the following class (“the Settlement Class”):

All insureds covered under any Georgia private passenger automobile insurance policy issued by USAA CIC with the same operative policy language covering a vehicle with auto physical damage coverage for comprehensive or collision loss who made a first-party claim which USAA CIC paid as a Total Loss within the relevant time period and who were not paid all of the TAVT due on their total loss claims, and who do not timely opt-out from the settlement class.

10. Excluded from the Settlement Class are (1) all present or former officers and/or directors of USAA CIC, the Settlement Administrator, Class

Counsel, and Judge of these Courts; and (2) Individuals who timely submit a request to be excluded from the Settlement Class.

11. For purposes of settlement, the Court finds, subject to the Final Fairness Hearing referred to in Paragraph 28 below, that the Settlement Agreement is fundamentally fair, adequate, and reasonable.

12. Should the Settlement Agreement not receive the Court's final approval, or should final approval be reversed on appeal, or should the Settlement Agreement otherwise fail to become effective, the Court's grant of class certification shall be vacated, and the Class Representative and the Settlement Class would once again bear the burden of establishing the propriety of class certification.

## **II. Notice and Administration**

13. The Court approves the Notice Plan, and, as to form and content, the Class Notice, the Claim Form, and Electronic Claim Form (in the forms of Exhibits 7, 8, 9 to the Motion for Preliminary Approval) to be distributed to and/or used by Settlement Class Members, and sets a Mail Notice Date (for the first mailed notice) to be within [60 days of the date of the Preliminary Approval Order].

14. The Claims Submission deadline, on or before which all claims must be postmarked, shall be thirty (30) days following the Final Approval Hearing.

15. The Court approves the Notice Plan and finds that the Notice Plan provides for Notice to Settlement Class Members and (i) is the best practicable notice

under the circumstances by providing individual notice to all Class Members who can be identified through reasonable effort; (ii) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to or exclude themselves from the Proposed Settlement; (iii) reasonably appraises Settlement Class Members of their right to submit claims; (iv) constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice; and (v) complies fully with the requirements of the Fed. R. Civ. P. 23 and of Due Process.

16. The Class Notice procedure shall be as set forth below and in the Settlement Agreement.

17. Epiq Class Action (“Epiq”) is authorized as the Settlement Administrator to administer the Notice Plan. Notice of the pendency of the Action and of the Settlement shall be made pursuant to the terms of the Agreement, including multiple mail notices, and the provision of a settlement website. Claims may be submitted by mail, and online as set forth in the Settlement Agreement. Claim forms with prepaid return postage and address shall be provided to Settlement Class Members with both mail notices.

18. The Court approves the settlement website as described in Paragraph 41 of the Settlement Agreement, which may be amended during the course of the settlement as appropriate and agreed to by the Parties, and which shall be maintained

for at least 180 days after the Effective Date. The Settlement Administrator also shall:

a. Use the name and address information of the Settlement Class provided by Defendant in connection with the Notice Program approved by the Court, for the purpose of distributing the Mailed Notice;

b. Process Claim Forms and oversee the Claim Form Submission Process as described more fully below;

c. Establish and maintain a post office box for requests for exclusion or objections from the Settlement Class;

d. Establish and maintain the Settlement Website;

e. Establish and maintain an automated toll-free telephone line for the Settlement Class to call and leave messages regarding settlement-related inquiries, and respond to questions of the Settlement Class who call with or otherwise communicate such inquiries;

f. Respond to any mailed Settlement Class inquiries;

g. Process all requests for exclusion from the Settlement Class;

h. Provide weekly reports to Class Counsel and Defendant that summarize the number of requests for exclusion received that week, the total number of exclusion requests received to date, the number of objections received that week, the total number of objections received to date, and other pertinent information;



i. In advance of the Final Approval Hearing, prepare an affidavit to submit to the Court confirming that the Notice Program was completed, describing how the Notice Program was completed, providing the names of each member of the Settlement Class who timely and properly requested exclusion from the Settlement Class or served objections, detailing the number of Claim Forms that were timely and validly submitted, and other information as may be necessary to allow the Parties to seek and obtain Final Approval; and

j. In advance of the Final Approval Hearing, provide Defendant and Class Counsel a copy of each notice of intent to object received by the Settlement Administrator.

19. All costs and expenses incurred in providing notice to Settlement Class Members shall be paid by USAA CIC as set forth in the Agreement.

20. The Settlement Administrator is to file proof of completion of Notice at least fifteen (15) days prior to the Fairness Hearing, along with the Notice List and Opt-Out List. The Settlement Administrator shall file the complete, unredacted Notice List under seal and shall file, not under seal, copy of the Notice List with all mailing addresses and email addresses redacted. The Opt-Out List shall be a list of all Persons who timely and properly requested exclusion from the Settlement Class. The Settlement Administrator shall file with the Notice List and the Opt-Out List an affidavit attesting to the accuracy of each list.

### **III. Exclusion**

21. Each Settlement Class Member who wishes to exclude himself or herself from the Settlement Class is required to submit an appropriate, timely request for exclusion, in accordance with the instructions contained in the Agreement and Class Notice. Exclusion requests must be postmarked no later than [45 days before the Final Approval Hearing]. Exclusion requests must satisfy the requirements in Paragraph 57 of the Settlement Agreement.

22. Settlement Class Members who exclude themselves (“opt out”) of the Settlement Agreement will relinquish their rights to benefits under the Settlement Agreement and will not release their claims. However, Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the date specified herein shall be bound by all terms of the Settlement Agreement and all other Orders including any final judgment and order of dismissal, that may be entered in the Action, even if such Settlement Class Member never received actual notice of the Action or this Proposed Settlement.

23. Any Settlement Class Member who chooses to opt out and exclude themselves may not object to the approval of this Settlement, shall be deemed to have waived any rights or benefits under the Settlement Agreement, and shall have waived any standing to object to the Settlement Agreement.

**IV. Objections**

24. Any Settlement Class Member who does not submit a timely request for exclusion from the Settlement Class and wishes to object to the fairness, reasonableness, or adequacy of this Agreement or any term of the Proposed Settlement or to intervene in the Action, shall follow the procedures set forth in Paragraphs 56-59 of the Settlement Agreement, including those requirements applicable to any attorney representing the Settlement Class Member. Any Class Member who does not so request to object or intervene waives the right to do so in the future, and shall be forever barred from intervening or making any objection to the Proposed Settlement or Final Judgment.

25. The Settlement Administrator is directed to provide within five (5) business days of receipt, copies of all objections, requests for exclusion, motions to intervene, notices of intention to appear, or other communications that come into its possession to Class Counsel and USAA CIC's counsel.

26. All proceedings in the Action are hereby stayed until further order of the Court, except that the Parties may conduct proceedings necessary to implement the Proposed Settlement or effectuate the terms of this Agreement, and this Court shall implement or order any other provisions or directives or procedures not contemplated by the Parties, if necessary, to comply with governing law and/or

binding precedent and if such provisions do not materially alter the substantive terms of this Settlement Agreement.

**V. Attorneys' Fees and Class Representative Settlement**

27. Class Counsel shall file a motion with the Court sixty (60) days after entry of this Preliminary Approval Order requesting an award of attorneys' fees and costs payable to Class Counsel in a total amount that shall not exceed \$572,934.50, and for approval of the \$5,000.00 settlement with Plaintiff Black.

**VI. Final Fairness Hearing**

28. The Final Fairness Hearing shall be held before this Court on **Wednesday, December 13, 2023 at 10:00 a.m. in Courtroom 2107** of the United States District Court for the Northern District of Georgia, Atlanta Division to determine (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate and should be given final approval by the Court; (b) whether a final judgment and order for dismissal should be entered; (c) whether to approve the payment of attorneys' fees and expenses to Plaintiff's counsel and the amount of any such payment; and (d) whether to approve the payment for a separate release to Plaintiff. The Court may adjourn or reschedule the Final Fairness Hearing without further notice to members of the Settlement Class.

**VII. Further Matters**

29. Settlement Class Members shall be bound by all determinations and judgments in the Action concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.

30. If the Settlement Agreement is not approved by the Court, each party will have the option of having the Action revert to its status as if the Settlement Agreement had not been negotiated, made, or filed with the Court. Any party proposing to nullify the Settlement based upon the preceding sentence must do so by delivering notice of intent to nullify the settlement, in accordance with the notice provisions of the Settlement Agreement, no later than fifteen (15) days after entry of any such order. In such event, the parties will retain all rights as if the Settlement Agreement was never agreed upon.

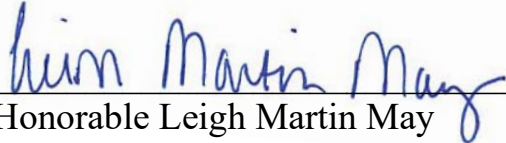
31. Additionally, if the Court does not give final approval of the Settlement, or if such approval is not sustained on any appeal, the Settlement shall become null and void.

32. In the event the Settlement is nullified: (a) the Settlement Agreement shall not be offered in evidence or used in this or any other action for any purpose including, but not limited to, the existence, certification or maintenance of any purported class; and (b) this Settlement and all negotiations, proceedings, documents prepared and statements made in connection with this Settlement shall be without

prejudice to any party and shall not be admissible into evidence, and shall not be deemed or construed to be an admission or confession by any party of any fact, matter or proposition of law, and shall not be used in any manner for any purpose, and all Parties to this Action shall stand in the same position as if this Settlement had not been negotiated, made or filed with the Court.

33. If this Settlement shall fail for any reason or if this Agreement shall be terminated: (a) this Agreement shall not have further force and effect and all proceedings having taken place with regard to this Agreement or the proposed Settlement shall be without prejudice to the rights and contentions of the Parties or of any potential Class Members in this Action or in any other litigation; and (b) the Parties agree that they will promptly file a joint motion with the Court to vacate all orders entered pursuant to the terms of this Agreement; and the Parties shall be returned to their respective status as it existed immediately prior to the execution of this Agreement.

SO ORDERED this 26th day of June, 2023.

  
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Honorable Leigh Martin May  
Judge, United States District Court  
Northern District of Georgia