

16TH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. MARTIN

STATE OF LOUISIANA

NO. 81489

DIVISION "G"

CASSANDRA REED, INDIVIDUALLY
AND ON BEHALF OF OTHERS SIMILARLY SITUATED

VERSUS

DIRECT GENERAL INSURANCE
COMPANY OF LOUISIANA

FILED: _____

DEPUTY CLERK

JOINT MOTION FOR PRELIMINARY APPROVAL
OF PROPOSED SETTLEMENT

Except as otherwise expressly provided below or as the context otherwise requires, all capitalized terms used in this Joint Motion for Preliminary Approval of Proposed Settlement (the "Joint Motion") shall have the meanings and/or definitions given them in the Settlement Agreement ("Settlement Agreement") entered into by or on behalf of Class Counsel, the Class, and Direct General, the original of which is attached to this Joint Motion as Exhibit A.

NOW INTO COURT comes The Plaintiff Class (hereinafter "Class"), represented herein by the Class Representative, appearing through Class Counsel J.R. Whaley, Kenneth D. St. Pe', Stephen B. Murray, Jr., and Kenneth W. DeJean, and Direct General Insurance Company of Louisiana (hereinafter "Direct General"), appearing through its counsel Kent A. Lambert and Erin Pelleteri, and do respectfully represent as follows:

1.

Class Counsel, individually and on behalf of the Class, and Direct General have agreed on a proposed settlement of all claims of the Class related to the Class Action against the Released Parties.

2.

All terms, definitions, provisions, reservations, and conditions of such compromise settlement are more particularly set forth in the Settlement Agreement, which is attached hereto as Exhibit A, all of which terms, definitions, provisions, reservations, and conditions are made part of this Joint Motion, the same as though copied herein *in extenso*. To the extent there may be any conflict between the terms, definitions, provisions, reservations, and conditions set forth in this Joint Motion and those set forth in the Settlement Agreement, the terms, definitions, provisions, reservations, and conditions of the Settlement Agreement shall govern.

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**JOINT MOTION FOR PRELIMINARY APPROVAL
OF PROPOSED SETTLEMENT**

Except as otherwise expressly provided below or as the context otherwise requires, all capitalized terms used in this Joint Motion for Preliminary Approval of Proposed Settlement (the "Joint Motion") shall have the meanings and/or definitions given them in the Settlement Agreement ("Settlement Agreement") entered into by or on behalf of Class Counsel, the Class, and Direct General, the original of which is attached to this Joint Motion as Exhibit A.

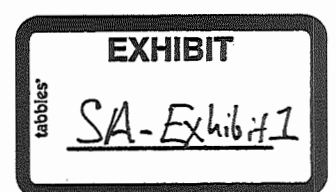
NOW INTO COURT comes The Plaintiff Class (hereinafter "Class"), represented herein by the Class Representative, appearing through Class Counsel J.R. Whaley, Kenneth D. St. Pe', Stephen B. Murray, Jr., and Kenneth W. DeJean, and Direct General Insurance Company of Louisiana (hereinafter "Direct General"), appearing through its counsel Kent A. Lambert and Erin Pelleteri, and do respectfully represent as follows:

1.

Class Counsel, individually and on behalf of the Class, and Direct General have agreed on a proposed settlement of all claims of the Class related to the Class Action against the Released Parties.

2.

All terms, definitions, provisions, reservations, and conditions of such compromise settlement are more particularly set forth in the Settlement Agreement, which is attached hereto as Exhibit A, all of which terms, definitions, provisions, reservations, and conditions are made part of this Joint Motion, the same as though copied herein *in extenso*. To the extent there may be any conflict between the terms, definitions, provisions, reservations, and conditions set forth in this Joint Motion and those set forth in the Settlement Agreement, the terms, definitions, provisions, reservations, and conditions of the Settlement Agreement shall govern.



3.

The purposes and intent of all Parties to the proposed settlement are:

- a. to settle all claims of the identified Class Members against the Released Parties; and
- b. to dismiss on the merits and with prejudice all claims asserted by any Class Members in this Class Action insofar as affecting the Released Parties, each party to bear its own costs.

4.

The "Class" is defined as follows:

All persons who have made a claim for first party total loss to their vehicle with Direct General where Direct General evaluated that claim as a total loss claim utilizing the Mitchell Total Loss Vehicle Valuation System and/or Mitchell WorkCenter Total Loss.

Movers agree that, for purposes of the proposed Settlement Agreement only, the Class as defined above is appropriate for class certification under applicable law and should be certified for class treatment by this Court as such given: (a) that the Class is objectively definable; (b) the likely numerosity of the Class; (c) the potential commonality of legal and factual issues to the Class; (d) the possible predominance of such common issues over questions affecting only individual members of the Class; (e) the potentially typicality of the claims or defenses of the Class Representatives and the claims or defenses of the Class; and (f) the probably fair and adequate representative of the Class by the Class Representatives. However, subject to this agreement and pursuant to the terms of the Settlement Agreement, Movers agree that no concession is being made by any party herein to the appropriateness of the Class for certification for litigation purposes.

5.

Direct General shall pay into the Class Settlement Fund Account a sum not to exceed Six Hundred Eighty Five Thousand and 00/100 (\$710,000.00) Dollars pursuant to the terms of the Settlement Agreement.

6.

All settlement contributions are to be held in the Class Settlement Fund Account under the terms of the Settlement Agreement.

7.

Class Counsel, on behalf of the Class, the Class, and Direct General represent to the Court that the proposed settlement has been reached through extensive and intensive negotiations, by

which the Parties have reached agreement through arms-length bargaining without any collusive practices among them.

8.

Class Counsel, on behalf of the Class, and Direct General suggest that among the factors favoring settlement on the terms proposed in the Settlement Agreement are:

- a. The uncertainty of the issues affecting liability, including fault and apportionment thereof, causation, injury, damages, and other legal issues;
- b. The assurance to be gained for the benefit of the Class that a substantial recovery will be obtained regardless of the outcome of further litigation;
- c. The economy of cost/exposure reduction for the benefit of Direct General;
- d. The costs of continued litigation for the benefit of the Class;
- e. The prevailing consideration in all compromises and settlements that each party, whether the Class and Direct General, weighs the advantages of settlement against the risks of loss.

9.

Class Counsel, on behalf of the Class, and Direct General further represent to the Court that while the Released Parties have denied, and continue to deny, any liability for the Action and the consequences thereof, the settlement proposed herein, and the consideration therefore, is fair, reasonable, and adequate, considering:

- a. The complexity, expense, and likely duration of the litigation with respect to the further participation of Direct General;
- b. The state of the proceedings and the amount of discovery completed;
- c. The possibility *vel non* of Plaintiffs' success on the merits as to Direct General;
- d. The range of possible recovery from Direct General, if any; and
- e. The concurrences of Class Counsel and counsel for Direct General, as reflected in their respective signatures to this Joint Motion.

10.

Class Counsel represent to the Court that in Class Counsels' collective opinion, the settlement, as proposed, is fair and reasonable to the Class as proposed, especially in view of the uncertainties and vagaries of further litigation with Direct General, the numerical constituency of the Class, and the nature and extent of damage to the Class.

11.

In accordance with the provisions of the Settlement Agreement, Class Counsel, on behalf of the Class, with the concurrences of Direct General, presents for the approval of the Court the

following proposed plan for management of the settlement contributions to be made by Direct General as provided in the Settlement Agreement:

- a. All settlement contributions by Direct General shall be paid, within the time fixed in the Settlement Agreement, into the Settlement Fund account, to be held and administered in accordance with the Settlement Agreement.
- b. Class Counsel, individually and on behalf of the Class, and Direct General have agreed on, and Class Counsel, on behalf of the Class, and Direct General move the Court's approval of Red River Bank or a mutually agreeable bank as the Class Settlement Fund Account Agent for the Class Settlement Fund, to serve in that capacity in accordance with all terms, provisions, and conditions provided in the Settlement Agreement.
- c. Except as otherwise provided in the Settlement Agreement, the Class Settlement Fund Account shall be maintained and managed in an interest bearing account in accordance with the terms of the Settlement Agreement.
- d. Following the Court's entry of the Order of Preliminary Approval of the Settlement Agreement, Notice to all putative members of the Class, in the form provided under the Settlement Agreement, shall be disseminated in accordance with the proposal set forth in Paragraph 14 of this Joint Motion, informing putative Class Members: of the certification of the Class for settlement purposes only; of the ability of putative Class Members to opt out of the Class and the manner and form in which opt outs are to take place; of the terms of the Settlement Agreement; that no allocations or disbursements will be made from the Class Settlement Fund Account without express prior written approval of the Court; the circumstances under which disbursements may be made in the future; and informing Class Members of their right to object to the terms of the proposed settlement and to be heard on their objections in a fairness hearing to be conducted at a prescribed time and place and in a prescribed manner. Class Members must opt out of the class or object to the settlement in the manner described in the Notice no later than 21 days before the fairness hearing.
- e. The fairness hearing shall be conducted in such manner as to assure full compliance with applicable considerations of due process of law and the provisions of Louisiana Code of Civil Procedure articles 591, *et seq.*
- f. No disbursements from the Class Settlement Fund Account shall be permitted, except in accordance with the terms of the Settlement Agreement, and approved via Court Order.

12.

In order to facilitate an orderly settlement of this matter, Class Counsel suggests that the Court order that any contingency fee contracts affecting the representation of Plaintiffs in the Action that are dated after the date of the Court's Order of Preliminary Approval of Proposed Settlement shall not be enforceable without approval of the Court unless related to the representation of an individual who has exercised his right to opt out of the settlement, and that all contingency fee contracts should be provided to the Court, and Class Counsel.

13.

As described in the Settlement Agreement, Class Counsel, individually and on behalf of the Class, and Direct General agree that in the event of termination of the Settlement Agreement, insofar as affecting the Parties to the Settlement Agreement, the Action and any related actions shall revert to their status before the execution of the Settlement Agreement as if related orders and papers and the efforts leading to the Settlement Agreement had not been entered, prepared, or taken.

14.

Following the entry of the Order of Preliminary Approval of this Settlement Agreement, to assure that Class Members are fully informed of (1) the pendency of the Action, (2) the certification of the Class, (3) the ability of Class Members to opt out of the Class and the manner and form in which opt outs are to take place, (4) the Settlement Agreement and its contents, (5) their rights to review the proposed settlement documents, (6) their right to be represented by private counsel at their own costs, (7) their right to object to the Settlement Agreement as proposed, and (8) the means whereby they may make their objections and be heard thereon at the fairness hearing to be held by the Court at a designated time and place, Movers suggest that the Class Settlement Notice in the form provided under the Settlement Agreement be approved by the Court and ordered disseminated to Class Members as due process and the Louisiana Code of Civil Procedure require. The Notice Plan, which is included with the Settlement Agreement, provides for dissemination of the Class Settlement Notice. The dissemination of the Class Settlement Notice shall be the responsibility of the Notice Administrator. Direct General has provided contact information in Direct General's possession for those individuals who Direct General has determined, based upon a reasonable review of its records, may be Class Members to Class Counsel. The the Notice Administrator shall create, upload documents, and maintain the neutral website and its contents. All costs associated with the neutral website and all reasonable costs for the dissemination of the notice shall be paid out of the Class Settlement Fund.

15.

To facilitate the proposed settlement and in the interests of judicial economy, Movers suggest that the commencement and/or prosecution of any and all actions and proceedings (including discovery) related to the Action by, on behalf of, or through any Class Members against any of the Released Parties (excluding, therefrom, however, those proceedings within the Action necessary to obtain certification of the Class, the necessary confirmatory depositions, and final

approval of the settlement embodied in the Settlement Agreement), be enjoined and stayed during the pendency of these settlement proceedings and until further ordered by this Court; such stay and injunction to prohibit any action related to the Action from being certified as a class action.

16.

As described in the Settlement Agreement, the Parties agree that the Court shall retain jurisdiction over the Action, the Settlement Agreement, the Final Judgment, the Class Settlement Fund, the Class Settlement Fund Account, all ancillary settlement matters, Class Counsel, the Class Members, and Direct General solely for the purpose of administering, supervising, construing, and enforcing the Settlement Agreement and the Final Judgment and supervising the management and disbursement of the funds in the Class Settlement Fund Account.

17.

All terms, definitions, provisions, reservations, and conditions of the Settlement Agreement, and particularly with regard to any matters not expressly set forth in this Joint Motion, are to be considered in full force and effect and binding on all parties subscribing thereto.

WHEREFORE, CLASS COUNSEL, ON BEHALF OF THE CLASS, AND DIRECT GENERAL, PRAY THAT:

- I. The Court review the proposed Settlement Agreement attached hereto as Exhibit A.
- II. The Settlement Agreement and the settlement set forth therein and all exhibits attached thereto and/or the Joint Motion be preliminarily approved by the Court as fair, reasonable, and adequate, entered into in good faith and without collusion and within the range of possible judicial approval.
- III. That in conjunction with the hearing on the Joint Motion for Preliminary Approval, that the Court also conduct a hearing on the certification of the Class.
- IV. Following such class certification hearing, the Court certify the Class as Defined herein.
- V. The Court approve the plan for management of the settlement contributions set forth in Paragraph 11 of this Joint Motion.
- VI. The Court approves Red River Bank or the bank as suggested by the parties as the Class Settlement Fund Account Agent, to serve in that capacity in accordance with all terms, provisions and conditions contained in the Settlement Agreement.
- VII. The funds in the Class Settlement Fund account be deposited, disbursed, paid, and/or transferred in accordance with the provisions of the Settlement Agreement.
- VIII. [Intentionally omitted]
- IX. The Court schedule a fairness hearing on the Settlement Agreement and the proposed settlement set forth therein, to consider comments/objections regarding

the Settlement Agreement and the proposed settlement set forth therein, and to consider its fairness, reasonableness, and adequacy under the provisions of Louisiana Code of Civil Procedure article 591, *et seq.* Class Members must opt out of the class or object to the settlement in the manner described in the Notice no later than 21 days before the fairness hearing.

- X. Any member of the Class who objects to the approval of the Settlement Agreement and the settlement set forth therein or to the entry of final judgment with respect thereto, and who timely and properly files the appropriate documentation of such objection, as described below, may appear at the fairness hearing and show cause why the Settlement Agreement and the settlement set forth therein should not be approved as fair, reasonable, and adequate. Objections to the Settlement Agreement shall be considered by the Court only if the objector properly files and provides a concise written statement describing the specific reason(s) for his or her objections, which must include: (i) the name, address, and telephone number of the Class Member and, if applicable, the name, address, and telephone number of the attorney of such Class Member; (ii) a statement that the objector is a member of the Class; (iii) the objection, including any supporting materials, papers, or briefs that the objector wishes the Court to consider, and (iv) the name and address of any witnesses to be presented at the fairness hearing, together with a statement as to the matters on which they wish to testify and a summary of the proposed testimony. Any Class Member who wishes to speak, personally or through his or her attorney, at the final fairness hearing must include a notice of intent to appear with his or her objection. Any member of the Class who does not make a timely objection in the manner specifically provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement Agreement and the settlement set forth therein and to any final judgment that may be entered with respect thereto. The concise written statement must be filed with the Court and served on the Special Master and counsel for the Parties at least twenty-one (21) days prior to the Fairness Hearing.
- XI. In due course, and after appropriate public notices and hearing(s), Final Judgment be entered by the Court, approving the settlement, and all terms thereof, as provided in the Settlement Agreement, and dismissing, upon the Effective Date, with prejudice and with each Party to bear its own costs through dismissal, except as provided in the Settlement Agreement, (i) all claims of whatever nature related to the Action that the Class and the Class Members asserted or could have asserted against the Released Parties, and (ii) the Released Claims in the Action and all cases consolidated with or therein, and all other actions now existing or hereafter brought upon Released Claims by the Class or Class Member, insofar as affecting the Released Parties, excluding only the claims of those individuals and entities who previously properly and timely opted out of the Class, and any and all claims by Direct General against any third party hereto, including without limitation Mitchell System, are reserved, and nothing herein or in the Settlement Agreement shall be construed to the contrary.
- XII. Unless otherwise expressly agreed in writing by Class Counsel, the Class, and Direct General, should the Effective Date not occur, pursuant to the terms of the Settlement Agreement, or in the event that the Settlement Agreement does not become effective as required by its terms for any other reason, (a) the Released Parties, and (b) Class Counsel and the Class shall be restored to their respective positions *status quo ante*; in such event, nothing in the Settlement Agreement, as well as any negotiations, proceedings, documents prepared, and statements made in connection therewith, shall be deemed or construed to be an admission or confession by any party of any fact, matter, or proposition of law nor used in any manner for any purpose.
- XIII. Any contingency fee contracts affecting the representation of Plaintiffs in the Class Action that are dated after the date of the Court's Order of Preliminary Approval shall not be enforceable without approval of the Court unless related to the representation of an individual who has exercised his right to opt out of the


settlement and that all contingency fee contracts should be provided to the Special Master.

- XIV. The Court approve the form, content, method, and date of dissemination to the Class Members of the Notice of the certification of the Class, the proposed Settlement Agreement, and the fairness hearing, the form provided under the Settlement Agreement, and order its dissemination to Class Members and others by first class mail, postage prepaid, and by publication as set forth in the Notice Plan, so that the Court may obtain and consider comments/objections of the Class, if any, regarding the Settlement Agreement and the settlement set forth therein and consider its fairness, reasonableness, and adequacy.
- XV. The Court enjoin and stay the commencement and/or prosecution of any and all actions and proceedings (including discovery) related to the Action by, on behalf of, or through any Class Members against any of the Released Parties (excluding, therefrom, however, those proceedings with the Action necessary to obtain certification of the Class, and final approval of the settlement embodied in the Settlement Agreement), during the pendency of these settlement proceedings and until further ordered by this Court; such stay and injunction to prohibit any action related to the Class Action and/or the Subject Matter of the Class Action (other than the Class Action itself) from being certified as a class action;
- XVI. The Court maintain continuing jurisdiction over the settlement proceedings to insure the effectuation therefore for the benefit of the Class.
- XVII. The Court authorize Direct General to disclose to Class Counsel and the Special Master the names and addresses concerning potential class members and other relevant information concerning claimants.

MOVERS FURTHER PRAY for all orders and decrees necessary in the premises, and for full, just and equitable relief.

Respectfully submitted:

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ATTORNEYS FOR PLAINTIFF

Respectfully submitted,

**BAKER DONELSON BEARMAN
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By: _____

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**ATTORNEYS FOR DEFENDANT,
DIRECT GENERAL INSURANCE
COMPANY OF LOUISIANA**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been forwarded to all counsel of record by e-mail and by depositing a copy of same in the United States Mail, properly addressed, and first-class postage prepaid, on this ____ day of _____, 2019.

16TH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. MARTIN

STATE OF LOUISIANA

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DIVISION "G"

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AND ON BEHALF OF OTHERS SIMILARLY SITUATED

VERSUS

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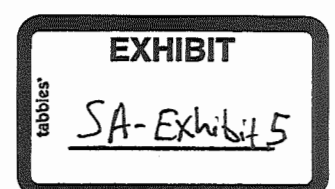
ORDER OF PRELIMINARY APPROVAL
OF PROPOSED SETTLEMENT

Except as otherwise expressly provided below or as the context otherwise requires, all capitalized terms used in this Order of Preliminary Approval of Proposed Settlement shall have the meanings and/or definitions given them in the Settlement Agreement ("Settlement Agreement") entered into by or on behalf of Class Counsel, the Class, and Direct General. The original of the Settlement Agreement is filed in these proceedings as Exhibit A to the Joint Motion for Preliminary Approval of Proposed Settlement (the "Joint Motion") signed by or on behalf of the Class and Direct General.

On considering the Joint Motion for Preliminary Approval of Proposed Settlement, filed by (a) the Class, as represented by Class Counsel, and (b) Direct General, for preliminary approval of the Settlement Agreement and the settlement set forth therein as fair, reasonable, and adequate, the evidence submitted to the Court by the Parties in support of this motion, the record of these proceedings, the recommendation of counsel for the moving parties, and the requirements of law, the Court finds, upon preliminary review, that (1) this Court has jurisdiction over the subject matter and parties to this proceeding; (2) the proposed Settlement Agreement is the result of arms-length negotiations between the parties; (3) the proposed Settlement Agreement is not the result of collusion; (4) the settlement as proposed in the Settlement Agreement bears a probable, reasonable relationship to the claims alleged by the plaintiffs and the litigation risks of the settling parties; and (5) the settlement as proposed in the Settlement Agreement is within the range of possible judicial approval. ACCORDINGLY:

IT IS ORDERED that:

(1) The Settlement Agreement and the settlement set forth therein and all exhibits attached thereto and/or to the Joint Motion are preliminarily approved by the Court as being fair,



reasonable, and adequate, entered into in good faith, free of collusion to the detriment of the Class, and within the range of possible judicial approval and that, for purposes of this settlement only, the Court finds that the Class is appropriate for class certification under applicable law. Class Members must opt out of the class or object to the settlement in the manner described in the Notice no later than 21 days before the fairness hearing.

(2) Red River Bank is hereby approved and appointed as the Class Settlement Fund Account Agent under the Settlement Agreement.

(3) Intentionally omitted

(4) Except as otherwise provided in the Settlement Agreement, the Class Settlement Fund Account shall be maintained and managed with interest under the supervision and orders of the Court.

(5) No disbursements from the Class Settlement Fund Account shall be permitted, except in accordance with the Settlement Agreement, unless and until approval by this Court.

(6) Any contingency fee contracts affecting the representation of Plaintiffs in the Class Action which are dated after the date of this Order of Preliminary Approval of Proposed Settlement shall not be enforceable without approval of the Court unless related to the representation of an Opt-Out Party. All contingency fee contracts shall be provided to Class Counsel, the Court, and the Special Masters.

(7) This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation of the Settlement Agreement, including the distribution of settlement funds according to the Settlement Agreement.

(8) The Court shall enjoin and stay the commencement and/or prosecution of any and all actions and proceedings (including discovery) related to the Class Action by, on behalf of, or through any Class Members against any of the Released Parties (**excluding therefrom, however, those proceedings with the Class Action necessary to obtain certification of the Class and final approval of the settlement embodied in the Settlement Agreement**), during the pendency of these settlement proceedings and until further ordered by this Court; such stay and injunction to prohibit any action related to the Action from being certified as a class action.

(9) The Court hereby Orders that Direct General is authorized to disclose to Class Counsel the names and best available contact information concerning potential class members and other relevant information concerning claimants.

(10) Any and all claims by Direct General against third-parties to the Settlement and Settlement Agreement, including without limitation Mitchell International, Inc., are reserved.

(11) This court will hold a Final Fairness Hearing on the ____ day of _____, 2019 at ____:00AM at the 16th Judicial District Courthouse in _____ Louisiana.

The Clerk of Court is hereby instructed to provide mail notice of this Order of Preliminary Approval of Proposed Settlement to those persons identified in the attached mail notice list.

THUS DONE AND SIGNED, on this ____ day of _____, 2019, at _____, Louisiana.

HONORABLE CURTIS SIGUR
DISTRICT JUDGE, DIVISION G