

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

_____X	:	
ROXETTE BUSANI, individually and as	:	
the representative of all persons similarly	:	
situated,	:	NO. 99-2-08217-1
	:	
Plaintiff,	:	NOTICE OF CLASS ACTION, PROPOSED
	:	SETTLEMENT AND HEARING
vs.	:	
	:	
UNITED SERVICES AUTOMOBILE	:	
ASSOCIATION,	:	
Defendants.	:	
_____X	:	

**THIS NOTICE FROM THE COURT MAY AFFECT YOUR RIGHTS.
PLEASE READ IT CAREFULLY IN ITS ENTIRETY.**

A CLASS ACTION SETTLEMENT has been reached under which your rights will be affected. You may be entitled to receive payment under the settlement. If you wish to comment upon, object to, or exclude yourself from the settlement, you must do so following the procedures described below. If you do nothing, you will be bound by any final judgment, and will automatically be sent any payment to which you are entitled, based on the distribution plan to be approved by the Court and on the information in Settling Defendants' records.

You are being sent this Notice because you have been identified from the records of Settling Defendants — United Services Automobile Association ("USAA"), United Services Automobile Association Casualty Insurance Company ("USAA CIC"), and United Services Automobile Association General Insurance Company ("USAA GIC") — as a member of the Class of insureds who had certain claims paid under their uninsured or underinsured motorist coverage and likely did not receive payment for the alleged loss in value of their vehicles resulting from the accident.

The Superior Court of the State of Washington in and for the County of Pierce (the "Court," which is located in Tacoma, Washington) has determined that this lawsuit is appropriate for class certification, has certified and exercised jurisdiction over the Settlement Class described below, and has preliminarily approved a class action settlement which, if finally approved by the Court, would result in:

- (a) The creation of a Settlement Fund, which shall be allocated as described below;
- (b) The modification of the Settling Defendants' practices and policies regarding the handling of uninsured and underinsured motorist claims; and
- (c) The dismissal of the lawsuit with prejudice and a release of all claims as to the lawsuit.

This Notice is not intended to, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the lawsuit, the merits of the claims or defenses asserted, or of the proposed settlement. This Notice is simply to advise you of the pendency of the lawsuit, the terms of the proposed settlement, and your rights in connection with the proposed settlement. **This is not a lawsuit against you. Nor will your participation in this lawsuit or acceptance of any benefit from its settlement be grounds for termination of your USAA insurance policy with any Settling Defendant.**

I. What Is the Lawsuit About?

Ms. Busani, who has been appointed as the representative of the Settlement Class, sought payment on behalf of herself, and others similarly situated for the alleged loss in value ("inherent diminished value") suffered by her vehicle, and the Class Members' vehicles, after they sustained accidents which fell within the Class definition.

Settling Defendants deny Plaintiff's allegations, including the existence of inherent diminished value. Settling Defendants also deny that they have a duty to inform policyholders of the right to recover inherent diminished value. Settling Defendants also assert a number of other defenses to Plaintiff's claims. As mentioned earlier, the Court has not decided the merits of Plaintiff's claims or Defendants' defenses. Nevertheless, Settling Defendants have agreed to enter into the Settlement this Notice describes.

II. The Proposed Settlement and Settlement Class

You are a member of this Settlement Class if you:

- (1) Were insured under an automobile insurance policy issued by USAA, USAA CIC, or USAA GIC in a Class state;^{1/}
- (2) Received payment under the automobile uninsured or underinsured (Part C) coverages for property damage (structural, paintwork, deformed sheet metal, or bodywork) to an insured automobile; and
- (3) Did not receive payment for inherent diminished value where: (a) the repair estimate including supplement total at least \$1,000.00; (b) the vehicle was no more than six years old (model year plus five years) and had less than 90,000 miles on it at the time of the accident.

The Class includes only those persons to whom notice is mailed, and covers only those claims that are specifically identified by Settling Defendants at the time of mailing of the class notice. Excluded from the Settlement Class are policyholders whose vehicles were leased, were total losses, or where the limits of coverage have already been reached. Also excluded are all policyholders whose claims would be barred by the statute of limitations for breach of contract for the jurisdiction for which the policy was issued when calculated from a filing date of May 30, 1999. The limitations periods for each state are listed on the website which has been established to provide you further updates regarding the status of this Settlement, www.usaadiminshedvalue.com. Also excluded are the employees, officers and/or directors of Settling Defendants.

Under the Agreement, the Settlement Class Members agree to release their claims against Settling Defendants, and Settling Defendants agree to:

1. Pay \$5,558,265.00 (five million, five hundred fifty-eight thousand, two hundred sixty-five and 00/100 dollars) into the "Settlement Fund," to be distributed pursuant to the terms of the settlement distribution plan. This represents an average recovery of approximately \$309.00 per Class Member, prior to subtraction of attorneys' fees and litigation costs;
2. Modify their practices and policies regarding the handling of uninsured and underinsured motorist claims, by notifying their insureds that they must specifically request payments for all coverage they believe they are entitled to, including, but not limited to, payment for the diminished value of the vehicle; and
3. Pay for notice and administration of the Settlement, which has an estimated value of up to approximately \$500,000.00 (five hundred thousand and 00/100 dollars).

Counsel for the Class have proposed to the Court to distribute the Settlement Fund pursuant to a Settlement Distribution Plan as follows:

- For each Class Member who does not opt out of the Settlement, the Claims Administrator will determine, from Settling Defendants' records, each vehicle's repair cost.
- After attorneys' fees and costs, interest on those costs and fees, a class representative incentive payment, and any other administrative expenses (not borne by the Defendant pursuant to the Settlement Agreement), as approved by the Court, and a reserved fund of \$1,000.00, have been removed from the Settlement Fund, the remainder of the Settlement Fund, including interest, will be distributed amongst the Class Members (the "Distribution").
- The Distribution will be allocated proportionally amongst Class Members so that all Class Members receive the same percentage of their vehicles' repair cost. So, for example, if the distribution were 10% of the Class Member's total repair costs, a Class Member whose vehicle cost \$2,000.00 to repair would receive \$200.00 (10% of the repair cost).

The full text of the Settlement Agreement and the Settlement Distribution Plan is posted at www.usaadiminshedvalue.com. If the Court finally approves the Settlement, the Court will enter a judgment dismissing the lawsuit against the USAA, USAA CIC, and USAA GIC with prejudice and releasing and forever discharging them from all manner of claims which fall within the class from all Class Members who have not timely excluded themselves from the Class, whether or not they object to the settlement. Nothing in this Settlement Agreement addresses or releases claims for personal injury or wrongful death. Nothing in this Settlement Agreement addresses or releases claims other than those regarding diminished value. In the event the Settlement does not become final, no claims shall be released.

III. Rights of Class Members

You may receive the benefit of, and become bound by the terms of, the proposed settlement and Settlement Distribution Plan described in Part II of this Notice on final approval by the Court. You have the following rights and options:

1. If you wish to participate in the Settlement you need do nothing at this time. If the Settlement is finally approved by the Court after the Final Approval Hearing, you will be sent your proportionate share of the Settlement Fund distribution described in Part II of this Notice.

2. If you do not wish to participate in, and be bound by, the proposed Settlement, you have the right to exclude yourself ("opt out") from the Class. To opt out from the Class, you must submit a signed letter postmarked no later than January 18, 2002, stating your name, address, and telephone number and policy number(s), and that you want to be excluded from the Settlement. This letter must be mailed to **Busani v. USAA Notice Administrator, c/o The Garden City Group, Inc., P.O. Box 8829, Melville, NY 11747-8829**.

^{1/}Class states include Alaska, Arkansas, California, Colorado, Delaware, Georgia, Illinois, Indiana, Louisiana, Maryland, Mississippi, North Carolina, New Hampshire, New Jersey, New Mexico, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.

3. If you remain a member of the Class and do not opt out, you have the right to support or oppose the settlement at the Final Approval Hearing. This right is described in more detail at Section V.

IV. Attorneys' Fees, Costs, and Incentive Awards to Class Representatives

Court-appointed Settlement Class Counsel include Terrell Oxford of Susman Godfrey LLP; Elizabeth J. Cabraser, Morris A. Ratner, and Scott P. Nealey of Lief, Cabraser, Heimann & Bernstein, LLP; Stephen M. Hansen of Lowenberg, Lopez & Hansen, P.S.; and Debra Hayes of Reich & Binstock. Additional counsel are working with Class Counsel.² Counsel for the Class in this lawsuit will apply to the Court for an award of attorneys' fees not to exceed 30% of the cash component of the Settlement plus the estimated \$500,000.00 value of notice and claims administration; Class Counsel will also seek reimbursement of litigation expenses and costs actually incurred. An application for attorneys' fees will be filed jointly on behalf of all attorneys for the law firms that have prosecuted this lawsuit for the benefit of the Class. This application will be filed on or before January 18, 2002, and will thereafter be available for inspection of the Clerk of the Court. In addition, Class Counsel will apply to the Court for an incentive award in the amount of \$3,000.00 for the representative plaintiff Roxette Busani, in recognition of her efforts and her significant time commitment on behalf of the Class.

V. Final Approval Hearing

A Final Approval Hearing ("Hearing") will be held on January 31, 2002, at 9:00 a.m. in the Superior Court of the State of Washington, in and for the County of Pierce in Tacoma, Washington, to determine whether the proposed settlement is fair, reasonable, and adequate. The date is subject to change; any change will be posted on the website.

If you exclude yourself from the Class, the Hearing does not concern you and you do not have the right to participate in the Hearing. Any member of the Class who has not elected to be excluded and who objects to the Settlement, the judgment to be entered in the lawsuit, or who otherwise wants to be heard, may appear at the Hearing in person or by his or her attorney, and may present evidence or argument. If the objection of a member of the Class is overruled, the member who objected will be bound by the terms of the Settlement. If you are satisfied with the Settlement as described in this Notice, you need not submit any comment nor attend the Hearing. Any member of the Class seeking to appear, object, or otherwise be heard at the Hearing must, on or before January 18, 2002, send detailed comments or objections in writing, postmarked no later than January 18, 2002, to:

**Busani v. USAA Notice Administrator
c/o The Garden City Group, Inc.
P.O. Box 8829
Melville, NY 11747- 8829**

Any documents that such person desires the Court to consider must be postmarked by January 18, 2002, and included with the comment or objection.

Unless the Court directs otherwise, any member of the Class who fails to file and serve written objections as described above may not be entitled to object to the approval of the Settlement, to object to the judgment to be entered, or to be heard at the hearing. Any member of the Class who fails to object in the manner described above may be deemed to have waived such an objection and be forever barred from raising such objections in this or any other action or proceeding.

VI. Inquiries by Class Members

This Notice is intended to be a summary of the terms of the Settlement. Pleadings in the case, the Settlement principles, Settlement Distribution Plan, and other papers related to this case and the proposed settlement may be viewed on the website www.usaadiminishedvalue.com. In addition, you may contact Class Counsel through the Notice Administrator at the address listed above. The pleadings and other papers filed in this lawsuit are also available for inspection, and/or copying at the office of the Clerk of the Pierce County Court, 930 Tacoma Avenue South, Tacoma, Washington 98402.

**PLEASE DO NOT CALL THE COURT OR THE COURT CLERK'S OFFICE, OR USAA
TO INQUIRE ABOUT THIS SETTLEMENT.**

DONE IN OPEN COURT this 19th day of October, 2001.

THE HONORABLE VICKI L. HOGAN
Pierce County Superior Court Judge

²Additional counsel include John Stoia of Milberg Weiss Bershad Hynes & Lerach LLP; Don Barrett of Barrett Law Offices; and Michael B. Hyman of Much Shelist Freed Denenberg Ament & Rubenstein, P.C.