

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GREGORY CRUTCHER, *individually and on
behalf of other similarly situated individuals,*

Plaintiff,

v.

No. 1:18-cv-00412-JCH-LF

LIBERTY MUTUAL INSURANCE COMPANY,
LIBERTY PERSONAL INSURANCE COMPANY,
FIRST NATIONAL INSURANCE COMPANY OF
AMERICA, SAFECO INSURANCE COMPANY
OF AMERICA, and SAFECO NATIONAL INSURANCE
COMPANY,

Defendants.

ORDER TO PROVIDE ADDITIONAL INFORMATION TO THE COURT

The parties have reached a settlement in this case. On November 5, 2025, Class Plaintiff Gregory Crutcher filed an *Unopposed Motion for Order (1) Preliminarily Approving Class Settlement, (2) Certifying Class for Settlement Purposes Only[,] (3) Approving Notice to Class Members, (4) Establishing Opt Out and Objection Procedures, (5) Appointing a Class Administrator, and (6) Setting a Final Hearing Date to Consider Final Approval of the Class Settlement, Attorneys' Fees and Expenses* (Dkt. No. 103) ("Motion for Preliminary Approval"). In sum, Class Plaintiff seeks preliminary approval of the proposed class action settlement and permission to notify the class of the settlement in advance of a fairness hearing under Federal of Civil Rule of Procedure 23(e). Having reviewed the Unopposed Motion for Preliminary Approval, the parties' settlement agreement, the proposed notices, exhibits, and the applicable law, the Court

has identified concerns regarding the Notice that it would like the parties to address before it rules on the Motion for Preliminary Approval.

I. STANDARD

“The Court will ordinarily grant preliminary approval where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval.” *In re Motor Fuel Temperature Sales Practices Litigation*, 286 F.R.D. 488, 492 (D. Kan. Sept. 28, 2012) (citation and internal quotations omitted). For classes certified under Rule 23(b)(3), “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Notice may be given by United States mail, electronic means, or other appropriate means. *Id.* Postal mail “may often be the preferred primary method of giving notice,” but courts should consider whether contemporary communication methods will have a more effective reach. *See* Fed. R. Civ. P. 23 advisory committee’s notes to 2018 amendments, subdivision (c)(2).

II. BACKGROUND

According to the Settlement Agreement, “Safeco will provide to Class Counsel and the Settlement Administrator a spreadsheet reflecting all New Mexico Underinsured Motorist Claims submitted during the Class Period. Offset Subclass Members who make a Valid Claim for payment will be entitled to payment of \$25,000.00.” Settlement Agreement ¶ 8, at 18, Dkt. No. 103-1. Two million dollars of the Settlement Fund is set aside for the Offset Subclass Payments. *Id.* “To be a Valid Claim, the Offset Subclass Member must have been in an accident between October 1, 2010

and March 31, 2022, and submitted a claim to Safeco for underinsured motorist coverage.” *Id.*¹ If the amounts paid to Offset Subclass members is less than \$2 million, “any remaining amounts will be added to the Direct Premium Refund Fund.” *Id.*

“Those Settlement Class Members who purchased a policy or paid premium for UM/UIM coverage between October 1, 2010, and March 31, 2022, and who do not make a Valid Claim for an Offset Subclass Payment, shall be directly paid a pro rata share of the Direct Premium Refund Fund.” *Id.* ¶ 9, at 18-19. As to the Direct Premium Refund Fund, each Class Member’s pro rata share will be calculated by the “aggregate amount of UM/UIM premium paid by an eligible Settlement Class Member/the total Direct Premium Refund Fund = pro rata percentage of Direct Premium Refund Fund.” *Id.* ¶ 9 at 19. The Direct Premium Refund Fund is the portion of the Settlement Fund remaining after deducting the Attorney’s Fee Award and Costs, the Service Award Payment, notice and administrative expenses, taxes and tax-related expenses, payment of valid claims to the Offset Subclass members, and estimated notice and administrative expenses to administer the Direct Premium Refund Fund. *See id.* ¶ 12(n) at 6-7.

The Settlement Agreement contains the following Notice provision:

Within 45 days after the entry of the Preliminary Approval Order, the Class Notice, in one of the two forms substantially similar to those attached hereto as Exhibit A, C, and D shall be emailed to each Settlement Class Member’s last known email address. If Safeco does not have a valid email address, notice shall be sent in one of the two forms substantially similar to those attached hereto as Exhibit A, by first class mail to those Settlement Class Members’ last known address. The last known address shall be determined from information reasonably available in Safeco’s files, which will be run by the Settlement Administrator through the United States Postal Service’s national change of address database prior to mailing by the Settlement Administrator.

¹ The claims form submitted to the Court lists the date range of “October 1, 2010 and March 31, 2025,” for claims. Dkt. No. 103-1 at 52 of 77. That date range seems to include a typo and should end on March 31, 2022. *See* Settlement Agreement ¶ 8, at 18, Dkt. No. 103-1.

Id. ¶ 11, at 19. Any “Class Notices that are returned with a listed forwarding e-mail and mailing address shall then promptly be mailed a Notice to the listed forwarding address.” *Id.* ¶ 13, at 20. No other attempts to verify email or mailing addresses will be made. *Id.* A copy of the Claim Form will be available on the website and mailed upon request. *Id.* ¶ 12, at 19-20.

III. ANALYSIS

A. Notification Method

The Court is concerned that email is not the best way to reach class members because, even active email address will often direct incoming messages to SPAM folders, and with mail-forwarding services, postal mailing may better ensure class members receive the Notice. The Court recognizes, however, that the class is numerous with 124,941 unique policy numbers. *See* Pl.’s Mot. 7, Dkt. No. 103.

The Court requests that the parties address the following issues in writing regarding the notification method:

- (1) what steps the administrator intends to take to design the subject line, the sender, and the body of emailed messages to overcome SPAM filters and ensure readership;
- (2) the expected number of Offset Subclass Members;
- (3) the cost to mail notice to all members of the Offset Subclass Members;
- (4) the feasibility of adding a step to compare return rates of claims forms in the Offset Subclass Members, and to send a second round of notice, this time by postal mail, to those Offset Subclass Members who have not sent in a Claim Form; include an estimate of the extra time this process would take so that an accurate date for the fairness hearing could be assessed; and
- (5) the added cost of mailing the Claim Form with the Notice to all members of the Offset Subclass; and

(6) the estimated cost of the current proposal.

B. Claims Process

According to the Settlement Agreement, Settlement Class Members do not need to make a claim to be entitled to a Direct Premium Refund Payment. *See* Settlement Agreement ¶ 26, at 24, Dkt. No. 103-1. The Settlement Administrator will issue a check made payable to the Settlement Class Member and mail it to such member’s last known address, unless the member elects an alternate payment method. *Id.* Checks not cashed shall be voided 90 days after issuance, with a process and deadline for re-issuance. *See id.* ¶ 27, at 25.

The Court has concerns about whether, if Defendant holds contact information for Offset Subclass Members, a claims process is necessary to issue payments to them. Please provide the Court the following information:

- (1) Why the parties believe a claims process is necessary for Offset Subclass Members; and
- (2) Whether a payment process similar to that proposed for non-Offset Subclass Settlement Class Members (those receiving a Direct Premium Refund Payment) is a feasible payment process for the Offset Subclass Members, setting forth those reasons.

C. Form of Notice

The Court also requests the parties address the following concerns the Court has regarding the Notices as currently drafted:

- (1) Discuss what steps will be taken to ensure the outside of the mailings avoid a “junk mail” appearance.
- (2) The Exhibit A Notice lacks a Spanish provision prominent on the first page directing the recipient to the webpage or toll-free phone number. Exhibit C contains a Spanish

provision but does not include the phone number or web page in that Spanish portion, which would assist Spanish speakers in finding that information. Either enact this suggestion in an amended notice(s) or explain an alternative option or why it is not necessary. In addition, discuss what information on the website will be in Spanish and whether there will be a Claim Form in Spanish available.

- (3) Discuss whether a headline in large font and a short table of legal rights and options should be included on the first page of Exhibit A prior to discussing what a Class Action is, similar to that used in [Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide](#) at 8 (2010), found at <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>.
- (4) Because the name of the case does not list any Safeco entity, for clarity, the Court recommends the various entities be bolded and/or offset more prominently on the first page of the notices. Either enact this suggestion in the amended notice(s) or explain an alternative option or why it is not necessary.
- (5) As currently drafted, the Exhibit A Notice does not list the case name and case number in each place that it gives instructions to mail correspondence to the Court. All correspondence sent to the Court must contain both the case number and case name to ensure the staff of the Clerk's Office directs the correspondence to the correct case. For clarity, each time a Notice instructs that correspondence be sent to the Court, the Notice should expressly say to include "Crutcher v. Liberty Mutual Insurance Company, et al., United States District Court for the District of New Mexico, Case No. 18-cv-412 JCH-

LF." By way of example, on page 5 for Option 4,² the Notice should replace "1. The name of the case and case number" with "1. The name of the case and the case number ('Crutcher v. Liberty Mutual Insurance Company, et al., United States District Court for the District of New Mexico, Case No. 18-cv-412 JCH-LF')".

- (6) Paragraph 48 of the Settlement Agreement, concerning what an objection must state, says, "(h) the objector's signature or the signature of the objector's duly authorized lawyer *or other duly authorized representative (along with documentation setting forth such representation)*." Settlement Agreement ¶ 48, at 29-30, Dkt. No. 103-1 at 30 of 77 (italics added). The Exhibit A Notice does not contain the italicized language. *See* Exhibit A at 6, Dkt. No. 103-1 at 49 of 77. Either include this information in an amended notice(s) or explain why it is not necessary.
- (7) Paragraph 49 of the Settlement Agreement lists other information the objections must contain (e.g., a list of cases in which the objector or his/her lawyer has filed objections and a list of other cases in which the objector has been a named plaintiff in any class action). Settlement Agreement ¶ 49, at 30, Dkt. No. 103-1 at 30 of 77. The Exhibit A Notice, in the Option 4 section, does not contain the list from Paragraph 49 of the Settlement Agreement. *See* Exhibit A at 5-6, Dkt. No. 103-1 at 48-49 of 77. Either include this information in the amended notice(s) or discuss why it is not necessary to so include.
- (8) Paragraph 50 of the Settlement Agreement says the Exhibit A Notice will inform Settlement Class Members that to be timely, an objection must be *filed* with the Clerk

² The Exhibit A Notice contains a typo on page 5 and should read "Option 4: Object to the Terms of the Settlement," rather than "Option 3." Exhibit A, Dkt. No. 103-1 at 48 of 77. The Court will refer to this section as "Option 4."

of the Court *and* mailed to the Court, Class Counsel, *and* Safeco's Counsel. Settlement Agreement ¶ 50, at 30, Dkt. No. 103-1 at 30 of 77. The Exhibit A Notice does not contain the Paragraph 50 information in the Option 4 section. *See* Exhibit A at 5-6, Dkt. No. 103-1 at 48-49 of 77. Either include this information in an amended notice or explain why it is not necessary.

- (9) The Exhibit C Notice does not include an Option 4. Either include this information in an amended notice or explain why it is not necessary.
- (10) Please explain the way in which the three different Notices (Exhibits A, C, and D) will be distributed and to whom.

D. The Notice should include estimated amounts of the Attorney's Fees and the Service Award

Page 3 of the Exhibit A Notice notes that Class Counsel Fees and a Service Award will be requested and approved by the Court. Exhibit A, Dkt. No. 103-1 at 46. The Exhibit A Notice, however, does not contain any estimates as to the amount of fees and the Service Award that they seek, subject to Court approval. Plaintiff requests a service award of \$10,000 to Plaintiff Gregory Crutcher, Mot. 13, Dkt. No. 103, and anticipates seeking 33 1/3% of the common fund plus costs and New Mexico gross receipts tax, a calculable amount, *see id.* at 12.

Federal Rule of Civil Procedure 23(h)(1) requires that the class members be notified of the motion for attorney's fees "in a reasonable manner." Fed. R. Civ. P. 23(h)(1). According to the advisory notes: "When a settlement is proposed for Rule 23(e) approval, either after certification or with a request for certification, notice to class members about class counsel's fee motion would ordinarily accompany the notice to the class about the settlement proposal itself." Fed. R. Civ. P. 23, advisory committee notes, 2003 amendment. The notes to the rule further advise: "For motions by class counsel in cases subject to court review of a proposed settlement under Rule 23(e), it

would be important to require the filing of at least the initial motion in time for inclusion of information about the motion in the notice to the class about the proposed settlement that is required by Rule 23(e).” *Id.* Where, as here, settlement approval is sought, “notice of class counsel’s fee motion should be combined with notice of the proposed settlement.” *Id.* The purpose is to allow an opportunity for class members to make an informed decision whether to object to the proposed settlement at the fairness hearing. *See* Fed. R. Civ. P. 23(h)(2) (“A class member ... may object to the motion.”). Before the Court will approve the notices, the parties shall amend the class notices by filling in the blanks with good-faith estimates of the amounts they seek in fees and costs.

E. The Proposed Order

The Court requests additional information regarding the contents of the Proposed Order.

- (1) In Paragraph 14 of the Proposed Order, opt-out procedures are described, as “provided in Paragraph 42” of the Settlement Agreement. *See* Proposed Order 8, Dkt. No. 103-1 at 62 of 77. Paragraph 14 of the Proposed Order includes "telephone number", but Paragraph 42 of the Settlement Agreement does not. *Compare id.*, with Settlement Agreement 28, Dkt. No. 103-1 at 28 of 77. Please explain whether "and telephone number" should be stricken from the Proposed Order.
- (2) In Paragraphs 21 and 22 of the Proposed Order, the parties suggest a deadline to file the Motion for Final Approval as 10 days before the Final Approval Hearing and a response time as 5 days before that hearing. *See* Proposed Order 10, Dkt. No. 64 of 77. Please notify the Court whether there is any reason the Court should not impose a date of 15 working days before the date for the Final Approval Hearing for the motion and 10 working days before the date for the Final Approval Hearing for the response.

IT IS THEREFORE ORDERED that the parties submit a brief with the information detailed above and a copy of any amended notices **on or before December 19, 2025**.



SENIOR UNITED STATES DISTRICT JUDGE