UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF TENNESSEE Belle Meade Owners Association, Inc. v. The Cincinnati Insurance Company

# NOTICE OF CLASS ACTION SETTLEMENT

A federal court authorized this notice. This is not an advertisement or solicitation. Please read this notice in its entirety.

If you made a claim to Cincinnati Insurance for damage to a dwelling or other structure in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin, and you received a payment, this class action settlement may affect your rights.

- A proposed settlement has been reached in a class action about whether The Cincinnati Insurance Company, The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd., and Cincinnati Specialty Underwriters Insurance Company (collectively, "Cincinnati Insurance") improperly deducted nonmaterial depreciation when adjusting certain insurance structural damage claims that occurred during the Class Periods for a dwelling or other structure in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin.
- You may be eligible for a payment if you qualify and timely submit a valid claim form.
- Your legal rights are affected whether you act or don't act. Your rights and options—and the deadlines to exercise them—are explained in this notice. Please read this notice carefully.

| SUBMIT A CLAIM FORM (deadline July 12, 2024)    | The only way to get a payment if you qualify.   |  |
|---|---|--|
| ASK TO BE EXCLUDED (deadline April 13, 2024)    | You get no payment. This is the only option that allows you<br>to individually sue Cincinnati Insurance over the claims<br>resolved by this settlement. |  |
| OBJECT<br>(deadline April 13, 2024)             | Write to the Court about why you don't agree with the settlement.   |  |
| GO TO A HEARING<br>(scheduled for May 13, 2024) | Ask to speak in Court about the settlement.   |  |
| DO NOTHING                                      | You get no payment. You give up rights.   |  |

# YOUR LEGAL RIGHTS AND OPTIONS UNDER THIS SETTLEMENT:

• The Court in charge of this case still has to decide whether to approve the settlement. If it does, and if any appeals are resolved in favor of the settlement, then money will be distributed to Class Members who timely submit a Claim Form and qualify for payment. Please be patient.

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## **BASIC INFORMATION**

#### 1. Why was this notice issued?

Cincinnati Insurance records reflect that you submitted a claim to Cincinnati Insurance for a covered loss to a dwelling or other structure in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin during the applicable Class Periods under a property insurance policy.

A Court authorized this notice because you have a right to know about a proposed settlement that has been reached in a lawsuit covering these claims. As part of the proposed settlement, the Court has allowed, or "certified," the case to proceed as a class action that may affect your rights. You should know that you have the right to submit a Claim Form for payment as part of the settlement and about your options regarding this settlement before the Court decides whether to give "Final Approval" to the settlement. If the Court approves the parties' Settlement Agreement, and if any appeals are resolved in favor of the settlement, then payments will be made to those who qualify and timely submit a valid Claim Form. This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who may be eligible for them, and how to get them. A Claim Form is included with this notice. You can also obtain a Claim Form online at the Settlement website.

The United States District Court for the Eastern District of Tennessee is overseeing this class action. The case is called *Belle Meade Owners Association, Inc. v. The Cincinnati Insurance Company*, Case No. 22-cv-00123. The company that filed the lawsuit is called the "Plaintiff," and the companies they sued are called the "Defendants" or "Cincinnati Insurance."

#### 2. What companies are part of the settlement?

The settlement includes The Cincinnati Insurance Company, The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd., and Cincinnati Specialty Underwriters Insurance Company (together "Cincinnati Insurance").

#### 3. What is this lawsuit about?

The lawsuit claims that Cincinnati Insurance improperly deducted depreciation on costs of labor and general contractor overhead and profit when calculating actual cash value payments for residential and commercial structural loss insurance claims in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin. Cincinnati Insurance has denied all allegations that it acted wrongfully or unlawfully.

#### 4. What is a class action?

In a class action, one or more persons or organizations called a "Class Representative" (in this case, Belle Meade Owners Association, Inc.) sue on behalf of others with similar claims. All those included are a "Class" or "Class Members." One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

#### 5. Why is there a settlement?

The Court did not decide in favor of the Plaintiff or Cincinnati Insurance and has not found that Cincinnati Insurance did anything wrong. Instead, both sides agreed to settle. That way, the parties avoid the cost of litigation, a trial and, potentially, an appeal, and those who qualify will get compensation. The Class Representative and its attorneys think the settlement is best for all Class Members. The settlement does not mean that Cincinnati Insurance did anything wrong, no trial has occurred, and no merits determinations have been made.

## WHO IS IN THE SETTLEMENT

To see if you are bound by or potentially eligible for benefits from this Settlement, you first must determine if you are a Class Member.

#### 6. Am I part of the settlement?

If you received this notice, then you have been identified as someone who may be a Class Member.

If you are uncertain about whether you are a Class Member after reviewing the information below, you may complete a Claim Form and your status as a potential Class Member will be determined for you.

The Class includes: (a) all policyholders under any residential or commercial property insurance policy issued by Defendants, except for those excluded (see below); (b) who had a Structural Loss that was a Covered Loss for property in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin during the applicable Class Periods; and (c) that resulted in an actual cash value payment from which Nonmaterial Depreciation was withheld, or that would have resulted in an actual cash value payment but for the withholding of Nonmaterial Depreciation causing the loss to drop below the applicable deductible.

Structural Loss means physical damage to a dwelling, commercial building, or other structure in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin while covered by a property insurance policy issued by Defendants.

Covered Loss means a first party insurance claim for Structural Loss that (a) occurred during the Class Periods, and (b) Defendants or a court of competent jurisdiction determined to be covered under a property insurance policy issued by Defendants, and (c) resulted in an actual cash value payment by Defendants, or would have resulted in an actual cash value payment but for the deduction of Nonmaterial Depreciation.

Nonmaterial Depreciation means depreciation of labor costs or general contractor overhead and profit, but not depreciation of materials, sales tax, or other items, and that is subtracted from the estimated cost to repair or replace a Structural Loss when calculating an actual cash value payment.

Class Periods mean the following time periods:

For policyholders of all Defendants with Structural Loss claims in Arizona, California, Illinois, Kentucky, Ohio, Tennessee, Texas, Vermont, Virginia, or Washington, dates of loss on or after April 8, 2020, and on or before May 31, 2022;

For policyholders of all Defendants with Structural Loss claims in Wisconsin, dates of loss on or after April 8, 2021, and on or before May 31, 2022;

For policyholders of all Defendants except Cincinnati Global Underwriting Ltd. with Structural Loss claims in Missouri, dates of loss on or after April 8, 2012, and on or before May 31, 2022;

For policyholders of Cincinnati Global Underwriting Ltd. with Structural Loss claims in Missouri, dates of loss on or after April 8, 2020, and on or before May 31, 2022.

## 7. Are there exceptions to being included in the Class?

Excluded from the Class are: (a) policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting Nonmaterial Depreciation within the text of the policy form, endorsement or rider, *i.e.*, by express use of the words "depreciation" and "labor"; (b) policyholders who only made a roof damage claim that arose under a roof surface payment endorsement or similar policy provision, which were paid based on a schedule and not by deducting depreciation; (c) policyholders who received one or more ACV Payments that exhausted the applicable limits of insurance; (d) policyholders whose claims were denied or abandoned without actual cash value payments; (e) Defendants and their officers and directors; (f) members of the judiciary and their staff to whom the class action is assigned, and their immediate families; and (g) Class Counsel and their immediate families (collectively, "Exclusions").

## 8. I'm still not sure I'm a Class Member.

If you are not sure whether you are included in the Class, you may timely submit a Claim Form to determine if you are eligible to receive payment. There is no penalty for submitting a Claim Form, and submitting a Claim Form is the only way to have your claim reviewed, and if eligible, receive money from this Settlement.

If you have further questions, you may call the following toll-free number 1-888-995-0297 or visit www.bellemeadelabordepreciationsettlement.com.

Please do not call Cincinnati Insurance or your Cincinnati Insurance agent to discuss this lawsuit. You may, however, continue to call Cincinnati Insurance or your Cincinnati Insurance agent regarding any other insurance matters.

# **SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY**

## 9. How much will settlement payments be?

Under the settlement, Cincinnati Insurance has agreed to pay Class Members who timely submit valid and completed claim forms as follows:

- (a) Class Members with Structural Losses in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, or Washington will receive 100% of the estimated Nonmaterial Depreciation that was withheld from actual cash value payments on the Class Member's Covered Loss and not subsequently paid;
- (b) Class Members with Structural Losses in Virginia and Wisconsin will receive 80% of the estimated Nonmaterial Depreciation that was withheld from actual cash value payments on the Class Member's Covered Loss and not subsequently paid;

- (c) Class Members identified under subsections (a) and (b) will also be paid simple interest at the rate of 5% per annum on the unrecovered Nonmaterial Depreciation from the date of the first actual cash value payment to the date of the Final Approval Hearing;
- (d) Class Members to whom all Nonmaterial Depreciation deducted from actual cash value payments was previously repaid in full will receive a fixed payment ranging from \$25 to \$500, depending on the amount of Nonmaterial Depreciation originally withheld.

The amount of these payments will vary based on the size of the claim and the amount of depreciation initially withheld. These payments, exclusive of interest payments, are subject to the terms, policy limits, conditions, coverage limits, and deductibles of policies.

You must submit a Claim Form in order to determine whether you are eligible for a settlement payment and, if so, the amount of your settlement payment. If you had more than one Covered Loss during the Class Periods, you will need to submit a separate Claim Form for each loss. *If you do not TIMELY submit your Claim Form, you will not receive a settlement payment*. For additional details on the payment terms, please see the Settlement Agreement, which is available at www.bellemeadelabordepreciationsettlement.com, or call the following toll-free number 1-888-995-0297.

# HOW TO GET A PAYMENT—SUBMITTING A CLAIM FORM

## **10.** How can I get a payment?

To find out whether you are eligible for a payment, you must complete and sign a Claim Form truthfully, accurately, and completely, to the best of your ability. You must then submit the claim form by either:

Mail the completed Claim Form to the following address, postmarked no later than July 12, 2024:

Belle Meade Labor Depreciation Settlement c/o JND Legal Administration P.O. Box 91490 Seattle, WA 98111

or

Upload the completed Claim Form at <u>www.bellemeadelabordepreciationsettlement.com</u> before midnight, Eastern Daylight Time on <u>July 12, 2024</u>.

A copy of the Claim Form was mailed with this notice. You may obtain an additional blank Claim Form by calling toll-free 1-888-995-0297 or downloading one at www.bellemeadelabordepreciationsettlement.com. If you sign a Claim Form as the representative of a deceased or incapacitated Class Member, you must also submit written proof that you are the Legally Authorized Representative. If you are a contractor to whom an insurance claim was properly assigned by a policyholder, you must submit written proof of the assignment with the Claim Form.

## **11. When will I get my payment?**

If the Court grants Final Approval of the settlement, and if any appeals are resolved in favor of the settlement, then payments will be mailed to eligible Class Members who timely submit valid Claim Forms, after the claims administration process is completed. This process can take time, so please be patient.

#### 12. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are staying in the Class, and that means you can't sue Cincinnati Insurance and the Released Persons over the claims settled in this case. It also means that all of the Court's orders will apply to you and legally bind you.

If you submit a Claim Form, or if you do nothing and stay in the Class, you agree to release all Released Claims against all Released Persons. "Released Claims" and "Released Persons" are defined in the Settlement Agreement, which you can request by calling 1-888-995-0297 or view at www.bellemeadelabordepreciationsettlement.com. Here is the definition of Released Claims in the Settlement Agreement:

"Released Claims" means any and all claims, Unknown Claims, actions, causes of action, allegations, suits, debts, sums of money, payments, obligations, reckonings, promises, damages, interest, penalties, attorney's fees and costs, liens, judgments, and demands of any kind whatsoever that each Releasing Person has or may have had prior to the Effective Date and arising from a loss during the Class Periods, whether *ex contractu* or *ex delicto*, debts, liens, contracts, liabilities, agreements, attorneys' fees, costs, penalties, interest, expenses, or losses (including actual, consequential, statutory, extra-contractual and punitive or exemplary damages), and whether arising under or based on contract, extra-contractual or tort theories, at law or in equity, or under federal, state, or local law, statute, ordinance, rule or regulation, whether asserted individually or in a representative capacity, whether past or present, mature or not yet mature, known or unknown, that Plaintiff or any Class Members have or may have had against Defendants or any other Released Persons that relate to, concern, arise from, or pertain in any way to:

- (a) Nonmaterial Depreciation, including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, or withholding of Nonmaterial Depreciation, in the adjustment or payment of any Covered Loss;
- (b) any and all claims that were or could have been brought pertaining to the calculation, deduction, determination, inclusion, modification, omission, or withholding of Nonmaterial Depreciation in the adjustment or payment of any Covered Loss;
- (c) the allegations and claims contained in the complaint and amended complaint in the Action concerning the alleged systematic practice of deducting Nonmaterial Depreciation through the use of estimating software; or
- (d) any alleged conspiracy in connection with the matters described in subsections (a) (c).

Released Claims do not include: (a) any claims that are not a Structural Loss; (b) claims for replacement cost benefits for a Covered Loss that are made after the date of Final Judgment and determined pursuant to the terms and conditions of policies of insurance; (c) claims arising after the Effective Date or outside the Class Periods; (d) claims for valuation or payment of a Covered Loss that are not related to the withholding of Nonmaterial Depreciation from an ACV Payment;

(e) Class Members' rights and obligations under this Agreement; and (f) claims of potential Class Members who timely and properly submit a request for exclusion from the Settlement Class in accordance with this Agreement.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want to participate in this settlement, but you want to keep the right to individually sue Cincinnati Insurance about the issues in this case, then you must take steps to get out of the settlement. This is called excluding yourself from—or "opting out" of—the Class.

## **13.** How do I get out of the settlement?

To exclude yourself from the settlement, you must mail a letter to the Settlement Administrator saying that you want to be excluded from the Belle Meade Insurance settlement class. Your letter must include your full name and address and must be signed by you. You must also include a clear statement that you wish to be excluded from the settlement class. You must mail your request for exclusion postmarked by <u>April 13, 2024</u>, to:

Belle Meade Labor Depreciation Settlement c/o JND Legal Administration P.O. Box 91490 Seattle, WA 98111

More instructions are in the Settlement Agreement available at www.bellemeadelabordepreciationsettlement.com. You cannot exclude yourself by phone, by email, or on the Settlement website. The right to exclude yourself from the proposed settlement must be exercised individually, not as a member of a group and, except for a deceased or incapacitated Class Member, not by another person acting or purporting to act in a representative capacity. If you request exclusion on behalf of a deceased or incapacitated Class Member, you must also submit written proof that you are the Legally Authorized Representative.

## 14. If I don't exclude myself, can I sue Cincinnati Insurance for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Cincinnati Insurance for the claims that this settlement resolves. You must exclude yourself from the Class to sue Cincinnati Insurance over the claims resolved by this settlement. Remember, the exclusion deadline is **April 13, 2024**.

## **15. If I exclude myself, can I get a payment from this settlement?**

No. If you exclude yourself from the settlement, you will not be eligible for a payment, and you should not submit a Claim Form to ask for a payment as it will be rejected.

# THE LAWYERS REPRESENTING YOU

## **16.** Do I have a lawyer in this case?

The Court appointed the following lawyers to represent you and other Class Members as Class Counsel:

| Erik D. Peterson               | T. Joseph Snodgrass          | J. Brandon McWherter        |
|--------------------------------|------------------------------|-----------------------------|
| Erik Peterson Law Offices, PSC | Snodgrass Law LLC            | McWherter Scott Bobbitt PLC |
| 110 West Vine Street           | 100 South Fifth Street       | 341 Cool Springs Blvd.      |
| Suite 300                      | Suite 800                    | Suite 230                   |
| Lexington, KY 40507            | Minneapolis, MN 55402        | Franklin, TN 37067          |
| 800-614-1957                   | 612-448-2600                 | 615-354-1144                |
| erik@eplo.law                  | jsnodgrass@snodgrass-law.com | brandon@msb.law             |

The Court determined that these attorneys are qualified to represent the interests of the Class in this lawsuit. More information about their firms, their practices, and their experience is available on the firms' websites.

You do not have to pay Class Counsel. If you want to be represented by your own lawyer, and potentially have that lawyer appear in court for you in this case, you may hire one at your own expense.

#### 17. How will the lawyers and Class Representative be paid?

If you choose to remain in this lawsuit, you will not be required to pay attorneys' fees or litigation expenses to Class Counsel out of your own pocket. As part of the settlement, Class Counsel will ask the Court for up to \$1,200,000 for attorneys' fees, costs and expenses, and will ask the Court to award the Class Representative \$7,500 for its efforts in representing the settlement class (called a service award). Cincinnati Insurance agreed not to oppose or object to these requests up to those amounts. The Court may award less than these amounts. Cincinnati Insurance will separately pay these fees, expenses, and service award that the Court orders. These payments will not reduce the amount distributed to Class Members. Cincinnati Insurance will also separately pay the costs to administer the settlement.

## **OBJECTING TO THE SETTLEMENT**

If you do not exclude yourself from the settlement, you can tell the Court if you don't agree with the settlement or some part of it.

## 18. How do I tell the Court if I don't agree with the settlement?

If you are a Class Member, you can object to the settlement. If you want to object, you must file a written objection with the Court by **April 13, 2024**, and mail a copy to the Settlement Administrator postmarked by **April 13, 2024**, to the addresses below. You must include: (a) the name of the case (*Belle Meade Owners Association, Inc. v. The Cincinnati Insurance Company*, Case No. 22-cv-00123); (b) your full name, address, telephone number, and signature; (c) the specific reasons why you object to the settlement; and (d) whether you intend to appear at the Final Approval Hearing in person or through counsel. If you have a lawyer file an objection for you, he or she must follow all local rules and you must list the attorney's name, address, and telephone number in the written objection filed with the Court and mailed to the Settlement Administrator.

If you intend to appear at the Final Approval Hearing to object to the settlement, you must also include with your written objection a detailed statement of the specific reasons for each objection, the name and address of any witnesses you may call at the hearing with a summary of their testimony, and a description of any documents you may present to the Court at the hearing. You

or your lawyer may appear at the Final Approval Hearing if you have filed a written objection as provided above.

If you do not serve a written objection with all of the information listed above, you may not be permitted to object and may be prevented from challenging the settlement, including through an appeal. Class Members who do not timely object as required above may be deemed to have waived all objections and may not be entitled to be heard at the Final Approval Hearing.

The right to object to the settlement must be exercised individually by a Class Member, not as a member of a group and, except in the case of a deceased or incapacitated Class Member, not by another person in a representative capacity. If you file an objection as the representative of a Class Member, you must also submit written proof that you are the Legally Authorized Representative.

| File the written objection with the Clerk of the Court at the address below by <b>April 13, 2024</b> . Note: You may send it by mail, but it must be received and filed by the Clerk by <b>April 13, 2024</b> . | And mail a copy of the objection to the Settlement Administrator at the following address so that it is postmarked by <b>April 13, 2024</b> : |
|---|---|
| Court   | Settlement Administrator  |
|   | Settlement Aummistrator   |

## 19. What's the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class or the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you. If you object, and the Court approves the settlement anyway, you will still be legally bound by the result.

## THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

#### 20. When and where will the Court decide whether to approve the settlement?

The Court has scheduled a Final Approval Hearing at **9:00 a.m. EST, on May 13, 2024**, at the United States Courthouse, Courtroom 400, 220 West Depot Street, Greeneville, Tennessee. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them at that time. The Court may listen to people who have asked to speak about their objection. The Court may also decide how much to award Class Counsel for fees and expenses for representing the Class and how much to award the Class

Representative as a service award. The Court will decide whether to approve the settlement, at or after the hearing. It is not known how long this decision will take.

Check the settlement website before attending the hearing to make sure the Final Approval Hearing hasn't been rescheduled, and to see whether the Court has scheduled the hearing to proceed by video conference or teleconference only, instead of in person.

#### 21. Do I have to come to the hearing?

No. You are not required to attend, and Class Counsel will answer any questions that the Court may have. If you wish to attend the hearing, you may come at your own expense. You may also pay your own lawyer to attend, but it's not necessary, unless you choose to have a lawyer appear on your behalf to object to the settlement.

#### 22. May I speak at the hearing?

If you submitted a proper and timely written objection to the settlement, you or your lawyer acting on your behalf may ask to speak at the Final Approval Hearing. You cannot speak at the Hearing if you exclude yourself from the settlement.

# IF YOU DO NOTHING

#### 23. What happens if I do nothing at all?

If you do nothing, you'll get no payment from this settlement. But, unless you exclude yourself from the settlement, you won't be able to individually sue Cincinnati Insurance for the claims in this case.

## **GETTING MORE INFORMATION**

#### 24. How do I get more information about the settlement?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. If you have questions or if you want to request a copy of the Settlement Agreement, which provides more information, call 1-888-995-0297 or visit www.bellemeadelabordepreciationsettlement.com.

## PLEASE DO NOT CALL OR WRITE THE COURT, THE JUDGE OR HIS STAFF, CINCINNATI INSURANCE, YOUR INSURANCE AGENT, OR DEFENDANTS' COUNSEL FOR INFORMATION OR ADVICE ABOUT THE SETTLEMENT.