

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DANSHIR, LLC and DANSHIR PROPERTY)
MANAGEMENT, LLC)
individually, and on behalf of all)
others similarly situated,)
)
Plaintiffs,)
)
vs.)
)
GREATER NEW YORK MUTUAL INSURANCE)
COMPANY,)
)
Defendant.)

Case No. 21-CV-01158

**AMENDED ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT, CERTIFYING SETTLEMENT CLASS, DIRECTING
CLASS NOTICE, AND SCHEDULING A FINAL APPROVAL HEARING**

Upon review and consideration of Motion for Preliminary Approval of Class Action Settlement of Plaintiffs Danshir, LLC and Danshir Property Management, LLC, (the “Representative Plaintiffs”), with Defendant Greater New York Mutual Insurance Company (“GNY” or the “Defendant”), including the parties’ Stipulation and Settlement Agreement signed by the Representative Plaintiffs and GNY in March 2023 (the “Agreement”) and all corresponding exhibits, and having been fully advised of the particulars, it is **HEREBY ORDERED, ADJUDGED and DECREED** as follows:

1. Settlement

The Representative Plaintiffs and GNY have negotiated a proposed settlement of the Representative Plaintiffs’ claims in this action, individually and on behalf of a class of policyholders of GNY, described below as the Settlement Class, to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims against the Released Persons as set forth in the Agreement. The Court has carefully reviewed the Agreement,

as well as the files, records, and proceedings to date in this matter. The terms and conditions in the Agreement are incorporated here as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the same definitions that are in the Agreement.

2. Preliminary Approval

The Agreement entered into, by and among the Representative Plaintiffs and GNY, was negotiated at arm's length and is approved on a preliminary basis as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing.

3. Settlement Class Relief

The proposed Claim Settlement Payments to Class Members and the settlement consideration, as identified in Sections 4, 6, and 7 of the Agreement, is approved on a preliminary basis as fair, reasonable, and adequate.

- a. The "Settlement Class" shall be defined as: All policyholders under any commercial lines property insurance policy issued by GNY who made a covered Structural Loss claim for property located in the State of Illinois during the applicable Class Period, as defined below, and who were issued an ACV payment where Nonmaterial Depreciation was withheld. Settlement Class also includes commercial policyholders for which an ACV would have been made but for the withholding of Nonmaterial Depreciation causing the loss to drop below the deductible.
- b. Excluded from the Settlement Class are:

Policyholders whose claims arose under labor depreciation permissive policy forms, *i.e.*, those forms and endorsements expressly permitting the "depreciation" of "labor" through use of those express terms within the text of the policy form. And any Policyholders whose claims arose from any other policy forms, endorsements, or riders expressly permitting the Nonmaterial Depreciation;

Policyholders who received one or more ACV Payments for claims, but not replacement cost value payments, that exhausted the applicable limits of insurance;

Policyholders whose claims were denied and/or abandoned without ACV Payment;

Aside from the representative Plaintiffs, Policyholders whose claims are, or have been, litigated by or against GNY in Illinois state or federal court;

Policyholders whose claims have been fully resolved and released through a prior settlement(s) executed with GNY;

GNY and its officers and directors;

Members of the judiciary and their staff to whom this action is assigned and their immediate families; and,

Class counsel and their immediate families.

- c. The “Class Period” includes only policyholders whose loss accrued between January 1, 2019 through September 23, 2021, and who submitted timely notice of their loss to GNY.

4. **Preliminary Certification of Settlement Class**

For settlement purposes only, the Court makes the following determinations as to certification of the Settlement Class:

- a. The Court preliminarily certifies the Settlement Class for purposes of settlement only, under Federal Rule of Civil Procedure 23;
- b. The Settlement Class is so numerous that joinder of all members is impracticable;
- c. There are questions of law or fact common to the members of the Settlement Class, which common questions predominate over any questions affecting only individual members;
- d. The Representative Plaintiffs are capable of fairly and adequately protecting the interests of the members of the Settlement Class, in connection with the Agreement; and
- e. The class action is an appropriate method for the fair and efficient adjudication of the controversy.

5. **Designation of Class Representative**

The Representative Plaintiffs are designated as the representatives of the Settlement Class for the purpose of seeking approval of and administering the Settlement Agreement.

6. **Designation of Class Counsel**

James X. Bormes of the Law Office of James X. Bormes P.C., David T. Butsch and Christopher E. Roberts of Butsch Roberts & Associates LLC, and T. Joseph Snodgrass of Snodgrass Law LLC are designated as Class Counsel for the Settlement Class for the sole purpose of the Settlement.

7. Final Approval Hearing

A hearing regarding final approval of the Settlement (“Final Approval Hearing”) will be held at 9:30 a.m. on September 20, 2023, in the United States District Court for the Northern District of Illinois before the Honorable Judge Rebecca R. Pallmeyer, to determine, among other things: (i) whether final judgment should be entered resolving and approving the proposed Settlement of the Representative Plaintiffs’ and the Settlement Class’ claims against the Defendant in the Action as fair, reasonable, and adequate; (ii) whether the Settlement Class Members should be bound by the Release set forth in the Agreement; and (iii) whether the application of Class Counsel for an award of attorneys’ fees and expenses, and for a proposed service award to the Representative Plaintiffs, should be approved and in what amount. The Final Approval Hearing may take place, at the sole discretion of the Court, via telephone or video conference so as to allow the Final Approval Hearing to proceed despite limitations on in-court hearings related to the COVID-19 pandemic. Any Class Member, who files a notice of intent to appear, shall be provided with information required to access a telephonic or video hearing.

8. Class Notice

8.1 The Court approves the methods of providing notice to Class Members as described in the Agreement, including the Class Notice, attached as Exhibit B to the Agreement, and the manner of providing notice to Class Members described in Section 5 of the Agreement. The Court finds that notice as described in the Agreement is reasonably calculated, under all the circumstances, to apprise Class Members of the pendency of this Action, the terms of the Agreement, and their right to object to the Settlement or to exclude themselves from the Settlement Class. The Court further finds that the Class Notice, the Settlement website, and the other forms of notice described in the Agreement are reasonable, constitute due, adequate, and sufficient notice to all persons entitled to receive

notice, and meet all legal requirements, including the requirements of Federal Rule of Civil Procedure Rule 23 and Due Process.

8.2 The Class Notice, in the form and content of Exhibit B to the Settlement Agreement, shall be mailed, by the Administrator, on or before June 9, 2023, in the manner described in the Agreement.

8.3 No later than the posting of the Class Notice, the Administrator shall establish a website containing copies of the Agreement and Exhibits, the Preliminary Approval Order, the Class Notice, Claim Form, Spanish translations of the Class Notice and Claim Form, and such other documents and information about the Settlement as Class Counsel and Defendant's Counsel agree upon. The Claim Form shall be available to download or print from the Settlement website, and signed, scanned, completed copies of the Class Form may be uploaded on the Settlement website. The Settlement website shall have a Uniform Resource Locator which identifies the Settlement website as www.GNYdepreciationsettlement.com, or such other URL as Class Counsel and the Defendant's Counsel agree upon. The Settlement website shall not include any advertising and shall not bear any logos or trademarks of the Defendant other than those appearing in the Agreement. The Settlement website shall cease to operate, and the Administrator shall remove all information from the Settlement website, no later than the Final Accounting as set forth in section 7.11 of the Agreement. Ownership of the Settlement website URL shall be transferred to the Defendant within ten (10) days after operation of the Settlement website ends.

8.4 No later than the posting of the Class Notice, the Administrator shall establish a toll-free, interactive, voice response phone number, with script recordings of information about this Settlement, including information about the Claim Form, utilizing the relevant portions of the Class Notice and Claim Form. At the Defendant's option, the Administrator may also provide live operators during select times to answer certain basic questions about the Settlement. The Administrator shall send the Class Notice and Claim Form, upon request, to any Class Members. The phone number shall remain open and accessible through the Claim Deadline and allow for Class Members to leave recorded messages. Except for requests for the Class Notice or Claim Form, the Administrator will promptly advise Class Counsel of recorded messages left by Class Members, concerning the Action and/or the Settlement, or direct any Class Members with questions, that cannot be answered, to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

8.5 Settlement Class Members may submit Claim Forms in the form attached to the Agreement, as Exhibit C, requesting a Claim Settlement Payment in accordance with the terms of the Agreement. To be considered valid and timely, a Claim Form must be materially complete, signed by or on behalf of the Class Member, and either: (a) mailed to the Administrator's address, as specified in the Claim Form, and postmarked by November 7, 2023; or (b) uploaded on the settlement website by November 7, 2023 ("Claim Deadline"). Claim Forms may be submitted on behalf of deceased or incapacitated Class Members only by Legally Authorized Representatives, with written

evidence of authority. Only settlement class members who complete a Claim Form may secure monetary recovery.

8.6 No later than October 6, 2023, the Administrator shall mail a postcard reminder in the form attached to the Agreement as Exhibit D (the “Postcard Notice”) with information regarding the Claim Deadline, the Settlement website address, and how to request a copy of the Claim Form. The Postcard Notice will be mailed to each Class Member who has not submitted a Claim Form and who has not timely and properly excluded themselves.

8.7 Class Counsel and the Defendant’s Counsel, as jointly agreed, along with the Administrator, are authorized, prior to mailing, to complete any omitted information and to make any non-substantive revisions to the Claim Form and Class Notice, as necessary, that do not materially reduce the rights of Class Members in order to fulfill the purposes of the Settlement. The font size, layout, and other presentation elements of the Claim Form and Class Notice may be adjusted to accommodate printing and mailing considerations.

9. **Administrator**

The Court approves and authorizes the Defendant and Class Counsel to retain Atticus Administration LLC, as the Administrator, to implement the terms of the Agreement, and authorizes and directs the Administrator to (a) mail the Class Notice, the Claim Form, and the Postcard Notice; (b) establish the interactive, voice response, phone line system; (c); establish the Settlement website; (d) receive and process Claim Forms; and, (e) carry out such other responsibilities as are provided for in the Agreement or as may be agreed to by Class Counsel and the Defendant, all according to and as provided in the Agreement.

10. **Exclusion from the Settlement Class**

Any Class Member who wishes to be excluded from the Settlement Class must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement website, a request for exclusion postmarked no later than August 20, 2023 (“Opt Out Deadline”).

10.1 To be valid, the request for exclusion must: (a) identify the case name; (b) identify the name and address of the Class Member; (c) be personally signed by the Class Member requesting exclusion; and (d) state a desire to be excluded from the Settlement Class, such as “I hereby request that I be excluded from the proposed Settlement Class in the GNY Class Action” Except for deceased or incapacitated Class Members, for whom Legally Authorized Representatives may act with written evidence of authority,

Class Members must request exclusion individually and not through another acting on their behalf, and mass or class opt outs are prohibited.

10.2 A Class Member who desires to opt out must take timely affirmative written action, pursuant to this Order and the Agreement, even if the Class Member desiring to opt out (a) files or has filed a separate action against any of the Released Persons, or (b) is or becomes a putative or actual class member in any other class action filed against any of the Released Persons. The Administrator shall provide Class Counsel and the Defendant's Counsel a list of all timely requests for exclusion on or before September 10, 2023.

10.3 Except for Class Members who timely submit a valid request for exclusion from the Settlement Class, all other Class Members will be deemed to be Class Members for all purposes under the Agreement, and upon the Effective Date will be bound by its terms, including, but not limited to, the Releases in Section 9 of the Agreement and Final Judgment approving the Settlement.

10.4 If the proposed Settlement is finally approved, any Class Member who has not submitted a timely, written, request for exclusion, from the Settlement Class, shall be bound by the Final Judgment and all subsequent proceedings, orders, and judgments in this Action, even if he or she has pending, or subsequently initiates, litigation against the Defendant or any Released Persons relating to any of the Released Claims as defined in the Agreement.

10.5 If the proposed Settlement is finally approved, any Class Member, who has not submitted a timely, written, Request for Exclusion, from the Settlement Class, shall be bound by the Judgment and all subsequent proceedings, orders, and judgments, even if he or she has pending, or subsequently initiates, litigation against the Defendant or any Released Persons relating to any of the Released Claims as defined in the Agreement.

11. **Objections and Appearances**

Any Class Member, who does not submit a valid request for exclusion from the Settlement Class and who complies with the requirements of this Order and the Agreement, may object to the proposed Settlement. Any Class Member, who wishes to object to the Settlement, must do so in writing, filed with the Clerk of Court, and a mail a copy to the Administrator, at the address in the Class Notice and on the Settlement website, a written statement of objection, in accordance with the requirements set forth below and in the Agreement, postmarked no later than August 20, 2023 ("Objection Deadline").

11.1 A valid written objection must include: (a) the case name and number; (b) the name and address of the objecting Class Member and of counsel, if represented;

and (c) the basis for the objection. These requirements shall also be set forth in the Class Notice and on the Settlement website.

11.2 Subject to approval of the Court, any Class Member, who files and serves a timely written objection, may appear, in person or by counsel, at the Final Approval Hearing, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Class Member: (a) files with the Clerk of the Court, by the Objection Deadline, a notice of intention to appear at the Final Approval Hearing, and (b) mails copies of the notice to the Administrator, at the address set forth in the Class Notice and on the Settlement website. The notice must include copies of any papers, exhibits, or other evidence that the objecting Class Member will present to the Court in connection with the Final Approval Hearing. Any Class Member, who does not file a notice of intention to appear in accordance with the deadlines and other requirements of this Order and the Agreement, shall not be entitled to appear at the Final Approval Hearing.

11.3 Any Class Member, who fails to object to the Settlement in the manner described in this Order, shall be deemed to have waived any objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

12. Releases

If the Settlement is finally approved, all Releasing Persons, including the Representative Plaintiffs and each Class Member, shall, by operation of the Final Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged GNY from any and all claims, Unknown Claims, actions, causes of action, 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 Period, 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, that the Representative Plaintiff or Class Members have or may have had against any of the Released Persons that relate to, concern, arise from, or pertain in any way to:

- 12.1.1 Depreciation or Nonmaterial Depreciation (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Nonmaterial Depreciation) in the adjustment and/or payment of any Covered Loss;
- 12.1.2 any and all claims that were, or could have been, brought pertaining to the calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Depreciation or Nonmaterial Depreciation in the adjustment and/or payment of any Covered Loss;
- 12.1.3 the allegations and claims contained in the Action concerning the alleged systematic practice of deducting Depreciation or Nonmaterial Depreciation through the use of estimating software. (Section 12.1 through Section 12.3 are collectively referred to as the “Released Claims”).
- 12.1.4 “Released Persons” means, individually and collectively GNY and all independent adjusting companies acting for GNY and all of the past and present Affiliates, successors and predecessors in interest, assigns, acquirers, divisions, representatives, heirs, officers, directors, shareholders, agents, managing agents, employees, attorneys, auditors, accountants, brokers, surplus lines brokers, underwriters, advisers, insurers, co-insurers, re-insurers, consultants, vendors, independent contractors, and legal representatives of GNY.
- 12.1.5 “Releasing Persons” mean the Representative Plaintiff, all Class Members who do not properly and timely opt out of the Settlement Class, and their respective spouses, family members, executors, representatives, administrators, guardians, wards, heirs, attorneys-in-fact, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf.
- 12.1.6 The Released Claims do not include claims under any coverages other than for loss or damage to structures or buildings. For example, this release does not encompass any claims for additional living expenses or contents. Further, this release only applies to claims arising under insurance policies issued by GNY in Illinois.

13. **Attorneys’ Fees and Expenses, and Case Contribution Awards**

The Representative Plaintiffs and Class Counsel shall not seek an award of attorneys’ fees and reasonable litigation expenses in this Action in a total amount that exceeds \$557,500.00. Class Counsel and the Representative Plaintiffs agree not to seek service awards that exceed \$10,000 in

total to the Representative Plaintiffs, Danshir, LLC and Danshir Property Management, LLC, for their work and assistance in this Action. Subject to Court approval, the Defendant will pay up to \$557,500 in attorneys' fees and expenses to Class Counsel and a service award of \$10,000.

The parties agree that Defendant will pay all costs of claims administration (including Class Notices and administration) up to \$50,000, as provided in the Settlement Agreement, and all costs above \$50,000 shall be split equally between Defendant and Class Counsel. The parties also agree that the reasonable fees incurred by the Neutral Evaluator, as provided in Settlement Agreement, will be split equally between Defendant and Class Counsel.

14. **Preliminary Injunction**

In order to protect the continuing jurisdiction of the Court, and to effectuate this Order, the Agreement, and the Settlement, all Class Members, who do not timely exclude themselves from the Settlement Class, and anyone acting, or purporting to act on their behalf, are preliminarily enjoined from directly or indirectly (a) filing, commencing, prosecuting, maintaining, intervening in, or participating in (as parties, class members or otherwise), any new or existing action or proceeding before any court or tribunal regarding any Released Claims against any of the Released Persons; and (b) organizing any Class Members into a separate class for purposes of pursuing, as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a new or pending action), based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims.

15. **Service of Papers**

Class Counsel and the Defendant's Counsel shall promptly furnish to each other any objections or requests for exclusion that they receive and shall file such objections with the Court on or before the Final Approval Hearing unless such documents already appear on the Court's docket.

16. **Termination of Settlement**

This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the proposed Settlement is not finally approved by the Court, or Final Judgment is not entered or does not become Final, or the Effective Date does not occur; or (b) the Settlement Agreement is terminated, pursuant to the terms of the Agreement, for any reason. In such event, and except as provided therein, the proposed Settlement and Agreement shall have no further force or effect, and all proceedings that have occurred, with regard to the Agreement and the Proposed Settlement, shall be without prejudice to the rights and contentions of the Parties and any Class Members; the preliminary certification of the Settlement Class for settlement purposes shall be automatically vacated; all communications and documents related to the Settlement will be subject to the Federal Rules of Evidence and all other applicable settlement and negotiation privileges; this Order and other orders, entered by the Court pursuant to the Agreement, will be treated as vacated, *nunc pro tunc*; the Agreement and the Court's orders, including this Order, shall not be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification.

17. Use of Order Following Termination of Settlement


This Order shall be of no force and effect, if the Settlement does not become Final, and shall not be construed or used as an admission, concession, or declaration, by or against the Defendant, of any fault, wrongdoing, breach, or liability, or by or against the Representative Plaintiffs or Class Members that their claims lack merit or that the relief requested in this Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses.

18. Stay

All proceedings in the Action (as defined in the Agreement), as to the claims of the Representative Plaintiffs against the Defendant, are stayed, except as necessary to effectuate the terms of the Settlement.

19. **Necessary Steps**

The Court authorizes and directs the Parties to take all other necessary and appropriate steps to implement the Settlement as set forth in the Agreement.

So Ordered:  Date: June 2, 2023
Hon. Rebecca R. Pallmeyer