SO ORDERED,
SIGNED January 24, 2023

John W. Kolwe
JOHN W. KOLWE
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA

IN RE: **LOUISIANA SAFETY ASSOCIATION** **OF TIMBERMEN - SELF INSURED FUND** **DEBTOR**	**CASE NO. 15-81004** **CHAPTER 7**

T. BRETT BRUNSON AS TRUSTEE FOR **LOUISIANA SAFETY ASSOCIATION OF** **TIMBERMEN – SELF INSURED FUND**	**ADVERSARY PROCEEDING** **No. 17-08003**
Versus	
ASCENSION READY MIX, INC., **O'NEALGAS, INC.,** **E.A. HINTON WELL SERVICING INC., and** **ALFORD MOTORS, INC.** **(On behalf of themselves** **and others similarly situated)**	**CLASS ACTION**

AMENDED ORDER AND REASONS

Before the Court is the *Amended Joint Motion for Final Approval of Class Action Settlement Agreement* [Doc. 251] ("**Final Approval Motion**"). On October 6, 2022, this Court held a Fairness Hearing to consider, among other matters[1], the *Final Approval Motion.*

I. BACKGROUND

The Class Action was commenced by T. Brett Brunson, in his capacity as the trustee, ("**Trustee**") appointed in the above-captioned chapter 7 case ("**Bankruptcy Case**") of the Louisiana Safety Association of Timbermen – Self Insured Fund ("**Timbermen**"). The Trustee and the representatives of the Class ("**Defendants**"), individually and on behalf of the Class, certified by this Court's Order ("**Certification Order**") dated August 22, 2018 [Doc. 143], as such order was amended on January 14, 2019 [Doc. 164], reached a proposed settlement agreement ("**Settlement**" or "**Settlement Agreement**") to fully settle and resolve the Class Action on the terms and conditions set forth in the Settlement. Pursuant to Fed. R. Bankr. P. 9019, the Trustee separately filed the 9019 Motion in the Bankruptcy Case, seeking approval of the Settlement, which matter was subsequently referred to this Court for hearing [BK Doc. 1236].

The Court held a Fairness Hearing on October 6, 2022 to consider, among other things, whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Class, and should therefore be approved; and whether to approve fees and expenses of Class Counsel.

[1]At the Fairness Hearing, the Court also considered (a) *Class Counsel's Motion for Award of Attorneys' Fees and Litigation Expenses* [Doc.237] ("**Fee Motion**") and, (b) the *Motion for Entry of Order Authorizing Compromise under Bankruptcy Rule 9019* [BK Doc.1234] ("**9019 Motion**"), both of which were ruled upon through separate orders of this Court.

II. THE CLASS ACTION SETTLEMENT

The Court having reviewed and considered the Settlement, all filings in connection therewith, including the Final Approval Motion, the 9019 Motion, and the Fee Motion; any objections to the Settlement or Fee Motion; the record of this Class Action; and the law and evidence being in favor hereof, the Court finds as follows:

1. **Jurisdiction**. The Court has jurisdiction over the subject matter of the Class Action as well as personal jurisdiction over the parties thereto, including all members of the Class.

2. **Incorporation of Settlement Documents.** The Settlement[2] and the Class Notice[3], approved through the Preliminary Approval Order [Doc. 234], are incorporated herein and made a part hereof.

3. **The Certified Class**. The Class means the Class certified through the Certification Order, consisting of all members of Louisiana Safety Association of Timbermen-Self Insured Fund who were members at any time from January 1, 1998 through September 11, 2015, except those members with whom the Trustee has settled and granted a release of liability. Also excluded from the Class are the persons and/or entities listed on Exhibit A to this Final Order and Judgment, who are excluded from the Class pursuant to their timely request.

4. **Notice**. The Court finds that the dissemination and publication of the Class Notice: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of (i) the

[2] Doc. 230-4
[3] Doc. 234, Appendix A and Appendix B

pendency of the Class Action; (ii) the effect of the proposed Settlement; (iii) the Fee Motion; (iv) their right to object to any aspect of the Settlement and/or Fee Motion; (v) their right to exclude themselves from the Class; and (vi) their right to appear at the Fairness Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).

5. The Court finds that the notice requirements set forth in the Class Action Fairness Act of 2005, 28 U.S.C. §1715, to the extent applicable to this Class Action, have been satisfied.

6. **Objections**. Class Members were provided with the opportunity (a) to be heard on all issues regarding the Settlement; and, (b) to exclude themselves from the Settlement. Although no objections to the overall Settlement were filed, seven (7) limited objections ("**Limited Objections**") related to certain Class Member's Payment Amount liability were filed.

OBJECTION	COURT'S RULING
Objection to Settlement by Lil Heath, LLC [Doc. 240]	Overruled.
Objection to Settlement by Joe Smetak, Jr. and Smetak Farms, Inc. [Doc. 241]	Sustained. "Joe Smetak, Jr. and/or Smetak Farms, Inc." shall be considered one Class Member rather than two separate Class Members with the revised Summed Annual Virile Share for "Joe Smetak, Jr. and/or Smetak Farms, Inc." as 5,032.17.
Objection to Settlement by All Services Storage & Transport, LLC, Datakeepers, LLC, All Services US, LLC [Doc. 242]	Overruled.
Objection to Settlement by All Services Storage & Transport, LLC, Datakeepers, L.L.C., All Services US, LLC [Doc. 243]	Sustained. Datakeepers, L.L.C. and All Services US, LLC shall be removed as Class Members and thus have no Summed Annual Virile Share. All Services Storage & Transport, LLC shall continue to have a Summed Annual Virile Share of 2,865.11.
Objection to Settlement by Lyle Jay Ivy and Jane Petersen Ivy [Doc. 244]	Sustained. The years of membership of Jane Ivy dba Ivy's Urania General Store shall be 2010 through 2011, with the Summed Annual Virile Share adjusted to 460.03.
Objection to Settlement by Harper Truck Line, Inc. and Littleton Truck Lines, Inc. [Doc. 245]	Sustained. Littleton Truck Lines, Inc. shall be removed as a Class Member and thus have no Summed Annual Virile Share. Harper Truck Line, Inc. shall continue to have a Summed Annual Virile Share of 4,231.04.
Limited Objection to Settlement by Mike's Hardware and Supply, L.L.C. [Doc. 246]	Overruled.

7. **Final Settlement Approval.** Pursuant to, and in accordance with, Rule 23(e)(2) of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the

Settlement in all respects, and finds that the Settlement is, in all respects, fair, reasonable, and in the best interests of the Class.

The Court considered the following factors in determining whether the Settlement is fair, adequate and reasonable and thus worthy of final approval: whether evidence exists that the Settlement was obtained by fraud or collusion; the complexity, expense and likely duration of the litigation; the stage of the litigation and amount of discovery completed; the probability that plaintiff will prevail on the merits; the range of possible recovery; and, the opinions of class counsel, class representatives and absent class members as to the Settlement. *Reed v. General Motors Corp.*, 703 F.2d 170 (5th Cir. 1983). Upon consideration thereof and the standards set forth in Fed. R. Civ. P. 23,the Court concludes: (a) Class Representatives and Class Counsel have adequately represented the Class; (b) the Settlement was negotiated by the parties at arm's length; (c) with respect to the Class, the liability assigned and released under the Settlement is adequate taking into account the costs, risks, and delay of trial and appeal; the proposed means of collection from the Class; and the proposed attorneys' fee award; and (d) the Settlement treats members of the Class equitably relative to each other.

Through separate order, the Court granted the 9019 Motion. [BK Doc. 1332]. The Trustee and Class Representatives are thus directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained therein.

8. **Releases**. The release of Class Members' liability set forth in the Settlement, including Section 3.6 thereof, together with the Trustee's obligations to document same, are expressly incorporated herein in all respects. Accordingly, pursuant to the Settlement,

with respect only to Class Members who pay their respective Payment Amount, the Trustee shall be deemed to have granted a Settlement Release and fully, finally and forever released, relinquished and discharged such members from all liability to the Trustee and Timbermen for all claims asserted, or which could have been asserted, in this Class Action. Each Opt Out and Nonpaying Member shall remain liable to the Trustee for all claims asserted or which could have been asserted against them in this Class Action (a) without receipt of any benefit afforded to those Class Members who have satisfied their Payment Amount obligations pursuant to the Settlement Agreement and (b) without any prejudice to the Trustee's rights against such Opt Outs and Nonpaying Members. The Trustee further reserves all of his rights to recover against any Class Member or other Timbermen member based on any claims unrelated to the Class Action.

9. **Modification of the Settlement**. Without further approval from the Court, to effectuate the Settlement, the Trustee and Class Representatives are hereby authorized to agree to and adopt such amendments or modifications of the Settlement or any exhibits thereto that: (a) are not materially inconsistent with this Final Order and Judgment or the Settlement as presented to this Court for approval; and, (b) do not adversely affect the rights or liabilities of Class Members in connection with the Settlement. Without further order of this Court, the Trustee and Class Representatives may agree to reasonable extensions of time to carry out any provisions of the Settlement.

10. **Class Counsel Fees**. Through the Certification Order, the Court appointed the following attorneys to represent the Class: W.L. West, Roedel, Parsons, Blache, Fontana, Piontek & Pisano and Barbara B. Parsons, The Steffes Firm, LLC. Through

separate order, the Court approved the *Fee Motion* and awarded Class Counsel attorneys' fees and reimbursement of expenses in an amount not to exceed $500,000 ("**Fee Award**"). The Court readopts and incorporates herein by reference its conclusions as set forth in the order approving [Doc. 269] the *Fee Motion.*

Subject to sufficient deposits into the Settlement Fund, the Fee Award shall be paid by the Trustee out of the Settlement Fund in accordance with the following terms: (a) based upon a $300,000 payment previously advanced to Class Counsel prior to the Settlement, $300,000 shall be immediately credited to Fee Award distributions due from the Settlement Fund, thereby leaving a net balance of up to $200,000 due to Class Counsel ("**Net Award**"); (b) the Trustee shall establish, from funds deposited into the Settlement Fund, an initial cash reserve up to $20,000 ("**Initial Trustee Reserve**") for reimbursement of costs incurred by the Trustee for transmission of the Class Notice to Class Members; (c) upon establishment of the Initial Trustee Reserve, the Trustee shall immediately establish, from funds deposited into the Settlement Fund, a cash reserve of $200,000 ("**Net Award Reserve**") for Net Award distributions to Class Counsel; (d) other than payments from the Initial Trustee Reserve, no payments shall be made from the Settlement Fund until the Net Award Reserve has been established and/or utilized for payment of the Net Award; (e) Net Award distributions to Class Counsel shall be paid as fees and expenses are or were incurred and such payment shall be made within fifteen (15) days after Class Counsel submits to the Trustee a summary statement providing the fees and expenses incurred by Class Counsel during not less than a single monthly period; (f) if funds remain in the Net Award Reserve after Class Counsel

confirms that no additional fees and expenses are due thereunder, then such remaining funds will be released into the general Settlement Fund.

11. **Payment Amounts of Class Members.** The Payment Amount for each Class Member shall be calculated as set forth in the Settlement and this Court's rulings on the Limited Objections as set forth herein. Based on the Fee Award approved, the final Payment Amount due from each Class Member, pursuant to the Settlement, is reflected in the *Notice of Payment Amount* [Doc. 264] filed on December 9, 2022.[4] The Trustee shall cause the *Notice of Payment Amount* to be accessible on the Class Action website (www.timbermenclassaction.com), which website shall remain active for a period of not less than 180 days from entry of this Final Order and Judgment. The Trustee's Demand for Payment and Class Member's Payment Amount shall be transmitted to the appropriate parties in accordance with the terms of the Settlement.

III. CONCLUSION

For the foregoing reasons, **IT IS ORDERED** that the Amended Joint Motion for Final Approval of Class Action Settlement Agreement is **GRANTED;** and, the Settlement Agreement is hereby **APPROVED**.

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ORDER SUBMITTED BY:

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[4] All amendments to the Settlement Agreement, i.e., amendments to Settlement Agreement, Exhibit SVS, are incorporated into the Notice of Payment Amount.

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CLASS COUNSEL

Exhibit A

Members Excluded from the Class Pursuant to Member Request/Opt-Out

Associated Directories, L.L.C., f/k/a Associated Directories, a Limited Partnership, L.L.P. (54549)	Armour Construction, a partnership (52753)
Central Louisiana Entertainment Group, Inc. (55424)	Bernard B. Williams dba B.B.'s Mobile Home Transport Company (57111)
Kevin Clement, individually, and on behalf of Clement Land Design & Horticultural Services, L.L.C. (58090)	Joseph A. Wallace, Sr. dba Bear's Auto (57776)
Daryl Larson d/b/a Daryl Larson Installations (57044)	Lawrence Brunet dba Brunet Woodworks (56561)
J & S Logging, LLC (56948)	Chris Harrell dba C & N One Stop, C & N Products, & C & N Plumbing (56862)
Louis E. Burnett d/b/a Louis E. Burnett Trucking (56994)	CAILLIER'S WELDING SERVICE, INC. (53999)
Charles Matt Monahan d/b/a Matt's Tree Service (54725)	CALDWELL COUNTRY CLUB (52356)
Matt's Tree Service, Inc. (54725)	CHARLES COURTNEY dba CHARLES COURTNEY TRUCKING (55928)
Southern Steel Erectors, L.L.C. (56263 and 57292)	Carl Landry dba CARL LANDRY TRUCKING (55948)
Todd G. Broussard and Tammy C. Broussard (56908)	DAIGLE'S PETROLEUM SALES, INC. dba Morse Bulk Fuel (55787)
Tyrone McGowan (54764)	Damaro, Inc., dba Stateline Restaurant & Lounge (54664)
Womack Contractors, L.L.C. f/k/a Womack Contractors, Inc. (57071)	Edmond Ewell, Jr. (55453)
	Fred's Amusement, Inc. (54450)
	Gator Knot Logging, L.L.C. (57988)
	GERALD TRAHAN WELDING SERVICE, INC (53895)
	Glenn's Auto Ranch, Incorporated, dba GLENN'S AUTO RANCH, INC. (53584)
	HIGHWAY 30 ENTERPRISES, INC. fka FRED'S LOUNGE, INC. dba FREDERICK'S TRUCK STOP (54449)
	Hobson & Son, L.L.C. (55716)
	Jack H. Reynolds Memorial Chapter No.1, Disabled Veterans of Louisiana, Incorporated fka Disabled Veterans of Louisiana, Incorporated dba Veterans Bingo Parlor (57578)
	Jackson Parish Ambulance Service District (56841)
	LEONARD ARDOIN, dba LEONARD ARDOIN PAINTING (50311)
	Natchitoches Right-of-Way, Inc. (57963)
	NOTO, INC., dba FUN & GAMES I (54694)
	Premier Engineering & Surveying Inc. (56868)
	Vacuum Cleaner Clinic and Janitorial Supply, Inc. fka Vacuum Cleaner Clinic and Janitorial Supplies, Inc. (56414)
	Ville Platte Concrete Service, Inc. (55767)
	WELLMAN FORESTRY, LLC (57894)
	Elray Wellman dba Wellman Forestry (57894)
	David W. Rushing, dba WHOLESALE UNLIMITED (50714)