

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

**Frank Apodaca as Personal Representative for the Estate of Yvonne Apodaca,
on behalf of herself and all others similarly situated,**

Plaintiff,

vs.

No. CIV 18-0399 KK-JMR

**YOUNG AMERICA INSURANCE
COMPANY,**

Defendant.

**THOMAS SWIECH, individually and on behalf of
Other similarly situated individuals,**

Plaintiff,

v.

No. 1:25-cv-00047 KK-JMR

LOYA INSURANCE COMPANY,

Defendant.

FINAL ORDER APPROVING SETTLEMENT

The Court preliminarily approved the Class Settlement in this case on October, 29, 2025. (Doc. 29). Since then, the Parties have completed the Notice process and now seek final approval of the Settlement Agreement (“Agreement”). In Plaintiffs’ Unopposed Motion and Memorandum of Law in Support of Final Approval, Class Plaintiffs’ Petition for Award of Attorneys’ Fees, Costs, and Award of Incentive Fee to Named Plaintiffs (Doc. 30) Plaintiffs ask the Court to (1) grant final certification of the settlement Class; (2) approve the Agreement as fair, reasonable, and adequate; (3) rule that the Notice process was reasonable and the best practicable under the circumstances; and (4) grant Plaintiffs’ unopposed request for attorneys’ fees, and the Class

Representative incentive awards. For the reasons stated below, the Motion is granted as follows.

On March 24, 2026, the matter of the Court's final approval of the Agreement submitted on October, 29, 2025 by the Unopposed Motion for Order Preliminarily Approving Settlement, Approving Notice to Class Members, and Setting Date for Settlement Fairness Hearing, came before the Court for consideration. Appearing on behalf of Plaintiff and the Settlement Class were Kedar Bhasker, LAW OFFICE OF KEDAR BHASKER, LLC, 2741 Indian School Rd. NE, Albuquerque, NM 87106, Corbin Hildebrandt, CORBIN HILDEBRANDT, P.C., 2741 Indian School Rd. NE, Albuquerque, NM 87106, Geoffrey Romero, Romero, Harada, and Winters, LLC, 4801 All Saints Rd., Albuquerque, NM 87120, and Andrea D. Harris, VALLE, O'CLEIREACHAIN, ZAMORA & HARRIS, 1805 Rio Grande Blvd. NW, Albuquerque NM 87104, ("Class Counsel"). Appearing on behalf of Defendants were Michael Mumford and Karl Fanter, BAKER & HOSTETLER LLP, Key Tower 127 Public Square, Suite 2000, Cleveland, OH.

WHEREAS, the Named Plaintiffs, Thomas Swiech and Frank Apodaca as Personal Representative for the Estate of Yvonne Apodaca, on behalf of themselves and the proposed Settlement Class, and Defendants Young America Insurance Company ("YAIC") and Loya Insurance Company ("LIC") (collectively, "Loya"), individually and on behalf of all other Released Parties, have executed and filed the Settlement Agreement with the Court on October 29, 2025; and

WHEREAS, all capitalized terms used herein shall have the same meaning as set forth in the Settlement Agreement and are hereby incorporated by reference; and

WHEREAS, the Court, on October 29, 2025, entered the Order Re: Preliminary Approval of Settlement and Approval of Notice of Pendency of Settlement of Class Action to Class Members

(“Preliminary Approval Order”), preliminarily approving the proposed Settlement and conditionally certifying these Actions, for settlement purposes only, as a class action; and

WHEREAS, Thomas Swiech and Frank Apodaca on behalf of the estate of Yvonne Apodaca, were approved in the Preliminary Approval Order as the Class Representatives; and

WHEREAS, the Court, as part of its Preliminary Approval Order, directed that a plan for disseminating notice of the Settlement (“Notice Plan”) be implemented, and scheduled a hearing to be held on March 24, 2026, to determine whether the Proposed Settlement should be approved as fair, reasonable and adequate; and

WHEREAS, Loya and Class Counsel have satisfactorily demonstrated to the Court that the Notice Plan was followed; and

WHEREAS, a Final Settlement Hearing was held on March 24, 2026, at which all interested persons were given an opportunity to be heard, and no objections to the settlement were raised,

NOW, THEREFORE, the Court, having read and considered all submissions made in connection with the Proposed Settlement, having reviewed and considered the files and records herein, and having heard from counsel for the parties at the final fairness hearing, finds and concludes as follows:

1. The Complaints filed in these consolidated Actions allege generally that Defendants sold “illusory” or misleading uninsured/underinsured motorists (“UM/UIM”) coverage in New Mexico automobile insurance policies (the “Policies”) by failing to adequately explain the effect of an offset against UIM coverage of the tortfeasor’s liability coverage pursuant to *Schmick v. State Farm Mutual Automobile Insurance Company*, 1985-NMSC-073, 103 N.M. 216, 704 P.2d 1092.

2. Pursuant to Federal Rule of Civil Procedure 23, this Court certifies, solely for purposes of effectuating the Settlement, these Actions as class actions on behalf of the Settlement Class, defined as:

All YAIC and LIC policyholders and insureds between October 1, 2010 and February 28, 2022, who (i) resided in New Mexico and (ii) purchased or otherwise paid premium to Young America or Loya for an insurance policy that included UM/UIM coverage; and/or (iii) made a claim for UIM benefits to YAIC or LIC after October 1, 2010 under an insurance policy that included UM/UIM coverage but did not include the disclosure or exclusion required by *Crutcher v. Liberty Mutual Insurance Company*, No. S-1-SC-37478, 501 P.3d 433 (N.M. 2021), and had UIM benefits reduced or denied due to the *Schmick offset*. Excluded from the Class are: (A) any claimant who has separately filed suit against YAIC or LIC up to the Notice Date, the subject of which suit includes the reduction or denial of UIM benefits on the basis of the *Schmick offset*, (B) any individual who has settled a claim for UIM benefits reduced or denied on the basis of the *Schmick offset*, whose claim was adjusted or readjusted without applying the *Schmick offset*, and signed a final release prior to the Notice Date, (C) any claimant whom, at the claimant's request, YAIC or LIC has already readjusted a claim for UIM benefits reduced or denied on the basis of the *Schmick offset*, (D) the judge(s) presiding over these Actions, and (E) any employees of the Released Parties.

3. The Court hereby affirms this definition of the Settlement Class for purposes of this Order and the Final Judgment which is filed concurrently herewith.

4. For purposes of Settlement only, the Named Plaintiffs possess standing and the proposed Settlement Class is adequately defined and ascertainable. The Settlement Class is adequately defined because the class definition is clear and precise, is based on objective criteria, and, because it only includes insureds who also suffered redressable harm, it is not overbroad.

5. For purposes of Settlement only, the Class is sufficiently numerous, there are questions of law and fact common to the Settlement Class (including whether Defendants' UM/UIM coverage was illusory or misleading), and Plaintiffs' claims are typical of the Settlement Class. In addition, both Plaintiffs and Class Counsel are adequate representatives of the Settlement Class and have fairly and adequately protected and will continue to protect the interests of the Settlement Class. Thus, the requirements to certify a class prescribed by Fed. R. Civ. P. 23(a) are satisfied as to the Settlement Class for purposes of settlement.

6. For purposes of Settlement only, the Settlement Class is certifiable under Rule 23(b)(3) because common issues predominate over individual issues and class treatment is superior to other alternatives for adjudicating the claims at issue.

7. The Plaintiffs and Loya have entered into the Agreement which has been filed with the Court. The Agreement provides for the Settlement of these Actions with Defendants on behalf of the Plaintiffs and the Settlement Class Members, subject to approval by the Court of its terms. The Court scheduled a hearing to consider the approval of the Settlement and directed that the Class Notice be disseminated in accordance with the terms of the Preliminary Approval Order.

8. In accordance with the terms of the Settlement and the Preliminary Approval Order, the Parties implemented the Notice Plan approved by the Court. Loya's counsel and Class Counsel have confirmed to the Court that the Parties complied with the Notice Plan.

9. The Court hereby finds that the Notice Plan and the Class Notice constituted the best notice practicable under the circumstances, and constituted valid, due and sufficient notice to members of the Settlement Class.

10. Plaintiffs and Loya have applied to the Court for final approval of the terms of the Proposed Settlement and for the entry of this Order and the Final Judgment. Pursuant to the Class Notice, a Final Fairness Hearing was held on March 24, 2026 to determine whether the proposed Settlement of the Actions should be finally approved as fair, reasonable, and adequate, and whether the Order and the Final Judgment approving the Settlement and dismissing all claims in the Action on the merits, with prejudice and without leave to amend should be entered.

11. The Court hereby finds that final approval of the Agreement and the Settlement embodied therein will result in substantial savings of time and money to the Court and the litigants and will further the interests of justice.

12. The Court hereby finds that the Proposed Settlement is the result of good faith arm's length negotiations by the Parties thereto, and is fair, reasonable, and adequate.

13. The Court has considered Tenth Circuit and New Mexico state law in determining the appropriate percentage of the fund attorney fee award to class counsel and hereby finds that the requested attorneys' fees, costs (including the Settlement Administration and mediation costs), and gross receipts taxes in the total combined amount of \$699,492,54 is reasonable and appropriate. *See Chieftan Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 458 (10th Cir. 2017); *In re N.M. Indirect Purchasers Microsoft Corp.*, 2007-NMCA-007, ¶¶ 39, 140 N.M. 879, 896, 149 P.3d 976, 993.

14. The Court finds that Class counsel has demonstrated that the class representatives expended time in a manner that was helpful to the litigation and clearly benefited the class as a

whole. The Court further finds that the requested class representative incentive fee of \$10,000.00 for each of the two class representatives is reasonable, similar to other incentive awards in class action litigation involving the *Schmick* offset in this district, and that the total combined amount of \$20,000.00 is reasonable given all circumstances presented here.

NOW, THEREFORE, GOOD CAUSE APPEARING, IT IS ORDERED, ADJUDGED AND DECREED THAT:

15. The Court possesses jurisdiction over the subject matter of these Actions, the Plaintiffs, the Settlement Class Members, Defendants, and the Released Parties. Venue is proper in this Court.

16. This Order incorporates and makes a part hereof: (a) the Agreement, dated October 13, 2025, including the definitions in the Agreement, (b) the Notices attached as Exhibits thereto, respectively, and (c) the Court's October 29, 2025, Order Preliminarily Approving Settlement, Approving Notice to Settlement Class Members, and Setting Date for Final Approval Hearing.

17. There were no Class Members that filed timely and valid requests for exclusion. All other Settlement Class Members are therefore bound by this Order and the Final Judgment and by the Agreement and the Settlement embodied therein, including the Releases. There were no objections to the Settlement.

18. All provisions and terms of the Settlement are hereby found to be fair, reasonable and adequate as to the Settlement Class Members and the Named Plaintiffs and are in compliance with due process and federal and New Mexico law, and all provisions and terms of the Settlement are hereby finally approved in all respects.

19. The Court finds that the dissemination of Notice to the Settlement Class Members (a) was 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 Settlement Class Members of (i) the pendency of the Actions; (ii) their right to submit a claim (where applicable) by submitting a Claim Form; (iii) their right to exclude themselves from the Settlement Class; (iv) the effect of the proposed Settlement (including the releases to be provided thereunder); (v) Class Counsel's motion for a fee award and costs and for incentive awards to the Class Representatives; (vi) their right to object to any aspect of the Settlement, and/or Class Counsel's motion for a fees award and costs and incentive awards to Class Representatives; and (vii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate, and sufficient notice to all natural persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

20. All claims in these consolidated Actions, as well as the Actions themselves, are dismissed in their entirety, on the merits, with prejudice and without leave to amend, and all members of the Settlement Class and their respective heirs, executors, administrators, partners, agents, and the successors and assigns of each of them, shall be forever barred and permanently enjoined from asserting, either directly or indirectly, individually, or in a representative capacity or on behalf of or as part of a class, and whether under State or Federal statutory or common law, any Released Claims against any of the Released Parties.

21. As of the Effective Date, by operation of the entry of this Order and the Final Judgment, the Releasing Parties shall be deemed to have fully released, waived, relinquished and discharged, to the fullest extent permitted by law, all Released Claims that the Releasing Parties may have against all the Released Parties. Plaintiffs and Settlement Class Members are hereby

barred and permanently enjoined from instituting, asserting, or prosecuting any or all of the Released Claims against any of the Released Parties.

22. The releases, including Released Claims, Released Persons, and Releasing Parties, as set forth in Paragraphs dd, ee and ff of Sections II and VIII “Releases” of the Agreement are expressly incorporated herein in all respects. The releases are effective as of the Effective Date. Accordingly, this Court orders pursuant to this Order, without further action by anyone, upon the Effective Date of the Settlement, as provided in the Agreement, that Plaintiffs and each and every member of the Settlement Class shall have released the Released Claims against the Released Persons. Notwithstanding the foregoing, nothing in this Order shall bar any action by any of the Parties to enforce or effectuate the terms of the Agreement or this Order.

23. The facts of the Settlement, the Agreement, this Order, and the Final Judgment do not constitute admissions of liability, wrongdoing, or fault by Defendants, or a finding of the validity of any claims in the Actions or of any wrongdoing or violation of law by Defendants, or an admission of the appropriateness of class certification for trial or dispositive motion practice. Nothing related to the Settlement or Agreement shall be offered or received in evidence as an admission, concession, presumption, or inference against Defendants or any of the Released Parties in any proceeding. The Agreement and Settlement are not a concession by the Parties and, to the extent permitted by law, neither this Order, nor the Final Judgment, nor the Settlement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall not: (a) be construed as an admission of liability or an admission of any claim or defense on the part of any party, in any respect; (b) be construed as an admission by Loya regarding the appropriateness of certification of any class other than the Settlement Class denied above, solely for settlement purposes; (c) form the basis for any claim of estoppel by any third party against any

of the Released Parties; or (d) be admissible in any action, suit, proceeding, or investigation as evidence, or an admission of any wrongdoing or liability whatsoever by any party, or as evidence of the truth of any of the claims or allegations in the Complaints. However, Defendants may use the Agreement or the exhibits thereto, and the Settlement, and/or any related document, in any action that may be brought against it in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion relating to the Released Claims set out in the Agreement.

24. Only to the extent that it is otherwise not violative of any applicable rules governing the practice of law, Class Counsel agree that any representation, encouragement, solicitation or other assistance, including, but not limited to, referral to other counsel, of any Opt Out or any other person seeking to litigate with any of the Released Parties over any of the Released Claims or to represent any form of opt-out class, could place Class Counsel in an untenable conflict of interest with the Class. Accordingly, Class Counsel and their respective firms shall not (only to the extent that it is otherwise not violative of any applicable rules governing the practice of law) represent, encourage, solicit or otherwise assist, in any way whatsoever (including, but not limited to referrals to other counsel) any Opt Out or any form of opt-out class, except that referring such person to the Notice or suggesting to any such person the option of obtaining separate counsel, without specifically identifying options for such counsel, shall be permitted.

25. The Court has considered the request for a Class Representative incentive awards, and hereby approves and awards the Plaintiffs an amount of \$ 10,000.00 each, to be paid by the Settlement Fund.

26. The Court has considered Class Counsel's request for an Attorneys' Fees award for the prosecution of these Actions, and hereby makes an Attorneys' Fees, costs (including settlement administration and mediator fees) and gross receipts tax award in the total combined amount of \$ 699,492.54 to be paid by the Settlement Fund.

27. This Order and the Final Judgment are final orders in the Actions within the meaning and for the purposes of the Federal Rules of Civil Procedure as to all claims among Defendants on the one hand, and the Plaintiffs, Class Representatives and all Settlement Class Members, on the other, and there is no just reason to delay enforcement or appeal.

28. If the Settlement is terminated as provided in the Agreement or the Effective Date of the Settlement otherwise fails to occur, this Order shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Agreement, and this Order shall be without prejudice to the rights of Plaintiffs, Settlement Class Members, and Defendants, and the Parties shall be deemed to have reverted *nunc pro tunc* to their respective litigation positions in the Action immediately prior to the execution of the Agreement.

29. Without in any way affecting the finality of this Order and the Final Judgment, this Court shall retain continuing jurisdiction over these Actions for purposes of:

- A. The implementation, enforcement, and performance of the Agreement and the Settlement;
- B. Any suit, action, proceeding or dispute arising out of or relating to the Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties;
- C. The administration, consummation, and enforcement of Agreement; and
- B. Hearing and determining any application by any Party to the Settlement for a settlement bar order; and

C. Any other matters related or ancillary to any of the foregoing.

IT IS SO ORDERED.

DATED: March 25, 2026

A handwritten signature in black ink, reading "Kirtan Khalsa". The signature is written in a cursive style with a horizontal line underneath it.

KIRTAN KHALSA
UNITED STATES MAGISTRATE JUDGE
Presiding by Consent