

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 D.R. Horton, Inc. and Natalie Zitek, )  
 Individually and in her class representative )  
 capacity, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 Federated Mutual Insurance Company, )  
 et al.; )  
 )  
 Defendants, )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT  
 CIVIL ACTION NO.: 2023-CP-23-01810

**ORDER GRANTING APPROVAL OF  
 FINAL RESOLUTION OF  
 HOMEOWNER CLAIMS**

**(This Order does not end case)**



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ANDERSON )  
 )  
 Natalie Zitek, individually and on behalf of )  
 all others similarly situated, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 D.R Horton, Inc., )  
 )  
 Defendant. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 TENTH JUDICIAL CIRCUIT  
 CASE NO.: 2019-CP-04-01942

This matter came before the Court on Plaintiff Natalie Zitek’s Motion for Approval of Settlement, Fees, and Expenses filed on December 22, 2025. The proposed settlement (“The Settlement”) is a class-wide settlement entered between Plaintiff Zitek, on behalf of the previously certified Rose Hill homeowner class, and Defendant Selective Insurance Company of America (“Selective”), the insurer for JLS Masonry, Inc. (“JLS”). The Settlement, if approved, will provide

a complete release and resolution of all claims between Plaintiff, Selective, and JLS in this coverage action, the underlying class action, and the related appeal. Hereinafter, “Plaintiff” will refer to Plaintiff Zitek and the certified class in the second, above-captioned action. This Order does not affect the claims asserted by the other Plaintiff, D.R. Horton, in the first above-captioned action against the insurance carriers for the other subcontractor defendants in the underlying action.

Plaintiff’s Motion and a Notice of Proposed Settlement (“Notice”) were emailed, mailed, and/or hand delivered to all class members on December 19, 2025. The Notice provided details of The Settlement and outlined proper action to take should there be any objection to The Settlement. The deadline for objections was January 5, 2026. Class Counsel has filed a report indicating that they performed the foregoing service and did not receive any objections. Therefore, this Court will address this matter on the below described record already before it. For the reasons set forth in the remainder of this Order, the Court GRANTS Approval of The Settlement and ORDERS as follows:

**I. JURISDICTION**

The Court has personal jurisdiction over the parties and all class members, and has subject-matter jurisdiction over this action, including, without limitation, jurisdiction to approve The Settlement, and to retain jurisdiction over any and all final settlement and release documents entered by Plaintiff and Selective.

**II. BACKGROUND**

This declaratory judgment action first captioned above arises out of the second above-captioned, underlying, construction defect, certified class action. During the trial of the underlying action, Plaintiff was assigned D.R. Horton, Inc.’s (“Horton”) claims and rights as part of a financial

settlement of Plaintiff's claims.<sup>1</sup> Plaintiff provided Horton a covenant not to execute, and Horton re-tendered its defense to the remaining, non-settling parties during the trial.

Most of the assigned claims and rights were settled during the ensuing trial days. Approved trial and pre-trial settlements in the underlying action total \$18.5m. However, Plaintiff's claims against subcontractor JLS were not resolved. Plaintiff went to verdict against Horton and JLS in that action. JLS and its insurer, Selective, have appealed the verdict against JLS. This appeal has now been remanded for the Circuit Court to consider the instant settlement.

Plaintiff Zitek was substituted into this action on Horton's assigned claims against Selective. The parties have litigated this coverage matter for several years.

Mediation in this matter was held on November 20, 2025, and conducted by Attorney Bill Lyles of the Charleston County Bar. While the parties were unable to reach agreement at mediation, the mediator did forge a framework for continued work, which ultimately resulted in the instant settlement being considered here.

### **III. PROPOSED SETTLEMENT**

Plaintiff seeks approval of the settlement of all remaining class claims against JLS and its insurer, Selective, for the sum of Ten Million Dollars (\$10,000,000.00).

If approved, The Settlement will provide Plaintiff and the class a gross recovery of \$10,000,000.00 and provide Selective and JLS a complete and mutual release and resolution of the Zitek case, the Zitek appeal, and this coverage case.

The Settlement requires, in typical fashion, that the settling party/its carriers pay a sum certain in exchange for receiving a complete mutual release and a dismissal of Plaintiff's claims

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<sup>1</sup> Plaintiff was also assigned other claims and rights by D.R. Horton which are not at issue here.

against the settling parties with prejudice.<sup>2</sup> The Settlement further provides for Plaintiff to procure this Court's approval of this compromise (as does Rule 23, SCRCF).

Plaintiff's Motion also seeks approval of the following allocation of The Settlement:

Settlement Amount:	\$10,000,000.00
Fees (38% Contingency):	\$ 3,800,000.00
Expenses in underlying case:	\$ 45,667.94
Expenses in present case:	\$ 5,272.82
<b>NET RECOVERY TO CLASS:</b>	<b>\$ 6,149,059.24</b>

Should The Settlement be approved, all of Plaintiff's claims against JLS and Selective will be fully resolved and dismissed, and JLS and Selective will end the appeal of the verdict entered against JLS in the underlying class action.<sup>3</sup>

#### IV. NOTICE PLAN

Plaintiff's Notice was emailed, mailed, and/or hand delivered to all class members on December 19, 2025. The deadline for objections was January 5, 2026. Class Counsel has filed a report indicating that they did not receive any objections.

The Court finds that the Notice has been faithfully carried out and constituted the best practicable notice to class members under the circumstances of this action, and was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with Notice. The Court further finds that the Notice was reasonably calculated to apprise all class members of their rights and the binding nature of The Settlement.

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<sup>2</sup> Horton may have one or more claims against other subcontractors insured by Selective (other than JLS) and against Selective relating to other, non-JLS subcontractors, which were not assigned to Zitek and are unaffected by this Settlement.

<sup>3</sup> On January 22, 2026, the South Carolina Court of Appeals issued an Order dismissing and remanding the appeal to the Circuit Court for consideration of the settlement approval.

## V. APPROVAL OF THE SETTLEMENT

A class action may not be dismissed without approval of the court and notice to all class members in a manner prescribed by the court. Rule 23(c), SCRCP. The Rule further provides that the court may, through an order, impose any terms at any time which “fairly and adequately protect the interests of the persons on whose behalf the action is brought.” Rule 23(d), SCRCP.

The focus of a court reviewing a class action settlement is on a series of factors in the two (2) major categories of fairness and adequacy. *Montgomery County Real Estate Antitrust Lit. v. ack Foley Realty Inc.*, 83 F.R.D. 305, 315 (D.M.D. 1979).<sup>4</sup> “To determine whether a proposed settlement is fair, reasonable, and adequate, the court must examine whether the interests of the class are better served by the settlement than by further litigation.” *Kirven v. Cent. States Health & Life Co. of Omaha*, No. 11-2149, 2015 WL 1314086, at \*4 (D.S.C. Mar. 23, 2015) (internal quotations omitted).

Accordingly, the Court finds as follows:

### A. The Settlement is Fair

In assessing a proposed class action settlement “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Brunson v. Louisiana-Pac. Corp.*, 818 F. Supp. 2d 922, 927 (D.S.C. 2011) (citing Newberg & Conte, *Newberg on Class Actions* § 11.41 (3d ed. 1992); see also *Preisendorf v. JK Harris Co., LLC*, No. 05-CP-10317, 2007 WL 5844105 (S.C.

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<sup>4</sup> The Fourth Circuit adopted *Montgomery*’s methodology in *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991).

Com. Pl. July 10, 2007) (“When sufficient discovery has been provided and the parties have bargained at arms-length, there is a presumption in favor of settlement.”).

The Court finds that Plaintiff has offered sufficient evidence to have satisfied these requirements and that approval of The Settlement is favored for the following reasons:

*i. The Settlement is Reached Through Arm’s-Length Bargaining*

As discussed above, the parties mediated the case on November 20, 2025. The Settlement is the result of extensive negotiations overseen by and facilitated through mediator Bill Lyles. There is no evidence of any collusion between the parties. Further, the circumstances surrounding the negotiations only suggest the settlements were the result of good-faith bargaining at arms-length. As a result, the Court finds that the parties have demonstrated that The Settlement was reached through arm’s-length bargaining.

*ii. Investigation and Discovery are Sufficient to Allow Counsel and The Court to Act Intelligently*

The underlying Zitek case was litigated for four years, and the subsequent Zitek appeal and this coverage case have been litigated for several more years. The case was a complex, construction defect class action, with many construction and legal issues, which required the use of the Anderson Convention Center to strike a jury and two weeks to try the case to a verdict. The parties engaged in discovery in this case prior to mediation which allowed Class Counsel to put on a presentation at mediation that Selective apparently found meaningful. Plaintiff’s Motion and accompanying exhibits adequately informed the Court of the facts and procedural posture relevant to The Settlement. Accordingly, the Court finds that there has been sufficient investigation and discovery to allow both counsel and the Court to act intelligently when evaluating The Settlement.

*iii. Counsel is Experienced in Similar Litigation*

In support of the Motion, Class Counsel submitted an Affidavit providing a detailed account of his firm's extensive experience in complex financial litigation, representative actions, and construction defect claims. (*See* Aff. Of Justin Lucey). Class Counsel has handled many of these claims and has tried more than a few to verdict. Additionally, Class Counsel has handled appeals resulting in many reported decisions relating to contracts, construction, developer duties, and insurance policy interpretation. The Court finds that the requirement that counsel is experienced in similar litigation is clearly met.

*iv. The Percentage of Objectors is Small*

To date, Class Counsel has not received any objections to The Settlement. Instead, the only feedback was positive as evidenced by the Affidavit of Plaintiff Natalie Zitek, which was filed as an exhibit to the Motion for Approval (*See* Aff. of Natalie Zitek). As a result, the parties have made a *prima facie* showing that the percentage of objectors is small or does not exist.

**B. The Settlement is Reasonable and Adequate**

The Court also finds that The Settlement is reasonable and adequate. Factors to consider when assessing the reasonableness and adequacy of a proposed class settlement include: "(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991). In this matter, these factors have been considered and met, as follows:

***i. The Relative Strength of the Plaintiff's Case on the Merits***

While Plaintiff believes the merits of the coverage case to be strong, evaluation of the same must be tempered by the availability of not insubstantial defenses, coupled with difficulties of proof, which strongly suggest that substantial weight should be accorded to the suggestion of Class Counsel that The Settlement is the preferable alternative. *See id.*

***ii. The Existence of Difficulties of Proof or Strong Defenses***

Selective has raised numerous defenses to both the additional insured claim predicated on the verdict against Horton and the coverage claim predicated on the verdict against JLS. These defenses included coverage exclusions, inadequate notice, and lack of damages proximately resulting from a covered event. While Plaintiff strongly contests these defenses, Plaintiff has acknowledged their presence and that they are potential obstacles to a greater recovery at trial.

***iii. The Anticipated Duration and Expense of Additional Litigation***

If The Settlement with Selective and JLS had not been accomplished, Plaintiff would have continued to incur substantial additional litigation expenses, including additional expert work, trial preparation, testimony related to the insurance coverage issues in anticipation of trial, as well as appellate work, both in the current JLS appeal and a future appeal of a successful outcome in the coverage action. In addition to additional expense, this would result in a significant delay to further compensation to the homeowners. Therefore, this factor weighs in favor of approval.

***iv. The Solvency of the Defendants and the Likelihood of Recovery on a Litigated Judgment***

The solvency of JLS was a consideration in evaluating and accepting The Settlement. In construction litigation, solvency often equates to insured damages. Absent insurance coverage, there was little expectation that JLS could satisfy judgment. Therefore, this factor weighs in favor of approving The Settlement.

*v. The Degree of Opposition to the Settlement*

No class member (or any party to this litigation) has objected to The Settlement. For this reason, this factor weighs heavily in favor of approving The Settlement.

**X. ATTORNEY FEES AND COSTS**

Class Counsel submitted an Affidavit providing a detailed analysis regarding the fairness of the attorney's fees sought in connection with The Settlement. (*See* Aff. of Justin Lucey, attached as Ex. A to Pl. Motion for Approval of Settlement, Fees, & Expenses, filed December 22, 2025). The Court has reviewed Class Counsel's Affidavit and finds that the fees and expenses sought in connection with The Settlement are reasonable under the six (6) factors enunciated in *Baron Data Systems, Inc. versus Loter*, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989). (*See* Aff. of Justin Lucey, ¶¶ 8-13).<sup>5</sup> Having found Class Counsel's fees and expenses to be reasonable, the Court approves the award of attorney's fees to Justin O'Toole Lucey, P.A., in the amount of \$3,800,000.00; reimbursement of expenses in the underlying case in the amount of \$45,667.94; and reimbursement of expenses in the present case in the amount of \$9,121.19.

**IX. BINDING EFFECT**

The terms of this court-approved settlement and accompanying releases shall be forever binding on Plaintiff and all class members, as well as their heirs, executors, administrators, representatives, agents, transferees, successors and assigns, and those terms shall have *res judicata* and other preclusive effect in all pending and future claims, lawsuits or other proceedings

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<sup>5</sup> Specifically as to these factors, the outcome alone evidences satisfaction of these factors; however, the Court expressly finds that the services were vigorously rendered on a complex, difficult matter, the time and labor have been shown to be justified, the professional standing of counsel is beyond question, the matter was handled on contingency, and the amount of contingency is reasonable, if not low, for this type of representation, and the results are extremely beneficial.

maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings involve matters that were or could have been raised in this action.

**XI. RETENTION OF JURISDICTION**

The Court retains exclusive jurisdiction over Plaintiff, Selective, all class members, and the above first-captioned lawsuit, with respect to matters arising from or connected with The Settlement.

**XII. DISTRIBUTION TO CLASS MEMBERS**

Class Counsel has indicated that it will immediately file a distribution petition in the underlying proceeding; and Class Counsel is authorized to hold the net funds in a segregated, collateralized, interest bearing account pending the underlying Court's approval of the distribution of net proceeds amongst class members. Therefore,

IT IS ORDERED, ADJUDGED, AND DECREED:

1. The foregoing Settlement, distribution, and terms are approved;
2. Plaintiff's claims against Selective are dismissed with prejudice;
3. Plaintiff's claims against JLS in the underlying defect action are dismissed with prejudice;
4. Plaintiff shall notice the cancelation the judgment obtained against JLS and D.R. Horton in the underlying defect action and confirm that is of no further force or effect;
5. Plaintiff's release of Selective and JLS is hereby incorporated by reference and made order of this Court;
6. Plaintiff Zitek and her class are dismissed from this matter;
7. This Order does not affect D.R. Horton's remaining claims in this matter; and

8. This Court retains jurisdiction of the dismissed claims for sixty days to enforce The Settlement.

AND IT IS SO ORDERED!

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Presiding Judge – Thirteenth Judicial Circuit

January \_\_\_\_, 2026  
Greenville, South Carolina



## Greenville Common Pleas

**Case Caption:** DR Horton Inc , plaintiff, et al vs. American Guarantee And Liability Insurance Company , defendant, et al  
**Case Number:** 2023CP2301810  
**Type:** Order/Approval Of Settlement

So Ordered

Vernon F. Dunbar