

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

TAMERA S. LECHNER, Individually, on behalf of the Mutual of Omaha 401(k) Long-Term Savings Plan and on behalf of a class of all those similarly situated; REGINA K. WHITE, Individually, on behalf of the Mutual of Omaha 401(k) Long-Term Savings Plan and on behalf of a class of all those similarly situated; and STEVEN D. GIFFORD, Individually, on behalf of the Mutual of Omaha 401(k) Long-Term Savings Plan and on behalf of a class of all those similarly situated;

Plaintiffs,

vs.

MUTUAL OF OMAHA INSURANCE COMPANY, UNITED OF OMAHA LIFE INSURANCE COMPANY, and JOHN DOES 1-50,

Defendants.

**8:18CV22**

**ORDER PRELIMINARILY CERTIFYING  
SETTLEMENT CLASS and  
PRELIMINARILY APPROVING CLASS  
ACTION SETTLEMENT**

Pursuant to the Memorandum and Order entered this date,

IT IS HEREBY ORDERED:

1. The following Settlement Class is certified for settlement purposes under [Federal Rule of Civil Procedure 23\(b\)\(1\)](#) in this litigation (hereinafter the "Settlement Class"):

All persons who are or were participants or beneficiaries in one or both of the Plans at any time during the Class Period, including any Beneficiary of a deceased person who participated in one or both of the Plans at any time during the Class Period, and/or Alternate Payee, in the case of a person subject to a Qualified Domestic Relations Order who participated in one or both of the Plans at any time during the Class Period. Excluded

from the Settlement Class are all current and/or former employees of Defendants who were members of the Administration Committee, Investment Committee, and/or IMOC during the Class Period.

The "Class Period" shall be defined as January 25, 2012 through February 28, 2020.

2. Schneider Wallace Cottrell Konecky LLP and Berger Montague PC are preliminarily certified as co-lead class counsel ("Class Counsel") with respect to the Settlement Class in this Action.
3. Plaintiffs Tamera S. Lechner, Regina K. White and Steven D. Gifford are preliminarily appointed as the representatives of the Settlement Class.
4. Members of the Settlement Class shall be bound by any judgment concerning the Settlement in this Action, subject to the Court's final determination as to whether this Action may so proceed.
5. The Settlement Agreement ([Filing No. 101-2](#), Exhibit 1) is hereby preliminarily approved and incorporated herein as if fully set forth.
6. Heffler Claims Group is appointed Settlement Administrator.
7. The Court approves the form and content of the Class Notice ([Filing No. 101-3](#), Exhibit 2).
8. Within forty-five (45) days of the date of this order, the Settlement Administrator shall cause the Class Notice, with any non-substantive modifications thereto as may be agreed upon by the Parties, to be distributed, by first-class U.S. Mail to each member of the Settlement Class who can reasonably be identified and contacted at his or her last-known address as maintained by each Plan's Recordkeeper or other third party

with custody and control of the data. Class Counsel shall also establish follow up procedures for any returned mailings.

9. Within forty-five (45) days of the date of this order, Plaintiffs also shall cause the Class Notice to be published on the website identified in the Class Notice [Filing No. 101-3](#), Exhibit 2).
10. A hearing (the “Fairness Hearing”) pursuant to [Fed. R. Civ. P. 23\(e\)](#) is hereby scheduled to be held before the Court on February 1, 2021, at 3:00 p.m. in U.S. District Court, in Courtroom No. 3, Roman Hruska Federal Courthouse, 111 South 18th Plaza, Omaha, Nebraska for a final determination of:

- (a) Whether the Settlement should be finally approved as fair, reasonable, and adequate;

- (b) Whether the Settlement Class satisfies the requirements of [Fed. R. Civ. P. 23](#), and should be finally certified as preliminarily found by the Court;

- (c) Whether the litigation should be dismissed with prejudice pursuant to the terms of the Settlement Agreement;

- (d) Whether the Final Approval Order attached to the Settlement Agreement should be entered and whether the Releasees should be released of and from the Released Claims, as provided in the Settlement Agreement;

- (e) Whether the notice and notice methodology implemented pursuant to the Settlement Agreement (i) were reasonably calculated, under the circumstances, to apprise Members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing; (ii) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and (iii) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law;

(f) Whether Class Counsel adequately represents the Settlement Class for purposes of entering into and implementing the Settlement Agreement as required by Fed. R. Civ. P. 23(g) and as preliminarily found by the Court;

(g) Whether the proposed Plan of Allocation of the Net Settlement Fund is fair, reasonable, and adequate and should be approved by the Court;

(h) Whether the application for attorneys' fees and expenses to be filed by Class Counsel should be approved;

(i) Whether case contribution awards should be awarded to Plaintiffs; and

(j) Any other issues necessary for approval of the Settlement.

11. Not more than fourteen days before the Fairness hearing, Class Counsel shall file with the Court proof of Class Counsel's timely compliance with the foregoing mailing and publication requirements, identifying class members who cannot be located despite reasonable efforts.
12. No later than twenty-eight days before the hearing, Class Counsel shall file with the Court a motion for entry of the Final Approval Order and approval of the Plan of Allocation, a motion for approval of attorneys' fees and expenses, and a motion for approval of case contribution awards to the Named Plaintiffs.
13. Any member of the Settlement Class who wishes to object to the fairness, reasonableness or adequacy of the Settlement, to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed case contribution awards, or to the proposed award of attorney fees and expenses should file with the Court a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support

or evidence that such Objector wishes to bring to the Court's attention or introduce in support of such objection. Any objection must be signed by the Settlement Class member. The Objector should also mail the objection and all supporting law and evidence to counsel for the Parties, as stated below. The addresses for filing objections with the Court and serving objections on counsel are:

**PLAINTIFFS' COUNSEL**

John Nestico  
Schneider Wallace Cottrell Konecky LLP  
6000 Fairview Road, Suite 1200  
Charlotte, NC 28210

Todd Collins  
BERGER MONTAGUE PC  
1818 Market Street, Suite 3600  
Philadelphia, PA 19103-6365

**DEFENDANTS' COUNSEL**

Christopher J. Boran  
Morgan, Lewis & Bockius LLP  
77 West Wacker Drive  
Chicago, IL 60601-5094

**COURT CLERK**

Clerk, US District Court  
Roman Hruska Federal  
Courthouse  
11 South 18th Plaza  
Omaha, NE 02903

The Objector, or, if represented by counsel, his, her, or its counsel, should effect service of the objection on counsel listed above and file the objection with the Court at least twenty (20) calendar days prior to the Fairness Hearing. Any Member of the Settlement Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph may be deemed to have waived, and may be foreclosed from raising, any objection to the Settlement and any untimely objection may be barred. The Parties shall respond to any Objector at least seven (7) calendar days prior to the Fairness Hearing.

14. An Objector who files and serves a timely, written objection in accordance with the paragraph above may also appear at the Fairness Hearing either in person or through counsel. Objectors or their attorneys intending to

appear at the Fairness Hearing should effect service of a “Notice of Intention to Appear” setting forth, among other things, the name, address, and telephone number of the Objector (and, if applicable, the name, address, and telephone number of the Objector’s attorney) on counsel identified above and should file it with the Court at least twenty (20) calendar days prior to the Fairness Hearing. Any Objector who does not timely file and serve a “Notice of Intention to Appear” in accordance with this paragraph will be permitted to appear at the Fairness Hearing on a showing of good cause. Each Parties’ counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

15. No later than ten (10) calendar days prior to the Fairness Hearing, the defendants shall file with the Court proof of compliance with the Class Action Fairness Act of 2005 (“CAFA”), as specified in [28 U.S.C. § 1715](#) and paragraph 2 of the Stipulation. The Court hereby approves the form of CAFA notice ([Filing No. 101-2](#), Settlement Agreement, Exhibit 4) and orders that, upon mailing of the CAFA notices, Defendants shall have fulfilled their obligations under CAFA
16. Reasonable expenses of effectuating Class Notice shall be paid out of the Settlement Fund.
17. Pursuant to the Settlement Agreement, all fees and expenses incurred by the Independent Fiduciary (including fees and expenses incurred by consultants, attorneys, and other professionals retained or employed by the Independent Fiduciary) in the course of evaluating and authorizing the

Settlement on behalf of the Plans will be paid from the Gross Settlement Amount. The Court understands that the expenses incurred by the Settlement Administrator in administering the Settlement and allocating the Settlement Fund pursuant to the Plan of Allocation approved by the Court shall be paid out of the Settlement Fund.

18. Pending final determination of whether the Settlement should be approved, all Members of the Settlement Class (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) and the Plans are each hereby barred and enjoined from instituting or prosecuting any action that asserts any Released Claim against any Released Parties.
19. If the Settlement is terminated in accordance with the Settlement Agreement or does not become Final under the terms of the Settlement Agreement for any other reason, this Order and all class findings 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.
20. In the event this Order becomes of no force or effect, no part of it shall be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability, nor shall the Order be construed or used as an admission, concession, or declaration by or against Plaintiffs or the Settlement Class that their claims lack merit or that

the relief requested in the Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have.

21. The Court reserves the right to continue the Fairness Hearing without further written notice.

Dated this 8th day of October, 2020.

BY THE COURT:

s/ Joseph F. Bataillon  
Senior United States District Judge