

DISTRICT COURT, BOULDER COUNTY, STATE OF  
COLORADO  
Boulder Justice Center  
1777 6<sup>th</sup> Street  
Boulder, CO 80302

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LAURIE LEWIS, individually and on behalf of all others  
similarly situated,

Plaintiff,

v.

MERASTAR INSURANCE COMPANY,

Defendant.

▲ COURT USE ONLY ▲

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Avi S. Rocklin  
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Case Number: 06CV332  
Div.: 3

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**SETTLEMENT AGREEMENT BETWEEN PLAINTIFF, INDIVIDUALLY AND ON  
BEHALF OF A CLASS, AND DEFENDANT MERASTAR INSURANCE COMPANY**

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**SETTLEMENT AGREEMENT BETWEEN PLAINTIFF, INDIVIDUALLY  
AND ON BEHALF OF A CLASS, AND DEFENDANT MERASTAR  
INSURANCE COMPANY**

Plaintiff Laurie Lewis (“Plaintiff”), on behalf of herself and the Settlement Class she seeks to represent, by her undersigned counsel of record, and Defendant Merastar Insurance Company (“Merastar”) by its undersigned counsel of record, hereby stipulate and agree that, subject to Court approval under Colo. R.Civ. P. 23, Plaintiff’s claims in this Litigation against Defendant Merastar Insurance Company will be settled and dismissed on the terms and conditions set forth in this Settlement Agreement (“Settlement Agreement”).

**I. DEFINITIONS**

The following words and phrases shall have the following meanings throughout this Settlement Agreement:

1. The word and phrase “Plaintiff” or “Class Representative” means Laurie Lewis.
2. The phrase “Settling Defendant” means Merastar Insurance Company.
3. The phrase “Settlement Class” or “Settlement Class Members” means all persons or entities assessed premiums by Settling Defendant for uninsured/underinsured motorist insurance (“UM/UIM”) coverage, pursuant to C.R.S. 10-4-609, on more than one motor vehicle at the same time, and based on the number of vehicles insured, in Colorado between May 1, 2001 and August 1, 2005 for new policies of personal lines automobile insurance and between May 1, 2001 and March 1, 2006 for renewal policies of personal lines automobile insurance, including any of their heirs, executors, administrators, personal representatives, successors and/or assigns, but excluding Settling Defendant and its employees, officers, directors and agents.

4. The phrase “Class Period” means the time period from May 1, 2001 to August 1, 2005 for new policies of personal lines automobile insurance, and from May 1, 2001 to March 1, 2006 for renewal policies of personal lines automobile insurance, inclusive of those dates.

5. The word “Litigation” means the above-captioned civil action filed in the District Court for Boulder County, Colorado insofar as it relates to the claims brought by Plaintiff against Defendant Merastar Insurance Company.

6. The phrase “Class Counsel” means the law firms of Hill & Robbins, P.C., 1441 18<sup>th</sup> Street, Denver, Colorado 80202, the McFarland Law Offices, 910 13<sup>th</sup> Street, Suite 200, Golden, Colorado 80401, Evans & McFarland, LLC, 910 13th St., Suite 200, Golden, Colorado 80401, and their predecessor and/or successor firms. The phrase “Settling Defendant’s Counsel” means Clifton Latiolais, Campbell, Latiolais, & Ruebel, PC, 825 Logan Street, Denver, CO 80203 , and Bruce Oetter, Bryan Cave LLP, 211 N. Broadway, Suite 3600, St. Louis, MO 63102-2750.

7. The phrase “Final Judgment” means the entry by the District Court of the judgment attached hereto as Exhibit D without modification, except as may be approved by the Parties in writing.

8. The phrase “Final Approval” means the last date by which all of the following have occurred:

(a) the District Court has entered the Final Judgment in the form attached hereto as Exhibit D, without modification, except as may be approved by the Parties in writing;

(b) 45 days have passed after entry of the Final Judgment and rehearing, reconsideration, or appellate review is not timely filed by any person, or if rehearing, reconsideration, or appellate review of the Final Judgment is timely filed by any person,

when any and all avenues of rehearing, reconsideration, and appellate review have been exhausted and no further rehearing, reconsideration, or appellate review is permitted or the time for seeking such review has expired, provided that the Final Judgment has not been altered, modified, amended, vacated, or overturned.

9. The word “Parties” means Plaintiff and Settling Defendant, collectively.

10. The phrase “Class Administrator” means Class Action Administration, Inc. retained by the Plaintiff.

11. The phrase “Preliminary Approval” means entry by the District Court of an order the same or similar in content to the attached Exhibit A, without modification except such as may be approved by the Parties in writing: (a) preliminarily approving the terms and conditions of this Settlement Agreement; (b) certifying the Settlement Class pursuant to Colo.R.Civ.P. 23, for settlement purposes only; (c) authorizing notice of the Settlement Agreement to be provided to the Settlement Class Members; (d) approving the manner and form of notice to be provided to the Settlement Class Members, as provided in this Settlement Agreement; and (e) scheduling a fairness hearing at which the Court will determine whether this Settlement Agreement should be approved as fair, reasonable, and adequate.

12. The phrase “Settlement Fund” means the sum of \$134,477.59, inclusive of any interest, which in addition to the Settlement Administration Costs that the Settling Defendants agree to pay pursuant to Article III, paragraph 6.1 of this Settlement Agreement, is the limit of the Settling Defendants’ total liability to the Settlement Class and to any other persons to settle this Litigation.

13. The phrase “Released Parties” shall mean Settling Defendant, and only to the extent of their involvement in the sale of Merastar insurance policies during the “Class Period”

its past and present officers, directors, employees, agents, predecessors and successors, parent corporation, subsidiaries and affiliates, and their past and present officers, directors, employees, agents, predecessors and successors.

14. The phrase “Plan of Distribution” means the methodology for calculating and procedure for distributing the Settlement Funds set forth in Article III, Sections 4 and 5 of this Settlement Agreement.

## **II. DESCRIPTION OF LITIGATION**

Plaintiff alleges that the Settling Defendant failed to provide the requisite information to their Colorado policyholders in connection with their sale of UM/UIM coverage to permit their insureds to make an informed decision as to whether to purchase UM/UIM coverage on more than one vehicle. Plaintiff brought this action on behalf of herself and a Class to recover the amounts paid for UM/UIM coverage assessed on more than one vehicle at the same time, and based on the number of vehicles insured. Plaintiff’s claim addresses only Merastar’s conduct in Colorado with respect to Colorado policyholders.

The Court’s Ruling and Order of January 26, 2005 dismissed Plaintiff’s claims concerning Merastar’s disclosures to policyholders concerning UM/UIM coverage prior to the decision of the Colorado Supreme Court in *DeHerrera v. Sentry Ins. Co.*, 30 P.3d 107, on April 30, 2001. Plaintiff’s claims concerning disclosures to policyholders about UM/UIM coverage after April 30, 2001 remained pending. The Court has not yet ruled on Plaintiff’s motion for class certification.

The Colorado Department of Insurance approved a request by Settling Defendant to change the method by which Settling Defendant charged premiums for personal lines UM/UIM coverage. Effective August 1, 2005 for new policies of insurance, and effective September 1, 2005 for renewal policies of insurance, Settling Defendant charged a single premium for

UM/UIM coverage for each policyholder, regardless of the number of vehicles insured for UM/UIM coverage by that policyholder.

Merastar has denied and continues to deny the allegations of wrongdoing and has vigorously litigated the issues that have arisen to date in the Litigation. Settling Defendant also denies any wrongful conduct toward Colorado policyholders concerning the sale of UM/UIM coverage. This settlement is a compromise of disputed claims, and Settling Defendant does not admit liability to Plaintiff or the Settlement Class. Nevertheless, without admitting or conceding any liability or damages and in order to avoid the uncertainty, risks, and costs of the Litigation, the Parties have agreed to settle the claims of the Plaintiff and the Settlement Class in the manner and upon the terms and conditions set forth in this Settlement Agreement.

NOW THEREFORE, it is stipulated and agreed by and between the Parties that the Litigation be settled, terminated, and dismissed, based on the following terms and conditions:

### **III. TERMS OF THE SETTLEMENT**

#### **1. Certification of Settlement Class for Settlement Purposes**

1.1 The parties hereby agree, subject to the approval of the Court pursuant to Rule 23 of the Colorado Rules of Civil Procedure, that Plaintiff will file a motion for certification of the Settlement Class contemporaneous with the filing of a motion for Preliminary Approval, seeking certification of the Settlement Class pursuant to Colo.R.Civ.P. 23 solely for the purpose of this settlement. Settling Defendant will consent to that certification, but solely for the purpose of this settlement, and for no other purpose, and for no other litigation or claims.

#### **2. Class Notice**

2.1 Settling Defendant agrees to use its best efforts to create, at their expense, a list of the names and last known addresses of Settlement Class Members, as reflected by Settling Defendant's records. Settling Defendant shall deliver such list of Class members to the Class

Administrator, with a copy to Class Counsel, within 5 days after Preliminary Approval. The list of Class members will be treated as “Confidential”.

2.2 No later than 30 days after Preliminary Approval, the Class Administrator shall cause notice to be mailed to each Class member, to the last known address of each Class member as reflected in Settling Defendant’s records. The notice shall be in substantially the same content and form as Exhibit C attached hereto. Any mailed notice returned to the Settlement Administrator by the U.S. Postal Service as not deliverable or not forwarded shall be checked against the National Change of Address database one time and re-mailed by the Settlement Administrator if a different address is obtained.

2.3 Any Settlement Class Member individually may elect to opt out of the Settlement Class, within the time and in the manner specified in the class notice and in the Preliminary Approval, with the effect that the rights of any Settlement Class Member who timely opts out shall not be affected by this Settlement Agreement. The right to opt out of the Settlement Class may only be exercised individually by a Settlement Class Member, and not by any other person in a representative capacity. Any Settlement Class Member seeking to be excluded from the Settlement Class must send a written request for exclusion to the Class Administrator, at an address to be designated in the class notice and postmarked by the date that appears in the notice to request exclusion from the Settlement Class.

2.4 Within 14 days after the deadline for Settlement Class Members to mail their elections to exclude themselves from the Class, the Class Administrator shall submit a report to Class Counsel and Settling Defendant’s Counsel of the names and addresses of all Settlement Class Members who have timely and properly excluded themselves from the Class. Upon the reasonable request of Class Counsel, the Class Administrator shall make available for inspection

and copying any opt out requests received by the Class Administrator.

2.5 Settling Defendant shall have the right to withdraw from this Settlement Agreement if the number of Settlement Class Members who timely elect to be excluded from the Settlement Class exceeds 5% of the total of all Settlement Class Members. Settling Defendant must exercise such right to withdraw, in writing to Class Counsel, within 10 days after receipt of the report of opt outs from the Class Administrator. If Settling Defendant timely exercises the right to withdraw described herein, this Settlement Agreement shall be null and void for all purposes and the Parties shall be restored without prejudice to their respective pre-settlement litigation positions, and decertification of the Settlement Class as certified by the Preliminary Approval will occur.

3. **Class Settlement Procedures**

3.1 Plaintiff shall move the Court to enter a Preliminary Approval order, and Defendant shall consent to such order, but solely for the purpose of this settlement, and for no other purpose, and for no other litigation or claims, in the form of Exhibit A.

3.2 Prior to the Fairness Hearing, Plaintiff's Counsel shall move the Court to approve and enter Final Judgment, substantially in the form of Exhibit D hereto, granting final approval of this Settlement Agreement as fair, reasonable, adequate and binding on all Settlement Class Members who have not timely and properly excluded themselves, approving the Plan of Distribution, and effecting the releases as set forth in Section 9. A list of the Class Members who have timely opted out will be filed, under seal, as an exhibit thereto.

3.3 If the District Court fails to enter the Final Judgment substantially in the form of Exhibit D hereto, or the Final Judgment does not receive Final Approval, or the Final Judgment materially alters the terms of this Settlement Agreement, each of the Parties have the right to

declare the Settlement Agreement null and void, and the Litigation will resume without prejudice to the rights of any Party, including decertification of the Settlement Class and restoration of the positions of the Parties as of the date this Settlement Agreement was executed, unless the Final Judgment and Final Approval in accordance with this Settlement Agreement are successfully obtained on appeal, or unless the Parties agree to amend the Settlement Agreement and obtain Final Approval of the amended Settlement Agreement.

4. **Disbursements to Settlement Class Members**

4.1 Within ten days after Final Approval, Settling Defendant shall establish the Settlement Fund by depositing the total sum of \$134,477.59, without interest, in trust with the Class Administrator, with written confirmation of such deposit provided to Class Counsel. Except for certain administrative expenses as provided in Article III, paragraph 7.1, this deposit of the Settlement Fund shall constitute the entire monetary consideration to be paid by or on behalf of Settling Defendant in connection with the Settlement.

4.2 Within 30 days after Final Approval, the Settlement Fund shall be distributed to the Settlement Class Members based on their pro rata share of the Settlement Fund, without interest, less all sums approved by the Court and distributed as compensation, attorneys' fees, or expenses pursuant to paragraphs 5.3 and 6.1 or otherwise. Each Settlement Class Members' pro rata share shall be determined based upon the business records provided by Settling Defendant, demonstrating the amount of UM/UIM premiums assessed to Settlement Class Members on more than one motor vehicle at the same time, and based on the number of vehicles insured, between May 1, 2001 and August 1, 2005 for new policies of personal lines automobile insurance and between May 1, 2001 and March 1, 2006 for renewal policies of personal lines automobile insurance.

4.3 Neither Settling Defendant nor Settling Defendant's Counsel will oppose a motion to the District Court seeking compensation to the Class Representatives for their work in connection with the Litigation in an amount not to exceed a total of \$2,500 to the Class Representative. Any compensation to the Class Representative approved by the Court shall be paid from the Settlement Fund at the same time as distributions to Settlement Class Members as described in Article III, paragraph 5.2.

4.4 The Class Administrator shall notify Class Counsel and Settling Defendant's Counsel at least three (3) days business days before distributions to Settlement Class Members commence.

4.5 Disbursements to Settlement Class Members shall be issued via checks whose terms require negotiation within 120 days of the instrument's date. Checks shall be mailed by the Class Administrator to Settlement Class Members to their last known address. In the event any such checks are returned to the Settlement Administrator by the U.S. Postal Service as not deliverable or not forwarded, the Class Members to whom such checks were mailed shall be checked against the National Change of Address database one time and re-mailed by the Settlement Administrator if a different address is obtained. Each check will contain the following endorsement: "By cashing this check I release all claims relating to payment of UM/UIM premiums identified in the Settlement Agreement in Lewis v. Merastar, Case Number: 2006CV332."

4.6 The portion of the Settlement Fund attributable to opt-outs or to Settlement Class Members who cannot be located in connection with the mailing of the class notice to Settlement Class Members shall remain in the Settlement Fund and shall be distributed to the participating Class Members on a pro rata basis.

4.7 Funds represented by checks distributed to Class Members that are not negotiated within 120 days of the date of the check, or that are represented by checks that the Class Administrator cannot deliver to Class Members in accord with the procedures set forth in Article III, paragraph 4.5, shall be returned to the Settlement Fund but shall be used to offset the fees and costs of administering this settlement. Any such funds in excess of the total administrative fees and costs shall be distributed in accordance with the District Court's order.

4.8 Within 150 days after completing disbursements to Settlement Class Members, the Class Administrator shall report in writing to Class Counsel and Settling Defendant's Counsel the total amount of disbursements to Settlement Class Members and the disposition of any unclaimed funds, in accord with paragraph 4.7. Within 10 days after receipt of the report of the Class Administrator, the Parties shall submit an agreed order to the Court in the form of Exhibit E, finally terminating and dismissing the Litigation.

5. **Attorneys' Fees and Costs and Payment To Class Representatives**

5.1 Neither Settling Defendant nor Settling Defendant's Counsel will oppose nor object to Class Counsel's request for an award of attorneys' fees and reimbursement of expenses and costs in connection with the representation of the Class in this Litigation up to a total of 30% of the Settlement Fund. Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid by the Class Administrator from the Settlement Fund within 30 days after Final Approval.

5.2 Settling Defendant shall have no responsibility for and shall have no liability whatsoever with respect to the allocation among Class Counsel and/or any other person who may assert a claim thereto of any attorneys' fees or expenses that the Court may award.

6. **Settlement Administration Costs**

6.1 Settling Defendant shall pay all reasonable fees and costs of the Class Administrator, including but not limited to the fees and costs to determine current addresses for the Settlement Class Members as provided in paragraph 2.2, provide notice to the Settlement Class Members as provided in Section 3, and distribute the Settlement Fund in accord with the Plan of Distribution approved by the Court as provided in Sections 4 and 5.

6.2 Class Counsel shall have the right to monitor the work of the Class Administrator and the Class Administrator shall report to the Parties and the Court, as requested, documenting its actions in connection with administration of the settlement pursuant to this Settlement Agreement. The Parties, Class Counsel, and Settling Defendant's Counsel shall in good faith cooperate in the implementation of the settlement and this Settlement Agreement.

7. **List of Class Members**

7.1 Class Counsel agrees to treat the list of Settlement Class Members as "Confidential" and not to use the list of Settlement Class Members for any purpose other than the administration and implementation of this Settlement Agreement.

8. **Release and Covenant Not to Sue**

8.1 Effective upon Final Approval, Plaintiff and all Settlement Class Members who have not timely and properly excluded themselves, regardless of whether such Settlement Class Members have claimed or obtained benefits hereunder, on behalf of themselves and each of their heirs, administrators, successors and assigns, hereby release and forever discharge the Released Parties from, and covenant not to sue the Released Parties respecting, any and all claims, lawsuits, rights, counts, causes of action, damages, judgments, executions, attachments, debts, demands, liabilities, and obligations of every kind and nature, known and unknown, in law or equity, class or individual, suspected or unsuspected, concealed or unconcealed, tangible or

intangible, whether sounding in contract, tort, unjust enrichment or any other theory, that were asserted or could have been asserted by Plaintiff in this Litigation on behalf of the Class against the Released Parties, for any injury or damages relating to or arising out of: (a)(i) premiums or rates charged for UM/UIM in the state of Colorado on more than one vehicle at the same time, and based on the number of vehicles insured, at any time during the Class Period; (ii) the manner in which premiums for UM/UIM were described or not described to policyholders during the Class Period; (iii) disclosures or omissions to disclose in connection with the sale of UM/UIM coverage during the Class Period; including without limitation any claim that the Released Parties violated (with respect to the foregoing) any Unfair Claims Practices statute, any consumer fraud statute, or any other statutory or common law requirement or duty, any claims of negligence, bad faith, misrepresentation, breach of contract, conversion, unjust enrichment, or any other claim; and (b) any and all claims to attorneys' fees and/or expenses in connection with the prosecution of this Litigation or the claims described in subparagraph 8.1(a), except for the amount set forth in and awarded pursuant to paragraph 5.1. It is specifically agreed that this paragraph 8.1 should not be interpreted to adversely impact any Settlement Class Member's automobile accident-related personal injury claim compensable under UM/UIM coverage.

8.2 Upon Final Approval, all Settlement Class Members who have not timely and properly excluded themselves hereby covenant not to sue the Released Parties in respect to any or all of the Released Claims identified in paragraph 8.1.

8.3 Effective upon entry by the Court of the Final Judgment, all claims of Plaintiff and of all Settlement Class Members, except for those who have timely and properly excluded themselves, shall be dismissed with prejudice and without costs.

8.4. Plaintiff agrees that Settling Defendant has offered consideration for the Released Claims by Settlement Class Members who do not opt out, regardless of whether Settlement Class Members receive or negotiate the checks described in Section 4.

8.5 Upon Final Approval, the Settling Defendant shall fully, finally and forever release the Class Representative, Settlement Class Members who have not opted out, and Class Counsel from any and all past, present, or future damages and/or request for equitable relief arising out of, relating to, or in connection with the institution, prosecution, or resolution of this Litigation.

8.6 This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims, and neither the Settlement Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Settlement Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, or of any point of fact or law (including but not limited to the propriety of class certification) on the part of any Party. Settling Defendant denies the allegations of the complaint and all amended complaints filed in the Litigation.

9. **Miscellaneous**

9.1 All proceedings with respect to the interpretation, implementation, administration and enforcement of this Settlement Agreement and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the District Court.

9.2 The terms of this Settlement Agreement inure to the benefit of and are binding upon the Parties and their assigns and successors in interest.

9.3 This Settlement Agreement may be executed in counterparts. This Settlement Agreement shall become effective upon its execution by all of the undersigned.

9.4 Class Counsel and Settling Defendant's Counsel agree to cooperate in the timely submission of this Settlement Agreement to the Court, to recommend approval of the settlement in the form set forth in this Settlement Agreement, and to use their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may become reasonably necessary by order of the Court or otherwise, to effect the settlement provided for by this Settlement Agreement and to obtain Final Approval of the Final Judgment.

9.5 The terms and conditions set forth in this Settlement Agreement, including all attached exhibits, constitute the complete and exclusive agreement between the Parties relating to the subject matter of this Settlement Agreement, superseding all previous negotiations, representations, and understandings, and may not be contradicted or supplemented by evidence of any prior or contemporaneous agreement. The Parties further intend that this Settlement Agreement and all attached exhibits constitute the complete and exclusive statement of its terms as between the Parties and that no extrinsic evidence may be introduced in any judicial proceeding involving this Settlement Agreement. Prior or contemporaneous representations not contained in this Settlement Agreement shall be of no force or effect. Any modification of this Settlement Agreement must be in writing signed by or on behalf of Class Counsel and Settling Defendants. This Settlement Agreement, including exhibits, shall not be introduced in evidence in any other proceeding against Settling Defendant or Released Parties, except to enforce its terms.

9.6 This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado.

9.7 Settling Defendant expressly reserves the right to communicate with and respond to inquiries from policyholders and Settlement Class Members orally and/or in writing, and it may do so through any appropriate agent or agencies. Settling Defendant will undertake to assure that such communications accurately reflect the pertinent terms, conditions and effects of this settlement.

9.8 This Agreement was entered into only for purposes of compromise and settlement and is not an admission of liability by Settling Defendant or an admission that a class should be certified. In the event that Final Approval, without modification, does not occur for any reason, then no term or condition of this Settlement Agreement shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Litigation or in any other proceeding.

9.9 The determination of the terms of and the drafting of this Settlement Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel.

9.10 As used herein, the plural of any defined term includes the singular thereof, and the singular of any defined term includes the plural thereof as the context may require.

9.11 In the event any date or deadline for actions set forth in this Settlement Agreement falls on a weekend or legal holiday, such date or deadline shall be on the first business day thereafter.

IN WITNESS HEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the date it has been executed on behalf of both Plaintiff and Defendant.

Dated: \_\_\_\_\_, 2006

Dated: \_\_\_\_\_, 2006

ATTORNEYS FOR SETTLING  
DEFENDANT:

*signed original on file at Campbell,  
Latiolais, & Ruebel, PC*

ATTORNEYS FOR PLAINTIFF AND  
THE SETTLEMENT CLASS:

*signed original on file at Hill & Robbins,  
P.C.*

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**Campbell, Latiolais, & Ruebel, PC**  
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McFarland Law Offices  
910 13<sup>th</sup> Street, Suite 200  
Golden, CO 80401

PLAINTIFF, INDIVIDUALLY AND ON  
BEHALF OF THE SETTLEMENT  
CLASS:

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Laurie Lewis