

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL ERBY, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

CASE NO. 2:18-cv-04944-PBT

ALLSTATE FIRE AND CASUALTY INS.  
CO., et al,

Defendant.

**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (“Agreement” or “Settlement Agreement”) is made by and between (1) Michael Erby (“Plaintiff”), on behalf of himself and as representative of the Settlement Class defined below, and (2) Allstate Fire and Casualty Insurance Company, Allstate Insurance Company, Allstate Indemnity Company, and Allstate Property and Casualty Insurance Company, (collectively, “Allstate” or “Defendants”). Plaintiff and Defendants are referred to collectively as “the Parties.”

This Agreement, upon final approval and judgment, effects a full and final settlement and dismissal with prejudice of all of the Released Claims against all Released Persons relating to the above-captioned lawsuit (the “Action”) on the terms and to the full extent set forth below, subject to the approval of the Court.

**RECITALS**

WHEREAS, on October 12, 2018, Plaintiff Michael Erby filed a Class Action Complaint against Defendant The Allstate Corporation in the Court of Common Pleas, Philadelphia County, Pennsylvania, Case No. 181001604, and

WHEREAS, on November 14, 2018, Defendant The Allstate Corporation removed the action to the United States District Court for the Eastern District of Pennsylvania, and

WHEREAS, on January 4, 2019, Defendant filed a motion to dismiss Plaintiff’s Complaint, and

WHEREAS, on January 22, 2019, the Parties stipulated to the substitution of Allstate Fire and Casualty Insurance Company for Defendant The Allstate Corporation , and Plaintiff amended the complaint on January 18, 2019, and

WHEREAS, on February 1, 2019 Allstate filed a motion to dismiss to Plaintiff's Amended Complaint, and

WHEREAS, following the grant in part and denial in part of Allstate's motion to dismiss and denial of Allstate's motion for reconsideration, the Parties engaged in written discovery, exchanged documents, and assessed the Parties' claims and defenses, and

WHEREAS, the Parties engaged in settlement negotiations, and

WHEREAS, Allstate, while denying wrongdoing of any kind and without admitting liability, nevertheless agrees to enter into this Agreement to avoid further burden, expense and risk of protracted litigation and to affect a full and final settlement of the claims asserted in this Action on the terms set forth below,

NOW, THEREFORE, IT IS HEREBY AGREED by and among the Parties, through their respective counsel, that the Action be settled and compromised by the Plaintiff, the Settlement Class, and Allstate on the following terms and conditions, subject to the approval of the Court after hearing:

#### **I. DEFINITIONS**

For purposes of this Settlement Agreement, the following terms shall be defined as set forth below:

- A. "Attorneys' Fee Award" means the Court-determined award of attorneys' fees, costs, and expenses to Class Counsel.
- B. "Automobile Insurance Policy" means a Pennsylvania policy of insurance issued by Allstate in effect during the Class Period and providing private- passenger automobile physical damage coverage for a vehicle.
- C. "Blank Claim Form" shall mean a claim form that is not pre-filled with the Settlement Class Member name, date of loss, or Claim ID.
- D. "Claims and Policy Data" means data provided to Class Counsel and the Claims Administrator that is sufficient for the Parties to identify potential Settlement Class Members by name and address (and email if in the possession of Allstate), based on the claims where the model year of the loss vehicle was within 5 years of the loss date, the amounts of adjusted vehicle value ("actual cash value"), payments of any sales tax on the claims, the dates of loss and any other information reasonably necessary to effectuate the terms of this Agreement.

- E. “Confidential Information” means the names, addresses, policy numbers and any and all data provided by Allstate relating to potential Settlement Class Members, and any other proprietary business information of Allstate.
- F. “Claim Form” means the Court-approved paper (not electronic) claim form, without material alteration, that a Settlement Class Member may submit to be considered for payment under the Final Settlement. The Claim Form is attached hereto as Exhibit 2.
- G. “Claim Payment” means the payment issued by Allstate to Settlement Class Members who submit valid and timely claims, as set forth in Paragraphs 31 - 34.
- H. “Claims Submission Deadline” means the date by which Claim Forms must be postmarked or Electronic Claim Forms must be electronically submitted to be considered timely. The Claims Submission Deadline shall be no more than 90 days from the Mail Notice Date.
- I. “Class Counsel” means the attorneys approved and appointed by the Court to represent the Settlement Class Members.
- J. “Class Period” means the period from January 1, 2012 through the date the Court enters the Preliminary Approval Order.
- K. “Court” means the United States District Court for the Eastern District of Pennsylvania.
- L. “Covered Total Loss Claim” means any private passenger auto property damage claim determined by Allstate to be a Total Loss to a leased insured automobile that (a) occurred within the Class Period, (b) was determined by Allstate or by a court or arbitrator of competent jurisdiction to be covered by an Automobile Insurance Policy issued by Allstate, and (c) resulted in a Total Loss Claim Payment.
- M. “Email Notice Dates” means the three dates on which the email notice is emailed to potential Settlement Class Members, as provided in Paragraphs 14-17.
- N. “Email Notices” means the Court-approved notice forms for Email Nos. 1, 2, and 3, without material alteration, emailed to potential Settlement Class Members, as provided in Paragraphs 14-17. The Email Notices are attached hereto as Exhibits 6, 7, 8.
- O. “Effective Date” means the date that is five (5) days after the following conditions have been met:

- (1) This Agreement has been fully executed by the Parties and/or their counsel;
  - (2) No Party has terminated the Agreement;
  - (3) Orders have been entered by the Court certifying a Settlement Class granting preliminary approval of this Agreement and approving a form of notice and claim forms as provided in this Agreement;
  - (4) The Court has entered the Final Order and Judgment approving this Agreement and releasing all Released Persons from all Released Claims and dismissing the Action with prejudice and without leave to amend, as provided in this Agreement;
  - (5) The Court has fully resolved any application made by Class Counsel for an Attorneys' Fee Award and Service Award; and,
  - (6) The Final Order and Judgment has become Final as defined in Paragraph (T) below.
- P. "Electronic Blank Claim Form" means an electronic claim form that is not pre-filled with the Settlement Class Member's name, claim date of loss, or Claimant ID. An Electronic Blank Claim Form may be submitted and signed electronically by a Settlement Class Member as described in Paragraphs 22-22.
- Q. "Electronic Claim Form" means the Court-approved electronic (not paper) claim form, without material alteration except those alterations necessary to convert to electronic format with the functionality described in Paragraphs 21-22, that a Settlement Class Member may submit electronically to be considered for payment under the Final Settlement. The Electronic Claim Form is attached hereto as Exhibit 3.
- R. "Eligible Class Member" means a Settlement Class Member who timely submits a Claim Form, Electronic Claim Form, or Electronic Blank Claim Form in accordance with Paragraphs 35-40 and satisfies the eligibility criteria stated in Paragraph 41 below.
- S. "Fairness Hearing" means the fairness hearing conducted by the Court to consider final approval of this Agreement, as set forth in Paragraph U.
- T. "Final" means that (a) the Final Order and Judgment is a final, appealable judgment and (b) either (i) no appeal has been taken from the Final Order and Judgment as

of the date on which all times to appeal therefrom have expired, or (ii) an appeal or other review proceeding of the Final Order and Judgment having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of certiorari, or otherwise, and such appeal or other review has been fully and finally resolved in such manner that affirms the Final Order and Judgment.

- U. “Final Approval Hearing” means the hearing before the Court at or after which the Court will make a final decision whether to approve the proposed settlement set forth herein as fair, reasonable and adequate.
- V. “Final Order and Judgment” means an order from the Court approving the Settlement Agreement, disposing of all claims asserted in the Action, and settling and releasing all claims consistent with the terms of this Agreement.
- W. “Final Settlement” means the settlement approved by the Court in the Final Order and Judgment as fair, reasonable, and adequate.
- X. “Full Sales Tax” means the amount of sales tax that would be due based on the adjusted vehicle value of the insured vehicle as determined by Allstate at the time of the total loss in the Pennsylvania county where the Settlement Class Member resided at the time of the total loss. For Settlement Class Members, this includes a 6% Pennsylvania state sales tax, and where applicable, a local sales tax. For example, 1% is added to the state sales tax in Allegheny County and 2% sales tax is added to the state sales tax in Philadelphia County.
- Y. “Service Award” means the potential award to the Plaintiff, if any, as determined by the Court.
- Z. “Legally Authorized Representative” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other legally appointed Person or entity responsible for handling the affairs of a Settlement Class Member. For purposes of completing a claim form, a surviving spouse of a deceased class member will be considered a legally authorized representative for purposes of this agreement if no Estate has been opened, and no other person has legal authority for handling the affairs of the deceased Settlement Class Member.
- AA. “Longform Notice” means the Court-approved longform notice without material alteration. The Longform Notice is attached hereto as Exhibit 4.

- BB. "Mail Notice" means the Court-approved short form notice (i.e., postcard notice), without material alteration, mailed via first-class mail to potential Settlement Class Members, as provided in Paragraphs 11 and 12. The Mail Notice is attached hereto as Exhibit 5.
- CC. "Mail Notice Date" means the date that the initial mailing of the Mailed Notice to potential Settlement Class Members as set forth in Paragraph 11 is completed.
- DD. "Neutral Evaluator" means a neutral third party agreed to by the parties as provided in Paragraph 41(g), whose duties are limited to those set forth in Paragraphs 41(g) and 401h).
- EE. "Opt-Out List" means the list of valid and timely requests for exclusion from the Settlement Class compiled by the Settlement Administrator, as set forth in Paragraph 49.
- FF. "Person" means any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity.
- GG. "Preliminary Approval Hearing" means any hearing at or after which the Court makes a preliminary decision whether to approve the settlement set forth in this Settlement Agreement as fair, adequate, and reasonable and within the reasonable range of possible final approval.
- HH. "Proposed Preliminary Approval Order" means the proposed order attached hereto as Exhibit 1.
- II. "Proposed Settlement" means the settlement described in this Agreement, before final approval by the Court.
- JJ. "Release" shall have the meaning given such term in Paragraphs 61-62.
- KK. "Released Claims" means and includes any and all known and unknown claims, rights, actions, suits or causes of action of whatever kind or nature, whether *ex contractu* or *ex delicto*, statutory, common law or equitable, including but not limited to breach of contract, bad faith or extracontractual claims, and claims for punitive or exemplary damages, or prejudgment or post-judgment interest, arising from or relating in any way to Allstate's failure to pay sufficient sales tax to Plaintiff and all Settlement Class Members with respect to any Covered Total Loss Claim during the Class Period under an Automobile Insurance Policy. Released Claims do not include any claim for enforcement of the contemplated Settlement



Agreement and/or Final Order and Judgment. Released Claims do not include any claims, actions, or causes of action alleging that Allstate failed to properly calculate the value of total loss vehicles except to the extent that such claims, actions, or causes of action relate to failure to pay sufficient sales tax.

- LL. “Releasing Persons” means: (a) Plaintiff; (b) Settlement Class Members listed in the Claims and Policy Data who do not otherwise timely opt-out of the Settlement Class (whether or not such members submit claims); and (c) Settlement Class Members not listed in the Claims and Policy Data who submit a Claim Form or an Electronic Claim Form, and their respective present, former or subsequent assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, agents, employees and anyone working on their behalf.
- MM. “Released Persons” means (a) Allstate; (b) all divisions, parent entities, affiliates, and subsidiaries of Allstate; (c) all past and present officers, directors, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, insurers and reinsurers; and (d) all of the heirs, estates, successors, assigns, and legal representatives of any of the entities or Persons listed in this Paragraph.
- NN. “Settlement Administrator” means Epiq.
- OO. “Settlement Class” is defined as:
- (1) All persons who submitted a private-passenger auto physical damage claim for a leased vehicle under an Allstate Pennsylvania policy during the Class Period whose claim was adjusted by Allstate as a total-loss claim, and whose claim resulted in a Total Loss Claim Payment by Allstate, and who were not paid Full Sales Tax.

Excluded from the Class are:

- (a) Allstate, all present or former officers and/or directors of Allstate, the Settlement Administrator, the Mediator, the Neutral Evaluator, Class Counsel, and a Judge of these Courts;
- (b) Individuals with claims for which Allstate received a valid and executed release;
- (c) Individuals who are not on the Notice List and who did not submit a valid Claim Form or Electronic Claim Form for payment under this Settlement;
- (d) Individuals who requested exclusion from the Class;
- (e) Individuals who received Full Sales Tax on their claims; and,

- (f) Individuals whose claims for property damage for which the individual process of appraisal or arbitration or a lawsuit has been completed or initiated at the time this Settlement Agreement is filed.

PP. “Settlement Class Member” means any Person encompassed by the definition of the Settlement Class and not excluded from the class as set forth above.

QQ. “Total Loss” means an insured vehicle that sustained damage, was the subject of a covered property damage claim submitted to Allstate, and for which Allstate issued a Total Loss Claim Payment.

RR. “Total Loss Claim Payment” means a property damage claim payment made by Allstate under Allstate’s Pennsylvania Automobile Insurance Policies for a vehicle determined to be a total loss.

## II. PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS

1. On April 4, 2022, Plaintiff filed a Second Amended Complaint to add additional Defendants, Allstate Fire and Casualty Insurance Co., Allstate Insurance Company, Allstate Indemnity Company and Allstate Property and Casualty Insurance Company.

2. This Agreement will effect a full and Final Settlement and dismissal with prejudice of all of the Released Claims against all Released Persons relating to the matter *Michael Erby v. Allstate Fire & Casualty Insurance Company*, No. 2:18-cv-04944 (E.D. Pa).

3. The Parties will request entry of the Proposed Preliminary Approval Order, without material alteration from Exhibit 1, that specifically:

- (a) preliminarily approves this Agreement;
- (b) finds that the Court possesses jurisdiction over the subject matter of this Action and over all Parties to this Action, including the Named Plaintiff and all Settlement Class Members;
- (c) preliminarily certifies the Settlement Class, approves the Plaintiff as class representative of the Settlement Class, and appoints Class Counsel as counsel for the Settlement Class;
- (d) finds that the Proposed Settlement is sufficiently fair, reasonable, and adequate to warrant providing Notice to the Settlement Class;
- (e) approves the Notice Plan;



- (f) approves the Claim Form and Electronic Claim Form to be distributed to and/or used by Settlement Class Members, and sets a Mail Notice Date not less than 90 days after the entry of a Preliminary Approval Order and a Claims Submission Deadline, which shall be no more than sixty (60) days from the Mail Notice Date, by which the Claim Forms must be postmarked and Electronic Claim Forms must be submitted in order to be deemed timely;
- (g) approves the settlement website as described in Paragraphs 20-22, which may be amended during the course of the settlement as appropriate and agreed to by the Parties, and which shall be maintained for at least sixty (60) days after the Claims Submission Deadline;
- (h) appoints Epiq as Settlement Administrator;
- (i) directs the Settlement Administrator to maintain a toll-free IVR telephone system containing recorded answers to frequently asked questions, along with an option permitting callers to punch through to a live operator;
- (j) determines that the Notice provided to potential Settlement Class Members (i) is the best practicable notice under the circumstances; (ii) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to or exclude themselves from the Proposed Settlement; and (iii) constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice;
- (k) schedules the Fairness Hearing to consider the fairness, reasonableness, and adequacy of the Proposed Settlement and whether it should be finally approved by the Court on a date not sooner than 130 days after entry of the Preliminary Approval Order;
- (l) requires the Settlement Administrator to file proof of completion of Notice at least ten (10) days prior to the Fairness Hearing, along with the Opt-Out List, which shall be a list of all Persons who timely and properly requested exclusion from the Settlement Class and an affidavit attesting to the accuracy of the Opt-Out List;
- (m) requires each Settlement Class Member who wishes to exclude himself or herself from the Settlement Class to submit an appropriate, timely request for exclusion, received by the Settlement Administrator at the address provided in the Mail Notice no later than thirty (30) days after the Mail

Notice Date and which complies with the requirements in Paragraphs 47-57;

- (n) orders that individuals who are on the Notice List who do not submit a timely, written request for exclusion from the Settlement Class will be bound by all proceedings, orders, and judgments in the Action, even if such Settlement Class Member never received actual notice of the Action or this Proposed Settlement;
- (o) requires each Settlement Class Member who does not submit a timely request for exclusion from the Settlement Class and wishes to object to the fairness, reasonableness, or adequacy of this Agreement or any term of the Proposed Settlement or to intervene in the Action, to follow the procedures set forth in Paragraphs 47-57 of this Agreement, including those requirements applicable to any attorney representing the Settlement Class Member;
- (p) directs the Settlement Administrator to rent a post office box to which requests for exclusion, objections, notices of intention to appear, and any other settlement-related communication may be sent, and provides that only the Settlement Administrator, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise expressly provided in this Agreement;
- (q) directs the Settlement Administrator to provide within 5 business days copies of all objections, requests for exclusion, motions to intervene, notices of intention to appear, or other communications that come into its possession to Class Counsel and Allstate's counsel;
- (r) stays all proceedings in the Action until further order of the Court, except that the Parties may conduct proceedings necessary to implement the Proposed Settlement or effectuate the terms of this Agreement; and,
- (s) implements or orders any other provisions, directives, or procedures not contemplated by the Parties, if necessary, to comply with governing law and/or binding precedent and if such provisions do not materially alter the substantive terms of this Agreement.

4. Solely for the purpose of implementing this Agreement and effectuating the Proposed Settlement, Allstate stipulates to entry of a Preliminary Approval Order (in the form of the proposed Order attached as Exhibit 1 or including the substance of the proposed Order attached as Exhibit 1), preliminarily certifying the Settlement Class, appointing the Plaintiff as

representative of the Settlement Class, and appointing the following as Class Counsel for the Settlement Class:

Daniel C. Levin, Esquire  
LEVIN SEDRAN & BERMAN LLP  
510 Walnut Street, Suite 500  
Philadelphia, PA 19102  
215-592-1500

D. Aaron Rihn, Esquire  
ROBERT PEIRCE & ASSOCIATES, P.C.  
707 Grant Street, Suite 125  
Pittsburgh, PA 15219-1918  
412-281-7229

Jason Medure, Esquire  
MEDURE BONNER BELLISSIMO, LLC  
713 Wilmington Avenue  
New Castle, PA 16101  
724-653-7855

Larry Weisberg, Esquire  
Derrek W. Cummings, Esquire, CPA  
Steve T. Mahan, Esquire  
Stephen P. Gunther, Esquire  
MCCARTHY WEISBERG CUMMINGS, P.C.  
2704 Commerce Drive, Suite B  
Harrisburg, PA 17110-9380  
717-238-5707

5. Solely for the purposes of implementing this Agreement and effectuating the Proposed Settlement, the Parties stipulate that Epiq shall be the Settlement Administrator.

6. In the event that the Proposed Settlement is not consummated for any reason (including but not limited to reversal on appeal), (a) the Parties and their attorneys shall proceed as though the Agreement had never been entered and the Parties and their Counsel shall not cite nor reference this Agreement (or negotiations or documents relating to this Agreement), (b) nothing in this Agreement and/or the fact that it was entered into and/or negotiations relating to this Agreement shall be offered, received or construed as an admission or as evidence for any purpose in any proceeding, including certification of a class, (c) the Parties agree to jointly file a motion with the Court to vacate all orders entered pursuant to this Agreement to restore each of the Parties' respective position existing immediately before April 5, 2022ws (which is the date on which the Parties filed the Notice of Settlement).

### **III. DATA PRODUCTION RELATING TO EXPANDED CLASS**

7. Within 15 days of execution of this Agreement, Allstate shall produce to Class Counsel Claims and Policy Data (as defined) for the period January 1, 2012 through the date of execution of this Agreement, and any other information reasonably necessary to effectuate the terms of this Agreement.

8. Within 21 days of the Court's entry of a Preliminary Approval Order, Allstate shall produce to Class Counsel and the Settlement Administrator Claims and Policy Data (to the extent not already produced) for the period January 1, 2012 through and including the date of Preliminary Approval.

### **IV. CLASS NOTICE**

9. Allstate will pay all costs of effectuating and implementing the Class Notice set forth herein.

10. Allstate represents that it will timely produce to effectuate the deadlines herein, email addresses to the extent that such addresses are in its possession for the Settlement Class Members.

11. Ninety (90) days after entry of the Preliminary Approval Order, Epiq shall initiate mailing of the Mail Notice and Claim Form by first-class mail to each potential Settlement Class Member. The Claim Form will be detachable, return addressed, and shall be affixed with prepaid postage sufficient to mail back to the Settlement Administrator.

12. The Mail Notice and Claim Form shall be in the same form as Exhibits 2 and 5. Claim Forms provided with the Mail Notice will be pre-filled with a unique Claimant ID, the potential Settlement Class Member Name, and the claim date of loss as set forth in Exhibits 2 and 5. Allstate will provide data to the Settlement Administrator to be used to enable Claim Forms and Electronic Claim Forms to be pre-filled with the Settlement Class Member Name and date of loss.

13. Prior to Mail Notice, the Settlement Administrator shall run physical mailing addresses through the National Change of Address Database ("NCOA") for any addresses that Allstate does not have or are incomplete and/or for any addresses to which the Settlement Administrator knows to be invalid based on subsequent notice mailings that took place in this Action.

14. For each potential Settlement Class Member for whom Allstate provides an associated e-mail address, the Settlement Administrator shall send E-Mail Notice with the same Claimant ID as the Mail Notice and with a hyperlink to the website "Make a Claim" page permitting the Settlement Class Member to access a pre-filled Electronic Claim Form with the

Claimant ID. The first E-Mail Notice shall occur on or about four (4) days after the Mail Notice and shall be in substantially the same form as Email Notice Form as Exhibit 6.

15. The Settlement Administrator shall send a second E-Mail Notice with the same Claimant ID as the first email and with a hyperlink to the website "Make a Claim" page permitting the Settlement Class Member to access a pre-filled Electronic Claim Form with the Claimant ID. The Settlement Administrator shall not send the second E-Mail Notice on any claim for which the Settlement Administrator knows that it already has received a claim form, objection, or opt-out. The second E-Mail shall be sent on or about twenty-two (22) days after the Mail Notice and shall be in substantially the same form as the Email Notice Form as Exhibit 7.

16. The Settlement Administrator shall send a third E-Mail Notice with the same Claimant ID as the first and second emails with a hyperlink to the "Make a Claim" page permitting the Settlement Class Member to access a pre-filled Electronic Claim Form with the Claimant ID. The Settlement Administrator shall not send the third E-Mail Notice on any claim for which the Settlement Administrator knows that it already has received a claim form, objection, or opt-out. The third E-Mail shall be sent on or about 40 days after the Mail Notice date and shall be in substantially the same form as the E-Mail Notice Form at Exhibit 8.

17. The Settlement Administrator shall send the three separate emails even if none of the emails is rejected or returned as undelivered or otherwise fail to transmit. If any email is rejected, returned as undelivered, or the Settlement Administrator otherwise receives notice of a failure to transmit, the Settlement Administrator will apply its discretion to adjust wherever possible the settings or functionality, so as to increase the likelihood that a subsequent email will successfully transmit.

18. The Settlement Administrator shall direct notice in the manner set out herein on each and every claim for which it has been provided Claims and Policy Data even if the Settlement Class Member has more than one claim. A Settlement Class Member who has more than one claim will receive multiple mail and E-mail notices (notices for each claim).

19. The Settlement Administrator shall utilize best practices designed to avoid spam filters, blockers, or any tool designed to prevent receipt of emails, and to otherwise design and implement the sending of the email to increase the chance that the E-Mail Notice will be successfully received into the inbox of potential Settlement Class Members. All E-Mail Notices must include the capability to click-through to the website "Make a Claim" page.

20. The Settlement Administrator shall continue to maintain the website [www.ErbyTotalLossInsuranceSettlement.com](http://www.ErbyTotalLossInsuranceSettlement.com) and post the Settlement Agreement, Mail Notice, Longform Notice, Claim Form, Electronic Claim Form, Preliminary Approval Order, and frequently asked questions. The website may be amended from time to time as agreed to by the Parties. The website also shall contain Spanish translations of the Mail Notice, Longform Notice, and Claim Form. The Settlement Administrator shall maintain the website for at least 60 days after expiration of the Claims Submission Deadline.



21. The home page of the website shall reflect the case settlement and shall have a "Make A Claim" button permitting a Settlement Class Member to access a pre-filled Electronic Claim Form by providing a Claimant ID, with a method to submit the Electronic Claim Form with an electronic signature. The home page of the website also shall have a method to request that another copy of the paper Claim Form be mailed or emailed to the Settlement Class Member.

22. The website shall provide that a Settlement Class Member may submit a Claim Form without a Claimant ID by completing an Electronic Blank Claim Form by entering the Settlement Class Member name and address, and either a policy number or claim number and by signing and submitting the Electronic Blank Claim Form electronically.

23. If any Notice and/or Claim Form mailed to any potential Settlement Class Member is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly log each Notice and/or Claim Form that is returned as undeliverable and provide copies of the log to Allstate and Class Counsel upon request. If the mailing is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the mailing to that address. For the remaining returned mailings, the Settlement Administrator will use reasonable efforts, including an Experian or equivalent search or skip tracing, to attempt to obtain a new address and those mailings shall be forwarded to any new address obtained through such a search. If any Notice is returned as undeliverable a second time, no further mailing shall be required. It is agreed by the Parties that the procedures set forth in the preceding Paragraph and this Paragraph constitute reasonable and the best practicable notice under the circumstances and an appropriate and sufficient effort to locate current addresses for Settlement Class Members such that no additional efforts to do so shall be required.

24. The Parties agree that the Longform Notice, without material alteration to Exhibit 4, shall be posted to the website as set forth below and will be available upon request to Settlement Class Members.

25. The Notice and Claim Form also will be made available to all potential Settlement Class Members by request to the Settlement Administrator, who shall send via first-class U.S. mail any of these documents as requested by any potential Settlement Class Member. If a Claim ID is not available to the Settlement Administrator for the potential Settlement Class Member, the Settlement Administrator shall provide a Blank Claim Form to the requester with instruction that the Blank Claim Form must be mailed to the Settlement Administrator postmarked by the Claims Submission Deadline with the Settlement Class Member name, policy number or claim number, address, and signature.

26. The Settlement Administrator shall maintain a toll-free IVR telephone system containing recorded answers to frequently asked questions, along with an option permitting callers to punch through to a live operator. The recorded answers to frequently asked questions are to be agreed to by the Parties. In the event a Settlement Class Member has a question that is not addressed by the Parties in the frequently asked questions, the Settlement Administrator is to contact counsel for both Parties and a response will be agreed to by the Parties.



27. The Settlement Administrator shall rent a post office box to be used for receiving requests for exclusion, objections, notices of intention to appear, and any other settlement-related communications. Only the Settlement Administrator, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise expressly provided in this Agreement.

## **V. SETTLEMENT ADMINISTRATOR**

28. The Parties agree to the appointment of Epiq as Settlement Administrator to perform the services described herein. Allstate shall be solely responsible for the payment of the Settlement Administrator's fees and costs relating to the effectuation of the Class Notice as described herein. Settlement administration fees and costs are separate from, and are not included as, part of the lawsuit expenses and costs that Allstate separately agrees to pay as part of those Attorneys' Fees and Costs approved by the Court.

29. The Settlement Administrator shall assist with the various administrative tasks set forth herein and any others necessary to implement the terms of this Agreement and the Proposed Settlement as preliminarily approved, including (i) mailing and emailing or arranging for the mailing and emailing, respectively, of the Mail and E-Mail Notices described above and submitting to the Parties and Court an affidavit offering proof thereof; (ii) handling mail returned as not delivered and making additional mailings required under the terms of the Agreement; (iii) responding, as necessary, to inquiries from Settlement Class Members; (iv) providing to the Parties, within five (5) business days of receipt, copies of all objections, motions to intervene, notices of intention to appear, and requests for exclusion from the Settlement Class; (v) preparing a list of all Persons who timely requested exclusion from the Settlement Class and submitting to the Court the Opt-Out List and supporting affidavit ten (10) days before the Fairness Hearing scheduled by the Court; (vi) preparing a list of all Persons who submitted objections to the settlement and submitting an affidavit testifying to the accuracy of that list; (vii) preparing a list of all Persons who make a timely claim; (viii) implementing procedures for processing and handling Claims submissions; and (ix) promptly responding to requests for information and documents from Class Counsel, Allstate, and/or Allstate's Counsel.

30. As set forth herein, the Settlement Administrator shall set up, coordinate, maintain and/or implement (a) the post office box described in Paragraph 27; (b) the website described in Paragraphs 20-22; and (c) the toll-free IVR number described in Paragraph 26.

## **VI. CLAIMS PAYMENTS**

31. This settlement shall be a claims-made settlement. To be eligible for a Claim Payment under this settlement, a Settlement Class Member or his or her Legally Authorized Representative must timely submit a Claim Form or Electronic Claim Form and must not have

submitted a request for exclusion. Allstate shall not be obligated to make any Claim Payments until after the Effective Date.

32. The Claim Payment paid to eligible class members who submit timely and valid claims will be the amount of unpaid Sales Tax as follows:

Each Settlement Class Member who submitted a claim for a Covered Total Loss with a date of loss during the Class Period and received a Total Loss Claim Payment from Allstate will receive a payment calculated by: (1) determining the Full Sales Tax for the vehicle that was a total loss; and (2) subtracting any amount of sales tax that was included in any prior payment made by Allstate on the claim. For example, if the Full Sales Tax was \$600.00 and a prior payment included \$100.00 for sales tax, the Eligible Class Member will receive a payment of \$500.00.

33. The Settlement Administrator shall establish procedures for receiving and processing Claim Forms and Electronic Claim Forms.

34. The Claim Payment described herein is the only payment to which Settlement Class Members, other than Plaintiff, are entitled under this Agreement. The payments are deemed to be inclusive of any claims for any potentially applicable penalties and/or interest and/or fees. The payments shall be in full and final disposition of the Action, and in consideration for the release of any and all Released Claims as against any and all Released Persons.

## **VII. CLAIM SUBMISSIONS**

35. The Claim Form shall be without material alteration from Exhibit 2, and the Electronic Claim Form shall be without material alteration from Exhibit 3 except for changes necessary for conversion to electronic format.

36. Each Settlement Class Member will be provided an opportunity to submit, at his or her option, either a Claim Form or an Electronic Claim Form requesting a payment calculated in accordance with Paragraph 32.

37. A Claim Form submitted by a Settlement Class Member who has more than one claim shall constitute a Claim Form for all covered claims of the Settlement Class Member.

38. To be considered for payment, a Claim Form must be postmarked no later than the Claims Submission Deadline and an Electronic Claim Form must be submitted electronically no later than the Claims Submission Deadline, at which point the Settlement Administrator shall deactivate the Electronic Claim Form.

39. If not pre-populated as set forth above, a Settlement Class Member must include in a Blank Claim Form (i) the name and current address of the Settlement Class Member and (ii) the claim number associated with the Covered Total Loss Claim or the Settlement Class Member's policy number at the time of the Covered Total Loss Claim.

40. The Claim Form, Blank Claim Form, and Electronic Claim Form must contain a signature, or in the case of an Electronic Claim Form, an electronic signature, certifying the claim.

## **VIII. CLAIMS ADMINISTRATION**

41. Claim Forms that are timely mailed to the correct address shall be processed as follows:

- (a) If a Claim Form is unsigned, illegible, or does not include the Claimant Number or policy number involved in the claim, the Settlement Administrator shall send the claimant a letter, with a copy to Allstate and Class Counsel, informing him or her of the defect and providing the claimant with thirty (30) days in which to cure the defect. If the claimant does not subsequently provide a Claim Form curing the defect and postmarked within thirty (30) days of the date of the Settlement Administrator's letter, that Claim Form shall be deemed defective and not eligible for payment, and the claimant shall not have an additional opportunity to cure the defect.
- (b) Within ninety (90) days after the later of the Claims Submission Deadline or the Final Order and Judgment, Allstate shall:
  - (i) inform Class Counsel and the Settlement Administrator of any claims (other than claims determined by the Settlement Administrator to be untimely) it believes are invalid, and, as to each such claim, include the Settlement Class Member name, claim number, and a brief description as to why Allstate believes the claim is not entitled to any payment; and,
  - (ii) For those claims that Allstate does not challenge as invalid, Allstate shall provide the Settlement Administrator and Class Counsel the amount of payment for each claim. Class Counsel will have ten days from the provision of the Claim Payment amount to dispute the amount of Claim Payment. Allstate and Class Counsel shall cooperate to resolve any dispute as to Claim Payment within ten days.

- (c) Within the later of one hundred twenty (120) days after the Claims Submission Deadline or forty five (45) days after the Effective Date, Allstate and/or Epiq shall make Claim Payments by mailing a check for the full amount of Claim Payment or, if authorized to do so, make an electronic transfer of funds for the full amount of Claim Payment to all Settlement Class Members whose submitted claims were not challenged as invalid, and for which Class Counsel did not dispute the amount of Claim Payment. The check shall be valid for 180 days after the date of the check.
- (d) If any Claim Payment mailed to any potential Settlement Class Member is returned to Allstate as undeliverable, Allstate will promptly log each Notice and/or Claim Form that is returned as undeliverable and provide copies of the log to the Settlement Administrator. The Settlement Administrator will run the address through the NCOA and provide Allstate with any updated address. If there is an updated address, Allstate shall resend the Claim Payment to that address. If the Claim Payment mailing is returned to Allstate with a forwarding address, Allstate shall forward the Claim Payment mailing to that address.
- (e) Within thirty (30) days after resolution of Class Counsel's disputes of the amount of Claim Payments as provided in Paragraph 41(b)(ii), Allstate shall make the Claim Payment as identified in the previous subparagraphs for the resolved full amount of Claim Payment to all Settlement Class Members on whose claims Class Counsel disputed the amount of Claim Payment.
- (f) Within thirty (30) days of receiving Allstate's determinations in Paragraph 41(b)(i), the Settlement Administrator shall mail an Explanation Letter to all Settlement Class Members who submitted claims challenged by Allstate as invalid an explanation of why Allstate deemed the claim to be invalid. A copy of each such Explanation Letter shall be provided to Class Counsel at or near the time of mailing to the Settlement Class Member. The explanation will include the process by which the defect may be cured and inform the Settlement Class Member that it may re-submit a Claim Form to correct the deficiency, or, if Allstate determined in its opinion that the defect is not curable, will inform the Settlement Class Member that they may contest the determination by mailing a written explanation as to why Allstate's determination was incorrect. The mailing contesting Allstate's determination must be postmarked no later than thirty (30) days after the Explanation Letter to be deemed timely.
- (g) Within thirty (30) days of receiving any re-submissions or contestations from Settlement Class Members as set forth in Subparagraph (f), the claim will be submitted to a Neutral Evaluator agreed to by the Parties. The Neutral Evaluator shall make a decision based solely on the written

submissions from the Settlement Class Member and Allstate. The decision by the Neutral Evaluator shall be binding on Allstate and any Settlement Class Member. The Neutral Evaluator shall provide an explanation of any decision to Allstate and Class Counsel. Within ten (10) days of the Neutral Evaluator's determination, Allstate will mail a payment to any Settlement Class Members determined by the Neutral Evaluator to have submitted or resubmitted a valid claim, and the Settlement Administrator shall mail an explanation to any Settlement Class Member the Neutral Evaluator determined submitted an invalid claim.

- (h) The Neutral Evaluator shall be a licensed attorney in the Commonwealth of Pennsylvania. A Settlement Class Member shall pay a \$50.00 contribution to the Neutral Evaluator fee as a prerequisite to having the Neutral Evaluator determine the claim. In the event the Neutral Evaluator determines that the Class Member is entitled to a greater amount than was determined by Allstate, Allstate shall pay the amount awarded by the Neutral Evaluator and also refund the \$50.00 contribution to the Neutral Evaluator fee paid by the Settlement Class Member. If the Parties cannot agree upon the Neutral Evaluator, such person shall be appointed by the Court.
- (i) Claim Forms that are not timely postmarked, as determined by the Settlement Administrator, will not be considered for payment, and the Settlement Class Members whose Claim Forms are deemed untimely will be provided written notice thereof.

#### **IX. ATTORNEYS' FEES AND COSTS AWARD AND SERVICE AWARDS**

42. Class Counsel's entitlement, if any, to an Attorneys' Fee Award and the Plaintiff's entitlement, if any, to a Service Award, will be determined by the Court. The terms of any such awards, fees, costs, or expenses were not negotiated until after all material elements of the Proposed Settlement were resolved and the terms of this Proposed Settlement are not conditioned upon any maximum or minimum Attorneys' Fee Award or Service Award, except as explicitly stated herein.

43. Class Counsel will file a motion with the Court prior to the Fairness Hearing requesting an award payable to Class Counsel of attorneys' fees in a total amount that shall not exceed Seven Hundred Thirty Thousand Dollars (\$730,000.00) and costs in a total amount that shall not exceed Twenty-Five Thousand Dollars (\$25,000.00) ("Maximum Attorneys' Fees and Costs Award"), that each party shall bear their own other costs and expenses except as otherwise provided in this Agreement, and an incentive award payable to the Named Plaintiff not to exceed Six Thousand Five Hundred Dollars (\$6,500.00) ("Maximum Service Award"). Payment of any attorneys' fees and costs award and/or service awards, and of the costs of the administration of this settlement (which includes any costs of the Neutral Evaluator), are separate from and in addition to the payments available to Settlement Class Members. The amount owed and/or paid to



Settlement Class Members will not be adjusted or reduced in any way as a result of any payments made for attorneys' fees, costs, service awards, or the costs of administration and notice.

44. Allstate will not oppose or object to a motion requesting an award of attorneys' fees, costs, and expenses to be paid to Class Counsel in an amount not exceeding the Maximum Attorneys' Fees and Costs Award. Allstate will not oppose or object to a motion requesting a Service Award to the Plaintiff in an amount not exceeding the Maximum Service Award. Allstate agrees to pay the attorneys' fee and costs award and service award or any lesser amount the Court may award. Plaintiff and Class Counsel will not seek to enforce or recover any attorneys' fee and costs award in excess of the Maximum Attorneys' Fees and Costs Award, or any service award in excess of the Maximum Service Award.

45. Any attorneys' fees and costs award and service award made by the Court must be paid by Allstate to Class Counsel (on the terms set forth above) no later than fourteen (14) days after the later of the Effective Date or, if issued in a separate order, a final Order approving or awarding the attorneys' fees and costs award and service award meaning the Order is a final, appealable judgment and either (i) no appeal has been taken as of the date on which all times to appeal therefrom have expired, or (ii) an appeal or other review proceeding of the Order having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of certiorari, or otherwise, and such appeal or other review has been fully and finally resolved in such manner that affirms the Order.

#### **X. FINAL APPROVAL OF THE PROPOSED SETTLEMENT**

46. Within fifteen (15) days after the deadline for seeking exclusion from the Settlement Class and/or for filing objections to the Proposed Settlement, Class Counsel will file a motion seeking the Court's Final Approval of the Proposed Settlement at the Fairness Hearing to be held at a time, date, and location as set by the Court and that will be stated in the Notice. The Motion shall request, at minimum, the Court to enter a Final Order and Judgment that:

- (a) certifies the Settlement Class for settlement purposes only;
- (b) finds the Court has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Agreement and all Exhibits thereto;
- (c) gives final approval to the Proposed Settlement and directs the Parties and counsel to comply with and consummate the terms of the Agreement;
- (d) finds that Class Counsel and the Plaintiff adequately represented the Settlement Class;



- (e) finds that the terms of this Agreement are fair, reasonable, and adequate to the Settlement Class Members;
- (f) finds that the Notice set forth in this Agreement (i) constituted the best practicable notice under the circumstances; (ii) was reasonably calculated to apprise potential Settlement Class Members of the pendency of the Action, their right to object to or exclude themselves from the Proposed Settlement, and to appear at the Fairness Hearing; and (iii) constituted due, adequate, and sufficient process and notice to all Persons entitled to receive notice;
- (g) finds that the Opt-Out List is a complete list of all Settlement Class Members who have timely requested exclusion from the Settlement Class and, accordingly, neither share in nor are bound by the Final Order and Judgment;
- (h) provides that the Plaintiff, all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List, and their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have submitted a Claim Form or Electronic Claim Form, and regardless of whether they have received actual notice of the Proposed Settlement, have conclusively compromised, settled, discharged, and released all Released Claims against Defendants and the Released Persons, and are bound by the provisions of this Agreement;
- (i) dismisses all claims in the Action on the merits and with prejudice, and without fees or costs except as provided herein, and entering final judgment thereon;
- (j) determines the amount of the Attorneys' Fees and Costs Award to Class Counsel and the Service Award to the Plaintiff; and,
- (k) appoints Epiq as the Settlement Administrator.

## **XI. REQUESTS FOR EXCLUSION AND OBJECTIONS**

47. Settlement Class Members who wish to exclude themselves from the Settlement Class must submit timely and written requests for exclusion. To be effective, such a request must include the Settlement Class Member's Name and address, an unequivocal statement that the

Settlement Class Member wishes to be excluded from the Settlement Class, and the signature of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class Member. The request must be received by the Settlement Administrator at the address provided in the Mail Notice no later than thirty (30) days after the Mail Notice Date. Requests for exclusion must be exercised individually by the Settlement Class Member and is only effective as to the individual Settlement Class Member requesting exclusion.

48. The Plaintiff shall not elect or seek to opt out or exclude himself from the Settlement Class, and any such attempt will be deemed a breach of this Agreement and sufficient to permit Allstate to terminate the Agreement.

49. The Settlement Administrator shall promptly log and prepare a list of all Persons who properly requested exclusion from the Settlement Class and shall submit an affidavit to the Court which includes and attests to the accuracy of the Opt-Out List no later than ten (10) days prior to the Fairness Hearing set by the Court.

50. All Settlement Class Members who do not timely and properly exclude themselves from the Settlement Class shall be bound by this Agreement, and upon entry of a Final Order and Judgment, this action shall be dismissed with prejudice and all of the Settlement Class Members Released Claims shall be released as provided for herein.

51. Settlement Class Members who do not request exclusion from the Settlement Class may object to the Proposed Settlement. Settlement Class Members who choose to object to the Proposed Settlement must file written notices of intent to object. Any Settlement Class Member who timely files an objection in compliance with this paragraph may appear at the Fairness Hearing, in person or by counsel, and be heard to the extent and only if permitted by the Court.

52. To be timely, the objection or motion to intervene must be received by the Settlement Administrator at the address provided in the Mail Notice and filed with the Court no later than thirty (30) days after the Mail Notice Date.

53. The right to object to the Proposed Settlement or to intervene in the Action must be exercised individually by a Settlement Class Member or his or her attorney, and not as a member of a group, class, or subclass, except that such objections may be submitted by a Settlement Class Member's Legally Authorized Representative.

54. To be effective, a notice of intent to object to the Proposed Settlement must:

- (a) Include the name of the case and case number;
- (b) Provide the name, address, telephone number, and signature of the Settlement Class Member filing the objection;

- (c) Indicate the specific reasons why the Settlement Class Member objects to the Proposed Settlement;
- (d) Contain the name, address, bar number, and telephone number of the objecting Settlement Class Member's counsel, if any, and any such attorney must comply with all applicable rules of the Court; and
- (e) State whether the objecting Settlement Class Member intends to appear at the Fairness Hearing, either in person or through counsel.

55. In addition, a notice of intent to object must contain the following information, if the Settlement Class Member or his or her attorney requests permission to speak at the Fairness Hearing:

- (a) A detailed statement of the legal and factual basis for each objection;
- (b) A list of any and all witnesses the Settlement Class Member may seek to call at the Fairness Hearing (subject to applicable rules of procedure and evidence and at the discretion of the Court), with the address of each witness and a summary of his or her proposed testimony;
- (c) A list of any legal authority the Settlement Class Member will present at the Fairness Hearing; and ,
- (d) Documentary proof of membership in the Settlement Class.

56. Any Settlement Class Member who does not file a timely notice of intent to object waives the right to object or to be heard at the Fairness Hearing and will be barred from making any objection to the Proposed Settlement. Settlement Class Members have the right to exclude themselves from the Proposed Settlement and pursue a separate and independent remedy against Allstate by complying with the exclusion provisions set forth herein. Settlement Class Members who object to the Proposed Settlement shall remain Settlement Class Members and waive their right to pursue an independent remedy against Defendants. To the extent any Settlement Class Member objects to the Proposed Settlement, and such objection is overruled in whole or in part, such Settlement Class Member will be forever bound by the Final Order and Judgment of the Court. Settlement Class Members can avoid being bound by any judgment of the Court by complying with the exclusion provisions set forth herein.

57. The Settlement Administrator shall provide Allstate and Class Counsel a copy of each notice of intent to object received by the Settlement Administrator.

## **XII. DENIAL OF LIABILITY**

58. Allstate maintains it acted in accordance with the governing laws and regulations of the Commonwealth of Pennsylvania and abided by the terms of the applicable insurance policies. Nonetheless, Allstate has concluded that it is in its best interests that the Action be settled on the terms and conditions set forth in this Agreement. Allstate reached this conclusion after considering the factual and legal issues in the Action, the substantial benefits of a final resolution of the Action, and the expense that would be necessary to defend the Action through judgment, appeal, and any subsequent proceedings that may occur.

59. Allstate believes that it stands a reasonable chance of success in any appeal as to the merits of this case and as to the certification of the Class. Allstate maintains that its defenses to the merits of this case and to class certification are meritorious. Because of the costs, resources, and time that would be incurred, Allstate asserts that it would not have settled this Action except on a claims-made basis.

60. As a result of the foregoing, Allstate enters into this Agreement without admitting, conceding, or acknowledging any fault, liability, or wrongdoing of any kind. This Agreement shall not be construed as an admission or concession of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind. The terms of this Agreement, including the claims-made nature of the Agreement, are material to Allstate's decision to settle this Action notwithstanding its belief that its defenses are meritorious and its chances of success on appeal are significant.

### **XIII. DISMISSAL OF ACTION AND RELEASE OF CLAIMS**

61. Upon the Effective Date, the Plaintiff, all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List, and their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have submitted a Claim Form or Electronic Claim Form, will be bound by the Final Order and Judgment and conclusively deemed to have fully released, acquitted, and forever discharged all Released Persons from all Released Claims.

62. Upon entry of the Final Order and Judgment, the Action will be dismissed with prejudice as to Allstate, the Plaintiff, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List and will release all Released Persons from Released Claims. It is the intent of the Parties to this Settlement Agreement that dismissal of the claims with prejudice and release of the claims shall have the res judicata effect of dismissal and release of only those claims expressly identified herein as Released Claims. It is the intent of the parties that this Settlement Agreement and lawsuit dismissal will not operate as a bar to any Class Member from pursuing any claim that is not a Released Claim.

### **XIV. RETENTION OF RECORDS**

63. The Settlement Administrator, Class Counsel, and Allstate shall retain copies or images of all returned Notices, Claim Forms, Electronic Claim Forms (and/or data resulting therefrom) and correspondence relating thereto, for a period of up to two (2) years after the Effective Date. After this time, Class Counsel shall destroy any documentary records in their possession.

## **XV. MISCELLANEOUS PROVISIONS**

64. Within twenty-one (21) days of the execution of this agreement, Class Counsel may take a deposition of a witness designated by Allstate to confirm the source and reliability of the data used in connection with the Settlement of this Action.

65. Allstate will pay all costs incurred by the Settlement Administrator to implement and effectuate this Settlement, including, but not limited to, administrative costs, notice costs, claims handling cost, postage, website maintenance, costs to email, and all other costs necessary to comport with this Agreement. These costs are separate from, and not included within, the lawsuit costs and expenses Allstate has agreed to pay, if ordered by the Court, as part of Plaintiff's attorneys' fee and costs award.

66. After entry of a Preliminary Approval Order, Allstate agrees to include payments for Full Sales Tax in Total Loss Claim Payment(s) relating to vehicles under Pennsylvania private passenger auto insurance policies, unless and until:

- (a) Allstate implements a change in their Pennsylvania private passenger auto insurance policies to exclude from actual cash value or otherwise Sales Tax;
- (b) The Pennsylvania Supreme Court issues a decision after the execution of this Agreement on a contested issue holding that such fees are not covered by policies utilizing language substantially similar to Allstate's Policy language; or
- (3) Pennsylvania Statutes or regulations are amended to clarify that sales tax is not owed to total loss insureds. No change in policy language, ruling from any Court identified in this paragraph, or amendment to Pennsylvania statutes or regulations, shall abrogate the duties of Allstate to pay the amounts due under this Settlement Agreement and otherwise comply with the Settlement Agreement with the sole exception being the payment of future claims as set forth in this paragraph.

67. Each Party to this Agreement warrants that he, she, or it is fully authorized to enter into this Agreement, and is acting upon his, her, or its independent judgment and upon the advice of his, her, or its counsel and not in reliance upon any warranty or representation, express or



implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Agreement.

68. The Parties and undersigned counsel agree to undertake best efforts to effectuate this Agreement and the terms of the Proposed Settlement, including taking all steps and efforts contemplated by this Agreement and any other reasonable steps and efforts which may become necessary by order of the Court or otherwise.

69. The headings and captions contained in this Agreement are for reference purposes only and in no way define, extend, limit, describe, or affect the scope, intent, meaning, or interpretation of this Agreement.

70. Unless otherwise noted, all references to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal or state legal holiday, such date or deadline shall be on the first business day thereafter.

71. Except as otherwise provided in a written amendment executed by the Parties or their counsel, this Agreement contains the entire agreement of the Parties hereto and supersedes any prior agreements or understandings between them. The Parties further agree that this Agreement contains the entire understanding between the parties with respect to the transaction contemplated herein, that there is no representation, agreement or obligation regarding the settlement which is not expressly set forth in this Agreement and that no representation, inducement, promise, or agreement not expressly set forth in the text of this Agreement shall be of any force or effect. All terms of this Agreement shall be construed as if drafted by all parties hereto. The terms of this Agreement are and shall be binding upon each of the Parties and their agents, attorneys, employees, successors, and assigns, and upon all other Persons claiming any interest in the subject matter hereof through any of the parties hereto, including any Settlement Class Member.

72. This Agreement may be amended or modified only by a written instrument signed by all Parties.

73. This Agreement shall be subject to, governed by, construed, and enforced pursuant to the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law.

74. The exhibits to this Agreement are integral parts of the settlement and are hereby incorporated and made part of this Agreement.

75. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of this Agreement.

76. This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned Parties and/or counsel.



77. Class Counsel agree that representations, encouragements, solicitations or other assistance to any Person seeking exclusion from the Settlement Class or any other Person seeking to litigate with Released Persons over any of the Released Claims in this matter could place Class Counsel in a conflict of interest with the Settlement Class. Accordingly, Class Counsel and their respective firms agree not to represent, encourage, solicit, or assist any Person in requesting exclusion from the Settlement Class. Nothing in this paragraph shall preclude or prevent Class Counsel from answering inquiries from any potential Settlement Class Member. Class counsel agrees to utilize the recorded answers to frequently asked questions as agreed to by the Parties to respond to inquiries from potential Settlement Class Members. In the event a potential Settlement Class Member has a question that is not addressed by the Parties in the frequently asked questions, Class Counsel will contact Allstate's counsel and a response will be agreed to by the Parties.

78. The confidentiality of all Confidential Information shall be protected from disclosure by Class Counsel and the Plaintiff to any Persons other than the Settlement Administrator, the Neutral Evaluator, and any Person the Court orders be allowed to access Confidential Information.

79. The Parties agree that Class Counsel or anyone associated with Class Counsel's firms shall not use any of the Confidential Information in any other litigation, whether pending or future, unless independently obtained through discovery or other procedures in that litigation.

80. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement and all parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied herein.

81. This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms' length negotiations among the Parties with the aid of a neutral mediator. Whereas all Parties have contributed substantially and materially to the preparation of this Settlement Agreement; it shall not be construed more strictly against one Party than another.

82. The Parties may terminate this Agreement within twenty (20) days after notice of an occurrence as set forth below, by providing written notice of termination where:

- (a) the Court or any appellate court(s) rejects, modifies or denies approval of any material portion of this Settlement except that rejection, modification or disapproval of the Attorneys' Fee Award and/or Service Award does not allow Plaintiff the right to terminate this Agreement;
- (b) any financial obligation is imposed on Allstate in addition to and/or greater than those accepted by Allstate in this Agreement; or,
- (c) if the Court allows a certified class of Persons who are members of the Settlement Class to opt out of the Proposed Settlement.

83. This Agreement may be amended or modified only by a written instrument signed by all Parties. Amendments and modifications may be made without additional notice to the potential Settlement Class Members unless such notice is required by the Court. The terms of this Agreement, including the claims-made structure, are material terms. Allstate represents that settlement is contingent on the claims-made structure as set forth herein.

Signed on April 5, 2022, by counsel of record for all parties, with express permission.

*Signed by counsel with express permission of  
client*

/s/ Daniel C. Levin

DANIEL C. LEVIN, ESQUIRE  
LEVIN SEDRAN & BERMAN LLP  
510 Walnut Street, Suite 500  
Philadelphia, PA 19102  
(215) 592-1500

D. Aaron Rihn, Esquire  
ROBERT PEIRCE & ASSOCIATES, P.C.  
707 Grant Street, Suite 125  
Pittsburgh, PA 15219-1918  
412-281-7229

Jason Medure, Esquire  
MEDURE BONNER BELLISSIMO, LLC  
713 Wilmington Avenue  
New Castle, PA 16101  
724-653-7855

Larry Weisberg, Esquire  
Derrek W. Cummings, Esquire, CPA  
Steve T. Mahan, Esquire  
Stephen P. Gunther, Esquire  
MCCARTHY WEISBERG CUMMINGS,  
P.C.  
2704 Commerce Drive, Suite B  
Harrisburg, PA 17110-9380  
717-238-5707

*Attorney for Plaintiff*

/s/ Peter Valeta

PETER VALETA, ESQUIRE  
COZEN O'CONNOR  
123 North Wacker Drive, Suite 1800  
Chicago, IL 60606  
(312) 474-7895

*Attorney for Defendant*