

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO. CACE13018792 DIVISION 08 JUDGE David A Haimes

GAIL PIERCE

Plaintiff(s) / Petitioner(s)

v.

ALLSTATE INSURANCE COMPANY

Defendant(s) / Respondent(s)

_____ /

ORDER OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

This matter came before the Court on April 28, 2020 upon the parties' Joint Motion for Preliminary Approval of Class Action Settlement Agreement and Stipulation ("Joint Motion"), and

WHEREAS, a class action is pending before the Court entitled *Gail Pierce v. Allstate Insurance Company, et al.*, pending as Case No. CACE-13-018792 ("the Action"); and

WHEREAS the parties have agreed on a Settlement Agreement and Stipulation dated February 18, 2020, and amended on March 26, 2020, which together with the Exhibits attached thereto, sets for the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Defendants upon the terms and conditions set forth therein (the "Settlement Agreement" or the "Agreement"), and the Court having read and considered the Settlement Agreement; and

WHEREAS, good cause has been shown, and the Court having considered the record and arguments of counsel, and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

1. Terms and phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement. Additionally, in this Order the Court will from time to time refer to Defendants collectively as “Allstate.”
2. The parties have moved the Court for an order approving the settlement of the Action in accordance with the Settlement Agreement, which together with the documents incorporated therein, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice, and the Court having read and considered the Settlement Agreement and having heard the parties and being fully advised in the premises, hereby gives its preliminary approval to the Settlement Agreement in its entirety subject to the Final Fairness Hearing referred to in Paragraph 21 of this Order for purposes of deciding whether to grant final approval to the said Settlement Agreement.

Settlement Class Certification

3. Lawrence M. Kopelman, 7900 Peters Road, Suite B200, Fort Lauderdale, Florida, 33324-402, and Stephen G. Grygiel, Grygiel Law, LLC, 301 Warren Avenue, #405, Baltimore, Maryland, 21230 are appointed Class Counsel for the Settlement Class. Gail Pierce is appointed the Class Representative.
4. For purpose of settlement only, the Court certifies the following class (“the Settlement Class”):

“EIP Class Members” and “Provider Class Members,” including “Allstate Post-Review Settlement Subclass Members.”

EIP Class Members are persons who were or are:

- i. An Eligible Injured Person under a Defendant Florida Auto Policy;

- ii. Where the Eligible Injured Person was injured in an automobile accident covered by the PIP coverage of a Defendant Florida Auto Policy which was governed by Florida law and the Florida PIP statute;

- iii. Where the PIP coverage for such Eligible Injured Person was subject to a PIP deductible;
and

- iv. Where payment of PIP benefits was calculated by applying the PIP deductible, or portion thereof, to a statutorily authorized limitation amount as opposed to the full amount billed for medical services rendered to the Eligible Injured person.

Provider Class Members are persons or entities who were or are:

- i. An assignee of an Eligible Injured Person under a Defendant Florida Auto Policy;

- ii. Where the Eligible Injured Person was injured in an automobile accident covered by the PIP coverage of a Defendant Florida Auto Policy which was governed by Florida law and the Florida PIP statute;

- iii. Where the PIP coverage for such Eligible Injured Person was subject to a PIP deductible;
and

- iv. Where payment of PIP benefits was calculated by applying the PIP deductible, or portion thereof, to a statutorily authorized limitation amount as opposed to the full amount billed for medical services rendered to the Eligible Injured Person.

The Allstate Post-Review Settlement Subclass Members (“Subclass Members”) are EIP Class

Members or Provider Class Members whose payment of PIP benefits;

i. was calculated by applying the PIP deductible, or portion thereof, to a statutorily authorized limitation amount as opposed to the full amount billed for medical services rendered to the Eligible Injured Person;

ii. was determined on or after March 8, 2018 and before December 29, 2018;

iii. and was not remediated under the Allstate Deductible Mitigation Plan, as described in the Agreement.

5. Excluded from the Settlement Class are: (a) the Defendant Insurers and any parent, subsidiary, affiliate, or controlled person of Defendant Insurers, as well as the officers and directors of Defendant Insurers; and (b) any trial judge that may preside over the Action. Additionally, certain claims of Class Members shall not be entitled to any payment under this Settlement ("Claim Exclusions") as follows:

i. any actual claim for benefits specifically alleging an improper payment of PIP benefits due to application of a PIP deductible, or portion thereof, to a statutorily authorized limitation amount as opposed to the amount billed for medical services rendered to the Eligible Injured Person that was asserted against one of the Defendant Insurers that has been adjudicated, released, settled, or otherwise lawfully satisfied or discharged prior to the date of the Agreement;

ii. any claim that was paid in response to a pre-suit demand subsequent to an initial denial of coverage;

iii. any claim which was paid by a Defendant Insurer pursuant to the "Allstate Deductible Mitigation Plan" or "Encompass Deductible Mitigation Plan" as described herein and more fully explained in the Agreement, which is on file in this case with the Circuit Court of Broward County and available for review as described herein;

iv. any bill for which no PIP coverage is applicable;

v. any bill which was a duplicate of any bill previously submitted to a Defendant Insurer, for the same services rendered to the same Eligible Injured Person for the same date of service;

vi. any claim where the available benefits of the Eligible Injured Person have been

exhausted; and

- vii. all claims against a Defendant Insurer under a Florida Auto Policy that on the date of Preliminary Approval of this Settlement are the subject of a Deductible Lawsuit, unless such claimant should affirmatively elect to include such claims for payment under this settlement as provided in the Agreement.

The "Allstate Deductible Mitigation Plan" shall refer to the Allstate Defendants' payments, beginning on December 31, 2018, of additional amounts for claims where there had been a previous application of a PIP deductible, or portion thereof, to a statutorily authorized limitation amount as opposed to the amount billed for medical services rendered to the Eligible Injured Person. The "Encompass Deductible Mitigation Plan" shall refer to the Encompass Defendants' payments on April 8, 2019 of additional amounts for claims where there had been a previous application of a PIP deductible, or portion thereof, to a statutorily authorized limitation amount as opposed to the amount billed for medical services rendered to the Eligible Injured Person.

6. The Court finds, subject to the Final Fairness Hearing referred to in Paragraph 21 below, that the Settlement Agreement is fundamentally fair, adequate and reasonable, and that the Settlement Class satisfies each of the requirements of Rule 1.220(b)(3) of the Florida Rules of Civil Procedure, specifically, that: the class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the representative party are typical of the claims of the class; the representative party will fairly and adequately protect the interests of the class; common questions of law or fact predominate over questions affecting individual members; and a class action is a superior method for fairly and efficiently adjudicating the action.
7. Should the Settlement Agreement not receive the Court's final approval, or should final approval be reversed on appeal, or should the Settlement Agreement otherwise fail to become effective, the Court's grant of class certification shall be vacated, and the Class

Representative and the Settlement Class would once again bear the burden of establishing the propriety of class certification.

Notice and Administration

8. The Court approves, as to form and content, the Class Notices in the forms of Exhibits C and D to the Parties' Joint Motion, and finds that the publication of the Publication Notice to the Settlement Class Members and that the mailing and distribution of the Mailing Notice to the Allstate Post-Review Settlement Subclass Members in the manner set forth in paragraphs 9 through 12 of this Order constitutes valid, due and sufficient notice to all persons entitled thereto, that it is the best notice practicable under the circumstances and constitutes due and sufficient notice to all persons entitled thereto, and comply fully with the requirements of the Florida Rules of Civil Procedure and of Due Process.
9. As stated above, the Agreement excludes from the class a claim against a Defendant under a Florida auto policy that is currently the subject of a pending lawsuit alleging an improper payment of PIP benefits due to application of a PIP deductible, or portion thereof, to a statutorily authorized limitation amount as opposed to the amount billed for medical services rendered to the Eligible Injured Person, which is unresolved by a Judgment that became final and unappealable prior to the Preliminary Approval date of this Settlement (a "Deductible Lawsuit"). The Court approves, as to form and content, the written Deductible Lawsuit Class Notice in the form of Exhibit H to the Settlement Agreement to the counsel for a Class Member in any currently pending Deductible Lawsuit at the time of entry of this Order explaining the Class Member's right to elect to have the claim which is the subject of such pending Deductible Lawsuit paid under the terms of the Agreement. The Court finds that the mailing and distribution of the Deductible Lawsuit Class Notice in the manner set forth in paragraphs 9 through 12 of

this Order constitutes a valid, due and sufficient notice to all persons entitled thereto, that it is the best notice practicable under the circumstances and constitutes due and sufficient notice to all persons entitled thereto, and complies fully with the requirements of the Florida Rules of Civil Procedure and of Due Process.

10. Pursuant to Paragraphs 2.3-2.5 of the Settlement Agreement, Epiq Systems (“Epiq”) is authorized as the Third Party Administrator to administer the publication and mailings of the Class Notices to the Class Members and the Deductible Lawsuit Class Notice to counsel for a Class Member in any currently pending Deductible Lawsuit under this Settlement.
11. As set forth in Paragraph 5 of the Settlement Agreement, Epiq is directed to publish the Publication Notice (Exhibit C to the Joint Motion) in as a ¼ page notice one time in the following newspapers: Centro Tampa; El Clarin; El Semanario Accion; and El Sentinel. The Publication Notice also will be published digitally for thirty-one (31) days on Facebook, Google Display Network, and Oath (Yahoo) Display Network. The Publication Notice will be accompanied by a state of Florida informational release issued one-time over PR Newswire and geo-targeted sponsored search listings on Google, Yahoo! and Bing internet search engines to Florida. As set forth in Paragraphs 2.4 and 2.5, Epiq is directed to mail the Mailed Notice (Exhibit D to the Joint Motion) and the Deductible Lawsuit Class Notice (Exhibit H to the Settlement Agreement) by first class mailing, postage prepaid, as its own mailing (i.e., not in the same envelope with any other material). The date upon which the said publication and mailing to the Class Members is to be completed shall be _____ (60) days following entry of the Order of Preliminary Approval. Defendants will file a list of the individuals to whom the Mailed Notice and Deductible Lawsuit Notice was mailed at least twenty (20) days prior to the Final Fairness Hearing.

12. Additionally, as set forth in Paragraph 7 of the Settlement Agreement, Defendants, through Epiq, will establish and pay for a website with information as to this Settlement, including the Agreement, the Class Notices and Claim Forms, which shall be maintained by Epiq. This website shall also contain a list of Frequently Asked Questions to give further information regarding this Agreement. The website referred to herein will be established and operational by a date no later than the date the Publication Notice is published, and will remain operational until thirty (30) days after the deadline for submitting Claim Forms.

Exclusion

13. Settlement Class Members who wish to exclude themselves from the Settlement Class may do so if, within thirty (30) days after the publication of the Publication Notice, they comply with the “Opt-Out” procedures set forth in the Settlement Agreement and Class Notices. Any Settlement Class Member so excluded shall neither be bound by the terms of the Settlement Agreement nor entitled to any of its benefits.
14. Class Members who wish to exclude themselves from the Settlement Class must submit a written request for exclusion, postmarked not later than thirty (30) days after the publication of the Publication Notice, which shall be sent to the address to be set forth in the Publication Notice. Written requests for exclusion must be signed and include the Class Member’s name, address, and telephone number, and expressly state the desire to be excluded from the Settlement Class.
15. Settlement Class Members who opt out of the Settlement Agreement will relinquish their rights to benefits under the Settlement Agreement and will not release their claims. However, Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the date specified herein shall be bound by all terms of the Settlement Agreement and all other Orders that may be entered in the Action.

16. Any Settlement Class Member who chooses to opt out and exclude themselves may not object to the approval of this Settlement, and shall be deemed to have waived any rights or benefits under the Settlement Agreement, and waived any standing to object to the Settlement Agreement.

Objections

17. Settlement Class Members who do not file a timely request for exclusion may file a notice of intent to object to the Settlement Agreement, or intervene in the Action for the purpose of contesting the Settlement Agreement. Any Settlement Class Member who intends to object to the fairness, reasonableness, or adequacy of the Settlement Agreement (hereinafter "Objections") or to a judgment being entered dismissing the Action with prejudice in accordance with the terms of the Settlement Agreement, or to the attorneys' fees and expense reimbursement sought by Class Counsel in their Motion for Attorneys' Fees, or to the incentive award sought by the Class Representative in the Motion for Incentive Award, must sign and file with the Court a written notice of intent to object or intervene not later than thirty (30) days before the date set for the Final Fairness Hearing as listed in the Class Notices.
18. Any written Notice of Intent to Object and/or Intervene must be: (a) filed with the Clerk of the Court not later than thirty (30) business days before the date set for the Final Fairness Hearing as listed in the Class Notices; and (b) sent by email and first-class mail, postmarked not later than thirty (30) days before the date set for the Final Fairness Hearing, to Class Counsel:

Lawrence M. Kopelman
7900 Peters Road, Suite B200
Fort Lauderdale, FL 33324-402
954-462-6855 (Telephone)
954-525-4300 (Facsimile)
lmk@kopelblank.com

and

Stephen G. Grygiel
Grygiel Law, LLC
301 Warren Avenue, #405
Baltimore, MD 21230
407-505-9463 (phone)
410-617-8945 (fax)
stephengrygiel22@gmail.com

And to Defendants' Counsel:

Rachel M. LaMontagne
Shutts & Bowen LLP
200 South Biscayne Boulevard
Suite 4100
Miami, Florida 33131
Email: RLaMontagne@shutts.com

and

Peter J. Valeta, Esq.
Cozen O'Connor
123 N. Wacker Dr., Ste. 1800
Chicago, Illinois 60606
Email: pvaleta@cozen.com

Any Class Member who does not so request to object or intervene waives the right to do so in the future, and shall be forever barred from intervening or making any objection to the Proposed Settlement or Final Judgment.

19. Any Notice of Intent to Object or Intervene must contain: (a) a heading which refers to the Action; (b) the name, address, telephone number and signature of the Class Member or its counsel filing the objection or intervention request; (c) a statement whether the objector or intervener intends to appear at the Final Fairness Hearing, either in person or through counsel, and, if through counsel, identifying counsel by

name, address and phone number; (d) a detailed statement of the specific legal and factual bases for intervention and for each and every objection, and, if through counsel, a legal memorandum in support of the objection or intervention; and (e) a list of any witnesses, along with the expected testimony of each such witness, and photocopies of exhibits which the objector intends to introduce at the Final Fairness Hearing.

Attorneys' Fees and Class Representative Incentive Award

20. Within thirty (30) days after the entry of the Preliminary Approval Order, Class Counsel will file their motion for award of class counsel's attorneys' fees and costs. Defendants have agreed not to oppose an application for class counsel's attorneys' fees and costs, not to exceed the sum of Four Hundred Twenty Five Thousand Dollars (\$425,000), and have agreed not to oppose an application for a Class Representative Award not to exceed the sum of Ten Thousand Dollars (\$10,000.00).

Final Fairness Hearing

21. The Final Fairness Hearing shall be held before this Court on **September 14, 2020 at 10:15 A.M.** at Courtroom WW16170 of the Seventeenth Judicial Circuit Court in and for Broward County, Florida, 201 SE 6th Street, Ft. Lauderdale, Florida to determine (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate and should be given final approval by the Court; (b) whether a final judgment granting Defendants' counterclaim for declaratory judgment should be entered; (c) whether a final judgment and order for dismissal should be entered; (d) whether to approve the payment of attorneys' fees and expenses to Plaintiff's counsel and the amount of any such payment; and (e) whether to approve the payment of an incentive award to the Class Representative and the amount of any such payment. The Court may adjourn or reschedule the Final Fairness Hearing

without further notice to members of the Settlement Class.

Further Matters

22. Settlement Class Members shall be bound by all determinations and judgments in the Action concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.
23. If the Settlement Agreement is not approved by the Court in complete accordance with its terms, each party will have the option of having the Action revert to its status as if the Settlement Agreement had not been negotiated, made, or filed with the Court. Any party proposing to nullify the Settlement based upon the preceding sentence must do so by delivering notice of intent to nullify the settlement, in accordance with the notice provisions of the Settlement Agreement, no later than five business days after entry of any such order. In such event, the parties will retain all rights as if the Settlement Agreement was never agreed upon.
24. Additionally, in the event that the Court does not give final approval of the Settlement, or if such approval is not sustained on any appeal, the Settlement shall become null and void.
25. In the event the Settlement is nullified: (a) the Settlement Agreement shall not be offered in evidence or used in this or any other action for any purpose including, but not limited to, the existence, certification or maintenance of any purported class; and (b) this Settlement and all negotiations, proceedings, documents prepared and statements made in connection with this Settlement shall be without prejudice to any party and shall not be admissible into evidence, and shall not be deemed or construed to be an admission or confession by any party of any fact, matter or proposition of law, and shall not be used in any manner for any purpose, and all Parties to this Action shall stand in

the same position as if this Settlement had not been negotiated, made or filed with the Court.

26. If this Settlement shall fail for any reason or if this Agreement shall be terminated: (a) this Agreement shall not have further force and effect and all proceedings having taken place with regard to this Agreement or the proposed Settlement shall be without prejudice to the rights and contentions of the Parties or of any potential Class Members in this Action or in any other litigation; (b) the Parties agree that they will promptly file a joint motion with the Court to vacate all orders entered pursuant to the terms of this Agreement; and the Parties shall be returned to their respective status as it existed immediately prior to the execution of this Agreement.
27. The confidentiality of information utilized in connection with the administration of this Settlement shall be protected under the terms of this Order. The private, personal or financial policyholder information which may be compiled by Defendants pursuant to this Agreement and the data processing and other record keeping procedures and materials to be utilized by Defendants in identifying the members of the class and effectuating Defendants' other obligations hereunder (the "Information") are represented by Defendants to constitute highly confidential and proprietary business information. The confidentiality of the Information shall be protected by entry by the Court of a mutually agreeable protective order.
28. No person, other than individuals employed by Defendants or to whom Defendants have expressly permitted access, including the Third Party Administrator, shall be allowed access to any Information except:
 - a. Class Counsel and clerical personnel employed by such counsel;
 - b. Such other persons as the Court may order after hearing on notice to all counsel of record; and
 - c. Such other persons as the parties may agree upon in writing.

At no time, except pursuant to Court order after hearing upon notice to all counsel of record, shall any Information be made known or available to any person, other than individuals described above and the individuals employed by Defendants or to whom Defendants have expressly permitted access, unless he or she first signs a statement attesting to the fact that: (a) he or she has read and understands the protective order to be entered by the Court; (b) that he or she agrees to be bound and to comply with the terms of the protective order; and (c) that he or she understands that disclosure of Information to unauthorized persons may constitute contempt of court. Copies of all such signed statements shall be retained by Class Counsel and delivered to Defendants upon request.

29. After performance of all terms of this Agreement is complete, any and all Information provided by Defendants to Class Counsel or anyone else, and all copies thereof, shall be promptly returned to Defendants.

DONE and **ORDERED** in Chambers, at Broward County, Florida on 04-29-2020.

CACE13018792 04-29-2020 1:20 PM



CACE13018792 04-29-2020 1:20 PM

Hon. David A Haimes

CIRCUIT JUDGE

Electronically Signed by David A Haimes

Copies Furnished To:

Douglas Brehm , E-mail : dbrehm@shutts.com

Douglas G. Brehm , E-mail : Allstateservice@shutts.com

Douglas G. Brehm , E-mail : droger@shutts.com

Lawrence M. Kopelman Esq. , E-mail : LMK@kopelblank.com

Peter J. Valeta , E-mail : peter.valeta@mbtlaw.com

Peter Valeta , E-mail : pvaleta@cozen.com

Rachel LaMontagne , E-mail : rlamontagne@shutts.com

Rachel Marie La Montagne , E-mail : rlamontagne@shutts.com

Stephen G. Grygiel , E-mail : sgrygiel@mdattorney.com