

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

CASE NO. CACE-13-018792

CLASS REPRESENTATION

GAIL PIERCE, on behalf of herself
and all others similarly situated

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY,
ALLSTATE INDEMNITY COMPANY,
ALLSTATE PROPERTY AND CASUALTY
INSURANCE COMPANY, ALLSTATE
FIRE AND CASUALTY INSURANCE
COMPANY, ENCOMPASS INDEMNITY
COMPANY, ENCOMPASS FLORIDIAN
INSURANCE COMPANY, and
ENCOMPASS FLORIDIAN INDEMNITY
COMPANY,

Defendants.

**NOTICE OF CLASS ACTION SETTLEMENT
TO SUBCLASS MEMBERS**

**PLEASE READ THIS NOTICE CAREFULLY.
YOUR RIGHTS MAY BE AFFECTED.**

TO: CERTAIN PERSONS WHO SUBMITTED CLAIMS FOR PAYMENT OF BILLS FOR MEDICAL SERVICES UNDER PIP COVERAGE UNDER A FLORIDA AUTOMOBILE VEHICLE INSURANCE POLICY ISSUED BY ONE OF THE FOLLOWING INSURANCE COMPANIES:

Allstate Insurance Company, Allstate Indemnity Company, Allstate Property and Casualty Insurance Company, Allstate Fire and Casualty Insurance Company, Encompass Indemnity Company, Encompass Floridian Insurance Company, and Encompass Floridian Indemnity Company (hereinafter referred to as "Defendant Insurers").

This lawsuit alleges that the Defendant Insurers have not complied with certain policies of insurance issued by Defendants and with Florida law regarding the payment of personal injury protection ("PIP") benefits under policies issued with a PIP deductible. The parties have agreed to settle the case, and the Seventeenth Judicial Circuit Court in and for Broward County, Florida ("the Court") has certified a Settlement Class, which Order and related documents are on file in this case with the Court and available for review as described herein.

As part of that Settlement, the Court has certified a Settlement Subclass whose PIP benefit payments were determined between March 8, 2018, and December 29, 2018, as described below.

You are receiving this Notice because you have been identified as a potential member of the Subclass. You may be entitled to receive the benefits of the Settlement as a member of this Subclass and will be bound by the release and other provisions of the Settlement if it is approved by the Court. If Defendant Insurers determine that you are entitled to receive a Settlement Payment as a Subclass Member in accordance with the Agreement, you will receive a Settlement Payment calculated as provided herein without requiring that you take any further action. You may instead elect to opt out of the Settlement Class and the Settlement, as explained below, which means you would not be entitled to a Settlement Payment as a Subclass Member. You also have a right to object to the Settlement or to the application for Class Counsel's attorneys' fees and the Class Representative's incentive award, but only if you comply with the procedures described in this Notice.

1. WHO IS INCLUDED IN THE SUBCLASS? The Subclass consists of “The Allstate Post-Review Settlement Subclass Members” who are EIP Class Members or Provider Class Members whose payment of PIP benefits, 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, was determined on or after March 8, 2018 and before December 29, 2018, and was not remediated under the Allstate Deductible Mitigation Plan. (The “Allstate Deductible Mitigation Plan” shall refer to payments made by the Allstate Defendants, beginning on December 31, 2018, of additional amounts for claims determined prior to March 8, 2018, 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.)

EIP Class Members are persons who were or are

- i. an Eligible Injured Person under a Defendant Insurer Florida Auto Policy;
- ii. where the Eligible Injured Person was injured in an automobile accident covered by the PIP coverage of a Defendant Insurer 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 Insurer Florida Auto Policy;
- ii. where the Eligible Injured Person was injured in an automobile accident covered by the PIP coverage of a Defendant Insurer 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.

2. WHO IS EXCLUDED FROM THE SUBCLASS? Excluded from the Subclass 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” 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.

3. WHAT ARE THE TERMS OF THE SETTLEMENT? Subject to the Final Fairness Hearing discussed in Paragraph 7 below, the Court has granted preliminary approval to the Settlement. Under the Settlement, the Defendant Insurers have agreed to pay a Settlement Payment to Subclass Members. **Subclass Members are not required to submit a Claim Form or perform any other action in order to receive a Settlement Payment.**

The eligibility of a Subclass Member for payment shall be subject to the applicable law and the terms and conditions of the Defendant Insurers' applicable Covered Policy, consistent with the terms of the Settlement Agreement. The amount of the Settlement Payment will be calculated as follows.

3.1. For each such Subclass Member, Defendant Insurers shall determine, based on Defendant Insurers' computer records, a "Settlement Amount Payable" by recalculating the application of the PIP deductible, or portion thereof, which would have been applicable to the Billed Amount instead of the application of the PIP deductible, or portion thereof, to a statutorily authorized limitation amount.

3.2. The Subclass Members will be entitled to recover pursuant to the Agreement under the PIP coverage of a single Florida Auto Policy an amount equal to the remaining available benefits for each policy to which the Subclass Member was entitled in accordance with the method of deductible calculation under the policy and Florida law. The total Settlement Amounts Payable for all bills for each Subclass Member will be aggregated for each Class Member to derive a Total Settlement Payment owed to each Class Member.

A check for each Subclass Member's Total Settlement Payment will be issued by the Defendant Insurers if the Settlement is given final approval by the Court as a result of the Final Fairness Hearing described below.

Pursuant to the terms of the Settlement, the Defendants will be seeking a judgment in accordance with Defendant Insurers' Counterclaim declaring that Defendants' Deductible Mitigation Plans, properly implemented to pay identifiable PIP claims where a PIP deductible, or portion thereof, was applied to a statutorily authorized limitation amount as opposed to the amount billed for medical services rendered to the Eligible Injured Person, where no Deductible Lawsuit was pending.

If the Settlement becomes final, judgment will be entered in accordance with the foregoing, the lawsuit will be dismissed with prejudice, and the Defendant Insurers will receive a complete release and discharge from all Subclass Members of any claim arising out of or related to the Defendants' 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 during the Class Period.

The Settlement Agreement provides that under certain circumstances, the Settlement may be terminated or nullified. The specific details regarding these termination provisions can be reviewed in the Settlement Agreement on file with the Court.

4. HOW DO I RECEIVE A SETTLEMENT PAYMENT? If Defendant Insurers determine that they are entitled to receive a Settlement Payment in accordance with the Agreement, Subclass Members will receive a Settlement Payment calculated as provided herein unless they timely submit a written request for exclusion from the Class, postmarked no later than thirty (30) days after this Notice is mailed. **Subclass Members are not required to submit a Claim Form or perform any other action in order to receive a Settlement Payment.**

5. WHAT DO I DO IF I AM A SUBCLASS MEMBER AND DO NOT RECEIVE A PAYMENT OR WANT TO CONTEST MY PAYMENT AMOUNT? Any Subclass Member who receives a Settlement Payment may, within 60 days from the date on which payment or notice of denial is postmarked, file a "Claim Dispute" by submitting a written demand for an evaluation of their claim to the Third Party Administrator at Pierce v. Allstate Settlement Administrator, P.O. Box 3518, Portland, Oregon 97208-3518, using the style and case number of the Action. In the event that Class Counsel, and/or the Class Member, and counsel for Defendant Insurers cannot agree to the correct disposition of any Claim Dispute, within 30 days of the Claims Dispute, then the Defendant Insurers will provide a Written Explanation of the payment decision. The Subclass Member will then have 30 days from the postmarked date of the Written Explanation to provide Notice of Intent to Arbitrate. The arbitration will be conducted by an independent Arbitrator previously designated by Class Counsel and counsel for Defendant Insurers. In order to arbitrate a Claim Dispute regarding the denial or amount of a Settlement Payment that has been determined to be payable to a particular Subclass Member, the Subclass Member or his/her counsel must submit a

written Notice of Intent to Arbitrate to Defendant Insurer's counsel, that includes a written, specific, final demand of the additional amount claimed by the Subclass Member as a Settlement Payment. The Notice of Intent to Arbitrate must be served upon the Third Party Administrator at the addresses provided above and must be accompanied by a payment of 50% of the uniform arbitration fee established for such arbitrations. Upon receipt of the written notice to arbitrate, Defendant Insurers shall pay their 50% share of the uniform arbitration fee established for such arbitrations. Defendant Insurers and the Subclass Member (or their counsel) shall only submit written presentations with any supporting documentation of their respective positions regarding the disputed claim. The arbitrator shall then determine the dispute and the amount owed (if any) by the Defendant Insurers, based solely on the parties' written submissions and relevant documentation submitted to him or her by the Subclass Member or his/her counsel, and Defendant Insurers, which determination shall be final and not subject to any appeal.

6. WHAT ABOUT ATTORNEYS' FEES AND EXPENSES? Class Counsel will apply to the Court for an award of reasonable attorneys' fees and expenses in an amount determined by the Court. The Defendant Insurers have agreed not to oppose a request by Class Counsel for an award of Class Counsel's reasonable attorneys' fees and costs of this litigation up to Four Hundred Twenty-Five Thousand Dollars (\$425,000.00); however, in no event shall Defendant Insurers have an obligation to pay more than Four Hundred Twenty-Five Thousand Dollars (\$425,000.00). The Defendant Insurers have agreed not to oppose a request by Class Counsel for an incentive award of up to Ten Thousand Dollars (\$10,000.00) to the Class Representative, which will be subject to the approval of the Court. Class Counsel will petition the Court with their requests for an award of their attorneys' fees and costs and for an incentive award to the Class Representative. The Court's determination with regard to such attorneys' fees and incentive award will be ordered in connection with the Final Fairness hearing on **September 14, 2020**. Payment of Class Counsel's attorneys' fees and an incentive award for Class Representative will not reduce any payments determined to be due Subclass Members under the Settlement.

7. WHEN IS THE FINAL FAIRNESS HEARING? A Final Fairness Hearing will be held before the Honorable David A. Haimos on **September 14, 2020**, in Courtroom WW16170 of the Seventeenth Judicial Circuit Court in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida. The purpose of the hearing will be for the Court to: (a) determine finally the reasonableness, adequacy and fairness of the Settlement for purposes of Florida Rule of Civil Procedure 1.220; (b) determine whether Final Judgment should be entered; and (c) approve or otherwise determine the amount of reasonable attorneys' fees and costs to be paid directly by the Defendant Insurers to Class Counsel and the amount of the incentive award to the Class Representative. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement Agreement that have properly been requested, as set forth herein. The hearing may be postponed or changed to a different date or time or location without notice. You are not required to come to the Final Fairness Hearing.

8. CAN I OBJECT TO THE SETTLEMENT OR PARTICIPATE IN THE FINAL FAIRNESS HEARING? Subclass Members who opt out or exclude themselves from the proposed Settlement may not object. However, Subclass Members who do not file a timely request for exclusion may file a notice of intent to object to the proposed Settlement or to intervene in the Action for the purpose of contesting the proposed Settlement. The written notice of intent to object and/or intervene must be: (a) filed with the Clerk of the Court not later than **August 3, 2020**; and (b) sent by email and first-class mail, postmarked no later than **August 15, 2020**, to Class Counsel and Defendant Insurers' Counsel:

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**Defendant Insurers'
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Insurers' Counsel**
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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 Subclass Member or its counsel filing the objection or intervention request; (c) a statement whether the objector or intervener intends to appear at the Final Settlement 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 Settlement Hearing.

If you do not comply with the foregoing procedures and deadlines for submitting written petitions to intervene, objections and/or appearing at the Final Fairness Hearing, you may lose substantial legal rights to contest the orders or judgments of the Court entered in connection with the Settlement.

9. WHAT IF I DO NOT WANT TO BE PART OF THE SETTLEMENT? Subclass Members who wish to opt out or exclude themselves from the Settlement Class must submit a written request for exclusion, postmarked not later than **July 28, 2020**, and sent to the Third Party Administrator at the address provided above. Written requests for exclusion must be signed and include the Subclass Member's name, address, and telephone number, and expressly state the desire to be excluded from the Settlement Class. **TO BE CONSIDERED TIMELY, ANY SUCH DOCUMENT MUST BE POSTMARKED NO LATER THAN JULY 28, 2020. IF IT IS NOT POSTMARKED BY THAT DATE, YOUR RIGHT TO OPT OUT WILL BE DEEMED WAIVED AND YOU WILL BE BOUND BY THE SETTLEMENT AGREEMENT AS WELL AS ALL ORDERS AND JUDGMENTS ENTERED IN CONNECTION WITH THE SETTLEMENT.** If you choose to exclude yourself from the Settlement Class, you will not be entitled to receive the benefits of the Settlement with the Defendant Insurers, including any payment from the Settlement Fund. Your claims against the Defendant Insurers will not be released and you will be free to separately pursue any claims you believe you may have.

10. CAN I REVIEW THE COURT DOCUMENTS? The foregoing references to the pleadings, Settlement Agreement and other documents, and their respective contents are only summaries. For further details with respect to these matters, you may examine the files for this case at any time during regular office hours at the Clerk of the Court, Seventeenth Judicial Circuit Court in and for Broward County, Florida, 201 SE 6th Street, Room 04130, 4th Floor, Ft. Lauderdale, FL 33301. To the extent, if any, that the terms of this Class Notice differ from the terms of the Settlement Agreement, the terms of the Settlement Agreement shall supersede and control.

11. WHO CAN I CONTACT WITH QUESTIONS? Defendant Insurers have established a website www.AllstateDeductibleSettlement.com which contains information related to the Settlement, including the Settlement Agreement, the Class Notices, and Claim Forms. It also contains a list of Frequently Asked Questions to give further information regarding the Settlement. If you have questions regarding this Notice or the Settlement in the Action generally, you can obtain additional information from the Third Party Administrator, EPIQ, and, if website and EPIQ do not provide the information you need, you may contact one of the Class Counsel:

Class Counsel
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PLEASE DO NOT CALL THE COURT OR THE OFFICE OF THE CLERK.
By Order of Seventeenth Judicial Circuit Court in and for Broward County, Florida.

By: *Honorable David A. Haimes*
Circuit Court Judge