

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**IN RE ALLSTATE FAIR CREDIT                    )**  
**REPORTING ACT LITIGATION                    )**     **MDL No. 3:02-md-1457 - ALL CASES**

**ORDER OF PRELIMINARY APPROVAL,  
CERTIFICATION OF SETTLEMENT CLASS, AND  
AUTHORIZING NOTICE OF PROPOSED SETTLEMENT OF  
CLASS ACTION AND HEARING THEREON**

Upon review and consideration of the Stipulation of Settlement dated August 18, 2004 and the Exhibits attached thereto (Docket No. 153), as amended following the preliminary approval hearing held August 23, 2004 by the Amended Stipulation of Settlement and the amended Exhibits attached thereto (Docket No. 158) (collectively, the "Stipulation of Settlement"), executed on behalf of Class Representative Plaintiffs Woodrow Shelton, Larry Daniels, Sr., Sandra Daniels, Cynthia Silhol, Marsha D. Myers, Ronald Kevin Myers, and Michael Sanchez ("Plaintiffs") and Defendants Allstate Insurance Company, Allstate Property Casualty Company, Allstate Indemnity Company, Allstate County Mutual Insurance Company, Allstate Floridian Indemnity Company, Allstate Floridian Insurance Company, Allstate New Jersey Insurance Company, Allstate Texas Lloyd's, Deerbrook Insurance Company, Encompass Floridian Indemnity Company, Encompass Floridian Insurance Company, Encompass Indemnity Company, Encompass Insurance Company, Encompass Insurance Company of New Jersey, First Colonial Insurance Company, and Northbrook Indemnity Company, (collectively, "Allstate"), in the above-captioned litigation (the "Litigation"), and as a hearing on the proposed settlement (the "Settlement") set forth in the Stipulation of Settlement is necessary,

This document was entered on  
1 the docket in compliance with  
Rule 58 and/or Rule 79(a).  
FRCP, on 9/22/04 By KM

162

NOW, UPON THE APPLICATION OF THE PARTIES HERETO, IT IS HEREBY ORDERED AS FOLLOWS:

1. The terms of the Stipulation of Settlement, and the Settlement provided therein, are preliminarily approved, subject to final consideration thereof at the Settlement Hearing described in paragraph 12 of this Order.

2. The definitions set forth in Section II of the Stipulation of Settlement are hereby incorporated into this Order.

3. Having made the findings set forth below, the Court hereby certifies four subclasses (the "Class" and "Class Member(s)") for the purpose of settlement in accordance with the Stipulation of Settlement, defined as follows:

**A. Sub-Class A**

Sub-Class A shall consist of all: (1) Secondary Operators or Occupants of Current and Former Policyholders; and (2) Secondary Operators or Occupants of Applicants whose Credit Information was obtained by Allstate in connection with the underwriting and/or rating of a Policy for the time period between February 2000 and October 1, 2004.

**B. Sub-Class B**

Sub-Class B shall consist of all Current and Former Policyholders and Secondary Operators or Occupants of Current and Former Policyholders who were issued a Policy and charged a premium at anything other than the lowest available premium for a Policy based in whole or in part on Credit Information of a Secondary Operator or Occupant of a Current and/or Former Policyholder for the period of time between November 1998 and October 1, 2004.

### **C. Sub-Class C**

Sub-Class C shall consist of all Current and Former Policyholders with respect to whom, between November 1998 and October 1, 2004, in connection with a Policy, Allstate charged anything but the lowest available rate for a Policy based in whole or in part on Credit Information and Allstate did not provide a Notice within 60 days of issuing the Policy, including those instances which were the result of a computer programming error like the one that occurred in Tennessee in October 2000.

### **D. Sub-Class D**

Sub-Class D shall consist of all customers to whom Allstate did not issue an automobile, homeowners or other personal lines insurance policy and, between November 1998 and October 1, 2004, who received a notice with form number X6096, X66323, X66204, X6425, X6845, or X6936 which allegedly did not provide that Allstate's decision to not issue a policy was based in whole or in part on information from a consumer report from a particular source.

4. The above-described Class is so numerous that joinder of all members is impracticable.

5. Because of the nature of the Settlement Processing Procedures to be undertaken by Allstate under the Stipulation of Settlement, for the purposes of the Settlement, the Court finds as follows:

- a. There are questions of fact or law common to the above-described Class;
- b. The claims of the Plaintiffs are typical of the claims of the above-described Class;

c. The Plaintiffs will fairly and adequately protect the interests of the above-described Class;

d. Questions of law or fact common to the members of the above-described Class predominate over the questions affecting only individual Class Members; and

e. Certification of the above-described Class for the purposes of the Settlement is superior to other available methods for the fair and efficient adjudication of the controversy.

6. Therefore, the Plaintiffs in the Litigation shall be the representatives of the above-described Class for the purposes of implementing the Settlement in accordance with the Stipulation of Settlement, and their counsel of record (Terry Smiljanich, James Hoyer Newcomer & Smiljanich; Ken Canfield, Doffermyre Shields Canfield Knowles & Devine LLC; and Charles McCallum, McCallum Law Firm) are appointed as counsel for said Class.

7. Defendant Allstate, at its cost and expense, shall give notice in the name and of the Clerk of this Court of the Settlement and of the Settlement Hearing to the above-described Class as follows:

a. By mailing, first class postage prepaid, a copy of the Notice having the content attached as Exhibit A to the Stipulation of Settlement to the addresses of Class Members maintained in the regular business records of Allstate including any new addresses revealed by the results of using the National Change of Address Databases, which Allstate shall obtain at its own expense;

b. By causing the Summary Notice to be published on Sunday, January 23, 2005, in the form attached as Exhibit G to the Stipulation of Settlement once in a section (not

exclusively devoted to advertising) of Parade and USA Sunday magazines.

8. Notice in compliance with the provisions of paragraph 7 of this Order is hereby found to be the best notice practicable under the circumstances, and constitutes due and sufficient notice of this Order to all persons affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure.

9. The costs and expenses of preparing, printing, mailing and publishing said Notices in accordance with paragraph 7 of this Order shall be paid by Allstate.

10. Prior to the hearing described in paragraph 12 of this Order, Allstate shall file with the Court a sworn statement of mailing of the Notice to Class members and of publication of the Summary Notice in accordance with paragraph 7 of this Order.

11. Any Class Member wishing exclusion from the Class shall mail a request for exclusion ("Request for Exclusion"), postmarked not later than March 9, 2005, to the Clerk of the District Court, M.D. Tennessee, United States Courthouse, 801 Broadway, Nashville, Tennessee 37203. Such request shall set forth: (i) the name and address of the Class Member; and (ii) the policy number(s) of the Class Member's Allstate insurance policy(ies). Any Class Member who does not properly and timely request exclusion shall be included in the Class and shall be bound by any Final Judgment entered in the Litigation.

12. A hearing (the "Fairness Hearing") shall be held before the undersigned at 9:00 a.m. on April 11, 2005, in Courtroom 873 in the United States District Court for the Middle District of Tennessee to consider the fairness, reasonableness and adequacy of the proposed Settlement, the dismissal of Counts I through VI of the Fifth Amended Complaint with prejudice and on the merits, entry of a Final Judgment with respect to Plaintiffs, the Class and Counts I

through VI, an application for attorneys' fees and reimbursement of costs and expenses by Plaintiffs' counsel and other related matters. The hearing may be postponed, adjourned or continued by the Court without further notice to the Settlement Class.

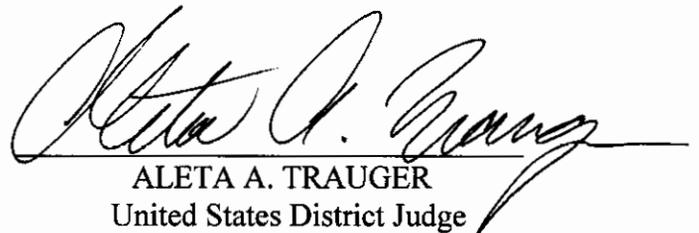
13. Any Class Member who does not elect to be excluded from the Class may appear at the Fairness Hearing in person or by counsel, if an appearance is filed as hereinafter provided, and be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness and adequacy of the proposed Settlement, the requested award of attorneys' fees and reimbursement of costs and expenses; provided, however, that no person shall be heard in opposition to the proposed Settlement and, if approved, the Judgment entered thereon, or to the requested award of attorneys' fees and reimbursement of costs or expenses, and no papers or briefs submitted by any person shall be accepted or considered by the Court, unless, on or before March 9, 2005, such person: (a) has filed with the Clerk of the Court a notice of such person's intention to appear together with a statement that indicates the basis for such opposition along with any supporting documentation, and (b) has served copies of such notice, statement and documentation together with copies of any other papers or briefs that such person files with the Court, either in person or by mail, upon the following: Plaintiffs' counsel, Terry Smiljanich and James Hoyer, Newcomer & Smiljanich, 4830 W. Kennedy Blvd., Suite 550, Tampa, Florida 33609; and Defendants' counsel, Jeffrey Lennard, Sonnenschein Nath & Rosenthal, 8000 Sears Tower, 233 S. Wacker Drive, Chicago, Illinois 60606.

14. All proceedings in the Litigation other than such as may be necessary to carry out the terms and conditions of the Stipulation or the responsibilities incidental thereto are stayed and suspended until further Order of this Court.

15. Upon consummation and approval of the Settlement provided for in the Stipulation of Settlement, the Stipulation of Settlement and each and every term and provision thereof and exhibits thereto shall be deemed incorporated herein as if explicitly set forth and shall have the full force and effect of an Order of this Court.

16. If the Settlement is terminated for any reason whatsoever, the Stipulation of Settlement and the Settlement and all proceedings had in connection therewith shall be without prejudice to the status quo ante rights of the parties to the action, the parties shall stand in the same position as to every issue of fact and law (including whether a class may be certified) as they did on the date of execution of the Stipulation of Settlement as though the Stipulation of Settlement had never been entered into and this Order had never been issued, and this Order and any other Order(s) issued pursuant to the Stipulation of Settlement shall be vacated and of no further force or effect.

Dated: Sept. 21, 2004

  
ALETA A. TRAUGER  
United States District Judge