

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

JAMES BOYLE, SR., on behalf of	:	CIVIL ACTION
himself and others similarly situated	:	
	:	
v.	:	
	:	
PROGRESSIVE SPECIALTY	:	
INSURANCE COMPANY	:	NO. 09-5515

ORDER

NOW, this 9th day of July, 2019, upon consideration of the Plaintiff’s Unopposed Motion for Notice of Proposed Settlement Agreement to the Class (Document No. 210) and after a hearing, it is **ORDERED** that the motion is **GRANTED**.

IT IS FURTHER ORDERED as follows:

1. The Class Litigation Settlement Agreement (“Settlement Agreement”) (Document No. 210-2) is preliminarily approved.
2. The terms and conditions of the Settlement Agreement are incorporated in this Order.
3. The following Settlement Class is certified for settlement purposes only, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), as follows:

All Progressive Specialty Insurance Company personal automobile policyholders in Pennsylvania who, at any point during the Class Period of November 19, 2005 to December 31, 2018: (a) had a policy of automobile insurance that included comprehensive insurance coverage; (b) insured a make, model and year vehicle that has as standard equipment a Pass-Key or PassLock system, SecuriLock/ PATS system, Sentry Key Immobilizer System, Nissan Vehicle Immobilizer System, or Mercedes Immobilizer system as identified on the Chart of Qualifying Vehicles; and (c) did not receive a 10% discount on the comprehensive portion of the paid premium.

4. The Settlement Agreement requires Progressive Specialty Insurance Company (“Progressive”) to pay the Gross Settlement Amount of two million dollars (\$2,000,000.00). Settlement Class Members entitled to a distribution will be paid a *pro rata* share of the Net Settlement Fund, which is the Gross Settlement Amount less the costs of administration and notice of up to \$200,000.00,¹ any class representative incentive award, and any award for attorneys’ fees and expenses.

5. All current Policyholder Class Members will automatically receive a share of the Net Settlement Fund, and former Policyholder Class Members will receive a share of the Net Settlement Fund if they return an “Address Verification Form” to the Settlement Administrator.

6. The Settlement Agreement also requires Progressive to provide prospective relief for two years to all vehicles qualifying for the discount.

7. If the settlement is not finally approved, Progressive’s stipulation to certification of the Settlement Class shall be null and void *ab initio*, and may not be used or relied upon by the plaintiff or any member of the Settlement Class for any purpose, nor may the findings set forth in this Order for purposes of Settlement Class Certification be used in connection with contested class certification proceedings or for any other purpose.

¹ If the costs of administration and notice exceed \$200,000.00, Class Counsel will request reimbursement for those excess costs in the petition for an award of attorneys’ fees and costs. See Settlement Agreement (Document No. 210-2), section IX, ¶ 4.

8. The Settlement Agreement entered into between the parties as of June 10, 2019, is likely to be approved as fair, reasonable and adequate to the Settlement Class after a final approval hearing.

9. The prerequisites to a class action under Fed. R. Civ. P. 23(a) have been satisfied for settlement purposes in that:

- a. there are thousands of members of the Settlement Class;
- b. there are questions of fact and law that are common to all members of the Settlement Class;
- c. the claims of the class representative are typical of those of the other members of the Settlement Class;
- d. the class representative will fairly and adequately protect the interests of the Settlement Class; and
- e. counsel for the Settlement Class, experienced in complex commercial and class action litigation, have and will continue to adequately represent the Settlement Class.

10. This action is maintainable as a class action under Fed. R. Civ. P. 23(b)(3) for settlement purposes² because:

- a. a class action is superior to other available methods for the fair and efficient adjudication of this controversy; and
- b. questions of fact and law common to members of the Settlement Class predominate over any questions affecting only individual members.

² See the Court's June 7, 2018 Order granting Plaintiff's motion for class certification (Document No. 178) for a more detailed explanation of how the prerequisites of Rule 23(a) and (b)(3) have been met.

11. Plaintiff James Boyle, Sr. is appointed as the Class Representative.

12. The following attorneys are appointed as counsel for the Settlement Class: Ira Neil Richards and Arleigh P. Helfer, III of Schnader Harrison Segal & Lewis LLP and Joseph E. Mariotti and Christopher P. Caputo of Caputo & Mariotti, P.C. (“Class Counsel”).

13. Ira Neil Richards is appointed as Lead Counsel for the Settlement Class.

14. RSM US LLP is appointed as the Settlement Administrator.

15. In accordance with section IX of the Settlement Agreement, Progressive shall conduct a reasonable search of its computer/electronic databases to ascertain the names, email addresses and last-known mailing address of each potential Settlement Class Member.

16. No later than **August 9, 2019**, the Settlement Administrator shall provide notice to the Settlement Class Members by:

a. causing a copy of the Class Notice to Current Policyholders and the Class Notice and Address Verification Form to Former Policyholders (in the form of Document Nos. 210-4 and 210-5), to be emailed to the addresses in Progressive’s records and, if such email cannot be delivered, mailed by first-class mail to each potential Settlement Class Member identified as a result of the searches described in paragraph 15 of this Order; and

b. re-mailing any Class Notices returned as undeliverable in accordance with section IX ¶ 9 of the Settlement Agreement.

17. No later than **August 9, 2019**, the Settlement Administrator shall establish the Settlement Website prescribed in section IX ¶ 11 of the Settlement Agreement.

18. The Settlement Website shall:
 - a. include a copy of the Settlement Agreement, the Class Notice, and this Order;
 - b. identify all deadlines;
 - c. provide answers to frequently asked questions;
 - d. be amended as needed during the course of the settlement administration, as agreed to by the Parties;
 - e. contain Spanish translations of the Class Notice, Website home page, and frequently asked questions; and
 - f. contain a link to the Address Verification Form for Former Policyholders to verify their addresses in accordance with the Settlement Agreement.
19. The Website shall be maintained until at least **January 31, 2020**.
20. The Settlement Administrator shall maintain a toll-free VRU telephone system containing recorded answers to frequently asked questions, along with an option permitting Settlement Class Members to speak to live operators or leave messages in a voice mail box.
21. No later than **September 6, 2019**, the Settlement Administrator shall file proof of mailing of the Class Notice required by paragraph 16 of this Order.
22. The manner of giving notice as prescribed in this Order satisfies the requirements of Fed. R. Civ. P. 23 and due process, constitutes the best notice practicable under the circumstances, and constitutes due and sufficient notice to all persons entitled to notice.

23. All briefs, memoranda, petitions and affidavits to be filed in support of final approval of the settlement and for an award of attorneys' fees and out-of-pocket expenses by Class Counsel shall be filed no later than **September 6, 2019**.

24. Each Settlement Class Member shall have the right not to be included in the Settlement Class by mailing a request for exclusion to the Settlement Administrator postmarked no later than **September 27, 2019**. Any Settlement Class Member who wishes to exclude himself or herself from the Settlement Class must comply with the terms set forth in the Settlement Agreement and the Class Notice. Requests for exclusion must be exercised individually by a Settlement Class Member, not as or on behalf of a group, class, or subclass, except that such exclusion requests may be submitted on behalf of an individual Settlement Class Member by that Settlement Class Member's Legally Authorized Representative. If the policy in question is a jointly-held policy, then all such joint policyholders of the policy in question shall be considered one Settlement Class Member. If any holder of a jointly-held policy makes a timely election to be excluded from the proposed Settlement Class, all joint policyholders on that policy shall be deemed to be excluded from the Settlement Class.

25. Any Settlement Class Member who does not submit a timely, written request for exclusion from the Settlement Class will be bound by all proceedings, orders, and judgments in this litigation, even if the Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the claims released in this case as specified in sections X and XV of the Settlement Agreement, and even if such Settlement Class Member never received actual notice of this litigation or this proposed settlement.

26. Unless and until they have submitted a timely request for exclusion from the Settlement Class, Settlement Class Members and their legally authorized representatives are preliminarily enjoined from:

a. filing, commencing, prosecuting, intervening in, or participating as plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction;

b. filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any Settlement Class Members (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action); and

c. attempting to effect an opt-out of a group, class, or subclass of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based upon the claims released in the Settlement Agreement.

27. No later than **September 27, 2019**, each Settlement Class Member who does not timely opt out of the Settlement Class shall have the right to object to the settlement or to the request by Class Counsel for an award of attorneys' fees and out-of-pocket expenses by filing written objections with the Clerk of Court and serving copies of the objections on Lead Counsel and Progressive's counsel.

28. No later than **October 11, 2019**, the Settlement Administrator shall file and serve on counsel a list of all persons who have timely opted out of the Settlement Class with its determinations as to whether any request to opt out of the Settlement Class was not submitted timely; and it shall provide written notification to any Settlement Class Member whose request to opt out of the Settlement Class was untimely.

29. Objections must comply with section XI of the Settlement Agreement and the Class Notice, and must contain the following: (1) a heading that refers to this action by case name and case number; (2) a statement of the specific legal and factual basis for each objection; (3) a statement whether the objecting person or entity intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number; (4) a description of any and all evidence the objecting person or entity may offer at the Final Approval Hearing, including but not limited to the names, addresses, and expected testimony of any witnesses; all exhibits intended to be introduced at the Final Approval Hearing; and documentary proof of the objecting person's membership in the Settlement Class; and (5) a list of other cases in which the objector or counsel for the objector has appeared either as an objector or counsel for an objector in the last five years.

30. Failure to timely file and serve written objections in compliance with section XI of the Settlement Agreement and paragraph 29 of this Order will preclude a Settlement Class Member from objecting at the Final Approval Hearing.

31. Pursuant to Fed. R. Civ. P. 23(e), a final approval hearing will be held on **October 22, 2019, at 10:00 a.m., in Courtroom 9A**, at the United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106, to determine:

a. whether this action satisfies the criteria for class certification set forth in Fed. R. Civ. P. 23(a) and (b);

b. whether the proposed settlement is fair, reasonable and adequate in consideration of the factors set forth in Fed. R. Civ. P. 23(e)(2);

- c. whether final approval should be granted;
- d. whether a final judgment should be entered dismissing the claims of the Settlement Class with prejudice;
- e. an award of attorneys' fees and out-of-pocket expenses; and
- f. other such matters as the Court may deem appropriate.

32. The Court retains exclusive jurisdiction over this action to consider all matters arising out of or connected with the Settlement Agreement.

/s/ Timothy J. Savage
TIMOTHY J. SAVAGE, J.