

Exhibit A

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

JAMES BOYLE, SR., on behalf of himself and
others similarly situated

Plaintiff,

v.

PROGRESSIVE SPECIALTY INSURANCE
COMPANY

Defendant.

CIVIL ACTION

NO. 09-5515-TJS

CLASS LITIGATION SETTLEMENT AGREEMENT

This Class Litigation Settlement Agreement (“Settlement Agreement”) is entered into between Progressive Specialty Insurance Company (“Progressive”), and James Boyle, Sr. (“Plaintiff”), individually and on behalf of a class.

RECITALS

WHEREAS, on November 19, 2009, Pamela Lowe-Fenick filed an action in the United States District Court for the Eastern District of Pennsylvania, captioned *Pamela Lowe-Fenick v. Progressive Specialty Insurance Company*, No. 09-cv-5515, in which Plaintiff James Boyle, Sr. later joined concerning Progressive’s liability and certification of a class of similarly situated Progressive policyholders; and

WHEREAS, the Court dismissed the claims brought by Pamela Lowe-Fenick;

WHEREAS, Progressive and Plaintiff seek to settle the lawsuit in this Settlement Agreement;

NOW, THEREFORE, Progressive and Plaintiff agree to settle the lawsuit as follows, subject to Court approval:

I. DEFINITIONS

1. Definitions: The following definitions apply to the Settlement Agreement, including all exhibits:

- (a) **Affected Policy:** A personal automobile insurance policy that was in force at any point between November 19, 2005, through December 31, 2018 and that: (1) included comprehensive coverage; (2) insured one or more vehicle(s) that, according to the List of Qualifying Vehicles, had a passive antitheft device installed as manufacturer's standard equipment; and (3) the policy did not include a 10 percent discount on the comprehensive portion of the paid premium.
- (b) **Antitheft Discount:** The 10% discount provided for in 75 Pa. C.S. §1799.1.
- (c) **CAFA Notice:** Notification of this proposed settlement to certain state and federal officials in accordance with 28 U.S.C. § 1715.
- (d) **Class or Settlement Class:** The class as defined in paragraph III below.
- (e) **Class Counsel:** Collectively, Ira Neil Richards and Arleigh P. Helfer III, of Schnader Harrison Segal & Lewis, LLP, and Joseph C. Mariotti and Christopher Caputo of Caputo & Mariotti, P.C.

- (f) **Class Member Award:** The amount Distribution Class Members are entitled to receive as defined in paragraph VI below.
- (g) **Class Members or Settlement Class Members:** Those current or former Progressive personal automobile insurance policyholders who fit the class definition in paragraph III below. If the Affected Policy is a jointly-held policy, then all such joint policyholders of the policy in question shall be considered Settlement and Class Members. If any holder of a jointly-held policy makes timely election to be excluded from the proposed Class, that policy will be excluded for all policyholders.
- (h) **Class Period:** The Class Period is from November 19, 2005, to December 31, 2018.
- (i) **Class Representative, Named Plaintiff, or Plaintiff:** Progressive has agreed, for purposes of this Settlement Agreement only, that James Boyle, Sr. shall be appointed as Class Representative.
- (j) **Court:** The United States District Court for the Eastern District of Pennsylvania.
- (k) **Complaint:** The Amended Complaint currently on file in the lawsuit.
- (l) **Current Policyholders:** Settlement Class Members whose Affected Policies were still in effect as of December 31, 2018.
- (m) **Distribution Class Member:** A Class Member who meets the criteria stated in paragraph VIII below.

- (n) **Distribution Date:** All Class Member Awards for those receiving a check shall be distributed within 95 days after the Effective Date. All Class Member Awards for those receiving a credit shall be applied to their policy on their next renewal date of their Affected Policy beginning within 95 days after the Effective Date.
- (o) **Effective Date:** The date upon which the Court’s Final Order and Judgment becomes “final” for purposes of this definition. The Final Order and Judgment shall become “final”: (1) if no appeal is taken therefrom, the first day after the date on which the time to appeal therefrom expires; (2) if an appeal is taken therefrom, the first day after the date on which all appeals therefrom, including petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for review, and petitions for certiorari or any other form of review, have been finally disposed of in a manner resulting in an affirmance of the Final Judgment and Order; or (3) on a date after the signing and entry of the Final Judgment and Order that counsel for the Settling Parties agree to in writing.
- (p) **Former Policyholders:** Settlement Class Members whose Affected Policies are no longer in effect as of December 31, 2018.
- (q) **Gross Settlement Amount:** The Gross Settlement Amount to be paid by Progressive is \$2,000,000. In all events, Progressive shall never be required to pay more than \$2,000,000 pursuant to this Settlement Agreement.
- (r) **Lead Counsel:** Ira Neil Richards of Schnader Harrison Segal & Lewis LLP.

- (s) **List of Qualifying Vehicles:** The list of vehicles submitted by the parties on September 13, 2018, as Exhibit A to their Joint Submission Regarding Amended Qualifying Vehicle Chart (ECF 189-1).
- (t) **Mailed Notice:** The short-form notice to be transmitted to Class Members via email or U.S. mail.
- (u) **Mailed Notice Date:** The date on which the Settlement Administrator transmits the Mailed Notice to class members via email or U.S. Mail.
- (v) **Progressive:** Progressive Specialty Insurance Company.
- (w) **Progressive Counsel:** Robert Feltoon of Conrad O'Brien PC and Francesco Trapani of Kreher & Trapani LLP.
- (x) **Parties:** Collectively, Plaintiff, Progressive, and the Class.
- (y) **Release:** The release and covenant not to sue set forth in paragraph XV below.
- (z) **Releasees:** (a) Progressive; and (b) all past and present officers, directors, shareholders, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, and legal representatives of the entities set forth in (a) provided, however, that nothing in this document is meant to release any claim against or designate as a "Releasee" any company that wrote or writes insurance other than Progressive.
- (aa) **Settlement Administrator:** RSM US LLP.

- (bb) **Settlement Agreement:** The Agreement and the attached Exhibits, which are an integral part of the Settlement Agreement and are incorporated herein in their entirety by reference.
- (cc) **Settlement Fund:** The fund described in paragraph V below.
- (dd) **Void Date:** Sixty days after the date of issuance stated on checks issued under the Settlement Agreement.
- (ee) **Website:** The website created for the purposes of publicizing and administering this Settlement Agreement.

II. BACKGROUND

1. In November 2009, Pamela Lowe-Fenick filed this lawsuit naming Progressive as defendant. She filed her complaint as a proposed class action. The lawsuit was assigned to Judge Timothy J. Savage and coordinated with other lawsuits brought by other plaintiffs against other insurance companies. Ms. Lowe-Fenick alleged that Progressive failed to give certain of its Pennsylvania automobile insurance policyholders an antitheft device discount. The Complaint alleged that Pennsylvania law requires Progressive to give an antitheft device discount to all vehicles that have a device that qualifies, that Progressive has information available to it that tells it which cars have such devices as standard equipment, and that Progressive failed to use the information to apply the discount. The Complaint alleged, among other things, that this conduct violated 75 Pa. C.S. § 1799.1 and was a breach of Progressive's insurance contracts.

2. In May 2010, Pamela Lowe-Fenick filed an Amended Complaint that joined James Boyle, Sr. as an additional plaintiff. The Amended Complaint alleged that

Progressive charged insureds more for automobile insurance than Pennsylvania law permits. Plaintiffs alleged that section 1799.1 of the MVFRL requires all insurance companies authorized to write private passenger automobile insurance in Pennsylvania to provide a ten percent premium discount on comprehensive coverage for vehicles with “passive antitheft devices” as defined in 75 Pa. C.S. § 1799.1(b). Plaintiffs further alleged that they, and many others in Pennsylvania, insured vehicles with Progressive that have passive antitheft devices as defined in 75 Pa. C.S. § 1799.1(b), but did not receive a 10 percent antitheft discount from Progressive on their comprehensive coverage. The Amended Complaint alleged that Progressive’s failure to provide the antitheft discount also breached the terms of Progressive’s insurance policies. Plaintiffs sought damages and injunctive relief. Progressive answered the Amended Complaint and denied that it had violated Pennsylvania law or breached the terms of its insurance policies.

3. The parties filed cross-motions for summary judgment. The Court granted Progressive’s motion for summary judgment as to Pamela Lowe-Fenick and denied Progressive’s motion as to Plaintiff Boyle. The Court granted Plaintiffs’ motion for summary judgment on liability as to one of Plaintiff Boyle’s vehicles (denying the motion as to his other vehicle/s) and granted summary judgment against Pamela Lowe-Fenick.

4. Progressive denies any and all liability to Plaintiff, the Settlement Class, or anyone else. Progressive maintains that it has complied fully with all of its obligations under Pennsylvania law and has fully satisfied its contractual obligation to its insureds with respect to the provision of antitheft device discounts. Progressive maintains, among other things, that it is exceeding its obligations under Pennsylvania law, including by giving discounts to insureds whose vehicles have a broader range of antitheft devices than Pennsylvania law requires; that Progressive is not required to apply an antitheft device discount without an insured’s confirming

that a vehicle has a qualifying device; and that the Pennsylvania Insurance Commissioner has not issued regulations identifying which antitheft devices qualify for a discount. Before this litigation (and the companion cases filed against other insurance companies), there had been no decisions by any court in Pennsylvania relating to insurers' obligations under Section 1799.1 to provide a discount or to the devices that qualify for a discount. Progressive maintains that its practices are consistent with guidance from the Pennsylvania Insurance Commissioner issued at the time that Section 1799.1 was enacted into law.

5. Before commencing the lawsuit, throughout its pendency, and during settlement negotiations, Class Counsel have conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the claims and potential claims to determine how best to serve the interests of the Plaintiff and the Settlement Class. In the course of their examination, Class Counsel reviewed thousands of pages of documents and files, and conducted other formal and informal discovery. The parties exchanged expert reports, completed merits discovery, and moved for entry of summary judgment. In March 2012, the Court granted Plaintiff Boyle's summary judgment motion as to one of his vehicles and granted Progressive's summary judgment motion against Ms. Lowe-Fenick. The Court deferred decision on the class certification motion until June 2018. Progressive disagrees with the Court's summary judgment and class certification rulings; if the parties had not settled, Progressive would have pursued its appellate rights. Plaintiff would have argued on appeal that the Court correctly decided the issues, but Plaintiff recognizes the significant risks of such an appeal.

6. Plaintiff and Progressive have agreed to settle under the terms and conditions set forth herein. It is understood and acknowledged that Progressive has denied, and still denies, any liability, wrongdoing, and damages with respect to the matters alleged in the

lawsuit, and that this Settlement Agreement is entered into as a compromise of disputed claims and for the purpose of avoiding the uncertainty, costs, and delay of continued litigation. The Parties agree that the settlement created by this Settlement Agreement is not and shall not be construed as an admission of liability, wrongdoing, or damages by Progressive, or as evidence of the validity of any of the claims asserted against Progressive.

7. Based upon their independent discovery, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, Plaintiff and Class Counsel have agreed to settle the lawsuit pursuant to the provisions of this Agreement after considering, among other things: (1) the substantial benefits available to Plaintiff and the Settlement Class under the terms of this Agreement; (2) the facts and circumstances relating to going forward relief; (3) the risks and uncertainty of litigation, especially in complex litigation such as this, as well as the difficulties and delays inherent in such litigation, including but not limited to the risk of appellate reversal of the Court's summary judgment ruling or class certification ruling; and (4) the desirability of consummating this Settlement Agreement promptly to provide effective relief to the Plaintiff and the Settlement Class. Based on these considerations and their due diligence, Class Counsel believe that this Agreement is fair, reasonable, and adequate because it provides substantial benefits to the Settlement Class, is in the best interests of the Settlement Class, and fairly resolves all the claims alleged.

8. Progressive continues to deny Plaintiff's allegations and maintains that it consistently acted in accordance with its insurance policies and all governing laws and regulations. Nevertheless, Progressive wishes to conclusively resolve this litigation without the uncertainty and legal expense of further litigation, pursuant to the terms set forth herein.

III. CLASS DEFINITION

1. Progressive has agreed, for the purposes of this Settlement Agreement only, to the certification of the following Class:

All Progressive Specialty Insurance Company personal automobile insurance policyholders in Pennsylvania, who at any point during the Class Period: (a) had a policy of personal automobile insurance that included comprehensive insurance coverage; (b) who 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 List of Qualifying Vehicles; and (c) did not receive a 10% discount on the comprehensive portion of the paid premium.

IV. CERTIFICATION OF SETTLEMENT CLASS AND PRELIMINARY APPROVAL

1. Solely for the purpose of implementing this Agreement and effectuating the proposed settlement, the Parties stipulate that the Court may enter a Preliminary Approval Order certifying the Settlement Class and appointing Plaintiff Boyle as representative of the Settlement Class.

2. The Parties and their counsel agree that the settlement of this litigation is not a concession by Progressive that the litigation class was properly certified in this litigation, and Plaintiff and Class Counsel agree not to argue, in this or any other proceeding, that the fact of this settlement, or Progressive's agreement to certification of the Settlement Class, constitutes an admission or concession by Progressive that the litigation class was properly certified in this lawsuit against Progressive.

3. After execution of this Agreement, the Parties shall promptly move the Court to enter the Preliminary Approval Order, substantially in the form of Exhibit 1 hereto, with any such modifications to which Lead Counsel and Progressive's Counsel agree.

V. RELIEF FOR THE CLASS

1. **Net Settlement Fund:** Within thirty business days after entry of the order of Final Approval, the Parties shall calculate the Net Settlement Fund. The Net Settlement Fund is the Gross Settlement Amount less: (a) the attorney's fees and expenses awarded to Class Counsel, (b) the costs of administration and notice, and (c) the incentive payment awarded to the Class Representative.

2. **Going Forward Relief For Applicants:** Commencing no later than the Effective Date, for a period of two years, and to the extent consistent with Pennsylvania law, Progressive shall provide the Antitheft Discount to current Pennsylvania personal automobile insurance policyholders, and to new insureds under personal automobile insurance policies with comprehensive insurance coverage, including at renewal, whose vehicles are identified on the List of Qualifying Vehicles. For the two year period referenced in the prior sentence, Progressive will conduct a manual review to identify then-current Pennsylvania personal automobile policyholders whose cars are identified on the List of Qualifying Vehicles and provide the discount to those individuals. Progressive concurrently intends to build its own database, which will be populated with the vehicles identified on the List of Qualifying Vehicles and may include additional vehicles that Progressive determines have a qualifying passive antitheft device installed as manufacturer's standard equipment. In the event that such database is completed and functional within two years after the Effective Date, Progressive will use it to

automatically provide the discount to Pennsylvania personal automobile insurance policyholders with comprehensive coverage whose vehicles have a qualifying passive antitheft device as manufacturer's standard equipment as determined by Progressive. This automatic provision of the discount may or may not begin during the two year period described above.

VI. CLASS MEMBER AWARDS

1. Within forty-five business days after an order of Final Approval is entered, the Settlement Administrator shall calculate the amount to which each Distribution Class Member is entitled. Each Distribution Class Member will receive a pro rata share of the Net Settlement Fund (not to exceed 10% of the comprehensive coverage premium charged on the Class Member's Affected Policies) based on the amount of the Class Member's comprehensive coverage premiums paid on Affected Policies during the class period.

2. Progressive will provide the Settlement Administrator with information sufficient to permit the Settlement Administrator to make the calculations required by this section.

VII. DISTRIBUTING THE CLASS MEMBER AWARDS

1. All Distribution Class Members, and only Distribution Class Members, shall receive a Class Member Award.

2. All Current Policyholders whose Affected Policies remain in effect on the Distribution Date shall receive a credit to the Affected Policy. In the event, however, it is not administratively feasible for Progressive to process a credit for a Current Policyholder who is a Distribution Class Member, Progressive or the appointed Settlement Administrator shall mail the Distribution Class Member a check at the address in Progressive's records.

3. For Current Policyholders who are no longer Progressive policyholders on the Distribution Date, Progressive or the appointed Settlement Administrator shall send a check to their last known address.

4. For Former Policyholders, Progressive or the appointed Settlement Administrator shall send a check to the address contained in the Address Verification Form.

5. For Class Members who became Distribution Class Members through the procedure provided in paragraph VIII (3), Progressive or the appointed Settlement Administrator shall send a check to the address provided by the Class Member.

6. The checks for Class Member Awards shall all be void if not cashed or deposited within 60 days of issuance. The checks shall state this fact on their face in a manner that is easy to notice and read. All funds from checks for Class Member Awards that are not cashed or deposited within 60 days from the date of insurance shall be returned to Progressive.

VIII. DETERMINING THE IDENTITY OF DISTRIBUTION CLASS MEMBERS

1. All Current Policyholder Class Members will automatically be Distribution Class Members.

2. All Former Policyholder Class Members will be Distribution Class Members if:

(a) They return the Address Verification Form that is part of the Former Policyholder Notice within twenty-one days following entry of the Final Approval Order; or

(b) In the alternative, they may print out the Address Verification Form available on the Settlement Website and return it to the Settlement Administrator within twenty-one days following entry of the Final Approval Order;

- (c) An Address Verification Form that is provided by any means listed in subparagraphs (a) and (b) above shall be deemed to constitute return of the Address Verification Form for purposes of this agreement.

3. Former Policyholder Class Members who do not return the Address Verification Form contained in the Former Policyholder Notice because they were not mailed an Address Verification form can become Distribution Class Members if:

- (a) Within twenty-one days following entry of the Final Approval Order, they contact Class Counsel or the Settlement Administrator and state they believe they are a Class Member. Any such person will be asked to provide their name, address, and approximate years of auto insurance with Progressive. If the contact is with Class Counsel, Class Counsel shall provide that information to Progressive within 10 business days.
- (b) Progressive will have 20 business days after receipt of the name and address of any such person to determine if Progressive's records confirm that the person is a Class Member.
- (c) If Progressive's records confirm that the person is a Class Member, that person shall be added to the Class List and considered to be a Distribution Class Member, and Progressive shall promptly provide notice to Class Counsel of its determination in this regard.
- (d) If Progressive's records show that the person is not a Class Member, Progressive will promptly provide that information to the Settlement Administrator, who shall send a letter to that person informing him or her of the decision.

IX. CLASS NOTICE AND ADMINISTRATION

1. Class Counsel shall retain the Settlement Administrator to implement the terms of this Settlement Agreement. Class Notice shall be emailed or mailed in the form of a post-card to potential Settlement Class Members substantially in form and content agreed to by Lead Counsel and Progressive's Counsel. Lead Counsel and Progressive's Counsel may, in their discretion, ask the Settlement Administrator or other third party to prepare the form of notice.

2. Progressive shall conduct a reasonable search of its computer/electronic databases to ascertain the email addresses, names, and last-known address of each potential Settlement Class Member. Progressive shall provide the information Progressive collects through this search to the Settlement Administrator.

3. Progressive shall, after entry of the Preliminary Approval Order and up until the Effective Date, advance up to \$200,000 towards payment of costs associated with providing notice to the Class and the costs of administering the Settlement Agreement when invoiced by the Settlement Administrator. The amount advanced shall not be refunded to Progressive in the event the settlement is not approved or is terminated. The Parties agree that expenses billed by the Settlement Administrator shall be deemed reasonable. Upon the Effective Date, any amounts advanced by Progressive pursuant to this provision shall be credited against its obligation to fund the Gross Settlement Amount. In all events, Progressive shall never be required to pay more than the Gross Settlement Amount.

4. If the costs of notice and administering the Settlement Agreement invoiced prior to the Effective Date exceed \$200,000, the costs exceeding \$200,000 shall be included in Plaintiff's Petition for an award of attorney's fees and reimbursement of expenses.

5. After the Effective Date, upon invoice from the Settlement Administrator, Progressive will pay any additional costs related to notice to the Class and the costs of administering the Settlement Agreement. Any amounts paid by Progressive pursuant to this provision shall be credited against its obligation to fund the Gross Settlement Amount. In all events, Progressive shall never be required to pay more than the Gross Settlement Amount.

6. Progressive shall comply with the CAFA Notice requirements set out in 28 U.S.C. § 1715.

7. The Settlement Administrator shall first attempt to email notice to potential Settlement Class Members. If any such email cannot be delivered after three attempts, the Settlement Administrator shall provide notice to such Class Members by first-class mail.

8. Before mailing the Mailed Notice, the Settlement Administrator shall run the addresses for Class Members once through the National Change of Address Database (“NCOA”) to attempt to obtain a more current name and/or address for each potential Settlement Class Member. The Settlement Administrator may also perform such further reasonable search for a more current name and/or address for the potential Settlement Class Member, including potentially a search of the Lexis/Nexis name and address database or other database selected by Progressive, to the extent Progressive determines in its good faith and sole discretion that the address contained in its records may no longer be current or accurate. The Settlement Administrator shall send a copy of the Mailed Notice (including, where applicable, the Address Verification Form) by first-class mail to each potential Settlement Class Member identified as a result of the above search(es). Progressive and the Settlement Administrator shall use their best efforts to complete the mailing of the Mailed Notice to potential Settlement Class Members within seventy five (75) days after entry of the Preliminary Approval Order. Other than the

Website and the Mailed Notice, the Parties and the Settlement Administrator shall not be obligated to provide any additional notice of this settlement.

9. If any Mailed Notice mailed to any potential Settlement Class Member in accordance with paragraph IX(8) is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly log each such Mailed Notice and provide copies of the log to Progressive and Class Counsel as requested. 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, if a Lexis/Nexis name and address search or other non-NCOA database search was not previously conducted for those mailings as set forth in paragraph IX(8), such a search shall be conducted and those mailings shall be forwarded to any new address obtained through such a search. In the event that any Mailed 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 herein 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.

10. The Settlement Administrator shall maintain an automated, toll-free phone line through which Class Members can obtain answers to frequently asked questions or to leave a message in a voicemail box.

11. The Settlement Administrator shall maintain a Website for this settlement beginning on the Mailed Notice Date and remaining for at least Ninety (90) days after the Effective Date. The Website shall include copies of this Agreement (including exhibits); the Mailed Notice; a detailed notice (“Website Notice”) in the form agreed to by Lead Counsel and

Progressive's Counsel and submitted to the Court for approval; the Motion for Preliminary Approval; and the Preliminary Approval Order. The Website shall also identify important deadlines and provide answers to frequently asked questions, and may be amended as appropriate during the course of the settlement administration as agreed to by the Parties. The Website shall also contain Spanish translations of the Mailed Notice, the Website Notice, Website home page, and frequently asked questions. The Website shall also contain a link to the Address Verification Form for Former Policyholders (or their Legally Authorized Representatives) to verify their addresses in accordance with this Agreement.

12. The Mailed Notice and the Website Notice, along with Spanish translations of this document, shall also be made available to all potential Settlement Class Members by request to the Settlement Administrator, who shall send them via first-class U.S. mail or by email to any potential Settlement Class Member who requests them.

X. PROCEDURES FOR REQUESTS FOR EXCLUSION

1. Settlement Class Members who wish to exclude themselves from the Settlement Class must submit timely, written requests for exclusion. To be effective, such a request must include the Settlement Class Member's name and address, a clear and 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 mailed to the Settlement Administrator at the address provided in the Mailed Notice and must be postmarked no later than forty-five (45) days after the Mailed Notice Date. Requests for exclusion must be exercised individually by the Settlement Class Member, not as or on behalf of a group, class, or subclass, except that such exclusion requests may be submitted by a 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.

2. The Settlement Administrator shall promptly log each request for exclusion that it receives and provide copies of the log and all such requests for exclusion to Progressive's Counsel and Class Counsel as requested.

3. The Settlement Administrator shall prepare a list of all persons who timely and properly requested exclusion from the Settlement Class (the "Opt-Out List") and shall, before the Final Approval Hearing, submit an affidavit to the Court attesting to the accuracy of the Opt-Out List.

4. All Settlement Class Members who do not timely and properly exclude themselves from the Settlement Class shall be bound by this Agreement, and all their claims shall be dismissed with prejudice and released as provided for herein, even if they never received actual notice of the litigation or this proposed settlement.

5. The Settlement Administrator, in its sole discretion, shall determine whether a request for exclusion was timely submitted. The Settlement Administrator's decision shall be final, binding, and non-appealable.

XI. PROCEDURES FOR OBJECTIONS AND MOTION TO INTERVENE

1. Any Settlement Class Member or governmental entity who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed settlement or wishes to intervene in the litigation must serve on Class Counsel and Progressive's Counsel, and file with the Court, as applicable, a timely statement of the objection or motion to intervene,

as well as the specific legal and factual reasons, if any, for each objection or motion, including any support the person or entity wishes to bring to the Court's attention and all evidence the person or entity wishes to introduce in support of the objection or motion to intervene, or be forever barred from objection or intervention.

2. To be timely, the objection or motion to intervene must be filed with the Court and served on Lead Counsel and Progressive's Counsel no later than forty-five (45) days after the Mailed Notice Date.

3. The objection or motion to intervene must contain at least the following: (1) a heading that refers to this case by case name and case number; (2) a statement of the specific legal and factual basis for each objection or intervention argument; (3) a statement whether the objecting or intervening 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 intervenor or counsel for the objector or intervenor has appeared either as an objector or counsel for an objector in the last five years. All objections shall be signed by the objecting Settlement Class Member (or his or her Legally Authorized Representative), even if the Settlement Class Member is represented by counsel. Any motion to intervene must further comply with the Federal Rules of Civil Procedure and the Local Rules of the Court. Furthermore, all objectors shall make themselves available to be deposed by any Party in the

county of the objector's residence within seven (7) days of service of his or her timely written objection. If an objector files an appeal from the Court's final Approval Order, the objector shall post a bond within 10 days of filing a notice of appeal in an amount sufficient to cover the amount of the Settlement Fund and the parties' costs and attorneys' fees that they anticipate incurring as a result of any such appeal.

4. Any Settlement Class Member (and/or his or her attorney), or any attorney working for a governmental entity, who wishes to appear at the Final Approval Hearing to object to the settlement or who is representing or assisting a Settlement Class Member in connection with any objection to the settlement (including, but not limited to, by drafting or preparing papers for an objection on behalf of a Settlement Class Member) or wishes to intervene, must serve on Lead Counsel and Progressive's Counsel and file with the Clerk of the Court a notice of appearance no later than forty-five (45) days after the Mailed Notice Date.

5. The right to object to the proposed settlement or to intervene in the litigation 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.

6. Any Settlement Class Member who does not file a timely notice of intent to object in accordance with paragraphs XI(1-5) above shall waive the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the proposed settlement. Settlement Class Members who object to the proposed settlement shall remain Settlement Class Members, and shall be deemed to have voluntarily waived their right to pursue an independent remedy against Progressive. 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.

7. In the event that any person or entity objects to or opposes this proposed settlement, or attempts to intervene in or otherwise enter the litigation, the Parties agree to use their best efforts to cooperate in the defense of the settlement. Notwithstanding the foregoing, it shall be Class Counsel's sole responsibility to respond to any objections made with respect to any application for the Attorneys' Fees and Expense Award.

XII. VERIFICATIONS

1. Lead Counsel and Progressive's Counsel may, in their discretion, request that the Settlement Administrator or the Settlement Administrator's designee submit a declaration attesting to the soundness of the Parties' proposed notice plan if the Settlement Administrator or its designee is of the opinion that the plan is appropriate under the circumstances of this case. The Parties agree to make any modifications in the notice plan necessary to obtain an opinion as to the appropriateness of the plan. Before the Final Approval Hearing, the Settlement Administrator shall file with the Court proof that notice has been provided to the Class as required under the Settlement Agreement.

2. After all Class Member Awards have been distributed, Progressive will file with the Court appropriate verification that it made the distributions required under the Settlement Agreement.

XIII. ATTORNEY'S FEES AND EXPENSES AND CLASS REPRESENTATIVE INCENTIVE AWARDS

1. Before the Final Approval Hearing, Class Counsel will file with the Court a Petition for an award of attorney's fees and reimbursement of expenses. Progressive will not object to any request for attorney's fees that does not exceed one-third of the \$2,000,000 Gross Settlement Amount, or to a request for expenses and an incentive award to the Class Representative. The attorneys' fees and expenses shall be paid by wire transfer from Progressive to Lead Counsel within 20 business days after the Effective Date. Lead Counsel shall be responsible for allocating any fees and expenses that the Court awards.

2. Class Counsel will petition the Court for incentive awards for the Plaintiff. Progressive will not object to any incentive award request that is no more than \$5,000 and is paid out of the \$2,000,000 Gross Settlement Amount. The incentive award shall be paid by a single lump sum wire transfer from Progressive to Lead Counsel within 20 days of the Effective Date.

XIV. FINAL APPROVAL, DISMISSAL OF CLAIMS AND RELEASES

1. The Parties shall request the Court to enter the Final Order and Judgment, to be submitted with the Motion for Final Approval of the Settlement, substantially in the form of Exhibit 2, with such modifications as Lead Counsel and Progressive's Counsel approve.

XV. RELEASE OF CLAIMS

1. The Plaintiff, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-out List approved by the Court, shall be bound by this Agreement, and all of their claims, as provided under this Agreement, shall be dismissed with prejudice and released, even if they never received actual notice of the lawsuit or this settlement.

2. As of the Effective Date, the Plaintiff, and all other Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List approved by the Court, on behalf of themselves 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 received actual notice of the proposed settlement, shall be conclusively deemed to have fully released and discharged Progressive and all of Progressive's Releasees of and from all Released Claims, and agree that they shall not now or hereafter initiate, maintain, or assert any Released Claims against the Releasees in any other court action or before any administrative body (including any state department of insurance or other regulatory entity or organization), tribunal, arbitration panel, or other adjudicating body. Without in any way limiting the scope of the Release described herein, this Release covers, without limitation, any and all claims for attorneys' fees, costs, or disbursements incurred by Class Counsel or any other counsel representing the Plaintiff or Settlement Class Members, or by the Plaintiff or Settlement Class Members, or any of them, in connection with or related in any manner to the lawsuit, the settlement of the lawsuit, the administration of such settlement, and/or the Released Claims except to the extent otherwise specified in the Agreement.

3. "Released Claims" include any and all claims for relief or causes of action, known or unknown, pursuant to any theory of recovery, including but not limited to claims based in contract or tort, common law or equity, and federal, state, or local law, statute, ordinance, or regulation, arising from or related to the allegations in this Action, from any and all claims, known and unknown, that have been, could have been, or should have been asserted in the lawsuits relating to passive antitheft device premium discounts for automobile insurance

policies issued in Pennsylvania. Released Claims also include but are not limited to claims for breach of contract, breach of the duty of good faith and fair dealing, negligence, bad faith, willful and wanton conduct, breach of statutory duties, actual or constructive fraud, intentional or negligent misrepresentations, fraudulent inducement, outrageous conduct, statutory and consumer fraud, breach of fiduciary duty or quasi-fiduciary duty, unfair or deceptive business or trade or insurance acts or practices, insurance premium overcharges or a refund or rebate of premiums, anticipatory repudiation, restitution, rescission, and for injunctive or declaratory relief relating to passive antitheft device premium discounts for automobile insurance policies issued in Pennsylvania. Released Claims also include all claims for compensatory, consequential, and punitive or exemplary damages, damages based on statutory violations, remedies, or penalties, damages in excess of actual damages, interest, attorneys' fees, damages for physical or bodily injury, or other injuries to person, property, or psyche, damages for emotional distress or mental anguish, loss of consortium, lost wages, loss of income, attorneys' fees, interest, costs, penalties, and any other damages, whether known or unknown, alleged or not alleged in the lawsuits, suspected or unsuspected, contingent or matured, under federal, state, or local law, which the Plaintiff or any Settlement Class Member had, now has, or may in the future have with respect to any conduct, act, omissions, facts, matters, transactions, or oral or written statements or occurrences prior to the Effective Date involving, based on, relating to, arising out of, or in any way connected with, directly or indirectly, the allegations in the Complaints or any Amended Complaint (including any Consolidated Amended Complaint), and any claims that were, could have been, or should have been brought by the Plaintiff or any Settlement Class Member concerning passive antitheft device premium discounts for automobiles insured in Pennsylvania.

4. Without in any way limiting the scope of the Release described in this Settlement Agreement, the Named Plaintiff, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List approved by the Court, also expressly waive all rights under Section 1542 of the Civil Code of the State of California, realizing and understand that Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

5. To the extent that, notwithstanding the choice of law provisions in the Agreement, California or other law may be applicable, the Named Plaintiff, and the Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List approved by the Court, hereby expressly agree that the provisions, rights, and benefits of Section 1542 and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction which may be applicable herein are hereby knowingly and voluntarily waived and relinquished by the Plaintiff and the Settlement Class Members to the fullest extent permitted by law solely in connection with unknown claims constituting Released Claims, and Plaintiff and the Settlement Class Members hereby agree and acknowledge that this is an essential term of this Release. In connection with this Release, Plaintiff and the Settlement Class Members acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the matters released herein. Nevertheless, Plaintiff and the Settlement Class Members acknowledge that a portion of the consideration received herein is for a Release with

respect to future damages and complaints, whether resulting from known injuries and consequences or from unknown injuries or unknown consequences of known or unknown injuries, and state that it is the intention of Plaintiff and the Settlement Class Members in executing this Release fully, finally, and forever to settle and release all matters, known or otherwise, and all claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action) constituting Released Claims.

6. Progressive and all Releasees shall release the Class Representative and Class Counsel and their respective agents, employees, contractors, successors, predecessors, heirs, assigns, and any person acting for or on behalf of the Class Representative or Class Counsel from any and all claims related to the Released Claims or related to the institution, prosecution or settlement of the Released Claims that Progressive or any Releasee may have or claim against them.

7. Nothing in this Release shall preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein.

XVI. MISCELLANEOUS PROVISIONS

1. **Settlement Non-approval.** In the event this Settlement Agreement does not receive final approval, or otherwise become effective, the litigation shall return to the exact status it was in before execution of this Settlement Agreement.

2. **Disputes Concerning Implementation of the Settlement Agreement.** Any disputes between the Parties concerning the implementation of any aspect of the Settlement Agreement shall be submitted for resolution to the presiding trial judge, and the trial judge's rulings on any such matters shall be final and non-appealable.

3. **Counterpart Execution.** This Agreement may be executed in any number of counterparts and will be binding when it has been executed by all necessary signatories.

4. **Termination of Settlement Agreement.**

- (a) **Bilateral right to Terminate.** Any of the Settling Parties may terminate this Settlement Agreement prior to the Effective Date at his or its sole option and discretion by providing written notice of the termination to counsel for the other parties if: (1) the Court, or any appellate Court(s), rejects, modifies, or denies approval of any portion of this Settlement Agreement that the terminating party in his or its sole judgment and discretion believes is material, including, without limitation, the terms of the Class relief, the provisions relating to notice, the definition of the Class, and the Release; or (2) the Court, or any appellate Court(s), does not enter or completely and unconditionally affirm any portion of the Final Order and Judgment that the terminating party in his or its sole judgment and discretion believes is material. To be effective, such notification must be received by the opposite Party within five business days of the occurrence of the event upon which the termination is proposed to be based. Notwithstanding the foregoing, Plaintiff may not terminate this Settlement Agreement because of the amount of attorneys' fees and expenses awarded by the Court or any appellate Court(s), or the failure of the Court or any appellate Court(s) to approve any provision of paragraph XIII of this Settlement Agreement.
- (b) **Progressive's Unilateral Right to Terminate.** Progressive may also unilaterally, in its sole discretion, withdraw from and terminate this Settlement

Agreement by providing written notice of termination to Class Counsel if: (1) those persons who elected to exclude themselves from the Class together number more than ten percent of all known potential Class Members; or (2) Plaintiff elects to exclude himself from the Class or object to the proposed settlement.

- (c) **Deadline for Termination.** Progressive must exercise any unilateral option to withdraw from and terminate this Settlement Agreement under paragraph XVI(4)(b) above no later than fifteen days immediately preceding the scheduled Final Approval Hearing Date or five business days after notice of the event prompting the right to terminate, whichever occurs first.
- (d) **No Obligation to Exercise Right.** If an option to withdraw from and terminate this Settlement Agreement arises under this paragraph XVI(4)(a) or XVI(4)(b), none of the Settling Parties is required for any reason or under any circumstance to exercise that option.
- (e) **Effect of Termination.** If this Settlement Agreement is terminated pursuant to this Section, then: (1) this Settlement Agreement shall be null and void and shall have no force or effect, and no party to this Settlement Agreement shall be bound by any of its terms, except for the terms of this paragraph XVI(4)(e); (2) this Settlement Agreement, all of its provisions (including, without limitation, any provisions regarding Class certification), and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of any of the Settling Parties, each of whom shall be restored to their respective positions existing immediately before the execution of this Settlement Agreement; (3) this

Settlement Agreement, any provision of this Settlement Agreement (including, without limitation, the provisions regarding Class certification), or the fact of this Settlement Agreement having been made, shall not be admissible or entered into evidence for any purpose whatsoever; and (4) any order or judgment entered after the date of this Settlement Agreement, including, without limitation, any order certifying the Class, will be vacated and will be without any force or effect.

5. Retention of Records.

(a) The Settlement Administrator shall retain all returned Settlement Class Notices and correspondence from Class Members, in either original format or electronic duplicate, for a period of up to two years after the Effective Date. After this time, the Settlement Administrator may destroy any such records that it has in its possession. Except as expressly stated above, nothing in this Settlement Agreement shall be construed to require Progressive to retain records beyond what its discretionary record retention policies are.

(b) Within 60 days after the Effective Date, Class Counsel and Plaintiff shall return to Progressive (at Progressive's expense) or destroy all confidential documents, data and information, and all copies thereof in their possession, custody, or control, provided by Progressive to Class Counsel or anyone they employed or retained in this lawsuit. Class Counsel may retain one hard copy and an electronic copy of the pleadings, briefs, and motions filed in the lawsuits, subject to maintaining the confidentiality of any material that has been filed under

seal. Within 75 days after the Effective Date, Class Counsel shall deliver a letter to Progressive certifying their compliance with this paragraph.

6. **Interests of the Class.** Class Counsel and Plaintiff represent that they are seeking to protect the interests of the entire Class and believe that this Settlement Agreement is in the best interests of the Class. Plaintiff agrees not to request exclusion from the Class or to encourage others to do so.

7. **Entire Agreement.** This Settlement Agreement sets forth the entire agreement between the Settling Parties relating to the settlement of this Lawsuit and may not be altered or modified except by written instrument executed by Class Counsel and Progressive's Counsel. There are no other representations or warranties between the Settlement Parties relating to the subject matter of this Settlement Agreement that are not contained in this Agreement or that are being relied upon by either party to this Settlement Agreement.

8. **Choice of Law.** This Settlement Agreement shall be governed by the substantive laws of Pennsylvania.

9. **Postmarks.** Whenever a Class Member is required to provide notice or submit materials by a certain date, the notice or submission shall be timely only if it is postmarked or received on or before the date it is due and is, in fact, received by the intended recipient within 10 days thereafter. Notwithstanding the foregoing, however, objections to the Settlement Agreement and notices of appearance must be actually delivered to and received by the intended recipient on or before the date they are due.

10. **Extensions.** The Settling Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of

the provisions of this Settlement Agreement. Such extensions must be in writing to be enforceable.

11. **Unambiguous Contract.** All parties agree that this Settlement Agreement is clear and unambiguous and was drafted jointly by counsel for all parties at arm's length, and that no parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, its intent, or the circumstances under which it was made or executed.

12. **Further Assurances.** The Settling Parties agree that upon the request of any one of them, they will execute and deliver such further documents and undertake such further action as may reasonably be required to effect any of the agreements and covenants contained in this Settlement Agreement.

13. **Parties Bound.** This Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties, the Class Members, the Releasees, and their respective heirs, successors, and assigns.

14. **Communications Regarding Settlement.** The Settling Parties and their counsel agree that prior to the date that the Settlement Class Notice is mailed, no party or counsel shall make any public announcements or other mass and/or generalized communications regarding this Settlement Agreement, including, without limitation, communications with the public, media or press.

15. **Right to Communicate with Class Member.** The Settling Parties agree that Progressive retains its right to communicate with and respond to inquiries from present and past customers, including Class Members. These communications may be oral and/or in writing, and may be handled directly or through designated agents.

AGREED AS TO FORM AND SUBSTANCE:

Dated: _____

**SCHNADER HARRISON SEGAL &
LEWIS LLP**

By: 

IRA NEIL RICHARDS
ARLEIGH P. HELFER III

Attorneys For Plaintiff James Boyle, Sr.,
and the Class

Dated: _____

CONRAD O'BRIEN PC

By: 

ROBERT FELTOON

Attorneys for Defendant Progressive
Specialty Insurance Company