

IN THE CIRCUIT COURT OF MILLER COUNTY, ARKANSAS

**BILL FEELY and ROBERT BEESON, as
Executor of the Estate of DORIS ANN
BEESON, Individually and as Class
Representatives on Behalf of all Similarly
Situated Persons,**

Plaintiffs,

vs.

**ALLSTATE COUNTY MUTUAL
INSURANCE COMPANY, *et al.*,**

Defendants.

No. CV-2004-294-3A

**FINAL ORDER AND JUDGMENT APPROVING SETTLEMENT, CERTIFYING
CLASS FOR SETTLEMENT PURPOSES, AWARDING CLASS COUNSEL
ATTORNEYS' FEES, AWARDING CLASS REPRESENTATIVE INCENTIVE FEES,
AND DISMISSING ACTION WITH PREJUDICE**

On this 6th day of May, 2011, the Court considered the Joint Motion for Final Approval of Stipulation of Settlement ("Joint Motion for Final Approval"), Plaintiffs' Brief in Support of the Joint Motion for Final Approval, Class Counsel's Application for Attorneys' Fees and Reimbursement of Costs Related to the Stipulation and Settlement and for Class Representative Incentive Fees ("Class Counsel's Application for Fees"), and Plaintiffs' Submission of Evidence in Support of Joint Motion for Final Approval ("Plaintiffs' Submission of Evidence"), and the Allstate Defendants'¹ submissions in support of Final Approval.

¹ Defendants Allstate Insurance Company, Allstate Indemnity Company, Allstate Property and Casualty Insurance Company, Allstate Fire and Casualty Insurance Company, Allstate County Mutual Insurance Company, Allstate Texas Lloyd's Inc., Allstate Floridian Insurance Company, Allstate Floridian Indemnity Company, Castle Key Insurance Company, Castle Key Indemnity Company, Allstate New Jersey Insurance Company, Encompass Indemnity Company, Encompass Insurance Company, Encompass Insurance Company of America, Encompass Property and Casualty Company, Encompass Independent Insurance Company, Encompass

The Joint Motion for Final Approval requests (a) certification of the class for settlement purposes only; (b) final approval of the Proposed Settlement preliminarily approved by this Court on December 6, 2010 and memorialized in the Stipulation of Settlement and Order Preliminarily Approving Class Settlement; and (c) dismissal with prejudice of Plaintiff's claims against "Allstate" (as that term is defined in paragraph 2 of the Stipulation of Settlement). Class Counsel's Application for Fees requests that this Court award attorneys' fees and reimbursement of expenses to Class Counsel and Class Representative fees. In connection with the Joint Motion for Final Approval and Class Counsel's Application for Fees, the Court considered, among other things, said pleadings, all exhibits and affidavits thereto, Plaintiffs' Brief in Support of Joint Motion for Final Approval of Stipulation of Settlement, all exhibits and attachments thereto, Plaintiffs' Submission of Evidence, all exhibits and attachments thereto, Plaintiffs' Exhibits 1 - 10 which were admitted into evidence for all purposes at the Settlement Final Approval Hearing, the Allstate Defendants' submissions in support of Joint Motion for Final Approval, all pleadings filed in this matter, and arguments of counsel. In entering this Final Order, the Court also relies on the entire record in this action, including but not limited to all pleadings, motions, and papers filed with the Court, all prior orders entered by this Court, and all transcripts of any hearings conducted by this Court. The entire record in this action is relevant to the *Grunin* factors 1, 3, and 4: "(1) the strength of the case for the plaintiffs on the merits, balanced against the amount offered in the settlement; ... (3) the complexity, length and expense of further litigation; and (4) the amount of the opposition to the settlement." *Ballard v. Martin*, 349 Ark. 564, 574 (2002),

Home and Auto Insurance Company, Encompass Insurance Company of New Jersey, Encompass Insurance Company of Massachusetts, Encompass Floridian Indemnity, Encompass Floridian Insurance Company, Encompass Property & Casualty Insurance Company of New Jersey, Allstate New Jersey Property & Casualty Insurance Company, and North Light Specialty Insurance Company (collectively referred to hereinafter as "Allstate Defendants").

citing *Grunin v. Int'l House of Pancakes*, 513 F.2d 114 (8th Cir. 1975). The entire record in this action is also relevant to the *Chrisco* factors the Court considers when addressing Class Counsel's Application for Fees. *Chrisco v. Sun Industries, Inc.*, 304 Ark. 227, 229, 800 S.W. 2d 717, 719 (1990). Additionally, because the class claims asserted in this action against Allstate were originally part of *Chivers, et al. v. State Farm Fire and Casualty Company, et al.*, No. 2004-294-3 ("Chivers") before being severed into the current matter on December 23, 2008, the Court also relies on the entire record in *Chivers* in support of this Final Order, including but not limited to all pleadings, motions, and papers filed with the Court in *Chivers*, all prior orders entered by this Court in *Chivers*, and all transcripts of any hearings conducted by this Court in *Chivers*. Further, this settlement is the final in a series of settlements approved by this Court related to the alleged underpayment of GCO&P by homeowners insurance companies originating in *Chivers*. This Court previously approved similar class settlements related to GCO&P with the following insurers: (1) Nationwide; (2) Farm Bureau Mutual Insurance Company of Arkansas; (3) Southern Farm Bureau; (4) State Farm; and (5) Farmers/Foremost. The Court also relies on its long-standing experience with GCO&P litigation for more than six years and various other GCO&P class settlements to evaluate the fairness and reasonableness of this settlement under Ark. R. Civ. P. 23.

WHEREAS, Plaintiff and the Allstate Defendants have executed and filed a Stipulation of Settlement (the "Stipulation") with the Court on December 6, 2010; and

WHEREAS, the Stipulation is hereby incorporated by reference in this Order and all terms defined in the Stipulation will have the same meanings in this Order; and

WHEREAS, the Court, on December 6, 2010, entered the Order Preliminarily Approving Class Settlement ("Preliminary Approval Order"), preliminarily approving the Stipulation,

preliminarily certifying, for settlement purposes only, this Action as a class action, and scheduling a hearing for May 6, 2011 at 9:00 a.m. ("Settlement Final Approval Hearing") (a) to determine whether the Proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate and should be finally approved by the Court; (b) to determine whether this case should be finally certified as a class action for settlement purposes only and that the requirements of Ark. R. Civ. P. 23 have been met; (c) to determine whether a final judgment should be entered herein; and (d) to consider Class Counsel's Application for Fees; and

WHEREAS, the Court ordered that the Individual Notice and Claim Form, in the forms attached to the Stipulation of Settlement as Exhibits "2" and "3", be mailed by the Administrator, Rust Consulting, by first-class mail, postage prepaid, on or before March 7, 2011 (the "Notice Mailing Date") to all potential Class Members whose names were ascertained by the Allstate Defendants through a reasonable search of their electronic records at their last known address with address updating and verification where reasonably available, and that the website and a toll-free number be implemented on or before the Notice Mailing Date; and

WHEREAS, the parties and the Administrator have satisfactorily demonstrated that such Class Notice was given in accordance with the terms of the Preliminary Approval Order; and

WHEREAS, in accordance with the Individual Notice, the Settlement Final Approval Hearing was duly held before this Court on May 6, 2011; and

WHEREAS, at the Settlement Final Approval Hearing, the Court considered, among other matters: (a) the Court's subject matter jurisdiction and jurisdiction over the parties; (b) whether certification for settlement purposes only was appropriate under Rule 23; (c) the fairness, reasonableness and the adequacy of the Stipulation, including whether the settlement

was fairly and honestly negotiated at arm's length, whether serious questions of law or fact exist placing the ultimate outcome of the merits of the litigation in doubt, the substantial benefits of the relief provided to the Class members, whether the value of an opportunity for an immediate recovery outweighs the mere possibility of future relief on the merits, the complexity, length, and expense of further litigation, the limited opposition to the settlement, and the judgment of the parties that the settlement is fair and reasonable; (d) the adequacy of the representation of the class by the Plaintiffs/Class Representatives and by Class Counsel; (e) an analysis of whether the constitutional procedural due process requirements for notice, an opportunity to be heard, a right to opt-out, and adequate representation have been met as described in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985); and (f) the fairness and reasonableness of Class Counsel's application for attorneys' fees under applicable law; and

WHEREAS, at the Settlement Final Approval Hearing, the Court fulfilled its duty to independently evaluate the fairness, reasonableness, and adequacy of the Stipulation and Class Counsel's Application for Attorneys' Fees by considering not only the pleadings and arguments of Plaintiffs, Class Counsel and the Allstate Defendants, but also by rigorously and independently evaluating the Stipulation, including the provisions for claims and the payments of benefits to the Class, other states' laws and Class Counsel's Application for Fees on behalf of the absent class members, and as such, the Court considered any argument that could reasonably be made against approval of the Stipulation and Class Counsel's Application for Attorneys' Fees, even if such argument was not actually presented to the Court by pleading or oral argument; and

WHEREAS, by performing this independent analysis of the Joint Motion for Final Approval and Class Counsel's Application for Fees, the Court has considered and protected the interests of all absent Class Members under Rule 23; and

WHEREAS, the Individual Notice and Detailed Notice described the Settlement Class and advised Class Members of the method by which a Class Member could request exclusion from the Settlement and pursue an independent legal remedy against the Allstate Defendants; and

WHEREAS, all Class Members had the absolute right to opt out and pursue an individual lawsuit against the Allstate Defendants, and this opt out right was clearly explained to Class Members in the Notice; and

WHEREAS, any Class Member who failed to request exclusion under the terms of the Individual Notice and Detailed Notice voluntarily waived the right to pursue an independent remedy against the Allstate Defendants; and

WHEREAS, the Individual Notice and Detailed Notice advised Class Members of the method by which a Class Member could properly file objections and request to be heard at the Settlement Final Approval Hearing; and

WHEREAS, 16 objections were filed by 19 Class Members who had notice of the Hearing and had the right to appear and be heard.

NOW, THEREFORE, the Court, having read and considered all submissions made in connection with the Joint Motion for Final Approval and Class Counsel's Application for Fees, the objections, and having reviewed and considered the files and records herein, and having relied on the entire record in this action and the *Chivers* action, and all other evidence submitted, finds and concludes as follows:

1. This Court has subject matter jurisdiction over this Action. Ark. Const. Amend. 80, Ark. Code Ann. § 16-13-201(a).

2. This Court has jurisdiction over the absent Class Members based upon the Court's findings and conclusions, set out below, that the absent Class Members have been afforded the due process protections required by the Arkansas and United States Constitutions of notice, an opportunity to be heard, a right to opt out, and adequate representation. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).

3. The definitions and terms set forth in the Stipulation are hereby adopted and incorporated into this Order.

4. The Amended Complaint filed in this Action alleges that the Allstate Defendants violated applicable law in resolving claims for Structural Loss of certain insureds by not properly paying and including in the adjustment of such homeowners insurance claims an amount to cover payments for General Contractor's Overhead and Profit ("GCO&P"). The Allstate Defendants have maintained throughout this Litigation that they have paid GCO&P when reasonable and appropriate to do so and have denied that they have engaged in any wrongful or unlawful conduct.

5. On or about May 5, 2011, Plaintiffs and the Allstate Defendants applied to the Court for final approval of the terms of the Proposed Settlement and for the entry of this Final Judgment. In support of that Application, Plaintiffs submitted, among other things, evidence concerning the dissemination and adequacy of Class Notice, evidence regarding the names of potential Class Members who have submitted requests for exclusion from the Settlement Class, evidence regarding the negotiation of the Stipulation, evidence regarding the value of the settlement and benefits to the class, evidence regarding compliance with Rule 23, evidence regarding the adequacy of Plaintiffs and Class Counsel to represent the absent Class Members, evidence regarding the fairness, reasonableness, and adequacy of the substantive terms of the

Stipulation, and evidence regarding the fairness, reasonableness and adequacy of Class Counsel's Application for Fees. In Support of the Joint Motion for Final Approval, Plaintiffs submitted a Brief in Support of Joint Motion for Final Approval, setting forth extensive argument and authority along with various Exhibits attached thereto. Class Counsel's Application for Fees contained both extensive argument and authority and various exhibits attached thereto. The Court finds that, given the procedural posture of the case at the time of settlement, Allstate had not yet made a complete submission of evidence as to the merits of this litigation. Additionally, Allstate had not yet addressed the certifiability of a class in a litigation context.

6. Plaintiff offered into evidence at the Settlement Final Approval Hearing the following evidence in support of the Joint Motion for Final Approval and Class Counsels' Application for Fees:

EXHIBIT #	DESCRIPTION
1	AFFIDAVIT OF BILL FEELY
2	AFFIDAVIT OF ROBERT BEESON
3	AFFIDAVIT OF MICHAEL ANGELOVICH
4	AFFIDAVIT OF JASON ROSELIUS
5	AFFIDAVIT OF JOHN GOODSON
6	AFFIDAVIT OF TORE HODNE
7	ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT
8	STIPULATION OF SETTLEMENT
9	DECLARATION OF PROFESSOR JAMES L. GIBSON, PH.D.
10	AFFIDAVIT OF GEOFFREY MILLER

The Court admitted Plaintiff's Exhibits 1 - 10 into evidence for all purposes. In addition, the Court also relies on the entire record in this Action and the *Chivers* action as well as the Court's long-standing experience with GCO&P litigation and similar nationwide class action settlements in entering this Final Order.

7. As part of its Preliminary Approval Order, the Court certified for settlement purposes a Settlement Class defined as follows:

Each and every person who:

- (a) was insured under a Homeowners Insurance policy that was issued by Allstate; and
- (b) during the Class Period suffered a Covered Loss;²
- (c) excluding:
 - (i) claims which were the subject of any lawsuit brought on an individual basis (not in a representative capacity) filed during the Class Period alleging causes of action related to any Released Claims; and
 - (ii) Allstate, all present or former officers and/or directors of Allstate, Neutral Evaluators, Class Counsel and their immediate families, any member of the Arkansas Judiciary and their immediate families, Allstate's counsel of record and their immediate family, and all Persons who make a timely election to be excluded from the Settlement Class.

8. The Court hereby affirms this definition of the Settlement Class for purposes of this Final Judgment and certifies this Action, for settlement purposes only, as a Class Action. In so doing, the Court finds, for settlement purposes only, that the Action meets all the requirements of Rule 23 of the Arkansas Rules of Civil Procedure, due process and all other applicable rules and law and can therefore be certified as a settlement class action.

9. Plaintiffs and the Allstate Defendants have entered into the Stipulation, which has been filed with the Court and is incorporated herein by reference. The Stipulation provides for

² "Covered Loss" is defined in the Stipulation as "any Structural Loss, as defined in paragraph 30 [of the Stipulation], to any building or other structure located in the United States (except in Ohio or Pennsylvania) that (a) occurred within the Class Period, (b) was determined by Allstate or by a court or arbitrator of competent jurisdiction to be covered by a Homeowners Insurance policy issued by Allstate; and (c) resulted in a payment by Allstate within the Class Period."

the settlement of this Action with the Allstate Defendants on behalf of the representative Plaintiffs and the members of the Settlement Class, subject to final approval by the Court. The Stipulation provides that, in exchange for the releases described in the Stipulation and this Judgment, the Allstate Defendants will provide (a) GCO&P settlement payments to all qualifying members of the Settlement Class who submit approved claims, (b) the Allstate Defendants' implementation of certain GCO&P claims practices and disclosures described in the Stipulation for a period of two years following the date of this Order, (c) an amount not to exceed \$63,900,000 in attorneys' fees, costs and expenses payable to Class Counsel, and (d) payment of all notice and administration costs.

10. On December 6, 2010, the Court held a Preliminary Approval Hearing to consider the preliminary approval of the Stipulation. The Court approved the Class Notice and method of notification for potential Class Members, and directed that Class Notice of the Proposed Settlement and of the Settlement Final Approval Hearing be disseminated in accordance with the terms of the Stipulation and the Preliminary Approval Order.

11. On May 5, 2011, the parties provided evidence that the Individual Notice, Detailed Notice, and website, all of which informed members of the Settlement Class of the terms of the Proposed Settlement, of their opportunity to request exclusion from the Settlement Class, and of their opportunity to object to the terms of the Stipulation, were disseminated in accordance with the Preliminary Approval Order.

12. Specifically, the Court received and admitted an affidavit from Tore Hodne, an employee of the Administrator, setting forth the scope and results of the notice campaign.

13. Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Individual Notice and Detailed Notice as disseminated to

members of the Settlement Class in accordance with provisions of the Preliminary Approval Order, provided the best notice practicable under the circumstances to all members of the Settlement Class. Accordingly, the Individual Notice and Detailed Notice as disseminated are finally approved as fair, reasonable and adequate. The Court finds and concludes that due and adequate notice of the pendency of this Action and of the Stipulation has been provided to members of the Settlement Class, and the Court further finds and concludes that the notice program described in the Preliminary Approval Order and completed by the parties complied fully with the requirements of Arkansas Rule of Civil Procedure 23, the requirements of due process under the Arkansas and United States Constitutions, and the requirements of any other applicable rules or law. The Court further finds that the notice campaign undertaken concisely and clearly states in plain, easily understood language:

- (a) the nature of the action;
- (b) the definition of the class certified;
- (c) the class claims, issues or defenses;
- (d) that a Class Member may object to the settlement;
- (e) that a Class Member may enter an appearance and participate at the Settlement Final Approval Hearing in person or through counsel if the member so desires;
- (f) that the Court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and
- (g) the binding effect of the class judgment on Class Members.

14. Having admitted and reviewed the Affidavit of Tore Hodne concerning the success of the notice campaign, the Court finds that it is unnecessary to afford a new opportunity

to request exclusion to individual Class Members who had an earlier opportunity to request exclusion, but did not do so.

15. The Settlement Final Approval Hearing and the evidence before the Court clearly support a finding that the Stipulation was entered into in good faith between the Plaintiff and the Allstate Defendants, and the Court does hereby so find.

16. The Court finds that the Stipulation is the result of a good faith arm's length negotiation by the parties hereto. In addition, the Court finds that approval of the Stipulation and the Proposed Settlement embodied therein will result in substantial savings in time and resources to the Court and the litigants and will further the interests of justice. Further, the Court finds that the Stipulation is fair, reasonable and adequate to members of the Settlement Class based on formal and informal discovery, due diligence, and the absence of material objections sufficient to deny approval.

17. The settlement of the Action on the terms and conditions set forth in the Stipulation is approved and confirmed in all respects as fair, reasonable, and adequate and in the best interest of the Settlement Class and Class Members, especially in light of the benefits to the Settlement Class and the costs and risks associated with the continued prosecution, trial and possible appeal of this complex litigation.

18. The Court finds and concludes that: the claims process is fair; the claims process provides an opportunity for Class Members to correct mistakes and deficiencies in their claims; Settlement Class Members have sufficient time to submit a Claim Form; payments to the eligible Class Members will be calculated according to the same formulas; there is no "preferential treatment" toward the Class Representatives or any other Settlement Class Member. Any disputes about whether payments are owed, or how much, will be decided by the Neutral

Evaluator. The Court has appointed the Neutral Evaluator, as ordered below, and finds that person to be disinterested and well-qualified to carry out this role in a way that is fair to both the class and the Defendants. Accordingly, the parties have established that the settlement is fair, reasonable and appropriate by balancing the strength of the Plaintiffs' case against the prospect and value of immediate recovery under the actual settlement.

19. The Court also finds that Defendants have raised significant defenses to the merits of Plaintiffs' liability and damage claims. The Court also finds that the Agreement makes significant benefits available to the Class Members in the form of cash payments to those who qualify. When weighed against the relative merits of the Plaintiffs' claims, the value of the Agreement strongly supports approval of the Proposed Settlement.

20. The Court finds and concludes that the costs, delays, and risks associated with the complex proceedings necessary to achieve a favorable result for the Class Members on the merits of their liability and damage claims during pre-trial proceedings, trials and appeals are significant. Furthermore, the benefits of the Proposed Settlement are immediate, in contrast with the "contingency of protracted litigation.... [T]his bird-in-the-hand argument militates in favor of the settlement." *Ballard v. Advance America*, 79 S.W.3d 835 (Ark. 2002) (*Ballard II*), *cert. denied*, 2003 U.S. Lexis 1993. Based upon the work to be completed in this case, it is expected that there would be thousands of attorney hours as well as millions of dollars spent in the further prosecution and defense of the claims asserted by the Class. In the absence of the Settlement, the Class would most likely be deprived of any benefits for many more years, even assuming Plaintiffs were successful at every stage of the litigation. The Court further finds and concludes that Arkansas public policy favors settlement of litigation. *Stromwall v. Van Hoose*, 265 S.W.3d 93, 104 (Ark. 2007). This presumption is especially strong in class actions and other

complex litigation where substantial judicial resources can be conserved by avoiding formal litigation. This public policy also ties into the strong policy favoring the finality of judgments and termination of litigation. Settlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the courts, and in addition to conservation of judicial resources, the parties may also gain significantly from avoiding the costs and risks of further protracted and expensive litigation, and the costs and risks of a lengthy and complex trial.

21. A review of the following factors supports a finding that the Settlement is fair and adequate:

- (a) the strength of the case for the plaintiffs on the merits, balanced against the amount offered in the settlement;
- (b) the defendant's overall financial condition and ability to pay;
- (c) the complexity, length and expense of further litigation; and
- (d) the amount of opposition to the settlement.

Ballard v. Martin, 349 Ark. 564, 574 (2002).

22. Although the Notice campaign was highly successful and resulted in notice being mailed to over six million potential Class Members, only 19 potential Settlement Class Members filed objections to either the Stipulation or Class Counsels' Application for Fees. Out of the 19 objections filed, 12 were subsequently withdrawn and 1 was from an objector who had also opted-out of the settlement. Pursuant to Ark. R. Civ. P. 23(e)(4), the Court hereby approves the withdrawal of these objections. Currently, 6 *pro se* objections are pending. The almost complete lack of opposition by a well-noticed Settlement Class strongly supports the fairness, reasonableness and adequacy of the Stipulation and Class Counsels' Application for Fees.

Additionally, class counsel in a competing class styled *Torres v. Allstate Property and Casualty Insurance Company, et al.*, Case No. 20093646 in the Arizona Superior Court, Pima County, filed an *amicus curiae* brief in support of the proposed settlement. The support of competent and experienced class action counsel in a competing class action further evidences the fairness and reasonableness of the settlement.

23. The Court, in its evaluation of the fairness, reasonableness, and adequacy of the Stipulation and Class Counsel's Application for Fees, considered all objections that were filed or that could have been raised by any absent Class Member, including objections that were withdrawn prior to the Final Fairness Hearing. After considering all such objections and possible objections, the Court finds that said objections are overruled or would have been overruled and the Stipulation is fair, reasonable, and adequate under the *Ballard* factors.

24. The Settlement Class is not required under the Stipulation to submit records or documents that they do not possess. The Settlement Class is not burdened or discouraged from filing their claims because they are required to provide documents in their possession along with their Claims Forms. Additionally, the manner in which documents in the Allstate Defendants' possession are used to evaluate and process claims is fair and reasonable based upon the terms of the Stipulation and evidence presented at the Settlement Final Approval Hearing. The claim process as set forth in the Stipulation is fair, reasonable and adequate to both Class Members and the Allstate Defendants.

25. Class Counsel's requests for \$ 63,900,000.00 in attorneys fees and expenses and Class Representative fees of \$5,000 to each Class Representative are fair, reasonable and adequate under the Court's analysis of the *Chrisco* factors applied to a percentage

of the common fund or common benefit approach. *Chrisco v. Sun Indus., Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990).

26. Under applicable law, the Court has the discretion to award fees based on a percentage of the common fund or common benefit made available to the Settlement Class after considering the following *Chrisco* factors. “(1) the experience and ability of the attorney; (2) the time and labor required to perform the legal service properly; (3) the amount involved in the case and the results obtained; (4) the novelty and difficulty of the issues involved; (5) the fee customarily charged in the locality for similar legal services; (6) whether the fee is fixed or contingent; (7) the time limitations imposed upon the client or by the circumstances; and (8) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.” *Chrisco v. Sun Indus., Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990).

27. The Court adopts Class Counsels’ analysis of the *Chrisco* factors as set forth in Class Counsels’ Application for Fees to support the Court’s award of attorneys’ fees and expenses to Class Counsel.

28. Arkansas law regarding attorneys’ fees in a class action against a private entity, such as the Allstate Defendants, does not require or mandate that the Court determine and award attorneys’ fees based on a lodestar analysis when the defendant has agreed to pay attorneys’ fees as part of a common fund or common benefit settlement. Further, Arkansas law allows the Court to consider the total value of the common fund or common benefit made available to the Class for purposes of calculating attorneys’ fees. The Court is not required to consider only the benefit claimed by Class Members when evaluating a class action settlement against a private entity,

such as the Allstate Defendants, who has agreed to pay attorneys' fees in addition to the other benefits discussed herein.

NOW, THEREFORE, GOOD CAUSE APPEARING THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Court possesses jurisdiction over the subject matter of this Action, the Plaintiffs, the Allstate Defendants, members of the Settlement Class, and the Released Persons.

2. The Court certifies the Settlement Class, for Settlement purposes only, under Arkansas Rule of Civil Procedure 23 and all other applicable rules and law.

3. Timely requests for exclusion were submitted by 1390 potential members of the Settlement Class and those potential Class Members (identified in Exhibit "1" hereto) are excluded from the Settlement Class. All other potential members of the Settlement Class are adjudged to be members of the Settlement Class and are bound by this Final Judgment and by the Stipulation and the Proposed Settlement embodied therein, including the releases provided for in the Stipulation and this Final Judgment.

4. All provisions and terms of the Stipulation are hereby finally approved in all respects. The parties to the Stipulation are hereby directed to consummate the Stipulation in accordance with its terms.

5. This Action is dismissed in its entirety on the merits, with prejudice and without leave to amend, and all members of the Settlement Class are forever barred and permanently enjoined from starting, continuing, or participating in, litigating or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative or regulatory proceeding or order against any of the Released Persons for any of the Released Claims. Accordingly, the Court permanently enjoins Plaintiff and any Class Member from bringing a new class action or

attempting to amend an existing action to assert any class claims that have been released pursuant to the Stipulation.

6. The Court finds that Class Counsel and the Class Representative adequately, appropriately and fairly represented and protected the interests of the Settlement Class for the purposes of entering into and implementing the Proposed Settlement. Accordingly, Plaintiffs, Bill Feely and Robert Beeson, are appointed as the representatives for the Settlement Class, and the following Class Counsel are appointed as counsel for the Settlement Class:

John Goodson
Matt Keil
KEIL & GOODSON
406 Walnut Street
Texarkana, Arkansas 71854

Michael B. Angelovich
Brad Seidel
NIX, PATTERSON & ROACH, LLP
2900 St. Michael Drive
Fifth Floor
Texarkana, Texas 75503

Jason Roselius
Douglas Terry
Derrick Morton
**NELSON, ROSELIUS, TERRY &
MORTON**
P. O. Box 138800
Oklahoma City, Oklahoma 73113

7. The Court finds that all requirements for certification of a settlement class under Rule 23 of the Arkansas Rules of Civil Procedure have been met.

8. The Court finds each Class Member shall be conclusively deemed to have fully released and discharged, to the fullest extent permitted by law, any and all of the Released Persons from all of the Released Claims. The provisions of any state, federal, municipal, local or territorial law or statute providing in substance that releases shall not extend to claims, demands, injuries, and/or damages that are unknown or unsuspected to exist at the time a settlement agreement is executed and/or approved by a court are hereby expressly, knowingly, and voluntarily waived by and on behalf of Plaintiffs and all members of the Settlement Class. Without limiting the foregoing in any way, the Court further finds that Plaintiffs, on behalf of

themselves and all members of the Settlement Class, expressly waive all rights under Section 1542 of the California Civil Code (and any similar law in any other state), realizing and understanding that Section 1542 provides as follows:

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

9. Upon the entry of this Final Judgment, each Class Member, acting individually or together, shall not and shall not seek to institute, maintain, prosecute, sue, assert or cooperate in any action or proceeding against any of the Released Persons for any of the Released Claims.

10. "Released Claims" means and includes any and all known and Unknown Claims, rights, demands, actions, causes of action, allegations, or suits of whatever kind or nature, whether *ex contractu* or *ex delicto*, debts, liens, contracts, liabilities, agreements, interest, attorneys' fees, costs, expenses or losses (including actual, consequential, statutory and/or punitive or exemplary damages) arising from or in any way related to any acts which have been alleged or which could have been alleged in the Action by the Plaintiffs for a Covered Loss, on behalf of themselves or on behalf of the Settlement Class, to the full extent of *res judicata* protections, and whether arising under or based on contract, extra-contractual or tort theories, common law or equity, or federal, state or local law, statute, ordinance, rule or regulation, and/or arising from or in any way related to any omission, diminution, depreciation, inclusion, deduction, determination, modification and/or calculation of any form or manner of General Contractor's Overhead and Profit in the adjustment and/or payment of any Covered Loss by Allstate and/or any alleged conspiracy in connection therewith, provided, however, that the

Released Claims do not include any claim for enforcement of this Stipulation and/or the Final Judgment.

11. "Unknown Claim" means any claim arising out of newly discovered facts and/or facts found hereafter to be other than or different from the facts now believed to be true. The Released Claims defined in paragraph 32 above, include all Unknown Claims arising from or in any way related to any acts which have been alleged or which could have been alleged in the Action by the Plaintiffs for a Covered Loss, on behalf of themselves or on behalf of the Settlement Class, to the full extent of *res judicata* protections, and/or arising from or in any way related to any omission, diminution, depreciation, inclusion, deduction, determination, modification and/or calculation of any form or manner of General Contractor's Overhead and Profit in the adjustment and/or payment of any Covered Loss by Allstate, and/or any alleged conspiracy in connection therewith. Upon the final approval of the Final Settlement, each Class Member shall be deemed to have expressly waived and released any and all Unknown Claims that he, she, or it has or might have arising from or in any way related to any acts which have been alleged or which could have been alleged in the Action by the Plaintiffs for a Covered Loss, on behalf of themselves or on behalf of the Settlement Class, to the full extent of *res judicata* protections, and/or arising from or in any way related to any omission, diminution, depreciation, inclusion, deduction, determination, modification and/or calculation of any form or manner of General Contractor's Overhead and Profit in the adjustment and/or payment of any Covered Loss by Allstate, and/or any alleged conspiracy in connection therewith.

12. "Released Persons" means (a) Allstate Insurance Company, Allstate Indemnity Company, Allstate Property and Casualty Insurance Company, Allstate Fire and Casualty Insurance Company, Allstate County Mutual Insurance Company, Allstate Texas Lloyd's Inc.,

Allstate Floridian Insurance Company, Allstate Floridian Indemnity Company, Castle Key Insurance Company, Castle Key Indemnity Company, Allstate New Jersey Insurance Company, Encompass Indemnity Company, Encompass Insurance Company, Encompass Insurance Company of America, Encompass Property and Casualty Company, Encompass Independent Insurance Company, Encompass Home and Auto Insurance Company, Encompass Insurance Company of New Jersey, Encompass Insurance Company of Massachusetts, Encompass Floridian Indemnity, Encompass Floridian Insurance Company, Encompass Property & Casualty Insurance Company of New Jersey, Allstate New Jersey Property & Casualty Insurance Company, and North Light Specialty Insurance Company (b) all of the past and present divisions, parent entities, associated entities, affiliates, partners, and subsidiaries, of the entities listed in subparagraphs (a)-(b), and (c) all past and present officers, directors, shareholders, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, and legal representatives of the entities and/or persons listed in subparagraphs (a)-(c).

13. The following constitutes highly confidential and proprietary business information of the Allstate Defendants (the "Proprietary Information"): (a) the names, addresses, policy numbers, and other data concerning Potential Class Members compiled by the Allstate Defendants and/or the Administrator in effectuating the Proposed Settlement; and (b) the electronic data processing and other record keeping procedures and materials to be utilized by the Allstate Defendants and/or the Administrator in identifying the Potential Class Members and effectuating Allstate Defendants' other obligations under the Stipulation and/or the Proposed Settlement. The confidentiality of all Proprietary Information shall be protected from disclosure by Class Counsel and/or other attorneys for Plaintiffs in this Action to any persons other than those described in paragraph 36 below.

14. No persons other than Allstate Defendants' counsel and clerical/administrative personnel employed by the Allstate Defendants, Class Counsel and clerical/administrative personnel employed by Class Counsel, the Administrator, and such other persons as the Court may order, after hearing on notice to all counsel of record, shall be allowed access to any Proprietary Information.

15. The Stipulation, Proposed Settlement, and this Final Judgment are not deemed admissions of liability or fault by the Allstate Defendants, or a finding of the validity of any claims in the Action or of any wrongdoing or violation of law by the Allstate Defendants. The Stipulation and Proposed Settlement are not a concession by the parties and, to the extent permitted by law, neither this Final Judgment nor the Stipulation or any other documents, exhibits or materials submitted in furtherance of the settlement, shall be offered or received in evidence in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, as an admission or concession of liability or wrongdoing of any nature on the part of the Allstate Defendants, as an admission or concession that this action may properly be maintained as a litigation class against the Allstate Defendants, or for any other purpose related to the Allstate Defendants.

16. Neither the Stipulation, nor the negotiations of the Class Settlement, nor the Class Settlement procedures, nor any act, statement or document related in any way to the Class Settlement negotiations or settlement procedures, nor any pleadings, or other document or action related in any way to the Stipulation shall be (a) offered into evidence in the Action or in any other case or proceeding in support of or in opposition to a motion to certify a contested class against the Allstate Defendants or (b) otherwise used in any case or proceeding whatsoever in

support of or in opposition to a motion to certify a contested class against the Allstate Defendants.

17. Pursuant to Class Counsel's Application for Attorneys' Fees and Reimbursement of Costs Related to the Stipulation, the Court jointly awards Class Counsel the sum of \$ 6,390,000.00 in attorneys' fees, costs and Class Representative incentive fees. The Court hereby finds that these amounts are fair and reasonable and fully supported by this Court's analysis of the *Chrisco* factors. The Court adopts Class Counsels' analysis of the *Chrisco* factors contained in Class Counsels' Application for Fees, and finds that this analysis of the *Chrisco* factors supports the award of attorneys' fees and costs. The Allstate Defendants shall pay such fees to Class Counsel pursuant to the terms of the Stipulation.

18. The Court appoints Rust Consulting, Inc. as the Administrator to carry out the duties and responsibilities set forth in the Stipulation. Neither Plaintiffs, nor Defendants, nor the parties counsel shall be liable for any act or omission of the Claims Administrator.

19. The Court appoints the following Neutral Evaluator(s): David Beatty to carry out the duties and responsibilities set forth in the Stipulation from the listing of mutually acceptable Neutral Evaluator(s) submitted by the Parties. The Neutral Evaluator(s) shall be discharged upon the Court's approval of the Final Report of Distribution. Neither Plaintiff, nor the Allstate Defendants, nor the parties' counsel shall be liable for any act or omission of the Neutral Evaluator(s).

20. Any Class Member who receives a check in connection with a claim submitted under the Stipulation and does not cash that check within 120 days of its date is deemed to have withdrawn that claim and the Allstate Defendants have no obligation to pay that claim.

21. In accordance with Ark. Stat. § 16-61-205, and pursuant to the Stipulation, all damages recoverable by any Class Member against any unnamed Person shall be reduced to the extent of the pro rata share of the Allstate Defendants' liability therefore, if any, if the Allstate Defendants are found to be a joint tortfeasor with any unnamed Person. Plaintiff and the Settlement Class have agreed pursuant to the Stipulation that they will not seek to recover from any unnamed Person any damages resulting from any acts and/or omissions of the Allstate Defendants. Accordingly, each Class Member shall reduce any judgment against or settlement payment from any unnamed Person by the amount, percentage or share of such judgment or settlement payment attributable to any act and/or omission of the Allstate Defendants, so as to bar, discharge and release under applicable law any claims for contribution and/or indemnity against the Allstate Defendants arising from or related to the claims that are the subject of this Action and/or the Released Claims. In the event that any Class Member obtains a judgment against or settlement payment from one or more unnamed Person(s) and any of those unnamed Person(s) obtains a judgment against the Allstate Defendants for contribution or indemnity in connection with such judgment or settlement payment, then such Class Member will be required to reduce or remit any judgment against or settlement payment from the unnamed Person by the amount of the judgment said unnamed Person obtained against the Allstate Defendants. Nothing in the parties' Stipulation or this Order is intended to release any unnamed Person from liability.

22. Within 60 days after the Effective Date as defined in the Stipulation, Class Counsel and/or other attorneys for Plaintiff in this Action shall return to the Allstate Defendants or destroy all Proprietary Information, and all confidential documents, data or information, and all copies thereof in their possession, custody, or control and any other confidential documents (exclusive of documents filed with the Court) provided by the Allstate Defendants to Class

Counsel or anyone they employed or retained in this Action, Case No. CV-2004-294-3, or other GCO&P class litigation against the Allstate Defendants, either in discovery or in connection with this Stipulation. Within 75 days after the Effective Date, Class Counsel shall deliver a letter to the Allstate Defendants certifying their compliance with this paragraph. Further, the parties agree that neither Class Counsel, nor anyone employed with, retained by, or otherwise associated with Class Counsel shall use any of this Proprietary or confidential material in any other litigation or proceeding, current or future, unless independently obtained through discovery or other procedures in such other litigation.

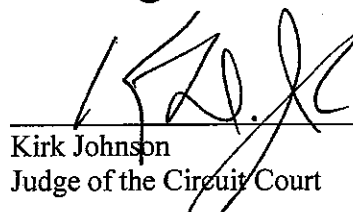
23. As soon as reasonably possible after the completion of all payments to Class Members eligible for payment pursuant to the Stipulation, the parties shall file with the Court a final report, together with a proposed order approving such report and discharging the Neutral Evaluator(s), indicating that distribution in accordance with the terms of the Stipulation and the Court's prior Orders have been completed.

24. Without in any way affecting the finality of this Final Judgment, this Court shall retain continuing jurisdiction over this Action for purposes of:

- A. Enforcing the Stipulation and the Proposed Settlement;
- B. Hearing and determining any application by any party to the Stipulation for a settlement bar order; and
- C. Any other matters related or ancillary to any of the foregoing.

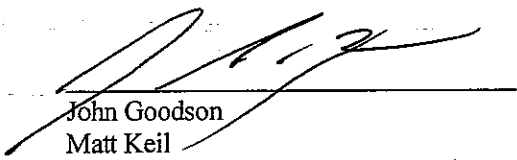
IT IS SO ORDERED THIS 6th DAY OF May, 2011.

Dated: 5-6-11


Kirk Johnson
Judge of the Circuit Court

FILED
2011 MAY -6 P 12:11
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BY
DEPUTY

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