

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON**

JAMES D. NICHOLS, ET AL.)	Case No. 2:06-cv-146 DLB
)	
Plaintiffs,)	
)	
v.)	
)	
)	Judge David L. Bunning
PROGRESSIVE DIRECT)	
INSURANCE COMPANY, et al.,)	Magistrate Judge Gregory Wehrman
)	
Defendants.)	

JEFF & HEATHER HASSAN, ET AL.)	Case No. 2:07-cv-00139-DLB
)	
Plaintiffs,)	
)	
v.)	
)	
)	Judge David L. Bunning
PROGRESSIVE CASUALTY)	
INSURANCE COMPANY)	Magistrate Judge Gregory Wehrman
)	
Defendant.)	

LISA HARTMAN)	Case No. 2:08-cv-00042-DLB
)	
Plaintiffs,)	
)	
v.)	
)	
)	Judge David L. Bunning
PROGRESSIVE NORTHERN)	
INSURANCE COMPANY)	Magistrate Judge Gregory Wehrman
)	
Defendant.)	

SETTLEMENT AGREEMENT

This Stipulation of Settlement is entered into in the above-captioned putative class action lawsuits (“Actions”) this 5th day of March 2010 by and between Plaintiffs, James Jarboe, Lisa Hartman, Jeff Hassan, and Heather Hassan, individually and on behalf of all members of the putative Settlement Class defined below (“Plaintiffs”), and Defendant The Progressive Group of Insurance Companies¹ (“Progressive”) and their respective attorneys of record. Subject to the approval of the Court, the Parties agree to a settlement of all claims in the Action brought by Plaintiffs against Defendant under the following terms and conditions:²

RECITALS

A. Plaintiffs commenced the first of the Actions on June 14, 2006 by filing a Complaint against Progressive Direct Insurance Company in the Commonwealth of Kentucky, Boone County District Court. The Complaints in the Actions allege that Progressive charged its customers Local Government Premium Taxes that were not owed or in excess of the amount owed, and that, in connection with the collection of these taxes, charged an additional Collection Fee. Specifically, the Complaints and amendments allege common law causes of action for fraud, conversion, negligence, breach of fiduciary duty, and civil conspiracy, as well as statutory violations of the Kentucky Consumer Protection Act, KRS 304.12-010, and KRS 304.12-190. Plaintiffs seek a refund of the Local Government Premium Taxes that have been allegedly overpaid or wrongly charged, a refund of all Collection Fees that have been paid, punitive damages, pre-judgment interest, and injunctive and declaratory relief. Plaintiffs also requested that the Actions be certified as a class action.

¹ The Progressive Companies referenced are limited to the following companies issuing policies of insurance in the Commonwealth of Kentucky during the relevant time period: National Continental Insurance Company, Progressive Advanced Insurance Company, Progressive American Insurance Company, Progressive Classic Insurance Company, Progressive Commercial Casualty Company, Progressive Direct Insurance Company, Progressive Max Insurance Company, Progressive Max Insurance Company, Progressive Northern Insurance Company, Progressive Northwestern Insurance Company, Progressive Preferred Insurance Company, Progressive Specialty Insurance Company, and United Financial Casualty Company.

² All capitalized terms shall have the meanings set forth in the “Definitions” section below.

B. Progressive responded to the averments in the Actions, denying that it had engaged in any of the conduct alleged to be wrongful. The parties to the Actions engaged in significant discovery and motion practice including briefing and argument of the propriety of class certification in the first filed of the Actions.

C. Plaintiffs' Counsel have engaged in good faith, arm's-length negotiations with Progressive's Counsel, with a view toward achieving substantial benefits for all members of the putative Settlement Class, and avoiding the cost, delay, and uncertainty of further litigation, trial, and appellate review. These negotiations have included numerous telephone conferences among the parties' respective counsel and clients and the exchange of a number of communications directed toward arriving at a resolution.

D. As a result of these negotiations, as well as independent investigation, research, and analysis, Plaintiffs' Counsel have decided to enter into this Stipulation of Settlement, believing the terms to be fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Class. Plaintiffs and Plaintiffs' Counsel have decided to execute this Stipulation of Settlement and to urge the Court to approve its terms after considering (1) the factual and legal defenses available to Defendant to the claims asserted in the Actions, which render the outcome of the Actions uncertain; (2) the uncertainty of receiving a more favorable award at trial, particularly considering the burden of proving that Progressive willfully committed any of the wrongful actions alleged by Plaintiffs in the Actions; (3) the likely appeals and additional proceedings necessary if Plaintiffs and the Settlement Class were to prevail at trial; (4) the substantial benefits that the Settlement Class will receive pursuant to this Stipulation of Settlement; (5) the fact that this Stipulation of Settlement provides for Settlement Class Members to receive relief in the most expeditious and efficient manner practicable, and thus much sooner

than would be possible were the claims in the Actions to be litigated successfully trial and appeal; (6) the provisions of this Stipulation of Settlement that require Progressive, at its sole expense, to identify members of the Settlement Class and provide benefits or the opportunity for benefits to such persons; and (7) the fact that this Stipulation of Settlement allows person to exclude themselves from the Settlement Class should they so desire and thereby not be precluded from individually pursuing the claims alleged in the Actions or any other claims relating to the conduct of Progressive at issue in the Actions.

E. Progressive has denied vigorously, and continues to deny vigorously, each and every allegation of liability and wrongdoing in the Action. Without admitting any wrongdoing or liability whatsoever, Progressive is nevertheless willing to agree to the terms of the Stipulation of Settlement, provided that all of the Settled Claims are settled and compromised, in order to resolve fully and finally all issues relating to the subject matter of the Actions. Defendants believe that this Stipulation of Settlement is desirable because it allows it to avoid the time and expense of defending the Actions; to avoid further business distractions and diversion of corporate resources necessitated by the defense of this Action; to avoid the risks associated with complex litigation; and to end all disputes and potential disputes related to the Actions with its valued customers.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties hereto, subject to the approval of the Court as provided below pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that all claims in the Actions will be settled, compromised, and resolved on the following terms:

DEFINITIONS

A. The “Actions” means the above-styled putative class action lawsuits.

B. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement.

C. “Class Action Settlement Notice” or “Notice” means the individual notice of settlement described in Paragraph V.C., below.

D. “Class Representative” means Plaintiffs individually or as representatives of all Settlement Class Members, as context may dictate.

E. “Collection Fee” means any and all fees charged, collected, and retained by an insurance company pursuant to KRS § 91A.080(4) and 806 KAR 2:090, without regard to the legality of the manner in which the collection fee was collected and retained.

F. “Collection Fee Refund” means the amount of Collection Fees that were paid by a Settlement Class Member and for which there will be reimbursement. If a Local Government Premium Tax was paid but not owed, the Collection Fee Refund would be the entire amount of the Collection Fee paid by the insured. If a Local Government Premium Tax was owed but overpaid, the Collection Fee Refund will be commensurate to the amount overpaid. By way of example only, if, during the Relevant Time Period, a Settlement Class Member paid \$10.00 in Local Government Premium Tax and a 15% Collection Fee of \$1.50 when the actual amount of Local Government Premium Tax was owed by the Settlement Class Member, and it was determined by the agreed settlement methodology that the Local Government Premium Tax was only \$5.00, then the Collection Fee Refund would be \$0.75 (the difference between 15% of \$10.00 and 15% of \$5.00).

G. “Court” means the United States District Court for the Eastern District of Kentucky, Northern Division at Covington.

H. “Effective Date” has the meaning set forth in Paragraph VI.D., below.

I. “Fairness Hearing” means the hearing described in Paragraph VI, below.

- J. “Final Approval” has the meaning set forth in Paragraph VI.C., below.
- K. “Defendants,” for the purpose of this Agreement only, means The Progressive Group of Insurance Companies as identified in footnote 1.
- L. “Defendants’ Counsel” means Donald L. Miller, II, of Reminger Co., L.P.A., 401 West Main Street, Suite 710, Louisville, Kentucky 40202.
- M. “Incentive Award” means any award for the Class Representatives, individually or collectively, as described in Paragraph II.E., below.
- N. “Local Government Premium Tax” means the taxes levied by Kentucky local governments pursuant to KRS § 91A.080, and calculated and collected by Progressive.
- O. “Local Government Premium Tax Refund” means the amount of Local Government Premium Taxes that were paid by a Settlement Class Member in excess of the applicable tax rates during the Relevant Time Period.
- P. “Objections” means the written objections to this Stipulation of Settlement described in Paragraph V.E., below.
- Q. “Parties” means the Plaintiffs, Settlement Class Members, and Progressive.
- R. “Plaintiffs” means James Jarboe, Lisa J. Hartman, Jeff Hassan and Heather Hassan, individually or collectively, and as representatives of all Settlement Class Members, as context may dictate.
- S. “Plaintiffs’ Counsel” means, collectively, Gary E. Mason of the law firm Mason LLP, 1625 Massachusetts Avenue, N.W., Suite 605, Washington, DC 20036; Alexander F. Edmondson and Jason V. Reed of the law firm Edmondson & Associates, 28 West Fifth Street, Covington, Kentucky 41011; Christopher S. Nordloh of Nordloh Law Office, PLLC, 28 West

Fifth Street, Covington, Kentucky 41011; and John C. Whitfield of Whitfield & Cox, PSC, 29 East Center Street, Madisonville, Kentucky 42431.

T. “Relevant Time Period” means the period of June 14, 2001 through September 30, 2009.

U. “Request for Exclusion” means the written request for exclusion from the Settlement Class described in Paragraph V.D., below.

V. “Settlement Administrator” means the entity chosen as administrator of the Settlement Fund providing services in connection with this Stipulation of Settlement, as provided in Paragraph V.A., below.

W. “Settlement Class” is, collectively, all persons, including individuals and corporations, in the Commonwealth of Kentucky who purchased insurance from Progressive during the Relevant Time Period, and who paid local government taxes on their payments of premiums that were not owed, as determined by utilizing information available in Progressive’s records.

X. “Settlement Class Members” means the members of the Settlement Class.

Y. “Stipulation” or “Settlement” means this Stipulation of Settlement.

TERMS OF SETTLEMENT

I. Class Certification.

A. Settlement Class. Plaintiffs will seek in the Actions certification of a Settlement Class under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure for purposes of settlement only. The members of the Settlement Class will be referred to as the “Settlement Class Members.” The Settlement Class will be defined as follows:

All persons, including individuals and corporations, in the Commonwealth of Kentucky who purchased insurance from

Progressive, during the Relevant Time Period, and who paid local government taxes on their payments of premiums that were not owed, as determined by utilizing information available in Progressive's records.

B. Motion to Certify the Settlement Class for Settlement Purposes Only. Plaintiffs will file a motion for preliminary approval of this Stipulation of Settlement and to certify the Settlement Class for settlement purposes only. Plaintiffs and Plaintiffs' Counsel will provide Progressive with a draft of the motion prior to filing, and Progressive will not oppose the motion so long as it is reasonable and consistent with the provisions of this Stipulation of Settlement.

C. Limitation of Effect of Certification. The certification of the Settlement Class pursuant to the provision of this Stipulation of Settlement will not constitute in this or any other proceeding an admission by Progressive of any kind, nor will it constitute a determination that certification of a class for trial purposes is appropriate or proper in these Actions. In the event that the terms of this Stipulation of Settlement are not finally approved by the Court, or the Stipulation of Settlement is otherwise terminated or rendered null and void, certification of a class for settlement purposes only will be automatically vacated and will not constitute evidence of or a binding determination that the requirements for certification of a class for trial purposes in this or any other action are satisfied, and, under such circumstances, Progressive expressly reserves all rights to challenge certification of a class for trial purposes in this or any other action on all available grounds as if no Settlement Class had been certified, and no reference to the prior certification of a Settlement Class, or any documents related thereto, will be made for any purpose. The Parties to this Stipulation specifically request that the Court not consider in any way the certification of any classes for settlement purposes when determining the issue of certification for trial purposes.

II. Benefits to Settlement Class Members, Plaintiffs' Counsel, and the Class Representatives.

A. Damages Calculation. Per the terms of this Agreement, Progressive shall conduct an analysis of its records for the total amount of Local Government Premium Tax Refunds and Collection Fee Refunds, to be paid under the terms of this Agreement. Progressive will calculate the Local Government Premium Tax Refunds and Collection Fee Refunds to be paid under the terms of this Agreement based upon best available methodologies in order to identify premium tax overpayments and the amount of refunds due.

B. Distribution Plan. The monetary payment by Progressive shall be made as follows:

1. To pay the cost of any initial administrative expenses;
2. To pay the reasonable costs and expenses of providing notice to the members of the Settlement Class, as directed by the Court.
3. To pay Plaintiffs' attorneys' fees, costs, and expenses, and any Incentive Award awarded to the Class Representatives, in such amounts as are allowed and approved by the Court;
4. To pay Class Members.

C. Refunds to Settlement Class Members. All Settlement Class Members who do not elect to opt out shall be entitled to receive a settlement award equal to the full amount of premium tax overpaid during the Relevant Time Period. The calculation of the refund of any overpayment of premium tax shall include the corresponding collection fee or portion thereof. Settlement Class Members will receive the settlement award in the form of a check.

Progressive will classify all Settlement Class Members whose addresses are verified by Progressive into one of two categories: Current Insureds and Former Insureds. Settlement Class

Members who are Current Insureds as of September 30, 2009, and who do not opt out, and Former Insureds who do not opt out and who submit a Claim Form, will receive a Settlement Award by direct payment of the refund calculated in the manner described above. All Settlement Class Members will be mailed a Class Action Notice. Former Insureds will also be sent a Claim Form that they can submit to verify entitlement to a settlement award and mailing address during the Relevant Time Period. The information submitted on these forms will be verified by the Settlement Administrator to determine if these individuals should be included in the Settlement Class. Those persons who do not return the Claim Form post-marked within one hundred and twenty (120) days of mailing will not be eligible to receive a settlement award, unless otherwise eligible under the terms of this Agreement.

D. Attorneys' Fees and Costs.

1. At or before the Fairness Hearing, Plaintiffs' Counsel may submit an application or applications to the Court to cover the following expenses: (a) an award of attorneys' fees; (b) reimbursement of expenses; and (c) an Incentive Award for the Class Representatives. Applications for attorneys' fees and expenses shall total no more than SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00), which shall be paid in addition to the refund calculation and Incentive Award set forth above.

2. The Parties' agreement to enter into this Stipulation of Settlement is not contingent upon the Court's approval of any application for fees, costs, and expenses filed by Plaintiffs' Counsel. The Parties agree that the award of attorneys' fees, costs, and expenses to Plaintiffs' Counsel is severable from the other terms of this Stipulation of Settlement and that

any decision by the Court with regard to such application will not have any effect on the other terms of this Stipulation of Settlement.

3. Except as provided in this Stipulation of Settlement, Progressive will not be required to pay any other expenses, costs, damages, or fees incurred by the Class Representatives, by any member of the Settlement Class, or by any of their attorneys, experts, advisors, investigators, agents, or representatives.

4. Progressive will not be responsible for attorneys, costs, or expenses of any kind to those members of the Settlement Class who submit objections to the Stipulation of Settlement or who exclude themselves from the Settlement Class.

E. Incentive Award to Class Representatives. At or before the time of the Fairness Hearing, Plaintiffs may apply to the Court for an Incentive Award for Plaintiff James Jarboe, the Class Representative, in an amount not to exceed FIVE THOUSAND DOLLARS (\$5,000.00) (in addition to any payment they may be entitled to receive as a member of the Settlement Class) to compensate him for his efforts in this Action on behalf of the Settlement Class. Plaintiffs may apply to the Court for an Incentive Award for Jeff and Heather Hassan, collectively, and Lisa Hartman, in an amount not to exceed ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) (in addition to any payment they may be entitled to receive as a member of the Settlement Class) to compensate each of them for their efforts in this Action on behalf of the Settlement Class. The Parties' agreement to enter into this Stipulation of Settlement is not contingent upon the Court's approval of the application for an Incentive Award. The Parties agree that the award of any Incentive Award is severable from the other terms of this Stipulation of Settlement, and that any decision by the Court with regard to such application will not have any effect on the other terms of this Stipulation of Settlement.

III. Dismissal and Release.

In exchange for the consideration set forth in this Stipulation of Settlement, Plaintiffs and all Settlement Class Members agree to dismiss with prejudice all claims and potential causes of action in these Actions brought against Progressive.

A. Dismissal. Upon Final Approval of this Stipulation of Settlement, Plaintiffs will dismiss the Actions, and all claims asserted therein, in their entirety, with prejudice., as may be necessary following entry of Final Judgment.

B. Release. Upon Final Approval of the Stipulation of Settlement, Plaintiffs, on their own behalf and as Class Representatives of the Settlement Class Members, and all persons purporting to act on their behalf or purporting to assert a claim through or under them (whether individual, class, representative, legal, equitable, direct, indirect, or of any other type or in any other capacity), including, but not limited to, their spouses, partners, dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, legal representatives, personal representatives, and successors-in-interest (collectively, the “Releasing Persons”), shall forever fully, completely, and irrevocably release and discharge Progressive and any of their subsidiaries, sister corporations, parent corporations, and any and all other affiliated or related persons, firms, and corporations, and all predecessors, representatives, officers, directors, employees, independent contractors, attorneys, experts, principals, agents, heirs, assigns, persons or entities who acted on their behalf, and persons or entities on behalf of whom they were acting (collectively, the “Released Parties”), from any and all claims, rights, causes of action for damages, punitive or statutory damages, penalties, losses, and relief of any kind or nature whatsoever, whether arising under federal, state, territorial, or local statutes, acts,

ordinances, or regulations, or federal, state, territorial, or local common law, asserted or unasserted, known or unknown, suspected or unsuspected, contingent or non-contingent, that any of the Releasing Persons have, may have had, or may have in the future against any of the Released Parties in any manner whatsoever, but also specifically those that relate to (i) these Actions; (ii) the allegations contained in any of the Complaints and Amended Complaints in these Actions; (iii) any action or failure to act by any of the Released Parties relating in any way to the payment of or charges for any Local Government Premium Tax or any Collection Fee (collectively, the “Settled Claims”).

Neither the release of the Settled Claims, the dismissal of the claims against Progressive in these Actions, nor any other provision of this Stipulation or any related document will be construed to release or affect any claim, including prior , current or future claims, for coverage or other benefits that the Class Representatives or any member of the Settlement Class may have under the terms of any insurance policy purchased from Progressive.

C. No Other Liability. This Stipulation of Settlement will be a full compromise, settlement, release, and discharge of the Settled Claims and the Released Parties will have no further or other liability or obligation to any member of the Settlement Class with respect to the Settled Claims, except as expressly provided herein.

D. Release Encompasses Unknown Claims. The release set forth in Paragraph III.B., above, of this Stipulation of Settlement extends to claims that Plaintiffs and Settlement Class Members do not know of or suspect to exist at the time of the release, which, if known, might have affected their decision to enter into this release. The Releasing Parties will be deemed to waive any and all provisions, rights, and benefits conferred by any law of the United States, any state or territory of the United States, or any state or territory of any other country, or principle of

common law or equity, which governs or limits a person's release of unknown claims. Plaintiffs, on behalf of themselves and as Class Representatives, understand and acknowledge that they may discover facts in addition to or different from those that are currently known or believed to be true with respect to the subject matter of this release, but that it is their intention to fully, finally, and forever settle and release any and all claims released hereby, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts.

E. Prohibition on Subsequent Assertion of Settled Claims. Plaintiffs and, to the fullest extent not prohibited by law, the members of the Settlement Class, are prohibited from ever asserting a Settled Claim, and from commencing, joining in, or voluntarily assisting in a lawsuit or adversary proceeding against the Released Parties, or any of them, arising out of, regarding, or relating in any way to the Settled Claims set forth above.

F. Covenant Not to Sue. Plaintiffs and, to the fullest extent not prohibited by law, the members of the Settlement Class, covenant and agree not to ever assert a Settled Claim, or to commence, join in, or voluntarily assist, in a lawsuit or adversary proceeding against the Released Parties, or any of them, arising out of, regarding, or relating in any way to the Settled Claims set forth above. Plaintiffs' Counsel agree not to initiate contact with persons whose identities they learn in the course of this Settlement for the purposes of offering legal services to or entering into an individual attorney-client relationship with any of these persons. Plaintiffs' Counsel agree not to represent any Class Members who have excluded themselves from this Settlement Agreement on a class action basis seeking relief against Defendant on a Settled

Claim. This provision is not intended to violate any professional or ethical considerations, and shall be construed to be consistent with such considerations.

G. No Assignment of Rights. Plaintiffs warrant and represent that (1) they have not individually or collectively assigned their Settled Claims; and (2) to the best of their individual and collective knowledge, each is the sole owner of his or her Settled Claims. Plaintiffs will hold the Released Parties, or any of them, harmless from and against any claims, damages, litigation, causes of action, and expenses, including reasonable attorneys' fees, resulting from any breach by them of this warranty and representation, or any breach by their release of their Settled Claims.

IV. Application for Preliminary Approval Order.

As soon as practicable after execution of this Stipulation of Settlement, Plaintiffs will move the Court for entry of an Order of preliminary approval of the Stipulation of Settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure (the "Preliminary Approval Order").

A. As part of the motion, Plaintiffs will apply for an Order, which will:

1. preliminarily approve the Stipulation of Settlement;
2. preliminarily certify the Settlement Class as provided in this Stipulation of Settlement;
3. appoint Plaintiffs' Counsel as counsel for the Settlement Class;
4. appoint Plaintiffs as the representatives of the Settlement Class;
5. approve the form and manner of the Class Action Settlement Notice;

6. establish the procedures described in this Stipulation by which members of the Settlement Class can assert objections to the certification of the Settlement Class and to the terms of the Stipulation of Settlement;

7. establish the procedures described in this Stipulation by which members of the Settlement Class can exclude themselves from the Settlement Class;

8. set a date and time for the Fairness Hearing; and

9. provide that, pending this Court's final determination of whether the proposed settlement will be approved, and in aid of the Court's jurisdiction, Plaintiffs and all members of the Settlement Class, and anyone acting on their behalf (including, but not limited to, attorneys, representatives, and agents of any member of the Settlement Class), are barred and enjoined from instituting, commencing, or continuing to prosecute, directly or indirectly, individually or collectively, representatively, derivatively, or in any other capacity of any kind whatsoever, any action in this Court, any other federal court, any state court, or any other tribunal or forum of any kind, against Progressive or any of the Released Parties that asserts any of the Settled Claims that are released and discharged upon final approval of the Settlement (except (a) as the Court may further order upon application of a Settlement Class member and notice to all parties or (b) as necessary to enforce the terms of this Stipulation of Settlement); and provide that any person or entity who knowingly violates such injunction will pay the costs and attorneys' fees incurred by any person or entity as a result of the violation.

V. Notice to Class Members.

A. Settlement Administrator. Progressive shall select, after consultation with Plaintiffs' Counsel, an entity to act as Settlement Administrator, subject to the supervision and direction of the Parties and the Court as may be necessary. The Settlement Administrator shall

oversee the provision of Notice and distribution of the Settlement Fund, as set forth herein. The fees, costs, and other expenses of the Settlement Administrator will be paid by Progressive.

B. Identification of Members of the Settlement Class. Progressive will complete a review of its databases or other records to identify the members of the Settlement Class. Where necessary and appropriate, Progressive will determine Class Members' identities based upon best data derived from information actually contained in Progressive's databases or other records.

Within forty-five (45) days of the entry of the Preliminary Approval Order, Progressive will compile a list of the names and last known addresses of the members of the Settlement Class that it has identified, and provide that list of names to Plaintiffs' Counsel and the Settlement Administrator.

C. Notice to Class Members. Notice shall be by direct mail to all Settlement Class Members, substantially in the form of Exhibit 1, hereto, supplemented by regionally-based, state-wide publication notice, substantially in the form of Exhibit 2, hereto, in publications mutually selected by Plaintiffs' Counsel and Progressive's Counsel,

D. Right to Request Exclusion.

1. Settlement Class Members may elect to exclude themselves from ("opt out of") the Settlement Class by submitting a written request for exclusion ("Request for Exclusion").

2. All Requests for Exclusion must be mailed to the Settlement Administrator at the address set forth in the Class Action Settlement Notice. Requests for Exclusion must be postmarked no later than sixty (60) days after the Notice Date.

3. A Request for Exclusion must (i) include the person's full name and current address, (ii) include a statement clearly indicating the person's desire for exclusion from the Settlement Class; and (iii) be signed by someone with authority to bind the person.

4. No person shall have the right or be allowed to opt out of the Settlement Class as a member of a class or group of persons or to act as a representative of a class or group of persons requesting to opt out of the Settlement Class.

5. Any Request for Exclusion that does not satisfy all of the requirements of this Paragraph V.D. shall be null and void.

6. All persons who validly request exclusion will be excluded from the Settlement Class, will be prohibited from participating in this Settlement, and shall not receive the cash refunds described in Paragraph II.C.1. No person who validly requests exclusion will have standing to submit any objection to the terms of this Stipulation of Settlement. Persons who validly request exclusion shall be prohibited from appearing or being heard at the Fairness Hearing and shall be prohibited from appealing any order regarding the certification, for settlement purposes only, of the Settlement Class or the Court's final approval of this Agreement. All members of the Settlement Class who do not validly request exclusion will be bound by the resolution of any and all issues arising in connection with the claims against Defendant that have been brought in this Action.

7. Within fourteen (14) days of the exclusion deadline, the Settlement Administrator shall forward all exclusions to the Court, Plaintiffs' Counsel, and Progressive's Counsel.

E. Objections to the Settlement.

1. Any member of the Settlement Class who does not submit a valid Request for Exclusion may object to certification of the proposed Settlement Class or to the terms of this Stipulation of Settlement by submitting to the Court, Plaintiffs' Counsel, and Progressive's Counsel a written objection ("Objection").

2. All Objections must be mailed to the Court, Plaintiffs' Counsel, and Progressive's Counsel at the addresses set forth in the Class Action Settlement Notice.

3. All Objections must be postmarked no later than sixty (60) days after the Notice Date.

4. Persons submitting Objections must state in their objection their full name and current address.

5. Persons submitting Objections must state in writing all of their objections and the reasons therefore, and include any and all supporting papers (including, without limitation, all briefs, written evidence, and declarations).

6. Persons submitting Objections who wish to appear at the Fairness Hearing and present their objections to the Court orally must mail a written statement of intent to appear at the Fairness Hearing to the Court, Plaintiffs' Counsel, and Progressive's Counsel. Only persons who specify in their Objections that they intend to appear at the Fairness Hearing will have the right to present their objections orally at the Fairness Hearing. Persons who do not timely submit their written Objections and intent to appear at the Fairness Hearing to the Court will not be permitted to present their objections at the Fairness Hearing.

VI. Fairness Hearing, Final Approval, and Effective Date.

A. Fairness Hearing. The Court will hold a hearing to consider (1) the merits of any Objections submitted by Members of the Settlement Class; and (2) whether the terms of the

Stipulation of Settlement should be finally approved by the Court as a fair, reasonable, and adequate settlement (the “Fairness Hearing”). If the Court grants final approval of the terms of this Stipulation of Settlement, the Court will also consider (3) whether any application by Plaintiffs’ Counsel for an award of reasonable attorneys’ fees and reimbursement of their reasonable costs and expenses should be granted; and (4) whether any application of the Plaintiffs for Incentive Awards should be granted to the Class Representatives. The Parties will request that the Court hold the Fairness Hearing approximately ninety (90) days after the Notice Date, or on such other date as may be convenient for the Court.

B. Best Efforts. Prior to the date of the Fairness Hearing, Plaintiffs’ Counsel, on behalf of the proposed Settlement Class, shall file a memorandum in support of the fairness, reasonableness, and adequacy of this Stipulation of Settlement. At the Fairness Hearing, the Class Representatives, Plaintiffs’ Counsel, and Progressive will use their collective best efforts to urge the Court to finally certify the Settlement Class, to grant approval of the terms of this Stipulation of Settlement (including any modification made thereto with the consent of the Parties), and to enter an Order and Final Judgment (the “Judgment”), that will:

1. confirm certification of the Settlement Class, for settlement purposes only, and find that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure have been met for purposes of certifying the Settlement Class;

2. find that the mailing of the Class Action Settlement Notice, in the form and manner previously ordered by the Court, has been accomplished as directed, that such Notice Plan satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure as being the best notice practicable under the circumstances to all persons entitled thereto;

3. find that the Class Representatives and Plaintiffs' Counsel have fairly and adequately represented and protected the interests of the Settlement Class;

4. approve the Settlement as fair, reasonable, and adequate and direct consummation of the terms of the Stipulation of Settlement;

5. dismiss with prejudice all claims in this Action against Progressive;

6. release and discharge the Released Parties from any and all liability with respect to the Settled Claims;

7. provide that, in order to protect the continuing jurisdiction of the Court and to protect and effectuate the Court's Judgment in this Action, Plaintiffs and all members of the Settlement Class, and anyone acting on their behalf (including, but not limited to, attorneys, representatives, and agents of Plaintiffs or any member of the Settlement Class), are permanently and forever barred and enjoined from instituting, commencing, or continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or in any other capacity of any kind whatsoever, any action in this Court, any other federal court, any state court, or any other tribunal or forum of any kind, against Defendant or any of the Released Parties any claims that are Settled Claims under the terms of this Stipulation of Settlement (except as necessary to enforce the terms of this Stipulation of Settlement); and providing that any person or entity who knowingly violates such injunction will pay the costs and attorneys' fees incurred by any person or entity as a result of the violation;

8. rule on Plaintiffs' Counsel's application for an award of reasonable attorneys' fees and reimbursement of reasonable costs and expenses;

9. rule on Plaintiffs' application for Incentive Award(s);

10. reserve continuing and exclusive jurisdiction over all matters related to the administration and consummation of the terms of this Stipulation of Settlement, over the enforcement, construction, and interpretation of this Stipulation of Settlement, over the enforcement, construction, and interpretation of the Judgment, including, but not limited to, the provisions therein enjoining any further litigation of Settled Claims, and over Plaintiffs' and all members of the Settlement Class (and their attorneys and law firms) in connection therewith; and

11. rule that there is no just reason for delay and the Court shall direct that the judgment of dismissal shall be final and appealable under any applicable rule of civil procedure, federal or state.

C. Conditions of Settlement. The terms of this Stipulation of Settlement are subject to and conditioned upon "Final Approval," which means: (1) the approval of the Settlement by the Court after Court-approved notice to the members of the Settlement Class and a Fairness Hearing; (2) entry of the Judgment; and (3) the dismissal with prejudice of all claims in this Action against Progressive and any other action asserting Settled Claims.

D. Finality and Effective Date.

1. The "Effective Date" for the purposes of finality and triggering Settlement Administration will occur when all of the conditions set forth in Paragraph VI.C., above, have been satisfied and (a) the periods of time to appeal the Judgment, the dismissal of the claims in this Action against Defendant, and the dismissal of any other action asserting Settled Claims, have all expired without any appeal having been filed, or any such appeals having been dismissed; or (b) if any appeal is taken and not dismissed, the appropriate appellate court has entered a final judgment affirming the Judgment or dismissal and the final judgment of the

appellate court is no longer subject to any further appellate challenge or procedure or has been affirmed by the Supreme Court of the United States.

2. If the conditions set for in Paragraph VI.D.1., above, occur, then as of the Effective Date, all members of the Settlement Class will be bound by all provisions of this Stipulation of Settlement and orders issued pursuant thereto, and this Stipulation of Settlement will operate as a full, complete, and final release of all the Settled Claims of all members of the Settlement Class and as an effective covenant not to sue and hold harmless indemnity agreement.

VII. Payment of Class Members' Refunds.

A. Payment. Within forty-five (45) days of the Effective Date, the Settlement Administrator shall mail to Former Insureds who have submitted valid Claim Forms and who did not elect to opt out of the Settlement Class, and all Current Insureds who did not elect to opt out of the Settlement Class, their refunds in accordance with the terms of this Stipulation of Settlement.

B. Claims Administration Process. Plaintiffs' Counsel, after consultation with Progressive's Counsel, shall prepare a Claim Form as may be needed to allow Former Insureds and Current Insureds to participate in the Settlement. The Claim Form will solicit basic information from the Settlement Class Member as may be necessary to prevent fraud and ensure efficient claim processing. The Claim Form shall require the Settlement Class Member to attest to the accuracy of the information provided. Pursuant to the Notice Plan, a Claim Form will be provided and required for those putative Settlement Class Members who do not receive the Initial Notice by direct mail.

Claim Forms must be mailed to the Settlement Administrator at the address indicated in the Class Action Settlement Notice, and postmarked no later than one hundred and twenty (120)

days from the Notice Date. Claim Forms that are timely mailed to the correct address shall be processed as follows:

1. Within thirty (30) days after the deadline to submit Claim Forms, the Settlement Administrator shall, in consultation with the Parties: (a) determine the remaining amount of the total fees and costs incurred in administering this Settlement; (b) make a determination of the payment, if any, due in response to each Claim Form timely mailed to the correct address; and, (c) give written notice of each such determination to Progressive and Plaintiffs' Counsel. The Settlement Administrator and Progressive may make a determination of the payment, if any, due in response to a particular claim based in whole or in part on any deficiency in the information provided in the Claim Form, if inconsistent with information within Defendant's files, and shall provide written notice of each such determination to Plaintiffs' Counsel. If the Settlement Administrator identifies any such deficiency, it shall notify the Class Member in order to provide the opportunity, pursuant to Paragraph VII.B.2, below, to correct the deficiency.

2. A Settlement Class Member who receives a determination of a deficiency shall have twenty (20) days after the date that the Settlement Administrator mails the determination to cure any deficiencies noted and provide written proof to the Settlement Administrator of the cure of all deficiencies.

3. Thereafter, within twenty (20) days of receipt by the Settlement Administrator of such written notice of the cure of deficiencies by the Settlement Class Member, the Settlement Administrator, in consultation with the Parties, shall either approve the claim for refund or notify the Settlement Class Member and Plaintiffs' Counsel of Final Rejection of Claim. Any dispute on this Final Rejection must be submitted to the Court by the Settlement

Class Member for final resolution pursuant to Paragraph IX within twenty (20) days after the date on which the Settlement Administrator mailed the Notice of Final Rejection of Claim.

4. Claim Forms that are not timely mailed to the Settlement Administrator will not be considered for payment and the individual Settlement Class Member will be provided written notice thereof. Untimely-filed Claim Forms shall not be subject to any appeal process.

5. All returned Class Action Settlement Notices, Claim Forms, and correspondence relating thereto shall be retained by the Settlement Administrator, Progressive, or Plaintiffs' Counsel for a period of three (3) years after the Effective Date. After this time, the Settlement Administrator, Progressive, and Plaintiffs' Counsel may destroy documentary records that they have in their possession. Any records or correspondence within the possession of the Settlement Administrator as of one (1) year after the Effective Date may be delivered to Progressive in accordance with Paragraph VII.G., below, until the expiration of the three-year retention period. Nothing in this Agreement shall be construed to require the Settlement Administrator, Progressive, or Plaintiffs' Counsel to retain other records beyond their respective discretionary record retention policies. Also, nothing in this Agreement shall require any party to destroy documents at any particular time following the expiration of the retention period.

C. Payment of Settlement Awards Within ten (10) days of the Effective Date, Defendant will transfer, by a check made payable to the appropriate party or by wire transfer, as directed: (a) any Incentive Award for each Class Representative, as ordered by the Court, by check made payable to the Class Representative and forwarded to the attention of the Class Representative at Edmondson & Associates; and (b) any award of attorneys' fees, costs, and expenses to Plaintiffs' Counsel, as ordered by the Court, and subject to the terms of this Stipulation of Settlement. The funding necessary to pay all settlement awards, as determined by

the Claims Administrator, shall be forwarded to the Settlement Administrator within thirty (30) days of the Effective Date, or at such later time as may be required to complete claims administration, to facilitate distribution of Settlement Awards.

D. Discharge of Obligations.

1. If a check mailed to a Settlement Class Member is returned with a forwarding address provided by the Postal Service, it will be promptly re-mailed to the address provided. If a check is returned as undeliverable, or is otherwise designated by the Postal Service as having been sent to an invalid address, neither Defendant nor the Settlement Administrator will have an obligation to take further steps to locate the address of the Settlement Class Member. In such an event, the Settlement Class Member to whom such check was mailed will have no further right to monetary compensation and, to the maximum extent permitted by law, all rights to the monetary compensation will revert to Defendant.

2. Progressive will fully discharge its obligation to the Settlement Class Members with regard to providing monetary compensation when the checks are mailed by the Settlement Administrator as set forth in Paragraphs VII.A and II.C.1, above, regardless of whether such checks are actually received and negotiated by the Settlement Class Members. Negotiating a check within (6) months of mailing to a Settlement Class Member is a condition precedent to a Settlement Class Member's entitlement to cash benefits under this Agreement. Any check not negotiated within six (6) months of mailing to a Settlement Class Member will become null and void. The Settlement Class Member to whom such check was mailed will have no further right to monetary compensation and, to the maximum extent permitted by law, all rights to the monetary compensation will revert to Defendant.

E. Taxes. Progressive and the Settlement Administrator will comply with any and all federal, state, and local tax reporting obligations in connection with the payments made to the Class Representatives, Plaintiffs' Counsel, and members of the Settlement Class pursuant to this Stipulation of Settlement. Progressive, however, is not and will not be obligated to compute, estimate, or pay any taxes on behalf of the Class Representatives, Plaintiffs' Counsel, or any Settlement Class Member.

F. Attorneys' Fees, Costs, and Expenses, and the Incentive Awards to the Class Representatives.

1. As set forth above, within thirty (30) days of the Effective Date, Progressive will transfer, by a check made payable to or wire transfer for the benefit of the appropriate party, (a) each Incentive Award to the Class Representatives, as ordered by the Court and (b) any award of attorneys' fees, costs, and expenses to Plaintiffs' Counsel, as ordered by the Court and subject to this Stipulation of Settlement.

2. The award of attorneys' fees, costs, and expenses will be made by check(s) or wire transfer(s), payable to the law firm or to such other payee as provided in instructions provided to Progressive's Counsel in a writing signed by all of Plaintiffs' Counsel. Such a payment will fully discharge Progressive's obligation to make a payment of attorneys' fees, costs, and expenses. Under no circumstances will Progressive be responsible for distributing or apportioning any award of attorneys' fees, costs, and expenses among Plaintiffs' Counsel. Once payment is made pursuant to the provisions of this Paragraph, Progressive will not be subject to any claims for additional payments to Plaintiffs' Counsel or any attorney who is a member of, partner of, or otherwise associated with any of the firms representing the Class Representatives or the Settlement Class in this action. Plaintiffs' Counsel will defend, hold harmless, and indemnify Progressive and Progressive's Counsel from and against any claims,

damages, litigation, causes of action, and expenses, including reasonable attorneys' fees and expenses, resulting from any action or proceeding involving the payment or apportionment of the award of attorneys' fees, costs, and expenses in this Action by, to, or among the Class Representatives, Plaintiffs' Counsel, or any attorney or firm that claims to have provided services to the Class Representatives or the members of the Settlement Class.

G. Termination of Settlement Administration. At the conclusion of one (1) year from the Effective Date, or such time as may be necessary to complete claims administration, settlement administration shall terminate. The Settlement Administrator shall have no further obligation to perform any functions to administer that settlement. All documents relating to the settlement in the possession of the Settlement Administrator at that time shall be returned to Progressive, where they will be kept until they are destroyed pursuant to the Progressive document retention policies, but in no event shall Progressive be required to keep such documents more than ten (10) years.

VIII. Confidential Information.

Information concerning Progressive's insureds shall be deemed to be confidential. Any such information provided to Plaintiffs' Counsel shall be handled in accordance with the Stipulated and Consent Protective Order entered in the Actions.

IX. Confirmatory Discovery.

Plaintiffs' Counsel may request limited confirmatory discovery. The sole purpose of such limited confirmatory discovery shall be to confirm the accuracy of Defendant's analysis of eligibility for, and calculation of, refunds due and owing to the Settlement Class Members. No confirmatory discovery will require Progressive to look beyond the information readily available in its policy records or Claim Forms submitted by putative Class Members. If a dispute arises

between Plaintiffs' Counsel and Progressive's Counsel regarding the discovery sought by Plaintiffs' Counsel, the methods by which Progressive has identified the Settlement Class Members, or the methods by which Progressive has calculated the refunds due and owing to the Settlement Class Members, that dispute shall be settled by the Court.

X. Additional Terms.

A. Publicity. The Class Representatives, Plaintiffs' Counsel, Progressive, and Progressive's Counsel agree that they will not make or distribute any press release or other public statement intended to be disseminated through the press or other media that: (a) states or suggests that either Party has through this Stipulation of Settlement prevailed or established the propriety of its claims or defenses, or that the other Party has lost or acknowledged the invalidity of its claims or defenses; (b) states or suggests that this Stipulation of Settlement is evidence of the merits of that Party's position in this Action or of the lack of merit in any other Party's position in this Action; or (c) disparages any other Party with respect to the Stipulation of Settlement, the conduct of this Action, or the subject matter addressed in this Action. The parties and their counsel further agree that they will not make or distribute any press release or initiate any public statement intended to be disseminated through the press or other media relating to this Stipulation of Settlement without giving prior reasonable advance notice and obtaining prior consent of the other Parties or their counsel.

B. Termination. In the event that (1) the Court declines to enter the Judgment or any part thereof as provided for herein, or the Parties hereto fail to consent to the entry of alternative forms of an Order and Final Judgment, in lieu thereof, or after such consent the Court declines to enter such alternate form of Order and Final Judgment; or (2) any conditions to the Stipulation of Settlement are not satisfied or the Stipulation of Settlement becomes subject to termination

pursuant to Paragraph X.C., below; or (3) the Court disapproves some or all of the terms of this Stipulation of Settlement, including any amendments hereto, and such disapproval becomes final by reason of its affirmance on appeal or lapse of time or otherwise; or (4) the Court approves the terms of this Stipulation of Settlement, including any amendments hereto, but any such judgment and approval is finally reversed on appeal; or (5) for any other reason the Effective Date is not obtained or the Stipulation of Settlement does not become effective, then, in any such event, this Stipulation of Settlement (with the exception of Paragraph X.D., below) will become null and void and of no further force and effect, and the Preliminary Approval Order to be entered pursuant to Paragraph IV.A., above, and the Judgment to be entered pursuant to Paragraph VI.B, above, will be vacated upon appropriate application to the Court. In such event, (1) any actions taken or to be taken in connection with this Stipulation of Settlement will become void and of no effect; (2) this Stipulation of Settlement and any hearings or proceedings thereunder will not be referred to or used as evidence for or against any party or Settlement Class Member in this or any other action or proceeding; (3) all pretrial proceedings, including discovery, will resume sixty (60) days thereafter as if this Stipulation of Settlement had not been presented for approval of the Court; and (4) all negotiations, proceedings, and statements relating to this Stipulation of Settlement will be without prejudice as to the rights of any and all parties hereto and their respective predecessors and successors, and all parties and their respective predecessors and successors will be restored to their respective positions existing at the commencement of these Actions.

C. Withdrawal. If the number of Requests for Exclusion (*i.e.*, “opt outs”) exceed five percent (5%) of the total number of Settlement Class Members. Progressive will have the option to withdraw from this Stipulation of Settlement no later than ten (10) days following the

deadline for Requests for Exclusion. Finally, Progressive will have the option to withdraw from this Stipulation of Settlement at any time prior to the Effective Date if any action of any kind asserting Settled Claims is allowed to be prosecuted notwithstanding the Stipulation of Settlement and the orders provided for herein.

In the event that Progressive exercises any such option to withdraw, a written notice of such withdrawal and the grounds therefore will be promptly delivered to all signatories to this Stipulation of Settlement. As a result of any such withdrawal, this Stipulation of Settlement and any action taken or to be taken in connection therewith will be terminated and will become void and have no further force and effect, with the same effect as if the Stipulation of Settlement were terminated pursuant to Paragraph X.B., above.

D. No Admissions. This Stipulation of Settlement and all negotiations, papers, statements, and proceedings in connection therewith, whether or not the terms of this Stipulation of Settlement are finally approved and consummated, are not and will not in any event be construed as, or deemed to be evidence of, an admission or concession on the part of Progressive of any liability or wrongdoing, or an admission or concession on the part of the Class Representatives that Progressive is not liable or has not committed any wrongdoing, and will not be offered or received in evidence in any action or proceeding, or used in any way as an admission, concession, or evidence of any liability (or lack thereof) or wrongdoing (or lack thereof) of any nature on the part of Progressive, and will not be construed as, or deemed to be evidence of, an admission or concession that the Class Representatives or any member of the Settlement Class has suffered any damage or has not suffered any damage. This Agreement will not be offered or be admissible in evidence against Progressive or the Class Representatives except in any action or proceeding brought by or against the Class Representatives, the

Settlement Class, Members of the Settlement Class, or Progressive, jointly or severally, to enforce its terms, or by the Released Parties in defense of any claims brought by the Class Representatives, the Settlement Class, or Members of the Settlement Class. The provisions of this Paragraph will become effective when this Stipulation of Settlement is signed and will be binding on the Parties and their counsel regardless of whether this Stipulation of Settlement is finally approved or terminated for any reason, or rendered null and void.

E. Extensions of Time. Unless the Court requires otherwise, in the event of unanticipated delays or difficulties, the Parties hereto may agree in writing, without further Order of the Court, to brief extensions of time to carry out any of the provisions of this Stipulation of Settlement.

F. Continued Cooperation. The Class Representatives, Plaintiffs' Counsel, Progressive, and Progressive's Counsel agree to cooperate fully with one another in seeking the Court's approval of the terms of this Stipulation of Settlement and to use their best efforts to consummate the Stipulation of Settlement. Each will exert every reasonable effort, and will act reasonably and in good faith, to agree upon and execute, at the earliest practicable time, such other documentation as may be required to: (1) implement the matters enumerated in this Stipulation of Settlement; (2) obtain preliminary and final approval by the Court of the terms and conditions set forth in this Stipulation of Settlement; (3) secure a final judgment as to the claims asserted in this Action against Progressive without undue costs for any Party; and (4) obtain an Effective Date for finality. The Parties to this Stipulation of Settlement will not seek to evade their good faith obligation to seek approval and implementation of this Settlement by virtue of any rulings, orders, government report, or other developments in this Action that might

hereinafter occur and might be deemed to alter the relative strengths of the Parties with respect to any claims or defenses or their relative bargaining power with respect to negotiating a settlement.

G. Force Majeure. The failure of any Party to perform any of its obligations hereunder will not subject such Party to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions, floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages, shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable control of such Party.

H. Arm's-Length Negotiations. This Stipulation of Settlement was entered into after significant good-faith, arm's-length negotiations between the Parties' counsel. Each Party hereto has approved this Stipulation of Settlement only after carefully reading it and reviewing it with counsel. This Stipulation of Settlement has been entered into without any coercion, harassment, or duress. This Stipulation of Settlement reflects the conclusion of each Party that the terms contained herein are in the best interest of said Party. The content of and language in this Stipulation of Settlement was approved by counsel for each of the Parties and, in the event interpretation of any alleged ambiguity herein is requested or required, there will not be a presumption or construction against either side as the drafter. Except as expressly provided herein, this Stipulation of Settlement is not intended to confer upon any other person or entity any rights or remedies.

I. Entire Agreement. This Stipulation of Settlement, including any Exhibits annexed hereto, is an integrated contract and constitutes the entire agreement among the Parties

with regard to the subject matter thereof. This Stipulation of Settlement is intended to supersede and entirely replace any prior Settlement Terms Sheet either proposed or signed in these Actions. No representations, warranties, or promises have been made or relied upon by any Party hereto other than those that are set forth in this Stipulation of Settlement. This Stipulation of Settlement may not be modified or amended except in a writing signed by all signatories hereto or their successors in interest.

J. Deadlines Falling on Weekends or Holidays. To the extent that any deadline set forth in this Stipulation of Settlement falls on a Saturday, Sunday, or legal holiday, that deadline will be continued until the following business day.

K. Successors. This Stipulation of Settlement will be binding upon and inure to the benefit of the settling parties hereto (including members of the Settlement Class) and their respective heirs, executors, administrators, successors, and assigns and upon any corporation, partnership, or other entity into or with which any settling Party hereto may merge, combine, or consolidate.

L. Counterparts. This Stipulation of Settlement may be executed in any number of actual or faxed counterparts and by the different settling Parties hereto on separate counterparts, each of which when so executed and delivered will be an original. The executed signature page(s) from each actual, e-mailed, or faxed counterpart may be joined together and attached to one such original and will constitute one and the same instrument.

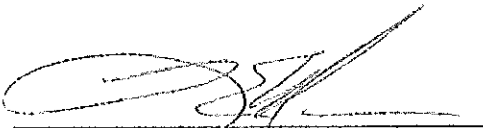
M. Waivers. The waiver by any party of any breach of this Stipulation of Settlement will not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Stipulation of Settlement.

N. Governing Law. This Stipulation of Settlement will be construed and enforced in accordance with the internal laws (as opposed to the conflicts of law provisions) of the Commonwealth of Kentucky. Any orders or judgments entered by the Court in conjunction with the proceedings relating to or arising out of this Stipulation of Settlement will be construed and enforced, and all issues relating to the preclusive effect of such orders or judgments will be determined, by the laws of the United States relating to the construction, enforcement, and preclusive effect of orders and judgments entered by federal courts.

O. Administration of the Settlement; Retention of Jurisdiction. The administration, effectuation, and enforcement of this Stipulation of Settlement as provided herein will be under the authority of the Court. The Court will retain continuing and exclusive jurisdiction over the Parties hereto, including the Class Representatives and all members of the Settlement Class (and their attorneys, representatives, and agents), and over the administration, effectuation, and enforcement of the terms of the Stipulation of Settlement and the benefits to the Settlement Class hereunder, and for such other matters that may properly come before the Court. Any disputes or controversy arising with respect to the interpretation, enforcement, or implementation of the Stipulation of Settlement (other than disputes subject to arbitration under Paragraph IX, above) must be brought to the attention of the Court by motion.

P. Signatures of Counsel. Counsel for the Parties indicate by signing below their approval of the form of this Stipulation of Settlement (and any Exhibits hereto) and, in the case of Plaintiffs' Counsel, their representation and warranty of authority to bind the Settlement Class described herein, subject to Court approval, and their acceptance of the provisions regarding attorneys' fees.

COUNSEL FOR THE PLAINTIFFS

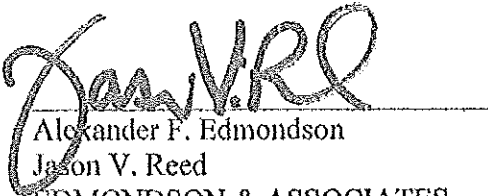


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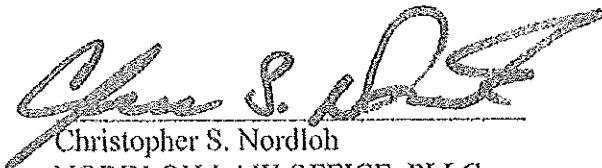
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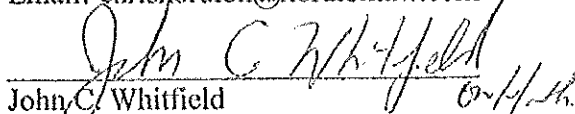
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