

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA**

SETH KONECKY and JENNIFER  
KONECKY, husband and wife,  
FLATHEAD VALLEY DIST., INC., a  
Montana Corporation, individually, and  
on behalf of all others similarly situated,

Plaintiffs,

vs.

ALLSTATE FIRE & CAS. INS. CO.,  
ALLSTATE INDEM. CO., ALLSTATE  
PROP. & CAS. INS. CO., and  
ALLSTATE INS. CO.,

Defendants

Case No. 17-CV-00010-DWM

NOTICE OF PENDENCY AND  
PROPOSED SETTLEMENT OF  
CLASS ACTION

**TO: ALL PERSONS AS OF SEPTEMBER 28, 2018 (A) WHO WERE INSURED UNDER AN AUTO INSURANCE POLICY ISSUED BY ALLSTATE (AS DEFINED BELOW) IN MONTANA; (B) WITH RESPECT TO WHOM ALLSTATE RECOVERED SUBROGATION ON A MONTANA AUTOMOBILE INSURANCE CLAIM AFTER OCTOBER 21, 2008.**

**THIS NOTICE MAY AFFECT YOUR RIGHTS  
PLEASE READ IT CAREFULLY**

**IF YOU MEET THE CRITERIA SET OUT BELOW AND, IN CERTAIN CIRCUMSTANCES DESCRIBED BELOW, TIMELY SUBMIT A VALID CLAIM FORM, YOU MAY BE ELIGIBLE FOR A CASH PAYMENT**

## **1. Why should I read this Notice?**

The purpose of this Class Notice is to inform you that your rights may be affected by the Proposed Settlement of the above captioned lawsuit. This Class Notice is issued pursuant to Federal Rule of Civil Procedure 23 and by order of the United States District Court for the District of Montana.

## **2. What is the lawsuit about?**

This Class Notice describes the Proposed Settlement of a class action lawsuit concerning alleged violation of Montana law by defendants Allstate Fire & Casualty Insurance Company, Allstate Indemnity Company, Allstate Property and Casualty Insurance Company, and Allstate Insurance Company, individually and on behalf of all affiliated entities (collectively, "Allstate," as defined in the Settlement Agreement). The Named Plaintiffs were involved in an automobile accident while insured under an automobile policy issued by a Allstate entity. The Named Plaintiffs allege their Allstate entity insurer subrogated from the at-fault driver before the Named Plaintiffs were made whole for their property damages or bodily injury damages. The Named Plaintiffs alleges their Allstate entity insurer had no legal right to subrogation, and failed to conduct a reasonable investigation to determine whether the Named Plaintiffs were or would be made whole from payments received from the at-fault driver or their insurer. The Named Plaintiffs allege, generally, that Allstate engaged in improper subrogation in Montana by subrogating before conducting a proper made whole analysis.

## **3. What are the terms of the Settlement Agreement?**

The settlement is a total recovery of \$2,673,500, which amount includes the following allocations: \$2,005,125 for subrogation recovered by Allstate and \$668,375 for the class recovery of attorneys' fees. Out of the total recovery of \$2,673,500, the Court will determine an appropriate amount of deductions for attorney fees (not to exceed 25%), costs of litigation, class representative fees, and costs of class administration. The remaining amount will be the net settlement fund.

Each Settlement Class Member shall automatically be entitled to receive a *pro rata* portion of the settlement fund net of fees and costs based on .30 of the amount Allstate subrogated as to that individual's claim, as more fully described in Section VI of the Settlement Agreement. However, Settlement Class Members will have the option of submitting a claim if they believe they are entitled to more, and if such a claim is submitted, there will be a claim adjustment process pursuant to which the individual can receive either more or less than .30 of the amount Allstate subrogated as to that individual's claim. In order to potentially qualify for payment as a member of the Settlement Class under the latter method, Settlement Class Members must submit a fully completed and signed Claim Form (the Claim Form is attached hereto), postmarked not later than March 30, 2019.

## **4. Who is covered by the case?**

On September 28, 2018, the Court provisionally certified the following class for settlement purposes (included persons are "Settlement Class Members"):

All Persons (and their heirs, executors, administrators, successors and assigns), as of September 28, 2018, (a) who were insured under an auto insurance policy issued by Allstate in Montana; (b) with respect to whom Allstate recovered subrogation on a Montana automobile insurance claim after October 21, 2008.

To be excluded from the Settlement Class, you must follow the "opt out" procedure described in this Class Notice.

**4A. What amount of subrogation is involved on my claim?**

Based on the records of Allstate the amount of subrogation recovery the insurer received on your claim is calculated to be:

\$ x,xxx.xx

**5. How do I make a claim?**

Without submitting a Claim Form, each Settlement Class Member shall automatically participate, *pro rata* in the net settlement fund in proportion to .30 of the amount shown above that Allstate subrogated as to that individual's claim, as described in Section VI of the Settlement Agreement. However, if you believe you had uncompensated losses that exceed 30% of the subrogation amount, you may submit a claim demonstrating such losses, and, if such a Claim Form is therefore submitted by you, there will be a claim adjustment process pursuant to which your recovery participation will be based on either more or less than .30 of the amount Allstate subrogated as to your claim. In order to potentially qualify for payment as a member of the Settlement Class under the latter method, you must submit a fully completed and signed Claim Form. A Claim Form is provided with this Notice. You must complete the Claim Form and mail it to the address listed on the Claim Form. In order to be eligible for consideration, the completed Claim Form must be postmarked not later than March 30, 2019. You must submit a separate Claim Form for each claim you have, if you have more than one claim.

**6. Do I need to do anything to participate or can I exclude myself from the Settlement Class?**

If you wish to participate in the Settlement, you do not need to do anything, and you will participate based on .30 of the amount Allstate subrogated as to your claim. (However, as described above, if you believe you are entitled to more, you must submit a Claim Form as provided in the previous paragraph.)

You will not be charged anything individually to remain in the Settlement Class. You may, if you wish, enter an appearance through your own counsel, although you must pay the fees and expenses incurred by that counsel.

If you fit the Settlement Class description, you will be bound by any Final Judgment entered, including the Release of all the Released Claims, and will be permanently enjoined from prosecuting any of the Released Claims in this Action at any time in the future.

Notwithstanding the preceding paragraphs, you may "opt out" of the Settlement Class by using the procedure described below. If you elect to opt out, the Court will exclude you from the Settlement and you will not receive any payment in this case. If you validly opt out, you will also not be bound by this Settlement or any Final Judgment entered in the Action.

To opt out, send a letter addressed to the address below:

Konecky v. Allstate Class Administrator  
c/o JND Legal Administration  
P.O. Box 91350  
Seattle, WA 98111

The letter should state your name, address, and telephone number, should state that you do not wish to be a member of the Settlement Class and are "opting out," and should be signed by the Person who is opting out. The letter must be postmarked no later than **January 14, 2019**.

## **7. Who represents the Class?**

For purposes of the Settlement, the Named Plaintiffs, Seth Konecky and Jennifer Konecky, and Flathead Valley Dist., Inc. have been designated by the Court as the Class Representatives. The Class is represented by the following attorneys (“Class Counsel”): Allan M. McGarvey, McGarvey, Heberling, Sullivan & Lacey, P.C., 345 First Avenue East, Kalispell, MT 59901, (406) 752-5566; Judah M. Gersh and Brian M. Joos, Viscomi, Gersh, Simpson & Joos, PLLP, 121 Wisconsin Avenue, Whitefish, MT 59937, (406) 862-7800; and Alan J. Lerner, Lerner Law Firm, P.O. Box 1158, Kalispell, MT 59903-1158, (406) 756-9100.

## **8. Reasons for the Settlement.**

The Named Plaintiffs and Class Counsel support the Settlement because it provides for prompt, efficient, and fair relief. In ultimately deciding to recommend this Settlement, Class Counsel considered the relative risks and benefits to the Settlement Class of settlement or continuing litigation. Settlement Class Members incur no risk or cost in obtaining the relief provided for by the Settlement.

While Allstate has agreed to the terms of this Settlement, Allstate has denied and continues to deny liability on each and every claim asserted by the Named Plaintiffs. More specifically, Allstate has denied and continues to deny all charges of wrongdoing or liability, on any theory, arising out of any conduct, statements, acts or omissions of Allstate or its employees, agents or representatives, in connection with the Action. Allstate has also denied and continues to deny any assertion that the Named Plaintiffs or Settlement Class Members suffered any damages that were proximately caused by any act or omission of Allstate or its employees, agents or representatives, or that a class action would otherwise be proper in this Action.

## **9. Who pays the attorneys’ fees and costs?**

At the Final Settlement Hearing, set for February 13, 2019 at 1:30 p.m., Class Counsel will seek Court approval for an attorneys’ fee award not to exceed 25% of the Settlement Fund amount of \$2,673,500, which amount includes the following allocations: \$2,005,125 for subrogation recovered by Allstate and \$668,375 for the class recovery of attorneys’ fees, plus costs and litigation expenses, including administrative costs, as well as a class representative fee of \$5,000 each to Seth and Jennifer Konecky for their prosecution of this Action. All of the costs and expenses of the settlement, in addition to Class Counsel’s fees and the class representative fees, will be paid out of the Settlement Fund.

Subject to Court approval, Class Counsel will request a Class Representative award to the Named Plaintiffs in the aggregate amount of \$10,000 in recognition of the risk and effort undertaken in prosecuting this case to be paid by Class Counsel out of the Settlement Fund.

## **10. Settlement approval procedure.**

The Court will hold a Final Settlement Hearing on February 13, 2019 at 1:30 p.m., in the Courtroom of the Honorable Donald W. Molloy, 201 East Broadway, Missoula MT 59802. At the Final Settlement Hearing, the Court will consider whether the proposed Settlement should be granted final approval as fair, adequate, and reasonable and in the best interests of the Class as a whole. The Court will also consider the request of Class Counsel for an award of attorneys’ fees and the proposed payment to the Class Representative. You may attend this hearing if you wish, but are not required to do so in order to participate in the Settlement.

If you decide to opt out of the Class, you are not entitled to comment on the proposed Settlement or be heard at the Final Settlement Hearing. If you decide to remain in the Class, and you wish to comment

in support of or in opposition to any aspect of the Settlement or proceedings described in this Class Notice, you may do so, provided that you submit your comments, in writing, to the Court and the persons listed below, not later than thirty (30) days before the Final Settlement Hearing:

The Court	For the Class	For Allstate
<p>Clerk of the Court United States District Court for the District of Montana 201 E. Broadway Missoula, MT 59802</p>	<p>Allan M. McGarvey McGarvey, Heberling, Sullivan &amp; Lacey, P.C. 345 First Avenue East Kalispell, MT 59901 (406) 752-5566</p> <p>Judah M. Gersh Brian M. Joos VISCOMI, GERSH, SIMPSON &amp; JOOS, PLLP 121 Wisconsin Avenue Whitefish, MT 59937 (406) 862-7800</p> <p>Alan J. Lerner LERNER LAW FIRM P.O. Box 1158 Kalispell, MT 59903-1158 (406) 756-9100</p>	<p>Peter F. Habein CROWLEY FLECK PLLP 500 Transwestern Plaza II 490 North 31st Street P.O. Box 2529 Billings, MT 59103-2529</p> <p>Mark L. Hanover DENTONS US LLP 233 S. Wacker Dr. Suite 5900 Chicago, IL 60606</p>

If you wish to appear at the Final Settlement Hearing and be heard orally in support of or in opposition to the Settlement, you may do so if you file with the Clerk of the Court, and send to the persons listed above, a written notification of your desire to appear personally, indicating briefly the nature of your intended comments. Such notice must be postmarked not later than thirty (30) days before the Final Settlement Hearing. You do not need to appear in person at the Final Settlement Hearing in order to submit a written comment.

If you intend to object to or seek to intervene in the Settlement, you must submit in writing to the Court and the above counsel the following information: (a) a heading which refers to the Action; (b) the name, address, telephone number and signature of the Settlement Class Member filing the objection; (c) a statement whether the objector intends to appear at the Final Settlement Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, address and phone number; (d) a detailed statement of the specific legal and factual bases for each and every objection, and if through counsel, a legal memorandum in support of the objection; (e) a list of any witnesses, along with the expected testimony of each such witness, and photocopies of exhibits which the objector intends to introduce at the Final Settlement Hearing; (f) a detailed description of any and all evidence the objector may offer at the Final Settlement Hearing, if the objector intends to speak at the Hearing; and (g) documentary proof of membership in the Settlement Class. If the Settlement Class Member is represented by an attorney, he/she or it must comply with all applicable laws and rules for filing pleadings and documents. The Notice of Intent to Object, to be effective, also must be submitted by the objector or a legally authorized representative on an individual basis and not as part of a group, class or subclass.

## **11. Effect of Settlement Approval, including Release of All Claims.**

Unless you exclude yourself from the Class in the manner set forth herein, if the Final Judgment and Order Approving Settlement is entered by the Court, you shall be deemed to have given Allstate, Allstate's counsel, and any of Allstate's past, present or future officers, stockholders, attorneys, insurers, reinsurers, excess insurers, directors, agents, employees and/or independent contractors, and/or any other successors, assigns, divisions, or legal representatives thereof (the "Released Persons") a General Release. Under this General Release, you, your heirs, executors, administrators successors and assigns, and any and all other Persons claiming through or by virtue of you, shall release, waive, withdraw, retract and forever discharge any and all known and Unknown Claims, rights, demands, actions, claims, causes of action, allegations, or suits of whatever kind or nature, whether in contract, tort or in equity, debts, liens, liabilities, agreements, interest, costs, expenses, attorneys' fees, losses or damages (whether actual, consequential, treble, statutory and/or punitive or exemplary or other) arising from or related to allegations regarding any purported improper subrogation activity whatsoever by Allstate, including, but not limited to: negligence; contractual insurance coverage of any kind; statutory insurance bad faith; breach of contract; breach of the implied covenant of good faith; constructive fraud; conversion; civil conspiracy; aiding and abetting; unfair claim settlement practices, unfair trade practices; unfair insurance practices; conversion; premium overcharges; fraud; misrepresentation; deception; consumer fraud; interference with contract or business expectations; injunctive relief, declaratory judgment; unfair competition; unjust enrichment; deceptive practices; unfair business practices; breach of fiduciary duty; mental or emotional distress and/or common law bad faith, relating in any way whatsoever to Allstate's subrogation practices in Montana, and/or which were brought or could have been brought in the Action. "Unknown Claims" means any claims arising out of facts found hereafter to be other than or different from the facts now believed to be true, relating to any matter covered by the Settlement, as to any of the Released Claims, as specifically defined above, so that each Settlement Class Member shall be deemed to have expressly waived any and all Unknown Claims relating to any matter covered by the Settlement to the full extent permitted by law, and to the full extent of claim preclusion and *res judicata* protections.

## **12. Where do I get additional information?**

The foregoing is only a summary of the circumstances surrounding the Action, the claims asserted, the proposed Settlement, and related matters. Copies of the court orders and Stipulation of Settlement are available on the class settlement website at [www.KoneckyClassAction.com](http://www.KoneckyClassAction.com). You may seek the advice and guidance of your own private attorney, at your own expense, if you desire, and you may call counsel for the class listed in Section 10.

For more detailed information, you may review the pleadings, records, and other papers on file in this Action, which may be inspected during regular business hours at the Clerk's Office, United States District Court for the District of Montana, 201 E. Broadway, Missoula, MT 59802. Copies of the Settlement Agreement are available from Class Counsel upon written request. If you wish to communicate with Class Counsel, you may do so by writing to Class Counsel, or phoning Class Counsel, at the addresses and those numbers listed above.

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION.**

Dated: September 28, 2018

Clerk, United States District Court for the District of Montana