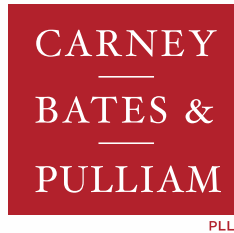

LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE



Application **GRANTED**. Class Counsel shall correct the notice errors as described in their letter. Class Counsel shall not use any funds from the settlement for the corrections or related work.

Corrected notices must be sent by **December 18, 2024**. The deadline to opt-out or object to the settlement shall be **January 6, 2025**. Any responses to objections shall be filed by **February 19, 2024**. The final settlement approval hearing scheduled for December 18, 2024, is adjourned to **March 5, 2025, at 3:00pm**.

Dated: November 20, 2024
New York, New York

November 19, 2024

Via ECF

The Honorable Lorna G. Schofield
United States District Court
Southern District of New York
500 Pearl Street, Room 1950
New York, NY 10007

Re: Volino, et. al. v. Progressive Casualty Ins. Co., et al., No. 1:21-cv-06243-LGS

Judge Schofield:

Plaintiffs file this unopposed pre-motion letter to inform the Court of two issues that impact the Court-approved Notice Plan. More specifically, Class Counsel has identified (1) instances in which notice that should have been sent to a Third Party Class Member was instead sent to the corresponding first-party insured and (2) instances in which both a First Party Class Member and a third-party claimant made claims on the same policy where notice for the First Party Class Member was erroneously emailed to the third party's email address. Class Counsel has determined every instance in which these errors occurred and request the Court approve Plaintiffs' proposals to correct those issues, as set forth herein. Class Counsel will pay for the cost of implementing these corrections. Settlement Class Members will not pay for implementing these corrections. As described below, implementation of these notice corrections will require moving certain deadlines and the date of the Final Fairness Hearing. Progressive does not oppose this letter brief.

I. Issues with the Notice Plan Implementation and Plaintiffs' Proposed Cures

The first issue was a simple mistake by Class Counsel. After Class Counsel calculated the individual damages for each Class Member, they then passed on the relevant contact information for each claim (along with the individual damages amount) to the Claims Administrator, Epiq, to effectuate the Notice Plan. For the third-party claims, the spreadsheet data Progressive provided included contact information for both the third-party claimant *and* the named insured associated with the claim. The problem was that when Class Counsel provided the information and individual damages to Epiq, they accidentally included the contact information for the named insured rather than for the third-party claimant. So, those Third Party Class Members did not receive the Notice approved by the Court.

To correct this issue, Plaintiffs propose implementing the exact Notice approved and ordered by this Court (ECF No. 380) to those Third Party Class Members (approximately 20,550) who have not yet received the Notice. Because those Class Members would be provided 45 days to either opt-out or object, this would require rescheduling the Final Fairness Hearing to a date after that 45-day period expires. Epiq has confirmed they can provide the Notice within 28 days of this Court approving Plaintiffs' proposed corrections, meaning the Final Fairness Hearing should be rescheduled to a date on or after 101 days following entry of an Order (which would be 28 days after expiration of the objection and opt-out period). The complete proposed schedule, which is consistent with the schedule in ECF No. 380, is set forth at the end of this letter.

While Class Counsel was investigating the aforementioned issue, they also identified a second issue: For claims that included both a First Party Class Member and a third-party claimant (even where that third party is not a Third Party Class Member), the spreadsheet that Progressive provided to Class Counsel, which reflected the information available to Progressive from its business records, included the email address for the third-party claimant rather than the email address for the First Party Class Member. Class Counsel identified 1,205 First Party Class Members whose notices were erroneously emailed to a third-party claimant.

Between these two problems, there are four groups that need some sort of corrective action.

Group No. 1 (20,550 Class Members) are those Third Party Class Members described above who never received proper Notice and now need to be provided the exact Notice already approved by and ordered by this Court in ECF No. 380.

Group No. 2 (5,512 non-Class Members) are those named insured who were erroneously sent the Notice intended for the Third Party Class Members informing them (incorrectly) that they are members of the Class. Plaintiffs propose issuing a "Correction Notice" (**Exhibit 1**) informing them that, upon review, they are not members of the Class and will not be receiving a payment.

Group No. 3 (1,205 Class Members) are those First Party Class Members who did not receive Notice because the email address associated with that Class Member was incorrect (i.e., there was a valid email address without a bounceback, but Progressive's records mistakenly logged the corresponding third-party claimant's email address rather than the Class Member's email address). Plaintiffs proposed that they be provided Notice in postcard form in the manner already approved by and ordered by this Court in ECF No. 380.

Group No. 4 (4,278 Class Members) are those First Party Class Members who were sent Notice correctly informing them they are Class Members, but their recovery estimate incorrectly included the payment due to the Third Party Class Member who also made a claim on the policy. In other words, these First Party Class Members received an inflated estimate of their payment from the Settlement Fund. To correct this error, Plaintiffs propose issuing a "Corrective Notice" (**Exhibit 2**) informing them that, upon review, they only have one claim and are only entitled to one recovery from the Settlement Fund.

The net result of Plaintiffs' proposals, if approved by the Court, is that (i) all Class Members will be sent the direct, individualized Notice originally approved and ordered by this Court, with an estimate of the individual recovery to which they are entitled; (ii) all non-Class Members who were erroneously informed they were Class Members will be informed of the mistake and that they are not a member of the Class; and (iii) all Class Members who received an inflated payment estimate will receive Notice providing a revised, corrected estimate.

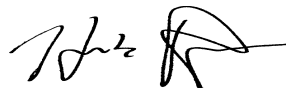
Class Counsel regret these errors and will bear all costs of implementing the proposed corrections. No portion of the Settlement Fund will be used to pay for these proposed corrections. And while some of these corrections go beyond the requirements of due process, Class Counsel want to deliver the top-shelf Notice program they proposed and this Court approved.

II. Conclusion

In sum, Plaintiffs respectfully request the Court grant the relief requested and order the corrective actions Class Counsel proposes along the following timeline:¹

- Corrected Settlement Notices Date (Corrected Notices Sent by): _____ (28 calendar days following entry of Order Approving Corrected Notices);
- Opt Out Deadline: _____ (45 calendar days following Corrected Settlement Notices Date);
- Objection Deadline: _____ (45 calendar days following Corrected Settlement Notices Date);
- Any Response to Objections: _____ (14 Days before Final Fairness Hearing)
- Final Fairness Hearing: _____ (at least 101 calendar days following the entry of an Order Approving Corrected Notices).

Respectfully submitted,



Hank Bates

cc: All Counsel of Record via ECF

¹ If the Court prefers, it can provide us a date by which it will order the requested corrections and a new Final Fairness Hearing date, and Class Counsel will provide a proposed order that fills in the dates for the proposed deadlines.

EXHIBIT 1

NOTICE OF CORRECTION REGARDING CLASS ACTION SETTLEMENT

[EPIQ INFO, CLAIMANT ID, ETC.]

Dear [NAME],

You previously received a “NOTICE OF CLASS ACTION SETTLEMENT,” informing you that you are a member of a Class Action Settlement and are entitled to a monetary recovery. Upon review of the records and data, it has been determined that this previous Notice was sent to you in error and that, in fact, you are not a member of the Settlement Class.

While no further action is required on your part, if you have any questions or need clarification, you can contact Class Counsel at [phone] or [email] with your questions.

PLEASE DO NOT CONTACT THE COURT, THE CLERK’S OFFICE, PROGRESSIVE, OR PROGRESSIVE’S COUNSEL TO ASK QUESTIONS ABOUT THIS CLASS ACTION OR THIS NOTICE. THEY CANNOT ANSWER ANY QUESTIONS OR DISCUSS THE CLASS ACTION.

EXHIBIT 2

NOTICE OF CORRECTION REGARDING CLASS ACTION SETTLEMENT

[EPIQ INFO, CLAIMANT ID, CASE NUMBER, ETC.]

Dear [NAME],

Our records indicated that you previously received a “NOTICE OF CLASS ACTION SETTLEMENT” that incorrectly informed you that you would receive payment for more than one total-loss claim. Upon review, you have only one valid claim. The other claim referenced in the prior notice you received belongs to a third-party who made a claim on your insurance policy.

To clarify any confusion, your estimated payment amount is \$.

While no further action is required on your part, if you have any questions or need clarification, you can call the Settlement Administrator toll free at 1-855-903-0774 or contact Class Counsel at [phone] or [email] with your questions.

PLEASE DO NOT CONTACT THE COURT, THE CLERK’S OFFICE, PROGRESSIVE, OR PROGRESSIVE’S COUNSEL TO ASK QUESTIONS ABOUT THIS CLASS ACTION OR THIS NOTICE. THEY CANNOT ANSWER ANY QUESTIONS OR DISCUSS THE CLASS ACTION.