

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
JUSTICE PERELL

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THURSDAY THE 8TH
DAY OF JUNE 2023

BETWEEN:

SUNG TAEK LEE

Plaintiff

– and –

ALLSTATE INSURANCE COMPANY OF CANADA

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

A **MOTION** made by the Plaintiff, for an Order certifying this action as a class proceeding, was heard on May 14, 2021 and August 30, 2022, by judicial videoconference at 330 University Avenue, Toronto, Ontario by the late Justice Edward Belobaba.

ON READING the materials filed by the parties, including the supplemental written submissions delivered on January 6, 2023 and January 11, 2023, and upon hearing the submissions of counsel for the parties Justice Belobaba granted the certification motion by decision dated January 13, 2023.

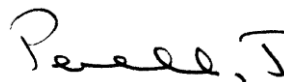
WHEREAS Justice Belobaba passed away on May 4, 2023 without settling the terms of the Certification Order, the Plaintiff brings **THIS MOTION** to settle the terms of the Order as follows:

1. **THIS COURT ORDERS** that this action is certified as a class proceeding as against Allstate Insurance Company of Canada (“Allstate”) pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c. 6.
2. **THIS COURT ORDERS** that the Class is defined as:

All Ontario Variable Compensation employees employed as a Business Development Agent (“BDA”) of Allstate Insurance Company of Canada (“Allstate”) from September 1, 2009 until August 21, 2023. (the “**Class**” and/or “**Class Members**”)
3. **THIS COURT ORDERS** that Jody Delorme is appointed as the representative plaintiff for the Class.
4. **THIS COURT ORDERS** Monkhouse Law Employment Lawyers is hereby appointed as lawyers for the Class (“**Class Counsel**”).
5. **THIS COURT DECLARES** that the following claims are asserted on behalf of the Class: breach of contract, and denial of the minimum standards to which Class Members were entitled under the *Employment Standards Act, 2000*, S.O. 2000.
6. **THIS COURT DECLARES** that the relief sought by the Class is:
 - a. A declaration that the members of the Class are owed public holiday and vacation pay on commissions above and beyond the compensation they were paid; and
 - b. Damages to the Class, and/or damages to each Class Member equal to the public holiday and vacation pay that they ought to have received during their employment with Allstate.
7. **THIS COURT ORDERS** that that the certified common issues are as follows:

- 1) Do the bonuses known by the Defendant as Agency Performance Bonus ('APB') awarded to Business Development Agents ("BDAs") fall within the exception of wages being "any sums paid as gifts or bonuses that are dependent on the discretion of the employer and that are not related to hours, production or efficiency"?
 - 2) If the answer to common issue 1 is no, were the members of the Class underpaid Vacation Pay and Public Holiday Pay based on the failure of the Defendant to count the APB as wages?
 - 3) If the answer to common issue 1 is no, are the members of the Class owed Vacation Pay and Public Holiday pay based on the failure of the Defendant to count the APB as wages?
8. **THIS COURT ORDERS** that the following issue is deferred to the trial judge or judge hearing a summary judgement motion:
- 4) If the answer to common issue 1 is no, what is the quantum of damages of each member of the Class?
9. **THIS COURT ORDERS** that the Notices of Certification attached at **Schedule "A"** and **Schedule "B"**, hereto are approved.
10. **THIS COURT ORDERS** that the Defendant shall provide Class Counsel a list of the last known emails and mailing addresses of the Class Members in excel format by July 31, 2023.
11. **THIS COURT ORDERS** that Notice of Certification will be given by Class Counsel as set out in the Litigation Plan attached at "**Schedule C**";

12. **THIS COURT APPROVES** the litigation plan enclosed as **Schedule “C”**.
13. **THIS COURT ORDERS** that the Notice of Opting Out attached hereto as **Schedule “D”** is approved.
14. **THIS COURT ORDERS** that Class Members may opt out of this class proceeding by following the opt-out process set out in the Notice of Certification and Notice of Opting Out by no later than 11:59 PM on November 28, 2023.
15. **THIS COURT ORDERS** that any person who opts out of this action in accordance with the provisions for doing so in the Notice of Certification and Notice of Opting Out, and this Order, shall be excluded from the Class and the action.
16. **THIS COURT ORDERS** that the Statement of Claim is amended as per the Fresh as Amended Statement of Claim, attached as **Schedule “E”**.
17. **THIS COURT ORDERS** that costs of the certification motion and this motion shall be the subject of a further Order of this Court.

A handwritten signature in black ink, appearing to read 'Perell, J.', is centered on the page.

The Honourable Justice Perell

SCHEDULE “A”

NOTICE OF CERTIFICATION AS A CLASS ACTION

To: All Ontario Variable Compensation employees employed as a Business Development Agent of Allstate Insurance Company of Canada (the “Company”) from September 1, 2009 until August 21, 2023

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ CAREFULLY.

The Nature of the Action

On May 20, 2020, an action was commenced in the Ontario Superior Court of Justice against the Company.

The action claims that the Company’s variable compensation employees who worked in the role of Business Development Agents (“BDAs”) from September 1, 2009 to August 21, 2023 were underpaid vacation and public holiday pay on their variable compensation that was named Agency Performance Bonus (“APB”). The Company disputes these claims

By order dated January 13, 2023, the Honourable Justice Belobaba certified the action as a class proceeding against the Company and appointed Jody Delorme as representative plaintiff for the class and by order dated June 8, 2023, Justice Perell settled the terms of the Certification Order.

Participation in the Class Action

If you were a BDA of the Company and fall within the class definition, you are automatically included as a member of the class unless you opt out. All members of the class will be bound by the judgment of the Court, or any settlement reached by the parties and approved by the Court. Among other things, members of the class may be found to have been underpaid vacation and public holiday pay.

At this juncture, the Court has not taken a position as to the likelihood of recovery for the

representative plaintiff or the Class, or with respect to the merits of the claims or defences asserted by either side.

Fees and Disbursements

You do not need to pay any legal fees out of your own pocket. A retainer agreement has been entered into between the representative plaintiff and Class Counsel with respect to legal fees. The agreement provides that the law firm has been retained on a contingency fee basis, whereby it will only be paid its fees in the event of a successful result in the litigation or a Court approved settlement. The fees payable to the lawyers for the class will be paid out of any judgment and will not be paid directly by class members. Any fee paid to lawyers for the class is subject to the Court’s approval.

You will not be responsible for the Company’s legal costs if the class action is unsuccessful.

Opt Out

If you wish to exclude yourself from this class proceeding (“opt out”), you must complete and return the “Opt Out” form by no later than NOVEMBER 28, 2023. The Opt Out form may be downloaded at:

<https://www.monkouselaw.com/allstate-class-action/>

If you would like to opt out, you can also e-mail, fax, or mail the completed opt-out form to Class Counsel.

If you choose to opt out within the above noted deadline you will not recover any monies in the event the representative plaintiff is successful in this action and you will not be bound by any court decision in these proceedings. If you do not choose to opt out by the prescribed deadline you will be bound by any judgment ultimately obtained in these proceedings, whether favourable or not, or any settlement if approved by the court. You may wish to obtain independent legal advice with respect to this matter.

Contact Information

If you have any questions or concerns about the matters in this Notice or the status of the this Class Action, please visit:

<https://www.monkouselaw.com/allstate-class-action/>

You may contact Class Counsel in a number of ways.

By email at the following address:

allstate.classaction@monkouselaw.com

By mail at the following address:

220 Bay Street, Suite 900
Toronto, Ontario
M5J 2W4

Or by fax or telephone:

Phone: (416) 907-9249

Fax: (888) 501-723

SCHEDULE “B”

Short Form Notice of Certification for Publication in News Papers- Allstate Class Action

Notice of Certification of Class Action for Allegedly Unpaid Vacation and Holiday Pay against Allstate

By order of Justice Perell of the Superior Court dated June 8, 2023 a class action has been certified against Allstate.

This action was brought on behalf of all All Ontario Variable Compensation employees employed as a Business Development Agent (“BDA”) of Allstate Insurance Company of Canada (“Allstate”) from September 1, 2009 until August 21, 2023.

If you were a BDA of the Company and fall within the class definition, you are automatically included as a member of the class unless you opt out. All members of the class will be bound by the judgment of the Court, or any settlement reached by the parties and approved by the Court. Among other things, members of the class may be found to have been underpaid vacation and public holiday pay.

The action alleges that the Company’s BDA employees were underpaid vacation and public holiday pay on their commissions. The Company disputes these claims.

If you wish to exclude yourself from the proceeding, you must complete an opt-out form no later than November 28, 2023.

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The opt-out form and more information about the class action is available at:
<https://www.monkouselaw.com/allstate-class-action>

SCHEDULE “C”

Court File No. CV-20-00641242-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JODY DELORME

Plaintiff

– and –

ALLSTATE INSURANCE COMPANY OF CANADA

Defendant

Proceeding commenced under the *Class Proceedings Act, 1992*

LITIGATION PLAN

Pursuant to section 5(1)(e)(ii) of the *Class Proceedings Act, 1992*, the Plaintiff proposes that this Litigation Plan be followed with respect to these proceedings, subject to the Court’s approval:

STAGE 1: PRE-CERTIFICATION INQUIRIES

1. The Plaintiff proposes the following class definition:

All Ontario Variable Compensation employees employed as a Business Development Agent (“BDA”) of Allstate Insurance Company of Canada (“Allstate”) from September 1, 2009 until August 21, 2023.

Communicating with the Class

2. Monkhouse Law has experience communicating with Class Members in employment class proceedings. In combination with the required court ordered notices, class counsel has

established a website page and an email address to facilitate communication with Class Members.

3. Monkhouse Law has taken the initiative of creating a website page that offers details and updates on the progress of the litigation. The website page is: <https://www.monkouselaw.com/allstate-class-action/>
4. Potential Class Members can locate the website page through an internet search or through links established on Monkhouse Law's website. Through this website page, Class Members may become aware of this action and are kept apprised of the progress of the litigation. Email contacts are also available on the website to allow interested parties to contact Monkhouse Law with inquiries.

STAGE 2: NOTICE OF CERTIFICATION AND OPT OUT

5. Following certification of this action as a class proceeding, notice of certification will be delivered pursuant to section 17 of the *Class Proceedings Act, 1992*, in a form and manner approved by this Court.

Draft Notice

6. Draft Notices of Certification are attached as Schedule "A" and "Schedule "B" to the Certification Order and are subject to the Court's approval. Upon certification of this proceeding and Court approval of the Draft Notices, the Notices of Certification ("Approved Notices") will be disseminated by August 21, 2023.

7. The Draft Notices provide the website page address established for this class action (<https://www.monkouselaw.com/Allstate-class-action/>), a contact email address (allstate.classaction@monkouselaw.com and Alexandra@monkouselaw.com), and Monkhouse Law's mailing address and phone number to allow for newly identified Class Members to make any inquiries regarding the class action.

Notice Program

8. The Approved Notices are to be disseminated at the Plaintiff's expense.
9. The Approved Notices will be distributed on or before August 21, 2023 using the following specific methods of distribution:
 - a. using the records of Allstate, the Approved Notice will be emailed and mailed by regular mail by Class Counsel to the last known personal and work email and regular mail addresses of the Class Members;
 - b. publishing the Approved Notice set out in Schedule "B" in the *Toronto Star* on or before August 21, 2023;
 - c. posting of the Approved Notice on Monkhouse Law's website on the Allstate class action webpage already created by Monkhouse Law <https://www.monkouselaw.com/allstate-classaction/>; and
 - d. delivery of the Approved Notice by Allstate or Monkhouse Law to any person who requests it.

Opt-Out

10. The opt-out deadline shall be November 28, 2023.
11. The Draft Notice outlines the significance of opting out explains that those members of the class who choose to opt out within stipulated deadline will not recover any monies in this action. Further, the Draft Notice makes clear that affected persons who do not opt out will be considered Class Members and will be bound by the Court's judgment or the terms of any settlement.
12. "Opt-Out" forms (a draft of which is attached as Schedule "D" of the Certification Order), to be approved by the Court, will be made available by Monkhouse Law upon request and will be posted on the Allstate class action webpage <https://www.monkouselaw.com/Allstate-class-action/>.
13. Class Members who wish to opt out of the class action as certified must complete and return the Opt-Out form to Monkhouse Law no later than November 28, 2023. The Opt-Out form can be returned by registered mail.
14. Monkhouse Law will serve an affidavit listing the opt-outs within 30 days of the opt-out deadline.

STAGE 3: PLEADINGS AND DOCUMENTARY DISCOVERY

15. If the action is certified as a class proceeding, the Court will be asked to order the Defendant to deliver its Statement of Defence no later than 60 days following August 21, 2023. The Plaintiff will have 30 days following service of the Statement of Defence to serve a Reply, if any.

15. Unless otherwise agreed by the parties, within 120 days following close of pleadings, each side shall deliver an affidavit of documents in accordance with the *Rules of Civil Procedure* with copies of the documents in PDF format either party shall have the right to request originals of documents (including metadata) or to review originals of any physical document.

STAGE 4: EXAMINATION FOR DISCOVERY

16. Examinations for discovery will commence within 180 days of the exchange of affidavits of documents, or as otherwise agreed by the parties or ordered by the Court, and subject to the below motions.

17. The Plaintiff may seek leave of Court to conduct oral examinations for discovery longer than the seven hours normally permitted, in view of the complexity of the action, under Rule 31.05.1 of the *Rules of Civil Procedure*.

18. The Plaintiff may seek leave to examine more than one representative of the Defendant, or bring a motion under Rule 31.10 for leave to examine for discovery certain non-parties, if applicable.

19. The Defendant may examine the Representative Plaintiff.

20. The Plaintiff may ask that examinations for discovery be conducted over video-conference.

STAGE 5: EXCHANGE OF EXPERT OPINIONS

21. The exchange of expert reports, if necessary, shall be governed by the timetable agreed to between the parties and ordered by the Court.

STAGE 6: COMMON ISSUE TRIAL

22. The trial of the certified common issues will take place on a timeline agreed to by the parties or as ordered by the Court and shall be set after the conclusion of discoveries and all preliminary motions.

23. A full list of the witnesses the parties intend to call will be provided in accordance with a trial management timetable agreed to between the parties.

24. If the common issues pertaining to liability are resolved to the Plaintiff's benefit, the Plaintiff will request that the Court make an order under section 24 of the *Class Proceedings Act, 1992* awarding the amount of aggregate damages determined by the Court to Class Members and ask that a common determination of Class Members' hours per day and days per week be made.

STAGE 7: NOTICE OF RESOLUTION AND DISTRIBUTION

25. After the common issues are determined, the process for the distribution of any aggregate damages is determined (see Stage 8 below), and the process for determinations of any individual issues has been approved, if necessary (see Stage 9 below), the Plaintiff will request that the Court approve the form and content of a notice program giving Class Members notice of the resolution of the common issues, notice of any aggregate award of damages, and the method for distributing such damages, and/or the method determination of any individual issues ("Notice of Resolution").

26. The Notice of Resolution will require eligible Class Members to file their claim on an approved claim form ("Claim Form") by a fixed date with the Class Action Administrator ("Administrator"). This form will allow the Class Members to establish their membership in the class and could be checked against the current and historical employment records of Allstate.

27. The Notice of Resolution and Claim Form will be disseminated in the same manner as the Approved Notice, or as directed by this Court.

STAGE 8: DISTRIBUTION OF AGGREGATE DAMAGES

Aggregate Damages

28. The Plaintiff proposes that an aggregate damages award shall be placed in a fund for the Class Members and claims shall be administered by the Administrator approved by the Court.

29. The Plaintiff understands that the total number of Class Members, their names and contact information, their length of active service with the Defendant, and the amounts paid by the Defendant to Class Members in commissions is all information that is readily accessible and ascertainable by the Defendant.

30. Using that information, along with the information from the Canada Revenue Agency (related to CPP contributions made by Class Members), the aggregate damages awarded (be it for all heads of damages or some – which includes vacation pay and public holiday pay) can be distributed to the Class Members based on their specific entitlements based on the length of service with the Defendant and common determinations of hours worked per day week.

31. The Plaintiff proposes that any amounts not specifically awarded to a Class Member through this process shall be distributed to all Class Members on a *pro rata* basis based on the Class Members' length of service.

32. Alternatively, the Plaintiff may bring a motion to the Court for directions on a formula for distributing the aggregate Award.

STAGE 9: INDIVIDUAL ISSUES DETERMINATIONS – IF NECESSARY

33. If the Court does not order an award under section 24 of the *Class Proceedings Act, 1992* and/or determines that individual issue determinations are necessary, then the Plaintiff will attempt to come to an agreement with the Defendant to reach a mutually acceptable method for determining individual issues (which may include liability and damages).

34. Alternatively, the Plaintiff will request that the common issues Judge approve a procedure to resolve individual issues pursuant to section 25 of the *Class Proceedings Act, 1992*. The approved procedure will be disseminated to the class in the Notice of Resolution.

35. Given the nature of individual issues that may need to be addressed and the quantum of each Class Member's claim, the Plaintiff proposes a simplified process for individual issues determinations. The Plaintiff proposes the following process:

1. A Claim Form will be drafted and approved, the structure and content of which will depend upon the findings made at the common issues trial.
2. The Defendant shall provide the Administrator with such information as the parties may agree, or as directed by the Court.
3. Class Members will be required to submit the following information in the Claim Form: (i) Their name and current contact information; and (ii) Identifying the period when they worked for Allstate as BDAs.
4. The Class Members will be permitted to complete and submit the Claim Form by fax, email, or mail or through a secure website operated by the Administrator.

5. The Class Members will have to submit their Claim Forms by a fixed date (“Claim Submission Date”).
6. The Defendant will have 60 days after the Claims Submission Date to advise the Administrator of which claims it intends on disputing and the specific basis for those disputes.
7. For any claims that the Defendant does not dispute, the Administrator will assess and determine the damages owing based on a pre-determined formula.
8. For any claims the Defendant disputes, individual assessments will be conducted pursuant to a process to be agreed upon by the parties or as directed by the Court.
9. Once final individual issue determinations, including liability and damages, are completed, individual damage awards would then be distributed to the Class Members.

FUNDING

36. The Plaintiff’s legal fees are to be paid on a contingency basis based on success on the common issues, as provided for in the *Class Proceedings Act, 1992*, and are subject to the Court’s approval.

37. Monkhouse Law will continue to provide the funding of all disbursements necessary to properly prosecute this action to successful completion.

SETTLEMENT

38. Monkhouse Law will conduct settlement negotiations with the Defendant's counsel from time to time, as circumstances dictate. The Plaintiff is prepared to enter into mediation processes or discussions during the litigation as the Defendant may agree or counsel recommend.

REVIEW OF THE LITIGATION PLAN

39. Notwithstanding the foregoing, this Litigation Plan will be subject to regular review by Monkhouse Law, and may be revised and/or modified at any time during the litigation process as required, with leave of the Court under the continuing case management authority of this Court.

SCHEDULE “D”

NOTICE OF OPTING OUT

**TO: Monkhouse Law
220 Bay Street, Suite 900
Toronto, Ontario
M5J 2W4**

ATTN: Monkhouse Law – Re Allstate Class Action

I do not want to participate in the class action styled as *Jody Delorme v Allstate Insurance Company of Canada* regarding the claims of wrongful denial of vacation and holiday pay on Agency Performance Bonuses to Business Development Agents in Ontario. I understand that by opting out, I will not be eligible for the payment of any amounts awarded or paid in the class action.

I certify under oath that the Defendant has not put pressure on me to opt out of this Class Action.

Dated: _____
Signature

Witness

Print Name

Address

City, Province, Postal Code

Telephone

Email

Copy of Government Issued ID enclosed

This Notice must be delivered by Registered Mail on or before November 28, 2023 and enclose a copy of Government Issued Identification to be effective.

SCHEDULE “E”

Court File No. CV-20-00641242-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JODY DELORME

Plaintiff

– and –

ALLSTATE INSURANCE COMPANY OF CANADA

Defendant

Proceeding commenced under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff’s lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for the costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date:

Issued by: _____
Local Registrar

Address of Court Office:
393 University Avenue
Toronto, ON M5G 1E6

TO: MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

F. Paul Morrison LSO#: 17000P
paulmorrison@millerthomson.com
Tel: 416.597.6050
Fax: 416.595.8695

Matthew G. Smith LSO#: 77154B
mgsmith@millerthomson.com
Tel: 416.597.6081

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto, ON M5V 3J7

Seann D. McAleese LSO#: 44187J
smcaleese@dwpv.com
Tel: 416.367.6974

RELIEF CLAIMED

1. The Proposed Representative Plaintiff claims the following on her behalf, and on behalf of members of the Class:
 - a) The sum of \$11,000,000 as general damages covering the damages to the class;
 - b) an order certifying this action as a class proceeding and appointing Jody Delorme as Representative Plaintiff of the Class;
 - c) a declaration that the members of the Class are owed public holiday and vacation pay on commissions above and beyond the compensation they were paid;
 - d) that damages be paid to each class member equal to the public holiday and vacation pay that they ought to have received during their employment with the Defendant;
 - e) pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
 - f) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
 - g) any goods and services tax or harmonized sales tax which may be payable on any amounts pursuant to Bill C-62, the *Excise Tax Act*, R.S.C. 1985, as amended or any other legislation enacted by the Government of Canada or Ontario;
 - h) the costs of this action on a substantial indemnity basis; and

- i) such further and other relief as counsel may advise and this Honourable Court permits.

BACKGROUND

2. The Defendant Allstate Insurance Company of Canada “**Allstate**” is a licensed insurance company selling property and automobile insurance in Ontario and several other provinces.
3. Jody Delorme is an individual residing in the Province of Ontario. Ms. Delorme worked for Allstate as a Senior Business Development Agent (“**BDA**”) from January 2010 until June 2015.
4. As a BDA, Ms. Delorme was a commissioned salesperson. Her pay was comprised of commissions and an Individual Performance Bonus, with a base salary that was characterized as an advance against future commissions. The commissions and bonus were based on Ms. Delorme’s ability to sell home and auto insurance policies.
5. This class action is brought because Ms. Delorme, and other commissioned salespeople in the role of Business Development Agents working for the Defendant, were systemically denied the minimum standards to which they were entitled under the *Employment Standards Act, 2000*, S.O. 2000 (“**ESA**”).
6. Ms. Delorme, and other commissioned salespeople in the role of Business Development Agents working for the Defendant did not receive vacation and public holiday pay on their total compensation, as required by the *ESA*.

ALLSTATE’S BONUSES

7. All of Allstate's employees, aside from contract employees, are eligible for what it refers to as bonuses.
8. Employees at Allstate are divided between Allstate Insurance Agency ("AIA") employees, who work in agencies (branches) and non-AIA employees. AIA employees include BDAs like Ms. Delorme, Customer Care Agents, Agency Assistants and Agency Managers.
9. All employees who work at Allstate's agency locations are eligible to receive an Agency Performance Bonus ("APB"). All employees who do not work at an agency are eligible for an incentive plan on top of their regular salary ("**Annual Incentive Plan**" or "**AIP**").
10. Allstate takes the position that these forms of compensation fall under the exclusion from wages under the *ESA* for "any sums paid as gifts or bonuses that are dependent on the discretion of the employer and that are not related to hours, production or efficiency". Allstate therefore does not pay Vacation and Statutory Holiday Pay on bonuses.

CLASS MEMBERS UNDERPAID VACATION PAY AND PUBLIC HOLIDAY PAY ON APB BONUSES

11. Allstate excludes APB bonuses from its calculation of Vacation and Holiday Pay for AIA employees, as Allstate takes the position that the APB does not form part of the Class Members' wages.
12. The Plaintiff pleads that these payments are wages as they relate to employees' production and efficiency. While Allstate maintains that they are discretionary, they are an integral part of the workers' compensation, given by default, and are only lost due to the employee's performance.

13. The APB is calculated based on a company-wide policy which is common across all employees who are eligible for this bonus.

CLASS MEMBERS UNDERPAID PUBLIC HOLIDAY PAY

14. The Defendant's policies for calculating Public Holiday Pay contravene the ESA.

15. Under section 24(1)(a) of the *ESA*, an employee's Public Holiday Pay should be equal to the total amount of regular wages earned and vacation pay payable to the employee in the four work weeks before the workweek in which the public holiday occurred, divided by 20.

16. The Plaintiff pleads that the policies of Allstate clearly do not follow the requirements of *ESA*. Allstate designates a specific daily amount at the end of each January to use for holiday pay through to the next February.

17. Allstate's method of calculating Public Holiday Pay does not provide a greater benefit for all employees as is required by s.5(2) of the *ESA* to override the minimum standards.

18. This method of calculating Public Holiday Pay is based on a company-wide policy which is common across all employees.

THE CLASS

19. This action is brought on behalf of a class of persons, defined as:

All Ontario Variable Compensation employees employed as a Business Development Agent ("BDA") of Allstate Insurance Company of Canada ("Allstate") from September 1, 2009 until August 21, 2023.

REQUIREMENT TO KEEP RECORDS

20. Ms. Delorme pleads that as per s. 15.1 of the *ESA* the Defendant was required to keep detailed records of her vacation pay, but she was not provided any such records and was not aware of any such records existing.

TRUST OVER VACATION PAY

21. As per s. 40(1) and (2) of the *ESA*, the Vacation Pay that ought to have been paid has a trust over it and creates a lien upon the assets of the employer in the amount of the monies that ought to have been paid.

LOCATION

22. Ms. Delorme proposes this action be tried at the City of Toronto, in the Province of Ontario.

Date of Issue:

MONKHOUSE LAW
220 Bay Street, Suite 900
Toronto, ON M5J 2W4

Andrew Monkhouse (64529L)
Alexandra Monkhouse (70390L)

Tel: 416-907-9249
Fax: 888-501-7235

Lawyers for the Plaintiff, Jody Delorme

JODY DELORME
Plaintiff

v.

ALLSTATE INSURANCE COMPANY OF
CANADA
Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

**Proceeding under the *Class*
*Proceedings Act, 1992***

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

MONKHOUSE LAW

220 Bay Street, Suite 900
Toronto, Ontario M5J 2W4

Andrew Monkhouse (64529L)
andrew@monkouselaw.com

Alexandra Monkhouse (70390L)
alexandra@monkouselaw.com

Tel: (416) 907-9249

Fax: (888) 501-7235

Lawyers for the Plaintiff