

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

BARBARA MORROW and)	
BENNY MORROW, individually)	
and on behalf of all those similarly situated,)	
)
Plaintiffs,)	CIVIL ACTION FILE
)
vs.)	NO. <u>5:16-CV-137</u>
)
ALLSTATE INDEMNITY COMPANY,)	
ALLSTATE INSURANCE COMPANY,)	
ALLSTATE FIRE & CASUALTY)	JURY TRIAL DEMANDED
INSURANCE COMPANY, and)	
ALLSTATE PROPERTY & CASUALTY)	
INSURANCE COMPANY,)	
)
Defendants.)	
)

CLASS ACTION COMPLAINT

COMES NOW Plaintiffs Barbara Morrow and Benny Morrow, individually and on behalf of all others similarly situated, and file this Class Action Complaint, respectfully showing:

INTRODUCTION

1. This action relates to Defendants' failure, in violation of Georgia law and in violation of their insurance policies with Plaintiffs and class members, to

assess for diminution in value to their insureds' properties, and where it is found to exist, to pay such diminution in value to their insureds.

2. Plaintiffs Barbara Morrow and Benny Morrow maintained homeowners property insurance coverage with Defendants. Plaintiffs timely reported two claims for direct physical loss to their home—one involving water damage and the other involving foundational and/or structural support damage. Both events were covered claims under their homeowners insurance policy with Defendants. Defendants were required not only to pay the costs of repair, but also to assess for and pay any diminution in the fair market value of the insured property. Defendants breached their insurance contract with Plaintiffs by (1) failing to assess Plaintiffs' property for diminution in value resulting the damage giving rise to the covered claims and (2) failing to pay Plaintiffs for such diminution in value. Each of Defendants' breaches gives rise to separate monetary damages.

3. Plaintiffs bring this action on behalf of themselves and other current insureds of Defendants to obtain a declaration that, when presented with first-party physical damage claims arising from direct physical losses, Defendants are obligated to assess insured properties for diminution in value and, where diminution in value is found, to pay such diminished value. Plaintiffs seek a corresponding injunction to the declaratory relief requested stating that Defendants must: (1) develop appropriate policies and procedures for assessing for diminished value, (2) submit

within a reasonable period those policies and procedures to this Court for its approval, and (3) pay for diminished value where it is found or deny it. Plaintiffs also seek to recover monetary damages on behalf of themselves and current and former insureds of Defendants who suffered direct physical losses to their insured properties caused by water damage, mold damage, fire damage, and/or foundational and/or structural support damage but for which Defendants failed to assess for that diminished value, in breach of their insurance contracts. In addition, Plaintiffs seek to recover monetary damages on behalf of themselves and other current and former insureds of Defendants who suffered direct physical losses to their properties caused by water damage, mold damage, fire damage, and/or foundational and/or structural support damage but for which Defendants failed to pay for diminution in value to those properties, in breach of their insurance contracts.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiffs Barbara Morrow and Benny Morrow, a married couple, reside and own the property located at 129 Sunset Drive, SE, Calhoun, Georgia 30701. Plaintiffs' home and property are insured under a "Deluxe Plus Homeowners Policy" with Policy Number 915106594 (the "Policy"). Allstate Indemnity Company, an Allstate underwriting company, is identified as the issuing company on the Policy's declarations page. The Policy was applied for and obtained in the State of Georgia.

5. Defendant Allstate Indemnity Company (hereinafter sometimes referred to as “Allstate Indemnity”) is a foreign insurance company and maintains its principal place of business at 3075 Sanders Road, Northbrook, Illinois 60062. Allstate Indemnity is authorized to write property insurance in the State of Georgia.

6. Allstate Indemnity may be served with process through its registered agent for service, CT Corporation System, located at 1201 Peachtree Street Northeast, Atlanta, Georgia 30361.

7. Defendant Allstate Insurance Company (hereinafter sometimes referred to as “Allstate Insurance”) is a foreign insurance company and maintains its principal place of business at 3075 Sanders Road, Northbrook, Illinois 60062. Allstate Insurance is authorized to write property insurance in the State of Georgia.

8. Allstate Insurance may be served with process through its registered agent for service, CT Corporation System, located at 1201 Peachtree Street Northeast, Atlanta, Georgia 30361.

9. Defendant Allstate Fire & Casualty Insurance Company (hereinafter sometimes referred to as “Allstate Fire & Casualty”) is a foreign insurance company and maintains its principal place of business at 3075 Sanders Road, Northbrook, Illinois 60062. Allstate Fire & Casualty is authorized to write property insurance in the State of Georgia.

10. Allstate Fire & Casualty may be served with process through its registered agent for service, CT Corporation System, located at 1201 Peachtree Street Northeast, Atlanta, Georgia 30361.

11. Defendant Allstate Property & Casualty Insurance Company (hereinafter sometimes referred to as “Allstate Property & Casualty”) is a foreign insurance company and maintains its principal place of business at 3075 Sanders Road, Northbrook, Illinois 60062. Allstate Property & Casualty is authorized to write property insurance in the State of Georgia.

12. Allstate Property & Casualty may be served with process through its registered agent for service, CT Corporation System, located at 1201 Peachtree Street Northeast, Atlanta, Georgia 30361.

13. Plaintiffs refer to Defendants collectively herein as “Allstate.”

14. Allstate has numerous agents and places of business in Georgia, some of which were located in Macon, Georgia, at the time the causes of action alleged herein accrued. Allstate continues to maintain agents and places of business in Macon, Georgia.

15. Defendants Allstate Indemnity, Allstate Insurance, Allstate Fire & Casualty, and Allstate Property & Casualty are wholly owned subsidiaries of Allstate Insurance Holdings, LLC, a Delaware limited liability company, which in turn is a

wholly owned subsidiary of The Allstate Corporation, a publicly traded Delaware corporation.

16. Defendants have a common administrative or principal place of business located at 3075 Sanders Road, Northbrook, Illinois 60062.

17. Upon information and belief, Defendants share and have in common several officers and/or directors, including Susan Lesueur Lees, who signed Plaintiffs' amended policy declarations page.

18. Defendants coordinate and commingle financial and other resources by making financial transactions between each other by issuing consolidated financial statements, and by other means.

19. Defendants operate and trade under the common name of Allstate and use the same logo and slogan to identify and promote their business:



20. Defendants maintain a common website, www.allstate.com, through which Allstate insureds can create an online account that, among other things, allows them to set up bill payments to pay premiums, access policy information, and file or

check the status of a claim.¹ Defendants' website provides a toll free number through which individuals with a homeowners claim can report a claim to Allstate.²

21. Upon information and belief, each of the Defendant Allstate entities issues homeowners insurance in Georgia that are the same or substantially similar in all respects material to Plaintiffs' policy. Upon information and belief, Defendants engaged in a common course of conduct pursuant to a common corporate policy with respect to those policies in terms of their failure to assess for and, where found, pay diminished value to their insureds.

22. Correspondence from Allstate following the submission of Plaintiffs' July 2015 claim at issue in this action is on "Allstate" letterhead that bears the Allstate logo and slogan.

23. Upon information and belief, at all relevant times herein, Defendants acted in all aspects as agent, apparent agent, and alter ego for each other, with respect to the acts complained of herein.

24. Upon information and belief, at all relevant times herein, Defendants were engaged in a joint venture with each other.

¹ See e.g., <https://www.allstate.com/support/payment-and-billing.aspx>; <https://www.allstate.com/claims.aspx>; <https://www.allstate.com/claims/report-claim.aspx>; <https://www.allstate.com/claims/view-claim.aspx> (webpages last visited on April 12, 2016).

² See <https://www.allstate.com/claims/report-claim.aspx> (webpage last visited on April 12, 2016).

25. Defendants' actions are sufficient to find that there is an amalgamation of the Defendants.

26. Defendants' actions and relationships are sufficient to find that there is a juridical link among them.

27. This Court has jurisdiction over this dispute under 28 U.S.C. § 1332(a) because the parties are completely diverse and the amount in controversy exceeds \$75,000.00. This Court also has subject matter jurisdiction of this action under 28 U.S.C. § 1332(d)(2)(A), which provides for federal jurisdiction in class actions with minimal diversity when damages exceed five million dollars, exclusive of interest and costs. Upon information and belief, the aggregate amount at issue in this dispute exceeds five million dollars. In addition, "minimal diversity" is satisfied because at least one member of the proposed classes is a citizen of a State different from any defendant. The Court has supplemental subject matter jurisdiction over the pendent state law claims pursuant to 28 U.S.C. § 1367.

28. Venue in this Court is proper pursuant to the provisions of 28 U.S.C §§ 1391(b)(2) & (d).

ALLEGATIONS SPECIFIC TO THE NAMED PLAINTIFFS

29. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

30. At all times pertinent hereto, Plaintiffs maintained an insurance policy issued by Allstate.

31. Specifically, in consideration for Plaintiffs' payment of premiums, Allstate issued an "Allstate Deluxe Plus Homeowners Policy" to Plaintiffs.

32. The Policy was issued in the State of Georgia.

33. The Policy was drafted by Allstate.

34. Plaintiffs performed all contractual conditions required of them under the Policy, including the timely payment of premiums due under the Policy and the timely reporting of covered claims.

35. Under Georgia law, coverage for diminution in value losses has been, and is, part of the contracts of homeowners insurance³ issued by Allstate to Plaintiffs and to other insureds throughout the State of Georgia.

36. Under Georgia law, when insureds present first-party claims under their homeowners insurance policies for direct physical loss to their covered properties, the insurers are required not only to pay the costs of repair, but also to assess for, and where found, pay any diminution in the fair market value of the insured property.

37. Implied in every contract, including the contract of insurance wherein Defendants agreed to provide coverage to Plaintiffs, is the covenant of good faith

³ Plaintiffs use the term "homeowners insurance" to refer to any insurance policy, however titled, issued by Allstate that provides homeowners property coverage.

and fair dealing. Defendants had the duty to treat Plaintiffs, as their insureds, with the utmost good faith.

38. On April 15, 2010, Plaintiffs' home and property was insured under the Policy.

39. On April 15, 2010, Plaintiffs' home suffered foundational and/or structural support damage that was covered by the Policy. Plaintiffs timely reported the direct physical loss to Allstate and otherwise complied with the terms and conditions of the Policy.

40. Allstate adjusted Plaintiffs' claim arising out of the April 15, 2010 loss, authorized repairs to Plaintiffs' home, and subsequently paid certain repair costs. The repair costs associated with the claim were greater than \$50,000. Despite those repairs, as a result of the foundational and/or structural support damage to Plaintiffs' property, the fair market value of Plaintiffs' property was diminished.

41. At the time Allstate authorized the repairs to Plaintiffs' home and adjusted the claim arising from the covered loss on April 15, 2010, Allstate took no action to assess any diminution in the fair market value of Plaintiffs' property.

42. Following the covered event on April 15, 2010, Plaintiffs continued to insure their home under the Policy.

43. On July 14, 2015, Plaintiffs' home and property was insured under the Policy.

44. On July 14, 2015, Plaintiffs' home suffered a loss that involved interior water damage and mold damage that was covered by the Policy. Plaintiffs timely reported the direct physical loss to Allstate and otherwise complied with the terms and conditions of the Policy.

45. Allstate adjusted Plaintiffs' claim arising out of July 14, 2015 loss, authorized repairs to Plaintiffs' home, and subsequently paid certain repair costs. The repair costs associated with the claim were approximately \$9,300.00. Despite those repairs, as a result of this water damage and mold damage to Plaintiffs' property, the fair market value of Plaintiffs' property was diminished.

46. At the time Allstate authorized the repairs to Plaintiffs' home and adjusted the claim arising from the covered loss on July 14, 2015, Allstate took no action to assess any diminution in the fair market value of Plaintiffs' property.

47. With respect to both covered losses—the April 15, 2010 loss and the July 14, 2015 loss—Allstate failed to assess Plaintiffs' diminution in value loss.

48. With respect to both covered losses, Allstate also failed to pay Plaintiffs' diminution in value loss to Plaintiffs.

49. By failing to account and assess for diminution in value as an element of loss and by failing to pay its insureds the diminution in value of their property, Allstate breached the Policy, including the covenant of good faith and fair dealing inherent therein.

50. Allstate's breaches of contract have injured and harmed Plaintiffs and have proximately caused Plaintiffs damages for which Plaintiffs seek recovery.

51. Plaintiffs are entitled to recover damages for Allstate's breaches of contract in (1) failing to assess for diminished value and (2) failing to pay for diminished value.

52. Plaintiffs, as current policyholders, are also entitled to declaratory and/or injunctive relief.

CLASS ALLEGATIONS

53. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

54. Plaintiffs bring this action on behalf of themselves and other similarly situated persons who contracted with Defendants for homeowners insurance⁴ coverage for property located in the State of Georgia.

55. Allstate has issued homeowners insurance policies throughout the State of Georgia. Upon information and belief, the Policy issued to Plaintiffs is the same or substantially similar in all respects material to this action to numerous policies of homeowners insurance issued by Allstate to insureds throughout the State of Georgia.

⁴ See *supra* note 3.

56. Despite the fact that its homeowners policies of insurance provide coverage for diminution in value, Allstate has implemented, and continues to implement, procedures whereby it systematically fails to assess for and pay diminution in value in first-party physical damage claims and fails to establish procedures to handle diminution in value claims.

57. Allstate's failure to assess for and pay diminution in value respecting first-party physical damage claims and Allstate's failure to establish procedures to handle such diminution in value claims has resulted in numerous and systematic breaches of contract by Allstate.

58. Plaintiffs' home was insured by Allstate under a Policy that had coverage against risks of direct physical loss to their home. At the time Plaintiffs submitted their claims to Allstate and Allstate authorized repairs to Plaintiffs' home and adjusted the claims, Allstate failed to assess for and pay Plaintiffs' diminution in value loss.

59. Upon information and belief, Allstate has treated all of its policyholders who have presented first-party physical damage claims under their homeowners insurance policies the same or substantially the same way Allstate treated Plaintiffs when Plaintiffs presented their claims in that Allstate has failed to assess for and pay diminution in value loss.

60. By paying only for repairs and by failing to assess for and pay diminution in value of its insureds' properties, Allstate's conduct has been, and is, in violation of Georgia law and contrary to the terms, conditions, and obligations of its own contracts of insurance.

61. Plaintiffs seek certification of three or more classes of similarly situated persons or entities in order to: (a) obtain a declaration that Allstate is obligated under the homeowners insurance policies to assess insured properties for and pay diminished value when policyholders present first-party physical damage claims arising from direct physical losses to their insured properties, which are covered events; (b) obtain an injunction prohibiting Allstate from failing to assess for and pay diminution in value, requiring Allstate to establish procedures to handle such claims and notify its policyholders of such coverage, and requiring Allstate in the future to honor and abide by its contractual obligations and the law of the State of Georgia to assess for and pay diminution in value when policyholders present first-party physical damage claims arising from direct physical losses to their insured properties, which are covered events; (c) require Allstate to pay damages equal to the cost of performing diminished value appraisals to those insureds who, under their homeowners insurance policies, have within the period of six years preceding the filing of this civil action, presented first-party physical damage claims arising from direct physical losses to their insured properties caused by covered events involving

water damage, mold damage, fire damage, and/or foundational and/or structural support damage but for which Allstate failed to assess for diminished value; and (d) require Allstate to pay damages for diminution in the fair market value of their properties to those insureds who, under their homeowners insurance policies, have within the period of six years preceding the filing of this action, presented first-party physical damage claims arising from direct physical losses to their insured properties caused by covered events involving water damage, mold damage, fire damage, and/or foundational and/or structural support damage but for which Allstate failed to pay for diminished value.

62. Specifically, pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves and all others similarly situated, as a representative of the following classes:

A.

All persons currently insured under homeowners insurance policies issued by Allstate that provide coverage for property located in the State of Georgia (hereinafter the “Policyholder Class”).

B.

All persons formerly or currently insured under homeowners insurance policies issued by Allstate that provide coverage for property located in the State of Georgia who, within the period of six years preceding the commencement of this civil action, presented first-party physical damage claims arising from direct physical losses to their properties as a result of water damage, mold

damage, fire damage, or foundational or structural support damage to their homes, which are events covered by the policy, but for which Defendants failed to assess for diminution of value in connection with said claims (hereinafter the “Failure to Assess Covered Loss Class”).

C.

All persons formerly or currently insured under homeowners insurance policies issued by Allstate that provide coverage for property located in the State of Georgia who, within the period of six years preceding the commencement of this civil action, presented first-party physical damage claims arising from direct physical losses to their properties as a result of water damage, mold damage, fire damage, or foundational or structural support damage to their homes, which are events covered by the policy, but for which Defendants failed to pay for diminution of value in connection with said claims (hereinafter the “Failure to Pay Covered Loss Class”).

63. Excluded from the Policyholder Class, the Failure to Assess Covered Loss Class, and the Failure to Pay Covered Loss Class are Defendants, the officers and directors of the Defendants at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest.

FEDERAL RULE OF CIVIL PROCEDURE 23(a)

64. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

65. The Policyholder Class, the Failure to Assess Covered Loss Class, and the Failure to Pay Covered Loss Class (collectively, the “Classes”) are properly brought and should be maintained as a class action under Rule 23(a) of the Federal Rules of Civil Procedure because they satisfy the prerequisites of numerosity, commonality, typicality, and adequacy.

66. Specifically, the members of the Classes are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believes that Allstate insures thousands of home owners in the State of Georgia who are members of the proposed Classes.

67. The claims of Plaintiffs and the members of the Policyholder Class involve common questions of law and fact, including, *inter alia*, the following: (1) whether, under Georgia law and pursuant to Allstate’s homeowners insurance policies, Allstate is required to assess for, and pay to, its first-party physical damage claimants, any diminution in value to their real property, where such damage is a covered event under the applicable insurance policy; (2) whether Allstate, once an insured reports a direct physical loss, must assess the insured property to determine whether it sustained diminution in value due to stigma despite physical repairs; (3) whether Allstate, pursuant to its insureds’ homeowners insurance policies, at the conclusion of the adjustment and repair process, must pay for any diminished value;

(4) whether Plaintiffs and members of the Policyholder Class are entitled to declaratory relief; and (5) whether Plaintiffs and members of the Policyholder Class are entitled to an injunction.

68. The claims of Plaintiffs and the members of the Failure to Assess Covered Loss Class involve common questions of law and fact, which predominate over questions affecting only individual class members, including, *inter alia*, the following: (1) whether, under Georgia law and pursuant to Allstate's homeowners insurance policies, Allstate is required to assess for any diminution in value to insured properties arising from direct physical losses caused by covered events involving water damage, mold damage, fire damage, or foundational and/or structural support damage; (2) whether Allstate failed to assess for any diminution in value when its policyholders presented first-party physical damage claims arising from direct physical losses to their insured properties caused by covered events involving water damage, mold damage fire damage, or foundational and/or structural support damage; (3) whether Allstate breached the terms of the homeowners insurance policies by refusing to assess for diminished value; (4) whether the claims of the Failure to Assess Covered Loss Class arise from the same conduct constituting Allstate's breach of the homeowners insurance policies; (5) whether Allstate's practices complained of herein should be enjoined or Allstate should be ordered to specifically perform its contractual obligation to assess; and/or (6) whether Plaintiffs

and members of the Failure to Assess Covered Loss Class are entitled to monetary damages as a result of Allstate's failure to assess for diminished value.

69. The claims of Plaintiffs and the members of the Failure to Pay Covered Loss Class involve common questions of law and fact, which predominate over questions affecting only individual class members, including, *inter alia*, the following: (1) whether, under Georgia law and pursuant to Allstate's homeowners insurance policies, Allstate is required to pay to its first-party physical damage claimants any diminution in value to their real property sustained as the result of water damage, mold damage, fire damage, or foundational and/or structural support damage to such property, where such damage is a covered event under the applicable insurance policy; (2) whether Allstate failed to pay for any diminution in value when its policyholders presented first-party physical damage claims arising from direct physical losses to their insured properties caused by water damage, mold damage, fire damage, or foundational and/or structural support damage to their insureds' properties, which are covered events under the policies; (3) whether Allstate breached the terms of the homeowners insurance policies by refusing to pay for such diminished value; (4) whether the claims of the Failure to Pay Covered Loss Class arise from the same conduct constituting Allstate's breach of the homeowners insurance policies; (5) whether Allstate's practices complained of herein should be enjoined; and (6) whether Plaintiffs and members of the Failure to Pay Covered Loss

Class are entitled to monetary damages as a result of Allstate's failure to pay for diminished value.

70. Plaintiffs' claims are typical of those of the members of the Policyholder Class because their claims have the same essential characteristics as the claims of the Policyholder Class members, and their claims arise from the same course of conduct by Allstate. In particular, Plaintiffs and all of the members of the Policyholder Class maintain physical damage insurance coverage pursuant to homeowners insurance policies issued by Allstate containing identical, or substantially similar, language respecting risks of direct physical losses to their properties and provisions respecting settlement of such losses. Plaintiffs' claims arise out of contracts of insurance that have not been performed due to the uniform policies, practices, and procedures of Allstate that omit or conceal reference to, consideration of, and payment for diminution in value. Allstate has developed policies, practices, and procedures for the repair of properties and the adjustment and settlement of claims that omit or conceal reference to, consideration of, and payment for diminution in value. Allstate applies these policies, practices, and procedures in a similar fashion to Plaintiffs and all other members of the Policyholder Class in that it uniformly fails to assess insured properties for diminished value arising from events that covered by the policies. Plaintiffs and the

members of the Policyholder Class all have an interest in ensuring that Allstate adjusts claims in the future in a manner that is consistent with Georgia law.

71. The claims of Plaintiffs are typical of those of the members of the Failure to Assess Covered Loss Class because their claims have the same essential characteristics as the claims of the Failure to Assess Covered Loss Class members, and their claims arise from the same course of conduct by Defendants. Plaintiffs and all of the members of the Failure to Assess Covered Loss Class maintain, or have maintained, physical damage insurance coverage pursuant to homeowners insurance policies issued by Allstate, containing identical, or substantially similar, language respecting risks of direct physical losses to their properties and provisions respecting settlement of such losses. Plaintiffs and the members of the Failure to Assess Covered Loss Class all made claims upon Allstate for adjustment of first-party physical damage claims arising from direct physical losses to their insured properties caused by covered events involving water damage, mold damage, fire damage, or foundational and/or structural support damage. When adjusting such claims, Allstate failed to assess for diminution in value losses to Plaintiffs and the members of the Failure to Assess Covered Loss Class. Each Failure to Assess Covered Loss Class member's contract of insurance was breached by Allstate in a substantially similar manner, i.e., by Allstate's failure to assess for diminution in value.

72. The claims of Plaintiffs are typical of those of the members of the Failure to Pay Covered Loss Class because their claims have the same essential characteristics as the claims of the Failure to Pay Covered Loss Class members, and their claims arise from the same course of conduct by Defendants. Plaintiffs and all of the members of the Covered Loss Class maintain, or have maintained, physical damage insurance coverage pursuant to homeowners insurance policies issued by Allstate, containing identical, or substantially similar, language respecting risks of direct physical losses to their properties and provisions respecting settlement of such losses. Plaintiffs and the members of the Failure to Pay Covered Loss Class all made claims upon Allstate for adjustment of first-party physical damage claims as a result of water damage, mold damage, fire damage, or foundational and/or structural support damage to their properties, which are events covered under Allstate's insurance policies. When adjusting such claims, Allstate failed to pay diminution in value losses to Plaintiffs and the members of the Failure to Pay Covered Loss Class. Each Failure to Pay Covered Loss Class member's contract of insurance was breached by Allstate in a substantially similar manner, i.e., by Allstate's failure to pay diminution in value.

73. Plaintiffs will fairly and adequately represent the interests of all members of the Policyholder Class, the Failure to Assess Covered Loss Class, and the Failure to Pay Covered Loss Class. Plaintiffs' claims are common to all members

of the Classes and Plaintiffs have strong interests in vindicating their rights. Plaintiffs are represented by counsel experienced in complex and class action litigation.

THE POLICYHOLDER CLASS MEETS THE REQUIREMENTS OF RULE 23(b)

74. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

75. Certification of the Policyholder Class is appropriate under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

76. Allstate has acted or refused to act on grounds that apply generally to the members of the Policyholder Class, so that final injunctive relief and corresponding declaratory relief is appropriate respecting the class as a whole. Allstate has failed to assess for and pay diminution-in-value losses to its insureds in a manner which is generally applicable to the members of the Policyholder Class, thereby making appropriate final injunctive relief with respect to the Policyholder Class as a whole. In particular, any final injunctive or declaratory relief would apply to the entire Policyholder Class as the rights of all Class members under the terms of the homeowners insurance policies can be addressed in one declaratory order and/or Allstate would be ordered to assess for and pay diminution in value when

policyholders present first-party physical damage claims arising from direct physical losses to their insured properties, which are covered events.

**THE FAILURE TO ASSESS COVERED LOSS CLASS AND THE
FAILURE TO PAY COVERED LOSS CLASS MEET THE
REQUIREMENTS OF RULE 23(b)**

77. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

78. The Failure to Assess Covered Loss Class and the Failure to Pay Covered Loss Class (collectively the “Covered Loss Classes”) may be maintained pursuant to Rule 23(b)(1), (b)(2), (b)(3), and/or (c)(4).

79. Certification of the Covered Loss Classes is appropriate pursuant to Rule 23(b)(1)(A) because the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for Allstate. Certification of the Covered Loss Classes is likewise appropriate pursuant to Rule 23(b)(1)(B) because the prosecution of separate actions by individual class members would create a risk of adjudications with respect to individual class members which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

80. Certification of the Covered Loss Classes is also appropriate pursuant to Rule 23(b)(2). Allstate has acted or refused to act on grounds that apply generally to the members of the Covered Loss Classes, so that final injunctive relief and corresponding declaratory relief is appropriate respecting the Covered Loss Classes as a whole. Allstate has systematically breached the contracts of insurance by failing to assess for and pay diminution-in-value to its insureds in a manner which is generally applicable to the members of the Covered Loss Classes, thereby making appropriate final injunctive relief with respect to the Covered Loss Classes as a whole. In particular, any final injunctive or declaratory relief would apply to the entire Covered Loss Classes. The rights of all Class members under the terms of the homeowners insurance policies can be addressed in one declaratory order and/or one injunctive relief order pursuant to which Allstate would be ordered to assess for diminution in value for policyholders who presented first-party physical damage claims arising from direct physical losses to their insured properties caused by covered events involving water damage, mold damage, fire damage, or foundational and/or structural support damage and/or pursuant to which Allstate would be ordered to pay diminution in value to policyholders who presented first-party physical damage claims arising from direct physical losses to their insured properties caused by water damage, mold damage, fire damage, or foundational and/or structural support damage, which are covered events.

81. Certification of the Covered Loss Classes is also appropriate pursuant to Rule 23(b)(3) because common questions of law and fact that exist as to all members of the Class are central to the adjudication of this action and predominate over any questions solely affecting individual members of the Covered Loss Classes.

82. Moreover, a class action is superior to other available methods for the fair and efficient adjudication of this controversy in that, among other factors:

- (a) The interests of the Plaintiffs and members of the Covered Loss Classes in individually controlling the prosecution of separate actions are outweighed by the advantages of adjudicating the common issues of fact and law by means of a class action;
- (b) The expense of prosecuting Plaintiffs' and Class members' claims individually would significantly exceed any economic benefit Plaintiffs or Class members could realize individually, and individual litigation would overload court dockets and magnify the delay and expense to all parties making individual litigation of liability and damages claims economically impractical and infeasible;
- (c) It is desirable that litigation of the claims occur for the Class in this forum to preserve the resources of both the Courts and the litigants, and to reduce the risk of varying and inconsistent adjudications that could occur in individual adjudications; and

(d) Little, if any, difficulty is likely to be encountered in management of this class action because applicable law will uniformly apply to the claims of the Covered Loss Class.

83. In the alternative, or in addition to certification under Rule 23(b), Plaintiffs seek certification of the Covered Loss Classes under Rule 23(c)(4), which provides that an action may be brought or maintained as a class action with respect to particular issues. Under Rule 23(c)(4), certification is appropriate when a Plaintiff establishes a class under Rule 23(a), and when a common issue threads through the case.

84. In particular, Plaintiffs seek certification of the liability aspects of the claims asserted by the Covered Loss Classes, including but not limited to whether Allstate's homeowners insurance policies provide coverage for diminished value, whether Allstate's homeowners insurance policies required Allstate to assess for diminished value, whether Allstate breached the homeowners insurance contracts by failing to assess for diminished value, and whether Allstate breached the homeowners insurance policies by failing to pay for diminished value where found. Specifically, the liability issues applicable to the breach of contract claim suffered by the Failure to Pay Covered Loss Class arise from the following question: whether the Defendants breached the homeowners insurance policies by failing to pay diminution in value when its policyholders presented first-party physical damage

claims arising from direct physical losses to their insured properties caused by water damage, which are covered events. Because Allstate's conduct was uniform with respect to all members of the Covered Loss Classes in that it failed to assess for and pay diminution of value, these issues are suited for class-wide issue resolution under Rule 23(c)(4).

COUNT 1 – BREACH OF CONTRACT

(FAILURE TO ASSESS FOR DIMINISHED VALUE)

85. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

86. During the relevant class period, Plaintiffs and all members of the Failure to Assess Covered Loss Class maintained coverage against risks of direct physical loss to their properties under policies of homeowners insurance issued by Allstate. These policies of homeowners insurance were drafted by Defendants and are accordingly construed against them.

87. Implied in every contract, including the contracts of insurance wherein Allstate agreed to provide homeowners insurance coverage to Plaintiffs and the members of the Failure to Assess Covered Loss Class, is the covenant of good faith and fair dealing. Allstate had a duty to treat Plaintiffs and the members of the Failure to Assess Covered Loss Class with the utmost good faith.

88. During the relevant class period, Plaintiffs and the other members of the Failure to Assess Covered Loss Class all made first-party claims against Allstate for water damage, mold damage, fire damage, and/or foundational and/or structural support damage to dwellings. These claims were covered under the homeowners insurance policies issued by Allstate.

89. The damage associated with these claims—water damage, mold damage, fire damage, and/or foundational and/or structural support damage—had the potential to cause diminished value due to stigma even after physical repairs

90. As part of its contractual obligations to Plaintiffs and members of the Failure to Assess Covered Loss Class, Allstate was required to assess Class members' homes for diminished value when it adjusted their claims.

91. Despite being required to do so by its policies of homeowners insurance and Georgia law, Allstate failed to assess the diminution in value losses of Plaintiffs and the other Failure to Assess Covered Loss Class members.

92. By failing to assess for diminution in value as an element of loss when it adjusted Class members' claims, Allstate breached the homeowners insurance contracts, including the covenant of good faith and fair dealing inherent therein.

93. The breaches of contract by Allstate have injured and harmed Plaintiffs and the Failure to Assess Covered Loss Class members and have proximately caused them damages.

94. Plaintiffs and members of the Failure to Assess Covered Loss Class have been damaged by Allstate's failure to assess for diminished value regardless of whether or not diminished value actually exists.

95. Plaintiffs and the members of the Failure to Assess Covered Loss Class are entitled to recover damages from Allstate for breach of contract arising from Allstate's failure to assess for diminished value. Accordingly, Plaintiffs sue on behalf of themselves and the other Failure to Assess Covered Loss Class members in order to recover for amounts due to members of that Class based upon Allstate's failure to assess diminution of value in the aforesaid first-party claims of Plaintiffs and the other Failure to Assess Covered Loss Class members.

96. Alternatively, because monetary relief is not adequate to remedy the harm caused by Allstate's failure to assess for diminished value in breach of the homeowners insurance contracts, Plaintiffs also seek specific performance and/or an order enjoining Defendants' nonperformance to prevent irreparable harm to Plaintiffs and members of the Failure to Assess Covered Loss Class.

COUNT 2 – BREACH OF CONTRACT
(FAILURE TO PAY DIMINISHED VALUE)

97. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

98. During the relevant class period, Plaintiffs and all members of the Failure to Pay Covered Loss Class maintained coverage against risks of direct physical loss to their properties under policies of homeowners insurance issued by Allstate. These policies of homeowners insurance were drafted by Defendants and are accordingly construed against them.

99. Implied in every contract, including the contracts of insurance wherein Allstate agreed to provide homeowners insurance coverage to Plaintiffs and the members of the Failure to Pay Covered Loss Class, is the covenant of good faith and fair dealing. Allstate had a duty to treat Plaintiffs and the members of the Failure to Pay Covered Loss Class with the utmost good faith.

100. During the relevant class period, Plaintiffs and the other members of the Failure to Pay Covered Loss Class all made first-party claims against Allstate for water damage, mold damage, fire damage, and/or foundational and/or structural damage to dwellings. These claims were covered under the homeowners insurance policies issued by Allstate.

101. The damage associated with these claims—water damage, mold damage, fire damage, and/or foundational and/or structural support damage—had the potential to cause diminished value due to stigma even after physical repairs

102. Despite being required to do so by its policies of homeowners insurance and Georgia law, Allstate failed to assess for the diminution in value losses of Plaintiffs and the other Failure to Pay Covered Loss Class members and failed to pay these losses to Plaintiffs and the other Failure to Pay Covered Loss Class members.

103. By failing to pay Plaintiffs and the Failure to Pay Covered Loss Class members the diminution in value of their properties, Allstate breached the homeowners insurance contracts, including the covenant of good faith and fair dealing inherent therein.

104. The breaches of contract by Allstate have injured and harmed Plaintiffs and the Failure to Pay Covered Loss Class members and have proximately caused them damages.

105. Plaintiffs and the members of the Failure to Pay Covered Loss Class also are entitled to recover damages from Allstate for breach of contract arising from Allstate's failure to pay for diminished value. Accordingly, Plaintiffs sue on behalf of themselves and the other Failure to Pay Covered Loss Class members in order to recover for amounts due to members of that class based upon Allstate's failure to pay diminution of value in the aforesaid first-party claims of Plaintiffs and the other Failure to Pay Covered Loss Class members.

106. Alternatively, because monetary relief is not adequate to remedy the harm caused by Allstate's ongoing and/or future breaches of the homeowners insurance contracts, Plaintiffs also seek specific performance and/or an order enjoining Defendants' ongoing and/or future nonperformance to prevent irreparable harm to Plaintiffs and members of the Failure to Pay Covered Loss Class.

COUNT 3 – DECLARATORY JUDGMENT
28 U.S.C § 2201

107. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

108. There exists an actual controversy as to the responsibilities of the parties under the homeowners insurance policies issued by Allstate to Plaintiffs and the members of the Policyholder Class.

109. Section 2201 of Title 28 of the United States Code authorizes this Court to declare the rights and other legal relations of the parties where such a controversy exists.

110. Specifically, Plaintiffs and the members of the Policyholder Class contend the homeowners insurance policies issued by Allstate require Allstate to assess and pay for the diminution in value to insured properties resulting from covered losses to insured properties as more completely set forth in the preceding allegations.

111. Plaintiffs continue to insure their home with Allstate.

112. Allstate has a uniform and systematic policy of failing to assess for or pay diminished value.

113. The risk that Plaintiffs or the class members will sustain another covered loss in the future, and that Allstate will continue to improperly fail to assess and pay for diminished value to their insured properties, is real and immediate.

114. According to publicly available data, there is as much as a 10% probability that Plaintiffs will submit a covered insurance claim on their home in a given year.⁵ This “probabilistic” injury is sufficient to support this Court’s Article III jurisdiction.

115. Further, Plaintiff has no control over whether or not the relevant future injury or contingency—i.e. a loss to their home which triggers an insurance claim—will occur.

116. As a result, Plaintiffs and the members of the Policyholder Class are entitled to the declaratory relief requested herein.

⁵ See Insurance Information Institute, *Homeowners and Renters Insurance Topic* (“In 2014, 5.3 percent of insured homes had a claim, according to ISO.”), available at : <http://www.iii.org/fact-statistic/homeowners-and-renters-insurance>; See Financial Planning Association, *Base Rate Neglect - Help Yourself by Knowing the Odds* (“the odds of filing a claim in a given year are only one in 10”), available at <http://www.plannersearch.org/life-events/financial-planning/Base%20Rate%20Neglect%20-%20Help%20Yourself%20by%20Knowing%20the%20Odds>; see also <http://www.sixwise.com/newsletters/08/01/30/what-should-homeowners-insurance-cover.htm> (“only about 7 percent of insured homes have damage that results in a claim each year”).

COUNT 4 – ATTORNEYS’ FEES AND COSTS

117. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

118. Throughout the course of events described in this Complaint, Defendants have acted in bad faith, been stubbornly litigious, and/or have caused Plaintiffs and members of the Policyholder Class and the Covered Loss Classes undue trouble and expense.

119. As a result, Plaintiffs and members of the Policyholder Class and Covered Loss Classes are entitled to recover attorneys’ fees, costs, and the expenses of litigation pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, the Plaintiffs pray:

- (a) that summons and process issue to the Defendants as required by law;
- (b) that Plaintiffs, individually, recover compensatory damages for the injuries and damages they have incurred in an amount proven at trial;
- (c) that this Court certify the Policyholder Class and the Covered Loss Classes requested herein, and that the Court find and conclude that Plaintiffs are an appropriate representative of these classes;
- (d) that this Court find and conclude that the undersigned counsel fairly and adequately represent and protect the interests of the Policyholder

Class and the Covered Loss Classes requested herein, and certify the undersigned counsel to act as counsel for these classes;

- (e) that this Court issue a declaratory judgment that Defendants are obligated under the homeowners insurance policies to assess insured properties for and pay diminished value when policyholders present first-party physical damage claims arising from direct physical losses to their insured properties, which are covered events;
- (f) that judgment be entered against Defendants finding that Defendants breached the homeowners insurance contracts by (1) failing to assess for diminished value and (2) failing to pay for diminished value;
- (g) that judgment be entered against Defendants in such amount as will fully and adequately compensate Plaintiffs and the other members of the Covered Loss Classes;
- (h) that this Court issue an order requiring that Defendants specifically perform their obligations under the homeowners insurance contracts in effect and enjoining any future non-performance by Defendants under the homeowners insurance contracts;
- (i) that this Court enter a permanent injunction requiring Defendants to establish procedures to handle diminution in value claims and evaluate

- for and, if found, pay diminution in value when policyholders present first-party physical damage claims arising from covered losses;
- (j) that this Court enter a permanent injunction requiring Defendants to make clear and obvious to policyholders their contractual right to be compensated for diminution in value losses and requiring Defendants to establish procedures to handle such diminution in value losses;
- (k) that this Court award Plaintiffs and members of the Policyholder Class and Covered Loss Classes their costs and attorney's fees pursuant to O.C.G.A. § 13-6-11;
- (l) that Plaintiffs have a trial by jury with respect to the legal claims; and
- (m) that this Court grant such other and further relief as it deems just and proper.

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Respectfully submitted this 14th day of April, 2016,

/s/ Richard Kopelman

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