

CV-08-00 355100-CP00

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ESTHER KAFKA, KETAL (KEN) PATEL and
MARK CASSELLS

Plaintiffs

and

ALLSTATE INSURANCE COMPANY OF CANADA
and THE ALLSTATE CORPORATION

Defendants

Proceeding under the *Class Proceedings Act*

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

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.

Date May 20, 2008 Issued by *A. Vainulmas*
Local Registrar

Address of court office:
393 University Avenue
10th Floor
Toronto, Ontario
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TO: **ALLSTATE INSURANCE COMPANY OF CANADA**
27 Allstate Parkway, Suite 100
Markham, Ontario
L3R 5P8

AND **THE ALLSTATE CORPORATION**
TO: 2775 Sanders Road
Northbrook, Illinois
United States of America
60062

DEFINITIONS

The following definitions apply for the purpose of this Statement of Claim:

- (a) **“Allstate Canada”** means Allstate Insurance Company of Canada, a corporation incorporated pursuant to the laws of Canada;
- (b) **“Allstate Corp.”** means The Allstate Corporation, a publicly-traded U.S.A. company trading on the New York Stock Exchange (NYSE) under the symbol “ALL”;
- (c) **“Allstate”** means together Allstate Canada and Allstate Corp.
- (d) **“Class” or “Class Members”** means all individuals in Canada who were employed by Allstate as agents as of July 24, 2007;
- (e) **“Departure Class”** means all Class Members whose employment with Allstate as an agent ended between July 24, 2007 and September 1, 2009, without having received termination and severance pay pursuant to the provisions of the *Employment Standards Act*, S.O. 2000, c.41 and similar legislation in other provinces where the Allstate employs Class Members;
- (f) **“ESA”** means the *Employment Standards Act*, S.O. 2000, c.41;
- (g) **“Esther”** means the plaintiff, Esther Kafka, an individual residing in the City of Windsor, in the Province of Ontario;
- (h) **“Ken”** means the plaintiff, Ketal Patel, an individual residing in the Town of Tecumseh, in the Province of Ontario;
- (i) **“Mark”** means the plaintiff, Mark Cassells, an individual residing in the City of Hamilton, in the Province of Ontario;

- (j) **“Retention Class”** means all Class Members whose employment with Allstate as an agent continued after July 24, 2007, but who are not included in the Departure Class.

CLAIM FOR RELIEF

1. Esther, Ken and Mark claim:

- (a) an order certifying this action as a class proceeding and appointing them as representative plaintiffs;
- (b) a declaration that Allstate has constructively terminated the employment of all Class Members as a result of unilaterally introducing substantive material changes to the employment relationship effective September 1, 2007;
- (c) a declaration that all Class Members rejected/reject the substantive material changes to the employment relationship unilaterally introduced by Allstate effective September 1, 2007;
- (d) a declaration that Allstate has repudiated the contracts of employment of all Class Members, and that Class Members are not bound by any restrictive covenants contained therein;
- (e) a declaration that Allstate is in breach of section 60 of the ESA, and similar legislation in other provinces where they employ Class Members, in reducing the wage rate and/or altering other terms or

conditions of employment of Class Members during a working notice period;

- (f) a declaration that Allstate is in breach of the ESA and similar legislation in other provinces where they employ Class Members, in failing to make payment of termination and severance pay to all Departure Class Members;
- (g) a declaration that any reduction of wage rate and/or alteration of terms or conditions of employment of Class Members during a working notice period, are null and void;
- (h) in the alternative to the relief requested in (g), specific performance of the 24-month "guarantee" of income provided by Allstate without condition or restriction, for all members of the Retention Class, and for all members of the Departure Class to the date of their departure;
- (i) general damages and special damages in the amount of FIFTY MILLION DOLLARS (\$50,000,000.00), or such further sum as this Honourable Court may find appropriate in the circumstances;
- (j) punitive damages in the amount of FIVE MILLION DOLLARS (\$5,000,000.00);
- (k) *Wallace* damages in the amount of FIVE MILLION DOLLARS (\$5,000,000.00);

- (l) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (m) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (n) the costs of this proceeding on a full indemnity basis, as well as costs of notice and of administering the plan of distribution of recovery in this action, plus disbursements and applicable taxes;
- (o) such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

THE NATURE OF THIS ACTION

2. Allstate employs approximately 450 agents across Canada. All are employed under the same or substantially the same terms and conditions.
3. On July 24, 2007, Allstate unilaterally announced substantive material changes to the employment contract terms with all Class Members, to be implemented September 1, 2007.
4. Class Members did not accept the substantive material changes to the employment relationship unilaterally introduced by Allstate. Indeed, Class Members rejected those changes.

5. The changes strip Class Members of their renewal books of business and close 256 agent locations throughout Canada consolidating those locations and replacing them with "Allstate Insurance Agency" offices.
6. The compensation system for Class Members changed, and while Allstate provided Class Members with 24-months' working notice, the compensation system in fact changed effective September 1, 2007 as the purported "guarantee" of income is conditional upon specific "minimum performance standards" unilaterally imposed by Allstate. The purported "guarantee" during the working notice period is in fact no guarantee at all.
7. Class Members have suffered and will continue to suffer loss and damage as a result of the constructive termination of their employment with Allstate.
8. Allstate is in breach of section 60 of the ESA, and similar legislation in other provinces where they employ Class Members, in that they reduced the wage rate and/or altered other terms and conditions of employment of all Class Members, during a working notice period.
9. Allstate is in breach of the ESA and similar legislation in other provinces where they employ Class Members, in that they failed to make payment of termination, and severance pay to all Departure Class Members.

THE PLAINTIFFS

10. Esther is an individual residing in the City of Windsor in the Province of Ontario and was at all material times an employee of Allstate.

11. Ken is an individual residing in the Town of Tecumseh in the Province of Ontario and was at all material times an employee of Allstate.
12. Mark is an individual residing in the City of Hamilton in the Province of Ontario and was at all material times an employee of Allstate.

THE DEFENDANTS

13. Allstate Canada is a federal corporation incorporated pursuant to the laws of Canada.
14. Allstate Canada has its head office in Markham, Ontario and is a member of one of the largest insurance organizations in the world, Allstate Corp.
15. Allstate Canada has provided property and casualty insurance products to Canadians since 1953. It is an agent-channel distributor of insurance products primarily through community-based agents.
16. Allstate Canada is a wholly-owned subsidiary of Allstate Corp. a publicly-traded U.S.A. company trading on the New York Stock Exchange (NYSE) under the symbol "ALL".
17. Allstate Canada and Allstate Corp. operate as if Allstate Canada is functionally part of Allstate Corp. They have both managed and continue to manage all aspects of the Canadian operations, including all decisions made with respect to development and implementation of the new agent distribution model and changes to the agent compensation system.

18. Allstate Canada and Allstate Corp. are jointly and severally liable for the wrongful acts and omissions particularized in this Statement of Claim because:

- (a) the acts and omissions particularized in the Statement of Claim were done in the pursuit of their common enterprise;
- (b) Allstate Corp. is the directing mind and will of Allstate Canada and operates Allstate Canada as if it were its alter-ego;
- (c) Allstate Corp. prepares its financial statements on a consolidated basis with Allstate Canada;
- (d) Allstate Corp. controlled and continues to control, through its management, the day-to-day operations of Allstate Canada;
- (e) Allstate Corp. and Allstate Canada have and use common offices and employees;
- (f) the officers and directors of Allstate Corp. control Allstate Canada;
- (g) Allstate Corp. provides management and other services to and for Allstate Canada.

19. Allstate employs approximately 450 agents in 256 locations to solicit applications for insurance policies, countersign policies, collect premiums, and maintain clients and customers for its insurance business. Agents are employed in Ontario, Alberta, Quebec, New Brunswick and Nova Scotia.

STATED FACTS OF THE REPRESENTATIVE PLAINTIFFS

A. Esther

20. Esther has been an Allstate employee and agent since February 1, 1994 in Windsor, Ontario.
21. Esther is a Senior Account Agent having achieved the Allstate "Honour Ring" designation for 8 years and the Allstate "National Champion" designation for 7 years.
22. On or about July 24, 2007, Esther, along with all other Class Members, was called to a meeting with Allstate management. At the meeting a video presentation was made by Allstate management announcing Allstate's new agent distribution model which would result in a number of changes to policies and practices, including the compensation system in place for all Class Members.
23. On July 24, 2007, Esther received correspondence from Allstate confirming these changes. All Class Members received the same correspondence from Allstate on or about July 24, 2007.
24. The correspondence received makes it clear that failure to comply with "minimum performance standards" will result in forfeiture of the purported 24-month "guarantee" of no reduction in remuneration.

25. Esther did not accept the unilateral substantive changes to the employment relationship introduced by Allstate effective September 1, 2007 and accordingly provided notice to Allstate on May 5, 2008 of her intention to leave her employment effective May 31, 2008. This is directly as a result of the substantive material changes to the employment relationship announced July 24, 2007 and implemented September 1, 2007.

B. Ken

26. Ken has been an Allstate employee and agent since May 25, 1987 in Windsor, Ontario.
27. Ken is a Senior Account Agent having achieved the Allstate "Honour Ring" designation for 16 years, the "National Champion" designation for 14 years, the "Distinguished Agency" designation for 2 years and the Allstate "Life Millionaire" designation for 1 year.
28. On or about July 24, 2007, Ken, along with all other Class Members, was called to a meeting with Allstate management. At the meeting a video presentation was made by Allstate management announcing Allstate's new agent distribution model which would result in a number of changes to policies and practices, including the compensation system in place for all Class Members.
29. On July 24, 2007, Ken received correspondence from Allstate confirming these changes. All Class Members received the same correspondence from Allstate on or about July 24, 2007.

30. The correspondence received makes it clear that failure to comply with "minimum performance standards" will result in forfeiture of the purported 24-month "guarantee" of no reduction in remuneration.

C. Mark

31. Mark was an Allstate employee and agent from February 2, 1992 to May 15, 2008 in Hamilton, Ontario.
32. On or about July 24, 2007, Mark, along with all other Class Members, was called to a meeting with Allstate management. At the meeting a video presentation was made by Allstate management announcing Allstate's new agent distribution model which would result in a number of changes to policies and practices, including the compensation system in place for all Class Members.
33. On July 24, 2007, Mark received correspondence from Allstate confirming these changes. All Class Members received the same correspondence from Allstate on or about July 24, 2007.
34. Mark did not accept the unilateral substantive changes to the employment relationship introduced by Allstate effective September 1, 2007 and accordingly provided notice to Allstate on April 15, 2008 of his intention to leave his employment, and did in fact leave his employment with Allstate on May 15, 2008. This was directly as a result of the substantive material changes to the employment relationship announced July 24, 2007, and implemented September 1, 2007.

35. Mark did not receive payment of termination and severance pay from Allstate upon cessation of his employment on May 15, 2008.

BREACH OF CONTRACT

36. All Class Members were employed by Allstate as agents under the same or substantially the same terms and conditions.
37. On July 24, 2007, Allstate unilaterally introduced substantive material changes to the employment contract terms with all Class Members effective September 1, 2007.
38. The changes strip Class Members of their renewal books of business. Class Members had previously received commission on all policy renewals where the agent had been responsible for the original sale of the policy. Furthermore, 256 agent locations are being closed by Allstate consolidating those locations and replacing them with "Allstate Insurance Agency" offices.
39. The compensation system for all Class Members was unilaterally changed by Allstate. Allstate purported to provide Class Members with 24-months' working notice period, however, the compensation system in fact changed effective September 1, 2007.
40. Allstate introduced a purported "guarantee" of income for the 24 months' working notice, however, the "guarantee" of income is conditional upon Class Members

meeting a minimum performance standard of the lesser of 70% of the average production of a unit or of the Class Member's individual plan.

41. These specific "minimum performance standards" were unilaterally developed and imposed by Allstate.
42. The purported "guarantee" in favour of Class Members during the working notice period is in fact no guarantee at all.
43. Indeed, Allstate knew or ought to have known that the "minimum performance standards" unilaterally imposed by them were/are such that Class Members have no guarantee whatsoever with respect to their incomes for the 24-month working notice period.
44. Allstate knew or ought to have known that the purported "guarantee" of Class Members' incomes for the 24-month working notice period is transparent and could not/will not be achieved.
45. Allstate has breached the employment contracts in place with all Class Members.
46. Class Members did not and have not accepted the unilateral substantive changes to the employment relationship introduced effective September 1, 2007.
47. The plaintiffs seek declarations that:
 - (a) all Class Members have been constructively terminated;

(b) plaintiffs seek declarations that Class Members did not accept the unilateral substantive changes to the employment relationship introduced by Allstate;

(c) Class Members are not bound by any restrictive covenants since the defendants have repudiated contracts of employment of all Class Members;

(d) the unilateral substantive changes to the employment relationship with all Class Members, are null and void.

48. In the alternative to the relief requested in 47(d), the plaintiffs seek specific performance of the 24-month guarantee of income, without condition or restriction, for all members of the Retention Class, and for all members of the Departure Class to the date of their departure.

BREACH OF STATUTE

49. Section 60 of the ESA provides as follows:

60(1) During a notice period under section 57 or 58, the employer,

(a) shall not reduce the employee's wage rate or alter any other term or condition of employment.

50. Similar legislation exists in Alberta, Quebec, New Brunswick and Nova Scotia.

51. Allstate is in breach of the ESA and similar legislation in other provinces as the purported "guarantee" of income for the 24-month working notice period is conditional upon Class Members meeting a "minimum performance standard" as outlined above. This change constitutes a reduction in the wage rate of all Class Members and/or an alteration of a material term or condition of employment, during a working notice period.
52. Allstate is in breach of the provisions of the ESA and similar legislation in provinces where they employ agents, in respect of all members of the Departure Class.
53. After learning of the unilateral substantive material changes to the employment contract terms, same constituting constructive termination, Departure Class Members left their employment with Allstate as agents after July 24, 2007.
54. Allstate failed and/or refused to make payment of termination and severance pay to Departure Class Members.
55. The plaintiffs seek declarations that:
 - (a) Allstate has reduced the wage rate and/or altered other terms or conditions of employment of Class Members during a working notice period, in breach of statute;
 - (b) Allstate has failed to make payment of termination and severance pay to the Departure Class members, in breach of statute.

DAMAGES

56. As a result of the conduct of Allstate described above, Class Members have suffered the following damages and losses:
- (a) loss of income;
 - (b) loss of employment benefits;
 - (c) special damages, being out-of-pocket expenses.
57. Retention Class Members remain employed by Allstate after September 1, 2009. Retention Class Members suffered loss of income during the 24-month working notice period to the extent they received income less than the purported "guarantee".
58. Departure Class Members suffered damages including loss of income and loss of termination and severance pay required to be paid pursuant to provisions of the ESA or similar legislation in other provinces where Allstate employs agents, upon them leaving their employ after July 24, 2007.

PUNITIVE / WALLACE DAMAGES

59. The plaintiffs state that the conduct of Allstate was entirely without care, deliberate, callous, wilful and in intentional disregard of the individual rights and circumstances of Class Members, and indifferent to the consequences.

60. The plaintiffs state that the conduct of Allstate lacked the required reasonableness, honesty and forthrightness required in the circumstances.
61. The plaintiffs state that the conduct of Allstate was disingenuous and in bad faith.
62. The plaintiffs state that Allstate knew or ought to have known that the purported “guarantee” of agents’ income for a 24-month period was transparent and could/would not be achieved.
63. The plaintiffs state that Allstate knew or ought to have known that the “minimum performance standards” unilaterally imposed were such that agents would have no guarantee whatsoever with respect to their incomes for the purported 24-month guarantee period.
64. The plaintiffs state that Allstate knew or ought to have known that they constructively terminated the employment of all Class Members and that upon the departure of Departure Class members they were obligated to make payment of termination and severance pay to those Class Members pursuant to the provisions of the ESA and similar legislation in other provinces where they employ agents.

LEGISLATION

65. The plaintiffs plead and rely upon the provisions of the *Class Proceedings Act*, S.O., 1992, c.C.6, the ESA and regulations, and similar legislation in Alberta, Quebec, New Brunswick and Nova Scotia.

SERVICE OUTSIDE ONTARIO

66. The plaintiffs anticipate that it might be necessary to serve this Statement of Claim on the defendants or either of them outside the Province of Ontario, and in that regard pleads and relies upon the provisions of Rule 17.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Regulation 194 as amended, and in particular:

- (a) Rule 17.02(f)—a contract made in Ontario and/or breached in Ontario;
- (b) Rule 17.02(h)—damages sustained in Ontario;
- (c) Rule 17.02(o)—against a person outside Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario.

PLACE OF TRIAL

67. The plaintiffs propose that this action be tried in the City of Toronto in the Province of Ontario.

May 20, 2008

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Solicitors for the Plaintiffs

RCP-E 14A (November 1, 2005)

ESTHER KAFKA et al.
Plaintiffs

-and-
ALLSTATE INSURANCE COMPANY OF CANADA et al.
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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