

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

PAUL R. DULBERG, Individually, and )  
THE PAUL R. DULBERG REVOCABLE )  
TRUST, )  
)  
*Plaintiffs,* )

v. )

No. 2022 L 10905

KELLY N. BAUDIN A/K/A BAUDIN & )  
BAUDIN, BAUDIN & BAUDIN AN )  
ASSOCIATION OF ATTORNEYS, LAW )  
OFFICES OF BAUDIN & BAUDIN, )  
BAUDIN & BAUDIN LAW OFFICES, )  
WILLIAM RANDAL BAUDIN II A/K/A )  
BAUDIN & BAUDIN, BAUDIN & BAUDIN )  
AN ASSOCIATION OF ATTORNEYS, LAW )  
OFFICES OF BAUDIN & BAUDIN, )  
BAUDIN & BAUDIN LAW OFFICES, )  
KELRAN, INC A/K/A THE BAUDIN LAW )  
GROUP, Ltd., JOSEPH DAVID OLSEN, )  
A/K/A YALDEN, OLSEN & WILLETTE )  
LAW OFFICES, CRAIG A WILLETTE, )  
A/K/A YALDEN, OLSEN & WILLETTE )  
LAW OFFICES, RAPHAEL E YALDEN II, )  
A/K/A YALDEN, OLSEN & WILLETTE )  
LAW OFFICES, ADR SYSTEMS OF )  
AMERICA, LLC., ASSUMED NAME ADR )  
COMMERCIAL SERVICES, ALLSTATE )  
PROPERTY AND CASUALTY INSURANCE )  
COMPANY, )  
)  
*Defendants.* )

Calendar U

ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY’S  
MOTION FOR SUMMARY JUDGMENT

NOW COMES Defendant, Allstate Property and Casualty Insurance Company  
 (“Allstate”), by and through its attorneys, Amundsen Davis, LLC, and for its Motion for Summary  
 Judgment pursuant to 735 ILCS 5/2-1005, states as follows:

FILED DATE: 6/5/2023 11:06 AM 2022L010905

## **INTRODUCTION**

Allstate’s alleged liability in this matter relates to a purported breach of an *unsigned* agreement (“unsigned agreement”) concerning mediation proceedings that occurred on December 8, 2016 (“Binding Mediation”) relating to a June 28, 2011 automobile accident. In connection with the Binding Mediation, Plaintiff Paul R. Dulberg and Allstate’s insured, David Gagnon (“Gagnon”), individually and/or by their attorneys, executed a binding mediation agreement (“Binding Mediation Agreement”), which is alleged to contain slightly different terms than the unsigned agreement.

There is no genuine issue of material fact that Allstate fully performed all obligations under the Binding Mediation Agreement—the only executed, valid and enforceable agreement that exists in the case at bar. Namely, Allstate participated in the Binding Mediation, and, when the mediator awarded Paul R. Dulberg a sum, Allstate made payment of said award in accordance with a “high/low agreement” and paid the agreed upon portion of the mediation costs, in accordance with both the unsigned agreement and the Binding Mediation Agreement. Further, and in consideration of Allstate’s payments in connection with the Binding Mediation, Joseph D. Olsen, Trustee of Paul R. Dulberg’s Estate (“Bankruptcy Estate”),<sup>1</sup> and Paul R. Dulberg, individually, executed a “Release of All Claims” (“Release”), which affirmatively bars the current breach of contract claim against Allstate. As such, there is no genuine issue of material fact precluding the entry of summary judgment on Count V of the Complaint at Law (“Complaint”) against Allstate as a matter of law.

## **THE PLEADINGS**

### **A. The Complaint**

On December 8, 2022, Plaintiffs, Paul R. Dulberg, individually, and The Paul R. Dulberg

---

<sup>1</sup> By Court Order entered on May 25, 2023, Joseph David Olsen, Craig A. Willette, and Raphael E. Yalden were dismissed from this matter with prejudice.

Revocable Trust (collectively, “Dulberg”)<sup>2</sup> filed a Complaint, comprised of five counts and 107 paragraphs, against numerous defendants, including Allstate. A copy of the Complaint is attached as **Exhibit A** hereto.

Only Count V of the Complaint (Breach of Contract) is brought against Allstate and alleges that a “valid and enforceable” contract, dated December 8, 2016, existed between Dulberg, by his attorneys, the Baudin Defendants, and Gagnon (Allstate’s insured), by attorney Shoshan Reddington, by way of the Binding Mediation Agreement. *Id.*, ¶ 102. The Complaint alleges that Dulberg retained the Baudin Defendants to represent him in prosecuting a personal injury case with respect to an accident occurring on or about June 28, 2011 (“Personal Injury Claim”). *Id.*, ¶ 19. It alleges that while the Personal Injury Claim was pending, Dulberg filed for bankruptcy, and the Personal Injury Claim subsequently became an asset of the Bankruptcy Estate. *Id.*, ¶¶ 19, 22. It further alleges that in July 2016, the Baudin Defendants proposed binding mediation as a means to resolve the Personal Injury Claim to Dulberg and Dulberg’s mother. *Id.*, ¶¶ 23-29.

Additionally, the Complaint alleges that prior to executing the Binding Mediation Agreement, the unsigned agreement was presented to the bankruptcy judge presiding over Dulberg’s separate bankruptcy proceedings in October 2016. *Id.*, ¶ 103. The Complaint alleges that “major terms” contained in the unsigned agreement were changed and/or omitted from the Binding Mediation Agreement, including, but not limited to:

- a. Notifications under the title on page one;
- b. Language under Parties B;
- c. [P]age 4 F [Award Limits] 1.b. regarding who is liable to Plaintiff;

---

<sup>2</sup> As the Baudin Defendants state in their Section 2-619.1 Motion to Dismiss, while Dulberg brings the instant lawsuit on behalf of himself and “The Paul R. Dulberg Revocable Trust” (“Trust”), Dulberg fails to allege how he has the authority to act for the Trust in the case at bar. As such, Allstate does not believe the Trust is a proper Plaintiff here.

- d. [P]age 5 V.A.1. ADR Systems Fee Schedule;
- e. [P]age 5 V [Mediation Costs] ADR Systems Fee Schedule boxed information;
- f. [P]age 6 [S]ection [V] number 5[.]

*Id.*, ¶ 104. As a result of modifications to and/or omissions in the above-referenced sections, the Complaint alleges that the conditions contained in Section III (Rules Governing the Mediation), Part B (Amendments to the Agreement) of the Binding Mediation Agreement were not followed, rendering a breach of said agreement by Allstate. **Ex. A**, ¶¶ 104-94 (*sic*), 106.

The Complaint also alleges that on December 8, 2016, Dulberg attended the Binding Mediation; Dulberg, or someone authorized to sign on Dulberg's behalf, signed the Binding Mediation Agreement; and on or about December 12, 2016, Dulberg was awarded the gross sum of \$660,000 (receiving a net award of \$561,000). *Id.*, ¶¶ 57, 64, 68. It alleges that Dulberg did all that was required of him under the terms of the Binding Mediation Agreement; that Allstate breached the Binding Mediation Agreement by not following the terms pertaining to amending the Binding Mediation Agreement; and that Dulberg and/or the Bankruptcy Estate, by virtue of the Personal Injury Claim being an asset of the same, suffered pecuniary injury in an amount in excess of \$261,000 (the difference between the amount paid by Allstate, the agreed upon high amount of \$300,000, and the net award of \$561,000), because the Binding Mediation Agreement, which included "changed terms" from the unsigned agreement, "should not be allowed to regulate the [Binding Mediation] procedure." *Id.*, ¶¶ 105-07.

#### **B. Allstate's Answer and Affirmative Defense**

On February 28, 2023, Allstate filed its Answer to the Complaint, denying all pertinent allegations. Additionally, Allstate set forth an Affirmative Defense, the basis of which pertains to Dulberg's execution of the Release, which bars the instant breach of contract claim against

Allstate. A copy of Allstate's Answer and Affirmative Defense is attached as **Exhibit B** hereto.

**C. Dulberg's Reply**

On March 22, 2023, Dulberg replied to Allstate's Affirmative Defense ("Reply"), a copy of which is attached as **Exhibit C** hereto. In the Reply, Dulberg admits that he executed the Release and states that the Release "speaks for itself." **Ex. C**, ¶¶ 1-2. Dulberg, however, denies that the Release fully releases and forever discharges Allstate from any and all claims, demands, damages, costs, expenses, loss of services, actions and causes of action, arising as a consequence of the Personal Injury Claim that was the subject of the Binding Mediation, and, therefore, Dulberg denies that his execution of the Release bars Count V of the Complaint against Allstate. *Id.*, ¶¶ 1, 3.

**BINDING MEDIATION & BINDING MEDIATION AGREEMENT**

On or about December 8, 2016, Dulberg, Allstate's insured Gagnon, ADR, and the Baudin Defendants participated in Binding Mediation, and the Binding Mediation Agreement was executed. **Ex. A-11**. The Binding Mediation Agreement provides, in relevant part:

**I. Parties**

- A. Paul Dulberg, by attorneys, Kelly N. Baudin and Randall Baudin, II
- B. David Gagnon, by attorney, Shoshan Reddington

\* \* \*

*Id.*, p. 1.

**III. Rulings Governing the Mediation**

\* \* \*

**B. Amendments to this Agreement**

- 1. No Party shall amend the Agreement at any time without the consent and approval of such changes by the opposing Party, and ADR . . .

2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR . . . case manager by telephone. The agreed proposal must also be submitted to the ADR . . . case manager in writing, by fax or email, if necessary, and the contract changes **MUST** be made by ADR . . . No changes made outside these guidelines will be accepted. Furthermore, if the amended contract made by ADR . . . is not signed by both Parties, the Agreement shall be enforced in its original form, without changes (emphasis in original).

\* \* \*

**Ex. A-11**, pp. 1-2.

#### **F. Award Limits**

1. The Parties may agree prior to the Mediation that a minimum and maximum amount will serve as parameters for the Award (sometimes referred to as a “high/low agreement”), such that the actual amount that must be paid to the plaintiff or claimant shall not exceed a certain amount (the “high” or “maximum award”) and shall not be less than a certain amount (the “low” or “minimum award”).

\* \* \*

- b. The Parties agree that for this [Binding] Mediation the minimum award to Paul Dulberg will be **\$50,000.00**. Also, the maximum award to Paul Dulberg will be **\$300,000**. These amounts reflect the minimum and maximum amounts of money that David Dulberg<sup>3</sup> shall be liable to pay to Paul Dulberg (emphasis in original).

\* \* \*

*Id.*, p. 4.

#### **IV. Effect of this Agreement**

- A. After the commencement of the Mediation, no Party shall be permitted to cancel this [Binding Mediation] Agreement or the [Binding] Mediation and the Mediator shall render a decision that shall be in accordance with the terms set forth in this [Binding Mediation] Agreement. When the Award is rendered, the [Binding] Mediation is resolved, and any Award arising from this [Binding] Mediation shall operate as a bar and complete defense to any action

---

<sup>3</sup> As detailed herein, “David *Dulberg*” is a scrivener’s error. It should state “David *Gagnon*.”

or proceeding in any court or tribunal that may arise from the same incident upon which the Mediation is based.

\* \* \*

Ex. A-11, p. 4.

**V. Mediation Costs**

\* \* \*

**B. Responsibility for Payment**

\* \* \*

**5. \*\*Defendant agrees to pay up to \$3,500.00 of [Dulberg]'s Binding Mediation Costs.**

\* \* \*

*Id.*, pp. 5-6.

**VI. Acknowledgment of Agreement**

A. By signing this [Binding Mediation] Agreement, I acknowledge that I have read and agree to all the provisions as set forth above.

\* \* \*

*Id.*, p. 6.

Following the Binding Mediation, a monetary sum of \$660,000 (a net award of \$561,000) was awarded to the Bankruptcy Estate. *See* Compl., Exhibit 10. Thereafter, Allstate promptly made payment of \$300,000, the maximum award provided for in the high-low agreement in the Binding Mediation Agreement, to Dulberg (or Dulberg's attorney), in addition to paying Dulberg's costs associated with the Binding Mediation in the sum of \$3,500. *See* Affidavit of Karen O'Neil, Allstate claim representative and senior consultant, attached hereto as **Exhibit D**. Both payments made by Allstate were accepted by the Bankruptcy Estate.

**RELEASE**

On December 21, 2016, Joseph D. Olsen, Trustee of the Bankruptcy Estate, and Dulberg, individually, signed a Release, which provides, in pertinent part:

[I]n consideration of the sum of Three Hundred Thousand [D]ollars (\$300,000.00), receipt thereof is hereby acknowledged, for myself and for my heirs, personal representatives and assigns, I do hereby release and forever discharge . . . Allstate . . . from any and all claims, demands, damages, costs, expenses, loss of services, actions and causes of action, arising from any act or occurrence up to the present time and particularly on account of all . . . loss or damages of any kind already sustained or that I may hereafter sustain in consequence of [the Personal Injury Claim] . . .

\* \* \*

Paul Dulberg DOES NOT release any claims involving The Law Offices of Thomas J. Popovich, P.C., Thomas J. Popovich, individually, Hans A. Mast, individually, Brad J. Balke, P.C., and Brad J. Balke individually” (emphasis in original). [The Bankruptcy Estate / Dulberg] hereby agree that, as further consideration and inducement for this compromise settlement, that it shall apply to all unknown and unanticipated injuries and damages resulting from said accident, casualty or event, as well as to those now disclosed.

[The Bankruptcy Estate / Dulberg] further understand that . . . said payments and settlements in compromise is made to terminate further controversy respecting all claims for damages that [the Bankruptcy Estate / Dulberg] have heretofore asserted or that [the Bankruptcy Estate / Dulberg] or . . . personal representatives [of the Bankruptcy Estate / Dulberg] might hereafter assert because of said accident.

\* \* \*

The undersigned agrees to indemnify, defend and hold harmless [Allstate] for any and all losses, claims, demands or causes of action, and any damages, judgments, fees, expenses, costs (including interest) of any nature whatsoever paid and incurred as a result of any breach of these agreements and covenants. The undersigned understands and agrees that [Allstate] . . . [has] relied on these material representations as part of the consideration and inducement for this settlement.

A true and correct copy of the Release is attached hereto as **Exhibit D-1** to the Affidavit of Karen O’Neil.

### **LEGAL STANDARD**

Summary judgment is appropriate when the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c); *Travelers Ins. Co. v.*



*Eljer Mfg., Inc.*, 197 Ill. 2d 278, 292 (2001). If the moving party “supplies facts which, if not contradicted, would entitle such party to judgment as a matter of law, the opposing party cannot rely on his pleadings alone to raise issues of material fact.” *Purtill v. Hess*, 111 Ill. 2d 229, 240-41 (1986).

## **ARGUMENT**

### **I. Dulberg cannot sustain a cause of action for breach of contract against Allstate**

Dulberg’s breach of contract claim against Allstate is without merit for two reasons. First, the notion that Allstate is bound by the unsigned agreement is untenable. Second, and with respect to the contract that was actually executed and ultimately performed—the Binding Mediation Agreement—Allstate fully performed its obligations according to the plain terms of said agreement. Accordingly, there is no genuine issue of material fact precluding the entry of summary judgment in favor of Allstate on Count V of the Complaint.

To prevail on a breach of contract claim, the plaintiff must prove: (1) the existence of a valid and enforceable contract; (2) plaintiff’s performance under the contract; (3) defendant’s breach of the contract; and (4) resulting injury to the plaintiff. *Razor Capital v. Antaal*, 2012 IL App (2d) 110904, ¶ 30. As to the fourth element, “[t]he proper measure of damages for a breach of contract is the amount of money necessary to place the plaintiff in a position as if the contract had been performed.” *In re Illinois Bell Telephone Link-Up II*, 2013 IL App (1st) 113349, ¶ 19 (citing *InsureOne Independent Ins. Agency, LLC v. Hallberg*, 2012 IL App (1st) 092385, ¶ 82). The plaintiff, however, “should not be placed in a better position, providing a windfall recovery.” *Id.* (citing *Walker v. Ridgeview Construction Co.*, 316 Ill. App. 3d 592, 596 (2000)). “Damages which ‘naturally and generally result from a breach are recoverable.’” *Id.* (citing *InsureOne Independent Ins. Agency, LLC v. Hallberg*, 2012 IL App (1st) 092385, ¶ 89).

It is undisputed that the unsigned agreement that was initially presented to the bankruptcy court in Dulberg's separate bankruptcy proceedings is not a valid and enforceable contract. Dulberg does not allege and Allstate does not maintain such. **Ex. A**, ¶¶ 102-03. Nonetheless, and as alleged in the Complaint, Dulberg seeks to hold Allstate liable for a purported breach of the unsigned agreement. *Id.*, ¶ 106. Specifically, Dulberg maintains that because certain terms in the unsigned agreement were modified and/or omitted from the Binding Mediation Agreement, that Allstate breached the provision relating to "Amendments to the Agreement." *Id.*, ¶¶ 104, 106; **Ex. A-6B**. Significantly, any proposals or drafts leading up to the Binding Mediation Agreement are not the agreement itself, and Dulberg does not contend that the Binding Mediation Agreement was subsequently amended by Allstate in breach of its terms. *See generally Ex. A*. To the extent that terms were modified and/or omitted between the time the unsigned agreement was submitted in Dulberg's separate bankruptcy proceedings to when the Binding Mediation Agreement was executed, Allstate played no role in drafting or amending the Binding Mediation Agreement and Dulberg does not plead such. *See generally Ex. A*. Moreover, the Binding Mediation Agreement is the only executed, valid agreement between the parties. On this basis alone, Dulberg's breach of contract claim fails and Allstate is entitled to summary judgment.

Further, according to the provisions of the Binding Mediation Agreement, Allstate was contractually obligated to pay certain sums under the same, which Allstate fully performed by paying the sum of \$300,000 to Dulberg/Dulberg's attorney for the benefit of the Bankruptcy Estate and by paying Dulberg's mediation fees of \$3,500 in accordance with the terms set forth in the Binding Mediation Agreement. **Ex. A-11**, pp. 4, 6; **Ex. D**, ¶¶ 2-3. The only difference in the "Award Limits" provision between the unsigned agreement and the Binding Mediation Agreement is a scrivener's error in the name identified. Specifically, the Binding Mediation Agreement

provides that “the minimum award to Paul Dulberg will be \$50,000 . . . [t]he maximum award to Paul Dulberg will be \$300,000 . . . [t]hese amounts reflect the minimum and maximum amounts of money that David *Dulberg* shall be liable to pay to Paul Dulberg” (emphasis added). **Ex. A-11**, p. 4. It is clear that the reference to David *Dulberg* was intended to read “David *Gagnon*,” the tort defendant, as it did in the unsigned agreement, and that this is no more than a typographical error. Allstate nonetheless paid, on behalf of its insured, Gagnon, and the Bankruptcy Estate accepted, the agreed upon high sum of \$300,000, which result would be the same under the terms of the unsigned agreement or the Binding Mediation Agreement. **Ex. A-6B; Ex. A-11; Ex. D, ¶ 2.**

Lastly, and not to be overlooked, the damages that Dulberg identifies in the Complaint, “an amount in excess of \$261,000,” do not flow from the breach complained of, as required to recover for breach of contract. **Ex. A, ¶ 107.** Stated differently, Dulberg has failed to sufficiently plead, and there are no set of facts in which he can plead, that the relief Dulberg seeks was proximately caused by the change in terms pertaining to certain language under sections of the unsigned agreement and/or Allstate’s alleged breach of the provision pertaining to “Amendments to the Agreement” of the Binding Mediation Agreement, which is a necessary and essential component of proving the fourth element of a breach of contract claim. Both the unsigned agreement, even if valid, and the Binding Mediation Agreement contained the high/low agreement, limiting Allstate’s obligations to a maximum amount of \$300,000 and \$3,500 in mediation costs. **Exs. A-6B, A-11.** Additionally, the difference in terms pertaining to the ADR Systems Fee Schedule between the unsigned agreement and the Binding Mediation Agreement have no bearing on the parameters of the high/low agreement and the mediation costs under both agreements. **Exs. A-6B, A-11.** Thus, there are no damages flowing from any purported breach.

In sum, there is no genuine issue of material fact precluding the entry of summary judgment

in favor of Allstate. There are no set of facts under which Dulberg can prove a breach of the Binding Mediation Agreement, which is the only valid and enforceable contract here. Thus, Allstate is entitled to summary judgment on Count V of the Complaint.

## **II. The Release affirmatively bars Dulberg's breach of contract claim against Allstate**

Alternatively, and without prejudice to the foregoing, the Release executed by Dulberg, individually, and the Trustee of the Bankruptcy Estate, plainly and unambiguously precludes the instant breach of contract claim, and any other claims, demands, damages, costs, expenses, loss of services, actions and causes of action, against Allstate in connection with the Personal Injury Claim that was the subject of the Binding Mediation.

“A release ‘is the abandonment of a claim to the person against whom the claim exists.’” *Goodman v. Hanson*, 408 Ill. App. 3d 285, 292 (1st Dist. 2011) (citations omitted). Because a release is a contract, general principles of contract law govern a release. *SADA 2400 Ogden, LLC v. 2400 Ogden Ave.—10041667 LLC*, 2021 WL 795011, at \*1 (N.D. Ill. Mar. 2, 2021), appeal dismissed, 2021 WL 5576346 (7th Cir. Aug. 26, 2021); *see also Carona v. Ill. Cent. Gulf R. Co.*, 203 Ill. App. 3d 947, 951 (5th Dist. 1990) (“A release is a contract wherein a party relinquishes a claim to a person against whom the claim exists, and a release is subject to the rules governing the construction of contracts”).

The “‘primary objective in construing a contract is to give effect to the intent of the parties. A court must initially look to the language of a contract alone, as the language, given its plain and ordinary meaning, is the best indication of the parties’ intent.’” *Id.* (quoting *Gallagher v. Lenart*, 226 Ill. 2d 208, 232-33 (2007) (citations omitted)). To be enforceable, the terms of a contract must be clear, certain and free from ambiguity and doubt. *Rakowski v. Lucente*, 104 Ill. 2d 317, 323 (1984). Where the terms of a release are clear and explicit, the Court must enforce them as written.

*Id.* Additionally, “[a] release must be based upon consideration, consisting of either some right, interest, or benefit accruing to one party, or some forbearance or detriment suffered or undertaken by the other.” *King v. Gerber Realty, Inc.*, 2022 IL App (1st) 211189, ¶ 33 (citing *White v. Village of Homewood*, 256 Ill. App. 3d 354, 356-57 (1st Dist. 1993)). ““Illinois courts read general releases to include claims of which the parties were aware at the time of the release’s execution.”” *SADA 2400 Ogden, LLC* 2021 WL 795011, at \*4 (quoting *Capocy v. Kirtadze*, 183 F. 3d 629, 632 (7th Cir. 1999)).

Here, a clear indication of the parties’ intent with respect to the Release is illustrated by the fact that the plain language of the Release provides, Dulberg “release[s] and forever discharge[s] Allstate . . .” but “DOES NOT release any claims involving The Law Offices of Thomas J. Popovich, P.C., Thomas J. Popovich, individually, Hans A. Mast, individually, Brad J. Balke, P.C., and Brad J. Balke individually” (emphasis in original). **Ex. D-1.** In consideration of \$300,000, undisputedly paid, Dulberg agreed to release and forever discharge Allstate from “any and all claims, demands, damages, costs, expenses, loss of services, actions and causes of action, arising from any act or occurrence up to the present time and . . . on account of all . . . loss or damages of any kind already sustained” or that the Bankruptcy Estate or Dulberg “may hereafter sustain in consequence of” the Personal Injury Claim. **Ex. D-1.**

The Release also unambiguously provides that as “further consideration and inducement,” the Release “shall apply to all unknown and unanticipated injuries and damages” resulting from the Personal Injury Claim. *Id.* By executing the Release, Dulberg acknowledged that he was agreeing to “indemnify, defend and hold harmless . . . [Allstate] . . . for any and all losses, claims, demands or causes of action, and any damages, judgments, fees, expenses, costs (including interest) of any nature whatsoever paid and incurred as a result of any breach” of any and all

agreements and covenants comprising the Release. *Id.* Additionally, and immediately above the signature line that Dulberg ultimately affixed his signature to, is a disclaimer that reads, “**CAUTION-READ BEFORE SIGNING**” (emphasis in original). Dulberg admits to executing the Release and that the Release “speaks for itself.” **Ex. C**, ¶ 1. Thus, it serves to bar the present action against Allstate.

Further, the Bankruptcy Estate has retained the consideration received under the Release, clearly benefitting from the same. The instant lawsuit and breach of contract claim against Allstate undoubtedly arises as a consequence of the Personal Injury Claim that was the sole subject of the Binding Mediation and the Binding Mediation Agreement (even the unsigned agreement) and which was specifically contemplated in the Release. This is obvious from the fact that the unsigned agreement and the Binding Mediation Agreement are central to Dulberg’s claim in Count V of the Complaint, coupled with the fact that the damages sought are the difference between the agreed upon high/low agreement and the mediation award.

Significantly, even if it could be shown that Allstate breached the Binding Mediation Agreement, which Allstate disputes, at the time Dulberg executed the Release, Dulberg knew and was aware of the facts underlying the current breach of contract claim against Allstate. As pleaded in the Complaint, Dulberg knew the amount he was awarded by the mediator in connection with the Binding Mediation (\$561,000) and the maximum amount he could receive of said award in accordance with the high/low agreement of the Binding Mediation Agreement (\$300,000) prior to executing the Release. As such, Dulberg has effectively “pleaded [himself] out of court” with respect to any claim, demand, etc. against Allstate. **Ex. A**, ¶ 67; *SADA 2400 Ogden, LLC* 2021 WL 795011, at \*5. Therefore, Allstate is entitled to summary judgment on Count V of the Complaint as a matter of law.

## **CONCLUSION**

For the foregoing reasons, Allstate prays that this Court grant summary judgment in Allstate's favor on Count V of the Complaint and for all such further relief that the Court deems just and proper.

Respectfully submitted,

ALLSTATE PROPERTY AND CASUALTY  
INSURANCE COMPANY

By: /s/ Michelle E. Tinajero  
One of Its Attorneys

Christine V. Anto  
Michelle E. Tinajero  
AMUNDSEN DAVIS, LLC – Firm I.D. No. 42907  
150 North Michigan Avenue, Suite 3300  
Chicago, Illinois 60601  
T: (312) 894-3200  
[canto@amundsendavislaw.com](mailto:canto@amundsendavislaw.com)  
[mtinajero@amundsendavislaw.com](mailto:mtinajero@amundsendavislaw.com)