

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PHILIP ANGELL, STEVEN BROWN,
TONNIE BECK, TAMMY MORRIS, and
DAWN BURNHAM, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

GEICO ADVANTAGE INSURANCE
COMPANY, GEICO INDEMNITY
COMPANY, GOVERNMENT
EMPLOYEES INSURANCE COMPANY,
GEICO COUNTY MUTUAL INSURANCE
COMPANY, and GEICO CHOICE
INSURANCE COMPANY,

Defendants.

CASE NO.:

Class Action

CLASS ACTION COMPLAINT FOR DAMAGES

Plaintiffs Philip Angell, Steven Brown, Tonnie Beck, Tammy Morris, and Dawn Burnham, individually and on behalf of all others similarly situated, file this Class Action Complaint against Defendants GEICO Advantage Insurance Company (“GEICO Advantage”), GEICO Indemnity Company (“GEICO Indemnity”), Government Employees Insurance Company (“Government Employees”), GEICO County Mutual Insurance Company (“GEICO County”), and GEICO Choice Insurance Company (“GEICO Choice”) (collectively, “Defendants” or “GEICO”), and in support thereof state the following:

NATURE OF THE ACTION

1. This is a class action lawsuit by Plaintiffs who were named insureds under separate (but materially identical) Texas GEICO private passenger auto policies (the “Policies”) issued for

physical damage including comprehensive and collision coverage. The Policies required payment of “actual cash value” (“ACV”) in the event of a total loss. GEICO systematically underpaid Plaintiffs and thousands of other putative class members amounts owed to its insureds pursuant to their promise to pay the ACV of total loss vehicles insured with comprehensive and collision coverage.

2. The Policies of all GEICO Defendants insuring Plaintiffs and all putative class members have identical material language relating to all claims in this lawsuit. All of the GEICO Defendants’ Texas policies define ACV as “the replacement cost of the auto or property less depreciation and/or betterment.” Plaintiffs attach, as Exhibit A, a GEICO Texas private passenger auto policy form that contains the material policy language providing coverage on first-party physical damage total loss claims. (Ex. A, Policy form, at 10¹, hereafter “the Policy”). The material Policy language is in all of the Policies, and is materially the same with regard to all claims against all Defendants alleged herein.

3. GEICO has breached its Policies on first-party total loss claims by failing to pay the “replacement costs” mandated by Texas law, including sales tax, title transfer fees (“Title Fees”), and fees for registration, inspection, and emissions (“Registration Fees”).

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), because: (a) the Plaintiffs are members of the putative class, which consists of at least 100 members and Plaintiffs and/or putative class members and Defendants are citizens of different states; (b) the amount-in-controversy exceeds \$5 million dollars exclusive of interest and costs; and (c) none of the exceptions under § 1332 apply to this claim.

¹ All page cites to the Policy form are to the pdf, exhibit page number and not the internal page number on the Policy itself.

5. Venue is proper in this Court because a substantial portion of the acts and course of conduct giving rise to the claims alleged occurred within the district and the Defendants are subject to personal jurisdiction in this district.

THE PARTIES

6. At all times material hereto, Plaintiff Philip Angell is and was a person domiciled and residing in Harris County, Texas, and a citizen of the State of Texas. Plaintiff Brown's total loss claim was insured by GEICO Indemnity.

7. At all times material hereto, Plaintiff Steven Brown is and was a person domiciled and residing in Travis County, Texas, and a citizen of the State of Texas. Plaintiff Angell's total loss claim was insured by GEICO Advantage.

8. At all times material hereto, Plaintiff Tonnie Beck is and was a person domiciled and residing in Harris County, Texas, and a citizen of the State of Texas. Plaintiff Beck's total loss claim was insured by Government Employees.

9. At all times material hereto, Plaintiff Tammy Morris is and was a person domiciled and residing in Harris County, Texas, and a citizen of the State of Texas. Plaintiff Morris's total loss claim was insured by GEICO County.

10. At all times material hereto, Plaintiff Dawn Burnham is and was a person domiciled and residing in Travis County, Texas, and a citizen of the State of Texas. Plaintiff Burnham's total loss claim was insured by GEICO Choice.

11. At all times material hereto, GEICO Advantage is and was a foreign corporation domiciled in the State of Nebraska and authorized to transact insurance in the State of Texas. GEICO Advantage's principal place of business and headquarters are both located in the State of Maryland.

12. At all times material hereto, GEICO Indemnity is and was a foreign corporation domiciled in the State of Maryland and authorized to transact insurance in the State of Texas. GEICO Indemnity's principal place of business and headquarters are both located in the State of Maryland.

13. At all times material hereto, Government Employees is and was a foreign corporation domiciled in the State of Maryland and authorized to transact insurance in the State of Texas. Government Employees's principal place of business and headquarters are both located in the State of Maryland.

14. At all times material hereto, GEICO County is and was a corporation domiciled in the State of Texas and authorized to transact insurance in the State of Texas. GEICO County's principal place of business and headquarters are both located in the State of Texas.

15. At all times material hereto, GEICO Choice is and was a foreign corporation domiciled in the State of Nebraska and authorized to transact insurance in the State of Texas. GEICO Choice's principal place of business and headquarters are both located in the State of Maryland.

FACTUAL ALLEGATIONS

16. Defendants' insured Plaintiffs and all putative class members during the class period under Texas private passenger auto insurance policies (the "Policies") providing coverage for physical damage.

17. All of the Policies during the class period have policy terms with materially identical policy provisions relating to the physical damage coverage provided on total loss claims.

18. The policy language insuring the total losses of Plaintiffs and every putative Class Member is the same in all material respects.

19. GEICO Indemnity, GEICO Advantage, GEICO Choice, and GEICO County are all subsidiaries of Government Employees. All Defendants operate under the GEICO brand, insure under the same policy forms, and have the same practices and procedures with regard to insuring and adjusting total loss claims.

I. TOTAL LOSS DETERMINATION.

20. When insureds suffer damage (or loss) to a vehicle caused by a covered peril, GEICO determines the costs necessary to repair the damage to the vehicle, which might include replacement of component parts of the vehicle, paint, repair labor, and other expenses.

21. If the amount required to repair the vehicle (plus any salvage value) exceeds the value of the vehicle *prior to the loss* (or as if the loss had not occurred at all), GEICO determines the vehicle to be a “total” or complete loss.

22. The Policies require GEICO to cover first-party total loss claims by paying the ACV of the total-loss vehicle, which is “the replacement cost of the auto or property less *depreciation* and/or *betterment*.” (Ex. A, Policy form, at 10) (emphasis added.)

23. In Texas, the costs necessary to replace a vehicle includes the base value of the vehicle plus sales tax, Title Fees, Registration Fees, and Inspection Fees.

24. GEICO pays the underlying value of the total-loss vehicle as part of the ACV payment to insureds. GEICO determines the underlying vehicle by determining the cost to purchase a similar vehicle. GEICO thus acknowledges that the underlying value is, at minimum, reasonably necessary replacement costs.

25. GEICO pays Title Fees on many claims as part of the ACV payment to total loss insureds, evidencing GEICO’s acknowledgement that Title Fees are, at minimum, reasonably

necessary replacement costs. GEICO determines the location or residence of the insured, and includes either \$28 or \$33 in Title Fees, depending on the county.

26. On many claims, GEICO pays sales tax as part of the ACV payment to insureds, indicating GEICO's acknowledgement that sales tax is, at minimum, a reasonably necessary replacement cost. GEICO determines the location or residence of the insured, and applies sales tax at the applicable rate depending on the county (state rate plus any local or county surtax) to the adjusted vehicle value of the total-loss vehicle.

27. In some claims, however, GEICO does *not* include sales tax as part of the ACV payment to insureds, even though the *exact* same Policy language applies to all insureds, and even though the Policy does not include any language permitting it to distinguish between vehicles for purposes of its contractual obligations.

28. Moreover, GEICO does not pay Registration Fees as part of the ACV payment to insureds, even though Registration Fees are necessary to replace a vehicle in the same way as underlying value, sales tax, and Title Fees.

29. GEICO's failure to pay sales tax, Title Fees, and/or Registration Fees is a breach of the Policy obligation to pay replacement costs (less depreciation/betterment) to insureds who suffer a total loss of their insured vehicle.

30. GEICO's failure is part of a uniform business practice applicable to all putative class members.

II. THE GEICO INSURANCE POLICY.

31. The Policies include the following coverage provisions applicable to all claims asserted herein.

32. The Policies provide comprehensive and collision coverage with a coverage limit of ACV.

33. The Policies define ACV, betterment, and depreciation as follows:

1. “**Actual cash value** is the replacement cost of the auto or property less **depreciation** and/or **betterment**.”

2. “**Betterment** is improvement of the auto or property to a value greater than its pre-loss condition.”

...

6. “**Depreciation** means a decrease or loss in value to the auto or property because of use, disuse, physical wear and tear, age, outdatedness, or other causes.”

(Ex. A, Policy form at 10.)²

34. The Policies provide as follows relating to PPA physical damage comprehensive and collision coverage:

3. **Collision** means the upset of **your covered auto** or **non-owned auto**; or collision with another object including an attached vehicle.

4. **Comprehensive** means **loss** caused other than by **collision** and includes but is not limited to the following causes:

- a. Missiles or falling objects;
- b. Fire;
- c. Theft or larceny;
- d. Explosion or earthquake;
- e. Windstorm;
- f. Hail, water or flood;
- g. Malicious mischief or vandalism;
- h. Riot or civil commotion;
- i. Contact with bird or animal; or
- j. Breakage of glass.

If breakage of glass is caused by a **collision** or if **loss** is caused by contact with a bird or animal, **you** may elect to have it considered a **loss** caused by **collision**.

² All bold and/or italics are in the original Policy.

35. The Policies provide the following limit of liability for PPA physical damage coverage:

LIMIT OF LIABILITY

1. Our limit of liability for *loss* will be the lesser of the:
 - a. *Actual cash value* of the stolen or damaged property;
 - b. Amount necessary to repair or replace the property with other of like kind and quality; or
 - c. Amount stated in the Declarations of this policy.
2. Our limit of liability for *loss* to a *trailer* not owned by *you* is \$500.
3. Our limit of liability for *loss* to personal effects arising out of one occurrence is \$200.
4. Our limit of liability for glass repair or replacement is limited to the prevailing competitive price. Although *you* have the right to choose any glass repair facility or location, the limit of liability for *loss* to window glass is the cost to repair or replace such glass but will not exceed the prevailing competitive price. This is the price we can secure from a competent and conveniently located glass repair facility. At *your* request, we will identify a glass repair facility that will perform the repairs at the prevailing competitive price. We will not apply the applicable deductible if the glass *loss* is repaired rather than replaced.
5. Our limit of liability for *custom parts or equipment* is limited to the *actual cash value* of the *custom parts or equipment*, not to exceed the *actual cash value* of the vehicle.

Our payment for *loss* will be reduced by any applicable deductible shown in the Declarations.

(*Id.* at 11.)

36. The Policies define **Loss** as follows:

DEFINITIONS

...

8. *Loss* means direct and accidental loss of or damage to:
 - a. The auto, including its equipment; or
 - b. Other insured property.

(*Id.* at 10.) The Policies' definition of **Loss** applies to both collision and comprehensive coverage.

37. The Policies define **covered auto** as follows:

DEFINITIONS SECTION

...

10. ***Your covered auto*** means:
- (a) Any vehicle shown in the Declarations;
 - (b) Any ***trailer you*** own.
 - (c) ***Temporary substitute auto***
 - (d) Any of the following types of vehicles on the date ***you*** became the owner or enter into a lease for a term of six months or more during the policy period:
 - 1. A ***private passenger auto***; or
 - 2. A utility type vehicle, with a G.V.W. of 25,000 lbs. or less, of the pickup body, sedan delivery, panel truck, van type and multi-use type, not used for the delivery or transportation of goods, materials or supplies other than samples; unless,
 - i. The delivery of goods, materials or supplies is not the primary usage of the vehicle; or
 - ii. Used for farming or ranching;

(*Id.* at 3.)

38. The Policies do not define “total loss.”

39. The Policies do not expressly reference the mandatory vehicle replacement costs of base vehicle value, sales tax, Title Fees, or Registration/Inspection Fees, but such replacement costs fall within the definition of ACV.

40. The Policies require GEICO to provide the same coverage for total losses under both comprehensive and collision coverage provisions.

41. The Policy contains no provision excluding sales tax or state and local regulatory fees from ACV.

42. The Policy defines “covered auto” as any vehicle listed in the declaration without distinction whether owned or leased. Policy at 3. The Policies coverage provisions are the same for all covered autos, regardless of whether the covered auto is owned without lien, financed, or leased.

43. Texas law requires payment of sales tax, Title Fees, Registration Fees and Inspection Fees on all vehicles, regardless of whether the vehicle is owned without lien, financed, or leased.

44. Texas law is clear that ACV includes costs reasonably likely to be incurred in property replacement. *Ghoman v. N.H. Ins. Co.*, 159 F. Supp. 2d 928, 934 (N.D. Tex. 2001) (Actual cash value is market value and “means repair or replacement costs less depreciation.”); *Tolar v. GEICO Tex. Lloyd's Co.*, 772 F. Supp. 2d 825 (N.D. Tex. 2011) (noting that Texas courts define ACV as “cost of replacement minus depreciation” and holding that it is “settled law” that insurers may not deduct sales tax from ACV payments). In *Ghoman*, the court easily concluded that “replacement costs” means any costs likely to be incurred in replacement, including, among other things, sales tax. *Ghoman* at 934.

A. Sales Tax Is A Mandatory Replacement Cost, Even for Leased Vehicles.

45. Sales tax is imposed on every vehicle transaction and is reasonably likely to be incurred upon replacement of the total-loss vehicle. It is for this reason that GEICO pays sales tax on the large majority of its total loss claims, which involve non-leased vehicles.

46. GEICO does not pay sales tax on leased vehicle total loss claims, however, even though (1) sales tax is a mandatory cost for the replacement of any leased vehicle; (2) the Policies treat leased and non-leased vehicles the same; (3) GEICO charges the same premiums for leased and non-leased vehicles; (4) GEICO provides no notice to leased vehicle insureds that they will receive substantially less in coverage on their total loss claims (compared with non-leased vehicles) while paying the same premiums as non-leased vehicles.

47. Texas imposes a sales tax of 6.25% on every leased vehicle. As such, sales tax is part of the replacement cost of leased vehicles, as well as non-leased vehicles. The Policies thus require payment of sales tax on leased vehicle total loss claims.

B. Title Fees are a Mandatory Replacement Cost.

48. Texas law imposes a mandatory title fee of either \$28.00 or \$33.00 (depending on the county) on the purchase of any vehicle, including, necessarily, the purchased replacement of a total loss vehicle. Tex. Stat. § 501.138(1). It is illegal in Texas to drive a vehicle on the road until the owner has applied for title and paid the fee imposed thereon. Tex. Stat. § 501.022. GEICO appears to properly pay title fees as part of ACV on most total loss claims because such fees are a mandatory replacement cost.

C. Registration Fees are a Mandatory Replacement Cost.

49. Texas law also makes it illegal to drive a vehicle without proper registration or tag. When a vehicle is sold, any existing registration expires, and the buyer must secure new registration. Texas imposes a fee of \$50.75 on the registration, and various counties impose additional fees ranging from \$10.00 to \$31.50.

50. Every vehicle in Texas must pass a yearly inspection (which must be proved prior to registration) for safety and, in some counties, for emissions, which range from \$7.50 to \$14.25.

51. When a vehicle is damaged, resulting in a total-loss, the valid registration and inspection on the vehicle is terminated. When insureds replace their total loss vehicles from a dealer, they must pay new Registration Fees rather than transferring the (now void) registration and inspection confirmations from the total-loss vehicle, the amounts of which are the previously-mentioned flat rates imposed by state and county depending on location. When insureds replace their total loss vehicles from a non-dealer private citizen, the insureds may pay a \$2.50 fee to

transfer the existing registration paid for by the seller into the consumer's own name, if the car is properly registered (otherwise, the consumer must pay the previously-mentioned Registration Fees to register and inspect the vehicle).

52. Many insurers, including State Farm, pay the Registration Fees on Texas first-party total loss claims because such fees are in fact part of the replacement cost on a total loss vehicle. GEICO pays no amounts for registration fees in violation of the Policies.

D. Plaintiffs' Total Loss Claims.

i. Plaintiff Brown.

53. Plaintiff Steven Brown insured his 2016 Toyota Tacoma SR5 under a Policy issued by GEICO Indemnity.

54. On or about July 16, 2018, Plaintiff Brown's insured vehicle was involved in a collision, after which he filed a claim for property damage with GEICO Indemnity, claim number 0345758350101173-01.

55. GEICO Indemnity determined that the vehicle was a total loss with an adjusted vehicle value of \$21,731.95. The adjusted vehicle value was based on the cost to purchase a replacement vehicle (but not including mandatory fees such as sales tax, Title Fees, and Registration Fees).

56. GEICO Indemnity issued payment on Plaintiff Brown's claim of \$21,264.95, which included Title Fees of \$33.00, and a subtracted deductible of \$500.00, for a total of \$21,264.95.

57. GEICO Indemnity breached the Policy by not including any amount for replacement costs of sales tax or Registration Fees in its ACV payment.

58. GEICO Indemnity thus did not pay Plaintiff Brown the full ACV of his insured vehicle.

59. Plaintiff Brown did not receive what he bargained for and what was owed due to the total loss of the insured vehicle.

60. GEICO Indemnity's underpayment constituted a breach of the insurance contract.

61. Plaintiff Brown paid all premiums owed and otherwise satisfied all conditions precedent such that the insurance policy was in effect and operational at the time of the collision.

ii. Plaintiff Angell.

62. Plaintiff Angell insured a 2015 Lexus RC 350 under the Policy issued by GEICO Advantage.

63. On or about August 27, 2017, Plaintiff Angell's insured vehicle was involved in a collision, after which Plaintiff Angell filed a claim for property damage with GEICO, claim number 0486329120101023-01.

64. GEICO determined that Plaintiff Angell's insured vehicle was a total loss with an adjusted vehicle value of \$40,580.00. The adjusted vehicle value was based on the cost to purchase a replacement vehicle (but not including mandatory fees such as sales tax, Title Fees, and Registration Fees).

65. GEICO Advantage added and included in its payment \$2289.75 in sales tax and \$33.00 in Title Fees, while subtracting the deductible of \$500.00, for a total of \$42,402.75.

66. GEICO Advantage did not include any amount for Registration Fees in making the ACV payment to Plaintiff Angell, notwithstanding that Registration Fees are reasonably necessary to replace a vehicle in Texas. GEICO Advantage also underpaid sales tax, because the adjusted vehicle value (\$40,580.00) X the sales tax rate (6.25%) equals \$2536.25, yet GEICO only paid \$2289.75 in sales tax.

67. By not paying the full ACV of the insured vehicle, GEICO Advantage breached its contract with Plaintiff Angell.

68. Plaintiff Angell paid all premiums owed and otherwise satisfied all conditions precedent such that the insurance policy was in effect and operational at the time of the collision.

69. Plaintiff Angell also insured a 2007 Lexus Rx 350 under the Policy issued by GEICO Advantage.

70. On or about August 27, 2017, Plaintiff Angell's insured vehicle was involved in an accident, after which Plaintiff Angell filed a claim for property damage with GEICO, claim number 0486329120101015-01.

71. GEICO determined that Plaintiff Angell's insured vehicle was a total loss with an adjusted vehicle value of \$14,395.00. The adjusted vehicle value was based on the cost to purchase a replacement vehicle (but not including mandatory fees such as sales tax, Title Fees, and Registration Fees).

72. GEICO Advantage added and included in its payment \$889.69 in sales tax and \$33.00 in Title Fees, while subtracting the deductible of \$500.00, for a total of \$14,827.69.

73. GEICO Advantage did not include any amount for Registration Fees in making the ACV payment to Plaintiff Angell, notwithstanding that Registration Fees are reasonably necessary to replace a vehicle in Texas.

74. By not paying the full ACV of the insured vehicle, GEICO Advantage breached its contract with Plaintiff Angell.

75. Plaintiff Angell paid all premiums owed and otherwise satisfied all conditions precedent such that the insurance policy was in effect and operational at the time of the collision

iii. Plaintiff Beck.

76. Plaintiff Beck insured a 2015 Ford Escape under the policy issued by Government Employees.

77. On or about August 29, 2017, Plaintiff Beck's insured vehicle was involved in a collision, after which Ms. Beck filed a claim for property damage, claim number 0362137210101061-01.

78. GEICO determined that the vehicle was a total loss with an adjusted vehicle value of \$12,445.00. The adjusted vehicle value was based on the cost to purchase a replacement vehicle (but not including mandatory fees such as sales tax, Title Fees, and Registration Fees).

79. Government Employees then added sales tax of \$777.81 and Title Fees \$33.00, while subtracting the deductible of \$500.00, for a total of \$12,755.81.

80. Government Employees did not include any amount for Registration Fees in making the ACV payment to Plaintiff Beck, notwithstanding that Registration Fees are reasonably necessary to replace a vehicle in Texas.

81. By not paying the full ACV of the insured vehicle, Government Employees breached its contract with Plaintiff Beck.

82. Plaintiff Beck paid all premiums owed and otherwise satisfied all conditions precedent such that the insurance policy was in effect and operational at the time of the collision.

iv. Plaintiff Morris.

83. Plaintiff Morris insured a 2007 BMW 550I under the policy issued by GEICO County.

84. On or about August 14, 2016, the insured vehicle was involved in a collision, after which Plaintiff Morris filed a claim for property damage, claim number 055430122-0101-051.

85. Following the filing of said claim, GEICO determined that the vehicle was a total loss with an adjusted vehicle value of \$9,212.00. The adjusted vehicle value was based on the cost to purchase a replacement vehicle (but not including mandatory fees such as sales tax, Title Fees, and Registration Fees).

86. GEICO County then added sales tax of \$575.75 and Title Fees \$33.00, while subtracting the deductible of \$501.00, for a total of \$9,319.75.

87. However, GEICO County did not include any amount for Registration Fees in making the ACV payment to Plaintiff Morris, notwithstanding that Registration Fees are reasonably necessary to replace a vehicle in Texas.

88. By not paying the full ACV of the insured vehicle, GEICO County breached its contract with Plaintiff Morris.

89. Plaintiff Morris paid all premiums owed and otherwise satisfied all conditions precedent such that the insurance policy was in effect and operational at the time of the collision.

v. Plaintiff Burnham.

90. Plaintiff Burnham insured a 2012 Chevrolet Cruze LS under the policy issued by GEICO Choice.

91. On or about April 21, 2017, Plaintiff Burnham's insured vehicle was involved in a collision, after which Plaintiff Burnham filed a claim for property damage, claim number 0274966150101054-01.

92. GEICO determined that the vehicle was a total loss with an adjusted vehicle value of \$9,026.50. The adjusted vehicle value was based on the cost to purchase a replacement vehicle (but not including mandatory fees such as sales tax, Title Fees, and Registration Fees).

93. GEICO Choice then added sales tax of \$564.16 and Title Fees \$33.00, while subtracting the deductible of \$500.00, for a total of \$9,123.66.

94. However, GEICO Choice did not include any amount for Registration Fees in making the ACV payment to Plaintiff Burnham, notwithstanding that Registration Fees are reasonably necessary to replace a vehicle in Texas.

95. By not paying the full ACV of the insured vehicle, GEICO Choice breached its contract with Plaintiff Burnham.

96. Plaintiff Burnham paid all premiums owed and otherwise satisfied all conditions precedent such that the insurance policy was in effect and operational at the time of the collision.

97. GEICO's practices and procedures are to not pay all of sales tax, Title Fees, and Registration Fees on Texas first-party total loss claims.

98. The aforementioned breaches of contract triggers an obligation by Defendants to pay 18% interest on all unpaid amounts paid on the claim under Section 542 of the Texas Insurance Code, plus attorneys' fees.

CLASS ALLEGATIONS

99. Plaintiffs bring this action seeking representation of the below-defined class pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

100. Plaintiffs are members of and seek to represent the following class ("Class"):

All insureds, under any Texas policy issued by GEICO with the same material operative policy language covering a vehicle with auto physical damage coverage, who 1) made a first-party auto property damage claim during the time period of 4 years prior to the filing of this Complaint to the date on which an Order certifying the class is entered, 2) where such vehicle was declared a total loss, 3) whose claim was adjusted as a total loss, and 4) where the total loss payment was for an amount less than the adjusted vehicle value, plus sales tax calculated as the applicable percentage of the adjusted vehicle value, applicable Title Fees, and applicable Registration Fees, less any applicable deductible and salvage-retained value.

101. Plaintiffs are members of the Class, because a) each Plaintiff made a claim under a Texas Policy issued by the respective GEICO defendant, all of which contained the same operative policy language and which included auto physical damage coverage, b) each Plaintiff made a first-party claim during the relevant time period, c) each Plaintiff's vehicle was declared to be and adjusted as a total loss, and d) each Plaintiff received a total-loss payment for less than the adjusted vehicle value, plus sales tax on the adjusted vehicle value, applicable Title Fees, and applicable Registration Fees, less applicable deductible and salvage-retained value.

102. **Numerosity**: Although the precise number of members of the class are unknown to Plaintiffs at this time and can only be determined through appropriate discovery, Plaintiffs believe that because GEICO (and each Defendant individually) are large motor vehicle insurers in the State of Texas and write tens of millions of dollars of annual physical damage coverage premiums, the class of persons affected by Defendants' unlawful practice consists of tens of thousands of Class members (and thousands of class members for each Defendant. The Class for each Defendant is so numerous that joinder of all class members is impractical. The unlawful practice alleged herein is a standardized and uniform practice, employed by GEICO pursuant to standardized insurance policy language, and results in the retention by GEICO of insurance benefits and monies properly owed to Plaintiffs and the Class Members. Thus, numerosity under Rule 23(a)(1) is established.

103. **Commonality**: Plaintiffs' claims raise questions of law and fact common to all members of the Classes under Rule 23(a)(2). Said common questions include, but are not limited to, the following: (a) whether, under Defendants' standardized policy language, Plaintiffs and the Class Members are owed full sales tax and Registration Fees necessary to replace a total-loss insured vehicle; (b) whether such amounts are elements of ACV, defined as the "replacement cost"

less depreciation/betterment of the insured vehicles; and (c) whether GEICO breached its insurance contracts with the Plaintiffs and every member of the Class by failing to pay such amounts.

104. The central issues in this litigation turn on interpretation of materially identical policy provisions; thus, this case is well-suited for class-wide adjudication. GEICO and all members of the Class are bound by materially identical policy terms.

105. **Typicality:** Plaintiffs' claims are typical to those of members of the respective Classes under the meaning of Rule 23(a)(3) because members of the Class are similarly affected by GEICO's failure to pay full ACV of the insured vehicles. The material and relevant policy terms for each Class Member are substantially identical to the terms of Plaintiffs' policies. Plaintiffs' claims are not unique from those of the members of the Class, nor are they subject to unique affirmative defenses. By pressing their own claims, Plaintiffs necessarily press the substantively-identical claims of Class Members.

106. Plaintiffs' claims are typical of the claims of all Class Members because all such claims arise from the allegedly improper failure by Defendant to pay all of sales tax, Title Fees, and Registration Fees upon the total loss of insured vehicles. Plaintiffs and Class Members were injured through Defendants' uniform misconduct. Plaintiffs' claims are based upon the same legal theories as those of the Class Members. Plaintiffs suffered the same harm as all the other Class Members: the coverage for sales tax and regulatory fees that Defendants failed to pay its insureds.

107. **Adequacy:** Plaintiffs and their counsel will fairly and adequately protect and represent the interests of each member of the class, pursuant to Rule 23(a)(4). Plaintiffs do not possess any interest adverse to those of the Class Members. Plaintiffs are committed to the vigorous prosecution of this action and retained competent counsel experienced in prosecuting and

defending class actions. Plaintiffs are committed to zealously protecting the interests of the members of the respective Classes.

108. Plaintiffs' counsel are also adequate representatives under the meaning of Rule 23(a)(4). The undersigned counsel collectively litigated thousands of first-party insurance claims under the Texas Insurance Code. Plaintiffs' counsel also associated other counsel (who intend to apply for admission *pro hac vice*) who successfully litigated class action cases similar to that here, where insurers breached contracts with insureds by failing to include sales tax, Title Fees, and/or Registration Fees.

109. **Superiority**: Pursuant to Rule 23(b)(3), a class action is superior to the other available methods for a fair and efficient adjudication of the controversy because, among other reasons, it is desirable to concentrate the litigation of the Class Members' claims in one forum, as it will conserve party and judicial resources and facilitate the consistency of adjudications. Furthermore, because the damages suffered by individual Class Members is relatively small, their interests in maintaining individual actions is questionable and the expense and burden of individual litigation makes it impracticable for Class Members to seek individual redress for the wrongs done to them. Plaintiffs know of no difficulty that would be encountered in the management of this case that would preclude its maintenance as a class action.

110. The issues related to Plaintiffs' claims do not vary from the issues relating to the claims of the other Class Members, such that a class action provides a more efficient vehicle to resolve this claim than through a myriad of separate lawsuits.

111. Certification of the above class is also supported by the following considerations:

- a. The relatively small amount of damages that members of the class have suffered on an individual basis would not justify the prosecution of separate lawsuits;

- b. Counsel in this class action is not aware of any previously filed litigation against the Defendants in which any of the members of the class are a party and where any question of law or fact in the subject action can be adjudicated; and
- c. No difficulties would be encountered in the management of the claim on a class action basis, because the class is readily definable and the prosecution of this class action would reduce the possibility of repetitious litigation.

105. **Predominance**: Rule 23(b)(3)'s predominance requirement is also met because the previously articulated common issues of fact and law predominate over any question solely affecting individual Class Members. Resolution of the common questions in this litigation will resolve virtually all substantive questions critical to individual class member claims in a single stroke. Whether the materially-identical Policy language requires payment of sales tax, Title Fees, and/or Registration Fees is the dispositive question in this litigation, the answer to which is the same for all Class Members.

106. While damages for individual Class Members may be in different numerical amounts,³ the measure of damages is the same for all members of Class and for Plaintiffs, the application of which is a purely ministerial matter.

**COUNT I: Claim for Breach of Contract Against GEICO Indemnity
(brought by Plaintiff Brown on behalf of GEICO Indemnity Insureds)**

107. All allegations in paragraphs Nos. 1 - 106 are incorporated in this Count I by reference.

108. This count is brought by Plaintiff Brown, individually and on behalf of the Class of persons whose total loss claims were insured by GEICO Indemnity ("GEICO Indemnity Class Members").

³ This is because, taking Sales Tax as an example, 6.25% of 2017 Ferrari is likely a higher amount than 6.25% of a 1990 Honda.

109. Plaintiff Brown was party to an insurance contract with GEICO Indemnity as described herein. All GEICO Indemnity Class Members were parties to an insurance contract with GEICO Indemnity containing materially identical terms.

110. The interpretation of Plaintiff Brown and all GEICO Indemnity Class Members' insurance Policies is governed by Texas law.

111. Plaintiff Brown and all GEICO Indemnity Class Members made a claim determined by GEICO Indemnity to be a first-party total loss under the insurance policy, and determined to be a covered claim.

112. By paying the total loss claims, GEICO Indemnity determined that Plaintiff Brown and each Class Member complied with the terms of their insurance contracts, and fulfilled all duties and conditions under the Policies for each insured to be paid on his or her total loss.

113. Pursuant to the aforementioned uniform contractual provisions, upon the total loss of insured vehicles, Plaintiff Brown and every GEICO Indemnity Class Member were owed the ACV of the vehicle, which is the adjusted vehicle value, sales tax calculated as a percentage of the full adjusted vehicle value, applicable Title Fees (depending on their readily-identifiable location), applicable Registration Fees (depending on their readily-identifiable location), minus any applicable deductible and salvage-retained value.

114. GEICO Indemnity failed to pay the aforementioned amount to Plaintiff Brown and failed to pay the aforementioned amount to every GEICO Indemnity Class Member. At minimum, GEICO Indemnity failed to pay any Registration Fees at all, and thus necessarily failed to pay the required amount for that reason alone. In some cases, GEICO Indemnity also failed to pay sales tax calculated as the applicable sales tax rate as a percentage of the full adjusted vehicle value and Title Fees.

115. GEICO Indemnity's failure to provide coverage for the full ACV of insured vehicles constitutes a material breach of contract with Plaintiff Brown and every GEICO Indemnity Class Member.

116. As a result of said breaches, Plaintiff Brown and the GEICO Indemnity Class Members are entitled under the Policy to sums representing the benefits owed for the full ACV of the insured vehicle (offset by partial amount already paid), as well as costs, prejudgment and post judgment interest, injunctive and/or declaratory relief and other relief as is appropriate.

117. In addition, Plaintiff Brown and GEICO Indemnity Class Members are entitled to an award of attorneys' fees and costs.

**COUNT II: Claim for Breach of Contract Against GEICO Advantage
(brought by Plaintiff Angell on behalf of GEICO Advantage Insureds)**

118. All allegations in paragraphs Nos. 1 - 106 are incorporated into this Count II by reference.

119. This count is brought by Plaintiff Angell, individually and on behalf of the Class of persons whose total loss claims were insured by GEICO Advantage (GEICO Advantage Class Members).

120. Plaintiff Angell was party to an insurance contract with GEICO Advantage as described herein. All GEICO Advantage Class Members were parties to an insurance contract with GEICO Advantage containing materially identical terms.

121. The interpretation of Plaintiff Angell and all GEICO Advantage Class Members' insurance Policies is governed by Texas law.

122. Plaintiff Angell and all GEICO Advantage Class Members made a claim determined by GEICO Advantage to be a first-party total loss under the insurance policy, and determined to be a covered claim.

123. By paying the total loss claims, GEICO Advantage determined that Plaintiff Angell and each Class Member complied with the terms of their insurance contracts, and fulfilled all duties and conditions under the Policies for each insured to be paid on his or her total loss.

124. Pursuant to the aforementioned uniform contractual provisions, upon the total loss of insured vehicles, Plaintiff Angell and every GEICO Advantage Class Member were owed the ACV of the vehicle, which is the adjusted vehicle value, sales tax calculated as a percentage of the full adjusted vehicle value, applicable Title Fees (depending on their readily-identifiable location), applicable Registration Fees (depending on their readily-identifiable location), minus any applicable deductible and salvage-retained value.

125. GEICO Advantage failed to pay the aforementioned amount to Plaintiff Angell and failed to pay the aforementioned amount to every GEICO Advantage Class Member. At minimum, GEICO Advantage failed to pay any Registration Fees at all, and thus necessarily failed to pay the required amount for that reason alone. In some cases, GEICO Advantage also failed to pay sales tax calculated as the applicable sales tax rate as a percentage of the full adjusted vehicle value and Title Fees.

126. GEICO Advantage's failure to provide coverage for the full ACV of insured vehicles constitutes a material breach of contract with Plaintiff Angell and every GEICO Advantage Class Member.

127. As a result of said breaches, Plaintiff Angell and the GEICO Advantage Class Members are entitled under the Policy to sums representing the benefits owed for the full ACV of the insured vehicle (offset by partial amount already paid), as well as costs, prejudgment and post judgment interest, injunctive and/or declaratory relief and other relief as is appropriate.

128. In addition, Plaintiff Angell and GEICO Advantage Class Members are entitled to an award of attorneys' fees and costs.

**COUNT III: Claim for Breach of Contract Against Government Employees
(brought by Plaintiff Beck on behalf of Government Employees Insureds)**

129. The allegations in paragraphs Nos. 1 - 106 are incorporated into this Count III by reference.

130. This count is brought by Plaintiff Beck, individually and on behalf of the Class of persons whose total loss claims were insured by Government Employees (Government Employees Class Members).

131. Plaintiff Beck was party to an insurance contract with Government Employees. All Government Employees Class Members were parties to an insurance contract with Government Employees containing materially identical terms.

132. The interpretation of Plaintiff Beck and all Government Employees Class Members' insurance Policies is governed by Texas law.

133. Plaintiff Beck and all Government Employees Class Members made a claim determined to be a first-party total loss under the insurance policy, and determined to be a covered claim.

134. By paying the total loss claims, Government Employees determined that Plaintiff Beck and each Class Member complied with the terms of their insurance contracts, and fulfilled all duties and conditions under the Policies for each insured to be paid on his or her total loss.

135. Pursuant to the aforementioned uniform contractual provisions, upon the total loss of insured vehicles, Plaintiff Beck and every Government Employees Class Member were owed the ACV of the vehicle, which is the adjusted vehicle value, sales tax calculated as a percentage of the full adjusted vehicle value, applicable Title Fees (depending on their readily-identifiable

location), applicable Registration Fees (depending on their readily-identifiable location), minus any applicable deductible and salvage-retained value.

136. Government Employees failed to pay the aforementioned amount to Plaintiff Beck and failed to pay the aforementioned amount to every Government Employees Class Member. At minimum, Government Employees failed to pay any Registration Fees at all, and thus necessarily failed to pay the required amount for that reason alone. In some cases, Government Employees also failed to pay sales tax calculated as the applicable sales tax rate as a percentage of the full adjusted vehicle value and Title Fees.

137. Government Employees' failure to provide coverage for the full ACV of insured vehicles constitutes a material breach of contract with Plaintiff Beck and every Government Employees Class Member.

138. As a result of said breaches, Plaintiff Beck and the Government Employees Class Members are entitled under the Policy to sums representing the benefits owed for the full ACV of the insured vehicle (offset by partial amount already paid), as well as costs, prejudgment and post judgment interest, injunctive and/or declaratory relief and other relief as is appropriate.

139. In addition, Plaintiff Beck and Government Employees Class Members are entitled to an award of attorneys' fees and costs.

**COUNT IV: Claim for Breach of Contract Against GEICO County
(brought by Plaintiff Morris on behalf of GEICO County Insureds)**

140. The allegations in paragraphs Nos. 1 - 106 are incorporated into this Count IV by reference.

141. This count is brought by Plaintiff Morris, individually and on behalf of the Class of persons whose total loss claims were insured by GEICO County (GEICO County Class Members).

142. Plaintiff Morris was party to an insurance contract with GEICO Advantage as described herein. All GEICO County Class Members were parties to an insurance contract with GEICO County containing materially identical terms.

143. The interpretation of Plaintiff Morris and all GEICO County Class Members' insurance Policies is governed by Texas law.

144. Plaintiff Morris and all GEICO County Class Members made a claim determined to be a first-party total loss under the insurance policy, and determined to be a covered claim.

145. By paying the total loss claims, GEICO County determined that Plaintiff Morris and each Class Member complied with the terms of their insurance contracts, and fulfilled all duties and conditions under the Policies for each insured to be paid on his or her total loss.

146. Pursuant to the aforementioned uniform contractual provisions, upon the total loss of insured vehicles, Plaintiff Morris and every GEICO County Class Member were owed the ACV of the vehicle, which is the adjusted vehicle value, sales tax calculated as a percentage of the full adjusted vehicle value, applicable Title Fees (depending on their readily-identifiable location), applicable Registration Fees (depending on their readily-identifiable location), minus any applicable deductible and salvage-retained value.

147. GEICO County failed to pay the aforementioned amount to Plaintiff Morris and failed to pay the aforementioned amount to every GEICO County Class Member. At minimum, GEICO County failed to pay any Registration Fees at all, and thus necessarily failed to pay the required amount for that reason alone. In some cases, GEICO County also failed to pay sales tax calculated as the applicable sales tax rate as a percentage of the full adjusted vehicle value, and Title Fees.

148. GEICO County's failure to provide coverage for the full ACV of insured vehicles constitutes a material breach of contract with Plaintiff Morris and every GEICO County Class Member.

149. As a result of said breaches, Plaintiff Morris and the GEICO County Class Members are entitled under the Policy to sums representing the benefits owed for the full ACV of the insured vehicle (offset by partial amount already paid), as well as costs, prejudgment and post judgment interest, injunctive and/or declaratory relief and other relief as is appropriate.

150. In addition, Plaintiff Morris and GEICO County Class Members are entitled to an award of attorneys' fees and costs.

**COUNT V: Claim for Breach of Contract Against GEICO Choice
(brought by Plaintiff Burnham on behalf of GEICO Choice Insureds)**

151. The allegations in paragraphs Nos. 1 - 106 are incorporated into this Count V by reference.

152. This count is brought by Plaintiff Burnham, individually and on behalf of the Class of persons whose total loss claims were insured by GEICO Choice (GEICO Choice Class Members).

153. Plaintiff Burnham was party to an insurance contract with GEICO Choice as described herein. All GEICO Choice Class Members were parties to an insurance contract with GEICO Choice containing materially identical terms.

154. The interpretation of Plaintiff Burnham and all GEICO Choice Class Members' insurance Policies is governed by Texas law.

155. Plaintiff Burnham and all GEICO Choice Class Members made a claim determined to be a first-party total loss under the insurance policy, and determined to be a covered claim.

156. By paying the total loss claims, GEICO Choice determined that Plaintiff Burnham and each Class Member complied with the terms of their insurance contracts, and fulfilled all duties and conditions under the Policies for each insured to be paid on his or her total loss.

157. Pursuant to the aforementioned uniform contractual provisions, upon the total loss of insured vehicles, Plaintiff Burnham and every GEICO Choice Class Member were owed the ACV of the vehicle, which is the adjusted vehicle value, sales tax calculated as a percentage of the full adjusted vehicle value, applicable Title Fees (depending on their readily-identifiable location), applicable Registration Fees (depending on their readily-identifiable location), minus any applicable deductible and salvage-retained value.

158. GEICO Choice failed to pay the aforementioned amount to Plaintiff Burnham and failed to pay the aforementioned amount to every GEICO Choice Class Member. At minimum, GEICO Choice failed to pay any Registration Fees at all, and thus necessarily failed to pay the required amount for that reason alone. In some cases, GEICO Choice also failed to pay sales tax calculated as the applicable sales tax rate as a percentage of the full adjusted vehicle value and Title Fees.

159. GEICO Choice's failure to provide coverage for the full ACV of insured vehicles constitutes a material breach of contract with Plaintiff Burnham and every GEICO Choice Class Member.

160. As a result of said breaches, Plaintiff Burnham and the GEICO Choice Class Members are entitled under the Policy to sums representing the benefits owed for the full ACV of the insured vehicle (offset by partial amount already paid), as well as costs, prejudgment and post judgment interest, injunctive and/or declaratory relief and other relief as is appropriate.

161. In addition, Plaintiff Burnham and GEICO Choice Class Members are entitled to an award of attorneys' fees and costs.

**COUNT VI: Violation of Prompt Payment of Claims Statute
(brought by All Plaintiffs on behalf of all Class Members)**

162. The allegations in paragraphs Nos. 1 - 106 are incorporated into this Count VI by reference.

163. The failure by GEICO to pay the full amount owed and/or to follow the statutory time guidelines for paying claims as set forth herein constitutes a violation of Section 542.051 *et seq.* of the Texas Insurance Code.

164. Plaintiffs and all other Class Members, therefore, in addition to the claim for damages, are entitled to 18% interest and attorneys' fees as set forth in Section 542.060 of the Texas Insurance Code.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Class, demands a trial by jury on all triable issues and seek and pray for relief and judgment as follows:

- a) For an Order certifying this action as a Class Action on behalf of the Class described above, and appointing Plaintiffs as class representatives of the Class and the undersigned counsel as Class Counsel;
- b) For an award of compensatory damages in amounts owed under the Policies;
- c) For injunctive relief to prevent continuation of this illegal practice and for other injunctive relief as is proven appropriate in this matter;
- d) For all other damages according to proof;
- e) 18% interest on all amounts owed pursuant to Tex. Ins. Code 542.051 *et seq.*;

- f) For an award of attorneys' fees and expenses as appropriate pursuant to applicable law, including Tex. Civ. Prac. & Rem. Code § 38.001, and Tex. Ins. Code 542.051 *et seq.*;
- g) For costs of suit incurred herein;
- h) For pre and post judgment interests on any amounts awarded;
- i) For other and further forms of relief as this Court deems just and proper.

Dated this 5th day of March, 2020.

Respectfully submitted,

/s/ Richard Daly

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**YOUR
TEXAS
PERSONAL
AUTO
POLICY**

GEICO INDEMNITY COMPANY

**YOUR TEXAS PERSONAL AUTO POLICY
Quick Reference**

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AGREEMENT

We, the company named in the Declarations to this policy, agree with *you*, in return for *your* payment on the premium when due, to insure *you*, subject to all the terms of this policy.

Acting in reliance on the information *you* have furnished us, we will insure *you* for the Coverages and the Coverage Limits for which a premium is shown in the Declarations.

DEFINITIONS SECTION

1. **Beneficiary** means (in order of priority of payment):
 - a. The surviving spouse, if a resident in the same household as the deceased at the time of the accident, or
 - b. If the deceased is an unmarried minor, either of the surviving parents who had legal custody at the time of the accident, or
 - c. The estate of the deceased.
2. **Bodily injury** means bodily harm to a person, including resulting sickness or death.
3. **Business day** means a day other than Saturday, Sunday or holiday recognized by the state of Texas.
4. **Family member** means a person who is a resident of *your* household and related to *you* by blood, marriage, or adoption. This definition includes a ward or foster child who is a resident of *your* household, and also includes *your* spouse even when not a resident of *your* household during a period of separation in contemplation of divorce.
5. **Non-owned auto** means a **private passenger auto** or **trailer** not owned by or furnished for regular use of either *you* or a **family member**, other than a **temporary substitute auto**. An auto rented or leased for more than 30 days will be considered as furnished for *your* regular use.
6. **Occupying** means in, upon, entering into, or alighting from.
7. **Private passenger auto** means a four - wheel private passenger:
 - a. automobile;
 - b. jeep-type auto;
 - c. pickup; or
 - d. sport utility vehicle.
8. **Temporary substitute auto** means an auto or **trailer**, not owned by *you*, temporarily used with the permission of the owner. This vehicle must be used as a substitute for *your covered auto* or **trailer** when withdrawn from normal use because of its breakdown, repair, servicing, loss, or destruction.
9. **Trailer** means a vehicle designed to be pulled by a:
 - a. **Private passenger auto**;
 - b. Pickup or van; or
 - c. A farm wagon or farm implement while towed by a **private passenger auto**, pickup, or van.
10. **Your covered auto** means:
 - a. Any vehicle shown in the Declarations;
 - b. Any **trailer you** own.
 - c. **Temporary substitute auto**
 - d. Any of the following types of vehicles on the date *you* became the owner or enter into a lease for a term of six months or more during the policy period:
 1. A **private passenger auto**; or
 2. A utility type vehicle, with a G.V.W. of 25,000 lbs. or less, of the pickup body, sedan delivery, panel truck, van type and multi-use type, not used for the delivery or transportation of goods, materials or supplies other than samples; unless,
 - i. The delivery of goods, materials or supplies is not the primary usage of the vehicle, or
 - ii. Used for farming or ranching.

This provision 10.d. applies only if *you*;

 1. Acquire the vehicle during the policy period; and
 2. Notify us within 30 days after *you* become the owner.

If the vehicle *you* acquire is in addition to any shown in the Declarations, it will have the broadest coverage we now provide for any vehicle shown in the Declarations.

If the vehicle *you* acquire replaces one shown in the Declarations, it will have the same coverage as the vehicle it replaced. *You* must notify us of a replacement vehicle within 30 days only if *you* wish to add or continue Coverage for Damage to Your Auto.
11. **You and your** as used throughout this policy means:
 - a. The policyholder shown in the Declarations;
 - b. His or her spouse, if a resident of the same household; or
 - c. His or her spouse, during a period of separation in contemplation of divorce.

SECTION I - LIABILITY COVERAGE

INSURING AGREEMENT

1. We will pay damages for **bodily injury** or property damage for which any **covered person** becomes legally responsible because of an auto accident. Property damage includes loss of use of the damaged property. Damages include prejudgment interest awarded against the **covered person**. We will defend any suit for damages payable under the terms of this policy. We may investigate and settle any claim or suit. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to indemnify, settle or defend ends when our limit of liability for this coverage has been exhausted.

DEFINITIONS

The definitions contained in the Definitions Section of the policy apply to Section I. The following special definition applies:

1. **Covered person** as used in this section means:
 - a. **You** or any **family member** for the ownership, maintenance or use of any auto or **trailer**.
 - b. Any person using **your covered auto**.
 - c. For **your covered auto**, any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Section.
 - d. For any auto or **trailer**, other than **your covered auto**, any person or organization but only with respect to legal responsibility for acts or omissions of **you** or any **family member** for whom coverage is afforded under this Section. This provision applies only if the person or organization does not own or hire the auto or **trailer**.

SUPPLEMENTARY PAYMENTS

1. In addition to our limit of liability, we will pay on behalf of a **covered person**:
 - a. Up to \$250 for the cost of bail bonds required because of an accident including related traffic law violations. The accident must result in **bodily injury** or property damage covered under this policy.
 - b. Premiums on appeal bonds and bonds to release attachments in any suit we defend.
 - c. Interest accruing after a judgment is entered in any suit we defend. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.
2. We will upon request by a **covered person**, provide reimbursement for the following items:
 - a. Up to \$100 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.
 - b. Other reasonable expenses incurred at our request.
 - c. Costs incurred by any **covered person** for first aid to others at the time of an accident involving **your covered auto** or **non-owned auto**.

EXCLUSIONS

Section I does not apply:

1. To any person who intentionally causes **bodily injury** or property damage;
2. To any person for damage to property owned or being transported by that person;
3. To any person for damage to property:
 - a. Rented to;
 - b. Used by; or
 - c. In the care of;
 that person.

This Exclusion (3) does not apply to damage to:

- a. A residence when rented or leased to **you**;
- b. A private garage when rented or leased to **you**.
4. To **bodily injury** to an employee of any **covered person** during the course of employment. This exclusion does not apply to **bodily injury** to a domestic employee unless workers' compensation benefits are required to be provided by **you** or available for that domestic employee.
5. To any person for liability arising out of the ownership or operation of a vehicle while it is:
 - a. Being used to carry persons for a fee; this does not apply to a share-the-expense car pool.
 - b. Being used to carry property for a fee; this does not apply to **you** or any **family member** unless the primary usage of the vehicle is to carry property for a fee; or
 - c. Rented or leased to another; this does not apply if **you** or any **family member** lends **your covered auto** to another for reimbursement of operating expenses only.

6. To any person while employed or otherwise engaged in the business or occupation of:

- a. Selling;
- b. Repairing;
- c. Servicing;
- d. Storing; or
- e. Parking;

vehicles designed for use mainly on public highways. This includes road testing and delivery. This exclusion (6.) does not apply to the ownership, maintenance or use of **your covered auto** by:

1. **You**;
2. Any **family member**; or
3. Any partner, agent or employee of **you** or any **family member**.

7. To any person for the maintenance or use of any vehicle while employed or otherwise engaged in any business or occupation other than selling, repairing, servicing, storing, or parking of vehicles designed for use mainly on public highways, including road testing and delivery.

This Exclusion does not apply to the maintenance or use of:

- a. A **private passenger auto**;
- b. **Trailer** used with a **private passenger auto**.

8. To any person for the use of a vehicle without a reasonable belief that that person is entitled to do so except for **you** or any **family member** while using **your covered auto**.

9. To **bodily injury** or property damage for which any person:

- a. Is an insured person under a nuclear energy liability policy; or
- b. Would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.

A nuclear energy liability policy is a policy issued by any of the following or their successors:

- a. American Nuclear Insurers;
- b. Mutual Atomic Energy Liability Underwriters; or
- c. Nuclear Insurance Association of Canada.

10. To an auto insured by **you** during the policy term, if **you** have purchased other liability insurance for it.

11. To:

- a. The United States of America or any of its Agencies;
- b. Any person, including **you**, if protection is afforded under the provision of the Federal Tort Claims Act.

12. To any liability assumed under any contract or agreement.

13. To **bodily injury** or property damage caused by an auto driven in or preparing for any, racing, speed or demolition contest or stunting activity of any nature, whether or not prearranged or organized.

14. To **bodily injury** or property damage caused by war, whether or not declared, civil war, insurrection, rebellion or revolution.

15. To **bodily injury** or property damage for the ownership, maintenance or use of:

- a. Any motorized vehicle having fewer than four wheels; or
- b. Any vehicle other than **your covered auto**, which is:
 1. Owned by **you**; or
 2. Furnished or available for **your** regular use.

16. To **bodily injury** or property damage for the ownership, maintenance or use of:

Any vehicle, other than **your covered auto**, which is:

- a. Owned by any **family member**;
- b. Furnished or available for the regular use of any **family member**.

However, this exclusion does not apply to **your** maintenance or use of any vehicle which is:

- a. Owned by a **family member**; or
- b. Furnished or available for the regular use of a **family member**.

17. To **you** or any **family member** for **bodily injury** to **you** or any **family member** in excess of the minimum financial responsibility limits required by Texas law.

LIMIT OF LIABILITY

1. The limit of liability shown in the Declarations for "each person" for Bodily Injury Liability is the most we will pay for all **bodily injuries** to any one person in any one auto accident. The limit of liability shown in the Declarations for "each accident" for Bodily Injury Liability is the most we will pay for all **bodily injuries** resulting from any one auto accident, regardless of how many people are injured. The limit of liability shown in the Declarations for "each accident" for Property Damage Liability is the most we will pay for all damages to all property resulting from any one auto accident.

This is the most we will pay regardless of the number of:

- a. **Covered persons;**
 - b. Claims made;
 - c. Vehicles or premiums shown in the Declarations; or
 - d. Vehicles involved in the auto accident.
2. Any payment under the Uninsured/Underinsured Motorist Coverage or the Personal Injury Protection Coverage of this policy to or for a **covered person** will reduce any amount a **covered person** is entitled to recover under this coverage.

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which **your covered auto** is principally garaged, we will interpret **your** policy for that accident as follows:

1. If the state or province has:
 - a. A financial responsibility or similar law specifying limits of liability for **bodily injury** or property damage higher than the limit shown in the Declarations, **your** policy will provide the higher specified limit.
 - b. A compulsory insurance or similar law requiring a non-resident to maintain insurance whenever the non-resident uses a vehicle in that state or province, **your** policy will provide at least the required minimum amounts and types of coverage.
2. No one will be entitled to duplicate payments for the same elements of loss.

FINANCIAL RESPONSIBILITY REQUIRED

When this policy is certified as future proof of financial responsibility, this policy shall comply with the law to the extent required.

OTHER INSURANCE

If there is other applicable liability insurance, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any liability insurance we provide to a **covered person** for the maintenance or use of a vehicle **you** do not own shall be excess over any other applicable liability insurance.

SECTION II - A- MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

1. We will pay reasonable expenses incurred for necessary medical and funeral services because of **bodily injury**:
 - a. Caused by accident; and
 - b. Sustained by a **covered person**.

We will pay only those expenses incurred within three years from the date of the accident.

DEFINITIONS

The definitions contained in the Definitions Section of the policy apply to Section II-A. The following special definition applies:

1. **Covered person** as used in this section means:
 - a. **You** or any **family member**:
 1. While **occupying**; or
 2. When struck by;
 - a motor vehicle designed for use mainly on public roads or a **trailer** of any type.
 - b. Any other person while **occupying your covered auto**.

EXCLUSIONS

We do not provide Medical Payments Coverage for any person for **bodily injury**:

1. Sustained while **occupying** any motorized vehicle having less than four wheels or an all-terrain vehicle.

2. Sustained while **occupying your covered auto** when it is:
 - a. Being used to carry persons for a fee; this does not apply to a share-the-expense car pool; or
 - b. Being used to carry property for a fee; this does not apply to **you** or any **family member** unless the primary usage of the vehicle is to carry property for a fee; or
 - c. Rented or leased to another; this does not apply if **you** or any **family member** lends **your covered auto** to another for reimbursement of operating expenses only.
3. Sustained while **occupying** any vehicle located for use as a residence or premises.
4. Occurring during the course of employment if workers' compensation benefits are required or available for the **bodily injury**.
5. Sustained while **occupying** or, when struck by, any vehicle (other than **your covered auto**) which is:
 - a. Owned by **you**; or
 - b. Furnished or available for **your** regular use.
6. Sustained while **occupying** or when struck by, any vehicle (other than **your covered auto**) which is:
 - a. Owned by any **family member**; or
 - b. Furnished or available for the regular use of any **family member**.
 However this exclusion (6.) does not apply to **you**.
7. Sustained while **occupying** a vehicle without a reasonable belief that that person is entitled to do so. This exclusion (7.) does not apply to **you** or any **family member** while using **your covered auto**.
8. Sustained while **occupying** a vehicle when it is being used in the business or occupation of a **covered person**. This exclusion (8.) does not apply to **bodily injury** sustained while **occupying** a:
 - a. **Private passenger auto**;
 - b. Pickup or van that **you** own; or
 - c. **Trailer** used with a vehicle described in (8.a. or 8.b.) above.
9. Caused by or as a consequence of:
 - a. Discharge of a nuclear weapon (even if accidental);
 - b. War (declared or undeclared);
 - c. Civil war;
 - d. Insurrection; or
 - e. Rebellion or revolution.
10. From or as a consequence of the following whether controlled or uncontrolled or however caused:
 - a. Nuclear reaction;
 - b. Radiation; or
 - c. Radioactive contamination.

LIMIT OF LIABILITY

1. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:
 - a. **Covered persons**;
 - b. Claims made;
 - c. Vehicles or premiums shown in the Declarations; or
 - d. Vehicles involved in the accident.
2. Any amounts otherwise payable for expenses under this coverage shall be reduced by any amounts paid or payable for the same expense under any Auto Liability or Uninsured/Underinsured Motorists Coverage provided by this policy.
3. No payment will be made unless the injured person or that person's legal representative agrees in writing that any payment shall be applied toward any settlement or judgment that person receives under any Auto Liability or Uninsured/Underinsured Motorists Coverage provided by this policy.
4. We will pay a supplementary death benefit to **your beneficiary** who provides proof of death of the **covered person** along with a police report or other proof, that the **covered person** at the time of the auto accident, was wearing a seat belt or protected by an airbag.

The supplementary death benefit will equal the limit shown for the applicable coverage but not more than \$10,000 per person because of death:

 - a. Caused by an auto accident; and

- b. Sustained by a **covered person** while wearing a seat belt (manual or automatic safety belts or seat and shoulder restraints or a child restraint device) or protected by an airbag (a functioning airbag designed to protect the occupant of a seat in an auto).

We will pay benefits only if an auto accident was the proximate cause of death occurring within three years of the date of such accident.

OTHER INSURANCE

If there is other applicable auto medical payments insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle **you** do not own shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

ASSIGNMENT OF BENEFITS

Payments for medical expenses will be paid directly to a physician or other health care provider if we receive a written assignment signed by the **covered person** to whom such benefits are payable.

SECTION II - B- PERSONAL INJURY PROTECTION COVERAGE

INSURING AGREEMENT

1. We will pay Personal Injury Protection benefits because of **bodily injury**.
 - a. Resulting from a motor vehicle accident; and
 - b. Sustained by a **covered person**.

Our payment will only be for losses or expenses incurred within three years from the date of accident.
2. Personal Injury Protection benefits consist of:
 - a. Medical Expenses
 1. Reasonable expenses incurred for necessary medical and funeral services.
 - b. Loss of Income
 1. Eighty percent of a **covered person's** loss of income from employment. These benefits apply only if, at the time of the accident, the **covered person**:
 - i. Was an income producer; and
 - ii. Was in an occupational status.
 2. Loss of income is the difference between:
 - i. Income which would have been earned had the **covered person** not been injured; and
 - ii. The amount of income actually received from employment during the disability.
 3. If the income being earned as of the date of accident is a salary or fixed remuneration, it shall be used in determining the amount of income which would have been earned. Otherwise, the average monthly income earned during the period (not more than 12 months) preceding the accident shall be used.
 - c. Essential Services
 1. Reasonable expenses incurred for obtaining services. These services must replace those a **covered person** would normally have performed:
 - i. Without pay;
 - ii. During a period of disability; and
 - iii. For the care and maintenance of the family or household.
 2. These benefits apply only if, at the time of the accident, the **covered person**
 - i. Was not an income producer; and
 - ii. Was not in an occupational status.

The benefits described in 2.b and 2.c above do not apply to any loss after the **covered person** dies.

DEFINITIONS

The definitions contained in the Definitions Section of the policy apply to Section II-B. The following special definition applies:

1. **Covered person** as used in this section means:
 - a. **You** or any **family member**.
 1. While **occupying**; or

2. When struck by;
 - a motor vehicle designed for use mainly on public roads or a **trailer** of any type.
- b. Any other person while **occupying your covered auto** with **your** permission.

EXCLUSIONS

We do not provide Personal Injury Protection Coverage for any person for **bodily injury** sustained:

1. In an accident caused intentionally by that person.
2. By that person while in the commission of a felony.
3. By that person while attempting to elude arrest by a law enforcement official.
4. While **occupying**, or when struck by, any motor vehicle (other than **your covered auto**) which is owned by **you**.
5. By a **family member** while **occupying**, or when struck by, any motor vehicle (other than **your covered auto**) which is owned by a **family member**.

LIMIT OF LIABILITY

1. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:
 - a. **Covered persons**;
 - b. Claims made;
 - c. Vehicles or premiums shown in the Declarations; or
 - d. Vehicles involved in the accident.
2. We will pay a supplementary death benefit to **your beneficiary** who provides proof of death of the **covered person** along with a police report or other proof, that the **covered person** at the time of the auto accident, was wearing a seat belt or protected by an airbag.

The supplementary death benefit will equal the limit shown for the applicable coverage but not more than \$10,000 per person because of death:

- a. Caused by an auto accident; and
- b. Sustained by a **covered person** while wearing a seat belt (manual or automatic safety belts or seat and shoulder restraints or a child restraint device) or protected by an airbag (a functioning airbag designed to protect the occupant of a seat in an auto).

We will pay benefits only if an auto accident was the proximate cause of death occurring within three years of the date of such accident.

OTHER INSURANCE

If there is other Personal Injury Protection insurance, we will pay only our share. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle **you** do not own shall be excess over any other collectible Personal Injury Protection insurance.

OTHER PROVISIONS

1. **Loss Payments.** Benefits are payable:
 - a. Not more frequently than every two weeks; and
 - b. Within 30 days after satisfactory proof of claim is received.
2. **Modification.** The General Provision section of this policy entitled "Our Right To Recover Payment" does not apply to this coverage.

ASSIGNMENT OF BENEFITS

Payments for medical expenses will be paid directly to a physician or other health care provider if we receive a written assignment signed by the **covered person** to whom such benefits are payable.

SECTION III - COVERAGE FOR DAMAGE TO YOUR AUTO

INSURING AGREEMENT

1. We will pay for direct and accidental **loss** to **your covered auto** or **non-owned auto** including its equipment permanently installed in or on the auto, less any applicable deductible shown in the Declarations. However, we will pay for **loss** caused by **collision** or **comprehensive** only if the Declarations indicate that Collision or Comprehensive Coverage is provided.

DEFINITIONS

The definitions contained in the Definitions Section of the policy apply to Section III. The following special definitions apply:

1. **Actual cash value** is the replacement cost of the auto or property less **depreciation** and/or **betterment**.
2. **Betterment** is improvement of the auto or property to a value or condition greater than its pre-loss condition.
3. **Collision** means the upset of **your covered auto** or **non-owned auto**; or collision with another object including an attached vehicle.
4. **Comprehensive** means **loss** caused other than by **collision** and includes but is not limited to the following causes:
 - a. Missiles or falling objects;
 - b. Fire;
 - c. Theft or larceny;
 - d. Explosion or earthquake;
 - e. Windstorm;
 - f. Hail, water or flood;
 - g. Malicious mischief or vandalism;
 - h. Riot or civil commotion;
 - i. Contact with bird or animal; or
 - j. Breakage of glass.

If breakage of glass is caused by a **collision** or if **loss** is caused by contact with a bird or animal, **you** may elect to have it considered a **loss** caused by **collision**.

5. **Custom parts or equipment** means paint, equipment, devices, accessories, enhancements, and changes, other than those which are original manufacturer installed, which:
 - a. Are permanently installed or attached; or
 - b. Alter the appearance or performance of a vehicle.

This includes any electronic equipment, antennas, and other devices used exclusively to send or receive audio, visual, or data signals, or play back recorded media, other than those which are original manufacturer installed, that are permanently installed in the **your covered auto**, using bolts or brackets, including slide-out brackets.

6. **Depreciation** means a decrease or loss in value or condition to the auto or property because of use, disuse, physical wear and tear, age, outdatedness, or other causes.
7. **Diminution in value** means the difference, if any, between the market value of **your covered auto** immediately preceding a **loss** and the market value of **your covered auto** after repair of physical damage resulting from that **loss**.
8. **Loss** means direct and accidental loss of or damage to:
 - a. The auto, including its equipment; or
 - b. Other insured property.

TRANSPORTATION EXPENSES

In addition, we will pay up to \$25 per day to a maximum of \$750 for transportation expenses incurred by **you**. This applies only in the event of the total theft of **your covered auto**. We will pay only transportation expenses incurred during the period:

1. Beginning 48 hours after the theft; and
2. Ending when **your covered auto** is returned to use or we pay for its **loss**.

EXCLUSIONS

We will not pay for:

1. **Loss** to **your covered auto** while it is:
 - a. Being used to carry persons for a fee; this does not apply to a share-the-expense car pool; or
 - b. Being used to carry property for a fee; this does not apply to **you** or any **family member** unless the primary usage of the vehicle is to carry property for a fee; or
 - c. Rented or leased to another; this does not apply if **you** or any **family member** lends **your covered auto** to another for reimbursement of operating expenses only.
2. Damage due and confined to:
 - a. Wear and tear;
 - b. Freezing;

- c. Mechanical or electrical breakdown or failure; or
- d. Road damage to tires.

This exclusion does not apply if the damage results from the total theft of **your covered auto**.

3. **Loss** due to or as a consequence of:
 - a. Radioactive contamination;
 - b. Discharge of any nuclear weapon (even if accidental);
 - c. War (declared or undeclared);
 - d. Civil war;
 - e. Insurrection; or
 - f. Rebellion or revolution.
4. **Loss** to a camper body or **trailer** not shown in the Declarations. This exclusion does not apply to a **trailer you**:
 - a. Acquire during the policy period; and
 - b. Notify us within 30 days after **you** become the owner.
5. **Loss** to any device or instrument used for detection of radar or other speed measuring equipment.
6. **Loss** to **custom parts or equipment** unless the existence of those **custom parts or equipment** has been previously reported to us and an endorsement to the policy has been added.
7. **Loss** due to or as a consequence of a seizure of **your covered auto** or **non-owned auto** by federal or state law enforcement officers as evidence in a case against **you** by the Texas Controlled Substances Act or the Federal Controlled Substances Act if **you** are convicted in such a case.
8. **Loss** to **your covered auto** or any **non-owned auto** due to **diminution in value**.
9. **Loss** caused by an auto driven in or preparing for any racing, speed, or demolition contest or stunting activity of any nature, whether or not prearranged or organized.
10. **Loss** caused by any person resulting from the intentional acts of that person.
11. **Loss** to any amphibious mobile home trailer, including any property contained in or used with any such auto or trailer, while used on, or while being launched into, or while being beached from water.

LIMIT OF LIABILITY

1. Our limit of liability for **loss** will be the lesser of the:
 - a. **Actual cash value** of the stolen or damaged property;
 - b. Amount necessary to repair or replace the property with other of like kind and quality; or
 - c. Amount stated in the Declarations of this policy.
2. Our limit of liability for **loss** to a **trailer** not owned by **you** is \$500.
3. Our limit of liability for **loss** to personal effects arising out of one occurrence is \$200.
4. Our limit of liability for glass repair or replacement is limited to the prevailing competitive price. Although **you** have the right to choose any glass repair facility or location, the limit of liability for **loss** to window glass is the cost to repair or replace such glass but will not exceed the prevailing competitive price. This is the price we can secure from a competent and conveniently located glass repair facility. At **your** request, we will identify a glass repair facility that will perform the repairs at the prevailing competitive price. We will not apply the applicable deductible if the glass **loss** is repaired rather than replaced.
5. Our limit of liability for **custom parts or equipment** is limited to the **actual cash value** of the **custom parts or equipment**, not to exceed the **actual cash value** of the vehicle.

Our payment for **loss** will be reduced by any applicable deductible shown in the Declarations.

PAYMENT OF LOSS

We may pay for **loss** in money or repair or replace the damaged or stolen property. We may, at our expense, return any stolen property to:

1. **You**; or
2. The address shown in this policy.

If we return stolen property, we will pay for any damage resulting from the theft. We may keep all or part of the property at an agreed or appraised value.

NO BENEFIT TO BAILEE

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

OTHER INSURANCE

1. If **you** have other insurance against a **loss** covered by Section III, we will not owe more than our pro-rata share of the total coverage available. Any insurance we provide for a vehicle **you** do not own shall be excess over any other collectible insurance.
2. For any **loss** to which Uninsured/Underinsured Motorists coverage (from this or any other policy) and this coverage both apply, **you** may choose the coverage from which damages will be paid.

You may recover under both coverages but only if:

- a. Neither one by itself is sufficient to cover the **loss**;
- b. **You** pay the higher deductible amount (**you** do not have to pay both deductibles); and
- c. **You** will not recover more than the actual damage.

APPRAISAL

If we and **you** do not agree on the amount of **loss**, either may demand an appraisal of the **loss**. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the **actual cash value** and the amount of **loss**. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the expenses of the umpire equally.

We do not waive any of our rights under this policy by agreeing to an appraisal.

SECTION IV - UNINSURED/UNDERINSURED MOTORISTS COVERAGE

INSURING AGREEMENT

1. We will pay damages which a **covered person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of **bodily injury** sustained by a **covered person**, or **property damage**, caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **uninsured motor vehicle**.

Any judgment for damages arising out of a suit brought without our consent is not binding on us. If we and **you** do not agree as to whether or not a vehicle is actually uninsured, the burden of proof as to that issue shall be on us.

DEFINITIONS

The definitions contained in the Definitions Section of the policy apply to Section IV. The following special definitions apply:

1. **Covered person** as used in this section means:
 - a. **You** or any **family member**,
 - b. Any other person **occupying your covered auto**;
 - c. Any person that is entitled to recover damages because of **bodily injury** to a person described in 1.a or 1.b above for which coverage applies.
2. **Property damage** as used in this Section means injury to or destruction of or loss of use of:
 - a. **Your covered auto**, not including a **temporary substitute auto**.
 - b. Any property owned by **you**, any **family member** or any other person **occupying your covered auto**, while contained in **your covered auto**.
 - c. Any property owned by **you** or any **family member** while contained in any auto not owned, but being operated, by **you** or any **family member**.
3. **Underinsured motor vehicle** means a land motor vehicle or **trailer** of any type to which a liability bond or policy applies at the time of the accident but its limit of liability either:
 - a. Is not enough to pay the full amount the **covered person** is legally entitled to recover as damages; or
 - b. Has been reduced by payment of claims to an amount which is not enough to pay the full amount the **covered person** is legally entitled to recover as damages.
4. **Uninsured motor vehicle** means a land motor vehicle or **trailer** of any type:
 - a. To which no liability bond or policy applies at the time of the accident.
 - b. Which is a hit and run vehicle whose operator or owner cannot be identified and which hits:
 1. **You** or any **family member**;
 2. A vehicle which **you** or any **family member** are **occupying**; or
 3. **Your covered auto**.
 - c. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company:

1. Denies coverage; or
 2. Is or becomes insolvent.
- d. Which is an **underinsured motor vehicle**.

However, **uninsured motor vehicle** does not include any vehicle or equipment:

- a. Owned by or furnished or available for the regular use of **you** or any **family member**.
- b. Owned or operated by a self insurer under any applicable motor vehicle law.
- c. Owned by any governmental body unless:
 1. The operator of the vehicle is uninsured; and
 2. There is no statute imposing liability for damage because of **bodily injury** or **property damage** on the governmental body for an amount not less than the limit of liability for this coverage.
- d. Operated on rails or crawler treads.
- e. Designed mainly for use off public roads while not on public roads.
- f. While located for use as a residence or premises.

EXCLUSIONS

We do not provide Uninsured/Underinsured Motorists Coverage:

1. To any person for **bodily injury** sustained while **occupying**, or when struck by, any motor vehicle or **trailer** of any type owned by **you** or any **family member** which is not insured for this coverage under this policy.
2. To any person if that person or the legal representative settles the claim without our written consent.
3. To any person when **your covered auto** is:
 - a. Being used to carry persons for a fee; this does not apply to a share-the-expense car pool; or
 - b. Being used to carry property for a fee; this does not apply to **you** or any **family member** unless the primary usage of the vehicle is to carry property for a fee; or
 - c. Rented or leased to another; this does not apply if **you** or any **family member** lends **your covered auto** to another or reimbursement of operating expenses only.
4. To any person for the first \$250 of damage to the property of that person as the result of any one accident.
5. To any person when using a vehicle without a reasonable belief that the person is entitled to do so. This exclusion does not apply to **you** or any **family member** while using **your covered auto**.
6. To any person for **bodily injury** or **property damage** resulting from the intentional acts of that person.
7. To any person for **bodily injury** or **property damage** caused by an auto driven in or preparing for any racing, speed, or demolition contest or stunting activity of any nature, whether or not prearranged or organized.
8. Directly or indirectly to benefit:
 - a. Any insurer or self-insurer under any workers' compensation, disability benefits or similar law;
 - b. Any insurer of property.
9. To any person for punitive and/or exemplary damages.

LIMIT OF LIABILITY

1. The limit of liability shown in the Declarations for "each person" for Uninsured/Underinsured Motorists Coverage is the most we will pay for all **bodily injuries** sustained by any one person in any one motor vehicle accident. The limit of liability shown in the Declarations for "each accident" for Uninsured/Underinsured Motorists Coverage is the most we will pay for all **bodily injuries** due to any one motor vehicle accident, regardless of the number of persons injured. The limit of liability shown in the Declarations for "each accident" for Property Damage Liability is the most we will pay for all damages to all property due to any one motor vehicle accident.

This is the most we will pay regardless of the number of:

- a. **Covered persons**;
- b. Claims made;
- c. Policies or bonds applicable;
- d. Vehicles or premiums shown in the Declarations; or
- e. Vehicles involved in the accident.

Subject to this maximum, our limit of liability will be the lesser of:

- a. The difference between the amount of a **covered person's** damages for **bodily injury** or **property damage** and the amount paid or payable to that **covered person** for such damages, by or on behalf of persons or organizations who may be legally responsible; and
- b. The applicable limit of liability for this coverage.

2. In order to avoid insurance benefits payments in excess of actual damages sustained, subject only to the limits set out in the Declarations and other applicable provisions of this coverage, we will pay all covered damages not paid or payable under any workers' compensation law, disability benefits law, any similar law, auto medical expense coverage or Personal Injury Protection Coverage.
3. Any payment under the Liability Coverage of this policy to or for a **covered person** will reduce any amount that person is entitled to recover for the same damages under this coverage.

OTHER INSURANCE

1. If there is other applicable similar insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However any insurance we provide with respect to a vehicle **you** do not own shall be excess over any other collectible insurance.
2. For any **property damage** to which the Coverage for Damage to Your Auto of this policy (or similar coverage from another policy) and this coverage both apply, **you** may choose the coverage from which damages will be paid. **You** may recover under both coverages, but only if:
 - a. Neither one by itself is sufficient to cover the loss;
 - b. **You** pay the higher deductible amount (but **you** do not have to pay both deductibles); and
 - c. **You** will not recover more than the actual damages.

SECTION V- GENERAL POLICY CONDITIONS APPLICABLE TO ALL SECTIONS OF THE POLICY

DUTIES AFTER AN ACCIDENT OR LOSS

DEFINITIONS

The definition of **business day**, **you**, **your**, and **your covered auto** in the Definitions Section apply to Section V-General Policy Conditions.

1. NOTIFICATION

We must be notified promptly of how, when and where the accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses. If we show that **your** failure to provide notice prejudices our defense, there is no liability coverage under the policy.

2. COOPERATION

Any person seeking any coverage must:

- a. Cooperate with us in the investigation, settlement or defense of any claim or suit.
- b. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.
- c. Submit, as often as we reasonably require, to physical exams by physicians we select. We will pay for these exams.
- d. Authorize us to obtain:
 1. Medical reports reasonably related to the accident or injury; and
 2. Other pertinent records.
- e. When required by us:
 1. Submit a sworn proof of loss;
 2. Submit to examination under oath.

3. OUR DUTIES

- a. Within 15 days after we receive **your** written notice of claim, we must:
 1. Acknowledge receipt of the claim. If our acknowledgment of the claim is not in writing, we will keep record of the date, method and content of our acknowledgment.
 2. Begin any investigation of the claim.
 3. Specify the information **you** must provide in accordance with paragraph 2. above.

We may request more information, if during the investigation of the claim such additional information is necessary.

- b. After we receive the information we request, we must notify **you** in writing whether the claim will be paid or has been denied or whether more information is needed:
 1. Within 15 **business days**; or
 2. Within 30 days if we have reason to believe the loss resulted from arson.
- c. If we do not approve payment of **your** claim or require more time for processing **your** claim, we must:
 1. Give the reasons for denying **your** claim, or
 2. Give the reasons we require more time to process **your** claim. But, we must either approve or deny **your** claim within 45 days after our requesting more time.
- d. In the event of a weather-related catastrophe or major natural disaster, as defined by the Texas Department of Insurance, the claim handling deadlines as stated above are extended for an additional 15 days.

4. LOSS PAYMENT

- a. If we notify **you** that we will pay **your** claim, or part of **your** claim, we must pay within 5 **business days** after we notify **you**.
- b. If payment of **your** claim or part of **your** claim requires the performance of an act by **you**, we must pay within 5 **business days** after the date **you** perform the act.

5. NOTICE OF SETTLEMENT OF LIABILITY CLAIM

- a. We will notify **you** in writing of any initial offer to compromise or settle a claim against **you** under the liability section of this policy. We will give notice within 10 days after the date the offer is made.
- b. We will notify **you** in writing of any settlement of a claim against **you** under the liability section of this policy. We will give **you** notice within 30 days after the date of the settlement.

6. ADDITIONAL DUTIES FOR COVERAGE FOR DAMAGE TO YOUR AUTO

A person seeking coverage for Damage to Your Auto must also:

- a. Take reasonable steps after loss to protect **your covered auto** and its equipment from further loss. We will pay reasonable expenses incurred to do this;
- b. Promptly notify the police if **your covered auto** is stolen; and
- c. Permit us to inspect and appraise the damaged property before its repair or disposal.

7. ADDITIONAL DUTIES FOR UNINSURED /UNDERINSURED MOTORISTS COVERAGE

A person seeking Uninsured/Underinsured Motorists Coverage must also:

- a. Promptly notify the police if a hit and run driver is involved;
- b. Promptly send us copies of the legal papers if a suit is brought;
- c. Take reasonable steps after loss, at our expense, to protect damaged property from further loss; and
- d. Permit us to inspect and appraise the damaged property before its repair or disposal.

GENERAL PROVISIONS**DEFINITIONS**

The definitions of **covered person**, **you**, **your**, and **your covered auto** in the Definitions Section apply to General Provisions. The definition of **underinsured motor vehicle** in Section IV applies to General Provisions.

1. BANKRUPTCY

Bankruptcy or insolvency of the **covered person** shall not relieve us of any obligations under this policy.

2. CHANGES

- a. This policy contains all the agreements between **you** and us. Its terms may not be changed or waived except by endorsement issued by us.
- b. If a change requires a premium adjustment, we will adjust the premium as of the effective date of change in accordance with rules prescribed by the Texas Department of Insurance or its successor. Changes during the policy term that may result in a premium increase or decrease include, but are not limited to, changes in:
 1. The number, type or use classification of **your covered auto**;
 2. Operators using **your covered auto**;
 3. The place of principal garaging of **your covered auto**;
 4. Coverage, deductible or limits.
- c. If this policy form is revised to provide more coverage without additional premium charge, we will automatically provide the additional coverage as of the date the revision is effective.
- d. We will compute the rates in effect on each anniversary date of the policy's inception date for a policy written for more than a full year.

3. LEGAL ACTION AGAINST US

- a. No legal action may be brought against us until there has been full compliance with all the terms of this policy. In addition, under Liability Coverage, no legal action may be brought against us until:
 1. We agree in writing that the **covered person** has an obligation to pay; or
 2. The amount of that obligation has been finally determined by judgment after trial.
- b. No person or organization has any right under this policy to bring us into any action to determine the liability of a **covered person**.

4. OUR RIGHT TO RECOVER PAYMENT

- a. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. That person shall do:
 1. Whatever is necessary to enable us to exercise our rights; and

2. Nothing after loss to prejudice them. (A release of the insurer of an **underinsured motor vehicle** does not prejudice our rights.)

However, our rights in this paragraph do not apply, under Section III, against any person using **your covered auto** with a reasonable belief that that person is entitled to do so.

- b. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:
 1. Hold in trust for us the proceeds of the recovery; and
 2. Reimburse us to the extent of our payment. (However, we may not claim the amount recovered from an insurer of any **underinsured motor vehicle**.)

5. POLICY PERIOD AND TERRITORY

- a. This policy applies only to accidents and **losses** which occur:
 1. During the policy period as shown in the Declarations; and
 2. Within the policy territory.
- b. The policy territory is:
 1. The United States of America, its territories or possessions;
 2. Puerto Rico; or
 3. Canada.

This policy also applies to loss to, or accidents involving, **your covered auto** while being transported between their ports.

6. TERMINATION

- a. **Cancellation.** This policy may be canceled during the policy period as follows:
 1. The policy holder shown in the Declarations may cancel by:
 - i. Returning this policy to us; or
 - ii. Giving us advance written notice of the date cancellation is to take effect.
 2. We may cancel by mailing at least 10 days notice to the policy holder shown in the Declarations at the address shown in this policy.
 3. After this policy is in effect for 60 days, or if this is a renewal or continuation policy, we will cancel only:
 - i. If **you** submit a fraudulent claim; or
 - ii. For nonpayment of premium; or
 - iii. If **your** driver's license or motor vehicle registration or that of:
 - (a) Any driver who lives with **you**; or
 - (b) Any driver who customarily uses **your covered auto** has been suspended or revoked. However, we will not cancel if **you** consent to the attachment of an endorsement eliminating coverage when **your covered auto** is being operated by the driver whose license has been suspended or revoked.
 4. We may not cancel this policy based solely on the fact that **you** are an elected official.
- b. **Non-renewal.** If we decide not to renew or continue this policy, we will mail notice to the policy holder shown in the Declarations at the address shown in this policy. Notice will be mailed at least 30 days before the end of the policy period. If the policy period is other than 1 year, we will have the right not to renew or continue it only at each anniversary of its original effective date. We will not refuse to renew because of a **covered person's** age. We may not refuse to renew this policy based solely on the fact that **you** are an elected official.
- c. **Automatic Termination.** If, at any time, **you** obtain other insurance on **your covered auto**, any similar insurance provided by this policy will terminate as to that auto on the effective date of the other insurance. If we offer to renew or continue and **you** or **your** representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that **you** have not accepted our offer.
- d. **Other Termination Provisions**
 1. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
 2. If this policy is cancelled, **you** may be entitled to a premium refund. If so, we will send **you** the refund not later than the 15th business day after the effective date of cancellation or termination of the policy. The premium refund, if any, will be computed pro-rata, subject to the policy minimum premium. However, making or offering to make the refund is not a condition of cancellation.
 3. The effective date of cancellation stated in the notice shall become the end of the policy period.
 4. Any cancellation or restriction of coverage made without **your** consent will be of no effect except as:

- i. Provided for in this Termination provision under:
 - (a) Cancellation;
 - (b) Non-renewal; or
 - (c) Automatic Termination.
- ii. Required by the Texas Department of Insurance.

7. TRANSFER OF YOUR INTEREST IN THIS POLICY

- a. **Your** rights and duties under this policy may not be assigned without our written consent. However, if a policy holder shown in the declarations dies, coverage will be provided for:
 - 1. The surviving spouse if a resident in the same household at the time of death. Coverage applies to the spouse as if a policy holder shown in the Declarations.
 - 2. The legal representative of the deceased person as if a policy holder shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use **your covered auto**.
- b. Coverage will be provided until the end of the policy period.

NOTE: Refer to Medical Payments and/or Personal Injury Protection Coverages for Assignment of Benefits.

8. DISPOSAL OF VEHICLE

If **you** relinquish possession of a leased vehicle or if **you** sell or relinquish ownership of **your covered auto**, any coverage provided by this policy for that vehicle will **you** terminate on the date do so.

9. TWO OR MORE AUTO POLICIES

If this policy and any other auto insurance policy issued to **you** by us apply to the same accident, the maximum limit of our liability under all the policies shall not exceed the highest applicable limit of liability under one policy.

10. DECLARATIONS

By accepting this policy **you** agree that:

- a. The statements in **your** application and in the Declarations are **your** agreements and representations;
- b. This policy is issued in the reliance upon the truth of these representations; and
- c. This policy along with the application and the Declarations sheet, embodies all agreements relating to this insurance. The terms of this policy cannot be changed orally.

11. FRAUD AND MISREPRESENTATION

Coverage is not provided to any person who knowingly conceals or misrepresents any material fact or circumstance;

- a. At the time application is made; or
- b. At anytime during the policy period; or
- c. In connection with the presentation or settlement of a claim.

12. TERMS OF POLICY CONFORMED TO STATUTES

Any terms of this policy in conflict with the statutes of Texas are amended to conform to those statutes.

13. CHOICE OF LAW

The policy and any amendment(s) and endorsement(s) are to be interpreted pursuant to the laws of the state of Texas.

14. DIVIDEND PROVISION-PARTICIPATING COMPANIES

The policy holder shall be entitled to participate in a distribution of the surplus of the Company, as determined by its Board of Directors from time to time, after approval in accordance with the provisions of the Texas Insurance Code of 1951, as amended.

In Witness Whereof, the company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by a duly authorized representative of the company.



W. C. E. Robinson
Secretary



William E. Roberts
President



GEICO INDEMNITY COMPANY
Policy Number: 4127-69-50-31

Automobile Policy Amendment TEXAS

Your policy is amended as follows:

DEFINITIONS SECTION

The following definition is revised:

9. **Trailer** means a vehicle designed to be pulled by a:

- a. **Private passenger auto**;
- b. Pickup or van; or
- c. A farm wagon or farm implement while towed by a **private passenger auto**, pickup, or van.

Trailer does not include a vehicle with built-in sleeping facilities designed for recreational or camping use.

The following definitions are added:

12. **Personal vehicle sharing program** means a business facilitating the sharing of private passenger motor vehicles for use by individuals or businesses for a fee.

13. **Ride-sharing** means the use of any vehicle by any driver while that vehicle is being used in connection with a **transportation network company** from the time that driver logs on to or signs into, as a driver, any computer or digital application or platform that connects or matches driver(s) with passenger(s) until the time that driver logs out of or signs off of any such application or platform, including while en route to pick up passenger(s) and while transporting passenger(s).

14. **Transportation network company** means a company or organization facilitating and/or providing transportation services using a computer or digital application or platform to connect or match passengers with drivers for compensation or a fee.

SECTION I- LIABILITY COVERAGE

EXCLUSIONS

Section I Does Not Apply:

The following exclusions are revised:

2. To damage to:

- a. Property, including motor vehicles of any type, owned or transported by a **covered person**; or
- b. Property rented to or in the charge of a **covered person** other than a residence or private garage.

5. To any person for liability arising out of the ownership or operation of a vehicle while it is:

- a. Being used to carry persons for a fee; this does not apply to an ordinary car pool.
- b. Being used to carry property for a fee; this does not apply to **you** or any **family member** unless the primary usage of the vehicle is to carry property for a fee;
- c. Rented or leased to another; this does not apply if **you** or any **family member** lends **your covered auto** to another for reimbursement of operating expenses only; or
- d. Being used for **ride-sharing**.

The following exclusions are added:

18. To any person or organization arising out of the use of any motor vehicle while that motor vehicle is being used for personal motor vehicle sharing facilitated by a **personal vehicle sharing program** from the time period a renter of the motor vehicle has care, custody, or control of the vehicle until the time the motor vehicle is returned to the owner's care, custody or control.

19. To punitive or exemplary damages.

Exclusion 3. is deleted.

OTHER INSURANCE

The following is revised:

If there is other applicable liability insurance available, any insurance we provide shall be excess over any other applicable liability insurance. If more than one policy applies on an excess basis, we will bear our proportionate share with other collectible liability insurance.

SECTION II - A - MEDICAL PAYMENTS COVERAGE

EXCLUSIONS

We do not provide Medical Payments Coverage for any person for **bodily injury**.

The following exclusion is revised:

2. Sustained while **occupying your covered auto** or a **non-owned auto** when it is:
 - a. Being used to carry persons for a fee; this does not apply to a share-the-expense car pool; or
 - b. Being used to carry property for a fee; this does not apply to **you** or any **family member** unless the primary usage of the vehicle is to carry property for a fee; or
 - c. Rented or leased to another; this does not apply if **you** or any **family member** lends **your covered auto** to another for reimbursement of operating expenses only; or
 - d. Being used for **ride-sharing**; this does not apply to **you** or any **family member** while a passenger and not operating the auto.

SECTION II – B- PERSONAL INJURY PROTECTION COVERAGE

EXCLUSIONS

We do not provide Personal Injury Protection Coverage for any person for **bodily injury** sustained:

The following exclusion is added:

6. While the motor vehicle being used at the time of the accident is being used for **ride-sharing**. This exclusion does not apply to **you** or any **family member** while a passenger and not operating the motor vehicle.

SECTION III - COVERAGE FOR DAMAGE TO YOUR AUTO

EXCLUSIONS

We will not pay for:

The following exclusion is revised as follows:

1. **Loss to your covered auto** or a **non-owned auto** while it is:
 - a. Being used to carry persons for a fee; this does not apply to an ordinary car pool.
 - b. Being used to carry property for a fee; this does not apply to **you** or any **family member** unless the primary usage of the vehicle is to carry property for a fee;
 - c. Rented or leased to another; this does not apply if **you** or any **family member** lends **your covered auto** to another for reimbursement of operating expenses only; or
 - d. Being used for **ride-sharing**.

The following exclusion is added:

12. **Loss** arising out of the use of any motor vehicle while that motor vehicle is being used for personal motor vehicle sharing facilitated by a **personal vehicle sharing program** from the time period a renter of the motor vehicle has care, custody, or control of the vehicle until the time the motor vehicle is returned to the owner's care, custody or control.

SECTION IV - UNINSURED/UNDERINSURED MOTORISTS COVERAGE

EXCLUSIONS

We do not provide Uninsured/Underinsured Motorists Coverage:

The following exclusion is revised as follows:

3. To any person while **your covered auto** or a **non-owned auto** is:
 - a. Being used to carry persons for a fee; this does not apply to an ordinary car pool.
 - b. Being used to carry property for a fee; this does not apply to **you** or any **family member** unless the primary usage of the vehicle is to carry property for a fee;
 - c. Rented or leased to another; this does not apply if **you** or any **family member** lends **your covered auto** to another for reimbursement of operating expenses only; or
 - d. Being used for **ride-sharing**; this does not apply to **you** or any **family member** while a passenger and not operating the auto.

The following exclusion is added:

10. To any person or organization arising out of the use of any motor vehicle while that motor vehicle is being used for personal vehicle sharing facilitated by a **personal vehicle sharing program** from the time period a renter of the motor vehicle has care, custody, or control of the vehicle until the time the motor vehicle is returned to the owner's care, custody or control.

GENERAL PROVISIONS

The following general provisions are revised.

6. TERMINATION

Item 6.a.2. **Cancellation** is revised as follows:

6.a.2. **Cancellation.** We may cancel by mailing at least 10 days notice to the policyholder shown in the Declarations at the policyholder's last known address.

Item 6.b. **Non-renewal** is revised as follows:

6.b. **Non-renewal.** If we decide not to renew or continue this policy, we will mail notice to the policyholder shown in the Declarations at the policyholder's last known address. Notice will be mailed at least 30 days before the end of the policy period. If the policy period is other than 1 year, we will have the right not to renew or continue it only at each anniversary of its original effective date. We will not refuse to renew because of a **covered person's** age.

We may not refuse to renew this policy based solely on the fact that **you** are an elected official.

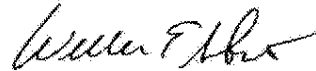
8. DISPOSAL OF VEHICLE

If **you** relinquish possession of a leased vehicle or if **you** sell or relinquish ownership of **your covered auto**, any coverage provided by this policy for that vehicle will terminate when **you** do so.

We affirm this amendment.



W. C. E. Robinson
Secretary



William E. Roberts
President

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.