STATE OF FLORIDA	)	IN THE SEVENTEENTH JUDICIAL CIRCUIT
	) SS:	
COUNTY OF BROWARD	)	CASE NO. CACE-18-029268

CHARLINE PETIT BEAU, and

JACQUELYN WHITTED, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

OCEAN HARBOR CASUALTY INSURANCE COMPANY,

Defendant.

AMENDED CLASS ACTION COMPLAINT

The Plaintiffs, Charline Petit Beau and Jacquelyn Whitted, individually and on behalf of all others similarly situated, file this Amended Class Action Complaint against Ocean Harbor Casualty Insurance Company ("Ocean Harbor" or "Defendant"), and in support states as follows:

NATURE OF THE ACTION

1. This is a class action lawsuit by Plaintiffs Charline Petit Beau and Jacquelyn Whitted, who are named insureds under virtually identical Ocean Harbor automobile policies issued for private passenger auto physical damage including comprehensive and collision coverage, which requires payment of "Actual Cash Value" or "ACV."

2. Defendant Ocean Harbor is one of the largest private passenger auto insurance carriers operating in Florida. One of the coverages Defendant offers is comprehensive and collision coverage. Upon information and belief, Defendant systematically underpaid not just Plaintiffs but thousands of other putative Class Members amounts Defendant owed its insureds for ACV losses for total loss vehicles insured with comprehensive and collision coverage.

3. This lawsuit is brought by the Plaintiffs individually and on behalf and all other similarly situated insureds who suffered damages due to Defendant's practice of refusing to pay full ACV payment or full total-loss payment ("FTLP") to first-party total-loss insureds on physical damage policies containing comprehensive and collision coverages and conditioning payment on whether insured takes certain actions not required by the policy itself.

4. The failure to pay FTLP to first-party total losses owed to the Ocean Harbor insureds and to condition payment of sales tax on actions not required by the policy itself is a breach of the policy agreement and a clear breach of contract under Florida law.

JURISDICTION AND VENUE

5. This action is brought as a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(1), (2) and/or (3) and alleges damages in excess of $15,000.

6. This Court has personal jurisdiction over Ocean Harbor because the Defendant at all times material was incorporated and has its principal place of business in the State of Florida, and was engaged in business in the State of Florida and in Broward County.

7. Venue is proper in this Court because a substantial part of the events or omissions giving rise to the claim occurred in Broward County, Florida, and Defendant conducts customary and extensive business in this county, including an office to conduct customary and extensive business.

THE PARTIES

8. At all times material hereto, Plaintiff Charline Petit Beau was a citizen of the State of Florida and domiciled in Broward County.

9. At all times material hereto, Plaintiff Jacquelyn Whitted was a citizen of the State of Florida and domiciled in Duval County.

10. At all times material hereto, Defendant is and was a corporation located in the State of Florida and authorized to transact insurance in the State of Florida and conducting a substantial part of its business in Broward County, Florida. Defendant is incorporated in the State of Florida, and its principal place of business and headquarters are both located in the State of Florida.

FACTUAL ALLEGATIONS

11. Defendant Ocean Harbor's standardized policy language as to comprehensive and collision coverage for ACV of total loss vehicles is present in every Ocean Harbor auto policy issued by Defendant in Florida.

12. ACV includes an obligation to pay state and local regulatory fees and taxes for total loss vehicle comprehensive and collision coverage (full total-loss payment or FTLP).

13. At all times material hereto, Plaintiff Petit Beau owned a 2012 Toyota Camry with VIN 4T1BF1FK6CU202310.

14. At all times material hereto, Plaintiff insured the vehicle under an insurance policy issued by Defendant. Defendant's form policy is affixed hereto as Exhibit A.

15. On or about October 23, 2017, Plaintiff was involved in an accident while operating the Insured Vehicle. As a result of said accident, Plaintiff filed a claim for property damage with Defendant, claim number S27W1323-01-18.

16. Following the filing of said claim, Defendant determined that the Insured Vehicle was a total loss with a base value of $8,913.00.

17. The base value was calculated by a third-party vendor ("CCC"), which bases vehicles valuations on the cost to purchase similar vehicles with similar conditions and mileage.

18. No amount for sales tax or title transfer fee or tag transfer fee was included in the amount listed in the CCC Market Valuation Report.

19. Defendant then subtracted the deductible of $500.00 and subtracted $1051.50 in depreciation for a net total payment of $7,361.50, which did not include any amount for sales tax or tag or title transfer fees.

20. Instead, as to sales tax, Defendant imposed an extra-contractual requirement that Ms. Petit Beau purchase a replacement vehicle prior to any consideration of sales tax payment.

21. At all times material hereto, Plaintiff Whitted owned a 2011 Nissan Altima with VIN 1N4AL2AP8BN452728.

22. At all times material hereto, Ms. Whitted insured the vehicle under an insurance policy issued by Defendant.[1]

23. On or about August 7, 2017, Ms. Whitted was involved in an accident while operating the Insured Vehicle. As a result of said accident, Ms. Whitted filed a claim for property damage with Defendant, claim number S2780324-01-15.

24. Following the filing of said claim, Defendant determined that the vehicle was a total loss with a base value of $4,418.00. As with Ms. Petit Beau's claim, the base value was calculated by CCC, based on the cost to purchase similar vehicles with similar conditions and mileage.

25. No amount for sales tax or title transfer fee or tag transfer fee was included in the amount listed in the CCC Market Valuation Report.

26. Instead, as to sales tax, Defendant imposed an extra-contractual requirement that Ms. Whitted purchase a replacement vehicle prior to any consideration of sales tax payment.

27. The failure to include sales tax and tag and title transfer fee amounts in making the total-loss payment is a breach of Defendant's policy, which promises to provide the full value of the total-loss vehicle, or FTLP, including sales tax and transfer fee amounts.

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[1] Plaintiff does not at this time have a certified copy of her insurance policy. However, upon information and belief, Ms. Whitted policy is virtually identical in all material ways to Exhibit A.

28. Neither Ms. Petit Beau nor Ms. Whitted received the FTLP (including sales tax and mandatory transfer fees) for their total-loss vehicle, in breach of the policy agreement.

29. Defendant, pursuant to a standard and uniform business practice, never pays insureds transfer fee amounts after a total-loss to an insured vehicle.

30. Defendant, pursuant to a standard and uniform business practice, requires insureds to actually replace the total-loss vehicle, and then pays in sales tax the lesser between 1) sales tax actually incurred or 2) sales tax calculated as a percentage of the total-loss vehicle value.

31. Defendant's failure to pay tag and title transfer fee amounts constitutes a breach of the policy.

32. Defendant's failure to pay sales tax unless and until the insured provides documentation of purchasing a replacement vehicle is found nowhere in Defendant's policy and constitutes a breach of the policy.

33. Defendant's failure to pay full sales tax where the replacement vehicle is a lesser value than the total-loss vehicle is found nowhere in Defendant's policy and constitutes a breach of the policy.

34. Title transfer fees and tag transfer fees are both mandatory applicable fees that must be paid to replace any vehicle in the State of Florida. Sales tax is also mandatory and imposed by the State of Florida and is necessarily incurred in replacing any vehicle in the State of Florida.

35. Florida law requires that all vehicles be properly titled and registered in order to be legally driven on Florida roadways. The fee to transfer title to a vehicle is, at minimum, $75.25.

36. Florida law requires that all vehicles have proper license plate (or tag) in order to be legally driven on Florida roadways. The fee to transfer license plate or tag is no less than $4.50.

37. Plaintiffs were owed title transfer fees and tag transfer fees, and state and local sales tax calculated as a percentage of the base vehicle value.

38. In breach of its contract with Plaintiffs, Defendant did not include both transfer fees and sales in making the ACV payment for Plaintiffs' total loss and thus did not make the FTLP required by its insurance policies and agreement.

39. Plaintiff paid all premiums owed and otherwise satisfied all conditions precedent such that their insurance policy was in effect and operational at the time of the accident.

THE OCEAN HARBOR INSURANCE POLICY

40. The insurance policy (Exh. A), under the section entitled "Part IV, Coverage for Damage to Your Covered Auto" (p. 13), states that "Collision" and "Other Than Collision" (more normally known as "Comprehensive") coverage means Defendant will pay for loss to a covered auto resulting from collision of the insured vehicle with another object and for any loss not covered by collision and not excluded from the policy. *Id.* at 13.

41. The "insured auto" or "Your covered auto" is defined, *inter alia*, as the auto listed in the declarations page. *Id.* at 2(I)(1).

42. In the "Part IV" section, under a provision entitled "Limits of Liability" (*Id.* p. 15), Defendant states, in relevant part, that the "limit of liability for loss… [is] the: 1. Actual cash value of the stolen or damaged property at the time of loss[.]"

43. "Property damage" is defined, in relevant part, as "damage or destruction of tangible property, including loss of use." *Id.* at 3.

44. There is no difference, for purposes of the duty to pay ACV on a first-party total loss claim, between a collision total-loss claim and an "other than collision" total-loss claim.

45. ACV is not specifically defined in the policy.

46. Clearly, then, the policy language does not further define ACV as including: (1) any provision excluding sales tax or state and local regulatory fees from ACV; (2) any provision deferring payment of the ACV sales tax or state and/or local regulatory fees for any purpose whatsoever; (3)

any provision requiring an insured to obtain a replacement vehicle at all in order to receive payment; (4) any provision requiring the insured to first obtain a replacement vehicle as a condition precedent to receiving ACV state and regulatory sales tax and/or fees; or (5) any provision linking the amount of ACV state and regulatory sales tax and/or fees to a particular replacement vehicle and the corresponding state or local regulatory sales tax and/or fees on said replacement vehicle.

47. According to Defendant's policy, insureds are owed the same amount – actual cash value of the insured vehicle – whether or not they replace the vehicle at all. Insureds are owed the same amount – actual cash value – whether or not they paid (or how much they paid) for the total-loss vehicle. Instead, in exchange for the premiums paid by the insureds, Defendant promises to pay a predictable amount – the actual cash value of the insured vehicle, including sales tax and transfer fees – irrespective of payments related to either the total-loss vehicle or the replacement vehicle (if any).

48. The policy language applies to all covered autos irrespective of ownership interests - whether owned, financed or leased, insured autos are considered "owned" for purposes of the policy. *Id.* at 2.

PAYMENT OF SALES TAX AND MANDATORY FEES

49. Controlling case law from the Florida Supreme Court, Florida's intermediate appellate courts, the 11th Circuit Court of Appeals, and Florida's federal district courts hold that the term "actual cash value," when undefined in an insurance policy, should be defined as the repair or replacement cost minus depreciation – a definition which would include sales tax and transfer fees necessarily incurred upon replacement of the insured vehicle. See e.g., Trinidad v. Florida Peninsula Insurance Co., 121 So.3d 433, 438 (Fla. 2013) ("[a]ctual cash value is generally defined as 'fair market value' or '[r]eplacement cost minus normal depreciation,' where depreciation is defined as a 'decline in an asset's value because of use, wear, obsolescence, or age.'") (quoting Blacks Law Dictionary 506,

1690) (9th Ed. 2009); Goff v. State Farm Florida Insurance Co., 999 So. 2d 684, 689 (Fla. 2d DCA 2008)(undefined ACV is calculated as full replacement cost minus depreciation); Mills v Foremost Insurance Co., 511 F.3d 1300, 1306 (11th Cir. 2008) (holding that sales tax "should be included in an ACV payment if it is 'reasonably likely' that the insured would incur" such cost upon replacement) (quoting Ghoman v. New Hampshire Insurance Co., 159 F. Supp.2d 928, 934 (N.D. Tex. 2001)); Roth v. Geico General Insurance Co., supra (Exh. B at 9) ("[T]he court concludes that [sales tax and title transfer fees] are components of actual cash value under the Policy and are therefore due to be paid to the insured under the Policy, regardless of whether the vehicle is owned, financed, or leased.") (note omitted); Bastian v. United Services Automobile Ass'n, 150 F. Supp. 3d 1284, 1290 (M.D. Fla. 2015) (agreeing with the 11th Circuit's "easily reached conclusion [in Mills] that state and local taxes are part of the cost of replacing an item" and thus part of the ACV).

50. In interpreting insurance policies, Florida courts begin with the plain language of the policy as bargained for by the parties. See Altman Contractors, Inc. v. Crum & Forster Specialty Ins. Co., 832 F.3d 1318, 1322 (11th Cir. 2016). Policy terms are given their plain and ordinary meaning and should be read in light of the skill and experience of ordinary people. Id. But, "if the relevant policy language is susceptible to more than one interpretation, one providing coverage and another limiting coverage, the insurance policy is considered ambiguous." See Auto-Owners Ins. Co. v. Anderson, 756 So. 2d 29, 34 (Fla. 2000). Courts should interpret policy ambiguities "liberally in favor of the insurer and strictly against the insured who prepared the policy." See Prudential Prop. & Cas. Ins. Co. v. Swindal, 622 So. 2d 467, 470 (Fla. 1993). Moreover, Florida law is equally well-settled that coverage clauses are "construed in the broadest possible manner" in order to effect "the greatest extent of coverage." See e.g., Hudson v. Prudential Prop. & Cas. Ins. Co., 450 So.2d 565 (Fla. 2nd DCA 1984) (coverage must be construed broadly and exclusions narrowly).

51. Sales tax, title transfer fees, and tag transfer fees are examples of elements constituting the FTLP owed to insureds in the event of a total-loss.

52. By operation of law and in the view of a reasonable insured, Defendant's policy promises to provide costs to be incurred upon replacement of the vehicle.

53. Nevertheless, Defendant declines to include all such fees, taxes and costs in making ACV payment to total-loss insureds – specifically tag and title transfer fee amounts – thereby breaching its contracts with insureds.

54. Defendant's policy of conditioning payment of sales tax, if any, until a replacement vehicle is procured – despite not providing for such procedure in its policy – is a breach of its policy, which promises to provide sales tax upon total loss, irrespective of whether vehicle is replaced at all, and irrespective of the amount or timing of replacement, if any.

55. Defendant's policy of conditioning the amount of sales tax payment, if any, on the value of the replacement vehicle – rather than the value of the total-loss vehicle – is a breach of its policy, which promises to pay the actual cash value of the insured vehicle, and does not require replacement of the vehicle at all.

56. Defendant's policy of conditioning payment of sales tax, if any, until a replacement vehicle is procured – despite not providing for such procedure in its policy – has already been considered and rejected by the Middle District of Florida in Bastian v. United Services Automobile Ass'n, 150 F. Supp. 3d 1284, 1290 (M.D. Fla. 2015). As the Court cogently noted, the mere fact that an insured might be permitted to implement a certain procedure without running afoul of Florida law is irrelevant unless the insurer provides for such procedures in its policy. Insureds are not required to guess what will be required of them in the event of a total-loss – rather, the policy terms set the contractual arrangement.

57. Defendant made no mention at all in its policy language concerning any conditions precedent and thus Defendant is not permitted to extra-contractually and unilaterally impose conditions to which insureds did not agree and of which insureds are not aware.

CLASS ALLEGATIONS

58. Plaintiffs bring this action seeking representation of a class pursuant to Florida Rule of Civil Procedure 1.220(b)(1)-(3).

59. Plaintiffs' claims are typical to those of all class member because members of the class are similarly affected by Defendant's failure to pay ACV state and local sales tax and regulatory fees upon the total loss of insured vehicles. The material and relevant policy terms for each class member are substantially identical to the terms of Plaintiffs' policy.

60. Plaintiffs' interests are coincident with and not antagonistic to those of other class members.

61. Plaintiffs' claim raises questions of law and fact common to all members of the class, within the meaning of Rule 1.220(a)(2) and they predominate over any questions affecting only individual Class Members within the meaning of Rule 1.220(b)(3). The common questions include, but are not limited to, the following: (a) whether, under the Defendant's standardized policy language, Plaintiffs and the class members are owed ACV sales tax and tag/title transfer fees upon the total loss of an insured vehicle; (b) whether Defendant is permitted to impose extra-contractual conditions precedent in order for insureds to receive sales tax and/or transfer fees as a part of the ACV payment; and (c) whether the Defendant has breached its insurance contracts with Plaintiffs and the class members by failing to pay ACV sales tax and tag/title transfer fees upon the total loss of an insured vehicle.

62. Plaintiffs' claims are typical of the claims of all other members of the class because all such claims arise from the improper failure by Defendant to pay state and local regulatory fees –

specifically sales tax and tag and title transfer fees – upon the total loss of insured vehicles and/or conditioning payment upon actual replacement of the total-loss vehicle.

63. Plaintiffs and their counsel will fairly and adequately protect and represent the interests of each member of the class.

64. Plaintiffs are committed to the vigorous prosecution of this action and has retained competent counsel experienced in prosecuting and defending class actions. Plaintiffs' counsel has successfully litigated other class action cases similar to that here, where insurers breached contracts with insureds by failing to include sales tax and/or total loss fees after total losses.

65. Class treatment is necessary, pursuant to Rule 1.220(b)(2) because Defendant has acted or refused to act on grounds generally applicable to all the members of the class, thereby making final injunctive relief or declaratory relief concerning the class as a whole appropriate.

66. Pursuant to Rule 1.220(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 separate 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.

67. Any argument that class treatment is not viable or productive in the present action is undercut by the fact that the Middle District of Florida very recently treated as a class action a case that is substantially identical in fact and in law to the present action. *See Bastian v. United Servs. Auto. Ass'n*, 150 F. Supp. 3d 1284 (M.D. Fla. December 10, 2015). *Bastian* is in the process of being

successfully settled as a class, and stands as incontrovertible evidence demonstrating the efficacy and viability of class treatment in the present action. Similarly, *Roth v. Geico General Insurance Co.*, Case No. 16-62942-CIV-Dimitrouleas (S.D. Fla. June 14, 2018) is a substantially similar case recently certified as a class action with judgment entered in favor of the class.

68. Plaintiffs bring this action as class representatives, individually and on behalf of all other persons or entities similarly situated, more specifically defined as follows:

MONETARY RELIEF CLASS

> All insureds, under any Florida policy issued by Ocean Harbor American Insurance Company and its subsidiaries with the same operative policy language covering a vehicle with private-passenger auto physical damage coverage for comprehensive or collision loss where such vehicle was declared a total loss, who made a first-party claim for total loss, and whose claim was adjusted as a total loss, within the five-year time period prior to the date on which this lawsuit was filed until the date of any certification order, who were paid a total amount in sales tax and title/tag transfer fees equaling less than 6% of the value of the total-loss vehicle plus $79.75.

INJUNCTIVE RELIEF CLASS

> All persons insured by Ocean Harbor American Insurance Company and its subsidiaries for private-passenger auto physical damage coverage for comprehensive or collision coverage.

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

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

a. The relatively small amount of damages that members of the classes 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 which any question of law or fact in the subject action can be adjudicated; and

c. No difficulties would be encountered in the management of Plaintiffs' 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.

71. Although the precise number of class members for the Monetary Relief Class and the Injunctive Relief Class are unknown to Plaintiffs at this time and can only be determined through appropriate discovery, Plaintiffs believe that because Defendant is one of the largest motor vehicle insurer in the State of Florida and writes hundreds of millions of dollars of private-passenger physical damage coverage premiums, the class of persons affected by Defendant's unlawful practice consists of thousands of individuals or the class of persons affected are otherwise so numerous that joinder of all class members is impractical. The unlawful practice alleged herein is a standardized and uniform practice, employed by Defendant pursuant to standardized insurance policy language, and results in the retention by Defendant of insurance benefits and monies properly owed to Plaintiffs and the class members. Thus, numerosity as to both classes is established.

72. Rule 1.220(A)(2)'s commonality requirement for the Monetary Relief Class is satisfied for reasons articulated herein. The central issues in this litigation turn on interpretation of materially identical policy provisions; thus, this case is well-suited for class-wide adjudication. Defendant and all class members are bound by the same materially identical policy terms. In addition to those reasons listed above, common questions include (but are not limited to): (1) Whether policy language ACV includes payment of mandatory transfer fees, and (2) whether Defendant is required to pay transfer fee amounts to insureds who suffer total-losses to vehicles insured under Defendant's Policies.

73. Rule 1.220(B)(3)'s typicality requirement for the Monetary Relief Class is satisfied for reasons articulated herein, and particularly because Plaintiffs and Class Members were injured through Defendant's uniform misconduct. Further, Plaintiffs' and Class Members' legal claims arise

from the same core practices, namely, the failure to pay full ACV, including title transfer fees, for first-party total loss claims, and for conditioning payment on actual replacement. Plaintiffs' claims are based upon the same legal theories as those of the Monetary Relief Class Members. Plaintiffs suffered the same harm as all the other Monetary Relief Class Members: the coverage for full ACV payment including the full measure of sales tax and transfer fees.

74. The relevant Policy provisions for each Monetary Relief Class Member are the same. The relevant law relating to the interpretation and application of those Policy provisions for each Monetary Relief Class Member is the same. There is the potential for inconsistent or varying adjudications concerning individual Monetary Relief Class Members. Without a single adjudication as to the application of relevant law to the relevant policy provisions, different courts may reach different conclusions relating to the same legal and factual issues.

75. Allowing the issues to be adjudicated in a piecemeal fashion likely would result in certain Monetary Relief Class Members who are not parties to individual adjudications having their rights impaired or impeded without notice or adequate representation.

76. Rule 1.220(B)(3)'s requirements are met for all reasons already stated herein. Specifically, the previously articulated common issues of fact and law predominate over any question solely affecting individual Monetary Relief Class Members. Further, and as stated previously, class treatment is superior to any other alternative method of adjudication because the damages suffered by individual Class Members is relatively small, their interests in maintaining separate 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, and Plaintiffs know of no difficulty that would be encountered in the management of this case that would preclude its maintenance as a class action.

77. The Injunctive Relief Class meets the requirements for class treatment under Rule 1.220(A) and 1.220(B)(2).

78. Numerosity is established because although Plaintiffs do not know the precise number of individuals insured under a private-passenger auto physical damage policy issued by Defendant and such number can only be established through discovery, the fact that Defendant is a large insurer writing hundreds of millions of dollars in premiums for such insurance policies indicates that numerosity is easily established as to the Injunctive Relief Class.

79. As to the Injunctive Relief Class, common questions of law and fact exist and predominate over any question affecting only individual Injunctive Relief Class Members. Trial Rule 23(A)(2). Because the central issues in this case turn on the interpretation of identical policy provisions, this case is especially well-suited to class adjudication. Further, Defendant and all members of the Injunctive Relief Class are bound by the same material terms, and the central issues in the case all involve interpretation of the same material and controlling terms.

80. Plaintiffs' claims and defenses are typical of the claims of the Injunctive Relief Class under Rule 1.220(A)(3). Plaintiffs and Injunctive Relief Class Members have insurance Policies with identical material terms. Plaintiffs' injunctive relief claims are based upon the same legal theories as those of the Injunctive Relief Class Members.

81. Plaintiffs' claims also are maintainable on behalf of the Injunctive Relief Class pursuant to Rule 1.220(B)(2) because Defendants have acted, and refused to act, on grounds that apply generally to all the Injunctive Relief Class Members, thereby making final injunctive relief appropriate with respect to the Injunctive Relief Class as a whole. Defendant has created and implemented a uniform claims handling practice based on policy language that is applicable to all Injunctive Relief Class Members. Defendant's practice of failing to pay full ACV, including sales tax

and transfer fees and conditioning payment (if any) on actual replacement, for first-party total loss claims applies generally to all Injunctive Relief Class Members and is ongoing.

82. Defendant's breach of Policy provisions requiring them to pay full ACV on total loss claims is a continuing breach and violation of Policy terms. Injunctive relief is necessary to stop these repeated and continued violations, which are likely to continue, repeat, and cause damages to Plaintiffs and the Injunctive Relief Class in the future.

CLAIM FOR BREACH OF CONTRACT

83. The allegations contained herein are incorporated by reference.

84. This count is brought by Plaintiffs Charline Petit Beau and Jacquelyn Whitted on behalf of themselves individually and on behalf of all putative Class Members.

85. Plaintiffs were party to an insurance contract with Defendant as described herein. All Class Members were parties to an insurance contract with Defendant containing materially identical terms.

86. The interpretation of Plaintiffs' and all Class Members' insurance Policies is governed by Florida law.

87. Plaintiffs and all Class Members made a claim determined by Defendant to be a first-party total loss under the insurance policy, and determined by Defendant to be a covered claim.

88. Defendant, by paying the total loss claim, determined that Plaintiffs and each Class Member complied with the terms of their insurance contracts, and fulfilled all duties and conditions under the Policies necessary to be paid on her or her total loss.

89. Pursuant to the aforementioned uniform contractual provisions, upon the total loss of insured vehicles, the Plaintiffs and every Class Member were owed the ACV of the vehicle.

90. Defendant refused to make a FTLP and thus failed to pay the vehicle's ACV to Plaintiffs and every Class Member.

91. Defendant's failure to provide the promised coverage constitutes a material breach of contract with the Plaintiffs and every Class Member.

92. As a result of said breaches, Plaintiffs and the class members are entitled under Defendant's insurance policies to sums representing the benefits owed for full ACV payment, including sales tax and transfer fees, as well as costs, prejudgment and post-judgment interest, injunctive relief and other relief as is appropriate.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs Charline Petit Beau and Jacquelyn Whitted, individually and on behalf of the Class, demand a trial by jury on all triable issues and seek relief and judgment as follows:

- For an Order certifying this action as a Class Action on behalf of the Classes described above;
- For an award of compensatory damages for the Monetary Relief Class in amounts owed under the Policies;
- For injunctive relief for the Injunctive Relief Class to prevent continuation of the illegal practice, for other injunctive relief as is proven appropriate in this matter;
- For all other damages according to proof;
- For an award of attorney's fees and expenses as appropriate pursuant to applicable law, including Fla. Stat. § 627.428;
- For costs of suit incurred herein;
- For pre and post judgment interests on any amounts awarded;
- For other and further forms of relief as this Court deems just and proper.

Dated this 3rd day of January, 2019.

Respectfully submitted,

/s/ Jake Phillips
Jacob L. Phillips
FBN: 120130
/s/ Ed Normand
Edmund A. Normand
FBN: 865590
NORMAND PLLC
3165 McCrory Place, Ste. 175
Orlando, FL 32803
Tel: 407.603.6031
jacob@ednormand.com
ed@ednormand.com
office@ednormand.com
service@ednormand.cm

/s/ Christopher J. Lynch
FBN: 331041
Christopher J. Lynch, P.A.
6915 Red Road, Suite 208
Coral Gables, FL 33143
Tel: 312.967.3653
clynch@hunterlynchlaw.com
lmartinez@hunterlynchlaw.com

SHAMIS & GENTILE, P.A.
/s/ Andrew J. Shamis
Andrew J. Shamis, Esq.
Florida Bar No. 101754
ashamis@shamisgentile.com
14 NE 1st Avenue, Suite 1205
Miami, FL 33132
Telephone: 305-479-2299
Counsel for Plaintiff and the Class

EDELSBERG LAW, PA
Scott Edelsberg, Esq.
Florida Bar No. 0100537
scott@edelsberglaw.com
19495 Biscayne Blvd #607
Aventura, FL 33180
Telephone: 305-975-3320

Exhibit "A"

OCEAN HARBOR CASUALTY INSURANCE COMPANY

LIMITED PERSONAL AUTO POLICY

Read your Policy carefully. This Policy does not satisfy all Financial Responsibility Laws.

This is a restricted Policy.

This Policy limits payment and reimbursement under the PIP Coverage as allowable by Florida Statute.

These policy terms and conditions with the declaration page and endorsements, if any, issued to form a part thereof, complete this policy.

OCEAN HARBOR CASUALTY INSURANCE COMPANY
LIMITED PERSONAL AUTO POLICY

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OCEAN HARBOR CASUALTY INSURANCE COMPANY

PERSONAL AUTO POLICY

AGREEMENT

In return for the payment of all premiums and subject to the terms of this policy, "we" agree with "you" as follows:

All correspondence shall be mailed to "you" at the address stated on the policy application unless "you" notify "us" in writing by certified mail of a change of address. All claims correspondence to "us" must be mailed to P.O. Box 451119, Sunrise, Florida 33345.

COMMON DEFINITIONS

The following definitions apply to all sections, parts, provisions and addendum of this policy.

Words and phrases are defined. They are in quotation marks when used.

A. Throughout this policy "You" and "Your" means the "named insured", defined as:
   1. The person or entity shown in the Declarations of this policy as the "named insured"; and, if an individual
   2. The spouse if a resident of the same household and who usually makes his or her home in the same family unit, whether or not temporarily living elsewhere, provided the spouse is listed by "you" on the policy application or endorsed thereto within thirty (30) days of becoming such.

   "You" and "Your" does not include a "Health Care Provider", with the exception of (1.) or (2.) above by way of occupation.

B. "We", "us" and "our" refer to Ocean Harbor Casualty Insurance Company.

C. For the purposes of this policy, any person leasing a private passenger "motor vehicle" which is leased:
   1. Under a written agreement to that person; and
   2. For a continuous period of at least six months.

   Shall be considered the "owner" of said leased "motor vehicle".

D. "Owner" means a person or entity that holds the legal title to a "motor vehicle", and also includes:
   1. A debtor having the right to possession, in the event a "motor vehicle", is the subject of a security agreement:
   2. A lessee having the right to possession, in event a "motor vehicle" is the subject of a lease with option to purchase; and such lease agreement is for a period of six months or more; and
   3. A lessee having the right to possession, in the event a "motor vehicle" is the subject of a lease without option to purchase; and that:
      a. Such lease agreement is for a period of six months or more; and
      b. The lease agreement provides that the lessee shall be responsible for providing any required insurance, including, but not limited to personal injury protection and Property Damage Liability.

E. "Business" includes trade, profession or occupation.

F. "Resident Relative" and "Family Member" means a person related to "you" by blood, marriage or adoption who is usually a resident of "your" household and who usually makes his or her home in the same family unit, whether or not temporarily living elsewhere. This includes a ward or a lawfully placed foster child.

G. "Insured" means
   1. "You" or any "resident relative" for the ownership, maintenance or use of any "motor vehicle" or "trailer", provided that all such individuals who are age 15 years or older are listed on the policy application; or
   2. Any person using "your covered auto" with express or implied permission to do so, provided that, if the individual is a regular operator of your covered auto, that individual is listed on the policy application.
   3. Any person who, during the term of this policy becomes a "resident relative" or another regular operator of your covered auto and is endorsed onto the policy within thirty (30) days of becoming such.

H. "Trailer" means any vehicle without motor power, other than a pole "trailer", designed for carrying persons or property and for being drawn by a "motor vehicle."

I. "Your covered auto" means:

1. Any "motor vehicle", shown in the Declarations.
2. Any private passenger "replacement motor vehicle" which replaces any motor vehicle shown in the Declarations of which "you" become the "owner" during the policy period.

   If the private passenger "replacement motor vehicle" "you" acquire replaces a motor vehicle shown in the Declarations, it will have the same liability, personal injury protection, and uninsured motorist coverage as the "motor vehicle" it replaced.
   "Replacement motor vehicle" means a private passenger motor vehicle purchased by or leased to "you" to replace a "motor vehicle" shown in the Declarations.

   Except as it pertains to Other Than Collision coverage, which is set forth in Part IV of this Policy, this policy will only provide coverage for the "replacement motor vehicle" if "you":
   a. Notify "us" in writing within 30 days after its delivery to "you" or "your spouse"; and;
   b. Pay "us" any added amount or premium due.

   As to Other Than Collision coverage as set forth in Part IV of this policy, this policy will only provide Other Than Collision coverage for the "replacement motor vehicle" if "you":
   c. Notify "us", in writing after its delivery to "you" or "your spouse". However, no Comprehensive or Collision coverage will be provided unless "you" notify "us" in writing prior to any accident or loss for which "you" are seeking Comprehensive or Collision coverage and have the vehicle inspected and photographed if requested to do so by us; and
   d. Pay "us" any added amount or premium due.
3. Any private passenger "motor vehicle" which is acquired in addition to the "motor vehicle(s)" shown in the Declarations of which "you" become the "owner" during the policy period provided that "you" are not the "owner" of any other "motor vehicles" which are uninsured, self-insured or insured with another insurer and:
   a. "You" ask "us" in writing to insure it within thirty days after "you" become the "owner" of said "motor vehicle" or take possession of said vehicle, whichever occurs first; and
   b. No other insurance policy provides coverage for that motor vehicle.
   If the private passenger "motor 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, except as to Other Than Collision coverage.
   As to Other Than Collision coverage as set forth in Part IV of this policy, this policy will only provide Other Than Collision coverage for the private passenger "motor vehicle" "you" acquire if "you":
   c. Notify "us", in writing after its delivery to "you" or "your spouse". However, no Comprehensive or Collision coverage will be provided unless "you" notify "us" in writing prior to any accident or loss for which "you" are seeking Comprehensive or Collision coverage and have the vehicle inspected and photographed if requested to do so by us; and
   d. Pay "us" any added amount or premium due.
4. Any "trailer" of which "you" are the "owner" while being towed by "your covered auto", provided that it is not used for any "business", professional or occupational purposes.
5. Any private passenger "motor vehicle" or "trailer" of which "you" are not the "owner" while being used as a "temporary substitute vehicle" for "your covered auto."

J. "Temporary substitute" means a private passenger "motor vehicle" or "trailer" which is used only while "your covered auto" or "trailer" is out of normal use because of its:

1. Breakdown;
2. Repair;
3. Servicing;
4. Loss; or
5. Destruction.

K. "Motor vehicle" means any self-propelled vehicle with four or more wheels, which is of a type both designed and required to be licensed for use on the highways of Florida and any "trailer" or semi-trailer designed for use with such vehicle. A "motor vehicle" does not include:

1. Any vehicle which is used in mass transit other than public school transportation and designed to transport more than 5 passengers exclusive of the operator of the vehicle and which is owned by a municipality, a transit authority, or by a political subdivision of the state; or
2. A mobile home; or
3. A motorcycle or any other vehicle with less than four wheels; or
4. Any vehicle while it is drag racing or engaged in any organized speed, stunt or demolition event or contest.

L. "Occupying" means in, upon, entering into, or alighting from

M. "Bodily Injury" means "bodily injury" to a person, including sickness, disease or death resulting therefrom.

N. "Property damage" means damage or destruction of tangible property, including loss of use.

O. "Medically necessary" refers to a medical service or supply that a prudent physician would provide for the purpose of preventing, diagnosing, or treating an illness, injury, disease, or symptom in a manner that is:
   1. In accordance with generally accepted standards of medical practice;
   2. Clinically appropriate in terms of type, frequency, extent, site, and duration; and
   3. Not primarily for the convenience of the patient, physician or other services or accommodations.

P. "Health Care Provider" means any person or entity providing any medical care, treatment, diagnostic testing, supplies, products, services or accommodations.

Q. "Policy" means a written contract of insurance or written agreement for or effecting insurance, or the certificate thereof, and includes all clauses, riders, endorsements, and papers which are a part thereof.

R. "Premium" means the consideration paid or to be paid to an insurer for the issuance and delivery of any binder or policy of insurance.

S. "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term.

T. "Limit of Liability" is the limit shown on the declarations page for that coverage.

U. "Spouse" means "your" husband or wife who resides with "you" and who usually makes his or her home in the same family unit, whether or not temporarily living elsewhere.

V. Throughout the Policy, "Organization" is replaced by "Entity".

PART I: COVERAGE FOR "BODILY INJURY" AND "PROPERTY DAMAGE" LIABILITY

INSURING AGREEMENT

"We" will pay damages for "bodily injury" or "property damage" for which any "covered person" becomes legally liable as a result of an auto accident. "We" will settle or defend, as "we" consider appropriate, any claim or suit against the "covered person" asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. "Our" duty to settle or defend ends when "our" limit of liability for this coverage has been exhausted. "We" have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.

DEFINITIONS

"Covered person" as used in this part means:

A. "You" or any "resident relative", for the ownership, maintenance or use of any "motor vehicle" or "trailer", except for any "motor vehicle" or "trailer";
   1. Of which "you" or any "resident relative" are the "owner" which is not defined as "your covered auto" under this policy; or
   2. Furnished or available for "your" or any "resident relative's" regular use which is not defined as "your covered auto" under this policy; or
   3. Rented or leased by "you" or any "resident relative" which is not being used as a "temporary substitute" for "your covered auto" except for a "trailer";

B. Any person using "your covered auto" with "your" express or implied permission, and used within the scope of that permission;

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 part;

D. For any private passenger "motor vehicle" or "trailer", other than "your covered auto", any person or organization, but only with respect to legal responsibility for acts or omissions of "you" for whom coverage is afforded under this part. This provision applies only if the person or organization does not own, rent, lease nor hire the private passenger "motor vehicle" or "trailer";

E. "Covered Person" is not a "Health Care Provider."

Except while operating, maintaining or using a motorcycle.

SUPPLEMENTARY PAYMENTS

In addition to "our" limit of liability, "we" will pay on behalf of a "covered person":

A. Up to $250 for the cost of the bail bonds required because of an auto accident, including related traffic law violations, resulting in "bodily injury" or "property damage" covered under this policy.

B. Premiums on appeal bonds and bonds to release attachments in any suit against the "covered person" that "we" defend.

C. Interest accruing after a judgment is entered in any suit against the "covered person" that "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.

D. Up to $50 per day for loss of earnings, but not other income, because of attendance at hearings or trials at "our" request.

E. Other reasonable expenses incurred at "our" request.

POLICY PERIOD AND TERRITORY

Policy Period

A. The policy coverages "you" chose apply only to accidents and losses which occur:
   1. During the policy period as shown in the Declarations; and
   2. Within the "policy territory".

Policy Territory

B. Other than for personal injury protection (No-Fault) coverage, the "policy territory" is:
   1. The United States of America, its territories and possessions; and
   2. Canada.

   This policy will also apply to loss to, or accidents involving, "your covered auto", while it is being transported between their ports.

C. The "policy territory" for the Personal Injury Protection (No-Fault) coverage "you" chose applies:
   1. In Florida; and
   2. Outside Florida, but within the United States of America or its territories or possessions or Canada, but only to "you" while occupying "your covered auto" and a "resident relative" while occupying "your covered auto" who is not himself or herself the owner of a motor vehicle with respect to which security is required under Florida Statutes.

However, the limit of liability shown in the Declarations is the maximum limit of liability "we" will pay, regardless of the location of the loss.

EXCLUSIONS

"We" do not provide "bodily injury" or "property damage" liability coverage:

A. For any person who intentionally causes "bodily injury" or "property damage".

B. For any person for damage to property owned or being transported by that person.

C. For any "covered person" for damage to property rented to, used by, or in the care of that person. This exclusion does not apply to damage to a residence or private garage. It also does not apply to damage to any of the following type vehicles not owned by or furnished or available for the regular use of "you" or any "resident relative":
   1. Private passenger "motor vehicles"; or
   2. "Trailers".

D. For any person while employed or otherwise engaged in the "business" or occupation of selling, repairing, servicing, storing or parking of "motor vehicles" designed for use mainly on public highways, including road testing and delivery.

E. For any person maintaining or using any "motor vehicle" while that person is employed or otherwise engaged in any "business" or occupation (other than farming and ranching) not described in Exclusion D.

F. For the ownership, maintenance or use of any "motor vehicle" which:
   1. Has less than four wheels;
   2. Is not required to be licensed for use on public roads; or
   3. Weighs in excess of 10,000 pounds.

   This exclusion does not apply to any "trailer" of which "you" are the "owner".

G. For the ownership, maintenance, or use of any "motor vehicle", other than the ownership or use of "your covered auto", which is owned by "you" or a "resident relative" or furnished or available for "your" or any "resident relative's" regular use.

H. For any person while "your covered auto" is being used:
   1. For the purpose of any prearranged or organized racing, demolition or speed contest, exhibition, or preparation therefore;
   2. In any illegal activity (other than a traffic violation) in which "you" or a "resident relative" are a willing participant or give willful consent.

I. For any person using "your covered auto" without express or implied permission to do so.

J. For any person for "bodily injury" or "property damage" for which that person is an "insured" under a "nuclear energy liability policy" or would be an "insured" but not for its termination upon exhaustion of its limits of liability. A "nuclear energy liability policy" is a policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors.

K. For "bodily injury" or "property damage" sustained by the "named insured" or any "resident relative".

L. For any person's liability arising out of the ownership or operation of a "motor vehicle" while it is being used to carry persons or property for a fee. This exclusion does not apply to a share-the-expense car pool.

M. For any "motor vehicle" while it is being used for or in the course of "your" employment or occupation, unless:
   1. "You" have told "us" in writing the car is for "business" use;
   2. "We" have accepted "your covered auto" based on these conditions; and
   3. "You" have paid the premium for "business" use.

N. For any "motor vehicle", nor operator of such "motor vehicle", rented by "you" or any "resident relative"; unless it is being used as a "temporary substitute" for "your covered auto".

O. For "bodily injury" or "property damage" arising out of any person's liability for the ownership, maintenance or operation of "your covered auto" when:
   1. It is being rented or leased to others;
   2. It has been sold to another; or
   3. It is under a conditional sales agreement by "you" to another.

P. For "bodily injury" or "property damage" arising out of any liability assumed under any contract or leasing agreement unless that liability arises out of negligence or such liability would have existed without the contract.

Q. For "bodily injury" or "property damage" arising out of the ownership, maintenance, or use of any vehicle while it is being used as a residence or premises.

R. For any damages which are specifically described as vicarious, punitive or exemplary.

S. For any person for "bodily injury" to an employee or fellow employee of that person during the course of:
   1. Employment; or
   2. Performing the duties related to the conduct of that person's "business"; or
   3. The spouse, child, parent, brother or sister of that person as a consequence of 1 or 2 above.

   This exclusion does not apply to "bodily injury" to a domestic employee not entitled to Workers' Compensation benefits or to liability assumed by the "named insured" under an "insured" contract.

LIMIT OF LIABILITY

The limit of liability shown in the Declarations for each person for "bodily injury" liability is "our" maximum limit of liability for all damages for "bodily injury" sustained by any one person in any one auto accident. This includes all derivative claims arising out of said "bodily injury" which includes, but is not limited to: damages for care; loss of service or death; loss of consortium; loss of society or companionship. Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for "bodily injury" liability is "our" maximum limit of liability for all damages for "bodily injury" resulting from any one auto accident.

The limit of liability shown in the Declarations for each auto accident for "property damage" liability is "our" maximum limit of liability for all damages to all property resulting from any one auto accident regardless of the location of the loss.

This is the most "we" will pay regardless of the number of "covered persons", claims made, vehicles or premiums shown in the Declarations, or vehicles involved in the auto accident.

The limits of liability are not increased because more than one person or "entity" may be a "covered person"; and

A motor vehicle and attached vehicle are one vehicle, therefore the maximum limits of liability are subject to the limits of any one vehicle.

FINANCIAL RESPONSIBILITY

When "we" certify this policy as proof under the Florida financial responsibility law, it will comply with the law to the extent of the coverage required under all Florida Statutes as provided in Chapter 324.

NON-DUPLICATION

We will not pay any claims for damages and expenses under Liability coverage, Part I, that have already been paid, could be paid, or could have been paid under any Personal Injury Protection Coverage or medical payments coverage of any policy.

OTHER INSURANCE

If there is other applicable liability insurance, the total limits of liability shall not exceed those of the policy with the highest limits of liability. "We" will pay only "our" share of the damages. "Our" share is the proportion that "our" limit of liability bears to the total of all other applicable limits of liability. However, any insurance "we" provide for a vehicle of which "you" are not the "owner" shall be excess over any other collectible insurance.

NON-JOINDER OF INSURER

No person, who is not an "insured" under the terms of this policy shall have any interest in this policy, either as a third party beneficiary or otherwise, prior to first obtaining a verdict against a person who is an "insured" under the terms of this policy for a cause of action which is covered by this policy.

LEGAL ACTION AGAINST "US"

No legal action may be brought against "us" until there has been full compliance with all the terms of this policy nor until thirty days after the required notice of auto accident and reasonable proof of claim has been filed with "us". Reasonable proof shall include, but not be limited to, a fully completed accident report and police report. In addition, under this section of the policy, no legal action may be brought against "us" until "we" agree, in writing, that the "covered person" has an obligation to pay or until the amount of that obligation has been finally determined by verdict after trial. No person or organization has any right under this policy to bring "us" into any action to determine the

liability of a "covered person" until after the rendition of a verdict.

NOTICE

In the event of an accident, written notice of the loss must be given to "us" or any of "our" authorized agents as soon as practicable.

SUBMIT A PROOF OF LOSS WHEN REQUIRED BY "US"

As soon as practicable, the person making the claim shall give to "us" written proof of claim, under oath if required, which may include information as may assist "us" in determining the amount due and payable.

A person seeking any coverage under this section of the policy must cooperate with "us" in the investigation, settlement or defense of any claim or suit, including submitting to an examination under oath by any person named by "us" when or as often as "we" may reasonably require at a place designated by "us" within a reasonable time after "we" are notified of the claim.

Whenever a person making a claim is charged with committing a felony in connection with the incident giving rise to said claim, "we" shall withhold benefits until at the trial level, the prosecution makes a formal entry on the record that it will not prosecute the case against the person, the charge is dismissed or the person is acquitted.

PART II: UNINSURED MOTORISTS COVERAGE
(Referred to as UM Coverage)

DEFINITIONS

A. "Covered person" as used in this Part means:
   1. "You" or any "family member";
   2. Any other person occupying "your covered auto";
   3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1 or 2 above.
   4. The definition of "covered person" does not include a "Health Care Provider."
   5. The definition of "covered person" does not include the Government of the United States of America.

B. "Uninsured Motor Vehicle".
   1. "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. To which a liability bond or policy applies at the time of the accident but its limit for bodily injury liability is not enough to pay the full amount the "covered person" is legally entitled to recover as damages.
      c. That is a hit-and-run vehicle. This means a "motor vehicle" whose "owner" or operator cannot be identified and that hits or that causes an accident resulting in "bodily injury" without hitting:
         i. "You" or any "family member";
         ii. A vehicle which "you" or any "family member" are "occupying"; or
         iii. "Your covered auto".

         If there is no physical contact with the hit-and-run vehicle and no witnesses other than any person making a claim under this or any similar coverage: (1.) The accident must be reported to the police or law enforcement within 24 hours; AND (2.) "We" must be notified within 30 days of the accident.
      d. To which a liability bond or policy applies at the time of the accident, but the bonding or insuring company denies coverage or is insolvent, or becomes insolvent within 4 years after the accident.
   2. 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"; unless, it is "your covered auto" to which Part I of the policy applies and liability coverage is excluded for any person other than "you" or any "family member" for damages sustained in the accident by "you" or any "family member".
      b. Operated on rails or crawler treads.
      c. Designed mainly for use off public roads while not upon public roads.
      d. While located for use as a residence or premises.

INSURING AGREEMENT

A. "We" will pay compensatory damages, except punitive or exemplary damages, which a "covered person" is legally entitled to recover from the "owner" or operator of an uninsured "motor vehicle" because of "bodily injury":
   1. Sustained by a "covered person"; and
   2. Caused by an auto accident; and
   3. Caused by the negligence of an "owner" and/or operator of an "uninsured motor vehicle" arising out of the ownership or operation of that vehicle.

However, this coverage does not apply and "we" will not pay damages for pain, suffering, mental anguish, or

inconvenience unless the "bodily injury" consists in whole or in part of:

a. Significant and permanent loss of an important bodily function;
b. Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement;
c. Significant and permanent scarring or disfigurement; or
d. Death.

B. Any judgment for damages arising out of a suit brought without "our" written consent is not binding on "us".

LIMIT OF LIABILITY

A. Accidents involving "bodily injury" to "you" or any "family member".

1. For "bodily injury" sustained by "you" or any "family member" in any one accident, "our" maximum limit of liability for all resulting damages, including, but not limited to:
   a. All direct;
   b. All derivative; or
   c. All consequential;

   Damages recoverable by any "covered person", is the sum of the limits of liability per individual shown in the Declarations for UM Coverage.
2. Subject to the maximum limit of liability per individual set forth above in A. 1., "our" maximum limit of liability for all damages for "bodily injury" resulting from any one accident is the sum of the limits of liability shown in the Declarations per accident for UM Coverage.
3. Subject to the maximum limits of liability per individual and per accident set forth in the A. 1. and A. 2. above, for "bodily injury" sustained in any one accident by "you" or any "family member", "our" maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative, or consequential damages recoverable by "you" or any "family member" is the lesser of:
   a. The sum of the limits of liability per individual shown in the Declarations applicable to all vehicles on the policy; or
   b. That "covered person's" pro-rata share of the sum of the limits of liability per accident applicable to all vehicles involved.

"You" or any "family member" who sustains "bodily injury" in the accident will also be entitled to a pro-rata share of the sum of the limits of liability per accident, for those vehicles to which UM Coverage applies, as shown in the Declarations. A person's pro-rata share shall be the proportion that that person's damages bears to the total damages sustained by all "covered persons".

B. Accidents involving "bodily injury" to any "covered person" other than "you" or any "family member".

1. For "bodily injury" sustained by any "covered person" other than "you" or any "family member" in any one accident, "our" maximum limit of liability for all resulting damages, including, but not limited to:
   a. All direct;
   b. All derivative; or
   c. All consequential;

   Damages recoverable by any "covered person", is the sum of the limits of liability per individual shown in the Declarations for UM Coverage.
2. Subject to the maximum limits of liability per individual set forth above in B. 1., "our" maximum limit for all damages for "BODILY INJURY" resulting from any one accident is the sum of the limits of liability shown in the Declarations per accident for UM Coverage.

C. The limits of liability described in Paragraphs A. and B. above are the most "we" will pay regardless of the number of:

1. "Covered persons";
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

D. Any amount otherwise payable for damages under UM Coverage shall be reduced by all sums payable because of the "bodily injury" under any:

1. Workers' compensation law;
2. Disability benefits law or similar law;
3. No-Fault/PIP Coverage;
4. Automobile medical expense coverage or similar coverage;
5. Or motor vehicle liability insurance.

E. Any amount otherwise payable for damages under UM shall be reduced by all sums paid because of the "bodily injury" by or on behalf of persons or organizations that may be legally responsible. This includes all sums payable under Part I.

EXCLUSIONS

A. "We" do not provide UM Coverage for "bodily injury" sustained by any "covered person":

1. If that person or legal representative settles the "bodily injury" claim without "our" written consent. However, this exclusion (A. 1.) does not apply:
   a. If such settlement does not prejudice "our" right to recover payment; or
   b. If that person or legal representative provides "us" with advance notice of any proposed settlement as required by Part V. G. – Additional Duties for any

"covered person" seeking Uninsured Motorist Coverage.

2. While "occupying" "your covered auto" when it is being used to carry persons for a fee. This exclusion (A. 2.) does not apply to a share-the-expense car pool.
3. While using a vehicle without expressed or implied permission.
4. While "your covered auto" is rented or leased to others.
5. While "occupying" any vehicle when it is being operated in, or in practice for, any driving contest or challenge.

B. UM coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:
   1. Worker's compensation law; or
   2. Disability benefits law.

C. "We" do not provide UM Coverage for punitive or exemplary damages.

OTHER INSURANCE

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" or a "family member" do not own, shall be excess over any other collectible insurance.

NON-DUPLICATION

No "covered person" will be entitled to receive duplicate payments under this coverage for the same elements of loss which were:

A. Paid because of the "bodily injury" by or on behalf of persons or organizations that may be legally responsible.

B. Paid or payable under any workers' compensation law or similar disability benefits law.

C. Paid under another provision or coverage in this policy.

D. Paid under any No-Fault/PIP Coverage, paid under any automobile medical expense coverage or paid under any other similar coverage.

ARBITRATION

A. If "we" and a "covered person" disagree as to:
   1. Whether the "covered person" is legally entitled to recover damages from the "owner" or operator of an uninsured motor vehicle or an underinsured motor vehicle; or
   2. The amount of damages that the "covered person" is legally entitled to collect from that "owner";

   Then, that disagreement may be arbitrated, provided both parties so agree. This arbitration shall be limited to the two aforementioned factual issues and shall not address any other issues. Any arbitration finding that goes beyond the two aforementioned factual issues shall be voidable by "us" or a "covered person".

B. If both parties agree to arbitration, each party will select an arbitrator, and those two arbitrators will select a third. If the two arbitrators cannot agree on a third within thirty (30) days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

C. Unless both parties agree otherwise, arbitration will take place in the county in which the covered person lived at the time of the accident, and local rules of law as to procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding up to the coverage limit of liability.

PART III: COVERAGE FOR PERSONAL INJURY PROTECTION

INSURING AGREEMENTS:

DEFINITIONS:

A. "Motor Vehicle" in this Part III means any self-propelled vehicle with four (4) or more wheels, which is of a type both designed and required to be licensed for use on the highways of Florida and any trailer or semi-trailer designed for use with such vehicle.

   A "Motor Vehicle" does not include:
   1. Any "motor vehicle", which is used in mass transit, other than public school transportation, that is:
      a. designed to transport more than five (5) passengers, exclusive of the operator of the vehicle; and
      b. owned by a municipality, a transit authority, or by a political subdivision of the State; or
   2. A mobile home.

B. An "Insured motor vehicle" means a "motor vehicle" listed on the policy for which a premium is being charged and with respect to which security is required to be maintained under Florida Motor Vehicle Law and any trailer or semi-trailer designed for use with such vehicle.

C. "Florida Motor Vehicle No-Fault Law" means the Florida Motor Vehicle No-Fault Law and any amendments.

D. "Pedestrian" means a person while not an occupant of any self-propelled vehicle.

E. "Medical Expenses" means all expenses for medically necessary:
   1. Medical;
   2. Surgical;
   3. X-ray;
   4. Dental; and
   5. Rehabilitative services;
      Including:
      a. Prosthetic devices; and
      b. Medically necessary ambulance, hospital, and nursing services;

   Resulting from an automobile accident. Such benefits shall also include necessary remedial treatment and services recognized and permitted under the laws of the state for an injured person.

F. "Replacement services expenses" means, with respect to the period of disability to the injured person, all expenses reasonably incurred in obtaining ordinary and necessary services from others, that the injured person would have performed without income for the benefit of his household, had he not been injured.

G. "Disability benefits" means gross income lost and loss of earning capacity per individual from inability to work proximately caused by the injury sustained by the injured person, as a result of an automobile accident. It includes all expenses reasonably incurred in obtaining ordinary and necessary services from others, that the injured person would have performed without income for the benefit of his or her household, had he not been injured.

H. "Death Benefit" means such benefits payable to:
   1. The executor or administrator of the deceased;
   2. Any of the deceased's relatives by blood, legal adoption or connection by marriage; or
   3. Any person appearing to "us" to be equitably entitled thereto;

   When the proximate cause of death was an automobile accident.

I. "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:
   1. Serious jeopardy to patient health.
   2. Serious impairment to bodily functions.
   3. Serious dysfunction of any bodily organ or part.

COVERAGE: PERSONAL INJURY PROTECTION (NO-FAULT)

"We", as the insurer of the owner of a "motor vehicle", will pay in accordance with the "Florida Motor Vehicle No-Fault Law", for "bodily injury" to an "insured", as defined in this Section, caused by an accident resulting from the ownership, maintenance or use of a "motor vehicle", as follows:

A. Medical Benefits:
   80% of properly billed "Medical Expenses" for medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices, and medically necessary ambulance, hospital, and nursing services if the individual receives initial services and care pursuant to subparagraph 1. below **within 14 days after the motor vehicle accident.** The medical benefits provide reimbursement only for:
   1. Initial services and care that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, or a chiropractic physician licensed under chapter 460 or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. Initial services and care may also be provided by a person or entity licensed under part III of chapter 401 which provides emergency transportation and treatment.
   2. Upon referral by a provider described in subparagraph 1., follow-up services and care consistent with the underlying medical diagnosis rendered pursuant to subparagraph 1. which may be provided, supervised, ordered, or prescribed only by a physician licensed under chapter 458 or chapter 459, a chiropractic physician licensed under chapter 460, a dentist licensed under chapter 466, or, to the extent permitted by applicable law and under the supervision of such physician, osteopathic physician, chiropractic physician, or dentist, by a physician assistant licensed under chapter 458 or chapter 459 or an advanced registered nurse practitioner licensed under chapter 464. Follow-up services and care may also be provided by any of the following persons or entities:
      a. A hospital or ambulatory surgical center licensed under chapter 395.
      b. An entity wholly owned by one or more physicians licensed under chapter 458 or chapter 459, chiropractic physicians licensed under chapter 460, or dentists licensed under chapter 466 or by such practitioners and the spouse, parent, child, or sibling of such practitioners.
      c. An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals.
      d. A physical therapist licensed under chapter 486, based upon a referral
      e. by a provider described in subparagraph 2.
      f. A health care clinic licensed under part X of chapter 400 which is:
         i. accredited by the Joint Commission on Accreditation

of Healthcare Organizations, the American Osteopathic Association, the Commission on Accreditation of Rehabilitation Facilities, or the Accreditation Association for Ambulatory Health Care, Inc.;

ii. Has a medical director licensed under chapter 458, chapter 459, or chapter 460;

iii. Has been continuously licensed for more than 3 years or is a publicly

iv. traded corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange; and

v. Provides at least four of the following medical specialties:
   a) General medicine.
   b) Radiography.
   c) Orthopedic medicine.
   d) Physical medicine.
   e) Physical therapy.
   f) Physical rehabilitation.
   g) Prescribing or dispensing outpatient prescription medication.
   h) Laboratory services.

3. Reimbursement for services and care provided in subparagraph 1. Or subparagraph 2. up to $10,000 if a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced registered nurse practitioner licensed under chapter 464 has determined that the injured person had an emergency medical condition.
4. Reimbursement for services and care provided in subparagraph 1. Or subparagraph 2. is limited to $2,500 if any provider listed in subparagraph 1. or subparagraph 2. determines that the injured person did not have an emergency medical condition.
5. Medical benefits do not include massage as defined in Florida Statutes S. 480.033 or acupuncture as defined in Florida Statutes S. 457.102, regardless of the person, entity, or licensee providing massage or acupuncture, and a licensed massage therapist or licensed acupuncturist may not be reimbursed for medical benefits under this section.

All such "Medical Benefits" are limited to 80% of the following schedule of maximum charges:

6. For emergency transport and treatment by providers licensed under chapter 401, 200 percent of Medicare.
7. For emergency services and care provided by a hospital licensed under chapter 395, 75 percent of the hospital's usual and customary charges.
8. For emergency services and care as defined by Florida Statutes S. 395.002 provided in a facility licensed under chapter 395 rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community.
9. For hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.
10. For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.
11. For all other medical services, supplies, and care, 200 percent of the allowable amount under the participating physicians' fee schedule of Medicare Part B. However, if such services, supplies, or care is not reimbursable under Medicare Part B, "we" will limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under Florida Statutes S. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by "us".

For purposes of the above, the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which at the time the services, supplies, or care was rendered and for the area in which such services, supplies, or care were rendered, and the applicable fee schedule or payment limitation applies throughout the remainder of that year, notwithstanding any subsequent change made to the fee schedule or payment limitation, except that it will not be less than the allowable amount under the applicable participating physicians schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.

B. Disability Benefits:
60% of "Disability Benefits" and 100% of all "Replacement services expenses".

Up to the policy limit of $10,000 per individual.

C. Death Benefits:
"Death benefits" up to $5,000 per individual in addition to the $10,000 policy limit.

If "we" have a reasonable belief that a fraudulent insurance act, for the purposes of Florida Statutes S. 626.989 or Florida

Statutes S. 817.234, has been committed, "we" shall notify the claimant, in writing, within 30 days after submission of the claim that the claim is being investigated for suspected fraud. Beginning at the end of the initial 30-day period, "we" have an additional 60 days to conduct our fraud investigation. No later than 90 days after the submission of the claim, the "we" will either deny the claim or pay the claim with simple interest. Interest shall be assessed from the day the claim was submitted until the day the claim is paid. All claims denied for suspected fraudulent insurance acts shall be reported to the Division of Insurance Fraud.

"Insured", as used in Part III, means:

In the State of Florida:

1. The "named insured" while occupying a "motor vehicle", or while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with a "motor vehicle".
2. The "named insured's" relatives residing in the same household while occupying a "motor vehicle", or while not an occupant of a self-propelled vehicle if the injury is caused by a "motor vehicle". This applies provided that the "named insured's" relative is domiciled in the "named insured's" household at the time of the loss, and is not the owner of a "motor vehicle" with respect to which security is required under the "Florida Motor Vehicle No-Fault Law."
3. Any other person while in the State of Florida and "occupying" an "insured motor vehicle" or, if a resident of the State of Florida, while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with an "insured motor vehicle", provided that the injured person is not:
    a. The "owner" of a "motor vehicle" for which security is required under the "Florida Motor Vehicle No-Fault Law"; or,
    b. Entitled to personal injury protection benefits from the insurer of the owner or owners of such a "motor vehicle" insured under the "Florida Motor Vehicle No-Fault Law."

Outside the State of Florida:

4. The "named insured" while occupying the "named insured's" vehicle outside this state, but within the United States of America or its territories or possessions or Canada.
5. The "named insured's" relatives residing in the same household while occupying the "insured motor vehicle" outside this state, but within the United States of America or its territories or possessions or Canada. This applies provided that the "named insured's" relative is domiciled in the "named insured's" household at the time of the loss, and is not the owner of a "motor vehicle" with respect to which security is required under the "Florida Motor Vehicle No-Fault Law."

"Insured" does not include a "health care provider."

"We" may pay death benefits to: a.) The executor or administrator of the deceased; b.) To any of the deceased's relatives by blood, legal adoption or connection by marriage; or c.) To any person appearing to "us" to be equitably entitled thereto, after a formal written request for payment of such benefits is made.

EXCLUSIONS:

This insurance does not apply:

A. To any person while "occupying" a "motor vehicle" of which "you" are the "owner", and which is not an "insured motor vehicle" under this policy.

B. To any person while operating an "insured motor vehicle" without the express or implied consent of "you";

C. To any person, if such person's conduct contributed to his "bodily injury" under any of the following circumstances:
    1. Causing "bodily injury" to himself or herself intentionally;
    2. While committing a felony.

Whenever a person is charged with committing a felony, payment of any personal injury benefits will be withheld pending the outcome of the case at the trial level. If the charge is nolle prossed or dismissed or the person is acquitted, the 30-day payment provision shall run from the date we are notified of such action.

D. To the "named insured" or the "named insured's" dependent relatives residing in the same household for work loss benefits if an entry in the Declarations indicates such coverage does not apply;

E. To any person who sustains "bodily injury" while "occupying" a "motor vehicle" located for use as a residence or premises;

F. To any person who sustains "bodily injury" while:
    1. "Occupying" a "motor vehicle", other than the "insured motor vehicle"; or
    2. A pedestrian;

Outside the State of Florida;

G. To any person, other than the "named insured" or the "named insured's" relatives residing in the same household who sustains "bodily injury" while "occupying" the "insured motor vehicle" outside the State of Florida.

PAYMENT OF ANY AMOUNT DUE:

"We" will pay any amount due:

A. To an "insured";

B. To a parent or guardian, if the "insured" is a minor or an incompetent person;

C. To the surviving "spouse"; or

D. At "our" option:

1. To a person authorized by law to receive such payment; or
2. To the person or organization rendering the treatment or services.

If "we" pay only a portion of a claim or reject a claim due to an alleged error in the claim, "we", at the time of the partial payment or rejection, shall provide an itemized specification or explanation of benefits due to the specified error. Upon receiving the specification or explanation, the person making the claim, at the person's option and without waiving any other legal remedy for payment, has 15 days to submit a revised claim, which shall be considered a timely submission of written notice of a claim.

PRIORITY OF PAYMENT:

The insured's medical bills will be paid in the order in which they are received after the satisfaction of any policy deductible "you" have chosen.

"We" will create and maintain a log of personal injury protection benefits paid by "us" on behalf of the insured. If litigation commences and "we" receive a request for the log from the insured, "we" will provide same within 30 days.

NO DUPLICATION OF BENEFITS:

No "insured" shall recover twice for the same expense or loss under this or similar vehicle insurance or self-insurance.

LIMIT OF LIABILITY:

Regardless of:

A. The number of persons insured;

B. Policies or bonds applicable;

C. Vehicles involved; or

D. Claims made;

The total aggregate limit of personal injury protection benefits available under the Florida Motor Vehicle No-Fault Law from all sources combined, including this policy, for loss and expenses incurred by or on behalf of any one person who sustains "bodily injury" as a result of any one accident, shall be $10,000; provided that payment of death benefits of $5,000 in addition to the foregoing shall apply. If worker's compensation benefits have been received for the same items of loss and expenses under any worker's compensation law, those items of loss and expenses will be credited against the personal injury protection benefits available with respect to such "bodily injury" under this section of the policy. The limits of liability shown in the Declarations are the maximum limit of liability "we" will pay regardless of the location of the loss.

If benefits have been received under the Florida Motor Vehicle No-Fault Law from any insurer for the same items of loss and expenses for which benefits are available under this policy, "we" shall not be liable to make duplicate payments to or for the benefit of the injured person; but, the insurer paying such benefits shall be entitled to recover from "us" its equitable pro-rata share of the benefits paid and expenses incurred in processing the claim.

The amount of any deductible stated in the Declarations for personal injury protection coverage shall be deducted from the total amount of all sums after all applicable reductions, including, but not limited to:

1. Medicare and Worker Compensation Lien reductions,
2. Allowable Statutory reductions,
3. Reduction agreed upon by Medical Provider and/or their attorneys and "us";

With respect to all loss and expenses, incurred by or on behalf of each person to whom the deductible applies and who sustains "bodily injury" as the result of any one accident. Such deductible amount shall not be applied to the death benefit.

No coverage will be provided for punitive damages.

REIMBURSEMENT:

"We" have a right to recover "our" Personal Injury Protection payments from the owner of or the company insuring a "commercial motor vehicle" if "We" have made payment for "bodily injury" resulting from the "insured's" occupying or being struck as a "pedestrian" by that "commercial motor vehicle". This right of recovery, under this Section, does not apply to an owner or registrant of a taxicab as identified in Florida Statutes S. 627.733(1)(b).

WHEN THERE IS OTHER NO-FAULT COVERAGE OR "YOU" OWN MORE THAN ONE VEHICLE:

Vehicles "You" Own:

A. If "you" are the "owner" of the vehicle involved in the accident, this coverage applies only if it is an "insured motor vehicle".

B. If the "insured motor vehicle" is also described in a policy issued to "you" by another company, the total limits of liability shall not exceed those of the policy with the highest limits of liability.

DISPUTES:

In a dispute between the insured and "us", or between an assignee of the insured's rights and "us", "we" will notify, upon request by either the insured or the assignee that the policy limits under this section have been reached within 15 days after the limits have been reached.

PART IV - COVERAGE FOR DAMAGE TO "YOUR COVERED AUTO"

INSURING AGREEMENT

A. "We" will pay to repair or replace "your covered auto" with other of like kind and quality for direct and accidental loss to "your covered auto", other than a vehicle being used as a "temporary substitute", including its equipment, minus any applicable deductible shown in the Declarations provided "you" request coverage for said vehicle in writing to "us" prior to any direct or accidental loss to said vehicle. "We" will pay for these losses to "your covered auto" caused by:
   1. Other than "collision" only if the Declarations indicate that other than collision coverage is provided for that "motor vehicle".
      "We" will pay for the cost of repairing or replacing the damaged windshield on "your covered auto" without a deductible.
   2. "Collision" only if the Declarations indicate that "collision" coverage is provided for that "motor vehicle".

B. "Collision" means the upset of "your covered auto" or its impact with another vehicle or object.
   Loss caused by the following is considered other than "collision":
   1. Missiles or falling objects;
   2. Fire;
   3. Theft or larceny;
   4. Explosion or earthquake;
   5. Windstorm;
   6. Hail, water or flood;
   7. Malicious mischief or vandalism;
   8. Riot or civil commotion;
   9. Contact with bird or animal; or
   10. Breakage of glass.

   If breakage of glass is caused by a "collision", "you" may elect to have it considered a loss caused by "collision".

TRANSPORTATION

In addition, "we" will pay up to $10 per day, to a maximum of $300, for transportation expenses incurred by "you". This applies only in the event of the total loss by theft of "your covered auto". "We" will pay only transportation expenses incurred during the period:

A. Beginning forty eight hours after the theft; and

B. Ending when "your covered auto" is returned to use or "we" pay for its loss.

"We" will not pay "you" the cost of renting a "motor vehicle" from an individual. The "motor vehicle" must be rented from a licensed "motor vehicle" rental company.

EXCLUSIONS

"We" will not pay for:

A. Loss to "your covered auto" which occurs while it is used to carry persons or property for a fee. This exclusion does not apply to share-the-expense car pools.

B. Loss to "your covered auto" that is damaged, destroyed or confiscated by governmental or civil authorities because "you" or a "resident relative" engaged in illegal activities or failed to comply with the Environmental Protection Agency or the Department of Transportation standards.

C. Damage due and confined to:
   1. Wear and tear;
   2. Freezing;
   3. Mechanical or electrical breakdown or failure; or
   4. Road damage to tires.

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

D. Loss due to or as a consequence of:
   1. Radioactive contamination;
   2. Discharge of any nuclear weapon (even if accidental);
   3. War (declared or undeclared);
   4. Civil war;
   5. Insurrection; or
   6. Rebellion or revolution.

E. Loss to equipment designed for the reproduction of sound. This exclusion does not apply if the equipment is original factory equipment and is permanently installed in "your covered auto".

F. Loss to tapes, records, compact disks or other devices for use with equipment designed for the reproduction of sound.

G. Loss to a camper body or "trailer".

H. Loss to any "non-owned auto" or any "motor vehicle" used as a "temporary substitute" for a "motor vehicle" of which "you" are the "owner", or as a rental vehicle.

I. Loss to:
1. TV antennas;
2. Awnings or cabanas; or
3. Equipment designed to create additional living facilities.

J. Loss to any of the following or their accessories:
1. Citizens band radio;
2. Two-way mobile radio;
3. Telephone; or
4. Scanning monitor receiver.

This exclusion does not apply if the equipment is permanently installed in the opening of the dash or console of "your covered auto". This opening must be normally used by the "motor vehicle" manufacturer for the installation of a radio.

K. Loss to any custom furnishings or equipment in, on, or upon any pickup, panel truck or van. Custom furnishings or equipment include but are not limited to:
1. Special carpeting and insulation, furniture, bars or television receivers;
2. Facilities for cooking and sleeping;
3. Height-extending roofs;
4. Custom murals, paintings or other decals or graphics;
5. Appliances.

L. Loss to equipment designed or used for the detection or location of radar or laser.

M. Loss to any equipment which is not installed as original factory equipment, including, but not limited to: racing tires, or any tires wider than those installed as original factory equipment; loss to special gauges or add-on instruments; loss to chrome, alloy and mag-type wheels, unless installed as original factory equipment.

N. Loss to "your covered auto" while being used by a usual and customary operator who is not listed on the Declarations and is not a "resident relative" unless such individual has become a usual and customary operator in the last thirty days.

O. Loss to "your covered auto" which is caused intentionally by "you", an "insured", or at "your" direction.

P. Loss to "your covered auto" while it is being used in any race, demolition or speed contest or exhibition, or in practice or preparation for any such event; or in any illegal activity other than a traffic violation.

This exclusion includes any loss to "your covered auto" while it is located inside a facility designed for racing, for the purpose of any prearranged or organized racing or speed contest.

Q. Loss to any customization or alteration from the original automobile factory manufacturer conditions of the engine, interior, or exterior, of "your covered auto".

R. Loss to "your covered auto" arising out of or during its commercial use or while being used for or in the course of "your" employment or occupation, unless "you" have informed "us" that the "motor vehicle" is for "business" use and "you" have paid the premium for "business" use.

S. Loss to "your covered auto" while being used for the transportation of any explosive substance, flammable liquid, or similar hazardous materials, except transportation incidental to "your" ordinary household or farm activities.

T. Loss due to delay repairs caused by the inability to obtain parts.

U. Loss to any custom options, which are not factory installed as original equipment by the manufacturer, including, but not limited to:
1. Custom "motor vehicle" kits;
2. Customized grills, louvers, side pipes, scoops or spoilers;
3. Window film tinting;
4. Alarms;
5. Customized T-tops, sunroofs, moon roofs, convertible tops and/or customized non-factory vinyl tops;
6. Customized paint;
7. Ground effect kits.

V. Loss to "your covered auto" when:
1. Repairs are performed to;
2. Alterations are made to; or
3. Evidence of physical damage is removed from;

"Your covered auto" by anyone prior to giving "us" the opportunity to have an appraiser appointed by "us" examine the damage. However, removal of equipment for orderly and safe transportation to a repair facility does not exclude coverage.

This exclusion does not apply in the case of emergency repairs that become necessary to minimize further damage and/or expenses if photographs are taken of the damaged area(s) along with supplying "us" with a complete estimate of repairs and payment receipts.

LIMIT OF LIABILITY

A. "Our" limit of liability for loss will be the lesser of the:
   1. Actual cash value of the stolen or damaged property at the time of loss; or
   2. Amount necessary to repair or replace the property with other of like kind and quality. If a repair or replacement results in better than like kind and quality, "we" will not pay for the amount of betterment. Replacement parts may be supplied by a source other than the manufacturer of "your covered auto", at "our" discretion.

   In the event "we" determine "your covered auto" to be a total loss, "we" will pay the actual cash value at the time of loss. "You" must immediately release "your motor vehicle" to "us" upon "our" payment of the claim. "We" reserve the right to retain "your" "motor vehicle" and/or its salvage property after "we" determine that "your" "motor vehicle" is a total loss.

B. An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of loss.

C. In the event of any loss, whether such loss is covered by this policy or not, "our" limit of liability on any subsequent loss shall automatically be reduced by the amount of the prior loss until:
   1. Repairs have been completed on the prior loss; and
   2. Any required certification of repairs has been received by "us".

D. Towing and Storage Expenses. We will pay up to $300, in total for each claim, for any towing and/or storage expenses for "your covered auto". Any amount in excess of that limit may be paid by us, but will be deducted from any claim settlement.

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:

A. "You"; or

B. The address shown on the Declarations of 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

If other insurance also covers the loss "we" are excess over any applicable insurance.

APPRAISAL

A. 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 upon by any two will be binding. Each party will:
   1. Pay its chosen appraiser; and
   2. Bear the expenses of the appraisal and umpire equally.

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

LEGAL ACTION AGAINST "US"

No legal action may be brought against "us" until there has been full compliance with all the terms of this policy nor until thirty days after the required notice of accident and reasonable proof of claim has been filed with "us". Reasonable proof shall include, but not be limited to, a fully completed accident report and police report.

NOTICE

In the event of an accident, written notice of the loss must be given to "us" or any of "our" authorized agents as soon as practicable.

SUBMIT A PROOF OF CLAIM WHEN REQUIRED BY "US"

As soon as practicable, the person making the claim shall give to "us" written proof of claim, under oath if required, which may include information as may assist "us" in determining the amount due and payable.

A person seeking any coverage under this Section of the policy must cooperate with "us" in the investigation, settlement or defense of any claim or suit, including submitting to an examination under oath by any person named by "us" when or as often as "we" may reasonably require at a place designated by "us" within a reasonable time after "we" are notified of the claim.

Whenever a person is making a claim in relation to "your covered auto" being used in an illegal activity (other than a traffic violation) in which "you" or a "resident relative" are a willing participant or give willful consent, "we" shall withhold benefits until at the trial level, the prosecution makes a formal entry on the record that it will not prosecute the case against the

person(s) using "your covered auto", the charge is dismissed or the person(s) is acquitted.

PART V: DUTIES AFTER AN ACCIDENT OR LOSS:

If failure to comply with the following duties is prejudicial to "us", "we" have no duty to provide any coverage under **PART I – IV** of this policy unless there has been full compliance with the following duties and conditions:

A. Notice of Accident or Loss:

"We" must be given notice of any accident or loss to the extent possible within 24 hours or as soon as reasonably possible. This notice requirement does not affect, alter, modify or extend any of the time requirements set forth in Florida Statutes.

The Notice to "us" shall include:

1. Your name;
2. The names, addresses and telephone numbers of all persons involved:
3. The time, date and location of the accident or loss;
4. The facts of the accident or loss;
5. The license plate number and description of any vehicles involved in the accident or loss;
6. The names, addresses and phone numbers of any witnesses.

B. Notice of Claim or Suit:

If any claim, lawsuit or other action is made against a "covered person" or an "insured" that "covered person" or "insured" must promptly send "us" copies of the demand, claim, lawsuit or other documents that comprise the claim, lawsuit or other action, as well as any summons or legal process received. Verbal notification of any claims, lawsuits or demands shall not constitute compliance with this section. "You" must inform "us" in writing of any claims, lawsuits or demands forthright.

C. Duty to Cooperate With "Us":

A person, "health care provider", or entity seeking any coverage or making any claim shall cooperate and assist "us", if requested to do so, in:

1. Giving and securing evidence;
2. Attending any hearings, mediations, arbitrations, trials or other legal process;
3. Getting any witnesses to attend any hearings, mediations, arbitrations, trials or other legal process;
4. Making settlements or defending any claim, lawsuit or other legal action;
5. If requested to do so, furnishing "us" with a written excuse, if any, for failing to attend an examination under oath, recorded statement, or medical examination. Said excuse shall be submitted to "us" forthright and the failure to comply with this request shall result in a breach of this policy by and could jeopardize payment of benefits.

Failure to cooperate with "us" may result in the insurer having reasonable proof for not paying benefits under this policy.

The "insured" or "covered person" shall not, except at his or her own cost, voluntarily:

a. Make any payment or assume any obligation to others; or
b. Incur any expense, other than for first aid to others.

D. Additional Duties and Conditions For Any Insured or Any Person, Other Than an Assignee or Third Party Claimant Making a Liability Claim, Seeking Coverage:

An "insured" or a person, other than an assignee or third party claimant making a liability claim, seeking any coverage must comply with the terms of the policy, which include, but are not limited to;

1. Giving "us" all details about the accident, loss, death, injury, treatment or other information necessary to determine if there is coverage for the claim and, if so, the amount payable;
2. Authorizing "us" to obtain, at "our" discretion, either directly or through other persons or entities "we" choose to obtain on "our" behalf:
   a. Medical records and bills;
   b. Other pertinent records or documents;
3. Submitting, as often as "we" reasonably require:
   a. To recorded statements, telephonically if requested by "us", outside the presence of any other "insured", "covered person", witness or any person making claim, except for that person's personal representative. Upon conclusion of your statement, we may require that the statement be signed verifying the accuracy and truthfulness of your assertions.
   b. To sworn statements outside the presence of any other "insured", "covered person", witness or person making claim, except for that person's personal representative. Upon conclusion of your statement, we may require that the statement be signed verifying the accuracy and truthfulness of your assertions.
   c. To mental and physical examinations by physicians chosen and paid by "us" in

regard to personal injury protection benefits. "We" may, at "our" option, authorize other persons or entities to choose and pay such physicians on "our" behalf, subject to:

i. Whenever the mental or physical condition of an injured person covered by personal injury protection is material to any claim that has been or may be made for past or future personal injury protection insurance benefits, such person shall, upon "our" request, submit to mental or physical examination by a physician or physicians. The costs of any examinations requested by "us" shall be borne entirely by "us". Such examination shall be conducted within the municipality where the insured is receiving treatment, or in a location reasonably accessible to the insured, which, for purposes of this paragraph, means any location within the municipality in which the insured resides, or any location within 10 miles by road of the insured's residence, provided such location is within the county in which the insured resides. If the examination is to be conducted in a location reasonably accessible to the insured, and if there is no qualified physician to conduct the examination in a location reasonably accessible to the insured, then such examination shall be conducted in an area of the closest proximity to the insured's residence. "We" may not withdraw payment of a treating physician without the consent of the injured person covered by the personal injury protection, unless "we" first obtain a valid report by a Florida physician licensed under the same chapter as the treating physician whose treatment authorization is sought to be withdrawn, stating that treatment was not reasonable, related, or necessary. A valid report is one that is prepared and signed by the physician examining the injured person or reviewing the treatment records of the injured person and is factually supported by the examination and treatment records if reviewed and that has not been modified by anyone other than the physician. The physician preparing the report must be in active practice, unless the physician is physically disabled. Active practice means that during the 3 years immediately preceding the date of the physical examination or review of the treatment records the physician must have devoted professional time to the active clinical practice of evaluation, diagnosis, or treatment of medical conditions or to the instruction of students in an accredited health professional school or accredited residency program or a clinical research program that is affiliated with an accredited health professional school or teaching hospital or accredited residency program. The physician preparing a report at "our" request and physicians rendering expert opinions on behalf of persons claiming medical benefits for personal injury protection, or on behalf of an insured through an attorney or another entity, shall maintain, for at least 3 years, copies of all examination reports as medical records and shall maintain, for at least 3 years, records of all payments for the examinations and reports. Neither "we" nor any person acting at the direction of or on behalf of "us" may materially change an opinion in a report prepared under this paragraph or direct the physician preparing the report to change such opinion. The denial of a payment as the result of such a changed opinion constitutes a material misrepresentation under Florida Statute S. 626.9541(1)(i)2.; however, this provision does not preclude "us" from calling to the attention of the physician

errors of fact in the report based upon information in the claim file.

ii. If requested by the person examined, "we" shall deliver to him or her a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out the examining physician's findings and conclusions in detail. After such request and delivery, "we" are entitled, upon request, to receive from the person examined every written report available to him or her or his or her representative concerning any examination, previously or thereafter made, of the same mental or physical condition. By requesting and obtaining a report of the examination so ordered, or by taking the deposition of the examiner, the person examined waives any privilege he or she may have, in relation to the claim for benefits, regarding the testimony of every other person who has examined, or may thereafter examine, him or her in respect to the same mental or physical condition. If a person unreasonably refuses to submit to or fails to appear at an examination, "we" are no longer liable for subsequent personal injury protection benefits. Under the Personal Injury Protection benefits, an insured's refusal to submit to or failure to appear at two examinations raises a rebuttable presumption that the insured's refusal or failure was unreasonable.

iii. If requested to do so, "you" shall furnish "us" with a written excuse, if any, for failing to attend an examination. Such written excuse shall be furnished to "us" forthwith upon request. Failure to provide such written excuse shall result in the insurer having reasonable proof for not paying benefits under this policy.

d. To Examinations Under Oath, telephonically if requested by "us", outside the presence of any other "insured", "covered person", witness or person making claim, except for that person's personal representative. Upon conclusion of your statement, you shall be required to sign same verifying the accuracy and truthfulness of your assertions. These Examinations Under Oath shall take place at "our" offices, "our" attorney's offices, or a court reporter's office at "our" sole discretion unless it is requested, in writing, that these Examinations Under Oath take place at a court reporter's office. These Examinations Under Oath may be recorded by audio, video, court reporter or any combination thereof, at "our" sole discretion.

e. A proof of loss forthwith when requested by "us".

4. If, as a result of your bodily injuries, "you" received treatment at a Hospital or emergency treatment facility, "you" shall furnish that facility with "your" insurance information so that the facility may bill "us" for the services rendered.

An insured seeking Personal Injury Protection Benefits, including an omnibus insured, must comply with the terms of the policy as stated above, which include, but are not limited to, submitting to an examination under oath. The scope of questioning during the examination under oath is limited to relevant information or information that could reasonably be expected to lead to relevant information. Compliance with this paragraph is a condition precedent to receiving benefits. Compliance with the duties and conditions described above is a condition precedent to receiving benefits.

Failure to comply may result in the insurer having reasonable proof for not paying benefits under this policy.

E. Additional Duties and Conditions For Any Claims made pursuant to an Assignment of Benefits or Similar Document:

Any "health care provider" or entity (including, but not limited to, a hospital, physician, clinic, diagnostic testing company, supplier or any provider of any medical services, billing service, diagnostic testing or supplies) who has accepted an Assignment of Benefits or similar document shall:

a. Cooperate with "us" in the investigation of any claim, lawsuit or other action.

b. Forthwith, provide "us" written proof of claim, under oath if required. Such proof shall include:

i. Full details of the nature and extent of the patient's history, condition, injuries, examinations, treatment, dates of treatment, diagnoses, recommendations, therapy and costs, and

ii. All medical records detailing the nature and extent of the patient's history, condition, injuries, examinations, treatment, dates of treatment, diagnoses, recommendations, therapy and costs; and

iii. Any other information which may assist "us" in determining any amounts due and payable.

c. Produce the owner, employees, independent contractors and any other person or entity the "health care provider" has otherwise contracted or arranged to provide a product, service or accommodation for which a claim was made, as often as "we" reasonably require to:

i. Appear for a recorded statement, outside the presence of any other "insured", "covered person", witness or any person making claim, except for that person's personal representative, and sign same.

ii. To appear for a sworn statement, outside the presence of any other "insured", "covered person", witness or any person making claim, except for that person's personal representative, and sign same.

These statements shall take place at "our" offices, "our" attorney's offices, or a court reporter's office at "our" sole discretion unless requested, in writing, that these statements take place at a court reporter's office. These statements may be recorded by audio, video, court reporter or any combination thereof, at "our" sole discretion.

d. At "our" request, provide to "us" forthwith:

i. All medical records and bills for the patient; and

ii. The entire file, including all medical and billing records, of the patient; and

iii. Any other pertinent records "we" request, at "our" discretion.

Failure to comply with the duties and conditions described above may result in the insurer having reasonable proof for not paying benefits under this policy.

F. Additional Duties for any person seeking Coverage For Damage To Your Auto or Coverage for Property Damage Liability:

"You" or the owner of the property also shall:

1. Make a prompt report to the police within 24 hours, or as soon as practicable, when "your covered auto", any "replacement motor vehicle" or any "temporary substitute vehicle" and their equipment is stolen or the result of theft, larceny, conversion, pilferage or vandalism;
2. Make a prompt report to the police within 24 hours, or as soon as practicable, after a "collision" with a hit-and-run driver.
3. Protect "your covered auto", any "replacement motor vehicle" or any "temporary substitute vehicle" and their equipment from further loss or damage. "We" will pay reasonable expenses incurred to do this.
4. Permit "us" or any person or entity "we" authorize to inspect, photograph, estimate and appraise the damage before any repair or disposal.
5. Provide all records, receipts and invoices, or certified copies of them. "We" may make copies.
6. Answer questions under oath when asked by anyone "we" name, as often as "we" reasonably ask, and sign copies of the answers. These Examinations Under Oath may be recorded by audio, video, court reporter or any combination thereof, at "our" sole discretion.

Failure to comply with the duties and conditions described above may result in the insurer having reasonable proof for not paying benefits under this policy.

G. Additional Duties for any person seeking Uninsured Motorist Coverage:

A person seeking coverage under Uninsured Motorist Coverage must also comply with the following:

1. If there is no physical contact with the hit-and-run vehicle and no witnesses other than any person making claim under this or any similar coverage, the accident must be reported to the police or law enforcement within 24 hours, or as soon as practicable, AND "we" must be notified within 30 days of the accident.
2. Promptly send "us" at once a copy of all papers if a lawsuit is brought.
3. If the "covered person" and the owner or operator of the "uninsured motor vehicle" legally liable for the "covered person's" Bodily Injury reach a settlement agreement to pay the "covered person" such person's limits of liability, the "covered person" must submit the agreement to "us" in writing for "our" approval prior to final execution of such settlement agreement if:
   a. The settlement would not fully satisfy the "covered person's" claim for Bodily Injury, and
   b. An "uninsured motor vehicle" claim has been or will be made against "us".
4. The "covered person" may file suit against "us" and the legally liable person if, within 30 days after "our" receipt of the settlement agreement "we" do not:
   a. Approve the settlement; or
   b. Waive "our" rights of recovery against the person or organization legally liable for the Bodily Injury; and, if "we" don't approve the settlement with the uninsured motorist carrier, "we" will pay the amount offered as settlement to their insured.

The suit shall decide if the "covered person" is legally entitled to collect damages and if so, the amount.

Failure to comply with the duties and conditions described above may result in the insurer having reasonable proof for not paying benefits under this policy.

H. Additional Duties for any person seeking Personal Injury Protection (No-Fault) Coverage:

1. Upon "our" request, provide "us" with sworn proof of claim as soon as reasonable on forms "we" furnish, including Applications for Personal Injury Protection (No-Fault) Benefits, Loss Affidavits and Proofs of Loss. This sworn proof of claim may not be satisfied by submitting medical bills. This sworn proof of claim requirement does not affect, alter, modify or extend any of the time requirements set forth in Florida Statutes.

Failure to comply with the duties and conditions described above may result in the insurer having reasonable proof for not paying benefits under this policy.

Throughout "your" policy, "we" refer to "our" right to obtain statements and/or examinations from "you", or any other party other than an assignee, seeking any coverage from this policy. These examinations may be held in person or telephonically, at "our" discretion. These statements and/or examinations may be recorded in video and/or audio format, at "our" discretion.

PART VI: GENERAL PROVISIONS

CHANGES

This policy contains all the agreements between "you" and "us". Its terms may not be changed or waived except by endorsement issued by "us". The premium for this policy is based on information "we" received from "you" or other sources. If the information is incorrect or incomplete, or changes during the policy period, "you" must inform "us" within thirty days, including, but not limited to:

A. "Your covered auto", or its use, including mileage to and from work;

B. The persons who regularly operate "your covered auto", including newly licensed "resident relatives" or additional "resident relatives";

C. "Your" marital status; or

D. The location where "your covered auto" is principally garaged.

If a change requires a premium adjustment, "we" will adjust the premium as of the effective date of change.

"We" may revise this policy form to provide more coverage without additional premium charge. If "we" do this "your" policy will automatically provide the additional coverage as of the date the revision is effective in "your" state.

Failure to provide "us" with these changes within the prescribed time period may result in a denial of "your" claim.

COOPERATION AND ASSISTANCE

"You" must cooperate with "us" and, upon "our" request, must attend hearings and trials and assist "us" in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. "You" must not, except at "your" own expense, voluntarily make any payment, assume any obligation or incur any expense for any loss, to which coverage of this policy would apply unless "you" and "we" agree to same.

MISREPRESENTATION AND FRAUD

This policy may be void if "you":

A. Have concealed or misrepresented any material facts or circumstances concerning this insurance or the subject thereof; or,

B. Engaged in fraudulent conduct in connection with any auto accident or loss for which coverage is sought under this policy; or,

C. Attempted fraud or false swearing by "you", touching upon any matter relating to this insurance or the subject thereof.

NON-JOINDER OF INSURER

No person, who is not an "insured" under the terms of this policy shall have any interest in this policy, either as a third party beneficiary or otherwise, prior to first obtaining a verdict against a person who is an "insured" under the terms of this policy for a cause of action which is covered by this policy.

LEGAL ACTION AGAINST "US"

No legal action may be brought against "us" until there has been full compliance with all the terms of this policy nor until thirty days after the required notice of an auto accident and reasonable proof of claim has been filed with "us". Reasonable proof shall include, but not be limited to: a) a properly completed Florida Application for No-Fault benefits; b) a fully completed auto accident report and police report; and c) all medical expenses incurred as a result of the auto accident and all supporting medical records. In addition, under the Liability Coverage, no legal action may be brought against "us" until "we" agree, in writing, that the "covered person" has an obligation to pay or until the amount of that obligation has been finally determined by verdict after trial. No person or organization has any right under this policy to bring "us" into any action to

determine the liability of a "covered person" until after the rendition of a verdict.

NOTICE

In the event of an accident, written notice of the loss must be given to "us" or any of "our" authorized agents as soon as practicable.

"OUR" RIGHTS 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.

   However, "our" rights in this paragraph **A** do not apply under Part II, against any person using "your covered auto" with express or implied permission 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.

"OUR" RIGHT TO RECOMPUTE PREMIUM

The premium for this policy has been established in the reliance upon the statements made by "you" in the application for insurance. "We" shall have the right to recompute the premium payable for this policy if information material to the development of the final premium is subsequently obtained.

It is agreed that in the event of any change in the rules, rates, rating plan, premiums or minimum premiums applicable to the insurance afforded, because of any adverse judicial finding as to the constitutionality of any provisions for the exemption of persons from tort liability, the premium stated in the Declarations for any Liability insurance shall be deemed provisional and subject to re-computation. If this policy is a renewal policy, such re-computation shall also include a determination of the amount of any return premium previously credited or refunded to the "named insured" pursuant to the Florida Motor Vehicle No-Fault Law, as amended, with respect to insurance afforded under a previous policy. If the final premium thus re-computed exceeds the premium stated in the Declarations, the "named insured" shall pay to "us" the excess, as well as the amount of any return premium previously credited or refunded.

POLICY PERIOD AND TERRITORY

Policy Period

A. The policy coverages "you" chose apply only to accidents and losses which occur:
   1. During the policy period as shown in the Declarations; and
   2. Within the "policy territory".

Policy Territory

B. Other than for personal injury protection (No-Fault) coverage, the "policy territory" is:
   1. The United States of America, its territories and possessions; and
   2. Canada.

   This policy will also apply to loss to, or accidents involving, "your covered auto", while it is being transported between their ports.

C. The "policy territory" for the Personal Injury Protection (No-Fault) coverage "you" chose applies:
   1. In Florida; and
   2. Outside Florida, but within the United States of America or its territories or possessions or Canada, but only to "you" while occupying "your covered auto" and a "resident relative" while occupying "your covered auto" who is not himself or herself the owner of a motor vehicle with respect to which security is required under Florida Statutes.

However, the limit of liability shown in the Declarations is the maximum limit of liability "we" will pay, regardless of the location of the loss.

TERMINATION

A. **Cancellation**
   1. **How "you" may cancel**
      a. The "named insured" shown in the Declarations may cancel by giving "us" written notice of the date cancellation is to take effect, which must be later than the date "you" mail or deliver the notice to "us". If no date is specified, this policy will be canceled effective the date the notice is received in "our" office.
      b. If "your" policy provides Property Damage Liability and/or Personal Injury Protection (No-Fault) coverages, it may not be cancelled by "you" during the first sixty days following the date the policy is issued or renewed except for one (1) of the following reasons:

i. "Your covered auto" is completely destroyed such that it is no longer operable; or
ii. Ownership of "Your covered auto" is transferred; or
iii. "You" have purchased another automobile insurance policy, which covers "your covered auto".
iv. "You" are a member of the United States Armed Forces and "you" are called to or are on active duty outside the United States in an emergency situation.

2. **How "we" may cancel**
   a. Except as provided under Cancellation Due to Incorrect Premium, "we" may cancel this policy by mailing or delivering written notice of cancellation to the "named insured" shown in the Declarations at the address shown in this policy:
      i. Mailed at least ten (10) days before the cancellation effective date if cancellation is for nonpayment of premium; or
      ii. Mailed at least forty-five (45) days before the cancellation effective date if the cancellation is for any other reason.
      iii. Mailing this notice by registered, certified mail or United States Post Office proof of mailing shall be sufficient proof of notice.
   b. If this is a new policy, "we" will not cancel for nonpayment of premium during the first sixty (60) days following the date of policy issuance unless a check used to pay "us" is dishonored for any reason. However, "we" may cancel for any other reason.
   c. After this policy has been in effect for sixty (60) days, or if this policy is a renewal or continuation policy, "we" will cancel only:
      i. For "your" failure to respond to "our" notice of additional premium due, pursuant to section 627.7282, Florida Statutes; or
      ii. For nonpayment of premium or nonpayment of additional premium; or
      iii. If the driver's license of "you", any operator who resides with "you"; or any driver who customarily operates "your covered auto" has been suspended or revoked:
         1) During the policy period; or
         2) 180 days immediately preceding its effective date;
         Or
         3) If the policy was obtained through material misrepresentation or fraud.

3. **Cancellation Due to Incorrect Premium**
   In the event "we" determine that "you" have been charged an incorrect premium for coverage requested in "your" application for insurance, "we" shall immediately mail "you" notice of any additional premium due "us". If within 10 days of the notice of additional premium due (or a longer time period as specified in the notice), "you" fail to either:
   a. Pay the additional premium and maintain this policy in full force under its original terms; or
   b. Cancel this policy and demand a refund of any unearned premium;
   Then this policy shall be canceled effective fifteen (15) days from the date of the notice (or a longer time period as specified in the notice).

B. **Non-renewal.** If "we" decide not to renew or continue this policy "we" will mail notice to the "named insured" shown in the Declarations at the address shown in this policy at least forty five (45) days before the end of the policy period. Notice will be mailed by registered or certified mail or United States Post Office proof of mailing. However, if the policy period is:
   1. Six (6) months, "we" will have the right not to renew or continue this policy every six (6) months, beginning six (6) months after its original effective date.
   2. One (1) year, "we" will have the right not to renew or continue this policy at each anniversary of its original effective date.

   "We" will not refuse to renew or continue this policy solely because:
   a. "You" were convicted of one or more non-criminal traffic violations which did not involve an auto accident or cause revocation or suspension of "your" driving privilege unless "you" have been convicted of or plead guilty to:
      i. Two (2) such traffic violations within an eighteen (18) month period; or
      ii. Three (3) or more such traffic violations within a thirty six (36) month period; or

iii. Exceeding the lawful speed limit by more than fifteen (15) miles per hour; or

b. "You" have had only one (1) accident in the last three years immediately preceding the renewal date. However, "we" may refuse to renew this policy if, at the time of renewal, "you" have had two (2) or more at-fault accidents, or three (3) or more accidents regardless of fault, within the current three (3) year period.

"Our" right to non-renew this policy is subject to the limitations contained in the Florida Statutes.

C. Automatic Termination

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.

If "you" obtain other insurance on "your covered auto", any similar insurance provided by this policy will terminate as to that "motor vehicle' on the effective date of the other insurance.

D. Other Termination Provisions

1. At the time this policy is used, renewed or continued, if Florida Law:
   a. Requires a longer notice period;
   b. Requires a special form of or procedure for giving notice; or
   c. Modifies any of the stated termination reasons.

   "We" will comply with those requirements.
2. If "you" cancel this policy, premium will be earned on a short rate basis, as defined below. If "we" cancel, premium will be earned on a pro-rata basis. If this policy is canceled, "you" may be entitled to a refund of unearned premium. If so, "we" will send "you" the refund at the time of cancellation or within a reasonable time thereafter. The premium refund, if any will be computed according to "our" manuals. Any delay in the return of the unearned premium shall not affect the cancellation.
3. The effective date of cancellation stated in the notice shall become the end of the policy period.
4. If the policy or form of coverage is cancelled by "us", the return premium shall be computed on a pro-rata basis, which means "we" will earn premium only for the period of time "you" were insured by this policy. If there is any unearned premium due to "you", "we" will mail "your" refund to "you" within fifteen (15) days of the effective date of cancellation.
5. If the policy or form of coverage is cancelled at the request of the "named insured", or a third party such as a premium finance company, short rate will apply. If there is any unearned premium due to "you", "we" will mail "your" refund to "you" within thirty (30) days of the effective date of cancellation.

   Short rate is defined as 90% of the premium refund calculated on a pro-rata basis.
6. If "you" are a service member of the U.S. Armed Forces and "you" cancel "your" policy because of being called to active duty or "you" are transferred to a location where the insurance is not required and provide proof of same. We will refund 100% of "your" unearned premium, computed on a pro-rata basis.

E. Return of Premium

If "you" financed your insurance premiums through a Premium Finance Company and "you" assigned your right to collect unearned premiums to the Premium Finance Company, then "we" shall return the unearned premium to the Premium Finance Company.

TRANSFER OF "YOUR" INTEREST IN THIS POLICY

"Your" rights and duties under this policy may not be assigned without "our" written consent. However, if a "named insured" shown on the Declarations dies, coverage will be provided for:

A. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if a "named insured" shown in the Declarations; and

B. The legal representative of the deceased person as if a "named insured" shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use "your covered auto".

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 any one policy.

BANKRUPTCY

"Your" bankruptcy or insolvency, or that of "your" estate, will not relieve "us" of "our" obligations under this policy.

MEDIATION OF CLAIMS

In any claim filed with an insurer for personal injury in the amount of $10,000 or less or any claim for "property damage" in any amount arising out of the ownership, operation, use or maintenance of a "motor vehicle", either party may demand mediation of the claim prior to the institution of litigation.

A request for mediation shall be filed with the Department on a form approved by the Department. The request for mediation shall state the reason for the request for mediation and the issues in dispute which are to be mediated. The filing of a request for mediation tolls the applicable time requirements for filing suit for a period of 60 days following the conclusion of the mediation process or the time prescribed in Statute 95.11, whichever is later.

The mediation shall be conducted as an informal process in which formal rules of evidence and procedure need not be observed. Any party participating in a mediation must have the authority to make a binding decision. All parties must mediate in good faith. The Department shall randomly select mediators. Each party may once reject the mediator selected, either originally or after the opposing side has exercised its option to reject a mediator. Costs of mediating shall be borne equally by both parties unless the mediator determines that one party has not mediated in good faith.

Only one mediation may be requested for each coverage of a claim, unless all parties agree to further mediation.
Upon receipt of a request for mediation, the Department shall refer the request to a mediator. The mediator shall notify the applicant and all interested parties, as identified by the applicant, and any other parties the mediator believes may have an interest in the mediation, of the date, time and place of the mediation conference.

The conference may be held by telephone, if feasible.

The mediation conference shall be held within forty-five days after the request for mediation.

The provisions of Section 627.745, Florida Statutes, will apply.

CONFORMITY WITH LAW

Terms of this policy, which are in conflict with the Statutes of the state wherein this policy is issued, are hereby amended to such Statutes.

APPLICATION AND DECLARATIONS

By acceptance of this policy, "you" agree: a) that the application and the Declarations are a material part of this policy; b) that the statements in them are "your" representations and are true and correct; c) that this policy is issued in reliance upon the truth of such representations; and d) that this policy embodies all agreements existing between "you" and "us".

INQUIRIES

If "you" have any inquiries or wish to obtain information about coverage, please call (954)587-2299. "We" will also provide assistance in resolving complaints.

In Witness Whereof, "we" have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by "our" authorized representative.

Donna Erickson

Secretary

Ralph Milo

President

LIMITATION OF COVERAGE FOR SOUND REPRODUCTION EQUIPMENT.

THIS ENDORSEMENT CHANGES THE POLICY.
PLEASE READ IT CAREFULLY.

In consideration of the premium charged for the policy to which this endorsement is attached, it is agreed that no more than $500 will be paid for the loss of or damage to any sound reproduction equipment.

EXHIBIT "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-62942-Civ-DIMITROULEAS

KERRY ROTH, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

GEICO GENERAL INSURANCE COMPANY,

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court upon Plaintiff Kerry Roth ("Roth" or "Plaintiff")'s Motion for Summary Judgment [DE 152] and Defendant GEICO General Insurance Company ("GEICO" or "Defendant")'s Motion for Summary Judgment [DE 151], both filed on April 20, 2018. The Court has carefully considered the Motions [DE's 151, 152], the Responses [DE's 171, 172], and the Replies [DE's 188, 190], argument by counsel at the hearing on June 8, 2018, and the record herein. The Court is otherwise fully advised in the premises.

I. BACKGROUND:

This case arises out of GEICO's alleged failure to pay state and local sales tax and title transfer fees in the settlement of total loss claims on leased vehicles.

Plaintiff Roth filed a putative state court class action against Defendant GEICO and related entities in Florida state court on August 30, 2016, which she replaced on November 8,

2016 with an Amended Class Action Complaint, and which she replaced on November 16, 2016 with a Second Amended Class Action Complaint. *See* [DE 1-2] at pp. 85-115. The Second Amended Complaint alleged two counts: Count I for breach of contract, and Count II for declaratory relief. Defendants removed the case to federal court on December 14, 2016, pursuant to the Class Action Fairness Act of 2005 ("CAFA"). *See* 28 U.S.C. §§ 1332(d), 1453.

On January 24, 2017, the Court entered an Order Granting Defendants' Partial Motion to Dismiss Plaintiff's Class Action Complaint. *See* [DE 14]. Therein, the Court dismissed all Defendants other than GEICO General Insurance Company for lack of standing, as Plaintiff alleged no contract with any other Defendant. *See id.* The Court also dismissed Count II for declaratory relief. *See id.*

Accordingly, Plaintiff is proceeding on her breach of contract claim, as set forth in Count I of the Second Amended Complaint, alleging that GEICO does not include sales tax or title transfer fees in its Actual Cash Value payments made to insureds in settlement of total loss claims, in violation of GEICO's policy language.

On May 4, 2018, the Court entered an Order Granting Plaintiff's Motion for Class Certification. *See* [DE 165]. On May 18, 2018, the Court approved the form and manner of class notice. *See* [DE 211]. Plaintiff provided notice to the class by before June 1, 2018, and requests to exclude must be postmarked no later than July 2, 2018. *See* [DE 234].

Both sides now move for summary judgment in this action. In conjunction with the instant summary judgment motions, the parties have provided in their respective Statements of Material Facts and responses thereto [DE 151-1; DE 183; DE 188-1; DE 153; DE 171-1; DE

191][1] various factual assertions that are supported by the record. In some instances, the parties have not contested their adversaries' assertions. The Court will deem any uncontested factual assertions supported by the record to be admitted. *See* S.D. Fla. L.R. 56.1(b); Fed. R. Civ. P. 56(c), (e).

II. LEGAL STANDARD

Under Rule 56(a) of the Federal Rules of Civil Procedure, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant bears "the stringent burden of establishing the absence of a genuine issue of material fact." *Suave v. Lamberti*, 597 F. Supp. 2d 1312, 1315 (S.D. Fla. 2008) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

The movant "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp.*, 477 U.S. at 323. To discharge this burden, the movant must point out to the Court that there is an absence of evidence to support the nonmoving party's case. *Id.* at 325. After the movant has met its burden under Rule 56(c), the burden of production shifts, and the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The non-moving party must come forward with "specific facts showing a genuine issue for trial." *Matsushita*, 475 U.S. at 587.

[1] The parties' Statements of Material Facts and responses thereto [DE 151-1; DE 183; DE 188-1; DE 153; DE 171-1; DE 191] include various citations to specific portions of the record. Any citations herein to the Statements of Material and responses should be construed as incorporating those citations to the record.

"A fact [or issue] is material for the purposes of summary judgment only if it might affect the outcome of the suit under the governing law." *Kerr v. McDonald's Corp.*, 427 F.3d 947, 951 (11th Cir. 2005) (internal quotations omitted). Furthermore, "[a]n issue [of material fact] is not 'genuine' if it is unsupported by the evidence or is created by evidence that is 'merely colorable' or 'not significantly probative.'" *Flamingo S. Beach I Condo. Ass'n, Inc. v. Selective Ins. Co. of Southeast*, 492 F. App'x 16, 26 (11th Cir. 2013) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249–50 (1986)). "A mere scintilla of evidence in support of the nonmoving party's position is insufficient to defeat a motion for summary judgment; there must be evidence from which a jury could reasonably find for the non-moving party." *Id.* at 26-27 (citing *Anderson*, 477 U.S. at 252). Accordingly, if the moving party shows "that, on all the essential elements of its case on which it bears the burden of proof at trial, no reasonable jury could find for the nonmoving party" then "it is entitled to summary judgment unless the nonmoving party, in response, comes forward with significant, probative evidence demonstrating the existence of a triable issue of fact." *Rich v. Sec'y, Fla. Dept. of Corr.*, 716 F.3d 525, 530 (11th Cir. 2013) (citation omitted).

III. DISCUSSION

On May 14, 2015, Plaintiff Roth entered into a lease agreement for an Audi A3. *See* [DE 152-19]. Plaintiff's leased vehicle was insured by Defendant GEICO's private passenger auto policy (the "Policy"). In June 2016, Plaintiff damaged her vehicle in an automobile accident, and she sought to recover under her GEICO Policy. Plaintiff submitted a claim for physical damage to her vehicle, and GEICO determined Plaintiff's vehicle to be a total loss.

The issue in this case is whether Plaintiff is entitled to sales tax and title transfer fees in addition to what Defendant paid her for the value of her total loss leased vehicle. Plaintiff seeks sales tax damages in the amount of tax she would incur if she were to buy her vehicle and title transfer fee damages in the minimum amount owed for the purchase of an owned vehicle ($75.25).

Defendant argues in its summary judgment motion that GEICO is entitled to summary judgment in its favor because GEICO's insurance policy and Florida law are clear that neither sales tax or title transfer fees are covered and therefore Plaintiff cannot demonstrate a breach of contract or damages. In contrast, Plaintiff argues in her summary judgment motion that she is entitled to summary judgment in her favor because GEICO violated the Policy terms and well-settled Florida law by refusing to pay all replacement costs – specifically, sales tax and title transfer fees –necessary to replace the total loss vehicle. For the reasons set forth below, the Court agrees with Plaintiff and will therefore grant Plaintiff's summary judgment motion and deny Defendant's summary judgment motion.

Under Florida law, to prevail in an action for breach of contract, the plaintiff must prove: (1) a valid contract; (2) a material breach; and (3) damages. *Beck v. Lazard Freres & Co., LLC*, 175 F.3d 913, 914 (11th Cir. 1999) (citing *Abruzzo v. Haller*, 603 So. 2d 1338, 1340 (Fla. Dist. Ct. App. 1992)). Additionally, Florida law requires that the Court begin with interpreting the insurance policy with the plain meaning of the policy, and that any ambiguities in the policy shall be construed against the insurer and in favor of the insured and coverage. *See, e.g., Altman Contractors, Inc. v. Crum & Forster Specialty Ins. Co.*, 832 F.3d 1318, 1322 (11th Cir. 2016);

Prudential Prop. & Cas. Ins. Co. v. Swindal, 622 So.2d 467, 470 (Fla. 1993). Keeping these legal standards in mind, the Court turns to the language of the Policy at issue.

The relevant section of the Policy is "**Section III – PHYSICAL DAMAGE COVERAGES**," subtitled "**Your Protection For Loss Or Damage To Your Car**," which protected Plaintiff against loss or damage to her Vehicle at the time of the Accident. *See* [DE 153-1] at 13. Damage to Plaintiff's Vehicle associated with the Accident was covered under the "Collision" provision of Section III. Pursuant to this provision, GEICO is responsible for paying "collision loss to the owned auto for the amount of each loss less the applicable deductible." The Policy defines a "**Loss**" as "direct and accidental loss of or damage to: (a) An **owned** or **non-owned auto**, including its equipment." *Id.* at 14. In the event of a loss, the Policy provides that the limit of GEICO's liability for the loss:

> 1. is the **actual cash value** of the property at the time of the **loss**.
>
> 2. Will not exceed the prevailing competitive price to repair or replace the property at the time of **loss**, . . . with other of like kind and quality and will not include compensation for any diminution of value that is claimed to result from the **loss**.
>
> * * *
>
> **Actual cash value** or **betterment** of property will be determined at the time of the **loss** and will include an adjustment for **depreciation/betterment** and for the physical condition of the property.

Id. at 15.

The term "actual cash value" (hereinafter, sometimes abbreviated by the Court as "ACV") is defined in the Policy as "the replacement cost of the auto or property less depreciation or betterment." *Id.* at 13. Importantly for the Court's analysis herein, the Policy does not distinguish between the ACV and replacement costs for owned, financed, or leased vehicles, and provides no notice to GEICO's insureds that their leased vehicles will be valued differently

based on whether they were leased. Rather, the Policy provides notice of just the opposite: the Policy defines owned, financed, and leased vehicles to all be considered "owned autos" under the Policy. There are no separate provisions in the Policy that apply to owned vehicles only, financed vehicles only, or leased vehicles only. Additionally, GEICO charges its insureds the same premiums under the Policy for owned, financed, and leased vehicles. Furthermore, nothing in the Policy requires a leased vehicle insured to replace their total loss vehicle with another leased vehicle, or even to replace her total loss with any vehicle at all.[2]

Plaintiff asserts that sales tax and title transfer fees are mandatory, necessarily included in the replacement costs of a total loss vehicle, and therefore are components of actual cash value under the Policy. The Court agrees. Sales tax and title transfer fees are mandatory fees imposed by Florida law on the replacement of all vehicles. *See* Fla. Stat. § 212.05 (sales tax); § 319.34 (title transfer fee).[3] Further, settled law in the Eleventh Circuit, applying Florida law, is that when an insurer provides an actual cash value insurance policy covering the cost to repair or replace damaged insured property, it must pay all of the costs that are included in the cost of replacement or repair of the property. *See Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1305 (11th Cir. 2008) ("[T]axes are not unambiguously excluded from actual cash value coverage. . . [p]art of 'the cost' of new materials is the taxes paid to purchase those materials").

In the summary judgment decision in *Bastian v. United Services Automobile Assn.*, 150 F. Supp. 3d 1284, 1290 (M.D. Fla. 2015) in favor of the plaintiffs insureds and against defendant insurance company, the district court agreed "with the Eleventh Circuit's easily-reached

2 In fact, many leased vehicle insureds replaced their total loss with an owned vehicle.
3 The title transfer fee for purchasing a replacement vehicle is a minimum of $75.25. The title transfer fee for leasing a replacement vehicle is a minimum of $54.25.

conclusion [in *Mills*] that state and local taxes are part of the cost of replacing an item."[4] While Defendant is correct that *Bastian* is distinguishable as it involved owned vehicles being replaced with owned vehicles, whereas Plaintiff Roth's vehicle was a leased vehicle and she replaced it with a leased vehicle, the Court finds *Bastian* to be persuasive here. In *Bastian,* USAA's insurance policy defined "[a]ctual cash value" as "the amount it would cost, at the time of loss, to buy a comparable vehicle. As applied to your covered auto, a comparable vehicle is one of the same make, model, model year, body type, and options with substantially similar mileage and physical condition." *Bastian*, 150 F. Supp. 3d at 1289. Here, GEICO's Policy defines actual cash value as "the replacement cost of the auto or property less depreciation or betterment." [DE 153-1] at 13. The relevant policy language at issue in the two cases is comparable in meaning and application.

The plain language of the Policy explicitly treats all vehicles as "owned." Moreover, for purposes of ACV and replacement cost under the Policy, the replacement costs for both owned and leased vehicles is based on the price to purchase a replacement vehicle (*i.e*, "the prevailing competitive price to repair or replace the property . . . with other of like kind and quality."). Plaintiff submits GEICO's two Market Valuation Reports for Plaintiff Roth's vehicle. *Compare* [DE 152-9] *with* [DE 152-11]. The first Market Valuation Report was created before GEICO realized that Plaintiff's vehicle was a lease. The first report valued Plaintiff's vehicle at $23,947.00 and added sales tax in the amount of 6% of that valuation, an amount of $1,436.82. [DE 152-11]. After determining that Plaintiff's vehicle was a lease, Defendant created a second report, in which it kept the vehicle valuation exactly the same ($23,947.00) -- with the sole

4 Further, a policy's failure to address limitations on the payment of sales tax must be construed in favor of the insured. *See Bastian*, 150 F. Supp 3d at 1295 ("At best, the Policy says nothing on the topic, which the Court should construe in favor of the insured."); *see also Mills,* 511 F.3d at 1305.

exception that it excluded the 6% sales tax. Thus, pursuant to the Policy, Defendant pays on leased vehicle total loss claim based on the market value on the date of the loss to purchase a replacement vehicle of the same make, model, and condition, not the cost to lease a replacement vehicle. As explained *supra*, the cost to purchase a replacement vehicle includes all costs necessarily included in the replacement costs of a total loss vehicle *Mills* and *Bastian*. Accordingly, as sales tax and title transfer fees are mandatory, necessarily included in the replacement costs of a total loss vehicle, the Court concludes that they are components of actual cash value under the Policy and are therefore due to be paid to the insured under the Policy, regardless of whether the vehicle is owned, financed, or leased.[5] Therefore, GEICO's failure to pay leased vehicle total loss insureds sale tax in the amount of 6% of the value of the vehicle (plus any local taxes) and title transfer fees in the amount of $75.25 constitutes a material breach of contract.

While GEICO complies with its Policy provisions (and the mandates of *Mills* and *Bastian*) by paying sales tax of a minimum of 6% of the total loss vehicle value on vehicles that are owned outright or financed by the insured, GEICO violates its Policy provisions (and the mandates of *Mills* and *Bastian*) by refusing to pay full sales taxes on leased vehicles.[6] Further, regarding title transfer fees owed under the Policy, GEICO does not pay title transfer fees on any total loss vehicles, regardless of whether the total loss vehicle is leased, owned, or financed, in violation of the Policy provisions defining all vehicles as owned vehicles and requiring payment

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5 GEICO's reliance on Fla. Stat § 626.9743(9) is unavailing, as that statute cannot limit coverage to less than what is provided for in the Policy. *See, e.g.*, *Bastian*, 150 F. Supp 3d at 1295.

6 GEICO's admitted practice of conditioning the payment of the sales tax component of ACV for leased vehicle total loss claims on whether the insured paid in the past, at lease inception, 100% of sales tax that would be due over the life of the lease is not supported by the Policy terms or Florida law.

of replacement costs be paid as part of ACV, as well as violating the mandates of *Mills* and *Bastian*.

Regarding damages, the third and final element of a breach of contract claim, Defendant contends that Plaintiff did not incur any damages, as she did not purchase the vehicle she totaled nor did she purchase her replacement vehicle. The Court disagrees. As noted by the Court, *supra,* nothing in the Policy requires a leased vehicle insured to replace their total loss vehicle with another leased vehicle, or even to replace her total loss with any vehicle at all. The damage to Plaintiff is the amount that she was underpaid by Defendant compared to the amount owed to her under the Policy.[7] Here, as to Plaintiff Roth, the amount of damages is $1,436.82 in sales tax and $75.25 in title transfer fees.

IV. CONCLUSION

Sales tax and title transfer fees are mandatory parts of the replacement cost under the GEICO Policy for Plaintiff Roth's (and the class members') leased total loss vehicle and therefore are components of "actual cash value" under the Policy. Accordingly, GEICO's failure to pay leased vehicle total loss insureds sale tax in the amount of 6% of the value of the vehicle (plus any local taxes) and title transfer fees in the amount of $75.25 constitutes a breach of contract.

For the foregoing reasons, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff Kerry Roth's Motion for Summary Judgment [DE 152] is **GRANTED;**
2. Defendant GEICO General Insurance Company's Motion for Summary Judgment [DE 151] is **DENIED**;

[7] While it is not necessary to the Court's analysis of whether Plaintiff was damaged by the breach of contract, the Court notes that Plaintiff submitted record evidence that she paid sales tax and title transfer fees on the replacement of her total loss leased vehicle.

3. Plaintiff Roth is entitled to damages in the amount of $1,436.82 in sales tax, which is 6% of the value of Plaintiff's total loss vehicle; and the amount of $75.25 in title transfer fees, which is the minimum amount of title transfer fees that are due on the purchase of a replacement vehicle.

4. Class members are entitled to damages in the amount of 6% of the value of Plaintiff's total loss vehicle (plus any applicable local taxes); and the amount of $75.25 in title transfer fees.

5. Within sixty (60) days from the expiration of the July 2, 2018 deadline to opt out of the class, the parties shall jointly submit a proposed final judgment to the Court.

6. The July 13, 2018 calendar call is **CANCELLED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 13th day of June, 2018.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies provided to:

Counsel of record