

Exhibit A1

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

DIANE MARTINEZ,
individually and on behalf of other
similarly situated individuals,

Plaintiff,

vs.

Case No. D-202-CV-2018-03583

**PROGRESSIVE PREFERRED INSURANCE COMPANY,
PROGRESSIVE CLASSIC INSURANCE COMPANY,
PROGRESSIVE CASUALTY INSURANCE COMPANY,
PROGRESSIVE MAX INSURANCE COMPANY,
PROGRESSIVE DIRECT INSURANCE COMPANY,
PROGRESSIVE ADVANCED INSURANCE COMPANY,
PROGRESSIVE SPECIALTY INSURANCE COMPANY, and
PROGRESSIVE NORTHERN INSURANCE COMPANY,**

Defendants.

**CLASS ACTION COMPLAINT FOR BREACH OF STATUTORY,
COMMON LAW, AND CONTRACTUAL DUTIES**

Diane Martinez, for herself and on behalf of putative class members defined herein,
through her counsel, for his Complaint, states as follows:

1. Pursuant to Rule 1-023 NMRA, Ms. Martinez seeks relief for himself and for a
class of similarly situated individuals defined as follows:

All persons (and their heirs, executors, administrators, successors, and assigns) who, at any time preceding this Complaint, were insured under a policy of underinsured motorist coverage that was issued or renewed in New Mexico by Defendants, and was illusory if subject to the offset described in *Schmick v. State Farm Mut. Auto. Ins. Co.*, 704 P.2d 1092 (1985);

Putative Class 1:

All putative class members (and their heirs, executors, administrators, successors, and assigns) who, at any time in the six years preceding this Complaint, sustained damages in excess of an insured tortfeasor's policy limits, received

the extent of all bodily injury liability limits available, made a claim with Defendants for underinsured motorist benefits and were denied, in writing, those benefits by Defendants.

Putative Class 2:

All putative class members (and their heirs, executors, administrators, successors, and assigns) who sustained damages in excess of an insured tortfeasor's policy limits, regardless of whether such members initiated claims for underinsured motorist benefits, except where such claims resulted in recovery of underinsured motorist benefits without a *Schmick* offset.

Putative Class 3:

All putative class members (and their heirs, executors, administrators, successors, and assigns) who paid for coverage that would be illusory if subjected to a *Schmick* offset, but who did not sustain damages in excess of an insured tortfeasor's policy limits.

2. Diane Martinez, individually and for members of the first Putative class of persons who, like her, would have recovered benefits under such a policy had it not been illusory, seeks to recover those benefits.

3. Diane Martinez, individually and for members of the second putative class of persons who sustained damages in excess of an insured tortfeasor's policy limits, regardless of whether such members initiated claims for underinsured motorist benefits, except where such claims resulted in recovery of underinsured motorist benefits without a *Schmick* offset.

4. Diane Martinez, individually and for members of the third putative class of persons, who, like her, paid for but never had occasion to make an underinsured motorist claim from such illusory policies seeks to recover damages for the tortious marketing and sale of those policies. *See Dollens v. Wells Fargo Bank, N.A.*, 2015-NMCA-096, ¶ 18, 356 P.3d 531, 538 (awarding out-of-pocket damages for a UPA violation); *see also Bhasker v. Kemper Cas. Ins.*

Co., No. CIV 17-0260 JB/JHR, 2018 WL 354675, at 72 (D.N.M. January 10, 2018) (finding the first \$25,000.00 of underinsured motorist coverage to be “illusory”).

5. Defendants’ marketing or sale of such policies, or Defendants’ handling of claims for benefits under those policies, or some combination thereof, violated New Mexico common law; the Unfair Practices Act, NMSA1978, Sections 57-12-1 to -26 (hereinafter “the UPA”); and NMSA 1978, Sections 59A-16-1 to -30 (hereinafter “the UIPA”).

I. PARTIES

6. Diane is, and was at all material times, a resident of Bernalillo County.

7. Diane and all members of the putative class were, at material times, covered by a policy of automotive insurance issued by Defendant(s) that had been marketed and sold as though it would cover claims resulting in damages exceeding the limits of insured tortfeasors’ policies.

8. Defendant Progressive Preferred Insurance Company is a foreign for-profit corporation conducting business, including the marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

9. Defendant Progressive Classic Insurance Company is a foreign for-profit corporation conducting business, including the sales and solicitations for the sales of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

10. Defendant Progressive Casualty Insurance Company is a foreign for-profit corporation conducting business, including the sales and solicitations for the sales of insurance

policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

11. Defendant Progressive Max Insurance Company is a foreign for-profit corporation conducting business, including the sales and solicitations for the sales of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

12. Defendant Progressive Direct Insurance Company is a foreign for-profit corporation conducting business, including the sales and solicitations for the sales of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

13. Defendant Progressive Advanced Insurance Company is a foreign for-profit corporation conducting business, including the sales and solicitations for the sales of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

14. Defendant Progressive Specialty Insurance Company is a foreign for-profit corporation conducting business, including the sales and solicitations for the sales of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

15. Defendant Progressive Northern Insurance Company is a foreign for-profit corporation conducting business, including the sales and solicitations for the sales of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

II. JURISDICTION AND VENUE

16. Defendants are real parties in interest and proper parties to this action.
17. The acts complained of herein occurred in New Mexico.
18. The Second Judicial District Court of New Mexico has jurisdiction over the parties and subject matter, and is the proper venue.

III. CLASS ACTION ALLEGATIONS AND REQUEST TO CERTIFY CLASS

19. Upon information and belief, there is no material difference between the underinsured motorist applications and insurance policies Defendants issued to members of the proposed class.

20. This action is properly maintainable as a class action pursuant to Rule 1-023 NMRA. The Class is defined as follows:

All persons (and their heirs, executors, administrators, successors, and assigns) who, at any time preceding this Complaint, were insured under a policy of underinsured motorist coverage that was issued or renewed in New Mexico by Defendants, and was illusory if subject to the offset described in *Schmick v. State Farm Mut. Auto. Ins. Co.*, 704 P.2d 1092 (1985);

21. Excluded from the Class are all of Defendants' present and former officers and directors, "Referees" serving the Evaluation Appeal process proposed below, Class counsel and their resident relatives, and Defendant's counsel of record and their resident relatives.

22. Also excluded from the class are all passengers who, though covered at some time(s) in the relevant period, neither paid for the illusory coverage at issue nor suffered damages that would have been covered by the illusory coverage but for application of a *Schmick* offset.

23. Pursuant to Rule 1-023 NMRA, Diane seeks relief for three putative classes:

Putative class 1:

All putative class members (and their heirs, executors, administrators, successors, and assigns) who, at any time in the six

years preceding this Complaint, sustained damages in excess of an insured tortfeasor's policy limits, received the extent of all bodily injury liability limits available, made a claim with Defendants for underinsured motorist benefits and were denied, in writing, those benefits by Defendants.

Putative class 2:

All putative class members (and their heirs, executors, administrators, successors, and assigns) who sustained damages in excess of an insured tortfeasor's policy limits, regardless of whether such members initiated claims for underinsured motorist benefits, except where such claims resulted in recovery of underinsured motorist benefits without a *Schmick* offset.

Putative class 3:

All putative class members (and their heirs, executors, administrators, successors, and assigns) who paid for coverage that would be illusory if subjected to a *Schmick* offset, but who did not sustain damages in excess of an insured tortfeasor's policy limits.

24. Ms. Martinez is a member of the first putative class because a *Schmick* offset was applied to reduce her recovery of underinsured motorist benefits in connection with a July 30, 2016 car collision.

25. The proposed class definition and putative classes are precisely, objectively, and presently ascertainable because:

- a. Upon information and belief, Defendants' existing billing records are currently sufficient to identify all members of the putative class with ease and certainty; and
- b. each member of the the putative class either has, or has not, been injured in a car collision (or other covered event) in the relevant time period.

26. It is administratively feasible for the Court to easily ascertain whether a particular individual is a member.

27. The allegations of this Complaint present predominant questions of law and fact that are common to all members of the putative class, including:

- a. Whether Defendants breached contractual obligations owed to their New Mexico policyholders;
- b. Whether Defendants breached duties owed to New Mexican insureds under the implied covenant of good faith and fair dealing;
- c. Whether Defendants violated Sections 59A-16-1 to -30;
- d. Whether Defendants failed to disclose one or more material facts in connection with the marketing or sale of the insurance policies at issue;
- e. Whether Defendants misled or deceived their policyholders in connection with the marketing or sale of the policies at issue;
- f. How properly to construe the Defendants' standard application forms and other standard form documents relative to the *Schmick* offset;
- g. What remedies are available to Diane and the members of the putative class in light of the answers to the foregoing questions; and
- h. Whether and to what extent there may be merit in any affirmative defenses that Defendants might claim.

28. Diane's claims are typical of the claims of the members of the putative class members Diane seeks to represent.

29. Defendants' conduct with respect to Diane is typical of Defendants' conduct with respect to the members of the putative class members Diane seeks to represent.

30. Diane will fairly and adequately protect the interests of the putative class members she seeks to represent.

31. There are no conflicts of interest between Diane and members of the putative class.

32. Diane is cognizant of her duties and responsibilities to the putative class.

33. Diane's counsel is adequately qualified to prosecute the proposed litigation.

34. The members of the putative class are so numerous that joinder of all members would be impracticable.

35. Defendants have acted or refused to act on grounds generally applicable to the putative class, thereby making appropriate injunctive relief and corresponding declaratory relief with respect to the putative class. Diane seeks to establish the rights and obligations of the parties with respect to the claims at issue in this case and to enjoin Defendants from continuing to engage in those practices that violate the duties, contractual, and legal obligations owed to Diane and the putative class under New Mexico statutory and common law.

36. This action should also proceed as a class action under Rule 1-023(B)(3) NMRA. The questions of law or fact common to the members the putative class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Although Defendants' acts affect many individuals, the marketing and sale of illusory underinsured motorist coverage is traced to Defendants' tortious, deceitful, and unfair business practices. Whether Diane and putative class members are presenting one of the three different categories of claims, they will present common liability proof that is the same for each member of the Class. Across claim categories, Diane's common proof of Defendants' liability will involve the same cast of characters, events, discovery, documents, fact witnesses, and experts.

37. The need for proof of Diane's and putative class members' damages will not cause individual issues to predominate over common questions. The amounts of losses can be efficiently demonstrated either at trial or as part of routine claims administration through accepted and court-approved methodologies with the assistance of court-appointed personnel, including Special Masters. Certain types or elements of damage are subject to proof using aggregate damage methodologies or simply rote calculation and summation.

38. A class action is superior to maintenance of these claims on a claim-by-claim basis when all actions arise out of the same circumstances and course of conduct. A class action allows the Court to process all rightful claims in one proceeding. Class litigation is manageable considering the opportunity to afford reasonable notice of significant phases of the litigation to putative class members and permit distribution of any recovery. The prosecution of separate actions by individual putative class members, or the individual joinder of all putative class members in this action, is impracticable and would create a massive and unnecessary burden on the resources of the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of each member of the putative class, should that be determined to be appropriate.

39. The conduct of this action as a class action conserves the resources of the parties and the court system, protects the rights of each member of the class, and meets all due process requirements.

40. Certification of the Class with respect to particular common factual and legal issues concerning liability, as well as the necessary and appropriate quantum of punitive damages, or ratio of punitive damages to actual harm, is appropriate under New Mexico Rule of Civil Procedure 23(c)(4).

41. The particular common issues of liability, comparative fault, and the quantum of punitive damages or ratio of punitive damages to actual harm, are common to all putative class members no matter what type of harm or injury was suffered by each Class Member.

III. GENERAL FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

Ms. Martinez is Injured in a Car Crash with an Underinsured Motorist

42. Diane and putative class members incorporate by reference the preceding paragraphs as though they were stated fully herein.

43. Diane, at the time of her motor vehicle occurrence, had purchased automobile insurance through Defendants on the three vehicles she owned.

44. Based on information and belief, sometime in 2003, Diane originally applied for and purchased Defendant's automobile insurance in person through the Manuel Lujan agency and thereafter was mailed renewal material by mail. Defendant is in possession of this information.

45. This method or the online medium is standard and was the same for putative class members.

46. Sometime after she applied for automobile insurance in 2003, Defendants issued to Diane Progressive automobile insurance policies covering her vehicles with corresponding endorsements.

47. Thereafter, Diane made changes to coverage as needed and received standard renewals without being properly informed of the Schmick offset.

48. The applications and policies failed to properly inform Diane about the Schmick offset described in *Schmick v. State Farm Mut. Auto. Ins. Co* and did not meet Diane's reasonable expectations of being properly insured in the event she sustained serious injuries.

49. Defendants did not properly inform Diane of how underinsured motorist coverage is illusory in the event of a covered occurrence involving an underinsured driver when Diane purchased automobile coverage. It is reasonable to infer that a likeminded person with all material facts would decline to pay valuable consideration for illusory coverage.

50. Defendants failed to properly inform Diane of the limited scenarios in which Diane would benefit from the purchase of minimum limits underinsured motorist coverage.

51. Defendants failed to properly inform Diane she would most likely not benefit from paying a premium for the first layer of \$25,000 worth of minimal underinsured motorist coverage that was equal to the amount of a tortfeasor's liability coverage because, pursuant to the Schmick offset, Diane's recovery of underinsured motorist benefits would be offset by the amount of the tortfeasor's liability coverage.

52. Defendant did not provide nor obtain a written waiver that acknowledged Diane understood what she was about to purchase, illusory underinsured motorist coverage.

53. On July 30, 2016, Diane sustained bodily injuries and other damages arising from an automobile collision that occurred in Albuquerque, New Mexico; Diane was not at fault for the collision.

54. On July 30, 2016, Diane lawfully traveled eastbound on Zuni Drive SE when an underinsured driver, who traveled at a high-rate of speed, collided with Ms. Martinez' vehicle.

55. The underinsured motorist failed to keep a proper lookout for traffic, traveled at an excessive rate of speed, and rear ended Diane's vehicle, before colliding with large rocks in the median and ending up on the curb on the opposite lanes of traffic.

56. As a result of the impacts, Diane suffered serious bodily injuries and other damages, including traumatic brain injury, which caused memory loss and adversely affected her ability to speak and process her thoughts.

57. At the time of the collision, Diane was abiding by the traffic laws of the State of New Mexico and the City of Albuquerque.

58. At the time of the collision, Diane was insured by Defendants' policy of insurance, Policy No. 80246262-8 for \$75,000 per person / \$150,000 each occurrence in stacked underinsured motorist coverage.

59. Diane received the full extent of liability coverage from the culpable underinsured motorists.

60. Diane Martinez sustained total actual damages well in excess of \$75,000.00.

61. Prior to the collision at issue, Diane properly paid three premiums for automobile coverage under the Defendants' policy and had a reasonable expectation that she carried underinsured motorist coverage of \$75,000.00 each person and \$150,000.00 each occurrence.

62. At the time of the collision, Diane was under the belief and had a reasonable expectation that she was entitled to underinsured motorist benefits pursuant to the referenced application form and policy issued by Defendant.

Defendants Tortiously Marketed and Sold Illusory Underinsured Motorist Coverage to Diane and Putative Class Members

63. Diane and putative class members incorporate by reference the preceding paragraphs as though they were stated fully herein.

64. Defendants and their parent company, Progressive Casualty Group, have written direct premium automobile insurance to thousands of New Mexico residents and, from 2010-

2016 and wrote direct auto/property casualty premiums in the approximate amount of \$97,000,000,000¹ across the United States.

65. In a 2010 case entitled *Progressive v. Weed Warrior*, the New Mexico Supreme Court established that underinsured coverage is superfluous when the tortfeasor and the injured driver both carry the statutory minimum of liability and underinsured coverage. *Progressive Nw. Ins. Co. v. Weed Warrior Services*, 2010-NMSC-050, ¶ 10. 149 N.M. 157, 161, 245 P.3d 1209, 1213.

66. Defendants made written statements that misrepresented to Diane and putative class members that they would benefit from underinsured coverage when they knew, or should have known, that the coverage was illusory. Defendants' misrepresentations or lack of representations were made, knowingly and willfully, with the intent to deceive and induce Diane and putative class members in purchasing underinsured coverage.

67. Following the representations and misrepresentations alleged, Defendants issued to Diane and putative class members Defendants' standardized automobile insurance policy with corresponding endorsements ("policy").

68. In violation of New Mexico law, the application and policy failed to state that underinsured coverage is illusory in the event of a covered occurrence, as in this case, involving a minimally insured driver.

69. In violation of New Mexico law, Defendants had a duty to properly inform Diane and putative class members what the combined monthly premiums would be for the next available tier of coverage. Defendants breached that duty.

¹ Products & Services: Alphabetical Index. (n.d.). Retrieved May 3, 2018, from http://www.naic.org/prod_serv_alpha_listing.htm#ast_compilation
National Association of Insurance Commissioners

70. The increase in benefits is well over 150% for most putative class members that purchased underinsured motorist coverage for one vehicle and sustained monetary damages in excess of the tortfeasors bodily injury liability limits when compared to the small increase of premium for the next level of available coverage.

71. Defendants' actions, and inactions, misrepresented and failed to properly inform Diane and putative class members of the significant increase of benefits available at a relatively small cost.

72. Under New Mexico law, Defendants had a duty to act fairly, honestly, and in good faith when dealing with Diane and putative class members. Defendant failed to do so when it failed to properly inform Diane of illusory underinsured coverage when compared to the next tier of available coverage and to not materially misrepresent the terms of underinsured coverage. Defendants breached that duty.

Insurance Investigation and Claims

73. Diane and putative class members incorporate by reference the preceding paragraphs as though they were stated fully herein.

74. Following the motor vehicle collision, Diane promptly reported the car collision to Defendants.

75. Defendants, under a standardized business practice, opened a claim, assigned claim number 16-2439017, and randomly assigned the adjustment of the matter to one of its several thousands of adjusters.

76. Despite Diane's counsel's requests, Defendants have not provided a copy of the original application requested on May 3, 2018 and May 7, 2018.

77. The renewal policy insuring Diane shows liability coverage on one vehicle in the amount of \$25,000 each person and \$50,000 per occurrence, per vehicle.

78. Defendants' renewal policy insuring Diane shows underinsured motorist coverage on each of her three vehicles in the amount of \$25,000.00 per occurrence / \$50,000.00 per occurrence and that the UM/UIM coverages may be stacked.

79. Defendants' application did not alert Diane, nor made clear to the ordinary and similarly situated insured, the fact that the Schmick offset drastically and materially diminished payment of benefits arising from a covered occurrence under the policy. Specifically, there is virtually no possible first layer of \$25,000 in underinsured minimum limits claim available to Diane.

80. Defendants' 2005 New Mexico application for personal auto insurance shows that Defendants did not properly inform its prospective insureds about underinsured motorist coverage, specifically, there is no mention of the Schmick offset or that the underinsured motorist coverage is illusory. It materially misrepresented that the insured applied for valuable underinsured motorist coverage and listed that amount. See Exhibit A.

81. Based on information and belief, Diane's application was substantially similar to Defendant's 2005 application.

82. Diane, through counsel, demanded Defendants provide Diane with the \$75,000 in underinsured benefits that the Defendants solicited and for which Diane paid multiple premiums and Defendants denied Diane's claim for underinsured benefits under the policies.

83. Diane had a reasonable expectation that she would benefit from insurance premiums she paid for. In fact, under her policy, the first \$25,000 of the underinsured motorist benefits she paid for her has been denied to her by Defendants, making it illusory.

84. Defendants, in violation of the New Mexico Unfair Practices Act, N.M.S.A.1978, § 57–12–1 et seq. (“UPA”); the New Mexico Unfair Insurance Practices Act N.M.S.A.1978, §§ 59A–16–1 et seq. (“UIPA”), and New Mexico common law, failed to offer their insureds sufficient information and knowledge regarding the illusory, superfluous, and deceptive coverage.

85. In violation of New Mexico law, Defendants failed to properly inform Diane and putative class members about combined premium costs corresponding to the available levels of coverage and failed to offer their insureds a fair opportunity to reconsider the decision to select a higher amount of underinsured coverage or reject such coverage altogether. Defendants’ application and renewal policy did not contain clear, unambiguous language regarding the effects of the Schmick offset.

86. In violation of New Mexico law, Defendants failed to properly inform Diane, and putative class members during the application and policy writing process, that a purchase of 25/50 underinsured coverage, when triggered by a collision with a tortfeasor who has 25/50 bodily injury liability limits, will result in a payment of premium for which no payment of benefits of the first layer \$25,000.00 of coverage will occur and therefore violated Diane’s and putative class members’ reasonable expectations of benefiting from the entirety of the underinsured motorist coverage sold by Defendant to Diane.

87. In violation of New Mexico law, the application, coverage, and the corresponding policy language must not be so complex such that a reasonable person would be unable to understand its full impact when he or she reads it. See *King v. Travelers Ins. Co.*, 1973- NMSC 013, 84 N.M. 550, 556, 505 P.2d 1226, 1232 and *Romero v. Dairyland Ins. Co.*, 1990-NMSC-111, 111 N.M. 154, 159, 803 P.2d 243, 248

88. Because Defendants failed to properly inform Diane and putative class members of the Schmick offset during the application and policy underwriting stages, in a manner consistent with the requirements imposed by, the UPA, the UIPA, and New Mexico common law, Defendants should be required to fully compensate Diane and putative class members for the injuries and/or actual damages they sustained as a result of the July 30, 2016 incident, via the first layer of underinsured benefits (\$25,000.00) and out-of-pocket expenses for which they paid a premium.

IV. ALLEGATIONS AND CLAIMS:

COUNT I

Negligence

89. Diane and putative class members incorporate by reference the preceding paragraphs as if they were fully stated herein.

90. Defendants had a duty to ensure Diane and putative class members would be offered and obtain the maximum benefit of underinsured coverage and would not be sold illusory underinsured coverage.

91. It was reasonably foreseeable that the underinsured coverage sold to Diane and putative class members was, in large part, illusory and that Defendants materially misrepresented the terms of underinsured coverage.

92. A reasonably prudent insurance company exercising ordinary care would offer and sell underinsured coverage that was not illusory and would not materially misrepresent the terms of underinsured coverage by properly informing its insured of the coverage they were purchasing and obtaining a written waiver acknowledging its insured consent to the purchase of illusory underinsured motorist coverage.

93. Defendants' actions and inactions, through its agents, employees, or others on its behalf, were negligent in that they breached the standard of care required of an insurance company issuing auto policies in New Mexico.

94. As a result of Defendants' negligence, Diane and putative class members, sustained actual damages for which Defendants are liable. Diane and putative class members are entitled to punitive damages for actions of Defendants that were willful, reckless and wanton, and in bad faith.

COUNT II

Violations of the New Mexico Unfair Trade Practices Act

95. Diane and putative class members incorporate by reference the preceding paragraphs as if they were fully stated herein.

96. There was in effect, at all times material, a state statute commonly known as the New Mexico Unfair Trade Practices Act, N.M.S.A.1978, § 57-12-2 to 58-12-10 ("UPA"), including but not limited to those subsections in Section 57-12-2(D)(7), (D)(14), (D)(15), (D)(17) and Section 57-12-2(E), which prohibits a person selling insurance from engaging in unfair or deceptive trade practices:

D. "unfair or deceptive trade practice" means an act specifically declared unlawful pursuant to the Unfair Trade Practices Act [Chapter 57, Article 12 NMSA 1978], a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by a person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead and includes but is not limited to:

(7) representing that the goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;

(14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;

(15) stating that a transaction involves rights, remedies or obligations that it does not involve;

(17) failure to deliver the quality or quantity of goods or services contracted for;

E. “unconscionable trade practice” means an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts which to a person’s detriment:

(1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or

(2) results in a gross disparity between the value received by a person and the price paid.

97. Defendants failed to deliver the quality or quantity of services applied for and purchased by Diane and other insureds by failing to provide insurance applications and policies containing sufficient information to properly inform a reasonably prudent person charged with the task of purchasing underinsured insurance, to which Diane was under the reasonable belief that such coverage existed, and to pay claims for insurance benefits sold and solicited by Defendants.

98. Defendants, acting through their agents, adjusters, and employees, as set forth above, knowingly and willfully engaged in unfair trade practices in violation of Section 57-12-3,

including but not limited to those subsections in Section 57-12-2(D)(7), (D)(14), (D)(15), (D)(17) and Section 57-12-2(E).

COUNT III

Violations of the New Mexico Unfair Insurance Practices Act

99. Diane and putative class members incorporate by reference the preceding paragraphs as if they were fully stated herein.

100. There was in effect at all times material a State statute commonly known in the Insurance Code New Mexico Unfair Insurance Practices Act N.M.S.A.1978, §§ 59A-16-1 to 59A-16-30 (“UIPA”).

101. The UIPA provides a private right of action to any person covered by the UIPA who has suffered damages as a result of a violation of that article by an insurer or agent is granted a right to bring an action in district court to recover actual damages.

102. Diane and putative class members were insured under the policy issued and adjusted by the Defendants.

103. Defendants owed Diane and putative class members the duties of good faith, fair dealing, and the accompanying fiduciary obligations.

104. In the sale and provision of insurance, and in the handling of the underinsured motorist claim, Defendants failed to exercise good faith, unreasonably delayed payment, and failed to give the interests of Diane and of the putative class members the same consideration it gave their own interests.

105. Defendants’ failure to pay anything on Diane’s, the Class’ and Putative class’ first \$25,000.00 level of underinsured motorist claims was unfounded, unreasonable, and in bad faith.

106. Defendants misrepresented the terms of the policy sold and provided to Diane and putative class members and other insureds, and/or failed to disclose material facts reasonably necessary to prevent other statements from being misleading; failed to implement and follow reasonable standards in the sale and provision of insurance; and failed to follow Defendants' own customary practices and procedures.

107. Defendants' acts and failures to act were in reckless disregard of Diane's, the Class' and Putative class' rights as an insured under the subject policy.

108. Defendants' acts and practices took advantage of the lack of knowledge and experience of Diane and putative class members to a grossly unfair degree.

109. Defendants failed to abide by its statutory duties under the UIPA, and such violations constitute negligence per se.

110. Defendants misrepresented to Diane and putative class members pertinent facts or policy provisions relating to coverages at issue, in violation of NMSA § 59A-16-20(A).

111. Defendants failed to acknowledge and act reasonably and promptly upon communications with respect to claims from Diane and putative class members, arising under the policy, in violation of NMSA § 59A-16-20(B).

112. Defendants failed to adopt and implement reasonable standards for the prompt investigation and processing of Diane's, the Class' and putative class members' claims arising under the policy, in violation of NMSA § 59A-16-20(C).

113. Defendants failed to properly affirm and pay the coverage for claims of its insured within a reasonable period of time after proof of loss requirements under the policy was completed and submitted by Diane and putative class members in violation of NMSA § 59A-16-20(D).

114. Defendants did not attempt in good faith to effectuate prompt, fair and equitable settlement of Diane's and putative class members' claims in which liability has become reasonably clear, in violation of NMSA § 59A-16-20(E).

115. Defendants compelled Diane and putative class members to institute litigation to recover amounts due under the policies by offering substantially less (i.e., nothing on the first level of \$25,000.00 of UIM coverage withheld based on the Schmick offset) than the amounts claimed by Diane and putative class members that will ultimately be recovered in actions brought by Diane, in violation of NMSA § 59A-16-20(G).

116. Defendants failed to promptly provide Diane and putative class members with a reasonable explanation of the basis relied upon in the policy in relation to the facts and the applicable law for denial of her claims, in violation of NMSA § 59A-16-20(N).

117. Defendants' failure to act in good faith and Defendants' violations of the Insurance Code and Trade Practices Act are proximate causes of damages sustained by Diane, and putative class members.

118. Defendants' conduct was in bad faith, malicious, willful, wanton, fraudulent and/or in reckless disregard of Diane's and putative class members' rights.

119. Diane and putative class members are entitled to attorneys' fees and costs pursuant to §59A-16-30 and §39-2-1. As a direct and proximate result of Defendants' acts, omissions policies, and conduct in violating UIPA, as set forth above, Diane and putative class members have sustained damages, in addition to the damages common to all counts of this Complaint, including but not limited to the actual damages incurred, the cost of prosecution of this lawsuit, attorneys' fees, and interest on the sums owed under the policy. These injuries and damages are ongoing, permanent, and are expected to continue in the future.

COUNT IV

Breach of Contract and Claim for Underinsured Motorist Coverage

120. Diane and putative class members incorporate by reference the preceding paragraphs as though they were stated fully herein.

121. By issuing the policy in question to Diane and putative class members, the Defendants entered into a contract with Diane and putative class members.

122. By undertaking the acts described above, Defendants have wrongfully and unlawfully failed to provide underinsured motorist coverage and/or denied underinsured motorist claims for benefits to Diane and putative class members.

123. By engaging in the conduct alleged herein, the Defendants breached their contractual obligations to Diane and putative class members.

124. Pursuant to New Mexico law, and because of Defendants' breaches of their contractual obligations to Diane and putative class members are entitled to actual damages, including but not limited to, underinsured motorist coverage in an amount equal to liability limits and may be entitled to payment of underinsured motorist benefits, or payment of additional underinsured motorist benefits accordingly and to damage to Diane and putative class members in an amount to be proven at trial.

COUNT V

Breach of the Covenant of Good Faith and Fair Dealing

125. Diane and putative class members incorporate by reference the preceding paragraphs as though they were stated fully herein.

126. Implicit in the contract of insurance between Diane and putative class members and Defendants was the covenant that Defendants would, at all times, act in good faith and deal honestly and fairly with Diane and putative class members.

127. Defendants breached the implied covenant of good faith and fair dealing, in one or more of the following ways, including but not limited to:

- a. Failing to properly inform Diane and putative class members of the illusory coverage it solicited and sold.
- b. Failing and refusing to acknowledge that the subject occurrence triggers the subject insurance policy;
- c. Failing and refusing to disclose, admit and acknowledge coverage in this matter;
- d. Failing and refusing to promptly and fairly investigate, process, determine and decide Diane's, the Class' and Putative class' claims under the policy referenced above;
- e. Denying coverage to Diane and putative class members under the policy;
- f. Failing and refusing to cover its insureds, Diane and putative class members under the underinsured motorist portion of their policies referenced above; and
- g. Failing and refusing to mediate, resolve, and settle Diane's and putative class members' underinsured motorist claims.

128. As a direct and proximate result Defendants' acts and omissions alleged herein, Diane and the putative class members have suffered damages in an amount to be proven at trial.

129. Defendants' acts and omissions alleged herein and breach of the implied covenant of good faith and fair dealing were done intentionally, willfully, wantonly, grossly, maliciously and/or with reckless disregard for the rights of Diane and putative class members.

130. Accordingly, Diane and the putative class members are entitled to recover punitive damages in an amount to be determined by the jury and sufficient to punish the Defendants for their misconduct and to deter others from similar conduct in the future.

COUNT VI

Unjust Enrichment

131. Diane and the putative class members incorporate by reference the preceding paragraphs as though they were stated fully herein.

132. Defendants have applied the Schmick offset to its insureds' claims and denied the first level of underinsured motorist coverage in New Mexico since 1985. Defendants misled, deceived, and acted in an unfair manner for decades and retained benefits (i.e., the payment of proper claims) from hundreds of thousands of New Mexico insureds for years, including Diane's and the putative class members' claims. The benefits Defendants denied their insureds allowed them to invest and enjoy the benefits of their deceitful and intentional conduct.

133. Diane and the putative class members are entitled to the value of the underinsured motorist benefits and out-of-pocket expenses under the equitable theory of Unjust Enrichment. Defendants should be ordered to disgorge the value of the underinsured motorist benefits, UIM premiums and out-of-pocket expenses along with the decades of Defendants' unjust enrichment activity and profit.

COUNT VII

Negligent Misrepresentation

134. Diane and the putative class members incorporate by reference the preceding paragraphs as though they were stated fully herein.

135. A special relationship exists between the Defendants, Diane and the putative class members sufficient to impose a duty on Defendants to disclose accurate information to Diane and the putative class members.

136. As early as 1985, when the New Mexico Supreme Court published its decision in *Schmick v. State Farm*, Defendants knew that underinsured motorist coverage would be illusory under circumstances similar to those experienced by Diane and the putative class members.

137. The Defendants, however, withheld this information from Diane and the putative class members and hid from them the fact that the underinsured motorist coverage as impacted by the Schmick offset is illusory.

138. From 1985 through the present, Defendants failed to disclose material facts and made material misrepresentations to Diane and the putative class members regarding illusory underinsured motorist coverage.

139. Defendants, therefore, misrepresented underinsured motorist coverages through their standard and uniform applications and policies used by Diane and putative class members, which the defendants knew or should have known, were misleading and contained material misrepresentations.

140. Diane's and the putative class members' reliance on Defendants was reasonable, given the Defendants' position of authority and superior and unique vantage point on these underinsured motorist coverage issues.

141. As a result of the Defendants' misrepresentations, they are liable to Diane and the putative class members for their damages flowing from their reliance on those misrepresentations.

142. As a direct and proximate result of the Defendants' negligent misrepresentations, Diane and the putative class members suffered economic loss, including the lost benefits of underinsured motorist coverage and out-of-pocket expenses. Diane and the putative class seek the full measure of damages allowed under applicable law.

COUNT VIII

Fraud and Fraudulent Concealment

143. Diane and the putative class members incorporate by reference the preceding paragraphs as though they were stated fully herein.

144. Defendants fraudulently made the representations and misrepresentations identified in the preceding paragraphs intending that Diane and the putative class members would rely on them to their detriment and damage.

145. At the time the fraudulent representations were made Defendants knew the representations were false.

146. In fact, Diane and the putative class members reasonably relied on the fraudulent representations to their detriment and damage.

147. Defendants failed to disclose material facts and in fact concealed material facts as set forth above, while having a duty to disclose those material facts. Had Diane, putative class members known the true and material facts as set forth above, Diane and putative class members would not have proceeded without further protecting their interests.

148. The actions of the Defendants were willful, intentional, malicious, and in reckless disregard for the rights of Diane and putative class members. Diane and putative class members are entitled to recover punitive damages against each defendant.

149. As a direct result of Defendants' fraud and fraudulent concealment of material facts, Diane and the putative class members have been damaged in an amount to be proven at trial.

COUNT IX

Injunctive Relief

150. Diane and the putative class members incorporate by reference the preceding paragraphs as though they were stated fully herein.

151. Diane, putative class members are entitled to injunctive relief requiring that Defendants be enjoined from continuing practices that violate the duties, contractual, and legal obligations owed to Diane putative class members.

152. Defendants must be compelled to stop their practice of failing to provide underinsured motorist coverage benefits equal to the limits of liability coverage where they failed to properly inform Diane and the putative class members throughout the application and policy underwriting process.

COUNT X

Declaratory Judgment

153. Diane and the putative class members incorporate by reference the preceding paragraphs as though they were stated fully herein.

154. An actual controversy exists between the parties thereby rendering declaratory relief proper pursuant to NMRA, Rule 1-057 and the New Mexico Declaratory Judgment Act, NMSA 1978, Sections 44-6-1 through -15 (1975).

155. Diane and the putative class members are entitled to a declaratory judgment establishing the respective rights and obligations of the parties with respect to the claims set forth herein.

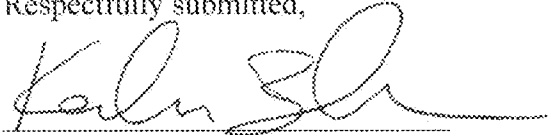
PRAYER FOR RELIEF

1. WHEREFORE, Diane and the putative class members pray for Jury Trial and for the following relief:

- i. An Order certifying this action to proceed as a Class Action, authorizing Dianes to represent the interests of the Class or putative classes as appropriate and appointing undersigned counsel to represent the Class;
- ii. Awarding compensatory damages to Diane and the putative class members for the damages done to them by Defendants in an amount to be proven at trial;
- iii. Awarding punitive damages to Diane and the putative class members in an amount sufficient to punish Defendants for their willful and wanton conduct, and to deter them, and others similarly situated, from such conduct in the future in an amount to be proven at trial;
- iv. Awarding Diane and the putative class members damages from Defendants as a result of its violations of UIPA, in an amount to be determined at trial and for attorneys' fees and costs;

- v. Awarding treble damages in accordance with NMSA 1978, Sections 57-12-10(B) (2005), and any and all damages permitted pursuant to NMSA 1978, Sections 57-12-1 through – 26, which will deter Defendants and others from such unfair trade practices and wrongful conduct in the future and will punish them or the conduct set forth in this Complaint;
- vi. Granting a declaratory judgment that establishes the rights and obligations of the parties with respect to the claims set forth herein;
- vii. Granting injunctive relief as may be deemed proper by the Court to require Defendants to desist in the wrongful actions described herein;
- viii. Awarding Diane and the putative class members their costs and expenses incurred in this actions, including reasonable attorneys' fees, experts' fees, and costs;
- ix. Awarding pre-judgment and post-judgment interest as allowed by law;
- x. The amounts which Diane and the putative class members are equitably entitled to under the theory of unjust enrichment; and
- xi. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Exhibit A

Note: For customers who e-sign, "Policy number: 9999999-9" will print only if available

Application for Insurance

Note: The heading below will not print for customers who e-sign.

Please review, sign where indicated and return

Note: The heading below will print for customers who e-sign.

Please review and sign where indicated

Policy number: 9999999-9

Policyholders: XXXXX XXXXXXXXXXXXXXXX

XXX XXXXXXXXXXXXXXXX

May 10, 2002

Page x of x "Page x of x" will not print for e-sign.

Note: For customers who sign the app electronically, "for policy number 9999999-9" will print if available.

Policy and premium information for policy number 9999999-9

Note: The name and address of the actual insuring entity will print below

Insurance company: XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX, XX 99999

Named insured: XXXXX XXXXXXXXXXXXXXXX
999 MAIN RD
CLEVELAND, OH 99999
Home: 999-999-9999

Note: The field below will print when credit has been pulled. The name and phone number of the vendor will print.

Financial responsibility vendor: XXXXXXXXXXXXXXXX
999-999-9999

Note: The "Policy period" and the "Effective date and time" fields below will print if policy is paid.

Policy period: May 10, 2002 – Nov 10, 2002

Note: If the sale date is the same as the effective date, show the effective time followed by "ET" i.e. 2:30 PM ET. If the effective date is in the future, show the time as "12:01 A.M."

Effective date and time: May 10, 2002 at 12:01 A.M.

Note: The "Effective date and time" heading and the sentence below will print if policy is unpaid.

Effective date and time: Your policy will be effective when your required down payment is submitted or at a later date of your choice.

Total policy premium: \$2,429.00

Down payment required: \$9,999.03

Note: "Down payment received" heading and the amount will print if policy is paid.

Down payment received: \$0.00

Payment plan: xxxxx (The selected payment plan will print here)

Note: This section below will always print with the exception of Named Operator policies.

Drivers and resident relatives

You, your spouse and all resident relatives XX years of age or older, all regular drivers of the vehicles described in this application, and all children who live away from home who drive these vehicles, even occasionally, are listed below.

Name	Date of birth	Sex	Marital status	Relationship	Driver status
XXXX XXXXXXXXXXXXXXXX	Oct 12, 1969	Male	Single	Insured	XXXXXX



Note: For customers who e-sign, "Policy number: 9999999-9" will print only if available.

Policy number: 99999999-9
 Policyholders: XXXXX XXXXXXXXXXXXXXXXXXXX
 XXX XXXXXXXXXXXXXXXXXXXX
 Page x of x
 "Page x of x" will not print for e-sign.

Note: The section below prints only when there is a driver with a filing.

SR22 driver filing

Name	Filing type	State	Case number
XXXXX XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	OH	9999999999

Note: The section below prints only when there is a named operator. The named operator field should print the insured's first and last name. The Additional information field should print 'Named insured'.

Named operator

Additional information
XXXXXXXXX XXXXX Named insured

Note: The section below will print the general policy coverages selected by the insured when there is a named operator policy.

Outline of coverage

General policy coverage	Limits	Deductible	Premium
Liability To Others			\$xxx
Bodily Injury Liability	\$xx,xxx each person/\$xx,xxx each accident		
Property Damage Liability	\$xx,xxx each accident		
Uninsured Motorist	Rejected (example of UM if Rejected)		xx
Medical Payments	\$xxx each person		xx
Total xx month policy premium (Note: The variable text represents either '6' or '12')			\$xxxxxx

Note: The section below prints the coverages selected by the insured. Rejected coverages that require a signature will also print below with the exception of PDO policies. This section will not print for Named Operator policies.

Outline of coverage

Note: The message below regarding policy limits needs to print directly underneath the "Outline of coverage" heading when there is more than one vehicle on the policy and at least one vehicle has Liability coverage. This message will not appear when every vehicle on the policy is PDO or when the policy is a Named Operator policy.

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for a vehicle may not be combined with the limits for the same coverage on another vehicle.

Note: The vehicle information should not print when a policy is a named operator.

2002 ACURA MDX 4 DOOR MPV

VIN: **XXX222222222222222**

Garaging ZIP Code: 44102

Primary use of the vehicle: Commute

	Limits	Deductible	Premium
Liability To Others			\$xxx
Bodily Injury Liability	\$xx,xxx each person/\$xx,xxx each accident		
Property Damage Liability	\$xx,xxx each accident		
Medical Payments	\$xxx each person		xx
Uninsured Motorist	\$xx,xxx each person/\$xx,xxx each accident (example if selected)		xx
Bodily Injury			
Property Damage			
Uninsured Motorist	Rejected (example if UM rejected)		xx
Comprehensive (Ex. of stated amt.)	*Actual Cash Value or Stated Amount	\$xxx	xxx
Collision (Ex. of stated amt.)	*Actual Cash Value or Stated Amount	\$xxx	xxx
Rental Reimbursement	\$xxxxxxxxxxxxxx		xx

Note: For customers who e-sign, "Policy number: 9999999-9" will print only if available.

Policy number: 99999999-9
 Policyholders: XXXXX XXXXXXXXXXXXXXXXXXXX
 XXX XXXXXXXXXXXXXXXXXXXX

Page x of x

"Page x of x" will not print for e-sign.

Loan/Lease Payout		XX
Roadside Assistance		X
Note: The variable for Custom Parts or Equipment should be \$1,000 for CPE value of \$1,001 - \$5,000, the Additional Custom Parts or Equipment variable will display as the CPE value declared minus \$1,000. If the insured has declared a CPE value from \$0-\$1,000, nothing will print.		
Custom Parts or Equipment	\$1,000 included with Comprehensive or Collision	
Additional Custom Parts or Equipment	\$xxxxxxx	XX
Total premium for 2002 ACURA		\$xxxx

Note: Only print the sentence below when stated amount.

*In the event of a total loss of this vehicle, the maximum amount payable is the lesser of the Actual Cash Value or the stated amount of \$x,xxx.

Total xx month policy premium (Note: The variable text represents either '6' or '12') **\$xxxxx**

Note: The section below prints when discounts apply to the policy. If there is only one discount listed the heading will read "Premium discount" not "Premium discounts".

Premium discounts

Policy		
99999999999	(For e-sign "999999" will print if available.)	home owner, paid in full and multi-car
Driver (Note: Don't print any driver discounts on a driver who is not rated, who is excluded or who is list only.)		
XXXX XXXXXXXXXXXXX		XXXXXXXXXXXXXXXX
Vehicle		
2002 ACURA MDX		vehicle tracking system

Note: The 'Additional policy information' section prints when there are surcharges.

Additional policy information

Policy		
99999999999	(For e-sign "999999" will print if available.)	surcharge
Driver (Note: Don't print any driver surcharges on a driver who is not rated, who is excluded or who is list only.)		
XXXX XXXXXXXXXXXXX		XXXXXXXXXXXXXXXX
Vehicle		
2002 ACURA MDX		surcharge

Driving history

Note: The section below prints on all applications when there is a driver with a violation and/or accident unless the driver is excluded or list only.

Please review the following information carefully because your driving history from the last 35 months is used to determine your rate. All accidents are considered at-fault and chargeable unless the accident is under the payment threshold or we receive additional information from you or another source that proves the accident was not-at-fault. We obtain your driving history from the following sources:

- Your application (APP)
- Progressive claims history (PROG)
- Motor Vehicle Reports - provided by state agencies (MVR)
- Comprehensive Loss Underwriting Exchange - provided by Choicepoint, Inc. (CLUE)

Driver	Description	Date	Source
XXXX XXXXXXXXXXXXX	Speeding	Jul 4, 2001	APP
XXXXX XXXXXXXXXXXXX	Speeding	Jul 4, 2001	APP



Note: For customers who e-sign, "Policy number: 9999999-9" will print only if available.

Policy number: 99999999-9
Policyholders: XXXXX XXXXXXXXXXXXXXXXXXXX
XXX XXXXXXXXXXXXXXXXXXXX

Page x of x

"Page x of x" will not print for e-sign.

(no points charged)) "no points charged" will ONLY print when there are two or more violations that occurred on the same day. Only the violation with the highest point value will charge points. The "no points charged" verbiage will print under all other violations that occurred on that day.

Note: The sentence below only prints when all rated drivers have a clean driving record. The variable text represents the Brand name.
XXXXXXXXXXXXXXXXXXXX uses your driving history from the past 35 months to determine your rate. There are no accidents or violations for drivers on this policy.

Note: The section below prints the applicable questions.

Prior insurance and underwriting questions

-
Prior insurance: xxx (either 'yes' or 'no' answer will print here)
.....
-
Prior insurance carrier: xxx (Prior Insurance carrier will print if applicant has prior insurance)
.....
-
Policy number: (Policy number heading and prior policy number will only print if provided)
.....
-
Bodily injury limits: (Bodily injury limits heading and actual limits will only print if provided)
.....
-
Comp claims: x (Comp claims apply to the state)
.....
-
Not at-fault accidents: x (NAFs apply to the state)
.....

Note: The heading below prints when there is a Lienholder and Additional Interest.

Lienholder and additional interest information

Note: The heading below prints when there is a Lienholder only.

Lienholder information

Note: The heading below prints when there is an Additional Interest only.

Additional Interest Information

We will send certain notices such as coverage summaries and cancellation notices to the following:

Note: The sections below print the names and addresses on file for the Lienholder and Additional Interest if address is available

-
Lienholder: LP #1
123 FIRST MAIN AL 44102
2002 ACURA MDX (XXX999999999999999)
.....
-
Lienholder: AMERICAN SUZUKI (LOAN)
2002 VOLKSWAGEN JETTA GL (XXX999999999999999)
.....
-
Additional Interest: ADDITIONAL INTEREST
123 FIRST MAIN, OH 44107
.....

Note: This section prints on all applications

Application agreement

Verification of content

I declare that the statements contained herein are true to the best of my knowledge and belief and do agree to pay any surcharges applicable under the Company rules which are necessitated by inaccurate statements. I declare that no persons other than those listed in this application regularly operate the vehicle(s) described in this application. I declare that none of the vehicles listed in this application will be used to pick up or deliver persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, mail, food (including pizza), or any other products. I understand that this policy may be rescinded and declared void if this application contains any false information or if any information that would alter the Company's exposure is omitted or misrepresented.

ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.

Note: For customers who e-sign, "Policy number: 9999999-9" will print only if available.

Policy number: 9999999-9

Policyholders: XXXXX XXXXXXXXXXXXXXXXX

XXX XXXXXXXXXXXXXXXXX

Page x of x

"Page x of x" will not print for e-sign.

Notice of information practices

I acknowledge that the Company and its affiliates may collect information from consumer reporting agencies, such as driving record, and claims and credit history reports. The Company may use a credit-based insurance score based on the information contained in that credit history report. This information will be used to underwrite my insurance and provide an accurate quote in an appropriate underwriting company. I authorize the Company and its affiliates to obtain future reports to update or renew the insurance or to offer replacement insurance.

I affirm that

If I make my initial payment by electronic funds transfer, check, draft, or other remittance, the coverage afforded under this policy is conditioned on payment to the Company by the financial institution. If the transfer, check, draft, or other remittance is not honored by the financial institution, the Company shall be deemed not to have accepted the payment and this policy shall be void.

If I make my initial payment by credit card, the coverage afforded under this policy is conditioned on payment to the Company by the card issuer. I understand that if the Company is unable to collect my initial payment from the card issuer, the Company shall be deemed not to have accepted the payment and this policy shall be void. I also understand that if I authorize a credit card transaction for any payment other than the initial payment, this policy will be subject to cancellation for nonpayment of premium if the Company is unable to collect payment from the card issuer. The Company is deemed "unable to collect" in the following instances: (1) when I reach my credit limit on my credit card and the card issuer refuses the charge; (2) when the card issuer cancels or revokes my credit card; or (3) when the card issuer does not pay Company, for any reason whatsoever, upon the Company's request.

Other charges

I understand that if I cancel this policy or if cancellation is due to non-payment of premium, any refund due will be computed on a ninety percent (90%) of a daily pro rata basis. This is a daily, accelerated method of calculating short-rate earned premium on cancellations. When I renew this policy, I understand that the Company will refund premium following a cancellation on a daily pro rata basis.

I agree to pay the fees shown on my billing statement that become due during the policy term and each renewal policy term in accordance with the payment plan I have selected. I understand that the amount of these fees may change upon policy renewal or if I change my payment plan. I also understand that the amount of these fees may change if my premium is increased due to inaccurate or incomplete information in this application.

I understand that a returned payment fee of \$XX.XX will be assessed to the balance due on my policy if any check offered in payment is not honored by my bank or other financial institution. Imposition of such charge shall not deem the Company to have accepted the check unconditionally.

I agree to pay a late fee of \$XX.XX during the policy term and each renewal policy term when either the minimum amount due is not paid or payment is postmarked more than XXX days after the premium due date. The amount of this fee may change upon policy renewal.



Note: For customers who e-sign, "Policy number: 9999999-9" will print only if available.

Policy number: 99999999-9

Policyholders: XXXXX XXXXXXXXXXXXXXXXXXXX

XXX XXXXXXXXXXXXXXXXXXXX

Page x of x

"Page x of x" will not print for e-sign.

Note: The "Applicant signature" heading and the three paragraphs under the heading print for customers who elect to sign their application electronically.

Applicant signature

Note: First and last name of primary named insured will display in variable text field.

I represent that I, XXXXXXXXXXXXXXXX, am the person identified as the named insured and the first driver in the Drivers and Resident Relatives section of this application. I acknowledge and agree to the statements contained within this application.

I also acknowledge and agree that by typing my name in the designated boxes on the screen below this form and clicking "Continue", I am electronically signing this application, which will have the same legal effect as the execution of this document by a written signature and shall be valid evidence of my intent and agreement to be bound by its terms.

I understand that my name already appears in the signature line below because I chose to electronically sign this application, and this application will be securely stored, as it is presented here, if I purchase this policy. I also understand that if I do not electronically sign this application, it will not be processed.

Note: The signature line will appear on all applications.

Note: Pre-fill name and date for those who elect to sign electronically.

Signature of Named insured

Date

X.....

