

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

MICHAEL A. LOPEZ, on behalf of  
himself and all others similarly situated,

Plaintiff,

CASE NO.:

v.

PROGRESSIVE SELECT  
INSURANCE CO.,

Defendant.

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**DEFENDANT'S NOTICE OF REMOVAL**

Defendant Progressive Select Insurance Company (“Progressive Select” or “Defendant”), pursuant to 28 U.S.C. §§ 1441, 1453 and 1446, removes to this Court the action described below.<sup>1</sup> This Court has jurisdiction over the claims asserted therein pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. §§ 1332(d).

**Background and Plaintiff's Allegations**

1. This action was filed on or about June 28, 2018, in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, styled as *Michael A. Lopez, on behalf of himself and all others similarly situated v. Progressive Select Insurance Co.*, Case No. CACE 18-015669 (the “State Court Action”).

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<sup>1</sup> Pursuant to 28 U.S.C. § 1446(a), Progressive Select attaches: (a) as **Exhibit 1**, a copy of the Complaint served upon it; and (b) as **Composite Exhibit 2**, a copy of all other process and pleadings served on Progressive Select in the State Court Action. A true and correct copy of this Notice of Removal will be filed with the Clerk of the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, in accordance with the provisions of 28 U.S.C. § 1446(d), along with a Notice of the filing, a copy of which will be served on Plaintiff.

2. Progressive Select was served with a Summons and the Complaint on July 9, 2018. Thus, this Notice of Removal is timely filed in accordance with 28 U.S.C. § 1446.<sup>2</sup>

3. Plaintiff Michael A. Lopez (“Plaintiff”) filed this suit on behalf of himself and two putative classes. The first putative class (the “Putative ACV Class”) is made up of all individuals insured under Progressive Select’s personal motor vehicle insurance Policies issued in Florida who submitted comprehensive and/or collision claims for a total loss vehicle to Progressive Select, and for which Progressive Select determined the Actual Cash Value or “ACV” of the insureds total loss vehicles with the assistance of a third-party software program that Progressive Select purchases from Mitchell International, Inc. called WorkCenter Total Loss (“WCTL”). Compl. ¶ 74. The second putative class (the “Putative Salvage Class”) is made up of all individuals insured under Progressive Select’s personal motor vehicle insurance Policies issued in Florida who submitted comprehensive and/or collision claims for a total loss vehicle to Progressive Select, and for which Progressive Select took ownership of the putative class members’ total loss vehicle without additionally compensating the insured the agreed or appraised value for the vehicle as salvage. *Id.*

4. Plaintiff alleges that Progressive Select’s use of WCTL violated Plaintiff’s policy of insurance with Progressive Select as well as Florida law. *Id.* ¶¶ 34-41. Plaintiff also alleges that Progressive Select violated its policy of insurance with Plaintiff by allegedly failing to pay the agreed or appraised value for Plaintiff’s total loss vehicle after it was determined a total loss and the ownership in the vehicle transferred to Progressive Select. *Id.* ¶¶ 53-58.

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<sup>2</sup> While the case was pending in state court, the Parties agreed that Progressive Select shall have through and including August 29, 2018, to respond to the Complaint. The email agreement is attached as **Exhibit 4**. Progressive Select will promptly file a consent motion for the Court’s consideration to effect this agreed extension in federal court.

5. Based on these legal theories, Plaintiff asserts two claims against Progressive Select: Count I, for declaratory judgment on behalf of the class; and Count II, for breach of contract on behalf of Plaintiff individually.

6. As to Count I – Declaratory Judgment, Plaintiff alleges that, Plaintiff: (a) “believes the Mitchell WorkCenter Total Loss valuation method including [the] algorithm Defendant systematically relied on was flawed and generated invalid deductions in actual cash value payments to Plaintiff and Class Members in violation of the Policy and Florida law,” *Id.* ¶ 89; (b) “believes these deductions violated Section 626.9743, Florida Statutes (whose terms are incorporated into the Policy) for Plaintiff and each Class Member,” *id.*; and, (c) “believes that Defendant was required under the Policy to pay Class Members and Plaintiff the ‘agreed or appraised value[s]’ of their vehicles as salvage in consideration for taking title to them,” *id.*

7. On behalf of himself and on behalf of each putative class, Plaintiff seeks a declaration that:

- a. “under Section 626.9743, Florida Statutes, the Mitchell WorkCenter Total Loss valuation method including the report it generated that Defendant relied on was not a ‘generally recognized used car industry source,’” *id.* at p. 18;
- b. “the Mitchell WorkCenter Total Loss valuation method including the report it generated was not a valid method of determining actual cash value under the Policy and Florida law,” *id.*;
- c. “Defendant could not utilize the Mitchell WorkCenter Total Loss valuation method including the report it generated to calculate actual cash value to pay total loss claims of Plaintiff and Class Members under the Policy or Florida law,” *id.* at p. 19;

- d. “under Section 626.9743, Florida Statutes, elements of the Mitchell WorkCenter Total Loss method leading to deductions from total value in the Mitchell Report of Plaintiff and each Class Member must have been fully disclosed and ‘must [have been] itemized and specified in appropriate dollar amounts,’” *id.*;
- e. “Florida law and Defendant’s Policy did not permit Defendant to deduct dealer overhead and profit from actual cash payments on total loss claims under the Policy and such deduction was a breach of the Policy,” *id.*; and,
- f. “under the Policy Defendant was required to pay Plaintiff and Class Members the agreed or appraised salvage value in consideration for taking title to their vehicles,” *id.*

8. In addition to the declaration, Plaintiff also seeks on behalf of himself and on behalf of each putative class, “supplemental relief,” *i.e.*, an order “requiring Defendant provide notice to all Class Members regarding the rulings, findings, declarations in this matter and their legal rights with respect to Defendant’s improper interpretation of the Policy and related Florida law.” *Id.*

9. Plaintiff also seeks attorney’s fees and costs on behalf of the classes.

**This Court Has Jurisdiction Over This Action Under CAFA**

10. This action is removable to this Court, and this Court has jurisdiction over this action, under CAFA, 28 U.S.C. § 1332, 28 U.S.C. § 1441(a) and (b), and 28 U.S.C. § 1453, because (1) this is a putative class action with more than 100 putative class members, (2) there is minimal diversity among the parties; and (3) the Complaint places into controversy an amount that exceeds \$5,000,000 in the aggregate.

11. CAFA reflects Congress's intent to have federal courts adjudicate substantial class action suits brought against out-of-state defendants. To that end, CAFA provides that class actions filed in state court are removable to federal court if they meet certain basic prerequisites. Specifically, CAFA expanded federal jurisdiction over class actions by amending 28 U.S.C. § 1332 to grant original jurisdiction where the putative class contains at least 100 class members; any member of the putative class is a citizen of a State different from that of any defendant; and the amount in controversy exceeds \$5,000,000 in the aggregate for the entire class, exclusive of interest and costs. 28 U.S.C. § 1332(d).

12. This suit satisfies all of the requirements under CAFA for federal jurisdiction: (1) the putative class exceeds 100 members; (2) members of the proposed class have a different citizenship from Progressive Select; and (3) the amount in controversy exceeds \$5,000,000. *See* 28 U.S.C. § 1332(d).

#### **The Putative Class Exceeds 100 Members**

13. CAFA requires that the class consist of at least 100 persons. 28 U.S.C. § 1332(d)(5). That requirement is met here. While Plaintiff does not quantify the number of putative class members in the Complaint, a review of Progressive Select's records indicates that there are in excess of 50,000 purported members of the Putative ACV Class, as defined by Plaintiff, and there are in excess of 50,000 members of the Putative Salvage Class, as defined by Plaintiff. (**Exhibit 3**, Declaration of Michael Silver ¶¶ 3, 5).

#### **There Is Minimal Diversity Among the Parties**

14. The second CAFA requirement is minimal diversity — at least one putative class member must be a citizen of a different state than any one defendant. 28 U.S.C. § 1332(d)(2).

15. Here, Plaintiff alleges that he is a citizen of the State of Florida, and Plaintiff seeks to represent a class consisting of individuals whose motor vehicles were insured under a policy of insurance issued in Florida. Compl. ¶¶ 9, 74.

16. As Plaintiff alleges, Progressive Select “is incorporated in, has a principal place of business in, and is a citizen of, a state other than Florida.” Compl. ¶ 12 Progressive Select is an Ohio corporation with its principal place of business located in Ohio. *See also* Silver Decl. ¶ 2.

19. Thus, there is minimal diversity here, as the Plaintiff is a citizen of Florida, and Progressive Select is (and was at the time of the filing of the Complaint and all times intervening) a citizen of Ohio. This prerequisite of CAFA is met. 28 U.S.C. § 1332(d)(2).

**The CAFA Amount in Controversy Is at Least \$5,000,000**

17. CAFA requires that the amount in controversy exceed \$5,000,000 for the entire putative class in the aggregate, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2) .

18. As the United States Supreme Court has held, a defendant’s notice of removal under CAFA “need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). “Evidence establishing the amount is required by §1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant’s allegation.” *Id.*

19. Based on Plaintiff’s allegations and legal theories, the \$5,000,000 CAFA amount in controversy requirement is satisfied.

20. The Eleventh Circuit’s opinion in *South Florida Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312 (11th Cir. 2014), is instructive. In that case, the plaintiff alleged that the defendant-insurer violated a Florida Statute governing claims for no-fault personal injury protection insurance payments. The plaintiff sought to represent a class to pursue a declaratory

judgment that the defendant-insurer had violated the Florida statute. The plaintiff sought no monetary relief.

21. While the district court found that a “pure declaratory judgment action” could not satisfy the amount in controversy and remanded the action, *id.* at 1313, the Eleventh Circuit disagreed. *Id.* at 1317. The Eleventh Circuit held that the amount in controversy was the amount the defendant-insurer allegedly should have paid if the plaintiff’s interpretation of Florida law was correct. *Id.* Even if there were “contingencies standing between any class member and recovery” following a declaratory judgment, the Eleventh Circuit held that the amount in controversy nevertheless exceeded \$5,000,000. *Id.* at 1316-17; *see also A&M Gerber Chiropractic LLC v. Geico Gen. Ins. Co.*, 16-CV-62610-Bloom/Valle, 2017 WL 35519, at \*2 (S.D. Fla. Jan. 3, 2017) (relying on *South Florida Wellness* and denying a motion to remand a declaratory judgment action filed against GEICO seeking a declaratory judgment that GEICO had underpaid certain insurance claims).

22. Based on the holding in *South Florida Wellness, Inc. v. Allstate Ins. Co.*, the declaratory judgment Plaintiff seeks on behalf of the putative class places into controversy more than \$5,000,000 in at least two ways (1) the value of the alleged “invalid deductions” alleged to have been applied to class members’ insurance claims and (2) the value of salvage vehicles transferred to Progressive Select by class members.

*The Value of Alleged “Invalid Deductions”*

23. Plaintiff alleges that Progressive Select’s use of WCTL in determining the actual cash value of class members’ total loss vehicles relies on “invalid deductions.” Compl. ¶¶ 48-50, 89. Plaintiff therefore seeks a declaration that such deductions are invalid and illegal. *Id.* pp. 18-19.

24. Plaintiff alleges that Progressive Select made allegedly improper adjustments of this nature in determining the actual cash value of his vehicle, as reflected in the WCTL Report and Settlement Summary, which are attached as Exhibit B and Exhibit C to the Complaint. *Id.* ¶¶ 62-66.

25. Plaintiff further alleges that his claims are “typical of the claims that would be asserted by other members of the Class.” *Id.* ¶ 78.

26. Plaintiff’s WCTL Report included two types of challenged deductions: a “projected sold adjustment” and a “condition adjustment.” *See* Compl. Ex. B.<sup>3</sup>

27. The actual cash value ultimately assigned by the WCTL Report was \$7,234.70. If the “projected sold adjustment” were deemed invalid and removed from Plaintiff’s WCTL Report, the actual cash value of his vehicle would have been \$7,695.12. The difference is \$460.42.

28. As a result, assuming that Plaintiff’s claims are typical as he alleges, Plaintiff’s challenge to the projected sold adjustment, on behalf of 50,000 or more putative ACV Class members, places at least \$23,000,000 in controversy.

29. Moreover, the WCTL Report also applied a “condition” deduction of \$392.12 in determining the actual cash value of Plaintiff’s vehicle.

30. As a result, assuming that Plaintiff’s claims are typical of the putative class members’ claims, as Plaintiff alleges, Plaintiff’s challenge to the condition adjustment on behalf of 50,000 or more putative ACV Class members places at least \$19,600,000 in controversy.

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<sup>3</sup> No projected sold adjustment was applied in determining the ACV of Vehicle 1.



31. Plaintiff's class-wide challenge to either one of these allegedly "invalid deductions" therefore puts into controversy far more than the \$5,000,000 jurisdictional minimum at issue.

*The Value of Class-Wide Salvage Vehicles*

32. Plaintiff also seeks a declaration that Progressive Select is required to make an additional payment for the agreed upon or appraised value of salvage vehicles transferred to Progressive Select by members of the class Plaintiff seeks to represent.

33. For vehicles transferred to Progressive Select by members of the Salvage Class, Progressive Select recovered at least \$100,000,000 in sales proceeds since June 28, 2013, net of fees and other costs of sale.

34. For this reason as well, it is evident that the \$5,000,000 CAFA amount in controversy requirement is satisfied.

**This Action Is Properly Removed**

35. Accordingly, because the CAFA prerequisites are met, this case is properly removable under CAFA.<sup>4</sup>

WHEREFORE, Progressive Select prays that this Court will consider this Notice of Removal as provided by law governing the removal of cases to this Court; that this Court will make the proper orders to achieve the removal of the State Court Action to this Court; and that this Court will make such other orders as may be appropriate to effect the preparation and filing of a true record in this cause of all proceedings that may have been had in the State Court Action.

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<sup>4</sup> It is also appropriate for this Court to exercise supplemental jurisdiction over Plaintiff's individual claims brought in Count II. 28 U.S.C.A. § 1367(a) ("[T]he district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.").

Counsel for Defendant

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed through the CM/ECF system and served by e-mail and US Mail this 8th day of August, 2018, on:

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/s/ Bryan T. West  
Bryan T. West

# EXHIBIT 1

## to Notice of Removal

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

MICHAEL A. LOPEZ, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

PROGRESSIVE SELECT  
INSURANCE CO.,

Defendant.  
\_\_\_\_\_ /

CASE NO.:

CLASS REPRESENTATION

**CLASS ACTION COMPLAINT**

Plaintiff, MICHAEL A. LOPEZ (“Plaintiff” or “Mr. Lopez”), on behalf of himself and all others similarly situated, hereby sues Defendant, PROGRESSIVE SELECT INSURANCE COMPANY (“Defendant”), and alleges as follows:

**NATURE OF THE CASE**

1. Plaintiff and putative Class Members are each insureds under standardized insurance policies covering damage to motor vehicles (“Policy” or “Policies”) Defendant issued to them in Florida.

2. The insured vehicles of Plaintiff and each Class Member have sustained significant property damage covered under the Policy to such extent Defendant has declared each of their insured vehicles total losses, triggering its obligation to pay them the actual cash value of their vehicles to settle their total loss claims under the Policy.

3. As set forth below, Defendant has routinely and systematically misinterpreted the Policy and Florida law; and based on the misinterpretation, it has improperly reduced the actual cash value payments to Plaintiff and Class Members because it based them on an invalid method and algorithm for determining value of insureds' vehicles.

4. Defendant has also routinely misinterpreted the Policy by requiring Plaintiff and each Class Member to transfer ownership of their total loss vehicles, without compensating Plaintiff and Class Members for the salvage values of those vehicles in consideration for the transfers to Defendant.

5. In Count I, Plaintiff brings a class claim solely for declaratory relief against Defendant, on behalf of a limited number of Florida citizens to whom Defendant issued Policies and whose vehicles Defendant deemed a total loss under those Policies in the past.

6. Plaintiff asks the Court to declare whether Defendant's past interpretation of the Policy and past conduct in utilizing a method and algorithm and its uncompensated takings of total loss vehicles were allowed under the Policy and Florida law.

7. The complaint does not seek a declaration for any future claims. Plaintiff is also not asking the Court to determine the individual actual cash value payments for Class Members, but to interpret specific portions of in Defendant's form insurance Policy and Florida law on a class-wide basis.

8. In Count II, Plaintiff seeks monetary relief for breach of contract *only* on an individual basis for himself and *only* in Count II.

#### **PARTIES, VENUE, AND JURISDICTION**

9. Plaintiff is a Florida citizen, resides in this Circuit, and is *sui juris*.

10. This case arises under Florida law, and all members of the “Classes” or “Class Members” that Plaintiff seeks to represent in this litigation are individuals insured under Defendant’s personal motor vehicle insurance Policies issued in Florida covering damage to motor vehicles.

11. The value of the putative class claims in the aggregate exceed \$15,000.00 exclusive of all costs and attorney’s fees.

12. Defendant is incorporated in, has a principal place of business in, and is a citizen of, a state other than Florida.

13. The Court has personal jurisdiction over Defendant because it markets, issues, and sells automobile insurance throughout the State of Florida, is registered to do business including transact insurance business in Florida, and is engaged in substantial, continuous, systematic, and non-isolated insurance business activity within the State of Florida, including Broward County, Florida.

14. Venue is proper in this Court because the individual cause of action accrued here.

15. All conditions precedent to the filing of this action, if any, have been performed, have occurred, or have been waived.

### **THE POLICY**

16. Defendant sells motor vehicle insurance that provides coverage for property damage done to a vehicle, whether by collision with another vehicle, theft of the vehicle, or from other perils.

17. The Policy providing this property damage coverage that Defendant issued to insure Plaintiff and Class Members is identified by the alphanumeric version codes including “9611D FL (07/13).” An exemplar of the Policy is attached as **Exhibit A**.

18. Defendant includes damage coverage in **PART IV** of the Policy, describing the “**DAMAGE TO A VEHICLE**” for the insured vehicle and payments made when certain losses occur. These coverages are called comprehensive and collision coverage respectively.

19. For **COMPREHENSIVE COVERAGE**, the Policy provides in relevant part that Defendant “will pay for sudden, direct, and accidental loss to a **covered auto**....not caused by **collision**.” Ex. A at 23 (emphasis in original).

20. For **COLLISION COVERAGE**, the Policy provides Defendant will pay for sudden, direct, and accidental loss to a **covered auto**....caused by **collision**.” Ex. A at 23 (emphasis in original).

21. The Policy states in **PART IV** under the heading “**PAYMENT OF LOSS**,” Defendant is to “pay for the loss in money” or “[r]epair or replace the damaged...property” at its option. Ex. A at 30 (emphasis in original). It then states in that same provision, Defendant “may *keep* all or part of the property *at the agreed or appraised value*.” *Id.* (emphasis added).

22. Under the “**LIMITS OF LIABILITY**” provision, Ex. A at 28, for both comprehensive and collision coverages, Defendant states it will pay the lowest of “the actual cash value of the ...damaged property at the time of the loss” or “the amount necessary to replace the...damaged property...” *Id.*

23. The Policy declaration pages indicate Defendant chooses actual cash value as its limit of liability for comprehensive and collision coverages. *See* Ex. A.<sup>1</sup>

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<sup>1</sup> *See also* <https://www.progressive.com/claims/total-loss/> (stating in cases of total loss, Defendant pays actual cash value) (accessed June 25, 2018).



**DEFENDANT’S TOTAL LOSS SETTLEMENT PROCESS**

24. Plaintiff’s and each Class Member’s insured motor vehicle<sup>2</sup> sustained property damage covered under the Policy, to such extent Defendant declared the vehicle a total loss under the Policy and Defendant’s obligations to pay actual cash value to Plaintiff and each Class Member.

25. For Plaintiff and each Class Member, Defendant undertook a routine total loss settlement process.<sup>3</sup>

26. That process involved declaring the vehicle a total loss, valuation of the vehicle, and a cash settlement payment to the insured of purported actual cash value of the totaled vehicle.

*The Mitchell WorkCenter Valuation Method and Report*

27. To determine actual cash value, for Plaintiff and each Class Member Defendant routinely utilized a total loss valuation database and attendant software platform and a Mitchell WorkCenter Vehicle Valuation Report or similar report (“Mitchell Report”) generated from the platform.

28. This computer platform was developed and marketed by third-party Mitchell International, Inc. (“Mitchell”).

29. Defendant has contracted with and paid Mitchell to access and use the Mitchell WorkCenter Total Loss computer platform and Mitchell Report to settle its total loss claims under the Policy.

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<sup>2</sup> The vehicles included in this case are ones insured under the Policy and declared a total loss, even though they may be titled to another individual insured under the same Policy other than the Class Member insured under the Policy whose claim was at issue. The possessive case is used throughout this complaint as a convenience.

<sup>3</sup> See generally <https://www.progressive.com/claims/total-loss/> (accessed June 25, 2018).

30. In adjusting total loss claims of Plaintiff and each Class Member under the Policy, Defendant adopted, relied on, and ratified the Mitchell WorkCenter Total Loss platform, its valuation method, and its Mitchell Report.

31. Defendant regularly provided the report to Plaintiff and each Class Member as part of the total loss settlement process in response to their claims to explain to them the basis for the settlement in writing.

32. Each Mitchell Report regularly contained reductions and additions in dollar amounts yielding a total dollar value for Plaintiff and each Class Member's vehicle, and comparable vehicles.

33. Defendant regularly adopted, relied on, and ratified the total value determination stated in the Mitchell Report as the actual cash value of the vehicle declared a total loss and the basis for its cash settlements to them. A copy of Plaintiff's report is attached and incorporated as **Exhibit B**.

**DEFENDANT'S DERIVATIONS OF ACTUAL CASH VALUE**  
**VIOLATED THE POLICY AND FLORIDA LAW**

34. Actual cash value is however not what Defendant systematically calculated and paid Plaintiff and Class Members.

35. Under Florida law, "actual cash value" is defined as replacement cost minus depreciation. The Policy incorporates this definition. *See* Ex. A at pp. 28-29.

36. The Mitchell WorkCenter Total Loss platform including the Mitchell Report Defendant relied on to derive actual cash value, employed a database, and undisclosed formulas, assumptions, and algorithms used to manipulate undisclosed comparative data, including undisclosed nationwide data.

37. But the algorithms and assumptions relied on in generating the total value stated on the Mitchell Report were statistically flawed and otherwise invalid.

38. The algorithms and assumptions generating the Mitchell Report constituted a flawed method that did not validly determine actual cash value as required by the Policy and Florida law.

39. The result of this flawed method was to generate invalid reductions in total value of Plaintiff's and each Class Member's vehicle.

40. These reductions then resulted in an invalid reduction in actual cash value Defendant adopted from the total value stated in the report and paid to Plaintiff and each Class Member to settle his or her total loss claim under the Policy.

41. Plaintiff believes that by basing its "actual cash value" payments to Plaintiff and each Class Member on this flawed method Defendant has violated the Policy and Florida law.

*Defendant's Unlawful Reliance on an Insurance-Industry Valuation Source*

42. Section 626.9743(5), Florida Statutes, authorizes use of databases to make cash payments to settle total loss claims but only when the cash settlement is based on a "*retail cost as determined from a generally recognized used motor vehicle industry*" database. § 626.9743(5)(a)2.a., Fla. Stat.

43. The Mitchell WorkCenter Total Loss platform, which includes a database, is an insurance industry source.

44. Mitchell develops, markets, and sells its total loss software, database, and the Mitchell Report—the Mitchell WorkCenter Total Loss method described above—almost exclusively to insurance companies for *them* to value total loss claims to reduce *their* exposure using data they request.

45. The Mitchell WorkCenter Total Loss method was not marketed and meant to provide an objective source to be utilized in and by the used motor vehicle industry to derive the actual retail cost needed to purchase a comparable used motor vehicle.

46. Defendant's use of the Mitchell WorkCenter Total Loss method including its database and Mitchell Report therefore violated Section 626.9743(5)(a)2.a., Florida Statutes.

47. Moreover, when Defendant choose not to base actual cash value from a "generally recognized *used motor vehicle industry* source," it was obligated to provide added disclosures and specific explanations to Plaintiff and each Class Member.

48. Defendant was obligated to support its determinations and derivations of value in detail in disclosures to Plaintiff and Class Members "*by documentation, and any deductions from value must [have been] itemized and specified in appropriate dollar amounts.*" See § 626.9743(5)(c), Fla. Stat. (emphasis added).

49. Also, any deductions for depreciation must have been "*itemized and specific as to dollar amount and [must have] accurately reflect[ed] the value assigned to the...depreciation.*" See § 626.9743(6), Fla. Stat. (emphasis added).

50. The Mitchell WorkCenter Total Loss method Defendant employed for Plaintiff and each Class Members, used one or more algorithms, assumptions, and data points leading to deductions in motor vehicle values, none of which were disclosed in the Mitchell Report. Nor were they itemized and specified in appropriate dollar amounts in Mitchell Reports Defendant routinely provided to Plaintiff and each Class Member to explain Defendant's valuation of the total loss vehicle it insured and its actual cash value derivations under the Policy and Florida law.

51. As such, Defendant violated the added protections of Section 626.9743(5)(c), Florida Statutes, and Section 626.9743(6), Florida Statutes both of which are incorporated in the Plaintiff's and each Class Member's Policy.

52. Also, because the only database method allowed under Section 626.9743(5)(a)2.a., Florida Statutes, is a "generally recognized *used motor vehicle industry* source," Defendant cannot employ a non-used-motor-vehicle-industry database source to satisfy its obligations under Section 626.9743(5)(c), Florida Statutes, and Section 626.9743(6), Florida Statutes.

*Taking Plaintiff's and Class Members' Totaled Vehicles without Compensation*

53. Moreover, even though a vehicle has been declared a total loss, it still has some monetary value, which can be determined upon appraisal or by agreement.

54. As part of the total loss settlement process, Defendant has also required its insureds, including Plaintiff and Class Members, to transfer ownership of their totaled vehicles to Defendant. But it has routinely done so without its providing them any form of monetary consideration attributable to the salvage value of those properties.

55. As stated above, Defendant may "pay for the loss *in money*" to each insured at Defendant's option. Ex. A at 30 (emphasis added). In accordance with this provision, Defendant has opted to pay Plaintiff and Class Members, the "actual cash value" of their vehicles, which under Florida law and the Policy is an amount to cover the replacement cost of the totaled vehicle minus depreciation and betterment. Ex. A at 30.

56. *In addition*, the Policy clearly states that Defendant "*may keep* all or part of the propert[ies]" of Plaintiff and Class Members —i.e., their totaled vehicles. Ex. A at 30 (emphasis added). But if it does take them, the Policy clearly states in same sentence Defendant must pay Plaintiff and Class Members "at the agreed or appraised value" for that taking. *Id.*

57. Under this provision, Plaintiff submits Defendant was required to compensate them the “agreed or appraised” salvage value of their vehicles in consideration for Defendant’s taking ownership of them, which Defendant has uniformly not done.

58. There is simply no provision in the Policy that permitted Defendant to require Plaintiff and Class Members to transfer ownership of their vehicles permanently to Defendant without compensation for the “agreed or appraised value” of those vehicles as salvage in exchange for transferring them to Defendant.

### **FACTS RELATED TO INDIVIDUAL PLAINTIFF**

59. Plaintiff underwent this total loss settlement process. On or about January 20, 2017, Plaintiff Mr. Lopez was involved in a motor vehicle accident which resulted in collision damage to his vehicle insured under Defendant’s Policy.

60. At all times material, Mr. Lopez had made payments of premiums under the Policy, and it was in full force and effect at the time of the accident.

61. After the accident, Mr. Lopez timely made a claim for the damage under the Policy. Defendant covered the claim and declared the vehicle a total loss.

62. In the settlement process, Defendant Provided Plaintiff a “Settlement Summary,” showing an “actual cash value” and a balance he was allegedly due after deductions on his claim under the Policy. This summary is attached as **Exhibit C**.

63. The Mitchell Report Defendant provided Plaintiff is attached as Exhibit B. Defendant provided the report to Plaintiff in response to Plaintiff’s claim as a written explanation of its settlement. This report stated a total value and was generated using the statistically flawed and otherwise invalid Mitchell method described above that Defendant used to determine and

provide Plaintiff a cash settlement purportedly equivalent to the actual cash value of this totaled vehicle.

64. The report took reductions from the value of his vehicle for mileage and other conditions.

65. The report incorporated undisclosed deductions that were clearly not specified, not itemized, and not documented.

66. Yet the total value Defendant ultimately relied on to pay Mr. Lopez actual cash value under the Policy was a total value invalidly derived by the Mitchell method stated above.

67. In addition, as with Class Members, after the accident, Defendant required Mr. Lopez to transfer title of the insured vehicle to Defendant, and Defendant took the vehicle, but Defendant did not compensate Plaintiff the “agreed or appraised value” of his vehicle as salvage in exchange for his transferring it to Defendant.

**DEFENDANT’S MISCONDUCT IS WIDESPREAD AND TRACKABLE**

68. Defendant’s Policy issued to insure Plaintiff and Class Members contained standardized pre-printed text; Defendant drafted it; and the Policy is identified by standard alphanumeric codes appearing on each Policy.

69. Interpretation of the Policy is not dependent on the individualized factual circumstances applying to Plaintiff and each Class Member. Plaintiff’s class claim for declaratory relief presents a question of law for the Court whose determination and resolution would apply to Plaintiff and all Class Members across the board.

70. The common injury that Defendant caused Plaintiff and Class Members stems from a dispute over Defendant’s blanket, systematic misinterpretation of the Policy and Florida law and conduct based on its standard practice regarding and related to settling total loss claims for actual cash value and taking insureds’ vehicles without compensating them for their salvages values.

71. Upon information and belief, Defendant tracks the total loss settlement process and claims that are made under property damage coverage provisions of the Policy; tracks the total loss value it assigns to each vehicle; tracks its use of the Mitchell WorkCenter Total Loss platform and Mitchell Report; and tracks payments it made to Plaintiff and each Class Member based on the report.

72. Plaintiff does not seek monetary relief for the Class defined below and does not seek a declaration concerning future claims.

73. For the Classes defined below, Plaintiff merely asks for declarations whether Defendant's total loss settlement process for past claims and past use of the Mitchell WorkCenter Total Loss database, software, and Mitchell Report complied with Florida law and the Policy.

#### **CLASS ACTION ALLEGATIONS**

74. Plaintiff wishes to be designated as a "Class Representative," and as Class Representative brings this action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure on behalf of all other persons similarly situated—the "Classes" or "Class Members" defined as follows:

##### **Actual Cash Value (ACV) Class**

From five years before the filing of this complaint until the day the complaint was filed (the "Class Period"), all individuals insured under Defendant's personal motor vehicle Policy substantially similar to Exhibit A and issued in Florida (1) who submitted a comprehensive and/or collision claim to Defendant on a vehicle covered under the Policy; (2) Defendant deemed the vehicle subject to the claim a total loss under the Policy; and (3) Defendant paid actual cash value to settle the claim, utilizing the total value stated in the Mitchell Report as the actual cash value to be paid.

##### **Takings Class**

From five years before the filing of this complaint until the day the complaint was filed (the "Class Period"), all individuals insured under Defendant's personal motor vehicle Policy substantially similar to Exhibit A and issued in Florida (1)



who submitted a comprehensive and/or collision claim to Defendant on a vehicle covered under the Policy; (2) Defendant settled the claim of the insured paying the insured what Defendant considered to be actual cash value for the vehicle; and (3) Defendant required the insured to arrange for transfer of ownership of the vehicle to Defendant, without Defendant additionally compensating the insured the agreed or appraised value for the vehicle as salvage.

Plaintiff and Class Members reserve the right to amend the Class definition as discovery proceeds and to conform to the evidence. Excluded from the Class are all members of the judiciary and persons employed by or family members of Plaintiff's counsel.

75. Numerosity (Rule 1.220(a)(1)). Plaintiff alleges on information and belief that the number of Class Members is so numerous that joinder of them is impractical. Plaintiff's belief is based on information indicating the number of Defendant's insureds.

76. At this time, Plaintiff does not know the exact number of Class Members, but the members of the Classes will be easily ascertained through Defendant's records through the use of its own computer data and that of Mitchell. Indeed, a simple run of the data will uncover all claims information, including whether the claim is a total loss, whether Defendant utilized the Mitchell WorkCenter Total Loss database, software, and Mitchell Report to determine the actual cash value paid to settle the claims of Plaintiff and Class Members, and whether Defendant also compensated the Class Member the salvage value of the vehicle in consideration for transferring title to Defendant.

77. Commonality (Rule 1.220(a)(2)). There are common questions of law and/or fact applicable to members of the Class. These principal common questions include the following, during the Class Period:

- a. Whether the Mitchell WorkCenter Total Loss method including algorithms it used validly determined actual cash values in accordance with the Policy and Florida law;

- b. Whether and to what extent the Mitchell WorkCenter Total Loss valuation method including the database it used is a permissible method to derive actual cash value under Section 626.9743, Florida Statutes;
- c. Whether deductions in value used in the Mitchell WorkCenter Total Loss method generating the Mitchell Report were sufficiently disclosed as required in Sections 626.9743(5) and (6), Florida Statutes;
- d. Whether the Policy clearly and unambiguously permitted Defendant to require insureds to transfer title to total loss vehicles to Defendant, without compensating them the salvage values of the vehicles in consideration for transferring title to Defendant; and,
- e. Whether Plaintiff is entitled to declaratory relief under Chapter 86, Florida Statutes.

78. Typicality (Rule 1.220(a)(3)). The claims of the Class Representative are typical of the claims that would be asserted by other members of the Class in that, in proving Plaintiff's claims, Plaintiff will simultaneously prove the claims of all Class Members. Plaintiff and each Class Member is an insured under Defendant's standardized Policy; whose insured vehicle underwent a loss attributable to a covered comprehensive and/or collision claim, the result of which Defendant deemed the vehicle to be a total loss under the Policy; based on the Mitchell Report, Defendant paid the insured what it deemed to be actual cash value under the Policy; and Defendant took title to the vehicle without compensating the insured the salvage value of the vehicle in consideration for transferring title to Defendant.

79. Adequacy (Rule 1.220(a)(4)). Plaintiff has no conflicts of interest and will fairly and adequately protect and represent the interests of each member of the Classes. Additionally, Plaintiff is fully cognizant of its responsibility as Class Representative and has retained experienced counsel fully capable of, and intent upon, vigorously pursuing the action. Each class counsel has extensive experience in class and/or insurance claims and litigation.

80. Rule 1.220(b)(2). Under Count I, Defendant has acted or refused to act on grounds or in a manner generally applicable to all members of the Class, thereby making declaratory relief to the entire Class particularly appropriate. Based on its Policy interpretation and its interpretation of Florida law, Defendant systematically made reductions to actual cash value payments to Plaintiff and Class Members, relying on the Mitchell Report, and it took title to their vehicles without compensating them their salvage values.

81. Rule 1.220(b)(3). If this class is not certifiable under (b)(2) then it should be certified under (b)(3) because, although in Count I Plaintiff seeks no damages, any individual damage issues do not predominate over the common legal and factual issues in this matter.

82. Rule 1.220(c)(4). In the alternative, if the Court is not inclined to certify a class under Rules 1.220(b)(2) or (b)(3), it can certainly certify an issue class with respect to the Defendant's liability on a class-wide basis and then proceed in accordance with the Florida Rules of Civil Procedure and employ other mechanisms at its disposal with respect to individual Class Members.

**COUNT I**  
**DECLARATORY JUDGMENT**  
**(CLASS CLAIM)**

83. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 82 above, as if the same were fully alleged herein and states further:

84. All conditions precedent to this action have occurred, been satisfied, or been waived.

85. In Count I, Plaintiff seeks no monetary relief and brings this count on behalf of the Classes defined above. Under Count I, Plaintiff is not requesting and will not request the Court to determine the reasonableness of any claim or amounts due and owing any Class Member, including

Plaintiff. It also does not ask for a forward-looking declaration but merely seeks a declaration resolving a present controversy concerning past acts.

86. Plaintiff, individually and on behalf of all those similarly situated, is in doubt as to his rights under Defendant's Policy, Florida law, and has an actual controversy with Defendant over the terms of its Policy and Florida law.

87. Because of this controversy, Plaintiff is an interested party who seeks a declaration of Part IV of the Policy, describing the comprehensive and collision coverages, Section 626.9743, Florida Statutes, and Florida case law definitions of what properly constitutes actual cash value.

88. On one side of the controversy, Defendant has systematically and routinely used a Mitchell WorkCenter Total Loss valuation method to adjust all "total loss" claims of Plaintiff and Class Members, it believes complied with the Policy and Florida Law. It has also routinely taking title to Plaintiff's and Class Members' total loss vehicles without compensating them for their salvage values in consideration for the taking.

89. On the other side of the controversy, Plaintiff believes the Mitchell WorkCenter Total Loss valuation method including algorithm Defendant systematically relied on was flawed and generated invalid deductions in actual cash value payments to Plaintiff and Class Members in violation of the Policy and Florida law. Also, Plaintiff believes these deductions violated Section 626.9743, Florida Statutes (whose terms are incorporated into the Policy) for Plaintiff and each Class Member. Plaintiff further believes that Defendant was required under the Policy to pay Class Members and Plaintiff the "agreed or appraised value[s]" of their vehicles as salvage in consideration for taking title to them.

90. Moreover, Plaintiff believes the Policy is a contract whose terms expressly allowed Defendant a choice of paying to replace totaled property or paying actual cash value to Plaintiff and each Class Member when it declared their vehicles total losses.

91. Defendant chose to pay them actual cash value under the provisions of the Policy.

92. The Policy incorporated the total loss settlement provisions of Section 626.9743, Florida Statutes, which provided Defendant a similar choice to pay to replace the totaled vehicle or pay actual cash value. § 626.9743(5), Fla. Stat. Defendant chose to pay actual cash value under the statute.

93. Section 626.9743(5) also permitted Defendant the choice of several methods of determining actual cash value.

94. Under the Policy incorporating the foregoing provisions, Defendant covenanted to exercise the foregoing choices fairly and in good faith.

95. Plaintiff believes Defendant violated this covenant because instead of choosing to employ of valid method of determining actual cash value, it chose to use an invalid one, devised in the insurance industry, which was intended to reduce Defendant's claim exposure to the detriment of Plaintiff and each Class Member.

96. There is a bona fide, actual, present, practical need for the Court to declare whose interpretation of the Policy provisions and Florida law on the foregoing issues are correct.

97. Plaintiff has interests adverse to Defendant and the declaration requested deals with a present ascertainable state of facts as presented in the allegations set forth above.

98. Plaintiff and all putative Class Members are in the same predicament, each suffering an injury from what Plaintiff believes to be a misinterpretation of the Policy and Florida law.

99. As stated above, Defendant's Policy is standardized and is generally applicable to each Class Member.

WHEREFORE, Plaintiff, individually and as Class Representative on behalf of the Classes of persons similarly situated, and pursuant to Chapter 86, Florida Statutes, hereby requests a declaratory judgment interpreting Florida law and the insurance Policy issued by Defendant described herein, and prays for an Order as follows:

a. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Florida Rule of Civil Procedure 1.220(b)(2) or alternatively Rule 1.220(b)(3) or Rule 1.220(c)(4);

b. Designating Plaintiff as representative of the Classes and his counsel as their counsel;

c. Entering judgment in favor of Plaintiff and the Classes and against Defendant;

d. Awarding attorney fees and costs under Section 627.428, Florida Statutes, for prosecuting this action; and,

e. Entering declaratory judgment as follows:

1) Declaring that under Section 626.9743, Florida Statutes, the Mitchell WorkCenter Total Loss valuation method including the report it generated that Defendant relied on was not a "generally recognized used car industry source;"

2) Declaring that the Mitchell WorkCenter Total Loss valuation method including the report it generated was not a valid method of determining actual cash value under the Policy and Florida law;

3) Declaring that Defendant could not utilize the Mitchell WorkCenter Total Loss valuation method including the report it generated to calculate actual cash value to pay total loss claims of Plaintiff and Class Members under the Policy or Florida law;

4) Declaring that under Section 626.9743, Florida Statutes, elements of the Mitchell WorkCenter Total Loss method leading to deductions from total value in the Mitchell Report of Plaintiff and each Class Member must have been fully disclosed and “must [have been] itemized and specified in appropriate dollar amounts;”

5) Declaring that Florida law and Defendant’s Policy did not permit Defendant to deduct dealer overhead and profit from actual cash payments on total loss claims under the Policy and such deduction was a breach of the Policy;

6) Declaring that under the Policy Defendant was required to pay Plaintiff and Class Members the agreed or appraised salvage value in consideration for taking title to their vehicles; and,

7) Awarding supplemental relief, requiring Defendant provide notice to all Class Members regarding the rulings, findings, declarations in this matter and their legal rights with respect to Defendant’s improper interpretation of the Policy and related Florida law.

**COUNT II**  
**BREACH OF CONTRACT**  
**(INDIVIDUAL CLAIM)**

100. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 76 above, as if the same were fully alleged herein and further alleges:

101. This Count does not assert claims on behalf of the Class and is brought by Plaintiff on an individual basis only.

102. Plaintiff is an insured under the Policy. Plaintiff satisfied all conditions precedent to this action.

103. The Policy at issue was an insurance contract and was maintained in full force and effect at all times material hereto.

104. Based on the foregoing, Defendant breached the Policy by not paying Plaintiff actual cash value under the Policy and Section 626.9743(5) and (6), Florida Statutes.

105. Based on the foregoing, Defendant breached the Policy by not paying Plaintiff the agreed or appraised salvage value in consideration for taking title to Plaintiff's vehicle.

106. As a direct and proximate result of Defendant's breaches of the Policy, Plaintiff suffered damages.

107. As a result of the Defendant's actions, Plaintiff was required to obtain the undersigned counsel and has agreed to pay them a reasonable fee.

108. Plaintiff is also entitled to reasonable attorney's fees and costs pursuant to Section 627.428, Florida Statutes.

WHEREFORE, Plaintiff, individually prays for an order as follows:

- a. Entering judgment for Plaintiff for monetary relief, including damages and interest allowed by law;
- b. Awarding attorney fees and costs under Section 627.428, Florida Statutes, for prosecuting this action; and
- c. Awarding Plaintiff any other relief the Court deems just and proper.



**JURY TRIAL DEMAND**

Plaintiff requests trial by jury on all issues triable before a jury.

Dated: June 28, 2018

Respectfully Submitted,

By: s/Edward H. Zebersky

Edward H. Zebersky, Esq. (FBN: 0908370)

Mark S. Fistos, Esq. (FBN: 909191)

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[mfistos@zpllp.com](mailto:mfistos@zpllp.com); [ndiaz@zpllp.com](mailto:ndiaz@zpllp.com)

***Attorneys for Plaintiff***

## Exhibit A

PROGRESSIVE  
 P.O. BOX 31260  
 TAMPA, FL 33631



**Policy Number:** [Redacted] 0551

Underwritten by:  
 Progressive Select Insurance Co  
 October 18, 2016  
 Policy Period: Nov 21, 2016 - May 21, 2017  
 Page 1 of 3

MICHAEL A LOPEZ

[Redacted]

**progressive.com**

**Online Service**

Make payments, check billing activity, update policy information or check status of a claim.

**1-800-776-4737**

For customer service and claims service,  
 24 hours a day, 7 days a week.

# Auto Insurance Coverage Summary

## This is your Renewal Declarations Page

The coverages, limits and policy period shown apply only if you pay for this policy to renew.

Your coverage begins on November 21, 2016 at 12:01 a.m. This policy expires on May 21, 2017 at 12:01 a.m.

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, unless the policy contract or endorsements indicate otherwise. The policy contract is form 9611D FL (07/13). The contract is modified by form A139 FL (06/14).

**Drivers and resident relatives**

Additional information

|                         |               |
|-------------------------|---------------|
| Michael A Lopez         | Named insured |
| Mariana E Velez - Lopez |               |

**Outline of coverage**

**1997 MERCEDES-BENZ E420 4 DOOR SEDAN**

VIN: [Redacted] 9478

Garaging ZIP Code: 33023

Primary use of the vehicle: Commute

|   | Limits  | Deductible     | Premium      |
|---|---|----------------|--------------|
| Liability To Others                               |   |                |              |
| Bodily Injury Liability                           | \$100,000 each person/\$300,000 each accident |                | \$174        |
| Property Damage Liability                         | \$100,000 each accident                       |                | 94           |
| Personal Injury Protection                        | \$10,000                                      | \$1,000/person | 96           |
| Deductible applies to You and Dependent Relatives |   |                |              |
| Uninsured Motorist - Nonstacked                   | \$100,000 each person/\$300,000 each accident |                | 109          |
| Comprehensive                                     | Actual Cash Value                             | \$500          | 60           |
| Collision   | Actual Cash Value                             | \$500          | 82           |
| Rental Reimbursement                              | up to \$30 each day/maximum 30 days           |                | 5            |
| Total premium for 1997 MERCEDES-BENZ              |   |                | <b>\$620</b> |

Policy Number: [Redacted] 0551

Michael A Lopez

Page 2 of 3

**2007 NISSAN MURANO 4 DOOR WAGON**

VIN: [Redacted] 8328

Garaging ZIP Code: 33023

Primary use of the vehicle: Commute

|   | Limits  | Deductible     | Premium           |
|---|---|----------------|-------------------|
| .....   |   |                |                   |
| Liability To Others                                 |   |                |                   |
| Bodily Injury Liability                             | \$100,000 each person/\$300,000 each accident |                | \$187             |
| Property Damage Liability                           | \$100,000 each accident                       |                | 120               |
| .....   |   |                |                   |
| Personal Injury Protection                          | \$10,000                                      | \$1,000/person | 109               |
| .....   |   |                |                   |
| Deductible applies to You and Dependent Relatives   |   |                |                   |
| .....   |   |                |                   |
| Uninsured Motorist - Nonstacked                     | \$100,000 each person/\$300,000 each accident |                | 141               |
| .....   |   |                |                   |
| Comprehensive                                       | Actual Cash Value                             | \$500          | 34                |
| .....   |   |                |                   |
| Collision   | Actual Cash Value                             | \$500          | 72                |
| .....   |   |                |                   |
| Rental Reimbursement                                | up to \$30 each day/maximum 30 days           |                | 7                 |
| .....   |   |                |                   |
| Total premium for 2007 NISSAN                       |   |                | <b>\$670</b>      |
| .....   |   |                |                   |
| <b>Total 6 month policy premium</b>                 |   |                | <b>\$1,290.00</b> |
| .....   |   |                |                   |
| Discount if paid in full                            |   |                | -269.00           |
| .....   |   |                |                   |
| <b>Total 6 month policy premium if paid in full</b> |   |                | <b>\$1,021.00</b> |

**Premium discounts**

| Policy                  |  |
|-------------------------|--|
| [Redacted] 0551         | Five-Year Accident Free, Five-Year Claim Free, Home Owner, Online Quote, Multi-Car, Continuous Insurance: Diamond, Paperless and Three-Year Safe Driving |
| .....                   |  |
| Vehicle                 |  |
| 1997 MERCEDES-BENZ E420 | Anti-Lock Brakes and Driver and Passenger-side Airbag  |
| .....                   |  |
| 2007 NISSAN MURANO      | Anti-Lock Brakes, Driver and Passenger-side Airbag and Passive Anti-Theft Device   |

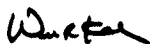
**Lienholder information**

| Vehicle                               | Lienholder                                 |
|---------------------------------------|--|
| 2007 NISSAN MURANO<br>[Redacted] 8328 | Pentagon Fed Cr Un<br>Alexandria, VA 22313 |

**Policyholder inquiries**

You may call Customer Service at 1-800-776-4737 to present inquiries or obtain information about coverage, and to obtain assistance with any complaints.

**Agent signature**



Policy Number: [REDACTED] 0551

Michael A Lopez

Page 3 of 3

**Company officers**

A handwritten signature in black ink, appearing to read 'MRL' followed by a stylized flourish.

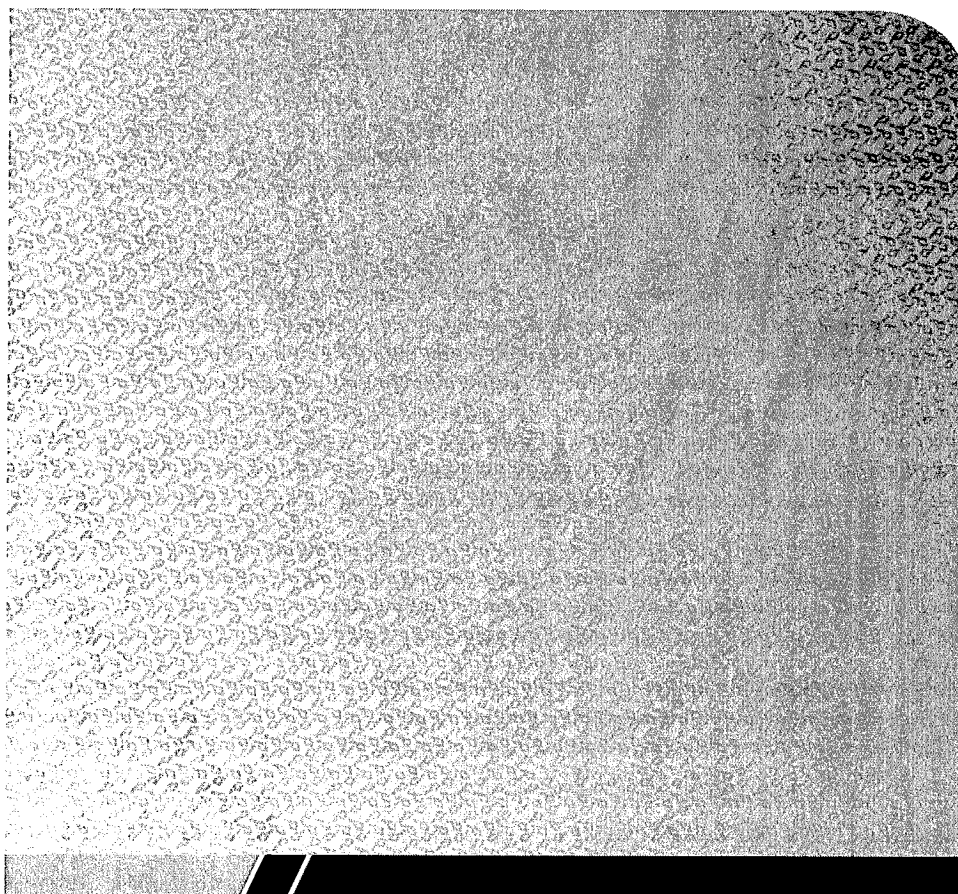
Secretary

9611D FL 0713



# FLORIDA

## AUTO POLICY



Form 9611D FL (07/13)  
version 1.0

**PROGRESSIVE**<sup>®</sup>  
DIRECT Auto



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## FLORIDA AUTO POLICY

### INSURING AGREEMENT

In return for **your** payment of the premium, **we** agree to insure **you** subject to all the terms, conditions, and limitations of this policy. **We** will insure **you** for the coverages and the limits of liability shown on this policy's **declarations page**. **Your** policy consists of the policy contract, **your** insurance application, the **declarations page**, and all endorsements to this policy.

### GENERAL DEFINITIONS

The following definitions apply throughout the policy. Defined terms are printed in bold-face type and have the same meaning whether in the singular, plural, or any other form.

1. "**Additional auto**" means an **auto you** become the actual or beneficial owner of during the policy period that does not permanently replace an **auto** shown on the **declarations page** if:
  - a. **we** insure all other **autos you** own;
  - b. the **additional auto** is not covered by any other insurance policy;
  - c. **you** notify **us** within 30 days of becoming the owner of the **additional auto**; and
  - d. **you** pay any additional premium due.

An **additional auto** will have the broadest coverage **we** provide for any **auto** shown on the **declarations page**. If **you** ask **us** to insure an **additional auto** more than 30 days after **you** become the actual or beneficial owner, any coverage **we** provide will begin at the time **you** request coverage.

2. "**Auto**" means a land motor vehicle:
  - a. of the private passenger, pickup body, or cargo van type;
  - b. designed for operation principally upon public roads;
  - c. with at least four wheels; and
  - d. with a gross vehicle weight rating of 12,000 pounds or less, according to the manufacturer's specifications.

However, "**auto**" does not include step-vans, parcel delivery vans, or cargo cut-away vans or other vans with cabs separate from the cargo area.

3. "**Auto business**" means the business of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles.
4. "**Bodily injury**" means bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease.
5. "**Covered auto**" means:
  - a. any **auto** or **trailer** shown on the **declarations page** for the coverages applicable to that **auto** or **trailer**;
  - b. any **additional auto**;
  - c. any **replacement auto**; or
  - d. a **trailer** owned by **you**.

6. "**Declarations page**" means the document showing **your** coverages, limits of liability, **covered autos**, premium, and other policy-related information. The **declarations page** may also be referred to as the Auto Insurance Coverage Summary.

7. **"Occupying"** means in, on, entering, or exiting.
8. **"Property damage"** means physical damage to, destruction of, or loss of use of, tangible property.
9. **"Rated resident"** means a person residing in the same household as **you** at the time of the loss who is not a **relative**, but only if that person is both:
  - a. listed in the "Drivers and household residents" section on the **declarations page**; and
  - b. not designated as either an "Excluded" or "List Only" driver.
10. **"Relative"** means a person residing in the same household as **you**, and related to **you** by blood, marriage, or adoption, and includes a ward, step-child, or foster child. **Your** unmarried dependent children temporarily away from home will qualify as a **relative** if they intend to continue to reside in **your** household.
11. **"Replacement auto"** means an **auto** that permanently replaces an **auto** shown on the **declarations page**. A **replacement auto** will have the same coverage as the **auto** it replaces if the **replacement auto** is not covered by any other insurance policy. However, if the **auto** being replaced had coverage under Part IV - Damage To A Vehicle, such coverage will apply to the **replacement auto** only during the first 30 days after **you** become the actual or beneficial owner unless **you** notify **us** within that 30-day period that **you** want **us** to extend coverage beyond the initial 30 days. If the **auto** being replaced did not have coverage under Part IV - Damage To A Vehicle, such coverage may be added, but the **replacement auto** will have no coverage under Part IV until **you** notify **us** of the **replacement auto** and ask **us** to add the coverage.
12. **"Trailer"** means a non-motorized trailer, including a farm wagon or farm implement, designed to be towed on public roads by an **auto** and not being used:
  - a. for commercial purposes;
  - b. as an office, store, or for display purposes; or
  - c. as a passenger conveyance.
13. **"We," "us," and "our"** mean the underwriting company providing the insurance, as shown on the **declarations page**.
14. **"You" and "your"** mean:
  - a. a person shown as a named insured on the **declarations page**; and
  - b. the spouse of a named insured if residing in the same household at the time of the loss.

#### **PART I - LIABILITY TO OTHERS**

##### **INSURING AGREEMENT - BODILY INJURY**

If **you** pay the premium for this coverage, **we** will pay damages for **bodily injury** for which an **insured person** becomes legally responsible because of an accident.

##### **INSURING AGREEMENT - PROPERTY DAMAGE**

If **you** pay the premium for this coverage, **we** will pay damages for **property damage** for which an **insured person** becomes legally responsible because of an accident.

Damages for **bodily injury** and **property damage** include prejudgment interest awarded against an **insured person**, where owed by law.

If **you** pay the premium for Bodily Injury Liability and Property Damage Liability, **we** will settle or defend, at **our** option, any claim for **bodily injury** or **property damage** covered by this Part I. **Our** duty to settle or defend ends after **we** have paid the applicable limit of liability for the accident that is the basis of the lawsuit.

If **you** pay the premium for Property Damage Liability only, **we** will settle or defend, at **our** option, any claim for **property damage** covered by this Part I. **Our** duty to settle or defend ends after **we** have paid the applicable limit of liability for the accident that is the basis of the lawsuit.

Satisfaction by an **insured person** of a judgment for **bodily injury** or **property damage** shall not be a condition precedent to the right or duty of **us** to make payment for such **bodily injury** or **property damage**.

#### **ADDITIONAL DEFINITION**

When used in this Part I:

**"insured person"** means:

- a. **you**, a **relative**, or a **rated resident** with respect to an accident arising out of the ownership, maintenance, or use of an **auto** or **trailer**;
- b. any person with respect to an accident arising out of that person's use of a **covered auto** with the permission of **you**, a **relative**, or a **rated resident**;
- c. any person or organization with respect only to vicarious liability for the acts or omissions of a person described in a or b above; and
- d. any Additional Interest shown on the **declarations page** with respect only to its liability for the acts or omissions of a person described in a or b above.

#### **ADDITIONAL PAYMENTS**

In addition to **our** limit of liability, **we** will pay for an **insured person**:

1. all expenses **we** incur in the settlement of any claim or in the defense of an **insured person** in any lawsuit. This does not include attorney fees awarded or assessed against an **insured person**;
2. interest accruing after entry of judgment, until **we** have paid, offered to pay, or deposited in court, that portion of the judgment which does not exceed **our** limit of liability. This does not apply if **we** have not been given notice of suit or the opportunity to defend an **insured person**;
3. the premium on any appeal bond or attachment bond required in any lawsuit **we** defend. **We** have no duty to purchase a bond in an amount exceeding **our** limit of liability, and **we** have no duty to apply for or furnish these bonds;
4. up to \$250 for a bail bond required because of an accident resulting in **bodily injury** or **property damage** covered under this Part I. **We** have no duty to apply for or furnish this bond; and
5. reasonable expenses, including loss of earnings up to \$200 per day, incurred at **our** request.

**EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART I.**

Coverage under this Part I, including **our** duty to defend, will not apply to any **insured person** for:

1. **bodily injury** or **property damage** arising out of the ownership, maintenance, or use of any vehicle or trailer while being used:
  - a. to carry persons or property for compensation or a fee; or
  - b. for retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food.This exclusion does not apply to shared-expense car pools;
2. any liability assumed under any contract or agreement by **you**, a **relative**, or a **rated resident**;
3. **bodily injury** to an employee of that **insured person** arising out of or within the course of employment. This exclusion does not apply to domestic employees if benefits are neither paid nor required to be provided under workers' compensation, disability benefits, or similar laws;
4. **bodily injury** or **property damage** arising out of an accident involving any vehicle while being maintained or used by a person while employed or engaged in any **auto business**. This exclusion does not apply to **you**, a **relative**, a **rated resident**, or an agent or employee of **you**, a **relative**, or a **rated resident**, when using a **covered auto**;
5. **bodily injury** or **property damage** resulting from, or sustained during practice or preparation for:
  - a. any pre-arranged or organized racing, stunting, speed, or demolition contest or activity; or
  - b. any driving activity conducted on a permanent or temporary racetrack or racecourse;
6. **bodily injury** or **property damage** due to a nuclear reaction or radiation;
7. **bodily injury** or **property damage** for which insurance:
  - a. is afforded under a nuclear energy liability insurance contract; or
  - b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
8. any obligation for which the United States Government is liable under the Federal Tort Claims Act. This exclusion will apply only to the damages that are in excess of the minimum limits of liability coverage required by the financial responsibility law of the state of Florida;
9. **bodily injury** or **property damage** caused by an intentional act of any **insured person**, or at the direction of any **insured person**, even if the actual injury or damage is different than that which was intended or expected. This exclusion will apply only to the damages that are in excess of the minimum limits of liability coverage required by the financial responsibility law of the state of Florida;
10. **property damage** to any property owned by, rented to, being transported by, used by, or in the charge of that **insured person**. This exclusion does not apply to a rented residence or a rented garage;

11. **bodily injury to you** or a **relative**;
12. **bodily injury or property damage** arising out of the ownership, maintenance, or use of any vehicle owned by **you** or furnished or available for **your** regular use, other than a **covered auto** for which this coverage has been purchased;
13. **bodily injury or property damage** arising out of the ownership, maintenance, or use of any vehicle owned by a **relative** or a **rated resident** or furnished or available for the regular use of a **relative** or a **rated resident**, other than a **covered auto** for which this coverage has been purchased. This exclusion does not apply to **your** maintenance or use of such vehicle;
14. **bodily injury or property damage** arising out of **your**, a **relative's**, or a **rated resident's** use of a vehicle, other than a **covered auto**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
15. **bodily injury or property damage** arising out of the use of a **covered auto** while leased or rented to others or given in exchange for any compensation. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**;
16. punitive or exemplary damages; or
17. **bodily injury or property damage** caused by, or reasonably expected to result from, a criminal act or omission of any **insured person**. This exclusion applies regardless of whether that **insured person** is actually charged with, or convicted of, a crime. This exclusion will apply only to the damages that are in excess of the minimum limits of liability coverage required by the financial responsibility law of the state of Florida and does not apply to moving traffic violations.

#### **LIMITS OF LIABILITY**

The limit of liability shown on the **declarations page** for liability coverage is the most **we** will pay regardless of the number of:

1. claims made;
2. **covered autos**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in the accident; or
6. premiums paid.

If **your declarations page** shows a split limit:

1. the amount shown for "each person" is the most **we** will pay for all damages due to **bodily injury** to one person resulting from any one accident;
2. subject to the "each person" limit, the amount shown for "each accident" is the most **we** will pay for all damages due to **bodily injury** sustained by two or more persons in any one accident; and
3. the amount shown for "property damage" is the most **we** will pay for the total of all **property damage** resulting from any one accident.

The “each person” limit of liability applies to the total of all claims made for **bodily injury** to a person and all claims of others derived from such **bodily injury**, including, but not limited to, emotional injury or mental anguish resulting from the **bodily injury** of another or from witnessing the **bodily injury** to another, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death, if recoverable under the applicable law.

If the **declarations page** shows that “combined single limit” or “CSL” applies, the amount shown is the most **we** will pay for the total of all damages resulting from any one accident. However, without changing this limit of liability, **we** will comply with any law that requires **us** to provide any separate limits.

No one is entitled to duplicate payments for the same elements of damages.

Any payment to a person under this Part I for **bodily injury** will be reduced by:

1. any payment made to that person for **bodily injury** under Part III - Uninsured Motorist Coverage; and
2. any amounts that are paid or payable to that person as personal injury protection benefits.

If multiple auto policies issued by **us** are in effect for **you**, **we** will pay no more than the highest limit of liability for this coverage available under any one policy.

An **auto** and attached **trailer** are considered one **auto**. Therefore, the limits of liability will not be increased for an accident involving an **auto** that has an attached **trailer**.

#### **FINANCIAL RESPONSIBILITY LAWS**

When **we** certify this policy as proof of financial responsibility, this policy will comply with the law to the extent required. The **insured person** must reimburse **us** if **we** make a payment that **we** would not have made if this policy was not certified as proof of financial responsibility.

#### **OTHER INSURANCE**

If there is any other applicable liability insurance or bond, **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 applicable limits. Any insurance **we** provide for a vehicle or trailer, other than a **covered auto**, will be excess over any other collectible insurance, self-insurance, or bond.

However, when **you**, a **relative**, or a **rated resident** rent or lease an **auto**, the liability coverage provided by the lessor’s policy shall be primary unless the rental or lease agreement includes a provision in the form specified in Florida Statute §627.7263, as amended, stating that the lessee or rentee’s liability insurance and personal injury protection insurance shall be primary. If the rental or lease agree-

ment includes such a provision, **our** duty to pay damages under this Part I, and **our** duty to defend **you**, a **relative**, or a **rated resident** under this Part I, shall be primary to any liability coverage provided by the lessor or owner for operation of that **auto** by **you**, a **relative**, or a **rated resident**. **We** have no duty to defend the lessor or owner of that **auto** under this Part I.

#### **OUT-OF-STATE COVERAGE**

If an accident to which this Part I applies occurs in any state, territory, or possession of the United States of America or any province or territory of Canada, other than the one in which a **covered auto** is principally garaged, and the state, province, territory, or possession has:

1. a financial responsibility or similar law requiring limits of liability for **bodily injury** or **property damage** higher than the limits shown on the **declarations page**, this policy will provide the higher limit only for the coverage or coverages shown on the **declarations page** for which **you** have paid the premium; or
2. a compulsory insurance or similar law requiring a non-resident to maintain insurance whenever the non-resident uses an **auto** in that state, province, territory, or possession, this policy will provide the greater of:
  - a. the required minimum amounts and types of coverage; or
  - b. the limits of liability under this policy.

#### **PART II(A) - PERSONAL INJURY PROTECTION COVERAGE**

##### **INSURING AGREEMENT**

If **you** pay the premium for this coverage, **we** will pay benefits that an **insured person** is entitled to receive pursuant to the Florida Motor Vehicle No-Fault Law, as amended, because of **bodily injury**:

1. caused by an **accident**;
2. sustained by an **insured person**; and
3. arising out of the ownership, maintenance or use of a **motor vehicle**.

Personal Injury Protection Coverage benefits consist of:

1. **medical benefits**;
2. **disability benefits**; and
3. **death benefits**.

##### **ADDITIONAL DEFINITIONS**

When used in this Part II(A):

1. "**Death benefits**" means benefits of \$5,000 payable per individual if an **insured person** dies because of injury covered under this Part II(A).
2. "**Dependent resident relative**" means a **resident relative**:
  - a. who receives more than one-half of his or her financial support from **you**; or
  - b. whom **you** claim as an exemption on **your** federal tax return.



3. **“Disability benefits”** means 60 percent of any **work loss** per **insured person** from inability to work proximately caused by the injury sustained by the **insured person**. **Disability benefits** also include all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those services that, but for the **bodily injury**, the **insured person** would have performed without income for the benefit of his or her household.
4. **“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:
  - a. serious jeopardy to patient health;
  - b. serious impairment to bodily functions; or
  - c. serious dysfunction of any bodily organ or part.
5. **“Insured person”** means:
  - a. **you** or any **resident relative** sustaining **bodily injury** while **occupying a motor vehicle**, or when struck by a **motor vehicle** while not **occupying a self-propelled vehicle**;
  - b. any person sustaining **bodily injury** while **occupying a covered auto**; or
  - c. any person, if a resident of Florida, sustaining **bodily injury** when struck by a **covered auto** while not **occupying a self-propelled vehicle**.

For purposes of this definition, **“covered auto”** includes an attached trailer or semi-trailer designed for use with such vehicle.
6. **“Medical benefits”** means 80 percent of all reasonable expenses incurred for **medically necessary** medical, surgical, x-ray, dental and rehabilitative services, including prosthetic devices and **medically necessary** ambulance, hospital and nursing services. **Medical benefits** only include: 1) services and care received within the initial 14 days after the motor vehicle accident, or 2) follow-up services and care received beyond the initial 14 days after the motor vehicle accident if services and care have been previously received within the initial 14 days after the motor vehicle accident, and a referral for more services and care has been provided by a statutorily authorized provider, and the follow-up services and care are consistent with the underlying medical diagnosis. **Medical benefits** do not include massage, as defined in FL. St. 480.033, or acupuncture, as defined in FL. St. 457.102, regardless of the person, entity or licensee providing the massage or acupuncture, and a licensed massage therapist or licensed acupuncturist will not be reimbursed for **medical benefits**.
7. **“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:
  - a. in accordance with generally accepted standards of medical practice;
  - b. clinically appropriate in terms of type, frequency, extent, site, and duration; and
  - c. not primarily for the convenience of the patient, physician, or other health care provider.

8. **"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 the State of Florida and any trailer or semi-trailer designed for use with such vehicle. A **motor vehicle** does not include a mobile home or any motor vehicle which is used in mass transit, other than public school transportation, and designed to transport more than five passengers exclusive of the operator of the motor vehicle and which is owned by a municipality, a transit authority, or a political subdivision of the state.
9. **"Resident relative"** means a relative of any degree by blood or by marriage who usually makes his or her home in the same family unit, whether or not temporarily living elsewhere.
10. **"Work loss"** means loss of gross income and loss of earning capacity.

**EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART II(A).**

Coverage under this Part II(A) does not apply to **bodily injury**:

1. sustained by **you** or a **resident relative** while **occupying** another **motor vehicle** owned by **you** and not insured under this policy;
2. sustained by any person operating a **covered auto** without **your** express or implied consent;
3. to any injured person, if such person's conduct contributed to his or her **bodily injury** under any of the following circumstances:
  - a. causing **bodily injury** to himself or herself intentionally; or
  - b. sustaining **bodily injury** while committing a felony;
4. sustained by any person, other than **you**, if such person is the owner of a **motor vehicle** with respect to which security is required under the Florida Motor Vehicle No-Fault Law, as amended;
5. sustained by any person, other than **you** or a **resident relative**, who is entitled to personal injury protection benefits from the insurer or owner of a **motor vehicle** that is not a **covered auto** under this policy;
6. sustained by any person while **occupying** a **motor vehicle** while located for use as a residence or premises;
7. with respect to **work loss**, if such **bodily injury** is sustained by **you**, and if a named insured has elected to exclude **work loss** for either the named insured, or the named insured and **dependent resident relatives**, as indicated on the **declarations page**; or
8. with respect to **work loss**, if such **bodily injury** is sustained by a **dependent resident relative**, and if a named insured has elected to exclude **work loss** for the named insured and **dependent resident relatives**, as indicated on the **declarations page**.

## EXTENDED PERSONAL INJURY PROTECTION COVERAGE

If **you** have purchased Extended Personal Injury Protection Coverage, then, as applied to **bodily injury** sustained by **you** or a **resident relative**, the definitions of “**disability benefits**” and “**medical benefits**” under this Part II(A) are deleted and replaced by the following:

“**Disability benefits**” means 80 percent of any **work loss** per **insured person** from inability to work proximately caused by the injury sustained by the **insured person**. **Disability benefits** also include all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those services that, but for the **bodily injury**, the **insured person** would have performed without income for the benefit of his or her household.

“**Medical benefits**” means all reasonable expenses incurred for **medically necessary** medical, surgical, x-ray, dental and rehabilitative services, including prosthetic devices and **medically necessary** ambulance, hospital and nursing services. **Medical benefits** only include: 1) services and care received within the initial 14 days after the motor vehicle accident, or 2) follow-up services and care received beyond the initial 14 days after the motor vehicle accident if services and care have been previously received within the initial 14 days after the motor vehicle accident, and a referral for more services and care has been provided by a statutorily authorized provider, and the follow-up services and care are consistent with the underlying medical diagnosis. **Medical benefits** do not include massage, as defined in FL. St. 480.033, or acupuncture, as defined in FL. St. 457.102, regardless of the person, entity or licensee providing the massage or acupuncture, and a licensed massage therapist or licensed acupuncturist will not be reimbursed for **medical benefits**.

## LIMIT OF LIABILITY

The limit of liability shown on the **declarations page** for Personal Injury Protection is the most **we** will pay for each **insured person** injured in any one accident, regardless of the number of:

1. claims made;
2. **covered autos**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in the accident; or
6. premiums paid.

The maximum reimbursement for services and care is limited to \$2,500, unless it has been determined that the injured person had an **emergency medical condition**. That determination can affirmatively be made only by a physician or physician assistant licensed under chapter 458 or 459, a dentist licensed under chapter 466, or an advanced registered nurse practitioner licensed under chapter 464, and further can be made only if no physician or physician assistant licensed under chapter 458 or 459, no

chiropractic physician licensed under chapter 460, no dentist licensed under chapter 466, and no advanced registered nurse practitioner licensed under chapter 464 has determined that the injured person did not have an **emergency medical condition**. This provision is applicable to all claims without regard to the identity, or status, of the entity seeking reimbursement, including those claims submitted by government entities possessing a statutory right to present claims under this Part II(A).

Benefits received under any workers' compensation law shall be credited against the benefits provided under this Part II(A). Any deductible elected by a named insured under Personal Injury Protection Coverage applies to those persons indicated as subject to a deductible on the **declarations page**. Any deductible that applies to the named insured shall apply to all persons listed as a named insured on the **declarations page** and any spouse of a named insured. When a deductible applies, the deductible will be applied to 100 percent of the expenses and losses covered under Personal Injury Protection Coverage. After the deductible is met, each **insured person** is eligible to receive up to \$10,000 in total benefits, exclusive of **death benefits**, under Personal Injury Protection Coverage. A separate \$5,000 benefit limit is reserved exclusively for **death benefits**. However, the deductible shall not be applied to reduce **death benefits**.

Personal Injury Protection Coverage is primary to the Medical Payments Coverage under Part II(B).

#### **OTHER INSURANCE**

If there is other applicable personal injury protection coverage for the same injury to any one **insured person**, the most the **insured person** may recover is the maximum amount payable for personal injury protection benefits under the Florida Motor Vehicle No-Fault Law, as amended. If there is other applicable personal injury protection coverage, and **we** make a payment under this Part II(A), **we** are entitled to recover from each of the other insurers an equitable pro rata share of the benefits paid and expenses incurred in processing the claim.

If an **insured person** sustains **bodily injury** while **occupying**, or through being struck by, a **motor vehicle** which is rented or leased, the personal injury protection coverage provided by the lessor's policy shall be primary unless the rental or lease agreement includes a provision in the form specified in Florida Statute §627.7263, as amended, stating that **your** liability insurance and personal injury protection insurance shall be primary.

#### **CONDITIONS**

In addition to the Duties set forth in Part VI of this policy and the Provisions set forth in Part VII of this policy, the following conditions apply to coverage afforded under this Part II(A).

**Policy Period and Territory.** The coverage under this Part II(A) applies only to accidents which occur during the policy period:

1. in the State of Florida; and
2. with respect to **you** or a **resident relative**, while **occupying a covered auto** outside the State of Florida but within the United States of America, its territories or possessions, or Canada; and
3. with respect to **you**, while **occupying a motor vehicle** owned by a **resident relative**, and for which security is maintained under the Florida Motor Vehicle No-Fault Law, as amended, outside the State of Florida but within the United States of America, its territories or possessions, or Canada.

**Provider Examination under Oath.** **We** may require representatives of any entity or person who is claiming benefits under this contract pursuant to an assignment of benefits under this Part II(A) to submit to examinations under oath, as often as **we** may reasonably require. **We** may choose any representative that **we** require to sit for examinations under oath, including but not limited to the person who actually rendered the treatment. **We** may refuse payment:

1. to any entity or person holding an assignment; or
2. for services rendered by any entity or person holding an assignment, who does not comply with this provision.

**Refusal to Submit to Medical Examination.** If a person making a claim under this Part II(A) unreasonably refuses to submit to a medical examination required by **us**, **we** shall not be liable for further payments under this Part II(A).

**Right of Reimbursement from Owner or Insurer of Commercial Motor Vehicle.** If **we** make a payment under this Part II(A) to any person sustaining **bodily injury** while **occupying** a commercial motor vehicle, as defined under the Florida Motor Vehicle No-Fault Law, as amended, or when struck by a commercial motor vehicle while not **occupying** a self-propelled vehicle, **we** shall have a right of reimbursement, to the extent of **our** payment, against the owner of the commercial motor vehicle or the owner's insurer.

**Unreasonable or Unnecessary Medical Benefits.** If an **insured person** incurs **medical benefits** that **we** deem to be unreasonable or unnecessary, **we** may refuse to pay for those **medical benefits** and contest them.

**We** will determine to be unreasonable any charges incurred that exceed the maximum charges set forth in Section 627.736 (5)(a)(2) (a through f) of the Florida Motor Vehicle No-Fault Law, as amended. Pursuant to Florida law, **we** will limit reimbursement to, and pay no more than, 80 percent of the following schedule of maximum charges:

- a. for emergency transport and treatment by providers licensed under Chapter 401 of the Florida Statutes, 200 percent of Medicare;
- b. for emergency services and care provided by a hospital licensed under Chapter 395 of the Florida Statutes, 75 percent of the hospital's usual and customary charges;

- c. for emergency services and care as defined by Section 395.002 (9) of the Florida Statutes, 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;
- d. 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;
- e. 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; and
- f. for all other medical services, supplies and care, 200 percent of the allowable amount under the participating physicians fee schedule of Medicare Part B, except as follows:
  - (1) for services, supplies and care provided by ambulatory surgical centers and clinical laboratories, 200 percent of the allowable amount under Medicare Part B; and
  - (2) for durable medical equipment, 200 percent of the allowable amount under "The Durable Medical Equipment Prosthetics/Orthotics and Supplies" fee schedule of Medicare Part B.

However, if such services, supplies or care is not reimbursable under Medicare Part B, as provided in this subsection f., we will limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under Section 440.13 of the Florida Statutes, 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 will not be reimbursed by us.

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 the services, supplies or care is rendered and for the area in which such services, supplies or care is rendered. This 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 may not be less than the allowable amount under the applicable schedules of Medicare Part B for 2007 for medical services, supplies and care subject to Medicare Part B.

In determining the appropriate reimbursement under the applicable Medicare fee schedule, all reasonable, medically necessary, and covered charges for services, supplies and care submitted by physicians, non-physician practitioners, or any other provider will be subject to the Center for Medicare Services (CMS) coding policies and payment methodologies, including applicable modifiers. The CMS policies include, but are not limited to: coding edits, both mutually exclusive and inclusive, payment limitations, and coding guidelines subject to the National Correct Coding Initiative (NCCI), Hospital Outpatient Prospective Payment System (OPPS), Multiple Procedure Payment Reduction (MPPR), and Multiple Surgery Reduction Rules (MSRR).

**We** will reduce any payment to a medical provider under this Part II(A) by any amounts **we** deem to be unreasonable **medical benefits**. However, the **medical benefits** shall provide reimbursement only for such services, supplies and care that are lawfully rendered, supervised, ordered or prescribed. Any reductions taken will not affect the rights of an **insured person** for coverage under this Part II(A). Whenever a medical provider agrees to a reduction of **medical benefits** charged, any co-payment owed by an **insured person** will also be reduced.

The **insured person** shall not be responsible for payment of any reductions applied by **us**. If a medical provider disputes an amount paid by **us**, **we** will be responsible for resolving such dispute. If a lawsuit is initiated against an **insured person** as a result of the reduction of a medical bill by **us**, other than reductions taken pursuant to FL St. 627.736 (5)(a)(1) (a through f), **we** will provide the **insured person** with a legal defense by counsel of **our** choice, and pay any resulting judgment. The **insured person** must cooperate with **us** in the defense of any claim or lawsuit. If **we** ask an **insured person** to attend hearings or trials, **we** will pay up to \$200 per day for loss of wages or salary. **We** will also pay other reasonable expenses incurred at **our** request.

**Protection of Insured Persons in Certain Provider Disputes.** The **insured person** shall not be responsible for payment of any reductions applied by **us**. If a medical provider disputes an amount paid by **us**, **we** will be responsible for resolving such dispute. If a medical provider fails to submit to examination under oath as required by **us**, and **we** subsequently refuse to make payment to that medical provider, **we** will be responsible for resolving any dispute or action that provider brings against the **insured person** to whom services were rendered. If a lawsuit is initiated against an **insured person** as a result of the reduction of a medical bill by **us**, or as a result of **our** refusal to pay an assignee due to non-compliance with the provider examination under oath conditions, **we** will provide the **insured person** with a legal defense by counsel of **our** choice, and pay any resulting judgment. The **insured person** must cooperate with **us** in the defense of any claim or lawsuit. If **we** ask an **insured person** to attend hearings or trials, **we** will pay up to \$200 per day for loss of wages or salary. **We** will also pay other reasonable expenses incurred at **our** request.

## **PART II(B) - MEDICAL PAYMENTS COVERAGE**

### **INSURING AGREEMENT**

If **you** pay the premium for this coverage, **we** will pay the reasonable expenses incurred for necessary **medical services** received within three years from the date of a **motor vehicle** accident because of **bodily injury**:

1. sustained by an **insured person**; and
2. caused by that **motor vehicle** accident.

**We**, or someone on **our** behalf, will determine:

1. whether the expenses for **medical services** are reasonable; and
2. whether the **medical services** are necessary.

There is no coverage under this Part II(B) for:

1. mileage costs for use of a personal vehicle;
2. any interest charges;
3. any **medical services** if the **insured person** does not receive initial medical services and care from an initial services provider within 14 calendar days after the **motor vehicle** accident;
4. massage of any body part either through one-on-one contact, or the use of any devices, or equipment that provide mechanical or electrical massage with or without heat;
5. acupuncture services, including all adjunctive therapies and diagnostic techniques, including herbs, rubs and oils, aromatherapy, cupping, dieting, and other oriental exercises and stretching techniques; or
6. any **medical services**, supplies, or care provided by a massage therapist or an acupuncturist.

#### **ADDITIONAL DEFINITIONS**

When used in this Part II(B):

1. "**Insured person**" means **you** or a **relative** or a **rated resident**:
  - a. while **occupying** an **auto**; or
  - b. when struck by a **motor vehicle** or a trailer while not **occupying** a self-propelled motorized vehicle.
2. "**Medical services**" means all reasonable expenses incurred for medically necessary medical, surgical, x-ray, dental and rehabilitative services, including prosthetic devices and medically necessary ambulance, hospital and nursing services. Medical services only include: 1) services and care received within the initial 14 days after the motor vehicle accident, or 2) follow-up services and care received beyond the initial 14 days after the motor vehicle accident if services and care has been previously received within the initial 14 days after the motor vehicle accident, and a referral for more services and care has been provided by an authorized provider as defined under the Florida No Fault law, as amended, and the follow-up services and care are consistent with the underlying medical diagnosis. **Medical services** do not include massage, as defined in FL. St. 480.033, or acupuncture, as defined in FL. St. 457.102, regardless of the person, entity or licensee providing the massage or acupuncture, and a licensed massage therapist or licensed acupuncturist will not be reimbursed for medical services.
3. "**Motor vehicle**" means a land motor vehicle designed for use principally on public roads.

**EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART II(B).**

Coverage under this Part II(B) will not apply to **bodily injury**:

1. sustained by any person while **occupying** a **covered auto** while it is being used;
  - a. to carry persons or property for compensation or a fee; or



- b. for retail or wholesale delivery, including, but not limited to, the pickup, transport, or delivery of magazines, newspapers, mail, or food.  
This exclusion does not apply to shared-expense car pools;
- 2. arising out of an accident involving a vehicle while being maintained or used by a person while employed or engaged in any **auto business**. This exclusion does not apply to **you**, a **relative**, or a **rated resident**, or an agent or employee of **you**, a **relative**, or a **rated resident**, when using a **covered auto**;
- 3. to any person resulting from, or sustained during practice or preparation for:
  - a. any prearranged or organized racing, stunting, speed, or demolition contest or activity; or
  - b. any driving activity conducted on a permanent or temporary racetrack or racecourse;
- 4. due to a nuclear reaction or radiation;
- 5. for which insurance:
  - a. is afforded under a nuclear energy liability insurance contract; or
  - b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
- 6. for which the United States Government is liable under the Federal Tort Claims Act;
- 7. sustained by any person while **occupying** any vehicle or trailer while located for use as a residence or premises;
- 8. if workers' compensation benefits are available for the **bodily injury**;
- 9. sustained by any person while **occupying** or when struck by any vehicle owned by **you** or furnished or available for **your** regular use, other than a **covered auto** for which this coverage has been purchased;
- 10. sustained by any person while **occupying** or when struck by any vehicle owned by a **relative** or a **rated resident** or furnished or available for the regular use of a **relative** or a **rated resident**, other than a **covered auto** for which this coverage has been purchased. This exclusion does not apply to **you**;
- 11. to **you**, a **relative**, or a **rated resident** while **occupying** any vehicle, other than a **covered auto**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
- 12. to any person while **occupying** a **covered auto** while leased or rented to others or given in exchange for any compensation. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**;
- 13. caused directly or indirectly by:
  - a. war (declared or undeclared) or civil war;
  - b. warlike action by any military force of any government, sovereign or other authority using military personnel or agents. This includes any action taken to hinder or defend against an actual or expected attack; or
  - c. insurrection, rebellion, revolution, usurped power, or any action taken by a governmental authority to hinder or defend against any of these acts;
- 14. caused directly or indirectly by any accidental or intentional discharge, dispersal, or release of radioactive or nuclear material;

15. caused by, or reasonably expected to result from, a criminal act or omission of an **insured person**. This exclusion applies regardless of whether the **insured person** is actually charged with, or convicted of, a crime. This exclusion does not apply to moving traffic violations; or
16. for which coverage is not afforded under Part II(A) - Personal Injury Protection for any reason, including the \$2,500 maximum imposed when it has been determined that the injured person did not have an emergency medical condition as defined in Part II(A). This exclusion does not apply to **medical services** covered under Part II(A) but not paid solely due to:
  - a. the application of the statutory 80 percent reimbursement limitation; or
  - b. the exhaustion of all applicable personal injury protection coverage.

### LIMITS OF LIABILITY

The limit of liability shown on the **declarations page** for Medical Payments Coverage is the most **we** will pay for each **insured person** injured in any one accident, regardless of the number of:

1. claims made;
2. **covered autos**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in the accident; or
6. premiums paid.

No one will be entitled to duplicate payments under this policy for the same elements of damages.

Any amount payable to an **insured person** under this Part II(B) will be reduced by any amount paid or payable for the same expense under Part I - Liability To Others or Part III - Uninsured Motorist Coverage.

If multiple auto policies issued by **us** are in effect for **you**, **we** will pay no more than the highest limit of liability for this coverage available under any one policy.

Any amounts payable for **medical services** to an **insured person** under this Part II(B) shall be excess over any personal injury protection coverage paid or payable under Part II(A) - Personal Injury Protection or which would be available but for the application of a deductible unless it has been determined that the injured party did not have an emergency medical condition as defined in Part II(A).

The maximum reimbursement for a non-emergency medical condition is limited to the remaining 20 percent of the fee schedule of maximum charges covered, but not paid, up to the \$2,500 non-emergency medical condition limit. However, where the limit of liability shown on the **declarations page** for Medical Payments Coverage is less than \$2,500, the lower limit will apply.

**We** will limit reimbursement to, and pay no more than, the remaining 20 percent of the fee schedule of maximum charges covered, but not paid, under Part II(A) - Personal Injury Protection Coverage. **We** will not provide reimbursement for any medical services, care, or supplies that are not required to be reimbursed under the Florida Motor Vehicle No Fault law. However, coverage under this Part II(B) shall not be available to pay any deductible for personal injury protection coverage.

#### **UNREASONABLE OR UNNECESSARY MEDICAL EXPENSES**

If an **insured person** incurs expenses for **medical services** that **we** deem to be unreasonable or unnecessary, **we** may refuse to pay for those expenses and contest them.

If the medical service provider sues the **insured person** because **we** refuse to pay expenses for **medical services** that **we** deem to be unreasonable or unnecessary, **we** will pay any resulting defense costs, and any resulting judgment against the **insured person**, subject to the limit of liability for this coverage. **We** will choose the counsel. **We** will also pay reasonable expenses, including loss of earnings up to \$200 per day, incurred at **our** request.

The **insured person** may not sue **us** for expenses for **medical services** **we** deem to be unreasonable or unnecessary unless the **insured person** paid the entire disputed amount to the medical service provider or the medical service provider has initiated collection activity against the **insured person** for the unreasonable or unnecessary expenses.

#### **OTHER INSURANCE**

If there is other applicable **auto** medical payments insurance, **we** will pay only **our** share of the loss. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance **we** provide for an **insured person occupying** a vehicle or trailer, other than a **covered auto**, will be excess over any other **auto** insurance providing payments for **medical services**.

### **PART III - UNINSURED MOTORIST COVERAGE**

#### **INSURING AGREEMENT**

If **you** pay the premium for this coverage, **we** will pay for damages, other than punitive or exemplary damages, that an **insured person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of **bodily injury**:

1. sustained by an **insured person**;
2. caused by an accident; and
3. arising out of the ownership, maintenance, or use of an **uninsured motor vehicle**.

**We** will pay under this Part III only after the limits of liability under all applicable bodily injury liability bonds and policies have been exhausted by payment of judgments or settlements.

**We** will not pay for damages consisting of pain, suffering, mental anguish, or inconvenience unless the injury or disease consists in whole or in part of:

1. significant and permanent loss of an important bodily function;
2. permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement;
3. significant and permanent scarring or disfigurement; or
4. death;

as described in section 627.737(2) of the Florida Motor Vehicle No-Fault Law, as amended.

An **insured person** must notify **us** in writing by certified mail at least 30 days before entering into any settlement with the owner or operator of an **uninsured motor vehicle**, or that person's liability insurer. In order to preserve **our** right of subrogation, **we** may elect to pay any sum offered in settlement by, or on behalf of, the owner or operator of the **uninsured motor vehicle**. If **we** do this, **you** agree to assign to **us** all rights that **you** have against the owner or operator of the **uninsured motor vehicle**.

Any judgment or settlement for damages against an owner or operator of an **uninsured motor vehicle** that arises out of a lawsuit brought without **our** written consent is not binding on **us**.

#### **ADDITIONAL DEFINITIONS**

When used in this Part III:

1. "**Insured person**" means:
  - a. **you**, a **relative**, or a **rated resident**;
  - b. any person while operating a **covered auto** with the permission of **you**, a **relative**, or a **rated resident**;
  - c. any person **occupying**, but not operating, a **covered auto**; and
  - d. any person who is entitled to recover damages covered by this Part III because of **bodily injury** sustained by a person described in a, b, or c above.
2. "**Uninsured motor vehicle**" means a land motor vehicle or trailer of any type:
  - a. to which no bodily injury liability bond or policy applies at the time of the accident;
  - b. to which a bodily injury liability bond or policy applies at the time of the accident, but the bonding or insuring company:
    - (i) denies coverage; or
    - (ii) is or becomes insolvent;
  - c. to which a bodily injury liability bond or policy applies at the time of the accident, but its limit of liability for bodily injury is less than the bodily injury damages an **insured person** is legally entitled to recover; or
  - d. that is a hit-and-run vehicle whose owner or operator cannot be identified and which causes an accident, with or without physical contact, resulting

in **bodily injury** to an **insured person**, provided that the **insured person**, or someone on his or her behalf, reports the accident to the police or civil authority within 24 hours or as soon as practicable after the accident.

- An **"uninsured motor vehicle"** does not include any vehicle or equipment:
- a. owned by **you**, a **relative**, or a **rated resident** or furnished or available for the regular use of **you**, a **relative**, or a **rated resident**. However, this shall not apply to a **covered auto** when coverage is denied under Part I - Liability To Others of this policy because of the exclusion of **bodily injury** to **you** or a **relative**, if the **bodily injury** results from operation of the **covered auto** by a person other than **you**, a **relative**, or a **rated resident**;
  - b. operated on rails or crawler treads;
  - c. designed mainly for use off public roads, while not on public roads;
  - d. while located for use as a residence or premises; or
  - e. that is a **covered auto**. However, this shall not apply when coverage is denied under Part I - Liability To Others of this policy because of the exclusion of **bodily injury** to **you** or a **relative**, if the **bodily injury** results from operation of the **covered auto** by a person other than **you**, a **relative**, or a **rated resident**.

**EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART III.**

Coverage under this Part III will not apply:

1. to **bodily injury** sustained by any person while using or **occupying**:
  - a. a **covered auto** while being used:
    - (i) to carry persons or property for compensation or a fee; or
    - (ii) for retail or wholesale delivery, including, but not limited to, the pickup, transport, or delivery of magazines, newspapers, mail, or food.This exclusion does not apply to shared-expense car pools; or
  - b. a motor vehicle that is owned by **you**, a **relative**, or a **rated resident**. This exclusion does not apply:
    - (i) to a **covered auto** that is insured under this Part III; or
    - (ii) if **you** have elected stacked uninsured motorist coverage;
2. to **bodily injury** sustained by **you**, a **relative**, or a **rated resident** while using any vehicle, other than a **covered auto**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
3. directly or indirectly to benefit any insurer or self-insurer under any of the following or similar laws:
  - a. workers' compensation law; or
  - b. disability benefits law;
4. to any punitive or exemplary damages; or
5. to **bodily injury** sustained by any person if that person or the legal representative of that person settles without **our** written consent.

## LIMITS OF LIABILITY

1. If **you** have elected stacked uninsured motorist coverage, the following limits of liability shall apply:

If **your declarations page** shows a split limit:

- a. the amount shown for “each person” is the most **we** will pay for all damages due to **bodily injury** to one person. When the limits of two or more **covered autos** are stacked, the most **we** will pay for all damages due to **bodily injury** to one person is the sum of the “each person” limits for each **covered auto** shown on the **declarations page**; and
- b. subject to the “each person” limit, the amount shown for “each accident” is the most **we** will pay for all damages due to **bodily injury** sustained by two or more persons in any one accident. When the limits of two or more **covered autos** are stacked, the most **we** will pay for all damages due to **bodily injury** to two or more persons in any one accident is the sum of the “each accident” limits for each **covered auto** shown on the **declarations page**.

If the **declarations page** shows that “combined single limit” or “CSL” applies, the amount shown is the most **we** will pay for the total of all damages resulting from any one accident. When the limits of two or more **covered autos** are stacked, the most **we** will pay for the total of all damages resulting from any one accident is the sum of the combined single limits for each **covered auto** shown on the **declarations page**.

2. If **you** have elected non-stacked uninsured motorist coverage, the following limits of liability shall apply:

If **your declarations page** shows a split limit:

- a. the amount shown for “each person” is the most **we** will pay for all damages due to **bodily injury** to one person; and
- b. subject to the “each person” limit, the amount shown for “each accident” is the most **we** will pay for all damages due to **bodily injury** sustained by two or more persons in any one accident.

If the **declarations page** shows that “combined single limit” or “CSL” applies, the amount shown is the most **we** will pay for the total of all damages resulting from any one accident. However, without changing this total limit of liability, **we** will comply with any law that requires **us** to provide any separate limits.

The limit of liability shown on the **declarations page** for Uninsured Motorist Coverage is the most **we** will pay regardless of the number of:

- a. claims made;
- b. **covered autos**;
- c. **insured persons**;
- d. lawsuits brought;

- e. vehicles involved in the accident; or
  - f. premiums paid.
3. Whether **you** have elected stacked uninsured motorist coverage or non-stacked uninsured motorist coverage, the following provisions shall apply:

The "each person" limit of liability includes the total of all claims made for **bodily injury** to an **insured person** and all claims of others derived from such **bodily injury**, including, but not limited to, emotional injury or mental anguish resulting from the **bodily injury** of another or from witnessing the **bodily injury** to another, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death, if recoverable under the applicable law.

In determining the amount payable under this Part III, the amount of damages that an **insured person** is entitled to recover for **bodily injury** will be reduced by:

- a. all sums paid because of **bodily injury** by any persons or organizations that may be legally responsible;
- b. all sums paid or payable under Part I - Liability To Others;
- c. all sums paid or payable under Part II(A) - Personal Injury Protection Coverage or Part II(B) - Medical Payments Coverage;
- d. all sums paid or payable because of **bodily injury** under any of the following or similar laws:
  - (i) workers' compensation law; or
  - (ii) disability benefits law;
- e. all sums paid or payable as personal injury protection benefits; and
- f. the amount of the limits of the uninsured motorist's liability policy.

No one will be entitled to duplicate payments for the same elements of damages.

#### **OTHER INSURANCE**

1. If **you** have elected stacked uninsured motorist coverage, the following shall apply:

If there is other uninsured motorist coverage that applies to the accident on a primary basis, **we** will pay only **our** proportionate share of the damages.

Any insurance **we** provide with respect to a vehicle that is not a **covered auto** will be excess over any other uninsured motorist coverage.

2. If **you** have elected non-stacked uninsured motorist coverage, the following shall apply:

If there is other uninsured motorist coverage that applies to the accident on a primary basis, the total benefits payable to any one person will not exceed the maximum benefits payable by the policy with the highest limit for uninsured motorist coverage. **We** will pay only **our** proportionate share of the damages. This applies no matter how many autos or auto policies may be involved whether written by **us** or another company.

Any insurance **we** provide with respect to a vehicle that is not a **covered auto** will be excess over any other uninsured motorist coverage.

If an **insured person** sustains **bodily injury** while **occupying** a motor vehicle, other than a **covered auto**, the **insured person** may elect to receive excess uninsured motorist benefits under only one policy of insurance under which the **insured person** is an insured. If the **insured person** elects to receive excess uninsured motorist benefits under a policy of insurance other than this policy, **we** will not pay any uninsured motorist benefits due to **bodily injury** to the **insured person**.

If an **insured person** sustains **bodily injury** while not **occupying** a motor vehicle, the **insured person** may elect to receive uninsured motorist benefits under only one policy of insurance under which the **insured person** is an insured. If the **insured person** elects to receive uninsured motorist benefits under a policy of insurance other than this policy, **we** will not pay any uninsured motorist benefits due to **bodily injury** to the **insured person**.

#### **TRUST AGREEMENT**

If an **insured person** elects to receive or receives uninsured motorist benefits under this policy and subsequently elects to receive or receives uninsured motorist benefits under a policy of insurance other than this policy, that **insured person** will hold the amount of those benefits in trust pending a determination regarding whether **we** are entitled to reimbursement of all or a portion of **our** uninsured motorist benefit payments.

#### **PART IV - DAMAGE TO A VEHICLE**

##### **INSURING AGREEMENT - COLLISION COVERAGE**

If **you** pay the premium for this coverage, **we** will pay for sudden, direct, and accidental loss to a:

1. **covered auto**, including an attached **trailer**; or
2. **non-owned auto**;

and its **custom parts or equipment**, resulting from **collision**.

In addition, **we** will pay the reasonable cost to replace any child safety seat damaged in an accident to which this coverage applies.

##### **INSURING AGREEMENT - COMPREHENSIVE COVERAGE**

If **you** pay the premium for this coverage, **we** will pay for sudden, direct, and accidental loss to a:

1. **covered auto**, including an attached **trailer**; or
2. **non-owned auto**;

and its **custom parts or equipment**, that is not caused by **collision**.



A loss not caused by **collision** includes:

1. contact with an animal (including a bird);
2. explosion or earthquake;
3. fire;
4. malicious mischief or vandalism;
5. missiles or falling objects;
6. riot or civil commotion;
7. theft or larceny;
8. windstorm, hail, water, or flood; or
9. breakage of glass not caused by **collision**.

In addition, **we** will pay for:

1. reasonable transportation expenses incurred by **you** if a **covered auto** is stolen; and
2. loss of use damages that **you** are legally liable to pay if a **non-owned auto** is stolen.

A combined maximum of \$900, not exceeding \$30 per day, will apply to these additional benefits. The additional benefit for transportation expenses will not apply if **you** purchased Rental Reimbursement Coverage for the stolen **covered auto**.

Coverage for transportation expenses and loss of use damages begins 48 hours after **you** report the theft to **us** and ends the earliest of:

1. when the **auto** has been recovered and returned to **you** or its owner;
2. when the **auto** has been recovered and repaired;
3. when the **auto** has been replaced; or
4. 72 hours after **we** settle the loss if the **auto** is deemed by **us** to be a total loss.

**We** must receive written proof of transportation expenses and loss of use damages.

#### **INSURING AGREEMENT – PET INJURY COVERAGE**

If **you** have purchased Collision coverage for at least one **covered auto** under **your** policy, Pet Injury coverage is added to Part IV – Damage To A Vehicle.

If **your pet** sustains injury or death while inside a **covered auto** or **non-owned auto** at the time of a loss covered under Collision or Comprehensive coverage, **we** will provide:

1. up to \$1,000 for reasonable and customary veterinary fees incurred by **you**, a **relative**, or a **rated resident** if **your pet** is injured in, or as a direct result of, the covered loss; or
2. a \$1,000 death benefit if **your pet** dies in, or as a direct result of, the covered loss, less any payment **we** made toward veterinary expenses for **your pet**.

In the event of a covered loss due to the theft of a **covered auto** or **non-owned auto**, **we** will provide the death benefit provided **your pet** is inside that auto at the time of the theft and **your pet** is not recovered.

**INSURING AGREEMENT - FULL COMPREHENSIVE WINDOW GLASS COVERAGE**

If **you** pay the premium for Comprehensive Coverage, **we** will pay for sudden, direct, and accidental loss to a windshield on a **covered vehicle** that is not caused by a **collision**, without applying a deductible.

**INSURING AGREEMENT - ADDITIONAL CUSTOM PARTS OR EQUIPMENT COVERAGE**

**We** will pay for sudden, direct, and accidental loss to **custom parts or equipment** on a **covered auto** for which this coverage has been purchased. This coverage applies only if **you** have purchased both Comprehensive Coverage and Collision Coverage for that **covered auto** and the loss is covered under one of those coverages. This coverage applies in addition to any coverage automatically provided for **custom parts or equipment** under Comprehensive Coverage or Collision Coverage.

**INSURING AGREEMENT - RENTAL REIMBURSEMENT COVERAGE**

**We** will reimburse rental charges incurred when **you** rent an **auto** from a rental agency or auto repair shop due to a loss to a **covered auto** for which Rental Reimbursement Coverage has been purchased. This coverage applies only if **you** have purchased both Comprehensive Coverage and Collision Coverage for that **covered auto** and the loss is covered under one of those coverages.

Additional fees or charges for insurance, damage waivers, optional equipment, fuel, or accessories are not covered.

This coverage is limited to the each day limit shown on the **declarations page** for a maximum of 30 days.

If Rental Reimbursement Coverage applies, no other coverage under this policy for rental expenses will apply.

Rental charges will be reimbursed beginning:

1. when the **covered auto** cannot be driven due to a loss; or
2. if the **covered auto** can be driven, when **you** deliver the **covered auto** to an auto repair shop or one of **our** Claims Service Centers for repairs due to the loss;

and ending the earliest of:

1. when the **covered auto** has been returned to **you**;
2. when the **covered auto** has been repaired;
3. when the **covered auto** has been replaced;
4. 72 hours after **we** settle the loss if the **covered auto** is deemed by **us** to be a total loss; or
5. when **you** incur 30 days worth of rental charges.

**You** must provide **us** written proof of **your** rental charges to be reimbursed.

#### INSURING AGREEMENT - LOAN/LEASE PAYOFF COVERAGE

If **you** pay the premium for this coverage, and the **covered auto** for which this coverage was purchased is deemed by **us** to be a total loss, **we** will pay, in addition to any amounts otherwise payable under this Part IV, the difference between:

1. the actual cash value of the **covered auto** at the time of the total loss; and
2. any greater amount the owner of the **covered auto** is legally obligated to pay under a written loan or lease agreement to which the **covered auto** is subject at the time of the total loss, reduced by:
  - a. unpaid finance charges or refunds due to the owner for such charges;
  - b. excess mileage charges or charges for wear and tear;
  - c. charges for extended warranties or refunds due to the owner for extended warranties;
  - d. charges for credit insurance or refunds due to the owner for credit insurance;
  - e. past due payments and charges for past due payments; and
  - f. collection or repossession expenses.

However, **our** payment under this coverage shall not exceed the limit of liability shown on the **declarations page**. The limit of liability is a percentage of the actual cash value of the **covered auto** at the time of the loss.

This coverage applies only if **you** have purchased both Comprehensive Coverage and Collision Coverage for that **covered auto** and the loss is covered under one of those coverages.

#### ADDITIONAL DEFINITIONS

When used in this Part IV:

1. "**Collision**" means the upset of a vehicle or its impact with another vehicle or object.
2. "**Custom parts or equipment**" means equipment, devices, accessories, enhancements, and changes, other than those that are offered by the manufacturer specifically for that **auto** model, or that are installed by the **auto** dealership as part of the original sale of a new **auto**, that:
  - a. are permanently installed or attached; and
  - b. alter the appearance or performance of an **auto**.
3. "**Mechanical parts**" means operational parts on a vehicle that wear out over time or have a finite useful life or duration typically shorter than the life of the vehicle as a whole. **Mechanical parts** do not include external crash parts, wheels, paint, or windshields and other glass.
4. "**Non-owned auto**" means an **auto** that is not owned by or furnished or available for the regular use of **you**, a **relative**, or a **rated resident** while in the custody of or being operated by **you**, a **relative**, or a **rated resident** with the permission of the owner of the **auto** or the person in lawful possession of the **auto**.
5. "**Your pet**" means any dog or cat owned by **you**, a **relative**, or a **rated resident**.

**EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART IV.**

Coverage under this Part IV will not apply for loss:

1. to any vehicle while being used:
  - a. to carry persons or property for compensation or a fee; or
  - b. for retail or wholesale delivery, including, but not limited to, the pickup, transport, or delivery of magazines, newspapers, mail, or food.This exclusion does not apply to shared-expense car pools;
2. to a **non-owned auto** while being maintained or used by a person while employed or engaged in any **auto business**;
3. to any vehicle resulting from, or sustained during practice or preparation for:
  - a. any pre-arranged or organized racing, stunting, speed, or demolition contest or activity; or
  - b. any driving activity conducted on a permanent or temporary racetrack or racecourse;
4. to any vehicle for which insurance:
  - a. is afforded under a nuclear energy liability insurance contract; or
  - b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
5. to any vehicle caused by an intentional act committed by or at the direction of **you**, a **relative**, a **rated resident**, or the owner of a **non-owned auto** even if the actual damage is different than that which was intended or expected. This exclusion precludes coverage for any person insured by this policy regardless of whether the person seeking coverage participated in the intentional act;
6. to a **covered auto** while it is leased or rented to others or given in exchange for compensation. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**;
7. due to destruction or confiscation by governmental or civil authorities of any vehicle because **you**, a **relative**, or a **rated resident** engaged in illegal activities;
8. to any vehicle that is due and confined to:
  - a. wear and tear;
  - b. freezing;
  - c. mechanical, electrical, or electronic breakdown or failure; or
  - d. road damage to tires.This exclusion does not apply if the damage results from the theft of a vehicle;
9. to portable equipment, devices, accessories, and any other personal effects that are not permanently installed. This includes, but is not limited to:
  - a. tapes, compact discs, cassettes, DVDs, and other recording or recorded media;
  - b. any case or other container designed for use in storing or carrying tapes, compact discs, cassettes, DVDs, or other recording or recorded media;
  - c. any device used for the detection or location of radar, laser, or other speed measuring equipment or its transmissions; and
  - d. CB radios, telephones, two-way mobile radios, DVD players, personal computers, personal digital assistants, or televisions;

10. to any vehicle caused directly or indirectly by:
  - a. war (declared or undeclared) or civil war;
  - b. warlike action by any military force of any government, sovereign or other authority using military personnel or agents. This includes any action taken to hinder or defend against an actual or expected attack; or
  - c. insurrection, rebellion, revolution, usurped power, or any action taken by a governmental authority to hinder or defend against any of these acts;
11. to any vehicle caused directly or indirectly by any accidental or intentional discharge, dispersal, or release of radioactive or nuclear material; or
12. to any vehicle caused by, or reasonably expected to result from, a criminal act or omission of **you**, a **relative**, a **rated resident**, or the owner of a **non-owned auto**. This exclusion applies regardless of whether **you**, a **relative**, a **rated resident**, or the owner of the **non-owned auto** is actually charged with, or convicted of, a crime. This exclusion precludes coverage for any person insured by this policy regardless of whether the person seeking coverage participated in the criminal act or omission. This exclusion does not apply to moving traffic violations.

#### LIMITS OF LIABILITY

1. The limit of liability for loss to a **covered auto**, **non-owned auto**, or **custom parts or equipment** is the lowest of:
  - a. the actual cash value of the stolen or damaged property at the time of the loss reduced by the applicable deductible;
  - b. the amount necessary to replace the stolen or damaged property reduced by the applicable deductible;
  - c. the amount necessary to repair the damaged property to its pre-loss physical condition reduced by the applicable deductible; or
  - d. the Stated Amount shown on the **declarations page** for that **covered auto**;However, the most **we** will pay for loss to:
  - a. **custom parts or equipment** is \$1,000 unless **you** purchased Additional Custom Parts or Equipment Coverage ("ACPE"). If **you** purchased ACPE, the most **we** will pay is \$1,000 plus the amount of ACPE **you** purchased.
  - b. a **trailer** is the limit of liability shown on the **declarations page** for that **trailer**. If the **trailer** is not shown on the **declarations page**, the limit of liability is \$500.
2. Payments for loss to a **covered auto**, **non-owned auto**, or **custom parts or equipment** are subject to the following provisions:
  - a. If coverage applies to a **non-owned auto**, **we** will provide the broadest coverage applicable to any **covered auto** shown on the **declarations page**.
  - b. If **you** have elected a Stated Amount for a **covered auto**, the Stated Amount is the most **we** will pay for all loss to that **covered auto**, including its **custom parts or equipment**.

- c. Coverage for **custom parts or equipment** will not cause **our** limit of liability for loss to an **auto** under this Part IV to be increased to an amount in excess of the actual cash value of the **auto**, including its **custom parts or equipment**.
- d. In determining the amount necessary to repair damaged property to its pre-loss physical condition, the amount to be paid by **us**:
  - (i) will not exceed the prevailing competitive labor rates charged in the area where the property is to be repaired and the cost of repair or replacement parts and equipment, as reasonably determined by **us**; and
  - (ii) will be based on the cost of repair or replacement parts and equipment which may be new, reconditioned, remanufactured, or used, including, but not limited to:
    - (a) original manufacturer parts or equipment; and
    - (b) nonoriginal manufacturer parts or equipment.
- e. To determine the amount necessary to repair or replace the damaged property as referred to in subsection 1, the total cost of necessary repair or replacement may be reduced by unrepaired prior damage. Unrepaired prior damage includes broken, cracked, or missing parts; rust; dents; scrapes; gouges; and peeling paint. The reduction for unrepaired prior damage is the cost of labor, parts, and materials necessary to repair or replace damage, deterioration, defects, or wear and tear on exterior body parts, windshields and other glass, wheels, and paint, that existed prior to the accident and that is eliminated as a result of the repair or replacement of property damaged in the loss.
- f. To determine the amount necessary to repair or replace the damaged property as referred to in subsection 1, an adjustment may be made for betterment or depreciation and physical condition on:
  - (i) batteries;
  - (ii) tires;
  - (iii) engines and transmissions, if the engine has greater than 80,000 miles; and
  - (iv) any other **mechanical parts** that are nonfunctioning or inoperative. **We** will not make an adjustment for the labor costs associated with the replacement or repair of these parts.
- g. The actual cash value is determined by the market value, age, and condition of the vehicle at the time the loss occurs.
- 3. No deductible will apply to a loss to window glass when the glass is repaired instead of replaced.
- 4. Duplicate recovery for the same elements of damages is not permitted.
- 5. The following Limits of Liability apply to Pet Injury coverage:
  - a. The most **we** will pay for all damages in any one loss is a total of \$1,000 regardless of the number of dogs or cats involved.
  - b. If **your pet** dies in, or as a direct result of, a covered loss, **we** will provide a death benefit of \$1,000, less any payment **we** made toward veterinary expenses for **your pet**.
  - c. No deductible shall apply to this coverage.

### **PAYMENT OF LOSS**

**We** may, at **our** option:

1. pay for the loss in money; or
2. repair or replace the damaged or stolen property.

At **our** expense, **we** may return any recovered stolen property to **you** or to the address shown on the **declarations page**, with payment for any damage resulting from the theft. **We** may keep all or part of the property at the agreed or appraised value.

**We** may settle any loss with **you** or the owner or lienholder of the property.

### **NO BENEFIT TO BAILEE**

Coverage under this Part IV will not directly or indirectly benefit any carrier or other bailee for hire.

### **LOSS PAYABLE CLAUSE**

Payment under this Part IV for a loss to a **covered auto** will be made according to **your** interest and the interest of any lienholder shown on the **declarations page** or designated by **you**. At **our** option, payment may be made to both jointly, or to either separately. However, if the **covered auto** is not a total loss, **we** may make payment to **you** and the repairer of the **auto**.

The lienholder's interest will not be protected:

1. where fraud, misrepresentation, material omission, or intentional damage resulting in a denial of coverage by **us** has been committed by or at the direction of **you** or any person seeking coverage; or
2. where the loss is otherwise not covered under the terms of this policy. If this policy is cancelled, nonrenewed or voided, the interest of any lienholder under this agreement will also terminate.

### **OTHER SOURCES OF RECOVERY**

If other sources of recovery also cover the loss, **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 for a **non-owned auto**, or **trailer** not shown on the **declarations page**, will be excess over any other collectible source of recovery including, but not limited to:

1. any coverage provided by the owner of the **non-owned auto** or **trailer**;
2. any other applicable physical damage insurance; and
3. any other source of recovery applicable to the loss.

### **APPRAISAL**

If **we** cannot agree with **you** on the amount of a loss, then **we** or **you** may demand an appraisal of the loss. Within 30 days of any demand for an appraisal, each party shall appoint a competent and impartial appraiser and shall notify the other party of that ap-

praiser's identity. The appraisers will determine the amount of loss. If they fail to agree, the disagreement will be submitted to an impartial umpire chosen by the appraisers, who is both competent and a qualified expert in the subject matter. If the two appraisers are unable to agree upon an umpire within 15 days, **we** or **you** may request that a judge of a court of record, in the county where **you** reside, select an umpire. The appraisers and umpire will determine the amount of loss. The amount of loss agreed to by both appraisers, or by one appraiser and the umpire, will be binding. **You** will pay **your** appraiser's fees and expenses. **We** will pay **our** appraiser's fees and expenses. All other expenses of the appraisal, including payment of the umpire if one is selected, will be shared equally between **us** and **you**. Neither **we** nor **you** waive any rights under this policy by agreeing to an appraisal.

#### **PART V - ROADSIDE ASSISTANCE COVERAGE**

##### **INSURING AGREEMENT**

If **you** pay the premium for this coverage, **we** will pay for **our** authorized service representative to provide the following services when necessary due to a **covered emergency**:

1. towing of a **covered disabled auto** to the nearest qualified repair facility; and
2. labor on a **covered disabled auto** at the place of disablement.

If a **covered disabled auto** is towed to any place other than the nearest qualified repair facility, **you** will be responsible for any additional charges incurred.

##### **ADDITIONAL DEFINITIONS**

When used in this Part V:

1. "**Covered disabled auto**" means a **covered auto** for which this coverage has been purchased that sustains a **covered emergency**.
2. "**Covered emergency**" means a disablement that is a result of:
  - a. mechanical or electrical breakdown;
  - b. battery failure;
  - c. insufficient supply of fuel, oil, water, or other fluid;
  - d. flat tire;
  - e. lock-out; or
  - f. entrapment in snow, mud, water, or sand, within 100 feet of a road or highway.

##### **EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART V.**

Coverage under this Part V will not apply to:

1. more than three **covered emergencies** for any single **covered auto** in a six-month period;
2. the cost of purchasing parts, fluid, lubricants, fuel, or replacement keys, or the labor to make replacement keys;



3. installation of products or material not related to the disablement;
4. labor not related to the disablement;
5. labor on a **covered disabled auto** for any time period in excess of 60 minutes per disablement;
6. towing or storage related to impoundment, abandonment, illegal parking, or other violations of law;
7. assistance with jacks, levelers, airbags, or awnings;
8. towing from a service station, garage, or repair shop;
9. labor or repair work performed at a service station, garage, or repair shop;
10. auto storage charges;
11. a second service call or tow for a single disablement;
12. disablement that occurs on roads not regularly maintained, sand beaches, open fields, or areas designated as not passable due to construction, weather, or earth movement;
13. mounting or removing of snow tires or chains;
14. tire repair;
15. disablement that results from an intentional or willful act or action by **you**, a **relative**, a **rated resident**, or the operator of a **covered disabled auto**, with the intent of causing such disablement; or
16. a trailer.

#### **UNAUTHORIZED SERVICE PROVIDER**

When service is rendered by a provider in the business of providing roadside assistance and towing services, other than one of **our** authorized service representatives, **we** will pay only reasonable charges, as determined by **us**, for:

1. towing of a **covered disabled auto** to the nearest qualified repair facility; and
2. labor on a **covered disabled auto** at the place of disablement; which is necessary due to a **covered emergency**.

#### **OTHER INSURANCE**

Any coverage provided under this Part V for service rendered by an unauthorized service provider will be excess over any other collectible insurance or towing protection coverage.

#### **PART VI - DUTIES IN CASE OF AN ACCIDENT OR LOSS**

For coverage to apply under this policy, **you** or the person seeking coverage must promptly report each accident or loss even if **you** or the person seeking coverage is not at fault. **You** or the person seeking coverage must provide **us** with all accident/loss information including time, place, and how the accident or loss happened. **You** or the person seeking coverage must also obtain and provide **us** the names and addresses of all persons involved in the accident or loss, the names and addresses of any witnesses, and the license plate numbers of the vehicles involved.

If **you** or the person seeking coverage cannot identify the owner or operator of a vehicle involved in the accident, or if theft or vandalism has occurred, **you** or the person seeking coverage must notify the police within 24 hours or as soon as practicable.

A person seeking coverage must:

1. cooperate with **us** in any matter concerning a claim or lawsuit;
2. provide any written proof of loss **we** may reasonably require;
3. allow **us** to take signed and recorded statements, including sworn statements and examinations under oath, which **we** may conduct outside the presence of **you** or any other person claiming coverage, and answer all reasonable questions **we** may ask and provide any documents, records, or other tangible items that **we** request, when, where, and as often as **we** may reasonably require;
4. promptly call to notify **us** about any claim or lawsuit and send **us** any and all legal papers relating to the claim or suit;
5. attend hearings and trials as **we** require;
6. take reasonable steps after a loss to protect the **covered auto**, or any other vehicle for which coverage is sought, from further loss. **We** will pay reasonable expenses incurred in providing that protection. If failure to provide such protection results in further loss, any additional damages will not be covered under this policy;
7. allow **us** to have the damaged **covered auto**, or any other damaged vehicle for which coverage is sought, inspected and appraised before its repair or disposal;
8. submit to medical examinations at **our** expense by doctors **we** select as often as **we** may reasonably require; and
9. authorize **us** to obtain medical and other records.

## **PART VII - GENERAL PROVISIONS**

### **POLICY PERIOD AND TERRITORY**

This policy applies only to accidents and losses occurring during the policy period shown on the **declarations page** and that occur within a state, territory, or possession of the United States of America, or a province or territory of Canada, or while a **covered auto** or **trailer** shown on the **declarations page** is being transported between their ports.

### **CHANGES**

This policy contract, **your** insurance application (which is made a part of this policy as if attached hereto), the **declarations page**, and all endorsements to this policy issued by **us**, contain all the agreements between **you** and **us**. Subject to the following, the terms of this policy may not be changed or waived except by an endorsement issued by **us**.

The premium for this policy is based on information **we** received from **you** and other sources. **You** agree to cooperate with **us** in determining if this information is correct and complete, and to promptly notify **us** if it changes during the policy period. If this information is incorrect, incomplete, or changes during the policy

period, **you** agree that **we** may adjust **your** policy information and premium accordingly. Changes that may result in a premium adjustment are contained in **our** rates and rules. These include, but are not limited to, **you** or a **relative** obtaining a driver's license or operator's permit, or changes in:

1. the number, type, or use classification of **covered autos**;
2. the persons who regularly operate a **covered auto**;
3. the persons of legal driving age residing in **your** household;
4. the residents in **your** household;
5. an operator's marital status;
6. **your** mailing address and **your** residence address;
7. the principal garaging address of any **covered auto**;
8. coverage, deductibles, or limits of liability; or
9. rating territory or discount eligibility.

The coverage provided in **your** policy may be changed only by the issuance of a new policy or an endorsement by **us**. However, if during the policy period **we** broaden any coverage afforded under the current edition of **your** policy without additional premium charge, that change will automatically apply to **your** policy as of the date the coverage change is implemented in **your** state.

If **you** ask **us** to delete a vehicle from this policy, no coverage will apply to that vehicle as of the date and time **you** ask **us** to delete it.

#### **DUTY TO REPORT CHANGES**

**You** must promptly report to **us** all changes, including additions and deletions, in policy information. Further, **you** must report to **us** certain changes no later than 30 days after the change occurs. These are changes to:

1. **your** mailing address or **your** residence address;
2. the principal garaging address for a **covered auto**;
3. the residents in **your** household;
4. the persons of legal driving age residing in **your** household;
5. the persons who regularly operate **covered auto**;
6. an operator's marital status; or
7. the driver's license or operator's permit status of **you**, a **relative**, or a **rated resident**.

**Your** failure to comply with this duty, where material to the risk of loss, may result in **our** denial of coverage for a claim.

#### **SETTLEMENT OF CLAIMS**

**We** may use estimating, appraisal, or injury evaluation systems to assist **us** in adjusting claims under this policy and to assist **us** in determining the amount of damages, expenses, or loss payable under this policy. Such systems may be developed by **us** or a third party and may include computer software, databases, and specialized technology.

#### **TERMS OF POLICY CONFORMED TO STATUTES**

If any provision of this policy fails to conform to the statutes of the state listed on **your** application as **your** residence, the provision shall be deemed amended to conform to such statutes. All other provisions shall be given full force and effect. Any disputes as to the coverages provided or the provisions of this policy shall be governed by the law of the state listed on **your** application as **your** residence.

#### **TRANSFER OF INTEREST**

The rights and duties under this policy may not be transferred without **our** written consent, except for an assignment of **medical benefits** under Part II(A) – Personal Injury Protection and only as set forth in that section. However, if a named insured shown on the **declarations page** dies, this policy will provide coverage until the end of the policy period for the legal representative of the named insured, while acting as such, and for persons covered under this policy on the date of the named insured's death.

#### **FRAUD OR MISREPRESENTATION**

This policy was issued in reliance upon the accuracy and truthfulness of information provided on **your** insurance application. **We** may void this policy at any time, including after the occurrence of an accident or loss, if **you**:

1. made incorrect or untrue statements or representations to **us** with regard to any material fact or circumstance;
  2. concealed or misrepresented any material fact or circumstance; or
  3. engaged in fraudulent conduct;
- at the time of application. This means that **we** will not be liable for any claims or damages that would otherwise be covered.

Any changes **we** make at **your** request to this policy after inception will be made in reliance upon information **you** provide. If **you**:

1. make incorrect statements or representations to **us** with regard to any material fact or circumstance;
2. conceal or misrepresent any material fact or circumstance; or
3. engage in fraudulent conduct;

in connection with a requested change, **we** may void the policy or reform it as it existed immediately prior to the requested change. **We** may do this at any time, including after the occurrence of an accident or loss.

When **we** have not voided or reformed the policy, **we** may still deny coverage for an accident or loss if **you**, in connection with the policy application, in connection with any requested change, or at any time during the policy period, have concealed or misrepresented any material fact or circumstance or engaged in fraudulent conduct and that concealment, misrepresentation, or fraudulent conduct was material to a risk **we** assumed.

**We** may deny coverage for an accident or loss if **you** or a person seeking coverage has concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, in connection with the occurrence of a loss, or the presentation or settlement of a claim.

#### **PAYMENT OF PREMIUM AND FEES**

If **your** initial premium payment is by check, draft, electronic funds transfer, or similar form of remittance, coverage under this policy is conditioned on payment to **us** by the financial institution. If the financial institution upon presentment does not honor the check, draft, electronic funds transfer, or similar form of remittance, this policy may, at **our** option, be deemed void from its inception, unless the non-payment is cured within the earlier of:

1. 5 days after actual notice by certified mail is received by **you**; or
2. 15 days after notice is sent to **you** by certified or registered mail.

If **we** deem the policy void from its inception, **we** will not be liable under this policy for any claims or damages that would otherwise be covered if the check, draft, electronic funds transfer, or similar form of remittance had been honored by the financial institution. Any action by **us** to present the remittance for payment more than once shall not affect **our** right to void this policy.

In addition to premium, fees may be charged on **your** policy. **We** may charge fees for installment payments, late payments, and other transactions. Payments made on **your** policy will be applied first to fees, then to premium due.

If a required premium is not paid when due, or by the end of any grace period if **we** agree to grant a grace period, this policy will lapse as of the due date of the overdue premium. If **we** offer to renew or continue this policy, and **you** fail to pay the required premium when due, this policy will automatically terminate at the end of the policy period unless **we** elect to reinstate the policy without a lapse. **Your** failure to pay the required renewal premium means that **you** have declined **our** offer.

#### **CANCELLATION**

**You** may cancel this policy during the policy period by calling or writing **us** and stating the future date **you** wish the cancellation to be effective. However, if **your** policy includes personal injury protection and property damage liability, **you** may not cancel **your** policy during the first two months immediately following the effective date of the initial policy period except:

1. upon total destruction of the **covered auto**;
2. upon transfer of ownership of the **covered auto**;
3. after the purchase of another policy or binder covering the **covered auto**; or
4. as provided in the Rate Increases provision under this Part VII.

**We** may cancel this policy during the policy period by mailing a notice of cancellation to the named insured shown on the **declarations page** at the last known address appearing in **our** records.

**We** will give at least 10 days notice of cancellation if the policy is cancelled for nonpayment of premium.

**We** will give at least 45 days notice of cancellation in all other cases.

During the first 60 days immediately following the effective date of the initial policy period, **we** may cancel **your** policy for nonpayment of premium if the reason for the cancellation is the issuance of a check for the premium that is dishonored for any reason or for any other type of premium payment that was subsequently determined to be rejected or invalid. If **your** policy has been in effect for less than 60 days, **we** may also cancel for reasons other than nonpayment of premium.

After this policy is in effect for 60 days, or if this is a renewal or continuation policy, **we** may cancel only for one or more of the following reasons:

1. nonpayment of premium;
2. material misrepresentation or fraud by **you** with respect to any material fact in the procurement, continuation, change, or renewal of this policy;
3. material misrepresentation or fraud in the submission of any claim under this policy; or
4. the driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates a **covered auto** has been under suspension or revocation during the initial policy period or the 180 days immediately preceding its effective date, or if the policy is a renewal, during the renewal policy period.

United States postal proof of mailing or certified or registered mailing will be sufficient proof of notice. If this policy is cancelled, coverage will not be provided as of the effective date and time shown in the notice of cancellation. For purposes of cancellation, this policy is neither severable nor divisible. Any cancellation will be effective for all coverages for all persons and all vehicles.

#### **CANCELLATION REFUND**

Upon cancellation, **you** may be entitled to a premium refund. However, **our** making or offering of a refund is not a condition of cancellation.

If this policy is cancelled, any refund due will be computed on a daily pro rata basis.

If **we** cancel this policy or if the cancellation is for nonpayment of premium, any refund due will be mailed within 15 days of the effective date of the policy cancellation.

If **you** cancel **your** policy, or if the named insured is a service member, as defined in Florida Statute §250.01, and he or she cancels due to being called to active duty

or being transferred by the United States Armed Forces to a location where the insurance is not required, any refund due will be mailed within 30 days of the effective date of the policy cancellation. **We** may require a service member to present **us** proof as outlined in Florida Statute §627.7283.

#### **RATE INCREASES**

If **we** determine that, in accordance with **our** rate filings and the applicable laws of Florida, **you** have been charged a premium that is incorrect for the coverage set forth in **your** application, **we** will provide notice to **you** of the amount of additional premium due and that **you** have the following options:

1. **you** have a period of 10 days, or longer if specified by **us**, from receipt of the notice to pay the additional amount of premium due and maintain **your** policy in force;
2. **you** have a period of 10 days, or longer if specified by **us**, from receipt of the notice to cancel the policy and demand a refund of any unearned premiums; or
3. if **you** fail to timely respond to the notice, **we** shall cancel the policy and return any unearned premium to **you**. The date of the cancellation will be stated in the notice and will not be less than 14 days after the date of the notice.

Any refund due under this provision will be calculated on a daily pro rata basis.

#### **NONCANCELABLE POLICY**

If this policy is issued for the purpose of providing proof of compliance with Florida Statute §627.7275(2)(a), as amended, in order to reinstate the named insured's driving privileges following suspension or revocation due to failure to maintain the required security, the following provisions shall apply when **our** underwriting is completed, or once this policy is in effect for 30 days, whichever comes first:

1. the policy may not be cancelled for any reason for the remainder of the policy period;
2. no refund of premium shall be allowed; and
3. the policy may not be changed during the policy period for any reason that materially increases the risk, including, but not limited to, changing to a higher risk vehicle, adding vehicles, adding new drivers, or moving to a different rating territory. If there is a material change in the risk **we** have insured against, **you** must obtain a replacement noncancelable policy.

#### **NONRENEWAL**

If neither **we** nor one of **our** affiliates offers to renew or continue this policy, **we** will mail notice of nonrenewal to the named insured shown on the **declarations page** at the last known address appearing in **our** records. United States postal proof of mailing or certified or registered mailing will be sufficient proof of notice. Notice will be mailed at least 45 days before the end of the policy period.

#### **AUTOMATIC TERMINATION**

If **we** or an affiliate offers to renew or continue this policy and **you** or **your** representative does 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 will mean that **you** have not accepted **our** offer.

If **you** obtain other insurance on a **covered auto**, any similar insurance provided by this policy will terminate as to that **covered auto** on the effective date of the other insurance.

If a **covered auto** is sold or transferred to someone other than **you**, a **relative**, or a **rated resident**, any insurance provided by this policy will terminate as to that **covered auto** on the effective date of the sale or transfer.

#### **LEGAL ACTION AGAINST US**

**We** may not be sued unless there is full compliance with all the terms of this policy.

**We** may not be sued for payment under Part I - Liability To Others until the obligation of an **insured person** under Part I to pay is finally determined either by judgment after trial against that person or by written agreement of the **insured person**, the claimant, and **us**. No one will have any right to make **us** a party to a lawsuit to determine the liability of an **insured person**.

As a condition precedent to filing any legal action for medical payment benefits under Part II(B) – Medical Payments, written notice of intent to initiate litigation must be provided to **us** in accordance with the requirements set forth in the “Demand Letter” provisions of the “Florida Required Personal Injury Protection Benefits” statute. Therefore, **we** may not be sued for payment under Part II(B) unless provisions of the Florida statute have been fully complied with.

If **we** retain salvage, **we** have no duty to preserve or otherwise retain the salvage for any purpose, including evidence for any civil or criminal proceeding.

#### **OUR RIGHTS TO RECOVER PAYMENT**

**We** are entitled to the rights of recovery that the insured person to whom payment was made has against another, to the extent of **our** payment. That insured person may be required to sign documents related to the recovery and must do whatever else **we** require to help **us** exercise those recovery rights, and do nothing after an accident or loss to prejudice those rights. If necessary to protect **our** subrogation rights following an accident, the insured person must file suit against a liable person or organization within the time period specified by the applicable statute of limitations.



However, **we** may not assert rights of recovery against the owner or operator of an "uninsured motor vehicle," as defined in Part III - Uninsured Motorist Coverage, if the insured person under Part III provides **us** with written notice by certified or registered mail at least 30 days prior to entering into a settlement that an offer of settlement has been made by, or on behalf of, the owner or operator of the "uninsured motor vehicle" and **we** do not elect to pay to the insured person an amount equal to the amount offered in full settlement by, or on behalf of, the owner or operator of the "uninsured motor vehicle."

When an insured person has been paid by **us** and also recovers from another, the amount recovered will be held by the insured person in trust for **us** and reimbursed to **us** to the extent of **our** payment. If **we** are not reimbursed, **we** may pursue recovery of that amount directly against that insured person. However, this shall not apply to any payment made by **us** under Part II(A) - Personal Injury Protection Coverage of this policy for personal injury protection benefits required under the Florida Motor Vehicle No-Fault Law, as amended.

If an insured person recovers from another without **our** written consent, the insured person's right to payment under any affected coverage will no longer exist.

If **we** elect to exercise **our** rights of recovery against another, **we** will also attempt to recover any deductible incurred by an insured person under this policy unless **we** are specifically instructed by that person not to pursue the deductible. **We** have no obligation to pursue recovery against another for any loss not covered by this policy.

**We** reserve the right to compromise or settle the deductible and property damage claims against the responsible parties for less than the full amount. **We** also reserve the right to incur reasonable expenses and attorney fees in pursuit of the recovery.

If the total recovery is less than the total of **our** payment and the deductible, **we** will reduce reimbursement of the deductible based on the proportion that the actual recovery bears to the total of **our** payment and the deductible. Reimbursement of the deductible will also be reduced by a proportionate share of collection expenses and attorney fees incurred in connection with these recovery efforts.

These provisions will be applied in accordance with state law.

#### **JOINT AND INDIVIDUAL INTERESTS**

If there is more than one named insured on this policy, any named insured may cancel or change this policy. The action of one named insured will be binding on all persons provided coverage under this policy.

#### **BANKRUPTCY**

The bankruptcy or insolvency of an insured person will not relieve **us** of any obligations under this policy.

## **MEDIATION**

Either **we** or **you** may request mediation of a claim for:

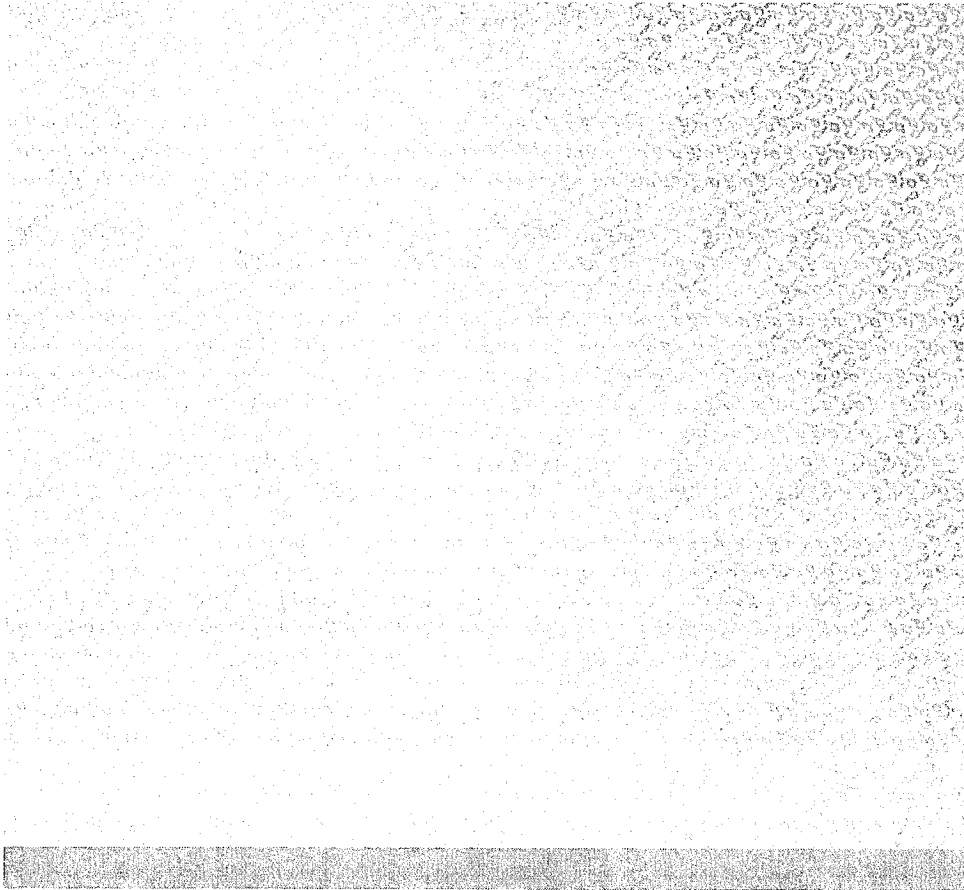
1. **bodily injury** in the amount of \$10,000 or less under Part II(A) - Personal Injury Protection Coverage, Part II(B) - Medical Payments Coverage, or Part III - Uninsured Motorist Coverage of this policy; or
2. **property damage** under Part IV - Damage To A Vehicle.

A demand for mediation shall be filed with the Florida Department of Financial Services on a form which may be obtained from the Department. The demand must state why mediation is being requested and the issue in dispute.

Only one mediation may be requested for each claim unless the parties agree to further mediation. The mediator shall be selected by the Department at random. Each party may reject one mediator selected by the Department, either before or after the other party has rejected a mediator. The mediation shall be conducted informally, and may be held by telephone if agreed to by the mediator and the parties. The date, time, and place of the mediation conference shall be set by the mediator and shall be held no later than 45 days following the demand for mediation. All persons participating in the mediation must have the authority to make a binding decision. Disclosures and statements made during mediation shall not be deemed admissions in any subsequent action or proceeding relating to the claim or cause of action giving rise to the claim. The costs of mediation shall be shared equally by the parties unless the mediator determines that one party has not mediated in good faith. Any lawsuit regarding a mediated dispute must be filed as required under the "Limitations of Actions" statutes or within 60 days after the conclusion of the mediation process, whichever is later.



***PROGRESSIVE***<sup>®</sup>  
*DIRECT Auto*



9611D FL 0713



## Exhibit B

# Vehicle Valuation Report



Progressive Insurance Progressive Group of Insurance Companies (800) 321-9843

## Claim Information

|                                       |                                    |  |  |
|---------------------------------------|------------------------------------|--|--|
| Claim Number<br><b>Redacted 81-01</b> | Policy Number                      | Loss Type<br><b>COLLISION</b>              | Owner<br><b>MICHAEL LOPEZ</b>            |
| Loss Date<br><b>04/27/2017</b>        | Reported Date<br><b>04/27/2017</b> | Valuation Report Date<br><b>05/01/2017</b> | Valuation Report ID<br><b>1006749222</b> |
|                                       |                                    |  | Version Number<br><b>1</b>               |

## Vehicle Information

|                     |                       |  |                            |                                |
|---------------------|-----------------------|--|----------------------------|--------------------------------|
| Year<br><b>2007</b> | Make<br><b>Nissan</b> | Model<br><b>Murano S 4 Door Utility 111" WB 3.5L 6 Cyl Gas A FWD</b> | License<br><b>FL 33023</b> | Mileage<br><b>86,052 miles</b> |
| Ext Color           | Interior              | VIN<br><b>Redacted 3328</b>  | Title History<br><b>No</b> |                                |

## Valuation Summary

### Loss Vehicle Adjustments

Adjustments specific to your vehicle

|                       |                   |
|-----------------------|-------------------|
| Base Value            | <b>\$7,234.70</b> |
| Condition             | <b>\$392.12</b>   |
| Prior Damage          | <b>\$0.00</b>     |
| Alternative Fuel      | <b>\$20.00</b>    |
| Equipment             | <b>\$0.00</b>     |
| Title History         | <b>\$0.00</b>     |
| <b>Market Value =</b> | <b>\$6,862.58</b> |

# Settlement Value: \$6,362.58

### Settlement Adjustments

Adjustments specific to your policy

|                           |                   |
|---------------------------|-------------------|
| Excess                    | <b>\$500.00</b>   |
| <b>Settlement Value =</b> | <b>\$6,362.58</b> |

**J.D. POWER**

**Mitchell WorkCenter**  
Total Loss

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## Loss Vehicle Detail

Loss vehicle: 2007 Nissan Murano | S 4 Door Utility 111" WB | 3.5L 6 Cyl Gas A FWD

### Standard Equipment

#### Exterior

|   |                            |
|---|----------------------------|
| Body-colored front/rear bumpers w/chrome lower front bumper | Body-colored pwr mirrors   |
| Brushed aluminum rear bumper protector                      | Chrome door handles        |
| Chrome front grille   | Halogen headlights         |
| LED rear combination lights                                 | Rear intermittent wiper    |
| Rear privacy glass  | Rear Spoiler               |
| Side sills  | UV cut glass front windows |
| Variable intermittent windshield wipers                     |                            |

#### Interior

|  |   |
|--|---|
| (8) 12-volt pwr outlets  | 3-pod style fine vision instrumentation cluster-inc: tachometer, twin LCD trip odometers, coolant temp                            |
| 3-spoke leather-wrapped steering wheel w/illuminated cruise/audio controls | 4-way manual passenger seat   |
| 4-way pwr driver seat  | 60/40 split flat-fold reclining rear seat w(3) head restraints, fold down center armrest w/cupholders & cargo area release levers |
| 7" color LCD display monitor   | Air conditioning w/dual zone automatic temperature control  |
| AM/FM stereo w/CD player, (4) speakers                                     | Cell phone holder   |
| Center console mounted sliding armrest                                     | Coin box w/lid  |
| Cruise control   | Double fold center console lid  |
| Dual front/rear cup holders  | Front bucket seats  |
| Front dual overhead map lamps  | Illuminated entry system w/light fade-out feature   |
| Illuminated visor vanity mirrors   | Immobilizer system  |
| Lockable glove box   | Luxury seat cloth   |
| Pwr door locks   | Pwr Windows   |
| Rear aluminum trim   | Rear B-pillar A/C vents   |
| Rear dual overhead reading lights  | Rear window defroster   |
| Remote keyless entry   | Sunglass tray   |
| Tilt steering column   | Under cargo floor storage   |

#### Mechanical

|                                 |                                    |
|---------------------------------|------------------------------------|
| 18" 6-spoke alloy wheels        | 4-wheel anti-lock braking system   |
| 4-wheel independent suspension  | 4-wheel vented disc brakes         |
| Brake assist                    | Double-tipped platinum spark plugs |
| Dual exhaust w/chrome finishers | Electronic brake distribution      |
| Front wheel drive               | Front/rear stabilizer bars         |
| P235/65TR18 all-season tires    | Pwr rack & pinion steering         |

Mitchell WorkCenter  
Total Loss

Claim # [REDACTED] 1-01 | © 2017 Mitchell International, Inc. All Rights Reserved. | Page 2

Temporary spare tire located under cargo area floor

**Safety**

3-point seat belts all seating positions

ELR seat belt for driver

Energy absorbing steering column

Front seat active head restraints

LATCH child safety seat system-inc: lower anchors & tethers for children

Reinforced front side member/front pillar/body sill

Child safety rear door locks

ELR/ALR seat belts for outboard passengers

Front & rear crumple zones

Front seat belt pretensioners & load limiters

Nissan Advanced Airbag System (AABS)-inc: driver & front passenger dual-stage airbags & side-impact supplemental airbags, front & rear roof-mounted curtain side-impact supplemental airbags

Upper tether anchors

**Loss Vehicle Base Value**

Loss vehicle: 2007 Nissan Murano | S 4 Door Utility 111" WB | 3.5L 6 Cyl Gas A FWD

**Comparable Vehicle Information**

Search Radius used for this valuation: 75 miles from loss vehicle zip/postal code.

Typical Mileage for this vehicle: 121,000 miles

| #                  | Vehicle Description                               | Mileage | Location | Distance From Loss Vehicle | Price                    | Adjusted Value    |
|--------------------|---|---------|----------|----------------------------|--------------------------|-------------------|
| 1                  | 2007 NISSAN MURANO S 4D SUV 6 3.5NORMAL GAS A 2WD | 93,056  | 33157    | 26 miles                   | \$7,898.00<br>Sold Price | \$7,612.34        |
| 2                  | 2007 NISSAN MURANO S 4D SUV 6 3.5NORMAL GAS A 2WD | 91,337  | 33023    | 0 miles                    | \$7,991.00<br>List Price | \$7,460.88        |
| 3                  | 2007 NISSAN MURANO S 4D SUV 6 3.5NORMAL GAS A 2WD | 135,771 | 33021    | 3 miles                    | \$6,500.00<br>List Price | \$7,186.46        |
| 4                  | 2007 NISSAN MURANO S 4D SUV 6 3.5NORMAL GAS A 2WD | 120,466 | 33010    | 12 miles                   | \$5,999.00<br>List Price | \$6,238.94        |
| 5                  | 2007 NISSAN MURANO S 4D SUV 6 3.5NORMAL GAS A 2WD | 120,500 | 33134    | 17 miles                   | \$6,638.00<br>List Price | \$6,606.86        |
| 6                  | 2007 NISSAN MURANO S 4D SUV 6 3.5NORMAL GAS A 2WD | 107,706 | 33063    | 18 miles                   | \$7,585.00<br>List Price | \$7,547.89        |
| 7                  | 2007 NISSAN MURANO S 4D SUV 6 3.5NORMAL GAS A 2WD | 88,561  | 33157    | 26 miles                   | \$6,777.00<br>List Price | \$7,669.70        |
| <b>Base Value:</b> |   |         |          |                            |                          | <b>\$7,234.70</b> |

**Loss Vehicle Adjustments**

Loss vehicle: 2007 Nissan Murano | S 4 Door Utility 111" WB | 3.5L 6 Cyl Gas A FWD



### Condition Adjustments

Condition Adjustment: **-5392.12**

Overall Condition: **2.73-Good**

Typical Vehicle Condition: **3.00**

| Category              | Condition | Comments                                   |
|-----------------------|-----------|--|
| <b>Interior</b>       |           |  |
| GLASS                 | 3 Good    |  |
| SEATS                 | 3 Good    |  |
| DASH/CONSOLE          | 2 Fair    | console door dmg require replacement       |
| DOORS/INTERIOR PANELS | 3 Good    |  |
| HEADLINER             | 3 Good    |  |
| CARPET                | 3 Good    |  |
| <b>Exterior</b>       |           |  |
| BODY                  | 2 Fair    | sandlines on qt panel                      |
| TRIM                  | 2 Fair    | fading / oxidation on headlamp             |
| VINYL/CONVERTIBLE TOP | Typical   |  |
| PAINT                 | Typical   | poor quality repairs greater than 3 panels |
| <b>Mechanical</b>     |           |  |
| ENGINE                | 3 Good    |  |
| TRANSMISSION          | 3 Good    |  |
| Tires                 | 3 Good    | reference                                  |

Typical condition reflects a vehicle that is in ready-for-sale condition and reflects normal wear and tear for that vehicle type / age.

Comments:

### After Market Parts and OEM Equipment Adjustments

| Category | Description         | Adjustment Type | Purchase Date | Amount Paid | Adjustment Amount |
|----------|---------------------|-----------------|---------------|-------------|-------------------|
| INTERIOR | PARTIAL WINDOW TINT | INSTANT QUOTE   |               |             | \$20.00           |

### Title History Adjustment

| Description  | Adjustment Amount |
|--|-------------------|
| The title history deduction is an average deduction that represents a variety of title history types such as flood, hail, collision, etc. and is not specific to a particular title type. In addition, the degree of the damage that resulted in a title history is assumed to be typical. | \$0.00            |

### Comparable Vehicles

Loss vehicle: 2007 Nissan Murano | S 4 Door Utility 111" WB | 3.5L 6 Cyl Gas A FWD

**1 2007 NISSAN MURANO S 4D SUV 6 3.5 NORMAL GAS A2WD** **Sold Price: \$7,698.00**

VIN: **Redacted**      Stock No: **Redacted**      Listing Date: **02/19/2017**      ZIP/Postal Code: **33157**      Distance from Loss Vehicle: **28 miles**

Source:

DEALER SALE - BUILDSHEET - J.D. POWER

| Adjustments               | Loss Vehicle | This Vehicle | Amount            |
|---------------------------|--------------|--------------|-------------------|
| Mileage                   | 66,052       | 93,058       | \$164.01          |
| Equipment                 |              |              |                   |
| [F01] CONVENIENCE PKG     | No           | Yes          | -\$221.93         |
| [L92] CARPETED FLOOR MATS | No           | Yes          | -\$27.74          |
| <b>Total Adjustments:</b> |              |              | <b>-\$88.86</b>   |
| <b>Adjusted Price:</b>    |              |              | <b>\$7,612.34</b> |

Comparable Vehicle Package Details:

[F01] CONVENIENCE PKG

Comparable Vehicle Option Details:

[L92] CARPETED FLOOR MATS

**2 2007 NISSAN MURANO S 4D SUV 6 3.5 NORMAL GAS A2WD** **List Price: \$7,991.00**

VIN: **Redacted**      Stock No: **2059 4512**      Listing Date: **03/19/2017**      ZIP/Postal Code: **33023**      Distance from Loss Vehicle: **0 miles**

Source:

DEALER WEB LISTING - BUILDSHEET - CARS.COM  
WEST INTERNATIONAL AUTO SALES  
4010 S STATE RD 7  
MIRAMAR FL 33023  
954-800-4664

| Adjustments               | Loss Vehicle | This Vehicle | Amount            |
|---------------------------|--------------|--------------|-------------------|
| Projected Sold Adjustment |              |              | -\$592.00         |
| Mileage                   | 66,052       | 91,337       | \$108.55          |
| Equipment                 |              |              |                   |
| [L92] CARPETED FLOOR MATS | No           | Yes          | -\$28.57          |
| <b>Total Adjustments:</b> |              |              | <b>-\$510.12</b>  |
| <b>Adjusted Price:</b>    |              |              | <b>\$7,480.88</b> |

Comparable Vehicle Option Details:

[L92] CARPETED FLOOR MATS

**3 2007 NISSAN MURANO S 4D SUV S 3.5 NORMAL GAS A2WD** **List Price: \$5,500.00**

|          |             |              |                 |                            |
|----------|-------------|--------------|-----------------|----------------------------|
| VIN      | Stock No    | Listing Date | ZIP/Postal Code | Distance from Loss Vehicle |
| Redacted | 9105 509105 | 03/04/2017   | 33021           | 3 miles                    |

| Source  | Adjustments               | Loss Vehicle | This Vehicle              | Amount            |
|---|---------------------------|--------------|---------------------------|-------------------|
| DEALER WEB LISTING -<br>BUILDSHEET - CARS.COM<br>DK AUTO SALES<br>1108 N STATE ROAD 7<br>HOLLYWOOD FL 33021<br>954-513-5310 | Projected Sold Adjustment |              |                           | -\$482.00         |
|   | Mileage                   | 88,062       | 128,771                   | \$1,190.16        |
|   | Equipment                 |              |                           |                   |
|   | [L92] CARPETED FLOOR MATS | No           | Yes                       | -\$21.89          |
|   |                           |              | <b>Total Adjustments:</b> | <b>\$688.46</b>   |
|   |                           |              | <b>Adjusted Price:</b>    | <b>\$7,188.46</b> |

Comparable Vehicle Option Details:  
**[L92] CARPETED FLOOR MATS**

**4 2007 NISSAN MURANO S 4D SUV S 3.5 NORMAL GAS A2WD** **List Price: \$5,999.00**

|          |             |              |                 |                            |
|----------|-------------|--------------|-----------------|----------------------------|
| VIN      | Stock No    | Listing Date | ZIP/Postal Code | Distance from Loss Vehicle |
| Redacted | 3873 523873 | 04/10/2017   | 33010           | 12 miles                   |

| Source   | Adjustments               | Loss Vehicle | This Vehicle              | Amount            |
|--|---------------------------|--------------|---------------------------|-------------------|
| DEALER WEB LISTING -<br>BUILDSHEET - AUTOTRADER.COM<br>G & R AUTO SALES CORP<br>560 E 9TH ST<br>HIALEAH FL 33010<br>786-360-5003 | Projected Sold Adjustment |              |                           | -\$445.00         |
|  | Mileage                   | 88,062       | 120,466                   | \$706.96          |
|  | Equipment                 |              |                           |                   |
|  | [L92] CARPETED FLOOR MATS | No           | Yes                       | -\$20.02          |
|  |                           |              | <b>Total Adjustments:</b> | <b>\$240.94</b>   |
|  |                           |              | <b>Adjusted Price:</b>    | <b>\$6,239.94</b> |

Comparable Vehicle Option Details:  
**[L92] CARPETED FLOOR MATS**

**2007 NISSAN MURANO S 4D SUV S 3.5 NORMAL GAS A2WD** **List Price: \$6,638.00**

|          |               |              |                 |                            |
|----------|---------------|--------------|-----------------|----------------------------|
| VIN      | Stock No      | Listing Date | ZIP/Postal Code | Distance from Loss Vehicle |
| Redacted | 3131 7W603131 | 04/19/2017   | 33134           | 17 miles                   |

Source:

DEALER WEB LISTING -  
BUILDSHEET - CARS.COM  
AUTONATION CHEVROLET CORAL  
GABLES  
4181 SW 8TH ST  
MIAMI FL 33134  
888-723-0913

| Adjustments               | Loss Vehicle | This Vehicle | Amount            |
|---------------------------|--------------|--------------|-------------------|
| Projected Sold Adjustment |              |              | -\$492.00         |
| Mileage                   | 86,052       | 120,600      | \$782.01          |
| Equipment                 |              |              |                   |
| [L92] CARPETED FLOOR MATS | No           | Yes          | -\$22.16          |
| <b>Total Adjustments:</b> |              |              | <b>\$267.86</b>   |
| <b>Adjusted Price:</b>    |              |              | <b>\$6,905.86</b> |

Comparable Vehicle Option Details:

[L92] CARPETED FLOOR MATS

**6 2007 NISSAN MURANO S 4D SUV S 3.5 NORMAL GAS A2WD** **List Price: \$7,588.00**

|          |               |              |                 |                            |
|----------|---------------|--------------|-----------------|----------------------------|
| VIN      | Stock No      | Listing Date | ZIP/Postal Code | Distance from Loss Vehicle |
| Redacted | 1717 7W601717 | 04/01/2017   | 33063           | 16 miles                   |

Source:

DEALER WEB LISTING -  
BUILDSHEET - AUTOTRADER.COM  
CARWAY AUTO SALES  
1301 N STATE ROAD 7  
MARGATE FL 33063  
954-972-0633

| Adjustments               | Loss Vehicle | This Vehicle | Amount            |
|---------------------------|--------------|--------------|-------------------|
| Projected Sold Adjustment |              |              | -\$562.00         |
| Mileage                   | 86,052       | 107,700      | \$547.01          |
| Equipment                 |              |              |                   |
| [L92] CARPETED FLOOR MATS | No           | Yes          | -\$25.32          |
| <b>Total Adjustments:</b> |              |              | <b>-\$40.31</b>   |
| <b>Adjusted Price:</b>    |              |              | <b>\$7,547.69</b> |

Comparable Vehicle Option Details:

[L92] CARPETED FLOOR MATS

**2007 NISSAN MURANO S 4D SUV 6 2.5 NORMAL GAS A2WD** **List Price: \$8,777.00**

|          |          |              |                  |                            |
|----------|----------|--------------|------------------|----------------------------|
| VIN      | Stock No | Listing Date | Z/V/Initial Code | Distance from Loss Vehicle |
| Redacted | 7361     | 7W527361     | 04/14/2017       | 33157                      |
|          |          |              |                  | 28 miles                   |

|   |                           |              |                           |                   |
|---|---------------------------|--------------|---------------------------|-------------------|
| Source:   | Adjustments               | Loss Vehicle | Tax Vehicle               | Amount            |
| DEALER WEB LISTING -<br>BUILDSHEET - CARS.COM   | Projected Sold Adjustment |              |                           | -3650.00          |
| AUTONATION NISSAN KENDALL<br>17305 S DIXIE HWY<br>PALMETTO BAY FL 33157<br>888-693-4445 | Mileage                   | 66,052       | 66,561                    | -428.01           |
|   | Equipment                 |              |                           |                   |
|   | [L92] CARPETED FLOOR MATS | No           | Yes                       | -29.28            |
|   |                           |              |                           |                   |
|   |                           |              | <b>Total Adjustments:</b> | <b>-41,107.30</b> |
|   |                           |              | <b>Adjusted Price:</b>    | <b>\$7,669.70</b> |

Comparable Vehicle Option Details:  
[L92] CARPETED FLOOR MATS

### Sub-Model Comparison

| Sub-Model Description | Configuration                             | Original MSRP |
|-----------------------|---|---------------|
| 2007 Nissan Murano S  | 4 Door Utility 111" WB 3.5L 6 Cyl Gas FWD | \$27,750.00   |

## Vehicle Valuation Methodology Explanation

WorkCenter Total Loss was built through a joint partnership between J.D. Power and Associates vehicle valuation division Power Information Network (P.I.N.) and Mitchell International, a leading provider of claims processing solutions to private passenger insurers.

WorkCenter Total Loss produces accurate and easy-to-understand vehicle valuations via this five step process:

### Step 1 - Locate Comparable Vehicles

Locate vehicles similar to the loss vehicle in the same market area. WorkCenter Total Loss finds these vehicles in AutoTrader.com, Cars.com, Vaa.com and directly from dealerships.

### Step 2 - Adjust Comparable Vehicles

Make adjustments to the prices of the comparable vehicles. The comparable vehicles are identical to the loss vehicle except where adjustments are itemized. There are several types of comparable vehicle adjustments:

- Projected Sold Adjustment - an adjustment to reflect consumer purchasing behavior (negotiating a different price than the listed price).
- Mileage Adjustment - an adjustment for differences in mileage between the comparable vehicle and the loss vehicle.
- Equipment adjustments for differences in equipment between the comparable vehicle (e.g. equipment packages and options) and the loss vehicle.

### Step 3 - Calculate Base Vehicle Value

The base vehicle value is calculated by averaging the adjusted prices of the comparable vehicles.

### Step 4 - Calculate Loss Vehicle Adjustments

There are four types of loss vehicle adjustments:

- Condition Adjustment:  
Adjustments to account for the condition of the loss vehicle prior to the loss.
- Prior Damage Adjustment:  
Adjustments to account for any prior damage present on the loss vehicle prior to the loss.
- After Market Part Adjustment:  
Adjustments to account for any after market parts present on the loss vehicle prior to the loss.
- Refurbishment Adjustment:  
Adjustments to account for any refurbishment performed on the loss vehicle prior to the loss.

### Step 5 - Calculate the Market Value

The Market Value is calculated by applying the loss vehicle adjustments to the base value.

## Exhibit C

Progressive Group of Insurance Companies

**Settlement Summary**

**Claim Information**

|                                     |   |
|-------------------------------------|---|
| <b>Claim Number:</b> Redacted:81-01 | <b>Coverage Type of Loss:</b> Collision |
| <b>Policy Number:</b>               | <b>Loss Date:</b> 04/27/2017            |
| <b>Owner:</b> LOPEZ, MICHAEL        | <b>Reported Date:</b> 04/27/2017        |
|                                     | <b>Valuation Report ID:</b> 1008748222  |

**Vehicle Information**

|  |                                |
|--|--------------------------------|
| <b>Loss Vehicle:</b> 2007 Nissan Murano S 4 Door Utility 111"<br>WB 3.5L 6 Cyl Gas A FWD | <b>Location:</b> FL 33023      |
| <b>VIN:</b> Redacted 3328  | <b>Exterior Color:</b>         |
| <b>Mileage:</b> 86,052 miles   | <b>License Plate:</b>          |
| <b>Title History:</b> No   | <b>Title History Comments:</b> |

**Loan Information**

**Payment Information**

|                                    |        |                                |            |
|------------------------------------|--------|--------------------------------|------------|
| <b>Lien Holder Payoff:</b>         | \$0.00 | <b>Lien Holder Payment(s):</b> | \$0.00     |
| <b>Loan/Lease Payoff Coverage:</b> | \$0.00 | <b>Net to Owner:</b>           | \$8,774.33 |

**Settlement**

|                                  |                    |
|----------------------------------|--------------------|
| <b>Stated Amount:</b>            | \$0.00             |
| <b>Actual Cash Value:</b>        | \$6,882.58         |
| Base Value:                      | \$7,234.70         |
| Title History Adjustment:        | -\$0.00            |
| Refurbishment Adjustments:       | \$0.00             |
| After Market Parts Adjustment:   | \$20.00            |
| Condition Adjustment:            | -\$392.12          |
| Prior Damage Adjustment:         | -\$0.00            |
| <b>Market Value:</b>             | <b>\$ 6,882.58</b> |
| Settlement Adjustment(Pre-Tax):  | \$0.00             |
| <b>Fees:</b>                     | <b>\$0.00</b>      |
| <b>Taxes:</b>                    | <b>\$411.75</b>    |
| <b>Company Obtains:</b>          | <b>\$0.00</b>      |
| <b>Net Settlement:</b>           | <b>\$7,274.33</b>  |
| Settlement Adjustment(Post-Tax): | \$0.00             |
| <b>Deductible:</b>               | <b>-\$500.00</b>   |
| <b>Other Adjustments:</b>        | <b>\$ 0.00</b>     |
| <b>Total Settlement:</b>         | <b>\$8,774.33</b>  |

**Adjuster License #:**

**Comments:**



# EXHIBIT 2

## to Notice of Removal



**Service of Process  
Transmittal**

07/09/2018

CT Log Number 533662464

**TO:** Ingrid Cerizo  
Progressive Casualty Insurance Company  
600 N West Shore Blvd Ste 400  
Tampa, FL 33609-1145

**RE: Process Served in Florida**

**FOR:** Progressive Select Insurance Company (Domestic State: OH)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** MICHAEL A. LOPEZ, on behalf of himself and all others similarly situated, Pltf. vs. Progressive Select Insurance Co., Dft.

**DOCUMENT(S) SERVED:** Notice(s), Summons, Attachment(s), Complaint, Exhibit(s)

**COURT/AGENCY:** Broward County Circuit Court, FL  
Case # CACE1801566918

**NATURE OF ACTION:** Insurance Litigation

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Plantation, FL

**DATE AND HOUR OF SERVICE:** By Electronic Receipt on 07/09/2018

**JURISDICTION SERVED :** Florida

**APPEARANCE OR ANSWER DUE:** Within 20 days after service, exclusive of the day of service (Document(s) may contain additional answer dates)

**ATTORNEY(S) / SENDER(S):** Edward H. Zebersky  
ZEBERSKY PAYNE, LLP  
110 S.E. 6th Street, Suite 2150  
Ft. Lauderdale, FL 33301  
954-989-6333

**ACTION ITEMS:** CT has retained the current log, Retain Date: 07/10/2018, Expected Purge Date: 07/15/2018  
  
Image SOP  
  
Email Notification, Ingrid Cerizo icerizo@progressive.com  
  
Email Notification, Progressive FL SOP flsop@progressive.com

**SIGNED:** C T Corporation System  
**ADDRESS:** 1200 South Pine Island Road  
Plantation, FL 33324  
**TELEPHONE:** 954-473-5503



CHIEF FINANCIAL OFFICER  
JIMMY PATRONIS  
STATE OF FLORIDA

MICHAEL A. LOPEZ, ON BEHALF OF HIMSELF  
AND ALL OTHERS SIMILARLY SITUATED

PLAINTIFF(S)

VS.

PROGRESSIVE SELECT INSURANCE COMPANY

DEFENDANT(S)

SUMMONS, COMPLAINT

**CASE #:** CACE 18-015669 (18)  
**COURT:** 17TH JUDICIAL CIRCUIT  
**COUNTY:** BROWARD  
**DFS-SOP #:** 18-000154821

### NOTICE OF SERVICE OF PROCESS

NOTICE IS HEREBY GIVEN of acceptance of Service of Process by the Chief Financial Officer of the State of Florida. Said process was received in my office by ELECTRONIC DELIVERY on Friday, June 29, 2018 and a copy was forwarded by ELECTRONIC DELIVERY on Monday, July 9, 2018 to the designated agent for the named entity as shown below.

PROGRESSIVE SELECT INSURANCE COMPANY  
DONNA MOCH  
1200 SOUTH PINE ISLAND ROAD  
PLANTATION, FL 33324

**\*Our office will only serve the initial process(Summons and Complaint) or Subpoena and is not responsible for transmittal of any subsequent filings, pleadings, or documents unless otherwise ordered by the Court pursuant to Florida Rules of Civil Procedure, Rule #1.080**

Jimmy Patronis  
Chief Financial Officer

EDWARD ZEBERSKY  
ATTORNEY  
ZEBERSKY PAYNE, LLP  
110 S.E. 6TH STREET, SUITE 2150  
FORT LAUDERDALE, FL 33301

LPB

IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

Case No.

MICHAEL A. LOPEZ, on behalf of himself  
and all others similarly situated,

Plaintiff,

vs.

PROGRESSIVE SELECT INSURANCE CO.,

Defendant.

**SUMMONS**

THE STATE OF FLORIDA:

To All and Singular the Sheriffs of said State:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the Complaint in this action on  
**Defendant:**

**PROGRESSIVE SELECT INSURANCE CO.**

**By Serving Its Registered Agent: Florida Chief Financial Officer  
200 East Gaines Street  
Tallahassee, FL 32399**

Each defendant is required to serve written defenses to the complaint or petition on Edward H. Zebersky, Esq.,  
(Florida Bar No. 0908370) Plaintiff's attorney, whose address is:

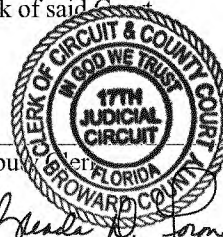
ZEBERSKY PAYNE, LLP  
110 SE 6<sup>th</sup> Street, Suite 2150  
Fort Lauderdale, FL 33301  
(954) 989-6333  
Email: ezebersky@zpllp.com

within twenty (20) days<sup>1</sup> after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

WITNESS my hand and seal of said Court JUN 29 2018

BRENDA D. FORMAN  
As Clerk of said Court

By: Deputy Clerk



*Brenda D. Forman*  
BRENDA D. FORMAN

<sup>1</sup> "Except when suit is brought pursuant to s. 768.28, Florida Statutes, by or on behalf of any officer, director, or employee of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to respond shall be 40 days. When suit is brought pursuant to 768.28, Florida Statutes, the time to respond shall be 30 days."

RECEIVED AS STATUTORY REGISTERED AGENT on 29 June, 2018 and served on defendant or named party on 09 July, 2018 by the Florida Department of Financial Services

**AMERICANS WITH DISABILITIES ACT OF 1990**

**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Diana Sobel, Room 470, 201 S.E. Sixth Street, Fort Lauderdale, Florida 33301, 954-831-7721 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."**

**FORM 1.997. CIVIL COVER SHEET**

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

**I. CASE STYLE**

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,  
 IN AND FOR BROWARD COUNTY, FLORIDA

Case No.: \_\_\_\_\_  
 Judge: \_\_\_\_\_

Michael A Lopez  
 Plaintiff

vs.

Progressive Select Insurance Co.  
 Defendant

**II. TYPE OF CASE**

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence – other
  - Business governance
  - Business torts
  - Environmental/Toxic tort
  - Third party indemnification
  - Construction defect
  - Mass tort
  - Negligent security
  - Nursing home negligence
  - Premises liability – commercial
  - Premises liability – residential
- Products liability
- Real Property/Mortgage foreclosure
  - Commercial foreclosure \$0 - \$50,000
  - Commercial foreclosure \$50,001 - \$249,999
  - Commercial foreclosure \$250,000 or more
  - Homestead residential foreclosure \$0 – 50,000
  - Homestead residential foreclosure \$50,001 - \$249,999
  - Homestead residential foreclosure \$250,000 or more
  - Non-homestead residential foreclosure \$0 - \$50,000
  - Non-homestead residential foreclosure \$50,001 - \$249,999

- Non-homestead residential foreclosure \$250,00 or more
- Other real property actions \$0 - \$50,000
- Other real property actions \$50,001 - \$249,999
- Other real property actions \$250,000 or more
- Professional malpractice
  - Malpractice – business
  - Malpractice – medical
  - Malpractice – other professional
- Other
  - Antitrust/Trade Regulation
  - Business Transaction
  - Circuit Civil - Not Applicable
  - Constitutional challenge-statute or ordinance
  - Constitutional challenge-proposed amendment
  - Corporate Trusts
  - Discrimination-employment or other
  - Insurance claims
  - Intellectual property
  - Libel/Slander
  - Shareholder derivative action
  - Securities litigation
  - Trade secrets
  - Trust litigation

**COMPLEX BUSINESS COURT**

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes  No

**III. REMEDIES SOUGHT** (check all that apply):

- Monetary;
- Non-monetary declaratory or injunctive relief;
- Punitive

**IV. NUMBER OF CAUSES OF ACTION: ( )**  
(Specify)

Declaratory Judgment; Breach of Contract

**V. IS THIS CASE A CLASS ACTION LAWSUIT?**

- Yes
- No

**VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?**

- No
- Yes – If “yes” list all related cases by name, case number and court:

**VII. IS JURY TRIAL DEMANDED IN COMPLAINT?**

- Yes
- No

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature s/ Edward H Zebersky  
Attorney or party

FL Bar No.: 908370

(Bar number, if attorney)

Edward H Zebersky 06/28/2018  
(Type or print name)

Date

# EXHIBIT 3

## to Notice of Removal



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

MICHAEL A. LOPEZ, on behalf of  
himself and all others similarly situated,

Plaintiff,

CASE NO.:

v.

PROGRESSIVE SELECT  
INSURANCE CO.,

Defendant.

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**DECLARATION OF MICHAEL D. SILVER**

Pursuant to 28 U.S.C. § 1746, I, Michael D. Silver, hereby depose and state as follows:

1. I am the Coordinator for Claims Data Compliance at the Progressive Group of Insurance Companies and have knowledge regarding data for claims submitted under policies issued by Progressive Select Insurance Company (“Progressive Select”). In my role as Coordinator for Claims Data Compliance, one of my responsibilities is to coordinate data requests for claims data.

2. Progressive Select is a corporation incorporated in the state of Ohio with its principal place of business located in Ohio.

3. Based on my review of data that is reasonably accessible to Progressive Select, in the five year period beginning on June 28, 2013, I estimate that Progressive Select has settled in excess of 50,000 total loss comprehensive and collision claims under automotive insurance policies issued in the state of Florida utilizing the program WorkCenter Total Loss to assist Progressive Select in determining the actual cash value of the vehicles subject to those total loss claims.

4. Based on my review of data that is reasonably accessible to Progressive Select, in the five year period beginning on June 28, 2013, I estimate that Progressive Select paid in excess of \$550 million in net settlement payments in settlement of the total loss claims referenced in the preceding paragraph.

5. Based on my review of data that is reasonably accessible to Progressive Select, in the five year period beginning on June 28, 2013, I estimate that Progressive Select took possession of in excess of 50,000 salvaged total loss vehicles in connection with comprehensive and collision claims under automotive insurance policies issued in the state of Florida.

6. Based on my review of data that is reasonably accessible to Progressive Select, in the five year period beginning on June 28, 2013, Progressive Select sold the salvaged vehicles referenced in the prior paragraph for in excess of \$100 million, net of costs of sale.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON: AUGUST 8, 2018

By:

  
Michael D. Silver

**EXHIBIT 4**  
**to Notice of Removal**

**From:** Aldrich, Marcy Levine (Ptnr-Mia)  
**Sent:** Wednesday, July 25, 2018 11:13 AM  
**To:** 'Ed Zebersky' <[EZebersky@zpllp.com](mailto:EZebersky@zpllp.com)>  
**Subject:** Michael A. Lopez v. Progressive Cas. Ins. Co.: (Case No. CACE 18-0- 15669 (18)) (Fla. Broward Cir. Ct.)

Ed:

Thanks for finding a few minutes to chat this morning. This email confirms that you have graciously agreed to extend the time for Progressive to respond to the Class Action complaint by thirty (30) days – i.e., until August 29, 2018. I will calendar the response accordingly.

In addition, you agreed to provide me with a cleaner copy of the Exhibit B to the Complaint (the vehicle valuation report). I look forward to the receipt of the same.

Please let me know if the above does not accurately reflect our understanding or if you have any questions.

Marcy.

**Marcy Levine Aldrich**

Partner

Akerman LLP | 98 Southeast Seventh Street, Suite 1100 | Miami, FL 33131

D: 305 982 5576

[marcy.aldrich@akerman.com](mailto:marcy.aldrich@akerman.com)

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

I. (a) PLAINTIFFS MICHAEL A. LOPEZ, DEFENDANTS PROGRESSIVE SELECT INSURANCE CO.,

(b) County of Residence of First Listed Plaintiff Broward County, FL County of Residence of First Listed Defendant Cuyahoga County, OH

(c) Attorneys (Firm Name, Address, and Telephone Number) Edward H. Zebersky and Mark S. Fistos, Zebersky Payne LLP, 110 S.E. 6th Street, Suite 2150, Ft. Lauderdale, FL 33301. Tel.: 954-989-6333 Marcy Levine Aldrich; Bryan T. West, Akerman LLP, 98 Southeast Seventh Street, Suite 1100, Miami, FL 33131. Tel.: 305-374-5600

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

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

Grid for Basis of Jurisdiction and Citizenship of Principal Parties. Includes categories like U.S. Government Plaintiff/Defendant, Federal Question, Diversity, Citizen of This State, etc.

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions

Large grid for Nature of Suit with categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation Transfer 7 Appeal to District Judge from Magistrate Judgment 8 Multidistrict Litigation - Direct File 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): CAFA, 28 U.S.C. § 1332, 28 U.S.C. § 1441(a) and (b), and 28 U.S.C. § 1453, Removal of Insurance Dispute

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ > 5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE August 8, 2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Bryan T. West

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Progressive Uses Flawed Method to Determine Car Value in Total Loss Claims](#)

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