

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KEVIN LUKASIK, *individually and on behalf
of all others similarly situated,*

Plaintiff,

v.

PROGRESSIVE CASUALTY INSURANCE
COMPANY, *a Ohio corporation,*

Defendant.

CLASS ACTION COMPLAINT

Case No. 1:21-cv-00850 (GLS/ML)

JURY TRIAL DEMANDED

Plaintiff Kevin Lukasik (“Plaintiff”), by and through undersigned counsel, brings this class action, individually and on behalf of all others similarly situated, against Progressive Casualty Insurance Company (“Defendant”) and alleges as follows:

INTRODUCTION

1. This class action lawsuit arises from Defendant’s deceptive, fraudulent, and unfair scheme through which Defendant systematically undervalues total-loss vehicles in order to arbitrarily reduce the ultimate payment to insureds who make total loss claims.

2. In the event of a “total loss” to an insured vehicle—*i.e.*, where repair of the vehicle is impossible or uneconomical—Defendant’s uniform insurance policies with Plaintiff and all putative Class members (defined below) promise to pay for the loss, limited to the actual cash value (“ACV”) of the vehicle. Attached as **Exhibit A** is a copy of Plaintiff’s Policy (“Policy”).

3. Defendant skirts its straightforward contractual obligation by directing its third-party vendor to systematically reduce the total loss evaluations. Specifically, Defendant’s third-party vendor determines the ACV of an insured total loss vehicle by comparing the for-sale price of “comparable vehicles” in the relevant market. *After* the vendor determines the price for

“comparable vehicles,” however, Defendant instructs its vendor to apply an arbitrary, baseless, and illegal “projected sold adjustment” reduction to each comparable vehicle. This reduction artificially reduces the ACV calculation of the total-loss vehicle and, consequently, reduces the amount of Defendant’s total loss payment to insureds.

4. Defendant’s deceptive, fraudulent, and unfair scheme violates the New York General Business Law § 349, *et seq.*, and constitutes a breach of contract and breach of the covenant of good faith and fair dealing.

5. As a result of Defendant’s deceptive, fraudulent, and unfair scheme, Plaintiff did not receive the benefit of the bargain, and thus sustained actual damages.

6. By this action, Plaintiff, individually and on behalf of the Class, seeks damages and injunctive and declaratory relief.

PARTIES

7. Plaintiff Kevin Lukasik is and was domiciled at [REDACTED] Clifton Park, New York and was a New York citizen at all times relevant to this lawsuit.

8. Defendant is and was, at all relevant times to this lawsuit, an Ohio company authorized to underwrite insurance in the State of New York, with its principal place of business being 6300 Wilson Mills Road, Cleveland, Ohio.

JURISDICTION AND VENUE

9. This Court has personal jurisdiction over Defendant because Defendant directs, markets, and provides its business activities throughout the State of New York, and makes its insurance services available to residents of New York. Further, this Court has personal jurisdiction over Defendant because Defendant’s tortious conduct against Plaintiff occurred in substantial part within this District and because Defendant committed the same wrongful acts to other individuals

within this judicial District, such that some of Defendant's acts have occurred within this District, subjecting Defendant to jurisdiction here.

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2) because at least one member of the putative class, including Plaintiff, is a citizen of New York, and Defendant is a citizen of Ohio, thus CAFA's minimal diversity requirement is met. Additionally, Plaintiff seeks an award of damages (including actual, compensatory, statutory, and punitive, as provided by law) and restitution to Plaintiff and the Class in an amount to be determined at trial, for each violation, which, when aggregated among a proposed class of potential thousands, exclusive of interests and costs, exceeds the \$5,000,000 threshold for federal jurisdiction under the Class Action Fairness Act ("CAFA").

11. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b) and (c) because Defendant is deemed to reside in any judicial district in which it is subject to personal jurisdiction, and because a substantial part of the events giving rise to the claim occurred in this District, and because Plaintiff was injured in this District.

FACTUAL ALLEGATIONS

"Projected sold adjustment"

12. When valuing total-loss automobile claims, insurance companies like Defendant use third party companies to determine the "market value" of an insured's totaled vehicle. The "market value" of the insureds total-loss vehicle serves as the baseline number for the total loss payment to an insured.

13. This is consistent with New York law, which requires insurers paying ACV on totaled vehicles to either directly replace the totaled vehicle with a comparable vehicle or to determine the "retail value" of the insured vehicle. N.Y. Comp. Codes R. & Regs. Tit. 11 §

216.7(c). If an insurer chooses to make a “cash settlement” rather than directly replacing the vehicle, the market value of the vehicle must be based on the “retail value” of the vehicle. *Id.* at 11 § 216.7(c)(1)(v).

14. To determine a totaled vehicle’s retail market value, New York law allows insurance companies to rely on “computerized database[s].” *Id.* at 11 § 216.7(c)(1)(iii). When a “computerized database” is used to determine the “retail value” of a totaled vehicle, the “computerized database” is required to “produce statistically valid fair market values for a substantially similar vehicle, within the local market area.” *Id.* The “computerized database” used must “produce values for at least 85 percent of all makes and models of private passenger automobiles... for the last 15 model years” and the quotation must “rely upon values derived from licensed dealers, which have minimum sales of 100 motor vehicles per year in the local market area... and be based upon the physical inventory of vehicles sold within the 90 days prior to the loss and vehicles with are available.” *Id.* at §§ 216.7(c)(1)(iii)(a), (b). In other words, the average price of a number of recently or currently available comparable vehicles becomes the retail “market value” underlying the ACV payment Defendant makes to its insureds under the Policy.

15. In a blatant and unlawful effort to reduce its total-loss payments to insureds, Defendant, through its vendor, after the retail market value is determined, applies a deceptive and capricious “projected sold adjustment,” in order to artificially lower the market value of the comparable vehicles and, thus, pay the Plaintiff an amount that is lower than required, in violation of the Policy and New York law.

16. Specifically, Defendant purports to calculate the value of total-loss vehicles via a third-party vendor, Mitchell, through a system called the Mitchell Vehicle Valuation Report (“Mitchell”). The Mitchell system identifies the list price of comparable vehicles sold or listed for

sale online. Mitchell then, at Defendant's directive, applies a deceptive and arbitrary "projected sold adjustment," which artificially reduces that "market value" of the comparable vehicles.

17. Upon information and belief, Defendant's "projected sold adjustment" is a blanket percentage reduction of the selling price of a comparable vehicle based on the listing price. Rather than basing their adjustment on any tangible features of the available vehicle which may relate to consumer negotiations, the "projected sold adjustment" is arbitrarily applied as a universal percentage reduction to any vehicle in a given price range. For example, and by way of illustration only, if a car is listed for sale at \$10,000, the vehicle could be reduced by 7%. Now if an identical vehicle of the same make, model year and trim is listed at \$15,000, the vehicle might be reduced by 10%, regardless of the fact that both vehicles shared the same make, model, year, and features. There is no rational explanation for why the two identical vehicles would be subject to such varied reductions in their selling price.

18. Defendant's "projected sold adjustment" is arbitrary and unsupportable. Without providing support or data, Defendant represents that the "projected sold adjustment" reflects some sort of average difference between a dealer list price and "what the dealer would be willing" to sell it for. *See* Ex. B at 7 ("Project Sold Adjustment – an adjustment to reflect consumer purchasing behavior (negotiating a different price than the listed price)."). However, an across-the-board 5-6% reduction on used vehicles' internet prices is not typical and does not reflect market realities, and neither New York Law nor the Policy permit Defendant to make this arbitrary deduction.

19. Indeed, Defendant applies the "projected sold adjustment" without contacting the identified dealerships or considering whether the online retailer ever discounts its vehicles. Notably, in applying an across-the-board, percentage-based "projected sold adjustment" reduction, Defendant failed to consider that most used car dealerships banned price negotiation by

implementing “no haggle” pricing¹ or that (as discovery will show), given certain market forces, even the few car dealers that might negotiate prices listed in-person on car lots do not negotiate the price listed online.

20. By applying an arbitrary and unsupported “projected sold adjustment” to every comparable vehicle, Defendant fails to provide documentation to ensure statistically valid local market area values in clear violation of N.Y. Comp. Codes R. & Regs. Tit. 11 § 216.7(c)(1)(iii).

21. Certainly, the arbitrary, capricious, and meretriciously labeled “projected sold adjustment” reduction cannot be a reflection of market realities given that, even accepting Defendant and its vendor’s assertions at face value, it is based on national data, not market data.

22. Plaintiff does not contest Defendant’s representations of the listed price of comparable vehicles. Plaintiff does not contest the value assigned to differences in trim, condition, mileage, packages, and equipment between comparable vehicles and the total-loss vehicle. Plaintiff solely contests that Defendant instructed Mitchell to apply an arbitrary, capricious, and invalid “projected sold adjustment” across-the-board.

23. Notably, and for reasons unknown, Defendant does not instruct Mitchell to apply a “projected sold adjustment” to comparable vehicles in all states in which it operates. Many other insurers who use Mitchell do not instruct Mitchell to apply “projected sold adjustments” to comparable vehicles.

PLAINTIFF’S TOTAL LOSS EXPERIENCE

24. Plaintiff owned a 2013 Hyundai Santa Fe Sport that was insured under a Policy issued by Defendant, which suffered a total loss on or around February 27, 2019.

¹ See <https://www.carmax.com/about-carmax> (last visited July 22, 2021) (“our ‘no-haggle’ prices transformed car buying and selling from a stressful, dreaded event into the honest, straightforward experience all people deserve.”).

25. Plaintiff made a claim with Defendant for the total loss of the vehicle.

26. Defendant provided a total loss valuation to Plaintiff for the total loss claim. Defendant based its offer upon a valuation report obtained from Mitchell.

27. Defendant valued Plaintiff's total loss claim at \$13,553.27 and paid Plaintiff that amount. The market valuation report listed values of four different comparable vehicles and shows that Defendant and its vendor applied a "projected sold adjustment" of approximately 5-6% to three of the four comparable vehicles without itemizing or explaining the basis of each adjustment and/or how the value of the deduction was determined. *See* Plaintiff's Market Value Report at 4-6, attached as **Exhibit B**.

CLASS ACTION ALLEGATIONS

28. Plaintiff brings this action individually and as a class action pursuant to Federal Rule of Civil Procedure 23. The proposed Class is defined as follows:

All New York citizens insured by Defendant who, from the earliest allowable time through the date of a class certification order, received a first-party total loss valuation and payment on an automobile total loss claim that included a "projected sold adjustment" or similar adjustment.

29. Excluded from the Class are Defendant and any of its members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; governmental entities; and the Judge(s) and Court staff assigned to this case and their immediate family members. Plaintiff reserves the right to modify or amend the Class definition during the course of this litigation.

30. Class certification is appropriate because Plaintiff can prove the elements of his claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

31. **Numerosity.** The members of the Class are so numerous that individual joinder of all Class members is impracticable. While Plaintiff is informed and believes that there are

thousands of Class members, the precise number is unknown to Plaintiff, but may be ascertained from Defendant's books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

32. **Commonality.** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- a. whether Defendant's practice of applying a "projected sold adjustment" when determining the market value of Class members' vehicles, and its failure to disclose same would deceive a reasonable consumer;
- b. whether Defendant's practice of applying a "projected sold adjustment" when determining the market value of Class members' vehicles would be considered material by a reasonable consumer;
- c. whether Defendant's conduct breached its contracts with Plaintiff and the other Class members;
- d. whether Defendant's conduct breached the covenant of good faith and fair dealing with Plaintiff and the other Class members;
- e. whether Plaintiff and the Class are entitled to injunctive relief; and
- f. whether Plaintiff and the Class are entitled to damages and the measure of damages owed to them.

33. **Typicality.** Plaintiff's claims are also typical of the other Class members' claims because Plaintiff and the other Class members were all similarly affected by Defendant's deceptive application of a downward "projected sold adjustment." Plaintiff's claims are based upon the same legal theories as those of the other Class members. Plaintiff and the other Class members sustained

damages as a direct and proximate result of the same wrongful practices in which Defendant engaged. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the other Class members.

34. **Adequacy of Representation.** Plaintiff is an adequate representative of the Class because Plaintiff's interests do not conflict with the interests of the other Class members whom they seek to represent, and Plaintiff has retained counsel competent and experienced in complex class action litigation, including successfully litigating class action cases similar to this one, where insurers breached contracts with insureds. The interests of the Class will be fairly and adequately protected by Plaintiff and his counsel.

35. **Superiority.** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, such that it would be impracticable for the Class members to individually seek redress for Defendant's wrongful conduct. Even if the Class members could afford litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

FIRST CAUSE OF ACTION

**VIOLATION OF NEW YORK CONSUMER PROTECTION ACT, N.Y. GEN. BUS. LAW
§ 349, *et seq.***

36. Plaintiff incorporates by reference each allegation set forth in the preceding paragraphs.

37. Plaintiff brings this cause of action individually and on behalf of the Class.

38. The New York General Business Law (“New York GBL”) prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state...” N.Y. Gen. Bus. Law § 349(a).

39. The New York Consolidated Laws on Insurance provides that the following are unfair claim settlement practices in the business of insurance: 1) “knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue”; and 2) “not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear.” N.Y. Ins. Law §§ 2601(a)(1), (4).

40. As alleged herein, Defendant, through its agents, employees, and/or subsidiaries, violated the New York GBL by knowingly and intentionally concealing and failing to disclose material facts regarding its application of an arbitrary “projected sold adjustment” to comparable vehicles in order to reduce their market value and, as a result, the amount of Defendant’s ACV payment to insureds, as detailed above.

41. Defendant’s misrepresentations and omissions regarding its application of an arbitrary “projected sold adjustment” to comparable vehicles were made to Plaintiff and the Class members in a uniform manner.

42. Defendant’s unfair or deceptive acts or practices, as alleged herein, had a tendency or capacity to mislead and create a false impression in consumers’ minds, and were likely to and,

in fact, did deceive reasonable consumers, including Plaintiff and the Class members, about Defendant's application of an arbitrary "projected sold adjustment" to comparable vehicles in order to reduce the amount of Defendant's ACV payment to its insureds.

43. The facts regarding Defendant's application of an arbitrary "projected sold adjustment" to comparable vehicles that Defendants knowingly and intentionally misrepresented, omitted, concealed, and/or failed to disclose would be considered material by a reasonable consumer, and they were, in fact, material to Plaintiff and the Class members, who consider such facts to be important to their purchase decisions with respect to Defendant's insurance coverage.

44. Plaintiff and the Class members had no way of discerning that Defendant's representations were false and misleading, or otherwise learning the facts that Defendant had concealed or failed to disclose. Plaintiff and the Class members did not, and could not, unravel Defendant's deception on their own.

45. Defendant had an ongoing duty to Plaintiff and the Class members to refrain from engaging in unfair or deceptive practices under the New York GBL in the course of its business. Specifically, Defendant owed Plaintiff and the Class members a duty to disclose all the material facts concerning its application of an arbitrary "projected sold adjustment" to comparable vehicles because Defendant possessed exclusive knowledge of those facts, it intentionally concealed those facts from Plaintiff and the Class members, and/or it made misrepresentations that were rendered misleading because they were contradicted by withheld facts.

46. Plaintiff and the Class members were aggrieved by Defendant's violations of the New York GBL because they suffered ascertainable loss and actual damages as a direct and proximate result of Defendant's knowing and intentional misrepresentations, omissions, concealments, and failures to disclose material facts regarding its application of an arbitrary

“projected sold adjustment” to comparable vehicles, including that the “projected sold adjustment” is arbitrarily selected and applied, in an inconsistent manner designed to decrease Defendant’s ACV payments under the Policy.

47. Plaintiff and the Class members purchased Defendant’s insurance coverage in reliance on Defendant’s misrepresentations, omissions, concealments, and/or failures to disclose material facts regarding “projected sold adjustment” its application of an arbitrary “projected sold adjustment” to comparable vehicles.

48. Had Defendant not engaged in the deceptive acts and practices alleged herein, Plaintiff and the Class members would not have purchased insurance coverage from Defendant, or would not have paid the same price for such coverage and, thus, they did not receive the benefit of the bargain and/or they suffered out-of-pocket loss.

49. Defendant’s violations of the New York GBL present a continuing risk to Plaintiff and the Class members.

50. Plaintiff and the Class members seek an order enjoining Defendant’s unfair and deceptive acts or practices in violation of the New York GBL and awarding actual damages, costs, attorneys’ fees, and any other just and proper relief available under the New York GBL.

SECOND CAUSE OF ACTION

BREACH OF CONTRACT

51. Plaintiff incorporates by reference each allegation set forth in paragraphs 1-35.

52. Plaintiff brings this claim individually and on behalf of the Class.

53. Plaintiff and each of the other Class members were insured under a policy issued by Defendant, as described herein.

54. Plaintiff's and each of the other Class members' insurance contracts are governed by New York law.

55. Plaintiff and each of the other Class members made claims under their insurance contracts, which Defendant determined to be first-party total losses under the insurance contract, and additionally determined to be covered claims.

56. Pursuant to the above-described contractual provisions, upon the total loss of their insured vehicles, Defendant purported to pay Plaintiff and each of the other Class members the ACV of their totaled vehicles.

57. Defendant, however, failed to pay the ACV of Plaintiff's and the Class members' vehicles because Defendant applied an arbitrary and capricious "projected sold adjustment" to comparable vehicles in order to reduce their market value and, as a result, Defendant's ACV payment to insureds.

58. Thus, Defendant failed to pay Plaintiff and each of the other Class members the promised ACV of their total loss vehicles and thereby breached its contract with Plaintiff and each of the other Class members.

59. As a result of the contractual breaches, Plaintiff and each of the other Class members have been damaged and are entitled to damages, as well as costs, pre-judgment and post-judgment interest, injunctive relief, and other relief as appropriate.

60. All conditions precedent have been satisfied.

THIRD CAUSE OF ACTION

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

61. Plaintiff incorporates by reference each allegation set forth in paragraphs 1-35.

62. Every contract, including the Policy, contains an implied covenant of good faith and fair dealing. The purpose of this duty is to ensure that parties do not take advantage of each other in a way that could not have been contemplated at the time the contract was drafted or do anything that will destroy the other party's right to receive the benefit of the contract.

63. Disputes involving the exercise of good faith arise when one party is given broad discretion in performing its obligations under the contract. Where a contract specifically vests one of the parties with broad discretion in performing a term of the contract, the covenant of good faith and fair dealing requires that the discretion be exercised reasonably and with proper motive, not arbitrarily, capriciously, or in a manner inconsistent with the reasonable expectations of the parties.

64. Under the Policy, Defendant had discretion to perform its obligations under the contract, including its obligation to determine the ACV of an insured's total loss vehicle. Defendant, however exercised its discretion unreasonably, with an improper motive, and in a manner that was arbitrary, capricious, and inconsistent with the reasonable expectations of the parties, specifically, to arbitrarily reduce the amount of its ACV payment to insureds, as alleged herein.

65. As such, Defendant breached the covenant of good faith and fair dealing by, *inter alia*:

- a. Intentionally applying "projected sold adjustments" to undervalue comparable vehicles, and, in turn, insureds' total loss vehicles;
- b. Failing to pay insureds the actual cash value of their total loss vehicles; Interpreting the terms and conditions of their insurance policies in an unreasonable manner, which is inconsistent with applicable law, solely in an effort to understate the retail market value of total loss vehicles and avoid paying insureds the actual cash value on their total loss claims; and

- c. Inventing spurious grounds for undervaluing total loss claims that are hidden, not specific in dollar amount, not adequately explained, and unreasonable.

66. Defendant's breaches of the covenant of good faith and fair dealing have caused damages to Plaintiff and the Class. Plaintiff's and the Class members' damages include the amounts improperly deducted by Defendant from its payments to insureds on the basis of a "projected sold adjustment".

FOURTH CAUSE OF ACTION

DECLARATORY JUDGMENT

67. Plaintiff incorporates by reference each allegation set forth in paragraphs 1-35.

68. A dispute between Plaintiff and the Class and Defendant is before this Court concerning the construction of the auto insurance policies issued by Defendant, and the rights of Plaintiff and the Class arising under that policy.

69. Plaintiff, individually and on behalf of the Class, seeks a declaration of rights and liabilities of the parties herein. Specifically, Plaintiff seeks a declaration that in paying total loss claims by first-party insureds, it is a breach of Defendant's insurance contract, as well as a violation of New York law, for Defendant to base the valuation and payment of claims on values of comparable vehicles that have been reduced by "projected sold adjustments" that are (a) arbitrary, (b) contrary to industry practices and consumer experiences (and therefore not reflective of the vehicle's fair market value), and (c) not as reasonably specific or appropriate as to dollar amount.

70. Defendant's unlawful common policy and general business practice as described herein are ongoing. Accordingly, Defendant has breached, and continues to breach, the express terms of its contracts of insurance with Plaintiff and members of the Class.

71. As a result of these breaches of contract, Plaintiff and the proposed Class members have been injured.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, respectfully seeks judgement in Plaintiff's favor and in favor of the Class as follows:

A. An Order certifying this action as a Class Action and appointing Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;

B. An award of damages (including actual, compensatory, statutory, and punitive, as provided by law) and restitution to Plaintiff and the Class in an amount to be determined at trial, plus interest, in accordance with law;

C. Disgorgement of Defendants' profits;

D. Appropriate preliminary and/or final injunctive or equitable relief against the conduct of Defendants described herein;

E. An award of Plaintiff's and the Class' costs of suit, including reasonable attorneys' fees as provided by law; and

F. An award of such further and additional relief as is necessary to redress the harm caused by Defendants' unlawful conduct and as the Court may deem just and proper under the circumstances.

Dated: July 28, 2021

Respectfully submitted,

By: /s/ Andrew Shamis
Andrew J. Shamis, Esq. (NY #5195185)
SHAMIS & GENTILE, P.A.
14 NE First Avenue, Suite 705

Miami, Florida 33132
Telephone: 305-479-2299
ashamis@shamisgentile.com

Rachel Dapeer, Esq. (NY #4995130)
DAPEER LAW, P.A.
20900 NE 30th Ave, Suite 417
Aventura, Florida 33180
Telephone: 305-610-5223
rachel@dapeer.com

Scott Edelsberg, Esq. (*Pro Hac
Forthcoming*)
Christopher Gold, Esq. (*Pro Hac
Forthcoming*)
EDELSBERG LAW, PA
20900 NE 30th Ave, Suite 417
Aventura, Florida 33180
Telephone: 305-975-3320
scott@edelsberglaw.com
chris@edelsberglaw.com

***Counsel for Plaintiff
and the Proposed Class***



NEW YORK

AUTO POLICY



Form 9611A NY (07/17)
version 2.0

PROGRESSIVE[®]
AUTO

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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 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 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 cutaway 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**, provided such **auto** or **trailer** is predominantly used for non-business purposes.
 - 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. **"Digital network"** means any system or service offered or utilized by a **transportation network company** that enables **TNC prearranged trips** with **transportation network company drivers**.
8. **"Occupying"** means in, on, entering or exiting.
9. **"Property damage"** means physical damage to, destruction of, or loss of use of, tangible property.
10. **"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 a "List Only" driver.
11. **"Relative"** means a person residing in the same household as **you**, and related to **you** by blood, marriage or adoption, and includes a ward, stepchild, 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.
12. **"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 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.
13. **"Trailer"** means a non-motorized, non-commercial 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.

Trailer does not include a mobile home or manufactured home.
14. **"Transportation network company"** or **"TNC"** means a person, corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to Article 44-B of the New York Vehicle and Traffic Law and is operating in New York state exclusively using a **digital network** to connect **transportation network company** passengers to **transportation network company drivers** who provide **TNC prearranged trips**.
15. **"Transportation network company driver"** means an individual who:
 - a. receives connections to potential passengers and related services from a **transportation network company** in exchange for payment of a fee to the **transportation network company**; and
 - b. uses a **TNC vehicle** to offer or provide a **TNC prearranged trip** to **transportation network company** passengers upon connection through a **digital network** controlled by a **transportation network company** in exchange for compensation or payment of a fee.

16. **“Transportation network company prearranged trip”** means the provision of transportation by a **transportation network company driver** to a passenger provided through the use of a **TNC’s digital network**:
- beginning when a **transportation network company driver** accepts a passenger’s request for a trip through a **digital network** controlled by a **transportation network company**;
 - continuing while the **transportation network company driver** transports the requesting passenger in a **TNC vehicle**; and
 - ending when the last requesting passenger departs from the **TNC vehicle**.
- The term **“Transportation network company prearranged trip”** does not include transportation provided through any of the following:
- shared expense carpool or vanpool arrangements, including those as defined in section one hundred fifty-eight-b of this chapter; and
 - use of a taxicab, livery, luxury limousine, or other for-hire vehicle, as defined in this chapter, section 19-502 of the administrative code of the city of New York, or as otherwise defined in local law.
17. **“Transportation network company vehicle”** or **“TNC vehicle”** means a vehicle that is:
- used by a **transportation network company driver** to provide a **TNC prearranged trip** originating within the state of New York; and
 - owned, leased or otherwise authorized for use by the **transportation network company driver**;
 - such term shall not include:
 - a taxicab, as defined in section one hundred forty-eight-a of this chapter and section 19-502 of the administrative code of the city of New York, or as otherwise defined in local law;
 - a livery vehicle, as defined in section one hundred twenty-one-e of this chapter, or as otherwise defined in local law;
 - a black car, limousine, or luxury limousine, as defined in section 19-502 of the administrative code of the city of New York, or as otherwise defined in local law;
 - a for-hire vehicle, as defined in section 19-502 of the administrative code of the city of New York, or as otherwise defined in local law;
 - a bus, as defined in section one hundred four of this chapter;
 - any motor vehicle weighing more than six thousand five hundred pounds unloaded;
 - any motor vehicle having a seating capacity of more than seven passengers; and
 - any motor vehicle subject to section three hundred seventy of this chapter.
18. **“We,” “us”** and **“our”** mean the underwriting company providing the insurance, as shown on the **declarations page**.
19. **“You”** and **“your”** mean:
- a person shown as a named insured on the **declarations page**; and
 - 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**

If **you** pay the premium for this coverage, **we** will pay damages, other than punitive or exemplary damages, for **bodily injury** and **property damage** for which an **insured person** becomes legally responsible because of an accident.

Damages include prejudgment interest awarded against an **insured person**.

We will settle or defend, as **we** consider appropriate, any claim for damages covered by this Part I. This applies even if the claim or suit is groundless or false.

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 a **trailer** shown on the **declarations page** or a **covered auto**;
- b. **you** or a **relative** with respect to an accident arising out of the ownership, maintenance, or use of an **auto** or **trailer** with the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
- c. 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**;
- d. any person or organization with respect only to vicarious liability for the acts or omissions of a person described in a., b., or c. above; and
- e. 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., b., or c. above.

ADDITIONAL PAYMENTS

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

1. all expenses **we** incur, and all costs taxed against the **insured person**, in the settlement of any claim or defense of any lawsuit;
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;
5. expenses incurred by the **insured person** for first aid to others at the time of the accident; and

6. 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 while being used as a public or livery conveyance. 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 an **auto** or **trailer** 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. any obligation for which the United States Government is liable under the Federal Tort Claims Act;
6. **bodily injury** or **property damage** caused by an intentional act of that **insured person**, or at the direction of that **insured person**;
7. **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;
8. **property damage** sustained by the spouse of an **insured person**. However, this exclusion does not apply to deny coverage to a spouse if named as a third-party defendant in a lawsuit brought by his or her spouse against another party;
9. **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;
10. **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; or
11. **bodily injury** or **property damage** sustained while the vehicle is used by a **transportation network company driver** who is logged onto the **transportation network company's digital network** but is not engaged in a **transportation network company prearranged trip** or while the driver provides a **transportation network company prearranged trip**.

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.

However, if **your policy** has **bodily injury** split limits of:

1. \$25,000 “each person” and \$50,000 “each accident” for coverage under this Part I, as shown on the **declarations page**, then the split limits set forth in the paragraph above shall not apply to **bodily injury** that results in death, and the following additional coverage will apply in the event of **bodily injury** that results in death, to the extent required by New York law:
 - a. **our** limit of liability for damages due to **bodily injury** that results in the death of one person in any one accident is \$50,000; or
 - b. if two or more persons sustain **bodily injury** that results in death, **our** limit of liability for **bodily injury** that results in the death of two or more persons in any one accident is \$100,000; or
2. \$50,000 “each person” and \$100,000 “each accident” for coverage under this Part I, as shown on the **declarations page**, then the split limits set forth in the paragraphs above for **bodily injury** shall not apply, and **our** limit of liability, to the extent required by New York law, will be as follows:
 - a. for any accident that causes **bodily injury** that results in the death of one person, the most **we** will pay for all damages due to **bodily injury** that results in death is \$50,000;
 - b. if only one person sustains **bodily injury** that does not result in death, the limit of liability for damages due to **bodily injury** to the one person is \$50,000;
 - c. subject to the per person limit, if two or more persons sustain **bodily injury** that does not result in death, the limit of liability for all damages due to **bodily injury** that does not result in death is \$100,000; or
 - d. for any accident that causes **bodily injury** that results in the death of two or more persons, the most **we** will pay for all damages due to **bodily injury** that results in death in any one accident is \$100,000, and the limit of liability for all other **bodily injury** that does not result in death is:
 - (i) \$50,000 if only one person sustains **bodily injury** in any one accident; or
 - (ii) subject to the per person limit, \$100,000 for two or more persons sustaining **bodily injury** in any one accident.

The above Limits of Liability with respect to **bodily injury** that results in death are subject to the following reductions:

1. in the event of the death of one person in any accident, **our** \$50,000 limit of liability will be reduced by any amounts paid to or on behalf of that person under this Part I; and

2. in the event of the death of two or more persons in any accident, our \$100,000 limit of liability will be reduced by any amounts paid to or on behalf of those persons under this Part I.

The limits of liability described above for “each person” and for “one person” apply 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, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

The limit of liability for **bodily injury** that results in the death of two or more persons in any one accident includes the total of all claims made for such **bodily injury** and all claims of others derived from such **bodily injury**, including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

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.

The limit of liability shown on the **declarations page** 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.

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

Any payment to a person under this Part I will be reduced by any payment to that person under Part III—Uninsured Motorists Coverage.

We will not pay under this Part I any expenses paid or payable under Part II(B)—Medical Payments Coverage.

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** issue this policy as proof of financial responsibility, this policy will comply with the law to the extent required.

OTHER INSURANCE

If there is any other valid and collectible liability insurance or bond that applies to the accident, **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. However, any insurance **we** provide for a vehicle or trailer, other than a **covered auto**, will be excess over any other valid and collectible insurance, self-insurance, or bond.

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 limits; 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

MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT (New York)

The Company agrees with the named insured, as follows:

Section I

Mandatory Personal Injury Protection

The company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle or a motorcycle during the policy period and within the United States of America, its territories or possessions, or Canada.

First-party Benefits

First-party benefits, other than death benefits, are payments equal to basic economic loss, reduced by the following:

- (a) 20 percent of the eligible injured person's loss of earnings from work to the extent that an eligible injured person's basic economic loss consists of such loss of earnings;

- (b) amounts recovered or recoverable on account of personal injury to an eligible injured person under State or Federal laws providing social security disability or workers' compensation benefits, or disability benefits under article 9 of the New York Workers' Compensation Law;
- (c) the amount of any applicable deductible, provided that such deductible shall apply to each accident, but only to the total of first-party benefits otherwise payable to the named insured and any relative as a result of that accident.

Basic Economic Loss

Basic economic loss shall consist of medical expense, work loss, other expense and, when death occurs, a death benefit as herein provided. Except for such death benefit, basic economic loss shall not include any loss sustained on account of death. Basic economic loss of each eligible injured person on account of any single accident shall not exceed \$50,000, except that any death benefit hereunder shall be in addition thereto.

Medical Expense

Medical expense shall consist of necessary expenses for:

- (a) medical, hospital (including services rendered in compliance with article 41 of the Public Health Law, whether or not such services are rendered directly by a hospital), surgical, nursing, dental, ambulance, X-ray, prescription drug and prosthetic services;
- (b) psychiatric, physical and occupational therapy and rehabilitation;
- (c) any nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of New York; and
- (d) any other professional health services.

These medical expenses will not be subject to a time limitation, provided that, within one year after the date of the accident, it is ascertainable that further medical expenses may be sustained as a result of the injury. Payments hereunder for necessary medical expenses shall be subject to the limitations and requirements of section 5108 and Regulation 83 of the New York Insurance Law.

Work Loss

Work loss shall consist of the sum of the following losses and expenses, up to a maximum payment of \$2,000 per month for a maximum period of three years from the date of the accident:

- (a) loss of earnings from work which the eligible injured person would have performed had such person not been injured, except that an employee who is entitled to receive monetary payments, pursuant to statute or contract with the employer, or who receives voluntary monetary benefits paid for by the employer, by reason of such employee's inability to work because of personal injury arising out of the use or operation of a motor vehicle or a motorcycle, shall not be entitled to receive first-party benefits for loss of earnings from work to the extent that such monetary

payments or benefits from the employer do not result in the employee suffering a reduction in income or a reduction in such employee's level of future benefits arising from a subsequent illness or injury; and

- (b) reasonable and necessary expenses sustained by the eligible injured person in obtaining services in lieu of those which such person would have performed for income.

Other Expenses

Other expenses shall consist of all reasonable and necessary expenses, other than medical expense and work loss, up to \$25 per day for a period of one year from the date of the accident causing injury.

Death Benefit

Upon the death of any eligible injured person, caused by an accident to which this coverage applies, the company will pay to the estate of such person a death benefit of \$2,000.

Eligible Injured Person

Subject to the exclusions and conditions set forth below, an eligible injured person is:

- (a) the named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle;
- (b) the named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle, while not occupying a motorcycle;
- (c) any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle in the State of New York while not occupying another motor vehicle; or
- (d) any New York State resident who sustains personal injury arising out of the use or operation of the insured motor vehicle outside of New York while not occupying another motor vehicle.

Exclusions

This coverage does not apply to personal injury sustained by:

- (a) the named insured while occupying, or while a pedestrian through being struck by, any motor vehicle owned by the named insured with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;
- (b) any relative while occupying, or while a pedestrian through being struck by, any motor vehicle owned by the relative with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;
- (c) the named insured or relative while occupying, or while a pedestrian through being struck by, a motor vehicle in New York State, other than the insured motor vehicle, with respect to which the coverage required by the New York Comprehensive

Motor Vehicle Insurance Reparations Act is in effect, however, this exclusion does not apply to personal injury sustained in New York State by the named insured or relative while occupying a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, unless that person is the operator, an owner, or an employee of the owner or operator, of such bus or school bus;

- (d) any person while occupying a motorcycle;
- (e) any person who intentionally causes his or her own personal injury;
- (f) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the Company has a cause of action against such person for the amount of first party benefits that are paid or payable; or
- (g) any person while:
 - (1) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;
 - (2) operating a motor vehicle in a race or speed test;
 - (3) operating or occupying a motor vehicle known to that person to be stolen; or
 - (4) repairing, servicing or otherwise maintaining a motor vehicle if the conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises;
- (h) the named insured or relative while not occupying a motor vehicle or a motorcycle when struck by a motorcycle in New York State with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect;
- (i) any New York State resident other than the named insured or relative injured through the use or operation of the insured motor vehicle outside of New York State if such resident is the owner or a relative of the owner of a motor vehicle insured under another policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act;
- (j) any New York State resident other than the named insured or relative injured through the use or operation of the insured motor vehicle outside of New York State if such resident is the owner of a motor vehicle for which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect; or
- (k) any person who is injured while, pursuant to Article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is being used or operated by a transportation network company driver.

When used in reference to this coverage:

- (a) the “insured motor vehicle” means a motor vehicle owned by the named insured and to which the bodily injury liability insurance of this policy applies and for which a specific premium is charged;
- (b) “motorcycle” means a vehicle as defined in section 123 of the New York Vehicle and Traffic Law and which is required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law;
- (c) “motor vehicle” means a motor vehicle, as defined in section 311 of the New York Vehicle and Traffic Law, and also includes fire and police vehicles, but shall not include any motor vehicle not required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law, or a motorcycle as defined above;
- (d) “named insured” means the person or organization named on the **declarations page**;
- (e) “occupying” means in or upon or entering into or alighting from;
- (f) “personal injury” means bodily injury, sickness or disease;
- (g) “relative” means a spouse, child, or other person related to the named insured by blood, marriage, or adoption (including a ward or foster child), who regularly resides in the insured’s household, including any such person who regularly resides in the household, but is temporarily living elsewhere; and
- (h) “use or operation” of a motor vehicle or a motorcycle includes the loading or unloading of such vehicle.

Conditions

Action Against Company. No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with the terms of this coverage.

Notice. In the event of an accident, written notice setting forth details sufficient to identify the eligible injured person, along with reasonably obtainable information regarding the time, place and circumstances of the accident, shall be given by, or on behalf of, each eligible injured person, to the Company, or any of the Company’s authorized agents, as soon as reasonably practicable, but in no event more than 30 days after the date of the accident, unless the eligible injured person submits written proof providing clear and reasonable justification for the failure to comply with such time limitation. If an eligible injured person or that person’s legal representative institutes a proceeding to recover damages for personal injury under section 5104(b) of the New York Insurance Law, a copy of the summons and complaint or other process served in connection with such action shall be forwarded as soon as practicable to the Company or any of the Company’s authorized agents by such eligible injured person or that person’s legal representative.

Proof of Claim; Medical, Work Loss, and Other Necessary Expenses. In the case of a claim for health service expenses, the eligible injured person or that person’s assignee or representative shall submit written proof of claim to the Company, in-

cluding full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably practicable, but in no event later than 45 days after the date services are rendered. The eligible injured person or that person's representative shall submit written proof of claim for work loss benefits and for other necessary expenses to the Company as soon as reasonably practicable but, in no event, later than 90 days after the work loss is incurred or other necessary services are rendered. The foregoing time limitations for the submission of proof of claim shall apply unless the eligible injured person or that person's representative submits written proof providing clear and reasonable justification for the failure to comply with such time limitation. Upon request by the Company, the eligible injured person or that person's legal representative shall:

- (a) execute a written proof of claim under oath;
- (b) as may reasonably be required submit to examinations under oath by any person named by the Company and subscribe the same;
- (c) provide authorization that will enable the Company to obtain medical records; and
- (d) provide any other pertinent information that may assist the Company in determining the amount due and payable.

The eligible injured person shall submit to medical examination by physicians selected by, or acceptable to, the Company, when, and as often as, the Company may reasonably require.

Arbitration. In the event any person making a claim for first-party benefits and the Company do not agree regarding any matter relating to the claim, such person shall have the option of submitting such disagreement to arbitration pursuant to procedures promulgated or approved by the Superintendent of Financial Services.

Reimbursement and Trust Agreement. To the extent that the Company pays first-party benefits, the Company is entitled to the proceeds of any settlement or judgment resulting from the exercise of any right of recovery for damages for personal injury under section 5104(b) of the New York Insurance Law. The Company shall have a lien upon any such settlement or judgment to the extent that the Company has paid first-party benefits. An eligible injured person shall:

- (a) hold in trust, for the benefit of the Company, all rights of recovery which that person shall have for personal injury under section 5104(b) of the New York Insurance Law;
- (b) do whatever is proper to secure, and shall do nothing to prejudice, such rights; and
- (c) execute, and deliver to the Company, instruments and papers as may be appropriate to secure the rights and obligations of such person and the Company established by this provision.

An eligible injured person shall not compromise an action to recover damages brought under section 5104(b) of the New York Insurance Law, except:

- (a) with the written consent of the Company;
- (b) with approval of the court; or
- (c) where the amount of the settlement exceeds \$50,000.

Other Coverage. Where more than one source of first-party benefits required by article 51 of the New York Insurance Law and article 6, 8, or 44-B of the New York Vehicle and Traffic Law is available and applicable to an eligible injured person in any one accident, this Company is liable to an eligible injured person only for an amount equal to the maximum amount that the eligible injured person is entitled to recover under this coverage, divided by the number of available and applicable sources of required first-party benefits. An eligible injured person shall not recover duplicate benefits for the same elements of loss under this coverage or any other mandatory first-party motor vehicle or no-fault motor vehicle insurance coverage issued in compliance with the laws of another state.

If the eligible injured person is entitled to benefits under any such mandatory first-party motor vehicle or no-fault motor vehicle insurance for the same elements of loss under this coverage, this Company shall be liable only for an amount equal to the proportion that the total amount available under this coverage bears to the sum of the amount available under this coverage and the amount available under such other mandatory insurance for the common elements of loss. However, where another state's mandatory first-party or no-fault motor vehicle insurance law provides unlimited coverage available to an eligible injured person for an element of loss under this coverage, the obligation of this Company is to share equally for that element of loss with such other mandatory insurance until the \$50,000, or \$75,000 if Optional Basic Economic Loss (OBEL) coverage is purchased, limit of this coverage is exhausted by the payment of that element of loss and any other elements of loss.

Section II

Excess Coverage

If motor vehicle medical payments coverage or any disability coverages or uninsured motorists coverage are afforded under this policy, such coverages shall be excess insurance over any Mandatory PIP, OBEL or Additional PIP benefits paid or payable, or which would be paid or payable but for the application of a deductible, under this or any other motor vehicle No-Fault insurance policy.

Section III

Constitutionality

If it is conclusively determined by a court of competent jurisdiction that the New York Comprehensive Motor Vehicle Insurance Reparations Act, or any amendment thereto, is invalid or unenforceable in whole or in part, then, subject to the approval of the Superintendent of Financial Services, the Company may amend this policy and may also recompute the premium for the existing or amended policy.

These amendments and recomputations will be effective retroactively to the date that such act or any amendment is deemed to be invalid or unenforceable in whole or in part.

NOTE: THE FOLLOWING ENDORSEMENT APPLIES ONLY IF YOU PAY THE PREMIUM FOR OPTIONAL BASIC ECONOMIC LOSS COVERAGE.

OPTIONAL BASIC ECONOMIC LOSS COVERAGE ENDORSEMENT (New York)

The Company agrees with the named insured, subject to all the provisions, exclusions and conditions of the MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT (New York) not expressly modified in this Endorsement, as follows:

The definition of Basic Economic Loss contained in the MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT (New York) is replaced by the following:

Basic Economic Loss

Basic economic loss shall consist of medical expense, work loss, other expense and, when death occurs, a death benefit as herein provided. Except for such death benefit, basic economic loss shall not include any loss sustained on account of death. Basic economic loss of each eligible injured person on account of any single accident shall not exceed \$75,000, the last \$25,000 of which represents optional basic economic loss coverage, payable after the first \$50,000 of basic economic loss has been exhausted, that the eligible injured person or that person's legal representative may specify will be applied to one of the following four options:

- (a) basic economic loss;
- (b) loss of earnings from work;
- (c) psychiatric, physical or occupational therapy and rehabilitation; or
- (d) a combination of options (b) and (c).

Any death benefit hereunder shall be in addition thereto.

Exclusion (c) set forth in the MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT (New York) is replaced by the following:

- (c) the named insured or relative while occupying, or while a pedestrian through being struck by, a motor vehicle in New York State, other than the insured motor vehicle, with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect; however, this exclusion does not apply to:
 - (1) the Optional Basic Economic Loss coverage provided under this endorsement, unless OBEL coverage is provided by the policy covering the other motor vehicle; or
 - (2) to personal injury sustained in New York State by the named insured or relative while occupying a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, unless that person is the operator, an owner, or an employee of the owner or operator, of such bus or school bus.

Election of the OBEL option shall be made by the eligible injured person or that person's legal representative after such person has incurred expense aggregating \$30,000 in basic economic loss and after receiving the required notices from the Company that an OBEL election may be made. Failure of the eligible injured person or that person's legal representative to respond to the second notice within 15 calendar days after its mailing shall be considered an election by the eligible injured person to apply OBEL coverage to all elements of basic economic loss. Once made by the eligible injured person or that person's legal representative, an OBEL election cannot be changed. However, if claims payable under OBEL coverage have not yet been received by the Company, an eligible injured person who has failed to respond to the second notice in a timely manner may make an election.

Notice

If OBEL coverage is payable under this policy, but Mandatory PIP is being paid under a policy covering another motor vehicle, then the named insured or relative shall notify the Company no later than 90 days after Mandatory PIP benefits under that other policy have been exhausted. The Company shall then send its OBEL election notice.

NOTE: THE FOLLOWING ENDORSEMENT APPLIES ONLY IF **YOU** PAY THE PREMIUM FOR ADDITIONAL PERSONAL INJURY PROTECTION COVERAGE.

ADDITIONAL PERSONAL INJURY PROTECTION ENDORSEMENT (New York)

The Company agrees with the named insured subject to all of the provisions, exclusions and conditions of the MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT (New York), not expressly modified in this coverage as follows:

Additional Personal Injury Protection

The Company will pay additional first-party benefits to reimburse for extended economic loss on account of personal injuries sustained by an eligible injured person and caused by an accident arising out of the use or operation of a motor vehicle or a motorcycle during the policy period. This coverage only applies to motor vehicle accidents within the United States of America, its territories or possessions, or Canada.

Eligible Injured Person

Subject to the exclusions and conditions set forth below, an eligible injured person is:

- (a) the named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle;
- (b) the named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle while not occupying a motorcycle;
- (c) any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle while occupying the insured motor vehicle; or

- (d) any other person who sustains personal injury arising out of the use or operation of any other motor vehicle (other than a public or livery conveyance) while occupying such other motor vehicle, if such other motor vehicle is being operated by the named insured or any relative.

Exclusions

This coverage does not apply to personal injury sustained by:

- (a) any person while occupying a motor vehicle owned by such person with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;
- (b) any person while occupying, or while a pedestrian through being struck by, a motor vehicle owned by the named insured with respect to which additional personal injury protection coverage is not provided under this policy;
- (c) any relative while occupying, or while a pedestrian through being struck by, a motor vehicle owned by such relative with respect to which additional personal injury protection coverage is not provided under this policy;
- (d) any New York State resident other than the named insured or relative injured through the use or operation of a motor vehicle outside of New York State if such resident is the owner of a motor vehicle for which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;
- (e) any person while occupying a motorcycle;
- (f) any person who intentionally causes his own personal injury;
- (g) any person as a result of operating a motor vehicle while in an intoxicated condition or while his ability to operate the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the Company has a cause of action against such person for the amount of first party benefits that are paid or payable;
- (h) any person while:
 - (i) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;
 - (ii) operating a motor vehicle in a race or speed test;
 - (iii) operating or occupying a motor vehicle known to him to be stolen; or
 - (iv) repairing, servicing, or otherwise maintaining a motor vehicle if such conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises; or
- (i) any person who is injured while, pursuant to Article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is being used or operated by a transportation network company driver.

Additional First-Party Benefits

Additional first-party benefits are payments equal to extended economic loss reduced by:

- (a) 20 percent of the eligible injured person's loss of earnings from work, to the extent that the extended economic loss covered by this Additional Personal Injury Protection Endorsement includes such loss of earnings;
- (b) amounts recovered or recoverable on account of personal injury to an eligible injured person under State or Federal laws providing social security disability or workers' compensation benefits or disability benefits under article 9 of the New York Workers' Compensation law, which amounts have not been applied to reduce first party benefits recovered or recoverable under basic economic loss;
- (c) amounts recovered or recoverable by the eligible injured person for any element of extended economic loss covered by this Additional Personal Injury Protection Endorsement under any mandatory source of first party automobile no-fault benefits required by the laws of any state (other than the State of New York) of the United States of America, its possessions or territories, or by the laws of any province of Canada.

Extended Economic Loss

Extended economic loss shall consist of the following:

- (a) basic economic loss sustained on account of an accident occurring within the United States of America, its possessions or territories, or Canada, which is not recovered or recoverable under a policy issued in satisfaction of the requirements of article 6 or 8 of the New York Vehicle and Traffic Law and article 51 of the New York Insurance Law;
- (b) the difference between
 - (i) basic economic loss; and
 - (ii) basic economic loss recomputed in accordance with the time and dollar limits shown on the **declarations page**.

Two Or More Motor Vehicles Insured Under This Policy

The limit of liability under this Additional Personal Injury Protection Endorsement applicable to injuries sustained by an eligible injured person while occupying or while a pedestrian through being struck by the insured motor vehicle shall be as stated on the **declarations page** for that insured motor vehicle. The limit of liability for injuries covered by this Additional Personal Injury Protection Endorsement and sustained by an eligible injured person while occupying, or while a pedestrian through being struck by, a motor vehicle, other than the insured motor vehicle, shall be the highest limit stated for this coverage in the declarations for any insured motor vehicle under this policy.

Arbitration

In the event any person making a claim for additional first-party benefits and the Company do not agree regarding any matter relating to the claim, such person shall

Subrogation

In the event of any payment for extended economic loss, the Company is subrogated to the extent of such payments to the rights of the person to whom, or for whose benefit, such payments were made. Such person must execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Such person shall do nothing to prejudice such rights.

Other Coverage; Non-Duplication

The eligible injured person shall not recover duplicate benefits for the same elements of loss covered by this Additional Personal Injury Protection Endorsement or any other optional first-party automobile or no-fault automobile insurance coverage.

If an eligible injured person is entitled to New York mandatory and additional personal injury protection benefits under any other policy, and if such eligible injured person is not entitled to New York mandatory personal injury protection benefits under this policy, then the coverage provided under this Additional Personal Injury Protection Endorsement (New York) shall be excess over such other New York mandatory and additional personal injury protection benefits.

When coverage provided under this Additional Personal Injury Protection Endorsement applies on an excess basis, it shall apply only in the amount by which the total limit of liability of New York mandatory and additional personal injury protection coverage available under this policy exceeds the total limit of liability for any other applicable New York mandatory and additional personal injury protection coverage.

Subject to the provisions of the preceding three paragraphs, if the eligible injured person is entitled to benefits under any other optional first-party automobile or no-fault automobile insurance for the same elements of loss covered by this Additional Personal Injury Protection Endorsement this Company shall be liable only for an amount equal to the proportion that the total amount available under this coverage bears to the sum of the amounts available under this coverage and such other optional insurance, for the same elements of loss.

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.

ADDITIONAL DEFINITIONS

When used in this Part II(B):

1. **"Insured person"** means:
 - a. **you**, a **relative**, or a **rated resident**:
 - (i) while **occupying** an **auto**; or
 - (ii) when struck by a **motor vehicle** or a trailer while not **occupying** a self-propelled motorized vehicle; and
 - b. any other person while **occupying** a **covered auto** with the permission of **you**, a **relative**, or a **rated resident**.
2. **"Medical services"** means medical, surgical, dental, x-ray, ambulance, hospital, professional nursing, and funeral services, and includes the cost of eyeglasses, hearing aids, pharmaceuticals, orthopedics, and prosthetic devices.
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 as a public or livery conveyance;
 - b. for retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food; or
 - c. by a **transportation network company driver** who is logged onto the **transportation network company's digital network** but is not engaged in a **transportation network company prearranged trip** or while the driver provides a **transportation network company prearranged trip**.
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**, 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 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. 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 by a criminal act or omission pertaining to a criminal act of an **insured person**. For purposes of this exclusion, criminal acts or omissions do not include traffic violations.

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, Part II(A)—Personal Injury Protection Coverage, or Part III—Uninsured Motorists 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.

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

The coverage provided by this Part II(B) shall be excess over any mandatory personal injury protection, optional basic economic loss, or additional personal injury protection benefits paid or payable, or which would be payable but for the application of a deductible or coinsurance, under this or any other motor vehicle no-fault insurance policy.

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 MOTORISTS COVERAGE

UNINSURED MOTORISTS ENDORSEMENT

We, the Company, agree with you, as the named insured, in return for the payment of the premium for this coverage to provide you with Uninsured Motorist (UM) Coverage, subject to the following terms and conditions:

1. **Damages for Bodily Injury Caused by Uninsured Motor Vehicles.** We will pay all sums which the insured, as defined herein, or the insured's legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, and caused by accident arising out of such uninsured motor vehicle's ownership, maintenance or use, subject to the Exclusions, Conditions, Limits and other provisions of this UM endorsement; provided, for the purposes of this coverage, determination as to whether the insured or the insured's representative is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the insured or the insured's representative and us or, if they fail to agree, by arbitration.

2. **Definitions.** For purposes of this UM endorsement, the following terms shall have the following meanings:
 - (a) **Insured.** The unqualified term "insured" means:
 - (1) You, as the named insured and, while residents of the same household, your spouse and the relatives of either you or your spouse;
 - (2) Any other person while occupying:
 - (i) A motor vehicle owned by the named insured or, if the named insured is an individual, such spouse and used by or with the permission of either, or
 - (ii) Any other motor vehicle while being operated by the named insured or such spouse, except a person occupying a motor vehicle not registered in the State of New York, while used as a public or livery conveyance; and
 - (3) Any person, with respect to damages such person is entitled to recover because of bodily injury to which this coverage applies sustained by an insured under sub-paragraphs (1) or (2) above.
 - (b) **Uninsured Motor Vehicle.** The term "uninsured motor vehicle" means a motor vehicle that through its ownership, maintenance or use, results in bodily injury to an insured, and for which:
 - (1) No bodily injury liability insurance policy or bond applies to such vehicle (including a vehicle that was stolen, operated without the owner's permission, or unregistered) at the time of the accident; or
 - (2) Neither the owner nor driver can be identified, including a hit-and-run vehicle, and which causes bodily injury to an insured by physical contact with the insured or with a motor vehicle occupied by the insured at the time of the accident, provided that:
 - (i) The insured or someone on the insured's behalf shall have reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles and shall have filed with us a statement under oath that the insured or the insured's legal representative has a cause or causes

of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and

- (ii) At our request, the insured or the insured's legal representative makes available for inspection the motor vehicle the insured was occupying at the time of the accident, or
- (3) There is a bodily injury liability insurance coverage or bond applicable to such motor vehicle at the time of the accident, but:
 - (i) The amount of such insurance coverage or bond is less than the UM limits of this policy; or
 - (ii) The insurer writing such insurance coverage or bond denies coverage.
- (4) The term "uninsured motor vehicle" does not include a motor vehicle that is:
 - (i) Insured under the liability coverage of this policy; or
 - (ii) Owned by you, as the named insured and, while residents of the same household, your spouse and relatives of either you or your spouse; or
 - (iii) Self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle is registered, or any similar state or federal law, to the extent that the required amount of such coverage is equal to, or greater than, the UM limits of this policy; or
 - (iv) Owned by the United States of America, Canada, a state, a political subdivision of any such government, or an agency of any of the foregoing; or
 - (v) A land motor vehicle or trailer, while located for use as a residence or premises and not as a vehicle, or while operated on rails or crawler-treads; or
 - (vi) A farm type vehicle or equipment designed for use principally off public roads, except while actually upon public roads.
- (c) **Hit-and-Run Motor Vehicle.** The term "hit-and-run motor vehicle" means a motor vehicle which causes bodily injury to an insured arising out of physical contact of such motor vehicle with the insured or with a motor vehicle which the insured is occupying at the time of the accident, provided:
 - (1) there cannot be ascertained the identity of either the operator or the owner of such "hit-and-run motor vehicle";
 - (2) the insured or someone on his behalf shall have reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles, and shall have filed with the company within 90 days thereafter a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and
 - (3) at our request, the insured or his legal representative makes available for inspection the motor vehicle which the insured was occupying at the time of the accident.
- (d) **Bodily Injury.** The term "bodily injury" means bodily harm, including sickness, disease or death resulting therefrom.

- (e) **Occupying.** The term "occupying" means in, upon, entering into, or exiting from a motor vehicle.
- (f) **State.** The term "state" includes the District of Columbia, a territory or possession of the United States, and a province of Canada.

3. **Territory.** The coverage provided by this UM endorsement applies only to accidents which occur within the State of New York.

EXCLUSIONS

This UM coverage does not apply:

1. To bodily injury to an insured while operating a motor vehicle in violation of an order of suspension or revocation; or to care or loss of services recoverable by an insured because of such bodily injury so sustained.
2. To bodily injury to an insured, or care or loss of services recoverable by an insured, with respect to which such insured, the insured's legal representatives or any person entitled to payment under this UM coverage shall, without our written consent, make any settlement with or prosecute to judgment any action against any person or organization who may be legally liable therefor, but this provision shall be subject to Condition 8 of this UM endorsement.
3. To bodily injury to an insured incurred while occupying a motor vehicle owned by that insured, if such motor vehicle is not insured for at least the minimum bodily injury liability limits and UM limits required by law by the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of this policy.
4. So as to inure directly or indirectly to the benefit of any workers' compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workers' compensation or disability benefits law or any similar law.
5. For non-economic loss, resulting from bodily injury to an insured and arising from an accident in New York State, unless the insured has sustained serious injury as defined in Section 5102(d) of the New York Insurance Law.
6. To bodily injury to an insured incurred while the insured motor vehicle is used by a transportation network company driver who is logged onto a transportation network company's digital network but is not engaged in a transportation network company prearranged trip or while the driver provides a transportation network company prearranged trip pursuant to article 44-B of the Vehicle and Traffic Law.

CONDITIONS

1. **Policy Provisions.** None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to this UM coverage except "Your Duties", "Fraud Or Misrepresentation", "Cancellation", "Cancellation Refund", and "Nonrenewal" if applicable.
2. **Premium.** If during the policy period the number of motor vehicles owned by the named insured or spouse and registered in New York or the number of New York dealer's license plates or transporter plates issued to the named insured

changes, the named insured shall notify us during the policy period of any change and the premium shall be adjusted as of the date of such change in accordance with the manuals in use by us. If the earned premium thus computed exceeds the advance premium paid, the named insured shall pay the excess to us; if less, we shall return to the named insured the unearned portion paid by such insured.

3. **Notice and Proof of Claim.** Within 90 days or as soon as practicable, the insured or other person making claim shall give us written notice of claim under this UM endorsement.

As soon as practicable after our written request, the insured or other person making any claim shall give us written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details we need to determine the UM amount payable hereunder.

The insured and every other person making claim hereunder shall, as may reasonably be required, submit to examinations under oath by any person named by us and subscribe the same. Proof of claim shall be made upon forms we furnish unless we fail to furnish such forms within 15 days after receiving notice of claim.

4. **Medical Reports.** The injured person shall submit to physical examinations by physicians we select when and as often as we may reasonably require. The insured, or in the event of the insured's incapacity, such insured's legal representative, or in the event of the insured's death, the insured's legal representative or the person or persons entitled to sue therefor, shall upon our request authorize us, when and as often as we may reasonably require, to obtain relevant medical reports and copies of records.
5. **Notice of Legal Action.** If the insured or such insured's legal representative brings any lawsuit against any persons or organizations legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with the lawsuit shall be forwarded immediately to us by the insured or the insured's legal representative.
6. **UM Limit of Liability.** The UM limit payable under this UM endorsement shall be:
 - (a) The limit of our liability for all damages, including damages for care or loss of services, because of bodily injury sustained by one person as the result of any one accident is \$25,000 per person and, subject to this per person limit, the total limit of our liability for all damages, including damages for care or loss of services, because of bodily injury sustained by two or more persons, as the result of any one accident is \$50,000.
 - (b) If the bodily injury results in death, the limit of our liability shall be \$50,000 for such bodily injury resulting in death sustained by one person as a result of any one accident and, subject to this limit for each person, \$100,000 for such bodily injury resulting in death sustained by two or more persons as the result of any one accident.

(c) Any amount payable under the terms of this UM endorsement, including amounts payable for care or loss of services, because of bodily injury sustained by one person, shall be reduced by (1) all sums paid to one or more insureds on account of such bodily injury by or on behalf of (a) the owner or operator of the uninsured motor vehicle and (b) any other person or persons jointly or severally liable together with such owner or operator for such bodily injury, and (2) all sums paid to one or more insureds on account of bodily injury sustained in the same accident under any insurance or statutory benefit similar to that provided by this UM endorsement.

7. **Other Insurance.** With respect to bodily injury to an insured while occupying a motor vehicle not owned by the named insured, the coverage under this UM endorsement shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such motor vehicle as primary insurance, and this UM endorsement shall then apply only in the amount by which the limit of liability for this coverage exceeds the applicable limit of liability of such other insurance.

Except as provided in the foregoing paragraph, if there is other similar insurance available to the insured and applicable to the accident, the damages shall be deemed not to exceed the higher of the applicable limits of liability of this coverage and such other insurance, and we shall not be liable for a greater proportion of any loss to which this coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this UM endorsement and such other insurance.

8. **Release or Advance.** In accidents involving the insured and one or more negligent parties, if such insured settles with any such party for the available limit of the motor vehicle bodily injury liability coverage of such party, release may be executed with such party after thirty calendar days actual written notice to us, unless within this time period we agree to advance such settlement amounts to the insured in return for the cooperation of the insured in our lawsuit on behalf of the insured.

We shall have a right to the proceeds of any such lawsuit equal to the amount advanced to the insured and any additional amounts paid under this UM coverage. Any excess above those amounts shall be paid to the insured.

An insured shall not otherwise settle with any negligent party, without our written consent, such that our rights would be impaired.

9. **Non-Duplication.** This UM coverage shall not duplicate any of the following:
- (a) Benefits payable under workers' compensation or other similar laws;
 - (b) Non-occupational disability benefits under article nine of the Workers' Compensation Law or other similar law;
 - (c) Any amounts recovered or recoverable pursuant to article fifty-one of the New York Insurance Law or any similar motor vehicle insurance payable without regard to fault;

- (d) Any valid or collectible motor vehicle medical payments insurance, or
- (e) Any amounts recovered as bodily injury damages from sources other than motor vehicle bodily injury insurance policies or bonds.

10. **Arbitration.** If we do not agree with the insured or the insured's representative making claim hereunder that the insured is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury to the insured, or do not agree as to the amount of payment which may be owing under this UM endorsement then, upon written demand of either the claimant or us, the matter or matters upon which we do not agree with such person shall be settled by arbitration in accordance with the rules and procedures of the American Arbitration Association prescribed or approved by the Superintendent of Financial Services for this purpose. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Such person and we each agree to consider itself bound and to be bound by any award made by the arbitrators pursuant to this UM endorsement.
11. **Subrogation.** If we make a payment under this UM coverage, we have the right to recover the amount of this payment from any person legally responsible for the bodily injury or loss of the person to whom, or for whose benefit such payment was made to the extent of the payment. The insured or any person acting on behalf of the insured must do whatever is necessary to transfer this right of recovery to us. Except as permitted by Condition 8, such person shall do nothing to prejudice this right.
12. **Payment of Loss by Company.** We shall pay any amount due under this UM endorsement to the insured or, at our option, to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents.
13. **Action Against Company.** No lawsuit shall lie against us unless, as a condition precedent thereto, the insured or the insured's legal representative has first fully complied with all the terms of this UM endorsement.
14. **Assignment.** Assignment of interest under this UM endorsement shall not bind us until our consent is endorsed hereon.
15. **Survivor Rights.** If you or your spouse, if a resident of the same household, dies, this UM coverage shall cover:
 - (a) The survivor as named insured;
 - (b) The decedent's legal representative as named insured, but only while acting within the scope of such representative's duties as such; and
 - (c) Any relative who was insured at the time of such death.
16. **Policy Period – Termination.** This UM coverage applies only to accidents which occur on and after the effective date hereof and during the policy period and shall

terminate upon (1) termination of the policy of which it forms a part or (2) termination of New York registration on all motor vehicles owned by the named insured or spouse.

NOTE: THE FOLLOWING ENDORSEMENT APPLIES ONLY IF **YOU** PAY A PREMIUM FOR SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS COVERAGE.

**SUPPLEMENTARY UNINSURED/UNDERINSURED
MOTORISTS ENDORSEMENT**

We, the company, agree with you, as the named insured, in return for payment of the premium for this coverage, to provide Supplementary Uninsured/Underinsured Motorists (SUM) coverage, subject to the following terms and conditions:

INSURING AGREEMENTS

- I. **Definitions:** For purposes of this SUM endorsement, the following terms have the following meanings.
- (a) **Insured.** The unqualified term "insured" means:
 - (1) you, as the named insured and, while residents of the same household, your spouse and the relatives of either you or your spouse;
 - (2) any person while acting in the scope of that person's duties for you, except with respect to the use and operation by such person of a motor vehicle not covered under this policy, where such person is:
 - (i) your employee and you are a fire department;
 - (ii) your member and you are a fire company, as defined in General Municipal Law section 100;
 - (iii) your employee and you are an ambulance service, as defined in Public Health Law section 3001; or
 - (iv) your member and you are a voluntary ambulance service, as defined in Public Health Law section 3001;
 - (3) any other person while occupying:
 - (i) a motor vehicle insured for SUM under this policy; or
 - (ii) any other motor vehicle while being operated by you or your spouse; and
 - (4) any person, with respect to damages such person is entitled to recover, because of bodily injury to which this coverage applies sustained by an insured under paragraph (1), (2) or (3) above.
 - (b) **Bodily Injury.** The term "bodily injury" means bodily harm, including sickness, disease or death resulting therefrom.
 - (c) **Uninsured Motor Vehicle.** The term "uninsured motor vehicle" means a motor vehicle that, through its ownership, maintenance or use, results in bodily injury to an insured, and for which:
 - (1) no bodily injury liability insurance policy or bond applies to such motor vehicle (including a vehicle that was stolen, operated without the owner's permission or unregistered) at the time of the accident; or

- (2) the owner and operator cannot be identified (including a hit-and-run motor vehicle), and which causes bodily injury to an insured by physical contact with the insured or with a motor vehicle occupied by the insured at the time of the accident, provided that:
 - (i) the insured or someone on the insured's behalf:
 - (a) reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles; and
 - (b) filed with the Company a statement under oath that the insured or the insured's legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and
 - (ii) at the request of the Company, the insured or the insured's legal representative makes available for inspection the motor vehicle the insured was occupying at the time of the accident; or
- (3) there is a bodily injury liability insurance coverage or bond applicable to such motor vehicle at the time of the accident, but:
 - (i) the amount of such insurance coverage or bond is less than the third-party bodily injury liability limit of this policy; or
 - (ii) the amount of such insurance coverage or bond has been reduced, by payments to other persons injured in the accident, to an amount less than the third-party bodily injury liability limit of this policy; or
 - (iii) the insurer writing such insurance coverage or bond denies coverage or such insurer is or becomes insolvent.

The term "uninsured motor vehicle" shall not include a motor vehicle that is:

- (1) insured under the liability coverage of this policy; or
 - (2) owned by you, the named insured, or your spouse residing in your household; or
 - (3) self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle is registered, or any similar state or federal law to the extent that the required amount of such coverage is equal to, or greater than, the third-party bodily injury liability limits of this policy; or
 - (4) owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing; or
 - (5) a land motor vehicle or trailer, while located for use as a residence or premises and not as a motor vehicle or while operated on rails or crawler-treads; or
 - (6) a farm type vehicle or equipment designed for use principally off public roads, except while actually upon public roads.
- (d) **Occupying.** The term "occupying" means in, upon, entering into or exiting from a motor vehicle.
 - (e) **State.** The term "state" means a state, territory or possession of the United States, the District of Columbia or a province of Canada.

II. Damages for Bodily Injury Caused by Uninsured Motor Vehicles:

We will pay all sums that the insured or the insured's legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, caused by an accident arising out of such uninsured motor vehicle's ownership, maintenance or use, subject to the Exclusions, Conditions, Limits and other provisions set forth in this SUM endorsement.

III. SUM Coverage Period and Territory:

This SUM coverage applies only to accidents that occur:

1. during the policy period shown in the **declarations page**; and
2. in the United States, its territories or possessions, or Canada.

EXCLUSIONS

This SUM coverage does not apply to:

1. bodily injury to an insured, including care or loss of services recoverable by an insured, if such insured, such insured's legal representatives or any person entitled to payment under this coverage, without our written consent, settles any lawsuit against any person or organization that may be legally liable for such injury, care or loss of services, however this provision shall be subject to Condition 9;
2. bodily injury to an insured incurred while occupying a motor vehicle owned by that insured, if such motor vehicle is not insured for SUM coverage by the policy under which a claim is made or is not a newly acquired or replacement motor vehicle covered under the terms of this policy;
3. non-economic loss resulting from bodily injury to an insured arising from an accident in New York State, unless the insured has sustained serious injury as defined in section 5102(d) of the New York Insurance Law; or
4. bodily injury to an insured incurred while the insured motor vehicle is used by a transportation network company driver who is logged onto a transportation network company's digital network but is not engaged in a transportation network company prearranged trip or while the driver provides a transportation network company prearranged trip pursuant to article 44-B of the Vehicle and Traffic Law.

CONDITIONS

1. **Policy Provisions:** None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to this SUM coverage except: "Your Duties", "Fraud or Misrepresentation", "Cancellation", "Cancellation Refund" and "Nonrenewal", if applicable.
2. **Notice and Proof of Claim:** As soon as practicable, the insured or other person making a claim shall give us written notice of claim under this SUM coverage.
 - (i) As soon as practicable after our written request, the insured or other person making claim shall give us written proof of claim, under oath if required, in-

cluding full particulars of the nature and extent of the injuries, treatment and other details we need to determine the SUM amount payable.

- (ii) The insured and every other person making claim hereunder shall, as may reasonably be required, submit to examinations under oath by any person we name and subscribe the same. Proof of claim shall be made upon forms we furnish unless we fail to furnish such forms within 15 calendar days after receiving notice of claim.
3. **Medical Reports:** The insured shall submit to physical examinations by physicians we select when and as often as we may reasonably require. The insured, or in the event of the insured's incapacity, the insured's legal representative (or in the event of the insured's death, the insured's legal representative or the person or persons entitled to sue therefor), shall upon each request from us authorize us to obtain copies of relevant medical reports and records.
 4. **Notice of Legal Action:** If the insured or the insured's legal representative brings any lawsuit against any person or organization legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with the lawsuit shall be forwarded immediately to us by the insured or the insured's legal representative.
 5. **SUM Limits and Maximum Payments:**
 - (a) The SUM limit(s) payable under this endorsement shall be determined as follows:
 - (1) if an accident results in bodily injury excluding death to one or more persons, then we will provide the SUM limit(s) stated in the **declarations page**; or
 - (2) if an accident results in the death of one or more persons, then we will provide the greater of the SUM limit(s) stated in the **declarations page** or \$50,000 for such bodily injury resulting in death sustained by one person as the result of any one accident and, subject to this per person limit, \$100,000 for such bodily injury resulting in death sustained by two or more persons as the result of any one accident; or
 - (3) if an accident results in both bodily injury to one or more persons and the death of one or more persons, then we will provide the greater of the SUM limits stated in the **declarations page** or the limits required by the mandatory uninsured motorists (UM) coverage as follows:
 - \$25,000 per injured person and, subject to this per person limit,
 - \$50,000 to two or more persons injured as the result of any one accident; and
 - \$50,000 per person for bodily injury resulting in death and, subject to this per person limit,
 - \$100,000 to two or more persons for bodily injury resulting in death as the result of any one accident.

(b) Regardless of the number of insureds, our maximum payment under this SUM endorsement shall be the difference between:

- (1) the SUM limits; and
- (2) the motor vehicle bodily injury liability insurance or bond payments received by the insured or the insured's legal representative, from or on behalf of all persons that may be legally liable for the bodily injury sustained by the insured.

(c) The SUM limit shown on the **declarations page** is the amount of coverage for all damages due to bodily injury in any one accident. (The SUM limit shown on the **declarations page** for "Each Person" is the amount of coverage for all damages due to bodily injury to one person. The SUM limit shown under "Each Accident" is, subject to the limit for "each person", the total amount of coverage for all damages due to bodily injury to two or more persons in the same accident).

6. **Non-Stacking:** Regardless of the number of motor vehicles involved, persons covered, claims made, motor vehicles or premiums shown in this policy or premium paid, the limits, whether for UM coverage or SUM coverage, shall never be added together or combined for two or more motor vehicles to determine the extent of insurance coverage available to an insured who was injured in the same accident.
7. **Priority of Coverage:** If an insured is entitled to UM coverage or SUM coverage under more than one policy, the maximum amount such insured may recover shall not exceed the highest limit of such coverage for any one motor vehicle under any one policy and the following order of priority shall apply:
 - (a) a policy covering a motor vehicle occupied by the injured person at the time of the accident;
 - (b) a policy covering a motor vehicle not involved in the accident under which the injured person is a named insured; and
 - (c) a policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.

Coverage available under a lower priority policy applies only to the extent that it exceeds the coverage of a higher priority policy.

8. **Exhaustion Required:** Except as provided in Condition 9, we will pay under this SUM coverage only after the limits of liability have been exhausted under all motor vehicle bodily injury liability insurance policies or bonds applicable at the time of the accident in regard to any one person who may be legally liable for the bodily injury sustained by the insured.
9. **Release or Advance:**
 - (a) In accidents involving the insured and one or more negligent parties, if such insured settles with any such party for the available limit of the motor vehicle bodily injury liability coverage of such party, release may be executed with such party after thirty (30) calendar days from our receipt of your written no-

tice to us, unless within this time period we agree to advance such settlement amounts to the insured in return for the cooperation of the insured in our lawsuit on behalf of the insured.

- (b) We shall have a right to the proceeds of any such lawsuit equal to the amount advanced to the insured and any additional amounts paid under this SUM coverage. Any excess above those amounts shall be paid to the insured.
- (c) An insured shall not otherwise settle with any negligent party, without our written consent, such that our rights would be impaired.

10. **Non-Duplication:** This SUM coverage shall not duplicate any of the following:

- (a) benefits payable under workers' compensation or other similar laws;
- (b) non-occupational disability benefits under New York Workers' Compensation Law article nine or other similar law;
- (c) any amounts recovered or recoverable pursuant to New York Insurance Law article 51 or any similar motor vehicle insurance payable without regard to fault;
- (d) any valid or collectable motor vehicle medical payments insurance; or
- (e) any amounts recovered as bodily injury damages from sources other than motor vehicle bodily injury liability insurance policies or bonds.

11. **Arbitration:**

- (a) If any insured makes a claim under this SUM coverage and we do not agree that such insured is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, or we do not agree as to the amount of payment that may be owing under this SUM coverage, then, at the option and upon written demand of such insured, the matter or matters upon which such insured and we do not agree shall be settled by arbitration, administered by the American Arbitration Association, pursuant to procedures approved by the Superintendent of Financial Services for this purpose.
- (b) If the maximum amount of SUM coverage provided by this endorsement equals the amount of coverage required to be provided by New York Insurance Law section 3420(f)(1) and New York Vehicle and Traffic Law Article 6 or 8, then such disagreement shall be settled by such arbitration procedures upon written demand of either the insured or us. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, and any such insured and we each agree to be bound by any award made by the arbitrator as to this SUM coverage. For purposes of this Condition, the term "insured" includes any person authorized to act on behalf of the insured.

12. **Subrogation:** If we make a payment under this SUM coverage, then we have the right to recover the amount of the payment from any person legally responsible for the bodily injury or loss of the person to whom, or for whose benefit, such pay-

ment was made to the extent of the payment. The insured or any person acting on behalf of the insured must do whatever is necessary to transfer this right of recovery to us. Except as permitted by Condition 9, such person shall do nothing to prejudice this right.

13. **Payment of Loss by Company:** We shall pay any amount due under this SUM coverage to the insured or, at our option, to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents.
14. **Action Against Company:** No lawsuit shall lie against us unless the insured or the insured's legal representative has first fully complied with all the terms of this SUM coverage.
15. **Survivor Rights:** If you or your spouse, if a resident of the same household, dies, then this SUM endorsement shall cover:
 - (a) the survivor as named insured;
 - (b) the decedent's legal representative as named insured, but only while acting within the scope of such representative's duties as such; and
 - (c) any relative who was an insured at the time of such death.

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** make an offer to 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—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** 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** make an offer to 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—PET INJURY COVERAGE

If **you** have purchased Collision coverage for at least one **covered auto** under **your** policy, and 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.

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 the **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 as a public livery conveyance;
 - b. for retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food; or
 - c. by a **transportation network company driver** who is logged onto the **transportation network company's digital network** but is not engaged in a **transportation network company prearranged trip** or while the driver provides a **transportation network company prearranged trip**.
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**;
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**, any **relative**, or any **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:
 - a. any accidental or intentional discharge, dispersal or release of radioactive, nuclear, pathogenic or poisonous biological material; or
 - b. any intentional discharge, dispersal or release of chemical or hazardous material for any purpose other than its safe and useful purpose; or
 - 12. to any vehicle caused by a criminal act or omission pertaining to a criminal act of **you**, a **relative**, a **rated resident**, or the owner of a **non-owned auto**. For purposes of this exclusion, criminal acts or omissions do not include 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 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.

No coverage is provided under this Part IV for diminution of value.

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, subject to the actual cash value, 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 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. Payment under this Part IV shall not duplicate payment made under the Rental Vehicle Coverage Endorsement or under any other coverage provided under this policy.

6. The following additional 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.

WAIVER OF COLLISION DEDUCTIBLE

If there is a collision loss that is payable under this Part IV, no deductible shall apply to the loss if:

1. the loss was caused by a collision with another **auto** insured by **us**; and
2. the applicable deductible shown on the **declarations page** is \$250 or less.

RECOVERY OF STOLEN OR ABANDONED VEHICLES

If an **auto** for which coverage is provided under this Part IV is stolen or abandoned, **we** may take custody of the **auto** for safekeeping once **we** are notified of its location.

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.

MANDATORY INSPECTION

Subject to New York State Department of Financial Services Regulation No. 79 (11 NYCRR Part 67), as amended, we have the right to inspect any **covered auto** or **non-owned auto** insured, or intended to be insured, under this Part IV.

When we require an inspection, you must:

1. cooperate with **us**; and
2. make the **auto** available for inspection.

AUTO REPAIRS

It is agreed that payment of a loss under this Part IV shall not be conditioned upon the repair of the automobile. However, **we** shall be entitled to the following:

1. a completed "Certification of Automobile Repairs" as prescribed by the New York State Department of Financial Services;

2. if the automobile is repaired, an Itemized Repair Invoice prepared by the automobile repairer; and
3. an inspection of the automobile, whether or not the automobile is repaired.

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 or nonrenewed, the interest of any lienholder under this agreement will also terminate.

We will be entitled to the lienholder's rights of recovery, to the extent of **our** payment to the lienholder.

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.

However, this provision does not apply if the loss is to a **non-owned auto** loaned or leased to **you** as a replacement for any **auto** shown on the **declarations page** while it is out of use because of breakdown, repair, or servicing.

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 appraiser and shall notify the other party of that appraiser's identity. The appraisers will determine the amount of loss. If they fail to agree, the disagreement will be submitted to a qualified umpire chosen by the appraisers. 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.

UNAUTHORIZED SERVICE PROVIDER

When service is rendered by a provider other than **our** authorized service representative, **we** will only pay 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**.

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. labor or repair work performed at a service station, garage, or repair shop;
9. auto storage charges;
10. 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;
11. mounting or removing of snow tires or chains;
12. tire repair;
13. disablement that results from an intentional or willful act or action by **you**, a **relative**, or the operator of a **covered disabled auto**;
14. a trailer; or
15. to any vehicle used by a **transportation network company driver** who is logged onto the **transportation network company's digital network** but is not engaged in a **transportation network company prearranged trip** or while the driver provides a **transportation network company prearranged trip**.

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 report each accident or loss as soon as reasonably possible even if **you** or the person seeking coverage is not at fault. **You** or the person seeking coverage must provide **us** with all accident or 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 a hit-and-run is involved, 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 seeking coverage, and answer all reasonable questions **we** may ask as often as **we** may reasonably require;
4. as soon as reasonably possible, 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.

A person claiming coverage under Part II(A)—Personal Injury Protection Coverage or Part III—Uninsured Motorists Coverage must perform any additional duties set forth in those Parts.

Failure to give any notice required by this policy within the time prescribed will not invalidate a claim made by you or a person seeking coverage unless our interests are prejudiced. Any such prejudice, however, will not invalidate that claim if it is shown not to have been reasonably possible to give notice within the time prescribed and that notice was given as soon as reasonably possible thereafter.

With respect to a claim arising out of death or personal injury sustained by any person, if we disclaim liability or deny coverage based upon the failure to provide timely notice, then you or a person seeking coverage may maintain an action directly against us. The sole question in such action will be our disclaimer or denial based on the failure to provide timely notice. The right to maintain an action directly against us will not apply if, within 60 days following such disclaimer or denial, you or we initiate an action that seeks a declaration of the rights of the parties under this policy and names the injured person or other person seeking coverage.

~~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** is being transported between their ports, except as otherwise stated in this policy.

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 determined by **us** to be incorrect, incomplete, or if it 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**, a **relative**, or a **rated resident** 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. This includes, but is not limited to, changes in:

1. **your** mailing address or **your** residence address;
2. the principal garaging address of any **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 a **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**.

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 to another person without **our** written consent. 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 information provided on **your** insurance application. **We** may cancel this policy and deny coverage under this policy at any time, including after the occurrence of an accident or loss, if **you**:

1. made incorrect 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, or in connection with the presentation or settlement of a claim.

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 cancel 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 canceled 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 presentation or settlement of a claim.

However, if this policy is issued as proof of financial responsibility, any denial of coverage under this Fraud or Misrepresentation provision shall not affect coverage under Part I—Liability To Others for claims of injured persons who have not concealed or misrepresented any material fact or circumstance or engaged in fraudulent conduct.

PAYMENT OF PREMIUM AND FEES

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.

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. Notice given by or on behalf of an insured person, or by or on behalf of a person making a claim under this policy, to one of our licensed agents shall be deemed notice to us if the notice sufficiently identifies the insured person.

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 15 days notice of cancellation if the policy is cancelled for nonpayment of premium.

We will give at least 20 days notice of cancellation in all other cases.

We may cancel this policy for any reason if the notice is mailed within the first 60 days of the initial policy period.

After this policy is in effect for more than 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 or fees;
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;
4. loss of driving privileges through suspension or revocation of an operator's license issued to **you**, any driver in **your** household, or any regular operator of a **covered auto**, other than a suspension issued pursuant to Section 510-b(1) of the New York Vehicle and Traffic Law or one or more administrative suspensions arising from the same incident which has or have been terminated prior to the effective date of cancellation. This provision applies only if the suspension or revocation occurs:
 - a. during the policy period; or
 - b. since the last anniversary of the original effective date if the policy period is other than one year.

Proof of 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.

The effective date of any cancellation, nonrenewal, conditional renewal or substitute policy, as shown in a notice, may be any day of the year, including a Saturday, Sunday, or public holiday. **We** are available by telephone or Internet 24 hours a day, 7 days a week to accept payment and service **your** policy. If payment is mailed, it is considered received the day after postmark.

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. However, **we** will retain a cancellation fee if, during the initial policy period, this policy is cancelled at **your** request or for nonpayment of premium.

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. Proof of mailing will be sufficient proof of notice. Notice will be mailed at least 45 days, but not more than 60 days, before the end of the policy period.

If **we** decide not to renew or continue this policy, the nonrenewal will be effective for all coverages for all persons and all vehicles. For purposes of nonrenewal, this policy is neither severable nor divisible. The effective date of any cancellation, nonrenewal, conditional renewal or substitute policy, as shown in a notice, may be any day of the year, including a Saturday, Sunday, or public holiday. **We** are available by telephone or Internet 24 hours a day, 7 days a week to accept payment and service **your** policy. If payment is mailed, it is considered received the day after postmark.

PAYMENT OR PERFORMANCE

If payment of money or performance of a condition specified by this policy is required within, before or after a period of time computed from a certain day, the last day of such time period for payment or performance may be any day of the year, including a Saturday, Sunday or public holiday. **We** are available by telephone or Internet 24 hours a day, 7 days a week to accept payment and service **your** policy. If payment is mailed, it is considered received the day after postmark.

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.

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.

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.

Except as otherwise provided in Part III—Uninsured Motorists Coverage, if an insured person recovers from another without **our** written consent, the insured person's right to payment under any affected first-party 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. A proportionate share of collection expenses and attorney fees incurred in connection with these recovery efforts will also reduce reimbursement of the deductible.

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. If a judgment against an insured person remains unsatisfied after 30 days because of the bankruptcy or insolvency of the insured person, a person claiming damages under Part I—Liability To Others may maintain an action against **us** for the amount of the judgment subject to the terms and conditions of this policy and not exceeding **our** Limits of Liability under Part I.

RENTAL VEHICLE COVERAGE ENDORSEMENT

This Rental Vehicle Coverage endorsement applies only to, and is part of, every motor vehicle liability insurance policy that covers less than five private passenger motor vehicles.

For each such policy, this endorsement provides coverage for the insured's obligations in the event of actual damage to, or loss of, any rental vehicle, including loss of use, rented by the insured anywhere in the United States, its territories or possessions, and Canada under a rental agreement with a term no longer than thirty continuous days, regardless of where such rental vehicle may be registered, rented or operated.

Rental Vehicle Coverage shall provide protection regardless of: (a) fault; and (b) whether the rental vehicle is rented or operated for business or pleasure, unless used for transporting persons or property for hire.

Definitions:

- (a) "Insured" means the named insured or any relative;
- (b) "Relative" means a spouse, child or other person related to the named insured by blood, marriage or adoption (including a ward or foster child), who regularly resides in the insured's household, including any such person who regularly resides in the household, but who is temporarily living elsewhere;
- (c) "Private passenger motor vehicle " means:
 - (1) a motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract by an individual or by husband and wife, and is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or
 - (2) a motor vehicle with a pick-up body, a delivery sedan, panel truck or van, owned by an individual or by husband or wife who are residents of the same household, or by a family farm co-partnership or a family farm corporation, and not customarily used in the occupation, profession or business of the insured other than farming or ranching, whether or not used in the course of driving to or from work.

"Public or livery conveyance as used in paragraph (1) of this definition shall not include the use of the vehicle as a transportation network company vehicle pursuant to article 44-B of the Vehicle and Traffic Law.
- (d) "Long-term contract" means a contract with a term of six months or longer.
- (e) "Rental vehicle" means a vehicle of the type described in (c) above, if:
 - (1) not used for transporting persons or property for hire (except if the insured does so solely as a transportation network company driver pursuant to article 44-B of the Vehicle and Traffic Law); and
 - (2) owned by a person engaged in the business of renting or leasing vehicles rented or leased without a driver to persons other than the owner and is registered in the name of such owner.

Priority of payment:

- (a) In no event shall payment be made under this endorsement duplicating payment made by this policy, another policy or another insurer for the same claim.
- (b) If more than one policy could cover the claim, payment on the claim shall be made in the following order of priority:
 - (1) the policy with respect to which the person is a named insured;

- (2) if the person is not a named insured on any policy, the policy with respect to which the person is an insured; and
 - (3) where two or more policies provide coverage of equal priority, the policy or insurer with respect to which the claim is first submitted.
- (c) An inquiry about coverage or notification of damage to, or loss of, a rental vehicle shall constitute submission of a claim.

Exclusions:

No Rental Vehicle Coverage shall be provided:

- (a) arising beyond the geographic limitations of the policy to which Rental Vehicle Coverage is endorsed;
- (b) to an insured who has committed fraud in connection with damage to, or loss of, a rental vehicle, including loss of use;
- (c) for damage to, or loss of, a rental vehicle, including loss of use, which the rental vehicle company is precluded from recovering from the insured:
 - (1) pursuant to the terms of the rental agreement; or
 - (2) due to the prohibitions of section 396-z of the General Business Law or similar statutory provisions of other jurisdictions; or
- (d) while the rental vehicle is used by a transportation network company driver who is logged onto the transportation network company's digital network but is not engaged in a transportation network company prearranged trip or while the driver provides a transportation network company prearranged trip.

Subrogation:

- (a) In the event of any payment under this endorsement, the insurer is subrogated to the extent of such payments to the rights of the person to whom, or for whose benefit, such payments were made.
- (b) Such person shall execute and deliver instruments and papers and do whatever else is necessary to secure such subrogation rights, and shall not act in a manner that may prejudice such rights.
- (c) Subrogation shall not be pursued against any person who operated the rental vehicle with the insured's permission.

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Vehicle Valuation Report

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EXHIBIT B

1:21-cv-00850 (GLS/ML)

Progressive Group of Insurance Companies (800) 321-9843



Claim Information

Claim Number	Loss Type	Owner
19-5312925-01	COLLISION	KEVIN LUKASIK [REDACTED] CLIFTON PARK, NY 12065 +1-518-2809963

Report Date	Report Time	Loss Date (mm/dd/yyyy)	Valuation Report ID	Version Number
02/27/2019	02/27/2019	03/18/2019	1008749308	4

Vehicle Information

Year	Make	Model	Location	Mileage
2013	Hyundai	Santa Fe Sport 2.0T 4 Door Utility 106" WB 2.0L 4 Cyl Gas Turbocharged AWD	NY 12065	90,597 miles
Ext Color	License Plate	VIN	Title History	
Cabo Bronze	HXE2722, New York	5XYZUDLA8DG042052	No	

Valuation Summary

Loss Vehicle Adjustments

Adjustments to arrive at actual cash value

Base Value	\$12,648.45
Condition	\$91.80
Price Change	\$0.00
Adjustment Factor	\$160.00
Excluded Amount	\$0.00
Market Value =	\$12,900.25

Settlement Adjustments

Amounts to be paid to the insured

Settlement Value	\$250.00
Settlement Value =	\$12,650.25

Settlement Value:
\$12,650.25

Loss Vehicle Detail

Loss vehicle: 2013 Hyundai Santa Fe Sport | 2.0T 4 Door Utility 106" WB | 2.0L 4 Cyl Gas Turbocharged A AWD

Standard Equipment

Exterior

19" hyper silver alloy wheels

Body-color rear spoiler -inc: LED brake lights

Chrome accent front grille

LED headlight accents

Solar glass front windows

Body-color exterior pwr mirrors

Chrome accent door handles

Chrome twin-tip exhaust

Rear privacy glass

Windshield wiper de-icer

Interior

Active ECO system

AM/FM/SiriusXM audio system w/CD/MP3 player -inc: (6) speakers, aux/USB/iPod jacks

Bluetooth hands-free phone system

Electroluminescent gauge cluster w/color LCD trip computer

Front sunvisors -inc: illuminated vanity mirrors, visor extension

Pwr door & tailgate locks

Remote keyless entry system w/alarm

Tilt/telescopic steering wheel -inc: audio & cruise controls

Air conditioning w/cabin air filter

Blue Link telematics system

Cruise control

Front bucket seats

Proximity key entry w/push button start

Pwr windows w/driver auto-up/down

Stain-resistant cloth seating surfaces

Mechanical

All wheel drive w/driver-selectable lock

MacPherson strut front suspension -inc: gas filled dampers, stabilizer bar

Pwr rack & pinion steering -inc: driver selectable steering mode (DSSM)

Front/rear ventilated disc brakes

Multi-link rear suspension -inc: gas filled dampers, stabilizer bar

Trailer prep pkg -inc: trailer pre-wiring

Safety

4-wheel anti-lock brakes (ABS) -inc: electronic brake force distribution (EBD), brake assist

Driver & front passenger advanced airbags w/occupant classification system

Electronic stability control (ESC) w/traction control system (TCS)

Front/rear side curtain airbags w/rollover sensors

Lower anchors & upper tether anchors (LATCH)

Downhill brake control

Driver's knee airbag

Front side-impact airbags

Hill-start assist control

Tire pressure monitoring system

Optional Equipment

CARGO COVER/SCREEN

CARPETED FLOOR MATS

*DIO/PIO = Dealer/Port Installed Options

Loss Vehicle Base Value

Loss vehicle: 2013 Hyundai Santa Fe Sport | 2.0T 4 Door Utility 106" WB | 2.0L 4 Cyl Gas Turbocharged A AWD

Comparable Vehicle Information

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

Typical Mileage for this vehicle: 77,000 miles

#	Vehicle Description	Mileage	Location	Distance From Loss Vehicle	Price	Adjusted Value
1	2013 HYUNDAI SANTA FE 2.0T 4D SUV 4 2TURBO GAS A AWD	29,170	12143	25 miles	\$17,930.00 Sold Price	\$14,246.41
2	2013 HYUNDAI SANTA FE 2.0T 4D SUV 4 2TURBO GAS A AWD	84,461	12304	8 miles	\$14,000.00 List Price	\$12,856.84
3	2013 HYUNDAI SANTA FE 2.0T 4D SUV 4 2TURBO GAS A AWD	115,000	12304	8 miles	\$10,995.00 List Price	\$10,396.75
4	2013 HYUNDAI SANTA FE 2.0T 4D SUV 4 2TURBO GAS A AWD	89,857	01060	70 miles	\$14,000.00 List Price	\$13,093.78
Base Value:						\$12,648.45

Loss Vehicle Adjustments

Loss vehicle: 2013 Hyundai Santa Fe Sport | 2.0T 4 Door Utility 106" WB | 2.0L 4 Cyl Gas Turbocharged A AWD

Condition Adjustments

Condition Adjustment: \$91.80

Overall Condition: 3.05-Good

Typical Vehicle Condition: 3.00

Category	Condition	Comments
Interior		
DOORS/INTERIOR PANELS	3 Good	missing drv carpet floor mat, small cut to lt rear door.
CARPET	3 Good	2 perm stains drv, 1 rear lt side
SEATS	2 Fair	signif bolster wear to drv seat
HEADLINER	2 Fair	3 perm marks in fabric will not detail
GLASS	3 Good	no damage
DASH/CONSOLE	3 Good	small cuts and knicks in dash and glove door, perm soil cntr
Exterior		
VINYL/CONVERTIBLE TOP	Typical	
PAINT	3 Good	normal stone chips to hood
TRIM	3 Good	small curb impact rt rear wheel
BODY	4 Very Good	small isolated ding drv door above handle
Mechanical		
ENGINE	3 Good	some fluid building around valve covers, missing engine covr
TRANSMISSION	3 Good	some fluid building on pan in engine bay
Tire	3 Good	8, 9, 4, 4, 32s avg together is good

Typical Vehicle Condition reflects a condition similar to the same year, make and model. Amount of wear and tear/ damage consistent with its age.

Comments:


interior - if drv carpet mat obtained rating would be a 3 - good *** update *** part returned updated to 3
 engine - if engine cover is put back with vehicle rating would change to a 3 - good *** update *** part returned updated to 3

After Market Parts and OEM Equipment Adjustments

Category	Description	Adjustment Type	Purchase Date	Amount Paid	Adjustment Amount
MECHANICAL	INTAKE (COLD AIR)	INSTANT QUOTE			\$160.00
INTERIOR	FLOOR MATS (NON-OEM)	INSTANT QUOTE			\$0.00

Comparable Vehicles

Loss vehicle: 2013 Hyundai Santa Fe Sport | 2.0T 4 Door Utility 106" WB | 2.0L 4 Cyl Gas Turbocharged A AWD

 2013 HYUNDAI SANTA FE 2.0T 4D SUV 4 2 TURBO GAS AAWD					Sell Price: \$17,000.00
VIN	Stock No	Listing Date	ZIP/Postal Code	Distance from Loss Vehicle	
5XYZUDLA6DGXXXXXX		12/04/2018	12143	25 miles	
DEALER SALE - BUILDSHEET - J.D. POWER		Adjustments	Loss Vehicle	This Vehicle	Amount
		Mileage	90,597	29,170	-\$3,650.10
		Equipment			
		WHEEL LOCKS	No	Yes	-\$33.49
				Total Adjustments:	-\$3,683.59
				Adjusted Price:	\$14,246.41

CARGO COVER/SCREEN, CARPETED FLOOR MATS, WHEEL LOCKS

2013 HYUNDAI SANTA FE 2.0T 4D SUV 4 2 TURBO GAS AAWD**List Price: \$14,000.00**

VIN	Stock No	Loss Date	Loss Mileage	Distance from Loss Vehicle
5XYZUDLA2DG001383	29580	02/17/2019	12304	8 miles

DEALER WEB LISTING -
BUILDSHEET - CARS.COM
METRO FORD
3601 STATE ST
SCHENECTADY NY 12304
518-429-7484

Adjustments	Loss Vehicle	This Vehicle	Amount
Projected Sold Adjustment			-\$818.00
Mileage	90,597	84,461	-\$325.16
Total Adjustments:			-\$1,143.16
Adjusted Price:			\$12,856.84

CARGO COVER/SCREEN, CARPETED FLOOR MATS**2013 HYUNDAI SANTA FE 2.0T 4D SUV 4 2 TURBO GAS AAWD****List Price: \$10,995.00**

VIN	Stock No	Loss Date	Loss Mileage	Distance from Loss Vehicle
5XYZUDLA9DG023994	18340	12/26/2018	12304	8 miles

DEALER WEB LISTING -
BUILDSHEET - CARS.COM
HORNING AUTO SALES
3821 STATE ST
SCHENECTADY NY 12304
518-344-7616

Adjustments	Loss Vehicle	This Vehicle	Amount
Projected Sold Adjustment			-\$643.00
Mileage	90,597	115,000	\$853.23
Equipment			
LEATHER & PREMIUM EQUIPMENT PKG	No	Yes	-\$861.20
CARGO COVER/SCREEN	Yes	No	\$52.72
Total Adjustments:			-\$598.25
Adjusted Price:			\$10,396.75

LEATHER & PREMIUM EQUIPMENT PKG (AUTO-DIMMING MIRROR W/HOMELINK & COMPASS)**CARPETED FLOOR MATS**

List Price: \$14,008.00

Source	Adjustments	Loss Vehicle	This Vehicle	Amount
DEALER WEB LISTING - BUILDSHEET - CARS.COM	Projected Sold Adjustment			-\$819.00
COUNTRY HYUNDAI	Mileage	90,597	89,857	-\$39.23
347 KING ST	Equipment			
NORTHAMPTON MA 01060	CARGO COVER/SCREEN	Yes	No	\$67.17
413-774-3122	AUTO-DIMMING MIRROR	No	Yes	-\$123.16
	W/HOMELINK & COMPASS			
			Total Adjustments:	-\$914.22
			Adjusted Price:	\$13,093.78

CARPETED FLOOR MATS, AUTO-DIMMING MIRROR W/HOMELINK & COMPASS

Sub-Model Description	Configuration	Original MSRP
2013 Hyundai Santa Fe Sport 2.0T	4 Door Utility 106" WB 2.0L 4 Cyl Gas Turbocharged AWD	\$29,450.00

Vehicle Valuation Methodology Explanation

WorkCenter Total Loss was designed and built in conjunction with J.D. Powers, experts in data analysis and vehicle pricing and a highly trusted name among consumers. With years of experience in vehicle pricing, J.D. Power is a credible, third-party expert whose name provides consumer recognition and confidence. WCTL provides a consistent methodology across all vehicles and it includes valid comparable vehicles that most closely resemble the totaled vehicle and are similar to the vehicles a consumer would find in their own research.

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

Step 1 - Locate Comparable Vehicles

Locate vehicles that are the closest match to the loss vehicle in the same market area. WorkCenter Total Loss utilizes consumer-based vehicle sources along with inventory directly from Dealerships. When available WCTL also provides sold vehicle records from sources such as J.D. Powers.

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.

CIVIL COVER SHEET

1:21-cv-00850-GLS/ML

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

I. (a) PLAINTIFFS

KEVIN LUKASIK, individually and on behalf of all others similarly situated,

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

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

Shamis & Gentile, P.A.
14 NE 1st Ave, Ste. 705, Miami, FL 33132

DEFENDANTS

PROGRESSIVE CASUALTY INSURANCE COMPANY, a Ohio corporation,

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

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

Attorneys (If Known)

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

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

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

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)(2)

Brief description of cause:

This is a putative class action under an automobile policy issued for private passenger auto physical damage

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$
\$5,000,000

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

7/28/2021

/s/ Andrew Shamis

FOR OFFICE USE ONLY

RECEIPT # AMOUNT \$402.00 APPLYING IFP JUDGE GLS MAG. JUDGE ML

ANYNDC-5599383

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Progressive Applies Unlawful Adjustments to Totaled Car Values, Class Action Alleges](#)
