

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOHN MENCL, *individually and on behalf of
all others similarly situated,*

Plaintiff,

v.

PROGRESSIVE MARATHON INSURANCE
COMPANY, *an Ohio corporation,*

Defendant.

Case No.

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff John Mencl (“Plaintiff”), by and through undersigned counsel, brings this class action, individually and on behalf of all others similarly situated, against Progressive Marathon 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 Michigan Consumer Protection Act, M.C.L.A. § 445.903, *et seq.*, and constitutes a breach of contract.

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 John Mencl, at all relevant times, was a Michigan citizen.

8. Defendant is an Ohio company with principal place of business in Mayfield, Ohio. Defendant provides insurance coverage in Michigan for first-party property damage under collision and/or comprehensive coverage.

JURISDICTION AND VENUE

9. This Court has personal jurisdiction over Defendant because Defendant directs, markets, and provides its business activities throughout the State of Michigan, and makes its insurance services available to residents of Michigan. 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 Michigan, 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, plus interest, in accordance with law, for each violation, which, when aggregated among a proposed class of potential thousands, 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 or omissions 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 Michigan 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 dollar value of a vehicle." Michigan Vehicle Code Section 257.217c(27). If

an insurer chooses to make a cash settlement rather than directly replacing the vehicle, the “actual cash value” of the vehicle must be based on the “retail dollar value” of the vehicle. *Id.*

14. To determine a totaled vehicle’s retail market value, Michigan law allows insurance companies to rely on “vehicle appraisal service[s].” *Id.* When a “vehicle appraisal service” is used to determine the “retail dollar value” of a totaled vehicle, the “vehicle appraisal service” is required to determine that value “by an objective vehicle evaluation using local market resources” *Id.* In other words, the “vehicle appraisal service” will average the price of a number of currently or recently available comparable vehicles to create the “retail dollar 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 arbitrary “projected sold adjustment,” in order to artificially decrease the market value of the comparable vehicles and, thus, decrease the amount Defendant is required to pay to its insureds under the Policy and Michigan law.

16. Specifically, Defendant calculates the purported value of total-loss vehicles via a third-party vendor, Mitchell, through a system called 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 “typical negotiation 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 "typical negotiation 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 explaining 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 unsupported. 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* ("Projected Sold Adjustment – an adjustment to reflect consumer purchasing behavior (negotiating a different price than the listed price)."). However, an across-the-board 7% reduction on used vehicles' internet prices is not typical and does not reflect market realities, and neither Michigan 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.

¹ *See* <https://www.carmax.com/about-carmax> (last visited June 9, 2021) ("our 'no-haggle' prices transformed car buying and selling from a stressful, dreaded event into the honest, straightforward experience all people deserve.").

20. 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.

21. 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. What Plaintiff contests is that (a) Defendant instructed Mitchell to apply arbitrary and invalid “projected sold adjustment” adjustment across-the-board, and (b) Defendant instructed Mitchell to always apply positive “vehicle description” adjustments *before* the “projected sold adjustment” adjustment, but to apply any negative adjustment—even negative “vehicle description” adjustments—*after* the “projected sold adjustment” adjustments.

22. 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 adjustment” adjustments to comparable vehicles.

PLAINTIFF’S TOTAL LOSS EXPERIENCE

23. Plaintiff owned a 2010 Honda Accord LX 4 door sedan that was insured under a Policy issued by Defendant, which was deemed a total loss on or around May 2, 2017.

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

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

26. Defendant valued Plaintiff’s total loss claim at \$7,271.07 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 7% 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 5-6, attached as **Exhibit B**.

CLASS ACTION ALLEGATIONS

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

All Michigan 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.

28. 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.

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

30. **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.

31. **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 failure 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 failure 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 Plaintiff and the Class are entitled to injunctive relief; and
- e. whether Plaintiff and the Class are entitled to damages and the measure of damages owed to them.

32. **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.

33. **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, 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 her counsel.

34. **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 THE MICHIGAN CONSUMER PROTECTION ACT, M.C.L.S. §
445.901, et seq.**

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

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

37. Defendant, Plaintiff, and the Class members are "persons" within the meaning of M.C.L.A § 445.902(d).

38. Defendant was and is engaged in "trade" or "commerce" within the meaning of M.C.L.A § 445.902(g).

39. The Michigan Consumer Protection Act (“Michigan CPA”) provides that “unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful[.]” M.C.L.A § 445.903(1). Pursuant to the CPA, the following actions constitute unfair and deceptive trade practices:

- a. causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction” constitutes an unfair trade practice. § 445.903(1)(n);
- b. failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner. § 445.903(1)(cc).

40. As alleged herein, Defendant, through its agents, employees, and/or subsidiaries, violated the Michigan CPA by knowingly and intentionally causing confusion and misunderstanding of Plaintiff and putative class members’ legal rights to the ACV of their total-loss vehicles.

41. Plaintiff and class members are legally entitled to ACV of their vehicles pursuant to the terms of their Policies with Defendant. Under Michigan law, ACV means the “retail dollar value of a vehicle as determined by an objective evaluation using local market resources.” Mich. Comp. Laws Serv. § 257.217c(27).

42. Defendant knowingly and intentionally caused confusion and misunderstanding to Plaintiff’s right to ACV by misleadingly applying an arbitrary “projected sold adjustment” to the retail dollar value of the vehicles, as described above.

43. Defendant’s actions of arbitrarily applying a “projected sold adjustment” mislead consumers, such as Plaintiff and putative class members, into believing that they were receiving

the “retail dollar value” of their vehicles, when in fact they received significantly less than the retail dollar value of their vehicles.

44. Defendant failed to reveal to consumers that it would apply an arbitrary “projected sold adjustment” in the event of a total loss. Indeed, consumers purchased insurance under the mistaken belief that they would receive the true “retail book value” of their vehicles in the event of a total loss. By failing to reveal Defendant’s arbitrary, misleading, and unauthorized practice of reducing retail value, Plaintiff’s and other putative class members were deceived into purchasing insurance with Defendant when they could have purchased insurance from an insurance company that does not apply a “projected sold adjustment.”

45. 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 Plaintiffs 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.

46. 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.

47. Plaintiff and 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 Class members did not, and could not, unravel Defendant’s deception on their own.

48. Defendant had an ongoing duty to Plaintiff and the Class members to refrain from engaging in unfair or deceptive practices under the Michigan CPA in the course of its business. Specifically, Defendant owed Plaintiff and 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.

49. Plaintiff and the Class members were aggrieved by Defendant’s violations of the Michigan CPA 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.

50. Plaintiffs 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.

51. Had Defendant not engaged in the deceptive acts and practices alleged herein, Plaintiff and 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.

52. Defendant's violations of the Michigan CPA present a continuing risk to Plaintiff and the Class members.

53. Plaintiff and the Class members seek an order enjoining Defendant's unfair and deceptive acts or practices in violation of the Michigan CPA and awarding actual damages, costs, attorneys' fees, and any other just and proper relief available under the Michigan CPA.

**SECOND CAUSE OF ACTION
BREACH OF CONTRACT**

54. Plaintiff incorporates by reference each allegation set forth in the preceding paragraphs, except for the paragraphs contained in the proceeding cause of action.

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

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

57. Plaintiff and each of the other Class members' insurance contracts are governed by Michigan law.

58. 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.

59. 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 the ACV of their totaled vehicles.

60. Defendant, however, failed to pay the ACV of Plaintiff's and Class member's 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.

61. 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.

62. 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.

63. All conditions precedent have been satisfied.

**THIRD CAUSE OF ACTION
DECLARATORY JUDGMENT**

64. Plaintiff incorporates by reference each allegation set forth in the preceding paragraphs, except for the paragraphs contained in the proceeding causes of action.

65. 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.

66. 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 Illinois law, for Defendant to base the valuation and payment of claims on values of comparable vehicles that have been reduced by arbitrary 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.

67. 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.

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

F. An award 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: June 11, 2021

Respectfully submitted,

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9611D MI 1115



MICHIGAN

AUTO POLICY



Progressive Michigan Insurance Company
Progressive Marathon Insurance Company

Form 9611D MI (11/15)
version 2.0

PROGRESSIVE[®]
DIRECT Auto

CONTENTS

INSURING AGREEMENT 1

GENERAL DEFINITIONS 1

PART I—LIABILITY TO OTHERS

Insuring Agreement—Bodily Injury and Property Damage
 Liability Coverage3

Insuring Agreement—Limited Property Damage Coverage3

Additional Definition3

Additional Payments.....4

Exclusions.....4

Limits of Liability.....6

Financial Responsibility Laws7

Other Insurance7

Out-of-State Coverage7

**PART II—PERSONAL PROTECTION INSURANCE AND
 PROPERTY PROTECTION INSURANCE COVERAGE**

Insuring Agreement—Personal Protection Insurance
 Coverage (PIP)7

Insuring Agreement—Property Protection Insurance
 Coverage (PPI)8

Additional Definitions.....8

Exclusions.....9

Limits of Liability.....12

Excess Coverage Option.....12

Work Loss Benefits Waiver13

Other Insurance13

Coordination of Benefits.....13

PART III—UNINSURED/UNDERINSURED MOTORIST COVERAGE

Insuring Agreement 13

Additional Definitions..... 14

Exclusions 15

Limits of Liability..... 16

Other Insurance 17

Arbitration..... 17

PART IV—DAMAGE TO A VEHICLE

Insuring Agreement— Standard Collision Coverage and
 Broad Form Collision Coverage 17

Insuring Agreement—Limited Collision Coverage 18

Insuring Agreement—Comprehensive Coverage 18

Insuring Agreement—Additional Custom Parts or Equipment Coverage	19
Insuring Agreement—Comprehensive Window Glass Coverage	19
Insuring Agreement—Rental Reimbursement Coverage.....	19
Insuring Agreement—Loan/Lease Payoff Coverage	20
Insuring Agreement—Pet Injury Coverage	21
Additional Definitions.....	21
Exclusions	21
Limits of Liability.....	23
Collision Arbitration	25
Payment of Loss.....	25
No Benefit to Bailee	25
Loss Payable Clause.....	26
Other Sources of Recovery	26
Appraisal	26

PART V—ROADSIDE ASSISTANCE COVERAGE

Insuring Agreement	27
Additional Definitions.....	27
Exclusions	27
Unauthorized Service Provider.....	28
Other Insurance	28

PART VI—DUTIES IN CASE OF AN ACCIDENT OR LOSS.....28

PART VII—GENERAL PROVISIONS

Policy Period and Territory.....	29
Changes.....	29
Duty to Report Changes	30
Settlement of Claims	30
Terms of Policy Conformed to Statutes	30
Transfer of Interest	31
Fraud or Misrepresentation	31
Payment of Premium and Fees	31
Cancellation	32
Cancellation Refund.....	32
Nonrenewal	33
Automatic Termination.....	33
Legal Action Against Us.....	33
Our Rights to Recover Payment.....	33
Joint and Individual Interests.....	34
Bankruptcy	34

MICHIGAN AUTO POLICY

INSURING AGREEMENT

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

GENERAL DEFINITIONS

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

1. **"Additional auto"** means an **auto you** become the 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**;
 - b. any **additional auto**;
 - c. any **replacement auto**; or
 - d. a **trailer** owned by **you**.

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

7. **"Occupying"** means in, on, entering or exiting.
8. **"Personal vehicle sharing program"** means a system or process, operated by a business, organization, network, group, or individual, that facilitates the sharing of private passenger motor vehicles for use by individuals, businesses, or other entities.
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 either an "Excluded" or 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. **"Ride-sharing activity"** means the use of any vehicle to provide transportation of persons or property in connection with a **transportation network company** from the time a user logs on to, or signs in to, any online-enabled application, software, website or system until the time the user logs out of, or signs off of, any such online-enabled application, software, website or system, whether or not the user has accepted any passenger(s) or delivery assignment, including the time the user is on the way to pick up any passenger(s) or property, or is transporting any passenger(s) or property.
14. **"Trailer"** means a non-motorized trailer, including a farm wagon or farm implement, designed to be towed on public roads by an **auto** and not being used:
 - a. for commercial purposes;
 - b. as an office, store, or for display purposes; or
 - c. as a passenger conveyance.
15. **"Transportation network company"** means a corporation, partnership, sole proprietorship, or other entity that uses any online-enabled application, software, website or system to connect drivers with clients or passengers to facilitate and/or provide transportation or delivery services for compensation or a fee.
16. **"We," "us"** and **"our"** mean the underwriting company providing the insurance, as shown on the **declarations page**.
17. **"You"** and **"your"** mean:
 - a. a person shown as a named insured on the **declarations page**; and

- b. the spouse of a named insured if residing in the same household at the time of the loss. The spouse is considered to be a resident of the household when there is a legitimate marital covenant, shared economic and non-economic burdens, and legitimate reasons for the spouse to be staying in another home or location. If the spouse ceases to be a resident of the same household during the policy period or prior to the inception of this policy, the spouse will be considered **you** and **your** under this policy, but only until the earliest of:
- (i) the end of 90 days following the spouse's change of residency;
 - (ii) the effective date of another policy listing the spouse as a named insured;
or
 - (iii) the end of the policy period.

PART I—LIABILITY TO OTHERS

INSURING AGREEMENT—BODILY INJURY AND PROPERTY DAMAGE LIABILITY COVERAGE

If **you** pay the premium for this coverage, **we** will pay 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, at **our** option, any claim for damages covered by this Part I.

INSURING AGREEMENT—LIMITED PROPERTY DAMAGE COVERAGE

If **you** pay the premium for this coverage, **we** will pay for damage to a motor vehicle, up to the limits of liability shown on the **declarations page**, for which an **insured person** becomes legally responsible because of an accident occurring within the State of Michigan, which arises out of the ownership, maintenance, or use of an **auto**, to the extent that such damage is not otherwise covered by insurance.

ADDITIONAL DEFINITION

When used in this Part I:

“Insured person” means:

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

ADDITIONAL PAYMENTS

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

1. all expenses **we** incur in the settlement of any claim or 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**. **You** are permitted to file a lawsuit against **us** within the statute of limitations to have any dispute settled by a court of proper jurisdiction when **you** believe **we** have not appropriately responded to **your** requests concerning such proceedings or **you** believe **we** have acted inappropriately in handling **your** claim;
3. the premium on any appeal bond or attachment bond required in any lawsuit **we** defend. **We** have no duty to purchase a bond in an amount exceeding **our** limit of liability, and **we** have no duty to apply for or furnish these bonds;
4. up to \$250 for a bail bond required because of an accident resulting in **bodily injury** or **property damage** covered under this Part I. **We** have no duty to apply for or furnish this bond; and
5. reasonable expenses, including loss of earnings up to \$200 per day, incurred at **our** request.

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

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

1. **bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle or trailer while being used:
 - a. to carry persons or property for compensation or a fee;
 - b. for retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food; or
 - c. for **ride-sharing activity**.

This exclusion does not apply to shared-expense car pools or to the use of a **covered auto** for volunteer or charitable purposes or for which reimbursement for normal operating expenses is received;

2. any liability assumed under any contract or agreement by **you**, a **relative**, or a **rated resident**;
3. **bodily injury** to an employee of that **insured person** arising out of or within the course of employment. This exclusion does not apply to domestic employees if benefits are neither paid nor required to be provided under workers' compensation, disability benefits, or similar laws;
4. **bodily injury** or **property damage** arising out of an accident involving any vehicle while being maintained or used by a person while employed or engaged in any **auto business**. This exclusion does not apply to **you**, a **relative**, a **rated resident**, or an agent or employee of **you**, a **relative**, or a **rated resident**, when using a **covered auto**;

5. **bodily injury** or **property damage** resulting from, or sustained during practice or preparation for:
 - a. any pre-arranged or organized racing, stunting, speed or demolition contest or activity; or
 - b. any driving activity conducted on a permanent or temporary racetrack or race-course;
6. **bodily injury** or **property damage** due to a nuclear reaction or radiation;
7. **bodily injury** or **property damage** for which insurance:
 - a. is afforded under a nuclear energy liability insurance contract; or
 - b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
8. any obligation for which the United States Government is liable under the Federal Tort Claims Act;
9. **bodily injury** or **property damage** which is intended or reasonably expected by an **insured person**, even if the actual injury or damage is different than that which was intended or expected. This exclusion applies only to damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of Michigan;
10. **property damage** to any property owned by, rented to, being transported by, used by, or in the charge of that **insured person**. This exclusion does not apply to a rented residence or a rented garage;
11. **bodily injury** to **you**, a **relative**, or a **rated resident**. This exclusion applies only to damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of Michigan;
12. **bodily injury** to **you**, a **relative**, or a **rated resident** arising out of the operation of 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**;
13. **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;
14. **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;
15. **bodily injury** or **property damage** arising out of **your**, a **relative's**, or a **rated resident's** use of a vehicle, other than a **covered auto**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
16. **bodily injury** or **property damage** arising out of the use of a **covered auto** while leased or rented to others or given in exchange for any compensation, including while being used in connection with a **personal vehicle sharing program**. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**;
17. punitive damages; or
18. **bodily injury** or **property damage** caused by, or reasonably expected to result from, a criminal act or omission of that **insured person**. This exclusion applies

regardless of whether that **insured person** is actually charged with, or convicted of, a crime. However, for **us** to establish a criminal act or omission for purposes of this exclusion by other than a criminal conviction, **we** must independently prove beyond a reasonable doubt that the **insured person** committed such a criminal act or omission. For purposes of this exclusion, criminal acts or omissions do not include traffic violations. This exclusion applies only to damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of Michigan.

LIMITS OF LIABILITY

The limit of liability shown on the **declarations page** for Bodily Injury and Property Damage Liability Coverage is the most **we** will pay regardless of the number of:

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

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

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

The “each person” limit of liability applies to the total of all claims made for **bodily injury** to a person and all claims of others derived from such **bodily injury**, including, but not limited to, emotional injury or mental anguish resulting from the **bodily injury** of another or from 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.

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/Underinsured Motorist Coverage.

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

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

FINANCIAL RESPONSIBILITY LAWS

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

OTHER INSURANCE

If there is any other applicable liability insurance or bond, **we** will pay only **our** share of the damages. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance **we** provide for a vehicle or trailer, other than a **covered auto**, will be excess over any other collectible insurance, self-insurance, or bond.

Limited Property Damage Coverage provided under this policy will be excess over any other collectible insurance, self-insurance or bond, including, but not limited to, coverage on the damaged motor vehicle. For Limited Property Damage Coverage provided under this policy, **we** will share on a pro rata basis with other valid and collectible insurance purchased on a primary basis. **Our** share will be the proportion that **our** limit of liability bears to the total of all applicable limits.

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—PERSONAL PROTECTION INSURANCE AND PROPERTY PROTECTION INSURANCE COVERAGE

INSURING AGREEMENT—PERSONAL PROTECTION INSURANCE COVERAGE (PIP)

If **you** pay the premium for this coverage, **we** will pay Personal Protection Insurance Benefits required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance

Code, as amended, for accidental **bodily injury** to an **eligible injured person** arising out of the ownership, operation, maintenance or use of a **motor vehicle** as a **motor vehicle**, subject to the exceptions, exclusions and limitations specified herein and as additionally provided by the law of the State of Michigan.

Personal Protection Insurance Benefits consist of:

1. **allowable expenses**;
2. **replacement services** sustained during the three years after the date of the accident;
3. **work loss** sustained during the three years after the date of the accident; and
4. **survivors' loss** sustained during the three years after the date of the accident.

INSURING AGREEMENT—PROPERTY PROTECTION INSURANCE COVERAGE (PPI)

If **you** pay the premium for this coverage, **we** will pay Property Protection Insurance Benefits in accordance with the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended, for accidental damage to tangible property arising out of the ownership, operation, maintenance or use of a **motor vehicle** as a **motor vehicle** by **you** or a **relative**.

ADDITIONAL DEFINITIONS

When used in this Part II:

1. **“Allowable expenses”** means all reasonable charges incurred for reasonably necessary products, services and accommodations for an **eligible injured person’s** care, recovery, or rehabilitation. However, **“allowable expenses”** shall not include:
 - a. charges for a hospital room in excess of a reasonable and customary charge for semiprivate accommodations except when the **eligible injured person** requires special or intensive care; or
 - b. charges for total funeral and burial expenses in excess of \$1,750.
2. **“Eligible injured person”** means:
 - a. **you** or any **relative** who sustains accidental **bodily injury** in an accident involving a **motor vehicle**;
 - b. any other person who meets the statutory requirements of the Michigan No-Fault Act, Chapter 31 of the Michigan Insurance Code, as amended; and
 - c. any person who, while not occupying a **motor vehicle**, sustains accidental **bodily injury** as a result of an accident involving:
 - (i) a **covered auto**; or
 - (ii) a **motor vehicle** owned by, registered to or operated by **you**, if the person injured in the accident is not entitled to personal protection insurance under any policy described in Section 500.3114(1) of the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended.
3. **“Motor vehicle”** means a vehicle, including a trailer, operated or designed for operation upon a public highway, by power other than muscular power, which has more than two wheels. However, **“motor vehicle”** does not include:
 - a. motorcycles;
 - b. mopeds;

- c. off-road vehicles (ORVs);
 - d. golf carts;
 - e. power driven mobility devices;
 - f. commercial quadricycles; or
 - g. farm tractors or implements of husbandry which are not required to be registered pursuant to Section 216 of the Michigan Vehicle Code, as amended.
4. **“Replacement services”** means expenses, not exceeding \$20.00 per day, the **eligible injured person** or dependents of the **eligible injured person** reasonably incur in obtaining the benefit of ordinary and necessary services in lieu of those that the **eligible injured person** would have performed if the **eligible injured person** had not been injured.
 5. **“Survivors’ loss”** means loss sustained by dependent survivors because of the death of an **eligible injured person**, limited to:
 - a. net lost wages and contributions of tangible things of economic value, subject to the statutory maximum limit, not including services, that such dependent survivors would have received for support during their dependency from the deceased if the deceased had not suffered the injury which caused death; and
 - b. expenses, not exceeding \$20.00 per day, reasonably incurred by dependent survivors during their dependency in obtaining ordinary and necessary services in lieu of those that the deceased person would have performed for their benefit if the deceased person had not suffered the injury which caused death.
 6. **“Work loss”** means actual loss of income from work an **eligible injured person** would have performed if the **eligible injured person** had not been injured, subject to the statutory maximum limit and not more than 85 percent of gross income.

However, **“work loss”** does not include any loss of income after the date on which the **eligible injured person** dies.

EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART II.

Coverage under Personal Protection Insurance does not apply to accidental **bodily injury**:

1. sustained by a person who has intentionally caused the **bodily injury**;
2. arising out of the use of a **motor vehicle** as a residence or premises;
3. sustained by any person willingly using a **motor vehicle** or motorcycle that was taken unlawfully, and the person knew or should have known that the **motor vehicle** or motorcycle was taken unlawfully;
4. arising out of the ownership, operation or use of a parked **motor vehicle**, unless:
 - a. the **motor vehicle** was parked in such a way as to cause unreasonable risk of the accidental **bodily injury** which occurred;
 - b. the accidental **bodily injury** was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used;
 - c. the accidental **bodily injury** was a direct result of physical contact with property being lifted onto or lowered from the vehicle in the loading or unloading process; or

- d. the accidental **bodily injury** was sustained by the **eligible injured person** while occupying, entering into, or alighting from the **motor vehicle**;
- 5. arising out of the ownership, operation, maintenance or use of a parked **motor vehicle** while the **eligible injured person** is loading, unloading, doing mechanical work on, or entering into or alighting from the parked **motor vehicle**, if:
 - a. the accidental **bodily injury** was sustained in the course of employment; and
 - b. benefits are available under the Michigan Workers' Disability Compensation Act, as amended, or under a similar law of another state or under a similar federal law;
- 6. sustained while an operator or passenger of a **motor vehicle** operated in the business of transporting passengers which is:
 - a. not **your covered auto**; and
 - b. insured as required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended;

However, this exclusion does not apply to a passenger in the following:

- (i) a school bus providing transportation not prohibited by law;
- (ii) a bus operated by a common carrier of passengers certified by the department of transportation;
- (iii) a bus operated under a government sponsored transportation program;
- (iv) a bus operated by or servicing a nonprofit organization;
- (v) a taxi cab insured as prescribed in Section 500.3101 or 500.3102; or
- (vi) a bus operated by a canoe or other watercraft, bicycle, or horse livery used only to transport passengers to or from a destination point;
- 7. to any person, other than **you** or a **relative**, who is:
 - a. injured when struck by a **motor vehicle** or trailer outside the State of Michigan, while not occupying a **motor vehicle**;
 - b. entitled to benefits as a named insured or **relative** under any other policy providing benefits under the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended;
 - c. occupying a **motor vehicle**, or struck as a pedestrian by a **motor vehicle**, which is:
 - (i) not a **covered auto**;
 - (ii) operated by **you** or a **relative**; and
 - (iii) covered by security as required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended; or
 - d. occupying a **motor vehicle** which is:
 - (i) not a **covered auto**;
 - (ii) operated outside the State of Michigan by **you** or any **relative**; and
 - (iii) not required to be covered by security under the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended;
- 8. sustained by the owner or registrant of a **motor vehicle** or motorcycle involved in an accident which is not covered by security as required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended;
- 9. sustained by a person who resides outside the State of Michigan, when occupying a **motor vehicle** or motorcycle not registered in Michigan. This exclusion does not apply if such **motor vehicle** or motorcycle is insured by a company which has filed

a certification in compliance with Section 500.9163, as amended, and the accident occurs in Michigan;

10. sustained by **you** while occupying or when struck as a pedestrian by a **motor vehicle**, other than a **covered auto**, which is owned by or registered to **you**;
11. sustained by a **relative** while occupying or when struck as a pedestrian by a **motor vehicle**, other than a **covered auto**, which is:
 - a. owned or registered by that **relative**; and
 - b. not covered by security as required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended;
12. sustained by **you** or a **relative** while occupying a **motor vehicle**, other than a **covered auto**, which is:
 - a. owned or registered by the employer of **you** or a **relative**; and
 - b. covered by the security required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended;
13. sustained by a **relative** who is entitled to No-Fault benefits under another policy as a named insured;
14. any **covered auto** while being used in connection with **ride-sharing activity**;
15. any **covered auto** while being used in connection with a **personal vehicle sharing program**;
16. sustained by **you** or a **relative** which is a result of an intentional physical attack that occurs while occupying a **motor vehicle**, which does not arise out of the ownership, operation, maintenance or use of a **motor vehicle** as a **motor vehicle**; or
17. excluded by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended, or the law of the State of Michigan.

Coverage under Property Protection Insurance does not apply to accidental damage to tangible property:

1. sustained by any person who has intentionally caused the **property damage**;
2. arising out of the use of a **motor vehicle** as a residence or premises;
3. to **motor vehicles** and their contents, including trailers, unless the **motor vehicle** is parked in a manner so as not to cause unreasonable risk of the damage which occurred;
4. sustained by **you** or a **relative** if a **motor vehicle** owned by **you** or a **relative** is involved in the accident;
5. sustained in an accident occurring outside the State of Michigan;
6. to utility transmission lines, wires, or cables, which have not been located and erected as required by Michigan law;
7. other than to a **covered auto**, arising out of an accident involving a **motor vehicle** while being used by a person in the course of a business of repairing, servicing, or otherwise maintaining **motor vehicles**. However, this exclusion does not apply to **you** or a **relative** when using a **covered auto**;
8. any covered vehicle while being used in connection with **ride sharing activity**;
9. any covered vehicle while being used in connection with a **personal vehicle sharing program**;
10. owned by **you** or a **relative** if **you** or a **relative** were the owner, operator, or registrant of a vehicle involved in the **motor vehicle** accident out of which the accidental damage to tangible property arose; or

11. excluded by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended, and the law of the State of Michigan.

LIMITS OF LIABILITY

Personal Protection Insurance Benefits otherwise payable shall be reduced by any benefits provided or required to be provided under the laws of any state or federal government, including, but not limited to:

1. Social Security Survivor Benefits;
2. Social Security Disability Benefits;
3. Workers' Compensation Benefits; and
4. Social Security Dependent Benefits.

No coverage will be provided under this Part II except as required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended.

Personal Protection Insurance Benefits otherwise payable shall also be reduced by any applicable deductible shown on the **declarations page**.

EXCESS COVERAGE OPTION

1. If **you** have elected Personal Protection Insurance Benefits for **allowable expenses** as excess coverage, it is agreed that the primary source of protection will be all other medical insurance, health care benefit plans, or similar benefit insurance, self-insurance or plans available to **you** and **relatives**, including, but not limited to:
 - a. individual, blanket or group accident disability or hospitalization insurance, self-insurance, or plans;
 - b. medical or surgical reimbursement insurance or plans;
 - c. automobile or premises insurance affording medical expense benefits; and
 - d. Health Maintenance Organization (HMO) service plans.

You and **relatives** seeking benefits under this Part II as excess coverage must first obtain benefits from all other available medical insurance, health care benefit plans, or similar benefit plans.

Coverage under this Part II is excluded to the extent that any elements of **allowable expenses** are paid, payable or required to be provided to, or on behalf of, **you** or a **relative** under the provisions of any medical insurance, health care benefit plans, or similar benefit insurance, self-insurance or plan. **We** will pay **allowable expenses** in excess of any valid limitations as to amount or duration of benefits which are not paid or payable under any other insurance, self-insurance or plans.

2. If **you** have elected Personal Protection Insurance Benefits for **work loss** as excess coverage, it is agreed that **your** primary source of protection will be all other valid and collectible:
 - a. individual, blanket or group accident, sickness and accident, or disability insurance, or plans; and

- b. Insurance or plans covering mortgage or **motor vehicle** loans which provide for direct payment to the lender.

Coverage under this Part II is excluded to the extent that any elements of loss covered under Personal Protection Insurance **work loss** benefits are paid, payable or required to be provided to, or on behalf of, **you** or a **relative** under the provisions of any other insurance, benefit plan, or similar plan.

- 3. If **you** have elected Personal Protection Insurance Benefits as excess coverage, **allowable expenses** and **work loss** benefits payable to **you** or a **relative** who sustains **bodily injury** in a **motor vehicle** accident shall be reduced by the deductible shown on the **declarations page**. However, this deductible shall be reduced by any benefits paid by a primary carrier for similar benefits.

WORK LOSS BENEFITS WAIVER

Any **eligible injured person** 60 years of age or older who has elected the Work Loss Benefits Waiver will not be eligible to receive **work loss** benefits under Personal Protection Insurance.

OTHER INSURANCE

If there is other applicable Personal Protection Insurance or **motor vehicle** medical payments insurance, **we** will pay in accordance with the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended, and as specified therein at M.C.L.A. Sections 500.3114, 500.3115, and 500.3171 as amended.

COORDINATION OF BENEFITS

If there is any other insurance, self-insurance, or insurance plan providing coverage for expenses or loss covered under this Part II, the coverage provided under this Part II shall be coordinated with the coverage available under all such policies and plans so that up to, but no more than, 100 percent of any such expenses or loss shall be recoverable under this and all such policies and plans combined.

PART III—UNINSURED/UNDERINSURED MOTORIST COVERAGE

INSURING AGREEMENT

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

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

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

Any judgment or settlement for damages against an owner or operator of an **uninsured motor vehicle** that arises out of a lawsuit brought without **our** written consent is not binding on **us**. **You** are permitted to file a lawsuit against **us** within the statute of limitations to have any dispute settled by a court of proper jurisdiction when **you** believe **we** have not appropriately responded to **your** requests concerning such proceedings or **you** believe **we** have acted inappropriately in handling **your** claim.

ADDITIONAL DEFINITIONS

When used in this Part III:

1. **“Insured person”** means:
 - a. **you**, a **relative**, or a **rated resident**;
 - b. any person who is not an insured for Uninsured/Underinsured Motorist or similar coverage by any other insurance policy while operating a **covered auto** with the permission of **you**, a **relative**, or a **rated resident**; and
 - c. any person who is not an insured for Uninsured/Underinsured Motorist or similar coverage by any other insurance policy **occupying**, but not operating, a **covered auto**; and
 - d. any person who is entitled to recover damages covered by this Part III because of **bodily injury** sustained by a person described in a., b. or c. above.
2. **“Uninsured motor vehicle”** means a land motor vehicle or trailer of any type:
 - a. to which no bodily injury liability bond or policy applies at the time of the accident;
 - b. to which a bodily injury liability bond or policy applies at the time of the accident, but the bonding or insuring company:
 - (i) denies coverage; or
 - (ii) is or becomes insolvent;
 - c. to which a bodily injury liability bond or policy applies at the time of the accident, but its limit of liability for bodily injury is less than the minimum limit of liability for bodily injury specified by the financial responsibility law of the state in which the **covered auto** is principally garaged;
 - d. that is a hit-and-run vehicle whose owner or operator cannot be identified and which strikes:
 - (i) **you**, a **relative**, or a **rated resident**;
 - (ii) a vehicle that **you**, a **relative**, or a **rated resident** are **occupying**; or
 - (iii) a **covered auto**;
 provided that the **insured person**, or someone on his or her behalf, reports the accident to the police or civil authority within 24 hours and to **us** within 30 days. But if it is shown that it was not reasonably possible to report the accident within this time period, then the **insured person**, or someone on his or her behalf, must report the accident to both the police and **us** as soon as reasonably possible; or
 - e. to which a bodily injury liability bond or policy applies at the time of the acci-

dent, but the sum of all applicable limits of liability for bodily injury is less than the coverage limit for Uninsured/Underinsured Motorist Coverage shown on the **declarations page**.

An “**uninsured motor vehicle**” does not include any vehicle or equipment:

- a. owned by **you**, a **relative**, or a **rated resident** or furnished or available for the regular use of **you**, a **relative**, or a **rated resident**;
- b. owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer that is or becomes insolvent;
- c. owned by any governmental unit or agency;
- d. operated on rails or crawler treads;
- e. designed mainly for use off public roads, while not on public roads;
- f. while located for use as a residence or premises; or
- g. that is a **covered auto**.

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

Coverage under this Part III will not apply:

1. to **bodily injury** sustained by any person while using or **occupying**:
 - a. a **covered auto** while being used:
 - (i) to carry persons or property for compensation or a fee;
 - (ii) for retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food; or
 - (iii) for **ride-sharing activity**.
This exclusion does not apply to shared-expense car pools or to the use of a **covered auto** for volunteer or charitable purposes or for which reimbursement for normal operating expenses is received; or
 - b. any vehicle that is owned by or available for the regular use of **you**, a **relative**, or a **rated resident**. This exclusion does not apply to a **covered auto** that is insured under this Part III;
2. to **bodily injury** sustained by **you**, a **relative**, or a **rated resident** while using any vehicle, other than a **covered auto**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
3. directly or indirectly to benefit any insurer or self-insurer under any of the following or similar laws:
 - a. workers’ compensation law; or
 - b. disability benefits law;
4. to any punitive or exemplary damages;
5. to **bodily injury** sustained by any person if that person or the legal representative of that person settles without **our** written consent. **You** are permitted to file a lawsuit against **us** within the statute of limitations to have any dispute settled by a court of proper jurisdiction when **you** believe **we** have not appropriately responded to **your** requests concerning such proceedings or **you** believe **we** have acted inappropriately in handling **your** claim; or
6. to **bodily injury** arising out of the use of a **covered auto** while being used in connection with a **personal vehicle sharing program**. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**.

LIMITS OF LIABILITY

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

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

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

1. the amount shown for “each person” is the most **we** will pay for all damages due to **bodily injury** to one person; and
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.

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

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

The limits of liability under this Part III will be reduced by all sums:

1. paid because of **bodily injury** by or on behalf of any persons or organizations that may be legally responsible;
2. paid under Part I—Liability To Others; and
3. paid or payable because of **bodily injury** under any of the following or similar laws:
 - a. workers’ compensation law; or
 - b. disability benefits law.

We will not pay under this Part III any expenses paid or payable under Part II—Personal Protection Insurance and Property Protection Insurance Coverage.

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

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.

OTHER INSURANCE

If there is other applicable uninsured or underinsured motorist coverage, **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 available coverage limits. However, any insurance **we** provide with respect to a vehicle that is not a **covered auto** will be excess over any other uninsured or underinsured motorist coverage.

ARBITRATION

If **we** and an **insured person** cannot agree on:

1. the legal liability of the operator or owner of an **uninsured motor vehicle**; or
2. the amount of the damages sustained by the **insured person**;

this will be determined by arbitration if **we** and the **insured person** mutually agree to arbitration prior to the expiration of the bodily injury statute of limitations in the state in which the accident occurred. If **we** and the **insured person** do not agree to arbitration, the disagreement may be resolved in a court of competent jurisdiction. Any lawsuit against **us** by an **insured person** for benefits under this Part III must be commenced prior to the expiration of the bodily injury statute of limitations in the state in which the accident occurred.

If **we** and an **insured person** have agreed to arbitration, the decision shall be made by an arbitrator agreed to by the parties. If the parties cannot agree on an arbitrator within 30 days, then on joint application by the **insured person** and **us**, the arbitrator will be appointed by a court having jurisdiction.

Each party will pay the expenses it incurs. The costs and fees of the arbitrator will be shared equally by both parties.

Unless both parties agree otherwise, arbitration will take place in the county in which the **insured person** resides. Local rules of procedure and evidence will apply.

A decision by the arbitrator will be binding with respect to a determination of:

1. the legal liability of the operator or owner of an **uninsured motor vehicle**; and
2. the amount of the damages sustained by the **insured person**.

The arbitrator will have no authority to award an amount in excess of the limit of liability.

We and an **insured person** may agree to an alternate form of arbitration.

PART IV—DAMAGE TO A VEHICLE

INSURING AGREEMENT—STANDARD COLLISION COVERAGE AND BROAD FORM 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—LIMITED 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**, if the operator of the **covered auto** or **non-owned auto** is not **substantially at-fault** in the accident from which the loss arose.

Determination of whether the operator of the **covered auto** or **non-owned auto** is **substantially at-fault**, and the amount of the loss, will be made by agreement between **you** and **us**. **We** may require **you** to provide reasonable proof that the operator of the **covered auto** or **non-owned auto** was not **substantially at-fault** for the accident. If no agreement is reached as to whether an operator was **substantially at-fault**, the decision will be determined by arbitration in accordance with the Collision Arbitration provision specified in this Part IV.

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—COMPREHENSIVE WINDOW GLASS COVERAGE

If **your declarations page** shows that this coverage applies to **your** policy, **we** will pay under Comprehensive Coverage for loss, not caused by **collision**, to glass or plastic used in the windshield, backglass, windows, moonroof, or sunroof of a **covered auto**.

This coverage is subject to the deductible shown on **your declarations page**.

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—LOAN/LEASE PAYOFF COVERAGE

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

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

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

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

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. **“Substantially at-fault”** means that the proportionate share of fault or liability for the accident is more than 50 percent.
6. **“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;
 - b. for retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food; or
 - c. for **ride-sharing activity**.

This exclusion does not apply to shared expense car pools or to the use of a **covered auto** for volunteer or charitable purposes or for which reimbursement for normal operating expenses is received.

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 race-course;
4. to any vehicle for which insurance:
 - a. is afforded under a nuclear energy liability insurance contract; or
 - b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
5. to any vehicle caused by an intentional act committed by or at the direction of **you**, a **relative**, a **rated resident**, or the owner of a **non-owned auto**, even if the actual damage is different than that which was intended or expected;
6. to a **covered auto** while it is leased or rented to others or given in exchange for compensation, including while being used in connection with a **personal vehicle sharing program**. 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 for diminution of value;
11. 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;

12. 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
13. to any vehicle caused by, or reasonably expected to result from, a criminal act or omission of **you**, a **relative**, a **rated resident**, or the owner of a **non-owned auto**. This exclusion applies regardless of whether **you**, the **relative**, the **rated resident**, or the owner of the **non-owned auto** is actually charged with, or convicted of, a crime. However, for **us** to establish a criminal act or omission for purposes of this exclusion by other than a criminal conviction, **we** must independently prove beyond a reasonable doubt that **you**, the **relative**, the **rated resident**, or the owner of the **non-owned auto** committed such a criminal act or omission. For purposes of this exclusion, criminal acts or omissions do not include traffic violations.
14. to any vehicle while being sold or offered for sale by a person while engaged in any **auto business**.

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.
2. Payments for loss to a **covered auto**, **non-owned auto**, or **custom parts or equipment** are subject to the following provisions:
 - a. If coverage applies to a **non-owned auto**, **we** will provide the broadest coverage applicable to any **covered auto** shown on the **declarations page**.
 - b. If **you** have elected a Stated Amount for a **covered auto**, the Stated Amount is the most **we** will pay for all loss to that **covered auto**, including its **custom parts or equipment**.
 - c. Coverage for **custom parts or equipment** will not cause **our** limit of liability for loss to an **auto** under this Part IV to be increased to an amount in excess of the actual cash value of the **auto**, including its **custom parts or equipment**.
 - d. In determining the amount necessary to repair damaged property to its pre-loss 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.
 - h. The limits of liability under this Part IV shall be reduced by any amount of a loss which has been paid under any Property Protection Insurance.
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. Payments for loss under Broad Form Collision Coverage are also subject to the following provisions:
 - a. notwithstanding any other provision contained in this policy, no deductible will apply to Broad Form Collision Coverage for loss to a **covered auto** when the operator of the **covered auto** is not **substantially at-fault** for the accident from which the loss arose; and
 - b. if no agreement is reached as to whether an operator was **substantially at-fault**, the decision will be determined by arbitration in accordance with the Collision Arbitration provision specified in this Part IV.
 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.

COLLISION ARBITRATION

If **you** pay the premium for Limited Collision Coverage or Broad Form Collision Coverage, any disagreement **you** have with **us** as to whether an operator was **substantially at-fault** will be determined by arbitration. **We** will notify **you** in writing of **our** determination as to whether an operator was **substantially at-fault**. **Your** demand for arbitration must be in writing and must be made within 30 days after receiving **our** written determination.

If a written demand for arbitration has been made, then each party shall select an arbitrator. The two arbitrators will select a third. If the two arbitrators cannot agree on a third arbitrator within 30 days, then on joint application by **us** and the insured person, the third arbitrator will be appointed by a court having jurisdiction.

Each party will pay the costs and fees of its arbitrator as well as any other expenses it incurs. The costs and fees of the third arbitrator will be shared equally by the parties.

Unless both parties agree otherwise, arbitration will take place in the county in which the insured person resides. Local rules of procedure and evidence will apply.

A decision agreed to by two of the arbitrators will be binding as to whether an operator was **substantially at-fault**.

Any dispute as to the amount of damages may be joined in the arbitration by **us** in lieu of appraisal.

PAYMENT OF LOSS

We may, at **our** option:

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

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

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

NO BENEFIT TO BAILEE

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

LOSS PAYABLE CLAUSE

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

The lienholder's interest will not be protected:

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

If this policy is cancelled, nonrenewed or voided, the interest of any lienholder under this agreement will also terminate.

OTHER SOURCES OF RECOVERY

If other sources of recovery also cover the loss, **we** will pay only **our** share of the loss. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance **we** provide for a **non-owned auto**, or **trailer** not shown on the **declarations page**, will be excess over any other collectible source of recovery including, but not limited to:

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

APPRAISAL

If **we** cannot agree with **you** on the amount of a loss, then **we** or **you** may demand an appraisal of the loss. Within 30 days of any demand for an appraisal, each party shall appoint a competent 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.

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. any **covered auto** while being used in connection with **ride-sharing activity**;
- 15. any **covered auto** while being used in connection with a **personal vehicle sharing program**; or
- 16. a trailer.

UNAUTHORIZED SERVICE PROVIDER

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

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

OTHER INSURANCE

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

PART VI—DUTIES IN CASE OF AN ACCIDENT OR LOSS

For coverage to apply under this policy, **you** or the person seeking coverage must promptly report each accident or loss even if **you** or the person seeking coverage is not at fault. **You** or the person seeking coverage must provide **us** with all accident 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 theft or vandalism has occurred, **you** or the person seeking coverage must notify the police within 24 and **us** within 30 days hours or as soon as reasonably possible. Notification to **our** authorized agent shall be deemed to be notice to **us**.

Coverage will not be denied due to lack of timely notice if:

- 1. **you** or an insured person can show that it was not reasonably possible to provide notice within the required time; and
- 2. notice is provided as soon as reasonably possible.

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** or **our** representative 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. promptly call to notify **us** about any claim or lawsuit and send **us** any and all legal papers relating to the claim or suit;
5. attend hearings and trials as **we** require;
6. take reasonable steps after a loss to protect the **covered auto**, or any other vehicle for which coverage is sought, from further loss. **We** will pay reasonable expenses incurred in providing that protection. If failure to provide such protection results in further loss, any additional damages will not be covered under this policy;
7. allow **us** to have the damaged **covered auto**, or any other damaged vehicle for which coverage is sought, inspected and appraised before its repair or disposal;
8. submit to medical examinations at **our** expense by doctors **we** select as often as **we** may reasonably require; and
9. authorize **us** to obtain medical and other records.

PART VII—GENERAL PROVISIONS

POLICY PERIOD AND TERRITORY

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

CHANGES

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

The premium for this policy is based on information **we** received from **you** and other sources. **You** agree to cooperate with **us** in determining if this information is correct and complete, and to promptly notify **us** if it changes during the policy period. If this information is 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 void 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. This means that **we** will not be liable for any claims or damages that would otherwise be covered.

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

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

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

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

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

PAYMENT OF PREMIUM AND FEES

If **your** initial premium payment is by check, draft, electronic funds transfer, or similar form of remittance, coverage under this policy is conditioned on payment to **us** by the financial institution. If the financial institution upon presentment does not honor the check, draft, electronic funds transfer, or similar form of remittance, this policy may, at

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

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

CANCELLATION

You may cancel this policy by notifying **us** of cancellation on or before the date of cancellation.

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

We will give at least 10 days notice of cancellation if the policy is cancelled for nonpayment of premium. If **we** cancel this policy for any reason other than nonpayment of premium within the first 55 days following the initial issuance of this policy, notice will be mailed at least 20 days before the effective date of cancellation.

We will give at least 30 days notice of cancellation in all other cases.

We may cancel this policy for any reason if the notice is mailed within the first 55 days of the initial policy period.

After this policy is in effect for more than 55 days, or if this is a renewal or continuation policy, **we** may cancel only for one or more of the following reasons:

1. nonpayment of premium;
2. material misrepresentation or fraud in the submission of any claim under this policy;
3. 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**;
4. **we** have agreed to issue a new policy within the same or an affiliated company; or
5. any other reason permitted by law.

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.

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** are entitled to retain **our** minimum earned premium.

NONRENEWAL

If neither **we** nor one of **our** affiliates offers to renew or continue this policy, **we** will mail notice of nonrenewal to the named insured shown on the **declarations page** at the last known address appearing in **our** records. Proof of mailing will be sufficient proof of notice. Notice will be mailed at least 30 days before the end of the policy period.

AUTOMATIC TERMINATION

If **we** or an affiliate offers to renew or continue this policy and **you** or **your** representative does not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due will mean that **you** have not accepted **our** offer.

For coverage under this policy, **we** will share on a pro rata basis with other valid and collectible insurance purchased on a primary basis. **Our** share will be the proportion that **our** limit of liability bears to the total of all applicable limits.

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. **You** are permitted to file a lawsuit against **us** within the statute of limitations to have any dispute settled by a court of proper jurisdiction when **you** believe **we** have not appropriately responded to **your** requests concerning such proceedings or **you** believe **we** have acted inappropriately in handling **your** claim.

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.

If an insured person recovers from another without **our** written consent, the insured person's right to payment under any affected coverage will no longer exist. **You** are permitted to file a lawsuit against **us** within the statute of limitations to have any dispute settled by a court of proper jurisdiction when **you** believe **we** have not appropriately responded to **your** requests concerning such proceedings or **you** believe **we** have acted inappropriately in handling **your** claim.

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.

PROGRESSIVE[®]
DIRECT Auto



9611D MI 1115



CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

JOHN MENCL, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Van Buren County, Mic (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 MARATHON INSURANCE COMPANY, an Ohio corporation,

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

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

Attorneys (If Known)

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

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: Violation of the Michigan Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE June 11, 2021 SIGNATURE OF ATTORNEY OF RECORD /s/ Andrew Shamis

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

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

SUMMONS IN A CIVIL ACTION

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

JOHN MENCL, individually and on behalf of all others
similarly situated,

Case No.
Hon.

v.
PROGRESSIVE MARATHON INSURANCE
COMPANY, an Ohio corporation,

TO: Progressive Marathon Insurance Company
ADDRESS: 6300 Wilson Mills Road
Mayfield Village, OH 44143

A lawsuit has been filed against you.

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff, an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure within 21 days after service of this summons on you (not counting the day you received it). If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You must also file your answer or motion with the Court.

The Court has offices in the following locations:

- 399 Federal Building, 110 Michigan St., NW, Grand Rapids, MI 49503
- P.O. Box 698, 330 Federal Building, Marquette, MI 49855
- 107 Federal Building, 410 W. Michigan Ave., Kalamazoo, MI 49007
- 113 Federal Building, 315 W. Allegan, Lansing, MI 48933

PLAINTIFF OR PLAINTIFF'S ATTORNEY NAME AND ADDRESS

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

CLERK OF COURT

Insert Today's Date

By: Deputy Clerk

Date

PROOF OF SERVICE

This summons for Progressive Marathon Insurance Company was received by me on _____
(name of individual and title, if any) (date)

I personally served the summons on the individual at _____
on _____
(date) (place where served)

I left the summons at the individual's residence or usual place of abode with _____, a person
(name)
of suitable age and discretion who resides there, on _____, and mailed a copy to the individual's last known address.
(date)

I served the summons on _____, who is designated by law to accept service
(name of individual)
of process on behalf of _____ on _____
(name of organization) (date)

I returned the summons unexecuted because _____

Other (specify) _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____

I declare under the penalty of perjury that this information is true.

Date: _____

Server's signature

Additional information regarding attempted service, etc.:

Server's printed name and title

Server's address

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Progressive Applies Unlawful 'Projected Sold Adjustment' to Value of Totaled Vehicles](#)
