

under contract and Pennsylvania law.

5. The present action seeks relief on behalf of the plaintiff, Eric Yost, individually, as well as on behalf of a class of similarly situated persons.

Background

6. At all times relevant hereto, the plaintiff, Eric Yost, was insured for disability benefits under an insured Group Plan issued by the defendant, Anthem, through Finisar Corporation, the former employer of the plaintiff, Eric Yost. A true and correct copy of the Group Plan is attached hereto as Exhibit "A".

7. On February 2, 2013, the plaintiff, Eric Yost, sustained injury as a result of a motor vehicle accident which rendered him temporarily disabled.

8. As a result of his temporary disability, the plaintiff, Eric Yost, submitted a claim for short term disability benefits to the defendant, Anthem, under the policy in question.

9. The defendant, Anthem, paid disability benefits to the plaintiff, Eric Yost, in the amount of \$5,654.40 for the period beginning February 4, 2013 and ending April 23, 2013. A true and correct copy of a statement of short term disability benefits paid to the plaintiff, Eric Yost, is attached hereto, marked Exhibit "B".

10. As a result of the injuries sustained in the motor vehicle accident, the plaintiff, Eric Yost, made a claim for

recovery of damages against the tortfeasor.

11. The insurer for the tortfeasor, did resolve, settle and make payment to the plaintiff, Eric Yost, in compensation for the personal injuries sustained by the Plaintiff in the motor vehicle accident.

12. The defendant, Anthem, then asserted a claim for reimbursement of the short term disability benefits paid to the plaintiff, Eric Yost, from the proceeds of the settlement of the tort action.

13. By e-mail dated August 26, 2014, counsel for Eric Yost wrote to Josephine Wartel, Disability Claims Manager for the defendant, Anthem, requesting information regarding any subrogation and/or reimbursement claim. A true and correct copy of the e-mail is attached hereto as Exhibit "C".

14. By e-mail dated August 26, 2014, Vikki Harvey, Compliance Analyst, Sr. for the defendant, Anthem, responded to counsel for Eric Yost asserting a right of recovery in the amount of \$6,997.25. A true and correct copy of the e-mail is attached hereto as Exhibit "D".

15. By e-mail dated August 27, 2014, counsel for Eric Yost offered Vikki Harvey \$2,610.91 in settlement of the claim for reimbursement. A true and correct copy of the e-mail is attached hereto as Exhibit "E".

16. By e-mail dated August 28, 2014, Vikki Harvey asserted a right of recovery from the proceeds of the settlement of Eric

Yost in the amount of \$4,760.09. A true and correct copy of the e-mail is attached hereto as Exhibit "F".

17. By e-mail dated December 11, 2014, counsel for Eric Yost advised Vikki Harvey that no valid right of recovery existed under Pennsylvania law, stating in pertinent part:

Accordingly, Anthem does not have an enforceable subrogation/reimbursement lien against Mr. Yost's tort recovery, the "Right of Recovery" language in the contract notwithstanding.

A true and correct copy of the e-mail is attached hereto as Exhibit "G".

18. By e-mail dated December 16, 2014, Vikki Harvey acknowledged the e-mail of counsel for Eric Yost and promised a prompt response. A true and correct copy of the e-mail is attached hereto as Exhibit "H".

19. By e-mail dated January 16, 2015, counsel for Eric Yost requested advice from Vikki Harvey regarding the claim for reimbursement of the defendant, Anthem. A true and correct copy of the e-mail is attached hereto as Exhibit "I".

20. By e-mail dated January 23, 2015, Vikki Harvey reaffirmed the claim of the defendant, Anthem, for reimbursement of disability benefits paid and requested a check in the amount of \$4,760.09. A true and correct copy of the e-mail is attached hereto as Exhibit "J".

21. The defendant, Anthem, is seeking reimbursement from the proceeds of the payment to plaintiff Eric Yost of damages for pain and suffering pursuant to the "Recovery of Overpayment" and

the "Right of Recovery" provisions of the Group Plan. See Exhibit "A".

22. The demand of the defendant is improper as a matter of law and as a matter of policy as the Right of Recovery provision of the Group Plan is not enforceable and forms no basis for any right of reimbursement under Pennsylvania law or under contract.

23. Nonetheless, the defendant, Anthem, is seeking reimbursement from plaintiff, Eric Yost, for \$6,997.25 from the proceeds of the pain and suffering tort settlement.

24. The defendant, Anthem, has continued to assert a claim for reimbursement of the short term disability benefits paid to the plaintiff, Eric Yost, from the proceeds of his tort pain and suffering settlement of his motor vehicle accident despite the policy and despite the law in Pennsylvania eliminating any such right.

25. The defendant, Anthem, has refused to withdraw its claim for reimbursement of short term disability benefits despite the request from the plaintiff, Eric Yost, to do so.

26. As a result of defendant's demand, counsel for Plaintiff has been forced to refuse to distribute to Mr. Yost the money in dispute. Counsel is ethically bound to refuse to provide the funds to Mr. Yost. Further, the policy leaves Mr. Yost subject to suit and loss of benefits based on the dispute over the subject funds. Accordingly, Mr. Yost is denied the payment, ownership and use of the dispute funds.

27. In consequence of the above, counsel for Plaintiff has refused Mr. Yost the payment, ownership and use of his funds by holding the disputed funds in escrow.

28. The plaintiff, Eric Yost, has been deprived of the ownership, possession and use of the from the proceeds of the tort settlement by reason of the illegal assertion of the claim for reimbursement of the defendant, Anthem. The plaintiff, Eric Yost, is further subject to suit and loss of future benefits as a result of the defendant's illegal assertion and claim for reimbursement.

29. It is believed, and therefore averred, that the defendant, Anthem, has illegally asserted liens and claims for reimbursement and further collected monies from the pain and suffering settlement or verdicts recovered in motor vehicle accident claims against not only the plaintiff, Eric Yost, but also against other persons.

30. The defendant, Anthem, has wantonly, willfully and wrongfully asserted claims and continues to assert claims for reimbursement from the proceeds of the pain and suffering settlement or verdict of motor vehicle accident claims contrary to the policy and contrary to the dictates of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq.

Statutory Provisions

31. The present matter arises under the policy and under the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq.

32. Section 1720 of the Pennsylvania Motor Vehicle Financial Responsibility Law eliminates all rights of subrogation or reimbursement by all group plans, programs or other arrangements for payment of benefits in connection with injuries sustained in motor vehicle accidents.

33. Specifically, § 1720 of the Pennsylvania Motor Vehicle Financial Responsibility Law provides:

In actions arising out of the maintenance or use of a motor vehicle, there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to workers' compensation benefits, benefits available under section 1711 (relating to required benefits), 1712 (relating to availability of benefits) or 1715 (relating to availability of adequate limits) or benefits paid or payable by a program, group contract or other arrangement whether primary or excess under section 1719 (relating to coordination of benefits).

75 Pa.C.S.A. § 1720.

34. The defendant, Anthem, has illegally asserted liens and claims for reimbursement against the proceeds of the pain and suffering settlement or verdict of motor vehicle accident claims that are in violation of the policy and in violation of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq.

35. It is believed, and therefore averred, that the defendant, Anthem, has illegally asserted liens and rights of reimbursement and recovered monies from the pain and suffering settlements or verdicts of motor vehicle accident claims against not only the plaintiff, Eric Yost, but also against other persons that contrary to the policy and contrary to the dictates of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq.

36. The plaintiff, Eric Yost, requests that the Court determine that the defendant, Anthem, has no right of subrogation or reimbursement against the proceeds of the pain and suffering settlement of his motor vehicle accident claim as well as the settlement or verdicts of other persons similarly situated.

37. The plaintiff, Eric Yost, requests that the Court order the defendant, Anthem, to accord relief as prayed for hereinafter as to repayment claims made to motor vehicle accident claimants in violation of the dictates of the policy and of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq.

38. The plaintiff, Eric Yost, requests that the Court award relief as prayed for hereinafter against the defendant, Anthem, as a result of its assertions of claims for reimbursement from the settlements or verdicts of motor vehicle accident claims where none exist.

Class Action Allegations

39. The plaintiff, Eric Yost, brings this action individually and on behalf of a class of similarly situated persons as a class action pursuant to the Pennsylvania Rules of Civil Procedure.

40. The defendant, Anthem, has continuously, systematically, wrongfully and wantonly asserted claims for reimbursement of disability benefits and recovered monies from the pain and suffering settlement or verdict of motor vehicle claims where all such claims for reimbursement and recovery are improper under the policy and as a matter of law as the Right of Recovery provisions of the Group Plan have been abrogated by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq. as recognized by the Supreme Court of Pennsylvania in *Tannenbaum v. Nationwide*, 992 A.2d 859 (Pa. 2010).

41. The plaintiff, Eric Yost, seeks to represent a class of persons injured in motor vehicle accidents against the defendant, Anthem, which has asserted a claim for reimbursement of disability benefits depriving those persons of the monies where such claims for reimbursement recovery are improper under the policy and as a matter of law as the Right of Recovery provisions of the Group Plan have been abrogated by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq. as recognized by the Supreme Court of Pennsylvania in *Tannenbaum v. Nationwide*, 992 A.2d 859 (Pa. 2010).

42. The plaintiff, Eric Yost, seeks to represent a class of persons injured in motor vehicle accidents against the defendant, Anthem, which has recovered disability benefits from the proceeds of the pain and suffering settlement or verdict of motor vehicle accident claims where such claims for reimbursement recovery are improper under the policy and as a matter of law as the Right of Recovery provisions of the Group Plan have been abrogated by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq. as recognized by the Supreme Court of Pennsylvania in *Tannenbaum v. Nationwide*, 992 A.2d 859 (Pa. 2010).

43. The plaintiff, Eric Yost, reserves the right to amend the definition and/or identify subclasses upon completion of class certification.

44. It is believed, and therefore averred, that the class is so numerous as to allow certification.

45. It is believed, and therefore averred that the defendant, Anthem, has asserted claims for reimbursement and/or has recovered monies from the members of the putative class from the proceeds of the pain and suffering settlement or verdict of motor vehicle accident claims where such claims for reimbursement recovery are improper under the policy and as a matter of law as the Right of Recovery provisions of the Group Plan have been abrogated by the Pennsylvania Motor Vehicle Financial

Responsibility Law, 75 Pa.C.S.A. § 1701 et seq. as recognized by the Supreme Court of Pennsylvania in *Tannenbaum v. Nationwide*, 992 A.2d 859 (Pa. 2010).

46. It is believed and therefore averred that the total amount in dispute on behalf of the claims of similarly situated individuals does not exceed \$5,000,000.00.

47. It is believed, and therefore averred, that the members of the putative class are so numerous that joinder of all members is impracticable.

48. The class claims constitute insureds who have suffered injury in motor vehicle accidents and who have recovered monies by way of settlement or verdict for pain and suffering from personal injuries and the defendant, Anthem, has asserted claims for reimbursement and/or has recovered disability monies paid to these individuals.

49. Identification of the members of the class can be ascertained in and through discovery of the files and/or computer data base of the defendant. Anthem Life Insurance Company.

50. A class action is the only practicable means available for the members of the class to pursue the appropriate remedies under the policies of insurance in question and the law.

51. A class action is the only practicable means available to prevent the defendant, Anthem, from engaging in the continuous and systematic illegal and unlawful conduct concerning benefits

under the policy and under the Pennsylvania Motor Vehicle Financial Responsibility Law and to remedy the harm created by this illegal and unlawful conduct.

52. The questions of law and fact are common to the members of the class which the plaintiff, Eric Yost, seeks to represent.

53. The questions of law and fact common to the members of the class predominate over questions that may affect only individual members.

54. The common questions of law and fact which control this litigation predominate over any individual issues include, but are not limited to:

- (a) Each member of the class was insured under a disability benefits policy issued by the defendant;
- (b) Each member of the class was injured in a motor vehicle accident;
- (c) Each member of the class was paid disability benefits by the defendant, Anthem, as a result of injuries sustained in the motor vehicle accident;
- (d) Each member of the class made a recovery for pain and suffering as a result of injuries sustained in a motor vehicle accident;
- (e) For each member of the class, the defendant, Anthem, made claim for reimbursement of disability benefits paid as a result of injuries sustained in a motor

vehicle accident from the proceeds of the pain and suffering settlement or verdict of the motor vehicle accident claim; and

- (f) For each member of the class, defendant Anthem's claims for reimbursement and recovery are improper under the policy and as a matter of law as the Right of Recovery provisions of the Group Plan have been abrogated by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq. as recognized by the Supreme Court of Pennsylvania in *Tannenbaum v. Nationwide*, 992 A.2d 859 (Pa. 2010).

55. The plaintiff, Eric Yost, is a member of the class that he seeks to represent.

56. The claims of the plaintiff, Eric Yost, are typical of the claims of other members of the class which he purports to represent.

57. The plaintiff, Eric Yost, is well qualified to act as class representative.

58. The plaintiff, Eric Yost, will fairly and adequately protect the interests of the members of the class.

59. The plaintiff, Eric Yost, has no interest that is adverse or antagonistic to the interests of the members of the class.

60. The plaintiff, Eric Yost, is committed to prosecuting the class action.

61. The plaintiff, Eric Yost, has retained competent counsel who are experienced in litigation of this nature.

62. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

63. Joinder of all class matters is impracticable and the likelihood of individual class members prosecuting separate claims is remote due to the fact that the members of the class do not know that they are entitled to uninsured motorist coverage.

64. The expense and burden of individual litigation makes it unlikely that a substantial member of the class members will individually seek redress for the wrongs done to them.

65. It is desirable for all concerned to concentrate the litigation in this particular forum for adjudication.

66. The plaintiff, Eric Yost, anticipates no difficulty in the management of this action as a class action.

67. The class action brought by the plaintiff, Eric Yost, is a convenient and proper forum in which to litigate the claim.

68. The prosecution of separate actions by individual class members would create the risk of bearing inconsistent determinations that could confront the defendant, Anthem, with incompatible standards of conduct and which could prejudice non-parties to any adjudication or substantially impede their ability to protect their own interests because of the overriding common

questions of law and fact involved in the matter.

69. Prosecution of these claims as a class action will result in an orderly and expeditious administration of the claims and will foster economies of time, effort and expense.

70. Prosecution of these claims as a class action will contribute to uniformity of decisions concerning the practices of the defendant, Anthem.

71. Prosecution of the claims as a class action in State Court is appropriate since the matter is limited to persons having claims governed by the policy and by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq., and the total amount of dispute is not in excess of \$5,000,000.00.

COUNT I

(Violation of 75 Pa.C.S.A §1720 - Rule of Decision)

72. Plaintiff, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

73. 75 Pa.C.S.A §1720 of the Pennsylvania Motor Vehicle Financial Responsibility Law was in full force and effect at the time of issue or renewal of the insurance policies issued by Anthem to Plaintiffs and, as such, the policies were amended by operation of law to conform with said statute and code.

74. Pursuant to 75 Pa.C.S.A. §1720 of the Pennsylvania Motor Vehicle Financial Responsibility Law, insurers are prohibited from asserting subrogation, liens and/or reimbursement against insureds' personal injury recoveries arising from motor vehicle claims.

75. At all times relevant hereto, Anthem asserted and continues to assert, a lien, subrogation claim and/or demand for repayment for the benefits which Anthem paid as against the proceeds of Plaintiffs' personal injury pain and suffering recoveries of motor vehicle accident claims.

76. Pursuant to 75 Pa.C.S.A §1720 of the Pennsylvania Motor Vehicle Financial Responsibility Law, insurers are prohibited from asserting lien, subrogation and/or reimbursement claims.

COUNT II
(Declaratory Relief)

77. The plaintiff hereby incorporates by reference the foregoing paragraphs 1 through 71 of this Complaint as though same were fully set forth herein.

78. The defendant, Anthem, seeks reimbursement of disability benefits paid to the plaintiff, Eric Yost, from the proceeds of the settlement of the pain and suffering tort claim in connection with injuries sustained in a February 2, 2013 motor

vehicle accident.

79. Pursuant to the policy and pursuant to §1720 of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1720, the defendant, Anthem, may not seek reimbursement or assert a right of subrogation against the pain and suffering recoveries of tort actions in connection with any disability benefits paid with respect to any recovery for injuries sustained in the February 2, 2013 motor vehicle accident.

80. The defendant, Anthem, has no right to reimbursement and may not assert any right of subrogation against the proceeds of the pain and suffering settlement of the tort action arising from the February 2, 2013 motor vehicle accident. See 75 Pa.C.S.A. § 1720; *Tannenbaum v. Nationwide Insurance Company*, 992 A.2d 859 (Pa. 2010).

81. The defendant, Anthem, wantonly, willfully and in reckless disregard of the rights of the plaintiff, Eric Yost, made claim for reimbursement and recovery from the proceeds of the pain and suffering settlement of his motor vehicle accident claim in violation of the policy and in violation of the dictates of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq.

82. The defendant, Anthem, wantonly, willfully and in reckless disregard of the rights of the members of the class,

made claim for reimbursement and recovery from the proceeds of the pain and suffering settlement of his motor vehicle accident claim in violation of the policy and in violation of the dictates of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq.

83. There is no reasonable basis for the assertion of a claim for recovery reimbursement from the proceeds of the pain and suffering settlement of the motor vehicle accident claim of the plaintiff, Eric Yost, in contravention of the policy and in contravention of the dictates of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq.

84. There is no reasonable basis for the assertion of a claim for recovery reimbursement from the proceeds of the pain and suffering settlement or verdict the motor vehicle accident claims of members of the class, in contravention of the policy and in contravention of the dictates of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq.

85. The defendant, Anthem, has made claim for recovery and reimbursement of the disability benefits paid from the proceeds of the pain and suffering settlement of the motor vehicle accident claim of the plaintiff, Eric Yost, with knowledge that its assertion of the claim is violative of the policy and violative of the dictates of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq.

86. The defendant, Anthem, has made claim for recovery and reimbursement of the disability benefits paid from the proceeds of the pain and suffering settlement or verdict of motor vehicle accident claims of members of the class, with knowledge that its assertion of the claim is directly violative of the policy and directly violative of the dictates of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq.

87. The plaintiff, Eric Yost, is entitled to a declaration that the defendant, Anthem, has no right for recovery of reimbursement of disability benefits paid from the proceeds of the pain and suffering settlement of the motor vehicle accident claim.

88. Each member of the class is entitled to a declaration that the defendant, Anthem, has no right for recovery of reimbursement of disability benefits paid from the proceeds of the pain and suffering settlement or verdict motor vehicle accident claims.

89. The controversy poses an issue for judicial determination under the Declaratory Judgment Act.

90. The controversy involves substantial rights of the parties to the action.

91. The controversy poses an issue for judicial determination by this Court at this time.

92. A judgment of this Court in this action will serve a useful purpose in clarifying and settling the legal relations at issue between the parties.

93. A judgment of this Court will determine, terminate and afford relief from the uncertainty and controversy giving rise to this action.

94. The plaintiff, Eric Yost, is entitled to a declaration that the defendant, Anthem, has no right of reimbursement and may not assert a claim for subrogation against the proceeds of the pain and suffering settlement of the motor vehicle accident claims arising from the February 2, 2013 motor vehicle accident.

95. Each member of the class is entitled to a declaration that the defendant, Anthem, has no right of reimbursement and may not assert a claim for subrogation against the proceeds of the pain and suffering settlement or verdict of motor vehicle accident claims.

COUNT III

(Violation of Employee Welfare Benefit Plan and Policy)

96. Plaintiff, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

97. Defendant's assertion of liens, subrogation claims

and/or repayment demands as against the proceeds of Plaintiffs' personal injury pain and suffering recoveries is a breach of the underlying policy and of the Employee Welfare Benefit Plan.

98. By taking the actions described above, Defendant violated the rights of Plaintiffs. Specifically, under the Plan, Plaintiffs have rights to insurance benefits that are not subject to lien, subrogation and/or repayment. Accordingly, Defendants' demands for lien, subrogation and/or repayment infringes upon and is in derogation of those rights under the Plan.

99. Defendant's repudiation of the terms of the employee welfare benefit plan is actionable in this Court under ERISA § 502, 29 U.S.C. § 1132, which allows a participant or beneficiary to bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."

100. Additionally, a participant suing under this provision is entitled to interest on any retroactive amounts awarded.

101. Pursuant to ERISA §502, Plaintiffs are entitled to an relief as against the defendants.

COUNT IV

(BREACH OF FIDUCIARY DUTY - MISREPRESENTATION)

102. Plaintiff, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

103. At all relevant times, Defendant was a fiduciary of the Plan, as defendant exercised discretionary authority, control or responsibility for administration or management of the Plan and management or disposition of Plan within the meaning of ERISA. ERISA § 3(21)(A)(i)-(iii), 29 U.S.C. § 1002(21)(A)(i)-(iii).

104. ERISA imposes a duty to Disclose Complete and Accurate Information and to avoid misrepresentations.

105. ERISA fiduciaries have a duty to disclose complete and accurate information about benefits to plan beneficiaries.

106. ERISA fiduciaries may not affirmatively make material misrepresentations and may not strategically withhold material information.

107. Under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), participants and beneficiaries may sue "to enjoin any act or practice which violates any provision of this subchapter [e.g., fiduciary provisions] or the terms of the plan, or . . . to obtain other appropriate equitable relief . . . to redress such violations or . . . to enforce any provisions of this subchapter or the terms of the plan."

108. Anthem's conduct, as set forth herein, violated its fiduciary duty to Plaintiffs.

109. More specifically, the defendant breached its fiduciary duty by making misrepresentations set forth herein and enumerated below, with each act constituting its own violation and claim or cause of action in its own right:

- a) Anthem made repeated and pervasive representations that Anthem was legally entitled to lien, subrogation and/or repayment as from Plaintiff's pain and suffering personal injury recoveries;
- b) Anthem, through its conduct affirmatively and systematically misinformed the Anthem insureds that it was entitled to liens, subrogation and repayment.
- c) Anthem made repeated and pervasive representations that the Plaintiffs owed money to and were required to pay money to Anthem based on Anthem's lien, subrogation and/or repayment rights as from Plaintiff's pain and suffering personal injury recoveries;

110. Anthem, through its conduct, actively and systemically recovered from Anthem insureds money in repayments as to which Anthem was not legally entitled.

111. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plaintiffs have already, and will continue to, suffer actual harm in the absence of relief.

112. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a), and ERISA §409, 29 U.S.C. §1109(a), Defendants in this Count are liable to restore the losses caused by their breaches of fiduciary duties.

113. As a result of defendant's violation of the fiduciary duty, Plaintiffs are entitled to relief as against the defendants.

114. The Defendant's actions to misrepresent that Anthem was legally entitled to lien, subrogation and/or repayment as from Plaintiff's pain and suffering personal injury recoveries is part of a systemic plan to recover money for defendant's own gain and advantage.

COUNT V

(BREACH OF FIDUCIARY DUTY - DUTY OF LOYALTY)

115. Plaintiff, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

116. At all relevant times, Defendant was a fiduciary of the Plan, as Anthem exercised discretionary authority, control or

responsibility for administration or management of the Plan and management or disposition of Plan within the meaning of ERISA. ERISA § 3(21)(A)(i)-(iii), 29 U.S.C. § 1002(21)(A)(i)-(iii).

117. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), imposes on Plan fiduciaries a duty of loyalty, that is, a duty to discharge his duties with respect to a Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries.

118. As a fiduciary of the Plan, Defendant was obligated to discharge its duties solely in the interests of Plaintiffs, who are Plan participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries.

119. Under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), participants and beneficiaries may sue "to enjoin any act or practice which violates any provision of this subchapter [e.g., fiduciary provisions] or the terms of the plan, or . . . to obtain other appropriate equitable relief . . . to redress such violations or . . . to enforce any provisions of this subchapter or the terms of the plan."

120. Anthem's inclusion of lien, subrogation and/or reimbursement provisions in its health insurance policies covering Plaintiffs, violated its fiduciary duty to Plaintiffs with each act constituting its own violation and claim or cause

of action in its own right.

121. Anthem's assertion of liens, subrogation and/or repayment demands as against Plaintiffs' pain and suffering recoveries, violated its fiduciary duty to Plaintiffs with each act constituting its own violation and claim or cause of action in its own right.

122. Anthem's enforcement of liens, subrogation and/or repayment demands as against Plaintiffs' pain and suffering recoveries, violated its fiduciary duty to Plaintiffs with each act constituting its own violation and claim or cause of action in its own right.

123. Anthem's collection of liens, subrogation and/or repayment demands as against Plaintiffs' pain and suffering recoveries, violated its fiduciary duty to Plaintiffs with each act constituting its own violation and claim or cause of action in its own right.

124. Defendant further breached its duty to avoid conflicts of interest by administering the Plan in a way favorable to itself and adversely to the participants and beneficiaries and by otherwise placing their own and/or the Company's interests above the interests of the participants and beneficiaries.

125. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plaintiffs have already, and

will continue to, suffer actual harm in the absence of relief.

126. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a), and ERISA §409, 29 U.S.C. §1109(a), Defendants in this Count are liable to restore the losses caused by their breaches of fiduciary duties.

127. As a result of defendant's violation of the fiduciary duty, Plaintiffs are entitled to relief as against the defendants.

COUNT VI
RELIEF DEMANDED

128. Plaintiffs hereby incorporate all previous paragraphs by reference as if fully set at length forth herein.

WHEREFORE, plaintiff, Eric Yost, individually and on behalf of a Class of Similarly Situated Persons, respectfully requests that this Court enter an Order:

A. Determining that this action is a proper class action, certifying the named Plaintiffs as class representatives for the classes alleged herein and Plaintiffs' counsel as Class Counsel;

B. Awarding judgment as to Count II in favor of named Plaintiff and each Other Similarly Situated Individual that Defendants' conduct was a violation of Pennsylvania Motor Vehicle

Financial Responsibility Law 75 P.A.C.S.A. §1720 and declaring that:

- (1) the defendant, Anthem Life Insurance Company, has no right of reimbursement from the proceeds of the pain and suffering settlement of the motor vehicle claims in connection with the disability benefits paid to the plaintiff, Eric Yost, in connection with injuries sustained in the February 2, 2013 motor vehicle accident;
- (2) declaring that the defendant, Anthem Life Insurance Company, may assert no right of subrogation against the proceeds of the pain and suffering settlement of the motor vehicle claims in connection with the disability benefits paid to the plaintiffs;
- (3) declaring that no right of reimbursement exists from the proceeds of pain and suffering settlements or verdicts of motor vehicle claims in connection with the disability benefits paid by defendant to plaintiffs;
- (4) awarding interest, counsel fees and costs;
- (5) such other relief as the Court deems appropriate.

C. Awarding judgment as to Count III in favor of named Plaintiff and each Other Similarly Situated Individual and against Defendant for:

- (1) All damages or permissible equitable or permissible monetary relief for benefits in favor of each named Plaintiff and each Other Similarly Situated Individual;
- (2) All damages or permissible equitable or permissible monetary relief for benefits in favor of each named Plaintiff and each Other Similarly Situated Individual in recovery of benefits due under the Plan and in enforcement of rights under the Plan;
- (3) All affirmative and negative injunctive and other permissible equitable or monetary relief for benefits in order to accord to the Plaintiffs the full and complete measure of benefits which Plaintiffs are entitled to under the Plan and to remedy defendant's breaches alleged above, as provided by any and all applicable provisions of ERISA;
- (4) reasonable attorney fees and expenses, as provided by ERISA § 502(g), 29 U.S.C. §1132(g) the common fund doctrine, and other applicable law;
- (5) taxable costs pursuant to 29 U.S.C. § 1132(g);
- (6) interest on these amounts, as provided by law;
- (7) Restitution;
- (8) Imposition Constructive Trust;
- (9) Disgorgement of ill-gotten profits;
- (10) Mandamus;

- (11) Estoppel;
- (12) Specific Performance;
- (13) Surcharge, and
- (14) Such other and further relief as this Court may deem just and proper.

D. Awarding judgment as to Count IV in favor of named Plaintiff and each Other Similarly Situated Individual and against Defendant for:

- (1) All damages and permissible equitable or permissible monetary relief for defendant's breach of its fiduciary duties in favor of each named Plaintiff and each Other Similarly Situated Individual;
- (2) All permissible equitable or permissible monetary relief to remedy, redress, compensate, cease, prevent and atone for defendant's breach of its fiduciary duties in favor of each named Plaintiff and each Other Similarly Situated Individual;
- (3) Actual monetary damages to make good to the Plaintiffs for each and every type and measure of loss resulting from the breaches of fiduciary duties alleged above;
- (4) All relief and remedy to make good to the Plaintiffs for each and every type and measure of loss resulting from the breaches of fiduciary duties alleged above;

- (5) Affirmative and negative injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by ERISA §409(a) and §502(a), 29 U.S.C. §1109(a) and §1132(a);
- (6) reasonable attorney fees and expenses, as provided by ERISA §502(g), 29 U.S.C. §1132(g), the common fund doctrine, and other applicable law;
- (7) taxable costs pursuant to 29 U.S.C. §1132(g);
- (8) interest on these amounts, as provided by law;
- (9) Restitution;
- (10) Imposition Constructive Trust;
- (11) Disgorgement of ill-gotten profits;
- (12) Mandamus;
- (13) Reformation;
- (14) Estoppel;
- (15) Specific Performance;
- (16) Surcharge,
- (17) Monetary damages against a fiduciary;
- (18) Such other and further relief as this Court may deem just and proper.

E. Awarding judgment as to Count V in favor of named Plaintiff and each Other Similarly Situated Individual and against Defendant for:

- (1) All damages and permissible equitable or permissible monetary relief for defendant's breach of its fiduciary duties in favor of each named Plaintiff and each Other Similarly Situated Individual;
- (2) All permissible equitable or permissible monetary relief to remedy, redress, compensate, cease, prevent and atone for defendant's breach of its fiduciary duties in favor of each named Plaintiff and each Other Similarly Situated Individual;
- (3) Actual monetary damages to make good to the Plaintiffs for each and every type and measure of loss resulting from the breaches of fiduciary duties alleged above;
- (4) All relief and remedy to make good to the Plaintiffs for each and every type and measure of loss resulting from the breaches of fiduciary duties alleged above;
- (5) Affirmative and negative injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by ERISA §409(a) and §502(a), 29 U.S.C. §1109(a) and §1132(a);
- (6) reasonable attorney fees and expenses, as provided by ERISA §502(g), 29 U.S.C. §1132(g), the common fund doctrine, and other applicable law;
- (7) taxable costs pursuant to 29 U.S.C. §1132(g);
- (8) interest on these amounts, as provided by law;

- (9) Restitution;
- (10) Imposition Constructive Trust;
- (11) Disgorgement of ill-gotten profits;
- (12) Mandamus;
- (13) Reformation;
- (14) Estoppel;
- (15) Specific Performance;
- (16) Surcharge,
- (17) Monetary damages against a fiduciary;
- (18) Such other and further relief as this Court may deem just and proper.

F. Awarding judgment in favor of named Plaintiff and each Other Similarly Situated Individuals for all damages, remedies and recourse as may be permitted under law arising from or related to Defendants' conduct;

G. Judgment in favor of named Plaintiff and each other Similarly Situated Individual, for all lawful damages, remedies and recourse, arising from the unlawful lien, subrogation and/or repayment collections and misrepresentations of the defendant.

H. Judgment in favor of the named Plaintiff and each other Similarly Situated Individual, equal to the sum of the lien, subrogation claim or reimbursement asserted by Defendants and any other damages incurred, related to such lien, subrogation claim and/or repayment demand which judgement to be satisfied from monies recovered, encumbered, impleaded, held or taken;

I. Judgement ordering defendant to return or release all monies which have been taken, liened, charged, received or,

encumbered and that such monies held, paid or otherwise encumbered be returned or released free of all claims, charges, holds, claims, demands, interest, liens, pretensions.

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