

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE**

DONALD ARMON, SR.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 1016-CV38265
	)	
UNITED FINANCIAL CASUALTY	)	Division No. 17
COMPANY d/b/a PROGRESSIVE	)	
INSURANCE COMPANY,	)	
	)	
Defendant.	)	
_____	)	

**DEFENDANT UNITED FINANCIAL CASUALTY COMPANY  
D/B/A PROGRESSIVE INSURANCE COMPANY’S ANSWER TO  
PLAINTIFF’S THIRD AMENDED CLASS ACTION PETITION**

COMES NOW Defendant United Financial Casualty Company d/b/a Progressive Insurance Company (“Progressive”), by and through its attorneys of record, and for its Answer to Plaintiff’s Third Amended Class Action Petition (“Third Amended Petition”) and its Affirmative Defenses, STATES, ADMITS and DENIES as follows:

**PARTIES**

1. Progressive lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 1 of Plaintiff’s Third Amended Petition and therefore DENIES same.
2. Progressive ADMITS the allegations contained in Paragraph 2 of Plaintiff’s Third Amended Petition.

**JURISDICTION AND VENUE**

3. Progressive DENIES the allegations contained in Paragraph 3 of Plaintiff’s Third Amended Petition.

4. Progressive DENIES the allegations contained in Paragraph 4 of Plaintiff's Third Amended Petition.

### **CLASS ACTION ALLEGATIONS**

5. Progressive ADMITS that Plaintiff attempts to bring this action as defined, and ADMITS that the quoted policy language is part of the applicable policy, but to the extent that there are any factual allegations against Progressive, they are DENIED. Progressive further STATES that Plaintiff has failed to state a claim, and further STATES that a class action is not appropriate for Plaintiff's purported class definition.

6. Progressive ADMITS that Plaintiff purports to bring a putative class action and to be representatives for a class as stated in Paragraph 6 of Plaintiff's Third Amended Petition, but DENIES any factual allegations against Progressive and DENIES that this case is appropriate for certification as a class action, that the proposed class definition is appropriate, or that Plaintiff is an appropriate class representative.

7. Progressive lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 7 of Plaintiff's Third Amended Petition and therefore DENIES same.

8. Progressive ADMITS that Plaintiff purports to certify a class as set forth in the allegation, but DENIES any factual allegations against Progressive, and DENIES that this case is appropriate for certification as a class action.

9. Progressive ADMITS that this case is brought pursuant to Supreme Court Rule 52.08, but DENIES any factual allegations against Progressive, and DENIES that this case is appropriate for certification as a class action under Rule 52.08.

**Numerosity – Rule 52.08(a)(1)**

10. Progressive DENIES the allegations contained in Paragraph 10 of Plaintiff's Third Amended Petition, and DENIES that any class certification is appropriate.

**Existence of Common Questions of Law and/or Fact – Rule 52.08(a)(2)**

11. Progressive DENIES the allegations contained in Paragraph 11 of Plaintiff's Third Amended Petition, including all sub-parts contained therein.

12. Progressive DENIES the allegations contained in Paragraph 12 of Plaintiff's Third Amended Petition, including all sub-parts contained therein.

**Typicality – Rule 52.08(a)(3)**

13. Progressive DENIES the allegations contained in Paragraph 13 of Plaintiff's Third Amended Petition.

**Adequacy of Representation – Rule 52.08(a)(4)**

14. Progressive DENIES the allegations contained in Paragraph 14 of Plaintiff's Third Amended Petition relating to Plaintiff Armon and STATES it lacks sufficient information to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 14 of Plaintiff's Third Amended Petition relating to counsel and therefore DENIES same.

**Risk of Inconsistent and/or Varying Adjudications – Rule 52.08(b)(1)**

15. Progressive DENIES the allegations contained in Paragraph 15 of Plaintiff's Third Amended Petition.

16. Progressive DENIES the allegations contained in Paragraph 16 of Plaintiff's Third Amended Petition.

17. Progressive DENIES the allegations contained in Paragraph 17 of Plaintiff's Third Amended Petition.

18. Progressive DENIES the allegations contained in Paragraph 18 of Plaintiff's Third Amended Petition.

**The Need For Final Injunctive and/or Declaratory Relief – Rule 52.08(b)(2)**

19. Progressive DENIES the allegations contained in Paragraph 19 of Plaintiff's Third Amended Petition.

20. Progressive DENIES the allegations contained in Paragraph 20 of Plaintiff's Third Amended Petition, including all sub-parts contained therein.

**Common Questions of Law and/or Fact Predominate – Rule 52.08(b)(1)**

21. Progressive DENIES the allegations contained in Paragraph 21 of Plaintiff's Third Amended Petition.

**Superiority – Rule 52.08(b)(3)**

22. Progressive DENIES the allegations contained in Paragraph 22 of Plaintiff's Third Amended Petition.

**GENERAL ALLEGATIONS**

23. Progressive ADMITS that Plaintiff entered into insurance contracts with the Defendant, known as a "Missouri Commercial Auto Policy" Form 6912, and drafted for or by Progressive, but DENIES the remaining allegations.

24. Progressive ADMITS that Plaintiff's contracts purported to provide automobile collision and comprehensive insurance coverage, but is without sufficient information to admit or deny allegations relating to other contracts, and they are therefore DENIED.

25. Progressive ADMITS the allegations as they relate to Plaintiff in that he provided Stated Amount as part of his coverage, but DENIES the remaining allegations, and is without sufficient information to admit or deny allegations relating to other purported class members, and they are therefore DENIED.

26. Progressive ADMITS that the Stated Amount was one factor in determining premiums, but DENIES the remaining allegations contained in Paragraph 26 of Plaintiff's Third Amended Petition.

27. Progressive DENIES the allegations contained in Paragraph 27 of Plaintiff's Third Amended Petition.

28. Progressive DENIES the allegations contained in Paragraph 28 of Plaintiff's Third Amended Petition.

29. Progressive DENIES the allegations contained in Paragraph 29 of Plaintiff's Third Amended Petition.

**COUNT I**  
**BREACH OF CONTRACT**

COMES NOW Defendant Progressive, and for its Separate Answer to Count I of Plaintiff's Third Amended Petition STATES, ADMITS and DENIES as follows:

30. For answer to Paragraph 30 of Plaintiff's Third Amended Petition, Progressive incorporates its statements, averments, denials, and responses to Paragraphs 1 through 29 of Plaintiff's Third Amended Petition as if they were set out at length herein.

31. Progressive DENIES the allegations contained in Paragraph 31 of Plaintiff's Third Amended Petition.

32. Progressive ADMITS that Plaintiff Armon purchased a Commercial Automobile Insurance Policy and that the policy insured a 1992 International 4000 Series 4600, with a Stated Amount of \$28,000, but DENIES the remaining allegations contained in Paragraph 32 of Plaintiff's Third Amended Petition.

33. Progressive ADMITS that Plaintiff suffered a loss, but lacks sufficient information to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 33 of Plaintiff's Third Amended Petition, and therefore DENIES same.

34. Progressive lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 34 of Plaintiff's Third Amended Petition and therefore DENIES same.

35. Progressive lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 35 of Plaintiff's Third Amended Petition and therefore DENIES same.

36. Progressive DENIES the allegations contained in Paragraph 36 of Plaintiff's Third Amended Petition.

37. Progressive lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 37 of Plaintiff's Third Amended Petition, and therefore DENIES same.

38. Progressive DENIES the allegations contained in Paragraph 38 of Plaintiff's Third Amended Petition.

39. Progressive DENIES the allegations contained in Paragraph 39 of Plaintiff's Third Amended Petition.

40. Progressive DENIES the allegations contained in Paragraph 40 of Plaintiff's Third Amended Petition.

41. Progressive DENIES the allegations contained in Paragraph 41 of Plaintiff's Third Amended Petition.

**COUNT II**  
**BREACH OF COVENANT OF**  
**GOOD FAITH AND FAIR DEALING**

COMES NOW Defendant Progressive, and for its Separate Answer to Count II of Plaintiff's Third Amended Petition STATES, ADMITS and DENIES as follows:

42. For answer to Paragraph 42 of Plaintiff's Third Amended Petition, Progressive incorporates its statements, averments, denials, and responses to Paragraphs 1 through 29 of Plaintiff's Third Amended Petition as if they were set out at length herein.

43. Progressive STATES that there are no factual allegations contained in Paragraph 43 and therefore no response is necessary. To the extent Paragraph 43 contains any factual allegations regarding Progressive, Progressive DENIES the allegations contained in Paragraph 43 of Plaintiff's Third Amended Petition.

44. Progressive DENIES the allegations contained in Paragraph 44 of Plaintiff's Third Amended Petition.

45. Progressive DENIES the allegations contained in Paragraph 45 of Plaintiff's Third Amended Petition.

**COUNT III**  
**BREACH OF CONTRACT -**  
**VALUED POLICY CONTRACT**

COMES NOW Defendant Progressive, and for its Separate Answer to Count III of Plaintiff's Third Amended Petition STATES, ADMITS and DENIES as follows:

46. For answer to Paragraph 46 of Plaintiff's Third Amended Petition, Progressive incorporates its statements, averments, denials, and responses to Paragraphs 1 through 29 and 42 through 45 of Plaintiff's Third Amended Petition as if they were set out at length herein.

47. Progressive ADMITS that loss by fire was one potential type of loss covered by the policy, but DENIES the remaining allegations contained in Paragraph 47 of Plaintiff's Third Amended Petition.

48. Progressive DENIES the allegations contained in Paragraph 48 of Plaintiff's Third Amended Petition.

49. Progressive ADMITS the allegation that Plaintiff was required to provide a Stated Amount for each auto insured under his policy, but Progressive DENIES the remaining allegations in Paragraph 49 of Plaintiff's Third Amended Petition

50. Progressive STATES that there are no factual allegations contained in Paragraph 50 and therefore no response is necessary. To the extent Paragraph 50 contains any factual allegations regarding Progressive, Progressive DENIES the allegations contained in Paragraph 50 of Plaintiff's Third Amended Petition, as well as the statement in Paragraph 50.

51. Progressive DENIES the allegations contained in Paragraph 51 of Plaintiff's Third Amended Petition.

52. Progressive DENIES the allegations contained in Paragraph 52 of Plaintiff's Third Amended Petition.

53. Progressive DENIES the allegations contained in Paragraph 53 of Plaintiff's Third Amended Petition.

**COUNT IV**  
**BREACH OF CONTRACT -**  
**CONTRACT OF ADHESION/**  
**REASONABLE EXPECTATIONS**

COMES NOW Defendant Progressive, and for its Separate Answer to Count IV of Plaintiff's Third Amended Petition STATES, ADMITS and DENIES as follows:

54. For answer to Paragraph 54 of Plaintiff's Third Amended Petition, Progressive incorporates its statements, averments, denials, and responses to Paragraphs 1 through 53 of Plaintiff's Third Amended Petition as if they were set out at length herein.

55. Progressive DENIES the allegations contained in Paragraph 55 of Plaintiff's Third Amended Petition.

56. Progressive STATES that there are no factual allegations contained in Paragraph 56 and therefore no response is necessary. To the extent Paragraph 56 contains any factual allegations regarding Progressive, Progressive DENIES the allegations contained in Paragraph 56 of Plaintiff's Third Amended Petition.

57. Progressive DENIES the allegations contained in Paragraph 57 of Plaintiff's Third Amended Petition.

58. Progressive DENIES the allegations contained in Paragraph 58 of Plaintiff's Third Amended Petition.

59. Progressive DENIES the allegations contained in Paragraph 59 of Plaintiff's Third Amended Petition.

60. Except as otherwise admitted herein, this Defendant DENIES each and every other allegation, averment, statement, fact and/or conclusion plead or averred in Plaintiff's Third Amended Petition.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff fails to state a claim against Progressive upon which relief may be granted.

2. Plaintiff's declaratory and injunctive claims fail because Plaintiff fails to state a justiciable controversy and/or because they are not based on a cause of action that supports injunctive relief.

3. Progressive has not failed to perform or breached any contractual obligation or agreement.

4. Plaintiff has failed to mitigate the damages, if any, which he alleges he incurred.

5. Plaintiff's class allegations should be dismissed on the grounds that Plaintiff has failed to meet the requirements set forth in Mo. R. Civ. P. 52.08, and Plaintiff's purported class definition is overbroad.

6. Plaintiff's claims against Progressive are barred by the doctrines of laches, waiver, estoppel, unclean hands, and *in pari delicto*.

7. Progressive reserves the right to amend its Answer to assert such other, further and additional defenses as are warranted and otherwise determined to be necessary during the pendency of this lawsuit.

WHEREFORE, having fully answered Plaintiff's Third Amended Class Action Petition, Defendant United Financial Casualty Company d/b/a Progressive Insurance Company prays that Plaintiff goes hence, *sine die*, having and recovering nothing from Progressive, that Progressive recover its costs incurred herein from Plaintiff, that the Court grant Progressive an award of expenses, and that the Court grant Progressive such other and further relief as the Court deems is just and proper in the premises.

March 26, 2013

Respectfully submitted,

LATHROP & GAGE LLP

By: /s/ Brian C. Fries

Brian C. Fries (40830)

[bfries@lathropgage.com](mailto:bfries@lathropgage.com)

James Moloney (56267)

[jmoloney@lathropgage.com](mailto:jmoloney@lathropgage.com)

Clay Britton (63437)

[cbritton@lathropgage.com](mailto:cbritton@lathropgage.com)

2345 Grand Boulevard, Suite 2200

Kansas City, Missouri 64108-2618

Telephone: (816) 292-2000

Telecopier: (816) 292-2001

ATTORNEYS FOR DEFENDANT

### **CERTIFICATE OF SERVICE**

This is to certify that on this 26<sup>th</sup> day of March, 2013, *Defendant United Financial Casualty Company D/B/A Progressive Insurance Company's Answer to Plaintiff's Third Amended Class Action Petition* was electronically filed and served by the ECF Court filing system on the below named counsel:

Martin M. Meyers

[mmeyers@meyerslaw.com](mailto:mmeyers@meyerslaw.com)

The Meyers Law Firm, LC

503 One Main Plaza

4435 Main Street

Kansas City, MO 64111

And was served by electronic mail and U.S. First-Class Mail, postage prepaid, on the following:

John M. Klamann

[jklamann@klamannlaw.com](mailto:jklamann@klamannlaw.com)

The Klamann Law Firm, PA

929 Walnut Street, Suite 800

Kansas City, MO 64106

/s/ Brian C. Fries

An Attorney for Defendant