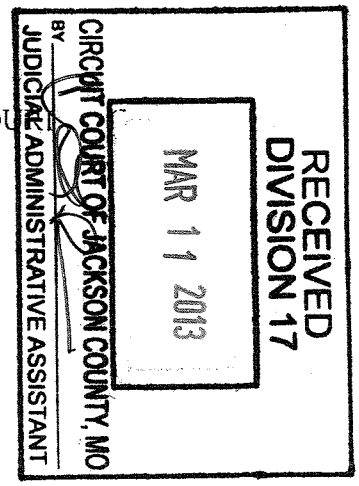


IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

DONALD ARMON, Sr., 807 S. Missouri Ave. Salem, MO 65560	)	
vs.	)	Case No. 1016-CV38265
UNITED FINANCIAL CASUALTY COMPANY *d/b/a* PROGRESSIVE INSURANCE COMPANY,	)	
Defendant.	)	

THIRD AMENDED CLASS ACTION PETITION
(To Remove Previous Plaintiff Lagares/Class Representative and to Conform to the Evidence)

COME NOW Plaintiff, individually, and on behalf of a Class of persons and entities who are similarly situated as hereinafter described, and states and alleges as follows:

PARTIES

1. Plaintiff Donald Armon, Sr., is a citizen and resident of the State of Missouri, residing at 807 S. Missouri Avenue, Salem, Missouri 65560.

2. Defendant United Financial Casualty Company is an insurance company doing business in the State of Missouri and elsewhere as "Progressive Insurance." United Financial Insurance Company is an Ohio corporation whose principal place of business is located at 6300 Wilson Mills Road, Cleveland, Ohio 44143-2109.

JURISDICTION AND VENUE

3. This court has jurisdiction over this action pursuant to Article IV, Section 14 of the Missouri Constitution of 1945.

4. Venue is proper in this Court pursuant to Section 508.010.2(4) R.S.Mo. in that there is no count herein alleging a tort and all defendants are nonresidents of the state of Missouri.

CLASS ACTION ALLEGATIONS

5. Plaintiff brings this action on behalf of himself and a Class of all other similarly situated individuals, corporations, partnerships, associations and other entities who otherwise fit within the class definition, set forth more fully in paragraph 6, below, who are and/or were during the Class Period defined in paragraph 7, below, insured under a "MISSOURI COMMERCIAL AUTO POLICY" of insurance underwritten by the Defendant and containing the following language, to wit:

LIMIT OF LIABILITY

1. The most we will pay for loss to your insured auto is the least of:

   a. the actual cash value of the . . . damaged property at the time of the loss;

   b. **the amount necessary to replace the stolen or damaged property with other of like kind and quality;**

   c. the amount necessary to repair the damaged property to its pre-loss physical condition, however if we determine that the insured auto is a total loss, we may, at our option, pay the lesser of the actual cash value, Stated Amount, or the cost to replace, rather than repair the insured auto; or

   d. the applicable Limit of Liability or Stated Amount of the property as shown on the Declarations Page.

Permanently attached equipment is included in the value of the insured auto, but only to the extent the value of the equipment has been included in the Limit of Liability or Stated Amount shown on the Declarations Page.

6. Said Class represented by the putative class representative and nominal Plaintiff Donald Armon, Sr., herein is hereby defined as follows:

> "All individual persons, corporations, partnerships, associations and other entities insured during the Class Period insured under a "MISSOURI COMMERCIAL AUTO POLICY" as aforesaid in paragraph 5, above, who insure or insured one or more vehicles for a "Stated Amount." Excluded from the Class are those persons who have lawsuits pending against, or who have settled their claims against, United Financial Casualty Company for the same or similar claims as set forth herein, Members of the Missouri state judiciary, Defendant, Defendant's employees, any entities in which either Defendant has a controlling interest, and the parents, subsidiaries, affiliates, and their officers and directors of Defendant and the members of their immediate families.

7. Greater than two-thirds of the members of the proposed Plaintiff class are citizens of the state of Missouri.

8. The Class Period is that period of time between January 1, 2006 and the date the Court certifies this Class Action under Supreme Court Rule 52.08.

9. This action is brought pursuant to Supreme Court Rule 52.08.

Numerosity – Rule 52.08(a)(1)

10. On information and belief, the members of the putative Class are so numerous that their individual joinder is impracticable. Although the exact number of putative Class members and their addresses are presently unknown to Plaintiff, they are readily ascertainable from Defendant's records. Class members may readily be notified of the pendency of this action by mail, supplemented (if deemed necessary by the Court) by published notice.

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

11. Questions of law exist in common to all members of the Class, including without limitation:

(a) Whether the terms of the form insuring contracts were vague and/or indefinite as a matter of law;

(b) The meaning as a matter of law of the vague and'/or indefinite terms in the form insuring contracts;

(c) Whether the form insuring contracts omitted terms necessary to make the meaning of the contracts' stated terms definite and certain;

(d) Whether the insuring agreement is a contract of adhesion;

(e) Whether the insuring agreement is a valued policy contract;

(f) The meaning and application as a matter of law of the duty of good faith and fair dealing in the context of interpretation and implementation of the terms and conditions of the form insuring contracts.

12. Common questions of fact exist as to all members of the Class, including without limitation:

(a) Whether Defendant based the premiums for its coverage upon the "Stated Amount;"

(b) Whether the amounts actually paid by or on behalf of the Defendant under the aforesaid insuring contracts for "total loss" were known and intended by the Defendant at the time of underwriting and issuance of the policies to be defined and computed in such a way as to be less that the "Stated

Amount," resulting in Defendant knowingly providing less actual insurance coverage at the time of underwriting and issuance of the policies, and at all times thereafter, than the Class members paid for in their premiums;

(c) Whether the underwriting and claims adjustment methods implemented by the Defendant resulted in the Class members paying for insurance which was neither provided nor ever intended by Defendant to be provided nor possible to be provided by Defendant under the aforesaid insuring contracts.

Typicality – Rule 52.08(a)(3)

13. Plaintiff's claims are typical of the claims of the Class because, among other things, Plaintiff's theories of action as hereinafter set forth are the same as the theories of action would be for the Class Members were they to individually pursue their rights and remedies as against the Defendant.

Adequacy of Representation – Rule 52.08(A)(4)

14. Plaintiff Donald Armon, Sr., is an adequate representative of the Class because his interests do not conflict with the interests of the members of the Class he seeks to represent. Further, Plaintiff Armon has retained legal counsel competent and experienced in complex and class action litigation. Plaintiff Armon and his attorneys intend to prosecute this action vigorously and the interests of the members of the Class will be fairly and adequately protected by Plaintiff Armon and his counsel.

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

15. The prosecution of separate actions by one or more individual members of the Class would create a risk of incompatible standards of conduct for the Defendant in that the interpretation of the meaning and effect of the aforesaid form contract language might vary from one action to another.

16. The prosecution of separate actions by one or more individual members of the Class requiring interpretation of the vague, ambiguous, and/or indefinite terms of the form insuring contracts would create a risk of adjudications by individual members of the class which would as a practical matter be dispositive of the interests of the other members of the Class who are not parties to those separate adjudications.

17. The prosecution of separate actions by one or more individual members of the Class requiring interpretation of the vague, ambiguous, and/or indefinite insuring contracts would create a risk of adjudications by individual members of the class which would as a practical matter impair or impede the ability of the absent Class Members to protect their interests.

18. The amounts in controversy on individual claims are so small as to disable individual Class Members from proceeding with their claims on their own since the costs of such individual lawsuits, including the retention of expert witnesses, the conduct of written discovery, the receipt and review of documents, and the taking of depositions in other jurisdictions, are likely to exceed the amounts of individual recoveries and therefore be prohibitive.

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

19. The Defendant has acted and/or refused to act, as alleged hereinafter, inter alia, on grounds founded upon its own interpretation of the aforesaid form contract provisions, which interpretations constitute grounds for their acts and inactions generally applicable to the Class.

20. Plaintiff seeks final injunctive relief in the form of a prohibition upon the following of Defendants' continuing actions:

(a) Defendant's omission to disclose in the form insurance contract that premiums are computed based upon the "Stated Amount" in circumstances where the "Stated Amount" is known to exceed, at the time of underwriting, the "actual value" amount and/or the amount of insurance that will be provided in the event of a "total loss;"

(b) Defendant's omission to adopt and disclose a specific method, including disclosure of reference materials to be used, by which the "actual value" of the insured automobile will be determined for purposes of paying a "total loss;" and

(c) Defendant's omission to disclose that insureds may avoid paying for insurance not provided by requesting insurance for a "Stated Amount" which coincides with the "actual value" according to the reference source used by Defendant to determine said actual value.

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

21. The common questions of law and fact set forth in paragraphs 11 and 12, above, predominate over any questions affecting only individual members of the Class and the

resolution of those common questions is central to this litigation and would be central to any adjudication of a separate action by an individual Class Member.

Superiority – Rule 52.08(b)(3)

22. A class action is superior to all other available methods 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. Not only does the class action device present far fewer management difficulties than innumerable individual actions pending in multiple state and federal forums across the state of Missouri, it also provides the benefits of a single adjudication, economies of scale and comprehensive supervision by a single court.

GENERAL ALLEGATIONS

23. The Plaintiff and Class members each entered into an insurance contract with the Defendant, known as a "Missouri Commercial Auto Policy." **These contracts were each drafted by and/or for the Defendant following standard form "6912."**

24. The Contracts purported to provide automobile collision and comprehensive insurance coverage.

25. In the process of obtaining such coverage, Plaintiff and each Class Member were required to complete an application for insurance coverage in which they were required to state an amount of coverage which they desired for each vehicle being insured, referred to in the policies as the "Stated Amount."

26. On information and belief, the prospective insured's statement of the amount of coverage the insured desired upon the vehicle was then used by Defendant in its underwriting process to determine the amount of the premiums to be paid by the insured for the coverage. By

doing this, the Defendant established an apparent relationship between the amount of coverage provided and the "Stated Amount" listed in the policies.

27. In some cases, the "Stated Amount" might be less than the actual value of the vehicle. In those cases, according to the terms of the policy form, the Defendant paid the Stated Amount and provided the amount of insurance directly related to the premiums which the insured had paid.

28. However, on information and belief, in many cases, the "Stated Amount" exceeded the actual value of the insured vehicle, using the valuation methods used by defendant to adjust losses, which excess was known to the Defendant at the time of underwriting and issuance of the policies. Nevertheless, and despite the fact that the Defendant knew that it would not provide an amount of insurance equal to the "Stated Amount," Defendant charged a premium based upon the "Stated Amount" without disclosing either the actual value at the time of underwriting or issuance of the policies or the method and source material by which the actual value would be determined by Defendant should there be a "total loss."

29. As a direct and proximate result of the methodology by which the Defendant computed premiums as aforesaid, and the omission by the Defendant to disclose that methodology, as well as the omission by Defendant to disclose the methodology and source by which "actual value" would be determined in the event of a "total loss," Plaintiff and the other members of the Class paid for insurance which was not provided and/or which defendant does not intend to provide.

COUNT I
BREACH OF CONTRACT

30. Plaintiff Armon, individually and on behalf of the Class Members hereby, incorporates by reference paragraphs 1 through 29, above, as though fully set forth herein.

31. Defendant breached the terms of its insuring contracts with Plaintiff Armon and the Class Members.

32. In August 2005, Plaintiff Armon purchased a Commercial Automobile Insurance Policy from Defendant insuring a 1992 International 4000 Series 4600 (the "1992 International") which was insured for the Stated Amount of $28,000.

33. On March 17, 2010, Plaintiff Armon suffered a loss when his 1992 International was forced off of the road and into a ditch.

34. The cost of repairing the vehicle was not estimated because, upon inspection of the vehicle, the adjuster stated that, due to the extensive damage to the 1992 International, it would cost more to repair the vehicle than the vehicle was worth.

35. Rather than paying Plaintiff Armon the cost to repair the vehicle, defendant informed Plaintiff Armon that the actual cash value of the vehicle was only $12,035 such that the loss was considered by defendant to be a total loss and Plaintiff Armon was entitled to receive only $12,035 less his deductible, despite having charged Plaintiff Armon premiums based upon a stated amount of $28,000.

36. By incorporating vague and ambiguous terminology, to wit: "actual value," which term was reasonably capable of two or more meanings, without defining such term or otherwise disclosing to Plaintiff Armon and Class Members how that term would be defined in the event of a "total loss," Defendant created an ambiguity in the contract.

37. Because such term was used in the insuring contract form to define the "most (Defendant) will pay for loss to (Plaintiff Armon and/or Class members') insured auto," the term was material.

38. Because such term was selected for use in the form created by or on behalf of the Defendant, by operation of law the term should be defined in the way most favorable to Plaintiff Armon and Class members who were not responsible for drafting the adhesive insuring contract form, to wit: as an amount equal to Stated Amount provided by the owners/policyholders, which by operation of Missouri law, is recognized as valid evidence of a property's value.

39. Rather than apply the meaning most favorable to Plaintiff Armon and Class Members, the Defendant applies an unstated meaning, which was unascertainable by Plaintiff Armon and Class Members at the time their contracts were entered into.

40. Defendant thereby breached its contract with Plaintiff Armon and other Members of the Class who have sustained total losses of their insured vehicles.

41. As a direct and proximate result of said breach of contract, Plaintiff Armon and the other Members of the Class were damaged.

WHEREFORE, Plaintiff Armon, individually, and as a representative of the other Members of the putative Class, prays judgment on Count I of this Class Action Complaint for actual damages, the costs of this litigation, and such further relief as the Court may deem proper and just, including without limitation, the equitable relief set forth in paragraph 20, above.

COUNT II
BREACH OF COVENANT OF
GOOD FAITH AND FAIR DEALING

42. Plaintiff, individually and on behalf of the Class Members hereby, incorporates by reference paragraphs 1 through 29, above, as though fully set forth herein.

43. Missouri law imposes upon defendant as a contracting party the duty of good faith and fair dealing that prohibits a contracting party from exercising a judgment conferred by the express terms of the contract in such a way as to evade the spirit of the transaction and deprive the other party of the expected benefit of the contract.

44. By applying a methodology for determining actual cash value that is unrelated to and fails to take into account the Stated Amount for which a vehicle is insured, defendant has breached and is breaching its duty of good faith and fair dealing to Plaintiff and the Class Members.

45. As a direct and proximate result of said breach of contract, Plaintiff and the other Members of the Class have been damaged.

WHEREFORE, Plaintiff, individually, and as representatives of the other Members of the putative Class, pray judgment on Count II of this Class Action Complaint for actual damages, the costs of this litigation, and such further relief as the Court may deem proper and just, including without limitation, the equitable relief set forth in paragraph 20, above.

COUNT III
BREACH OF CONTRACT –
VALUED POLICY CONTRACT

46. Plaintiff, individually and on behalf of the Class Members hereby, incorporates by reference paragraphs 1 through 29 and 42 through 45, above, as though fully set forth herein.

47. The insurance policy issued by defendant insured against, inter alia, loss by fire.

48. As a result, the policy is a valued policy within the meaning of R.S.Mo. 379.160.

49. **The insurance policy also clearly indicates, by requiring Plaintiff to declare a "Stated Amount" for each auto insured under the policy, an intention on the part of Defendant to value the risk and loss.**

50. **As result, the insurance policy is a valued policy by contract. *Huth v. Gen. Acc. & Life Assur. Corp., Ltd.*, 536 S.W.2d 177, 181 (Mo. App. E.D. 1976).**

51. Defendant accordingly is estopped to deny that the vehicles insured under the policy for a Stated Amount were worth the Stated Amount on the date the policy was issued.

52. Defendant breached its obligations under the policy by valuing the vehicles for loss adjustment purposes by a methodology or methodologies independent of and without regard for the Stated Amount for which the vehicles were insured.

53. As a direct and proximate result of said breach of contract, Plaintiff and the other Members of the Class were damaged.

WHEREFORE, Plaintiff, individually, and as a representative of the other Members of the putative Class, pray judgment on Count III of this Class Action Complaint for actual damages, the costs of this litigation, and such further relief as the Court may deem proper and just, including without limitation, the equitable relief set forth in paragraph 20, above.

COUNT IV
BREACH OF CONTRACT –
CONTRACT OF ADHESION/REASONABLE EXPECTATIONS

54. Plaintiff, individually and on behalf of the Class Members hereby, incorporates by reference paragraphs 1 through 53, above, as though fully set forth herein.

55. The policy of insurance issued by defendant to Plaintiff and the Class Members are contracts of adhesion.

56. Under Missouri law, contracts of adhesion are interpreted so as to protect and enforce the reasonable expectations of the parties to the contract.

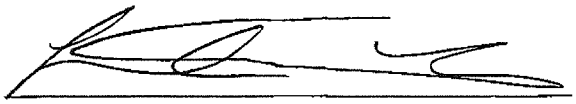
57. Under the totality of circumstances surrounding the purchase of the insurance, a reasonable person in the position of Plaintiff and the Members of the Class would reasonably have expected that they were insuring their vehicles for the Stated Amount set forth in the policy and that they would receive the Stated Amount from defendant in the event of a total loss of the insured vehicle.

58. Defendant breached its obligations under the policy by valuing the vehicles for loss adjustment purposes by a methodology or methodologies independent of and without regard for the Stated Amount for which the vehicles were insured.

59. As a direct and proximate result of said breach of contract, Plaintiff and the other Members of the Class were damaged.

WHEREFORE, Plaintiff, individually, and as a representative of the other Members of the putative Class, pray judgment on Count IV of this Class Action Complaint for actual damages, the costs of this litigation, and such further relief as the Court may deem proper and just, including without limitation, the equitable relief set forth in paragraph 20, above.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFF
AND THE PUTATIVE CLASS

CERTIFICATE OF SERVICE

A true and accurate copy of the above and foregoing was e-mailed and mailed, via regular U.S. Mail, this 31st day of January, 2013 to:

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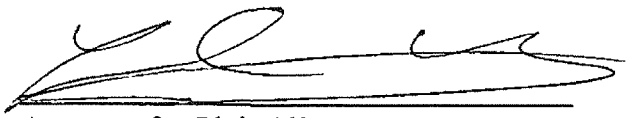

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