

DISTRICT COURT, BOULDER COUNTY
COLORADO

Boulder Justice Center
1777 6th Street
Boulder, CO 80302

LYNN & SETH YOUNG; STEVE & SARA FORSYTH;
WAYNE & KAREN FISHER; JOHN L. & MARCIA
QUINN; LARRY BRIGGS; DAVID & SUZANNE
PETERSON; CHERYL REYNOLDS; ROBERT
THACKER; EDWARD & KIMBERLY IVKOV; MARIA
& LAJOS GALL; WILLIAM L. OLIVER; ETHAN &
TANYA JAHNKE; JANET M. MAXWELL; CHARLES
R. FRYE; LEON F. HILL, JR.; JUDITH K. & DAVID J.
FLOM; RICHARD T. & KATHLEEN T. PHELPS;
MARSHALL & SUZETTE FIKE; DOUGLAS B. &
JAIMARIE NELSON; RENEE E. & SEAN R. LALLY;
QUINTER & VALDORA FIKE; CURTIS
RICHARDSON; JOHN W. ENGEL; KAREN GROTE;
LAVERNE & TED MEDINA, SR.; LAURIE LEWIS;
MARK RODENBURG; DARRELL TOUTANT;
DWAYNE WISE; MICHAEL HAZLETT; PAUL
ALLEN; ARNOLD MAGBY; on behalf of themselves
and all other similarly situated,

Plaintiffs,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, an Illinois Corporation;
AMERICAN FAMILY MUTUAL INSURANCE
COMPANY, a/k/a AMERICAN STANDARD
INSURANCE COMPANY OF WISCONSIN, a
Wisconsin, corporation; AMERICAN NATIONAL
PROPERTY AND CASUALTY COMPANY, a Missouri
Corporation; ALLSTATE INSURANCE COMPANY, an
Illinois Corporation; FARMERS INSURANCE
COMPANY, an Iowa Corporation; THE PROGRESSIVE
CASUALTY INSURANCE COMPANY, an Ohio
corporation; GEICO GENERAL INSURANCE
COMPANY, a Maryland Corporation; SHELTER
MUTUAL INSURANCE COMPANY, Missouri

? COURT USE ONLY ?

Case Number: 2003CV55

Div.: 5

Corporation; USAA CASUALTY INSURANCE COMPANY, a Texas Corporation; LIBERTY MUTUAL FIRE INSURANCE COMPANY, a Massachusetts Insurance Company; ONEBEACON INSURANCE COMPANY, a Pennsylvania Corporation, f/k/a CGU INSURANCE COMPANY, a Pennsylvania Corporation, f/k/a HAWKEYE-SECURITY INSURANCE COMPANY, an Iowa Corporation; KEMPER AUTO AND HOME INSURANCE COMPANY, an Illinois Corporation; OHIO CASUALTY INSURANCE COMPANY, an Ohio Corporation; COUNTRY MUTUAL INSURANCE COMPANY, an Illinois Corporation; SAFECO INSURANCE COMPANY OF AMERICA, a Washington Corporation; UNION INSURANCE COMPANY, a Nebraska Corporation; HARTFORD INSURANCE COMPANY OF THE MIDWEST, an Indiana Corporation; GENERAL INSURANCE COMPANY OF AMERICA, a Washington Corporation; THE TRAVELERS INSURANCE COMPANY, a Connecticut Corporation; CHARTER OAK FIRE INSURANCE COMPANY, a Connecticut Corporation; TRUMBULL INSURANCE COMPANY, a Connecticut Corporation; HARTFORD INSURANCE COMPANY OF CONNECTICUT, a Connecticut Corporation; COLONIAL PENN FRANKLIN INSURANCE COMPANY, a Pennsylvania Corporation, d/b/a GE AUTO INSURANCE PROGRAM; MERASTAR INSURANCE COMPANY, a Tennessee Corporation; PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey Corporation, d/b/a PRUDENTIAL FINANCIAL, a trademark; AUTO-OWNERS INSURANCE COMPANY, a Missouri Corporation; and NATIONWIDE MUTUAL INSURANCE COMPANY, an Ohio Corporation, PROGRESSIVE MOUNTAIN INSURANCE COMPANY, a Colorado Corporation, ORIONAUTO, INC., a Colorado Corporation, ORION INSURANCE COMPANY, a Connecticut Corporation, VIKING INSURANCE COMPANY OF WISCONSIN, a Colorado Corporation, PROPERTY AND CASUALTY INSURANCE COMPANY OF HARTFORD, an Indiana Corporation; COLORADO FARM BUREAU MUTUAL INSURANCE COMPANY, a Colorado Corporation,

Defendants.

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AMENDED CLASS ACTION COMPLAINT AND JURY DEMAND

COME NOW the Plaintiffs, on their own behalf and on behalf of all others similarly situated, by and through their undersigned counsel, Hill and Robbins, P.C., McFarland Law Offices, and Bieging Shapiro & Burrus, LLP, and for their Complaint state as follows:

PARTIES AND VENUE

1. Plaintiffs Lynn and Seth Young are natural persons who reside, or during relevant times hereto resided, in the State of Colorado, and are, or were during relevant times hereto, insureds of State Farm Mutual Automobile Insurance Company.

2. Plaintiffs Steve and Sara Forsyth are natural persons who reside, or during relevant times hereto resided, in the State of Colorado, and are, or were during relevant times hereto, insureds of State Farm Mutual Automobile Insurance Company.

3. Plaintiffs Wayne and Karen Fisher are natural persons who reside, or during relevant times hereto resided, in the State of Colorado, and are, or were during relevant times hereto, insureds of American Family Mutual Insurance Company, also known as American Standard Insurance Company of Wisconsin.

4. Plaintiffs John L. and Marcia Quinn are natural persons who reside, or during relevant times hereto resided, in the State of Colorado, and are, or were during relevant times hereto, insureds of American Family Mutual Insurance Company, also known as American Standard Insurance Company of Wisconsin.

5. Plaintiff Larry Briggs is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of American National Property and Casualty Company and Geico General Insurance Company.

6. Plaintiffs David and Suzanne Peterson are natural persons who reside, or during relevant times hereto resided, in the State of Colorado, and are, or were during relevant times hereto, insureds of Allstate Insurance Company and State Farm Mutual Automobile Insurance Company.

7. Plaintiff Cheryl Reynolds is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of Allstate Insurance Company.

8. Plaintiff Robert Thacker is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of Farmers Insurance Company.

9. Plaintiffs Edward and Kimberly Ivkov are natural persons who reside, or during relevant times hereto resided, in the State of Colorado, County of Boulder, and are, or were during relevant times hereto, insureds of Progressive Casualty Insurance Company.

10. Plaintiffs Maria and Lajos Gall are natural persons who reside, or during relevant times hereto resided, in the State of Colorado, and are, or were during relevant times hereto, insureds of Geico General Insurance Company.

11. Plaintiff William L. Oliver is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of Shelter Mutual Insurance Company.

12. Plaintiffs Ethan & Tanya Jahnke are natural persons who reside, or during relevant times hereto resided, in the State of Colorado, and are, or were during relevant times hereto, insureds of Shelter Mutual Insurance Company and The Progressive Casualty Insurance Company.

13. Plaintiff Janet M. Maxwell is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of USAA Casualty Insurance Company.

14. Plaintiff Charles R. Frye is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of USAA Casualty Insurance Company.

15. Plaintiff Leon F. Hill, Jr., is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, County of Boulder, and is, or was during relevant times hereto, an insured of USAA Casualty Insurance Company.

16. Plaintiffs Judith K. and David J. Flom are natural persons who resides or during relevant times hereto resided, in the State of Colorado, and are, or were during relevant times hereto, insureds of Liberty Mutual Fire Insurance Company.

17. Plaintiffs Richard T. and Kathleen T. Phelps are natural persons and at all times alleged in this complaint were residents of the State of Colorado, and were insureds of OneBeacon Insurance Company, formerly named CGU Insurance Company, formerly known as Hawkeye-Security Insurance Company.

18. Plaintiffs Marshall and Suzette Fike are natural persons who reside, or during relevant times hereto resided, in the State of Colorado, County of Boulder, and are, or were during relevant times hereto, insureds of Kemper Auto and Home Insurance Company, and Union Insurance Company.

19. Plaintiffs Douglas B. and Jaimarie Nelson are natural persons who reside, or during relevant times hereto resided, in the State of Colorado, and are, or were during relevant times hereto, insureds of Ohio Casualty Insurance Company.

20. Plaintiffs Renee E. and Sean R. Lally are natural persons who reside, or during relevant times hereto resided, in the State of Colorado, and are, or were during relevant times hereto, insureds of Country Mutual Insurance Company.

21. Plaintiffs Quinter and Valdora Fike are natural persons who reside, or during relevant times hereto resided, in the State of Colorado, County of Boulder, and are, or were during relevant times hereto, insureds of Safeco Insurance Company of America.

22. Plaintiff Curtis Richardson is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of Hartford Insurance Company of the Midwest.

23. Plaintiff John W. Engel is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of General Insurance Company of American, Trumbull Insurance Company, and Hartford Insurance Company of Connecticut.

24. Plaintiff Karen Grote is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of The Travelers Insurance Company and Charter Oak Fire Insurance Company.

25. Plaintiffs Laverne and Ted Medina are natural persons who reside, or during relevant times hereto resided, in the State of Colorado, and are, or were during relevant times hereto, insureds of Colonial Penn Franklin Insurance Company and GE Auto Insurance Program.

26. Plaintiff Laurie Lewis is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of Merastar Insurance Company and Prudential Insurance Company of America, doing business as Prudential Financial.

27. Plaintiff Mark Rodenburg is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of Auto-Owners Insurance Company.

28. Plaintiff Darrell Toutant is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of Nationwide Mutual Insurance Company.

29. Plaintiff Dwayne Wise is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of Progressive Mountain Insurance Company.

30. Plaintiff Michael Hazlett is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of Orionauto, Inc., Orion Insurance Company and Viking Insurance Company.

31. Plaintiff Paul Allen is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of Property and Casualty Insurance Company of Hartford.

32. Plaintiff Arnold Magby is a natural person who resides, or during relevant times hereto resided, in the State of Colorado, and is, or was during relevant times hereto, an insured of Colorado Farm Bureau Mutual Insurance Company.

33. Defendant State Farm Mutual Automobile Insurance Company is an Illinois Corporation selling auto insurance and otherwise doing business in the State of Colorado.

34. Defendant American Family Mutual Insurance Company, also known as American Standard Insurance Company of Wisconsin, is a Wisconsin corporation authorized selling auto insurance and otherwise doing business in the State of Colorado.

35. Defendant American National Property and Casualty Company is a Missouri Corporation selling auto insurance and otherwise doing business in the State of Colorado.

36. Defendant Allstate Insurance Company is an Illinois Corporation selling auto insurance and otherwise doing business in the State of Colorado.

37. Defendant Farmers Insurance Company, is an Iowa Corporation selling auto insurance and otherwise doing business in the State of Colorado.

38. Defendant The Progressive Casualty Insurance Company is an Ohio Corporation selling auto insurance and otherwise doing business in the State of Colorado.

39. Defendant Geico General Insurance Company is a Maryland Corporation selling auto insurance and otherwise doing business in the State of Colorado.

40. Defendant Shelter Mutual Insurance Company is a Missouri Corporation selling auto insurance and otherwise doing business in the State of Colorado.

41. Defendant USAA Casualty Insurance Company is a Texas Corporation selling auto insurance and otherwise doing business in the State of Colorado.

42. Defendant Liberty Mutual Fire Insurance Company is a Massachusetts Insurance Company selling auto insurance and otherwise doing business in the State of Colorado.

43. Defendant OneBeacon Insurance Company, a Pennsylvania Corporation formerly known as CGU Insurance Company, a Pennsylvania Corporation, formerly known as Hawkeye-Security Insurance Company, is an Iowa Corporation selling auto insurance and otherwise doing business in the State of Colorado.

44. Defendant Kemper Auto and Home Insurance Company is an Illinois Corporation selling auto insurance and otherwise doing business in the State of Colorado.

45. Defendant Ohio Casualty Insurance Company is an Ohio Corporation selling auto insurance and otherwise doing business in the State of Colorado.

46. Defendant Country Mutual Insurance Company is an Illinois Corporation selling auto insurance and otherwise doing business in the State of Colorado.

47. Defendant Safeco Insurance Company of America is a Washington Corporation selling auto insurance and otherwise doing business in the State of Colorado.

48. Defendant Union Insurance Company is a Nebraska Corporation selling auto insurance and otherwise doing business in the State of Colorado.

49. Defendant Hartford Insurance Company of the Midwest is an Indiana Corporation selling auto insurance and otherwise doing business in the State of Colorado.

50. Defendant General Insurance Company of America is a Washington Corporation selling auto insurance and otherwise doing business in the State of Colorado.

51. Defendant The Travelers Insurance Company is a Connecticut Corporation selling auto insurance and otherwise doing business in the State of Colorado.

52. Defendant Charter Oak Fire Insurance Company is a Connecticut Corporation selling auto insurance and otherwise doing business in the State of Colorado.

53. Defendant Trumbull Insurance Company is a Connecticut Corporation selling auto insurance and otherwise doing business in the State of Colorado.

54. Defendant Hartford Insurance Company of Connecticut is a Connecticut Corporation selling auto insurance and otherwise doing business in the State of Colorado.

55. Defendant Colonial Penn Franklin Insurance Company is a Pennsylvania Corporation doing business as GE Auto Insurance Program is selling auto insurance and otherwise doing business in the State of Colorado.

56. Defendant Merastar Insurance Company is a Tennessee Corporation selling auto insurance and otherwise doing business in the State of Colorado.

57. Defendant Prudential Insurance Company of America, is a New Jersey Corporation doing business as Prudential Financial, selling auto insurance and otherwise doing business in the State of Colorado.

58. Defendant Auto-Owners Insurance Company is a Missouri Corporation selling auto insurance and otherwise doing business in the State of Colorado.

59. Defendant Nationwide Mutual Insurance Company is an Ohio Corporation selling auto insurance and otherwise doing business in the State of Colorado.

60. Defendant Progressive Mountain Insurance Company is a Colorado Corporation selling auto insurance and otherwise doing business in the State of Colorado.

61. Defendant Orionauto, Inc. is a Colorado Corporation selling auto insurance and otherwise doing business in the State of Colorado.

62. Defendant Orion Insurance Company is a Connecticut Corporation selling auto insurance and otherwise doing business in the State of Colorado.

63. Defendant Viking Insurance Company of Wisconsin is a Colorado Corporation selling auto insurance and otherwise doing business in the State of Colorado.

64. Defendant Property and Casualty Insurance Company of Hartford is an Indiana Corporation selling auto insurance and otherwise doing business in the State of Colorado.

65. Venue is designated as Boulder County, Colorado, and is proper pursuant to C.R.C.P. 98(c), as seven Plaintiffs reside within Boulder County, Colorado, and most, if not all, Defendants have sold automobile insurance in Boulder County, Colorado.

GENERAL ALLEGATIONS

66. All persons providing insurance services to the public in Colorado must “be at all times actuated by good faith in everything pertaining thereto.” C.R.S. § 10-1-101, (1987). This duty of good faith, as enacted by the General Assembly of Colorado, is broad and wide-ranging, extending to “everything pertaining” to the provision of insurance services to the public in Colorado.

67. Insurance carriers operating in Colorado fail to meet their duty of “good faith” if they engage in unreasonable conduct with either knowledge that their conduct is unreasonable or a reckless disregard of the unreasonableness of the conduct.

68. Defendant insurance carriers have a thorough and sophisticated understanding of the insurance policies they offer to the public in Colorado and how Colorado insurance law affects those policies and the resulting coverage to their insureds, as well as the interrelationship between different policies.

69. Colorado recognizes a special relationship between an insured and insurer resulting in a relationship of trust and confidence that requires full and fair disclosure regarding the extent and nature of policy coverage.

70. Colorado statutes require that an insurer must offer uninsured motorist/underinsured motorist (“UM/UIM”) coverage in conjunction with every automobile liability or motor vehicle liability policy. C.R.S. § 10-4-609(1)(a).

71. If an insured purchases UM/UIM coverage, “persons insured” are entitled to UM/UIM benefits when a person who is at fault in an accident does not have adequate insurance. UM/UIM coverage essentially replaces the benefits an innocent injured insured would have recovered from an uninsured or underinsured tortfeasor if the tortfeasor had been

insured for liability coverage to the same extent that the injured insured was covered for UM/UIM benefits.

72. C.R.S. § 10-4-609 provides for coverage for “persons insured”, and it does not place geographical limits on coverage and does not limit the coverage to occupancy in any particular vehicle. Thus, the UM/UIM coverage follows the “persons insured” not the vehicles.

73. To the extent any insurance policy purports to impose limits contrary to state statute, such limits are void and unenforceable. Thus, for example, an “owned but not insured” exclusion in a UM/UIM policy is void as against the public policy of Colorado.

74. A person who purchases UM/UIM coverage for one vehicle obtains UM/UIM coverage for all persons insured under that policy and any of the persons insured may recover UM/UIM benefits if they are involved in an accident with an uninsured/underinsured motorist while occupying any vehicle owned by the insured even if additional UM/UIM coverage was not purchased for that vehicle.

75. For that reason, once an insured has purchased a single UM/UIM policy for one of the insured’s vehicles, the persons insured under the policy obtain absolutely no additional UM/UIM coverage by purchasing UM/UIM policies on additional vehicles.

76. Despite their superior knowledge regarding their insurance policies and the policy coverage provided to Colorado insureds and despite their unique expertise and experience in insurance matters, Defendant insurance carriers engaged in a course of conduct of selling multiple UM/UIM policies to their insureds for the same time period without disclosing to their insureds that the persons insured were obtaining no additional UM/UIM coverage by purchasing multiple UM/UIM policies and paying premiums for multiple UM/UIM policies.

77. Plaintiffs seek, individually and on behalf of the class, compensatory damages in an amount equal to the excess premiums paid by plaintiffs and the members of the class for duplicative UM/UIM policies, exemplary damages, and an order enjoining Defendant from engaging in the practices complained of herein.

FRAUDULENT CONCEALMENT

78. Defendant fraudulently and improperly concealed from the Plaintiffs and the members of the Class the fact that once an insured has purchased a single UM/UIM policy for one of the insured’s vehicles, the persons insured under that policy obtain no additional UM/UIM coverage by purchasing UM/UIM policies on additional vehicles thereby tolling the statute of limitations.

CLASS ALLEGATIONS

79. Plaintiffs bring this action pursuant to Colo.R.Civ.P. 23(a) and (b)(3) on behalf of a class of similarly situated Colorado residents. The class consists of:

ALL PERSONS OR ENTITIES WHO HAVE PAID PREMIUMS TO ONE OF THE DEFENDANTS FOR UM/UIM POLICY COVERAGE ON MORE THAN ONE MOTOR VEHICLE AT THE SAME TIME IN COLORADO BETWEEN JULY 1, 1979 AND THE PRESENT. DEFENDANTS AND THEIR EMPLOYEES, OFFICERS, DIRECTORS AND AGENTS ARE EXCLUDED FROM THE CLASS.

80. Members of the class are so numerous and geographically dispersed that their individual joinder is impracticable. Upon information and belief, the number of class members exceeds 100,000. The precise number of class members may be determined with specificity from records maintained by Defendants.

81. Common questions of law and fact that exist as to all members of the class include, but are not limited to, the following:

- (a) Whether Defendants improperly charged premiums to plaintiffs and the members of the class for UM/UIM coverage on more than one vehicle at the same time?
- (b) Whether Defendants were required to inform the Plaintiffs and the members of the class of the fact that their purchase of one of Defendants' UM/UIM policies for one vehicle resulted in full UM/UIM coverage for all persons insured under the policy Regardless of which vehicle they occupied at the time of an accident.
- (c) Whether Defendants were required to inform the Plaintiffs and the members of the class of the fact that persons insured would not receive any additional coverage by purchasing multiple UM/UIM policies at the same time?
- (d) Whether the nature of the insurer-insured relationship required the Defendants to disclose to the Plaintiffs and the members of the class the fact that their purchase of one of Defendants' UM/UIM policies for one vehicle resulted in full UM/UIM coverage for all persons insured under the policy and that the persons insured did not receive any additional coverage by purchasing multiple contemporaneous UM/UIM policies?
- (e) Whether Defendants violated their duty of "good faith" by accepting premiums for UM/UIM policies on more than one vehicle at the same time and/or by concealing from the Plaintiffs the fact that purchasing UM/UIM policies on more than one vehicle resulted in no additional UM/UIM coverage for persons insured under the policy?

(f) Whether Defendants knew that their conduct was unreasonable or were reckless in disregarding the reasonableness of their conduct?

(g) Whether Defendants violated the Colorado Consumer Protection Act by concealing from the Plaintiffs the fact that purchasing a UM/UIM policy at the same time on more than one vehicle for the persons insured under the policy did not provide the insured persons with any additional coverage?

(h) Whether Defendants acted in bad faith by engaging in conduct in violation of the Unfair Competition – Deceptive Practices Act, C.R.S. § 10-3-1004?

(i) Whether Defendants should be required to reimburse premiums paid by Plaintiffs and members of the class for UM/UIM policies on more than one vehicle at the same time?

(j) Whether Defendants should be enjoined from soliciting or accepting premiums for UM/UIM coverage from their insured persons on more than one vehicle at the same time without disclosing the fact that purchasing UM/UIM policies on multiple vehicles does not provide the insured persons with any additional coverage?

82. Plaintiffs' claims are typical of the claims of the members of the class because Plaintiffs paid premiums for UM/UIM coverage for more than one vehicle at the same time.

83. Plaintiffs are adequate representatives of the class because they will vigorously pursue this action on behalf of the entire class, their interests do not conflict with the interests of other class members, and they have retained counsel competent and experienced in class action litigation. Plaintiffs and Plaintiffs' counsel will fairly and adequately protect the interests of the class.

84. The common questions of law and fact set forth above predominate over any questions affecting only individual members of the class. In addition, a class action in this matter is superior to other available methods for the fair and efficient adjudication of the controversy. The class is readily definable, and prosecution of this case as a class action will eliminate the possibility of repetitious litigation and will provide redress for claims that otherwise may be too small to support the expense of individual prosecution. A class action presents far fewer management difficulties and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court of what would otherwise amount to tens of thousands of separate claims.

85. In the alternative, the class may be certified under the provisions of Colo.R.Civ.P. 23(b)(1) and/or 23(b)(2) because, in addition to the fact that the class is so numerous that joinder of all members is impracticable, there are questions of law or fact

common to the class, plaintiffs' claims are typical of those of the class, and plaintiffs and their counsel will fairly and adequately represent the class:

- (a) The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudication with respect to individual class members which would establish incompatible standards of conduct for Defendants; or
- (b) The prosecution of separate actions by individual class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; or
- (c) Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final and injunctive relief with respect to the members of the class as a whole.

86. For all the reasons set forth, certification of a class of persons who have paid premiums to a Defendant for UM/UIM coverage on more than one motor vehicle in Colorado at the same time is appropriate.

FIRST CAUSE OF ACTION
(Fraudulent Concealment)

87. Plaintiffs incorporate by reference the allegations contained in all other paragraphs.

88. In selling UM/UIM coverage to Plaintiffs, Defendants concealed material existing facts.

89. Among other material facts that were concealed, Defendants failed to inform the Plaintiffs and the members of the class of the fact that the purchase of one UM/UIM policy for one vehicle resulted in UM/UIM coverage for the persons insured under the policy and that purchasing UM/UIM policies on more than one vehicle at the same time did not provide the persons insured with any additional UM/UIM coverage.

90. Defendants should have disclosed the foregoing material facts to Plaintiffs and members of the class.

91. Defendants were aware that the material facts were being concealed.

92. Plaintiffs and the members of the class were ignorant of the existence of the material facts.

93. Defendants intended that the concealment of the material facts be acted upon by Plaintiffs and members of the class.

94. Plaintiffs and members of the class acted upon the concealment of the material facts.

95. As a result of Defendants' fraudulent concealment, Plaintiffs and members of the class have suffered damages by paying premiums on two or more contemporaneous UM/UIM policies and seek recovery of all premiums for duplicative policy coverage in an amount to be proven at trial.

SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

96. Plaintiffs incorporate by reference the allegations contained in all other paragraphs.

97. In the course of Defendants' business activities selling, automobile and motor vehicle liability insurance policies to insureds having more than one vehicle, Defendants provided their insureds with various standard form information regarding the UM/UIM coverage provided by the policies, but failed to disclose to the Plaintiffs and the members of the class that purchasing UM/UIM coverage on more than one vehicle did not provide the persons insured with additional UM/UIM coverage.

98. Equity and good conscience required the Defendants to disclose to all insureds who purchased insurance coverage on more than one vehicle at the same time the fact that purchasing UM/UIM coverage on more than one vehicle did not provide the persons insured with additional UM/UIM coverage.

99. The standard form documents regarding UM/UIM coverage that Defendant insurers provided to Plaintiffs and members of the class was rendered false due to Defendants' failure to disclose to their insureds who were purchasing insurance on more than one vehicle that purchasing UM/UIM coverage on more than one vehicle did not provide the persons insured with additional UM/UIM coverage.

100. In light of the affirmative statements made by the Defendant insurers in their standard form documents, Defendants' superior knowledge of their insurance policies and the interrelationship between multiple policies, and the Defendants' special relationship with their insureds, Defendant insurers should have informed Plaintiffs of the fact that purchasing UM/UIM coverage on more than one vehicle did not provide the persons insured with additional UM/UIM coverage.

101. In light of the affirmative statements made by the Defendant insurers in their standard form documents, Defendants' superior knowledge of their insurance policies and the interrelationship between multiple policies, and the Defendants' special relationship with their

insureds, Plaintiffs and the members of the class could reasonably expect that the Defendant insurers would disclose to their insureds who were purchasing insurance on more than one vehicle that purchasing a UM/UIM policy on more than one vehicle provided the persons insured with no additional UM/UIM coverage.

102. Defendants were negligent in failing to obtain and/or communicate the fact that purchasing a UM/UIM policy on more than one vehicle provided the persons insured with no additional UM/UIM coverage.

103. Defendants supplied standard form information regarding the UM/UIM coverage in their policies that, absent a disclosure that purchasing a UM/UIM policy on more than one vehicle provided the persons insured with no additional UM/UIM coverage, created a false impression knowing that the Plaintiffs would be guided by and rely upon it.

104. Plaintiffs' justifiably relied upon the false impression provided by Defendants.

105. As a result of the false impression provided to them by Defendant insurers, Plaintiffs have suffered damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(Bad Faith)

106. Plaintiffs incorporate by reference the allegations contained in all other paragraphs.

107. Defendants engaged in bad faith, and breached the covenant of good faith and fair dealing that governs all actions by the Defendant insurance carriers in dealing with the public in Colorado, by soliciting and accepting premiums for UM/UIM policies on more than one vehicle at the same time and/or by concealing from the Plaintiffs and the class members the fact that purchasing UM/UIM policies on more than one vehicle at the same time did not provide the persons insured with any additional UM/UIM coverage.

108. Defendants' actions were unreasonable.

109. Defendants' conduct also violated provisions of Colorado's Unfair Competition-Deceptive Practices Act, C.R.S. § 10-3-1101, *et seq.* and is therefore unreasonable per se.

110. Defendants knew that their conduct was unreasonable or Defendants recklessly disregarded the fact that their conduct was unreasonable.

111. As a result of Defendants' bad faith conduct, Plaintiffs have suffered damages by paying premiums on two or more contemporaneous UM/UIM policies and seek recovery of all premiums for duplicative policy coverage in an amount to be proven at trial.

FOURTH CAUSE OF ACTION
(Violation of the Colorado Consumer Protection Act)

112. Plaintiffs incorporate by reference the allegations contained in all other paragraphs.

113. Defendants engaged in an unfair or deceptive trade practice by failing to disclose material facts to Plaintiffs regarding UM/IUM coverage in violation of C.R.S. § 6-1-105(u).

114. Among other material facts that were concealed, Defendants failed to inform the Plaintiffs and the class members of the fact that the purchase of a single UM/UIM policy for one vehicle resulted in full UM/UIM coverage for the persons insured under the policy and that purchasing additional UM/UIM policies on more than one vehicle did not provide the persons insured with any additional UM/UIM coverage.

115. Defendants engaged in the foregoing unfair or deceptive trade practice in the course of their business.

116. Defendants conduct significantly impacted the public as actual or potential consumers of Defendants' goods, services, and/or property.

117. Plaintiffs suffered injury in fact to a legally protected interest.

118. As a result of Defendants' unfair or deceptive trade practice, Plaintiffs have suffered damages in an amount to be proven at trial.

WHEREFORE, Plaintiffs and the class members respectfully request that this Court:

- A. Find in favor of Plaintiffs and the class members and against Defendants on each of the claims for relief set forth herein;
- B. Award Plaintiffs and the class members compensatory damages, punitive damages and attorney fees, interest, and costs as permitted by law; and
- C. Take any other action the Court deems to be just and proper.

JURY DEMAND

PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated: March 14, 2003.

McFARLAND LAW OFFICES
[Signed copy on file at the McFarland
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