

EXHIBIT A

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

THOMAS SWIECH, individually and on behalf of
other similarly situated individuals,

Plaintiff,

v.

LOYA INSURANCE COMPANY,

Defendant.

No. D-202-CV-2024-09620

CLASS ACTION COMPLAINT

1. Plaintiff Thomas Swiech, for himself and on behalf of the Class and Subclass defined herein, brings this Class Action Complaint to recover damages from Loya Insurance Company (“Defendant”), and states as follows:

JURISDICTION AND VENUE

2. This This Court has jurisdiction under Article VI, Section 13 of the New Mexico Constitution.

3. Venue is proper under NMSA 1978, § 38-3-1(B).

4. Defendant is a real party in interest and a proper party to this action.

5. This Court has personal jurisdiction over the Defendant. The acts complained of herein occurred in the New Mexico.

PARTIES

6. Plaintiff Thomas Swiech is, and was at all material times, a resident of Bernalillo County, New Mexico.

7. Defendant Loya Insurance Company, is a foreign for-profit corporation conducting business, including the sales and solicitations for the sales of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

FACTUAL ALLEGATIONS

Thomas Swiech purchased an uninsured/underinsured motorist policy from Defendant.

8. In 2013, Defendant issued Mr. Swiech a motor vehicle insurance policy effective March 24, 2013. See **Exhibit 1**.

9. The policy that Defendant issued and which was in effect at the time of Mr. Swiech's loss was Policy No. 62 520939352, effective from March 24, 2013 to September 24, 2013. Id.

10. Policy No. 62 520939352 provided liability coverage on one vehicle in the amount of \$25,000 each person and \$50,000 per accident, per vehicle. Id.

11. Defendant Policy No. 62 520939352 also purportedly provided uninsured and underinsured motorist coverage in the amount of up to \$25,000.00 per person/\$50,000.00 per accident, which was the maximum amount of coverage that Mr. Swiech could purchase given his purchase of liability insurance at the \$25,000.00 per person/\$50,000.000 per accident limit. Id.

12. Mr. Swiech paid a premium of \$36.00 for the uninsured and underinsured motorist bodily injury coverage and \$36.00 for the uninsured and underinsured motorist property damage coverage that Defendant purportedly offered from March 24, 2013 to September 24, 2013. Id.

Defendant’s systematic application process, declarations, UM/UIM information and selection forms, and policy are ambiguous and misrepresented the true value of underinsured motorist coverage and failed to properly and adequately disclose to Swiech that the underinsured motorist coverage for which Defendant collected a premium was illusory and misleading.

13. Defendant’ boilerplate forms which should allow insureds to select or reject Uninsured and Underinsured Motorists Coverage do not adequately disclose “Underinsured Motorist”. Id.

14. Defendant’ boilerplate forms which allow insureds to select or reject Uninsured and Underinsured Motorists Coverage are ambiguous and do not in any manner refer to the New Mexico statute, NMSA § 66-5-301(B). Id.

15. Defendant’s application, pursuant to NMSA § 66-5-301(C), should provide adequate disclosures so that a meaningful offer is made and an insured is able to make a knowing and intelligent choice of UM/UIM coverage. Defendant has not provided the application that was used.

16. Defendant’s boilerplate forms and ambiguous policy definitions failed to properly inform Mr. Swiech about the offset described in *Schmick v. State Farm Mutual Automobile Insurance Company*, 704 P.2d 1092 (1985) (“the *Schmick* offset”) and did not meet his reasonable expectations of being properly insured in the event he sustained significant injuries. See *Crutcher v. Liberty Mut. Ins. Co.*, 2022-NMSC-001, ¶ 2, 501 P.3d 433, 434. “We conclude that this type of policy is illusory in that it may mislead minimum

UM/UIM policyholders to believe that they will receive underinsured motorist benefits, when in reality they may never receive such a benefit.”

17. Nothing in Defendant’s boilerplate forms advise an insured that they will never receive the full amount of underinsured motorist coverage for which they have contracted. *Id.*

18. When Mr. Swiech purchased automobile coverage, Defendant did not properly inform him of how underinsured motorist coverage is illusory in the event of a covered occurrence involving an underinsured driver.

19. Defendant failed to properly inform Mr. Swiech that he and his insured beneficiaries would most likely not be afforded the full UIM benefits from paying a premium for underinsured motorist coverage because, pursuant to the *Schmick* offset, Mr. Swiech’s and insured beneficiaries’ recovery of underinsured motorist benefits would be offset by the amount of the tortfeasor’s liability coverage. See *Id.*, ¶ 26. “We refuse to impose on the insured the obligation to be aware of and understand the consequences of New Mexico’s UM/UIM statutory provisions, much less the offset rule derived by its technical language.”

20. When Mr. Swiech purchased automobile coverage, Defendant did not properly inform him of how underinsured motorist coverage is illusory and/or misleading in the event of a covered occurrence involving an underinsured driver.

21. Defendant’ forms did not contain clear, unambiguous language regarding the effects of the *Schmick* offset.

22. Defendant’ systematic processes forms did not alert Mr. Swiech, nor make clear to ordinarily and similarly situated insureds, the fact that the *Schmick* offset drastically and materially diminished payment of benefits arising from a covered occurrence under the policy for crashes involving underinsured motorists. See *Id.*

23. Defendant's systematic processes and forms misrepresented the true value of the illusory underinsured motorist coverage that it advertised and sold to Mr. Swiech and for which Defendant collected premiums. See *Id.*, ¶ 26. "First, we find no merit in Defendant's argument that the language of the statute provides immunity from claims that it misrepresented the coverage available to consumers like Mr. Swiech. Certainly, while the Legislature authorized the selling of premiums together, its intent was not to sanction the deception of those consumers in their selection of policies and coverage levels. The Court in *Weed Warrior* concluded that it was the obligation of the insurance company to clearly provide its policyholders the opportunity to match their UM/UIM policy with their liability coverage. *Id.* ¶ 15. In this case [*Crutcher*], we are simply identifying the same consequence previously illuminated in *Weed Warrior*. *Id.* ¶ 10.) and *Id.*, ¶ 27. If a person pays for something called "underinsured motorist" insurance, we think it reasonable for the person to be under the impression that he or she is, in fact, eligible to receive UIM coverage if involved in an accident with someone who does not have enough insurance to cover the costs of the insured's injuries." *Id.*

24. The statute of limitations is tolled for Plaintiff and class members due to Defendant's fraud. See *Gaston v. Hartzell*, 1976-NMCA-041, ¶ 9, 89 N.M. 217, 219. ("We conclude that a false representation constitutes fraudulent concealment and 'constructive fraud', each of which tolls the statute of limitations. The date of discovery of the false representation was the time from which plaintiffs' cause of action accrued.").

CLASS ACTION ALLEGATIONS

25. This action is properly maintainable as a class action pursuant to Rule 1-023

NMRA. The Class is defined as follows:

All persons between January 1, 1990 to present, (and their heirs, executors, administrators, successors, and assigns) from whom Defendant collected a premium for an underinsured motorist coverage on a policy that was issued or renewed in New Mexico by Defendant and that purported to provide underinsured motorist coverage on the face of its application and declaration pages, but which effectively no underinsured motorists coverage and/or misleading underinsured coverage, reflected on Defendant's declaration page, because of the statutory offset recognized in *Schmick v. State Farm Mutual Automobile Insurance Company*, 704 P.2d 1092 (1985).

26. The proposed class and subclass definitions are precise, objective, and presently ascertainable, and it is administratively feasible for the Court to ascertain whether a particular individual is a member of the Class.

27. The members of the Class are so numerous that joinder of all members of the Class is impracticable.

28. Mr. Swiech's claims are typical of the claims of members of the Class and Subclass.

29. Certification of the Class and Subclass is desirable and proper, because there are questions of law and fact in this case common to all members of the Class. Such common questions of law and fact include, but are not limited to:

a. Whether Defendant breached contractual obligations owed to their New Mexico policyholders;

b. Whether Defendant breached duties owed to New Mexican insureds under the implied covenant of good faith and fair dealing;

- c. Whether Defendant violated NMSA 1978, §§ 59A-16-1 to 30;
- d. Whether Defendant failed to disclose one or more material facts in connection with the marketing or sale of the insurance policies at issue;
- e. Whether Defendant misled or deceived their policyholders in connection with the marketing or sale of the policies at issue;
- f. How properly to construe Defendant's standard application forms and other standard form documents relative to the *Schmick* offset;
- g. What remedies are available to Mr. Swiech and Class Members in light of the answers to the foregoing questions; and
- h. Whether and to what extent there may be merit in any affirmative defenses that Defendant might claim.

30. These common questions of law or fact common to members of the Class predominate over any questions affecting only individual members, and a class action is superior to all other available methods for the fair and efficient adjudication of the controversy. In this action:

31. Common or generalized proof will predominate with respect to the essential elements of the nine claims at issue.

32. The common questions of law or fact that pertain to the Class predominate over any individual questions and any individual issues do not overwhelm the common ones.

33. If any member or members of the Class has an individually controlling interest to prosecute a separate action, they may exclude themselves from the Class upon receipt of notice under Rule 1-023(C)(2).

34. The determination of the claims of all members of the Class in a single forum

and in a single proceeding would be a fair, efficient and superior means of resolving the issues raised in this litigation.

35. Any difficulty encountered in the management of the proposed Class is reasonably manageable, especially when weighed against the impossibility of affording adequate relief to the members of the Class through numerous independent actions.

36. The need for proof of Mr. Swiech's and Class members' damages will not cause individual issues to predominate over common questions. The amounts of losses can be efficiently demonstrated either at trial or as part of routine claims administration through accepted and court-approved methodologies with the assistance of court-appointed personnel, including Special Masters. Certain types or elements of damage are subject to proof using aggregate damage methodologies or simply rote calculation and summation.

37. The particular common issues of liability and the quantum of punitive damages or ratio of punitive damages to actual harm, are common to Class Members no matter what type of harm or injury was suffered by each Class Member.

38. Defendant have acted or refused to act on grounds generally applicable to all Class Members, thereby making appropriate injunctive relief and corresponding declaratory relief with respect to Class Members. Mr. Swiech seeks to establish the rights and obligations of the parties with respect to the claims at issue in this case and to enjoin Defendant from continuing to engage in those practices that violate the duties, and the contractual and legal obligations owed to Mr. Swiech and Class Members under New Mexico statutory and common law.

39. A class action is superior to maintenance of these claims on a claim-by-claim basis when all actions arise out of the same circumstances and course of conduct. A class

action allows the Court to process all rightful claims in one proceeding. Class litigation is manageable considering the opportunity to afford reasonable notice of significant phases of the litigation to Class Members and permit distribution of any recovery. The prosecution of separate actions by individual Class Members, or the individual joinder of all Class Members in this action, is impracticable and would create a massive and unnecessary burden on the resources of the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of each Class Member, should that be determined to be appropriate.

40. The conduct of this action as a class action conserves the resources of the parties and the court system, protects the rights of each member of the class, and meets all due process requirements.

41. Certification of the Class with respect to particular common factual and legal issues concerning liability, as well as the necessary and appropriate quantum of punitive damages, or ratio of punitive damages to actual harm, is appropriate under Rule 1-023.

42. Certification of the Class is desirable and proper, because Mr. Swiech will fairly and adequately protect the interests of the Class that he seeks to represent. There are no conflicts of interest between Mr. Swiech's claims and those other members of the Class. Mr. Swiech is cognizant of his duties and responsibilities to the Class. Mr. Swiech's attorneys are qualified, experienced, and able to conduct the proposed class action.

CLAIM 1 - NEGLIGENCE

43. Mr. Swiech and Class Members incorporate by reference the preceding paragraphs as if they were fully stated herein.

44. Defendant had a duty to ensure Mr. Swiech and Class Members would be

offered and obtain the maximum benefit of underinsured coverage purchased and would not be sold illusory and/or misleading underinsured coverage.

45. Defendant had a duty to provide Mr. Swiech and Class Members coverage for which a premium was charged and collected.

46. Since the issuance of the New Mexico Supreme Court's opinion of *Schmick* on August 14, 1985 it was reasonably foreseeable that the underinsured coverage sold Mr. Swiech and Class Members was illusory and/or misleading and Defendant therefore materially misrepresented the terms and benefits of underinsured coverage, yet charged a premium for such illusory and/or misleading coverage.

47. A reasonably prudent insurance company exercising ordinary care would offer and sell underinsured coverage that was not illusory and/or misleading and would not materially misrepresent the terms of underinsured coverage by properly informing its insureds of the coverage they were purchasing and obtaining a written waiver acknowledging its insured's consent to the purchase of what amounts to illusory underinsured motorist coverage.

48. A reasonably prudent insurer would not charge a premium for coverage it intended to deny or did not provide.

49. Defendant's actions and inactions, through its agents, employees, or others on its behalf, were negligent in that they breached the standard of care required of an insurance company issuing auto policies in New Mexico.

50. As a result of Defendant's negligence, Mr. Swiech and Class Members sustained actual damages for which Defendant is liable. Mr. Swiech and Class Members are entitled to punitive damages for actions of Defendant that were willful, reckless and wanton,

and in bad faith and/or based on dishonest business judgments.

**CLAIM 2 - VIOLATIONS OF THE NEW MEXICO UNFAIR TRADE
PRACTICES ACT**

51. Mr. Swiech and Class Members incorporate by reference the preceding paragraphs as if they were fully stated herein.

52. There was in effect, at all times material, a New Mexico statute commonly known as the New Mexico Unfair Trade Practices Act, N.M.S.A.1978, § 57-12-2 to 58-12-10 (“UPA”), including but not limited to Sections 57-12-2(D)(7), (D)(14), (D)(15), (D)(17) and Section 57-12- 2(E), which prohibits a person selling insurance from engaging in unfair or deceptive trade practices:

- D. “unfair or deceptive trade practice” means an act specifically declared unlawful pursuant to the Unfair Trade Practices Act [Chapter 57, Article 12 NMSA 1978], a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by a person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead and includes but is not limited to:
- (7) representing that the goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;
 - (14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;
 - (15) stating that a transaction involves rights, remedies or obligations that it does not involve;
 - (17) failing to deliver the quality or quantity of goods or services contracted for;
- E. “unconscionable trade practice” means an act or practice in

connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts which to a person's detriment: takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or results in a gross disparity between the value received by a person and the price paid.

53. Defendant failed to deliver the quality or quantity of services applied for and purchased and paid for by Mr. Swiech and other insureds by failing to provide insurance applications and policies containing sufficient information to properly inform a reasonably prudent person purchasing underinsured insurance when Mr. Swiech and others similarly situated were under the reasonable belief that such coverage existed and would protect them.

54. In the regular course of its business, Defendant or its agents knowingly made oral and written statements that were false and misleading in connection with the sale of underinsured motorist insurance in New Mexico.

55. These ambiguous, false, and misleading representations may, tend to, and do deceive or mislead persons into believing that underinsured motorist coverage has a value that it does not have and into contracting for and paying premiums for underinsured motorist policies that are illusory and/or misleading and do not provide the underinsured motorist coverage and benefits that Defendant's customers reasonably expected to receive.

56. In the regular course of its business, Defendant or its agents took advantage of its customers' lack of knowledge, ability, experience or capacity to a grossly unfair degree by marketing, advertising, selling, and receiving premium payments for illusory underinsured motorist coverage.

57. Since the New Mexico Supreme Court's opinion in *Progressive Northwest*

Insurance Co. v. Weed Warrior Services, 2010-NMSC-050, 149 N.M. 157, 245 P.3d 1209, Defendant has been on notice that underinsured motorist policies provide no coverage at minimal limits and misleading coverage at higher limits, yet Defendant markets, advertises, sells, and received premiums for above-minimal limits underinsured motorist policies to and from customers, such as Mr. Swiech and Class Members, who do not know and do not understand that if they purchase underinsured motorist coverage, they will not receive any underinsured motorist coverage at all when damages in excess of the tortfeasor's liability coverage are incurred, losing the full benefit of their above-minimal limits coverage displayed on the face of their declaration pages because of the *Schmick* offset.

58. Defendant' actions resulted in a gross disparity between the value of the illusory and/or misleading underinsured motorist coverage received by Mr. Swiech and Class Members and the price of the premiums that Mr. Swiech and Class Members paid for illusory and/or misleading underinsured motorist coverage.

59. Defendant, acting through its agents, adjusters, and employees, as set forth above, knowingly and willfully engaged in unfair trade practices in violation of Section 57-12-3, including but not limited to Sections 57-12-2(D)(7), (D)(14), (D)(15), (D)(17) and Section 57-12- 2(E).

CLAIM 3 - VIOLATIONS OF THE NEW MEXICO UNFAIR INSURANCE PRACTICES ACT

60. Mr. Swiech and Class Members incorporate by reference the preceding paragraphs as if they were fully stated herein.

61. There was in effect at all times material a New Mexico statute commonly known as the Insurance Code New Mexico Unfair Insurance Practices Act, NMSA 1978, §§

59A-16-1 to 59A-16-30 (“UIPA”).

62. The UIPA provides a private right of action to any person covered by the UIPA who has suffered damages as a result of a violation of that statute by an insurer or agent and is granted a right to bring an action in district court to recover actual damages.

63. Mr. Swiech and Class Members were insured under the policies issued by Defendant.

64. Defendant owed Mr. Swiech and Class Members the duties of good faith, fair dealing, and the accompanying fiduciary obligations.

65. In the sale and provision of insurance, Defendant failed to exercise good faith and failed to give the interests of Mr. Swiech and of Class Members the same consideration it gave their own interests.

66. Defendant misrepresented the terms of the policy sold and provided to Mr. Swiech and Class Members, and/or failed to disclose material facts reasonably necessary to prevent other statements from being misleading and failed to implement and follow reasonable standards in the sale and provision of insurance.

67. Defendant’s acts and failures to act were in reckless disregard of Mr. Swiech’s, and Class Members’ rights as insureds under the subject policies.

68. Defendant’s acts and practices took advantage of the lack of knowledge and experience of Mr. Swiech and Class Members to a grossly unfair degree.

69. Defendant failed to abide by its statutory duties under the UIPA, and such violations constitute negligence per se.

70. Defendant misrepresented to Mr. Swiech and Class Members pertinent facts or policy provisions relating to coverages at issue, in violation of NMSA 1978, § 59A-16-

20(A).

71. Defendant' failure to act in good faith and Defendant' violations of the Insurance Code and Unfair Practices Act are proximate causes of damages sustained by Mr. Swiech and Class Members.

72. Defendant' conduct was in bad faith, malicious, willful, wanton, fraudulent, based on dishonest business judgments and/or in reckless disregard of Mr. Swiech's and Class Members' rights.

73. Mr. Swiech and Class Members are entitled to attorneys' fees and costs pursuant to NMSA 1978, §§ 59A-16-30 and 39-2-1. As a direct and proximate result of Defendant' acts, omissions policies, and conduct in violating UIPA, as set forth above, Mr. Swiech and Class Members have sustained damages, in addition to the damages common to all counts of this complaint, including but not limited to the actual damages incurred, the cost of prosecution of this lawsuit, attorneys' fees, and interest on the sums owed under the policy. These injuries and damages are ongoing, permanent, and are expected to continue in the future.

CLAIM 5 - BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

74. Mr. Swiech and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

75. A special relationship exists between Defendant, on the one hand, and Mr. Swiech and Class Members, respectively, on the other hand, sufficient to impose a duty of good faith and fair dealing on Defendant owed to Mr. Swiech and Class Members.

76. Implicit in the contract of insurance between Mr. Swiech and Class

Members, on the one hand, and Defendant on the other, was the covenant that Defendant would, at all times, act in good faith and deal honestly and fairly with Mr. Swiech and Class Members.

77. Defendant breached the implied covenant of good faith and fair dealing, in one or more of the following ways, including but not limited to:

- a. Failing to properly inform Mr. Swiech and Class Members of the illusory and/or misleading coverage it solicited and sold;
- b. Charging a premium for coverage that would not be provided;

78. As a direct and proximate result of Defendant' acts and omissions alleged herein, Mr. Swiech and Class Members have suffered damages in an amount to be proven at trial.

79. Defendant' acts and omissions alleged herein and breach of the implied covenant of good faith and fair dealing were done intentionally, willfully, wantonly, grossly, with dishonest business judgment, and/or with reckless disregard for the rights of Mr. Swiech and Class Members.

80. Accordingly, Mr. Swiech and Class Members are entitled to recover punitive damages in an amount to be determined by the jury and sufficient to punish Defendant for its misconduct and to deter others from similar conduct in the future.

CLAIM 6 - NEGLIGENT MISREPRESENTATION

81. Mr. Swiech and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

82. A special relationship existed between Defendant, on the one hand, and Mr. Swiech and Class Members, respectively, on the other hand, sufficient to impose a duty on

Defendant to disclose accurate information to Mr. Swiech and Class Members.

83. As early as 1985, when the New Mexico Supreme Court published its decision in *Schmick v. State Farm*, Defendant knew that underinsured motorist coverage would be illusory and/or misleading under most ordinary circumstances.

84. Defendant, however, withheld this information from Mr. Swiech and Class Members and hid from them the fact that the underinsured motorist coverage as impacted by the *Schmick* offset is illusory and/or misleading in its effect.

85. From 1985 through the present, Defendant failed to disclose material facts and made material misrepresentations to Mr. Swiech and Class Members regarding illusory and/or misleading underinsured motorist coverage.

86. Defendant, by their failures and omissions, misrepresented underinsured motorist coverages through their standard and uniform applications and policies given to Mr. Swiech and Class Members, which Defendant knew or should have known, were misleading and contained material misrepresentations.

87. Defendant' material omissions and misrepresentations were made to induce Mr. Swiech and Class Members to purchase underinsured motorist coverage that Defendant knew or should have known was illusory and/or misleading.

88. Mr. Swiech and Class Members reasonably relied on Defendant' material omissions and misrepresentations when deciding to purchase underinsured motorist coverage at the level of coverage they respectively purchased.

89. As a result of Defendant' misrepresentations and omissions, Defendant are liable to Mr. Swiech and Class Members for their damages flowing from those misrepresentations and omissions.

90. As a direct and proximate result of Defendant' negligent misrepresentations, Mr. Swiech and Class Members suffered economic loss, including the payment of premiums for coverage that had no value. Mr. Swiech and Class Members seek the full measure of damages allowed under applicable law.

CLAIM 7 – UNJUST ENRICHMENT

91. Mr. Swiech and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

92. Defendant have applied the *Schmick* offset to its insureds' claims and denied underinsured motorist coverage benefits in New Mexico since 1985. Defendant, through its ambiguous insurance contracts, have misled, deceived, and acted in an unfair manner for decades and retained benefits (*i.e.* the payment of UIM claims, and retained premium charges which were unearned) from thousands of New Mexican insureds for years, including Mr. Swiech and Class Members. The windfall Defendant received allowed them to invest and enjoy the benefits of their deceptive and intentional conduct.

93. Mr. Swiech and Class Members are entitled to the value of the UIM benefits and out-of-pocket damages under the equitable theory of unjust enrichment.

94. Defendant should be ordered to disgorge of the value of the UIM benefits retained, the UIM premiums received, and the unjust profit that it derived from.

CLAIM 8 - DECLARATORY JUDGMENT

95. Mr. Swiech, and Class members incorporate by reference the preceding paragraphs as though they were stated fully herein.

96. An actual controversy exists between the parties thereby rendering declaratory relief proper under the New Mexico Declaratory Judgment Act, NMSA 1978,

Sections 44-6-1 through 44-6-15.

97. The Court should reform the insurance contracts respectively entered between Defendant and their agents, and Mr. Swiech and Class Members to conform to the intentions and reasonable beliefs of Mr. Swiech and Class Members that they would receive the underinsured motorist coverage that they contracted for and for which Defendant collected premiums

98. Mr. Swiech, and Class Members are entitled to a declaratory judgment establishing their respective rights and obligations of the parties with respect to the claims set forth herein.

INJUNCTIVE RELIEF

99. Mr. Swiech and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

100. Mr. Swiech and Class Members are entitled to injunctive relief under the claims they have pled because Mr. Swiech and Class Members would suffer an irreparable injury that monetary damages at a later time would not adequately compensate them for the injury of paying a premium for illusory and/or misleading coverage.

101. Defendant should be enjoined from continuing practices that violate the duties, and the contractual and legal obligations owed to Mr. Swiech and Class Members.

102. Defendant must be compelled to stop their practice of collecting premiums for the sale of illusory and/or misleading underinsured motorist coverage and failing to provide underinsured motorist coverage benefits equal to the limits of liability coverage where they failed to properly inform Mr. Swiech and Class Members throughout the application and policy underwriting process.

REQUEST FOR RELIEF

Mr. Swiech and Class Members request a jury trial and the following relief:

- i. An order certifying this action to proceed as a class action, authorizing Mr. Swiech to represent the interests of the Class Members as appropriated and appointing undersigned counsel to represent the class.
- ii. Awarding compensatory damages to Mr. Swiech and Class Members for the damages done to them by Defendant in an amount to be proven at trial;
- iii. Awarding Mr. Swiech and Class Members damages from Defendant as a result of its violations of the UIPA, in an amount to be determined at trial for attorneys' fees and costs;
- iv. Awarding treble damages in accordance with NMSA 1978, Sections 57-12-10(B) and any and all damages pursuant to NMSA 1978, Sections 57-12-1 through -26, which will deter Defendant and others from such unfair trade practices and wrongful conduct in the future and will punish them for the conduct set forth herein;
- v. Granting declaratory relief that establishes the rights and obligations of the parties with respect the claims set forth herein;
- vi. Granting injunctive relief requiring Defendant to properly inform Mr. Swiech and Class Members throughout the application and policy underwriting process of the true value of the underinsured motorist benefits that are being advertised and sold;
- vii. Awarding Mr. Swiech and Class Members their costs and expenses incurred in these actions, including reasonable attorney's fees, experts'

fees, and costs; and

viii. Granting such other and further relief as the Court deems just and proper.

Respectfully Submitted:

LAW OFFICE OF KEDAR BHASKER

/s/ Kedar Bhasker
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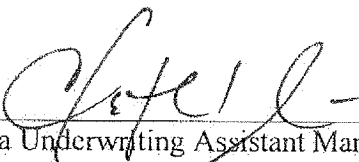
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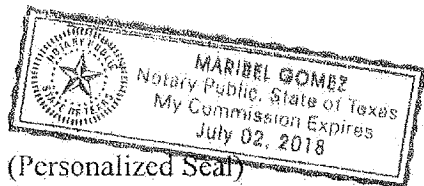
Exhibit 1


I hereby certify that the above is a true and correct Declarations Page for policy 62/520939352 taken from our files at 1800 N. Lee Trevino, El Paso, Texas 79936

X 
Fred Loya Underwriting Assistant Manager

State of Texas
County of El Paso


, personally appeared before me, and being first duly sworn declared that he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and the statements therein contained are true.



 El Paso 15 22
Notary Public's Signature

**DECLARATIONS
NEW MEXICO PERSONAL
AUTO POLICY**

LOYA INSURANCE COMPANY
1800 LEE TREVIÑO, SUITE 201 EL PASO, TEXAS 79936

POLICY NUMBER 62 520939352	POLICY PERIOD FROM 3/24/13 TO 9/24/13 TERM 06 MONTHS <small>12:01 A.M. STANDARD TIME AT THE ADDRESS OF THE NAMED INSURED AS STATED HEREIN.</small>	POLICY CHANGE EFFECTIVE DATE 3/24/13	AGENT NUMBER 133 03003
NAMED INSURED AND MAILING ADDRESS 62/520939352 THOMAS J SWIECH 		AGENT NAME AND ADDRESS FRED LOYA INS AGENCY INC. 2710 SAN MATEO NE ALBUQUERQUE, NM 87110 800 554-0595	

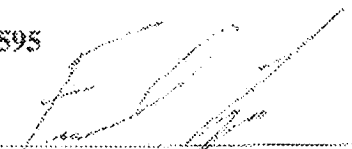
COVERAGES/PREMIUMS COVERAGES PROVIDED WHERE A PREMIUM AND A LIMIT OF LIABILITY ARE SHOWN FOR THE COVERAGE.

A U T O	I- LIABILITY			II- MEDICAL PAYMENTS	C- (UN)INSURED/UNDERINSURED MOTORISTS			IV- COVERAGE FOR DAMAGE TO YOUR AUTO				
	RODLY INJURY	PROPERTY DAMAGE			RODLY INJURY	PROPERTY DAMAGE INC DEC		COMPREHENSIVE DEDUCTIBLE	COLLISION DEDUCTIBLE	TOWING AND LARGE LOSS	RENTAL REIMB 30 DAYS MAXIMUM	
1	25000	50000	10000		25000	80000	10000					
	EACH PERSON	EACH ACCIDENT		EACH PERSON	EACH PERSON	EACH ACCIDENT						
1	114	114			36	36						
		DOLLARS		DOLLARS		DOLLARS						DOLLARS
SUB TOTAL								POLICY FEE	TOTAL	INSTALLMENT FEE		
300.00								18.00	318.00	8.00		

DESCRIPTION OF AUTO

AUTO	YEAR	MAKE	MODEL	VEHICLE ID NO.	DRIVER	TERRITORY	SYMBOL	SPECIAL EQUIP.	
1	2001	CHEV	SUBURBAN	3GNFK16T61G110604	1	1	15		
<p>ANY LOSS UNDER PART D IS PAYABLE AS INTEREST MAY APPEAR TO THE NAMED INSURED AND</p> <p>1</p>									
<p>THE AUTO(S) DESCRIBED IN THIS POLICY IS PRINCIPALLY GARAGED AT THE ABOVE ADDRESS UNLESS OTHERWISE STATED</p> <p>1</p> <p style="text-align: right;">67112-0000</p>									

**FOR INFORMATION, OR TO MAKE A COMPLAINT, CALL 1-800-554-0595
CLAIMS INFORMATION 1-800-880-0472**

By 
Chief Executive Officer and Secretary

PROCESSED ON: 3/24/13

DEF219

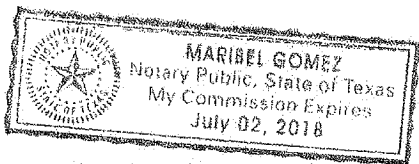
FLNM-62-001

I hereby certify that the above is a true and correct Application for policy 62/520939352 taken from our files at 1800 N. Lee Trevino, El Paso, Texas 79936

X *Fred Loya*
Fred Loya Underwriting Assistant Manager

State of Texas
County of El Paso

Chris Garcia, personally appeared before me, and being first duly sworn declared that he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and the statements therein contained are true.



(Personalized Seal)

Maribel Gomez *El Paso 5/22*
Notary Public's Signature

APPLICANTS STATEMENTS - READ BEFORE SIGNING

I hereby declare that the statements, representations and promises contained in this insurance policy application are true to the best of my knowledge. I agree that such policy shall be null and void at inception if I knowingly provide information that is false or misleading or if I knowingly omit information that materially affects acceptance of the risk of the Company. I declare and understand that knowingly failing to disclose my accident and/or violation history, or that of a named driver to be covered under a policy issued, regardless of the state in which any accident and/or violation occurred shall make such policy null and void at inception.

I further declare that if such false information would not have resulted in rejection of the risk, but, would have resulted in a higher premium charge, I agree to pay this additional premium. I agree that an inquiry may be made which will provide applicable information as to character, reputation, personal characteristics, mode of living and credit history. I authorize Company to obtain such reports for this policy, renewals or for any claim. I agree to pay any additional premium which is charged and based upon information disclosed by these reports. Further information on these is provided in the policy package.

I declare that I understand that physical damage coverage (if afforded) is based on the actual cash value of the factory standard motor vehicle and that no coverage exists for customizing, add-on equipment or accessories that are not factory standard unless such customizing equipment is specially listed and described on this application under the customizing equipment description section.

If the down payment accompanying this application is made by check or credit card, is not honored by its bank, I understand and agree that the policy shall be deemed void from inception and I will not be afforded any coverage whatsoever.

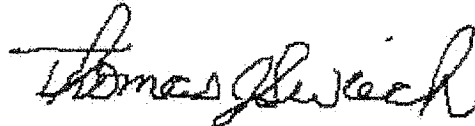
I understand that a service charge of \$25.00 will be assessed to the balance due on my policy if any check or credit card offered in payment of all installment is not honored by its bank. Imposition of such charge shall not deem the Company to have accepted the check unconditionally. I understand and agree that my premium down payment for this application may be used to reduce any previous balance I owe the Company.

I understand that the statements and representations made on this application, and the application itself, will become a part of my policy.

I hereby declare that I have read the terms and conditions contained on this insurance application, that I have had an opportunity to ask any questions regarding the terms and conditions of this policy application, and that I accept the terms and conditions contained in this policy application.

ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.

Have you received your policy including a copy of your application? YES NO



Applicant's Signature

THOMAS J. SWIECH

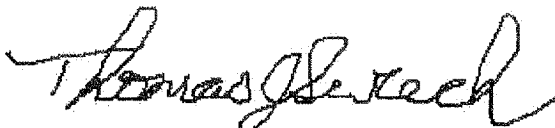
Date: 03/24/2011

AppFrm01 62-520939352

APPLICANT'S STATEMENTS - READ BEFORE SIGNING

1. All regular operators, licensed household members, and all household members age 12 and over are listed on this application.
2. The garaging address listed on this application is completed and verifiable.
3. All drivers listed on this application permanently reside in New Mexico.
4. None of the drivers listed on this application have been convicted of insurance fraud.
5. All drivers listed on this application will have or will acquire within 30 days of policy inception a New Mexico driver's license.
6. All vehicles listed on this application are titled and registered in New Mexico.
7. All vehicles listed on this application are garaged in New Mexico a minimum of 10 months each year.
8. None of the vehicles listed on this application are used for pickup or delivery of goods (including but not limited to: Pizza, mail, magazines and newspapers).
9. None of the vehicles listed on this application are used for: racing, limousine, taxi, or emergency services.
10. None of the vehicles listed on this application: have altered suspensions; have snow-plowing equipment; are not registered for street use; are equipped with cooking or bathroom facilities.
11. None of the vehicles listed on this application have load capacity in excess of 1 ton.
12. None of the vehicles listed on this application for insurance are or will be leased or rented to other operators.
13. All drivers listed on this application possess a valid US driver's license.
14. None of the vehicles listed on this application have a salvage title.
15. Insured understands and agrees that no coverage will be provided for any customizing equipment on their vehicles unless such customizing equipment is specifically listed and described on this application under the Customizing Equipment Description Section.

By signing below, I declare that I have read the statements listed above and that such statements are true. By signing below, I further declare that I will notify my agent should any information change during the policy period. I further agree and declare that the policy of insurance, as set forth in this application, is null and void if the statements listed above prove to be false at any time during the policy period.



Applicant's Signature

THOMAS J. SWIECH

Date: 03/24/2011

AppFrm02 62-520939352

LOYA INSURANCE COMPANY
UNINSURED/UNDERINSURED MOTORISTS COVERAGE - NEW MEXICO
Selection Form (Single Car Policy)

ELECTION OF UNINSURED/UNDERINSURED MOTORISTS COVERAGE

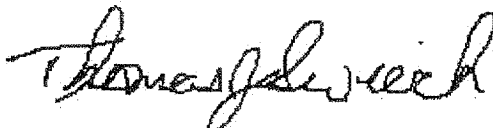
The New Mexico Insurance Code requires an insurer to offer uninsured/underinsured motorists coverage in each bodily injury or property damage liability insurance policy it issues covering liability arising out of the ownership, maintenance or use of a motor vehicle. Those provisions also permit the insurer and the applicant to agree to provide the coverage up to an amount equivalent to the liability limit of the primary policy, but not less than New Mexico financial responsibility requirements.

Uninsured/underinsured motorists coverage insures the insured, his or her heirs, or legal representatives for all sums within the limits established by law, that the person or persons are legally entitled to recover as damages due to bodily injury or death or due to destruction of property from the owner or operator of an uninsured/underinsured motor vehicle. An uninsured motor vehicle includes both an underinsured motor vehicle, as defined in NMSA 1978, § 66-5-301(B), and a hit-and-run motor vehicle, as defined in Subsection 13.12.3.14(D) NMAC.

You may elect the following Uninsured/Underinsured Bodily Injury and Property Damage Limits of Liability by INITIALING the box below. The uninsured/underinsured motorist coverage limit of

X Bodily Injury: \$25,000 per person/\$50,000 per accident; AND: Property Damage: \$10,000 per accident, at a premium cost of \$ 72.00 per 6 month(s).

I UNDERSTAND THAT MY ELECTION OF UNINSURED/UNDERINSURED MOTORISTS COVERAGE WILL APPLY TO THIS POLICY DESPITE THE FUTURE ADDITION OR DELETION OF ANY VEHICLE AND TO ALL FUTURE RENEWAL, REINSTATEMENTS, REWRITE OR REPLACEMENT POLICIES ISSUED BY LOYA INSURANCE CO. UNLESS OTHERWISE REQUESTED BY NAMED INSURED IN WRITING.



Applicant's Signature

THOMAS J. SWIECH

Date: 03/24/2011

AppFrm06 62-520939352

Driver Exclusion Endorsements

11515A. EXCLUSION OF NAMED DRIVER & PARTIAL REJECTION OF COVERAGES

WARNING! READ THIS ENDORSEMENT CAREFULLY!

This acknowledgment and rejection is applicable to all renewals issued by us or any affiliated insurer. However we must provide a notice with each renewal as follows:

"This Policy Contains A Named Driver Exclusion."

Nothing herein contained shall be held to alter, vary, waive or extend any of the terms, conditions, agreements or limits of the under mentioned policy other than as stated herein below.

Effective - 12:01 a.m., standard time. Attached to and forming part of Policy Number 62-520939352 issued to THOMAS J. SWIECH (Insured's name)

By: **Loya Insurance Company** (carrier name)

In consideration of the premium for which the policy is written, it is agreed that the company shall not be liable and no liability or obligation of any kind shall be attached to the company for losses or damages sustained after the effective date of this endorsement while any motor vehicle insured herein under is driver or operated by:

I further agree that none of the insurance coverage's afforded by this policy shall apply while the excluded driver is operating my covered auto or any other motor vehicle. I further agree that this endorsement will also serve as includes and incorporates my rejection of Uninsured/Underinsured Motorist Coverage and Personal Injury Protection while my covered auto or any motor vehicle is operated by the excluded driver(s). I further agree and acknowledge that my rejection of Uninsured/Underinsured Motorist Coverage was made only after the company provided premium costs for such coverage which are attached or otherwise made a part of this policy.



Acknowledged By:

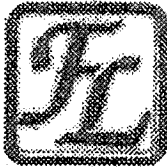
THOMAS J. SWIECH

Date: 03/24/2011

AppFrm07 62-520939352

Authorization Agreement for Direct Payments

http://www.fli.com/esign/download/file/name/AppFrm08_62520939...



LOYA INSURANCE COMPANY

Auto Specialist Since 1974

915-590-5692 • 1800 LULU TREVENO #201 • EL PASO, TX 79936

Authorization Agreement for Direct Payments

I (we) hereby authorize Fred Loya Insurance, and its subsidiaries, hereinafter called COMPANY to initiate monthly deductions from my (our) checking account, identified below, for payment of premium on the insurance policy issued to me (us) by COMPANY, and any renewals thereof, and to initiate credit entries to my (our) account in order to correct my erroneous deductions or provide a refund of premium. I (we) authorize the financial institution named below as the DEPOSITORY to accept and post entries to my account.

I (we) understand that this authorization allows COMPANY to adjust the monthly deductions to reflect any premium changes and policy renewals. COMPANY agrees to notify me (us) at least ten (10) days prior to making any deduction that will be less than the previous deduction by more than (\$1,000), or that will be greater than previous deduction.

CUSTOMER INFORMATION

Insured Name: **THOMAS J. SWIECH**

Co/Policy #: **62/520939352**

BANK INFORMATION

Name(s) on Account: **THOMAS J SWIECH**

Name of Financial Institution: [REDACTED]

Routing/Transit/ABA #: [REDACTED]

Account #: [REDACTED]

First Due Date: **04/13/2011**

Acct Type: [REDACTED]

Subsequent monthly payments will be drafted 5 days prior to your policy's payment due date.

This authorization will remain in effect until I (we) provide written notice to COMPANY and DEPOSITORY of its termination in such time and such manner as to afford COMPANY and DEPOSITORY a reasonable opportunity to act on it.

Insured Signature: 
THOMAS J. SWIECH

Date: **03/24/2011**

Acct Holder Signature: 
THOMAS J SWIECH

Date: **03/24/2011**

TO ENSURE ACCURACY, PLEASE ATTACH A SAMPLE CHECK MARKED "VOID"

IMPORTANT NOTE FOR CREDIT UNION MEMBERS: Many smaller credit unions use a different account number than the one shown on your check. You may wish to verify your account number through your local office to assure proper set up for withdrawals.

Please Note: Deduction date may be changed during the policy period. The consumer must receive a copy of this authorization.

I understand I must give Fred Loya Insurance at least ten (10) working days prior notice to cancel my bank draft (EFT).

AppFrm08 62-520939352

Authorization Agreement for Direct Payments

http://www.fli.com/esign/download/file/name/AppFrm09_62520939...



LOYA INSURANCE COMPANY

Auto Specialist Since 1974

915-590-5692 • 1800 LEE TREVINO #201 • EL PASO, TX 79936

PAYMENT SCHEDULE

Co/Policy #: 62/520939352

Next Due Date: 04/13/2011

Payment Number

Payment Draft Date

1st	04/08/2011
2nd	05/08/2011
3rd	06/08/2011
4th	07/08/2011
5th	08/08/2011
6th	09/08/2011

Insured Signature:

THOMAS J. SWIECH

Date: 03/24/2011

Acct Holder Signature:

THOMAS J SWIECH

Date: 03/24/2011

Please Note: Deduction date may be changed during the policy period. The consumer must receive a copy of this authorization.

AppFrm09 62-520939352



LOYA INSURANCE COMPANY

Auto Specialist Since 1974

915-590-5692 • 1800 LEE TREVINO #201 • EL PASO, TX 79936

NO BUSINESS USE STATEMENT

I hereby state and affirm that the vehicle/vehicles listed below is/are not used for business purposes.

AUTO#	YEAR	MAKE	MODEL	VIN#
1	2001	CHEV	SUBURBAN	3GNFK16T61G110504

Insured Signature:

THOMAS J. SWIECH

Date: 03/24/2011

AppFrm10 62-520939352

Auto Inspection Form

http://www.fli.com/esign/download/file/name/AppFrm12_62520939...



LOYA INSURANCE COMPANY

Auto Specialist Since 1974

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AUTO INSPECTION FORM

AUTO#	YEAR	MAKE	MODEL	VIN#	MILEAGE
1	2001	CHEV	SUBURBAN	3GNFK16T61G110504	0

NO MAJOR DAMAGES

Insured Signature:

THOMAS J. SWIECH

Date: 03/24/2011

AppFrm12 62-520939352

LOYA INSURANCE COMPANY

Auto Specialist Since 1974

1800 LEE TREVINO #201

EL PASO, TX 79936

800-554-0695

915 590-5692

AUTO INSURANCE QUOTE

QUOTE# 62 AD	EFF DATE	EXP DATE	DUE DATE	TERM	DATE	MS TIME
520938352	3/24/11	9/24/11	4/13/11	06	3/24/11	18:04:55

INSURED INFORMATION		AGENT#	B3983	ALB3
Name	SWIECH, THOMAS J	Name	FRED LOYA INS AGENCY INC.	
Address	[REDACTED]	Address	2710 SAN MATEO NE	
Ct/St/Zip	[REDACTED]	Ct/St/Zip	ALBUQUERQUE, NM 87110	
Home Phone	[REDACTED]	Phone	505-837-9100	
Work Phone	[REDACTED]	Fax	505-837-9636	
Cell Phone	[REDACTED]			

DISCOUNTS	Prior Cvg	Preferred

DRIVERS	SEX	AGE	MS	DOB	SR22	APC	PTS VIOLATIONS
1	M	54	S	4/18/56	N	N	

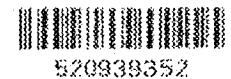
VEHICLES	ZIP CODE	YEAR	MAKE	MODEL	SYM	PAT	BUS USE
1	87112	2001	CHEV	SUBURBAN	15		N

QUOTE RESULTS	VEH# 1	VEH# 2	VEH# 3	VEH# 4	VEH# 5
Rated Driver # & Rated Points	1				
Driver Class & Driver Age	M 54	54			
Territory	1				
Comprehensive & Collision Deductible					
SPEC Value & SPEC Cost					

COVERAGE	TOTAL	COST	COST	COST	COST	COST
BI 25 50	114	114				
PD 10	114	114				
Medical						
UMBI 25 50	36	36				
UMPD 10	36	36				
Comprehensive						
Collision						
Towing						
Rental						
TAX PREMIUM	300	300				

Policy Fee	18.00				
GROSS PREMIUM	318.00				
Down Payment	55.00				
Monthly Payment	67.00				

Today Monthly 4/8/11



520938352

Thomas Swiech

DEF229

LOYA INSURANCE COMPANY

Auto Specialist Since 1974

1800 LEE TREVINO #201

EL PASO, TX 79936

800-564-0596

915-590-5692

SUPPLEMENTAL APPLICATION


I. LIST ALL PERSONS LIVING IN THE HOUSEHOLD.

NAME	DOB	AGE	YDE	MS	RELATION	EXCLUDED?
THOMAS SWIECH	[REDACTED]	54	35	5	SELF	NO

II. LIST ALL PERSONS DRIVING YOUR VEHICLE THAT LIVE OUT OF THE HOUSEHOLD.

NAME	DOB	AGE	YDE	MS	RELATION	EXCLUDED?


3/24/11
 INSURED SIGNATURE DATE


3/24/11
 WITNESS SIGNATURE DATE



LOYA INSURANCE COMPANY

Auto Specialist Since 1974

1800 LEE TREVINO #201

EL PASO, TX 79936

800-554-0595

915-590-5692

DRIVER TO VEHICLE ASSIGNMENT SUPPLEMENTAL

DRIVER NAME	YEAR	MAKE	MODEL
THOMAS SWIECH	01	Chev	Suburban

Thomas Swiech 3/24/11
INSURED SIGNATURE DATE

Gregory P. 3-24
WITNESS SIGNATURE DATE



520939352

NEW MEXICO MOTOR VEHICLE POLICY

If you pay your premium when due, we agree to provide this insurance, subject to all the terms and provisions of this policy, and up to the limits of Liability described in this policy and shown on the Declarations Page.

**LOYA INSURANCE
COMPANY**

YOUR DUTIES IN CASE OF AN ACCIDENT OR LOSS

Notice of Accident or Loss

NEW MEXICO AUTO POLICY

If there is an accident or loss arising out of ownership, maintenance or use of a vehicle, for which coverage may be provided under this policy, report it to us within twenty-four (24) hours or as soon as practicable by calling us at 1-800-554-0595.

**FOR MORE INFORMATION OR TO
MAKE A COMPLAINT, CALL:**

You or an insured person must report each accident or loss even if an insured person is not at fault. The following accident information should be reported as it is obtained:

Servicing office: (915) 590-5692
(800) 554-0595

1. time;
2. place;
3. circumstances of the accident or loss;
4. names and addresses of all persons involved;
5. names and addresses of any witnesses; and
6. the license plate numbers of the vehicles involved.

Claims Office: (915) 590-5692
(800) 880-0472

You should also notify the police within twenty-four (24) hours or as soon as practicable if:

1. you cannot identify the owner or operator of a vehicle involved in the accident; or
2. theft or vandalism has occurred.

Address all correspondence to:

OTHER DUTIES

Service Office
1800 Lee Trevino, Suite 201
El Paso, Texas 79936

A person claiming coverage under this policy must:

1. cooperate with us in any matter concerning a claim or lawsuit;
2. provide any written proof of loss we may reasonably require;
3. allow us to take signed and recorded statements, including sworn statements and examinations under oath, and answer all reasonable questions we may ask, when and as often as we may reasonably require;
4. promptly send us any and all legal papers relating to any claim or lawsuit;
5. attend hearings and trials as we require;
6. take reasonable steps after loss to protect the covered vehicle or non-owned vehicle from further loss. We will pay reasonable expenses incurred in providing that protection. If you fail to do so, any further damages will not be covered under this policy;
7. allow us to inspect and appraise the damage to a covered vehicle or non-owned vehicle before its repair or disposal;
8. submit to medical examinations at our expense by doctors we select as often as we may reasonably require; and
9. authorize us to obtain medical and other records.

GENERAL DEFINITIONS

Except as otherwise defined in this policy, terms appearing in boldface will have the following meaning:

1. "Accident" means a sudden, unexpected, and unintended occurrence.
2. "Bodily Injury" means bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease.
3. "Business" includes a trade, profession, or occupation.
4. "Covered Vehicle" means:
 - a. any vehicle shown on the Declarations Page;
 - b. any additional vehicle on the date you become the owner if:
 - i. you acquire the vehicle during the policy period shown on the Declarations Page;
 - ii. we insure all vehicles owned by you; and
 - iii. no other insurance policy provides coverage for that vehicle.

If we provide coverage for a vehicle you acquire in addition to any vehicle shown on the Declarations Page, we will provide the broadest coverage we provide for any vehicles shown on the Declarations Page. That coverage will be provided for a period of thirty (30) days after you become the owner. We will not provide coverage after this thirty-day period, unless within this period you ask us to insure the additional vehicle;

 - c. any replacement vehicle on the date you become the owner if:
 - i. you acquire the vehicle during the policy period shown on the Declarations Page;
 - ii. the vehicle that you acquire replaces one shown on the Declarations Page; and
 - iii. no other insurance policy provides coverage for that vehicle.

If the vehicle that you acquire replaces one shown on the Declarations Page, it will have the same coverage as the vehicle it replaces. You must ask us to insure a replacement vehicle within thirty (30) days after you become the owner if you want to continue any coverage you had under Part IV-Damage to a Vehicle. If the vehicle replaced did not have coverage under Part IV-Damage to a Vehicle, you may add coverage for the replacement vehicle. However if you are adding coverage under Part IV-Damage to a Vehicle this will not become effective until after you ask us to add the coverage and;

 - d. any trailer owned by you while drawn by or attached to a vehicle described in a, b, c above.
5. "Declarations Page" means the report from us listing:
 - a. the types of coverage you have elected;
 - b. the limit for each coverage;
 - c. the cost for each coverage;
 - d. the specified vehicles covered by this policy;
 - e. the types of coverage for each such vehicle; and
 - f. other information applicable to this policy.
6. "Loss" means sudden, direct, and accidental loss or damage.
7. "Non-owned vehicle" means any vehicle that is not owned by you, a relative, or the named insured's non-resident spouse.
8. "Occupying" means in, on, entering, or exiting.

9. "Owned" means the person:
 - a. holds legal title to the vehicle;
 - b. has legal possession of the vehicle that is subject to a written security agreement with an original term of six(6) months or more; or
 - c. has legal possession of the vehicle that is leased to that person under a written agreement for a continuous period of six (6) months or more.
10. "Owner" means any person who with respect to a vehicle:
 - a. holds legal title to the vehicle;
 - b. has legal possession of the vehicle that is subject to a written security agreement with an original term of six(6) months or more; or
 - c. has legal possession of the vehicle that is leased to that person under a written agreement for a continuous period of six (6) months or more.
11. "Relative" means a person residing in the same household as you, and related to you by blood, marriage, or adoption, including a ward, stepchild, or foster child. Unmarried dependent children temporarily away from home will be considered residents if they intend to continue to reside in your household.
12. "Vehicle" means a land motor vehicle:
 - a. of the private passenger, pickup body, or sedan delivery type;
 - b. designed for operation principally upon public roads;
 - c. with at least four(4) wheels; and
 - d. with a gross vehicle weight of 10,000 pounds or less.
13. "We", "Us", and "Our" mean the company providing the insurance as shown on the Declarations Page.
14. "You" and "Your" mean a person shown as named insured on the Declarations Page and that person's spouse if residing in the same household.

PART I - LIABILITY TO OTHERSINSURING AGREEMENT-BODILY INJURY

Subject to the limits of Liability, if you pay a premium for bodily injury liability coverage, we will pay damages, other than punitive or exemplary damages, for bodily injury for which an insured person becomes legally responsible because of an accident arising out of the ownership, maintenance, or use of a vehicle.

INSURING AGREEMENT-PROPERTY DAMAGE

Subject to the limits of Liability, if you pay a premium for property damage liability coverage, we will pay damages other than punitive or exemplary damages, for property damage for which an insured person becomes legally responsible because of an accident arising out of the ownership, maintenance, or use of a vehicle. We will settle or defend, at our option, any claim for damages covered by this Part I.

When used in this Part I

ADDITIONAL DEFINITIONS

1. "Insured Person" or "Insured Persons" means:
 - a. you or a relative with respect to an accident arising out of the ownership, maintenance, or use of a covered vehicle;
 - b. any person with respect to an accident arising out of that person's use of a covered vehicle with the express or implied permission of you or a relative;
 - c. a relative with respect to an accident arising out of the maintenance or use of a non-owned vehicle with the express or implied permission of the owner of the vehicle;
 - d. you with respect to an accident arising out of the maintenance or use of any vehicle with the express or implied permission of the owner of the vehicle;
 - e. any person or organization with respect only to vicarious liability for an accident arising out of the use of a covered vehicle or non-owned vehicle by a person described in a, b, c, or d above;
 - f. any additional interest insured designated by you in your application or by a change request agreed to by us, with respect to liability for an accident arising out of the use of a covered vehicle or non-owned vehicle by a person described in a, b, c, or d above.
2. "Property Damage" means physical damage to or destruction or loss of use of tangible property.

ADDITIONAL PAYMENTS

In addition to our Limit of Liability, we will pay for an insured person:

1. all expenses that we incur in the settlement of any claim or defense of any lawsuit;
2. interest accruing after entry of judgment until we have paid or tendered that portion of the judgment which does not exceed our Limit of Liability. This does not apply if we have not been given notice of suit or the opportunity to defend an insured person;
3. premiums on appeal bonds or attachment bonds required in any lawsuit we defend. We have no duty to purchase bonds in amounts exceeding our Limit of Liability, and we have no duty to apply for or furnish these bonds;
4. up to \$250 for a bail bond required because of an accident arising out of the ownership, maintenance, or use of a covered vehicle or non-owned vehicle. We have no duty to apply for or furnish this bond; and
5. reasonable expenses, including loss of earnings up to \$50 a day, incurred at our request.

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

Coverage under this Part I, including our duty to defend, does not apply to:

1. bodily injury or property damage arising out of the ownership, maintenance, or use of a vehicle or trailer while being used to

carry persons or property for compensation or a fee, including but not limited to, delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;

2. any liability assumed by an insured person under any contract or agreement;
3. bodily injury to an employee of an insured person arising out of or within the course of employment, except for domestic employees if benefits are neither paid nor required to be provided under workers compensation, disability benefits, or similar laws;
4. bodily injury or property damage arising out of an accident involving a vehicle or trailer while being used by a person while employed or engaged in the business of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles. However, this exclusion does not apply to you, a relative, or an agent or employee of you or a relative, when using a covered vehicle;
5. bodily injury or property damage resulting from any pre-arranged or organized racing, speed or demolition contest, stunting activities, or in practice or preparation for any such contest or activity;
6. bodily injury or property damage due to a nuclear reaction or radiation;
7. bodily injury or property damage for which insurance is afforded under a nuclear energy liability insurance contract;
8. any obligation for which the United States Government is liable under the Federal Tort Claims Act;
9. bodily injury or property damage caused by an intentional act of an insured person or at the direction of an insured person;
10. property damage to any property owned by, rented to, being transported by, used by, or in the charge of an insured person. However, this exclusion does not apply to a rented residence or a rented garage damaged by a covered vehicle;
11. bodily injury or property damage resulting from a relative's operation or use of a vehicle, other than a covered vehicle, owned by a person who resides with you; or
12. bodily injury or property damage resulting from your operation or use of a vehicle owned by you other than a covered vehicle.

LIMITS OF LIABILITY

The Limit of Liability shown on the Declarations Page is the most we will pay regardless of the number of:

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

If the Declarations Page shows that "combined single limits" or "CSL" applies, the amount shown is the most we will pay for the total of all damages resulting from any one (1) accident. We will apply the "each person" Limit of Liability for bodily injury as required by the law of the state listed on your application as your residence. However this provision does not change our total "each

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accident" Limit of Liability.

If your Declarations Page shows a split limit:

1. the amount shown for "each person" is the most we will pay for all damages due to a bodily injury to one (1) person;
2. subject to the "each person" limit, the amount shown for "each accident" is the most we will pay for all damages due to bodily injury sustained by two (2) or more persons in any one (1) accident; and
3. the amount shown for "property damage" is the most we will pay for the total of all property damage for which an insured person becomes liable as a result of any one accident.

The bodily injury limit for "each person" includes the total of all claims made for such bodily injury, including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

No one will be entitled to duplicate payments for the same elements of damages. Any payment to a person under this Part I shall be reduced by any payment to that person under Part III – Uninsured/Underinsured Motorist Coverage.

A vehicle and attached trailer are considered one (1) vehicle. Therefore, the Limits of Liability will not be increased for an accident involving a vehicle, which has an attached trailer.

FINANCIAL RESPONSIBILITY LAWS

When we certify this policy as proof of financial responsibility, this policy will be:

1. provided in accordance with the coverage defined in the New Mexico Mandatory Financial Responsibility Act (the "Act") regarding bodily injury, property damage, or both; and
2. subject to all provision of that Act.

You must reimburse us if we make a payment that we would not have made if this policy was not certified as proof of financial responsibility.

OTHER INSURANCE

If there is other applicable liability insurance or bond, we will pay only our share of the damages. Our share is the proportion that our Limit of Liability bears to the total of all applicable limits.

Any insurance we provide for a vehicle, other than a covered vehicle, will be excess over any other collectible insurance, self-insurance, or bond.

OUT-OF-STATE COVERAGE

If an accident to which this Part I applies occurs in any state or province other than the one which a covered vehicle is principally garaged, and the state or province has:

1. a financial responsibility or similar law requiring limits of liability for bodily injury or property damage higher than the limits shown in the Declarations Page, this policy will provide the higher limit; or

2. a compulsory insurance or similar law requiring a non-resident to maintain insurance whenever the non-resident uses a vehicle in that state or province, this policy will provide:
 - a. the required minimum amounts and types of coverage; or
 - b. any higher limit you have elected, provided you have paid the premium for higher limits.

PART II – MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

Subject to the Limit of Liability shown on the Declarations Page, if you pay a premium for Medical Payments Coverage, we will pay the usual and customary charge for reasonable and necessary expenses, incurred within three (3) years from the date of an accident, for medical and funeral services because of bodily injury:

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

Any dispute as to the usual and customary charge will be resolved between us and the service provider.

When used in this Part II:

ADDITIONAL DEFINITIONS

1. "Insured person" and "insured persons" mean:
 - a. you while occupying any vehicle, other than a vehicle owned by you which is not a covered vehicle;
 - b. a relative while occupying a covered vehicle or non-owned vehicle;
 - c. you or any relative when struck by a motor vehicle or trailer while not occupying a motor vehicle; and
 - d. any other person while occupying a covered vehicle.
2. "Usual and customary charge" means an amount which we determine represents a customary charge for services in the geographical area in which the service is rendered. We shall determine this customary charge through the use of independent sources of our choice.

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

Coverage under this Part II does not apply to bodily injury:

1. sustained while occupying a vehicle while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;
2. sustained while occupying any vehicle while being used as a residence or premises;
3. if workers' compensation benefits are available for the bodily

- injury;
4. arising out of an accident involving a vehicle while being used by a person while employed or engaged in the business of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles. However, this exclusion does not apply to you, a relative, or an agent or employee of you or a relative, when using a covered vehicle;
 5. resulting from any pre-arranged or organized racing, speed or demolition contest, stunting activity, or in practice or preparation for any such contest or activity;
 6. due to a nuclear reaction or radiation;
 7. for which insurance is afforded under a nuclear energy liability insurance contract;
 8. for which the United States Government is liable under the Federal Tort Claims Act;
 9. sustained by any person while occupying a covered vehicle without the express or implied permission of you or a relative; or
 10. sustained by you or a relative while occupying a non-owned vehicle without the express or implied permission of the owner.

LIMIT OF LIABILITY

The Medical Payments Limit of Liability shown on the Declarations Page is the most we will pay for each insured person injured in any one (1) accident, regardless of the number of:

1. claims made;
2. covered vehicles;
3. insured persons;
4. lawsuits brought;
5. vehicles involved in an accident;
6. premiums paid; or
7. policies issued by us.

Any amounts payable to an insured person under this Part II will be reduced by any amounts paid or payable for the same expense under Part I - Liability To Others or Part III - Uninsured Motorist Coverage.

OTHER INSURANCE

If there is other applicable vehicle medical payments insurance, we will pay only our share of the medical and funeral expenses. Our share is the proportion that our Limit of Liability bears to the total of all applicable limits. Any insurance that we provide for an insured person occupying a vehicle, other than a covered vehicle, will be excess over any other vehicle insurance providing payments for medical or funeral expenses.

PART III – UNINSURED MOTORIST COVERAGE

Subject to the Limits of Liability, if you pay a premium for Uninsured Motorist Bodily Injury Coverage, we will pay for damages which an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle or underinsured motor vehicle because of bodily injury:

1. sustained by an insured person;
2. caused by accident; and

3. arising out of the ownership, maintenance, or use of an uninsured motor vehicle or underinsured motor vehicle.

INSURING AGREEMENT – UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE

Subject to the Limits of Liability, if you pay a premium for Uninsured Motorist Property Damage Coverage, we will pay for damages which an insured person is entitled to recover from the owner or operator of an uninsured motor vehicle because of property damage:

1. caused by accident; and
2. arising out of the ownership, maintenance, or use of an uninsured motor vehicle.

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

ADDITIONAL DEFINITIONS

When used in this Part III:

1. "Insured person" and "insured persons" mean:
 - a. you or a relative;
 - b. any person occupying a covered vehicle;
 - c. any person occupying a non-owned vehicle operated by you or a relative that is being used with the permission of the owner as a temporary substitute vehicle for a covered vehicle that has been withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction; and
 - d. any person who is entitled to recover damages covered by this Part III because of bodily injury sustained by a person described in a, b, or c above.
2. "Property damage" means:
 - a. physical damage to or destruction of a covered vehicle; and
 - b. physical damage to or destruction of any property owned by an insured person which is contained in the covered vehicle at the time of the accident.
3. "Relative" shall also include:
 - a. your unemancipated minor child for whom you are required by law to provide financial support; and
 - b. the spouse of the named insured who does not reside in the same household as the named insured if that spouse had been residing in the same household as the named insured at the beginning of the policy period.
4. "Underinsured Motor Vehicle" means a land motor vehicle for which the sum of all bodily injury liability bonds or policies applicable at the time of the accident, is:
 - a. less than the coverage limit for Uninsured Motorist

- Coverage shown on the Declarations Page; or
- b. the proceeds of the liability bond or policy available for bodily injury to the insured person, after payment to other injured persons, is less than the coverage limit for Uninsured Motorist Coverage shown on the Declarations Page.

An underinsured motor vehicle does not include any vehicle or equipment:

- a. owned by you or a relative;
- b. owned by any governmental unit or agency;
- c. operated on rails or crawler treads;
- d. designed mainly for use off public roads, while not on public roads;
- e. while used as a residence or premises;
- f. shown on the Declarations Page of this policy; or
- g. not required to be registered as a motor vehicle.

5. "Uninsured motor vehicle means a land motor vehicle or trailer of any type:

- a. to which no liability bond or policy applies at the time of the accident;
- b. to which a liability bond or policy applies at the time of the accident, but the bonding or insuring company;
 - i. denies coverage; or
 - ii. is or becomes insolvent;
- c. to which a liability bond or policy applies at the time of the accident, but its limit of liability is less than the minimum limit of liability specified by the financial responsibility law of the state in which a covered vehicle is principally garaged; or
- d. that is a hit-and-run vehicle whose operator or owner cannot be identified and which causes bodily injury or property damage to an insured person arising out of physical or attempted physical contact, provided that the insured person, or someone on his or her behalf:
 - i. reports the accident to the police or civil authority within twenty-four (24) hours or as soon as practicable after the accident;
 - ii. within thirty (30) days thereafter filed with us a statement under oath of the cause or causes of action arising out of the accident; and
 - iii. at our request, make available for our inspection the motor vehicle the insured was occupying at the time of the accident.

An Uninsured motor vehicle does not include any vehicle or equipment:

- a. owned by you or a relative;
- b. owned or operated by a self-insurer under any applicable vehicle law, except a self-insurer that is or becomes insolvent;
- c. owned by any governmental unit or agency;
- d. operated on rails or crawler treads;
- e. designed mainly for use off public roads, while not on

public roads;

- f. while used as a residence or premises;
 - g. shown on the Declarations Page of this policy; or
 - h. not required to be registered as a motor vehicle.
6. "You and Your" mean the person shown as the first named insured on the Declarations Page, and that person's spouse if residing in the same household as the first named insured at the time of the accident.

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

Coverage under this Part III is not provided for bodily injury sustained by any person while using or occupying:

- 1. a vehicle while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;
- 2. a covered vehicle without the express or implied permission of you or a relative;
- 3. a non-owned vehicle without the express or implied permission of the owner; or
- 4. a vehicle owned by you or a relative, other than a covered vehicle.

Except while occupying a covered vehicle, coverage under this Part III is not provided for bodily injury sustained by the spouse of the person shown as the first named insured on the Declarations Page if that spouse does not reside in the same household as the first named insured at the time of the accident.

Coverage under this Part III will not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar laws:

- 1. workers' compensation law; or
- 2. disability benefits law.

Coverage under this Part III is not provided for property damage:

- 1. sustained while a covered vehicle is being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;
- 2. any Limit of Liability shown on the Declarations Page for "property damage" under this Part III; or
- 3. for the first \$250 of the amount of damage to property of that person as the result of any one accident.

Payments for property damage under this Part III are subject to the following provisions:

- 1. no more than one (1) deductible shall be applied to any one (1) accident; and

2. an adjustment for depreciation and physical condition will be made in determining the Limit of Liability at the time of the accident.

Any payment made to a person under this Part III shall reduce any amount that the person is entitled to recover under Part I – Liability To Others or Part IV – Damage To A Vehicle.

No one will be entitled to duplicate payments for the same elements of damages. Any judgment or settlement for damages against an operator or owner of an uninsured motor vehicle which arises out of a lawsuit brought without our written consent is not binding on us.

OTHER INSURANCE

If there is other applicable uninsured or underinsured motorist coverage, we will pay only our share of the damages. Our share is the proportion that our Limit of Liability bears to the total of all available coverage limits. Any insurance we provide shall be excess over any other uninsured or underinsured motorist coverage, except for bodily injury to an insured person when occupying a covered vehicle.

We will not pay for any damages which would duplicate any payment made for damages under other insurance.

ARBITRATION

Determination of whether an insured person is legally entitled to recover damages, and the amount of damages, will be made by agreement between the insured person and us. If no agreement is reached, the decision shall be made by arbitration if we or the insured person make a written demand for arbitration prior to the expiration of the bodily injury statute of limitations in the state in which the accident occurred. If a written demand for arbitration has been made, then each party shall select an arbitrator. The two arbitrators will select a third. If the two arbitrators cannot agree on a third arbitrator within thirty (30) days, then on joint application by us and the insured person, the third arbitrator will be appointed by a court having jurisdiction.

Each party will:

1. pay the expenses it incurs; and
2. bear the expenses of the third arbitrator equally; unless the arbitration costs are awarded to the prevailing party by the arbitrators.

Unless both parties agree otherwise, arbitration will take place in the county in which the insured person resides. Local rules of procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding as to whether the insured person is legally entitled to recover damages from an uninsured or

underinsured motorist, and the amount of damages. The arbitrators shall have no authority to award an amount in excess of the Limit of Liability. The decision of the arbitrators is binding only if the amount of the award does not exceed the minimum limit of liability specified by the financial responsibility laws of the state listed on your application as your residence. If the award of the arbitrators is in an amount which exceeds this minimum limit, either party may demand the right to a trial.

This demand must be made in writing within thirty (30) days of the arbitrator's decision. If the demand is not made within thirty (30) days, the amount of damages agreed to by the arbitrators will be binding.

Any lawsuit against us for benefits under this Part III must be commenced prior to the expiration of the bodily injury statute of limitations in the state in which the accident occurred.

PART IV – DAMAGE TO A VEHICLE

INSURING AGREEMENT – COLLISION COVERAGE

If you pay a premium for Collision Coverage, we will pay for loss to a:

1. covered vehicle for which Collision Coverage has been purchased;
2. non-owned vehicle; or
3. trailer.

When it collides with another object or overturns, subject to the Limits of Liability.

INSURING AGREEMENT – COMPREHENSIVE COVERAGE

If you pay a premium for Comprehensive Coverage, we will pay for comprehensive loss to a:

1. covered vehicle for which Comprehensive Coverage has been purchased;
2. non-owned vehicle; or
3. trailer

subject to the Limits of Liability.

A comprehensive loss is a loss to a covered vehicle, non-owned vehicle, or trailer, caused by any event other than collision, including, but not limited to, any of the following:

1. contact with an animal (including a bird)
2. explosion or earthquake;
3. fire;
4. malicious mischief or vandalism;
5. missiles or falling objects;
6. riot or civil commotion;
7. theft or larceny; or
8. windstorm, hail, water, or flood.

If you pay a premium for Comprehensive Coverage under this policy, we will pay you up to \$20 each day for thirty (30) days for any one (1) loss for:

1. transportation expenses incurred by you if a covered vehicle is stolen; or
2. loss of use damages that you are legally liable to pay if a non-owned vehicle is stolen.

Transportation expenses and loss of use damages coverage begins forty-eight (48) hours after you report the theft to us, and ends the earlier of when the covered vehicle or non-owned vehicle has been:

1. recovered and returned to you or its owner;
2. recovered and repaired;
3. replaced; or
4. if the covered vehicle or non-owned vehicle is deemed by us to be a total loss or unrecoverable, forty-eight (48) hours after we make an offer to pay the applicable limit of liability under this Part IV.

You must provide us written proof of your transportation expenses and loss of use damages. If we can pay the loss under either Comprehensive Coverage or Collision Coverage, we will pay under the coverage where you collect the most.

INSURING AGREEMENT – CUSTOM PARTS OR EQUIPMENT COVERAGE

Subject to the Limits of Liability, if you pay a premium for Comprehensive Coverage or Collision Coverage, we will pay for theft of, or damage to, custom parts or equipment resulting from any loss for which Comprehensive Coverage or Collision Coverage is provided under the terms of this policy. All payments for loss to custom parts or equipment shall be reduced by the applicable deductible; but only one (1) deductible may be applied to any one (1) loss in an accident which is covered by this Part IV.

Unless you pay a premium for Additional Custom Parts or Equipment Coverage, and it is shown on the Declarations Page, the Limit of Liability for loss to custom parts or equipment is the lowest of:

1. the actual cash value of such custom parts or equipment, reduced by the applicable deductible and by its salvage value if you or the owner retain the salvage;
2. the amount necessary to repair or replace such custom parts or equipment, reduced by the applicable deductible; or
3. \$1,000.

If you purchase Additional Custom Parts Or Equipment Coverage:

1. the \$1,000 limit shall not apply; and
2. the limit of liability set forth in the Additional Custom Parts Or Equipment Coverage shall apply.

Coverage for custom parts or equipment shall not cause our Limit of Liability for loss to a vehicle under this Part IV to be increased to an amount in excess of the actual cash value of the vehicle.

INSURING AGREEMENT – ADDITIONAL CUSTOM PARTS OR EQUIPMENT COVERAGE

If you pay a premium for Additional Custom Parts Or Equipment Coverage, the Limit of Liability for loss to custom parts or equipment is the lowest of:

1. the actual cash value of such custom parts or equipment, reduced by the applicable deductible and by its salvage value if you or the owner retain the salvage;
2. the amount necessary to repair or replace such custom parts or equipment, reduced by the applicable deductible; or
3. the declared value of such custom parts or equipment.

This coverage applies only to a covered vehicle for which Additional Custom Parts Or Equipment Coverage has been purchased.

Coverage for additional custom parts and equipment shall not cause our Limit Liability for loss to a vehicle under this Part IV to be increased to an amount in excess of the actual cash value of the vehicle.

ADDITIONAL DEFINITIONS

When used in this Part IV:

1. "Custom parts or equipment" means equipment, devices accessories, enhancements, and changes, other than those which are original manufacturer installed, which:
 - a. are permanently installed or attached; and
 - b. alter the appearance or performance of the vehicle.
 - c. This includes any electronic equipment, antennas, and other devices used exclusively to send or receive audio, visual, or data signals, or to play back recorded media, other than those which are original manufacturer installed, that are permanently installed in a covered vehicle or non-owned vehicle
 - d. using bolts or brackets, including slide-out brackets.
2. "Non-owned vehicle" means any vehicle that is not owned by you, a relative, a resident of your household, or the spouse of the named insured even if not residing in the same household as the named insured, while in the custody of, or being operated by, you or a relative with the express or implied permission of the owner.
3. "Property damage" means physical damage to, or destruction or loss of use of, tangible property.
4. "Total loss" means:
 - a. the theft of the covered vehicle if the covered vehicle is not recovered within thirty (30) days; or
 - b. any other loss to the covered vehicle that is payable under this Part IV if the cost to repair the damage to

the covered vehicle exceeds the actual cash value of the covered vehicle at the time of the loss.

5. "Trailer" means a non-motorized trailer, including a farm wagon or farm implement, designed to be towed on public roads by a land motor vehicle, that is:
 - a. owned by you; or
 - b. not owned by you, while being towed by a covered vehicle;
 - provided that the trailer;
 - i. is not used for commercial or business purposes;
 - ii. is not used as a primary residence;
 - iii. is not used as premises for office, store or display purposes;
 - iv. is not used as a passenger conveyance; and
 - v. does not have built in sleeping facilities.

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

Coverage under this Part IV does not apply for loss:

1. to a covered vehicle, non-owned vehicle, or trailer, while being used to carry persons or property for compensation or a fee including, but not limited to, delivery of magazines, newspaper, food, or any other products. This exclusion does not apply to shared-expense car pools;
2. to a non-owned vehicle or trailer rented by you or a relative if being maintained or used by a person while employed or engaged in any business. However, this exclusion does not apply if you have paid our business use surcharge;
3. to a non-owned vehicle or trailer, other than one rented by you or relative, if being maintained or used by a person while employed or engaged in any business not described in exclusion 4 below. This exclusion does not apply to the use by you or any relative of a non-owned passenger vehicle or trailer;
4. to a non-owned vehicle or trailer while being used or driven by a person while employed or engaged in the business of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicle;
5. to a covered vehicle or non-owned vehicle resulting from any pre-arranged or organized racing, speed or demolition contest, stunting activity, or in practice or preparation for any such contest or activity;
6. to a covered vehicle, non-owned vehicle, or trailer, due to a nuclear reaction or radiation;
7. to a covered vehicle, non-owned vehicle, or trailer, for which insurance is afforded under a nuclear energy liability insurance contract;
8. due to destruction or confiscation by government or civil authorities of a covered vehicle, non-owned vehicle, or trailer, because you or any relative engaged in illegal activities;
9. to a covered vehicle, non-owned vehicle, or trailer, caused by

an intentional act of you or a relative or at the direction of you or a relative;

10. to a covered vehicle, non-owned vehicle, or trailer, that is due and confined to:
 - a. wear and tear;
 - b. freezing;
 - c. mechanical or electrical breakdown or failure;
 - d. road damage to tires.

This exclusion does not apply if the damage results from the theft of a covered vehicle, non-owned vehicle, or a trailer;
11. due to theft or conversion of a covered vehicle, non-owned vehicle, or trailer;
 - a. by you, a relative, or any resident of your household;
 - b. prior to its delivery to you or a relative or
 - c. while in the care, custody, or control of anyone engaged in the business of selling the vehicle or trailer;
12. to tapes, compact discs, cassettes, and other recording or recorded media;
13. to any case or other container designed for use in storing or carrying tapes, compact discs, cassettes, or any other recording or recorded media.
14. to any device used for the detection or location of radar, laser, or any other recording or recorded media;
15. to custom parts or equipment in excess of the applicable Limit of Liability; or
16. to a covered vehicle, non-owned vehicle, or trailer, for diminution of value

LIMITS OF LIABILITY

1. The limit of liability for loss to a covered vehicle, non-owned vehicle, or trailer is the lowest of:
 - a. the actual cash value of the stolen or damaged property at the time of the loss, reduced by the applicable deductible shown on the Declarations Page, and by its salvage value if you or the owner retain the salvage;
 - b. the amount necessary to replace the stolen or damaged property, reduced by the applicable deductible shown on the Declarations Page;
 - c. the amount necessary to repair the damaged property reduced by the applicable deductible shown on the Declarations Page; or
 - d. any applicable Limit of Liability or Stated Amount Vehicle Coverage elected by you, reduced by its salvage value if you or the owner retain the salvage.

However, if the loss is to a trailer, the applicable Limit of Liability shall not exceed \$500.
2. Payments for loss covered under Collision Coverage, Comprehensive Coverage, Custom Parts Or Equipment Coverage are subject to the following provisions:
 - a. no more than one (1) deductible shall be applied to any one (1) covered loss;

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- b. if coverage applies to a non-owned vehicle, we will provide the broadest coverage applicable to any vehicle shown on the Declarations Page, however the highest deductible on any covered vehicle shall apply;
- c. if Stated Amount Vehicle coverage is elected by you, that stated Limit of Liability will be the total limit of Liability applicable for loss to a covered vehicle, including its custom parts or equipment;
- d. an adjustment for depreciation and physical condition will be made in determining the Limit of Liability at the time of loss;
- e. in determining the amount necessary to repair damaged property, our estimate will be based on:
 - i. the prevailing competitive labor rates charged in the area where the property is to be repaired, as reasonably determined by us; and
 - ii. the cost of repair or replacement parts and equipment which may be new, refurbished, restored, or used, including, but not limited to:
 - (a) original manufacturer parts or equipment and
 - (b) non original manufacturer parts or equipment.
 - f. the actual cash value is determined by the market value, age and condition of the vehicle at the time of loss occurs; and
 - g. duplicate recovery for identical elements of damages is not permitted under this policy.
- 3. If more than (1) vehicle is shown on your Declarations Page, Coverage will be provided as specified on the Declarations Page as to each vehicle.
- 4. Any amount paid or payable to a person under this Part IV shall be reduced by any amount paid for property damage to a covered vehicle under Part III – Uninsured/Underinsured Motorist coverage of this policy.

INSURING AGREEMENT – EMERGENCY TOWING AND LABOR COVERAGE

If you pay your premium for Emergency Towing And Labor Coverage for a covered vehicle, we will pay for towing and labor costs incurred by you as a result of the disablement of the covered vehicle for which this coverage has been purchased, or for disablement of a non-owned vehicle, subject to the Limit of Liability shown on the Declarations Page, provided that:

- 1. the labor is performed at the place of disablement; and
- 2. the disablement does not occur at your residence.

INSURING AGREEMENT – RENTAL REIMBURSEMENT COVERAGE

Subject to the Limit of Liability, if you pay a premium for Rental Reimbursement Coverage, we will reimburse rental charges incurred when you rent a vehicle from a rental agency or vehicle

repair shop due to a loss to a covered vehicle that is payable under Comprehensive Coverage or Collision Coverage under this Part IV.

However, this coverage:

- 1. does not apply to theft of a recovered vehicle; and
- 2. applies only to loss to a covered vehicle which has been purchased.

Our limit of liability is the amount and the number of days shown on the Declarations Page.

Rental charges will be reimbursed beginning:

- 1. when the covered vehicle cannot be driven due to a loss; or
- 2. if the covered vehicle can be driven, when you deliver the covered vehicle to a vehicle repair shop for repairs due to the loss; and ending the earlier of when the covered vehicle has been:
 - a. returned to you;
 - b. repaired;
 - c. replaced; or
 - d. if the covered vehicle is deemed by us to be a total loss; forty eight (48) hours after we make an offer to pay the applicable limit of Liability under this Part IV.

You must provide us written proof of your rental charges. Duplicate recovery for identical elements of damages is not permitted under this policy.

LOAN/LEASE PAYOFF COVERAGE

If you pay a premium for Loan/Lease Payoff Coverage for a covered vehicle and the covered vehicle for which coverage has been purchased sustains a total loss, we will pay, in addition to any amounts otherwise payable under this Part IV, the difference between:

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

DEF242

However, our payment under this Loan/Lease Payoff Coverage shall not exceed twenty five percent (25%) of the actual cash value of the covered vehicle at the time of the total loss.

Loan/Lease Payoff Coverage applies only while the covered vehicle is covered for both Collision Coverage and Comprehensive Coverage.

PAYMENT OF LOSS

At our expense, we may return any recovered stolen property to you or to the address shown on the Declarations Page, with payment for any damage resulting from the theft. We may keep all or part of the property at the agreed or appraised value. We may settle any loss with appraised value. We may settle any loss with you or the owner or lien holder of the property.

NO BENEFIT TO BAILEE

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

LOSS PAYEE AGREEMENT

Payment for loss to a covered vehicle will be made according to your interest and the interest of any loss Payee or lien holder shown on the Declarations Page or designated by you. Payment may be made to both jointly, or separately, at our discretion.

Where fraud, misrepresentation, material omission, or intentional damage has been committed by or at the direction of you or a relative, the Loss Payee or lien holder's interest will not be protected.

We will be entitled to the Loss Payee or lien holder's rights of recovery, to the extent of our payment to the Loss Payee or lien holder.

OTHER INSURANCE

If there is other applicable insurance, we will pay only our share of the loss. Our share is the proportion that our Limit of Liability bears to the total of all applicable limits of liability. However, any insurance that we provide for a vehicle other than a covered vehicle, or for any trailer, will be excess over any other collectible source of recovery including, but not limited to:

1. any coverage provided by the owner of the non-owned vehicle or trailer; and
2. any other applicable physical damage insurance.

APPRAISAL

If we cannot agree with you on the amount of a loss, then we or you may demand an appraisal of the loss. If so each party shall appoint a competent and impartial umpire chosen by the appraisers. The amount of loss agreed to by any two will be binding. You will pay your appraiser's fees and expenses. Payment of the umpire and all other expenses of the appraisal will be shared equally between us and you. Neither we nor you waive any rights under this policy by agreement to an appraisal.

GENERAL PROVISIONS

POLICY PERIOD AND TERRITORY

This policy applies only to those accidents and losses occurring during the policy period shown on the Declarations Page and which occur within any state, territory, or possession of the United State of America, or any province of Canada, or while a covered vehicle, non-owned vehicle or trailer is being transported between their ports.

POLICY CHANGES

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

The premium for each vehicle is based on information we have received from you or other sources. You agree to cooperate with us in determining if this information is correct and complete, and you will notify us if it changes during the policy period. If this information is incorrect, incomplete, or changes during the policy period we may adjust your premium during the policy period, or take other appropriate action. To properly insure your vehicle, you must promptly notify us when:

1. you change your address;
2. any resident operators are added or deleted; or
3. you acquire an additional or replacement vehicle.

Changes that may result in a premium adjustment are contained in our rates and rules. These include but are not limited to:

1. changes in the number, type, or use classification of covered vehicles;
2. changes in operators using covered vehicles or changes in their marital status;
3. a relative obtaining a driver's license or operator's permit;
4. changes in the place of principal garaging of any covered vehicle;
5. changes in coverage, deductibles, or limits of liability; or

6. changes in rating territory or discount eligibility.

TERMS OF POLICY CONFORMED TO STATUTES

If any provision of this policy fails to conform with the legal requirements of the state listed on your application as your residence, the provision shall be deemed amended to conform with such legal requirements. All other provisions shall be given full force and effect. Any disputes as to the coverages provided or the provisions of this policy shall be governed by the law of the state listed on your application as your residence.

TRANSFER

This policy may not be transferred to another person without our written consent. If a named insured dies, this policy will provide coverage until the end of the policy periods for the legal representative of the named insured, while acting as such, and for persons covered under this policy on the date of the name insured's death.

FRAUD OR MISREPRESENTATION

This policy was issued in reliance upon the information provided on your insurance application. We may void this policy if you or an insured person made incorrect statements or representations to us with regard to any material fact or circumstance, or knowingly concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, at the time application was made. We may void this policy due to fraud or misrepresentation after the occurrence of an accident or loss. However, if we void this policy, this shall not affect coverage under Part I – Liability to others up to the minimum limits required by the New Mexico Mandatory Financial Responsibility Act if the accident occurs before we notify the named insured that the policy is void. If we void this policy, you must reimburse us if we make a payment. No person who engages in fraudulent conduct in connection with an accident or claim shall be entitled to receive any payment under this policy.

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

PAYMENT OF PREMIUM

If your initial premium payment is by check, draft, or any remittance other than cash, coverage under this policy is conditioned upon the check, draft, or remittance being honored upon presentment. If the check, draft, or remittance is not honored upon presentment, this policy may at our option, be deemed void from its inception. This means that we will not be liable under

this policy for any claims or damages, which would otherwise be covered if the check, draft, or remittance had been honored upon presentment.

A charge may be added to your account if:

1. you tender a check, draft, remittance or other method of payment to us for any full or partial payment of your premium, other than your initial payment, and the check, draft, remittance or other method is returned to us or refused because of insufficient funds, a closed account, or a stop payment; or
2. your premium payment is received after the due date but prior to cancellation.

CANCELLATION

You may cancel this policy by calling or writing us, and stating the future date that you wish the cancellation to be effective. We may cancel the policy by mailing a notice of cancellation to the named insured shown on the Declarations Page at the last known address appearing in our records.

If you do not pay the required premium for this policy when due, this policy may be cancelled. If we cancel this policy because you did not pay the required premium for this policy when due, notice will be mailed at least ten (10) days before the effective date of cancellation.

We may cancel this policy for any reason within the first sixty (60) days of the initial policy period. If we cancel this policy within the first sixty (60) days of the policy period, notice will be mailed at least ten (10) days before the effective date of cancellation.

After this policy is in effect for more than sixty (60) days or if this is a renewal or continuation policy, if we cancel this policy due to a substantial change in risk, notice will be mailed at least thirty (30) days before the effective date of cancellation.

After this policy is in effect for more than sixty (60) days or if this is a renewal or continuation policy, if we cancel the policy for any reason other than nonpayment of premium or due to a substantial change in risk, notice will be mailed at least fifteen (15) days before the effective date of cancellation.

After this policy is in effect for more than sixty (60) days or if this is a renewal or continuation policy, we may cancel only for one (1) or more of the following reasons:

1. you do not pay the required premium for this policy when due;
2. the policy was obtained through material misrepresentation, fraudulent statements, omissions or concealment of facts material to the acceptance of the risk or to the hazard assumed by us;
3. willful or negligent acts or omissions by an insured person

- 4. loss of driving privileges through suspension or revocation of your operator's license or that of a covered vehicle;
- 5. the named insured presented a claim based on fraud or material misrepresentation;
- 6. reasonable cause;
- 7. a substantial change in the risk assumed by us; or
- 8. any other reason specified by law or contained in the rules or regulations of the Superintendent of Insurance of the State of New Mexico.

CANCELLATION REFUND

Upon cancellation, you may be entitled to a premium refund. However, our making or offering of a refund is not a condition of cancellation.

However, we shall retain a cancellation fee if this policy is cancelled at your request or if cancellation is for nonpayment of premium. If this policy is cancelled, coverage will not be provided after the effective date shown in a notice of cancellation.

NONRENEWAL

If we decide not to renew or continue this policy we will mail notice of non renewal to the named insured shown on the Declarations Page at the last known address appearing in our records. Notice will be mailed at least thirty (30) days before the end of the policy period. If the policy period is other than one (1) year, we will have the right not to renew or continue this policy only at each anniversary of its original effective date or earlier if permitted by state law.

PROOF OF NOTICE

Proof of mailing of any notice will be sufficient proof of notice.

AUTOMATIC TERMINATION

- Coverage for a covered vehicle shall automatically terminate:
- 1. when a person other than you or a relative becomes the owner of the vehicle; or
 - 2. on the effective date of any other motor vehicle insurance policy covering that vehicle.

COVERAGE CHANGES

If we make a change which broadens a coverage you have under this edition of your policy, without additional charge, you will receive the broadened coverage. The broadened coverage applies on the date the coverage change is implemented in your state.

This provision does not apply to a general program revision or our issuance of a subsequent edition of your policy. Otherwise, this policy can be changed only by endorsement issued by us.

LEGAL ACTION AGAINST US

We may not be sued unless there is full compliance with all the terms of this policy. Any lawsuit against us by you, a relative, or any other insured person must be commenced following an accident, or an alleged breach of our obligation under this policy, within the time period set forth as the bodily injury statute of limitations in the laws of the state listed in our records as your principal address.

We may not be sued for payment under Part II liability to others until the obligation of an insured person to pay is finally determined either by final judgment against that person or by written agreement of the insured person, the claimant, and us. No one will have any right to make us a party to a lawsuit to determine the liability of an insured person.

OUR RIGHTS TO RECOVER PAYMENT

In the event of any payment under this policy, we are entitled to all the rights of recovery that the insured person whom payment was made has against another.

That insured person must sign and deliver to us any legal papers relating to that recovery, do whatever else is necessary to help us exercise those rights, and do nothing after an accident or loss to prejudice our rights.

However, we may not assert rights of recovery against any person who was using a covered vehicle with your express or implied permission for any payment under Part IV – Damage To A Vehicle.

When an insured person has been paid by us under this policy and also recovers from another person, entity, or organization, the amount recovered will be held by the insured person in trust for us and reimbursed to us to the extent of our payment.

If recovery is made by an insured person under this policy from a responsible party or that party's insurer without our written consent, the insured person's rights to payment under any affected coverage will no longer exist.

BANKRUPTCY

The bankruptcy or insolvency of an insured person will not relieve us of any obligations under this policy.

NAMED OPERATOR-NON-OWNED VEHICLE COVERAGE

If you elect Named Operator-Non-Owned Vehicle Coverage, you agree with us that this policy is amended as following:

1. GENERAL DEFINITIONS

The general policy definition of "you" and "your" is deleted and replaced by the following:

- a. "You" and "Your" mean the person shown as the named insured on the Declarations Page.
- b. The general policy definition of "covered vehicle" is deleted and no coverage is provided with respect to a covered vehicle under this policy.

2. PART I - LIABILITY TO OTHERS

ADDITIONAL DEFINITION: When used in Part I, the definition of "insured person" and "insured persons" is deleted and replaced by the following:

- "Insured person" and "insured persons" mean:
 - a. you when operating a vehicle other than a vehicle owned by you or a relative, with express or implied permission of the owner; and
 - b. any person or organization with respect only to vicarious liability for an accident arising out of the use of a non-owned vehicle by you with the express or implied permission of the owner.

3. PART II - MEDICAL PAYMENTS, PERSONAL INJURY PROTECTION, OR NO-FAULT MEDICAL COVERAGE

ADDITIONAL DEFINITION: When used in Part II, the definition of "insured person" and "insured persons" is deleted and replaced by the following:


- "Insured person" and "insured persons" mean you:
 - a. while occupying any vehicle other than a vehicle owned by you; or
 - b. when struck by a motor vehicle or trailer while not occupying a motor vehicle.

4. PART III - UNINSURED/UNDERINSURED MOTORIST COVERAGE

ADDITIONAL DEFINITION: When used in Part III, the Additional Definition of "insured person" and "insured persons" is deleted and replaced by the following:

- "Insured person" and "insured persons" mean:
 - a. you; and
 - b. any person who is entitled to recover damages covered by Part III because of bodily injury to you.

In **Witness Whereof**, the company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by a duly authorized representative of the company.


PRESIDENT


SECRETARY

FILED
2ND JUDICIAL DISTRICT COURT
Bernalillo County
12/6/2024 11:39 AM
KATINA WATSON
CLERK OF THE COURT
Yarid M Vasquez-Venegas

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

THOMAS SWIECH, individually and on behalf of
other similarly situated individuals,

Plaintiff,

v.

LOYA INSURANCE COMPANY,

Defendant.

No. D-202-CV-2024-09620

**PLAINTIFF'S CERTIFICATION
REGARDING ARBITRATION UNDER RULE LR2-603**

KEDAR BHASKER, counsel for Plaintiff, certifies that:

 This case is subject to referral to arbitration under Local Rule 603. No party seeks relief other than a money judgment and no party seeks an award in excess of \$50,000 inclusive of punitive damages and exclusive of interest, costs and attorneys' fees.

 X This case is not subject to referral to arbitration under Local Rule 603 because at least one party seeks relief other than a money judgment and/or at least one party seeks an award in excess of \$50,000 inclusive of punitive damages and exclusive of interest, costs and attorneys' fees.

Respectfully submitted,
/s/ Kedar Bhasker
KEDAR BHASKER
Attorney for Plaintiff
2741 Indian School Rd. NE
Albuquerque, NM 87106
Phone: 505 407-2088
Kedar@bhaskerlaw.com

Corbin Hildebrandt
CORBIN HILDEBRANDT P.C.
2741 Indian School Rd. NE
Albuquerque, NM 87106
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corbin@hildebrandtlawnm.com

Geoffrey Romero
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mz@vozhlaw.com

Counsel for the Plaintiff

FILED
2ND JUDICIAL DISTRICT COURT
Bernalillo County
12/6/2024 11:39 AM
KATINA WATSON
CLERK OF THE COURT
Yarid M Vasquez-Venegas

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

THOMAS SWIECH, individually and on behalf of
other similarly situated individuals,

Plaintiff,

v.

LOYA INSURANCE COMPANY,

Defendant.

No. D-202-CV-2024-09620

JURY DEMAND

Plaintiff Thomas Swiech, individually and on behalf of other similarly situated individuals, by and through his undersigned counsel of record, hereby demands a trial by jury of twelve (12) jurors in the above entitled and numbered cause and states Plaintiff has paid a jury fee in the amount of \$300.00.

Respectfully Submitted:

LAW OFFICE OF KEDAR BHASKER

/s/ Kedar Bhasker

KEDAR BHASKER
Attorney for Plaintiff
2741 Indian School Rd. NE
Albuquerque, NM 87106
Phone: 505 407-2088
Kedar@bhaskerlaw.com

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mz@vozhlaw.com

Counsel for the Plaintiff

FILED
 2ND JUDICIAL DISTRICT COURT
 Bernalillo County
 1/6/2025 12:04 PM
 KATINA WATSON
 CLERK OF THE COURT

SUMMONS	
District Court: SECOND JUDICIAL Bernalillo County, New Mexico P.O. Box 488 / Albuquerque, NM 87103-0488 400 Lomas Blvd. NW / Albuquerque, New Mexico 87102 Court Telephone No.: 505-841-8400	Case Number: D-202-CV-2024-09620 Assigned Judge: Elaine P. Lujan
Plaintiff(s): THOMAS SWIECH, individually and on behalf of other similarly suited individuals v.	Defendant: Loya Insurance Company c/o Office of Superintendent of Insurance PO Box/1120 Paseo De Peralta, Rm 428 Santa Fe, NM 87504-1689/87501
Defendant(s): LOYA INSURANCE COMPANY	

Alyssa Garza


TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066.


Dated: Albuquerque, New Mexico

12/9/2024

CLERK OF DISTRICT COURT
 Katina Watson

By:  SECOND JUDICIAL DISTRICT COURT
 Clerk of the Court

Dep


 Deputy Clerk

Sofia Apodaka-Morales

/s/ Kedar Bhasker

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 BHASKER LAW
 2741 Indian School Rd. NE

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mz@vozhilaw.com

Counsel for the Plaintiff

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 OF THE NEW MEXICO
RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

RETURN¹

STATE OF NEW MEXICO)
)ss
COUNTY OF _____)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the ____ day of _____, 2024, by delivering a copy of this summons, and a copy of the First Amended Complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

to the defendant _____ (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)

to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (used when service is by mail or commercial courier service).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at _____ (insert defendant's last known mailing address) a copy of the summons and complaint.

to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ (insert defendant's business address) and by mailing the summons and complaint by first class mail to the defendant at _____ (insert defendant's last known mailing address).

to _____, an agent authorized to receive service of process for defendant _____.

to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ (used when defendant is a minor or an incompetent person).

to _____ (name of person), _____, (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: _____

Signature of person making service

Title (if any)

Subscribed and sworn to before me this ____ day of _____, 2024

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTES

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.
2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013.]

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE



SUPERINTENDENT OF INSURANCE

Alice Kane

COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT JUDICIAL DISTRICT

THOMAS SWIECH
Plaintiff,

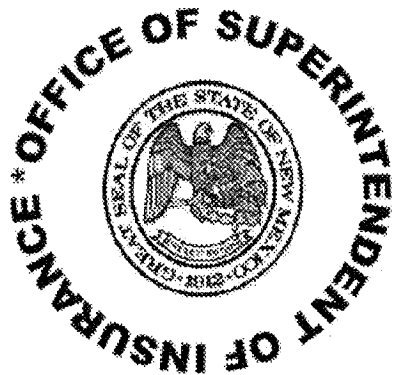
v.

D-202-CV-2024-09620

LOYA INSURANCE COMPANY
Defendants,

ACCEPTANCE OF SERVICE

I, Alice Kane, Superintendent of Insurance of the State of New Mexico, do hereby certify that a copy of a Complaint and Summons was served on Loya Insurance Company on 12/16/2024 as provided in Section 59A-5-31 and 59A-5-32 NMSA 1978, and was received by said company on 12/16/2024 confirmed by Electronic Acceptance.



In Witness Whereof, I have
hereunto set my official seal
on December 17, 2024.

Superintendent of Insurance

Main Office: 1120 Paseo De Peralta, 4th Floor, Santa Fe, NM 87501
Satellite Office: 6200 Uptown Blvd NE, Suite 400, Albuquerque, NM 87110
Main Phone: (505) 827-4601 | Toll Free: (855) 4-ASK-OSI
www.osi.state.nm.us

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE



SUPERINTENDENT OF INSURANCE

Alice Kane

12/16/2024

SOP ID 8056

Loya Insurance Company

11900 North 26th Street, Suite 200

Edinburg, TX 78539

agentforprocess@fredloya.com

RE: Thomas Swiech V. Loya Insurance Company

D-202-CV-2024-09620

Dear Sir or Madam:

In accordance with the provisions of NMSA 1978, Sections 59A-5-31 & 59A-5-32, enclosed is a copy of a Complaint and Summons on the above styled cause. Service was accepted on your behalf on 12/16/2024.

Respectfully,

A handwritten signature in cursive script that reads 'Alice Kane'.

Alice Kane

Superintendent

Main Office: 1120 Paseo De Peralta, 4th Floor, Santa Fe, NM 87501
Satellite Office: 6200 Uptown Blvd NE, Suite 400, Albuquerque, NM 87110
Main Phone: (505) 827-4601 | Toll Free: (855) 4-ASK-OSI

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