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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

GENE ACHZIGER, individually and as the  
representative of all persons similarly situated,

Plaintiff,

v.

IDS PROPERTY CASUALTY INSURANCE  
COMPANY a/k/a "AMERIPRISE,"

Defendants

NO.

CLASS ACTION COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF;  
FOR BREACH OF CONTRACT, FOR  
VIOLATION OF WASHINGTON  
INSURANCE CODE AND WASHINGTON  
CONSUMER PROTECTION ACT

COMES NOW, Gene Achziger, Plaintiff in the above styled and numbered cause and files this, his Original Class Action Complaint, as the proposed Class Representative of a Class to be composed of certain insureds of IDS PROPERTY CASUALTY INSURANCE COMPANY a/k/a "AMERIPRISE" (hereafter "IDS") with policies issued in the State of Washington, and in support thereof alleges as follows:

I. INTRODUCTION

1.1 This actions seeks to recover damages suffered by Plaintiff and the Members of the Class, all IDS insureds within the State of Washington as a result of IDS's breach of its policy of insurance and violation of the Washington Administrative Code and as a result, its violation of the Washington Consumer Protection Act.

1.2 Throughout the proposed class period, IDS advertised, solicited, and sold

CLASS ACTION COMPLAINT - 1

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Exhibit A

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automobile insurance policies providing Comprehensive, Collision, and Uninsured Motorist Coverage in the State of Washington. These policies, like the policy sold to Gene Achziger, offered the identical promise to pay for legally recoverable losses and damage to insured vehicles. The Insuring obligation is found in Coverage C (Uninsured Motorist Property Damage “UIM PD”), and Coverage C (Collision and Comprehensive).

1.3 Each of these coverage promises to pay for all “property damage”, a defined bolded term.

1.4 While there was (until March 10, 2013) no express exclusion for loss in value or “diminished value” in IDS’s policy, Coverage D states that IDS will pay up to “the actual cash value of the damaged property or the amount need to repair or replace it with like kind and quality, whichever is less.” This language has been authoritatively construed by the Courts of Washington, first on March 10, 2010 by the Court of Appeal (*Moeller v. Farmers Ins. Co. of Wa*, 155 Wn.App. 133, 229 P.3d 857 (Div. 2 2010), and then on December 22, 2011 by the Washington Supreme Court (*Moeller v. Farmers Ins. Co. of Wa.*, 173 Wn.2d 264, 267 P.3d 998 (2011), as providing coverage for “diminished value after a car is repaired.”

1.5 Coverage C in the IDS policy has at no time had any exclusionary language to address the losses from the “diminished value after a car is repaired.”

1.6 Plaintiff claims that when certain automobiles, his own, and those within the proposed Class, sustain damage to their structural systems and bodies, they cannot be repaired to their pre-accident condition, and are as a result tangibly different than they were pre-accident. This causes the vehicles to suffer a loss in value called “diminished value” at the time of the accident.

1.7 IDS’s policy language is identical to that in the policy interpreted in the Moeller decisions and therefore coverage for diminished value was not excluded from

1 their policy. Faced with decisions from the Court of Appeal, and then the  
2 Washington Supreme Court, IDS started on March 10, 2013, on a rolling basis, to  
3 begin to add an express exclusion for diminished value as an endorsement when  
4 policies were renewed or new policies issued. However, this exclusion  
5 (Endorsement AMWA13a-d) only applied to claims under the Comprehensive  
6 and Collision coverage (coverage D) and did not apply to UIM PD, and was  
7 moreover not retroactive to claims made under then in force policies issued  
8 without the endorsement's exclusionary language.

9 1.8 Despite knowing that diminished value was a non-excluded loss under Coverages  
10 C and D, and not even attempting to exclude the loss under Coverage C (UIM  
11 PD), IDS did not inform its insureds regarding coverage for diminished value nor  
12 did it adjust their losses to include any losses due to diminished value. Instead,  
13 IDS continued with its practice of failing to disclose the loss or coverage, and  
14 failing to adjust losses to consider and include payment for diminished value.

15 1.9 On October 4, 2013, Mr. Achziger was involved in an auto accident with his 2008  
16 Toyota Tacoma 2D 6' bed, 110" WB Pick-up while insured by IDS. The vehicle  
17 had approximately 56,207 miles on it at the time of the accident. As shown by the  
18 repair estimate, the vehicle required paint and body work, as well as  
19 frame/structural repair, and the cost of repair was over \$1,000. The claimed was  
20 covered by IDS under Mr. Achziger's UIM PD coverage (Coverage C).

21 1.10 As a result of the damage suffered in the accident, Mr. Achziger's vehicle was  
22 worth less after it was repaired than it was before the accident. Mr. Achziger's  
23 vehicle, due to the nature of its damage was tangibly, and identifiably, different  
24 after the accident and after the repairs. Since the areas of repaired damage would  
25 be detectable in any later inspection, the vehicle was worth less (it had  
26 "diminished value") as a result of the accident and after the accident, irrespective

1 of any repairs that might or could be done to the vehicle.

2 1.11 Like other members of the proposed Class, when Mr. Achziger presented his  
3 vehicle to IDS to have his loss adjusted and paid, IDS neither informed Mr.  
4 Achziger of the availability of coverage for diminished value, nor did it adjust the  
5 loss to include diminished value. IDS instead simply had an estimate prepared for  
6 the cost of repair of the vehicle, not the entire covered damages and loss incurred  
7 by Mr. Achziger.

8 1.12 Plaintiff alleges that IDS's failure to pay for this type of loss under its Washington  
9 insurance policy's comprehensive, collision, and UIM PD coverage breached its  
10 contract, and that its course of conduct in addressing (or failing to address)  
11 diminished value in claims handling violated the Washington Administrative  
12 Code and constitutes an unfair business practice.

13 II. JURISDICTION AND VENUE

14 2.1 IDS transacts business in Pierce County, Washington. Venue is therefore proper  
15 pursuant to RCW 4.12.025 section (1) and (3)(d) as the county in which the  
16 Defendant transacts business.

17 2.2 The claims asserted herein exceed the minimum jurisdiction amount of this Court  
18 but are less than \$75,000.00, including exemplary damages and attorney's fees,  
19 per Class member.

20 2.3 Defendant is a resident of, and a citizen of, Washington under 28 USC §  
21 1332(c)(1) and § 1332(c)(1)(A) and © such that diversity does not exist.

22 2.4 Mr. Achziger is a citizen of the State of Washington. All members of the  
23 proposed Class are insured under policies issued in and for the State of  
24 Washington for vehicles registered in the State of Washington, and as a result  
25 nearly all are Washington residents and citizens. Less than one percent (1%) of  
26 the members of the proposed Class will be citizens of other States, and will then

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be connected to Washington State via their vehicles and insurance policies. As a result far more than two-thirds of all members of the proposed Class are citizens of Washington, IDS is a citizen of Washington, and the principle injuries resulting from the alleged conduct and any related conduct of IDS occurred and were incurred in Washington. As such under 28 USC § 1332(d)(4)(A) and (B) no Federal jurisdiction exists under the Class Action Fairness Act (“A district court shall decline to exercise jurisdiction under paragraph (2) -”) and this case is not removable.

III. THE PARTIES

- 3.1 Plaintiff, Gene Achziger (“Mr. Achziger”) is an adult citizen of Washington. Mr. Achziger was insured under a policy of insurance issued by IDS. That policy provided coverage for Collision, Comprehensive, and UIM PD losses.
- 3.2 IDS Property Casualty Insurance Company (“IDS”) is headquartered in DePere WI, and is domiciled in that State. The company does business, under the name “Ameriprise Auto & Home Insurance” or “Ameriprise”

THE COMMON COURSE OF CONDUCT BY IDS

- 3.3 IDS solicits and advertises consumers to purchase comprehensive, collision, and UIM PD coverage for their vehicles from IDS.
- 3.4 The policy that IDS used throughout the Class period promises that IDS will: “pay compensatory damages which an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle due to.... property damage caused by accident....” [Coverage C] and “We will pay for loss to your insured car caused by: 1. Collision...or 2. Other than collision (Comprehensive)... less any applicable deductibles shown in the declarations” [Coverage D]. For purposes of the issues in this case, these coverage clauses are identical in there scope of coverage. Both cover any loss in vehicle value or

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diminished value.

3.5 All of the IDS coverages have the same “limits of liability” clause in them, promising to pay up to “the actual cash value of the stolen or damaged property or the amount needed to repair or replace it with like kind and quality, whichever is less,” The language in this clause facially is not an exclusion for diminished value, and has been authoritatively construed in Moeller as not excluding diminished value from coverage.

3.6 Despite having not excluded diminished value as a loss, rather than informing members of the potential Class about the coverage provided by their policies and adjusting the loss, IDS failed to disclose pertinent coverages and benefits and did not adjust claims to address the damage which results from diminished value.

3.7 On October 24, 2012, IDS submitted an endorsement to the Washington Insurance Commissioner to exclude diminished value from the coverage provided under Coverage D (collision and comprehensive). This endorsement was approved for use, and began to be added to new policies, and upon renewals, on March 10, 2013. It stated as Exclusion #14 to Coverage D any loss: “ To your insured car or any non-owned vehicle due to diminution in value.” Diminution in value is further defined in the endorsement as “the actual or perceived loss in market or resale value or actual cash value which results from a direct and accidental loss.”

3.8 Despite knowing that its policies covered diminished value, and drafting an exclusion which applied to collision and comprehensive, IDS continued with its ongoing course of conduct of not informing its insureds of the presence of coverage for diminished value. IDS continued to not adjust claims for diminished value, and if by chance an insured was knowledgeable enough to request payment for diminished value, IDS continued to have no approved method or procedure to adjust the claim.

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3.10 IDS is aware of its obligations under the general duty of good faith and fair dealing and under the specific provisions of Washington Administrative Code Sections § 284-30-330 and § 284-30-350. These included (but are not limited to) those in § 284-30-330:

- (1) Misrepresenting pertinent facts or insurance policy provisions.
- (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
- (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
- (4) Refusing to pay claims without conducting a reasonable investigation.
- (5) Failing to affirm or deny coverage of claims within a reasonable time after fully completed proof of loss documentation has been submitted.
- (7) Compelling a first party claimant to initiate or submit to litigation, arbitration, or appraisal to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in such actions or proceedings.
- (16) Failing to adopt and implement reasonable standards for the processing and payment of claims after the obligation to pay has been established.
- (18) Failing to make a good faith effort to settle a claim before exercising a contract right to an appraisal;

and in § 284-30-330:

- (1) No insurer shall fail to fully disclose to first party claimants all

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pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.

(3) No insurer shall deny a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.

(4) No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices the insurer's rights.

3.11 Despite knowing its obligations and duties and obligations to its insureds, IDS has undertaken a course of conduct designed to limit payments for diminished value by failing to disclose and adjust the loss, while instituting no company policies and procedures to pay for damages which it knows it is required to pay to many of its policyholders.

IV. CLASS ACTION ALLEGATIONS

4.1 This action is brought as a class action under Superior Court Civil Rule 23. IDS's conduct has been systematic and continuous and has affected large numbers of IDS policy holders over time. Plaintiff brings this class action to secure redress for IDS's uniform and common practice of adjusting vehicle losses so that IDS fails to restore them to their pre-loss condition, including value, by leaving the vehicles with the unavoidable tangible differences after repair. IDS further uniformly has failed to inform its policyholders of their loss, and pertinent benefits and coverages under the policy while failing to fully adjust their loss. IDS's conduct has been uniform throughout the Class Period.



1 4.2 All members of the proposed Class have fully complied with all pertinent policy  
2 provisions to receive payment under their policies from IDS. IDS has found one  
3 of the applicable coverages to apply to each member of the proposed Class's  
4 accident, and found the requirements for coverage to apply to have been fulfilled.  
5 Each member of the proposed Class has presented their vehicle for inspection by  
6 IDS or its agents to have the loss fully adjusted, and IDS or their authorized agent  
7 has inspected the vehicle. No further performance is required by any members of  
8 the proposed Class to secure all available coverages and benefits provided by the  
9 IDS policy.

10 4.3 Plaintiff seeks certification of the following Class:

All IDS insureds with Washington policies issued in Washington State, where the insured's vehicle's damages was covered under the UIM PD, collision, and/or comprehensive coverages, and

- 1. the repair estimates on the vehicle (including any supplements) totaled at least \$1,000; and
- 2. the vehicle was no more than six years old (model year plus five years) and had less than 90,000 miles on it at the time of the accident; and
- 3. the vehicle suffered structural (frame) damage and/or deformed sheet metal and/or required body or paint work.

Excluded from the Class are a) claims involving leased vehicles or total losses, b) employees of IDS, c) the assigned judge, the judge's staff and family, d) claims paid under the collision or comprehensive coverage where the in force policy included Amendment AMWA13a-d and e) accidents occurring before April 4, 2008.

24 4.4 Membership in the Class is so numerous as to make it impractical to bring all  
25 Class members before the Court. The exact number of Class members is  
26 unknown, but can be readily determined from the records maintained by IDS.

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Plaintiff believes there are thousands of persons in the Class, and that the Class size will be around seven thousand IDS insureds.

4.5 The named Plaintiff is typical of members of the Class. He purchased a IDS automotive policy, paid his premiums, and made a claim for loss when his insured automobile was damaged in an accident. Plaintiff filed a claim, and made his vehicle available to IDS for determination and payment of his loss. IDS then failed to adjust the loss to include diminished value, or to inform him of the existence of coverage for his diminished value loss.

4.6 There are numerous and substantial question of law and fact common to all of the members of the proposed Class which predominate over any individual issues. Included within the common questions of law and fact are:

- a) Whether IDS is contractually obligated to provide payment for diminished value to its insureds.
- b) Whether Plaintiff and members of the proposed Class had any further obligations before having their losses adjusted by IDS to include diminished value.
- c) Whether IDS failed to exercise good faith and fair dealing in not disclosing the presence of diminished value loss, by not adjusting that loss, and by not paying that loss.
- d) Whether IDS engaged in unfair claims settlement practices under Washington Administrative Code Sections § 284-30-330 and § 284-30-350.
- e) Whether IDS committed consumer fraud and acted in bad faith thereby violating RCW 48.30.040 and .090.
- f) Whether IDS breached its contracts of insurance with the Class by failing to pay diminished value.

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- g) The measure of damages for diminished value for the Class and its amount
- h) Whether Class members vehicles were tangibly different after an accident and repair compared to before the accident, or if only “intangible” differences remain after repair.

4.7 Plaintiff has no interests adverse to the interests of other members of the proposed Class, and will fairly and adequately protect the interests of the Class.

4.8 Plaintiff has retained the undersigned counsel who are experienced and competent in the prosecution of class actions and complex litigation and have extensive experience with litigation involving diminished value. These counsel have the resources and experience necessary to prosecute this case.

4.9 A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, due to the refusal of IDS to inform its insureds about diminished value, the Class members will continue to suffer damage and IDS's conduct will proceed without effective remedy.

4.10 Individual members of the proposed Class have little interest or ability to prosecute an individual action due to the complexities of the issues involved, the costs of assembling proof of the amount of diminished value, the time required, and the relatively small, although significant (likely averaging around \$1500 per accident) damages suffered by each member of the proposed Class.

4.11 This action will allow the orderly, fair, and expeditious administration of Class claims, economics of time, effort, and expense will be fostered, and uniformity of decisions will be ensured. As with prior diminished value cases in this country, collective adjudication will allow sufficient proof and expertise to be assembled to fairly value and prove the losses at issue.

4.12 This action will present no difficulties which would impede its management by

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this Court as a class action and a class action is the best available means by which Plaintiff and the Members of the proposed Class can seek redress for the harm caused to them by IDS.

V. PLAINTIFF'S CAUSES OF ACTION AGAINST IDS

COUNT I

BREACH OF CONTRACT

- 5.1 Plaintiff realleges the allegations contained in the previous paragraphs as if fully set forth herein.
- 5.2 Plaintiff and members of the proposed CLASS entered into contracts which were identical in material respects with IDS. They paid all required consideration in the form of premium for the coverage afforded by the IDS policy. They complied with all conditions precedent under the IDS policies, presented their claims. As to each claim, before paying to repair the vehicle, IDS found coverage to exist and apply and all conditions precedent to payment to be satisfied.
- 5.3 The IDS policy covers diminished value, and does not exclude the loss. There is no exclusion or limitation for diminished value in the policy, except the one added via Amendment Endorsement AMWA13a-d, which does not apply to any members of the proposed Class. As such IDS was obligated to cover losses for diminished value.
- 5.4 IDS breached the express provisions of the policy and its contract with Plaintiff and members of the Class by not restoring vehicles to their pre-loss value and then not paying for the resulting diminished value on those vehicles (such as those within the Class) that had, or would have, tangible differences after repair.
- 5.5 As a direct and foreseeable consequence of the foregoing, Plaintiff and the members of the Class have been damaged by receiving less (in the form of the difference in the pre-accident value of the vehicle and its value as a vehicle

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repaired to industry standards) than they would have received had IDS paid the amounts Plaintiff and members of the Class has contracted for, in an amount to be determined at trial.

COUNT II

FAILURE TO DISCLOSE AND ADJUST CLAIM,

CONSUMER PROTECTION ACT & W.A.C. VIOLATIONS

5.6 Plaintiff realleges the allegations contained in previous paragraphs as if fully set forth herein.

5.7 At all relevant times, IDS was engaged in trade or commerce in the State of Washington.

5.8 IDS failed to disclose to Plaintiff and members of the proposed Class information concerning its refusal to adjust and pay diminished value claims, information which was in its possession during the Class period. This failure was intended by IDS to induce Plaintiff and the members of the proposed Class to enter into transactions they otherwise would not have entered into if the information would have been disclosed, and prevent them raising claims for diminished value.

5.9 The acts and conduct of IDS constitute unfair and/or deceptive acts and practices in violation of (as detailed above) Washington Administrative Code § 284-30-330 and § 284-30-350, the duty of good faith and fair dealing, and RCW 48.30.090 and 48.30.010.

5.10 IDS's unlawful acts under Washington State's Consumer Protection Act, RCW 19.86 *et seq.*, have been a proximate cause of damage to Plaintiff and the members of the proposed Class in an amount to be proven at trial.

5.11 IDS's acts entitle Plaintiff and members of the proposed Class to treble damages.

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COUNT III

FAILURE TO MAKE PROMPT PAYMENT OF CLAIM

5.12 Plaintiff realleges the allegations contained in previous paragraphs as if fully set forth herein.

5.13 Despite knowing that all conditions precedent to Plaintiff's recovery had been performed or had occurred, IDS has failed and refused to pay Plaintiff in accordance with its contractual obligations. Furthermore, IDS has unjustifiably failed to adjust diminished value to provide supportable and authoritative estimates of damages to its insureds.

5.14 Because of IDS's failure to restore Plaintiff, and the members of the proposed Class's, vehicles to their pre-accident value, and IDS's failure to make prompt payment of the amount of such damages, Plaintiff has been forced to initiate legal proceedings. IDS knew that its failure to address to promptly adjust and pay the loss was an unlawful act under Washington Administrative Code Sections § 284-30-330 and § 284-30-350.

5.15 As a result of IDS's conduct, Plaintiff has been compelled to engage the services of the attorneys whose names are subscribed to this pleading for the prosecution and collection of their claim. Therefore, Plaintiff is entitled to recover from IDS the additional sum of 12 percent (12%) per year of the amounts payable under the policy, together with a reasonable sum for the necessary services of Plaintiff's attorneys in the preparation and trial of this action, including any appeals.

VI. PRAYER FOR RELIEF

6.1 Plaintiff and the members of the proposed Class have been injured as a result of IDS's wrongful conduct as described above. As a result, Plaintiff and the members of the proposed Class are entitled to and pray for the following relief:

- 1. Payment of the difference between the insured vehicle's pre-loss value and

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its projected market value as a repaired vehicle after the accident, together with pre-judgment interest from the date the automobile was damaged until date of judgment;

- 2. Treble damages in an amount up to \$25,000.00 per violation, as the statutory penalty for Defendants' knowing commission of acts under Washington Administrative Code § 284-30-330 and § 284-30-350, and RCW 48.20.040, 48.30.090, and the Washington State Consumer Protection Act, RCW 19.86 *et seq.*;
- 3. A reasonable sum for attorney's fees, pursuant to RCW 19.86 *et seq.*, with additional sums for the services of Plaintiff's attorneys in the event of subsequent appeals;
- 4. Costs of suit;
- 5. Post-judgment interest on the judgment at the rate provided by law from the date of judgment until paid;
- 6. Injunctive, equitable, and declaratory relief; and
- 7. Such other relief as deemed just and equitable.

6.2 WHEREFORE, THE FORGOING BEING CONSIDERED, Plaintiff respectfully requests that the Court certify this case as a Class Action and that judgment be entered for the Plaintiff and members of the proposed Class against IDS for the damages described above, and for such other and further relief, at law and equity, to which he and the Class may be entitled.

DATED this 3<sup>rd</sup> day of April, 2014.

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Of Attorneys for Plaintiff

CLASS ACTION COMPLAINT - 15

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CLASS ACTION COMPLAINT - 16

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