

THE HON. ROBERT J. BRYAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

CAMERON LUNDQUIST, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

FIRST NATIONAL INSURANCE
COMPANY OF AMERICA, a New Hampshire
Corporation,

Defendant.

No. 18-cv-05301 RJB

MOTION TO DISMISS PLAINTIFF'S
COMPLAINT
PURSUANT TO FED. R. CIV. P. 12(b)(6)

Noting Date: June 8, 2018

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1 Defendant First National Insurance Company of America (“First National”) hereby
2 moves to dismiss the complaint of Plaintiff Cameron Lundquist (“Plaintiff”) pursuant to Fed.
3 R. Civ. P. 12(b)(6). In support of its motion, First National states as follows:

4 INTRODUCTION

5 The Complaint rises and falls on First National’s compliance with Wash. Admin.
6 Code § 284-30-391¹ (hereinafter, “WAC 284-30-391”). In short, Plaintiff alleges that First
7 National failed to “itemize” and “explain” certain “condition adjustments” made to the value
8 of comparable vehicles in the valuation report provided to Plaintiff (the “Valuation Report”),
9 supposedly in contravention of Subsection (4)(b) and Subsection (5)(d) of WAC 284-30-391.
10 This allegation is the basis for all four of Plaintiff’s causes of action.²

11 However, as is apparent from an examination of the regulations at issue and the
12 valuation report referenced in the Complaint, First National fully complied with WAC 284-
13 30-391. As a result, First National did not violate the terms of the insurance policy (Count I),
14 its duty of good faith and fair dealing (Count II), or the Washington Consumer Protection Act
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20 ¹ For the Court’s convenience, First National attaches a copy of Wash. Admin. Code § 284-30-391
hereto as Ex. A.

21 ² See Compl. at ¶ 41 (alleging in Count I that First National failed to offer actual cash values and
22 therefore breached the insurance policy by “basing its valuation and payment of the claim on values of
comparable vehicles that have been *artificially reduced by an arbitrary and unjustified ‘condition adjustment’*
23 *that is not itemized or explained*”) (emphasis added), ¶¶ 46-48 (alleging in Count II that First National acted in
bad faith by “basing its valuation and payment of the claim on values of comparable vehicles that have been
24 *artificially reduced by an arbitrary and unjustified ‘condition adjustment’ that is not itemized or explained*”)
(emphasis added), ¶¶ 51-53 (alleging in Count III that First National breached the Washington Consumer
Protection Act, which clearly references standards for unfair claims settlement procedures contained in Wash.
25 Admin. Code Chapter 284-30, including WAC 284-30-391), ¶¶ 56, 59 (alleging in Count IV that declaratory
and/or injunctive relief is appropriate because First National based “its valuation and payment of the claim on
26 values of comparable vehicles that have been *artificially reduced by an arbitrary and unjustified ‘condition*
adjustment’ that is not itemized or explained”) (emphasis added).

1 (Count III), and Plaintiff’s requests for declaratory and injunctive relief (Count IV) are moot.
2 Accordingly, Plaintiff’s Complaint must be dismissed in its entirety.

3 **SUMMARY OF ARGUMENT**

4 WAC 284-30-391 prescribes methods and standards of practice for settlement of total
5 loss vehicle claims, but Plaintiff takes snippets of that regulation out of context in an effort to
6 impose non-existent disclosure obligations on First National.
7

8 In particular, neither Subsection (4)(b) nor Subsection (5)(d)³ requires itemization or
9 explanation of such condition adjustments, and in any event, First National *both* itemized *and*
10 explained all the condition adjustments in the Valuation Report.⁴

11 Subsection (4)(b) does not impose any disclosure obligation; it only describes what the
12 insurer must *base its offers* on. But, to the extent it arguably did impose a disclosure
13 obligation, that obligation would only be to “itemize,” *i.e.*, to list, rather than to both
14 “itemize” *and* “explain.” Other sections of the regulation that do not apply here require
15 explanation explicitly, but Subsection (4)(b) says nothing of a requirement to “explain” any
16 condition adjustments to comparable vehicles.
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22 ³ Notably, Plaintiff does not allege that First National violated any of the procedures set forth in
23 Subsection (2) of WAC 284-30-391, which applies to cash settlements such as the one that First National offered
24 – and Plaintiff accepted – in this case. Rather, Plaintiff only alleges that, as a result of supposed violations of
25 Subsection (4)(b) and (5)(d), First National ultimately failed to pay the “actual cash value” of the loss vehicle.
26 Thus, Plaintiff’s Complaint turns on First National’s compliance with Subsections (4)(b) and (5)(d).

⁴ Plaintiff makes repeated references in the Complaint to the Valuation Report but fails to attach it as an
exhibit. (Compl. at ¶¶ 21-24, 27-28, 40-41, 47, 51.) Therefore, Plaintiff has incorporated the Valuation Report
into its Complaint by reference. A copy of the Valuation Report is attached hereto as Ex. B and is referred to
throughout this motion.

1 Subsection (5)(d), for example, requires an insurer to both itemize and explain certain
2 adjustments to the cash value of the loss vehicle, but Subsection (5)(d) does not apply to
3 condition adjustments made to comparable vehicles. Subsections (5)(a) through (5)(c) all
4 describe adjustments that an insurer may make to the loss vehicle *after* the actual cash value
5 has been determined by the methods outlined in Subsections (1) through (4). These
6 Subsection (5) adjustments all account for particular circumstances in the relationship
7 between the insurer and the insured, including deductions for prior claim payments for
8 unrepaired damage to the same vehicle or, if the plaintiff elects to keep the loss vehicle, the
9 salvage value of such vehicle. Pursuant to (5)(d), *those* adjustments described in (5)(a)
10 through (5)(c) “must be explained to the claimant and must be itemized showing specific
11 dollar amounts.” Wash. Admin. Code § 284-30-391(5)(d). Subsection (5)(d) simply is not a
12 blanket requirement that every addition or deduction in the Valuation Report must be
13 explained, as Plaintiff would have this Court believe.
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16 Moreover, even a cursory examination of the Valuation Report shows that First
17 National fully complied with WAC 284-30-391 under *any* interpretation of that regulation.
18 That is, First National did “base all offers” on the actual cash value of comparable vehicles,
19 including appropriate additions and deductions. *See* Wash. Admin. Code § 284-30391(4)(b).
20 However, even if the Court were to conclude that Subsection (4)(b) requires itemization of
21 condition adjustments to comparable vehicles, First National did itemize all such condition
22 adjustments; and, to the extent this Court finds that Subsection (5)(d) requires explanation of
23 all condition adjustments, which it clearly does not, First National did explain all condition
24 adjustments. In short, First National fully complied with the requirements of WAC 284-30-
25 391, and thus, Plaintiff’s Complaint should be dismissed.
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STANDARD OF REVIEW

Fed. R. Civ. P. 12(b) motions to dismiss may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted, and the complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295 (9th Cir. 1983). However, where a "plaintiff's claims depend on the contents of a document, the defendant attaches the document to its motion to dismiss, and the parties do not dispute the authenticity of the document, even though plaintiff does not explicitly allege the contents of that document in the complaint," that document is incorporated into plaintiff's complaint by reference. *Walters v. Walden Univ., LLC*, No. 15-5651 RJB, 2015 WL 6550754, at *2 (W.D. Wash. Oct. 28, 2015) quoting *U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

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"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact). *Id.* Plaintiff must allege enough facts to state a claim to relief that is plausible on its face. *Id.* at 570.

1 **STATEMENT OF UNDISPUTED FACTS⁵**

2 The following facts are undisputed for the purposes of this Motion to Dismiss:

3 1. Plaintiff experienced a total vehicle loss in December 2017. (Compl. at
4 ¶ 25; Ex. B at p. 1.)

5 2. In order to pay Plaintiff’s claim, First National performed an analysis
6 of the actual cash value of Plaintiff’s loss vehicle using a database maintained by CCC
7 Information Services, Inc. (“CCC”). (Compl. at ¶¶ 27-28; Ex. B at pp. 1-17.)

8 3. On the basis of the information included in its database and the
9 information provided by First National regarding the loss vehicle, CCC generated the
10 Valuation Report. (Compl. at ¶ 28; Ex. B at pp. 1-17.)

11 4. The Valuation Report is a 17-page report explaining in detail the
12 methodology used by First National and showing among other things, the make, model,
13 mileage and condition of the loss vehicle. (Ex. B at pp. 1-17.)

14 5. The Valuation report also shows the make, model, VIN, options,
15 location, and dealer offering each of the comparable vehicles used in developing the actual
16 cash value and how each was weighted in arriving at the base vehicle value. (Ex. B at pp. 8-
17 10.)

18 6. The Valuation Report calculates a condition adjustment to plaintiff’s
19 loss vehicle vis-à-vis three comparable vehicles. (Ex. B at pp. 7-9.)

20 7. After taking into consideration the condition of Plaintiff’s vehicle
21 which resulted in an upward condition adjustment of \$102, the Valuation Report shows that
22 First National came to a cash value of \$18,406.12. (Ex. B at p. 1.)

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⁵ These are all based on the Complaint’s allegations or the Valuation Report referenced therein.

8. After subtracting Plaintiff's \$1,000 deductible, First National offered, and Plaintiff accepted, a total payment of \$17,406.12. (Compl. at ¶ 28; Ex. B at p. 1.)

ARGUMENT

Plaintiff's Complaint is infirm as a matter of law. First, the Washington insurance regulations cited do not require that First National itemize and explain the condition adjustments at issue, and therefore, failure to do so cannot form the basis of a valid claim under any of the asserted causes of action. Second, taking the facts alleged in – and incorporated by reference into – the Complaint as true, First National did itemize and explain all condition adjustments in the Valuation Report.

I. THE REGULATIONS DO NOT REQUIRE THAT FIRST NATIONAL ITEMIZE AND EXPLAIN CONDITION ADJUSTMENTS TO COMPARABLE VEHICLES.

Plaintiff alleges that Subsections (4)(b) and (5)(d) require First National to “itemize” and “explain” condition adjustments made to comparable vehicles. (*See* Compl. at ¶¶ 24, 41, 47, 56.) However, a closer inspection of WAC 284-30-391 and related regulations shows that Plaintiff misreads the regulation.

A. WAC 284-30-391(4)(b)

Subsection (4)(b) requires that First National *base* its calculation of actual cash value on comparable vehicles, taking into consideration the options, mileage and condition of those vehicles compared to the loss vehicle. It does not impose any type of disclosure requirement on First National. Even assuming *arguendo* that the regulation did require disclosure of anything, that requirement would be merely that First National “itemize” additions and deductions to the actual cash value of comparable vehicles based on the options, mileage

1 and/or condition of those vehicles, not that First National “explain” each and every such
2 addition or deduction.

3 1. ***Subsection (4)(b) Is Not a Disclosure Requirement.***

4 Subsection (4)(b) provides as follows:

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6 When settling a total loss vehicle claim using methods in
7 subsections (1) through (3) of this section, the insurer must ...
8 *[b]ase all offers* on itemized and verifiable dollar amounts for
9 vehicles that are currently available, or were available within
ninety days of the date of loss, using appropriate deductions or
additions for options, mileage or condition when determining
comparability.

10 Wash. Admin. Code § 284-30-391(4)(b) (emphasis added.) In other words, the insurer must
11 “base all offers *[for the loss vehicle]*” on “[*comparable*] vehicles that are currently available,
12 or were available within ninety days of the date of loss,” but the insurer may make
13 “appropriate deductions or additions ... when determining comparability.” *See id.*
14 Subsection (4)(b) provides the method for determining the settlement offer by describing what
15 must be considered; it does not prescribe what must be disclosed to the insured.
16

17 This interpretation is reinforced by the very next regulation in the Washington
18 Administrative Code, WAC 284-30-392⁶, which enumerates the information that “must be
19 included in the insurer’s total loss vehicle valuation report.” Unlike WAC 284-30-391 (4)(b),
20 WAC 284-30-392 *is* a disclosure requirement.
21

22 WAC 284-30-392 spells out what must be disclosed in the Valuation Report and to
23 what level of detail. Notably, that regulation specifically requires disclosure of “[a]ll
24 information collected during the initial inspection assessing the condition, equipment, and
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26 ⁶ For the Court’s convenience, First National attaches a copy of Wash. Admin. Code § 284-30-392
hereto as Ex. C.

1 mileage of the loss vehicle,” but no such requirement exists with respect to the condition of
2 the comparable vehicles. Compare Wash. Admin. Code § 284-30-392(1) (emphasis added)
3 with Wash. Admin. Code § 284-30-392(2)-(4). Similarly, when using a computerized source
4 to determine actual cash value, the regulation requires that “[a]ny weighting of identified
5 [comparable] vehicles to arrive at an average must be documented and explained,” but no
6 other category of information must be explained. Compare Wash. Admin. Code § 284-30-
7 392(4)(c) (emphasis added) with Wash. Admin. Code § 284-30-392(1)-(4)(b). The express
8 mention of one item (e.g., disclosure of “all” information relating to the condition of the loss
9 vehicle or explanation of weighting of comparable vehicles) implies the exclusion of others
10 (e.g., disclosure of detailed information relating to the condition of the comparable vehicle or
11 explanation of condition adjustments to the comparable vehicle). See *Lloyd C. Lockrem, Inc.*
12 *v. U.S.*, 609 F.2d 940, 944 (9th Cir. 1979) (apply the canon of *expressio unius est exclusio*
13 *alterius* to interpretation of regulations).
14
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16 2. ***If Subsection (4)(b) Were to Require Disclosure, It Would Only***
17 ***Require Itemization, Not Explanation.***

18 Even if this Court were to find that Subsection (4)(b) requires some type of disclosure,
19 it clearly does not require *explanation* of condition adjustments to comparable vehicles.
20 Subsection (4)(b) only discusses basing settlement offers on “itemized and verifiable” dollar
21 amounts rather than “itemized and explained” dollar amounts. Wash. Admin. Code § 284-30-
22 391(4)(b). There is simply no textual basis to assert that Subsection (4)(b) requires
23 explanation of each adjustment to the comparable vehicles.
24

25 Other portions of WAC 284-30-391 again reinforce this interpretation. For example,
26 Subsection (5)(d) requires that certain enumerated adjustments *to the loss vehicle* “must be

1 explained to the claimant and must be itemized showing specific dollar amounts.” Wash.
 2 Admin. Code § 284-30-391(5)(d). But Subsection (4)(b) makes no such mention of
 3 explaining condition adjustments to comparable vehicles. Yet again, the express mention of a
 4 requirement to explain in Subsection (5)(d) suggests that a requirement to explain was
 5 intentionally excluded from Subsection (4)(b).
 6

7 In any event, there can be no doubt that First National “itemized” every condition
 8 adjustment in the Valuation Report. In particular, First National itemized (and also
 9 explained)⁷ the \$936 condition adjustment about which Plaintiff complains on page 9 of the
 10 Valuation Report as follows:

Options	Loss Vehicle	Comp 1	Comp 2	Comp 3
Metallic Paint	✓	✗	✗	✗
Two Tone Paint	✓	✗	✗	✗
Rear Step Bumper	✓	✓	✓	✓
Trailer Hitch	✓	✗	✓	✗
Trailer Package	✓	✗	✓	✗
Rear Sliding Window	✓	✗	✗	✗
Dual Rear Wheels	✗	✗	✗	✓
Bedliner (spray On)	✓	✗	✗	✗
Tool Box (permanent)	✓	✗	✗	✗
List Price		\$ 18,999	\$ 19,999	\$ 15,991
Adjustments:				
Make/Model/Trim			- \$ 350	- \$ 825
Options		+ \$ 1,904	+ \$ 912	+ \$ 1,768
Mileage		- \$ 3,246	- \$ 3,052	+ \$ 963
Condition ⁷		- \$ 936	- \$ 936	- \$ 936
Adjusted Comparable Value		\$ 16,721	\$ 16,573	\$ 16,961

⁷The Condition Adjustment sets that comparable vehicle to Normal Wear condition, which the loss vehicle is also compared to in the Vehicle Condition section.

25 ⁷ What the Complaint fails to mention, but is clear from the chart below, is that First National not only
 26 itemized the \$936 condition adjustment, but also explained in the right-hand column that the condition
 adjustment was made to bring the comparable vehicles to a Normal Wear baseline. Thus, as argued further
 below, First National exceeded the requirements of WAC 284-30-391 by both itemizing *and* explaining all
 condition adjustments.

1 (Ex. B at p. 9) (emphasis added). Indeed, Plaintiff admits that the condition adjustments to
2 comparable vehicles were itemized when it alleges, “[t]he valuation report listed values of
3 three different comparable vehicles and applied a uniform condition adjustment of \$936 to all
4 three of them[.]” (Compl. at ¶ 28.) Thus, even assuming *arguendo* that Subsection (4)(b)
5 requires itemization of condition adjustments to comparable vehicles, First National clearly
6 complied with the regulation.
7

8 **B. WAC 284-30-391(5)(d)**

9 Subsection (5)(d) simply does not apply to condition adjustments to comparable
10 vehicles such as those that Plaintiff complains of here. Subsection (5)(d) provides “Any
11 additions or deductions from the actual cash value must be explained to the claimant and must
12 be itemized showing specific dollar amounts.” Wash. Admin. Code § 284-30-391(5)(d).
13 However, in context, this provision relates to additional adjustments enumerated in
14 Subsection (5)(a) through (c) that are made to the “total loss settlement,” *i.e.*, the actual cash
15 value of *the loss vehicle* after the initial determination of such actual cash value by reference
16 to the comparable vehicles. *See* Wash. Admin. Code § 284-30-391(5).
17

18 Subsections (5)(a) through (c) all describe adjustments that may be made to the
19 settlement amount that have nothing to do with comparable vehicles. For example,
20 Subsections (5)(a) and (b) describe deductions for prior claims made for unrepaired damage to
21 the loss vehicle, and Subsection (5)(c) describes a deduction for salvage value if the insured
22 chooses to keep the total loss vehicle. These are highly specific deductions that depend on the
23 actions of the insured independent of the calculation of actual cash value of the loss vehicle
24 by reference to comparable vehicles. Accordingly, the general language of Subsection (5)(d)
25 should be interpreted in accordance with – and in light of – the specifically enumerated
26

1 adjustments in Subsections (5)(a) through (c). *See White Mem'l Med. Ctr. v. Schweiker*, 640
2 F.2d 1126, 1129 (9th Cir. 1981) (applying the canon of *ejusdem generis* – which construes
3 general language following specifically enumerated examples narrowly so as to apply only to
4 the same class as the specifically enumerated examples – to a regulation). By reading
5 Subsection (5)(d) to require explanation of all condition adjustments to comparable vehicles,
6 Plaintiff disregards the context of the regulation and distorts the clear import of the regulation.
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8 This interpretation is reinforced by the next regulation in the Washington
9 Administrative Code, WAC 284-30-392, which enumerates the “information that must be
10 included in the insurer’s total loss vehicle valuation report.” Wash. Admin. Code § 284-30-
11 392. As explained above, WAC 284-30-392 requires, “[a]ll information ... assessing the
12 condition, equipment, and mileage *of the loss vehicle*,” to be disclosed, but makes no such
13 requirement for information relating to the condition of the comparable vehicle. Wash.
14 Admin. Code § 284-30-392(1) (emphasis added). And similarly, WAC 284-30-392 requires
15 *explanation* of “any weighting of identified [comparable] vehicles,” but makes no such
16 requirement for any other information relating to comparable vehicles. Wash. Admin. Code §
17 284-30-392(4)(c). It would be illogical to read additional disclosure requirements into
18 Subsection (5), which relates to a narrow category of specifically enumerated adjustments,
19 when they are specifically excluded from the valuation report disclosure regulation.
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22 **II. FIRST NATIONAL EXPLAINED ALL CONDITION ADJUSTMENTS IN THE**
23 **VALUATION REPORT.**

24 As explained above, Plaintiff admits that the Valuation Report *itemized* the condition
25 adjustment to comparable vehicles of which Plaintiff complains. (Compl. at ¶ 28.) Plaintiff’s
26

Complaint attempts to ignore the *explanations* for such condition adjustments provided in the Valuation Report, but the Valuation Report belies Plaintiff’s allegations.

For starters, page 9 of the Valuation Report explained the \$936 condition adjustment made to comparable vehicles as follows:

Options	Loss Vehicle	Comp 1	Comp 2	Comp 3
Metallic Paint	✓	✗	✗	✗
Two Tone Paint	✓	✗	✗	✗
Rear Step Bumper	✓	✓	✓	✓
Trailer Hitch	✓	✗	✓	✗
Trailer Package	✓	✗	✓	✗
Rear Sliding Window	✓	✗	✗	✗
Dual Rear Wheels	✗	✗	✗	✓
Bedliner (spray On)	✓	✗	✗	✗
Tool Box (permanent)	✓	✗	✗	✗
List Price		\$ 18,999	\$ 19,999	\$ 15,991
Adjustments:				
Make/Model/Trim			- \$ 350	- \$ 825
Options		+ \$ 1,904	+ \$ 912	+ \$ 1,768
Mileage		- \$ 3,246	- \$ 3,052	+ \$ 963
Condition¹		- \$ 936	- \$ 936	- \$ 936
Adjusted Comparable Value		\$ 16,721	\$ 16,573	\$ 16,961

¹The Condition Adjustment sets that comparable vehicle to Normal Wear condition, which the loss vehicle is also compared to in the Vehicle Condition section.

(Ex. B at p. 9) (emphasis added). As the note in the right-hand column of that same page explains: “The Condition Adjustment sets that comparable vehicle to Normal Wear condition, which the loss vehicle is also compared to in the Vehicle Condition section” (*Id.*) In other words, the condition adjustment to comparable vehicles was made in order to perform an apples-to-apples comparison between the loss vehicle, which is most commonly in Normal Wear, and the comparable vehicles, which are most commonly in Dealer Ready condition.⁸

⁸ In this case, all three comparable vehicles were listed for sale at dealerships and were therefore in Dealer Ready condition. (Ex. B at pp. 8-10.) This is in contrast to a vehicle that is currently in normal, everyday use such as Plaintiff’s vehicle.

1 Then, in the “Vehicle Condition” section on page 7 (to which the insured had been
 2 directed by the explanation on page 9), the Valuation Report itemized and explained
 3 adjustments made to the loss vehicle based on the apples-to-apples comparison between the
 4 components of the loss vehicle to a comparable vehicle in Normal Wear condition. Page 7
 5 reads as follows:
 6

VEHICLE CONDITION

COMPONENT CONDITION

	Condition	Inspection Notes	Value Impact
INTERIOR			
Seats	NORMAL WEAR		\$ 0
Carpets	NORMAL WEAR		\$ 0
Dashboard	DEALER READY		\$ 51
Headliner	NORMAL WEAR		\$ 0
EXTERIOR			
Sheet Metal	NORMAL WEAR		\$ 0
Trim	NORMAL WEAR		\$ 0
Paint	NORMAL WEAR		\$ 0
Glass	NORMAL WEAR		\$ 0
MECHANICAL			
Engine	DEALER READY		\$ 51
Transmission	NORMAL WEAR		\$ 0
TIRES			
Front Tires	NORMAL WEAR	7/32 7/32	\$ 0
Rear Tires	NORMAL WEAR	8/32 8/32	\$ 0
Total Condition Adjustments			\$ 102

FIRST NATIONAL INS CO OF AMERICA uses condition inspection guidelines to determine the condition of key components of the loss vehicle prior to the loss. The guidelines describe physical characteristics for these key components, for the condition selected based upon age. Inspection Notes reflect observations from the appraiser regarding the loss vehicle's condition. CCC makes dollar adjustments that reflect the impact the reported condition has on the value of the loss vehicle as compared to Normal Wear condition. These dollar adjustments are based upon interviews with dealerships across the United States.

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24 (*Id.* at p. 7) (emphasis added).

25 Importantly, in Plaintiff’s case, based on the adjuster’s observation of key components
 26 of the loss vehicle, First National made two \$51 *upward* adjustments for the dashboard and

1 the engine that were in Dealer Ready (*i.e.*, better than Normal Wear) condition. (*See id.*) A
 2 note in the right hand column of that very same page then explained the basis of these upward
 3 adjustments. The note explained that dollar adjustments “reflect the impact the reported
 4 condition has on the value of the loss vehicle as compared to Normal Wear condition. These
 5 dollar adjustments are based upon interviews with dealerships across the United States.” (*See*
 6 *id.*) That is, First National explained that it was giving Plaintiff additional money based on
 7 the condition of his vehicle compared to other Normal Wear comparable vehicles based on
 8 how dealerships would value those better than Normal Wear components.

9
 10 Finally, the Valuation Report accounted for the \$102 total upward adjustment for the
 11 key components that were in Dealer Ready condition. This total adjustment is reflected in the
 12 Summary on Page 1 as follows:

VALUATION SUMMARY		BASE VEHICLE VALUE
Base Vehicle Value	\$ 16,738.00	This is derived from comparable vehicle(s) available or recently available in the marketplace at the time of valuation, per our valuation methodology described on the next page.
Condition Adjustment	+ \$ 102.00	
Adjusted Vehicle Value	\$ 16,840.00	ADJUSTED VEHICLE VALUE This is determined by adjusting the Base Vehicle Value to account for the actual condition of the loss vehicle and certain other reported attributes, if any, such as refurbishments and after factory equipment.
Vehicular Tax (9.3%)	+ \$ 1,566.12	
Tax reflects applicable state, county and municipal taxes.		
Value before Deductible	\$ 18,406.12	
Deductible	- \$ 1,000.00	
Total	\$ 17,406.12	

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 21 (*Id.* at p. 1) (emphasis added). The summary shows a “Base Vehicle Value,” which is the
 22 value based on the comparable vehicles after being normalized to Normal Wear Condition.
 23 Then, the summary shows the \$102 upward “Condition Adjustment” to arrive at an “Adjusted
 24 Vehicle Value,” which reflects “the *actual* condition of the loss vehicle,” as again explained
 25 in the right-hand column. (*Id.*)
 26

1 In short, the Valuation Report itemizes *and explains* each step of the condition
2 adjustment calculation, including (1) normalization of Dealer Ready comparable vehicles to
3 Normal Wear condition to achieve a baseline for comparison, (2) adjustments credited to the
4 loss vehicle for components in better than the baseline Normal Wear condition, and (3)
5 calculation of such adjustments into the total settlement offer.
6

7 **III. ALL OF THE CAUSES OF ACTION ALLEGED IN THE COMPLAINT MUST**
8 **FAIL.**

9 Because First National fully complied with WAC 284-30-391 – including, to the
10 extent this Court finds such disclosure to be required, fully itemizing and explaining all
11 condition adjustments – it is clear that the settlement offer to Plaintiff was based on the actual
12 cash value of the loss vehicle. As such, there is no violation of the terms of the insurance
13 policy (Count I); there is no breach of the implied covenant of good faith and fair dealing
14 (Count II); there is no violation of the Washington Consumer Protection Act (Count III); and
15 there is no basis for the declaratory or injunctive relief holding that Plaintiff requests (Count
16 IV).
17

18 **A. First National Did Not Breach the Terms of the Insurance Policy.**

19 Under Washington law, the elements of a breach of contract claim are duty, breach,
20 causation, and damages. *Dania, Inc. v. Skanska USA Bldg. Inc.*, 185 Wash. App. 359, 374
21 (2014). Here, Plaintiff has not satisfactorily alleged that First National breached the terms of
22 the insurance policy.

23 The only basis for Plaintiff’s breach of contract claim is that First National failed to
24 pay the “actual cash value” of plaintiff’s loss vehicle. In particular, Plaintiff alleges:
25

26 First National has breached the [insurance policy] by not
offering to settle and by not settling claims based upon the

1 actual cash value of loss vehicles. First National departed from
2 the use of actual cash values by basing its valuation and
3 payment of the claim on values of comparable vehicles that
4 have been artificially reduced by an arbitrary and unjustified
5 ‘condition adjustment’ that is not itemized or explained.

6 (Compl. at ¶ 41.)

7 As an initial matter, the policy to which Plaintiff refers specifically allows First
8 National to make appropriate condition adjustments as part of the “actual cash value.” In the
9 same section of the policy that provides that First National may pay the “actual cash value” to
10 settle a claim for damage to Plaintiff’s vehicle, the very next provision provides that “[a]n
11 adjustment for depreciation and physical condition may be made based upon the physical
12 condition and wear and tear of the property or damaged part of the property at the time of the
13 loss.”⁹ (Ex. D at p. 19.) Thus, the condition adjustment made to Plaintiff’s loss vehicle is in
14 line with the terms of Plaintiff’s insurance policy and the payment of “actual cash value.”

15 Moreover, as explained above, the Valuation Report, which is incorporated by
16 reference into Plaintiff’s Complaint, clearly shows that First National itemized and explained
17 all condition adjustments. The Plaintiff’s allegation that such condition adjustments to
18 comparable vehicles were “arbitrary and unjustified” or somehow “artificially reduced” the
19 actual cash value of the loss vehicle amount to nothing more than mere “labels and
20 conclusions.”¹⁰ *Twombly*, 550 U.S. at 555. To the contrary, as explained in the Valuation
21 Report, the condition adjustments were made precisely to account for actual cash value of the
22

23 ⁹ Plaintiff alleges that First National violated the terms of the insurance policy (Compl. at ¶¶ 17, 20, 39-
24 43), but has failed to attach the policy to its Complaint. The terms of the insurance policy are clearly
25 incorporated into Plaintiff’s Complaint by reference. Accordingly, First National attaches Policy No.
H2323009 hereto as Ex. D.

26 ¹⁰ Other than his claim about the condition adjustment to the comparable vehicles, Plaintiff nowhere
alleges in the Complaint that the settlement offer made by First National and accepted by him was unfair,
deceptive or amounted to less than the actual cash value of his vehicle.

1 loss vehicle. Indeed, as a result of those condition adjustments, Plaintiff received an
2 additional \$102 *upward* adjustment for components of his loss vehicle that were in better than
3 Normal Wear condition. (*See* Ex. B at pp. 1, 7.) Based on this Valuation Report, First
4 National paid – and Plaintiff accepted – a cash settlement of \$17,406.12. (*See* Compl. at ¶¶ 28;
5 Ex. B at p. 1.) There simply is no breach of the terms of the insurance policy based on the
6 facts as alleged in, and incorporated by reference into, Plaintiff’s Complaint.
7

8 Accordingly, Plaintiff has failed to allege “enough facts to state a claim to relief that is
9 plausible on its face,” *Twombly*, 550 U.S. at 570, and his breach of contract claim must fail.

10 **B. First National Did Not Breach the Implied Covenant of Good Faith and**
11 **Fair Dealing.**

12 The duty of good faith and fair dealing requires only that First National perform
13 contractual or regulatory duties in good faith. *See Badgett v. Sec. State Bank*, 116 Wash. 2d
14 563, 569, 807 P.2d 356, 360 (1991) (The implied duty of good faith and fair dealing “requires
15 only that the parties perform in good faith the obligations imposed by their agreement.”);
16 *Coventry Assocs. v. Am. States Ins. Co.*, 136 Wash. 2d 269, 279 (1998) (“The insurer is only
17 required to fulfill its contractual and statutory obligation to fully and fairly investigate the
18 claim.”). As is pertinent here, the duty of good faith and fair dealing requires an insurer to
19 exercise discretion (*e.g.*, in determining of actual cash value) *reasonably*. *See Curtis v. N.*
20 *Life Ins. Co.*, 147 Wash. App. 1030 (2008) (“Ordinary contract principles require that, where
21 one party is granted discretion under the terms of the contract, that discretion must be
22 exercised in good faith—a requirement that includes the duty to exercise the discretion
23 reasonably.”).
24
25
26

1 The basis for Plaintiff's breach of implied covenant claim is essentially the same as
2 Plaintiff's breach of contract claim. In particular, Plaintiff alleges:

3 46. First National purposefully, in bad faith, and without
4 regard to the rights of the Plaintiff and the class, failed to pay
5 the actual cash value of total loss vehicles. First National's
6 actions breached the insurance contract and were unreasonable,
7 frivolous, and unfounded.

8 47. First National's unfair acts and/or acts of bad faith
9 include basing its valuation and payment of the claim on values
10 of comparable vehicles that have been artificially reduced by an
11 arbitrary and unjustified "condition adjustment" that is not
12 itemized or explained.

13 (Compl. at ¶¶ 46-47.)

14 Clearly, Plaintiff's claim for a breach of the implied covenant of good faith and fair
15 dealing turns on the same condition adjustments to comparable vehicles that were
16 contradicted by the Valuation Report incorporated into Plaintiff's complaint, as explained
17 above. For the same reasons as the allegations in Count I must fail, so too must the same
18 allegations that condition adjustments to comparable vehicles were "arbitrary and unjustified"
19 or somehow "artificially reduced" the actual cash value of the loss vehicle. These allegations
20 amount to nothing more than mere "labels and conclusions" when alleged in Count II and
21 when alleged in Count I. *See Twombly*, 550 U.S. at 555.

22 The only unique allegation in Count II is that these actions were in "bad faith,"
23 "unreasonable," "frivolous," and "unfounded," (Compl. at ¶ 46), but that allegation must fail
24 for independent reasons. First, as explained above, First National compliance with – and even
25 exceeding of – the requirements of WAC 284-30-391 shows that First National acted in good
26 faith. But, even if this Court disagrees with First National's interpretation of WAC 284-30-
391, the Valuation Report shows that First National still acted *reasonably* in (1) investigating

1 the actual cash value of the loss vehicle based on comparable vehicles, and (2) itemizing and
2 explaining each step in the calculation of actual cash value for the Plaintiff.

3 Accordingly, Plaintiff has failed to allege “enough facts to state a claim to relief that is
4 plausible on its face,” *Twombly*, 550 U.S. at 570, and his breach of implied warranty of good
5 faith and fair dealing claim must fail.
6

7 **C. First National Did Not Violate the Washington Consumer Protection Act.**

8 In Count III of Plaintiff’s Complaint, Plaintiff alleges a “violation of the Washington
9 Consumer Protection Act, in particular, Wash Rev. Code § 19.86.020.” (Compl. at ¶ 53.)
10 That statute generally provides that “Unfair methods of competition and unfair or deceptive
11 acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”
12 Wash. Rev. Code § 19.86.020. Chapter 284-30 of the Washington Administrative Code –
13 including the regulation at issue here, WAC 284-30-391 – further defines unfair claims
14 settlement practices. Plaintiff is relying on its allegations that First National violated WAC
15 284-30-391, (*see* Compl. at ¶¶ 16, 18-19, 21), to establish a violation of the Washington
16 Consumer Protection Act.
17

18 However, as explained above, Plaintiff misreads Subsection (4)(b) and Subsection
19 (5)(d) to impose a blanket requirement to “explain” every condition adjustment to comparable
20 vehicles. In fact, Subsection (4)(b) merely requires First National to “[b]ase all offers” on
21 comparable vehicles, including appropriate condition adjustment, or at most, Subsection
22 (4)(b) only requires “itemized” condition adjustments. For its part, Subsection (5)(b) is
23 clearly inapplicable to condition adjustments made to comparable vehicles as it applies only
24 to the specifically enumerated adjustments set forth in Subsections (5)(a) through (d).
25
26

1 Accordingly, Count III suffers from a “lack of a cognizable legal theory.” *See Balistreri v.*
2 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

3 Even if this court finds that First National must “itemize” or “explain” the condition
4 adjustments made to comparable vehicles, the Valuation Report incorporated into Plaintiff’s
5 Complaint by reference makes clear that First National did in fact itemize and explain such
6 condition adjustments. (*See Ex. B at pp. 1, 7, 9.*) Accordingly, even if its legal theory is
7 cognizable, Plaintiff has failed to allege “enough facts to state a claim to relief that is
8 plausible on its face,” *Twombly*, 550 U.S. at 570, and his Washington Consumer Protection
9 Act claim also must fail.
10

11 **D. There Is No Basis for the Declaratory or Injunctive Relief Requested.**

12 Neither the declaratory relief nor the injunctive relief requested in Count IV is proper.
13 With respect to declaratory relief, the Declaratory Judgment Act requires an “actual
14 controversy” to confer jurisdiction. *See* 28 U.S.C. § 2201(a). Here, Plaintiff has requested “a
15 declaration that ... it is a violation of Washington law and the insurance contract for First
16 National to base its valuation and payment of the claim on values of comparable vehicles that
17 have been artificially reduced by an arbitrary and unjustified ‘condition adjustment’ that is not
18 itemized or explained.” (Compl. at ¶ 56.) But as explained above, Plaintiff has not
19 adequately alleged “a violation of Washington law [or] the insurance contract” in Counts I
20 through III based on the condition adjustments to comparable vehicles. Accordingly, there is
21 no actual controversy for this Court to resolve by declaration.
22
23

24 With respect to injunctive relief, Plaintiff’s request for a permanent injunction is
25 similarly moot. *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156–57 (2010)
26 (“[A] plaintiff seeking a permanent injunction must satisfy a four-factor test before a court

1 may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable
2 injury; (2) that remedies available at law, such as monetary damages, are inadequate to
3 compensate for that injury; (3) that, considering the balance of hardships between the plaintiff
4 and defendant, a remedy in equity is warranted; and (4) that the public interest would not be
5 disserved by a permanent injunction.”). For the reasons stated above, Plaintiff has not
6 adequately alleged *any* cognizable injury, much less an *irreparable or ongoing* one, in Counts
7 I through III of the Complaint. Plaintiff’s mere assertion that it has no “adequate remedy at
8 law” is not enough to satisfy the second element that monetary damages are inadequate. *See*
9 *Twombly*, 550 U.S. at 555 (“[A] formulaic recitation of the elements of a cause of action will
10 not do.”).

11 12 **CONCLUSION**

13
14 For the foregoing reasons, Defendant First National moves to dismiss Plaintiff’s
15 Complaint pursuant to Fed. R. Civ. P. 12(b)(6).

16 Respectfully submitted this 15th day of May, 2018.

17
18 *s/ John M. Silk*

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1 **CERTIFICATE OF ELECTRONIC SERVICE**

2 I hereby certify that on the date set forth below, I electronically filed the foregoing
3 with the Clerk of the Court using the CM/ECF system, which will send notification of such
4 filing to those attorneys of record registered on the CM/ECF system. All other parties (if any)
5 shall be served in accordance with the Federal Rules of Civil Procedure.

6 DATED this 15th day of May, 2018.

7 s/ Traci Jay
8 Traci Jay

EXHIBIT A

WAC 284-30-391

Methods and standards of practice for settlement of total loss vehicle claims.

Unless an agreed value is reached, the insurer must adjust and settle vehicle total losses using the methods set forth in subsections (1) through (3) of this section. Subsections (4) through (6) of this section establish standards of practice for the settlement of total loss vehicle claims. If an agreed value or methodology is reached between the claimant and the insurer using an evaluation that varies from the methods described in subsections (1) through (3) of this section, the agreement must be documented in the claim file. The insurer must take reasonable steps to ensure that the agreed value is accurate and representative of the actual cash value of a comparable motor vehicle in the principally garaged area.

(1) Replacing the loss vehicle: The insurer may settle a total loss claim by offering to replace the loss vehicle with a comparable motor vehicle that is available for inspection within a reasonable distance from where the loss vehicle is principally garaged.

(2) Cash settlement: The insurer may settle a total loss claim by offering a cash settlement based on the actual cash value of a comparable motor vehicle, less any applicable deductible provided for in the policy.

(a) Only a vehicle identified as a comparable motor vehicle may be used to determine the actual cash value.

(b) The insurer must determine the actual cash value of the loss vehicle by using any one or more of the following methods:

(i) Comparable motor vehicle: The actual cash value of a comparable motor vehicle based on current data obtained in the area where the loss vehicle is principally garaged.

(ii) Licensed dealer quotes: Quotations for the cost of a comparable motor vehicle obtained from two or more licensed dealers within a reasonable distance of the principally garaged area not to exceed one hundred fifty miles (except where there are no licensed dealers having comparable motor vehicles within one hundred fifty miles).

(iii) Advertised data comparison: The actual cash value of two or more comparable motor vehicles advertised for sale in the local media if the advertisements meet the definition of current data as defined in WAC [284-30-320](#)(4). The vehicles must be located within a reasonable distance of the principally garaged area not to exceed one hundred fifty miles.

(iv) Computerized source: The insurer may use a computerized source to establish a statistically valid actual cash value of the loss vehicle. The source used must meet all of the following criteria:

(A) The source's database must produce values for at least eighty-five percent of all makes and models for a minimum of fifteen years taking into account the values of all major options for such motor vehicles.

(B) The source must produce actual cash values based on current data within a reasonable distance of the principally garaged area, not to exceed one hundred fifty miles.

(C) The source must rely upon the actual cash value of comparable motor vehicles that are currently available or were available in the market place within ninety days prior to or after the date of loss.

(D) The source must provide a list of comparable motor vehicles used to determine the actual cash value. If more than thirty comparable motor vehicles are located, the insurer need list only thirty but may list more.

(v) Cash settlement search area: If none of the methods in subsection (2)(b)(i) through (iv) of this section produce a comparable motor vehicle to establish an actual cash value within a reasonable distance of the principally garaged area, the search area may be expanded in increasing circles of twenty-five mile increments, up to one hundred and fifty miles, until two or more comparable motor vehicles are located. If no comparable motor vehicles can be located within one hundred fifty miles, the search area may be expanded with the agreement of the first party claimant.

(3) Appraisal: If the first party claimant and the insurer fail to agree on the actual cash value of the loss vehicle and the insurance policy has an appraisal provision, either the insurer or the first party

claimant may invoke the appraisal provision of the policy to resolve disputes concerning the actual cash value.

(4) Settlement requirements: When settling a total loss vehicle claim using methods in subsections (1) through (3) of this section, the insurer must:

(a) Communicate its settlement offer to the claimant by phone or in writing and information about this communication must be documented in the claim file, including the date, time, and name of the person to whom the offer was made.

(b) Base all offers on itemized and verifiable dollar amounts for vehicles that are currently available, or were available within ninety days of the date of loss, using appropriate deductions or additions for options, mileage or condition when determining comparability.

(c) Consider relevant information supplied by the claimant when determining appropriate deductions or additions.

(d) Provide a true and accurate copy of any "valuation report," as described in WAC **284-30-392**, if requested.

(e) As part of the settlement amount, include all applicable government taxes and fees that would have been incurred by the claimant if the claimant had purchased the loss vehicle immediately prior to the loss. These taxes and fees must be included in the settlement amount whether or not the claimant retains or subsequently transfers ownership of the loss vehicle.

(5) Settlement adjustments: Insurers may adjust a total loss settlement through the following methods only:

(a) The insurer may deduct from a first party claim the amount of another claim payment (including the applicable deductible) previously made to an insured for prior unrepaired damage to the same vehicle.

(b) Deductions other than those made pursuant to (a) of this subsection may be made for other unrepaired damage as long as the amount of deduction is no greater than the decrease in the actual cash value due to prior damage.

(c) If the claimant retains the total loss vehicle, the insurer may deduct the salvage value from the settlement amount, as described in subsection (4)(e) of this section. Upon a request by the claimant, the insurer must provide the name and address of a salvage entity or dismantler who will purchase the salvage for the amount deducted with no additional charge. This purchase option must remain available for at least thirty days after the settlement agreement is reached and the claimant must be advised that the salvage entity may not honor its offer if the condition of the salvage has changed.

(d) Any additions or deductions from the actual cash value must be explained to the claimant and must be itemized showing specific dollar amounts.

(6) Reopening a claim file:

(a) The insurer must reopen the claim file if within the first thirty-five days after the date final payment is sent to the first party claimant, lienholder, or both, the claimant is not able to purchase a comparable motor vehicle for the agreed amount but was able to locate, but did not purchase a comparable motor vehicle that costs more than the agreed settlement amount.

(b) If the claimant has satisfied (a) of this subsection, and if the appraisal section of the policy has not been utilized, the insurer must do one of the following:

(i) Locate a comparable motor vehicle that is currently available for the agreed settlement amount;

(ii) Pay the claimant the difference between the agreed settlement amount and the cost of the comparable motor vehicle;

(iii) Purchase the comparable motor vehicle for the claimant; or

(iv) Conclude the loss settlement in the manner provided in the appraisal section of the insurance policy in force at the time of the loss.

(c) The insurer is not required to reopen the claim file if:

(i) The claimant received written notification of the location of a specific comparable motor vehicle available for purchase for the agreed settlement amount and the claimant did not purchase this vehicle within five business days after the date final payment is sent to the claimant, lienholder, or both; or

(ii) The appraisal provision was previously exercised.

[Statutory Authority: RCW **48.02.060** and **48.30.010**. WSR 09-11-129 (Matter No. R 2007-08), § 284-30-391, filed 5/20/09, effective 8/21/09.]

EXHIBIT B

REPORT SUMMARY

CLAIM INFORMATION

Owner	Lundquist.corrinne Killion,cameron [REDACTED]
Loss Vehicle	1998 Dodge Ram 2500 Quad Cab 155" WB HD 4WD
Loss Incident Date	12/04/2017
Claim Reported	12/11/2017

The CCC ONE® Market Valuation Report reflects CCC Information Services Inc.'s opinion as to the value of the loss vehicle, based on information provided to CCC by FIRST NATIONAL INS CO OF AMERICA.

Loss vehicle has 1% greater than average mileage of 183,900.

INSURANCE INFORMATION

Report Reference Number	86935731
Claim Reference	379983576010-203
Adjuster	Ramm, Sarah
Appraiser	Potter, Robert
Odometer	185,000
Last Updated	12/11/2017 03:41 PM

VALUATION SUMMARY

Base Vehicle Value	\$ 16,738.00
Condition Adjustment	+ \$ 102.00
Adjusted Vehicle Value	\$ 16,840.00
Vehicular Tax (9.3%)	+ \$ 1,566.12
Tax reflects applicable state, county and municipal taxes.	
Value before Deductible	\$ 18,406.12
Deductible	- \$ 1,000.00

Total \$ 17,406.12

The total may not represent the total of the settlement as other factors (e.g. license and fees) may need to be taken into account.

BASE VEHICLE VALUE

This is derived from comparable vehicle(s) available or recently available in the marketplace at the time of valuation, per our valuation methodology described on the next page.

ADJUSTED VEHICLE VALUE

This is determined by adjusting the Base Vehicle Value to account for the actual condition of the loss vehicle and certain other reported attributes, if any, such as refurbishments and after factory equipment.

Inside the Report

Valuation Methodology.....	2
Vehicle Information.....	3
Vehicle Condition.....	7
Comparable Vehicles.....	8
Valuation Notes.....	11
Supplemental Information.....	12

VALUATION METHODOLOGY

How was the valuation determined?

CLAIM INSPECTION



FIRST NATIONAL INS CO OF AMERICA has provided CCC with the zip code where the loss vehicle is garaged, loss vehicle VIN, mileage, equipment, as well as loss vehicle condition, which is used to assist in determining the value of the loss vehicle.

DATABASE REVIEW



CCC maintains an extensive database of vehicles that currently are or recently were available for sale in the U.S. This database includes vehicles that CCC employees have physically inspected, as well as vehicles advertised for sale by dealerships or private parties. All of these sources are updated regularly.

SEARCH FOR COMPARABLES

When a valuation is created the database is searched and comparable vehicles in the area are selected. The zip code where the loss vehicle is garaged determines the starting point for the search. Comparable vehicles are similar to the loss vehicle based on relevant factors.



CALCULATE BASE VEHICLE VALUE

Adjustments to the price of the selected comparable vehicles are made to reflect differences in vehicle attributes, including mileage and options. Dollar adjustments are based upon market research.

Finally, the Base Vehicle Value is the weighted average of the adjusted values of the comparable vehicles based on the following factors:

- Source of the data (such as inspected versus advertised)
- Similarity (such as equipment, mileage, and year)
- Proximity to the loss vehicle's primary garage location
- Recency of information



 **VEHICLE INFORMATION**

VEHICLE DETAILS

Location	PORT ORCHARD, WA 98366-1315
VIN	1B7KF23D1WJ129708
Year	1998
Make	Dodge
Model	Ram 2500
Body Style	Quad Cab 155" WB HD 4WD
Body Type	Pickup
Engine -	
Cylinders	6
Displacement	5.9L
Induction	Turbocharged
Fuel Type	Diesel
Carburation	Turbo-Charged
Transmission	Automatic Transmission 4 Wheel Drive Overdrive
Curb Weight	5077 lbs

VEHICLE ALLOWANCES

Odometer	185,000	- 74
-----------------	---------	------

Options

Automatic Transmission	Reported	+ 339
Power Mirrors	Reported	+ 41
Power Driver Seat	Reported	+ 68
Power Passenger Seat	Reported	+ 68
Air Conditioning	Reported	+ 339
Keyless Entry	Reported	+ 102
Leather Seats	Reported	+ 271
Heated Seats	Reported	+ 136
CD Player	Reported	+ 136
Cassette	Not Present	- 68
Aluminum/Alloy Wheels	Reported	+ 136
Heated Mirrors	Reported	+ 25
Aftermarket Film Tint	Reported	+ 34
Fog Lamps	Reported	+ 68
Trailer Hitch	Reported	+ 68
Trailer Package	Reported	+ 68
Rear Sliding Window	Reported	+ 68
Bedliner (spray On)	Reported	+ 140

Vehicles sold in the United States are required to have a manufacturer assigned Vehicle Identification Number(VIN). This number provides certain specifications of the vehicle.

Please review the information in the Vehicle Information Section to confirm the reported mileage and to verify that the information accurately reflects the options, additional equipment or other aspects of the loss vehicle that may impact the value.

Allowances are factors influencing the value of the loss vehicle when compared to a typical vehicle. The typical vehicle is a vehicle of the same year, make, and model as the loss vehicle, including average mileage, and all standard and predominant equipment. These allowances are displayed for illustrative purposes only.

The Base Vehicle Value is calculated from the comparable vehicles with adjustments to reflect the loss vehicle configuration

 VEHICLE INFORMATION

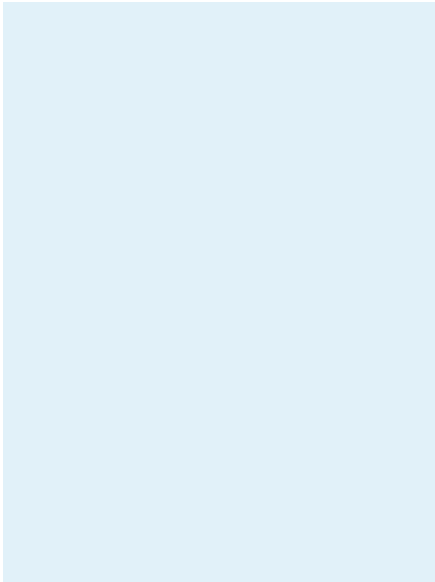
VEHICLE ALLOWANCES

Tool Box (permanent)	Reported	+ 68
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Reported* Option(s) added after initial valuation

















VEHICLE HISTORY SUMMARY

CCC VINguard®	1 Collision Estimate	12/30/2008
Experian AutoCheck	No Title Problem Found	
Insurance Services Organization/ National Insurance Crime Bureau	4 Records Found	
National Highway Traffic Safety Administration	1 Recall	




 VEHICLE INFORMATION

VEHICLE EQUIPMENT

Odometer	185,000	
Transmission	Automatic Transmission	
	Overdrive	✓
	4 Wheel Drive	✓
Power	Power Steering	✓
	Power Brakes	✓
	Power Windows	
	Power Locks	
	Power Mirrors	
	Power Driver Seat	
	Power Passenger Seat	
	Decor/Convenience	Air Conditioning
	Climate Control	
	Tilt Wheel	
	Cruise Control	
	Intermittent Wipers	✓
	Console/Storage	✓
	Keyless Entry	
	Wood Interior Trim	
Seating	Leather Seats	
	Heated Seats	
Radio	AM Radio	✓
	FM Radio	✓
	Stereo	✓
	Search/Seek	✓
	CD Player	
Wheels	Aluminum/Alloy Wheels	
Safety/Brakes	Air Bag (Driver Only)	✓
	Passenger Air Bag	✓
	Anti-lock Brakes (2)	✓
Exterior/Paint/Glass	Dual Mirrors	✓
	Heated Mirrors	

To the left is the equipment of the loss vehicle that FIRST NATIONAL INS CO OF AMERICA provided to CCC.

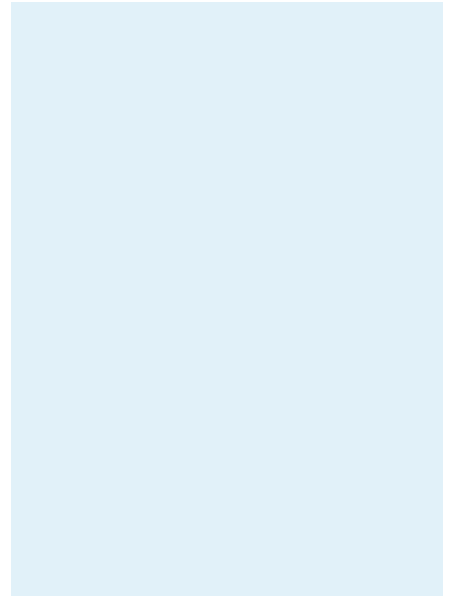
✓ **Standard** This equipment is included in the base configuration of the vehicle at time of purchase.

 **Additional** Equipment that is not Standard but was noted to be on the loss vehicle.

VEHICLE INFORMATION

VEHICLE EQUIPMENT

	Aftermarket Film Tint	
	Fog Lamps	
	Clearcoat Paint	
	Metallic Paint	
	Two Tone Paint	
Other - Trucks	Rear Step Bumper	
	Trailer Hitch	
	Trailer Package	
	Rear Sliding Window	
	Bedliner (spray On)	
	Tool Box (permanent)	



 VEHICLE CONDITION

COMPONENT CONDITION

	Condition	Inspection Notes	Value Impact
INTERIOR			
Seats	NORMAL WEAR		\$ 0
Carpets	NORMAL WEAR		\$ 0
Dashboard	DEALER READY		\$ 51
Headliner	NORMAL WEAR		\$ 0
EXTERIOR			
Sheet Metal	NORMAL WEAR		\$ 0
Trim	NORMAL WEAR		\$ 0
Paint	NORMAL WEAR		\$ 0
Glass	NORMAL WEAR		\$ 0
MECHANICAL			
Engine	DEALER READY		\$ 51
Transmission	NORMAL WEAR		\$ 0
TIRES			
Front Tires	NORMAL WEAR	7/32 7/32	\$ 0
Rear Tires	NORMAL WEAR	8/32 8/32	\$ 0
Total Condition Adjustments			\$ 102

FIRST NATIONAL INS CO OF AMERICA uses condition inspection guidelines to determine the condition of key components of the loss vehicle prior to the loss. The guidelines describe physical characteristics for these key components, for the condition selected based upon age. Inspection Notes reflect observations from the appraiser regarding the loss vehicle's condition.

CCC makes dollar adjustments that reflect the impact the reported condition has on the value of the loss vehicle as compared to Normal Wear condition. These dollar adjustments are based upon interviews with dealerships across the United States.

 COMPARABLE VEHICLES

Options	Loss Vehicle	Comp 1	Comp 2	Comp 3
Odometer	185,000	127,664	130,017	201,150
Automatic Transmission	✓	✓	✓	✓
Overdrive	✓	✓	✓	✓
4 Wheel Drive	✓	✓	✓	✓
Power Steering	✓	✓	✓	✓
Power Brakes	✓	✓	✓	✓
Power Windows	✓	✗	✓	✗
Power Locks	✓	✗	✓	✗
Power Mirrors	✓	✗	✓	✓
Power Driver Seat	✓	✗	✓	✗
Power Passenger Seat	✓	✗	✗	✗
Air Conditioning	✓	✗	✓	✗
Climate Control	✓	✗	✗	✗
Tilt Wheel	✓	✗	✓	✗
Cruise Control	✓	✗	✓	✗
Intermittent Wipers	✓	✓	✓	✓
Console/Storage	✓	✓	✓	✓
Keyless Entry	✓	✗	✗	✗
Wood Interior Trim	✓	✗	✗	✗
Cloth Seats	✗	✗	✓	✗
Leather Seats	✓	✗	✗	✗
Heated Seats	✓	✗	✗	✗
AM Radio	✓	✓	✓	✓
FM Radio	✓	✓	✓	✓
Stereo	✓	✓	✓	✓
Search/Seek	✓	✓	✓	✓
CD Player	✓	✗	✓	✗
Cassette	✗	✓	✓	✓
Styled Steel Wheels	✗	✓	✓	✓
Aluminum/Alloy Wheels	✓	✗	✗	✗
Drivers Side Air Bag	✓	✓	✓	✓
Passenger Air Bag	✓	✓	✓	✓
Anti-lock Brakes (4)	✗	✗	✗	✓
Anti-lock Brakes (2)	✓	✓	✓	✗
Dual Mirrors	✓	✓	✓	✓
Heated Mirrors	✓	✗	✗	✓
Tinted Glass	✗	✓	✓	✓
Aftermarket Film Tint	✓	✗	✗	✗
Fog Lamps	✓	✗	✗	✗
Clearcoat Paint	✓	✗	✗	✗

Comp 1 Updated Date: 09/19/2017

1998 Dodge Ram 2500 Quad Cab
139" Wb Hd 4wd 6 5.9l Diesel
Turbocharged Turbo-charged
VIN [REDACTED]

Dealership Northwest Motorsport
Telephone (253) 292-5015

Source Autotrader
Stock # 38986B

Distance from Port Orchard, WA
 26 Miles - Puyallup, WA

Comp 2 Updated Date: 11/22/2017

1999 Dodge Ram 2500 Quad Cab
139" Wb Hd 4wd 6 5.9l Diesel
Turbocharged Turbo-charged
VIN [REDACTED]

Dealership Northwest Motorsport Lynn
Telephone (425) 287-5732

Source Autotrader
Stock # 44361

Distance from Port Orchard, WA
 25 Miles - Lynnwood, WA

Comp 3 Updated Date: 10/04/2017

1999 Dodge Ram 3500 Quad Cab 155"
Wb 4wd W/dual Rear Wheels 6 5.9l
Diesel Turbocharged Turbo-charged
VIN [REDACTED]

Dealership Excellent Choice Auto Sal
Telephone (425) 512-9000

Source Autotrader
Stock # Mf4135A

Distance from Port Orchard, WA
 30 Miles - Everett, WA

Comparable vehicles used in the determination of the Base Vehicle Value are not intended to be replacement vehicles but are reflective of the market value, and may no longer be available for sale.

List Price is the sticker price of an inspected dealer vehicle and the advertised price for the advertised vehicle.

Distance is based upon a straight line between loss and comparable vehicle locations.

 **COMPARABLE VEHICLES**

Options	Loss Vehicle	Comp 1	Comp 2	Comp 3
Metallic Paint	✓	✗	✗	✗
Two Tone Paint	✓	✗	✗	✗
Rear Step Bumper	✓	✓	✓	✓
Trailer Hitch	✓	✗	✓	✗
Trailer Package	✓	✗	✓	✗
Rear Sliding Window	✓	✗	✗	✗
Dual Rear Wheels	✗	✗	✗	✓
Bedliner (spray On)	✓	✗	✗	✗
Tool Box (permanent)	✓	✗	✗	✗
List Price		\$ 18,999	\$ 19,999	\$ 15,991
Adjustments:				
Make/Model/Trim			- \$ 350	- \$ 825
Options		+ \$ 1,904	+ \$ 912	+ \$ 1,768
Mileage		- \$ 3,246	- \$ 3,052	+ \$ 963
Condition ¹		- \$ 936	- \$ 936	- \$ 936
Adjusted Comparable Value		\$ 16,721	\$ 16,573	\$ 16,961

¹The **Condition Adjustment** sets that comparable vehicle to Normal Wear condition, which the loss vehicle is also compared to in the Vehicle Condition section.

 **COMPARABLE VEHICLES**

 **COMPARABLE VEHICLE CONTRIBUTION**

Source	Comparable Vehicle	Price	Adjusted Comp Value	% of Base Vehicle Value
1 Dealer Vehicle	1998 Dodge Ram 2500 Quad Cab 139" Wb Hd 4wd 6 5.9l Diesel Turbocharged Turbo-charged	\$ 18,999 (List)	\$ 16,721	29 %
2 Dealer Vehicle	1999 Dodge Ram 2500 Quad Cab 139" Wb Hd 4wd 6 5.9l Diesel Turbocharged Turbo-charged	\$ 19,999 (List)	\$ 16,573	40 %
3 Dealer Vehicle	1999 Dodge Ram 3500 Quad Cab 155" Wb 4wd W/dual Rear Wheels 6 5.9l Diesel Turbocharged Turbo- charged	\$ 15,991 (List)	\$ 16,961	32 %
Base Vehicle Value			\$ 16,738.00	

The following comparable vehicle(s) were used to determine this Base Vehicle Value. The listed % of Base Vehicle Value displays what percentage the comparable vehicle contributed to the Base Vehicle Value as described in the Valuation Methodology section.

VALUATION NOTES

This Market Valuation Report has been prepared exclusively for use by FIRST NATIONAL INS CO OF AMERICA, and no other person or entity is entitled to or should rely upon this Market Valuation Report and/or any of its contents. CCC is one source of vehicle valuations, and there are other valuation sources available.

Regulations concerning vehicle value include Washington Administrative Code 284-30. It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefit.

America First Insurance, Colorado Casualty, Golden Eagle Insurance, Indiana Insurance, Liberty Agency Underwriters, Liberty Northwest, Montgomery Insurance, Ohio Casualty, Peerless Insurance and Safeco Insurance are part of Liberty Mutual Agency Markets, a business unit of Liberty Mutual Group.

SUPPLEMENTAL INFORMATION



CARRIER INFORMATION

Prepared for: FIRST NATIONAL INS CO OF AMERICA

Personal Lines East Total Loss



VEHICLE HISTORY INFORMATION

VINGUARD®

VINGUARD® Message: VINGUARD has decoded this VIN without any errors

ISO Vehicle History:

Number of times reported to ISO:	4
ISO's file number:	H0266273277
Loss date:	11/26/2005
Claim ref:	1007549076-1-1
Mileage:	0000000
ISO notified:	12/08/2005
Loss date:	12/24/2008
Claim ref:	[REDACTED]
Point of Impact:	Right Front
Mileage:	0133714
ISO notified:	12/30/2008
Loss date:	12/24/2008
Phone:	[REDACTED]
Claim ref:	[REDACTED]
Point of Impact:	Right Front
Mileage:	0133714
ISO notified:	01/05/2009
Loss date:	12/04/2017
Phone:	[REDACTED]

Collision History Information:

COLLISION INCIDENT REPORTED BY KEMPER SERVICES GROUP ON 12/30/2008

Claim #: 781AF013249N7810101 in BOTHELL, WA

Repair Estimate: 8027.42 Miles: 133714

Damage Location: ROLLOVER
 UNKNOWN

SUPPLEMENTAL INFORMATION



EXPERIAN® AUTOCHECK® VEHICLE HISTORY REPORT

TITLE CHECK	RESULTS FOUND
Abandoned	✓ No Abandoned Record Found
Damaged	✓ No Damaged Record Found
Fire Damage	✓ No Fire Damage Record Found
Grey Market	✓ No Grey Market Record Found
Hail Damage	✓ No Hail Damage Record Found
Insurance Loss	✓ No Insurance Loss Record Found
Junk	✓ No Junk Record Found
Rebuilt	✓ No Rebuilt Record Found
Salvage	✓ No Salvage Record Found
EVENT CHECK	RESULTS FOUND
NHTSA Crash Test Vehicle	✓ No NHTSA Crash Test Vehicle Record Found
Frame Damage	✓ No Frame Damage Record Found
Major Damage Incident	✓ No Major Damage Incident Record Found
Manufacturer Buyback/Lemon	✓ No Manufacturer Buyback/Lemon Record Found
Odometer Problem	✓ No Odometer Problem Record Found
Recycled	✓ No Recycled Record Found
Water Damage	✓ No Water Damage Record Found
Salvage Auction	✓ No Salvage Auction Record Found
VEHICLE INFORMATION	RESULTS FOUND
Accident	📄 Accident Record Found
Corrected Title	📄 Corrected Title Record Found
Driver Education	✓ No Driver Education Record Found
Fire Damage Incident	✓ No Fire Damage Incident Record Found
Lease	✓ No Lease Record Found
Lien	✓ No Lien Record Found
Livery Use	✓ No Livery Use Record Found
Government Use	✓ No Government Use Record Found
Police Use	✓ No Police Use Record Found
Fleet	✓ No Fleet Record Found
Rental	✓ No Rental Record Found
Fleet and/or Rental	✓ No Fleet and/or Rental Record Found
Repossessed	✓ No Repossessed Record Found
Taxi use	✓ No Taxi use Record Found
Theft	✓ No Theft Record Found
Fleet and/or Lease	✓ No Fleet and/or Lease Record Found
Emissions Safety Inspection	✓ No Emissions Safety Inspection Record Found
Duplicate Title	✓ No Duplicate Title Record Found

CCC provides FIRST NATIONAL INS CO OF AMERICA information reported by Experian regarding the **1998 Dodge Ram 2500 (1B7KF23D1WJ129708)**. This data is provided for informational purposes. Unless otherwise noted in this Valuation Detail, CCC does not adjust the value of the loss vehicle based upon this information.

LEGEND :

- ✓ No Event Found
- 🚫 Event Found
- 📄 Information Needed

TITLE CHECK

THIS VEHICLE CHECKS OUT

AutoCheck's result for this loss vehicle show no significant title events. When found, events often indicate automotive damage or warnings associated with the vehicle.

EVENT CHECK

THIS VEHICLE CHECKS OUT

AutoCheck's result for this loss vehicle show no historical events that indicate a significant automotive problem. These problems can indicate past previous car damage, theft, or other significant problems.

VEHICLE INFORMATION

INFORMATION FOUND

AutoCheck found additional information on this vehicle. These records will provide more history for this loss vehicle

ODOMETER CHECK

THIS VEHICLE CHECKS OUT

AutoCheck's result for this loss vehicle show no indication of odometer rollback or tampering was found. AutoCheck determines odometer rollbacks by searching for records that indicate odometer readings less than a previously reported value. Other odometer events can report events of tampering, or possible odometer breakage.

SUPPLEMENTAL INFORMATION



FULL HISTORY REPORT RUN DATE: 12/11/2017

Below are the historical events for this vehicle listed in chronological order.

EVENT DATE	RESULTS FOUND	ODOMETER READING	DATA SOURCE	EVENT DETAIL
12/05/1997	PORTLAND, OR		Motor Vehicle Dept.	TITLE (Lien Reported)
01/07/1998	PORTLAND, OR		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
11/04/1998	PORTLAND, OR		Motor Vehicle Dept.	TITLE (Lien Reported)
11/04/1998	PORTLAND, OR		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
08/09/1999	PORTLAND, OR		Motor Vehicle Dept.	TITLE
08/09/1999	PORTLAND, OR		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
03/22/2000	PORTLAND, OR		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
09/15/2003	PORTLAND, OR		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
03/22/2004	WILSONVILLE, OR	97326	Dealer Record	VEHICLE IN DEALER INVENTORY
04/05/2004	PORTLAND, OR		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
04/09/2004	OR	97474	Motor Vehicle Dept.	ODOMETER READING FROM DMV
05/03/2004	TROUTDALE, OR		Motor Vehicle Dept.	TITLE (Lien Reported)
05/03/2004	TROUTDALE, OR		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
02/13/2006	PACIFIC NW REGION,	112819	Auto Auction	REPORTED AT AUTO AUCTION
02/14/2006	PACIFIC NW REGION,	112819	Auto Auction	REPORTED AT AUTO AUCTION AS DEALER VEHICLE
02/28/2006	MONROE, WA	112875	Motor Vehicle Dept.	TITLE (Lien Reported)
03/01/2006	MONROE, WA		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
02/26/2007	MONROE, WA		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
03/27/2007	MONROE, WA	122000	Motor Vehicle Dept.	TITLE (Lien Reported)
05/01/2008	YAKIMA, WA		Motor Vehicle Dept.	TITLE (Lien Reported)
05/01/2008	YAKIMA, WA		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
05/01/2008	YAKIMA, WA		Motor Vehicle Dept.	EXCLUDED/EXEMPT
12/24/2008	WA		State Agency	VEHICLE OVERTURNED
07/17/2009	YAKIMA, WA		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL

SUPPLEMENTAL INFORMATION

EVENT DATE	RESULTS FOUND	ODOMETER READING	DATA SOURCE	EVENT DETAIL
04/05/2010	MAPLE VALLEY, WA		Motor Vehicle Dept.	TITLE
04/05/2010	MAPLE VALLEY, WA		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
04/05/2010	MAPLE VALLEY, WA		Motor Vehicle Dept.	EXCLUDED/EXEMPT
05/12/2011	RENTON, WA		Motor Vehicle Dept.	TITLE
05/12/2011	RENTON, WA		Motor Vehicle Dept.	CORRECTED TITLE
05/12/2011	RENTON, WA		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
05/12/2011	RENTON, WA		Motor Vehicle Dept.	EXCLUDED/EXEMPT
04/27/2012	RENTON, WA		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
05/25/2013	AUBURN, WA		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
09/14/2015	AUBURN, WA		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
09/14/2015	REDMOND, WA		State Agency	PASSED EMISSION INSPECTION
09/24/2016	AUBURN, WA		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
03/07/2017	PORT ORCHARD, WA		Motor Vehicle Dept.	TITLE
03/07/2017	PORT ORCHARD, WA		Motor Vehicle Dept.	REGISTRATION EVENT/ RENEWAL
03/07/2017	PORT ORCHARD, WA		Motor Vehicle Dept.	EXCLUDED/EXEMPT

AUTOCHECK TERMS AND CONDITIONS:

Experian's Reports are compiled from multiple sources. It is not always possible for Experian to obtain complete discrepancy information on all vehicles; therefore, there may be other title brands, odometer readings or discrepancies that apply to a vehicle that are not reflected on that vehicle's Report. Experian searches data from additional sources where possible, but all discrepancies may not be reflected on the Report.

These Reports are based on information supplied to Experian by external sources believed to be reliable, BUT NO RESPONSIBILITY IS ASSUMED BY EXPERIAN OR ITS AGENTS FOR ERRORS, INACCURACIES OR OMISSIONS. THE REPORTS ARE PROVIDED STRICTLY ON AN "AS IS WHERE IS" BASIS, AND EXPERIAN FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THIS REPORT.

YOU AGREE TO INDEMNIFY EXPERIAN FOR ANY CLAIMS OR LOSSES, INCLUDING COSTS, EXPENSES AND ATTORNEYS FEES, INCURRED BY EXPERIAN ARISING DIRECTLY OR INDIRECTLY FROM YOUR IMPROPER OR UNAUTHORIZED USE OF AUTOCHECK VEHICLE HISTORY REPORTS.

Experian shall not be liable for any delay or failure to provide an accurate report if and to the extent which such delay or failure is caused by events beyond the reasonable control of Experian, including, without limitation, "acts of God", terrorism, or public enemies, labor disputes, equipment malfunctions, material or component shortages, supplier failures, embargoes, rationing, acts of local, state or national governments, or public agencies, utility or communication failures or delays, fire, earthquakes, flood, epidemics, riots and strikes.

SUPPLEMENTAL INFORMATION

These terms and the relationship between you and Experian shall be governed by the laws of the State of Illinois (USA) without regard to its conflict of law provisions. You and Experian agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Cook, Illinois.

SUPPLEMENTAL INFORMATION



NHTSA VEHICLE RECALL

NHTSA Campaign ID : 99V190

Potential Number Of Units Affected : 9,000

Summary : The underbody hydraulic clutch line heat shield is too short, allowing the plastic clutch line material to be directly exposed to exhaust temperatures. If the line melts, hydraulic fluid can leak onto the vehicle exhaust and cause an underbody fire.

Remedy : Dealers will install the proper length heat shield. Owner notification is expected to begin during September 1999. Owners who do not receive the free remedy within a reasonable time should contact Chrysler at 1-800-992-1997.

Dates Of Manufacture : February - June 1999

Manufacturer Recall No. : 838

The National Highway Traffic Safety Administration has issued 1 safety related recall notices that may apply to the above valued vehicle.

EXHIBIT C

WAC 284-30-392

Information that must be included in the insurer's total loss vehicle valuation report.

The insurer's total loss vehicle valuation report must include:

- (1) All information collected during the initial inspection assessing the condition, equipment, and mileage of the loss vehicle;
- (2) All information the insurer used to determine the actual cash value of the loss vehicle;
- (3) A list of the comparable motor vehicles used by the insurer to arrive at the actual cash value. This list must include:
 - (a) The source of the information used;
 - (b) The date of the information;
 - (c) The contact information for the seller, the comparable motor vehicle's vehicle identification number, or both;
 - (d) The seller's asking price;
 - (e) The sold price, if available; and
 - (f) The location or contact information for each comparable motor vehicle at the time of the valuation.
- (4) When the insurer uses a computerized source for determining statistically valid actual cash values after meeting the requirements of WAC [284-30-391](#) (2)(b)(iv):
 - (a) The source must provide a list of comparable motor vehicles used to determine the actual cash value. If more than thirty comparable motor vehicles are used, only thirty must be listed.
 - (b) Any supplemental information must be clearly identified with a separate heading.
 - (c) Any weighting of identified vehicles to arrive at an average must be documented and explained.

[Statutory Authority: RCW [48.02.060](#) and [48.30.010](#). WSR 09-11-129 (Matter No. R 2007-08), § 284-30-392, filed 5/20/09, effective 8/21/09.]

EXHIBIT D



WASHINGTON ESSENTIAL PERSONAL AUTO POLICY

FIRST NATIONAL INSURANCE COMPANY OF AMERICA
Home Office: 62 Maple Avenue, Keene, New Hampshire 03431

(A stock insurance company.)

READY REFERENCE TO YOUR AUTO POLICY

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- Additional Personal Injury Protection Coverage
- Underinsured Motorists Coverage — Property Damage
- Roadside Assistance Coverage
- Loss of Use Coverage
- Full Safety Glass Coverage

AGREEMENT

In return for your payment of all premiums, and in reliance upon the statements in the application we agree to insure you subject to the terms, conditions and limitations of this policy. We will insure you for the coverages and limits shown on the Declarations. Your policy consists of the policy contract, Declarations and endorsements applicable to the policy.

DEFINITIONS

- A. Throughout this policy, “you” and “your” refer to:
1. The “named insured” shown in the Declarations;
 2. The spouse if a resident of the same household;
 3. The civil partner, if a resident of the same household, by civil union licensed and certified by the state; or
 4. The **domestic partner**, if a resident of the same household;
- “**Domestic partner**” means a person living as a continuing partner with you and:
- (a) is at least 18 years of age and competent to contract;
 - (b) is not a relative; and
 - (c) shares with you the responsibility for each other’s welfare, evidence of which includes:
 - (1) the sharing in domestic responsibilities for the maintenance of the household; or
 - (2) having joint financial obligations, resources, or assets; or
 - (3) one with whom you have made a declaration of domestic partnership or similar declaration with an employer or government entity.
- Domestic partner** does not include more than one person, a roommate whether sharing expenses equally or not, or one who pays rent to the named insured.
- B. “We”, “us” and “our” refer to the Company, as shown in the Declarations providing this insurance.
- C. For purposes of this policy, a private passenger auto shall be deemed to be owned by a person if leased:
1. Under a written agreement to that person; and
 2. For a continuous period of at least six months.
- D. Throughout the policy, “**minimum limits**” refers to the following limits of liability required by Washington law to be provided under a policy of automobile liability insurance:
1. \$25,000 for each person, subject to \$50,000 for each accident, with respect to **bodily injury**;
 2. \$10,000 for each accident with respect to **property damage**.

Other words and phrases are defined. They are in bold type when used.

- E. “**Bodily injury**” means bodily harm, sickness or disease, including death that results.
- F. “**Business**” includes trade, profession or occupation.
- G. “**Diminution in value**” means the actual or perceived loss in market or resale value which results from a direct and accidental loss.
- H. “**Family member**” means a person related to you by blood, marriage, civil union, domestic partnership or adoption who is a resident of your household. This includes a ward or foster child who is a resident of your household.
- I. “**Non-resident family member**” means a person related to you by blood, marriage, civil union, domestic partnership or adoption who is not a resident of your household.
- J. “**Occupying**” means in; upon; or getting in, on, out or off.

- K. **“Personal vehicle sharing program”** means a legal entity qualified to do **business** in this state and engaged in the **business** of facilitating the sharing of private passenger motor vehicles for noncommercial use by individuals within this state. Private passenger motor vehicle as it relates to **personal vehicle sharing program** means a four wheel passenger or station wagon type motor vehicle insured under an automobile liability insurance policy covering any individuals residing in your household.
- L. **“Property damage”** means physical injury or destruction of tangible property including loss of use.
- M. **“Punitive or exemplary damages”** include damages which are awarded to punish or deter wrongful conduct, to set an example, to fine, penalize or impose a statutory penalty, and damages which are awarded for any purpose other than as compensatory damages for **bodily injury** or **property damage**.
- N. **“Trailer”** means a vehicle designed to be pulled by a:
 1. Private passenger auto; or
 2. Pickup, van or motorhome.

It also means a recreational camping vehicle, a farm wagon or farm implement while towed by a vehicle listed in **N.1.** or **N.2.** above.

- O. **“Transportation network platform”** means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.
- P. **“Your covered auto”** means:
 1. Any vehicle shown in the Declarations.
 2. a. Any newly acquired vehicle, whether operational or not, on the date you become the owner, subject to conditions for **Newly Acquired Replacement Vehicle** and **Newly Acquired Additional Vehicle** under **P.2.b.** below. Any newly acquired vehicle must be of the following types:
 - (1) a private passenger auto;
 - (2) a pickup or van that:
 - (a) has a Gross Vehicle Weight Rating of 12,000 lbs or less; and
 - (b) is not used for the delivery or transportation of goods and materials unless such use is:
 - i. incidental to your **business** of installing, maintaining or repairing furnishings or equipment; or
 - ii. for farming or ranching; or
 - (3) a motorhome or **trailer**.
 - b. A newly acquired vehicle is subject to the following conditions:
 - (1) **Newly Acquired Replacement Vehicle.** If the vehicle you acquire replaces one shown in the Declarations, the replacement vehicle will have the same coverage as the vehicle it replaced, other than Part **D** — Coverage for Damage to Your Auto. This provision applies only if there is no other insurance policy that provides coverage for that replacement vehicle.

Part **D** — Coverage for Damage to Your Auto shall apply for the first thirty (30) days after you acquire the vehicle, including the date of acquisition, only to the extent Part **D** — Coverage for Damage to Your Auto applied to the vehicle being replaced. You must notify us within thirty (30) days after you acquire the replacement vehicle, including the date of acquisition, only to the extent that Part **D** — Coverage for Damage to Your Auto applied to the vehicle being replaced. You must notify us within thirty (30) days after you acquire the replacement vehicle for Part **D** — Coverage for Damage to Your Auto to continue.
 - (2) **Newly Acquired Additional Vehicle.** For any newly acquired vehicle that is in addition to any shown In the Declarations coverage shall apply for the first thirty (30) days after you acquire the vehicle, including the date of acquisition. Coverage shall be the broadest coverage we provide for any vehicle shown in the Declarations. This coverage applies only if:
 - (a) you acquire the additional vehicle during the policy period shown on the Declarations; and

- (b) there is no other insurance policy that provides coverage for the additional vehicle.

If you wish to add or continue coverage you must ask us to insure the additional vehicle within thirty (30) days after you acquire the additional vehicle. This thirty (30) days of coverage includes the day you acquire the vehicle.

- (3) Collision Coverage for a newly acquired vehicle begins on the date that you acquire the vehicle. However, if the Declarations does not indicate that Collision Coverage applies to at least one vehicle, you must ask us to insure the newly acquired vehicle within four (4) days after you acquire it. If a loss occurs during the four (4) days after you acquire the vehicle but before you asked us to insure the newly acquired vehicle, a \$500 collision deductible will apply.
- (4) Comprehensive Coverage for a newly acquired vehicle begins on the date that you acquire the vehicle. However, if the Declarations does not indicate that Comprehensive Coverage applies to at least one vehicle, you must ask us to insure the newly acquired vehicle within four (4) days after you acquire it. If a loss occurs during the four (4) days after you acquire the vehicle but before you asked us to insure the newly acquired vehicle, a \$500 comprehensive deductible will apply.

- 3. Any auto or **trailer** you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
 - a. breakdown;
 - b. repair;
 - c. servicing;
 - d. loss; or
 - e. destruction.

This provision (P.3.) does not apply to Coverage for Damage to Your Auto.

PART A — LIABILITY COVERAGE

INSURING AGREEMENT

- A. We will pay damages for **bodily injury** or **property damage** for which any **insured** becomes legally responsible because of an auto accident. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements, by permission of the **insured**, or as otherwise approved by a court of law. We have no duty to defend any suit or settle any claim for **bodily injury** or **property damage** not covered under this policy.
- B. “**Insured**” as used in this Part means:
 - 1. You or any **family member** for the ownership, maintenance or use of any auto or **trailer**.
 - 2. Any person using **your covered auto** with your express or implied permission. The actual use must be within the scope of that permission.
 - 3. For **your covered auto**, any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under **B.1.** and **B.2.** above.
 - 4. For any auto or **trailer**, other than **your covered auto**, any other person or organization but only with respect to legal responsibility for acts or omissions of you or any **family member** for whom coverage is afforded under this Part. This provision (**B.4.**) applies only if the person or organization does not own or hire the auto or **trailer**.

However, for the purposes of this coverage, “**insured**” does not mean any person who is using **your covered auto** under a **personal vehicle sharing program**.

INTEREST ON JUDGMENTS

We will pay interest on judgments subject to all of the following:

1. Any notice, demand, summons, judgment, or any process has been promptly forwarded to us as required by the policy conditions.
2. We accept the defense or agree to the judgment.
3. We will pay the interest on that part of the judgment that is covered and that does not exceed our applicable limit of liability.
4. We will pay interest that accrues after entry of judgment and before we pay, tender, or deposit in court.
5. If we appeal the judgment, we will pay interest on the entire judgment.
6. Post-judgment interest is in addition to the applicable limit of liability.
7. Where we are required to cover prejudgment interest, it shall be included in the limit of liability and is not an additional amount of insurance.

SUPPLEMENTARY PAYMENTS

We will pay on behalf of an **insured**:

1. Up to \$250 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in **bodily injury** or **property damage** covered under this policy. We are not obligated to apply for or furnish such bonds.
2. Premiums on appeal bonds and bonds to release attachments in any suit we defend.
3. Up to \$200 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.
4. Other reasonable expenses incurred at our request.
5. All expenses incurred by an **insured** for first aid to others at the time of the accident, not to exceed \$10,000.

EXCLUSIONS

A. We do not provide Liability Coverage for:

1. Any **insured** who intentionally causes **bodily injury** or **property damage**.
2. **Property damage** to property owned or being transported by any **insured**.
3. **Property damage** to property:
 - a. rented to;
 - b. used by; or
 - c. in the care of;
 any **insured**.

This exclusion (A.3.) does not apply to **property damage** to a residence or private garage.

4. **Bodily injury** to an employee of any **insured** during the course of employment. This exclusion (A.4.) does not apply to **bodily injury** to a domestic employee unless workers compensation benefits are required or available for that domestic employee.
5. Any **insured's** liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This includes but is not limited to any period of time while it is being used by any person who is logged in a **transportation network platform** as a driver, whether or not a passenger is **occupying** the vehicle. This exclusion (A.5.) does not apply to a share-the-expense car pool.
6. Any **insured** using any vehicle while employed in the pickup or delivery of newspapers or magazines, food or any products for the purpose of compensation. This exclusion does not apply to delivery that is incidental to an **insured's business**.
7. a. Any **insured** while employed or otherwise engaged in the **business** of:

- (1) selling;
 - (2) repairing;
 - (3) servicing;
 - (4) storing; or
 - (5) parking;
- vehicles designed for use mainly on public highways. This includes road testing and delivery.
- b. This exclusion (A.7.) does not apply to the ownership, maintenance or use of **your covered auto** by:
 - (1) you;
 - (2) any **family member**; or
 - (3) any partner, agent or employee of you or any **family member**.
8. Any **insured** maintaining or using any vehicle while that **insured** is employed or otherwise engaged in any **business** (other than farming or ranching) not described in Exclusions A.6. or A.7. This exclusion (A.8.) does not apply to the maintenance or use of a:
- a. private passenger auto;
 - b. pickup, motorhome or van that:
 - (1) you own; or
 - (2) you do not own while used as a temporary substitute for **your covered auto** which is out of normal use because of its:
 - (a) breakdown;
 - (b) repair;
 - (c) servicing;
 - (d) loss; or
 - (e) destruction; or
 - c. **trailer** used with a vehicle described in A.8.a. or A.8.b. above.
9. Any **insured** using a vehicle without the express or implied permission of the owner or other person having lawful possession, or using a vehicle beyond the scope of the permission granted. However, this exclusion does not apply to a **family member** using **your covered auto**.
10. a. **Bodily injury or property damage** for which any **insured**:
- (1) is an insured under a nuclear energy liability policy; or
 - (2) would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.
- b. A nuclear energy liability policy is a policy issued by any of the following or their successors:
- (1) Nuclear Energy Liability Insurance Association;
 - (2) Mutual Atomic Energy Liability Underwriters; or
 - (3) Nuclear Insurance Association of Canada.
11. **Punitive or exemplary damages** awarded against any **insured**.
12. **Bodily injury or property damage** arising out of the use of **your covered auto** while leased or rented to others. However, this exclusion does not apply to the operation of **your covered auto** by you or a **family member**.
13. **Bodily injury or property damage** arising out of a criminal act or omission of the **insured**. This exclusion applies regardless of whether that **insured** is actually charged with, or convicted of, a crime. However, this exclusion (13.) does not apply to traffic violations.

B. We do not provide Liability Coverage for the ownership, maintenance or use of:

1. **a.** Any vehicle which:
 - (1) has fewer than four wheels;
 - (2) is designed mainly for use off public roads; or
 - (3) is a vehicle not licensed for use on public roads.
- b.** This exclusion does not apply:
 - (1) while such vehicle is being used by an **insured** in a medical emergency; or
 - (2) to any **trailer**.
2. Any vehicle, other than **your covered auto**, which is:
 - a.** owned by you; or
 - b.** furnished or available for your regular use.
3. **a.** Any vehicle, other than **your covered auto**, which is:
 - (1) owned by any **family member** or other person who resides with you; or
 - (2) furnished or available for the regular use of any **family member** or other person who resides with you.
- b.** However, this exclusion (**B.3.**) does not apply to you while you are maintaining or **occupying** any vehicle which is:
 - (1) owned by a **family member** or other person who resides with you; or
 - (2) furnished or available for the regular use of a **family member** or other person who resides with you.
4. Any vehicle while it is:
 - a.** operating on a surface designed or used for racing, except for an organized and controlled event that is not a speed, performance, stunt or demolition event;
 - b.** participating in a high performance driving or racing instruction course or school; or
 - c.** preparing for, practicing for, used in, or competing in any prearranged or organized:
 - (1) race activity; or
 - (2) speed, performance, stunt, or demolition contest or exhibition.

LIMIT OF LIABILITY

A. If the Declarations indicates “per person”/“per accident” coverage applies:

The limit of liability as shown in the Declarations for “each person” for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care and loss of services (including loss of consortium and wrongful death), arising out of **bodily injury** sustained by any one person in any one auto accident.

Subject to this limit for “each person”, the limit of liability shown in the Declarations for “each accident” for Bodily Injury Liability is our maximum limit of liability for all damages for **bodily injury** resulting from any one auto accident.

The limit of liability shown in the Declarations for each accident for Property Damage Liability is our maximum limit of liability for all **property damage** resulting from any one accident.

This is the most we will pay regardless of the number of:

1. **Insureds;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the auto accident.

- B.** If the Declarations indicate **Combined Single Limit** applies, Paragraph **A.** above is replaced by the following:

The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one auto accident. This is the most we will pay regardless of the number of:

1. **Insureds**;
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the auto accident.

We will apply the limit of liability to provide any separate **minimum limits** required by law for **bodily injury** and **property damage** liability. However, this provision will not change our total limit of liability.

- C.** No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part **C** of this policy.
- D.** A vehicle and attached **trailer** are considered one vehicle. Therefore the limits of liability will not be increased for an accident involving a vehicle which has an attached **trailer**.

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which **your covered auto** is principally garaged, we will interpret your policy for that accident as follows:

- A.** If the state or province has:
1. A financial responsibility or similar law specifying limits of liability for **bodily injury** or **property damage** higher than the limit shown in the Declarations, your policy will provide the higher specified limit.
 2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum limits and types of coverage.
- B.** No one will be entitled to duplicate payments for the same elements of loss.

FINANCIAL RESPONSIBILITY

When this policy is certified as future proof of financial responsibility, this policy shall comply with the law to the extent required. The **insured** 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 available any insurance we provide shall be excess over any other applicable liability insurance. If more than one policy applies on an excess basis, we will bear our proportionate share with other collectible liability insurance.

However, if a **non-resident family member** is using **your covered auto** and **your covered auto** is not furnished or available for their regular use, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of applicable limits.

PART B — PERSONAL INJURY PROTECTION COVERAGE

INSURING AGREEMENT

- A.** We will pay personal injury protection benefits to or on behalf of an **insured** for losses or expenses incurred because of **bodily injury** sustained by that **insured** and caused by an auto accident while **occupying** or using a **motor vehicle**. Personal injury protection benefits consist of the following:
1. Medical and hospital benefits;
 2. Income continuation benefits;
 3. Loss of services benefits;
 4. Funeral expenses.

B. “Family member” means a person related to the **named insured** by:

1. blood;
2. marriage; or
3. adoption;

including a ward or foster child, who is a resident of the **named insured’s** household. However, the **named insured’s** spouse, civil partner or **domestic partner** shall be considered a **named insured**.

C. “Funeral expenses” means payment for reasonable expenses incurred because of **bodily injury** sustained by an **insured** in the accident.

D. “Income continuation benefits” means payment for an **insured’s** loss of income from work, during a period of disability due to **bodily injury** sustained in an auto accident less income earned during the benefit payment period. This benefit payment period begins 14 days after the date of the auto accident and ends at the earliest of the following:

1. The date the **insured** is reasonably able to perform the duties of that **insured’s** usual occupation;
2. After 54 weeks from the date of the auto accident; or
3. The date of the **insured’s** death.

E. “Insured” as used in this section means:

1. The **named insured** or any **family member** while:
 - a. **occupying** or using; or
 - b. a **pedestrian** struck by;
 - a **motor vehicle**.
2. Any other person while:
 - a. **occupying** or using **your covered auto** with your express or implied permission. The actual use must be within the scope of that permission; or
 - b. a **pedestrian** accidentally struck by **your covered auto**.
3. Any other person while **occupying**, as a guest, an automobile not owned by you or a **family member**, while being operated by you or a **family member**.

However, for the purposes of this coverage, **“insured”** does not mean any person who is using **your covered auto** under a **personal vehicle sharing program**.

F. “Loss of services benefits” means reimbursement for payments to others for expenses reasonably incurred during a period of disability for essential services the **insured** would usually have performed for the **insured’s** household without compensation, provided the services are actually rendered and by persons who are not members of the household. This benefit ends:

1. The date the **insured** is reasonably able to resume essential services;
2. The expiration of 52 weeks since the date of the accident; or
3. The date of the **insured’s** death.

G. “Medical and hospital benefits” mean payment for the **reasonable and necessary** expenses incurred by or on behalf of the **insured** for **bodily injury** sustained as a result of an automobile accident. Medical and hospital benefits are payable for expenses incurred within 3 years from the date of the accident for:

1. Medical, surgical, X-ray and dental services;
2. Pharmaceuticals, prosthetic devices and eyeglasses; and
3. Necessary ambulance, hospital and professional nursing services.

We have a right to review medical expenses and services to determine if they are **reasonable and necessary** for the **bodily injury** sustained.

“Reasonable and necessary charges” as used in this Part mean:

Any amount which we determine represents a customary charge for services in the geographic area in which the service is rendered. To determine whether a charge is customary, we may consider outside sources of information of our choice, including, but not limited to:

1. Licensed, certified or registered health care professionals;
2. Medical examinations;
3. Medical file reviews;
4. Medical bill review services; or
5. Computerized data bases.

The **reasonable and necessary charge** payable under this Part shall not exceed the 85th percentile charge indicated by a FAIR Health database for similar charges in the same geographic area; however, the **insured** shall not be responsible for payment of any reduction applied by us. If a medical provider disputes an amount paid by us, we will be responsible for resolving such disputes.

H. “Motor vehicle” means a self-propelled land motor vehicle or **trailer**. However, **“motor vehicle”** does not include a:

1. Farm-type tractor or other self-propelled equipment designed for use principally off public roads, while not upon public roads.
2. Vehicle operated on rails or crawler treads.
3. Vehicle located for use as a residence or premises.
4. Motorcycle or moped.

I. “Named insured” means:

1. The person named in the Declarations; and
2. That person’s resident spouse, civil union partner or domestic partner.

J. “Occupying” means in or upon or entering into or alighting from.

K. “Pedestrian” means any person not **occupying** a **motor vehicle**.

EXCLUSIONS

We do not provide Personal Injury Protection Coverage for:

1. Any **insured** who intentionally injures himself or herself.
2. Any **insured** while participating in or practicing for any prearranged or organized racing or speed contest.
3. The **named insured** or any **family member** while **occupying** any **motor vehicle**, other than **your covered auto**, which is:
 - a. owned by; or
 - b. furnished for the regular use of:
the **named insured**.
4. Any **family member** while **occupying** any **motor vehicle**, other than **your covered auto**, which is:
 - a. owned by; or
 - b. furnished for the regular use of:
that **family member**.
5. Any **insured** while **occupying** a motorcycle or moped.
6. Any **insured** for **bodily injury** resulting from radioactive, toxic, explosive or other hazardous properties of nuclear material.

7. Any **insured** due to war, whether or not declared, or to an act or condition incident to such circumstances.
8. Any person whose **bodily injury** results or arises from the **insured's** use of a **motor vehicle** in the commission of a felony.
9. Any **insured** while a **motor vehicle** is being used as a public or livery conveyance. This includes but is not limited to any period of time a **motor vehicle** is being used by any **insured** who is logged into a **transportation network platform** as a driver, whether or not a passenger is **occupying** the vehicle.

LIMIT OF LIABILITY

Regardless of the number of **insureds**, policies or bonds applicable, claims made or vehicles to which this coverage applies, our liability for Personal Injury Protection Coverage is limited as follows:

1. The total amount payable by us to any one **insured** because of **bodily injury** sustained in any one **motor vehicle** accident shall not exceed the sum of:
 - a. \$10,000 for **medical and hospital benefits**;
 - b. \$2,000 for **funeral expenses**;
 - c. \$10,000 for **income continuation benefits**, subject to a limit of the lesser of:
 - (1) \$200 per week; or
 - (2) 85% of the **insured's** weekly income from work.

The combined weekly payment under this benefit or any workers compensation, any other disability or loss of income benefit and this coverage shall not exceed 85% of the **insured's** weekly income from work at the time of the accident. The **insured's** sick leave benefit or vacation pay will not be considered in determining payment of this benefit.
 - d. \$5,000, subject to a limit of \$40 per day, not to exceed \$200 per week for **loss of services benefits**.
2. Any amount payable under this coverage shall be reduced by any amount paid or payable under any:
 - a. workers compensation law; or
 - b. other similar medical or disability benefits law, excluding Medicare.

Payments made under Personal Injury Protection Coverage are limited to the actual amount of loss or expense incurred.

OTHER INSURANCE

- A. If there is other applicable auto medical payments or personal injury protection insurance we will pay only our share. Our share is the proportion that our limit of liability bears to the total of all applicable limits.
- B. Any insurance we provide with respect to an **insured** while:
 1. **Occupying**; or
 2. A **pedestrian** struck by;

a temporary substitute or a **non-owned auto** shall be excess over any other valid and collectible auto medical payments coverage or personal injury protection coverage.

POLICY PERIOD; TERRITORY

This coverage applies only to accidents which occur during the policy period, within the United States of America, its territories or possessions, or Canada.

ARBITRATION

- A. If we and an **insured** do not agree on the amounts payable under this coverage, the matter shall, upon mutual agreement, be decided by arbitration. If we and that **insured** do not both agree to arbitration, then that **insured** must file suit to recover Personal Injury Protection benefits in Washington state court in the county of that **insured's** residence or in the county in which the accident occurred.

If we and that **insured** agree to Arbitration:

1. The parties may agree to a single arbitrator. A decision by the arbitrator will be binding.
 2. If the parties cannot agree on a single arbitrator, each will select an independent representative, who will then select a single arbitrator. The parties may then proceed with the single arbitrator by agreement. A decision by the arbitrator will be binding.
 3. If the representatives cannot agree on a single arbitrator within 30 days or the parties do not agree on the arbitrator selected, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a court having jurisdiction. A decision by two of the three arbitrators will be binding.
- B.** Unless both parties agree otherwise, arbitration will take place within the county and state in which the **insured** lives. Local rules of law as to procedure and evidence will apply. Each party will pay the expenses it incurs, except we will bear the reasonable expenses of the arbitrator(s) and any statutory costs actually incurred by the **insured**.

COORDINATION OF COVERAGE

Any payments under Underinsured Motorists Coverage under this policy shall be excess over any payment made under Personal Injury Protection Coverage provided by this policy.

PART C — UNDERINSURED MOTORISTS COVERAGE — BODILY INJURY

INSURING AGREEMENT

A. We will pay damages which an **insured** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of **bodily injury**:

1. Sustained by that **insured**; and
2. Caused by an accident;

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **underinsured motor vehicle**.

B. "**Insured**" as used in this Part means:

1. You or any **family member**.
2. Any Rated Driver shown on the Declarations other than you or a **family member**.
3. Any other person **occupying your covered auto** with your express or implied permission. The actual use must be within the scope of that permission.
4. Any person entitled to recover damages because of **bodily injury** to which this coverage applies sustained by a person described in **B.1.**, **B.2.** or **B.3.** above.

However, for the purposes of this coverage, "**insured**" does not mean any person who is using **your covered auto** under a **personal vehicle sharing program**.

C. "**Underinsured motor vehicle**" means a land motor vehicle or trailer of any type:

1. To which no bodily injury liability bond or policy applies at the time of the accident.
2. To which a bodily injury liability bond or policy applies at the time of the accident but the amount payable under all of the bonds or policies to an **insured** is not enough to pay the full amount the **insured** is legally entitled to recover as damages.
3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in **bodily injury** without hitting:
 - a. you or any **family member** or any other rated driver listed on the Declarations;
 - b. a vehicle which you or any **family member** or any other rated driver listed on the Declarations are **occupying**; or
 - c. **your covered auto**.

If there is no physical contact with the vehicle causing the accident, the facts of the accident must be proved. We will only accept competent evidence other than the testimony of an **insured** or any person having an underinsured motorist claim resulting from the accident.

4. To which a bodily injury liability bond or policy applies at the time of the accident, but the bonding or insuring company:
 - a. denies coverage; or
 - b. is or becomes insolvent.

However "**underinsured motor vehicle**" does not include any vehicle or equipment:

1. Operated on rails or crawler treads.
2. While located for use as a residence or premises.
3. To which the Liability Coverage of this policy applies. However, this exception to the definition of **underinsured motor vehicle** does not apply to you or any **family member** or any other rated driver listed on the Declarations if you or any **family member** or any other rated driver listed on the Declarations sustain damages while **occupying**, or when struck by, a vehicle for which coverage under Part **A** of this policy applies.
4. Owned by any governmental entity, including its subdivisions or agencies; or operated by an employee or agent of any governmental entity, including its subdivisions or agencies, while in the course of employment. However, exception **4.** does not apply if the governmental entity is unable to satisfy a claim because of financial inability or insolvency.

EXCLUSIONS

- A. We do not provide Underinsured Motorists Coverage for **bodily injury** sustained:
 1. By an **insured** while operating or **occupying** any motor vehicle owned by that **insured** which is not insured for Liability Coverage under this policy. This includes a trailer of any type used with that vehicle.
 2. By any **family member** or any other rated driver listed on the Declarations while **occupying**, or when struck by, any motor vehicle you own which is insured for this coverage on a primary basis under any other policy.
- B. We do not provide Underinsured Motorists Coverage for **bodily injury** sustained by any **insured**:
 1. While **occupying your covered auto** when it is being used as a public or livery conveyance. This includes but is not limited to any period of time while it is being used by any person who is logged into a **transportation network platform** as a driver, whether or not a passenger is **occupying** the vehicle. This exclusion (**B.1.**) does not apply to a share-the-expense car pool.
 2. While using any vehicle while employed in the pickup or delivery of newspapers or magazines, food or any products for the purpose of compensation. This exclusion does not apply to delivery that is incidental to an **insured's business**.
 3. While using a vehicle without the express or implied permission of the owner or other person having lawful possession, or using a vehicle beyond the scope of the permission granted. However, this exclusion does not apply to you or any **family member** or any other rated driver listed on the Declarations using **your covered auto**.
 4. While **occupying** or operating an owned motorcycle or moped.
 5. While using any vehicle while it is:
 - a. operating on a surface designed or used for racing except for an organized and controlled event that is not a speed, performance, stunt or demolition event;
 - b. participating in a high performance driving or racing instruction course or school; or
 - c. preparing for, practicing for, used in, or competing in any prearranged or organized:
 - (1) race activity; or
 - (2) speed, performance, stunt, or demolition contest or exhibition.

- C. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:
 1. Workers compensation law; or
 2. Disability benefits law.
- D. We do not provide Underinsured Motorists Coverage for **punitive or exemplary damages**.

LIMIT OF LIABILITY

- A. The limit of liability shown in the Declarations for “each person” for Underinsured Motorists Coverage is our maximum limit of liability for all damages, including damages for care and loss of services (including loss of consortium and wrongful death), arising out of **bodily injury** sustained by any one person in any one auto accident.

Subject to this limit for “each person”, the limit of liability shown in the Declarations for “each accident” for Underinsured Motorists Coverage is our maximum limit of liability for all damages for **bodily injury** resulting from any one auto accident.

This is the most we will pay regardless of the number of:

1. **Insureds**;
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations;
 4. Premiums paid; or
 5. Vehicles involved in the accident.
- B. If the Declarations indicate Combined Single Limit Coverage applies, paragraph **(A.)** above is replaced by the following:

The limit of liability shown in the Declarations for Underinsured Motorists Coverage is our maximum limit of liability for all damages resulting from any one auto accident. This is the most we will pay regardless of the number of:

1. **Insureds**;
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the auto accident.

We will apply the limit of liability to provide any separate **minimum limits** required by law for **bodily injury** and **property damage** liability. However, this provision will not change our total limit of liability.

- C. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part **A** of this policy.
- D. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.
- E. With respect to coverage under Paragraph **2.** of the definition of “**underinsured motor vehicle**”, we will reduce the **insured’s** total damages by any amount available to that **insured** under any bodily injury liability bonds or policies applicable to the **underinsured motor vehicle**, that such **insured** did not recover as a result of a settlement between that **insured** and the insurer of an **underinsured motor vehicle**. However, any reduction of the **insured’s** total damages will not reduce the limit of liability for this coverage.
 This Paragraph **(E.)** shall not apply if we advance payment to the **insured** in an amount equal to the tentative settlement with the insurer of the **underinsured motor vehicle**.
- F. A vehicle and attached **trailer** are considered one vehicle. Therefore the limits of liability will not be increased for an accident involving a vehicle which has an attached **trailer**.

OTHER INSURANCE

If there is other applicable insurance available under one or more policies or provisions of coverage that is similar to the insurance provided under this Part of the policy:

1. Any recovery for damages under all such policies or provisions of coverage may equal but not exceed the highest applicable limit for any one vehicle under any insurance providing coverage on either a primary or excess basis.
2. Any insurance we provide with respect to a vehicle you do not own, including any vehicle while used as a temporary substitute for **your covered auto**, shall be excess over any collectible insurance.
3. If the coverage under this policy is provided:
 - a. on a primary basis, we will pay only our share of the loss that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on a primary basis.
 - b. on an excess basis, we will pay only our share of the loss that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on an excess basis.

ARBITRATION

A. If we and an **insured** do not agree:

1. Whether that **insured** is legally entitled to recover damages; or
2. As to the amount of damages which are recoverable by that **insured**;

from the owner or operator of an **underinsured motor vehicle**, then the matter may be arbitrated but only if we and the **insured** both agree to arbitration. If we and that **insured** do not agree to arbitration, then that insured must file suit to recover Underinsured Motorists Coverage benefits in Washington state court in the county of that **insured's** residence, in the county in which the **underinsured motor vehicle** accident occurred or in the county of the residence of the owner or operator of the **underinsured motor vehicle**.

Even if we and that **insured** do agree to arbitration, disputes concerning coverage under this Part may not be arbitrated.

If we and that **insured** agree to arbitration:

1. The parties may agree to a single arbitrator. A decision by the arbitrator will be binding.
2. If the parties cannot agree on a single arbitrator, each will select an independent representative, who will then select a single arbitrator. The parties may then proceed with the single arbitrator by agreement. A decision by the arbitrator will be binding.
3. If the representatives cannot agree on a single arbitrator within 30 days or the parties do not agree on the arbitrator selected, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a court having jurisdiction. A decision by two of the three arbitrators will be binding.

B. Unless both parties agree otherwise, arbitration will take place within the county and state in which the **insured** lives. Local rules of law as to procedure and evidence will apply. Each party will pay the expenses it incurs, except we will bear the reasonable expenses of the arbitrator(s) and any statutory costs actually incurred by the **insured**.

ADDITIONAL DUTIES

1. A person seeking Underinsured Motorists Coverage must also promptly notify us of a tentative settlement between the **insured** and the insurer of the **underinsured motor vehicle** and allow us a reasonable time to advance payment to that **insured** in an amount equal to the tentative settlement to preserve our rights against the insurer, owner or operator of such **underinsured motor vehicle**. If you fail to promptly notify us of such tentative settlement, we will not provide this coverage to the extent your failure to provide such notice prejudices our rights against any third party.
2. If there is no physical contact with the vehicle causing the accident, someone must report the accident to the appropriate law enforcement agency within 72 hours of the accident.

PART D — COVERAGE FOR DAMAGE TO YOUR AUTO

INSURING AGREEMENT

A. We will pay for direct and accidental loss to **your covered auto** or any **non-owned auto**, including its equipment, any child safety seat in use in **your covered auto** or **non-owned auto**, minus any applicable deductible shown in the Declarations. We will pay for loss to **your covered auto** caused by:

1. Other than **collision** only if the Declarations indicate that Comprehensive Coverage is provided for that auto.
2. **Collision** only if the Declarations indicate that Collision Coverage is provided for that auto.

If there is a loss to a **non-owned auto**, we will provide the broadest coverage applicable to any vehicle shown in the Declarations.

B. “**Collision**” means the upset of **your covered auto** or a **non-owned auto** or its impact with another vehicle or object.

“**Comprehensive**” means loss, other than **collision**, to **your covered auto** or a **non-owned auto**. Losses caused by the following are not **collision** losses but are **comprehensive** losses:

Loss caused by missiles or falling objects; fire; theft or larceny; explosion or earthquake; windstorm; hail, water or flood; malicious mischief or vandalism; riot or civil commotion; contact with a bird or animal; or breakage of glass.

If breakage of glass is caused by a **collision**, you may elect to have it considered a loss caused by **collision**.

C. 1. “**Non-owned auto**” means:

- a. Any private passenger auto, pickup, van (other than cargo van) or **trailer** with a Gross Vehicle Weight rating of 12,000 pounds or less or any cargo van or moving van with a Gross Vehicle Weight Rating of 18,000 pounds or less, not owned by or furnished or available for the regular use of you or any **family member** while in the custody of or being operated by you or any **family member**.
- b. Any auto or **trailer** you do not own while used as a temporary substitute for **your covered auto** which is out of normal use because of its:
 - (1) breakdown;
 - (2) repair;
 - (3) servicing;
 - (4) loss; or
 - (5) destruction.

2. “**Non-owned auto**” does not include any vehicle which has been operated or rented by or in the possession of you or any **family member** for 30 or more consecutive days. This does not apply to a temporary substitute vehicle authorized by us.

D. “**Camper body**” means a body equipped as sleeping or living quarters which is designed to be mounted on a pickup.

DEDUCTIBLE

Unless stated otherwise, the applicable deductible shown in the Declarations shall be applied to each accidental loss covered under this Part of the policy. However,

1. If loss to more than one of **your covered autos** or a **non-owned auto** results from the same loss, only the highest applicable deductible will apply.
2. In the event of a **collision** with another vehicle insured by:
 - a. a Safeco insurance company; or
 - b. another Liberty Mutual Agency Corporation company;

no deductible will apply.

This does not include a vehicle described as **your covered auto** or **non-owned auto**.

3. No deductible will apply to **your covered auto** or a **non-owned auto** if the loss to **your covered auto** or a **non-owned auto** results from the same event as a loss covered under your Safeco Homeowners, Condominium or Renter's policy and we issue a payment under your Homeowners, Condominium or Renter's policy for the loss.

TRANSPORTATION EXPENSES

A. Subject to the limitations described in paragraphs **B.** and **C.** below, we will pay:

1. Temporary transportation expenses incurred by you in the event of the total theft of **your covered auto** or a **non-owned auto**. We will pay for such expenses only if the Declarations indicate that Comprehensive Coverage is provided for that auto.

We will pay only expenses incurred during the period:

- a. beginning 48 hours after the theft; and
- b. ending when **your covered auto** or the **non-owned auto** is returned to use or we pay for its loss.

2. Indirect loss expenses for which you become legally responsible in the event of a loss to a **non-owned auto**.

We will pay only expenses beginning when the **non-owned auto** is withdrawn from use for more than 24 hours.

We will pay for indirect loss expenses if the loss is caused by:

- a. a **comprehensive** loss only if the Declarations indicate that Comprehensive Coverage is provided for any **your covered auto**.
- b. **collision** only if the Declarations indicate that Collision Coverage is provided for any **your covered auto**.

B. For the expenses described in paragraphs **A.1.** and **A.2.** we will pay the greater of the following, without application of a deductible,

1. Up to \$20 per day, to a maximum of \$600; or
2. The limit for Loss of Use, if any, shown in the Declarations.

C. Our payment for the expenses described in paragraphs **A.1.** and **A.2.** will be limited to that period of time reasonably required to repair or replace **your covered auto** or the **non-owned auto**.

EXCLUSIONS

We will not pay for:

1. Loss to **your covered auto** or any **non-owned auto** which occurs while it is being used as a public or livery conveyance. This includes but is not limited to any period of time while it is being used by any person who is logged in a **transportation network platform** as a driver, whether or not a passenger is **occupying** the vehicle. This exclusion (1.) does not apply to a share-the-expense car pool.
2. Loss to **your covered auto** or any **non-owned auto** while employed in the pickup or delivery of newspapers or magazines, food or any products for the purpose of compensation. This exclusion does not apply to delivery that is incidental to an **insured's business**.
3. Damage or loss due and confined to:
 - a. wear and tear;
 - b. freezing;
 - c. mechanical or electrical breakdown or failure; or
 - d. road damage to tires.

This exclusion (3.) does not apply if the damage results from the total theft of **your covered auto** or any **non-owned auto**.

4. Damage or loss arising out of neglect. Neglect means your failure to adequately maintain **your covered auto** or **non-owned auto** after the loss.

With respect to water under Comprehensive Coverage, there is no coverage for:

- a. moisture, condensation, humidity, or vapor;
- b. water intrusion around or through panels, surfaces and seals; or
- c. water that collects in spaces or ventilation systems; or
- d. fungi, dry rot or bacteria;

resulting from neglect.

5. Loss due to or as a consequence of:
- a. discharge of any nuclear weapon (even if accidental);
 - b. war (declared or undeclared);
 - c. civil war;
 - d. insurrection; or
 - e. rebellion or revolution.
6. Loss from or as a consequence of the following, whether controlled or uncontrolled or however caused:
- a. nuclear reaction;
 - b. radiation; or
 - c. radioactive contamination.
7. Loss to:
- a. any electronic equipment designed for the production or reproduction of sound, pictures, audio, visual or data or that receives or transmits sound, pictures or data signals.
 - b. This exclusion (7.) does not apply to:
 - (1) equipment designed for the reproduction of sound or transmission of sound, pictures, audio, visual or data signals and accessories used with such equipment, provided:
 - (a) the electronic equipment is permanently installed by the original vehicle manufacturer or manufacturer's dealership in **your covered auto** or any **non-owned auto**; or
 - (b) the electronic equipment is:
 - i. removable from a housing unit which is permanently installed by the original vehicle manufacturer or manufacturer's dealership in the auto;
 - ii. designed to be solely operated by use of the power from the auto's electrical system; and
 - iii. in or upon **your covered auto** or any **non-owned auto**;
 at the time of loss.
 - (c) any equipment installed through our Teen Safe Driver™ program.
 However, we will pay only up to a total of \$500 or the actual cash value of **your covered auto** or any **non-owned auto**, whichever is less, for all such equipment that is not installed by the original vehicle manufacturer or manufacturer's dealership.
 - (2) any other electronic equipment that is:
 - (a) necessary for the normal operation of the auto or the monitoring of the auto's operating systems;
 - (b) an integral part of the same unit housing any electronic equipment described in 7.a. and permanently installed by the original vehicle manufacturer or manufacturer's dealership in **your covered auto** or any **non-owned auto**.

8. Loss to:
 - a. tapes, records, discs, or other media used with such equipment described in exclusion (7.); or
 - b. any other accessories, not permanently installed used with such equipment described in exclusion (7.).
9. Loss to **your covered auto** or any **non-owned auto** due to destruction or confiscation by governmental or civil authorities because you or any **family member**:
 - a. engaged in illegal activities; or
 - b. failed to comply with Environmental Protection Agency or Department of Transportation standards.

This exclusion (9.) does not apply to the interests of Loss Payees in **your covered auto**.
10. Loss to a **camper body**, motorhome or **trailer** you own which is not shown in the Declarations. This exclusion (10.) does not apply to a **camper body**, motorhome or **trailer** you:
 - a. acquire during the policy period; and
 - b. ask us to insure within 30 days after you become the owner.
11. Loss to any **non-owned auto** when used by you or any **family member** without the express or implied permission of the owner or other person having lawful possession, or using a vehicle beyond the scope of the permission granted.
12. Loss to equipment, whether operational or not, whose design may be used for the detection or location of law enforcement equipment.
13. Loss to any **non-owned auto** being maintained or used by any person while employed or otherwise engaged in the **business** of:
 - a. selling;
 - b. repairing;
 - c. servicing;
 - d. storing; or
 - e. parking;

vehicles designed for use on public highways. This includes road testing and delivery.
14. Loss to any **non-owned auto** being maintained or used by any person while employed or otherwise engaged in any **business** not described in exclusion 2. and 13. This exclusion (14.) does not apply to the maintenance or use by you or any **family member** of a **non-owned auto** which is a private passenger auto or **trailer**.
15. Loss to **your covered auto** or any **non-owned auto** while it is:
 - a. operating on a surface designed or used for racing. This does not apply to an organized and controlled event that is not a speed, performance, stunt or demolition event;
 - b. participating in a high performance driving or racing instruction course or school; or
 - c. preparing for, practicing for, used in, or competing in any prearranged or organized:
 - (1) race activity; or
 - (2) speed, performance, stunt, or demolition contest or exhibition.
16. Loss to, or loss of use of, a **non-owned auto** rented by:
 - a. you; or
 - b. any **family member**;

if a rental vehicle company is precluded from recovering such loss or loss of use, from you or that **family member**, pursuant to the provisions of any applicable rental agreement or state law.
17. Loss to **your covered auto**, **non-owned auto**, or **trailer**, for **diminution in value**.

18. Loss in excess of \$500 per claim or the actual cash value of **your covered auto** or any **non-owned auto**, whichever is less, for any furnishings or equipment that were not installed by the original vehicle manufacturer or manufacturer's dealership which mechanically or structurally changes your vehicle and results in increase in performance or change in appearance, including but not limited to:
- a. custom murals, paintings or other decals or graphics;
 - b. custom wheels, tachometers, pressure and temperature gauges;
 - c. modified or custom engines and fuel systems, light bars, racing slicks and/or oversized tires, roll bars and lift kits, winches, utility boxes, and tool boxes; or
 - d. non-standard paint.
- This exclusion does not apply to:
- a. equipment installed to make a vehicle handicap accessible.
 - b. a cap, cover or bedliner in or upon **your covered auto** which is a pickup.
19. Loss arising out of the use of **your covered auto** while leased or rented to others.
20. Loss to **your covered auto** or a **non-owned auto** caused by an intentional act by you, a **family member** or at the direction of you or a **family member**.
21. Loss to **your covered auto** or **non-owned auto** while being used in a **personal vehicle sharing program**.

LIMIT OF LIABILITY

- A. At our option, our limit of liability for loss will be the lowest of:
1. The actual cash value of the stolen or damaged property;
 2.
 - a. The amount necessary to repair or replace the property;
 - b. Determination of the cost of repair or replacement will be based upon one of the following:
 - (1) the cost of repair or replacement agreed upon by you and us;
 - (2) a competitive bid approved by us; or
 - (3) an estimate written based upon the prevailing competitive price. You agree with us that we may include in the estimate parts furnished by the original vehicle manufacturer or parts from other sources including non-original equipment manufacturers. The prevailing competitive price means prices charged by a majority of the repair market in the area where the vehicle is to be repaired as determined by us; or
 3. The limit of liability shown in the Declarations.

However, the most we will pay for loss to any **non-owned auto**, which is a **trailer**, is \$1,500.

- B. An adjustment for depreciation and physical condition may be made based upon the physical condition and wear and tear of the property or damaged part of the property at the time of the loss. This adjustment for physical condition includes but is not limited to, broken, cracked or missing parts, rust, dents, scrapes, gouges and paint condition. When replacing parts normally subject to repair or replacement during the useful life of the vehicle, we will not pay for the amount of any betterment.

We may deduct for betterment for parts normally subject to repair and replacement during the useful life of the auto. In this event, deductions shall be limited to the lesser of:

1. An amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of that part; or
 2. The amount which the actual cash value of the auto is increased from the replacement of the part.
- C. No payment will be made for loss paid under Underinsured Motorists Coverage.

PAYMENT OF LOSS

We may pay for loss in money or repair or replace the damaged or stolen property. We may, at our expense, return any stolen property to:

1. You; or
2. The address shown in this policy.

If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the property at an agreed or appraised value.

If we pay for loss in money, our payment will include the applicable sales tax for the damaged or stolen property.

NO BENEFIT TO BAILEE

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

OTHER INSURANCE

If other insurance also covers the loss, 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. However, any insurance we provide with respect to a **non-owned auto** shall be excess over any:

1. Other collectible insurance; or
2. Coverage provided under a collision or loss damage waiver for loss to a rental vehicle.

APPRAISAL

- A.** If we and you do not agree on the amount of loss, either party may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:
1. Pay its chosen appraiser; and
 2. Bear the expenses of the appraisal and umpire equally.
- B.** Neither you nor we waive any of our rights under this policy by agreeing to an appraisal.

PART E — DUTIES AFTER AN ACCIDENT OR LOSS

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- A.** We must be notified promptly of how, when and where the accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.
- B.** A person seeking any coverage must:
1. Cooperate with us in the investigation, settlement or defense of any claim or suit.
 2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.
 3. Submit, as often as we reasonably require:
 - a. to physical examinations by physicians we select. We will pay for these exams.
 - b. to examination under oath and subscribe the same. We may examine any **insured** separately and apart from the presence of any other **insured**.
 4. Authorize us to obtain:
 - a. medical reports; and
 - b. other pertinent records.
 5. Submit a proof of loss, under oath if requested, when required by us.

- C. A person seeking Personal Injury Protection Coverage must:
1. In the event of an accident, give us or our authorized agent prompt written notice of the accident. The notice should identify the **insured** and contain reasonably obtainable information regarding how, when and where the accident happened.
 2. Submit to, when and as often as we reasonably require, physical exams by physicians we select. We will pay for these exams.
 3. Give us:
 - a. prompt written proof of claim, under oath if required; and
 - b. any other information which may assist us in determining the amount due and payable.
 4. Give us authorization to enable us to obtain:
 - a. medical reports;
 - b. copies of records; and
 - c. information regarding loss of income as a condition for receiving income continuation.
 5. Furnish us with reasonable medical proof of that person's inability to work.
 6. If a person takes legal action to recover damages for **bodily injury**, against a person or organization who may be legally liable, a copy of the summons and complaint or other process served in connection with such action shall be promptly forwarded to us.
- D. A person seeking Underinsured Motorists Coverage must also:
1. Promptly notify the police if a hit-and-run driver is involved and there is **bodily injury** or death of any person or damage to the property of any one person to an apparent extent equal to or greater than the reporting threshold described in WAC 446-85-010. However if there is no physical contact with a hit-and-run vehicle, someone must report the accident to the appropriate law enforcement agency within 72 hours of the accident.
 2. Promptly send us copies of the legal papers if a suit is brought.
 3. Promptly notify us of a tentative settlement between the **insured** and the insurer of the **underinsured motor vehicle** and allow us a reasonable time to advance payment to that **insured** in an amount equal to the tentative settlement to preserve our rights against the insurer, owner or operator of such **underinsured motor vehicle**. If you fail to promptly notify us of such tentative settlement, we will not provide this coverage to the extent your failure to provide such notice prejudices our rights against any third party.
- E. A person seeking Coverage for Damage to Your Auto must also:
1. Take reasonable steps after loss to protect **your covered auto** or any **non-owned auto** and its equipment from further loss. We will pay reasonable expenses incurred to do this.
 2. Promptly notify the police if **your covered auto** or any **non-owned auto** is stolen.
 3. Permit us to inspect and appraise the damaged property before its repair or disposal.

PART F — GENERAL PROVISIONS

POLICY PERIOD AND TERRITORY

- A. This policy applies only to accidents and losses which occur:
1. During the policy period as shown in the Declarations; and
 2. Within the policy territory.
- B. The policy period is the period stated in the Declarations. The policy may be renewed for successive policy periods if the required premium is paid and accepted by us on or before the expiration of the current policy period. The premium will be computed at our then current rate for coverage then offered.

C. The policy territory is:

1. The United States of America, its territories or possessions;
2. Puerto Rico; or
3. Canada.

This policy also applies to loss to, or accidents involving, **your covered auto** while being transported between their ports.

BANKRUPTCY

Bankruptcy or insolvency of the **insured** shall not relieve us of any obligations under this policy.

CHANGES

- A.** This policy, your Declarations page and endorsements issued by us to this policy contain all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us.
- B.** The premium for your policy 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. If this information is incorrect, incomplete, or changes, we will adjust your premium during the policy term or take other appropriate action based upon the corrected, completed or changed information. Changes during the policy term that will result in a premium increase or decrease during the policy term include, but are not limited to, changes in:
1. The number, type or use classification of insured vehicles.
 2. Operators using insured vehicles including newly licensed **family member** drivers and any household members that have licenses.
 3. The location where your vehicle is principally garaged.
 4. Customized equipment or parts.

You must disclose to us all licensed drivers residing in the household.

- C.** If we make a change which broadens coverage under this edition of your policy without additional premium charge, that change will automatically apply to your policy as of the date we implement the change in your state. This paragraph (**C.**) does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:
1. A subsequent edition of your policy; or
 2. An Amendatory Endorsement.
- D.** Additional or return premium of \$3.00 or less resulting from policy changes will be waived.

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 to the bank or other financial institution. 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.

FRAUD

This policy was issued in reliance upon the information provided on your application. We may void this policy if you or an **insured** have concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, with the intent to deceive at the time application was made or any time during the policy period.

We may void this policy or deny coverage for an accident or loss if you or an **insured** have concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, with the intent to deceive in connection with the presentation or settlement of a claim.

We may void this policy or deny coverage for fraud or material misrepresentation even after the occurrence of an accident or loss. The material misrepresentation must have existed at the time of loss. This means we will not be

liable for any claims or damages which would otherwise be covered. If we make a payment, we may request that you reimburse us. If so requested, you must reimburse us for any payments we may have already made.

LEGAL ACTION AGAINST US

- A. No legal action may be brought against us until there has been full compliance with all the terms of this policy. In addition, under Part A, no legal action may be brought against us until:
 - 1. We agree in writing that the **insured** has a legal obligation to pay damages; or
 - 2. The amount of that obligation has been finally determined by judgment after trial.
- B. No person or organization has any right under this policy to bring us into any action to determine the legal liability of an **insured**.

OUR RIGHT TO RECOVER PAYMENT

- A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another person, entity or organization we shall then have that right. That person shall:
 - 1. Do whatever is necessary to enable us to exercise our rights; and
 - 2. Do nothing after loss to prejudice them.

We shall not use that right if the person against whom it may be asserted is an **insured** under Part **A** of this policy.

Our rights in this paragraph **A**. do not apply under Part **D**, against any person using **your covered auto** with your express or implied permission or other person having lawful possession and is not using a vehicle beyond the scope of the permission granted.

- B. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall hold in trust for us the proceeds of the recovery.
- C. We shall be entitled to a recovery under paragraph **A**. or **B**. only after the person has been fully compensated for damages.
- D. Our rights do not apply under paragraph **A**. with respect to Underinsured Motorists Coverage if:
 - 1. We have been given prompt written notice of a tentative settlement between an **insured** and the insurer of an **underinsured motor vehicle**; and
 - 2. We fail to advance payment to the **insured** in an amount equal to the tentative settlement within a reasonable time after receipt of notification.

If we advance payment to the **insured** in an amount equal to the tentative settlement within a reasonable time after receipt of notification:

- 1. That payment will be separate from any amount the **insured** is entitled to recover under the provisions of Underinsured Motorists Coverage.
- 2. We also have a right to recover the advanced payment.
- E. With respect to Personal Injury Protection Coverage, any legal expenses incurred by us or that person, in recovering payments which benefit both parties, shall be shared equally by the parties. This provision (**E.**) applies to legal expenses incurred in a legal action for damages or otherwise.

TERMINATION

- A. **Cancellation.** This policy may be canceled during the policy period as follows:
 - 1. The named insured shown in the Declarations may cancel by:
 - a. returning this policy to us; or
 - b. giving us written or verbal notice of the date cancellation is to take effect. We may waive the requirement the notice be in writing by confirming the date and time of cancellation to you in writing.
 - 2. We may cancel by mailing to the named insured shown in the Declarations at the address shown in this policy:
 - a. at least 10 days notice if cancellation is for nonpayment of premium; or

- b. at least 20 days notice in all other cases.

The notice will include the reason for cancellation.

- 3. After this policy is in effect for 60 days, or if this is a renewal policy, we will cancel only:

- a. for nonpayment of premium; or
- b. for fraud or material misrepresentation concerning the policy or **insureds**; or
- c. if your driver's license or that of:
 - (1) any driver who lives with you; or
 - (2) any driver who customarily uses **your covered auto**; has been suspended or revoked. This must have occurred:
 - (1) during the policy period; or
 - (2) if this is a renewal or continuation policy, during the policy period or the 180 days immediately preceding the effective date of the renewal or continuation policy.
- d. if the policy was obtained through material misrepresentation with intent to deceive.

- 4. We will mail the same written notice of cancellation to your agent or broker, if applicable.

B. Nonrenewal. If we decide not to renew this policy we will mail notice to you at the address shown in this policy at least 20 days before the end of the policy period. We may not refuse to renew the Liability or Collision Coverage of this policy on the basis that you have made one or more claims under the:

- 1. Comprehensive Coverage; or
- 2. Roadside Assistance Coverage;

of this policy.

Notice will include the reason for the nonrenewal.

We will mail the same advance written notice of Nonrenewal to your agent or broker, if applicable.

C. Automatic Termination. If we offer to renew and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal premium when due shall mean that you have not accepted our offer.

We are not required to renew this policy if other coverage acceptable to you is obtained before the end of the policy period.

D. Other Termination Provisions.

- 1. If the law in effect in your state at the time this policy is issued or renewed:
 - a. requires a longer notice period;
 - b. requires a special form of or procedure for giving notice; or
 - c. modifies any of the stated termination reasons;
 we will comply with those requirements.
- 2. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
- 3. If this policy is canceled, you may be entitled to a premium refund. If so, we will send you the refund as soon as possible but no later than 45 days after the date we send notice of cancellation if we cancel the policy, or no later than 30 days after the date we receive notice of cancellation if you cancel the policy. The premium refund, if any, will be computed pro rata. However, making or offering to make the refund is not a condition of cancellation.
- 4. The effective date of cancellation stated in the notice shall become the end of the policy period.

TRANSFER OF YOUR INTEREST IN THIS POLICY

- A.** Your rights and duties under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, coverage will be provided for:
1. The surviving spouse, civil partner or **domestic partner** if resident in the same household at the time of death. Coverage applies to the spouse, civil partner or **domestic partner** as if a named insured shown in the Declarations; and
 2. The legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use **your covered auto**.
- B.** Coverage will only be provided until the end of the policy period.

TWO OR MORE AUTOS INSURED; TWO OR MORE AUTO POLICIES

If this policy insures two or more autos or if any other auto insurance policy issued to you by us applies to the same accident, the maximum limit of our liability shall not exceed the highest limit applicable to any one auto under any one auto policy. In no event shall the limit of liability of two or more motor vehicles or two or more policies be added together, combined, or stacked to determine the limit of insurance coverage available to you or any **insured**.

LOSS PAYABLE CLAUSE (REG-335)

This clause is identical to that promulgated in Washington State Insurance Commissioner's Regulation No. 335, pursuant to § 1, Chapter 12, Laws of 1967, Extraordinary Session, State of Washington.

- A.** Loss or damage, if any, under this policy shall be payable first to the loss payee or mortgagee (hereinafter called secured party), and, second, to the insured, as their interests may appear; PROVIDED, That, upon demand for separate settlement by the secured party, the amount of said loss shall be paid directly to the secured party to the extent of its interest.
- B.** This insurance as to the interest of the secured party shall not be invalidated by any act or neglect of the insured named in said policy or his agents, employees or representatives, nor by any change in the title or ownership of the insured property; PROVIDED, HOWEVER, That, the conversion, embezzlement or secretion by the named insured or his agents, employees or representatives is not covered under said policy unless specifically insured against and premiums paid therefor.
- C.** In applying the pro rata provisions of the policy, the amount payable to the secured party shall be reduced only to the extent of pro rata payments receivable by the secured party under other policies.
- D.** The company reserves the right to cancel the policy at any time as provided by its terms, but in such case the company shall mail to the secured party a notice stating when such cancellation shall become effective as to the interest of said secured party. The amount and form of such notice shall be not less than that required to be given the named insured, by law or by the policy provisions, whichever is more favorable to the secured party.
- E.** If the insured fails to render proof of loss within the time granted in the policy conditions, such secured party shall do so within sixty (60) days after having knowledge of a loss, in form and manner as provided by the policy, and, further, shall be subject to the provisions of the policy relating to appraisal and the time of payment and bringing suit.
- F.** Whenever the company shall pay the secured party any sum for loss or damage under such policy and shall claim that, as to the insured, no liability exists, the company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all collateral held to secure the debt, or may, at its option, pay to the secured party the whole principal due or to grow due on the mortgage or other security agreement, with interest, and shall thereupon receive a full assignment and transfer of the mortgage or other security agreement and of all collateral held to secure it; but no subrogation shall impair the right of the secured party to recover the full amount due it.
- G.** All terms and conditions of the policy remain unchanged except as herein specifically provided.
- H.** All notices sent to the secured party shall be sent to its last reported address, which must be stated in the policy.

STORAGE COSTS

If you give us your consent, we may move the damaged property, at our expense, to reduce storage costs during the claims process. If you do not give us your consent, we will pay only the storage costs which would have resulted if we had moved the damaged property.

NAMED DRIVER EXCLUSION

If there is an excluded driver under this policy, then we will not provide coverage for any claim arising from an accident or loss involving a motor vehicle being operated by that excluded person. This includes any claim for damages made against you or any **family member** or any other person or organization that is vicariously liable for an accident arising out of the operation of a motor vehicle by the excluded driver.

This provision does not apply to:

1. Any **insured** covered under the Personal Injury Protection Coverage of this policy.
2. Underinsured Motorists Coverage when an **insured** is covered under the Liability Coverage of this policy.

ADDITIONAL COVERAGES

AGREEMENT: WE WILL PROVIDE THE INSURANCE DESCRIBED IN EACH OF THE FOLLOWING ADDITIONAL COVERAGES ONLY IF INDICATED IN THE DECLARATIONS.

ADDITIONAL PERSONAL INJURY PROTECTION COVERAGE

For an additional premium, the Limit of Liability under the Personal Injury Protection Coverage is deleted and replaced by the following:

LIMIT OF LIABILITY

Regardless of the number of claims made or vehicles to which this coverage applies, our liability for Personal Injury Protection Coverage is limited as follows:

1. The total amount payable by us to each **insured** arising out of **bodily injury** sustained in any one accident shall not exceed the sum of:
 - a. \$35,000 for **medical and hospital benefits**;
 - b. \$2,000 for **funeral expenses**;
 - c. \$35,000 for **income continuation benefits**, subject to a limit of the lesser of:
 - (1) \$700 per week; or
 - (2) 85% of the **insured's** weekly income from work.

The combined weekly payment under this benefit or any workers compensation, any other disability or loss of income benefit and this coverage shall not exceed 85% of the **insured's** weekly income from work at the time of the accident. The **insured's** sick leave benefit or vacation pay will not be considered in determining payment of this benefit.
 - d. \$40 per day for **loss of services benefits** for up to one year from the date of the accident.

UNDERINSURED MOTORISTS COVERAGE — PROPERTY DAMAGE

INSURING AGREEMENT

- A. We will pay damages which an **insured** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of **property damage** caused by an accident if the Declarations indicates that Underinsured Motorists Property Damage applies.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **underinsured motor vehicle**.

B. "Insured" as used in this coverage means:

1. You or any **family member** or any other rated driver listed on the Declarations.
2. Any other person **occupying your covered auto**, with your express or implied permission. The actual use must be within the scope of that permission.

However, for the purposes of this coverage, **"insured"** does not mean any person who is using **your covered auto** under a **personal vehicle sharing program**.

C. "Property damage" as used in this coverage means physical damage, destruction or loss of use of the property of an **insured**.**D. "Underinsured motor vehicle"** means a land motor vehicle or trailer of any type:

1. To which no property damage liability bond or policy applies at the time of the accident.
2. To which property damage liability bonds or policies apply at the time of the accident but the amount payable under all of the bonds or policies to an **insured** is not enough to pay the full amount the **insured** is entitled to recover as damages.
3. To which property damage liability bonds or policies apply at the time of the accident, but the bonding or insurance companies deny coverage or are or become insolvent.
4. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in **property damage** without hitting:
 - a. a vehicle which you or any **family member** or any other rated driver listed on the Declarations are **occupying**; or
 - b. **your covered auto**.

If there is no physical contact with the vehicle causing the accident, the facts of the accident must be proved. We will only accept competent evidence other than the testimony of an **insured** or any person having an underinsured motorists claim resulting from the accident.

However, **"underinsured motor vehicle"** does not include any vehicle or equipment:

1. Operated on rails or tracks.
2. While located for use as a residence or premises.
3. To which the Liability Coverage of this policy applies. However, this exception to the definition of **underinsured motor vehicle** does not apply to you or any **family member** or any other rated driver listed on the Declarations if you or any **family member** or any other rated driver listed on the Declarations sustain damages while **occupying**, or when struck by, a vehicle for which coverage under Part **A** of this policy applies.
4. Owned by any governmental entity, including its subdivisions or agencies; or operated by an employee or agent of any governmental entity, including its subdivisions or agencies, while in the course of employment. However, exception **4.** does not apply if the governmental entity is unable to satisfy a claim because of financial inability or insolvency.

EXCLUSIONS**A.** We do not provide Underinsured Motorists Coverage for **property damage** sustained by any **insured**:

1. While operating or **occupying** any motor vehicle owned by, furnished or available for regular use by that **insured** which is not insured for Liability Coverage under this policy. This includes a trailer of any type used with that vehicle.
2. If the accident was caused by an auto which has no physical contact with **your covered auto** or a vehicle an **insured** was **occupying** at the time of the accident unless:
 - a. the facts of the accident are corroborated by competent evidence other than a person having an Underinsured Motorists Coverage claim resulting from the accident; and
 - b. the accident is reported to the appropriate law enforcement agency within 72 hours after the accident.

3. When **your covered auto** is being used as a public or livery conveyance. This includes but is not limited to any period of time while it is being used by any person who is logged in a **transportation network platform** as a driver, whether or not a passenger is **occupying** the vehicle. This exclusion does not apply to a share-the-expense car pool.
4. While using any vehicle while employed in the pickup or delivery of newspapers or magazines, food or any products for the purpose of compensation. This exclusion does not apply to delivery that is incidental to an **insured's business**.
5. While using a vehicle without the express or implied permission of the owner or other person having lawful possession, or using a vehicle beyond the scope of the permission granted. However, this exclusion does not apply to you or any **family member** or any other rated driver listed on the Declarations using **your covered auto**.
6. While operating or **occupying** a motorcycle, motor-driven cycle or moped.
7. While using any vehicle while it is:
 - a. operating on a surface designed or used for racing except for an organized and controlled event that is not a speed, performance, stunt or demolition event;
 - b. participating in a high performance driving or racing instruction course or school; or
 - c. preparing for, practicing for, used in, or competing in any prearranged or organized:
 - (1) race activity; or
 - (2) speed, performance, stunt, or demolition contest or exhibition.
8. For **diminution in value** for **your covered auto**.

B. This coverage shall not apply to the benefit of any insurer of property.

DEDUCTIBLES

The following will be deducted from the amount of **property damage** resulting from any one accident:

1. \$300 if the accident is caused by a hit-and-run vehicle or a vehicle which has no physical contact with **your covered auto**.
2. \$100 in all other cases.

LIMIT OF LIABILITY

- A.** The limit of liability shown in the Declarations for Underinsured Motorists Property Damage is our maximum limit of liability for all **property damage** sustained in any one accident.
- B.** Any amounts otherwise payable for damages which the **insured** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of **property damage** caused by an accident shall be reduced by all sums payable because of the **property damage** by or on behalf of persons or organizations who may be legally responsible.

OTHER INSURANCE

With respect to an auto or property contained in an auto:

1. If there is other applicable similar 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. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible insurance.
2. For any **property damage** to which the Collision Coverage of this policy (or similar coverage from another policy) and this coverage both apply, you may choose the coverage from which damages will be paid. You may recover under both coverages, but only if:
 - a. neither one by itself is sufficient to cover the loss; and
 - b. you will not recover more than the actual damages, less the applicable deductible.
3. With respect to all other property, this coverage shall be excess over any other collectible insurance.

ARBITRATION

- A.** If we and an **insured** disagree whether that person is legally entitled to recover damages from the owner or operator of an **underinsured motor vehicle** or do not agree as to the amount of damages, the dispute shall be resolved by arbitration. Both parties must agree to arbitration. If we and that **insured** do not both agree to arbitration, then that **insured** must file suit to recover Underinsured Motorists Coverage benefits in Washington state court in the county of that **insured's** residence or in the county in which the accident occurred.

If we and that **insured** agree to Arbitration:

1. The parties may agree to a single arbitrator. A decision by the arbitrator will be binding.
 2. If the parties cannot agree on a single arbitrator, each will select an independent representative, who will then select a single arbitrator. The parties may then proceed with the single arbitrator by agreement. A decision by the arbitrator will be binding.
 3. If the representatives cannot agree on a single arbitrator within 30 days or the parties do not agree on the arbitrator selected, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a court having jurisdiction. A decision by two of the three arbitrators will be binding.
- B.** Unless both parties agree otherwise, arbitration will take place within the county and state in which the **insured** lives. Local rules of law as to procedure and evidence will apply. Each party will pay the expenses it incurs, except we will bear the reasonable expenses of the arbitrator(s) and any statutory costs actually incurred by the **insured**.

ROADSIDE ASSISTANCE COVERAGE CALL 1-877-ROAD101 (1-877-762-3101)

“**Your covered auto**” as used in this endorsement means a private passenger vehicle, motorhome or **trailer** owned by you and for which a specific premium is shown on the Declarations for this coverage.

The following coverages apply to each vehicle for which this coverage is shown on the Policy Declarations:

1. Each time **your covered auto** or any **non-owned auto** is disabled due to mechanical or electrical breakdown we will pay reasonable and necessary expenses for the use of an **authorized service provider** to tow or flatbed **your covered auto** or **non-owned auto** up to 15 miles or to the nearest qualified place where necessary repairs can be made during regular **business** hours.
2. Each time **your covered auto** or any **non-owned auto** is disabled requiring:
 - a. Towing to dislodge the vehicle from its place of disablement within 100 feet of a public street or highway; or
 - b. Labor, including change of tire, at the place of its breakdown; or
 - c. Delivery of fuel, oil, water or other fluids (we do not pay the costs of these items); or
 - d. Key lock-out services;

we will cover up to one (1) hour of labor for the use of an **authorized service provider** for service at the place of disablement.
3. For policies with a 6 month policy term, coverage is limited to no more than two occurrences per vehicle plus an additional two occurrences per policy in a 6 month policy period for both coverages **1.** and **2.** above.
4. For policies with an annual policy term, coverage is limited to no more than four occurrences per vehicle plus an additional four occurrences per policy in a 12 month policy period for both coverages **1.** and **2.** above.

Authorized service provider means a service provider contracted by us providing, at no charge to you, roadside assistance as described and limited above.

When service is provided by other than an **authorized service provider**, we will reimburse you only for reasonable charges as determined by us.

No deductible applies to this coverage.

LOSS OF USE COVERAGE

The provisions and exclusions that apply to Part **D** — Coverage for Damage to Your Auto also apply to this coverage except as changed below:

When there is a loss to any vehicle described in the Declarations for which a specific premium charge indicates that Loss of Use Coverage is afforded, we will reimburse you for expenses you incur to rent a substitute vehicle.

This coverage applies only if:

1. The vehicle is withdrawn from use for more than 24 hours;
2. The loss is caused by **collision**, or is covered by the Comprehensive Coverage of this policy; and
3. The loss exceeds the appropriate **collision** or **comprehensive** deductible applying to the vehicle.

However, this coverage does not apply to losses caused by **collision** if Collision Coverage does not apply to the vehicle.

Our payment will be limited to that period of time reasonably required to repair or replace the vehicle. We will pay up to the amount per day and the maximum shown for Loss of Use in the Declarations.

No deductible applies to this coverage.

FULL SAFETY GLASS COVERAGE

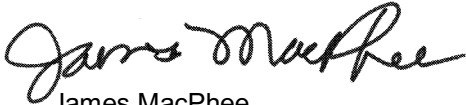
We will pay under Comprehensive Coverage for the cost of repairing or replacing damaged **safety equipment** on **your covered auto** without a deductible. We will pay only if:

1. The Declarations indicates that Comprehensive Coverage applies; and
2. A specific premium charge for Full Safety Glass Coverage is shown in the Declarations for **your covered auto**.

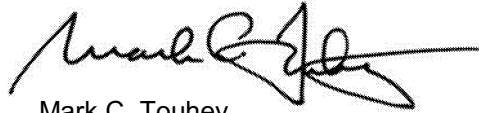
“**Safety equipment**”, as used in this coverage means the:

1. Glass used in the windshield, doors and windows of **your covered auto**; and
2. Glass, plastic or other material used in the lights of **your covered auto**.

This policy has been signed by our President and Secretary.



James MacPhee
President



Mark C. Touhey
Vice President and Secretary

This policy includes copyrighted material of Insurance Services Office, Inc. with its permission.

SA-1701/EP 9/90 _____
G19



A Liberty Mutual Company

RODRIGUEZ INSURANCE AGENCY LLC
DBA SOUND BUSINESS INSURANCE
3309 56TH ST NW STE 101
GIG HARBOR WA 98335-8580

July 13, 2017

Policy Number: H2323009

24-Hour Claims: 1-800-332-3226

Policy Service: (253) 858-9988

Online Account Services: www.safeco.com

**THIS IS NOT A BILL.
IDENTIFICATION CARDS ENCLOSED**

CAMERON LUNDQUIST
CORRINNE KILLION

Thank you for allowing us to continue serving your insurance needs.

To ensure you are receiving the best coverage and value available, the following changes have been made to your 12-month automobile policy, including those requested by you or your agent or broker.

2000 SUBARU IMPREZA RS
- Vehicle is added.

Your discounts or surcharges have changed. Please read the enclosed policy declarations page carefully.

This change is effective July 13, 2017. Please place this letter with your insurance policy. Information on coverages and limits can be found on the revised Declarations page, enclosed.

The additional premium for this change is \$309.47. The billing for this amount will be explained on your next billing statement. A \$149.30 payment for the outstanding bill on your account is due on July 27, 2017.

If you have any questions or wish to make any changes to your policy, you can do so by calling your agent at (253) 858-9988.

We appreciate the opportunity to serve you. Thank you.

Personal Lines Underwriting

FIRST NATIONAL INSURANCE COMPANY OF AMERICA



POLICY NUMBER: H2323009

**FIRST NATIONAL INSURANCE COMPANY OF AMERICA
AUTOMOBILE POLICY DECLARATIONS**

NAMED INSURED:
CAMERON LUNDQUIST
CORRINNE KILLION
[REDACTED]

POLICY CHANGE
CHANGED EFFECTIVE: JULY 13 2017
POLICY PERIOD FROM: APR. 27 2017
TO: APR. 27 2018

at 12:01 A.M. standard time at the address of the insured as stated herein.

AGENT:
RODRIGUEZ INSURANCE AGENCY LLC
DBA SOUND BUSINESS INSURANCE
3309 56TH ST NW STE 101
GIG HARBOR WA 98335-8580

AGENT TELEPHONE:
(253) 858-9988

RATED DRIVERS CAMERON LUNDQUIST, CORRINNE KILLION

2012 NISSAN PATHFINDER S/LE/SE 4 DOOR ID# [REDACTED]
1998 DODGE RAM 2500 4 DOOR PICK-UP ID# [REDACTED]

Insurance is afforded only for the coverages for which limits of liability or premium charges are indicated.

COVERAGES	2012 NISS LIMITS	PREMIUMS	1998 DODG LIMITS	PREMIUMS
LIABILITY:				
BODILY INJURY	\$100,000 Each Person \$300,000 Each Occurrence	\$ 159.30	\$100,000 Each Person \$300,000 Each Occurrence	\$ 154.30
PROPERTY DAMAGE	\$100,000 Each Occurrence	129.00	\$100,000 Each Occurrence	152.40
PERSONAL INJURY PROTECTION	\$10,000	119.10	\$10,000	86.30
UNDERINSURED MOTORISTS:				
BODILY INJURY	\$50,000 Each Person \$100,000 Each Accident	48.10	\$50,000 Each Person \$100,000 Each Accident	48.10
PROPERTY DAMAGE	\$10,000 Each Accident	19.10	\$10,000 Each Accident	19.10
DEDUCTIBLE:	SEE YOUR POLICY		SEE YOUR POLICY	
COMPREHENSIVE	Actual Cash Value Less \$1000 Deductible Full Safety Glass	94.20	Actual Cash Value Less \$1000 Deductible Full Safety Glass	75.10
COLLISION	Actual Cash Value Less \$1000 Deductible	211.20	Actual Cash Value Less \$1000 Deductible	96.10
ENHANCED COVERAGE LEVEL		39.90		32.30
	TOTAL \$	819.90	TOTAL \$	663.70

You may pay your premium in full or in installments. There is no installment fee for the following billing plans: Full Pay. Installment fees for all other billing plans are listed below. If more than one policy is billed on the installment bill, only the highest fee is charged. The fee is:
\$2.00 per installment for recurring automatic deduction (EFT)
\$5.00 per installment for recurring credit card or debit card
\$5.00 per installment for all other payment methods

-CONTINUED-

P O BOX 515097, LOS ANGELES, CA 90051



POLICY NUMBER: H2323009

**FIRST NATIONAL INSURANCE COMPANY OF AMERICA
AUTOMOBILE POLICY DECLARATIONS**

(CONTINUED)

NAMED INSURED:
CAMERON LUNDQUIST
CORRINNE KILLION
[REDACTED]

POLICY CHANGE

CHANGED EFFECTIVE: JULY 13 2017
POLICY PERIOD FROM: APR. 27 2017
TO: APR. 27 2018

at 12:01 A.M. standard time at the address of the insured as stated herein.

AGENT:

RODRIGUEZ INSURANCE AGENCY LLC
DBA SOUND BUSINESS INSURANCE
3309 56TH ST NW STE 101
GIG HARBOR WA 98335-8580

AGENT TELEPHONE:
(253) 858-9988

RATED DRIVERS CAMERON LUNDQUIST, CORRINNE KILLION

2000 SUBARU IMPREZA RS 2 DOOR ID# [REDACTED]

Insurance is afforded only for the coverages for which limits of liability or premium charges are indicated.

COVERAGES	2000 SUBA LIMITS	PREMIUMS
LIABILITY:		
BODILY INJURY	\$100,000 Each Person	\$ 134.10
	\$300,000 Each Occurrence	
PROPERTY DAMAGE	\$100,000 Each Occurrence	108.20
PERSONAL INJURY PROTECTION	\$10,000	101.70
UNDERINSURED MOTORISTS:		
BODILY INJURY	\$50,000 Each Person	48.10
	\$100,000 Each Accident	
PROPERTY DAMAGE	\$10,000 Each Accident	19.10
DEDUCTIBLE:	SEE YOUR POLICY	
COMPREHENSIVE	Actual Cash Value Less \$1000 Deductible Full Safety Glass	65.90
COLLISION	Actual Cash Value Less \$1000 Deductible	131.50
ENHANCED COVERAGE LEVEL		31.10
	TOTAL	\$ 639.70

TOTAL EACH VEHICLE:
2012 NISS \$ 819.90
1998 DODG 663.70
2000 SUBA 639.70

PREMIUM SUMMARY
VEHICLE COVERAGES \$ 2,123.30
DISCOUNTS & SAFECO SAFETY REWARDS **You saved \$597.30** Included
TOTAL 12 MONTH PREMIUM FOR ALL VEHICLES \$ 2,123.30

-CONTINUED-

P O BOX 515097, LOS ANGELES, CA 90051



POLICY NUMBER: H2323009

**FIRST NATIONAL INSURANCE COMPANY OF AMERICA
AUTOMOBILE POLICY DECLARATIONS**

(CONTINUED)

You may pay your premium in full or in installments. There is no installment fee for the following billing plans: Full Pay. Installment fees for all other billing plans are listed below. If more than one policy is billed on the installment bill, only the highest fee is charged. The fee is:

- \$2.00 per installment for recurring automatic deduction (EFT)
- \$5.00 per installment for recurring credit card or debit card
- \$5.00 per installment for all other payment methods

YOU SAVED \$597.30 BY QUALIFYING FOR THE FOLLOWING DISCOUNTS:

- Account
- Anti-Theft
- Advance Quoting
- Accident Free
- Violation Free
- Coverage
- Homeowners
- Multi-Car

ENHANCED LEVEL ENDORSEMENT

It is agreed that the Essential Personal Auto Policy is amended as follows:

PART A — LIABILITY COVERAGE

If the Declarations indicates that Part A — Liability Coverage applies, then the following applies:

SUPPLEMENTARY PAYMENTS

Item **1.** is amended to increase the \$250 to \$1,000.

Item **3.** is amended to increase the \$200 a day to \$250 a day.

PART D — COVERAGE FOR DAMAGE TO YOUR AUTO

The following items apply in the event of a covered **collision** or **comprehensive** loss:

TRANSPORTATION EXPENSES

B.1. is replaced by the following:

1. Up to \$25 per day, to a maximum of \$750; or

EXCLUSIONS

Exclusion **7.** is amended by increasing the \$500 to \$1,000.

Exclusion **18.** is amended by increasing the \$500 to \$1,000.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

CAMERON LUNDQUIST, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

FIRST NATIONAL INSURANCE
COMPANY OF AMERICA, a New Hampshire
Corporation,

Defendant.

No. 18-cv-05301 RJB

[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION TO DISMISS

THIS MATTER having come on for hearing before The Honorable J. Bryan on
Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant to FED. R. CIV. P. 12(b)(6),
and the Court having considered:

1. Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant to FED. R. CIV.
P. 12(b)(6) (and attachments thereto);
- 2.
- 3.
- 4.

1 the files and pleadings herein, and having heard oral argument of counsel, now, therefore,

2 IT IS HEREBY ORDERED that Defendant's Motion to Dismiss Plaintiff's Complaint

3 Pursuant to FED. R. CIV. P. 12(b)(6) is granted.

4 DATED _____.

5
6
7 _____
United States District Judge

8 Presented by:

9 s/ John M. Silk

10 John M. Silk, WSBA #15035
11 WILSON SMITH COCHRAN DICKERSON
12 901 Fifth Ave., Suite 1700
13 Seattle, WA 98164
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15 Facsimile: (206) 623-9273
16 silk@wscd.com

17 James A. Morsch
18 Julie Rodriguez Aldort
19 John O. Leahy
20 *Admitted Pro Hac Vice*
21 BUTLER RUBIN SALTARELLI & BOYD LLP
22 321 N. Clark Street, Suite 400
23 Chicago, IL 60654
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Attorneys for Defendants

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the date set forth below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 15th day of May, 2018.

s/ Traci Jay
Traci Jay