

**COMMONWEALTH OF KENTUCKY
SCOTT CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. _____**

IN THE MATTER OF:

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

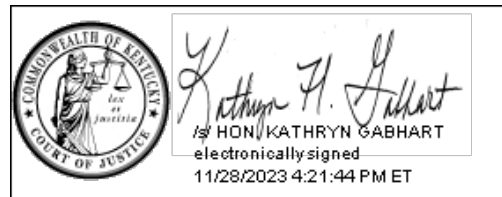
ORDER ON ASSURANCE OF VOLUNTARY COMPLIANCE

Pursuant to KRS 367.230, the Assurance of Voluntary Compliance attached hereto is provided to the Commonwealth of Kentucky, ex. rel. Daniel Cameron, Attorney General, by State Farm Mutual Automobile Insurance Company (“State Farm”).

WHEREFORE, the parties having reached agreement and having agreed to the approval and filing of this Assurance of Voluntary Compliance, the requirements of KRS 367.230 having been met, and the Court being duly and sufficiently advised and having jurisdiction and venue pursuant to KRS 367.230, the Assurance of Voluntary Compliance attached hereto is hereby approved. The amount payable to the Commonwealth of Kentucky pursuant to the Assurance of Voluntary Compliance is \$1,350,000 for the recovery of the Attorney General’s reasonable costs of investigation and expenses in accordance with KRS 48.005.

DATE: _____

JUDGE, SCOTT CIRCUIT COURT



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ASSURANCE OF VOLUNTARY COMPLIANCE

I. INTRODUCTION

1. This Assurance of Voluntary Compliance (“Assurance”) is entered into by the Commonwealth of Kentucky, ex rel. Daniel Cameron, Attorney General of the Commonwealth of Kentucky (“Attorney General”), and State Farm Mutual Automobile Insurance Company (“State Farm”). In consideration of their mutual agreements to the terms of this Assurance, and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows.

2. The Attorney General is responsible for the enforcement and administration of Kentucky law including the consumer protection laws set forth in Kentucky Revised Statutes (“KRS”) Chapter 367.

3. State Farm is a mutual insurance company organized under the laws of the State of Illinois and maintains its principal place of business in Bloomington, Illinois.

4. This Court has jurisdiction over the parties and subject matter of this Assurance pursuant to KRS 367.230 and the agreement of the parties.

5. In relation to the filing of the Assurance in the Scott Circuit Court in the Commonwealth of Kentucky as required by statute, State Farm waives notice and service of process regarding the filing of the Assurance and does not object to the Court’s approval and entry of this Assurance. State Farm also does not object to the *ex parte* submission and presentation of this Assurance by the Attorney General to the Court.

II. NO ADMISSION OF LIABILITY

6. The parties have entered into this Assurance without trial of any issue of fact or law. State Farm specifically denies it has violated any federal or state laws. Nothing contained herein may be taken as or construed to be an admission or concession of any violation of law or regulation,

or of any other matter of fact or law, or of any liability or wrongdoing, nor shall it constitute any evidence or finding supporting any of the allegations of fact or law alleged by the Attorney General, or any violation of state or federal law, rule or regulation or any liability or wrongdoing whatsoever. This Assurance is not intended to constitute evidence or precedent of any kind except in any action or proceeding by one of the parties to enforce, rescind or otherwise implement or affirm any or all terms of this Assurance. The parties expressly acknowledge and agree that nothing shall prevent the Attorneys General's enforcement rights associated with this Assurance.

III. DEFINITIONS

The following definitions shall be used in construing this Assurance:

- a. "Assurance" means this Assurance of Voluntary Compliance.
- b. "Attorney General" means the Attorney General of Kentucky and authorized representatives of his Office.
- c. "State Farm" means State Farm Mutual Automobile Insurance Company and includes its subsidiary corporations to the extent said corporation has issued automobile insurance policies in the Commonwealth of Kentucky.
- d. "Automobile Insurance Policy" means an insurance policy issued by State Farm covering a motor vehicle owned or operated in the Commonwealth of Kentucky.
- e. "Uninsured Motorist Benefits," also known as "UM" benefits, means benefits provided under the uninsured motorist coverage in State Farm's automobile insurance policies and as also defined in KRS 304.20-020.
- f. "UM Selection/Rejection Form" means a form completed by a Policyholder, in relation to an automobile insurance policy indicating the Policyholder's decision to not purchase uninsured

motorist coverage on an automobile insurance policy and as further described in KRS 304.20-020(1).

g. “Underinsured Motorist Benefits,” also known as “UIM” benefits, means benefits provided under the underinsured motorist coverage in State Farm’s automobile insurance policies and as also defined in KRS 304.39-320.

h. “Effective Date” means the date the Court’s order approving this Assurance was entered.

i. “Policyholder” means a person who is a named insured or spouse of the named insured under an automobile insurance policy issued by State Farm.

j. “Insured” means any person who qualifies as an insured under a State Farm automobile insurance policy for purposes of UM or UIM coverage.

k. “Parties” means the Attorney General of Kentucky and State Farm.

l. “Civil Investigative Demand” means the Attorney General’s Civil Investigative Demand issued on February 11, 2019, as modified on October 11, 2019.

m. “State Farm Agent” means a State Farm independent contractor agent authorized to assist in the marketing and distribution of automobile insurance policies from State Farm in the Commonwealth of Kentucky.

n. “Agent Team Member” means an employee of a State Farm independent contractor in the Commonwealth of Kentucky.

III. BACKGROUND

7. The Attorney General issued a Civil Investigative Demand on February 11, 2019, as modified on October 11, 2019, addressing two primary issues: whether State Farm had failed to identify and disclose UM and/or UIM coverages available under State Farm automobile insurance policies to affected claimants and insureds who were entitled to said coverage (“Coverage Issue”); and whether State Farm Agents or the Agent Team Members were signing UM Selection/Rejection

Forms without the Policyholder's authorization or consent ("UM Selection/Rejection Form Issue"). State Farm made good faith efforts to respond to the Attorney General's inquiries under this Civil Investigative Demand to address these issues.

8. As to the Coverage Issue, State Farm learned in 2018 that, on some occasions, State Farm claims personnel were inadvertently failing to identify and disclose UM and/or UIM coverage available under a State Farm automobile policy covering vehicles not involved in the accident at issue where the claimant could potentially qualify as an insured under the additional household policy as a named insured, named insured's spouse, or resident relative.

9. To determine the scope of this issue, in January 2019, State Farm voluntarily initiated a review of claims made by Kentucky claimants and made supplemental payments in situations where claimants qualified as an insured under the additional household policy and had damages that warranted payments above the initial UM or UIM limits payment. Upon receipt of the Civil Investigative Demand, State Farm expanded the timeframe of the claims to be reviewed by an additional one year.

10. In March 2019 and again in October 2019, State Farm also revised its Kentucky reference materials to provide State Farm claims personnel with specific, detailed steps to identify and disclose all available UM and UIM coverages.

11. In March 2020, State Farm also made available to its claims personnel an electronic search tool that permitted claims personnel to reasonably identify additional household automobile insurance policies that could potentially provide UM and/or UIM coverage to the claimant.

12. On May 22, 2019, Linda Davis filed a Complaint against State Farm in Jefferson Circuit Court, which was later amended to assert a class action against State Farm addressing the Coverage Issue and then removed to federal court in *Linda Davis v. State Farm Mutual Automobile Insurance*

Company, Case No. 3:19-cv-00466-CRS (W.D. Ky.) (“*Davis Class*”). In the *Davis Class*, State Farm reached a court approved settlement whereby it paid sums to members of the Stacking Class who were those affected claimants identified as part of its voluntary remediation described above, and paid sums to members of the Underlying Coverage Class who were deemed entitled to UM and/or UIM coverage not paid under the State Farm automobile insurance policy covering the involved vehicle but available under other household automobile insurance policies in effect on the date of loss.

13. State Farm kept the Attorney General advised as to the settlement negotiations in the *Davis Class* and provided notice to the Attorney General of the class settlement. The Attorney General did not object to the terms of the class settlement.

14. Throughout the course of the Civil Investigative Demand, State Farm provided responsive information and materials related to the Coverage Issue to the Attorney General.

15. As to the UM Selection/Rejection Form Issue, State Farm maintains policies and procedures which state that State Farm Agents and Agent Team Members should not sign UM Selection/Rejection Forms on behalf of Policyholders with or without their consent and that only the Policyholder, or someone the Policyholder authorizes (not associated with the State Farm Agent), should sign the UM Selection/Rejection Form.

16. State Farm learned in 2018 that one Agent Team Member of a State Farm Agent in Louisville, Kentucky, had signed UM Selection/Rejection forms without the authorization of the Policyholder, contrary to the policies and procedures described above.

17. The Agent terminated the Agent Team Member’s employment, and the Agent retired.

18. State Farm engaged in efforts to address any potential adverse effects and remediated active policies in the book of business assigned to the involved State Farm Agent where concerns about

the validity of UM Selection/Rejection Forms were identified, by providing each such Policyholder with UM coverage at limits equal to the Policyholder's liability limits until the next renewal date, at no charge.

19. State Farm also sent letters to the other active automobile Policyholders assigned to the involved State Farm Agent, advising them that State Farm was updating its records relating to UM coverage on the State Farm policy, and that if the Policyholder did not want to carry UM coverage on that policy, the Policyholder must decline the coverage in writing by submitting a signed UM Selection/Rejection Form enclosed with the letter. The letter further advised that if the Policyholder did not submit the signed form, UM coverage with limits equal to the Policyholder's liability limits would be added to the policy when it renewed, with a premium reflecting the additional coverage.

20. Additionally, during the handling of any claim, if there is credible evidence that the UM Selection/Rejection Form was not signed by the Policyholder (or someone with their authorization), State Farm will provide UM coverage to the claimant for a particular loss.

21. The Kentucky Department of Insurance also conducted an investigation into whether State Farm Agents were signing UM Selection/Rejection forms without Policyholder authorization and closed its investigation without issuing any findings.

22. State Farm recognizes that the Attorney General has incurred substantial investigative costs and expenses in pursuing its Civil Investigative Demand warranting reimbursement to the Attorney General of said costs and expenses.

IV. ASSURANCES

23. State Farm will continue to exercise good faith and use its best efforts to disclose UM and/or UIM coverages to all affected insureds for claims arising out of motor vehicle accidents in

the Commonwealth of Kentucky, and to otherwise comply with Kentucky law regarding the disclosure of its coverages to affected Policyholders, insureds or claimants.

24. To further this end, State Farm will continue training its claims personnel on the importance of complying with the revised claim procedures described above and utilization of the updated search tool described above to confirm that all available coverages are reasonably identified and disclosed in connection with any bodily injury claim involving UM and/or UIM coverages.

25. State Farm agrees to use its best efforts to file a proposed multi-car policy form with the Kentucky Department of Insurance in 2025.

26. State Farm will continue to require compliance with its internal policies and procedures which prohibit State Farm Agents and Agent Team Members from signing a UM Selection/Rejection Form on behalf of a Policyholder.

27. State Farm will send a communication to all State Farm Agents in the Commonwealth of Kentucky regarding State Farm's policies and procedures that prohibit State Farm Agents and Agent Team Members from signing UM Selection/Rejection Forms on behalf of a Policyholder, that failure to comply with these policies and procedures could subject State Farm Agents to consequences as a violation of their agency agreements, and of State Farm's ability to review said Forms to verify compliance with its policies and procedures through various compliance reviews. State Farm Agents will be asked to communicate this information to their Agent Team Members.

28. As part of its compliance procedures with its Agents, State Farm will continue communicating to State Farm Agents to comply with its policies and procedures on signing UM Selection/Rejection Forms in annual compliance reviews and training.

29. State Farm agrees to notify the Attorney General of any required notice sent to the Kentucky Department of Insurance for termination for cause of any Kentucky State Farm Agent related to fraudulently signing UM Selection/Rejection Forms on behalf of Policyholders.

30. The Assurance Compliance Period shall run from the Effective Date of this Assurance for a period of two years.

V. ENFORCEMENT

31. If the Attorney General believes that State Farm is in violation of any of its obligations under this Assurance, the parties agree that the Attorney General will provide State Farm with written notice, including a specific description of the conduct that appears to violate the Assurance and the provisions of the Assurance that the conduct appears to violate, and provide State Farm thirty (30) business days after the date of receipt of the notice prior to commencing any further proceeding; provided, however, that the Attorney General may take any action where the Attorney General concludes that because of the specific practice, a threat to the health or safety of the public requires immediate action.

32. Within thirty (30) business days of receipt of the Notice, State Farm shall have the opportunity to demonstrate that:

- a. State Farm is in compliance with the obligations of this Assurance cited by the Attorney General as being violated;
- b. The alleged violation has been addressed, including by remedial actions having been taken to remedy any conduct inconsistent with this Assurance; or,
- c. State Farm has begun to take action to address the alleged violation, is pursuing such action with due diligence, and has provided a reasonable timetable for addressing the alleged violation.

33. Nothing shall prevent the Attorney General from agreeing to provide State Farm with additional time beyond the thirty (30) business days to respond to the Notice.

34. If the Attorney General is dissatisfied with the written response, then the Attorney General may request additional information or materials from State Farm to address the concerns raised in the notice or may find State Farm liable for all or a part of stipulated civil penalties in the amount of Four Hundred Thousand Dollars (\$400,000.00).

35. If there is continued disagreement between the parties on whether there was substantial noncompliance, this court will make the final determination.

36. At the end of the two-year period following the Effective Date of this Assurance, the Attorney General will be deemed to have permanently waived enforcement of said civil penalty of \$400,000.00 if State Farm has not received notice that it has not substantially complied with the terms of this Assurance or the Attorney General has determined that State Farm has adequately addressed any notice of violation issued by the Attorney General during said period.

VI. PAYMENT

37. State Farm will pay One Million Three Hundred Fifty Thousand Dollars (\$1,350,000.00) as reimbursement for the Attorney General's reasonable costs of investigation and expenses within sixty (60) days of the Effective Date.

38. Within thirty (30) days of the Effective Date, the Attorney General will provide State Farm with instructions for payment that include wiring information and associated account numbers and/or the Parties will otherwise work in good faith to comply with the time period for payment.

VII. RELEASE

39. In consideration of the stipulated payments and assurances and contingent on the Court's entry of the Order on this Assurance, the Attorney General, by execution of this Assurance, hereby

fully and completely releases State Farm of all claims and allegations related to the issues raised in its Civil Investigative Demand.

40. The Attorney General through this Assurance does not settle, release, or resolve any claim against State Farm or any other person or organization involving private causes of action, claims, and remedies pursued by any third party. This release also does not apply to claims of any other Kentucky state agency, department, official or division.

41. This release applies to State Farm Mutual Automobile Insurance Company, its subsidiary corporation, State Farm Fire and Casualty Company, State Farm's employees and assigns, and State Farm's Agents and Agent Team Members, and anyone else acting on behalf of, or in concert or participation with State Farm, directly or indirectly, including principals, directors, officers, agents, representatives, volunteers, employees, independent contractors, affiliates, successors, transferees, assignees, and all other persons or corporate devices, partnerships, associations, or other business entities.

VIII. GENERAL PROVISIONS

42. The terms of this Assurance shall be governed by the laws of the Commonwealth of Kentucky.

43. This Assurance shall not be construed as a waiver or limitation of any defense otherwise available to State Farm in any other action, or of State Farm's right to defend itself from, or make any arguments in, any other individual, regulatory, governmental or class claims or suits related to the subject matter or terms of this Assurance and as raised in the Civil Investigative Demand. This Assurance is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Notwithstanding the foregoing, the Attorney General may file an action to enforce the terms of this Assurance.

44. This Assurance does not create a private cause of action or confer any right to any third party for violation of any federal or state law or statute and should not be construed as an admission of any fact or legal conclusion related to the investigation, or of any wrongdoing or liability by State Farm, and State Farm expressly denies any such admission, wrongdoing, or liability.

45. This Assurance represents the full and complete terms of the settlement and/or agreement entered into by the Parties as a part of their negotiated agreements.

46. The Attorney General agrees that the information provided to the Attorney General by State Farm as part of its Civil Investigative Demand shall remain confidential and proprietary information, and the Attorney General will not make public or produce such information unless required by a court of law or permitted to do so by law.

47. This Assurance shall not be construed as relieving State Farm of the obligation to comply with the applicable state and federal laws, regulations, and rules, nor shall any of the provisions of this Assurance be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, and rules.

48. This Assurance may be executed by any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart thereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart thereof.

49. The undersigned Attorney General and State Farm representatives state that they are authorized to enter into and execute this Assurance on behalf of the Attorney General and State Farm and, further agree to execute and deliver all authorizations, documents, and payments that are necessary to carry out the terms and conditions of this Assurance.

50. If any portion, provision, or part of this Assurance is held invalid, unenforceable, or void for any reason, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining portions.

CONSENTED AND AGREED TO BY:

State Farm Mutual Automobile Insurance Company

Signature: /s/ David T. Klapheke (by permission)

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COUNSEL FOR STATE FARM

Date: November 28, 2023

APPROVED BY:

Signature: 

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COUNSEL FOR COMMONWEALTH OF KENTUCKY

Date: November 28, 2023