

Defendants' practice of deducting amounts of betterment or depreciation on first party collision or comprehensive claims under the standard Texas Personal Auto Policy;

Whereas, Defendants' practice of deducting for betterment or depreciation for first party claims has been a common practice of automobile insurers in Texas for many years and at least since adoption of the current Texas Personal Auto Policy in 1981;

Whereas, the Texas Department of Insurance ("TDI") is the state agency authorized by the Texas legislature to regulate the business of insurance in Texas. TDI promulgated that standard and uniform Texas Personal Auto Policy in 1981. Although aware of insurers' practice of deducting betterment or depreciation for first party collision or comprehensive claims under the Texas Personal Auto Policy, TDI did not formally object to the practice until February 24, 2000, through Commissioner's Bulletin No. B-0014-00;

Whereas, Defendants assert they ceased their practice of deducting for betterment or depreciation on first party collision or comprehensive coverage claims sometime in 1999, after the publication of *Great Texas County Mut. Ins. Co. v. Lewis*, 979 S.W. 2d 72 (Tex. App.—Austin 1998), which was the first reported Texas case to interpret the Texas Personal Auto Policy to prohibit deductions for betterment or depreciation for first party claims; and

Whereas, this Assurance of Voluntary Compliance and the Agreement contained herein constitutes a fair, adequate and reasonable settlement for Defendants' alleged violations of the DTPA and Texas Insurance Code.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the State of Texas and Defendants agree as follows:

1. Defendants agree that:

1.1 Defendants will pay, according to the procedures set forth in paragraphs 1.2, 1.3 and 1.4 of this Agreement, their insureds, whether a current policyholder or not, the total amount deducted as depreciation or betterment (“the deduction amount”), if any, by any Defendant from each first party comprehensive or collision coverage claim (where the covered auto was not adjusted as a total loss) made by the insured against a Texas personal auto policy issued by any Defendant where the claim was paid, in whole or in part, on or after January 1, 1996. Defendants shall also pay to the insured 10% per annum simple interest on the deduction amount with such interest to be calculated from the date the claim was originally paid.

1.2 Defendants produced a sworn affidavit that they located over 5000 Texas first party auto physical damage and collision claims files with a claim payment date between January 1, 1996 through September 1999, and conducted a manual review of such each of such files to identify policyholders entitled to reimbursement under paragraph 1.1. Defendants estimate that, based on this manual file review, approximately 185 insureds may be entitled to payment under paragraph 1.1 above. Defendants will mail to each of these identified insureds (unless the insured has already recovered or been paid the full deduction amount), and to any insureds who request and are identified as being entitled to payment under paragraph 1.1 of this Agreement, a check or draft in the amount of the deduction amount plus 10% per annum simple interest on such amount from the date the claim was originally paid. It is acknowledged that Defendants will have to establish payment procedures under this Agreement. Defendants will make their best efforts to mail payment to identified insureds entitled to payment under paragraph 1.1 within thirty (30) days of the effective date of this Agreement. If, after making best efforts, it is impracticable for Defendants to pay such identified insureds within thirty (30) days of the effective date of this Agreement, Defendants may contact the Attorney General to request a reasonable extension, which extension shall not be unreasonably

denied. Defendants will make their best efforts to mail payment to those insureds not initially identified but who request and are entitled to payment under paragraph 1.1 of this Agreement within twenty (20) days of the date on which such insureds are identified as being entitled to payment under paragraph 1.1. Defendants presently estimate the total amount of payment to presently identified insureds, including interest, to be approximately \$53,000.00.

1.3 Each check or draft shall be accompanied by a letter in the form attached hereto as Exhibit "A." Each check or draft may include the following release language and none other: "Full and final settlement for the deduction of betterment or depreciation on this claim."

1.4 All payments shall be mailed to the insured's most current address available to Defendants, with an address correction requested. All payments returned to Defendants with a corrected address shall be forwarded to such address. Any payments returned that are undeliverable and remain unclaimed shall be subject to TEX. PROP. CODE ANN. § 72.001, *et seq.*

1.5 Ten (10) months from the effective date of this Agreement or earlier, Defendants shall provide the Consumer Protection and Public Health Division of the Office of the Texas Attorney General with a verified report under oath which shall reflect:

- a. the total dollar amount, including interest, of payments mailed under this Agreement;
- b. the total number of persons who were mailed checks or drafts;
- c. the total number and dollar amount of negotiated checks or drafts; and
- d. the total number of persons who, under paragraph 1.2 hereof, subsequently request payment of the deduction amount but who are determined by any Defendant not to be entitled to payment under paragraph 1.1 of this Agreement.

1.6 On or before the effective date of this Agreement, and continuing thereafter, until and unless the Limit of Liability section of Part D coverage under the standard Texas personal auto

policy is amended to specifically permit deduction for depreciation or betterment on collision or comprehensive claims where the covered auto is not adjusted as a total loss, Defendants shall cease and desist from: (a) deducting amounts for betterment or depreciation on first party collision or comprehensive coverage auto insurance claims where the covered auto has not been adjusted as a total loss; and (b) representing to any person making a first party collision or comprehensive coverage auto insurance claim, where the covered auto has not been adjusted as a total loss, that deduction for betterment or depreciation on such claim is legal, required, or otherwise permitted.

2. Within 15 days of the effective date of this Agreement, Defendants shall pay the total sum of \$10,000.00 to the Office of the Attorney General of Texas as its attorneys' fees, expenses, and costs of investigation. Failure to pay within the designated time period shall be a material breach of this agreement.

3. Defendants further agree that they:

- a. will not cancel or refuse to renew the insurance coverage of any insured of any Defendant because that insured has received a payment under this Agreement; provided, however, that such agreement shall not prevent Defendants from canceling or non-renewing any insurance policy, or coverage under any insurance policy (including a policy held by an insured who receives a payment hereunder), for any other legitimate reason; and
- b. will not consider payments made to policyholders or to the Attorney General pursuant to paragraph 1 or 2 of this Agreement in projecting future rate needs, for purposes of setting the rates any Defendant charges for motor vehicle insurance policies issued by any Defendant in Texas; provided, however, that this agreement is not intended to supersede any requirement imposed by law, or by regulation, order, or directive of the Texas Department of Insurance, on the reporting of data or the setting of rates for Texas motor vehicle insurance.

4. The parties agree that they will submit this Agreement to a court of competent jurisdiction in Travis County and request that the court approve and enter this Agreement pursuant to TEX. BUS. & COM. CODE § 17.58.

5. The parties hereto agree that this is a compromise of a disputed claim, and that this Agreement is entered into without admitting any liability, which liability is expressly denied, and without agreement by any party to any of the allegations made by another party. Nothing contained herein shall be deemed an admission of liability or wrongdoing of any kind.

6. The parties hereto agree to release and discharge each other from any and all claims for damages or other relief, other than as provided herein, arising out of Defendants' practice of deducting for betterment or depreciation on first party collision or comprehensive coverage auto damage insurance claims (where the covered auto has not been adjusted as a total loss) that may exist as of the effective date of this Agreement, whether or not asserted by the parties, in their pleadings in this case or otherwise.

7. The parties represent and warrant, each to the other, that each has the authority to enter into and made this Agreement, and to bind themselves to this Agreement.

8. This Agreement shall be governed by TEX. BUS. & COM. CODE § 17.58. Defendants and the Attorney General agree that nothing in this Agreement shall create any private rights, causes of action or remedies of any other party against any Defendant.

9. Any and all taxable costs of court are taxed against Defendants.

10. No modification of this AVC may be made, except by written agreement of both the Plaintiff and Defendants.

EXECUTED AND EFFECTIVE this _____ day of _____, 2004.

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

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ATTORNEYS FOR MARYLAND CASUALTY COMPANY, MARYLAND INSURANCE COMPANY, NATIONAL STANDARD INSURANCE COMPANY, NORTHERN INSURANCE COMPANY OF NEW YORK, VALIANT INSURANCE COMPANY and ASSURANCE COMPANY OF AMERICA

MARYLAND CASUALTY COMPANY

By: _____

Title: _____

MARYLAND INSURANCE COMPANY

By: _____

Title: _____

NATIONAL STANDARD INSURANCE COMPANY

By: _____

Title: _____

NORTHERN INSURANCE COMPANY OF NEW YORK

By: _____

Title: _____

VALIANT INSURANCE COMPANY

By: _____

Title: _____

ASSURANCE COMPANY OF AMERICA

By: _____

Title: _____

EXHIBIT A

DATE:

CLAIM NO:

Dear _____:

Recently Texas Attorney General Greg Abbott and Maryland Casualty Company and its subsidiaries came to an agreement regarding the propriety of deducting for depreciation or betterment on collision or comprehensive coverage claims since January 1, 1996 where your covered auto was not declared a total loss. Although this practice was common among insurance companies in Texas, Maryland Casualty and its subsidiaries have agreed with Texas Attorney General Greg Abbott to reimburse policyholders for the amounts deducted plus 10% per annum interest.

You have been identified by Maryland Casualty Company as someone entitled to reimbursement under this settlement. Accordingly, please find the enclosed check, which is payment for the amount deducted for betterment or depreciation on your claim plus 10% per annum interest. By negotiating this check, you release Maryland Casualty Company and its subsidiaries from any liability for the deduction of depreciation or betterment on this claim.

If you have any questions regarding the enclosed check or this letter, please contact Maryland Casualty Company toll-free at 1-800_____.

Please note that, if you accept this payment, this check must be negotiated no later than six (6) months from the date of its issuance.