

CAUSE NO. GV000275

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
PROGRESSIVE COUNTY MUTUAL	§	
INSURANCE COMPANY,	§	
Defendant.	§	261st JUDICIAL DISTRICT

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("AVC") is made and entered into this 15th day of September, 2004, by and between the State of Texas, acting through its Attorney General Greg Abbott, and Progressive County Mutual Insurance Company, (hereafter referred to as "Progressive").

1.0
RECITALS

1.1 This action was commenced by the State of Texas on February 14, 2000, with Plaintiff's Original Petition complaining of Progressive, and alleging violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. COM. CODE §§ 17.41, *et seq.*, and violation of TEX. INS. CODE Art. 21.21, and TEX. ADMIN. CODE ANN. § 21.1, *et seq.* The State of Texas complained in its Petition of the practice of deducting an amount for depreciation or betterment on certain first party claims under the Texas Private Passenger Automobile Policy of Insurance, alleging that such practice was not allowed under the policy language in the Limit of Liability Provision, Part D - Coverage for Damage to Your Auto. In its petition, the State of Texas sought injunctive relief, restitution to insureds, civil penalties and attorney's fees and costs.

1.2 Progressive's 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.

1.3 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.

1.4 Progressive alleges that it ceased its practice of deducting for betterment or depreciation on first party collision or comprehensive coverage claims on May 20, 1999.

1.5 Progressive intends that the payment provisions of this AVC offer full and complete restitution for Progressive 's alleged violations of the DTPA and Texas Insurance Code.

1.6 Progressive denies any and all liability for the claims asserted and contends that it properly and timely paid all amounts due insureds under the policy terms. Progressive denies any violation of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. COM. CODE §§ 17.41 *et seq.*, denies any violation of TEX. INS. CODE Art. 21.21, denies any violation of 28 TEX. ADMIN. CODE §§ 21.3 (b) or 21.1 *et seq.*, and denies it misrepresented or violated its contract with its insureds.

1.7 The Attorney General and Progressive conclude that the further conduct of this lawsuit would be protracted and expensive, and that it is desirable that this lawsuit be settled in the manner and upon the terms set forth in this AVC. This AVC is intended to limit further expense and inconvenience and to buy peace.

1.8 The relief provided to the eligible Progressive policyholders and the procedures set forth in this AVC for the distribution of this relief provide a fair, flexible, speedy, cost-effective, and assured monetary settlement to the eligible Progressive policyholders. Thus, this AVC provides considerable benefit to the eligible Progressive policyholders, while avoiding the costs and uncertainty of litigation.

1.9 The Parties are desirous of entering into, and obtaining approval of this AVC, pursuant to TEX. BUS. COM. CODE § 17.58 in order to fully and finally resolve all claims and disputes related to the practice of deducting an amount for depreciation or betterment on first party repair claims under the collision and comprehensive coverages of the Texas Personal Auto Policy.

2.0 AGREEMENT

2.1 In consideration of the mutual promises and covenants herein contained, the State of Texas and Progressive agree as follows:

2.2 Progressive will pay each and every insured, whether a current policyholder or not, according to the procedures set forth in this AVC, the total amount deducted as depreciation or betterment (“the deduction amount”), if any, 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 the Defendant in this case where the claim was paid, in whole or in part, on or after January 1, 1996. Progressive 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. Progressive acknowledges that it will have to establish payment procedures under this AVC.

2.3 Progressive states and affirms that it is unable to identify policyholders through searches of its electronic records who would be eligible for compensation under the terms of this AVC. However, Progressive has estimated, by utilizing its estimating software data from 1997, 1998 and 1999, and extrapolating that data for 1996, that approximately 10,933 presently unidentified policyholders may be entitled to payment under paragraph 2.2 above. Progressive will set aside and hold, for a period of two years after the effective date of this AVC, the amount of \$2,352,915.94 (“the set-aside”) for payment of claims to presently unidentified policyholders who qualify under paragraph 2.2 of this AVC and whose first party comprehensive or coverage or collision was paid before May 20, 1999, but after December 31, 1995. Two years after the effective date of this AVC, the claims process will terminate and any and all unpaid amounts from the set-aside shall be paid within 30 days to the Office of the Attorney General for deposit to the State of Texas’ general revenue fund. The payments to policyholders under this paragraph shall be made as follows:

- (a) Within forty-five (45) days after the effective date of this AVC, Progressive will mail the Progressive Notice and Claim Form in the form attached hereto as Exhibits A and B to its Texas policyholders who were paid on a first party comprehensive or collision claim (excluding those claims adjusted as a total loss) under the Texas Private Passenger Automobile Policy of Insurance before May 20, 1999 but after December 31, 1996, in which Progressive’s estimating software date indicates that betterment or depreciation may have been taken;
- (b) Within forty-five (45) days after the effective date of this AVC, Progressive

will mail the Progressive Notice and Claim Form in the form attached hereto as Exhibits A and B to its Texas policyholders who were paid on a first party comprehensive or collision claim (excluding those claims adjusted as a total loss) under the Texas Private Passenger Automobile Policy of Insurance before January 1, 1997 but after December 31, 1995;

- (c) After the notice is mailed, the Progressive's policyholders must mail the claim form (*Exhibit B*) to Progressive within 90 days of the date of the mailing to initiate the claims review process;
- (d) Following the receipt of a timely Claim Form, Progressive will review the original claim file, and if there is an indication anywhere in the claim file that betterment or depreciation was deducted, the policyholder is entitled to the deduction amount plus interest pursuant to this AVC unless (i) there is clear and unequivocal documentation in the claim file that betterment or depreciation was ultimately not deducted on the claim or (ii) Progressive records clearly and unequivocally reflect that the betterment or depreciation amount has already been refunded;
- (e) After the claims review process, if Progressive determines from the criteria set forth in this AVC that the policyholder is entitled to payment under paragraph 2.2 of this AVC, then within ninety (90) days of the date the claim form is received, Progressive shall mail directly to each policyholder a check or draft for the deduction amount plus interest as provided in this AVC.

2.4 Progressive will make its best efforts to mail payment to those insureds not initially

identified, and who are not mailed the Progressive Notice described in paragraph 2.3 of this AVC, but who subsequently request prior to the two year deadline under paragraph 2.3 and are entitled to payment under paragraph 2.2 of this AVC, within ten (10) days of the date on which such insureds are independently identified by Progressive, or within 60 days of receipt of a completed claim form, whichever is later.

2.5 Each check or draft shall also include on the back of the check or draft release as follows: "I release Progressive County Mutual Insurance Company from any and all liability for betterment or depreciation deducted on this claim."

2.6 Each check or draft issued pursuant to the claim procedure under paragraphs 2.3 and 2.4 herein will be accompanied by a letter in the form attached hereto as *Exhibit C*. If a policyholder is not entitled to payment pursuant to paragraph 2.3 (d), Progressive shall notify the policyholder by a letter in the form attached hereto as *Exhibit D*.

2.7 Each check or draft will be mailed by first class mail, with address correction requested, to the most current address available to Progressive. All such payments returned to Progressive with a corrected address will be forwarded to such corrected address. Any checks or drafts returned to Progressive that are undeliverable shall be subject to TEX. PROP. CODE ANN. § 72.001, *et seq.* Progressive shall pay all costs in connection with making payments under this AVC. Progressive intends to notify policyholders that they shall have six months to negotiate any check or draft.

2.8 Twelve (12) months and Twenty-Six (26) months after the Effective Date of this AVC, Progressive shall file with the Attorney General a verified report under oath which shall state:

- (1) the total dollar amount of payments, including interest, mailed to policyholders pursuant to this AVC;

- (2) the total number of policyholders to whom checks or drafts were mailed;
- (3) the total number and dollar amount of negotiated checks or drafts;
- (4) the total number and dollar amount of returned checks or drafts;
- (5) a list of policyholders to whom notice was sent;
- (6) the total number policyholders who, pursuant to paragraphs 2.3 or 2.4 hereof, were determined to be entitled to payment under paragraph 2.2 of this AVC;
and
- (7) the total number policyholders who, under paragraph 2.3 or 2.4 hereof, request payment of the deduction amount but who are determined by Progressive not to be entitled to payment under paragraph 2.2 of this AVC.

2.9 On or before the effective date of this AVC, 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, or the parties agree that new developments in case law permit deductions for depreciation or betterment on collision or comprehensive claims where the auto is not adjusted as a total loss, Progressive shall not (a) deduct amounts for betterment or depreciation on first party collision or comprehensive coverage auto insurance claims covered under a Texas personal auto policy where the covered auto has not been adjusted as a total loss; and (b) represent to any person making a first party collision or comprehensive coverage auto insurance claim covered under a Texas personal auto policy, 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.

2.10 Not later than October 1, 2004, Progressive shall pay \$175,000 to the Office of the Attorney General 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.

2.11. Progressive further agrees that it:

- a. will not cancel or refuse to renew the insurance coverage of any Progressive insured because that insured has filed a claim form or received a payment under this AVC; provided, however, that such agreement shall not prevent Progressive 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 this AVC in projecting future rate needs, for purposes of setting the rates Progressive charges for motor vehicle insurance policies issued by Progressive 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.

3.0 COURT APPROVAL

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

3.2 This agreement shall be deemed to be finally approved and effective only after the Court has entered an order approving this AVC. If the court does not approve the terms of this AVC, this AVC shall become null and void.

3.3 The parties hereto agree that this is a compromise of a disputed claim, and that this AVC 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.

3.4 The parties hereto release and discharge each other and Progressive 's past and present agents, employees, affiliates, officers, representatives, successors, parents, subsidiaries and divisions, from any and all claims for damages or other relief arising out of Progressive 's 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 AVC, whether or not asserted by the parties, in their pleadings in this case or otherwise.

3.5 The parties represent and warrant, each to the other, that each has the authority to enter into and make this AVC, and to bind themselves to this AVC. Progressive and the Attorney General agree that nothing in this AVC shall create any private rights, causes of action or remedies of any other individual or entity against Progressive .

3.6 This AVC shall be governed by TEX. BUS. & COM. CODE 17.58.

3.7 Any and all taxable costs of court are taxed against Progressive.

4.0 MISCELLANEOUS PROVISIONS

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

4.2 This AVC may be executed in any number of counterparts and each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same AVC.

EXECUTED this 15th day of September, 2004.

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL CARMONA
Chief, Consumer Protection and Public Health Division

By: _____
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ATTORNEYS FOR THE STATE OF TEXAS

By: _____
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(713) _____
(713)

ATTORNEYS FOR PROGRESSIVE COUNTY MUTUAL INSURANCE COMPANY

Progressive County Mutual Insurance Company

By: _____/S/_____

Title: _ Vice-President_____

THE STATE OF §
 §
COUNTY OF §

On this 13th day of September, 2004, before me, the undersigned authority, personally appeared W. Thomas Forrester, who is personally known to me and acknowledged himself/herself to be an officer or employee of Progressive County Mutual Insurance Company, and he/she, as such, being authorized to do so by Progressive County Mutual Insurance Company, executed the foregoing instrument for the purpose and consideration therein contained by signing for Progressive County Mutual Insurance Company by himself/herself as an officer or employee for such.

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of _____

My Commission Expires: _____

EXHIBIT A

Date: _____, 2004

Progressive County Mutual Insurance Company, (“Progressive”) and the Texas Attorney General, Greg Abbott, have recently come to an agreement regarding deductions for depreciation or betterment on certain collision or comprehensive coverage auto insurance claims. Despite the fact that this was a common practice among insurance companies, Progressive has elected to avoid the additional time and expense of litigation with the Attorney General by settling the issue and avoiding the potential of increased costs, which could result in raising automobile insurance rates.

Progressive has agreed to return to eligible Progressive policyholders the amount deducted for depreciation or betterment on their claims. Progressive has also agreed to 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. You may be an eligible policyholder if:

- (1) You presented a collision or comprehensive claim for damages to an auto covered under your Progressive policy (other than a total loss), and
- (2) Your claim was paid between January 1, 1996, and May 20, 1999, and
- (3) A betterment or depreciation amount was noted on your estimate, or you believe it was deducted, and a deduction for betterment or depreciation can be verified by your own records or a presently existing Progressive claim file.

Enclosed with this notice is a claim form for you to complete in order to determine whether you are eligible for a return of the amount deducted for depreciation or betterment in accordance with the above eligibility requirements. If you believe you meet the above criteria, please complete the attached form and return it by first class mail to the following:

Progressive Claims Administrator – The Garden City Group, Inc.
6525 West Campus Oval
New Albany, Ohio 43054

Although it is not required that you submit a copy of your estimate in order to make a claim, enclosing a copy of the estimate from your loss with the attached claim form will allow Progressive to process your claim more efficiently.

NOTICE OF RELEASE

In accepting payment from Progressive pursuant to this notice, you will be releasing Progressive, and its past and present agents, employees, affiliates, officers, representatives, successors, parents, subsidiaries and divisions, from any and all liability and causes of action for betterment or depreciation previously deducted by Progressive on your claim.

YOU MUST COMPLETE AND MAIL THE ATTACHED CLAIM FORM WITHIN 90 DAYS OF THE DATE OF THIS LETTER.

If you have any questions concerning this form, please contact Progressive at 1-800-290-8323_____.

EXHIBIT B

POLICYHOLDER SETTLEMENT CLAIM FORM

RETURN THIS FORM BY MAIL ONLY IF A BETTERMENT OR DEPRECIATION AMOUNT WAS NOTED ON YOUR VEHICLE ESTIMATE, OR IF YOU BELIEVE BETTERMENT OR DEPRECIATION WAS DEDUCTED AND A DEDUCTION CAN BE VERIFIED BY YOUR OWN RECORDS OR A PRESENTLY EXISTING PROGRESSIVE CLAIM FILE.

Named Insured: _____
Current Address: _____
Current Home Phone: _____
Progressive Auto Policy Number (at time of loss, if available): _____
Claim Number (if available; please refer to any correspondence received with your claim): _____
Date of Loss (if known): _____

Signature

Date

YOU MUST COMPLETE AND MAIL THIS CLAIM FORM WITHIN 90 DAYS OF THE DATE IT WAS MAILED TO YOU. IN ORDER TO EXPEDITE THE CLAIM PROCESS, PLEASE ATTACH A COPY OF THE ESTIMATE FROM YOUR LOSS IF AVAILABLE. FAILURE TO ATTACH THE ESTIMATE WILL NOT PRECLUDE YOUR CLAIM.

EXHIBIT C

Date: _____

Policyholder Name and Address: _____

Policy No. _____

Claim No. _____

Progressive acknowledges receipt of your completed claim form in connection with your above loss. After reviewing company records, Progressive has determined that you meet the eligibility requirements for reimbursement of betterment or depreciation on your claim. Progressive is pleased to provide you with the enclosed check representing the amount deducted for betterment or depreciation on your claim, along with 10% per annum simple interest on the deduction amount calculated from the date the claim was originally paid.

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. Additionally, if you negotiate this check, you shall be deemed to have released Progressive from any and all liability for deduction of betterment or depreciation on this claim.

If you have any questions regarding the enclosed check or this letter, please contact Progressive at: 1-800-290-8323.

EXHIBIT D

Date: _____

Policyholder Name and Address: _____

Policy No. _____

Claim No. _____

Progressive acknowledges receipt of your completed claim form in connection with your above loss. After reviewing company records, Progressive has determined that you do not meet the eligibility requirements for reimbursement of betterment or depreciation on your claim because either: (1) betterment or depreciation was never deducted on your claim; or (2) betterment or depreciation has already been refunded on your claim.

If you have any questions regarding this letter, please contact Progressive at: 1-800-290-8323.