

CAUSE NO. GV 000283

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

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("AVC") is made and entered into this _____ day of February 2004, by and between the State of Texas, acting through its Attorney General Greg Abbott, and CONSUMERS COUNTY MUTUAL INSURANCE COMPANY (also referred to as ADefendant@ or "Consumers@).

I. RECITALS

1.1 Consumers is chartered as a county mutual insurance company pursuant to TEX. INS. CODE ANN. art. 17, and it writes auto insurance in the State of Texas.

1.2 This action was commenced by the State of Texas on February 14, 2000, with Plaintiff-s Original Petition complaining of Consumers, 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.

1.3 From January 1, 1996, to the present, Consumers accepted and processed Texas personal auto insurance policies and adjusted claims through its ADirect® program. In addition, pursuant to TEX. INS. CODE ANN. 21.07-3, Consumers entered into agreements with Texas-licensed Managing General Agents (AMGAs®) whereby Consumers authorized the MGAs to conduct field operations on its behalf, including accepting and processing insurance policies produced by other agents and adjusting claims. From January 1, 1996, to the present, Consumers had contracts with a total of seven (7) MGAs which conducted field operations on Consumers' behalf with respect to the sale of Texas personal auto policies and the adjustment of claims. Attached hereto as **Exhibit A** is a list of the MGA programs with which Consumers contracted.

1.4 Of the seven (7) MGA's listed in Paragraph 1.3 above, Travelers MGA, Inc. ("Travelers") is excluded from this AVC as it entered into an Assurance of Voluntary Compliance on or about October 10, 2001 in Cause No. GV000282, styled *State of Texas v. Travelers Casualty and Surety Company, et al.*; pending before the 250th Judicial District Court of Travis County, Texas.

1.5 In response to the Attorney General's investigation and lawsuit, Consumers requested that the MGAs with which it had contracts determine their practices with regard to deducting an amount for depreciation or betterment on first party auto repair claims since 1996 and conduct audits of their books and records. Each of the six (6) MGAs has stated the results of its investigation and

audit in a sworn affidavit. Of the six (6) MGA=s under contract with Consumers, two (2) stated under oath that they did not deduct for depreciation or betterment on first party auto repair claims and four (4) stated under oath that they did deduct for depreciation or betterment on first party auto repair claims. Of the four (4) MGA=s that did deduct for depreciation or betterment on first party auto repair claims, each conducted a complete audit of their books and records. The four (4) MGA=s that conducted a complete audit of their books and records stated that a total of \$13,223.36 was taken for depreciation and betterment on first party auto repair claims since 1996.

1.6 In providing the information and data on which this AVC is based, Consumers relies on its own records and the sworn affidavits of the MGA=s with which it has contracts. In the affidavit attached as **Exhibit B**, Consumers attests that the spread sheet attached to **Exhibit B** is an accurate summation of the information and data provided to it by the MGA=s.

1.7 The practice of deducting for betterment or depreciation on 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.

1.8 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 the 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.

1.9 Consumers alleges that it and the MGA=s with which it had contracts ceased the practice of deducting for betterment or depreciation on first party auto repair claims by no later than February 24, 2000.

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

1.10 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 the State=s 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.

1.11 Consumers and its agents intend that the payment provisions of this AVC offer full and complete restitution for Consumers' and its agents' alleged violations of the DTPA and Texas Insurance Code.

II. AGREEMENT

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

2.2 Consumers and its agents 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 (Athe 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 Consumers where the claim was paid, in whole or in part, on or after January 1, 1996. Consumers and its agents 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.

2.3 Based on information and data provided by the MGA=s from their audits, Consumers has identified 142 insureds who may be entitled to payment under paragraph 2.2. Consumers and its agents will mail to each of these insureds identified on **Exhibit C** (unless the insured has already recovered or been paid the full deduction amount), a check or draft in the amount of the deduction amount, plus 10% per annum simple interest on such amount, calculated from the date the claim was originally paid. Consumers and its agents will make its best efforts to mail payment to the insureds entitled to payment (identified on **Exhibit C**) under paragraph 2.2 within sixty (60) days of the effective date of this AVC. Consumers and its agents presently estimate the total amount of such payment to the insureds entitled to payment (identified on **Exhibit C**), including interest, to be approximately \$18,931.29.

2.4 Each check or draft may also include on the back of the check or draft a release as follows: "I release Consumers County Mutual Insurance Company and its agents from any and all liability related to or arising out of any betterment or depreciation deducted on this claim."

2.5 Each check or draft issued to a policyholder pursuant to the terms of this AVC shall be accompanied by a letter in the form attached hereto as **Exhibit D**.

2.6 Each check or draft will be mailed by first class mail, with address correction requested, to the most current address available to Consumers and its agents. All such payments returned to Consumers and its agents with a corrected address will be forwarded to such corrected address. Any checks or drafts returned to Consumers and its agents that are undeliverable shall be subject to TEX. PROP. CODE ANN. § 72.001, *et seq.* Consumers and its agents shall pay all costs in connection with making payments under this AVC.

2.7 Thirty-two (32) months after the Effective Date, Consumers and its agents shall file with the Attorney General a verified report under oath, which shall state:

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

(b) the total number of policyholders to whom checks or drafts were mailed;

(c) the total number and dollar amount of negotiated checks or drafts;

(d) the total number and dollar amount of returned checks or drafts;

(e) a list of policyholders to whom notice was sent; and

(f) the total number policyholders who, pursuant to paragraphs 2.3 hereof, were determined to be entitled to payment under paragraph 2.2 of this AVC.

2.8 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, Consumers and its agents shall cease and desist from: (a) deducting 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) representing 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.

2.9 Within 10 days of the effective date of this AVC, Consumers and its agents shall pay \$5,000.00 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.

2.10 Consumers further agrees that it:

(a) will not cancel or refuse to renew the insurance coverage of any Consumers insured because that insured has filed a claim form or received a payment under this AVC; provided, however, that such agreement shall not prevent Consumers 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 Consumers charges for motor vehicle insurance policies issued by Consumers 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.

III. 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 agree to release and discharge each other and their agents and representatives from any and all claims for damages or other relief, other than as provided herein, arising out of Consumers' and its agents' 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. Consumers and the Attorney General agree that nothing in this AVC shall create any private rights, causes of action or remedies of any other party against Consumers and/or its agents.

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 Consumers.

IV. MISCELLANEOUS PROVISIONS

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

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 AND EFFECTIVE this _____ day of February, 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 Division

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**ATTORNEYS FOR DEFENDANT,
CONSUMERS COUNTY MUTUAL INSURANCE COMPANY**

CONSUMERS COUNTY MUTUAL INSURANCE COMPANY

By: _____
Gary A. Dobbie, President

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

On this _____ day of _____, 2004, before me, the undersigned authority, personally appeared Gary A. Dobbie, who is personally known to me and acknowledged himself to be the President of CONSUMERS COUNTY MUTUAL INSURANCE COMPANY, and he, as such an agent, being authorized to do so, executed the foregoing instrument for the purpose and consideration therein contained by signing for CONSUMERS COUNTY MUTUAL INSURANCE COMPANY by himself as an agent for such.

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

Notary Public, State of Texas

EXHIBIT A--MANAGING GENERAL AGENTS FOR CONSUMERS COUNTY MUTUAL

AMCO General Agency, Inc.

Advantage General Agency, Inc.

American Modern Home Insurance Co. (Helen S. Danford, Managing General Agent)

Consumers County Mutual Insurance Co. (Direct Program)

Prudential Property & Casualty Insurance Co. (Forrest C. Roan, Jr., General Agent)

Texas All Risk General Agency

Travelers MGA, Inc.

EXHIBIT D--FORM LETTER

DATE

Date of Loss:

Policy Number:

Claim Number:

Recently Texas Attorney General Greg Abbott and Consumers County Mutual Insurance Company (“Consumers”) came to an agreement regarding the propriety of deducting for depreciation or betterment on collision or comprehensive coverage claims where your covered auto was not adjusted as a total loss. As a result of a settlement with the Attorney General, you are entitled to a payment equal to the amount deducted for depreciation or betterment on your claim, along with 10% per annum simple interest on the deduction amount calculated from the date the claim was originally paid; however, if the claim was originally paid prior to January 1, 1996, the interest calculated at 10% per annum simple interest starting at January 1, 1996. Accordingly, please find a check enclosed, which is payment for that amount.

If you have any questions regarding the enclosed check or this letter, please call 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. If you negotiate this check, you shall be deemed to have released Consumers and its agents from any and all liability relating to this claim for the deduction of betterment or depreciation.

Attachments:

Exhibit A: MGA Programs/Names List

Exhibit B: Gary Dobbie's Affidavit with Spreadsheet of Amounts Owed by MGA's

Exhibit C: Names of Insureds that are entitled to payments

Exhibit D: Form Letter that will be sent out to insureds