UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FRANK MONTELEONE and SHERI MONTELEONE, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

THE AUTO CLUB GROUP, a Michigan corporation; MEMBERSELECT INSURANCE COMPANY, a Michigan corporation; AUTO CLUB INSURANCE ASSOCIATION, a Michigan corporation; AUTO CLUB GROUP INSURANCE COMPANY, a Michigan corporation; and AUTO CLUB PROPERTY-CASUALTY INSURANCE COMPANY, an Iowa corporation; and AUTO CLUB SERVICES, a Michigan corporation; jointly and severally,

Defendants.

Case No. 2:13-cv-12716-GCS-DRG

Hon. George Caram Steeh
Mag. Judge David R. Grand

FIRST AMENDED CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Frank Monteleone and Sheri Monteleone (hereinafter "Monteleones" or "Plaintiffs"), on behalf of themselves and all others similarly situated, by their attorneys, SOMMERS SCHWARTZ, P.C., and FABIAN SKLAR & KING, P.C., and for their Class Action Complaint against THE AUTO CLUB GROUP, a Michigan corporation, d/b/a AAA (hereinafter "Auto Club Group"),

MEMBERSELECT INSURANCE COMPANY, a Michigan corporation (hereinafter "MemberSelect"), AUTO CLUB INSURANCE ASSOCIATION, a Michigan corporation, AUTO CLUB GROUP INSURANCE COMPANY, a Michigan corporation, AUTO CLUB PROPERTY-CASUALTY INSURANCE COMPANY, an Iowa corporation, and AUTO CLUB SERVICES, a Michigan corporation, jointly and severally ("Defendants"), allege the following:

I. NATURE OF THE ACTION

1. Plaintiffs bring this class action to resolve a coverage dispute regarding Defendants' standard-form residential fire insurance policies (also known as "Homeowners Insurance" policies).[1] Specifically, Defendants advertise and contractually agree that the "accidental overflow of plumbing fixtures" is a covered peril (commonly termed an "overflow"). But Defendants in fact systematically and consistently denied policyholders full coverage for certain types of water damage claims by wrongfully applying an exclusion for backups that does not cover the subject water damage events.

[1] Although the Homeowners Insurance policy is central to this litigation, discovery confirms that Defendants' condominium, renters, and mobile home insurance policies also contain the language of the 3.b. exclusion and/or the 13.c. limitation at issue here. These policyholders have suffered the same injuries as homeowners' policyholders, and they are included in the Classes pled herein. Accordingly, where the First Amended Complaint refers to the "homeowners" policy, it should be understood to also refer to these other policies that contain similar backup exclusions and limitations.

2. According to internal emails and documents obtained by Plaintiffs' counsel, the change in Defendants' practices appears to have occurred many years ago in eight states, but as of March 2009 in Michigan. *See* discussion of the "Whitlow Directive," below.

3. The relevant exclusion is found in paragraph 3.b. of the policy, and there is a corresponding personal property limitation set forth in paragraph 13.c. By its terms, these provisions only apply in the case of either a sump pump failure or a backup of the municipal sewer system. However, beginning some years ago, Defendants departed from the express language, industry standards, and their own previous interpretation of these provisions, and began construing and applying the 3.b exemption so broadly that it eliminated coverage for the subject water events.

4. Defendants' broad interpretation of the exclusion also obviated the need for Defendants' to investigate claims, since under their new approach, all claims involving a basement or floor drain could be automatically rejected as excluded under the 3.b exclusion. This sweeping change in Defendants' claims practices is inconsistent with Defendants' duties under the policy, and with the express language of the policy itself, e.g., "Any ensuing loss, not excluded, is covered. . . ."

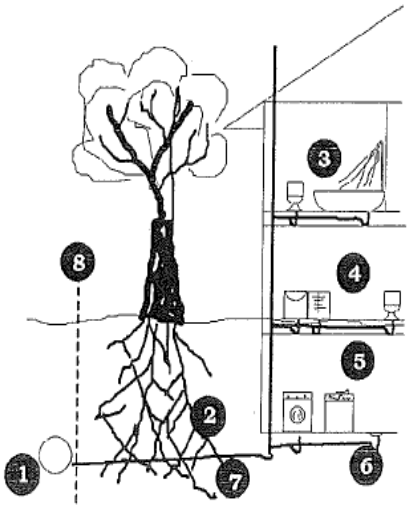
5. The specific subset of claims at issue in this case includes those claims where water (1) from the home is unable to reach the municipal sewer (2)

due to a blockage or other plumbing system failure (3) which forces the exiting water to re-enter the home through a basement or floor drain (referred to throughout as "subject water damage claims" or "overflow").

6. Customers paid for overflow and basement and floor drain coverage as part of their premiums, as evidenced by the following diagram taken from Defendants' Claims Adjuster Training Manual, which explains how the exclusion is supposed to be applied:

Illustration for Exclusion 3b.
Waste water typically enters the home drainage system somewhere between points ❸ to ❻. The waster water then travels along ❼ and then enters either a septic or city sewage system at point ❶. If the home drainage system becomes obstructed then the water originating in the home will overflow at one or more of the points in the home. Typically at point ❻. This type of loss is covered.

Another common situation involves material that originates at point ❶. When the system at point ❶ cannot handle all the material then it travels into the home drainage system through point ❼ and typically appears at a floor drain like point ❻. This can happen after a heavy rainstorm. Damage from this loss is not covered.



7. As Defendants' Claim Manual explains, a backup is fundamentally different than an overflow. An overflow occurs when water originating from within a home is prevented from leaving the insured premises, while a backup originates from an external source, like the municipal sewer system, or beyond line 8 in the diagram.

8. The illustration represents, and clearly explains, Defendants' view of the types of losses that are covered under the policy. When an obstruction (represented by the tree roots at point 7) prevents water originating in the home from exiting the insured premises, it causes an overflow at the lowest point in the system. As the illustration and caption make clear, all overflows, whether from a toilet, shower, sink, appliance, or basement or floor drain, are, for coverage purposes, treated the same, i.e., "*This type of loss is covered*." (Emphasis added.)

9. The illustration also confirms that when an obstruction prevents water from reaching the municipal sewer system, it "typically" overflows into the home at point 6—the basement floor drain.

10. Claims involving a basement or floor drain incident must be investigated to determine whether the loss is due to a covered reason or one of the two relevant policy exclusions (sump pump failure or municipal sewer backup).[2]

11. According to the policy's plain language, property damage caused by an overflow is supposed to be covered up to the policy limit, while damage caused by an excluded backup event under 3.b. or 13.c. is not covered (or is covered only

[2] Note also that the dotted line at point 8 on the diagram includes coverage for blockages or plumbing system failures that occur within the side yard or lot lines of the insured premises and, conversely, that dotted line shows that the word "sewer" used in paragraphs 3.b. (and 13.c.) of the policy means municipal sewer. When used here, they are interchangeable and synonymous with one another.

up to $5,000, $10,000, or $25,000 with the purchase of an additional endorsement).[3]

12. By self-servingly treating both overflow and backup events as an excluded backup, Defendants have avoided liability altogether or limited their payout to $5,000, $10,000, or $25,000 for both types of losses. Adopting this tactic also eliminated the cost of investigating these claims.

13. Improper coverage determinations and non-existent investigations are not what policyholders like Plaintiffs bargained or paid for as part of their policy premiums. They also do not represent good faith in Defendants' performance of their claims-handling obligation under the policy and reasonable standards of care. It also is contrary to Defendants' own training manuals.

14. To the extent Defendants intended their Homeowners' policy to not cover the subject water events, but instead have them fall within the 3.b. exclusion, the policy is unclear. At best, the policy is ambiguous and in need of interpretation and clarification.

15. Despite their altered interpretation and application of the 3.b. exclusion and 13.c. limitation, Defendants never changed the language in their

[3] Defendants sell several optional endorsements that contain identical language covering damage from backups and only varying in the coverage limit: the H-500, which promises $5,000 in backup coverage; the H-48 and H-501, which promise $10,000 in backup coverage; and the H-700, which promises $25,000 in backup coverage. Of these, the H-500 is apparently the most common, although all are relevant to this litigation.

insurance policies to clarify that coverage would no longer be afforded for water incidents that involved basements or floor drains. Defendants also never provided renewal notices or other information that would have allowed policyholders to learn that their basement and floor drain coverage had been taken away, absent the purchase of one of Defendants' optional (and much more limited) endorsements. Defendants nevertheless continued to collect and receive full premium payments for the coverage described in the policy, even though that coverage was never going to be paid by Defendants.

16. In the case of the Monteleones, the cost of repairing the damage to their finished basement exceeds $100,000. Yet, Defendants insist that their maximum liability for the claim is $5,000, and they performed no investigation as to the origin of the water.

17. Defendants' corporate practice, policy, and decision to deny coverage for claims involving basement or floor drains without investigation is unsupportable, improper, and specious. Plaintiffs seek to remedy these practices and recover damages for themselves and all other similarly situated policyholders under each of the following legal theories: declaratory relief (Count I); breach of contract (Count II); breach of the covenant of good faith and fair dealing (Count III).

II. JURISDICTION AND VENUE

18. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d) (the Class Action Fairness Act, or "CAFA") because this is a class action where the amount in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs and because at least one member of the proposed class is a citizen of a state different from the Defendants. The relevant states include Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Ohio, West Virginia, and Wisconsin.

19. This Court has personal jurisdiction over the Defendants, and venue is proper in this District pursuant to 28 U.S.C. § 1391(a) and (c). Venue is also proper in this District because all of the Defendants are headquartered here.

III. PARTIES

A. Plaintiffs

a. The Monteleones

20. Plaintiffs Frank Monteleone and Sheri Monteleone were at all relevant times residents of Clinton Township, Michigan.

21. In or around 2002, the Monteleones purchased a standard-form Homeowners Insurance policy from Defendants to insure their home and finished basement. When that initial Homeowners Insurance policy expired, the Monteleones renewed their coverage with Defendants on an annual basis at a cost

of roughly $1,100 to $1,500 per year. Defendants accepted and retained those premium dollars paid by the Monteleones.

22. The Homeowners Insurance policy Defendants sold to the Monteleones provided coverage for loss caused by "overflows" up to the limits of liability applicable to the Monteleones' policy (including no less than $531,497 of coverage for the dwelling, $398,623 for damaged personal property, and $106,299 for additional expenses). A copy of the Monteleones' Homeowners Insurance policy and the applicable declarations page are in Defendants' possession, and those documents are attached hereto as **Exhibit A** and **Exhibit B**.

23. The Monteleones also purchased Defendants' optional "H-500 Protection Plus Homeowners Package," which provided coverage for "backups" up to the amount of $5,000. A copy of that endorsement is attached hereto as **Exhibit A** at 21-22.

24. At no time relevant to this case did Defendants ever advise the Monteleones of a change in the overflow or backup coverage under the policy.

25. On January 17, 2013, while the Monteleones' insurance policy was in full force and effect, the Monteleones experienced an overflow in the finished basement of their Clinton Township home, which caused water damage in their basement, damaged personal property, and caused thousands of dollars of structural damage.

26. Defendants made no determination as to the origination of the offending water during the claims handling process. The overflow has since been traced to a faulty backflow preventer in the plumbing waste line that extends under the slab in the Monteleones' basement.

27. In accordance with the terms of their Homeowners Insurance policy, the Monteleones timely submitted an itemized Sworn Statement in Proof of Loss to Defendants claiming $121,819.34 in damages, plus reimbursement for the cost of the plumber they hired to repair their broken backflow preventer.

28. On February 15, 2013, in compliance with the unilateral change in claims practices outlined above, the Monteleones received a letter from Defendants' claim representative (Betty Biagini) disclaiming liability and coverage above the $5,000 amount provided under Defendants' H-500 endorsement.

29. In relevant part, that letter stated as follows:

> We have concluded our adjustment of your claim for the damage you sustained to your basement due to water. A check has been issued to you in the amount of $6,750.00 and will arrive in a separate mailing. A separate check was issued to [your public adjuster] Michigan Adjustment Company in the amount of $750.00 which is 10% of the loss. Policy limits under the H500 sewer and drain coverage endorsement is capped at $5,000.00. The plumber job is separate from this coverage. The $500.00 deductible has been absorbed in your loss.

30. As further evidence that Defendants were following their faulty claims practice concerning overflows when adjusting the Monteleones' claim, on

February 26, 2013, Defendants sent the Monteleones a second letter, which quoted the policy exclusion *for backups*, but failed to reference or quote the applicable coverage *for overflows*. That letter concluded with the statement that: "[r]espectfully your claim has been paid [sic] full policy limits [sic]."

31. And finally, on March 25, 2013, Defendants sent the Monteleones a third conclusory letter trying to avoid coverage, which stated in relevant part that:

> "We are returning your Sworn Statement and Proof of Loss which cannot be accepted for the following reason: 1. The Actual Cash Value of the property at the time of loss as shown exceeds the policy limits of $5,000.00 under the H-500 endorsement language.…This is not a denial of the claim."

32. It is implausible to view the Monteleones' experience as unique, isolated, or atypical from other policyholders' experiences, nor the result of a misinformed claims representative who mistakenly applied the wrong policy standard. The Monteleones' public adjuster spoke with Ms. Biagini's supervisor (Tony Smith) and manager (Teri Page), and both of these individuals reaffirmed Defendants' decision to deny the Monteleones' claim for more than $5,000.00 for the same reasons.

33. Furthermore, page 13 of Defendants' Homeowner Claims Operations Manual, which instructs AAA claims representatives how to interpret the Homeowners Policy and how to pay claims, also specifies that:

> "All denial letters will be approved by the Claim Handler's Manager, subject to the manager's discretion."

B. Defendants

34. Defendant The Auto Club Group is a Michigan corporation that does business through numerous affiliated insurance companies (including the other Defendants in this case) who issue the subject policies. Defendant The Auto Club Group is incorporated in Michigan, and its affiliates are authorized to issue property insurance policies in the State of Michigan as well as, upon information and belief, the States of Illinois, Indiana, Iowa, Kentucky, Minnesota, Ohio, West Virginia, and Wisconsin. Defendant The Auto Club Group maintains its headquarters and principal place of business in Dearborn, Michigan.

35. Defendant Auto Club Insurance Association is an insurance company incorporated in Michigan that is authorized to issue property insurance policies in the State of Michigan as well as, upon information and belief, the states of Illinois, Indiana, Iowa, Kentucky, Minnesota, Ohio, West Virginia, and Wisconsin. Defendant Auto Club Insurance Association maintains its headquarters and principal place of business in Dearborn, Michigan.

36. Defendant Auto Club Insurance Association is the parent corporation for subsidiary Defendants MemberSelect Insurance Company, Auto Club Group Insurance Company, and Auto Club Property-Casualty Insurance Company. The parent pervasively controls the claims handling of the subsidiaries. The parent sets

claims handling policy for the subsidiaries and reports all subsidiaries' profit and loss from claims handling on the parent's books.

37. Defendant MemberSelect Insurance Company is an insurance company incorporated in Michigan that is authorized to issue property insurance policies in the State of Michigan as well as, upon information and belief, the states of Illinois, Indiana, Iowa, Kentucky, Minnesota, Ohio, West Virginia, and Wisconsin. Defendant MemberSelect Insurance Company maintains its headquarters and principal place of business in Dearborn, Michigan.

38. Defendant Auto Club Group Insurance Company is an insurance company incorporated in Michigan that is authorized to issue property insurance policies in the State of Michigan as well as, upon information and belief, the states of Illinois, Indiana, Iowa, Kentucky, Minnesota, Ohio, West Virginia, and Wisconsin. Defendant Auto Club Group Insurance Company maintains its headquarters and principal place of business in Dearborn, Michigan.

39. Defendant Auto Club Property-Casualty Insurance Company is an insurance company incorporated in Iowa that is authorized to issue homeowners insurance policies in the State of Michigan as well as, upon information and belief, the States of Illinois, Indiana, Iowa, Kentucky, Minnesota, Ohio, West Virginia, and Wisconsin. Defendant Auto Club Property-Casualty Insurance Company maintains headquarters in Bettendorf, Iowa, and/or Dearborn, Michigan.

40. Defendant Auto Club Services is a Michigan corporation under the umbrella of AAA. Defendant Auto Club Services is an employee holding company that supplies the claims handling employees for the other Defendant insurance companies. Its employees, including Nicole Whitlow, make company policies that affect the coverage extended under residential insurance policies issued by the other Defendants in the State of Michigan as well as, upon information and belief, the States of Illinois, Indiana, Iowa, Kentucky, Minnesota, Ohio, West Virginia, and Wisconsin. Defendant Auto Club Services maintains its headquarters and principal place of business in Dearborn, Michigan.

41. Plaintiffs reserve the right to seek leave to amend their complaint if additional entities involved in the wrongful conduct become known.[4] Plaintiffs also reserve the right to seek leave to amend their complaint if discovery sheds further light on the nature of the complex relationships among Defendants.

[4] The Whitlow Directive discussed *infra* indicates that the change in Defendants' claims practices impact both "MemberSelect" and "Legacy" policies in Michigan. However, Legacy is not a registered entity or trade name in any of the states at issue, so Legacy's true identity will have to await completion of discovery.

IV. COMMON FACTUAL ALLEGATIONS

A. Defendants' Standard-Form Homeowners Insurance Policy Provides Full Coverage for Basement or Floor Drain Overflows

42. Defendants sell a standard-form Homeowners Insurance policy to residential property owners in Michigan and numerous other states including Illinois, Indiana, Iowa, Kentucky, Minnesota, Ohio, West Virginia, and Wisconsin.

43. The form policy language at issue in this litigation is identical in all of Defendants' Homeowners Insurance policies. In fact, Defendants' Homeowner Claims Operation Manual explicitly acknowledges that Defendants' "***[d]uties are identical under all policy forms***" and "***[a]ll policies carry the same water exclusions and coverage***." *Id*., at 12 (Last Updated: 12-06-02) (emphasis added).

44. The specific coverage language at issue in this case includes:

➢ Page 8 of 26:

> **PERILS WE INSURE AGAINST**
>
> **We** cover accidental direct physical loss to property insured under Coverages A and B, except as limited or excluded under this policy.[5]
>
> **We** cover accidental direct physical loss to property insured under Coverage C caused by any of the following perils, except as limited or excluded under this policy:

[5] Coverage A refers to the coverage limit available for damage to the Dwelling; Coverage B refers to the limit available for Additional Structures; Coverage C refers to the limit available for Personal Property; and Coverage D refers to the limit available for Additional Expenses.

* * *

➢ 13. **Accidental discharge or overflow of water or steam** from within a plumbing, heating, air conditioning or automatic fire protection sprinkler system or domestic appliance.

We will not cover loss:

* * *

➢ c. Caused by or resulting from water which backs up through sewers or drains or water which enters into and overflows from within a sump pump, sump pump well or other type system designed to remove subsurface water which is drained from the foundation area.

45. The specific exclusion language at issue includes:

➢ Pages 9-10:

EXCLUSIONS

Under **Part I Property Insurance Coverages** and **Additional Insurance Coverages, we** will not cover loss to property insured under this policy caused directly or indirectly (whether or not any other cause or event contributes concurrently or in any sequence to the loss) by any of the following.

* * *

➢ 3. Water damage, meaning:

* * *

➢ b. water or water-borne material which backs up through sewers or drains or water which enters into and overflows from within a sump pump, sump pump well or other type system designed to remove subsurface water which is drained from the foundation area; or

* * *

Under Coverages A and B, **we** will not cover loss resulting directly or indirectly from:

* * *

➢ 4. any of the following:

a. wear and tear, marring or scratching, deterioration;
b. mechanical breakdown; latent defect; inherent vice or any quality in the property that causes it to damage or destroy itself;
c. rust or other corrosion, wet or dry rot;
d. discharge, dispersal, seepage, migration, release, or escape of fuels, chemicals or other pollutants or contaminants from any source;
e. smog; smoke from agricultural smudging or industrial operations;
f. settlement, cracking, shrinkage, bulging or expansion of pavement, patios, foundations, walls, floors, roofs or ceilings;
g. birds, vermin, rodents, insects or domestic animals.

If, because of any of these (4. a. through 4. g. above), water escapes from a plumbing, heating, air conditioning or automatic fire protection sprinkler system or domestic appliance within the covered building, we cover loss caused by water. **We** also cover the cost of tearing out and replacing any part of the covered building and Additional Structure necessary to repair the system or appliance. **We** will not cover loss to the system or appliance from which the water escapes or the cost of excavating land;

* * *

Any ensuing loss, not excluded, is covered as provided for in the policy.

46. The specific added endorsement language for Plaintiffs includes:

➢ Pages 21-22:

H-500 – PROTECTION PLUS HOMEOWNERS PACKAGE

The following Additional insurance Coverages and increased limits of liability apply, as described:

* * *

➢ 9. **Back up of Sewer and Drain Coverage**

We will pay up to $5,000 for accidental direct physical loss to the dwelling and only the following personal property …

* * *

Caused by:

a. Water which backs up through the sewers or drains; or
b. Water which enters into and overflows from within a sump pump, sump pump well or other type system designed to remove subsurface water which is drained from the foundation area.

➢ Page 23:

H-501 – INCREASED LIMIT ON BACKUP OF SEWER AND DRAIN COVERAGE

The Limit of Liability and Deductible provisions contained in Item 9., Backup of Sewer and Drain Coverage, under Optional Insurance Coverage H-500 – Protection Plus Homeowners Package are revised as follows:

1. The Limit of Liability is increased from $5,000 to $10,000.
2. The deductible amount is increased from $500 to $1,000.

47. Additionally, Defendants prominently advertise on their website that the "Accidental Overflow of Plumbing Fixtures" is a fully covered peril. **Exhibit C** at 2.[6] *See also*

http://michigan.aaa.com/insurance/home-condo-insurance/683/655.uts

B. Defendants' Refusal to Extend Full Coverage for Basement and Floor Drain Overflows is a Clear Breach of the Insurance Policy

48. Notwithstanding the clearly worded and express contractual obligation to fully pay claims associated with water overflows up to the limits for building coverage (Coverage A), Defendants have denied full coverage for the subject water damage claims in all nine states in which they do business for several years, and since at least March 2009 in Michigan.

49. For example, on or about March 4, 2009, Defendants' Director of Homeowners Claims, Ms. Nicole Whitlow, issued a company-wide directive instructing all property claims adjusters to stop recognizing any distinction between water overflow and water backup claims where the basement or floor drain was involved, even though the policy language and Defendants' prior claim manuals and practices treated these perils differently. She has since stated that the practice was already in existence in the other states, and she wanted to bring Michigan into conformity with the practice in the other states.

[6] Notably, Defendants devote a single page on their website to Homeowners Insurance products, yet on that single page, they expressly represent that overflows are a covered peril.

50. Ms. Whitlow wrote that, "[a]ny claim reported with water back up or overflow coming from a basement drain is not a covered loss unless the insured has purchased the H-500 endorsement…." (underlining omitted). Ms. Whitlow further directed that, "[w]ater or sewage that enters the home through the sanitary drain is another form of back-up that is not covered by the policy unless it contains an endorsement, including back-ups caused by blockages." Finally, Ms. Whitlow directed that "floor break-up" is not covered under Defendants' Homeowners Insurance policies but is only covered if the policyholder had purchased the H-500 endorsement. (A copy of the March 4, 2009 Whitlow directive is in Defendants' possession and was previously filed with the Court as Dkt. #18).

51. The clear intention and effect of these changes in claim payment procedures was to limit Defendants' exposure for overflow claims to the same limit that Defendants applied to backups (i.e., nothing, or $5,000, $10,000, or $25,000 with an optional endorsement).

52. Treating every basement or floor drain claim as a backup also relieved Defendants of having to investigate each claim to determine the source of the offending water. *Cf.* Defendants' Homeowner Claims Operation Manual at 12 ("The first step in handling a claim is determining the cause and origin of the loss and documenting it in CPS. **This must be done on each claim**. In those rare instances where the adjuster cannot determine the cause of loss it may be necessary

to retain the services of an expert.") (emphasis in original). By automatically paying nothing (denying coverage) or capping payment at $5,000, $10,000, or $25,000, Defendants effectively eliminated the burden and expense of investigating these claims and improperly shifted the burden onto policyholders, who must investigate their own claims or simply walk away with an inadequate payment.

53. Defendants' unilateral decision to stop recognizing any distinction between basement drain overflows and backups also cannot be reconciled with Defendants' prior claims investigation, their prior payment practices, or the express and unambiguous language of Defendants' Homeowners Insurance policy, *supra*, which clearly provides coverage for all accidental discharges or "overflows" of water originating from, among other things, the plumbing system.

54. For example, Defendants' internal Homeowner Claim Operations Manual states that:

> Q: Backups/Overflows: Tree roots blocking sewer line causing water damage to the insured's residence. Is this type [of] loss an uncovered "backup" or a covered "overflow"? Is water damage covered regardless of where the water comes from when it can't exit fast enough to the drains because there are tree roots in the sewer line?
>
> A: The key to coverage for an overflow is "where did the water originate"?
>
> Yes. If a blockage prevents water from within the building (i.e. toilets, bathtubs, appliances or plumbing systems) from draining, the result is an overflow of the plumbing system and covered.

* * *

Id., at 19 (Last updated: 12-06-02).

55. Defendants' Claims Manual recognizes a distinction between water overflows and backups and calls that distinction "key." The distinction is key because it determines whether or not there is coverage. Overflows were fully covered events, while backups were not, unless a separate endorsement was purchased, in which case coverage was limited to $5,000, $10,000, or $25,000, depending on the endorsement purchased and in effect.

C. Defendants Have Charged Every Policyholder for Coverage Expressly Provided for in the Policy, but Which Would Never be Afforded to Them

56. Plaintiffs and other similarly situated Homeowners Insurance policyholders have contracted and annually paid premiums to Defendants for overflow coverage they would never receive. They have been damaged each year that they paid for the phantom coverage.

57. An insurance policy transfers risk from an individual consumer (the insured) to an insurance company. Under the law, it is the insurance policy that defines the scope of risk assumed by the insurer from the insured. *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 131, 102 S.Ct. 3002, 3009 (1982)(citing § 39:3; R. Keeton, Insurance Law § 5.1(a) (1971)).

58. The essence of a contract of insurance is the assumption, by the insurance company, of risk of loss and the indemnification of the insured against such loss. Each policy insuring a consumer represents an exposure for the insurance company.

59. The transfer of risk from insured to insurer is affected by means of the contract between the parties -- the insurance policy -- and that transfer is complete at the time that the contract is entered. *Id*. (citing 9 G. Couch, Cyclopedia of Insurance Law §§ 39:53, 39:63 (2d ed. 1962)).

60. The premium charges to policyholders represent the distribution of the overall cost of the risk transfers to the members of the pool.

61. During the continuance of the policy in force the insured receives benefits in the form of the insurance protection afforded by the policy.

62. An insured receives the benefit of coverage at the time of purchase of the insurance policy, and that benefit is the value of the coverage afforded under the policy.

63. A policy promising fewer benefits is a different product than a policy form promising greater benefits.

64. A claim settlement scheme in which the insurance company systematically and intentionally reduces the expected benefits from those benefits

promised in the purchased policy is, in fact, a different product with a different set of benefits than the product purchased.

65. If the insurance company fails to honor its promises about the coverage and benefits provided, the consumer cannot typically start over with an alternative. The value of an insurance policy to a consumer is not only the payment of benefits if a catastrophic event occurs, but the expectation of that economic and financial assistance in time of need.

66. If an insured does not in fact receive the full coverage as stated in the purchased policy, then they have paid for something that they did not receive, and thus damaged.

67. An insurance company determines the amount of premium required from the members of the risk pool (the insureds) by estimating the likelihood of covered events (claims) occurring for the specific product (benefits promised) and group of insureds (exposures) along with expected expenses and profit. Defendants calculated and charged premiums for their Homeowners Insurance products based on the policy limits and perils and exclusions listed in each policy, including, specifically, full coverage for the subject water damage events. Insurance premium charges also included costs for claims investigation and other claims adjusting activities.

68. As detailed above, each Homeowners Policy expressly includes full coverage for overflows, including the subject water damage events.

69. Plaintiffs and class members purchased insurance policies that provided them certain water loss coverage and they paid premiums for the specified coverage. However, they were systematically provided coverage less than promised and specified in the insurance policies. They were thus damaged.

70. Insureds who purchased a particular insurance product (policy form) suffer a concrete injury and measurable economic harm if the insurance company systematically provides fewer benefits than promised in that policy form. This harm is not speculative, but substantive and measurable: the harm to the group of policyholders comprising the risk pool is the difference between the premium paid for the benefits promised and the premium value for the benefits actually received. The harm is not predicated on anticipated denial of future claims, but on the actual extent to which the defendants reduced their assumption of risk by the claim settlement practices, measured by actual claims paid – and changes in actual claims paid – by the defendants.

71. Plaintiffs and other similarly situated policyholders have been denied the benefit of their bargain and thus suffered an injury that is recoverable as damages under the law.

72. Damage to class members can be identified as a uniform percentage of premiums associated with the promised-but-not-provided overflow coverage.

73. The dollar amount of damage for individual class members will be the percentage of premium for promised-but-not-provided coverage times the premium paid by the class member.

74. The percentage of premium for promised-but-not-provided coverage is a straightforward calculation by an expert in insurance rates and the economics of damages.

D. Defendants Have Acted In Bad Faith

75. Defendants owe "a duty to [their] members to pay each and every benefit owed under the contract." Homeowner Claims Operations Manual at 7. "[W]hen an insurance company does not treat an insured fairly according to … the insurance contract" it has acted in "bad faith." *Id*., at 7.

76. AAA owed its policyholders an implied covenant of good faith and fair dealing in the performance of contracts because only AAA had the discretion to make coverage decisions.

77. Under the policy, determining coverage was not specifically addressed, but rather, AAA's performance in that regard was a matter of its own discretion. AAA also exercised discretion in deciding whether to investigate water claims.

78. Where a party to a contract makes the manner of performance a matter of its own discretion, it must exercise that discretion honestly and in good faith.

79. Examples of an insurer's bad faith, include:

- C. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

- D. Refusing to pay claims without conducting a reasonable investigation based on the available information.

* * *

- G. Compelling [the] insured to institute litigation to recover amount due under an insurance policy by offering substantially less than the amounts due the insureds.

Homeowner Claims Operations Manual at 7-8 (Last updated: 12-06-02).

80. As detailed above, Defendants have systematically violated each of these and other relevant standards with respect to the policies and claims at issue.

81. By engaging in this conduct, the defendants unilaterally changed the assumption of risks and the promise of benefits in the contract of insurance coverage they agreed to undertake in consideration for the premiums paid by Plaintiff and the members of the risk pool for homeowners insurance at issue.

82. Determining whether the covenant of good faith and fair dealing exists in this setting is a good issue for class-wide treatment. First, it is up to the Court to determine whether the covenant exists in a relationship, including

between an insured and insurer. This Court will have to examine the contract and AAA's role in deciding coverage questions to make that determination.

83. Second, the evidence on which the Court will rely in determining if a covenant exists is the same for all policyholders. The Court will look at the standard-form insurance policy, perhaps expert materials on claims handling, and perhaps some AAA depositions. But there will be nothing unique to any one claim or the need for multiple submissions of evidence for each policyholder to make the determination.

84. If the Court rules that the covenant exists, then another issue for which class certification is proper arises: whether AAA breached the covenant, i.e., acted in bad faith.

85. And again, the evidence on which the Court will rely in determining if AAA breached the covenant relative to the water exclusions will be the same for all policyholders. For example, AAA was the party responsible for claims handling; AAA created practices and policies as to its collection of claim information and decisions whether any investigation was needed; and it was AAA who ultimately, and in its sole discretion, decided whether the policy provisions afforded full coverage for the subject water damage event, or if it was limited or excluded.

86. Policyholders had no authority over the coverage question, and they were reliant upon the party in control—AAA—to decide issues of coverage or exclusion.

87. AAA knows that it was obligated to review coverage questions in good faith. In fact, the evidence will show that AAA's standard approach to making coverage decisions – other than in this instance – was to decide in favor of the customer unless it was clear that an exemption applied.

88. Furthermore, the many email exchanges between AAA management and its claims adjusters about the backup exclusion and limitation demonstrates they were aware of the obligation to make coverage decisions in good faith to the customer. Aside from confirming that AAA was aware of its good faith obligation, the emails also demonstrate the breach of the covenant. The policy and exemptions, AAA depositions of claims leaders, and company documents and emails will all be equally relevant to all policyholders.

89. The Court will be able to determine if AAA breached the covenant of good faith and fair dealing on a class-wide basis. Answering that question will not involve anything unique to any one claim or the need for multiple submissions of evidence for each policyholder. While individual calculations of each class member's damages may exist, doing so does not defeat class certification in this case.

90. There is no utility in deciding the question of breach of the covenant of good faith and fair dealing thousands of times when the answer will be the same for each class member.

V. CLASS ACTION ALLEGATIONS

91. This action is being brought and may be properly maintained as a class action under Fed. R. Civ. P. 23 on behalf of a class defined as follows:

> All persons who purchased one or more of the identified insurance policies from Defendants at any time during the applicable statute of limitations periods (the "Class").
>
> The indentified insurance policies, include each policy sold by Defendants (1) that contained the following exclusion: "water or water-borne material which backs up through sewers or drains or water which enters into and overflows from within a sump pump, sump pump well or other type system designed to remove subsurface water which is drained from the foundation area" (the "3.b. Exclusion"), or (2) the following limitation on personal property coverage: "Caused by or resulting from water which backs up through sewers or drains or water which enters into and overflows from within a sump pump, sump pump well or other type system designed to remove subsurface water which is drained from the foundation area" (the "13.c. Limitation").
>
> The applicable states and statute of limitations periods include: Illinois-10 years; Indiana-10 years; Iowa-10 years; Kentucky-15 years; Michigan-6 years; Minnesota-6 years; Ohio-8 years; West Virginia-10 years; and Wisconsin-6 years.

92. In addition, pursuant to Fed. R. Civ. P. 23(c)(4)(b), the following subclass is alleged and proper:

> All Class members who submitted property damage claims involving water damage who received less than full payment from

> Defendants due to Defendants' application of the Whitlow Directive (the "Property Damage and Appraisal Subclass"). Excluded from the Subclass is any Class member whose claim was properly investigated, properly paid, or properly denied by Defendants.[7]

93. Plaintiffs reserve the right to amend and further clarify their proposed class definitions as discovery proceeds.

94. As detailed above, Plaintiffs are members of both classes ("Classes"). This Court may designate particular claims or issues for class treatment and joint or common trial pursuant to Fed. R. Civ. P. 23(c)(4)(a) and may designate one or more subclasses pursuant to Fed. R. Civ. P. 23(c)(4)(b).

95. This Court may bifurcate issues that affect the class in general from those that require individual treatment and as to damage and liability issues as needed to manage the class action and achieve an effective Rule 23 case management plan. *See Olden v. Lafarge Corp., 383 F.3d 495*(6th Cir. 2004); *Sterling v. Vesicol Chem. Corp.*, 855 F.2d 1188, 1197 (6th Cir. 1988); *Manual for Complex Litigation, Fourth* §§22.318 and 22.756.

96. Also excluded from both Classes are Defendants, including any parent, subsidiary, affiliate, or controlled person of Defendants and their officers,

[7] Once discovery closes and Defendants produce the relevant electronic claims data, Plaintiffs believe that they will be able to propose a Rule 23 compliant method to effectively identify Subclass Members, perhaps even by name and loss. If for any reason that does not happen, Plaintiffs will alter this class definition when filing their class certification motion to conform with Rule 23 standards on identification of class members.

directors, agents, sales agents, employees, and members of their immediate families and the judicial officers before whom this case is assigned, and their families.

97. The requirements of Fed. R. Civ. P. 23 are satisfied, in that: (a) the Classes for whose benefit this action is brought are so numerous and geographically dispersed that joinder of all Class members is impracticable, (b) there are questions of law or fact common to the members of the Classes that predominate over questions affecting only individual members, (c) the claims or defenses of the representative parties are identical to the claims being advanced on behalf of the Classes, (d) the representative parties will fairly and adequately assert and protect the interests of the Classes, (e) Defendants have acted or refused to act on grounds that apply generally to the class so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; and (f) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

98. Defendants are large insurance companies that have issued thousands and probably tens of thousands of the subject residential insurance policies. Each such policyholder is a member of the Class and has not received the benefit of his or her bargain—i.e., the coverage and protection as provided in the policy.

99. Defendants charged premiums to the policyholders, which collectively represents the distribution of the overall cost of the risk transfers to the members of the pool. An insurance company does not evaluate the adequacy of premiums for a product (policy form) on an individual policyholder basis, but in the aggregate over the book of business, i.e., the pool of exposures for that product. Thus class treatment of all policyholders is proper and necessary under Rule 23

100. In addition, some smaller percentage of those policyholders, like Plaintiffs, have experienced basement or floor drain overflows during specific years and made claims that should have been fully covered under Defendants' Homeowners Insurance policies, but were not due to the contractual breaches and violations explained herein.

101. While the exact number of Class members is presently unknown, Defendants possess this information, and the Classes are believed to be sufficiently large enough in number to preclude joinder or other practical litigation solutions.

102. There are numerous questions of fact and law common to each Class that predominate over any questions affecting only individual Class members. These questions include, but are not limited to, the following:

As to the Class:

(a) Whether Defendants' standard-form Homeowners Insurance policy includes full coverage for basement or floor drain overflows and whether declaratory relief is appropriate with respect to same;

(b) Whether the terms "overflow" and "backup" are defined differently from one another in an material manner in Defendants' Homeowners Insurance policies;

(c) Declaring whether AAA has properly interpreted and applied the 3.b. exclusion and 13.c. limitation to the subject water damage events;

(d) Whether Defendants' coverage decisions and claims investigation policies or practices were done in compliance with the contract;

(e) Whether Defendants' coverage decisions and claims investigation policies or practices were done in compliance with the covenant of good faith and fair dealing;

(f) Whether Defendants were obliged to, or did, disclose or announce the variance between the policy and the coverage that would actually exist for the subject water damage events to policyholders that were either purchasing a policy or considering whether to renew;

(g) Whether Plaintiffs and the Class are entitled to damages, including for being overcharged for coverage they could never receive, and, if so, the appropriate measure thereof;

(h) Whether the challenged conduct violates any state insurance codes or regulations and, if so, what remedy is appropriate or required, including statutory appraisal for any Class members.

And as to the Appraisal Subclass:

(i) Whether Defendants have systematically settled covered property losses for a reduced amount by treating the subject water events as excluded or limited backups;

(j) Whether Defendants breached their contracts and covenants of good faith and fair dealing with Plaintiffs and the Class by failing to recognize any distinction between basement/floor drain overflows and backups and by refusing to fully pay for losses caused by an overflow;

(k) Whether Defendants breached their contracts and covenants of good faith and fair dealing with Plaintiffs and the Class by failing to properly investigate these claims and/or by effectively switching the burden to investigate and report on the causes of these claims onto Class members; and

(l) Whether Plaintiffs and other similarly situated policyholders have been damaged under any of the liability theories pled herein and, if so, the appropriate measure of damages sustained.

(m) Whether the challenged conduct violates any state insurance codes or regulations and, if so, what remedy is appropriate or required, including statutory appraisal for any Class members;

(n) Whether an appraisal process is appropriate, and if so, the details of that process.

103. Defendants and their sales and claims adjusters possess sufficient computerized records and data to allow each of these questions to be analyzed and answered on a common, class-wide basis.

104. The claims and legal theories advanced by the representative Plaintiffs are typical of the claims of the Classes because Plaintiffs and the members of the Classes were harmed, and are at risk of further harm, as a result of Defendants' strained interpretation of a standard-form residential insurance policy that has been sold to every putative Class member.

105. Like other Class members, the named Plaintiffs suffered ascertainable economic losses and injuries attributable to Defendants' conduct. *Fed. R. Civ. P.* 23(a)(3)-(a)(4).

106. Plaintiffs can and will fairly and adequately represent and protect the interests of the Classes and Plaintiffs have no interests that conflict with or are antagonistic to the interests of the Classes. Plaintiffs have retained attorneys who are experienced in insurance and class action litigation. No conflict exists between Plaintiffs and the Classes because Plaintiffs' claims are typical of the claims of the Classes.

107. All of the questions of law and fact regarding the liability of Defendants are common to Plaintiffs and each member of the proposed Classes, and these questions predominate over any individual issues that may exist, such that by prevailing on their own claims, Plaintiffs necessarily will establish Defendants' liability to all other members of the Classes. Furthermore, Plaintiffs' damages, like all putative Class members, are susceptible to common proof, calculation, and evidentiary support.

108. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because Defendants have acted on grounds generally applicable to both Classes. Defendants engaged in a uniform, systemic practice regarding the resolution of their policyholders' basement and floor drain overflow damage claims. Plaintiffs and all other Class members have the same legal rights to, and interests in, being treated fairly by Defendants, the proper interpretation and application of their respective Homeowners Insurance

policies, the proper calculation of policy premiums, and the proper payment of any legitimate property damage claims.

109. Prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying judicial rulings and would establish incompatible standards of conduct for the Defendants in this action. Class actions also provide the benefits of unitary adjudication, judicial economy, economies of scale, and comprehensive supervision of a single court. *Fed. R. Civ. P.* 23(b)(3)(A)-(D).

110. Plaintiffs do not anticipate any difficulty in the management of this litigation as a class action. Sufficient data exists to allow Class members to be specifically identified, and the damages in this case can be computed on a class-wide basis on behalf of each putative Class, or separated from general common issues through bifurcation, issue classes or appraisal.

111. Since the requirements of Fed. R. Civ. P. 23(a) and (b)(2) and (3) are met in this case, the two proposed Classes outlined above should be certified as multi-state class actions, and Plaintiffs and their counsel should be appointed to represent the interests of those Classes.[8]

[8] Plaintiffs seek multi-state class certification because Defendants sell the Homeowners Insurance policies at issue in nine states, including Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Ohio, West Virginia, and Wisconsin.

112. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) because declaratory and injunctive relief is appropriate with respect to the Classes as a whole.

113. Class certification under Fed. R. Civ. P. 23 (b)(2) in actions where Plaintiffs seek monetary relief as well as declaratory relief is appropriate when the requested declaratory relief predominates over any claims for monetary relief. *Reeb v. Ohio Dept. of Rehabilitation and Correction*,435 F.3d 639, 647 (6th Cir.2006) (citing *Allison v. Citgo Petroleum Corp*., 151 F.3d 402, 411 (5th Cir.1998). "[M]onetary relief predominates in (b)(2) class actions unless it is incidental to requested injunctive or declaratory relief." *Allison v. Citgo Petroleum Corp*., 151 F.3d 402, 415 (5th Cir.1998). "In determining whether injunctive relief predominates in a Rule 23(b)(2) class, one critical factor is whether the compensatory relief requested requires individualized damages determination or is susceptible to calculation on a classwide basis." *Coleman v. GMAC*, 296 F.3d 443, 449 (6th Cir. 2002).

114. Plaintiffs' declaratory judgment claim is properly certifiable under Fed. R. Civ. P. 23 (b)(2) regardless of whether the Court certifies a class under Fed. R. Civ. P. 23 (b)(3). *Olden v. Lafarge Corp*., 383 F.3d 495 (6th Circuit 2004).

115. Rule 23 governs the class certification of Plaintiffs' claims. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co*., 559 U.S. 393; 130 S. Ct. 1431,

1437 (2010) ("By its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action").

COUNT I
Declaratory Judgment
(On Behalf of the Class and the Appraisal Subclass)

116. The allegations contained in the preceding paragraphs are realleged and incorporated as if fully set forth herein.

117. An actual controversy exists between Plaintiffs and the Classes and Defendants. This Court is vested with the power to declare the rights and liabilities of the parties hereto and give such other and further relief as may be necessary.

118. The questions appropriate for declaratory relief is whether Defendants' standard-form Homeowners Policy includes full coverage for basement and floor drain overflow-related property damages and whether Defendants' interpretation and application of the 3.b and 13.c exclusions was proper.

119. Resolution of these foundational questions is important, because, among other things, each of the policies at issue includes a putative right of appraisal. Conversely, invoking the right of appraisal prior to a class-wide resolution of these questions would be futile. *Jimenez v. Allstate Indem. Co.*, No. 07-14494, 2009 U.S. Dist. LEXIS 13653, *8 (E.D. Mich. Feb. 23, 2009).

120. Declaring the rights of the parties pursuant to Rule 23 (b)(2) will lay the groundwork for providing useful notice to absent class member policy holders, such as: (1) Defendants' actions amount to a breach of contract or covenant of good faith; (2) Defendants' actions amount to an anticipatory repudiation of the contract, and allow absent class members to seek remedies as provided under the law, including: (a) damages for the unused portion of their premiums; (b) recession and repayment of the full premium; and (c) to treat the contract as at an end and to sue to recover back premiums paid although the time of performance had not arrived, or stop paying any scheduled, but as of yet unpaid, premiums in light of Defendants anticipatory repudiation; or (3) their right to seek appraisal – either individually or as part of a class wide plan.

COUNT II
Breach of Contract
(On Behalf of the Class)

121. The allegations contained in the preceding paragraphs are realleged and incorporated as if fully set forth herein.

122. The standard-form Homeowners Insurance policy at issue is a contract between Defendants and their policyholders, including Plaintiffs and each member of the Class.

123. Under those Insurance policies, Defendants had an express contractual duty to settle and pay overflow property damage claims in full up to the policy limit.

124. Defendants prominently advertised on their website that the "accidental overflow of plumbing fixtures" is a covered peril.

125. Defendants and their sales agents use a system to calculate the premiums of their Homeowners Insurance coverage, and those premiums, in part, are based on the risk and likelihood of having to investigate and pay basement and floor drain overflow claims in full.

126. Plaintiffs and every other Class member paid a substantial premium to obtain Homeowners Insurance that contains, among other things, coverage for basement and floor drain overflows.

127. Overflows are specifically defined in Defendants' claims manuals and sales materials as distinct from a backup.

128. Despite having adopted clear and mutually exclusive contractual definitions for what constitutes an overflow versus a backup, Defendants unilaterally and secretly stopped recognizing any distinction between the two and began treating the subject water damage events the same to minimize Defendants' claim payouts and investigation costs.

129. At no time relevant to this case did Defendants ever advise Plaintiffs or Class members that the distinction between the express water damage coverage for the subject water events had changed or that the exclusions or limitations were being expanded.

130. Defendants' unilateral and wrongful decision and practice to no longer distinguish between basement or floor drain overflows and backups reduced the scope of insurance coverage available for covered property losses and reduced the amount of Defendants' payouts for basement and floor drain overflow claims. The effect of both of these changes constitutes a breach of contract, which caused injury and damages to Plaintiffs and every other Class member.

131. These damages include every Homeowners Insurance policy purchase and renewal during the class period(s) for the value of basement and floor drain overflow coverage and protection that policyholders were never going to receive.

132. Plaintiffs and every other Class member have an insurable interest in the real property they insured with Defendants, and they are believed to be competent adults with the capacity to enter into the contracts at issue.

133. Contract law is substantially uniform throughout the United States.

134. State contract law distinguishes between the fact of damages and the amount of damages. Once a plaintiff has established that there are damages, a plaintiff will not be precluded from recovering because of inability to demonstrate

with precision the exact amount of the damages. *See, e.g., Godwin v. Ace Iron & Metal Co.*, 376 Mich. 360, 137 N.W.2d 151 (Mich. 1965); *Lorenz Supply Co. v. American Standard, Inc.*, 100 Mich. App. 600, 300 N.W.2d 335, 340 (Mich. App. 1981). Doubts as to the amount of damages are generally resolved against the wrongdoer. *Lorenz,* 300 N.W.2d at 340.

COUNT III
Breach of Contract and the Covenant of Good Faith and Fair Dealing
(On Behalf of the Appraisal Subclass)

135. The allegations contained in the preceding paragraphs are realleged and incorporated as if fully set forth herein.

136. Defendants made their performance under the policy a matter of their own discretion: they decided how to categorize water events; they decided whether to investigate; and they have used their discretion to construe the ambiguities in their insurance policies in their favor and against the insured.

137. By treating every basement or floor drain claim as a backup, Defendant was able to avoid liability above the limits set forth in its optional backup-protection endorsements.

138. Defendants' practice of refusing to provide coverage for basement or floor drain overflow losses and/or settling basement or floor drain overflow losses for a reduced amount was caused by their decision to stop recognizing any

distinction between water overflows and backups where basement or floor drains were involved.

139. Defendants' practice of refusing to provide coverage for covered property losses and/or settling covered property losses for a reduced amount by mischaracterizing the covered property loss as a "backup" instead of properly characterizing it as an "overflow" constitutes a breach of contract, which resulted in injuries and damages to Plaintiffs and every other Appraisal Class member.

140. In addition, Defendants' have breached the covenant of good faith and fair dealing that accompanies every contract, including insurance policies and coverage disputes and that was owed to members of the Appraisal Class. *Lester v. Allstate Prop. & Cas. Ins. Co.*, 2014 FED App. 0037P

141. Among other things, the resulting damages from Defendants breach of contract and the covenant of good faith and fair dealing include thousands of dollars in unreimbursed property damages.

142. With regard to the Monteleones, Defendants' breach of contract and covenant of good faith has directly resulted in a loss of insurance benefits of more than $115,000 ($121,819.34 claimed less $5,000 received to date), exclusive of interest, costs, and attorneys' fees.

WHEREFORE, Plaintiffs, on behalf of themselves and all other similarly situated Appraisal Class members, pray for a judgment against Defendants as follows:

(a) For an order certifying the Subclass, designating Plaintiffs as the Class Representatives, and designating Plaintiffs' attorneys as Class Counsel;

(b) For declaratory relief, including a ruling that Defendants are violating the clear terms of their Homeowners Insurance policies with respect to basement and floor drain overflow claims;

(c) For class-wide damages, in amounts to be determined at trial or other process;

(d) For costs, interest, and disbursements incurred in connection with this action;

(e) For attorneys' fees; and

(f) For such other relief that the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury of all issues so triable of right.

Respectfully submitted,

SOMMERS SCHWARTZ, P.C.

Dated: April 30, 2014

By: /s/ Jason J. Thompson

Jason Thompson (P47184)
Lance Y. Young (P51254)
Kevin J. Stoops (P64371)
Amy L. Marino (P76998)
One Towne Square, Suite 1700
Southfield, MI 48076
(248) 355-0300
jthompson@sommerspc.com
lyoung@sommerspc.com
kstoops@sommerspc.com
amarino@sommerspc.com

FABIAN, SKLAR & KING, P.C.
Michael H. Fabian (P29024)
Patrick A. King (P27701)
33450 West Twelve Mile
Farmington Hills, MI 48331
(248) 553-2000
mfabian@fabiansklar.com
pking@fabiansklar.com

Attorneys for Plaintiffs