

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**DIANE MCCOY, individually and on
behalf of all others similarly situated,**

Plaintiff,

v.

**GEICO INDEMNITY COMPANY,
a foreign corporation**

Defendant.

CASE NO.: 3:20-cv-05597

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT FOR DAMAGES

Plaintiff Diane McCoy, on behalf of herself and all others similarly situated, files this Class Action Complaint against GEICO Indemnity Company (“GEICO Indemnity”), and in support thereof state the following:

NATURE OF THE ACTION

1. Plaintiff McCoy was insured under a GEICO Indemnity policy of insurance (the “Policy”) and suffered a total-loss of her insured vehicle. Plaintiff made a covered claim for physical damage under her Policy. GEICO Indemnity breached the Policy by failing to pay the cost of title transfer fees and registration transfer fees due under the Policy. This was not an isolated incident. To the contrary, the failure to pay the cost of title transfer fees and registration transfer fees is a fundamental component of GEICO Indemnity’s business practices within New Jersey.

2. The Policy promises to pay for any “loss” to an insured vehicle, whether resulting under collision (such as a motor vehicle accident) or comprehensive (such as theft) coverage.

Plaintiff and all class members suffered loss in the form of a “total-loss” – a loss of the entire vehicle.

3. The Policy requires payment on first-party total-loss physical damage claims of Actual Cash Value (“ACV”) of the damaged property. The Policy requires Defendant to determine ACV for the property at the time of the loss.

4. The Policy defines ACV as the “replacement cost” of the insured auto less depreciation and/or betterment.

5. The ACV of a vehicle includes mandatory, unavoidable title transfer fees and registration (tag) transfer fees, both of which are necessary replacement costs. New Jersey requires all vehicles to be legally titled and registered; otherwise, insureds cannot operate the vehicles at all. In the view of a reasonable insured, and by law, title and registration transfer fees are necessary costs to replace a vehicle in New Jersey.

6. GEICO Indemnity, however, as a matter of uniform procedure and process, does not include title transfer and tag transfer fee amounts in making payment to New Jersey insureds who have suffered a total-loss, thereby breaching its policy contract with Plaintiff and every member of the Class, as defined below.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under 28 U.S.C. § 1332(d)(2) because (a) Plaintiff is a member of the putative class, which consists of at least 100 members; (b) Plaintiff is a New Jersey citizen and Defendant is a Maryland citizen; and (c) the amount-in-controversy exceeds the sum of \$5 million exclusive of interest and costs.

8. Venue is proper in this Court because a substantial portion of the acts and course of conduct giving rise to the claims alleged occurred within the district and Defendant is subject

to personal jurisdiction here.

PARTIES

9. Plaintiff McCoy is and was domiciled at 258 Brunswick Ave, Apartment 101, Lambertville, New Jersey, 08530, and was a New Jersey citizen at all times relevant to this lawsuit.

10. GEICO Indemnity is and was, at all times relevant to this lawsuit, a corporation located in and incorporated in Maryland, with its principal place of business at 5260 Western Avenue in Chevy Chase, Maryland. GEICO Indemnity is authorized to conduct insurance business in New Jersey.

FACTUAL ALLEGATIONS

A. The GEICO Indemnity Insurance Policy

1. Plaintiff McCoy had automobile insurance through GEICO Indemnity. Plaintiff's Policy provides that for "Collision" and "Comprehensive" coverages, GEICO Indemnity will pay for each "loss" to an "owned auto" or "non-owned auto":

Comprehensive (Excluding Collision)

1. We will pay for each *loss*, less the applicable deductible, caused other than by *collision*, to the *owned* or *non-owned auto*. This includes breakage of glass and *loss* caused by:

Collision

1. We will pay for *collision loss* to the *owned* or *non-owned auto* for the amount of each *loss* less the applicable deductible.

2. The Policy defines "owned auto" as including any vehicle described in the Policy for which a specific premium charge indicates there is coverage:

6. *Owned auto* means:

(a) A vehicle described in this policy for which a premium charge is shown for these coverages:

3. The Policy defines "Loss," with respect to "Collision" and "Comprehensive" coverage, as "direct and accidental loss of or damage to (a) The auto, including its equipment; or (b) Other insured property":

7. **Loss** means direct and accidental loss of or damage to:
 - (a) The auto, including its equipment; or
 - (b) Other insured property.

4. The Policy represents that the limit of GEICO Indemnity's liability for loss, with respect to "Collision" and "Comprehensive" coverage, is "the actual cash value of the property at the time of the loss":

LIMIT OF LIABILITY

The limit of our liability for **loss**:

1. Is the **actual cash value** of the property at the time of the **loss**;

5. "Actual cash value" is defined in the Policy, with respect to "Collision" and "Comprehensive" coverages, as "the replacement cost of the auto or property less depreciation or betterment":

1. **Actual cash value** is the replacement cost of the auto or property less **depreciation** or **betterment**.

6. Under the Policy, GEICO Indemnity's legal obligation to pay Actual Cash Value on a first-party total-loss claim does not differ between a Collision total loss claim and a Comprehensive total-loss claim.

7. In the event of a loss, including a total-loss, the Policy provides that GEICO Indemnity may either: (1) pay for the loss, or (2) repair or replace the damaged or stolen property.

8. As a matter of uniform procedure and process, when an insured suffers a total-losses, GEICO Indemnity elects to pay for the loss, rather than repair or replaced the damaged vehicle.

9. When GEICO Indemnity elects to pay for a total-loss, GEICO Indemnity is obligated to pay the ACV of the total-loss vehicle.

10. Because a total-loss is the term used to describe the scenario where GEICO Indemnity determines that the cost to repair the damage exceeds the ACV of the vehicle, the

relevant limitation on liability in the context of a total-loss is always ACV precisely because GEICO Indemnity determined that it is less than the cost to repair the damage.

11. The Policy does not condition any aspect of coverage upon the purchase of a replacement vehicle or incurring costs associated with replacing the insured loss, whether a total or partial loss.

12. Upon information and belief, each Class member was insured under policies that were materially identical to Plaintiff McCoy's Policy with respect to GEICO Indemnity's obligation to pay "Actual Cash Value" in the event of a total-loss.

B. GEICO Does Not Pay the Agreed-Upon Replacement Costs

13. Title transfer fees and registration transfer fees are necessary and mandatory vehicle replacement costs in New Jersey.

14. Throughout the class period, New Jersey prohibited buying or selling motor vehicles unless the certificate of title under the name of the buyer was provided. New Jersey also prescribes the method and form for applying for transfer of certificate of title into the name of the buyer. New Jersey imposes a flat (minimum) fee on certificate of title transfers. These title transfer fees are mandatory and apply to the replacement of all total-loss vehicles in New Jersey. At the time of Plaintiff's total-loss, the title transfer fee was \$85.00.

15. Unlike some states, New Jersey does not prescribe an exception to the imposition of the title transfer fees for consumers who are replacing a total-loss vehicle. Instead, the title transfer fee is applicable to all vehicle purchases, including when replacing a total-loss vehicle.

16. Throughout the class period, New Jersey required that every vehicle be legally and properly registered to be used or operated on New Jersey highways and roadways. These registration fees are mandatory and apply to the purchase of all vehicles in New Jersey, including

when replacing a total-loss vehicle. The registration transfer fee at the time of loss on Plaintiffs' replacement vehicle was \$4.50.

17. By providing that it will pay Actual Cash Value in the event of a total-loss, GEICO Indemnity promises to pay these mandatory vehicle replacement costs as part of its Collision and Comprehensive coverages

18. GEICO Indemnity, however, by its conduct alleged herein, breached its contracts with Plaintiff and the other Class members by failing to pay title transfer fees or registration transfer fees upon the total-loss of an insured vehicle.

C. GEICO Indemnity Failed to Pay Plaintiff the Actual Cash Value to Which She was Entitled

19. Plaintiff McCoy owned a 2005 Ford Escape (the "Insured Vehicle").

20. On or about January 4, 2018, Plaintiff was involved in an auto collision while operating the insured vehicle. Plaintiff filed a claim with GEICO Indemnity following the accident, Claim No. 041610953-0101-044.

21. GEICO Indemnity determined that the vehicle was a total-loss and that the claim was a covered claim.

22. GEICO Indemnity, through a third-party vehicle valuation provider, determined the vehicle had a base value of \$3,777.00 and an adjusted value of \$3,838.00. (*See Exhibit A, McCoy Market Valuation Report.*)

23. GEICO Indemnity then added sales tax in the amount of \$254.27 and subtracted the \$500.00 deductible for a total of \$3,592.27. (*See Exhibit B, McCoy Total Loss Settlement Letter.*) GEICO Indemnity did not include any amount for title transfer or registration transfer fees.

24. GEICO Indemnity's failure to pay title transfer and tag transfer fees at the time of the loss breached the Policy because these fees are necessary "replacement costs" and are not

attributable to depreciation nor betterment and constitute elements of the ACV of the insured vehicle.

25. McCoy paid all premiums owed and otherwise satisfied all conditions precedent such that her insurance policy was in effect and operational at the time of the accident.

26. Plaintiff and all members of the Class, as defined below, were owed title transfer fees in the amount of \$85.00 and tag transfer fees in the amount of \$4.50.

CLASS ALLEGATIONS

27. Plaintiff brings this action pursuant to Rules 23(a), 23(b)(2), and, and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of herself and all others similarly situated.

28. Plaintiff seeks to represent a class (“the Class”) defined as:

All persons: (a) who insured a vehicle for physical damage coverage under a New Jersey automobile insurance policy issued by GEICO Indemnity that provided for an Actual Cash Value payment in the event that a vehicle was declared a total-loss, (b) who made a claim under the policy for physical damage, (c) whose claim was adjusted as a total-loss within the six-year time period prior to the date on which this lawsuit was filed until the date of any certification order, and (d) who were not paid the costs of title transfer fees or registration transfer fees.

29. Excluded from the Class is Defendant and any of its members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; governmental entities; and the Court staff assigned to this case and their immediate family members. Plaintiff reserves the right to modify or amend the Class definition, as appropriate, during the course of this litigation.

30. This action has been brought and may properly be maintained on behalf of the Class proposed herein under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

31. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the Class are so numerous that individual joinder of all Class members is impracticable. While Plaintiff is informed and believes that there are thousands of Class members, the precise number

of Class members is unknown to Plaintiff, but may be ascertained from Defendant's books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

32. Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3). This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- a. whether Defendant's agreement to pay Actual Cash Value in the event of total loss obligated Defendant to pay the costs of title transfer fees and registration transfer fees to Plaintiff and the other Class members;
- b. whether Defendant breached its contracts with Plaintiff and the other Class members; and
- c. the amount and nature of relief to be awarded to Plaintiff and the other Class members.

33. Typicality – Federal Rule of Civil Procedure 23(a)(3). Plaintiff's claims are typical of the other Class members' claims because Plaintiff and the other Class members were all similarly affected by Defendant's failure to pay the costs of title transfer fees and registration transfer fees under New Jersey insurance policies that provided for an Actual Cash Value payment in the event of total loss. Plaintiff's claims are based upon the same legal theories as those of the other Class members. Plaintiff and the other Class members sustained damages as a direct and proximate result of the same wrongful practices in which Defendant engaged. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the other Class members

34. Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).

Plaintiff is an adequate Class representative because her interests do not conflict with the interests of the other Class members who he seeks to represent, Plaintiff has retained counsel competent and experienced in complex class action litigation, including successfully litigating class action cases similar to this one, where insurers breached contracts with insureds by failing to include sales tax, title transfer fees, and tag transfer fees in total loss situations, and Plaintiff intends to prosecute this action vigorously. The Class's interests will be fairly and adequately protected by Plaintiff and her counsel.

35. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).

Defendant has acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class members as a whole.

36. Superiority – Federal Rule of Civil Procedure 23(b)(3). A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for the Class members to individually seek redress for Defendant's wrongful conduct. Even if the Class members could afford litigation the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the

benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

COUNT I – BREACH OF CONTRACT

37. Plaintiff McCoy incorporates by reference each allegation set forth in the preceding paragraphs.

38. Plaintiff brings this claim individually and on behalf of the other Class members.

39. Plaintiff and each of the other Class members were parties to insurance contracts with GEICO Indemnity, as described herein.

40. Plaintiff and each of the other Class members' insurance contracts with GEICO Indemnity are governed by New Jersey law.

41. Plaintiff and each of the other Class members made claims under their insurance contracts with GEICO Indemnity, which GEICO Indemnity determined to be first-party total losses under the insurance contract, and which GEICO Indemnity determined to be covered claims.

42. Pursuant to the above-described contractual provisions, upon the total loss of their insured vehicles, Plaintiff and each of the other Class members were each owed the Actual Cash Value of their vehicles, which includes title transfer fees and registration transfer fees.

43. GEICO Indemnity failed to pay the requisite costs title transfer fees and registration transfer fees to Plaintiff and each of the other Class members on their total loss claims.

44. GEICO Indemnity's failure to pay the requisite costs of title transfer fees and registration transfer fees constitutes a material breach of GEICO Indemnity's contracts with Plaintiff and each of the other Class members.

45. As a result of GEICO Indemnity's contractual breaches, Plaintiff and each of the other class members have been damaged, and are entitled under GEICO Indemnity's insurance

contracts to sums representing the benefits owed for title transfer fees and registration transfer fees, as well as costs, pre-judgment and post-judgment interest, injunctive relief, and other relief as appropriate.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff McCoy, individually and on behalf of the other Class members, respectfully requests that the Court enter judgment in her favor and against Defendant GEICO Indemnity Co. as follows:

- a. An order certifying the proposed Class, as requested herein, designating Plaintiff as Class representative, and appointing Plaintiff's undersigned attorneys as Class Counsel;
- b. An award of compensatory damages, and all other available damages, for Plaintiff and the other Class members, as well as pre- and post- judgment interests on any amounts awarded;
- c. An order enjoining GEICO Indemnity from continuing the illegal practices alleged herein, and for other injunctive relief as is proven appropriate in this matter;
- d. An award of attorney's fees, expenses, and costs of suit as appropriate pursuant to applicable law
- e. An order providing such other and further forms of relief as this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: May 6, 2020

Respectfully submitted,

/s/ Mark A. DiCello
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***Counsel for Plaintiff
and the Proposed Class***

*Application for admission *pro hac vice* to be submitted

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Diane McCoy

(b) County of Residence of First Listed Plaintiff Hunterdon (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DiCello Levitt Gutzler LLC
7556 Mentor Avenue, Mentor, OH 44060; Tel: 440-953-8888

DEFENDANTS

GEICO Indemnity Company

County of Residence of First Listed Defendant Montgomery (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC 1332

Brief description of cause: Breach of Contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,001.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 05/06/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Mark A. DiCello

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.