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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MARGARET SOUKUP; BRITTNEY
BATHURST; AMBER DEMERITT; and
SAMANTHA JONES,

Plaintiffs,

v.

USAA CASUALTY INSURANCE
COMPANY, a foreign insurer; UNITED
SERVICES AUTOMOBILE
ASSOCIATION, a foreign intransurance
exchange; USAA GENERAL INDEMNITY
COMPANY, a foreign insurer; USAA
COUNTY MUTUAL INSURANCE
CORPORATION, a foreign insurer;
GARRISON PROPERTY AND CASUALTY
INSURANCE COMPANY, a foreign insurer;
AUTO INJURY SOLUTIONS, INC., a
foreign corporation; DR. CLARK H. WOLF,
III, D.C.; and DR. ROSS HART, D.C.

Defendants.

Case No.:

CLASS ACTION COMPLAINT

- 1. Breach of Contract**
- 2. Breach of the Covenant of Good Faith and Fair Dealing**

DEMAND FOR JURY TRIAL

Plaintiffs, by and through their attorneys, bring this action on their own behalf and on behalf of all other similarly situated military personnel, veterans, and their families, who were insured through USAA, and its affiliates, and allege as follows:

NATURE OF THE ACTION

1. This is a class action suit on behalf of active members of the military, honorably discharged veterans, and their families, against defendants USAA Casualty Ins. Co., United Services Automobile Assoc., USAA General Indemnity Co., USAA County Mutual Ins. Corp., Garrison Property and Casualty Ins. Co., (collectively hereinafter “USAA”), Auto Injury Solutions, Inc. (“AIS”), Chiropractor, Clark Wolf, III, and Chiropractor, Ross Hart, seeking relief on behalf of a class of insureds and parties covered by first-party insurance policies issued by USAA.
2. In short, this is a class action against Defendants for their implementation of an undisclosed cost containment scheme which wrongfully deprives U.S. military servicemen, women, and their families, of insurance benefits for medical treatment. USAA represented to U.S. service men and women that USAA would pay for reasonable and necessary medical expenses in the event of an automobile injury, thereby inducing Plaintiffs and other U.S. service men and women, into contracting with USAA for first-party insurance. When Plaintiffs suffered injuries, they sought reasonable and necessary medical care which USAA promised to pay for. However, Plaintiffs’ medical treatment was then wrongfully denied by USAA on the basis of fraudulent file reviews in order to deprive Plaintiffs, and those like them, of their medical treatment and thereby save USAA money at the expense of servicemen and women, and their families.

JURISDICTION AND VENUE

3. This Court has original jurisdiction of the claims asserted herein pursuant to 28 U.S.C. § 1332(d)(2)(A) because the amount in controversy and the claims at issue exceed the sum

of \$5,000,000, exclusive of interests and costs, and is a putative class action in which members of the class are plaintiffs who are citizens of states different from the Defendants' states of citizenship.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. Defendants USAA and AIS transact substantial business in this District and maintain their agents or representatives, Chiropractor, Clark H. Wolf, III, and Chiropractor, Ross Hart, in this District. Defendants USAA and AIS regularly and continuously conduct business in interstate commerce that is carried out in substantial part in this District. In addition, many of the acts and transactions giving rise to the claims asserted herein occurred in this District.

THE PARTIES

PLAINTIFFS

(Margaret Soukup)

5. At all times material hereto, Plaintiff Margaret Soukup was and remains a resident of Clatsop County, Oregon. Margaret Soukup was, and is, an active member of the armed services and was induced into selecting USAA as the insurer for her and her family, based on USAA's representations that USAA was committed to taking care of and supporting members of the armed services and U.S. veterans. USAA touted its commitment to servicing military families and advertised the "exclusive privileges of its auto insurance," noting that, "For those who stood tall for this country and for their families, we stand ready to return the favor." Exhibit 1. During the proposed Class Period, Plaintiff Soukup was insured with USAA for Personal Injury Protection benefits ("PIP"). During the proposed Class Period, Soukup performed all conditions precedent to maintaining her PIP

coverage with USAA, including paying her insurance premiums and performing all other required duties, with the understanding that by doing so USAA would cover her and her family in the event they were injured.

6. Plaintiff Soukup was involved in an automobile collision on September 15, 2009, on Highway 30 in Oregon. As Margaret Soukup slowed and stopped for traffic, she was suddenly rear-ended, jolting her body and vehicle forward, causing her vehicle to then slam into the vehicle in front of her. During these collisions, Margaret's body was whipsawed backwards and forwards, causing injuries to her neck and back. Her vehicle sustained substantial damage during the collisions. In accordance with the terms of her policy, Plaintiff Soukup notified USAA of her accident and submitted a claim for PIP benefits.
7. As a result of the collision, Plaintiff Soukup was injured and sought medical treatment with the understanding that USAA would pay for treatment which was reasonable and necessary.
8. Plaintiff Soukup and her medical providers did what was requested of them by USAA and submitted to USAA bills for treatment of Plaintiff Soukup. USAA, in turn, referred Plaintiff Soukup's claim to Auto Injury Solutions for "file reviews" without Soukup's knowledge and without disclosing that USAA held a relationship with AIS to prepare "file reviews" which would uniformly conclude that medical treatment was not needed. In Soukup's case, AIS prepared 8 sham file reviews, all concluding that treatment should be denied. Four such reviews were purportedly created by a Chiropractor, Clark H. Wolf III, D.C., a chiropractor in Medford, Oregon (Exhibits 2-5); three from a James

Blumenthal, D.O., a doctor in Florida (Exhibits 6-8); and one from Pejman Lavian, M.D., a doctor in Clifton, New Jersey. (Exhibits 9).

9. USAA and AIS's sham file reviews were then used as the basis for AIS and USAA to wrongfully deny Plaintiff Soukup's PIP benefits. Defendants damaged Soukup by refusing to pay for her reasonable and necessary health care expenses which USAA is contractually obligated to pay. Plaintiff Soukup has been further damaged by Defendants in that their denial of her medical treatment prevents Soukup from making a full recovery from her injuries. Plaintiff Soukup has also been damaged in that she was forced to retain an attorney to pursue her claim against the tortfeasor in her automobile collision claim, and was forced to pay her retained attorney a contingency fee which included a fee on the sums recovered for Plaintiff Soukup's outstanding medical bills – medical bills which should have been paid for by USAA had USAA not wrongfully denied her PIP benefits.

(Brittney Bathurst)

10. At all times material hereto, Plaintiff Brittney Bathurst was a resident of Chisago County, Minnesota, and is currently a resident of Maricopa County, Arizona. During the proposed Class Period, Plaintiff Bathurst was insured with USAA for PIP benefits under her mother's policy. Bathurst's mother, Susan Bathurst, was a veteran of the U.S. armed services and Susan Bathurst entered the U.S. Army Reserves in 1981, retiring in 2005 after serving in operations such as Desert Storm, Enduring Freedom (Iraq War) and receiving decorations such as the Air Force Achievement Award, National Defense Service Medal and Army Overseas Service Ribbon. She was honorably discharged. As a result of her military service, Susan Bathurst was told that she and her family qualified for

USAA insurance and Bathurst was then induced into contracting with USAA for automobile insurance based on USAA's representations that it was committed to serving U.S. veterans. During the proposed Class Period, Plaintiff Bathurst and her mother performed all conditions precedent to maintaining her PIP coverage with USAA, including paying all premiums and otherwise performing all required duties, with the understanding that by doing so, reasonable and necessary health care expenses would be paid by USAA in the event of an injury suffered in an automobile collision.

11. At age 17, plaintiff Brittney Bathurst was involved in an automobile collision on June 30, 2007, when she was traveling as a passenger and was "T-boned" by a jeep traveling at a very high rate of speed, totaling the vehicle in which Brittney was riding. Airlife, police, fire, and other emergency responders were deployed to the scene of the near death collision. Ultimately Bathurst was taken to a nearby hospital by ambulance. The accident occurred in Chisago City, Minnesota. In accordance with the terms of her policy, Plaintiff Bathurst notified USAA of her accident and submitted a claim for PIP benefits.
12. As a result of the collision, Plaintiff Bathurst was injured and sought reasonable and necessary health care based on the representations USAA made to her mother that as a military service woman, she and her family members, including Plaintiff Bathurst, would be covered in the event of an accident and reasonable and necessary health care expenses would be paid for.
13. Plaintiff's medical providers submitted bills for their treatment of Plaintiff Bathurst to USAA. USAA, in turn, referred Plaintiff Bathurst's claim to Auto Injury Solutions for a

“file review,” without Bathurst’s knowledge and without disclosing that USAA held a relationship with AIS to prepare “file reviews” which would uniformly conclude that treatment should be denied. AIS prepared a sham file review, purportedly created by a Leslie Kancir, an acupuncturist located in Lakewood, Colorado (Exhibit 10).

14. In Exhibit 10, one will readily note that Kancir’s signature is an “electronic” signature. Note also that the report states in no uncertain terms that “A Physician Review has been completed.” Said statement is absolutely false at the time of writing the review. See also the so-called criteria/sources referenced as justification for the ultimate conclusion that the reimbursement of health care services should be denied. The authorities are immaterial and not reliable with reference to the individualized injuries and subsequent care needed by Brittney Bathurst. Compare Exhibits 11–13, which are all purportedly reviews written and signed by the one and same Leslie Kancir, an acupuncturist from Colorado.
15. In the additional Exhibits 11–13, victim reviews are again “electronically” signed by acupuncturist Leslie Kancir, each contain the false statement that “A Physician Review has been completed,” and each rely on so-called source or criteria references that are immaterial and not reliable as to the individual injuries suffered by additional victims in separate collisions, on separate dates. Each review appears to be an authentic, individualized medical review when clearly each is not.
16. AIS’s sham file review of Brittney Bathurst was used as the basis for AIS and USAA to deny Plaintiff Bathurst’s acupuncturist care which was subsequently incurred in Arizona. Defendants damaged Bathurst by refusing to pay for her reasonable and necessary

expenses which USAA was contractually obligated to pay. Plaintiff Bathurst has been further damaged by Defendants in that Bathurst must incur and pay for health care expenses out of her own resources, which, if not done, will prevent Bathurst from making a full recovery from her injuries.

(Amber DeMerritt)

17. At all times material hereto, Plaintiff Amber DeMerritt was and remains a resident of Clackamas County, Oregon. During the proposed Class Period, Plaintiff DeMerritt's husband was in active military service, serving in places such as Texas and Kuwait. As a result of her marriage to an active serviceman, DeMerritt was induced into being insured with USAA for PIP benefits, based upon USAA's representations that it would pay the medical bills of U.S. servicemen and their families. During the proposed Class Period, Plaintiff DeMerritt performed all conditions precedent to maintaining her PIP coverage with USAA, including paying all premiums and performing other required duties, with the understanding that by doing so USAA would pay the medical bills of DeMerritt in the event she was injured in an automobile accident.
18. Plaintiff DeMerritt was involved in a serious automobile collision on October 25, 2010, on Dryland Road in Clackamas County, Oregon. Plaintiff DeMerritt slowed for a passing vehicle when she was suddenly rear-ended, forcing her vehicle into a spin during which it was impacted yet again, while the other driver's vehicle was caused to rollover. *See* Exhibits 14-15 depicting vehicle damage. In accordance with the terms of her policy, Plaintiff DeMerritt notified USAA of her accident and submitted a claim for benefits incurred for injuries sustained as a result of a collision.

19. As result of the collision, Plaintiff DeMerritt was injured and sought medical treatment based on the representations USAA made that she would be covered in the event of an accident and would be taken care of.
20. Plaintiff's medical providers submitted bills for their treatment of Plaintiff DeMerritt to USAA. USAA, in turn, referred Plaintiff DeMerritt's claim to Auto Injury Solutions for "file reviews" without DeMerritt's knowledge and without disclosing that USAA held a relationship with AIS to prepare "file reviews" which would uniformly conclude that treatment should be denied. USAA and AIS prepared at least four sham file review Reports, purportedly created by a George D. Sage, a chiropractor in Decatur, Georgia (Exhibits 16-19).
21. AIS's sham file reviews were used as the basis for AIS and USAA denying Plaintiff DeMerritt's PIP claim. Defendants damaged DeMerritt by refusing to pay for her reasonable and necessary medical expenses which USAA is contractually obligated to pay. Plaintiff DeMerritt has been further damaged by defendants in that their denial of her medical treatment prevents her from making a full recovery from her injuries.

(Samantha Jones)

22. At all times material hereto, Plaintiff Samantha Jones resided in King County, Washington, and currently is a resident of Washington County, Oregon. During the proposed Class Period, Plaintiff Jones was insured with USAA for PIP benefits because her step-father was a serviceman within the U.S. military. During the proposed Class Period, Plaintiff Jones performed all conditions precedent to maintaining her PIP coverage with USAA, including paying all premiums and performing other required

duties, with the understanding that by doing so USAA would in turn take care of Jones in the event of an accident.

23. Plaintiff Jones was involved in an automobile collision occurring on February 10, 2009, in Renton, Washington. Plaintiff Jones's vehicle was struck by a driver who failed to stop at a stop sign. In accordance with the terms of her policy, Plaintiff Jones notified USAA of her accident and submitted a claim for PIP benefits.
24. As result of the collision, Plaintiff Jones was injured and sought medical treatment based on the representations USAA made that she would be covered in the event of an accident and would be taken care of.
25. Plaintiff's medical providers submitted bills for their treatment of Plaintiff Jones to USAA. USAA, in turn, referred Plaintiff Jones's claim to Auto Injury Solutions for "file reviews" without Jones's knowledge and without disclosing that USAA held a relationship with AIS to prepare "file reviews" which would uniformly conclude that treatment should be denied. AIS prepared nine sham file reviews, five of which were purportedly created by Ross, Hart, D.C., a chiropractor in Springfield, Oregon (Exhibits 20-24); three from John T. Murphy, D.C. (Exhibits 25-27); and one from Clark H. Wolf III, D.C., a chiropractor in Medford, Oregon (Exhibit 28).
26. AIS's sham file reviews were used as the basis for AIS and USAA denying Plaintiff Jones's PIP claim. Defendants damaged Jones by refusing to pay for her reasonable and necessary medical expenses which USAA is contractually obligated to pay. Plaintiff Jones has been further damaged by Defendants in that their refusal to pay her reasonable and necessary medical expenses prevented her from making a full recovery from her

injuries. Plaintiff Jones has also been damaged in that she was forced to retain an attorney to pursue her claim against the tortfeasor, and was forced to pay her retained attorney a contingency fee which included a fee on the sums recovered for Plaintiff Jones's outstanding medical bills – medical bills which should have been paid for by USAA had it not wrongfully denied her PIP benefits.

DEFENDANTS

27. At all times material hereto, Defendant USAA Casualty Insurance Company was and is a foreign insurer licensed to transact insurance business in the state of Oregon and other states.
28. At all times material hereto, Defendant United Services Automobile Association was and is a reciprocal interinsurance exchange organized under the laws of Texas, and transacts business in the state of Oregon and other states.
29. At all times material hereto, Defendant USAA General Indemnity Company was and is a foreign insurer organized under the laws of Texas, and licensed to transact insurance business in the state of Oregon and other states.
30. At all times material hereto, Defendant USAA County Mutual Insurance Company was and is a foreign insurer organized under the laws of Texas, and transacts business in the state of Oregon and other states.
31. At all times material hereto, Defendant Garrison Property and Casualty Insurance Company was and is a foreign insurer organized under the laws of Texas, and licensed to transact insurance business in the state of Oregon and other states.
32. The foregoing defendant entities are hereinafter referred to collectively as "USAA."

33. At all times material hereto, upon information and belief, Auto Injury Solutions, Inc., (“AIS”) was and is a foreign corporation, organized under the laws of Alabama, and conducting business in Oregon and other states.
34. At all times material hereto, upon information and belief, Clark H. Wolf, III, is a chiropractor licensed in the State of Oregon, and practicing or residing in Medford, Oregon. Wolf performs countless file reviews for USAA and AIS which affect insureds all over Oregon and other states in the nation.
35. At all times material hereto, upon information and belief, Ross Hart, is a chiropractor licensed in the State of Oregon, and practicing or residing in Albany and Bend, Oregon. Dr. Wolf performs countless file reviews for USAA and AIS which affect insureds all over Oregon and other states in the nation.

CLASS ACTION ALLEGATIONS

36. Defendant USAA offered and sold a form of first-party medical coverage that provides payment to covered persons for “reasonable and necessary” medical expenses incurred by the insured for bodily injury(ies) resulting from a covered automobile accident. This coverage is commonly referred to as Personal Injury Protection (“PIP”) and/or Medical Payments (“Med Pay”) coverage. PIP and Med Pay is commonly referred to as “no-fault coverage.” *See Exhibits 29-30 as example policies sold by USAA.*
37. Defendant USAA did offer PIP and/or Med Pay coverage to its insureds in states across the country, including Oregon, Washington, Arizona, Minnesota, and other states in which Defendants conduct business.

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38. Plaintiffs, and all others similarly situated, contracted for and paid premiums to maintain PIP and/or Med Pay coverage with USAA, with the understanding that USAA would “be there to take care” of Plaintiffs. Exhibit 31. Plaintiffs were induced into contracting with USAA because of their status as active or honorably discharged members of the U.S. armed services, or by being a family member of such a service member.
39. Under the terms of the policies, defendant USAA assumed the responsibility and obligation to pay all reasonable and necessary medical expenses incurred for the treatment of injuries sustained in an accident.
40. During the proposed Class Period, USAA adopted an undisclosed and wrongful cost containment program through which USAA seeks to arbitrarily reduce PIP and/or Med Pay benefits for claims submitted by its insureds. This cost containment program operates to uniformly reduce or deny medical claims which are incurred as a result of automobile collisions causing injuries for which insureds seek out reasonable and necessary care.
41. USAA contracted with an apparent third party provider, Auto Injury Solutions, Inc., to assist USAA in implementing and carrying out its fraudulent cost containment program under the guise of AIS providing “independent” and impartial medical review services. In reality, AIS serves at the direction of USAA, and/or as the alter ego of USAA, in that AIS’s services are not rendered independently and are focused on generating false and misleading reports in order to save USAA millions of dollars at the expense of military personnel and their family members who have been injured in automobile collisions and whose bills were reasonable and necessarily incurred.

42. USAA has entered into an agreement in which its PIP and/or Med Pay claims are sent to AIS for review and/or claims handling. AIS serves as USAA's agent. Insureds and their health providers are instructed to send information, including appeals, to AIS's address in Daphne, Alabama, and not to USAA claims handling locations scattered throughout the United States.
43. The purported medical review services provided by AIS are a sham. The records review reports ("Reports") generated by Auto Injury Solutions are purportedly created by physicians whom AIS contracts with to provide "independent" medical record review services in order to give the appearance of legitimacy, when, in fact, such appearance is false and fraudulent.
44. The Reports purportedly created by defendants Clark H. Wolf and Ross Hart are sham, contain false information, and fail to comply with applicable Oregon statutes, administrative rules, and practice and utilization guidelines which are adopted and controlling the standard of care in Oregon..
45. Defendants create the Reports by utilizing template forms. Defendants utilize an electronic signature stamp on each Report in order to give the false impression that a physician created and approved each Report. In reality, each report generated is substantially the same in reaching the uniform conclusion that benefits should be denied. These reports utilize identical and the same conclusionary language (including typographical errors) despite the impression that each report is supposedly created for different claimants. Furthermore, for several Plaintiffs and Class members, the reports are cut and paste papers, merely duplicating exactly what was said in other reports

generated for the same insured. Compare Exhibits 6-8 and 32 which were purportedly created by Dr. James Blumenthal, D.O. Compare Exhibits 20-24 and 33 which were purportedly created by Ross Hart, D.C. Compare Exhibits 2-5, 34-37 which were purportedly created by Clark Wolf III, D.C.

46. The Reports prepared by AIS uniformly deny that the treatment received by the insureds is reasonable and necessary. These Reports are without basis and are not supported by proper sources, criteria, or medical authority. The Reports are fraudulent and are designed to save defendants substantial money for health expenses already contracted and paid for by servicemen and women, veterans and their families. Because of defendants' phony reviews, plaintiffs and the class members' medical care was affected and denied, and such claims were generally in the range of \$500 to \$10,000 per collision and claim. The Reports are inconsistent with, and unsupported by the very medical records which they purport to review. The Reports uniformly recommend denial of submitted claims without reasonable, individualized medical basis and without individualized appropriate investigation into, or consideration of, the reasonableness or necessity of the insureds' medical treatment.
47. Defendants maintain a list or database of purported "authorities" to cite when generating file and peer review reports to give the appearance that the Reports' conclusions are medically supported.
48. Defendants deny claims for PIP and/or Med Pay benefits on the Reports. Defendants do not conduct a separate investigation, review, or otherwise seek to confirm the opinions

expressed in the Reports. Defendants uniformly deny claims submitted to AIS and subjected to an AIS Report.

49. USAA's denial of PIP and/or Med Pay claims is based upon fraudulent and sham records review reports generated by AIS at USAA's direction, or with USAA's knowledge and consent. USAA knew of AIS's fraudulent system of generating reports and encouraged it, knowing that USAA would gain financially if the reports denied care, and disregarding that it was breaching its promise of serving the men and women of the military who served this nation.
50. Defendants' denial of PIP and/or Med Pay claims are not based upon legitimate determinations of reasonableness or necessary care. As a result, USAA's claims handling and denials do not abide by its own policy terms.
51. Defendants' aforesaid utilization of its undisclosed cost containment program to reduce first-party medical benefits is presumptively unreasonable and in breach of USAA's obligations to pay all reasonable and necessary medical expenses incurred by covered persons.
52. Any medical expenses not paid under defendant USAA's PIP and/or Med Pay coverages by reason of its undisclosed cost containment program are, *ipso facto*, presumptively reasonable and necessary, valid, and are owed by USAA to plaintiffs and all others similarly situated under the terms of its contract with its insureds.
53. Defendants' actions in utilizing its cost containment program to unilaterally reduce or deny health care expenses submitted for payment under PIP and/or Med Pay coverage, constitute a presumptive breach of USAA's implied duty of good faith and fair dealing,

including its obligation to conduct a full and fair evaluation of each claim and to not unreasonably deny or withhold benefits. The Reports and USAA's denials contain nothing more than language that the medical treatment is not reasonable and not necessary. This determination is unsupported by USAA and AIS. Furthermore, Defendants' denials rely upon opinions rendered by physicians who are not of the same speciality, license, or certification as the treating physicians, whose records they are purportedly reviewing.

CLASS DEFINITIONS

54. There exists a class of persons, who are insureds of defendant USAA with PIP and/or Med Pay coverage. Such insureds are "members" of USAA, who have "honorably served" in branches of the U.S. military, or are covered by a policy as a result of a family member who served.
55. This class ("Class") is, or can be initially, defined as follows:
 - a. All persons who, within applicable statutory limitations periods, were injured in automobile accidents while a driver or passenger in an automobile insured by USAA, or who were members/insureds of USAA and whose policy covered them; and
 - b. The insurance policy provided by USAA covered MedPay, PIP, First Party Benefits, Medical Expense Benefits, Automobile Death and Disability, or any other first-party medical coverage (collectively referred to as "Medpay"); and
 - c. Who submitted claims for Medpay benefits within January 1, 2005, through the present, and
 - d. Who had bills for health care expenses submitted to review by Auto Injury Solutions, or its parents, subsidiaries or affiliates, which recommended denial of payment and/or partial denial of payment, based upon:
 - i. A written AIS "Physician Review," and
 - ii. USAA denied payment of all, or a portion, of benefits based upon AIS's recommendation.
56. In addition to the foregoing national Class, there is a subclass of Oregon insureds

(“Oregon Subclass”) which may be defined as follows:

- a. All persons who, within the past six years, were injured in automobile accidents while a driver or passenger in an automobile insured by USAA under an Oregon Policy, or who were members/insureds of USAA under an Oregon Policy, and whose PIP policy covered them; and
- b. Who submitted claims for PIP benefits within January 1, 2005, through the present, and
- c. Who had bills for health care expenses submitted to review by Auto Injury Solutions, or its parents, subsidiaries or affiliates, which recommended denial of payment and/or partial denial of payment, based upon:
 - i. A written AIS “Physician Review,” and
 - ii. USAA denied payment of all, or a portion, of benefits based upon AIS’s recommendation.

57. This action is brought and may properly be maintained as a class action.

58. The proposed Class and Oregon Subclass is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiffs at this time, Plaintiffs are informed and believe that the proposed Class and Oregon Subclass include hundreds, if not thousands of members throughout the United States.

59. Class treatment is appropriate in this case because (1) it involves the legality of uniform policies and practices that defendants applied to all members of the proposed Classes; and (2) there are numerous common questions of law and fact that exist as to all members of the proposed Classes which predominate over any questions that affect only individual members of the proposed Class and Oregon Subclass. These common legal or factual questions include:

- a. Whether the file reviews created by AIS are in fact individually written by appropriate physicians, or by the physicians who purportedly sign them.

- b. Whether the claims denials by USAA and AIS are the product of false and inappropriate claims handling and/or investigative techniques.
 - c. Whether USAA unreasonably put its own interests ahead of that of its insureds.
 - d. The meaning of the policy's terms "reasonable and necessary."
 - e. Whether USAA's denial of PIP benefits constitutes a breach of contract.
 - f. Whether USAA's breach of contract met USAA's obligation of good faith and fair dealing.
 - g. For the Oregon Subclass, whether USAA has breached its contract with Oregon policyholders by basing their denials on File Reviews which contradict the applicable practice and utilization guidelines for treating physicians.
60. Plaintiffs' claims are typical of the proposed Class and Oregon Subclass members' claims. Plaintiffs and the Classes purchased or were covered by PIP and/or Med Pay insurance offered by USAA. Plaintiffs and the Classes were physically injured in covered accidents or events, and sought medical treatment as a result. Plaintiffs and the Classes sustained injuries arising out of Defendants' common course of conduct of denying their PIP or MedPay claims based on false Reports. Plaintiffs are, therefore, no different in any material respect from any other Class or Subclass member, and the relief sought is common to the Class and Oregon Subclass.
61. Plaintiffs will fairly and adequately represent and protect the interests of the proposed Class and Oregon Subclass. Plaintiffs are adequate representatives of the Classes and have no conflict or adverse interest to the proposed Classes.

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62. All claims on behalf of the proposed Class and Oregon Subclass, including the claims of the Plaintiffs, arise from the same scheme and practice and are based on the same legal theories. The issues that affect Plaintiffs and the proposed Classes predominate over those that affect only individual members of the proposed Class and Oregon Subclass.
63. A class action is a superior means for a fair and efficient adjudication of the matters at issue because individual joinder of all members of the proposed Class and Oregon Subclass is impracticable. Additionally, the damages suffered by any individual member of the proposed Classes may be relatively small, making the burden and expense of individual litigation difficult or prohibitive. Furthermore, the nature of the alleged cost containment scheme orchestrated by the defendants is such that individual class members may be unaware of the fraud and thus unaware that their legal rights have been violated. Moreover, individual adjudication of claims of the members of the proposed Classes presents the possibility of inconsistent and contradictory judgments.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Breach of Contract)

64. Plaintiffs hereby repeat, re-allege, and restate the foregoing as if fully set forth herein.
65. The policies of insurance between defendant USAA and Plaintiffs, either directly or through proper assignment, constitute lawfully binding contracts.
66. Plaintiffs have paid their premiums to defendant USAA in order to maintain PIP and/or Med Pay coverage, and have otherwise satisfied all other conditions precedent.

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67. Plaintiffs have been injured in a covered event and have demanded performance under the contracts. Defendant USAA's failure to perform as required under the contract constitute a breach thereof.
68. Defendants USAA, AIS, Dr. Clark Wolf, III, and Dr. Ross Hart, engaged in the same course of conduct in applying the cost containment scheme to Plaintiffs, and members of the Class and Oregon Subclass, and did breach the contract with Plaintiffs, and members of the Class and Oregon Subclass, by denying payment of PIP and/or Med Pay claims without regard or determination of the reasonableness or necessity of the treatment received.
69. For the Oregon Subclass, Defendants USAA, AIS, Dr. Clark Wolf, III, and Dr. Ross Hart denied PIP benefits without regard to Oregon statute, Oregon Administrative Rules, and Oregon practice and utilization guidelines, and therefore, Defendants' denials are presumptively unreasonable and constitute a breach of contract.
70. Plaintiffs have sustained actual damages as a result of defendants USAA and AIS's breach.
71. Plaintiffs are entitled to reasonable attorneys' fees under O.R.S. 742.061 and other applicable states' statutes.

SECOND CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing ("Bad Faith"))

72. Plaintiffs Brittney Bathurst and Samantha Jones hereby repeat, re-allege, and restate the foregoing as if fully set forth herein.

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73. Defendants USAA, AIS, and Dr. Ross Hart, at all relevant times, owed and continue to owe Plaintiffs, and all others similarly situated, an implied duty of good faith and fair dealing.
74. Defendants USAA, AIS, and Dr. Ross Hart's actions were in breach of the duty of good faith and fair dealing, and therefore constitute "bad faith."
75. Defendants USAA, AIS, and Dr. Ross Hart's bad faith conduct consists of, but is not limited to:
- a. Failing to fully, fairly and promptly investigate Plaintiffs' claims;
 - b. Unreasonably denying and/or withholding benefits under the policy;
 - c. Uniformly misconstruing policy language against Plaintiffs;
 - d. Wrongfully reducing or denying benefits due and payable under the policy;
 - e. Creating unreasonable burdens for payment and benefits; and
 - f. Engaging in a pattern and practice of similar bad faith claims handling practices.
 - g. Violating applicable state statutes and administrative rules, including, but not limited to RCW 48.30.015 and WAC 284-30-330, and their equivalents in other states, and by engaging in unfair practices by violating WAC 284-30-395.
76. Plaintiffs and the members of the proposed Class have sustained actual damages as a result of Defendants' bad faith conduct.
77. Defendants' actions entitle Plaintiffs Bathurst and Jones, and others similarly situated, to payment or reimbursement of legally incurred but unpaid medical expenses.

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78. Defendants' actions further entitle Plaintiffs Bathurst and Jones, and others similarly situated, to an award of general and consequential damages for Defendants' bad faith conduct.
79. Defendants' actions were undertaken with ill intent and/or in conscious disregard for the harm to be caused to the Plaintiffs and others similarly situated.
80. Defendants' actions, for the reasons afore-mentioned, further entitle Plaintiffs Bathurst and Jones, and others similarly situated to an award of punitive damages.
81. Plaintiffs are also entitled to their reasonable attorneys' fees pursuant to applicable states' statutes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other members of the Class, request judgment and relief on all causes of action as follow:

AS TO THE FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT:

- a. An order certifying that this action is properly brought and may be maintained as a Class Action under FRCP 23, that Plaintiffs be appointed as Class Representatives, and Plaintiffs' counsel be appointed Class Counsel.
- b. A judgment entered against Defendants, jointly and severally, and in favor of Plaintiffs and each member of the Class they represent, determining that Defendants have breached their contracts with Plaintiffs and the proposed Class and Oregon Subclass;
- c. For an award of the actual damages sustained thereby;

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- d. For Plaintiffs' reasonable fees and costs, pursuant to ORS 742.061 and other states' applicable law; and
- e. For such additional and further relief as the court deems proper.

AS TO THE SECOND CAUSE OF ACTION FOR BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING ("BAD FAITH"):

- a. An order certifying that this action is properly brought and may be maintained as a Class Action under FRCP 23, that Plaintiffs Bathurst and Jones be appointed as Class Representatives, and Plaintiffs' counsel be appointed Class Counsel.
- b. A judgment entered against Defendants, jointly and severally, and in favor of Plaintiffs and each member of the Class they represent, determining that Defendants have breached their covenant of good faith and fair dealing with Plaintiffs Bathurst and Jones, and the proposed Class;
- c. For an award of the actual damages sustained thereby;
- d. For an award of general compensatory damages sustained thereby;
- e. For an award of punitive damages sustained thereby;
- f. For Plaintiffs' reasonable fees and costs, pursuant to R.C.W. § 48.30.015 and other states' applicable laws; and
- g. For such additional and further relief as the court deems proper.

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JURY DEMAND

Plaintiffs demand a trial by jury on all issues which may be so tried.

DATED this ____ day of May, 2011.

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