

No.

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**In the**  
**Supreme Court of the United States**

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ALLAN M. LEAVITT,  
*Petitioner,*

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION; STUART PARKER, individually and as Chief Operating Officer of United Services Automobile Association; WAYNE PEACOCK, individually and as Chief Operating Officer of United Services Automobile Association; BOARD OF DIRECTORS, UNITED SERVICES AUTOMOBILE ASSOCIATION, collectively and individually; GEICO INDEMNITY INSURANCE COMPANY; TONY NICELY, individually and as Chairman, President, CEO, and Treasurer of GEICO Indemnity Company; TONY NICELY, as a member of the Board of Directors of Berkshire Hathaway, Inc.; BOARD OF DIRECTORS, GEICO INSURANCE COMPANY, collectively and individually; THE COMMERCE INSURANCE COMPANY; CYNTHIA A. PHILLIPS; BERKSHIRE HATHAWAY, INC.; WARREN BUFFETT, Chairman, CEO, and Principal Shareholder of Berkshire Hathaway, Inc.; BOARD OF DIRECTORS, BERKSHIRE HATHAWAY, INC., collectively and individually; SMITH & BRINK, P.C.; DAVID BRINK, individually and as Director of Smith & Brink, P.C.; LYNN G. McCARTHY, individually and as employee of Smith & Brink, P.C.; LAMONTAGNE, SPAULDING & HAYES, LLP; CATHRYN SPAULDING, individually and as Partner of Lamontagne, Spaulding, & Hayes, LLP; Ronald R. Harding; J. DOE, 1 – 100,  
*Respondents.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the First Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED

Did the Court of Appeals violate Petitioner's rights when it relied on the Rooker-Feldman doctrine as authority and affirmed dismissal his Complaints for Declaratory Relief, Injunctive Relief, and Specific Performance under a contract purchased in 2020 by ruling that these causes of action, requests for relief, and new defendants were previously litigated in state court in 2013 (a factual and legal impossibility) as there is no state court litigation or judgment on any of the causes of action, requests for relief, or defendants raised in District Court violating this Court's ruling in Lance v. Dennis, 546 U.S. 459 (2006)?

## LIST OF PARTIES

- 1) Allan M. Leavitt, Petitioner  
and
- 2) UNITED SERVICES AUTOMOBILE ASSOCIATION
- 3) STUART PARKER, individually and as Chief Operating Officer of United Services Automobile Association
- 4) WAYNE PEACOCK, individually and as Chief Operating Officer of United Services Automobile Association
- 5) BOARD OF DIRECTORS, UNITED SERVICES AUTOMOBILE ASSOCIATION, collectively and individually
- 6) GEICO INDEMNITY INSURANCE COMPANY
- 7) TONY NICELY, individually and as Chairman, President, CEO, and Treasurer of GEICO Indemnity Company
- 8) TONY NICELY, as a member of the Board of Directors of Berkshire Hathaway, Inc.
- 9) BOARD OF DIRECTORS, GEICO INSURANCE COMPANY, collectively and individually
- 10) THE COMMERCE INSURANCE COMPANY;
- 11) CYNTHIA A. PHILLIPS;
- 12) BERKSHIRE HATHAWAY, INC.
- 13) WARREN BUFFETT, Chairman, CEO, and Principal Shareholder of Berkshire Hathaway, Inc.
- 14) BOARD OF DIRECTORS, BERKSHIRE HATHAWAY, INC., collectively and individually
- 15) SMITH & BRINK, P.C.
- 16) DAVID BRINK, individually and as Director of Smith & Brink, P.C.
- 17) LYNN G. McCARTHY, individually and as employee of Smith & Brink, P.C.
- 18) LAMONTAGNE, SPAULDING & HAYES, LLP
- 19) CATHRYN SPAULDING, individually and as Partner of Lamontagne, Spaulding, & Hayes, LLP
- 20) Ronald R. Harding
- 21) J. DOE, 1 – 100, Respondents

## TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
LIST OF PARTIES.....	ii
TABLE OF AUTHORITIES CITED.....	v
OPINIONS BELOW.....	2
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
PREFACE AND INTRODUCTION.....	4
STATEMENT OF THE CASE.....	5
I. <u>Lance v. Dennis</u> , 546 U.S. 459 (2006) Is Dispositive and Controlling.....	5
II. Application of Rooker-Feldman Denied Petitioner of Due Process.....	7
A. Not One Count in the DC Complaint Was Litigated in State Court, Not One Defendant Was Sued for the Causes of Action Brought in the DC, and Not One Request for Relief Sued for in DC was Litigated in State Court.....	12
1. DC Count I – The DC Count for Declaratory Relief Not Litigated in State Court.....	12
2. DC Counts XV, XVI – The DC Counts for Specific Performance/Injunctive Relief Not Litigated in State Court.....	13
3. DC Counts II – XIV – The DC Counts in Part Second Not Litigated in State Court.....	13
B. DC Defendants Not Litigated in State Court.....	14
III. Notwithstanding this Court's concurrence with <u>Evans</u> , <u>Rooker-Feldman</u> does not Apply in this Case as not One Count in the DC Complaint was Litigated in State Court.....	14
REASONS FOR GRANTING THE PETITION.....	16
CONCLUSION.....	16

## INDEX TO APPENDICES

District Court, Memorandum and Order dated July 16, 2021.....	1
District Court Order of Dismissal date July 16, 2021.....	18
Objected-to and Protested Court-Ordered Amended Complaint for Declaratory Relief, Part First, and Amended Complaint, Part Second, Verified Amended Complaint, Part Third.....	20
M.G.L. ch. 90, § 3.....	73
M.G.L. ch. 231A, § 1.....	80
M.G.L. ch. 231A, § 2.....	82
M.G.L. ch. 231A, § 3.....	84
United States Court of Appeals for the First Circuit, Judgment.....	85
State Court Complaint September 16, 2013.....	87
<u>Evans v. Cordray</u> , 424 Fed.Appx. 537, 2011 WL 2149547.....	134

## TABLE OF AUTHORITIES CITED

### Cases

<u>District of Columbia Court of Appeals v. Feldman</u> , 460 U.S. 462 (1983)	1, 4, 5, 6, 7, 8, 9, 10, 13, 14, 16, 17
<u>Evans v. Cordray</u> , 424 Fed.Appx. 537, 2011 WL 2149547	8, 9, 10, 14
<u>Exxon Mobil Corp. v. Saudi Basic Indus. Corp.</u> , 544 U.S. 280, 292 (2005)	6, 7, 10
<u>Gulla v. North Strabane Twp.</u> , 146 F.3d 168, 1998 U.S. App. LEXIS 11909	6
<u>Klimowicz v. Deutsche Bank Nat'l Tr. Co.</u> , 907 F.3d 61, 66–67 (1st Cir. 2018)	16
<u>Lance v. Dennis</u> , 546 U.S. 459 (2006)	4, 5, 17
<u>Marks v. Tennessee</u> , 554 F.3d 619, 622 (6th Cir. 2009)	10
<u>Rooker v. Fidelity Trust Co.</u> , 263 U.S. 413 (2923)	1, 4, 5, 6, 7, 8, 9, 10, 13, 14, 16, 17
<u>Whiteford v. Reed</u> , 155 F.3d 671, 674 (3d Cir. 1998)	5, 6
<u>Wright v. North Carolina</u> , 415 U.S. 936 (1974)	16

### Statutes

The Constitution of the United States, Amendment Fourteen	3, 4, 7, 13, 16, 17
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Petitioner, Allan M. Leavitt, respectfully requests that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit (CA1) where an appeal of a District Court (DC) Judgment was affirmed on April 7, 2022. The DC denied and dismissed all 27 counts of the DC Complaint invoking the Rooker-Feldman doctrine as the sole grounds which included, *inter alia*, Complaints for Declaratory Relief, Injunctive Relief, and

Specific Performance under a contract purchased in 2020.

## **OPINIONS BELOW**

The precedential opinion of the CA1, Leavitt v. United Services Automobile Association, et al., \_\_ Fed. 3D, \_\_ (2022), is included in Petitioner Appendix 132 – 133 (PA 132-133 hereafter) wherein the CA1 agreed with the DC “for substantially the reasons set forth in the district court's July 16, 2021 decision” ruling that “..the plaintiff's federal suit is, in effect, an end-run around a final state-court judgment” and the District Court Memorandum and Order with which it concurred dated July 16, 2021 appears at PA 1 – 19.

## **JURISDICTION**

Jurisdiction of the Supreme Court of the United States (SCOTUS) is found in Article III of the Constitution which mandates “judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time may ordain and establish.”

## **NOTIFICATION UNDER 29.4(c) THAT 28 U. S. C. § 2403(b) MAY APPLY**

Notification under SCOTUS Rule 29.4(c) that this case involves a proceeding in this Court in which the constitutionality of the Mass. statute is drawn into question, and neither the State nor any agency, officer, or employee thereof is a party, and that 28 U. S. C. § 2403(b) may apply and notice has been served on the Attorney General of the Commonwealth of Mass. and pursuant to 28 U. S. C. § 2403(b), and this certifies that to the best of Petitioner's understanding that the

Mass. Court has not certified to the State Attorney General the fact that the constitutionality of M.G.L. ch. 231A was drawn into question.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Constitution of the United States, 14<sup>th</sup> Amendment.

The Equal Protection Clause provides:

nor shall any State....deny to any person within its jurisdiction the equal protection of the law.

The Due Process Clause provides:

No person shall...be deprived of ... property, without due process of law.

M.G.L. ch. 231A, §§ 1 - 3 provide:

Section 1. The supreme judicial court, the superior court, the land court and the probate courts, within their respective jurisdictions, may on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought ...

Section 2. The procedure under section one may be used to secure determinations of right, duty, status or other legal relations under deeds, wills or written contracts or other writings constituting a contract or contracts or under the common law, or a charter, statute, municipal ordinance or by-law, or administrative regulation, including determination of any question of construction or validity thereof...

Section 3. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceedings or for other sufficient reasons. The reasons for such refusal shall be stated in the record.

## PREFACE AND INTRODUCTION

A split in the Circuits exists in the application of the Rooker-Feldman doctrine. One application affords due process and equal protection. The other denies it. Rooker-Feldman is wielded by CA1 improvidently and in violation of Lance v. Dennis, 546 U.S. 459 (2006).

The Sixth Circuit Court of Appeals (CA6) holds the Rooker-Feldman doctrine [1] does not bar claims and **requests for relief** in federal court that were *not previously litigated*, [2] does not bar **defendants** *not previously sued*, [3] does not bar **declarations** of law *not previously raised* for which relief was sought, in a state court.

However, CA1 held in this case that the Rooker-Feldman doctrine [1] *does bar claims* and **requests for relief** in federal court that were *never previously litigated*, [2] *does bar defendants* that were *never previously sued*, and [3] *does bar declarations* of law *not previously raised*, in a state court. No *evidence* or *analysis* exists in the DC or CA1 rulings to justify these claims were previously litigated in a state court action. *See PA 87 – 131.*

Resolution of the the scope of Rooker-Feldman is required as these matters are certain to be repeated and the CA1 refuses to abide Lance.

Complaints for declaratory relief, injunctive relief, and specific performance were brought in DC for the first time November 30, 2020. They were ignored by the DC. Nonetheless, the DC claimed these causes of action

and requests for relief *were previously litigated in a state court*. A conclusion factually and legally impossible. No evidence to support their finding exists. None were provided by the DC or CA1. And none by the Appellees herein.

Mass. statute has required *non-Mass.-resident* motor vehicle owners to maintain Mass. PIP provisions as part of their policy of *liability* insurance. The Insurers and all Appellees herein disagree. But the DC refused to address Petitioner's right to a declaration, injunctive relief, and request for assurances of a never previously litigated insurance contract, and with a never previously sued under contract insurer, which was never litigated in any court. Let alone a state court

### **STATEMENT OF THE CASE**

#### **I. LANCE v. DENNIS, 546 U.S. 459 (2006) Is DISPOSITIVE AND CONTROLLING.**

This Court has already ruled in Lance that “where a state action does not reach the merits of a plaintiff’s claims, then Rooker-Feldman does not deprive the federal court of jurisdiction.” Whiteford v. Reed, 155 F.3d 671, 674 (3d Cir. 1998).” None of the Defendants in the DC action that were sued for the first time were properly dismissed under the Rooker-Feldman doctrine because the state action did not meet the merits of the DC claims. Any of them. Note the fourteen defendants in DC not sued before. Anywhere.

And it is clear that the Rooker-Feldman doctrine never prevented the district courts from exercising subject matter jurisdiction over claims never

adjudicated in state courts. See e.g., Gulla v. North Strabane Twp., 146 F.3d 168, 1998 U.S. App. LEXIS 11909 and has held that "...this court has consistently held that where a state action does not reach the merits of a plaintiff's claims, then Rooker-Feldman does not deprive the federal court of jurisdiction." Whiteford v. Reed, 155 F.3d 671, 674 (3d Cir. 1998).

In the case at bar, Petitioner Leavitt's Defendants, now Respondents, were plainly not parties to the underlying state court proceeding as the state court proceeding arose from a November 24, 2010 automobile collision. The DC action arose from an insurance contract purchased in 2020 from a different insurer after the state court action was finished and included defendants (Respondents here) that were not part of the state court action.

Rooker-Feldman applies only in cases "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." See Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005). None of the causes of action brought in the District Court in the case at bar were counts brought in the state court.

"A more expansive Rooker-Feldman rule would tend to supplant Congress' mandate, under the Full Faith and Credit Act, 28 U. S. C. §1738, that federal courts 'give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which

the judgments emerged.” Baker v. General Motors Corp., 522 U. S. 222, 246 (1998) (quoting Kremer v. Chemical Constr. Corp., 456 U. S. 461, 466 (1982)).”

And this court has previously “warned that the lower courts have at times extended Rooker-Feldman “far beyond the contours of the Rooker and Feldman cases, overriding Congress’ conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U. S. C. §1738.” 544 U. S., at 283. Rooker-Feldman, we explained, is a narrow doctrine, confined to “cases brought by state-court losers complaining of injuries caused by state-court judgments...Exxon Mobil, 544 U. S., at 284. It is time to put an end to the broad application of Rooker-Feldman which violates due process.

## **II. APPLICATION OF ROOKER-FELDMAN DENIED PETITIONER OF DUE PROCESS.**

There is a split in the Circuits in the application of the Rooker-Feldman doctrine which requires resolution. And even if SCOTUS concludes there is no split, Rooker-Feldman does not bar any claim filed in the DC action.

Petitioner brought suit in DC on November 30, 2020 (“2020 DC suit”). *See PA 20 - 72.* The 2020 suit involved an October, 2020 contract purchased from GEICO Indemnity Insurance Company (“GEICO”) and as a member of United Services Automobile Association (“USAA”) at that same time. *See PA 38.*

The suit sought declaratory relief, specific performance and injunctive relief.

The DC and CA1 held the 2020 DC suit was litigated in state court. *See PA 18* and *See PA 132 – 133*. Such a finding is factually and legally impossible. In fact, there is neither a complaint nor judgment in state court on any cause of action or count in the DC complaint. Nor did the DC, CA1, or Respondents produce any.

It is a fact that the 2013 state court law suit (“2013 Mass. suit”) was against different defendants, for causes of action arising in 2010, under contracts effective in 2010, and seeking different damages incurred in 2010. *See PA 87 – 131*. There is no cause of action against these defendants in the DC action. They were never sued in any state court for the Counts raised in the DC suit. Yet, the DC court and CA1 said they were without any evidence in support. *See PA 18* and *PA 132 – 133*.

At no time in DC or in the CA1 was a comparison of the Counts in the 2020 DC suit ever compared to any state court action or judgment. *See PA 87 – 131* for the state court action and *PA 20 – 72* for the DC action. This Court will find no comparison in the DC Judgment or the CA1 Ruling. *See PA 1 – 19* and *PA 132 – 133*.

And to be clear, while the CA6 *permits* federal law suits for declarations, new defendants, and new causes of action under Rooker-Feldman, the CA1 invoked the Rooker-Feldman doctrine to *deny* them. “The problem with the district court’s analysis is that it determined the source of [Leavitt’s] injury without reference to his request for relief.” *See Hamilton*, 540 F.3d at 372. quoting Evans v. Cordray, 424 Fed.Appx. 537, 2011 WL 2149547.

Further, in Evans, the Court noted that "...the plaintiff's complaint contained "no demand to set aside the verdict or the state court ruling" and instead "[sought] injunctive and declaratory relief prohibiting defendants-appellees from using 'preaching and/or handing out religious tracts' as a basis for 'enforcing or attempting to enforce' Ohio Administrative Code § 128-4," this court concluded that "the *Rooker-Feldman* doctrine [was] inapplicable to th[e] lawsuit." *Id.* At 598." Likewise, Petitioner's claim in this case at bar contained no demand to set aside the verdict or the state court ruling. But the DC and CA1 concluded it did.

And just as "Evans [was] not seeking relief from the state domestic court's decisions to deny him leave to proceed on May 27, 2009, and June 18, 2009 [and] Instead, Evans requests 'prospective and permanent injunctive relief against Richard Cordray, in his official capacity...', Petitioner seeks declaratory relief against "GEICO" under contract with them for the first time, as a Member of USAA for the first time, and causes of action and against defendants he has never previously sued in any court. Evans.

"When the litigant is challenging the constitutionality of a rule that was applied to him, but is not asking to correct or revise the determination that he violated the rule, Rooker-Feldman is no obstacle to the maintenance of [the] suit.") (internal quotation marks and citation omitted); *cf. Hood*, 341 F.3d at 598; *Buckley*, 997 F.2d at 227. Evans. The same applies to the Petitioner, however, the CA1 denies him his rights while the 6CA does not.

The CA6 clearly states:

In general, Rooker-Feldman precludes “lower federal courts . . . from exercising appellate jurisdiction over final state-court judgments,” Marks v. Tennessee, 554 F.3d 619, 622 (6th Cir. 2009) (internal quotation marks and citation omitted), “[b]ecause [28 U.S.C.] § 1257, as long interpreted, vests authority to review a state court’s judgment solely in [the Supreme] Court,” Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 292 (2005). But the doctrine does not bar “a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court.” *Id.* at 293. It applies only to the “narrow ground” of “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Id.* At 284. Evans.

And the Evans Court concluded:

We thus determine whether Rooker-Feldman bars a claim by looking to the “source of the injury the plaintiff alleges in the federal complaint.” McCormick v. Braverman, 451 F.3d 382, 393 (6th Cir. 2006). If the source of the plaintiff’s injury is the state-court judgment itself, then the Rooker-Feldman doctrine bars the federal claim. *Id.* “If there is some other source of injury, such as a third party’s actions, then the plaintiff asserts an independent claim.” *Id.*; see also Lawrence v. Welch, 531 F.3d 364, 368-69 (6th Cir. 2008), cert. denied 130 S. Ct. 233 (2009); Hamilton v. Herr, 540 F.3d 367, 372 (6th Cir. 2008). Evans.

The DC and CA1 failed to look at the source of the injury complained of by Petitioner. The source was not the state court judgment in any way. All counts in the DC suit contained other sources of injury, including, but not limited to, third party actions. All counts in the DC suit were independent and new claims.

No claims in the DC action had been previously litigated. Yet, with respect to reliance on Rooker-Feldman for dismissal, the CA1 said “We agree with the District of for essentially the same reasons.” But neither the District nor the Court if

Appeals stated even one reason they concluded the counts and requests for relief were previously litigated. *See* PA 1 – 19 and PA 132 – 133.

The Petitioner demanded a declaration in DC that Mass. statute requires PIP on non-resident vehicles and policies of liability insurance issued by the within insurers provide PIP, however, the DC *refused* Petitioner's right to declare the law without “reason(s)” “stated in the record.” Petitioner travels from Vermont into Mass. frequently for family, medical treatment, and other things and has a need and right to know his “right(s), dut(ies), status and other legal relations” M.G.L. ch. 231A, § 3. His claims will be repeated.

It is imperative that SCOTUS conduct a search of LEXIS or any other legal research engine to determine their legal rights, duties, status, and other legal relations when in Mass. operating their automobiles. Petitioner avers that you will not be able to know them as this case reflects Mass. statute obligates you to “maintain” compulsory insurance which includes PIP. But that law has never been declared. And if Mass. law does not require PIP on non-resident vehicles, it would have declared that law and dismissed this action from DC with a declaration.

A quick search of the laws in Mass. as to whether there has been a declaration that the Mass. statute requires PIP on non-resident policies of liability insurance will lead to the conclusion that there is no such declaration. But it is the law. A declaration stating just that was requested in

DC. It was ignored. The CA6 would not have ignored that declaration nor any one of the other 26 counts in the Amended Complaint. *See PA 20 – 72.*

**A. Not One Count in the DC Complaint Was Litigated in State Court, Not One Defendant Was Sued for the Causes of Action Brought in the DC, and Not One Request for Relief Sued for was Litigated in State Court**

**1. DC Count I – The DC Count for Declaratory Relief Not Litigated In State Court**

Petitioner demanded a declaration in DC against “GEICO” as a policyholder under an October, 2020 contract and as a Member of USAA that the DC Court:

[a] declare that Massachusetts statute (M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A) requires *non-resident* motor vehicle owners to “maintain” Massachusetts PIP “provisions” as part of their “policy of liability insurance,” [b] declare that policies of liability insurance issued by “GEICO” and USAA provide Massachusetts PIP “protection,” [c] as well as other declarations referenced in the Prayer for Relief infra or, in the alternative, issue certified questions as requested in the Prayer for Relief. “GEICO” and USAA deny aforementioned averments.

*See PA 38 and PA 68 – 71.* A contract in 2013 was with USAA; not “GEICO.”

This Count in DC was not litigated in a state court action.

The DC complaint and requests for relief are found nowhere in the state court action (*See PA 87 – 131*) as Petitioner never had a contract with “GEICO” prior to 2020 and, it should be obvious, the state court never “declared” the requested relief quoted above. *See the state court action (PA 87 – 131) and compare it with the DC law suit. (PA 68 – 131).*

Accordingly, it is factually and legally impossible that “Leavitt’s federal suit seeks to invalidate the state courts’ judgments...” (*See PA 17*) and

Rooker-Feldman does not bar his claims. And if it does, it is in conflict with the CA6 and denies due process to Petitioner whereas the CA6 would not.

**2. DC Counts XV, XVI – The DC counts for Specific Performance/Injunctive Relief Were Not Litigated In State Court**

Petitioner demanded relief in the form of Specific Performance and Injunctive Relief. *See* PA 65 – 71. They were never addressed by the DC or CA1. They were never plead in a state court action. *See* PA 87 – 131.

Accordingly, it is factually and legally impossible that “Leavitt’s federal suit seeks to invalidate the state courts’ judgments...” (*See* PA 17) and Rooker-Feldman does not apply. And if it does, it is in conflict with the CA6 and denies due process to Petitioner whereas the CA6 would not.

**3. DC Counts II – XIV – The DC Counts in Part Second Not Litigated in State Court**

Petitioner demanded causes of action alleging:

Breach Of Contract Against “GEICO” and USAA  
Negligence In Contract Against “GEICO” and USAA  
Respondeat Superior Against Warren Buffett, Chairman, CEO, and Principal Shareholder, Of Berkshire Hathaway, Inc., “GEICO,” USAA, Berkshire, Smith & Brink, P.C., and Lamontagne, Spaulding & Hayes, LLP  
Tortious Bad Faith, Contractual Bad Faith, Violation Of Implied Covenant Of Good Faith and Fair Dealing Under Vermont Law, Against “GEICO” and USAA  
Negligent Hiring and Continued Negligent Hiring Against “GEICO” and USAA, Smith & Brink, P.C., and Lamontagne, Spaulding & Hayes, LLP  
Negligent Supervision Against All Defendants, Except Phillips Fraud, Conspiracy to Commit Fraud, Attempt to Commit Fraud, and Misrepresentation Against All Defendants  
Negligent, Willful, Wanton and Intentional Interference With Contractual Relations Against All Defendants

Aiding and Abetting Against All Defendants  
Breach Of Fiduciary Duty Against “GEICO” and USAA  
Immediate and Ongoing Payment Of Attorney Fees Against All Defendants  
For Prosecution Of Part First  
Breach of Fiduciary Duty and Aiding and Abetting Against J. Doe, 1 – 100,  
“GEICO” and USAA  
Violations of Racketeer Influenced Corrupt Organizations Act Against All  
Defendants

*See* PA 39 – 65. These Counts against these Defendants, for these requested reliefs, are found nowhere in the state court action. *See* PA 87 – 131. None were ever plead before November 30, 2020. They were never adjudicated anywhere in any state court against these Defendants. They were not adjudicated in DC. That fact was never addressed by the DC or CA1. Rooker-Feldman was improvidently applied and conflicts with the application by the CA6.

#### **B. DC Defendants Not Litigated in State Court**

Numerous Defendants in the DC action were sued nowhere prior to the DC action. Compare the Defendants in the state and federal complaints. Rooker-Feldman was improvidently applied and conflicts with the application by the CA6.

#### **III. NOTWITHSTANDING THIS COURT'S CONCURRENCE WITH EVANS, ROOKER-FELDMAN DOES NOT APPLY IN THIS CASE AS NOT ONE COUNT IN THE DC COMPLAINT WAS LITIGATED IN STATE COURT.**

Should SCOTUS not agree with the rationale in Evans, it should still review this matter to clarify the scope of application of the Rooker-Feldman doctrine.

**Factual Impossibility.** The DC Complaint involved causes of action arising on different, and later, dates than the 2010 state-court action.

**Legal Impossibility.** It is legally impossible that an insurance contract purchased in 2020 was litigated prior to the date that it was purchased.

Why not to declare the law? If the defendants were right, the case would have been dismissed by the district court in 2020. There would be no need to rely on the Rooker-Feldman doctrine. The matter would be res adjudicata.

This Court will find nowhere in the DC papers any question from the judge to the insurers if they agree with Petitioner's averments that Mass. PIP is required on non-resident motor vehicles or if they are paying those statutorily-mandated protections for which their policyholders are paying. You will find nowhere in the DC papers any need for the insurers to admit or deny they are paying Mass. PIP for passengers in non-Mass. resident vehicles. And the DC wishes this Court to believe Petitioner's demand for a declaration of statute and contract have been litigated (resolved) in a state court action? The causes of action and reliefs plead in the DC are totally different than those plead in the state court. As are the defendants.

Many defendants named in the DC action were dismissed as having been litigated in a state court, however, neither the DC Judge What is the reason the DC Court and CA1 address that? What could have been their justification?

Where is the judgment against the judges, court personnel, RICO participants...? In what state court was the RICO count brought? The conspiracy to commit fraud? Etc. No evidence shows they were previously adjudicated.

The 2020 insurance contract was not part of any prior state court action (*See*

PA 87 – 131). The DC specific performance and injunctive relief action was never addressed by the DC judge let alone declared.

## **REASONS FOR GRANTING THE PETITION**

The reasons for granting the petition is to assure consistency in the application of the Rooker-Feldman doctrine and to avoid violations of rights of due process and equal protection of the laws.

## **CONCLUSION**

The scope and reach of Rooker-Feldman to deprive citizens of their rights to due process and equal protection of the laws must be clarified by SCOTUS as there exists a split in the circuits as to its scope and reach. It is factually and legally impossible that “Leavitt’s federal suit seeks to invalidate the state courts’ judgments...” (See PA 17) and Rooker-Feldman does not apply. And if it does, it is in conflict with the CA6 and denies due process to Petitioner whereas the CA6 would not have denied him. And one of the most important functions of the highest court under our Constitution is to clarify and enforce a unified interpretation and understanding of our laws among the intermediate courts of appeal. See Testimony of William Van Devanter, Hearings before Subcomm. of Sen. Comm. On Judiciary, 68 Cong. 1<sup>st</sup> Sess., at 29 – 30 (1924) and Wright v. North Carolina, 415 U.S. 936 (1974), cert. Denied (Douglas J. dissenting).

The Court erred when it misinterpreted and misapplied Klimowicz v.

Deutsche Bank Nat'l Tr. Co., 907 F.3d 61, 66–67 (1st Cir. 2018) “the critical datum is whether the plaintiff's federal suit is, in effect, an end-run around a final state-court judgment.” *See* PA 86 and PA 16 as all causes of action, Defendants, etc. are completely different. *See* PA 87 – 131 and compare each count to PA 20 - 72.

Accordingly, the Court of Appeals violated Petitioner's rights when it relied on the Rooker-Feldman doctrine as authority and affirmed dismissal his Complaints for Declaratory Relief, Injunctive Relief, and Specific Performance under a contract purchased in 2020 by ruling that these causes of action, requests for relief, and new defendants were previously litigated in state court in 2013 (a factual and legal impossibility) as there is no state court litigation or judgment on any of the causes of action, requests for relief, or defendants raised in District Court.

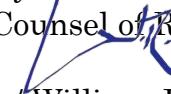
The wholesale dismissal of defendants, causes of action, declarations, and requests for relief never adjudicated previously, violates due process. And because Lance is dispositive and controlling in this case as to defendants and causes of action, this Petition should be granted.

From his pen or in his head, slowly or swiftly as his capacities admit, out of the murk the pattern emerges, his pattern, the expression of what he has seen and what he has therefore made, the impress of his self upon the not-self, upon the hitherto formless material of which he was once but a part and over which he has now become the master.

Billings Learned Hand, Commencement Speech, Bryn Mawr College, 1927.

Mass. statute requires Mass. PIP on non-resident motor vehicle policies of liability insurance. The DC refused to declare that law or even address the Petitioner's right to it under M.G.L. ch. 231A, §§ 1 - 3.

Respectfully Submitted,

Petitioner,  
Allan M. Leavitt,  
By His Attorney and  
Counsel of Record,  
  
/s/ William J. Ruotolo

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Dated: June 25, 2022

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ALLAN M. LEAVITT, \*  
\*  
Plaintiff, \*  
\*  
v. \* Civil Action No. 1:20-cv-12130-IT  
\*  
UNITED SERVICES AUTOMOBILE \*  
ASSOCIATION, *et al.*, \*  
\*  
Defendants. \*

MEMORANDUM & ORDER

July 16, 2021

TALWANI, D.J.

Pending before the court are Defendants' Motions to Dismiss [#51, #62, #64, #70, #74, #77, #80, #82] Plaintiff Allan Leavitt's Amended Complaint [#17]. For the following reasons, the motions are ALLOWED for lack of subject matter jurisdiction.

**I. Background<sup>1</sup>**

**A. Car Accident and Bodily Injury Claims**

This case originally arose out of a "low speed, soft impact" car accident in Boston in 2010 between Cynthia Phillips, a Massachusetts resident, and Melissa Aebersold, a Vermont resident. Leavitt v. Phillips, 95 Mass. App. Ct. 1125, 134 N.E.3d 132, 2019 WL 4019952, at \*3,

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<sup>1</sup> Leavitt's Amended Complaint [#17] requests that the court take judicial notice of the documents filed in and associated with his 2013 state court litigation in Massachusetts. Am. Compl. ¶ 1 [#17]; see also Opp. 6 [#59] ("All documents involving, and associated with, the 2013 state court action . . . are incorporated herein . . . "); Opp. 8 [#84] (same); Opp. 7 [#86] (same); Opp. 7 [#95] (same); Opp. 7 [#96] (same); Opp. 6 [#97]; Opp. 7 [#98] (same). The court accordingly draws background facts from the records in those proceedings.

review denied, 483 Mass. 1105, 135 N.E.3d 198 (2019), and cert. denied, 140 S. Ct. 1216 (2020). Leavitt, also a Vermont resident, was a passenger in Aebersold’s car. Id. at \*1.

At the time of the accident, Phillips’ car was insured under a Massachusetts policy by the Commerce Insurance Company (“Commerce”). Id. at \*3 n.9. Aebersold’s car was insured under a Vermont policy by GEICO Indemnity Company (“GEICO”). Id. at \*1. Leavitt also owned a car, which was not involved in the accident and which was insured under a Vermont policy by United Services Automotive Association (“USAA”). Id.

Sometime after the accident, Leavitt presented bodily injury claims to Commerce, GEICO, and USAA. Id. at \*3. He claimed that the car accident had caused radiculopathy, resulting in pain and numbness in his arms and part of his hands. Id. Settlement negotiations between Commerce and Leavitt were unsuccessful. Id. at \*3 n.9; see also Superior Court Compl. ¶¶ 16-21 [#52-2]. GEICO and USAA denied Leavitt’s claims on the ground that neither policy provided personal injury protection (“PIP”). Leavitt, 2019 WL 4019952, at \*1 & n.5.

B. *State Court Litigation*

1. Suffolk Superior Court

On September 6, 2013, Leavitt filed a lawsuit in Suffolk Superior Court against Phillips, Aebersold, Commerce, GEICO, and USAA. Superior Court Compl. [#52-2]. He asserted negligence against Phillips and claimed that Aebersold had violated Massachusetts law by not purchasing PIP. Id. at ¶ 31-41. Against Commerce, he alleged violations of Massachusetts consumer protection statutes. Id. at ¶ 69-76. And, against GEICO and USAA, he asserted (1) claims for breach of contract arising from the denials of his PIP claims, (2) claims for unfair or deceptive acts and practices under Massachusetts law, (3) claims for bad faith conduct under Vermont law, and (4) claims seeking declaratory judgments that GEICO and USAA were

required to pay his PIP claims. Id. at ¶¶ 56-68, 77-108. In her answer, Phillips asserted a crossclaim against Aebersold for negligence. Leavitt, 2019 WL 4019952, at \*1.

GEICO and USAA both moved for summary judgment. On May 30, 2014, a Superior Court judge granted USAA's motion, reasoning that

Vermont does not require drivers to carry PIP insurance or require Vermont auto insurance policies to include PIP coverage. 23 V.S.A. § 800. Leavitt's Policy does not itself include PIP coverage.

The USAA policy applies to Leavitt's vehicle, not Phillips' or Aebersold's. Leavitt's vehicle was not involved. Nor was he an operator. Under the USAA's out-of-state coverage clause, Leavitt is only entitled to coverage consisting of "the minimum amounts and types of coverages required by law." Because Leavitt was a passenger in a car that he did not own or operate, Massachusetts law does not "require[] him to have PIP coverage. It would counter the express meaning of the words used in the Policy to require USAA to provide Leavitt coverage that he was not "required by law" to have in force.

It follows that the "minimum amounts and types of coverages required by law" of USAA's insured did not include PIP or, indeed, any coverages required by [Mass. Gen. Laws ch.] 90, § 34A, which apply to owners and operators. USAA's out-of-state coverage therefore does not apply to this accident.

Leavitt v. Phillips, No. SUCV201303280, 2014 WL 7895125, at \*3 (Mass. Super. May 30, 2014).

On June 9, 2014, the Superior Court judge denied GEICO's motion without prejudice.

Leavitt v. Phillips, No. SUCV201303280, 2014 WL 7895127, at \*1 (Mass. Super. June 9, 2014). He explained that Mass Gen. Laws. ch. 90, § 3, requires an out-of-state motorist to have an insurance policy that conforms to Massachusetts law—which, unlike Vermont law, requires drivers to carry PIP—if the car has been operated in Massachusetts for "more than thirty days in the aggregate in any one year." Id. at \*2. Aebersold's insurance policy provided "coverages to the extent required of out-of-state motorists by local law." Id. at \*3. However, it was not clear from the record whether her car had been operated in Massachusetts for more than thirty days

that year. Id. at \*5. The judge accordingly denied the motion without prejudice to a motion for reconsideration upon completion of discovery. Id.

The parties engaged in additional discovery, and GEICO filed a motion for reconsideration on December 9, 2014. Leavitt v. Phillips, No. SUCV201303280, 2015 WL 13568729, at \*1 (Mass. Super. Apr. 14, 2015). On the record before the court, Leavitt “[could not] prove that Aebersold operated a motor vehicle in Massachusetts for more than 30 days at any time in 2009 or 2010.” Id. It was undisputed, however, that she did operate a car for more than thirty days in Massachusetts in 1998. Id. Leavitt argued that as long as Aebersold had operated a car in Massachusetts for thirty days in *any* year, i.e., in 1998, she was subject to Massachusetts’ compulsory insurance laws at all times in the future and that there was no expiration on that obligation. Id. at \*2.

The Superior Court judge concluded that Leavitt’s “argument conflict[ed] with the statutory language” and that the “straightforward construction” of the statute required a policy conforming to Massachusetts law only if the motorist had “a substantial driving presence in Massachusetts at the time of operation.” Id. The judge went on to state that although “[o]ne [could] debate whether the applicable year is a policy year, a 365-day period, or a calendar year,” it was a distinction without a difference where Aebersold had not operated her car for thirty days in Massachusetts in “any one-year period encompassing the accident.” Id. He accordingly granted GEICO’s motion on April 14, 2015. Id.

Aebersold then moved for judgment on the pleadings based on the same argument, i.e., that she was not required to carry PIP because she had not operated her car in Massachusetts for more than thirty days in the year of the accident. Leavitt, 2019 WL 4019952, at \*2 n.8. Before Leavitt filed his opposition, a different judge held a hearing during which Aebersold’s motion

was raised. Id. The judge dismissed Leavitt's claim against Aebersold, noting that the legal arguments had already been addressed in the ruling on GEICO's motion for summary judgment. Id.

At that point, the remaining claims were Leavitt's against Phillips and Commerce and Phillips' crossclaim against Aebersold. Id. at \*1. The claim against Commerce was stayed pending a determination as to Phillips' negligence, and the case proceeded to trial only on the issue of Phillips' and Aebersold's negligence. Id. At the close of Leavitt's case, Phillips and Aebersold moved for a directed verdict based on Leavitt's failure to prove an injury sufficient to satisfy the relevant statutory requirements. Leavitt v. Phillips, No. SUCV201303280, 2015 WL 13568730, at \*1 (Mass. Super. Dec. 07, 2015). The trial judge deferred decisions on the motions until after the jury verdict. Id. Following a three-day trial in early December 2015, the jury concluded that Phillips was negligent but that her negligence had not caused Leavitt's injury. Leavitt, 2015 WL 13568730, at \*1. The judge then allowed both motions for a directed verdict and denied Leavitt's subsequent motion for a new trial on causation and damages. Id. at \*2; Leavitt, 2019 WL 4019952, at \*1. Judgment entered in the Superior Court on July 27, 2017. Leavitt v. Phillips, No. SUCV2013-03280, 2017 WL 3784622, at \*1 (Mass. Super. July 27, 2017).

## 2. Massachusetts Appeals Court

Leavitt appealed the grants of summary judgment, the entry of a directed verdict for Phillips, and the denial of his motion for a new trial to the Massachusetts Appeals Court. Leavitt, 2019 WL 4019952, at \*1. As to the summary judgment motions, his primary argument on appeal was that pursuant to Mass. Gen. Laws ch. 90, § 3, "Aebersold was required to carry PIP, even as a nonresident of the Commonwealth, because she spent more than thirty days in the

Commonwealth in 1998.” Id. The Appeals Court disagreed, stating that Leavitt’s “interpretation of the statute would produce absurd results.” Id. at \*2. The Appeals Court construed the statutory language “more than thirty days in the aggregate in any one year” to mean that nonresidents are required “to purchase the requisite motor vehicle insurance only during the year in which they have driven a motor vehicle in the Commonwealth for more than thirty days in the aggregate.” Id.

Leavitt also raised a variety of other arguments related the motions for summary judgment. Id. at \*2 n.8. First, he argued that the judge had “violated his rights of due process and equal protection by refusing to consider his requests for declaratory relief before granting summary judgment.” Id. The Appeals Court found that this assertion “lack[ed] merit” because “[r]equests for declaratory relief are frequently resolved at the summary judgment stage, and the judge properly declared Leavitt’s rights”—i.e., that under the facts of the case, neither USAA nor GEICO were required to provide PIP—“when granting summary judgment.” Id. Second, Leavitt asserted “that the judge erred in dismissing on summary judgment his breach of contract claims where there were material facts in dispute and where the judge made clearly erroneous findings of fact.” Id. However, because Leavitt did not point to “any such facts or findings,” the Appeals Court found that he had waived the argument. Id. Third, Leavitt argued that the judge erred in denying his requests for attorney’s fees, but the Appeals Court concluded that Leavitt had not provided adequate support for his argument where he cited a case in which the insured party had brought a *successful* claim for declaratory relief. Id. Leavitt also raised an argument related to how his PIP claim against Aebersold was dismissed before he filed his opposition, claiming that this was evidence of ex parte communications. Id. The Appeals Court was “not persuaded” that

any ex parte communications had taken place where the issues had been fully and fairly litigated in the GEICO motion for summary judgment. Id.

Leavitt also argued that the judge made several errors at trial. Id. at \*3. First, he claimed that the judge erroneously denied “his requests to obtain discovery from GEICO and USAA regarding any medical bills that they paid on his behalf” and to introduce “Medicare summaries to prove the truth of the matter asserted therein, that he received medical care in excess of the \$2,000 statutory threshold.” Id. As to the former, the Appeals Court concluded that Leavitt had not explained how the discovery was relevant to his negligence claim against Phillips, and, as to the latter, that he had not articulated an applicable hearsay exception. Id. at \*3 & n.10. Regarding the directed verdict and the denial of Leavitt’s motion for a new trial, the Appeals Court considered the weight of the evidence and concluded that a reasonable jury could have concluded that Phillips’ negligence had not caused Leavitt’s injury. Id. at \*3. Specifically, the Appeals Court explained that

[t]he jury had reason not to credit Leavitt’s treating physician where there was evidence that (1) the accident was a minor one involving a low speed, soft impact, (2) Leavitt did not experience pain in his hands and arms until well after the accident, contrary to his own testimony, (3) neurological tests did not support a finding of radiculopathy, and (4) Leavitt suffered from a degenerative disease that could have caused the pain in his hands and arms.

Id.

Finally, Leavitt raised “several allegations of judicial misconduct, including that the Superior Court (1) failed to address Leavitt’s accusations of ex parte communications, (2) manipulated the docket, and (3) failed to disclose the name of a newly-inducted Superior Court judge who observed one of the hearings.” Id. at \*4. The Appeals Court concluded that these allegations lacked merit. Id.

3. Massachusetts Supreme Judicial Court

Leavitt then filed an application for further appellate review in the Supreme Judicial Court. SJC Docket FAR-27070 [#52-8]. The application is ninety-six pages long and describes the Superior Court and Appeals Court litigation as a series of “[c]rimes that define our times” and “what may be, Massachusetts’ darkest hour since Salem, 1692.” FAR App. 16, 19 [#52-13]. Specifically, these alleged crimes consist of

(1) conspiracy to suppress (criminal acts), (2) actual suppression of [Leavitt’s] right to a declaration of law, **due process**, and **equal protection** in his rights under the statute and insurance contracts. And there has been a (3) **chilling of the valid exercise of his constitutional rights of freedom of speech and petitioning for the redress of grievances.**

Id. at 19-20 (emphasis original). The application goes on to assert that although “Leavitt was **protected** by liability insurance in every way by Massachusetts law since 1927” and “[t]he tortfeasor (Phillips) had liability coverages and was negligent,” “Leavitt received nothing.” Id. at 32 (emphasis original). Leavitt takes further issue with the fact that “[t]hough 2900 pages of documents were provided to the Appeals Court and 20 issues, it claims some issues raised lacked foundation.” Id. at 33.

After recounting the various Superior Court and Appeals Court proceedings, the application requests further appellate review of the following issues: (1) the Superior Court and Appeals Court’s “refusal to declare the law” and to “announce to the world Massachusetts Statute requires PIP be **maintained** on **non-resident motor vehicle policies of liability insurance**”; (2) the “clear violation of Leavitt’s rights of **due process** and **equal protection**” caused by this supposed refusal to declare the law; (3) the Appeals Court’s conclusion that “**no substantial question of law [was] presented by the appeal or that some clear error of law ha[d] been committed**” by the Superior Court; (4) the Appeals Court’s holding that the thirty-

day clock for maintaining PIP resets after a year; (5) the Appeals Court's affirming of the Superior Court judge's conclusion that USAA was not required to provide Leavitt PIP where he was neither the owner nor operator of a car involved in the accident; (6) the Appeals Court's "gratuitous 'findings'" that it was no persuaded that there had been any ex parte communications; and (7) Leavitt's "concerns that suppression of his rights were planned." *Id.* at 53-69.

In addition to the application, Leavitt filed eleven motions, demanding that every justice of the Supreme Judicial Court "recuse and disclose." SJC Docket FAR-27070 [#52-8]. The application for further appellate review was denied on October 18, 2019. Leavitt, 483 Mass. at 1105.

#### 4. Supreme Court of the United States

Having exhausted his state court appeals, Leavitt filed a petition for a writ of certiorari. The questions presented were:

"1) Did Massachusetts deprive a Vermont citizen the fundamental right to property without a compelling state interest by refusing to enforce its substantive and procedural laws where there exist unresolved disputes as to the Massachusetts statute (he plead it requires Massachusetts Personal Injury Protection ((PIP)) on non-resident vehicles which insurers deny) and Vermont contracts (he plead they promise Massachusetts PIP which insurers deny), when the Judiciary, while conceding both of Petitioner's pleas are the law, refused to declare the law; and instead forced an interpretation of disputed law and contracts on him in summary judgments, without declaration of statute or contract, depriving him, and no others similarly situated, of the protections of both law and contracts?

2) Did Massachusetts violate Article IV when it refused to declare whether, under Vermont contract law, there were breaches of Vermont contracts?

3) Is M.G.L. ch. 231A unconstitutional or unconstitutional as exercised?

Petition for Writ of Certiorari, Leavitt, 140 S. Ct. 1216. The substance of the petition claims that the Massachusetts judiciary acted arbitrarily and capriciously in refusing to issue a declaratory

judgment on the meaning of Mass. Gen. Laws ch. 90, §§ 3 and 34A, that Leavitt's rights were violated by unfair procedures during the state court litigation, that the state courts made a variety of errors, and that Mass. Gen. Laws ch. 231A (which governs the procedure for declaratory judgments) is unconstitutional because the Massachusetts courts refuse to "declare the law." *Id.*

The Supreme Court denied the petition on February 24, 2020. Leavitt, 140 S. Ct. at 1216.

C. *Present Action*

1. Leavitt's Complaint

On November 30, 2020, Leavitt filed through counsel a 382-page, twenty-seven-count Complaint [#1] against nineteen named defendants and 100 unnamed defendants, based on the events at issue and actions in the state court litigation. Through counsel, he also sought leave to proceed without prepaying fees or costs. See Application to Proceed [#3]. The court denied the application without prejudice to refiling where Leavitt had not completely or accurately filled it out. See Elec. Order [#4]. Leavitt submitted a renewed Application [#6] on December 18, 2020. On December 30, 2020, the court granted the Application [#6] and dismissed the Complaint [#1], explaining that the court lacked jurisdiction to consider Leavitt's challenges to the findings and proceedings in the state courts and that the Complaint [#1] failed to comply with the pleading requirements of Federal Rule of Civil Procedure 8. See Mem. & Order 1, 5-6 [#11]. The court granted Leavitt leave to file an amended complaint not to exceed fifty double-spaced pages and emphasized that "[a]s with all filings, the amended complaint shall be signed and filed in compliance with Federal Rule of Civil Procedure 11." *Id.* at 6-7.

On January 4, 2021, Leavitt filed an Emergency Motion to Disclose and Recuse and Emergency Motion for Reconsideration [#12], demanding reconsideration based on "the lack of the Court's analysis" and the impossibility of meeting the fifty-page limit for the amended

complaint. Pl's Mem. 2 [#15]. Leavitt also asserted that the court had “exceeded its powers” and acted in an “arbitrary and capricious” manner and stated that his request for recusal was “based on the “clearly prejudicial nature” of the court’s December 30, 2020 order and the “impossible task” of condensing the complaint. Id. at 13. Where Leavitt’s request for recusal rested “entirely on his dissatisfaction with the court’s orders,” the court found that this was not a valid basis for recusal. Mem. & Order 3 [#16]. The court also determined that Leavitt had not met the standard for reconsideration. Id.

## 2. Leavitt’s Amended Complaint

Through counsel, Leavitt filed an Amended Complaint [#17] on February 11, 2021, against all the defendants who were party to the state court litigation except Aebersold, plus individuals holding positions as officers and directors of GEICO and USAA; Berkshire Hathaway, Inc., the holding company for GEICO, and its chairman and board of directors; and four of the attorneys who represented the insurance companies and Aebersold in the state court litigation, as well as their law firms. The first paragraph states that the Amended Complaint [#17] was “filed under objection and protest” for the reasons previously set forth in Leavitt’s Emergency Motion to Disclose and Recuse and Emergency Motion for Reconsideration [#12]. Am. Compl. ¶ 1 [#17]. Leavitt further states that the Amended Complaint [#17] incorporates “all facts and circumstance” in the original Complaint [#1] as well as “all documents filed and associated with the 2013 litigation in Massachusetts for which [Leavitt] demands judicial notice be taken.” Id.

The Amended Complaint [#17] proceeds in three parts. In “Part First,” Leavitt demands that this court declare (1) that Mass. Gen. Laws ch. 90, §§ 3 and 34A “require[] non-resident motor vehicle owners to ‘maintain’ Massachusetts PIP ‘provisions’ as part of their ‘policy of

liability insurance,’” and (2) “that policies of liability insurance issued by ‘GEICO’ and USAA provide Massachusetts PIP ‘protection.’” Am. Compl. ¶ 32 [#17] (emphasis original).

In “Part Second,” he asserts breach of contract against GEICO and USAA (Counts II-III) and against their principals on a respondeat superior theory (Count IV); bad faith against GEICO and USAA (Count V); negligent hiring against GEICO, USAA, and the law firms that defended them in the state court litigation (Count VI); negligent supervision against all defendants except Phillips (Count VII); fraud, conspiracy, and misrepresentation against all defendants (Count VIII); negligent, willful, wanton, and intentional interference with contractual relations against all defendants (Count IX); aiding and abetting suppression of his rights against all defendants (Count X); breach of fiduciary duty against GEICO and USAA (Count XI); a claim for attorney’s fees (Count XII); breach of fiduciary duty and aiding and abetting against the unnamed J. Does, GEICO, and USAA (Count XIII); and RICO violations (Count XIV). Id. at ¶¶ 38-102. The basis for these claims appears to be Leavitt’s repeated assertion that GEICO and USAA “*conspired to suppress and actually suppressed* [Leavitt’s] rights to a declaration of law” in the 2013 state court litigation. Id. at ¶ 39; see also id. at ¶¶ 40, 44, 48, 52, 56-57, 61-62, 66-68, 72-73, 76-78, 81-82, 85-86, 90-91, 96-100.

Finally, in “Part Third,” Leavitt seeks specific performance against GEICO and USAA (Count XV) and an injunction against all defendants (Count XVI). Id. at ¶¶ 103-111. Specifically, Leavitt requests that the court compel GEICO and USAA to affirm that Mass. Gen. Laws ch. 90, §§ 3 and 34A, require non-resident car owners to carry PIP and that policies issued by GEICO and USAA cover PIP claims. Id. at 51-52. He also requests injunctive relief prohibiting GEICO and USAA from denying the same and enjoining all of the defendants from conspiring “between themselves, others, and/or judges and court personnel of the Massachusetts

Judiciary, or any judiciary, to suppress, and the actual suppression of, a declaration of law requiring PIP on non-resident vehicles.” Id. at 109.

The factual basis for all the causes of action appears to be the denial of Leavitt’s PIP claims in 2013 and the subsequent state court litigation. Id. at ¶ 28. He asserts that the state court proceedings were “nothing more than a ruse. A scam. A flimflam.” Id. at ¶ 28 n.8. And he repeatedly claims that the defendants conspired against him. See id. at ¶¶ 8, 28, 30, 39-40, 44, 48, 52, 56-57, 61-62, 66-68, 72-73, 76-78, 81-82, 85-86, 90-91, 96-100. However, rather than provide support for these assertions of conspiracy, he frames the conspiracy as a fact in itself. See id. at ¶ 30 (“**Fact:** There was a *conspiracy to suppress* and actual *suppression* of the Plaintiff’s right to a declaration of law, rights in all his claims in the 2013 action, and rights of due process and equal protection in the 2013 action”). To the extent that the Amended Complaint [#17] offers any factual basis for the conspiracy allegations, it seems to be that Leavitt “lost all but one of the (approximately) one hundred motions in the 2013 action.” Id. at ¶ 28 n.8.

### 3. Defendants’ Motions to Dismiss

On March 29, 2021, Phillips filed a Motion to Dismiss [#51] the Amended Complaint [#17], arguing that this court lacks jurisdiction to hear the case under the Rooker-Feldman doctrine, that res judicata bars the claims, and that Leavitt failed to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Similar motions seeking dismissal for lack of subject matter jurisdiction and on other grounds were filed by Ronald Harding,<sup>2</sup> Mot. to Dismiss [#62]; David Brink, Lynn McCarthy, and Smith and Brink, P.C.,<sup>3</sup> Mot. to Dismiss [#64]; USAA, its

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<sup>2</sup> Harding was retained by GEICO to defend Aebersold in the state court litigation. Am. Compl. ¶ 22 [#17].

<sup>3</sup> Brink and McCarthy of Smith & Brink, P.C., represented GEICO in the state court litigation. Am. Compl. ¶¶ 17-19 [#17].

principals, and board of directors, Mot. to Dismiss [#70]; Commerce, Mot. to Dismiss [#74]; GEICO, its principal, and board of directors, Mot. to Dismiss [#77]; Berkshire Hathaway, its principals, and board of directors, Mot. to Dismiss [#80]; and Cathryn Spaulding and Lamontagne, Spaulding & Hayes, LLP,<sup>4</sup> Mot. to Dismiss [#82]. All eight motions are opposed by Leavitt, Opps. [#59, #84, #85, #86, #95, #96, #97, #98], and are pending before the court.

## II. Standard of Review

“Rule 12(b)(1) is the proper vehicle for challenging a court’s subject matter jurisdiction.” Valentin v. Hospital Bella Vista, 254 F.3d 358, 362–63 (1st Cir. 2001). Federal courts are courts of limited jurisdiction, so federal jurisdiction is never presumed. Viqueira v. First Bank, 140 F.3d 12, 16 (1st Cir. 1998). The party asserting jurisdiction has the burden of demonstrating the existence of federal jurisdiction. Id. A court should treat all well-pleaded facts as true and provide the plaintiff the benefit of all reasonable inferences. Fothergill v. United States, 566 F.3d 248, 251 (1st Cir. 2009). Dismissal is appropriate only when the facts alleged in the complaint, taken as true, do not support a finding of federal subject matter jurisdiction. Id. A challenge to the court’s subject matter jurisdiction must be addressed before addressing the merits of a case. See Acosta-Ramirez v. Banco Popular de Puerto Rico, 712 F.3d 14, 18 (1st Cir. 2013) (“Federal courts are obliged to resolve questions pertaining to subject-matter jurisdiction before addressing the merits of a case”).

## III. Discussion

Under the Rooker-Feldman doctrine, lower federal courts are barred from hearing de facto appeals from state-court judgments. See generally D.C. Ct. App. v. Feldman, 460 U.S. 462

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<sup>4</sup> Spaulding of Lamontagne, Spaulding & Hayes, LLP, represented USAA in the state court litigation. Superior Court Docket 2 [#52-3].

(1983); Rooker v. Fid. Trust Co., 263 U.S. 413 (1923); Wilson v. Shumway, 264 F.3d 120 (1st Cir. 2001). The doctrine applies where “the losing party in state court file[s] suit in federal court after the state proceedings [have] ended, complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment.” Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 291 (2005). In short, a federal district court lacks the authority to effectively sit as an appellate court and to disrupt a final judgment from a state court. Id. This applies not just to claims explicitly raised in state court but to any claims that are “‘inextricably intertwined’ with questions previously adjudicated by a state court, such that the federal district court would be in the unseemly position of reviewing a state court decision for error.” Mills v. Harmon L. Offs., P.C., 344 F.3d 42, 44 (1st Cir. 2003) (citing Hill v. Town of Conway, 193 F.3d 33, 39 (1st Cir. 1999)).

This case was fully litigated in the Massachusetts courts. A Superior Court judge granted USAA and GEICO’s motions for summary judgment, concluding that Leavitt had no right to PIP benefits under Mass. Gen. Laws ch. 90, § 3. A different Superior Court judge granted Aebersold’s motion for judgment on the pleadings, where the same legal issue had already been decided in the ruling on GEICO’s motion for summary judgment. After a three-day trial, a jury found that Phillips had not caused Leavitt’s injuries. Leavitt’s motion for a new trial was denied.

Leavitt objected to these rulings and appealed.<sup>5</sup> The Appeals Court conducted a thorough analysis of the issues raised and upheld the Superior Court judgment, concluding that Leavitt’s

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<sup>5</sup> The Superior Court record does not make clear why it took a year and half for judgment to enter after trial and the judge’s rulings on post-trial motions. The docket does reflect that Leavitt filed a notice of appeal, emergency motion to docket the notice of appeal, and emergency motion to assemble the record *before* judgment had entered. Superior Court Docket 18-19 [#52-3]. He also petitioned a single justice of the Massachusetts Supreme Judicial Court for a writ of mandamus, seeking an order directing the clerk of the Superior Court to assemble the record for

statutory argument “would produce absurd results” and that he was not entitled to PIP benefits.

Leavitt then appealed to the Supreme Judicial Court, raising not only the factual and legal issues that were before the Superior Court but also the impropriety that he alleges took place in those courts. The Supreme Judicial Court, in its discretion, denied further appellate review.

Leavitt sought federal court review of the state court action and took the only appropriate step: he filed a petition for certiorari with the United States Supreme Court, the only federal court with the authority to review a state court judgment. The Supreme Court denied his petition.

Under the Rooker-Feldman doctrine, this court does not have jurisdiction to revisit substantially the same issues already decided by the Superior Court and the Appeals Court. Leavitt has had his day in court and has exhausted all the review to which he is entitled. Nor may he circumvent the Rooker-Feldman doctrine by adding principals, agents, directors, and shareholders of the insurance companies to his Amended Complaint [#17] and claiming that they participated in a vast conspiracy with the state courts to deny him access to justice. “Put simply, a federal court’s application of the Rooker-Feldman doctrine is not contingent upon an identity between the issues actually litigated in the prior state-court proceedings and the issues proffered in the subsequent federal suit. Instead, the critical datum is whether the plaintiff’s federal suit is, in effect, an end-run around a final state-court judgment.” Klimowicz v. Deutsche Bank Nat’l Tr. Co., 907 F.3d 61, 66–67 (1st Cir. 2018).

At oral argument, Leavitt’s counsel stated that he was not attempting to relitigate the state court proceedings but rather that his aim was forward-looking: because no court had yet “declared the law,” he merely wanted a declaration from this court that Massachusetts law

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appeal. SJC Docket SJ-2016-0143 [#52-6]. It is possible that these filings seeking or relating to appellate review contributed to the delay in entry of judgment in the Superior Court.

requires out-of-state motorists to carry PIP. This argument appears disingenuous. To the extent that Leavitt seeks a declaration based on the facts in the state court case, the Appeals Court clearly held that Mass. Gen. Laws ch. 90, § 3 “exempts most nonresidents from having to comply with the Commonwealth’s motor vehicle insurance requirements” except “during the year in which they have driven a motor vehicle in the Commonwealth for more than thirty days in the aggregate.” Leavitt, 2019 WL 4019952, \*2. To the extent that Leavitt is seeking a declaration not tied to any factual record, Leavitt is, in effect, asking for an advisory opinion, which this court is without jurisdiction to issue. See Flast v. Cohen, 392 U.S. 83, 96 (1968) (“the rule against advisory opinions implements the separation of powers prescribed by the Constitution and confines federal courts to the role assigned them by Article III”).

In brief, where Leavitt’s federal suit seeks to invalidate the state courts’ judgments through such requested relief as a declaration that the state statutes at issue require GEICO and USAA to cover his PIP claims, this court lacks jurisdiction over his Amended Complaint [#17].

#### **IV. Conclusion**

For the foregoing reasons, Defendants’ Motions to Dismiss [#51, #62, #64, #70, #74, #77, #80, #82] are ALLOWED.

IT IS SO ORDERED.

July 16, 2021

/s/ Indira Talwani  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ALLAN M. LEAVITT,

Plaintiff,

V.

UNITED SERVICES AUTOMOBILE ASSOCIATION; STUART PARKER, individually and as Chief Operating Officer of United Services Automobile Association; WAYNE PEACOCK, individually and as Chief Operating Officer of United Services Automobile Association; BOARD OF DIRECTORS OF UNITED SERVICES AUTOMOBILE ASSOCIATION, collectively and individually; GEICO INDEMNITY COMPANY; TONY NICELY, individually and as Chairman, President, CEO, and Treasurer of GEICO Indemnity Company; TONY NICELY, member of the Board of Directors of Berkshire Hathaway, Inc.; BOARD OF DIRECTORS OF GEICO INDEMNITY COMPANY, collectively and individually; THE COMMERCE INSURANCE COMPANY, INC.; CYNTHIA A. PHILLIPS; BERKSHIRE HATHAWAY, INC.; WARREN BUFFETT, Chairman, CEO, and Principal Shareholder of Berkshire Hathaway, Inc.; BOARD OF DIRECTORS OF BERKSHIRE HATHAWAY, INC., collectively and individually; SMITH & BRINK, P.C.; DAVID BRINK, individually and as Director of Smith & Brink, P.C.; LYNN G. MCCARTHY, individually and as employee of Smith & Brink, P.C.; LAMONTAGNE, SPAULDING & HAYES, LLP; CATHRYN SPAULDING, individually and as partner of Lamontagne, Spaulding, & Hayes, LLP; RONALD E. HARDING; and J. DOE, 1-100,

## Defendants.

ORDER OF DISMISSAL

July 16, 2021

TALWANI, D.J.

Pursuant to the court's Memorandum and Order [#127] granting Defendants' Motions to Dismiss [#51, #62, #64, #70, #74, #77, #80, #82] for lack of subject matter jurisdiction, Plaintiff

Allan Leavitt's Amended Complaint [#17] is dismissed with prejudice. This case is now CLOSED.

IT IS SO ORDERED.

July 16, 2021

/s/ Indira Talwani

United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

<b>Allan M. Leavitt, Plaintiff</b>	:
<i>v.</i>	:
<b>UNITED SERVICES AUTOMOBILE ASSOCIATION,</b>	:
A Texas Department of Insurance Regulated	:
Reciprocal Inter-insurance Exchange and Subsidiaries,	:
<b>Stuart Parker</b> , Individually and as Chief Operating Officer,	:
of UNITED SERVICES AUTOMOBILE ASSOCIATION,	:
<b>Wayne Peacock</b> , Individually and as Chief Operating Officer,	:
of UNITED SERVICES AUTOMOBILE ASSOCIATION,	:
<b>Board of Directors</b> , Collectively and Individually, <sup>1</sup>	:
of UNITED SERVICES AUTOMOBILE ASSOCIATION,	:
<b>GEICO INDEMNITY COMPANY</b> , <sup>2</sup>	:
<b>Tony Nicely</b> , Individually and as	:
Chairman, President, CEO, and Treasurer,	:
of GEICO INDEMNITY COMPANY,	:
<b>Tony Nicely</b> , Member of the Board of Directors,	:
of BERKSHIRE HATHAWAY, INC.,	:
<b>Board of Directors</b> , Collectively and Individually,	:
of GEICO INDEMNITY COMPANY,	:
<b>THE COMMERCE INSURANCE COMPANY, INC.</b> ,	:
<b>Cynthia A. Phillips</b> ,	:
<b>BERKSHIRE HATHAWAY, INC.</b> , A Holding Company,	:
<b>Warren Buffett</b> , Chairman, CEO, and Principal Shareholder,	:
of BERKSHIRE HATHAWAY, INC.,	:
<b>Board of Directors</b> , Collectively and Individually,	:
of BERKSHIRE HATHAWAY, INC.,	:
<b>SMITH &amp; BRINK, P.C.</b> ,	:
<b>David Brink</b> , Individually and as Director of SMITH & BRINK, P.C.	:
<b>Lynn G. McCarthy</b> , Individually and as Employee of,	:
SMITH & BRINK, P.C.,	:
<b>LAMONTAGNE, SPAULDING &amp; HAYES, LLP</b> ,	:
<b>Cathryn Spaulding</b> , Individually and as Partner of,	:
LAMONTAGNE, SPAULDING, & HAYES, LLP,	:
<b>Ronald E. Harding</b> ,	:
<b>J. Doe, 1 - 100</b> , <i>Defendants</i>	:

<sup>1</sup> Individuals to be named once they can be identified through Discovery. Accordingly, the Plaintiff reserves his right to amend this (Court-Ordered) Amended Complaint to add those individuals or entities.

<sup>2</sup> The name of the real party in interest is unknown as this Defendant signed a stipulation in the 2013 Suffolk Superior Court action which contained a fictitious name as the “real party in interest.” Therefore, the Plaintiff reserves the right to amend to accurately name this Defendant. “GEICO” will be used to refer to this Defendant.

## TABLE OF CONTENTS

INTRODUCTION _____	4
PARTIES AND NON-DEFENDANT PERSONS OF IMPORTANCE _____	4
JURISDICTION AND VENUE _____	11
LAW _____	11
FACTUAL BACKGROUND _____	11
FACTS AND CIRCUMSTANCES _____	12

### **PART FIRST COMPLAINT FOR DECLARATORY RELIEF**

COUNT I Declaratory Relief Against “GEICO” and USAA _____	18
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### **PART SECOND COMPLAINT**

COUNT II Breach Of Contract Against “GEICO” and USAA _____	20
COUNT III Negligence In Contract Against “GEICO” and USAA _____	21
COUNT IV Respondeat Superior Against Warren Buffett, Chairman, CEO, and Principal Shareholder, Of Berkshire Hathaway, Inc., “GEICO,” USAA, Berkshire, Smith & Brink, P.C., and Lamontagne, Spaulding & Hayes, LLP _____	22
COUNT V Tortious Bad Faith, Contractual Bad Faith, Violation Of Implied Covenant Of Good Faith and Fair Dealing Under Vermont Law, Against “GEICO” and USAA _____	24
COUNT VI Negligent Hiring and Continued Negligent Hiring Against “GEICO” and USAA, Smith & Brink, P.C., and Lamontagne, Spaulding & Hayes, LLP _____	27
COUNT VII Negligent Supervision Against All Defendants, Except Phillips _____	29
COUNT VIII Fraud, Conspiracy to Commit Fraud, Attempt to Commit Fraud, and Misrepresentation Against All Defendants _____	30
COUNT IX Negligent, Willful, Wanton and Intentional Interference With Contractual Relations Against All Defendants _____	33
COUNT X Aiding and Abetting Against All Defendants _____	34
COUNT XI Breach Of Fiduciary Duty Against “GEICO” and USAA _____	35
COUNT XII Immediate and Ongoing Payment Of Attorney Fees Against All Defendants For Prosecution Of Part First _____	37
COUNT XIII Breach of Fiduciary Duty and Aiding and Abetting Against J. Doe, 1 – 100, “GEICO” and USAA _____	38
COUNT XIV Violations of Racketeer Influenced Corrupt Organizations Act Against All Defendants _____	40

**PART THIRD**  
**VERIFIED COMPLAINT IN EQUITY**

COUNT XV	Specific Performance and Against “GEICO” and USAA	46
COUNT XVI	Injunctive Relief Against All Defendants	48
PRAYER FOR RELIEF		49
VERIFICATION		53

## INTRODUCTION

¶ 1. This Court-Ordered Amended Complaint is filed under objection and protest for all of the reasons raised in the Plaintiff's Emergency Motion for Reconsideration [#12 and #15]. The Court lacked authority "screen" and dismiss the Plaintiff's Complaint [#1] under the Prisoner Litigation Reform Act 28 U.S.C. § 1915(e)(2)(B) and for all reasons raised in the aforementioned motions. Further, the Plaintiff is not a prisoner.<sup>3</sup> The Plaintiff incorporates all facts and circumstance cited in Complaint [#1]<sup>4</sup> and in all documents filed and associated with the 2013 litigation in Massachusetts for which he demands judicial notice be taken.<sup>5</sup>

¶ 2. Crimes have *suppressed* this **Landmark Legal Discovery**. Suit here unfolds in three parts: a complaint [1] for declaratory relief (**Part First**); [2] for causes of action arising from the conduct of the Defendants in the 2013 litigation in which the [a] duties owed at law by all Defendants and [b] under contract by "GEICO" and **UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA)** from September 16, 2013 involve *suppression* of all of the Plaintiff's rights by the Defendants and likely others (**Part Second**);<sup>6</sup> and [3] In Equity (**Part Third**).

## PARTIES AND NON-DEFENDANT PERSONS OF IMPORTANCE

¶ 3. Plaintiff, **ALLAN M. LEAVITT** is an individual whose current address is, and was at all times relevant to this law suit, 27 Conant Square, Brandon, VT 05733. He is a policyholder of "GEICO" (policy # 6039156739) and a member of **USAA** (member # 4000247).

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<sup>3</sup> There is a "plethora of legislative history establishing that the PLRA was applicable only to prisoners." *Floyd v. U.S. Postal Service*, 105 F.3d 274 (6th Cir. 1997). Plaintiff is not a "prisoner" as defined by §§ 1915(h) or 1915A(c). And though, arguably, the PLRA was in-artistically drafted, this Court's assumed authority thereunder is troubling.

<sup>4</sup> Despite the intent Rule 15 as the Court arbitrarily and capriciously limited this Amended Complaint to 50 pages. By so doing, this Court has started down the path of *suppression* of a declaration of law. And children are involved. The facts and circumstance in the Complaint [#1] plead under Rule 9(b) consist of 235 paragraphs over 160 pages.

<sup>5</sup> This Court's reticence to acknowledge the import of the complaint for declaratory relief signals *suppression* of it. This Court's [a] failure to address how the Counts for declaratory relief and equity failed rule 8 and [b] refusal to address the request by the Plaintiff to disclose ex parte communications are for posterity now.

<sup>6</sup> The Plaintiff avers that the acts of the Defendants *suppressing* the Plaintiff's rights and all other violations outlined in this Amended Complaint and Complaint [#1] continue to this day as does the pattern of corruption, obstruction of justice, etc. The statute of limitations is extended daily as the "insurers" continue to refuse to provide assurances. This Complaint does not seek the same claims, causes of action, or damages as those plead in the state court action.

¶ 4. Defendant, **UNITED SERVICES AUTOMOBILE ASSOCIATION, A TEXAS DEPARTMENT OF INSURANCE REGULATED RECIPROCAL INTER-INSURANCE EXCHANGE AND SUBSIDIARIES (USAA)**, is an organization that has its principal place of business located at 9800 Fredericksburg Road, San Antonio, TX 78288, and is an association organized under the laws of the State of Texas whose registered agent for service of process is believed to be CT Corporation System, 350 N. St. Paul St., Ste. 2900, Dallas, TX 75201.

¶ 5. Defendant, **STUART PARKER, INDIVIDUALLY AND AS CHIEF OPERATING OFFICER, USAA**, was, and/or is Chief Operating Officer of **USAA** which has its principal place of business located at 9800 Fredericksburg Road, San Antonio, TX 78288.

¶ 6. Defendant, **WAYNE PEACOCK, INDIVIDUALLY AND AS CHIEF OPERATING OFFICER, USAA**, was, and/or is Chief Operating Officer of **USAA** which has its principal place of business located at 9800 Fredericksburg Road, San Antonio, TX 78288.

¶ 7. Defendant, **BOARD OF DIRECTORS, COLLECTIVELY AND INDIVIDUALLY, USAA**, was, and is an entity comprised of individuals whose identities have not been determined and who were directors of **USAA** from September 30, 2015 to the present. Its principal place of business is located at 9800 Fredericksburg Road, San Antonio, TX 78288.

¶ 8. Defendant, **GEICO INDEMNITY COMPANY** (“**GEICO**” subject to the reservation above in footnote 2), is believed to be a corporation that is wholly owned by Defendant, Berkshire Hathaway, Inc., however, “**GEICO**” has evaded all attempts at identification in the 2013 law suit by providing false information as to their identity in a stipulation and resisted Discovery of their real identity to this date including objecting to the Court providing their true identity to the Plaintiff in the 2013 action and including conspiring with the Defendants and possibly the Court, Judges, or Court Personnel, in a plan to prevent the

Plaintiff's right to a declaration of law, due process, and equal protection as well as *suppression* of his rights in all of his claims in that 2013 lawsuit. "**GEICO**" is believed to be a wholly owned subsidiary of Defendant, **BERKSHIRE HATHAWAY, INC.**, which is a Delaware Corporation whose principal place of business is at 5260 Western Avenue, Chevy Chase, MD 20815-3799 and whose registered agent for Service of Process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

¶ 9. Defendant, **TONY NICELY, INDIVIDUALLY AND AS CHAIRMAN, PRESIDENT, CEO, AND TREASURER OF "GEICO,"** was at all times from September 30, 2015 Chairman, President, CEO, and Treasurer of "**GEICO.**" "**GEICO**"s principal place of business is believed to be 5260 Western Avenue, Chevy Chase, MD 20815-3799 and whose registered agent for Service of Process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

¶ 10. Defendant, **TONY NICELY, is a MEMBER OF THE BOARD OF DIRECTORS OF BERKSHIRE HATHAWAY, INC.** whose address is believed to be Berkshire Hathaway, Inc., 3555 Farnam Street, Suite 1440, Omaha, NE 68131.

¶ 11. Defendant, **BOARD OF DIRECTORS, COLLECTIVELY AND INDIVIDUALLY, GEICO,** was, and is an entity comprised of individuals whose responsibilities include consulting with management regarding strategic and operational direction of the company as well as monitoring the company's performance whose identities have not been determined and who were directors of "**GEICO**" from at least September 30, 2015 to the present. The "**GEICO**" Board is also responsible for, *inter alia*, approving company strategy, testing its business model, identifying risk areas, insuring integrity of the company financial statements, protecting the company's assets and reputation, representing the interests of

shareholders, and ensuring the company complies with laws and codes, and the duty of loyalty and care to shareholders and members, and whose responsibilities include consulting with management regarding strategic and operational direction of the company as well as monitoring the company's performance and had a duty to remove directors and officers who knowingly engaged in acts in violation of the insurance contracts they sold and guaranteed as well as civil and criminal laws, has its principal place of business located at 5260 Western Avenue, Chevy Chase, MD 20815-3799 and whose registered agent for Service of Process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

¶ 12. Defendant, **THE COMMERCE INSURANCE COMPANY (Commerce)**, is the insurance company that entered into contract with **Cynthia A. Phillips** to provide automobile liability insurance coverage under a Massachusetts Automobile Insurance Policy, to the best of the Plaintiff's knowledge and belief, which covered the loss that occurred on, or around, November 24, 2010. **Commerce** is a Domestic Profit Corporation incorporated in Massachusetts, ID Number, 042495247, with its principal place of business located at 211 Main Street, Webster, MA 01570, and whose Registered Agent for Service of Process is Daniel P. Olohan, 211 Main Street, Webster, MA 01570.

¶ 13. Defendant, **Cynthia A. Phillips (Phillips)**, is an individual with a last known address located at 46 South Huntington Avenue, Apartment 2, Jamaica Plain, MA 02130-4711 in Massachusetts or 235 Marilyn Drive, Baton Rouge, LA 70815. **Commerce** and **Phillips** relied on the \$2,000 tort threshold at trial. They admit the PIP requirement but *suppressed* a declaration.

¶ 14. Defendant, **BERKSHIRE HATHAWAY, INC. (Berkshire)**, is a holding company and Delaware Corporation whose registered agent for Service of Process is The

Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. “**GEICO**” is a wholly owned subsidiary of **Berkshire**.

¶ 15. Defendant, **WARREN BUFFETT**, is, and was at all times, **CHAIRMAN, CEO, AND PRINCIPAL SHAREHOLDER OF BERKSHIRE HATHAWAY, INC. (Buffett)** whose address and principal executive office is 3555 Farnam Street, Suite 1440, Omaha, NE 68131.

¶ 16. Defendant, **BOARD OF DIRECTORS, COLLECTIVELY AND INDIVIDUALLY, BERKSHIRE HATHAWAY, INC.**, was, and is an entity comprised of individuals is responsible for, *inter alia*, approving company strategy, testing its business model, identifying risk areas, insuring integrity of the company financial statements, protecting the company's assets and reputation, representing the interests of shareholders, and ensuring the company complies with laws and codes, and the duty of loyalty and care to shareholders and members, and whose responsibilities include consulting with management regarding strategic and operational direction of the company, monitoring the company's performance, had a duty to remove directors and officers who knowingly engaged in acts in violation of the insurance contracts they sold and guaranteed. Its principal place of business/executive office is 3555 Farnam Street, Suite 1440, Omaha, NE 68131.

¶ 17. Defendant, **SMITH & BRINK, P.C.**, is a professional corporation incorporated in Massachusetts, ID # 043213715, with a principal place of business located at 350 Granite Street, Suite 2303, Braintree, MA 02184 and whose Registered Agent for Service of Process is Bruce Medoff, 350 Granite Street, Suite 2304, Braintree, MA 02184.

¶ 18. Defendant, **David Brink**, Individually and as Director of, **Smith & Brink, P.C.**, is an attorney licensed to practice law in Massachusetts, a citizen of Massachusetts, and Director of the law firm **SMITH & BRINK, P.C.**, whose business address is 350 Granite Street, Suite 2304,

Braintree, MA 02184 and who was, at all times relevant to this Complaint, believed to be a resident of Massachusetts and an employee, agent, servant, legal representative, or persons/entities under the direction and control of **Smith & Brink, P.C.**.

¶ 19. Defendant, **Lynn G. McCarthy**, Individually and as Employee of **Smith & Brink, P.C.**, is an attorney licensed to practice law in Massachusetts and a citizen of Massachusetts, and whose present business address is One Hollis Street, Suite, 425, Wellesley, MA 02482, and who was, at all times relevant to this Complaint, believed to be a resident of Massachusetts, an employee, agent, servant, legal representative, or persons/entities under the direction and control of **Smith & Brink, P.C.**.

¶ 20. Defendant, **LAMONTAGNE, SPAULDING & HAYES, LLP**, is a Professional Limited Liability Partnership incorporated in Massachusetts, ID # 001162764, with a principal place of business located at One Hollis Street, Wellesley, MA 02482 and whose Registered Agent for Service of Process is Cathryn Spaulding, One Hollis Street, Suite, 425, Wellesley, MA 02482.

¶ 21. Defendant, **Cathryn Spaulding**, Individually and as Partner of **LAMONTAGNE, SPAULDING & HAYES, LLP**, is an attorney licensed to practice law in Massachusetts, and a citizen of Massachusetts, and who was, at all times relevant to this Complaint, believed to be a resident of Massachusetts and an employee, agent, servant, legal representative, or persons/entities under the direction and control of **Lamontagne, Spaulding & Hayes, LLP**.

¶ 22. Defendant, **Ronald E. Harding**, is an attorney licensed to practice law in Massachusetts, and a citizen of Massachusetts, who was, at all times relevant to this Complaint, believed to be a resident of Massachusetts whose business address is believed to be HARDING GURLEY, LLP, 65 William Street, Suite 207 Wellesley, MA 02481and whose services as an attorney were engaged by “**GEICO**” to defend **Aebersold**.

¶ 23. Defendants, **J. Doe, 1 – 100**, represent and include [a] those employees, agents, servants, legal representatives, or persons/entities under the direction and control of individuals, corporations or entities mentioned in the caption of this Amended Complaint as Defendants. They include current and successor officers or directors of the corporate Defendants sued and identified within this Amended Complaint. They include [b] individuals over whom the above-named corporations or entities did, or could have, exercised control. They include [c] those who were not under the direction or control of the Defendants named above but whose conduct in all Courts in the 2013 litigation the Defendants were aware at all times, provided encouragement and could have exercised control of those persons. They include the Defendants in the prior proceedings in the Massachusetts Courts and their [d] attorneys, [e] law firms, [f] boards of directors, or [g] any person, persons, entities private, public, or not-for-profit who were involved in the litigation from 2013 to 2020 and may involve Court Personnel<sup>7</sup> and Judges.

¶ 24. Non-Defendant, **Melissa Aebersold (Aebersold)**, who is not a Defendant in this action is an individual who was operating a vehicle in which the Plaintiff was injured on November 24, 2010 insured by “**GEICO**” as the primary liability insurer. Other non-defendant persons/entities involved in the 2013 suit are: John Callahan, Esq., Philip Tierney, Esq., FINNEGAN, UNDERWOOD, RYAN & TIERNEY, ATTORNEYS AT LAW, 101 Federal Street, Suite 1900, Boston, MA 02110 who represented **Commerce**; Richard Bradley, Esq. and Mark Darling, Esq., FULLER, ROSENBERG, PALMER & BELIVEAU, LLP, Counsellors At Law, 339 Main Street, Worcester, MA 01608 who represented **Phillips**; Charles J. Braley, Esq., LAW OFFICE OF PATRICE L. SIMONELLI, ATTORNEYS AND SUPPORT ASSOCIATES ARE EMPLOYEES OF GOVERNMENT EMPLOYEES INSURANCE COMPANY, 29 Crafts Street, Suite 200, Newton, MA 02458 who are employees of Government Employees Insurance Company; William J. Fidurko, Esq., ZIZIK, POWERS,

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<sup>7</sup> Possibly acting above the law. Discovery is required pertaining to this aspect of the *suppression* and fraud claims.

O'CONNELL, SPAULDING & LAMONTAGNE, 690 Canton Street, Westwood, MA 02090, and Jocelyn M. Sedney, Esq., Brody, Hardoon, Perkins & Kestin, LLP, 699 Boylston Street, 12<sup>th</sup> Floor, Boston, MA 02116. The Plaintiff reserves the right to add them as Parties.

#### **JURISDICTION AND VENUE**

¶ 25. Venue in the United States District Court for the District of Massachusetts is proper for the following reasons: [a] the claims involve complete diversity and claims in excess of \$75,000.00, [b] the acts were committed in Massachusetts, and the claims involve: [c] Vermont contract law, [d] Massachusetts statutory law, [e] citizens from different states, [f] cases and controversies involving the Constitutional Guarantees of the United States Constitution and Constitutions of Vermont and Massachusetts and [g] jurisdiction is proper under 28 U.S.C. § 1331 and 28 U.S.C. § 1332. The Plaintiff has standing as he has [1] an injury-in-fact, [2] has suffered an invasion of a legally protected interest, [3] that interest is traceable to the challenged conduct of the Defendants and [4] that interest is likely to be redressed by a favorable decision by this Court as contemplated by *Spokeo, Inc. v. Robins*, 578 U.S. \_\_, 136 S. Ct. 1540, 194 L. Ed. 2D 635 (2016). The Plaintiff is entitled to declaration of law pertaining to Massachusetts statute and his Vermont contract(s). He is entitled to his rights under M.G.L. ch. 231A §§ 1 – 3.

#### **LAW**

¶ 26. The following law is at issue in this case: M.G.L. ch. 90 § 3, M.G.L. ch. 90, § 34A, M.G.L. ch. 231A §§ 1 – 3, and all case law quoted within this Complaint as well as in all documents in the 2013 litigation.

#### **FACTUAL BACKGROUND**

¶ 27. This suit pleads for [1] declaratory relief, [2] causes of action arising from the conduct of the Defendants in and during the litigation commenced in 2013 where the Plaintiff

avers Defendants *suppressed* his rights, breached duties owed, or participated in violating his rights under contract or at law in that litigation,<sup>8</sup> and [3] a Complaint in Equity.

### FACTS AND CIRCUMSTANCES REQUIRED BY FED. R. CIV. P. RULE 9(b)

¶ 28. *See* ¶ 1 for the Plaintiff's reliance on judicial notice of prior proceedings, Complaint [#1], and all documents in the 2013 action for facts and circumstances required by 9(b). Those facts reflect a systemic linkage through continuing coordination of the attempt to *suppress, conspiracy to suppress, and actual suppression*, of Plaintiff's rights to a declaration of law, to due process, to equal protection with the intent to commit fraud. They also reflect the Defendants' knowledge of, encouragement and participation in, a *conspiracy* which gives rise to all Counts raised in **Part Second**. These facts apply to the Defendants' intent to commit fraud and to all Counts in this Amended Complaint. They refer to all Defendants. This Court has prejudiced the Plaintiff's right to plead with particularity under Rule 9(b) by limiting this Amended Complaint to 50 pages.<sup>9</sup>

¶ 29. All facts, arguments, claims by the Plaintiff, information, proceedings, transcripts, motions, rulings, etc., relating to events involving the 2013 action contained in all papers, motions, transcripts, rulings, reported decisions, and unreported decisions, audio recordings of hearings, motions, and trial, communications to and from the Court in any form including the post, electronically, or voice recordings (i.e, everything which occurred involving the 2013 action), filed in the 2013 litigation are incorporated herein by reference and represent facts or circumstances constituting fraud or mistake. They pertain to all Counts herein.

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<sup>8</sup> Plaintiff avers the 2013 proceedings were a sham. They were an attempt to deceive the Plaintiff into believing his claims were adjudicated lawfully. The Summ. Judg.s are one example. They were nothing more than a ruse. A scam. A flimflam. In fact, the Plaintiff lost all but one of the (approximately) one hundred motions in the 2013 action by design of the Defendants and the Court. In a case that is a **Landmark Legal Discovery**. No Defendant objected to another Defendant's motion. Ever. The Defendants worked as coadjutants in a *conspiracy to suppress* the Plaintiff's right to a declaration of law, due process, and equal protection in all of his claims.

<sup>9</sup> An arbitrary and capricious number of pages set by the Court designed to prejudice the Plaintiff's right to plead. He is denied access to justice to plead his case just as his right to a declaration of law has been *suppressed* since 2013.

¶ 30. The Plaintiff avers the following facts plead (and those contained in Complaint [#1] along with all documents in the 2013 Massachusetts State Court action of which judicial notice must be taken) clearly show, and are sufficient to raise, a right to relief above the speculative level on the assumption that all the allegations in the complaint are true. They present enough facts to raise a reasonable expectation that Discovery will reveal a plausible suggestion of *conspiracy to suppress* and actual *suppression*<sup>10</sup> of the Plaintiff's rights to a declaration of law from 2013 to the present giving rise to all counts raised herein. The following facts allow the Court to draw a reasonable inference that the Defendants are liable for the conduct herein alleged which reflect a plausible suggestion that the Defendants *conspired to suppress* and actually *suppressed* the Plaintiff's right to a declaration of law and rights in all Counts in the 2013 action in Massachusetts state court which involved duties owed to the Plaintiff by the Defendants.<sup>11</sup> The source of the information and reasons for belief that the Plaintiff's right to a declaration of law was actually *suppressed* and that there was a *conspiracy to suppress* his rights are found in the fact that he had a right to a declaration of law and rights of due process and equal protection, in the state court action, and there is *no declaration of law* despite pleas since 2013. He was denied those rights. He was denied his opportunity to be heard. He is forced to pursue declaration of his rights at this time. **Fact:** There is no declaration of law. **Fact:** There has never been a real contest before the state court due to fraud involving all Defendants<sup>12</sup> and the Court in a *conspiracy to suppress* a declaration of the Plaintiff's rights and all claims.<sup>13</sup> There is no declaration that the

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<sup>10</sup> Conduct which is not only civilly actionable, but also criminal in nature and not a legitimate defense strategy.

<sup>11</sup> Here, there can be no attack on a state court judgment as claimed by this Court in its December 9 and 30 Orders for there was no judgment with respect to the Complaint for Declaration or breach of contract claims. Or any claims. The law, as written in 1971 and plead by the Plaintiff, was *suppressed*. There was no opportunity to be heard.

<sup>12</sup> All Defendants herein had knowledge of the *suppression* of the Plaintiff's rights in the 2013 action for which there could be no adjudication of any rights without resolution through declaration of the disputed law. The proceedings were fraudulent by design in a *conspiracy to suppress* a declaration of law. There was no access to justice.

<sup>13</sup> This involves extrinsic fraud to which the Court-cited *Rooker-Feldman* doctrine does not apply. Nor could it. After the Defendants' plan to *suppress* a declaration of law was conceived, all events involved extrinsic fraud not discoverable to the Plaintiff. Though he did all that was possible for the Defendants and Court to reveal their fraud.

Massachusetts statute requires PIP on non-resident vehicles evincing a plausible suggestion of *conspiracy*. The Plaintiff is required to litigate, yet again, to terminate the uncertainty of his rights, duties, status, and other legal relations.<sup>14</sup> He was denied his right to present his case. All facts herein pertain to **Part First, Second, and Third**. In addition to the facts stated with particularity in Complaint [#1] starting at ¶ 54, as well as above, the following facts satisfy rule 8, Rule 9(b), *Twombly*, and *Iqbal*. They clearly show: **[a] Fact:** There was a *conspiracy to suppress* and actual *suppression* of the Plaintiff's right to a declaration of law, rights in all his claims in the 2013 action, and rights of due process and equal protection in the 2013 action; **[b] Fact:** There was never a declaration of law for which the Plaintiff had a right as plead in his 2013 Complaint; **[c] Fact:** Failure to declare the law affected every count in the 2013 action; **[d] Fact:** There is continued uncertainty as to the statute and contracts as Summary Judgment (Summ. Judg.) did not declare rights and perpetuated uncertainty; **[e] Fact:** The proceedings were fraudulent and no rights of the Parties were established or resolved;<sup>15</sup> **[f] Fact:** the breach of contract counts were not adjudicated and summarily dismissed;<sup>16</sup> **[g] Fact:** No rights were adjudicated in the 2013 litigation without a declaration of law. Nor could there be; **[h] Fact:** A strong common motive on behalf of all Defendants and the Court existed to *suppress* a declaration of law, due process, equal protection, and claims brought in the 2013 action;<sup>17</sup> **[i] Fact:** The Defendant insurers never moved for declaration and insure 29 million persons;<sup>18</sup> **[j]**

<sup>14</sup> The Plaintiff's 2013 claims changed the rights, duties, status of all Defendants in that suit. But it was ignored.

<sup>15</sup> Plaintiff avers during the 2013 proceedings in which all Defendants *suppressed* the Plaintiff's rights, they were engaged in breach of contract, bad faith, violations of covenants of good faith, fraud, conspiracy to commit fraud, attempt to commit fraud, misrepresentation, interference with contractual relations, aiding and abetting, breach of fiduciary duties, and violations of the Racketeer-influenced Corrupt Organizations Act. **Part Second** within.

<sup>16</sup> There was no adjudication of breach of contract by design of the Defendants and the Court. A clear plausible suggestion of *conspiracy to suppress* and *suppression* as declaration must precede Summ. Judg. for there can be no determination as to whether the contracts were breached without resolving the law in dispute.

<sup>17</sup> The "insurers" would be required to pay PIP to 7,500 persons per year. And prior claims for breach of contract.

<sup>18</sup> Though the insurers denied the statute requires PIP and their policies provided PIP in their Answers to the 2013 Complaint, they never moved for a declaration. If were correct that the statute does not require PIP or their policies did not provided PIP, the breach of contract claims go away. If they denied in good faith they would have sought a declaration faster than it took them to contrive their fraudulent scheme involving summary judgment.

**Fact:** Defendants never mentioned the word “declaration” except once by accident in seven years of litigation and almost a thousand pages of hearing transcripts – as if the Plaintiff never filed a complaint for declaration; **[k] Fact:** All rights and claims were adjudicated in the 2013 action under law that does not exist; **[l] Fact:** Defendants requested the Court refuse to declare the law and not docket the motion for declaration; **[m] Fact:** Declaration was refused without reason stated in the record as required by M.G.L. ch. 231A § 3;<sup>19</sup> **[n] Fact:** The Defendants and Court ignored demands for declaration and recusal; **[o] Fact:** Defendants and the Court never denied Plaintiff's complaints that they were *suppressing* a declaration of law and his rights of due process and equal protection; **[p] Fact:** The Defendants and Court never denied the Plaintiff's concerns and averments that their *suppression* of his right to a declaration of law, due process, equal protection and rights in all his claims were, in fact, criminal acts;<sup>20</sup> **[q] Fact:** There were ex parte communications from at least March 5, 2014 and ongoing between the Defendants and the Court;<sup>21</sup> **[r] Fact:** All Defendants conspired and worked together to suppress all of the Plaintiff's claims and rights in the 2013 action despite their conflicting interests; **[s] Fact:** There is only one way there was no declaration of law and that is by way of a *conspiracy* between Defendants and Court to *suppress* and actual *suppression* of a declaration of law; **[t] Fact:** A declaration was the insurers' obligation in 2013 and it is here; **[u] Fact:** The insurers had, and have, an obligation to convert the Complaint for Declaratory Relief, **Part First**, to a mandatory class action under Fed. R. Civ. P. Rule 23(b)(1)(B) and Rule 19 as the relief sought by the Plaintiff here affects(s) the

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<sup>19</sup> Though the Plaintiff repeatedly requested a reason, justification, or excuse why the Superior Court, Appeals Court, and Supreme Judicial Court (SJC) did not declare the law, none was ever provided. It refused to provide a reason it would not provide a reason. Like frightened school children running away from their guilty acts hoping, against hope, to avoid accountability. And not one Court, not one Judge, and not one Defendant has declared the Plaintiff's rights under the statute. They are still in dispute. A perpetuated uncertainty at the request of the Defendants. And the clearest plausible suggestion of a *conspiracy to suppress* and *suppression* of the Plaintiff's rights.

<sup>20</sup> The most significant crimes against people and children in the 21<sup>st</sup> Century. Defendants have blood on their hands.

<sup>21</sup> “GEICO” objected to Plaintiff's motion to reveal ex parte communications. A plausible suggestion there were ex parte communications under the rules of judicial and professional conduct.

interest of all class members who are policyholders.<sup>22</sup> And specifically, with respect to **Parts First** and **Third**, it is a plain statement that the Plaintiff is entitled to know and be granted his rights under Massachusetts law which the insurers deny but the Massachusetts Court agrees; **[v]** **Fact:** Plaintiff was, and is entitled to PIP protections<sup>23</sup> associated with non-resident motor vehicle policies of liability insurance as he travels into Massachusetts routinely. But the law was never declared; **[w]** **Fact:** In the 2013 litigation, the Plaintiff averred Massachusetts statute requires non-resident motor vehicle “owners” to “maintain” Massachusetts “Personal Injury Protection” (PIP) “provisions” as part of their “policy of liability insurance.” Their policy of liability insurance becomes the equivalent of a Massachusetts Compulsory Automobile Liability Policy. But “**GEICO**” and **USAA** denied these averments and never moved for a declaration of their position; **[x]** **Fact:** The Massachusetts Judiciary agreed with the Plaintiff the statute requires PIP. It refused to declare the law; **[y]** **Fact:** At no time from September 16, 2013 did any Defendant move for a declaration of law as to the Plaintiff’s rights or their rights nor did they support the Plaintiff’s Complaint for, or motion for, a declaration of his rights; **[z]** **Fact:** The Plaintiff avers *suppression* could only have been as successful as it was if there was a *conspiracy* between all Defendants and the Court; **[aa]** **Fact:** All Defendants in this suit knew of those persons or entities (and encouraged them) who were *suppressing* the Plaintiff’s rights by way of written communications since 2015 or by direct participation,<sup>24</sup> but failed to take any action to prevent those acts or to intervene and stop the *conspiracy to suppress* the Plaintiff’s right to a declaration of that law, due process and equal protection or the actual *suppression* of those rights.

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<sup>22</sup> Proof of strong common motive and plausible suggestion of *conspiracy to suppress* as they did not move to convert the 2013 action to a class action. Nor did they move to join others. Rather, they *suppressed* a declaration for 29 million policyholders. A monumental public relations disaster for “**GEICO**,” **USAA**, and **Commerce**.

<sup>23</sup> PIP “protections” are entitlements intended to be “quick and efficient” payments. *Pinnick v. Cleary*, 360 Mass. 1, 22, 271 N.E.2d 592 (1971). They have been rendered nonsense by “**GEICO**,” **USAA**, **Commerce** and the Judiciary.

<sup>24</sup> And knew of their obligation to convert the 2013 suit to a mandatory class action for their policyholders. And further knew their failure to seek declaration would result in injury and death of their policyholders and children.

In fact, they encouraged those acts. **[bb] Fact:** Further proof of *conspiracy* between the Defendants and the Court is found in the uses by the Defendants and the Court of selective, purportedly dispositive “facts”: The following facts and circumstances clearly show a systemic linkage through continuing coordination of the attempt to *suppress, conspiracy to suppress*, and actual *suppression*, of Plaintiff’s rights, by the Defendants and Judiciary in the 2013 action, to a declaration of law, to due process, to equal protection with the intent to commit fraud. Such facts are that “**GEICO**” and **USAA** were released from the 2013 breach of contract case based on: **(1)** “facts” “**GEICO**” and **USAA** were obligated by contract to investigate in 2010 but never did (as far as we know); **(2)** “facts” which Plaintiff requested from “**GEICO**” and **USAA** which they denied him; **(3)** “facts” which Plaintiff was entitled to from “**GEICO**” and **USAA** in Discovery but they denied to provide him;<sup>25</sup> **(4)** “facts” which the Court, at all times, knew were not the facts on November 24, 2010 (the date of the auto collision) as there is no indication that the insurers complied with their contractual obligations to investigate those facts; **(5)** “facts” which thereafter Fabricant, J. denied to the Plaintiff on March 6, 2014 by ex parte oral motion by the Defendants staying (denying) Discovery; **(6)** “facts” which thereafter Wilkins, J. ruled were required (bearing on PIP benefits from “**GEICO**”); **(7)** “facts” which thereafter Fabricant, J. ruled had “no apparent bearing on the claim for PIP benefits from **GEICO**;” **(8)** “facts” which thereafter Wilkins, J. ruled were dispositive (bearing on PIP benefits from “**GEICO**”) dismissing claims against “**GEICO**” (and **USAA**); **(9)** “facts” disallowed as evidence under *Canavan v. Hanover Insurance Company*, 356 Mass. 88, 248 N.E.2d 271 (1969) since 1969; **(10)** “facts” irrelevant to either a declaration of law, coverage, or breach of contract; **(11)** “facts” which reflect the Massachusetts Judiciary, at all levels, *refused* to address a declaration of law or a even

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<sup>25</sup> There can be no determination of a breach of contract claim without the contract. Denial of Discovery of these documents to the Plaintiff reflects a plausible suggestion of a *conspiracy* to commit fraud, *suppression*, etc. raised herein. A denial of Discovery of those contracts by “**GEICO**” and **USAA** sealed the Plaintiff’s fate in 2013.

the right to one at the request of the Defendants; *and ultimately*; (12) [inadmissible “newly discovered” and misleading] “facts” used by conspirators as a diversion from their real objective. The obstruction of justice. Crimes incapable of commission by accident. The foregoing averments were made to the Superior Court, Appeals Court,<sup>26</sup> SJC and Defendants. Not one made any response. Not one denied these were facts which reflected crimes or *suppression* of the Plaintiff’s rights. *Suppression* of a declaration of law was *suppression* of all the Plaintiff’s rights.

## PART FIRST

### Count I - Declaratory Relief Against “GEICO” and USAA

¶ 31. The Plaintiff re-alleges, re-avers and incorporates herein by reference the facts, circumstances, and allegations set forth in ¶ 1 through ¶ 30 above including all documents referenced in ¶ 55 of Complaint [#1] (based on the Court’s arbitrary and capricious 50 page limitation), all documents, orders, transcripts, etc. in the 2013 Massachusetts State Court Action, and seeks relief in this Count under Fed. R. Civ. P. Rule 57 and 28 U.S.C. § 2201.

¶ 32. The Plaintiff demands that this Court [a] declare that Massachusetts statute (M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A) requires *non-resident* motor vehicle owners to “maintain” Massachusetts PIP “provisions” as part of their “policy of liability insurance,” [b] declare that policies of liability insurance issued by “GEICO” and USAA provide Massachusetts PIP “protection,” [c] as well as other declarations referenced in the Prayer for Relief infra or, in the alternative, issue certified questions as requested in the Prayer for Relief. “GEICO” and USAA deny aforementioned averments. However, the Massachusetts Judiciary agrees with the Plaintiff. The Plaintiff is entitled to a declaration of his rights under statute and insurance contracts by virtue of his presence in Massachusetts as a pedestrian and “traveller” on its roads.

<sup>26</sup> The case was imprisoned in Superior Court for 979 days *after* trial ended before appeal. A plausible suggestion of a *conspiracy to suppress* and actual *suppression* of a declaration of law and the Plaintiff’s rights. The Appeals Court’s Rule 1:28 Decision confirmed the statute requires PIP on non-resident vehicles and policies by “GEICO” and USAA provide PIP. These Defendants did not appeal those findings in Superior Court.

Should the Massachusetts Judiciary refuse to answer certified questions, the Plaintiff requests Mandamus issue for them to do so.

¶ 33. On information and belief the “**GEICO**” policy of insurance<sup>27</sup> **SECTION I – Liability Coverage, Your Protection Against Claims From Others, Bodily Injury Liability, Property Damage Liability** states:

When the policy applies to the operation of a motor vehicle outside of **your** state, we agree to increase **your** coverages to the extent required of out-of-state motorists by local law.

¶ 34. On information and belief the **USAA** policy provided **OUT OF STATE COVERAGE** and appears in **PART A – LIABILITY COVERAGE**:

If an auto accident to which this policy applies occurs in any state or province other than the one in which your covered auto is principally garaged, your policy will provide at least the minimum amounts and types of coverages required by law.

¶ 35. The Plaintiff (a Member of **USAA** and policyholder of “**GEICO**” and beneficiary of both) is a frequent “traveller” on the roads of Massachusetts as a pedestrian or occupant of a non-resident motor vehicle. He is entitled to the “protections” mandated by M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A. He has a right under M.G.L. ch. 231A, §§ 1 – 3 to a declaration of the law<sup>28</sup> pertaining to statute and contract that **[a]** Massachusetts statute (M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A) requires non-resident motor vehicle owners to “maintain” Massachusetts PIP “provisions” as part of their “policy of liability insurance” *and* **[b]** policies of liability insurance provide Massachusetts PIP “protection” which are denied by “**GEICO**” and **USAA**.

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<sup>27</sup> No certified copy of the “**GEICO**” or **USAA** policies were produced in the 2013 litigation due to *suppression*. The actual language of both of these policies on the date of filing suit on September 16, 2013 is unknown. The quoted language applies to the present policy the Plaintiff has with “**GEICO**” as he is a current policyholder. That no contract was allowed to be Discovered in the 2013 action when the claims were for breach of contract should shock the conscience as clear evidence of a *conspiracy to suppress* and *suppression* of a declaration of the Plaintiff’s rights. The Court and Defendants intended from March 6, 2014 (when Discovery was stayed via oral motion by the Defendants) to *suppress* a declaration of law and rights. They did so by ex parte agreement on March 5, 2014.

<sup>28</sup> I.e. a declaration of his rights under Massachusetts statute and Vermont contracts of automobile liability insurance.

¶ 36. Under their policies of insurance, “**GEICO**” and **USAA** have contractual obligations, and obligations at law, to the Plaintiff (and everyone) to provide peace of mind and the “protections” promised by contract and mandated by Massachusetts law. They include Massachusetts PIP protections on non-resident vehicles such as Vermont-registered vehicles. They promise to increase and afford coverages under its out-of-state coverage clause in accord with its insurance policies and M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A. “**GEICO**” and **USAA** deny these averments. The Plaintiff is entitled to a declaration of law to “terminate” the “uncertainty” of the statute and insurance contract under M.G.L. ch. 231A, §§ 1 – 3.

¶ 37. WHEREFORE, Plaintiff requests that this Court enter judgment and declaration of law as plead in the paragraph below titled PRAYER FOR RELIEF against these Defendants.

## **PART SECOND**

### **Count II - Breach Of Contract Against “GEICO” and USAA**

¶ 38. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 39. Defendants “**GEICO**” and **USAA** had duties and obligations under their contracts and at law from September 16, 2013 that they would defend any claims made against them under their contract with the Plaintiff in good faith and refrain from *conspiring to suppress*, and actually *suppressing*, his rights in any litigation to a declaration of law, due process, and equal protection. Those duties were breached from September 16, 2013 as evidenced in all facts enumerated in this Complaint, Complaint [#1], and in the *suppression* of a declaration of his rights. There is proximate causation to the Defendants' conduct involving *conspiring to suppress* and *suppressing* the Plaintiff's rights in the 2013 litigation and damages resulting as there is no declaration of law and the Plaintiff must litigate herein to determine his rights.

¶ 40. In defending the 2013 law suit, these Defendants had duties and obligations to honor their contracts. They breached those obligations. Under Vermont law, "...a breach of contract is merely a failure to perform as promised. A party is entitled to the benefits of their bargain. That is, each is entitled to rely on the agreement reached by the parties either expressly or impliedly in performing their obligations that they're promised, expressly or impliedly." *Haynes v. Golub Corporation*, 166 Vt. 228, 692A. 2D 377 (1997). This included their obligations in the defense of claims and law suits made against them. The Defendants breached their obligations under their contracts (as described herein and throughout Complaint [#1]) in that they *conspired to suppress* and actually *suppressed*<sup>29</sup> the Plaintiff's rights to a declaration of law and under contract since 2013. The Defendants knew they failed to investigate PIP protections, defended in bad faith, conspired with others, and *suppressed* Plaintiff's rights to terminate the uncertainty of his rights.

¶ 41. As a result of the actions of the Defendants described in this Count which continue to this date, the Plaintiff was caused to suffer financial harm including compensatory damages, attorney's fees, costs, and expenses associated with litigating his claims from September 16, 2013 to the present as well as compensatory damages, attorney's fees, costs, and expenses associated with his claims filed on September 16, 2013.

¶ 42. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

**Count III - Negligence In Contract Against "GEICO" and USAA**

¶ 43. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 44. In defending the 2013 law suit brought by the Plaintiff, these Defendants had duties and obligations to honor their contracts. Instead, they negligently breached them. The

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<sup>29</sup> *Suppression* is involved in all Counts in this Amended Complaint which include, fraud, attempted fraud, etc.

Plaintiff avers the Defendants in this Count were negligent in defending their duties and obligations under contract in the 2013 litigation, were negligent in failing to seek declaration of the law, *conspired to suppress*, and actually *suppressed* Plaintiff's right to a declaration of law, due process, and equal protection, in all claims in that litigation. The Defendants knew they failed to investigate PIP protections in 2010, defended the 2013 law suit in bad faith as they clearly had breached their contracts by failing to investigate, conspired with others, and *suppressed* Plaintiff's rights to terminate uncertainty of his rights in the 2013 litigation.

¶ 45. As a result of the actions of the Defendants described in this Count which continue to this date, the Plaintiff was caused to suffer financial harm including compensatory damages, attorney's fees, costs, and expenses associated with litigating his claims from September 16, 2013 to the present as well as compensatory damages, attorney's fees, costs, and expenses associated with his claims filed on September 16, 2013.

¶ 46. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

**Count IV - Respondeat Superior Against Warren Buffett, Chairman, CEO, And Principal Shareholder, Of Berkshire Hathaway, Inc. and Berkshire Hathaway, Inc., "GEICO," USAA, Berkshire, Smith & Brink, P.C., and Lamontagne, Spaulding & Hayes, LLP**

¶ 47. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 48. The Plaintiff avers the existence of an employer/employee relationship and liability on the Defendants named in this Count for the acts of those persons who *conspired to suppress* and actually *suppressed* the Plaintiff's claims in the 2013 litigation. These Defendants were, at all times therein, those who were responsible under the theory of respondeat superior for "GEICO," USAA, Berkshire Hathaway, Inc., Smith & Brink, P.C., and Lamontagne, Spaulding & Hayes, LLP, and its agents, servants, employees, and those under its direction and

control, as well as those not under its direction and control and which they knew of their conduct which occurred in the 2013 litigation. These Defendants named herein were aware of those who *conspired to suppress* and actual *suppressed* the Plaintiff's rights in the 2013 litigation and provided encouragement to them. These Defendants had obligations and opportunities to intervene but failed to stop those persons or entities from engaging in the negligent, willful, wanton, and/or intentional conduct in the 2013 litigation involving the *suppression* of the Plaintiff's rights. "Under the settled doctrine of respondeat superior, an employer or master is held vicariously liable for the tortious acts of an employee or servant committed during, or incidental to, the scope of employment. *Brueckner v. Norwich Univ.*, 730 A.2d 1086, 1090 (Vt. 1999). These Defendants knew, were reckless in not knowing, or took steps to ensure they would not know or would not be kept informed, and/or should have known of such *suppression* or the Plaintiff's rights and all other acts described in this Complaint. They further knew that *suppression* of the Plaintiff's rights were ongoing. They had an obligation to know, had a financial interest in, and benefited from said conduct involving *suppression* of the Plaintiff's rights (which was conducted "in furtherance of the [employer's] business." *Lewis v. Bellows Falls Congregation of Jehovah's Witnesses*, 95 F. Supp. 3D 762, 766 (D. Vt. 2015). See [bb] above. The fact that the predominant motive of the agent(s) may have been to benefit himself/herself/themselves does not prevent the act from coming within the scope of employment as long as the act is otherwise within the purview of these Defendants' authority and such was the case from 2013. Further, the Defendants in this Count participated by their silence and/or encouragement in aiding and abetting the actions of the remaining Defendants. The Plaintiff avers the acts of the employees, agents, etc. engaged in *suppressing* and violating the Plaintiff rights since 2013 are (a) of the kind they were employed to perform; (b) occurred

substantially within the authorized time and space limits; (c) were actuated, at least in part, by a purpose to serve the master; *and* (d) were not unexpected by their master (the Defendants in this Count). *Doe v. Forrest*, 2004 VT 37, P15 (Vt. 2004). Further, though Defendant **Buffett** knew of Plaintiff's allegations, he still referred to **Nicely** as follows:

Finally, there is GEICO, the company that set my heart afire 66 years ago (and for which the flame still burns). GEICO is managed by Tony Nicely, who joined the company at 18 and completed 55 years of service in 2016. Tony became CEO of GEICO in 1993, and since then the company has been flying. There is *no* better manager than Tony, who brings his combination of brilliance, dedication *and* soundness to the job. (The latter quality is essential to sustained success. As Charlie says, it's great to have a manager with a 160 IQ – unless he thinks it's 180.) Like Ajit, Tony has created tens of billions of value for Berkshire.

*See* Berkshire Hathaway Inc Annual Letter 02.27.2017, p. 10. All the actions described in this Complaint occurred while **Nicely** was on **Berkshire's** Board of Directors.

¶ 49. As a result of the relationship of the Defendants in this Count to the persons who engaged in the conduct described in this Complaint and Complaint [#1], the Defendants named in this Count are liable under principles of respondeat superior for damages to the Plaintiff who was caused to suffer financial harm including compensatory damages, attorney's fees, costs, and expenses associated with litigating his claims from September 16, 2013 to the present as well as compensatory damages, attorney's fees, costs, and expenses associated with those claims.

¶ 50. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

**Count V - Tortious Bad Faith, Contractual Bad Faith, Violation Of Implied Covenant Of Good Faith and Fair Dealing Under Vermont Law Against “GEICO” and USAA**

¶ 51. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 52. In defending the 2013 law suit by the Plaintiff, “GEICO” and **USAA** had duties and obligations to honor their contracts. They had a duty to act in good faith and an implied

covenant of good faith and fair dealing that they would defend any claims and law suits against them in good faith and would refrain from *conspiring to suppress*, and actually *suppressing* his rights in litigation. Those duties were breached as evidenced by the facts enumerated in this Complaint, Complaint [#1], and in the *suppression* of a declaration of his rights. There is proximate causation to the Defendants' conduct involving *suppressing* the Plaintiff's rights in that litigation and damages resulted. In a claim for tortious bad faith the plaintiff must prove: (1) that the insurance company had no reasonable basis to deny the benefits of the policy, and that, (2) the insurance company knew or recklessly disregarded the fact that no reasonable basis existed for denying the claim. *Bushey v. Allstate Ins. Co.*, 164 Vt. 399, 670 A.2d 807, 809 (Vt. 1995). Here, Plaintiff and Defendant insurers had an insured/insurer/beneficiary relationship by virtue of a policy of insurance. *Kirkpatrick v. Merit Behavioral Care Corp.*, 128 F.Supp.2d 186, 191 (D. Vt. 2000). That policy of insurance was mandated (required) by M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A under which the Plaintiff was an insured, beneficiary, or entitled covered person under M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A. The Defendants knew they had investigated no facts involving the 2010 injuries and engaged in fraudulent conduct in the 2013 litigation to *suppress* those facts. They knew they breached their contracts and covered it up. The duty of good faith and fair dealing applies to the insurers and "arises solely because of the presence of the insurance contact." *Greene v. Stevens Gas Serv.*, 177 Vt. 90 (2004). Vermont also recognizes a cause of action for bad faith in the context of handling third-party claims against an insured which PIP claims represent. *Myers v. Ambassador Ins. Co., Inc.*, 508 A.2d 689, (Vt. 1986). "The implied covenant of good-faith and fair-dealing defined plaintiff's expectations for coverage and recovery in the event that benefits were wrongfully denied." *Murphy v. Patriot Insurance Company*, 2014 Vt, 96, 106 A.3d 911 (Vt. 2014). A claim for bad faith requires "more than

negligence on the part of the insurer.' *Booska v. Hubbard Ins. Agency, Inc.*, 160 Vt. 305, 312, 627 A.2d 333, 336 (1993). And to establish bad faith, the plaintiff must show that: '(1) the insurance company had no reasonable basis to deny benefits of the policy, and (2) the company knew or recklessly disregarded the fact that no reasonable basis existed for denying the claim.' *Bushey*, 164 Vt. at 402, 670 A.2d at 809; accord *Peerless Ins. Co. v. Frederick*, 2004 VT 126, ¶ 13, 177 Vt. 441, 869 A.2d 112." quoting *Murphy* at ¶ 17. In the present case, there was no "legitimate dispute" (*Murphy* at ¶ 17) for the insurers in the 2013 law suit for denying the Plaintiff's claims when, having conducted no investigation, they were in clear breach of contract.<sup>30</sup> The insurers moved for Summ. Judg.s (in bad faith) on "facts" they did not investigate, facts they did not know, facts that they did not have to successfully move for Summ. Judg., and knew Summ. Judg. would not resolve with respect to the breach of contract claims. They moved for Summ. Judg. with no affidavits. And the insurers *conspired to suppress* and did *suppress* a declaration of law. This is more than negligence. They moved for Summ. Judg. in an attempt to defraud the Plaintiff of his right to a declaration of law and under contract. It is a plausible suggestion of bad faith and all causes of action in this law suit that they knew they failed to investigate coverage and facts and thereby breached their contracts, They contrived a *conspiracy to suppress* a declaration of law, due process, and equal protection rights of the Plaintiff in an attempt to deceive him into believing his rights were properly adjudicated by Summ. Judg. The expectations for coverage were negligently, recklessly, willfully, wantonly, and/or intentionally abandoned by these Defendants. Therefore, the actions from September 16, 2013 represent tortious bad faith, contractual bad faith, violations of implied covenants of good faith and fair dealing proximately causing the Plaintiff's damages. These facts permit the Court, under the principle of

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<sup>30</sup> A plausible suggestion of *conspiracy to suppress* and actual *suppression* of the right to a breach of contract claim.

judicial experience and common sense, to draw the reasonable inference that the Defendants are liable for the misconduct alleged herein.

¶ 53. As a result of the actions and inactions of the Defendant which continue to this date, in engaging in tortious bad faith, contractual bad faith, violations of implied covenants of good faith and fair dealing under Vermont law, has caused, and is causing, financial harm to the Plaintiff including compensatory damages, attorney's fees, costs, and expenses associated with litigating his claims from September 16, 2013 to the present as well as compensatory damages, attorney's fees, costs, and expenses associated with his claims filed on September 16, 2013.

¶ 54. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

**Count VI - Negligent Hiring And Continued Negligent Hiring Against “GEICO,” USAA, Smith & Brink, P.C. and Lamontagne, Spaulding & Hayes, LLP**

¶ 55. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 56. The Defendants named in this Count had contractual duties and obligations to the Plaintiff to engage and/or hire competent, ethical, and qualified individuals, entities, or firms who were either employees, agents, servants, legal representatives, or persons/entities under their direction and control, or those just mentioned not under their direction or control and of whose conduct they had knowledge and encouraged. These Defendants were aware at all times of their employees' conduct and provided encouragement to them in the *suppression* of the Plaintiff's rights in the 2013 litigation. These Defendants had the authority to control, or hire, or terminate the employment or engagement of services of those under their control and who were engaged to fulfill these Defendants' obligations under contract and statute in the 2013 litigation. The obligation of the Defendants named herein was to hire competent persons to defend claims made in law suits against them in good faith by the Plaintiff. The duty and obligation owed was to

refrain from *conspiring to suppress*, and actually *suppressing* the Plaintiff's rights in litigation and to refrain from attempting to commit fraud. These Defendants were aware of the conspiracy *to suppress* and *suppression* of a declaration of law owed to the Plaintiff. They were aware of ex parte communications in the 2013 law suit. Their knowledge of this conduct by their employees' was first provided to these Defendants in a letter dated September 30, 2015 and in many letters thereafter. None of the Defendants named in this Count took any action in response to their knowledge of negligent, intentional, unethical and/or illegal conduct by those they hired to defend the 2013 litigation. They took no action from 2013 to stop the *conspiracy to suppress* or *suppression* as their intent was to further aid and abet the *conspiracy to suppress* and actual *suppression* of a declaration of law, due process, equal protection rights of the Plaintiff. The doctrine of negligent hiring "...establishes a principle of employer liability for the costs that work-related torts impose on third parties." Restatement (Third) of Agency § 2.04 cmt. b (2006). "Under the settled doctrine of respondeat superior, an employer or master is held vicariously liable for the tortious acts of an employee or servant committed during, or incidental to, the scope of employment." *Brueckner*, 1090 (1999); See Restatement (Third) of Agency § 7.07(1) ("An employer is subject to vicarious liability for a tort committed by its employee acting within the scope of employment").

¶ 57. The Defendants named in this Count breached their duties by negligently hiring unqualified, unvetted, inexperienced, uneducated, untrained, employees, agents, servants, legal representatives, etc. to defend the 2013 law suit and provided encouragement to them in their actions which included a *conspiracy to suppress* and actual *suppression* of the Plaintiff's rights. They failed to take any action to stop the *conspiracy to suppress* and *suppression* of the

Plaintiff's rights. Such acts were a proximate cause of the Plaintiff's damages. They knew the Plaintiff was entitled to a declaration of law but took no action to support or encourage that right.

¶ 58. As a result of the actions of the Defendants described in this Count which continue to this date, as well as their inactions, the Plaintiff has set forth a claim of negligent hiring and continued negligent hiring by the Defendants named in this Count. *See Haverly v. Kaytek, Inc.*, 169 Vt. 350, 738 A.2d 86 (1999). The Plaintiff was, and continues to be, caused financial harm including compensatory damages, attorney's fees, costs, and expenses associated with litigating his claims from 2013 to the present as well as compensatory damages, attorney's fees, costs, and expenses associated with his claims filed on September 16, 2013.

¶ 59. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

**Count VII - Negligent Supervision Against All Defendants, With The Exception of Phillips**

¶ 60. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 61. All Defendants in this Count had contractual duties and obligations to the Plaintiff to properly supervise competent, ethical, and qualified individuals, entities, firms or organizations, to service the Plaintiff's contract(s) and/or fulfill their obligations under contract and statute. Their obligations included defending any claims under contract or at law in good faith. They had the right to control the actions of their employees, etc., had knowledge of their employees' conduct, profited from that conduct, and encouraged those employees in acts of *conspiracy to suppress and suppression* of the Plaintiff's rights. Their employees, etc. engaged in the conduct described in this Complaint and in Complaint [#1] which represented intentional, willful, wanton, reckless, or negligent conduct in the *suppression* of the Plaintiff's rights in the 2013 action. The Defendants identified in this Count were negligent in their supervision of those

persons or entities in that they took no action in response to their knowledge such conduct by their agents, servant, employees, etc. These Defendants further aided and abetted the *conspiracy to suppress* and actual *suppression* of a declaration of law, due process, and equal protection rights of the Plaintiff by failing to properly supervise their employees. The doctrine of Negligent Supervision "...establishes a principle of employer liability for the costs that work-related torts impose on third parties." Restatement (Third) of Agency § 2.04 cmt. b (2006). "Under the settled doctrine of respondeat superior, an employer or master is held vicariously liable for the tortious acts of an employee or servant committed during...the scope of employment." *Brueckner*.

¶ 62. The Defendants named in this Count breached their duties by negligently supervising the employees, agents, servants, legal representatives, etc. in the 2013 legal proceedings resulting in the *suppression* of the Plaintiff's right to a declaration of law, due process, and equal protection which were a direct and proximate cause of the Plaintiff's damages.

¶ 63. As a result of the actions of the Defendants described herein, the Plaintiff has set forth a claim of negligent supervision by the Defendants named herein and was caused financial harm including compensatory damages, attorney's fees, costs, and expenses associated with litigating his claims from 2013 to the present as well as compensatory damages, attorney's fees, costs, and expenses associated with his claims filed on September 16, 2013.

¶ 64. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

**Count VIII - Fraud, Conspiracy to Commit Fraud, Attempt to Commit Fraud, and Misrepresentation Against All Defendants**

¶ 65. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 66. All Defendants had a duty and obligation to refrain from conspiring to commit fraud, attempting to commit fraud, and committing fraud during the 2013 litigation and knew,

were reckless in not knowing, or took steps to ensure they would not know or would not be kept informed, or should have known of the conduct of *suppression* of the Plaintiff's rights with intent to defraud was ongoing in that litigation. These Defendants had an obligation to know, and/or had a financial interest in, the actions of their employees, agents, etc. These Defendants had the right to control those employees, agents, etc. in their acts of *suppression* of the Plaintiff's rights and did not intervene to prevent that *suppression*. In fact, these Defendants encouraged those employees and profited by their employees' actions. Thereby, these Defendants failed to prevent the *conspiracy to suppress*, actual *suppression* of the Plaintiff's right to a declaration of that law, due process, equal protection in the 2013 law suit. These Defendants had been provided written notice of such *suppression* in the 2013 suit of the Conspiracy to Commit Fraud, Attempt to Commit Fraud, Misrepresentation, and Fraud.

¶ 67. Fed. R. Civ. P. Rule 9(b) provides “....a party must state with particularity the circumstances constituting fraud or mistake.” The Plaintiff has been denied that right by the Court's Order of December 30, 2020 limiting this Amended Complaint to 50 pages. Accordingly, the Plaintiff states with particularity the facts and circumstances constituting fraud and/or mistake are found in every act, action, and omission,<sup>31</sup> of every Defendant and/or Court Personnel or Judge, every motion, pleading, paper, transcript, docket entry, fact or circumstance, which occurred in the 2013 civil action or associated with it. The facts and circumstances constituting fraud are found in the *suppressing* and *conspiring to suppress* the Plaintiff's rights at law and to a declaration of law. Those facts are iterated in each Count of the Complaint [#1] and this Amended Complaint and are relied on here. The Plaintiff, relying on these facts and circumstances avers the following: (1) the Defendants intentionally misrepresented material facts

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<sup>31</sup> The Plaintiff avers the *conspiracy to suppress*, and actual *suppression* of his right to a declaration of law was the intent of all actions by the Defendants named herein and all motions, oppositions and papers filed by them in the 2013 litigation. And their intent to *suppress* a declaration of the Plaintiff's rights was exactly what occurred.

in the 2013 litigation (in moving for Summ. Judg., etc.) and also in the 2020 (refusal to respond to request for assurances) contract of insurance with “**GEICO**” in that they made promises of insurance coverage which the facts reflect they had no intention to keep; (2) those misrepresented facts in the 2013 litigation (specifically that a Summ. Judg. was sufficient to address the Plaintiff’s breach of contract claims) and the 2020 contract with “**GEICO**” which promised out-of-state protections, were known to be false when made. This included moving for Summ. Judg.s that would not declare the Plaintiff’s rights or determine his breach of contract claims and offering the 2020 policy of liability insurance with no intent to pay PIP provisions; (3) those facts were not open to the Plaintiff’s knowledge and still are not; (4) the Plaintiff acted in reliance on those facts and continues to do so; *and* (5) the Plaintiff has thereby been harmed.

*Estate of Alden v. Dee*, 2011 VT 64, ¶ 32, 190 Vt. 401, 35 A.3d 950. “An action for fraud and deceit will lie upon an intentional misrepresentation of existing fact, affecting the essence of the transaction, so long as the misrepresentation was false when made and known to be false by the maker, was not open to the defrauded party’s knowledge, and was relied on by the defrauded party to his damage.” *Bank v. Jones*, 138 Vt. 115, 121, 411 A.2d 1338, 1342 (1980). The Plaintiff avers that is the case in all claims raised herein.

¶ 68. As a result of the actions of the Defendants described in this Count which continue to this date, as well as their inactions, the Plaintiff has set forth, with particularity, a claim of Fraud, Conspiracy to Commit Fraud, Attempt to Commit Fraud, and Misrepresentation by all Defendants involving a *conspiracy to suppress* and *suppression* of the Plaintiff’s rights, including facts and circumstances constituting fraud which will be made available in Discovery. The Plaintiff was, and continues to be, caused financial harm including compensatory damages,

attorney's fees, costs, and expenses associated with litigating his claims from 2013 to the present and compensatory damages, attorney's fees, costs, and expenses associated with 2013 action.

¶ 69. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

**Count IX - Negligent, Willful, Wanton and Intentional Interference With Contractual Relations Against All Defendants**

¶ 70. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 71. The Plaintiff had a contractual relationship with **USAA** and “**GEICO**.”

¶ 72. These Defendants named in this Count had duties and obligations to refrain from interference with contractual relations of the Plaintiff and negligently, willfully, wantonly, and intentionally interfered with those contractual relations and rights at law by *conspiring to suppress* and actually *suppressing*, the Plaintiff's right to a declaration of law, and all rights in the 2013 law suit in ways described in this Amended Complaint above and Complaint [#1]. The Defendants knew of those actions aforementioned, profited by them, and encouraged others to engage in them. They had the right to control their employees' conduct and failed to prevent the acts of *conspiring to suppress* and *suppression* of the Plaintiff's rights in the 2013 litigation.

¶ 73. As a result of the actions described in this Complaint involving *suppression* of the Plaintiff's rights by these Defendants which continue to this date, as well as their inactions, and breaches of duties owed by these Defendants, the Defendants have engaged in Negligent, Willful, Wanton and Intentional Interference With Contractual Relations resulting in the Plaintiff being denied his rights under contract, his rights of due process, his right to fair and unbiased litigation and Discovery period, his right to a declaration of the law and insurance policy contract contested by these Defendants, causing the Plaintiff to suffer loss of income, earnings, or earning opportunity, expenses, and attorney's fees.

¶ 74. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

**Count X - Aiding and Abetting Against All Defendants**

¶ 75. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 76. All Defendants had duties and obligations to refrain from aiding and abetting in the acts of *conspiracy to suppress* and *suppression* of the Plaintiff's rights in the 2013 litigation. They knew, or took steps to ensure they would not know or would not be kept informed or should have known, that a *conspiracy to suppress* and actual *suppression* of a declaration of law, due process, and equal protection was ongoing in that litigation. All Defendants knew they were profiting by the *suppression* or gave substantial assistance or encouragement to those *suppressing* the Plaintiff's rights. They aided and abetted those engaged in *suppression* as evidenced in all actions in the 2013 litigation. The Defendants' conduct was a substantial factor in causing harm to the Plaintiff in the form of *suppression* of his rights to this day.

¶ 77. The facts plead with particularity in the entirety of this Amended Complaint and Complaint [#1] clearly show the existence of a *conspiracy to suppress* and actual *suppression* of the Plaintiff's rights. They show a conspiracy to commit fraud, fraud-in-fact, attempts to commit fraud and substantially assisted the advancement of the commission of that fraud. *See De Sole v. Knoedler Gallery, LLC*, 137 F. Supp. 3d 387, 411 (S.D.N.Y. 2015). The Plaintiff claims his right under the crime-fraud doctrine to pierce the attorney-client privilege without the burden of proof necessary to prove a tort where the furtherance of a crime is involved as there was in the 2013 litigation and continuing. The Plaintiff, based on the facts and circumstances alone presented within and in Complaint [#1], presents a clear *prima facie* showing that (1) the Defendants were engaged in criminal or fraudulent behavior when the communications between them took place

in furtherance of a *conspiracy to suppress* and *suppression* of the Plaintiff's rights and (2) that the communications between them were intended by Defendants to engage and/or conceal the crime or fraud as contemplated by *U.S. v. Gorski*, No. 14-1963, 2015 WL 8285086, 807 F.3d 451 (1st Cir. Dec. 9, 2015) as fraud is not limited to the criminal context and is applicable to contract and tort law. *See* RESTATEMENT (SECOND) OF TORTS §§ 526-528, 530, 538 (1976) dealing with misrepresentation and the RESTATEMENT (SECOND) OF CONTRACTS §§ 159-162 (1979) dealing with definitions pertaining to misrepresentation, concealment, etc.

¶ 78. As a result of the actions of the Defendants described in this Amended Complaint and Complaint [#1] involving *conspiracy to suppress* and *suppression* of the Plaintiff's rights and the Defendants' aiding and abetting that *suppression*, the Plaintiff was denied his rights under contract, his rights of due process, his right to fair and unbiased litigation and Discovery period in the 2013 litigation. The Plaintiff was denied his right to a declaration of statutory law as well as the law concerning the insurance policy contract contested by the Defendants. He was denied his right to proper procedure. All conduct was aided and abetted by all Defendants in this action causing the Plaintiff to suffer loss of income, loss of earnings or earning opportunity, financial damages, expenses, and attorney's fees.

¶ 79. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

**Count XI - Breach Of Fiduciary Duty Against "GEICO" and USAA**

¶ 80. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 81. The Plaintiff avers "GEICO" and USAA owed fiduciary duties and obligations to the Plaintiff because, as insurers (fidelity institutions), they promise to step into the shoes of the insured and/or beneficiary and pay *obligations required by statute*. For, by its very nature, the

Massachusetts statute is intended not just to protect the person insured but is also intended to protect the “innocent traveller” on the road injured by his *negligence* (before 1971). And (after 1971) it is also intended to protect a person by virtue of his standing as an “obligor” (no-fault liability) in addition to negligence. That is, the insurers promise to step into the shoes of their policyholder for “protections” which are intended to promote “human welfare and public safety.” “The purpose of the compulsory motor vehicle insurance law is not, like ordinary insurance, to protect the owner or operator alone from loss, but rather is to provide compensation to persons injured through the operation of the automobile insured by the owner.” *Wheeler v. O'Connell*, 297 Mass. 549, 553, 9 N.E.2d 544 (1937). Thus, when the insurers agreed to insure the Plaintiff (and Defendants, **Phillips** and **Aebersold**), they *stood in the shoes of the persons they promised* and who were bound by statute to provide the “purpose” of compulsory insurance which is to protect the persons injured through the operation of their automobile. And under Vermont law, 14 V.S.A. § 3565, Fiduciary duty and authority, (a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including: (1) the duty of care and (2) the duty of loyalty. A person is a fiduciary who is invested with rights and powers to be exercised for the benefit of another person. *Svanoe v. Jurgens*, 144 Vt. 507, 33 N. E. 955; *Stoll v. King*, 8 How. Prac. (N.Y.) 299. “**GEICO**” and **USAA**, had the fiduciary duties of care and loyalty in defending any denial of such statutory coverages claimed. They owed the duty of good faith not to *conspire to suppress* and actually *suppress* the Plaintiff’s rights. They had an obligation not to engage in fraud and/or to conspire with the Judiciary and others to *suppress* the Plaintiff’s rights to a declaration of law. They further had a duty to refrain from ex parte communications in which they engaged repeatedly.

¶ 82. The Defendants named in this Count breached their fiduciary obligations by *conspiring to suppress*, and *suppressing* in fact, the Plaintiff's right to a declaration of law, due process and equal protection of the laws in all of their actions in their 2013 law suit. As a result of the actions and inactions of the Defendants, "GEICO" and USAA, the Plaintiff was denied his rights under contract, his rights of due process, his right to fair and unbiased litigation and Discovery period, his right to a declaration of the statutory law and the law pertaining to the insurance contacts, causing the Plaintiff to suffer loss of income, loss of earnings or earning opportunity, financial damages, expenses, and attorney's fees.

¶ 83. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

**Count XII - Immediate and Ongoing Payment Of Attorney Fees Against All Defendants  
For Prosecution Of Part First**

¶ 84. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 85. All Defendants had duties and obligations not to interfere with the Plaintiff's right to a declaration of law in the 2013 litigation. They had an obligation to refrain from *conspiring to suppress* and actually *suppressing* his rights. All Defendants knew, were reckless in not knowing, or took steps to ensure they would not know or would not be kept informed, of the *suppression* of the Plaintiff's rights that were ongoing. They had an obligation to know, and/or had a financial interest in, the *conspiracy to suppress* and *suppression* of a declaration of law and failed to take any action to prevent that *suppression*. They had been provided written notice of such *suppression* from 2015 and every year since. All Defendants knew, were reckless in not knowing, etc. that the Plaintiff's right to a declaration of law was being *suppressed* or were reckless in not knowing, or took steps to ensure they would not know or would not be kept informed of such *suppression*. All Defendants knew, were reckless in not knowing that a

declaration of the law in 2013 was necessary to adjudicate the Plaintiff's claims in their entirety against all Defendants in that action. All Defendants knew or were reckless in not knowing that a declaration of the rights, duties, status, and other legal relations of all Parties was mandated under M.G.L. ch. 231A, § 1 - § 3 in order to terminate the dispute between all Parties to the 2013 law suit. All Defendants knew or were reckless in not knowing that all claims raised in that law suit were adjudicated and dismissed under law which has never existed in Massachusetts. All Defendants knew or were reckless in not knowing the Plaintiff would be required to re-litigate his claims for declaration of law.

¶ 86. As a result of the Defendants' actions as described in the entirety of this Amended Complaint and Complaint [#1] and in the *suppression* of a declaration of law, the Plaintiff is required to litigate the averments concerning the statute and contract as described within causing him to expend sums for such litigation. A **NOTICE – DEMAND FOR ATTORNEY FEES** was mailed to the Defendants on October 8, 2020. There was no response.<sup>32</sup>

¶ 87. As such, the Plaintiff demands this Court to order immediate and ongoing payment of attorney fees by the Defendants as incurred for the prosecution of **Part First** or this action for the Plaintiff in his plea for declaratory relief against all Defendants.

¶ 88. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

**Count XIII - Breach of Fiduciary Duty and Aiding And Abetting Against  
J. Doe, 1 – 100, “GEICO,” and USAA**

¶ 89. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 90. The Defendants named in this Count owed a fiduciary duty to the Plaintiff to honor their contracts in defending coverage claims and suits in good faith as promised coverages

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<sup>32</sup> So corrupt are the Defendant insurers that they refused even to respond to a request they assure coverage which the Massachusetts Court confirms exists. A plausible suggestion of *conspiracy to suppress* a declaration of law.

mandated by statute and for which the Plaintiff became an “obligor” in the 2013 litigation. Other Defendants had obligations not to aid and abet those breaches. These Defendants breached their duties by drafting documents of which all Defendants herein were aware that effectuated breaches of duties under contracts and statute, by misrepresentations to Plaintiff during and throughout the litigation from September 16, 2013 that Summ. Judg. was a lawful and proper adjudication of his rights obviating the need for a declaration of law when they were not proper. They breached their duties by counseling their clients by drafting, negotiating, and reviewing documents that allowed such breach of their duties by proceeding with improper and unlawful procedures. *See Chalpin v. Snyder*, 207 P.3d 666, 220 Ariz. 413 (Ariz. Ct. App. 2009). Further, the Defendants who breached their duties were in a position of power as executives, managers, directors, Judges or Court Personnel who participated in a *conspiracy to suppress* and the *suppression* of a declaration of law as well as the rights of due process and equal protection of the Plaintiff during the 2013 litigation. For Vermont law, *see* 14 V.S.A. § 3565 quoted above.

¶ 91. The Defendants named in this Count had the fiduciary duties of care and loyalty in honoring their promise under the out-of-state coverage clauses of their policies of liability insurance and to defend the 2013 law suit in good faith and to refrain from conspiring with others and the Judiciary to *suppress*, and actual *suppression* of, the Plaintiff’s rights to a declaration of law. They had the duty to refrain from ex parte communications in which they engaged repeatedly.<sup>33</sup> Though the Defendants knew the Plaintiff was entitled to a declaration of law, they took no action to support or encourage that right. These Defendants had obligations to ensure the law was declared. They had obligations to ensure termination of the uncertainty pertaining to the Plaintiff’s rights. Yet each Defendant abandoned their obligations, conspired together to *suppress* a declaration of law, due process, and equal protection to the Plaintiff. These

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<sup>33</sup> And refused to disclose those ex parte communications. Just as this Court has done. *See* [#12, 15, and 16].

Defendants breached these fiduciary duties of care and loyalty by failing to investigate during the 2013 litigation and failing to defend in good faith.

¶ 92. As a result of the actions of breach of fiduciary duties by the Defendants described in this Count, the Plaintiff was denied his rights under contract, his rights of due process, his right to fair and unbiased litigation, a Discovery period, his right to a declaration of the statutory law and the law pertaining to the insurance contact, causing the Plaintiff to suffer loss of income, loss of earnings or earning opportunity, financial damages, expenses, and attorney's fees.

¶ 93. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

**Count XIV - Violations of the Racketeer Influenced Corrupt Organizations ((RICO)) Act  
18 U.S.C. § 1961, et seq. Against All Defendants**

¶ 94. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 95. **The Schemes.** There are at least two RICO schemes alleged in this Count. The Plaintiff reserves the right to update this Count based on facts and circumstances unveiled in Discovery. Some conduct may overlap. The schemes victimized the Plaintiff and all policyholders of the Defendant Insurers. They victimize all persons entitled to PIP "protections."

¶ 96. **Scheme I.** One scheme involves the Defendants' conduct in the 2013 law suit pertaining to *suppression* of the Plaintiff's rights and conspiracy to commit mail and wire fraud.

¶ 97. **Scheme II.** Another scheme involves the Defendant Insurers selling false promises to consumers that they will pay statutory "protections" in the form of PIP coverages without any intent to pay or even allow a policyholder un-corrupted litigation in Courts of law.

¶ 98. Both schemes involve illegally *conspiring* and *suppressing* the law with the intent that their policyholders and beneficiaries have no knowledge of coverages to which they are entitled, pay dearly for, and by which their children are adversely affected.

¶ 99. The facts supporting a plausible suggestion that these Defendants are RICO enterprises lie in the *conspiracy to suppress* and *suppression* by them of the Plaintiff's rights to a declaration of law, due process, and equal protection in the 2013 law suit. In addition to the following *see* ¶ 30 *supra*. Those facts include the Defendants engaging in mail and wire fraud, obstruction of justice, and possibly bribery in that action. All Defendants<sup>34</sup> (including the corporate entities and all those associated with them) had an obligation to refrain from conducting and/or participating in (as contemplated by *Reves v. Ernst Young*, \_\_\_ U.S., 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993)) a conspiracy to commit and/or actual committing mail and wire fraud and obstruction of justice as a pattern of racketeering activity which included a *conspiracy to suppress* and actual *suppression* of the Plaintiff's rights in the 2013 action. The Plaintiff avers all Defendants (with the exception of **Aebersold** throughout this Count) in the 2013 law suit were "participants" in *suppression* of his rights to a declaration of law. The insurers engaged in a *conspiracy to suppress* and *suppression* of the Plaintiff's rights after soliciting monies in the form of premiums. This represents more than common law mail fraud (18 U.S.C.A. § 1341) and wire fraud (18 U.S.C.A. § 1343)<sup>35</sup> in that it includes the predicate conduct of mail and wire fraud under § 1962(c) (attempting to defraud the Plaintiff by filing Summ. Judg. motions and other papers they knew would not address his rights in declaration of contract) in addition to *conspiracy to commit* mail and wire fraud under § 1962(c). It represents more than common law fraud in that it includes obstruction of justice in preventing testimony of those who had knowledge of the names of individuals who engaged in ex parte communications with the Judiciary and those who conspired with them and/or the Judiciary to *suppress* the Plaintiff's

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<sup>34</sup> To include all culpable "person"(s) who conduct the affairs of a distinct "enterprise" through a "pattern" of "racketeering" in a way that proximately caused injury to the Plaintiff yet to be identified due to fraud.

<sup>35</sup> Both mail and wire fraud pertain to the Plaintiff and all persons insured by "GEICO" and USAA as well as all persons injured as pedestrians entitled to PIP under Massachusetts law by vehicles insured by these insurers.

rights.<sup>36</sup> And finally, it represents more than common law fraud in that it includes [c] obstruction of justice in *suppressing*<sup>37</sup> a declaration of law, due process, and equal protection of the law in all Counts raised in the 2013 law suit. The prohibited conduct alleged here occurred at the time and place of each event which occurred in the 2013 action. It continues in the refusal to provide requests for assurances demanded September 4, 2020 and October 8, 2020. Both schemes of the Defendants involved every act of the Defendants in furtherance of a *conspiracy to suppress* the Plaintiff's rights from 2013. This conduct injured, and continues to injure the Plaintiff, and involved "(1) conduct (2) of an enterprise<sup>38</sup> (3) through a pattern (4) of racketeering activity" as contemplated by 18 U.S.C. §§ 1961-1968 (*Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985)). "**GEICO**" and **USAA** are enterprises affecting interstate commerce within the meaning of 18 U.S.C. § 1962(c). The Plaintiff avers the facts and circumstances presented herein clearly reflect that the Defendants in this Count engaged in prohibited conduct under the RICO statute since September 16, 2013 in an attempt to defraud the Plaintiff. The Defendants intended for him to rely on the lie they perpetrated which was that Summ. Judg. would resolve his claims in the

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<sup>36</sup> This Pleading avers that the conduct of the Defendants *with the Court* makes this RICO count based on more than simply frivolous, fraudulent, or baseless litigation activities in a single law suit. Rather, it involves a pattern of conduct of *suppression*, fraud, and obstruction of justice combined with mail and wire fraud falling squarely within the intent of Congress sought to prohibit. They represent racketeer-influenced acts in which the Defendants continue to engage in mail and wire fraud in that they sell promises under policies of liability insurance they do not intend to honor, refuse to provide assurances that they will honor, and will continue to engage in obstruction of justice. It involves filing papers in Court that intend to deceive policyholders out of their rights under statute and contract. In short, it is alleged in this Complaint the predicate acts "amount [ ] to far more than mere 'litigation activities,' and... [involve] extensive and broader schemes to defraud" and that they actually involve a fraudulent criminal scheme "entirely external to, and independent of, any of the particular disputes between the litigants in the civil actions that was filed and litigated by the ... defendants in execution of their scheme" in that they intend *suppression* of a declaration of law to prevent payment of the statutory protections to 29 million other paying policyholders. *See Kim v. Kimm*, 884 F.3d (2d Cir. 2018) and *United States v. Eisen*, 974 F.2d 246 (2d Cir. 1992). That which these "insurers" sell is not "insurance." They have no intention of paying PIP protections and every intention of deceiving policyholders to give them their money so insurers may invest in their fraudulent scheme. *Suppressing* a declaration of law and contract perpetuates uncertainty. Such conduct is found in facts and circumstances in this Complaint.

<sup>37</sup> At no time from January 8, 2013 to the present, has Plaintiff's Counsel been allowed to Discover whether "**GEICO**" or **USAA** ever investigated the Plaintiff's rights under their contract with respect to PIP benefits. These enterprises were held untouchable from on high: the Massachusetts Judiciary, it is believed.

<sup>38</sup> "**GEICO**" and **USAA** are "enterprise"(s) that promised "insurance" with no intention to pay (either before September 16, 2013 or after) in order to invest premiums in the stock market and other ventures. They do not pay claims, delay payment of claims, conspire with other insurers to defraud policyholders and third-parties, make collection of monies owed impossible to recover due to the bad faith defense of legitimate claims, etc.

2013 action. It would not and did not. It could not. The Plaintiff further alleges the monies unlawfully obtained by the Defendants since at least September 16, 2013 for premiums in the form of liability insurance from policyholders, has been used to fund continued *suppression*<sup>39</sup> of the Plaintiff's right to a declaration of law, due process, and equal protection of the law in all of the Plaintiff's claims. They did so to prevent payment to him who is entitled to Massachusetts PIP protections for which "**GEICO**" and **USAA** were statutorily and contractually liable.

¶ 100. The Defendants (including the corporate entities and all those associated with them) violated their duties and engaged (willfully or with knowledge and encouragement of the illegal activities) in fraudulent conduct, aided and abetted fraudulent conduct, engaged in mail and wire fraud and obstructed justice, from at least 2013 to the present. They did so in a pattern of illegal and continuous activity in a scheme involving *suppression* of the Plaintiff's rights that threatens to continue and affects the enterprises "**GEICO**," **USAA**, and **Commerce**. The Plaintiff avers the facts and circumstances enumerated herein show: [1] the existence of an enterprise or enterprises involving "**GEICO**" and **USAA**. [2] That these enterprises engaged in, or its activities affected, interstate commerce. [3] That those persons named as Defendants in this action were employed by or were associated with those enterprises. [4] That the Defendants named in this Count knowingly conducted the affairs of those enterprises or knowingly participated, directly or indirectly, in the conduct of those enterprises' affairs and had knowledge of the fraudulent scheme and that scheme involved the *suppression* of the Plaintiff's rights to a

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<sup>39</sup> The Plaintiff avers in support of his RICO claims that there is no evidence in the 2013 action and all documents associated therewith that "**GEICO**" and/or **USAA** attempted to provide liability "insurance" to the Plaintiff in the form of Massachusetts PIP protections or a determination of his rights under the statute or contracts. And **Commerce** participated in the *suppression* of a declaration of law. "Insurance" was just a ruse for these RICO enterprises to gather capital in the form of premiums and use those premiums to engage in mail and wire fraud, *suppression* of policyholder rights, obstruction of justice, possibly bribery, and all other acts which constitute RICO predicates enumerated in this Complaint. **Fact:** For, there is no indication "insurance" was provided to the Plaintiff as there is no declaration of law, no declaration of the Plaintiff's rights, no adjudication of his breach of contract claims, no indication whether "**GEICO**" or **USAA** conducted a coverage investigation. But there is every indication that they communicated with the Court ex parte in order to prevent the Plaintiff from making any Discovery into whether any factual or coverage investigation was conducted for purposes of the breach of contract Count.

declaration of law, due process, and equal protection of the law in all of his claims in the 2013 litigation. [5] That said Defendants named in this Complaint knowingly conducted or participated in, directly or indirectly, a pattern of racketeering activity as alleged in this Complaint. [6] That the Plaintiff remains a policyholder of “**GEICO**” (policy # 6039156739) and a member of **USAA** (member # 4000247) and a Notice under Fed. R. Civ. P. Rule 65 (on September 4, 2020) and a demand for assurances (sent to them on October 8, 2020) which have met with no response. The schemes includes selling purported “polic[ies] of liability insurance” with no intention to pay (either before September 16, 2013 or after)<sup>40</sup> or in the alternative to “delay paying legitimate claims, including acting in bad faith.”<sup>41</sup> And thereafter investing premiums for profit without an intention to pay<sup>42</sup> for years and investing in the establishment and operation of their enterprise,<sup>43</sup> which was engaged in or its activities affected commerce.<sup>44</sup> The Plaintiff avers that the *suppression* of his rights was, and continues to be a crime and not a

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<sup>40</sup> They had every obligation to convert the 2013 action into a class action for 29 million paying policyholders. The failure of the insurers to convert to a mandatory class action proves they are RICO enterprises. If “**GEICO**” and **USAA** were legitimate insurers, they would have filed a complaint for declaratory relief or motion for one if there was even a remote possibility they owed coverage (protections) to their 29 million policyholders and their children. But they are RICO enterprises who gather capital to invest with no intention to pay PIP provisions. Since 2013.

<sup>41</sup> The insurers would rather pay defense attorneys to defend for no valid reason rather than pay monies owed by them which will save the lives of children. And were so intended by Legislative design.

<sup>42</sup> The Plaintiff avers the scheme to defraud included “**GEICO**” and **USAA** working together and with **Commerce** through their agents, representatives, attorneys, or someone under their direction and control (or independent contractors, Judges or Court Personnel, not under their direction and control but whose illegal or unethical actions were, at all times, known to “**GEICO**” and **USAA**, those who manage and direct them) and all “participants” in the scheme to defraud the Plaintiff, with those in charge and control at “**GEICO**” and **USAA** having full knowledge and encouragement of those actions while at the same time that scheme was never divulged to the Plaintiff. The scheme violated contractual and ethical obligations to the Plaintiff.

<sup>43</sup> See, *United States v. Vogt*, 910 F.2d 1184 (4th Cir. 1990); *United States v. Carlock*, 806 F.2d 535 (5th Cir. 1986).

<sup>44</sup> Cunningham documents: “One such exposé attacked Berkshire’s practice of generating substantial investable funds from insurance float. Insurance float refers to funds that arise from the fact that policy premiums are paid up front while claims need only be paid, if at all, much later. Buffett frequently describes the appeal of such leverage, explaining that Berkshire is often paid to hold such money—so long as risks are properly priced. Buffett thus stresses the relative cost of float, noting the importance of disciplined underwriting. But a reporter turned the strategy around on Berkshire, portraying the company’s approach as giving insurance personnel perverse incentives to do everything in their power to avoid or delay paying legitimate claims, including acting in Bad Faith. See Cunningham, L. A. (2016), *Berkshire’s Blemishes: Lessons for Buffett’s Successors, Peers, and Policy*. Columbia Business Law Review, 2016, p. 24. It is believed that is exactly what occurred in this case since 2013. And there are approximately 55,452 persons injured and entitled to PIP that have gone without since September 16, 2013 as these insurer Defendants *suppressed* the law and requested it not be declared.

legitimate defense strategy.<sup>45</sup> Their schemes were, and are, to pretend to offer “insurance” and “protection” while the entity’s real motive is to gather capital to invest in the stock market and withhold otherwise lawful payments to policyholders and third-parties in order to grow profits. The Plaintiff’s claims are “cognizable” as “the defendant’s alleged violation(s) proximately caused the plaintiff’s injury” in forcing him to litigate in a corrupted Judiciary with no chance of declaration. *See Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461-62 (2006). The proximate cause of the Plaintiff’s damages exhibit a “direct relation between the injury asserted and the injurious conduct alleged.” *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268 (1992). Here, the Plaintiff avers a *conspiracy to suppress* and actual *suppression* of his rights to a declaration of law, due process, and equal protection of the laws by some, or all Defendants (with the exception of **Aebersold**) participating in the *conspiracy* with the intent to *suppress* all claims in the 2013 law suit causing him to litigate needlessly. The evidence here is that there is no declaration that **[a]** Massachusetts statute (M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A) has required *non-resident* motor vehicle owners to “maintain” Massachusetts PIP “provisions” as part of their “policy of liability insurance” *or* **[b]** policies of liability insurance provide Massachusetts PIP “protection.”

¶ 101. As a result of said violations of said violations of the statute plead herein for which the Defendants are directly liable and/or vicariously liable, the Plaintiff was caused to suffer injury to his business or property by the conduct constituting the violations identified above by reason of a violation of the statute and investment of the proceeds of their racketeering activity and by reason of the Defendants’ maintenance of an interest in and control of their

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<sup>45</sup> And consequently, the Massachusetts Courts have been, and continue to be, a crime scene since September 16, 2013. For the Plaintiff and 55,452 others. Sadly, these statistics include children. And these numbers grow daily.

enterprise to include financial loss, compensatory damages, attorney's fees, costs, and expenses associated with litigating his claims from September 16, 2013 to the present as well as compensatory damages, attorney's fees, costs, and expenses associated with his claims filed on September 16, 2013 and any treble damages and other remedies this Court deems just and meet.

¶ 102. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

### **PART THIRD**

#### **Count XV - Specific Performance Against “GEICO” and USAA**

¶ 103. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 104. Children are out there along with the Plaintiff on the streets of Massachusetts. As pedestrians and in vehicles from other states. And Massachusetts law protects them. They are being injured. Daily. “GEICO” and USAA refuse to pay them. And refuse to permit them to know their rights. Defendants, “GEICO” and USAA, write automobile policies of liability insurance in all contiguous states in the United States upon information and belief. Millions of the vehicles they insure are registered and insured by them in states other than Massachusetts, some of which travel into Massachusetts every day. Those automobile policies of liability insurance include a liberalization clause captioned “out-of-state” coverage or “other states” coverage, or something similar. That liberalization clause promises to provide the amounts, types, or limits of financial responsibility required of those non-resident automobiles under their policy of liability insurance should they be present in a jurisdiction other than that in which their vehicle is registered, insured and operating. The policy of liability insurance promises peace of mind that the “insured”/ policyholder will be in compliance with liability laws of any state into which they travel with their vehicle (or as an operator/covered person). Since 2013, these

Defendants have *suppressed* a declaration of their obligations under Massachusetts law and their contract of liability insurance. But the Massachusetts Court agrees its statute requires PIP be maintained on non-resident vehicles and these “insurers” disagree.

¶ 105. The Plaintiff is a Vermont resident and Member of **USAA** (ID 400247) for around fifty (50) years and has been insured under policies of liability insurance for much of that time. He is a beneficiary and also an insured of a policy of liability insurance written by “**GEICO**” as of 2020 (policy # 6039156739). He is an intended beneficiary of the statute in Massachusetts under M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A. The Plaintiff frequents Massachusetts regularly [a] for medical treatment through the Veterans Hospitals in Jamaica Plain and also [b] to visit family in Massachusetts. He travels into Massachusetts in vehicles insured by “**GEICO**” and **USAA**, either as a passenger or operator or as a pedestrian.

¶ 106. The Plaintiff has averred that [a] Massachusetts statute (M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A) requires *non-resident* motor vehicle owners to “maintain” Massachusetts PIP “provisions” as part of their “policy of liability insurance” and [b] policies of liability insurance provide Massachusetts PIP “protection.” “**GEICO**” and **USAA** have denied these averments since 2013 and continue to deny these averments. The Massachusetts Judiciary agrees with the Plaintiff but refuses to declare the law at request of all the Defendants. The Plaintiff remains in a state of “uncertainty”<sup>46</sup> as to his rights, duties, status, and other legal obligations. He seeks “**GEICO**” and **USAA** to specifically perform their contract as these Defendants refuse to provide assurances with respect to their policies of liability insurance and continue to deny the law and payment of PIP protections under their policies of liability insurance issued on vehicles registered and insured by them in states other than Massachusetts.<sup>47</sup> Because the law pertaining

<sup>46</sup> Disputed statute and insurance, without declaration, are unknowable. The complete opposite of their very purpose.

<sup>47</sup> If either of these Defendants *are paying* PIP in accord with the 2014 summary judgment rulings, they are treating the Plaintiff differently from all other policyholders. If they *are not paying* PIP in accord with those 2014 rulings, it represents a plausible suggestion of *conspiracy to suppress* and actual *suppression* of the Plaintiff’s rights.

to the statute and the policies of liability insurance issued by “**GEICO**” and **USAA** remain unresolved (and they have a present and future interest in “termination” of the “uncertainty” of both statute and contract), the Plaintiff seeks specific performance of the contracts with both of these Defendants in order to terminate the uncertainty, prevent the Plaintiff from being unprotected by insurance required by the statute since 1971. He seeks to prevent further attorney's fees, costs, expenses, compensatory damages, etc. from continued denial by them. The Plaintiff was, is, and shall always be, “entitled to know and be granted his rights” as to what the law is despite the Defendants' request that the Court *suppress* that law. (*Cantell v. Commissioner of Correction*, 87 Mass.App.Ct. 629, 33 N.E.3d 1255 ((2015)), Rubin, J. quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483 ((1976)), at 636. The Plaintiff demands a declaration of law as described above as the Massachusetts Court has “found” in the Summ. Judg. rulings in this case.

¶ 107. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

**Count XVI - Injunctive Relief Against All Defendants**

¶ 108. The Plaintiff re-alleges, re-avers and incorporates herein all paragraphs above.

¶ 109. As required by the rules, the Plaintiff sent notice to all Defendants under Fed. R. Civ. P. Rule 65. It requested the following:

The cessation and future prevention of “**GEICO**” and **USAA** and those identified in that notice from denying Massachusetts statute (M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A) requires non-resident motor vehicle owners to “maintain” Massachusetts Personal Injury Protection (PIP) “provisions” as part of their “policy of liability insurance;” and that their policies of liability insurance provide Massachusetts PIP “protection;” The cessation and future prevention of conspiring between themselves, others, and/or judges and court personnel of the Massachusetts Judiciary, or any judiciary, to suppress, and the actual suppression of, a declaration of law requiring PIP on non-resident vehicles; The cessation and future prevention of conspiring between themselves, others, judges and/or court

personnel of the Massachusetts Judiciary, or any judiciary, to engage in ex parte communications, and actually engaging in ex parte communications, in civil actions commenced in any court in which claims are brought concerning PIP being required on non-resident vehicles and otherwise engaging in unlawful acts; The cessation and future prevention of conspiring to aid and abet in the suppression of a declaration of law, by their participation, silence, or encouragement, in suppressing a declaration of law, and the actual aiding and abetting in the suppression of a declaration of law; and

Providing assurances that they will acknowledge coverage and protections that Massachusetts statute (M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A) requires *non-resident* motor vehicle owners to “maintain” Massachusetts Personal Injury Protection (PIP) “provisions” as part of their “policy of liability insurance;” and policies of liability insurance provide Massachusetts PIP “protection.”

¶ 110. The Plaintiff seeks an injunction against those Parties as detailed and identified in

**NOTICE UNDER FED. R. CIV. P. RULE 65 - INJUNCTIVE RELIEF** sent to the Defendants on September 4, 2020 and a **NOTICE – DEMAND FOR ASSURANCES** sent to the Defendants on October 8, 2020. Neither communication met with a response.

¶ 111. WHEREFORE, Plaintiff requests that this Court enter judgment as plead in the paragraph below titled PRAYER FOR RELIEF.

#### **PRAYER FOR RELIEF**

The Plaintiff requests the following relief:

A. With respect to **Part First** for the Court to: **[i] Declare** M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A requires *non-resident* motor vehicle owners to maintain Massachusetts PIP protections on their *non-resident* motor vehicles when operating in Massachusetts; **[ii] Declare** that *non-resident* policies of liability insurance issued by “**GEICO**” and **USAA** do, in fact, provide Massachusetts PIP protections on their *non-resident* motor vehicles when operating on the roads of Massachusetts; **[iii] Declare** that Massachusetts PIP is a liability coverage and terminating the uncertainty and dispute between the Parties; **[iv] Declare** that liability coverages issued under the policies of liability insurance issued by “**GEICO**” and **USAA** provide primary and

excess liability coverages which include Massachusetts PIP and terminating the uncertainty and dispute between the Parties; **[v] Declare** that both a motor vehicle owner and non-owner liability policyholder, is required to maintain PIP provisions for himself/herself as an “obligor” under Massachusetts law when in Massachusetts and terminating the uncertainty and dispute between the Parties; **[vi] Declare** that “on more than thirty days in the aggregate in any one year” means exactly what it says and that once that threshold is met, a non-resident motor vehicle “owner” must “maintain[] in full force a policy of liability insurance providing indemnity for or protection to him, and to any person responsible for the operation of such motor vehicle or trailer with his express or implied consent, against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, caused by such motor vehicle or trailer, at least to the amount or limits required in a motor vehicle liability policy as defined in section thirty-four A” and that there is no expiration date wherein such liability coverages must be maintained thereafter thereby terminating the uncertainty and dispute between the Parties; **[vii] Declare** that the “owner thereof” is the intended subject required to “maintain” a policy of liability insurance under Massachusetts statute and that liability coverage follows, not just the automobile, but the person and terminating the uncertainty and dispute between the Parties; **[viii] Declare** the thirty day period in M.G.L. ch. 90, § 3 is void as unconstitutional and violative of the due process and equal protection clauses of the Constitution of the United States and Article IV of the Constitution; **And/or [ix] issue a certified question(s) to the SJC as certified questions pursuant to S. J. C. Rule 1:03, and appearing in 382 Mass. 700 (1981) to declare i – viii above and/or should the SJC refuse to answer certified questions, issue a mandamus to the SJC to declare the law in i – viii above as federal constitutional rights are involved;**

B. With respect to **Part First, Part Second, and Part Third**, it is requested that this Court enter judgment in favor of Plaintiff, Allan M. Leavitt, against Defendants on each of the Counts in this Complaint for compensatory damages, attorney's fees, costs, and expenses associated with litigating his claims in this case as well as compensatory damages, attorney's fees, costs, and expenses associated with his claims filed on September 16, 2013 including treble damages and those damages allowed by statute for each claim raised in each Count;

C. With respect to **Part Third** that the Court exercise its equitable powers to compel “**GEICO**” and **USAA** [i] to specifically perform their contracts and to provide peace of mind and certainty requiring these Defendants to affirm that [a] Massachusetts statute (M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A) has required non-resident motor vehicle owners to “maintain” Massachusetts PIP “provisions” as part of their “policy of liability insurance” *and* [b] policies of liability insurance issued by them provide Massachusetts PIP “protection” and require them to specifically perform their obligations as provided in their contracts and to provide assurances and specific performance that the Plaintiff is being treated in a manner equal to that of all other policyholders or beneficiaries “**GEICO**” and **USAA** insure. The Plaintiff requests this Court exercise its equitable powers to order [i] specific performance to affirm that “**GEICO**” and **USAA** will not deny that [a] Massachusetts statute (M.G.L. ch. 90, § 3 and M.G.L. ch. 90, § 34A) requires non-resident motor vehicle owners to “maintain” Massachusetts PIP “provisions” as part of their “policy of liability insurance” *and* that they will not deny [b] their policies of liability insurance provide Massachusetts PIP “protection” for the Plaintiff (or anyone else) when the Plaintiff is traveling on the roads of Massachusetts or, in the alternative, while he is occupying a non-resident vehicle insured by them while traveling on the roads of Massachusetts, [ii] award damages for attorney's fees, costs and expenses associated with this law suit and the

2013 law suit, and [iii] if specific performance not be granted, that the Plaintiff be awarded attorney's fees, costs, and expenses associated with his law suits.

D. That with respect to **Part Third** that this Court order Injunctive Relief as outlined with the items requested be enjoined, enforced, and assured as documented in the Notice under Rule 65 sent to the Parties on September 4, 2020 and quoted above and other relief as the Court deems meet and just.

E. That with respect to **Part First** this Court order the insurers named in this Amended Complaint to join their policyholders in this action as mandated under Fed. R. Civ. P. Rule 23(b)(1)(B) and Rule 19 due to the fact that the claims affect all persons and involve constitutional issues.

F. That this "...court...order a speedy hearing of a declaratory judgment action" as provisioned by Fed. R. Civ. P. Rule 57.

G. Awarding Plaintiff Attorney fees, costs, and expenses associated with this suit; *and*

H. Granting Plaintiff such other and further relief as the Court deems just and proper.

For this is a **Landmark Legal Discovery**. This is history.

**PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS.**

*Respectfully Submitted,*

Plaintiff, Allan M. Leavitt,  
By his Attorney and  
Counsel of Record,

/s/ William J. Ruotolo  
William J. Ruotolo  
Attorney & Counsellor At Law  
BBO # 628288  
PO Box 111  
North Scituate, RI 02857  
(401) 489-1051  
williamjruotolo@gmail.com

Dated: February 11, 2021

**VERIFICATION**

I, Allan M. Leavitt, hereby state under the pains and penalties of perjury that I am the Plaintiff in the above-titled action, that I have read the allegations of the Verified Complaint, and state that those allegations are true and correct to the best of my knowledge, information, and belief.

/s/ William J. Ruotolo

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William J. Ruotolo  
BBO # 628288  
On Behalf of and as  
Attorney and Counsel of Record for  
Plaintiff, Allan M. Leavitt

**Part I**

ADMINISTRATION OF THE GOVERNMENT

**Title XIV**

PUBLIC WAYS AND WORKS

**Chapter 90**

MOTOR VEHICLES AND AIRCRAFT

**Section 3**

OPERATION OF MOTOR VEHICLES OWNED BY NON-RESIDENTS; LIABILITY INSURANCE; VEHICLES USED IN CONNECTION WITH PLACE OF BUSINESS; SUSPENSION OR REVOCATION OF RIGHT TO OPERATE VEHICLE; REGISTRATION

Section 3. Subject to the provisions of section three A and except as otherwise provided in this section and in section ten, a motor vehicle or trailer owned by a non-resident who has complied with the laws relative to motor vehicles and trailers, and the registration and operation thereof, of the state or country of registration, may be operated on the ways of this commonwealth without registration under this chapter, to the extent, as to length of time of operation and otherwise, that, as finally determined by the registrar, the state or country of registration grants substantially similar privileges in the case of motor vehicles and trailers duly registered under the laws and owned by residents of this commonwealth; provided, that no motor vehicle or trailer shall be so operated on more than thirty days in the aggregate in any one year or, in any case where the owner thereof

acquires a regular place of abode or business or employment within the commonwealth, beyond a period of thirty days after the acquisition thereof, except during such time as the owner thereof maintains in full force a policy of liability insurance providing indemnity for or protection to him, and to any person responsible for the operation of such motor vehicle or trailer with his express or implied consent, against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, caused by such motor vehicle or trailer, at least to the amount or limits required in a motor vehicle liability policy as defined in section thirty-four A.

In any prosecution or proceeding other than an action to recover damages for bodily injuries or death arising out of an accident in which such a motor vehicle or trailer was involved, proof that the owner or operator of such a motor vehicle or trailer, while operating the same during such additional time, fails to have on his person or in the vehicle in an easily accessible place a policy providing such insurance or a certificate of an insurance company stating that such a policy has been issued, shall be *prima facie* evidence that insurance was not being maintained as required by this section, and in any such action to recover damages proof of such failure at the time of the accident shall create a presumption, which may be rebutted, that such insurance was not then being maintained as so required.

Every nonresident enrolled as a student at a school or college in the commonwealth who operates a motor vehicle registered in another state or country during any period beginning on September the first of any year and ending on August the thirty-first of the following year shall file in quadruplicate with the police department of the city or town in which such school or college is located, on a form approved by the registrar of motor vehicles, a statement signed by him under the penalties of perjury providing the following information:—the registration number and make of the motor vehicle and the state or country of registration, the name and local and out-of-state address of the owner, the names and addresses of all insurers providing liability insurance covering operation of the motor vehicle, the legal residence of such nonresident and his residence while attending such school or college and the name and address of the school or college which he is attending. He shall also maintain in full force a policy of liability insurance providing indemnity for or protection to him and to any person responsible for the operation of such motor vehicle with his express or implied consent against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, caused by such motor vehicle, at least to the amount or limits required in a motor vehicle liability policy as defined in section thirty-four A. The police department with whom any such statement is filed in quadruplicate shall send one copy thereof to the registrar of motor vehicles, 1 copy to the local assessor's office

and one copy to such school or college. Any such nonresident who fails to comply with the provisions of this paragraph shall be punished by a fine of not more than \$200. From the copies of the statements received from the police department, as hereinbefore provided, each such school or college shall compile and maintain a register of all such nonresidents enrolled as students thereat which shall be available for inspection at all reasonable times by the registrar, his agents, and police officers. Each such school or college shall provide to all nonresident students the following warning in bold type not less than 1/2 inch in height: **"IT IS UNLAWFUL FOR A NONRESIDENT STUDENT TO FAIL TO FILE A NONRESIDENT DRIVER STATEMENT WITH THE POLICE DEPARTMENT LOCATED IN THE SAME CITY OR TOWN AS THE SCHOOL OR COLLEGE ATTENDED, IN ACCORDANCE WITH SECTION 3 OF CHAPTER 90 OF THE MASSACHUSETTS GENERAL LAWS. FAILURE TO FILE SUCH STATEMENT IS PUNISHABLE BY A FINE NOT TO EXCEED \$200."** A written acknowledgment of receipt of this warning shall be required. Each such school or college shall issue to each such student such serially numbered or lettered decal as may be prescribed by the registrar, which decal shall be affixed to the uppermost center portion of the windshield. Such register shall contain the written acknowledgement of receipt of the nonresident driver statement warning, the numbers or letters of the decal issued to each such student, the name and address of the owner of the motor vehicle, the residential address of the student within the commonwealth, if any, while attending

such school or college, the residential address of the student without the commonwealth, the registration number, make and type of the motor vehicle and the state, province or country of registration, and the names and addresses of all insurers providing liability insurance covering the operation of the motor vehicle, which information shall be forwarded by the school or college to the assessor's office of the municipality listed as the student's local residence. Any such school or college which fails to compile and maintain a register, to issue a decal as required by this paragraph or to forward register data to the assessor's office of a municipality in which a nonresident student resides shall be punished by a fine of not more than one hundred dollars for each such offense.

A motor vehicle or trailer owned by a non-resident and used in direct connection with a place of business of such non-resident within this commonwealth shall be registered in this commonwealth; provided, that a non-resident who uses motor vehicles or trailers both in direct connection with his place of business in this commonwealth and in connection with a place or places of business outside the commonwealth need not register in this commonwealth more than the number of his vehicles which equals the average number of his vehicles regularly used in connection with his place of business in this commonwealth. For the purposes of such registration, the registrar may determine what vehicles or what proportion of vehicles owned by such non-resident are so used, and such determination shall be final.

The registrar may suspend the right of any nonresident operator to operate in this commonwealth, and may suspend the right of any nonresident owner to operate or have operated in this commonwealth any motor vehicle or trailer for the same causes and under the same conditions that he can take such action regarding resident owners, operators, motor vehicles and trailers owned in this commonwealth. Every such vehicle so operated shall have displayed upon it number plates, substantially as provided in section six, bearing the distinguishing number or mark of the state or country in which such vehicle is registered, and none other except as authorized by this chapter.

A corporation organized under the laws of this commonwealth, or a person resident therein, having a place of business in another state or a foreign country shall, with respect to the operation upon the ways of this commonwealth of a commercial motor vehicle, trailer or semi-trailer which is used in connection with such place of business, is customarily garaged in such other state or foreign country and is registered therein, have the rights and privileges and be subject to the obligations imposed by this section.

Except as provided in the preceding paragraph, a motor vehicle or trailer, owned by a non-resident, that is in the possession or under the control of a resident of this commonwealth for a period greater than thirty days, in the aggregate within a calendar year, whether under terms of a lease, or otherwise, and such vehicle is registered in another state or country, shall not be operated on the ways of this

commonwealth, unless registered under this chapter. Whoever operates or allows to be operated a motor vehicle or trailer in violation of this paragraph, shall be punished by a fine of not less than one hundred nor more than two hundred fifty dollars.

Notwithstanding any other provisions of this chapter, when records maintained by the registrar show that the use of a motor vehicle or trailer owned by any person or corporation has resulted in three or more convictions for a violation of this section within any twenty-four month period, he may suspend the right to operate, or right to have operated, in this commonwealth any motor vehicle or trailer owned by such person or corporation for a period not to exceed six months.

**Part III**

COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES

**Title II**

ACTIONS AND PROCEEDINGS THEREIN

**Chapter 231A** PROCEDURE FOR DECLARATORY JUDGMENTS**Section 1**

POWER TO MAKE DECLARATORY DETERMINATION; JURY QUESTIONS

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Section 1. The supreme judicial court, the superior court, the land court and the probate courts, within their respective jurisdictions, may on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought thereby, either before or after a breach or violation thereof has occurred in any case in which an actual controversy has arisen and is specifically set forth in the pleadings and whether any consequential judgment or relief is or could be claimed at law or in equity or not; and such proceeding shall not be open to objection on the ground that a merely declaratory judgment or decree is sought thereby and such declaration, when made, shall have the force and effect of a final judgment or decree and be reviewable as such; provided, that nothing contained herein shall be construed to authorize the change, extension or alteration of the law regulating the method of obtaining service on, or

jurisdiction over, parties or affect their right to trial by jury. When a declaration of right, or the granting of further relief based thereon, shall involve the determination of issues of fact triable by a jury as of right and as to which a jury trial is duly claimed by the party entitled thereto, or issues which the court, in accordance with the practice of courts of equity, considers should be tried by a jury, such issues may be submitted to a jury in the form of questions, with proper instructions by the court, whether a general verdict be required or not.

**Part III**

COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES

**Title II**

ACTIONS AND PROCEEDINGS THEREIN

**Chapter 231A** PROCEDURE FOR DECLARATORY JUDGMENTS**Section 2**

CONTROVERSIES TO WHICH DECLARATORY JUDGMENT PROCEDURE IS APPLICABLE

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Section 2. The procedure under section one may be used to secure determinations of right, duty, status or other legal relations under deeds, wills or written contracts or other writings constituting a contract or contracts or under the common law, or a charter, statute, municipal ordinance or by-law, or administrative regulation, including determination of any question of construction or validity thereof which may be involved in such determination. Said procedure under section one may be used in the superior court to enjoin and to obtain a determination of the legality of the administrative practices and procedures of any municipal, county or state agency or official which practices or procedures are alleged to be in violation of the Constitution of the United States or of the constitution or laws of the commonwealth, or are in violation of rules or regulations promulgated under the authority of such laws, which violation has been consistently repeated;

provided, however, that this section shall not apply to the governor and council or the legislative and judicial departments. For the purpose of this section practices or procedures mean the customary and usual method of conducting municipal, county, state agency or official business.

The foregoing enumeration shall not limit or restrict the exercise of the general powers conferred in section one in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

**Part III**

COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES

**Title II**

ACTIONS AND PROCEEDINGS THEREIN

**Chapter 231A** PROCEDURE FOR DECLARATORY JUDGMENTS**Section 3**

GROUNDS FOR REFUSING DECLARATORY JUDGMENT

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Section 3. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceedings or for other sufficient reasons. The reasons for such refusal shall be stated in the record. The failure to exhaust administrative relief prior to bringing an action under section one shall not bar the bringing of such action if the petition for declaratory relief is accompanied by an affidavit stating that the practice or procedure set forth pursuant to the provisions of section two is known to exist by the agency or official therein described and that reliance on administrative relief would be futile. For the purposes of this section practice or procedure means the customary and usual method of conducting agency or official business.

# United States Court of Appeals For the First Circuit

No. 21-1561

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ALLAN M. LEAVITT,

Plaintiff - Appellant,

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION; STUART PARKER, individually and as Chief Operating Officer of United Services Automobile Association; WAYNE PEACOCK, individually and as Chief Operating Officer of United Services Automobile Association; BOARD OF DIRECTORS, UNITED SERVICES AUTOMOBILE ASSOCIATION, collectively and individually; GEICO INDEMNITY COMPANY; TONY NICELY, individually and as Chairman, President, CEO, and Treasurer of GEICO Indemnity Company; TONY NICELY, as a member of the Board of Directors of Berkshire Hathaway, Inc.; BOARD OF DIRECTORS, GEICO INDEMNITY COMPANY, collectively and individually; THE COMMERCE INSURANCE COMPANY; CYNTHIA A. PHILLIPS; BERKSHIRE HATHAWAY, INC.; WARREN BUFFETT, Chairman, CEO, and Principal Shareholder of Berkshire Hathaway, Inc.; BOARD OF DIRECTORS, BERKSHIRE HATHAWAY, INC., collectively and individually; SMITH & BRINK, P.C.; DAVID BRINK, individually and as Director of Smith & Brink, P.C.; LYNN G. MCCARTHY, individually and as employee of Smith & Brink, P.C.; LAMONTAGNE, SPAULDING & HAYES, LLP; CATHRYN SPAULDING, individually and as partner of Lamontagne, Spaulding, & Hayes, LLP; RONALD E. HARDING; J. DOE, 1 - 100,

Defendants - Appellees.

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Before

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Lynch, Thompson and Gelpí,  
Circuit Judges.

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## JUDGMENT

Entered: April 7, 2022

Appellant Allan Leavitt appeals from the judgment of the district court dismissing his complaint. Several defendant-appellees have moved for summary disposition and/or for dismissal of the appeal.

After our own careful review of the record, we affirm, for substantially the reasons set forth in the district court's July 16, 2021 decision. Appellant's contentions on appeal, including his contention that the Rooker-Feldman doctrine does not bar his federal court suit due to the inclusion of non-identical claims and/or additional parties, are unconvincing. See Klimowicz v. Deutsche Bank Nat'l Tr. Co., 907 F.3d 61, 66–67 (1st Cir. 2018) ("Put simply, a federal court's application of the Rooker-Feldman doctrine is not contingent upon an identity between the issues actually litigated in the prior state-court proceedings and the issues proffered in the subsequent federal suit. Instead, the critical datum is whether the plaintiff's federal suit is, in effect, an end-run around a final state-court judgment.").

The judgment of the district court is affirmed in all respects. The motions for summary disposition filed by various defendant-appellees are granted. All other pending motions, to the extent not mooted by the foregoing, are denied. This includes the motions for sanctions filed by some defendant-appellees, but the court strongly cautions Leavitt and his counsel against the filing of additional frivolous motions in this now-adjudicated appeal.

By the Court:

Maria R. Hamilton, Clerk

cc:

William J. Ruotolo  
James W. McGarry  
Deidre Brennan Regan  
Jocelyn M. Sedney  
John R. Callahan  
John P. Donohue  
Mark C. Darling  
William T. Bogaert  
Samantha R. Puckett  
Edwin F. Landers Jr.  
William Robert Covino  
Kristyn M. Kelley

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL DOCKET # SUCV2013-3280A

ALLAN M. LEAVITT,  
*Plaintiff*

v.

CYNTHIA A. PHILLIPS,  
MELISSA AEBERSOLD,  
THE COMMERCE INSURANCE COMPANY,  
GEICO INSURANCE COMPANY, *and*  
UNITED SERVICES AUTOMOBILE ASSOCIATION,  
*Defendants*

**COMPLAINT BY PLAINTIFF, ALLAN M. LEAVITT, AGAINST  
DEFENDANTS, CYNTHIA A. PHILLIPS, MELISSA AEBERSOLD, THE  
COMMERCE INSURANCE COMPANY, GEICO INSURANCE  
COMPANY AND UNITED SERVICES AUTOMOBILE ASSOCIATION  
*and*  
COMPLAINT FOR DECLARATORY RELIEF AGAINST DEFENDANTS,  
GEICO INSURANCE COMPANY AND UNITED SERVICES  
AUTOMOBILE ASSOCIATION**

NOW COMES Plaintiff, Allan M. Leavitt ("Plaintiff"), and states:

**SUMMARY OF THE ACTION AND CLAIMS**

¶1. This action arises from a two-vehicle automobile collision on, or around, November 24, 2010 in Massachusetts. The Plaintiff was a passenger in **Aebersold's** (refers to Defendant, Melissa Aebersold, hereinafter) vehicle. **Phillips** (refers to Defendant, Cynthia Phillips, hereinafter) operated the second vehicle. There are three insurers involved in this law suit: Two "liability;" one "primary," "excess" or "pro-rata." **USAA** (refers to Defendant, United Services Automobile Association, hereinafter) is the primary, excess, or pro-rata insurer.

¶ 2. **Phillips: Negligent Operation of Motor Vehicle.**

Due to **Phillips** negligent operation of her motor vehicle, the Plaintiff sustained bodily injuries. **Phillips** was insured for liability by **Commerce** (refers to Defendant, The Commerce Insurance Company, hereinafter).

¶ 3. **Aebersold: Failure to Comply with Statute.**

Due to the negligent and/or intentional failure of **Aebersold** to ensure her vehicle carried the insurance coverages as required by Massachusetts law, the Plaintiff was denied personal injury protection (“PIP” hereinafter) benefits as required by Massachusetts G.L. c. 90 § 3 and § 34A. The statute required persons in **Aebersold’s** position “...maintain[] in full force a policy of liability insurance providing indemnity for or protection to him, and to any person responsible for the operation of such motor vehicle or trailer with his express or implied consent, against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, caused by such motor vehicle or trailer, at least to the amount or limits required in a motor vehicle liability policy as defined in section thirty-four A.” **Aebersold** was insured by **GEICO** (refers to Defendant, GEICO Insurance Company, hereinafter) for liability (“Liability” to include PIP provisions of a motor vehicle liability policy as contemplated by Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A) under a Vermont Automobile Insurance Policy.

¶ 4. **GEICO/USAA: PIP, Breach of Contract, 93A/176D, etc.**

Due to the breach of contract, bad faith, etc. of **GEICO** and **USAA**, the Plaintiff was denied PIP benefits as required by Massachusetts G.L. c. 90 § 3

which requires out-of-state vehicles to maintain coverages at least to the amounts of coverage required under Massachusetts G.L. c. 90, § 34A. **GEICO** and **USAA** never investigated the issue of coverage under the liberalization clause concerning PIP benefits in the years since the collision giving rise to coverage. *Years later, they denied coverage without ever conducting a factual investigation into the issue of coverage.* Claims involve breach of contract, violation of 93A, etc., bad faith. The Complaint for Declaratory Relief pertains to these two Defendants.

¶ 5. **Commerce: 93A/176D Unfair and Deceptive Trade Practices.**

Due to the unfair business dealings and bad faith of **Commerce**, as contemplated by Massachusetts G.L. c. 93A and c. 176D, in tendering an unconscionably low bodily injury settlement offer to the Plaintiff, in failing to conduct a proper investigation, etc., the Plaintiff was required to sue in order to recover a reasonable settlement for his injuries.

¶ 6. **GEICO/USAA: Suit Under Contract for Underinsurance.**

**GEICO** and **USAA** are the insurers with respect to underinsurance coverages which require suit under contract to recover under the policy and do not contain volitional or mandatory arbitration provisions. Summary charts follow:

<b><u>SUMMARY: COVERAGES AND PARTIES</u></b>			
	<b>AUTO POLICY 1</b>	<b>AUTO POLICY 2</b>	<b>AUTO POLICY 3</b>
<b>POLICY OWNER</b> →	Phillips	Aebersold	Plaintiff
<b>POLICY STATE</b> →	Massachusetts	Vermont	Vermont
<b>INSURER</b> →	Commerce	GEICO	USAA
<b>COVERAGES</b> →	Liability	Liability, PIP claims, UIM Underinsured	Liability, PIP claims, UIM Underinsured

<b><u>SUMMARY: CLAIMS AND CAUSES OF ACTION</u></b>			
	<b>AUTO POLICY 1</b>	<b>AUTO POLICY 2</b>	<b>AUTO POLICY 3</b>
<b>POLICY OWNER →</b>	Phillips	Aebersold	Plaintiff
<b>INSURER →</b>	Commerce	GEICO	USAA
<b>CLAIMS/ →</b>	93A/176D	93A/176D	93A/176D
<b>CAUSES OF</b>	Bad Faith, etc.	Bad Faith, etc.	Bad Faith, etc.
<b>ACTION</b>	(Commerce)	Bx of Contract...	Bx of
Contract....	Negligence (Phillips)	(GEICO) Failure to Insure	(ISAA)

### **JURISDICTION AND VENUE**

¶ 7. Venue in the Commonwealth of Massachusetts Superior Court is proper as at least two of the Defendants (**Phillips, Commerce**) are found, inhabit, are incorporated, reside, and/or transact business in the Commonwealth of Massachusetts and one or more acts or transactions constituting negligence, breaches of contract, and/or violations of Massachusetts G.L. c. 93 and/or c. 176D occurred as a result of the events surrounding the Plaintiff's claims in Massachusetts. Further, Massachusetts is the locus where the collision resulting in the Plaintiff's injuries occurred.

### **PARTIES**

¶ 8. Plaintiff is an individual whose current address is, and was at all relevant times to this law suit, 27 Conant Square, Brandon, VT 05733. At the time of the collision, he was a passenger in an automobile operated by **Aebersold**. On, or before, the date of the collision, the Plaintiff was required to ensure his vehicle was insured to the limits required by Massachusetts G.L. c. 90, § 3 as he fell into the category of motor vehicles non-resident operators who were required

to comply with the requirements of liability coverages under Massachusetts G.L. c. 90, § 3 and G.L. c. 90, § 34A. Said coverages included the requirement to ensure his vehicle carried PIP benefits on the day of the collision in question. He met with the statutory requirement by purchasing a Vermont Auto Policy Number 00400 02 47U 7103 9 ((Form Number 5100VT(01) 3-99)) along with

**IMPORTANT MESSAGES, SUPPLEMENTAL INFORMATION, AMENDMENT OF POLICY PROVISIONS, and AMENDATORY ENDORSEMENTS**, which included a grant of coverage titled **OUT OF STATE COVERAGE** (the liberalization clause) which provided benefits to the Plaintiff as required by Massachusetts law. However, his insurer, **USAA**, first failed to even investigate (for years) whether he was entitled to PIP coverages under the liberalization clause of his policy and then, years later (at the demand of the Plaintiff to afford PIP coverage through his legal counsel), wrongfully denied PIP coverages under the policy without conducting any investigation into coverage.

¶ 9. **Phillips** is an individual with a last known address located at 46 South Huntington Avenue, Apartment 2, Jamaica Plain, MA 02130-4711 to the best of the Plaintiff's knowledge and belief. **Phillips** was an owner and operator of a motor vehicle involved in a collision with **Aebersold** on, or around, November 24, 2010, on Huntington Avenue, in Jamaica Plain, Massachusetts and whose negligence caused the Plaintiff permanent bodily injuries and medical expenses, loss of earning capacity, and/or loss of earnings, and will continue to cause, the Plaintiff's permanent bodily injuries and medical expenses, loss of earning capacity, and/or loss of earnings.

¶ 10. **Aebersold** is an individual with a last known address located at 106 Ethan Allen Drive, South Burlington, VT 05403. **Aebersold** was the owner and operator of a motor vehicle involved in a collision with **Phillips** on, or around, November 24, 2010, on Huntington Avenue, in Jamaica Plain, Massachusetts and whose negligence or intentional conduct in failing to ensure her vehicle carried the limits required by Massachusetts G.L. c. 90, § 3 as she fell into the category of motor vehicles non-resident operators who were required to comply with the requirements of liability coverages under Massachusetts G.L. c. 90, § 3 and G.L. c. 90, § 34A (which included PIP benefits available for persons in the Plaintiff's position), caused, and continues to cause, the Plaintiff economic damages.

¶ 11. **Commerce** is the insurance company that entered into contract with **Phillips** to provide automobile liability insurance coverage under a Massachusetts Automobile Insurance Policy, to the best of the Plaintiff's knowledge and belief, which covered the loss that occurred on, or around, November 24, 2010. **Commerce** is a Massachusetts Corporation with its principal place of business located at 211 Main Street, Webster, MA 01570, and who was at all times relevant to this complaint subject to Massachusetts G.L. Ch. 93A and Ch. 176D of the Commonwealth of Massachusetts.

¶ 12. **GEICO** is the insurance company that entered into contract with **Aebersold** to provide automobile liability insurance coverage, medical payments coverage, and underinsured motorist bodily injury coverage, under a Vermont Automobile Insurance Policy which covered the loss that occurred on, or around,

November 24, 2010. **GEICO** is a corporation with its principle place of business located at 5260 Western Avenue, Chevy Chase, Md. 20815. **GEICO** was at all times relevant to this complaint subject to Massachusetts G.L. Ch. 93A and Ch. 176D of the Commonwealth of Massachusetts and/or the laws of the State of Vermont with respect to its policy contract issued to **Aebersold** and under which the Plaintiff is a beneficiary, “covered person,” and/or “**insured**” as defined by that policy. **GEICO** is also one of the two insurers who carry underinsured motorist bodily injury to which the Plaintiff is entitled (**USAA** is the other).

¶ 13. **USAA** is the insurance company that entered into contract with the Plaintiff to provide automobile liability insurance coverage, medical payments coverage, and Uninsured Motorist Coverage (underinsured motorist bodily injury) under a Vermont Automobile Insurance Policy which covered the loss that occurred on, or around, November 24, 2010. **USAA** is an organization that has its principle place of business located at 5619 NW Loop, 1604 # 101, San Antonio, TX, and is an association organized under the laws of the State of Texas. The Plaintiff is a member of **USAA**. **USAA** was at all times relevant to this complaint subject to Massachusetts G.L. Ch. 93A and Ch. 176D of the Commonwealth of Massachusetts and/or the State of Vermont with respect to its policy contract issued to the Plaintiff and under which the Plaintiff is an insured. **USAA** is also one of the two insurers who carry underinsured motorist bodily injury to which the Plaintiff is entitled (**GEICO** is the other).

## **FACTUAL BACKGROUND**

¶ 14. On or around November 24, 2010, the Plaintiff was a passenger in an automobile owned and operated by **Aebersold** when it was involved in a collision with **Phillips** on, or around, Huntington Avenue in Jamaica Plain, in the Commonwealth of Massachusetts.

¶ 15. As a result of the negligent operation of her motor vehicle, **Phillips** caused the Plaintiff to sustain serious and permanent bodily injuries and was required to expend great sums of monies for medical care and treatment and lost earnings, loss of earning capacity, and/or loss of income opportunity.

¶ 16. The Plaintiff was offered seventeen thousand dollars (\$17,000.00) by **Commerce** for settlement of his claims (which included eleven thousand, six hundred and sixty-six dollars and sixty-two cents ((\$11,666.62)) for medical expenses incurred up to that point in time).

¶ 17. To the Plaintiff's surprise, he later learned (contrary to his understanding and only after engaging Counsel) that the seventeen thousand dollars (\$17,000.00) offered by **Commerce** was *inclusive (and not exclusive)* of approximately eleven thousand, six hundred and sixty-six dollars and sixty-two cents (\$11,666.62) in medical expenses which **Commerce** intended to reimburse to **GEICO** and **USAA** under a subrogation clause in their respective insurance policies rather than paid the Plaintiff for his pain and suffering, loss of income or earning capacity, and permanency. **Commerce** had no obligation to either **GEICO** or **USAA** with respect to subrogation provisions in the insurance policies issued by **GEICO** or **USAA** and faced no threat of suit against either **Commerce**

or their policyholder **Phillips** from either **GEICO** or **USAA** for any payments under their respective insurance contracts with those policyholders.

¶ 18. The offer to settle the Plaintiff's bodily injuries claims mentioned above was tendered by **Commerce** with full knowledge that the Plaintiff continued to experience pain and suffering, physical limitations, and continued to seek medical treatment for said injuries from November 24, 2010 and with full knowledge that the Plaintiff had a twenty-five (25) year life expectancy from the date of the collision.

¶ 19. A demand for settlement as well as a demand for settlement under Massachusetts G.L. Ch. 93A and Ch. 176D was made by the Plaintiff on January 30, 2013 to **Commerce** as the liability insurer of the tortfeasor in compliance with the statute and prior to filing suit. Said demand was sufficient to place them on notice of the Plaintiff's bodily injury claims and demands and offered mediation as a potential resolution for the Plaintiff's claims.

¶ 20. **Commerce** responded to the above demand without any additional meaningful offers of settlement except to increase its offer by five hundred dollars (\$500.00).

¶ 21. Further, **Commerce** refused to accept the Plaintiff's January 30, 2013 offer to mediate his claims requiring the Plaintiff to litigate his injury claims in order to recover a fair settlement.

¶ 22. In addition to the above, Plaintiff requested **USAA** provide information concerning [a] the amount of medical payments coverage, [b] the amount of payments made under the medical payments portion of the Plaintiff's

automobile insurance policy, [c] any time limitations under any portion of this Defendant's policy with the Plaintiff for treatment and/or making claims and [d] the amount of underinsured motorist bodily injury limits available to the Plaintiff in a communication over the telephone on, or around, March 28, 2013.

¶ 23. The Plaintiff was advised that **USAA** did not accept letters of representation in any manner except facsimile (**USAA** was aware on March 30, 2013 that neither Plaintiff nor Plaintiff Counsel possessed or had access to a facsimile machine) or regular mails notwithstanding the fact that representatives at **USAA** were advised the Plaintiff needed peace of mind under his policy immediately as he was interested in seeking continued treatment for his injuries and wanted to know what amounts, if any, remained under his coverage limits with **USAA** and whether there were any other time-related obstacles to making a claim as well as whether a coverage investigation into PIP benefits was conducted.

¶ 24. **USAA** also refused to provide the Plaintiff or his Counsel an e-mail address in order to provide the required letter of representation to **USAA** in an expeditious manner. Without having received a letter of representation, **USAA** then refused to speak with the Plaintiff stating that he was represented by an attorney. After receiving a letter of representation in the mails, **USAA** failed and/or refused to provide the requested information. It was only months later, and after engaging counsel for **USAA**, was any information provided to the Plaintiff.

¶ 25. Both **GEICO** and **USAA** failed and/or refused to provide the Plaintiff with a copy of the insurance contract governing the medical payments

and/or the liberalization clause within their policies and to which as a policyholder or, in the alternative, a beneficiary, covered person, and/or “**insured**” as defined and/or contemplated by that policy, was entitled for many months after requested by Plaintiff Counsel. This prevented the Plaintiff from knowing whether he had coverage available to him for medical care and treatment, for lost wages or loss of income, the amount of coverage available, the time limitations provided by the policy, etc. from November 24, 2010 until June, 2013.

¶ 26. It is clear that neither **GEICO** nor **USAA** investigated the coverage issue involving the liberalization clause and PIP benefits at any time prior to Plaintiff Counsel’s inquiries or to determine the scope of coverage pertaining to PIP benefits available to the Plaintiff.

¶ 27. In addition to the above, the Plaintiff requested information with respect to whether either the policy of insurance issued by **GEICO** to **Aebersold** or **USAA** to Plaintiff contained a liberalization clause which affected coverage as both aforementioned policies were written to Vermont policyholders while the collision and injuries occurred in the Commonwealth of Massachusetts. Initially for many months, neither **GEICO** nor **USAA** provided a copy of the policy under which the Plaintiff was a beneficiary, covered person, and/or “**insured**” as defined and/or contemplated by that policy until after several requests. **GEICO** responded to the request with respect to their position concerning a Liberalization Clause under either policy issued by **GEICO** to **Aebersold** claiming that Massachusetts was not a “deemer” state without addressing the issue of a

liberalization clause. **USAA**, through its Counsel, responded but failed to even address the issue of a liberalization clause. Clearly, neither **GEICO** nor **USAA** had investigated the issue of coverage involving other states and the liberalization clause of their respective polices at any time in 2010, 2011, or 2012 at which time Counsel for the Plaintiff had to request they address the issue and take a position. **GEICO** took a position and it denied coverage in error followed by **USAA** taking a position and denying coverage. Both denials were in error and relied on misunderstood law or contract provisions and interpretations.

¶ 28. It was only after months of requests from Plaintiff Counsel that **GEICO** and **USAA** finally provided a copy of their respective insurance contract in June, 2013 in order for the Plaintiff, through his Counsel, to assess whether the Plaintiff was owed coverage under Massachusetts G.L. c. 90 § 3 which requires out-of-state vehicles to maintain coverages at least to the amounts of coverage required under Massachusetts G.L. c. 90, § 34A which includes coverage for PIP benefits. As it turns out, both the **GEICO** and **USAA** insurance contracts contain a liberalization clause requiring them to afford coverage under Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A. **GEICO** and **USAA** both wrongfully denied coverage for PIP benefits under their respective insurance policies for reasons that are inconsistent with their individual policies, with Vermont law, and with Massachusetts law.

¶ 29. As a result of the actions and inactions of the Defendants, the Plaintiff has been caused to suffer economic damages, costs, and attorney's fees.

¶ 30. Massachusetts law provides, *inter alia*, as follows:

**Chapter 93A: Section 2 Unfair practices; legislative intent; rules and regulations**

*Section 2. (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.*

*Section 9 Civil actions and remedies; class action; demand for relief; damages; costs; exhausting administrative remedies.*

Section 9. (1) Any person, other than a person entitled to bring action under section eleven of this chapter, who has been injured by another person's use or employment of any method, act or practice declared to be unlawful by section two or any rule or regulation issued thereunder or any person whose rights are affected by another person violating the provisions of clause (9) of section three of chapter one hundred and seventy-six D may bring an action in the superior court, or in the housing court as provided in section three of chapter one hundred and eighty-five C whether by way of original complaint, counterclaim, cross-claim or third party action, for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper.

**Chapter 176D: Section 3 Unfair methods of competition and unfair or deceptive acts or practices**

*Section 3. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:*

- (9) Unfair claim settlement practices: An unfair claim settlement practice shall consist of any of the following acts or omissions: ...
  - (b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
  - (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 upon all available information;

- (f) Failing to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
- (g) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds; ...

### **CAUSES OF ACTION**

#### **COUNT I** **PHILLIPS**

##### **(Negligence against Defendant Phillips)**

¶ 31. The Plaintiff re-alleges, re-avers and incorporates herein by reference the facts and allegations set forth in paragraphs 1 through 30 above.

¶ 32. Defendant, **Phillips** had a duty to maintain and operate her motor vehicle in a reasonable and safe manner on the roads of the Commonwealth of Massachusetts so as to avoid bodily injuries to pedestrians and passengers in the Plaintiff's position.

¶ 33. **Phillips** breached her duty to maintain and operate her motor vehicle in a reasonable and safe manner so as to avoid bodily injuries to pedestrians and passengers in the Plaintiff's position.

¶ 34. As a direct and proximate cause of **Phillips'** negligence, the Plaintiff was caused to suffer severe and permanent bodily injuries, disability, permanency, loss of earnings, loss of earning capacity, and loss of income opportunities and requiring the Plaintiff to expend large sums of monies to seek medical care and treatment.

¶ 35. In addition, the Plaintiff bears no fault for the collision and did not contribute to his injuries in any way.

¶ 36. WHEREFORE, the Plaintiff demands judgment against **Phillips** in the amount of \$500,000.00 plus interest, costs, and attorney's fees.

COUNT II  
AEBERSOLD

**(Negligent and/or Intentional Violation of Massachusetts G.L. c. 90, § 3  
against Aebersold for failure to maintain coverages required by  
Massachusetts G.L. c. 90, § 34A for the protection of the Plaintiff)**

¶ 37. The Plaintiff re-alleges, re-avers and incorporates herein by reference the facts and allegations set forth in paragraphs 1 through 36 above.

¶ 38. Defendant, **Aebersold**, was operating her motor vehicle in the Commonwealth of Massachusetts and in which the Plaintiff was a passenger at the time of the collision. Under Massachusetts G.L. c. 90, § 3, her status on the day of the collision required her to "...maintain(sic) in full force a policy of liability insurance providing indemnity for or protection to him, and to any person responsible for the operation of such motor vehicle or trailer with his express or implied consent, against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, caused by such motor vehicle or trailer, at least to the amount or limits required in a motor vehicle liability policy as defined in section thirty-four A" which includes PIP coverages as part of the liability insurance policy.

¶ 39. **Aebersold** negligently and/or intentionally failed to comply with the statute depriving the Plaintiff of PIP coverages which include wage benefits for loss of earnings or income.

¶ 40. As a result of the intentional and/or negligent failure of **Aebersold** to carry coverages required by law in Massachusetts, the Plaintiff was caused to suffer permanent economic harm and financial loss.

¶ 41. WHEREFORE, the Plaintiff demands judgment against **Aebersold** in the amount of \$500,000.00 plus interest, costs, and attorney's fees.

**COUNT III**  
**USAA**

**(Suit under Contract with respect to the Underinsured Motorist Claim, Part C Coverage, Under USAA Insurance Policy as the Parties cannot agree on Value of Plaintiff's Bodily Injury Claim)**

¶ 42. The Plaintiff re-alleges, re-avers and incorporates herein by reference the facts and allegations set forth in paragraphs 1 through 41 above.

¶ 43. Defendant, **USAA**, issued a Vermont Auto Policy Number 00400 02 47U 7103 9 ((Form Number 5100VT(01) 3-99)) along with IMPORTANT MESSAGES, SUPPLEMENTAL INFORMATION, AMENDMENT OF POLICY PROVISIONS, and AMENDATORY ENDORSEMENTS to the Plaintiff in exchange for valuable consideration, which included a grant of coverage under Part C, Uninsured Motorist Coverage which provided benefits in an amount up to \$1,000,000.00 for bodily injuries and lost wages or lost income to which the policy applied.

¶ 44. The Plaintiff was involved in a loss to which the afore-mentioned insurance policy and coverage applied on November 24, 2010, and under which policy the Plaintiff was entitled to recover damages from the person liable for causing his injuries, at which time he sustained severe and permanent bodily injuries, lost wages, and/or loss of earning capacity, and said person liable for the

Plaintiff's injuries and economic damages carried insurance coverage which is insufficient to compensate the Plaintiff for his injuries and economic damages.

¶ 45. A demand for settlement of the injuries aforementioned was made under that portion of the insurance contract to **USAA** on July 20, 2013 but **USAA** and the Plaintiff cannot agree on the value of the Plaintiff's claims or settlement.

¶ 46. The Plaintiff has complied with all terms under the contract prior to filing suit.

¶ 47. The policy of insurance quoted above had deleted the arbitration clause under the contract prior to the collision on November 24, 2010 requiring the Plaintiff to commence suit to recover damages under contract for uninsured/underinsured benefits and the Plaintiff avers that his bodily injuries, permanency, and loss of income and/or earning capacity exceeds the liability limits of the tortfeasor or tortfeasors entitling him to coverage for underinsured motorist bodily injury of the aforementioned insurance policy with **USAA**.

¶ 48. WHEREFORE, the Plaintiff demands judgment against **USAA** in the amount of \$1,000,000.00 plus interest, costs, and attorney's fees.

**COUNT IV**  
**GEICO**

**(Suit under Contract with respect to the Underinsured Motorist Claim,  
Section IV, Uninsured Motorist Coverage, Under GEICO Insurance  
Company's Policy as the Parties cannot agree on Value of Plaintiff's Bodily  
Injury Claim)**

¶ 49. The Plaintiff re-alleges, re-avers and incorporates herein by reference the facts and allegations set forth in paragraphs 1 through 48 above.

¶ 50. Defendant, **GEICO**, issued a Vermont Auto Policy Form Number A-30VT(6-97) to the **Aebersold** in exchange for valuable consideration and under which policy the Plaintiff was a beneficiary, covered person, or insured for underinsured motorist coverages, which included a grant of coverage under Section IV, Uninsured Motorist Coverage which provided benefits for bodily injuries and lost wages or lost income to which the policy applied.

¶ 51. The Plaintiff was involved in a loss to which the afore-mentioned insurance policy and coverage applied on November 24, 2010, and under which policy the Plaintiff was entitled to recover damages from the person liable for causing his injuries, at which time he sustained severe and permanent bodily injuries, lost wages, and/or loss of earning capacity, and said person liable for the Plaintiff's injuries and economic damages carried insurance coverage which is insufficient to compensate the Plaintiff for his injuries and economic damages.

¶ 52. A demand for settlement of those injuries under that portion of the insurance contract was made on July 20, 2013 and **GEICO** and the Plaintiff cannot agree on the value of the Plaintiff's claims or settlement.

¶ 53. The Plaintiff has complied with all terms under the contract prior to filing suit.

¶ 54. The policy of insurance quoted above had deleted the (or had no) arbitration clause under the contract prior to the collision on November 24, 2010 requiring the Plaintiff to commence suit to recover damages under contract for uninsured/underinsured benefits and the Plaintiff avers that his bodily injuries, permanency, and loss of income and/or earning capacity exceeds the liability

limits of the tortfeasor or tortfeasors entitling him to coverage for underinsured motorist bodily injury of the aforementioned insurance policy with **GEICO**

¶ 55. WHEREFORE, the Plaintiff demands judgment against **GEICO** in the total amount of the underinsured motorist policy limits available plus interest, costs, and attorney's fees.

COUNT V  
GEICO

**(Breach of Contract against GEICO)**

¶ 56. The Plaintiff re-alleges, re-avers and incorporates herein by reference the facts and allegations set forth in paragraphs 1 through 55 above.

¶ 57. **GEICO** entered into a contract with **Aebersold** for good and valuable consideration. **GEICO** had a contractual obligation to the Plaintiff as a beneficiary, covered person, and/or “**insured**” under that policy, Section II, and to **Aebersold** under Section I for liability. **GEICO**’s promise and obligation under that policy was to provide coverage consistent with [a] the terms of that policy, [b] the laws of the State of Vermont which required the Defendant to honor the contract as well as an implied a covenant of good faith and fair dealing and/or [c] the laws of the Commonwealth of Massachusetts governing contract, and/or Massachusetts G.L. Ch. 93A and Ch. 176D. Said policy provided “**OUT OF STATE INSURANCE**: When the policy applies to the operation of a motor vehicle outside of **your** state, we agree to increase **your** coverages to the extent required of out-of-state motorists by local law.”

¶ 58. Under said policy of insurance, **GEICO** had an obligation to provide to persons in the Plaintiff’s position, coverage, an accurate coverage

investigation, peace of mind, accurate coverage limits and amounts of coverage, and was required by its contract and by law to increase and afford said amounts and to the extent required of out-of-state motorists by local law (in this case Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A) for **Aebersold**. Had **GEICO** properly investigated coverage, **Aebersold** would have been provided liability coverages under the grant of coverage mentioned in ¶ 57 above which would have provided coverages consistent with Massachusetts G.L. c. 90 § 34A and which would have included PIP benefits for the Plaintiff. **GEICO** failed, and or refused to do so, thereby breaching their obligations under said contract.

¶ 59. Plaintiff made numerous requests and demands to **GEICO** that they provide information concerning whether the policy provided a liberalization clause, and if applicable to afford the liberalized coverage amounts and limits, the amounts of monies paid under that policy of insurance for medical payments, a copy of the insurance policy, the time limit in which to make claims under that policy, whether **GEICO** had investigated the issue of a liberalization clause under its policy of insurance or the issue of liability, and whether it applied in the present situation involving the Plaintiff. This information was never provided or, in the alternative, incompletely addressed. The Plaintiff also made demands for payment of PIP benefits under the **GEICO** policy as required by that contract and as required of their policyholder by Massachusetts law. **GEICO**, in fact, initially breached its contract with the Plaintiff by failing to complete any coverage investigation for years and then, without any coverage investigation, wrongfully denied coverage under the policy of insurance issued to the Plaintiff for PIP

benefits as promised by the insurance contract. **GEICO** also denied the coverages as required by Massachusetts G.L. c. 90 § 3, and G.L. c. 90, § 34A to the Plaintiff's financial detriment. Plaintiff made numerous demands to provide PIP coverage and **GEICO** denied his requests.

¶ 60. **GEICO** breached its obligation to provide coverage, a coverage investigation and breached its obligation to provide coverage consistent with [a] the terms of that policy, [b] the laws of the State of Vermont which required the **GEICO** to honor the contract as well as the implied covenant of good faith and fair dealing, to refrain from tortious bad faith, to refrain from contractual bad faith, to refrain from violation of implied covenant of good faith and for dealing and/or [c] the laws of the Commonwealth of Massachusetts governing contract, Massachusetts G.L. Ch. 93A and/or Ch. 176D, and failed to provide coverages required by the policy contract liberalization clause. **GEICO** refused to afford coverages required by contract, Massachusetts G.L. c. 90 § 3, and G.L. c. 90, § 34A and ultimately denied coverage as described above.

¶ 61. As a result of the actions, inactions, and denial by **GEICO** of coverages by required under Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A and/or by the laws of the State of Vermont, the Plaintiff has suffered loss of income, loss of earnings or earning opportunity, financial damages, expenses, and attorney's fees.

¶ 62. WHEREFORE, the Plaintiff demands judgment against **GEICO** in the amount of \$500,000.00 plus interest, costs, expenses, and attorney's fees.

**COUNT VI**  
**USAA**

**(Breach of Contract against USAA)**

¶ 63. The Plaintiff re-alleges, re-avers and incorporates herein by reference the facts and allegations set forth in paragraphs 1 through 62 above.

¶ 64. **USAA** had a contractual obligation to the Plaintiff as its insured, covered person, and/or “**named insured**” under its policy of insurance issued to Plaintiff to provide coverage consistent with [a] the terms of that policy, [b] the laws of the State of Vermont which required **USAA** to honor the contract as well as implied a covenant of good faith and fair dealing and/or [c] the laws of the Commonwealth of Massachusetts governing contract and/or Massachusetts G.L. Ch. 93A and Ch. 176D, as well as in accordance with Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A, and which policy provided “**OUT OF STATE COVERAGE**: If an auto accident to which this policy applies occurs in any state or province other than the one in which your covered auto is principally garaged, your policy will provide at least the minimum amounts and types of coverages required by law.”

¶ 65. Under said policy of insurance, **USAA** had an obligation to provide coverage, an accurate coverage investigation, peace of mind, status of any coverage investigation by **USAA**, accurate coverage limits, and was required by contract and law to increase and afford “amounts” and “types” coverages in accordance with the insurance contract, Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A consistent with the contract issued to the Plaintiff and the laws of the Commonwealth of Massachusetts. **USAA** failed, and/or refused, to do so thereby

breaching their obligations under said contract. **USAA**, in fact, initially breached its contract with the Plaintiff by failing to complete any coverage investigation for years and then, without any coverage investigation, wrongfully denied coverage under the policy of insurance issued to the Plaintiff for PIP benefits as promised by the insurance contract the coverages as required by Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A to the Plaintiff's financial detriment.

¶ 66. The Plaintiff made numerous requests to **USAA** that they provide information concerning whether the policy provided a liberalization clause, and if applicable to afford the liberalized coverage "amounts" and "types," information concerning the amounts of monies paid under that policy of insurance for medical payments, a copy of the insurance policy, the time limit in which to make claims under that policy, whether **USAA** had investigated the issue of a liberalization clause under its policy of insurance or the issue of liability and whether it applied in the present situation involving the Plaintiff. The Plaintiff also made many demands for PIP benefits under his policy of insurance. His demand was first ignored for months and at which time **USAA** denied coverage years after the loss and without any coverage investigation. Therefore **USAA** breached its obligation to provide coverage consistent with [a] the terms of that policy, [b] the laws of the State of Vermont which required **USAA** to honor the contract as well as an implied covenant of good faith and fair dealing, refrain from tortious bad faith, refrain from contractual bad faith, refrain from violation of implied covenant of good faith and fair dealing and/or [c] the law of the Commonwealth of Massachusetts governing contract and/or Massachusetts G.L. Ch. 93A and Ch.

176D and [d] denying coverages promised by the contract and as required of the Plaintiff by Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A, [e] providing a copy of the incorrect policy contract to the Plaintiff on, or around, June 14, 2013, and upon which **USAA** relied, [f] failing to respond to specific coverage questions after a medical bill had been denied as being beyond the one-year time limit claimed in the policy as contained in communications from August 17, 2013 and after. Plaintiff made numerous demands to provide PIP coverage and **USAA** denied his requests.

¶ 67. As a result of the actions and inactions of **USAA**, the Plaintiff has suffered contractual and extra-contractual damages and economic damages.

¶ 68. WHEREFORE, the Plaintiff demands judgment against the **USAA** in the amount of \$500,000.00 plus interest, costs, expenses, and attorney's fees.

**COUNT VII**  
**COMMERCE**

**(Violation of Chapter 93A - Unfair and Deceptive Trade Practices and  
Chapter 176D, against Commerce)**

¶ 69. The Plaintiff re-alleges, re-avers and incorporates herein by reference the facts and allegations set forth in paragraphs 1 through 68 above.

¶ 70. **Commerce** had an obligation to comply with Massachusetts G.L. Ch. 93A and Ch. 176D at all times from on, or around, November 24, 2010 and at all times thereafter, and refrain from unfair methods of competition and unfair or deceptive acts or practices under Massachusetts G.L. Ch. 93A as well as unfair methods of competition and unfair or deceptive acts or practices in the business of

insurance under Ch. 176D. The Massachusetts statutes are identified, but are not limited to, ¶ 30 above.

¶ 71. A demand for settlement under Massachusetts G.L. Ch. 93A and Ch. 176D was made by the Plaintiff on January 30, 2013 to **Commerce**. Said demand was sufficient to place them on notice of the Plaintiff's claims and demands in accordance with the statute and existing case law.

¶ 72. **Commerce** breached its obligations under Massachusetts G.L. Ch. 93A and Ch. 176D in, *inter alia*, and not limited to, the following ways:

- a. **Commerce** failed to properly investigate the Plaintiff's claims of injuries and made an offer in the amount of \$17,000.00 for his past and future medical expenses and past and future pain and suffering with full knowledge that he had no injuries previous to November 24, 2010 that were diagnosed as bulging or herniated disc at C-6 and/or C-7, thoracic outlet syndrome, and/or carpal tunnel syndrome;
- b. **Commerce** failed to properly investigate liability in that they failed to secure statements from witnesses, failed to conduct an investigation of the scene of the collision, failed to have experts review and opine concerning the damage to the automobiles and take measurements of the scene of the collision in order to opine with respect to liability;

- c. **Commerce** rejected the Plaintiff's offer in January, 2013 to mediate settlement in light of the clear injuries of bulging or herniated disc at C-6 and/or C-7, thoracic outlet syndrome, and/or carpal tunnel syndrome and instead requesting authorization to obtain past medical records pertaining to conditions which they were advised were never diagnosed (specifically, bulging or herniated disc at C-6 and/or C-7, thoracic outlet syndrome, and/or carpal tunnel syndrome) requiring the Plaintiff to litigate;
- d. **Commerce** failed to state the reasons for its very low offer of settlement both to the Plaintiff prior to his legal representation and then to his Counsel;
- e. **Commerce** did not justify or demonstrate that the Plaintiff's claims were reasonably debatable at any time;
- f. **Commerce** failed to inform the Plaintiff through his Counsel that they intended to send the Plaintiff's medical records to someone other than an employee of **Commerce** in order to prepare a defense with respect to Mr. Leavitt's injuries and medical condition and thereby violated the Plaintiff's privacy rights in an effort to gain support for a potential future law suit;
- g. **Commerce** forced the Plaintiff to file suit and refused to make a reasonable offer of settlement;

h. **Commerce** made an offer in the amount of \$17,000.00 for the Plaintiff's past and future medical expenses and past and future pain and suffering with full knowledge that he had no injuries previously that were diagnosed as bulging or herniated disc at C-6 and/or C-7, thoracic outlet syndrome, carpal tunnel syndrome when they knew the Plaintiff was unrepresented by legal counsel, that the Plaintiff never had been diagnosed or experienced symptoms with the aforementioned conditions, and that said offer was insufficient to compensate him for a bulging or herniated disc at C-6 and/or C-7, thoracic outlet syndrome, and/or carpal tunnel syndrome, past and future medical expenses, and past and future pain and suffering. Nor was there any discussion that the amount of settlement mentioned above was to pay subrogation to insurance carriers which **Commerce** had no obligation to do. Said amount was clearly made in bad faith as the offer did not fairly and reasonably compensate the Plaintiff for his injuries as described above;

i. **Commerce** deceived the Plaintiff into providing a medical release in order to request medical records for five (5) years prior to November 24, 2010 in order to rule out prior injuries and thereafter forwarded them to an individual who

was not an employee of **Commerce** with full intent to use that individual's "records review" against the Plaintiff and in violation of his privacy rights;

j. **Commerce** deceived the Plaintiff in that its employees intended to seek a medical expert's review of his medical records with the Plaintiff's authorization and consent thereby gaining an advantage over the Plaintiff in addition to the rights of **Commerce** and their Insured under Mass.R.Civ.P. 35 without informing, discussing, or negotiating their intent with the Plaintiff;

k. **Commerce** violated the Plaintiff's privacy rights by sharing his medical records and health care information with third-parties without the Plaintiff's knowledge, expectation, or consent;

l. **Commerce** violated Massachusetts G.L. c. 176D(3)(9)(b), (c), (d), (f), and (g) among other sections of these statutes;

m. **Commerce** intentionally deceived the Plaintiff with respect to the offer of seventeen thousand dollars (\$17,000.00) in that said offer by **Commerce** was *inclusive (and not exclusive)* of approximately eleven thousand, six hundred and sixty-six dollars and sixty-two cents (\$11,666.62) in medical expenses which **Commerce** intended to reimburse to **GEICO** and **USAA** under a subrogation clause in their

respective insurance policies rather than paid the Plaintiff for his pain and suffering, loss of income or earning capacity, and permanency. Commerce had no obligation to either **GEICO** or **USAA** with respect to subrogation provisions in the insurance policies issued by **GEICO** or **USAA** and faced no threat of suit from either **GEICO** or **USAA** for any payments under their respective insurance contracts with those policyholders; and

- n. **Commerce** purposefully, and without good faith, cause, justification, or excuse, refused to attempt to resolve the Plaintiff's dispute intending to require the Plaintiff to litigate in order to recover a reasonable amount for his injuries when neither liability for the collision nor liability for the injuries was reasonably debatable.

¶ 73. A demand as required by the statute was sent on, or around, January 30, 2013. Said demand was sufficient to place them on notice of the Plaintiff's claims and demands.

¶ 74. **Commerce's** response failed to address the demand in any meaningful manner forcing the Plaintiff to file suit.

¶ 75. As a result of the actions and inactions of **Commerce** the Plaintiff has suffered contractual and extra-contractual damages and economic loss.

¶ 76. WHEREFORE, the Plaintiff demands judgment against **Commerce** in the amount of \$500,000.00 plus interest, costs, treble damages, expenses, costs, and attorney's fees associated with this litigation.

**COUNT VIII**  
**GEICO**

**(Violation of Chapter 93A - Unfair and Deceptive Trade Practices and Chapter 176D under Massachusetts Law and/or Tortious Bad Faith, Contractual Bad Faith, Violation of Implied Covenant of Good Faith and Fair Dealing under Vermont Law, against GEICO)**

¶ 77. The Plaintiff re-alleges, re-avers and incorporates herein by reference the facts and allegations set forth in paragraphs 1 through 76 above.

¶ 78. **GEICO** had an obligation to comply with the laws of the Commonwealth of Massachusetts G.L. Ch. 93A and Ch. 176D and/or the laws of the State of Vermont at all times from on, or around, November 24, 2010 and at all times thereafter and refrain from unfair or deceptive acts or practices, unfair business dealings, tortious bad faith, contractual bad faith, and violating any implied covenant of good faith and fair dealing and/or **GEICO** had an obligation under Massachusetts law to refrain from unfair methods of competition and unfair or deceptive acts or practices under Massachusetts G.L. Ch. 93A as well as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance under Ch. 176D. Those Massachusetts statutes are identified, but are not limited to, ¶ 30 above.

¶ 79. A demand for coverage as required by Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A as well as a general demand under the laws of the State of

Vermont for PIP benefits was made to **GEICO**, however, **GEICO** denied coverages to the Plaintiff without conducting a proper investigation.

¶ 80. **GEICO** breached its obligations in bad faith under the laws of the Commonwealth of Massachusetts and/or the State of Vermont in, *inter alia*, the following ways:

- a. **GEICO**, refused to honor its contract with its policyholder and/or the Plaintiff by affording coverages promised by the policy contract and required of its policyholder under Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A;
- b. **GEICO** failed to properly investigate the Plaintiff's claims of injuries by failing to exhaust reasonable and available means of investigation pertaining to liability and damages including, but not limited to, PIP benefits. Said failure was made in bad faith and was ongoing for years after the collision causing injuries to the Plaintiff;
- c. **GEICO** forced the Plaintiff to file suit and refused to make an offer of settlement with respect to PIP coverages;
- d. **GEICO** denied coverage for PIP benefits based on an erroneous interpretation of its insurance contract;
- e. **GEICO** denied coverage for PIP benefits based on an erroneous section of Massachusetts General Laws;
- f. **GEICO** forced the Plaintiff to file suit and denied coverage under Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A.

¶ 81. As a result of the actions and inactions of **GEICO**, the Plaintiff has suffered contractual and extra-contractual damages and economic harm.

¶ 82. WHEREFORE, the Plaintiff demands judgment against **GEICO** in the amount of \$500,000.00 plus interest, costs, treble damages, expenses, costs, and attorney's fees associated with this litigation.

**COUNT IX**  
**USAA**

**(Violation of Chapter 93A - Unfair and Deceptive Trade Practices and Chapter 176D under Massachusetts Law and/or Tortious Bad Faith, Contractual Bad Faith, Violation of Implied Covenant of Good Faith and Fair Dealing under Vermont Law, against USAA)**

¶ 83. The Plaintiff re-alleges, re-avers and incorporates herein by reference the facts and allegations set forth in paragraphs 1 through 82 above.

¶ 84. **USAA** had an obligation to comply with the laws of the Commonwealth of Massachusetts and the State of Vermont at all times from on, or around, November 24, 2010 and at all times thereafter and refrain from unfair or deceptive acts or practices, unfair business dealings, tortious bad faith, contractual bad faith, and violating any implied covenant of good faith and fair dealing and/or **USAA** had an obligation under Massachusetts law to refrain from unfair methods of competition and unfair or deceptive acts or practices under Massachusetts G.L. Ch. 93A as well as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance under Ch. 176D. Those Massachusetts statutes are identified, but are not limited to, ¶ 30 above.

¶ 85. A demand for coverage under Massachusetts G.L. Ch. 93A and Ch. 176D as well as a general demand under the laws of the State of Vermont was

made by the Plaintiff on two occasions in 2013 to **USAA** as the insurer of the Plaintiff in compliance with the statute and prior to filing suit. Said demand was sufficient to place them on notice of the Plaintiff's claims and demands. **USAA** had obligations under its insurance contract to the Plaintiff to refrain from unfair methods of competition and unfair or deceptive acts or practices under Massachusetts G.L. Ch. 93A as well as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance under Ch. 176D as well as in accordance with the laws of the State of Vermont. The Massachusetts statutes are identified in, but are not limited to, ¶ 30 above.

¶ 86. **USAA** breached its obligations under Massachusetts G.L. Ch. 93A and Ch. 176D and/or its obligations under the laws of the State of Vermont in, *inter alia*, the following ways:

- a. **USAA** refused to honor its contract with the Plaintiff and afford coverages promised by the policy contract and as required under Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A;
- b. **USAA** refused to confirm coverage under the medical payments, PIP, and/or underinsured motorist portions of his automobile policy without conducting a reasonable and/or adequate investigation and by unreasonably refusing to provide a means of communication available to the Plaintiff and his attorney and by insisting that communication be limited through the mail or facsimile (USAA was aware on March 30, 2013 that neither Plaintiff nor Plaintiff Counsel possessed or had access to a

facsimile machine but thereafter left messages for Plaintiff Counsel requesting his facsimile number) and impeded the Plaintiff's ability to seek medical treatment with peace of mind that he had coverage under that policy of insurance;

- c. **USAA** refused to respond to the communications from the Plaintiff's Counsel and impeded the Plaintiff's ability to seek medical treatment with peace of mind that he had coverage under that policy of insurance;
- d. **USAA's** refusals as outlined above have caused the Plaintiff's injuries to go untreated causing pain;
- e. **USAA** violated Massachusetts G.L. c. 176D(3)(9)(b), (c), (d), (f), and (g);
- f. **USAA** provided a copy of the incorrect policy contract to the Plaintiff on, or around, June 14, 2013, and upon which **USAA** relied in denying coverage for PIP benefits;
- g. Failing to respond to specific coverage questions after a medical bill had been denied as being beyond the one-year time limit claimed in the policy as contained in communications from August 17, 2013 and after;
- h. After the Plaintiff, through his Counsel, provided a clear coverage analysis which was detailed, thorough, and accurate, **USAA** through its coverage counsel once again denied PIP coverage to the Plaintiff by way of a communication that misstated the Plaintiff's

position on coverage, misstated the facts of the case presented to them, misinterpreted and misunderstood the Vermont Insurance Policy, and misstated and misunderstood the law in Massachusetts;

i. **USAA**, through its Coverage Counsel, provided a denial letter concerning PIP coverage that was so defective as to constitute bad faith under Massachusetts and/or Vermont law;

j. **USAA**, through its Coverage Counsel, refused to respond to specific inquiries from the Plaintiff concerning the manner in which **USAA** had arrived at its coverage denial thereby failing to provide justifiable reasons for its coverage denial.

¶ 87. A demand for coverage was sent on, or around, April 24, 2013 which requested **USAA**: "...please advise if the Vermont policy issued by USAA Insurance Company to Mr. Leavitt contains a liberalization clause?; Was that investigated by USAA's claims department at any time?; If the policy issued by USAA Insurance Company contained a liberalization clause, Mr. Leavitt would be entitled to PIP benefits to the minimum limit required by Massachusetts law; ... (whether) the liberalization clause, if any in the USAA Insurance Company policy would also contain a limit of time within which the PIP claim must be made or, in the alternative, medical expenses incurred. Can you please advise if USAA had completed any investigation concerning a liberalization clause within Mr. Leavitt's policy, ... (that) USAA confirm the medical payments coverage limits and underinsured motorist coverage limits; (that) USAA provide a breakdown of payments made under the medical payments portion of Mr.

Leavitt's policy; (that **USAA**) provide me a copy of the insurance policy issued to Mr. Leavitt." Said demand was sufficient to place them on notice of the Plaintiff's claims and demands. Demands for coverage were made after April 24, 2013.

¶ 88. **USAA**, through its Coverage Counsel, responded in June, 2013 and failed to even address the issue of the liberalization clause with respect to coverages owed to the Plaintiff and as demanded.

¶ 89. As a result of the actions and inactions of **USAA**, the Plaintiff has suffered contractual and extra-contractual damages as well as economic damages.

¶ 90. WHEREFORE, the Plaintiff demands judgment against **USAA** in the amount of \$500,000.00 plus interest, costs, treble damages, and attorney's fees associated with this litigation.

COUNT X  
GEICO

(Declaratory Relief against GEICO)

¶ 91. The Plaintiff re-alleges, re-avers and incorporates herein by reference the facts and allegations set forth in paragraphs 1 through 90 above.

¶ 92. **GEICO** entered into a contract with **Aebersold** for good and valuable consideration. **GEICO** had a contractual obligation to the Plaintiff as a beneficiary, covered person and/or "insured" under that policy and as defined and/or contemplated by that policy issued to **Aebersold**. **GEICO's** obligation under that policy was to provide coverage consistent with [a] the terms of that policy, [b] the laws of the State of Vermont which required the Defendant to honor the contract as well as an implied covenant of good faith and fair dealing

and/or [c] the laws of the Commonwealth of Massachusetts governing contract, and/or Massachusetts G.L. Ch. 93A and Ch. 176D and which policy provided

**“OUT OF STATE INSURANCE:** When the policy applies to the operation of a motor vehicle outside of *your* state, we agree to increase *your* coverages to the extent required of out-of-state motorists by local law.”

¶ 93. Massachusetts G.L. c. 90 § 3 deals with out-of-state vehicles and provides:

§ 90:3. Operation of motor vehicles owned by non-residents; limitation; liability insurance; vehicles used in connection with place of business; suspension or revocation of right to operate vehicle; registration

Subject to the provisions of section three A and except as otherwise provided in this section and in section ten, a motor vehicle or trailer owned by a non-resident who has complied with the laws relative to motor vehicles and trailers, and the registration and operation thereof, of the state or country of registration, may be operated on the ways of this commonwealth without registration under this chapter, to the extent, as to length of time of operation and otherwise, that, as finally determined by the registrar, the state or country of registration grants substantially similar privileges in the case of motor vehicles and trailers duly registered under the laws and owned by residents of this commonwealth; provided, that no motor vehicle or trailer shall be so operated on more than thirty days in the aggregate in any one year or, in any case where the owner thereof acquires a regular place of abode or business or employment within the commonwealth, beyond a period of thirty days after the acquisition thereof, except during such time as the owner thereof maintains in full force a policy of liability insurance providing indemnity for or protection to him, and to any person responsible for the operation of such motor vehicle or trailer with his express or implied consent, against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, caused by such motor vehicle or trailer, at least to the amount or limits required in a motor vehicle liability policy as defined in section thirty-four A.

¶ 94. Massachusetts G.L. c. 90, § 34A provisions as follows:

"Motor vehicle liability policy", a policy of liability insurance which provides indemnity for or protection to the insured and any person responsible for the operation of the insured's motor vehicle with his express or implied consent against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, or consequential damages consisting of expenses incurred by a husband, wife, parent or guardian for medical, nursing, hospital or surgical services....

*and*

"Personal injury protection," provisions of a motor vehicle liability policy or motor vehicle liability bond which provide for payment to the named insured in any such motor vehicle liability policy, the obligor of any motor vehicle liability bond, members of the insured's or obligor's household, any authorized operator or passenger of the insured's or obligor's motor vehicle including a guest occupant, and any pedestrian struck by the insured's or obligor's motor vehicle...

¶ 95. Under said policy of insurance **GEICO** had an obligation to provide an accurate coverage investigation, peace of mind, accurate coverage limits, and was required by contract and law to increase and afford coverages in accordance with the Vermont insurance policy, under Vermont law governing contract and under Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A. **GEICO** failed, and or refused to do so, thereby breaching their obligations under said contract and under the laws of the State of Vermont and/or Commonwealth of Massachusetts.

¶ 96. Plaintiff made numerous requests and demands to **GEICO** that they provide information concerning whether the policy provided a liberalization clause, and if applicable to afford the liberalized coverage amounts and limits, the amounts of monies paid under that policy of insurance for medical payments, a copy of the insurance policy, the time limit in which to make claims under that

policy, whether **GEICO** had investigated the issue of a liberalization clause under its policy of insurance or the issue of liability and whether it applied in the present situation involving the Plaintiff. This information was never provided or, in the alternative, incompletely addressed. The Plaintiff also made demands for payment of PIP benefits under the **GEICO** policy as required by that contract and as required of their policyholder by Massachusetts law. For years, **GEICO** never investigated the issue of PIP benefits. When demands for PIP benefits were made, **GEICO** ignored Plaintiff Counsel. When Plaintiff Counsel persisted, **GEICO** erroneously denied PIP benefits.

¶ 97. **GEICO** breached its obligation to provide coverage consistent with [a] the terms of that policy, [b] the laws of the State of Vermont which required the **GEICO** to honor the contract as well as an implied covenant of good faith and fair dealing, to refrain from tortious bad faith, to refrain from contractual bad faith, to refrain from violation of implied covenant of good faith and for dealing and/or [c] the laws of the Commonwealth of Massachusetts governing contract, Massachusetts G.L. Ch. 93A and/or Ch. 176D, and failed to provide coverages required by the policy contract liberalization clause and Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A.

¶ 98. As a result of the actions, inactions, and denial of coverages required under Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A, by **GEICO**, the Plaintiff has suffered loss of income, loss of earnings or earning opportunity, financial damages, expenses, and attorney's fees.

¶ 99. Wherefore, Plaintiff respectfully requests that this Court enter its judgment, as follows:

- A. Declaring that, with respect to the insurance policy issued by **GEICO** to **Aebersold**, Defendant, **GEICO**, is liable to pay all sums necessary to fully indemnify Plaintiff for PIP benefits under said policy of insurance in accordance with the requirements of Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A and in the amounts required by the statute;
- B. Awarding Plaintiff Attorney fees;
- C. Awarding Plaintiff costs; and
- D. Granting Plaintiff such other and further relief as the Court deems just and proper.

**COUNT XI**  
**USAA**

**(Declaratory Relief against USAA)**

¶ 100. The Plaintiff re-alleges, re-avers and incorporates herein by reference the facts and allegations set forth in paragraphs 1 through 99 above.

¶ 101. **USAA** entered into a contract with Plaintiff for good and valuable consideration. **USAA** had a contractual obligation to the Plaintiff as a beneficiary, covered person and/or “**insured**” under that policy and as defined and/or contemplated by that policy issued to Plaintiff. **USAA**’s obligation under that policy was to provide coverage consistent with [a] the terms of that policy, [b] the laws of the State of Vermont which required the Defendant to honor the contract as well as an implied covenant of good faith and fair dealing and/or [c] the laws of the Commonwealth of Massachusetts governing contract, and/or

Massachusetts G.L. Ch. 93A and Ch. 176D and which policy provided “**OUT OF STATE COVERAGE**: If an auto accident occurs to which this policy applies occurs in any state or province other than the one in which your covered auto is principally garaged, your policy will provide at least the minimum amounts and types of coverages required by law.”

¶ 102. Massachusetts G.L. c. 90 § 3 deals with out-of-state vehicles and provides:

§ 90:3. Operation of motor vehicles owned by non-residents; limitation; liability insurance; vehicles used in connection with place of business; suspension or revocation of right to operate vehicle; registration

Subject to the provisions of section three A and except as otherwise provided in this section and in section ten, a motor vehicle or trailer owned by a non-resident who has complied with the laws relative to motor vehicles and trailers, and the registration and operation thereof, of the state or country of registration, may be operated on the ways of this commonwealth without registration under this chapter, to the extent, as to length of time of operation and otherwise, that, as finally determined by the registrar, the state or country of registration grants substantially similar privileges in the case of motor vehicles and trailers duly registered under the laws and owned by residents of this commonwealth; provided, that no motor vehicle or trailer shall be so operated on more than thirty days in the aggregate in any one year or, in any case where the owner thereof acquires a regular place of abode or business or employment within the commonwealth, beyond a period of thirty days after the acquisition thereof, except during such time as the owner thereof maintains in full force a policy of liability insurance providing indemnity for or protection to him, and to any person responsible for the operation of such motor vehicle or trailer with his express or implied consent, against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, caused by such motor vehicle or trailer, at least to the amount or limits required in a motor vehicle liability policy as defined in section thirty-four A.

¶ 103. Massachusetts G.L. c. 90, § 34A provisions as follows:

"Motor vehicle liability policy", a policy of liability insurance which provides indemnity for or protection to the insured and any person responsible for the operation of the insured's motor vehicle with his express or implied consent against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, or consequential damages consisting of expenses incurred by a husband, wife, parent or guardian for medical, nursing, hospital or surgical services....

*and*

"Personal injury protection," provisions of a motor vehicle liability policy or motor vehicle liability bond which provide for payment to the named insured in any such motor vehicle liability policy, the obligor of any motor vehicle liability bond, members of the insured's or obligor's household, any authorized operator or passenger of the insured's or obligor's motor vehicle including a guest occupant, and any pedestrian struck by the insured's or obligor's motor vehicle...

¶ 104. Under said policy of insurance **USAA** had an obligation to provide an accurate coverage investigation, peace of mind, accurate coverage limits, and was required by contract and law to increase and afford coverages in accordance with the Vermont insurance policy, under Vermont law governing contract and under Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A. **USAA** failed, and or refused to do so, thereby breaching their obligations under said contract and under the laws of the State of Vermont and/or Commonwealth of Massachusetts.

¶ 105. After **USAA** failed to investigate the issue of PIP coverage for years, Plaintiff made numerous requests and demands to **USAA** that they provide information concerning whether the policy provided a liberalization clause, and if applicable to afford the liberalized coverage amounts and limits, the amounts of monies paid under that policy of insurance for medical payments, a copy of the insurance policy, the time limit in which to make claims under that policy,

whether **USAA** had investigated the issue of a liberalization clause under its policy of insurance or the issue of liability and whether it applied in the present situation involving the Plaintiff. This information was never provided or, in the alternative, incompletely addressed. The Plaintiff also made demands for payment of PIP benefits under the **USAA** policy as required by that contract and as required of their policyholder by Massachusetts law. Said requests were denied. **USAA** denied PIP coverage on two occasions through its coverage counsel who failed to get the facts straight as reported by the Plaintiff to **USAA**, failed to understand the contract, failed to understand the statute, and failed to request any investigation into the issue of PIP coverage.

¶ 106. **USAA** breached its obligation to provide coverage consistent with [a] the terms of that policy, [b] the laws of the State of Vermont which required the **USAA** to honor the contract as well as an implied covenant of good faith and fair dealing, to refrain from tortious bad faith, to refrain from contractual bad faith, to refrain from violation of implied covenant of good faith and for dealing and/or [c] the laws of the Commonwealth of Massachusetts governing contract, Massachusetts G.L. Ch. 93A and/or Ch. 176D, and failed to provide coverages required by the policy contract liberalization clause and Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A. **USAA** responded by stating that it refused to afford coverages required by contract, Massachusetts G.L. c. 90 § 3, and G.L. c. 90, § 34A.

¶ 107. As a result of the actions, inactions, and denial of coverages required under Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A, by **USAA**, the

Plaintiff has suffered loss of income, loss of earnings or earning opportunity, financial damages, expenses, and attorney's fees.

¶ 108. Wherefore, Plaintiff respectfully requests that this Court enter its judgment, as follows:

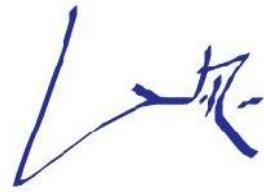
- A. Declaring that, with respect to the insurance policy issued by **GEICO** to **Aebersold**, Defendant, **GEICO**, is liable to pay all sums necessary to fully indemnify Plaintiff for PIP benefits under said policy of insurance in accordance with the requirements of Massachusetts G.L. c. 90 § 3 and G.L. c. 90, § 34A and in the amounts required by the statute;
- B. Awarding Plaintiff Attorney fees;
- C. Awarding Plaintiff costs; and
- D. Granting Plaintiff such other and further relief as the Court deems just and proper.

**PLAINTIFF CLAIMS TRIAL BY JURY ON ALL COUNTS.**

*Respectfully Submitted,*

PLAINTIFF,

ALLAN M. LEAVITT,  
By his Attorney and  
Counsel of Record,



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William J. Ruotolo  
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Dated: September 11, 2013

C:\Users\William\Desktop\wjr\wjr\LEAVITT v. phillips, et al - SUCV2013-03280\complaint\filed\complaint & declaratory relief - allan m. leavitt - 09.11.2013 - filed suffolk superior court - docket # - 04.12.2015.doc

# United States Court of Appeals For the First Circuit

No. 21-1561

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ALLAN M. LEAVITT,

Plaintiff - Appellant,

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION; STUART PARKER, individually and as Chief Operating Officer of United Services Automobile Association; WAYNE PEACOCK, individually and as Chief Operating Officer of United Services Automobile Association; BOARD OF DIRECTORS, UNITED SERVICES AUTOMOBILE ASSOCIATION, collectively and individually; GEICO INDEMNITY COMPANY; TONY NICELY, individually and as Chairman, President, CEO, and Treasurer of GEICO Indemnity Company; TONY NICELY, as a member of the Board of Directors of Berkshire Hathaway, Inc.; BOARD OF DIRECTORS, GEICO INDEMNITY COMPANY, collectively and individually; THE COMMERCE INSURANCE COMPANY; CYNTHIA A. PHILLIPS; BERKSHIRE HATHAWAY, INC.; WARREN BUFFETT, Chairman, CEO, and Principal Shareholder of Berkshire Hathaway, Inc.; BOARD OF DIRECTORS, BERKSHIRE HATHAWAY, INC., collectively and individually; SMITH & BRINK, P.C.; DAVID BRINK, individually and as Director of Smith & Brink, P.C.; LYNN G. MCCARTHY, individually and as employee of Smith & Brink, P.C.; LAMONTAGNE, SPAULDING & HAYES, LLP; CATHRYN SPAULDING, individually and as partner of Lamontagne, Spaulding, & Hayes, LLP; RONALD E. HARDING; J. DOE, 1 - 100,

Defendants - Appellees.

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Before

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Lynch, Thompson and Gelpí,  
Circuit Judges.

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## JUDGMENT

Entered: April 7, 2022

Appellant Allan Leavitt appeals from the judgment of the district court dismissing his complaint. Several defendant-appellees have moved for summary disposition and/or for dismissal of the appeal.

After our own careful review of the record, we affirm, for substantially the reasons set forth in the district court's July 16, 2021 decision. Appellant's contentions on appeal, including his contention that the Rooker-Feldman doctrine does not bar his federal court suit due to the inclusion of non-identical claims and/or additional parties, are unconvincing. See Klimowicz v. Deutsche Bank Nat'l Tr. Co., 907 F.3d 61, 66–67 (1st Cir. 2018) ("Put simply, a federal court's application of the Rooker-Feldman doctrine is not contingent upon an identity between the issues actually litigated in the prior state-court proceedings and the issues proffered in the subsequent federal suit. Instead, the critical datum is whether the plaintiff's federal suit is, in effect, an end-run around a final state-court judgment.").

The judgment of the district court is affirmed in all respects. The motions for summary disposition filed by various defendant-appellees are granted. All other pending motions, to the extent not mooted by the foregoing, are denied. This includes the motions for sanctions filed by some defendant-appellees, but the court strongly cautions Leavitt and his counsel against the filing of additional frivolous motions in this now-adjudicated appeal.

By the Court:

Maria R. Hamilton, Clerk

cc:

William J. Ruotolo  
James W. McGarry  
Deidre Brennan Regan  
Jocelyn M. Sedney  
John R. Callahan  
John P. Donohue  
Mark C. Darling  
William T. Bogaert  
Samantha R. Puckett  
Edwin F. Landers Jr.  
William Robert Covino  
Kristyn M. Kelley

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**  
**File Name: 11a0363n.06**

No. 09-3998

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

BEFORE: GILMAN and GRIFFIN, Circuit Judges; COLLIER, District Judge.\*

GRiffin, Circuit Judge.

Plaintiff Charles Evans appeals the district court's dismissal of his claim pursuant to the *Rooker-Feldman* doctrine. We reverse and remand for further proceedings.

L.

Charles Evans was involved in a divorce proceeding in the Franklin County, Ohio Court of Common Pleas, Domestic Relations Division. In a separate state-court action, he filed an abuse-of-process claim against his estranged spouse, and she filed a counterclaim asserting that he was a “vexatious litigator” pursuant to Ohio Revised Code § 2323.52. The latter court rejected Evans’s abuse-of-process claim; held that Evans was a vexatious litigator; and entered an order pursuant to

<sup>\*</sup>The Honorable Curtis L. Collier, Chief United States District Judge for the Eastern District of Tennessee, sitting by designation.

§ 2323.52, prohibiting Evans from instituting or continuing actions in the Ohio state courts without first obtaining leave. Subsequently, the domestic-relations court denied two of Evans's motions to continue in his divorce case because Evans failed to seek leave in accordance with the § 2323.52 order.

Evans then filed this suit in the United States District Court for the Southern District of Ohio against Ohio Attorney General Richard Cordray and the Franklin County Court of Common Pleas, claiming that § 2323.52 is unconstitutional as applied to him and other litigants in Ohio domestic-relations cases because it allegedly deprives them of the fundamental right of access to the courts in violation of the Fifth and Fourteenth Amendments to the United States Constitution. The district court granted the Ohio Attorney General's motion to dismiss, and also denied Evans's motion for reconsideration, concluding that the court lacked subject-matter jurisdiction pursuant to the *Rooker-Feldman* doctrine.

Evans timely appeals.

## II.

We review de novo a district court's determination that it lacked subject-matter jurisdiction pursuant to the *Rooker-Feldman* doctrine. *Carter v. Burns*, 524 F.3d 796, 798 (6th Cir. 2008).

## III.

In general, *Rooker-Feldman* precludes "lower federal courts . . . from exercising appellate jurisdiction over final state-court judgments," *Marks v. Tennessee*, 554 F.3d 619, 622 (6th Cir. 2009) (internal quotation marks and citation omitted), "[b]ecause [28 U.S.C.] § 1257, as long interpreted,

vests authority to review a state court’s judgment solely in [the Supreme] Court,” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292 (2005). But the doctrine does not bar “a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court.” *Id.* at 293. It applies only to the “narrow ground” of “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Id.* at 284.

We thus determine whether *Rooker-Feldman* bars a claim by looking to the “source of the injury the plaintiff alleges in the federal complaint.” *McCormick v. Braverman*, 451 F.3d 382, 393 (6th Cir. 2006). If the source of the plaintiff’s injury is the state-court judgment itself, then the *Rooker-Feldman* doctrine bars the federal claim. *Id.* “If there is some other source of injury, such as a third party’s actions, then the plaintiff asserts an independent claim.” *Id.*; *see also Lawrence v. Welch*, 531 F.3d 364, 368-69 (6th Cir. 2008), *cert. denied* 130 S. Ct. 233 (2009); *Hamilton v. Herr*, 540 F.3d 367, 372 (6th Cir. 2008) (stating that “what the *Rooker-Feldman* doctrine primarily bars are claims that seek relief from injury ‘caused by’ the state court judgment”) (internal quotation marks and citation omitted). The doctrine also “does not prohibit federal district courts from exercising jurisdiction where the plaintiff’s claim is merely a general challenge to the constitutionality of the state law applied in the state action, rather than a challenge to the law’s application in a particular state case.” *Carter*, 524 F.3d at 798 (internal quotation marks and citation omitted).

In the present case, the district court concluded that Evans's suit was barred by the *Rooker-Feldman* doctrine. The starting point of that court's analysis was Evans's allegations "that 'Ohio Revised Code Section 2323.52 is unconstitutional as applied to [him] and potential litigants involved in cases of divorce"'; that "the domestic court[,] being aware of the Plaintiffs [sic] vexatious litigator designation, denied the Plaintiff [leave] to proceed [at a hearing on May 27, 2009]"; and that "on June 18, 2009, leave was denied for Plaintiff to proceed with his divorce case." *Evans v. Cordray*, No. 2:09-cv-0587, 2009 WL 2628280, at \*2 (S.D. Ohio Aug. 25, 2009) (unpublished) (citing Compl., ¶¶ 1, 12). Based on these allegations, the district court found that "[t]he subject of Plaintiff's complaint is not the constitutionality of the Ohio statute, but rather is the state court's decision to deny him leave to proceed under that statute: a decision that implicates the merits of Plaintiff's application for leave." *Id.* Because the court believed that it "[could not] review Plaintiff's constitutional claims without reviewing the state court's substantive findings," it held that Evans's claim was just the sort of federal appeal of a state-court judgment that the *Rooker-Feldman* doctrine prohibits. *Id.* at \*3.

Evans argues that the district court's decision is erroneous for two reasons. First, he contends he made two claims, a specific challenge ("pursuant to 42 U.S.C. § 1983, this Appellant made a claim that he was denied his federal rights by the Defendants under color of state law"), and a general one ("pursuant to 28 U.S.C. § 1331, the Plaintiff brought a general challenge to state law as applied to a class of litigants designated under R.C. § 2323.52 in proceedings of divorce and domestic relations"), which the district court "improperly lump[ed] . . . together." Second, Evans

argues that even if his complaint presented only an as-applied challenge, the *Rooker-Feldman* doctrine does not apply because his complaint did not attack the judgment itself, only “the constitutionality of the statutory procedure of being required to ask for leave.” Defendants, in turn, contend that we “previously rejected” Evans’s general-challenge argument in *Carter*, 524 F.3d at 796. And they argue that the domestic court’s judgment is implicated in this suit because “Mr. Evans can only prevail if the District Court finds that the domestic court erred when it denied him leave to proceed with his domestic litigation, precisely what *Rooker-Feldman* prohibits.”

We substantially agree with Evans. The problem with the district court’s analysis is that it determined the source of Evans’s injury without reference to his request for relief. *See Hamilton*, 540 F.3d at 372. Our decision in *Hood v. Keller*, 341 F.3d 593 (6th Cir. 2003), provides a useful example. There, a plaintiff was convicted of criminal trespass in state court and subsequently brought suit in federal district court against state officials, challenging the constitutionality of Ohio Administrative Code § 128-4, which required all persons who wished to use the Ohio Statehouse grounds to first obtain a permit to do so. *Id.* at 596. The district court held that the claim was barred by the *Rooker-Feldman* doctrine. On appeal, we reversed. Noting that the plaintiff’s complaint contained “‘no demand to set aside the verdict or the state court ruling’” and instead “[sought] injunctive and declaratory relief prohibiting defendants-appellees from using ‘preaching and/or handing out religious tracts’ as a basis for ‘enforcing or attempting to enforce’ Ohio Administrative Code § 128-4,” this court concluded that “the *Rooker-Feldman* doctrine [was] inapplicable to th[e] lawsuit.” *Id.* at 598.

The Seventh Circuit's decision in *Buckley v. Illinois Judicial Inquiry Board*, 997 F.2d 224 (7th Cir. 1993), which we relied on in *Hood*, is also instructive. In that case, the Illinois Judicial Inquiry Board filed charges against Robert Buckley, an Illinois state-court justice, for violating a state rule regulating the speech of candidates for judicial office. *Id.* at 226. The Illinois Courts Commission ruled that Buckley had violated the rule in his 1990 judicial campaign. *Id.* Buckley, in response, filed suit in federal district court seeking a declaratory judgment that the state rule regulating the speech of judicial candidates was unconstitutional. The Seventh Circuit ultimately reviewed the claim and held that the *Rooker-Feldman* doctrine did not apply. It explained:

Justice Buckley's challenge to the constitutionality of [the Illinois rule] does not entail a challenge to the ruling by the Illinois Courts Commission that he violated the rule. It is true that if . . . Buckley were seeking not only to clear away the rule so that he could run in future judicial elections unimpeded by it but also to obtain relief against the discipline imposed upon him, he would be in effect appealing from the Illinois Courts Commission's judgment . . . , which *Rooker-Feldman* forbids him to do. But he is not asking us to expunge the disciplinary finding or do anything else to correct or revise the Commission's judgment. He is not, in short, asking for any relief of the kind an appellant seeks – relief directed against a judgment.

*Id.* at 227. Cf. *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 485-88 (1983) (holding in part that a lawyer who was refused admission to the bar could challenge in federal district court the constitutionality of the rule that had been applied to deny him admission because the suit did not entail a challenge to the state court's prior application of the rule in his case).

The same reasoning applies here. Evans is not seeking relief from the state domestic court's decisions to deny him leave to proceed on May 27, 2009, and June 18, 2009. Instead, Evans requests "prospective and permanent injunctive relief against Richard Cordray, in his official capacity as

Attorney General for the State of Ohio, and the Franklin County Court of Common Pleas, from applying Ohio’s vexatious litigator statute against the Plaintiff in his divorce case.” He also seeks “permanent injunctive declaratory relief where Ohio Revised Code 2323.52 is unconstitutional as it applies to litigants designated vexatious who presently are, or subsequently become, involved in cases of divorce and domestic relations.” Thus, the source of Evans’s injury is Ohio’s allegedly unconstitutional present and future enforcement of § 2323.52’s remedial provisions in divorce proceedings, not the domestic court’s prior interlocutory decisions denying him leave to proceed.

*Rooker-Feldman* therefore does not apply. *Cf. Fieger v. Ferry*, 471 F.3d 637, 646 (6th Cir. 2006) (“To the extent that Fieger challenges the constitutionality of Michigan’s recusal rules by alleging that ‘[t]he threat . . . is real, immediate, and continuing,’ *Rooker-Feldman* does not bar his action” because “the source of [his] alleged injury is not the past state court judgments; it is the purported unconstitutionality of Michigan’s recusal rule as applied in future cases.”).

Evans’s present action is also not a prohibited federal-district-court appeal of the state-court decision determining that he is a “vexatious litigator.” Although the § 2323.52 order entered in that case required Evans to seek leave to litigate or continue litigating in the Ohio courts, and is thus in some sense a source of his injury here, Evans is not seeking relief from that *judgment* – he does not contest the state court’s determination that he is a vexatious litigator. *See Edwards v. Ill. Bd. of Admissions to Bar*, 261 F.3d 723, 729 (7th Cir. 2001) (“When the litigant is challenging the constitutionality of a rule that was applied to him, but is not asking to correct or revise the determination that he violated the rule, *Rooker-Feldman* is no obstacle to the maintenance of [the]

suit.”) (internal quotation marks and citation omitted); *cf. Hood*, 341 F.3d at 598; *Buckley*, 997 F.2d at 227. Moreover, Evans’s current claim that the statute is unconstitutional as applied in divorce proceedings was not an issue in the vexatious-litigator case and therefore presented no basis for an appeal. *See generally Exxon Mobil*, 544 U.S. at 293 (explaining that “[i]f a federal plaintiff present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction.”) (internal quotation marks and citations omitted).

Because the source of Evans’s injury is neither the Ohio domestic court’s decision to deny his motions to continue, nor the state court’s determination that he is a vexatious litigator, but rather the alleged unconstitutionality of § 2323.52 as applied in divorce proceedings, we hold that the district court was not deprived of subject-matter jurisdiction pursuant to the *Rooker-Feldman* doctrine.

#### IV.

For these reasons, we reverse the judgment of the district court and remand for further proceedings consistent with this opinion.