MABRY ORDER # 1 (12/01/00)

(6)(A): State Farm's own documents evidence the existence of DV.

(7): DV has been covered under State Farm auto policies since the Simmons decision in 1965.

(7), p. 5: State Farm has recognized its contractual obligations to cover DV losses. Premiums paid by State Farm policyholders are based on historical losses; payments for DV are included in those historical losses.

(12) State Farm has taken the position that if a policyholder's vehicle is properly repaired, there is no DV.

(15), p. 4: The Court finds that it is the practice and policy of State Farm not to inform its policyholders about coverage for a loss of DV.

RUDINE MABRY, INDIVIDUALLY, MAURICE J. CARDENAS, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,	)	
Plaintiffs,	)	
vs.	)	CIVIL ACTION
	)	FILE NO. SU 99 CV 4915
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	)	
Defendant.	)	

ORDER

This matter is before the Court on Plaintiffs' Motion for Declaratory and Injunctive Relief. Plaintiffs move the Court to declare that under Georgia law State Farm Mutual Automobile Insurance Company's ("State Farm") automobile insurance policy requires assessment of, and, if applicable, payment for diminution in value in first party physical damage claims, and by injunction order State Farm to give effect to such declaration. Based upon the following evidence which has been submitted, received and admitted by the Court, both in documentary form and during the course of evidentiary hearings and which is catalogued below, this Court finds and concludes that Plaintiffs' Motion should be granted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) After hearings conducted on May 15, 2000, and June 12, 2000, the Court certified this action as a class action in its Order dated June 15, 2000.

References herein to the May 15, 2000, hearing will be shown as May 15, 2000, at p _____.

(2) Plaintiffs moved for, and the action was certified for, the purpose of determining whether declaratory, injunctive and other necessary and proper equitable relief should be afforded Plaintiffs and the absent class members. See generally June 15 Order.

(3) The Court conducted a two-day evidentiary hearing on Plaintiffs' Motion for Declaratory and Injunctive Relief on September 7-8, 2000. References herein to the September 7-8, 2000, hearing will be shown as September 7-8, 2000, at p _____.

(4) At the conclusion of such hearing, and in a subsequent Order entered on October 12, 2000, the Court directed both Plaintiffs and Defendant State Farm to submit Proposed Orders on Plaintiffs' Motion.

(5) Such Proposed Orders have been submitted and reviewed.

(6) "Diminished value" or "diminution in value" (hereinafter sometimes referred to as "DV") concerns the loss of or reduction in an automobile's value due to its involvement in an accident or -other event. This loss could occur where a vehicle was repaired properly. In every event of loss, there is the potential for a DV loss. See, September 7-8, 2000, at pp. 75, 76, 80. The Court references the following evidentiary support:

(a) State Farm's own documents evidence the existence of diminution in value:

(1) “There is a common perception in the public that a wrecked vehicle is worth less simply because it has been wrecked. It matters little that the vehicle has been adequately repaired, that new parts were used, or there is no evidence of damage after repair. Whether this perception is accurate is not for us to debate, it simply exists. Therefore, if the plaintiff has enough competent evidence to show diminution in value, the jury will normally award an amount for diminution in value.” September 7-8, 2000, at pp. 143-144; 178-179.

(2) "The phrase diminution in value has traditionally been used to describe the before acid after difference in the value of property damaged in an accident. With respect to repairable property, like automobiles, the measure of this loss in value was the cost of repairing that property to its pre-accident condition. Occasionally some persons would argue that even when properly repaired an automobile was worth less after an accident simply because it was a repaired vehicle. This allegation of an inherent loss in value is what most persons are referring to when they present claims for diminution in value." September 7-8, 2000, at p. 143.

(b) State Farm’s witnesses also confirm the existence of diminution in value, testifying, among other things, that when a policyholder is involved in an automobile accident, the potential exists that a loss occasioned by DV could occur (September 7-8, 2000, at p. 801; that State Farm recognizes the potential for DV even if a vehicle is properly repaired- (September 7-8, 2000, at p. 76); that there is the potential for a DV claim in every property damage claim presented to State Farm (September 7-8, 2000, at p. 188); that the perception exists in the public that a wrecked vehicle. is worth less than an unwrecked vehicle (September 7-8, 2000, at p. 187); that DV can occur regardless of make or model; DV is not restricted to expensive cars; DV is not restricted to vehicles with a certain mileage; DV is not restricted to the type of damage sustained to a vehicle (September 7-8, 2000, at p. 77); that

State Farm can anticipate that a vehicle will have DV once it is repaired (September 7-8, 2000, at p. 115); and, that the public would choose an unwrecked vehicle over a wrecked vehicle assuming the vehicles are the same otherwise (September 7-8, 2000, at p. 186).

(7) There is no express reference to or mention of DV in the text of State Farm's automobile insurance contract. State Farm recognizes and the Court finds that DV is a covered loss under the first party physical damage coverages of State Farm's contract of insurance. State Farm's own testimony establishes the support for this finding. State Farm's witnesses have testified, among other things, that the State Farm insurance contract typically provides comprehensive and collision coverage; that the comprehensive coverage pays for a "loss" to the insured vehicle except for loss by collisions; that the collision coverage conversely pays for a "loss" caused by a collision (May 15, 2000, at p. 78; State Farm automobile insurance policy, Exhibit 1); that State Farm policyholders pay a portion of their premium to receive coverage for DV May 15, 2000, at pp. 79-80); that State Farm policyholders pay a premium that includes coverage for DV (September 7-8, 2000, at p. 137); that the "loss" definition in the insurance contract includes DV (September 7-8, 2000, at p. 96); that, State Farm has not modified or charged its insurance policy to reflect its obligation to cover and pay for DV losses (September 7-8, 2000, at p. 90); that DV has been -covered under the State Farm auto policy in Georgia since at least 1965 (May 15, 2000, at p. 79); that since the Simmons decision (1965), DV has been covered by the State Farm insurance policies in Georgia (September 7-8, 2000, at p. 88); and, that State Farm has paid DV claims

Further, in interrogatory responses, State Farm has recognized its contractual obligation to cover DV losses and its policyholders payment of premium for DV:

Interrogatorv 10.

Does the policy of insurance issued by State Farm Fire and Casualty (missing sentence) value?if not, state the reason why not.

Response

- In Georgia, State Farm Fire & Casualty does not provide "diminution in value" coverage as such. In Georgia, diminished value, when it exists, is only an element of damage, not a type of coverage, and certainly not a given damage in every case. It is State Farm's position that in Georgia, under first party coverages, an insured may be entitled to recover both the cost of repair and any diminution of value, so long as both are satisfactorily established and that they do not total more than the market value of the vehicle before the accident in question. (emphasis supplied)

(Response of Defendant State Farm Fire and Casualty Company to Plaintiff's Fourth Interrogatories and Third Request for the Production of Documents to Defendant State Farm, Interrogatory #10; State Farm Fire & Casualty and State Farm Mutual Automobile Insurance Company provide for coverage for the same losses in Georgia; September 7-8, 2000, at p. 58.)

. . .

"The premiums that State Farm policy-holders pay are based upon the historical losses paid for the coverage provided under the insurance policy, appropriately adjusted for expected future trends including inflation of costs. To the extent that there have been payments for diminution in value in Georgia, those payments would be included in the historical losses paid..." (Answer of State Farm Mutual Automobile Insurance Company to Plaintiffs' First Set of Interrogatories, interrogatory No. 35).

(8) For purpose of complying with their obligations under the State Farm automobile insurance contract, State Farm recognizes and the Court finds that an insured, like Plaintiffs Mabry, Cardenas and Childs, must report a loss to State Farm and thereafter cooperate by providing information about and access to the vehicle. The Court finds that, each of the named Plaintiffs has fulfilled each and all obligations under the State Farm insurance contract. See Exhibits "NN" and "00" to Plaintiffs' Motion to Maintain Class Action and for Class Certification (hereinafter "Certification Motion"); September 7-8, 2000, at pp. 212-271. In support hereof, the Court references the following from the record:

(a) State Farm's automobile insurance contract, p. 5, "Reporting A Claim - Insured's Duties (September 7-8, 2000, at pp.. 90-95);

(b) State F arm's witness testimony that, there is no other document other than the insurance contract that sets out the obligations of the insured (September 7-8, 2000, at p. 93); and that there is no obligation or duty of the insured to make a specific claim for DV, that all that is required of the insured is to report the loss and cooperate. A “loss" would include DV. (September 7-8, 2000, at pp. 94-95).

(9) State Farm recognizes and the Court finds that State Farm's obligations under its automobile insurance contract require State Farm to evaluate for and pay its policyholders for all covered losses including DV. State Farm's own documents recognize its obligation of good faith and fair dealing in its contractual relationships with its policyholders.

(a) State Farm Auto Claim School Administration Guide (01/01/98),

(1) Always tell the insured what we owe. (emphasis supplied)

(2) It is the responsibility of the claim representative to have knowledge of and tell the person making a claim about other State Farm coverages and policies which could apply. Bates No. 012729 (emphasis supplied).

(3) One of the most challenging, responsibilities of a claim representative is to fully explain the claim process. Bates No. 012733 (emphasis supplied).

(4) The claim representative has to educate the customer. Bates No. 012734.

See Exhibit "U" to Certification Motion; May 15, 2000, at p. 99.

(b) State Farm, "Explanation of Claim Policy" states as follows:

> It is our policy to explain the Auto Damage claim Policy and the claim handling process to each customer. The, claim representative is trained to react to information that develops during the course of discussions with insureds and claimants which would affect coverage, liability, and damages. Due to the complexity of these topics, it is our requirement that these explanations are made by a claim representative."

See Exhibit "V" to Certification Motion, Bates No. 010879 (emphasis supplied); September 7-8, 2000, at pp. 158-161.

(c) State Farm "Good Faith Claim Handling" states as follows:

> We need to understand and practice good faith claim handling. Our promise to the insured is outlined in the policy. These items should define our interactions-with the insureds: For the insurer to fulfill its obligation not to impair the right of the insured to receive the benefits agreement, the insurer must give at least as much consideration to the insureds interest as it does to its own.

See Exhibit "W" to Certification Motion, Bates No. 010558 (emphasis supplied); September 7-8, 2000, at pp. 162.164.

(d) State Farm distributed a document entitled, "We're here to Help Get the Wrinkles Out", which states:

> If you have a loss, you are entitled to fast, fair claim service….to be paid the amount covered by insurance. After all, that's why coverage is purchased.
>
> We intend to deliver on your claim, because how we deliver is your one sure way of determining if we are the Good Neighbor we promise to be. And that means not just paying what we owe, but showing concern for you as well.

See Exhibit "X" to Certification Motion, Bates No. 021502-021504; May 15, 2000, at p. 100

(e) Auto Claim Manual, January 1998, "(guiding Principle - Automobile Insurance Claims," which includes the following:

> Because of our contractual relationship, we owe a loyalty and duty to those whom we insure. .. . We declare it to be our earnest intent and purpose to: Determine the amount of automobile and other property losses promptly and fairly.
>
> Pay Party claim handling
>
> Our Commitment is our Policyholders
>
> It is the responsibility of the State Farm claim staff to implement Company philosophy with respect to claim handling. Our commitment to our policyholders is to treat them like a good neighbor. We should: Be familiar with and in compliance with those laws and regulation that impact claims in the appropriate state and treat policyholders consistent with requirements of the law. Explain all relevant coverages under the policy. Encourage policyholders to report all losses and avail themselves of all benefits under their coverages. Make an objective evaluation of the facts and circumstances supporting our policyholders' claims. Doing so helps ensure our policyholders obtain all benefits available provided by the insurance policy.

See Exhibit 'Y' to Certification 'Motion, Bates Nos. 006382-006385 (emphasis supplied); May 15, 2000, at P. 100.

(f) State Farm's 'Unfair Claim Practice Acts", states as follows:

> It is your job' as a claim professional to know, understand and comply with the unfair claim practices acts of your state. Issues addressed in nearly all UCPA's are: misrepresenting facts or policy provisions relating to coverage of an insurance policy.

See Exhibit "Z" to Certification Motion, Bates No. 010554; September 7-8, 2000, at pp. 166-169.

(g) State Farm's Physical Damage Manual requires, when writing estimates, the following;

> Our estimating activities has 2 goals.
>
> 1. To provide service to our customers.
> 2. To accurately establish the amount of damage on a specific claims.

See Exhibit "AA" to Certification Motion, Sates No. 018615 (emphasis supplied); September 7-8, 2000, at pp. 169-170.

(h) State Farm distributes to its policyholders who report a loss "Auto Damage Claim Information", which sets forth State Farm Mutual's claim policy. This Auto Damage Claim Policy makes no reference to diminution in value nor does it include an evaluation thereof as part of the claim process. By sending the information to its insureds, State Farm Mutual acknowledges that it informed its insureds of the coverages and handling of those coverages to the extent it focuses the insured on the issues the company desires to address. However, the document could mislead an

insured with regard to the coverage of or potential of diminution in value by leaving it out of the claims process explanation. SM Exhibit "68" to Certification Motion, Bates Nos. 021499-021501.

(i) State Farm distributes to its policyholders that report a loss "Auto Damage Claim Information," which states:

> Allow approximately 45 minutes to one hour for your Claim Service Appointment. Your appointment will include an estimate of damages and a meeting with a claim representatives to discuss your loss.

See Exhibit "CC" to Certification Motion, Bates No. 021489 (emphasis supplied); September 7-8, 2000, at pp. 170-171. See also Exhibit "DD" to Certification Motion, Bates No. 021505.

(j) State Farm distributed "What Is Auto Insurance", which states:

> COLLISION. Pays to repair your car or replace it (when repair costs exceed car's value) when it is damaged in a collision, even if you're at fault. The amount of coverage is based on the car's value.

See Exhibit "EE" to Certification Motion, Batas Nos. 021496-021498.

(k) State Farm distributed 'Like a Good Neighbor State Farm is There" which states:

> Deductible collision - Coverage G
>
> Pays for loss to any car covered by the policy, caused by collision with another object (or upset of the car) but only for the amount of loss in excess of the deductible amount stated in the policy. (If the deductible is $100 or less, it does not apply if collision is with another car insured with State Farm.)

See Exhibit "FF" to Certification Motion, Bates Nos. 021 519-021521.

(l) State Farm's "Quality Results Profile" provides as follows:

> Claim decisions must be based solely on the merits of the claims. At the time of loss, it has always been State Farm's policy and practice

> to provide effective claim service to our policyholders, fairly and accurately determined what is owed, and pay that amount.

See Exhibit "GG" to Certification Motion, Sates Nos. 018645-018646; September 7-8, 2000, at pp. 171-173.

(10) State Farm's contractual obligation to evaluate for and pay total losses or repair losses is accomplished through extensive home office training, comprehensive training manuals and materials, an internal computer system for claims processing and administration, research, computer software packages designed to quantify repair estimates and actual cash values, guidelines, documentation and support. State Farm produced over 30,000 pages of documents that outlined the training and resources for evaluating total losses or repair losses. Further, State Farm does not require its policyholders to make a specific demand for these losses nor provide any proof thereof. See Certification Motion, pp. 22-25; September 7-8, 2000, at pp. 66, 72, 109, 119, 295, 300-310.

(11) On the other hand, DV losses receive strikingly different treatment by State Farm. DV is not mentioned in any of the 30,000 pages State, Farm's training or operations manual, computer software programs, internal computer claims administration system, guidelines, or other instruction with respect to DV, except for one internal memo, Bates No. SFF 3857, dated July 16, 1998. (Exhibit "4" to September 7-8, 2000, hearing.) This document, together with the testimony of State Farm's witnesses, makes it clear that State Farm will not address a DV loss unless and until a policyholder makes a specific demand for DV, and, that, furthermore, State Farm will require its policyholder to prove both quality of repairs

and amount of DV. DV is the only element of loss covered under the physical damage coverages that State Farm requires its policyholders to make a specific demand for payment and to prove the amount of loss. See May 15, 2000, at pp. 111-114, 136; September 7-8, 2000, at pp. 73, 74, 84, 111, 121, 123,132-35, 156-158, 205-211, 502.

(12) The Court finds that State Farm has taken the general position that if a policyholder's vehicle is properly repaired, there is no DV. State Farm takes this position even though it has neither obtained nor conducted any research or studies on this issue and despite the fact it recognizes that the public has a contrary perception. According to State Farm, a determination of whether a vehicle has lost value in an accident can only be made once the vehicle has been repaired and requires collecting information about the vehicle, i.e., make, model, VIN, engine, accessories, options, condition (mechanical and appearance), prior damage history, etc., as well as, a post-repair inspection. State Farm has no procedure in place to acquire this information or to inspect its policyholders' vehicles after repair however. See September 7-8, 2000, at pp. 80-84, 155-160, 192.

(13) The Court finds that despite the fact that State Farm has its policyholders' cooperation, as well as forms, checklists and computer fields available to generate or obtain any of the information it represents it would need to quantify a DV loss, State Farm does not request or obtain this information for purposes of making a DV- loss determination. See May 15, 2000, at pp. 124-125; September 7-8, 2000, at pp. 152-154, 504.

(14) The Court finds, that State Farm does not submit for approval its policies and procedures for the administration of physical damage losses, including DV, to the Georgia Insurance Commissioner. State Farm's manuals, guidelines, computer programs or systems are not submitted for approval, nor has State Farm ever submitted its most recent workflow internal procedure for processing DV losses (referenced at paragraph 11, supra) to the Georgia Insurance Commissioner. The only involvement of the Commissioner's office has been to reject two attempts by the Insurance Services Office ("ISO") to have DV losses excluded from coverage in the State of Georgia. The ISO, on behalf of the majority of the insurance companies doing business in Georgia, has attempted twice over the past two years to seek approval of an endorsement that would exclude DV losses from coverage under the physical damages coverages of automobile insurance contracts in Georgia. The Commissioner's office rejected both submissions, citing to the number of Georgia cases requiring coverage for DV losses. See May 15, 2000, at pp. 120,121,141-145.

(15) State Farm policyholders receive no information or notice that their State Farm policies provide coverage for DV losses, nor does State Farm provide any advice, information or materials to its policyholders with regard to what constitutes DV or to any process available to have a DV loss evaluated and paid for, despite State Farm's recognition that most people are not familiar with the concept of DV and do not know it is a covered loss under the insurance contract. State Farm does not tell its policyholders about DV because of its concern that policyholders will request payment for it. In fact, despite its obligation to explain

all the benefits or coverages to its policyholders. State Farm trains its claims representatives not to mention DV even if an insured specifically asks a State Farm claims employee to explain all benefits available to them under the State Farm insurance contract. The Court finds that it is the practice and policy of State Farm not to inform its policyholders about coverage for or loss of DV. See May 15, 2000, at p. 135; September 7-8, 2000, at pp. 91, 158, 160, 162-164, 166.175, 193, 197-198, 201.

(16) State Farm did not provide any information, materials or advice to Plaintiffs Mabry and. Cardenas about DV nor did State Farm obtain any information from the Plaintiffs about their vehicles or inspect their vehicles post-repair. State Farm did not evaluate for or pay Ms. Mabry nor Mr. Cardenas for DV. With respect to Mr. Childs, only after he raised the issue did State Farm have any communication with him about DV. Nevertheless, State Farm did not evaluate or pay Mr. Childs for his DV loss. See Exhibit "NN" and '00' to Certification Motion; September 7-8, 2000, at pp. 212-271.

(17) The Court finds that State Farm has the capability, through its administration, personnel, technology and other resources to provide notice to its policyholders of the coverage 'for DV losses, to evaluate for DV losses and pay same when owed. The testimony of State Farm's employees, including its corporate representative, evidence, among other things, that, State Farm could easily include bullet points in its Auto Damage Claims Policy to notify its policyholders about DV (September 7-8, 2000, at p. 96); that such a notice could be on State Farm's website, in its billing statements, renewal notices or State Farm

could just tell its policyholders about DV when a loss is reported (September 7-8, 2000, at pp. 97-98); that State Farm acknowledges that the repair facilities it contracts with could disseminate information about DV (September 7-8, 2000, at p. 105); that all State Farm claims representatives are trained- to make DV appraisals (September 7-8, 2000, at p. 107); that State Farm has the computer capability to assist in DV calculations that is utilized by State Farm to determine if a vehicle is a total loss (September- 7-8, 2000, at p. 118); that it would cost State Farm less than $10.00 per policyholder to evaluate for and pay its policyholders for DV or inform the policyholder why no payment is forthcoming in every claim (September 7-8, 2000, at p. 147); that State Farm also has computer technology to make repair estimates and actual cash value ("ACV") determinations both of which could be used to determine DV (September 7-8, 2000, at p. 119); that State Farm has the capability to change its computer codes to reference DV (September 7-8, 2000, at p. 87); that State Farm can obtain whatever information about the vehicle it needs to make its ultimate decision on DV losses (September 7-8, 2000, at pp. 124-125); that State Farm has forms already in use such as the "Vehicle Inspection Report/Total, Loss Settlement," - a form prepared by State Farm to acquire information on total losses that provides a mechanism to note condition, vehicle information, salvage value, etc., all of the information necessary to calculate an ACV (September 7-8, 2000, at pp. 300-310); that State Farm has form affidavits for theft and vehicle fire losses designed to obtain every conceivable piece of information about a vehicle to make a value determination without the vehicle itself(September 7-8, 2000, at pp. 312-313); that when a vehicle is not

available, State Farm depends on its policyholders to help it understand the condition of the vehicle and will evaluate for or pay a loss without seeing the vehicle (September 7-8, 2000, at pp. 318-320); and, that information similar to the Vehicle Inspection Report/Total Loss Settlement and theft and fire affidavits can be used by State Farm to determine DV with only a change of the names on the forms (September 7-8, 2000, at p. 326).

(18) This Court has jurisdiction over the parties and over the subject matter of this action. See Constitution of the State of Georgia, Art. 8, § 1, ¶ 4; Art. 6,§ 2, ¶ 3; Art: 6, § 4, ¶ 1. See also O.C.G.A. § 9-4-1 et seq.; O.C.G.A. § 9-5-1.

(19) Insureds like the named Plaintiffs here, on behalf of the class members they represent, have the same opportunity as insurers to determine the scope of policy provisions. Atlantic Wood Industries, Inc. v. Argonaut Ins. Co., 258 Ga. 800, 801, 375 S.E.2d 221, 222 (1989).

(20) This matter presents an actual and justifiable controversy between State Farm and the class members. Plaintiffs Mabry and Cardenas had no knowledge of their right to be paid for diminution in value and were neither paid for same nor advised that no diminution- in value had occurred. Plaintiff Childs requested payment of diminution in value, and State Farm refused payment. Incidents giving rise to claims under State Farm's policy, which potentially include as an element of damage diminution in value, occur almost daily. The evidence showed that State Farm did not evaluate whether the named Plaintiffs' vehicles had diminished in value, and that State Farm did not affirm or deny payment for diminution in value with respect to the named Plaintiffs. The evidence also showed

that State Farm does not as a matter of course evaluate its policyholders' vehicles for diminution in value as part of the -claims process, and that State Farm as a matter of course does not affirm or deny payment for diminution in value. The ends of justice thus require that the Court make the declaration sought for here. See O.C.G.A. §9-4-2. See also Allstate Ins. Co. v. Schuman, 163 Ga.App. 313, 293.S.E.2d 868 (1982); Calvary Independent Baptist Church v. City of Rome, 208 Ga. 312, 66 S.E.2d 726 (1951).

(21) Relief by declaratory judgment is available notwithstanding that the, complaining party may have some other adequate legal or equitable remedy, O.C.G.A. § 9-4-2(c).

(22) It appears to the Court, however, there is no other adequate remedy. State Farm steadfastly disputes the occurrence of diminution in value, and it does not undertake to evaluate its policyholders' vehicles for such element of damage as part of the damage appraisal and repair process. Yet, losses are reported almost daily. Policyholders as a general rule do not know about their right under the policy to be paid for diminution in value, and they do not know to make a specific claim for diminution in value, which State Farm argues a policyholder is required to do.

(23) State Farm's persistent and systematic failure to determine and pay DV takes this case out of the general rule that a court may not enjoin a prospective breach of contract. Here, the evidence of State Farm's clear and consistent pattern of conduct demonstrates its unwillingness to determine as a matter of course as part of its regular claims handling process whether DV has

occurred. Until this conduct is changed, insureds who report first party physical damage claims will continue not to be compensated for this item of their losses.

(24) Plaintiffs have not brought this action pursuant to the Unfair Claims Practices Act, O.C.G.A. § 33-6-31 et seq., or the Georgia Motor Vehicle Reparations Act, § 33-34-1 g,$,.

(25) The "primary jurisdiction doctrine", urged by State Farm as a bar to this action, is a rule of judicial construction which permits a court, in the exercise of its sound discretion, to defer to an administrative agency for the initial resolution of certain disputes. United States v. Western Pac. R, Co., 352 U.S. 59, (1956). It is not a mandatory doctrine. “This doctrine is usually invoked when resolution of a dispute will require special skill or knowledge peculiar to a certain agency." Curran v. Merrill-Lynch, Pierce, Fenner and Smith, Inc., 622 F.2d 216, 235 (6th Cir. 1980), aff’d. 456 U.S. 353 (1982). The doctrine suggests judicial abstention "when protection of the integrity of a. regulatory scheme dictates preliminary resort to the agency which administers the scheme." Cost Management Services, Inc. v. Washington Natural Gas Co., 99 F.3d 93 (9th Cir. 1996).

(26) Plaintiffs are seeking equitable relief. There is no provision in the Insurance Code of Georgia giving the Commissioner the power or authority to issue injunctions. See e.g., Art. Vl, Sec. I, Par. IV, Ga. Constitution (only the Superior and Appellate Courts in Georgia have the power to issue process in the nature of an injunction). The Commissioner cannot grant equitable relief in any form. Thus, the doctrine of primary jurisdiction, and/or the doctrine of exhaustion of remedies, should not be employed here. Crayey v. Southeastern Underwriters' Ass'n., 214

Ga. 450, 457, 150 S.E.2d 497 (1958) (A court should, prior to denying equitable relief, determine whether the non-equitable relief is "as practical and as efficient to the ends of justice and its prompt administration as the remedy in equity").

(27) In addition to the unavailability of appropriate classwide relief in the Office of the Insurance Commissioner, actions concerning the rights and obligations and duties of parties to insurance contracts are typically brought in the courts of Georgia. This action does not depend upon the special expertise of the Office of the Insurance Commissioner for resolution.

(28) In Dependable Ins. Co. v. Gibbs, 218 Ga. 305, 127 S.E.2d 454, the Supreme Court interpreted the language of an automobile insurance policy and held that "the primary obligation of the insurer was to pay for the loss caused by collision and... the correct measure of that loss would be the difference in the market value of the automobile immediately before the collision and the combined amount of its market value immediately after being repaired, plus the $100 deductible". Id. at 315, 127 S.E.2d at 461.

(29) Three years later, the Georgia Court of Appeals interpreted the language of a State Farm automobile insurance policy similar to the State Farm policy here at issue. See Simmons v. State Farm Automobile Insurance Company 111 Ga.App. 738, 143 S.E.2d 55 (1965). Relying on Gibbs the Court of Appeals held that State Farm "had an option to pay for the loss in money, to repair the vehicle, or to replace it with other property of like kind and quality, but the contract requires that no matter which alternative is chosen, the market value of the

property plus [the deductible] after payment must equal the market value before the loss". Id. at 740, 143 S.E.2d at 57.

(30) Several years later, the Georgia Court of Appeals interpreted another insurance policy and held that depreciation in market price should be added to the cost of repairs or included in any payment such that the insured will be made whole. See Georgia Farm Bureau Mutual Ins. Co. v. Lane. 129 Ga.App. 166, 197 S.E.2d 273 (1973).

(31) In 1982, the Georgia Court of Appeals decided United States Fire Ins, Co. v. Welch, 163 Ga.App. 480, 294 S.E.2d 713 (1982). Consistent with the previously cited authority, the Court of Appeals stated: "(w)e construe repair to mean restoration of the vehicle to substantially the same condition and value as existed before the damage occurred". Id, at 481, 294 S.E.2d at 714. "'(T)he market value of the property plus (deductible) after payment must equal the market value before the loss.'" Id. At 482, 294. S.E.2d at 714, quoting Simmons v. State Farm, supra, 111 Ga.App. 738, 740, 143 S.E.2d 55.

(32) In Hartford Fire Ins. Co. v. Rowland, 181 Ga.App. 213, 351 S.E.2d 650 (1986), the phrase "diminution in value" appears. "Hartford argues that its refusal to pay for the diminution in value - of plaintiff's vehicle is in good faith because 'Georgia law does not necessarily obligate [it] to pay depreciation under collision coverage when the insured has elected to repair the car.' In light of our holding in Division 1 of this opinion, this argument is without merit." Id. at 217, 351 S.E.2d at 654.

(33) From these cases the Court concludes that automobile insurance policies with language like that addressed in Gibbs, Simmons, Lane, Welch and Rowland provide coverage for diminution in value. The State Farm policy here at issue contains such language.

(34) Georgia cases have consistently made it clear that "every contract imposes upon each party a duty of good faith and fair dealing in the performance of their respective duties and obligations". Southwestern Coomggsite Technology Corp. v. Americus-Sumter Payroll Development Authority. 239 Ga.App. 342, 521 S.E.2d 378 (1999). The term "good faith" is a "shorthand way of saying substantial compliance with the spirit, and not merely the letter, of a contract." Fisher v. Toombs County Nursing Home, 223 Ga.App. 842, 479 S.E.2d 180 (1996). Cases interpreting the concept have not limited it to certain situations, but rather have extended the concept to all contracts. "As with any contract, however, this contract imposed upon each party a duty of good faith and fair dealing in the performance' and completion of their respective duties and obligations." Phillips v. Key Services, Inc., 235 Ga.App. 564, 510 S.E.2d. 304 (1998) (citing Toncee, Inc. v.. Thomas, 219 Ga.App. 539, 466 S.E.2d 27 (1995)).

(35) "[l]t is a time honored rule that the highest degree of good faith is demanded of the parties to an insurance contract." Avemco insurance Co. V. Rollins, 380 F.Supp. 869 (N.D. Ga. 1974). In Leader Nat. Ins. Co. v. Smith, 177 Ga.App. 267, 339 S.E.2d 321 (1985), an action by an insured against an insurer, the Court of Appeals noted: "as [the insured] correctly points out, every contract imposes a duty of good faith and fair dealing in the fulfillment of each party's

(40) Applying the above-referenced authority and principles, State Farm has a duty under the automobile insurance policy here at issue to pay diminution in value, whenever any diminution in value exists.

(41) State Farm long has known or should have, known of its duty under its contract of insurance to pay diminution in value, whenever it exists. State Farm's internal documents recognized this duty. On State Farm document Bates stamped SFMAB 021305, entitled "Section 251, Property Damage Workshop, Diminution in Value, there is the following:

> HAS DIMINUTION OF VALUE BEEN DEFIED UNDER GA. LAW FOR INSUREDS?
>
> YES - THE FOLLOWING CASES HAVE UPHELD DIMINUTION OF VALUE LOSSES TO INSUREDS:
>
> A) UNITED STATES FIRE INS CO. V. WELCH 183 GA APP 480 1982 GA COURT OF APPEALS
>
> B) HARTFORD FIRE. INS CO. V. ROWLAND 181 GA APP 213 1986 GA. CASE
>
> (CASES OUTLINED/SEE- SHARON W. WARE & ASSOCIATES)
>
> (MEMORANDUM DATED 10/26192)
>
> BOTH CASES ESTABLISH THAT THE INSURANCE COMPANIES ARE OBLIGATED. TO PAY DIMINUTION OF.VALUE (IF THE LOSS CAN BE ESTABLISHED). BOTH CASES CONTAIN LAW THAT WOULD BE APPLICABLE TO OUR STATE FARM AUTO POLICY, AND ACCORDING TO CLAIM LITIGATION, IT APPEARS THAT WE WOULD OWE DIMINUTION OF VALUE CLAIMS FOR LOSSES TO OUR POLICY HOLDERS VEHS COVERED UNDER PERILS INSURED BY OUR POLICY."

Other State Farm documents similarly evidencing State Farm's knowledge of this duty have been presented to this Court.

(42) State Farm's superior knowledge of Georgia law, including the duty of good faith and fair dealing, and of that law's application to State Farm's policies insuring automobiles, requires State Farm to make its duty to pay diminution in

value, if any, effective. Specifically, the Court concludes that when an insured gives notice of a loss, as he or she is required to do under the State Farm policy, that insured has given notice of all elements of damage associated with that loss, including any diminution in value. State Farm then must undertake to evaluate the claim for diminution in value, as it must do and does do for all other elements of damage. If, at the conclusion of the adjustment and repair process, State Farm has determined the vehicle has sustained diminution in value, State Farm must offer to pay its insured for such diminution in value. If State Farm determines its insureds vehicle has not diminished in value. State Farm must advise its insured that it is denying any claim for diminution in value.

(43) Nothing the Court has held herein. should be construed to alter the measure of damage as set forth in the cases discussed, including Gibbs, Simmons, Lane, Welch, and Rowland.

CONCLUSION

The Court herein DECLARES that the law of Georgia requires State Farm to pay its insureds making a first party physical damage claim for any diminution in value which the vehicle may have sustained. The Court DECLARES that the law of Georgia requires State Farm, once its insured reports a loss, to evaluate the claim in good faith to determine if the insured's vehicle has sustained a loss resulting from diminished value. The Court DECLARES that the law of Georgia requires State Farm, at the conclusion of the adjustment and repair process, to either affirm the presence of diminution in value and offer to pay same, or deny the presence of diminution in value and so advise its insured.

INJUNCTION

Pursuant to the power vested in the Superior Courts of the State of Georgia, this court hereby ORDERS and ENJOINS- State arm to evaluate first party physical damage claims for the presence of diminution in value by an appropriate methodology and procedure, and to offer to pay such diminution in value if is determines it has occurred or to deny the presence of diminution in value and so advise its insureds. The Court ORDERS and ENJOINS State Farm to collect, catalog and maintain any information necessary to make a determination as to the amount of any loss for diminution in value sustained by the vehicles of its insureds. The Court further ORDERS and ENJOINS State Farms to report to the Court within 45 days of the date of this Order the manner in which it is complying with the Court's Order and Injunction.

So ordered this _____ day of _____, 2000.

_____
Douglas C. Fullen
Superior Court Judge

June 12, 2001
Mabry Order
#2

MABRY ORDER # 2 06/12/01

(2), p. 4: State Farm doesn't inspect the car BEFORE the wreck.

(2), p. 5: in excess of 26,000 1st party claims; only inspected 2,679 vehicles

(6): An appropriate methodology and procedure to assess non-repair related DV claims need not and should not be a standardless methodology and procedure.

(7) State Farm's insistence that an assessment for DV must include an inspection of the vehicle is not supported by the evidence.

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

RUDINE MABRY, INDIVIDUALLY, MAURICE J. CARDENAS, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,	)	
Plaintiffs,	)	
vs.	)	CIVIL ACTION
	)	FILE NO. SU 99 CV 4915
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	)	
Defendant.	)	

ORDER ON COMPLIANCE AND INJUNCTION GRANTING
FURTHER AND CONSISTENT RELIEF

On December 1, 2000, this Court granted Plaintiffs' Motion for Declaratory and Injunctive Relief (thereinafter "the first motion") to the policyholder class, defined by the Court's June 15, 2000 certification Order, with respect to class members claims from December 1, 2000 forward and requiring State Farm to assess, using an appropriate methodology and procedure, all reported first party automobile property damage losses of State Farm insureds for diminished value, to determine from such assessments if diminished value was present and to pay or deny those claims following such assessment. The Court further ordered State Farm to collect, catalogue and maintain the information regarding such process and to report to the Court the results. On December 8, 2000, a Motion for Further and Consistent Injunctive Relief (hereinafter "the second motion") was filed on behalf of that same class of policyholders seeking the same relief on behalf of all class members who had reported first party automobile

property damage losses or the same kind prior to December 1, 2000, and including all such reports loss filed after six years preceding the filing of tale lawsuit on December 22,1999.

This Court has held numerous hearings, taken evidence and considered many issues and positions of the parties during the months of the pendency of is action on both the second motion, and on the question of the Defendants' compliance or failure of compliance with the Court's declaratory and injunctive Order of December 1, 2000, on Plaintiffs first motion and the subsequent orders and decrees entered in furtherance of the injunction, including an Order entered May, 1, 2001, and filed May 2, 2001. Many of hearings held have been lengthy and, in total, have involved many witnesses and much documentary evidence. The latest hearing, culminating in this Oder and Decree, was conducted on June 1, 2001, and lasted from 10:30 A.M. until just before midnight. At that June 1, 2001, hearing the Court concluded the testimony offered In support of and in opposition to the second motion and received the Defendant's Second Report of Compliance with the Court's May 1, 2001, Order. The Court further conducted a hearing and considered the position of the parties in conjunction with direction to show cause by the Defendant following the Second Report as such had been directed by the May 1, 2001 Order.

Having thus received all of the evidentiary submissions and arguments of the parties and after having considered all such from the June 1, 2001 hearing and all the previous hearings conducted in this matter, the Court is now prepared to rule on both the Plaintiffs' second motion and on the issue of State Farm's compliance with the May 1, 2001, Order: The Court directed both parties to propose an Order granting the

Plaintiffs' second motion. Plaintiffs did so, but State Farm instead submitted a Memorandum in Opposition to the Second Motion. The Court has considered both submissions.

Accordingly, the Court finds as follows:

COMPLIANCE WITH DECEMBER 1, 2000 AND MAY 1, 2001 ORDERS

1. State Farm has implemented a costly and vast state-wide system of "assessments" for those first party claims which have been reported since, December 1, 2000, and which State Farm has previously failed or refused to properly assess by an appropriate methodology and procedure as required by this Court's Orders of December 1, 2000 and May 1, 2001.

2 Dallas Mathile, State Farm`s corporate representative, testified at the February 14, 2001 hearing. He testified, among other things, that on many reports of loss, particularly those before December 1, 2000, the vehicles Plaintiffs now seek to have State Farm assess will not be available in many instances for inspection because those vehicles have been sold or otherwise disposed of (February 14, 2001, Hearing Testimony, p. 270); and that in those instances, and in order to assess for diminished value, State Farm, he said, could use the claim file materials, i.e. police reports, repair estimates, photographs, vehicle inspection reports, etc. and information from the insured to reconstruct the condition of the vehicle and the diminished value loss without the necessity for having an inspection (February 14, 2001, Hearing Transcript, pp. 271-280).

In fact, Mr. Mathile testified as follows:

Q. “Okay. So if we look back at these, the old files as we call them, despite not having the vehicle or the vehicle being there but time having lapsed, you could still make an evaluation it just won't be as accurate as if you had the car, isn’t it?”

A. “We could make, we possibly could make an evaluation, yes.”

February 14, 2001, Hearing Transcript, p. 280, Lines 4-10.

Thus, the Court finds, as it has so previously in its May 1, 2001 Order, that an inspection of the vehicle is not necessary in order for State Farm to make an assessment for diminished value, particularly for non-repair related diminished value, which this case is primarily about. Inspections are undertaken primarily to test the adequacy of repairs and allegedly to compare the post-repair condition of the vehicle to the pre-loss condition. This latter reason is inconsistent with the obvious fact that State Farm does not inspect the vehicle prior to any loss, as Ray Smith testified.

The Court’s finding that inspections are not necessary, however, is not intended to prohibit State Farm’s choice to conduct inspections on what has been called the “going forward” class claims are made. In State Farm’s Second Report on Compliance, filed with the Court on May 28, 2001, State Farm indicated that It intends to inspect vehicles before they leave the repair shop or as soon thereafter as possible, a matter that was addressed during the June 1, 2001 hearing. That process should continue, at least as long as State Farm maintains its position that inspections are necessary or preferred.

3: The Second Report on Compliance filed with the Court On May 28, 2001, and the evidentiary offering, including the testimony of State Farm`s witness Laura Quinn and John Dosen in support of that report at the June 1, 2001 hearing, reveals

that in excess of 26,000 first party claims were made after the Court's December 1, 2000 Order and that some 24,000 first party claims were not inspected and were either not "assessed," i.e., the exclusion of leased vehicles, or were "assessed" by some standardless review. Of the total first party claims, State Farm's process resulted in inspections of only 2679 vehicles, which small number is in large part a result of the discouraging language used by State Farm in both its telephone and written communications when it contacted its insured as the Court has ordered in its May 1, 2001 Order. An Invitation to an insured to join a lawsuit can hardly be considered a good faith effort by State Farm to obtain access for inspection to its policyholders' vehicles, yet that is what State Farm has written and told to its insureds. The remaining claims that were "assessed" were allegedly "assessed" in the manner set forth in the Court's May 1 Order, that is, by a review of the claim file and other information available to State Farm. But the testimony adduced during the June 1 hearing and the exhibits to State Farm's Second Report show inspection or any claim file review that may have been made was made without any criteria or any method of calculating a number, be it zero or greater, and that such review was prejudiced by State Farm's corporate mindset that diminished value does not occur where proper repairs have been made and that nothing in its claims files, regardless of detail or substance, could evidence any diminished value or lead to a determination of diminished value. The Court finds that it is not credible that such claim file "review" could result in not a single vehicle having any diminished value, particularly if proper criteria were adopted for use in the assessments, and if the intent in State Farm's "assessments" were not to predetermine and thus to preclude finding diminished value in all instances. Contrary to

the Court's Orders and declarations of the Georgia law, State Farm insists, however, that its only inquiry is to determine repair related diminished value. This position is inconsistent with State Farm's own expert who testified that diminished value will occur in "most" vehicles after repairs have been completed following a loss.

4 The testimony of Laura Quinn, a State Farm employee whose testimony was offered at the June 1st hearing by the Defendant, clearly demonstrates State Farm has refused to adopt any criteria or standards for assessing for the existence of and calculating dollar amounts for diminished value. Ms. Quinn testified that there was no standard or uniform measure or guide employed by State Farm for the assessment and qualification of diminished value and she confirmed, as is set out in footnote 5 of State Farm's a Second Report, that the personnel responsible to do the required assessments received from State Farm no instructions or directions on how to assess vehicles for non-repair related diminished value even though all of these employees had been made aware of State Farm's corporate view that a repaired vehicle will ordinarily not have any diminished value. The result of such failure to educate the very "assessors" charged with looking for non-repair related diminished value is that they were not to look for what the Court had ordered State Farm to look for and were not instructed on how to recognize it and calculate it in any event. In fact, counsel for State Farm represented to the Court at the June 1st hearing that State Farm's determinations and quantifications of diminished value were arrived at only through the process of negotiations on a case by case basis between State Farm and its policyholders, not based on any assessment of the loss using criteria or standards.

5. John Dosen, the second highest ranking State Farm employee in Georgia and the State Farm executive In charge of State Farm's compliance with the Court's Orders, testifies that State Farm has not paid one single non-repair related diminished value loss since December 1, 2000. Though that statement is difficult to square with the documents produced and the prior testimonies of State Farm witnesses, it conclusively shows State Farm's non-compliance with the December 1, 2000 and May 1, 2001 Orders.

6. The evidence in this case, presented from both Plaintiffs and Defendant makes it clear that an appropriate methodology and procedure to assess non-repair related diminished value claims need not and should not be standardless methodology and procedure. Such methodology must be one that can be based upon uniform criteria found in and determined from the claims files of the insureds. Standards must then be applied thereto by the assessor in order to determine the existence of and amount of diminished value.

7. The insistence of State Farm that an assessment for diminished value must include an inspection of the vehicle that is the subject of the claim for diminished value is not supported by the evidence before the Court. On the contrary, the evidence shows that evaluation for non-repair related diminished value is done by other insurance companies in the industry, including Safeco, Progressive and Nationwide, without the necessity for inspecting the vehicle. Testimony taken before this Court from car dealers, appraisers, adjusters, including State Farm's expert witness John Williams, and the adjusting company, Crawford & Co., together with valuation experts, show that assessors from all areas of the industry can and do provide regularly

evaluations for insurance companies without the requirement of an inspection. Moreover, State Farm hires appraisers, including the independent appraiser, Don Peterson, to perform such evaluations without the requirement of an inspection. Importantly, beginning in approximately 1995, State Farm utilized the largest valuation company in this valuation industry. CCC Information Services Inc., to perform valuations, including non-repair related diminished value assessments, without requiring an inspection. Unknown to its policyholders, State Farm has used for years the valuation company, CCC, to reduce State Farm's obligation to third party claimants against State Farm in its resistance to paying for losses to vehicles insured by other carriers where such losses were caused by State Farms policyholders. In this context, State Farm used CCC's non-repair related diminished value assessments to prove that the third party vehicle had been in a previous collision and suffered diminished value even though properly repaired. By using CCC's methodology for assessing non-repair related diminished value without inspecting the vehicle; State Farm has been able for years to decrease total loss determinations by substantiating previous loss of diminished value.

8. The evidence shows that State Farm has used the contrived concept of the need for inspection of its insureds' vehicles in its first party claims since the December 1, 2000 Order of this Court as a means of making the assessment requirement so arduous, onerous and burdensome as to accomplish two purposes. The first purpose is to shift to the insured the responsibility for physically making the vehicle available for inspection. State Farm has always sought to wait to address the diminished value issue until after the policyholders' vehicle had been repaired and

retuned to its owner, instead of dealing with the issue while the vehicle was conveniently available after repairs in the repair shop and when corrective repairs and a diminished value assessment could most readily made and before further burdening the policyholder. Prior to the December 1 Order, State Farm addressed diminished value only if the policy holder knew to raise and did raise the issue, at which time State Farm's first response was what it continues to argue here – a properly repaired vehicle has no diminished value. Since the Court's May 1, 2001 Order, many policyholders have not been able to be contacted, resulting in no assessment. Others have been required to submit to two or three unnecessary inspections, resulting in great inconvenience and frustration. Still others have been subjected to carefully prepared pre-scripted statements and representations by the company representatives in calls to the insureds in the inspection process which can only be described as discouraging the whole process. The second purpose is, by utilizing the inspection procedure and insisting upon the necessity for conducting one, State Farm is able to argue to this Court that the whole concept for assessing for diminished value is so burdensome and expensive as to be an exercise which is not worth the effort and expense. The 281 State Farm policyholders who have been paid a total of $205,023.03 for diminished value, which according to Mr Dosen has been paid for repair-related diminished value, most likely would not agree that the Court's effort to have State Farm comply with Georgia law is not worth the effort. The Court expressly does disagree with State Farm's position that it has not been worth the effort and notes other evidence indicates that at least some of the payments have been made for non-repair related diminution in value. The Court notes that State Farm has failed to assess on a routine

basis all of its policyholders' claims for diminished value since the Gibbs and Simmons decisions and despite numerous other intervening cases consistent with those decisions, as discussed in Court's prior Orders, even though it has accepted premiums which include experience based on the occasional payment of diminished value.

9. Because State Farm had insisted that it needed to look at and inspect each and every vehicle in order to properly assess for diminished value, in the May 1, 2001 Order this Court ordered State Farm "to evaluate those insureds' vehicles for diminution in value either by inspecting the vehicles at the convenience of the insureds or by review of information in the files otherwise available elsewhere. (emphasis added) The Court further directed: "Should these phone calls or contacts (for inspection) not produce an assessment for diminished value, for whatever reason. State Farm will assess each claim for diminished value based upon the information which it has at its disposal…"(emphasis added) The evidence is now clear that State Farm has ignored the alternative directive because it could not contact by phone the insureds or otherwise get them to arrange an inspection and has chosen to instead take the position that it has not been able to inspect most of the vehicles the Court ordered it to inspect and, thus, it can avoid the inspection and assess the remainder by simply doing and finding nothing. This artifice provides the excuse that has resulted in only 2679 Inspections out of more than 26,000 potential ones since December 1, 2000 and in only 281 payments being made for diminished value. It is significant that only 170 payments for diminished value have been made since the May 1, 2001 Order. Just as revealing and indicative of State Farms non-compliance with the mandate in the Court's May 1, 2001 Order is the

fact, as shown on page 21 of State Farm's Second Reports that since December 1, 2000 a total number of 23,389 claims have been denied, the vast majority of which have been denied without the "necessary" inspection. Except for a very few instances which Ms. Quinn could only sketchingly recall having to do with vehicles that had been sold, State Farm denied every claim where an inspection was not arranged. Moreover, State Farm's John Dosen, the Vice President of Operations in Georgia, testified that State Farm has paid no inherent or non-repair related diminished value claim to its insureds since December 1, 2000 and that the 281 claims which have been paid were all repair related.

10. The Court is convinced from the evidence that the State Farm claims files contain all of the information necessary to assess each claim in an orderly, relatively inexpensive, standardized and appropriate manner, regardless of whether an inspection takes place or not, which comports with the way the industry and State Farm have assessed claims in the past. State Farm witnesses, as well as every independent car dealer, adjuster, appraiser, claims representative and valuation expert appearing before this Court, has clearly testified that all, or substantially all, of the information necessary for an assessment of diminished value is contained in State Farm's claims files. These files include reports of loss, police reports, photographs, repair estimates, vehicle inspection reports, claims logs, etc., which provide all of the particulars regarding a subject vehicle, to wit, year, make, model, mileage. VIN, condition, options and accessories, nature of damage, location of damage, cost of repair, repair work necessary, parts, labor, repair facility, payments made and the discussion or communications regarding the damage between State Farm and its policyholder, etc.

Several of these adjusters, appraisers, claims representatives and valuation experts, including Don Peterson, Javier Bermudez, John Williams , Chris Harmon, David McCollum, Gene Malone, Jim Boyd, Gary Griffin, Mark Baker, Bill Geen and Neil Billstein have testified that, based on their particular methodology, i.e. the Georgia Insurance Commissioner's distributed formula, their personal formula developed and used in the industry, or the ClaimCoach.com system , all or a subset of these pieces of information can be to accurately, consistently and fairly determine diminished value. In fact Bill Geen and Neil Billstein, co-partners in ClaimCoach.com, have developed a methodology to determine diminished value based on their twenty years experience in the calculation business. Bill Geen, while at CCC, developed the methodology used by CCC which has been recognized and used by all automobile insurance carriers in the U.S., including State Farm, for determining total loss value of automobiles. Neil Billstein, as an independent contractor with CCC, developed CRV, a division of CCC, to determine total loss value of specialty vehicles, trucks, boats, motorcycles, recreational vehicles and heavy equipment. Further, Neil Billstein, while with CCC, developed a system to determine the diminished value of vehicles and State Farm and other insurance carriers, hired CCC/CRV to provide such determinations in third party total loss contexts. The present system developed being used by Messrs, Geen and Billstein of ClaimCoach.com utilizes the valuation methodology recognized in the insurance industry, and the standards and criteria they are currently utilizing to determine diminished value is more complete, accurate and consistent than the CCC/CRV method which they originally developed and which has been recognized, used and accepted previously by State Farm and others. In addition, the

ClaimCoach.com methodology could be utilized to provide the assessments required of State Farm in Georgia at a fraction of the cost State Farm has expended and which it has shown this Court it has employed with regard to Its standardless efforts at compliance with this Court's orders.

11. The large expense and burden that State Farm now complains of is a consequence of its failure to comply timely with this Court's December 1st Order at the time that such Order was entered. Its failure to comply resulted in the accumulation of a large backlog of claims that had to be assessed and, since State Farm, insisted that the inspection of vehicles was necessary to assess that backlog, people from State Farm's national catastrophe group had to be brought into Georgia to accomplish the inspections. These national catastrophe adjusters were, for the most part, unfamiliar with any methodology for assesing for non-repair related diminished value and were only employed to look at vehicles to determine if they were repaired correctly. The testimony from State Farm's Ms. Quinn that timely compliance would not have avoided any of this expense occasioned by the five-month delay and subsequent backlog is simply not credible.

12. State Farm is not in compliance with either the Court's Order of December 1, 2000 or May 1, 2001. The withholding of a decision on this issue by the Court is reserved because of the Court's belief that if the resources devoted to and the expenses incurred by State Farm had been with a corporate mindset to approach the task of determining diminished value as required by Court with the employment of an appropriate methodology, the job could have been done. Nonetheless, in the continuing

hope that State Farm will do what it can and should do, as ordered by this Court, the Court reserves its decision on contempt until ithe following has been completed:

(a) The Court, at the June 1, 2001 hearing; required and State Farm agreed to provide to Plaintiffs within 45 days of June 1, 2001, the search and retrieval of its CSR for and download of each of the criteria outlined by Plaintiffs at the May 16, 2001 meeting at State Farm's Duluth office (the transcript of the meeting has admitted into the record by agreement of counsel) on an Access database. This search retrieval and download shall encompass January 1, 1996 to the present.

(b) The Court ordered State Farm to provide all of the claims files for the 26 79 inspections and assessments referenced in State Farm's Second Report Compliance with the Court's May 1, 2001 Order within thirty (30) days from the June 1st hearing for Plaintiffs review and copying.

(c) The Court Orders State Farm to produce, within that same thirty (30) days, all the written assessments of the 24,250 claim files noted at page 21 of State Farm's Second Repast, to show the Court the work, if any, State Farm did to assess those files. If there are no such assessments documents, State Farm is to notify the Court in writing no later than Monday, July 9, 2001.

(d) The Court ordered State Farm to produce hereafter, on a regular basis, for review and copying by Plaintiffs, the claims files for any additional inspections and/or assessments not heretofore addressed in this Order, and

(e) State Farm is ordered to propose to this Court, no later than thirty (30) days after the entry of this Order, an assessment methodology, based upon criteria found in and determined from its policyholders' claim files, with standards applied

thereto to determine the existence of and amount of non-repair related diminished value. Such a methodology must clearly illustrate how State Farm's claims representatives will uniformly and consistently determine, in writing, the existence of and amount of diminished value that will provide this Court with an opportunity to objectively review each written assessments. This assessments methodology must be applicable whether or not an inspections is or could be conducted. If at the end of the thirty (30) day period, State Farm fails or refuses to provide an approved methodology, the Court will select one of the methodologies referenced in ¶¶7, 10 and17, at least for the reassessment of the approximately 24,000 files not heretofore appropriately assessed and for all future claims. A timetable for these reassessments will be addressed by further order of the Court.

INJUNCTION GRANTING FURHTER AND CONSISTENT RELIEF

13. The Court finds the factual and legal scenario with regard to the claims prior to December 1, 2000, to be the same as for those claims subsequent to that date. The findings of the December 1, 2000 and May 1, 2001 Orders are, therefore. Incorporated herein. The Court finds that State Farm did not notify its policyholders of the coverage for diminished value losses nor did State Farm evaluate for diminished value and pay its policyholders for diminished value unless forced to do so by its policyholders, despite the fact that policyholders pay a portion of their premium that is attributable diminished value losses. (February 14, 2001, Hearing Transcript, p. 267). Nevertheless, State Farm did not obtain releases from these first property damage claimants and the claims, therefore, remain unevaluated to present. (February 14, 2001, Hearing Transcript, p. 268-269). Counsel for State Farm agreed at the June 1,

2001 hearing that State Farm's files were still open and the diminished value losses were not resolved. He further agreed that policyholders who sustained a loss during the past six years could try seek payment for diminution in value from State Farm.

14. The Court hereby grants Plaintiffs' Motion for Further Injunctive Relief, and with regard to the first party property dam age reports of loss by class members herein made prior to December 1, 2001, and subsequent to December 22, 1993, this Court hereby ORDERS and ENJOINS State Farm to evaluate of those first party physical dam claims for the presence of non-repair related diminution in value by an appropriate methodology and procedure, as that methodology is outlined in. ¶7 and ¶10 above, and to offer to pay such diminution in value if it determines it has occurred or to deny the presence of diminution in value and so advise its insureds. The Court ORDERS and ENJOINS State Farm to collect, catalog and maintain any information necessary to make such determination as to amount of any loss for diminution in value sustained by the vehicles of its insureds.

15. State Farm has not established criteria or standards with which to assess non –repair related diminished value losses, yet because State Farm has demonstrated to the Court it is capable of developing and utilizing a methodology of ssessment based on criteria and standards that will in determining non-repair related diminished value, from the claims files and without the necessity for an inspection, the Court will not accept State Farm's decision to expand additional enormous resources as establishing anything other than a hallow process that results in a blanket denial offered under the guise an "assessment."

16. The Court is convinced that methodologies are available and in use in the insurance and valuation industries that will and do provide assessments of non-repair related diminished value based squarely on recognized criteria and standards which result in fair and reasonable determinations and qualifications of diminished value losses. See ¶¶7, 10 supra.

17. Within thirty (30) days of the entry of this Order, State Farm is to submit in writing for approval, by the Court, a methodology for assessment of non-repair related diminished value based on criteria and standards that the Court can approve as being acceptable. State Farm may employ or use the following methodologies to make such required assessments:

(a) The ClaimCoach.com system:

(b) The Classic Car Appraisal Service (Don Peterson) methodology;

(c) The formula distributed by the Georgia Insurance Commissioner's office and used by Safeco, Progressive, Nationwide and Crawford & Co.;

(d) Any combination or modification of (a), (b) or (c) as approved by the Court;

If State Farm were to employ or use (a) or (b) or any combination thereof, such employment and use would be at State Farm's expense.

18. If, after the end of the thirty (30) day period, State Farm has not submitted an appropriate methodology approved by the Court, the Court, in such event, will select one of the methodologies outlined in ¶17 supra, for the assessments of pre December 1, 2000, reports of loss, which assessments shall be conducted at State Farm's expense.

19. After the end of thirty (30) day period, the Court will consider State Farm's submission and thereafter will establish a schedule of assessments of pre December 1, 2000 losses and schedule reports to be received from State Farm regarding the timeliness, adequacy and sufficiency of said assessments.

SO ORDERED this the _____ day of June, 2001.

_____

DOUGLAS C. PULLEN
SUPERIOR COURT JUDGE

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Muscogee County, Georgia

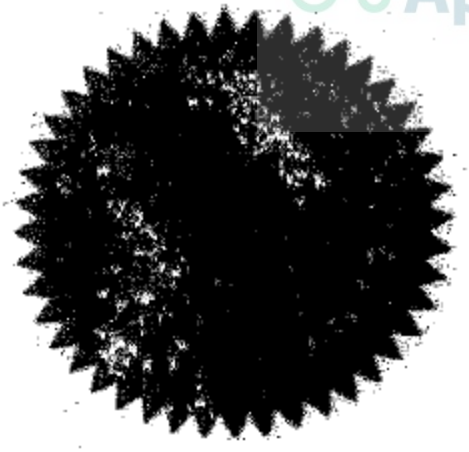
I do certify that the within and foregoing is a true and Correct copy of the document (s) as appears by the Original on file and record in the office of the Clerk of Muscogee Superior Court.

_____

_____ *DAY OF* _____ *2010*

_____

Deputy Clerk, Muscogee Superior Court



M. Linda Pierce
Clerk Of Superior Court
Muscogee County, Georgia

MABRY ORDER - 03/06/02

PARAGRAPH SUMMARY

(1) Class action for settlement purposes only on behalf of a class (the settlement class) consisting of all persons issued a Georgia automobile insurance policy by State Farm Mutual Automobile Insurance Company or State Farm Fire & Casualty Company that was in force between and including December 22, 1993 and November 30, 2001…

(10) The 17c formula included in the June 12, 2001 Order is an acceptable methodology for assessing diminished value claims. State Farm's use of the 17c formula is pursuant to order of the Court and the use of that formula is approved by the Court for the purpose of settling claims of the Settlement Class and for the purposes of assessing the future Georgia claims for diminished value. The Court hereby orders State Farm to continue the use of the 17c formula in its assessment of diminished value losses sustained by State Farm policyholders making first party claims under the collision, comprehensive and uninsured motorist coverages of their Georgia insurance policies subsequent to November 30, 2001, unless a change in Georgia law or regulation permits a discontinuance of that practice...

State Farm cannot be found to have acted in bad faith by virtue of applying the 17c formula to assess diminished value claims. In the event any Georgia policyholder reports a loss or makes a property damage claim after November 30, 2001 and asserts that State Farm's application of the 17c formula constitutes bad faith pursuant to O.C.G.A. Section 33-4-7, State Farm shall present a copy of this order to the policyholder and/or to the appropriate court, if applicable.

Neither plaintiffs' counsel nor class members shall challenge in the future State Farm's use of the 17c formula, as State Farm as heretofore applied it, to assess claims for diminished value and. offer diminished value payments to Georgia policyholders, though class members with respect to claims reported after November 31, 2001, are not prohibited from disputing the amount resulting from State Farm's use of the 17c formula in connection with their individual future claims.

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

RUDINE MABRY, INDIVIDUALLY, MAURICE J. CARDENAS, INDIVIDUALLY, RICHARD A. CHILDS, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION FILE NO. SU99CV4915
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and STATE FARM FIRE AND CASUALTY COMPANY,	)	
Defendants.	)	

ORDER AND FINAL JUDGEMENT

This action was heard on _____, 2002, before the undersigned, pursuant to the Consent Order Preliminarily Approving Settlement and Approving Notice to Class Members (the "Preliminary Approval Order") entered on _____ ____, 2001, for the purpose of determining: (i) whether the settlement of the action, on the terms and conditions set forth in the Settlement Agreement previously submitted to the Court ("the Settlement"), should be approved as fair, reasonable and adequate; (ii) the amount of attorneys' fees and expenses to award

counsel for Plaintiffs; and (iii) whether a Settlement Order and Final Judgment should be entered.

This class action, like any class action; cannot be compromised without the approval of this Court. Having conducted the analysis required by the statute, the Court finds and concludes for purpose of settlement only that the requirements of O.C.G.A. § 9-11-23 have been satisfied, and that the settlement is fair, adequate and reasonable.

The Court having considered the record in this action,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. This action is maintainable as a class action for settlement purposes only on behalf of a class ("the Settler t Class") consisting of all persons issued a Georgia automobile insurance policy by State Farm Mutual Automobile Insurance Company or State Farm Fire and Casualty Company that was in force between and including December 22, 1993 and November 30, 2001 who reported valid property damage claims for vehicle damage under the collision, comprehensive, or uninsured motorist coverages of their Georgia policies during the same time period, but excluding claims resulting in total losses, claims relating to non-owned (as that term is defined in State Farm's Georgia automobile policies) or temporary substitute vehicles, claims limited glass replacement, claims

confined to emergency roadside assistance or towing, and claims identified as closed without payment by State Farm Mutual Automobile Insurance Company or State Farm Fire and Casualty Company.

2. For settlement purposes only, the Court finds that the prerequisites of O.C.G.A § 9-11-23 are met and hereby certifies the foregoing defined Settlement Class an injunctive, equitable, and damages class pursuant to-O.C.G.A. § 9-I1-23.

3. For settlement purposes only, the Court finds that the prequisites of O.C.G.A. § 9-11-20 are met and hereby adds State Farm Fire and Casualty as a defendant to this litigation.

4. The Courts that counsel for the Plaintiffs, Pope McGlamry Kilpatrick Morrison & Norwood, LLP; Hatcher Stubbs Land Hollis & Rothschild, LLP; and Ronald Ellington are competent to serve as Class Counsel and will fairly and adequately refit the interests of the class.

5. Based on the evidence presented at the hearing, the Court finds that notice has been given to the class pursuant to the Preliminary Approval Order, and that the Mailed Notice, the Published Notice, and the notice methodology adopted pursuant to this Settlement were the best notice practicable, satisfied due process requirements, and provided Class members with fair and adequate notice of the hearing and adequate information concerning the hearing, the right to be excluded

from the Class, the settlement, and the rust of counsel for Plaintiffs to apply for an award of attorneys' fees and expenses.

6. The terms of the settlement, as set forth in the Settlement Agreement, are hereby determined to be fair, reasonable and adequate. Accordingly, said Settlement, including each of is respective terms and conditions, is hereby finally approved by and incorporated as part of this Final Order and Judgment. Words in this Final Order have the same meaning as defined terms in the Settlement.

7. The Court hereby enters judgment fully and finally terminating all claims, on the merits, against State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company and each of their respective parents, subsidiaries, affiliates, predecessors, successors and/or assignees, attorneys, accountants, representatives, past or present officer, inside and outside directors, employees and agents ("the Released Parties"), and finds that all Class Members who have not timely and properly excluded themselves, regardless of whether such Class Members have claimed or obtained benefit hereunder, have waived and are estopped from asserting against the Released Parties: (a) any and all claims which were asserted (including without limitation all claims for diminished value) or could have been asserted in the Action, or which Were at issue or could have been.

any nature, whether known or unknown, suspected or unsuspected, concealed or unconcealed, tangible or intangible, that any Class Member has or ever has had arising from the relationship between State Farm and each Class Member, based upon or related to the Class Member's vehicle property damage claims under their policy, whether sounding in contract, tort, unjust enrichment or any other theory, including without limitation any claim that the Released Parties violated any aspect of any Unfair Claims Practices statute, any consumer fraud statute, or any other statutory or common law requirement, claims of any bad faith, breach of contract, or any other claim; and (c) any claim of fraud in the inducement of this Settlement Agreement. Provided, however, that, while Class Members specifically include all claims for diminished value of any nature in the release set out above, Class Members do not release claims arising from the use of non-OEM parts in vehicle repairs that have been reduced to judgment in *Avery v. State Farm Mutual Automobile Insurance Company*, pending in Williamson County, Illinois, Case No. 97-L-114, currently on appeal.

8. All members of the Settlement Class are barred and permanently enjoined from asserting, instituting, or prosecuting, either directly or indirectly, any claim adjudicated or foreclosed by this Judgment.

9. The sum of $ _____ is hereby awarded to Plaintiffs' Counsel to cover their fees for legal services, all of their costs,

disbursements out-of-pocket expenses and other expenditures in connection with this litigation, to be paid as provided in the Settlement, and in accordance with future orders of this Court. In making the above award, the Court does not by this Order allocate said fees and expenses. However, as provided in the settlement, the Court orders that the payment by State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company of Fifty Million Dollars ($50,000 000) in attorneys' fees and reimbursement of expenses, one business day after Final Approval as defined in the Settlement Agreement will discharge any and all liability of defendants for attorneys' fees and reimbursement of expenses and, under the terms of the Settlement Agreement, plaintiffs' attorneys will indemnify and hold harmless defendants from any claim for attorneys fees and reimbursement of expenses in excess of Fifty Million Dollars ($50,000,000), and plaintiffs' attorneys, including all attorneys who made application to this Court and all attorneys who have arrangements and/or agreements with said applying attorneys, are hereby restrained and enjoined from seeking any other fees or expenses from defendants arising out of or relating to this case. Pending such allocation of said fees and expenses, such award, when payable under the terms of this Order, shall be paid to the Registry of the Court, pending further Order of the Court.

10. The mandatory injunctions issued in the Court's Orders of December 1, 2000, May 2, 2001, and June 12, 2001 are dissolved. The 17(c) formula included in the June 12, 2001 order is an acceptable methodology for assessing diminished value claims. State Farm's use a of the 17(c) formula is pursuant to order of the Court and the use of that formula is approved by the Court for the purpose of settling claims of the Settlement Class and for the purposes of assessing the future Georgia claims for diminished value. The Court hereby orders State Farm to continue the use of the 17(c) formula in its assessment of diminished value losses sustained by State Farm policyholders making first party claims under the collision, comprehensive and uninsured motorist coverages of their Georgia insurance policies subsequent to November 30, 2001, unless a change in Georgia law or regulation permits a discontinuance of that practice or the claim is pursuant to a policy accepted by the Georgia Insurance Commissioner and in compliance with Georgia law that excludes or limits the scope diminished value coverage, that State Farm does not have to assess for diminished value claims resulting in total losses, claims limited to glass replacement, claims relating to non-owned or temporary substitute vehicles (as those terms are defined in State Farm's Georgia automobile policies), claims identified as closed withouth payment by State Farm and claims confined to emergency roadside assistance or towing. State Farm cannot be found to have acted in bad faith by virtue of applying the 17(c) formula

to assess diminished value claims. In the event my Georgia policyholder reports a loss or makes a property damage claim after November 30, 2001 and asserts that State Farm's application of the 17(c) formula constitutes bad faith pursuant to O.C.G.A. Sec. 33-4-7, State Farm shall present at copy of this order to the policyholder and/or to the appropriate court, if applicable. If such presentation does not end or resolve the dispute regarding bad faith, State Farm may apply for and, in t appropriate circumstances, this Court shall issue a show cause order to the policyholder so as to effectuate the terms and conditions of this settlement. Neither plaintiffs' counsel nor class members shall challenge in the future State Farm's use of the 17(c) formula, as State Farm as heretofore applied it, to assess claims for diminished value and offer diminished value payments tp Georgia policyholders though class members with respect to claims reported after November 30, 2001, are not prohibited first, disputing the amount resulting from State Farm's use of the 17(c) formula in connection with their individual future claims.

11. Neither this Final Judgment, the Settlement, the fact of settlement, the settlement proceedings, settlement negotiations nor any related document, shall be used as an admission of any act or omission by Defendants or be offered or received in evidence as an admission, concession, presumption, or

inference of any wrongdoing by Defendants in a proceeding other than such proceedings as may be necessary to consummate or enforce the Settlement.

12. The parties are hereby authorized without further approval from the Court to agree to and adopt such amendments or medications of the Settlement and all exhibits hereto as shall be consistent in all respects with the Final Order and Judgment and do not limit the rights of members in the settlement class.

13. The Court retains jurisdiction over this Settlement to the extent necessary to implement, effectuate and administer this Settlement and this Order and Final Judgment.

14. This Order and Final Judgement and the Settlement to which they relate are limited to claims made by Georgia policyholders under Georgia law.

This _____ day of _____ 2002.

_____
DOUGLAS C. PULLEN
SUPERIOR COURT JUDGE

Muscogee County, Georgia

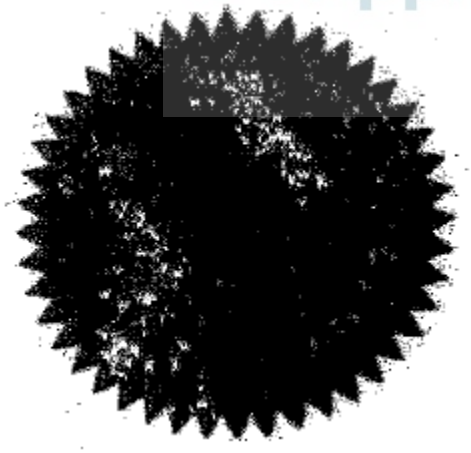
I do certify that the within and foregoing is a true and Correct copy of the document (s) as appears by the Original on file and record in the office of the Clerk of Muscogee Superior Court.

_____

_____ *DAY OF* _____ *2010*

_____

Deputy Clerk, Muscogee Superior Court



M. Linda Pierce
Clerk Of Superior Court
Muscogee County, Georgia