UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DIANE WATTS, ANTHONY WATTS, and ADAM PIZZITOLA, individually and on behalf of all others similarly situated, Plaintiff, v. LIBERTY MUTUAL PERSONAL INSURANCE COMPANY, LIBERTY MUTUAL GROUP, INC., LMHC MASSACHUSETTS HOLDINGS, INC., and LIBERTY MUTUAL HOLDING COMPANY, INC., Defendants.	Case No. 1:23-cv-12845-PBS JURY TRIAL DEMANDED

LIBERTY MUTUAL PERSONAL INSURANCE COMPANY'S
ANSWER TO CLASS ACTION COMPLAINT

Defendant Liberty Mutual Personal Insurance Company ("LMPIC"), by and through its attorneys, Saul Ewing LLP, responds to the Class Action Complaint filed by Plaintiffs Diane Watts and Anthony Watts (collectively, "Watts") and Adam Pizzitola ("Pizzitola" and together with Watts, "Plaintiffs") as follows:

1. Plaintiffs bring this class action lawsuit for breach of contract, vexatious refusal to pay, and insurance bad faith against Defendants Liberty Mutual Personal Insurance Company, Liberty Mutual Group, Inc., LMHC Massachusetts Holdings, Inc., and Liberty Mutual Holding Company, Inc. (collectively, "Liberty Mutual" or "Defendants"), in connection with Liberty

Mutual's standard practice of prematurely terminating Transportation Expenses Coverage benefits when it declares a vehicle a total loss.[1]

ANSWER: LMPIC admits this case purports to be a class action and the allegations made in Footnote 1, but denies the remainder of the allegations in this Paragraph.

2. Specifically, Liberty Mutual sells automobile insurance policies that include optional coverage for "Transportation Expenses" (hereinafter referred to as "Transportation Expenses Coverage"). Transportation Expenses Coverage is intended to reimburse an insured for transportation expenses such as the cost of a rental car, while an insured's own automobile is not available after a covered insurance claim.

ANSWER: LMPIC admits an insured may purchase optional coverage for temporary transportation expenses in the event of a loss. The terms of such coverage are written, and therefore, speak for themselves. LMPIC denies the remainder of the allegations in this Paragraph.

3. Under its Transportation Expenses Coverage, when Liberty Mutual declares a vehicle a total loss it is contractually obligated to pay for coverage limited only by a per accident limit, a daily monetary rate, and the "***period of time reasonably required to...replace***" the totaled vehicle.

ANSWER: LMPIC admits that the subject policies provide for temporary transportation expenses "limited to that period of time reasonably required to repair or replace [the] covered auto." The terms of such coverage are written, and therefore, speak for themselves. LMPIC denies the remainder of the allegations in this Paragraph.

[1] A total loss generally means that the insurance company has determined that the cost to repair the damage to an automobile is more than the automobile is worth.

4. In breach of its insurance policy, when Liberty Mutual determines that a vehicle is a total loss, it does not evaluate the amount of time "reasonably required" for an insured to replace the totaled vehicle. Instead, Liberty Mutual systematically places an arbitrary cap on the length of time it pays Transportation Expenses Coverage.

ANSWER: LMPIC denies the allegations in this Paragraph.

5. For example, when the Watts' vehicle was declared a total loss, Liberty Mutual arbitrarily and without conducting any investigation into what would have, been a reasonable amount of time to replace their vehicle, instead limited Watts' coverage, providing only seven days of coverage after the vehicle was determined to be a total loss. This was a clear breach of Liberty Mutual's automobile insurance policy, and Liberty Mutual has no cause or excuse for refusing to pay the full amount of Transportation Expenses Coverage it was obligated to provide under its insurance policies.

ANSWER: LMPIC admits that it covered the Watts' rental vehicle for seven days after declaring the vehicle a total loss, but denies the remainder of the allegations in this Paragraph.

6. Plaintiffs seek to represent a Class and/or Subclasses of all insureds who have suffered similar injury when Liberty Mutual arbitrarily and prematurely terminated Transportation Expenses Coverage, and to recover all damages and losses owed to them.

ANSWER: LMPIC admits Plaintiffs purport to bring this action on behalf of themselves and a putative class of LMPIC's first-party insureds, but denies the remainder of the allegations in this Paragraph and that this case is appropriate for class certification given what is a reasonable amount of time to replace a totaled vehicle differs by insured.

7. Plaintiffs Diane Watts and Anthony Watts are married adult individuals who reside in Kansas City, Missouri.

ANSWER: LMPIC is without sufficient information to admit or deny the allegations in this Paragraph.

8. Plaintiff Adam Pizzitola is an adult individual who resides in Oak Lawn, Illinois.

ANSWER: LMPIC is without sufficient information to admit or deny the allegations in this Paragraph.

9. Defendant Liberty Mutual Personal Insurance Company is a New Hampshire company with a principal place of business located at 175 Berkeley Street, Boston, MA 02116.

ANSWER: LMPIC admits the allegations in this Paragraph.

10. Defendant Liberty Mutual Group, Inc. is a Massachusetts corporation with a principal place of business located at 175 Berkeley Street, Boston, MA 02116.

ANSWER: LMPIC admits the allegations in this Paragraph.

11. Defendant LMHC Massachusetts Holdings, Inc. is a Massachusetts corporation with a principal place of business located at 175 Berkeley Street, Boston, MA 02116.

ANSWER: LMPIC admits the allegations in this Paragraph.

12. Defendant Liberty Mutual Holding Company, Inc. is a Massachusetts corporation with a principal place of business located at 175 Berkeley Street, Boston, MA 02116.

ANSWER: LMPIC admits the allegations in this Paragraph.

13. At all relevant times, Defendants acted as the alter ego, on behalf of each other, as the agent or authorized representative of one another, and/or the insurer of Plaintiffs and Class members.

ANSWER: LMPIC denies the allegations of this Paragraph.

14. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiffs seek relief on behalf of a class, which will result in at least one class member belonging to a different state than the Defendants, and the damages of the proposed Class as defined below exceed $5,000,000.

ANSWER: LMPIC admits this Court has jurisdiction over this action.

15. Venue is proper in the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. § 1391(b)(1), as Defendants are all residents of this District.

ANSWER: LMPIC admits that venue is proper.

16. On or about April 15, 2023, there was in full force and effect an automobile insurance policy, no. AOV-243-634444-70 3 7, between the Watts and Liberty [Mutual (the "Watts Policy"). *See* Watts Policy Declarations, attached as Exhibit "A."[2]

ANSWER: LMPIC admits that it issued an automobile insurance policy, number AOV24363444470, to the Watts (the "Watts Policy"), which was in effect on April 15, 2023. As for footnote 2, LMPIC is without sufficient information to admit or deny the allegations of footnote 2, and they are therefore denied. Further answering, LMPIC states that Exhibit A to the Class Action Complaint does not reflect the Watts Policy that was in effect at the time of the Watts' accident.

17. The Watts Policy provided, among other things, insurance coverage for the use of the Watts' 2009 Nissan Ultima (the "Watts Vehicle").

ANSWER: LMPIC admits the allegations of this Paragraph.

[2] The Watts Plaintiffs possess a copy of the declaration pages of their Liberty Mutual automobile insurance policy for the policy period beginning on February 10, 2023, and ending on February 10, 2024, but do not possess a complete copy of their policy. Further, the policy declaration pages they do possess were updated to replace the 2009 Nissan Ultima that was totaled in the accident with the vehicle the Watts Plaintiffs purchased after the accident. Plaintiffs will request in discovery that Liberty Mutual provide a certified copy of the Watts' Policy in effect at the time of this loss, including the declaration pages applicable to the 2009 Nissan Ultima involved in the April 15, 2023 accident.

18. The Watts Policy, in addition to other insurance benefits, promised to provide the Watts with coverage to rent a replacement vehicle in the event that their vehicle was damaged in a loss. These benefits are referred to as Transportation Expenses Coverage. *See* Watts Policy Declarations p. 3 of 4, attached as Exhibit "A."

ANSWER: LMPIC admits that the Watts Policy included coverage for "Transportation Expenses" in the event of a loss. The terms of such coverage are written, and therefore, speak for themselves. LMPIC denies the remainder of the allegations in this Paragraph. Further answering, LMPIC states that Exhibit A to the Class Action Complaint does not reflect the Watts Policy that was in effect at the time of the Watts' accident.

19. The Watts Policy's Transportation Expenses Coverage provides as follows:

> **OPTIONAL TRANSPORTATION EXPENSES COVERAGE**
>
> When there is a loss to a **your covered auto** described in the Schedule or in the Declarations for which a specific premium charge indicates that Optional Transportation Expenses Coverage is afforded, we will pay, without application of deductible, the daily amount shown on the policy Declarations Page to a maximum of 30 days for:
>
> 1. Additional transportation expenses incurred by you for renting a substitute auto.
>
> 2. Additional transportation expenses incurred by you for renting a substitute auto due to a total loss of **your covered auto**.
>
> 3. Loss of use expenses for which you become legally responsible in the event of loss to a **non-owned auto**.
>
> All coverage provided by this endorsement shall only apply once for any single occurrence. Our payment will be limited to that period of time *reasonably required to repair or replace* **your covered auto** or the **non-owned auto**.

See Form AS 2225 06 05, attached as Exhibit "B" (emphasis in original and added).[3]

ANSWER: LMPIC admits that the quoted language appears in the Watts Policy except for the italicized emphasis. As for footnote 3, LMPIC admits that Optional Transportation Expenses Coverage Form AS 2225 06 05 is included in the Watts Policy, but is without sufficient information to admit or deny the allegations of footnote 3, and they are therefore denied.

20. The Watts Policy's declarations page sets forth the length of time Transportation Expenses Coverage is available, and the maximum benefit recoverable:

Optional Coverages

Transportation Expenses	$30 Per Day
	$900 Per Accident

See Watts Policy at Declarations p. 3 of 4, attached as Exhibit "A." The maximum allowed amount of $900 constitutes thirty (30) days of Transportation Expenses Coverage at the "Daily Limit" of $30 (*i.e*., $900 / $30 = 30 days).

ANSWER: LMPIC admits that the quoted language appears in the Watts Policy and that the Watts Policy provided coverage of $30 per day with a maximum coverage of $900.

21. On or about April 15, 2023, Diane Watts was involved in an automobile collision.

ANSWER: LMPIC admits the allegations of this Paragraph.

[3] While the Watts Plaintiffs do not possess a complete copy of their Liberty Mutual automobile insurance policy covering the February 10, 2023 to February 10, 2024 policy term, the policy declaration pages confirm that Optional Transportation Expenses Coverage Form AS 2225 06 05 is included with their policy. *See* Watts Policy Declarations, p. 4 of 4, attached as Exhibit "A." This same form is attached to the Complaint as Exhibit "B."

22. As a result of this collision, the Watts Vehicle suffered physical damage.

ANSWER: LMPIC admits the allegations of this Paragraph.

23. As a result of the damage that the Watts Vehicle suffered in the collision, the Watts Vehicle was withdrawn from use for more than 24 hours.

ANSWER: LMPIC admits that the Watts Vehicle was declared a total loss, but denies the remainder of this Paragraph.

24. As a result of the collision, the Watts Vehicle suffered significant damage, was no longer usable after the date of the collision, and was ultimately deemed a total loss by Liberty Mutual.

ANSWER: LMPIC admits that the Watts Vehicle suffered significant damage and was declared a total loss, but denies the remainder of this Paragraph.

25. Diane Watts called Liberty Mutual on April 15, 2023 to report a claim while still at the scene of the collision.

ANSWER: LMPIC admits that Diane Watts reported the claim on April 15, 2023, but is without sufficient information to admit or deny the remainder of this Paragraph.

26. Liberty Mutual informed Diane Watts that she had $900 of rental vehicle coverage on the Policy.

ANSWER: LMPIC admits that it advised Diane Watts that the Watts Policy included a maximum rental coverage of $900.

27. On or about April 16, 2023, the Watts Plaintiffs, upon the recommendation of Liberty Mutual, availed themselves to the benefits provided by the Policy's Transportation

Expenses Coverage and rented an automobile from Enterprise. *See* Enterprise Rental Agreement, attached as Exhibit "C."

ANSWER: LMPIC admits that the Watts picked up a rental vehicle from Enterprise on April 16, 2023, but denies the remainder of the allegations in this Paragraph.

28. The Enterprise rental agreement set forth that the rental was to be returned by April 22, 2023. *Id.*

ANSWER: LMPIC admits that Exhibit C to the Class Action Complaint states the anticipated return of the rental vehicle was April 22, 2023.

29. On April 17, 2023, Diane Watts spoke with Liberty Mutual who advised her that, due to delays in the review and inspection of the damaged Vehicle, she could remain in the rental vehicle until April 29, 2023.

ANSWER: LMPIC admits it authorized Watts to keep the rental car after April 17, 2023, but denies the remaining allegations in this Paragraph.

30. On or about April 20, 2023, Liberty Mutual deemed the Watts Vehicle a total loss.

ANSWER: LMPIC admits the allegations in this Paragraph.

31. Despite its earlier assurance to the contrary, and the explicit language of the Watts Policy, Liberty Mutual texted Diane Watts (seemingly using a form text message) in the early morning of April 20, 2023, upon deeming the Watts Vehicle a total loss, to advise that the Watts Vehicle had been totaled and that she would be permitted to remain in the rental vehicle obtained from Enterprise only for one week until April 27, 2023. The text message provided as follows:

> Good morning! I wanted to let you know your vehicle has been declared a total loss. ... Your settlement amount after deductible is $4,125.75. I have extended your rental 7 days; **<u>your last day of rental will be 4/27/23</u>**.

Liberty Mutual 4/20/23 Text Message, attached as Exhibit "D" (emphasis added).

ANSWER: LMPIC admits that it sent the quoted text message without the emphasis, but denies the remainder of the allegations in this Paragraph.

32. Later that same day, Liberty Mutual contacted the Watts Plaintiffs by email (again seemingly using a form email template), advising the Watts Vehicle had been totaled and that their Transportation Expenses Coverage would be terminated in just seven days:

> As your Liberty Claims Representative, my goal is to make your claims experience as easy and worry-free as possible. I'm writing you now to share the latest information about your claim.
>
> Based on our review, your vehicle was determined to be a 'total loss.' This means we will issue a payment based on its pre-accident value (see table below).
>
> To ensure prompt payment, this letter covers all your claim settlement options and next steps, including:
> • How we determined your payment
> • How to receive prompt payment with completion of paperwork
> • Management of the rental car
> …
> **Additional Information to Know**
>
> **Length of Rental Coverage** - We will continue to pay for your rental car until 04/27/2023. <u>**After this date, payment for the rental vehicle will be your responsibility**</u>. However, you're welcome to stay in the rental as long as needed with our reduced rates.

Liberty Mutual 4/20/23 Email, attached as Exhibit "E" (emphasis in original and added).

ANSWER: LMPIC admits that it sent the quoted email without the emphasis, but denies the remainder of the allegations in this Paragraph.

33. Liberty Mutual's form communications to the Watts Plaintiffs on April 20, 2023 were clear: their Transportation Expenses Coverage benefits were arbitrarily being terminated in seven days - on April 27, 2023.

ANSWER: LMPIC admits that it covered the Watts' rental vehicle through April 27, 2023, but denies the remainder of the allegations in this Paragraph. Further answering, LMPIC states that it provided Watts with rental car coverage for a total of twelve, not seven, days from April 16-27, 2023.

34. In providing the Watts Plaintiffs with only seven additional days of coverage, Liberty Mutual never provided the Watts Plaintiffs a written explanation of the specific basis in their policy, in relation to the facts, for terminating their Transportation Expenses Coverage benefits on April 27, 2023.

ANSWER: LMPIC denies the allegations in this Paragraph.

35. Diane Watts returned the rental vehicle she obtained from Enterprise on April 29, 2023 - consistent with the verbal instructions that Liberty Mutual provided her on or about April 17, 2023.

ANSWER: LMPIC admits that Watts returned the rental vehicle on or about April 29, 2023, but denies the remainder of the allegations in this Paragraph.

36. Nonetheless, Enterprise advised Diane Watts that the rental vehicle was due back two days earlier, on April 27, 2023, and as a result Diane Watts was forced to pay Enterprise approximately $77 out of pocket, representing two days of rental coverage.

ANSWER: LMPIC is without sufficient information to admit or deny the allegations in this Paragraph.

37. At the time Liberty Mutual terminated the Watts Plaintiffs' Transportation Expenses Coverage benefits, there remained an additional 18 days (at the maximum daily rate of $30 per day), and $540 in available coverage under the express terms of the insurance contract as detailed above.

ANSWER: LMPIC denies the allegations in this Paragraph. Further answering, LMPIC states that the referenced benefits expired after a reasonable time for Watts to replace the vehicle in question, not eighteen days after April 27, 2023.

38. At the time Liberty Mutual terminated the Watts Plaintiffs' Transportation Expenses Coverage benefits, the amount of time reasonably required to replace the Watts Vehicle had not passed, and the Watts Plaintiffs had not received the full settlement value (as determined by Liberty Mutual) of the Watts Vehicle and had not replaced their vehicle.

ANSWER: LMPIC denies the allegations in this Paragraph.

39. The Watts Plaintiffs were not reasonably able to replace their vehicle for several weeks after Liberty Mutual terminated their Transportation Expenses Coverage benefits.

ANSWER: LMPIC denies the allegations in this Paragraph.

40. The Watts Policy does not allow for the termination of an insured's Transportation Expenses Coverage benefits in the event of a total loss earlier than thirty (30) days (the approximate amount of time that is equivalent to the Policy maximum of $900 of Transportation Expenses Coverage), unless and until a specific finding is made by Liberty Mutual that the time "reasonably required to ... replace" an insured's vehicle is less than that time.

ANSWER: LMPIC denies the allegations in this Paragraph.

41. Prior to terminating the Watts Plaintiffs' Transportation Expenses Coverage benefits, Liberty Mutual failed to make any specific determination or finding regarding the time

period that the Watts Plaintiffs reasonably required to replace their vehicle. In other words, Liberty Mutual terminated the Watts Plaintiffs' Transportation Expenses Coverage benefits without conducting any investigation into whether the Watts Plaintiffs were afforded the time reasonably required to replace their vehicle.

ANSWER: LMPIC denies the allegations in this Paragraph.

42. Liberty Mutual terminated the Watts Plaintiffs' Transportation Expenses Coverage benefits before the Watts Plaintiffs had a reasonable opportunity to locate, purchase, and/or lease a replacement vehicle of like kind and quality.

ANSWER: LMPIC admits the benefits at issue were tied to the replacement of the loss vehicle with one of like kind and quality, but denies the remaining allegations in this Paragraph.

43. Liberty Mutual's unequivocal statement on April 20,2023, that the Watts Plaintiffs would not be able to recover any benefits under their policy's Transportation Expenses Coverage after April 27, 2023, was unfounded, without any reasonable basis in fact, and was in breach of the terms of its contract.

ANSWER: LMPIC denies the allegations in this Paragraph.

44. The Watts Policy does not authorize Liberty Mutual to arbitrarily terminate an insured's Transportation Expenses benefits seven days after determining the insured vehicle is a total loss or notifying an insured that their vehicle is a total loss.

ANSWER: LMPIC denies the allegations in this Paragraph.

45. Because Liberty Mutual failed to conduct a good faith investigation and make a determination into the amount of time that the Watts Plaintiffs reasonably required to replace their

vehicle, the Watts Policy contractually prohibited Liberty Mutual from limiting the Watts Plaintiffs' benefits to a time period of less than 30 days.

ANSWER: LMPIC denies the allegations in this Paragraph.

46. Liberty Mutual issued payment in the amount of $360 for twelve (12) days of rental at $30 per day, for the time period beginning on April 16, 2023, and ending on April 27, 2023.

ANSWER: LMPIC admits the allegations in this Paragraph.

47. As a result of Liberty Mutual's breach of contract, the Watts Plaintiffs are entitled to recover the remaining $540 of Transportation Expenses under their policy.

ANSWER: LMPIC denies the allegations in this Paragraph.

48. On or about January 26, 2022, there was in full force and effect an automobile insurance policy, no. AOV-243-828039-40 1 4, between Pizzitola and Liberty Mutual (the "Pizzitola Policy"). *See* Pizzitola Policy Declarations, attached as Exhibit "F."[4]

ANSWER: LMPIC admits that it issued an automobile insurance policy, number AOV24382803940, to Pizzitola (the "Pizzitola Policy"), which was in effect on January 26, 2022. As for footnote 4, LMPIC is without sufficient information to admit or deny the allegations of footnote 4, and they are therefore denied.

49. The Pizzitola Policy provides, among other things, insurance coverage for the use of Pizzitola's 2018 Nissan Kicks (the "Pizzitola Vehicle").

ANSWER: LMPIC admits the allegations of this Paragraph.

50. The Pizzitola Policy, in addition to other insurance benefits, contractually obligated Liberty Mutual to provide Pizzitola with coverage to rent a replacement vehicle in the event his

[4] Pizzitola possesses a copy of the declaration pages from his Liberty Mutual automobile insurance policy for the policy period beginning on April 22, 2021 and ending on April 22, 2022. The loss giving rise to Pizzitola's claim occurred on January 26, 2022. Plaintiff Pizzitola will request in discovery that Liberty Mutual provide a certified copy of the complete Pizzitola Policy in effect at the time of his loss.

vehicle was damaged in an accident. Just as in the Watts Policy, these benefits are referred to as Transportation Expenses Coverage. *See* Pizzitola Policy at Declarations p. 3 of 4, attached as Exhibit "F."

ANSWER: LMPIC admits that the Pizzitola Policy included coverage for "Transportation Expenses" in the event of a loss. The terms of such coverage are written, and therefore, speak for themselves. LMPIC denies the remainder of the allegations in this Paragraph.

51. Just as with the Watts Policy, the Pizzitola Policy's Transportation Expenses Coverage provides as follows:

> **OPTIONAL TRANSPORTATION EXPENSES COVERAGE**
>
> When there is a loss to a **your covered auto** described in the Schedule or in the Declarations for which a specific premium charge indicates that Optional Transportation Expenses Coverage is afforded, we will pay, without application of deductible, the daily amount shown on the policy Declarations Page to a maximum of 30 days for:
>
> 1. Additional transportation expenses incurred by you for renting a substitute auto.
>
> 2. Additional transportation expenses incurred by you for renting a substitute auto due to a total loss of **your covered auto**.
>
> 3. Loss of use expenses for which you become legally responsible in the event of loss to a **non-owned auto**.
>
> All coverage provided by this endorsement shall only apply once for any single occurrence. Our payment will be limited to that period of time *<u>reasonably required to repair or replace</u>* **your covered auto** or the **non-owned auto**.

See Pizzitola Policy at Declarations p. 4 of 4, attached as Exhibit "F;" Form AS 2207 02 05, attached as Exhibit "G" (emphasis original and added).[5]

ANSWER: LMPIC denies that the quoted language appears in the Pizzitola Policy. The Optional Transportation Expenses Coverage included with the Pizzitola Policy states, in relevant part:

> **When there is a loss to your covered auto described in the Schedule or in the Declarations for which a specific premium charge indicates that Optional Transportation Expenses Coverage is afforded, we will pay, without application of deductible, the amount shown on the policy Declarations Page to a maximum of 30 days for:**
>
> **1. Additional transportation expenses incurred by you for renting a substitute auto.**
>
> **2. Additional transportation expenses incurred by you for renting a substitute auto due to a total loss of your covered auto.**
>
> **3. Loss of use expenses for which you become legally responsible in the event of loss to a non-owned auto.**
>
> **All coverage provided by this endorsement shall only apply once for any single occurrence. Our payment will be limited to that period of time reasonably required to repair or replace your covered auto or the non-owned auto.**

As for footnote 5, LMPIC admits that the Watts Policy included Optional Transportation Expenses Coverage Form AS 2225 06 05 and the Pizzitola Policy included Optional Transportation Expenses Coverage form is AS 2207 02 05, but denies that the form language is identical.

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[5] While the Transportation Expenses Coverage form number for the Watts Policy is AS 2225 06 05, and the Transportation Expenses Coverage form number for the Pizzitola Policy is AS 2207 02 05, the relevant and operative language impacting Plaintiffs' Transportation Expenses Coverage benefits is identical.

52. The Pizzitola Policy's declarations page sets forth the length of time Transportation Expenses Coverage is available, and the maximum benefit recoverable:

Optional Coverages

Transportation Expenses	$30 Per Day
	$900 Per Accident

See Pizzitola Policy at Declarations p. 3 of 4, attached as Exhibit "F." The maximum allowed amount of $900 constitutes thirty (30) days of Transportation Expenses Coverage at the "Daily Limit" of $30 (i.e., $900 / $30 = 30 days).

ANSWER: LMPIC admits that the quoted language appears in the Pizzitola Policy and that the Pizzitola Policy provided coverage of $30 per day with a maximum coverage of $900.

53. On or about January 26, 2022, Pizzitola was involved in an automobile collision.

ANSWER: LMPIC admits the allegations of this Paragraph.

54. As a result of the collision, the Pizzitola Vehicle suffered physical damage.

ANSWER: LMPIC admits the allegations of this Paragraph.

55. As a result of the damage that the Pizzitola Vehicle suffered in the collision, the Pizzitola Vehicle was withdrawn from use for more than 24 hours.

ANSWER: LMPIC admits that the Pizzitola Vehicle was declared a total loss, but denies the remainder of this Paragraph.

56. As a result of the collision, the Pizzitola Vehicle suffered significant damage, was no longer usable after the date of the collision, and was ultimately deemed a total loss by Liberty Mutual.

ANSWER: LMPIC admits that the Watts Vehicle suffered significant damage and was declared a total loss, but denies the remainder of this Paragraph.

57. Pizzitola submitted a claim to Liberty Mutual on January 26, 2022 - the day of the accident.

ANSWER: LMPIC admits the allegations of this Paragraph.

58. On or about January 26,2022, Pizzitola availed himself of the benefits provided by his policy's Transportation Expenses Coverage and rented an automobile from Enterprise.

ANSWER: LMPIC admits the allegations of this Paragraph.

59. On or about February 2, 2022, Liberty Mutual determined the Pizzitola Vehicle to be a total loss and provided him with a vehicle valuation report. See Liberty Mutual Emails, pp. 7-9, attached as Exhibit "H."

ANSWER: LMPIC admits that it declared Pizzitola's Vehicle a total loss on February 1, 2022 and that it provided Pizzitola with the valuation report.

60. At that time, Liberty Mutual set a termination date of February 8, 2023, for Pizzitola's Transportation Expenses Coverage claim, after which time Liberty Mutual refused to cover any expenses he incurred for a rental vehicle.

ANSWER: LMPIC admits that it advised Pizzitola on February 1, 2022 that the last day of his vehicle rental was going to be February 8, 2022, but denies the remainder of the allegajurytions in this Paragraph.

61. On February 3, 2022, Pizzitola expressed concern to Liberty Mutual over his ability to get a replacement vehicle. *See* Liberty Mutual Emails, pp. 4-6, attached as Exhibit "H."

ANSWER: LMPIC admits the allegations of this Paragraph.

62. Later that evening, Pizzitola wrote to Liberty Mutual questioning Defendants' valuation of the Pizzitola Vehicle, noting that "every penny matters because I'm going to have to get a 2nd job on top of my full time job to be able to afford the monthly payments." See Liberty Mutual Emails, pp. 4-5, attached as Exhibit "H."

ANSWER: LMPIC admits that the quoted sentence appears in Exhibit H.

63. On February 4, 2023, Pizzitola requested an extension of the Transportation Expenses Coverage. *See* Liberty Mutual Emails, pp. 3-4, attached as Exhibit "H."

ANSWER: LMPIC admits that on February 4, 2022, Pizzitola requested "an extension of the rental."

64. On February 7, 2023, Pizzitola again requested an extension of his Transportation Expenses Coverage:

> Can you please extend the rental or do I need to call Enterprise to extend it under my claim, because I will not have a new vehicle by tomorrow.

See Liberty Mutual Emails, p. 3, attached as Exhibit "H."

ANSWER: LMPIC admits that the quoted language appears in Exhibit H, but was sent on February 7, 2022.

65. On February 8, 2023, Liberty Mutual rejected Pizzitola's request to extend his Transportation Expenses Coverage:

> Morning sir, I totally get it I would do the same thing. In regards to rental I am unable to extend it out any more. The last day is today 2/8 if you would like to keep it past today that is fine it will just be an out of pocket expenses from this point forth. If you are deciding

> to keep it please make sure you reach out to Enterprise to make them aware. Hope you have a great day sir.

See Liberty Mutual Emails, p. 2, attached as Exhibit "H."

ANSWER: LMPIC admits that the quoted language appears in Exhibit H, but was sent on February 8, 2022.

66. Pizzitola brought to Liberty Mutual's attention that he had only used 13 days of his Transportation Expenses Coverage, leaving a significant number of rental days still available under his policy:

> Why can't the rental be extended under Liberty Mutual? I have \$900 in rental coverage at \$30 a day = 30 days of rental coverage. It's only been 13 days. I don't have the financial ability to pay out of pocket yet alone a car to replace the rental.

See Liberty Mutual Emails, pp. 1-2, attached as Exhibit "H."

ANSWER: LMPIC admits that the quoted language appears in Exhibit H, but was sent on February 8, 2022. LMPIC denies the remainder of the allegations in this Paragraph. Further answering, LMPIC states that the referenced benefits expired after a reasonable time for Pizzitola to replace the vehicle in question with one of like kind and quality, not a significant number of days after February 8, 2022.

67. Liberty Mutual responded to Pizzitola's inquiry, revealing that their *standard operating procedure* is to breach, ignore, and deviate from their policy language by refusing to make an actual determination of the amount of time reasonably required to replace a vehicle once deemed a total loss:

> **Rental are managed, and you are given 7 days from the day your vehicle is deemed a total loss to be covered by us. Your vehicle was deemed a total loss on 2/1/23 which makes today the 7th day. <u>That is standard operating procedure for all total loss claims sir</u>.** You will be covered through the end of business day today sir, anything after that will have to be out of pocket.

See Liberty Mutual Emails, p. 1, attached as Exhibit "H" (emphasis added).

ANSWER: LMPIC admits that the quoted language appears in Exhibit H without the emphasis, but was sent on February 8, 2022. LMPIC denies the remainder of the allegations in this Paragraph.

68. Liberty Mutual's communication to Pizzitola was clear: his Transportation Expenses Coverage benefits were being terminated as of February 8, 2023.

ANSWER: LMPIC admits that it covered the Pizzitola's rental vehicle through February 8, 2022, but denies the remainder of the allegations in this Paragraph.

69. Liberty Mutual never provided Pizzitola with a written explanation of the specific basis in the Pizzitola Policy, in relation to the facts, for terminating his Transportation Expenses Coverage benefits on February 8, 2023.

ANSWER: LMPIC denies the allegations in this Paragraph.

70. Pizzitola returned his rental vehicle obtained from Enterprise on February 9, 2023, and as a result paid out-of-pocket for the additional day of rental.

ANSWER: LMPIC admits that Pizzitola returned the rental vehicle on February 9, 2022 and was charged $30 for the additional day of rental.

71. At the time Liberty Mutual terminated Pizzitola's Transportation Expenses Coverage, there remained an additional 17 days, and $510 in available coverage under the contract for which Pizzitola paid valuable consideration in exchange for the benefits guaranteed under the agreement.

ANSWER: LMPIC denies the allegations in this Paragraph. Further answering, LMPIC states that the referenced benefits expired after a reasonable time for Pizzitola to replace the vehicle in question, not seventeen days after February 8, 2022.

72. At the time Liberty Mutual terminated Pizzitola's Transportation Expenses Coverage benefits, the amount of time reasonably required to replace the Pizzitola Vehicle had not passed, Pizzitola had not secured a replacement vehicle, and he had not received the full settlement value of the Pizzitola Vehicle.

ANSWER: LMPIC denies the allegations in this Paragraph.

73. The Pizzitola Policy does not allow for the termination of an insured's Transportation Expenses Coverage benefits in the event of a total loss earlier than thirty (30) days (the approximate amount of time that is equivalent to the Policy maximum of $900 of Transportation Expenses Coverage), unless and until a specific finding is made by Liberty Mutual that the time "reasonably required to ... replace" an insured's vehicle is less than that time.

ANSWER: LMPIC denies the allegations in this Paragraph.

74. Prior to terminating Pizzitola's Transportation Expenses Coverage benefits, Liberty Mutual failed to make any specific finding regarding what time period he reasonably required to replace the Pizzitola Vehicle. In other words, Liberty Mutual terminated Pizzitola's Transportation Expenses Coverage benefits without conducting any investigation into whether he was afforded the time reasonably required to replace his vehicle.

ANSWER: LMPIC denies the allegations in this Paragraph.

75. Liberty Mutual terminated Pizzitola's Transportation Expenses Coverage benefits before he had a reasonable opportunity to locate, purchase, and/or lease a replacement vehicle of like kind and quality.

ANSWER: LMPIC denies the allegations in this Paragraph.

76. Liberty Mutual's unequivocal statement on February 8, 2023, that Pizzitola would not be able to recover any benefits under the Policy's Transportation Expenses Coverage after that

day, was unfounded, without any reasonable basis in fact, and was in breach of the terms of its contract with Pizzitola.

ANSWER: LMPIC denies the allegations in this Paragraph.

77. The Pizzitola Policy does not authorize Liberty Mutual to arbitrarily terminate an insured's Transportation Expenses Coverage benefits seven days after determining the insured vehicle is a total loss or notifying an insured that their vehicle is a total loss.

ANSWER: LMPIC denies the allegations in this Paragraph.

78. Because Liberty Mutual failed to conduct a good faith investigation and make a determination into the amount of time that Pizzitola reasonably required to replace his vehicle, the Pizzitola Policy contractually prohibited Liberty Mutual from limiting his benefits to a time period less than 30 days.

ANSWER: LMPIC denies the allegations in this Paragraph.

79. Liberty Mutual issued payment in the amount of $390 for thirteen (13) days of rental at $30 per day, for the time period beginning on January 27, 2023, and ending on February 8, 2023.

ANSWER: LMPIC denies the allegations in this Paragraph. By way of further response, LMPIC issued payment in the amount of $420 to Pizzitola for the rental vehicle.

80. As a result of Defendants' breach, Pizzitola is entitled to recover the remaining $510 of Transportation Expenses under the Policy.

ANSWER: LMPIC denies the allegations in this Paragraph.

81. Liberty Mutual's conduct toward Plaintiffs is not unique but is uniform across members of the proposed Class and Subclasses defined below.

ANSWER: LMPIC denies the allegations in this Paragraph.

82. Liberty Mutual wrote and/or issued automobile insurance policies within Missouri, Illinois, and throughout the country, which included a Transportation Expenses Coverage provision in substantially the same form as the one in the Watts Policy and Pizzitola Policy (the "Policies").

ANSWER: LMPIC admits that Plaintiffs were insured under automobile policies issued by LMPIC which contained Transportation Expenses Coverage, but denies the remainder of the allegations in this Paragraph.

83. Liberty Mutual processed, adjusted, and handled Class members' Transportation Expenses Coverage claims under the Policies, including the Policies issued to the Watts and Pizzitola, in a substantially similar manner: by prematurely terminating Transportation Expenses Coverage without making any determination as to the amount of time reasonably required to obtain a substitute vehicle.

ANSWER: LMPIC denies the allegations in this Paragraph.

84. In fact, Liberty Mutual has a policy and/or practice of terminating Transportation Expenses Coverage benefits in a predetermined number of days following its determination that an insured vehicle is a total loss. It is Liberty Mutual's "standard operating procedure" to do so.

ANSWER: LMPIC denies the allegations in this Paragraph.

85. To that effect, Liberty Mutual provides manuals, instructions, direction, and/or training to employees, agents, and/or other personnel regarding the policies and procedures to be used in processing and adjusting of total loss claims, and handling an insured's Transportation Expenses Coverage claim arising under automobile insurance policies.

ANSWER: LMPIC admits that it has guidelines for handing total loss claims, but denies the remainder of the allegations in this Paragraph.

86. This uniform conduct by Liberty Mutual is a systematic breach of its Policies issued to Plaintiffs and the substantially similar Policies issued to members of the proposed Class and Subclasses that require Liberty Mutual to pay Transportation Expenses Coverage for 30 days, or until it determines that an earlier period of time was sufficient to reasonably replace a covered vehicle.

ANSWER: LMPIC denies the allegations in this Paragraph.

87. As a result of its breaches as set forth in detail herein, Plaintiffs and members of the Class and Subclasses defined below have been uniformly injured when they received less payment for Transportation Expenses Coverage than Liberty Mutual was contractually obligated to provide.

ANSWER: LMPIC denies the allegations in this Paragraph.

88. This action is brought individually and as a class action pursuant to Federal Rule of Civil Procedure 23.

ANSWER: LMPIC admits Plaintiffs purport to bring this action on behalf of themselves and a putative class of LMPIC's first-party insureds, but denies that this matter can or should be certified as a class action.

89. Plaintiffs seek to represent all members of the following Class:

> All insureds in the United States who have been policyholders of automobile insurance policies sold by Liberty Mutual that included Optional Transportation Expenses Coverage, who, within the applicable statute of limitations, have made a claim to Liberty Mutual for Transportation Expenses Coverage as a result of a total loss of a vehicle damaged in a covered loss, and as to whom Liberty Mutual limited the amount of time such coverage is provided to a period of time less than thirty (30) days (the "Class").

ANSWER: LMPIC admits Plaintiffs purport to bring this action on behalf of themselves and a putative class of LMPIC's first-party insureds, but denies that this matter can or should be certified as a class action.

90. Alternatively, the Watts Plaintiffs and Pizzitola seek to represent all members of the following Subclasses:

> The Watts Plaintiffs:
>
> All insureds who are members of the Class and who resided in Missouri at the time their vehicles suffered damage that resulted in Liberty Mutual determining their vehicles were a total loss (the "Missouri Subclass").
>
> Pizzitola:
>
> All insureds who are members of the Class and who resided in Illinois at the time their vehicles suffered damaged that resulted in Liberty Mutual determining their vehicles were a total loss (the "Illinois Subclass").

ANSWER: LMPIC admits Plaintiffs purport to bring this action on behalf of themselves and putative subclasses of LMPIC's first-party insureds, but denies that this matter can or should be certified as a class action.

91. Excluded from the Class and Subclasses are Liberty Mutual and each of Defendants' parents, subsidiaries, authorized distributors and affiliates, and their legal representatives, heirs, successors, and assigns of any excluded person.

ANSWER: LMPIC admits Plaintiffs purport to bring this action on behalf of themselves and putative subclasses of LMPIC's first-party insureds, but denies that this matter can or should be certified as a class action.

92. Plaintiffs reserve the right to amend the Class and Subclass definitions above and/or to identify additional subclasses upon completion of discovery and/or class certification, or the identification and joinder of additional class representatives.

ANSWER: This Paragraph states a legal conclusion to which no response is required and is accordingly denied.

93. The Class and Subclasses are each so numerous that joinder of all members is impracticable. Although the exact number and identities of Class and Subclass members are presently unknown, the number can easily be ascertained from Liberty' Mutual's records, databases, and appropriate discovery.

ANSWER: LMPIC denies the allegations in this Paragraph.

94. There are questions of fact and law which are common to the Class and Subclasses that predominate over any questions affecting only individual Class and Subclass members. Among the common questions of law and facts are the following, without limitation:

a. Whether Liberty Mutual had a policy and practice of selling automobile insurance policies to insureds with Transportation Expenses Coverage as set forth in the Policies, without disclosing to Plaintiffs and the members of the Class and Subclasses that Liberty Mutual will terminate Transportation Expenses Coverage before the expiration of a thirty (30) day period, and without conducting an analysis or making a finding as to the time period reasonably required to replace the covered vehicle, as required by the policies;

b. Whether Liberty Mutual had a policy and practice of ;selling automobile insurance policies to insureds with Transportation Expenses Coverage as set forth in the Policies without disclosing to Plaintiffs and members of the Class and Subclasses that Liberty Mutual would prematurely terminate Transportation Expenses Coverage benefits based upon terms not found in the Policies, if the insured's vehicle was a total loss, and without conducing an analysis or making a finding as to what time period is reasonably required to replace the covered vehicle, as mandated by the Policies;

c. Whether Liberty Mutual's policy and practice of terminating Transportation Expenses Coverage benefits earlier than thirty (30) days without conducing an: analysis or making a finding as to what time period is reasonably required to replace the covered vehicle, is a material reduction of benefits provided by the Policies, which is imposed without any basis;

d. Whether Liberty Mutual's policy and practice of terminating Transportation Expenses Coverage benefits earlier than thirty (30) days without conducing an analysis or making a finding as to what time period is reasonably required to replace the covered vehicle, is a breach of the Policies;

e. Whether Liberty Mutual had a policy and practice of misrepresenting pertinent facts or policies or contract provisions related to Transportation Expenses Coverage benefits;

f. Whether Liberty Mutual failed to adopt and implement reasonable standards for the prompt investigation of claims; and

g. Whether Liberty Mutual had a policy and practice of failing to promptly provide a reasonable explanation of the basis in the Policies in relation to the facts or applicable law for the denial of a claim.

ANSWER: LMPIC denies the allegations in this Paragraph.

95. Plaintiffs' claims are typical of the claims of the other members of the Class and Subclasses inasmuch as all such claims arise out of Liberty Mutual's prior and current standard policies and practices relating to Transportation Expenses Coverage limitations found in the

applicable Policies, and Plaintiffs will assert and pursue the same claims as other members of the Class and Subclasses.

ANSWER: LMPIC denies the allegations in this Paragraph.

96. Plaintiffs have no interests antagonistic to the interests of the other members of the Class or Subclasses. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions and insurance litigation. Accordingly, Plaintiffs are adequate representative of, and will fairly and adequately protect the interests of the Class and Subclasses as set forth herein.

ANSWER: LMPIC denies the allegations in this Paragraph.

97. Class certification is appropriate because Liberty Mutual has acted or refused to act on grounds generally applicable to the Class and Subclasses, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

ANSWER: LMPIC denies the allegations in this Paragraph.

98. Class certification is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, the vast majority of Class and Subclass members likely would not be in a position to litigate their claims individually and would have no effective remedy at law through which to vindicate their claims against Defendants and be made whole. Class treatment of predominating common questions of law and fact is also superior to multiple individual actions, in that class treatment will conserve the resources of the courts and the litigants and will further the efficient adjudication of the claims of the Class ana Subclasses.

ANSWER: LMPIC denies the allegations in this Paragraph.

COUNT I
BREACH OF CONTRACT
Brought by Plaintiffs, individually and on behalf of the Class and/or Subclasses

99. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth here.

ANSWER: LMPIC incorporates its answers to Plaintiffs' allegations in the preceding paragraphs as if fully set forth herein.

100. Plaintiffs and Class members paid Liberty Mutual premiums as consideration for issuing the Policies.

ANSWER: Assuming "premium" means insurance premiums, LMPIC admits the allegations of this Paragraph. Otherwise, LMPIC denies the allegations of this Paragraph.

101. The Policies constituted valid contracts and were in full force and effect at the time of the motor vehicle accidents involving Plaintiffs and Class members.

ANSWER: LMPIC admits Plaintiffs were parties to insurance contracts with LMPIC.

102. The Policies imposed upon Liberty Mutual an agreement and a duty to use good faith and apply fair dealing toward Plaintiffs and the Class, its insureds, in handling all claims made under the Policies.

ANSWER: This Paragraph states a legal conclusion to which no response is required and is accordingly denied.

103. Plaintiffs and Class members have satisfied all their obligations under the Policies, including, but not limited to, all conditions precedent and all conditions subsequent.

ANSWER: LMPIC denies the allegations of this Paragraph.

104. Liberty Mutual materially breached the obligations under the Policies and the law by:

a. Failing to properly handle the claims of Plaintiffs and Class members;

b. Failing to objectively and fairly evaluate the claims of Plaintiffs and members of the Class;

c. Concocting, creating, and imposing purported policy limitations without a reasonable basis in the Policy, fact or law;

d. Concocting, creating, and imposing an unreasonable and self-serving interpretation of the Policies in order to wrongfully withhold and/or reduce benefits due to Plaintiffs and Class members under the applicable Policies;

e. Using claims handling techniques designed to systematically deny and/or reduce payments and prevent claim evaluations;

f. Denying, limiting, and/or reducing the coverage provided by the Policies without satisfying the necessary conditions precedent to impose such denials, limitations, and/or reductions; and

g. Denying, limiting, and/or reducing the claims of Plaintiffs and Class members without any reasonable basis in fact or law; and/or otherwise unreasonably and unfairly withholding benefits due under the Policies to Plaintiffs and Class members.

ANSWER: LMPIC denies the allegations of this Paragraph.

105. The Policies impose upon Liberty Mutual the obligation to determine the amount of time insureds reasonably require to replace their vehicles prior to terminating and/or limiting their Transportation Expenses Coverage benefits.

ANSWER: LMPIC denies the allegations of this Paragraph.

106. Liberty Mutual materially breached its obligations under the Policies by, without limitation, informing their insureds that their Transportation Expenses Coverage benefits would

be terminated after a total loss without making a determination of the amount of time reasonably required to replace those covered vehicles.

ANSWER: LMPIC denies the allegations of this Paragraph.

107. As a direct and proximate result of the foregoing acts and/or omissions of Liberty Mutual, Plaintiffs and Class (and Subclass) members were damaged in an amount to be determined at trial.

ANSWER: LMPIC denies the allegations of this Paragraph.

COUNT II
VEXATIOUS CONDUCT, Mo. Rev. Stat. § 375.420
By the Watts Plaintiffs, individually and on behalf of the Missouri Subclass

108. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth here.

ANSWER: LMPIC incorporates its answers to Plaintiffs' allegations in the preceding paragraphs as if fully set forth herein.

109. Liberty Mutual failed to make a determination of the amount of time the Watts Plaintiffs and Missouri Subclass members reasonably required to replace their totaled vehicles prior to terminating benefits available to them under the Transportation Expenses Coverage provision.

ANSWER: LMPIC denies the allegations of this Paragraph.

110. Liberty Mutual's application of the provisions of Transportation Expenses Coverage found in the Policies is contrary to the express terms of the Policies.

ANSWER: LMPIC denies the allegations of this Paragraph. Further answering, LMPIC states the policies at issue do not set forth an express amount of time for the benefit at issue and leave that to the individual circumstances.

111. Liberty Mutual misrepresented and failed to disclose the coverage it offered to the Watts Plaintiffs and Missouri Subclass members through the Transportation Expenses Coverage provision.

ANSWER: LMPIC denies the allegations of this Paragraph.

112. Liberty Mutual terminated benefits owed to the Watts Plaintiffs and Missouri Subclass members purportedly pursuant to the Transportation Expenses Coverage provision without conducting a reasonable investigation into the amount of time required to replace the insured vehicles.

ANSWER: LMPIC denies the allegations of this Paragraph.

113. Liberty Mutual refused to issue payment to the Watts Plaintiffs and Missouri Subclass members owed pursuant to the Transportation Expenses Coverage provision.

ANSWER: LMPIC denies the allegations of this Paragraph.

114. Liberty Mutual lacked reasonable or probable cause or excuse to withhold benefits owed to the Watts Plaintiffs and Missouri Subclass members pursuant to the Transportation Expenses Coverage provision.

ANSWER: LMPIC denies the allegations of this Paragraph.

115. As a result of the above conduct, the Watts Plaintiffs and Missouri Subclass members are entitled to recover attorneys' fees, interest, and additional damages of 20% of the first $1,500 of loss and 10% of the amount of loss in excess of $1,500. *See* Mo. Rev. Stat. § 375.420.

ANSWER: LMPIC denies the allegations of this Paragraph.

COUNT III
VIOLATION OF § 155 ILLINOIS INSURANCE CODE
By Plaintiff Adam Pizzitola, individually and on behalf of the Illinois Subclass

116. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth here.

ANSWER: LMPIC incorporates its answers to Plaintiffs' allegations in the preceding paragraphs as if fully set forth herein.

117. At all times relevant to this Complaint, there has been in force in Illinois § 155 of the Illinois Insurance Code, which provides, in pertinent part:

> (1) In any action by or against a company wherein there is in issue the liability of a company on a policy or policies of insurance or the amount of the loss payable thereunder, or for an unreasonable delay in settling a claim, and it appears to the court that such action or delay is vexatious and unreasonable, the court may allow as part of the taxable costs in the action reasonable attorney fees, other costs, plus an amount not to exceed any one of the following amounts:
>
> (a) 60% of the amount which the court or jury finds such party is entitled to recover against the company, exclusive of all costs;
>
> (b) $60,000;
>
> (c) the excess of the amount which the court or jury finds such party is entitled to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to the action.

215ILCS 5/155.

ANSWER: This Paragraph states a legal conclusion to which no response is required and is accordingly denied.

118. Pizzitola and the Illinois Subclass members are entitled to an award under § 155 of the Illinois Insurance Code as a result of Liberty Mutual engaging in the following vexatious and unreasonable conduct:

a. Failing to make a determination of the amount of time Pizzitola and the Illinois Subclass members reasonably required to replace their totaled vehicles prior to terminating benefits available to them under the Transportation Expenses Coverage;

b. Applying the provisions of Transportation Expenses Coverage found in the Policies in a manner contrary to the express terms of the policies;

c. Misrepresenting the coverage available to Pizzitola and the Illinois Subclass members through the Transportation Expenses Coverage provision;

d. Failing to disclose the coverage available to Pizzitola and the Illinois Subclass members through the Transportation Expenses Coverage provision;

e. Terminating benefits owed to Pizzitola and the Illinois Subclass members purportedly pursuant to the Transportation Expenses Coverage provision without conducting a reasonable investigation into the amount of time required to replace the insured vehicles;

f. Refusing to issue payment to Pizzitola and the Illinois Subclass members owed pursuant to the Transportation Expenses Coverage provision, despite lacking reasonable or probable cause to withhold such payments; and

g. Failing to objectively evaluate the claims of Pizzitola and the Illinois Subclass members.

ANSWER: LMPIC denies the allegations of this Paragraph.

<u>COUNT IV</u>
DECLARATORY JUDGMENT
By Plaintiffs, individually and on behalf of the Class and Subclasses

119. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth here.

ANSWER: LMPIC incorporates its answers to Plaintiffs' allegations in the preceding paragraphs as if fully set forth herein.

120. By their terms, the Policies provide that Liberty Mutual "will pay, without application of deductible, the daily amount shown on the policy Declarations Page to a maximum of 30 days for ... [a]dditional transportation expenses incurred by you for renting a substitute auto due to a total loss of **your covered auto.**"

ANSWER: LMPIC admits that the quoted language appears in the Watts Policy.

121. The Policies dictate only one authorized justification for Liberty Mutual to limit rental benefits to less than the time provided for in the Policies' declarations pages: "Our payment will be limited to that period of time reasonably required to repair or replace **your covered auto** or the **non-owned auto**."

ANSWER: LMPIC admits that the quoted language appears in the Watts Policy and in the Pizzitola Policy, but denies the remainder of the allegations in this Paragraph.

122. The limitation contained in the Policies' Transportation Expenses Coverage provision imposes upon Liberty Mutual the obligation to investigate and make a determination as to the amount of time insureds reasonably require to replace their vehicles prior to terminating and/or limiting their rental benefits.

ANSWER: LMPIC denies the allegations of this Paragraph.

123. Liberty Mutual has a policy and/or practice of terminating an insured's Transportation Expenses Coverage benefits after a total loss to less than 30 days without determining the amount of time reasonably required to replace an insured vehicle as required under the Policies.

ANSWER: LMPIC denies the allegations of this Paragraph.

124. Plaintiffs continue to insure their vehicles with Liberty Mutual and continue to maintain and pay valuable consideration for the Transportation Expenses Coverage.

ANSWER: LMPIC admits that Plaintiffs are customers of LMPIC as of the date of the filing of this Answer.

125. An actual controversy exists because Plaintiffs paid a specific additional premium to receive the coverage afforded by the Transportation Expenses Coverage provision found in the Policies, and Liberty Mutual had adopted policies and/or procedures that deprive Plaintiffs (and the Class) of the benefits they purchased.

ANSWER: LMPIC denies the allegations of this Paragraph.

AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim upon which relief may be granted.

2. LMPIC's liability, if any, may be barred to the extent that Plaintiffs and/or any putative class members have not performed and/or complied with all of the obligations, conditions, and duties precedent and subsequent in the applicable policy(ies) or state regulations.

3. Some or all of Plaintiffs' claims, and/or the claims of some or all putative class members, are barred by the equitable doctrine of laches. Plaintiffs and/or some or all of the putative class members have negligently and unreasonably delayed in commencing a lawsuit against LMPIC. None of the putative class members have taken any action to assert a cause of action to date. LMPIC has been prejudiced by these delays.

4. Some or all of Plaintiffs' claims, and/or the claims of some or all putative class members, are barred by the failure to mitigate damages or minimize the loss.

5. This action may be barred, in whole or in part, by the doctrines of claim and/or issue preclusion, under which Plaintiffs and the putative class members may not relitigate issues or claims that have been decided against them in other litigation or individual resolutions of the claims.

6. Some or all of Plaintiffs' claims, and/or the claims of some or all putative class members, are barred in whole or in part to the extent doctrines such as ratification, estoppel, and/or unclean hands are determined to apply.

7. Many of the putative class members lack standing and/or any injury-in-fact to assert the claims for the relief sought on his or her behalf because LMPIC provided the benefits at issue for the amount of time, or more, needed to replace their totaled vehicles with a vehicle of like kind and quality.

8. Some of the claims of putative class members may be barred by accord and satisfaction, release, failure to include such a claim in a personal bankruptcy filing, judicial estoppel, and/or prior settlement as a result of submitting a dispute over the value of the insured's loss to binding appraisal or litigation.

9. LMPIC may have additional defenses that cannot now be articulated due to the generality of Plaintiffs' pleadings, the fact that no class has been certified, and discovery has not yet begun. Accordingly, LMPIC expressly reserves the right to supplement or amend the foregoing and to plead any and all additional defenses available under the law.

WHEREFORE, Defendant Liberty Mutual Personal Insurance Company requests that the Class Action Complaint be dismissed, judgment be entered in its favor and against Plaintiffs, and the Court award it such additional relief as appropriate, including their defense costs and attorney's fees.

Respectfully submitted,

Defendant Liberty Mutual Personal Insurance Company

/s/ Bridgitte E. Mott
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Date: February 2, 2024

CERTIFICATE OF SERVICE

I, Bridgitte E. Mott, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on February 2, 2024.

/s/ Bridgitte E. Mott
Bridgitte E. Mott