

Defendants, who have not registered as insurance agents or submitted the PCTG to the Insurance Department for rate review and approval. In addition, Defendants misrepresent the PCTG to be a form of “warranty,” but they fail to include the required disclosures under the Magnuson-Moss Warranty Act (“MMWA”), and thereby violate that Act if the PCTG is considered to be a “warranty” or “service contract” within the meaning of the MMWA. Regardless of its characterization, the PCTG, as marketed and sold by Defendants, is an unfair and deceptive act or practice.

2. This case is brought on behalf of all consumers who purchased the PCTG from any Pennsylvania car dealer during the period July 1, 2001 through the present. The PCTG is a written insurance agreement that, in consideration of a one-time premium payment, obligates Defendant Alexico to indemnify the purchaser for a period of three years against the happening of a fortuitous event: the theft of the purchaser’s vehicle. The payment of this premium only secures the coverage provided by the PCTG since the etching of the windows is completed on all vehicles before they are made available for sale to consumers. As insurance, the PCTG must be approved and regulated by the Pennsylvania Department of Insurance, and its seller must be licensed to sell and profit from its sale. None of these requirements is satisfied by the PCTG or Defendants.

3. Defendants have instead uniformly, affirmatively, and deceptively misrepresented the PCTG to consumers. On the face of the form written agreement entered into between Defendants and every consumer, the PCTG states the following: “the guarantee is not an insurance policy.” Defendants make this affirmative misrepresentation to deceive the consumer into drastically overpaying for a 3 year / \$3,000 insurance policy; and to conceal the PCTG’s existence from the regulation and oversight of the Pennsylvania Department of Insurance.

4. Although likely an illegal insurance product, Defendant Alexico Corporation identifies the PCTG as a “guarantee” or warranty. As a warranty, the sale of the PCTG remains unlawful as the Defendant dealerships have deceptively sold it to Pennsylvania consumers well in excess of the Pennsylvania Motor Vehicle Sales Finance Act’s (“MVSFA”) 100% mark-up limitation. Defendants are prohibited under the MVSFA to charge consumers “in excess of 100% of the cost to the dealers . . .” 69 P.S. § 610(14). Such conduct is defined as being “unfair, deceptive, fraudulent or illegal” and a *per se* violation of the MVSFA. *Id.* Defendants disregard this law, charging consumers several hundred percent over the dealers’ cost violating the MVSFA on each transaction to the detriment of Pennsylvania consumers.

5. The sale of the PCTG and the tactics employed by the Defendants to sell it to consumers are deceptive sales practices that violate the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.* (“UTPCPL”), together with the Pennsylvania Unfair Insurance Practices Act, 40 P.S. § 1171.5, *et seq.* (“UIPA”), and the Pennsylvania Motor Vehicle Sales Finance Act, 69 P.S. § 603, *et seq.* (“MVSFA”), along with common law unjust enrichment. Plaintiff further alleges that both Defendant Alexico Corporation and the dealership Defendants were aware that the selling of the PCTG was illegal in Pennsylvania, and that they intentionally and maliciously conspired to sell it nonetheless and defraud consumers.

6. Defendants are liable to Plaintiff and the putative class whether the PCTG is insurance or a warranty. This action seeks, *inter alia*, to terminate all practices complained of herein and refund Plaintiff and the members of the Class all premiums and charges they paid in connection with the PCTG; disgorge any unlawfully retained profits or commissions from the unauthorized sales of insurance, along with treble damages; disgorgement of unlawful profits under the common law of unjust enrichment; plus interest and all attorneys’ fees and costs. In

the alternative, should it be determined that the PCTG is not insurance, but a warranty, Plaintiff and members of the Class seek a refund of all monies paid in excess of the MVSA 100% mark-up limitation for the PCTG or statutory damages of \$100.00 provided by the UTPCPL, whichever is greater, plus interest and all attorneys' fees and costs.

PARTIES

7. Plaintiff, John A. Reichelt, is an adult individual who resides at 9 Milton Street, Feasterville, Pennsylvania 19053. On July 14, 2003, Plaintiff Reichelt entered into a retail installment sales contract with Defendant, Fred Beans Ford, Inc. d/b/a Fred Beans Ford Lincoln Mercury for the purchase of a 2000 Jeep Wrangler. Plaintiff Reichelt's retail buyer's order lists a pre-tax charge for "Security \$199.00." (Exhibit A). As part of the transaction, Plaintiff Reichelt also executed the standard "'Premium Care' Theft-Gard Registration Form," which outlines the terms of a \$3,000 indemnity benefit and affirmatively states that the PCTG is not an insurance policy. Furthermore, the line item on the Registration Form, in spite of Plaintiff Reichelt payment of \$199.00, for "Theft-Gard Sys. Price" intentionally contains only an "N/A." (Exhibit B).

8. Defendant, Alexico Corporation, upon information and belief, is a Kansas Corporation that regularly conducts business within Pennsylvania. Its principal place of business is located at 6201 College Blvd, Suite 300, Overland Park, KS 66211. Defendant, through its agents, servants, contractors and/or employees, illegally sold the PCTG to consumers.

9. Defendant Fred Beans Holdings, Inc. d/b/a Fred Beans Family of Dealerships, upon information and belief, is a Pennsylvania corporation with its principal place of business located at 3960 Airport Boulevard, Doylestown, Pennsylvania 18901. Defendant, through its agents, servants, contractors and/or employees, illegally sold the PCTG to consumers.

10. Defendant, Fred Beans Ford, Inc., d/b/a Fred Beans Ford Lincoln Mercury, upon information and belief, is a Pennsylvania corporation with its principal place of business located at Rte. 611 & Saw Mill Road, Doylestown, Pennsylvania 18901. Defendant, through its agents, servants, contractors and/or employees, illegally sold the PCTG to consumers.

11. Defendant, McCafferty Beans Holding Company, Inc., upon information and belief, is a Pennsylvania corporation with its principal place of business located at 1939 E. Lincoln Highway, Langhorne, Pennsylvania, 19047. Defendant, through its agents, servants, contractors and/or employees, illegally sold the PCTG to consumers.

ARBITRATION PROVISIONS

12. The standard “Registration Form” required for all purchases of PCTG contains the following arbitration agreement on the back of the form: “All disputes and controversies of every kind and nature between the parties arising out of or in connection with this contract, its subject matter or its negotiation, as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach of contract, breach of warranty, continuance or termination thereof or any claim alleging fraud in fact, fraud in the inducement, deceit or suppression of any material fact shall be submitted to binding arbitration pursuant to the provisions of the Federal Arbitration Act and according to the commercial rules of the American Arbitration Association then in effect in Kansas City, Missouri. Such arbitration may be initiated by either party by notice in writing to the other and to the American Arbitration Association. Each party shall bear his own arbitration costs and expenses.” (Exhibit B hereto, p. 2.) The provision does not contain a prohibition against classwide arbitration. A copy of the “Registration Form” is attached hereto as Exhibit B and incorporated herein by reference.

13. Plaintiff submits that this clause permits classwide arbitration to proceed according to the Supplementary Rules for Class Arbitrations and the Consumer Due Process Protocol of the AAA.

FACTUAL BACKGROUND

14. Beginning before 2001 Alexico developed, instituted and embarked on a common course of conduct and uniform practice of selling and administering the PCTG to consumers through car dealers with which it had contracted to sell the PCTG. Alexico, in agreement with the dealership Defendants, conspired to affirmatively misrepresent the PCTG to consumers as a

“guarantee” and “security system” and specifically “not an insurance policy.” Defendants agreed to use this affirmative and deceptive misrepresentation to describe the product so they could: avoid registering the PCTG with the Department of Insurance; avoid obtaining the appropriate insurance sales licenses from the Department of Insurance; and avoid providing such basic rights afforded consumers by the laws and regulations of the Commonwealth of Pennsylvania in the purchase of insurance.

15. For example, although the PCTG purports to transfer the risk and cost of a loss (limited to \$3,000) from an unexpected and unintended occurrence beyond the control of any party (car theft) from the PCTG purchaser to Alexico, neither Alexico nor any of the Dealership defendants has disclosed to any authority the relationship between claim and payment rates and the aggregate charges collected for the transfer of this risk and cost. In contrast with a product warranty or service contract, which either promises that the product is defect free or undertakes to refund, repair or replace the product if it fails to meet the product specifications (*see* 15 U.S.C. § 2302 (6) (A) & (B) and 16 C.F.R. § 700.11), the PCTG here provides a cash payment contingent only on the product being stolen and not recovered within 30 days.

16. Defendant Alexico and the dealership Defendants, as Alexico’s agents, have unlawfully profited at the expense of consumers by charging unregulated and unconscionable premiums for the PCTG insurance policy. Under its common course of conduct, Alexico typically charges the dealership Defendants less than \$20 for the PCTG while agreeing with the dealership Defendants that they may charge consumers anywhere from \$199.00 to \$700.00 for the PCTG. Without the oversight and approval of the Department of Insurance, Defendants levy well over a one-thousand percent (1000%) mark-up on the cost of the PCTG. In addition, upon information and belief, the dealership Defendants, are paid a commission by Alexico on the sale

of the PCTG.

A. The PCTG is Unlawful Insurance:

17. “Insurance policy” is not defined by statute in Pennsylvania, and therefore has been defined only through judicial interpretation. Pennsylvania Courts define insurance as “[a]n instrument in writing, by which one party (insurer), in consideration of a premium, engages to indemnify another (insured) against a contingent loss, by making him a payment in compensation, whenever the event shall happen by which the loss is to accrue.” *Ferrick Constr. Co. v. One Beacon Ins. Co.*, 2004 Phila. Ct. Com. Pl. LEXIS 70 (Phila. Com. P. LEXIS 2004) (citing *Norwood Co. v. RLI Ins. Co.*, Civ. Action No. 01-CV-6153, 2002 U.S. Dist. LEXIS 5560, *8-9 (E.D. Pa. April, 2002)(citing Black's Law Dictionary 1156 (6th ed. 1991)).

18. The PCTG squarely fits the definition of insurance: it is an instrument in writing (“Premium Care” Theft-Gard Registration Form) by which one party (Alexico Corporation) in consideration of a premium (\$199 - \$700 charge included with consumer’s vehicle purchase) engages to indemnify another (consumer) against a contingent loss (theft of vehicle) by making him a payment in compensation (\$3,000), whenever the event shall happen by which the loss is to accrue.

19. To receive the benefit under the PCTG, a claim must be submitted to and approved by Alexico Corporation, which serves as the PCTG administrator. This claim must be submitted within thirty (30) days of the loss, which is when the covered vehicle is stolen and not recovered, or stolen, recovered and declared a total loss by the vehicle’s comprehensive insurance carrier. If the claim is approved by Alexico, a benefit is paid to the registered owner of the PCTG in the amount of \$3,000.00. This is plainly loss reimbursement, also known as, insurance.

20. Defendants affirmatively and deceptively misrepresent the PCTG as “not an insurance policy” but instead a “\$3,000 Guarantee” of an “anti-theft system” in order to avoid the Pennsylvania Department of Insurance regulation and oversight. Defendants know that they would be unable to sell the PCTG to Pennsylvania consumers if they were subject to the oversight of the Department of Insurance for at least three reasons: a) none of the Defendants are licensed by the Department of Insurance to sell theft-insurance in Pennsylvania; b) the PCTG is not underwritten by an insurance carrier licensed in Pennsylvania; and c) the PCTG premium has not been filed or approved by the Pennsylvania Department of Insurance.

21. Many states have determined that products similar to the PCTG are insurance, including the following:

- a. **New York**: the New York General Counsel has repeatedly ruled that programs similar to the PCTG constitute a contract of insurance, not a warranty. *See* Money Back Warranty, N.Y. Gen. Counsel Op. July 30, 1993; Glass Etching Program, N.Y. Gen. Counsel Op. March 7, 1997; Theft Deterrent Discount Program, N.Y. Gen. Counsel Op. August 29, 2001; Sale of Etching Program with Insurance, N.Y. Gen. Counsel Op. April 23, 2002; Warranty on Auto Anti-Theft Device Constitutes Insurance, N.Y. Gen. Counsel Op. March 17, 2005; and N.Y. Comp. Codes R. & Regs. tit. 11 § 310 (2005) (agreements such as the WLPS “are not truly warranties or guarantees, but rather are insurance contracts”).
- b. **Florida**: the state of Florida recognizes anti-theft products such as the PCTG as insurance and companies offering these products must register with the department of insurance and provide consumers with the product cost, which cannot be marked up further by the dealership. 2002 Florida Statutes § 634.01, *et seq.*;
- c. **Massachusetts**: finding as a matter of law that a program similar to the PCTG called “Tracker Plus” was insurance and not a warranty. *Horwitz v. Boch Motor, Inc.*, No. 01 Civ. 0659 (Mass. Super. Ct. filed June 27, 2003); and
- d. **California**: a product similar to the PCTG that paid the vehicle owner \$2,500 if the vehicle was stolen was considered insurance and treated as insurance under California law. *Campbell v. Cal-Guard Surety Services.*,

Inc., 62 Cal. App. 4th 563 (4th App. Dist. 1998).

22. Pennsylvania law states that “a person shall not sell, solicit or negotiate a contract of insurance in this Commonwealth unless the person is licensed as an insurance producer for the line of authority under which the contract is issued.” 40 P.S. § 310.3(a).

23. Furthermore, the Pennsylvania Motor Vehicle Sales Financing Act, 69 P.S. § 617(C), provides that when a dealership enters into a retail installment contract with a consumer that includes the sale of a theft insurance product,

such insurance shall be purchased through an agent and/or broker, authorized to conduct business in Pennsylvania, and such insurance shall be written by an insurance company qualified to do business in Pennsylvania.....[and] [t]he charges for insurance to the buyer shall not be in excess of the charges for insurance which others are required to pay to such an insurance company for similar coverage... 69 P.S. § 617(C)(emphasis added).

24. None of the Defendants are licensed insurance producers in Pennsylvania and, therefore, not authorized to sell insurance. *See*

<http://www.insurance.state.pa.us/dsf/gfsearch.html> (last viewed on June 18, 2007).

25. Alexico is not a licensed insurance carrier in Pennsylvania and therefore is not authorized to underwrite or engage in the business of insurance in Pennsylvania. *See*

<http://www.insurance.state.pa.us/dsf/gfsearch.html>. (last viewed on June 18, 2007).

26. If the PCTG had been properly identified as insurance by the Defendants, any premium for the PCTG would have been required to be filed with the Department of Insurance and approved under its rate-making system. 40 P.S. § 1184.

27. If the Department of Insurance approved the PCTG for sale as insurance, the premium charged for the coverage provided (3 year coverage period / one-time \$3,000 benefit) would be well below the Defendants’ charges of \$199.00 up to \$700.00.

28. Since Defendants illegally sold the PCTG and did not register it as insurance with the Department of Insurance, they have denied Plaintiff and members of the Class the mandatory protections afforded other purchasers of insurance in Pennsylvania while charging them a grossly inflated premium for a 3 year / \$3,000 auto theft-insurance policy.

29. Defendants efforts to mischaracterize the PCTG as “not an insurance policy” when in fact the PCTG is insurance is a *per se* deceptive act under the Pennsylvania Unfair Insurance Practices Act, 40 P.S. § 1171.5(a)(1)(v).

30. Defendant Alexico’s writing of automobile theft insurance in Pennsylvania and the dealership Defendants’ sale of automobile theft insurance in Pennsylvania without proper authorization from the Pennsylvania Department of Insurance is a *per se* violation of the Pennsylvania Motor Vehicle Sales Finance Act, 69 P.S. § 617(C) and the UTPCPL.

B. The Terms of the PCTG:

31. The PCTG has two components: (i) the “TG-Registration” number; and (ii) a \$3,000 indemnity payable to the vehicle owner which is contingent on the vehicle being stolen within three (3) years of the date of purchase and either “not recovered within thirty (30) days of the date the theft is reported to the police” or “recovered within thirty (30) days [but] declared a total loss” by the consumer’s automobile liability insurance carrier.

32. The purported “Vehicle Security System” or “anti-theft system” that the Defendants deceptively misrepresent the PCTG as, consists only of a “TG-Registration Number.” The “TG-Registration Number” is etched only on the vehicle’s driver’s side and passenger windows. The registration number appears in small type font in the lower right hand corner of the vehicle’s two front windows, and is off-white in color, making it extremely difficult, if not impossible, to view by a potential thief.

33. Further, the “TG-Registration Number” is specific to Alexico. This is different from the vehicle’s Vehicle Identification Number (“VIN”) number, which is permanently burned into the vehicle in at least eighteen locations, registered with the State and traceable by law enforcement agencies throughout the nation. The “TG-Registration Number” is maintained only by Alexico, the dealership Defendants, and the consumer. The registration number is identifiable by no other person. This is the extent of the anti-theft system included with the PCTG and is uniformly placed on every vehicle before it is available for sale to consumers.

34. If a vehicle covered by the PCTG is stolen and not recovered within thirty (30) days, or stolen and recovered within thirty (30) days but declared a total loss by the consumer’s primary insurance carrier, the PCTG states that it will pay a \$3,000 indemnity benefit upon the filing of an approved claim.

35. As such, the PCTG insurance is only effective if the consumer also carries comprehensive automobile insurance that includes theft-insurance. The Pennsylvania Department of Insurance, however, does not require drivers to carry comprehensive insurance coverage for their vehicles and, therefore, if a consumer does not elect comprehensive coverage the PCTG is valueless. Defendants’ “Registration Form” omits this material fact and, therefore, is deceptive.

36. Furthermore, by requiring the consumers’ primary, comprehensive insurance carrier to first evaluate and approve the claim, Alexico and dealership Defendants can pass the typical cost of investigation and reporting onto the consumer’s primary, comprehensive insurance carrier.

37. Additionally, unlike an insurance policy regulated by the Department of Insurance, the PCTG cannot be canceled nor is the consumer entitled to a refund of the canceled

pro-rata premium.

C. The Marketing and Sale of the PCTG:

38. The Defendants market and sell the PCTG to consumers by affirmatively misrepresenting it as an “anti-theft system” or “security system” and specifically “not an insurance policy.” As described above, the PCTG consists only of the “TG-Registration Number” which is etched only on the front two windows of the vehicle.

39. Window etching is traditionally known as the practice of permanently engraving the vehicle’s identification number (“VIN”) onto the windows of a vehicle. It is considered a theft-deterrent because the VIN is traceable by law enforcement agencies to a specific vehicle, which makes it difficult to sell off valuable pieces of the car that are etched with the VIN. In fact, every car sold in the United States must have its VIN permanently installed on eighteen specific locations. 49 C.F.R. § 541.5. The VIN is registered with the State, the consumer’s insurer and the National Crime Information Center (“NCIC”) maintained by Federal Bureau of Investigations in the event of a vehicle theft. Furthermore, many automobile dealerships, if requested by the consumer, will etch the windows of the vehicle with the VIN at a cost of approximately \$30.00.

40. The “TG-Registration Number” is provided to every consumer for free. All vehicles in dealership Defendants’ inventory are etched before the vehicle is available for sale to consumers. Thus, the inclusion of the “TG-Registration Number” bears no relationship to the purchase of the PCTG given that those who do not purchase the PCTG still have their windows etched without tendering any payment to dealership Defendants.

41. Plainly, the fee charged by the Defendants is not for the etching of the “TG-Registration Number,” but for the \$3,000 insurance benefit. In fact, the sole exchange of

consideration under the PCTG is Plaintiff's payment of money for the right to coverage and ability to file a claim under the PCTG. Payment for the PCTG tendered by Plaintiff and the Class is therefore a one-time premium for insurance.

42. The charge for the PCTG appears only on the dealership Defendants' retail buyer's order, not on the retail installment contract or the PCTG's Registration Form. As part of the scheme, dealerships Defendants leave the line item for "THEFT-GARD SYS. PRICE" blank or place an "N/A" in that column on the PCTG "Registration Form," which is the only form provided the consumer regarding the purchase of the PCTG. The "Registration Form" does not disclose the price or any affiliation with the fee for "Theft Guard" or "Security" included on the consumer's retail buyer's order. This form is submitted to the consumer for signature along with dozens of other documents that consummate the transaction.

43. The PCTG "Registration Form" includes signature lines for the "THEFT-GARD REPRESENTATIVE" and "THEFT-GARD SIGNATURE" which is signed by the dealership Defendants' salesperson.

44. Alexico and dealership Defendants uniform, written, deceptive misrepresentations to consumers about the nature of the PCTG include: (1) that the PCTG is a "anti-theft system" or "Security System" when, in fact, it is an illegal insurance policy; (2) that the \$3,000 indemnity benefit provided for by the terms of the PCTG Registration Form is not a "guarantee" of the "anti-theft system" but, in fact, an indemnity benefit payable contingent on the consumer's loss of the vehicle; (3) affirmatively misrepresent and deceptively print on the face of the agreement that the PCTG is "not an insurance policy"; (4) misrepresent the charge for the PCTG on consumer's buyer's orders as "Security" or "Theft Guard" when in fact it is a premium for an insurance policy; and (5) fail to include the premium for the PCTG on the consumer's retail

installment contract under “amounts paid on your behalf. . . to insurance companies.”

45. By signing the standardized PCTG “Registration Form,” Plaintiff and the Class, justifiably relied on the Defendants’ written, affirmative, deceptive, misrepresentation that the PCTG was “not an insurance policy” but a guarantee for a non-existent anti-theft system.

46. Defendants’ deceptive misrepresentation about the PCTG directly caused Plaintiff and the Class harm because Defendants were able to drastically inflate the premiums charged for PCTG.

D. Alternatively, the PCTG as a Warranty Violates the MVSFA:

47. If the PCTG is determined to be a warranty rather than insurance, it would remain unlawful since it violates the 100% mark-up limitation imposed by the Pennsylvania Motor Vehicle Sales Finance Act, 69 P.S. § 603, *et seq.*

48. The Pennsylvania Motor Vehicle Sales Finance Act, 69 P.S. § 603, *et seq.* (eff. June 1990) (“MVSFA”), applies to a motor vehicle dealer when selling a vehicle under an installment sale contract. *Id.* The Pennsylvania Department of Banking issues a license to a dealer under the MVSFA as an installment seller, or as a sales finance company.

49. The MVSFA requires the dealer to disclose all of the material terms of the sale transaction in a written contract of sale, 69 P.S. § 613, it further prescribes and defines such material terms, 69 P.S. §§ 603, 614, prescribes items that may and may not be financed through an installment sale contract, 69 P.S. §§ 618, 631, and limits the amount of interest and/or finance charges that may be assessed, 69 P.S. § 619.

50. On the installment contract the dealer must include the separately itemized charges for any service contracts or warranties and those same charges must be specifically stated in the contract and warranty items. *Id.* at § 614(1).

51. In Section 610(14) of the MVSFA, the legislature expressly stated that a “[dealer] has engaged in unfair, deceptive, fraudulent or illegal practices or conduct in connection with any business regulated under this act, including making...mark-ups for service contracts, warranties, debt cancellation agreements and debt suspension agreements in excess of 100% of the cost to the dealer. . . .”

52. As such, a dealer’s charge for a warranty that exceeds 100% of the dealer’s cost is a deceptive act under the plain language of the MVSFA.

53. The Magnusson Moss Warranty Act, 15 U.S.C. §2301(6)(B), defines a warranty as:

Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purpose other than resale of such product.

54. Written rather plainly on the bottom of the PCTG Registration Form is, “GUARANTEE IS BASED UPON THE PERFORMANCE OF ANTI-THEFT SYSTEM, IS NON-REFUNDABLE, AND MAY NOT BE CANCELLED BY THE PURCHASER.” If the consumer’s vehicle is stolen, presumably under the terms of the guarantee / warranty the window etching “fail[ed] to meet the specifications set forth in the undertaking,” and therefore the consumer is entitled to the remedy of \$3,000.00. The “\$3,000 Guarantee” of the PCTG is subject to the MVSFA 100% mark-up limitation.

55. If the Panel finds that the PCTG is not insurance, but a warranty for the “anti-theft system” that warranty is subject to the 100% mark-up limitation and the sale of it at prices ranging from \$199.00 to \$700.00 would be *per se* deceptive by the terms of the MVSFA.

56. As a result of an investigation conducted by the Southwest Regional Office of Consumers Union in March 2003, the consumer’s advocacy group uncovered the exorbitant mark-up automobile dealers add to products such as the PCTG and pass-on to unwitting consumers. The chart below represents its findings ¹:

Theft Program Underwriter	Insurance Price	Theft Program Name	Price to Consumer
Western General \$2,500/2 Years	\$6.00	Theft Guard \$ “3,000”	\$795.00
Western General \$2,500/3 Years	\$8.00	SafeGuard	\$299.00
Western General \$1,000/4 Years	\$6.25	Permavin	\$379.00
Courtesy Insurance Company \$5,000	\$14.00	Information Unavailable	\$1,094.00
Universal Underwriter \$2,000	\$8.33	Information Unavailable	\$2,834.00
Universal Underwriter \$4,000	\$16.26	Protection Plus \$1,000/3 Years	\$1,495.00
Great American Insurance \$2,500/3 years	\$10.50	Theft Guard, Details Unavailable	\$699
Great American Insurance \$3,000/5 years	\$14.00		

57. As a *per se* deceptive act in a consumer transaction for the purchase of a good, Defendants, through their common course of conduct, have violated the plain language of the UTPCPL, 73 P.S. §201-9.2. As a result, Plaintiff and the Class are entitled to the greater of their actual damages or statutory damages of \$100.00, treble damages, and attorneys’ fees and costs.

1 Sharon Hernandez-Darrow, *Auto Finance Add-Ons: Little Bang for the Buck – the sky’s the limit on prices!* (March 2003) (*citing* Attorney General Consumer Complaints and Rate Filings of Universal Underwritings for 2001 and Western General Insurance Company 2002, Courtesy Insurance Company’s Contractual Liability reimbursement Policy provided to the TDLR 1997, Great American Insurance Group Contractual Liability Reimbursement Policy) *available at*: <http://www.consumersunion.org/finance/auto-dealer-rpt303.htm>

CLASS ACTION ALLEGATIONS

58. This action is brought by Plaintiff as a class action pursuant to Rule 4 of the Supplementary Rules for Class Arbitrations and the Consumer Due Process Protocol of the AAA, on behalf of himself and the following:

ALL PERSONS WHO PURCHASED THE 'PREMIUM CARE' THEFT-GARD FROM A PENNSYLVANIA AUTOMOBILE DEALER SINCE JULY 1, 2001. EXCLUDED FROM THE CLASS ARE ANY DEFENDANTS, THEIR RESPECTIVE PARENTS, EMPLOYEES, SUBSIDIARIES AND AFFILIATES, THEIR ALLEGED CO-CONSPIRATORS AND ALL GOVERNMENT ENTITIES.

59. The Class is believed to include thousands of Pennsylvania car purchasers/lessees who purchased the PCTG from Pennsylvania automobile dealerships over the past six (6) years.

60. The proposed members of the class are so numerous that the individual joinder of each would be impracticable. The exact number of members is unknown at this time but can be ascertained readily from the registration records of Defendants. Plaintiff believes and therefore avers that the number of class members in is in the thousands. In many instances, such persons either are unaware that claims exist on their behalf or have sustained damages in amounts too small to justify the expense and effort required to bring suit separately. These damages, addressed collectively through the class action mechanism, are substantial enough to justify legal action.

61. This matter presents common questions of law and fact arising out of the sale of the PCTG. These common questions predominate over any individual questions applicable to Class members. Among the numerous questions of law and fact common to the Class are:

A. whether the PCTG is insurance under Pennsylvania law;

- B. whether Defendants must submit the PCTG to Pennsylvania Department of Insurance for approval;
- C. whether the Defendants are licensed by the Department of Insurance to sell the PCTG;
- D. whether Alexico is authorized to offer the PCTG for sale to Pennsylvania consumers through its agents, the dealership Defendants;
- E. whether the unlawful sale of the PCTG by the Defendants is a deceptive sales practice that violates the UTPCPL, 73 P.S. § 201-2, *et seq.*;
- F. whether the unlawful sale of the PCTG by the Defendants is a deceptive act or practice that violates the Unfair Insurance Practices Act, 40 P.S. § 1171.5;
- G. whether the unconscionable charges for the PCTG imposed on consumers by Defendants violate the Pennsylvania Motor Vehicle Sales Finance Act, 69 P.S. § 631(A);
- H. whether the Defendants affirmative, deceptive misrepresentation that the PCTG was “not an insurance policy” constitutes a deceptive sales practice in violation of the UTPCPL;
- I. whether Plaintiff and the Class suffered an ascertainable loss in their purchase of the PCTG, by over-paying for a 3 year / \$3,000 automobile theft insurance policy, or paying a rate that was never approved by the Department of Insurance pursuant to its rate-making procedures;
- J. whether the PCTG is a warranty subject to the 100% mark-up limitations in the Pennsylvania Motor Vehicle Sales Finance Act, 69 P.S. § 610(14);
- K. whether the Defendants’ charges in excess of the 100% mark-up limitations is a *per se* deceptive act as defined in the Pennsylvania Motor Vehicle Sales Finance Act, 69 P.S. § 610(14);
- L. whether Defendants’ deceptive act in charging in excess of the 100% mark-up limitations set by the MVSFA violates the UTPCPL; and
- M. whether the Defendants were unjustly enriched by retaining a

portion or the entire fee charged for the PCTG.

62. Plaintiff Reichelt's claims are typical. Plaintiff and all members of the Class sustained damages arising out of the Defendants' common course of conduct as complained of herein. The amount of money at issue is such that proceeding by way of class action is the only economical and sensible manner in which to vindicate the injuries sustained by Plaintiff and members of the Class.

63. There are no unusual legal or factual issues which would cause management problems not normally and routinely handled in class actions. Damages may be calculated with mathematical precision.

64. Plaintiff will fairly and adequately protect the interests of class members. Plaintiff has retained qualified and experienced counsel in class action litigation, and counsel have no adverse interest. Plaintiff understands the nature of the claims herein, has no disqualifying interest and will vigorously represent the class. Plaintiff, by agreement with Plaintiff's counsel, has the resources necessary to prosecute the case fully and completely.

65. The AAA Panel is an appropriate forum, since Defendants selected this forum by including a non-negotiable forum selection clause on the back of the adhesion contract signed by each class member.

COUNT I
VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND
CONSUMER PROTECTION LAW, 73 P.S. §201-1, et seq.

66. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

67. Plaintiff and the members of the Class are persons as that term is defined under 73

P.S. § 201-2(2).

68. The PCTG is a good the use of which is intended for personal, family or household purposes as described in 73 P.S. § 201-9.2(a).

69. Plaintiff and the Class members purchased the PCTG from the dealership Defendants and from Defendant Alexico.

70. The PCTG is an insurance product and its sale violates the following provisions of the UTPCPL:

(ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(iii) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;

(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. § 201-2(4)(ii), (iii), and (xxi).

71. Dealership Defendants and Alexico uniformly, affirmatively and deceptively misrepresented to the Plaintiff and every member of the class that the PCTG was “not an insurance policy,” but a “\$3,000 Guarantee” for an “anti-theft system.”

72. Dealership Defendants and Alexico intentionally misrepresented the PCTG as a “\$3,000 Guarantee” and specifically “not an insurance policy” to evade the oversight of the Pennsylvania Department of Insurance and permit an exorbitant charge to Plaintiff and the members of the Class that is a drastically inflated premium for a 3 year / \$3,000 insurance policy.

73. Dealership Defendants’ and Alexico Corporation’s deceptive sales practices also

violated the UTPCPL in the followings ways:

- a. The PCTG was never submitted, and therefore never approved for sale by the Pennsylvania Department of Insurance;
- b. Alexico and dealership Defendants are not a licensed insurance companies licensed to engage in the business of insurance in Pennsylvania;
- c. Alexico and dealership Defendants are not licensed by the Department of Insurance to solicit, negotiate, or sell a line of insurance such as the PCTG;
- d. Defendants misrepresent the PCTG as a guarantee, and specifically “not an insurance policy”;
- e. The rate charged by the Defendants for the PCTG was never submitted to or approved by the Department of Insurance under its mandatory rate-making system;
- f. Since the PCTG was incapable of obtaining approval for sale by the Department of Insurance, the Defendants sought to avoid its oversight;
- g. Alexico provided dealership Defendants with the PCTG “TG-Registration Number” and “Registration Forms” empowering dealership Defendants to serve as Alexico’s representative in the sale of the PCTG;
- h. Dealership Defendants etched the “TG-Registration number” on all vehicles at the time of delivery from the manufacturer and prior to the vehicle being publicly available for sale;
- i. Any potentially theft-detering attribute of the PCTG was installed on the vehicle at no charge prior to it being displayed for purchase by consumers;
- j. Defendants failed to include the charge for the PCTG on its “Registration Form” to avoid customer objection;
- k. The “Registration Form” includes a blank for the amount charged for the PCTG, however, the Defendants uniformly leave it blank or insert an “N/A” in spite of the fact they charged consumers for the PCTG;

- l. Defendants identified the PCTG on consumers' retail buyer's order only as "Security" or "Theft Guard";
- m. Defendants' do not disclose the charge for the PCTG in any financing documents;
- n. Dealership Defendants paid Alexico a portion of their charge for the PCTG and retain the balance as an unlawful and unearned profit; and
- o. By circumventing the Department of Insurance, Defendants have denied Plaintiff and the Class the benefit of a lower premium approved by the Department of Insurance under its rate-making system and the other mandatory protections afforded to purchasers of insurance in Pennsylvania.
 - a. the unlawful sale of the PCTG by the Defendants is a deceptive act or practice that violates the Unfair Insurance Practices Act, 40 P.S. § 1171.5; and
 - b. the unconscionable charges for the PCTG imposed on consumers by Defendants violate the Pennsylvania Motor Vehicle Sales Finance Act, 69 P.S. § 631(A);

74. Defendants' actions in connection with the promotion, marketing, solicitation, negotiation, administration and sale of the PCTG, as set forth herein, constitute unfair and deceptive acts and practices in the sale of a household good to consumers in violation of the UTPCPL, 73 P.S. § 201-9.2.

75. As a direct result of the deceptive practices of the Defendants, Plaintiff and the members of Class suffered an ascertainable loss in the amount of the charges imposed or paid for the PCTG.

76. Additionally, the rate for the PCTG was not approved by Department of Insurance and was not calculated pursuant to the Department's oversight and regulation, which also resulted in an ascertainable loss to Plaintiff and the Class pursuant to 73 P.S. § 201-9.2.

WHEREFORE, Plaintiff demands judgment against Alexico and dealership Defendants,

on his own behalf and on behalf of the Class, for refunds, compensatory damages, costs, treble damages, and reasonable attorneys' fees.

COUNT II
CONSPIRACY TO COMMIT CONSUMER FRAUD

90. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

91. Dealership Defendants and Alexico Corporation knowingly agreed, with intent and malice, to engage and did engage in fraudulent, deceptive, improper and illegal consumer practices in conjunction with the sale of the PCTG as set forth above.

92. Alexico Corporation and dealership Defendants conspired together to formulate sales practices which resulted in fraudulent sale of the PCTG to Plaintiff and the members of the Class as demonstrated by the same or similar sales practices employed by uniformly by all the dealership Defendants, including at least the following:

- a. Selling the PCTG;
 - b. Installing the "TG-Registration Number" on all vehicles prior to the sale of the PCTG;
 - c. Failing to include the charge for the PCTG on the Registration Form;
 - d. Failing to submit the PCTG to the Department of Insurance for approval;
 - e. Failing to submit the rate for the PCTG to the Department of Insurance for approval;
 - f. Failing to obtain a license from the Department of Insurance to sell the PCTG; and
 - g. Receiving a kickback from Alexico Corporation on sales of the PCTG.
79. Defendants coordinated activities described herein are deceptive acts as defined in

73 P.S. § 201-2(4)(ii), (iii), and (xxi) which violates the UTPCPL, 73 P.S. § 201-9.2, requiring a refund and resulting in an ascertainable loss by Plaintiff and the members of Class.

WHEREFORE, Plaintiff, individually and on behalf of the class they represent, requests damages against the collective Defendants for refunds, compensatory damages, costs, treble damages, and reasonable attorneys' fees.

COUNT III
VIOLATION OF THE MAGNUSON-MOSS WARRANTY
ACT, 15 U.S.C. § 2301, et seq.

80. Plaintiff, on behalf of himself and all similarly situated persons, incorporates by reference all of the foregoing allegations in this Claim as though fully set forth herein.

81. Congress enacted the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* (the “Act”) in 1975 in response to widespread complaints from consumers that many warranties were misleading and deceptive. To remedy this problem of deception, the Act imposes civil liability on any “warrantor” for, *inter alia*, failing “to comply with any obligation under this chapter.” 15 U.S.C. § 2310(d)(1). The Act authorizes a “suit for damages and other legal and equitable relief.” *Id.* The Act authorizes the award of attorneys’ fees (*id.*), and expressly authorizes class actions. 15 U.S.C. § 2310(e).

82. Plaintiff and the Class members are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

83. Alexico and the dealer Defendants each is a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

84. The vehicles and PCTG at issue in this lawsuit are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

85. At the time of sale, Alexico and the dealer Defendants provided Plaintiff and Class members with the Registration Form, which arguably constitutes a written warranty and/or service contract within the meaning of the Magnuson-Moss Warranty Act (“MMWA”), 15 U.S.C. § 2301, *et seq.*

86. The Registration Form fails to specify, however, whether it is a Full or Limited Warranty as required by the MMWA. In addition, by conditioning the warranty remedy on the consumer first having comprehensive theft insurance provided by a separate insurance carrier, Defendants have violated the anti-tying provisions of the MMWA.

87. The amount in controversy of each Plaintiff’s individual claim meets or exceeds the sum or value of \$25.

88. As a direct and proximate result of Defendants’ violations of the MMWA, Plaintiff and Class members sustained damages and other losses in the amount of the charges imposed or paid for the PCTG. Defendants’ common course of conduct caused Plaintiff’s and Class members’ damages and accordingly Plaintiff and Class members are entitled to recover damages, costs, attorneys’ fees, rescission, and/or other equitable relief as appropriate.

WHEREFORE, Plaintiff, individually and on behalf of the class he represents, requests damages against the Defendants for refunds, compensatory damages, costs, treble damages, and reasonable attorneys’ fees.

COUNT IV
VIOLATION OF THE PENNSYLVANIA UNFAIR INSURANCE PRACTICES ACT,
40 P.S. § 1171.5(a)(1)(v)

89. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

90. The Pennsylvania Unfair Insurance Practices Act (“UIPA”), 40 P.S. § 1171.5(a)(1)(v), defines an unfair or deceptive act or practice in the business of insurance as the use of “any name or title of any insurance policy or class of insurance policies [that] misrepresent[s] the true nature thereof.”

91. Dealership Defendants and Alexico violated UIPA § 1171.5(a)(1)(v), in their affirmative misrepresentation of the nature of the PCTG as a “Guarantee” and as specifically, “not an insurance policy.”

92. Plaintiff and the other class members have sustained damages as a result of Alexico’s and dealership Defendants’ violations of the UIPA.

WHEREFORE, Plaintiff, individually and on behalf of the class he represents, requests damages against the Defendants for refunds, compensatory damages, costs, treble damages, and reasonable attorneys’ fees.

COUNT V
VIOLATION OF THE PENNSYLVANIA MOTOR VEHICLE SALES FINANCING
ACT, 69 P.S. § 617(C)

93. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

94. The Pennsylvania Motor Vehicle Sales Financing Act, 69 P.S. § 601, *et seq.*, was enacted after the Commonwealth of Pennsylvania recognized that such an Act was needed because of “nefarious, unscrupulous, and improper practices in the financing of the sale of motor vehicles existed” in Pennsylvania. 69 P.S. § 602(A). The Commonwealth of Pennsylvania further recognized that “because of [] legal technicalities and because of their unequal bargaining position, [car buyers] are at the mercy of unscrupulous persons and are being intolerably

exploited in the installment purchase of motor vehicles.” 69 P.S. § 602(c). Therefore, “[t]he Commonwealth of Pennsylvania found it ‘necessary to the adequate protection of the public interest’ ...to protect its citizens from abuses” (69 P.S. § 603(d)) by enacting a detailed law that (a) limited dealer charges, (b) required full and complete disclosures; (c) restricted abusive dealers from using contractual provisions; (d) required certain specified contractual safeguards for car buyers.

95. Plaintiff has a private right of action to enforce his MVSFA rights, under 69 P.S. § 631(C), which authorizes recovery of all payments collected or received in violation of the Act.

96. The Pennsylvania Motor Vehicle Sales Financing Act, 69 P.S. § 617(C), provides that when a dealership enters into a retail installment contract with a consumer that includes the sale of an insurance product,

such insurance shall be purchased through an agent and/or broker, authorized to conduct business in Pennsylvania, and such insurance shall be written by an insurance company qualified to do business in Pennsylvania... [and] [t]he charges for insurance to the buyer shall not be in excess of the charges for insurance which others are required to pay to such an insurance company for similar coverage... 69 P.S. § 617(C)(emphasis added).

97. None of the Defendants is a licensed insurance producer in Pennsylvania and, therefore, none is authorized to sell insurance.

<http://www.insurance.state.pa.us/dsf/gfsearch.html>

(last viewed on June 18, 2007).

98. Alexico is not a licensed insurance carrier in Pennsylvania and therefore is not authorized to underwrite or engage in the business of insurance in Pennsylvania. *See*

<http://www.insurance.state.pa.us/dsf/gfsearch.html> (last viewed on June 18, 2007).

99. Defendant Alexico's writing of insurance in Pennsylvania and the dealership Defendants' sale of that insurance in Pennsylvania without proper authorization from the Pennsylvania Department of Insurance is a *per se* violation of the Pennsylvania Motor Vehicle Sales Finance Act, 69 P.S. § 617.

100. Plaintiff and the other class members have sustained damages as a result of Alexico and dealership Defendants' violations of the MVSFA.

WHEREFORE, Plaintiff, individually and on behalf of the class they represent, requests damages against the collective Defendants for refunds, compensatory damages, costs, treble damages, and reasonable attorneys' fees.

COUNT VI
VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND
CONSUMER PROTECTION ACT, AND THE MOTOR VEHICLE SALES FINANCE
ACT, 69 P.S. § 610(14) (IN THE ALTERNATIVE)

101. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

102. Defendants represent the PCTG as a "Guarantee," which is a warranty. As a warranty, the sale of the PCTG must comply with the 100% mark-up limitation imposed by the Pennsylvania Motor Vehicle Sales Finance Act, 69 P.S. § 603, *et seq.*

103. The 100% mark-up limitation is set forth in Section 610(14) of the MVSFA, where the legislature expressly states that a "[dealer] has engaged in unfair, deceptive, fraudulent or illegal practices or conduct in connection with any business regulated under this act, including making...mark-ups for service contracts, warranties, debt cancellation agreements and debt suspension agreements in excess of 100% of the cost to the dealer. . . ."

104. Upon information and belief, the dealership Defendants' actual cost to purchase the PCTG from Alexico is between \$9.00 and \$17.00. Thus, the MVSFA prohibits dealer Defendants from charging in excess of 100% of that cost, or a maximum of \$18.00 - \$34.00.

105. Plaintiff Reichelt was charged \$199.00 for the PCTG.

106. As in Plaintiff's transactions, dealership Defendants and Alexico uniformly and consistently charge well in excess of 100% over actual dealer cost for the PCTG. This overcharge and violation of the MVSFA is *per se* deceptive conduct on the part of Defendants.

107. As a *per se* deceptive act in a consumer transaction for the purchase of a good, Defendants have violated the plain language of the UTPCPL, 73 P.S. §201-9.2. As a result, Plaintiff and the Class are entitled to the greater of their actual damages or statutory damages of \$100.00, treble damages, and attorneys' fees and costs.

WHEREFORE, Plaintiff, individually and on behalf of the Class he represents, requests damages against Defendants for refunds, compensatory damages, statutory damages, costs, treble damages, and reasonable attorneys' fees.

COUNT VII
UNJUST ENRICHMENT

108. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

109. As the intended and expected result of their conscious wrongdoing as set forth in this Complaint, Defendants have profited and benefited from the unlawful sale of the PCTG.

110. Defendants have voluntarily accepted and retained these profits and benefits, derived from Plaintiff and members of the Class, with full knowledge and awareness that, as a result of Defendants' deception, Plaintiff and the members of Class paid substantial monies and benefits to Defendants to which Defendants were not entitled.

111. Defendants have been unjustly enriched at the expense of the Plaintiff and the Class members, who are entitled to in equity, and hereby seek, the disgorgement and restitution of Defendants' wrongful profits, wrongful commissions, revenue, and benefits, to the extent, and in the amount, deemed appropriate by the Panel; and such other relief as the Panel deems just and proper to remedy Defendants' unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following:

- (a) An order certifying this action as a class action, appointing Plaintiff as Class Representative and designating Plaintiff's counsel as Class Counsel;
- (b) An order declaring the conduct alleged herein be a deceptive sales practice within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-9.2, and the common law of unjust enrichment;
- (c) A judgment awarding Plaintiff and each member of the Class a full refund of all monies paid for the PCTG, interest thereon and any amount by which Defendants have been unjustly enriched, plus treble damages;
- (d) A judgment awarding Plaintiff and each member of the Class the greater of compensatory or statutory damages;
- (e) An order enjoining the sale of the PCTG unless and until its premium is approved by the Department of Insurance, Defendants become properly licensed insurance producers;
- (g) An order awarding Plaintiff and the Class their costs of suit, including reasonable attorneys' fees and expenses as provided by law; and

(h) An award of such other, further, and different relief as the nature of the case may require or as may be determined to be just, equitable, or proper by the Panel.

Respectfully submitted,

Dated: July 9, 2007

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