

CAUSE NO. _____

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
AMERICAN NATIONAL INSURANCE	§	
COMPANY,	§	
Defendant.	§	____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff the STATE OF TEXAS acting by and through the Attorney General of Texas, Greg Abbott, files this action against AMERICAN NATIONAL INSURANCE COMPANY (hereafter referred to as “Defendant”), and respectfully urges the following claims:

I.

NATURE OF CLAIM

1. This suit is brought against Defendant for violations of the Texas Deceptive Trade Practices -- Consumer Protection Act, TEX. BUS. & COM. CODE § 17.41, *et seq.* (the “DTPA”), former TEX. INS. CODE art. §21.21, and current TEX. INS. CODE §541.001 *et seq.*(“Texas Insurance Code”). This claim is brought in the name of the State of Texas by the Attorney General acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas. The discovery in this case is intended to be conducted under Level 3, pursuant to TEX. R. CIV. P. 190.3

II.

SERVICE OF PROCESS

2. Defendant, AMERICAN NATIONAL INSURANCE COMPANY, is an insurance company doing business in Texas and licensed to write insurance in Texas, and may be served with process by serving its president George R. Ferdinandtsen, American National Insurance Company, One Moody Place, Galveston, TX 77550-7999, with citation and a copy of the petition attached thereto.

III.

VENUE

3. Venue is proper in Travis County, Texas pursuant to former TEX. INS. CODE art. 21.21 15(b) and current TEX. INS. CODE §541.202.

IV.

PUBLIC INTEREST

4. The State has reason to believe that Defendant has engaged in, and will continue to engage in, unlawful practices against a multitude of Texas policyholders in violation of the DTPA and former art. 21.21 and current §541.001 *et seq.* of the TEX. INS. CODE as set forth below. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General believes that bringing this claim is in the public interest and, having so concluded, brings this action pursuant to former TEX. INS. CODE art. 21.21, current TEX. INS. CODE Chapter 541, and TEX. BUS. & COM. CODE § 17.47, and seeks injunctive relief against the Defendant to restrain the use of such unlawful practices and other remedies specified below.

V.

DECEPTIVE TRADE PRACTICES ACT NOTICE

5. Defendant has been notified in general of the alleged unlawful conduct described below in accordance with TEX. BUS. & COM. CODE § 17.47(a).

VI.

ACTS OF AGENTS

6. An allegation that Defendants or a Defendant engaged in any act or practice means:
- a. that a Defendant performed, authorized or participated in the act or practice;
 - or
 - b. that one or more of the Defendant's officers, agents, representatives or employees performed or participated in the act or practice on behalf of and under the authority or direction of the Defendant.

VII.

TRADE AND COMMERCE

7. Defendant is a "person," as defined by the DTPA § 17.45(3) and former TEX. INS. CODE art. 21.21 § 2 (a) and current TEX. INS. CODE § 541.002, and has, at all times as described below, engaged in conduct which constitutes "trade" and "commerce," as those terms are defined by § 17.45(6) of the DTPA, and also in conduct which constitutes the "business of insurance" in Texas under former TEX. INS. CODE art. 21.21 § 4, and current TEX. INS. CODE § 541.052. The unlawful conduct of Defendants has affected and continues to affect persons in the State of Texas.

VIII.

STATEMENT OF FACTUAL ALLEGATIONS

8. Defendant, AMERICAN NATIONAL INSURANCE COMPANY is an insurance company that writes credit life and credit accident and health insurance (hereafter, collectively referred to as “credit insurance”) in the State of Texas through a network of motor vehicle dealers acting as its agents. Virtually all policies sold by Defendant to motor vehicle buyers are “single premium policies” where the entire period of insurance coverage, which can be as much as six years, is paid for in one payment and added to the insured’s retail installment contract for the purchase of a motor vehicle.

9. The Texas Insurance Code requires that each individual or group policy issued in Texas “shall provide that if the underlying debt or the insurance terminates before the scheduled maturity date of the debt, including the termination of a debt by renewing or refinancing the debt, the refund of any amount paid by or charged to the debtor for insurance shall be paid or credited to the person entitled to the refund.” TEX. INS. CODE §1153.202.

10. In selling single premium credit insurance policies, Defendant represents that if an insured’s underlying debt is paid off early or their insurance stops, American National will refund the unearned portion of the credit insurance premium.

11. Defendant has refused or failed to promptly make refunds of unearned credit insurance premiums to insureds and improperly retained these premiums, unjustly enriching itself at the expense of its insureds.

12. Defendant maintains business policies that require insureds to fulfill conditions not required by their insurance policies as a precondition to obtaining refunds of unearned credit insurance premiums.

13. Defendant has failed to set up procedures to make certain that it will be timely informed by creditors holding the motor vehicle retail installment contracts of its insureds, that the insureds' loans have been paid off early.

14. Defendant delegates the majority of its premium refund function to its agents and/or automobile dealers, but fails to put any meaningful audit procedures in place to insure that its agents and/or dealers are making timely refunds owed to insureds.

IX.

TEXAS INSURANCE CODE VIOLATIONS

15. Sections VI through VIII are incorporated herein by reference. Defendant has violated former TEX. INS. CODE art. 21.21 and current TEX. INS. CODE Chapter 541.001 *et seq.* by engaging in one or more of the following acts or practices:

- a. Engaging in unfair or deceptive acts or practices in the business of insurance, in violation of former TEX. INS. CODE art. 21.21 §3 and current TEX. INS. CODE. §541.003;
- b. Making, issuing, or circulating, or causing to be made, issued or circulated, a statement misrepresenting the benefits or advantages of credit life or accident and health insurance policies, in violation of former TEX. INS. CODE art 21.21 §4(1) and current TEX. INS. CODE §541.051(1)(b);
- c. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, a statement containing an untrue, deceptive, or misleading assertion, statement, representation or statement regarding the business of insurance,

in violation of former TEX. INS. CODE art. 21.21 §4(2) and current TEX. INS. CODE §541.052;

- d. Making an untrue statement of material fact in violation of former TEX. INS. CODE art. 21.21 § 11(a) and current TEX. INS. CODE §541.061(1);
- e. Failing to state a material fact necessary to make the other statements made not misleading, considering the circumstances under which the statements were made, in violation of former TEX. INS. CODE art. 21.21 § 11(b) and current TEX. INS. CODE § 541.061(2);
- f. Making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of a material fact, in violation of former TEX. INS. CODE art. 21.21 § 11(c) and current TEX. INS. CODE § 541.061(3); and
- h. Making a material misstatement of law in violation of former TEX. INS. CODE art. 21.21 § 11(d) and current TEX. INS. CODE §541.061(4).

X.

**TEXAS DECEPTIVE TRADE PRACTICES --
CONSUMER PROTECTION ACT VIOLATIONS**

16. Sections IV through IX are incorporated herein by reference. Defendant has violated and continues to violate TEX. BUS. & COM. CODE § 17.41, *et seq.* by engaging in one or more of the following acts or practices:

- a. engaging in false, misleading, or deceptive acts or practices in the conduct of trade and commerce, in violation of TEX. BUS. & COM. CODE § 17.46(a);
- b. representing that its goods or services have characteristics, uses or benefits which they do not have, in violation of TEX. BUS. & COM. CODE § 17.46(b)(5); and

- c. representing that an agreement confers or involves rights, remedies, or obligations which it does not have or which are prohibited by law, in violation of TEX. BUS. & COM. CODE § 17.46(b)(12).

XI.

TEXAS ADMINISTRATIVE CODE VIOLATIONS

17. Sections IV through X are incorporated herein by reference. Defendant has engaged in trade practices in the business of insurance which are unfair or deceptive, in violation of 28 TEX. ADMIN. CODE § 21.3.

XII.

REQUEST FOR INJUNCTION

18. Because the Defendant has engaged in the unlawful acts and practices described above, Defendant has violated the law as alleged in this petition. Unless restrained by this Honorable Court, Defendant may continue to violate the laws of the STATE OF TEXAS and cause additional injury, loss and damage to the STATE OF TEXAS, to its citizens and to the general public.

19. Plaintiff, the STATE OF TEXAS respectfully requests that after notice and hearing this Court issue a permanent injunction restraining and enjoining Defendant, Defendant's agents, servants, employees, attorneys, and any other person in active concert or participation with Defendant, from engaging in the following acts or practices:

- a. refusing or failing to refund unearned credit insurance premiums to its insureds when its insureds' underlying debts are paid off early or their insurance otherwise stops;

- b. representing to insureds that affirmative actions are required on their part in order to receive refunds of unearned credit insurance premiums;
- c. requiring notice from insureds that their automobile contracts have been paid off as a precondition for receiving refunds of unearned credit insurance premiums;
and
- d. improperly retaining unearned credit insurance premiums to which its insureds are entitled.

XIII.

CIVIL PENALTIES AND RESTITUTION

- 20. In addition, Plaintiff, the STATE OF TEXAS respectfully requests that this court:
 - a. Adjudge against the Defendant, civil penalties in favor of Plaintiff, THE STATE OF TEXAS, in the amount of not more than \$20,000 per violation of the DTPA.
 - b. Order Defendant to pay civil penalties of up to \$10,000 per violation of the former TEX. INS. CODE art. 21.21 §15 (c) and current TEX. INS. CODE §541.204, and the administrative rules promulgated under these statutes; and
 - c. Enter additional orders and judgments against the Defendant as is necessary to compensate identifiable persons for restoration of money which may have been acquired by the Defendant by means of any act or practice restrained, as authorized by former TEX. INS. CODE art. 21.21 §15(d), current TEX. INS. CODE §541.205, and TEX. BUS. & COM. CODE § 17.47(d).

VIV.

PRAYER

21. Plaintiff, the STATE OF TEXAS respectfully prays that Defendant be served with citation as required by law and that this court grant judgment to Plaintiff against Defendant for all relief requested above and other relief to which Plaintiff may show itself entitled.

Respectfully submitted,

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