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*Attorneys for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

NOLA GREENO,

Plaintiff,

-vs-

Cause No.: CV-06-113-M-DWM

ALLIED PROPERTY AND  
CASUALTY INSURANCE  
COMPANY, an Iowa corporation,  
AMCO INSURANCE COMPANY, an  
Iowa corporation, DEPOSITORS  
INSURANCE COMPANY, a Iowa  
corporation, NATIONWIDE INSURANCE  
COMPANY OF AMERICA, a California  
corporation, ALLIED GROUP, INC. a Iowa corporation,  
Defendants.

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**AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

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For her Amended Complaint, the Plaintiff respectfully alleges:

**JURISDICTION AND PARTIES**

1. The Plaintiff, Nola Greeno, has at all times relevant hereto resided in Missoula County, State of Montana.

2. Allied Property And Casualty Insurance Company (“Allied”) has been at all times relevant hereto an insurance company licensed to do business in the State of Montana, providing automobile insurance in the State of Montana.

3. Amco Insurance Company (“Amco”) has been at all times relevant hereto an insurance company licensed to do business in the State of Montana, providing automobile insurance in the State of Montana.

4. Depositors Insurance Company (“Depositors”) has been at all times relevant hereto an insurance company licensed to do business in the State of Montana, providing automobile insurance in the State of Montana.

5. Nationwide Insurance Company Of America (“Nationwide”) has been at all times relevant hereto an insurance company licensed to do business in the State of Montana, providing automobile insurance in the State of Montana.

6. The Defendants are part of the Nationwide Group, one of the largest multi-line insurers and financial services companies in the United States with over 26 insurance companies.

7. Defendants “Allied”, “Amo”, “Nationwide”, and “Depositors” stock is owned by Defendant Allied Group, Inc. (“Allied Group”) and Allied Group is owned by the Nationwide Group.

8. The Defendants all operate out of a common location at 1100 Locust Street, Department 2007 in Des Moines, Iowa, are governed by common officers and directors, use common agents for adjusting of claims, use the same form insurance policies, and have implemented common practices and procedures relevant to the issues raised herein. As a result, Allied, Amco, Nationwide,

and Depositors are the alter egos of Allied Group.

9. With respect to the UIM benefits at issue here and Plaintiff's personal claim for exemplary damages, the amount in controversy exceeds \$75,000 under the provisions of 28 U.S.C.A. §1332.

### **GENERAL ALLEGATIONS**

10. On and before December 13, 2000, Allied provided automobile insurance coverage to Plaintiff under Policy Number PCC 0007930986

11. During the period between August 27, 2000 to February 27, 2001, the Plaintiff had two vehicles insured under the Allied Policy.

12. The Declaration Page for the period of August 27, 2000 to February 27, 2001, is attached hereto, marked as Exhibit A.

13. The Greeno's paid premiums of \$7.63 and \$7.73 for medical payments coverage on the two vehicles for a total medical payments premium of \$15.36 for \$20,000.00 limits of coverage as shown on the Declaration Page.

14. The Greeno's paid premiums of \$8.19 and \$8.19 for underinsured motorists coverage on the two vehicles for a total underinsured motorists premium of \$16.38 for \$200,000.00 limits of coverage as shown on the Declaration Page.

15. The Allied Policy purportedly prohibits the stacking of medical payments coverages and underinsured coverages.

16. Allied's anti-stacking provision was held unconstitutional in *Hardy v. Progressive Speciality Company*, 2003 MT, 85, 315 Mont. 107, 67 P.3d 892.

17. On December 13, 2000, while the Allied Policy was in full force and effect, Plaintiff

suffered personal injuries when the insured car which she was operating was struck by a negligent driver.

18. Plaintiff was not responsible for the collision in any way.

19. As a result of the wreck, Plaintiff has incurred medical expenses in excess of \$18,000.00, and other damages compensable under the terms of her medical payments and under insured motorist coverage with Defendant.

20. On May 18, 2004, Plaintiff requested that Allied stack the medical payments limits of her coverage.

21. However, Allied refused to stack the medical pay coverages on September 20, 2004, despite the *Hardy* decision.

22. On June 6, 2004, Allied informed Plaintiff that it would not stack the coverages, because the *Hardy* decision is not retroactive.

23. However, the Montana Supreme Court in *Dempsey v. Allstate Insurance Co.*, 2004 MT 391, 325 Mont. 207, 104 P.3d 483, declared that *Hardy* should have retroactive application.

24. The person who negligently struck Plaintiff's vehicle on December 13, 2000 was an "underinsured motorist" as this term is defined under Plaintiff's Allied policy.

25. Plaintiff has settled with the underinsured motorist for his policy limits and has incurred UIM clause damages in excess of \$57,000.00 under Plaintiff's Allied policy.

**COUNT - 1**  
**Request for Declaratory Relief**

26. Plaintiff re-alleges and incorporates Paragraph 1 through 25 above as if fully set forth herein.

27. An actual controversy exists between the parties regarding their respective rights and remedies under the Allied and Defendants' Policies in that Plaintiff contends she is entitled to accumulate or "stack" her two separate medical payments limits and Defendants have refused to stack its coverages.

WHEREFORE, Plaintiff prays for relief as more fully set forth in the prayer for relief.

**COUNT - 2**  
**Bad Faith**

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28. Plaintiff re-alleges and incorporates Paragraph 1 through 27 above as if fully set forth herein.

29. Defendants' refusal to stack its medical payments coverages after the *Hardy* decision and the *Dempsey* decision constitutes bad faith.

30. As a result of Defendants' wrongful conduct herein, Plaintiff has suffered damages.

WHEREFORE, Plaintiff prays for relief as more fully set forth in the prayer for relief.

**COUNT - 3**  
**Punitive Damages**

31. Plaintiff re-alleges and incorporates Paragraph 1 through 30 above as if fully set forth herein.

32. Defendants had knowledge of facts or intentionally disregarded facts that created a high probability of injury to Plaintiff.

33. Defendants deliberately proceeded to act in conscience or intentional disregard of the high probability of injury to Plaintiff.

34. Or Defendants deliberately proceeded to act with indifference to the high probability of injury to Plaintiff.

WHEREFORE, Plaintiff prays for relief as more fully set forth in the prayer for relief.

**COUNT - 4**  
**Class Action**

35. Plaintiff re-alleges and incorporates Paragraph 1 through 34 above as if fully set forth herein.

36. Plaintiff brings this action pursuant to the provisions of Rule 23(a) and Rule 23(b)(2) and/or (3) of the Montana Rules of Civil Procedure as a class action for herself and as representative of and on behalf of all other persons similarly situated to-wit: all individuals who have or had medical payment coverage, or uninsured coverage or underinsured coverage through Defendants on two or more vehicles as part of their policy[ies] and who were charged separate premiums for medical payments coverage or uninsured coverage or underinsured coverage on two or more vehicles.

37. This class action satisfies the prerequisite set forth in Rule 23(a) for maintaining a class action:

- a. The class is so numerous that joinder of all members is impracticable;
- b. There are questions of law and fact common to the class: to-wit:
  - (i) Whether Defendants have charged their insureds, who have or had insured two or more vehicles and who have or had paid multiple premiums for medical payment coverages, uninsured motorist coverages or underinsured motorist coverages;
  - (ii) Who have had claims against such coverages which should be stacked by Defendants but which Defendants refuse or decline to

stack;

- c. Plaintiff's claim herein is typical of the class to-wit, even though Nola Greeno was charged and paid more than one premium for medical payments coverage, Defendants have taken the position that they are entitled to collect the multiple premiums but are obligated to pay only one coverage; and
- d. Plaintiff will fairly and adequately protect the interest of the class.

38. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impeded their ability to protect their interests.

39. Defendants have acted on grounds which are generally applicable to the class, thereby making appropriate corresponding declaratory relief with respect to the class as a whole.

40. Questions of law or fact common to the members of the class predominate over any questions effecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

WHEREFORE, Plaintiff prays for relief as more fully set forth in the prayer for relief.

**COUNT - 5**  
**Common Fund**

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41. Plaintiff re-alleges and incorporates Paragraph 1 through 40 above as if fully set forth herein.

42. As a result of the efforts of Plaintiff, a common fund will be created whereby all Defendants' insureds in the class will share in the common fund and all such insureds should bear

a proportionate share of the litigation costs, including attorneys fees and costs incurred therein.

WHEREFORE, Plaintiff prays for relief as more fully set forth in the prayer for relief.

**COUNT - 6**  
**Private Attorney General**

43. Plaintiff re-alleges and incorporates Paragraph 1 through 42 above as if fully set forth herein.

44. The State of Montana, through its insurance commissioner, has declined or failed to enforce the provisions of the *Hardy* decision and the *Dempsey* decision to ensure that all insureds of Allied receive the benefit of the *Hardy* decision.

WHEREFORE, Plaintiff prays for relief as more fully set forth in the prayer for relief.

**PRAYER FOR RELIEF**

\_\_\_\_ WHEREFORE, Plaintiff prays for relief as follows:

1. That Defendants be ordered to return to its insureds the excess premiums or, in the alternative, to declare that insureds can stack the above noted coverages and order Allied to re-open all claims for medical payments coverages, uninsured motorist coverages, or underinsured motorist coverages where it paid out only one coverage for premiums where such coverage was charged on two or more vehicles and where Plaintiff and the other members of the putative class are entitled to stack the coverages.

2. To award Plaintiff her attorney's fees and costs and the class members attorneys fees and costs incurred herein.

3. To award Plaintiff general and special damages in amounts sufficient to compensate her for Allied's wrongful conduct.

4. To award the class its general and special damages in amounts sufficient to compensate them for Allied's wrongful conduct.

5. To assess exemplary damages against Defendants in an amount sufficient to deter them from further engaging in its malicious and wrongful conduct and to deter others who may be inclined to engage in such wrongful conduct.

6. To assess such attorneys fees and costs against the Defendants as are provided by law

8. For such interest as prescribed by law

9. For such other and further relief as to the Court seems just.

**DEMAND FOR JURY TRIAL**

Plaintiff requests a jury trial of all issues triable by jury in this cause.

DATED this 13 day of March, 2007.

/s/ Lawrence A. Anderson  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on 13 day of March, 2007, a copy of the foregoing document was served on the following persons by the following means:

1,2 CM/ECF  
       Hand Delivery  
       Mail  
       Overnight Delivery Service  
       Fax  
       E-Mail

1. Clerk, U.S. District Court
  
2. DENNIS TIGHE  
PAUL R. HAFFEMAN  
Davis, Hatley, Haffeman & Tighe, P.C.  
The Milwaukee Station, Third Floor  
101 Rive Drive North  
P.O. Box 2103  
Great Falls, MT 59403-2103

/s/ Lawrence A. Anderson  
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c: Nola Greeno