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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, NATIONWIDE MUTUAL  
INSURANCE COMPANY, an Ohio corporation,  
Defendants.

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**SECOND 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. Nationwide Mutual Insurance Company (“Nationwide Mutual”) 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.

7. Nationwide Mutual provides the employees and adjusters for the other insurance companies named herein and sets the policies and procedures for said companies.

8. Defendants “Allied”, “Amco”, “Nationwide”, and “Depositors” stock is owned by Defendant Allied Group, Inc. (“Allied Group”) and Allied Group is owned by Nationwide Mutual.

9. 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 Nationwide Mutual.

10. 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**

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

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

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

14. 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.

15. 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.

16. The Allied Policy purportedly prohibits the stacking of medical payments

coverages and underinsured coverages.

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

18. 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.

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

20. 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 underinsured motorist coverage with Defendant.

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

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

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

24. 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.

25. 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.

26. 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**

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

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

\_\_\_\_ 30. Defendants' refusal to stack its medical payments coverages after the *Hardy* decision and the *Dempsey* decision constitutes bad faith.

31. 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**

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

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

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

35. 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**

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

37. 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.

38. 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.

39. 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.

40. 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.

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

43. 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**

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

45. 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.

**COUNT - 7**  
**Disregard Corporate Entities**

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46. Plaintiff re-alleges and incorporates Paragraph 1 through 45 above as if fully set forth herein.

47. Allied, Amco, Depositors, Nationwide, and Allied Group are the alter-egos of Nationwide Mutual.

48. Nationwide Mutual used Allied, Amco, Depositors, Nationwide, and Allied Group to perpetuate the wrongful conduct described herein.

49. The inter company transactions between Nationwide Mutual and Allied, Amco, Depositors, Nationwide, and Allied Group lack substantial economic effect.

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 the separate corporate identities of Allied, Amco, Depositors, Nationwide, and Allied Group be disregarded.
2. 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 Defendants 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.
3. To award Plaintiff her attorney's fees and costs and the class members attorneys fees and costs incurred herein.
4. To award Plaintiff general and special damages in amounts sufficient to compensate her for Allied's wrongful conduct.
5. To award the class its general and special damages in amounts sufficient to

compensate them for Allied's wrongful conduct.

6. To access 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.

7. To assess such attorney's 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 26 day of June, 2007.

/s/ Lawrence A. Anderson  
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Rex Palmer  
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301 Spruce  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on 26 day of June, 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  
Lawrence A. Anderson  
P.O. Box 2608  
Great Falls, MT 59403-2608  
laa@silverstatelaw.net

c: Nola Greeno

**PERSONAL AUTO POLICY** **ALLIED PROP AND CAS INS CO** **EXPANDED FILE DAIL**

NAMED INSURED & ADDRESS: GREENO, DENNIS GREENO, NOLA 1815 FREY LN MISSOULA MT 59808-1249

POLICY NUMBER: PPC 0007930986-6

TERM: 06 BILLING: D/I STATUS: I N/R: R CRT: DECLARATIONS: CONTINUATION

POLICY PERIOD: 082700 022701 MONEY W/APP: SUSPENSE NO.

AGENT: M & M FINANCIAL SERVICES, INC. 015 KALISPELL MT 59901-4510 MT09247

RATE DATE: 071500 RUN DATE: 071300 ENTRY DATE: BILLING DATE: 071300 ACCOUNT NO.: 809223837 GROUP: 25000 UND: Y

PRIOR AGENCY: MT 09247 ADJ. IND.: 1.000 PREVIOUS POLICY NO.: PPC 0007930986-5 PRIOR INS.: CONT 36+ STD EMP1 EMPLOY 12+ EMP2 EMPLOY 12+ FULLTIME 12+ OTHER: RESIDENCE: RES 12+ OWN: Y

DATE OF AMEND.: CHANGES

NO	BODILY INJURY*	PROP. DAM*	LIABILITY*	MED. PAY*	PIP	UNINS. MOTORISTS*	UM - CL*	UMPO	UNINS. MOTORISTS*	UIM - CL*
	Es. Person	Es. Accident	Es. Accident	Es. Person	OPTION	Es. Person	Es. Accident	Es. Accident	Es. Person	Es. Accident
1	100	300	100	10,000		100	300		100	300
3	100	300	100	10,000		100	300		100	300
1	250	500	50	30/ 900						
3	250	500	50	30/ 900						
NOT NO'S.	IN0263 (1199) AA0008 (1094) PP0401 (0486)	IN0538 (0990) AA0078 (0995) PP0402 (0486)	IN0571 (0396) AA0183 (0600)	IN0590 (0200) AA0309 (1190)	AA0001 (0986) AA0311 (0397)	AA0001A (1098) PP0305 (0886)				

OTHER

NO	BODILY INJURY	PROPERTY DAMAGE	LIABILITY	MEDICAL	OTHER THAN COLLISION	COLLISION	UNINSURED MOTORISTS	UMPO	UNDERINSURED MOTORISTS	PERS. INJ. PROTECTION	TOWING	RENTAL REIMB.
1	41.43	25.07		7.63	32.16	67.59	12.87		8.19		1.80	9.90
3	41.99	25.41		7.73	33.14	78.43	12.87		8.19		1.80	9.90
NO	Total Premium							Other Misc. Endtc. Requiring Premium	Sub-Total Endorsements		426.10	
1	206.64								Full Term Prem. Add'l. Premium Return Premium		426.10	
3	219.46											

VEHICLE(S)

NO	YR	TRADE NAME	TYPE	IDENTIFICATION NUMBER	RATING CODE	RATING FACTOR	COST ST. AMT.	WPI CC's	RATING ST. TERR. CO.	AUTO USE	ODOMETER	ANNUAL MILEAGE	PERF. CATEGORY	COMM.
1	1995	TOYOTA	PICKUP	JT4UD10D1S0009470	P11320	.75			25 9 32	3-15		7,000	ST	10.00
3	1998	DODGE	VAN *	2B4GP44G9XR203006	P11120	.80			25 9 32	PLEA		10,000	ST	10.00
NO	ISO SYM	CSL	BL	SYMBOLS PD. MED/PIP COMP. COLL.	AD	RD	- Toyota Parts 1200 installed							
1	10				05	AB								
3	7				05	AB								

VO: \* 100+ WHEEL BASE GARAGE LOCATION:

LIEN

NO	LOSS PAYEE (L) ADDITIONAL INSURED (A) COMB. LOSS PAYEE/ADDL INSURED (C) ADDL. INSURED - KS (K) LOSS PAYEE/ADDL INSURED - KS (B)
1	L TOYOTA MOTOR CREDIT CORP, P.O. BOX 3035, CEDAR RAPIDS IA 52406-3035
2	L CHRYSLER FINANCIAL COMPANY LLC, PO BOX 207007, STOCKTON CA 95267-9501

CLASS	DR. NO.	PREM. BI	PD	LAB.	MED.	DEATH AND DISABILITY	DI	DB

DRIVER INFORMATION

NO	DRIVER NAMES	IDENTIFICATION NUMBER	SEX	D O B	MAR	DT	CS	RS	PO	PA	VEH	CIT	REL	ACCPRE
1	GREENO, DENNIS	517884827	M	010958	M		N	N	Y	Y	1	Y	A	
2	GREENO, NOLA	517648953	F	032658	M		N	N	Y	Y	3	Y	S	

ACCIDENT/VIOLATION SDIP INFORMATION

NO	TC	PTS	DATE	TC	PTS	DATE	TC	PTS	DATE	TC	PTS	DATE	TC	PTS	DATE	TC	PTS	DATE	
1	00	00	060199																
2	00	00	060199																

EXCLUDED DRIVER/NON-DRIVER INFORMATION

NO	EXCLUDED DRIVERS	HOUSEHOLD MEMBERS NOT DRIVING
		M 091285 M 070388

NO	LIVE W/PAR	SUPP	POI
1	N	N	N
2	N	N	N

DISCOUNTS

Multi-Policy - More than one policy with us.  
 Multi-Car - More than one auto with us.  
 Air Bag Discount

Anniversary - Length of time insured.  
 Four Door - Larger four-door autos.  
 Reduced Mileage Rating