

Exhibit A

Exhibit A

In the Superior Court of the State of Arizona
In and For the County of Maricopa

Case Number CV2015-094615

CIVIL COVER SHEET- NEW FILING ONLY
(Please Type or Print)

Plaintiff's Attorney Joseph W. Watkins

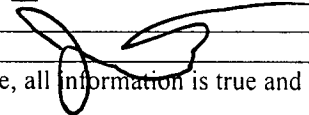
Attorney Bar Number SBN 012403

Plaintiff's Name(s): (List all)
**JOSHUA BERRY, ON BEHALF OF
HIMSELF AND ALL OTHERS SIMILARLY
SITUATED**

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OCT 06 2015

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C. GOBBLE
DEPUTY CLERK

Is Interpreter Needed? yes No
If yes, language type: _____
Attorney/Pro Per Signature 
To the best of my knowledge, all information is true and correct.

Plaintiff's Address:
c/o Joseph W. Watkins
1661 N. Swan Road, Ste. 250 Tucson, AZ 85712
(520) 882-9115- Email: Joewlaw2@gmail.com

(List additional plaintiffs on page two and/or attach a separate sheet).

Defendant's Name(s): (List All)

**SAFECO INSURANCE COMPANY OF AMERICA, LIBERTY MUTUAL GROUP, INC., AND
LIBERTY MUTUAL INSURANCE CO.,**

(List additional defendants on page two and/or attach a separate sheet)

EMERGENCY ORDER SOUGHT: Temporary Restraining Order Provisional Remedy OSC
 Election Challenge Employer Sanction Other _____
(Specify)

RULE 8(i) COMPLEX LITIGATION DOES NOT APPLY. (Mark appropriate box under Nature of Action)

RULE 8(i) COMPLEX LITIGATION APPLIES. Rule 8(i) of the Rules of Civil Procedure defines a "Complex Case" as civil actions that require continuous judicial management. A typical case involves a large number of witnesses, a substantial amount of documentary evidence, and a large number of separately represented parties. (Mark appropriate box on page two as to complexity, **in addition** to the Nature of Action case category).

NATURE OF ACTION

(Place an "X" next to the **one** case category that most accurately describes your primary case.)

100 TORT MOTOR VEHICLE:

- 101 Non-Death/Personal Injury
- 102 Property Damage
- 103 Wrongful Death

110 TORT NON-MOTOR VEHICLE:

- 111 Negligence
- 112 Product Liability – Asbestos
- 112 Product Liability – Tobacco
- 112 Product Liability – Toxic/Other
- 113 Intentional Tort
- 114 Property Damage
- 115 Legal Malpractice
- 115 Malpractice – Other professional
- 117 Premises Liability
- 118 Slander/Libel/Defamation

X 118 Other (Specify) Bad Faith & Negligence

120 MEDICAL MALPRACTICE:

- 116 Physician M.D. 123 Hospital
- 122 Physician D.O. 124 Other

130 CONTRACTS:

- 131 Account (Open or Stated)
- 132 Promissory Note
- 133 Foreclosure
- 138 Buyer-Plaintiff
- 139 Fraud
- 134 Other Contract (i.e. Breach of Contract)
- 135 Excess Proceeds-Sale
- Construction Defects (Residential/Commercial)
 - 136 Six to Nineteen Structures
 - 137 Twenty or More Structures

150-199 OTHER CIVIL CASE TYPES:

- 156 Eminent Domain/Condemnation

- 151 Forcible Detainer
- 152 Change of Name
- 153 Transcript of Judgment
- 154 Foreign Judgment
- 158 Quiet Title
- 160 Forfeiture
- 175 Election Challenge
- 179 Employer Sanction Action (A.R.S. §23-212)
- 180 Injunction against Workplace Harassment
- 181 Injunction against Harassment
- 182 Civil Penalty
- 186 Water Rights(Not General Stream Adjudication)
- 187 Real Property
- Sexually Violent Person (A.R.S. §36-3704)
(Except Maricopa County)
- Minor Abortion (See Juvenile in Maricopa County)
- Special Action Against Lower Courts
(See lower court appeal cover sheet in Maricopa)

- 155 Declaratory Judgment
- 157 Habeas Corpus
- 184 Landlord Tenant Dispute- Other
- 159 Restoration of Civil Rights (Federal)
- 159 Clearance of Records (A.R.S. §13-4051)
- 190 Declaration of Factual Innocence(A.R.S.§12-771)
- 191 Declaration of Factual Improper Party Status
- 193 Vulnerable Adult (A.R.S. §46-451)
- 165 Tribal Judgment
- 167 Structured Settlement (A.R.S. §12-2901)
- 169 Attorney Conservatorships (State Bar)
- 170 Unauthorized Practice of Law (State Bar)
- 171 Out-of-State Deposition for Foreign Jurisdiction
- 172 Secure Attendance of Prisoner
- 173 Assurance of Discontinuance
- 174 In-State Deposition for Foreign Jurisdiction
- 176 Eminent Domain- Light Rail Only
- 177 Interpleader- Automobile Only
- 178 Delayed Birth Certificate (A.R.S. §36-333.03)
- 183 Employment Dispute- Discrimination
- 185 Employment Dispute-Other
- 163 Other _____

150-199 UNCLASSIFIED CIVIL:

- Administrative Review
(See lower court appeal cover sheet in Maricopa)
- 150 Tax Appeal (All other tax matters must be filed
in the AZ Tax Court)

(Specify)

COMPLEXITY OF THE CASE

If you marked the box on page one indicating that Complex Litigation applies, place an "X" in the box of no less than one of the following:

- Antitrust/Trade Regulation
- Construction Defect with many parties or structures
- Mass Tort
- Securities Litigation with many parties
- Environmental Toxic Tort with many parties
- Class Action Claims
- Insurance Coverage Claims arising from the above-listed case types

Additional Plaintiff(s)

Additional Defendant(s)

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4 Attorney for Plaintiff

5 **SUPERIOR COURT OF THE STATE OF ARIZONA,**
6 **MARICOPA COUNTY**

7 **JOSHUA BERRY, ON BEHALF OF**
8 **HIMSELF AND ALL OTHERS**
9 **SIMILARLY SITUATED,**

10 Plaintiff,

11 v.

12 **SAFECO INSURANCE COMPANY**
13 **OF AMERICA, LIBERTY MUTUAL**
14 **GROUP, INC., AND LIBERTY**
15 **MUTUAL INSURANCE CO.**

16 Defendant.

Case No.:

CV2015-094615

CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL

Assigned to Judge:

17 Plaintiff Joshua Berry ("Plaintiff"), by and through his attorneys, files this Complaint
18 against Defendants Safeco Insurance Company of America, Liberty Mutual Group, Inc., and
19 Liberty Mutual Insurance Co., (collectively, "Defendants"), on behalf of himself and all other
20 similarly situated Arizona residents who received "Actual Cash Value" payments for casualty
21 losses from which Defendants categorically excluded General Contractor's Overhead and
22 Profit based on the position that Defendants only pay General Contractor's Overhead and
23 Profit if they receive a bill from a General Contractor.

Parties

24 1. Plaintiff is, and at all times mentioned herein was, a resident and citizen of
25 Maricopa County, Arizona.

26 2. Defendant Liberty Mutual Group, Inc., is a Massachusetts corporation with its
27 principal place of business in Boston, Massachusetts. It can be served via its registered agent
28 for service, Corporation Service Company, 84 State Street, Boston, MA 02109.

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Plaintiff's Facts

14. Safeco issued an Arizona homeowners insurance policy to Plaintiff.

15. Plaintiff suffered a covered loss on December 11, 2014 and submitted a claim to Safeco.

16. Safeco accepted coverage and made payment to Plaintiff, which payment improperly excluded asbestos testing and content manipulation.

17. Upon demand for these two items, Safeco agreed to pay them, but refused to pay an additional 20% of the estimated amounts for asbestos testing and content manipulation for General Contractor's Overhead and Profit ("GCOP").

18. Michael Rutherford, Safeco's Property Loss Field Specialist, explained Safeco's refusal in a June 16, 2015 email to Plaintiff's public adjuster, John McDougall as follows: **"We [Safeco] do not pay for overhead and profit on incurred bills unless from a General Contractor."**

19. When asked for support for this position, Mr. Rutherford explained, in a June 18 email, that he reviewed the Loss Settlement section of the policy and was not aware of anything in the policy or in case law that required Safeco to pay GCOP.

20. Plaintiff does not dispute the amount of any deduction from Plaintiff's ACV payment; rather, Plaintiff disputes Safeco's legal authority to refuse to pay GCOP unless there is a bill from a general contractor. Therefore, Plaintiff's claims are not subject to the appraisal process provided for in the Policy. *Bond v. American Family Mut. Ins. Co.*, 2008 WL 477873 (D. Ariz. 2008).

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Arizona Law Regarding Including GCOP in ACV Payments

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21. This case involves claims by Plaintiff and other similarly situated Arizona insureds of Defendants who received only ACV payments for loss to Building Property under the Policy, either (a) because they made only an ACV claim, or (b) they received an ACV payment for a loss and did not thereafter receive an RCV payment for that loss.

28

22. The Arizona Amendatory Endorsement, required to conform the Policy to Arizona law, defines ACV to mean:

1
2 ... the amount it *would currently cost to repair or replace covered property*
3 *with new material of like kind and quality*, less allowance for physical
deterioration and depreciation, including obsolescence.

4 Exhibit A, "Special Provisions – Arizona" (emphasis added).

5 23. Under Arizona law, such an ACV payment to an insured must include all costs
6 "likely required" to be incurred in repairing or replacing the loss, even if the insured decides
7 not to repair or replace the loss. *Tritschler v. Allstate Ins. Co.*, 213 Ariz. 505, 144 P.3d 519
8 (Ct. App. 2006).

9 24. In other words, the *Tritschler* opinion prohibits insurers of Arizona property
10 from treating costs likely required to be incurred in repairing or replacing the loss as only "Pay
11 When Incurred" or "PWI" for short.

12 25. In *Tritschler*, the Arizona insurer took the same position as Safeco took with
13 Plaintiff in the present case, treating GCOP as a PWI cost, and thus refusing to include GCOP
14 in the ACV payment to an Arizona insured, arguing that it was not obligated to do so unless
15 and until such GCOP costs were actually incurred by the insured. The Arizona Court of
16 Appeals rejected this contention, ruling that ACV payments must include all costs likely to be
17 incurred to repair or replace the loss whether or not the insured actually incurred such costs.

18 26. The *Tritschler* opinion has been the law of the land in Arizona since it was
19 decided in 2006, and is well known to all insurance companies writing policies in Arizona.

20 27. Contrary to this well-established and well-publicized Arizona law, Defendants
21 have systematically reduced ACV payments by excluding GCOP from the ACV payments
22 based on a position that was expressly rejected by the *Tritschler* opinion.

23 28. Defendants have done so through a deliberate company policy and practice,
24 rather than miscalculation, honest mistake, bad judgment or negligence.

25 29. Specifically, in conscious disregard of *Tritschler*, Defendants have adopted a
26 company-wide policy or practice of treating GCOP as a PWI, or Pay When Incurred cost,
27 refusing to include GCOP in ACV unless and until the insured actually incurs those costs ("the
28 Exclusion Practice").

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30. Not only do Defendants improperly treat GCOP as a PWI cost under the Exclusion Practice, Defendants also treat sales tax, architectural/drafting fees, engineering fees, insurance, permits & fees, temporary power usage and temporary toilet as PWI costs, excluding them from ACV payments. Defendants refuse to include these elements in their ACV computations unless and until the insured actually incurs the costs when repairing or replacing the Building Property.

31. As affirmed, and reaffirmed, by Safeco's "Property Loss Field Specialist," the Exclusion Practice is a common practice for Defendants, and not an honest mistake or the practice of one misguided adjuster.

32. Notably, Defendants are not purporting to characterize the exclusion of these PWI costs as based upon a subjective determination regarding whether these costs would likely be required in a repair; Defendants are simply and impermissibly excluding these costs altogether from the ACV payment unless and until the insured actually incurs the cost.

33. As made clear in *Tritschler*, however, Defendants cannot unilaterally exclude GCOP or other PWI costs from the ACV payment, or otherwise make inclusion of PWI costs in ACV dependent upon the costs being actually incurred by the insured.

34. Defendants' implementation of their company-wide practice (which they know is based on incorrect, unreasonable, and bad faith interpretation of the relevant coverage provision in its insurance policy) has led to a systematic practice of undervaluing ACV claims, and a systematic practice of paying ACV claims for less than the amount to which its insureds are entitled.

Class Allegations

35. Plaintiff brings this action on behalf of himself and all other similarly situated Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Arizona Rules of Civil Procedure. Plaintiff seeks certification of the following Classes:

"PWI Class"

1 All owners of insured Arizona properly who, during the Class Period, (a)
2 received an actual cash value payment for a covered loss under a homeowners
3 insurance policy issued by a Defendant, (b) did not receive a replacement
4 coverage payment for that loss, and (c) did not receive payment for items likely
5 required to be incurred in repairing or replacing the loss ("PWI Costs) on
6 grounds that PWI Costs would only be paid if and when incurred.

6 **"GCOP Class"**

7 All owners of insured Arizona properly who, during the Class Period, (a)
8 received an actual cash value payment for a covered loss under a homeowners
9 insurance policy issued by a Defendant, (b) did not receive a replacement
10 coverage payment for that loss, and (c) did not receive payment for General
11 Contractors Overhead and Profit likely required to be incurred in repairing or
12 replacing the loss ("GCOP") on grounds that GCOP would only be paid if and
13 when incurred.

12 36. **Numerosity.** The members of each Class are so numerous that joinder of all
13 members of the Classes is impracticable. Plaintiff is informed and believes that the Exclusion
14 Practice has been applied to thousands of claims by Arizona policyholders. The identity and
15 precise number of Class members, though unknown to Plaintiff, is reasonably and objectively
16 ascertainable from Defendants' own records.

17 37. **Existence and Predominance of Common Questions of Law and Fact.** This
18 action involves common questions of law and fact, which predominate over any questions
19 affecting individual members of the Classes. These common legal and factual questions
20 include, but are not limited to, (a) whether Defendants are permitted to withhold PWI Costs
21 from ACV payments, (b) whether Defendants adopted a company practice of excluding PWI
22 Costs from its ACV payments, (c) whether Defendants did so through the knowing or reckless
23 disregard of Arizona law, (d) whether Plaintiff and the other members of the Classes are
24 entitled to appropriate equitable remedies, including declaratory and injunctive relief requiring
25 Defendants to reopen and properly adjust their loss claims, and/or discontinue its practice of
26 treating PWI Costs in a manner contrary to Arizona law; and (d) whether Plaintiff and the
27 members of the Classes are entitled to monetary damages.

1 38. **Typicality.** Plaintiff's claims are typical of the claims of the members of each
2 Class because, *inter alia*, all members of the Classes were injured through Defendants'
3 uniform misconduct under the Exclusion Practice described above.

4 39. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the
5 interests of the members of each Class. Plaintiff has retained counsel experienced in consumer
6 class action litigation, and Plaintiff intends to prosecute this action vigorously on behalf of
7 other similarly situated insureds. Plaintiff has no interests adverse or antagonistic to those of
8 the proposed Class.

9 40. **Certification under Rule 23(b)(2).** The Class may be certified because
10 Defendants have acted or refused to act on grounds generally applicable to the proposed
11 Classes, thereby making appropriate final declaratory and/or injunctive relief with respect to
12 the members of the Classes as a whole. Plaintiff seeks permanent injunctive and equitable
13 relief on behalf of the entire Class, on grounds generally applicable to the entire Class, to
14 enjoin and prevent Defendants from engaging in the systematic misconduct described above,
15 and requiring them to provide full equitable relief to Plaintiff and Class members (which
16 would include, among other things, requiring Defendants to reopen and correctly adjust claims
17 closed within the Class Period, and to discontinue the practices at issue when adjusting claims
18 in the future). Unless a Class-wide injunction is issued, Defendants will continue to commit
19 the violations alleged, and the members of the Class and other policyholders will continue to
20 be injured.

21 41. **Superiority under Rule 23(b)(3).** A class action is superior to all other available
22 means for the fair and efficient adjudication of this controversy. The damages or other
23 financial detriment suffered by individual Class members is relatively small compared to the
24 burden and expense that would be entailed by individual litigation of their claims against
25 Defendants. It would thus be virtually impossible for Plaintiff and Class members, on an
26 individual basis, to obtain cost-effective redress for the wrongs done to them. Furthermore,
27 even if Class members could afford such individualized litigation, the court system could not.
28 Individualized litigation would create the danger of inconsistent or contradictory judgments

1 arising from the same set of facts. Individualized litigation would also increase the delay and
2 expense to all parties and the court system from the issues raised by this action. By contrast,
3 the class action device provides the benefits of adjudication of these issues in a single
4 proceeding, economies of scale, and comprehensive supervision by a single court, and presents
5 no unusual management difficulties under the circumstances here.

6
7 **Count One**
8 **(Breach of Express Contract)**

9 42. Plaintiff and the Class repeat and reallege all allegations contained in the
10 paragraphs above as if set forth separately in this Claim for Relief.

11 43. Under Arizona law, an insurance policy's provisions must be construed
12 "according to their plain and ordinary meaning." *Tritschler*, 213 Ariz. 505, ¶ 12, 144 P.3d
13 519, 525 (App.2006), quoting *Sparks v. Republic Nat'l Life Ins. Co.*, 132 Ariz. 529, 534, 647
14 P.2d 1127, 1132 (1982). But "[t]he language used in an insurance contract must be viewed
15 from the standpoint of the average layman who is untrained in the law or the field of
16 insurance." *Liristis*, 204 Ariz. 140, ¶ 13, 61 P.3d at 25–26.

17 44. Under the Policy, Safeco was obligated to make the ACV payment in the "the
18 amount it would currently cost to repair or replace covered property...." The ACV payment to
19 an insured must include all costs "likely required" to be incurred in repairing or replacing the
20 loss, even if the insured decides not to repair or replace the loss.

21 45. Safeco breached the Policy contract when, pursuant to the Exclusion Practice, it
22 failed to make full ACV payments to Plaintiff and the other Class members by excluding likely
23 required GCOP and other PWI costs.

24 46. Safeco also breached the implied covenant of good faith and fair dealing. "In
25 Arizona, insurance contracts include an implied covenant of 'good faith and fair dealing,'
26 whereby each party is 'bound to refrain from any action which would impair the benefits
27 which the other had the right to expect from the contract or the contractual relationship.'"
28

1 *Voland v. Farmers Ins. Co.*, 189 Ariz. 448, 451, 943 P.2d 808, 811 (App.1997) (quoting
2 *Rawlings v. Apodaca*, 151 Ariz. 149, 154, 726 P.2d 565, 570 (1986)).

3 47. In cases (such as this) involving first-party coverage, the insurer must “play
4 fairly with its insured.” *Rowland v. Great States Ins. Co.*, 199 Ariz. 577, 20 P.3d 1158 (Ct.
5 App., 2001) (citing *Rawlings*, 151 Ariz. at 154, 726 P.2d at 570). The insurer must “give equal
6 consideration in handling the claim, and do so in fairness and honesty.” *Id.*

7 48. The duty of good faith also includes an obligation to inform the insured about the
8 extent of coverage and his or her rights under the policy and to do so in a way that is not
9 misleading. This *See Nardelli v. Metropolitan Group Property and Cas. Ins. Co.*, 230 Ariz.
10 592, 603, 277 P.3d 789, 800 (Ct. App., 2012) (citing, *inter alia*, *Rawlings v. Apodaca*, 151
11 Ariz. 149, 156–57, 726 P.2d 565, 572–73 (1986); *Sarchett v. Blue Shield of Cal.*, 233 Cal.
12 Rptr. 76, 729 P.2d 267, 275–77 (1987) (internal quotation omitted) (“important facet” of duty
13 of equal consideration is “the duty reasonably to inform an insured of the insured's rights and
14 obligations under the insurance policy”)).

15 49. Safeco breached this implied duty by improperly underpaying its insureds by the
16 application of the Exclusion Practice described above.

17 50. Plaintiff and the other members of the Class were injured by Defendants’
18 breaches, in an amount to be proved at trial.

19 51. This matter arises out of contract, such that Plaintiff and the Class are eligible
20 for and entitled to an award of their attorneys’ fees under A.R.S. § 12-134.01.

21 **Count Two**
22 **(Bad Faith)**

23 52. Plaintiff and the Class repeat and reallege all allegations contained in the
24 paragraphs above as if set forth separately in this Claim for Relief.

25 53. Arizona law imposes a duty of a fiduciary nature on an insurance company when
26 it receives a demand for payment under a policy, including a duty to give equal consideration
27 to its interests and those of the insured before paying out policy proceeds. *See Deese v. State*
28 *Farm Mut. Auto. Ins. Co.*, 172 Ariz. 504, 507, 838 P.2d 1265, 1268 (1992) (“[A]n insurance
company's duty of good faith means that ‘an insurer must deal fairly with an insured, giving

1 equal consideration in all matters to the insured's interest.”) (quoting *Tank v. State Farm Fire*
2 & *Cas. Co.*, 105 Wash.2d 381, 386, 715 P.2d 1133, 1136 (1986)).

3 54. The tort of bad faith arises when an insurer “intentionally denies, fails to process
4 or pay a claim without a reasonable basis.” *Noble v. Nat'l Am. Life Ins. Co.*, 624 P.2d 866, 868
5 (Ariz.1981); *Wood v. Liberty Mut. Fire Ins. Co.*, 2012 WL 2798761, at *2 (D. Ariz., July 09,
6 2012). “The appropriate inquiry is whether there is sufficient evidence from which reasonable
7 jurors could conclude that in the investigation, evaluation, and processing of the claim, the
8 insurer acted unreasonably and either knew or was conscious of the fact that its conduct was
9 unreasonable.” *Zilisch v. State Farm Mut. Auto. Ins. Co.*, 995 P.2d 276, 280 (Ariz.2000). By
10 faith can be established by showing “(1) the absence of a reasonable basis for denying benefits,
11 and (2) the defendant’s knowledge or reckless disregard of the lack of a reasonable basis for
12 denying the claim.” *Wood*, 2012 WL 2798761, at *2.

13 55. Defendants acted objectively and subjectively unreasonably in adopting the
14 Exclusion Practice. *Wood*, 2012 WL 2798761, at *2-5; *see also Bradshaw v. State Farm Mut.*
15 *Auto. Ins. Co.*, 758 P.2d 1313, 1325 (Ariz.1988) (observing that intent could be inferred from
16 evidence that the insurer “sought its own legitimate objective-settlement for as little as
17 possible-by improper means”); *see generally, Zilisch*, 995 P.2d at 280 (whether insurer
18 possessed wrongful intent is question for the jury). Defendants’ alleged misconduct is not the
19 result of an honest mistake, mere oversight or carelessness.

20 56. Defendants objectively and subjectively unreasonable adoption of the Exclusion
21 Practice, in which no consideration at all is given to the interests of the insured as required by
22 Arizona law, constitutes a breach of Defendants’ obligations of investigation, information and
23 equal consideration.

24 57. Defendants breached the implied obligation of good faith and fair dealing when,
25 pursuant to the Exclusion Practice, Defendants excluded likely GCOP and other PWI costs
26 from ACV payments to Plaintiff and the other members of the Classes. After *Tritschler*,
27 Defendants knew or should have known that their failure to include likely GCOP and other
28 PWI costs in ACV payments was invalid and that they were therefore acting in bad faith when

1 they excluded these items from ACV payments.

2 58. Plaintiffs and the other members of the Class were injured by Defendants'
3 breach, in an amount to be proved at trial.

4 **Count Three**
5 **(Declaratory and Injunctive Relief)**

6 59. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above,
7 as if fully set forth herein.

8 60. An actual controversy has arisen and now exists between Plaintiff and the
9 members of the Classes, on the one hand, and Defendants, on the other hand, as to the
10 propriety of Defendants' interpretation of the Policy contract.

11 61. Under the circumstances, Plaintiff and the members of the Classes are entitled to
12 a declaration that the Policy does not permit Defendants to unilaterally defer from its ACV
13 payments those GCOP costs and other PWI costs that are likely required to repair or replace
14 the loss, and providing for appropriate equitable relief to Plaintiff and other members of the
15 Class injured by Defendants' misconduct.

16 62. Because Plaintiff is still insured by Safeco, he is susceptible to being damaged
17 by Defendants' practice in the future and he has standing to seek declaratory and injunctive
18 relief precluding Defendants from continuing this improper practice into the future.

19 63. The appropriate equitable remedy includes, among other things, ordering a self-
20 audit to identify Defendants' insureds who have been underpaid in the past, and ordering
21 Defendants to ensure that their practices regarding GCOP and other PWI costs comply with
22 Arizona law into the future.

23 **Joint Venture**

24 64. Plaintiff incorporates all paragraphs of this complaint into his joint venture
25 allegation.

26 65. Upon information and belief, Liberty Mutual Group, Inc. is engaged in the
27 business of insurance through its various trade names, subsidiaries and member companies
28 including: Liberty Mutual Insurance Company; Safeco Insurance Company; First America

1 Insurance; Colorado Casualty; Golden Eagle Insurance; Indiana Insurance; Liberty Mutual
2 Surety; Liberty Northwest; Liberty Surety First; Montgomery Insurance; Peerless Insurance;
3 and Ohio Casualty (the "Liberty Insurance Venture").

4 66. Liberty Mutual Group, Inc. states that it sells homeowner's insurance through the
5 Liberty Mutual Insurance and Safeco Insurance "brands."

6 67. Liberty Mutual is the trade name for a group of affiliated insurance companies
7 which are in a joint venture, including, but not limited to, the members of the Liberty
8 Insurance Venture.

9 68. Upon information and belief, Liberty Mutual adopted and set the policy
10 regarding the practices at issue in this case for the entities that made up the Liberty Insurance
11 Venture.

12 69. The members of the Liberty Mutual Venture have an agreement with each other
13 setting forth the relationship described above.

14 70. The members of the Liberty Mutual Venture have a common purpose and a
15 community of interest in profiting from their insurance contracts by underpaying insurance
16 claims as described above.

17 71. Liberty Mutual Group, Inc. has the absolute right of control over each of the
18 various entities in the Liberty Mutual Venture.

19 72. Liberty Mutual participates in the profits and losses of the various Liberty
20 Mutual entities in the Liberty Insurance Group.

21 73. Justice requires piercing of the corporate veil in order to hold all members of the
22 Liberty Insurance Group jointly liable for the acts at issue in this litigation.

23 **Alter Ego / Single Business Enterprise**

24
25 74. Plaintiff incorporates all paragraphs of this petition into his alter ego / single
26 business enterprise allegation.

27 75. The members of the Liberty Mutual Venture all empower Liberty Mutual to act
28 as their attorney-in-fact. Liberty Mutual is empowered to exercise all functions of an insurer,

1 e.g., to set rates, to settle losses, to compromise claims, and to cancel contracts. Liberty
2 Mutual receives a sizable percentage of the premiums deposited with any of the members of
3 the Liberty Mutual Venture.

4 76. Liberty Mutual Group, Inc. is liable for the breaches of the insurance policies
5 because the Court should not permit various members of the Liberty Mutual Venture to
6 insulate themselves from liability by the simple technique of operating with various trade
7 names and/or subsidiaries separate from the company that is party to the insurance policy, and
8 Plaintiff and class members cannot be deprived from redress against the parties primarily
9 responsible for their damages.

10 77. There is a lack of separation between the various members of the Liberty Mutual
11 Venture with premiums paid to various members being swept by Liberty Mutual Group and
12 applied at Liberty Mutual Group's discretion to the Liberty Mutual entity it chooses, with
13 Liberty Mutual Group's underwriting department making the decision regarding which Liberty
14 Mutual entity will issue which policies, and with guidelines for operation of the various
15 members of the Liberty Mutual Venture generated by the home office of Liberty Mutual
16 Group.

17 78. Because of the manner in which the members of the Liberty Mutual Venture
18 operate as a single unified enterprise, the distinction between Defendants and other Liberty
19 Mutual companies must be disregarded and all Defendants held liable for the acts complained
20 of herein, regardless of which member of the Liberty Mutual Venture is signature to the
21 insurance contract.

22 79. It would be offensive to the interests of justice to allow Liberty Mutual Group
23 (which formulated and implemented the nationwide scheme at issue in this case), to shift all
24 liability to the member of the Liberty Mutual Venture which signed the actual contracts with
25 insureds.

26 80. Liberty Mutual Group, on behalf of the other members of the Liberty Mutual
27 Venture, makes the critical decisions regarding the insureds. Liberty Mutual Group
28 manipulates the various members of the Liberty Mutual Venture as parts of a single enterprise.

COPY

OCT 06 2015



MICHAEL K. JEANES, CLERK
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7 Attorney for Plaintiffs

8 **SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **MARICOPA COUNTY**

10 **JOSHUA BERRY, ON BEHALF OF**
11 **HIMSELF AND ALL OTHERS**
12 **SIMILARLY SITUATED,**

13 Plaintiffs,

14 v.

15 **SAFECO INSURANCE COMPANY OF**
16 **AMERICA, LIBERTY MUTUAL GROUP,**
17 **INC., AND LIBERTY MUTUAL**
18 **INSURANCE CO.,**

19 Defendant

Case No.


CV2015-094615

CERTIFICATE OF COMPULSORY
ARBITRATION

20 The undersigned certifies that he knows the dollar limits and any other limitation
21 set forth by the local rules of practice for the applicable superior court, and further certifies
22 that this case **IS NOT** subject to the compulsory arbitration, as provided by Rules 72
23 though 76 of the Arizona Rules of Civil Procedure.

24 Dated this 2nd day of October, 2015.

25 **JOSEPH W. WATKINS, P.C.**

26 By 
27 Joseph W. Watkins
28 Attorney for Plaintiffs



CORPORATION SERVICE COMPANY®

Notice of Service of Process

SOM / ALL
Transmittal Number: 14336654
Date Processed: 10/09/2015

Primary Contact: Arlene Smith
Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02117

Entity:	Safeco Insurance Company Of America Entity ID Number 2781189
Entity Served:	Safeco Insurance Company of America
Title of Action:	Joshua Berry vs. Safeco Insurance Company of America
Document(s) Type:	Summons/Complaint
Nature of Action:	Class Action
Court/Agency:	Maricopa County Superior Court, Arizona
Case/Reference No:	CV2015-094615
Jurisdiction Served:	Arizona
Date Served on CSC:	10/09/2015
Answer or Appearance Due:	20 Days
Originally Served On:	CSC
How Served:	Certified Mail
Sender Information:	Joseph W. Watkins (520) 882-9115

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

1 **JOSEPH W. WATKINS, P.C.**
2 Joseph W. Watkins (SBN# 012403)
3 1661 N. Swan, Suite 250
4 Tucson, Arizona 85712
5 Ph: (520) 882-9115
6 Joewlaw2@gmail.com
7 Attorney for Plaintiffs

STATE OF ARIZONA
DEPT. OF INSURANCE

OCT 06 2015
TIME 10:07 AM
SERVICE OF PROCESS

8 **SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **MARICOPA COUNTY**

10 **JOSHUA BERRY, ON BEHALF OF**
11 **HIMSELF AND ALL OTHERS**
12 **SIMILARLY SITUATED,**

13 Plaintiffs,

14 v.

15 **SAFECO INSURANCE COMPANY OF**
16 **AMERICA, LIBERTY MUTUAL GROUP,**
17 **INC., AND LIBERTY MUTUAL**
18 **INSURANCE CO.,**

19 Defendant

Case No.

CV2015-094615

SUMMONS

If you would like legal advice from a lawyer,
contact the Lawyer Referral Service at
602-257-4434

or
www.maricopalawyers.org

Sponsored by the
Maricopa County Bar Association

20 THE STATE OF ARIZONA to the above named Defendant:

21 **SAFECO INSURANCE COMPANY OF AMERICA**
22 **c/o Arizona Department of Insurance**
23 **2910 N. 44th Street, Ste. 210 (second floor)**
24 **Phoenix, AZ 85018-7269**

- 25 I. A lawsuit has been filed against you.
- 26 II. If you do not want a Judgment taken against you for the relief demanded in the
27 accompanying Complaint, you must file a response in writing with the Office of the
28 Clerk of the Superior Court, 110 West Congress, Tucson, Arizona, 85701,
accompanied by the necessary filing fee. A copy of the response must also be
mailed to the Plaintiff/Attorney whose name appears below.
- III. The response must be filed within **TWENTY DAYS**, exclusive of the date of service,
if served within the State of Arizona, or within **THIRTY DAYS**, exclusive of the date
of service, if served outside the State of Arizona.
- IV. This is a legal document. If you do not understand its consequences, you should
seek the advice of an attorney.

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V. Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least three (3) working days in advance of a scheduled court proceeding.

WITNESS my Hand and Seal of the Superior Court.

Attorney Information:

Joseph W. Watkins, P.C.
Joseph W. Watkins (SBN 012403)
1661 N. Swan Road, Ste. 250
Tucson, Arizona 85712
Ph: 520.882.9115

DATED:

CLERK OF THE SUPERIOR COURT

By _____
Deputy Clerk

OCT 06 2015

MICHAEL K. JEANES, CLERK
C. GOBBLE
DEPUTY CLERK



COPY