UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

THOMAS ARCHER BANNON and
MARGARET JOAN RANDALL,
individually and as husband and wife,

Plaintiffs,

vs.

GEICO GENERAL INSURANCE COMPANY,

Defendant.
_____/

COMPLAINT FOR DAMAGES

Plaintiffs, Margaret Joan Randall ("Randall") and Thomas Archer Bannon ("Bannon") (collectively, Randall and Bannon may be referred to as "Plaintiffs") sue the Defendant, Geico General Insurance Company ("Geico") and allege as follows:

1. This is an action for damages exceeding Seventy Five Thousand and No/100 ($75,000.00) DOLLARS, excluding costs, interest and attorneys' fees.

2. At all material times hereto, Randall was a citizen and resident of Monroe County, Florida and is sui juris.

3. At all material times hereto, Bannon was a citizen and resident of Monroe County, Florida, the husband of Randall, and is sui juris.

4. At all times material hereto, Geico, an insurance corporation, was a citizen of a state other than Florida with its principal place of business in a state other than Florida. Geico has offices in Miami-Dade County and does business from those offices.

5. Geico was and is engaged in the business of issuing policies of insurance in Miami-Dade County, Florida and handling claims in Miami-Dade County, Florida.

6. As of July 29, 2010, Geico issued in Florida an automobile insurance policy, policy number 4116-27-17-52 (the Geico Policy), to Beverly Allen ("Allen") under which Allen and her daughter, Melissa Servold ("Servold") were insured.

7. The policy provided liability insurance limits of $250,000 per person and $500,000.00 per occurrence.

8. The Geico Policy was intended to and did cover and indemnify Allen and Servold (collectively, the "insureds") for bodily injury claims and property damage claims arising out of the operation of Allen's motor vehicles.

9. On October 27, 2010, while driving a vehicle insured under the Geico Policy, Servold negligently caused a motor vehicle crash that proximately caused significant and permanent brain and other injuries to Randall, and derivatively, to Bannon. As a result of her life threatening injuries, Randall was rushed by air ambulance to the Ryder Trauma Center in Miami-Dade County Florida.

10. The Geico Policy provided coverage and under the policy Geico owed, *inter alia,* a defense to its insureds for the crash.

11. Defendant Geico was almost immediately notified about the crash and the claim, and by October 29, 2010, a Geico representative had left a phone message for Plaintiffs. By November 8, 2010, a Geico Field Liability Adjuster went to the hospital in Miami and knew that Randall was still in the intensive care unit. As of then, or even sooner, the medical and ambulance bills alone were likely far in excess of Geico's policy limits.

12. Defendant Geico failed to timely and properly settle the Plaintiffs' claim against Allen and Servold and protect its insureds, even though it knew that this was a covered claim, that liability was reasonably certain and that the damages greatly exceeded

policy limits by many multiples. The facts known by Geico by early November 2010 mandated an immediate tender of policy limits, but Geico made no such tender, and in failing to so tender, failed to properly and reasonably protect its insureds and was guilty of bad faith.

13. Once Geico failed to timely tender the policy limits despite knowing that the facts and circumstances required it, the Plaintiffs were required to incur the expense of engaging counsel. On November 19, 2010, Plaintiffs filed suit against Allen and Servold for damages resulting from the crash (the Underlying Lawsuit).

14. Only after Plaintiffs had filed suit and advised Geico of that fact, and with no new information in its possession, Geico finally and untimely tendered its policy limits. Plaintiffs, having incurred delay and additional expense by the time of the tender, were entitled to and did then reject it.

15. Throughout the Underlying Lawsuit, Plaintiffs provided opportunities for Geico to resolve the Underlying Lawsuit under circumstances that would either entirely eliminate or significantly lessen the exposure of Geico's insureds to financial ruin, yet Geico refused to even discuss any such resolution, much less engage in any negotiations. Instead, Geico ignored all attempts at resolution until it faced an imminent trial, specially set to begin on April 13, 2015. By that time, Plaintiffs had been required to spend tens of thousands of dollars and incur almost five years of delay in pursuing a claim that should have been settled promptly after the crash occurred or at numerous opportunities during the progression of the Underlying Lawsuit.

16. Nonetheless, Geico continued to act in bad faith to its insureds, requiring these vast expenditures of money, time or both by Plaintiffs and Geico's insureds when the

underlying case could and should have been resolved if Geico had acted reasonably and with due and proper regard for the interests of its insureds.

17. For example, but not by way of limitation, the following events occurred during the course of the Underlying Lawsuit:

a. On October 24, 2011, after several depositions had been taken, Plaintiffs inquired by letter whether Geico had "any interest" in settling the case, and proposed either a payment in excess of policy limits based on its prior bad faith or simply reaching an agreement on a judgment amount in the Underlying Lawsuit that would halt the expenditure of money and avoid further delay. Geico ignored the proposal.

b. On February 23, 2012, despite having had no response at all to the October 24, 2011 letter, Plaintiffs proposed an agreement with Geico, Servold and Allen by which an agreed judgment would be entered against Servold and Allen in the Underlying Lawsuit, but Servold and Allen would be fully insulated against any obligation to pay the judgment, ever. Rather, Plaintiffs were willing to agree that their sole remedy for collection of the judgment would be a bad faith claim against Geico, which would stand or fall on its own merits. This proposal was clearly and unequivocally in the best interests of Servold and Allen. Plaintiffs offer was explicitly negotiable. After hearing nothing from Geico for twelve days, and in light of significant additional expenses that were to be immediately incurred, on March 6, 2012 Plaintiffs imposed a March 9, 2012 deadline for a response. On March 7, 2012, Geico's appointed counsel for Servold and Allen requested an extension of "a few weeks" on Geico's behalf. Despite the additional expenses, Plaintiffs granted the extension until March 21, 2012. After requesting the extension and obtaining it, Geico never responded at all, and just ignored this proposal, too.

c. Despite Geico's abject refusal to even discuss resolution, on May 29, 2012, Plaintiffs offered to sit down with Geico to discuss some form of acceptable settlement of the Underlying Lawsuit. Geico, once again, ignored this proposal.

d. On January 17, 2013, Plaintiffs made yet another written proposal to resolve the Underlying Lawsuit. The proposal would have required an agreed judgment against Servold and Allen - a certainty anyway - and would have fully insulated Allen, but not Servold, from ever having to pay a penny of that judgment. The judgment amount was significantly lower than the amount required in the February 23, 2012 proposal because, among other things, in this version Servold remained liable to pay it. The terms were explicitly negotiable. Geico ignored it.

e. On April 16, 2013, Plaintiffs continued to try and convince Geico to do what was required of it, and proposed another negotiable framework to settle the Underlying Lawsuit. Because of the passage of time and the additional expenses Plaintiffs had incurred, they were no longer able to provide the level of protection for Geico's insureds that had been offered previously. But the proposal was still in the best interests of Servold and Allen and would significantly limit their personal responsibility to Plaintiffs. This proposal, again, required an agreed judgment against Servold and Allen, but for an even lower amount than proposed on January 17, 2013. It further provided that there would be no collection efforts at all against Servold or Allen until the final conclusion of the bad faith claim against Geico. And if Plaintiffs either prevailed against or settled with Geico, Plaintiffs would fully satisfy the judgment upon Geico's payment. Geico actually responded to this proposal on May 10, 2013, but made no counter-proposal or suggested any terms on which a settlement could be had. Rather, it merely stated that it "will not be a party to

any agreement to settle [Plaintiffs'] claims against Melissa Servold and Beverley Allen."

f. On February 23, 2015, in the face of an upcoming specially set trial set to begin on April 13, 2015, Plaintiffs made one additional and negotiable attempt at resolution of the Underlying Lawsuit. The proposal provided for an agreed judgment in an amount lower than had been proposed on April 16, 2013, but because of the lower judgment amount, provided less protection to Servold and Allen. It provided that there would be no collection efforts at all against Servold or Allen until the conclusion of the bad faith claim against Geico in the trial court, but thereafter Plaintiffs could institute collection efforts against them for up to $500,000. The proposal was not accepted before it expired on March 9, 2015, although on March 5, 2015, Geico reiterated, without more, that "it will not be a party to any agreement" to settle the Underlying Lawsuit. It made no attempt to engage in negotiations and provided no alternate terms, at this point, or ever previously, on which the Underlying Lawsuit could be resolved.

18. Nonetheless, after unnecessarily requiring Plaintiffs to spend tens of thousands of dollars in expenses, and after suffering years of delay, in late March, 2015 Geico did what it should have done years before - by October 24, 2011 if not earlier – that is, permit or engage in negotiating a settlement that would terminate the Underlying Lawsuit and protect its insureds.

19. On March 23, 2015, a mere three weeks before the scheduled specially set trial, Geico advised its appointed counsel for Servold and Allen that the insureds could enter into an agreement for a consent judgment if was in their best interests, and that by doing so, Geico would not assert defenses of voluntary payment or breach of the cooperation clause of the Geico policy.

20. Plaintiffs immediately entered into negotiations with Servold and Allen and without the additional and unnecessary expense of painful trial for all concerned, were able to resolve the Underlying Lawsuit shortly before trial was set to begin. But for Geico's bad faith, the case could and should have been settled as early as the end of October or the very first week of November, 2010.

21. Because of the delay and expense occasioned by Geico's bad faith, however, Servold and Allen have suffered a stipulated judgment against them - $600,000 jointly and severally, and an additional $2,350,000 severally against Servold.

22. The amount of the judgment is reasonable under the circumstances, and was negotiated between Plaintiffs on the one hand and Servold and Allen on the other in light of both liability for and damages that resulted from the October 27, 2010 crash.

23. Plaintiffs have complied with all conditions precedent.

24. Plaintiffs' hold an assignment of rights from Servold and Allen under which they may pursue this claim.

25. Geico's duties to its insureds in the Underlying Lawsuit were fiduciary and non-delegable.

26. Defendant, Geico, is liable for the acts and omissions of its agents, employees or representatives in the handling of the claim against its insureds.

27. Geico, through its agents, employees and representatives, breached its duties of good faith as previously set forth..

28. As a result of Geico's breaches of its duties of good faith and its failure to settle the Plaintiffs' claim when it could and should have done so, there is now a Final Judgment against Servold and Allen as set forth above. Servold and Allen have been

damaged by Geico's bad faith because their credit has been adversely affected; the judgment constitutes a lien against their property; and they have sustained other financial damages and losses including liability for the full amount of the judgment.

29. Plaintiffs have engaged counsel to represent them in this matter and have agreed to pay them no less than a reasonable fee.

WHEREFORE, Plaintiffs, Margaret Joan Randall and Thomas Archer Bannon, demand judgment against the Defendant, Geico General Insurance Company, for compensatory damages, including the amount of the Final Judgment, interest, attorneys' fees and costs, and further demand trial by jury.

DATED: July 6, 2015.

Respectfully submitted,

MICHAEL S. OLIN, P.A.
Alfred I. DuPont Building, Suite 1224
169 East Flagler Street
Miami, Florida 33131
(305) 677-5088 / Fax (305) 677-5089

By: s/Michael S. Olin
MICHAEL S. OLIN
Florida Bar No. 220310
molin@olinlawfirm.com
ALAINA FOTIU-WOJTOWICZ
Florida Bar No. 0084179
afw@olinlawfirm.com