

STATE OF MISSOURI )  
 ) SS  
ST. CHARLES COUNTY )

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI

DAVID O. RUCKER, and )  
JOSHUA A. COX, and )  
EDWARD C. HANSEN, as attorney in fact for )  
HEY PING CHEN, )  
and )  
RONALD J. RUTKIEWICZ, )

Plaintiffs )

-vs- )

US FIDELIS, INC., )  
a Missouri corporation, )  
f/k/a NATIONAL AUTO WARRANTY )  
SERVICES, INC., f/k/a DEALER SERVICES, )  
(Serve Registered Agent: )  
John R. Hamill, III )  
211 North Third Street )  
St. Charles, Missouri 63301 )

and )

DARAIN ATKINSON, )  
(Serve at: )  
100 Mall Parkway )  
Wentzville, Missouri 63385 )

and )

CORY ATKINSON, )  
(Serve at: )  
100 Mall Parkway )  
Wentzville, Missouri 63385 )

Defendants. )

Cause No.

Division No.

JURY TRIAL DEMANDED

**PETITION FOR DAMAGES**

Come now Plaintiffs and for their Petition for Damages, state:

## **NATURE OF THE ACTION**

1. Plaintiffs bring this action on their own behalf individually and on behalf of all individuals wherever located who purchased motor vehicle extended service contracts (“MVESC”) from Defendants US Fidelis, Inc. (“US Fidelis”), Darain Atkinson, and Cory Atkinson (hereinafter collectively referred to as the “Defendants”) on or after April 1 2004.

2. Plaintiffs allege that Defendant US Fidelis, and its officers and owners, Defendants Darain Atkinson and Cory Atkinson, conspired to violate the Missouri Merchandising Practices Act (§ 407.010 R.S.Mo., *et seq.*) by purposefully employing a business plan and scheme of deception, fraud, misrepresentation including the omission of material facts in the sale of MVESC to individuals across the United States.

## **PARTIES**

3. Plaintiff David O. Rucker is an individual and resident of the state of Kentucky.

4. Plaintiff Josh A. Cox is an individual and resident of the state of Missouri.

5. Plaintiff Edward C. Hanson is an individual and the attorney in fact for Hey Ping Chen. Mr. Hansen and Ms. Chen are residents of the state of New York.

6. Plaintiff Ronald J. Rutkiewicz is an individual and resident of the state of Florida.

7. All Plaintiffs are purchasers of a MVESC through Defendant US Fidelis.

8. Defendant US Fidelis is a Missouri corporation in good standing formerly known as National Auto Warranty Services, Inc. prior to its name change on November 5, 2008. From time to time, Defendant US Fidelis previously also did business as Dealer Services. Defendant US Fidelis’s principal place of business is located in St. Charles County, Missouri.

9. Defendant Darain Atkinson is a founder, owner and President of Defendant US Fidelis and is a resident of St. Charles County, Missouri.

10. Defendant Cory Atkinson is a founder, owner and Vice President of Defendant US Fidelis and is a resident of St. Charles County, Missouri.

11. At all times herein mentioned, Defendants Darain Atkinson and Cory Atkinson acted both individually and as agents, servants and employees of Defendant US Fidelis and of each other.

12. At all times herein mentioned, Defendant US Fidelis acted through its agents, servants and employees who, at all times herein mentioned, acted within the course and scope of their agency and employment with Defendant US Fidelis.

**COUNT I**  
**Class Action by all Plaintiffs against all Defendants for**  
**Violations of the Missouri Merchandising Practices Act**

Come now Plaintiffs, on behalf of themselves and on behalf of all others similarly situated and for Count I of their Petition for Damages, state:

13. Plaintiffs re-allege and incorporate herein by reference as though fully set forth herein each and every allegation contained in all preceding paragraphs.

**CLASS ACTION ALLEGATIONS**

14. Plaintiffs bring Count I of this action as a Class Action pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure and § 407.025 R.S.Mo. on behalf of all individuals who purchased MVESC from Defendants on or after April 1, 2004.

15. The Class consists of numerous individuals throughout the United States. The members of the Class are so numerous that joinder of all Class members is impractical. The exact number of Class members is not presently known to Plaintiffs, but can readily be determined by appropriate discovery.

16. Plaintiffs' claims are typical of the claim of all members of the Class and Plaintiffs will fairly and accurately protect the interests of the members of the Class and have retained competent counsel. Plaintiffs have no interests that are adverse or antagonistic to those of the Class.

17. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by many individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to individually seek redress for the wrongful conduct alleged herein.

18. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting solely individual members of the Class. Among questions of law and fact common to the Class are:

- (a) Whether the Missouri Merchandising Practices Act, § 407.010 RSMo, *et seq.*, was violated by the Defendants' acts and omissions, as alleged herein;
- (b) Whether Plaintiffs and members of the Class have sustained injury by reason of Defendants' acts and omissions.

19. Plaintiffs envision no difficulty in the management of this litigation as a Class Action.

#### **VIOLATIONS OF THE MISSOURI MERCHANDISING PRACTICES ACT**

20. At all times herein mentioned, Defendants engaged in the business of selling MVESC throughout the United States and at all times engaged in the promotion of such sales through television advertising, telemarketing, and direct mail solicitation.

21. Defendants, through Defendant US Fidelis's officers, executives, managers, and employees conspired to implement and execute a scheme of deception, fraud, false pretense, false promise, misrepresentation, unfair practice, and the concealment, suppression, or omission of material facts in connection with the sale of MVESC.

22. Through their television advertising, training (or lack thereof), sales scripts, telephone sales representatives, brochures, pamphlets, and other advertising and promotional materials, Defendants have perpetrated the following scheme to defraud and deceive the public into purchasing MVESC:

a. Defendants represent that the MVESC sold by US Fidelis are the product of US Fidelis when, in fact, US Fidelis is only a broker for other MVESC providers;

b. Defendants represent that US Fidelis pays claims made on MVESC it sells when, in fact, US Fidelis pays no claims; whatever claims are paid are paid by unrelated MVESC providers;

c. Defendants represent that installment payment financing for MVESC is provided by US Fidelis when, in fact, US Fidelis acts only as a broker and conduit to other finance entities;

d. Defendants represent that the MVESC sold by US Fidelis provide "full comprehensive coverage", cover "100%" of repairs or are "bumper to bumper" protection for a covered vehicle when, in fact, the MVESC do not provide "full comprehensive coverage", do not cover "100%" of repairs and do not provide "bumper to bumper" protection in that they have numerous terms, conditions, exclusions and limits of liability;

e. Defendants fail to adequately train and educate their sales representatives regarding the numerous terms, conditions, exclusions and limits of liability for the numerous MVESC US Fidelis sells;

f. Defendants fail to provide potential customers the actual written documentation setting forth the full terms of the MVESC prior to purchase, even when requested;

g. Defendants create a false sense of urgency for the purchase of the MVESC by representing that the offer of the MVESC is available “today only” after which time the potential customer’s name will be placed in a “delete file” or in “delete status” and will be barred forever from purchasing the MVESC ever again, when, in fact, there is no such thing as a “delete file” or “delete status” and MVESC are available for purchase on subsequent dates by the same customers for the same vehicles.

h. Defendants represent to potential customers that resist purchase of the MVESC because of the price that they qualify to be in savings programs such as “1<sup>st</sup> time buyer”, “preferred customer”, “owner loyalty”, “retired”, “senior financing”, “friends and family”, “hardship”, “military”, “AARP”, “pay as you go”, “low risk”, “student”, “employee pricing”, “travel” or “competitive pricing” when, in fact, no such programs exist;

i. Defendants represent to potential customers that they are getting the “lowest” or “best” price for the MVESC, when, in fact lower prices are available from US Fidelis.

23. Examples of the fraud, deception misrepresentation and omission of material fact utilized by Defendants against the named Plaintiffs is more particularly set forth in Counts II through V which Plaintiffs fully incorporate into Count I by this reference.

24. As a direct and proximate result of the aforesaid acts and activities of Defendants, Plaintiffs, and each of them, have been caused to sustain damage by virtue of amounts paid pursuant to the purchase of the MVESC and with respect to damages for unpaid repairs to vehicles warranted thereunder.

25. All of the acts and activities of Defendants, as heretofore set out, were performed willfully, intentionally, fraudulently, maliciously, knowingly, and conspiratorially.

WHEREFORE, Plaintiffs state that they have been damaged, for which damage they pray judgment against Defendants, and each of them, in such sum as may be fair and reasonable in the premises, but in excess of Twenty-Five Thousand Dollars (\$25,000.00), together with punitive damages, attorneys' fees, and their costs in this behalf expended.

**COUNT II**  
**Plaintiff David O. Rucker against all Defendants for**  
**Violations of the Missouri Merchandising Practices Act**

Comes now Plaintiff David O. Rucker and for Count II of his Petition for Damages, states:

26. Plaintiff David O. Rucker re-alleges and incorporates herein by reference as though fully set forth herein each and every allegation contained in all preceding paragraphs.

27. On August 18, 2008, Plaintiff Rucker spoke by telephone with, Gregory E. Hutton, a sales representative for Defendants, about the purchase of a MVESC and ultimately purchased a MVESC from Defendants on that date.

28. During the telephone call with Mr. Hutton, Mr. Hutton made the following representations to Plaintiff Rucker regarding the MVESC he purchased:

- a. The MVESC gives 100% coverage for vehicle repairs;
- b. The MVESC is only available today and must be purchased today or you will be placed in the “delete file” and barred forever from purchasing a MVESC from US Fidelis;
- c. The MVESC was offered by US Fidelis;
- d. Financing of the MVESC was through US Fidelis.

29. All of the representations set forth in Paragraph 28 were false in that:

- a. The MVESC actually sold to Plaintiff Rucker did not cover all repairs to his covered vehicle 100%, but rather had numerous conditions, exclusions and limits of liability;
- b. The MVESC was not only available to Plaintiff Rucker on August 18, 2008, but rather the same or similar MVESC was available to him through US Fidelis on subsequent dates;
- c. The MVESC was not offered by US Fidelis, but rather a different company;
- d. The financing was not through US Fidelis, but rather a different finance company.

30. Furthermore, in the same August 18, 2008 telephone call with Mr. Hutton, Mr. Hutton suppressed or omitted the following material facts from Plaintiff Rucker regarding the MVESC:

- a. He failed to ever inform Plaintiff Rucker of all of the terms of the MVESC, including conditions, exclusions, restrictions and limits of liability, of the MVESC.

31. As a direct and proximate result of the aforesaid acts and activities of Defendants, Plaintiff Rucker has been caused to sustain damage by virtue of amount paid pursuant to the

purchase of the MVESC and with respect to damages for unpaid repairs to his vehicle warranted thereunder.

32. All of the acts and activities of Defendants, as heretofore set out, were performed willfully, intentionally, fraudulently, maliciously, knowingly, and conspiratorially.

WHEREFORE, Plaintiff David O. Rucker states that he has been damaged, for which damage he prays judgment against Defendants, and each of them, in such sum as may be fair and reasonable in the premises, but in excess of Twenty-Five Thousand Dollars (\$25,000.00), together with punitive damages, attorneys' fees, and their costs in this behalf expended.

**COUNT III**  
**Plaintiff Joshua A. Cox against all Defendants for**  
**Violations of the Missouri Merchandising Practices Act**

Comes now Plaintiff Joshua A. Cox and for Count III of his Petition for Damages, states:

33. Plaintiff Joshua A. Cox re-alleges and incorporates herein by reference as though fully set forth herein each and every allegation contained in all preceding paragraphs.

34. On December 17, 2008, Plaintiff Cox spoke by telephone with, Gregory E. Hutton, a sales representative for Defendants, about the purchase of a MVESC and ultimately purchased a MVESC from Defendants on that date.

35. During the telephone call with Mr. Hutton, Mr. Hutton made the following representations to Plaintiff Cox regarding the MVESC he purchased:

- a. The MVESC covers all repairs 100% including all labor, taxes and parts;
- b. The MVESC is only available today and must be purchased today or you will be barred forever from purchasing a MVESC from US Fidelis;
- c. The MVESC was offered by US Fidelis;

d. Financing of the MVESC was through US Fidelis.

36. All of the representations set forth in Paragraph 35 were false in that:

a. The MVESC actually sold to Plaintiff Cox did not cover all repairs to his vehicle 100%;

b. The MVESC was not only available to Plaintiff Cox on December 17, 2008, but rather the same or similar MVESC was available to Plaintiff Cox through US Fidelis on subsequent dates;

c. The MVESC was not offered by US Fidelis, but rather a different company;

d. The financing was not through US Fidelis, but rather a different finance company.

37. Furthermore, in the same December 17, 2008 telephone call with Mr. Hutton, Mr. Hutton suppressed or omitted the following material facts from Plaintiff Cox regarding the MVESC:

a. He expressly refused to send Plaintiff Cox the actual MVESC documentation prior to purchase, even when expressly requested by Plaintiff Cox;

b. He failed to ever inform Plaintiff Cox of all of the terms of the MVESC, including conditions, exclusions, restrictions and limits of liability of the MVESC; and

c. Defendants failed and omitted to ever send Plaintiff Cox the actual MVESC documentation setting forth the full terms, including conditions, exclusions and restrictions, of the MVESC.

38. As a direct and proximate result of the aforesaid acts and activities of Defendants, Plaintiff Cox has been caused to sustain damage by virtue of amount paid pursuant to the purchase of the MVESC and with respect to damages for unpaid repairs to his vehicle warranted thereunder.

39. All of the acts and activities of Defendants, as heretofore set out, were performed willfully, intentionally, fraudulently, maliciously, knowingly, and conspiratorially.

WHEREFORE, Plaintiff Joshua A. Cox states that he has been damaged, for which damage he prays judgment against Defendants, and each of them, in such sum as may be fair and reasonable in the premises, but in excess of Twenty-Five Thousand Dollars (\$25,000.00), together with punitive damages, attorneys' fees, and their costs in this behalf expended.

#### **COUNT IV**

#### **Plaintiff Edward C. Hansen, as attorney in fact for Hey Ping Chen, against all Defendants for Violations of the Missouri Merchandising Practices Act**

Comes now Plaintiff Edward C. Hansen, as attorney in fact for Hey Ping Chen, and for Count IV of his Petition for Damages, states:

40. Plaintiff Edward C. Hansen re-alleges and incorporates herein by reference as though fully set forth herein each and every allegation contained in all preceding paragraphs.

41. In or about May of 2008, Plaintiff Hansen, acting as attorney in fact for Hey Ping Chen, spoke by telephone with an unknown sales representative for Defendants about the purchase of a MVESC and ultimately purchased a MVESC from Defendants for Hey Ping Chen's vehicle on that date.

42. During the telephone call with the sales representative, the sales representative made the following representations to Plaintiff Hansen regarding the MVESC he purchased:

- a. The MVESC covers everything 100%;
- b. The MVESC is only available today and must be purchased today or you will be barred forever from purchasing a MVESC from US Fidelis;
- c. The MVESC was offered by US Fidelis;
- d. Financing of the MVESC was through US Fidelis.

43. All of the representations set forth in Paragraph 42 were false in that:

- a. The MVESC actually sold to Plaintiff Hansen did not cover all repairs to his vehicle 100%;
- b. The MVESC was not only available to Plaintiff Hansen on that one day, but rather the same or similar MVESC was available to Plaintiff Hansen through US Fidelis on subsequent dates;
- c. The MVESC was not offered by US Fidelis, but rather a different company;
- d. The financing was not through US Fidelis, but rather a different finance company.

44. Furthermore, in the same telephone call with Defendants' sales representative, the sales representative suppressed or omitted the following material facts from Plaintiff Hansen regarding the MVESC:

- a. He expressly refused to send Plaintiff Hansen the actual MVESC documentation prior to purchase, even when expressly requested by Plaintiff Hansen;
- b. He failed to ever inform Plaintiff Hansen of all of the terms of the MVESC, including conditions, exclusions, restrictions and limits of liability of the MVESC; and
- c. Defendants failed and omitted to ever send Plaintiff Hansen the actual MVESC documentation setting forth the full terms, including conditions, exclusions and restrictions, of the MVESC.

45. As a direct and proximate result of the aforesaid acts and activities of Defendants, Plaintiff Hansen, as attorney in fact for Hey Ping Chen, has been caused to sustain damage by virtue of amount paid pursuant to the purchase of the MVESC and with respect to damages for unpaid repairs to the vehicle warranted thereunder.

46. All of the acts and activities of Defendants, as heretofore set out, were performed willfully, intentionally, fraudulently, maliciously, knowingly, and conspiratorially.

WHEREFORE, Plaintiff Edward C. Hansen states that he has been damaged, for which damage he prays judgment against Defendants, and each of them, in such sum as may be fair and reasonable in the premises, but in excess of Twenty-Five Thousand Dollars (\$25,000.00), together with punitive damages, attorneys' fees, and their costs in this behalf expended.

**COUNT V**  
**Plaintiff Ronald J. Rutkiewicz against all Defendants for**  
**Violations of the Missouri Merchandising Practices Act**

Comes now Plaintiff Ronald J. Rutkiewicz and for Count V of his Petition for Damages, states:

47. Plaintiff Ronald J. Rutkiewicz re-alleges and incorporates herein by reference as though fully set forth herein each and every allegation contained in all preceding paragraphs.

48. On or about October 30, 2008, Plaintiff Rutkiewicz spoke by telephone with a sales representative for Defendants about the purchase of a MVESC and ultimately purchased a MVESC from Defendants on that date.

49. During the telephone call with the sales representative, the sales representative made the following representations to Plaintiff Rutkiewicz regarding the US Fidelis MVESC he purchased:

- a. The MVESC is a 100% bumper to bumper warranty and everything is covered;
- b. The MVESC is only available today and must be purchased today or you will be barred forever from purchasing a MVESC from US Fidelis;
- c. The MVESC was offered by US Fidelis;
- d. Financing of the MVESC was through US Fidelis.

50. All of the representations set forth in Paragraph 49 were false in that:

- a. The Warranty actually sold to Plaintiff Rutkiewicz did not cover all repairs to his vehicle 100%;
- b. The MVESC was not only available to Plaintiff Rutkiewicz on October 30, 2008, but rather the same or similar MVESC was available to Plaintiff Ronald Rutkiewicz through US Fidelis on subsequent dates;
- c. The MVESC was not offered by US Fidelis, but rather a different company;
- d. The financing was not through US Fidelis, but rather a different finance company.

51. Furthermore, in the same October 30, 2008 telephone call with Defendants' sales representative, the sales representative suppressed or omitted the following material facts from Plaintiff Rutkiewicz regarding the MVESC:

- a. He failed to ever inform Plaintiff Rutkiewicz of all of the terms of the MVESC, including conditions, exclusions, restrictions and limits of liability of the MVESC; and
- b. US Fidelis failed and omitted to ever send Plaintiff Rutkiewicz the actual MVESC documentation setting forth the full terms, including conditions, exclusions and restrictions, of the MVESC.

52. As a direct and proximate result of the aforesaid acts and activities of Defendants, Plaintiff Rutkiewicz has been caused to sustain damage by virtue of amounts paid pursuant to the purchase of the MVESC and with respect to damages for unpaid repairs to his vehicle warranted thereunder.

53. All of the acts and activities of Defendants, as heretofore set out, were performed willfully, intentionally, fraudulently, maliciously, knowingly, and conspiratorially.

WHEREFORE, Plaintiffs state that they have been damaged, for which damage they pray judgment against Defendants, and each of them, in such sum as may be fair and reasonable in the premises, but in excess of Twenty-Five Thousand Dollars (\$25,000.00), together with punitive damages, attorneys' fees, and their costs in this behalf expended.

**COUNT VI**  
**All Plaintiffs against all Defendants for Civil Conspiracy**

Come now Plaintiffs, on behalf of themselves and on behalf of all others similarly situated and for Count VI of their Petition for Damages, state:

54. Plaintiffs re-allege and incorporate herein by reference as though fully set forth herein each and every allegation contained in all preceding paragraphs.

55. In selling the MVESC, Defendants, and each of them, after a meeting of the minds, conspired with each other for the unlawful objective of violating the MMPA.

56. Defendants and each of them performed one or more acts including, but not limited to, the creation, implementation and performance of a plan and scheme of deception, fraud, misrepresentation and the omission of material facts in the sale of MVESC to individuals across the United States, as is more fully set forth in Counts I through V.

57. All of the acts and activities of Defendants, as heretofore set out, were performed willfully, intentionally, fraudulently, maliciously, knowingly, and conspiratorially.

58. That as a direct and proximate result of the aforesaid acts and activities of Defendants, Plaintiffs, and each of them, have been caused to sustain damage by virtue of amounts paid pursuant to the purchase of the extended vehicle service contracts and with respect to damages for unpaid repairs to vehicles warranted thereunder.

59. That all of the acts and activities of Defendants, as heretofore set out, were performed willfully, intentionally, fraudulently, maliciously, knowingly, and conspiratorially.

WHEREFORE, Plaintiffs state that they have been damaged, for which damage they pray judgment against Defendants, and each of them, in such sum as may be fair and reasonable in the premises, but in excess of Twenty-Five Thousand Dollars (\$25,000.00), together with punitive damages, attorneys' fees, and their costs in this behalf expended.

CASEY & DEVOTI, P.C.

by

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