IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

BRONSON D. THOMPSON, ET AL. PLAINTIFFS

V. NO. 4:20-CV-00123-SA-JMV

USAA CASUALTY INSURANCE COMPANY, ET AL. DEFENDANTS

DEFENDANT UNITED SERVICES AUTOMOBILE ASSOCIATION'S MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS

I. INTRODUCTION

Plaintiff contends that his claim depends on a legal question of policy interpretation, but his proffered interpretation is wrong. As succinctly put by a court of appeals affirming dismissal of cases like this one, the fatal flaw in Plaintiff's lawsuit is that he "misconstrues a limitation of liability as a promise to pay." *Sigler v. GEICO Cas. Co.*, 967 F.3d 658, 660 (7th Cir. 2020); *Coleman v. Garrison Prop. & Casualty Insurance Co.*, 839 F. App'x 20, 21-22 (7th Cir. 2021). So too here. USAA is entitled to judgment as a matter of law.

After Plaintiff's vehicle was totaled in an accident, he submitted an insurance claim under his automobile insurance policy issued by USAA ("Policy"). Plaintiff does not dispute that USAA properly determined "the loss amount" and that the vehicle was a total loss. Nor does Plaintiff quibble with USAA's invocation of the Policy's limit of liability for total losses, which is the Actual Cash Value ("ACV") of the total loss vehicle. (*See* Am. Compl. ¶ 21). Instead, Plaintiff contends that USAA was contractually required to pay ACV—***the limit of liability***— in ***every*** total loss, and that "ACV" necessarily includes the payment of certain taxes, and "dealer fees."

Plaintiff's entire case rests on a misinterpretation of his Policy and of insurance policies generally. Nowhere in the Policy does USAA promise to pay taxes and dealer fees in the event of a total loss. Nor was USAA contractually obligated to pay "ACV." Plaintiff confuses his Policy's Insuring Agreement—which defines USAA's obligation to pay for loss—with the Policy's Limit of Liability—which is the limit, or *most*, that USAA will pay for a given loss. The term "ACV" does not appear in the Policy's Insuring Agreement, but rather in the Limit of Liability section. ACV therefore does not define USAA's insuring obligation and cannot provide a basis for imposing a contractual obligation to pay taxes and dealer fees.

Indeed, the Seventh Circuit recently decided this issue in two cases brought by Plaintiff's counsel here and addressing the same claims and policy language. *See Coleman*, 839 F. App'x 20; *Sigler*, 967 F.3d 658. *Coleman* involved the insurance policy of a USAA affiliate with the same language as Plaintiff's Policy.[1] The Seventh Circuit affirmed the dismissal of the plaintiff's claim for sales tax because the plaintiff had "'mistake[n] a liability ceiling for a floor.'" *Id*. at 21 (quoting *Sigler*, 967 F.3d at 662). The insurance policy there, like Plaintiff's, stated "that the limit of liability for a total loss is the vehicle's actual cash value. . . . [A] limit on liability is the most that an insurer will pay its policyholder, not the amount that the insurer promises to pay." *Id*.

And, even if Plaintiff's could substitute his Policy's ACV limit of liability for the grant of insurance, his claims still fail. ACV is defined in the Policy as the "cost to buy" a vehicle (without

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[1] The insuring company in the *Coleman* case was a USAA affiliate Garrison Property and Casualty Insurance Company; the relevant provisions of the *Coleman* policy are identical to those of Plaintiff's policy, except that the *Coleman* plaintiff did not have CRA coverage. *See Coleman*, 839 F. App'x at 21; *Coleman v. Garrison Prop. & Cas. Ins. Co.*, No. 19-cv-1745, 2019 WL 3554184, at *1-2 (N.D. Ill. July 31, 2019). The relevant policy language in *Sigler* is also materially indistinguishable from Plaintiff's, *see Sigler*, 967 F.3d at 659-60, and the Seventh Circuit in *Coleman* relied on *Sigler* for its decision, *see Coleman*, 839 F. App'x at 21.

any mention of taxes or fees). So, Plaintiff contends that USAA must pay ACV and that "cost to buy" necessarily includes highway privilege and ad valorem taxes, and dealer fees. Plaintiff is mistaken. None of these expenses properly is categorized as the cost to buy a vehicle. Furthermore, Mississippi law provides Plaintiff with a credit for the unused portion of the highway privilege and ad valorem taxes. Therefore, Plaintiff did not suffer a "loss" under the Policy with respect to these taxes. And finally, neither the Policy nor Mississippi law requires USAA to pay optional "dealer fees" that not all dealers charge, and that no private sellers may charge.

Accordingly, USAA is entitled to judgment as a matter of law on Plaintiff's claims.

II. STATEMENT OF FACTS

A. The Adjustment of Plaintiff's Total Loss Claim

On December 19, 2017, Plaintiff's vehicle was in a collision. (Am. Compl. at ¶ 53.) Because the cost to repair Plaintiff's vehicle was greater than its actual cash value minus its salvage value after the loss, USAA declared the vehicle a total loss and paid Plaintiff $26,884.70. (*Id.* at ¶¶ 54-56.)

B. Plaintiff's Insurance Policy

USAA's "Insuring Agreement" of the Physical Damage Coverage states it pays pay for "loss":

> **INSURING AGREEMENT**
>
> . . . .
>
> Collision Coverage. **We** will pay for **loss** caused by **collision** to **your covered auto**, including its equipment, and personal property contained in your **covered auto**, minus any applicable deductible shown on the Declarations.

(Answer to Am. Compl, Ex. A, ECF No. 28-1 (hereinafter, "Policy") at pp. 15–16 of 24.)[2]

The Policy defines "Loss" as follows:

[2] Bolded terms from the Policy are emphasized in the original.

> [D]irect and accidental damage to the operational safety, function, or appearance of, or theft of, **your covered auto**, or personal property contained in **your covered auto**. **Loss** includes a total loss, but does not include any damage other than the cost to **repair** or replace. **Loss** does not include any loss of use, or diminution in value that would remain after **repair** or replacement of the damaged or stolen property.

(Policy at p. 16 of 24.)

The Policy separately defines USAA's limit of liability as the "actual cash value" of Plaintiff's vehicle:

> **Limit of Liability**
>
> . . . .
>
> A. Total loss to **your covered auto**. **Our** limit of liability under Comprehensive Coverage and Collision Coverage is the **actual cash value** of the vehicle, inclusive of any **custom equipment**, and the cost to transfer or replace any equipment, furnishings or parts designed to assist disabled persons.
>
> 1. The maximum amount **we** will include for **loss** to **custom equipment** in or on **your covered auto** is $5,000.
>
> 2. **We** will declare **you covered auto** to be a total loss if, in **our** judgment, the cost to **repair** it would be greater than its **actual cash value** minus its salvage value after the **loss**.
>
> 3. If Car Replacement Assistance is shown on the Features Declarations for this **your covered auto**, **we** will pay an additional 20% of the **actual cash value** of the vehicle at the time of a total loss. This additional amount:
>
> a. Is separate from the limit available for **loss** to **your covered auto** under Comprehensive Coverage or Collision Coverage; and
>
> b. Is available if the total loss paid:
>
> (1) Under this policy's Comprehensive Coverage or Collision Coverage; or
>
> (2) Because of the **PD** by or on behalf of persons or organizations who may be legally responsible.

> However, Car Replacement Assistance does not apply to total loss to any **nonowned vehicle.**

(Policy, Amendatory Endorsement at pp. 1–2 of 3.) The Policy defines "Actual cash value" as

> the amount that it would cost, at the time of **loss**, to buy a comparable vehicle. As applied to **you covered auto**, a comparable vehicle is one of the same make, model, model year, body type, and options with substantially similar mileage and physical condition.

(Policy at p. 14 of 24.)

C. Plaintiff's Amended Complaint

On October 6, 2020, Plaintiff filed the Amended Complaint (Plaintiff was not named in the original pleading, filed July 9, 2020). (*Id.*) Plaintiff alleges the Policy entitles him to two categories of payments in the event of a total loss. The first category are three government-imposed charges:

1. Highway Privilege Tax (a/k/a Road and Bridge Privilege Tax)

Miss. Code Ann. § 27-19-5 imposes an "annual highway privilege tax on operators of private carriers of passengers as reasonable compensation for the use of the highways" as follows:

> (a) On the owner or operator of each private carrier of passengers $15.00
> (b) On each motorcycle, per annum $8.00

2. County Registration

Miss. Code Ann. § 27-19-57(1) states that "[a]ll persons required to pay the privilege tax . . . shall register their private or commercial vehicle and pay such tax in the county in which such vehicles are domiciled or the county from which such vehicles most frequently leave and return." The act of registration incurs a registration fee of $14.00 for first-time registration and $12.75 for renewals.

3. Ad Valorem Tax

Miss. Code Ann. § 27-51-7 states that "[a]ny person required by law to pay a road and bridge privilege license tax on any motor vehicle shall also be liable for the ad valorem taxes due on such motor vehicle, unless otherwise specifically exempt herein."

The Amended Complaint inaccurately refers to these charges as "License Fees," but none of them relate to a "license" and two of them are explicitly referred to as taxes.[3] USAA, therefore, will refer to these charges as "Taxes."

The second category of charges Plaintiff seeks are dealer or documentation fees ("Dealer Fees"). (*Id.* at ¶ 27.) Dealer Fees are not assessed by a governmental authority; instead, they are charged and kept by some motor vehicle dealers. Mississippi law allows, but does not require, these fees and caps them at $425. 30 Miss. Code R. § 1301-8.1(B)(8). The Amended Complaint claims Taxes and Dealer Fees are part of "actual cash value" as defined in the Policy, and that USAA must pay them to Plaintiff at the time of the total loss payment. (*Id.* at ¶ 33.) He brings two breach of contract claims. Count One alleges that USAA breached the Policy by not including the Taxes in Plaintiff's Total Loss Settlement. (*Id.* at ¶¶ 78–83.) Count Two alleges that USAA breached the Policy by not including Dealer Fees in Plaintiff's Total Loss Settlement. (*Id.* at ¶¶ 86–88.)

III. LEGAL STANDARD

"After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). A motion for judgment on the pleadings is evaluated using the same standard as a motion to dismiss for failure to state a claim under Rule 12(b)(6). *Spec's Family Partners, Ltd. v. Hanover Ins. Co.*, 739 F. App'x 233, 237 (5th Cir. 2018) (quoting *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008)). "[T]he central issue is whether, in the light most favorable to the plaintiff, the complaint states a valid claim for relief." *Id.* (quoting *Hughes v. Tobacco Inst., Inc.*, 278 F.3d 417, 420 (5th Cir. 2001)). A valid claim for relief is one in which "the plaintiff pleads factual content that allows the court to draw

[3] The highway privilege tax at times is called a "privilege license" tax in the code. Miss. Code Ann. § 27-19-59.

the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court accepts "all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *Gines v. D.R. Horton, Inc.*, 699 F.3d 812, 816 (5th Cir. 2012) (quoting *Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007)).

In ruling, the Court may consider "attachments [to the Complaint], documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Monroe's Donuts & Bakery v. Sweet Sensations Bakery, LLC*, No. 3:10CV664, 2011 U.S. Dist. LEXIS 99016, at *5 (S.D. Miss. Sep. 1, 2011) (quoting *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008)).

IV. LAW AND ARGUMENT

There are two elements to a breach of contract claim: "(1) the existence of a valid and binding contract, and (2) a showing that the defendant has broken, or breached it." *Winters v. Feng*, 320 So. 3d 1235, 1242 (Miss. Ct. App. 2020) (quoting *Maness v. K & A Enters. of Miss. LLC*, 250 So. 3d 402, 414 (Miss. 2018)). In Mississippi, "[t]he interpretation of an insurance policy is a question of law." *Hinton v. Pekin Ins. Co.*, 268 So. 3d 543, 552 (Miss. 2019) (quoting *Minn. Life Ins. Co. v. Columbia Cas. Co.*, 164 So. 3d 954, 967 (Miss. 2015)). "Insurance policies are contracts and must be enforced according to their provisions." *Minn. Life Ins. Co.*, 164 So. 3d at 968. "[W]hen the words of an insurance policy are plain and unambiguous, the court will afford them their plain, ordinary meaning and will apply them as written." *Id.* (quoting *Noxubee Cty. Sch. Dist. v. United Nat'l Ins. Co.*, 883 So. 2d 1159, 1165 (Miss. 2004)).

A. The Policy does not require payment of the Taxes or Dealer Fees.

Plaintiff's claim for payment of Taxes and Dealer Fees is predicated on an inaccurate characterization of USAA's Policy. The Policy nowhere mentions the Taxes or Dealer Fees. Plaintiff's argument rests exclusively on his assertion that under the Policy, USAA promises to

pay "the amount it would cost to buy a comparable vehicle," or "ACV." (Am. Compl. at ¶ 17.) But that alleged "promise to pay" appears nowhere in the Policy. Rather, USAA's "promise to pay" is contained in the Insuring Agreement, which requires that USAA pay for "loss." (Policy at p. 15–16 of 24.) The Insuring Agreement does not mention "ACV," and Plaintiff does not contend that "loss," or the Insuring Agreement generally, requires USAA to pay Taxes or Dealer Fees on total loss claims. Instead, Plaintiff's argument rests exclusively on the term "ACV," which appears only in the Limit of Liability provision. The Policy's Limitation of Liability section does not create an obligation to pay Taxes and Dealer Fees.

The Seventh Circuit's recent decisions in *Coleman* and *Sigler* explained the distinction between an insuring agreement and limit of liability with respect to near-identical claims. In *Coleman*, the plaintiff insured's claims involved the insurance policy of a USAA affiliate with the same relevant language as Plaintiff's Policy. *Coleman v. Garrison Prop. & Cas. Ins. Co.*, 839 F. App'x 20, 20 (7th Cir. 2021). The Seventh Circuit rejected the very argument that Plaintiff makes here: that USAA allegedly was obligated to pay its insureds ACV for totaled vehicles, and that ACV includes certain taxes. *Coleman*, 839 F. App'x at 21.

In *Sigler*, the Seventh Circuit rejected nearly identical claims by a GEICO insured on the same basis. *Sigler v. Geico Cas. Co.*, 967 F.3d 658, 660 (7th Cir. 2020). The Seventh Circuit explained the distinct provisions of an insurance policy, characterizing the "coverage-grant section" (the "Insuring Agreement") as defining the insurer's obligation to pay, and the "Limit of Liability" section as the "ceiling on [the insurer's] payment obligation," or "ACV." *Id*. The Seventh Circuit rejected the same argument Plaintiff makes here—that ACV, which appears only in the Limit of Liability, defines USAA's obligation to pay:

> *This argument misconstrues a limitation on liability as a promise to pay. Put slightly differently, Sigler mistakes a liability ceiling for a floor.* The Limit of

> Liability section of the policy doesn't promise to pay these costs regardless of whether the insured incurs them; it simply describes the *most* that GEICO will pay in the event of a covered loss. To repeat: the coverage-granting language says only that GEICO will pay for the "collision loss to the owned or non-owned auto," with "loss" defined as "direct and accidental loss of or damage to" an insured vehicle or "[o]ther insured property."

Id. (emphasis added); *see also Coleman*, 839 F. App'x at 21; *see also Lett v. Wausau Underwriters Ins. Co.*, No. 2:20-cv-9630 (JMV), 2021 U.S. Dist. LEXIS 29642, at *13 (D.N.J. Feb. 17, 2021) ("To read otherwise blurs the line between ACV and replacement cost, which both the Policy and New Jersey law treat as distinct measurements of loss.").

Like *Coleman* and *Sigler*, the Limit of Liability provision in Plaintiff's Policy is not USAA's obligation to pay, but is rather the *most* that USAA could be required to pay on a given claim. *Coleman*, 839 F. App'x at 21; *Sigler*, 967 F.3d at 660.

B. Plaintiff's Argument Would Alter the Bargain in the Policy by Changing the Insuring Agreement from Payment of "Loss" to Payment for Replacement.

Plaintiff did not incur a "loss" with respect to his vehicle for the Taxes and Dealer Fees. USAA only promised to pay for loss, which is centered on damage to the covered auto. (Policy at pgs. 14–15, 17 of 24.) Neither Taxes nor Dealer Fees are a "loss" because they are not "direct and accidental damage" to the vehicle. And USAA's obligation is to "pay for **loss** in *money*" and not, for example, replace the vehicle. (Policy at p. 17 of 24 (second emphasis added.) The Policy is not a replacement policy. *Barlow v. Gov't Emples. Ins. Co.*, No. 19-CV-3349 (PKC) (RML), 2020 U.S. Dist. LEXIS 179455, at *9 (E.D.N.Y. Sep. 29, 2020) (explaining that coverage for "compensable loss" that does not include "replacement value" is not a replacement cost policy). Plaintiffs' theory, though, does just that— it improperly morphs payment for "loss" into a promise to pay for an actual or hypothetical replacement of Plaintiff's vehicle. That is not what USAA agreed to insure.

C. The Taxes and Dealer Fees Are Not Payable, Even Under Plaintiff's Interpretation of the Policy.

Plaintiff theory relies on the definition of ACV, specifically, "the amount that it would cost, at the time of loss, to buy a comparable vehicle." (Am. Compl. at ¶¶ 17, 34.) As noted above, this is not USAA's promise to pay. But, even under Plaintiff's theory, the Taxes and Dealer Fees are not the "amount that it would cost … to buy."

1. Dealer Fees are not a mandatory or universal "cost to buy" a vehicle

Dealer Fees are not necessarily charged when buying a vehicle. Instead, the Dealer Fee is discretionary and applies only to "motor vehicle dealers." 30 Miss. Code R. § 1301-8.1. Whether and how much a dealer charges is at the individual discretion of each motor vehicle dealer, up to the statutory maximum. Moreover, Mississippi's statutes do not appear to permit private parties that are selling a vehicle, non "motor vehicle dealers," to charge Dealer Fees.

2. The Taxes are not a mandatory or universal "cost to buy" a vehicle

With respect to the Ad Valorem Tax, there are at least two-dozen payment exceptions. Miss. Code Ann. § 27-51-41(2). Exceptions include vehicles owned by a disabled veteran, the surviving spouse of a member of the Armed Forces who died on active duty, the recipient or surviving spouse of a recipient of a Purple Heart, prisoners of war and their surviving spouses, antique or historical vehicles, veterans of WWII and their surviving spouses, law enforcement officers injured in the line of duty, and the mother of a service member who died on active duty. *Id.* at § 27-51-41(2).[4]

Furthermore, the Taxes are a cost of *using* a vehicle, not *buying* a vehicle. The Privilege tax imposes an "annual highway privilege tax on operators of private carriers of passengers as

[4] Most of these exceptions are particularly significant because USAA's membership is limited to members and veterans of the armed forces, as well as their family members. https://www.usaa.com/inet/wc/why_choose_usaa_main?wa_ref=pub_global_membership.

reasonable compensation *for the use of the highways.*" Miss. Code Ann. § 27-19-5 (emphasis added). And nothing in the County Registration or Ad Valorem tax statutes indicates these Taxes are included in the cost "to buy" a vehicle. *See* Miss. Code Ann. § 27-19-40 (permitting motor vehicle dealers to issue temporary tags); Miss. Code Ann. § 27-19-141 (providing private-party purchasers with seven days to register vehicle).

Plaintiff cannot claim USAA breached the Policy by not paying amounts that it would **not** cost to buy a comparable vehicle. *See Coleman v. Garrison Prop. & Cas. Ins. Co.*, No. 19 C 1745, 2019 U.S. Dist. LEXIS 127940, at *8 (N.D. Ill. July 31, 2019) (holding that the insurer did not breach the policy by not paying sales tax because the cost to buy a comparable vehicle is "limited to the purchase price of the vehicle itself and does not include attendant 'replacement costs' like sales tax, title fees, registration fees, or the like"), *aff'd* 839 F. App'x 20 (7th Cir. 2021); *see also Furniture & Accessory Retail Grp., Inc. v. Lane Furniture Indus.*, No. 1:10CV213-SA-JAD, 2011 U.S. Dist. LEXIS 61133, at *12 (N.D. Miss. June 8, 2011) (granting motion to dismiss when "no breach alleged by Plaintiffs is plausible").

The Amended Complaint does not allege otherwise. However, Plaintiff does allege the Taxes and Fees are "reasonably necessary" to purchase a vehicle (ECF No. 21 at ¶ 25.). This is a bridge too far. Even if the definition of ACV controlled, and not the coverage grant, ACV is "the amount that it would cost, at the time of **loss**, to buy a comparable vehicle." This does not include every conceivable cost "reasonably necessary" to purchase a vehicle.

For example, transportation to dealerships to shop for a replacement vehicle, or a computer to conduct internet searches and obtain Carfax reports might be "reasonably necessary" to buy a replacement vehicle. So too are the costs to pick up, transport, and deliver a vehicle from an out-of-state dealer. However, such expenses are *not* part of the cost to "buy" the vehicle. *Coleman v.*

Garrison Prop. & Cas. Ins. Co., No. 19 C 1745, 2019 U.S. Dist. LEXIS 127940, at *8 (N.D. Ill. July 31, 2019) (holding that the insurer did not breach the policy by not paying sales tax because the cost to buy a comparable vehicle is "limited to the purchase price of the vehicle itself and does not include attendant 'replacement costs' like sales tax, title fees, registration fees, or the like"), *aff'd* 839 F. App'x 20 (7th Cir. 2021). Even under Plaintiff's mistaken reading of the Policy, he is not entitled to sums that may never be charged and are not for "buying" a vehicle in any event.

D. Plaintiff did not suffer Loss with respect to the Highway Privilege and Ad Valorem taxes.

As shown above, the USAA Policy definition of "Loss" does not include the Taxes. (Policy at p. 16 of 24.) And even if it did, Plaintiff still did not incur a "loss" in the form of the Taxes, because Mississippi law provides a credit for the unused portion of Highway Privilege and Ad Valorem Taxes paid for his total loss vehicle.

Mississippi levies a $15 annual "highway privilege tax" for private automobiles. Miss. Code Ann. § 27-19-5. Mississippi also imposes an annual "ad valorem tax" on any person required to pay the highway privilege tax, with exceptions. Miss. Code Ann. § 27-51-7. Thus, these are fees generally incurred annually by vehicle operators in Mississippi.

However, when a vehicle title is transferred, the owner receives a credit for the unused portion of the privilege and ad valorem taxes. The Mississippi Code sets forth the following process for a vehicle transfer:

> The seller or transferor shall remove the license plate from the vehicle and retain the same. Such license plate must be surrendered to the issuing authority with the corresponding tax receipt if required, and ***credit shall be allowed for the taxes paid for the remaining tax year on like privilege or ad valorem taxes*** due on another vehicle owned by the seller or transferor, or by the seller's or transferor's spouse or dependent child. . . . If the seller or transferor does not elect to receive such credit at the time the license plate is surrendered, ***the issuing authority shall issue a certificate of credit to the seller or transferor***, or to the seller's or transferor's spouse or dependent child, or to any other person, business or corporation, at the direction of the seller or transferor, for the remaining unexpired taxes prorated from

> the first day of the month following the month in which the license plate is surrendered.

Miss. Code Ann. § 27-19-141 (emphases added); *see also* Miss. Code Ann. § 27-51-41(5). That is, the owner—here Plaintiff—receives a *credit* for the unused portion of the taxes paid, regardless of whether a replacement vehicle is ever purchased.

The Mississippi Code has a similar credit for total losses. Miss. Code Ann. § 27-19-71 (providing that the owner "shall be entitled to the issuance of new privilege license for the replacement vehicle for the remainder of the registration year"); Miss. Code Ann. § 27-51-27 (providing that an owner shall be "credited with the amount of the ad valorem taxes on the proportional part of the taxable year remaining").

The Amended Complaint alleges that USAA deemed Plaintiff's vehicle a total loss and issued payment for the vehicle. (Am. Compl. at ¶¶ 46–48.) Thus, Plaintiff received, or at least was entitled to receive, a credit for the Highway Privilege and Ad Valorem taxes for the remaining annual year. Plaintiff's claim for the High Privilege and Ad Valorem tax is rooted in a *future* annual expense. These are the same expenses Plaintiff would incur had he sought to re-register his loss vehicle. Therefore, he suffered no "loss" for either tax.

E. Mississippi law does not require payment of the Taxes and Dealer Fees.

Plaintiff does not identify any Mississippi case law, statute, or regulation requiring payment of the Taxes and Dealer Fees. The Amended Complaint does reference a 2007 Insurance Bulletin by the Mississippi Department of Insurance. (Am. Compl. at ¶ 26.) But the 2007 Bulletin does not help Plaintiff.

First, the 2007 Bulletin identifies only the payment of sales tax, title fees, and license fees as necessary to "make the insured whole" in a total loss.[5] The Bulletin does not mention the Taxes

[5] https://www.mid.ms.gov/legal/bulletins/20074bull.PDF.

or Dealer Fees at issue here. Plaintiff does not allege that USAA failed to pay sales tax, title fees, and license fees. That the Bulletin mentions sales tax and other fees but does not mention the Taxes and Dealer Fees Plaintiff seeks suggests the Department believes that such fees are not owed for total loss claims.

Second, even if the 2007 Bulletin could be stretched to arguably include the Taxes or Dealer Fees, the Department's position is not entitled to deference. *See Hinton v. Pekin Ins. Co.*, 268 So. 3d 543, 551 (Miss. 2019) (policy interpretation is the province of the Court); *Miss. Methodist Hosp. & Rehab. Ctr., Inc. v. Miss. Div. of Medicaid*, 319 So. 3d 1049, 1054 (Miss. 2021) (Mississippi law does not afford weight to an agency's interpretation of a rule or statute because that "is the province of the courts."). Indeed, there is even less reason here to give the Bulletin weight, as it does not purport to interpret any law, regulation, or policy language, and does not even mention the Taxes or Dealer Fees at issue here.

Accordingly, Mississippi law does not require payment of the Taxes or Dealer Fees.

V. CONCLUSION

Neither Plaintiff's Policy nor Mississippi law required USAA to pay the Taxes and Dealer Fees for Plaintiff's total loss claim. Therefore, USAA respectfully requests that the Court grant its motion for judgment on the pleadings.

This the 4th day of November 2021.

Respectfully submitted,

UNITED SERVICES AUTOMOBILE
ASSOCIATION

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the ECF system, which served a copy on all counsel of record.

This the 4th day of November 2021.

/s/ William N. Reed
WILLIAM N. REED