

I.D. No.: 21392  
Our File No.: 175.16003

STATE OF ILLINOIS        )  
                                   )  
                                   )        ss  
COUNTY OF COOK        )

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

AUTO-OWNERS INSURANCE        )  
COMPANY,                            )  
                                   )  
          Plaintiff,                    )  
                                   )  
                                   )        v.  
                                   )  
                                   )  
CHICAGO MOTOR CAR CORP.       )  
and GATEWAY ONE LENDING        )  
& FINANCE, LLC,                   )  
                                   )  
          Defendants.                   )

**12CH20155**

No:

**DOROTHY BROWN  
CLERK OF CIRCUIT COURT**

**MAY 9 1 2012**

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT**

**FILED**

NOW COMES Plaintiff, AUTO-OWNERS INSURANCE COMPANY, by and through its attorneys, CONDON & COOK, LLC, and for its Verified Complaint for Declaratory Judgment against the Defendants, CHICAGO MOTOR CAR, CORP. and GATEWAY ONE LENDING & FINANCE, LLC, it states as follows:

1. AUTO-OWNERS INSURANCE COMPANY (hereinafter "AUTO-OWNERS") is a corporation engaged in the business of selling and issuing insurance policies and is licensed to do business as such in the State of Illinois.
2. Defendant, CHICAGO MOTOR CAR, CORP. is a corporation organized under Illinois law engaged in the business of selling automobiles with its principal place of business in DuPage County, Illinois.
3. Defendant, GATEWAY ONE LENDING & FINANCE, LLC (hereinafter

"GATEWAY") is a Delaware limited liability corporation licensed to do business in the State of Illinois.

4. Venue is proper in Cook County as Defendant GATEWAY is a foreign corporation which does business in Cook County.

5. On or about October 20, 2009, AUTO-OWNERS issued a Garage Liability Policy (No: 47-803-128-00) to CHICAGO MOTOR CAR CORP. (A true and correct certified copy of the Garage Liability policy is attached hereto and incorporated herein as Exhibit "1.")

6. On or about October 20, 2009, AUTO-OWNERS issued a Commercial General Liability (hereinafter "CGL") Policy (No: 084604-61803128-09) to CHICAGO MOTOR CAR, CORP. (A true and correct certified copy of the CGL policy is attached hereto and incorporated herein as Exhibit "2.")

7. On March 2, 2012, CHICAGO MOTOR CAR CORP. and others were named as Defendants in a lawsuit filed by GATEWAY. This action is currently pending in the Circuit Court of Cook County, at Docket No. 2012 M3 00765 (hereinafter "Underlying Complaint"). (A true and correct copy of the Underlying Complaint is attached and incorporated herein as Exhibit "3.")

8. GATEWAY is a necessary party to this action because it is the real party at interest.

9. An actual controversy exists between the Plaintiff and the Defendants pursuant to 735 ILCS 5/2-701.

**COUNT I**  
**No Occurrence Under the CGL**

10. As paragraph 10, Plaintiff realleges and incorporates by reference the

allegations contained in paragraphs 1 through 9 as though fully set forth word for word herein.

11. The subject policy provides, in pertinent part:

**SECTION I – COVERAGES**

**COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

a. **Bodily Injury And Property Damage Liability (Other Than Auto)**

**1. Insuring Agreement**

- a. We will pay those sums that **you** become legally obligated to pay as damages because of **bodily injury** or **property damage** to which this insurance applies.
- b. This insurance applies to **bodily injury** and **property damage** only if:
  - (1) The **bodily injury** or **property damage** is caused by an **occurrence** that takes place in the **coverage territory**

\* \* \* \*

12. The CGL Policy also contains the following definitions:

\* \* \* \*

**SECTION V - DEFINITIONS**

\* \* \* \*

12. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

13. The allegations of Count I of the Underlying Complaint, purport to set forth a claim for common law fraud.

14. Specifically, Count I of GATEWAY's Underlying Complaint alleges that

CHICAGO MOTOR CAR CORP. entered into a vehicle purchase agreement with an individual. In conjunction with same, CHICAGO MOTOR CAR arranged financing through GATEWAY. In furtherance of that financing, CHICAGO MOTOR CAR CORP. made statements to GATEWAY regarding its customer that it knew were false. GATEWAY further alleges in Count I that the individual never took possession of the vehicle. It further alleges that the financing that CHICAGO MOTOR CAR CORP. obtained for the individual did not fund the car purchase but rather, was used as working capital by CHICAGO MOTOR CAR CORP. (Exhibit "3," Count I, at ¶¶ 7 and 10).

15. The Underlying Complaint also alleges that "[GATEWAY] has been damaged by its reasonable reliance upon the representations of [the individual] and [CHICAGO MOTOR CAR CORP.]" (Exhibit "3," Count I, at ¶ 17.)

16. The allegations contained in Count II of the Underlying Complaint, purport to set forth a claim for "Conspiracy to Defraud" restates and realleges the facts contained in Count I, and alleges that "[a]s a result of the misrepresentations and/or failures to disclose set forth above, Plaintiff has suffered various damages and losses." (Exhibit "3," Count II at ¶ 15.)

17. Count III of the Underlying Complaint purports to set forth a claim for "Breach of Contract" and alleges that CHICAGO MOTOR CAR CORP. entered into the financing agreement in breach of its agreement with GATEWAY, that pursuant to the terms of the contract CHICAGO MOTOR CAR CORP. must repurchase the vehicle and that it has failed to do so. (See Exhibit "3," Count III, at ¶¶ 26-28.)

18. Accordingly, AUTO-OWNERS does not owe any duty to defend and/or

indemnify CHICAGO MOTOR CAR CORP. because the allegations of Counts I through III of the Underlying Complaint do not allege an "occurrence" as that term is defined in the CGL.

WHEREFORE the Plaintiff, AUTO-OWNERS INSURANCE COMPANY respectfully requests this Honorable Court adjudicate and decree as follows:

- (a) That the CGL policy issued to CHICAGO MOTOR CAR CORP. by AUTO-OWNERS (No: 084604-61803128-09), does not afford coverage for any claim set forth in the Complaint entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (b) That Auto-Owners Insurance Company has no duty to defend any Defendant in the case entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (c) That Auto Owners Insurance Company has no duty to indemnify any Defendant in the litigation entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (d) For any other relief this Court deems equitable and just.

## **COUNT II**

### **No Occurrence Under the Garage Liability Policy**

10. As paragraph 10, Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 9 as though fully set forth word for word herein.

11. The Garage Liability Policy provides, in pertinent part:

#### **SECTION II – COVERAGE**

##### **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

a. **Bodily Injury And Property Damage Liability (Other Than Auto)**

- (1) We will pay those sums that **you** become legally obligated to pay as damages because of **bodily injury** or **property damage** to which this insurance applies.
- (2) This insurance applies to **bodily injury** and **property damage** only if:
  - (a) The **bodily injury** or **property damage** is caused by an **occurrence** that takes place in the **coverage territory**;

\* \* \* \*

12. The Garage Liability Policy also contains the following definitions:

**SECTION I - DEFINITIONS**

To understand this policy, **you** must understand the meaning of the following words. These words appear in **bold face type** whenever used in this policy and attached amendatory forms.

\* \* \* \*

R. **Occurrence** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \* \*

13. The allegations of Count I of the Underlying Complaint, purport to set forth a claim for common law fraud.

14. GATEWAY's Underlying Complaint alleges that CHICAGO MOTOR CAR CORP. entered into a vehicle purchase agreement with an individual. In conjunction with same, CHICAGO MOTOR CAR arranged financing through GATEWAY. In furtherance of that financing, CHICAGO MOTOR CAR CORP. made statements to GATEWAY regarding its customer that it knew were false. GATEWAY further alleges in

Count I that the individual never took possession of the vehicle. It further alleges that the financing that CHICAGO MOTOR CAR CORP. obtained for the individual did not fund the car purchase but rather, was used as working capital by CHICAGO MOTOR CAR CORP. (Exhibit "3," Count I, at ¶¶ 7 and 10).

15. The Underlying Complaint also alleges that "[GATEWAY] has been damaged by its reasonable reliance upon the representations of [the individual] and [CHICAGO MOTOR CAR CORP.]" (Exhibit "3," Count I, at ¶ 17.)

16. The allegations contained in Count II of the Underlying Complaint, purport to set forth a claim for "Conspiracy to Defraud" restates and realleges the facts contained in Count I, and alleges that "[a]s a result of the misrepresentations and/or failures to disclose set forth above, Plaintiff has suffered various damages and losses." (Exhibit "3," Count II at ¶ 15.)

17. Count III of the Underlying Complaint purports to set forth a claim for "Breach of Contract" and alleges that CHICAGO MOTOR CAR CORP. entered into the financing agreement in breach of its agreement with GATEWAY, that pursuant to the terms of the contract CHICAGO MOTOR CAR CORP. must repurchase the vehicle and that it has failed to do so. (See Exhibit "3," Count III, at ¶¶ 26-28.)

18. Accordingly, AUTO-OWNERS does not owe any duty to defend and/or indemnify CHICAGO MOTOR CAR CORP. because the allegations of Counts I through III of the Underlying Complaint do not allege an "occurrence" as that term is defined in the Garage Liability Policy.

WHEREFORE the Plaintiff, AUTO-OWNERS INSURANCE COMPANY respectfully requests this Honorable Court adjudicate and decree as follows:

- (a) That the Garage Liability Policy issued to CHICAGO MOTOR CAR CORP. by AUTO-OWNERS (No: 47-803-128-00), does not afford coverage for any claim set forth in the Complaint entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (b) That Auto-Owners Insurance Company has no duty to defend any Defendant in the case entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (c) That Auto Owners Insurance Company has no duty to indemnify any Defendant in the litigation entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (d) For any other relief this Court deems equitable and just.

**COUNT III**  
**No Property Damage Under the CGL**

10. As paragraph 10, Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 9 as though fully set forth word for word herein.

11. The subject policy provides, in pertinent part:

**SECTION I – COVERAGES**

**COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies.

\* \* \* \*



b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

\* \* \* \*

12. The CGL Policy also contains the following definitions:

\* \* \* \*

18. "Property Damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;

\* \* \* \*

13. The allegations contained in Count I of the Underlying Complaint, purport to set forth a claim for common law fraud.

14. GATEWAY's Underlying Complaint alleges that CHICAGO MOTOR CAR CORP. entered into a vehicle purchase agreement with an individual. In conjunction with same, CHICAGO MOTOR CAR arranged financing through GATEWAY. In furtherance of that financing, CHICAGO MOTOR CAR CORP. made statements to GATEWAY regarding its customer that it knew were false. GATEWAY further alleges in Count I that the individual never took possession of the vehicle. It further alleges that the financing that CHICAGO MOTOR CAR CORP. obtained for the individual did not fund the car purchase but rather, was used as working capital by CHICAGO MOTOR CAR CORP. (Exhibit "3," Count I, at ¶¶ 7 and 10).

15. The Underlying Complaint also alleges that "[GATEWAY] has been damaged by its reasonable reliance upon the representations of [the individual] and [CHICAGO MOTOR CAR CORP.]" (Exhibit "3," Count I, at ¶ 17.)

16. The allegations contained in Count II of the Underlying Complaint, purport to set forth a claim for "Conspiracy to Defraud" restates and realleges the facts contained in Count I, and alleges that "[a]s a result of the misrepresentations and/or failures to disclose set forth above, Plaintiff has suffered various damages and losses." (Exhibit "3," Count II at ¶ 15.)

17. Count III of the Underlying Complaint purports to set forth a claim for "Breach of Contract" and alleges that CHICAGO MOTOR CAR CORP. entered into the financing agreement in breach of its agreement with GATEWAY, that pursuant to the terms of the contract CHICAGO MOTOR CAR CORP. must repurchase the vehicle and that it has failed to do so. (See Exhibit "3," Count III, at ¶¶ 26-28.)

18. Accordingly, AUTO-OWNERS does not owe any duty to defend and/or indemnify CHICAGO MOTOR CAR CORP. because the allegations of Counts I through III of the Underlying Complaint do not allege an "occurrence" as that term is defined in the CGL.

WHEREFORE the Plaintiff, AUTO-OWNERS INSURANCE COMPANY respectfully requests this Honorable Court adjudicate and decree as follows:

- (a) That the CGL policy issued to CHICAGO MOTOR CAR CORP. by AUTO-OWNERS (No: 084604-61803128-09), does not afford coverage for any claim set forth in the Complaint entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (b) That Auto-Owners Insurance Company has no duty to defend any Defendant in the case entitled *Gateway One Lending & Finance, LLC v.*

*Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.

- (c) That Auto Owners Insurance Company has no duty to indemnify any Defendant in the litigation entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (d) For any other relief this Court deems equitable and just.

**COUNT IV**

**No Property Damage Under the Garage Liability Policy**

10. As paragraph 10, Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 9 as though fully set forth word for word herein.

11. The Garage Liability Policy provides, in pertinent part:

**SECTION II – COVERAGE**

**COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

**a. Bodily Injury And Property Damage Liability (Other Than Auto)**

(1) **We** will pay those sums that **you** become legally obligated to pay as damages because of **bodily injury** or **property damage** to which this insurance applies.

\* \* \* \*

(2) This insurance applies to **bodily injury** and **property damage** only if:

(a) The **bodily injury** or **property damage** is caused by an **occurrence** that takes place in the **coverage territory**;

\* \* \* \*

12. The Garage Liability Policy also contains the following definitions:

**SECTION I – DEFINITIONS**

**W. Property Damage means:**

1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;

\* \* \* \*

13. The allegations contained in Count I of the Underlying Complaint, purport to set forth a claim for common law fraud.

14. GATEWAY's Underlying Complaint alleges that CHICAGO MOTOR CAR CORP. entered into a vehicle purchase agreement with an individual. In conjunction with same, CHICAGO MOTOR CAR arranged financing through GATEWAY. In furtherance of that financing, CHICAGO MOTOR CAR CORP. made statements to GATEWAY regarding its customer that it knew were false. GATEWAY further alleges in Count I that the individual never took possession of the vehicle. It further alleges that the financing that CHICAGO MOTOR CAR CORP. obtained for the individual did not fund the car purchase but rather, was used as working capital by CHICAGO MOTOR CAR CORP. (Exhibit "3," Count I, at ¶¶ 7 and 10).

15. The Underlying Complaint also alleges that "[GATEWAY] has been damaged by its reasonable reliance upon the representations of [the individual] and [CHICAGO MOTOR CAR CORP.]" (Exhibit "3," Count I, at ¶ 17.)

16. The allegations contained in Count II of the Underlying Complaint, purport

to set forth a claim for "Conspiracy to Defraud" restates and realleges the facts contained in Count I, and alleges that "[a]s a result of the misrepresentations and/or failures to disclose set forth above, Plaintiff has suffered various damages and losses." (Exhibit "3," Count II at ¶ 15.)

17. Count III of the Underlying Complaint purports to set forth a claim for "Breach of Contract" and alleges that CHICAGO MOTOR CAR CORP. entered into the financing agreement in breach of its agreement with GATEWAY, that pursuant to the terms of the contract CHICAGO MOTOR CAR CORP. must repurchase the vehicle and that it has failed to do so. (See Exhibit "3," Count III, at ¶¶ 26-28.)

18. Accordingly, AUTO-OWNERS does not owe any duty to defend and/or indemnify CHICAGO MOTOR CAR CORP. because the allegations of Counts I through III of the Underlying Complaint do not allege an "occurrence" as that term is defined in the Garage Liability Policy.

WHEREFORE the Plaintiff, AUTO-OWNERS INSURANCE COMPANY respectfully requests this Honorable Court adjudicate and decree as follows:

- (a) That the Garage Liability Policy issued to CHICAGO MOTOR CAR CORP. by AUTO-OWNERS (No: 47-803-128-00), does not afford coverage for any claim set forth in the Complaint entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (b) That Auto-Owners Insurance Company has no duty to defend any Defendant in the case entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (c) That Auto Owners Insurance Company has no duty to indemnify any Defendant in the litigation entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.

- (d) For any other relief this Court deems equitable and just.

**COUNT V**  
**Exclusion Under the CGL – Expected or Intended Injury**

10. As paragraph 10, Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 9 as though fully set forth word for word herein.

11. The subject policy provides, in pertinent part:

**2. Exclusions**

This insurance does not apply to:

**a. Expected or Intended Injury**

“Bodily injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” resulting from the use of reasonable force to protect persons or property.

\* \* \* \*

12. Counts I and II pleaded against CHICAGO MOTOR CAR CORP. in the Underlying Complaint allege liability based upon statements made by CHICAGO MOTOR CAR CORP. and intentional actions taken by CHICAGO MOTOR CAR CORP.

13. The allegations contained in Count I of the Underlying Complaint, purport to set forth a claim for common law fraud.

14. In Count I of the Underlying Complaint, it is alleged that “[CHICAGO MOTOR CAR CORP.] made false statements of material fact to [GATEWAY]” and that “the representations made as aforesaid were false, and [...] [CHICAGO MOTOR CAR

CORP.] each knew they were false at the time they were made” and that said representations “were made for the purpose of inducing [GATEWAY] to accept assignment of the contract and made a loan”. (Exhibit “3,” Count I, ¶¶ 12-14.)

15. The allegations contained in Count II of the Underlying Complaint, purport to set forth a claim for “Conspiracy to Defraud” and in addition to restating and realleging the facts contained in Count I, alleges that “Tate and at least one unknown representative of [CHICAGO MOTOR CAR CORP.] combined to accomplish by concerted action an unlawful purpose or a lawful purpose by unlawful means”. (Exhibit “3,” Count III at ¶ 20.)

16. Count II of the Underlying Complaint also alleges that, “both Tate and each representative of [CHICAGO MOTOR CAR CORP.] understood the general objectives of the conspiracy, knowingly and voluntarily accepted them, and agreed either explicitly or implicitly to do his or her part to further those objectives. (Exhibit “3,” Count II, ¶ 21.)

17. GATEWAY further alleges in Count II that “overt actions were taken in furtherance of the conspiracy.” (Exhibit “3,” Count II, ¶22.)

18. Accordingly, Plaintiff does not owe any duty to defend and/or indemnify CHICAGO MOTOR CAR CORP. based upon the explicit and unambiguous terms of the aforesaid policy because the Underlying Complaint alleges an expected or intended injury on behalf of CHICAGO MOTOR CAR CORP. as that term is defined in the CGL.

WHEREFORE the Plaintiff, AUTO-OWNERS INSURANCE COMPANY respectfully requests this Honorable Court adjudicate and decree as follows:

- (a) That the CGL policy issued to CHICAGO MOTOR CAR CORP. by AUTO-OWNERS (No: 084604-61803128-09), does not afford coverage for any













claim set forth in the Complaint entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.

- (b) That Auto-Owners Insurance Company has no duty to defend any Defendant in the case entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (c) That Auto Owners Insurance Company has no duty to indemnify any Defendant in the litigation entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (d) For any other relief this Court deems equitable and just.

#### **COUNT VI**

#### **Exclusion Under the Garage Liability Policy – Expected or Intended Injury**

10. As paragraph 10, Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 9 as though fully set forth word for word herein.

11. The Garage Liability Policy provides, in pertinent part:

#### **2. EXCLUSIONS**

\* \* \* \*

#### **b. Bodily Injury and property Damage Liability (Other Than Auto)**

This insurance does not apply to:

- (1) **Bodily injury or property damage** expected or intended from the standpoint of the **insured**. This exclusion does not apply to **bodily injury** result from the use of reasonable force to protect persons or property.

\* \* \* \*

12. Counts I and II pleaded against CHICAGO MOTOR CAR CORP. in the

Underlying Complaint allege liability based upon statements made by CHICAGO MOTOR CAR CORP. and intentional actions taken by CHICAGO MOTOR CAR CORP.

13. The allegations contained in Count I of the Underlying Complaint, purport to set forth a claim for common law fraud.

14. In Count I of the Underlying Complaint, it is alleged that “[CHICAGO MOTOR CAR CORP.] made false statements of material fact to [GATEWAY]” and that “the representations made as aforesaid were false, and [...] [CHICAGO MOTOR CAR CORP.] each knew they were false at the time they were made” and that said representations “were made for the purpose of inducing [GATEWAY] to accept assignment of the contract and made a loan”. (Exhibit “3,” Count I, ¶¶ 12-14.)

15. The allegations contained in Count II of the Underlying Complaint, purport to set forth a claim for “Conspiracy to Defraud” and in addition to restating and realleging the facts contained in Count I, alleges that “Tate and at least one unknown representative of [CHICAGO MOTOR CAR CORP.] combined to accomplish by concerted action an unlawful purpose or a lawful purpose by unlawful means”. (Exhibit “3,” Count III at ¶ 20.)

16. Count II of the Underlying Complaint also alleges that, “both Tate and each representative of [CHICAGO MOTOR CAR CORP.] understood the general objectives of the conspiracy, knowingly and voluntarily accepted them, and agreed either explicitly or implicitly to do his or her part to further those objectives. (Exhibit “3,” Count II, ¶ 21.)

17. GATEWAY further alleges in Count II that “overt actions were taken in furtherance of the conspiracy.” (Exhibit “3,” Count II, ¶22.)

18. Accordingly, Plaintiff does not owe any duty to defend and/or indemnify CHICAGO MOTOR CAR CORP. based upon the explicit and unambiguous terms of the aforesaid policy because the Underlying Complaint alleges an expected or intended injury on behalf of CHICAGO MOTOR CAR CORP. as that term is defined in the Garage Liability Policy.

WHEREFORE the Plaintiff, AUTO-OWNERS INSURANCE COMPANY respectfully requests this Honorable Court adjudicate and decree as follows:

- (a) That the Garage Liability Policy issued to CHICAGO MOTOR CAR CORP. by AUTO-OWNERS (No: 47-803-128-00), does not afford coverage for any claim set forth in the Complaint entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (b) That Auto-Owners Insurance Company has no duty to defend any Defendant in the case entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (c) That Auto Owners Insurance Company has no duty to indemnify any Defendant in the litigation entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (d) For any other relief this Court deems equitable and just.

**COUNT VII**  
**Exclusion Under the CGL – Contractual Liability**

10. As paragraph 10, Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 9 as though fully set forth word for word herein.

11. The subject policy provides, in pertinent part:

**2. Exclusions**

This insurance does not apply to:

\* \* \*

**b. Contractual Liability**

“Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

\* \* \* \*

12. Count III pleaded against CHICAGO MOTOR CAR CORP. in the Underlying Complaint alleges liability based upon the existence of a contract and CHICAGO MOTOR CAR CORP.’s subsequent breach of same.

13. In Count III, GATEWAY alleges that the contract between it and CHICAGO MOTOR CAR CORP. stated that in the event that any representation or warranty with respect to any signed contract is breached or false, [CHICAGO MOTOR CAR CORP.] agreed to repurchase the contract from [GATEWAY] for the unpaid balance remaining on the Contract, together with any other indebtedness due”. (Exhibit “3,” Count III, ¶ 27.)

14. Count III also alleges that “[GATEWAY] has demanded that [CHICAGO MOTOR CAR CORP.] repurchase the contract, but [CHICAGO MOTOR CAR CORP.]



has failed and refused to do so." (Exhibit "3," Count III, ¶ 27.)

15. Finally, Count III alleges that "[GATEWAY] has been damaged by [CHICAGO MOTOR CAR CORP.'s] breach of contract. (Exhibit "3," Count III, ¶ 30.)

16. Accordingly, Plaintiff does not owe any duty to defend and/or indemnify CHICAGO MOTOR CAR CORP. based upon the explicit and unambiguous terms of the aforesaid policy because the Underlying Complaint alleges liability based on a contract as that term is defined in the CGL Policy.

WHEREFORE the Plaintiff, AUTO-OWNERS INSURANCE COMPANY respectfully requests this Honorable Court adjudicate and decree as follows:

- (a) That the CGL policy issued to CHICAGO MOTOR CAR CORP. by AUTO-OWNERS (No: 084604-61803128-09), does not afford coverage for any claim set forth in the Complaint entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (b) That Auto-Owners Insurance Company has no duty to defend any Defendant in the case entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (c) That Auto Owners Insurance Company has no duty to indemnify any Defendant in the litigation entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (d) For any other relief this Court deems equitable and just.

#### **COUNT VIII**

##### **Exclusion Under the Garage Liability Policy – Contractual Liability**

10. As paragraph 10, Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 9 as though fully set forth word for word herein.

11. The Garage Liability Policy provides, in pertinent part:

## 2. EXCLUSIONS

\* \* \*

### **a. Bodily Injury and property Damage Liability (Other Than Auto) and Bodily Injury And Property Damage Liability (Auto)**

This insurance does not apply to:

**(1) Bodily injury or property damage** assumed under any contract or agreement.

\* \* \* \* \*

12. Count III pleaded against CHICAGO MOTOR CAR CORP. in the Underlying Complaint alleges liability based upon the existence of a contract and CHICAGO MOTOR CAR CORP.'s subsequent breach of same.

13. In Count III, GATEWAY alleges that the contract between it and CHICAGO MOTOR CAR CORP. stated that in the event that any representation or warranty with respect to any signed contract is breached or false, [CHICAGO MOTOR CAR CORP.] agreed to repurchase the contract from [GATEWAY] for the unpaid balance remaining on the Contract, together with any other indebtedness due". (Exhibit "3," Count I, ¶ 27.)

14. Count III also alleges that "[GATEWAY] has demanded that [CHICAGO MOTOR CAR CORP.] repurchase the contract, but [CHICAGO MOTOR CAR CORP.] has failed and refused to do so." (Exhibit "3," Count I, ¶ 27.)

15. Finally, Count III alleges that "[GATEWAY] has been damaged by [CHICAGO MOTOR CAR CORP.'s] breach of contract. (Exhibit "3," Count III, ¶ 30.)

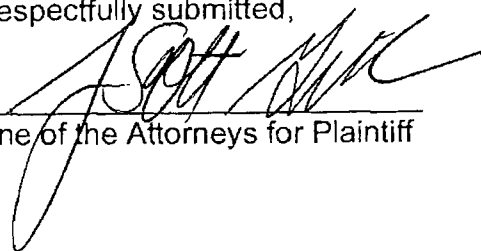
16. Accordingly, Plaintiff does not owe any duty to defend and/or indemnify CHICAGO MOTOR CAR CORP. based upon the explicit and unambiguous terms of the

aforesaid policy because the Underlying Complaint alleges liability based on a contract as that term is defined in the Garage Liability Policy.

WHEREFORE the Plaintiff, AUTO-OWNERS INSURANCE COMPANY respectfully requests this Honorable Court adjudicate and decree as follows:

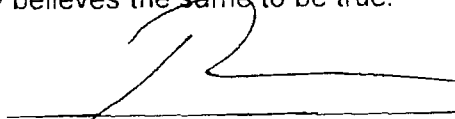
- (a) That the Garage Liability Policy issued to CHICAGO MOTOR CAR CORP. by AUTO-OWNERS (No: 47-803-128-00), does not afford coverage for any claim set forth in the Complaint entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (b) That Auto-Owners Insurance Company has no duty to defend any Defendant in the case entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (c) That Auto Owners Insurance Company has no duty to indemnify any Defendant in the litigation entitled *Gateway One Lending & Finance, LLC v. Kierre Tate and Chicago Motor Car Corp.*, currently pending in the Circuit Court of Cook County under docket No. 2012 M3 0765.
- (d) For any other relief this Court deems equitable and just.

Respectfully submitted,

  
\_\_\_\_\_  
One of the Attorneys for Plaintiff

SECTION 1-109 VERIFICATION

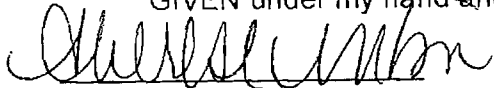
Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT are true and correct, and except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

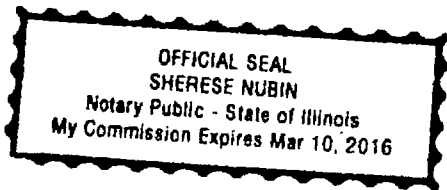
  
\_\_\_\_\_  
Tim Hayden

STATE OF ILLINOIS     )  
                                  ) ss  
COUNTY OF COOK     )

I, Sherese Nubin, a Notary Public in and for said County, in the State aforesaid do hereby certify that TIM HAYDEN is personally known to me to be the same person whose name is subscribed to the foregoing appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notary seal this 23 day of May, 2012.

  
Notary Public



CONDON & COOK, L.L.C.  
745 North Dearborn Street  
Chicago, IL 60654  
Phone: 312-266-1313  
Fax: 312-266-8148