

Cause No. 201951576

ALVIN TOWNSEND,
Plaintiff,

v.

ACCC INSURANCE COMPANY,
Defendant.

§ IN THE DISTRICT COURT
§
§
§
§ OF HARRIS COUNTY, TEXAS
§
§
§
§ 113th JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION, REQUEST FOR DISCLOSURE,
AND REQUEST FOR DOCUMENTS**

Plaintiff, **ALVIN TOWNSEND**, by and through the undersigned attorney, files this his Original Petition, Request for Disclosure, and Request for Documents against Defendant, **ACCC INSURANCE COMPANY**, and alleges as follows:

DISCOVERY-CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks monetary relief over \$100,000 or non-monetary relief.

CLAIM FOR RELIEF

2. Plaintiff seeks monetary relief over \$100,000 but not more than \$200,000. Tex. R. Civ. P. 47(c)(3).

PARTIES

3. Plaintiff, **ALVIN TOWNSEND** (hereinafter "Plaintiff" or "Mr. Townsend"), is an individual who resides in Harris County, Texas.
4. Defendant **ACCC INSURANCE COMPANY** (hereinafter "Defendant" or "ACCC"), a domestic insurance carrier, authorized to conduct business in Texas, whose home office is located in Harris County at 390 Benmar Drive, Suite 225, Houston, TX 77060-2901, may be served with process by

leaving a copy of the process at that address during regular business hours. Tex. Ins. Code §804.101(b)(2).

JURISDICTION

5. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

VENUE

6. Venue is proper in this county under Texas Civil Practice & Remedies Code section 15.002 because all or a substantial part of the events or omissions giving rise to the claim occurred in this County.

FACTS

7. On or about June 4, 2019, Mr. Townsend was purchasing a vehicle from Auto Leads, 2243 Strawberry Rd, Pasadena, TX 77502-3948. To complete the transaction, Mr. Townsend was required to secure automobile insurance. At the suggestion of Auto Leads, Mr. Townsend sought and acquired an insurance policy from ACCC Insurance Company through its agent Universal Auto Insurance Service, LLC (producer 6551), located at 2811 Airline Drive, Suite 4, Houston, TX 77009-1151. During the transaction, which occurred over the phone, Mr. Townsend was asked if he wanted "basic full coverage". When Mr. Townsend replied in the affirmative, the agent at Universal Auto Insurance, LLC simply took it upon himself to reject all coverages except liability, collision, and comprehensive. At no time did Mr. Townsend ever reject Uninsured Motorist coverage ("UM"), Underinsured Motorist coverage ("UIM"), or Personal Injury Protection coverage ("PIP") in writing or otherwise. Furthermore, at no time did Mr. Townsend visit Universal Auto's office to sign anything in person, nor did he sign anything electronically or otherwise.
8. After purchasing the vehicle and insurance policy, Alvin Townsend was seriously injured in a motor vehicle accident on or about July 3, 2019. The

accident was caused by a negligent driver who fled the scene. After filing a claim on his policy with ACCC, Mr. Townsend was falsely informed that he had rejected Personal Injury Protection and Uninsured/Underinsured Motorist coverages. However, Mr. Townsend never rejected these coverages in writing or otherwise. Without a written rejection from a name insured, ACCC Insurance Company was not permitted to issue a policy without including these coverages. *See* Texas Insurance Code Sections Sec. 1952.101 (concerning UM/UIM); Texas Insurance Code Sections Sec. 1952.151 (concerning Personal Injury Protection).

- 9.** Disturbingly, when Mr. Townsend called the representative at Universal Auto Insurance Services, LLC who took his phone application, the representative quite openly admitted that he found it too onerousness and repetitiousness to explain the various coverage options to each insurance applicant, including Mr. Townsend. The representative boasted that he simply asks customers if they want “basic full coverage”. If they respond affirmatively, the representative deems that to be a rejection of all coverages except liability, collision, and comprehensive. On information and belief, if a customer is not physically present at the office, the representatives at Universal Auto Insurance Service, LLC simply forge any necessary signature to give the false appearance that a customer had validly rejected UM/UIM and PIP.
- 10.** To be clear, Mr. Townsend did not sign any document containing the rejection of policy any coverage. An insurer or its agents may not evade the requirements of the insurance code by falsifying documents to falsely suggest that a named insured had rejected statutorily required automobile coverages.
- 11.** At all relevant times, Plaintiff was covered by policy number U0828059-6. The claim number assigned to the incident at issue was TUD7966820-8.

CLAIMS

COUNT 1

Deceptive Trade Practices Act Violations

- 12.** Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs.
- 13.** Pursuant Texas Business and Commerce Code Sec. 17.50(a) (“DTPA”), “A consumer may maintain an action where any of the following constitute a producing cause of economic damages or damages for mental anguish...”
- 14. Texas Business and Commerce Code Sec. 17.46(a)**
 - a. (12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law. By issuing an automobile insurance policy without securing written rejections of PIP, UM, or UIM, ACCC effectively represented that the policy would contain such coverages because they are required by law.
 - b. (24) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed. The acts of failing to disclose the real policy coverages and falsifying documents to make it appear as if Mr. Townsend had rejected certain coverages were in violation of this section.

COUNT 2

Breach of Contract – Refusal to Pay PIP

- 15.** Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs.
- 16.** Pursuant to Texas Insurance Code Sections Sec. 1952.101, [unless a named insured makes a written rejection], an insurer may not deliver or issue for delivery in this state an automobile liability insurance policy, including a policy provided through the Texas Automobile Insurance Plan Association under Chapter 2151, that covers liability arising out of the ownership, maintenance, or use of any motor vehicle unless the insurer provides

personal injury protection coverage in the policy or supplemental to the policy.

17. Mr. Townsend did not make such a rejection and therefore, as a matter of law, the insurance contract has coverage for Personal Injury Protection of at least \$2,500.
18. ACCC breached the contract by falsifying a rejection of PIP coverage and refusing to make PIP payments.

COUNT 3

Breach of Contract – Refusal to make Uninsured and Underinsured Motorist Payments

19. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs.
20. Pursuant to Texas Insurance Code Sections Sec. 1952.151, [unless a named insured makes a written rejection], an insurer may not deliver or issue for delivery in this state an automobile liability insurance policy, including a policy provided through the Texas Automobile Insurance Plan Association under Chapter 2151, that covers liability arising out of the ownership, maintenance, or use of any motor vehicle unless the insurer provides uninsured or underinsured motorist coverage in the policy or supplemental to the policy.
21. Mr. Townsend did not make such a rejection and therefore, as a matter of law, the insurance contract has coverage for uninsured and underinsured motorist coverage of at least \$30,000 for each type of coverage.
22. ACCC breached the contract by falsifying a rejection and refusing to make uninsured and underinsured motorist payments.

COUNT 4

Violation of the Insurance Code

23. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs.
24. Pursuant to Texas Insurance Code Sec. 541.060, an insurer is prohibited from misrepresenting to a claimant a material fact or policy provision relating to coverage at issue.

25. Defendant violated this section by falsely representing that Plaintiff's policy did not have PIP or UM/UIM coverages, when such coverages are required by law unless the insured rejects them in writing, which Mr. Townsend did not do.

DAMAGES

26. Plaintiff requests UM/UIM and PIP coverages as required by the Texas Insurance Code, to wit: minimum \$2,500 in for PIP, \$30,000 for UM, \$30,000 for UIM coverages.
27. **Statutory Damages.** Because Defendant's actions were knowing or intentional, Plaintiff seeks treble damages as authorized by Texas Business and Commerce Code Section 17.50(b)(1), including for claims arising out of a violation of Texas Insurance Code Sec. 541.060. In addition, Plaintiff seeks all damages authorized by Texas Insurance Code Sec. 542.060, which states in relevant part:

LIABILITY FOR VIOLATION OF SUBCHAPTER.

(a) Except as provided by Subsection (c), if an insurer that is liable for a claim under an insurance policy is not in compliance with this subchapter, the insurer is liable to pay the holder of the policy or the beneficiary making the claim under the policy, in addition to the amount of the claim, interest on the amount of the claim at the rate of 18 percent a year as damages, together with reasonable and necessary attorney's fees. Nothing in this subsection prevents the award of prejudgment interest on the amount of the claim, as provided by law.

(b) If a suit is filed, the attorney's fees shall be taxed as part of the costs in the case.

(c) In an action to which Chapter 542A applies, if an insurer that is liable for a claim under an insurance policy is not in compliance with this subchapter, the insurer is liable

to pay the holder of the policy, in addition to the amount of the claim, simple interest on the amount of the claim as damages each year at the rate determined on the date of judgment by adding five percent to the interest rate determined under Section 304.003, Finance Code, together with reasonable and necessary attorney's fees. Nothing in this subsection prevents the award of prejudgment interest on the amount of the claim, as provided by law. Interest awarded under this subsection as damages accrues beginning on the date the claim was required to be paid.

- 28. Attorney Fees.** Plaintiff has incurred, and will continue to incur, legal fees in the prosecution of this matter. Plaintiff seeks reasonable and necessary attorney fees as authorized by Texas Business and Commerce Code Section 17.50(d) and the Texas Insurance Code Section 542.060.

CONDITIONS PRECEDENT

- 29.** All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

REQUEST FOR DISCLOSURE

- 30.** Under Texas Rule of Civil Procedure 194, Defendant is requested to disclose, within 50 days of service of this request, the information or material described in Texas Rule of Civil Procedure 194.2.

REQUEST FOR DOCUMENTS

- 31.** Pursuant to Rule 196 of the Texas Rules of Civil Procedure, Defendant is requested to produce, within 50 days of the service of this request, the following documents.
- 32. REQUEST 1:** Produce all documents related to Claim No. TUD7966820-8, including all video recordings, audio recordings, photographs, witness statements, statements by Plaintiff, reports, estimates, and file notes.

- 33. REQUEST 2:** Produce a copy of the insurance policy (No. Uo828059-6) that was in effect at the time of the incident at issue in this case.

PRAYER FOR RELIEF

- 34.** For these reasons, Plaintiff asks that Defendant be cited to appear and answer. In addition, Plaintiff asks to court to render judgment in his favor and award the following damages:
- a. Actual damages.
 - b. Prejudgment and postjudgment interest.
 - c. Statutory damages and interest pursuant to the Texas Deceptive Trade Practices Act and the Texas Insurance Code.
 - d. Court costs.
 - e. Attorney fees.
 - f. All other relief to which Plaintiff is entitled.

Respectfully submitted,

/s/ Leroy Scott
Leroy B. Scott, Ph.D.
Texas Bar No. 24083824

Scott Law, PLLC
5100 Westheimer Road Ste 200
Houston, Texas 77056

Mailing Address:
PO Box 420453
Houston, TX 77242-0453

Tel (713) 588-4416
Fax (713) 583-1158
Email: lscott@scottesq.com

ATTORNEY FOR PLAINTIFF