

Cause No. _____

SHERLONIA GRACE,
Plaintiff,

v.

**SAFE AUTO INSURANCE
COMPANY,**
Defendant.

§ IN THE DISTRICT COURT
§
§
§
§ OF HARRIS COUNTY, TEXAS
§
§
§
§ _____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

Plaintiff, **SHERLONIA GRACE**, by and through the undersigned attorney, files this her Original Petition against Defendant, **SAFE AUTO 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.

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, Sherlonia Grace (hereinafter “Plaintiff”), is an individual who resides in Harris County, Texas.
4. Defendant Safe Auto Insurance (hereinafter “Defendant” or “Safe Auto”), a foreign corporation organized and existing under the laws of the State of Ohio, whose primary office is located at 4 Easton Oval, Columbus OH 43219-6010, may be served with process by delivering a copy of the petition and citation to C T CORPORATION SYSTEM, 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136, as its agent for service.

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 Harris 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 Harris County.

FACTS

7. At all relevant times, Defendant was in the business of providing auto insurance services in Harris County, Texas. On December 15, 2017, Defendant, knowing that Plaintiff's driver's license was suspended, issued policy number TX00269308A-0, which purported to exclude from coverage drivers whose licenses were suspended. A copy of the declaration page is attached hereto and is hereby incorporated by reference. The Declaration Page stated, "Endorsement Reasons: The MVR has changed the driver license to invalid for GRACE, SHERLONIA", but Defendant failed to inform Plaintiff that this notation meant that she was purchasing a completely useless what was not suitable for its intended purpose of providing collision, comprehensive, and liability coverage for Plaintiff.
8. On December 18, 2017, after the transaction was already completed and the policy issued, Defendant sent a letter to Plaintiff informing her that she needed to address the issue of her suspended driver's license by January 7, 2018 or the policy may be canceled. Plaintiff did not address the issue, and rather than canceling the policy and stopping the collection of premiums payments, Defendant renewed the policy on June 15, 2018, still knowing that Plaintiff's driver's license was suspended. A copy of the renewed declaration page is attached hereto and is hereby incorporated by reference.
9. In a letter dated May 12, 2018, prior to the renewal date of the policy, Defendant lulled Plaintiff into falsely believing that although there might be problems with her policy due to her suspended driver's license, if she

continues to pay her premiums on time, she would be covered in the event of a loss. The letter stated:

Upon review, we have found that SHERLONIA GRACE has not obtained a valid driver license. Since all drivers are required to have a valid driver license, SHERLONIA GRACE not obtaining one ***has forced us to take action on your account***. Due to the previously mentioned factors, Safe Auto Insurance Company is ***unable to accept any late payment***, unless the above mentioned information is submitted.

10. When Plaintiff was involved in a motor vehicle accident on October 24, 2018, Defendant promptly denied Plaintiff's claim, delighted that it had collected a year's worth of premiums while knowing all along that it would never have to cover a loss. Defendant violated the Texas Deceptive Trade Practices Act by knowingly selling an insurance policy that was not suitable for its intended purpose of covering Plaintiff in the event of a loss. Further because Defendant knew at the inception and subsequent renewal of the policy that Plaintiff's license was suspended, Defendant should be estopped from, or should be deemed to have waived its right to, complain about this defect.

Claims

Breach of Contract:

11. By the terms of the insurance policy at issue, Defendant agreed to pay for damages to Plaintiff's vehicle if it is damaged as a result of an accident. An accident occurred while the policy was in full force and effect and the vehicle was damaged in said accident. Nonetheless, Defendant decided not to pay for the damage because Plaintiff's license was suspended at the time of the accident.
12. Waiver is an intentional relinquishment of a known right or ***intentional conduct inconsistent with claiming that right***. *Avary v. Bank of*

Am., N.A., 72 S.W.3d 779, 788 (Tex.App.-Dallas 2002, pet. denied). By informing Plaintiff that she was required to have a valid driver's license, but renewing the insurance policy anyway, Defendant intentionally acted inconsistently with its right to deny a claim for that reason and therefore waived that right.

13. Estoppel generally prevents one party from misleading another to the other's detriment or to the misleading party's own benefit. See, e.g., *Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 515-16 (Tex. 1998). In its May 12, 2018 letter to Plaintiff, instead of clearly informing Plaintiff that she was not covered under her own policy, Defendant misled Plaintiff into believing that actions were already taken against her due to her failure to secure a valid driver's license and that she only needed to pay her policy premiums on time to maintain coverage.

Failing to disclose information:

14. A merchant is prohibited from "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". Texas Business and Commerce Code Sec. 17.46(24). At the time Defendant issued the policy to Plaintiff, Defendant checked Plaintiff's driver license status and knew that she would not be covered by the policy. Nonetheless, Defendant failed to disclose to Plaintiff that she would not be covered by the policy being issued. The failure to disclose this information was done to induce Plaintiff to enter the transaction.
15. A merchant is also prohibited from "representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law". Texas Business and Commerce Code Sec. 17.46(12). By issuing the policy to Plaintiff, Defendant falsely represented that Plaintiff had liability, comprehensive and collision coverage.

Unconscionable action:

16. A merchant may not engage in an unconscionable action or course of action. Texas Business and Commerce Code Sec. 17.50(3). "Unconscionable action or course of action" means an act or practice which, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree. Texas Business and Commerce Code Sec. 17.45(5). Defendant issued the policy knowing it would not cover Plaintiff in case of a loss. Defendant then collected premiums and renewed the policy for as long as it could until a covered event occurred. When such an event occurred, Defendant denied coverage. Such a course of action is in clear violation of the DTPA because it is unconscionable.

Damages.

Repair cost: The total reasonable and necessary cost of the repair was at least \$3,562.30.

Rental Reimbursement: As a result of the incident, Ms. Grace was unable to use her vehicle for more than 30 days. Therefore, she is entitled to rental reimbursement of \$600.

Statutory Damages.

17. 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). For example, Defendant intentionally issued the policy knowing that it had no intention of covering Plaintiff.

Attorney Fees.

18. 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.

19. Conditions Precedent: All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

PRAYER

- 20.** For these reasons, Plaintiff asks that Defendant be cited to appear and answer. In addition, Plaintiff asks to court to render judgment in her 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.
 - 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

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5100 Westheimer Road Ste 200
Houston, Texas 77056

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PO Box 420453
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ATTORNEY FOR PLAINTIFF



4 Easton Oval
Columbus, OH 43219
1-800-SAFEAUTO
(1-800-723-3288)

AUTO INSURANCE POLICY DECLARATIONS

Policy No. : TX00269308A-0
Policy Period: From 12/15/2017 10:38 A.M.
To 06/15/2018 12:01 A.M.

Local time at the address of the named insured as stated herein.
This Amended Declaration Page Supersedes prior Declaration Page Issued.

Endorsement Reasons:
-The MVR has changed the driver license to invalid for GRACE, SHERLONIA

A AtFault accident was returned from the Evaluation Service based on information from:
- A CLUE reported accident
Endorsement Effective 12/15/2017 10:38:53

SHERLONIA GRACE

This Declarations Page, together with the forms and endorsements listed below, constitute the complete policy of insurance listed above. Insurance is provided only for any coverage for which a premium charge is indicated, or is otherwise specified as being included. Subject to the terms and conditions of the policy, the limit of the company's liability under any such coverage is as stated below.

Specimen copies of the policy book, amendments and endorsements applicable to your policy are available at www.safeauto.com/policyforms/Texas. Please refer to the Endorsements/Forms Made Part Of This Policy section below to determine which forms are applicable to your policy. You may request a paper copy of your policy; free of charge, by calling 1-800-723-3288.

VEH #	YEAR	MAKE	MODEL	BODY TYPE	SERIAL NUMBER
1	2011	CHEVROLET	EQUINOX LS	SPORT UTIL	2CNA [REDACTED]

COVERAGES

BODILY INJURY LIABILITY

PROPERTY DAMAGE LIABILITY
PERSONAL INJURY PROTECTION
UNINSURED/UNDERINSURED MOTORIST BODILY INJURY

UNINSURED/UNDERINSURED MOTORIST PROPERTY
DAMAGE LESS \$250 DEDUCTIBLE

TOWING AND LABOR - PER DISABLEMENT MAXIMUM OF 6
PHYSICAL DAMAGE

COMPREHENSIVE - ACTUAL CASH VALUE LESS DEDUCTIBLE \$500
COLLISION - ACTUAL CASH VALUE LESS DEDUCTIBLE \$500
RENTAL REIMBURSEMENT - PER DAY NOT TO EXCEED 30 DAYS \$20

TOTAL PREMIUM BY VEHICLE

ACCIDENTAL DEATH BENEFIT

TOTAL PREMIUM ALL VEHICLES

LIMITS OF LIABILITY

\$30,000 EACH PERSON/
\$60,000 EACH ACCIDENT
\$25,000 EACH ACCIDENT
\$2,500 EACH PERSON
\$30,000 EACH PERSON/
\$60,000 EACH ACCIDENT

\$25,000 EACH ACCIDENT

VEH 1

\$40

\$500

\$500

\$20

\$10,000 EACH PERSON

**** 6 MONTHS PREMIUM ****

VEH 1

\$804

INCL

\$70

\$70

\$18

\$5

\$121

\$267

\$21

\$1,376

\$12

\$1,386

ENDORSEMENTS/FORMS MADE PART OF THIS POLICY:

TX1000/1013 TX1010/1215 TX1020/1215

LIENHOLDER (S):

MERCURY FINANCE GROU, [REDACTED]



4 Easton Oval
Columbus, OH 43219
1-800-SAFEAUTO
(1-800-723-3288)

AUTO INSURANCE POLICY DECLARATIONS

Policy No. : TX00269308A-1
Policy Period: From 06/15/2018 12:01 A.M.
To 12/15/2018 12:01 A.M.

Local time at the address of the named insured as stated herein.
This Amended Declaration Page Supersedes prior Declaration Page Issued.

Endorsement Reasons:
Prep Renewal
Endorsement Effective 06/15/2018 00:01:00

SHERLONIA GRACE

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VEH #	YEAR	MAKE	MODEL	BODY TYPE	SERIAL NUMBER
1	2011	CHEVROLET	EQUINOX LS	Sport Util	2CN [REDACTED]

COVERAGES

BODILY INJURY LIABILITY

PROPERTY DAMAGE LIABILITY
PERSONAL INJURY PROTECTION
UNINSURED/UNDERINSURED MOTORIST BODILY INJURY

UNINSURED/UNDERINSURED MOTORIST PROPERTY
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TOTAL PREMIUM BY VEHICLE

ACCIDENTAL DEATH BENEFIT

TOTAL PREMIUM ALL VEHICLES

LIMITS OF LIABILITY

\$30,000 EACH PERSON/
\$60,000 EACH ACCIDENT
\$25,000 EACH ACCIDENT
\$2,500 EACH PERSON
\$30,000 EACH PERSON/
\$60,000 EACH ACCIDENT

\$25,000 EACH ACCIDENT

VEH 1

\$40

\$500

\$500

\$20

\$10,000 EACH PERSON

**** 6 MONTHS PREMIUM ****

VEH 1

\$831

INCL

\$77

\$72

\$20

\$5

\$133

\$297

\$23

\$1,458

\$10

\$1,468

ENDORSEMENTS/FORMS MADE PART OF THIS POLICY:

TX1000/1013 TX1010/1215 TX1020/1215

LIENHOLDER (S):

MERCURY FINANCE GROU, [REDACTED]