

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MICHAEL HARRIS,	§	
Plaintiff,	§	
	§	
v.	§	
	§	CIVIL ACTION NO. 4:19-CV-507
STATE AUTOMOBILE MUTUAL	§	
INSURANCE COMPANY dba	§	
STATE AUTO INSURANCE	§	
COMPANIES and MERIDIAN	§	
SECURITY INSURANCE	§	
COMPANY,	§	
Defendant.	§	

AMENDED COMPLAINT

Plaintiff, **MICHAEL HARRIS**, by and through the undersigned attorney, files this Amended Complaint against Defendants, **STATE AUTOMOBILE MUTUAL INSURANCE COMPANY and MERIDIAN SECURITY INSURANCE COMPANY**, and alleges as follows:

PARTIES

1. Plaintiff, Michael Harris (hereinafter “Plaintiff” or “Mr. Harris”), is an individual who resides in Tarrant County, Texas.
2. Defendant, Meridian Security Insurance Company, (hereinafter “Meridian”), a foreign insurance company licensed to do business in the State of Texas, may be served with process by delivering a copy of the petition and citation to Corporation Service Company, 211 East 7th Street Suite 620, Austin TX 78701 -3218, as its agent for service of process. Meridian issued an insurance policy that forms the basis of this lawsuit. Meridian also does business as “State Auto”.
3. Defendant, State Automobile Mutual Insurance Company dba “State Auto Insurance Companies”, “State Auto Insurance”, or “State Auto” (hereinafter “State Auto”) is a foreign insurance company licensed to do business in the State of Texas. On information and belief, State Auto is the parent company of Meridian Security Insurance Company and was

responsible for administering the policy and processing the claim that forms the basis of this lawsuit.

JURISDICTION AND VENUE

4. The jurisdiction of this court was invoked by Defendant Meridian pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.
5. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2).

FACTS

6. Mr. Harris is the proud and supportive father of Nylah Harris, a young gymnast. When Mr. Harris found out that his daughter, Nylah, qualified for the state-level gymnastic competition to be held in Lubbock, Texas, he was overjoyed.
7. Desiring to share the good news with friends and family, Mr. Harris made a Facebook post on October 18, 2017 to publicly congratulate his daughter.
8. For well-wishers who wanted to attend the event, Mr. Harris also provided information about the competition, which was scheduled for November 10 to 12, 2017. Of course, by providing the information in such a public setting to “anyone interested in coming down to watch us win first place”, Mr. Harris was also inadvertently informing potential thieves and criminals that his home would be left unattended during the competition.
9. On or about November 11 or 12, 2017, while Mr. Harris was away from his home to support his daughter’s participation in the gymnastic competition, one or more unknown persons burglarized his home and stole numerous items of personal property, including expensive jewelry and items of clothing.
10. At all relevant times, Mr. Harris was insured against losses due to the theft his personal property, including specified items of jewelry, by an insurance policy issued by Meridian and administered by State Auto. The policy was assigned the number 1000018954.
11. November 13, 2017, upon realizing that he was the victim of a burglary, Mr. Harris promptly notified law enforcement and State Auto of the

- incident. After the incident at issue was reported to State Auto, State Auto assigned the claim number PR-0000000-191439 to track the claim.
12. For almost a year and a half subsequent to the incident, Mr. Harris fully cooperated with law enforcement and State Auto to seek justice and to be compensated for his losses.
 13. Although the incident at issue was clearly covered by the applicable insurance policy, State Auto nonetheless embarked on an unfair, unethical, unprofessional, deceptive, and illegal pursuit to avoid the legal obligation to compensate Mr. Harris for his losses.
 14. ***Reservation of Rights***. Within 30 days of the incident, Mr. Harris filed a claim and submitted all requested documents to State Auto so that his claim could be reviewed and processed. However, rather than promptly processing the claim as it is required to do by law, State Auto delayed the process and waited almost four months to finally send a reservation of rights letter dated March 13, 2018.
 15. The letter indicated that State Auto was “still evaluating coverage and investigating the loss”. In the letter, State Auto requested 1) an examination under oath, 2) a sworn proof of loss, 3) copies of Mr. Harris’s Discover Card and Sam’s Club credit card statements, and 4) an authorization for State Auto to obtain a plethora of documents.
 16. Mr. Harris promptly provided the requested proof of loss, submitted to an examination under oath, and provided his credit card statements as requested. The requested authorization, however, was quite problematic.
 17. Firstly, Mr. Harris had already signed and returned an authorization dated November 18, 2017 for State Auto to obtain documents.
 18. Secondly, the authorization sought to obtain private medical information and legally prohibited materials such as Mr. Harris’s income tax returns. *See Texas Insurance Code Sec. 542.004(a)* (An insurer regulated under this code may not require a claimant, as a condition of settling a claim, to produce the claimant's federal income tax returns for examination or investigation by the insurer).

19. Mr. Harris declined to allow State Auto to riffle unmonitored through his private medical and tax records to process a claim that had nothing to do with his health or loss of income.
20. **Denial Letter.** Except for legally prohibited requests, Mr. Harris complied with all of State Auto's requests. Nonetheless, on February 25, 2019, about 15 months after the claim was reported, State Auto finally sent a denial letter that was written by Sherri King, the adjuster who handled the claim. Desperate for any reason to deny a valid claim, State Auto seized on the false excuse that Mr. Harris had not cooperated with the investigation.
21. The letter falsely stated that Mr. Harris failed to provide documentation of his loss and "refused to sign **any** authorization to obtain documents that would help substantiate your claim."
22. The excuse was blatantly false, the goal of which was to shift blame to Mr. Harris for State Auto's own nefarious scheme to avoid paying valid claims. Sherri King, while acting within the course and scope of her employment by State Auto, falsely claimed that Mr. Harris did not cooperate with the investigation because she requested, but was not given, "many missing pieces of documentation that was needed to substantiate your ownership/value/date of purchase of the personal property that was allegedly stolen". As previously stated, Mr. Harris had signed an authorization allowing State Auto to request the information directly from merchants.
23. Contrary to Ms. King's false and deceptive assertions, Mr. Harris did in fact provide all the documents he had and did not have anything else to give to State Auto. In fact, Mr. Harris provided over 1200 pages of documents and photographs, including a police report, an inventory of stolen items, receipts, appraisals, photographs, phone records, and even an authorization for State Auto to access any other documents needed to determine his ownership and value of the stolen property. Mr. Harris's inability to provide any additional documents was because he had nothing

- else to provide, and not because of a refusal to cooperate with the investigation as Ms. King falsely represented in her denial letter. In fact, the only authorization that Mr. Harris refused to sign was one that requested his tax information in violation of Texas Insurance Code Sec. 542.004(a).
24. The stated reasons for denying the claim are clearly false or illegal. In her letter, Sherri King presented a list of items she believed constituted “[a] matter of great concern” during Mr. Harris’s examination under oath.
25. The so-called matter of great concern was that Mr. Harris was unable to recall the dates and obscure details of various life events that occurred in Mr. Harris’ distant past.
26. None of the items that caused great concern to Ms. King related to claim at issue, rather they related to Mr. Harris’s sex life and interactions with law enforcement. It appears that the examination under oath was simply a tool used to harass and embarrass Mr. Harris about private events that were not even remotely related to the insurance claim at issue.
27. None of the items that caused such great consternation to Ms. King fell under any of the policy exclusions and therefore could not have served as the basis for denying the claim. Ms. King’s baseless insinuations of fraud also could not serve as the basis for denying a valid claim.
28. At all relevant times, State Auto acted on behalf itself and Meridian.

CLAIMS

29. Meridian and State Auto’s actions constituted breach of contract, violations of the Texas Insurance Code, and violations of the Texas Deceptive Trade Practices Act (“DTPA”).

COUNT ONE

BREACH OF CONTRACT

30. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs.
31. At all relevant times, there was an active insurance policy to cover the Mr. Harris’s personal property from losses due to theft. After the theft occurred, Mr. Harris complied with all requirements of the contract. As

- required by the insurance contract, Mr. Harris timely reported the theft to law enforcement and State Auto.
32. According to the contract, within 15 days of receiving written notice of a claim, the insurer must “[s]pecify the information you must provide in accordance with Paragraph C.1. Your Duties After Loss above. We may request more information if during the investigation of the claim such additional information is necessary.”
 33. Therefore, after 15 days, the insurer may only request additional information if such information is necessary.
 34. Nonetheless, State Auto repeatedly and incessantly barraged Mr. Harris with requests for items that were not necessary. For example, at State Auto’s request, Mr. Harris provided an authorization for State Auto to obtain documents. Therefore, any additional request for another a similar authorization is not permitted after 15 days because a second authorization was not necessary after an initial authorization was provided.
 35. Similarly, after having obtained authorization to obtain documents directly, requesting the same documents from Mr. Harris was unnecessary and duplicative.
 36. State Auto and Meridian breached the contract by failing and refusing to make payments under the insurance contract, even for items that were clearly documented.

COUNT TWO

UNFAIR INSURANCE SETTLEMENT PRACTICES

Misrepresenting Fact and Policy Provision

37. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs.
38. State Auto engaged in the following prohibited behaviors in the course of processing this claim on behalf of Meridian. Pursuant to Section 541.060(a)(1) of the Texas Insurance Code, it is a violation to misrepresent to a claimant a material fact or policy provision relating to coverage at issue.

39. After Mr. Harris complied with State Auto's first request to sign an authorization for State Auto to obtain purchase information related to the items he lost as a result of the theft at issue, State Auto decided to also request another authorization for:

Any and all personal and business financial records relating but not limited to bank accounts, canceled checks, deposit slips, books of original entry, sales invoices, vendor invoices, inventory records, fixed assets records, brokerage accounts, stocks, bonds investments, personal property transactions, real property transactions, deeds, mortgages, loans, credit cards, open accounts, gifts, inheritances, **income tax returns**, tax returns related to business transactions and payroll, employment records, appraisals, credit application, medical records, photographs, all telephone records (landline and/or cellular) and/or any other materials or records that may be deemed necessary to complete the investigation.

40. State Auto misrepresented the policy terms by falsely representing that Mr. Harris was obligated pursuant to the policy to sign an authorization allowing State Auto to access his private medical information and tax returns even though Texas Insurance Code Sec. 542.004(a) prohibits an insurer from requesting a claimant's tax returns.
41. When Mr. Harris failed to sign the second authorization after having already signed the first, State Auto misrepresented a material fact and policy provision by indicating that the claim was denied because "you have refused to sign **any** authorization to obtain documents that would help substantiate your claim."

COUNT THREE

UNFAIR INSURANCE SETTLEMENT PRACTICES

Failure to Effectuate a Prompt, Fair, and Equitable Settlement

42. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs.

43. State Auto engaged in the following prohibited behaviors in the course of processing this claim on behalf of Meridian. Pursuant to Section 541.060(a)(2) of the Texas Insurance Code, it is a violation to fail to attempt in good faith to effectuate a prompt, fair, and equitable settlement of 1) a claim with respect to which the insurer's liability has become reasonably clear.
44. Although it was reasonably clear from all the evidence that Mr. Harris suffered a covered loss, State Auto refused to make any payments on the claim. State Auto chose instead to complain that it did not get enough documents and repeatedly insinuate, without evidence, that Mr. Harris conspired to commit insurance fraud. While State Auto may permissibly refuse to pay for items that have not been sufficiently documented, it cannot simply refuse to pay for items that were sufficiently documented.

COUNT FOUR

UNFAIR INSURANCE SETTLEMENT PRACTICES

Failure to Promptly Provide a Reasonable Explanation of Denial

45. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs.
46. State Auto engaged in the following prohibited behaviors in the course of processing this claim on behalf of Meridian. Pursuant to Section 541.060(a)(3) of the Texas Insurance Code, it is a violation to fail to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim.
47. State Auto did not promptly provide a reasonable explanation for its denial of the claim. State Auto's explanation that the claim was denied because Mr. Harris refused to sign any authorization or provide documents is not a reasonable explanation because it is false. Furthermore, the denial explanations were not prompt because they were provided about 15 months after the claim was reported, even though, on information and belief, the claim was denied internally several month before the denial letter was sent.

COUNT FIVE

UNFAIR INSURANCE SETTLEMENT PRACTICES

Failure to Submit a Reservation of Rights in a Reasonable Time

48. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs.
49. State Auto engaged in the following prohibited behaviors in the course of processing this claim on behalf of Meridian. Pursuant to Section 541.060(a)(4) of the Texas Insurance Code, it is a violation to fail within a reasonable time to a) affirm or deny coverage of a claim to a policyholder or b) submit a reservation of rights to a policyholder.
50. Mr. Harris provided documentations and authorizations to State Auto on November 26, 2017. Nonetheless, State Auto decided to delay the process by waiting until March 13, 2018, after any physical evidence of the theft would have been removed or repaired, to finally send a reservation of rights “because of questions regarding the details of the loss, and the damages”. State Auto then proceeded to harass Mr. Harris for over a year with repetitive, redundant, and unreasonable demands before finally denying the claims on February 25, 2019.

COUNT SIX

VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

Violation of Chapter 541, Insurance Code

51. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs.
52. 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... the use or employment by any person of an act or practice in violation of Chapter 541, Insurance Code”.
53. As detailed above, State Auto, while processing the claim on behalf of Meridian, violated Sections 541.060(a)(1) to (4) of the Texas Insurance Code.
54. Therefore, Mr. Harris is entitled to bring his claims under the DTPA.

COUNT SEVEN

VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

Section 542.004, Texas Insurance Code

55. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs.
56. A violation of Section 542.004 of the Texas Insurance Code is a violation of the DTPA. *See* Texas Insurance Code 542.004(b)(c).
57. Section 542.004 of the Texas Insurance Code prohibits an insurer from examining the tax returns of a claimant without a court order unless the claim involves a fire loss or loss of profit or income. Without a court order, State Auto, while processing the theft claim on behalf of Meridian, requested authorization to obtain Mr. Harris's tax returns. When Mr. Harris failed to sign the form, the claim was denied, in part because of his failure to sign the authorization.

COUNT EIGHT

VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

Unconscionable Action

58. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs.
59. 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... any unconscionable action or course of action by any person".
60. "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). State Auto, while processing the claim on behalf of Meridian, knowingly and intentionally engaged in a series of activities designed to take advantage of Mr. Harris and unreasonably delay payment on his claims. Such activities include making numerous, repeated requests for unnecessary documents; making false statements about the claim and policy; and requesting documents that it was prohibited by statute from reviewing. As a result of

State Auto's actions, Mr. Harris was not compensated for the damages he suffered due to the theft.

DAMAGES

61. ***Damage to personal property.*** The theft at issue resulted in the loss of personal property in excess of \$94,741.01. Plaintiff also suffered loss of use damages as a result of Defendant refusal to replace the stolen items.
62. ***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). 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.

63. **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

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

PRAYER FOR RELIEF

65. 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

Certificate of Service

I certify that on July 3, 2019, I served a copy of the foregoing document on the parties listed below by electronic service and by USPS First Class Mail. My e-mail address is lscott@scottesq.com.

/s/ Leroy Scott

Leroy B. Scott

Patrick M. Kemp
Texas Bar No. 24043751
pkemp@smsm.com
Robert G. Wall
rwall@smsm.com
Segal McCambridge Singer & Mahoney
100 Congress Avenue, Suite 800
Austin, Texas 78701
(512) 476-7834
(512) 476-7832 – Facsimile
Attorney for Defendant