

IN THE CIRCUIT COURT OF ADAMS COUNTY
STATE OF ILLINOIS

JAVIER LOFTON and SHARI LOFTON,)	
)	
Plaintiffs,)	2022LA19
)	Case No.
v.)	
)	
CERTAIN UNDERWRITERS AT LLOYD'S,)	
LONDON SUBSCRIBING TO POLICY)	JURY TRIAL DEMANDED
NUMBER PK1005319,)	
)	
Serve:)	
Illinois Corporation Service Company)	
801 Adlai Stevenson Drive)	
Springfield, IL 62703,)	
)	
CERTAIN UNDERWRITERS AT LLOYD'S,)	
LONDON (BRIT SYNDICATE 2987)	
AND 2988),)	
)	
Serve:)	
Illinois Corporation Service Company)	
801 Adlai Stevenson Drive)	
Springfield, IL 62703,)	
)	
COUNTIES OF ILLINOIS RISK MANAGEMENT)	
AGENCY,)	
)	
Serve:)	
Counties of Illinois Risk Management Agency)	
828 S. Second Street, Suite 101)	
Springfield, IL 62704,)	
)	
and)	
)	
ADAMS COUNTY, ILLINOIS,)	
)	
Serve:)	
Adams County Clerk Ryan Kiekamp)	
507 Vermont St., Suite G02)	
Quincy, IL 62301,)	
)	
Defendants.)	

COMPLAINT

NOW COMES plaintiffs, Javier Lofton and Shari Lofton, by and through their attorneys, Goldblatt + Singer, and for their Complaint against defendants, Certain Underwriters at Lloyd's London Subscribing to Policy Number PK1005319; Certain Underwriters at Lloyd's London (Brit Syndicate 2987 and 2988); Adams County, IL; and Counties of Illinois Risk Management Agency, state as follows:

GENERAL ALLEGATIONS

1. On July 9, 2020, during a routine traffic stop on the side of Interstate 172, an officer went down in the line of duty. Adams County Deputy Sheriff Javier Lofton was taken down by the vehicle of an under insured third-party tortfeasor and her violation of Scott's Law. Adams County contracted and paid premiums for under insured motorist (UIM) coverage as a benefit to its employees. This policy ensures that officers like Deputy Lofton are taken care of and so that no man/person is left behind. In October 2020, Deputy Lofton made a UIM claim and demand for arbitration under the policy. He is waiting for a response. At this point, he is still a man down, left behind by those that are supposed to take care of him.

2. Defendants, Certain Underwriters at Lloyd's, London Subscribing to Policy Number PK1005319 and Certain Underwriters at Lloyd's, London (Brit Syndicate 2987 and 2988), (hereinafter these two defendants are referred to as "Underwriters"), at all relevant times wrote insurance policies, with under insured motorist coverage and benefits to persons and/or entities in the State of Illinois.

3. Defendants issued an insurance policy with under insured motorist coverage to Counties of Illinois Risk Management Agency (hereinafter "CIRMA") policy No. PK1005319, with effective dates of December 1, 2019 through December 1, 2020 (hereinafter, the "policy"). A copy of said policy (122 pages) is attached and incorporated herein as Exhibit 1.

4. Adams County, IL, is a Member of CIRMA and a Named Assured in the policy.

5. Underwriters, Adams County and CIRMA are all parties to the policy and all agreed to the terms of the policy.

6. On July 9, 2020, plaintiff Javier Lofton was in Adams County, IL; acting in the scope of his duties as an employee of Adams County, IL; on duty as a Deputy for Adams County Sheriff's Department; in operation of an Adams County, IL police vehicle/squad car (hereinafter "plaintiff's vehicle").

7. Plaintiff's vehicle was struck from behind by a motorist (hereinafter the "under insured motorist/tortfeasor") operating a vehicle insured by Farmers Insurance.

8. The under insured motorist/tortfeasor was in violation of Scott's law (625 ILCS 5/11-907(c)), and was negligent and at fault for the collision into plaintiff's vehicle and plaintiffs' injuries.

9. The under insured motorist/tortfeasor's automobile liability policy issued by Farmers Insurance contained limits in the amount of \$250,000.00 for its insured's liability to third persons.

10. As a direct and proximate result of the collision caused by the under insured motorist/tortfeasor insured by Farmers Insurance:

- a. plaintiff suffered pain, suffering and severe injuries, including but not limited to his right knee, left shoulder, right elbow and ACL tear.
- b. plaintiff has received substantial medical treatment resulting in medical bills in the amount of \$108, 224.12.
- c. plaintiff suffered lost wages from being unable to work.
- d. Plaintiffs suffered loss of consortium, including that plaintiff's spouse, Shari Lofton, suffered significant loss of consortium, including but not limited to the fact that she was approximately 7.5 months pregnant at the time of the accident and had to care for a toddler and new born, as well as her injured husband, all while Javier Lofton was physically prevented from performing his duties as a father and husband.

11. Plaintiff settled his underlying cause of action with the under insured motorist/tortfeasor for the Farmers Insurance policy limits.

12. Plaintiffs' damages and injuries from the underlying collision and negligence of the under insured motorist/tortfeasor were in excess of the \$250,000 Farmers Insurance policy limits.

13. According to the terms of the policy, on July 9, 2020 as a driver/operator of plaintiff's vehicle, plaintiff Javier Lofton was an "assured" under the policy. Plaintiff was also an "assured" under the policy by virtue of Endorsement No. 1 (listing "Adams County" as a "Named Assured") and Endorsement No. 8 (defining an "Assured", among other things, as employees of a "Named Assured" acting within the scope of their duties).

14. The policy provides under-insured (UIM) coverage.

15. Plaintiffs were and are entitled to under-insured motorist (UIM) coverage under the policy.

16. The policy identifies a third-party claims administrator, through which "all claims, suits or occurrences ... must be adjusted and handled by".

17. On or about October 27, 2020, plaintiff's attorney, on behalf of plaintiff, made a written demand to the third-party claims administrator to arbitrate the under-insured (UIM) claim under the policy. (See letter from Rob Schmittgens to Ms. Kathleen D. Cammack, Davies Claims Solutions, attached and incorporated herein as Exhibit 2).

18. Davies Claims Solutions sent a letter to plaintiff's counsel dated November 2, 2020, acknowledging receipt of plaintiff's counsel's prior correspondence and stating plaintiff's "sole remedy in the State of Illinois is work comp". (See November 2, 2020 letter from Kathleen Cammack/Davies Claims Solutions, attached and incorporated herein as Exhibit 3).

19. The Illinois Worker's Compensation Act does not bar employee UIM claims. *Norris v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 368 Ill. App. 3d 576, 585, 857 N.E.2d 859, 867 (1st Dist. 2006) (agreeing with earlier precedent that nothing in the Illinois Work Comp Act precludes an

employee's recovery of uninsured motorist benefits from the employer's automobile insurer). (Emphasis added).

20. On August 23, 2021, plaintiff's attorney, on behalf of plaintiff, made a second written demand to the third-party claims administrator to arbitrate the under-insured (UIM) claim. (See August 23, 2021 letter from plaintiff's counsel to Kathleen D. Cammack/Davies Claims Solutions, attached and incorporated herein as Exhibit 4).

21. Attorney James A. Hansen sent a letter to plaintiff's counsel dated October 8, 2021, wherein Mr. Hansen acknowledged receipt of plaintiff's counsel's August 23, 2021 demand letter to Davies Claims Solutions, states he "represent[s] Davies and Adams County" and that his letter will constitute a response to the August 23, 2021 letter. (See October 8, 2021 letter from James A. Hansen, attached and incorporated herein as Exhibit 5).

22. Mr. Hansen's October 8, 2021 letter (Exhibit 5), on behalf of Davies Claims Solutions and Adams County, states that plaintiff's "sole and exclusive remedy is to file a worker's compensation claim with the Illinois Industrial Commission."

23. Plaintiff's counsel's letters to Davies Claims Solution of October 2021 (Exhibit 2) and August 23, 2021 (Exhibit 4) also made a settlement demand to defendants regarding the UIM claim. Mr. Hansen's letter of October 8, 2021 (Exhibit 5) stated the "settlement demand is denied".

24. On or about February 24, 2022, plaintiff's attorney, on behalf of plaintiff, sent a letter to Davis Claims Solution via fax, asking them to disclose policies covering Medical Payments, Uninsured Motorist and/or Underinsured Motorist Coverage. (See February 24, 2022 letter to Davies Claims Solutions, attached and incorporated herein as Exhibit 6).

25. Davies Claims Solutions sent a letter to plaintiff's counsel dated March 30, 2022, which acknowledged receipt of the letter dated February 24, 2022 and referred plaintiff to James A. Hansen's October 8, 2021 letter. (See March 30, 2022 letter, attached and incorporated herein as Exhibit 7, with the enclosure of Hansen's October 8, 2021 letter).

26. To date, defendants have not responded to plaintiff's request for arbitration nor have defendants appointed in arbitrator in response to the arbitrator plaintiff appointed in plaintiff's written demands for arbitration.

27. Defendants have failed to pay plaintiffs in accordance with the terms of the under insured motorist (UIM) coverage in the policy.

COUNT I
BREACH OF CONTRACT
vs. Underwriters

28. Plaintiffs reallege, reaffirm, adopt and incorporate by reference all of the allegations contained in paragraphs 1 through 27 of this Complaint as paragraphs 1 through 27 of this count.

29. Underwriters entered into an insurance contract, the policy, with Adams County and CIRMA agreeing that it was obligated to make under insured motorist (UIM) payments in an amount not to exceed \$1,900,000.00.

30. The policy was in full force and effect on July 9, 2020 and plaintiffs have performed all conditions precedent under the terms of the policy.

31. According to the terms of Underwriters' contract with plaintiff, Adams County and CIRMA, "[i]n the event an Assured and Underwriters are unable to agree to the amount recoverable by the Assured from Underwriters under the terms and conditions of this Policy" each party is to name a disinterested arbitrator and engage in the prescribed arbitration process.

32. From on or about October 27, 2020, to the present date, Underwriters have refused to participate and follow the arbitration provisions of the policy, and have otherwise breached the terms of the policy, thus denying plaintiffs the benefits that they are entitled to under the policy provisions, and policy limits.

33. In addition, Underwriters breached this contract with plaintiff, Adams County and CIRMA, including but not limited to, when they:

- a. wrongfully took the position that plaintiff's "sole and exclusive remedy is to file a worker's compensation claim with the Illinois Industrial Commission";
- b. failed to pay the UIM claim;
- c. failed to appoint an arbitrator; and
- d. failed to abide by the terms of the contract as alleged elsewhere in this Complaint.

WHEREFORE, plaintiffs respectfully pray for judgment against defendants for damages that are fair and reasonable, in an amount in excess of the minimum jurisdictional amount of Fifty Thousand Dollars (\$50,000.00), plus costs herein incurred, pre-judgment interest, post-judgment interest, statutory penalties, attorney fees, and for such other orders as this Court deems just under the circumstances.

COUNT II
LIABILITY PURSUANT TO 215 ILCS 5/155
vs. Underwriters

34. Plaintiffs reallege, reaffirm, adopt and incorporate by reference all of the allegations contained in paragraphs 1 through 33 of this Complaint as paragraphs 1 through 33 of this count.

35. The actions of Underwriters from October 2020 to the present time were and are a continuing course of conduct by defendants to unreasonable delay payment to plaintiffs of any and all benefits to which plaintiffs are entitled to receive under the policy and specifically to the UIM coverage, and prevented plaintiffs from resolving any and all issues regarding the UIM claim through arbitration of that claim.

36. The conduct of Underwriters in the handling of plaintiff's UIM claim, the delay caused by Underwriters in paying said claim; the delay and unreasonable conduct of Underwriters subsequent to plaintiff's demands for arbitration were vexatious and unreasonable within the meaning of 215 ILCS 5/155 in one or more of the following respects:

- (a) Refused to make a reasonable offer on plaintiff's claim;
- (b) Refused to make a reasonable offer on plaintiff's claim in a reasonable time;

- (c) Refused to make any offer on plaintiff's claim within a reasonable time;
- (d) Willfully refused to participate in arbitration by continuously failing and refusing to identify its arbitrator in spite of repeated requests by plaintiff's counsel for defendants to do so;
- (e) Willfully and vexatiously violated 215 ILCS 154.6(d) by not attempting in good faith to effectuate a prompt, fair and equitable settlement of plaintiff's claim which liability had become reasonably clear to defendants;
- (f) Willfully and vexatiously violated 215 ILCS 154.6(h) by refusing to pay plaintiff's claim without having conducted a reasonable investigation based upon all available information provided by plaintiffs to defendant;
- (g) Willfully and vexatiously violated 215 ILCS 154.6(n) by failing to offer a compromise settlement and to promptly provide a reasonable and accurate explanation of the basis in the policy or applicable law for its failure to offer a reasonable, compromise settled;
- (h) Knowingly, vexatiously and wrongfully violated 215 ILCS 154.6(a) by misrepresenting to plaintiff and his attorneys relevant facts or policy provisions relating to coverages at issue, including, but not limited to, false claims that work comp was plaintiff's sole remedy;
- (i) Failed to adopt and implement reasonable standards for the prompt investigations and settlement of claims arising under its policy (215 ILCS 154.6(c));
- (j) Willfully, knowingly and vexatiously compelled plaintiff to attempt to institute an arbitration action to recover amounts under its policy by making no offer;
- (k) Willfully, and vexatiously caused unreasonable delay for arbitration of plaintiff's claim from October 2020 to the present date;
- (l) Willfully, knowingly and vexatiously failed to provide the UIM coverage to plaintiffs; and
- (m) Otherwise committed unreasonable delay and vexatious conduct in the handling of the UIM claim under the aforementioned policy.

WHEREFORE, plaintiffs respectfully pray for judgment against defendants in an in an amount in excess of the minimum jurisdictional amount of Fifty Thousand Dollars (\$50,000.00), including an amount equal to plaintiffs reasonable attorney's fees; all costs and expenses incurred by plaintiffs; sixty percent of the amount which this court finds that plaintiffs are entitled to recover against defendants, exclusive of costs, or SIXTY THOUSAND DOLLARS (\$60,000.00); and an award of the full UIM benefits under the policy, plus expenses and costs of this action, and for such other orders as this Court deems just under the circumstances.

COUNT III
COMMON LAW FRAUD
vs. Underwriters

37. Plaintiffs reallege, reaffirm, adopt and incorporate by reference all of the allegations contained in paragraphs 1 through 36 of this Complaint as paragraphs 1 through 36 of this count.

38. The foregoing, including defendants' misrepresentation of the policy and statement that plaintiff's "sole and exclusive remedy is to file a worker's compensation claim with the Illinois Industrial Commission" were deceptive acts and/or practices by defendants.

39. Defendants had knowledge that these deceptions were false, misleading and deceptive.

40. Defendants intended that plaintiffs rely on defendants' deception.

41. Plaintiffs were damaged as described above, and those damages were proximately caused by defendants' deception.

WHEREFORE, plaintiffs respectfully pray for judgment against defendants for damages that are fair and reasonable, in an amount in an amount in excess of the minimum jurisdictional amount of Fifty Thousand Dollars (\$50,000.00), plus costs herein incurred, pre-judgment interest, post-judgment interest, punitive damages, attorney fees, and for such other orders as this Court deems just under the circumstances.

COUNT IV
ILLINOIS CONSUMER FRAUD AND DECEPTIVE

BUSINESS PRACTICE ACT (815 ILCS 505/2)
vs. Underwriters

42. Plaintiffs reallege, reaffirm, adopt and incorporate by reference all of the allegations contained in paragraphs 1 through 41 of this Complaint as paragraphs 1 through 41 of this count.

43. Defendants' deception was in the course of conduct involving trade or commerce.

44. Defendants' conduct violated the Illinois Consumer Fraud and Business Practice Act (815 ILCS 505/2).

WHEREFORE, plaintiffs respectfully pray for judgment against defendants for damages that are fair and reasonable, in an amount in an amount in excess of the minimum jurisdictional amount of Fifty Thousand Dollars (\$50,000.00), plus costs herein incurred, pre-judgment interest, post-judgment interest, statutory penalties, punitive damages, attorney fees, and for such other orders as this Court deems just under the circumstances.

COUNT V
BREACH OF CONTRACT
vs. Adams County and CIRMA

45. Plaintiffs reallege, reaffirm, adopt and incorporate by reference all of the allegations contained in paragraphs 1 through 27 of this Complaint as paragraphs 1 through 27 of this count.

46. Defendants entered into an insurance contract, the policy, which provides underinsured motorist (UIM) coverage for plaintiff Javier Lofton.

47. The policy was in full force and effect on July 9, 2020 and plaintiffs have performed all conditions precedent under the terms of the policy.

48. According to the terms of the policy, "[i]n the event an Assured and Underwriters are unable to agree to the amount recoverable by the Assured from Underwriters under the terms and conditions of this Policy" each party is to name a disinterested arbitrator and engage in the prescribed arbitration process.

49. From on or about October 27, 2020, to the present date, defendants have refused to participate and follow the arbitration provisions of the policy, and have otherwise breached the

terms of the policy, thus denying plaintiffs the benefits that they are entitled to under the policy provisions, and policy limits.

50. In addition, defendants breached this contract, including but not limited to, when they:

- a. wrongfully took the position that plaintiff's "sole and exclusive remedy is to file a worker's compensation claim with the Illinois Industrial Commission";
- b. failed to file and/or assert a UIM claim on behalf of plaintiffs to Underwriters;
- c. failed to initiate and/or participate in arbitration for plaintiffs' UIM claim;
- d. failed to negotiate in good faith;
- e. denied plaintiffs' UIM claim;
- f. failed to pay plaintiffs' UIM claim;
- g. failed to appoint an arbitrator; and
- h. failed to abide by the terms of the contract as alleged elsewhere in this Complaint.

WHEREFORE, plaintiffs respectfully pray for judgment against defendants for damages that are fair and reasonable, in an amount in excess of the minimum jurisdictional amount of Fifty Thousand Dollars (\$50,000.00), plus costs herein incurred, pre-judgment interest, post-judgment interest, statutory penalties, attorney fees, and for such other orders as this Court deems just under the circumstances.

Respectfully submitted,

GOLDBLATT + SINGER

/s/Lucas J. Dalton

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