

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

KRISTI IHRIG, individually and
on behalf of all others similarly situated

PLAINTIFF

vs.

Civil Action No. 2:19-cv-91-KS-MTP

ACCC INSURANCE COMPANY

DEFENDANT

COMPLAINT

(Jury Trial Demanded)

COMES NOW, the Plaintiff, Kristi Ihrig, by and through counsel, and files this action on her own behalf and on behalf of a class of persons defined below against the Defendant, ACCC Insurance Company, and alleges as follows:

I.

Introduction

This action arises out of vehicular automobile insurance policies sold by Defendant ACCC Insurance Company in the states of Mississippi, Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah that did not provide the uninsured/underinsured motorist ("UM/UIM") insurance coverage required by law. These policies were sold by Defendant ACCC Insurance Company and purchased by and issued to, *inter alia*, the Plaintiff's mother in Mississippi and also sold by Defendant ACCC Insurance Company to similarly situated Mississippi, Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah citizens. This action is filed on behalf of Plaintiff and all other Mississippi, Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and

Utah insureds who are similarly situated to Plaintiff. The claims of the proposed class arise as a result of Defendant's issuing policies that failed to provide the UM/UIM coverage required by law.

I.

Parties

1. Kristi Ihrig is an adult resident citizen of Marion County, Mississippi.
2. ACCC Insurance Company is a foreign corporation with its corporate headquarters in Houston, Texas. ACCC Insurance Company may be served with process by serving its agent for service of process, CT Corporation System of Mississippi, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232.

II.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds the sum value of \$75,000, exclusive of interest and costs, and is between citizens of different states. This Court additionally has subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d), because the class members are of diverse citizenship from the Defendant's home state, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.
4. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

III.

Factual Allegations

5. On or about June 30, 2016, Plaintiff Kristi Ihrig was seriously injured in a vehicular accident in Walthall County, Mississippi (the "Accident").

6. At the time of the Accident, Plaintiff Kristi Ihrig was the passenger in a 1997 Dodge Ram (the "Vehicle") which was owned and registered to her and being operated by Derwin Anderson. Ms. Ihrig and Mr. Anderson were traveling West on US 98 in Walthall County, Mississippi when a vehicle being driven by Mr. Monroe Lenoir failed to yield the right-of-way and entered their lane of travel. Mr. Lenoir was killed in the wreck and Ms. Ihrig and Mr. Anderson sustained serious bodily injuries and were transported to Walthall County General Hospital for treatment.

7. Mr. Monroe Lenoir was an uninsured motorist.

8. Prior to the Accident, the Plaintiff's mother, Vonda Ihrig, entered into an insurance contract with Defendant ACCC Insurance Company to provide insurance on a 2003 Ford Mustang. The ACCC Insurance Company policy number was MSE0268645-9 (the "Policy"). The Policy provided \$25,000/\$50,000/\$25,000 in uninsured/underinsured motorist benefits.

9. Vonda Ihrig paid the premiums for coverage on the Vehicle, and Defendant ACCC Insurance Company agreed to provide coverage. The coverage was paid in full and was in force on the date of the accident.

10. At all times material hereto, Plaintiff Kristi Ihrig was a resident relative of her mother, Vonda Ihrig's household, and she was a Class I insured under the Policy with Defendant ACCC Insurance Company.

11. At all times material hereto, the law of Mississippi required that all policies of insurance for automobiles issued within Mississippi provide coverage for uninsured and underinsured motor vehicle accidents ("UM/UIM claims") to all insureds unless there was a valid written rejection of that additional coverage. ~~In order to be valid, such a rejection had to be in writing on a form approved by the Mississippi Department of Insurance informing the insured or applicant of the benefits of and reasons for electing to purchase uninsured motorist coverage. A written rejection of uninsured motorist coverage under the Policy was never executed.~~

12. At all times material hereto, the law of Mississippi, specifically Miss. Code Ann. § 83-11-103(b), defined the term "insured" for purposes of uninsured motorist coverage as:

[T]he named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies, and a guest in such motor vehicle to which the policy applies, or the personal representative of any of the above.

13. In 1992, the Mississippi Supreme Court issued its decision in *Dixie Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 614 So. 2d 918, 922 (Miss. 1992). In that decision, the Mississippi Supreme Court stated that it "has consistently held that an insurer may not diminish the mandated statutory requirements."

14. In 1995, the Mississippi Supreme Court issued its decision in *Guardianship of Lacy v. Allstate Ins. Co.*, 649 So. 2d 195 (Miss. 1995). In that decision, the Mississippi Supreme Court specifically held that under Mississippi law, an automobile insurance policy may provide uninsured motorist coverage greater than that required by statute, but it may not diminish the uninsured motorist coverage required by statute.

15. In 2003, the United States District Court for the Southern District of Mississippi issued its decision in *Owen v. Universal Underwriters Ins. Co.*, 252 F.Supp.2d 324 (S.D. Miss. 2003). In that case, the Court found an automobile insurance policy provision restricting uninsured motorist coverage to certain designated individuals was invalid as violative of Mississippi's statutory requirements concerning uninsured motorist coverage because the policy's definition of "insured" was narrower than statutory definition.

16. In 2016, the United States District Court for the Southern District of Mississippi issued its decision in *Godwin v. United States*, No. 3:14CV391-DPJ-FKB, 2016 WL 6127405 (S.D. Miss. Oct. 19, 2016). In that case, the Court found an automobile insurance policy provision that attempted to exclude regular and frequent users of the covered automobile that were not listed on the Declarations page as a driver or operator unenforceable as against the public policy of Mississippi.

17. Plaintiff Kristi Ihrig through counsel made a claim under the Policy. Despite its obligations under the law, Defendant ACCC Insurance Company denied Kristi Ihrig's claim under the uninsured motorist provisions of the Policy.

18. In denying Kristi Ihrig's claim under the uninsured motorist provision of the Policy, Defendant ACCC Insurance Company relied on language in its insurance policies issued in Mississippi that exclude family members and residents of the insured as a "covered person" for purposes of uninsured motorist coverage if they are not named on the declarations page or added by endorsement ("Family Member/Resident Exclusion").

19. The Family Member/Resident exclusion in Defendant ACCC Insurance Company's insurance policies issued and/or delivered in Mississippi, therefore, denies uninsured motorist coverage for an entire class of people in violation of Miss. Code Ann. § 83-11-101, the other legal authority cited above, and the public policy of the State of Mississippi.

20. ACCC Insurance Company also issues auto insurance policies in Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah.

21. Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah have uninsured motorist laws similar to Mississippi's uninsured motorist statute.

22. The policies issues in these states incorporates the same language as the policies issued within the state of Mississippi. Accordingly, Plaintiff seeks have this Court declare the rights of those insureds under the uninsured/underinsured motorist coverage of their policies.

23. The Family Member/Resident exclusion found in Defendant ACCC Insurance Company's policies issued and/or delivered in Mississippi diminishes the uninsured motorist coverage available to its insureds, ~~and Defendant ACCC Insurance~~

~~Company failed to obtain rejections of UM/UIM coverage in a manner consistent with the requirements imposed by Mississippi law.~~ The failure of Defendant ACCC Insurance Company to pay the Plaintiff's claim amounts to bad faith.

24. As a direct and proximate result of Defendant ACCC Insurance Company's failure to comply with Mississippi law, Plaintiff has been damaged and is likely to continue to be damaged, and she is entitled to damages and declaratory and injunctive relief as set forth below.

25. As a direct and proximate result of Defendant ACCC Insurance Company's failure to comply with the laws of Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah, insureds under the applicable law in these states have been damaged, and are likely to continue to be damaged, and are entitled to damages and declaratory and injunctive relief as set forth below.

IV.

Class Allegations

26. The allegations of the preceding paragraphs are incorporated herein by reference as if set forth in full herein.

27. All automobile insurance policies issued by Defendant ACCC that include the Family Member/ Resident Exclusion in contradiction of state laws of Mississippi, Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah are uniform in all respects material to the claims asserted by the named Plaintiff.

28. Plaintiff asserts her claims as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure as the following definition: all insureds under

automobile policies issued and/or delivered in Mississippi, Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah by ACCC Insurance Company in which UM/UIM coverage was denied based on the Family Member/Resident Exclusion found in the policies.

29. Plaintiff is a member of the class that she seeks to represent, and Plaintiff's claims are representative of the class.

30. The class, as defined above, is sufficiently numerous that joinder of all members is impracticable. There are common issues of law and fact to all of the claims of the class members. A class action represents the easiest and most economical way to declare and notify class members of their rights as set forth herein and their potential claims. A class action also ensures that all potential claimants are notified and can redress the wrongs and make a claim for UM/UIM coverage.

31. Excluded from the class are officers, directors, and employees of Defendant ACCC Insurance Company, their spouses, children, heirs, and assigns.

32. The proposed class definition is precise, objective and presently ascertainable and it is administratively feasible for the court to easily ascertain whether a particular individual is a member.

33. There are questions of law and fact common to the class, and these questions predominate over individual questions. Such questions include, *inter alia*, whether Defendant ACCC Insurance Companies acts and/or practices amount to a breach of its contractual obligations with respect to its Mississippi, Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah insureds, whether Defendant ACCC

Insurance Company's acts and/or practices breached the implied covenant of good faith and fair dealing with respect to the policies issued and/or delivered to its Mississippi, Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah insureds, whether Defendant's policy provision that excludes uninsured motorist coverage for spouses and/or members of the household of the insured who are not listed on the declarations page and/or in an endorsement violates Mississippi, Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah law and/or Mississippi, Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah public policy, and whether injunctive and other equitable remedies and extra-contractual and punitive damage relief for the class is warranted.

34. Certification of the class is desirable and proper because Plaintiff's claims are typical of the claims of the members of the class that Plaintiff seeks to represent. Without limitation, Plaintiff claims that Defendant ACCC Insurance Company's acts and practices are in breach of the common law and statutory duties alleged herein and are typical of the claims of the members of the class.

35. Certification of the class is desirable and proper because Plaintiff will fairly and adequately protect the interests of the class she seeks to represent. There are no conflicts of interest between Plaintiff and those of other members of the class, and Plaintiff is cognizant of her duties and responsibilities to the class.

36. Plaintiff seeks to establish the rights and obligations of the parties with respect to the claims at issue in this case and to enjoin Defendant ACCC Insurance Company from continuing to engage in those practices that violate the duties and

contractual and legal obligations owed to Plaintiff and the class under Mississippi, Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah statutory and common law.

37. This action is properly maintainable under both Federal Rule of Civil Procedure Rule 23(b)(2) and (3) because Defendant has acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief or corresponding declarative relief appropriate with respect to the class as a whole. Plaintiff seeks final injunctive or corresponding declarative relief providing coverage for those Mississippi, Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah insureds which are covered under their state's uninsured motorist statute, but which the ACCC policy seeks to unlawfully restrict. This action is properly maintainable under both Federal Rule of Civil Procedure Rule 23(b)(2) and (3) because questions of law and fact common to the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this case. This action also is properly maintainable under Rule 23(c)(4) for all class issues alleged herein.

V.

Causes of Action

Count I
(Breach of Contract)

38. The allegations of the preceding paragraphs are incorporated herein by reference as if set forth in full herein.

39. The Policy constituted a binding contract in which ACCC Insurance Company agreed to provide, for a certain premium amount, uninsured motorist insurance to Vonda Ihrig, her family members, residents of her household, and/or any other person occupying her covered auto with express permission.

40. The Plaintiff was a beneficiary of a contract of insurance between Vondra Ihrig and Defendant ACCC Insurance Company which under Mississippi law provided uninsured motorist benefits and medical payments coverage to, *inter alia*, the Plaintiff for the motor vehicle accident in which she was involved.

41. The Plaintiff was entitled to recover from ACCC Insurance Company up to the applicable policy limits all of those amounts she would be entitled to recover from the tortfeasor for damages sustained as a proximate result of the motor vehicle accident described herein.

42. Defendant ACCC Insurance Company has steadfastly refused to pay any amount whatsoever to the Plaintiff under the uninsured motorist provision of the Policy for the bodily injuries she sustained as a proximate result of the motor vehicle accident described herein.

43. Defendant ACCC Insurance Company's actions constitute a breach of contract, and as a direct and proximate result of the Defendant's breach, the Plaintiff has suffered damages in an amount that will be shown at the trial of this matter.

Count II
(Tortious Breach of Contract)

44. The allegations of the preceding paragraphs are incorporated herein by reference as if set forth in full herein.

45. Defendant ACCC Insurance Company's breach of the insurance contract was accompanied by an intentional wrong, insult, abuse, or negligence that was so gross as to constitute an independent tort. Defendant ACCC Insurance Company's actions constitute a tortious breach of the contract, thereby entitling the Plaintiff to extra-contractual and punitive damages which she specifically seeks to recover. As a direct and proximate result, the Plaintiff has suffered damages in an amount that will be shown at the trial of this matter.

Count III
(Violation of the Covenant of Good Faith and Fair Dealing)

46. The allegations of the preceding paragraphs are incorporated herein by reference as if set forth in full herein.

47. Defendant ACCC Insurance Company owed the Plaintiff a duty to exercise good faith and an obligation to deal fairly with the Plaintiff. Further, Defendant ACCC Insurance Company owed the Plaintiff a duty to deal with her and adjust her claim in good faith.

48. Defendant ACCC Insurance Company breached the duty of good faith and fair dealing by, including but not limited to, denying and continuing to deny the Plaintiff's claims under the policy without a legitimate or arguable reason, failing to properly and adequately investigate the Plaintiff's claims in a timely fashion, and continuing to litigate issues regarding coverage of the Plaintiff under the Policy.

49. The acts on the part of Defendant ACCC Insurance Company violated standards of decency, fairness and/or reasonableness, and they constitute a bad faith breach of the duty to exercise good faith and an obligation to deal fairly with the Plaintiff's claim, thereby entitling the Plaintiff to extra-contractual and punitive damages which she specifically seeks to recover.

50. As a direct and proximate result of Defendant ACCC Insurance Company's bad faith breach of the duty of good faith and fair dealing, the Plaintiff has suffered damages in an amount that will be shown at the trial of this matter.

Count IV
(Negligence)

51. The allegations of the preceding paragraphs are incorporated herein by reference as if set forth in full herein.

52. Defendant ACCC Insurance Company owed one or more of the following duties to the Plaintiff:

- (a) A duty to place the interests of the Plaintiff above its own interest;
- (b) A duty to conduct a prompt and thorough investigation of the Plaintiff's claims in a timely fashion;

- (c) A duty to pay the Plaintiff's undisputed claims in a timely fashion;
- (d) A duty to comply with Mississippi law regarding uninsured motorist provisions in the insurance policies it issued and/or delivered in Mississippi, including the insurance policy to which the Plaintiff was a beneficiary;
- (e) A duty to comply with the law of the states of Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah regarding uninsured motorist provisions in the insurance policies it issued and/or delivered in Alabama, Arizona, Georgia, Louisiana, New Mexico, Texas, and Utah; and
- (f) A duty to not deny the Plaintiff's claims under the policy without a legitimate or arguable reason.

53. The Plaintiff would show that Defendant ACCC Insurance Company breached one or more of the above duties and other duties and by so doing, negligently denied the Plaintiff's claims.

54. Defendant ACCC Insurance Company was negligent in adjusting the Plaintiff's claims in such a manner so as to deny the Plaintiff's claims under the Policy.

55. The aforesaid negligence of Defendant ACCC Insurance Company was a proximate and/or contributing cause of damages to the Plaintiff in an amount that will be shown at the trial of this matter.

Count V
(Gross Negligence)

56. The allegations of the preceding paragraphs are incorporated herein by reference as if set forth in full herein.

57. The wrongful acts and/or omissions of Defendant ACCC Insurance Company were willful, intentional, malicious, and/or grossly negligent, and evidence a reckless indifference to the consequences of its actions without the exertion of any substantial effort to avoid them. As a result, the Plaintiff is entitled to recover extra-contractual and punitive damages in an amount that will be shown at the trial of this matter.

Count VI
(Injunctive Relief)

58. The allegations of the preceding paragraphs are incorporated herein by reference as if set forth in full herein.

59. The Plaintiff and the class are entitled to injunctive relief enjoining Defendant ACCC Insurance Company from continuing practices that violate the statutory and common law duties described above as well as the contractual and legal obligations owed to the Plaintiff and the class.

60. Defendant ACCC Insurance Company should be compelled to stop its practice of failing to provide UM/UIM limits equal to the limits of liability coverage where it has failed to obtain a valid waiver/rejection of the same.

61. Defendant ACCC Insurance Company should also be compelled to give notice to all class members that they are entitled to UM/UIM coverage equal to liability coverage and of their right to make a claim.

Count VII
(Declaratory Judgment)

62. The allegations of the preceding paragraphs are incorporated herein by reference as if set forth in full herein.

63. An actual controversy exists between the parties thereby rendering declaratory relief proper pursuant to Rule 57 of the Federal Rules of Civil Procedure and/or the Federal Declaratory Judgment Act, 28 U.S.C. Section 2201, *et seq.*

64. Plaintiff and the class are entitled to a declaratory judgment declaring that Defendant ACCC Insurance Company has breached its contracts with Plaintiff and the class, has failed to provide UM/UIM coverage and has violated the implied covenant of good faith and fair dealing. Plaintiff and the class also request that the Court declare and establish the respective rights and obligations of the parties with respect to the claims set forth herein.

(Count VIII)
(Willful Misconduct)

65. The allegations of the preceding paragraphs are incorporated herein by reference as if set forth in full herein.

66. Defendant ACCC Insurance Company's conduct was willful, wanton, malicious, in bad faith and in reckless disregard of the rights of the Plaintiff and the class.

67. Defendant ACCC Insurance Company's conduct in failing to provide and/or denying UM/UIM coverage with limits equal to the limits of liability coverage where the absence of a legally sufficient waiver/rejection had become reasonably clear was willful, wanton, malicious, and bad faith and in reckless disregard of the rights of Plaintiff and the class.

68. Defendant ACCC Insurance Company's conduct in failing to provide and/or denying UM/UIM coverage based upon the policy exclusion which excludes family members and residents of the insured as a "covered person" for purposes of uninsured motorist coverage if they are not named on the declarations page or added by endorsement ("Family Member/Resident Exclusion").

69. Plaintiff and the class are entitled to declaratory and injunctive relief declaring and notifying them of Defendant ACCC Insurance Company's misconduct. Plaintiff and the class are entitled to punitive and extra-contractual damages which they seek to recover.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, on her own behalf and on behalf of the class, seeks the following relief:

1. Certification of the class as a class action on behalf of the proposed class and designation of Plaintiff as the representative of the class and her counsel of record as class counsel;
2. An award of compensatory damages in an amount to be proven at trial;
3. An award of extra-contractual damages in an amount to be proven at trial;

4. An award of punitive damages in an amount sufficient to punish Defendant ACCC Insurance Company for its reckless, willful, and wanton conduct, and to deter it from such conduct in the future in an amount to be proven at trial;
5. A declaratory judgment that will establish the rights and obligations of the parties with respect to the claims set forth herein;
6. Injunctive relief to enjoin Defendant ACCC Insurance Company from continuing to engage in those practices that violate its duties and contractual and legal obligations owed to the Plaintiff and the class as described herein;
7. An award of all costs and expenses, including but not limited to, attorneys' fees, pre-judgment and post-judgment interest;
8. Leave to amend this Complaint to conform to any evidence presented at trial; and,
9. Such other and further relief as the Court deems just and proper.

Demand for Jury Trial

A trial by jury as to all claims so triable is hereby demanded.

RESPECTFULLY SUBMITTED on June 19, 2019,

KRISTI IHRIG, individually and
on behalf of all others similarly situated

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