

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

CHERYL SLADE, Individually and on
behalf of others similarly situated

CASE NO.: 6:11-cv-02164

JUDGE TUCKER L. MELANCON

VERSUS

PROGRESSIVE SECURITY
INSURANCE

MAGISTRATE JUDGE C. MICHAEL HILL

SECOND SUPPLEMENTAL AND AMENDING PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, comes plaintiff, CHERYL SLADE, Individually and on behalf of others similarly situated, who respectfully request that she be permitted to supplement and amend their Original Petition for Damages to add the following enumerated paragraphs, to-wit:

I.

To add paragraph 27 to read as follows:

27.

Under the collision provisions of her insurance policy with Progressive Security Insurance Company (specifically Part IV), Progressive Security Insurance Company (Progressive) was obligated to pay for the “loss” of her vehicle.

II.

To add paragraph 28 to read as follows:

28.

The parties intended and Louisiana statutory law demands that the “loss” be considered the fair market retail value of the vehicle.

III.

To add paragraph 29 to read as follows:

29.

Plaintiff paid her premiums and submitted a claim to Progressive for the “loss” of her vehicle.

IV.

To add paragraph 30 to read as follows:

30.

Progressive paid only a portion of the “loss” and refused to negotiate with plaintiff on the difference.

V.

To add paragraph 31 to read as follows:

31.

Plaintiff attempted to collect the difference between what Progressive paid and the actual amount of the “loss” but Progressive refused.

VI.

To add paragraph 32 to read as follows:

32.

Under the terms of her policy with Progressive, and specifically Part IV, Page 22, Subsection titled “Appraisal”, plaintiff is exercising her right to bring a court action for the purpose of collecting the difference between what Progressive paid under the collision portion of her policy and the actual amount of her “loss”.

VII.

To add paragraph 33 to read as follows:

33.

Plaintiff alleges that Progressive's refusal to pay the full amount of her "loss" under the terms and provisions of her insurance policy with Progressive, and specifically, Part IV, is a breach of the contract between Progressive and the plaintiff.

VIII.

To add paragraph 34 to read as follows:

34.

On information and belief, Progressive has breached its contractual obligations to the plaintiff through its use of a vehicle valuation system which intentionally undervalues the "loss".

IX.

To add paragraph 35 to read as follows:

35.

Prior to filing this lawsuit plaintiff attempted to negotiate the dispute but Progressive through its representatives and/or agents refused and instructed plaintiff to file this lawsuit.

X.

To add paragraph 36 to read as follows:

36.

Progressive owes Plaintiff the fair retail value of her vehicle as her “loss” and not the lower value determined by its valuation system and Progressive’s refusal to pay the difference in value is arbitrary, capricious and/or intentionally fraudulent.

XI.

To add paragraph 37 to read as follows:

37.

Progressive’s use of the Mitchell Vehicle Valuation Report violates Louisiana law and specifically, LSA-R.S. 1892 (B)(5)(b) in that the Mitchell Vehicle Valuation Report is not a “generally recognized used motor vehicle industry source” but instead a tool employed for the specific purpose of undervaluing claims and thereby cheating its policy holders.

XII.

To add paragraph 38 to read as follows:

38.

Plaintiff represents that she provided Progressive with documentation concerning the actual value of her “loss” but to date, Progressive has refused to pay the difference and that more than 60 days have passed since she made her demand for the difference.

XIII.

To add paragraph 39 to read as follows:

39.

Plaintiff specifically alleges that the Mitchell Vehicle Valuation Report is not a “generally recognized used motor vehicle industry source” within the intendment of R.S. 22:1892 (B)(5)(b).

XIV.

To add paragraph 40 to read as follows:

40.

Plaintiff specifically alleges that Progressive has violated statutorily imposed duty under LSA-R.S. 22:1973A which requires an insurer to adjust claims promptly and fairly and to make a reasonable effort to settle claims within its insured.

XV.

To add paragraph 41 to read as follows:

41.

Plaintiff specifically alleges Progressive has violated LSA-R.S. 22:1973(B)(5) in that more than 60 days have passed since she submitted satisfactory proof of loss to Progressive but to date, they have not paid the full amount due under the terms of her insurance contract.

XVI.

To add paragraph 42 to read as follows:

42.

Plaintiff specifically alleges that Progressive has violated LSA-R.S. 22:1973B(1) in that it has misrepresented pertinent facts of the insurance policy provisions relating to the coverage at issue to both the plaintiff and this Court in its argument that its policy does not provide coverage

for the damages (i.e. the difference between what was tendered and the actual “loss”) and further, that she has no right under the policy to bring this action.

XVII.

To add paragraph 43 to read as follows:

43.

On information and belief, Progressive employs the use of the Mitchell Vehicle Valuation Report knowing that it will undervalue the “loss” of its policyholders’ vehicles and further, that it knew this information at the time it entered into the contract with the plaintiff.

XVIII.

To add paragraph 44 to read as follows:

44.

On information and belief, Progressive misled its policyholders, including the plaintiff, into believing they would pay the full amount of any “loss” to a totaled insured vehicle (the fair market retail value).

XIX.

To add paragraph 45 to read as follows:

45.

On information and belief, Progressive employs a system which specifically misleads their insureds, intentionally undervalues their claims, intentionally refuses to negotiate and then refuses to recognize the insured’s right to bring legal action all of which constitute fraud and unfair trade practices.

WHEREFORE, petitioner prays that her Original and First Supplemental and Amending Petition for Damages be supplemented and amended in the above particulars, that defendant be

cited to appear and answer hereto, that after legal delays and due proceedings had, there be judgment herein in favor of petitioner, CHERYL SLADE, individually and on behalf of others similarly situated, and against defendant, for such damages as are reasonable in the premises, with legal interest thereon from the date of judicial demand until paid, and for all costs of these proceedings.

AND FOR ALL GENERAL AND EQUITABLE RELIEF, ETC.

RESPECTFULLY SUBMITTED,

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