

COHELAN KHOURY & SINGER

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By Rebecca Vela, Deputy Clerk

Attorneys for Plaintiff Mona K. Webb and all others similarly situated

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

MONA K. WEBB, individually and on behalf
of all similarly situated current and former
employees,

Plaintiffs,

v.

ALLSTATE INSURANCE COMPANY, an
Illinois corporation; and, DOES 1 through 10,
inclusive,

Defendants

CASE NO. 37-2013-00077708-CU-BC-CTL

CLASS ACTION

- 1) Breach of Contract
- 2) Breach of Implied Covenant of Good Faith and Fair Dealing
- 3) Violations of Unfair Competition Law (Bus. & Prof. Code, §§ 17200-17208)

DEMAND FOR JURY TRIAL

Plaintiff MONA K. WEBB, on behalf of herself and all others similarly situated, alleges:

I. INTRODUCTION

1. Plaintiff MONA K. WEBB brings this class action complaint against Defendants ALLSTATE INSURANCE COMPANY, and DOES 1 through 10 (“ALLSTATE” or “defendants”) on behalf of herself and all others similarly situated as automobile insurance policyholders of ALLSTATE. This action arises out of defendants’ conduct in charging and collecting a collision deductible from their insureds involved in collisions with uninsured drivers, despite policy language waiving collection of the deductible.

II. PARTIES

2. Plaintiff MONA K. WEBB is an individual and a resident of the State of California, and County of San Diego. The amount in controversy collectively for all members of the plaintiff class exceeds the minimum jurisdictional limits of this Court.

1 9. On March 28, 2013, Ms. Webb was driving her Chrysler PT Cruiser when she was
2 struck from behind by an uninsured vehicle. Ms. Webb notified ALLSTATE of this collision.

3 10. Ms. Webb's collision was caused by direct physical contact between a vehicle owned by
4 her and an uninsured vehicle. ALLSTATE confirmed the vehicle which struck Ms. Webb's vehicle
5 was uninsured, and this is shown in correspondence dated June 10, 2013. (Attached as Exhibit B).

6 11. Contrary to its policy of insurance, ALLSTATE did not pay the full amount of the loss
7 and Ms. Webb was required to pay the deductible amount to have her car repaired. ALLSTATE did
8 not waive the deductible and it did not reimburse Ms. Webb for the deductible.

9 12. Defendants were specifically prohibited from "[m]isrepresenting to claimants pertinent
10 facts or insurance policy provisions relating to any coverages at issue." California Insurance Code,
11 Section 790.03(h)(l).

12 13. In communications with Ms. Webb, ALLSTATE repeatedly misrepresented that the
13 deductible was not to be waived and would not be reimbursed to her. For example, in a letter dated
14 May 2, 2013, ALLSTATE claimed it was exercising its right to subrogation and was seeking to
15 recover the deductible paid by Ms. Webb, but would only reimburse her for the deductible, "If we are
16 successful in making any recovery." (Attached as Exhibit C). In a May 23, 2013 letter, Ms. Webb
17 demanded reimbursement for the deductible she paid, and made a claim under the "uninsured motorist
18 deductible waiver" found in her policy. (Attached as Exhibit D). In a letter dated June 10, 2013,
19 ALLSTATE claimed it had been unable to recover the deductible and was retaining Credit Collection
20 Services Commercial, LLC (CCSC) to attempt to recover the deductible. (Attached as Exhibit B). In a
21 September 13, 2013 letter, ALLSTATE advised CCSC had been unable to recover the deductible and
22 that ALLSTATE was "no longer pursuing collection action against the responsible party," and that it
23 "cannot help you get back your deductible." (Attached as Exhibit E).

24 14. By not waiving, or reimbursing, the deductible paid by Ms. Webb, and representing to
25 her that it had no obligation to do so, and that it "cannot help you get your deductible back,"
26 ALLSTATE willfully avoided its statutory and contractual obligation to pay Ms. Webb the full
27 amount of her collision loss, and retained a deductible which should have been waived or reimbursed
28 directly to Ms. Webb as a result of the collision.

1 **A. Numerosity**

2 19. The potential members of the class as defined are so numerous that joinder of all
3 members is impracticable. While the precise number of class members has not yet been determined,
4 plaintiff is informed and believes there are thousands of automobile insurance policy holders in the
5 County of San Diego and throughout California affected by defendants' policy of not waiving the
6 collision deductible for its insureds involved in collisions with uninsured vehicles. The exact number
7 and identity of class members can be identified through records created and maintained by defendants.

8 **B. Commonality**

9 20. There are common questions of fact and law arising out of defendants' conduct, as
10 described above, and its continued practice of charging a collision deductible to members of the class.

11 21. Common questions of fact and law predominate over any questions affecting only
12 individual members of the class.

13 22. The predominating common questions of fact and law include the following:

14 a. Whether defendants' policy of insurance issued to putative class members
15 provided for a deductible to be waived in the event of a collision with an uninsured vehicle;

16 b. Whether defendants required putative class members to pay a deductible
17 following collisions between their vehicles and uninsured vehicles;

18 c. Whether defendants breached a contractual obligation to putative class members
19 by refusing to waive the deductible following collisions with uninsured vehicles;

20 d. Whether defendants made false written representations to class members that
21 deductibles were applicable to their collisions with uninsured motorists despite contrary language in
22 their insurance policies;

23 e. Whether defendants violated the California Business and Professions Code
24 and/or other applicable consumer protection laws by engaging in this conduct;

25 f. Whether defendants' conduct violates the covenant of good faith and fair dealing
26 implicit in each putative class member's policy;

27 g. Whether defendants are liable to putative class members for monetary damages
28 as a result of avoiding their obligation to fully pay collision losses;

1 h. Whether defendants are liable to class members for exemplary and/or punitive
2 damages, and if so, the amount of exemplary and/or punitive damages.

3 23. The defenses of defendants, to the extent any are raised, are applicable generally to the
4 whole class and not dependent on the circumstances of individual claims.

5 **C. Typicality**

6 24. The claims of the representative plaintiff are typical of the claims of the class. Plaintiff,
7 and all members of the class as a whole, all of whom have sustained and/or will sustain damages,
8 including irreparable harm, as a proximate and legal result of the common course of conduct of
9 defendants as complained of in this class action complaint.

10 **D. Adequacy of Representation**

11 25. Plaintiff will fairly and adequately represent and protect the interests of the members of
12 the class. Counsel representing plaintiff are competent and experienced in litigating large class
13 actions.

14 **E. Superiority of Class Action**

15 26. A class action is superior to other available means for the fair and efficient adjudication
16 of this controversy. Individual joinder of all class members is not practicable, and questions of law
17 and fact common to the class predominate over questions affecting only individual class members.
18 Each class member has been damaged and is entitled to recovery by reason of defendants' illegal
19 policy and/or practice of not waiving the collision deductible for it insureds involved in collisions
20 with uninsured motorists. A class action will allow those similarly situated to litigate their claims in
21 the most efficient and economical manner for the parties and the judicial system. Plaintiff is unaware
22 of any difficulties that are likely to be encountered in the management of this action that would
23 preclude its maintenance as a class action.

24 27. A class action will avoid case management difficulties and provide multiple benefits to
25 the parties, including efficiency, economy of scale, unitary adjudication with consistent results and
26 equal protection of the rights of defendants and class member, through efficient supervision of the
27 action by a single court.

28 a. Without class certification, the prosecution of separate actions by individual

1 members of the putative class would create a risk of inconsistent or varying adjudications with
2 respect to individual members of the plaintiff class that would establish incompatible standards of
3 conduct for defendants; or adjudications of claims of individual members of the plaintiff class that
4 would, as a practical matter, be dispositive of the interests of t other members not parties to the
5 adjudication, or would substantially impair or impede their ability to protect their interest.

6 28. Defendants have acted or refused to act in ways generally applicable to the class, making
7 final injunctive relief appropriate for the putative class.

8 **V. CLAIMS FOR RELIEF**

9 **FIRST CAUSE OF ACTION**

10 **Breach of Contract**

11 29. Plaintiff re-alleges each preceding paragraph of this Complaint.

12 30. Plaintiff and putative class member policyholders entered into a written contract with
13 defendants, for an insurance policy. The terms of the contracts were substantially identical.

14 31. Plaintiff and putative class members have performed all conditions, covenants and
15 promises which they were required to perform in accordance with the terms and conditions of their
16 automobile insurance contract with defendants.

17 32. At all times during the class period, defendants breached express written contracts, and
18 implied contracts, by charging a collision deductible to plaintiff and putative class members following
19 collisions with uninsured autos in direct contravention of the written terms of the insurance contract.

20 33. As a proximate and legal result of defendants' breach of contract, plaintiff and members
21 of the class incurred damages in the amount of deductibles not waived for claims involving collisions
22 with uninsured vehicles.

23 **SECOND CAUSE OF ACTION**

24 **Breach of the Covenant of Good Faith and Fair Dealing**

25 34. Plaintiff re-alleges each preceding paragraph of this Complaint.

26 35. Each contract of insurance contains an implied covenant of good faith and fair dealing,
27 which obliges defendants to perform all services properly. At all material times, defendants held
28 themselves out as reputable entities in the business of providing policies of automobile insurance.

1 defendants be enjoined from wrongfully refusing to waive deductibles, and refusing to reimburse
2 deductibles paid by insureds, in claims involving collisions with uninsured vehicles, and refund all
3 amounts illegally retained. Plaintiff further seeks temporary, preliminary and/or permanent orders
4 enjoining defendants from pursuing the policies, acts and practices complained of; requiring
5 defendants to provide a form of warning, corrective advertising or public notice of the improper
6 charging of deductibles; requiring defendants to identify and locate all class members wrongfully
7 charged a deductible, at defendants' expense; an order requiring disgorgement and/or imposing a trust
8 upon all monies defendants' have illegally retained; requiring defendants to pay restitution to plaintiff
9 and the putative class, for all practices declared by this Court to be unlawful or unfair business acts or
10 practices, a violation of laws, statutes or regulations, or constituting unfair competition or false, untrue
11 deceptive or misleading advertising.

12 43. The acts, omissions, misrepresentations, and practices engaged in by defendants during
13 the class period as described in this Complaint constitute ongoing unfair business practices within the
14 meaning of California Business and Professions Code sections 17200, *et seq.* These practices are
15 likely to deceive, and have deceived, members of the general public, as well as plaintiff.

16 44. As a result of such unfair business practices, plaintiff has suffered damages and injury as
17 alleged above, and accordingly is entitled to the recovery, refund, restitution, and disgorgement by
18 defendants of all earnings, profits, compensation, and other benefits obtained by defendants as a result
19 of their unfair business practices, pursuant to California Business and Professions Code sections
20 17200, *et seq.*

21 **PRAYER**

22 Plaintiff, on behalf of herself and all others similarly situated, class, prays for judgment against
23 defendants as follows:

- 24 1. For an Order certifying this action as a class action pursuant to California Code of Civil
25 Procedure, Section 382, and appointing the plaintiff and her counsel to represent the class;
- 26 2. For prospective injunctive relief as set forth in the Third Cause of Action;
- 27 3. For damages according to proof;
- 28 4. For punitive and exemplary damages against defendants, under the Second Cause of

1 Action, for acting with oppression, fraud, malice or despicable behavior within the meaning of
2 California Civil Code §3294, in an amount sufficient to punish defendants and deter others from
3 similar wrongdoing;

4 5. For disgorgement of all earnings, profits, compensation and other benefits obtained by
5 defendants, as a result of unfair business practices alleged in the Third Cause of Action;

6 6. For prejudgment interest pursuant to California Civil Code §3288 and §3291;

7 7. For costs of suit;

8 8. For reasonable attorneys' fees; and

9 9. For such other and further relief as this Court may deem just and proper.

10 COHELAN KHOURY & SINGER

11
12 Dated: November 27, 2013

13 By: 

14 Isam C. Khoury

15 Jeff Geraci

16 Counsel for Plaintiff Mona K. Webb

17 and others similarly situated

EXHIBIT A

Allstate Insurance Company

Policy Number: [REDACTED] 10/10 Your Agent: Howland Ins & Fin (610) 425-8400
Policy Effective Date: Apr. 10, 2012

COVERAGE FOR VEHICLE #1 2003 Chrysler Pt Cruiser

COVERAGE	LIMITS	DEDUCTIBLE	PREMIUM
Automobile Liability Insurance		Not Applicable	\$170.70
• Bodily Injury	\$50,000 each person \$100,000 each occurrence		
• Property Damage	\$50,000 each occurrence		
Uninsured Motorists Insurance for Bodily Injury	\$30,000 each person \$60,000 each accident	Not Applicable	\$13.21
Auto Collision Insurance Waiver of deductible applies	Actual Cash Value	\$250	\$111.02
Auto Comprehensive Insurance	Actual Cash Value	\$0	\$166.42
Total Premium for 03 Chrysler Pt Cruiser			\$464.30

DISCOUNTS Total premium for this vehicle reduced by following discounts:
Good Driver 20% Distinguished Driver \$97.96

RATING INFORMATION Your premium is determined based on certain information, including the following:
The estimated number of miles that this vehicle is driven annually is 12,000 - 12,999. This vehicle is driven for pleasure, unmarried female licensed 47 years

Important Note: The estimated annual mileage figure applicable to this vehicle for the expiring policy period was: 12,000 - 12,999. The estimated annual mileage figure applicable to this vehicle for the current policy period is: 12,000 - 12,999.

If any of the information shown above is incorrect or if it changes in the future, please notify Allstate promptly. A change in the information could result in a premium adjustment.

EXHIBIT B



JUNE 10, 2013

MONA WEBB
[REDACTED]Reference No.: 01001405003
Claim File No.: 0280896316
Incident Date: 03/28/13

Dear MONA WEBB:

We are sorry to hear about your recent loss. We have identified your claim as having recovery potential; however, the person responsible for the incident was not insured. Therefore to date, we have been unable to recover your deductible. In order to continue our recovery efforts; we have retained Credit Collection Services Commercial, LLC (CCSC), CCSC specializes in recoveries against uninsured drivers.

CCSC will make every effort to recover your deductible and the money we have paid for damages to your vehicle. However, it is important for you to know that the recovery process, especially against uninsured parties, can take several months. Additionally, on average less than 10 percent of these losses are collected from uninsured parties. Therefore, we cannot guarantee that CCSC will be able to recover your deductible.

Another option open to you is to pursue your deductible on your own. If you wish to do so, please let us know. Otherwise you will be notified by mail anytime there is any meaningful progress in the recovery of your case.

If you need to speak with an Allstate Representative while CCSC is handling your case please call us at 1-800-374-4246. Be assured we will make every attempt to recover your deductible and appreciate your patience through what can be a very lengthy process.

If you have any questions about the recovery process, please call CCSC's information line at 1-800-361-3407. This line is open 24 hours a day. You can also access information about your case online at www.ccsstatus.com.

Sincerely,

Recovery Department
Allstate Insurance Company

EXHIBIT C



Allstate

Express Office
PO BOX 650506
DALLAS TX 752650506

You're in good hands.

MONA K. WEBB

May 02, 2013

INSURED: MONA WEBB
DATE OF LOSS: March 28, 2013
CLAIM NUMBER: 0280896316

PHONE NUMBER: 800-255-7828
FAX NUMBER: 866-447-4293
OFFICE HOURS:
Open 24 hours a day, 7 days a week

Re: Recovery of Your Deductible

Dear MONA K. WEBB,

We have started our efforts to recover your deductible as well as the amount we paid for the loss listed above.

We will work aggressively to recover your deductible and will handle any costs related to our efforts. The recovery process, which is known as subrogation, typically takes several months to complete. If we are successful in making any recovery, we will reimburse you up to the full amount of your deductible.

We will periodically update you on our progress. You can also check the status of your claim anytime online at Allstate.com. Should you have any questions, please feel free to contact us at the number listed below.

We appreciate the opportunity to help you with your insurance needs and want to thank you for being a loyal customer.

Sincerely,

Your Claim Team

Your Claim Team
800-255-7828
Allstate Insurance Company

*Forward letter
5/29/13*



EXHIBIT D

May 23, 2013

Allstate Insurance
Express Office
P.O. Box 650506
Dallas, Texas 75265-0506

RE Insured : Mona Webb
Date of Loss : 3/28/13
Claim No. : 0280896316

Ladies and Gentlemen:

With regard to your letter to me, dated May 2, 2013, why is there any subrogation in this case? It was clearly his fault; I was stopped and he rear ended me and either he has insurance or he doesn't.

If he has insurance, I can see it may take a couple of weeks for you to collect your money back. However, if he has insurance, I think you should send my deductible right away, knowing that, if he does have insurance, they will pay.

If he doesn't have insurance, I want to make a claim under my uninsured motorist deductible waiver and I would like you to send me the \$250 as soon as possible.

Either way, I shouldn't have to wait, after being with Allstate over 30 years. I am entitled to the deductible under either circumstance and should not have to wait until you get your money back. That is why we have insurance.

Thank you for your prompt attention to this matter.

Mona Kay Webb
Mona Kay Webb

EXHIBIT E



SEPTEMBER 13, 2013

MONA WEBB
[REDACTED]

Reference No.: 01001405003
Claim File No.: 025096316
Accident Date: 03/26/13

Dear MONA WEBB:

Through our collection partner, Credit Collection Services Commercial (CCSC), we have made repeated efforts to recover the deductible you paid to repair damages to your vehicle. The responsible party, however, has refused to pay, and CCSC has determined that any further collection activities would continue to be unsuccessful. As a result, we are no longer pursuing collection action against the responsible party.

We are sorry that, despite our efforts, we cannot help you get back your deductible. Please be aware that you have the authority to pursue collection action on your own.

If you have any questions, please contact us at 800-374-4246.

Thank you for choosing Allstate for your insurance needs.

Sincerely,

Recovery Team
ALLSTATE INSURANCE COMPANY