

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

RICHARD STINSON, individually and on)	
behalf of all others similarly situated,)	
)	
Plaintiff,)	Case No. 3:18-cv-752-DJH
)	
v.)	Removed from Jefferson Circuit Court
)	Case No. 18-CI-006033
STATE FARM MUTUAL AUTOMOBILE)	
INSURANCE COMPANY,)	
)	
Defendant.)	

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant State Farm Mutual Automobile Insurance Company (“State Farm”), by its undersigned counsel, hereby removes the above-captioned case from the Jefferson Circuit Court, Kentucky, to this Court pursuant to 28 U.S.C. §§ 1441, 1446, and the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. 109-2, 119 Stat. 4, codified in pertinent part at 28 U.S.C. §§ 1332(d) and 1453.

Plaintiff’s State Court Filings

1. On October 16, 2018, Plaintiff Richard Stinson filed a Complaint in Jefferson Circuit Court, Kentucky, purporting to assert individual and class claims against State Farm for breach of contract, bad faith, negligence, fraud, unjust enrichment and violations of K.R.S. §§ 304.12-230 and 367.220. (*See* Complaint, with Notice of Service of Process and Summons, attached as Exhibit 1.)

2. Plaintiff seeks compensatory, punitive, and treble damages, as well as attorneys’ fees, costs, interest and injunctive relief. (*Id.* at 29.)

3. Plaintiff alleges that, on or about December 31, 2016, he and his wife, Linda Stinson, were involved in an automobile accident. (*Id.* ¶ 40.) Plaintiff further alleges that on December 31, 2016, “State Farm insured Plaintiff Stinson.” (*Id.* ¶ 39.)

4. Plaintiff alleges that he retained counsel to represent him on January 11, 2017, and that his counsel thereafter sent a letter to State Farm requesting “a copy of the Declarations of Coverage for all policies covering this claim.” (*Id.* ¶¶ 41-42.) On January 19, 2017, State Farm sent Plaintiff’s counsel a “Confirmation of Coverage” that identified a single automobile insurance policy for a 1997 Chevy C1500 (the “Chevy Policy”), which was in effect on December 31, 2016, with coverages and liability limits on that date of “A25/50/25, D250, G250, H, P104.” (*Id.* ¶ 43.)

5. Plaintiff alleges that State Farm’s Confirmation of Coverage letter “contained multiple material omissions and/or misrepresentations, because State Farm did not disclose that Plaintiff had additional insurance with State Farm,” which allegedly included uninsured (UM) and underinsured (UIM) motorist coverage. (*Id.* ¶ 44.) Plaintiff further alleges that at the time State Farm sent the Confirmation of Coverage letter, “it did not and could not have known the true measure of Plaintiff Stinson and his wife’s injury and damages, and therefore could not have possibly determined that these coverages would not apply or not be needed by the Plaintiff and/or his wife Linda.” (*Id.* ¶ 45.)

6. Based on these allegations, Plaintiff contends State Farm breached the terms of its policy (*id.* ¶¶ 87-93) (Count One); violated the Kentucky Unfair Claims Settlement Practices Act, K.R.S. § 304.12-230 (*id.* ¶¶ 94-98) (Count Two); violated the Kentucky Consumer Protection Act, K.R.S. § 367.220 (*id.* ¶¶ 99-105) (Count Three); breached the covenant of good faith and fair dealing (bad faith) (*id.* ¶¶ 106-111) (Count Four); committed negligence *per se* (*id.*

¶¶ 112-18) (Count Five) and negligence (*id.* ¶¶ 119-24) (Count Six); engaged in fraud by concealment (*id.* ¶¶ 125-34) (Count Seven); and was unjustly enriched (*id.* ¶¶ 135-42) (Count Eight).

7. Plaintiff purports to assert these claims on behalf of himself and the members of a proposed class (the “Class”), defined as:

All Kentucky residents who were insured by State Farm, were injured in a motor vehicle accident due to the fault of another, sought coverage from State Farm for resulting damages, and were not provided information about and/or the benefit of all available coverages.

(*Id.* ¶ 76.)

8. State Farm submits that Plaintiff’s claims are meritless. Among other things, the fundamental premise of Plaintiff’s claims – that State Farm failed to disclose to him that Plaintiff had additional insurance with State Farm, which included UM and UIM coverage – is false.

9. On the date of the accident, Plaintiff had only one State Farm policy in force, which was the Chevy Policy identified in the Confirmation of Coverage letter. Plaintiff previously had a second State Farm policy, on a 1991 Toyota Supra (the “Toyota Policy”), but Plaintiff *cancelled* that policy effective December 20, 2016. Prior to the cancellation, Plaintiff had carried UM and UIM coverage on the Toyota Policy, but not on the Chevy Policy. When Plaintiff cancelled the Toyota Policy twelve days before the accident, he transferred the UM and UIM coverage from the Toyota policy to the Chevy Policy. Thus, on December 31, 2016 (the date of the accident), Plaintiff had in force a single State Farm policy – the Chevy Policy – and that policy carried both UM and UIM coverage. Moreover, on January 24, 2017 (less than a week after the initial Confirmation of Coverage letter), State Farm informed Plaintiff’s counsel that the Chevy Policy did in fact carry UIM coverage with limits of \$25,000 per person and

\$50,000 per accident.¹ And State Farm ultimately paid \$2,500 for Plaintiff and \$25,000 for his wife under that UIM coverage – a fact that Plaintiff’s complaint omits entirely.

10. State Farm also submits that no class could properly be certified here for numerous reasons, including that Plaintiff has alleged an improper failsafe class, and that Plaintiff’s theory of liability – that State Farm fails to disclose when insureds have UM and UIM coverage available under multiple policies – would require an individualized inquiry into every claim within the scope of the putative class to determine (a) whether there were multiple policies potentially offering UM and/or UIM coverage in force on the date of the putative class member’s injury, (b) what was communicated by State Farm to each putative class member regarding available coverages, and (c) whether the putative class member suffered any injury as a result of State Farm’s alleged failure to disclose all available coverages. Nevertheless, for the reasons set forth below, this case belongs in federal court pursuant to CAFA, and State Farm accordingly exercises its right of removal.

Bases for Removal

11. As set forth more fully below, this removal is proper both procedurally and in substance. The removal is timely and is properly venued. In addition, removal is proper because this case satisfies the CAFA requirements of minimal diversity, asserted class size, and aggregate amount in controversy for the asserted class.

I. The Procedural Requirements for Removal are Satisfied.

12. State Farm’s removal of this action is timely. State Farm was served with the Complaint on October 22, 2018, by certified mail to its registered agent. (*See* Ex. 1, Notice of

¹ The other vehicle involved in Plaintiff’s December 31, 2016 accident was insured, so Plaintiff’s UM coverage did not come into play.

Service of Process.) State Farm is filing this Notice of Removal within 30 days of service, and it therefore is timely. *See* 28 U.S.C. § 1446(b)(1).

13. Venue is proper in this Court because the Jefferson Circuit Court is located in the Western District of Kentucky, Louisville Division. *See* 28 U.S.C. § 1441(a) (a state-filed action subject to federal jurisdiction may be removed “to the district court . . . for the district and division embracing the place where such action is pending”).

14. Consistent with the requirements of 28 U.S.C. § 1446(a), copies of the Complaint (Ex. 1), along with all other process, pleadings, and orders contained within the state court file and a printout of the state court’s docket (*see* State Court File, attached as Exhibit 2) are attached and filed with this Notice of Removal.

15. As 28 U.S.C. § 1446(d) requires, a copy of this Notice of Removal is being served on Plaintiff’s counsel, and a copy is being filed with the Clerk of the Jefferson Circuit Court.

II. The Substantive Requirements for CAFA Removal are Satisfied.

16. Under CAFA, this Court has diversity jurisdiction over any asserted class action that: (1) includes at least one class member who is a citizen of a state different from any defendant; (2) would have at least 100 putative class members; and (3) involves an aggregate amount in controversy of \$5 million or more. *See* 28 U.S.C. §§ 1332(d)(2), (d)(5)-(6). Each requirement is satisfied here.

A. There is Minimal Diversity.

17. Plaintiff alleges he is a citizen of Kentucky, and he seeks to represent a class of Kentucky residents. (*Id.* ¶¶ 3, 76.)

18. Plaintiff alleges that State Farm is authorized to and actually conducts business in Kentucky (*id.* ¶ 4), but does not allege State Farm’s citizenship.

19. State Farm is a mutual insurance company organized under the laws of Illinois, and it maintains its principal place of business in Illinois. (*See* Declaration of Michael Roper, attached as Exhibit 3.) State Farm therefore is a citizen of Illinois for purposes of federal jurisdiction. *See* 28 U.S.C. § 1332(c)(1); *see also* *Ljuljdjuraj v. State Farm Mut. Auto. Ins. Co.*, 774 F.3d 908, 910 (6th Cir. 2014) (“State Farm, which is incorporated in Illinois and has its principal place of business there, is a citizen of Illinois.”).

20. Because State Farm’s citizenship differs from Plaintiff’s, State Farm has established minimal diversity under 28 U.S.C. § 1332(d)(2)(A).

B. The Asserted Class Size Requirement is Satisfied.

21. Plaintiff seeks to represent a putative class defined as follows:

All Kentucky residents who were insured by State Farm, were injured in a motor vehicle accident due to the fault of another, sought coverage from State Farm for resulting damages, and were not provided information about and/or the benefit of all available coverages.

(Ex. 1, Compl. ¶ 76.) Plaintiff alleges that State Farm “has hundreds of thousands of insureds in Kentucky and through the United States.” (*Id.* ¶ 80.)

22. Plaintiff’s proposed class definition includes no temporal limitations, and the applicable statutes of limitations vary by claim. For example, per the terms of the Chevy Policy, Plaintiff’s breach of contract claim is governed by the limitations period under Kentucky law for filing a lawsuit to recover bodily injury damages incurred as a result of a motor vehicle accident, which is two years from the accident or the last payment of PIP benefits, whichever is later. *See State Farm Mut. Auto. Ins. Co. v. Riggs*, 484 S.W.3d 724, 727-28 (Ky. 2016). Plaintiff’s Unfair Claim Settlement Practices Act claim, on the other hand, is subject to Kentucky’s five-year limitations period for statutory claims. *See* K.R.S. § 413.120(2); *McMurtry v. Botts*, No. 1:04CV-81-R, 2005 WL 2429109, at *7 (W.D. Ky. Sept. 30, 2005).

23. Even if the putative class were limited to insureds who, like Plaintiff, had a date of loss during calendar year 2016, however, it would clearly exceed 100 members. As discussed further in Section II.C hereof, one way to estimate the size of the putative class, based on Plaintiff's allegations that State Farm supposedly failed to disclose coverage available to insureds injured in a motor vehicle accident under household State Farm policies other than the policy that specifically insured the vehicle involved in the loss, is to look at claims by Kentucky insureds where State Farm paid policy limits under the policy's UM and/or UIM coverage. State Farm's claim records show that, for calendar year 2016, there were over 300 such claims where State Farm paid policy limits under the policy's UIM coverage, and over 150 such claims where State Farm paid policy limits under the policy's UM coverage. State Farm therefore alleges that the putative class contains well over 100 members.

C. This Action Places More than \$5,000,000 in Controversy.

24. Like a complaint, a Notice of Removal need only contain "a short and plain statement of the grounds for removal." 28 U.S.C. § 1446. As the Supreme Court has explained, "Congress, by borrowing the familiar 'short and plain statement' standard from Rule 8(a), intended to 'simplify the 'pleading' requirements for removal' and to clarify that courts should 'apply the same liberal rules [to removal allegations] that are applied to other matters of pleading.'" *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 553 (2014) (quoting H.R. Rep. No. 100-889, p. 71 (1988)). In keeping with this approach, "a defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Id.* at 554.

25. State Farm certainly disputes that Plaintiff has stated viable claims, or that any damages whatsoever are owed to Plaintiff or the asserted class. But what matters to the

jurisdictional inquiry is the amount the class conceivably could recover assuming Plaintiff succeeds in his suit. *See Everett v. Am. Gen. Life Ins. Co.*, No. 1:16-cv-83-GNS-HBB, 2016 WL 4746214, at *2 (W.D. Ky. Sept. 12, 2016) (“In determining whether this Court has jurisdiction, the Court must consider all of Plaintiff’s damages claims”); *see also Hampton v. Safeco Ins. Co. of Am.*, 614 F. App’x 321, 324 (6th Cir. 2015) (rejecting plaintiff’s speculation that amount actually recovered might not satisfy amount-in-controversy requirement). State Farm may make this showing by reference to allegations in the Complaint. *Brown v. Paducah & Louisville Ry., Inc.*, No. 3:12-cv-00818-CRS, 2013 WL 5273773, at *3 (W.D. Ky. Sept. 17, 2013) (“[T]he defense is entitled to rely on a ‘fair reading’ of the allegations set forth in the complaint, meaning that the amount in controversy may be established by drawing reasonable inferences based on the nature and extent of the damages requested in the complaint.”) (citation omitted). Under this standard, Plaintiff’s proposed class claims would place more than \$5 million in controversy. Indeed, Plaintiff himself alleges that State Farm’s alleged practices as set forth in his Complaint “have deprived insureds of millions, and perhaps billions, of dollars in coverage.” (Ex. 1, Compl. ¶ 41.)

26. As previously noted, Plaintiff seeks to represent a putative class defined as follows:

All Kentucky residents who were insured by State Farm, were injured in a motor vehicle accident due to the fault of another, sought coverage from State Farm for resulting damages, and were not provided information about and/or the benefit of all available coverages.

(*Id.* ¶ 76.) The particular “coverages” that Plaintiff alleges State Farm “prevents its insureds from recovering under” are UM and UIM coverage. (*Id.* ¶ 7.) Plaintiff alleges, among other things, that State Farm, in response to a first party claim, sends a “standard letter” to the insured or the insured’s counsel which “deliberately omits disclosure of any coverage available to its

insureds under any household State Farm policy other than that which specifically insures the vehicle involved in the loss,” thereby preventing insureds from “accessing” the coverage available under other household policies. (*Id.* ¶¶ 8(b) and 8(c).)

27. Taking these allegations as true for purposes of determining the amount placed in controversy by Plaintiff’s claims, only those insureds whose motor vehicle accident injuries exceeded the UM or UIM coverage limits of the policy that specifically insured the vehicle involved in the loss could even theoretically suffer an injury as a result of being prevented from accessing *additional* UM or UIM coverage available under other household policies.

28. State Farm’s claim records show that, for calendar year 2016 (the year of the accident that forms the basis of Plaintiff’s own claims), there were over 300 claims by State Farm Kentucky insureds where State Farm paid policy limits under the policy’s UIM coverage. Although there is no way absent a detailed, individualized inquiry into the circumstances of each such insured’s claim for State Farm to know the extent of such insured’s additional injuries (if any), State Farm’s claim records do reflect that the total amount paid to those insureds under their UIM coverage was over \$15 million (an average of almost \$50,000 per claim). Similarly, for calendar year 2016 alone there were over 150 claims by State Farm Kentucky insureds where State Farm paid policy limits under the policy’s UM coverage, and the total of those UM payments exceeded \$5 million.

29. Thus, even looking at just calendar year 2016, if Plaintiff seeks as compensatory damages on behalf of the class just twenty-five percent of the amounts actually paid under UM and UIM coverages on claims by Kentucky insureds where State Farm paid policy limits under at least one of those coverages, the amount in controversy easily exceeds \$5 million. Moreover,

this is a conservative estimate because, as previously discussed, Plaintiff apparently seeks to assert a class encompassing multiple years.

30. Plaintiff's request for punitive damages further supports an amount in controversy well beyond the CAFA threshold.² See *Hampton*, 614 F. App'x at 323 ("In calculating the amount in controversy for diversity jurisdiction, courts can consider punitive damages"); *Hayes v. Equitable Energy Res. Co.*, 266 F.3d 560, 572 (6th Cir. 2001) ("When determining the jurisdictional amount in controversy in diversity cases, punitive damages must be considered . . . unless it is apparent to a legal certainty that such cannot be recovered.") (internal quotation omitted); *Heyman v. Lincoln Nat'l Life Ins. Co.*, No. 3:16-cv-37-DJH-DW, 2017 WL 3274452, at *3 (W.D. Ky. Apr. 27, 2017) ("Punitive damages are available for violations of the UCSPA . . . Punitive damages must therefore be included in the amount-in-controversy calculation."). Although Kentucky law does not recognize a cap on punitive damages, see *Ky. Farm Bur. Mut. Ins. Co. v. Rodgers*, 179 S.W.3d 815, 828 (Ky. 2005) (Wintersheimer, J., dissenting), federal courts routinely recognize a single-digit ratio between punitive and compensatory damages as reasonable. *Heyman*, 2017 WL 3274452, at *2-3 (describing a 2-to-1 punitive-to-compensatory damages ratio as "conservative" for jurisdictional purposes); *McElroy v. Cordish Companies, Inc.*, No. 3:15-cv-390-DJH, 2016 WL 1069684, at *3 (W.D. Ky. Mar. 16, 2016) (applying 4-to-1 punitive-to-compensatory damages ratio for purposes of removal analysis); see also *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003) (observing that single-digit multipliers "are more likely to comport with due process," but that a 4-to-1 punitive to compensatory damages ratio "might be close to the line of constitutional impropriety").

² Plaintiff also purports to seek recovery of treble damages, but neither the Kentucky Unfair Claims Settlement Practices Act nor the Kentucky Consumer Protection Act contemplates an award of treble damages. See K.R.S. §§ 304.12-230, 367.220. Accordingly, State Farm does not include treble damages in its amount-in-controversy calculation.

31. Using a 2-to-1 ratio of punitive to compensatory damages, and again looking just at calendar year 2016, if Plaintiff seeks as compensatory damages on behalf of the class just ten percent of the approximately \$20 million actually paid under UM and UIM coverages on claims by Kentucky insureds where State Farm paid policy limits under at least one of those coverages, the amount in controversy including a potential punitive damages award easily exceeds \$5 million.³

32. Plaintiff also requests attorneys' fees, which are considered in determining the amount in controversy when, as here, they are authorized by statute. *See* K.R.S. §§ 304.12-235, 367.220; *see also Williamson v. Aetna Life Ins. Co.*, 481 F.3d 369, 376 (6th Cir. 2007); *Hampton v. Safeco Ins. Co. of Am.*, No. 13-39-DLB, 2013 WL 1870434, at *1 (E.D. Ky. May 3, 2013). Although State Farm does not concede that any such award would be merited, Plaintiff's Complaint purports to place fees in controversy. Conservatively assuming a fee award of just twenty percent of the potential compensatory damages sought by Plaintiff and the asserted class,⁴ and conservatively estimating potential compensatory damages of approximately \$2 million based on 2016 alone, increases the amount placed in controversy by Plaintiff's claims by an additional \$400,000.

33. Finally, Plaintiff seeks interest, in an unspecified amount, on any award of damages, costs or attorneys' fees. (Ex. 1, Compl. at 29.) The Kentucky Unfair Claims

³ Ten percent of the approximately \$20 million actually paid would be \$2 million. A punitive damages award of twice that amount would be \$4 million, yielding a total amount in controversy of approximately \$6 million.

⁴ A fee award at that percentage falls well within the range that may be considered in determining the amount in controversy for removal purposes. *See, e.g., Carrollton Hospitality, LLC v. Ky. Insight Partners II, LP*, No. 13-21-GFVT, 2013 WL 5934638, at *4 (W.D. Ky. Oct. 31, 2013) (noting that under Sixth Circuit precedent, it is not *per se* unreasonable to estimate a fee award of as much as fifty percent of the plaintiff's claimed damages).

Settlement Practices Act authorizes a twelve percent interest penalty for failure to make a good faith settlement attempt within the time provided by statute. K.R.S. § 304.12-235(2). While it is unclear from his factual allegations whether Plaintiff contends State Farm failed to make a timely settlement offer, he nevertheless asserts a claim under this statute. (Ex. 1, Compl. ¶¶ 94-98.) The potential award of a twelve percent statutory interest penalty further increases the amount placed in controversy by Plaintiff's Complaint well beyond the \$5 million CAFA threshold for just 2016. *See Williamson*, 481 F.3d at 376 (amount in controversy included statutory penalties); *Hampton*, 2013 WL 1870434, at *2 (same).

34. In sum, considering Plaintiff's various compensatory and punitive damages claims, request for attorney's fees, and statutory interest penalty, the amount in controversy in this action easily exceeds the minimum amount required for CAFA jurisdiction.

Conclusion

For the foregoing reasons, State Farm has demonstrated that the prerequisites for CAFA jurisdiction are met.

WHEREFORE, Defendant State Farm Automobile Insurance Company hereby removes this action from the Jefferson Circuit Court, Kentucky to this Court.

Dated: November 13, 2018

Respectfully submitted,

/s/ David T. Klapheke

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2018, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants. It is further certified that a true copy hereof was mailed to the following:

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/s/ David T. Klapheke

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CIVIL COVER SHEET 3:18-cv-752-DJH

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

RICHARD STINSON

(b) County of Residence of First Listed Plaintiff JEFFERSON County, KY (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Sam Aguiar 1201 Story Avenue, Suite 301 Louisville, KY 40206 (502) 813-8900

DEFENDANTS

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) David T. Klapheke, Boehl Stopher & Graves, LLP 400 West Market Street, Suite 2300 Louisville, KY 40202 (502) 589-5980

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§1441 and 1446; CAFA, 28 USC §§1332(d) and 1453. Brief description of cause: Alleged class action for failure to provide uninsured and underinsured motorist coverage under auto policies

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/13/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ David T. Klapheke

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT 1



Notice of Service of Process

Transmittal Number: 18858126
Date Processed: 10/22/2018

Primary Contact: State Farm Enterprise SOP
Corporation Service Company- Wilmington, DELAWARE
251 Little Falls Dr
Wilmington, DE 19808-1674

Entity: State Farm Mutual Automobile Insurance Company
Entity ID Number 3461675

Entity Served: State Farm Mutual Automobile Insurance Co

Title of Action: Richard Stinson vs. State Farm Mutual Automobile Insurance Company

Document(s) Type: Summons/Complaint

Nature of Action: Class Action

Court/Agency: Jefferson County Circuit Court, Kentucky

Case/Reference No: 18-CI-006033

Jurisdiction Served: Kentucky

Date Served on CSC: 10/22/2018

Answer or Appearance Due: 20 Days

Originally Served On: CSC

How Served: Certified Mail

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Case #: 18-CI-006033

Court: CIRCUIT

County: JEFFERSON Circuit

CIVIL SUMMONS

Plaintiff, **STINSON, RICHARD VS. STATE FARM MUTUAL AUTOMOBILE INSURANCE**, Defendant

TO: **STATE FARM MUTUAL AUTOMOBILE INSURANCE CO**
ONE STATE FARM PLAZA
BLOOMINGTON, IL 61710

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

/s/ David L. Nicholson, Jefferson Circuit Clerk
Date: 10/16/2018

Proof of Service

This Summons was:

Served by delivering a true copy and the Complaint (or other initiating document)

To: _____

Not Served because: _____

Date: _____, 20____

Served By

Title

Summons ID: @00000885384
CIRCUIT: 18-CI-006033 Return to Filer for Service
STINSON, RICHARD VS. STATE FARM MUTUAL AUTOMOBILE INSURANCE



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Presiding Judge: HON. A. C. MCKAY CHAUVIN (6302220)

CI : 000001 of 000001

NO. 18-CI-_____

JEFFERSON CIRCUIT COURT
DIVISION _____

JUDGE _____

Electronically Filed

RICHARD STINSON, Individually and On
Behalf of All Others Similarly Situated,

PLAINTIFF

v.

COMPLAINT

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY
One State Farm Plaza
Bloomington, IL 61710

DEFENDANT

SERVE: Via Registered Agent
Corporation Service Company
421 West Main Street
Frankfort, KY 40601

COMPLAINT

Plaintiff Richard Stinson (hereinafter, "Plaintiff"), individually and on behalf of all other persons similarly situated, brings this Complaint against State Farm Mutual Automobile Insurance Company (hereinafter, "Defendant" or "State Farm") and, by and through his attorneys, alleges as follows:

INTRODUCTION

1. State Farm has not been a good neighbor. To the contrary, State Farm has knowingly and fraudulently engaged in a scheme to deprive its own insureds of tens of millions of dollars of first-party insurance coverage. It has done so through systematic efforts to prevent insureds from receiving coverage to which they are entitled, including nefarious tactics such as forging insurance documents related to Uninsured Motorist ("UM") coverage, knowingly misrepresenting available UM and Underinsured Motorist ("UIM") coverages in order to deprive

insureds of the contracted for, paid for or otherwise payable insurance that should have been available after auto collisions, and other methods of hiding, denying or concealing coverage from insureds. These fraudulent activities are widespread and consistent across multiple states. The practices are being perpetuated by State Farm and take place within all facets of the company, from the local State Farm agencies, to the underwriters, to the claims adjusters, to the company management. Making this fraud even worse is the lack of accountability of State Farm and their failure to come clean about this company wide profit scheme. Instead, State Farm adjusters and agent are blaming their colleagues and their own premium paying policyholders for the damages they are causing. One prominent agency owner, when confronted with forged signatures of his customers, along with denials of coverage to which his customers were entitled, blamed it all on one employee and called that employee a “lazy ass ni---r.” This agency owner further acknowledged that State Farm was well aware of these issues and nothing was being done to address them.

2. Simply put, State Farm is preventing its insureds from accessing the coverage to which they are entitled through systematic, company-wide policies with the specific goal of reducing first-party payouts by State Farm.

PARTIES

3. Plaintiff Richard Stinson (“Plaintiff Stinson” or “Plaintiff”) is a citizen of the Commonwealth of Kentucky, residing in the city of Louisville, Jefferson County. Plaintiff has been a State Farm insured and was a State Farm insured at all relevant times herein.

4. Defendant State Farm Mutual Automobile Insurance Company is and at all relevant times was, an insurer engaged in the business of insurance, authorized to do business in Kentucky and in Jefferson County, and actually doing business in Kentucky and Jefferson

County.

JURISDICTION AND VENUE

5. Substantial acts giving rise to the causes of action asserted herein occurred in this State and within this venue.

6. This Court has subject matter jurisdiction over both the parties and the subject matter because a substantial number of the events giving rise to this complaint occurred in Jefferson County. Additionally, Jefferson County is the proper venue for this action because the events giving rise to the Complaint and the damages suffered by Plaintiff occurred in Jefferson County.

FACTS

7. State Farm engaged in a company-wide and Kentucky-wide strategy to prevent its insureds from recovering under first party policies for UM and UIM coverage. It is implementing this strategy through its own employees and through State Farm agents and agencies in Kentucky and beyond, in a way that is causing enormous financial injury to its insureds.

8. State Farm is implementing this strategy by engaging in different tactics designed to prevent insureds from accessing coverage.

- a. State Farm altered the policies of their insured without consent, both by forging the signatures and dates on UM rejection forms and by copying digital signatures from other documents, modifying them and superimposing them onto rejection forms without notice to or permission from its insureds;
- b. State Farm purposefully, in response to a first party claim, sends a standard letter to the insured and/or the insureds' counsel which blatantly

misrepresents the amount of available coverage to the insured for the claim. State Farm deliberately omits disclosure of any coverage available to its insureds under any household State Farm policy other than that which specifically insures the vehicle involved in the loss;

- c. State Farm intentionally creates separate policy numbers and prevents State Farm employees and/or agents from linking individual policies to a household so that other available policies in that household are concealed from or are not made available to insureds; and
- d. State Farm is engaged in other policies and practices that result in insureds being misled or prevented from accessing all available policies or to prevent “stacking” of available policies.

9. This conduct has resulted in claims being denied or underpaid. Based on these actions and inactions, Defendant has committed fraud, bad faith, engaged in unfair claims and settlement practices and breached several duties to its insureds, including but not limited to the duties to investigate coverage, identify the coverages, adjusting claims in good faith and with fair dealing, to cooperate with the insured, to comply with its contractual duties, to promptly and thoroughly investigate and pay claims, to fairly evaluate information they knew or should have known related to the claim, to pay all benefits due under the contract, to keep its promise to pay claims due under the coverage, to be honest and forthright in relation to the coverages available to the insured, to treat claimants fairly, to properly evaluate the claims, to obtain adequate information necessary to evaluate the claim, to treat insureds’ interests with equal regard as it does its own interests, to assist the insured with the claim, to disclose all coverages and benefits which apply to the claim, and to pay all benefits owed to the insured under the claim. Rather

than doing this, State Farm knowingly denied producing coverages which it knew would afford coverage to its insureds for injuries and damages.

10. State Farm has motivated its agents, employees, and ostensible agents to employ illegal and/or deceptive practices by training them to deliberately not sell or mislead customers into not purchasing first party insurance, training them to not search for or identify certain first party coverages available to their insureds follow a loss, depriving them of the ability to even search for certain available first party household coverages, and establishing a compensation structure in which agents and employees are incentivized for conduct that helps State Farm profit while depriving State Farm insureds of available coverage, such as forgery of UM rejections.

11. More disturbingly yet, State Farm engaged in a practice in which agents actually forged the signature of its insureds on rejections for uninsured and/or underinsured motorist coverage.

12. State Farm not only rejected these coverages without authorization from its insureds, but it failed to notify its insureds of this rejection until the insured made a claim for coverage.

13. In many of these cases, State Farm intentionally deprived its insureds of the only insurance available to them after an uninsured driver caused injury to State Farm's insured, thereby leaving the insured with no coverage at all. It is difficult to imagine a more unfair or deceptive practice than for an insurance company to engage in a concerted effort to deprive its insureds of the coverage the insurance company purports to provide.

14. Without question, State Farm's unfair, unconscionable, fraudulent and/or deceptive schemes have deprived insureds of millions, and perhaps billions, of dollars in coverage, while State Farm has profited generously from these practices.

15. Plaintiff seek monetary damages for these losses, in an amount to be determined at trial.

16. Plaintiff also seek injunctive relief, as described in more detail below.

17. State Farm engaged in a practice in which State Farm altered and forged policy documents of their insureds in order to deprive them of uninsured motorist coverage.

18. Many states, including Kentucky, require that their citizens carry uninsured coverage. In these states, insureds may only opt out of this coverage by signing a rejection form with his or her insurer.

19. In these states, State Farm engaged in a practice where it forged rejection forms to avoid paying uninsured motorist claims. State Farm's agents forged signatures and dates, back-dated documents, copied and pasted insureds' signatures from properly signed documents to rejection letters without consent, and/or otherwise took affirmative steps to deprive insureds of UM coverage that the insureds otherwise wanted.

20. In one recent Kentucky case, when a claimant sought to understand why an agent would forge her signature to reject uninsured coverage, the owner of the agency admitted to the fraudulent signature and insinuated that this was not an isolated forgery. However, he tried to shift blame by saying that only one, previously-fired employee had engaged in this practice.

21. When pressed as to why an agent would engage in this practice, the owner said the agent had forged signatures "because he's a lazy ass ni---r."

22. Despite the owner's attempt to label the forgery as an isolated event, numerous other examples of forgeries from other State Farm agencies in Kentucky have come to light, making it clear the systematic and concerted efforts of State Farm. These are discussed in more detail below.

23. More than that, State Farm, by having knowledge of its employees' and agents' actions and acquiescing to them through their actions and inactions, demonstrated ratification of the conduct of its employees and agents. State Farm failed to disaffirm the aforementioned actions, the actions are beneficial to the corporation, and the corporation has in fact benefitted from the conduct.

24. In addition to the forgeries, State Farm is not informing policyholders and claimants of available coverages under the policies for vehicles which were not involved in the accidents but which would still afford coverage for the losses.

25. If State Farm truly wished to look out for its insured by providing transferrable first party coverage while reducing the exposure for coverage stacking, it could do so fairly simply and in a manner which reduces or eliminates their own exposure for paying stacked claims. It is the simple method employed by nearly all other insurers in Kentucky: issuing a policy for all household vehicles while charging a single-limits premium for the UM and UIM coverages. This protects the insureds by assuring them that this coverage is available to them under all of the insured vehicles. This single-limits premium reduces the insurer's exposure on the claim by keeping the coverages from being stackable. And this single-limits premium coverage, by affording coverage which extends to all vehicles on the policy and clearly identifying this, eliminates the requirement for a policyholder to "reject" UM coverage or sign a rejection.

26. Defendant's assignments of vehicles to separate "policies," despite collecting premiums together in one lump fashion and despite representing that there was a single policy, are part of an effort to conceal coverages and fraudulently deny claims.

27. This is different from standard insurance practices in the industry in which an

insurer will typically provide a single policy with a single policy number to an insured or household describing all covered items and available insurance.

28. State Farm uses its scheme of issuing multiple policies to deprive coverage to claimants by only disclosing the policy issued for the vehicle involved in the wreck upon notice of a claim.

29. State Farm does not investigate coverages of their insured or investigate available household coverages under other policies. State Farm asserts that the claimant should have actually opened a distinct claim under each vehicle policy. Even when State Farm is specifically asked to identify all coverages available to their insured under all policies, State Farm has refused to do so.

30. State Farm further perpetuates its scheme by categorizing policies in its internal database only by policyholder name and policy number, but not address. Therefore, State Farm prevents its own employees and/or agents from finding other policies in the same household.

31. State Farm effectuates this scheme primarily through uninsured and underinsured coverages, as well as umbrella coverages.

32. In Kentucky, a member of a household may “stack” certain first party insurance coverages.

33. For example, if a household garages three (3) vehicles of relatives and separate underinsured coverage premiums are paid on each vehicle in the household, a claimant who lives in the household would be entitled to stack, or add together, the coverages on three policies. Thus, if each policy provided \$100,000 of underinsured motorist coverage, the claimant would be entitled to \$300,000 in underinsured motorist coverage.

34. State Farm deprives its insureds of coverage by failing to disclose stackable

policies. Instead, State Farm presents the coverage under a single policy to its insured as the only available coverage for the loss. In these situations, State Farm (1) is doing nothing to confirm or search for other policies in the household that would cover the respective loss; or, even worse, (2) knew about the other stackable policies and decided not to disclose them.

35. State Farm has misrepresented to their agents and employees that it in the best interests their policyholders to not purchase first-party coverages. The reality is that certain first party coverages, such as UM coverage, are so important to carry that most states have required that this coverage be a part of all issued car insurance policies unless the insured formally rejects the coverage in writing. But for State Farm, this public policy is trumped by their desire for profits at the expense of their insureds, and the first party coverages are not profitable.

36. State Farm enabled this practice of deceiving its insureds of coverage by concocting a scheme whereby State Farm issues separate policies for each insured vehicle, as opposed to the industry standard of issuing one policy which covers all of the vehicles. This practice is what allows State Farm to subsequently misrepresent the available insurance to their insureds, as they will only cite the coverage for one "policy" and not disclose the available coverage under all additional "policies." The consequences of this practice are staggering. A simple example would be a home where a couple insures their vehicles and their two children's vehicles with State Farm and maintain \$100,000 of stackable uninsured and underinsured motorist coverage on each vehicle. If one of the children is critically injured in a crash caused by an uninsured driver, State Farm's standard practice would be to advise the couple only of the \$100,000 in uninsured motorist coverage available to their child under the policy of vehicle he was driving. State Farm will advise of this in writing and purposefully withhold from the couple that their child is actually entitled to \$300,000 in additional stackable household UM coverages

under other “policies.”

37. Before a lawsuit allows for broad discovery, counsel and the claimant must reasonably rely on information from the insurer regarding available coverage to determine the existence of a valid claim.

38. In cases where the insured provides notice of a claim through his or her agent without retention of counsel, the insured has no choice but to rely on the agent or adjuster to advise him of his coverage. An insured cannot reasonably be expected to understand stacking or other legal theories for providing coverage beyond the single policy issued to the vehicle involved in the wreck.

39. On December 31, 2016, State Farm insured Plaintiff Stinson.

40. On or about December 31, 2016 Plaintiff and his wife, Linda Stinson, were involved in an automobile wreck.

41. On or about January 11, 2017 Plaintiff retained the undersigned counsel, Aguiar Injury Lawyers, to represent him.

42. On or about January 13, 2017, Aguiar Injury Lawyers sent a letter of representation on behalf of Plaintiff Stinson to State Farm. This letter specifically requested that State Farm send “a copy of the Declarations of Coverage for all policies covering this claim.”

43. On or about January 19, 2017, State Farm sent a “Confirmation of Coverage” to counsel, identifying one insurance policy for a 1997 Chevy C1500. The letter specifically stated that “Policy number 194808017B, Covering a(n) 1997 Chevrolet C1500, 1GCEC14W1VZ110785, was issued to Richard and Linda Stinson and was in effect on the accident date of December 31, 2016. The coverages and limits of liability for this policy on that date were “A25/50/25, D250, G250, H, P104”.

44. This letter contained multiple material omissions and/or misrepresentations, because State Farm did not disclose to counsel that Plaintiff had additional insurance with State Farm. This additional insurance included, but was not limited to, uninsured and underinsured motorist coverage.

45. At the time State Farm made this material omission and/or misrepresentation, it did not and could not have known the true measure of Plaintiff Stinson and his wife's injuries and damages, and therefore could not have possibly determined that these coverages would not apply or not be needed by the Plaintiff and/or his wife Linda.

46. This misrepresentation was a material fact that State Farm knew was untrue when it made the statement. It was intended for Plaintiff Stinson and his attorney to rely upon, and Plaintiff and his counsel did reasonably rely upon it.

47. Plaintiff Stinson's experience is substantially similar to numerous other individuals in Kentucky.

48. For instance, as alleged in more detail in *Stinson v. State Farm Mutual Automobile Insurance Co.*, et. al, Jefferson County (Kentucky) Circuit Court, 18-CI-5433, Sarah Stinson was injured in an automobile crash on December 5, 2015. State Farm was asked to identify all household policies affording first party coverage to Ms. Stinson. The State Farm Claim Number was 17778G995. State Farm only identified policy number 233221617A and on several occasions advised the Plaintiff's counsel that there were no other household coverages. State Farm then, only when pressed two years after denying the claim, conceded that there was actually \$125,000 in available household UIM coverage under two different household vehicle "policies." These coverages were identified by the State Farm claims handler Harry Swain through a voicemail the night before the statute of limitations may have run on her claims, and

only after numerous denials by multiple State Farm employees that additional coverage existed. State Farm thus misrepresented to Ms. Stinson that there was no uninsured or underinsured motorist coverage available to her when in fact there was \$125,000 in coverage available to her.

49. Similarly, undersigned counsel Aguiar represents Keith Hicks, who was injured in an automobile wreck on February 9, 2018. His case is the subject of *Hicks v. State Farm Mutual Automobile Insurance Co.*, Jefferson County (Kentucky) Circuit Court, 18-CI-5402. Shortly after the wreck, State Farm was asked to identify all household policies affording first party coverage to Mr. Hicks. The State Farm Claim Number was 172939S20. State Farm only identified policy number 3107679B0617A and denied that there was any available UM or UIM coverage to Mr. Hicks. In fact, the truth was that Mr. Hicks was also insured under policy number 3031693CO117 which carried \$100,000 in UIM coverage. State Farm thus misrepresented to Mr. Hicks that there was no uninsured or underinsured motorist coverage available to him when in fact there was \$100,000 in coverage available to him.

50. Undersigned counsel Aguiar also represents Rachel G., who was injured in a crash on April 2, 2017. State Farm was asked to identify all household policies affording first party coverage to Ms. G. The State Farm Claim Number was 1712277G3. State Farm only identified policy number 297393617A and failed to identify policy number 1721444697D. State Farm misrepresented to Ms. G. that there was no uninsured or underinsured motorist coverage available to her when in fact there was \$50,000 in coverage available to her.

51. Undersigned counsel Aguiar also represents Steven W., who was injured in a crash on August 12, 2017. State Farm was asked to identify all household policies affording first party coverage to Mr. W. for State Farm Claim Number 171076F89. In response, State Farm only identified one household policy and elected not to disclose the policies which did afford this

coverage.

52. Undersigned counsel Aguiar also represents Valerie H., who was injured in a crash on September 5, 2017. State Farm was asked to identify all policies affording first party coverage to Ms. H. The State Farm Claim Number was 17689W170. State Farm only identified the household policy which lacked uninsured and underinsured motorist coverage. State Farm did not disclose the policies which did afford this coverage.

53. Undersigned counsel Aguiar also represents William J., who was injured in a crash on May 14, 2018. State Farm was asked to identify all policies affording first party coverage to Mr. J. The State Farm Claim Number was 174142L13. State Farm only identified the household policy which lacked uninsured and underinsured motorist coverage. State Farm did not disclose the policies which did afford this coverage.

54. Undersigned counsel Aguiar also represents Pamela D., who was injured in a crash on December 24, 2017. State Farm was asked to identify all policies affording first party coverage to Ms. D. The State Farm Claim Number was 172467S11. State Farm only identified the household policy which lacked uninsured and underinsured motorist coverage. State Farm did not disclose the policies which did afford this coverage until pressed on the matter repeatedly. Even when State Farm did begrudgingly concede the existence of more coverage, they denied the request to open a claim under the coverage.

55. Undersigned counsel Aguiar also represents Dalton Y., who was injured in a crash on June 19, 2018. State Farm was asked to identify all policies affording first party coverage to Mr. Y. The State Farm Claim Number was 17-4583-S21. State Farm only identified the household policy which lacked uninsured and underinsured motorist coverage. State Farm did not disclose the policies which did afford this coverage.

56. Undersigned counsel Aguiar also represents the Estate of Chelsea Chambers. Mr. Chambers was tragically killed as a result of a July 10, 2017 car wreck. State Farm was asked to identify all policies affording first party coverage to Mr. Chambers' Estate. The State Farm Claim Number was 171008T12. State Farm only identified one household policy when there were in fact several household policies.

57. Undersigned counsel Aguiar also represents Pamela R. She was injured in a wreck on August 19, 2017. State Farm was asked to identify all policies affording first party coverage to Ms. R. The claim number assigned by State Farm was 1700Q087P. State Farm declined to identify the coverage available to their own insured, Ms. R., on many occasions. Finally, over a year after the wreck, State Farm identified the coverage only for policy 310066417 when there was in fact multiple household policies.

58. Undersigned counsel Aguiar represents Lance W., who was injured in a March 15, 2018 wreck. State Farm was asked to identify all policies affording first party coverage to Mr. W. The claim number assigned by State Farm was 173330V60. State Farm initially declined altogether to identify the coverage available to their own insured, Mr. W., instead simply sending a letter stating that he did not have PIP coverage available to him for the wreck. State Farm then proceeded to identify one policy with UM and UIM coverage available to Mr. W. when in fact several household policies.

59. Undersigned counsel Aguiar has also represented dozens of other crash victims who were insureds with State Farm where State Farm sent correspondence which deliberately misrepresented and withheld the amount and types of first party coverages available to the insured for the loss.

60. State Farm has a pattern and

61. As a result of State Farm's unfair and/or deceptive trade practices, Plaintiff Stinson and the class of policy holders he represents have been deprived of insurance coverage that they are rightfully owed.

62. Additionally, there is a widespread and systemic problem within State Farm and their agencies in Kentucky involving the forging and alteration of policy documents. This UM rejection forgery tactic is widespread and has occurred at many State Farm agencies throughout Kentucky.



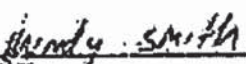

63. For instance, as alleged in *Linda Brown v. State Farm Mutual Automobile Insurance Company*, Shelby County (Kentucky) Circuit Court, 18-CI-469, those within the office of State Farm agent Jim O'Donoghue forged Ms. Brown's signature numerous times on different UM rejection forms. Ms. Brown was involved in a crash in November 2017, and her attorney sought information about her available policies. On November 16, 2017, State Farm sent a letter to Ms. Brown's counsel with documents purporting to be Ms. Brown's signed rejections of UM coverages. But these signatures were forgeries, and were forged by multiple people with different handwriting:


Signature of Any Named Insured (If a Business, a Corporation, or a Partnership)

64. Undersigned counsel also represents the families of Ronnie A. and Russell F., each of whom has passed away, in separate claims. State Farm was presented with claims under policies for these men, and, in response, denied the existence of UM coverage and produced rejections in support of these contentions. Both rejections appear to be digital forgeries.

65. Bob Dotson is a different State Farm agent and with a different State Farm agency than the ones where the signatures above were forged. In the Kentucky case of *Megan Whiteside*

v. *State Farm Mutual Automobile Insurance Company*, Jefferson County (Kentucky) Circuit Court, 18-CI-4492, an employee of Dotson forged Ms. Whiteside's signature and her mother's signature on UM rejection letters as well as the dates of August 28 and August 28, 2017. These signatures look to be forged by the same person:

	
_____	_____
	
_____	_____

66. Mr. Dotson called Sam Aguiar, undersigned counsel, on July 30, 2018, and said that a specific employee forged the signatures. He said that State Farm - and specifically the underwriter on the claim - was aware of the forgery.

67. When undersigned counsel Aguiar asked why the State Farm employee forged the signature, Mr. Dotson said "because he's a lazy ass n----r, n----r."

68. Mr. Dotson then said: "Let me promise you one thing, State Farm will do the right thing."

69. The purported rogue agent did not actually forge the signatures, and had left the agency for disputed, unrelated reasons. In fact, other employees at Dotson's agency routinely forged UM rejection forms, under Dotson and State Farm's direction and for their benefit.

70. And, as shown above, numerous different State Farm agencies had UM forgeries, making this was a widespread practice across multiple State Farm agencies across Kentucky and not the action of one rogue employee.

71. Other State Farm agents forged UM rejections through similar means, including forged signatures, forged dates, or copy/pasted signatures from one document to another. Specifically, State Farm has sent undersigned counsel Aguiar numerous UM rejection forms

purportedly signed by Mr. Aguiar's clients that were not actually signed and/or dated by his clients.

72. That Mr. Dotson would blame an employee and called him a "lazy ass" n-word, and then, in his next breath, say that State Farm will do the right thing, shows how outrageous State Farm's conduct in the pursuit of profits is.

73. The reality is that UM coverage is relatively cheap, required by law (unless rejected) and that very few people actually reject the coverage.

74. The above allegations and lawsuits show how State Farm has engaged in a company-wide strategy to reduce payouts on first-party claims through various tactics designed to conceal or invalidly deny coverage from its insureds.

75. As a result of the above described actions, Plaintiff and the Class have been damaged. Specifically, Plaintiff and the Class have been defrauded, lied to by their own insurance company, paid premiums for UIM coverage that was not provided to them, misled into settling and/or forgoing UIM and/or UM claims for less than their total value, and other damages as described in detail below.

CLASS ALLEGATIONS

a. Class Definition

76. Plaintiff bring this action against Defendant pursuant to Rule 23 of the Kentucky of Civil Procedure on behalf of themselves and all others similarly situated ("The Class" or "The Proposed Class"). Plaintiff seek to certify a class defined as follows:

All Kentucky residents who were insured by State Farm, were injured in a motor vehicle accident due to the fault of another, sought coverage from State Farm for resulting damages, and were not provided information about and/or the benefit of all available coverages.

77. Plaintiff reserves the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

78. Excluded from the Class are:

- a. Defendant and any entities in which Defendant has a controlling interest;
- b. Any entities in which Defendant's officers, directors, or employees are employed and any of the legal representatives, heirs, successors, or assigns of Defendant;
- c. The Judge to whom this case is assigned and any member of the Judge's immediate family and any other judicial officer assigned to this case;
- d. Persons or entities with claims for personal injury, wrongful death, and/or emotional distress as a result of State Farm's practices;
- e. All persons or entities that properly execute and timely file a request for exclusion from the Class;
- f. Any attorneys representing the Plaintiff or the Class; and
- g. All governmental entities.

79. Defendant subjected Plaintiff and the Proposed Class members to the same unfair, unlawful, and deceptive practices and harmed them in the same manner. The conduct described above is the Defendant's standard and undisputed business practice.

b. Numerosity

80. The individual class members are so numerous that joinder of all members is impracticable. The Defendant has branches and agencies in Kentucky, including many within Jefferson County, and has hundreds of thousands of insureds in Kentucky and throughout the United States. The individual class members are ascertainable as the names and addresses of all class members can be identified in the business records maintained by the Defendant. Plaintiff do not anticipate any difficulties in the management of the action as a class action.

c. Commonality

81. The claims made by Plaintiff meet the commonality requirement because they present shared questions of law and fact and resolving these questions will resolve the classwide litigation. These shared questions predominate over individual questions, and they include, without limitation:

1. Whether State Farm misrepresented insurance coverage available to claimants on a common, systemic, corporate-wide basis, and/or provided incentives to agents or agencies to do so, and/or negligently failed to train agents and/or agencies on the proper methods to find and determine all available coverage.
2. Whether State Farm forged rejection of insurance forms or applications of its insureds, on a common, systemic, corporate-wide basis, and/or provided incentives to agents or agencies to do so.
3. Whether State Farm breached its contracts with Plaintiff and Class by engaging in the conduct identified above.
4. Whether State Farm violated the Unfair Kentucky Claims Settlement Practices Act.
5. Whether State Farm violated the Kentucky Consumer Protection Act.
6. Whether State Farm owed a duty to the class members under the applicable statutes and law; and
7. Whether and to what extent State Farm has been unjustly enriched as a result of State Farm's unfair practices complained of herein.

d. Typicality

82. Plaintiff is a member of the Proposed Class. Plaintiff's claims are typical of the claims of the proposed Class because of the similarity, uniformity, and common purpose of the unlawful conduct of Defendant. Each class member has sustained and will continue to sustain damages in the same manner as Plaintiff as a result of Defendant's wrongful conduct.

e. Adequacy of Representation

83. Plaintiffs will fairly and adequately represent and protect the interests of the

Classes in that they have no disabling conflicts of interest that would be antagonistic to those of the other members of the Classes. Plaintiffs seek no relief that is antagonistic or adverse to the members of the Classes and the infringement of the rights and the damages they have suffered are typical of other Class members.

f. Superiority

84. The class litigation is an appropriate method for fair and efficient adjudication of the claims involved. Class action treatment is superior to all other available methods for the fair and efficient adjudication of the controversy alleged herein; it will permit a large number of class members to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort and expense that hundreds of individual actions would require. Class action treatment will permit the adjudication of relatively modest claims by certain class members, who could not individually afford to litigate a complex claim against large corporate defendants. Further, even for those class members who could afford to litigate such a claim, it would still be economically impractical.

85. The nature of this action and the nature of Kentucky laws available to Plaintiff and the Class make the use of the class action device a particularly efficient and appropriate procedure to afford relief to Plaintiff and the Class for the wrongs alleged because Defendant would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual Class member with superior financial and legal resources; the costs of individual suits could unreasonably consume the amounts that would be recovered; proof of a common course of conduct to which Plaintiff was exposed is representative of that experienced by the Class and will establish the right of each member of the Class to recover on the cause of action alleged; and Individual actions would create a risk of

inconsistent results and would be unnecessary and duplicative of this litigation.

86. The class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Because of the number and nature of common questions of fact and law, multiple separate lawsuits would not serve the interest of judicial economy.

COUNT I
BREACH OF CONTRACT

87. Plaintiff Stinson, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing allegations of this Complaint as if fully set forth herein.

88. State Farm has a standard insurance contract with its insured, which describes State Farm's obligations to insure those such as Plaintiff Stinson.

89. Pursuant to the standard State Farm policy contract, State Farm must pay compensatory damages for bodily injury to an insured under the uninsured motorist coverage if he is entitled to recover from the owner or driver of an uninsured motor vehicle. State Farm defined "insured" in this context to mean "you," "resident relatives," and "any other person while occupying a car that is owned by you or any resident relative and provided Liability Coverage through a policy issued by *us*."

90. As described above, State Farm failed to disclose all policies from which Plaintiff Stinson could receive coverage, and routinely failed to disclose applicable coverages for resident relatives or for the insureds themselves, despite its contractual obligations to pay these claims, and therefore did not pay out under these available policies.

91. State Farm therefore breached the insurance contract by failing to disclose the availability of UIM and/or UM coverage that would have or could have provided coverage to its insureds.

92. State Farm breached the insurance contract by failing to pay under its uninsured or underinsured insurance policies that were available, by relying on forged UM rejections to deny coverage, and by other tactics as described above.

93. As a result of State Farm's breach of contract, Plaintiff Stinson, and all others similarly situated, are entitled to compensatory damages in an amount to be determined after a trial by jury.

COUNT II
VIOLATIONS OF THE KENTUCKY UNFAIR CLAIMS
SETTLEMENT PRACTICES ACT

94. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing allegations of this Complaint as if fully set forth herein.

95. State Farm's actions and inactions described herein violate the Kentucky Unfair Claims Settlement Practices Act, KRS 304.12-230, *et. seq.*, by, amongst other things:

- a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
- b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- d. Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- e. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
- f. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear; and
- g. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured.

96. Pursuant to KRS 304.12-235, Plaintiff and the Class are entitled to recover a reasonable attorney fee for the aforementioned violation(s).

97. That as a result of the actions and inactions, Defendant has directly, foreseeably, and proximately caused damages to Plaintiff and the proposed Class.

98. That the actions and inactions of Defendant, as aforementioned, were undertaken with malice and a flagrant indifference to the rights of Plaintiff and with a subjective awareness that such conduct would result in harm to Plaintiff, and were otherwise so grossly negligent, so as to justify an award of punitive damages in an amount required to establish the jurisdiction of this Court.

COUNT III
VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT

99. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing allegations of this Complaint as if fully set forth herein.

100. State Farm's actions violated the Kentucky Consumer Protection Act, KRS 367.220, because its handling of its insureds claims was unfair, false, misleading, or deceptive.

101. State Farm deceived its insureds by both misrepresenting available coverage to its insureds and forging rejections of coverage available to its insureds, as well as other tactics designed to reduce payouts of first-party claims as described above.

102. That as a result of the actions and inactions of State Farm, Plaintiff have been economically and mentally injured through the stress of suffering of the proceedings; have been unduly exposed to economic hardship; have incurred and will in the future incur legal expense

and legal fees. Plaintiff's damages exceed the threshold required to establish jurisdiction in this Court.

103. Pursuant to KRS 367.220(3), Plaintiff is entitled to recover a reasonable attorney fee and the costs incurred for the aforementioned violation(s).

104. As a direct and proximate result of Defendant's unfair or deceptive acts or practices, Plaintiff and the Class were damaged.

105. The actions and inactions of State Farm described herein were undertaken with malice and a flagrant indifference to the rights of Plaintiff and with a subjective awareness that such conduct would result in mental and physical harm to Plaintiff, and were otherwise so grossly negligent, so as to justify an award of punitive damages in an amount required to establish the jurisdiction of this Court.

COUNT IV
BAD FAITH UNDER KENTUCKY COMMON LAW

106. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing allegations of this Complaint as if fully set forth herein.

107. State Farm owed a duty of good faith and fair dealing to its insureds in carrying out its contractual obligations to provide insurance coverage.

108. State Farm failed to carry out its obligations of good faith and fair dealing by deceiving its insureds about coverage available to them and by forging forms and applications to strip its insureds of insurance coverage without their knowledge or consent, as well as other tactics designed to reduce payouts of first-party claims as described above.

109. State Farm's actions demonstrated a reckless disregard to the rights of its insureds.

110. As a direct and proximate result of Defendant's unfair or deceptive acts or practices, Plaintiff and Class were damaged.

111. That the actions and inactions of Defendant, as aforementioned, were undertaken with malice and a flagrant indifference to the rights of the Plaintiff and the Class and with a subjective awareness that such conduct would result in mental and physical harm to the Plaintiff and the Class, and were otherwise so grossly negligent, so as to justify an award of punitive damages in an amount required to establish the jurisdiction of this Court.

COUNT V
NEGLIGENCE PER SE

112. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing allegations of this Complaint as if fully set forth herein.

113. State Farm, by and through its agents and employees, was negligent *per se* in that it breached its statutorily imposed duties under Kentucky law.

114. Defendant violated KRS 304.14-090 in that State Farm or its agents altered insurance applications and documents without written consent.

115. Defendant further violated KRS 304.14-090 by causing an insurance application and documents to be falsified.

116. Notably, pursuant to KRS 304.14-090, State Farm cannot exercise a defense based upon the alteration of the application.

117. As a direct and proximate result of Defendant's actions and/or inactions, Plaintiff and the Class were damaged.

118. That the actions and inactions of Defendant, as aforementioned, were undertaken with malice and a flagrant indifference to the rights of the Plaintiff and the Class and with a

subjective awareness that such conduct would result in harm to the Plaintiff and the Class, and were otherwise so grossly negligent, so as to justify an award of punitive damages in an amount required to establish the jurisdiction of this Court.

COUNT VI
NEGLIGENCE

119. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing allegations of this Complaint as if fully set forth herein.

120. Defendant, by and through its agents or employees, owed a duty to handle insurance claims of its insureds as a reasonably prudent insurer would.

121. Defendant, by and through its agents or employees, had a duty to reasonably refrain from acting in such a manner as to cause economic injury to its insureds.

122. Defendant, by and through its agents or employees, acted carelessly and negligently in the following manner:

- a. Failing to properly supervise its employee(s) or agent(s) who misrepresented available coverage to its insured and/or forged rejections of coverage for its insureds;
- b. Failing to properly train its employees, servants, and agents; and
- c. Failing to establish practices and procedures to prevent fraud or mishandling of claims.

123. As a direct and proximate result of Defendant's actions and/or inactions, Plaintiff and Class were damaged.

124. That the actions and inactions of Defendant, as aforementioned, were undertaken with malice and a flagrant indifference to the rights of Plaintiff and the Class and with a

subjective awareness that such conduct would result in harm to Plaintiff and the Class, and were otherwise so grossly negligent, so as to justify an award of punitive damages in an amount required to establish the jurisdiction of this Court.

COUNT VII
FRAUD BY CONCEALMENT

125. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing allegations of this Complaint as if fully set forth herein.

126. Defendant intentionally implemented a company-wide strategy to reduce first party claims, through tactics such as forging signatures belonging to its insureds to reject uninsured and/or underinsured insurance coverage in motor vehicle insurance contracts.

127. Another tactic State Farm used was to misrepresent or conceal available coverage to Plaintiff Stinson and its insureds, thereby depriving its insureds of insurance coverage.

128. Plaintiff and the Class reasonably relied upon Defendant's representations regarding available coverage.

129. Defendant's false representations were material to Plaintiff because it precluded the very insurance coverage Plaintiff had sought to obtain.

130. Defendant had a duty to disclose the scheme it was engaged in because it had exclusive knowledge as to implementation and maintenance of its scheme, and because it knew facts not known to or reasonably discoverable by Plaintiff or the Class.

131. Defendant actively concealed and/or suppressed these material facts as described above, in whole or in part, to pad and protect its profits and to avoid paying insurance claims.

132. On information and belief, Defendant has still not made full and adequate disclosures, and continue to attempt to defraud Plaintiff and the Class by concealing material information regarding the insurance coverage available to its insureds.

133. Because of the concealment and/or suppression of the facts, Plaintiff and the Class have sustained damages as outlined above. Accordingly, Defendant is liable to Plaintiff and the Class for damages in an amount to be proven at trial.

134. Defendant's actions were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of the rights of Plaintiff and the Class, and the conduct as alleged warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which is to be determined according to the proof.

COUNT VIII
UNJUST ENRICHMENT

135. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing allegations of this Complaint as if fully set forth herein.

136. Defendant was unjustly enriched by charging and collecting from Plaintiff Stinson and the Class premiums on policies that State Farm failed to honor.

137. Defendant was unjustly enriched by charging Plaintiff Stinson and the Class premiums without providing insurance consistent with State Farm's obligations under the issued insurance contracts.

138. Plaintiff Stinson and the Class conferred a benefit on Defendant, which Defendant knowingly accepted despite the fact that it had no intention of honoring its obligations. Such acts were, and are, unconscionable.

139. As a direct and proximate result of Defendant's actions, which constitute unjust

enrichment, Plaintiff Stinson and the Class suffered actual damages for which Defendant is liable.

140. It would be unjust for Defendant to retain the benefits it received from Plaintiff Stinson and the Class. To date, Defendant has retained said benefits.

141. Plaintiff Stinson and the Class have no adequate remedy at law.

142. Defendant's liability for those damages should be measured by the extent of its unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray:

A. That the Court determine that this action may be maintained as a class action under Rule 23 of the Kentucky Rules of Civil Procedure, that the Plaintiff is proper class representative, and his counsel is adequate class counsel;

B. That the Court certify the Class identified above;

C. That judgment be entered against Defendant and in favor of Plaintiff and the Class on the Causes of Action in this Complaint, for injunctive and equitable relief as requested above, and for actual, compensatory, punitive, and treble damages in an amount to be determined at trial;

D. That judgment be entered imposing interest on damages, litigation costs, and attorneys' fees against Defendant;

E. That the Court immediately enter an Order (1) enjoining State Farm from engaging in the activity described above, (2) requiring State Farm to immediately review all currently pending first-party claims and notify their insureds of all available policies covering those claims; (3) requiring State Farm to review first party claims in the past 4 years where

claimants were not told of all available policies covering those claims and to notify those claimants; (4) requiring State Farm to change its practices and notify all first party claimants of all available coverage on a going forward basis; (5) requiring State Farm to review all first party UM claim rejections over the past 4 years to determine how many of those rejections were forged, and then notify those insureds that there is actually UM coverage and their claims have been reopened; and (6) enjoin State Farm from asserting the statute of limitations in any UIM and/or UM claim during the pendency of this action and until such time as the true extent of State Farm's actions can be discovered and analyzed.

F. For all other and further relief as this Court may deem necessary and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff, individually and on behalf of all others similarly situated, demand a trial by jury on all issues so triable.

Dated: October 16, 2018

Respectfully submitted,

JONES WARD PLC

/s/Jasper D. Ward IV

Jasper D. Ward IV

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David L. Nicholson, Jefferson Circuit Clerk

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18-CI-006033 10/16/2018

31

David L. Nicholson, Jefferson Circuit Clerk

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Lawsuit Alleges State Farm Forged Documents, Concealed Available Insurance Coverage](#)
