

BATON ROUGE CITY COURT

STATE OF LOUISIANA

NO.

██████████

DIVISION:

VERSUS

BLUE CROSS AND BLUE SHIELD OF MISSISSIPPI

FILED: _____

CLERK: _____

PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, comes Plaintiff, Ms. ██████████, who seeks monetary damages, bad faith penalties, punitive damages, and attorney fees arising out of her health insurer's wrongful denial of her health insurance claims.

1.

Made defendant herein is:

Blue Cross Blue Shield of Mississippi, a Mississippi insurance company doing business in Louisiana.

2.

Venue is proper in East Baton Rouge Parish under Code of Civil Procedure Article 42 because Blue Cross is an alien insurer who has not appointed an agent for service of process in Louisiana.

3.

At all relevant times Blue Cross issued a Health Insurance Policy that provides certain health insurance benefits to Plaintiff as an insured. All premiums have been paid and remain current.

4.

Plaintiff, ██████████, was involved in an automobile accident on May 20, 2014. She presented to the Our Lady of the Lake Emergency Room with complaints of headache, neck pain, blurred vision, and dizziness. She was diagnosed with acute cervical strain and acute headache. In the following months, Ms. ██████████ treated with Baton Rouge Physical Therapy Lake, Dr. Rachel Gruber her primary care physician, and Dr. Peter Dickinson, D.C. at Total Care Pain and Injury Centers.

5.

In due course, Ms. [REDACTED] presented her health insurance claims to Blue Cross, either individually, through the providers, or through the undersigned. Upon information and belief, all of the providers are in network and all of the charges were reasonable and customary.

6.

Remarkably, Blue Cross wrongfully denied the majority of the claims.

7.

As a result of the denials, [REDACTED] had to cease treating at Baton Rouge Physical Therapy Lake even though Dr. Gruber prescribed that she treat there. She was forced to pay nearly \$5,000.00 out of pocket to defray her treatment with Dr. Peter Dickinson, D.C. Further, [REDACTED] receives bills from Baton Rouge Physical Therapy Lake to this day.

8.

It is expected that the discovery process will reveal that the medical bills wrongfully unpaid by Blue Cross total between \$6,000.00 and \$10,000.00.

9.

Blue Cross arbitrarily, capriciously, and without probable cause denied the claims on the rationale that Ms. [REDACTED] injuries and treatment were the responsibility of either (1) the at fault driver and the driver's insurer, Allstate and/or (2) her own insurer, Geico.

10.

The trouble with the denials is that they are completely without merit. Under both Louisiana and Mississippi Law, Blue Cross merely has a contingent right of subrogation against the third party tortfeasor. See e.g., *Barreca v. Cobb*, 95-1651 (La. 2/28/96), 668 So. 2d 1129 and *Federated Mut. Ins. Co. v. McNeal*, 943 So.2d 658 (Miss. 2006). In short, [REDACTED] paid her premiums and Blue Cross should have paid her insurance claims.

11.

Moreover, under the "made whole" doctrine, Blue Cross's putative rights to subrogation/reimbursement are only triggered if Ms. [REDACTED] is completely compensated for her damages by the third party tortfeasor. Civil Code Article 1826; *Great West Casualty Company v. Manning*, 95-2359 (La.App. 1 Cir. 6/28/96), 687 So. 2d 416; and *Federated Mut. Ins. Co. v. McNeal*; see also Louisiana Commissioner of Insurance Directive Number 175 of January 8, 2003 (incorporating Regulation 78).

12.

As it turns out, [REDACTED] was not full compensated or “made whole” as her damages from the motor vehicle accident exceeded \$39,000.00 and Allstate settled for the policy limits of \$15,000.00. Also, Ms. [REDACTED]’s underinsured motorist claim with her own insurer, Geico, was denied as she had executed a valid UM waiver before the motor vehicle accident.

13.

To appeal Blue Cross’s denials, [REDACTED] provided Blue Cross with, among other things: (1) her Geico Declarations Sheet showing that she had no underinsured or uninsured motorist coverage; (2) a copy of the UM rejection form she signed at the inception of her Geico policy; (3) a letter of exhaustion from Allstate showing that the policy limits of the tortfeasor’s policy are \$15,000.00; and (4) multiple demand letters. She also requested a certified copy of the insurance policy. To date the claims remain unpaid and Blue Cross has not provided a copy of the policy.

14.

Blue Cross violated La. R.S. 22:1821 and similar controlling law in Mississippi requiring good faith handling of insurance claims by failing to pay the claims within thirty days of presentation of notice and proof of the claim.

15.

Under La. R.S. 22:1821, Blue Cross is liable for penalties, including but not limited to double the amount of the health benefits due under the policy as well as [REDACTED] attorney fees.

16.

Under the Mississippi Supreme Court case of *Blue Cross & Blue Shield v. MAAS*, 516 So. 2d 495 (1988), Blue Cross is liable for significant punitive damages.

WHEREFORE, Petitioner, [REDACTED], prays that judgment be entered in her favor and against Defendant Blue Cross and Blue Shield of Mississippi for the following:

- A. Principal amount of the unpaid health insurance claims;
- B. A penalty of double the amount of the health benefits due, per La. R.S. 22:1821;
- C. Attorney fees per La. R.S. 22:1821;

- D. Punitive damages per *Blue Cross & Blue Shield v. MAAS*, 516 So. 2d 495 and the Court's equitable powers under Civil Code Article 4;
- E. Interest under Civil Code Article 2000;
- F. Other damages to be amended, presented in the Pretrial Order, and/or proven at the trial of this matter;
- G. Other and further relief as the Court may deem just and proper.

Respectfully submitted,



Nicholas M. Graphia, No. 33159
Law Office of Nicholas M. Graphia, LLC
301 Main Street, Ste. 2200
Baton Rouge, LA 70801
(225) 366-8618
(888) 909-6892 Fax
ngraphia@nmglegal.com
Attorney for Petitioner, Ms. [REDACTED]

Please Serve Via Long Arm Statute:

Blue Cross and Blue Shield of Mississippi, through its registered agent:

John H. Proctor, III
3545 Lakeland Drive
Jackson, MS 39215-1043