

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

AMY DUNN, individually and as the)	
natural parent of DANIELLE)	
DEMONBREUN, JAMES DUNN, and)	
RONALD CURTIS PATTERSON,)	
)	
Plaintiffs,)	
)	CIVIL ACTION
v.)	FILE NO. _____
)	
COLUMBIA NATIONAL INSURANCE)	
COMPANY,)	
)	
Defendant.)	

COMPLAINT AND DEMAND FOR JURY TRIAL

The Plaintiffs in this action were adverse to each other in an earlier action. The earlier action arose after members of the Dunn family were hit by a truck driven by Ronald Curtis Patterson and brought a personal injury lawsuit against him (“Underlying Lawsuit”). Mr. Patterson was insured by Defendant Columbia National Insurance Company (“Columbia”) under two insurance policies with combined limits of \$4 million. Columbia breached its contractual duties to Mr. Patterson by failing to defend him in the Underlying Lawsuit. Columbia breached its common-law duties to Mr. Patterson by failing to settle the claims against him

within policy limits when it had a reasonable opportunity to do so. As a result of Columbia's breaches, the Underlying Lawsuit resulted in an \$11.5 million judgment against Mr. Patterson. Plaintiffs jointly bring this action because their rights to relief arise out of the same transactions and occurrences and because questions of law and fact common to all Plaintiffs will arise in this action. Fed. R. Civ. P. 20(a)(1)(A) and (B).

PARTIES, JURISDICTION AND VENUE

1.

Amy Dunn is a natural person who is domiciled in Hall County, Georgia.

2.

James Dunn is a natural person who is domiciled in Hall County, Georgia.

3.

Amy Dunn is the natural parent of Danielle Demonbreun, a minor. Danielle is a natural person who is domiciled in Hall County, Georgia. (The aforesaid three Plaintiffs are sometimes referred to collectively as the "Dunn Family.")

4.

Ronald Curtis Patterson is a natural person who is domiciled in Hall County, Georgia.

5.

All Plaintiffs are citizens of Georgia.

6.

Columbia National Insurance Company is a foreign insurance company registered with the Georgia Office of Insurance and Safety Fire Commissioner. Columbia is incorporated or otherwise organized as a business entity in Nebraska and has its principal place of business in Missouri. Columbia is a citizen of Nebraska and Missouri.

7.

Columbia has made filings with the Georgia Office of Insurance and Safety Fire Commissioner stating that its registered agent for service of process is Robert K. O'Reilly, Jr., 11138 State Bridge Road, Suite 200, Johns Creek, GA, 30022. Columbia has been served with process in this action.

8.

The amount in controversy with respect to Amy Dunn's individual claim exceeds \$75,000. The amount in controversy with respect to James Dunn's individual claim exceeds \$75,000. The amount in controversy with respect to Amy Dunn's claim as parent of Danielle exceeds \$75,000. The amount in controversy with respect to Mr. Patterson's claims exceeds \$75,000.

9.

This Court has diversity jurisdiction of this case under 28 U.S.C. § 1332.

10.

All Plaintiffs reside in this district and this division.

11.

Columbia has agents registered in Hall County, Georgia, and those agents sell insurance policies insuring risks located in Hall County. Columbia transacts business in Hall County.

12.

A substantial part of the events or omissions giving rise to the claims asserted in this action occurred in Hall County, Georgia.

13.

Venue is proper in this district and in this division.

FACTS COMMON TO ALL CLAIMS

14.

On June 7, 2013, members of the Dunn Family were walking out of a Walmart in Gainesville, Georgia, when they were struck by a vehicle driven by Mr. Patterson (“Accident”). Each member of the Dunn Family who is a party to this action suffered bodily injury as a proximate result of the Accident.

15.

Mr. Patterson was arrested at the scene for driving under the influence. He later pled guilty to the charge. Mr. Patterson was clearly at fault for causing the Accident.

16.

No member of the Dunn Family was in any way at fault for causing the Accident.

17.

At the time of the Accident, Mr. Patterson was employed by Lawson Air Conditioning and Plumbing, Inc. (“Lawson”), and driving a Chevy pickup truck owned by Lawson and assigned to Patterson (“Work Truck”).

18.

Prior to the Accident, Lawson had purchased two liability insurance policies from Columbia, a “Primary Policy” with limits of \$1 million and an “Umbrella Policy” with limits of \$3 million (collectively, “Policies”). (A true and correct copy of the declarations pages of the Primary Policy is attached hereto as Exhibit A. A true and correct copy of the declarations pages of the Umbrella Policy is attached hereto as Exhibit B.)

19.

At the time of the Accident, the Work Truck was a “covered auto” under the Primary Policy.

20.

Lawson is a named insured under the Policies and has coverage under the Policies for its legal liability to the Dunn Family arising out of the Accident. The Primary Policy states that an insured includes “[a]nyone else while using with your permission a covered ‘auto’ you own ...”

21.

For approximately one year prior to the Accident, Lawson had assigned the Work Truck to Mr. Patterson. Lawson allowed Mr. Patterson to take the Work Truck home at night and on the weekends, and to use the Work Truck for personal errands. Lawson also provided Mr. Patterson a gas credit card for the Work Truck, which Patterson maintained in his possession and used to fuel the Work Truck.

22.

At the time of the Accident, Mr. Patterson was using the Work Truck with Lawson’s permission.

23.

At the time of the Accident, Mr. Patterson was using the Work Truck within the scope of Lawson's permission.

24.

Mr. Patterson is an insured under the Policies, and the Policies provide liability coverage to Mr. Patterson for his legal liability to the Dunn Family arising out of the Accident.

25.

Lawson promptly reported the Accident to Columbia and otherwise complied with all conditions precedent to coverage.

26.

Within days of the Accident, an agent or representative of Columbia generated an Automobile Loss Notice that states on the first page as follows: "Insured driver hit 3 pedestrians in Walmart parking lot." The Automobile Loss Notice states on the second page as follows: "INSURED DRIVER WAS ARRESTED AT THE SCENE AND FAMILY OF 3 TAKEN TO THE HOSPITAL IN STABLE CONDITION." (A true and correct copy of the Automobile Loss Notice is attached hereto as Exhibit C.)

27.

Both references to “insured driver” in the Automobile Loss Notice were references to Mr. Patterson.

28.

Columbia received timely notice of the Accident.

29.

Soon after the Accident, the Dunn Family retained Gainesville attorneys Mark Alexander and Dan Sammons to recover for injuries sustained in the Accident.

30.

On June 28, 2013, Mr. Alexander sent a letter to Lawson advising of his representation and asking that evidence be preserved, including evidence regarding Mr. Patterson’s work records and use of the Work Truck. Mr. Alexander copied Columbia on the June 28 letter. (A true and correct copy of the letter is attached hereto as Exhibit D.)

31.

On July 15, 2013, Mr. Alexander again informed Columbia of his representation and, pursuant to O.C.G.A. § 33-3-28, requested information

regarding insurance “for or potentially covering Mr. Patterson.” (A true and correct copy of the letter is attached hereto as Exhibit E.)

32.

On July 16, 2013, Columbia responded to Mr. Alexander’s request, forwarding him the declarations pages for the Policies.

33.

Upon receiving the Automobile Loss Notice and correspondence from Mr. Alexander dated June 26, 2013, and July 15, 2013, Columbia knew or reasonably should have known that the Dunn Family would make personal injury claims against Mr. Patterson.

34.

On September 13, 2013, Columbia unambiguously denied all coverage to Mr. Patterson. (A true and correct copy of the denial letter is attached hereto as Exhibit F.)

35.

The sole reason stated in the September 13, 2013, letter for Columbia’s denial of coverage is that Mr. Patterson “was not a permissive driver at the time of the accident.” (Exhibit F.)

36.

Columbia has waived or is otherwise estopped from asserting any reasons for noncoverage not set forth in the September 13, 2013, denial letter.

37.

On April 7, 2014, the Dunn Family filed a lawsuit styled *Amy Dunn and James Dunn, individually, and Amy Dunn as the natural parent of Danielle Demonbreun v. Ronald Patterson and Lawson Air Conditioning and Plumbing, Inc.*, State Court of Hall County, Georgia, Civ. Action No. 2014-cv-200-z (“Underlying Lawsuit”). (A true and correct copy of the complaint in the Underlying Lawsuit is attached hereto as Exhibit G.)

38.

Allegations in the complaint included that Mr. Patterson had already pled guilty to DUI and other offenses and that the Dunn Family were entitled to unlimited punitive damages. (Exhibit G, ¶19 and ¶40)

39.

Columbia received prompt and actual notice of the filing of the Underlying Lawsuit.

40.

Columbia possessed a copy of the complaint in the Underlying Lawsuit prior to the time any defendant in the Underlying Lawsuit was required to file an answer or other responsive pleading.

41.

Under the terms of the Primary Policy, Columbia was required to defend Lawson and Mr. Patterson in the Underlying Lawsuit.

42.

Columbia promptly retained counsel to defend Lawson in the Underlying Lawsuit.

43.

At this time, Columbia did not retain counsel to defend Mr. Patterson in the Underlying Lawsuit.

44.

Columbia did not file a declaratory judgment action for a judicial determination as to whether Mr. Patterson was entitled to a defense.

45.

As a proximate result of Columbia's breach of its duty to defend Patterson, Mr. Patterson went into default in the Underlying Lawsuit.

46.

The parties in the Underlying Lawsuit proceeded with discovery. In December 2014, during depositions, Lawson and its representatives made admissions establishing that Mr. Patterson had Lawson's permission to use the Work Truck at the time of the Accident.

47.

At this time, Columbia did not attempt to provide a defense to Mr. Patterson.

48.

On December 9, 2014, William Strickland filed a motion for entry of appearance as counsel for Columbia in the Underlying Lawsuit. The stated basis for his appearance was to "urge certain Requests to Charge" and "to save the cost and trouble of a declaratory judgment action." (A true and correct copy of the motion is attached hereto as Exhibit H.)

49.

On January 13, 2015, the trial court denied the motion for entry of appearance because Columbia was not a party to the Underlying Lawsuit.

50.

Nine days later, on January 22, 2015, Columbia filed a motion to intervene in the Underlying Lawsuit.

51.

In its brief in support of its motion to intervene, Columbia argued, *inter alia*, that its intervention would allow presentation to the jury of charges and special interrogatories that would resolve “issues of coverage” regarding Mr. Patterson. (A true and correct copy of the brief is attached hereto as Exhibit I. The quoted language is on page 2.)

52.

Columbia’s representations in support of the motions to appear and intervene (Exhibit H and Exhibit I, respectively) acknowledge that Mr. Patterson had at least potential coverage under the Policies.

53.

On June 5, 2015, the trial court denied Columbia’s motion to intervene.

54.

At this time, Columbia did not attempt to provide a defense to Mr. Patterson.

55.

On January 5, 2016, the Dunn Family settled their claims against Lawson only. Lawson was later dismissed from the Underlying Lawsuit, which proceeded with Mr. Patterson as the sole defendant.

56.

On February 26, 2016, and on March 1, 2016, Columbia sent “reservations of rights” letters to Mr. Patterson offering to provide a defense to him under terms set forth in the letters. (True and correct copies of the two letters are attached hereto as Exhibit J and Exhibit K, respectively.)

57.

Exhibit J and Exhibit K are the only letters from Columbia to Mr. Patterson offering to defend him under a reservation of rights.

58.

Mr. Patterson reasonably, justifiably and lawfully rejected the defense offered by Columbia.

59.

Columbia retained attorneys Michael J. Rust and David C. Sawyer, who on February 29, 2016, filed an Entry of Appearance stating that they were retained to defend Mr. Patterson.

60.

The Dunn Family objected to Columbia’s late attempt to hire counsel for Mr. Patterson in light of Columbia’s previous unambiguous denial of coverage. (See Exhibit F)

61.

The trial court allowed Messrs. Rust and Sawyer to appear, but in reviewing Columbia's belated attempt to provide Mr. Patterson with a defense, made the following findings in its Order on October 12, 2016: "While this Court disapproves of Columbia National Insurance's procedural handling of this case, whether there are legal ramifications as a result of their contradictory positions is a question for another Court."

62.

The trial court eventually required Messrs. Rust and Sawyer to withdraw, as they had no authorization to appear on behalf of their purported client.

63.

Sanctions were entered against Mr. Patterson for failing to appear at his deposition in the Underlying Lawsuit. But for Columbia's breaches of its contractual and common-law duties to Mr. Patterson, no sanctions would have been entered against him.

64.

The Underlying Lawsuit went to trial with Mr. Patterson as the sole defendant and unrepresented by counsel.

65.

On June 6, 2017, the jury rendered a verdict against Mr. Patterson and in favor of the Dunn Family. The jury awarded \$1.5 million to Danielle Demonbreun, \$1 million to James Dunn, and \$4 million to Amy Dunn. The jury further assessed punitive damages of \$5 million against Mr. Patterson.

66.

On June 8, 2017, the court in the Underlying Lawsuit entered a judgment against Mr. Patterson and in favor of the Dunn Family in the gross amount of \$11.5 million for their various claims (“Judgment”). The Judgment is subject to post-judgment interest of seven percent (7%). (A true and correct copy of the Judgment is attached hereto as Exhibit L.)

67.

Mr. Patterson is personally liable to the Dunn Family for the full amount of the Judgment and all post-judgment interest.

68.

The Dunn Family has initiated collection proceedings against Mr. Patterson, causing him damages as further described herein.

69.

Under the terms of the Policies, Columbia has a duty to indemnify Mr. Patterson for the amount of the Judgment within the Policies' limits (\$4 million) and all post-judgment interest accruing on the gross amount of the Judgment.

COUNT 1
ALL PLAINTIFFS' CLAIM FOR A DECLARATORY JUDGMENT

70.

Plaintiffs incorporate and reallege the allegations in paragraphs 1-69 of this complaint as if fully set forth herein.

71.

The Dunn Family has obtained against Mr. Patterson a judgment that fixes the liability of Columbia's insured, allowing the Dunn Family to maintain an action directly against Columbia for the proceeds of the Policies. *Smith v. GEICO*, 179 Ga. App. 654, 347 S.E.2d 245 (1986).

72.

The Judgment triggers Columbia's duty to pay its policy limits and other amounts due under the Policies.

73.

Mr. Patterson has a strong interest in Columbia fulfilling its contractual duties under the Policies and indemnifying him for those portions of the judgment within the limits of the Policies (\$4 million) and post-judgment interest.

74.

An actual controversy exists between the Dunn Family and Mr. Patterson, on the one hand, and Columbia, on the other hand, with respect to Columbia's contractual duties to defend and indemnify Mr. Patterson with respect to the Underlying Lawsuit and the Judgment.

75.

This Court is invested with the power to declare the rights and liabilities of the parties to this action and to grant such relief as it deems necessary and proper under 28 U.S.C. §§ 2201 and 2202.

76.

Accordingly, Plaintiffs ask the Court to declare that Mr. Patterson is entitled to coverage (including a defense and indemnity) under the Policies for his legal liability to the Dunn Family arising out of the Accident and that Columbia is required to pay to the Dunn Family all amounts due and owing under the terms of the Policies in partial satisfaction of the Judgment.

COUNT 2
MR. PATTERSON'S CLAIM FOR BREACH OF CONTRACT

77.

Mr. Patterson incorporates and realleges the allegations in paragraphs 1- 69 of this complaint as if fully set forth herein.

78.

Mr. Patterson fulfilled all conditions precedent to coverage under the Policies.

79.

Prior to September 13, 2013, which is the date Columbia unambiguously denied all coverage to Mr. Patterson (*see Exhibit F*), Mr. Patterson had not failed to respond to any request by Columbia for cooperation or information.

80.

The September 13, 2013, denial of coverage acted as a breach by Columbia with respect to any duties Columbia owed to Mr. Patterson under the Policies. As of September 13, 2013, Mr. Patterson is released from any of his contractual duties to Columbia, and Columbia waived or is otherwise estopped from relying on provisions in the Policies placed in the Policies for Columbia's benefit.

81.

The factual allegations in the Underlying Lawsuit triggered potential coverage under the Policies for Mr. Patterson.

82.

Columbia had a duty to defend Mr. Patterson under the terms of the Primary Policy, and Columbia breached that duty by failing to defend Mr. Patterson in the Underlying Lawsuit prior to the time he went into default.

83.

Because Columbia failed to defend him prior to the time he went into default, Mr. Patterson is released from any of his contractual duties to Columbia, and Columbia has waived or is otherwise estopped from relying on provisions in the Policies placed in the Policies for Columbia's benefit.

84.

Patterson's default and resulting money judgment against him arise naturally and according to the usual course of things from an insurer's breach of the duty to defend its insured. The parties to an insurance contract would contemplate a default judgment and resulting money judgment to be probable results of the breach of the duty to defend.

85.

Columbia has breached the duty to indemnify Mr. Patterson for the resulting Judgment and post-judgment interest.

86.

Because of its breaches, Columbia is liable to Mr. Patterson for the full amount of the judgment and all post-judgment interest and other damages, including nominal damages.

COUNT 3
MR. PATTERSON'S CLAIM
FOR NEGLIGENT OR BAD FAITH FAILURE TO SETTLE
UNDER THE COMMON LAW

87.

Mr. Patterson incorporates and realleges the allegations in paragraphs 1 - 69 of this complaint as if fully set forth herein.

88.

Upon receiving the Automobile Loss Notice, the June 28, 2013, letter and the July 15, 2013, letter (*see* Exhibit C, Exhibit D and Exhibit E), Columbia had a duty to investigate Mr. Patterson's status as an insured and the extent of his potential legal liability to the Dunn Family.

89.

On August 18, 2016, the Dunn Family provided Columbia an opportunity to settle their claims against Patterson for \$1.25 million. (A true and correct copy of the demand is attached hereto as Exhibit M.)

90.

If Columbia had accepted the terms of the August 18, 2016, offer, Mr. Patterson would have been released from the Dunn Family's claims and the Underlying Lawsuit would have been dismissed with prejudice. (Exhibit M, p.1, final paragraph.)

91.

On August 23, 2016, Columbia rejected the August 18, 2016, opportunity to settle. (A true and correct copy of the rejection is attached hereto as Exhibit N.)

92.

The August 23, 2016, rejection states that the August 18, 2016, demand "does not comply with statutory requirements for such a time demand" (*see* Exhibit N), but the August 18 demand is not subject to any statutory requirements.

93.

The August 23, 2016, rejection reiterates that "Columbia National has denied coverage to Mr. Patterson." (Exhibit N)

94.

Columbia had reasonable opportunities to settle the claims against Mr. Patterson within policy limits.

95.

Columbia unreasonably refused to settle the claims against Mr. Patterson.

96.

Columbia breached its duties by failing to adequately investigate and evaluate the claims against Mr. Patterson, which failure to investigate and evaluate contributed to Columbia's failure to accept reasonable opportunities to settle the claims against Mr. Patterson within policy limits.

97.

Columbia failed to treat Mr. Patterson's interests equal to its own interests by gambling with his financial interests, by failing to adequately investigate and by choosing to not settle a claim where its insured was clearly at fault and clearly exposed to unlimited punitive damages.

98.

Columbia breached duties to its insured, failed to act as a reasonably prudent liability insurer, and negligently and/or in bad faith and with a specific intent to injure failed to settle the claims, damaging Mr. Patterson as described herein.

99.

In addition, or in the alternative, Columbia's negligent or bad faith failure to settle was caused by its failure to hire and retain competent claims professionals and by its failure to train, supervise, provide time and resources to, or otherwise manage its claims professionals as would a reasonably prudent insurer that was attempting to or desired to treat its insured's interests equal to its own interests. All of these actions were taken with the specific intent to save money for itself while exposing its insureds to legal liability in excess of policy limits.

100.

As a proximate result of these breaches by Columbia, the Judgment was ultimately entered against Mr. Patterson. Columbia is liable for the full amount of the unpaid judgment, plus post-judgment interest and other damages.

COUNT 4
MR. PATTERSON'S CLAIM FOR PUNITIVE DAMAGES

101.

Mr. Patterson incorporates and realleges the allegations in paragraphs 1-100 of this complaint as if fully set forth herein.

102.

Columbia's actions show willful misconduct, wantonness, and that entire want of care which would raise the presumption of conscious indifference to the consequences to its insured.

103.

The conduct of Columbia was deliberate and intentional and was the conscious and calculated result of Columbia's decision to give greater importance to its own interests rather than to the interests of its insured.

104.

Columbia's willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences with the specific intent to cause harm, entitles Mr. Patterson to damages, including punitive damages within the meaning of O.C.G.A. § 51-12-5.1.

105.

By reason of the foregoing, Mr. Patterson is entitled to an award of punitive damages pursuant to O.C.G.A. § 51-12-5.1 against Columbia in such amount to be determined by the enlightened conscience of a fair and impartial jury so as to penalize, punish or deter Columbia from repeating such conduct.

COUNT 5
ALL PLAINTIFFS' CLAIM FOR ATTORNEYS' FEES
AND EXPENSES OF LITIGATION UNDER O.C.G.A. § 13-6-11

106.

Plaintiffs incorporate and reallege the allegations in paragraphs 1-100 of this complaint as if fully set forth herein.

107.

Columbia's actions and omissions constitute bad faith, stubborn litigiousness, and have caused Mr. Patterson and the Dunn Family unnecessary trouble and expense within the meaning of O.C.G.A. § 13-6-11, entitling Mr. Patterson and the Dunn Family to attorneys' fees and other expenses of litigation in this lawsuit.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury for each and every claim and defense for which there is a right to a jury.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Columbia for the following:

- A. That they have a trial by jury;
- B. That they have and recover the following:

1. A declaration that Mr. Patterson is covered under the Policies, was owed a defense, and that Columbia owes a duty to indemnify him for amounts within the limits of the Policies and all post-judgment interest;
2. Attorneys' fees and expenses of litigation;
3. That all costs be taxed against Columbia; and
4. Other and further relief as the Court may deem just and proper.

WHEREFORE, Mr. Patterson prays for judgment in his favor and against Columbia for the following:

A. That he have a trial by jury;

B. That he have and recover the following:

1. Special damages in the principal amount of the Judgment;
2. All post-judgment interest accruing on the Judgment;
3. Further special damages;
4. General damages in an amount to be determined by the enlightened conscious of a fair and impartial jury;
5. Nominal damages for each and every count of this complaint;
6. Punitive damages (pursuant to OCGA § 51-12-5.1 or otherwise) in such amount that the jury deems adequate to punish and deter

Columbia in light of the aggravated nature of its conduct, its financial circumstances, and its intent to cause harm;

7. Pre-judgment interest; and
8. Other and further relief as the Court may deem just and proper.

Respectfully submitted on November 17, 2017.

/s/ Richard E. Dolder
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