

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

DENNIS LAGARES,)
)
 Plaintiff,)
)
 vs.) Case No. 1016-CV38265
)
 UNITED FINANCIAL CASUALTY) Division No. 17
 COMPANY d/b/a PROGRESSIVE)
 INSURANCE COMPANY,)
)
 Defendant.)

FILED-2011 NOV 3 PM 2:30
JACKSON COUNTY MISSOURI

**DEFENDANT UNITED FINANCIAL CASUALTY COMPANY
D/B/A PROGRESSIVE INSURANCE COMPANY'S ANSWER TO
PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT [SIC]**

COMES NOW Defendant United Financial Casualty Company d/b/a Progressive Insurance Company ("Progressive"), by and through its attorneys of record, and for its Answer to Plaintiffs' First Amended Class Action Complaint [SIC] ("First Amended Complaint") and its Affirmative Defenses, STATES, ADMITS and DENIES as follows:

1. Progressive lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraphs 1 of Plaintiff's First Amended Complaint and therefore DENIES same.
2. Progressive ADMITS the allegations contained in Paragraph 2 of Plaintiff's First Amended Complaint.

JURISDICTION AND VENUE

3. Progressive DENIES the allegations contained in Paragraph 2 of Plaintiff's First Amended Complaint.
4. Progressive DENIES the allegations contained in Paragraph 2 of Plaintiff's First Amended Complaint.

CLASS ACTION ALLEGATIONS

5. Progressive ADMITS that Plaintiff attempts to bring this action as defined, but to the extent that there are any factual allegations against Progressive, they are DENIED. Progressive further STATES that Plaintiff has failed to state a claim, and further STATES that a class action is not appropriate for Plaintiff's purported definition.

6. Progressive ADMITS that Plaintiff purports to bring a putative class action and to be a representative for a class as stated in Paragraph 6 of Plaintiff's First Amended Complaint, but DENIES any factual allegations against Progressive and DENIES that this case is appropriate for certification as a class action, or that that Plaintiff is an appropriate class representative.

7. Progressive lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraphs 7 of Plaintiff's First Amended Complaint and therefore DENIES same.

8. Progressive ADMITS that Plaintiff purports to certify a class as set forth in the allegation, but DENIES any factual allegations against Progressive, and DENIES that this case is appropriate for certification as a class action.

9. Progressive ADMITS that this case is brought pursuant to Supreme Court Rule 52.08, but DENIES any factual allegations against Progressive, and DENIES that this case is appropriate for certification as a class action under Rule 52.08.

Numerosity – Rule 52.08(a)(1)

10. Progressive DENIES the allegations contained in Paragraph 10 of Plaintiff's First Amended Complaint, and DENIES that any class certification is appropriate.

Existence of Common Questions of Law and/or Fact – Rule 52.08(a)(2)

11. Progressive DENIES the allegations contained in Paragraph 11 of Plaintiff's First Amended Complaint, including all sub-parts contained therein.

12. Progressive DENIES the allegations contained in Paragraph 12 of Plaintiff's First Amended Complaint, including all sub-parts contained therein.

Typicality – Rule 52.08(a)(3)

13. Progressive DENIES the allegations contained in Paragraph 13 of Plaintiff's First Amended Complaint.

Adequacy of Representation – Rule 52.08(a)(4)

14. Progressive DENIES the allegations contained in Paragraph 14 of Plaintiff's First Amended Complaint relating to Plaintiff and STATES it lacks sufficient information to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 14 of Plaintiff's First Amended Complaint relating to counsel and therefore DENIES same.

Risk of Inconsistent and/or Varying Adjudications – Rule 52.08(b)(1)

15. Progressive DENIES the allegations contained in Paragraph 15 of Plaintiff's First Amended Complaint.

16. Progressive DENIES the allegations contained in Paragraph 16 of Plaintiff's First Amended Complaint.

17. Progressive DENIES the allegations contained in Paragraph 17 of Plaintiff's First Amended Complaint.

18. Progressive DENIES the allegations contained in Paragraph 18 of Plaintiff's First Amended Complaint.

The Need For Final Injunctive and/or Declaratory Relief – Rule 52.08(b)(2)

19. Progressive DENIES the allegations contained in Paragraph 19 of Plaintiff's First Amended Complaint.

20. Progressive DENIES the allegations contained in Paragraph 20 of Plaintiff's First Amended Complaint, including all sub-parts contained therein.

Common Questions of Law and/or Fact Predominate – Rule 52.08(b)(1)

21. Progressive DENIES the allegations contained in Paragraph 21 of Plaintiff's First Amended Complaint.

Superiority – Rule 52.08(b)(3)

22. Progressive DENIES the allegations contained in Paragraph 22 of Plaintiff's First Amended Complaint.

GENERAL ALLEGATIONS

23. Progressive ADMITS that Plaintiff entered into insurance contracts with the Defendant, known as a "Missouri Commercial Auto Policy," but DENIES the remaining allegations.

24. Progressive ADMITS that Plaintiff's contracts purported to provide automobile collision and comprehensive insurance coverage, but is without sufficient information to admit or deny allegations relating to other contracts, and they are therefore DENIED.

25. Progressive ADMITS the allegations as they relate to Plaintiff in that he provided Stated Amount as part of his coverage, but DENIES the remaining allegations, and is without sufficient information to admit or deny allegations relating to other purported class members, and they are therefore DENIED.

26. Progressive ADMITS that the Stated Amount was a factor in determining premium, but DENIES the remaining allegations contained in Paragraph 26 of Plaintiff's First Amended Complaint.

27. Progressive DENIES the allegations contained in Paragraph 27 of Plaintiff's First Amended Complaint.

28. Progressive DENIES the allegations contained in Paragraph 28 of Plaintiff's First Amended Complaint.

29. Progressive DENIES the allegations contained in Paragraph 29 of Plaintiff's First Amended Complaint.

COUNT I
BREACH OF CONTRACT

COMES NOW Defendant Progressive, and for its Separate Answer to Count I of Plaintiff's First Amended Complaint STATES, ADMITS and DENIES as follows:

30. For answer to Paragraph 30 of Count I of Plaintiff's First Amended Complaint, Progressive incorporates its statements, averments, denials, and responses to Paragraphs 1 through 29 of Plaintiff's First Amended Complaint as if they were set out at length herein.

31. Progressive DENIES the allegations contained in Paragraph 31 of Plaintiff's First Amended Complaint.

32. Progressive ADMITS the allegations contained in Paragraph 32 of Plaintiff's First Amended Complaint.

33. Progressive ADMITS the allegations contained in Paragraph 33 of Plaintiff's First Amended Complaint.

34. Progressive ADMITS the allegations contained in Paragraph 34 of Plaintiff's First Amended Complaint.

35. Progressive ADMITS that it informed Plaintiff that the actual cash value of the vehicle was \$4,111.00, and that the loss was considered to be a total loss and that Plaintiff was entitled to receive \$4,111.00 less deductible. Progressive DENIES the remaining allegations contained in Paragraph 35 of Plaintiff's First Amended Complaint.

32 [SIC]. Progressive DENIES the allegations contained in Paragraph 32 of Plaintiff's First Amended Complaint.

33 [SIC]. Progressive ADMITS that the term was a material term of the insurance contract, but DENIES the remaining allegations contained in Paragraph 33 of Plaintiff's First Amended Complaint.

34 [SIC]. Progressive DENIES the allegations contained in Paragraph 34 of Plaintiff's First Amended Complaint.

35 [SIC]. Progressive DENIES the allegations contained in Paragraph 35 of Plaintiff's First Amended Complaint.

36 [SIC]. Progressive DENIES the allegations contained in Paragraph 36 of Plaintiff's First Amended Complaint.

37 [SIC]. Progressive DENIES the allegations contained in Paragraph 37 of Plaintiff's First Amended Complaint.

COUNT II
BREACH OF COVENANT OF
GOOD FAITH AND FAIR DEALING

COMES NOW Defendant Progressive, and for its Separate Answer to Count II of Plaintiff's First Amended Complaint STATES, ADMITS and DENIES as follows:

38 [SIC]. For answer to Paragraph 38 of Count II of Plaintiff's First Amended Complaint, Progressive incorporates its statements, averments, denials, and responses to Paragraphs 1 through 29 of Plaintiff's First Amended Complaint as if they were set out at length herein.

39 [SIC]. Progressive STATES that there are no factual allegations contained in Paragraph 39 and therefore no response is necessary. To the extent Paragraph 39 contains any factual allegations regarding Progressive, Progressive DENIES the allegations contained in Paragraph 39 of Plaintiff's First Amended Complaint.

40 [SIC]. Progressive DENIES the allegations contained in Paragraph 40 of Plaintiff's First Amended Complaint.

41 [SIC]. Progressive DENIES the allegations contained in Paragraph 37 of Plaintiff's First Amended Complaint.

COUNT III
BREACH OF CONTRACT -
VALUED POLICY CONTRACT

COMES NOW Defendant Progressive, and for its Separate Answer to Count III of Plaintiff's First Amended Complaint STATES, ADMITS and DENIES as follows:

42 [SIC]. For answer to Paragraph 42 of Count III of Plaintiff's First Amended Complaint, Progressive incorporates its statements, averments, denials, and responses to Paragraphs 1 through 29 of Plaintiff's First Amended Complaint as if they were set out at length herein.

43 [SIC]. Progressive ADMITS that loss by fire was one potential type of loss covered by the policy, but DENIES the allegations contained in Paragraph 43 of Plaintiff's First Amended Complaint.

44 [SIC]. Progressive DENIES the allegations contained in Paragraph 44 of Plaintiff's First Amended Complaint.

45 [SIC]. Progressive DENIES the allegations contained in Paragraph 45 of Plaintiff's First Amended Complaint.

46 [SIC]. Progressive DENIES the allegations contained in Paragraph 46 of Plaintiff's First Amended Complaint.

47 [SIC]. Progressive DENIES the allegations contained in Paragraph 47 of Plaintiff's First Amended Complaint.

COUNT IV
BREACH OF CONTRACT -
CONTRACT OF ADHESION/
REASONABLE EXPECTATIONS

COMES NOW Defendant Progressive, and for its Separate Answer to Count IV of Plaintiff's First Amended Complaint STATES, ADMITS and DENIES as follows:

48 [SIC]. For answer to Paragraph 48 of Count IV of Plaintiff's First Amended Complaint, Progressive incorporates its statements, averments, denials, and responses to Paragraphs 1 through 29 of Plaintiff's First Amended Complaint as if they were set out at length herein.

49 [SIC]. Progressive DENIES the allegations contained in Paragraph 49 of Plaintiff's First Amended Complaint.

50 [SIC]. Progressive STATES that there are no factual allegations contained in Paragraph 39 and therefore no response is necessary. To the extent Paragraph 50 contains any factual allegations regarding Progressive, Progressive DENIES the allegations contained in Paragraph 50 of Plaintiff's First Amended Complaint.

51 [SIC]. Progressive DENIES the allegations contained in Paragraph 51 of Plaintiff's First Amended Complaint.

52 [SIC]. Progressive DENIES the allegations contained in Paragraph 52 of Plaintiff's First Amended Complaint.

53 [SIC]. Progressive DENIES the allegations contained in Paragraph 53 of Plaintiff's First Amended Complaint.

54. Except as otherwise admitted herein, this Defendant DENIES each and every other allegation, averment, statement, fact and/or conclusion plead or averred in Count I of Plaintiffs' Petition.

AFFIRMATIVE DEFENSES


1. Plaintiff fails to state a claim against Progressive upon which relief may be granted.
2. Plaintiff's declaratory and injunctive claims fail because Plaintiff fails to state a justiciable controversy.
3. Progressive has not failed to perform or breached any contractual obligation or agreement.
4. Plaintiff has failed to mitigate his damages, if any, which he alleged incurred.
5. Plaintiff's class allegations should be dismissed on the grounds that Plaintiff has failed to meet the requirements set forth in Mo. R. Civ. P. 52.08, and Plaintiff's purported class definition is overbroad.
6. Plaintiff's claims against Progressive are barred by the doctrines of laches, waiver, estoppel, unclean hands, and *in pari delecto*.
7. Progressive reserves the right to amend its Answer to assert such other, further and additional defenses as are warranted and otherwise determined to be necessary during the pendency of this lawsuit.

WHEREFORE, having fully answered Plaintiff's First Amended Class Action Complaint, Defendant United Financial Casualty Company d/b/a Progressive Insurance Company prays that Plaintiff goes hence, *sine die*, having and recovering nothing from Progressive, that Progressive recover its costs incurred herein from Plaintiff, that the Court grant Progressive an award of expenses, and that the Court grant Progressive such other and further relief as the Court deems is just and proper in the premises.

November 3, 2011

Respectfully submitted,

LATHROP & GAGE LLP

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was served by Electronic Mail and U.S. First-Class Mail, postage prepaid, this 3rd day of November, 2011, on the following counsel:

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An Attorney for Defendant