

IN THE CIRCUIT COURT OF CHRISTIAN COUNTY, MISSOURI

JOHN DOE,)
)
 Plaintiff,)
)
 vs.)
)
 JANE DOE,)
)
 and)
)
 INSURANCE COMPANY)
 Serve: Director of Insurance)
 Missouri Department of Insurance)
 301 West High Street, Room 530)
 Jefferson City, MO 65101)
)
 Defendants.)

Case Number: 11CT-*****

SECOND AMENDED PETITION FOR DAMAGES

COMES NOW Plaintiff, John Doe, by and through his attorneys of record, O’Reilly, Jensen & Preston, LLC, and for his causes of action against Defendants, states, alleges, and otherwise avers as follows:

GENERAL FACTS APPLICABLE TO ALL COUNTS

1. Plaintiff is a resident of Nixa, Christian County, Missouri.
2. Defendant Jane Doe is a resident of Ozark, Christian County, Missouri, and can be served with process at 2151 Longview Road #38, Ozark, Missouri, 65721.
3. Defendant Insurance Company is an insurance company doing business and in good standing in Missouri, which can be served with process as referenced above with the Missouri Department of Insurance.

4. Jurisdiction and venue are proper in this court in that the auto accident which is the subject of this litigation occurred in Christian County, Missouri, and the amount of controversy exceeds Twenty-Five Thousand Dollars (\$25,000.00).

COUNT I – NEGLIGENCE AGAINST JANE DOE

COMES NOW Plaintiff, and hereby asserts the following cause of action against Defendant Jane Doe:

5. Plaintiff hereby incorporates by reference each and every previously pled paragraph.
6. On April 20, 2011, Plaintiff was driving an automobile traveling northbound on Highway 160 near Ozark, Christian County Missouri, 0.2 miles south of the intersection of Highway 160 and CC Highway.
7. Defendant Jane Doe was operating a motor vehicle, moving in the same northbound direction as Plaintiff, and located two vehicles behind Plaintiff.
8. Defendant Jane Doe's phone rang, and she took her eyes off the road and looked down.
9. When Defendant Jane Doe looked back up at the roadway, she noticed that traffic was stopped due to the traffic light at the intersection of Highway 160 and CC Highway, and because a MoDOT truck was striping the highway and had limited and diverted traffic to one lane.
10. Defendant Jane Doe struck the rear of a vehicle driven by Jamie Smith, which was immediately behind Plaintiff's vehicle.

11. The impact between the vehicles driven by Defendant Jane Doe and Jamie Smith caused Jamie Smith's vehicle to move forward and strike the rear end of Plaintiff's vehicle.
12. Plaintiff was stopped in traffic at the time Jamie Smith's vehicle collided with his vehicle.
13. Defendant Jane Doe owed Plaintiff and others a duty to exercise the highest degree of care in the operation of her motor vehicle.
14. Defendant Jane Doe breached that duty of care in the following ways:
 - a. Failing to keep a careful lookout;
 - b. Failing to pay adequate attention to the roadway;
 - c. Rear ending the vehicle in front of her driven by Jamie Smith, causing Jamie Smith to rear-end Plaintiff;
 - d. Following too close;
 - e. Failure to act after danger of collision became apparent;
 - f. Failing to stop, swerve, slacken speed, or sound a warning; and
 - g. Failing to exercise the highest degree of care, or, in the alternative, ordinary care in the operation of a motor vehicle.
15. As a direct and proximate result of Defendant Jane Doe's actions, set forth in the previous paragraphs, Plaintiff has suffered permanent and progressive injury to his head, neck, and back, and upon information and belief, damage to his kidneys and internal organs, past medical bills for reasonable and necessary treatment in an amount presently unknown, and which continues to accrue.

16. Also as a direct and proximate result of Defendant Jane Doe's actions, set forth in the previous paragraphs, Plaintiff has also suffered past, present, and future lost wages; past, present and future pain and suffering; lost enjoyment of life; lost past, present and future household contributions; and future medical care, treatment and expenses, in an amount unknown at this time.

WHEREFORE, premises considered, Plaintiff prays for judgment against Defendant Jane Doe for all actual, incidental and consequential damages, for past and future lost wages, past, present and future pain and suffering, lost enjoyment of life, lost past and future household contributions, past medical bills for reasonable and necessary treatment, and future medical care, treatment and expenses, in an amount unknown at this time, for attorney's fees and costs incurred in this action, and for such other and further relief as this Court deems just and proper under the circumstances.

COUNT II – BREACH OF UNINSURED MOTORIST INSURANCE CONTRACT

COMES NOW Plaintiff, and hereby asserts the following cause of action against Defendant Insurance Company:

17. Plaintiff hereby incorporates by reference each previously pled paragraph.
18. Plaintiff purchased an insurance policy through the Defendant Insurance Company for automobile coverage, including coverage for uninsured motorist protection, with effective policy dates of April 2, 2011 through October 2, 2011.
19. Defendant Insurance Company issued an insurance policy number 4160-**-**-** to Plaintiff as a named insured.
20. As such, the policy was in full force and effect on the date of the auto accident referenced above.

21. Plaintiff was an insured under the coverage of said policy.
22. Plaintiff paid premiums for said coverage, including uninsured motorist protection in the amounts of One Hundred Thousand Dollars (\$100,000.00) per person, and Three Hundred Thousand Dollars (\$300,000.00) per occurrence, and thus is entitled to benefit from the insurance contract's protections. This policy covered a 2002 Chevy Tahoe VIN number ***** and a 2008 Toyota Scion XD with VIN number *****. The policy provides for up to One Hundred Thousand Dollars (\$100,000.00) of uninsured motorist coverage applicable to this accident.
23. As referenced above, Plaintiff sustained bodily injury as a result of Defendant Jane Doe's operation of her motor vehicle.
24. Defendant Jane Doe is legally liable for Plaintiff's bodily injury.
25. Defendant Jane Doe is uninsured and operating an uninsured vehicle at the time of the accident as provided in the insurance policy between Plaintiff and Defendant Insurance Company.
26. All conditions precedent to the liability of Defendant under Plaintiff's own uninsured policy have been met.
27. Plaintiff is legally owed benefits under his uninsured policy for his damages.
28. Defendant Insurance Company has breach its contract for insurance coverage with Plaintiff, and is legally liable for his damages in this lawsuit.
29. On or about December 4, 2012, Plaintiff sent Defendant Insurance Company a demand for settlement of his claim under the uninsured provision of his insurance policy.

30. As a direct and proximate result of that breach, Plaintiff has been damaged, in an exact amount unknown at this time, but in excess of Two Hundred Thousand Dollars (\$200,000.00).

WHEREFORE, Plaintiff prays for judgment against Defendant Insurance Company for all amounts owed to him under the contract for insurance between the parties, in an exact amount unknown at this time, for all of his damages from this accident that remain uncompensated, and for such other and further relief as this Court deems just and proper under the circumstances.

COUNT III – VEXATIOUS REFUSAL TO PAY CLAIM

COMES NOW Plaintiff, by and through his attorney of record, and for Count III of Plaintiffs' *Petition for Damages* against Defendant Insurance Company, hereby states, alleges, and otherwise avers as follows:

1. Plaintiff hereby incorporates by reference each and every previously pled paragraph as if pled herein in this Count III.
2. On or about November 19, 2012, Plaintiff issued a formal demand under Plaintiff's uninsured policy that informed Defendant Insurance Company of his permanent and progressive injury to his neck, shoulders, and back.
3. In the demand letter issued by Plaintiff, he acknowledged that he currently accrued Seven Thousand Two Hundred Fifteen and 55/100 Dollars (\$7,215.55) in medical bills and had significant and permanent injury from the wreck.
4. Defendant Insurance Company has failed to make a payment under and in accordance with the terms of the uninsured contract it has with Plaintiff.
5. Defendant Insurance Company's refusal to pay for the loss incurred by Plaintiff due to this wreck was without reasonable cause or excuse.

6. Pursuant to RSMo § 375.420, Plaintiff is entitled to, in addition to all damages associated with Count II, twenty percent (20%) of the first \$1,500.00 of loss and ten percent (10%) for all losses greater than \$1,500.00, as well as Plaintiff's attorneys fees.
7. As a direct and proximate result of Defendant Insurance Company's refusal, Plaintiff is entitled to additional damages in the amount of One Hundred Thousand and 00/100 Dollars (100,000.00).

WHEREFORE premises considered, Plaintiff prays for Judgment against Defendant Insurance Company in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) pursuant to RSMo §375.420, and for such other and further relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

35. Plaintiff demands a jury trial of all counts of this *Petition for Damages*.

O'REILLY, JENSEN & PRESTON, LLC

By _____
ERIC JENSEN
Missouri Bar No. *****

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon all attorneys of record in this case via Facsimile this ____ day of _____, 2013.

Jane Doe
P.O. Box 664,
Rockaway Beach, MO 65740

Attorney for Plaintiff