

MIDDLESEX, SS COMMONWEALTH OF MASSACHUSETTS SUPERIOR COURT

ANDREA MCLEAN,
Plaintiff
v.
HARLEYSVILLE WORCESTER
INSURANCE COMPANY
Defendant

CASE NO: _____

COMPLAINT

Plaintiff Andrea McLean ("Mrs. McLean") submits this Complaint against Defendant Harleysville Worcester Insurance Company ("Harleysville") for denying coverage for the fire of Mrs. McLean's home.

THE PARTIES

- 1. Mrs. McLean is an individual who resides in Ashland, Massachusetts.
2. Defendant Harleysville is a Massachusetts corporation with its principal place of business at 120 Front Street, Suite 500, Worcester, MA 01608.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over Harleysville because it transacts business in the Commonwealth, and because the acts and conduct that are the subject matter of this action arose from Harleysville's transaction of business in the Commonwealth.

4. Venue is proper in this county because Mrs. McLean lives in this county.

FACTUAL ALLEGATIONS

5. Mrs. McLean and her husband, Weldon McLean ("Mr. McLean"), were insureds under a homeowner policy issued by Harleysville. The mortgagee, North Brookfield Savings Bank ("NBSB"), was also an insured under the policy.
6. On or about March 10, 2010, the home was destroyed by fire.
7. A claim was made under the policy shortly after the loss.
8. On information and belief, NBSB also submitted a claim to Harleysville under the policy.
9. On information and belief, recognizing that there was, in fact, coverage under the policy, Harleysville paid NBSB its full claim, but less than the total loss.
10. On information and belief, NBSB then assigned its rights under the mortgage to Harleysville.
11. At no time did either NBSB or Harleysville inform Mrs. McLean that Harleysville had agreed to pay NBSB under the policy.
12. At no time did either NBSB or Harleysville inform Mrs. McLean that her mortgage had been assigned, despite federal laws requiring them to do so.
13. Mrs. McLean fully cooperated with Harleysville's investigation of the claim by, among other things, submitting herself for deposition. She likewise provided Harleysville all the documents she had concerning the claim.
14. On or about January 17, 2013, however, Harleysville denied Mrs. McLean's claim by inventing wholly concocted and inapplicable reasons that she (in comparison with NBSB) was not entitled to coverage under the claim.

15. Harleysville, for example, denied Mrs. McLean coverage because Mr. and Mrs. McLean allegedly failed to provide documents, and failed to execute the errata sheets to their depositions, despite the fact that both depositions were under oath, and that there could therefore not possibly be any prejudice in Harleysville allegedly not receiving the errata sheets.

16. Harleysville similarly informed Mrs. McLean that the section of the policy that purports to limit the statute of limitations of any court action to two years after the loss prevents her from bringing this action, despite the fact that Harleysville only rendered its claims decision this year.

17. Harleysville likewise denied Mrs. McLean coverage under the policy because it believes Mr. McLean set the fire. Just as NBSB is a separate insured and was entitled to coverage because it was not involved in the fire, however, Mrs. McLean is likewise a separate insured and was entitled to coverage because she was not involved in the fire.

CLAIMS FOR RELIEF

COUNT I - Breach of Contract

18. Mrs. McLean incorporates all other allegations in this Complaint.
19. Harleysville issued a binding policy of insurance to Mrs. McLean.
20. Mrs. McLean performed all of her obligations under the policy.
21. Harleysville's denial of Mrs. McLean's claim breached the policy.
22. Mrs. McLean was damaged.

COUNT II - Declaratory Judgment

23. Mrs. McLean incorporates all other allegations in this Complaint.

24. A dispute exists between Harleysville and Mrs. McLean as to whether coverage exists under the policy.

25. The Court should enter an order that there is in fact coverage for the claim under the policy.

COUNT III – Violation of Chapter 93A

26. Mrs. McLean incorporates all other allegations in this Complaint.

27. Harleysville's wrongful conduct occurred in trade or commerce and primarily and substantially in the Commonwealth.

28. On or about August 9, 2013, Mrs. McLean sent a demand letter pursuant to Chapter 93A.

29. Harleysville responded, but failed to make any settlement offer.

30. Harleysville's conduct violated Chapter 176D.

31. Harleysville misrepresented pertinent facts and insurance policy provisions relating to coverages at issue. Harleysville, for example, misrepresented whether it had received the errata sheets from Mr. and Mrs. McLean. Harleysville misrepresented, by omission, that it had decided that there was in fact coverage and had paid NBSB under its claim for the same loss. Harleysville misrepresented that the statute of limitation provision was applicable. Harleysville misrepresented that it could deny coverage for the failure to sign an errata sheet, when it was not prejudiced by such failure.

32. Harleysville failed to acknowledge and act reasonably promptly upon communications with respect the claim.

33. Harleysville failed to adopt and implement reasonable standards for the prompt investigation of the claim.

34. Harleysville refused to pay the claim without conducting a reasonable investigation based upon all available information.

35. Harleysville failed to affirm or deny coverage of the claim within a reasonable time.

36. Harleysville failed to effectuate a prompt, fair and equitable settlement of the claim.

37. Harleysville failed to provide promptly a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of the claim.

38. Harleysville compelled Mrs. McLean to institute this litigation in order to recover the amounts due to her under the policy.

39. Harleysville's wrongful acts caused Mrs. McLean damage.

WHEREFORE, Mrs. McLean requests judgment against Harleysville in an amount to be determined at trial, together with triple damages and attorney fees, and that the Court grant such other relief as is just and proper.

Jury Demand: Mrs. McLean demands a trial by jury on all issues so triable.

Dated: October 1, 2013

ANDREA MCLEAN
By her attorneys



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