

RETURN DATE: JANUARY 8, 2019 : SUPERIOR COURT
WILLIAM GHIO AND JANET GHIO : J.D. OF HARTFORD
V. : AT HARTFORD
LIBERTY INSURANCE UNDERWRITERS, INC.,
WHITE & CASE LLP, JOSHUA BERMAN,
BAILEY CAVALIERI LLC, R. STACY LANE,
BACK9 NETWORK, INC., PAUL PENDERGAST,
J. REID GORMAN, CARLOS SILVA, AND
CHARLES COX : DECEMBER 3, 2018

COMPLAINT

COUNT ONE

1. The plaintiffs William and Janet Ghio had commenced a lawsuit entitled *William Ghio v. Paul Pendergast, et al.*, Docket No. HHD-CV-15-6058382 S, in Hartford Superior Court in Hartford, Connecticut, and named therein as defendants a corporation named Back9 Network, Inc. ("Back9"), Paul Pendergast, J. Reid Gorman, Carlos Silva and Charles Cox, which individuals were all officers of said Back9 (collectively the "original defendants").

2. At all times from the commencement of the action until October 10, 2018, defendant Liberty Insurance Underwriters, Inc. ("Liberty" or "insurance company") not only provided an active defense in regard to the claims under its Policy No. DONYA AOAZK003, but failed and neglected to

provide any disclaimer or reservation of rights as to all insureds in regard to coverage for the claims asserted by the plaintiffs until near the eve of trial.

3. Trial was scheduled to commence with jury selection on October 23, 2018 and evidence to start on October 29, 2018. On or about October 10, 2018, the defendant R. Stacy Lane ("Lane") an attorney of the defendant law firm of Bailey Cavalieri LLC ("Bailey"), was engaged by Liberty as coverage counsel, and advised defendant Attorney Berman, an attorney of the defendant law firm of White & Case LLP representing the original defendants, that the insurance company was declining coverage and indemnity in regard to the plaintiffs' claims (hereinafter referred to as the "Lane letter").

4. Same was communicated to the plaintiffs' attorney by Attorney Berman, including a copy of the October 10, 2018 Lane letter.

5. Thereafter the plaintiffs and the original defendants negotiated a stipulation which was finalized on or about October 22, 2018, which stipulation was entered by the court on October 23, 2018, and which represented that Liberty was declining coverage as to plaintiffs' claims. Attorney Berman and the original defendants executed said stipulation which included the representation aforesaid.

6. As a result of the October 10, 2018 Lane letter, the plaintiffs' counsel wrote a communication to the defendant Lane contesting the basis for the denial of coverage, but Attorney Lane instructed plaintiffs' attorney not to contact him as coverage counsel, notwithstanding the denial of coverage. The e-mail was intended to provide notice to Liberty of plaintiffs' position. No further communication was received from coverage counsel until after the stipulation was entered in court.

7. In the stipulation for judgment, the original defendants agreed to a total judgment of \$1,901,056, and those original defendants, Liberty's insureds, assigned all of their rights under the Liberty policy to the plaintiffs herein.

8. Thereafter demand was made on the defendant Liberty to pay said judgment pursuant to Connecticut General Statutes §38a-321 and to honor Liberty's contract with its insureds. More than thirty (30) days has elapsed from the date of said demand and from the date of judgment, yet the defendant Liberty has declined and refused to pay said judgment.

9. The plaintiffs seek to enforce the judgment pursuant to C.G.S. §38a-321, and pursuant to the assignment of the Liberty insureds' rights pursuant to the stipulation for judgment.

COUNT TWO (As to the defendant Liberty)

1-9. Paragraphs 1 through 9 of Count One are hereby made paragraphs 1 through 9 of this Count Two, as if fully set forth herein.

10. The aforesaid conduct of the defendant Liberty was in bad faith, including *inter alia* the involvement of coverage counsel on the eve of trial and the representations made to Berman, which denied coverage in regard to the plaintiffs' claims.

11. As is evident from the case herein, there were two plaintiffs and five defendants in the Back9 case, as a result thereof the plaintiffs maintain that the defendant Liberty violated the Connecticut Unfair Insurance Practice Act, C.G.S. § 38a-815 *et seq.* ("CUIPA") and in particular violations of § 38a-816 *et seq.*, in one or more of the following ways:

a. it failed to timely reserve its rights in regard to its insureds who were represented by Attorney Berman, who was counsel retained by the defendant Liberty to represent the original defendants;

b. Liberty was legally required to properly set forth and identify any rights of reservation and to disseminate those to each insured, so that the insureds would be fully aware of their exposure and consequences of said litigation;

c. Liberty provided a defense through the defendant Attorney Berman as to its insureds while plotting the denial of coverage through coverage counsel, without requiring full transparent communication by and between coverage counsel and plaintiffs' counsel;

d. Liberty denied coverage based on wrongful interpretation of the allegations of the plaintiffs' complaint and Connecticut Law, attempting to limit Liberty's exposure;

e. Any reservations of rights letters were poorly articulated in terms of coverage Liberty's denial of indemnity;

f. The defendant Liberty failed to timely provide any such reservation of rights letters and/or failed to timely refuse to provide coverage;

g. The defendant Liberty failed in good faith to effectuate a fair and equitable settlement;

h. The defendant Liberty failed to reasonably participate in settlement discussions in regard to the plaintiffs' claims, and further failed to reasonably articulate reasons why it would not so participate;

i. Still further, the defendant Liberty when it discussed a settlement proposal with Berman, it did so for an unreasonable amount, and made

demands on the defendants that they pay an amount greater than the deductible under the terms of the policy;

j. Further, in an effort to avoid claims of wrongful conduct, the defendant Liberty sought to rely upon a reservation of rights letter to a different insured sent to a different lawyer years earlier, as if that provided an excuse in regard to the its failure to provide any such reservation of rights letters to each of the insureds in the Back9 case;

k. Most notably, defendant Liberty misled its insureds as to coverage for plaintiffs' claims and allowed the stipulation to be executed by Attorney Berman and its insureds and then subsequently claimed there was no denial of coverage and its insureds had no right to enter into said stipulation.

12. As a result of the violations as aforesaid, which were multiple in nature in regard to two plaintiffs and five defendants, the plaintiffs maintain that same constitutes CUIPA violations and hence a CUTPA violation, all to the special loss and damages of the plaintiffs herein.

13. At all times relevant hereto, the conduct of the defendants offended public policy; was immoral, oppressive, unethical and unscrupulous; and caused substantial injury to plaintiffs; thereby violating the Connecticut Unfair Trade

Practices Act ("CUTPA") C.G.S. § 42-110a, *et seq.*, as made and provided, resulting in ascertainable losses to the plaintiffs as set forth herein.

COUNT THREE (As to the defendants White & Case LLP and Joshua Berman)

1-9. Paragraphs 1 through 9 of Count One are hereby made Paragraphs 1 through 9 of this Count Three, as if fully set forth herein.

10. Since making demand on the defendant Liberty, its coverage counsel (defendant Lane) claims that in fact Liberty had backpedaled and was prepared to provide coverage to its insureds under the policy, and seeks to undermine the enforceability of the stipulation notwithstanding the conduct of Liberty up to the eve of trial, and notwithstanding the letter of disclaimer from Liberty's coverage counsel.

11. If there is a determination that Liberty had not denied coverage, and the stipulation was wrongfully executed by Attorney Berman and the original defendants, then Berman negligently misrepresented such denial of coverage. The terms of the stipulation clearly reflect that Liberty was denying coverage in regard to the plaintiffs' claims, which representation plaintiff relied upon, all to the special loss and damage of the plaintiffs herein.

12. The full extent of communications between the defendant Berman, the defendant Lane and the defendant Liberty are unknown and while

Berman obligated himself to produce all such communications, thus far he has failed and neglected to do so.

COUNT FOUR (As to the defendants Bailey and R. Stacy Lane)

1-9. Paragraphs 1 through 9 of Count One are hereby made Paragraphs 1 through 9 of this Count Four, as if fully set forth herein.

10. The October 10, 2018 Lane letter clearly denies coverage for any judgment that may be awarded to the plaintiffs' in the original lawsuit, as a result of which plaintiffs' counsel wrote to the defendant Lane challenging same. The defendant Lane on behalf of his client, Liberty, disavowed the right or propriety of the undersigned to contact the defendant Lane and refused any communication with the undersigned. Under the facts and circumstances herein, the conduct of the defendant Lane and the Bailey law firm constituted a negligent misrepresentation of a material omission by failing to advise plaintiffs' counsel that Liberty was in fact providing indemnity and coverage.

11. The failure of the defendant Lane to timely advise the undersigned that in fact Liberty would cover plaintiffs' claims and that Liberty was not disavowing its responsibility to its insureds led to the plaintiffs to enter into the stipulation aforesaid, on account of which the plaintiffs have been

damaged, if and to the extent the court finds the stipulated judgment to be unenforceable against the defendant Liberty.

COUNT FIVE (As to all defendants Back9, Pendergast, Gorman, Silva and Cox)

1-9. Paragraphs 1 through 9 of Count One are hereby made paragraphs 1 through 9 of this Count Five, as if fully set forth herein.

10. The original defendants' represented that the defendant Liberty denied coverage as to plaintiffs' claims which representation was included in the stipulation. If Liberty was not declining coverage, then the original defendants either negligently and/or intentionally misrepresented same upon which plaintiffs relied, all to the special loss and damage of the plaintiffs herein.

WHEREFORE the plaintiffs claim:

1. Damages;
2. Damages pursuant to C.G.S. § 42-110g;
3. Punitive damages pursuant to C.G.S. § 42-110g(a);
4. Attorney's fees pursuant to C.G.S. § 42-110g(d);
5. Pre and post-judgment interest;
6. Such other legal and equitable relief as the court deems

appropriate.

PLAINTIFFS

By 

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STATEMENT OF AMOUNT IN DEMAND

The amount in demand is greater than Fifteen Thousand and 00/100
(\$15,000.00) Dollars, exclusive of interest and costs.

PLAINTIFFS

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