

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AUDRIUS DIDJURGIS, individually and on)	
behalf of all those similarly situated,)	
)	
Plaintiff,)	
)	No. 1:23-cv-2706
v.)	
)	Class Action
UNIQUE INSURANCE COMPANY,)	
)	Jury Trial Demanded
Defendant.)	
)	

CLASS ACTION COMPLAINT

Plaintiff, AUDRIUS DIDJURGIS (“Plaintiff” or “Didjurgis”), by and through his undersigned counsel, Keith L. Gibson and Bogdan Enica, on behalf of himself and all those similarly situated, brings this Class Action Complaint against UNIQUE INSURANCE COMPANY (“Defendant” or “Unique”), alleging as follows:

INTRODUCTORY STATEMENT

1. This is an Illinois class action seeking monetary damages, restitution, injunctive and declaratory relief from Defendant, UNIQUE INSURANCE COMPANY, for its fraudulent conduct in seeking payments from Plaintiff arising out of an automobile accident.
2. This class action arises from the deceptive, unfair and misleading demands for payment related to insurance claims arising in the State of Illinois and Nationwide.
3. Defendant sent harassing letters to Plaintiff and other consumers making

unfounded threats regarding the collection of what it claimed were outstanding amounts owed to Defendant resulting from an automobile subrogation claim.

4. Relying on the misleading and deceptive letters from Defendant, Plaintiff and the Class Members made payments to Unique based on false claims of a determination on liability and threats that Unique had the power to have Plaintiff and the Class Members' drivers' licenses suspended.

5. This matter is brought as a class action on behalf of all persons defined below as the "Class", asserting claims against Unique Insurance Company for violations of the Illinois Consumer Fraud Act ("ICFA") 815 ILCS 505/1, common law fraud and unjust enrichment. Plaintiff seeks, *inter alia*, damages and injunctive relief.

PARTIES

6. Plaintiff, Audrius Didjurgis, is a citizen of Illinois who resides in Clarendon Hills, IL and is otherwise *sui juris*.

7. Plaintiff brings this action on his own behalf and on behalf of all other persons similarly situated individuals ("Class Members").

8. Defendant, Unique Insurance Company, is an Illinois insurance company with its headquarters and principal place of business in Cook County, Illinois.

9. Upon information and belief, Unique issues policies of insurance in numerous states throughout the United States.

10. Upon information and belief, Unique sends subrogation demand letters to consumers in numerous states throughout the United States.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(d) because it is brought as a class action, on behalf of a class of over 100 class members, whose claims aggregate in excess of \$5 million dollars, and which includes members whose state citizenship is diverse from that of Defendant.

12. This Court has personal jurisdiction over Defendant because Defendant is authorized to conduct and do business in Illinois, including this District. Defendant marketed and sold policies of insurance in Illinois and sent subrogation letters to individuals residing in Illinois. Defendant has sufficient minimum contacts with this State and/or has sufficiently availed itself of the markets in this State to render the exercise of jurisdiction by this Court permissible.

13. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events giving rise to Plaintiff's claims occurred while he resided in this District.

FACTUAL ALLEGATIONS

THE ACCIDENT

14. On or about June 26, 2022, Mr. Didjurgis' agent and driver, Mr. Martin Barahona, was involved in a two-vehicle accident in Chicago, Illinois at approximately 7:30 pm. As a result of the accident, the two automobiles involved sustained damage.

15. The accident occurred at the intersection of Madison Street and Wabash Avenue, Chicago, Illinois. At that intersection, there are two right turn lanes. Both vehicles were attempting to turn right onto Madison Street from Wabash Street and collided in the course of making the right turn.

16. Immediately after the accident, both drivers stopped and exchanged insurance and identifying information.

17. No police officer was called to the scene and no police report was filled out at the scene.

18. The vehicle driven by Mr. Barahona, a Dodge Ram 3500 truck, was owned and titled in the name of United Business Corporation, located in Hinsdale, Illinois (the “Plaintiff’s Vehicle”). Didjurgis is the owner of United Business Corporation.

19. At the time of the accident, the Plaintiff’s Vehicle was insured by Artisan & Truckers Casualty Co.

20. At the scene of the accident, Mr. Barahona provided the insurance information for Plaintiff’s vehicle to the other driver. Mr. Barahona also provided a copy of his driver’s license to the other driver. The other driver took photographs on his phone of the Plaintiff’s Vehicle insurance information and Mr. Barahona’s driver’s license information.

21. Mr. Barahona satisfied all of his obligations to provide identification and insurance information to the other driver at the accident scene.

22. At the time of the accident, Unique provided automobile insurance coverage applicable to the other vehicle (the “Unique Insured Vehicle”).

23. Unique’s insured was Joseph Chamochochumbi, Unique policy number ILVS4032008 with effective date February 18, 2022, to August 18, 2022.

24. At the time of the accident, the Unique Insured Vehicle was driven by an individual identifying himself as Jayson Alejandro Chamochochumbi.

25. At the scene of the accident, the Unique Insured Vehicle's driver, Jayson Chamochumbi, provided a copy of his driver's license and insurance information to the driver of the Plaintiff's vehicle, Mr. Barahona.

26. No Court or jury has ever made a determination of liability or fault for the June 26, 2022, accident at issue.

UNIQUE INSURANCE DEMAND LETTERS

27. Upon information and belief, subsequent to the accident, Unique allegedly paid some amount of damages and/or repairs made to the Unique Insured Vehicle.

28. By letter dated October 10, 2022, Unique sent Mr. Didjurgis a demand letter seeking payment on an "Amount of the Claim" of \$730.15. (See attached Ex. 1). The demand letter went on to state that "Our investigation of the accident has determined that you were negligent and therefore responsible for the damages and/or injuries, we have paid on behalf of our insured". The letter demands payment be made to "Unique Insurance Company, 7400 N. Caldwell Avenue, Niles IL 60714.

29. The demand letter also states, in bold and underlined type face, as follows:

Please be advised, if you do not respond to this letter, we will have your driving privileges suspended and we will initiate a lawsuit against you on behalf of our insured.

30. At no time prior to sending the subrogation demand letter did Unique attempt to contact Mr. Didjurgis.

31. At no time prior to sending the subrogation notice did Unique attempt to contact Mr. Didjurgis' agent, Mr. Barahona, who was driving his vehicle at the time of the accident.

32. At no time prior to sending the subrogation demand letter did Unique provide Mr. Didjurgis with any information or documents supporting their demand.

33. At no time prior to sending the subrogation demand letter did Unique perform any investigation of the accident.

34. Upon receiving the October 10th letter, Mr. Didjurgis caused a payment to be made in the amount of \$730.15 to Unique Insurance by Just Car Haulers, Inc. Didjurgis reimbursed Just Car Haulers for this payment on a later date.

35. By letter dated January 5, 2023, Unique sent Mr. Didjurgis a supplemental demand letter seeking payment on an “Amount of the Claim” of \$2,779.34. (See Exhibit 2). The January 5, 2023, letter is identical to the October 10th letter in all material respects except the amount of the claim.

36. By letter dated March 9, 2023, Unique sent Mr. Didjurgis a supplemental demand letter, with a stamp indicating “SECOND REQUEST”, again seeking the “Supplement demand \$2,779.34”. (See Exhibit 3).

37. At no time prior to the sending of any of the above referenced letters did any Court or jury make a determination of liability or fault for the June 26, 2022, accident at issue.

GENERALLY

38. At the time the subrogation demand letters referenced above were sent, Plaintiff was not indebted to Unique for any amount of money whatsoever.

39. Unique’s subrogation demand letter dated October 10, 2022, states an “Amount of the Claim” as \$730.15.

40. Unique's subrogation demand letter dated January 5, 2023, states an "Amount of the Claim" as \$2,779.34.

41. Even so, the subrogation notices referenced above were designed to appear as demand letters of a definite and due and owing debt. The letters were signed by a "Subrogation Adjuster" and the letters threaten in bold print "**Please be advised, if you do not respond to this letter, we will have your driving privileges suspended and we will institute a lawsuit against you on behalf of our insured.**".

42. The subrogation demand letters referenced above included the threat of a suspension of Plaintiff's driver's license if payment was not made for the purported "Amount of the Claim".

43. At no time did Unique have the legal or statutory power to suspend Plaintiff's driving privileges.

44. Unique does not have, and has never had, the legal power to suspend an individual's driving privileges.

45. Unique's statement that it "will have your driving privileges" suspended is deceptive, misleading and false.

46. Unique knew at the time it sent the October 10, 2022, January 5, 2023, and March 9, 2023, subrogation demand letters that it did not have the legal or statutory authority to suspend Plaintiff's driver's license.

47. Unique's subrogation demand letters state "Our investigation of the accident has determined that you were negligent and therefore responsible for the damages and/or injuries, we have paid on behalf of our insured".

48. Unique conducted no investigation of the accident.

49. Unique did not attempt to contact Plaintiff or his driver that was involved in the accident.

50. Unique did not speak with the Plaintiff or his driver.

51. Unique made no investigation of whether Plaintiff's vehicle was insured and made no attempt to determine if Plaintiff has insurance applicable to this accident.

52. Unique did not have the legal authority to make a determination that Plaintiff, or his driver, was "negligent and therefore responsible for the damages and/or injuries, we have paid on behalf of our insured".

53. Under Illinois law, the determination of negligence and responsibility for an accident is reserved solely to our judicial system and through a determination by a Court or jury of his peers.

54. Unique's statement in its demand letter that it conducted an investigation of the accident was knowingly misleading, deceptive and false.

55. Unique's statement in its demand letters that Plaintiff was negligent and responsible for the damages and/or injuries was knowingly misleading, deceptive and false.

56. At the time the Defendant sent their subrogation demand letters, Defendant possessed, at best, a potential, unliquidated claim based on a subrogated interest from its insured.

57. Defendant's acts and practices in connection with the purported "collection" efforts, as set forth above, were unfair and deceptive.

58. Defendant's knowingly misleading, deceptive and false statements caused

Plaintiff to make a payment to Defendant that he was not legally obligated to pay.

59. Defendant's unfair and deceptive acts and practices, as set forth above, have injured and continue to injure the public interest.

CLASS ALLEGATIONS

60. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully re-written herein.

61. Plaintiff asserts the counts stated herein as class action claims pursuant to Federal Rule of Civil Procedure 23.

62. Plaintiff asserts claims on behalf of himself, and on behalf of all others similarly situated (the "Class").

63. The Class is comprised of the following:

All persons in the United States against whom Defendant has utilized debt-collection type practices arising from an alleged subrogation interest and the person(s) paid some amount of money to Defendant as a result.

64. Plaintiff is filing this lawsuit on behalf of Class members from June 26, 2017, to the present ("Class Period").

65. The Class excludes counsel representing the class, governmental entities, Defendant, any entity in which Defendant has a controlling interest, Defendant's officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns, any judicial officer presiding over this matter, the members of their immediate families and judicial staff, and any individual whose interests are antagonistic to other putative class members.

66. Plaintiff reserves the right to amend or modify the class descriptions with

greater particularity or further division into subclasses or limitation to particular issues.

67. This action has been brought and may properly be maintained as a class action under Federal Rule of Civil Procedure 23 because it is a well-defined community of interest in the litigation and the class is readily and easily ascertainable.

68. Numerosity: Thousands of consumers have been injured by Defendant's deceptive and fraudulent practices, including Plaintiff. They all have received subrogation collection letters from Defendant and been the victim of Defendant's illegal practices.

69. The Class represented by Didjurgis has thousands of members and the joinder of all members is impracticable.

70. Typicality: Plaintiff's claims are typical for the class and, as the named Plaintiff, he is aware of other persons in the same situation. Plaintiff and the members of each class sustained damages arising out of Defendant's illegal course of business.

71. Commonality: Since the whole class, the questions of law and fact are common to the class.

72. Adequacy: Didjurgis will fairly and adequately protect the interests of each class they represent. Plaintiff's Counsel is experienced in prosecuting consumer class actions and will properly represent the class.

73. Superiority: As questions of law and fact that are common to class members predominate over any questions affecting only individual members, a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

COUNT I: COMMON LAW FRAUD

74. Plaintiff incorporates by reference paragraphs 1-59 of this Complaint as if fully re-written herein. Didjurgis asserts this count on his own behalf and on behalf of the Class, as defined above, pursuant to Federal Rule of Civil Procedure 23.

75. Defendant made false statements of material fact to the Plaintiff.

76. Defendant's statement that Defendant will have Plaintiff's driving privileges suspended was false as Defendant had no power to have Plaintiff's driving privileges suspended.

77. Defendant's statement that its investigation of the accident determined Plaintiff's negligence and responsibility for the damages and/or injuries was false as Defendant did not conduct any investigation and had no legal authority or power to determine Plaintiff's responsibility for the damages and/or injuries.

78. Defendant knew its statements were false at the time they were made.

79. Defendant made the false statements with the intent that Plaintiff rely on them to make payments to Defendant.

80. Defendant made the false statements with the intent that Plaintiff rely on the statements to make a payment to Defendant in the amount claimed in the demand letters.

81. Plaintiff acted in reliance on the Defendant's false statements.

82. Plaintiff caused a payment to be made to Defendant in the amount of \$730.15 in reliance on Defendant's false statements.

83. Plaintiff suffered damages in the form of the payment made to Defendant in reliance on the false statements.

**COUNT II: VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND
DECEPTIVE TRADE PRACTICES ACT**

84. Plaintiff incorporates by reference paragraphs 1-59 of this Complaint as if fully re-written herein. Plaintiff asserts this count on his own behalf and on behalf of the Class, as defined above, pursuant to Federal Rule of Civil Procedure 23.

85. The Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS §§ 505/1, et seq., prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”. 815 ILCS § 505/2.

86. The ICFA applies to Defendant’s acts as described herein because it applies to transactions that occur in the course of conduct involving trade or commerce.

87. Defendant is a “person” as defined by section 505/1(c) of the ICFA.

88. Defendant’s activity is within the meaning of “trade” or “commerce” under the ICFA.

89. Defendant’s misrepresentations and false statements are deceptive and unfair acts and practices prohibited by Chapter 2 of ICFA.

90. Defendant’s deceptive and unfair acts create a likelihood of confusion and misunderstanding as to the Defendant’s legal right to suspend Plaintiff and Class Members’ driver’s licenses, as indicated in the subrogation demand letters, in violation of 815 ILCS 510/2(a)(12).

91. Defendant's deceptive and unfair acts create a likelihood of confusion and misunderstanding as to the Defendant's investigation and determination of negligence and responsibility for damages and injuries, as indicated in the subrogation demand letters, in violation of 815 ILCS 510/2(a)(12).

92. Plaintiff and the Class Members relied upon Defendant's misrepresentations, omissions and false statements when they made payments to Defendant.

93. Defendant's actions violate section 510/2(a)(12) of the DTPA by creating a likelihood of confusion and misunderstanding as to Defendant's legal authority as to the stated actions and as to Plaintiff's obligation to pay the requested "Amount of the Claim".

94. Plaintiff and the Class reasonably relied on Defendant's misrepresentations and omissions when they made claims payment to Defendant.

95. Defendant's misrepresentations and omissions regarding the subrogation demand letters were likely to mislead the Plaintiff and the Class members acting reasonably under the circumstances, and thus constitute unfair and deceptive trade practices in violation of ICFA.

96. As a direct and proximate result of Defendant's violation of the ICFA, Plaintiff and the Class Members have suffered harm in the form of monies paid to Defendant to satisfy the claims they were not legally obligated to pay.

97. Defendant's practices set forth herein offend public policy, were and are immoral, unethical, oppressive, and unscrupulous, and cause substantial injuries to consumers.

COUNT III: UNJUST ENRICHMENT

98. Plaintiff incorporates by reference all paragraphs 1-59 of this Complaint as if fully rewritten herein. As set forth above, Plaintiff asserts this count on his own behalf and on behalf of all other similarly situated persons.

99. By paying the amount of the claim demanded by Defendant, Plaintiff and the Class Members conferred a direct benefit to the Defendant.

100. Persons that are members of the class continue to suffer injuries as a result of the Defendant's behaviors. If the Defendant does not compensate the Plaintiff and Class Members, Defendant would be unjustly enriched as a result of its unlawful act or practices.

101. It is an equitable principle that no one should be allowed to profit from his own wrong, therefore it would be inequitable for the Defendant to retain said benefit, reap unjust enrichment.

102. Since the Defendant unjustly enriched itself at the expense of the Plaintiff and Class Members, the Plaintiff requests the disgorgement of these ill-gotten money.

103. Due to Defendant's conduct, Plaintiff and the putative Class Members are entitled to damages.

DEMAND FOR JURY TRIAL

104. Plaintiff and those similarly situated demand a trial by jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, AUDRIUS DIDJURGIS, respectfully requests that judgment be entered in his favor and in favor of those similarly situated as follows:

- a. Certifying and maintaining this action as a class action, with the named Plaintiff as designated class representatives and with his counsel appointed as class counsel;
- b. Declaring the Defendant in violation of each of the counts set forth above;
- c. Awarding the Plaintiff and those similarly situated compensatory, punitive, and treble damages;
- d. Awarding the Plaintiff and those similarly situated liquidated damages;
- e. Order the disgorgement of ill-gotten monies;
- f. Awarding the named Plaintiff a service award;
- g. Awarding pre-judgment, post-judgment, and statutory interest;
- h. Awarding attorneys' fees and costs;
- i. Awarding such other and further relief as the Court may deem just and proper.

Dated: May 1, 2023

Respectfully Submitted,

s/Keith Gibson
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