

IN THE COURT OF COMMON PLEAS OF BLAIR COUNTY, PENNSYLVANIA

PROFESSIONAL, INC. d/b/a,
PROFESSIONALS AUTO BODY

Plaintiff

VS.

KEMPER INDEPENDENCE INSURANCE COMPANY,

Defendant

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: NO. 2017 GN _____
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: CIVIL ACTION - LAW
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: JURY TRIAL DEMANDED

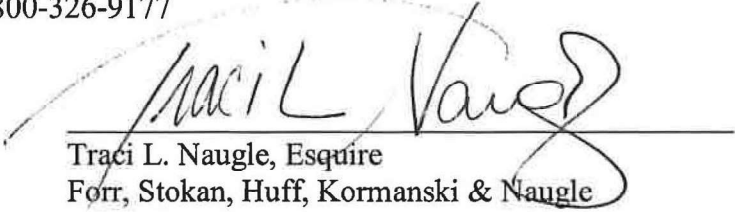
NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within **TWENTY (20) DAYS** after this **COMPLAINT** and **NOTICE** are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the **COMPLAINT** or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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CAROL A. NEWMAN
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COMPLAINT

TO THE HONORABLE, THE JUDGES OF SAID COURT:

AND NOW, to wit, comes the Plaintiff, PROFESSIONAL, INC. d/b/a PROFESSIONALS AUTO BODY (hereinafter "Professionals"), who by and through its counsel, FORR, STOKAN, HUFF, KORMANSKI & NAUGLE, ESQUIRE, does hereby file this COMPLAINT against the above named Defendant averring as follows:

1.

Plaintiff, Professional, Inc., d/b/a Professionals Auto Body, is a corporation incorporated pursuant to the laws of the Commonwealth of Pennsylvania with a principal place of business located at 1109 Plank Road, Duncansville, Blair County, Pennsylvania.

2.

Defendant, Kemper Independence Insurance Company, is an insurance company registered to do business with the Pennsylvania Insurance Department with a Pennsylvania address of 12926 Gran Bay Parkway West, Jacksonville, Florida 32258.

3.

Plaintiff, Professionals, is an automobile body repair shop with locations in the Duncansville and Altoona areas.

4.

Defendant is an insurance company licensed to and does actually provide automobile insurance coverage for automobile owners in the Commonwealth of Pennsylvania.

5.

In the Commonwealth of Pennsylvania, the right of the owner of a damaged automobile to choose a repair shop is preserved by Pennsylvania law at 63 P.S. §861.

6.

At various times between September, 2013 up through the date of this filing, individuals insured by Defendant have brought their automobiles to the plaintiff's auto body repair shop for repairs that were to be covered pursuant to each insurance policy whether the policy was by and between the owner of the automobile or a policy with the liable third party.

7.

The many automobile owners hereinafter referenced did select Professional to make repairs to their damaged automobiles and provided a written authorization to Professionals to perform those repairs reasonable and necessary for the vehicles to be brought back into their pre-loss condition.

8.

Each individual automobile owner did also execute an assignment of proceeds authorizing Professionals to recover any unpaid amount for services rendered and repairs made by plaintiff, Professionals, pursuant to their request and authorization of each automobile owner.

9.

Defendant has failed to make payment to Professionals for services provided therefore

has a collective sum due and owing to Professionals in the amount no less than \$5,240.99, together with the delay time costs of \$51,474.98, together with the administrative costs of \$2,709.00 for a total amount of no less than \$59,424.97.

10.

Despite numerous requests made by Professionals to Defendant, Defendant has indicated that it will not be paying the full sum due and owing for parts, labor, repairs made and other services rendered by Professionals to each individual automobile owner.

11.

Due to the refusal of Defendant to make payment of the full sum due and owing to Professionals for services provided relative to each automobile owner Professionals has been greatly damaged by the loss of income, need to utilize additional administrative resources to obtain any payment, delay in repair cycles and the provision of parts and services for which it was never properly compensated by the various insurers.

12.

Over a period of years, Defendant has engaged in intentional, ongoing and concerting courses of conduct in order to improperly and illegally control and depress the costs of automobile repairs, which has all been to the detriment of Plaintiff and the substantial benefit of Defendant.

13.

Plaintiff has been put in the untenable position of having to provide all necessary repair services in order to bring each damaged vehicle back to its pre-loss condition without ever receiving full reimbursement for the labor and costs involved in making those necessary repairs, which has resulted in Plaintiff regularly making repairs without compensation and to its own financial detriment.

14.

Attached to this Complaint as Exhibit "A" are documents relating to each individual

automobile owner whose cost of repairs was not fully paid by Defendant as indicated and averred in the foregoing paragraphs.

15.

For example but not by way of limitation, automobile owner brought his 2008 Suzuki SX4 to Professionals for repair services in October 2013.

16.

's vehicle was insured by Defendant.

17.

After an inspection of the damage to the vehicle, Defendant did elect for repairs to be performed rather than to replace the vehicle as a total loss.

18.

Professionals did utilize a licensed appraiser at its facility to review all damage, determine necessary repair procedures and prepare a repair estimate, which was then submitted to Defendant.

19.

Despite numerous requests and attempts to obtain full reimbursement for all parts and labor invested in repair of the vehicle pursuant to vehicle owner's authorization and election to repair made by the insurer Professionals remains unpaid for the full sum of parts, labor and other supplies invested in the repair in the amount of \$703.44, plus delay damages in the amount of \$7,674.67, plus Administrative Costs in the amount of \$501.20.

20.

did sign an assignment of proceeds and authorization for repairs in order to permit and direct that Professionals would pursue this deficiency due and owing to it.

21.

is just one example of such practices by Defendant. A complete list of the instances giving rise to this Complaint is attached as Exhibit A.

COUNT I – QUANTUM MERUIT

22.

Plaintiff hereby incorporates by reference all of the foregoing paragraphs by reference as if again fully set forth.

23.

Plaintiff is in the business of repairing damaged automobiles to their pre-loss condition.

24.

Relative to each transaction attached hereto Plaintiff was contacted by the customer and then, pursuant to the customer's authorization, expended significant costs in the sense of labor and materials to the benefit of Defendant and Defendant's claimant or insured.

25.

In each of the attached transactions, the Defendant is required by either contract or tort law to provide payment on behalf of each claimant for all repairs and services rendered.

26.

While the Plaintiff has provided full and complete information with regard to each necessary repair and transaction, Defendant has repeatedly failed and/or refused to provide full payment for all of the services and materials rendered to each automobile owner.

27.

Defendant has failed and/or refused to fully reimburse Plaintiff for all of the costs involved with making repairs to each automobile for which Defendant was required to make payment for such repairs.

28.

Defendant's refusal to fully reimburse Plaintiff for the repairs provided has unjustly enriched Defendant and each transaction by the sum of the difference between what is due to Plaintiff and what Defendant independently determined and unilaterally determined it would.

29.

Defendant is aware that a significant benefit has been received by it from its refusal to pay the full amount for repair of each vehicle, and the bottom line of Defendant has been increased by each refusal to pay the full sum due and owing for the proper repairs that were completed for each vehicle.

30.

As a result of the actions, failures and/or omissions of Defendant, Plaintiff suffered additional damages in the form of delay time cost and administrative costs for each instance.

31.

Said delay time costs and administrative costs were part of and required in the reasonable and necessary repairs to each vehicle to restore the vehicle to its pre-loss condition and to the satisfaction of the owner of the vehicle.

32.

Defendant continues to retain all benefits despite objection of the Plaintiff.

WHEREFORE, Plaintiff respectfully requests this Honorable enter an Order requiring Defendant to make the Plaintiff whole for all labor and materials expended that have benefited Defendant which sum would be approximately \$5,240.99, together with the delay time costs of \$51,474.98, together with the administrative costs of \$2,709.00 for a total amount of no less than \$59,424.97, and to enter any further Order this Honorable Court may deem just and proper to

compensate Plaintiff for benefits wrongfully retained by Defendant.

COUNT II – UNJUST ENRICHMENT

33.

Plaintiff hereby incorporates all of the foregoing paragraphs by reference as if each paragraph was again fully set forth.

34.

The repairs made by Plaintiff to each vehicle have benefited Defendant in that the repairs necessary for each vehicle to be put back to its pre-loss condition and to the satisfaction of the owner of the vehicle, which repairs Defendant was responsible to pay for, has satisfied an obligation owing from Defendant to either its own policy holder or to an individual who is damaged by one of its policy holders.

35.

The satisfaction of that repair obligation is a significant benefit conferred upon Defendant, which benefit was provided by Plaintiff.

36.

While each repair was fully and completely made to a great benefit of Defendant, Defendant failed to pay the full cost necessary for the repairs as set forth in the attached Exhibits.

37.

Despite numerous requests being made by Plaintiff for full and complete payment of all repair costs, Defendant has failed and/or refused to remit full reimbursement to Plaintiff for the necessary repairs to each vehicle.

38.

By accepting the full and complete repairs to each vehicle while refusing to make full payment for all costs of every necessary repair, Defendant has received a significant benefit for which

it has not paid but has rather retained sums of money properly due and owing to Plaintiff as consideration for the repairs performed.

39.

In each transaction, Defendant has made a partial payment and thus only partially performed its duty to pay.

40.

As a result of the actions, failures and/or omissions of Defendant, Plaintiff suffered additional damages in the form of delay time cost and administrative costs for each instance.

41.

Said delay time costs and administrative costs were part of and required in the reasonable and necessary repairs to each vehicle to restore the vehicle to its pre-loss condition and to the satisfaction of the owner of the vehicle.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter an Order requiring Defendant to pay damages in the amount of \$5,240.99, together with the delay time costs of \$51,474.98, together with the administrative costs of \$2,709.00 for a total amount of no less than \$59,424.97, and to enter any other Order as may be deemed just and proper.

COUNT III – BREACH OF CONTRACT

42.

Plaintiff hereby incorporates all of the foregoing paragraphs by reference as if each paragraph was again fully set forth.

43.

In each of the attached transactions, Defendant has represented that it did have an

obligation to pay and did partially perform its duty to make payment by making a partial payment relative to all repairs rendered.

44.

In each of the attached instances, Defendant has failed/refused to pay the full amount due to Plaintiff as each amount due is what was required in order to fully and properly make the necessary and reasonable repairs to the vehicle.

45.

It is clear from each partial payment that Defendant was in agreement that repairs had to be made to each vehicle and that it would be obligated to make payments for such repairs.

46.

Plaintiff is now seeking complete performance by Defendant who has failed and/or refused to make payment in full and by this action is seeking the deficiency owed relative to each individual transaction as attached hereto.

47.

Failure and/or refusal of Defendant to pay the full and complete costs of repairs does constitute a breach of the agreement whereby Plaintiff completed repairs to each vehicle with the understanding that payment in full would be received.

48.

As a result of the actions, failures and/or omissions of Defendant, Plaintiff suffered additional damages in the form of delay time cost and administrative costs for each instance.

49.

Said delay time costs and administrative costs were part of and required in the reasonable and necessary repairs to each vehicle to restore the vehicle to its pre-loss condition and to the satisfaction of the owner of the vehicle.

50.

By Defendant's failure and/or refusal to make payment in full, Plaintiff has now been damaged in the sum of \$5,240.99, together with the delay time costs of \$51,474.98, together with the administrative costs of \$2,709.00 for a total amount of no less than \$59,424.97.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter an Order requiring Defendant to pay damages in the amount of \$5,240.99, together with the delay time costs of \$51,474.98, together with the administrative costs of \$2,709.00 for a total amount of no less than \$59,424.97 and to otherwise enter an Order providing for any and all such other relief that this Honorable Court may deem just and proper.

COUNT IV – BAD FAITH

51.

Plaintiff hereby incorporates all of the foregoing paragraphs by reference as if each paragraph was again fully set forth.

52.

By failing and refusing to make full and proper payment for all necessary and proper repairs made to each vehicle in order to put the same into its pre-loss condition, Defendant has violated the Pennsylvania Motor Vehicle Damage Appraisers Act and/or various regulations relating to the same.

53.

Defendant has failed to fully and properly evaluate each claim in order to make the full and proper payment due to Plaintiff for repairs made to each vehicle.

54.

The failure and/or refusal of Defendant to fully and properly inspect and make full and proper payment for the repairs necessary to each vehicle has caused continuous and ongoing damages relative to the proceeds of each policy due and owing to Plaintiff.

55.

The violation of those duties owed by Defendant relative to each claim whether by virtue of the policy/contract were pursuant to statutory obligation is a clear demonstration of bad faith pursuant to Pennsylvania law.

56.

Defendant is therefore liable for those bad faith remedies available to Plaintiff by virtue of 42 Pa. C.S.A. § 8371, including but not limited to attorney's fees and punitive damages.

57.

As a result of the actions, failures and/or omissions of Defendant, Plaintiff suffered additional damages in the form of delay time cost and administrative costs for each instance.

58.

Said delay time costs and administrative costs were part of and required in the reasonable and necessary repairs to each vehicle to restore the vehicle to its pre-loss condition and to the satisfaction of the owner of the vehicle.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter an Order finding that Defendant has acted in bad faith with regard to each of the attached transactions and order payment of all attorney's fees and punitive damages and any other such relief that this Honorable Court may deem just and proper.

COUNT V – INTENTIONAL INTERFERENCE WITH BUSINESS

59.

Plaintiff hereby incorporates all the foregoing paragraphs by references as if each paragraph was again fully set forth.

60.

Plaintiff had a contract with each of the vehicle owners to repair each to satisfaction of the owner by putting the same into its pre-loss condition and to perform all reasonable and necessary repairs to the vehicle to accomplish that directive.

61.

Defendant purposefully and intentionally interfered with that contractual relationship by failing and/or refusing to pay for all reasonable and necessary repairs.

62.

Moreover, Defendant attempted to direct Plaintiff to utilize inferior parts and/or to perform inferior service, which would have prevented Plaintiff from fully performing its duties under the attached contracts.

63.

Defendant lacked privilege or justification for such interference.

64.

Despite Defendant's intentional interference, Plaintiff still completed the terms of its contract with each vehicle owner by performing all reasonable and necessary repairs to place the vehicles in their pre-loss condition.

65.

Plaintiff suffered harm in that it has not received full compensation from Defendant for the reasonable and necessary repairs to each vehicle.

66.

Defendant's conduct has created delays in repair of each vehicle, resulting in Plaintiff's loss of business and incurrence of potential liability for the storage of each vehicle.

67.

Defendant's conduct was unreasonable, intentional, and malicious under the circumstances.

68.

As a result of the actions, failures and/or omissions of Defendant, Plaintiff suffered additional damages in the form of delay time cost and administrative costs for each instance.

69.


Said delay time costs and administrative costs were part of and required in the reasonable and necessary repairs to each vehicle to restore the vehicle to its pre-loss condition and to the satisfaction of the owner of the vehicle.

WHEREFORE, Plaintiff respectfully requests this Honorable enter an Order compensating Plaintiff for the loss from Defendant's interference in its business which sum would be approximately \$5,240.99, together with the delay time costs of \$51,474.98, together with the administrative costs of \$2,709.00 for a total amount of no less than \$59,424.97, and to enter any further Order this Honorable Court may deem just and proper to compensate Plaintiff for intentional interference by Defendant.

And Plaintiff shall ever pray.

Respectfully Submitted,
Forr, Stokan, Huff, Kormanski & Naugle

By: _____


Traci L. Naugle, Esquire

Attorneys for Plaintiff

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