

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

TOTAL RECON AUTO CENTER, LLC

649 Southlawn Lane
Rockville, Maryland 20850

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY

P.O. Box 4900
Columbia, MD 21045

SERVE:

Kathleen A. Birrana., Commissioner,
Maryland Insurance Administration, Resident Agent:
200 St. Paul Place, Suite 2700
Baltimore, MD 21202

Defendant.

Civil Case No.: _____

COMPLAINT

Plaintiff, Total Recon Auto Center, LLC (“Total Recon”), by and through its attorneys, Jeffrey M. Schwaber, Eduardo S. Garcia, and Stein Sperling Bennett De Jong Driscoll PC, hereby sues and demands judgment against Defendant, Allstate Insurance Company (“Allstate”):

INTRODUCTION

This lawsuit results from Allstate’s intentional use of its size and leverage to unlawfully cause maximum disruption and harm to Total Recon—a premier independent auto repair shop located in Rockville, Maryland that prides itself on providing proper, highest-quality repair services for its clients, free from influence of insurance carriers.

Tesla, Inc. (“Tesla”), the pioneer and market leader in the electric vehicle space, runs a very tight and precise ship as it relates to the care and maintenance of its vehicles. Total Recon is

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the only Tesla-Approved Collision Center (“TACC”) in Montgomery County, meaning that its technicians are Tesla trained, evaluated, and certified, and Total Recon uses only certified, original Tesla parts and equipment, as well as Tesla’s proprietary, high-security technology to diagnose and facilitate the proper and precise repair of Tesla vehicles. Tesla sets standard reimbursement rates for TACCs for each geographic or trade area; the current labor rate for body and refinish work in the DC Metropolitan area is \$60 per hour.

Despite such reality, Allstate and other insurance carriers have been working together to decree a single customary reimbursable labor rate of \$46 per hour in the DC Metropolitan area. This leaves the repair shops with the ‘Hobson’s Choice’ of accepting that absurdly low rate or pursuing their own customers for the difference above their reimbursable amount. While most repair shops in the area have capitulated to this pricing squeeze by insurance carriers and adjusted the quality of their services accordingly—often to the detriment of their customers—Total Recon, as a TACC, continues to charge the standard Tesla mandated labor rate for the certified and specialized Tesla work it does.

Over time, Total Recon succeeded in persuading insurance providers other than Allstate to see the reasonableness and lawfulness of its Tesla mandated labor rate and to accept and pay it for Tesla repairs from Total Recon. Allstate, however, stubbornly refused to do so. What’s more, Allstate has launched an intentional campaign to harm Total Recon, including by making nonsensical demands and deliberately disseminating harmful misinformation to its clients who are actual or potential Total Recon customers. As a direct result of Allstate’s intentional and tortious conduct, Total Recon’s existing relationships with current customers and prospective customers have been harmed. Through this action, Total Recon seeks judicial intervention and necessary relief against Allstate for tortious interference and defamation.

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PARTIES

1. Total Recon is a Maryland limited liability company with its principal place of business in Montgomery County, Maryland.

2. Allstate is a Delaware corporation with its principal place of business in Illinois. Allstate conducts business in the State of Maryland, including in Montgomery County.

JURISDICTION & VENUE

3. Subject matter jurisdiction is proper in this Court pursuant to Md. Code, *Cts. & Jud. Proc.* § 1-501.

4. Personal jurisdiction is proper in this Court pursuant to Md. Code, *Cts. & Jud. Proc.* § 6-103.

5. Venue is proper in this Court pursuant to Md. Code, *Cts. & Jud. Proc.* § 6-201.

FACTS

Operations of Total Recon as a TACC

6. Total Recon began operating in 2013 as a full-service collision center/repair shop in Montgomery County, Maryland.

7. Total Recon is one of the few independent collision centers in Montgomery County—i.e., it does not work through any insurance company’s so-called Direct Repair Program or other referral agreements, all of which allow insurance companies to dictate how a vehicle is repaired, not necessarily with the best interest of their insureds in mind. As an independent collision center, Total Recon works solely in the best interest of its clients, refusing to cut any corners, implement merely “band-aid” solutions, or use suboptimal or secondary market parts solely to save money for the insurance companies who are paying the bills.

8. Given the highly unique structural make-up of Tesla vehicles compared to other vehicles, only specially trained technicians/auto shops using highly precise and carefully calibrated

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technology can properly and safely repair and restore a Tesla back to original factory specifications. As a result of the rapid rise in the popularity of Tesla vehicles, Tesla sought out a relationship with a top-notch repair shop in Montgomery County that could ensure the precision and quality that Tesla demands and that its customers have come to expect. It approached Total Recon, and on or about November 2021, Total Recon was approved, and made the business decision to focus primarily on servicing Tesla vehicles and becoming experts in collision repairs for Tesla vehicles.

9. Thereafter, Total Recon proceeded to become a TACC. Total Recon is the only TACC in Montgomery County and one of only seven (7) TACCs in the State of Maryland. Becoming a TACC came at a significant cost to Total Recon, as maintaining the high standards that are required to perform these services requires significant continuous investments of time and money.

10. As a TACC, Total Recon's technicians are Tesla trained, evaluated, and certified, and Total Recon uses certified, original Tesla parts and equipment, as well as proprietary, high-security¹ Tesla technology to diagnose repair issues and to calibrate and evaluate repairs. The quality of Total Recon's work is actively and electronically monitored by Tesla.

11. Tesla has informed Total Recon that as a TACC, it must charge a specific hourly labor rate—no more or no less—determined by Tesla to be reasonable for a given geographic or trade area. This rate for labor for body and refinish work is Sixty Dollars (\$60.00) in the DC Metropolitan area ("Tesla Labor Rate"). The Tesla Labor Rate—although quite low compared to other regions in the country—is marginally higher than the area's more typical hourly labor rate

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¹ The Tesla technology is accessible only via an IP address originating from the physical premises of Total Recon and other TACCs.

(for body and refinish work) of Forty-Six Dollars (\$46.00) for all other types of collision centers/repair shops and is widely considered to be reasonable.

12. On or about March 7, 2022, consistent with the requirements imposed by Tesla for its TACCs, Total Recon informed insurance providers, including Allstate, that it would be charging the Tesla Labor Rate on all Tesla repairs going forward. Despite initial resistance, every insurance provider except Allstate eventually agreed to pay and has been paying the Tesla Labor Rate to Total Recon. Allstate, however, persisted in refusing to pay the additional \$14 per hour despite charging its Tesla owning insureds a substantially higher premium to insure a Tesla compared to other similarly categorized gas powered vehicles.

13. This has resulted in Total Recon having to tell Allstate's customers that Allstate will only cover an hourly labor rate of Forty-Six Dollars (\$46.00) and that the customer will then individually be liable for the Fourteen Dollar (\$14.00) per hour difference.

14. Allstate's customers have reasonably expressed exasperation at the situation and stated that it is illogical that Allstate is charging them much higher premiums to insure their Tesla vehicles, but then refusing to provide the appropriate and necessary coverage for the repair of those vehicles. This illogical situation has led many of these customers to complain directly to Allstate and to file complaints against Allstate with the Maryland Insurance Administration ("MIA") for unfair and/or deceptive trade practices.

15. When some of these Total Recon customers who are insured by Allstate began complaining to the MIA about being forced to pay out of pocket the difference between the "covered" rate that Allstate deemed reimbursable and the Tesla Labor Rate, Allstate decided to turn up the pressure on Total Recon.

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Total Recon Transitions Exclusively to Digital Adjusting

16. Across many industries, the COVID-19 Global Pandemic (“COVID-19 Pandemic”) forced businesses to reinvent themselves and rethink how things could be done with less human contact. This process led to certain innovations that in turn resulted in better and more efficient methods for certain practices, such as digital adjusting.

17. In the collision repair world before the COVID-19 Pandemic, many insurance companies still used the process of an on-site visit by a claims adjuster to the collision repair center prior to authorizing repairs to a vehicle. This process was labor intensive, unprecise, inefficient and slow. Even prior to the COVID-19 Pandemic, certain industry leaders, including Allstate, began to champion the notion of digital adjusting.

18. In fact, even before the COVID-19 Pandemic, Allstate had been a self-proclaimed leader in “the [insurance] industry in digital transformation of the claims experience.” According to Allstate,

- a. “[Its] business success depends on innovating digital products, as well as improving efficiency through technology, process simplification and digitalization. Allstate’s Transformative Growth strategy uses technology to make our products more accessible and affordable.”
- b. “[It is] setting a new standard for faster and easier claims handling while maintaining quality and accuracy. [It] take[s] advantage of emerging technologies and advanced data capabilities to better meet the needs of customers and make [its] claims process more efficient.”
- c. **“In early 2019, [it] completed the transition to a digital claim file system, so claim agents and adjusters have electronic access to everything they need. In the new system, users can share files and images, and separate, reorder and annotate digital documents, just as they would with a paper file. This eliminated mail to the claim offices and improved . . . speed and accuracy. The new file tool is more consistent and simple”**

Pertinent screenshots from Allstate’s website are attached hereto and incorporated herein as

Exhibit 1 (emphasis added).

19. After the start of the COVID-19 Pandemic, virtually all major insurance providers and collision centers did away with the need for the adjuster to physically inspect vehicles and instead devised a methodology to accomplish the entire process remotely through digital adjusting. In addition to being safer from the Covid-19 Pandemic standpoint, this was more efficient and more precise, as adjustment was now able to be measured with computers, digital photos, and other technologies that typically were far more accurate than the naked eye inspection of a field adjuster.

20. Total Recon became an early leader in the process of digital adjusting, including investing in expensive, sophisticated, and specialized software, equipment, and training. Total Recon takes highly detailed, enlarged photos and videos of each damaged part of a vehicle and is able to generate precise diagnostic information. This data is uploaded and becomes immediately accessible to adjusters and insurance companies remotely. Any requests for supplemental photos, videos, or live video calls are easily and quickly accommodated.

21. In addition to the lack of physical contact, there are many benefits associated with the move to digital adjusting including, but not limited to, (i) the ability for insurance providers to rely on precise and reliable information rather than an adjuster simply physically eyeballing the vehicle for a limited amount of time and (ii) reducing the need for scheduling and waiting for a time for an adjuster to be able to physically be present at Total Recon.

22. Total Recon's move to 100% digital adjusting initially went seamlessly, and insurance providers, even including Allstate, accepted the process without complaint and issued payments on the claims that were processed and submitted with digital adjusting.

Allstate's Intentional Campaign Against Total Recon

23. Ultimately however, Allstate changed its tune. Angered by Total Recon's independent status, insistence on the Tesla Labor Rate, and consumer complaints to MIA, Allstate

decided to launch a targeted campaign to interfere with Total Recon's business with its current and prospective clients.

24. On or about May 2022, Allstate arbitrarily and capriciously imposed a targeted and punitive requirement upon Total Recon, announcing that it would no longer process claims that did not include physical inspections by adjusters. This was contrary to Total Recon's known and previously accepted digital adjusting practice, and contrary to Allstate's prior history and its professed "leadership" in the digital adjusting world.

25. Total Recon asked Allstate to provide any rational basis for its new requirement for physical inspections. Allstate gave no explanation for this arbitrary and capricious requirement and instead simply refused to authorize any further Total Recon repairs, leaving its Tesla insureds without an option in Montgomery County for authorized Tesla repairs.

26. Allstate is transparently using its insistence on physical inspections by adjusters as a subterfuge to either drive its customers away from Total Recon or to get Total Recon to drop its demand for the Tesla Labor Rate, a "demand" over which Total Recon has no discretion.

27. Allstate's arbitrary and capricious conduct has affected Total Recon's ability to perform the necessary repairs on a number of contracts that it had entered into with certain Allstate customers prior to Allstate's sudden about face, and newly decreed insistence on physical inspections by adjusters.

28. Some Total Recon customers who are insured by Allstate have expressed displeasure with Total Recon as a result of Allstate's shenanigans and have been vocal about their dissatisfaction. For example, on or about June 20, 2022, an individual identified as "Clayton DJCLAY Harris" posted a one (1) star review for Total Recon on Google stating: "They don't work with All-State insurance. Had to go to another company." By way of further example, several

Total Recon clients have indicated that when they called Allstate, their insurance provider, representatives have made disparaging comments about Total Recon and/or have tried to incentivize insureds to go elsewhere by offering to waive deductibles.

29. The conduct by Allstate is intentional and improperly designed to divert customers away from Total Recon; and it has succeeded in diverting significant customers away from Total Recon.

30. As a result of the above referenced conduct by Allstate, Total Recon has suffered significant harm and will continue to suffer significant harm.

Allstate's Improper Actions are Inconsistent with the Regulated Insurance Scheme in Maryland

31. Insurance is a heavily regulated industry in Maryland. All insurance companies are required to comply with the Maryland Insurance Act (the "Act"), which prohibits, *inter alia*, unfair claim settlement practices such as

- a. "refus[ing] to pay a claim for an arbitrary or capricious reason based on all available information," Md. Code Ann., Ins. § 27-303(2); § 27-304(15);
- b. "fail[ing] to act in good faith² . . . in settling a first-party claim under a policy of property and casualty insurance," *id.* § 27-303(9); § 27-304(18);
- c. "fail[ing] to adopt and implement reasonable standards for the prompt investigation of claims that arise under policies," *id.* § 27-304(3), and
- d. "attempt[ing] to settle a claim for less than the amount to which a reasonable person would expect to be entitled after studying written or printed advertising material accompanying, or made part of, an application," *id.* § 27-304(8).

32. The Act further contains a catch-all provision prohibiting all other "unfair or deceptive act or practice" not otherwise specified in the Act. *Id.* § 27-104.

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² "Good faith" means "an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insurer made a decision on a claim." Md. Code Ann., Ins. § 27-1001(a).

33. Additionally, the Act states that “[a]n adjuster, appraiser, or insurance producer or employee of an insurer” may not:

- (1) recommend the use of a specific repair service or source for the repair or replacement of property damage to a motor vehicle without informing the claimant or insured that the claimant or insured does not have to use the recommended repair service or source;
- (2) require that an appraisal or repair be made in a specific repair shop;
- (3) require that a claimant or insured use a specific contractor or repair shop for a repair service or repair product; or
- (4) intimidate, coerce, or threaten a claimant or insured to use a specific contractor or repair shop for a repair service or repair product.

Md. Code Ann., Ins. § 10-503.

34. State provisions such as Md. Code Ann., Ins. § 10-503 are intended to protect against various tactics commonly referred to as “steering” in the auto insurance industry—i.e., tactics employed by insurance companies to steer their insureds to or away from particular repair shops, without informing their insureds of their statutory right to choose. *See, e.g., Medine’s Collision Ctr., LLC v. Progressive Direct Ins. Co.*, 199 So. 3d 38, 42 (La. App. 1st Cir. 2016) (referring to Louisiana’s statute establishing an insured’s right to choose his repair shop as the “anti-steering provision”); *Auto Body Fedn. of Empire State, Inc. v. Lewis*, 436 N.Y.S.2d 32 (N.Y. App. Div. 2d Dept. 1981) (stating that the New York statute prohibiting requirement in automobile policies that auto repairs be made in particular shop was enacted to protect the public, which includes independent auto body and repair shops, from “steering” tactics practiced by some automobile insurers).

35. The above referenced statutory framework makes clear that the intentional conduct that Allstate has embarked upon is not only improper, but also contrary to established regulation

in the State of Maryland. Allstate cannot be permitted to continue acting in an arbitrary and capricious manner that is inconsistent with established law.

COUNT I
(Tortious Interference with Contractual Relations)

36. Total Recon adopts herein by reference paragraphs 1 through 35 above as if fully set forth herein.

37. Total Recon entered into valid repair contracts with certain customers who were insured by Allstate to perform auto repair services.

38. Allstate was aware of these valid agreements between Total Recon and these insureds.

39. On or about May 2022, Allstate arbitrarily and capriciously imposed a requirement that it would not process claims from Total Recon that did not have physical inspections performed by adjusters, contrary to Total Recon's known and previously accepted digital adjusting practice.

40. Allstate arbitrarily and capriciously imposed this new requirement on Total Recon, in violation of Md. Code Ann., Ins. §§ 27-303 and 304, as a pretext to injure Total Recon's business without legal justification, knowing that the requirement was directly contrary to Total Recon's established policy of digital adjusting. Allstate's goal was to render it impossible for Total Recon to repair vehicles insured by Allstate, simply so Allstate could save money.

41. Allstate's knowing and wrongful interference with the valid contracts between Total Recon and Allstate's insureds was accompanied by actual malice.

42. As a result of Allstate's intentional and improper conduct, Total Recon became unable to timely perform under its valid agreements with its Allstate insured customers.

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43. As a result of being unable to perform under these valid agreements and having to rescind them, Total Recon suffered significant damages, including, but not limited to, lost profits and actual harm to reputation.

WHEREFORE, Plaintiff Total Recon Auto Center, LLC respectfully requests that this Honorable Court enter judgment in its favor and against Defendant Allstate Insurance Company, in an amount which exceeds \$75,000.00 in compensatory damages, punitive damages, pre- and post-judgment interest, and costs and such other and further relief as the Court deems just and proper.

COUNT II
(Tortious Interference with Prospective Advantage)

44. Total Recon adopts herein by reference paragraphs 1 through 35 above as if fully set forth herein.

45. On or about April 2020, Total Recon made the decision to use digital adjustments for all of its claims. This decision involved further investing in sophisticated, specialized software, equipment, and training for its employees.

46. Allstate had previously accepted the digital adjusting process without complaint and issued payments on the claims that were adjusted with digital adjusting.

47. On or about May 2022, Allstate arbitrarily and capriciously imposed a requirement that it would not process claims from Total Recon that did not have physical inspections performed by adjusters, contrary to Total Recon's known and previously accepted digital adjusting practice.

48. Allstate arbitrarily and capriciously imposed this new requirement on Total Recon, in violation of Md. Code Ann., Ins. §§ 27-303 and 304, as a pretext to injure Total Recon's business without legal justification, knowing that the requirement was directly contrary to Total Recon's

established policy of digital adjusting. Allstate's goal was to render it impossible for Total Recon to repair vehicles insured by Allstate, simply so Allstate could save money.

49. Allstate continued its malicious campaign when it began making disparaging remarks about Total Recon and further began steering prospective Total Recon customers to go elsewhere for their repairs.

50. Allstate's statements were improperly made in violation of Md. Code Ann., Ins. § 10-503 and/or were defamatory.

51. Allstate's intentional and wrongful conduct in communicating with its insureds to steer them away from Total Recon was accompanied by actual malice.

52. As a result of Allstate's intentional and improper conduct, prospective clients of Total Recon took and, presumably, will continue to take their business to repair shops other than Total Recon.

53. These were, and are possible, future relationships which were likely to occur, absent the intentional and improper interference by Allstate.

54. As a result of Allstate's intentional and improper conduct, Total Recon has suffered and will continue to suffer significant damages including, but not limited to, lost profits and harm to its reputation.

WHEREFORE, Plaintiff Total Recon Auto Center, LLC respectfully requests that this Honorable Court enter judgment in its favor and against Defendant Allstate Insurance Company, in an amount which exceeds \$75,000.00 in compensatory damages, punitive damages, pre- and post-judgment interest, and costs and such other and further relief as the Court deems just and proper.

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COUNT III
(Defamation *Per Se*)

55. Total Recon adopts herein by reference paragraphs 1 through 35 above as if fully set forth herein.

56. Allstate continued its malicious campaign when it began making disparaging remarks about Total Recon to its insureds including, but not limited to, the following:

- a. "It is our nightmare when a car ends up at Total Recon;"
- b. Allstate would waive deductibles if the insured were to go somewhere other than Total Recon;
- c. Total Recon's work is of poor quality;
- d. Total Recon is dishonest; and
- e. Total Recon is price-gouging.

57. Allstate's statements were improperly made in violation of Md. Code Ann., Ins. § 10-503 and/or are defamatory.

58. The statements are defamatory *per se*—their injurious character to Total Recon is self-evident given their disparagement of Total Recon's business reputation.

59. These statements are false.

60. Allstate was legally at fault in making these statements.

61. Allstate made these statements negligently or with actual malice to injure Total Recon's business, knowing they were false.

62. As a result of these defamatory statements, Total Recon suffered significant harm to its business.

WHEREFORE, Plaintiff Total Recon Auto Center, LLC respectfully requests that this Honorable Court enter judgment in its favor and against Defendant Allstate Insurance Company,

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in an amount which exceeds \$75,000.00 in compensatory damages, punitive damages, pre- and post-judgment interest, and costs and such other and further relief as the Court deems just and proper.

Respectfully submitted,

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