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**IN THE U.S. DISTRICT COURT
DISTRICT OF ARIZONA**

ROBERT E. WAINWRIGHT, individually,

Case No.:

Plaintiff,

COMPLAINT

vs.

JURY TRIAL DEMANDED

ACE AMERICAN INSURANCE COMPANY,
a Pennsylvania corporation; ABC
CORPORATIONS I-X; XYZ PARTNERSHIPS
I-X; JOHN DOES I-X; and JANE DOES I-X,

Defendants.

COMES NOW Plaintiff Robert E. Wainwright (hereinafter "Plaintiff" or "Wainwright") and submits his Complaint against Defendant Ace American Insurance Company (hereinafter "ACE" or "Defendant"), as follows:

PARTIES, VENUE AND JURISDICTION

1. Plaintiff Wainwright is, and at all times relevant hereto, was a citizen and resident of the State of Arizona, wherein he engaged in a business transaction with Defendant.
2. On information and belief, Defendant ACE is and, at all times relevant hereto, was a Pennsylvania corporation, authorized to do business in the State of Arizona.
3. This Court has original subject matter jurisdiction of the federal claims pursuant to supplemental jurisdiction of the state claims pursuant to 28 U.S.C. § 1332.

1 4. Venue is proper in this District under 28 U.S.C. § 1391.

2 **GENERAL ALLEGATIONS**

3 5. Plaintiff was an independent contractor of Swift Transportation Co., Inc. on
4 September 12, 2009.

5 6. As such, Plaintiff was covered under a Occupational Accident Insurance
6 Agreement, specifically Occupational Accident Plan A, Policy Number
7 TOCN01303533 (hereinafter "Policy").

8 7. On September 12, 2009, Plaintiff was involved in a motor vehicle accident, while
9 working as an independent contractor for Swift Transportation Co., Inc.

10 8. Among other things, under the Policy, Plaintiff was to receive (1) payment of
11 medical expenses incurred in connection with an accident, (2) payment of
12 temporary total disability benefits under the Policy, and (3) payment of permanent
13 total disability benefits under the Policy.

14
15 **FIRST CAUSE OF ACTION**

16 **BREACH OF CONTRACT**

17 9. Paragraphs 1-8 are hereby incorporated by this reference in support of this cause
18 of action as though fully set forth herein.

19 10. Plaintiff Wainwright and Defendant ACE entered into a contract, namely the
20 Policy.

21 11. Defendant ACE agreed that it would timely provide to Plaintiff the benefits
22 identified in the Policy.

23 12. Despite Demand, Defendant ACE did not pay all the reasonable medical expenses
24 covered by the Policy that were incurred by Plaintiff as a direct and proximate
25 result of the accident.

26 13. Defendant ACE did pay Plaintiff for temporary total disability benefits owed to
27 Plaintiff under the Policy.

1 14. Despite Demand, Defendant ACE has not paid any of the permanent total
2 disability benefits owed to Plaintiff under the Policy.

3 15. The Social Security Administration (hereinafter "SSA") made a formal
4 determination that Plaintiff is totally disabled. Pursuant to the request of ACE, the
5 entire SSA file of Plaintiff was delivered to ACE at the insistence of Plaintiff,
6 establishing for ACE the basis for the SSA finding of total disability.

7 16. Plaintiff has forwarded to Defendant ACE all medical bills incurred by him.

8 17. Defendant ACE has failed and refused to fulfill its obligation under the Policy
9 despite Plaintiffs having substantially fulfilled all his duties under the Policy and
10 having met all Policy conditions to such payments.

11 18. Defendant ACE has breached its contract with Plaintiff, and as a direct and
12 proximate result, Plaintiff has incurred multi-faceted damages.

13 19. Plaintiff did not get the benefits of the bargain for which he paid.

14 20. Plaintiff has incurred significant pain and suffering as a result of the failure of
15 ACE to authorize covered medical expenses.

16 21. Plaintiff has suffered damage to his credit and severe emotional distress as a direct
17 and proximate result of being deprived of benefits to which he is entitled under the
18 Policy.

19
20 **DAMAGES IN GENERAL**

21 22. As a direct and proximate result of Defendant ACE's having breached its contract
22 with Plaintiff, as reflected in the Policy, Plaintiff Wainwright has incurred multi-
23 faceted, substantial, and ongoing damages and losses, including, but not limited to,
24 unpaid medical expenses, unpaid temporary total disability benefits, unpaid
25 permanent total disability payments, severe physical pain as a result of the failure
26 to pay for medical benefits and Plaintiff's inability to receive the medical care he
27 needed, severe emotional distress, embarrassment, humiliation and damage to
credit. Plaintiffs are, thus, entitled to significant compensatory damages.

PRAYER FOR RELIEF

Wherefore, for the **First Cause of Action**, Plaintiff requests a trial by Jury and prays that a judgment be entered in his favor as follows:

- A. For compensatory damages against Defendant ACE in an amount to be determined at a jury trial, but not less than \$200,000.00;
- B. Attorney’s fees and costs;
- C. Interest at the highest legal rate from the date first recoverable until paid in full; and
- D. Such other and further relief as the Court deems fair and just.

SECOND CAUSE OF ACTION

BAD FAITH: BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING BY DEFENDANT ACE

- 23. Paragraphs 1-21 are hereby incorporated by this reference in support of this cause of action as though fully set forth herein.
- 24. Defendant ACE and Plaintiff entered into a contract for insurance benefits.
- 25. Defendant ACE had a duty to deal at all times with Plaintiff fairly and in good faith.
- 26. Defendant ACE breached this duty (1) through its failure to properly pay for reasonable and necessary medical expenses; (2) through its failure to pay for the temporary total disability benefits to which Plaintiff was entitled, (3) through its failure to pay for the permanent total disability benefits to which Plaintiff was entitled, (4) through its delayed investigation and analysis of Plaintiff’s claims, (5) through its denial of benefits for medical care costs; (6) through its unreasonable and bullying type tactics designed specifically to humiliate Plaintiff and (7) through its refusal to promptly provide to Plaintiff all of the benefits under the Policy to which he was entitled.

1 27. Defendant's acts and omissions violated the duty of good faith and fair dealing
2 owed to Plaintiff under the Policy.

3 28. Defendant intentionally deprived Plaintiff of his benefits under the Policy at a time
4 when he needed the benefits the most.

5 29. Defendant acted with an evil mind, placing its desire for profits above the rights of
6 one of its insureds.

7 30. Defendant's acts and omissions violated the duty of good faith and fair dealing
8 owed to Plaintiff under the Policy.

9 31. As a direct and proximate result of Defendant ACE's having breached its duty,
10 Plaintiff has incurred multi-faceted damages.

11 32. Defendant is liable to Plaintiff for punitive damages.

12 **DAMAGES IN GENERAL**

13 33. As a direct and proximate result of Defendant ACE's having breached its duty
14 owed to Plaintiff, Plaintiff has incurred multi-faceted, substantial, and ongoing
15 damages and losses, including, but not limited to physical pain and suffering,
16 severe emotional distress, embarrassment and humiliation. Plaintiffs are, thus,
17 entitled to significant compensatory damages in an amount to be proved at trial,
18 but not less than \$200,000.00.

19 34. In addition to the entitlement of significant compensatory damages, Plaintiff are
20 each entitled to significant punitive damages from Defendant ACE: Defendant
21 ACE engaged in conduct that was intentional, and performed with an evil mind
22 and attitude toward Plaintiff.

23 **PRAYER FOR RELIEF**

24 Wherefore, for the **Second Cause of Action**, Plaintiff requests a trial by Jury and
25 prays that a judgment be entered in his favor as follows:

26 A. For compensatory damages against Defendant ACE in an amount to be
27 determined at a jury trial, but not less than \$200,000.00;

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- B. For punitive or exemplary damages against Defendant ACE in an amount to be determined at a jury trial;
- C. Attorney’s fees and costs;
- D. Interest at the highest legal rate from the date first recoverable until paid in full; and
- E. Such other and further relief as the Court deems fair and just.

RESPECTFULLY submitted this 29th day of September 2015.

SCHUTT LAW FIRM, P.L.C.

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