

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

**MAGGIE J. ROBINSON and)
CODY ROBINSON,)
)
Plaintiffs,)**

vs.

CIVIL ACTION NO.

**LIBERTY MUTUAL)
INSURANCE COMPANY;)
LIBERTY INSURANCE)
CORPORATION; LIBERTY)
MUTUAL GROUP, INC.)
)
Defendants.)**

COMPLAINT

Comes now the Plaintiffs, Maggie J. Robinson and Cody Robinson, and hereby file this complaint against Liberty Mutual Insurance Company, Liberty Insurance Corporation, and Liberty Mutual Group, Incorporated.

PARTIES

1. The Plaintiffs, Maggie J. Robinson and Cody Robinson, wife and husband, are adult citizens of the state of Alabama who reside at 326 Bellevue Drive, Gadsden, Alabama 35904.

2. The Defendant, Liberty Mutual Insurance Company is a corporation incorporated and organized under the laws of the State of Massachusetts, having its principal place of business in Boston, Massachusetts.
3. Upon information and belief, the Defendant, Liberty Insurance Corporation, is a corporation incorporated and organized under the laws of the State of Vermont, having its principal place of business in Boston, Massachusetts.
4. The Defendant, Liberty Mutual Group, Incorporated is a corporation incorporated and organized under the laws of the State of Massachusetts, having its principal place of business in Boston, Massachusetts.

JURISDICTION AND VENUE

5. Plaintiffs invoke this Court's jurisdiction based on diversity of citizenship pursuant to 28 U.S.C. § 1332, as the matter in controversy exceeds \$75,000, exclusive of interest and costs, and there exists complete diversity of citizenship among the Plaintiffs and Defendants.
6. Venue is proper in the United States District Court for the Northern District of Alabama, Middle Division, pursuant to 28 U.S.C.A. § 1391 as a substantial part of the events or omissions giving rise to these claims occurred within this judicial district.
7. Liberty Mutual promotes and sells insurance policies and regularly does business in Etowah County, Alabama.

8. On information and belief, Liberty Insurance Corporation and its predecessors in interest, and other related and affiliated entities, is a parent or affiliated company of Liberty Mutual Insurance Company.
9. Liberty Insurance Corporation provided and underwrote insurance coverage for the Plaintiffs' home located in Etowah County, Alabama and has a role and involvement in handling insurance claims against Liberty Mutual Insurance Company.
10. On information and belief, Liberty Mutual Group, Incorporated and its predecessors in interest, and other related and affiliated entities, is a parent or affiliated company of Liberty Mutual Insurance Company and has a role and involvement in handling insurance claims against Liberty Mutual Insurance Company.
11. Hereinafter "Liberty Mutual" refers to all three Liberty Mutual Defendants.
12. The Plaintiffs reside in Etowah County, Alabama and their home, which is the property that is the subject of this action, is located in Etowah County, Alabama. Etowah County, Alabama lies within the purview of the United States District Court for the Northern District of Alabama, Middle Division.

FACTUAL ALLEGATIONS

13. The Plaintiffs purchased the house and property located at 326 Bellevue Drive, Gadsden, Alabama (hereinafter the "HOME") on March 5, 2008.

14. After moving into the HOME, the Plaintiffs discovered that the HOME was infested with a large colony of highly venomous brown recluse spiders.
15. Efforts at eradication of the brown recluse spiders in the HOME have failed.
16. In March 2013, the Plaintiffs hired Knox Pest Control to eradicate the brown recluse spider infestation at the HOME.
17. On March 25, 2013, Knox Pest Control treated the HOME with both liquid chemical pesticide and powder pesticide in an effort to eradicate the brown recluse spider infestation.
18. These treatment efforts were unsuccessful and the brown recluse spider infestation remained at the HOME.
19. On May 16, 2014, Knox Pest Control treated the HOME again with both liquid and granular pesticides in another attempt to eradicate the brown recluse spider infestation, but again these treatment efforts were unsuccessful in ridding the HOME of the brown recluse spider infestation.
20. On May 8, 2015, Knox Pest Control once again treated the HOME with pesticides to try to eradicate the brown recluse spider infestation, but yet again the treatments were unsuccessful and the Plaintiffs' HOME continues to be infested with brown recluse spiders.
21. The brown recluse spiders have permeated the Plaintiffs' HOME and have become so pervasive that a clear and present danger exists to the Plaintiffs.

22. The venom of the brown recluse spider contains a compound that can cause severe human tissue deterioration and loss.
23. The bite of a brown recluse spider and its ensuing complications can result in the death of a child.
24. The Plaintiffs' now eight-year old son and four-year old daughter are particularly vulnerable to the brown recluse spider's venomous bite and are in constant danger of being bitten.
25. The brown recluse spiders have been found in every area and room of the Plaintiffs' HOME including inside their children's clothes and shoes, in their bathrooms and showers, under their beds, in the kitchen sink, and in light fixtures.
26. No pest control company the Plaintiffs have spoken to will provide any guarantee that the spiders can be permanently removed or eradicated.
27. The brown recluse spider infestation at the Plaintiffs' HOME is a dangerous and irreparable condition that has rendered the HOME unsafe for occupancy.
28. The presence of this massive and unassailable infestation of brown recluse spiders constitutes a direct physical loss of the HOME.
29. The HOME and its contents are a total loss.

30. Even if the Plaintiffs were to leave the property and move to another home, none of the Plaintiffs' furniture or other personal property would be able to be taken to their new home because any undiscovered spider or egg sac in any transported item, clothing, or piece of furniture would likely lead to another brown recluse spider infestation at the new home.
31. The Plaintiffs purchased a Liberty Mutual "LibertyGuard Deluxe Homeowners Policy" and Liberty Mutual issued a homeowner's insurance coverage policy (hereinafter the "POLICY") to the Plaintiffs on March 1, 2014 with a policy period of March 1, 2014 through March 1, 2015.¹
32. Prior to issuing the POLICY, Liberty Mutual knew that brown recluse spiders can so pervasively infest a structure that it is unreasonable to believe that they can be successfully eradicated.
33. Prior to issuing the POLICY, Liberty Mutual have had other insureds with substantially the same policy language regarding exclusions for insects.
34. Prior to issuing the POLICY, Liberty Mutual knew that the word "insect[s]" refers to a scientific classification of organisms that distinguishes them from other organisms.

¹ Policy Number H37-258-033598-70 attached hereto as Exhibit "A".

35. Prior to issuing the POLICY, Liberty Mutual knew that spiders are not classified as insects by any reputable scientist or group of scientists with specialization in entomology.
36. Spiders are not classified in the field of entomology as insects.
37. Scientific literature in the field of entomology classify spiders as arachnids.
38. School children are taught that spiders are classified as arachnids.
39. Liberty Mutual sponsored through its financial support educational programs for Kindergarten through third grade programs that taught new American learners that insects, coruscations and arachnids are different classifications of living organisms.
40. Specifically, Liberty Mutual sponsored educational programs at the San Diego Natural History Museum in 2014-15 which included a unit titled “Amazing Arthropods” which was described in published literature as teaching children that, “Arthropods are interdependent on all life and serve an important role on Earth. Armed with an exoskeleton and enhanced sight and smell, insects, arachnids, and crustaceans are Earth’s great survivors.”
See, https://www.mos.org/sites/dev-elvis.mos.org/files/docs/advancement/mos_magazine_winter_2016-17.pdf

41. Liberty Mutual or their affiliated companies sponsor the Museum of Science in Boston, MA, with gifts totaling \$1,000,000 to \$2,499,999.99 which presented educational programs that distinguish arachnids from insects in 2016-2017.
42. Specifically, the Liberty Mutual-sponsored Boston Museum of Science presented a program with the following stated objective: “Spiders Alive! organized by the American Museum of Natural History, was presented by the Museum in Nichols Gallery. The traveling exhibition featured approximately 20 species of arachnids, including 16 spiders, 2 scorpions, a vinegaroon, and an African whip spider.”
43. Liberty Mutual financial support has educated school children and the general public in the United States that spiders are arachnids.
44. In litigation decided against Liberty Mutual in 2005 in the State of Arkansas, Liberty Mutual learned or re-learned that spiders are classified as arachnids, not insects, in a Worker Compensation claim it lost before the Arkansas Workers’ Compensation Commission, Claim Number F205463, wherein the claimant was Bonnie Reeves, the employer was Actronix, and the insurer was Liberty Mutual Insurance Company, an affiliate company of one or more
DEFENDANTS. See,

http://www.awcc.state.ar.us/opinions/fc/2005/pqr/f205463_reeves_bonnie_20050829.pdf

45. Liberty Mutual relied upon no scientific literature when drafting or interpreting its POLICY language that it believes in good faith classifies spiders as insects rather than arachnids.
46. The Declarations Page of the POLICY states that coverage is “provided and underwritten by Liberty Insurance Corporation, Boston MA.”
47. The POLICY provides in part the following:

“Section I – PERILS INSURED AGAINST

COVERAGE A – DWELLING and COVERAGE B – OTHER STRUCTURES

We insure against risk of direct loss to property described in Coverages A and B only if that loss is a physical loss to property. We do not insure, however, for loss:

... 2. Caused by:

... e. Any of the following:

... (7) Birds, vermin, rodents, or insects”.

48. Arachnids are not mentioned anywhere in the POLICY.
49. Spiders are not mentioned anywhere in the POLICY.
50. The POLICY does not contain any exclusion pertaining to arachnids in general or spiders.

51. Direct loss to property caused by spiders or arachnids is not excluded from coverage anywhere in the POLICY.
52. On March 1, 2015, Liberty Mutual issued a renewal of the POLICY to the Plaintiffs with a policy period of March 1, 2015 through March 1, 2016.²
53. On March 1, 2016, Liberty Mutual issued a renewal of the POLICY to the Plaintiffs with a policy period of March 1, 2016 through March 1, 2017.³
54. The Declarations Page of the March 1, 2016 renewal of the POLICY states that coverage is “provided and underwritten by Liberty Insurance Corporation, Boston MA.”
55. The Plaintiffs paid Liberty Mutual annual premiums to have their HOME covered for loss.
56. On September 15, 2016, the Plaintiffs submitted a claim with Liberty Mutual pursuant to the POLICY for the loss of use of the HOME.
57. On September 16, 2016, Liberty Mutual claims adjuster, Thomas Curcio, told Plaintiff Cody Robinson via telephone that the Plaintiffs’ claim would be denied under the insect exclusion of the POLICY.
58. Later on September 16, 2016, Mr. Curcio told Plaintiff Cody Robinson that the Plaintiffs’ claim had been submitted to “higher review”.

² Policy Number H37-258-033598-70 effective March 1, 2015 attached hereto as Exhibit “B”.

³ Policy Number H37-258-033598-70 effective March 1, 2016 attached hereto as Exhibit “C”.

59. On September 20, 2016, Mr. Curcio told Plaintiff Cody Robinson that the Plaintiffs' claim had been sent to Liberty Mutual's legal department and it would take two weeks to receive an opinion concerning whether or not the "insect" exclusion in the POLICY was applicable to spiders.
60. During the September 20, 2016 conversation with Plaintiff Cody Robinson, Mr. Curcio admitted that spiders were not insects and therefore the insect exclusion would not apply.
61. On September 29, 2016, Mr. Curcio informed Plaintiff Cody Robinson via telephone that the Liberty Mutual legal department had advised that spiders are insects and the claim would be denied.
62. Plaintiffs received a letter⁴ from Liberty Mutual dated September 30, 2016, informing them that the POLICY "does not afford coverage for a loss as a result of spider infestation."
63. Liberty Mutual's September 30, 2016 letter stated that the applicable policy provisions within the POLICY upon which Liberty Mutual based its denial of Plaintiffs' claim were as follows:

"SECTION I – PERILS INSURED AGAINST

**COVERAGE A – DWELLING and COVERAGE B – OTHER
STRUCTURES**

⁴ Attached hereto as Exhibit "D"

We insure against risk of direct loss to property described in Coverages A and B only if that loss is a physical loss to property.

We do not insure, however, for loss:

2. Caused by:

... e. Any of the following:

... (7) Birds, vermin, rodents, or insects”.

COVERAGE D – Loss of Use

The limit of liability for Coverage D is the total limit for all the coverage’s that follow.

1. If a loss covered under this Section makes that part of the “residential premises” where you reside not fit to live in, we cover, at your choice, either of the following. However, if the “residence premises” is not your principal place of residence, we will not provide the option under paragraph b. below.

- a. **Additional Living Expense**, meaning any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living; or
- b. **Fair Rental Value**, meaning the fair rental value of that part of the “residence premises” where you reside less any expenses that do not continue while the premises are not fit to live in.

Payment under **a.** or **b.** will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere.”

64. In its September 30, 2016 letter, Liberty Mutual provided no support or justification for why these exclusions applied to a brown recluse spider infestation.
65. Immediately upon receiving the letter of denial on September 30, 2016, Plaintiff Cody Robinson attempted to contact Mr. Curcio's supervisor, Emily Rennert, via telephone and left a voice mail message requesting that she contact him to discuss the denial of Plaintiffs' claim.
66. On October 3, 2016, Emily Rennert, contacted Plaintiff Cody Robinson via telephone and Ms. Rennert told Plaintiff Cody Robinson that "Liberty Mutual considers spiders insects" and that was the basis of the denial of the claim.
67. During the October 3, 2016 telephone conversation between Emily Rennert and Cody Robinson, Ms. Rennert also stated there was nothing else to be done once a coverage issue has been addressed by Liberty Mutual's legal department.
68. On October 4, 2016, Plaintiff Cody Robinson sent a letter⁵ to Emily Rennert requesting Liberty Mutual reconsider its denial of Plaintiffs' claim.

⁵ Attached hereto as Exhibit "E"

69. On October 6, 2016, the Plaintiffs received an email⁶ from Emily Rennert stating Liberty Mutual had reviewed the Plaintiffs' request for reconsideration and "Liberty Mutual's coverage position remains the same".
70. Liberty Mutual has no legitimate or debatable reason for the denial of Plaintiffs' claim of loss under the insect exclusion in the POLICY.
71. It is common knowledge that spiders are arachnids, not insects.
72. All arachnids, including spiders, have two body segments (the cephalothorax and abdomen), eight legs, simple eyes, no wings and no antennae.
73. Insects have three body segments divided into the head, thorax and abdomen.
74. Insects have six legs, compound eyes, antennae and one or two pair of wings.
75. Arachnids have their own scientific field of study known as arachnology.
76. Insects have their own scientific field of study known as entomology.
77. No reputable arachnologist or entomologist will ever say that spiders and insects are the same thing.
78. The refusal of Liberty Mutual to pay the Plaintiffs' claim has made the Plaintiffs "economic prisoners" to a very dangerous and potentially deadly predicament.

⁶ Attached hereto as Exhibit "F"

79. The Plaintiffs do not possess the financial means necessary to purchase and furnish another home to remove themselves from the danger the Plaintiffs and their children continue to be exposed to by the brown recluse spider infestation.
80. Liberty Mutual continues to deny the Plaintiffs' claim.

COUNT 1

BREACH OF CONTRACT

81. Plaintiffs re-allege and incorporate the preceding and subsequent paragraphs of this Complaint as if set out here in full.
82. Plaintiffs (the insured) are contractual parties to a valid homeowners' insurance liability contract (the POLICY) issued by Liberty Mutual (the insurer).
83. Liberty Mutual's contractual obligations require Liberty Mutual to provide the Plaintiffs with coverage of loss to the HOME as provided in the POLICY and to pay for those losses when a valid claim is made by the Plaintiffs.
84. Liberty Mutual agreed to insure the Plaintiffs' HOME against risk of direct loss to property in exchange for the payment of premiums from the Plaintiffs.

85. Plaintiffs have at all times on their part complied with all of the contractual provisions of the POLICY by paying the annual premiums and providing notice of their claim of loss on September 15, 2016.
86. Liberty Mutual has breached its contractual obligations to Plaintiffs by failing to provide coverage for loss of use of the HOME as required by the POLICY.
87. Liberty Mutual has intentionally refused to pay the Plaintiffs' loss incurred by reason of the severe infestation of brown recluse spiders at the HOME.
88. As a direct and proximate result of Liberty Mutual's contractual breach, Liberty Mutual is liable to the Plaintiffs for the full value of their covered loss and up to the coverage limits of the POLICY.
89. As a direct and proximate result of Liberty Mutual's breach of contract, Plaintiffs have suffered significant damages.

COUNT 2

BAD FAITH REFUSAL TO PAY THE PLAINTIFFS' CLAIM AND BAD FAITH REFUSAL TO INVESTIGATE THE PLAINTIFFS' CLAIM

90. Plaintiffs re-allege and incorporate the preceding and subsequent paragraphs of this Complaint as if set out here in full.
91. Plaintiffs are contractual parties to a valid homeowners' insurance liability contract (the POLICY) issued by Liberty Mutual.
92. Plaintiffs are express beneficiaries of the POLICY issued by Liberty Mutual.

93. Liberty Mutual's actions in refusing to honor the terms of the POLICY constitutes a breach of the valid homeowners insurance liability contract by Liberty Mutual because Liberty Mutual has no lawful basis for denying the Plaintiffs' claim.
94. Liberty Mutual has intentionally refused to pay the Plaintiffs' claim.
95. Liberty Mutual has no reasonably legitimate or arguable reason for refusing to pay the Plaintiffs' claim.
96. Liberty Mutual's position that a spider is an insect constitutes an unreasonable and illegitimate basis upon which to base a denial of coverage and is a bad faith refusal to pay the Plaintiffs' claim.
97. Liberty Mutual has actual knowledge that there is no legitimate or arguable reason for refusing to pay the Plaintiffs' claim.
98. It is a simple matter of absolute science that spiders are arachnids and not insects and therefore spiders are not excluded from coverage for loss under the insect exclusion of the POLICY.
99. Liberty Mutual made no effort to investigate the Plaintiffs' claim.
100. No Liberty Mutual adjuster has ever inspected the HOME to properly investigate the severity of the brown recluse spider infestation to determine if it amounts to a direct and complete loss of use of the HOME and its contents.

101. Liberty Mutual never made any effort whatsoever to properly investigate the Plaintiffs' claim and the denial of the claim was never subjected to a cognitive evaluation or review.

102. Liberty Mutual's actions have demonstrated a reckless failure to investigate whether the HOME is unsafe due to brown recluse spider infestation.

103. Liberty Mutual's actions have demonstrated a reckless failure to investigate the Plaintiffs allegation that spiders are arachnids and not insects and therefore not covered by the insect exclusion of the POLICY.

104. Liberty Mutual intentionally turned a blind eye to the Plaintiffs' claim and failed to determine whether or not there was any legitimate or arguable reason for its refusal to pay the Plaintiffs' claim.

PRAYER FOR RELIEF

WHEREFORE, the foregoing averments considered, Plaintiffs demand judgment for themselves as follows:

(A) Compensatory damages including mental anguish, incidental, consequential, and punitive damages against the DEFENDANTS for damages according to proof at trial;

(B) Equitable relief against the DEFENDANTS in accordance with proof at trial;

(C) Granting such other and further relief, including, without limitation, injunctive relief, declaratory relief, specific performance relief and other forms of equitable relief, as may be just, premises considered.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by struck jury of all issues in this Complaint triable to the jury.

Respectfully submitted,

/s/ Thomas F. Campbell
THOMAS F. CAMPBELL (ASB-5900-M60T)
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Cody Robinson*
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PLEASE SERVE DEFENDANTS VIA CERTIFIED MAIL AT:

LIBERTY MUTUAL INSURANCE COMPANY
c/o Registered Agent: Corporation Service Company, Inc.
641 South Lawrence Street
Montgomery, AL 36104

LIBERTY INSURANCE CORPORATION
c/o Registered Agent: Corporation Service Company, Inc.
641 South Lawrence Street

Montgomery, AL 36104

LIBERTY MUTUAL GROUP, INC.

c/o Registered Agent: Corporation Service Company, Inc.

641 South Lawrence Street

Montgomery, AL 36104