

FILED

COMMONWEALTH OF KENTUCKY  
WARREN CIRCUIT COURT, DIVISION I  
CIVIL ACTION NO. 19-CI- 00543

2019 APR 22 PM 1:43

WARREN CIR/DIS CT  
BRANDI DUVALL CLERK  
PLAINTIFF EB DC

**RENE BOUCHER**

v.

**UNITED SERVICES AUTOMOBILE ASSOCIATION**

Serve: Corporation Service Company  
421 W. Main Street  
Frankfort, KY 40601

**and**

**RAND PAUL**

**DEFENDANT**

Serve: 200 Lakeside  
Bowling Green, KY 42103

Plaintiff, Rene Boucher, by counsel and for his complaint against United Services Automobile Association and Rand Paul, states as follows

1. The Plaintiff, Rene Boucher, is and was at all times relevant hereto, a resident of Warren County, Kentucky, residing at 582 Rivergreen Lane, Bowling Green, KY 42103.

2. The Defendant, United Services Automobile Association ("USAA"), is and was at all times relevant hereto, a foreign corporation with its home office in San Antonio, TX. USAA regularly conducts business in the Commonwealth of Kentucky. USAA has designated its agent for service of process as Corporation Service Company, 421 W. Main Street, Frankfort, KY 40601. The Defendant, Rand Paul, is a citizen and resident of Bowling Green, Warren County, Kentucky, and is a necessary and proper party to this

action, as he has a vested interest in the outcome and a recognizable, present, and substantial interest in the subject matter.

3. As the events complained of occurred in Warren County, Kentucky, the homeowner's insurance policy at issue was purchased in Warren County, the Plaintiff is a resident of Warren County, and the amount in controversy exceeds the jurisdictional minimum, the Warren Circuit Court has jurisdiction over this case and is the proper venue.

### **Facts**

4. On November 3, 2017, Boucher was involved in an altercation with his neighbor, Rand Paul, in which Rand Paul suffered bodily injury. Paul retained an attorney and asserted an injury claim against Boucher just a few days later.

5. Boucher also retained an attorney and provided notice of the injury claim against him to his homeowner's insurer, USAA. Boucher was insured under USAA Homeowner's Insurance Policy No. 002364073 94A. Boucher is a military veteran and had been insured with USAA since 1980.

6. USAA conducted little to no investigation and denied coverage for the claims against Boucher by letter dated March 7, 2018. USAA also refused to provide Boucher with a defense to the claims against him. USAA did not seek a judicial determination on the issue of coverage from any Court.

7. Under the terms of Policy No. 002364073 94A, USAA agreed to pay the sums that Boucher became legally obligated to pay as damages because of bodily injury caused by him and to defend any suit or claim against Boucher seeking such damages.

8. In June of 2018, Paul filed suit against Boucher for the bodily injury that Paul sustained on November 3, 2017.

9. On June 27, 2018, Boucher's attorney tendered the complaint to USAA for defense and indemnity. Upon information and belief, USAA never responded to the tender.

10. On January 30, 2019, Paul prevailed on his claims against Boucher. A Warren County jury returned a verdict of \$582,834.82 against Boucher. The Trial Court entered a consistent judgment for that same amount on February 8, 2019.

11. All risks not expressly excluded under Policy No. 002364073 94A are covered, including those not contemplated by either party.

12. Policy No. 002364073 94A does not exclude coverage for bodily injury, for which the insured may be held liable, that was not expected or intended by the insured.

13. USAA had a duty to defend Boucher since there was an allegation that potentially, possibly or might come within the coverage terms of Policy No. 002364073 94A.

14. Boucher complied with his contractual duties under Policy No. 002364073 94A by paying his premium, by promptly providing USAA with notice of the injury claim against him and providing USAA with a copy of the complaint filed against him.

15. Boucher complied with his contractual duties under Policy No. 002364073 94A by making himself available for any investigation conducted by USAA.

16. On March 7, 2018, USAA sent a letter to Boucher denying coverage, consciously and unreasonably misrepresenting that there was no coverage under Policy No. 002364073 94A and electing not to defend Paul's claims against Boucher, leaving Boucher exposed and uninsured.

17. When USAA denied coverage it demonstrated a wanton or reckless disregard for the rights, interests and property of Boucher.

18. When USAA elected not to defend Boucher it demonstrated a wanton or reckless disregard for the rights, interests and property of Boucher.

19. USAA's decisions to deny coverage and deny a defense to its insured were unreasonable and in breach of the terms and conditions of Policy No. 002364073 94A. USAA's failure to defend has resulted in a significant judgment against Boucher. USAA is liable for the judgment against Boucher, together with interest thereon, from the date of entry of the judgment.

20. Boucher has expended attorney's fees and incurred significant costs as a result of USAA's decision not to provide Boucher with a defense.

21. Boucher is also entitled to an assessment of punitive damages against USAA and to his attorney's fees and costs.

#### **COUNT I – BREACH OF DUTY TO DEFEND**

22. USAA issued Policy No. 002364073 94A, under which Boucher is insured.

23. Boucher notified USAA of an occurrence which potentially, possibly or might come within the coverage terms of Policy No. 002364073 94A.

24. USAA owed a duty to defend Boucher under Policy No. 002364073 94A.

25. Boucher has complied with all material terms required under Policy No. 002364073 94A.

26. USAA elected not to defend Boucher. Accordingly, USAA is liable for all damages naturally flowing from the failure to provide a defense.

27. Judgment of \$582,834.82 has been entered against Boucher, for an occurrence within the coverage terms of Policy No. 002364073 94A.

28. USAA's conduct and breach of duty is ongoing and has been since November of 2017.

29. As a proximate result of USAA's breach of duty, USAA is liable to Boucher for the judgment, plus 12% interest from the date of entry of the judgment, for his attorney's fees and costs of litigation and any other damages sustained by Boucher as a result of USAA's breach of duty to defend.

### **COUNT II – BREACH OF CONTRACT**

30. USAA issued Policy No. 002364073 94A under which Boucher is insured.

31. Boucher notified USAA of an occurrence within the coverage terms of Policy No. 002364073 94A.

32. Boucher has complied with all material terms required under Policy No. 002364073 94A.

33. Judgment of \$582,834.82 has been entered against Boucher, for an occurrence within the coverage terms of Policy No. 002364073 94A.

34. USAA denied coverage that was due and owing under Policy No. 002364073 94A. Accordingly, USAA is liable for all damages naturally flowing from its breach of contract.

35. USAA's conduct and breach of contract is ongoing and has been since November of 2017.

36. As a direct and proximate result of USAA's breach of contract, USAA is liable to Boucher for the judgment, plus interest from the date of entry of the judgment, for his attorney's fees and costs of litigation and any other damages sustained by Boucher as a result of USAA's breach of contract.

**COUNT III – VIOLATION OF THE COVENANT OF  
GOOD FAITH AND FAIR DEALING**

37. USAA owed Boucher a duty of good faith and fair dealing with respect to the claims handling and indemnification for claims asserted and the suit filed by Paul. USAA covenanted that it would do nothing to impair Boucher's rights to receive the benefits of the insurance policy.

38. USAA was obligated to provide coverage under Policy No. 002364073 94A.

39. USAA lacked a reasonable basis in law or fact for denying coverage.

40. USAA knew, or should have known, there was no reasonable basis for denying coverage

41. USAA acted with reckless disregard for whether a basis existed to deny coverage.

42. USAA violated its covenant of good faith and fair dealing as follows:

a. Consciously and unreasonably denying coverage and electing not to defend without a valid basis was a conscious course of conduct firmly grounded in established company policy;

b. Consciously and unreasonably failing to investigate or evaluate Boucher's claim fairly and in good faith, but seeking and utilizing information available to it in a manner calculated to provide it with a wrongful but plausible sounding justification for denial;

d. Consciously and unreasonably failing to thoroughly and fairly review all information reasonably available to it;

- e. Construing the terms and conditions under Policy No. 002364073 94A to deny instead of provide coverage for this claim;
- f. Failing to make any settlement offer to Paul under Policy No. 002364073 94A;
- g. Failing to communicate in a proper and timely manner with respect to the claim;
- h. Denying coverage for this claim under Policy No. 002364073 94A as a matter of company economics, instead of based on the claim merits; and
- i. Such other acts as may be revealed through further discovery, evaluation and analysis.

43. As a direct and proximate result of USAA's violations, USAA is liable to Boucher for the judgment, plus interest from the date of entry of the judgment, for his attorney's fees and costs of litigation and any other damages sustained by Boucher as a result of USAA's violations, including an assessment of punitive damages.

**COUNT IV – VIOLATION OF KRS § 304.12-230**  
**KENTUCKY UNFAIR CLAIMS SETTLEMENT PRACTICES ACT**

44. USAA's actions were in violation of KRS § 304.12-230, as follows:
- a. USAA misrepresented and misconstrued pertinent facts and policy provisions relating to coverage at issue;
  - b. USAA failed to acknowledge and act reasonably promptly upon communications with respect to a claim under Policy No. 002364073 94A;
  - c. USAA failed to adopt and implement reasonable standards for the prompt investigation of a claim arising under its insurance policies;

d. USAA chose not to provide coverage, not to provide Boucher with a defense and not to pay this claim, without conducting a reasonable investigation based upon all available information;

e. USAA chose not to attempt in good faith to effectuate a prompt, fair and equitable settlement of this claim, in which liability was reasonably clear;

f. By choosing not to make any offer to settle this claim and denying coverage, USAA forced Paul to institute litigation and to obtain a judgment against Boucher, to recover amounts due under Policy No. 002364073 94A.

g. USAA failed to provide a reasonable explanation of the basis in Policy No. 002364073 94A in relation to the facts or applicable law for denial of the claim; and

h. Such other acts as may be revealed through further discovery, evaluation and analysis.

45. As a direct and proximate result of USAA's violations of KRS 304.12-230, USAA is liable to Boucher for the judgment, plus interest from the date of entry of the judgment, for his attorney's fees and costs of litigation and any other damages sustained by Boucher, including an assessment of punitive damages.

**COUNT V—VIOLATION OF THE  
KENTUCKY CONSUMER PROTECTION ACT  
KRS CHAPTER 367**

46. The conduct of USAA was in violation of the Kentucky Consumer Protection Act, KRS 367.170, in that the conduct of USAA in handling of Boucher's claim was false, unfair, misleading, and/or deceptive. Boucher is entitled to recover all of his statutory damages, to include compensatory damages, punitive damages, and attorney fees.

**COUNT V—RIGHT OF RELIEF UNDER  
THE KENTUCKY DECLARATORY JUDGMENT ACT  
KRS CHAPTER 418**

47. The Plaintiff states that there is an actual case and controversy as to the issue of coverage under the policy of insurance issued to him by USAA, such that this Court should declare the rights of the parties under KRS 418.040 et seq.

The Plaintiff, demands relief from the Defendant, United Service Automobile Association, as follows:

1. That a Summons be issued to the defendant, USAA Custom Insurance Company, process agent, Corporation Service Company, 421 W. Main Street, Frankfort, KY 40601.

2. Judgment against the Defendant, USAA, in favor of the plaintiff, Rene Boucher, in an amount that is determined to be fair and reasonable, for:

a. The judgment entered against Boucher in the amount of \$582,834.82, interest from the date of entry of the judgment;

b. Past mental and emotional distress, suffering and inconvenience;

c. Future mental and emotional distress, suffering and inconvenience;

d. Other expenses incurred by the third-party plaintiff;

e. An assessment of punitive damages;

f. The third-party plaintiff's costs, including his attorney's fees'

3. Pre-judgment and post-judgment interest;

4. Trial by jury;

5. Any and all other relief to which the third-party plaintiff may appear to be entitled.

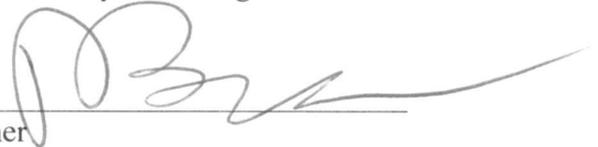
This 22 day of April, 2019.



**Matthew J. Baker**  
911 College Street, Suite 200  
Bowling Green KY 42101  
Telephone: (270) 746-2385  
Facsimile: (270) 746-9621

#### VERIFICATION

I, Rene Boucher, state that I have read the foregoing Complaint, and that the allegations contained therein are true and correct to the best of my knowledge and belief.



Rene Boucher