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2
3 THE HONORABLE CAROL MURPHY
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6 SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY
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8 TARVA LEE,)
9 Plaintiff,)
10 v.)
11 FARMERS INSURANCE COMPANY)
12 OF WASHINGTON, a Washington)
13 State Corporation,)
14 Defendant.)

No: 11-2-00788-7

PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR BREACH OF
CONTRACT, BAD FAITH,
NEGLIGENCE AND VIOLATION
OF STATUTORY DUTIES

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16 This First Amended Complaint repeats the allegations set forth in the Plaintiff's
17 Complaint, and now adds claims against FARMERS INSURANCE COMPANY OF
18 WASHINGTON, a Washington State Corporation.

19 COMES NOW the Plaintiff, Tarva Lee, by and through her attorneys of record, Cross
20 Border Law Corporation, and alleges the following:

21 **I. PARTIES**

22 1.1 Plaintiff Tarva Lee has at all times relevant to this action been a resident of Las
23 Vegas, Nevada.
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1 1.2 Defendant Farmers Insurance Company of Washington (“Farmers”) has at all times
2 relevant to this action been a Washington State corporation, conducting business within the
3 State of Washington.

4 **II. JURISDICTION AND VENUE**

5 2.1 Jurisdiction over Defendant Farmers lies pursuant to its residence in Washington
6 State.
7

8 2.3 Venue for this action lies in Thurston County, as the Breach of Contract, Bad Faith
9 and Violation of statutory duties involve a contract between Steven Yaworski and the
10 Defendant that was entered into in Thurston County.

11 **III. FACTUAL BACKGROUND – THE COLLISION**

12 3.1 On November 5, 2006, the Plaintiff was involved in an automobile accident north of
13 Williams Lake, British Columbia, Canada. The Plaintiff was a front seat passenger in a vehicle
14 driven by Washington State resident Steven L. Yaworski, when Mr. Yaworski failed to heed
15 the road and weather conditions and reduce his speed, thereby losing control of his vehicle and
16 causing a single-vehicle accident. The Plaintiff was injured in the accident resulting in a
17 permanent disability.
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19 3.2 As a passenger in Mr. Yaworski’s vehicle, the Plaintiff had access to increased
20 insurance coverage for Mr. Yaworski’s third party tort liability (Part 6 of the British Columbia
21 *Insurance (Vehicle) Regulations*), increased coverage for her own medical and rehabilitation
22 expenses (Part 7) and increased coverage for her own underinsured motorist protection (Part
23 10) (“UMP”) under Mr. Yaworski’s policy with Farmers, due to Farmers having signed a
24 certain Power of Attorney and Undertaking (“PAU”) with the Canadian Council of Insurance
25 Regulators (“CCIR”) on September 26, 2002. The monetary limits of the insurance coverage
26

1 are CAD \$200,000 for third party liability, CAD \$150,000 for medical and rehabilitation
2 expenses and CAD \$1,000,000 for UMP.

3 3.3 The Plaintiff relies on British Columbia law in enforcing her rights under the
4 Washington contract. Under the PAU, and pursuant to British Columbia law, Farmers must
5 compensate the Plaintiff according to the same terms that B.C. residents are compensated by
6 the Insurance Corporation of British Columbia (“ICBC”). See Part 10 to the *Insurance*
7 *(Vehicle) Act*, R.S.B.C 1996 ch. 231 and *Insurance (Vehicle) Regulations*, B.C. Reg. 447/83, S.
8 148.1 and 148.2; see also *Ruckheim v. Robinson*, {1995} 1 B.C.L.R.3d 46, 57, 59 (B.C. Ct.
9 App.); see also *Diotte v. Ins. Corp. of B.C.*, {2000} 28 C.C.L.I.3d 125 (B.C. Sup. Ct.); see also
10 *Anderson v. Co-Operators Gen. Ins. Co.*, {1990} 51 B.C.L.R.2d 93 (B.C. Ct. App.).

11 3.4 The Plaintiff has clearly demonstrated to Farmers that she sustained a catastrophic
12 brain injury that will leave her permanently disabled, as well as a host of other injuries and
13 losses. The Plaintiff therefore demanded payment of the maximum third party, medical and
14 rehabilitation expense and UMP coverage provided to her by way of Steven Yaworski’s policy
15 as affected by the PAU, subject to relevant deductions for certain benefits under British
16 Columbia law.

17 3.5 In or about June 2009, Farmers paid the Plaintiff the maximum CAD \$200,000 in third
18 party tort liability coverage and the maximum CAD \$150,000 in medical and rehabilitation
19 expenses. Farmers, through its counsel, has admitted that, in addition to the \$350,000 it has
20 paid to the Plaintiff, it is liable to the Plaintiff for up to \$1 million in Canadian funds, subject
21 only to applicable deductions. Although the burden of proof for such deductions under British
22 Columbia law rests with Farmers, Farmers has neither delineated nor proposed any such
23 deductions. Moreover, Farmers has either refused to pay, neglected to pay, or delayed in
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1 paying the Plaintiff as required, forcing the Plaintiff to initiate UMP arbitration proceedings in
2 British Columbia pursuant to the British Columbia *Insurance (Vehicle) Regulations*. Attached
3 as Exhibit 1 to this Complaint is a copy of the Notice of Arbitration filed in British Columbia.
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5 **IV. RESERVATION OF RIGHTS**

6 Further particulars of the Defendant's breach of contract, breach of statutory duties and
7 negligence are likely to become evident through the discovery process, and the Plaintiff
8 reserves the right to amend this complaint and/or to present further allegations consistent with
9 the evidence to the fullest extent permitted under Washington law.
10

11 **V. FIRST CAUSE OF ACTION-BREACH OF CONTRACT**

12 5.1 Each of the above allegations is incorporated herein by this reference.

13 5.2 Under its Policy, Defendant contracted to provide UIM coverage to its first party
14 insureds including passengers in the principal insured's vehicle while that vehicle was
15 travelling on the roads of British Columbia, Canada, in exchange for premium payments paid
16 by Steven Yaworski. Steven Yaworski made all premium payments and the contract of
17 insurance was in full force at the time of the loss.
18

19 5.3 Defendant has breached the contract of insurance by failing to abide by its terms and
20 pay covered damages.
21

22 5.4 Defendant's breach of contract has caused damage to the Plaintiff.
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24 **VI. SECOND CAUSE OF ACTION-BAD FAITH**

25 6.1 Each of the above allegations is incorporated herein by this reference.
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1 6.2 Defendant has a duty to Plaintiff and the contracting public to conduct itself in good
2 faith respecting its obligations as an insurer.

3 6.3 Defendant's acts and omissions, as alleged herein, are a breach of its duty to deal in
4 good faith with its insured, and have caused damage to Plaintiff.

5 6.4 Defendant's acts and omissions are contrary to its insureds' best interests and
6 Defendant's acts are in bad faith, and indeed outrageous.

7 6.5 The acts and omissions of Defendant are unfair and deceptive.
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10 **VII. THIRD CAUSE OF ACTION - NEGLIGENCE**

11 7.1 Each of the above allegations is incorporated herein by this reference.

12 7.2 Defendant owed statutory, contractual and common law duties to Plaintiff, which were
13 breached by Defendant's conduct as alleged herein.

14 7.3 Defendant's discharge of its duties was negligent.

15 7.4 By its acts and omissions, Defendant negligently inflicted physical, emotional, and
16 financial distress on Plaintiff.

17 7.5 Defendant's breach of the duties owed to Plaintiff proximately caused damage to the
18 Plaintiff.
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21 **VIII. FOURTH CAUSE OF ACTION-VIOLATION OF WASHINGTON CONSUMER
22 PROTECTION ACT (RCW 19.86)**

23 8.1 Each of the above allegations is incorporated herein by this reference.

24 8.2 The business of insurance, as well as the practice of insurers, agents, and adjustors, is
25 subject to the Consumer Protection Act ("CPA"), RCW 19.86, *et seq.*
26

1 8.3 The acts and omissions of Defendant and its employees, as alleged herein, during the
2 course of their insurance business, are subject to the CPA, RCW 19.86, *et seq.*

3 8.4 Defendant's actions are unfair, deceptive and violate the CPA, RCW 19.86 *et seq.*

4 8.5 Defendant by and through its employees violated the CPA, RCW 19.86 *et seq.*, thereby
5 causing damage to Plaintiff and entitling Plaintiff to treble damages, attorneys' fees, costs, and
6 such other relief permitted by the Court.

7 8.6 The acts and omissions of Defendant Farmers violate WAC 284 *et seq.*, including WAC
8 284-30-330, WAC 284-30-370 and WAC 284-30-380, constituting *per se* violations of the
9 Consumer Protection Act, codified as RCW 19.86 *et seq.*
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13 **IX. FIFTH CAUSE OF ACTION-VIOLATION OF THE INSURANCE FAIR**
14 **CONDUCT ACT (RCW 48.30)**

15 9.1 Each of the above allegations is incorporated herein by this reference.

16 9.2 By its actions it is clear that Defendant holds its monetary interests as more important
17 than its insured's interests. Defendant's acts and practices are contrary to the fair claims
18 practice regulations codified in the Washington Administrative Code, including but not limited
19 to Sections 284-30-330, 284-30-370 and 284-30-380.
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21 9.3 Defendant's acts and omissions, as alleged herein, constitute unreasonable conduct and
22 violate RCW 48.30 *et seq.*, entitling Plaintiff to treble damages, attorneys' fees, costs of suit,
23 and such other relief permitted by the Court.
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1 9.4 On November 10, 2010, Plaintiff provided Farmers at least 20 days notice of this
2 lawsuit as required by RCW 48.30.015(8)(a). Farmers has failed to cure the cause for the 20
3 day letter.
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5 **X. RELIEF SOUGHT**

6 10.1 As a proximate result of Defendant's acts and omissions, Plaintiff suffered past, present
7 and future special and general damages, including, but not limited to, the negligent infliction of
8 emotional distress, in amounts to be proven at the time of trial.
9

10 10.2 Wherefore Plaintiff prays for past, present and future special and general damages in
11 amounts to be proven at the time of trial; for all of Plaintiff's actual costs and attorneys' fees
12 pursuant to RCW 19.86 *et seq.* and RCW 48.30 *et seq.* and *Olympic Steamship* and its
13 progeny, and common law; for treble damages including the damages determined by the B.C.
14 UMP arbitration, pursuant to RCW 19.86 *et seq.* and RCW 48.30 *et seq.*; pre-judgment interest
15 on all special damages; post judgment interest of 12% per annum; and for such other costs and
16 further relief as the Court may deem just and equitable.
17

18 RESPECTFULLY SUBMITTED this ____ day of May, 2011.
19

20 GREG SAMUELS,
21 CROSS BORDER LAW CORPORATION
22

23 _____
24 W. Mark Belanger, WSBA #34340
25 Greg Samuels, WSBA #19497
26 Attorneys for Plaintiff