

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY
a foreign corporation,

Plaintiff,

v.

Case No. 21-
Judge

BLUE CROSS BLUE SHEILD OF ALABAMA,

Defendant.

KENNETH P. WILLIAMS (P55790)
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COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, **ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY** (“Allstate”), by and through its attorneys, SEGAL McCAMBRIDGE SINGER & MAHONEY, LTD., and for its Complaint for Declaratory Judgment against the above-named Defendant, BLUE CROSS BLUE SHEILD OF ALABAMA, states as follows for its Complaint for Declaratory Judgment pursuant to MCR 2.605:

PARTIES, JURISDICTION & VENUE

1. Plaintiff ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY, (“Plaintiff”) is a wholly owned subsidiary of Allstate Insurance Holdings, LLC, which is an Illinois limited liability company. Allstate Insurance Holdings, LLC., is a subsidiary of The Allstate Corporation, which is an Illinois corporation. The Plaintiff’s principal place of business is Illinois,

where it maintains its headquarters, and it is licensed to conduct insurance business in the State of Michigan.

2. This case arises out of an automobile accident which occurred February 27, 2019 in Ann Arbor, in the County of Washtenaw County, State of Michigan, and the subsequent treatment to follow. The injured party in said accident was Tamara Webster.

3. That upon information and belief, Tamara Webster, at the time of said accident, was domiciled in the State of Michigan with a permanent address of 20471 Elmwood Street Garden City, Michigan 48135.

4. The amount in controversy is \$111,351.01 which exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of costs, interest and attorney fees, and is otherwise within the jurisdiction of this Court for the reason that declaratory relief is sought.

5. That this is a diversity case, as Defendant Blue Cross Blue Shield of Alabama is headquartered in Alabama, and Plaintiff is an Illinois Corporation, and is licensed to conduct business in the State of Michigan

5. Upon information and belief, this Court is the proper venue for this action under 28 USC Sec. 1391 because a substantial part of the events giving rise to the claims at issue occurred in this district.

FACTS

6. Allstate restates the allegations pled in paragraphs 1–5 above as if set forth in full.

7. Allstate provided Ms. Webster with Michigan automobile insurance coverage.

8. On February 27, 2018, Webster was allegedly involved in a motor vehicle accident while she was walking in a hospital parking structure. Webster was allegedly pulling a wagon when the negligent driver hit the wagon which then hit the Plaintiff's leg.

9. After the accident, Webster left the parking structure and returned to the hospital's emergency room to seek treatment. At the time, Webster only complained of injuries to her right leg. Webster admitted that her right leg was also injured prior to the accident.

10. On December 4, 2018, Tamara Webster filed litigation against Allstate (Wayne County Circuit Court, Case No. 18-015368-NF). During that litigation, by court order, Allstate agreed to indemnify and hold Webster harmless in the event that Defendant would file a lawsuit against her, giving rise to this declaratory action.

11. At the time of the accident Webster was had health insurance through her husband's employer with Blue Cross Blue Shield of Kentucky. This later changed to defendant Blue Cross Blue Shield of Alabama. **(Exhibit A- Proof of Coverage)**.

12. Approximately one year following the accident, from February 2019 to October 2019, Webster sought treatment for pre-existing injuries including an injury to her right leg prior to the motor vehicle accident, a previous surgery on her right ankle, fibromyalgia, multiple sclerosis, and a previous motor vehicle accident in 1984 which caused cervical and lower back pain. These injuries and complaints pre-dated the subject motor vehicle accident and were unrelated to the motor vehicle accident.

13. Defendant Blue Cross Blue Shield of Alabama provided coverage to Webster and paid \$111,351.01 in benefits for treatment for the dates between February 2019-October 2019. **(Exhibit B- BCBS Lien)**

14. Now, Defendant Blue Cross Blue Shield of Alabama seeks to enforce a subrogation lien for the amount of \$111,351.01 against Webster for the services provided to Webster from February 2019-October 2019.

15. Pursuant to the Michigan No-Fault Act, Allstate is only liable for treatment casually related to Webster's injuries arising out of the accident. Any treatment rendered for injuries not related to the motor vehicle, are to be covered by Webster's health insurance carrier.

16. Blue Cross Blue Shield of Alabama listed the services in which they seek to recover from Webster in their lien. These services provided to Webster include only treatment to injuries Webster had prior to the motor vehicle accident.

17. Among the treatments that Defendant included in the lien, Defendant included physical therapy rendered to Webster from Dearborn Orthopedic Association. These sessions were intended to rehabilitate Webster's right leg. Webster testified that she injured her right leg prior to the accident. Specifically, on October 17, 2017 Webster presented to the emergency room with right leg pain after placing her daughter in bed, 9 days later Webster returned to the hospital after hearing a pop in her right calf and started wearing a CAM boot. Webster's calf injury and subsequent treatment was unrelated to any injury sustained in the subject motor vehicle accident.

18. In 1984, Webster was involved in a motor vehicle accident which caused cervical and lower back pain. Webster also has a long history of multiple sclerosis and fibromyalgia. In 2000, Plaintiff was involved in another motor vehicle accident and her University of Michigan medical records that year indicate that she had chronic lower back pain.

19. Following the alleged accident, Webster suffered from a fall in Disney world in September of 2019 and a slip and fall at Walgreens in November 2019. Among other services, Defendant is also asking for reimbursement for a surgery performed at Ascension Providence Hospital by Michigan Brain and Spine on October 24, 2019 which doctors directly related to Webster's fall at Disney World after the motor vehicle accident.

20. Comparing the treatments included in Defendant's lien, to Webster's medical records, it is clear that the treatment which Defendant is seeking reimbursement of is unrelated to the injuries sustained in the motor vehicle accident.

21. In addition, a full body scan of Webster eight months after the motor vehicle accident demonstrated no fractures or acute abnormalities in her body.

22. Here, Defendant seeks to recover for treatment over a year after the accident.

REQUEST FOR DECLARATORY RELIEF

23. Allstate repeats the allegations pled in paragraphs 1-22 above as set forth in full.

24. Allstate provided Ms. Webster with Michigan Automobile insurance (**Exhibit C-Allstate Policy**). Pursuant to Michigan No-Fault Acts, Allstate is only liable for medical treatment that is reasonably necessary and causally related to the motor vehicle accident.

25. Here, Defendant, placed a lien on Plaintiff for non-payment of treatment that is unrelated to the subject motor vehicle accident.

26. MCL 500.3105 (1) states that "an [automobile] insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.

27. MCL 500.3105 (1) states that there must be a causal connection between the injuries and the motor vehicle accident.

28. MCL 500.3107(1)(a) permits an injured person to recover PIP benefits from an insurer for "[a]llowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." Under Griffith, this provision requires that "an 'allowable expense' must be 'for' one of the following: (1) an injured person's care, (2) his recovery, or (3) his rehabilitation."

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