

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JOE HOLLAND CHEVROLET, INC.,

Plaintiff,

v.

Civil Action No. 13-C-978

LIBERTY MUTUAL INSURANCE
COMPANY and GREG CHANDLER'S
FRAME AND BODY, LLC,

Defendants.

FILED
MAY 17 PM 3:51
CLERK OF COURT
KANAWHA COUNTY
WEST VIRGINIA

Joe Holland Chevrolet, Inc. (hereafter "Joe Holland") brings this civil action against Liberty Mutual Insurance Company and Greg Chandler's Frame and Body, LLC. This civil action is brought to recover damages for breach of contract, wrongful termination of contract, tortious interference with prospective business relations, and civil conspiracy.

Parties

1. Plaintiff Joe Holland Chevrolet, Inc. ("Joe Holland") is a West Virginia corporation with its principal place of business in South Charleston, Kanawha County, West Virginia. At all relevant times, Joe Holland has been licensed to conduct business and has been conducting business in the State of West Virginia.

2. Defendant Liberty Mutual Insurance Company ("Liberty Mutual") is a Massachusetts corporation with its principal place of business in Boston, Massachusetts. At all relevant times, Liberty Mutual has been licensed to conduct business and has been conducting business in the State of West Virginia.

3. Defendant Greg Chandler's Frame and Body, LLC ("Greg Chandler") is a West Virginia limited liability company with its principal place of business in St. Albans, Kanawha

County, West Virginia. At all relevant times, Greg Chandler has been licensed to conduct business and has been conducting business in the State of West Virginia.

Background Allegations

4. Plaintiff Joe Holland Chevrolet, Inc., is an automobile dealership located on MacCorkle Avenue in South Charleston, West Virginia. Joe Holland is engaged in all aspects of business associated with automobile dealerships, including new and used car sales, car and body repairs, and the authorized sale of original equipment manufacturer ("OEM") replacement parts to other car and body repair shops.

5. Defendant Liberty Mutual Insurance Company is an insurance company and is in the business of providing automobile insurance to automobile owners and operators.

6. As part of the claims handling and processing side of its insurance business, Liberty Mutual created a program that it refers to as the "Total Liberty Care" or "TLC" program for steering claimants and insureds in need of automobile repairs to Liberty Mutual's preferred list of automobile repair shops. Under the program, participating repair shops agree to provide estimating and adjusting services for Liberty Mutual and agree to comply with certain conditions and targets imposed by Liberty Mutual, including limitations on the amount of time to completion of estimates and repairs. In exchange, Liberty Mutual places the repair shop on its list of TLC facilities ("TLC list").

7. The primary benefit to repair shops of being placed on Liberty Mutual's TLC list is the possibility of gaining or retaining business when a Liberty Mutual insured or claimant is in need of repairs. While Liberty Mutual informs insureds and claimants that they have the right to have their cars repaired at any facility they choose, Liberty Mutual heavily encourages the use of TLC facilities and, by implication, heavily discourages the use of non-TLC facilities. For

example, statements appearing on Liberty Mutual's website imply that it will be more difficult to obtain approval for a non-TLC shop's estimate and repairs, that it will be more difficult to schedule an appointment with a non-TLC shop, that rental car benefits may not be available if the claimant chooses a non-TLC shop, that the work performed by non-TLC shops will not be warranted, and that arranging for payment by Liberty Mutual to non-TLC shops will be more of a hassle.

8. On or about December 18, 2008, Joe Holland entered into a "TLC Repair Shop Agreement" ("the TLC Agreement") with Liberty Mutual. This agreement was for a period of 12 months and renewable in 12-month intervals thereafter. The agreement permitted termination without cause by either party on 30 days notice. The TLC Repair Shop Agreement provided, however, that, "In the event that the terms of this Agreement conflict with any laws or regulations, those laws or regulations control the conduct of the parties under this Agreement."

9. As part of becoming a participating TLC repair shop, Joe Holland was required to purchase specialized estimating software from Audatex, software that no other insurer requires Joe Holland to use.

10. After entering into the TLC repair shop agreement at the end of 2008, the Liberty Mutual segment of Joe Holland's repair business (i.e. those customers whose repair work was paid for in whole or part by Liberty Mutual) went from 13 customers in 2007 and 17 customers in 2008 to 104 customers in 2009 and 92 customers in 2010.

11. In or about February 2011, a representative of Liberty Mutual called Joe Holland's body repair shop and informed the manager that Liberty Mutual was changing its policy with respect to the use of replacement parts (known as "crash parts") on new vehicles. Liberty Mutual's new policy was to require TLC shops to repair all automobiles, including those within

the first three years of manufacture, with used or salvage parts without obtaining the owner's consent. The policy also required the use of used fenders, bumpers, and sheet metal on all car repairs, including repairs of newer cars.

12. Joe Holland subsequently informed Liberty Mutual's representative that West Virginia law, W.V. Code § 46A-6B-3, as interpreted in *West Virginia Automotive Dismantlers v. McGraw*, Civil Action No. 97-2C-2797 (Kan. Cty. Cir. Ct. August 20, 1998), prohibited the use of used parts for the repair of cars within the first three years of their manufacture. Accordingly, Joe Holland informed Liberty Mutual that it would not comply with Liberty Mutual's request to repair newer cars with used parts.

13. In mid-2011, Liberty Mutual informed Joe Holland that because of its refusal to repair newer cars with used parts, Liberty Mutual was removing Joe Holland from the TLC list and program.

14. After Liberty Mutual removed Joe Holland from its TLC list in mid-2011, the Liberty Mutual segment of Joe Holland's repair business (i.e. those customers whose repair work was paid for in whole or part by Liberty Mutual) dropped from 14 customers in May 2011, five in June 2011, four in July 2011, to never more than three in subsequent months and only six total for all of 2012. Overall, the number of Joe Holland's Liberty Mutual repair customers dropped from 104 in 2009 and 92 in 2010 to 64 in 2011 (when Joe Holland was dropped from the TLC program mid-year) and six in 2012.

15. Defendant Greg Chandler's Frame and Body, LLC, is a car repair shop that, upon information and belief, specializes in the repair and replacement of car bodies and frames. Greg Chandler is a competitor of Joe Holland for repair business.

16. Upon information and belief, Liberty Mutual imposed the same requirement on Greg Chandler that it violate West Virginia law and use used replacement parts on newer cars without providing notice to the customer in order to remain on the TLC list.

17. From August 2011 to October 2011, Greg Chandler repaired a Liberty Mutual insured's 2009 Chevrolet Aveo, which had been purchased at Joe Holland in June 2009, with used replacement parts and without the owner's consent, in violation of the law.

18. Upon information and belief, Liberty Mutual continued to impose the unlawful requirement on TLC shops that they repair newer cars with used parts until they reached an agreement with the West Virginia Attorney General to stop the practice in 2012.

19. Liberty Mutual has continued and continues to keep Joe Holland off of its TLC list.

20. Upon information and belief, Greg Chandler continued to comply with Liberty Mutual's unlawful request to repair newer cars with used replacement parts until Liberty Mutual agreed to stop its practice of requiring repair shops to do so in 2012, and has continued to maintain TLC status.

21. Upon information and belief, Greg Chandler continued to cause prospective repair shop customers to use his shop rather than Joe Holland's through wrongful means, by conspiring with Liberty Mutual to violate West Virginia law for the financial benefit of both Greg Chandler and Liberty Mutual.

Count I: Breach of Contract Against Liberty Mutual

22. Plaintiff incorporates and re-alleges paragraphs 1-21 as though separately set forth herein.

23. Although the TLC Agreement between Joe Holland and Liberty Mutual could be terminated at will with 30 days notice by either party, Joe Holland relied on Liberty Mutual's

good faith and its express agreement to comply with all applicable laws in the performance of the TLC Agreement to its detriment. Joe Holland incurred substantial out-of-pocket costs and contractual commitments for the Audatex software in order to qualify for Liberty Mutual's TLC list.

24. Liberty Mutual breached the express terms of the TLC Agreement when it required Joe Holland to violate the law of the State of West Virginia in order to avoid termination of the Agreement. The second paragraph of section I ("Terms and Conditions") of the TLC Agreement reads: "In the event that the terms of this Agreement conflict with any laws or regulations, those laws or regulations control the conduct of the parties under this Agreement."

25. As a result of Liberty Mutual's decision to terminate the TLC Agreement, Joe Holland was forced to pay approximately \$515 per month for an additional ten months for the Audatex software, incurring out-of-pocket losses, in excess of \$5,000, for no benefit.

26. As a result of Liberty Mutual's breach of the express terms of the TLC Agreement by terminating it because Joe Holland refused to conduct business under the Agreement in violation of the law, Joe Holland suffered a substantial decline in the number of Liberty Mutual insureds and claimants who become customers of its repair shop, and lost and continues to lose substantial profits due to the loss of those customers.

Count II: Wrongful Termination of Contractual Agreement Against Liberty Mutual

27. Plaintiff incorporates and re-alleges paragraphs 1-26 as though separately set forth herein.

28. Under West Virginia law, at-will contracts cannot be terminated in retaliation against a person or party for disclosing or refusing to participate in unlawful conduct or conduct that violates public policy. This rule has been applied most clearly in the employment context but

also applies and should apply beyond the employment context to include other contracts that create or give rise to the expectation of long-term or indefinite business, service, or professional relationships.

29. Liberty Mutual terminated the TLC Agreement because of Joe Holland's refusal to violate the law and strong public policy of the West Virginia legislature, embodied in W.V. Code § 46A-6B-3, against using used parts in the repair of newer model cars.

30. As a result of Liberty Mutual's decision to terminate the TLC Agreement, Joe Holland was forced to pay approximately \$515 per month for an additional ten months for the Audatex software, incurring out-of-pocket losses in excess of \$5,000, for no benefit.

31. As a result of Liberty Mutual terminating the TLC Agreement because Joe Holland refused to conduct business under the Agreement in violation of the law, Joe Holland suffered a substantial decline in the number of Liberty Mutual insureds and claimants who become customers of its repair shop, and lost and continues to lose substantial profits due to the loss of those customers.

Count III:
Tortious Interference with Prospective Business Relations Against Liberty Mutual

32. Plaintiff incorporates and re-alleges paragraphs 1-31 as though separately set forth herein.

33. Joe Holland has a clear expectation, based on its business, market knowledge, market share, reputation and standing in the community, and past experiences, that at least a certain number of Liberty Mutual's insureds and claimants in the Kanawha River Valley will become customers of its repair shop.

34. Joe Holland has a pre-existing business relationship with many of Liberty Mutual's insureds and claimants, some of whom purchased cars from its lots and others of whom have had repair work performed at its facility in the past.

35. Through the information that Liberty Mutual provides to its insureds and claimants about the disadvantages of choosing a non-TLC repair shop, Liberty Mutual intentionally interferes with its insureds and claimants choice of repair shop and intentionally causes its insureds and claimants to avoid going to repair shops that are not on its TLC list.

36. Through its policy of denying TLC status to repair shops, like Joe Holland's, that refuse to violate the law by placing used parts on newer cars without the owner's consent, Liberty Mutual intentionally interferes with the prospective business relations of those repair shops and tries to influence those repair shops to adopt a policy that is in violation of both the law and the strong public policy of the State of West Virginia.

37. Liberty Mutual specifically intended for Joe Holland to lose repair customers when it removed Joe Holland from the TLC list for refusing to violate the law. Liberty Mutual specifically intends for its actions to influence repair shops, including Joe Holland's, to adopt its unlawful policy and to participate in its unlawful scheme, and to punish those that refuse to do so.

38. As a consequence of Liberty Mutual's intentional act in causing its insureds and claimants to avoid having repair work performed at Joe Holland, Joe Holland has suffered a substantial and significant decline in the number of Liberty Mutual insureds and claimants who become customers of its repair shop.

39. As a consequence of Liberty Mutual's intentional act in causing its insureds and claimants to avoid having repair work performed at Joe Holland, Joe Holland has suffered a substantial and significant decline in profits at its repair shop.

40. Joe Holland has a clear expectation, based on its business dealings and relationships, past experiences, market share, and status as an authorized new original equipment manufacturer ("OEM") parts dealer for General Motors and other car manufacturers, that other repair shops will purchase new OEM parts from Joe Holland's wholesale parts business in order to conduct and complete repairs in compliance with the law and the public's expectation that new OEM parts will be used for repairs of newer cars.

41. Through its policy of denying TLC status to repair shops that refuse to violate the law by placing used parts on newer cars without the owner's consent, Liberty Mutual intentionally influenced repair shops to violate the law by using used parts instead of new OEM parts in their repair shops and for their customers. Liberty Mutual intentionally interfered with Joe Holland's prospective business relations and customers for new OEM parts and intentionally caused new OEM parts wholesalers, like Joe Holland, to lose customers.

42. As a consequence of Liberty Mutual's unlawful and intentional actions, many repair shops, such as Greg Chandler's, use used parts for repairs that would otherwise have been completed with new OEM parts.

43. As a consequence of Liberty Mutual's unlawful and intentional actions, Joe Holland has lost prospective contracts for sales and consequent profits for its new OEM parts wholesale business and associated profits from those sales.

Count IV:
Tortious Interference with Prospective Business Relations Against Greg Chandler

44. Plaintiff incorporates and re-alleges paragraphs 1-43 as though separately set forth herein.

45. Joe Holland has a clear expectation, based on its business, market knowledge, market share, reputation and standing in the community, and past experiences, that at least a certain number of Liberty Mutual's insureds and claimants in the Kanawha River Valley will become customers of its repair shop.

46. Greg Chandler is a competitor of Joe Holland in the automobile repair business.

47. As a consequence of Greg Chandler's business and status as Joe Holland's competitor, Greg Chandler intentionally causes third persons to choose its body shop for repair work rather than its competitors', including Joe Holland.

48. Greg Chandler agreed to Liberty Mutual's request that it use used parts in repair work on newer cars in order to maintain and increase its share of customers from Liberty Mutual's pool of insureds and claimants.

49. By agreeing to violate the law and strong public policy of the State of West Virginia in order to maintain and increase its share of Liberty Mutual's insureds and claimants at the expense of its law-abiding competitors, including Joe Holland, Greg Chandler used unlawful and wrongful means to engage in what would otherwise have been lawful competition. Greg Chandler intentionally interfered with the choice of repairs shops by prospective repair-shop customers through these unlawful and wrongful means.

50. Joe Holland lost customers, and attendant profits, from Liberty Mutual's pool of insureds and claimants to Greg Chandler as a consequence of Greg Chandler's unlawful conduct.

Count V: Civil Conspiracy Between Liberty Mutual and Greg Chandler

51. Plaintiff incorporates and re-alleges paragraphs 1–50 as though separately set forth herein.

52. Greg Chandler engaged in a civil conspiracy with Liberty Mutual to further Liberty Mutual's intentional act of unlawfully interfering with Joe Holland's prospective business relations.

53. Liberty Mutual engaged in this civil conspiracy in order to reduce its own costs by cutting off non-compliant repair shops, and specifically to punish Joe Holland for refusing to use cheaper used parts for the repair of newer cars.

54. Liberty Mutual engaged in this civil conspiracy in order to further Liberty Mutual's goal of reducing its own claims costs and maximizing Liberty Mutual's profits.

55. Greg Chandler engaged in this civil conspiracy in order to gain customers from Liberty Mutual's pool of insureds and claimants and thereby increase its own profits.

56. As a consequence of this civil conspiracy between Liberty Mutual and Greg Chandler to unlawfully interfere with Joe Holland's prospective business relations, Joe Holland's repair shop lost customers from Liberty Mutual's pool of insureds and claimants and lost associated profits.

Prayer for Relief and Demand for Jury Trial

WHEREFORE, Plaintiff Joe Holland Chevrolet, Inc., prays for the following relief:

A. Damages in an amount sufficient to compensate Joe Holland for the loss of profits up to the time of adjudication and/or trial;

B. Damages in an amount sufficient to compensate Joe Holland for the loss of reasonably certain future profits;

C. Damages in an amount sufficient to compensate Joe Holland for out-of-pocket expenses for the Audatex software purchased at Liberty Mutual's behest;

D. Punitive damages against Liberty Mutual for its malicious, oppressive, wanton, willful, and reckless conduct and its criminal indifference to civil obligations;

E. Prejudgment interest;

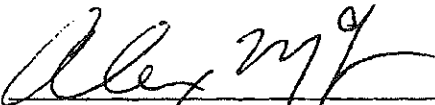
F. Reasonable costs, expenses, and attorneys fees; and

G. Such other relief as this Court may deem appropriate.

Plaintiff demands a jury trial as to all issues so triable.

Respectfully submitted,

Plaintiff, by Counsel:



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