

IN THE COUNTY COURT OF POLK COUNTY, FLORIDA
CLAIMS DIVISION
CASE NO. 2013SC-001284-0000-LK

RAYMOND E. GUNDER, JR., OBO WHEELER
3001 BARTOW ROAD
LAKELAND, FL 33803
PLAINTIFF

vs.

ALLSTATE INSURANCE COMPANY
C/O CFO,
200 E. GAINES STREET
TALLAHASSEE, FL 32399
DEFENDANT

SUMMONS/NOTICE TO APPEAR FOR PRETRIAL CONFERENCE/MEDIATION

YOU ARE HEREBY COMMANDED to serve this NOTICE and a copy of the COMPLAINT upon: ALLSTATE INSURANCE COMPANY

YOU ARE HEREBY NOTIFIED that you are required to appear in person or by attorney at the POLK COUNTY GOVERNMENT CENTER, 930 East Parker Street, Courtroom 216, Lakeland, Florida on the 24 day of JUNE, 2013, at 10:00AM for a PRETRIAL CONFERENCE before a judge of this court.

**IMPORTANT – READ CAREFULLY
THE CASE WILL NOT BE TRIED AT THAT TIME,
BUT MAY BE MEDIATED AT THAT TIME.**

DO NOT BRING WITNESSES. YOU MUST APPEAR IN PERSON OR BY ATTORNEY.

The defendant(s) must appear in court on the date specified in order to avoid a default judgment. The plaintiff(s) must appear to avoid having the case dismissed for lack of prosecution. A written MOTION or ANSWER to the court by the plaintiff(s) or the defendant(s) shall not excuse the personal appearance of a party or its attorney in the PRETRIAL CONFERENCE/MEDIATION. The date and time of the pretrial conference CANNOT be rescheduled without good cause and prior court approval.

A corporation may be represented at any stage of the trial court proceedings by an officer of the corporation or any employee authorized in writing by an officer of the corporation. Written authorization must be brought to the Pretrial Conference/Mediation.

The purpose of the pretrial conference is to record your appearance, to determine if you admit all or part of the claim, to enable the court to determine the nature of the case, and to set the case for trial if the case cannot be resolved at the pretrial conference. You or your attorney should be prepared to confer with the court and to explain briefly the nature of your dispute, state what efforts have been made to settle the dispute, exhibit any documents necessary to prove the case, state the names and addresses of your witnesses, stipulate to the facts that will require no proof and will expedite the trial, and estimate how long it will take to try the case.

Mediation

Mediation may take place during the time scheduled for the pretrial conference. Mediation is a process whereby an impartial and neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties, without prescribing what the

resolution should be. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement.

In mediation, decision making rests with the parties. Negotiations in county court mediation are primarily conducted by the parties. Counsel for each party may participate. However, presence of counsel is not required. If a full agreement is not reached at mediation, the remaining issues of the case will be set for trial. Mediation communications are confidential and privileged except where disclosures are required or permitted by law.

If you admit the claim, but desire additional time to pay, you must come and state the circumstances to the court. The court may or may not approve a payment plan and may withhold judgment or execution or levy.

RIGHT TO VENUE: The law gives the person or company who has sued you the right to file in any one of several places as listed below. However, if you have been sued in any place other than one of these places, you, as the defendant(s), have the right to request that the case be moved to a proper location or venue. A proper location or venue may be one of the following: (1) where the contract was entered into; (2) if the suit is on an unsecured promissory note, where the note is signed or where the maker resides; (3) if the suit is to recover property or to foreclose a lien, where the property is located; (4) where the event giving rise to the suit occurred; (5) where any one or more of the defendants sued reside; (6) any location agreed to in a contract; (7) in an action for money due, if there is no agreement as to where suit may be filed, where payment is to be made.

If you, as the defendant(s), believe the plaintiff(s) has/have not sued in one of these correct places, you must appear on your court date and orally request a transfer, or you must file a WRITTEN request for transfer in affidavit form (sworn to under oath) with the court 7 days prior to your first court date and send a copy to the plaintiff(s) or plaintiff's(s') attorney, if any.

A copy of the statement of claim shall be served with this summons.

WITNESS MY HAND and Official Seal of this Court on 24th day of April, 2013.



STACY M. BUTTERFIELD, CPA
Clerk of the Circuit Court
930 EAST PARKER STREET, ROOM 240
LAKELAND, FL 33801
PHONE (863) 608-6412

By _____

Deputy Clerk

Copy to Plaintiff & Defendant

Return to: SCANNED FOR PLAINTIFF

**REQUESTS FOR ACCOMMODATIONS
BY PERSONS WITH DISABILITIES**

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Office of the Court Administrator, 255 N. Broadway Avenue, Bartow, Florida 33830, (863) 534-4686, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

**IN THE COUNTY COURT
IN AND FOR POLK COUNTY, FLORIDA**

RAYMOND E. GUNDER, JR.,
on behalf of Wheeler,

Plaintiff,

v.

Case No:
Section:

ALLSTATE INSURANCE
COMPANY,

Defendant.

COMPLAINT

Plaintiff, RAYMOND E. GUNDER, JR., ("GUNDER"), hereby files this Complaint against Defendant, ALLSTATE INSURANCE COMPANY, ("ALLSTATE"), and states as follows:

JUDICIAL ALLEGATIONS

1. This is an action for damages that do not exceed \$5,000.00 independent of attorney's fees and costs.
2. At all times material hereto, GUNDER was and is a resident of Lakeland, Polk County, Florida.
3. On or about January 4, 2013, Mrs. Barbara Wheeler executed a valid Durable Limited Power of Attorney, granting GUNDER the power to, "institute, prosecute, defend, compromise, settle, appeal, or terminate any administrative proceedings, civil claims, litigation, or other proceedings...against [ALLSTATE]...", ("Power of Attorney"); said Power of Attorney is attached hereto and incorporated herein as Exhibit "A".

4. For purposes of this case, GUNDER "stands in the shoes" of Mrs. Wheeler.
5. At all times material hereto, ALLSTATE was and is a Florida Corporation authorized and doing business in Lakeland, Polk County, Florida.
6. The acts by Defendant which constitute the basis for this lawsuit and the causes of action set forth herein were committed within Polk County, Florida.
7. Venue is proper in Polk County, Florida pursuant to Section 47.011, *Florida Statutes*.

SUBSTANTIVE ALLEGATIONS

8. At all times material hereto, Mrs. Wheeler/GUNDER was/is a policy holder/insured of ALLSTATE. Pursuant to the policy/contract (which Mrs. Wheeler/GUNDER does not currently have in her/his possession, but which is expected to be obtained through discovery from the Defendant in this case) between Mrs. Wheeler /GUNDER and ALLSTATE, Mrs. Wheeler /GUNDER agrees to pay a monetary premium to ALLSTATE in exchange for ALLSTATE providing automobile insurance and, generally, paying for/reimbursing Mrs. Wheeler /GUNDER for any repair charges that are necessary, reasonable, and/or "competitive in the market area" for purposes of ultimately repairing Mrs. Wheeler's/GUNDER's vehicle if it is damaged as a result of a collision.
9. On or about December 21, 2012, after being involved in a collision, Mrs. Wheeler /GUNDER entered into a contract with Gunder's Auto Center (an auto body repair shop in Lakeland, Florida) in order that Gunder's Auto Center would provide Mrs. Wheeler /GUNDER with certain repair materials and/or labor for her 2010 Dodge Grand Caravan

4x2 SXT ("Dodge") in exchange for payment to Gunder's Auto Center for the repair materials, parts, services, and/or labor used in repairing the damaged Dodge.

10. Thereafter, an ALLSTATE representative "inspected" the damaged Dodge in order to prepare an estimate for repair of the damaged Dodge (Defendant's ALLSTATE Claim #000270950215D01). The ALLSTATE representative underestimated the amount necessary, reasonable, and/or "competitive in the market area" to bring the damaged Dodge back to pre-loss condition.

11. Most importantly, ALLSTATE relayed to Mrs. Wheeler /GUNDER and Gunder's Auto Center that ALLSTATE would not pay for, and/or reimburse Mrs. Wheeler /GUNDER for, *all* of the repair charges associated with numerous repair procedures that were necessary and reasonable for purposes of ultimately bringing, as much as possible, the damaged Dodge back to pre-loss condition. In fact, ALLSTATE failed and refused to pay for, and/or reimburse Mrs. Wheeler/GUNDER for, *all* of the repair charges associated with numerous repair procedures that were necessary and reasonable for purposes of bringing, as much as possible, the damaged Dodge back to pre-loss condition.

12. ALLSTATE is obligated, in this instance, to pay for, and/or reimburse Mrs. Wheeler /GUNDER for, *all* of the repair charges involved in Gunder's Auto Center's ultimate repair of the damaged Dodge pursuant to Mrs. Wheeler's/GUNDER's policy/contract with ALLSTATE.

13. As a result of Defendant's foregoing acts, Mrs. Wheeler /GUNDER was, and continues to be damaged.

COUNT I
(BREACH OF CONTRACT)

14. GUNDER realleges and incorporates herein by reference the allegations contained in paragraphs one (1) through thirteen (13) above.

15. Gunder's Auto Center has demanded payment from Mrs. Wheeler /GUNDER for all services, labor, parts and/or materials provided to Mrs. Wheeler /GUNDER in the ultimate repair of the damaged Dodge. All such charges to Mrs. Wheeler /GUNDER are necessary, reasonable, and/or "competitive in the market area".

16. ALLSTATE has breached the policy/contract with Mrs. Wheeler /GUNDER by failing and refusing to pay for, and/or reimburse Mrs. Wheeler /GUNDER for, the repair of her damaged Dodge pursuant to the terms of Mrs. Wheeler's/GUNDER's policy/contract with ALLSTATE.

17. As a direct and proximate result of ALLSTATE's breach of the policy/contract with Mrs. Wheeler/GUNDER, Mrs. Wheeler/GUNDER has been damaged to the extent that Mrs. Wheeler /GUNDER is in default on the monies owed to Gunder's Auto Center that otherwise should be paid by ALLSTATE pursuant to its policy contract with Mrs. Wheeler /GUNDER. The repair charges remaining in default are the following: (1) Body and Paint Labor - \$97.80; (2) Taxes - \$6.84; (3) Credit for Overpayment - \$10.00. The total current outstanding amount owed is approximately \$94.64.

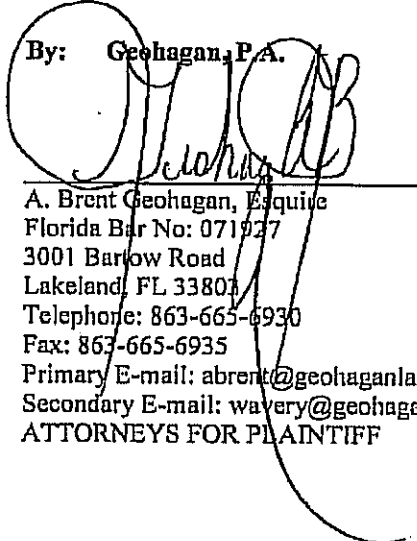
WHEREFORE, GUNDER demands judgment against Defendant, ALLSTATE, for damages, interest, attorney fees and costs and any such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

GUNDER demands a trial by jury of all issues so triable.

DATED this 19th day of April, 2013.

By: Geohagan, P.A.

A large, stylized handwritten signature in black ink, appearing to read 'A. Brent Geohagan', is written over a horizontal line. The signature is written in a cursive, somewhat compressed style.

A. Brent Geohagan, Esquire
Florida Bar No: 071927
3001 Barlow Road
Lakeland, FL 33803
Telephone: 863-665-6930
Fax: 863-665-6935
Primary E-mail: abrent@geohaganlaw.com
Secondary E-mail: wavery@geohaganlaw.com
ATTORNEYS FOR PLAINTIFF

EXHIBIT

“A”

DURABLE LIMITED POWER OF ATTORNEY

This DURABLE LIMITED POWER OF ATTORNEY, executed pursuant to the authority granted by section 709.08, Florida Statutes, made this 4th day of January, 2013, is from Barbara Wheeler of North Perry, Florida, as Grantor (the principal), to RAYMOND ELLSWORTH GUNDER, JR., OF Lakeland, Florida, as Grantee (the agent). (When applicable the singular shall include the plural and the masculine shall include the feminine.)

WITNESSETH: That Grantor has made, constituted, and appointed, and by these presents does make, constitute and appoint Grantee his true and lawful attorney-in-fact, in his name and for his use and benefit, to act as follows:

- A. Scope of Authority: Grantee shall have every power of Grantor to take all actions and execute and deliver all paper, as if Grantor were personally present, to the full and complete extent that Grantor is permitted by law to act individually, jointly with others, or as a fiduciary, including without limitation:
 1. Business and Financial Matters: Grantee shall have the following powers, directions, and authorizations:
 - a. to institute, prosecute, defend, compromise, settle, appeal, or terminate any administrative proceedings, civil claims, litigation, or other proceedings, for or against Grantor with regard to any and all claims Grantor has or may have in the future against Allstate Insurance Company and /or any of its subsidiaries, related companies, and/or agents regarding any monies alleged to be owed to Gunder's Auto Center, Inc., related to any automobile repairs.

- B. Authority to Delegate: Grantee shall have no authority to delegate any powers granted by this instrument.
- C. Release: Grantor hereby releases and discharges Grantee of and from any and all claims, losses, or causes of action with Grantor or anyone claiming by or through Grantor shall or may have against Grantee for the exercise of the powers, directions, and authorizations contained in this power of attorney when the same is exercised in good faith and with the intent of providing for the best interests of Grantor.
- D. Duration: This Durable Limited Power Of Attorney shall not be affected by subsequent incapacity of the Grantor except as provided in Section 709.08, Florida Statutes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the
4th day of January, 2013.

GRANTOR: Barbara Wheeler

Print Name: Barbara J. Wheeler

WITNESS: Susan Brown

Print Name: Susan Brown

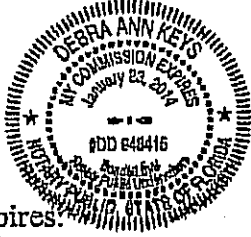
WITNESS: Tiffany Rodriguez

Print Name: Tiffany Rodriguez

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgements, appeared Barbara Wheeler to me known to be the person described herein or who has produced a Driver's License # W46-071-51-718-0 as identification and who executed the foregoing instrument and acknowledge before me (and who did/did not take an oath) that he/she executed the same.

WITNESS MY hand and official seal in the County and State of last
aforesaid this 4th day of January, 2013.

(NOTARY SEAL)



My commission expires:
January 23, 2014

A handwritten signature in cursive script that reads "Debra Ann Keys".

NOTARY PUBLIC

Debra Ann Keys
NAME TYPED OR PRINTED