

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR NASSAU COUNTY, STATE OF FLORIDA**

SHERRY GOLD,

Plaintiff,

CASE NO.:

DIVISION:

vs.

CHRISTINE MAZZANTI WARD, STATE
FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, ISLAND WALK
STATION, LLC, a for profit corporation, and
STARBUCKS COFFEE COMPANY a/k/a
STARBUCKS CORPORATION, a for profit
company,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, SHERRY GOLD, by and through the undersigned counsel, hereby sues Defendants, CHRISTINE MAZZANTI WARD, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ISLAND WALK STATION, LLC, a for profit corporation, and STARBUCKS COFFEE COMPANY a/k/a STARBUCKS CORPORATION, a for profit company, and alleges:

GENERAL ALLEGATIONS

1. This is an action for damages which exceed the sum of \$75,001, exclusive of interest and costs.
2. At all times relevant, Defendant STARBUCKS COFFEE COMPANY a/k/a STARBUCKS CORPORATION, (Defendant "STARBUCKS" herein), was a For Profit Corporation that was actively engaged in business in the State of Florida, including Nassau County, Florida.
3. At all times relevant, Defendant ISLAND WALK STATION, LLC (Defendant "ISLAND WALK" herein), was a For Profit Corporation that was actively engaged in business in the State of Florida, including Nassau County, Florida.

4. At all times relevant, Defendant Christine Mazzanti Ward (Defendant “Ward”) was a resident of Nassau County Florida.

5. At all times relevant, Defendant Ward owned and operated a 2015 Jeep Grand Cherokee Limited, bearing Florida tag number 7107PX (hereinafter the “Jeep”).

6. At all times relevant, Defendant STARBUCKS maintained and had possession and control of the premises located at 1453 Sadler Road, Fernandina Beach, Florida (“Starbucks Premises” herein), including the areas of parking lot, drive-thru, and pedestrian ingress and egress into and out of the Starbucks store located on the Starbucks Premises.

7. At all times relevant, Defendant ISLAND WALK owned, maintained, and had right and duties of possession and control of the Starbucks Premises, including the areas of parking lot, ingress, and egress into and out of the store located on the Starbucks Premises.

8. On or about July 1, 2019, Defendant Ward was a drive-thru customer of Defendant STARBUCKS on the Starbucks Premises driving the Jeep.

9. On or about July 1, 2019, Sherry Gold was an in-store customer of Defendant Starbucks, and an invitee on the Starbucks Premises, who drove to Starbucks, parked her car on the Starbucks Premises, and walked into the Defendant STARBUCKS store.

10. At all times relevant, Defendant STARBUCKS solicited the general public, both foot traffic and vehicle traffic, to come to the STARBUCKS Premises as customers – not only to come and park on the Starbucks premises and walk into the store through its parking lot, but also to drive vehicles through Defendant STARBUCKS’ parking lot and drive-thru window for drinks, coffee, food or beverage, which would be handed through the customer’s window in the driver-thru on the Starbucks Premises, after which the customer would pull through the Starbucks Premises parking lot/pedestrian areas with their newly acquired drinks or food in hand.

11. At all times relevant, Defendant STARBUCKS profited off selling coffee drinks and other products to BOTH in-store customers who STARBUCKS solicited to park in the parking lot of the Starbuck's Premises and then walk through the parking lot of the Starbucks Premises into the store, AND drive-thru customers who STARBUCKS solicited to drive through the parking lot up to the drive-thru window where Defendant STARBUCKS sold the customers drinks and food into their vehicles, after which the customers drove away through the parking lot/pedestrian traffic area.

12. At all times relevant, Defendant STARBUCKS had a right and duty to exercise reasonable care in the design, construction, inspection, maintenance and/or operation of parking lot/drive thru/pedestrian areas of the Starbucks Premises which was and is conjoined with that parking area surrounding the actual Defendant STARBUCKS -- an area where Defendant STARBUCKS not only knew its foot-traffic customers parked and walked through to get into and leave from the store, but Defendant STARBUCKS also knew that its drive-thru customers were driving and exiting with food and drink just handed to them through Defendant STARBUCKS' drive-thru window.

13. At all times relevant, Defendants STARBUCKS and ISLAND WALK, jointly maintained and had possession and control of the Starbucks Premises -- including the parking lot/drive thru/pedestrian areas through which STARBUCKS's in-store customers walked, and drive-thru customers drove -- and therefore owed a legal duty to design, construct, inspect, maintain and/or operate the Starbucks Premises in a reasonably safe condition for the benefit of pedestrian invitees, including Plaintiff.

14. At all times relevant, Defendant ISLAND WALK owned the Starbucks Premises, and therefore had a non-delegable legal duty to design, construct, inspect, maintain and/or operate the Starbucks premises in a reasonably safe manner in light of reasonably foreseeable dangers arising out of actual and reasonably foreseeable (and intended) uses of the premises. This includes, but is not limited to, the design, construction, inspection, maintenance and/or operation of

the Starbucks Premises.

15. At all times relevant, and by virtue of their joint maintenance, possession and control of the Starbucks Premises, Defendants STARBUCKS and ISLAND WALK owed a legal duty to invitees on the premises, including Plaintiff, to design out, guard against, and/or warn of unreasonably dangerous hazards, defects or conditions existing on the Starbucks premises which Defendants STARBUCKS and ISLAND WALK knew or should have known.

16. At all times relevant, including on or about July 1, 2019, Defendants STARBUCKS and ISLAND WALK maintained and provided nine parking spots on the west side of the Starbucks Premises for in-store pedestrian customers.

17. At all times relevant, including on or about July 1, 2019, Defendants STARBUCKS and ISLAND WALK maintained and operated the STARBUCKS drive-thru on the west side of the STARBUCKS store, running directly between the designated west-side parking spaces and the store.

18. At all times relevant, including on or about July 1, 2019, Defendants STARBUCKS and ISLAND WALK maintained and operated a fenced-in outdoor patio on the south and west side of the STARBUCKS store -- with seats, chairs, customers, tables, and umbrellas -- connected to the Defendant STARBUCKS store and fenced all the way up to the curb, directly along the path that vehicles exited the drive-thru window, with no sidewalk for pedestrians exiting the STARBUCKS store walking to their car parked in west-side parking spots.

19. At all times relevant, including on or about July 1, 2019, Defendants STARBUCKS and ISLAND WALK maintained and provided only one entrance/exit for the STARBUCKS store, located east of the fenced-in patio on the south side of the store.

20. At all times relevant, including on or about July 1, 2019, in-store patrons with

their car parked in the west-side parking spots were forced out into traffic and off the curb by the fenced in patio (fence forces pedestrians off the curb), and directly across, through, and into the path of vehicles taking a left around the patio after exiting STARBUCKS' drive-thru window.

21. At all times relevant, including on or about July 1, 2019, there were no stop signs, no warning signs, no designated pedestrian walkways, no protected pedestrian walkways, no cones, no traffic control persons, no marked exit lane for the drive-thru at all, nothing at all to protect pedestrian patrons/invitees of STARBUCKS on the Starbucks Premises walking from inside the store to their cars parked in the west-side parking spots.

22. On or about July 1, 2019, at approximately 1:54 PM, and at all times relevant, Defendants STARBUCKS and/or ISLAND WALK negligently operated or maintained the Starbucks Premises and, as a result, a STARBUCKS customer (Christine Ward) exiting the drive-thru window in her Jeep with her drink, ran into a STARBUCKS customer (Sherry Gold) who was on-foot walking from inside the store to her car parked in the west-side parking spots.

23. As a result, Sherry Gold suffered serious injuries, including, among other injuries, multiple broken bones including, but not limited to:

- a. Displaced tibial plateau fractures with vertical fracture line through the lateral tibial plateau and separation of the fracture fragments;
- b. Transverse fracture through the proximal tibial metaphysis extending into the anterior and posterior subchondral bone of the lateral plateau;
- c. Right ankle displaced medial malleolar fractures with widening of the medial ankle mortise and delayed union in healing;
- d. Left foot transverse fracture through fifth metatarsal

24. On or about July 1, 2019, at approximately 1:54 PM, Defendant Ward was a

drive-thru customer of Defendant STARBUCKS on the Starbucks Premises, and had just received her order through the drive-thru window.

25. At that time and place, Defendant Ward negligently operated or maintained the Jeep such that it collided with Sherry Gold, to wit: Defendant Ward drove away from STARBUCKS' drive-thru window with her drink, made a left around the corner of the fenced-in patio and collided with Sherry Gold.

26. As a result, SHERRY GOLD suffered serious injuries as referenced above.

27. At all times relevant, Defendant, State Farm Mutual Automobile Insurance Company (hereinafter "State Farm"), was and is a foreign corporation licensed to, and doing substantial and not isolated business in Nassau County, Florida, where State Farm has agents and representatives for the transaction of its customary business.

28. At all times relevant, Sherry Gold was and is insured under Defendant State Farm's uninsured/underinsured motorist policy number C38695159A, which provided at least \$250,000 in UM/UIM coverage ("The Policy"). A copy of State Farm's Disclosure for this Policy is attached hereto as Exhibit "A".

29. At all times relevant, Christie Mazzanti Ward was an uninsured/underinsured motorist (hereinafter "UM driver") pursuant to the terms and conditions of Sherry Gold's policy of insurance with State Farm, making State Farm responsible for damages caused by her negligence.

30. Defendant State Farm was notified of Sherry Gold's losses and is obligated to pay uninsured motorist benefits to Plaintiff under The Policy.

31. Defendant State Farm has unjustifiably refused to honor its contractual obligations by refusing to pay the uninsured benefits owed, necessitating this lawsuit.

32. Plaintiff has complied with all the terms and conditions precedent to entitlement to uninsured motorist benefits under the Policy.

33. State Farm and Sherry Gold have been unable to agree on the amount of damages

and neither has demanded arbitration.

COUNT I

NEGLIGENCE AGAINST STARBUCKS COFFEE COMPANY a/k/a STARBUCKS CORPORATION

34. Plaintiff realleges and incorporates by reference herein all the allegations contained in paragraphs 1 through 26 above.

35. At all times relevant, including on or about July 1, 2019, Defendant STARBUCKS negligently breached its duties of care to SHERRY GOLD.

36. As a result, SHERRY GOLD suffered serious bodily injury resulting in suffering, pain, disability, disfigurement, loss of capacity for the enjoyment of life, mental anguish, expense of hospitalization, medical and nursing care and treatment, loss of ability to care for home or household, and/or aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer losses in the future.

WHEREFORE, the Plaintiff SHERRY GOLD demands judgment for damages and costs of suit against Defendant STARBUCKS COFFEE COMPANY a/k/a STARBUCKS CORPORATION, together with interest and any other remedy the Court deems meet and just, and demands a trial by jury on all issues so triable.

COUNT II

NEGLIGENCE AGAINST ISLAND WALK STATION, LLC

37. Plaintiff realleges and incorporates by reference herein all the allegations contained in paragraphs 1 through 26 above.

38. At all times relevant, including on or about July 1, 2019, Defendant ISLAND WALK negligently breached its duties of care to SHERRY GOLD.

39. As a result, SHERRY GOLD suffered serious bodily injury resulting in suffering, pain, disability, disfigurement, loss of capacity for the enjoyment of life, mental anguish, expense of hospitalization, medical and nursing care and treatment, loss of ability to care for home or household, and/or aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer losses in the future.

WHEREFORE, the Plaintiff SHERRY GOLD demands judgment for damages and costs of suit against Defendant ISLAND WALK STATION, LLC, together with interest and any other remedy the Court deems meet and just, and demands a trial by jury on all issues so triable.

COUNT III

JOINT VENTURE – DEFENDANTS STARBUCKS AND ISLAND WALK

40. Plaintiff realleges paragraphs 1 through 26, and further alleges.

41. At all times relevant, the Defendants STARBUCKS and ISLAND WALK were engaged in a joint venture and each was acting on behalf of the joint venture and within the scope of its business at the time and place of the crash at issue.

42. At all times relevant, including July 1, 2019, Defendants STARBUCKS and ISLAND WALK were responsible for designing, constructing, inspecting, maintaining, and operating the Starbucks Premises and were responsible for the safety of customers at the Starbucks Premises.

43. Defendants STARBUCKS and ISLAND WALK combined their resources and efforts to solicit customers to and make profits from goods sold at the Starbucks Premises.

44. Defendants STARBUCKS and ISLAND WALK had a common financial interest in a successful operation of the Starbucks Premises and additionally had a common right to

control the parking lot/pedestrian/drive-thru area of the Starbucks Premises.

45. Defendants STARBUCKS and ISLAND WALK had a common right to share in the profits and losses of the venture, as they shared in profits made through sales at the instant STARBUCKS store.

46. As a result of their combination of resources, common financial interests, common rights to share in the profits of the venture, and pursuant to an implied contract based on the acts and conduct of the parties, Defendants STARBUCKS and ISLAND WALK were engaged in a joint venture at the time of this collision.

47. Defendants STARBUCKS and ISLAND WALK are each responsible for the negligence of the other while acting on behalf of the joint venture and within the scope of the business.

WHEREFORE, Plaintiff SHERRY GOLD demands judgment against Defendants STARBUCKS and ISLAND WALK, together with interest and any other remedy the Court deems meet and just, and demands a trial by jury on all issues so triable.

COUNT IV

NEGLIGENCE AGAINST CHRISTINE MAZZANTI WARD

48. Plaintiff realleges and incorporates by reference herein all the allegations contained in paragraphs 1 through 26 above.

49. At all times relevant, including on or about July 1, 2019, Defendant WARD negligently operated or maintained the Jeep such that she collided with Plaintiff SHERRY GOLD.

50. As a result, SHERRY GOLD suffered serious bodily injury resulting in suffering, pain, disability, disfigurement, loss of capacity for the enjoyment of life, mental anguish, expense

of hospitalization, medical and nursing care and treatment, loss of ability to care for home or household, and/or aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer losses in the future.

WHEREFORE, the Plaintiff SHERRY GOLD demands judgment for damages and costs of suit against Defendant CHRISTIE MAZZANTI WARD, together with interest and any other remedy the Court deems meet and just, and demands a trial by jury on all issues so triable.

COUNT V

UM - STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

51. Plaintiff, Sherry Gold, re-alleges and incorporates by reference herein paragraphs 1 through 33 above, and further alleges.

52. The damages sustained by Plaintiff Sherry Gold exceed the policy limits of the coverage maintained by Christie Mazzanti Ward.

53. At all times relevant, Plaintiff Sherry Gold was insured under an automobile insurance policy issued by Defendant STATE FARM which provided uninsured/underinsured motorist ("UM") insurance (policy number C38695159A) with policy limits of \$250,000 for injuries and damages sustained in the crash at issue (copy of coverage affidavit(s) provided by STATE FARM with incorporated declarations pages are attached hereto as Plaintiff's Ex. "A", and the policy is incorporated by reference herein).

54. At all times relevant, Ward was an uninsured/underinsured motorist pursuant to Florida law and by the terms of Plaintiff Sherry Gold's uninsured/underinsured motorist policy of insurance with Defendant STATE FARM.

55. Plaintiff is entitled to uninsured motorist benefits from the insurance policy with Defendant STATE FARM. Defendant STATE FARM, through the UM coverage on the Policy, is obligated to pay monetary damages to Plaintiff as a result of the damages Plaintiff sustained in the aforesaid motor vehicle crash.

56. All conditions precedent have been performed or have occurred. Further, Plaintiff has fully complied with all of the terms and conditions of the insurance policy issued by Defendant STATE FARM.

57. Plaintiff Sherry Gold has offered to settle for the policy limits, but Defendant STATE FARM has failed or refused to pay the policy limits.

58. As a result of the negligence of the uninsured motorist, Ward, as alleged above, Plaintiff Sherry Gold suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, severe emotional distress, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of ability to care for home and household, and aggravation of any previously existing condition. These losses are either permanent or continuing and Plaintiff Sherry Gold will suffer the losses in the future.

WHEREFORE, Plaintiff SHERRY GOLD demands judgment against Defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY for damages and costs of suit, together with such other relief as the Court may deem fair and just, and demands a trial by jury on all issues so triable.

COUNT VI
BAD FAITH - STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY

59. Plaintiff Sherry Gold realleges the allegations of paragraphs 1 through 33, and 52 - 58 above, and incorporates the same by reference herein.

60. This claim will ripen upon the determination by the Court or by confession of judgment by STATE FARM that Plaintiff is entitled to uninsured motorist benefits under the policy in an amount greater than STATE FARM's highest offer of \$106,500.

61. STATE FARM has known or should have known (had it exercised good faith handling of this case) since the early inception of this case, shortly after the July 1, 2019 collision which broke bones in both of Sherry Gold's lower extremities rendering her bedridden, in a hospital and rehab hospital for a month, before she was wheelchair bound and non-weightbearing for weeks, alone, in her home where her bedroom was on the second, that Sherry Gold's damages far exceed the combined underlying insurance limits and UM limits, combined.

62. Plaintiff Sherry Gold by and through her attorney, provided STATE FARM with a written formal offer to settle her uninsured motorist claim for the policy limits of \$250,000 on February 14, 2020. STATE FARM failed to accept this offer.

63. On March 23, 2020, Plaintiff Sherry Gold filed a Civil Remedy Notice of Insurer Violations ("CRN") with the Florida Department of Insurance and served a copy of the CRN upon Defendant State Farm. Copy of the CRN are attached hereto as **Exhibit "B"**.

64. As a result of the injuries caused by the negligence of the uninsured motorist and the relationship between the parties under the Policy, Defendant State Farm owed a duty to Plaintiff to attempt in good faith to settle Plaintiff's uninsured motorist claim when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for Plaintiff's interests.

65. Defendant State Farm further owed to Plaintiff a duty to refrain from engaging in unfair claim settlement practices.

66. Defendant State Farm breached its duties to Plaintiff, in violation of section 624.155, Florida Statutes, by:

- a. failing to attempt, in good faith, to settle Plaintiff's uninsured motorist claim when, under all of the circumstances, it could have and should have done so, had it acted fairly and honestly and with due regard for Plaintiffs' interests, who was an insured, in violation of section 624.155(1)(b)(1), Florida Statutes;
- b. failing to properly train adjusters and claims personnel;
- c. placing its own financial interests before that of Plaintiff;
- d. engaging in unfair claims settlement practices in violation of section 626.9541(1)(i)3.a, c, d, f, and g, Florida Statutes. Including, Defendant State Farm:
 - i. failed to adopt and implement standards for the proper investigation of claims, including coverage;
 - ii. failed to acknowledge and act promptly upon communications with respect to Plaintiff's uninsured motorist claim, including its failure to properly respond to Plaintiff's multiple written requests for coverage information and demands for disclosure of all uninsured motorist benefits available;
 - iii. failing to conduct reasonable investigations based on the available information;
 - iv. failed to provide a reasonable written explanation of the basis in the insurance policy, in relation to the facts or applicable law, for its lack of any reasonable settlement offers; and

- v. failing to promptly notify Plaintiff of any additional information necessary for the processing of the uninsured motorist claim, including what information Defendant State Farm employees required to properly assess and determine a reasonable amount of damages pursuant to Defendant State Farm policies and procedures.

67. The acts complained of herein constituted Defendant State Farm's general business practices in that they (a) were expressions of, and in compliance with, standard company practices and procedures, (b) are said by Defendant State Farm to be in conformity with what it contends are standard and good faith claims practices, and consequently or incidentally, (c) occur with such frequency as to indicate general business practices.

68. As a direct and proximate result of Defendant State Farm's actions and/or inactions as set forth above, Plaintiff has been damaged.

69. As a result of Defendant State Farm's failure to act in good faith and violations alleged above, Plaintiff is entitled to recover the total amount of damages pursuant to §627.727(10), Florida Statutes, including attorney fees, costs, and all damages suffered as a result of the Crash and all damages caused by Defendant State Farm's failure to act in good faith and violations alleged above.

70. As a further direct and proximate result of Defendant State Farm's failure to act in good faith and statutory violations alleged above, Plaintiff has had to retain the services of the undersigned attorneys and contracted with them for the payment of their attorney's fees to bring this action and recover the excess damages owed by Defendant State Farm. By operation of law, including section 627.428, Florida Statutes, Defendant State Farm will be obligated to pay those fees upon the successful conclusion of Plaintiff's claims.

WHEREFORE, Plaintiff SHERRY GOLD demands judgment against Defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY for the total damages suffered by Plaintiff, pre and post-judgment interest, attorneys' fees pursuant to sections 624.155, 627.727(10), and 627.428, Florida Statutes, costs, and any other relief this Court deems proper, and further demands a trial by jury on all issues so triable.

DATED this 3rd day of April, 2020.

PAJCIC & PAJCIC, P.A.

/s/ Curry G. Pajcic, Esq.

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