

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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BARRY'S AUTO BODY OF NY LLC, : SUMMONS
: :
Plaintiff : Index No.
: :
- against - :
:

TRI-STATE CONSUMER INSURANCE
COMPANY, INC., GABE DERI, LOUIS SIMO,
BASIT IRFAN, and IANET CORPORATION.

Defendants.

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To the above named Defendants:

YOU ARE HEREBY SUMMONED to appear in the Supreme Court of the State of New York, County of Richmond at the office of the Clerk of the said Court at 26 Central Avenue, Staten Island, New York 10301 in the County of Richmond, City and State of New York, within the time provided by law as noted below and to file your answer to the annexed complaint with the Clerk; upon your failure to answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default of the relief demanded in the complaint.

Dated: June 20, 2017

Defendants' Address:

Tri-State Consumer Insurance Company
100 Jericho Triangle
Suite 124
Jericho, New York 11753

Gabe Deri
60 Windsor Gate Dr.
New Hyde Park, New York 11040

Basit Irfan
7121 71st Street
Fresh Meadows, New York 11365

Louis Simo
5024 71st Street
Woodside, New York 11377

IANet Corporation
22044 North 4th Street
Suite 200
Phoenix Arizona 8505

Yours etc.,
HOWARD M. FILE, ESQ. P.C.

A handwritten signature in black ink, appearing to read 'A. Rafter', with a large, sweeping flourish extending to the right.

By: Andrew A. Rafter, Esq.
Attorneys for Plaintiffs
260 Christopher Lane, Suite 102
Staten Island, New York 10314
(718) 494 – 8800

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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BARRY'S AUTO BODY OF NY LLC, : VERIFIED COMPLAINT
:
Plaintiff : Index No.
:
- against - :
:

TRI-STATE CONSUMER INSURANCE
COMPANY, INC., GABE DERI, LOUIS SIMO,
BASIT IRFAN, and IANET CORPORATION.

Defendants.

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Plaintiff, BARRY'S AUTO BODY OF NY LLC ("Plaintiff"), by and through its attorneys, Howard M. File, Esq. P.C. as and for its Complaint against TRI-STATE CONSUMER INSURANCE COMPANY, IANET CORPORATION, GABE DERI, LOUIS SIMO, BASIT IRFAN and ("Defendants"), hereby states and alleges as follows:

FACTS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff is a Domestic Limited Liability Company duly formed and authorized to transact business under the laws of the State of New York with its principal place of business located at 4301 Amboy Road, Staten Island, New York, 10304.
2. Defendant Tristate Consumer Insurance Company ("Tri-State") is an insurance company organized under the laws of the State of New York, authorized to sell insurance within the state of New York and with a principal place of business located at 100 Jericho Quadrangle, Suite 124, Jericho New York 11735.
3. Upon information and belief, Defendant Gabe Deri ("Deri") is an individual insurance adjuster, duly licensed by the State of New York, and a resident of the State of New York.

4. Upon information and belief, Defendant Basit Irfan (“Irfan”) is an individual insurance adjuster duly licensed by the State of New York and a resident of the State of New York.
5. Upon information and belief, Defendant Louis Simo (“Simo”) is an individual insurance adjuster duly licensed by the State of New York and a resident of the State of New York.
6. Upon information and belief, Defendant IANET CORP. (“IANET”) is a foreign corporation authorized to do business in the State of New York with a principal place of business located at 22044 North 4th Street, Suite 200, Phoenix Arizona 85050.
7. Plaintiff is the Assignee of personal property claims by the following persons (“Assignors”), each of whom brought their vehicles to Plaintiff for repairs. As indicated below, each Assignor was either an insured of Tri-State or was involved in a motor vehicle accident with an insured of Tri-State, for whom Tri-State accepted liability and agreed to pay for motor vehicle repairs.

	Assignor	Defendant's Insured	Policy No.	VIN No.
1	Garisto, Phyllis	Yodice, Domonick	Unknown	WVWMP7ANXAE5179
2	DeFilippo, Michael	DeFilippo, Michael	01AP16804208	1N4AL3AP5FN361296
3	Vinceguerra, Claire	Vinceguerra, Claire	01AP99946731	JF2SJAAC3GH445091
4	Stege, Anthony	Stege, Anthony	AP16912207	2B3CJ5DT0AH192563
5	Carrano, Joseph	Carrano, Joseph	01AP17087606	5FNYF485X9B034275

8. At all times relevant to this Complaint, the policies for each of Defendant Tri-State's

insureds listed above (collectively the “Policies”) were in effect.

9. The Policies were standard form automobile insurance policies.

10. That each of the Assignors were involved in motor vehicle accidents resulting in property damage to their respective Vehicles, for which damage claims were assigned the below-mentioned claim numbers:

	Assignor	Policy No.	Claim No.
1	Garisto, Phyllis	Unknown	01-070059
2	DeFilippo, Michael	01AP16804208	01-072925
3	Vinceguerra, Claire	01AP99946731	01-072100
4	Stege, Anthony	AP16912207	01-071650
5	Carrano, Joseph	01AP17087606	01-071423

11. That each of the respective Policies provided insurance coverage for property damage to the automobiles listed above.

12. For each of the Assignors, Tri-State provided only partial payment for the property damage claims specified above.

13. That in each claim set forth above, Tri-State was obligated to provide sufficient coverage to restore the Assignors’ Vehicles to the same condition they were in immediately prior to the Accidents.

14. That each of the Assignors made the Plaintiff his/her designated representative as provided for by Regulation.

15. That with respect to each of the Vehicles, Plaintiff provided Tri-State with Estimates that reflected the amount necessary for proper repair of the Vehicle and/or to return the Vehicle to its pre-accident condition.

16. That with respect to each of the Vehicles set forth above, Tri-State provided Plaintiff with copies of its Estimate for Repairs (the “Insurer’s Estimates”).

17. The Insurer’s Estimates were insufficient to repair the Vehicles to their pre-accident condition as required by New York State Insurance Laws and Regulations.

18. That each of the Assignors assigned to Plaintiff their respective property damage claims against Tri-State in connection with the Claim Numbers specified above.

19. That Defendant IANet Corp. upon information and belief, employs and/or contracts with independent insurance adjusters that it provides to companies such as Tri-State.

20. That upon information and belief Tri-State retained IANet Corp. to adjust claims made in regard to each of the aforementioned vehicles.

21. That Defendants Deri, Irfan, and Simo (the “Individual Adjuster Defendants”) are the individual adjusters who were employed by and/or contracted with IANet to inspect the Vehicles at Plaintiff’s shop.

22. That the Individual Adjuster Defendants did in fact inspect the Vehicles and prepared the Estimates of Repair used by Tri-State.

23. That the Individual Adjuster Defendants, without justification, refused to approve claims for all necessary repairs and refused to negotiate labor rates, and other aspects of the requisite repairs.

24. The Individual Adjuster Defendants, without justification or prior notice to Plaintiff, modified their estimates for the cost of repair to the Vehicles.

25. That at all times herein mentioned, the Individual Adjuster Defendants acted in bad faith for the sole purpose of injuring Plaintiff in its business dealings with the Assignors.

Tri-State's Claims Practices

26. That at all times mentioned herein, , Tri-State used improper methods for calculating the number of hours of labor required to repair the Vehicles, including without limitation, refusing to pay for certain necessary repairs, refusing to allow hours for items which were recommended by the manufacturer guidelines and/or best practices, and refusing to account for the published guidelines that are generally accepted within the automotive insurance repair industry.

27. That in preparing the Insurer's respective Estimates to repair the Vehicles, Tri-State arbitrarily set price caps on the amount it would pay per unit for labor costs to repair the Vehicles.

28. The capped labor rates set by Tri-State were far below market rate.

29. In preparing the Insurer's Estimates, Tri-State insisted on using parts that are not Original Equipment Manufacturer parts ("non-OEM"), even when those parts are known to be of inferior quality to OEM parts and where the use of such non-OEM parts did not meet Tri-States contractual and legal obligations under the applicable policies and under New York State Insurance Law.

30. In preparing the Insurer's Estimates, Tri-State refused to negotiate on itemized lists of paint materials and instead utilized a formula based on paint-related labor, which was insufficient to cover the costs of paint-related repairs to the Vehicles.

31. As a result of the above-described improper policies, practices and procedures, the Insurer's Estimates did not provide sufficient coverage to repair the Vehicles to their pre-accident condition as Tri-State was obligated to do under both the applicable insurance policy and New York State law.

32. Upon information and belief, in each of the claims, specified above, Tri-State represented

that another repair shop would, repair the Vehicles to its pre-accident condition for the amount in Tri-State's Estimates, when in fact no other shop had previously inspected the Vehicles [and, to the extent that any other shop had an agreement to do work generally for Tri-State, that agreement was subject to the right to exceed Tri-State's estimates].

33. That Plaintiff served Tri-State notice of the deficiency amounts due and owing on each of the aforementioned vehicles on or about February 8, 2017 and demanded payment of the amounts due.

34. That Defendants jointly and severally impeded and delayed fair settlement of the Assignor's claims by using improper costs schedules, setting arbitrary price caps, refusing to negotiate in good faith on labor rates, refusing to pay appropriate amounts for paint materials and parts, and by otherwise failing to inspect or re-inspect the Vehicles within the time frames specified by regulation.

35. That Plaintiff completed the repairs to the Vehicles that were necessary to constitute a proper repair and/or restore them to their pre-accident condition.

36. That in each of the above referenced Claims, Tri-State made only a partial payment and failed to pay Plaintiff for the full amount actually required to for a proper repair and/or to restore the Vehicles to their pre-accident condition.

37. That the deficiencies currently due and owing to Plaintiff as a result of its repair of all the foregoing are as follows:

Assignor	Claim No.	Deficiency
Garisto, Phyllis	01-070059	\$12,734.53
DeFilippo, Michael	01-072925	\$8,770.34
Vinciguerra, Claire	01-072100	\$9,826.14

Stege, Anthony	01-071650	\$12,876.54
Carrano, Joseph	01-071423	\$9,698.12

AS AND FOR A FIRST CAUSE OF ACTION

(Breach of Contract against Defendant Tri-State)

38. Plaintiff repeats and reiterates paragraphs 1 through 37 of the Complaint as if fully set forth herein at length.

39. That Assignors DeFilippo, Vinciguerra, Stege and Carrano were each in privity of contract with Tri-State as a result of the insurance policies issued by Tri-State that were in effect on of the loss.

40. That Assignor Garisto was entitled to payment from Tri-State for damage to her vehicle that was caused by Tri-State's insured and for which Tri-State agreed to indemnify Garisto.

41. That Pursuant to its insurance Policies, Tri-State was obligated to provide sufficient coverage to pay for a proper repair and/or to restore the Assignors' Vehicles to their pre-accident condition.

42. That Tri-State has failed and refused to pay the deficiencies for repairs on the Assignors' Vehicles in the total sum of \$53,905.67 in violation of its contractual obligation under the Policies.

43. That Tri-State's refusal to pay the full cost to repair, damaged the Assignors, who were billed for the full amount necessary to repair their respective Vehicles to their pre-accident condition, was a breach of its contract to insure its policy holders for such claims.

44. As set forth above, Plaintiff is the Assignee of each of the Assignors' claims against Tri-State.

45. As a result of the foregoing, Plaintiff is entitled to damages from Tri-State in the amount

of \$53,905.67.

AS AND FOR A SECOND CAUSE OF ACTION
(VIOLATION OF GENERAL BUSINESS LAW §349 AGAINST TRI-STATE)

46. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 39 as if fully set forth herein at length.

47. That over several years Plaintiff has had numerous dealings with Defendant Tri-State for insurance claims for repairs to its insureds' vehicles pursuant to insurance policies issued by Tri-State.

48. That Tri-State has over this period of time consistently and systematically provided lower estimates of the cost of repairs than what is actually the reasonable cost of repairing a given vehicle to its pre-loss condition. That Tri-state has continually engaged in unfair claims practices as described above, including using inappropriate methods of determining the number of hours of labor, the arbitrary capping of labor rates, arbitrary capping of paint and materials, refusing to pay for body shop materials, and misleading consumers regarding the availability of other repair shops that would put the vehicle to its pre-loss condition for the amount of Tri-State's estimate.

49. That Tri-State has continuously attempted to "steer" its insureds away from Plaintiff's shop by pressuring them to use repair shop(s) recommended by Tri-State.

50. That as a result of the foregoing policies of Tri-State, which affected all general consumers and customers of Tri-State, Tri-State has violated General Business Law §349 by engaging in unfair claims practices as described above and by arbitrarily and improperly refusing to pay the actual amounts reasonably necessary to restore each Vehicle to its pre-loss condition.

51. That Tri-State's ongoing deceptive are in violation of GBL §349.

52. That Tri-State's failure to negotiate in good faith repair claims by its Insureds constitute a deceptive business practice within the meaning of GBL §349.

53. That Plaintiff's Assignors are consumers who have been targeted by the deceptive actions of Tri-State.

54. Plaintiff has been injured because it has not been paid the actual cost of repairs that were completed on the Vehicles and which were reasonably necessary to restore the Vehicles to their pre-loss condition.

55. As a result of the foregoing, Tri-State has violated GBL 349 and Plaintiff is entitled to actual damages for each violation provided herein, totaling \$53,905.67 as well as treble damages and reasonable attorneys' fees as provided for by the statute.

AS AND FOR A THIRD CAUSE OF ACTION

(Deceptive Business Practices in Violation of General Business Law §349 against IANet Corp.)

56. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 55 as if fully set forth herein at length.

57. That Defendant IANET Corp.'s actions in changing adjusters' estimates without inspection, setting arbitrary caps on price of certain tasks and otherwise interfering with the claims process were material deceptive actions in violation of GBL §349.

58. As a result of the foregoing, IANet Corp. has violated GBL §349 and Plaintiff is entitled to actual damages for each violation provided herein, totaling \$53,905.67 as well as treble damages and reasonable attorneys' fees as provided for by statute.

AS AND FOR A FOURTH CAUSE OF ACTION

(Tortious Interference With Business Relationship against Defendant Gabe Deri)

59. Plaintiff repeats and realleges paragraphs 1 through 58 as if full set forth herein.

60. Plaintiff had contracts and/or agreements with Plaintiff's Assignors Michael DeFilippo ("DeFilippo") and Anthony Stege ("Stege") to repair their respective Vehicles to their pre-loss condition. At all times relevant herein, Defendant Gabe Deri ("Deri"), was aware of these

agreements.

61. Deri interfered with these agreements for no legitimate purpose.

62. In doing so, Deri acted maliciously and with the sole purpose of interfering with Plaintiff's repair contracts with DeFilippo and Stege.

63. As a result of Deri's tortious interference with contract, Plaintiff has incurred special damages in the amount of \$21,646.88, plus costs, disbursements and interest.

AS AND FOR A FIFTH CAUSE OF ACTION

(Tortious Interference With Business Relationship Against Defendant Basit Irfan)

64. Plaintiff repeats and realleges paragraphs 1 through 63 as if full set forth herein.

65. Plaintiff had a contract/agreement with Plaintiff's Assignor Claire Vinciguerra ("Vinciguerra") to repair Vinciguerra's vehicle to its pre-loss condition. At all times relevant herein, Defendant Basit Irfan ("Irfan"), was aware of said contract/agreement.

66. Irfan intentionally interfered with the contract/agreement for no legitimate purpose.

67. In doing so, Irfan acted maliciously and with the sole purpose of harming Plaintiff in its contractual relations with Vinciguerra.

68. As a result of Irfan's interference, Plaintiff has incurred special damages in the amount of \$9,826.14, plus costs, disbursements and interest.

AS AND FOR A SIXTH CAUSE OF ACTION

(Tortious Interference With Business Relationship Against Defendant Louis Simo)

69. Plaintiff repeats and realleges paragraphs 1 through 57 as if full set forth herein.

70. Plaintiff had a contract/agreement with Plaintiff's Assignor Phyllis Garisto ("Garisto") to repair Garisto's vehicle to its pre-loss condition. At all times relevant herein, Defendant Louis Simo ("Simo"), was aware of this contract/agreement.

71. Simo intentionally interfered with this contract/agreement for no legitimate purpose.

72. In doing so, Simo acted maliciously and with the sole purpose of harming Plaintiff in its contractual relations with Garisto.

73. As a result of Simo's interference, Plaintiff has been injured and has incurred special damages in the amount of \$12,734.53, plus costs, disbursements and interest.

74. WHEREFORE, Plaintiff demands judgment against Defendant Tri-State Consumer Insurance for the sum of \$53,905.67 on its First Cause of Action; judgment against Tri-State Consumer Insurance in the sum of \$53,905.67 plus treble damages and reasonable attorneys' fees on its Second Cause of Action; against Defendant IANet Corporation in the sum of \$53,905.67 plus treble damages and reasonable attorneys' fees on its Third Cause of Action; judgment against Defendant Gabe Deri in the amount of \$21,646.88 on its Fourth Cause of Action; against Defendant Basit Irfan in the amount of \$9,826.14 on its Fifth Cause of Action; against Defendant Louis Simo in the amount of \$12,734.53 on its Sixth Cause of Action; together with reasonable attorney's fees in a sum to be determined at trial plus, the costs and disbursements of this action, and for such other and further relief as to the Court may deem just and proper.

Dated: Staten Island, New York
June 20, 2017

Yours, etc.

HOWARD M. FILE, ESQ., P.C.
Attorneys for Plaintiff

By: 

Andrew A. Rafter, Esq.
260 Christopher Lane
Staten Island, New York 10314
(718) 494-8800

STATE OF NEW YORK)
) ss.:
COUNTY OF RICHMOND)

Barry Crupi, Jr., being duly sworn, deposes and says: I am the Managing Member of Plaintiff in the within action; I have read the foregoing Verified Complaint, and know the contents thereof to be true, except as to the matter therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

Barry Crupi
Barry Crupi Jr.

Sworn to before me this
20th day of June 2017

[Signature]
Notary Public

MICHELE ERIN CRUPI
Notary Public, State of New York
Registration #01CR6268511
Qualified In Richmond County
Commission Expires Sept. 10, 2020