

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

2007 AUG 23 PM 2: 18

THOMAS M. HOHAN

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CIVIL ACTION NO. 07-4298

NORETTA G. WHYTE
CLERK

VERSUS

JUDGE

STATE FARM INSURANCE COMPANY

SECTION "C"

07-4298
SECT. C MAG 1

MAGISTRATE

COMPLAINT FOR DAMAGES

NOW INTO COURT, through undersigned counsel, comes Thomas M. Hohan who alleges the following:

1.

Plaintiff is a resident of Orleans Parish, State of Louisiana, and is the owner of real property situated in Orleans Parish commonly identified as 5905 Colbert St., New Orleans, Louisiana.

2.

Defendant STATE FARM FIRE AND CASUALTY COMPANY (hereinafter sometimes referred to as "STATE FARM") at all times relevant to this action conducted business in Orleans Parish, State of Louisiana, specifically, writing and selling policies of insurance, such that this court has jurisdiction over this Defendant.

3.

At the time of the event that resulted in this claim Defendant State Farm had in full force and effect a FLOOD INSURANCE policy, bearing Policy Number 98-RB -1615-9. The insured property is one-half of a double townhouse.

Fee 350.00
Process _____
 Dktd _____
CtRmDep _____
Doc. No _____

4.

On August 29, 2005, Hurricane Katrina caused extensive damage to property insured under the State Farm policy.

5.

Following the storm event Plaintiff submitted a claim and demand under the policy for compensation for losses from perils covered under the policy.

6.

In response to Plaintiff's demand for coverage the Defendant sent an adjuster to allegedly inspect the damage to Plaintiff's property.

7.

On or about January 19, 2006, Defendant provided the Plaintiff with a claims report that indicated that the property sustained \$85,846.07 in damage. The estimate of damages provided to the Plaintiff was deficient in that it undervalued the damages sustained to the Plaintiff's property and failed to consider flood damage to the second story of the dwelling as part of the damages. The actual damages to Plaintiff's property exceeds the policy limits of \$162,000.00.

8.

Upon information and belief the Defendant also insures the adjoining townhouse. Upon information and belief the Defendant tendered the full policy limits of the adjacent property to the adjacent property owner. The tender to the adjacent property owners was in excess of the Plaintiff's policy limit of \$162,000.00.

9.

Contrary to its duty of good faith and fair dealing the Defendant treated the Plaintiff differently from the owners of the adjoining townhouse.

10.

Plaintiff's property is located in an area of the City of New Orleans that received in excess of 10 feet of flood waters. Pursuant to a directive issued by the director of the National Flood Insurance Program State Farm failed to treat the Plaintiff in the same manner as all other residents of the same geographic area, when it failed to tender the Plaintiff's policy limits. Defendant has received satisfactory proof of Plaintiff's losses and is fully aware that Plaintiff's losses exceed the policy limits.

11.

Upon information and belief the Defendant's actions were arbitrary and capricious.

12.

Plaintiff is entitled to recover from the Defendant all losses, including damages, costs and attorney's fees, caused by the Defendant's breach of contract and violations of state law, La. R.S. 22:658 as amended by Louisiana Act No. 813, effective August 15, 2006.

13.

Pursuant to La. R.S. 22:658, Defendant is obligated to pay Plaintiff proper coverage under the policy, plus a penalty of 50% on the amount due the insured, or one thousand dollars, whichever is greater, or, in the event a partial payment or tender has been made, 50% of the difference between the amount paid or tendered and the amount fund to be due as well as reasonable attorney fees and costs of the amount due in accordance with La. R.S. 22:658 as amended by Louisiana Act No. 813, effective August 15, 2006.

14.

La. R.S. 22:1220 provides that an insurer "owes to his insured a duty of good faith and fair dealing," and provides that the insurer "has an affirmative duty to adjust claims fairly and promptly, and to make a reasonable offer to settle claims with the insured. The statute further

provides that “any insurer who breaches these duties shall be liable for any damages sustained as a result of the breach.”

15.

La. R.S. 22:1220 specifically provides among the actions breaching the insurers duties set forth above are: a) Misrepresenting pertinent facts or insurance policy provisions relating to any coverages at issue, or b)Failing to pay the amount of any claim due any person insured by the contract within sixty days after receipt of satisfactory proof of loss from the claimant when such failure is arbitrary, capricious, or without probable cause. La. R.S. 22:1220(B)(1) & (5)

16.

The statute further provides that an insurer who breaches this duty is liable for, in addition to any general or special damages, a penalty equal to the greater of two times the damages sustained or \$5,000.00.

17.

Pursuant to La. R.S. 22:1220, Defendant is obligated to pay Plaintiff the amount of actual damages sustained, plus a penalty of two times the actual damages sustained by Plaintiff. Plaintiff is entitled to prejudgment and post judgment interest on Plaintiff's claims.

COUNT I

18.

The Plaintiff repeats and realleges the allegations of paragraphs 1-17.

19.

Defendant wrongfully failed to act in a timely manner, in violation of La. R.S. 22:658 and La. R.S. 22:1220. Further, Defendant’s breach of the express terms and conditions of the

policy were arbitrary, capricious, and without probable cause in violation of La. R.S. 22:658 and La. R.S. 22:1220.

COUNT II

20.

The Plaintiff repeats the allegations of paragraphs 1-19.

21.

The Defendant has acted without reasonable basis or justification and in contravention of its duty of good faith and fair dealing in handling the Plaintiff's claim, namely: in violation of La. R.S. 22:658 and La. R.S. 22:1220 the Defendant has unreasonably and intentionally refused to pay benefits to which the Plaintiff is entitled under the terms of the insurance policy;

- a. the Defendant has unreasonably and intentionally delayed payments to which the Plaintiff is entitled under the terms of the insurance policy;
- b. the Defendant has intentionally failed to conduct a reasonable investigation into the claim reasonably based on all available information, to reasonably evaluate and review the information, and to make reasonable and timely efforts to settle the claim; and
- c. the Defendant has no reliable knowledge or information upon which to substantiate the denial of Plaintiff's claim.

COUNT III

22.

The Plaintiff repeats the allegations of paragraphs 1-21.

23.

The Defendant has acted with actual knowledge or with reckless disregard of the lack of a reasonable basis in denying the claim, delaying payment of the claim, failing to make reasonable attempts to settle the claim, and failing to conduct a reasonable investigation into the claim and failing to reasonably evaluate the available information in violation of La. R.S. 22:658 and La. R.S. 22:1220.

COUNT IV

24.

The Plaintiff repeats the allegations of paragraphs 1-23.

25.

Defendant's intentional breach of its duty of good faith towards the Plaintiff has been accompanied by oppression, fraud, or malice in violation of La. R.S. 22:658 and La. R.S. 22:1220.

COUNT V

26.

The Plaintiff repeats the allegations of paragraphs 1-25.

27.

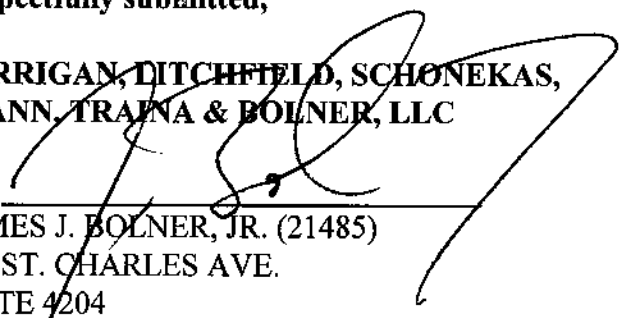
Defendant's intentional misrepresentation of the policy provisions violated La. R.S. 22:658 and La. R.S. 22:1220.

WHEREFORE, Plaintiff demands judgment against Defendant, including payment for compensatory damages, including the difference between the actual cost to repair the damage to

the insured's property plus the additional living expenses that Plaintiff has incurred together with statutory penalties, costs, attorney's fees, and for such further relief as the Court deems just and equitable.

Respectfully submitted,

**BERRIGAN, DITCHFIELD, SCHONEKAS,
MANN, TRAINA & BOLNER, LLC**

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PLEASE SERVE

STATE FARM INSURANCE COMPANY
through the Secretary of State
State of Louisiana
Baton Rouge, LA