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FOR SERVICE

25th JUDICIAL DISTRICT COURT FOR THE PARISH OF PLAQUEMINE
STATE OF LOUISIANA

NO. 51-79P

DIVISION 2

JUDY KODRIN AND MICHAEL KODRIN

versus

STATE FARM INSURANCE COMPANY and
BRIAN R. SUBRIG INSURANCE AGENCY, INC.

FILED: Aug. 25, 2006

J. Anthony F. Phillips
CLERK

PETITION FOR DAMAGES AND JURY DEMAND

The petition of JUDY KODRIN AND MICHAEL KODRIN, persons of full legal age and capacity and residents and domicilleries of Plaquemine Parish, State of Louisiana, respectfully represents:

I.

DEFENDANT STATE FARM INSURANCE COMPANY [hereinafter "Insurer"] is a foreign corporation licensed to issue insurance policies and in fact issuing insurance policies in the State of Louisiana at all times relevant.

II.

DEFENDANT BRIAN R. SUBRIG INSURANCE AGENCY, INC. [hereinafter "Agent"] is a Louisiana resident and licensed insurance agent under the laws of Louisiana doing business in Louisiana at all times relevant.

BACKGROUND

III.

At all times relevant, Petitioners owned the following real property located in Plaquemine Parish, Louisiana: 177 Holiday Drive, Port Sulphur, Louisiana 70083. [hereinafter "Residence"]

IV.

Sometime prior to Hurricane Katrina, Petitioners entered into a contract with Insurer known as a homeowner's policy for the Residence as follows: Policy Number 18-CH-7692-3, the homeowner's policy provides coverage for a time period including all times relevant herein



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concerning limits of \$105,000.00 for damage to the dwelling, \$10,500.00 for damage to the dwelling extension, \$78,750.00 for personal contents, and the Actual Loss of Use Sustained.

V.

The homeowner's policy was entered into upon representations made by Agents as to the proper amount of coverage. Agents advised and represented to Petitioners that they should take out the minimum amount of coverage for flood and more in homeowners. Agents also represented to Petitioners that whatever flood policy did not pay would be covered by the homeowner's policy. Based upon these representations, Petitioners obtained flood coverage for the Residence.

VI.

On August 29, 2005, Hurricane Katrina made landfall near Grand Isle, Louisiana. The hurricane made a second landfall a short time later near the Louisiana-Mississippi border. As expected, Hurricane Katrina produced a great deal of rain fall and caused significant wind damage in Plaquemines Parish and created a storm surge that overtopped the levees and contributed to levee failures.

VII.

Petitioners' property was significantly damaged by the wind, rain, and storm surge.

VIII.

A significant portion of Petitioners' damage was caused by the wind and rain of the hurricane.

IX.

A significant portion of Petitioners' damage was caused by the rising water and flood following the storm surge.

X.

Upon reason and belief, sometime after August 29, 2005 but before September 6, 2005, Petitioners notified Defendant Insurer of their loss and filed a claim.

XI.

Upon reason and belief, sometime after August 29, 2005 but before October 16, 2005, defendant Insurer sent adjusters to evaluate Petitioner's losses. The adjusters acted as defendant Insurer's legal agents.

XII.

The adjusters' inspections comprised satisfactory proof of losses. Petitioners also provided Insurer with more than adequate documentation of their losses.

XIII.

At approximately the same time, Defendant Insurer communicated to Petitioners that it valued Petitioners' damages due to wind significantly under the true value of the damage to the home.

XIV.

Immediately after the news, Petitioners communicated to Insurer that the above estimates were woefully inadequate. Defendant Insurer refused to re-evaluate its estimates. Defendant Insurer further committed the below violations in determining Petitioners' loss of use claims by providing only initial payment, despite the fact that Petitioners were unable to return to their home for quite longer.

CAUSES OF ACTION AGAINST DEFENDANT INSURER

A. Bad faith: LA. REV. STAT. § 22:1220.

XV.

Petitioners repeat and re-allege all foregoing paragraphs.

XVI.

Petitioners maintain that Defendant Insurer's aforementioned conduct breached the following duties to Petitioners: (1) the duty of "good faith and fair dealing;" (2) the "affirmative duty to adjust claims fairly and promptly"; and (3) the "affirmative duty" to "make a reasonable effort to settle claims with the insured or the claimant, or both."

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XVII.

Petitioners further maintain that Defendant Insurer "knowingly committed or performed" the following acts, thereby constituting a breach of the insurer's duties: (1) 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; and (2) Failing to pay claims pursuant to R.S. 22:658.2 when such failure is arbitrary, capricious, or without probable cause.

XVIII.

As a result of Defendant Insurer's aforementioned conduct, the Defendant Insurer is liable for any damages sustained as a result of the breach, including, but not limited to specific and general damages (i.e. for mental anguish and/or inconvenience), attorneys' fees, and penalties. Such penalties include an amount not to exceed two times the damages sustained or five thousand dollars, whichever ever is greater.

B. **Bad Faith: LA. CIVIL CODE art. 1997.**

XIX.

Petitioners repeat and re-allege all preceding paragraphs.

XX.

Petitioners maintain that Defendant Insurer's aforementioned conduct violates La. Civil Code art. 1997.

XXI.

As a result of its bad faith, Defendant Insurer is liable to Petitioners for all damages, foreseeable or not, that are a direct consequence of its failure to perform.

C. **La. Rev. Stat. § 22:658.**

XXII.

Petitioners repeat and re-allege all preceding paragraphs.

XXIII.

Petitioners maintain that Defendant Insurer's aforementioned conduct violated La. Rev. Stat. § 22:658 by Defendant Insurer's failure to provide Petitioners payment within thirty (30) days after being provided satisfactory proof of loss by Petitioners.

XXIV.

As a result of its misconduct, Defendant Insurer is liable to Petitioners for all damages occasioned by the breach, specific and general, as well as attorneys' fees, costs, interests, penalties as provided in Section 658.

D. Miscellaneous Breaches of Aforementioned Duties.

XXV.

Petitioners repeat and re-allege all preceding paragraphs.

XXVI.

Petitioners maintain that Defendant Insurer's further breached the aforementioned duties for the following, non-exclusive acts: (1) Failing to properly train its adjusters and agents; (2) failing to provide its adjusters and agents with proper uniform materials with which to properly evaluate claims; (3) failing to take into account the economic climate after Hurricane Katrina; (4) failing to account for the increase in labor, materials, costs, and time in valuing Petitioners' claims; (5) failing to provide a proper means to facilitate contact between Petitioners and Defendant Insurer; (6) instructing its adjusters and agents to undervalue Petitioners' damages; (7) instructing its adjusters and agents to delay the process of Petitioners' claim; (8) instructing its adjusters and agents to engage in multiple, time consuming evaluations of Petitioners' claim; and (9) any and all misconduct as becomes known before trial.

XXVII.

As a result of its misconduct, Defendant Insurers are liable to Petitioners for all damages occasioned by the breach, specific and general, as well as attorneys' fees, costs, interests, penalties.

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E. Breach of Contract.

XXVIII.

Petitioners repeat and re-allege all preceding paragraphs.

XXIX.

Petitioners maintain that defendant insurer's preceding conduct constitutes a breach of the contract as embodied by the aforementioned insurance policies.

XXX.

As a result of its misconduct, Defendant Insurer is liable to Plaintiff for all damages resulting from the breach.

F. Unconscionable Contractual Provision.

XXXI.

Petitioners repeat and re-allege all preceding paragraphs.

XXXII.

The aforementioned homeowner's policy excludes coverage for damages caused by rising water, although provides coverage for wind and rain damage caused by hurricanes.

XXXIII.

Petitioners' damage caused by water was, in significant part, the direct unavoidable result of the storm surge caused by Hurricane Katrina. This storm surge was wind driven water.

XXXIV.

Petitioners maintain that the enforcement of the water exclusion in this circumstance would be unconscionable and violative of public policy. Defendant Insurer should be prohibited from "splitting" the damaging effects from the same source. As a result, the homeowner's policy should cover all damage caused by the hurricane, including water that was caused by the storm surge.

G. Third-Party Liability.

XXXV.

Petitioners repeat and re-allege all preceding paragraphs.

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XCCXVI.

The aforementioned home-owner's policy covers damages caused by the fault of third parties but excludes damage caused by rising water.

XCCXVII.

Petitioners maintain that the water damage Petitioners sustained was caused by the fault of a third party, namely, the United States Army Corps of Engineers, and is a covered loss.

XCCXVIII.

Petitioners maintain that any conflicts in the insurance policy should be resolved in favor of the Petitioners.

H. Total Loss: LA. REV. STAT. § 22:695.

XCCXIX.

Petitioners repeat and re-allege all preceding paragraphs.

XL.

Petitioners' home-owners policy is known under the law as a "valued policy" in that Defendant Insurer placed a valuation upon the covered property and uses such valuation for purposes of determining the premium charge to be made under the policy.

XLI.

Petitioners' property sustained a total loss as defined by Section 695.

XLII.

A proportion of Petitioners' sustained damage was for the covered loss of wind and rain.

XLIII.

As a result, Defendant Insurer is liable to Petitioners for the policy limits, attorney fees, penalties, costs, and interest from the date of judicial demand.

CAUSES OF ACTION AGAINST DEFENDANT INSURANCE AGENT

XLIV.

Petitioners repeat and re-allege all preceding paragraphs.

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XLV.

Defendant Insurance Agents are authorized to issue insurance policies under Louisiana law.

XLVI.

Petitioners maintain that based on Defendant Insurance Agents' aforementioned conduct, Defendant Insurance Agents breached their fiduciary duties to Petitioners to provide and secure appropriate and adequate coverage in the following non exclusive particulars: (1) failing to provide and/or advise Petitioners to secure the proper amount of homeowners insurance; (2) failing to provide and/or advise Petitioners to secure adequate flood insurance; (3) failing to provide and/or advise Petitioners that excess flood insurance was an available, viable option; (4) failing to inform Petitioners of homeowners and flood policy limitations and exclusions; (5) under insuring Petitioners; and (6) any and all other such acts as become known at the time of trial.

XLVII.

Defendant Insurance Agents are the lawful agents of Defendant State Farm and are liable to Petitioners under its acts or omissions policy of insurance.

XLVIII.

If Petitioners would have been properly advised of their insurance options, Petitioners would have undertaken the necessary steps to secure adequate insurance coverage with adequate provisions.

XLIX.

As a result of this breach, Defendant Insurance Agents are liable to Petitioners for all damages caused as a result.


L.

Petitioners requests a trial by jury.

PRAYER FOR RELIEF

Petitioners pray that after due proceedings are conducted and after a jury verdict in their favor that this Court enter judgment in their favor against Defendants for all damages discussed herein, including, but not limited to, all general, specific, equitable, and punitive relief which include but are not limited to costs, attorneys fees, penalties, and interest from the date of injury.

RESPECTFULLY SUBMITTED:


JOHN W. REDMANN #19984
LAW OFFICE OF JOHN W. REDMANN, PLC
5407 Mas Arthur Blvd.
New Orleans, Louisiana 70131
Tel: (504) 433-5550
Fax: (504) 433-5556

PLEASE SERVE:

Brian R. Bubrig Insurance Agency, Inc.
through its registered agent
BRIAN R. BUBRIG
30950 Highway 23
Buras, LA 70041-2792

A TRUE COPY

By: Clerk of Court
Parish of Plaquemine, La.

STATE FARM INSURANCE COMPANY (PLEASE HOLD SERVICE)
through its registered agent
Secretary of State, State of Louisiana
3851 Esplanade
Baton Rouge, LA 70809