

IN THE CIRCUIT COURT OF THE FIRST
JUDICIAL DISTRICT OF HINDS COUNTY
STATE OF MISSISSIPPI

FILED
JUN 11 2007
BARBARA BUNN, CIRCUIT CLERK
BY _____ D.C.

JIM HOOD, ATTORNEY GENERAL FOR
THE STATE OF MISSISSIPPI, *ex rel.* THE
STATE OF MISSISSIPPI

PLAINTIFF

VERSUS

CIVIL ACTION NO. 257-07-565

STATE FARM FIRE AND CASUALTY
COMPANY

DEFENDANT

COMPLAINT

COMES NOW Jim Hood, in his official capacity as Attorney General for the State of Mississippi, *ex rel.* the State of Mississippi, plaintiff, and files this Complaint against State Farm Fire and Casualty Company, defendant, for breach of contract, bad faith breach of contract, breach of duty of good faith and fair dealing, compensatory damages, exemplary damages, attorneys' fees, and costs, and in support thereof would respectfully show unto the Court the following:

PARTIES

1. Plaintiff, Jim Hood, is the duly elected Attorney General of the State of Mississippi. He brings this action on behalf of the State in *parens patriae* to redress a quasi-sovereign interest for the breach of a contract, and other relief, entered into by State Farm Fire and Casualty Company with the Attorney General and to redress the injury to the physical and economic well being of certain residents of the State of Mississippi residing in

Hancock, Harrison, and Jackson Counties, Mississippi, who constitute a substantial segment of the population of the State of Mississippi.

2. State Farm Fire and Casualty Company (“State Farm”), defendant herein, is a corporation created, organized, and existing under the laws of the State of Illinois with its principal office and place of business located at One State Farm Plaza, Bloomington, Illinois 61710-0001.

JURISDICTION

3. This Court has jurisdiction over the subject matter herein pursuant to Article VI, Section 156 of the Mississippi Constitution of 1890 and MISS. CODE ANN. § 9-7-81.

4. This Court has *in personam* jurisdiction over State Farm in that State Farm is a corporation engaged in the insurance business in the State of Mississippi and licensed to do business therein by the Mississippi Insurance Department (“MID”). Further, State Farm has appointed as its agent for service of process in Mississippi, William E. Penna, 1080 River Oaks Drive, Suite B-10, Flowood, Mississippi 39232-7644, upon whom process for State Farm may be served in the State of Mississippi.

5. This action is brought under the common law of the State of Mississippi by the Attorney General as an agency of the State of Mississippi. The State is thus not a “citizen” for purposes of conferring federal diversity jurisdiction. Plaintiff does not seek any relief whatsoever under any federal statutes, laws, or regulations; thus, no federal question jurisdiction exists.

VENUE

6. Venue of this action is properly laid in Hinds County, Mississippi, pursuant to the provisions of MISS. CODE ANN. § 11-11-3 in that the contract which is the subject of this suit and upon which the plaintiff sues was negotiated and entered into in Hinds County, Mississippi, and in which county a substantial act or omission giving rise to this action occurred, consisting of the breach by State Farm of the contract entered into with the Attorney General for the benefit of the third party beneficiaries of the Attorney General's contract with State Farm.

STATEMENT OF FACTS

7. On August 29, 2005, Hurricane Katrina struck the Mississippi Gulf Coast causing widespread damage and destruction in the Mississippi counties of Hancock, Harrison, and Jackson.

8. Numerous Mississippi property owners in said counties suffered various degrees of property loss, damage, and destruction as a result of the hurricane winds and storm surge brought about by Hurricane Katrina.

9. Many of the property owners who suffered losses as a result of Hurricane Katrina carried property and casualty insurance coverage with State Farm.

10. In response to the thousands of claims filed against it, State Farm asserted an interpretation of its policy language which excluded any liability for damage loss caused by

water based in large part upon an anti-concurrent causation clause in each of its policies issued to insure the property owners in the three affected counties.

11. As a result of State Farm's interpretation of its policy provisions which had the effect of illegally and improperly denying coverage to thousands of policyholders for the losses they sustained, the Attorney General filed suit on September 15, 2005, against State Farm and other similarly situated defendants in the Chancery Court of the First Judicial District of Hinds County, Mississippi (hereinafter "state court litigation") seeking to have certain provisions in the said insurance policies declared void as being against public policy and/or ambiguous and/or unconscionable and/or in violation of the Mississippi Consumer Protection Act and to enjoin the enforcement of such provisions. A true and correct copy of said Complaint is attached hereto, marked "Exhibit A," and made a part hereof by reference the same as if fully copied herein.

12. On January 23, 2007, State Farm and the Attorney General entered into a Settlement Agreement of the state court litigation for good and valuable considerations, which Agreement is attached hereto, marked "Exhibit B," and made a part hereof the same as if fully copied herein in words and figures, requiring, *inter alia*, State Farm to establish an administrative procedure to re-evaluate claims of the affected State Farm policyholders in Hancock, Harrison, and Jackson Counties with policies in effect on August 29, 2005, which (a) would "... establish an orderly, fair, and prompt resolution of claims" and (b) would be submitted to the United States District Court for the Southern District of

Mississippi for approval based upon criteria and guidelines approved by the said Federal Court [Agreement, § III].

13. In connection with said Agreement, State Farm further agreed that in the re-evaluation process it would make initial offers on claims for foundation or pier-only sites (“slab” claims), that would be no less than fifty percent (50%) of the structural policy limits and to pay not less than fifty million dollars (\$50,000,000.00) in the aggregate to those participating in the settlement process.

14. The Attorney General, in consideration of the contractual undertakings of State Farm, dismissed with prejudice on January 23, 2007, the claims against State Farm asserted in the state court litigation. A true and correct copy of the Final Order of Dismissal as to State Farm Fire and Casualty Company is attached hereto, marked “Exhibit C,” and made a part hereof the same as if fully copied herein in words and figures.

15. On January 24, 2007, pursuant to the state court Settlement Agreement, State Farm presented to the United States District Court for the Southern District of Mississippi, a proposed Class Action Settlement Agreement which purported to establish the administrative re-evaluation procedure, criteria, and guidelines called for in the Settlement Agreement with the Attorney General for review and approval by the Federal Court. A true and correct copy of State Farm’s proposed Class Action Settlement Agreement is attached hereto, marked “Exhibit D,” and made a part hereof by reference.

16. The proposal submitted, however, failed to comply with the terms of State Farm's contractual undertaking in the Agreement it entered into with the Attorney General in that, while it did propose an administrative procedure for the re-evaluation of claims, the procedure proposed was not fair to policyholders, was ambiguous, confusing and did not offer a realistic prospect of bringing a fair, orderly or prompt resolution of claims.

17. On January 26, 2007, the United States District Court for the Southern District of Mississippi entered an Order rejecting the proposed Class Action Settlement Agreement for reasons specifically enumerated and set out in its Order. A true and correct copy of said Order is attached hereto, marked "Exhibit E," and made a part hereof by reference the same as if fully copied herein. In particular, the District Judge, in rejecting State Farm's and putative class counsel's proposed Class Action Settlement Agreement, concluded that "In the absence of substantially more information . . . I am unable to say . . . that the proposed settlement establishes a procedure that is fair, just, balanced, or reasonable."

18. Subsequent to the Order of the United States District Court for the Southern District of Mississippi denying State Farm's Motion for Preliminary Approval of Proposed Class Action Settlement, the Attorney General repeatedly called upon State Farm to modify, re-negotiate, and/or re-submit a revised Class Action Settlement Agreement incorporating an administrative procedure to re-evaluate claims of the State Farm policyholders by establishing an orderly, fair, and prompt resolution of claims to be approved by the United States District Court.

19. Notwithstanding the District Court's invitation to State Farm and the putative class plaintiffs to submit a revised Class Action Settlement Agreement to it which would enable the District Court to approve the Class Action Settlement, State Farm, for no legitimate or justifiable reason, refused to do so, thereby failing to live up to the terms of the State Farm - Attorney General contract.

20. In a good faith effort to aid State Farm in the establishment of an orderly, fair, and prompt resolution of claims which would meet the concerns of the United States District Court for the Southern District of Mississippi, the Attorney General sought, on February 22, 2007, to intervene in the proposed Class Action Settlement action for the limited purpose of enforcing his state court Settlement Agreement with State Farm. A true and correct copy of said Motion is attached hereto, marked "Exhibit F," and made a part hereof by reference the same as if fully copied herein in words and figures. Rather than supporting the Attorney General's effort to intervene in the federal court litigation in order to aid in the establishment of an orderly, fair, and prompt resolution of claims which could be approved by the federal court, State Farm opposed the Attorney General's Motion to Intervene, thereby further breaching the terms of the State Farm - Attorney General Agreement. A true and correct copy of State Farm's Response to the Attorney General's Motion to Intervene is attached hereto, marked "Exhibit G," and made a part hereof the same as if fully copied herein in words and figures.

21. The Federal District Court, in an effort to resolve the concerns expressed in its denial of certification Order, convened and conducted, on February 28, 2007, a hearing on the unresolved status of the Petition for a Class Action Settlement Agreement. The District Court permitted the Attorney General to appear and address the Court at this hearing prior to ruling on the Attorney General's Motion to Intervene. State Farm, by and through its attorneys, filed and presented to the District Court at said hearing, its Supplemental Memorandum in response to the rejection of certification of the Class Action Settlement Agreement. The substance of State Farm's presentation was a reiteration of its Petition for a Class Action Settlement Agreement previously rejected by the District Court. The February 28, 2007, hearing concluded with the District Court taking the issue of the grant of Class Action Settlement certification under advisement.

22. Subsequent to the adjournment of the February 28, 2007, hearing, the Attorney General filed a Revised Motion to Intervene in the Class Action, seeking specific performance by State Farm of its contractual duty to present the District Court with a fair, balanced, and reasonable class action settlement. A true and correct copy of the Attorney General's Revised Motion to Intervene is attached hereto, marked "Exhibit H," and made a part hereof the same as if fully copied herein in words and figures.

23. While the District Court was still holding the issue of class certification (as well as the Attorney General's Motion to Intervene) under advisement, State Farm settled with the putative class plaintiffs and sought dismissal of the underlying suit seeking Class

Action Settlement status which (a) killed the effort of the Attorney General to seek intervention for enforcement of the state court settlement agreement and (b) breached the State Farm - Attorney General Agreement by willfully and knowingly violating the terms of the Agreement requiring it to establish an orderly, fair, and prompt resolution of claims to be submitted to and approved by the United States District Court for the Southern District of Mississippi based upon criteria and guidelines approved by that Court. In so doing, State Farm breached the Agreement it entered into with the Attorney General. A true and correct copy of the district court's Memorandum Opinion and Order of Dismissal dated April 16, 2007, is attached hereto, marked "Exhibit I," and made a part hereof the same as if fully copied herein in words and figures.

24. As a result of the request for dismissal by State Farm, the District Court denied the Attorney General's Motion to Intervene in the Class Action, thereby effectively terminating the Attorney General's efforts to enforce the Settlement Agreement entered into on January 23, 2007, with State Farm.

25. The actions of State Farm in refusing to establish an administrative procedure for the orderly, fair, and prompt resolution of claims based upon criteria and guidelines approved by the United States District Court for the Southern District of Mississippi constitutes a willful and deliberate breach of its Settlement Agreement with the Attorney General and was done without any arguable, legitimate, or justifiable basis or reason.

COUNT I

Breach of Contract

26. The Attorney General hereby adopts and incorporates herein the allegations contained and set forth in paragraphs 1 through 25 of this Complaint.

27. Subsequent to entering into the State Farm - Attorney General Agreement, the Attorney General complied with and performed the conditions imposed upon the Attorney General in said Agreement on January 23, 2007, by dismissing the State Court claims against State Farm with prejudice.

28. Notwithstanding its contractual obligations so to do, State Farm has wholly failed, refused, and neglected to perform the obligations imposed upon it in the Agreement, while at the same time realizing the benefit of performance of the conditions of the Agreement imposed upon the Attorney General.

29. Notwithstanding State Farm's breach of the Agreement, as aforesaid, the Attorney General, before resorting to the courts of this state, sought compliance of the terms of the Contract imposed upon State Farm. Attached hereto, marked collective "Exhibit J" are copies of communications between the Attorney General and State Farm memorializing the breach of the contract, the Attorney General's requests that State Farm perform the contract, and State Farm's continued refusal to comply.

30. State Farm has refused to live up to the obligations it undertook in the Agreement of January 23, 2007, and continues to refuse to perform its obligations under the Agreement.

31. State Farm is in breach of the Agreement.

COUNT II

Bad Faith Breach of Contract

32. The Attorney General hereby adopts and incorporates herein the allegations contained and set forth in paragraphs 1 through 31 of this Complaint.

33. State Farm has intentionally, willfully, and with gross negligence breached the express terms of the Agreement with the Attorney General of the State of Mississippi by (a) failing and refusing to submit to the United States District Court for the Southern District of Mississippi an administrative procedure to re-evaluate claims of State Farm policyholders in Hancock, Harrison, and Jackson Counties who had residential or commercial policies in effect with State Farm on August 29, 2005; (b) failing and refusing to submit to the Court a procedure consisting of an orderly, fair, and prompt resolution of such claims; and (c) failing to submit offers of settlement to said policyholders based upon criteria and guidelines approved by the United States District Court for the Southern District of Mississippi.

34. State Farm, acting and/or failing to act as set forth herein, has intentionally and in bad faith acted with willfulness, malice, gross negligence, and reckless disregard for the rights of its policyholders as third party beneficiaries to the Agreement between the Attorney

General and State Farm. Such acts are the equivalent of a breach of State Farm's Agreement with the Attorney General and were done without a legitimate or arguable reason and, thereby, evince a wanton and reckless disregard for the rights of the Attorney General and State Farm's policyholders, thereby entitling the Attorney General to recover damages, as hereinafter set forth.

COUNT III

Breach of Duty of Good Faith and Fair Dealing

35. The Attorney General hereby adopts and incorporates herein the allegations contained and set forth in paragraphs 1 through 34 of this Complaint.

36. State Farm, upon entering into the Agreement with the Attorney General, undertook a separate duty of good faith and fair dealing in the performance of its Agreement with the Attorney General, including the duties of honesty and fairness in the observance of reasonable commercial standards and the avoidance of deception and subterfuge in the performance of its contract with the Attorney General.

37. Additionally, State Farm had an identical duty of good faith and fair dealing in the performance of its insurance contracts with its policyholders in Hancock, Harrison, and Jackson Counties.

38. State Farm has been, and remains, in breach of the duty of good faith and fair dealing in the performance of its contracts with the Attorney General and its policyholders by deceiving them into believing that it was going to establish an administrative procedure

to re-evaluate claims of its policyholders which would provide an orderly, fair, and prompt resolution of claims based upon criteria and guidelines approved by the United States District Court for the Southern District of Mississippi, and by then refusing to establish such a plan and to even attempt to submit to the United States District Court for the Southern District of Mississippi the criteria and guidelines for approval by said Court.

CAUSATION

39. The Attorney General hereby adopts and incorporates herein the allegations contained and set forth in paragraphs 1 through 38 of this Complaint.

40. As a direct and proximate result of the conduct of State Farm, the State of Mississippi and the plaintiffs for whom this action is brought have suffered, are suffering, and will continue to suffer damages, as hereinafter set forth.

DAMAGES

A. Compensatory

41. The persons for whom this suit is brought have been and are being caused to suffer compensatory damages as a result of State Farm's breach of the State Farm - Attorney General Agreement in a sum not less than fifty million dollars (\$50,000,000.00) and not more than their individual policy limits on their property.

42. In addition, the persons for whom this suit is brought have been and are being caused to suffer extra-contractual damages in a sum to be determined as a result of the monetary losses they have suffered from the loss of time, comfort, and security in receiving

the proceeds of their insurance coverage for which State Farm agreed to pay upon re-evaluation of their claims as a result of the breach of the express contract terms and the implied covenants of good faith and fair dealing on the part of State Farm.

43. The Attorney General and the State of Mississippi have been caused to suffer consequential contractual damages consisting of attorneys' fees and expenses in an amount to be determined by this Court.

B. Exemplary

44. The aforesaid omissions and acts of commission on the part of State Farm in breaching its Settlement Agreement with the Attorney General were malicious and grossly negligent, and evidence a willful, wanton, and reckless disregard for the safety and security of others, thereby entitling the plaintiffs to an award of punitive damages of and from State Farm in an amount to be determined sufficient to punish State Farm for its egregious condition and deter State Farm and others similarly situated from such conduct in the future.

AD DAMNUM

WHEREFORE, PREMISES CONSIDERED, Jim Hood, Attorney General of the State of Mississippi, acting for the State of Mississippi and Property and Casualty Policyholders of State Farm Fire and Casualty Company in Hancock, Harrison, and Jackson Counties, Mississippi, prays for a judgment against State Farm Fire and Casualty Company as follows:

1. Compensatory damages to be held in a court-approved depository for distribution to Property and Casualty Insurance Policyholders of State Farm Fire and

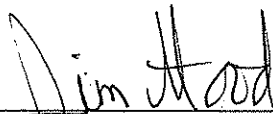
Casualty Company in Hancock, Harrison, and Jackson Counties, Mississippi, in an amount sufficient to compensate the plaintiffs for the actual compensatory damages sustained by them in an amount in excess of the minimum jurisdictional limits of this Court; and

2. Consequential damages in an amount sufficient to compensate the plaintiffs for the losses and damages sustained by them in consequence of the breaches of the express and implied covenants of the Agreement by State Farm Fire and Casualty Company in an amount in excess of the minimum jurisdictional limits of this Court; and

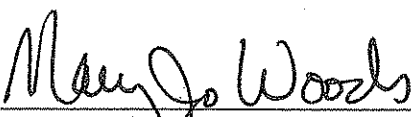
3. Punitive damages in an amount sufficient to punish State Farm Fire and Casualty Company for its egregious conduct and to deter it and others similarly situated from such conduct in the future; and

4. Attorneys' fees and expenses; and

5. All costs incurred herein.



JIM HOOD, ATTORNEY GENERAL FOR THE STATE OF
MISSISSIPPI, *EX REL.* THE STATE OF MISSISSIPPI



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