

COPY

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

FILED

BRADLEY SAMS

JUN 27 2008

PLAINTIFF

v.

JOE W. MARTIN, JR. CLERK
BY K. Stone D.C.

CAUSE NO.: 2008-00,147(3)

**NATIONWIDE PROPERTY & CASUALTY INSURANCE
COMPANY AND JOHN DOES 1 THROUGH 10**

DEFENDANTS

**COMPLAINT
(JURY TRIAL DEMANDED)**

COMES NOW BRADLEY SAMS, by and through counsel, and files this his Complaint against Defendants, Nationwide and John Does 1-10, and alleges as follows:

**I.
PARTIES**

1. Plaintiff, Bradley Sams, is an adult resident citizen of Jackson County, Mississippi, who before the storm resided at 3004 Magnolia Lane, Ocean Springs, Mississippi.
2. Defendant Nationwide is a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at One Nationwide Plaza, Columbus, Ohio 43216, and which may be served with process by service on its agent for service of process, CT Corporation System, at 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232, or on the Mississippi Insurance Commissioner at Post Office Box 79, Jackson, Mississippi, 39205-0079, pursuant to Mississippi Code Annotated section 83-21-1.
3. Defendants John Does 1-10 are entities affiliated with Defendant and/or have acted in concert with Defendant, and whose identities are currently unknown. All allegations and claims asserted herein against Defendant are incorporated herein by reference against John Does 1-10. Said John Does, when their identities are known, will be identified by name and joined in this action, if necessary, pursuant to the Mississippi Rules of Civil Procedure.

II.
SUBJECT MATTER AND PERSONAL JURISDICTION

4. This Court has jurisdiction over the subject matter and Defendant in this case because all actions at all times complained of herein occurred in Jackson County, Mississippi, and the amount in controversy exceeds \$200,000.00.

III.
VENUE

5. Venue in this case is proper in this Court because this suit respects personal property located exclusively in Jackson County, Mississippi, and the conduct, acts and/or omissions upon which this cause of action is based occurred in Jackson County, Mississippi, which is completely within the Circuit Court of Jackson County, Mississippi.

IV.
FACTS AND GENERAL ALLEGATIONS

6. Plaintiff is a resident of Ocean Springs, Mississippi and has been a loyal insured of Nationwide. He has dutifully and loyally paid all premiums to Nationwide Insurance.

7. Bradley Sams purchased from Nationwide a standard "Pleasure Boatowners Policy" ("subject policy"), naming Bradley Sams as the insured. The subject policy insured the 1996 37' Convertible with two (2) Detroit diesel engines ("insured boat"), the personal property thereof, and loss of use for actual loss sustained. A representative copy of the subject policy is attached as Exhibit "A" to this Complaint. There was no lien on the subject property.

8. The subject policy, through its "Contents and Additional Coverages" and "Losses Not Insured" provisions, also purported to provide full and comprehensive coverage for all loss to insured property proximately and efficiently caused by theft, collision, upset, rain, wind and wind-propelled objects.

9. Based on the representations of full coverage made by Nationwide and its agent, and the express and implicit policy coverage, Bradley Sams reasonably relied on said representations and purchased the subject policy with the reasonable expectation that the subject policy would provide full and comprehensive coverage for damage to the insured residence caused by theft, collision, upset, wind, rain, and/or wind-propelled objects.

10. On July 23, 2007, within the subject policy period, the insured boat and the personal contents therein were destroyed and the boat was subsequently sunk and proximately and/or efficiently destroyed. It is undisputed that the subject property was stolen, damaged, recovered, and returned to Mr. Sams; however, at the time the boat was recovered, it was unknown the insured boat had been damaged. The subject property subsequently sunk and was completely destroyed and it and its contents damaged in excess of the limits of the subject policy while it was in the boat slip behind Mr. Sams's house. The boat has since been raised from the water and stored at the Mr. Sams's residence.

11. Almost immediately thereafter, and in accordance with the subject policy provisions, Bradley Sams notified Nationwide of the covered loss.

12. Nationwide subsequently assigned an adjuster and notified Mr. Sams that they were investigating his claim. At all times Mr. Sams co-operated and complied with each and every request of Nationwide or its agents, including, but not limited to, giving a statement under oath.

13. On October 25, 2007, Nationwide sent a letter to Mr. Sams telling him they were denying coverage. A copy of this letter is attached to this Complaint as Exhibit "B".

14. On February 6, 2008, Mr. Sams's attorney, Douglas L. Tynes, Jr., sent Nationwide a good faith letter again requesting payment on his loss. A copy of this letter is attached to this Complaint as Exhibit "C".

15. On February 18, 2008, Nationwide sent another letter to Mr. Sams's attorney, Douglas L. Tynes, Jr., telling him that all damage not paid for was the result of "gradual deterioration, including but not limited to, wet or dry rot, rust, weathering, fading, galvanic corrosion or electrolysis" or "caused because your watercraft was not seaworth". This letter represented Nationwide's denial to pay any funds whatsoever for Mr. Sams's covered loss. A copy of this letter is attached to this Complaint as Exhibit "D".

16. Nationwide's position in this directly contradicts Mississippi insurance law, in existence for the last forty years, which mandates full insurance coverage if theft was the efficient proximate cause of the loss. It is uncontroverted that loss caused by no fault of the Plaintiff and is covered under the subject policy.

17. Additionally, as the policy at issue is an "all risk" policy, all risks of accidental direct physical loss are covered by the subject policy unless specifically excluded by the terms of the subject policy. In such policies, insured such as Bradley Sams only have the burden of showing the existence of a covered loss, at which point the burden of proof shifts to the insurer, Nationwide, to establish the applicability of a named exclusion under the facts of the case and the terms of the policy.

18. In this case, there is no question that Bradley Sams has established a loss covered by the subject policy, unless specifically excluded by the terms of the subject policy. In such policies, insured such as Bradley Sams only have the burden of showing the existence of a covered loss, at which point the burden of proof shifts to the insurer, Defendants, to establish

what part of the loss, if any, is attributable to an excluded peril. Thus, Nationwide has the burden to prove that the loss was attributable to an excluded peril such to a named exclusion under the facts of the case and the terms of the policy. The loss, regardless of its cause, is an accidental loss. Nationwide *has not met* this burden of proof and *cannot meet it*.

19. An insurance contract is a contract of adhesion, and should be construed in the light most favorable to the insured.

20. Inherent in any insurance contract, and in the policy at issue, is that payment must be made promptly so that the insured may be put back into the position he or she was in prior to the loss, and as quickly as possible.

21. A special relationship exists between an insurer and its insured; such relationship is best characterized as one of the utmost good faith and fair dealing.

22. Bradley Sams has complied with all conditions precedent to obtaining payment of benefits under the subject policy, and Nationwide has waived and/or is estopped from raising such conditions precedent.

23. Nationwide is merely attempting to dodge its coverage obligations to the Plaintiff under the subject policy by wrongfully characterizing his damage as "a result from the boat being unseaworthy" in order to avoid paying Plaintiff's claim.

24. Plaintiff is therefore entitled to full coverage under the subject policy for the damage to his property, injunctive relief, specific performance of the Contract, indemnity, unjust enrichment, other such equitable relief, and extra-contractual, compensatory and punitive damages.

V.
COUNT ONE:
DECLARATORY JUDGMENT

25. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in Paragraphs 1-24 of the Amended Complaint.

26. This count is an action for declaratory judgment pursuant to Mississippi Rule of Civil Procedure 57.

27. On the occasion of July 23, 2007, Bradley Sams's insured property was proximately and/or efficiently devastated by people whom stole the insured property and subsequently damaged it. However, Nationwide has maintained and continues to maintain the position that it owes no obligation to provide any benefits to Bradley Sams for his loss and damage, relying on the exclusions in the subject policy.

28. In order to deny coverage for Bradley Sams's loss resulting from the stealing and subsequent sinking of the insured property, Nationwide has the burden to prove that the loss was attributable to an excluded peril rather than a covered peril.

29. Nationwide has not met and cannot meet its burden of proof. The damage to Bradley Sams's property is thus covered under the subject policy. Nationwide should have tendered Bradley Sams him policy limits as soon as it became apparent that it could not meet said burden of proof.

30. Wherefore, Bradley Sams respectfully seeks a declaration from this Court that:

- (a) Nationwide breached its policy obligations to its insured, Bradley Sams, and owes coverage for the damage sustained to Bradley Sams's insured property due to the stealing and subsequent sinking it;
- (b) In order to deny coverage for Bradley Sams's claim under the subject policy, Nationwide has the burden to prove that the loss was attributable to an excluded peril and not to a covered peril;
- (c) Nationwide has not met and cannot meet its burden of proof, and the loss and damage is thus covered under the subject policy; and

- (d) Bradley Sams is entitled to an award of damages for the full value of all coverages available to him under the policy, and such other extra-contractual damages or relief as this Court may deem fit to make her whole; Bradley Sams is entitled to receive a trial by jury on all issues triable.

COUNT TWO:
SPECIFIC PERFORMANCE OF INSURANCE CONTRACT

31. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in Paragraphs 1-30 of the Complaint.

32. Nationwide entered into the subject contract of insurance with the Plaintiff wherein it clearly and expressly agreed to provide insurance coverage for physical loss to property and loss of use proximately and efficiently caused by the theft of the property. Plaintiff, in turn, has paid Nationwide substantial premiums for a number of years and has done all things required of him by the policy and by the Defendants.

33. Plaintiff has now suffered total destruction of his insured boat and personal property as a proximate and direct result of covered losses, and has consequently been denied use of his boat.

34. Plaintiff has performed his end of the bargain and is accordingly now entitled to Specific Performance of his subject insurance contract. The Court should therefore require Nationwide to specifically perform such agreement.

COUNT THREE:
INDEMNITY

35. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in Paragraphs 1-34 of the Amended Complaint.

36. Nationwide is obligated under the subject policy and by its representations to provide full insurance coverage to Plaintiff for all damage to the insured residence, property, and loss of use caused by the theft of the insured property.

37. However, Nationwide has denied Plaintiff insurance coverage and has refused to pay him for his covered loss.

38. As a direct and proximate result of Nationwide's denial, Plaintiff has been and will continue to be forced to pay a substantial amount of money out of his own pocket for his loss of use of the insured boat. Plaintiff will also be required to pay hundreds of thousands of dollars to rebuild and/or replace destroyed property. This will consequently require Plaintiff to incur additional damages and expenses.

39. The expenses that Plaintiff has incurred and continues to incur as a result of Nationwide's refusal to pay him what is owed are expenses that Nationwide, in all fairness and equity, should pay under the subject policy or otherwise. Plaintiff is therefore entitled to indemnity from Nationwide for all sums he has expended and will be required to expend, as well as expenses and/or debt he will be required to incur, in order to repair, refurbish, and/or replace his insured property, as well as any sums expended or debts incurred as a result of being forced to hire engineers, attorneys and other experts in order to recover sums under his insurance contract.

COUNT FOUR:
UNJUST ENRICHMENT/CONSTRUCTIVE TRUST

40. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in Paragraphs 1-39 of the Complaint.

41. In marketing, selling and issuing the subject policy to Plaintiff, Nationwide represented and agreed to obtain and provide Plaintiff with full coverage for property damage

and loss of use, as well as for damage proximately caused by theft. These representations and contractual obligations are also evidenced by the subject policy's coverage provisions.

42. Plaintiff has paid Nationwide substantial monetary premiums for such coverage.

43. Despite realizing substantial premiums from Plaintiff, Nationwide has withheld the insurance proceeds owed to Plaintiff for the damage to her insured property.

44. By purposefully mischaracterizing the damage to Plaintiff's residence and property as being caused by "unseaworthy" despite a complete lack of evidence or diligent investigation, and despite the fact that Nationwide was well aware that it could not prove that Plaintiff's property was damaged by excluded perils, Nationwide has wrongfully realized insurance premiums and withheld insurance proceeds to which the Plaintiff is entitled, and have gained interest on such sums.

45. Nationwide has therefore been unjustly enriched at Plaintiff's expense.

46. Plaintiff has suffered injury as a proximate result of Nationwide's unjust enrichment. Plaintiff has been and will continue to be forced to pay for costs storage and upkeep that should, in equity and good conscience, be borne by Nationwide under the subject policy.

47. As a proximate result of Nationwide's false representations and refusal to provide full insurance coverage under the subject policy for the damage to Plaintiff's insured boat and other personal property, Nationwide is in possession of premiums, insurance proceeds and other monies that it should not, in equity and good conscience, be entitled to retain.

48. Plaintiff is therefore entitled to damages resulting from Nationwide's unjust enrichment, including, but not limited to, the imposition of a Constructive Trust on all premiums Plaintiff paid to Nationwide and on the insurance proceeds wrongfully held by Nationwide under the subject policy.

COUNT FIVE:
WAIVER AND ESTOPPEL

49. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in Paragraphs 1-48 of the Complaint.

50. Nationwide had the obligation to establish what part, if any, of the loss fell under the terms of its exclusion by intentionally abandoning its obligation to establish what, if any, part of the loss was excluded. Defendant, therefore, has waived its right to attempt to put on any "after-the-fact" evidence to exclude any part of the loss.

51. Defendant induced the Plaintiff to rely on its representations that it was handling the claim in good faith, while at the time, it had actually already adopted its undisclosed and unsupported procedures by which coverage under the subject policy was to be denied in Plaintiff's situation. Defendant fraudulently concealed said fact and fraudulently induced the Plaintiff to act to the detriment of his substantial claim. Defendant should be estopped from denying that it owe full coverage under the subject policy to the Plaintiff.

COUNT SIX:
BAD FAITH

52. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in Paragraphs 1-53 of the Complaint.

53. Defendant had a duty to undertake a prompt and reasonable investigation into the Plaintiff's claim and to base its decision on the evidence.

54. Upon information and belief, Defendant implemented claims programs for the adjustment of claims that are/were secret and unknown practices designed to pay less than the fair value of the claim, to be free from regulatory and judicial review, and to create an unfair advantage over its insured.

55. Upon information and belief, Defendant had adopted the practices as a way to reduce its exposure, even though the duty to accept coverage and pay policy benefits must be afforded under the circumstances.

56. Defendant had a duty to pay Plaintiffs' claim for perils covered under the subject policy. Despite its own admissions that loss from covered perils occurred, it denied Plaintiff's claim, instead claiming that the investigation was ongoing for almost six months and that fraud may be involved. Defendant knew that it was incumbent upon it, in denying Plaintiff's claim, to meet the factual burden of proving that the damage to Plaintiff's property was wholly due to an excluded peril such as fraud. Defendant knew it was impossible for it to do so, but, nevertheless, denied Plaintiff's claim.

57. Defendant has ignored any evidence as to the cause of destruction of Plaintiff's property and Plaintiff's role in the circumstances causing the loss in an attempt to avoid paying the sums owed under the subject insurance contract. All of these actions, alone or in concert, constitute bad faith by Defendant. Defendant acted with gross negligence, malice and reckless disregard for the Plaintiff's rights, and this Court should not tolerate its heinous conduct.

58. Defendant has unreasonably and in bad faith, never provided Plaintiffs with any documents or rationale to demonstrate on what basis it refuses to pay the Plaintiff's subject property.

59. Defendant acted in bad faith when it failed to conduct a proper investigation and used its consequent lack of information as a basis for denying Plaintiff's claim.

60. Defendant has never made an outright denial of Plaintiff's claim, using the dearth of factual evidence resulting from its own purposeful lack of adequate investigation and willful blindness to facts presented to it, just to keep from having to pay what it clearly owed Plaintiff.

Defendant's bad faith denial of coverage was malicious, grossly negligent and/or made with reckless disregard for the rights of the Plaintiff.

61. Because of Defendant's conduct in handling and denying Plaintiff's claim, Plaintiff has suffered emotional distress and mental anguish. Defendant knew that Plaintiff lost the property and that it owed him policy limits, but nevertheless unreasonably denied Plaintiff's claim. Further, Defendant exercised, and continues to exercise, intentional delay in its paltry investigation of said claim, further causing mental anguish to Plaintiff.

62. Defendant's intentional delay in tendering Plaintiff his policy limits is yet another act of its intentional, malicious and recklessly indifferent misconduct, and continues to cause damage to Plaintiff. As a direct result of Defendant's post- and pre-litigation tortious conduct, the Plaintiff has suffered significant damages, including worry, anxiety, additional disruption of a life already significantly disrupted by Hurricane Katrina; use of his boat, additional damages include the incurring of significant expenses, including time, attorneys' fees, expert witness fees, and other expenses clearly foreseeable to Defendant as a result of its bad faith and fraudulent conduct.

63. Nationwide knew that the decisions it made would impact the rights of the Plaintiff, but acted maliciously and in reckless disregard of those rights nonetheless.

64. Nationwide's actions constitute a breach of the duties owed to Plaintiff.

65. Nationwide's conduct was willful, malicious and/or grossly negligent as to warrant the imposition of extra-contractual and punitive damages under Mississippi law.

COUNT SEVEN:
FRAUDULENT CLAIMS PRACTICES

66. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in Paragraphs 1-65 of the Complaint.

67. The claim of Plaintiff has, in effect, been wrongfully denied.

68. Said actions by the Defendant constitute fraud, fraudulent concealment and fraudulent inducement, as well as bad faith claims handling on an institutional basis in the handling by Defendant of claims. The actions by Defendant were intended to, and did, result in the intentional and fraudulent denial of the claims of the Plaintiff.

69. The actions of Nationwide warrant the imposition of extra-contractual and punitive damages under Mississippi law.

**COUNT EIGHT:
REMEDIES**

70. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in Paragraphs 1-69 of the Complaint.

71. Plaintiff is entitled to declaratory relief as to the rights and obligations of the parties under the subject policy.

72. Plaintiff is entitled to full insurance coverage under the subject policy for the damage to the insured residence and property, as well as other monies she should have been paid under the subject policy, and other such equitable relief set forth in the Complaint, including, but not limited to, specific performance, indemnity and/or a constructive trust.

73. Plaintiff is entitled to recover consequential and incidental damages caused by Nationwide's refusal to honor its obligations under the subject policy and otherwise.

74. Plaintiff is entitled to recover punitive and/or exemplary damages for Nationwide's bad faith denial of coverage.

75. Plaintiff is entitled to recover damages for pain and suffering, emotional distress, mental anguish, loss of enjoyment of life and such other extra-contractual damages as may be appropriate.

76. Plaintiff is entitled to recover attorneys' fees, litigation expenses, funds expended on experts, pre-judgment interest and post-judgment interest; as such expenses incurred by Plaintiff were clearly foreseeable to Nationwide as a result of its conduct in mishandling Plaintiff's claim.

WHEREFORE, PREMISES CONSIDERED, your Plaintiff demands judgment against the Defendant, Nationwide, in the amount over and above the jurisdictional limits of Two Hundred Thousand and no/100 Dollars (\$200,000.00), including an amount of the limits of liability of his insurance policy, other sums he should have been paid under the insurance policy, extra-contractual damages and punitive damages in an amount sufficient to make Plaintiff whole and deter future wrongful conduct of the Defendant, Nationwide, together with all costs, attorneys' fees and pre- and post-judgment interest. Plaintiff requests any further relief that may be appropriate.

RESPECTFULLY submitted, this the 27th day of June, 2008.

BRADLEY SAMS

BY: TYNES LAW FIRM, P.A.

BY:


Douglas L. Tynes, Jr.

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