

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

DALLAS FLINT AND LAURA FLINT

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 2008-00,406 (3)

NATIONWIDE MUTUAL FIRE INSURANCE
COMPANY AND CAIN AND ASSOCIATES
ENGINEERS AND CONSTRUCTORS, INC.

FILED
AUG 28 2008

DEFENDANTS

JOE W. MARTIN, JR., CLERK
Joe W. Martin, Jr.
COMPLAINT *FILED* D.C.

The Plaintiffs allege:

1. The Plaintiffs are adult resident citizens of Jackson County, Mississippi.
2. The Defendant, Nationwide Mutual Fire Insurance Company ("Nationwide") is a corporation qualified to do business in Mississippi and doing business in Mississippi, whose agent for service of process is the Mississippi Insurance Commissioner, Mike Chaney.
3. The Defendant, Cain and Associates Engineers and Constructors, Inc., ("Cain") is an Alabama corporation not qualified to do business in Mississippi, but has and is doing business in Mississippi, and who has committed a tort in whole or in part in this state against the Plaintiffs. Therefore, pursuant to §13-3-57, Mississippi Code of 1972, Cain is subject to the jurisdiction of this Court. Service of process may be had by service upon Cain's agent for service of process and president, Hal K. Cain, at 2356 East Huffman, Mobile, Alabama 36609 by certified mail pursuant to Rule 4 (c) (5) MRCP.
4. On August 29, 2005 the Plaintiffs owned the real property and improvements and contents located at 206 Bay Point Drive, Gautier, Mississippi 39553-6244, in Jackson County, Mississippi.

5. On August 29, 2005 the Plaintiffs were insured as the named insureds under Nationwide's policy number 6323 MP 071042 (the "contract") that insured the plaintiffs' dwelling home and other structures under a homeowner's policy, and also insured the personal property located at 206 Bay Point Drive, Gautier, Mississippi 39553-6244. Attached hereto as Exhibit "A" is a copy of the insurance contract which has been certified by Nationwide as being a true and correct copy.

6. On August 29, 2005, the contract provided the following coverages:

- (a) Coverage for the dwelling in the amount of \$296,800.00;
- (b) Coverage for other structures in the amount of \$29,680.00;
- (c) Coverage for personal property in the amount of \$220,000.00;
- (d) Coverage for the loss of use in the amount of \$59,360.00; and
- (e) And other additional coverages including debris removal, temporary repairs, etc.

7. Each of the coverages described above in Paragraph 6 constitutes a separate contract under Mississippi law, and a separate contractual undertaking by Nationwide.

8. Under the contractual coverage for the dwelling home, Nationwide agreed to insure the Plaintiffs for, inter alia, "direct loss by fire or explosion resulting from wind storm or hail damage". Additionally, Nationwide agreed to insure the Plaintiffs for "windstorm or hail" and for "explosion" in the perils insured against contractual provision.

9. The Defendant, Cain, was employed by Nationwide to conduct an inspection and render an engineering report for Nationwide on the insured property of the Plaintiffs under the Nationwide contract. Pursuant to this employment, Cain conducted an

inspection of the insured premises, after which Cain advised the Plaintiffs that the report would state that the dwelling had been damaged as a result of an "explosion", which was covered under the homeowner's policy. Thereafter, Cain returned for a second inspection of the plaintiffs' premises and advised that the inspection was being repeated at the request of Nationwide. After the inspection, Cain again represented to the Plaintiffs that the report would not change and that the damage had been caused by an "explosion", which was covered under the Nationwide policy. Finally, a third inspection was conducted by Cain outside the presence of the Plaintiffs. The Cain report dated December 18, 2005, made no mention of explosion, but instead asserted that surge waters and waves caused the damage to the plaintiffs' property and dwelling, which was an excluded event under the homeowner's policy. Thereafter, by letter dated February 8, 2006, Nationwide finally denied the Plaintiffs' claim without providing a copy of the Cain report.

10. Plaintiffs, Dallas Flint and Laura Flint, charge the Defendants with conspiring to deprive the Plaintiffs the insurance proceeds due under the existing Nationwide contract. Nationwide's employees and agents communicated with various agents and employees of Cain in order to insure engineering reports prepared by Cain for and on behalf of Nationwide only concluded that the Flints' property and other Nationwide insureds property were destroyed solely by storm surge, which was an excluded event under the Nationwide policy.

11. Nationwide has never produced to the Plaintiffs the initial reports prepared by Cain for Nationwide.

12. Plaintiffs charge the Defendants with conspiring to deprive the Plaintiffs the insurance proceeds due under the contract of insurance existing between the Plaintiffs and Nationwide. Cain, through negligence, gross negligence and fraud, has falsified and

altered its engineering reports at the behest of Nationwide, and would deny the Plaintiffs and other policy holders similarly situated from policy proceeds as a result of damages associated with Hurricane Katrina.

FIRST CLAIM:

BREACH OF CONTRACT FOR PROPERTY DAMAGE

13. On August 29, 2005 Hurricane Katrina struck the Mississippi Gulf Coast and caused substantial damage to the Plaintiffs insured dwelling home and contents.

14. The damage and loss to the Plaintiffs' home and contents were covered by the contract.

15. Plaintiffs gave Nationwide notice of their insurance claim under the contract, and made the demand on Nationwide for payment under the contract.

16. The Plaintiffs have performed all conditions precedent and obligations required of them under the contract.

17. Nationwide failed to make a timely, prompt, fair and reasonable investigation of the Plaintiffs' claim, and failed and refused to pay complete contract benefits due the Plaintiffs under the contract for property damage.

18. As a result of Nationwide's breach of contract, the Plaintiffs sustained contract damage for the damage to and loss of the dwelling home and its contents and other structures, additional living expense, debris removal, and other covered benefits.

19. Plaintiffs are entitled to maximum contract benefits for damage to the dwelling home and other contractual benefits.

SECOND CLAIM:

CIVIL CONSPIRACY

20. The Plaintiffs re-allege and incorporate all preceding allegations in the Complaint and the First Claim.

21. The Defendants Cain and Nationwide through acts of negligence, gross negligence, and fraud, conspired with each other, and aided and abetted each other, to deprive Mr. and Mrs. Flint of insurance proceeds under their homeowners' policy for losses associated with the events occurring on August 29, 2005 known as Hurricane Katrina.

THIRD CLAIM:

PUNITIVE DAMAGES OR, ALTERNATIVELY, EXTRA-CONTRACTUAL DAMAGES NOT INCLUDING PUNITIVE DAMAGES

22. The Plaintiffs re-allege and incorporate all preceding allegations in the Complaint and the First and Second Claim.

23. Nationwide and Cain conspired to willfully, recklessly and arbitrarily breach the contract with the plaintiffs to deprive the plaintiffs of their contract benefits in a way that evinces bad faith and a breach of their covenant of good faith and fair dealing with the plaintiffs. The Defendants' conduct amounts to an independent tort justified the imposition of punitive damages against these defendants.

24. Alternatively, if the plaintiffs are not entitled to punitive damages, plaintiffs are entitled to extra-contractual damages for emotional distress, inconvenience, attorney's fees, litigation costs and expenses.

FOURTH CLAIM:

PERSONAL PROPERTY

25. Plaintiffs re-allege and incorporate the preceding allegations of the Complaint and the First, Second and Third Claims.

26. The Defendants, Nationwide and Cain conspired to breach Nationwide's contract with the Plaintiffs by failing to timely pay benefits for personal property and contents damaged by Hurricane Katrina that are within the contract's coverage.

27. As a proximate result of this breach of contract, the Plaintiffs sustained compensatory damages for the value of the personal property contents insured under the contract and damage, along with prejudgment interest.

FIFTH CLAIM:

PUNITIVE DAMAGES OR, ALTERNATIVELY, EXTRA-CONTRACTUAL DAMAGES NOT INCLUDING PUNITIVE DAMAGES

28. The Plaintiffs re-allege and incorporate the allegations of the Complaint and the First, Second, Third and Fourth Claims.

29. The Defendants conspired to willfully, recklessly and arbitrarily breach the contract with the Plaintiffs by failing to pay benefits for personal property and contents in a way that evinces bad faith and a breach of their covenant of good faith and fair dealing with the Plaintiffs. This breach of contract amounts to an independent tort justifying the imposition of punitive damages against the defendants.

30. Alternatively, if the Plaintiffs are not entitled to punitive damages, then the Plaintiffs are entitled to extra-contractual damages for emotional distress, inconvenience, attorney's fees, litigation costs and expenses.

SIXTH CLAIM:

ADDITIONAL LIVING EXPENSES AND OTHER CONTRACTUAL EXPENSES

31. The Plaintiffs re-allege and incorporate the allegations of the Complaint and the First, Second, Third, Fourth and Fifth Claims.

32. The Defendants, Nationwide and Cain, conspired to breach the Nationwide contract with the Plaintiffs by failing to timely pay benefits for additional living expenses that are within the ALE coverage provided by the contract and other contract benefits.

33. The Defendants were and have been aware that the Plaintiffs have been unable to live in their dwelling home since August 29, 2005 because of the damage caused by Hurricane Katrina to their home within the ALE coverage of the contract.

34. Despite this knowledge, Defendants did not pay the Plaintiffs adequate additional living expenses when they knew or should have known that the Plaintiffs were entitled to ALE under the contract.

35. As a proximate result of this breach of contract and conspiracy to breach contract, the Plaintiffs sustained compensatory damages for ALE and other coverage benefits with prejudgment interest.

SEVENTH CLAIM:

PUNITIVE DAMAGES OR, ALTERNATIVELY EXTRA-CONTRACTUAL DAMAGES NOT INCLUDING PUNITIVE DAMAGES

36. The Plaintiffs re-allege and incorporate the allegations of the Complaint and the First, Second, Third, Fourth, Fifth and Sixth Claims.

37. The Defendants conspired to willfully, recklessly and arbitrarily breach the insurance contract of the plaintiffs by failing to timely pay complete ALE in a way that evinces bad faith and a breach of its covenant of good faith and fair dealing with the Plaintiffs. The Defendants' breach of contract amounts to an independent tort in justifying the imposition of punitive damages against these defendants.

38. Alternatively, the Plaintiffs are not entitled to punitive damages, then the Plaintiffs are entitled to extra-contractual damages for emotional distress, inconvenience, attorney's fees, litigation costs and expenses.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment against the Defendants for:

(1) Compensatory damages under the contract for the maximum dwelling structure coverage, personal property coverage, additional living expenses, and other coverages;

(2) Compensatory damages for emotional distress and inconvenience, attorneys fees, litigation costs and expenses;

(3) Punitive damages;

(4) Attorneys fees and all penalties provided by law;

(5) Prejudgment interest and post-judgment interest;

(6) Costs of court; and

(7) All other legal and equitable relief to which the Plaintiffs may be entitled.

Respectfully submitted,

DALLAS FLINT AND LAURA FLINT

BY: 

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