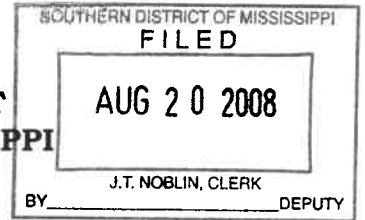


**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**



REGINALD EDWIN BOSSIER

PLAINTIFF

VERSUS

CAUSE NO. 1:08CV40826-RHW

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT

COMPLAINT
(JURY TRIAL REQUESTED)

COMES NOW, Reginald Edwin Bossier, ("Plaintiff"), by and through counsel and files this his Complaint against Defendant State Farm Fire and Casualty Company, and in support of said claim would show unto this Honorable Court the following facts to-wit:

I.

PARTIES

1. At all material times herein, Plaintiff was an adult resident citizen of Harrison County, Mississippi, who owned property located at 1987 Bayside Drive, Biloxi, Mississippi 39532.

2. Defendant State Farm Fire and Casualty Company is a corporation 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, and which may be served with process by service on its agent for service of process, Mr. William E. Penna, 1080 River Oaks Drive, Suite

B-100, Flowood, Mississippi 39232-7644 or on the Mississippi Insurance Commissioner, P. O. Box 79, Jackson, Mississippi 39205-0079, pursuant to Miss. Code Ann. §83-21-1.

II.

SUBJECT MATTER AND PERSONAL JURISDICTION

3. This Court has jurisdiction over the subject matter and Defendant in this case pursuant to 28 U.S.C. §1332 because there is complete diversity of citizenship between Plaintiff and Defendant and the amount in controversy exceeds \$75,000.00.

III.

VENUE

4. Venue in this case is proper in this Court pursuant to 28 U.S.C. §1391, because this suit respects real and personal property which is completely within the district of the United States District Court for Southern District of Mississippi.

IV.

FACTS

5. Plaintiff purchased from State Farm a standard "Homeowner's Policy" ("subject policy"), naming him as the insured. The subject policy insured Plaintiff's Dwelling and Dwelling Extension; Personal Property; and loss of use for

actual loss sustained. The subject policy was in effect on August 29, 2005. The policy is in possession of Defendant.

6. The subject policy provides “all risk” coverage for all “accidental direct physical loss” to Plaintiff’s “Dwelling” and “Dwelling Extension” unless the proximate and efficient cause of the loss is one that is expressly excluded by the policy, stating as follows:

SECTION I- LOSSES INSURED

COVERAGE A- DWELLING

We insure for accidental direct physical loss to the property described in Coverage A, except as provided in SECTION I - LOSSES NOT INSURED.

7. The subject policy also provides coverage for “accidental direct physical loss” to Plaintiff’s “Personal Property” proximately and efficiently caused by windstorm, stating as follows:

COVERAGE B - PERSONAL PROPERTY

We insure for accidental direct physical loss to property described in Coverage B caused by the following perils, except as provided in **SECTION I - LOSSES NOT INSURED:**

2. **Windstorm or hail.** This peril does not include loss to property contained in a building caused by rain, snow, sleet, sand or dust. This limitation does not apply when the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

8. On August 29, 2005, within the subject policy period, the insured “Dwelling”, “Dwelling Extension,” and the “Personal Property” therein sustained accidental direct physical losses caused by Hurricane Katrina.

9. Almost immediately thereafter, and in accordance with the subject policy provisions, Plaintiff notified State Farm of his “accidental direct physical loss” and performed all obligations imposed on him by the policy.

10. However, State Farm failed to fairly, adequately, and sufficiently investigate and adjust Plaintiff’s “accidental direct physical loss” under the policy.

11. State Farm’s investigation, adjustment, and failure to pay all amounts due under the contract of Plaintiff’s claim were negligent, grossly negligent, and in breach of contract. Such conduct also constitutes bad faith and tortious breach of contract and breach of the duty of good faith and fair dealing. State Farm has forced Plaintiff to litigate in order to receive benefits that should have been paid immediately under the subject policy.

V.

COUNT ONE

**NEGLIGENCE/GROSS NEGLIGENCE/RECKLESS
DISREGARD FOR RIGHTS OF PLAINTIFF**

12. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the foregoing paragraphs of this Complaint.

13. State Farm had a duty under Mississippi law to fully, fairly, adequately and correctly investigate and adjust Plaintiff's claims for hurricane damage.

14. State Farm was negligent by failing to adequately investigate and adjust Plaintiff's "accidental direct physical loss" and failing to timely pay amounts due under the contract.

15. Such conduct as alleged above constitutes negligence, gross negligence, and/or reckless disregard for Plaintiff's rights as a State Farm insured.

16. State Farm's negligent, grossly negligent, and/or reckless adjustment proximately caused Plaintiff's economic and other damages.

COUNT TWO

BREACH OF CONTRACT

17. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the foregoing paragraphs of this Complaint.

18. Plaintiff entered into an insurance contract with State Farm in which he contracted for, purchased, and was entitled to receive full insurance coverage under the subject policy for all "accidental direct physical loss" or "collapse" to the insured Dwelling and other structures and additional living expenses. Plaintiff similarly contracted for insurance coverage for all loss to the personal contents proximately and efficiently caused by windstorm.

19. Plaintiff suffered an “accidental direct physical loss” under the subject policy.

20. Hurricane Katrina is considered to be a windstorm under the subject policy.

21. Plaintiff satisfied his obligations under the subject policy by submitting a claim showing that he sustained an “accidental direct physical loss” as a result of Hurricane Katrina, a windstorm. However, State Farm breached the subject policy by unjustifiably denying insurance coverage for Plaintiff’s loss in the following ways:

a. State Farm breached the subject policy by failing to timely pay for all loss.

b. State Farm breached the subject policy by negligently, grossly negligently, and/or recklessly failing to conduct a prompt, adequate, proper, honest, and good faith inspection, adjustment, investigation, and payment of Plaintiff’s loss.

c. State Farm breached the subject policy by failing to construe the policy in favor of coverage for Plaintiff’s loss.

d. Developing a new procedure for Hurricane Katrina claims, known as the “wind/water protocol”, that required Plaintiff to prove “discernible wind damage”, contrary to the terms of the policy.

22. State Farm's breaches of contract have proximately caused Plaintiff's economic and other damages.

COUNT THREE

**BREACH OF DUTY OF GOOD FAITH AND
FAIR DEALING AGAINST STATE FARM**

23. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the foregoing paragraphs of this Complaint.

24. State Farm breached its duty of good faith and fair dealing to Plaintiff by unjustifiably failing to pay all loss in a timely manner.

25. State Farm breached its duty of good faith and fair dealing by negligently, gross negligently, and/or recklessly failing to conduct a timely, adequate, proper, honest, and good faith inspection, adjustment, investigation and payment of Plaintiff's claims for hurricane damage.

26. State Farm breached its duty of good faith and fair dealing by developing a new procedure for Hurricane Katrina claims, known as the "wind/water protocol", that required Plaintiff to prove "discernible wind damage" contrary to the terms of the policy.

27. Such conduct by State Farm violates the standards of decency, fairness, and reasonableness.

28. State Farm's breaches of its duty of good faith and fair dealing have proximately caused Plaintiff's economic and emotional damages.

COUNT FOUR

BAD FAITH AND TORTIOUS BREACH OF CONTRACT

29. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the foregoing paragraphs of this Complaint.

30. State Farm tortiously, maliciously, and in bad faith breached the subject policy by refusing to provide full insurance coverage under the subject policy for Plaintiff's "accidental direct physical loss" without a legitimate or arguable reason.

31. State Farm tortiously, maliciously, and in bad faith breached the subject policy by developing a new procedure for Hurricane Katrina claims, known as the "wind/water protocol", that required Plaintiff to prove "discernible wind damage" contrary to the terms of the policy.

32. State Farm's tortious, malicious, and bad faith breaches of contract have proximately caused Plaintiff's economic and emotional damages.

33. State Farm's acts and conduct as alleged above were willful, wanton, malicious, grossly negligent, and done with reckless disregard for the rights of Plaintiff, thereby arising to the level of an independent tort and entitling Plaintiff to an award of punitive damages.

VI.

REMEDIES

34. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the foregoing paragraphs of this Complaint.

35. As a direct and proximate result of State Farm's negligence, gross negligence, reckless disregard for Plaintiff's rights as a State Farm insured, breach of contract, breach of duty of good faith and fair dealing, and bad faith and tortious breach of contract without a legitimate or arguable reason in fact or law, Plaintiff is entitled to the following relief:

(A) Payment for all contractual benefits for all coverages afforded to Plaintiff under the subject State Farm policy for damage to his insured residence and personal contents caused by Hurricane Katrina, with pre-judgment and post-judgment interest on all amounts due Plaintiff under his policy;

(B) Compensatory damages on the tort claims for mental distress, emotional harm, and other losses and damages suffered by Plaintiff as a proximate result on the denial of coverage. Plaintiff is entitled on his contract claims to consequential damages, including but not limited to the amounts Plaintiff expended or lost in trying to subsist without insurance benefits since August 29, 2005. On all claims Plaintiff is entitled to recovery for humiliation, stigmatization in the Plaintiff's communities, embarrassment, and mental distress proximately caused by State Farm's bad faith denial of his claim;

(C) Compensatory damages for the additional economic damages sustained as a result of Defendant's delay, including further loss to Plaintiff;

(D) For the intentionally tortious actions of State Farm, compensatory damages as described above, and as further provided under Mississippi law, Plaintiff is entitled to recovery of his attorney fees and costs of litigation for such intentional acts committed by State Farm;

(E) Extra-contractual damages for State Farm's tortious, malicious, willful, wanton, reckless, grossly negligent, and bad faith conduct, which arose to the level of an independent tort, including but not limited to, compensatory damages for all out-of-pocket expenses incurred by reason of State Farm's refusal to pay contractual benefits, mental distress and/or emotional harm caused or contributed to by Defendant's bad faith refusal to honor its contract of insurance, and recovery of attorney fees and litigation expenses incurred by Plaintiff by reason of Defendant's denial of insurance coverage; and

(F) Punitive and exemplary damages for Defendant's tortious, malicious, willful, wanton, reckless, grossly negligent, and bad faith conduct which arose to the level of an independent tort, including but not limited to, an award of punitive damages sufficient to punish and deter Defendant, make an example of Defendant to discourage other insurers from engaging in such misconduct, taking into account Defendant's financial condition, all in an amount sufficient to achieve the public purposes underlying an award of punitive damages

as may be determined by the Court and/or jury; pre-judgment and post-judgment interest on all amounts in contractual benefits and compensatory damages awarded by the Court and/or jury; and all costs of litigation, including but not limited to reasonable attorney fees, incurred in prosecuting this action and any subsidiary or auxiliary actions that arise in determining the losses of Plaintiff by reason of the non-payment of contractual benefits, in an amount to be determined by the Court following conclusion of all proceedings herein.

36. Plaintiff respectfully requests such further general or specific relief to which he is entitled to at law or in equity.

37. Plaintiff respectfully requests a trial by jury on all issues so triable.

This the 19th day of August, 2008.

Respectfully submitted,

REGINALD EDWIN BOSSIER

By: 

JUDY M. GUICE (MSB #5057)

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