

IN THE DISTRICT COURT OF OTTAWA COUNTY
STATE OF OKLAHOMA

FILED
DISTRICT COURT
OTTAWA CO. OKLA.

JUN 09 2020

QUAPAW NATION d/b/a DOWNSTREAM
DEVELOPMENT AUTHORITY OF THE
QUAPAW NATION OF OKLAHOMA
(O-GAH-PAH),

Plaintiff,

v.

AFFILIATED FM INSURANCE COMPANY,

Defendant.

CASSIE KEY COURT CLERK
BY R. Blalock

) Case No. CJ-20-82
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PETITION

Plaintiff, the Quapaw Nation d/b/a the Downstream Development Authority of the Quapaw Nation of Oklahoma (O-Gah-Pah), an Indian tribe, through undersigned counsel, respectfully represents and requests:

PARTIES

1. Plaintiff, the Quapaw Nation d/b/a the Downstream Development Authority of the Quapaw Nation of Oklahoma (O-Gah-Pah) (the "Nation") is federally recognized Indian tribe, with its headquarters located in Quapaw, Oklahoma. The Nation is not a citizen for purposes of federal diversity jurisdiction.

2. Defendant, Affiliated FM Insurance Company ("AFM Insurance") is a foreign insurer doing business in the State of Oklahoma.

3. Venue is proper pursuant to 12 O.S. Sec. 137.

FACTUAL BACKGROUND

4. The Nation, as the named insured, owns and operates property used in connection with multiple commercial businesses and services (the "Nation's Property").

5. AFM Insurance sold the Nation all-risk property insurance, (policy no. GS931, hereafter, the "Policy") for a term from October 1, 2019, to October 1, 2020.

6. Some, but not all, of the benefits provided include business interruption, interruption by civil authority, limitations of ingress and egress, and extra expense.

7. The Nation has paid all premiums for the coverage.

8. On or about March of 2020, the United States of America became infected by COVID-19 resulting in a pandemic.

9. Due to the pandemic, the Nation's Property sustained direct physical loss or damage and will continue to sustain direct physical loss or damage covered by the Policy, including but not limited to business interruption, extra expense, interruption by civil authority, limitations on ingress and egress, and expenses to reduce loss. As a direct result of this pandemic, the Nation's Property has been damaged, as described above, and cannot be used for its intended purpose.

FIRST CAUSE OF ACTION – BREACH OF CONTRACT

10. The previous paragraphs are incorporated here as if stated in full.

11. The Nation filed a claim with AFM Insurance to recover for covered losses.

12. The Nation complied with all notice requirements and, on April 6, 2020, AFM Insurance acknowledged receipt of the claim.

13. On April 24, 2020, AFM Insurance denied the claim.

14. By denying the claim, AFM Insurance breached its contract with the Nation.

15. As a result of AFM Insurance's breach of contract, Plaintiff has sustained financial losses and have been damaged in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00).

SECOND CAUSE OF ACTION – BAD FAITH

16. The previous paragraphs are incorporated here as if stated in full.
17. AFM Insurance owes a duty of good faith and fair dealing to the Nation.
18. While investigating the claim, AFM Insurance limited its investigation and analysis to “Communicable Disease.” *Ex. 1*, Letter from AFM Insurance to the Nation (Apr. 8, 2020).
19. AFM Insurance denied coverage because “there has not been any reported case of COVID-19 at any of The Downstream Development Authority of the Quapaw Nation of Oklahoma's insured locations.” *Ex. 1*, Letter from AFM Insurance to the Nation (Apr. 8, 2020).
20. AFM Insurance relied on third-parties to contact the Nation rather than conduct its own investigation when it denied coverage.
21. By limiting potential coverage to Communicable Diseases, AFM Insurance treated the Policy as a named-peril policy.
22. The Policy is not a named-peril policy.
23. The Policy is an all-risk policy, which provides coverage for “all risk of physical loss or damage.”
24. As an all-risk policy, the Nation’s insurance coverage is not limited to the peril of Communicable Disease.
25. Consequently, AFM Insurance did not deal fairly and in good faith with the Nation by engaging in the following acts and omissions:
 - a. failing to perform a proper investigation in regards to the Nation’s claim;
 - b. refusing, without a reasonable basis, to pay all benefits owed;
 - c. knowingly failing to engage in proper claims handling practices;
 - d. forcing the Nation to pursue litigation for payment of the claim;

- e. intentionally engaging in an outcome-oriented investigation and analysis;
and,
- f. purposefully maximizing financial gains at the expense of the insured.

26. As a consequence of AFM Insurance's breach of the duty of good faith and fair dealing, the Nation have sustained damages, including deprivation of monies rightfully belonging to it, decreased organization morale, attorney fees and litigation costs, further its public officials, agents, employees, and tribal members have experienced anger, stress, mental anguish and emotional distress.

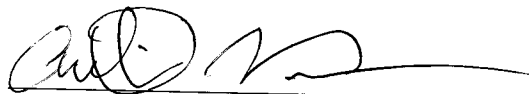
27. The conduct of AFM Insurance was intentional, willful, malicious, and/or in reckless disregard of the rights of others.

28. The Nation therefore seeks damages, including punitive damages, in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00).

PRAYER FOR RELIEF

WHEREFORE, the Nation prays for judgment against AFM Insurance in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), together with costs, interest, reasonable attorney fees, and other relief that this Court deems just and equitable.

Respectfully submitted,



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