

Velva L. Price
District Clerk
Travis County
D-1-GN-20-002922
Jessica A. Limon

CAUSE NO. D-1-GN-20-002922

RIO GRANDE VILLA, LLC	§	IN THE DISTRICT COURT
	§	
V.	§	
	§	<u>419TH</u> JUDICIAL DISTRICT
STATE FARM LLOYDS	§	
AND BRANDON GEBO	§	TRAVIS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, RIO GRANDE VILLA, LLC, and files this Original Petition against STATE FARM LLOYDS, (“State Farm”) and BRANDON GEBO (“Gebo”) and in support thereof, would show as follows:

I.
DISCOVERY CONTROL PLAN LEVEL

Plaintiff intends for discovery to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure. This case involves complex issues and will require extensive discovery. Therefore, Plaintiff will ask the Court to order that discovery be conducted in accordance with a discovery control plan tailored to the particular circumstances of this suit.

II.
PARTIES AND SERVICE

Plaintiff is doing business in Travis County, Texas.

State Farm is in the business of insurance in the State of Texas. The insurance business done by State Farm in Texas includes, but is not limited to, the following:

- The making and issuing of contracts of insurance with the Plaintiff;
- The taking or receiving of application for insurance, including the Plaintiff’s application for insurance;

- The receiving or collection of premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from the Plaintiff; and
- The issuance or delivery of contracts of insurance to residents of this state or a person authorized to do business in this state, including the Plaintiff.

Defendant **State Farm Lloyds** can be served, via certified mail, through its registered agent, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

Service is requested at this time.

Defendant **Brandon Gebo** is a Texas resident and may be served at his business address at 4050 Regent Blvd., Irving, Texas 75063 by certified mail, return receipt requested. **Service is requested at this time.**

III. JURISDICTION AND VENUE

Venue is appropriate in Travis County, Texas because all or part of the conduct giving rise to the causes of action were committed in Travis County, Texas and Plaintiff and Property which are the subject of this suit are located in Travis County, Texas. Accordingly, venue is proper pursuant to Texas Civil Practice & Remedies Code §15.002.

IV. BACKGROUND FACTS

Plaintiff is the owner of an Insurance Policy (hereinafter referred to as "the Policy"). Defendant provided the Plaintiff's business insurance for the business located at 600 W. 28th Street, Austin, Texas 78705 (hereinafter referred to as "the Property"). State Farm sold the Policy insuring the Property to Plaintiff.

During the terms of said Policy, Plaintiff has sustained and will sustain covered losses during the Covid-19 outbreak and subsequent Travis County and State of Texas Orders ("Orders"), and Plaintiff reported same to State Farm pursuant to the terms of the Policy.

Plaintiff asked that State Farm cover the cost for lost rents pursuant to the Policy. State Farm assigned Brandon Gebo to adjust the claim and investigate the loss related to the lost rents; however, he failed to properly investigate as described more specifically below. Due to his failure, the claim has been wrongfully denied. To date, Gebo and State Farm have mishandled Plaintiff's claim and caused and will continue to cause Plaintiff further and additional damages.

Gebo made no request to Plaintiff for documents or information relating to the claim, and State Farm denied Plaintiff's claim within days the claim was presented meaning he could not have done a proper or thorough investigation.

Gebo and State Farm made material misrepresentations about Policy provisions, coverage and the law in Texas applying thereto. State Farm and its agents have kept and have in their possession a claim file which details the Plaintiff's claim and its investigation, adjustment and subsequent denial of the claim.

State Farm wrongfully denied Plaintiff's claim for lost rents even though the Policy provides coverage for losses such as those suffered by Plaintiff. Furthermore, by information and belief, State Farm engaged its agents to misrepresent Policy provisions and coverage. To date, State Farm continues to deny the payment for Plaintiff's lost rents.

V.

CAUSES OF ACTION AGAINST STATE FARM

A. BREACH OF CONTRACT

Plaintiff re-alleges the foregoing paragraphs. State Farm and its agents' conduct constitutes a breach of the insurance contract between it and Plaintiff. State Farm's failure and/or refusal, as described above, to pay Plaintiff adequate compensation as it is obligated to do under the terms of the Policy in question, and under the laws of the State of Texas, constitutes a breach of the insurance contract with Plaintiff.

State Farm failed to perform its contractual duty to adequately compensate Plaintiff under the terms of the Policy. Specifically, State Farm wrongfully denied coverage for lost rents and refused to offer the full proceeds of the Policy, although due demand was made for proceeds to be paid in an amount sufficient to cover Plaintiff's business loss, and all conditions precedent to recovery under the Policy have been carried out and accomplished by Plaintiff. State Farm's conduct constitutes a breach of the insurance contract between it and Plaintiff.

B. NONCOMPLIANCE WITH TEXAS INSURANCE CODE

1. UNFAIR SETTLEMENT PRACTICES

Plaintiff re-alleges the foregoing paragraphs. Texas law is clear that insurance companies and anyone engaged in the business of insurance by investigating and adjusting a claim must conduct a reasonable, full and fair claim investigation. State Farm violated Chapter 541 of the Texas Insurance Code, in one or more of the following particulars:

§ 541.061. Misrepresentation of Insurance Policy.

- Making an untrue statement of material fact;
- Failing to state a material fact necessary to make other statements made not misleading;
- Making a misleading statement; and
- Failing to disclose a material matter of law.

§ 541.060. Unfair Settlement Practices.

Insurance Code chapter 541, section 541.060 by, among other things:

- misrepresenting one or more material facts and/or Policy provisions relating to coverage;
- making misrepresentations of law;
- failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which its liability has become reasonably clear;
- failing to promptly provide a reasonable explanation of the basis in law or fact for the denial of Plaintiffs' claims;
- refusing to affirm or deny coverage within a reasonable time;
- refusing to conduct a reasonable investigation;

- ignoring damage known to be covered by the Policy; and/or
- conducting an outcome-oriented investigation in order to provide a basis to underpay or deny the claim.

2. THE PROMPT PAYMENT OF CLAIMS

Plaintiff re-alleges the foregoing paragraphs. State Farm's conduct constitutes and will continue to constitute multiple violations of the Texas Insurance Code, Prompt Payment of Claims. All violations made under this article are made actionable by TEX. INS. CODE §542.060.

State Farm failed to meet its obligations under the Texas Insurance Code regarding timely beginning an investigation of Plaintiff's claims, and requesting all information reasonably necessary to investigate Plaintiff's claims within the statutorily mandated time of receiving notice of Plaintiff's claims. Its conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.055.

Further, State Farm failed to accept or deny Plaintiff's full and entire claims within the statutorily-mandated time of receiving all necessary information. Its conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.056.

State Farm failed and will fail to timely pay Plaintiff's claim, and for all of the covered losses due to its wrongful denial of the policy benefits. TEX. INS. CODE §542.057.

State Farm failed and will fail to meet its obligations under the Texas Insurance Code regarding payment of claims without delay due to its wrongful denial. Its conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.058.

Because of State Farm's wrongful acts and omissions, Plaintiff was forced to retain the professional services of the attorney and law firm who is representing it with respect to these causes of action.

C. BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

Plaintiff re-alleges the foregoing paragraphs. State Farm’s conduct constitutes a breach of the common law duty of good faith and fair dealing owed to the insureds pursuant to insurance contracts.

From and after the time Plaintiff’s loss was presented to State Farm, its liability to pay the full claim in accordance with the terms of the Policy was reasonably clear. However, it has refused to pay Plaintiff in full and wrongfully denied the claim, despite there being no basis upon which a reasonable insurance company would have relied to deny the full payment. State Farm’s conduct constitutes a breach of the common law duty of good faith and fair dealing.

Further, State Farm’s failure, as described above, to adequately and reasonably investigate and evaluate Plaintiff’s claims, although, at that time, it knew or should have known by the exercise of reasonable diligence that its liability was reasonably clear, constitutes a breach of the duty of good faith and fair dealing.

VI.

CAUSES OF ACTION AGAINST DEFENDANT GEBO

A. NONCOMPLIANCE WITH TEXAS INSURANCE CODE

Plaintiff re-alleges the foregoing paragraphs. At all pertinent times, Gebo was engaged in the business of insurance as defined by the Texas Insurance Code. The acts and omissions of Gebo constitute one or more violations of the Texas Insurance Code. More specifically, Gebo has, among other violations, violated the following provisions of the Code:

1. Insurance Code § 542.003(b)(5).
2. Insurance Code chapter 541, section 541.060 by, among other things:
 - misrepresenting one or more material facts and/or policy provisions relating to coverage;

- failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claims with respect to which their liability has become reasonably clear;
- failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claims under one portion of a policy with respect to which liability has become reasonably clear in order to influence Plaintiffs to settle its claims with respect to another portion of the policy;
- failing to promptly provide a reasonable explanation of the basis in law or fact for the denial of Plaintiff's claims;
- refusing to affirm or deny coverage within a reasonable time;
- refusing to conduct a reasonable investigation;
- ignoring damage known to be covered by the Policy; and/or
- conducting an outcome-oriented investigation in order to provide the carrier with a basis to deny the claim.

State Farm assigned the loss and the claim to Gebo who was at all pertinent times the agent of State Farm, through both actual and apparent authority. The acts, representations and omissions of Gebo are attributed to State Farm. Gebo was tasked with the responsibility of conducting a thorough and reasonable investigation of Plaintiff's loss. Despite the fact that the Texas Insurance Code dictates adjusters must conduct a reasonable investigation and adjustment of a claim, Gebo failed to do so and actually set out to conduct an outcome-oriented investigation and adjustment, which has and will result in an inequitable settlement of Plaintiff's claim.

Gebo pre-textually looked only for ways to avoid coverage rather than first trying to find coverage. Notably, he made no request for documentation. Instead, following a phone conversation, he immediately sent Plaintiff a denial letter stating that there is no coverage for Plaintiff's loss without conducting an investigation or adjustment of the claim. Gebo misrepresented the policy coverages to Plaintiff. He misrepresented to Plaintiff that in order to

have coverage for lost rents, it had to have sustained direct physical loss to the Property. The Policy covers direct physical *loss* to the property, yet Gebo failed to investigate the “loss to” the property due to the Orders. Physical loss is not defined by the Policy, and yet Gebo represented without any basis that the Orders did not constitute a “loss” even though physical loss has been broadly construed to apply to losses that do not necessarily cause actual physical alteration of the property. As well, Gebo misrepresented to Plaintiff that coverage under civil authority does not apply because the civil authority action was not as a result of damage to property. But Gebo did no investigation whatsoever to make such a determination, and the civil authority coverage applies when there is a continuation of a Covered Cause of Loss – defined as physical loss. He also wholly ignored the state and local Orders, and did no investigation as to whether there was an actual basis for State Farm to assert the application of the virus exclusion in the Policy. Rather than advising State Farm to pay Plaintiff’s claim, investigating more (or at all) with respect to the Orders or even sending a reservation of rights letter, Gebo sent Plaintiff a denial letter right after the claim was made, despite the fact the Policy provides coverage for Plaintiff’s lost rents. As result of Gebo’s misrepresentations, inadequate and outcome-oriented investigation in the form of no investigation, Plaintiff has not received any payment for the claim.

The foregoing conduct was and is the producing cause(s) of injury and damage to Plaintiff and Plaintiff has suffered damages including, without limitation, actual damages, economic damages, and consequential damages. Gebo’s conduct caused a failure to effectuate a prompt, reasonable settlement of the claim. Moreover, one or more of the foregoing acts or omissions were committed “knowingly” entitling Plaintiff to seek treble damages pursuant to the Insurance Code.

VII.
CAUSES OF ACTION AGAINST ALL DEFENDANTS FOR CIVIL CONSPIRACY

Plaintiff re-alleges the foregoing paragraphs. The Defendants conspired to delay and deny

or underpay Plaintiff's claim. State Farm assigned Gebo to investigate Plaintiff's claim, and the Defendants set out to intentionally conduct an outcome-oriented investigation in order to avoid paying for all of the damages to Plaintiff's Property covered by the Policy. The denial letter misrepresenting coverage, as well as his failure to investigate or adjust the claim to create a basis for denial, were either independent acts by Gebo in violation of the Insurance Code or a meeting of the minds between Gebo and State Farm to accomplish violations of the Insurance Code – the discovery process will bear out which. The Defendants' conspiracy was a proximate cause of Plaintiff's damages.

VIII. KNOWLEDGE

Each of the acts described above, together and singularly, was done "knowingly" by Defendants as that term is used in the Texas Insurance Code and was a producing cause of Plaintiff's damages described herein.

IX. DAMAGES

Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the proximate and producing causes of the damages sustained by Plaintiff.

For breach of contract, Plaintiff is entitled to regain the benefit of the bargain, which is the amount of the claim, together with attorney's fees.

For noncompliance with the Texas Insurance Code, Unfair Settlement Practices, Plaintiff is entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the Policy but for the wrongful denial, court costs, consequential damages not covered by Plaintiff's Policy and attorney's fees. For knowing conduct of the acts described above, Plaintiff asks for three times the actual damages. TEX. INS. CODE §541.152.

For noncompliance with the Texas Insurance Code, Prompt Payment of Claims, Plaintiff is entitled to the amount of the claim, as well as eighteen (18) percent interest per annum on the amount of such claim as damages, together with attorney's fees. TEX. INS. CODE §542.060.

For breach of the common law duty of good faith and fair dealing, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from the insurer's breach of duty, such as additional costs, economic hardship, losses due to nonpayment of the amount the insurer owed, and exemplary damages.

For the prosecution and collection of this claim, Plaintiff has been compelled to engage the services of the attorney whose name is subscribed to this pleading. Therefore, Plaintiff is entitled to recover a sum for the reasonable and necessary services of Plaintiff's attorney in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the Supreme Court of Texas.

X.

In addition, as to any exclusion, condition, or defense pled by Defendants, Plaintiff would show that:

The clear and unambiguous language of the policy provides coverage for lost rents and other losses to the Property caused by losses made the basis of Plaintiff's claims;

In the alternative, any other construction of the language of the policy is void as against public policy;

Any other construction and its use by the Defendants violate the Texas Insurance Code section 541 et. seq. and is void as against public policy;

Any other construction is otherwise void as against public policy, illegal, and violates state law and administrative rule and regulation.

In the alternative, should the Court find any ambiguity in the policy, the rules of construction of such policies mandate the construction and interpretation urged by Plaintiff;

In the alternative, Defendants are judicially, administratively, or equitably estopped from denying Plaintiff's construction of the policy coverage at issue;

In the alternative, to the extent that the wording of such policy does not reflect the true intent of all parties thereto, Plaintiff pleads the doctrine of mutual mistake requiring reformation.

**XI.
REQUEST FOR DISCLOSURES**

Pursuant to the Texas Rules of Civil Procedure 194, Plaintiff requests that Defendants provide the information required in a Request for Disclosure.

**XII.
FIRST REQUEST FOR PRODUCTION TO STATE FARM**

- 1) Produce the non-privileged portion of State Farm's complete claim file for Plaintiff's Property relating to or arising out of Plaintiff's losses for which State Farm opened a claim under the Policy.
- 2) Produce all emails and other forms of communication between State Farm, its agents, adjusters, employees, or representatives and the agent and adjuster, and/or their agents, adjusters, representatives or employees relating to, mentioning, concerning or evidencing the Plaintiff's Policy and/or Property which is the subject of this suit.
- 3) Underwriting documents and communications, including but not limited to, any and all materials, documents, notations, files, reports, correspondence and/or other communications related to Plaintiff's application/s for coverage, binders, proposals, and the issuance of the policy, including renewals thereof. This request also includes materials, determination and/or method for determining the forms and endorsements to be used in creating the policy. This request also includes information regarding the basis for rating and premium classifications used for Plaintiff. Finally, this request includes any internal communications or guidelines regarding the handling and/or coverage positions of Defendant regarding business interruption and other claims related to the 2019 Novel Coronavirus and/or COVID-19.
- 4) Any and all documents and/or communications from State Farm or any parent, subsidiary or affiliated entities to any third-party, including but not limited to insurance agents and brokers, marketing and/or public relations firms, at any time after December 15, 2019, and relating in any way to coverage or exclusions or denials of coverage for civil authority or for business

interruption or business income loss and/ or commercial property coverage mentioning or referencing the 2019 Novel Coronavirus, the pandemic, and/or COVID-19.

XII.

FIRST REQUEST FOR PRODUCTION TO GEBO

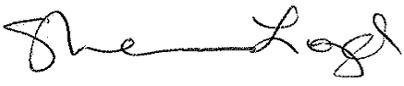
- 1) Produce Gebo's complete claim or adjusting file for Plaintiff's claim.
- 2) Produce all emails and other forms of communication between State Farm, its agents, adjusters, employees, or representatives and Gebo and/or his agents, adjusters, representatives or employees relating to, mentioning, concerning or evidencing the claim which is the subject of this suit. This request includes Documents and/or Communications relating to the handling of business interruption and other claims related to the 2019 Novel Coronavirus and/or COVID-19.

XIII.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer herein; that, on final hearing, Plaintiff have judgment against Defendants for an amount, deemed to be just and fair by the jury, which will be a sum within the jurisdictional limits of this Court. FOR THE COURT: Plaintiff is forced to state a range amount of damages sought although Plaintiff believes that the amount of damages is solely for the jury to determine. However, because Plaintiff must state a range of damages, Plaintiff pleads that the damages will be more than \$100,000 but less than \$200,000. Plaintiff further pleads for costs of suit; for interest on the judgment; for pre-judgment interest; and, for such other and further relief, in law or in equity, either general or special, including the non-monetary relief of declaratory judgment against Defendants, to which Plaintiff may be justly entitled.

Respectfully submitted,

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BY: 

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ATTORNEY FOR PLAINTIFF

PLAINTIFF REQUESTS A TRIAL BY JURY