

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

██████████,

Plaintiff,

vs.

**ALLSTATE INSURANCE
COMPANY,**

Defendant.

Civil Action No.:

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

COMPLAINT

INTRODUCTION

1. This is an action for actual and statutory damages brought by plaintiff, ██████████, ██████████, against defendant, Allstate Insurance Company, for breach of insurance contract and breach of the duties of good faith and fair dealing set forth in La. R.S. 22:1892 and 22:1973. Ms. ██████████'s condominium burned to the ground earlier this year, destroying all of her and her family's personal possessions. Although a renter's insurance policy was in place, Allstate Insurance Company has refused to pay Ms. ██████████'s claim.

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 28 U.S.C. § 1332 since the parties are completely diverse and the amount in controversy exceeds \$75,000.00.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(d). Allstate's contacts with the Middle District, particularly East Baton Rouge Parish, would subject it to personal jurisdiction here under La. R.S. 22:1269 (B).

PARTIES

4. Plaintiff, [REDACTED], is an individual residing in Calcasieu Parish, Louisiana.

5. Defendant, Allstate Insurance Company, is an Illinois insurance company licensed to do and doing business in Louisiana and who may be served through its registered agent for service of process, the Louisiana Secretary of State, 8585 Archives Avenue, Baton Rouge, LA 70809.

FACTUAL ALLEGATIONS

6. On or about September 24, 2014, Ms. [REDACTED]'s rented condominium located at 5087B Weaver Road, Lake Charles, LA burned to the ground.

7. The fire destroyed all of Ms. [REDACTED]'s personal property, including but not limited to: [REDACTED] a laptop computer, a living room set of furniture, her bedroom furniture and clothing, her son's bedroom furniture and clothing, jewelry, electronics, and all major appliances. The value of the destroyed personal property exceeds \$25,000.00.

8. At the time of the loss, the contents of the condominium were insured by a policy of insurance issued and serviced by Allstate Insurance Company. All premiums were paid and current.

9. Ms. [REDACTED] promptly reported the loss to, and filed a claim with, her insurer, Allstate Insurance Company.

10. In due course, Allstate Insurance Company began paying alternate living expenses per the terms of the policy.

11. Allstate Insurance Company also dispatched an insurance adjuster, Ms. Jodie Rushing, to the scene of the fire to meet with Ms. [REDACTED] and document the destroyed personal property.

12. Upon information and belief, adjuster Rushing found that the damaged personal property exceeded the policy limits of \$25,000.00 and reported same to her supervisors, recommending full payment on the claim.

13. Remarkably, however, Allstate Insurance Company ceased making alternate living expense payments and denied Ms. [REDACTED]'s personal property claim.

14. Allstate Insurance Company rescinded the policy and declared it void ab initio. Allstate rationalized that Ms. [REDACTED] had committed material misrepresentations in her insurance application and in the presentation of her claim because she allegedly failed to disclose two prior theft losses that occurred in June and September of 2013.

15. The trouble with Allstate Insurance Company's basis for denying the claim is that it is simply not true. First, when Allstate's representative took Ms. [REDACTED]'s application via telephone he did not ask her one single question about prior claims. Second, at the time of the inspection for the claim at issue, Ms. [REDACTED] did disclose the prior claim she had made on a previous renter's insurance policy.

16. Moreover, per industry customs and standards Allstate Insurance Company's agents are responsible for running industry standard loss reports at the time of the application. To wait until after premiums are paid and a claim is made is nothing more than ex poste underwriting.

17. In denying Ms. [REDACTED]'s claim, Allstate Insurance Company has itself misrepresented pertinent facts and pertinent policy provisions. For example, by way of its October 29, 2014 denial letter, Allstate misquoted its insurance policy by relaying:

“This policy is void if it was obtained by misrepresentation, fraud or concealment of material facts. If it is determined that this policy is void, all premiums paid will be returned to you since there has been no coverage under this policy.

“We do not cover any loss of occurrence in which any insured person has concealed or misrepresented any material fact or circumstance.”

18. The trouble with that quote is that it omits an essential clause. The first sentence actually reads: “This policy is void if it was obtained by misrepresentation, fraud or concealment of material facts **if such**

misrepresentation, fraud, or concealment of material facts was made with the intent to deceive.” (emphasis supplied)

19. Moreover, Allstate Insurance Company also misrepresented pertinent policy provisions as shown by the fact that the denial letter does not include the language from the policy endorsement explaining that in order for the exclusion to apply, the alleged misrepresentation or concealment of fact must be done so “willfully.”

20. As a result of Allstate Insurance Company’s failure to pay the claim, Ms. [REDACTED] and her minor son have been sleeping on air mattresses and living without: furniture, appliances, electronics such as flat screen televisions, jewelry such as an engagement ring, and a complete wardrobe since the date of the fire.

21. Ms. [REDACTED] and her minor son have suffered undue aggravation and stress, loss of enjoyment of life, mental anguish and psychological distress, humiliation, and embarrassment as a result of Allstate Insurance Company’s failure to adjust the claim in good faith and reasonably perform under the insurance policy.

FIRST CLAIM FOR RELIEF: BREACH OF CONTRACT

22. Allstate Insurance Company is liable unto Ms. [REDACTED] under Civil Code Articles 1906 *et seq.* because it failed to perform under the policy of insurance by:

- a. Not paying the claim in accordance with its own adjuster’s recommendation;
- b. Not tendering the proceeds due under the policy in a timely fashion;

- c. Not thoroughly investigating the claim; and
- d. Not acting reasonable under the circumstances.

SECOND CLAIM FOR RELIEF: BAD FAITH

23. Allstate Insurance Company breached the duties of good faith and fair dealing set forth in La. R.S. 22:1892 and 22:1973 by:

- a. Failing to pay the amount of the claim due Ms. [REDACTED] within 30 days after receiving satisfactory proof of the loss;
- b. Failing to make a written offer to settle Ms. [REDACTED]'s property damage claim within 30 days after receiving satisfactory proof of the loss;
- c. Breaching its affirmative duty to adjust the claim fairly and promptly;
- d. Breaching its affirmative duty to make a reasonable effort to settle claims with Ms. [REDACTED];
- e. Misrepresenting pertinent policy provisions; and
- f. Arbitrarily, capriciously, and without probable cause failing to pay the amount of the claim due within 60 days after receiving satisfactory proof of the loss.

WHEREFORE, Plaintiff, [REDACTED], respectfully requests that judgment be entered against Defendant Allstate Insurance Company for the following:

- A. Personal property damages and unpaid alternate living expenses, pursuant to Civil Code Article 1994 and the insurance policy;
- B. General, mental anguish and distress, and hedonic damages under La. R.S. 22:1973 and *Durio v. Horace Mann Ins. Co.*, 74 So.3d 1159 (La., 2011);
- C. Bad faith damages under La. R.S. 22:1892 and 22:1973;
- D. Attorneys' fees, pursuant to La. R.S. 22:1973;
- E. Court costs;
- F. Expert and consultant fees;
- G. Other damages to be amended, presented in the Pretrial Order, and/or proven at the trial of this matter; and
- H. Other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff, [REDACTED], demands trial by jury in this action.

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DATED: December 10, 2014

RESPECTFULLY SUBMITTED,

By: /s/ Nicholas M. Graphia

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