

NO. 423-2496

**KENNETH STORM AND SHERYL STORM,**

**Plaintiffs,**

**V.**

**SENTINEL INSURANCE COMPANY, LTD. AND PATRICK J. DUGGAN,**

**Defendants.**

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**IN THE DISTRICT COURT**

423<sup>rd</sup>

**JUDICIAL DISTRICT**

**BASTROP, TEXAS**

**PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE COURT:

Kenneth Storm and Sheryl Storm, Plaintiffs, file this petition complaining of Sentinel Insurance Company, Ltd., and Patrick J. Duggan, Defendants, and in support thereof show the Court the following:

**I. DISCOVERY CONTROL PLAN**

1. Plaintiffs intend to conduct discovery under Discovery Level 3 (TEX. R. CIV. P. 190.4). This case involves complex issues and may require extensive discovery. Plaintiffs 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**

2. Plaintiffs Kenneth Storm and Sheryl Storm are individuals who, until their loss at issue in this case, resided at 118 Plover Drive, Paige, TX 78659. Plaintiffs may be served via their attorney of record listed below.

3. Defendant Sentinel Insurance Company, Ltd. ("Sentinel") is a foreign insurance company incorporated in and/or having its principal place of business in Connecticut.

Defendant  
FILED 1:20 PM  
DATE 7-25-13  
Sarah Loucks  
District Clerk, Bastrop County

Sentinel is licensed to engage in the business of insurance in Texas and may be served via its Texas agent for service, CT Corporation System, 350 N. Saint Paul St., Suite 2900, Dallas, TX 75201-4284.

4. Defendant Patrick J. Duggan is an individual residing in and domiciled in the State of Texas. Defendant Duggan may be served at his residence located at 22708 E. Range, San Antonio, TX 78255.

### III. JURISDICTION AND VENUE

5. The Court has jurisdiction over this case because the amount in controversy is within the jurisdictional limits of this Court.

6. The Court has personal jurisdiction over Defendant Sentinel because this defendant is a foreign insurance company that engages in the business of insurance in the State of Texas, and Plaintiffs' causes of action arise out of this defendant's business activities in the State of Texas.

7. The Court has personal jurisdiction over Defendant Duggan because this defendant engages in the business of adjusting insurance claims in the State of Texas, and Plaintiffs' causes of action arise out of this defendant's business activities in the State of Texas.

8. Venue is proper in Bastrop County, Texas, because the insured property is situated in Bastrop County, Texas. TEX. CIV. PAC. & REM. CODE § 15.032.

9. Venue is also proper in Bastrop County, Texas, because all or a substantial part of the events giving rise to the claim occurred in Bastrop County, Texas. TEX. CIV. PAC. & REM. CODE § 15.002.

### IV. FACTUAL BACKGROUND

10. Plaintiffs are the owners of a Texas Homeowners' Insurance Policy (hereinafter referred to as "the Policy"), which was issued by Sentinel.

11. Defendant Sentinel sold Plaintiffs the Policy insuring the Property.

12. On September 4, 2011, the date of loss, Plaintiffs owned the insured property, which is specifically located at 118 Plover Drive, Paige, TX 78659, in Bastrop County (hereinafter referred to as “the Property”).

13. On September 4, 2011, an enormous wildfire swept through the piney woods of Bastrop County, burning hundreds of homes and causing unprecedented property damage. According to the Texas Forest Service, the fire, which spread between Bastrop and Paige, Texas, blackened more than 50 square miles and burned more than 1,700 homes and businesses—a record number destroyed in a single fire in Texas history. Plaintiffs’ Property was in the direct path of the wildfire, forcing Plaintiffs to flee their home with only minutes’ notice. Plaintiffs’ home was burned to the ground and the entire contents of the home were consumed in the blaze. More than 30 pine trees on Plaintiffs’ Property were also burned and later had to be felled and removed from the premises. The home’s foundation was cracked from the heat of the blaze and also had to be broken up and cleared. Additionally Plaintiffs suffered food loss and were compelled to incur living expenses for several months following the fire.

14. Plaintiffs submitted a claim to Sentinel against the Policy for the loss of their dwelling, appurtenant private structures, trees and shrubs and other plants, debris removal, unscheduled personal property and additional living expenses. Plaintiffs asked that Sentinel cover their losses pursuant to the terms of the Policy.

15. Defendant Sentinel assigned Defendant Duggan to be the individual adjuster on the claim. Defendant Duggan conducted a bad faith and substandard investigation of Plaintiffs’ loss, particularly related to the loss of Plaintiffs’ unscheduled personal property. After Plaintiffs provided all required information related to their unscheduled personal property and satisfied all

conditions precedent for recovery, Duggan and Sentinel prepared a “Contents Pricing Spreadsheet” that misrepresented the nature of the personal property Plaintiffs lost in the fire and grossly undervalued that personal property.

16. On or about November 30, 2011, Duggan sent Plaintiffs the Contents Pricing Spreadsheet Defendants prepared. Plaintiffs immediately and unequivocally objected to the nature of the contents the spreadsheet described and the amount Sentinel offered as a proposed final settlement for their loss of the entire contents of their home. Indeed, Plaintiff Sheryl Storm asked Defendant Duggan not to send a check in the amount that Defendants proposed and made clear that the amount was woefully insufficient and did not represent a good faith valuation of the actual cash value of the unscheduled personal property Plaintiffs lost in the fire. In response, Duggan suggested to Mrs. Storm that Sentinel might increase its settlement offer if Mr. and Mrs. Storm edited the Contents Pricing Spreadsheet to add website links showing the actual cash value of the personal property Plaintiffs lost. However, without waiting for Plaintiffs to correct the deficient spreadsheet and despite Duggan’s implication that Sentinel might correct its valuation estimate, Defendants proceeded to send Plaintiffs a check written for the same proposed settlement amount Plaintiffs previously rejected.

17. After sending Plaintiffs the insufficient settlement check, Defendants failed to make any additional effort to investigate Plaintiffs’ claims or communicate with Plaintiffs concerning those claims. Moreover, neither Duggan nor any other Sentinel representative provided a reasonable explanation of the basis in the Policy for Sentinel’s inequitable offer of a compromise settlement of Plaintiffs’ claim.

18. As a result of Sentinel's and Duggan's wrongful acts and omissions, Plaintiffs were forced to retain the professional services of the undersigned attorney and law firm to represent them and prosecute these causes of action.

19. After considerable time, effort and expense, Plaintiffs and their attorney conducted their own investigation and prepared their own spreadsheet detailing more than 700 personal property items that Plaintiffs lost in the fire and hyperlinking each of those items to websites of legitimate retailers to accurately demonstrate the market value of the personal property Plaintiffs lost. On or about November 7, 2012, Plaintiffs completed their spreadsheet and sent it to Defendants. After Plaintiffs' spreadsheet was submitted to Duggan and Sentinel, Defendants made no objections to the validity of the items listed in the Plaintiffs' spreadsheet or the Plaintiffs' meticulously documented valuation of those items. Defendants failed to accept or deny Plaintiffs' claim or provide any explanation for withholding payment of the valuation amount Plaintiffs' demonstrated in their November 7, 2012 spreadsheet. Nevertheless, Defendants did not change their valuation estimate and continued to delay payment of the full amount of Plaintiffs' unscheduled personal property loss for months without providing any explanation or justification for the delay.

20. Additionally, Defendant Duggan and Sentinel failed to make timely payment for Plaintiffs' cost of debris removal and debris removal additional expense until more than a year after receipts documenting those expenses were originally submitted to them by Plaintiffs.

21. As a result of Defendants' unreasonable investigation, bad faith valuation and unjustified delay, Plaintiffs were considerably underpaid on their claim and have suffered damages. The mishandling of Plaintiffs' claim has also resulted in more than a years' delay in their ability to replace their property, which has resulted in additional damages. To date, Sentinel continues to

delay the payment for damages to the Property. As a result, Plaintiffs have not been paid in full for the damages to their home.

22. Defendant Sentinel failed to perform its contractual duties to adequately compensate Plaintiffs under the terms of the Policy. Specifically, it refused to pay the full proceeds of the Policy, although due demand was made for proceeds to be paid in an amount sufficient to cover the damaged property, and all conditions precedent to recovery upon the Policy had been carried out and accomplished by Plaintiffs. Sentinel's conduct constitutes a breach of the insurance contract between Sentinel and Plaintiffs.

23. Defendants Sentinel and Duggan failed to make an attempt to settle Plaintiffs' claim in a fair manner, although they were aware of their liability to Plaintiffs under the Policy. Defendants Sentinel's and Duggan's conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a)(2)(A).

24. Defendants Sentinel and Duggan failed to explain to Plaintiffs the reasons for their offer of an inadequate settlement. Specifically, Defendants Sentinel and Duggan failed to offer Plaintiffs adequate compensation, without any explanation why full payment was not being made. Furthermore, Defendants Sentinel and Duggan did not communicate that any future settlements or payments would be forthcoming to pay for the entire losses covered under the Policy, nor did they provide any explanation for the failure to adequately settle Plaintiffs' claim. Defendants Sentinel's and Duggan's conduct is a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a)(3).

25. Defendants Sentinel and Duggan failed to affirm or deny coverage of Plaintiffs' claim within a reasonable time. Specifically, Plaintiffs did not receive timely indication of acceptance or rejection, regarding the full and entire claim, in writing from Defendants Sentinel

and Duggan. Defendants Sentinel's and Duggan's conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a)(4).

26. Defendants Sentinel and Duggan refused to fully compensate Plaintiffs, under the terms of the Policy, even though Defendants Sentinel and Duggan failed to conduct a reasonable investigation. Specifically, Defendants Sentinel and Duggan performed an outcome-oriented investigation of Plaintiffs' claim, which resulted in a biased, unfair, and inequitable evaluation of Plaintiffs' losses on the Property. Defendants Sentinel's and Duggan's conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a)(7).

27. Defendant Sentinel failed to accept or deny Plaintiffs' full and entire claim within the statutorily mandated time of receiving all necessary information. Sentinel's conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.056.

28. Defendant Sentinel failed to meet its obligations under the Texas Insurance Code regarding payment of claim without delay. Specifically, it has delayed full payment of Plaintiffs' claim longer than allowed and, to date, Plaintiffs have not received full payment for their claim. Sentinel's conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.058.

29. From and after the time Plaintiffs' claim was presented to Defendant Sentinel, the liability of Sentinel to pay the full claim in accordance with the terms of the Policy was reasonably clear. However, Sentinel has refused to pay Plaintiffs in full, despite there being no basis whatsoever on which a reasonable insurance company would have relied to deny the full

payment. Sentinel's conduct constitutes a breach of the common law duty of good faith and fair dealing.

## V. CAUSES OF ACTION

### A. CAUSES OF ACTION AGAINST DEFENDANT DUGGAN:

#### NONCOMPLIANCE WITH TEXAS INSURANCE CODE: UNFAIR SETTLEMENT PRACTICES

30. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs.

31. Defendant Duggan is liable to Plaintiffs for intentional violations of the Texas Insurance Code including multiple violations of the Texas Insurance Code's proscription of unfair settlement practices. TEX. INS. CODE §541.060(a). All violations under this article are made actionable by TEX. INS. CODE §541.151.

32. Defendant Duggan is individually liable for his unfair and deceptive acts, irrespective of the fact he was acting on behalf of Sentinel, because he is a "person" as defined by TEX. INS. CODE §541.002(2). The term "person" is defined as "any individual, corporation, association, partnership, reciprocal or interinsurance exchange, Lloyds plan, fraternal benefit society, or other legal entity engaged in the business of insurance, including an agent, broker, *adjuster* or life and health insurance counselor." TEX. INS. CODE §541.002(2) (emphasis added). (See also *Liberty Mutual Insurance Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 484 (Tex. 1998) (holding an insurance company employee to be a "person" for the purpose of bringing a cause of action against him or her under the Texas Insurance Code and subjecting him or her to individual liability)).

33. Defendant Duggan's unfair settlement practice, as described above, of failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the claim, even



though liability under the Policy is reasonably clear, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a)(2)(A).

34. Defendant Duggan's unfair settlement practice, as described above, of failing to promptly provide Plaintiffs with a reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for the offer of a compromise settlement of Plaintiffs' claim, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a)(3).

35. Defendant Duggan's unfair settlement practice, as described above, of failing to promptly give written indication of acceptance or rejection of coverage for the full and entire claim, constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a)(4).

36. Defendant Duggan's unfair settlement practice, as described above, of refusing to pay Plaintiffs' claim without conducting a reasonable investigation, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a)(7).

B. CAUSES OF ACTION AGAINST DEFENDANT SENTINEL

37. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs.

38. Defendant Sentinel is liable to Plaintiffs for intentional breach of contract, as well as intentional violations of the Texas Insurance Code, and intentional breach of the common law duty of good faith and fair dealing.

1. BREACH OF CONTRACT

39. Defendant Sentinel's conduct constitutes a breach of the insurance contract made between Sentinel and Plaintiffs.

40. Defendant Sentinel's failure and/or refusal, as described above, to pay the 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 Sentinel's insurance contract with Plaintiffs.

2. NONCOMPLIANCE WITH TEXAS INSURANCE CODE:  
UNFAIR SETTLEMENT PRACTICES

41. Defendant Sentinel's conduct constitutes multiple violations of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a). All violations under this article are made actionable by TEX. INS. CODE §541.151.

42. Defendant Sentinel's unfair settlement practice, as described above, of failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the claim, even though Sentinel's liability under the Policy was reasonably clear, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a)(2)(A).

43. Defendant Sentinel's unfair settlement practice, as described above, of failing to promptly provide Plaintiffs with a reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for its offer of a compromise settlement of the claim, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a)(3).

44. Defendant Sentinel's unfair settlement practice, as described above, of failing to promptly give written indication of acceptance or rejection of coverage for the full and entire

claim, constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a)(4).

45. Defendant Sentinel's unfair settlement practice, as described above, of refusing to pay Plaintiffs' claim without conducting a reasonable investigation, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a)(7).

3. NONCOMPLIANCE WITH TEXAS INSURANCE CODE:  
THE PROMPT PAYMENT OF CLAIMS

46. Defendant Sentinel's conduct constitutes violation of the Texas Insurance Code, Prompt Payment of Claims. All violations made under this article are made actionable by TEX. INS. CODE §542.060.

47. Defendant Sentinel's failure to notify Plaintiffs in writing of its acceptance or rejection of the claim within the applicable time constraints, constitutes a non-prompt payment of the claim. TEX. INS. CODE §542.056.

48. Defendant Sentinel's delay of the payment of Plaintiffs' claim following its receipt of all items, statements, and forms reasonably requested and required, longer than the amount of time provided for, as described above, constitutes a non-prompt payment of the claim. TEX. INS. CODE §542.058.

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

49. Defendant Sentinel's conduct constitutes a breach of the common law duty of good faith and fair dealing owed to insureds in insurance contracts.

50. Defendant Sentinel's failure, as described above, to adequately and reasonably investigate and evaluate Plaintiffs' claim, although, at that time, Sentinel 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.

C. KNOWLEDGE

51. Each of the acts described above, together and singularly, was done “knowingly,” as that term is used in the Texas Insurance Code, and was a producing cause of Plaintiffs’ damages described herein.

D. DISCOVERY RULE

52. Under the discovery rule, a cause of action does not begin to accrue until Plaintiffs knew, or in the exercise of reasonable diligence should have known, of the wrongful act and resulting injury. The discovery rule applies in this case, and the statute of limitations does not begin to run until Plaintiffs discovered the improprieties set out above.

E. DAMAGES

53. Plaintiffs would show that all of the aforementioned acts, taken together or singularly, constitute the producing causes of the damages sustained by Plaintiffs. These damages are a direct result of Defendant Sentinel’s and Duggan’s mishandling of Plaintiffs’ claim in violation of the Policy and the laws set forth above.

54. For breach of contract, Plaintiffs are entitled to regain the benefit of their bargain, which is the amount of their claim, together with attorney’s fees.

55. For noncompliance with the Texas Insurance Code, Unfair Settlement Practices, Plaintiffs are entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the Policy, mental anguish, court costs, and attorney’s fees.

56. For knowing conduct of the acts described above, Plaintiffs ask for three times their actual damages. TEX. INS. CODE §541.152.

57. For noncompliance with Texas Insurance Code, Prompt Payment of Claims, Plaintiffs are entitled to the amount of their 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.

58. For breach of the common law duty of good faith and fair dealing, Plaintiffs are 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, exemplary damages, and damages for emotional distress.

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

#### F. CONDITIONS PRECEDENT

60. All conditions precedent have been performed or have occurred as required by Texas Rule of Civil Procedure 54.

#### VI. JURY DEMAND

61. Plaintiffs hereby request that all causes of action alleged herein be tried before a jury consisting of citizens residing in Bastrop County, Texas. Plaintiffs hereby tender the appropriate jury fee.

#### PRAYER

Wherefore, Plaintiffs request that Defendant be cited to appear and answer this petition and that upon final hearing, that Plaintiffs be awarded such sums as would reasonably and justly compensate them in accordance with the rules of law and procedure, as to actual damages and treble damages under the Texas Insurance Code as may be found. In addition, Plaintiffs request the award of attorney's fees for the trial and any appeal of this case, for all costs of Court on their behalf expended, for prejudgment and post-judgment interest as allowed by law, and for any

other and further relief, either at law or in equity, to which they may show themselves justly entitled.

Date: January 25, 2013.

Respectfully submitted,

THE STORM LAW FIRM PLLC

/s/ Eric B. Storm

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