

01/11/05

2003CLL16046
CAUSE NO.

44

<p>BRYAN PRINGLE AND CHARLES PRINGLE Plaintiffs</p> <p style="text-align: center;">CRT PROCESS DEPT.</p> <p>v.</p> <p>USAA, INSURANCE AGENCY, INC.</p> <p>DEFENDANTS</p>	<p style="text-align: center;">§ §</p> <p style="text-align: center;">IN THE DISTRICT COURT</p> <p style="text-align: center;">22</p> <p style="text-align: center;">JUDICIAL DISTRICT</p> <p style="text-align: center;">BEXAR COUNTY, TEXAS</p>
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PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

BRYAN PRINGLE AND CHARLES PRINGLE, hereinafter referred to as "plaintiffs", files this ORIGINAL petition against **USAA INSURANCE AGENCY, INC**, defendant for the following reasons:

1. Service of Process

Service of process may be had on the defendant at the following address:

USAA Insurance Agency, Inc.
Registered Agent: Robert Hoagland III
9800 Fredericksburg Rd.
San Antonio, Texas 78228

2. Statutory Authority

This suit is brought in part pursuant to the Tex. Bus. & Com. Code § 17.41 et. seq. commonly known as the "Deceptive Trade Practices and Consumer Protection Act" and cited in this petition as the "DTPA". Further Claims against Defendant are brought pursuant to Article 21.21 of the Texas Insurance Code and the Common Law remedies of Breach of Fiduciary Duty and Breach of Good Faith and Fair Dealing.

Further, Plaintiff asserts the Defendants have committed Slander and Defamation.

3. Venue

Venue of this action is proper in the county of suit because the Policy was purchased in relation to the purchase of an insurance policy covering property in Bexar County and the acts which give rise to this suit occurred in Bexar County.

4. Notice; Conditions precedent

(a) Defendant was given notice in writing of the claims made in this petition including a statement of plaintiff's actual damages and expenses including attorney's fees more than sixty days before this suit was filed in the manner and form required by DTPA § 17.505 and Article 21.21 § 19 of the Texas Insurance Code.

(b) All conditions precedent necessary to maintain this action have been performed or

have occurred.

5. The Transactions.

This suit arises from a claim for damage that was filed by the Plaintiff on the Defendant.

Plaintiffs are rental property owners. The majority of the property owned by Plaintiffs is in Abilene, Texas. Plaintiffs have hired Doug Harris to serve as property manager. On or about October 10, 2002, Mr. Harris discovered that the lock on the garage of the apartment at 1517 N. 10th Street was missing. Mr. Harris discovered that numerous items from the garage were missing. Mr. Harris contacted Plaintiff Bryan Pringle to inform him of the theft. Mr. Harris then called the Abilene Police Department. The police made a report of the incident on October 11, 2002. On October 15, 2002, the Plaintiff Bryan Pringle filed a claim under his father, Plaintiff Charles Pringle's, renters insurance policy.

Defendant USAA renters policy number is 00111 37 73 REN 001. Plaintiffs estimated that approximately \$25,477.20 worth of items were stolen from the garage of a rent house owned by the Plaintiffs at 1517 N. 10th in Abilene, Texas. Plaintiff Bryan Pringle is the son of Plaintiff Charles Pringle and is thereby a relative and an insured under the policy. The declaration page of the policy on the limitation of liability for personal property is \$57,900. Plaintiffs claim is well within that limit.

The stolen items were Plaintiff Brian Pringle's personal property. The policy on page 10 states that Defendant is to cover the "personal property" of an "insured" anywhere in the

"world". PP-3/ Page 10 states that theft is specifically one of the covered losses.

In stead of paying the claim, Defendants launched a fraud investigation. Charles Pringle, Bryan and his mother submitted to Examinations under oath, submitted to extensive questioning and hired an attorney. Mr. Harris was not interviewed until several months after the claims was made. Plaintiffs are still not aware that the Defendant has even spoken with the Abilene Police Department.

The Defendant has uncovered no evidence of fraud or any wrongdoing on the part of the Plaintiffs. However, because of the delay, Bryan Pringle filed a complaint with the Texas Department of Insurance. During the investigation of the claim, employees of the Defendant stated to the Texas Department of insurance that Bryan Pringle had instructed witnesses not to cooperate and was blocking efforts to handle the claim. The statement made by the employee of the Defendant were comply false. Mr. Pringle, never instructed any person to not cooperate with USAA.

Plaintiffs have also learned from investigators at TDI that the Defendant's employees, including Cristin Gray and Kevin Bryant, stated that Bryan Pringle is unemployed, was previously cancelled as an insured because of an excessive loss history and made a series of what USAA believed to be questionable, if not bogus claims. Also, Defendants employees including Lillian Saldivar, Sharon Jonas, Cristin Gray and Tamra Carson, stated that Mr. Pringle and his Father (A civil service employee with an impeccable reputation) were committing fraud and misrepresentation. These malicious and false comments were made and also directed to several different investigators at TDI, including Darrell Hartman, a police officer, and investigator in the insurance fraud unit. These false statements caused the Plaintiffs to be

investigated for criminal insurance fraud by TDI. No charges were ever filed and no proof of fraud or misrepresentation was ever claimed by TDI against the Plaintiffs. Defendant's employees also stated to TDI that Bryan Pringle was attempting to present again an item from a previous theft claim for reimbursement despite the fact that the Defendant had had in their possession two completely separate proof of ownership receipts for two separate items at the time the statement was made. One of the receipts for an itemized credit card statement from USAA savings bank. In addition, USAA has non-renewed and effectively cancelled both Charles Pringle's renter's and fire insurance policies, based on their false claim of fraud and misrepresentation against the Plaintiffs. Defendants have no proof of any fraud or misrepresentation. As to the assertion by USAA of alleged questionable, if not bogus past claims by the Plaintiffs, Plaintiffs received a letter recently from the city of Abilene Police Department where a piece of equipment that was stolen as a result of a prior theft (which is one of the alleged bogus claims) was recovered in a local pawn shop.

Plaintiffs assert that Defendants statements to TDI constitute defamation and were made with malice, fraudulent intent or in bad faith and are therefore not immune under Section 6 of Article 1.10D of the Texas Insurance Code. Defendants are private individuals, a non-media defendant and the matter spoken of constitutes a private issue and therefore this constitutes a strict liability defamatory act. Defendants acts also constitute slander per se by stating that Plaintiffs were involved in a criminal act. Further, Defendants have now stated on a sight available to all insurance companies that both Plaintiffs had their policy of insurance cancelled due to fraud and misrepresentation. These acts constitute publication.

6. Causes of Action.

A. DTPA Violations

The facts set forth in the preceding paragraph give rise to the following causes of action under the DTPA §17.46 and 17.50 the following causes were relied on to the Plaintiff's detriment.

A. Deceptive Trade Claims § 17.46

1) representing that goods or services have a sponsorship, approval, characteristics, ingredients, uses, or benefits, or qualities which they do not have...

2) representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are another.

3) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.

4) failure to disclose information concerning goods or services which was know at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction which the consumer would not have entered had the information been disclosed...

5) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve...

B. INSURANCE CODE VIOLATIONS

A. Texas Insurance Code, Article 21.21 Violations

- 1) Plaintiffs assert that the Defendant made misrepresentations of material fact or policy provisions.
- 2) Failed to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the claim when the Defendant's liability became reasonably clear.
- 3) Refusing to pay a claim without conducting a reasonable investigation with respect to the claim.

B. Breach of Contract

1) Nature of the Contract

The contract the basis of this suit is an insurance policy as described above that was in full force and affect at the time of the covered loss.

2) Terms of the Contract

The Policy is a Standard renters policy.

3) Performance by Plaintiff

Plaintiff was performing all duties related to the contract.

4) Breach

Plaintiff asserts that the Defendant's decision to deny the claim is a breach of the policy.

C. Breach of Fiduciary Duty

The above described failure to pay constitutes a breach of fiduciary duty as under Texas law

Insurance Companies and insurance contracts create a "special relationship" therefore this was a confidential relationship. Said relationship imposed the duty on the defendant to not just seek its own economic interests but to put the Plaintiff's interests before its own. Said relationship was breached by the Defendant's failure to pay the claim and their continued failure to pay the claim.

D. Breach of Good Faith and Fair Dealing

As asserted in the facts above the Defendants had no reasonable basis for denying the claim, and they knew or reasonably should have known that they had no basis to deny the claim.

E. Slander/Defamation/Libel

The above acts constitute that the Defendant

1. Published a statement of fact
2. The Statement referred to the Plaintiffs
3. The Statements were defamatory
4. The Statements were false
5. With regard to the truth of the statement, the Defendant was
 - (A) Acting with malice
 - (B) is liable without regard to fault
6. The plaintiff suffered pecuniary injury (although Plaintiff asserts that this is presumed because of the allegation by the Defendant that Plaintiffs committed a criminal act)

E. Violation of Article 21. 55 §3(a)

Plaintiff asserts that the Defendants failed to accept or reject the claim within the thirty (30) day period provided by the policy and by statute. The Plaintiff also

such deceptive acts constitute grounds that would also cause said above described acts to fall under the above referenced section of the DTPA.

9. Additional Statutory damages;exemplary damages

Plaintiff is entitled to recover three times that portion of his damages because of the conduct of the defendant was committed knowingly pursuant to DTPA § 17.50(b)(1).

Plaintiff asserts that under Section 16 of Article 21.21 of the insurance code that the above described acts constitute violations of Section 4 and therefore the Plaintiff is entitled to recover three times the economic damages caused because the Defendant knowingly committed said acts.

Further, Plaintiff asserts that the Acts described above in both the Breach of Fiduciary Duty and the Breach of Good Faith and Fair Dealing and Defamation/Slander were done with Fraud, Malice or were Willful Acts or Omissions and therefore Plaintiff is entitled to \$750,000.

Under article 21.55 § 6 the Plaintiff requests in addition to the amount of the claim the 18% per annum allowed by the statute.

10. Mental Anguish

Plaintiff asserts that due to the knowing nature of the damages that the Plaintiff has suffered Mental Anguish damages as this has caused him to loss rents, make repeated trips to

asserts that the Defendant failed to accept or reject the claim within the 45 day period allowed by the statute.

7. Causation; damages.

(a) The conduct described in the preceding paragraphs was a producing and proximate cause of economic and actual damages to plaintiff. The amount of plaintiff's damages exceeds the minimum jurisdictional limits of the court and is believed to be in an amount in excess of \$25,000.

8. Knowing and Intentional Conduct

Plaintiff asserts, in compliance with §17.45(9) that the Defendant was aware, at the time of the act or practice complained of, of the falsity, deception or unfairness of the act or practice giving rise to the consumers claim. Further, Plaintiff asserts that the Defendant's acts were intentional as defined in § 17.45(13) in that in addition to the knowing nature of the conduct, the Defendants had the specific intent that the Plaintiff act in detrimental reliance on the falsity or deception or in detrimental ignorance of the unfairness.

The Plaintiff asserts that their acts in failing to pay claims constitutes the exact same conduct as listed above and therefore under Article 21.21 § 16 said acts were committed knowingly. because Plaintiffs relied on the acts or omissions and representations of USAA that

Abilene to deal with and remedy the problem and constitutes a substantial disruption to his daily routine. Plaintiff continues to suffer Mental Anguish as a result of the Defendants continued failure pay the claim. Due to the intentional nature of this mental anguish caused by the Defendant, Plaintiff asserts that the amount of mental anguish damages should be awarded at three times that found by the trier of fact in compliance with § 17.50(b)(1) of the DTPA.

11. Attorney's Fees.

Plaintiff seeks all reasonable and necessary attorneys' fees in this case which include the following:

- (a) Preparation and trial of this lawsuit; and
 - (b) Post-trial, pre-appeal legal services; and
 - (c) An Appeal to the court of appeals; and
 - (d) Making or responding to an application for writ of error to the Supreme Court of Texas;
- and
- (e) An appeal to the Supreme Court of Texas in the event application for writ and error is granted; and
 - (f) Post-judgment discovery and collection in the event execution on the judgment is necessary.

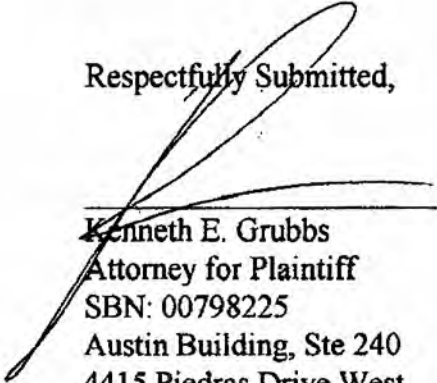
12. Request for relief

- (a) Plaintiff demands judgment against defendants for all damages and attorney's fees; and all statutory additional or exemplary damages as set forth above, costs of expert witnesses, costs of copies of depositions, costs of court and pre-judgment and post-judgment interest at the highest lawful rates.
- (b) Plaintiff also asks for such other relief to which plaintiff may be entitled.
- (c) Petitioner prays that citation and notice issue as required by law and that the Court the relief requested in this petition.
- (d) Petitioner prays for attorney's fees, expenses and costs.
- (e) Petitioner prays for general relief.

13. Demand for Jury and Trial Setting

Plaintiff demands a jury trial. Plaintiff's jury fee is tendered with this petition and Plaintiff requests that the Court set this issue for trial at earliest possible date available to the Court.

Respectfully Submitted,



Kenneth E. Grubbs

Attorney for Plaintiff

SBN: 00798225

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4415 Piedras Drive West

San Antonio, Texas 78228

(210) 490-1292

(210) 499-4587 (fax)

BY *[Handwritten Signature]*

DEPUTY

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FILED
DISTRICT CLERK
BEXAR CO. TEXAS