

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

OUTLAWS & GENTS GROOMING, LLC; §
DIESEL BARBERSHOP, LLC; §
WILDERNESS OAKS CUTTERS, LLC; §
DIESEL BARBERSHOP BANDERA §
OAKS, LLC; DIESEL BARBERSHOP §
DOMINION, LLC; DIESEL §
BARBERSHOP ALAMO RANCH, LLC; §
and HENLEY'S GENTLEMEN'S §
GROOMING, LLC, §

Plaintiffs, §

v. §

STATE FARM LLOYDS, §

Defendant. §

CIVIL ACTION NO.: 5:20-cv-00461

DEFENDANT STATE FARM LLOYDS' NOTICE OF REMOVAL

Defendant State Farm Lloyds files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441 and 1446(a) and shows as follows:

I. INTRODUCTION

1. This is an insurance coverage and bad faith case. On April 8, 2020, Plaintiffs filed their Original Petition in Cause No. 2020-C106851 in the 45th Judicial District Court of Bexar County, Texas, initiating a civil cause of action against Defendant. Exhibit C.

2. Removal is based on diversity jurisdiction because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and there is complete diversity between Plaintiffs and Defendant.

3. Plaintiffs allege multiple causes of action against Defendant related to its handling of insurance claims submitted by Plaintiffs following the Covid-19 outbreak. Plaintiffs specifically allege breach of contract; non-compliance with Chapter 542 of the Texas Insurance Code; non-

compliance with Chapter 541 of the Texas Insurance Code; and breach of the duty of good faith and fair dealing. Plaintiffs further allege that Defendant's conduct was committed "knowingly" as that term is defined in the Texas Insurance Code. Plaintiffs plead that "damages will be over \$1,000,00 [sic]. Plaintiffs further pleads [sic] 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...to which Plaintiffs may be justly entitled." Exhibit C at Section XI. Defendant reasonably believes Plaintiffs intended to plead damages "over \$1,000,000" as provided in Texas Rule of Civil Procedure 47(c)(5).

4. As of the time of filing, Defendant has not yet been formally served with Citation and Plaintiffs' Original Petition. Defendant did not file an Original Answer in state court prior to removal, and thus will file its initial responsive pleading in accordance with Federal Rule of Civil Procedure 81(c).

5. Defendant now files this Notice of Removal based on the grounds asserted herein, and promptly upon the filing of same, is also filing a Notice of Filing Notice of Removal with the Bexar County state court in which this case was previously pending.

II. GROUNDS FOR REMOVAL

6. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(a) because the parties involved are citizens of different states, and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

A. Complete Diversity Exists Between the Viable Parties.

7. According to Plaintiffs' Original Petition, at the time this action was commenced, Plaintiffs and their properties made subject of this lawsuit are located in Bexar County, Texas. Thus, for purposes of diversity of citizenship, Plaintiffs are citizens of the State of Texas.

8. State Farm Lloyds was, at the time this action was commenced, and still is, a citizen of Illinois. Defendant is a "Lloyds Plan" organized under Chapter 941 of the Texas Insurance Code.

It consists of an unincorporated association of underwriters who were at the time this action was commenced, and still are, all citizens of Illinois for diversity purposes. *See Royal Ins. Co. of Am. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993) (citizenship of unincorporated association determined by citizenship of members).¹

B. The Amount in Controversy Exceeds \$75,000.

9. Additionally, the claims asserted by Plaintiffs exceed \$75,000. Plaintiffs plead that “damages will be over \$1,000,00 [sic]. Plaintiffs further pleads [sic] 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...to which Plaintiffs may be justly entitled.” Exhibit C at Section XI. Defendant reasonably believes Plaintiffs intended to plead damages “over \$1,000,000” as provided in Texas Rule of Civil Procedure 47(c)(5). Thus, should Plaintiffs prevail on their claims herein, the damages potentially to be awarded exceed \$75,000 on their face.

III. VENUE

10. Venue for removal is proper in this district and division under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action was pending, the 45th Judicial District Court of Bexar County, Texas, and a substantial part of the events giving rise to Plaintiffs’ claims allegedly occurred in that district.

IV. PROCEDURAL REQUIREMENTS

11. Pursuant to 28 U.S.C. § 1446(a), the following exhibits are attached and indexed:

EXHIBIT	DESCRIPTION
A.	Index of Matters Being Filed
B.	Docket Sheet in the state court action

¹ Defendant will supplement with an Affidavit affirming the residency of its underwriters.

EXHIBIT	DESCRIPTION
C.	Plaintiffs' Original Petition in the removed action.
D.	List of Counsel of Record

12. This Notice of Removal is being filed within 30 days of service of the citation and Plaintiffs' Original Petition, and is thus timely filed under 28 U.S.C. §1446(b). There exists an actual and justiciable controversy between Plaintiffs and Defendant with regard to the legal issues herein and this controversy is within the jurisdiction of this Court.

13. Pursuant to 28 U.S.C. § 1446(a), all pleadings, process, orders and all other filings in the state court action are attached to this Notice.

14. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice of Removal will be given to all adverse parties promptly after the filing of same.

15. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of the Notice of Removal will be filed with the District Clerk for the 45th Judicial District Court of Bexar County, Texas promptly after filing of same.

V. CONCLUSION

16. Defendant respectfully requests that the above-captioned action now pending in 45th Judicial District Court of Bexar County, Texas be removed to the United States District Court for the Western District of Texas, San Antonio Division.

Respectfully Submitted,

/s/ W. Neil Rambin

W. NEIL RAMBIN
ATTORNEY-IN-CHARGE
State Bar No. 16492800
rambindocket@faegredrinker.com

SUSAN E. EGELAND
State Bar No. 24040854
susan.egeland@faegredrinker.com

FAEGRE DRINKER BIDDLE & REATH LLP
1717 Main Street, Suite 5400
Dallas, Texas 75201
(469) 357-2500 (Telephone)
(469) 327-0860 (Fax)

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on April 13, 2020.

/s/ Susan E. Egeland

SUSAN E. EGELAND

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Outlaws & Gents Grooming, LLC; Diesel Barbershop, LLC; et al

(b) County of Residence of First Listed Plaintiff **Bexar County**

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Shannon E. Loyd, THE LOYD LAW FIRM, P.L.L.C., 12703 Spectrum Drive, Suite 201, San Antonio, Texas 78249, (210) 775-1424, (210) 775-1410 (fax), shannon@theloydlawfirm.com

DEFENDANTS

State Farm Lloyds

County of Residence of First Listed Defendant **McLean County, Illinois**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

W. Neil Rambin, Susan E. Egeland, Faegre Drinker Biddle & Reath, LLP, 1717 Main Street, Ste. 5400, Dallas, TX 75201, (469) 357-2500; rambindocket@faegredrinker.com

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §1446(a)

Brief description of cause:

Plaintiff alleges breach of contract, non-compliance with the Texas Insurance Code

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

1,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED PENDING OR CLOSED CASE(S)**

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/13/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Susan E. Egeland

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**United States District Court
Western District of Texas**

**Supplemental Civil Cover Sheet For Cases Removed
From State Court**

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.

1. State Court Information:

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

Court

Case Number

45th Judicial District Court of Bexar
County, Texas

2020CI06851

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

Party and Party Type

Attorney(s)

Plaintiffs:
Outlaws & Gents Grooming, LLC
Diesel Barbershop, LLC
Wilderness Oaks Cutters, LLC
Diesel Barbershop Bandera Oaks, LLC
Diesel Barbershop Dominion, LLC
Diesel Barbershop Alamo Ranch, LLC
Henley's Gentlemen's Grooming, LLC,

Shannon E. Loyd
State Bar No. 24045706
THE LOYD LAW FIRM, P.L.L.C.
12703 Spectrum Drive, Suite 201
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Defendant: State Farm Lloyds

W. NEIL RAMBIN
State Bar No. 16492800
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LLP
1717 Main Street, Suite 5400
Dallas, Texas 75201
(469) 357-2500 (telephone)
(469) 327-0860 (facsimile)

3. Jury Demand:

Was a Jury Demand made in State Court? Yes

If "Yes," by which party and on what date?

Plaintiff
Party

April 8, 2020
Date

4. Answer:

Was an Answer made in State Court? No

If "Yes," by which party and on what date?

Party

Date

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

Party
State Farm Lloyds

Reason(s) for No Service
unknown

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate any changes from the style on the State Court papers and the reason for that change:

Party
None

Reason
None

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

Party

Claim(s)

Plaintiff

Breach of Contract, Noncompliance with Chapters 541 of the Texas Insurance Code, Violations of the Texas Prompt Pay Statute, Breach of the Duty of good Faith and Fair Dealing

CAUSE NO. **2020CI06851**

OUTLAWS & GENTS GROOMING, LLC;	§	IN THE DISTRICT COURT
DIESEL BARBERSHOP, LLC;	§	
WILDERNESS OAKS CUTTERS, LLC;	§	
DIESEL BARBERSHOP BANDERA OAKS,	§	
LLC; DIESEL BARBERSHOP DOMINION,	§	
LLC; DIESEL BARBERSHOP	§	45th JUDICIAL DISTRICT
ALAMO RANCH, LLC; AND HENLEY'S	§	
GENTLEMEN'S GROOMING, LLC	§	
	§	
	§	
V.	§	
	§	
STATE FARM LLOYDS	§	BEXAR COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs, OUTLAWS & GENTS GROOMING, LLC; DIESEL BARBERSHOP, LLC; WILDERNESS OAK CUTTERS, LLC; DIESEL BARBERSHOP BANDERA OAKS, LLC; DIESEL BARBERSHOP DOMINION, LLC; DIESEL BARBERSHOP ALAMO RANCH, LLC; AND HENLEY'S GENTLEMEN'S GROOMING, LLC, and file this Original Petition against STATE FARM LLOYDS, ("State Farm") and in support thereof, would show as follows:

I.
DISCOVERY CONTROL PLAN LEVEL

Plaintiffs intend 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, Plaintiffs 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**

Plaintiffs are doing business in Bexar 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 Plaintiffs;
- The taking or receiving of application for insurance, including the Plaintiffs' 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 Plaintiffs; 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 Plaintiffs.

Defendant **State Farm Lloyds** can be served, via certified mail, at through its registered agent at the following address: Corporation Service Company at 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218. **Service is requested at this time.**

III. **JURISDICTION AND VENUE**

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

IV. **BACKGROUND FACTS**

Plaintiffs are the owners of multiple Insurance Policies (hereinafter referred to as "the Policies"). Plaintiffs own the insured properties which are located at the following addresses:

1. 4902 Golden Quail, Suite 105, San Antonio, Texas 78240;

2. 11255 Huebner Road, San Antonio, Texas 78230;
3. 20711 Wilderness Oak, Suite 110, San Antonio, Texas 78258;
4. 11398 Bandera Road, Suite 205, San Antonio, Texas 78250;
5. 22015 W LH 10, Suite 205, San Antonio, Texas 78257;
6. 5535 W Loop 1604 N, Suite 106, San Antonio, Texas 78253; and
7. 14510 NW Military HWY, Suite 103, Shavano Park, Texas 78231.

(hereinafter referred to as "the Properties"). State Farm sold the Policies insuring the Properties to Plaintiff.

During the terms of said Policies, Plaintiffs have sustained and will sustain covered losses during the Covid-19 outbreak and subsequent Bexar County Order, attached hereto as Exhibit A, and Plaintiffs reported same to State Farm pursuant to the terms of the Policies. Plaintiffs asked that State Farm cover the cost for business interruption to the Properties pursuant to the Policies. State Farm assigned Kelsey Reehl to adjust the claims and investigate the losses related to business interruption; however, the claims have been wrongfully denied. To date, State Farm has mishandled Plaintiffs' claims and caused and will continue to cause Plaintiffs further and additional damages.

State Farm made material misrepresentations about Policies' provisions, coverage and the law in Texas applying thereto with regard to Plaintiffs' Loss of Income and Civil Authority additional coverages. State Farm and its agents have kept and have in their possession a claim file which details the Plaintiffs' claim and its investigation, adjustment and subsequent denial of the claims.

State Farm wrongfully denied Plaintiffs' claims for business interruption even though the Policies provide coverage for losses such as those suffered by Plaintiffs. Furthermore, State Farm engaged its agents to misrepresent Policies provisions and coverage. To date, State Farm continues to deny the payment for Plaintiffs' loss of business.

V.
CAUSES OF ACTION

A. BREACH OF CONTRACT

Plaintiffs re-allege the foregoing paragraphs. State Farm and its agents' conduct constitutes a breach of the insurance contracts between it and Plaintiffs. State Farm's failure and/or refusal, as described above, to pay Plaintiffs adequate compensation as it is obligated to do under the terms of the Policies in question pursuant to the additional coverages of Loss of Income and Civil Authority, and under the laws of the State of Texas, constitutes a breach of the insurance contracts with Plaintiffs.

State Farm failed to perform its contractual duty to adequately compensate Plaintiffs under the terms of the Policies pursuant to the additional coverages of Loss of Income and Civil Authority. Specifically, State Farm wrongfully denied coverage and refused to offer the full proceeds of the Policies, although due demand was made for proceeds to be paid in an amount sufficient to cover Plaintiffs' business loss, and all conditions precedent to recovery under the Policies have been carried out and accomplished by Plaintiffs. State Farm's conduct constitutes a breach of the insurance contracts between it and Plaintiffs.

B. NONCOMPLIANCE WITH TEXAS INSURANCE CODE

1. UNFAIR SETTLEMENT PRACTICES

Plaintiffs re-allege 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 Policies.

- 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.

2. THE PROMPT PAYMENT OF CLAIMS

Plaintiffs re-allege 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 and will fail to timely pay Plaintiffs' 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, Plaintiffs were 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

Plaintiffs re-allege 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 Plaintiffs' loss was presented to State Farm, its liability to pay the full claim in accordance with the terms of the Policies was reasonably clear. However, it has refused to pay Plaintiffs 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 Plaintiffs' 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. **KNOWLEDGE**

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

VII. **DAMAGES**

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

For breach of contract, Plaintiffs are 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, Plaintiffs are entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the Policies but for the wrongful denial, court costs, consequential damages not covered by Plaintiffs' Policies and attorney's fees. For knowing conduct of the acts described above, Plaintiffs ask for three times the actual damages. TEX. INS. CODE §541.152.

For noncompliance with the Texas Insurance Code, Prompt Payment of Claims, Plaintiffs are 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, 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, and exemplary damages.

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.

VIII.

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

The clear and unambiguous language of the policies provides coverage for business interruption and other losses to the Properties caused by losses made the basis of Plaintiffs' claims;

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

Any other construction and its use by the Defendant 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 policies, the rules of construction of such policies mandate the construction and interpretation urged by Plaintiffs;

In the alternative, Defendant is judicially, administratively, or equitably estopped from denying Plaintiffs' construction of the policies coverage at issue;

In the alternative, to the extent that the wording of such policies do not reflect the true intent of all parties thereto, Plaintiffs plead the doctrine of mutual mistake requiring reformation.

**IX.
REQUEST FOR DISCLOSURES**

Pursuant to the Texas Rules of Civil Procedure 194, Plaintiffs request that Defendant provide the information required in a Request for Disclosure.

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

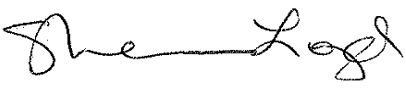
- 1) Produce the non-privileged portion of State Farm's complete claim files for Plaintiffs' Properties relating to or arising out of any damages caused by the losses determined by Defendant's expert and Plaintiffs for which State Farm opened claims under the Policies.
- 2) Produce all emails and other forms of communication between State Farm, its agents, adjusters, employees, or representatives and the adjuster, and/or his agents, adjusters, representatives or employees relating to, mentioning, concerning or evidencing the Plaintiffs' Properties which are the subject of this suit.

XI.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that Defendant be cited to appear and answer herein; that, on final hearing, Plaintiffs have judgment against Defendant 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: Plaintiffs are forced to state a range amount of damages sought although Plaintiffs believe that the amount of damages is solely for the jury to determine. However, because Plaintiffs must state a range of damages, Plaintiffs plead that the damages will be over \$1,000,00. Plaintiffs 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 Defendant, to which Plaintiffs may be justly entitled.

Respectfully submitted,

THE LOYD LAW FIRM, P.L.L.C.
12703 Spectrum Drive, Suite 201
San Antonio, Texas 78249
Telephone: (210) 775-1424
Facsimile: (210) 775-1410
Electronic Mail: shannon@theloydlawfirm.com

BY: 
SHANNON E. LOYD
State Bar No. 24045706

ATTORNEY FOR PLAINTIFFS

PLAINTIFFS REQUEST A TRIAL BY JURY