

Cause No. 86687-CV

FLOWING OVER, INC d/b/a	§	
THE OVERFLOW CHURCH	§	
<i>Plaintiff</i>	§	
	§	
V.	§	BRAZORIA COUNTY, TEXAS
	§	
MID-CENTURY INSURANCE	§	
COMPANY and LISA ANN MURRAY	§	
<i>Defendants</i>	§	___ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION & JURY DEMAND

Plaintiff FLOWING OVER, INC. d/b/a THE OVERFLOW CHURCH (“Overflow” or “Plaintiff”) by and through its attorneys, files this Original Petition & Jury Demand against Defendants MID-CENTURY INSURANCE COMPANY (“Mid-Century”) and LISA ANN MURRAY (“Murray”) (collectively “Defendants”) and would respectfully show the following:

Discovery Control Plan

1.1 Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

Parties

2.1 Flowing Over, Inc. d/b/a The Overflow Church is a church organization located in Manvel, Brazoria County, Texas.

2.2 Upon information and belief, Defendant Mid-Century is a foreign fire and casualty insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Mid-Century regularly and systematically issues insurance policies in the State of Texas and may be served

by mailing certified mail, return receipt requested to Chanda Sperry, 15700 Long Vista Drive, Austin, Texas 78728-3822.

2.3 Upon information and belief, Lisa Ann Murray is an individual living and residing in the State of Texas and may be served with process at Lisa Ann Murray, 12182 Arcturus Drive, Willis, Texas 77318-5106.

Venue & Jurisdiction

3.1 Venue is proper in Brazoria County under Tex. Civ. Prac. & Rem. Code Section 15.002(a)(1), as all or a substantial part of the events or omissions giving rise to this claim occurred in Brazoria County and Plaintiff's property which is the subject of this suit is located in Brazoria County, Texas. In particular, the insurance policy at issue and of which Overflow is a beneficiary was to be performed in Brazoria County, Texas and the losses under the policy (including payments to be made to Overflow under the policy) were required to be made in Brazoria County, Texas. Further, investigation, including communications to and from Defendants and Overflow (including telephone calls, mailings, and other communications to Overflow) occurred in Brazoria County, Texas.

3.2 Overflow seeks damages within the jurisdictional limits of this Court. Overflow trusts the jury to evaluate the evidence, but at this time, Overflow seeks monetary relief in an amount over \$1,000,000. Overflow reserves the right to modify the amount and type of relief sought in the future.

General Allegations

4.1 On or before January 22, 2015, Mid-Century marketed and sold a commercial insurance policy bearing Policy No. 0605452003 to Overflow whereby Mid-Century would provide property insurance for the church located at 7355 McCoy Road, Manvel, Texas 77578 (the "Property") in exchange for the timely payment of premiums (the "Policy"). The Policy was sold by Mid-Century to Plaintiff as the insured under the Policy and provides coverage for the Property resulting from windstorm.

4.2 On or about January 22, 2015, Plaintiff's property was substantially damaged by the severe windstorm that struck the area. As a result, the roof, exteriors, and interiors of the Property were substantially damaged. Immediately after the storm, Plaintiff filed an insurance claim under the Policy with Mid-Century for damages to the Property caused by the windstorm. Plaintiff asked that the cost of repairs be covered pursuant to the Policy.

4.3 Mid-Century is the insurer on the Property. In response to the claim, Mid-Century assigned representatives, adjusters, consultants, and agents to Plaintiff's file that were inadequate and improperly trained. Specifically, Mid-Century assigned Plaintiff's claim to Lisa Ann Murray as the local claims representative and adjuster charged with assessing damages under the Policy. Ms. Murray was improperly trained and not equipped to handle this type of claim.

4.4 Ms. Murray failed to perform a thorough investigation of the claim. On January 26, 2015, Ms. Murray inspected the Property but failed to complete an

adequate inspection and refused to acknowledge all the damages to the Property, despite the fact that Plaintiff and its representatives pointed out the damages to Ms. Murray. Moreover, Ms. Murray refused to retain appropriate consultants to evaluate the claim. Specifically, Ms. Murray retained an unlicensed adjuster who is not registered with the Texas Department of Insurance to scope the damages to the Property and prepare an estimate of repairs. Ms. Murray then utilized that scope and estimate to make recommendations to Mid-Century on what amounts to pay and not pay under the Policy.

4.5 Throughout the claims process, Ms. Murray was the only point of contact on Mid-Century's behalf yet she continually delayed the claims process and refused to provide answers to the insured. Mid-Century relied exclusively on Ms. Murray's substandard investigation in determining what amounts, if any, to pay on Plaintiff's claim and failed to perform its own investigation. As a result of Ms. Murray's haphazard inspection, misrepresentations, and inadequate investigation, Mid-Century denied Plaintiff's claim. Mid-Century and Ms. Murray performed an inadequate, incomplete and unreasonable investigation of Plaintiff's claim, which is evidenced by the failed inspections and the undervalued estimate of damages for the necessary repairs for the Property prepared by an unlicensed adjuster.

4.6 Mid-Century and Ms. Murray wrongfully denied Plaintiff's claim for property repairs. Furthermore, Mid-Century and Ms. Murray underestimated what damages they did accept during the investigation. Mid-Century and Ms. Murray represented to Plaintiff that certain damages were not covered under the Policy

when in fact they were. Ms. Murray refused to provide answers to Plaintiff during the claims process, further delaying resolution of Plaintiff's claim in violation of her duties under Texas law. Mid-Century and Ms. Murray have chosen to continue to deny timely payment of the damages. As a result, Plaintiff has not been fully paid under the Policy provided by Mid-Century since the windstorm. To this day, Mid-Century refuses to pay for the necessary repairs to the Property as required under the Policy.

4.7 As a result of Defendants' acts and/or omissions, Plaintiff was required to retain an attorney to prosecute its claim for insurance benefits.

4.8 Unfortunately, Defendants have delayed payment for Plaintiff's necessary and covered property repairs under the insurance policy that Mid-Century wrote. Given the repeated delays of payment, Plaintiff has been subjected to significant economic impact, worry, distress, and continuing economic and physical damage. Because of Defendants' delays, denials, and underpayment, Plaintiff has been unable to make necessary repairs to the Property which has resulted in further damages to the Property, including additional interior damage, among others. In addition, Plaintiff has suffered financial harm and damage as a result of Defendants' denials and repeated delays. The significant effect of Defendants' wrongful and unjustified delays, however, is still uncompensated.

FIRST CAUSE OF ACTION--Violations of Texas Insurance Code

5.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-4.7 of this Petition as if fully set forth herein.

5.2 Mid-Century and Ms. Murray failed to attempt to effectuate a prompt, fair, and equitable settlement of a claim with respect to which liability has become reasonably clear, in violation of Texas Insurance Code Section 541.060 (a)(2)(A).

5.3 Mid-Century and Ms. Murray failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 Mid-Century and Ms. Murray failed to provide promptly a reasonable explanation, in relation to the facts or applicable law, for the denial of a claim, in violation of Texas Insurance Code Section 541.060 (a)(3).

5.5 Mid-Century and Ms. Murray refused to pay a claim without conducting a reasonable investigation with respect to the claim, in violation of Texas Insurance Code Section 541.060 (a)(7).

5.6 Mid-Century and Ms. Murray misrepresented the insurance policy under which it affords Property coverage to Plaintiff, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Mid-Century and Ms. Murray misrepresented the insurance policy to Plaintiff, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

5.7 Mid-Century and Ms. Murray misrepresented the insurance policy under which it affords Property coverage to Plaintiff, by failing to state a material fact that is necessary to make other statements made not misleading, in violation of Texas Insurance Code Section 541.061 (2). Mid-Century and Ms. Murray misrepresented the insurance policy to Plaintiff by failing to state a material fact that is necessary to

make other statements made not misleading, in violation of Texas Insurance Code Section 541.061 (2).

5.8 Mid-Century and Ms. Murray misrepresented the insurance policy under which it affords Property coverage to Plaintiff, by making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of material fact, and failing to disclose a matter required by law to be disclosed, in violation of Texas Insurance Code Section 541.061 (3) and Texas Insurance Code Section 541.002 (1). Mid-Century and Ms. Murray misrepresented the insurance policy to Plaintiff by making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of material fact, and failing to disclose a matter required by law to be disclosed, in violation of Texas Insurance Code Section 541.061 (3) and Texas Insurance Code Section 541.002 (1).

5.9 Mid-Century and Ms. Murray knowingly committed the foregoing acts, with actual knowledge of the falsity, unfairness, or deception of the foregoing acts and practices, in violation of Texas Insurance Code Section 541.002 (1).

SECOND CAUSE OF ACTION---Prompt Payment of Claim

6.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-5.9 of this Petition as if fully set forth herein.

6.2 Mid-Century and Ms. Murray failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

6.3 Mid-Century and Ms. Murray failed to timely commence investigation of the claim or to request from Plaintiff any additional items, statements or forms that Mid-

Century and Ms. Murray reasonably believe to be required from Plaintiff in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

6.4 Mid-Century and Ms. Murray failed to notify Plaintiff in writing of the acceptance or rejection of the claim not later than the 15th business day after receipt of all items, statements and forms required by Mid-Century and Ms. Murray in violation of Texas Insurance Code Section 542.056(a).

6.5 Mid-Century and Ms. Murray delayed payment of Plaintiff's claim in violation of Texas Insurance Code Section 542.058(a).

THIRD CAUSE OF ACTION--Statutory Interest

7.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-6.5 of the Petition as if fully set forth herein.

7.2 Plaintiff makes a claim for penalties of 18% statutory interest on the amount of the claims along with reasonable attorneys' fees for violation of Texas Insurance Code Subchapter B pursuant to Texas Insurance Code Section 542.060.

FOURTH CAUSE OF ACTION--Breach of Contract

8.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-7.2 of the Petition as if fully set forth herein.

8.2 Mid-Century breached its contracts with Plaintiff. As a result of Mid-Century's breaches, Plaintiff suffered legal damages.

FIFTH CAUSE OF ACTION--Breach of duty of good faith & fair dealing

9.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-8.2 of the Petition as if fully set forth herein.

9.2 Mid-Century, as the property coverage insurer, had a duty to deal fairly and in good faith with Plaintiff in the processing of the claim. Mid-Century breached this duty by refusing to properly investigate and effectively denying insurance benefits. Mid-Century knew or should have known that there was no reasonable basis for denying or delaying the required benefits. As a result of Mid-Century's breach of these legal duties, Plaintiff suffered legal damages.

SIXTH CAUSE OF ACTION--Punitive Damages for Bad Faith

10.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-9.2 of this Petition as if fully set for herein.

10.2 Mid-Century and Ms. Murray fraudulently and with malice (as that term is legally defined) denied Plaintiff's claim for benefits. Further, Mid-Century and Ms. Murray had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff.

SEVENTH CAUSE OF ACTION--Violations of Texas DTPA

11.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-10.2 of this Complaint as if fully set forth herein.

11.2 The Deceptive Trade Practices-Consumer Protection Act (DTPA) provides additional protections to consumers who are victims of deceptive, improper, or illegal practices. Defendants' violations of the Texas Insurance Code create a cause of action under the DTPA. Defendants' violations of the Texas Insurance Code, as set forth herein, specifically violate the DTPA as well.

KNOWLEDGE

13.1 Each of the actions described herein were done “knowingly” as that term is used in the Texas Insurance Code and were a producing cause of Plaintiff’s damages.

RESULTING LEGAL DAMAGES

14.1 Plaintiff is entitled to the actual damages resulting from the Defendants’ violations of the law. These damages include the consequential damages to its economic welfare from the wrongful denial and delay of benefits; the mental anguish and physical suffering resulting from this wrongful denial of benefits, and continued impact on Plaintiff; lost credit reputation; and the other actual damages permitted by law. In addition, Plaintiff is entitled to exemplary damages.

14.2 As a result of Defendants’ acts and/or omissions, Plaintiff has sustained damages in excess of the minimum jurisdictional limits of this Court.

14.3 Plaintiff is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

14.4 Defendants’ knowing violations of the Texas Insurance Code and DTPA entitle Plaintiff to the attorneys’ fees, treble damages, and other penalties provided by law.

14.5 Plaintiff is entitled to statutory interest on the amount of its claim at the rate of 18% per year as damages under the Texas Insurance Code §542.060(a).

14.6 Plaintiff is entitled to the recovery of attorneys’ fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, the Texas Insurance Code §542.060(a)-(b), the Tex. Bus & Commerce Code §17.50 and Tex. Civ. Prac. & Rem. Code §37.009.

Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that Plaintiff have judgment against Defendants for actual damages in excess of the minimum jurisdictional limits of this Court, pre- and post-judgment interest as allowed by law, costs of suit, and all other relief, at law or in equity, to which Plaintiff may be entitled.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

JURY DEMAND

Plaintiff hereby demands a trial by jury, a right enshrined in the Constitution of the United States of America and the State of Texas and preserved by the sacrifices of many. The necessary jury fee has been paid.



JEFFREY L. RAIZNER