

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 21-cv-00866-CMA-NYW

SCOTT D. SMITH and JENNIFER K. SMITH

Plaintiffs

v.

STATE FARM FIRE AND CASUALTY COMPANY

Defendant

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**AMENDED COMPLAINT AND JURY DEMAND**

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Scott and Jennifer Smith (“Plaintiffs”), by and through counsel, Taussig & Smith, PC, file this Complaint and Jury Demand against Defendant State Farm Fire and Casualty Company (“State Farm”). For their claims and causes of action, Plaintiffs state and allege as follows:

**GENERAL ALLEGATIONS**

1. At all times complained of herein, Plaintiffs were residents of the state of Colorado.
2. At all times relevant to this Complaint State Farm Fire and Casualty Company (hereinafter “State Farm”) is and was a foreign insurance company licensed to do business in Colorado. State Farm is a non-resident of this state.
3. Venue is proper in the Courts of the State of Colorado.
4. In matters involving insurance, particularly claims, there are what are called *Industry Standards*, which are minimum levels of conduct, and include:
  - a. C.R.S. § 10-1-101, which requires good faith in all activities relevant to this case.
  - b. The Unfair Claims’ Settlement Practices Act (“UCPSA”) codified at CRS 10-3-1104(1) which prohibits all insurers, such as Defendant from certain activities, relevant to this case. The UCPSA was originally enacted by the National Association of Insurance

Commissioners (NAIC) and represents what everyone agrees are *Industry Standards* that apply to all insurers at all times.

- c. The Colorado Division of Insurance Regulations, including Regulation 1-1-7, which requires that claim handling and other activities be documented such that pertinent events can be clearly reconstructed and verified by reviewing claim records.
- d. C.R.S. § 10-3-1115 and 1116 (*Prompt Payment of Benefits Statutes*). These statutes prohibit insurers, such as Defendant, from delaying or denying claims or insurance benefits without a reasonable basis.
- e. Insurers, such as Defendant, are presumed to have knowledge of what is in their files.
- f. Insurers, such as Defendant, know that a claim for benefits under one part of an insurance policy is a claim for benefits under all coverages that might apply.
- g. Insurers, such as Defendant, have a non-delegable duty to investigate claims for their insureds and to fund that investigation.
- h. Insurers, such as Defendant, must not conduct a biased one-sided investigation.
- i. Insurers, such as Defendant, must be honest with their insureds.
- j. Insurers must objectively consider all evidence available to them after conducting a thorough investigation and decide claims based on policy language, and the applicable law.
- k. Insurers, such as Defendant, have a duty to assist their insureds with their claim. As part of their duty to assist their insureds, they must keep their insureds advised of what coverages are available for their claims.
- l. Insurers, such as Defendant, must equally seek information that supports and does not support their insured's claim.
- m. Insurers have a duty to be fair to their insureds at all times.

- n. Insurers may not deny, under-pay or refuse to pay a claim based solely on a guess or speculation.
  - o. Insurers cannot encourage their claim handlers to arbitrarily pay less on claims.
  - p. Defendant has the burden to prove any coverage exclusions it might assert.
  - q. Any ambiguities as to coverage are decided against the insurer and in favor of providing coverage to the insured.
  - r. It would be wrong for Insurers to encourage their claims personnel to underpay claims.
  - s. Insurers must pay any amounts they have determined to be recoverable for a claim as part of their duty to assist with the processing of the claim.
  - t. Insurers should continue to evaluate and investigate all facts of a claim even if a lawsuit is filed by the policyholder against Insurer.
  - u. Insurers should not in any manner tie any claim personnel's compensation with insurer profitability based on delay or denial of claims.
  - v. Insurers should not use their claims department as a profit center.
  - w. Insurers may not violate the Unfair Claim Settlement Practices Act.
5. At all times relevant to this Complaint, State Farm, was the homeowner's insurance company for Plaintiffs' residential property located at 8251 Arrowhead Way, Lone Tree, CO 80124.
6. The homeowner's insurance coverage provided by State Farm is memorialized as part of a written policy delivered to Plaintiffs by State Farm and identified as Policy Number 06BQZ6456.
7. The Policy provides that insurance coverage existed and was effective as of May 20, 2018 for the risk of loss or damage to Plaintiffs' Residence.
8. The policy language provided

**COVERAGE A – DWELLING**

We insure for accidental direct physical loss to the property described in Coverage A...

9. On or about May 20, 2018, Plaintiffs discovered a high volume water leak emanating from the hot water supply line to the faucet for Plaintiffs' kitchen sink.

10. Shortly after the leak was discovered, Plaintiffs turned off the water to Plaintiffs' home and had the leak repaired.

11. The plumber that examined and repaired the leak noted that "hot water supply line leaking with a moderate and steady flow of water ... Leaks appear recent ... Based on amount of water from leak and location where leak was discovered it does not appear to have been leaking for long."

12. As a direct and proximate result of the May 20, 2018 water leak, Plaintiffs' home sustained extensive water damage to their basement and kitchen.

13. Shortly following the May 20, 2018 water leak, Plaintiffs submitted a claim to Defendant for the damages to their home.

14. Following initiation of the claim, Plaintiff Jennifer Smith along with a representative from a content moving and storage company, Contents Cleaning, Inc. a/k/a C&C Restoration, contacted Defendant to confirm whether it would be extending coverage and paying the claim.

15. Defendant confirmed that it would.

16. In reliance on Defendant's assurances, Plaintiffs then authorized

- a. Contents Cleaning, Inc. a/k/a C&C Restoration to remove their personal property from the damaged area of their home and to store it at an offsite location and
- b. Restoration 1, a water damage remediation company, to proceed with remediating the water damage to Plaintiff's home.

17. After representing it would cover and pay Plaintiffs' claim, Defendant then began looking for ways to delay and deny it.

18. On or about May 29, 2018, a representative of Defendant met with Plaintiff Scott Smith at Plaintiff's home to examine the damage from the water leak.

19. During that meeting, Plaintiff advised Defendant that a portion of the area that had been effected by the May 20, 2018 leak, had also been effected by a prior water leak over a year before.

20. Defendant's representative examined damage from the prior water leak, informed Plaintiff that State Farm would likely not be covering damage from the prior leak, but that State Farm would look for ways to cover damage from the recent leak on May 20, 2018 and would be providing a breakdown of the specific items that it would be covering.

21. Following this meeting, Defendant then refused to respond to multiple communications from Plaintiffs and the service providers Plaintiffs hired to assist with the work remediating their home.

22. After these calls were ignored, Plaintiffs then began writing to Defendant asking for information related to their claim.

23. Plaintiff wrote to Defendant requesting information on June 27, 2018, July 2, 2018 and July 10, 2018.

24. Plaintiffs asked Defendant on multiple occasions to provide a copy of their policy so that they could understand their coverage related to the loss.

25. Defendant ignored these requests.

26. Plaintiffs also informed Defendants on July 2, 2018, that they had received word that Defendant might be denying their claim, and asked Defendant to indicate if it was denying the claim, and if it was, to explain why it was denying it.

27. Defendant did not respond to any of these communications.

28. On July 13, 2018, after refusing to respond to Plaintiff's multiple prior letters and phone calls, Plaintiff Scott Smith was finally able to reach a representative of State Farm to discuss Plaintiffs' claim.

29. During that call, Defendant informed Plaintiff that despite previously representing that it

would be covering and paying Plaintiffs' claim, State Farm was now denying it.

30. Defendant then forwarded a letter to Plaintiff indicating that Defendant had communicated the denial to Plaintiff on May 29 (via telephone) and May 30, 2018 (via letter).

31. These statements were untrue and Defendant knew that they were untrue.

32. In actuality, this letter was delivered to Plaintiff for the first time via email on July 13, 2018.

33. In addition to these false statements, Defendant also falsely asserted that Plaintiff's claim was denied because the leak under Plaintiff's kitchen sink had been longstanding, but provided no facts to support the basis for its denial.

34. The leak wasn't longstanding, and the facts indicated this statement was false.

35. Three days prior to the leak, on May 17, 2018, Plaintiff Scott Smith had been in the exact area of the home's basement where water from the leak was discovered.

36. On that date, there was no water on the basement floor, no water damage was visible on the wall, and no water damage was visible on any of the personal property in the area.

37. In addition, on May 2, 2018, Plaintiffs had taken a video in the exact area of the home's basement where water from the leak was discovered.

38. On that date, there was no water on the basement floor, no water damage was visible on the wall, and no water damage was visible on any of the personal property in the area.

39. Following Defendant's July 13, 2018 denial, Plaintiffs wrote to Defendant on August 24, 2018 asking Defendant to reconsider its denial. In that letter, in light of the fact that no water was visibly present from a leak three days prior to loss, Plaintiff asked Defendant to explain

- a. Whether "State Farm considers three (3) days to constitute 'repeated leakage or seepage of water'?"
- b. And "[i]f not, what time frame does State Farm consider to be 'repeated leakage or seepage of water'?"

c. “[H]ow State Farm is defining this term in the policy.”

40. Defendant never answered any of these questions.

41. Plaintiffs’ August 24, 2018 letter also asked Defendant to explain in light of the high volume of the leak

a. Whether State Farm believed that it would have taken more than three (3) days for water to have travelled the distance it was observed to travel from the leak in Plaintiff’s home?

b. What distance State Farm believed water would have travelled from the leak within the three (3) day period it was observed to have occurred.

c. Whether State Farm believed the area effected by water was covered in water for more than three (3) days?

d. Why the water didn’t travel further if it lasted more than three (3) days?

e. If, the leak was longstanding as State Farm asserted, why there was no evidence of rot in the subfloor below the leak?

f. If, the leak was longstanding as State Farm asserted, why there was no evidence of mold on the wooden subfloor effected by the leak?

42. Defendant never answered any of these questions.

43. Plaintiffs’ August 24, 2018 letter also asked Defendant to explain

a. What portion of the observed damage State Farm had determined was due to repeated seepage or leakage of water?

b. Any portion of the damage State Farm had determined wasn’t due to repeated seepage or leakage of water?

c. State Farm’s basis for asserting that all of the observed damage was due to repeated seepage or leakage when there was no observable evidence of water three days

before the loss.

44. Defendant never answered any of these questions.
45. As Plaintiffs had multiple times before, they again asked for a copy of their policy to better understand their coverage.
46. Defendant again refused to provide it.
47. Following receipt of Plaintiff's letter, a representative of Defendant contacted Plaintiff and indicated that if Plaintiff could provide evidence of the area effected by water prior to the loss showing that it wasn't damaged, Defendant would reevaluate Plaintiff's claim.
48. On May 20, 2020, Plaintiffs wrote to Defendant informing it that they had recently discovered a 12 second video of the water damaged area of their home approximately 2 ½ weeks prior to the date of loss and that they were forwarding the video along with still images extracted from the video.
49. The 12 second video demonstrated there was no water present on the carpet that had been damaged by the water, no water damage present on the wall where the leak had occurred and no water damage shown on the items of personal property that were later saturated by water.
50. On July 1, 2020, Plaintiffs wrote to Defendant asking about the status of their claim, and indicating that in addition to their May 20, 2020 letter, they had also left messages for Defendant the week of June 15, 2020 and June 22, 2020 without response.
51. After almost two (2) months with no response from Defendant, on July 17, 2020, Plaintiffs finally received a communication from Defendant's counsel on their behalf.
52. Defendant's counsel indicated they would be representing Defendant, but provided no response from Defendant related to Plaintiff's multiple prior communications.
53. Despite the passage of almost two months, Defendant had apparently still not reviewed nor

evaluated the 12 second video.

54. On October 9, 2020, Plaintiffs received a letter from Defendant indicating that it had finally reviewed the 12 seconds of video from Plaintiffs and that it was continuing to deny Plaintiff's claim.

55. Defendant still did not answer any of Plaintiff's prior questions or provide any of the information Plaintiff previously requested.

56. As with Defendant's prior letter, Defendant again falsely indicated that it had sent it months before.

57. It had not.

58. Defendant's denial of Plaintiffs' claim lacks a reasonable basis.

59. As a result of the damage to Plaintiffs' home, they expended substantial amounts to remediate and repair the damage to their home.

60. Plaintiffs have not failed to mitigate any of the damages which they suffered in this incident as a result of the damage to their home.

61. Plaintiffs repeatedly requested that Defendant calculate and pay the damages they sustained as a result of May 20, 2018 water leak in their home.

62. Despite repeated requests, Defendant has refused, without a reasonable basis, to pay Plaintiffs' claim.

63. From the date of the loss, Plaintiffs were entitled to prompt and reasonable insurance benefits to relieve them from their loss, and delays and denials in providing those prompt and reasonable insurance benefits were harmful to them.

64. Defendant has engaged in other improper actions, or has further improperly failed to act as required, in a fashion to be more fully set forth at trial and that support the present cause of action and claims pled herein.

65. All conditions precedent to entitlement to suit, and the damages claimed in this lawsuit have either occurred or have been satisfied or waived.

66. As a direct and proximate result of Defendant's breach of contract, and the negligent and otherwise actionable conduct of Defendant, Plaintiffs have sustained harms, damages and losses.

67. Contrary to all law, public policy, and their own policies and procedures, Defendant has forced the Plaintiffs, their insureds, to file a lawsuit to collect the homeowner's insurance benefits due and owing them under the policy with Defendant for which valuable premiums were paid.

**FIRST CLAIM FOR RELIEF**  
**(BREACH OF AN INSURANCE CONTRACT)**

68. Plaintiffs incorporate all previous allegations as if more fully set forth herein.

69. Pursuant to the terms of the policy, Defendant contracted to provide insurance coverage to Plaintiffs.

70. The policy provided by Defendant to Plaintiff(s) made Defendant responsible for (and liable to timely pay for) all reasonable and necessary mitigation and remediation of the loss arising from the incident.

71. Due to the incident, Plaintiffs suffered immediate damages and losses. Pursuant to the terms of the Policy, Defendant was obligated to immediately pay policy benefits so that those damages and losses would not be exacerbated.

72. Defendant has failed and refused to pay for reasonable and necessary mitigation and remediation of the loss arising from the incident.

73. Defendant has failed and refused to perform their other obligations owed to Plaintiffs under the terms of the policy and under Colorado law.

74. The insurance coverage provided by Defendant is of such a personal and special nature that Defendant knew or should have known that a breach of the insurance contract would result in harms, damages and losses. Additionally, Defendant's breach of the insurance contract caused

damages due to the willful and wanton or insulting conduct accompanying the breach of the insurance contract.

75. Plaintiffs have complied with all conditions precedent to coverage under the insurance policy issued by Defendant for which Plaintiffs are insureds.

76. To the extent that Plaintiffs have failed to comply with any of the contractual obligations, Defendants have not been prejudiced by the failure to comply or have waived any non-compliance.

77. As a direct and proximate result of Defendant's breach of contract, Plaintiffs have suffered damages and losses in the amount to be proved at the time of trial. These damages and losses were foreseeable at the time of contracting and were the natural and probable consequence of Defendant's breach of the terms of the policy.

**SECOND CLAIM FOR RELIEF**  
**(BAD FAITH BREACH OF INSURANCE CONTRACT)**

78. Plaintiffs incorporate all previous allegations as if more fully set forth herein.

79. As a provider of insurance services to the public, Defendant at all times had a duty to be actuated by good faith and fair dealing in everything pertaining thereto, abstain from deceptive or misleading practices and keep, observe, and practice the principles of law and equity in all matters pertaining to the business of insurance.

80. Under Colorado law, every insurance contract contains an implied covenant of good faith and fair dealing and imposes on insurers a duty to act in good faith with their insureds. Pursuant to their implied duty of good faith and fair dealing, Defendant owed to Plaintiffs an obligation to treat Plaintiffs' interests with equal consideration to their own interests.

81. Defendant has breached their duty of good faith and fair dealing owed to Plaintiffs, including but not limited to:

- a. Failing to give equal consideration to the interests of Plaintiffs, their insureds;

- b. When investigating Plaintiffs' claims, failing to diligently search for evidence that supported their insureds' (Plaintiffs') claims;
- c. Seeking to discover only evidence that defeated their insureds' (Plaintiffs') claims;
- d. Unreasonably delaying, denying and/or withholding benefits under the insurance policy without a reasonable basis for delaying, denying and/or withholding benefits, with knowledge or reckless disregard or a lack of reasonable basis for delaying and/or withholding benefits;
- e. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under the insurance policy;
- f. Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- g. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims after their liability has become reasonably clear;
- h. Forcing Plaintiffs into the costly and lengthy process of litigation;
- i. Violations of C.R.S. 10-3-1104(1); including the subsections of (h) as follows:
  - Misrepresenting pertinent facts or policy provisions [section (I)];
  - Failing to acknowledge and act reasonable promptly upon communications from the insured [section (II)]
  - Failing to adopt and implement reasonable standards for the prompt investigation of claims [section (III)]; State Farm may have reasonable standards, but it does not implement them by making sure claims are handled correctly;

- Refusing to pay benefits without conducting a reasonable investigation based upon all available information [section (IV)]: State Farm sought out and relied on only information favorable to it, not to the insured's claims;
- Not attempting, in good faith, to effectuate prompt, fair and equitable payments of claims [section (VI)];
- Failing to promptly pay claims, where liability has become reasonably clear [section (XIII)];
- Failing to promptly provide a reasonable explanation of the basis for its actions [section (XIV)]; and

j. Any further acts which may be discovered.

82. Defendant's aforesaid conduct was unreasonable and Defendant either knew such conduct was unreasonable or recklessly disregarded the fact that the conduct was unreasonable.

83. As a direct and proximate result of Defendant's breach of their duty of good faith and fair dealing, Plaintiffs have sustained damages in an amount to be proven at trial.

### **THIRD CLAIM FOR RELIEF**

#### **(VIOLATION OF C.R.S. § 10-3-1115(1)(A) AND C.R.S. § 10-3-1116(1))**

84. Plaintiffs incorporate all previous allegations as if more fully set forth herein.

85. Defendant's delay and denial of Plaintiffs' claim for homeowner's insurance benefits is unreasonable.

86. Pursuant to C.R.S. § 10-3-1116(1), Plaintiffs are entitled to reasonable attorney's fees, costs and two times the covered benefit.

WHEREFORE, Plaintiffs request that judgment be entered in favor of the Plaintiffs and against the Defendant for actual damages in an amount which will reasonably compensate them for their damages, including compensation for:

- a. Non-Economic losses incurred to the present time, or which will probably be incurred in the future, including, but not limited to, pain and suffering, inconvenience, emotional stress;
- b. Economic losses incurred to the present time, or which will probably be incurred in the future, including, but not limited to, damages to their home, expenses; costs of suit, expert witness fees, and attorney fees; and statutory damages;
- c. Pre-judgment and post-judgment interest (including interest from the date of the incident), costs, expert witness fees, and any other relief to which Plaintiffs are entitled.
- d. Reasonable attorney's fees, costs and two times the covered benefit and
- e. Damages as a result of Defendant's bad faith.

PLAINTIFFS REQUEST A TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Dated this 16th day of April, 2021.

TAUSSIG & SMITH, P.C.  
*Original signature on file.*

/s/ Scott D. Smith

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John G. Taussig, III  
Scott D. Smith  
1873 S. Bellaire Street, Suite 400  
Denver, CO 80222  
Telephone: (303) 443-2700  
Fax: None Designated  
[jt@taussigsmith.com](mailto:jt@taussigsmith.com)  
[scott@taussigsmith.com](mailto:scott@taussigsmith.com)

**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on this 16<sup>th</sup> day of April, 2021, I electronically filed the foregoing **AMENDED COMPLAINT AND JURY DEMAND** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Franklin D. Patterson, Esq.  
Hilliary D. Patterson, Esq.  
Patterson Ripplinger, P.C.  
5613 DTC Parkway, Suite 400  
Greenwood Village, CO 80111  
[fpatterson@prplegal.com](mailto:fpatterson@prplegal.com)  
[hpatterson@perpelegal.com](mailto:hpatterson@perpelegal.com)