

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

KATHLEEN AND DAVID
HENDRICKSON,

Plaintiffs,

v.

FARMERS INSURANCE COMPANY
OF OREGON,

Defendant.

Case No. **0812-17820**

**COMPLAINT (Breach of
Insurance Policy; Intentional
Infliction of Emotional
Distress; Deceit; Breach of
Contract; Negligent
Misrepresentation;
Reformation)**

REQUEST FOR JURY TRIAL
(Not Subject to Mandatory
Arbitration)

FIRST CLAIM FOR RELIEF
(Breach of Insurance Policy)
COUNT 1
(Express Contract)

Plaintiffs David and Kathleen Hendrickson (collectively "plaintiff")
allege as follows:

1.

Plaintiff is, and at all times mentioned herein was, the owner of
property located at 6438 SW Burlingame Place, Portland, Oregon (the
"property").

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2.

Defendant Farmers Insurance Company of Oregon ("defendant") is,
and at all times mentioned herein was, a corporation.

3.

Defendant issued Policy No. 92791-45-52 (the "policy") to plaintiff in
Oregon through defendant's Oregon insurance agent. The policy was issued
for valuable consideration in the form of policy premiums, which were paid
by plaintiff.

4.

Pursuant to the policy, defendant insured plaintiff's property and
agreed to pay for certain losses, including, but not limited to, damage to the
dwelling and contents.

5.

While the policy was in force, a shaking of the earth and/or sudden
and accidental discharge of water caused physical damage to plaintiff's
property, constituting a complete loss to the dwelling and its contents, and
physical injury to Kathleen Hendrickson.

6.

The losses suffered by plaintiff fall within the coverage of defendant's
policy. Pursuant to the terms of the policy, plaintiff timely sought payment
from defendant for all of plaintiff's damages. Defendant refused to pay any
of plaintiff's damages.

7.

Defendant's denial and refusal to pay any of plaintiff's damages
constitutes a breach of the insurance contract.

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8.

As a result of defendant's breach of contract, plaintiff has been damaged in excess of \$1,000,000.

9.

Plaintiff is entitled to attorney fees under ORS 742.061.

COUNT 2
(Implied Covenant)

10.

Plaintiff realleges and incorporates by reference the allegations in paragraphs 1-9.

11.

Defendant failed to make payment, refused to make payment, and delayed payment for covered losses, in violation of the policy of insurance, thus causing damages to plaintiff.

12.

Defendant violated the implied covenant of good faith and fair dealing in failing properly to investigate the loss, adjust the claim, and pay plaintiff for all the losses sustained, causing damages to plaintiff.

13.

It was foreseeable to defendant that if it breached its obligations under the insurance policy, plaintiff would suffer damages.

14.

As a result of the breach of contract by defendant, plaintiff has suffered damages as set forth in paragraph 8.

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d. Defendant did not pay plaintiff the money that defendant knew it owed plaintiff but instead has delayed payment for months.

19.

As a result of said actions, plaintiff suffered severe nervous and emotional trauma and stress due to defendant's intentional refusal to repair plaintiff's damaged home. Plaintiff claims \$1,000,000 in noneconomic damages.

20.

Defendant's actions have been in wanton, willful disregard of social norms and standards, and in some cases, calculatingly malicious. Plaintiff intends to amend the complaint to seek punitive damages.

THIRD CLAIM FOR RELIEF
(Deceit)

21.

Plaintiff realleges and incorporates by reference the allegations in paragraphs 1-20.

22.

On or about July 12, 2005, and continuing up until the loss, defendant, through its agent Steve Hatch, intentionally or recklessly made the following representations to plaintiff:

a. That defendant's agent was an expert in evaluating plaintiff's Insurance needs and making suitable recommendations to protect plaintiff's investment;

b. That plaintiff's hillside location, which defendant personally visited, inspected, and photographed, presented particularized risks of loss, including earth movement;

1 c. That the policy would provide plaintiff with comprehensive
2 protection;

3 d. That defendant would give precedence to claims made by
4 plaintiff under the policy;

5 e. That defendant would act quickly on claims made by plaintiff
6 under the policy; and

7 f. That defendant would give its best claim service on claims made
8 by plaintiff under the policy.

23.

9 All of defendant's representations alleged above were false (although
10 plaintiff did not discover their falsity until late 2008):

11 a. Defendant did not provide comprehensive protection, to the
12 contrary, defendant narrowly interpreted plaintiff's protection and denied
13 plaintiff's claim;

14 b. Defendant gave no precedence to plaintiff's claim; to the
15 contrary, defendant rejected its insured's position that the claim was
16 covered; and

17 c. Defendant did not act quickly; to the contrary, defendant has
18 executed a strategy of delay.

24.

19 Defendant knew that its representations were false when made, and
20 defendant knew and intended that plaintiff would rely on such false
21 representations in entering into the policy contract.

25.

22 Plaintiff reasonably believed and justifiably relied on defendant's false
23 representations by entering into the policy contract.

1 26.

2 The false representations were material and induced plaintiff to enter
3 the policy contract.

4 27.

5 As the direct result of defendant's false representations, plaintiff has
6 suffered the damages set forth in paragraph 8.

7 28.

8 Defendant's false representations were willful, wanton, and committed
9 with malice, in disregard of societal norms, and were made with a reckless
10 disregard of the rights of plaintiff. Plaintiff intends to amend the complaint
to seek award of punitive damages.

11 **FOURTH CLAIM FOR RELIEF**
12 **(Breach of Contract)**

13 29.

14 Plaintiff realleges and reincorporates by reference the allegations in
paragraphs 1-28.

15 30.

16 Defendant and plaintiff agreed on July 12, 2005, when
17 David Hendrickson met at the home with defendant's agent Steve Hatch,
18 that the insurance policy issued by defendant would provide plaintiff with
comprehensive protection, including earth movement.

19 31.

20 Defendant breached its agreement to provide such protection.

21 32.

22 As the direct result of defendant's breach of contract, plaintiff has
23 suffered the damages set forth in paragraph 8.

1 38.

2 Defendant's false information was the direct and foreseeable cause of
3 damage to plaintiff as specified in paragraph 8.

4 **SIXTH CLAIM FOR RELIEF**
5 **(Reformation)**

6 39.

7 The allegations of paragraphs 1-38 are incorporated herein by
8 reference.

9 40.

10 The original agreement of the parties was the provision of
11 comprehensive protection, including earth movement.

12 41.

13 A misunderstanding occurred because the policy issued contained an
14 "earth movement" exclusion.

15 42.

16 The parties made a mutual mistake.

17 43.

18 There was no gross negligence on the part of plaintiff, and the
19 insurance policy should be reformed to provide coverage for earth
20 movement.

21 WHEREFORE, plaintiff prays for judgment as follows:

22 (a) On the FIRST CLAIM FOR RELIEF: For damages in excess
23 of \$1,000,000 in an amount to be proved at trial, including prejudgment
interest and plaintiff's attorney fees herein;

(b) On the SECOND CLAIM FOR RELIEF: For noneconomic
damages in the sum of \$1,000,000;

1 (c) On the THIRD, FOURTH, FIFTH and SIXTH CLAIMS FOR
2 RELIEF: For general damages in excess of \$1,000,000 in an amount to be
3 proved at trial;

4 (d) For prejudgment interest at the legal rate from the time
5 damages are incurred;


6 (e) For plaintiff's attorney fees, costs and disbursements
7 herein; and

8 (f) For such other relief as the court deems just and proper.

9 Dated this 10 day of December, 2008.

10 SHENKER & BONAPARTE, LLP

11 By

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13 Robert E.L. Bonaparte, OSB No. 88341
14 Of Attorneys for Plaintiffs Kathleen and
15 David Hendrickson
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