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4	IN THE CIRCUIT COURT	OF THE STATE OF OREGON
5	FOR THE COUN	ITY OF MULTNOMAH
6 7	KATHLEEN AND DAVID HENDRICKSON,) Case No. 0812-17820
8	Plaintiffs,	COMPLAINT (Breach of
9	٧.) Insurance Policy; Intentional) Infliction of Emotional
10	FARMERS INSURANCE COMPANY OF OREGON,	Distress; Deceit; Breach ofContract; NegligentMisrepresentation;
11	Defendant.) Reformation)
12 13	Delendant.) REQUEST FOR JURY TRIAL) (Not Subject to Mandatory) Arbitration)
14		
15		IM FOR RELIEF nsurance Policy)
16	· co	OUNT 1
17	• •	ss Contract) Hendrickson (collectively "plaintiff")
		rendrickson (conectively plantin)
18	allege as follows:	· •
19		1.
20	•	intioned herein was, the owner of
21	property located at 6438 SW Burling	ame Place, Portland, Oregon (the
22	"property").	·
23		

1	2.
2	Defendant Farmers Insurance Company of Oregon ("defendant") is,
3	and at all times mentioned herein was, a corporation.
4	3.
5	Defendant issued Policy No. 92791-45-52 (the "policy") to plaintiff in
6	Oregon through defendant's Oregon insurance agent. The policy was issued
	for valuable consideration in the form of policy premiums, which were paid
7	by plaintiff.
8	4.
9	Pursuant to the policy, defendant insured plaintiff's property and
10	agreed to pay for certain losses, including, but not limited to, damage to the
11	dwelling and contents.
12	5.
	While the policy was in force, a shaking of the earth and/or sudden
13	and accidental discharge of water caused physical damage to plaintiff's
14	property, constituting a complete loss to the dwelling and its contents, and
15	physical injury to Kathleen Hendrickson.
16	6.
17	The losses suffered by plaintiff fall within the coverage of defendant's
18	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
19	of plaintiff's damages.
20	7.
21	Defendant's denial and refusal to pay any of plaintiff's damages
22	constitutes a breach of the insurance contract.
23	////

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1	8.
2	As a result of defendant's breach of contract, plaintiff has been
3	damaged in excess of \$1,000,000.
4	9.
5	Plaintiff is entitled to attorney fees under ORS 742.061. COUNT 2 (Implied Covenant)
6	10.
7	Plaintiff realleges and incorporates by reference the allegations in
8	paragraphs 1-9.
9	11.
10	Defendant failed to make payment, refused to make payment, and
1-1	delayed payment for covered losses, in violation of the policy of insurance,
12	thus causing damages to plaintiff.
13	12.
	Defendant violated the implied covenant of good faith and fair dealing
14	in failing properly to investigate the loss, adjust the claim, and pay plaintiff
15	for all the losses sustained, causing damages to plaintiff.
16	13.
17	It was foreseeable to defendant that if it breached its obligations under
18	the insurance policy, plaintiff would suffer damages.
19	14.
	As a result of the breach of contract by defendant, plaintiff has
20	suffered damages as set forth in paragraph 8.
21	1111
22	////
23	////

1	SECOND CLAIM FOR RELIEF
2	(Intentional Infliction of Emotional Distress)
3 .	15.
4	Plaintiff realleges and incorporates by reference the allegations in
5	paragraphs 1-14.
5	16.
6	Plaintiff owed a special duty of good faith and fair dealing to plaintiff,
7	its insured. This duty requires the insurer to honor with reasonable
8	promptness meritorious claims arising under the policy.
9	17.
	Defendant has known of plaintiff's susceptibility to emotional distress
10	since the inception of the loss, when defendant learned that
11	Kathleen Hendrickson was injured as a result of the loss, that she nearly
12	perished, and that the home was destroyed.
13	18.
14	Defendant intended to and did cause plaintiff emotional distress, and
1 5	committed the following outrageous acts in furtherance of such intent:
	a. Defendant knew it owed plaintiff money when plaintiff promptly
16	reported the loss and damage to the home, and defendant admitted to
17	plaintiff there was damage to the home.
18	b. Defendant knew, following plaintiff's communication shortly
19	following the loss, that the loss was likely caused by a shaking of the earth
20	in the course of grinding a stump on the property, and that such loss was
21	expressly covered by endorsement to the policy.
	c. Defendant knew it owed plaintiff substantial money for repairs
22	and restoration, but denied coverage entirely.

23

1	d. Defendant did not pay plaintiff the money that defendant knew it	
2	owed plaintiff but instead has delayed payment for months.	
3	19.	
4	As a result of said actions, plaintiff suffered severe nervous and	
5	emotional trauma and stress due to defendant's intentional refusal to repair	
6	plaintiff's damaged home. Plaintiff claims \$1,000,000 in noneconomic	
	damages.	
7	20.	
8	Defendant's actions have been in wanton, willful disregard of social	
9	norms and standards, and in some cases, calculatingly malicious. Plaintiff	
10	intends to amend the complaint to seek punitive damages.	
11	THIRD CLAIM FOR RELIEF (Deceit)	
12	21.	
13	Plaintiff realleges and incorporates by reference the allegations in	
14	paragraphs 1-20.	
15	22.	
	On or about July 12, 2005, and continuing up until the loss, defendant,	
16	through its agent Steve Hatch, intentionally or recklessly made the following	
17	representations to plaintiff:	
18	a. That defendant's agent was an expert in evaluating plaintiff's	
19	insurance needs and making suitable recommendations to protect plaintiff's	
20	investment;	
21	b. That plaintiff's hillside location, which defendant personally	
	visited, inspected, and photographed, presented particularized risks of loss,	
22	including earth movement;	
23		

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 un	der the policy;
5	e.	That defendant would act quickly on claims made by plaintiff
6	under the	policy; and
	f.	That defendant would give its best claim service on claims made
7	by plaintiff	under the policy.
8		.23.
9	Allo	f defendant's representations alleged above were false (although
10	plaintiff did	d 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	
	plaintiff's o	claim;
13	b.	Defendant gave no precedence to plaintiff's claim; to the
14	contrary, o	defendant rejected its insured's position that the claim was
15	covered; a	ınd
16	c.	Defendant did not act quickly; to the contrary, defendant has
17	executed a	a strategy of delay.
18		24.
	Defe	endant knew that its representations were false when made, and
19	defendant	knew and intended that plaintiff would rely on such false
20	representa	ations in entering into the policy contract.
21		25.
22	Plair	tiff reasonably believed and justifiably relied on defendant's false
72	representa	ations 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.	
	28.	
7	Defendant's false representations were willful, wanton, and committed	
8	with malice, in disregard of societal norms, and were made with a reckless	
9	disregard of the rights of plaintiff. Plaintiff intends to amend the complaint	
10	to seek award of punitive damages.	
11	FOURTH CLAIM FOR RELIEF	
12	(Breach of Contract) 29.	
13	Plaintiff realleges and reincorporates by reference the allegations in	
14	paragraphs 1-28.	
15	30.	
16	Defendant and plaintiff agreed on July 12, 2005, when	
	David Hendrickson met at the home with defendant's agent Steve Hatch,	
17	that the insurance policy issued by defendant would provide plaintiff with	
18	comprehensive protection, including earth movement.	
19	31.	
20	Defendant breached its agreement to provide such protection.	
21	32.	
	As the direct result of defendant's breach of contract, plaintiff has	
22	suffered the damages set forth in paragraph 8.	
23		

1	FIFTH CLAIM FOR RELIEF
2	(Negligent Misrepresentation)
3	33.
4	The allegations of paragraphs 1-32 are incorporated herein by
5	reference.
	34.
6	In the course of advertising and promoting its policy, and during its
7	claims handling, defendant supplied material false information for the
8	guidance of plaintiff. In the course of supplying such information, defendant
9	was assisting and acting on plaintiff's behalf, and plaintiff was relying on
	defendant's professional expertise. Therefore, defendant owed plaintiff a
10	duty of care independent of the contract.
11	35.
12	Defendant failed to exercise reasonable care or competence in
13	communicating and failing to communicate true and accurate material
14	information to plaintiff.
15	36.
	Plaintiff, based on his professional insurance relationship with
16	defendant, had a reasonable expectation that the information supplied by
17	defendant would be truthful and accurate. Defendant was manifestly aware,
18	based on its purported expertise and on its previous course of dealing with
19	plaintiff, of the use to which the information was to be put by plaintiff.
20	Defendant intended to supply the information for such use.
21	37.
	Plaintiff justifiably relied upon defendant's material and false
22	information in the reasonable conduct of plaintiff's financial affairs.
23	

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 (Reformation)
5 .	39.
6	The allegations of paragraphs 1-38 are incorporated herein by
7	reference.
8	40.
9	The original agreement of the parties was the provision of
10	comprehensive protection, including earth movement.
	41.
11	A misunderstanding occurred because the policy issued contained an
12	"earth movement" exclusion.
13	42.
14	The parties made a mutual mistake.
1 5	43.
16	There was no gross negligence on the part of plaintiff, and the
	insurance policy should be reformed to provide coverage for earth
17	movement.
18	WHEREFORE, plaintiff prays for judgment as follows:
19	(a) On the FIRST CLAIM FOR RELIEF: For damages in excess
20	of \$1,000,000 in an amount to be proved at trial, including prejudgment
21	interest and plaintiff's attorney fees herein;
22	(b) On the SECOND CLAIM FOR RELIEF: For noneconomic
23	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
	herein; and
7	(f) For such other relief as the court deems just and proper.
8	Dated this 10 day of December, 2008.
9	SHENKER & BONAPARTE, LLP
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11	By Re El had
12	Robert E.L. Bonaparte, ØSB No. 88341 Of Attorneys for Plaintiffs Kathleen and
13	David Hendrickson
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