

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

FIRST BAPTIST CHURCH ODESSA

Plaintiff,

v.

BROTHERHOOD MUTUAL
INSURANCE COMPANY

Defendant.

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CASE NO. 7:18-cv-00208-DC

**DEFENDANT BROTHERHOOD MUTUAL INSURANCE COMPANY’S
OPPOSED MOTION FOR LEAVE TO FILE
COUNTERCLAIMS AND THIRD-PARTY COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 15, Defendant Brotherhood Mutual Insurance Company (“Brotherhood Mutual”) files this Opposed Motion for Leave to File Counterclaims and Third-Party Complaint. Brotherhood Mutual respectfully requests that the Court grant leave to amend to assert counterclaims against First Baptist Church Odessa (“FBCO”) and third-party claims against Raymond Choate (“Choate”) and Mark Weeks (“Weeks”). Brotherhood Mutual’s proposed Counterclaims and Third-Party Complaint is attached to this Motion as Exhibit A.

INTRODUCTION

1. FBCO filed its Original Petition in the state court proceeding on October 19, 2018. On November 20, 2018, Brotherhood Mutual filed its Original Answer. This case was then removed to federal court on November 28, 2018. The federal court matter was then administratively closed while the parties participated in an insurance appraisal process. On February 1, 2021 the stay was lifted. On March 8, 2021, Brotherhood Mutual filed its Motion for Leave to File its First Amended Answer to add and clarify its defenses to FBCO’s claims specifically pertaining to issues arising from the recently completed appraisal process. On March 24, 2021, Brotherhood Mutual’s consultants performed an additional inspection of the FBCO

property primarily at issue in the matter. Based on this inspection and other information, Brotherhood Mutual now desires to pursue various counterclaims against FBCO and third-party claims against Choate and Weeks. Brotherhood Mutual does not believe that any substantial reason exists to deny it leave to amend to assert counterclaims against FBCO and third-party claims against Choate and Weeks. Therefore, Brotherhood Mutual's Opposed Motion for Leave to File its Counterclaims and Third-Party Complaint should be granted.

2. Brotherhood Mutual has conferred with FBCO in a good-faith attempt to resolve the matter by agreement. FBCO's counsel, James McClenny, advised that he is opposed to the leave being requested.

ARGUMENT & AUTHORITY

3. Pursuant to Federal Rule of Civil Procedure 15(a) and 15(d) and Local Rule CV-7(b), Brotherhood Mutual respectfully requests that the Court grant it leave to amend to assert counterclaims against FBCO and third-party claims against Choate and Weeks.

4. By way of its Motion for Leave to File Counterclaims and Third-Party Complaint, Brotherhood Mutual seeks to bring counterclaims against FBCO and third-party claims against Choate and Weeks that are based on terms and conditions of FBCO's insurance policy and the conduct of FBCO, Choate, and Weeks during and subsequent to the recently completed appraisal process and FBCO's resulting claim for damages.

5. This matter was administratively closed after the Court granted a Joint Motion to Abate Pending the Outcome of Appraisal on November 7, 2019. The abatement was lifted on February 1, 2021. On February 19, 2021, this Court entered a Scheduling Order setting the deadline for all parties to file motions requesting leave to amend pleadings on April 2, 2021 (Doc. No. 27). This Motion and the proposed counterclaims and third-party complaint attached hereto are being filed in accordance with the Court's Scheduling Order.

6. Furthermore, the filing of Brotherhood Mutual's Counterclaims and Third-Party Complaint will not delay the progress of this case. Discovery in this matter will not end until August 6, 2021, allowing the parties months to conduct any additional discovery necessitated by Brotherhood Mutual's newly asserted counterclaims and third-party claims.

7. The filing of Brotherhood Mutual's Counterclaims and Third-Party Complaint will also advance the interest of justice by allowing Brotherhood Mutual the opportunity to avail itself of critical causes of action known to be available to Brotherhood Mutual. The Federal Rules of Civil Procedure thus support the relief sought by Brotherhood Mutual's Motion for Leave. *See* Fed. R. Civ. P. 15(a)(2) (stating that "[t]he court should freely grant leave when justice so requires").

CONCLUSION

For the foregoing reasons, Brotherhood Mutual respectfully requests that the Court grant Brotherhood Mutual's this Opposed Motion for Leave to File in its entirety, giving Brotherhood Mutual leave to file its Counterclaims and Third-Party Complaint attached hereto as Exhibit A.

Respectfully submitted,

ALLEN, STEIN & DURBIN, P.C.

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AND

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 on April 2, 2021, in accordance with the Federal Rules of Civil Procedure as follows:

<p>James M. McClenny State Bar No. 24091857 james@mma-pllc.com J. Zachary Moseley State Bar No. 24092863 zach@mma-pllc.com Sean Patterson State Bar No. 24073546 sean@mma-pllc.com MCCLENNY MOSELEY & ASSOCIATES, PLLC 516 Heights Blvd. Houston, Texas 77007 Telephone: 713-334-6121 Facsimile: 713-322-5953 <i>Counsel for Plaintiff</i></p> <p>Christopher G. Lyster State Bar No. 12746250 chris@lysterlaw.com LYSTER & ASSOCIATES, PLLC 6300 Ridglea Place, Ste 610 Fort Worth, Texas 76116 Telephone: 817-738-7000 Facsimile: 817-900-3331 <i>Co-Counsel for Plaintiff</i></p>	<p>Russell S. Post State Bar No. 00797258 rpost@beckredde.com David W. Jones State Bar No. 00790980 djones@beckredde.com BECK REDDEN LLP 1221 McKinney, Suite 4500 Houston, Texas 77010-2010 Telephone: 713-951-3700 Facsimile: 713-951-3720 <i>Co-Counsel for Plaintiff</i></p> <p>David McDevitt State Bar No. 24117433 DMcDevitt@loveinribman.com LOVEIN RIBMAN 1225 S. Main Street, Suite 200 Grapevine, Texas 76051 Telephone: 817-442-5106 Facsimile: 817-442-5108 <i>Counsel for Mark Weeks</i></p> <p>James Juranek State Bar No. 24026888 james@jjfirm.com JURANEK LAW FIRM, PLLC 1201 Shepherd Houston, Texas 77007 Telephone: 713-229-0699 Facsimile: 888-626-6596 <i>Counsel for Raymond Choate</i></p>
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/s/ Steven J. Badger
Steven J. Badger

4811-1635-6836v1

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

FIRST BAPTIST CHURCH ODESSA

Plaintiff,

v.

CASE NO. 7:18-cv-00208-DC

BROTHERHOOD MUTUAL
INSURANCE COMPANY

Defendant.

BROTHERHOOD MUTUAL
INSURANCE COMPANY

Counterclaimant and
Third-Party Plaintiff.

v.

FIRST BAPTIST CHURCH ODESSA,
Counterclaim Defendant; RAYMOND
CHOATE, Third-Party Defendant; and MARK
WEEKS, Third-Party Defendant.

**[PROPOSED] DEFENDANT, COUNTERCLAIMANT AND THIRD-PARTY
PLAINTIFF BROTHERHOOD MUTUAL INSURANCE COMPANY’S
COUNTERCLAIMS AND THIRD-PARTY COMPLAINT**

Defendant Brotherhood Mutual Insurance Company (“Brotherhood Mutual”) files its Counterclaims against First Baptist Church Odessa and its Third-Party Complaint against Raymond Choate and Mark Weeks and, in support thereof, would respectfully show as follows:

**I.
THE PARTIES**

1. Counterclaimant and Third-Party Plaintiff Brotherhood Mutual is, and at all times relevant hereto has been, an Indiana corporation with its principal place of business in Indiana.

2. Counterclaim Defendant First Baptist Church Odessa (“FBCO”) is a Texas non-profit corporation that is a resident of Ector County, Texas and is/was the owner of properties located in Ector County, Texas that are the subject of FBCO’s property insurance claim to Brotherhood Mutual at issue in FBCO’s underlying lawsuit.

3. Third-Party Defendant Raymond Choate (“Choate”) is an individual citizen and resident of Texas.

4. Third-Party Defendant Mark Weeks (“Weeks”) is an individual citizen and resident of Texas.

II. JURISDICTION AND VENUE

5. The Court has jurisdiction over this cross-action under 28 U.S.C. § 1332 because there is and was complete diversity between all real parties in interest and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue is proper in this district under 28 U.S.C. §1391 because this district embraces the place in which FBCO is located and it’s underlying removed action is pending, this district is also where the properties involved in the underlying disputes are located, and/or because a substantial part of the events giving rise to counterclaims and third-party claims being asserted occurred in this district and division.

III. FACTUAL ALLEGATIONS

7. The underlying dispute between FBCO and Brotherhood Mutual arises from reported hail damage to FBCO’s buildings resulting from a June 14, 2017 hail event. Brotherhood Mutual adjusted FBCO’s claim and determined the total damage from the hail event was approximately \$1 million.

8. On July 26, 2018, counsel for FBCO sent a pre-suit notice letter under Section 542A of the Texas Insurance Code contesting Brotherhood Mutual’s claim measurement. In that letter, FBCO stated its total “Property Damages” claim against Brotherhood Mutual to be \$10,660,764.16. In support of its letter, FBCO submitted a damages estimate from its estimator, Julie Needham, stating that total property damages resulting from the hail event were \$10,660,764.16. Needham’s estimate stated the total “Interior” damage resulting from the hail

event was \$40,707.88. Needham's estimate did not identify any disruption to interior operations or any damages arising from such a disruption to interior operations.

9. On October 19, 2018, FBCO filed a lawsuit against Brotherhood Mutual in Ector County (Odessa) state court. Based on diversity of citizenship, Brotherhood Mutual timely removed the matter to federal court. For almost a year, FBCO and Brotherhood Mutual litigated FBCO's dispute in this Court. During the litigation, FBCO issued an expert report from Needham supported by her estimate stating total property damages of approximately \$10.6 million, including \$40,707.88. Needham's report did not identify any disruption to interior operations or any damages arising from such a disruption to interior operations.

10. One year after bringing its lawsuit, on October 1, 2019, FBCO invoked the appraisal process set forth in its insurance policy with Brotherhood Mutual. FBCO named Choate as its appraiser. Choate is a licensed public insurance adjuster in the State of Texas, a role in which he advocates for consumers in disputed insurance claims. Brotherhood Mutual named independent adjuster V'Rhett Williams as its appraiser. Choate and Williams initially agreed on Lonnie Kizer as the umpire. On November 6, 2019, FBCO and Brotherhood Mutual submitted a Joint Motion to Abate Pending the Outcome of Appraisal requesting that the federal court lawsuit be abated to permit the appraisal to proceed. The Joint Motion asked that the federal court "continue to entertain Motions regarding any issues that arise associated with the appraisal process during the abatement." On November 7, 2019, the federal court granted the Joint Motion, stating that the federal court lawsuit was administratively closed "subject to the case being reopened should the Court need to rule on motions regarding issues associated with the appraisal process during abatement."

11. Subsequently, on June 1, 2020, Kizer withdrew as umpire. On June 2, 2020, Choate emailed Williams about the selection of a replacement umpire. Thirteen days later, on June 15, 2020, while Williams and Choate continued their discussions to identify a replacement umpire, FBCO, through its newly engaged counsel, Christopher Lyster, submitted an ex-parte request to

the Honorable Michael Moore, District Judge of the 29th Judicial District Court in Palo Pinto County, Texas, asking for that state court (located over 250 miles from Odessa and having no relation to the dispute between the parties) to appoint an umpire for the appraisal process. Lyster suggested three individuals to the state court who could be appointed as the umpire. Of these individuals, the state court selected Weeks. In numerous ex-parte umpire appointment requests filed by Lyster across Texas, Weeks is routinely suggested by Lyster to serve as the umpire and has been appointed as the umpire in at least four matters. Weeks has also worked as an appraiser for a client of Lyster. Like Choate, Weeks is a licensed public insurance adjuster in the State of Texas, a role in which he advocates for consumers in disputed insurance claims.

12. Absent from Lyster's ex-parte umpire appointment letter to the state court was any mention of FBCO's pending federal court lawsuit. Notice of the letter was not provided to counsel for Brotherhood Mutual consistent with the requirements of Rule 5 of the Federal Rules of Civil Procedure, Rule 21 of the Texas Rules of Civil Procedure, and various provisions of the Texas Disciplinary Rules of Professional Conduct.

13. Also absent from Lyster's ex-parte umpire appointment letter to the state court was any mention of the Joint Motion filed by FBCO and Brotherhood Mutual asking the federal court to lift its abatement to address "any issues that arise associated with the appraisal process." Also omitted was any mention of the Order from the federal court granting the Joint Motion, which adopted the parties' agreement that the case would be "reopened should the Court need to rule on motions regarding issues associated with the appraisal process."

14. While Brotherhood Mutual was objecting to FBCO's conduct in obtaining an ex-parte state court umpire appointment in violation of the parties' Joint Motion and resulting court Order, on October 23, 2020, FBCO's appraiser Choate and umpire Weeks unilaterally signed and issued an appraisal award in the amount of \$56,596,606.92.

15. Despite FBCO's own disclosed litigation expert Needham stating that the total interior damages resulting from the hail event were just over \$40,000, the appraisal award issued by Choate and Weeks included over \$14 million for interior damages. The appraisal award also included approximately \$18 million for FBCO to move out of its current building, relocate into a temporary facility for a two-year period of time while interior repairs were completed, and then move back into the building. This is despite the fact that during a service on the Sunday following the hail event, a Pastor from FBCO stated that the church experienced only small hail and made no mention of any resulting interior damage or disruption of operations. FBCO has continued to use the interior of its premises without any interruption resulting from interior damages caused by the hail event.

16. Brotherhood Mutual has repeatedly raised objections to the appraisal award and demanded that it be vacated and/or set-aside in its entirety. FBCO has refused these requests and seeks to enforce the appraisal award as issued by Choate and Weeks.

17. On March 24, 2021, Brotherhood Mutual asked two Texas licensed professional engineers, a building consultant, and two local roofing contractors to conduct an inspection and exterior inspection of the main FBCO facility located at 709 N. Lee Ave., Odessa, Texas. The two licensed engineers and building consultant advise that at the time of their inspection there was no indication of significant roof leaks, nothing showing substantial roof leak related interior damage, no indication of widespread past water damage repairs, and no evidence of any disruption to church operations. They further advised that there was no indication of hail damage to the roofs on the building that would result in widespread leaks or require replacement of the roofs.

IV.
BREACH OF CONTRACT
(Against FBCO)

18. Brotherhood Mutual hereby incorporates by reference all facts and allegations in the preceding paragraphs as though set forth in full herein.

19. Brotherhood Mutual issued a commercial property insurance policy to FBCO that included an appraisal clause that specifically provides that if the parties did not agree on the amount of a loss, either party may request appraisal:

If either makes a written demand for appraisal, each selects a competent, independent appraiser and notifies the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers then select a competent impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the property is located to select an umpire.

20. Because appraisal of an insurance claim is a process that is intended to take place before suit is filed, and it is deemed under the law to be a condition precedent to a lawsuit, FBCO breached the terms of its insurance contract with Brotherhood Mutual by electing on October 19, 2018 to file a lawsuit against Brotherhood Mutual in connection with its insurance claim, litigating its lawsuit for almost a year, and then invoking the appraisal process on October 1, 2019.

21. FBCO also breached its insurance contract by failing to designate a competent and independent appraiser and by asking the state court to appoint a recommended umpire who was not competent and impartial.

22. FBCO also breached its insurance contract by not waiting fifteen days as required by its insurance contract before asking for the appointment of an umpire.

23. As a result of FBCO's conduct, Brotherhood Mutual has been damaged in that it has incurred attorney's fees and other costs as a consequence of these breaches of the insurance contract. FBCO is entitled to recover compensatory damages, including, but not limited to, court costs as well as reasonable attorney's fees pursuant to Texas Civil Practice and Remedies Code §38.001.

V.
FRAUD
(Against FBCO, Choate and Weeks)

24. Brotherhood Mutual hereby incorporates by reference all facts and allegations in the preceding paragraphs as though set forth in full herein.

25. Brotherhood Mutual is informed and believes, and on that basis alleges, that Choate knowingly and intentionally misrepresented the existence, extent and amounts of damage purportedly sustained to the interior and/or exteriors of FBCO's properties resulting from the June 14, 2017 hail event and included in the appraisal award and/or intentionally omitted and failed to disclose the true conditions of the properties and the lack of any significant hail-related damages throughout the interior and/or exteriors of FBCO's properties.

26. Brotherhood Mutual is informed and believes, and on that basis alleges, that Weeks knowingly made the aforementioned intentional misrepresentations, or ratified, adopted and agreed to the intentional misrepresentations initially made by Choate, as to the existence, extent and amounts of damage purportedly sustained to the interior and/or exteriors of FBCO's properties resulting from the June 14, 2017 hail event and included in the appraisal award and/or intentionally omitted and failed to disclose the true conditions of the properties and the lack of any significant hail-related damages throughout the interior and/or exteriors of FBCO's properties.

27. Brotherhood Mutual is informed and believes, and on that basis alleges, that FBCO made the aforementioned intentional misrepresentations, and/or ratified, adopted and agreed to the misrepresentations by Choate and Weeks, as to the existence, extent and amounts of damage purportedly sustained to the interior and/or exteriors of FBCO's properties resulting from the June 14, 2017 hail event and included in the appraisal award and/or intentionally omitted and failed to disclose the true conditions of the properties and the lack of any significant hail-related damages throughout the interior and/or exteriors of FBCO's properties.

28. Brotherhood Mutual is informed and believes, and on that basis alleges, that Choate and Weeks each made the misrepresentations that were incorporated into the appraisal award knowing that FBCO would seek to bind Brotherhood Mutual by court processes to such false assertions as to the existence, extent and/or amount of damage to FBCO's properties as reflected in their appraisal award.

29. Brotherhood Mutual is informed and believes, and on that basis alleges, that FBCO made, ratified, adopted and/or agreed to the misrepresentations as to the existence, extent and/or amount of damage to FBCO's properties as reflected in the appraisal award knowing that it would seek to bind Brotherhood Mutual by court processes to such false assertions and seek to enforce the overstated and misrepresented losses stated in the appraisal award.

30. Brotherhood Mutual is informed and believes, and on that basis alleges, that the loss figures as agreed to by Choate and Weeks in their signed appraisal award are untethered to reality and unsupported by any facts. The award includes categories and amounts of damages that represent outright misrepresentations and falsehoods. Aside from, and in addition to, the significant disparity between the previous assertions made by FBCO and its disclosed litigation expert as to the extent of its damages for more than two years as compared to the excessive amounts listed in the appraisal award, it is apparent that Choate and Weeks lacked personal knowledge or evidence within their possession to justify and support the assertions they made and agreed to concerning the extent of damages sustained and valuations as listed in their signed appraisal award.

31. Based on a subsequent property inspection conducted of FBCO's property, it is apparent that significant damages included in the appraisal award do not exist to FBCO's properties. Brotherhood Mutual submits that no competent, independent appraiser, nor an impartial umpire, could reasonably conclude that the figures and categories identified in the issued appraisal award are reflective of the damages actually sustained to the involved properties from the 2017 hail event or otherwise.

32. Brotherhood Mutual is informed and believes, and on that basis alleges, that, FBCO either must have provided the appraiser and umpire with misrepresentations as to the scope of its damages sustained in direct contradiction to its previous damage assertions and its disclosed damage expert's opinions, or it elected to ratify, approve and adopt the damage misrepresentations of Choate and Weeks despite knowing them to be overstated, false and fictitious.

33. Brotherhood Mutual is informed and believes, and on that basis alleges, that as a consequence of FBCO's, Choate's and Weeks' false representations, or their ratifications, adoptions and agreements to the misrepresentations made by the others, Brotherhood Mutual has been damaged and forced to incur, and will continue to be forced to incur, fees, costs and expenses both to investigate as well as to dispute and seek to set aside the fraudulently-based appraisal award in amounts that will be proven at trial, but which are in excess of \$75,000.

34. FBCO, Choate and Weeks, in making, ratifying and adopting the aforementioned misrepresentations each acted with malice and intent to deceive Brotherhood Mutual, with the knowledge and the expectations that the fictitious representations as to the existence, extent and amount of damages to FBCO's properties would be relied upon and provide false evidence for any proceeding to enforce the fraudulent appraisal award against Brotherhood Mutual. As a result of this extreme conduct, Brotherhood Mutual is entitled to a recovery of exemplary damages.

VI.
CONSPIRACY TO COMMIT FRAUD
(Against FBCO, Choate and Weeks)

35. Brotherhood Mutual hereby incorporates by reference all facts and allegations in the preceding paragraphs as though set forth in full herein.

36. Brotherhood Mutual is informed and believes, and on that basis alleges, that Choate and Weeks conspired and agreed to knowingly and intentionally misrepresent and ratify each other's misrepresentations as to the existence, extent and amounts of damage purportedly sustained to the interior and/or exteriors of FBCO's properties resulting from the June 14, 2017 hail event in the appraisal award that they issued.

37. Brotherhood Mutual is informed and believes, and on that basis alleges, that Choate and Weeks conspired and agreed to make the misrepresentations incorporated into their appraisal award knowing that FBCO would seek to bind Brotherhood Mutual to such false assertions as to the existence, extent and/or amount of damage to FBCO's properties as reflected in the award.

38. Brotherhood Mutual is informed and believes, and on that basis alleges, that the loss figures as agreed to by Choate and Weeks in their signed appraisal award are untethered to reality and unsupported by any facts. The award includes categories and amounts that represent outright misrepresentations and falsehoods. Aside from, and in addition to, the significant disparity between the previous assertions made by FBCO and its disclosed litigation expert as to the extent of its damages for more than two years as compared to the excessive amounts listed in the appraisal award, it is apparent that Choate and Weeks must have lacked personal knowledge or evidence within their possession to justify and support the assertions they made and agreed to concerning the extent of damages sustained and valuations as listed in their signed appraisal award.

39. Based on subsequent property inspections conducted of FBCO's property, it is apparent that various damages included in the appraisal do not exist in FBCO's properties, and that no disinterested appraiser and no impartial umpire would reasonably conclude that the figures and categories identified in the issued appraisal award are reflective of the damages actually sustained by FBCO from the 2017 hail event or otherwise.

40. Brotherhood Mutual is informed and believes, and on that basis alleges, that FBCO knowingly conspired with Choate and Weeks to make, ratify, adopt and agree to the false representations as to the existence, extent and amounts of damage purportedly sustained to the interior and/or exteriors of FBCO's properties from the June 14, 2017 hail event reflected in the issued appraisal award or it became a willing and complicit participant in their conspiracy to commit fraud by knowingly seeking to take advantage of the fictitious damages reflected in the appraisal award and maintaining its silence as to the truth despite reasonably knowing that the issued award contained and reflects false and fictitious representations as to the existence, extent and amounts of damage to its properties.

41. Brotherhood Mutual is informed and believes, and on that basis alleges, that FBCO knowingly conspired with Choate and Weeks and/or became a willing participant in their

conspiracy to commit by maintaining its silence as to the true extent of its losses knowing that it would seek to bind Brotherhood Mutual by court processes to the false assertions as to the existence, extent and/or amount of damage to FBCO's properties and to seek to enforce the overstated and misrepresented losses as reflected in the appraisal award.

42. Brotherhood Mutual is informed and believes, and on that basis alleges, that, in seeking to enforce the misrepresentations reflected in the appraisal award, despite undeniably knowing that it did not sustain interior and other damage amounts consistent with what was included in the appraisal award, FBCO either actively provided the appraiser and umpire with direct misrepresentations as to the scope of its damages sustained in direct contradiction to its previous damage assertions and its disclosed damage expert's opinions, or it elected to ratify, approve and adopt the damage misrepresentations of Choate and Weeks despite knowing them to be overstated, false and fictitious.

43. As a direct consequence of the aforementioned intentional misrepresentations and despicable conduct of Choate, Weeks and FBCO, Brotherhood Mutual has been damaged and is entitled to recovery of all consequential loss proximately caused, including, but not limited to attorney's fees and expenses that have been and will continue to be incurred, as well as an award of exemplary damages.

VII.
TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONSHIP
(Against Choate and Weeks)

44. Brotherhood Mutual hereby incorporates by reference all facts and allegations in the preceding paragraphs as though set forth in full herein.

45. Choate, having been designated as FBCO's appraiser for its disputed insurance claim with Brotherhood Mutual, is and was aware of the existing insurance contract between FBCO and Brotherhood Mutual.

46. Although Brotherhood Mutual has asserted and continues to maintain that the appointment was improper and also unauthorized under FBCO's policy's applicable appraisal clause, since Weeks was notified that he had been appointed as umpire by a state court judge for an appraisal of FBCO's insurance claim with Brotherhood Mutual, Weeks is and was aware of the existing insurance contract between FBCO and Brotherhood Mutual.

47. In making their aforementioned intentionally false representations as to the existence, scope and amounts of damage allegedly sustained to FBCO's properties, and/or in ratifying, adopting and agreeing to the intentional misrepresentations made by the other as to the fictitious existence, scope and amounts of damage allegedly sustained to FBCO's properties, while knowing that their fraudulent appraisal award would be used by FBCO to try to bind Brotherhood Mutual to the unsupported and fictitious amounts of loss reflected in their award, Choate and Weeks wilfully and intentionally interfered with the insurance contract between FBCO and Brotherhood Mutual and the appraisal process provided therein.

48. As a consequence of Choate's and Week's willful interference with FBCO and Brotherhood Mutual's insurance contract and the appraisal process provided under it, Brotherhood Mutual has been damaged and forced to incur, and will continue to be forced to incur, fees, costs and expenses both to investigate and to dispute and set aside the fraudulently-based appraisal award, in amounts that will be proven at trial, but which are in excess of \$75,000.

VIII. PRAYER FOR RELIEF

49. Brotherhood Mutual therefore prays that judgment be entered in its favor and against FBCO in accordance with the relief requested herein for Brotherhood Mutual's actual damages, prejudgment interest, post-judgment interest, court costs, punitive damages, reasonable and necessary attorneys' fees, and for all such other relief, general or specific, to which Brotherhood Mutual is determined to be justly entitled, whether at law or in equity.

50. Brotherhood Mutual further prays that judgment be entered in its favor and against Choate in accordance with the relief requested herein for Brotherhood Mutual's actual damages, prejudgment interest, post-judgment interest, court costs, punitive damages, reasonable and necessary attorneys' fees, and for all such other relief, general or specific, to which Brotherhood Mutual is determined to be justly entitled, whether at law or in equity.

51. Brotherhood Mutual further prays that judgment be entered in its favor and against Weeks in accordance with the relief requested herein for Brotherhood Mutual's actual damages, prejudgment interest, post-judgment interest, court costs, punitive damages, reasonable and necessary attorneys' fees, and for all such other relief, general or specific, to which Brotherhood Mutual is determined to be justly entitled, whether at law or in equity.

Respectfully submitted,

ALLEN, STEIN & DURBIN, P.C.

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***Counsel for Defendant, Counterclaimant
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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 on April 2, 2021, in accordance with the Federal Rules of Civil Procedure as follows:

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