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Attorney for Plaintiff(s)

KONRAD KURACH
344 North Mt. Vernon Circle
Bensalem, PA 19020

vs.

TRUCK INSURANCE EXCHANGE
P.O. Box 268994
Oklahoma City, Ok 73126-8994

COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY

TERM, 2015

NO:

**CLASS ACTION
JURY TRIAL DEMANDED**

CIVIL ACTION COMPLAINT

I. THE PARTIES

1. Plaintiff, Konrad Kurach, is an adult individual residing at the address set forth above.
2. Defendant, Truck Insurance Exchange, (“TRUCK”) is a corporation duly organized and existing which is authorized to conduct business as an insurance company within the Commonwealth of Pennsylvania and maintains a place of business for that purpose at the address set forth above. Truck Insurance Exchange regularly conducts business and issues policies of insurance within the City and County of Philadelphia.
3. At all times material hereto Defendant TRUCK was acting by and through its duly authorized agents, servants, workmen or employees acting within the course and scope of their employment and on the business of said employer.

II. JURISDICTION

4. This Court has jurisdiction over the subject matter and parties to this action pursuant to the Pennsylvania Rules of Civil Procedure, Rule 1701 *et seq.*

III. INDIVIDUAL PLAINTIFF'S CAUSE OF ACTION

A. CONTRACT CLAIM

5. Defendant TRUCK in its regular course of business issued to Plaintiff a policy of insurance ("Policy") covering Plaintiff's home located at 344 N. Mt Vernon Circle, Bensalem, PA 19020. A true and correct copy of the Policy Declarations Page is attached hereto, made part hereof and marked Exhibit "A".

6. The policy of insurance issued by TRUCK to Plaintiff provides Replacement Cost coverage for the structure insured under the policy of insurance.

7. Replacement Cost coverage has been interpreted by Courts of this Commonwealth to require the payment of overhead and profit to compensate the policyholder for the services of a general contractor in employing, scheduling and supervising the work of subcontractors for the repair and replacement of damaged structures insured under replacement cost coverage policies. Gilderman v. State Farm Fire & Cas. Co., 437 Pa. Super. 217, 649 A.2d 941 (1994).

8. The inclusion of the fee for a General Contractor in an estimate for repair involving replacement cost coverage is required where the repair work involves the use of more than one building trade and where it is reasonably anticipated that the services of a General Contractor would be required in order to accomplish the necessary work. Gilderman v. State Farm Fire & Cas. Co., supra.

9. An insurance carrier paying benefits under a Replacement Cost policy may not arbitrarily omit or deduct from the Replacement Cost estimate the fees of a general contractor to employ subcontractors, schedule and oversee their work where it is reasonably anticipated that such services will be required. Gilderman v. State Farm Fire & Cas. Co., supra.

10. “Actual Cash Value” is defined in Pennsylvania as “Replacement Cost less Depreciation.” Gilderman v. State Farm Fire & Cas. Co., supra.

11. Because Actual Cash Value is “Replacement Cost less Depreciation”, when the cost of a General Contractor is included as a percentage of the Replacement Cost, the Actual Cash Value must necessarily include that cost as a percentage of the Actual Cash Value.

12. TRUCK, in preparing estimates for repairs under its replacement cost policies, regularly allows fees for the services of a general contractor of 20%.

13. On or about October 14, 2014 , while the said Policy was in full force and effect, Plaintiff suffered sudden and accidental direct physical loss and damage to the insured premises believed to be the result of a peril or perils insured against under the Policy issued by TRUCK INSURANCE EXCHANGE, to wit, water which escapes from within a plumbing or heating system resulting in damage to the insured premises in those areas and set forth in the preliminary estimate of loss, a true and correct copy of which is attached hereto, made part hereof and marked Exhibit “B”. In addition, Plaintiff has suffered a loss of use of the premises for an amount in excess of \$50,000.00.

14. The estimate of loss prepared by TRUCK for Plaintiff’s claim included the customary allowance of a fee for a General Contractor (referred to in the industry as “overhead and profit”) in the amount of 20%. (Exhibit “C”)

15. TRUCK has refused to pay Plaintiff for that portion of the Actual Cash Value of his loss representing the General Contractor's cost ("Overhead and Profit") relying on a term of its policy which states:

“ However, actual cash value settlements will not include estimated general contractor fees or charges for general contractor's services unless and until you actually incur and pay such fees and charges, **unless the law of your state requires that such fees and charges be paid with the actual cash value settlement.**” (emphasis supplied). (Exhibit “D”)

16. As set forth above, the law of Pennsylvania requires the payment of General Contractor's fees as a part of the Actual Cash Value settlement. Gilderman v. State Farm Fire & Cas. Co., supra.

17. There is no rational basis for TRUCK to refuse to pay the general contractor's Overhead and Profit as a part of the Actual Cash Value settlement since same is required by State Law.

18.. TRUCK has refused to change its arbitrary position despite written request that it do so. (Exhibit “E”)

19. TRUCK'S arbitrary position that it does not owe a general contractor's Overhead and Profit as part of the Actual Cash Value settlement is a breach of the contract between Plaintiff and TRUCK which requires TRUCK to pay the customary general contractor's Overhead and Profit as part of the Actual Cash Value payment.

20. As a direct and factual result of TRUCK's breach of contract, Plaintiff has been denied the benefits of his bargain with TRUCK and has suffered a loss of 20% of his covered claim.

21. Notice of this covered loss was given to Defendant in a prompt and timely manner and Plaintiff, at all relevant times, fully complied with all of the terms and conditions required by the Policy.

22. Defendant, despite demand for benefits under the Policy, has refused, without legal justification or cause, and continues to refuse, to pay to Plaintiff monies owed for the damages suffered as a result of the Loss.

23. Solely as a result of Defendant's failure and refusal to pay benefits to Plaintiff as required under the Policy, Plaintiff has suffered loss and damage in an amount in excess of \$50,000.00.

COUNT I
In Assumpsit - Breach of Contract

24. Plaintiff incorporates by reference the facts and allegations contained in the foregoing paragraphs as though fully set forth hereinafter at length.

25. Defendant is obligated by the terms of the contract to indemnify Plaintiff's loss.

26. Despite submission of reasonable proof and demand for full and complete payment with respect to Plaintiff's loss, Defendant has not paid to Plaintiff all of the policy benefits to which he is entitled under the Policy.

27. Defendant's denial of coverage was made without a reasonable basis in fact.

28. Defendant's refusal to indemnify Plaintiff's loss constitutes a breach of the insurance contract.

WHEREFORE, Plaintiff demands judgment against TRUCK in an amount in excess of \$50,000.00, together with interest and court costs.

COUNT II
CLAIM AS A RESULT OF TRUCK'S VIOLATION OF
42 Pa.C.S.A. SECTION 8371

29. Plaintiff incorporates by reference herein the averments set forth in the foregoing paragraphs of Plaintiff's Complaint, as fully as though same were here set forth at length.

30. TRUCK has engaged in bad faith conduct toward Plaintiff with respect to its adjustment of Plaintiff's covered loss in violation of 42 Pa.C.S.A. Section 8371 *et seq.*

31. In furtherance of its bad faith and wrongful denial and refusal to pay benefits for Plaintiff's covered loss, TRUCK acting by and through its duly authorized agent, servant, workman or employees, including but not limited to Sharnee Snyder has engaged in the following conduct:

a. by refusing to pay General Contractor's fees as a part of the Actual Cash Value Settlement of Plaintiff's claim in clear violation of the terms of the TRUCK Insurance Policy;

b. by arbitrarily refusing the payment of a contractor's Overhead and Profit as part of the Actual Cash Value Settlement for Plaintiff's covered loss with no legal or factual basis;

c. by misrepresenting to Plaintiff that he is not entitled to a payment of a contractor's Overhead and Profit as part of the Actual Cash Value settlement for his covered loss when Defendant knew, or in the exercise of reasonable care should have known, that such misrepresentation was wholly without legal or factual basis;

d. in providing benefits to Plaintiff for repair of his damaged premises

under its replacement cost policy which TRUCK knew was inadequate and insufficient to perform the work required;

e. in unnecessarily and unreasonably compelling Plaintiff to institute this lawsuit to obtain policy benefits for a covered loss which TRUCK should have paid promptly and without the necessity of litigation;

f. in unreasonably withholding a benefit due and owing under the policy issued by TRUCK;

g. in acting unreasonably and unfairly in response to Plaintiff's claim.

32. For the reasons set forth above, TRUCK has acted in bad faith and in violation of 42 Pa.C.S.A. Section 8371 rendering TRUCK liable for statutory damages including interest from the date the claim was made in an amount equal to the prime rate of interest plus 3%, court costs, attorney's fees, punitive damages and such other compensatory and/or consequential damages as are permitted by law.

33. The practice of TRUCK in refusing the payment of a general contractor's Overhead and Profit as part of the Actual Cash Value settlement is a settled practice which is in direct contravention of existing case law and industry standards and has been perpetrated by TRUCK maliciously and in conscious disregard for the rights of its policyholders solely for the financial advantage of TRUCK thereby rendering TRUCK liable for punitive damages.

WHEREFORE, Plaintiff demands judgment against TRUCK for compensatory damages including costs, counsel fees, interest, punitive damages and such other relief as the Court may deem equitable and just.

IV. CLASS ACTION ALLEGATIONS

34. This action is being brought by Plaintiff as a Class Action pursuant to Pennsylvania Rules of Civil Procedure, Rule 1701 *et seq*, on Plaintiff's own behalf and on behalf of a class of persons to which he belongs as defined below.

35. Members of Plaintiff's Class are defined as follows:

all property owners located within the Commonwealth of Pennsylvania who have been issued policies of insurance by TRUCK providing replacement cost coverage for damage to real property during the six years prior to the filing of this Complaint, whose insured properties' sustained a covered loss, where TRUCK refused payment of contractor's Overhead and Profit as part of the Actual Cash Value Settlement.

36. Upon information and belief, the Class contains an excess of 100,000 located throughout the Commonwealth of Pennsylvania.

37. The claim of Plaintiff as a representative party is typical of the claims of the Class, including, but not limited to the following:

a. A Class of persons insured by TRUCK with property insurance policies providing Replacement Cost Coverage who have suffered covered property damage or loss to their real property where TRUCK has refused to pay a General Contractor's fee ("Overhead and Profit") as part of the Actual Cash Value settlement.

b. TRUCK's failure to comply with the laws of the Commonwealth of Pennsylvania concerning payment of benefits, in particular a general contractor's Overhead and Profit;

c. The misrepresentations, practices and policies of TRUCK are typical of the Class;

d. Plaintiff and members of the proposed Class have all been harmed by similar or identical conduct by TRUCK;

e. The injuries suffered by Plaintiff is typical of other members of the Class.

38. There are questions of law or fact common to the Class, including, but not limited to the following:

a. Plaintiff and all members of his Class have been issued Replacement Cost Coverage property insurance policies by TRUCK;

b. Plaintiff and all members of his Class have suffered covered property damage loss to insured property;

c. Plaintiff and all members of his Class have been refused payment for a general contractors' Overhead and Profit as part of the Actual Cash Value settlement;

d. TRUCK has breached its policy of insurance with Plaintiff and members of his Class by refusing the payment of a general contractor's Overhead and Profit as part of the Actual Cash Value settlement;

e. TRUCK's refusal to pay a general contractor's Overhead and Profit as part of the Actual Cash Value Settlement is contrary to the law of the Commonwealth of Pennsylvania;

f. TRUCK has acted in bad faith by refusing the payment of a general contractor's Overhead and Profit as part of the Actual Cash Value settlement.

g. TRUCK's limitation of the payment of a general contractor's Overhead and Profit is deceptive thereby violating Pennsylvania's Consumer Protection Law.

39. The interest of the Class will be fairly and adequately asserted and protected by the representative party and his counsel. First, Plaintiff has no conflict of interest in the maintenance of the Class Action. Second, Plaintiff's counsel has more than 35 years of experience in handling and litigating complex homeowners' insurance coverage disputes and bad faith claims. Third, Plaintiff's counsel has considerable Class Action experience. Finally, sufficient financial resources are available to assure that the interest of the Class will be protected.

40. Adjudicating this controversy as a Class Action would be the fairest and most efficient method of resolution. Due to the large number of policyholders who have suffered identical losses, joinder would be impractical. Further, the prosecution of separate claims would most likely create varying or inconsistent adjudications and incompatible standards of conduct. Lastly, common questions of law and fact predominate over any issues involving only individual Class members.

V. ADDITIONAL CLASS ALLEGATIONS

41. Plaintiff and members of his Class have all purchased policies of property insurance from TRUCK for a good and valuable consideration which provide Replacement Cost Coverage benefits.

42. Plaintiff and members of his Class have all suffered property damage or losses covered under the policies of insurance issued by TRUCK.

43. Plaintiff and members of his Class have all received payment from TRUCK for repair of their covered losses in which TRUCK has refused the payment of a general

contractor's Overhead and Profit as part of the Actual Cash Value settlement.

44. Contrary to the law of Pennsylvania as set forth in Gilderman v. State Farm Fire & Cas. Co., supra., TRUCK has improperly withheld payment of a general contractor's Overhead and Profit by arbitrarily and without legal or factual basis refusing the payment of Overhead and Profit as part of the Actual Cash Value settlement contrary to industry practice which effectively prevents policyholders from employing a general contractor to employ subcontractors to schedule and supervise their work.

45. TRUCK has engaged in a practice of routinely and systematically refusing the payment of a general contractor's Overhead and Profit as part of the Actual Cash Value settlement without legal or factual justification thereby denying Plaintiff and members of his Class, benefits which are due and owing under the policy of insurance issued by TRUCK.

46. TRUCK is barred or estopped from asserting a suit limitation clause in its policy by reason of its conduct and actions as set forth above.

47. TRUCK has benefitted from its conduct to the detriment of Plaintiff and the members of his Class and TRUCK's conduct has prevented members of the Class from asserting their rights. TRUCK has failed to apprise Plaintiff or members of his Class in a timely manner of their right to pursue litigation. Further, TRUCK's conduct in misleading members of the Class into believing that refusal to make payment for a General Contractor's Overhead and Profit as a part of the Actual Cash Value settlement, was reasonable and justified when TRUCK knew it was not. TRUCK, thereby breached its fiduciary duty to Plaintiff and members of his Class and lulled Class members into not filing suit within otherwise applicable periods of limitation. Finally, TRUCK's violation of Pennsylvania's

clear legal standard regarding payment of replacement cost benefits, to the detriment of Plaintiff, constitutes a waiver of TRUCK's right to assert a suit limitation defense.

VI. CLASS CAUSES OF ACTION

COUNT I - BREACH OF CONTRACT

48. Plaintiff incorporates by reference herein the facts and allegations contained in the foregoing paragraphs as fully as though same were here set forth at length.

49. TRUCK has breached its policies of insurance with Plaintiff and members of his Class by arbitrarily refusing payment of a general contractor's Overhead and Profit as part of the Actual Cash Value settlement with no legal or factual basis.

50. By reason of TRUCK's breach of contract, Plaintiff and members of his Class have not received proper indemnification under their policies of insurance with TRUCK. Specifically, Plaintiff has been deprived of an amount of his claim equaled to 20% of the Actual Cash value of damage to his building. The amount due to each and every member of Plaintiff's Class will be determined.

COUNT II - BAD FAITH

51. Plaintiff incorporates by reference herein the facts and allegations set forth in the foregoing paragraphs as fully as though same were here set forth at length.

52. TRUCK has engaged in bad faith conduct toward Plaintiff and members of his Class and have treated Plaintiff and members of his Class unreasonably with respect to the payment of benefits for their covered losses in violation of 42 Pa.C.S.A. Section 8371.

53. TRUCK's action in refusing payment of benefits for a general contractor's

Overhead and Profit as part of the Actual Cash Value settlement is frivolous and unfounded. Further, TRUCK's improper limitation of this benefit was done without any reasonable basis in law or fact and in reckless disregard of TRUCK's fiduciary responsibility to treat Plaintiff and members of his Class in a fair and impartial manner. Finally, TRUCK's conduct was motivated by financial self interest and was accomplished with reckless indifference to the rights of Plaintiff and members of his Class.

54. As a result of TRUCK's bad faith conduct, Plaintiff has been forced to commence the present litigation and have incurred and will incur costs, expenses and counsel fees.

VII. REQUESTED RELIEF

55. The following relief is requested by Plaintiff and members of Plaintiff's Class:
- a. certification of this case as a Class action;
 - b. compensatory damages to Plaintiff in the amount of money withheld for payment of a general contractor's Overhead and Profit (20%) and such compensatory damages to each member of the Class in an amount to be determined, including interest on said amounts for Plaintiff and members of his Class;
 - c. damages pursuant to Pennsylvania's Bad Faith Statute 42 Pa.C.S.A. Section 8371;
 - d. an order of the Court declaring the rights of the respective parties;
 - e. litigation costs and counsel fees;
 - f. administrative costs and expenses incurred in the Class certification

process; and

- g. such additional relief as the Court may deem necessary and proper.

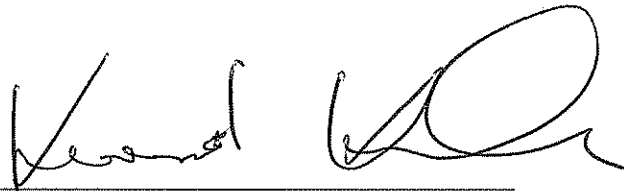
LAW OFFICES OF JONATHAN WHEELER, P.C.

BY: /s/ Jonathan Wheeler
JONATHAN WHEELER, ESQUIRE
Attorney for Plaintiff(s)

CIVIL ACTION COMPLAINT

VERIFICATION

The undersigned hereby states that he/she is the plaintiff in this action and that the statements of fact made in the foregoing document are true and correct to the best of his/her information and belief. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904 relating to unsworn falsification to authorities.



KONRAD KURACH

DATE: 06/23/2015