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05/19/2023

**Jury Trial Scheduled**

Scheduled For: 11/13/2023; 9:00 AM; ELIZABETH BYRNE HOGAN; City of St. Louis

05/16/2023

**Agent Served**

Document ID - 23-SMCC-2605; Served To - STATE FARM FIRE & CASUALTY COMPANY; Server - ; Served Date - 12-MAY-23;  
Served Time - 00:00:00; Service Type - Special Process Server; Reason Description - Served

**Notice of Service**

Affidavit of Service.

**Filed By:** MATTHEW SCOTT DARROUGH

**On Behalf Of:** THE PROGRESS PROJECT, LLC

05/11/2023

**Summons Issued-Circuit**

Document ID: 23-SMCC-2605, for STATE FARM FIRE & CASUALTY COMPANY.

**Request Filed**

Request for Appointment of Process Server.

**Filed By:** MATTHEW SCOTT DARROUGH

**On Behalf Of:** THE PROGRESS PROJECT, LLC

05/09/2023

**Confid Filing Info Sheet Filed**

**Filed By:** MATTHEW SCOTT DARROUGH

**Note to Clerk eFiling**

**Filed By:** MATTHEW SCOTT DARROUGH

**Pet Filed in Circuit Ct**

Petition; Exhibit 1; Exhibit 2; Case Filing Information Sheet.

**Filed By:** MATTHEW SCOTT DARROUGH

**On Behalf Of:** THE PROGRESS PROJECT, LLC

**Judge Assigned**



IN THE 22ND JUDICIAL CIRCUIT, CITY OF ST LOUIS, MISSOURI

Judge or Division: ELIZABETH BYRNE HOGAN	Case Number: 2322-CC00904
Plaintiff/Petitioner: THE PROGRESS PROJECT, LLC	Plaintiff's/Petitioner's Attorney/Address MATTHEW SCOTT DARROUGH ONE US BANK PLAZA ST LOUIS, MO 63101
Defendant/Respondent: STATE FARM FIRE & CASUALTY COMPANY	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101
Nature of Suit: CC Breach of Contract	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: STATE FARM FIRE & CASUALTY COMPANY

Alias:

CSC LAWYERS INCORPORATING  
SERVICE COMPANY  
221 BOLIVAR STREET  
JEFFERSON CITY, MO 65101

SPECIAL PROCESS SERVER

COURT SEAL OF



CITY OF ST LOUIS

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

May 11, 2023

Date

Further Information:

Circuit Clerk

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above Summons by: (check one)

☐ delivering a copy of the summons and petition to the defendant/respondent.

☐ leaving a copy of the summons and petition at the dwelling house or usual place of abode of the defendant/respondent with

☒ (for service on a corporation) delivering a copy of the summons and petition to:

Lauren Shipley (name) Authorized Agent (title).

☐ other:

Served at 221 Bolivar St. #106, Jefferson City (address)

in Cole (County/City of St. Louis), MO, on May 12, 2023 (date) at 9:45 AM (time).

Stephen R. Waters

Printed Name of Sheriff or Server

Stephen R. Waters

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on May 15, 2023 (date).

(Seal)

My commission expires: 11-1-2024

Date

Lisa G. Gerbes

Notary Public

Sheriff's Fees, if applicable

Summons \$

Non Est \$

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ ( miles @ \$.

Total \$

LISA G GERBES

Notary Public - Notary Seal

STATE OF MISSOURI

Cole County

My Commission Expires: Nov. 1, 2024

Commission #20143368

A copy of the summons and petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.





IN THE 22ND JUDICIAL CIRCUIT, CITY OF ST LOUIS, MISSOURI

Judge or Division: ELIZABETH BYRNE HOGAN	Case Number: 2322-CC00904	
Plaintiff/Petitioner: THE PROGRESS PROJECT, LLC	Plaintiff's/Petitioner's Attorney/Address MATTHEW SCOTT DARROUGH ONE US BANK PLAZA ST LOUIS, MO 63101	
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Nature of Suit: CC Breach of Contract		(Date File Stamp)

Summons in Civil Case

The State of Missouri to: **STATE FARM FIRE & CASUALTY COMPANY**  
Alias:

CSC LAWYERS INCORPORATING  
SERVICE COMPANY  
221 BOLIVAR STREET  
JEFFERSON CITY, MO 65101

**SPECIAL PROCESS SERVER**

**COURT SEAL OF**  
  
**CITY OF ST LOUIS**

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**May 11, 2023**  
Date

*Thomas Haysinger*  
Circuit Clerk

Further Information:

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- ☐ delivering a copy of the summons and petition to the defendant/respondent.  
☐ leaving a copy of the summons and petition at the dwelling house or usual place of abode of the defendant/respondent with \_\_\_\_\_, a person at least 18 years of age residing therein.

☐ (for service on a corporation) delivering a copy of the summons and petition to: \_\_\_\_\_ (name) \_\_\_\_\_ (title).  
☐ other: \_\_\_\_\_

Served at \_\_\_\_\_ (address)  
in \_\_\_\_\_ (County/City of St. Louis), MO, on \_\_\_\_\_ (date) at \_\_\_\_\_ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

**Must be sworn before a notary public if not served by an authorized officer:**

Subscribed and sworn to before me on \_\_\_\_\_ (date).

(Seal)

My commission expires: \_\_\_\_\_ Date \_\_\_\_\_ Notary Public

**Sheriff's Fees, if applicable**

Summons \$ \_\_\_\_\_  
Non Est \$ \_\_\_\_\_  
Sheriff's Deputy Salary  
Supplemental Surcharge \$ 10.00  
Mileage \$ \_\_\_\_\_ (\_\_\_\_\_ miles @ \$.\_\_\_\_\_ per mile)  
**Total** \$ \_\_\_\_\_

A copy of the summons and petition must be served on **each** defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

In the  
**CIRCUIT COURT**  
City of St. Louis, Missouri



For File Stamp Only

The Progress Project, LLC

Plaintiff/Petitioner

May 11, 2023

Date

vs.

2322-CC00904

Case number

State Farm Fire & Casualty Company

Elizabeth Byrne Hogan

Defendant/Respondent

Division

**REQUEST FOR APPOINTMENT OF PROCESS SERVER**

Comes now Plaintiff The Progress Project, LLC, pursuant  
Requesting Party

to Local Rule 14, requests the appointment by the Circuit Clerk of

Stephen R. Waters

1909 Tanner Bridge Rd, Jefferson City, MO 65101

(573) 645-0627

Name of Process Server

Address

Telephone

Name of Process Server

Address

Telephone

Name of Process Server

Address

Telephone

to serve the summons and petition in this cause on the below named parties.

SERVE:

CSC - Lawyers Incorporating Service Company

Name  
211 Bolivar Street

Address  
Jefferson City, MO 65101

City/State/Zip

SERVE:

Name

Address

City/State/Zip

SERVE:

Name

Address

City/State/Zip

SERVE:

Name

Address

City/State/Zip

Appointed as requested:

**TOM KLOEPPINGER**, Circuit Clerk

By *[Signature]*  
Deputy Clerk

Date

Matthew S. Darrough, Thompson Coburn LLP

Attorney/Plaintiff/Petitioner  
46307

Bar No.  
One US Bank Plaza, St. Louis, MO 63101

Address  
(314) 552-6552

Phone No.

In the  
**CIRCUIT COURT**  
City of St. Louis, Missouri



For File Stamp Only

The Progress Project, LLC

Plaintiff/Petitioner

May 11, 2023

Date

vs.

2322-CC00904

Case number

State Farm Fire & Casualty Company

Defendant/Respondent

Elizabeth Byrne Hogan

Division

**REQUEST FOR APPOINTMENT OF PROCESS SERVER**

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CSC - Lawyers Incorporating Service Company

Name

211 Bolivar Street

Address

Jefferson City, MO 65101

City/State/Zip

SERVE:

Name

Address

City/State/Zip

Appointed as requested:

**TOM KLOEPPINGER**, Circuit Clerk

By

Deputy Clerk

Date

SERVE:

Name

Address

City/State/Zip

SERVE:

Name

Address

City/State/Zip

Matthew S. Darrough, Thompson Coburn LLP

Attorney/Plaintiff/Petitioner  
46307

Bar No.

One US Bank Plaza, St. Louis, MO 63101

Address

(314) 552-6552

Phone No.



#### **RULE 14 SPECIAL PROCESS SERVERS**

1. Any person appointed by the Court or the Circuit Clerk to serve process must have a license issued pursuant to this rule to serve process.
2. Licenses to serve process shall be issued by the Sheriff of the City of St. Louis if the applicant has met the following qualifications:
  - a. Is twenty-one years of age or older;
  - b. Has a high school diploma or an equivalent level of education;
  - c. Has insurance coverage for any errors or omissions occurring in the service of process;
  - d. Has not been convicted, pleaded guilty to or been found guilty of any felony, or of any misdemeanor involving moral turpitude; and,
  - e. Has passed a training course for the service of process which shall be administered by the Sheriff of the City of St. Louis.
3. Each applicant for a process server license under the provisions of this rule shall provide an affidavit setting forth such person's legal name, current address, any other occupations and current telephone numbers. Licensed process servers shall immediately notify the Sheriff of the City of St. Louis of any change in the above information, and the failure to do so shall constitute good cause for the revocation of such person's license.
4. The Sheriff of the City of St. Louis shall maintain a list of persons licensed to serve process pursuant to this rule, and shall make such list available to litigants upon request.
5. A photo identification card designed by the Sheriff of the City of St. Louis shall be issued in addition to the license. No other identification will be allowed. All licenses must be signed and approved by the Sheriff of the City of St. Louis and the Presiding Judge or his designee.
6. A license fee recommended by the Sheriff and approved by the Court En Banc shall be charged to cover the costs of compiling and maintaining the list of process servers and for the training of such process servers. The license fees shall be made payable to the Sheriff of the City of St. Louis.

7. A license for service of process issued under this rule may be revoked by the Sheriff with the approval of the Presiding Judge or his designee, for any of the following reasons:

- a. Misrepresentation of duty or authority;
- b. Conviction, guilty plea or finding of guilty of any state or federal felony, or a misdemeanor involving moral turpitude;
- c. Improper use of the license;
- d. Making a false return; or
- e. Any other good cause.

Provided, no service of process made by an appointed process server with a revoked license shall be void if the Court or Circuit Clerk made the appointment in good faith without knowledge of the license revocation.

8. Any person authorized to serve process may carry a concealed firearm as allowed by Section 506.145, RSMo, only while actually engaged in the service of process and only if the person has passed a firearms qualification test approved by a law enforcement agency; provided, however, that any licensed special process server may file a written waiver of the right to carry a concealed firearm and thereby avoid the requirements of firearm training and testing. Any violation of this section shall be considered beyond the scope of the privilege to carry a concealed weapon that is granted by the appointment, and shall constitute good cause for the revocation of the license.
9. Applications for the appointment of a special process server shall be made on forms available in the offices of the Sheriff and Circuit Clerk. Orders Appointing special process servers may list more than one licensed server as alternatives.
10. The licenses granted pursuant to this rule shall be good for two years. Each person granted a license shall be required to reapply at the expiration of the license and shall be required to provide all the information required in the initial application, including a current police record check.

(Approved 9/28/92; amended 11/23/92; 5/31/95; 12/17/07)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI

THE PROGRESS PROJECT, LLC,	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No.
	)	
STATE FARM FIRE AND CASUALTY	)	
COMPANY	)	
	)	JURY TRIAL DEMANDED
Registered Agent for Summons:	)	
CSC-Lawyers Incorporating Service	)	
Company	)	
221 Bolivar Street	)	
Jefferson City, Missouri 65101	)	
	)	
Defendant.	)	

**PETITION**

COMES NOW Plaintiff The Progress Project, LLC and for its Petition against Defendant State Farm Fire and Casualty Company states:

**PARTIES**

1. Plaintiff The Project Progress, LLC ("Plaintiff") is a limited liability company.
2. On information and belief, State Farm Fire and Casualty Company ("State Farm") is, and at all relevant times has been, an Illinois insurance company with its principal place of business in Bloomington, Illinois.
3. On information and belief, State Farm was and is qualified to do business in the state of Missouri as an insurer and in fact, has done business and insured risks within the state of Missouri.
4. The claims asserted herein arise out of and relate to damage to the roof and the interior of the building located at 8960 Riverview Boulevard, St. Louis, Missouri 63147 (the "Subject Property") during a 1-in-1000 year storm event and more specifically, State Farm's improper and



bad faith denials of Plaintiff's claim for property coverage under a State Farm insurance policy issued to Plaintiff for the Subject Property.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over State Farm pursuant to RSMo. § 506.500. On information and belief, State Farm is now and has been at all relevant times transacting business in Missouri on a regular basis, entering contracts to insure risks in Missouri, and/or evaluating Missouri claims under its policies of insurance, including the insurance policy purchased by Plaintiff and at issue herein. In addition, State Farm committed tortious acts in Missouri.

6. Venue is proper under RSMo. § 508.010 in the City of St. Louis in that State Farm is a nonresident of Missouri and because State Farm committed tortious acts in Missouri relating to coverage for the Subject Property located in the City of St. Louis.

### **GENERAL ALLEGATIONS**

#### **A. The Policy**

7. State Farm issued a certain insurance policy to Plaintiff numbered 95-CZ-T899-0 (the "Policy") for the period of August 14, 2021 to August 14, 2022.

8. A true and accurate copy of the Policy is attached as **Exhibit 1** and incorporated by reference as if set forth fully herein.

9. The Policy identifies the Subject Property as the Building insured under the Property Coverage A with a limit of \$1,827,800 subject to a deductible of \$5,000. Ex. 1, Declarations.

10. The insuring agreement of Section I – Property of Form CMP-4100 states that when a limit of insurance is shown in the Declarations for that type of property as described under Coverage A – Buildings, Coverage B – Business Personal Property, or both, State Farm will pay for physical loss to that Covered Property at the premises described in the Declarations caused by

any loss as described under Section 1 – COVERED CAUSES OF LOSS. Exhibit 1, CMP-1400, Sec. I.

11. Section I – Property, Covered Causes of Loss, of Form CMP-4100 states that State Farm insured for “accidental direct physical loss to Covered Property unless the loss is: 1. Excluded in Section I – EXCLUSIONS; or 2. Limited in the Property Subject to Limitations provision.” Ex. 1, CMP-1400, Sec. I, Covered Causes of Loss. Such language is frequently referred to in the insurance industry as “all risk” coverage as the covered causes of loss are not limited to specific insured perils, but instead the form covers all causes of loss not specifically excluded or limited.

#### **B. The Storm Event and Resulting Loss**

12. On or about July 26, 2022, the St. Louis Metropolitan Area experienced a 1-in-1000 year storm event (the “Storm Event”).

13. During Storm Event, an extraordinary amount of rain, up to 12 inches, fell onto the roof at the Subject Property in a short amount of time.

14. The exceptional downpour during the Storm Event caused the accumulation of rain water on the roof at the Subject Property.

15. The weight of accumulated water impacted the structural integrity of the roof at the Subject Property, causing a failure of support that resulted in depression areas of the roof.

16. The depression areas held accumulated rain water that could not drain from the roof, damaging the roofing materials and increasing the depressions, which then held more water that could not drain.

17. The water on the roof of the Subject Property damaged the roofing materials (which had seven years remaining on a warranty and anticipated life beyond the warranty) as well as the roof support, causing substantial damage to the Subject Property.

18. As a result of the Storm Event, the roof and certain support for the roof at the Subject Property requires replacement due to the extent of damage and the impact from the damage that impairs the roof's ability to effectively shed water.

19. The estimated cost of such roof work is in excess of \$1,000,000.

20. During or as a result of the Storm Event, water also entered the structure causing certain interior damage to the structure at the Subject Property, including damage to ceiling tiles, lighting fixtures, camera system, and other interior components.

21. The estimated cost of repair and replacement for the interior damage is in excess of \$70,000.

22. The estimated damages for both the roof and interior damage combined are in excess of \$1,100,000.

### **C. The Claim and State Farm's Claims Handling**

23. Following the Storm Event, Plaintiff contacted its State Farm agent concerning damage at the structure. The State Farm agent told Plaintiff to have its roofing contractor survey the damage.

24. Plaintiff's contractor identified widespread damage to the roof during a July 28, 2022 survey and Plaintiff submitted a claim to State Farm that day for recovery under the Policy.

25. State Farm ultimately assigned the claim made by Plaintiff under the Policy the number 25-37G5-88Z (the "Claim") and on information and belief, initially assigned David Carvajal ("Carvajal") as the State Farm adjuster assigned to the Claim.

26. Plaintiff did not hear from Carvajal for several days after Plaintiff submitted the Claim. When Carvajal contacted Plaintiff, Carvajal indicated that he wanted to inspect the Subject Property, but would be unavailable to do so until August 10, 2022.



27. On August 10, 2022, Carvajal inspected the roof at the Subject Property with Plaintiff's Brent Cowin and Plaintiff's contractor, Todd Morris.

28. During the inspection, State Farm's Carvajal admitted that the roof suffered significant damage and that his inspection of the roof system revealed no indication of any clogs that would prevent roof drainage.

29. On August 13, 2022, State Farm directed a letter to Plaintiff advising of State Farm's need for additional time to complete its investigation without explanation despite the fact that Plaintiff suffered a loss clearly covered by the Policy. The letter stated that State Farm would complete its investigation to determine coverage and provide a State Farm Estimate, if applicable, by August 16, 2022.

30. State Farm did not provide its position or a State Farm Estimate for the damage by August 16, 2022.

31. On August 22, 2022, State Farm's Carvajal contacted Plaintiff's Cowin by telephone, stating that State Farm's home office directed Carvajal to deny the Claim on the basis of clogs in the roof system.

32. Plaintiff's Cowin pressed State Farm's Carvajal during the call as State Farm had previously admitted that it observed no evidence of clogs. Carvajal again and repeatedly admitted during the call that there was no evidence of clogs in the roof system, but explained that State Farm's home office intended to take the position that clogs caused the water accumulation and loss unless Plaintiff could disprove the existence of clogs.

33. Carvajal suggested during the call that Plaintiff obtain a professional report to explain the damage did not result from clogs in the roof system, which would allow Carvajal to reopen the denied Claim.

34. In taking this position and making such representation, State Farm knew its position and representation were false in that State Farm, as insurer, relying on limitations or exclusionary provisions in its form, bears the burden of demonstrating their application based on its investigation, which reflected no evidence of clogs.

35. State Farm's Carvajal then directed two letters to Plaintiff on August 22, 2022, with the second purporting to update the first.

36. Both letters stated, "based upon the site inspection, and investigation, it was determined that the damage to *interior* of the building resulted from a large amount of water on the roof that was not able to be handled by the drain system due to *clogging* and back-up." (emphasis added).

37. The above statement does not address the substantial roof damage and contains knowing and intentional misrepresentations to Plaintiff in stating that State Farm determined the system could not handle the water "due to clogging and back-up".

38. Both letters identified section I.e. of "Property Subject To Limitations" as State Farm's basis for denial, but the provision identified had no possible application to the roof damage as it potentially applied only to "interior damage".

39. Both letters also identified exclusions, without explanation, relating to fungi, wear and tear, settling, cracking, shrinking, expansion, continuous or repeated seepage for over a period of 14 days, and defective work, even though such exclusions were facially inapplicable and without support based on State Farm's investigation.

40. Plaintiff engaged professionals based on State Farm's incorrect position and false statement that it was incumbent on Plaintiff to disprove State Farm's unsupported clogging position.

41. Such professionals found no evidence of clogs in the roof system and eliminated clogs in the roof system as a possible causal factor.

42. Plaintiff's Cowin began trying to contact Carvajal in August 2022 to report the findings of these professionals and to get State Farm to reopen the Claim, but State Farm proved unresponsive.

43. When trying a general State Farm number on September 27, 2022, State Farm advised that Carvajal did not appear in its system and State Farm had now assigned the Claim to Tina Gholston ("Gholston").

44. On September 27, 2022, State Farm's Gholston directed a letter to Plaintiff, again denying coverage for the Claim.

45. The September 27, 2022 letter stated that the photos, documents, and site inspection revealed there was no storm created opening in the roof associated with the Date of Loss and said State Farm determined the damages to the interior of the building resulted from a large amount of water on the roof which overwhelmed the system due to clogging and back-up.

46. As with previous communications from State Farm, the letter ignored the substantial roof damage and falsely stated that State Farm's site inspection and investigation revealed clogging and back-up when such representations were knowingly untrue.

47. For the first time, State Farm identified a new exclusion, not previously included in the coverage denial, found at 1.h of the exclusions and relating to "water or sewage that backs up or overflows from a sewer, drain, or pump."

48. On or about September 29, 2022, Plaintiff's Cowin spoke to State Farm's Gholston by telephone, with Gholston asserting that that the water on the roof appeared as a result of a backup through the sewer system and that she had discussed the matter with her State Farm manager, who believed a backup had occurred, despite no evidence of a backup.



49. Plaintiff contacted the St. Louis Metropolitan Sewer District (“MSD”) that services the area in which the Subject Property is located and was connected with MSD’s engineering department.

50. An operational engineer at MSD explained to Plaintiff’s Cowin that there was no possibility of a water or sewage backup or overflow involved with such a loss and provided a written explanation as to this impossibility based on both MSD’s reports of backups, overcharges, and overland flooding as well as the scientific impossibility of the theory which would require flooding to have occurred above the height of the building at the Subject Property to allow for water to come back up the sewer system onto the roof.

51. On October 3, 2022, Plaintiff’s Cowin wrote State Farm’s Gholston to explain that State Farm’s backup exclusion position could have no impact on the Claim and providing the MSD explanation.

52. On October 4, 2022, State Farm’s Gholston wrote Plaintiff, stating Plaintiff has provided no new information that will change State Farm’s position and stating that State Farm was not referring to a sewer backup, but some other unidentified “back-up/clog”.

53. Plaintiff’s Cowin contacted State Farm’s Gholston by telephone the same day and Gholston admitted that State Farm did not find clogs in the roof system despite repeated references in letters to the contrary as a basis for coverage denial. She insisted on the call that water backed up onto the roof from an overcharged sewer system and said MSD’s written explanation supported State Farm’s position of a sewer backup.

54. When Plaintiff’s Cowin explained this discussion to MSD’s engineer, the MSD engineer said that he would call State Farm’s Gholston directly to explain why a backup could not have resulted in water on the roof.

55. MSD's engineer spoke to State Farm's Gholston on or about October 12, 2022 to attempt to explain the fallacy of State Farm's position, but State Farm's Gholston responded by stating that she understood no backup or overflow of the sewer system occurred and that State Farm did not deny on such basis, but instead denied coverage for the Claim due to clogs in the roof system that State Farm deemed a maintenance failure.

56. Plaintiff retained the services of a forensic engineering company, which provided a written report dated November 3, 2022, explaining with a high level of confidence that the loss did not occur because of clogs in the roof system or because of backup or overflow from the systems.

57. Plaintiff submitted the November 3, 2022 report to State Farm and then followed-up with State Farm to see if it considered the report and would reverse its coverage denial.

58. State Farm directed Plaintiff's Cowin to Toxie Turner ("Turner") instead of Gholston. Cowin spoke with Turner on November 30, 2022, explaining State Farm's changing positions and the lack of support for all of them.

59. On December 2, 2022, State Farm's Turner issued a letter based on the discussion, the site inspection, and State Farm's investigation. The letter abandoned the existence of a clogged roof system and/or backup/overflow positions previously identified by State Farm as a basis for State Farm's denial, stating State Farm determined the damage to the interior of the building resulted from a large amount of rainwater on the roof that exceeded the design flow of the system causing water to pool and resulting in water infiltration to the building through a non-storm created opening. The letter provides no explanation or basis for State Farm's refusal to cover the damage to the roof, only the interior damage.

60. Plaintiff retained the services of a law firm, Goldstein & Price, to assist with State Farm's improper denials.

61. Goldstein & Price directed a letter to State Farm on December 21, 2022, explaining why State Farm's shifting positions lacked merit, that State Farm's positions were contrary to fact and law, and that State Farm was estopped from changing its basis for coverage denial.

62. On January 7, 2023, State Farm's Nina Everitt responded to the Golstein & Price letter with a four sentence response that only: acknowledged receipt of the December 21, 2022 correspondence; stated there is no change as State Farm maintains its coverage decision; directed use of the claim number on any future correspondence; and provided a phone number if there are any questions.

63. On March 6, 2023, the undersigned counsel for Plaintiff directed a letter to State Farm, explaining the Claim's history, reiterating the facts, discussing the policy language, and detailing why the Policy provides coverage for the Claim.

64. The March 6, 2023 letter further identified many of State Farm's bad faith practices with respect to handling the Claim and demanded that State Farm reverse its position by March 13, 2023 to avoid a suit that included a request for extracontractual damages for State Farm's vexatious refusal.

65. A true and accurate copy of the March 6, 2023 correspondence is attached hereto as **Exhibit 2** and incorporated by reference as if set forth fully herein.

66. State Farm never responded to the March 13, 2023 correspondence.

67. Plaintiff has been damaged in an amount exceeding \$1.1 million for the damage to the Subject Property that State Farm failed to pay under the Policy.

68. In addition, Plaintiff has been forced to incur fees and expenses on consultants, engineers, and attorneys to force State Farm to honor its obligations under the Policy and the law. Attorneys' fees and expenses will continue to accrue in this suit.



69. Plaintiff is informed and believes State Farm has unnecessarily, improperly, and intentionally refused to honor State Farm's coverage obligation.

70. All conditions precedent under the Policy have been satisfied or State Farm has otherwise waived or should be estopped from asserting such conditions.

**COUNT I**  
**(Breach of Contract)**

71. Plaintiff realleges and incorporates paragraphs 1 through 70, inclusive, as if set forth fully herein.

72. The Policy is a contract of insurance that is valid and enforceable against State Farm.

73. The Policy included coverage for damage to the roof of the Subject Property and to the interior of the building at the Subject Property during the Storm Event.

74. The Policy is written all risk, which includes damage from the rain during the 1-in-1000 year Storm Event.

75. The damage suffered by Plaintiff includes a replacement roof as well as the support for the roof and the damage to the interior of the building, qualifying as loss within a Policy in the estimated amount of more than \$1,100,000 in total.

76. Plaintiff made claim on State Farm for the loss to the Subject Property by making the Claim.

77. Pursuant to the Policy, State Farm was obligated to timely investigate its coverage obligations and pay Plaintiff to satisfy those obligations.

78. Plaintiff has performed or is otherwise excused from performing all of its obligations and responsibilities required pursuant to the Policy.

79. State Farm has failed and refused to honor its obligations related to the Claim made under the Policy.

80. Despite Plaintiff's demands to State Farm, State Farm failed and refused and fails and refuses to acknowledge its coverage obligations and refuses to pay any amounts owed under the Policy on the Claim, all in contravention of the terms and conditions of the Policy and shared intent of the parties in so contracting.

81. As a result, Plaintiff has been damaged in the amount of at least \$1,100,000 plus foreseeable consequential damages, pre-judgment interest for such sums, and attorneys' and consultants' fees and costs to obtain the coverage benefits, all to be proven at the time of trial.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor and against State Farm in the amount of at least \$1,100,000 or another amount determined to properly reflect the insured loss, for the attorneys' fees incurred by Plaintiff, for the expense associated with the consultants and engineers that State Farm caused Plaintiff to unnecessarily incur, plus prejudgment interest, post-judgment interest, attorneys' fees and costs incurred herein and such other and further relief as the Court deems just and proper.

**COUNT II**  
**(Bad Faith/Vexatious Refusal to Pay)**

82. Plaintiff realleges and incorporates paragraphs 1 through 81, inclusive, as if set forth fully herein.

83. State Farm's repeated denials of the Claim for coverage were in violation of the terms and provisions of the Policy and were vexatious and without reasonable cause or excuse.

84. State Farm owed certain duties to its insured upon submission of its claim.

85. Those duties, included, but were not limited to, a duty of good faith and fair dealing.

86. Those duties, included, but were not limited to, an obligation to provide coverage as required by the Policies unless State Farm had a good faith belief based on its investigation or other available information that the Policy would not afford such coverage.

87. Those duties, included, but were not limited to, an obligation to conduct any investigation into coverage and/or the facts surrounding coverage with ordinary and reasonable care.

88. Those duties, included, but were not limited to, an obligation to conduct its investigation and make its coverage decision based on the terms of the coverage and not based on the exposure to State Farm.

89. Those duties, included, but were not limited to, an obligation to timely make a coverage decision and to identify the bases for its decision in communication.

90. Those duties, included, but were not limited to, an obligation to act promptly and to timely respond to communications about the Claim.

91. Those duties, included, properly representing the investigation, facts, and coverage to Plaintiff.

92. State Farm knew at all relevant times that it owed coverage under the Policy for the Claim.

93. Yet, State Farm refused and continues to refuse to recognize its coverage obligations for the Claim.

94. State Farm acted dilatory in completing its investigation and taking a coverage position.

95. State Farm intentionally and knowingly misrepresented the findings of its inspection and investigation as a reason for its coverage denial.

96. State Farm's home office forced State Farm adjusters to take no coverage positions contrary to the findings of State Farm during its inspection and investigation.



97. State Farm consistently changed its coverage position(s), knowing each such position lacked evidence or support, and without addressing its coverage obligation to pay for the substantial damage to the roof.

98. State Farm knowingly misrepresented the Policy provisions to Plaintiff, indicating that a limitation on interior damage also applied to the damage for the roof.

99. State Farm sought to rely on exclusions and limitations in its Policy that it knew had not possible application to the Claim and that it knew State Farm's own investigation had proven had no application.

100. State Farm, through the foregoing actions and inactions, breached its duties, including its failure to conduct a timely and reasonable investigation, its delays, its misrepresentations, its non-responsiveness, the other issues identified herein, and its refusal to properly consider materials provided in support of the Claim and to honor State Farm's obligations.

101. Plaintiff has been damaged as a direct and proximate result of State Farm's failure to exercise care in its investigation and assessment of the Claim under the Policies.

102. At all times, State Farm either knew or should have known that it was required to exercise ordinary and reasonable care in its investigation and coverage decision to avert injury to its insured.

103. At all times, State Farm had the ability to avoid the resulting harm by ordinary and/or reasonable care in the use of means at hand.

104. State Farm failed to use such care to avert the harm to its insured, when to the ordinary mind it must have been apparent that State Farm would cause harm.

105. State Farm's actions and inactions were carried out to harm its insured or, with conscious or reckless disregard for the welfare of its insured.

106. State Farm's actions and inactions were willful, wanton, reckless, and/or in bad faith.

107. Acting oppressively, maliciously, and outrageously, and in conscious disregard for the law and its insured's known rights and with the intention of wrongfully interfering with its insured's prospective economic advantage and interests in the benefits of the insurance purchased, and of intentionally causing, or willfully disregarding the probability of causing, unjust and cruel hardship on its insured, State Farm withheld policy benefits as herein alleged, causing Plaintiff damages.

108. Plaintiff is therefore entitled to recover its damages as well as penalties pursuant to the provisions of RSMo. §375.420 in the amount of twenty percent (20%) of the first one thousand five hundred (\$1,500) due and owing Plaintiff and ten percent (10%) of the remaining amount due and owing to Plaintiff, plus Plaintiff's reasonable fees and expenses in pursuing State Farm's satisfaction of its obligations, including those incurred in this lawsuit.

WHEREFORE, Plaintiff prays for judgment in his favor and against State Farm for its damages from Plaintiff's bad faith tactics, vexatious penalties as permitted in RSMo. § 375.420, reasonable attorneys' fees, the cost of this action, and for any other and further relief as this Court deems just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

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