

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA**

ELLISE BINGHAM,

Plaintiff,

v.

CASE NO.: 51-2012-CA-0812-ES

TOWER HILL PREFERRED INSURANCE
COMPANY,

Defendants.

**DEFENDANT'S ANSWER, DEFENSES, AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S THIRD AMENDED COMPLAINT**

Defendant, Tower Hill Preferred Insurance Company, files this Answer, Defenses, and Affirmative Defenses in response to Plaintiff's Third Amended Complaint, and states as follows:

GENERAL ALLEGATIONS

1. Admitted that this is an action for bad faith pursuant to Florida Statutes § 624.155.

Otherwise, denied.

2. Admitted.

3. Admitted.

4. Defendant admits that Plaintiff, by and through her attorneys, reported a sinkhole claim while the subject insurance policy was in effect. Defendant further admits that the assigned date of loss was November 10, 2010. Defendant further admits that Plaintiff filed a civil action for breach of contract against Defendant. Any remaining allegations are denied.

5. Defendant admits that Plaintiff filed a Civil Remedy Notice against Defendant on December 23, 2013, the contents of which speak for itself. Defendant further admits that it

timely responded to Plaintiff's Civil Remedy Notice on February 20, 2014, the contents of which speak for itself. Any remaining allegations are denied.

6. Defendant admits that the Court in the Underlying Contract Action entered summary judgment in Plaintiff's favor. Defendant further admits that it tendered the insurance policy limits to Plaintiff and settled the attorney's fees claim in the Underlying Contract Action. Defendant further admits that Plaintiff sought leave of court to amend her Complaint to assert a statutory bad faith action. Any remaining allegations are denied.

7. Defendant admits that the parties have conducted discovery in this action. Any remaining allegations are denied.

8. Defendant admits that Plaintiff sought leave to add a claim for punitive damages. Any remaining allegations are denied.

9. Defendant states that Fla. Stat. § 627.706 speaks for itself. Any remaining allegations are denied.

10. Defendant states that Fla. Stat. § 627.706 and Florida law speak for themselves. Any remaining allegations are denied.

11. Defendant states that Florida law speaks for itself. Any remaining allegations are denied.

12. Denied.

13. Defendant states that Fla. Stat. § 627.706 and Florida law speak for themselves. Any remaining allegations are denied.

14. Defendant admits that Plaintiff owned a duplex separately from her neighbors, and that each side of the duplex had its own unique legal description. Defendant further admits that Plaintiff was insured by Defendant on the date of loss in question and for additional policy

periods. Defendant further admits that Plaintiff's neighbors had a separate insurance policy. Any remaining allegations are denied.

15. Defendant admits that Plaintiff's neighbors presented a claim to their insurer. Defendant further admits that Westcoast Forensic conducted a sinkhole investigation and prepared a report. Any remaining allegations are without knowledge and, therefore, denied.

16. Defendant admits that Plaintiff's neighbors went into foreclosure and that any *lis pendens* filed with the Clerk of Court speaks for itself. Any remaining allegations are without knowledge and, therefore, denied.

17. Defendant admits that Westcoast Forensic conducted a sinkhole investigation at Plaintiff's neighbor's property and prepared a report. Defendant states that the Westcoast Forensic report speaks for itself. Any remaining allegations are without knowledge and, therefore, denied.

18. Defendant is without knowledge and, therefore, denies the allegations of this paragraph.

19. Defendant admits that Plaintiff, by and through her attorneys, reported a sinkhole claim while the subject insurance policy was in effect. Defendant further admits that the assigned date of loss was November 10, 2010. Defendant further admits that Martha Carter was an adjuster assigned to the claim. Any remaining allegations are denied.

20. Defendant admits that Plaintiff gave a recorded statement to Martha Carter, which speaks for itself. Defendant further states that the Adjuster's Handbook speaks for itself. Any remaining allegations are denied.

21. Denied.

22. Defendant admits that it retained Madrid Engineering Group (“MEG”) to perform a sinkhole investigation at the insured property, which is a duplex. Defendant further admits that Plaintiff advised that her neighbor had a confirmed sinkhole. Defendant further admits that, after suit was filed, it received a West Coast Forensic report which confirmed sinkhole activity at the neighbor’s property. Defendant further admits that MEG’s report speaks for itself. Any remaining allegations are denied.

23. Defendant admits that, in a letter dated March 21, 2011, it denied Plaintiff’s sinkhole claim in reliance on MEG’s Subsidence Investigation Report. Any remaining allegations are denied.

24. Denied.

25. Denied.

26. Defendant admits that Sam Townsend was the litigation adjuster assigned to the underlying breach of contract action. Any remaining allegations are denied.

27. Defendant admits that Westcoast Forensic conducted a sinkhole investigation at Plaintiff’s neighbor’s property and prepared a report. Defendant states that the Westcoast Forensic report speaks for itself. Defendant admits that it did not obtain a copy of the Westcoast Forensic report from the County records. Any remaining allegations are denied.

28. Defendant states that the referenced claim notes speak for themselves. Any remaining allegations are denied.

29. Defendant admits that, in a letter dated May 16, 2012, it accepted coverage for the loss based upon MEG’s new opinion. Defendant further admits that the contents of the letter speak for itself. Any remaining allegations are denied.

30. Defendant admits that it presented a proposed repair plan to Plaintiff. Defendant further admits that it invoked the neutral evaluation process, and that the neutral evaluator prepared a repair plan, which speaks for itself. Defendant further admits that it accepted the neutral evaluator's repair plan. Defendant also states that the insurance policy and applicable Florida laws speak for themselves. Any remaining allegations are denied.

31. Denied.

32. Defendant admits that the witness testimony and Adjuster's Handbook speak for themselves. Any remaining allegations are denied.

33. Denied.

34. Denied.

35. Denied.

36. Defendant admits that the May 16, 2012 letter speaks for itself. Defendant further admits that the parties have exchanged discovery in this action and the Court has ruled on discovery and privilege issues. Any remaining allegations are denied.

37. Denied.

38. Denied.

39. Denied.

40. Defendant admits that the subject insurance policy speaks for itself. Any remaining allegations are denied.

41. Defendant admits that it took a recorded statement of Plaintiff, which speaks for itself. Defendant admits that it retained Madrid Engineering Group to perform a sinkhole investigation at the insured property, which is a duplex. Defendant further admits that Plaintiff

advised that her neighbor had a confirmed sinkhole. Defendant further admits that the Adjuster's Handbook speaks for itself. Any remaining allegations are denied.

42. Defendant admits that it filed a Motion for summary Judgment on March 20, 2014, which speaks for itself. Defendant further admits that it served a proposal for settlement to Plaintiff on March 25, 2014. Any remaining allegations are denied.

Counts Under Florida's Bad Faith Statutes § 624.155, Florida Statutes

43. Defendant incorporates by reference its responses to paragraphs 1 through 43 above.

44. Defendant states that Fla. Stat. § 624.155 speaks for itself. Any remaining allegations are denied.

45. Defendant states that Fla. Stat. § 624.155 speaks for itself. Any remaining allegations are denied.

Counts Under Florida's Unfair Methods of Competition and Unfair or Deceptive Acts,
Section § 626.9541, Florida Statutes

46. Defendant incorporates by reference its responses to paragraphs 1 through 43 above.

47. Defendant states that Fla. Stat. § 624.9541 speaks for itself. Any remaining allegations are denied.

48. Defendant states that Fla. Stat. § 624.9541 speaks for itself. Any remaining allegations are denied.

49. Defendant states that Fla. Stat. § 624.9541 speaks for itself. Any remaining allegations are denied.

50. Defendant states that Fla. Stat. § 624.9541 speaks for itself. Any remaining allegations are denied.

51. Defendant states that Fla. Stat. § 624.9541 speaks for itself. Any remaining allegations are denied.

Counts Under Florida Administrative Code, Section 69O-220

52. Defendant incorporates by reference its responses to paragraphs 1 through 43 above.

53. Defendant states that Section 69O-220.201(4) of the Florida Administrative Code speaks for itself. Any remaining allegations are denied.

54. Defendant states that Section 69O-220.201(4) of the Florida Administrative Code speaks for itself. Any remaining allegations are denied.

55. Defendant states that Section 69O-220.201(4) of the Florida Administrative Code speaks for itself. Any remaining allegations are denied.

56. Defendant states that Section 69O-220.201(4) of the Florida Administrative Code speaks for itself. Any remaining allegations are denied.

57. Defendant states that Section 69O-220.201(4) of the Florida Administrative Code speaks for itself. Any remaining allegations are denied.

Prayer of Relief for Punitive Damages

58. Defendant incorporates by reference its responses to paragraphs 1 through 43 above.

59. Denied.

GENERAL DENIAL

Defendant denies each and every allegation of Plaintiff's Third Amended Complaint not specifically admitted herein and demands strict proof thereof.

DEFENSES AND AFFIRMATIVE DEFENSES

1. Plaintiff's Third Amended Complaint should be dismissed in that Defendant has made full payment to Plaintiff and, in good faith, performed under the terms of the subject insurance policy.

2. Claims and allegations under Florida Statutes § 624.155 are limited to those claims and allegations of which proper statutory notice has been given to Defendant and to those individuals who have complied with all conditions precedent. To the extent Plaintiff has not provided statutory notice of a specific claim or allegation or complied with the conditions precedent under § 624.155(3)(a) and (b), she cannot bring any action predicated on such claims or allegations.

3. Plaintiff has no viable action based upon any alleged conduct or violation that was cured by Defendant before the filing of Plaintiff's Civil Remedy Notice or the sixty-day cure period.

4. The statutory basis for Plaintiff's action under Florida Statutes § 624.155 is limited to the statutory provisions set forth in § 624.155(1)(a). Plaintiff's action is barred to the extent Plaintiff has included statutory provisions not set forth in § 624.155(1)(a) within the Civil Remedy Notice of Insurer Violation and Plaintiff's Third Amended Complaint.

5. Defendant did not fail to pay or settle Plaintiff's claim when, under the totality of the circumstances, it could and should have done so. At all times material, Defendant acted in good faith with respect to the handling and determination of Plaintiff's claim.

6. Plaintiff has no viable action against Defendant under Florida Statutes § 624.155 to the extent Plaintiff has not been damaged by any alleged actions of Defendant.

6. Plaintiff has failed to state a proper basis for recovery of punitive damages pursuant to Florida Statutes Section 768.72(2) or 768.72(3).

7. Plaintiff's claims for punitive damages are not warranted under applicable law, and, if imposed, would violate Defendant's constitutional rights under the United States Constitution and the Constitution of the State of Florida, and would be improper under the statutory law, common law, and public policies of Florida.

8. Plaintiff's claim for punitive damages cannot be maintained unless the trial is bifurcated. Any award of punitive damages without bifurcating the trial and after liability on the merits has been found would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by Florida's Constitution and would be improper under the common law and public policies of Florida.

9. Plaintiff's claim for punitive damages cannot be maintained, because an award of punitive damages would be void for vagueness, both facially and as applied, as a result of, among other things, the absence of adequate notice of what conduct is subject to punishment, the absence of adequate notice of what punishment may be imposed, and the absence of a predetermined limit, such as a maximum multiple of compensatory damages or a maximum on the amount of punitive damages that a jury may impose, all in violation of the due process clause of the Fourteenth Amendment to the United States Constitution and by Florida's Constitution, and the common law and public policies of Florida.

10. Plaintiff's claims for punitive damages cannot be maintained, because any award of punitive damages under applicable law would be by a jury that (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of a punitive damages award, (2) is not adequately instructed on the limits of punitive damages imposed by

the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the residence, wealth, and corporate status of Defendant, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to adequate trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards. Any such verdict would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process and equal protection provisions of the Florida Constitution, and would be improper under the common law and public policies of Florida.

11. Defendant is not liable for punitive damages, because Plaintiff cannot establish, based on clear and convincing evidence, that any employee of Defendant was personally guilty of intentional misconduct or gross negligence.

12. Defendant is not liable for punitive damages because it did not actively or knowingly participate in any intentional misconduct or gross negligence.

13. Defendant is not liable for punitive damages because no officers, directors, or managers of Defendant knowingly condoned, ratified, or consented to any intentional misconduct or gross negligence of any employee.

14. Defendant is not liable for punitive damages because it did not engage in conduct that constituted gross negligence and that contributed to the loss, damages, or injury alleged by Plaintiff.

15. Defendant is not liable for punitive damages because it has not engaged in any acts giving rise to the alleged violation with such frequency as to indicate a general business practice.

16. Defendant is not liable for punitive damages because it has not engaged in any conduct that is (a) willful, wanton, and malicious or (b) in reckless disregard for the rights of any insured.

Defendant reserves the right to amend this Answer and add, delete, or modify its defenses and affirmative defenses based upon any information learned through discovery.

WHEREFORE, Defendant, Tower Hill Preferred Insurance Company, demands trial by jury on all issues so triable and respectfully requests that judgment be entered in its favor based upon the forgoing defenses and affirmative defenses.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-mail to the following, this 1st day of October, 2020:

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