

**ZENSTEIN, GALLANT & PARLOW, P.C.**

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CLASS ACTION

JURY TRIAL DEMANDED

Attorney for Plaintiffs

JEFFREY TOMCZAK and JOETTE TOMCZAK:

individually and on behalf of all others

similarly situated

1415 Columbia Avenue

Philadelphia, PA 19125

PHILADELPHIA COUNTY  
COURT OF COMMON PLEAS

v.

ALLSTATE INSURANCE COMPANY

individually and on behalf of all other

affiliated insurance companies which are part

of Allstate Insurance Company

2775 Sanders Road

Northbrook, IL 60062

NO.: TERM, 2009

**CIVIL ACTION**

**(1C. Contracts; 1J. Bad Faith; 1O. Other)**

I.

**Nature Of The Case**

1. This class action arises from Defendants' and the Defendant Class's failure to pay full indemnification for to the cost of tearing out and replacing any part of a building necessary to repair or replace the system or appliance from which water or steam escaped.

2. Plaintiffs, insureds under Defendants' homeowner's policy, seek to represent a class of similarly situated insureds, that is, insureds who submitted covered claims for loss to their buildings but who were paid less than the full cost of repair or replacement

because Defendants improperly withheld access costs necessary to repair or replace the system or appliance from which water or steam escaped.

## II.

### Parties

3. Plaintiffs JEFFREY TOMCZAK and JOETTE TOMCZAK, h/w, are adult citizens of the Commonwealth of Pennsylvania residing at 1415 Columbia Avenue, Philadelphia, PA 19125.

4. Defendant ALLSTATE INSURANCE COMPANY is a group of affiliated companies, which maintain their principal place of business at 2775 Sanders Road, Northbrook, IL 60062.

5. Defendant ALLSTATE INSURANCE COMPANY is a corporation which is licensed to issue homeowners policies of insurance in the Commonwealth of Pennsylvania.

## III.

### Facts

6. Defendants issued to Plaintiffs a policy of insurance, policy number 908388656, covering Plaintiffs' home located at 1415 Columbia Avenue, Philadelphia, PA 19125. A true and correct copy of the policy is attached hereto, made part hereof as Exhibit "A".

7. On or about August 7, 2008, while the policy of insurance was in full force and effect, Plaintiffs suffered damage to the insured house as the result of water that escaped from a plumbing system.

8. Notice of Plaintiffs' covered loss was given to Defendants in a prompt and

timely manner and Plaintiffs have done and otherwise performed all things required of them under their Allstate policy of insurance.

9. After it received Plaintiffs' notice of loss, Defendants determined that the loss was covered under the terms and conditions of the policy.

10. Nevertheless, Defendants tendered benefits to the Plaintiffs without providing for the cost of tearing out and replacing any part of the building necessary to repair or replace the system or appliance from which water or steam escaped.

11. Defendants' failure to provide such benefits has deprived Plaintiffs of benefits due and owing to them under the terms of the policy.

12. As a result of Defendants' failure and refusal to pay benefits to Plaintiffs as required under the applicable policy of insurance and Pennsylvania law, as well as Defendants' bad faith and deceptive conduct as described below, Plaintiffs have suffered loss and damage.

#### IV.

##### **Class Action Allegations - Plaintiff Class**

13. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated pursuant to the provisions of Rule 1701 of the Pennsylvania Rules of Civil Procedure, *et seq.*

14. Defendants and members of the Defendant Class have withheld amounts for the cost of tearing out and replacing any part of the building necessary to repair or replace the system or appliance from which water or steam escaped.

15. As a result of Defendants' and the Defendant Class's wrongful conduct,

Plaintiffs and all others similarly situated have been caused to sustain damages and losses, including the improper withholding of the cost of tearing out and replacing any part of the building necessary to repair or replace the system or appliance from which water or steam escaped.

16. Plaintiffs seek certification of a class which shall include:

All persons who, since January 1, 2002, were covered under a homeowners policy issued by Defendant or a member of the Defendant Class located within the United States of America and who have suffered loss or property damage to their homes as a result of a loss caused by water or steam that escaped from a system or appliance, wherein Defendant has refused to cover all or part of the loss or property damage including but not limited to the cost of tearing out and replacing any part of the building necessary to repair or replace the system or appliance.

17. Upon information and belief, the proposed class exceeds 100 people, and is so numerous that joinder of all members is impracticable.

18. There are questions of law and fact common to the proposed class, including but not limited to whether Defendants' and the Defendant Class's uniform practice violated the terms of their policies, and whether the Plaintiffs and members of the proposed class are entitled to an accounting, money damages, and injunctive relief, among other damages. Defendants and the Defendant Class's uniform practice of withholding the cost of tearing out and replacing any part of the building necessary to repair or replace the system or appliance from which water or steam escaped warrants treatment of this case as a class action.

19. The claims of Plaintiffs Jeffrey Tomczak and Joette Tomczak, the representative parties, are typical of the claims of the class because at all material times

Plaintiffs were insureds who submitted to an Allstate Insurance Company affiliated insurance company a covered claim for water or steam that escaped from a system or appliance and were deprived of the cost of tearing out and replacing any part of the building necessary to repair or replace the system or appliance from which water or steam escaped.

20. Plaintiffs will thoroughly and adequately protect the interests of the class pursuant to the criteria set forth in Rule 1709 of the Pennsylvania Rules of Civil Procedure. Plaintiffs have adequate financial resources to prosecute this litigation, and have retained counsel experienced in class actions, consumer law, insurance law, mass tort, contract and commercial actions, and other complex civil matters. Further, Plaintiffs' counsel will advance all reasonable costs to protect the class and prosecute the claims set forth herein.

21. A class action provides a fair and efficient method for adjudication of this controversy under the criteria set forth in Rule 1708 of the Pennsylvania Rules of Civil Procedure because:

- (a) Common questions of law and fact predominate over any question affecting only individual members;
- (b) The class is of sufficient size to warrant class treatment, and the proposed class action does not present any extraordinary or unusual difficulties affecting its management as a class action;
- (c) The prosecution of separate actions by individual members of the proposed Plaintiff Class would create a risk of inconsistent or varying adjudications with respect to individual members of the proposed Plaintiff Class, which would establish incompatible standards of conduct for Defendants and the Defendant Class;

- (d) Prosecution of separate actions by individual members of the proposed Plaintiff Class would create a risk of adjudications with respect to individual members of the proposed Plaintiff Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications;
- (e) Upon information and belief, Plaintiffs allege that there is no other litigation already commenced by or against members of the class involving any of the same issues raised in this complaint;
- (f) This particular forum, the Court of Common Pleas, is appropriate for the litigation of the claims of the entire class;
- (g) In view of the complexities of the issues and the expenses of litigation, the separate claims of individual class members are insufficient in amount to support separate actions;
- (h) It is likely that the amount which may be recovered by individual class members will be sufficiently large in relation to the expense and effort of administering the action as to justify a class action; and
- (i) Defendants and members of the Defendant Class have acted or refused to act on grounds generally applicable to the proposed Plaintiff Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the proposed class as a whole.

V.

**Class Action Allegations - Defendant Class**

22. Plaintiffs incorporate herein by reference all other paragraphs of this Class Action Complaint.

23. Plaintiffs, individually and on behalf of all others similarly situated, bring this action against Defendants individually and on behalf of all other Allstate Insurance Company affiliated insurance companies.

24. Defendants and members of the Defendant Class have withheld the cost of tearing out and replacing any part of the building necessary to repair or replace the system or appliance from which water or steam escaped.

25. As a result of Defendants' and the Defendant Class's wrongful conduct, Plaintiffs and all others similarly situated have been caused to sustain damages and losses.

26. Plaintiffs seek certification of a Defendant Class which shall include:

All affiliated insurance companies which are part  
of Allstate Insurance Company.

27. Upon information and belief, Plaintiffs aver that the proposed class exceeds 5 entities and is so numerous that joinder of all members is impracticable given the subject matter of this class action.

28. There are questions of law and fact common to the proposed class, including but not limited to whether Defendants' and the Defendant Class's uniform practice violated the terms of their policies, and whether the Plaintiffs and members of the proposed class are entitled to an accounting, money damages, and injunctive relief, among other damages. Defendants' and the Defendant Class's uniform practice of withholding the cost of tearing out and replacing any part of the building necessary to repair or replace the system or appliance from which water or steam escaped warrants treatment of this case as a class action.

29. The defenses of Defendants are typical of the claims of the Defendant Class because at all material times Defendants deprived its insureds of the cost of tearing out and replacing any part of the building necessary to repair or replace the system or appliance from which water or steam escaped

30. Defendants will thoroughly and adequately protect the interests of the Defendant Class pursuant to the criteria set forth in Rule 1709 of the Pennsylvania Rules of Civil Procedure. Defendants have adequate financial resources to prosecute this litigation, and have or will retain adequate counsel.

31. A class action provides a fair and efficient method for adjudication of this controversy under the criteria set forth in Rule 1708 of the Pennsylvania Rules of Civil Procedure because:

- (a) Common questions of law and fact predominate over any question affecting only individual members;
- (b) The class is of sufficient size to warrant class treatment, and the proposed class action does not present any extraordinary or unusual difficulties affecting its management as a class action;
- (c) The prosecution of separate actions against individual members of the proposed Defendant Class would create a risk of inconsistent or varying adjudications with respect to individual members of the proposed Defendant Class, which would establish incompatible standards of conduct for Plaintiff and the Plaintiff Class;
- (d) Prosecution of separate actions by individual members of the proposed Defendant Class would create a risk of adjudications with respect to individual members of the proposed Defendant Class that would, as a practical

matter, be dispositive of the interests of the other members not parties to the adjudications;

- (e) Upon information and belief, Plaintiffs allege that there is no other litigation already commenced by or against members of the class involving any of the same issues raised in this complaint;
- (f) This particular forum, the Court of Common Pleas, is appropriate for the litigation of the claims of the entire class;
- (g) In view of the complexities of the issues and the expenses of litigation, the separate claims of individual class members are insufficient in amount to support separate actions;
- (h) It is likely that the amount which may be recovered by individual class members will be sufficiently large in relation to the expense and effort of administering the action as to justify a class action; and
- (i) Defendants and the Defendant Class have acted or refused to act on grounds generally applicable to the proposed Plaintiff Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the proposed class as a whole.

## **COUNT ONE**

### **Breach Of Contract**

32. Plaintiffs incorporate herein by reference all other paragraphs of this Class Action Complaint.

33. Defendants and the Defendant Class have breached their policies of insurance with Plaintiffs and members of the Plaintiff Class by withholding the cost of tearing out and replacing any part of the building necessary to repair or replace the

system or appliance from which water or steam escaped.

34. As a result of Defendants' and the Defendant Class's breaches of contracts, Plaintiffs and members of the Plaintiff Class have not received proper indemnification under their policies of insurance with Defendants and the Defendant Class. Plaintiffs and members of the Plaintiff Class have been deprived of benefits, that is, the cost of tearing out and replacing any part of a building necessary to repair or replace the system or appliance from which water or steam escaped.

## **COUNT TWO**

### **Bad Faith**

35. Plaintiffs incorporate herein by reference all other paragraphs of this Class Action Complaint.

36. Defendants and the Defendant Class have engaged in bad faith conduct toward Plaintiffs and the members of the Plaintiff Class. Defendants' and the Defendant Class's actions and practices in withholding the cost of tearing out and replacing any part of a building necessary to repair or replace the system or appliance from which water or steam escaped is frivolous and unfounded. Defendants and the Defendant Class withheld these benefits without any reasonable basis and Defendants knew of or recklessly disregarded its lack of reasonable basis in withholding such benefits. Defendants' and the Defendant Class's conduct was motivated by self-interest and done with reckless indifference to the rights of Plaintiffs and members of the Class.

37. As a result of Defendants' and the Defendant Class's bad faith conduct Plaintiffs have been forced to commence the present litigation and have incurred and will incur costs, expenses, and counsel fees.

### **COUNT THREE**

#### **Violation Of Unfair Trade Practices**

#### **And Consumer Protection Law**

38. Plaintiffs incorporate herein by reference all other paragraphs of this Class Action Complaint.

39. Defendants and the Defendant Class misrepresented its loss payment obligations to Plaintiffs and members of Plaintiffs' class and such misrepresentations were deceptive, willful, intentional, reckless and outrageous.

40. Defendants and the Defendant Class engaged in deceptive conduct by withholding the cost of tearing out and replacing any part of a building necessary to repair or replace the system or appliance from which water or steam escaped, without any contractual or legal justification.

41. As a result of Defendants' and the Defendant Class's deceptive conduct Plaintiffs and members of Plaintiffs' class have suffered loss and damage as set forth above.

42. Defendants' and the Defendant Class's conduct is in violation of 73 P.S. §201-2(4)(xxi), as amended in 1996, otherwise known as the "catch-all" provision of Pennsylvania's Consumer Protection Law, which allows a Plaintiff to bring a claim for "deceptive" conduct.

#### **DEMAND FOR RELIEF**

WHEREFORE, Plaintiffs demand judgment against Defendants and members of the Defendant Class as follows:

- (1) certifying this action as a class action with Plaintiffs Jeffrey Tomczak and Joette Tomczak, as the representatives of the Plaintiff Class and Defendant Allstate Insurance Company as representative of the Defendant Class;
- (2) declaring that Defendants' and the Defendant Class's conduct was and is unlawful;
- (3) awarding Plaintiffs and other members of the class damages in an amount in excess of the statutory limits for arbitration which fairly compensates them for their damages and losses, together with interest and costs;
- (d) an accounting, at Defendants' and the Defendant Class's expense, of all amounts they have unlawfully withheld for the cost of tearing out and replacing any part of a building necessary to repair or

replace the system or appliance from which water or steam escaped;

- (e) awarding Plaintiffs and other members of the class statutory, treble and punitive damages;
- (f) awarding Plaintiffs their costs of suit, together with reasonable attorney's fees; and
- (g) such other and further relief as the law allows.

**ZENSTEIN, GALLANT & PARLOW, P.C.**

BY: \_\_\_\_\_

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Attorney for Plaintiffs

Date: 8/7/09