UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

MARK DIZDAR, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 7:14-CV-00402
	§	
STATE FARM LLOYDS, *et al*,	§	
	§	
Defendants.	§	

JUDICIAL NOTICE
TO THE MOSTYN LAW FIRM

The Court now considers a family of hailstorm cases filed by Mark and Kelly Dizdar[1] against State Farm Lloyds, Richard Freymann, and Richard Lee Wallace.[2] The Court has observed an unacceptable and systematic practice by Plaintiffs' counsel—the Mostyn Law Firm—of filing numerous and unfounded claims. In many of these cases, the only issue truly in dispute is whether or not State Farm Lloyds adequately estimated and paid Plaintiffs according to the terms of the contract. Nevertheless, the Mostyn Law Firm finds it worth everyone's time and energy to lop upon their breach claim numerous extra-contractual theories without any apparent justification. These claims include: fraud; conspiracy to commit fraud; violations of the Texas Insurance Code §§ 541.060(a)(1), 541.060 (a)(2)(A), 541.060 (a)(3), 541.060 (a)(4), 541.060 (a)(7); and violations of Texas Insurance Code §§ 542.055, 542.056, and 542.058.[3]

The Court observes that Texas law is clear that there can be no successful extra-contractual claims absent indications of *non-contractual* injury—underpayment alone is not

[1] These claims were filed in the Dizdars' individual capacities and on behalf of Dizdar Development.
[2] These claims include, but are not limited to case numbers 7:14-CV-00402, 445, 447, 449, 451, 506, 508, 509, 510, 514, 515, 517, 523, 570, 664, and 678.
[3] *See* Dkt. No. 1 at pp. 7–16.

enough.[4] However, the Mostyn Law Firm consistently fails to allege any facts supporting extra-contractual injuries. Instead, they are content to squander valuable time fruitlessly answering decisive motions for summary judgment against them.[5] This occurred in at least the following cases: 7:14-CV-00678, 664, 570, 514, 509, 508, 506, 451, 449, 447, 445, and 402.[6] The Mostyn Law Firm has justified its continual defense of extra-contractual claims by pointing out that the Fifth Circuit recently certified the question of independent injury to the Texas Supreme Court.[7] However, that certified question was specifically predicated upon a wrongful withholding of policy benefits.[8] Thus, the Mostyn Law Firm's practice of systematically pleading and defending extra-contractual claims based solely on payment disputes is both wasteful and futile.

The Mostyn Law Firm not only alleges extra-contractual claims rendered baseless by Texas case law, they also fail to muster any meaningful support for statutory violations on the face of those statutes themselves. An illustration is helpful. In case 7:14-CV-00514, the Mostyn Law Firm alleged violations of the Texas Insurance Code §§ 542.055, 542.056, and 542.058.[9] However, beyond merely copying-and-pasting these claims from their templates and dropping them into their case filings, the Mostyn Law Firm did not bother to specifically bring up, argue,

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[4] *Parkans Int'l LLC v. Zurich Ins. Co.*, 299 F.3d 514, 519 (5th Cir. 2002) ("There can be no recovery against an insurer for extra-contractual damages for mishandling claims unless the complained of actions or omissions caused injury independent of that which would have resulted from a wrongful denial of policy benefits.")(citing *Provident Am. Ins. Co. v. Castaneda*, 988 S.W.2d 189, 198–99 (Tex.1998)); *See Terry v. Safeco Ins. Co. of Am.*, 930 F. Supp. 2d 702, 715 (S.D. Tex. 2013); *Texas Med. Clinics, P.A. v. CNA Fin. Corp.*, CIV.A. H-06-4041, 2008 WL 450012, at *11 (S.D. Tex. Feb. 15, 2008); *Texas Med. Clinics, P.A. v. CNA Fin. Corp.*, CIV.A. H-06-4041, 2008 WL 450012, at *11 (S.D. Tex. Feb. 15, 2008); *Southstar Corp. v. St. Paul Surplus Lines Ins. Co.*, 42 S.W.3d 187 (Tex.App.-Corpus Christi 2001).

[5] *See* case numbers 7:14-CV-00678, 664, 570, 514, 509, 508, 506, 451, 449, 447, 445, and 402.

[6] There are certainly more cases with the same outcome for the same reasons—the Court took this handful as an example. The Court also notes that cases 7:14-CV-00402, 447, 506, 514, 517, 523, and 664 were assigned to Judge Micaela Alvarez, while cases 7:14-CV-00445, 449, 451, 508, 509, 510, 515, 570, and 678 were assigned to Judge Ricardo Hinojosa.

[7] *See* 7:14-CV-00514, Dkt. No. 31 at p. 4; see also 7:14-CV-00644, Dkt. No. 31 at p. 8.

[8] *In re Deepwater Horizon*, 807 F.3d 689, 698 (5th Cir. 2015), certified question accepted (Dec. 4, 2015). The question has now been withdrawn upon request by the settling parties. Texas Supreme Court Docket #15-0891. To access this information in unofficial form, contact your Westlaw representative. For the official docket information, contact the Clerk's Office of the Texas Supreme Court.

[9] Dkt. No. 1. at p. 19.

or support these claims in any fashion. Mostyn Law Firm obstinately defended its § 542 claims at the summary judgment stage even when the undisputed evidence directly contradicted those claims.[10] The Court is left wondering—why?

It comes as no surprise that the Mostyn Law Firm's extra-contractual claims arise not only unjustifiably, but also uniformly—they are undoubtedly part of a template the Mostyn Law Firm uses in hailstorm petitions. By way of example, a comparison of the Mostyn Law Firm's petitions in cases 7:14-CV-00523 and 7:14-CV-00514 unveils virtually identical wording, minus some dates and a few minor factual changes. When highlighting every difference between the two documents, the Court is left with an exceptionally large amount of white space. Further, and not surprisingly, the numerous alleged causes of action are identical, despite the fact that these cases were separately processed by State Farm.

The Court offers four bits of advice. **First** and foremost, the Mostyn Law Firm must adhere to the mandates of Federal Rule of Civil Procedure 11 and its Texas equivalent, Rule 13 of the Texas Rules of Civil Procedure. Generally, these rules require a factual basis for each claim made, or at the very least, a good faith belief that the claim will be factually supported. Hope does not constitute a good faith belief.

Second, the Mostyn Law Firm should remember to be cognizant of the claims it is filing, and the *elements* that attend those causes of action. It should then identify and support the elements of those causes of action in a meaningful way throughout litigation, based on facts, relevant case law, and statutory language. It should not copy and paste throw-away claims to its filings. The Court is not to be treated like flypaper—hoping that something sticks.

Third, disputed damages are *often* not a valid basis for breach. State Farm Lloyd's contracts contain standard appraisal provisions that supply procedures for equitably resolving

[10] Docket No. 29. (citing to evidence that investigations, responses, and payments were all timely made).

estimate disputes.[11] This is a plaintiff's first proper avenue for seeking relief. Once the plaintiff has been paid pursuant to the appraisal process, the contractual obligations of the insurer have been fulfilled, and there can be no valid breach claim.[12] The only exceptions to this rule are when (1) the appraisal process was conducted improperly, or (2) some provision of the contract unrelated to underpayment was breached.[13] If the Mostyn Law Firm wishes to litigate breach claims after appraisal and payment have occurred, the Court advises it to *meaningfully* support at least one of these two exceptions.

Fourth, the Mostyn Law Firm should be mindful that evidence of underpayment, by itself, is not a basis for *extra*-contractual claims. Those extra-contractual claims require more than mere underpayment to survive. It troubles the Court to see instances in which the insured and insurer appeared to resolve all disputes under the contract, and then years later suit is filed for no apparent reason—putting aside the attorney knocking on the insured's door. By way of example, case 7:14-cv-00514 features plaintiffs whose property was damaged in March of 2012.[14] They did not file suit until more than two years later. During that interim, evidence of *underpayment* arose, but no evidence of injuries *apart from underpayment* arose that would support extra-contractual claims. Merely heaping more and more evidence of underpayment upon itself does not equal an extra-contractual claim.

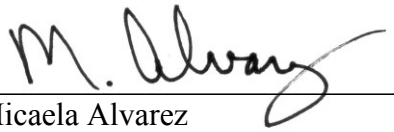
In a bout of cosmic irony, the Mostyn Law Firm has unleashed a hailstorm of its own upon the Court in the form of baseless claims. The Court is not pleased. Federal Rule of Civil Procedure 11 authorizes sanctions when the Rule is violated. While the Court here is not

[11] *See* 7:16-CV-00514, Dkt. No. 35 at p. 39.
[12] *Franco v. Slavonic Mut. Fire Ins. Ass'n*, 154 S.W.3d 777, 786 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (citing *Wells v. American States Preferred Ins. Co*., 919 S.W.2d 679, 683-85 (Tex. App.—Dallas 1996, writ denied)).
[13] *See Franco*, 154 S.W.3d at 786-87.
[14] Dkt. No. 31. at p. 1.

imposing sanctions, the Court cautions the Mostyn Law Firm that future violations will subject it to sanctions. Finally, the Mostyn Law Firm would do well to submit filings that are befitting of the legal profession in this regard.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 13th day of December, 2016.



Micaela Alvarez
United States District Judge