

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

HOWARD MEISTER, an individual;)
LAURIE MEISTER, an individual;)
CAMPBELL MEISTER, by and through her mother)
and next friend, LAURIE MEISTER,)
BARTLEY MEISTER, by and through his mother)
and next friend, LAURIE MEISTER,)

Plaintiffs,)

vs.)

Case No:)

STATE FARM FIRE AND CASUALTY COMPANY, a corporation; SERVPRO OF TENNESSEE, a corporation; BUTLER CONSTRUCTION COMPANY, L.L.C., a corporation; JADE ENGINEERING AND INSPECTION, INC., a corporation; VCE, INC., a corporation; No. 1 whether singular or plural, that entity or those entities whose breach of contract proximately caused the Plaintiffs to incur economic losses which resulted in substantial damages pursuant to said contractual breach; No. 2, whether singular or plural, that entity or those entities whose fraud in the inducement caused the plaintiff to incur substantial damages and great mental anguish as a result thereof; No. 3, whether singular or plural, that entity or those entities which made any promise or affirmation of fact relating to the contract involved in the occurrence made the basis of plaintiffs' complaint; No. 4, whether singular or plural, that entity or those entities who or which provided information referable to the coverage of the insurance contract involved in the occurrence made the basis of plaintiff's complaint; No. 5, whether singular or plural, that entity or those entities other than those entities described above which is the successor in interest of any of the entities described above; No. 6, whether singular or plural, that entity or those entities who or which sold the policy of insurance made the basis of this lawsuit; No. 7, whether singular or plural, that individual or those individuals who were involved in the decision to deny the claim for benefits made the basis of this lawsuit; No. 8, whether singular or plural, that entity or those entities, other than those entities described above, which was the predecessor corporation of any of the entities described. Plaintiffs aver that the identities of the fictitious parties defendant herein is otherwise unknown to the plaintiffs at this time or, if their names are known to the plaintiffs their identities as proper party defendants is not known to plaintiffs at this time and their true names will be substituted by amendment when ascertained. No. 9, whether singular or plural, those persons or entities involved in the water damage investigation of State Farm Fire and Casualty Company claim number 01-Q109-652. No. 10, whether singular or plural, those persons or entities responsible for the event and/or events causing water intrusion into the home located at 2327 Jacksonburg Road in Florence, Alabama.

Defendants.)

COMPLAINT

1. Plaintiffs, Howard Meister and Laurie Meister are over the age of nineteen and and currently reside in Pittsburgh, Pennsylvania.
2. Plaintiffs, Campbell Meister and Bartley Meister are minors and are bringing this action by and through their mother and next friend, Laurie Meister.
3. In 2001 and most of 2002, Plaintiffs owned and lived in a residential property located at as 2327 Jacksonburg Road, Florence, AL 35634, Alabama (hereafter referred to as the “the Home”).
4. Defendant, State Farm Fire and Casualty Company (hereafter referred to as “State Farm”), is a corporation doing substantial business in the state of Alabama. Defendant State Farm’s principal office in Alabama is located in Jefferson County. Venue in this matter is proper in the Circuit Court of Jefferson County pursuant to § 6-3-7 of the 1975 Code of Alabama.
5. Defendant, ServPro of Tennessee, (hereafter referred to as “ServPro”) is a Tennessee corporation doing substantial business in the state of Alabama.
6. Defendant, Butler Construction Company, L.L.C. (hereafter referred to as “Butler”), is an Alabama corporation doing substantial business in the state of Alabama.
7. Defendant, Jade Engineering and Inspection, Inc., (hereafter referred to as “Jade”), is an Alabama corporation doing substantial business in the state of Alabama.
8. Defendant, VCE, Inc, is a Tennessee corporation doing substantial business in the state of Alabama.
9. On or about November 30, 2001, Plaintiffs returned to the home after eating dinner out and found a water line under a sink in the master bathroom had burst and several rooms in the home had flooded. On or about November 30, 2001, Plaintiffs contacted State Farm

to apprise them of the extensive water damage in the home. The Defendant State Farm opened claim # 01-Q109-652 to investigate the damage at the home.

10. Prior to the pipe burst in the home, State Farm had sold to the Plaintiffs a Homeowners Policy number 01-CX-3496-1, for the period effective September 13, 2001 to September 13, 2002 (the “Policy”). The policy provided coverage for the home and its contents. In addition, the policy provided for additional living expenses when a loss insured causes the residence to become uninhabitable. The insurance policy at all times material to this action was in full force and effect.

11. State Farm never warned the Plaintiffs of possibility of mold contamination from the water damage event of November 30, 2001. Plaintiffs allege that the November 30, 2001 water line break and subsequent flooding of the home caused water damage and microbial contamination of the home and its contents. Plaintiffs allege this loss and the ensuing damages to their real and personal property were covered under the terms of the policy. In addition, Plaintiffs suffered illnesses, inconvenience and mental anguish as a result of the Defendants’ conduct and the exposure to harmful mold contaminants.

12. In or about December 2001, Plaintiffs began suffering from various illnesses but at that time were unable to determine the cause of their illnesses.

13. Commencing in December 2001 and ending in February 2003, State Farm “investigated” and “assessed” the Plaintiffs water damage claim. This “investigation” included numerous “inspections” of the home and its contents by State Farm agents and/or employees and Defendants ServPro, Butler and VCE, Inc. While the Defendants adjusters and employees were “assessing” the damage, the toxic mold continued to grow in the home. Air quality testing in the home shows that the home is contaminated with a variety of toxic molds.

14. On or about December 1, 2001, State Farm sent ServPro to inspect the home and investigate the water damage. ServPro used fans and de-humidifiers to dry out the flooded rooms and ducts in the home. Neither State Farm nor ServPro warned the Plaintiffs of the possibility of mold contamination. As the “investigation” continued representatives of each of the Defendants “inspected” the home on at least one occasion. Throughout the “investigation” Plaintiffs provided State Farm with additional requested information. During the course of the “investigation”, State Farm sent a benefits check to the Plaintiffs which payment represented compensation for a small portion of water damage at the home. State Farm improperly withheld payment for the remainder of the covered water damage, most notably, the resulting required mold remediation and additional living expenses. None of the Defendants ever warned the Plaintiffs of the potential for mold contamination and/or the problems commonly associated with it. In addition, the defendants knew or should have known of the potential growth of toxic substances in the exercise of ordinary care and failed to protect the Plaintiffs from the harmful contaminants.

15. For months, the Plaintiffs were forced to live in a home infested with high concentrations of toxic molds because State Farm in conjunction with the other Defendants refused to neither warn the Plaintiffs nor honor its obligations under the policy. The policy plainly covers losses by this type of water damage. In addition, under the policy State Farm had a duty to provide the plaintiffs with additional living expenses incurred because of a covered loss. On or about February 13, 2003, after over a year of “investigating” the damage in the home, State Farm sent a letter to the Plaintiffs denying their request for payment for the water damage, remediation costs and additional living expenses.

16. As a result of the health problems experienced by the Plaintiffs and safety hazards created throughout the Home, Plaintiffs were forced to move out of the Home for health reasons in August 2002. In addition, Howard Meister was forced to close his business. Subsequently, the Plaintiffs were ordered by their doctor to avoid the home and its contaminated contents.

17. On or about September 19, 2002, almost 11 months into the State Farm claims investigation, Plaintiffs, having lost confidence in the Defendants to provide them with accurate data and appropriate information on a safe and reasonable course of action, hired Services Unlimited to inspect the home and it was determined that the home was uninhabitable due to the mold in the home. A certified industrial hygienist later confirmed the inhabitability of the home. The Plaintiffs informed State Farm of these findings, but were still denied coverage and additional living expenses.

18. On or about December 5, 2002, State Farm hired VCE, Inc. to inspect the home. The Defendants failed to adequately inspect the home and failed to review the Defendant State Farm claims file of the damage and repairs already made to the home prior to the VCE, Inc inspection.

19. Throughout the claim investigation process, the Defendant State Farm failed to provide Additional Living Expenses even though the Plaintiffs had requested such relief and/or despite the fact that the Defendants knew or should have known of the potential for mold contamination in the home and the dangers associated with living in such an environment.

COUNT I

(Breach of Contract Against Defendant, State Farm)

20. Plaintiffs reallege and reaffirm each and every preceding paragraph as fully set forth herein.

21. Prior to November 30, 2001, Plaintiffs entered into a contract of insurance with State Farm, policy number 01-CX-3496-1 (hereafter referred to as “policy”).

22. Plaintiffs paid all premiums due and performed each act required to maintain the policy in full force and effect. State Farm had an obligation to cover the claim reported by the Plaintiffs and investigate it properly and in good faith.

23. Plaintiffs timely and properly asserted claims for damages within the scope of coverage of the policy. The policy states, inter alia, that damage to real and personal property is covered.

24. Under the terms of the policy, Defendants became obligated to pay and Plaintiffs were entitled to receive compensation for all covered damages resulting from the mold created by the covered loss.

25. Notwithstanding its obligation to do so, Defendants failed and refused to pay Plaintiffs the benefits owing under the Policy, including but not limited to Additional Living Expenses, even though Plaintiffs made a demand for payment.

26. The conduct of Defendants constitutes a material breach of the policy.

27. As a result of the conduct of Defendants, Plaintiffs have sustained general and special damages as will be established at the time of the trial.

COUNT II

(Bad Faith Against Defendant, State Farm)

28. Plaintiffs reallege and reaffirm each and every preceding paragraph as fully set forth herein.

29. Implicit in the policy is an agreement obligating Defendants to act in good faith and to deal fairly with Plaintiffs. An insurance company in Alabama is obligated to act in good

faith in its relationship with its policyholders. Pursuant to this obligation, State Farm was obligated to timely perform its contractual obligation to provide the Plaintiffs with coverage for losses under the policy unless it had a reasonable basis for denying the claim.

30. Defendants breached the obligation of good faith and fair dealing by engaging in a course of conduct to further their own economic interests and in violation of their contractual and legal obligations to Plaintiffs, including but not limited to:

- A. Unreasonable and improper investigation and handling of Plaintiffs' insurance claims including State Farm's failure to fully investigate the circumstances surrounding the plaintiffs' claim, and, thus failing to warn Plaintiffs of the dangers associated with living in the home;
- B. Unreasonable delays in acting upon Plaintiffs' insurance claim;
- C. Unreasonable and legally untenable interpretations of defendants' obligations under the policy;
- D. Unreasonable and improper repairs of Plaintiffs' property damage;
- E. In the absence of a reasonable basis of or doing so, and with full knowledge and/or conscious disregard of the health consequences to Plaintiffs, failure and refusal to pay benefits due under the policy to Plaintiffs;
- F. Unreasonably and unjustifiably withholding payments and reimbursements for additional living expense by;
- G. Unreasonably forcing Plaintiffs to personally finance the investigation and analysis of losses contrary to the policy;
- H. Unreasonably referring Plaintiffs to unqualified and improper experts;

- I. Unreasonably and unjustifiably withholding payment for the remediation of the covered water damage;
- J. Not attempting in good faith to effectuate prompt, fair and equitable settlement of Plaintiffs' claims for benefits where the obligation to pay has become reasonably clear;
- K. Unreasonably failing to take a position on coverage;
- L. Unreasonably and wrongfully advising Plaintiffs that the claims were not covered under the policy.

31. Defendants' breach of the obligation of good faith and fair dealing constitutes the tort of bad faith entitling Plaintiffs to compensation for all damages sustained as a result thereof.

32. The conduct of Defendants was despicable and constituted malice, entitling Plaintiffs to recover punitive damages from Defendants in that conduct was carried on by Defendants for their own economic gain and with a willful and conscious disregard of the rights of Plaintiffs.

COUNT IV

(Negligent and Wanton Behavior)

33. Plaintiffs reallege and reaffirm each and every preceding paragraph as fully set forth herein.

34. Having undertaken to inspect, repair and advise Plaintiffs regarding the mold problem in the Home, Defendants State Farm, ServPro, Butler and VCE, Inc., owed Plaintiffs a duty of reasonable care to inspect, repair and advise Plaintiffs regarding the mold problem in the Home. During the time in question, the Defendants directly and/or through its employees, agents, and representatives were negligent and/or wanton in failing to use ordinary care in its activities

and failing to use ordinary care to prevent, reduce and/or eliminate an unreasonable risk of hazards created by the growth of toxic substances which the Defendants knew or should have known existed in the exercise of ordinary care, failing to provide appropriate remedial measures for a condition of which were aware and which was within the scope of their responsibility, and failing to protect the Plaintiffs from foreseeable exposure to contaminants.

35. Defendants breached their duty to Plaintiffs by negligently inspecting, repairing and advising Plaintiffs regarding the mold problem in the Home. Defendants further breached their duty by failing to advise the Plaintiffs of potential mold contamination despite the Defendants knowledge of the recurring medical problems of the Plaintiffs.

36. As a result of the conduct of Defendants, Plaintiffs sustained personal physical injuries, which have caused and will continue to cause Plaintiffs' pain and suffering, entitling Plaintiffs to general damages as will be established at the time of trial.

37. As a result of the conduct of Defendants, Plaintiffs incurred, and will continue to incur, expenses and obligations resulting from the treatment of the personal physical injuries Plaintiffs sustained to Plaintiffs' damage as will be established at the time of trial.

38. As a result of the conduct of Defendants, Plaintiff Howard Meister was unable to attend to his normal occupation, resulting in a loss of earnings and/or earning capacity to Plaintiffs' damage as will be established at the time of trial.

39. The conduct of defendants was despicable and constituted malice, entitling Plaintiffs to recover punitive damages from defendants in that the conduct was carried on by defendants for their own economic gain and with a willful and conscious disregard of the rights and safety of Plaintiffs.

- A. Defendants knew of the potential dangers in mold exposure and of the measures which needed to be taken in order to eradicate those dangers. Notwithstanding that knowledge, defendants failed to alert Plaintiffs to the potential dangers so that Plaintiffs could protect their health by moving out of the Home until the repair work was completed, thereby affirmatively exacerbating the mold problem and Plaintiffs' damages. Defendants also attempted to convince Plaintiffs that the mold problem was minor and required only minimal repairs. Defendants attempted to deceive Plaintiffs about the true scope of the mold problem so that defendants could save the expensive policy benefits that were due and owing to Plaintiffs under the terms of the policy.
- B. Officers, directors, and/or managing agents of defendants had actual knowledge that the practices alleged were in contravention of the obligation of good faith and fair dealing and nevertheless authorized and/or ratified the practices with conscious disregard of the rights of Plaintiffs.

COUNT IV

(Negligent Misrepresentation)

40. Plaintiffs reallege and reaffirm each and every preceding paragraph as fully set forth herein.

41. Defendants owed a duty to Plaintiffs to disclose to them information regarding the dangers involved in water damage and the potential for mold exposure and the appropriate measures that needed to be taken in order to eradicate those dangers.

42. Defendants negligently failed to disclose to Plaintiffs information regarding the dangers involved in mold exposure and the appropriate measures that needed to be taken in order to eradicate those dangers.

43. Defendants also actively attempted to convince Plaintiffs that the water damage was repaired and never advised the plaintiffs to move out of the home.

44. Defendants' failure to disclose the above-stated information to Plaintiffs constitutes a negligent misrepresentation of a material fact.

45. Defendants' conduct was carried out with the intention of inducing Plaintiffs to believe that the investigation and remediation would be thorough and to act in reliance on that representation or with the expectation that they would so act.

46. Plaintiffs relied and acted upon defendants' misrepresentation by agreeing to the repair work which State Farm recommended and by remaining in the Home while the repair work was being performed and not taking appropriate measures to protect their health.

47. During the time that defendants failed to disclose these material facts, defendants had no reasonable ground for believing that the water damage was remedied and that there was no need to warn the Plaintiffs of the potential for mold contamination.

48. During the time that defendants failed to disclose these material facts and at the time Plaintiffs took the above-described actions, Plaintiffs were ignorant of the falsity of defendants' representations and believed the representations to be true since defendants had superior knowledge about mold exposure. Had Plaintiffs known the actual facts, they would not have taken such action. Specifically, Plaintiffs would have immediately moved out of the Home and taken other appropriate measures to protect their health.

49. As a legal result of defendants' conduct, Plaintiffs have sustained general and special damages, as will be established at the time of trial.

COUNT V

(Fraud)

50. Plaintiffs reallege and reaffirm each and every preceding paragraph as fully set forth herein.

51. Defendants represented to Plaintiffs that the water damage in the Home was could be eradicated while Plaintiffs remained in the Home.

52. At the time that defendants made these representations, defendants knew that the representations were false.

53. Defendants knew or reasonably should have known that Plaintiffs would rely upon the truth and accuracy of defendants' representations.

54. Plaintiffs did not know the falsity of defendants' representations.

55. In reliance upon defendants' representations, Plaintiffs were induced to remain in the Home while defendants "inspected and investigated" the claim which was inappropriate and exacerbated the problem and Plaintiffs' illnesses and other damages.

56. Plaintiff's reliance upon defendants' representation was justified, because defendants were specialists who had superior knowledge of the nature and extent of the potential mold problem in Plaintiffs' Home and Plaintiffs place trust and confidence in defendants' integrity, professional knowledge, training and experience with such problems.

57. Defendants' conduct constitutes fraud, entitling Plaintiffs to compensation for all damages sustained as a result thereof.

HOLLIS & WRIGHT, P.C.

By: _____
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OF COUNSEL:

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PLAINTIFFS DEMAND TRIAL BY STRUCK JURY

Serve Defendants at the following addresses:

State Farm Fire and Casualty Company
c/o Tom Lakin
100 State Farm Parkway
Birmingham, Alabama 35297

ServPro of Tennessee
c/o Ted R. Habermann
575 Airport Boulevard
Gallatin, Tennessee 37066

Butler Construction Company, L.L.C.
c/o Ricky Butler
1711 Wall Street
Sheffield, Alabama 35660

Jade Engineering and Inspection, Cin.
c/o James A. Durham
818 6th Avenue Southeast
Decatur, Alabama 35601-3022

VCE, Inc.
c/o Earl Hutchinson
2604 Foster Avenue
Nashville, Tennessee 37210