

## CAUSE NO. 1188597

CARMEN ALEMAN,	§	IN THE COUNTY CIVIL COURT
<i>Plaintiff,</i>	§	
	§	
vs	§	AT LAW NUMBER 3
	§	
STANDARD CASUALTY	§	
COMPANY,	§	
<i>Defendant.</i>	§	HARRIS COUNTY, TEXAS

**FINAL JUDGMENT**

This Court granted Defendant Standard Casualty Company's *Traditional* and *No-Evidence Motions for Summary Judgment* and *Motion for Recovery of Attorney's Fees and Costs under the Texas Insurance Code, Texas Civil Practice and Remedies Code, the Texas Rules of Civil Procedure, and the DTPA*. Following the granting of Standard Casualty Company's *Traditional* and *No-Evidence Motions for Summary Judgment* and *Motion for Recovery of Attorney's Fees and Costs under the Texas Insurance Code, Texas Civil Practice and Remedies Code, the Texas Rules of Civil Procedure, and the DTPA*, Plaintiff Carmen Aleman requested, and the Court granted her request for a jury trial on the reasonableness and necessity of Standard's attorney's fees. Trial by jury was held on October 11, 2023 and a verdict rendered by that jury. The Court now enters Final Judgment disposing of all claims by Plaintiff against Defendant and enters Judgment against Plaintiff for the sums awarded Standard by the jury.

Regarding Defendant's Objections and Motion to Strike Plaintiff's Summary Judgment Evidence, IT IS ORDERED, ADJUDGED AND DECREED that Defendant's objections to Plaintiff's Summary Judgment evidence are SUSTAINED, and Exhibits A and B to Plaintiff's Response to Defendants Standard Casualty Company's *Traditional* and *No-Evidence Motions for Summary Judgment* are struck from the record of the Court.

IT IS FURTHER ORDERED, ADJUGED AND DECREED that Defendant Standard Casualty Company's Motions for Traditional and No Evidence Summary Judgment are GRANTED. It is further ORDERED that Plaintiff Carmen Aleman take nothing on her causes against Defendant Standard Casualty Company.

IT IS FURTHER ORDERED, ADJUGED AND DECREED that Defendant Standard Casualty Company's Motion for Recovery of Fees and Costs is well-taken and the is GRANTED under Section 541.153 of the Texas Insurance Code, Rule 13 of the Texas Rules of Civil Procedure, Section 10.001 of the Texas Civil Practice and Remedies Code, and Section 17.50(c) of the DTPA.

IT IS FURTHER ORDERED, ADJUGED AND DECREED that Defendant Standard Casualty Company is awarded recovery of \$137,00.00 in attorney's fees against Plaintiff Carmen Aleman and her attorneys, Eric B. Dick and the Dick Law Firm, PLLC, as sanctions under Section 541.153 of the Texas Insurance Code, Rule 13 of the Texas Rules of Civil Procedure, Section 10.001 of the Texas Civil Practice and Remedies Code, and under Section 17.50(c) of the DTPA.

The Court enters the following Findings of Fact supporting the sanctions awarded against Plaintiff Carmen Aleman and her attorneys, Eric B. Dick and the Dick Law Firm, PLLC:

1. Plaintiff failed to present any admissible evidence to contradict Defendant Standard Casualty Company's Traditional and No-Evidence Motions for Summary Judgment pursuant to Texas Rules of Civil Procedure 166a and 166a(i):
  - a. Plaintiff and her counsel did not present admissible evidence of coverage under any insurance policy and failed to identify a loss occurring within the applicable policy period that was covered under the policy.
  - b. Plaintiff and her counsel failed to establish with any admissible evidence that Plaintiff suffered any damages for which Standard could be held liable.

- c. Plaintiff and her counsel did not present admissible evidence of any act or omission constituting a breach of any policy contract issued by Standard, including evidence of a covered peril occurring within the policy period.
  - d. Plaintiff and her counsel did not present admissible evidence segregating covered losses from those specifically excluded by the applicable insurance policy for any loss suffered.
  - e. In their response to the Motions for Summary Judgment, Plaintiff and her counsel failed to establish that Standard (1) violated the policy contract or any provision of the Texas Insurance Code; (2) committed any act or omission constituting bad faith; (3) failed to act in good faith and fair dealing; or (4) engaged in fraud or a breach of the Texas Deceptive Trade Practices Act.
2. The Response to Standard's Motions for Summary Judgment and Motion for Recovery of Attorney's Fees and Costs as described above demonstrate that the lawsuit is groundless, brought in bad faith, and could only have been brought for the purpose of harassment. The Response demonstrates that the pleadings filed by Plaintiff lacked any reasonable basis in law or fact; that the pleadings were signed by counsel without any inquiry and without knowledge of viable claims; and that counsel knew or should have known the allegations were groundless.
3. Plaintiff's pleadings and responses demonstrate that neither Plaintiff nor her counsel had any evidence of coverage, acts violating any provision of the Texas Insurance Code, any act constituting bad faith or the failure to act in good faith and to deal fairly with its insured, fraud, or a violation of the Texas Deceptive Trade Practices Act when this lawsuit was filed.

4. Due to Plaintiff and her counsel's failure to support by any claim pled in this lawsuit and the failure to identify any effort to investigate a basis in law or fact to support their pleadings, the Court finds that there is no evidentiary support for any claim pled by Plaintiff in this lawsuit and that the lawsuit was brought for an improper purpose, including to cause unnecessary delay and the needless increase of the cost of litigation.
5. With regard to the following of Plaintiffs' designated experts, the Court further finds that the Expert Designations filed by Plaintiff and her attorneys, Eric B. Dick and the Dick Law Firm, PLLC, were misleading and contained false information about designated witnesses. Eric B. Dick and the Dick Law Firm, PLLC obstructed the discovery process by filing designations that were not reviewed or approved by the named witnesses and did not accurately represent the views or opinions of the identified witnesses. Plaintiff's expert designations stated false opinions that were not actually held by the identified witnesses:

- a. **Richard Gadrow:**

- i. Gadrow was designated as a "General Contractor/Estimator" to testify "about the nature, existence of damage, **loss cause** ... and value of Plaintiff's property and similar property."
- ii. the Designation further identifies the following expected opinions for Gadrow:
  - A. "... an insurance carrier adjusting this claim reasonably and in good faith either knew or should have known to identify and accept coverage for the aforementioned reasonably clear damages";

- B. "to the extend [*sic*] Defendant failed to acknowledge and accept coverage for the aforementioned reasonably clear damage, Defendant adjusted this claim in bad faith";
  - C. "Defendant did not fully indemnify the insured for his/her loss and he/she has not been paid to restore the insured's property back to pre-loss condition"; and
  - D. "the insured was underpaid for this claim and Defendant knew or should have known that its claim decision constituted an unfair denial because evidence of covered damages warranting further coverage at all times was reasonably clear during its claim investigation".
- iii. Gadrow was deposed on January 19, 2023. He testified that he did not recall being approached by Plaintiff's counsel to be an expert and could only recall inspecting the Property "sometime in 2021." He had not seen the Expert Designation attributable to him, did not approve of it before it was filed in this case, was not informed that it was being submitted on his behalf, or that he was being designated as an expert. He was first informed that he was designated an expert a few weeks before his January 19<sup>th</sup> deposition.
  - iv. He inspected the Property and prepared a single damage estimate using Xactimate, which contained detailed information regarding the damaged items and estimated costs of repair but was *wholly devoid of any analysis as to the cause or type of damage* and *did not*

*address causation*. Rather the estimate contains a single remark related to causation which was not a conclusion or opinion of Gadrow, but merely a statement that he was contracted to provide a "disinterested third party estimate for the repairs to the subject property caused by a covered peril *as defined by Others*". (emphasis added)

- v. Gadrow testified that he would not be testifying whether or not the damage was covered under the policy, and his sole report (an Xactimate estimate) contains *no analysis of policy coverage*.
- vi. Mr. Gadrow merely inspected the damage and prepared a repair estimate, but he did not find that Plaintiff's roof exhibited damage caused by hail, rather he found it was caused by "the freeze" and "ice damming" and also stated that wind was a possible cause of some of the damage, and that there was nothing he could rely on to tell the date of damage.
- vii. Gadrow did not calculate any percentage of the roof damaged by the ice storm versus wind damage, and did not recall any damage caused by hail, nor conclude that any damage was caused by hail based on review of his report photos during his deposition. He did not state in his report on which elevations he saw any alleged ice or wind damage. He further admits he cannot tell when the damage occurred and stated there is nothing he could rely on that shows when the damage occurred.

b. **Billy Bray:**

i. Plaintiff designated Bray to opine as to the following:

A. the insured sustained covered loss during the effective policy period.

B. The proper scope of repairs to address the damages is reflected in the estimates or appraisal awards previously produced or to be produced.

C. Evidence of covered damage was obvious and reasonably clear.

D. An insurance carrier adjusting this claim reasonably and in good faith either knew or should have known to identify and accept coverage for the reasonably clear damages.

E. To the extent Defendant failed to acknowledge and accept coverage for the reasonably clear damage, Defendant adjusted this claim in bad faith.

F. Defendant did not fully indemnify the insured for his/her loss and he/she has not been paid to restore the insured's property back to pre-loss condition.

G. The insured was underpaid for this claim and Defendant knew or should have known that its claim decision constituted an unfair denial because evidence of covered damages warranting further coverage at all times was reasonably clear during its claim investigation.

- ii. Plaintiff's counsel initially agreed to a date for Bray's deposition and the deposition was scheduled for January 17, 2023. Plaintiff's counsel informed Standard's counsel the day before that the deposition had to be rescheduled. Mr. Bray's deposition was eventually taken on January 26, 2023.
- iii. When deposed, Mr. Bray admitted he was first contacted by Plaintiff's counsel in January of 2023, and had never spoken with the Plaintiff.
- iv. Bray testified that he would not be testifying as to bad faith and had no basis to believe bad faith occurred.
- v. Bray did not inspect the Property, has not been asked to prepare a report, and he did not review or approve the Designation prior to the date it was filed.

c. **Matt Morgan:**

- i. Plaintiff's Expert Designation states that Morgan is expected to opine to the following opinions:
  - A. He may be called to testify as an insurance professional with regard to what a reasonable and prudent insurance adjuster and/or insurance company would have done in processing the insurance claim subject to this lawsuit.
  - B. He is expected to testify regarding his investigation and Defendant's handling of the claim and that Defendant did not exercise good faith while adjusting Plaintiff's claim.
  - C. He is designated to testify that he would testify as insurance professional and "legal expert" with regard to what constitute a



valid defense of fraud. More specifically, he will testify that the Defendant would be incorrect in claiming fraud because there is a lack of materiality and/or there is no material evidence showing intent to deceive on behalf of the insured. (emphasis added)

- ii. This deposition was unnecessarily difficult to schedule. Plaintiff's counsel initially agreed to a date, and the deposition was scheduled for January 10, 2023. Counsel apparently never informed Morgan about the deposition and Standard was forced to serve a Notice of Deposition and a subpoena to compel Morgan to appear. After Morgan was served, he contacted Standard's counsel, asking to be paid, and stated that Plaintiff's counsel had never contacted him. Indeed, his first knowledge of this case was when Standard's counsel contacted him.
- iii. Morgan's deposition was rescheduled twice, first from January 10, 2023 to February 15, 2023, and then rescheduled again to February 21, 2023, and his deposition was ultimately taken on February 21, 2023.
- iv. Morgan did not inspect the Property and had not spoken to the Plaintiff at the time of the deposition. He did not contribute at all to the Expert Designation attributable to him. Despite being designated to testify to "Defendant's handling of the claim and that Defendant did not

exercise good faith while adjusting Plaintiff's claim," he was not even given the claim file to review.

- v. Contrary to Plaintiff's claim that her Property was damaged by hail, Morgan concluded the damage was caused primarily by a wind event, and he had no basis to conclude there was any other cause.

d. **Shiran Perera:**

- i. Shiran Perera, P.E. was designated to testify "regarding the causation, nature, existence of damage at the insured property" and "an event (ie: hail, wind, fire, pipe burst, freeze, water loss, etc) occurred at the insured location during the policy period and said event caused damaged [sic] to the insured property."
- ii. Perera was first contacted by Plaintiff's counsel a few weeks before his January 11, 2023 Deposition. He did not inspect the Property, nor speak with anyone about the Property and the alleged damage. Perera testified only to wind damage, damage from a tree branch, and temperature changes (freezing and thawing).
- iii. He did not see evidence of hail damage to the roof, including no hail damage to any of the metal vents. He could only testify from photographs taken in August 2021, even though the alleged hailstorm was stated as occurring in October 2020.
- iv. He cannot determine when any of the damage he sees in the photograph occurred, other than to guess at the "last couple of years," and some of the damage was even older.

6. Eric B. Dick and the Dick Law Firm, PLLC obstructed the discovery process by failing to timely tender each designated witness for deposition, forcing Standard to incur substantial expense in issuing and serving subpoenas, forcing Standard to incur cost to issue multiple deposition notices, and in having to depose each witness to discover the falsity of the designations. In addition to the findings discussed above in paragraph 5, Plaintiff and her counsel designated Dexter McIntyre as an “Appraiser,” with a nearly identical designation as Gadrow. There was no appraisal in this case. Plaintiff never made McIntyre available for deposition, forcing Defendant to serve a Notice of Deposition and subpoena to compel him to appear. McIntyre was served and scheduled to appear for deposition on January 9, 2023. After McIntyre was served, he personally contacted Standard's counsel, asking to be paid, and stated that Plaintiff's counsel had never contacted nor retained him to serve as an expert. McIntyre's deposition was then scheduled for March 2, 2023, however Plaintiff's counsel cancelled and informed Defendant that the deposition again needed to be rescheduled without providing any reason or explanation. Mr. McIntyre was never presented for deposition.
7. Plaintiff and her counsel Eric B. Dick and the Dick Law Firm, PLLC were provided the opportunity to respond to the Motion for Recovery Fees and Costs, but failed to do so in any meaningful or substantive way. In response to the Motion for Recovery of Attorney's Fees and Costs, neither Plaintiff nor counsel responded with affidavit testimony or any evidence establishing that either had investigated the facts supporting the lawsuit, nor determined that the lawsuit was supported by any legal authority. The Court finds that Plaintiff and her counsel's failure to present evidence supporting the claims made in Plaintiff's Petition and the failure to identify any investigation or basis

for any claim made in this proceeding when the suit was filed is evidence that the lawsuit, from its inception, was frivolous, groundless, and made solely for the purpose of harassment.

8. Defendant Standard Casualty Company has suffered damages in the amount of \$137,00.00 in attorney's fees as a result of the groundless and frivolous pleadings and expert designations filed in this lawsuit by Plaintiff Carmen Aleman and her attorneys, Eric B. Dick and the Dick Law Firm, PLLC.

IT IS FURTHER ORDERED that if Plaintiff and/or her counsel appeals this Final Judgment and award of sanctions, Defendant Standard Casualty Company is entitled to recover the following appellate fees:

- a. \$16,500.00 for the appeal to the Court of Appeals;
- b. \$10,000.00 for the appeal to the Supreme Court of Texas if it is required to file a Petition for Review or respond to a Petition for Review;
- c. \$10,000.00 for an appeal to the Supreme Court of Texas if the Texas Supreme Court grants the parties briefing on the merits, for preparation and filing of the brief;
- d. \$12,000.00 for an appeal to the Supreme Court of Texas if the Texas Supreme Court grants the petition and asks for oral arguments to be presented, for preparing and presenting oral argument to the Texas Supreme Court.

IT IS FURTHER ORDERED that all costs are taxed against Plaintiff.

IT IS FURTHER ORDERED that Standard Casualty Company is awarded post-judgment interest at the rate of eight and one-half percent (8.5%) compounded annually from the date of this Judgment is entered until all amounts are paid in full.

IT IS FURTHER ORDERED that Standard Casualty Company is allowed such writs and process as may be necessary in the enforcement and collection of this Judgment.

IT IS FURTHER ORDERED that all other requests for relief that have not been expressly granted herein, or in a previous written order, are DENIED.

The Court intends for this Final Judgment to constitute the Court's final, appealable judgment resolving all matters.

SIGNED on 10/17/2023, 2023.



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JUDGE PRESIDING

FILED  
10/18/2023 8:49:11 AM  
Teneshia Hudspeth  
County Clerk  
Harris County, Texas  
krojas

### Automated Certificate of eService

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Kathy Donalds on behalf of Daena Goldsmith Ramsey  
Bar No. 8093970  
kdonalds@shieldslegal.com  
Envelope ID: 80658420  
Filing Code Description: Proposed Order  
Filing Description: Proposed Final Judgment  
Status as of 10/17/2023 9:44 AM CST

Associated Case Party: CARMEN ALEMAN

Name	BarNumber	Email	TimestampSubmitted	Status
Eric BDick		eric@dicklawfirm.com	10/17/2023 9:29:36 AM	SENT
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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