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WHATCOM COUNTY
WASHINGTON

BY

Raquel Montoya-Lewis

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WHATCOM COUNTY SUPERIOR COURT

Case Information Cover Sheet (CICS)

16 2 00321 1

Case Number Case Title Bagley v. Travelers Home and Marine Ins. Co.

Attorney Name Kathryn M. Knudsen

Bar Membership Number 41075

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time in docketing new cases, but helps in forecasting needed judicial resources. Cause of action definitions are listed on the back of this form. Thank you for your cooperation.

<input type="checkbox"/> ABJ	Abstract of Judgment	<input type="checkbox"/> PRG	Property Damage – Gangs
<input type="checkbox"/> ALR	Administrative Law Review	<input type="checkbox"/> PRP	Property Damages
<input type="checkbox"/> ALRJT	Administrative Law Review-Jury Trial (L&I)	<input type="checkbox"/> QTI	Quiet Title
<input type="checkbox"/> CHN	Non-Confidential Change of Name	<input type="checkbox"/> RDR	Relief from Duty to Register
<input type="checkbox"/> COL	Collection	<input type="checkbox"/> SDR	Restoration of Firearm Rights
<input type="checkbox"/> CON	Condemnation	<input type="checkbox"/> SPC	School District-Required Action Plan
<input checked="" type="checkbox"/> COM	Commercial	<input type="checkbox"/> SPR	Seizure of Property-Commission of Crime
<input type="checkbox"/> DOL	Appeal Licensing Revocation	<input type="checkbox"/> STK	Seizure of Property-Resulting from Crime
<input type="checkbox"/> DVP	Domestic Violence	<input type="checkbox"/> SXP	Stalking Petition
<input type="checkbox"/> EOM	Emancipation of Minor	<input type="checkbox"/> TAX	Sexual Assault Protection
<input type="checkbox"/> FJU	Foreign Judgment	<input type="checkbox"/> TAX	Employment Security Tax Warrant
<input type="checkbox"/> FOR	Foreclosure	<input type="checkbox"/> TAX	L & I Tax Warrant
<input type="checkbox"/> FPO	Foreign Protection Order	<input type="checkbox"/> TAX	Licensing Tax Warrant
<input type="checkbox"/> HAR	Unlawful Harassment	<input type="checkbox"/> TAX	Revenue Tax Warrant
<input type="checkbox"/> INJ	Injunction	<input type="checkbox"/> TMV	Tort – Motor Vehicle
<input type="checkbox"/> INT	Interpleader	<input type="checkbox"/> TRJ	Transcript of Judgment
<input type="checkbox"/> LCA	Lower Court Appeal – Civil	<input type="checkbox"/> TTO	Tort – Other
<input type="checkbox"/> LCI	Lower Court Appeal – Infractions	<input type="checkbox"/> TXF	Tax Foreclosure
<input type="checkbox"/> LUPA	Land Use Petition Act	<input type="checkbox"/> UND	Unlawful Detainer – Commercial
<input type="checkbox"/> MAL	Other Malpractice	<input type="checkbox"/> UND	Unlawful Detainer – Residential
<input type="checkbox"/> MED	Medical Malpractice	<input type="checkbox"/> VAP	Vulnerable Adult Protection Order
<input type="checkbox"/> MHA	Malicious Harassment	<input type="checkbox"/> VVT	Victims of Motor Vehicle Theft-Civil Action
<input type="checkbox"/> MSC2	Miscellaneous – Civil	<input type="checkbox"/> WDE	Wrongful Death
<input type="checkbox"/> MST2	Minor Settlement – Civil (No Guardianship)	<input type="checkbox"/> WHC	Writ of Habeas Corpus
<input type="checkbox"/> PCC	Petition for Civil Commitment (Sexual Predator)	<input type="checkbox"/> WMW	Miscellaneous Writs
<input type="checkbox"/> PFA	Property Fairness Act	<input type="checkbox"/> WRM	Writ of Mandamus
<input type="checkbox"/> PIN	Personal Injury	<input type="checkbox"/> WRR	Writ of Restitution
<input type="checkbox"/> PRA	Public Records Act	<input type="checkbox"/> WRV	Writ of Review

IF YOU CANNOT DETERMINE THE APPROPRIATE CATEGORY, PLEASE DESCRIBE THE CAUSE OF ACTION BELOW.

Please Note: Public information in court files and pleadings may be posted on a public Web site.

<p>APPEAL/REVIEW</p> <p>Administrative Law Review-Petition to the superior court for review of rulings made by state administrative agencies.</p> <p>Appeal of a Department of Licensing Revocation-Appeal of a DOL revocation (RCW 46.20.308(9)).</p> <p>Lower Court Appeal-Civil-An appeal for a civil case; excludes traffic infraction and criminal matters.</p> <p>Lower Court Appeal-Infractions-An appeal for a traffic infraction matter.</p>	<p>Relief from Duty to Register-Civil action requesting relief from duty to register as a sex offender. Petition can address the registration obligation that arises from multiple cases. RCW 9A.44.142, 9A.44.143.</p> <p>Restoration of Firearms Rights-Petition seeking restoration of firearms rights under RCW 9.41.040 and 9.41.047. (Eff. 9-2-2014)</p> <p>School District-Required Action Plan-Petition filed requesting court selection of a required action plan proposal relating to school academic performance.</p> <p>Seizure of Property from the Commission of a Crime-Seizure of personal property which was employed in aiding, abetting, or commission of a crime, from a defendant after conviction.</p> <p>Seizure of Property Resulting from a Crime-Seizure of tangible or intangible property which is the direct or indirect result of a crime, from a defendant following criminal conviction (e.g., remuneration for, or contract interest in, a depiction or account of a crime).</p> <p>Subpoenas-Petition for a subpoena.</p>
<p>CONTRACT/COMMERCIAL</p> <p>Breach of Contract-Complaint involving monetary dispute where a breach of contract is involved.</p> <p>Commercial Contract-Complaint involving monetary dispute where a contract is involved.</p> <p>Commercial Non-Contract-Complaint involving monetary dispute where no contract is involved.</p> <p>Third Party Collection-Complaint involving a third party over a monetary dispute where no contract is involved.</p>	<p>Seizure of Property from the Commission of a Crime-Seizure of personal property which was employed in aiding, abetting, or commission of a crime, from a defendant after conviction.</p> <p>Seizure of Property Resulting from a Crime-Seizure of tangible or intangible property which is the direct or indirect result of a crime, from a defendant following criminal conviction (e.g., remuneration for, or contract interest in, a depiction or account of a crime).</p> <p>Subpoenas-Petition for a subpoena.</p>
<p>PROTECTION ORDER</p> <p>Civil Harassment-Petition for protection from civil harassment.</p> <p>Domestic Violence -Petition for protection from domestic violence.</p> <p>Foreign Protection Orders-Any protection order of a court of the United States, or of any state, territory, or tribal land, which is entitled to full faith and credit in this state.</p> <p>Sexual Assault Protection-Petition under RCW 7.90.020.</p> <p>Stalking- Petition for protection from stalking for victims who do not qualify for a domestic violence protection order. (RCW 7.92.030)</p> <p>Vulnerable Adult Protection-Petition for protection order for vulnerable adults, as those persons are defined in RCW 74.34.020.</p>	<p>Condemnation-Complaint involving governmental taking of private property with payment, but not necessarily with consent.</p> <p>Foreclosure-Complaint involving termination of ownership rights when a mortgage or tax foreclosure is involved, where ownership is not in question.</p> <p>Land Use Petition-Petition for an expedited judicial review of a land use decision made by a local jurisdiction (RCW 36.70C.040).</p> <p>Property Fairness-Complaint involving the regulation of private property or restraint of land use by a government entity brought forth by Title 64 RCW.</p> <p>Quiet Title-Complaint involving the ownership, use, or disposition of land or real estate other than foreclosure.</p> <p>Unlawful Detainer-Complaint involving the unjustifiable retention of lands or attachments to land, including water and mineral rights.</p>
<p>JUDGMENT</p> <p>Abstract Only-A certified copy of a judgment docket from another superior court, an appellate court, or a federal district court.</p> <p>Foreign Judgment-Any judgment, decree, or order of a court of the United States, or of any state or territory, which is entitled to full faith and credit in this state.</p> <p>Judgment, Another County-A certified copy of a judgment docket from another superior court within the state.</p> <p>Judgment, Another State-Any judgment, decree, or order from another state which is entitled to full faith and credit in this state.</p> <p>Tax Warrants -A notice of assessment by a state agency creating a judgment/lien in the county in which it is filed. (Four types available.)</p> <p>Transcript of Judgment-A certified copy of a judgment from a court of limited jurisdiction to a superior court in the same county.</p>	<p>TORT, MEDICAL MALPRACTICE</p> <p>Hospital-Complaint involving injury or death resulting from a hospital.</p> <p>Medical Doctor-Complaint involving injury or death resulting from a medical doctor.</p> <p>Other Health Care Professional-Complaint involving injury or death resulting from a health care professional other than a medical doctor.</p>
<p>OTHER COMPLAINT/PETITION</p>	<p>TORT, MOTOR VEHICLE</p> <p>Death-Complaint involving death resulting from an incident involving a motor vehicle.</p> <p>Non-Death Injuries -Complaint involving non-death injuries resulting from an incident involving a motor vehicle.</p> <p>Property Damage Only-Complaint involving only property damages resulting from an incident involving a motor vehicle.</p>
<p>Change of Name-Petition for a change of name. If change is confidential due to domestic violence/anti-harassment see case type 5 instead.</p> <p>Deposit of Surplus Funds-Deposit of money or other item with the court.</p> <p>Emancipation of Minor-Petition by a minor for a declaration of emancipation.</p> <p>Injunction-Complaint/petition to require a person to do or refrain from doing a particular thing.</p> <p>Interpleader-Petition for the deposit of disputed earnest money from real estate, insurance proceeds, and/or other transaction(s).</p> <p>Malicious Harassment-Suit involving damages resulting from malicious harassment.</p> <p>Minor Settlements-Petition for a court decision that an award to a minor is appropriate when no letters of guardianship are required (e.g., net settlement value \$25,000 or less).</p> <p>Petition for Civil Commitment (Sexual Predator)-Petition for the involuntary civil commitment of a person who 1) has been convicted of a sexually violent offense whose term of confinement is about to expire or has expired, 2) has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial who is about to be released or has been released, or 3) has been found not guilty by reason of insanity of a sexually violent offense and who is about to be released or has been released, and it appears that the person may be a sexually violent predator.</p> <p>Property Damage-Gangs-Complaint involving damage to property related to gang activity.</p> <p>Public Records Act-Actions filed under RCW 42.56.</p>	<p>TORT, NON-MOTOR VEHICLE</p> <p>Asbestos-Complaint alleging injury resulting from asbestos exposure.</p> <p>Other Malpractice-Complaint involving injury resulting from other than professional medical treatment.</p> <p>Personal Injury-Complaint involving physical injury not resulting from professional medical treatment, and where a motor vehicle is not involved.</p> <p>Products Liability-Complaint involving injury resulting from a commercial product.</p> <p>Property Damages-Complaint involving damage to real or personal property excluding motor vehicles.</p> <p>Victims of Motor Vehicle Theft-Complaint filed by a victim of car theft to recover damages. (RCW 9A.56.078)</p> <p>Wrongful Death-Complaint involving death resulting from other than professional medical treatment.</p>
	<p>WRIT</p> <p>Writ of Habeas Corpus-Petition for a writ to bring a party before the court.</p> <p>Writ of Mandamus-Petition for writ commanding performance of a particular act or duty.</p> <p>Writ of Restitution-Petition for a writ restoring property or proceeds; not an unlawful detainer petition.</p> <p>Writ of Review-Petition for review of the record or decision of a case pending in the lower court; does not include lower court appeals or administrative law reviews.</p> <p>Miscellaneous Writs</p>

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WHATCOM COUNTY
WASHINGTON

BY _____

SUPERIOR COURT OF WASHINGTON IN AND FOR WHATCOM COUNTY

CURT BAGLEY and SANDRA BAGLEY,
husband and wife and the marital community
comprised thereof,

Plaintiffs,

v.

TRAVELERS HOME AND MARINE
INSURANCE COMPANY,

Defendant.

No.

16-2-00321-1

SUMMONS

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\$1240.00

Raquel Montoya-Lewis

THE STATE OF WASHINGTON, TO:

TRAVELERS HOME AND MARINE INSURANCE COMPANY, DEFENDANT

TO THE DEFENDANT: A lawsuit has been started against you in the above-entitled court by plaintiff(s), CURT BAGLEY and SANDRA BAGLEY. Plaintiff(s)' claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 40 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff(s) is/are entitled to what has been asked for because you have not responded. If you serve a notice of

SUMMONS-1

ORIGINAL

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
TELEPHONE: (206) 623-1000
FACSIMILE: (206) 623-3384

1 appearance on the undersigned person, you are entitled to notice before a default judgment may
2 be entered.

3 You may demand that the plaintiff(s) file this lawsuit with the court. If you do so, the
4 demand must be in writing and must be served upon the person signing this summons. Within
5 14 days after you serve the demand, the plaintiff(s) must file this lawsuit with the court, or the
6 service on you of this summons and complaint will be void.
7

8 If you wish to seek the advice of any attorney in this matter, you should do so promptly
9 so that your written response, if any, may be served on time.

10 THIS SUMMONS is issued pursuant to Rule 4 of the Superior Court Civil Rules of the
11 State of Washington.
12

13 DATED this 23rd day of February, 2016.

14 KELLER ROHRBACK L.L.P.
15

16 By 
17 William C. Smart, WSBA #8192
18 Kathryn M. Knudsen, WSBA #41075
19 Attorneys for Plaintiffs CURT BAGLEY and
20 SANDRA BAGLEY
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SUPERIOR COURT OF WASHINGTON IN AND FOR WHATCOM COUNTY

CURT BAGLEY and SANDRA BAGLEY,
husband and wife and the marital community
comprised thereof,

Plaintiffs,

v.

TRAVELERS HOME AND MARINE
INSURANCE COMPANY,

Defendant.

No. 16 2 00321 1

COMPLAINT

For cause of action against defendant, plaintiffs allege as follows:

I. PARTIES

1.1. Curt Bagley and Sandra Bagley are husband and wife. They live at 4101 Matia Dr., Ferndale, Washington. They purchased a homeowners insurance policy from defendant Travelers Home and Marine Insurance Company which was in effect on November 12, 2015.

1.2. Travelers Home and Marine Insurance Company ("Travelers") is a foreign corporation doing business in Whatcom County.

II. JURISDICTION AND VENUE

2.1. This Court has subject matter jurisdiction pursuant to RCW 2.08.010.

COMPLAINT- 1

ORIGINAL

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

2.2. Venue is proper in this Court under RCW 48.05.220, which provides: "Suit upon cause of action arising within this state against an insurer upon an insurance contract shall be brought in the county where the cause of action arose."

III. FACTS

3.1. On November 12, 2015, a large windstorm occurred in and about Ferndale, Washington. Winds were high and continuous throughout the day. Gusts of at least 61 miles per hour were recorded.

3.2. At that time and date, plaintiffs had a boat moored to their dock located on the Sandy Point Canal.

3.3. As a direct and proximate result of the wind operating on the boat and dock, the dock and ramp were severely damaged.

3.4. Prior to the loss, plaintiffs rented a different slip in the Sandy Point Canal to a third party. Following the damage to plaintiffs dock and ramp, plaintiffs have been required to keep their own boat in that slip and, consequently, have lost the monthly moorage income.

3.5. Plaintiffs Bagley were insured by Travelers under a homeowners' policy no. 0DGO30-990362148-663-1. The policy provides coverage for damage due to wind.

3.6. The dock and ramp are covered by the policy.

3.7. Plaintiffs properly presented a claim to Travelers on November 13, 2015, the day after the loss due to wind.

3.8. No person from Travelers investigated the loss before November 18, 2015, nearly a week after the loss occurred. The weather conditions were substantially different at that time.

3.9. Travelers improperly denied coverage for plaintiffs' claim.

1 3.10. Insurance companies are prohibited by industry standards and Washington
2 Administrative Code Regulations from:

- 3 • Misrepresenting facts and policy provisions.
- 4 • Failing to acknowledge and act reasonably promptly upon communications with
5 respect to claims arising under insurance policies.
- 6 • Failing to adopt and implement reasonable standards for the prompt investigation
7 of claims.
- 8 • Failing to advise insured of what is necessary to complete the claim.
- 9 • Failing to assist the insured.
- 10 • Refusing to pay claims without a reasonable investigation.
- 11 • Compelling first party claimants to initiate litigation by offering substantially less
12 than the amounts due under policies.
- 13 • Failing to promptly settle claims where liability has become reasonably clear.
- 14 • Failing to promptly provide a reasonable explanation of the basis in the insurance
15 policy in relation to the facts or applicable law for the denial of the claim.
- 16 • Failing to disclose all rights and benefits under an insurance policy to the
17 insured.
- 18 • Attempting to transfer the cost of investigation to the insured.
- 19 • Failing to complete a full and fair investigation within 30 days.

20 3.11. The conduct of defendant Travelers has violated all of the above standards in
21
22 Washington Administrative Code Regulations.

CAUSES OF ACTION

IV. CLAIM NO. 1 – DECLARATORY JUDGMENT

- 4.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.
- 4.2. The case involves a justiciable controversy.
- 4.3. Defendants have refused to acknowledge coverage for the loss and have denied coverage.

4.4. Mr. and Mrs. Bagley seek a judgment from this Court that Travelers is in violation of the provisions of the unfair settlement practices regulations.

4.5. Mr. and Mrs. Bagley seek a judgment from this Court declaring that Travelers is estopped from asserting any time limitation as a defense to coverage claims.

4.6. Mr. and Mrs. Bagley seek a judgment from this Court declaring that coverage exists under the policy.

4.7. Mr. and Mrs. Bagley seeks determination that Travelers is liable for plaintiffs' reasonable attorney fees and costs under *Olympic Steamship Co. v. Centennial Insurance Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991), *McGreevy v. Oregon Mutual Insurance Co.*, 128 Wn.2d 26, 904 P.2d 731 (1995), and RCW 19.86.090.

V. CLAIM NO. 2 – BREACH OF CONTRACT

- 5.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.
- 5.2. Travelers is in breach of the insurance contract.

VI. CLAIM NO. 3 - INSURANCE BAD FAITH

- 6.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.
- 6.2. Traveler's conduct constitutes insurance bad faith.

VII. CLAIM NO. 4 – NEGLIGENT CLAIMS HANDLING

- 7.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.
- 7.2. The conduct of the defendants described above constitutes negligent claims handling.

VIII. CLAIM NO. 5 – CONSUMER PROTECTION ACT

- 8.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.
- 8.2. Defendant's conduct violates the Washington Consumer Protection Act.

IX. CLAIM NO. 6 – CONSTRUCTIVE FRAUD

- 9.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.
- 9.2. Defendant's conduct herein constitutes constructive fraud.

X. CLAIM NO. 7 - NEGLIGENT / INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

- 10.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.
- 10.2. Defendant's conduct amounts to negligent or intentional infliction of emotional distress.
- 10.3. Mr. and Mrs. Bagley sustained damage as a result.
- 10.4. Defendants are liable for Mr. and Mrs. Bagley's damages.

XI. CLAIM NO. 8 – INJUNCTIVE RELIEF

- 11.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.
- 11.2. Mr. and Mrs. Bagley assert a claim for injunctive relief under the Consumer Protection Act.
- 11.3. The Court should enjoin Travelers from further acts that violate the Washington Administrative Code, the insurance code, or the Consumer Protection Act.

11.4. The Court should require that Travelers enact procedures by which the insurance company lives up to its legal obligations to its insureds.

XII. RESERVATION

12.1. Plaintiffs reserve the right to amend the complaint to add a claim under the Insurance Fair Conduct Act, RCW 48.30.010 and 48.30.015.

XIII. PRAYER FOR RELIEF

WHEREFORE, Mr. and Mrs. Bagley requests that this Court:

- A. Enter a declaratory judgment as stated;
- B. Enter a money judgment against defendants in the amount that we will prove;
- C. Enter an injunction as stated;
- D. Award plaintiff's costs, disbursements, and attorney's fees, including reasonable attorney's fees and costs under *Olympic Steamship Co. v. Centennial Insurance Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991), RCW 19.86.090, for constructive fraud, and for defendant's bad faith.
- E. Otherwise award plaintiffs their attorney fees and costs;
- F. Award enhanced damages pursuant to RCW 19.86.090; and
- G. Award such other relief as is just and proper.

DATED this 23rd day of February, 2016.

KELLER ROHRBACK L.L.P.

By William C. Smart, WSBA #8192
Kathryn M. Knudsen, WSBA #41075
Attorneys for Plaintiffs CURT BAGLEY and
SANDRA BAGLEY

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SUPERIOR COURT OF WASHINGTON IN AND FOR WHATCOM COUNTY

CURT BAGLEY and SANDRA BAGLEY,
husband and wife and the marital community
comprised thereof,

Plaintiffs,

v.

TRAVELERS HOME AND MARINE
INSURANCE COMPANY,

Defendant.

No. 16-2-00321-1

FIRST AMENDED COMPLAINT FOR
MONEY DAMAGES AND INJUNCTIVE
RELIEF

Raquel Montoya-Lewis

For cause of action against defendant, plaintiffs allege as follows:

I. PARTIES

1.1. Curt Bagley and Sandra Bagley are husband and wife. They live at 4101 Matia Dr., Ferndale, Washington. They purchased a homeowners insurance policy from defendant Travelers Home and Marine Insurance Company which was in effect on November 12, 2015.

1.2. Travelers Home and Marine Insurance Company ("Travelers") is a foreign corporation doing business in Whatcom County.

II. JURISDICTION AND VENUE

2.1. This Court has subject matter jurisdiction pursuant to RCW 2.08.010.

FIRST AMENDED COMPLAINT-1

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

2.2. Venue is proper in this Court under RCW 48.05.220, which provides: "Suit upon cause of action arising within this state against an insurer upon an insurance contract shall be brought in the county where the cause of action arose."

III. FACTS

3.1. On November 12, 2015, a large windstorm occurred in and about Ferndale, Washington. Winds were high and continuous throughout the day. Gusts of at least 61 miles per hour were recorded.

3.2. At that time and date, plaintiffs had a boat moored to their dock located on the Sandy Point Canal.

3.3. As a direct and proximate result of the wind operating on the boat and dock, the dock and ramp were severely damaged.

3.4. Prior to the loss, plaintiffs rented a different slip in the Sandy Point Canal to a third party. Following the damage to plaintiffs dock and ramp, plaintiffs have been required to keep the boat that was once tied to their dock in the other slip and, consequently, have lost the monthly moorage income for that slip.

3.5. Plaintiffs Bagley were insured by Travelers under a homeowners' policy no. 0DGO30-990362148-663-1. The policy provides coverage for damage due to wind.

3.6. The dock and ramp are covered by the policy.

3.7. Plaintiffs properly presented a claim to Travelers on November 13, 2015, the day after the loss due to wind.

3.8. No person from Travelers investigated the loss before November 18, 2015, nearly a week after the loss occurred. The weather conditions were substantially different at that time.

1 3.9. Travelers improperly denied coverage for plaintiffs' claim.

2 3.10. Insurance companies are prohibited by industry standards and Washington

3 Administrative Code Regulations from:

- 4 • Misrepresenting facts and policy provisions.
- 5 • Failing to acknowledge and act reasonably promptly upon communications with
- 6 respect to claims arising under insurance policies.
- 7 • Failing to adopt and implement reasonable standards for the prompt investigation
- 8 of claims.
- 9 • Failing to advise insured of what is necessary to complete the claim.
- 10 • Failing to assist the insured.
- 11 • Refusing to pay claims without a reasonable investigation.
- 12 • Compelling first party claimants to initiate litigation by offering substantially less
- 13 than the amounts due under policies.
- 14 • Failing to promptly settle claims where liability has become reasonably clear.
- 15 • Failing to promptly provide a reasonable explanation of the basis in the insurance
- 16 policy in relation to the facts or applicable law for the denial of the claim.
- 17 • Failing to disclose all rights and benefits under an insurance policy to the
- 18 insured.
- 19 • Attempting to transfer the cost of investigation to the insured.
- 20 • Failing to complete a full and fair investigation within 30 days.

21 3.11. The conduct of defendant Travelers has violated all of the above standards in

22 Washington Administrative Code Regulations.

CAUSES OF ACTION

IV. CLAIM NO. 1 – DECLARATORY JUDGMENT

- 4.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.
- 4.2. The case involves a justiciable controversy.
- 4.3. Defendants have refused to acknowledge coverage for the loss and have denied coverage.
- 4.4. Mr. and Mrs. Bagley seek a judgment from this Court that Travelers is in violation of the provisions of the unfair settlement practices regulations.
- 4.5. Mr. and Mrs. Bagley seek a judgment from this Court declaring that Travelers is estopped from asserting any time limitation as a defense to coverage claims.
- 4.6. Mr. and Mrs. Bagley seek a judgment from this Court declaring that coverage exists under the policy.
- 4.7. Mr. and Mrs. Bagley seek determination that Travelers is liable for plaintiffs' reasonable attorney fees and costs under *Olympic Steamship Co. v. Centennial Insurance Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991), *McGreevy v. Oregon Mutual Insurance Co.*, 128 Wn.2d 26, 904 P.2d 731 (1995), and RCW 19.86.090.

V. CLAIM NO. 2 – BREACH OF CONTRACT

- 5.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.
- 5.2. The insurance policy is a valid, enforceable contract.
- 5.3. Travelers is in breach of the insurance contract.

5.4. The Bagleys have sustained damage as a result of Traveler's breach in an amount to be proven at trial.

5.5. In addition to the Bagley's damages, Travelers is liable for the Bagley's reasonable attorney fees and costs under *Olympic Steamship Co. v. Centennial Insurance Co.*, 117 Wn.2d 37, 51-53, 811 P.2d 673 (1991).

VI. CLAIM NO. 3 – INSURANCE BAD FAITH

6.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.

6.2. Traveler's conduct was unreasonably, frivolous, or unfounded and constitutes insurance bad faith.

6.3. Travelers is in violation of the provisions of the Unfair Claim Settlement Practices Regulation.

6.4. Travelers is in violation of industry standards for the handling of insurance claims.

6.5. The Bagleys sustained damage as a result of Travelers' conduct.

6.6. Travelers is liable for the Bagley's consequential economic and noneconomic damages in addition to reasonable attorney fees and costs under *McGreevy v. Oregon Mutual Insurance Co.*, 128 Wn.2d 26, 37, 904 P.2d 731 (1995).

VII. CLAIM NO. 4 – NEGLIGENT CLAIMS HANDLING

7.1 The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.

7.2. The conduct of the defendants described above was unreasonable, in violation of the Unfair Claim Settlement Practices Regulation, and constitutes negligent claims handling.

7.3 The Bagleys sustained damage as a result of Traveler's conduct.

VIII. CLAIM NO. 5 – CONSUMER PROTECTION ACT

- 8.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.
- 8.2. Travelers engaged in unfair or deceptive acts or practices.
- 8.3. Travelers' conduct occurred in trade or commerce.
- 8.4. Travelers is in violation of the Unfair Claims Settlement Practices Regulation.
- 8.5. Travelers' conduct affected the public interest.
- 8.6. Traveler's conduct caused injury to the Bagleys "business or property" under the
mer Protection Act.
- 8.7. The Bagleys sustained damage as a result of Traveler's conduct.
- 8.8. Defendant's conduct violates the Washington Consumer Protection Act.
- 8.9. In addition to damages, Travelers is liable for attorney fees and costs under RCW
090.
- 8.10. The Court should order Travelers to pay enhanced damages under RCW
090.

IX. CLAIM NO. 6 – CONSTRUCTIVE FRAUD

- 9.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.
- 9.2. Defendant's conduct herein constitutes constructive fraud.

X. CLAIM NO. 7 - NEGLIGENT / INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

- 10.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.
- 10.2. Defendant's conduct amounts to negligent or intentional infliction of emotional distress.
- 10.3. Mr. and Mrs. Bagley sustained damage as a result.
- 10.4. Defendants are liable for Mr. and Mrs. Bagley's damages.

XI. CLAIM NO. 8 – INJUNCTIVE RELIEF

11.1. The plaintiffs incorporate all the preceding paragraphs as if fully set forth herein.

11.2. Mr. and Mrs. Bagley assert a claim for injunctive relief under the Consumer Protection Act.

11.3. The Court should enjoin Travelers from further acts that violate the Washington Administrative Code, the insurance code, or the Consumer Protection Act.

11.4. The Court should require that Travelers enact procedures by which the insurance company lives up to its legal obligations to its insureds.

11.5. Travelers is liable for reasonable attorney fees and costs under RCW 19.86.090.

XII. INSURANCE FAIR CONDUCT ACT

12.1. Plaintiffs incorporate all of the preceding paragraphs as if fully set forth herein.

12.2. Plaintiffs are first party claimants to a policy of insurance.

12.3. Travelers unreasonably denied a claim for coverage or payment of benefits.

12.4. Travelers is in violation of the provisions of the Unfair Claims Settlement

Practices regulation, namely those regulations set forth in RCW 48.30.015(5).

12.5. Plaintiffs have sustained actual damage as a result of Travelers' conduct.

12.6. Plaintiffs have provided Travelers with notice of its basis of this claim as required by RCW 48.30.015(8).

12.7. In addition to plaintiffs' actual damages, Travelers is liable for attorney fees and costs under RCW 48.30.015(1), (3).

12.8. The Court should order Travelers to pay enhanced damages under RCW 48.30.015(2).

XIII. PRAYER FOR RELIEF

WHEREFORE, Mr. and Mrs. Bagley request that this Court:

- A. Enter a declaratory judgment as stated;
- B. Enter a money judgment against defendants in the amount that we will prove;
- C. Enter an injunction as stated;
- D. Award plaintiffs costs, disbursements, and attorney's fees, including reasonable attorney's fees and costs under *Olympic Steamship Co. v. Centennial Insurance Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991), RCW 19.86.090, RCW 48.30.015, for constructive fraud, and for defendant's bad faith.
- E. Otherwise award plaintiffs their attorney fees and costs;
- F. Award enhanced damages pursuant to RCW 19.86.090 and RCW 48.30.015; and
- G. Award such other relief as is just and proper.

DATED this 30th day of March, 2016.

KELLER ROHRBACK L.L.P.

By

William C. Smart, WSBA #8192
Kathryn M. Knudsen, WSBA #41075
Attorneys for Plaintiffs CURT BAGLEY and
SANDRA BAGLEY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

CURT BAGLEY and SANDRA BAGLEY,
husband and wife and the marital
community comprised thereof,

| No. 16-2-00321-1

husband and wife and the marital community comprised thereof,

Plaintiffs,

GR17 FACSIMILE/ELECTRONIC
TRANSFER DECLARATION REGARDING
FIRST AMENDED COMPLAINT FOR
MONEY DAMAGES AND INJUNCTIVE
RELIEF

TRAVELERS HOME AND MARINE
INSURANCE COMPANY,

Defendants.

Assigned To: RAQUEL MONTOYA-LEWIS

I, JULINE E. MARRIOTT, do solemnly declare under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of my information and belief:

I have examined the attached **FIRST AMENDED COMPLAINT FOR MONEY DAMAGES AND INJUNCTIVE RELIEF** sent via electronic transfer, consisting of nine (9) pages, including this *Declaration*, determined that said document is complete and legible.

I declare under the penalty of perjury, under the laws of the state of Washington, that the foregoing is true and correct to the best of my knowledge.

DATED this 30th day of March, 2016, Bellingham, WA.

JUNIE MARRIOTT

GR17 FACSIMILE/ELECTRONIC TRANSFER DECLARATION REGARDING
FIRST AMENDED COMPLAINT FOR MONEY DAMAGES
AND INJUNCTIVE RELIEF | Page 1 of 1

Law office of
Wm. G. Knudsen, P.S.
119 N. Commercial Street • Suite 1200
Bellingham, Washington 98225
(360) 676-0646 • (360) 738-8116

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM

CURT BAGLEY and SANDRA BAGLEY,
husband and wife and the marital community
comprised thereof,

Plaintiffs,

v.

TRAVELERS HOME AND MARINE
INSURANCE COMPANY,

Defendant.

No.: 16-2-00321-1

DEFENDANT'S ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT WITH AFFIRMATIVE
DEFENSES

In response to Plaintiffs' First Amended Complaint, Defendant Travelers Home and
Marine Insurance Company ("Travelers") hereby by admits, denies and alleges as follows:

I. PARTIES

1.1 Based upon information and belief, admitted.

1.2 Travelers admits that it is a Connecticut corporation with its principal place of
business in Hartford, Connecticut and that it does business in Washington State.

II. JURISDICTION AND VENUE

2.1 Admitted.

2.2 Admitted.

///

///

III. FACTS

2 3.1 Travelers admits that there was a storm on November 12, 2015 in and about
3 Ferndale, Washington but is otherwise currently without sufficient information to admit or
4 deny the remaining allegations and must therefore deny the same.

5 3.2 Travelers is currently without sufficient information to admit or deny the
6 allegations and must therefore deny the same.

7 3.3 Travelers is currently without sufficient information to admit or deny the
8 allegations and must therefore deny the same.

9 3.4 Travelers is currently without sufficient information to admit or deny the
10 allegations and must therefore deny the same.

11 3.5 Travelers admits that it issued Policy No. 990362148-663-1 (the "Policy") to
12 the Plaintiffs and the terms, conditions and limitations for which speak for themselves.

13 3.6 Travelers admits that issued Policy No. 990362148-663-1 (the "Policy") to the
14 Plaintiffs and the terms, conditions and limitations for which speak for themselves.

15 3.7 Travelers admits that the Plaintiffs presented a claim to Travelers on or about
16 November 13, 2015 but is otherwise currently without sufficient information to admit or
17 deny the remaining allegations and must therefore deny the same.

18 3.8 Travelers admits that it investigated the claim presented by the plaintiffs but is
19 otherwise currently without sufficient information to admit or deny the remaining allegations
20 and must therefore deny the same.

21 3.9 Denied.

22 3.10 Travelers admits that certain Washington Administrative Code provisions
23 apply to insurance companies but the scope and extent of those provisions speak for
24 themselves.

25 3.11 Denied.

26 | //

CAUSES OF ACTION

IV. CLAIM NO. 1 – DECLARATORY JUDGMENT

4.1 Travelers incorporates by references its responses to paragraphs 1.1 through 3.11 as stated herein.

4.2 Travelers objects to the extent the allegation is a legal conclusion.

4.3 Travelers admits that based on its investigation to date it has not extended coverage to the Plaintiffs for the claim but otherwise denies the remaining allegations.

4.4 To the extent a response is required, based on information and belief, Travelers admits that the Plaintiffs seek a declaratory judgment but otherwise denies the remaining allegations.

4.5 To the extent a response is required, based on information and belief, Travelers admits that the Plaintiffs seek a declaratory judgment but otherwise denies the remaining allegations.

4.6 To the extent a response is required, based on information and belief, Travelers admits that the Plaintiffs seek a declaratory judgment but otherwise denies the remaining allegations.

4.7 To the extent a response is required, based on information and belief, Travelers admits that the Plaintiffs seek a declaratory judgment but otherwise denies the remaining allegations.

V. CLAIM NO. 2- BREACH OF CONTRACT

5.1 Travelers incorporates by references its responses to paragraphs 1.1 through 4.7 as stated herein.

5.2 Denied

VI. CLAIM NO. 3 – INSURANCE BAD FAITH

6.1 Travelers incorporates by references its responses to paragraphs 1.1 through 5.2

1 as stated herein.

2 6.2 Denied.

3 **VII. CLAIM NO. 4 – NEGLIGENT CLAIMS HANDLING**

4 7.1 Travelers incorporates by references its responses to paragraphs 1.1 through 6.2
5 as stated herein.

6 7.2 Denied.

7 **VIII. CLAIM NO. 5 – CONSUMER PROTECTION ACT**

8 8.1 Travelers incorporates by references its responses to paragraphs 1.1 through 7.2
9 as stated herein.

10 8.2 Denied.

11 **IX. CLAIM NO. 6 – CONSTRUCTIVE FRAUD**

12 9.1 Travelers incorporates by references its responses to paragraphs 1.1 through 8.2
13 as stated herein.

14 9.2 Denied.

15 **X. CLAIM NO. 7 – NEGLIGENT/INTENTIONAL
16 INFILCTION OF EMOTIONAL DISTRESS**

17 10.1 Travelers incorporates by references its responses to paragraphs 1.1 through 9.2
18 as stated herein.

19 10.2 Denied.

20 10.3 Denied.

21 10.4 Denied.

22 **XI. CLAIM NO. 8 – INJUNCTIVE RELIEF**

23 11.1 Travelers incorporates by references its responses to paragraphs 1.1 through
24 10.4 as stated herein.

25 11.2 To the extent a response is required, based on information and belief,

26 Travelers admits that the Plaintiffs seek a claim for injunctive relief but otherwise denies the

1 remaining allegations.

2 11.3 Denied.

3 11.4 Denied.

4 **XII. INSURANCE FAIR CONDUCT ACT**

5 12.1 Travelers incorporates by references its responses to paragraphs 1.1 through
6 11.4 as stated herein.

7 12.2 Travelers admits that it issued Policy No. 990362148-663-1 (the "Policy") to
8 the Plaintiffs and the terms, conditions and limitations for which speak for themselves.

9 12.3 Denied.

10 12.4 Denied.

11 12.5 Denied

12 12.6 Denied.

13 12.7 Denied.

14 12.8 Denied.

15 Except as expressly admitted herein, Travelers denies the remaining allegations in
16 Plaintiff's First Amended Complaint and the whole thereof.

17 **XIII. PRAYER FOR RELIEF**

18 To the extent Travelers is obligated to respond to Plaintiffs' Prayer for Relief,
19 Travelers denies the allegations contained therein.

20 **XIV. AFFIRMATIVE DEFENSES**

21 1. Plaintiffs' First Amended Complaint and the relief requested therein fail to
22 state a viable claim upon which relief can be granted, in whole or in part.

23 2. Plaintiffs' First Amended Complaint and the relief requested therein may be
24 limited and/or barred to the extent Plaintiffs have failed to meet the conditions precedent to
25 suit required by the insurance policy.

26 3. Plaintiffs' First Amended Complaint and the relief requested therein may be

1 limited and/or barred to the extent they were caused or exacerbated by third-parties over
2 whom Travelers had no control, nor right to control.

3 4. Plaintiffs' First Amended Complaint and the relief requested therein may be
4 limited and/or barred to the extent Plaintiffs and/or their representatives failed to mitigate.

5 5. Plaintiffs' First Amended Complaint and the relief requested therein may be
6 limited or barred to the extent it was "caused by" "Water Damage", including but not limited
7 to "storm surge, waves, wave wash, tidal water * * * overflow of a body of water, or spray
8 from any of these, whether or not a result of precipitation or driven by wind" as the terms are
9 used and defined in the policy.

10 6. Plaintiffs' First Amended Complaint and the relief requested therein may be
11 subject to the Appraisal provision within the Policy.

12 7. Plaintiffs' First Amended Complaint and the extra-contractual relief requested
13 therein are barred by Travelers good faith performance of all obligations required of it
14 pursuant to the insurance policy and applicable law.

15 8. Plaintiffs First Amended Complaint and the extra-contractual relief requested
16 therein are barred, limited or otherwise subject to the express terms, conditions and
17 limitations of the policy.

18 **XV. RESERVATION OF RIGHTS**

19 Travelers reserves the right to assert other affirmative defenses, counterclaims, cross
20 claims and third-party claims, as appropriate.

21 **XVI. REQUEST FOR RELIEF**

22 Having fully answered the First Amended Complaint and asserted Affirmative
23 Defenses, Travelers requests:

24 1. A declaration that the Plaintiffs' claim is subject to the express terms,
25 conditions and limitations of the Policy and is barred or limited accordingly;

26 2. That the Court dismiss Plaintiffs' claims against Travelers with prejudice;

3. That Travelers be awarded costs and attorney fees incurred in this action; and
4. That the Court grant Travelers such relief as is just and equitable.

DATED: April 1, 2016

BULLIVANT Houser Bailey PC
By 
Lloyd Bernstein, WSBA #46244
Attorneys for Defendant

15944498.1

CERTIFICATE OF SERVICE

2 I hereby certify that on April 1, 2016, I caused to be delivered as indicated below a
3 copy of the foregoing to the following counsel of record:

4 Attorneys for Plaintiffs:

William C. Smart
wsmart@kellerrohrback.com
Kathryn M. Knudsen
kknudsen@kellerrohrback.com
Keller Rohrback LLP
1201 Third Ave., Suite 3200
Seattle, WA 98101-3052

(X) Mail
() Fax
(X) Email

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 1st day of April, 2016.

Lloyd Bernstein, WSBA #46244

Of Attorneys for Defendant

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WHATCOM COUNTY
WASHINGTON

RY

IN THE SUPERIOR COURT, IN AND FOR THE COUNTY OF WHATCOM, STATE OF WASHINGTON

**CURT BAGLEY AND SANDRA BAGLEY, HUSBAND
AND WIFE AND THE MARITAL COMMUNITY
COMPRISED THEREOF**

Plaintiff/Petitioner

vs.

**TRAVELERS HOME AND MARINE INSURANCE
COMPANY**

Defendant/Respondent

Cause No.: **16-2-00321-1**

Hearing Date:

DECLARATION OF SERVICE OF

**\$10.00 CHECK TO OFFICE OF THE INSURANCE
COMMISSIONER; FIRST AMENDED COMPLAINT FOR
MONEY DAMAGES AND INJUNCTIVE RELIEF (2)**

The undersigned hereby declares: That s/he is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

On the **1st day of April, 2016 at 12:52 PM** at the address of **5000 CAPITOL BLVD SE, TUMWATER, Thurston County, WA 98501**; this declarant served the above described documents upon **TRAVELERS HOME AND MARINE INSURANCE COMPANY c/o OFFICE OF THE INSURANCE COMMISSIONER, REGISTERED AGENT** by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with **Sarah Gosney, SOP COORDINATOR, PERSON AUTHORIZED TO ACCEPT**, who accepted service, with identity confirmed by verbal communication, a white female approx. 35-45 years of age, 5'8"-5'10" tall, weighing 160-180 lbs with brown hair..

No information was provided or discovered that indicates that the subjects served are members of the United States military.



For: Keller, Rohrback L.L.P.
Ref #: 31213-1

ORIGINAL PROOF OF SERVICE

PAGE 1 OF 2

Tracking #: 0011112338



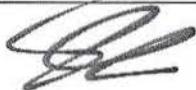
PLAINTIFF/PETITIONER: CURT BAGLEY AND SANDRA BAGLEY, HUSBAND AND WIFE AND THE MARITAL COMMUNITY COMPRISED THEREOF	CASE NUMBER: 16-2-00321-1
DEFENDANT/RESPONDENT: TRAVELERS HOME AND MARINE INSURANCE COMPANY	

Service Fee Total: **\$ 114.50**

Declarant hereby states under penalty of perjury under the laws of the State of Washington that the statement above is true and correct.

4/3/16

DATED _____.



Scott Gogan, Reg. # 11-0127-04, Thurston County



For: Keller, Rohrback L.L.P.
Ref #: 31213-1

ORIGINAL PROOF OF SERVICE

PAGE 2 OF 2

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10 SUPERIOR COURT OF WASHINGTON IN AND FOR WHATCOM COUNTY

11 CURT BAGLEY and SANDRA BAGLEY, and
12 the marital community comprised thereof,

13 Plaintiffs,

14 v.

15 TRAVELERS HOME AND MARINE
16 INSURANCE COMPANY,

17 Defendant.

18 No. 16-2-00321-1

19 JURY DEMAND

20 \$250

21 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

22 Pursuant to CR 38, a jury is hereby being requested prior to the time the case is called to
23 be set for trial.

24 Plaintiffs, Curt and Sandra Bagley, herein hereby requests a jury of 12 persons for the
25 trial in the above-entitled matter.

26 The proper fee for this demand, the sum of \$250, is submitted herewith.

27 //

28 //

29 JURY DEMAND- 1

30 KELLER ROHRBACK L.L.P.

31 1201 Third Avenue, Suite 3200
32 Seattle, WA 98101-3052
33 TELEPHONE: (206) 623-1900
34 FACSIMILE: (206) 623-3384

1 DATED this 26th day of April, 2016.

2 KELLER ROHRBACK L.L.P.

3 By 

4 William C. Smart, WSBA #8192

5 Ian S. Birk, WSBA #31431

6 Kathryn M. Knudsen, WSBA #41075

7 Attorneys for Plaintiffs

JURY DEMAND- 2

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I served the within documents on the below individuals via email:

Lloyd Bernstein
300 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204
Attorneys for Defendant

DATED this 26th day of April, 2016.

Chris Jarman, Legal Assistant

JURY DEMAND- 3

KELLER ROHRBACK L.L.P.

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