

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

\_\_\_\_\_X

MICHAEL B. STEIN,

Index No.:

Plaintiff,

-against-

**COMPLAINT**

JURY TRIAL REQUESTED

NATIONAL GENERAL INSURANCE COMPANY,

Defendant.

\_\_\_\_\_X

Plaintiff, MICHAEL B. STEIN (hereinafter “Plaintiff”), by and through its attorneys, Merlin Law Group, P.A., as and for its Complaint against Defendant, NATIONAL GENERAL INSURANCE COMPANY, (“NAT GEN” or “Defendant”), alleges as follows:

**THE PARTIES**

1. At all times material hereto, Plaintiff owned and operated a convenience store located at 245 East 54<sup>th</sup> St., Unit 8, New York, NY 10022 (“the Property” or “the insured premises”).

2. At all times material hereto, Defendant was an insurance company authorized to do business in the State of New York.

**JURISDICTION AND VENUE**

3. Jurisdiction is proper in New York County, New York, because the Property is located within Kings County and NAT GEN voluntarily insured property located in New York County.

4. Venue is proper in this Court because the acts and/or inactions forming the basis of this action took place within this County and the amount at issue exceeds the jurisdictional threshold.

5. This action is brought within two years from the date of loss or occurrence as specified and required by the Policy and applicable law.

### **FACTUAL BACKGROUND**

6. This is an action by Plaintiff against its insurance carrier, NAT GEN, for breach of contract for benefits owed under an insurance policy which have not been fully paid, stemming from water damage at the Property on or about February 26, 2018.

7. In consideration for the premiums paid to it by Plaintiff, NAT GEN issued and delivered to Plaintiff an “all risk” policy of property insurance, in effect from January 9, 2018 to January 9, 2019 (the “Policy”).

8. The Policy was sold by NAT GEN to Plaintiff, all premiums on the Policy were paid, and the Policy was in full and continuing force and effect at all relevant times herein.

9. On or about February 26, 2018, Plaintiff’s home and personal property were damaged as a result of a broken pipe that spewed water through his apartment.

10. Plaintiff complied with all conditions precedent to obtaining payment of benefits under the Policy or NAT GEN has waived such conditions precedent.

11. Plaintiff promptly reported the loss to NAT GEN.

12. NAT GEN acknowledged coverage for the loss, assigned claim number 3288384 to Plaintiff’s claim, inspected Plaintiff’s property, and handled the claim through its duly authorized representatives and adjusters.

13. During the adjustment of the claim, a disagreement between Plaintiff and NAT GEN arose over the amount of coverage of the loss.

14. Plaintiff was denied coverage for a large portion of his estimated loss, which is covered under the terms of the Policy.

15. Plaintiff was paid \$25,519.82 for the loss. An amount that is wholly inadequate to properly compensate Plaintiff for their actual loss.

16. By correspondence dated October 24, 2019, NAT GEN partially disclaimed coverage for Plaintiff's loss.

17. Plaintiff contends that NAT GEN breached the contract by not compensating it for this claim and forcing it to incur the additional cost of hiring an attorney.

18. Defendant's inaccurate and flawed interpretations of the Policy's provisions has caused Plaintiff to incur damages to which Defendant owes.

19. Plaintiff is owed sums in excess of \$400,000 for damage sustained during the water loss.

**AS AND FOR THE FIRST CAUSE OF ACTION**  
**(Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing)**

20. The allegations contained in the prior paragraphs and Counts are hereby re-alleged and incorporated as if set forth verbatim herein.

21. Plaintiff's home sustained sudden and accidental direct physical loss because of a broken pipe, a covered peril under the Policy.

22. NAT GEN insured the Plaintiff for direct physical loss to its property.

23. The Policy is a valid and enforceable contract providing insurance coverage for the loss suffered by the Plaintiff.

24. NAT GEN was given timely notice of the loss, and all other conditions of the Policy, including but not limited to payment of premium and full cooperation, have been satisfied.

25. NAT GEN's contractual duty to indemnify Plaintiff for the value of the loss has been triggered.

26. NAT GEN failed to pay Plaintiff for certain covered damages under the Policy caused by the covered peril.

27. NAT GEN breached the Policy by the following actions:

- (a) Failing to pay Plaintiff what it is owed under the relevant provisions in the Policy;
- (b) Failing to properly analyze the Policy after the loss in order to ascertain the proper amount for the covered damages thereby paying an improper amount after the loss;
- (c) Failing to properly evaluate and adjust the damages due to an incorrect reading of the policy provisions;
- (d) Unsatisfactory settlement offers;
- (e) By forcing Plaintiff to engage the services of an attorney to advocate on behalf of Plaintiff for proper payment under the Policy; and
- (f) Plaintiff anticipates identifying additional facts that further demonstrate NAT GEN's breach of the contract during the litigation discovery process.

28. As a direct and proximate result of the above-breaches, Plaintiff has suffered and continues to suffer damages in an amount to be determined at the jury trial of this action.

29. Plaintiff and NAT GEN entered into the insurance contract whereby NAT GEN promised to pay for covered damages to Plaintiff's home.

30. The Policy contained an implied covenant of good faith and fair dealing. This covenant includes, but is not limited to duties to honestly, promptly, and fairly investigate facts of coverage, evaluate damages, adjust the loss, communicate and cooperate with the insured, and promptly pay the full amount of covered losses.

31. NAT GEN failed to properly adjust Plaintiff's claim by engaging in activities that include, but are not limited to:

- (a) Deliberately, negligently and unreasonably delaying payment of Plaintiff's claim, and failing to timely pay Plaintiff the full amount of benefits owed under the Policy for the loss;
- (b) Refusing to compensate Plaintiff for the fair value of the claim;
- (c) Improperly denying the claim;
- (d) Failing to properly analyze the Policy after the loss;

32. NAT GEN's actions in failing to properly adjust Plaintiff's claim is a breach of the implied covenant of good faith and fair dealing.

33. As a result of NAT GEN's wrongful acts and omissions, Plaintiff was forced to retain the professional services of experts, the attorneys and law firm who are representing Plaintiff with respect to these causes of action.

34. Defendant knowingly breached the implied covenant of good faith and fair dealing in an attempt to deprive Plaintiff of its rights and reasonable expectations under the Policy.

35. The losses incurred by Plaintiff are a direct and foreseeable consequence of NAT GEN's above-described wrongful conduct in that such wrongful conduct has caused additional monetary losses, which were reasonably foreseeable and contemplated by the parties at the time of contracting under the subject insurance policy.

36. The very purpose of insurance coverage as afforded by NAT GEN would make the insurer aware that if it breached the Policy it would be liable for the losses consequent to the breach. In addition, it would be reasonable for Plaintiff to expect when they purchased the Policy that NAT GEN would meet its contractual obligations and not conduct its claims handling practices in such a way to cause additional loss and damage to their policyholders' interests.

37. As a result of NAT GEN's breach of the implied covenant of good faith and fair dealing, Plaintiff has suffered and will continue to suffer damages.

38. Accordingly, Plaintiff is entitled to an award against NAT GEN of compensatory and consequential damages in such amounts as established by evidence, as well as pre- and post-judgment interest, costs, and such further relief as may be just.

**WHEREFORE**, Plaintiff respectfully requests that this Honorable Court enter judgment against Defendant for:

- (a) Compensatory damages;
- (b) Consequential damages;
- (c) Pre-judgment interest and post-judgment interest;
- (d) Costs of suit;
- (e) Attorney's fees; and
- (f) For such other relief as the Court may deem equitable and just.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all issues so triable.

Dated: New York, New York  
February 18, 2020

Respectfully submitted,

/s/: Jason M. Cieri, Esq.

Jason M. Cieri, Esq.

[jcieri@melrinlawgroup.com](mailto:jcieri@melrinlawgroup.com)

**MERLIN LAW GROUP, P.A.**

100 Park Avenue, 16<sup>th</sup> Floor

New York, New York 10017

Telephone: 212.351.5017

Facsimile: 212.984.0698

*Attorneys for Plaintiff*