

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

KEVIN AND SHERRYE WEBSTER

PLAINTIFFS

VERSUS

CAUSE NUMBER:1:05cv715LTS-JMR  
JURY TRIAL DEMANDED

USAA CASUALTY INSURANCE COMPANY

DEFENDANT

**PLAINTIFFS FIRST AMENDED COMPLAINT**

COME NOW the Plaintiffs, Kevin and Sherrye Webster, by and through their attorneys, Merkel & Cocke, P.A.; William Roberts Wilson, Jr., P.A.; and the law offices of Alwyn H. Luckey, and files this their First Amended Complaint against the Defendant, state as follows:

1. The Plaintiffs, Kevin and Sherrye Webster, are adult resident citizens of Hancock County, Mississippi.

2. The Defendant, USAA Casualty Insurance Company [hereinafter "USAA"], is a corporation organized and existing under the laws of the State of Texas, with its principal office and place of business at 9800 Fredericksburg Road, San Antonio, Texas 78288. It may be served with process by service on its agent for service, Robert S. Addison, 4400 Old Canton Road, Suite 400, Jackson, Mississippi 39211.

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between the Plaintiffs and the Defendant, and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

4. Venue in this cause is proper pursuant 28 U.S.C. § 1391, because this suit involves real and personal property located in Hancock County, Mississippi, a substantial part of the events giving rise to this claim occurred in Hancock County, and for purposes of venue, the Defendant is a resident of this judicial district under 28 U.S.C. §1391(c).

5. The Plaintiffs, until August 29, 2005, lived in their house at 502 North Beach

Boulevard, Bay St. Louis, Mississippi. Since their purchase of the house in 2000, they have insured the house through the Defendant, USAA.

6. The Plaintiffs purchased from USAA a standard homeowner's insurance policy naming Kevin R. Webster and Sherrye B. Webster as the named insureds and insuring the premises at 502 North Beach Boulevard, Bay St. Louis, Mississippi. A true and correct copy of the declaration page and policy packet provided by the Defendant was attached as Exhibit I to the original Complaint and is incorporated herein by reference.

7. The subject insurance policy provided casualty coverage for the Plaintiffs' dwelling in the amount of \$811,000.00; personal property contents coverage of \$760,480.00; and loss of use coverage for a period of up to twelve months of \$162,200.00.

8. The Plaintiffs also had replacement value insurance on the subject premises and contents which provided additional amounts of insurance up to 25% of the stated limits of liability on the insured structures.

9. The Plaintiffs paid premiums of approximately \$11,000.00 per year since 2000.

10. The Plaintiffs, whose residence was on a beach, purchased the subject policy for the express purpose of insuring the property against any damage that could possibly result from hurricanes.

11. On each occasion that the Plaintiffs renewed their insurance with USAA on an annual basis, the Plaintiffs consulted with USAA's representative, a top management policy advisor, regarding what coverage they needed to provide full coverage for all risks, and followed each recommendation she made regarding coverage necessary to protect the subject property from any and all perils.

12. The policy also provided for payment of reasonable expenses, up to \$500.00, for the removal from the premises of trees felled by wind storm or hail.

13. Further, the subject policy provides that it will pay the reasonable costs incurred by the insured for necessary measures taken solely to protect the property against further damage.

14. The subject policy also provides coverage of additional structures in the amount of \$80,000.00.

15. The policy further provides that USAA will pay the necessary increase in living expenses incurred by the insureds so that the insureds' household can maintain its normal standard of living when a covered loss occurs, to the limit of \$162,500 for a period of 12 months.

16. The subject policy insures the dwelling against risk of direct physical loss to the insured premises with certain limited exceptions.

17. As to the personal property, the policy provided coverage for direct physical loss to the Plaintiffs' personal property caused by wind storm or hail.

18. On August 29, 2005, within the subject policy period, the insured residence and virtually all personal contents therein were completely destroyed by hurricane wind and rain from Hurricane Katrina.

19. The loss was covered under the subject policy.

20. The ground elevation of the subject property is approximately twenty-seven feet above mean sea level, and the house is approximately six feet above that level. This places the first floor level approximately thirty-three feet above mean sea level.

21. As a result of the winds created by Hurricane Katrina, piers supporting the residence were damaged by flying debris and the front side of the structure collapsed, with the foundation gone.

22. The residence and the contents thereof are a total loss as a result of Hurricane Katrina.

23. The house was rendered uninhabitable as a result of hurricane wind, and the insureds have incurred substantial additional living expenses as a result.

24. The Plaintiffs were advised by the USAA hired engineer and the USAA adjuster that the home was unstable and that it was unsafe to enter the home.

25. The Plaintiffs did wrap the residence in red construction webbing and metal wire fencing and boarded up the access window to the residence. They further requested the Bay St.

Louis Police Department to provide extra patrols and posted “keep out” and “no trespassing” signs.

26. The Plaintiffs have complied with every condition of the subject policy and have made demand for payment of the contents and dwelling coverages of the policy. They properly advised USAA of their loss and were told that USAA considered the property a total loss.

27. The Defendant, USAA, on November 17, 2005, denied the Plaintiffs’ claim and offered a check of \$10,944.16 for all damages to the subject property.

28. USAA held itself out to the public and to the Plaintiffs as an expert in insurance matters. The Plaintiffs placed complete confidence in USAA and relied upon it exclusively to formulate an insurance program that would protect the Plaintiffs from risk to their property, including damage caused by hurricanes. USAA knew or should have known that the Plaintiffs were relying on it to provide adequate insurance coverage and that the Plaintiffs were relatively unsophisticated in insurance matters; and USAA assumed the duty of recommending insurance coverage to the Plaintiffs and advising them as to what coverage was needed in order to insure the property against any and all risks of damage, particularly damage from hurricanes. The Plaintiffs followed every recommendation made by USAA and would have purchased any additional coverage they had been advised was necessary to fully protect their property against any and all foreseeable risk from hurricane, including the risk of damage from water or erosion caused in part by hurricane-related surge.

29. Based on USAA’s representations concerning the subject policy coverage, and USAA’s recommendations that the subject policy was what was needed to provide the Plaintiffs full coverage against all risks to this property, the Plaintiffs agreed to purchase the subject policy in reasonable and justifiable reliance that the subject policy would provide full and comprehensive coverage for all damages, including any damage caused by hurricanes.

30. USAA has now refused to pay the Plaintiffs for the damage to the insured residence and property caused by Hurricane Katrina. By letter dated November 17, 2005, a true and correct copy of which was attached to the original Complaint as Exhibit 2, the Defendant in

writing denied coverage for the Plaintiffs' claims and refused to pay the amount due to the Plaintiffs under the subject insurance contract.

31. The Plaintiffs are entitled to be paid the full amount of insurance contracted for, including \$811,000 for the residence, \$80,000 for additional structures, plus an additional 25% of the stated amounts for replacement coverage, and \$760,480.00 for contents, for which the Plaintiffs also had replacement coverage. The Plaintiffs are also entitled to additional living expenses incurred to date and for the 12 months following August 29, 2005, up to the limits of \$162,200.00.

32. The Plaintiffs also seek a Declaratory Judgment pursuant to Federal Rule of Procedure 57 for the purpose of determining a question of actual controversy between the parties concerning their rights and coverages under the subject policy.

33. Based on the representations made by USAA and the express policy provisions, the Plaintiffs are entitled to full insurance coverage under the subject policy for all damage to the insured property and for loss of use caused by Hurricane Katrina.

34. The Plaintiffs, therefore, seek a Declaration that the subject policy provides full insurance coverage for all damage to their insured residence, personal property, and loss of use caused by Hurricane Katrina.

35. Alternatively, should the existing policies be interpreted not to provide coverage for any found hurricane related loss, then USAA was negligent in failing to advise the Plaintiffs that they needed additional insurance coverage in order to insure against all possible damage from a hurricane and for advising the Plaintiffs that the policy sold to them, in fact, provided them all the insurance coverage they needed.

36. Alternatively, therefore, the Defendant is liable to the Plaintiffs for all damages proximately caused by its negligence, including the allegedly uninsured portion of the loss of their residence and premises equal to the full amount of insurance limits set out in the subject policy.

37. Alternatively, the Defendant is estopped by its own representations and

negligence as described above from denying that the subject policy covers the Plaintiff's losses.

38. Further, the Defendant, USAA has acted in bad faith and bad insurance practices in denying Plaintiffs' claim and are guilty of mishandling the claim and, as such, should be assessed with punitive damages in an amount to be determined by a struck jury.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs respectfully demand as follows:

1. A Declaration that the damages to their insured premises and personal property are covered by the subject insurance policy;
2. An award of money damages in the amount of the full limits of liability of the subject policy, \$811,000.00 for the residence; \$80,000 for additional structures, plus an additional 25% of those amounts under the replacement policy provision, and \$760,480.00 for personal property and \$162,200.00 for loss of use, less the approximately \$4,900 previously paid for living expenses;
3. An award of punitive damages in an effort to punish and deter the Defendant from this conduct in the future;
4. Attorney's fees and expenses, court costs and expenses, prejudgment interest from the date of the hurricane, August 29, 2005; or alternatively, from the date of Plaintiffs' Notice of Claim to the Defendant, August 30, 2005;
5. Post-judgment interest; and
6. Any and all other relief deemed appropriate by the Court.
7. Alternatively to the extent that any of Plaintiffs' losses are found to be uninsured, then Plaintiffs are entitled to recover such losses as damages for Defendant's negligent misrepresentations, together with attorney's fees, expenses, court costs, prejudgment interest and post-judgment interest.

THE PLAINTIFFS HEREBY RESPECTFULLY DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

RESPECTFULLY SUBMITTED this, the 17<sup>th</sup> day of August, 2006.

KEVIN AND SHERRYE WEBSTER

By and Through Their Attorneys of Record,  
LUCKEY & MULLINS, PLLC

By: s/Stephen W. Mullins  
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**CERTIFICATE OF SERVICE**

I, STEPHEN W. MULLINS, do hereby certify that I have this date electronically filed the above and foregoing First Amended Complaint with this Court by using the ECF system which notified and forwarded a copy of said First Amended Complaint to the following counsel of record: Louis B. Lanoux, Esquire.

SO CERTIFIED this the 17<sup>th</sup> day of August, 2006.

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s/Stephen W. Mullins