

IN CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

DAVID W. AIKEN, JR. AND
MARILYN M. AIKEN

PLAINTIFFS

VS.

JUN 27 2006

CIVIL ACTION NO.: A2401-06-201

Gayle Parker
CIRCUIT CLERK
BY *Russell Crockett*
RIMKUS CONSULTING GROUP, INC.,
GARY L. BELL, INDIVIDUALLY,
JAMES W. JORDAN, P.E., S.E., INDIVIDUALLY,
AND USAA CASUALTY INSURANCE COMPANY

DEFENDANTS

COMPLAINT-JURY TRIAL DEMANDED

COME NOW, DAVID W. AIKEN, JR. and MARILYN M. AIKEN ("Plaintiffs"),

by and through their undersigned counsel, and files this their Complaint and jury trial demand, and
allege the following, to wit:

1. Plaintiff, David W. Aiken, Jr., is an adult resident citizen of Jefferson Parish, Louisiana, residing at 4805 Cleary Ave., Metairie, Louisiana, 70002.
2. Plaintiff, Marilyn M. Aiken is an adult resident citizen of Jefferson Parish, Louisiana, residing at 4805 Cleary Ave., Metairie, Louisiana, 70002.
3. Defendant, Rimkus Consulting Group, Inc. ("Rimkus"), is a Texas corporation doing business in the State of Mississippi. Rimkus can be served with process through its registered agent. CT Corporation System located at 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232. Rimkus is vicariously liable for the acts of their employees and agents, Bell and Jordan.

4. Defendant, Gary L. Bell ("Bell"), is an adult person who resides at 3500 Rue Michelle, New Orleans, Louisiana, 70131. Bell is individually liable for all claims and damages asserted herein. Bell is in charge and control of Rimkus's Mississippi district and at all relevant times had authority to approve any and all of Rimkus's corporate decisions. Bell conspired with Jordan and other Rimkus employees to commit the wrongful, improper and fraudulent acts complained of herein.

5. Defendant, James W. Jordan, P.E., ("Jordan"), is an adult person who upon information and belief resides at 13215 Carver Ct., Westfield, IA 46074. At all relevant times Jordan was Rimkus's branch manager.

6. Defendant, USAA Casualty Insurance Company ("USAA"), is a foreign corporation who can be served with process through its registered agent Robert S. Addison, 4400 Old Canton Rd., Suite 700, Jackson, MS 39211. USAA directed, caused and conspired with co-defendants to implement a scheme to defraud Plaintiffs through false representations as to the cause and origin of the damage caused to Plaintiffs' insured property that was destroyed by Hurricane Katrina.

7. This Court has subject matter and personal jurisdiction over this cause and the Defendants, respectively. Venue in this Court is proper.

8. The Plaintiffs own property with a physical address of 1 Eighth Street, Pass Christian, MS 39571.

9. When they purchased said property in 1998, the Plaintiffs purchased USAA comprehensive Homeowners Policy # 00153222691A, which insured the property for all risks

including wind. Said policy was in full force and effect when Hurricane Katrina devastated the Mississippi Gulf Coast. Hurricane Katrina's winds destroyed Plaintiffs' property on August 29, 2005.

10. Plaintiffs timely and properly filed a claim with USAA to recover under said policy. At all relevant times, Don Himmler was an employee of USAA and the adjuster initially assigned to Plaintiffs' claim. Mr. Himmler told Plaintiffs, by phone, that before any determination of loss could be made, a Mississippi engineer would have to give an opinion as to the cause of the loss. Mr. Himmler told Aikens that USAA hired Rimkus Engineering to determine the cause of Plaintiffs' loss and USAA's decision to pay the claim would be determined by the report issued by Rimkus. Mr. Himmler invited Plaintiffs to be present at the pre-report property inspection. On October 6, 2005, at 1:00 p.m., Plaintiffs met a Rimkus employee, Robert Chapa, at the property site. Mr. Chapa inspected Plaintiffs' property. Plaintiffs asked Mr. Chapa what his inspection revealed. Mr. Chapa would not give Plaintiffs his opinion.

11. Upon information and belief, Jordan never visited or inspected the property, thus, USAA denied Plaintiffs' claim before obtaining a cause and origin report.

12. In December 2005, Mr. Himmler told Plaintiffs that USAA appointed a new adjuster for Plaintiffs claim, David Rummel, who at all relevant times was an employee or agent of USAA. Plaintiffs talked on the phone many times with Mr. Rummel who assured Plaintiffs that efforts were being made to pay their homeowner's claim. Finally, in mid-March 2006, USAA provided Plaintiffs the December 20, 2005, Rimkus report regarding Mr. Chapa's inspection of Plaintiffs' property on October 6, 2005.

13. On March 27, 2006, Mr. Rummel sent Plaintiffs a letter admitting that USAA requested Rimkus prepare a second cause and origin report regarding Plaintiffs' property. Mr. Rummel sent Dr. Aiken the Second Rimkus Report with his letter of March 27, 2006. In the second Rimkus report, Rimkus changed its opinion of the cause and origin of Plaintiffs' property damage to provide USAA with a report that USAA used to reduce amount due to the Plaintiffs. Rimkus, acting by and through its agents, employees and co-defendants, conspired with USAA to wrongful deny Plaintiffs property claim.

14. The first Rimkus/USAA report, dated December 20, 2005, states:

“it cannot be determined how much damage the wind forces did to the residence before the storm surge arrived. The wind forces were strong enough to uproot mature trees to the south of the house, so it cannot be ruled out that a significant portion of the house was damaged due to wind forces.”; and “High wind forces and storm surge forces from the hurricane were both of sufficient magnitude to damage the three story house, the boat house, and the pump house on the property.”

15. The second Rimkus/USAA report, dated March 23, 2006, states:

“the majority of damage to these buildings was the result of storm surge associated with Hurricane Katrina”; and also, “the wind driven rain would have been relatively minor compared to the extensive flooding from the storm surge...”

16. On April 7, 2006, Plaintiffs received a letter from USAA indicating it re-assigned their claim to adjuster Duane Quinn. At all relevant times, Mr. Quinn was an USAA employee or agent. Plaintiffs provided all information requested by Mr. Quinn.

17. Mr. Quinn and Plaintiffs had several phone conversations. Mr. Quinn told Plaintiffs that he had been working for USAA for a long time and had handled many insurance claims, but had

never paid the policy limits on any hurricane wind claim. Before investigating Plaintiffs' claim, Mr. Quinn stated USAA would not pay the full amount of Plaintiffs claim based on the aforementioned USAA policy.

18. Hurricane Katrina caused Plaintiffs' property to be totally demolished with nothing but a slab remaining where the house was located. Plaintiffs' subject USAA policy provides the following coverage:

Dwelling	-	\$333,000.00
Personal Property	-	249,000.00
Loss of Use	-	66,600.00
Outbuildings	-	33,000.00
Money	-	200.00
Personal Records	-	1,000.00
Watercraft	-	1,000.00
Trailer	-	1,000.00
Debris Removal	-	16,650.00
Felled Tree Removal	-	500.00
Refrig. Products	-	500.00
Trees and Shrubs	-	16,650.00
Temp. Living Expense	-	<u>2,000.00</u>
Total Coverage	-	\$734,750.00
Amount Paid by USAA	-	\$178,229.87
Amount Unpaid by USAA	-	\$556,520.13

19. The Mississippi Department of Insurance issued Bulletin 2005-6 on September 7, 2005, addressing situations where little or nothing remains of the insured structure

following Hurricane Katrina. The Bulletin specifically requires:

In these situations, the insurance company must be able to clearly demonstrate the cause of the loss. I expect and believe that where there is any doubt, that doubt will be resolved in favor of finding coverage on behalf of the insured. In instances where the insurance company believes the damage was caused by water, I expect the insurance company to be able to prove to this office and the insured that the damage was caused by water and not by wind.

Plaintiffs faxed this bulletin to Mr. Quinn on May 3, 2006. Mr. Quinn completely disregarded and ignored it in adjusting Plaintiffs' claim.

20. Rimkus is liable to Plaintiffs for compensatory damages, punitive damages and attorney's fees as a result of the following non-exclusive particulars:

- a) Fraudulently changing its cause and origin conclusion in regards to Plaintiffs' property.
- b) Conspiring with USAA to deprive Plaintiffs' money by changing the cause and origin of the Plaintiffs' loss without site inspection.
- c) Conspiring with Jordan to violate the Mississippi Board of Licensure for Professional Engineers and Land Surveyors, "Rules and Regulations of Procedure" by fraudulently changing its cause and origin conclusion as to Plaintiffs' property damage.
- d) Other acts to be proven at trial.

22. As Rimkus's engineer in charge, Bell's job duties were to supervise, approve, and

control the firm's business in Mississippi, Louisiana, and Arkansas. Bell is personally liable to plaintiffs for compensatory damages, punitive damages, and attorney's fees as a result of the following non-exclusive particulars:

- a) Fraudulently changing Rimkus's cause and origin report to deprive the Plaintiffs' of money.
- b) Conspiring with USAA to deprive Plaintiffs of money by changing the cause and origin of the damage to Plaintiffs' property.
- c) Conspiring with Jordan to violate the Mississippi Board of Licensure for Professional Engineers and Land Surveyors, "Rules and Regulations of Procedure".
- d) Issued two cause and origin reports regarding Plaintiffs' property without inspecting same.
- e) Failing to enforce reasonable engineering standards so as to require the Rimkus employee, consultant, representative, or contractor of Rimkus, to visit and inspect the site of loss before rendering a cause and origin report.
- f) Failure to supervise and/or train the Rimkus employee, consultant, representative, or contractor of Rimkus of the appropriate standards when determining cause and origin after property loss.
- g) Failure to require and insist that a Mississippi licensed engineer inspect the loss site before issuing a report.
- h) Other acts to be proven at trial.

22. As the Mississippi licensed engineer assigned to inspect and determine the cause and origin of Plaintiffs' loss, James W. Jordan is liable to plaintiffs for compensatory damages, punitive damages, and attorney's fees as a result of the following non-exclusive particulars:

- a) Fraudulently changing his cause and origin report regarding Plaintiffs' property.
- b) Conspiring with USAA and Bell to deprive Plaintiffs of money.
- c) Violating of the Mississippi Board of Licensure for Professional Engineers and Surveyors, "Rules and Regulations of Procedure".
- d) Committing fraud as well as gross, wanton, arbitrary and capricious negligence in deliberately not inspecting the loss site before issuing two cause and origin reports.
- e) Fraud and gross wanton and capricious negligence in authoring a second report changing the cause of the loss, without inspecting the loss site.
- f) Violating the engineering standard of practice by not inspecting the premises before issuing his cause and origin report.

23. USAA is liable to the plaintiffs for the full policy amount of \$734,750.00 plus compensatory damages, punitive damages, and attorney's fees as a result of the following non-exclusive particulars:

- a) Conspiring to defraud Plaintiffs of money owing to Plaintiffs under said insurance policy. USAA caused Co-Defendants to issue cause and origin reports regarding Plaintiffs' property without inspecting said property and otherwise caused Co-

Defendants to issue a bogus cause and origin report to provide itself an excuse for denying Plaintiffs' claim.

b) Breach of contract by failing to investigate and pay Plaintiffs' legitimate homeowner's claim.

c) Conspiring with Co-Defendants to deprive the Plaintiffs of money.

d) Failing to comply with Mississippi Department of Insurance Regulation Bulletin 2005-6 issued on September 7, 2005, addressing losses where little or nothing remains of the insured structure following Hurricane Katrina damage.

e) Failing to act in good faith when adjusting Plaintiffs' legitimate homeowner's claim.

f) Denying Plaintiffs' homeowner's claim without an arguably reasonable basis therefore. Defendants acted with malice and reckless disregard of Plaintiffs' rights when they intentionally denied Plaintiffs' homeowner's claim.

24. At all pertinent times herein, Rimkus, Bell, and Jordan were acting in their capacity as duly authorized agents and representatives of USAA.

25. Plaintiffs are entitled to the policy limits of said insurance policy, as well as damages for their mental anguish and emotional distress caused by the acts of Rimkus, Bell, Jordan, and USAA in fraudulently and wrongfully denying the Plaintiffs' homeowner's claim.

PRAYER FOR RELIEF

WHEREFORE PREMISES CONSIDERED, Plaintiffs', pray for trial by jury and for the following relief:

- (a) Award damages in Plaintiffs' favor against all Defendants jointly and severally for all insurance benefits due and owing under policy number # 00153222691A and to fully compensate Plaintiffs for their mental anguish and emotional distress suffered as a consequence of the Defendants wrongful conduct;
- (b) Punitive damages of \$20,000,000.00.
- (c) Award of costs, attorney fees and prejudgement interest; and
- (d) All other relief that this Court may determine is just and appropriate.

Respectfully submitted, this 27th day of June, 2006.

BY: DAVID W. AIKEN, JR. AND MARILYN M.
AIKEN, PLAINTIFFS

BY: GEORGE W. HEALY, IV. & ASSOCIATES

BY: _____
GEORGE W. HEALY, IV., (MBN 2154)
TIMOTHY J. MATUSHESKI (MBN 100998)

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VERIFICATION

I, David W. Aiken, Jr., Plaintiff in the above-captioned lawsuit, state that I have reviewed this Complaint, and the statements set forth herein are true and correct to the best of my knowledge and belief.

David W. Aiken, Jr.
David W. Aiken, Jr., Plaintiff

Sworn to and subscribed under penalty of perjury, this the 27th day of June,
2006.

My Commission Expires:

[Signature]
Notary Public

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES
BONDED THROUGH STATE