

II.
PARTIES AND SERVICE

3. Plaintiff, Ameriforge Group Inc., a Texas for profit corporation, d/b/a AFGlobal Corporation is a Texas corporation with its principal place of business in Houston, Harris County, Texas.

4. Defendant Federal Insurance Company, is an Indiana for profit corporation admitted to conduct insurance business in Texas, with its principal place of business at 251 North Illinois, Suite 1100, Indianapolis, Indiana 46204. Federal is an insurance company doing business in the State of Texas. Said Defendant may be served by serving its registered agent for service, CT Corporation System, 1999 Bryan Street, Ste. 900, Dallas, Texas 75201-3136.

5. Defendant Chubb & Son Inc., is a foreign for profit corporation, d/b/a Chubb & Son, a division of the Chubb Group of Insurance Companies. Chubb is an insurance company doing business in the State of Texas. Chubb & Son Inc., Defendant may be served by serving its registered agent for service, CT Corporation System, 1999 Bryan Street, Ste. 900, Dallas, Texas 75201-3136.

III.
JURISDICTION AND VENUE

6. This Court has personal jurisdiction over Defendants because they avail themselves of the privilege of doing business in the State of Texas, and the subject matter of this action arises under the common law and statutes of the State of Texas. Furthermore, the amount in controversy is within the jurisdictional limits of this Court.

7. Venue is proper in this Court because suit on a policy against an insurance carrier may be brought in the county in which the policyholder or beneficiary instituting the suit resided at the time the cause of action accrued, pursuant to Texas Civil Practice & Remedies Code §15.032.

**IV.
FACTS APPLICABLE TO ALL CAUSES OF ACTION**

8. On or about November 13, 2013, AFGlobal purchased from Defendants a certain insurance policy. A true and correct copy of this Policy is attached hereto as Exhibit A to this Petition. The policy period in question provided coverage for losses by AFGlobal from October 31, 2013 to October 31, 2014.

9. The policy limit is \$3,000,000.00, subject to a \$100,000.00 deductible. AFGlobal Corporation suffered a loss of \$480,000.00 as a result of a fraudulent transfer of funds as described below.

10. The fraudulent emails made on Wednesday, May 21, 2014, and continuing to Tuesday May 27, 2014, included instructions received from a person believed to be Mr. Gean Stalcup, the CEO of AFGlobal Corporation, requesting AFGlobal to initiate a wire transfer to Agriculture Bank of China. The person sending the instructions was not Mr. Gean Stalcup and is referred to hereafter as the "Imposter." The employee was Glen Wurm, Director of Accounting of AFGlobal Corporation. The Imposter's email read:

"Glen, I have assigned you to manage file T521. This is a strictly confidential financial operation, to which takes priority over other tasks. Have you already been contacted by Steven Shapiro (attorney KPMG)? This is very sensitive, so communicate with me through this email, in order for us not to infringe SEC regulations. Please do not speak with anyone email or phone regarding this. Regards, Gean Stalcup."

11. Approximately 30 minutes later, Mr. Wurm was contacted via phone and via email by Mr. Shapiro stating that due diligence fees associated with the China acquisition in the amount of USD 480,000.00 were needed. Mr. Shapiro followed up via email with wiring instructions.

12. Mr. Wurm engaged AFGlobal's Cash Manager and AFGlobal's Treasurer with transferring the funds under the full belief he was being instructed to do so by the CEO of the

company and that confidentiality was very important. After the funds transfer was made, Mr. Wurm did not receive any further correspondence from the Imposter until Tuesday May 27, 2014, when the Imposter acknowledged receipt of the funds and asked Mr. Wurm to send an additional USD 18 million. It was at this time Mr. Wurm became suspicious and told the Imposter that he could not wire the funds without at a minimum informing his immediate supervisor and the Company Treasurer. Mr. Wurm then immediately alerted his immediate supervisor and the officers of the company of his suspicion: Chief Accounting Officer (Tom Edgeller), Treasurer (Perry Ewing), General Counsel (Tom Giles), and Chief Financial Officer (Brian Fontana).

13. The Imposter seemed to know the normal procedures of the company and also that Gean Stalcup had a long-standing, very personal and familiar relationship with Mr. Wurm -- sufficient enough that Mr. Wurm would not question a request from the CEO. Once Mr. Edgeller and the other officers of the company realized that they had been a victim of fraud, they reacted quickly to try and retrieve the funds. The Treasurer and the Cash Manager reacted rapidly and attempted to recall the wire from Bank of America. Moreover, they instructed Bank of America to alert all the banks involved (i.e. beneficiary banks) and their security departments of the fraud. Finally, they filed a police report with the Houston Police Department.

14. The funds were transferred on Wednesday May 21, 2014. As regards discovery of the fraud, Mr. Gean Stalcup was informed of the fraud on Tuesday May 27, 2014. The Treasurer, Mr. Perry Ewing received an email from Bank of America which confirmed that the funds were transferred on Wednesday May 21, 2014. Moreover, they were informed that the beneficiary account had been zeroed out and closed.

15. Defendants were first made aware of the situation on Tuesday May 27, 2014 via the brokerage firm Aon Risk Services.

16. On or about June 2, 2014, AFGlobal filed a formal proof of loss with the insurance carriers. A copy of the proof of loss signed under oath by Perry Ewing, Corporate Treasurer, is attached hereto as Exhibit B.

17. On July 7, 2014, Defendants denied AFGlobal's claim in writing. A copy of this denial is attached hereto as Exhibit C; and, on October 9, 2014, Defendants further communicated to AFGlobal that the claim was being denied. A copy of the October 9, 2014 denial is attached hereto as Exhibit D. Finally, on October 30, 2015, a demand letter was sent by the undersigned law firm to Defendants, enclosing in the letter a report by two experts, one an expert in insurance underwriting, and the other in the field of computer forensics to give Defendants notice that the failure to pay the claim and deny coverage under the particular facts and reasoning indicated in the letter, amounted to bad faith. The letter also gave notice that if payment was not made as set out in the letter suit would be filed under such claim. No response was received to the October 30, 2015 letter, and this suit ensued.

**V.
NOTICE AND CONDITIONS PRECEDENT**

18. Plaintiff has served Defendants with notice of this claim, including documentation and detailed proof of loss, via the aforementioned statement of loss dated June 2, 2014, as well as notice that denial the claim, when liability was reasonably clear, is a breach of the duty of good faith and fair dealing, amounting to bad faith as allowed under the common law of Texas, and as well as an unfair or deceptive insurance practice under the Texas Insurance Code. All other conditions precedent to maintaining this cause of action have been performed or have otherwise occurred.

**VI.
ASSUMED NAMES**

19. Pursuant to Rule 28, of the Texas Rules of Civil Procedure, Plaintiff hereby gives Defendants notice that they are being sued in all of their business or common names regardless of whether such businesses are partnerships, unincorporated associations, individuals, entities, and private corporations. Defendants are known to have used or done business under the following assumed names which include: Chubb Group of Insurance Companies, Chubb & Sons Inc., Chubb & Son, and Federal Insurance Company. In particular, Chubb & Son Inc. d/b/a Chubb & Son, a division of Federal Insurance Company, is further liable to Plaintiff, as it is the claims handling entity.

**VII.
VICARIOUS LIABILITY**

20. Wherever in this petition it is alleged that Defendants did any act or thing, it is meant that the Defendants' officers, agents, servants, employees or representatives did such act or thing that at the time such act or thing was done, it was done with the full authorization or ratification of the Defendants or was done in the normal and routine course and scope of employment of the Defendants' officers, agents, servants, employees, or representatives. Accordingly, Defendants are liable to Plaintiff under the doctrines of respondeat superior, vicarious liability, and principal-agent.

**VIII.
CAUSES OF ACTION**

A. BAD FAITH GENERALLY

21. Having determined that the aforementioned insurance was, at the time of the occurrence described above, in force and effect, Plaintiff timely and properly noticed Defendants

of the occurrence and/or loss. Plaintiff fully complied with all the conditions of the insurance policy prior to bringing this suit. All conditions precedent have been performed or have occurred. Nevertheless, Defendants have failed and refused, and still fail and refuse to Plaintiff, the benefits due under the policy, as Defendants are contractually required to do.

22. Defendants' refusal to pay or deny coverage on Plaintiff's claim is in bad faith, both under the Texas common law and under the Texas Insurance Code. Defendants are liable to Plaintiff for unfair and deceptive insurance due to their failure to settle the claims when coverage is reasonably clear. Defendants' actions also constitute an unfair claim settlement practice, as defined by the Texas Insurance Code. Specifically, Defendants have not attempted in good faith to effectuate prompt, fair, and equitable settlement of this claim, and liability has become reasonably clear. Moreover, Defendants have compelled the policy holder to institute suit to recover the amounts due under the policy by not offering to pay the claim. Said acts or practices are in violation of Chapter 541 of the Texas Insurance Code, including Tex. Ins. Cod §541, Subchapter B.

1. COMMON LAW AND BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

23. The allegations of paragraph 8 through 17 and incorporated herein, as if set out verbatim. Plaintiff would show that there was an insurance contract between the Plaintiff-(Insured) and Defendants-(Insurer), a duty of good faith and fair dealing.

24. Defendants breached their duty when they denied payment when Defendants knew, or should have known, that coverage of the claim, and thus, liability for payment of the claim, was reasonably clear. No reasonable basis exists for denying payment of the claims because the claim was in fact covered by the policy. It is clear from a review of the policy that coverage arises under Subparts (E) – “Computer Fraud Coverage” and/or (F) – “Funds Transfer Fraud Coverage.”

25. Furthermore, Defendants' breach proximately caused the Plaintiff's damages.

2. BAD FAITH INSURANCE PRACTICES

26. The allegations of paragraph 8 through 17 and incorporated herein, as if set out verbatim. In a lawsuit filed under the aforementioned subchapters of the Texas Insurance Code, in particular §541 et seq., Plaintiff may obtain:

- i. The amount of actual damages, plus interest thereon at the rate of eighteen percent (18%) per annum;
- ii. On a finding by the trier of fact that Defendants knowingly committed the act(s) complained of, an amount not to exceed three (3) times the actual damages;
- iii. Reasonable and necessary attorneys' fees, which are to be taxed as Court costs, along with all other taxable Court costs; and,
- iv. Any other relief which the Court deems proper.

27. Furthermore, pursuant to Texas Insurance Code § 542.061, the remedies provided under this subchapter are not exclusive and are in addition to any other remedy provided by statute or at common law.

28. Defendants' conduct was a producing cause of Plaintiff's damages.

B. BREACH OF CONTRACT

29. The allegations of paragraph 8 through 17 and incorporated herein, as if set out verbatim. Plaintiff would show that it entered into a binding agreement with Defendants for insurance, and that there existed a meeting of the minds as to the premiums to be paid by Plaintiff, and all actions to be taken by Plaintiff upon suffering a covered loss, and the duties and obligations of Defendants toward AF Global. Defendants breached the contract by failing to pay on a covered claim.

30. Defendants' breach has proximately caused Plaintiffs' damages, to include the policy amount, interest on the policy amount as allowed under the terms of the contract, reasonable and necessary attorneys' fees in prosecuting this claim to seek the policy amount, and court costs.

C. BREACH OF WARRANTY

31. The allegations of paragraph 8 through 17 and incorporated herein, as if set out verbatim. Defendants breached the expressed and implied warranties. They refused to honor AFGlobal's claim. Defendants' conduct was a producing and/or proximate cause of Plaintiff's damages.

D. FRAUD AND MISREPRESENTATION.

32. The allegations of paragraph 8 through 17 and incorporated herein, as if set out verbatim. Defendants made material representations to Plaintiff including that it would insure the business operations of AFGlobal. Plaintiff relied on the Defendants' representations and has suffered damages as a result of Defendants' conduct. Defendants have refused to honor AFGlobal's claim and as a result, Plaintiff has suffered damages.

**IX.
ATTORNEYS FEES**

33. Plaintiff has been required to engage the services of the undersigned attorney to represent it in this case. Accordingly, this suit is maintained against the Defendants for reasonable attorneys' fees for the services expended and to be expended in the presentation of Plaintiff's claims through the trial court and at all levels in the appellate process. All conditions precedent necessary for the recovery of attorneys' fees by Plaintiff have been fulfilled.

**X.
PUNITIVE DAMAGES**

34. The actions of the Defendants were undertaken willfully and maliciously. Defendants intentionally committed these wrongful acts and their actions were motivated by malice. Accordingly, Plaintiff is entitled to recover punitive damages.

**XI.
JURY DEMAND**

35. Plaintiff respectfully demands its right to have a trial by jury and hereby tenders the appropriate jury fee to the District Clerk of Harris County, Texas.

**XII.
REQUESTS FOR DISCLOSURE**

36. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, you are requested to disclose, within 50 days of the service of this request, the information or material described in Rule 194.2 of the Texas Rules of Civil Procedure.

**XII.
PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Ameriforge Group Inc., a Texas corporation, d/b/a AFGlobal Corporation respectfully requests that Defendants, Federal Insurance Company, an Indiana corporation admitted to conduct insurance business in Texas, and Chubb & Son Inc., a foreign corporation d/b/a Chubb & Son, a division of the Chubb Group of Insurance Companies be cited to appear and answer, and that on final trial on the merits, Plaintiff have and recover from Defendants the following:

- a. Actual damages in an amount in excess of the minimum jurisdictional limits of this Court;
- b. Pre-judgment at the highest legal rate of eighteen percent (18%) per annum or as allowed by law;

- c. Reasonable and necessary attorneys' fees including fees in responding to an unsuccessful appeal by Defendants;
- d. Taxable Court costs;
- e. Statutory damages in the amount of three (3) times the actual damages;
- f. Post-judgment interest on the above amounts, at the highest rate as allowed by law; and,
- g. Such other and further relief, general or special, at law or in equity, to which the Court finds Plaintiff justly entitled.

Respectfully submitted,

CERSONSKY, ROSEN & GARCÍA, P.C.

By: /s/ Jacquelyn D. McAnelly

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