

**IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA**

CASE NO.:

**HERBERT JIMENEZ,
Plaintiff,**

vs.

**CITIZENS PROPERTY INSURANCE CORPORATION,
Defendant.**

/

COMPLAINT-CLASS REPRESENTATION

COMES NOW the Plaintiff, individually and as representative of a putative class of similarly situated insured individuals, by and through the undersigned attorney, and sues the Defendant, Citizens Property Insurance Corporation (hereinafter sometimes referred to as "CITIZENS") and alleges as follows:

1. This is an action with damages greater than Fifteen Thousand Dollars (\$15,000), exclusive of interest, costs, and attorney's fees. The action is based upon Defendant's CITIZENS failure to recognize, implement, and incorporate the requirements of the Florida Building Code (hereinafter referred to as "FBC") when adjusting hurricane claims in South Florida.

2. Defendant CITIZENS, and its authorized representatives, failed to pay and/or properly adjust claims in Broward and Dade County by utterly ignoring the FBC and its High Velocity Hurricane Zone building requirements with regard to the replacement of windows (and other glass structures) damaged or destroyed by Hurricane Wilma which occurred in October, 2005.

3. As a result of its failure to take the FBC into account in its adjustment of claims, thousands of Floridians were under-compensated for their losses related to Hurricane Wilma, and thousands of Floridians are now at risk should another storm strike South Florida. Defendant's CITIZENS actions in failing to follow the FBC, especially with regard to high impact glass requirements and storm shutters, are inexcusable and evince a reckless disregard for the rights and safety of the residents of Florida.

4. The FBC is a legacy of Hurricane Andrew, which caused approximately \$30 billion in property damage as it swept across southern Florida in 1992. The FBC's requirements are incorporated into every insurance policy in the state of Florida.¹

5. Before Andrew, the response to storm damage had been to clear away the debris and build again. After Andrew's sustained winds of 145 mph (with gusts up to 170 mph) leveled Homestead and other cities in its path, taxpayers *and the insurance industry* questioned the practice of "just build again". As a result, the country's toughest building codes were adopted in southern Florida.

6. The changes, incorporated into the 1994 code, were designed to address the weaknesses associated with the building envelope that became evident after a major storm. The three main areas of building construction weakness (roof systems, *opening protection*, and roof sheathing attachment) were identified and hurricane mitigation provisions were considered. Ultimately, the improved structural provisions were incorporated from the South Florida Building Code into the Florida Building Code as the

¹ The Courts of this State have allowed insurance carriers to limit their exposure to this requirement. Exclusions related to improvements made necessary by updated code requirements when rebuilding have been upheld. Most carriers typically exclude code improvements in their standard homeowner's insurance policy, and sell separate "Ordinance and Law" coverage which provides supplemental insurance limited to twenty-five percent (25%) or fifty percent (50%) of the face value of the insurance policy. This action is brought as a putative class action on behalf of all insureds who bought this additional "Ordinance and Law" coverage.

High Velocity Hurricane Zone provisions (hereinafter referred to as “HVHZ”), which are applicable in Broward and Dade Counties.

7. The HVHZ imposes substantial requirements upon individuals seeking to make repairs to windows and sliding doors after a hurricane has damaged the glass structures of a building.² Indeed, simple glass replacement is virtually impossible in HVHZ areas following a hurricane. Inexplicably, Defendant CITIZENS, with knowledge of these provisions, prescribed simple glass replacement for virtually all of its insureds in the HVHZ.

8. Defendant CITIZENS actions were negligent, reckless, and perhaps willful and wanton in light of the prescribed requirements of the HVHZ. At best, CITIZENS actions are a breach of the insurance contract to all individuals with “Ordinance and Law” upgrade coverage.

CLASS REPRESENTATION ALLEGATIONS

9. Plaintiff (hereinafter sometimes referred to as the “putative representative”) seeks to bring this case as a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(1) and/or Florida Rule of Civil Procedure 1.220(b)(3), on behalf of himself and all other persons similarly situated in the State of Florida.

² *Section 403.2 of the Florida Building Code (FBC), Existing Buildings* states that replacement glazing in hazardous locations or High Velocity Hurricane Zones, shall comply with the safety glazing requirements of the FBC, Building Section. *Chapter 24 of the FBC*, Building Section requires that the glazing on windows be designed and constructed to sufficiently resist the full pressurization from the wind loads prescribed in *Chapter 16 of the FBC* and the concentrated loads that result from hurricane generated wind-borne debris. If the structure is located within the hazardous zones and the glazing does not meet these requirements, then the glazing shall be protected by storm shutters. The FBC does not require a particular brand or type of shutter, however the product needs to have been approved for use in the State of Florida. The FBC designates Broward and Dade Counties as the hazardous zones or High Velocity Hurricane Zones in Florida.

10. The issues of law and fact in this class action are set forth above and are common to the putative representative and the putative class. These include, but are not limited to:

- A. Whether Defendant CITIZENS owes a duty to its insureds who have purchased “Ordinance and Law” coverage to follow the Florida Building Code with regard to High Velocity Hurricane Zones when adjusting claims.
- B. Whether Defendant CITIZENS has breached its duty to its insureds who have purchased “Ordinance and Law” coverage to follow the Florida Building Code with regard to High Velocity Hurricane Zones when adjusting claims.
- C. Whether Defendant CITIZENS owes damages, including attorneys fees and costs, to its insureds who have purchased “Ordinance and Law” coverage for Defendant’s failure to follow the Florida Building Code with regard to High Velocity Hurricane Zones when adjusting claims.

11. The putative representative’s claim is typical of those of the class in that each has the same interest in recovering damages for the difference between the cost of simple glass windows [as allowed by CITIZENS] and the upgraded requirements (high impact glass or shutters) required under the HVHZ. As insureds under insurance policies which provide precisely the same coverage, all putative class members (including the Plaintiff) are situated identically with respect to the issues presented in the case.

12. The class consists of approximately fifty thousand individuals, who are defined as follows: “All insureds with ‘Ordinance and Law’ coverage issued by CITIZENS PROPERTY INSURANCE CORPORATION for properties in High Velocity Hurricane Zones who were not provided insurance proceeds sufficient to comply with upgraded HVHZ requirements”.

13. The putative representative/Plaintiff will fairly and adequately represent and protect the interests of the class members, and has no interest antagonistic to those of the class. Plaintiff has retained counsel who are competent and experienced in insurance law, and committed to resolution of issues of great importance to the consumers of this State.

14. A Class Action is superior to other available methods for the fair and efficient adjudication of this controversy for the following reasons:

- A. It is economically impracticable for Class Members to prosecute individual actions because the individual claims are so small.
- B. Class members are generally unaware of the technical requirements which govern their claims, and the vast majority of claims such as these would never be brought.
- C. Questions of law or fact common to the claims or defenses of the representative party and the class predominate over any question of law or fact affecting its individual members.
- D. It is desirable to concentrate these claims in a single forum where inconsistent adjudications may be avoided, and consistent conduct be determined and followed throughout all affected areas of the State.

- E. The members of the class are so numerous that separate joinder of each member is impracticable.
- F. Plaintiff is aware of no other litigation concerning this controversy already commenced by its class members.
- G. There are no difficulties likely to be encountered in the management of this class action, given the limited issue presented, defendant's record-keeping requirements under Florida law, and the simplicity of data retrieval for the defendant.

BREACH OF CONTRACT

15. At all material times hereto, Plaintiff was a resident of Florida, and the policies of insurance written by CITIZENS were issued by Defendant CITIZENS to Plaintiff, and all similarly situated individuals, in the State of Florida.

16. At all material times hereto, Defendant CITIZENS was a corporation duly licensed to transact insurance business in the State of Florida. Defendant does business, has offices, and/or maintained agents for the transaction of its customary business in Dade County.

17. Plaintiff, and all members of the putative class, sought property owner's insurance from Defendant CITIZENS to cover their property, and a policy of insurance, including but not limited to coverages to protect against wind and rain, was issued by the Defendant. In addition, separate coverage to allow upgrade for "Ordinance and Law" requirements was issued as well.

18. On or about October 24, 2005, Plaintiff's, and all members of the putative class', dwellings and other property in Broward County and Dade County were damaged by wind and rain.

19. The above homeowner's insurance with Defendant CITIZENS was in full force and effect as to the Plaintiff and the putative class members when their property was damaged. True and correct copies of the policies of insurance are in control of Defendant CITIZENS, and will be provided through discovery, if necessary.

20. Plaintiff, and all members of the putative class, have timely notified Defendant CITIZENS of the loss and otherwise complied with all conditions precedent to entitle recovery under the policy or the conditions have been waived.

21. Jurisdiction and venue are proper in Dade County.

22. Despite demand for payment, Defendant CITIZENS has failed or refused to pay all of Plaintiff's, and the putative class', covered losses. Defendant's CITIZENS failure to make proper reimbursement for all items required under the HVHZ is a breach of contract. Plaintiff and all members of the putative class have been damaged as a result of Defendant's conduct.

23. As a result of Defendant's CITIZENS breach of contract, it has become necessary that Plaintiff, and the putative class, retain the services of the undersigned attorney.

24. Plaintiff, and the members of the putative class, are entitled to reimbursement of attorney's fees and costs under F.S. §627.428.

WHEREFORE, Plaintiff, and the members of the putative class, demand judgment against Defendant CITIZENS for all covered losses with interest on any overdue

payments, costs, and attorney's fees pursuant to F.S. §627.428, and trial by jury is hereby demanded.

Dated this ____ day of _____ 200 ____.

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