

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI DADE COUNTY, FLORIDA

CASE NO. 15-008280 CA 01 (05)

GLADYS CARDENAS,

Plaintiff,

v.

SOUTHERN FIDELITY INSURANCE COMPANY,

Defendant.

DEFENDANT, SOUTHERN FIDELITY INSURANCE COMPANY,
ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIM, AND DEMAND FOR JURY
TRIAL

The Defendant, SOUTHERN FIDELITY INSURANCE COMPANY ("SFIC"), by and through its undersigned counsel files this its Answer, Affirmative Defenses, Counterclaim, and Demand for Jury Trial in Response to Plaintiff's Complaint, and states as follows:

1. Defendant denies paragraphs 1-20 of the Plaintiff's Complaint and demands strict proof thereof.
2. Defendant admits that on the date of the alleged loss there was policy of insurance in effect that was maintained for the benefit of the Plaintiff and the listed property.
3. All allegations set forth in the Plaintiff's Complaint not hereinbefore specifically admitted are hereby denied.

AFFIRMATIVE DEFENSES

4. As a first affirmative defense, the Defendant would state that the damage claimed by the Plaintiff were not caused by a covered loss, but instead were caused by wear and tear, marring, and/or deterioration.
5. As a second affirmative defense, the Defendant would state that the damage was not caused

by a covered loss, but instead was caused by mechanical breakdown, inherent vice and/or latent defect.

6. As a third affirmative defense, the Defendant would state that the damage was not caused by a covered loss, but instead was caused by smog, rust or other corrosion, mold, wet or dry rot.
7. As a fourth affirmative defense, the Defendant would state that the damage was not caused by a covered loss, but instead was caused by constant or repeated seepage or leakage of water or the presence or condensation of humidity, moisture or vapor, over a period of weeks, months or years.
8. As a fifth affirmative defense, the Defendant would state that the damage was not caused by a covered loss, but instead was caused by settling, shrinking, bulging or expansion, including resultant cracking or bulkheads, pavement, patios, footings, foundations, walls, floors, roofs or ceilings.
9. As a sixth affirmative defense, the Defendant would state that the Plaintiff has failed to fully comply with and/or satisfy any and all conditions or requirements set forth in the policy of insurance prior to making this claim by failing to promptly show the Defendant the damaged property when the damage first occurred and prior to the conditions in question being altered/manipulated by third-parties. This misconduct has irreparably prejudiced SFIC's ability to investigate/validated the true facts and circumstances surrounding the alleged loss and claimed damages.
10. As a seventh affirmative defense, the Defendant would state that the damage was not caused by a covered loss, but instead was caused by faulty, inadequate or defective design, specifications, workmanship, repair, construction, renovation, remodeling, grading or

compaction.

11. As an eighth affirmative defense, the Defendant would state that the damage was not caused by a covered loss, but instead was caused by faulty, inadequate or defective materials used in repair, construction, renovation or remodeling.
12. As a ninth affirmative defense, the Defendant would state that the damage was not caused by a covered loss, but instead was caused by faulty, inadequate or defective maintenance.
13. As a tenth affirmative defense, the Defendant would state that the damage was not caused by a covered loss, but instead was caused by the Plaintiff's neglect in failing to use all reasonable means to save and preserve the property at, before or after the time of the loss and/or to mitigate her damages.
14. As an eleventh affirmative defense, the Defendant would state that the Plaintiff breached the terms of the subject policy by failing to protect the property from further damage, by failing to make reasonable and necessary repairs to protect the property and by failing to keep and/or produce an accurate record of the repair expenses. SFIC has been irreparably prejudice as consequence thereof, including but not limited to the mere fact that additional damages are being claimed and the true facts and circumstances surrounding the events in question cannot be verified.
15. As a twelfth affirmative defense, the Defendant would state that the Plaintiff and/or her agents have intentionally concealed and/or misrepresented material facts, or otherwise engaged in fraudulent conduct. The specific facts and circumstances supporting this defense are fully outlined the counterclaim set forth below.
16. As a thirteenth affirmative defense, the Defendant would state that the damages at issue are not covered since they were intentionally caused by the Plaintiff individually, and/or

through the utilization of third-parties.

17. As a fourteenth affirmative defense, the Defendant would state that the Plaintiff has failed to fully comply with and/or satisfy any and all conditions or requirements set forth in the policy of insurance prior to making this claim, including but not limited to failing to timely provide Defendant with documentation and authorizations that were requested.
18. As a fifteenth affirmative defense, the Defendant would state that the Plaintiff has failed to fully or substantially comply with and/or satisfy any and all conditions or requirements set forth in the policy of insurance prior to making this claim by failing to submit a sworn proof of loss that set forth to the best of her knowledge the true: date of loss; cause of loss; and value of the loss.
19. As a sixteenth affirmative defense, the Defendant would state that the Plaintiff has failed to fully or substantially comply with and/or satisfy any and all conditions or requirements set forth in the policy of insurance prior to making this claim by: improperly and unjustifiably terminated her examination under oath; failing to provide truthful and complete information during the course of her examination under oath; failing to provide truthful and complete information regarding water mitigation services that were performed; failing to provide truthful and complete information regarding the retention of a plumber and the payment of his services; failing to provide truthful and complete information regarding prior claims/damages; failing to provide truthful and complete information regarding known witnesses; failing to provide truthful and complete information regarding the cause and origin of damages being claimed; etc. The Defendant further incorporates into this affirmative defense the allegations set forth in paragraphs 4 through 21 of the counterclaim set forth below.

20. As a seventeenth affirmative defense, the Defendant would state that the subject damages, if any, are not covered under the policy because they did not arise in part or in whole during the policy period and/or were not the result of covered peril.
21. As an eighteenth affirmative defense, the Defendant would state that the damages and/or the cause of said damages pre-date the subject policy of insurance and therefore they are not covered.
22. As a nineteenth affirmative defense, the Defendant would state the subject policy of insurance does not provide coverage for any claims or damages for any stated amount whether covered by Plaintiff's policy or not, that were not completely repaired before the subject policy's inception.
23. As a twentieth affirmative defense, the Defendant would state that the damage was not caused by a covered loss, but instead was caused by water which backed up through a sewer or drain.
24. As a twenty-first affirmative defense, the Defendant would state that with regards to loss to a pair of set, the Defendant may elect to pay the difference between actual cash value of the property before and after the loss, if any.

DEMAND FOR JURY TRIAL

25. This Defendant demands trial by jury of all issues so triable.

COUNTERCLAIM

COMES NOW, the Defendant/Counter-Plaintiff, SOUTHERN FIDELITY INSURANCE COMPANY ("SFIC"), by and through undersigned counsel and hereby files this, its Counterclaim against the Plaintiff/Counter-Defendant, GLADYS CARDENAS.

PARTIES, JURISDICTION AND VENUE

1. This is an action for punitive damages, common law fraud, contractual relief and declaratory relief pursuant to Chapter 86, *et seq.*, Florida
2. At all times material hereto SFIC was authorized to conduct business in the State of Florida and Miami-Dade County.
3. Venue and jurisdiction are appropriate in Miami-Dade County since the Plaintiff/Counter-Defendant filed suit against SFIC in Miami-Dade County, alleging breach of contract in Miami-Dade County in relation to insurance claims that were made under a homeowner's insurance policy that she maintained with SFPC.

GENERAL ALLEGATIONS

4. On March 13, 2014 and March 16, 2014, SFPC maintained for the benefit of Gladys Cardenas ("Cardenas") a homeowner's insurance policy (hereinafter referred to as "Policy") under SFIC policy number SLS 1234258 06 09. *See the Policy attached hereto as Exhibit "A."*
5. The property that was insured is located at 600 NE 36TH Street, Unit 718, Miami, FL 33137.
6. Cardenas is a licensed and practicing lawyer who owns and operates a law firm by the name of the The Cardenas Law Group, LLC.,
7. Cardenas and The Cardenas Law Group commonly represent homeowners/insureds in relation to first-party homeowner's insurance claims.
8. On March 19, 2014, Cardenas utilized an employee from The Cardenas Law Group named Dana Solamanis ("Dana") to report on her behalf two water loss claims that were said to have occurred on March 13, 2014 and March 16, 2014.
9. The first claim, which is identified by claim number 090100008035, was reported by Dana

as a shower pan leak that caused water damage to the home (hereinafter referred to as the "Shower Pan claim").

10. The second claim, which was identified by claim number 090100008036, was reported as an "accidental discharge of water in the kitchen," causing water damage to the surrounding areas (hereinafter referred to as the "Kitchen claim"), and when referred to in combination with the Shower Pan claim, both claims are collectively referred to as the "Claims".
11. Cardenas intentionally fabricated and concealed the facts and circumstances surrounding the putative Kitchen Claim and Shower Pan claim in an effort to falsely and fraudulently create the appearance that there were two sudden and accidental events on the dates indicated that necessitated repairs by the same plumber, Lazaro Menendez ("Menendez"), water mitigation services by Dryworld, Inc. ("Dryworld"), and the assistance of a loss consultant by the name of Daniel Silva ("Silva").
12. Cardenas, Menendez, Dryworld and Silva (hereinafter collectively referred to as "Collaborators") all worked in collusion to fabricate the dates of loss, cause of loss, scope of loss and value of damages.
13. Cardenas and the Cardenas Law Group commonly utilizes Dryworld, Menendez and/or Silva to submit first-party homeowner insurance claims under a set of facts highly similar to the ones set forth herein.
14. For example, it is common practice for them (in part or in whole) to work in combination to reach the end result of: delaying SFIC's inspection of the claim; precluding SFIC from inspecting (or observing through photos/videos) the plumbing system failure that is being alleged as causing substantial damages; disposing and/or concealing the plumbing system/part that failed so as to interfere with SFIC's ability to validate the loss; allowing water excavation to be completed before an SFIC inspection so as to interfere with SFIC's

ability to validate the claim; utilizing "loss consultants" that are not qualified to render expert opinions and are operating as de facto unlicensed public adjusters; shielding the claimant/insured from speaking to SFIC so as to preclude the true facts and circumstances surrounding the loss from being unveiled; delaying communications between SFIC and the insured regarding the facts and circumstances surrounding the claim, and then SFIC is presented with an insured that claims lack of knowledge or recollection regarding key facts and circumstances; relying upon false "plumbing invoices" or documents to substantiate a false claim; delaying and/or not submitting receipts, invoices, proposal or other documents regarding repairs performed; causing intentional damage to the flooring before SFIC is ever given an opportunity to inspect; concealing the identity of the persons that are preparing unqualified estimates; not making any effort to substantiate the true market value of repairs; not exercising due diligence to differentiate between recent damage and preexisting damage; as a standard business practice making baseless continuous floor claims so as to unnecessarily inflate the value of the claim; etc.

15. As established by, *inter alia*, SFIC's investigation, the evaluation by an independent engineer (report attached hereto as *Exhibit "B"*) and Cardenas' own examination under oath ("EUO") testimony, neither of the two losses occurred as alleged.
16. More specifically, there was no shower pan leak as alleged, and there was no kitchen leak due to the later alleged supply line failure.
17. Rather, the damages being claimed were due to a multitude of unrelated events and an attempt to create intentional damages.
18. The Collaborators worked in collusion and/or independently to interfere with SFIC's investigation by intentionally concealing and/or misrepresenting the facts and circumstances surrounding the losses, creating intentional damage and embellishing the

claim.

19. The Collaborators knew that this conduct interfered with Cardenas' contractual duties under the policy, constituted spoliation of evidence and served to cause irreparable prejudice to SFIC's investigation.
20. As stated above, many of the acts of misconduct as set forth herein are not unique to the claims at hand. Rather, the Collaborators have worked in unison as it relates to numerous claims that have been submitted by various Insureds. As discovery continues, the fraud counts and the tortious interference counts set forth below will be amended to include additional claims.
21. As it relates to the Claims at hand, the acts of fraud and misconduct are specifically outlined below:
 - (a.) Cardenas reported the claim through third parties such as Dana to shield herself from any questions that SFIC had regarding the facts and circumstances surrounding the alleged losses.
 - (b.) Cardenas knowingly relied upon anonymously prepared (failed to name the person preparing the estimate) estimates that she knew were not prepared by a licensed vendor, licensed public adjuster, general contractor or other qualified person.
 - (c.) Cardenas signed and submitted sworn proofs of loss for the Claims that she knew (or acted with a reckless disregard for the truth) did not truthfully set forth the true: dates of loss; causes of loss; and/or value of the losses.
 - (d.) Cardenas colluded with Dryworld to give the false appearance that the Claims arose from a sudden and accidental event.
 - (e.) Notwithstanding multiple requests for months on end, and the fact that she had yet to communicate with SFIC directly regarding the facts and circumstances surrounding the

Claims, Cardenas intentionally interfered with SFIC's ability to validate/investigate the claim by refusing to timely submit to a recorded statement.

(f.) Cardenas intentionally interfered (for the purpose of concealing the truth) with SFIC's investigation by failing to promptly submit to an EUO, and then claiming lack of knowledge and recollection as to most questions regarding the facts and circumstances surrounding the causes of loss/damage, the dates of loss, water mitigation efforts, plumbing repairs, consequential repairs, etc.

(g.) As a calculated means to interfere with the investigation and conceal the truth, Cardenas imposed artificial, arbitrary and capricious time and scope limitations on her EUO. Further, she acted in a combative, hostile and non-cooperative fashion during the course of the EUO.

(h.) As it relates to this claim and other claims they have made with SFIC, the Collaborators work in unison and/or individually to ensure that the claim is not promptly reported and that SFIC is not given an opportunity to inspect until the conditions in question have been altered, the putative plumbing repair has been performed, the failed plumbing system has been discarded and a sufficient amount of time has passed so that the water conditions in question cannot be verified in relation to the loss in question. This conduct is driven to develop a false theory of loss, and in order to create coverage for an event that would not be covered if the true facts were known.

(i.) As a means of giving the false impression that a sudden and accidental loss occurred, and as it relates to the Claims in question and others, the Collaborators utilize Menendez (and other unlicensed "plumbers") to prepare and submit false plumbing invoices. The Collaborators know that Menendez is not a plumber, did not perform the plumbing services as alleged and typically wait months (and only upon motivated to do so based on an

insurer's repeated demands for proof of a covered event) to fabricate/submit Menendez's "plumbing invoices."

(j.) Only upon repeated requests on SFIC's part, did Cardenas submit a fraudulent invoice prepared by Menendez. Cardenas knew that the plumbing repairs/services set forth in the invoice had not been performed and the charges set forth had not been incurred for the reasons indicated. Furthermore, she knew that he was not a plumber and that the documentation she was submitting was intended to give the false appearance that he was.

(k.) In connection with the Claims, Cardenas and Silva knowingly allowed Dryworld to submit to SFIC (via a limited assignment of benefits) thousands of dollars of putative water mitigation services that were either not rendered or unnecessary.

(l.) In an effort to fraudulently inflate the value of the Claims, Cardenas, Silva and Dryworld colluded to cause intentional damage by unnecessarily removing baseboard tiles, and then claiming tens of thousands of dollars in damages in relation to the allegation that the baseboard tiles had been damaged and discarded in relation to the water mitigation efforts. More specifically, this conduct allowed Cardenas and Silva to claim that SFIC had to pay for the cost of removing and replacing all the continuous tile throughout the property.

(m.) Even though Cardenas knew or should have known that the removal of the baseboard tile served to create tens of thousands of dollars' worth of damages, she never took any reasonable measures to justify the course of action or preserve the evidence.

(n.) Although the Cardenas residence is a condominium with less than one thousand two hundred and fifty square feet, and Dryworld putatively performed their water mitigation services for the Claims simultaneously, in an effort to embellish and misrepresent the value of the services they submitted two separate water mitigation bills. There were clear

duplicate charges between Dryworld's charges for the Kitchen Claim and Shower Pan claim. Even though Dryworld is a client of Cardenas and a vendor utilized by many of the insureds she represents, she refused to address or clarify these duplicate charges with Dryworld and/or SFIC.

(o.) The Collaborators failed to produce for inspection the putatively failed supply line in the kitchen, or otherwise memorialize its condition via photo or video. Independently and/or jointly, this conduct is systemic on the part of the Collaborators, and is used as a means of fabricating a theory of loss that would qualify coverage for an otherwise uncovered event. Cardenas was legally obliged per the policy and general principles of law to preserve this key piece of evidence, yet during her EUO she conveyed a complete disregard for this obligation and has repeatedly failed to take the necessary steps to preserve this type of evidence in relation to claims that she makes with SFIC in relation to insureds that she represents.

(p.) Cardenas refused to provide the contact information for a household resident, when she knew that this person would be a key factual witness. This conduct was an intentional effort on her part to interfere with the investigation and conceal the true facts and circumstances surrounding the events/damages in question.

(q.) Cardenas refused to be forthright regarding prior claims and damages, and knowingly (or with a reckless disregard for the truth) included as part of the Shower Pan claim damages that related to prior losses that she had made insurance claims for with other insurers.

(r.) So as to allow a claim for preexisting damages, Cardenas did not exercise any reasonable measures to ascertain to what degree the subject damages overlapped with preexisting damages that were paid for in connection with prior claims.

(s.) In an effort to interfere with the investigation and conceal the truth, Cardenas and/or Silva refused/failed to provide documentation and information regarding ongoing repairs and prior repairs.

(t.) The Collaborators worked in unison and/or independently to falsely claim that the damages in question were sudden and accidental, when in fact they were continuous, ongoing and/or longstanding.

(u.) Cardenas knew she had systemic leaks in the kitchen area that caused the damages in question in part and/or in whole, yet she is claiming tens of thousands of dollars in relation to the subject Kitchen Claim and allowed thousands of dollars of water mitigation services that were in essence useless in light of the ongoing conditions that were made apparent to her during the course of the claim process. Cardenas' conduct was motivated by the fact that Dryworld is a source of business for Cardenas in the form of referrals, and eventually, her Firm's representation of Dryworld.

(v.) Cardenas and Silva have knowingly operated in conjunction with each other to permit Silva to act as a de facto public adjuster, when in fact, Silva is not licensed or qualified to serve as such. Consequently, and as occurred in the subject Claims, baseless, fraudulent and anonymous estimates are submitted to SFIC for payment and in support of a sworn proof of loss.

(w.) Cardenas knowingly attempted to utilize the subject claim as a means to pay for substantial and unrelated renovations and/or repairs to the insured property, and then refused to disclose the facts and circumstances surrounding these renovations and repairs.

(x.) Cardenas knowingly put into place a scheme whereby Silva would serve as the only direct means of communication between SFIC and Cardenas. This was done in order to devalue/justify any inconsistencies regarding the facts and circumstances surrounding the

loss, and otherwise interfere with SFIC's investigation of the claim.

(y.) With the intent to deceive and defraud SFIC, as well as interfere with the investigation, Cardenas refused to identify the person(s) at Dryworld with whom she dealt with in relation to the Claims, as well as generally speaking.

(z.) Cardenas and/or Silva allowed/authorized "Dana" to submit false information to SFIC regarding the date of loss and cause of loss for the Claims.

(a.a.) During the course of her EUO Cardenas intentionally concealed and misrepresented material facts regarding: the cause of loss; date of loss; value of damages; scope of damages; retention of a plumber; scope of work performed by a plumber; monies paid to a plumber; the need for water mitigation services; the value of water mitigation services; repairs performed; preexisting damage; prior claims; mitigation efforts; the cause of post loss damages; the identity of witnesses; the existence of documentation related to the claim; the legitimacy of an estimate relied upon; the truthfulness of her sworn proof of loss; the date the damages arose; steps that were taken to mitigate damages; the order in which damages arose; and her general knowledge regarding the facts and circumstances surrounding the damages at issue and preexisting/unrelated conditions.

(b.b.) In an effort to interfere with SFIC's investigation, during her EUO Cardenas misrepresented her efforts to gain information/documentation from Menendez, the so called plumber.

(c.c.) In an effort to interfere with SFIC's investigation, Cardenas failed to memorialize via photos or video: an active condition; the failed plumbing system; or the condition of the home on the dates that the losses supposedly occurred.

(d.d.) As it relates to the Claims, Cardenas intentionally allowed for a water condition to continue so as to allow an inflated and unjustified claim.

(e.e.) As an intentional means of interfering with the investigation, Cardenas failed to be present for SFIC's inspections, and then refused to speak directly with SFIC for months on end thereafter.

(f.f.) Cardenas intentionally misrepresented that she had paid Menendez for necessary plumbing repairs and evaluations, when in fact he did not perform the necessary evaluations and the water conditions at the home continued for months on end as a consequence. Further, and in direct violation of the policy conditions, she failed to obtain and/or produce receipts evidencing payment of the plumbing repairs.

(g.g.) Cardenas refused to disclose the identity or contact information for persons that she had retained to perform repairs that were said to be ongoing at the time of her EUO.

(h.h.) Cardenas acknowledged that she did not even validate the basis for the sworn proofs of loss that were submitted to SFIC for the Claims, which collectively totaled \$68,400.98.

(i.i.) In an effort to interfere with SFIC's investigation, Cardenas withheld (or failed to exercise good faith efforts to obtain) documentation and inspection reports from a recent refinancing of the home.

(j.j.) In an effort to interfere with SFIC's investigation and conceal financial motives for her conduct, Cardenas refused to disclose her historical relationship with Dryworld, who submitted thousands of dollars of unnecessary and duplicative charges for water mitigation services and caused intentional damage to the home.

(k.k.) Intentionally relying upon an unqualified and inflated estimate, Cardenas failed/refused to provide any documentation relating to the actual cost of repairs that she testified had already commenced by the time of her EUO.

(l.l.) Either in an effort to intentionally conceal the true facts and circumstances, or otherwise fabricate documentation, Cardenas awaited approximately 6 months to submit

any documentation in relation to the plumbing repairs that were said to have been promptly performed after the loss.

(m.m.) In an effort to intentionally fabricate the claim and interfere with SFIC's investigation, Cardenas refused to provide any meaningful information during the course of her EUO regarding the volume of water that was present in relation to the Claims.

(n.n.) Dryworld charged SFIC for approximately 22 hours of labor for setting up and taking down their equipment, yet Cardenas who had personal knowledge of same could not validate the fact and refused to otherwise take necessary steps to clarify the patent discrepancy.

(o.o.) In an effort to conceal the true facts and circumstances surrounding the loss, Cardenas falsely represented that Dryworld commenced their mitigation efforts on the day that the loss occurred.

(p.p.) Knowing that SFIC had not been given an opportunity to inspect, and in an effort to interfere with SFIC's investigation, Cardenas did not direct Dryworld or Silva to preserve evidence or memorialize the conditions in question before they were altered. This is common practice for the Collaborators, and they commonly work in unison to this end to create unnecessary litigation, create unnecessary delay in the processing of insurance claims, conceal the true circumstances surrounding a loss, etc.

(q.q.) In an effort to allow for an inflated/embellished claim, Cardenas took no steps to validate whether the limited kitchen cabinet damages could be repaired, but instead, demanded the costs associated with completely removing and replacing all the kitchen cabinets.

(r.r.) From the time that "Dana" first reported the claim to SFIC, it was stated that Silva would be acting as Cardenas' "loss consultant." Although authorized to make

representations on her behalf, and repeatedly indicating that he was highly qualified, Cardenas' represented that that she was not aware of his qualifications to act in his capacity. This statement was patently false, since Cardenas commonly utilizes Silva as her loss consultant for other losses wherein she represents the insured as a lawyer, and would have a duty to validate Silva's qualifications before allowing him to act as a de facto public adjuster.

(s.s.) Even though Cardenas claimed that nearly \$8,000 of water mitigation services were necessary in relation to the events in question, at the time of SFIC's retained engineer's inspection on November 24, 2014, there were open and active water conditions which Cardenas knew would render water mitigation services in that area virtually meaningless and would serve to create additional and unnecessary damage to the home.

(t.t.) Cardenas claimed that in relation to the water events in question she retained a plumber (other than Menendez-who she refused to identify) who had to obtain permits to effectuate the repairs. Cardenas refused to provide these permits as requested, and a subsequent permit search did not reveal any applications/permits as attested to. Even though she was put on notice of this fact, she refused to offer clarity in this regard and instead acted in a hostile and evasive fashion.

(u.u.) Via a denial letter sent to Cardenas many of the above stated issues were addressed and SFIC sought clarification from her in that regard if she believed them to be inaccurate. Instead of providing the requested clarity, she filed the instant suit.

(v.v.) During her EUO Cardenas refused to provide information on the basis that it could be obtained via subpoena. Cardenas knew this was a false pretense since the subject matter was not in litigation at the time. Moreover, she knew that this conduct was in direct breach of the policy conditions which required her to cooperate and produce

documentation related to the claim upon request.

(w.w.) With the intent to deceive and defraud SFIC, during the course of her EUO Cardenas feigned complete ignorance regarding the scope and value of her damages. She repeatedly asserted that she was simply relying upon her "expert" Silva. However, when questioned about Silva's qualifications, she admitted that she did not know what they were.

(x.x.) With the intent to deceive and defraud SFIC, Cardenas willfully chose to not evaluate/consider the line items entries set forth in her estimate for damages, or Dryworld's mitigation charges. She knew or should have known that the repair estimate set forth valuations that did not correspond with true market values.

(y.y.) With the intent to deceive and defraud SFIC, as well as interfere with the investigation, throughout her November 7, 2014 EUO Cardenas repeatedly asserted that questions had been asked before when in fact they had not and interfered with the questioning by repeatedly telling SFIC's counsel to move on (or through the utilization of other similar terms).

(z.z.) With the intent to deceive and defraud SFIC, as well as interfere with the investigation, Cardenas stated during her November 7, 2014 EUO that if SFIC had questions about the water mitigation they should be presented to Dryworld instead. Cardenas knew that this was non-sensical, since the questions posed dealt with her personal knowledge of the work that they performed (i.e. how long it had taken them to set up and take down the equipment).

(a.a.a.) With the intent to deceive and defraud SFIC, Dryworld, with Cardenas' knowledge, submitted false "dry out logs." More specifically, they submitted daily logs, when Cardenas knew they were not at her home on a daily basis.

(b.b.b.) With the intent to deceive and defraud SFIC, and conceal the facts and

circumstances surrounding the claim, during her EUO Cardenas refused to disclose Silva's financial interest in the claim, his employment status and his general dealings with her Firm.

(c.c.c.) With the intent to deceive and defraud SFIC, Cardenas testified during her EUO about matters regarding the Claims that she possessed no personal knowledge about and was simply reading off documents. For example, she eventually admitted that without looking at documentation she could not even say whether the Shower Pan Claim occurred before the Kitchen Claim.

(d.d.d.) With the intent to deceive and defraud SFIC, during her EUO Cardenas feigned a lack of awareness as to who Menendez was, when in reality, he is commonly involved in claims that Cardenas is involved in as the attorney for the Insured. Moreover, and in effort to disassociate herself with him, she claims that Dryworld was the one that referred her to Menendez.

(e.e.e) With the intent to deceive and defraud SFIC, and feigning a lack of recollection, at one point during her EUO Cardenas refused to even take a fixed position of whether she in fact paid for the plumbing repairs.

(f.f.f) With the intent to deceive and defraud SFIC, Cardenas falsely claimed during her EUO that she had not attempted to confirm the actual cost of repairs because she did not have the monies to perform the repairs.

COUNT I – DECLARATORY RELIEF

22. SFPC adopts and realleges the allegations contained in Paragraphs 1 through 21 as if fully set forth herein.
23. This Court has jurisdiction pursuant to Section 86.011, Florida Statutes.
24. Fla. Stat. § 86.011 states as follows:

The circuit and county courts have jurisdiction within their respective jurisdictional amounts to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed. No action or procedure is open to objection on the ground that a declaratory judgment is demanded. The court's declaration may be either affirmative or negative in form and effect and such declaration has the force and effect of a final judgment. The court may render declaratory judgments on the existence, or nonexistence: (1) Of any immunity, power, privilege, or right; or (2) Of any fact upon which the existence or nonexistence of such immunity, power, privilege, or right does or may depend, whether such immunity, power, privilege, or right now exists or will arise in the future. Any person seeking a declaratory judgment may also demand additional, alternative, coercive, subsequent, or supplemental relief in the same action.

SUBJECT POLICY PROVISIONS

25. The Policy precludes coverage if an insured has intentionally concealed and/or misrepresented material facts related to the claim, or otherwise engaged in fraudulent conduct.
26. The specific Policy provisions states as follows:

SECTION I - CONDITIONS

...

Q. Concealment or Fraud.

We do not provide coverage for a person insured under this policy who, whether before or after loss has:

- 1. Intentionally concealed or misrepresented any material fact or circumstance;*
 - 2. Engaged in fraudulent conduct; or*
 - 3. Made false statements;*
- relating to this insurance.*

27. For the reasons outlined in paragraphs 1 through 21, SFIC contends that Cardenas has violated the Policy provision set forth in paragraph 26 and therefore is not entitled to any coverage for the subject claim, irrespective of whether one aspect of her claim is proved to be true.
28. A condition precedent to coverage is the requirement to submit a sworn proof of loss and submit to an EUO.

29. The specific Policy provision in this regards provides as follows:

SECTION I – CONDITIONS

B. Duties After Loss

In case of a loss to covered property, we have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us. These duties must be performed either by you, an “insured” seeking coverage, or a representative of either:

...

7. As often as we reasonably require:

...

c. Any and all “insureds” must submit to recorded statements when requested by “us”;

d. In the county where the “residence premises” is located “you”, “your” agents, “your” representatives and any and all “insureds” must submit to examinations under oath and sign the same when requested by “us”;

...

8. Send to us, within 60 days after our request, your signed, sworn proof of loss which sets forth, to the next of your knowledge and belief:

...

a. The time and cause of loss;

...

e. Specifications of damaged buildings and detailed repair estimates;

30. For the reasons outlined in paragraphs 1 through 21, SFIC contends that Cardenas has violated the Policy provision set forth in paragraph 29 by submitting a sworn proof of loss that she did not authenticate in any meaningful fashion and was completed with a reckless disregard for the truth. Furthermore, she failed to duly submit to the EUO or substantially comply with said provision.

31. Cardenas had a general duty to cooperate with SFIC by providing truthful, complete and accurate documentation and information. Further, she a duty to promptly report the claim, show the damaged property, perform necessary and reasonable repairs, provide receipts evidencing repairs, identify witnesses and provide a reliable/truthful account of the facts and circumstances surrounding the Claims and associated repairs. Specific provisions in this regards are as follows:

SECTION I – CONDITIONS

B. Duties After Loss

In case of a loss to covered property, we have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us. These duties must be performed either by you, an "insured" seeking coverage, or a representative of either:

1. Give prompt notice to us or our agent;

...

4. Protect the property from further damage. If repairs to the property are required, you must:

a. Make reasonable and necessary repairs to protect; and

b. Keep an accurate record of repair expenses;

5. Cooperate with us in investigation of a claim;

...

7. As often as we reasonably require:

...

a. Show "us" the property;

b. Provide "us" with records and documents we request and permit "us" to make copies;

32. For the reasons outlined in paragraphs 1 through 21, Cardenas has not complied with these duties that are set forth in paragraph 31.
33. SFIC has been irreparably prejudiced as a result of Cardenas non-compliance with the policy conditions set forth above, and is thereof of the belief that she is not entitled to coverage under the policy.
34. The policy precludes coverage for intentional damage and preexisting damage. In this regard, the policy specifically provides as follows:

SECTION I – EXCLUSIONS

A. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause of event contributing concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

...

8. Intentional loss

Intentional Loss means any loss arising out of any act an "insured" commits or conspires to commit with the intent to cause a loss, which a reasonable person would expect would cause a loss or which the insured intends to cause a loss.

SECTION I – CONDITIONS

...

P. Policy Period

This policy applies only to loss which occurs during the policy period.

35. For the reasons outlined in paragraphs 1 through 21, SFIC is of the belief that the Claims are

not covered per the above exclusions.

36. The policy precludes coverage for long term and ongoing water conditions, specifically stating as follows:

SECTION I – EXCLUSIONS

A. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause of event contributing concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage of affects a substantial area.

...
*11. Constant Or Repeated Seepage or Leakage Of Water
Constant Or Repeated Seepage Or Leakage Of Water means the constant or repeated seepage or leakage of water or the presence or condensation of humidity, moisture or vapor, over a period of weeks, months or years unless such seepage or leakage of water or the presence or condensation of humidity, moisture or vapor and the resulting damage is unknown to all “insureds.”*

37. As outlined in the attached engineer report marked as *Exhibit “B”*, the conditions at issue were due to long term and ongoing water conditions. As such, SFIC is of the belief that Cardenas is not entitled to coverage under the policy.

WHEREFORE, the Defendant/Counter-Plaintiff, SOUTHERN FIDELITY INSURANCE COMPANY, respectfully requests that this Court accept jurisdiction of this matter and grant the following relief:

- a. Adjudicate and declare that the SFIC policy issued to the Plaintiff/Counter-Defendant does not provide coverage for any damages that may have resulted from the alleged incidents;
- b. Grant SFIC its costs and attorney's fees incurred in this action pursuant to Fla. Stat. Secs. 92.231, 57.105, 768.79 and Fla. Stat. § 57.041;
- c. Grant SFIC such further relief as this Court deems appropriate and just under the circumstances presented.

COUNT II-BREACH OF CONTRACT

38. SFIC adopts and realleges the allegations contained in Paragraphs 1 - 37 as if fully set forth herein.

39. The Insured has materially breached the policy conditions referenced in paragraphs 26, 29 and 31 and therefore is not entitled to coverage under the Policy.

WHEREFORE, the Defendant/Counter-Plaintiff, SOUTHERN FIDELITY INSURANCE COMPANY, demands judgment in its favor, costs pursuant to Fla. Stat. Sec. 92.231 and 57.041, attorney's fees pursuant to Fla. Stat. Sec. 57.105, and all other relief as this Honorable Court deems just, including punitive damages.

COUNT III - FRAUD

40. SFIC adopts and realleges the allegations contained in Paragraphs 1 through 21 as if fully set forth herein.

41. Based thereon, it is established that Cardenas knowingly made false representations of fact, and/or concealed material facts, with the intent of inducing SFIC into paying monies that she knew she was not entitled to per the terms and conditions of the policy.

42. SFIC relied on Cardenas' false representations and was misled by the concealment as set forth in paragraphs 1 through 21, and has suffered damages as result thereof.

43. Specifically, as a direct result of the concealment and false representations, as wells as it statutory duties to adjust what was ultimately established to be a fraudulent claim, SFIC was forced to incur, and continues to incur, thousands of dollars in investigative costs and attorney's fees in relation to the fraudulent conduct.

44. Specifically, as a direct result of the concealment and false representations, as wells as it statutory duties to adjust what was ultimately established to be a fraudulent claim, SFIC was forced to

incur, and continues to incur, thousands of dollars in investigative costs and attorney's fees in relation to the fraudulent conduct.

45. Moreover, based on the systemic pattern of fraud as outlined above, included below you will find certain of Cardenas' clients that she has represented, wherein SFIC was forced to unnecessarily incur thousands of dollars in investigative costs in relation to what was ultimately determined to either be fraudulent claims, or claims that could not be substantiated due to her intentional misconduct and/or tortious interference with SFIC's contractual relationship.

a. Hernan and Adriana Acosta, Claim Nos. 5101-5319 and 5101-5318. Both claims were reported at the same time on February 25, 2014 by the Insureds' insurance agent and it was represented that Claim No. 1201-5319 transpired on February 17, 2014 and that Claim No. 5101-5318 transpired on February 21, 2014. These representations as to the dates of loss, sequence of the losses and the longevity of the losses were proven to be false through the subsequent EUO testimony of the Insured, Hernan Acosta. By the time the insurer's independent adjuster was permitted to enter the property on March 20, 2014, the two plumbing systems that purportedly caused the losses were disposed of, rendering it impossible to substantiate the causes of loss. Likewise, substantial demolition of the residence had been performed in advance of the independent adjuster inspection (some of which included removal of downstairs tile baseboard, which precipitated a claim for all the continuous tile in the downstairs of the residence based on a "matching theory"), and no photographs/videos were ever produced evidencing the condition of the property prior to same. At the time of the aforementioned EUO, the Insured also expressed a general inability to substantiate the facts and circumstances of either loss, as well as a complete lack of knowledge of: who prepared estimates on his behalf, who retained the individuals preparing the estimates, the amounts set forth in the

estimates, and the basis for the scope of the estimates. Furthermore, the two invoices submitted from Menendez (months after the losses were initially reported), which were both dated, February 21, 2014, were proven through the course of the EUO to contain false dates of repair, coupled with the Insured's general inability to pinpoint who performed the plumbing repairs, the nature of the repairs made, who paid for the repairs, how much was paid for the repairs, who retained Menendez, and Silva's role in either claim (Silva was disclosed as the "loss consultant" for both claims). Moreover, in terms of the EUO of the other named Insured, Adriana Acosta, Cardenas' office evinced a clear lack of cooperation in promptly setting the subject EUO and eventually refused altogether to coordinate same.

- b. Luis Torres, Claim No. 1201-3511. This claim was reported by "Donna" from Cardenas Law Group as water related damage due to a plumbing leak on July 2, 2014, with a reported date of loss of June 20, 2014. No specific cause of loss was provided. The insurer's independent adjuster was not provided access to the property until July 20, 2014, at which point he met with Silva upon his arrival (Silva was acting as the "loss consultant"). At this point it was represented that a toilet supply line had failed in the upstairs hallway bathroom, although no failed part was ever presented, nor were any documents evidencing repair provided until months later. Likewise, demolition to the property had already been completed (inclusive of disposal of certain portions of the ceramic tile base) at the time of the inspection, purportedly through the efforts of the water mitigation company retained by the Insured. The documentation eventually submitted to evidence repairs was from Menendez/Menendez's company. That said, during the course of the Insured's EUO, he could not name the plumber who allegedly performed repairs and had no idea as to the type of repairs that were performed or the

amount paid for said repairs/who paid for the repair. Further, and among other things, during the course of the EUO the Insured was again unable to identify with specificity the facts and circumstances surrounding the alleged loss; the location of the water loss; the cause of the alleged loss; the manner in which the water remediation was conducted and why the demolition was conducted; and the basis of his sworn proof of loss.

WHEREFORE, the Defendant/Counter-Plaintiff, SOUTHERN FIDELITY INSURANCE COMPANY, demands judgment in its favor in the amount that equates to the consequential damages suffered, including but not limited to all investigative costs, court costs, attorney's fees, interests, costs pursuant to Fla. Stat. Sec. 92.231 and 57.041, attorney's fees pursuant to Fla. Stat. Sec. 57.105, punitive damages and all other relief as this Honorable Court deems just.

DEMAND FOR JURY TRIAL

46. This Defendant demands trial by jury of all issues so triable.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was electronically delivered on July 15, 2015 to: Gladys A. Cardenas, Esq., 2300 West 84th Street, Suite 203, Hialeah, Fl., 33016; efiling@cardenaslawgroup.com

VERNIS & BOWLING OF BROWARD, P.A.
Attorney for Defendant
5821 Hollywood Boulevard,
Hollywood, Florida 33021
Tel: (954) 927-5330; Fax: (954) 927-5320
Designated E-mail: pleadings2@florida-law.com

BY: /s/Jose Font
JOSE P. FONT, ESQ.
Florida Bar #: 0738719