

## Nebraska Judicial Branch

## Case Summary

In the District Court of Douglas County  
 The Case ID is CI 20 0004880  
 Panchal Enterprise v. State Farm Fire &  
 The Honorable Marlon A Polk, presiding.  
 Classification: Contract Disputes  
 Filed on 06/24/2020  
 This case is Closed as of 07/24/2020  
 It was disposed as Transferred

## Parties/Attorneys to the Case

<p>Party          Plaintiff ACTIVE          Panchal Enterprises          c/o Matthew R. Pearson          425 Soledad, Suite 600          San Antonio TX 78205</p> <p>Admitted Pro Hac Vice: Matthew R Pearson          425 Soledad 6th Flr          San Antonio TX</p> <p>Alias is America's Best Value Inn          Defendant ACTIVE          State Farm Fire &amp; Casualty Co.          3 State Farm Plz S          Bloomington IL 61710</p>	<p>Attorney          Terrence J Salerno          809 N 96th St., Ste 100          Omaha NE 68114          402-502-9002</p> <p>Rex A Rezac          409 South 17th Street #500          Omaha NE 68102          402-341-6000</p>
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## Court Costs Information

Incurred By	Account	Date	Amount
Plaintiff	Petition	06/24/2020	\$35.00
Plaintiff	Filing Fee - State	06/24/2020	\$1.00
Plaintiff	Automation Fee	06/24/2020	\$8.00
Plaintiff	NSC Education Fee	06/24/2020	\$1.00
Plaintiff	Dispute Resolution Fee	06/24/2020	\$0.75
Plaintiff	Indigent Defense Fee	06/24/2020	\$3.00
Plaintiff	Uniform Data Analysis Fee	06/24/2020	\$1.00
Plaintiff	J.R.F.	06/24/2020	\$6.00
Plaintiff	Filing Fee-JRF	06/24/2020	\$6.00
Plaintiff	Legal Aid/Services Fund	06/24/2020	\$6.25
Plaintiff	Complete Record	06/24/2020	\$15.00
Plaintiff	Service Fees	07/03/2020	\$7.70
Plaintiff	Counsel-Discipline Cash Fun	07/07/2020	\$250.00

## Financial Activity

No trust money is held by the court  
No fee money is held by the court

## Payments Made to the Court

Receipt	Type	Date	For	Amount
370033	Electronic Trans	07/07/2020	Panchal Enterprises	\$250.00
			Counsel-Discipline Cas	\$250.00
369127	Electronic Trans	06/24/2020	Panchal Enterprises	\$83.00
			Petition	\$35.00
			Filing Fee - State	\$1.00
			Automation Fee	\$8.00
			NSC Education Fee	\$1.00
			Dispute Resolution Fee	\$.75
			Indigent Defense Fee	\$3.00
			Uniform Data Analysis	\$1.00
			J.R.F.	\$6.00
			Filing Fee-JRF	\$6.00
			Legal Aid/Services Fun	\$6.25
			Complete Record	\$15.00

## Register of Actions

07/24/2020 Notice-Removal  
This action initiated by party State Farm Fire & Casualty Co.  
to US Dist Crt /dth  
Image ID N20206DD4D01

07/10/2020 order

This action initiated by Marlon A Polk  
Matthew Pearson Pro Hac Vice ag eNotice Certificate Attached  
Image ID 002065893D01

07/07/2020 order  
This action initiated by Timothy P Burns  
Pro Hac Vice Admitted Matthew Pearson /mg eNotice Certificate Attached  
Image ID N20189B7YD01

07/07/2020 Note from Court Staff  
P/O sent to Judge kr

07/07/2020 Motion-Pro Hac Vice Admission  
This action initiated by party Panchal Enterprises

Atty Matthew R Pearson kr  
Image ID N20189AKGD01

07/03/2020 Return Summons/Alias Summons  
The document number is 00679653  
AK  
Served 06/29/2020, Certified Mail  
Image ID N20185VS4D01

06/24/2020 Summons Issued on State Farm Fire & Casualty Co.  
The document number is 00679653  
Summons e-mailed  
Image ID D00679653D01

06/24/2020 Praecipe-Out St Summons/Alias  
This action initiated by party Panchal Enterprises  
as  
Image ID N20176T86D01

06/24/2020 Complaint-Praecipe  
This action initiated by party Panchal Enterprises  
Praecipe filed separate as  
Image ID N20176T82D01

## Judges Notes

07/07/2020  
Burns  
order signed.

IN THE DISTRICT COURT FOR DOUGLAS COUNTY, NEBRASKA

PANCHAL ENTERPRISES D/B/A  
AMERICAS BEST VALUE INN

Plaintiff

VS.

STATE FARM FIRE AND CASUALTY  
COMPANY

Defendants

Case No. \_\_\_\_\_

COMPLAINT FOR A CIVIL ACTION AND  
JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, PANCHAL ENTERPRISES D/B/A AMERICAS BEST VALUE INN (“Panchal”), files this Complaint for a Civil Action against Defendant, STATE FARM FIRE AND CASUALTY COMPANY (“State Farm”), and for causes of action would respectfully show the court the following:

**I. THE PARTIES TO THIS COMPLAINT**

1. Plaintiff Panchal Enterprises is a domestic limited liability company whose principal place of business is in Douglas County, Nebraska.

2. Defendant State Farm a fire and casualty insurer doing business in the State of Nebraska. The insurance business done by State Farm in Nebraska includes, but is not limited to, the following:

- The making and issuing of contracts of insurance with Plaintiff;
- The taking or receiving of application for insurance, including Plaintiff’s application for insurance;

- The receiving or collection of premiums, commissions, membership fees, assessments, dues, or other consideration for any insurance or any party thereof, including any such consideration or payments from Plaintiff; and
- The issuance or delivery of contracts of insurance to residents of this state or a person authorized to do business in this state, including Plaintiff.

## II. VENUE

4. Venue is appropriate in Douglas County, Nebraska because all or part of the conduct giving rise to the causes of action were committed in Douglas County, Nebraska, and the Plaintiff and property which is the subject of this suit are located in Douglas County, Nebraska.

## III. STATEMENT OF CLAIM

5. **Breach of Contract.** Plaintiff owns a hotel located at 7101 Grover St, Omaha, NE 68106-3515. The property is covered by a policy of insurance, Policy No., 97-BU-K268-9, issued by Defendant. The policy covered Plaintiff's property against loss by fire, among other perils. As a consequence of a fire which occurred on March 21, 2019, Plaintiff's property suffered extensive damage. Plaintiff has performed all conditions precedent to its recovery under the policy. Specifically, Plaintiff timely reported the loss to Defendant and took reasonable measures to protect the property from further damage. Defendant has failed and refused to pay Plaintiff in accordance with the promises under the policy and has wrongfully undervalued Plaintiff's claim for covered damages.

After Plaintiff reported the loss to Defendant, Defendant should have evaluated and paid for the necessary work to remediate the smoke and fire damage to the hotel. Defendant failed to do so. Defendant's investigation of the scope of damage and cost to repair was incomplete. When Defendant finally prepared an estimate to repair the hotel, they ignored significant aspects of the damage such as the damage caused to the mechanical system. Plaintiff's public adjuster tried to work with Defendant to properly adjuster the claim. However, Defendant refused to engage in

any significant interaction with Plaintiff's public adjuster. Specifically, Defendant would not meet on site for a joint evaluation of the damage, and even refused to participate in conference calls to address the damage to the hotel. Defendant also retained control over the scene until recently, preventing Plaintiff for doing any temporary or permanent work at the property.

The acts and omissions of Defendant and its agents constitute a breach and/or anticipatory breach of Defendant's contract with Plaintiff. Accordingly, Plaintiff brings an action for breach of contract against Defendant pursuant to Nebraska statutory and common law, including Chapter 44 of Nebraska Revised Statutes, and seeks all of its damages for such breach, including actual damages under the various coverages in the policy, compensatory damages, and attorney's fees.

6. **Bad Faith.** Plaintiff re-alleges and incorporates the foregoing paragraphs. Defendant has refused to fully pay and delayed in paying the Plaintiff's loss which is clearly covered under the policy, although liability is reasonably clear. Defendant has failed to provide a reasonable basis for this refusal and delay. Defendant knew or should have known that no reasonable basis exists for underpaying and delaying Plaintiff's claim. Defendant recklessly disregarded the fact that there was a lack of a reasonable basis for underpaying the claim, and such action involves an extreme risk that Plaintiff will suffer financial damage as a result of Defendant's refusal to honor its obligations. This constitutes a breach of Defendant's common law duty of good faith and fair dealing, i.e., it is acting in bad faith. Accordingly, Plaintiff brings an action for breach of the duty and seeks all of its damages for such breach, including consequential damages.

7. **Declaratory Judgment.** Plaintiff re-alleges the foregoing paragraphs. Pursuant to Chapter 25 of Nebraska Revised Statutes, Plaintiff is entitled to a declaration that the policy provide coverage for the cost to repair the damage to the hotel, damage to business personal property, and business interruption coverage, less only a deductible, among other things. In the alternative,

Plaintiff asserts that the policy is ambiguous and must be interpreted in favor of coverage and against Defendant.

#### **IV. RELIEF**

WHEREFORE, Plaintiff seeks the following relief:

- A. Damages against Defendant for breach of contract including actual damages under the policy, compensatory damages, attorney's fees and expenses, and costs of court;
- B. Damages against Defendant for breach of the common law duty of good faith and fair dealing including consequential damages, and costs of court;
- C. The Court's declaration that the policy provide coverage for the damage to the property, less only a deductible; or
- D. Alternatively, a ruling that the policy is ambiguous and must be interpreted in favor of coverage and in favor of Plaintiff; and
- E. All other financial relief and rulings to which Plaintiff may be legally or equitably entitled.

Respectfully submitted,



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And

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**ATTORNEYS FOR PLAINTIFF**