

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

**RONALD AND THERESIA LLOYD,
on their own behalf and on behalf of
all others similarly situated, and
JOHN POLANCO, individually
and on behalf of all others similarly
situated,**

Plaintiffs,

v.

COLONIAL HOME WARRANTY,

Defendant

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JUDGE:

MAG JUDGE:

CIVIL ACTION NO. _____

Plaintiffs Ronald and Theresia Lloyd, on behalf of themself and all others similarly situated, and John Polanco, individually and on behalf of all others similarly situated (collectively "Plaintiffs"), hereby bring this nationwide class action complaint against Defendant Colonial Home Warranty ("Defendant" or "Colonial").

I.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs Ronald and Therresia Lloyd are husband and wife adult resident citizens of Louisiana and of Washington Parish.

2. Plaintiff John Polanco is an adult resident citizen of the State of California. Plaintiff Polanco joins his claims pursuant to Fed. R. Civ. P. 20 since

his claims stem from common conduct of the Defendant, and has questions of law or fact in common.

3. The Defendant Colonial Home Warranty is in the business of selling home warranty contracts. According to Colonial's website and home warranty agreement, it operates under the name Colonial Home Warranty or just Colonial. Colonial's principal place of business is in Wilmington, DE.

4. This is a class action with class members located throughout the United States. Less than one-third of the class members reside in Louisiana. The defendant is not a citizen of Louisiana. The amount in controversy exceeds \$5,000,000.00 (five million dollars) exclusive of interest and costs. Accordingly, diversity jurisdiction exists pursuant to 28 U.S.C. § 1332(d) (as modified by the Class Action Fairness Act of 2005).

5. Venue is proper under 28 U.S.C. §1391, since the events giving rise to the named Plaintiffs Ronald and Theresia Lloyd's claims occurred within this judicial district and since Defendant is subject to the personal jurisdiction of this Court.

6. Defendant's wrongful activities and conduct were directed to this jurisdiction. Some of the named plaintiffs' rights were damaged or impaired in this jurisdiction, and significant damages and losses were suffered in this

jurisdiction. Some of the named plaintiffs' property covered by the Defendant's standard form contract is located within this jurisdiction.

II.

ALLEGATIONS PERTAINING TO NAMED PLAINTIFFS RONALD AND THERESIA LLOYD

7. Ronald and Theresia Lloyd purchased their home in Franklinton, Louisiana on June 26, 2011.

8. In July of 2011, Plaintiffs purchased and entered into a home warranty agreement with Colonial.

9. At the time the Lloyds' agreement with Colonial began, their water heater was working properly. In fact, the Lloyds had their home components inspected, including the water heater, before they purchased their home one month before. All components passed the inspection, and were in proper working order.

10. In January of 2012, Plaintiffs began having problems with their water heater, so they contacted Colonial for service under their home warranty contract.

11. Colonial sent a contractor, Johnny's Pump & Well Service, to the plaintiffs' home on January 26, 2012. The contractor required, over and above the service fee of \$60 as Colonial quoted to the Plaintiffs, the full payment for his costs and services of \$145. The contractor explained that the Plaintiffs would be reimbursed by Colonial for their expenditures, but they were not.

12. The service contractor had to return on the following day to perform additional repairs. The contractor again required full payment for his costs and services the second day in the amount of \$368 which was also to be reimbursed by Colonial, but they were not.

13. Plaintiffs began having problems with their hot water heater again on April 13, 2012.

14. Plaintiffs contacted Colonial who sent the same contractor out to repair the unit. The contractor refused to repair the unit, instead stating that the unit needed to be replaced. Colonial's contractor told the plaintiffs that, "[Colonial] wanted me to rig it up and I would not do it because I ask them, what if I put this part in that you want me to and her house burns down?"

15. Following the claim in April, Colonial told the plaintiffs that both their January and April claims were denied for failing to provide maintenance records for the water heater based on the criteria set by the manufacturer of the unit.

16. Colonial's employee, Craig Bowen, when asked what records should have been provided responded to the plaintiffs that, "I do not know but you do not have the records."

17. Colonial's standard contract, a copy of which is attached hereto as Exhibit A, covers water heaters that "[a]re in proper working order and in place on the date coverage begins."

18. Colonial's standard contract provides that:

VI. LIMITATIONS OF LIABILITY

14. Colonial will not pay for repairs or failures if you fail to perform normal or routine maintenance. For example, you are responsible for providing maintenance and cleaning pursuant to manufacturers' specifications, such as periodic cleaning of heating and air conditioning systems, evaporator coils and condenser coils, as well as periodic filter replacement. Colonial reserves the right to request copies of your maintenance records.

(Emphasis added).

19. The Lloyd's water heater, like most household appliances such as water heaters and air conditioning systems, are suggested to perform annual maintenance by their manufacturers. The Plaintiffs had lived in their home for less than a year when their water heater began having problems.

20. To date, the Lloyd Plaintiffs have not been reimbursed for their expenditures related to the water heater, and Colonial never replaced the unit.

21. Colonial's employee, Craig Bowen, threatened the plaintiffs with additional charges of \$222.35 for "service charges" if they plaintiffs chose to cancel their contract with Colonial.

22. Colonial's decision to deny the Plaintiffs' claims related to their water heater was a breach of their agreement, and a breach of the agreement's duty of good faith. The agreement clearly applies to the Plaintiffs' water heater which was operational when the contract began. The agreement requires that the Plaintiffs provide their maintenance records in accordance with the manufacturer's specifications. Since the Plaintiffs had not been in their home for a year, they could not have failed to perform the manufacturer's suggested annual maintenance, or failed to provide their records for such maintenance.

23. Plaintiffs have provided a written claim of their dispute to Colonial, and provided Colonial with ample opportunity to respond.

III.

ALLEGATIONS PERTAINING TO NAMED PLAINTIFF JOHN

POLANCO

24. Plaintiff John Polanco had a home warranty contract with Colonial.

25. On March 14, 2011 Plaintiff Polanco contacted Colonial to report issues with his ductwork which is covered under his contract.

26. Colonial sent a contractor out to inspect the ductwork, who indicated that there was a six inch section of duct that he alleged was destroyed by UV light. The contractor offered to fix the ductwork for Polanco for \$350.

27. Colonial denied Plaintiff Polanco's claim for ductwork based on an exclusion in the Colonial standard contract (a copy of which is attached) to "[d]uctwork exposed to outside elements."

28. Plaintiff Polanco had a highly rated contractor company, ASI Hastings Heating & Air, inspect his ductwork. ASI determined that the entire ductwork, not just a six inch section, required replacing due to normal wear and tear, and it had outlasted its life expectancy. Plaintiff Polanco paid ASI \$2,482 to replace the ductwork. A copy of ASI's determination and invoice are attached hereto.

29. Plaintiff Polanco's ductwork was located in his enclosed attic space, as space with no windows or openings for light to shine on the ductwork.

30. Colonial breached its contract with Plaintiff Polanco by refusing to replace the covered ductwork. Colonial acted in bad faith by relying on its contractor who had a financial interest in Colonial's denial, a potential \$350 job.

31. Plaintiff Polanco had a separate claim related to his built-in microwave oven. The Colonial contractor determined that the parts needed to repair the unit were unavailable, and that the unit was not worth repairing.

32. Colonial's standard contract provides under VI. LIMITATIONS OF LIABILITY paragraph 21 that "Colonial reserves the right to offer cash back in lieu of repair or replacement in the amount of Colonial's actual cost (which at times may be less than retail) to repair or replace any covered system, component or appliance."

33. Colonial offered Plaintiff Polanco a "cash back in lieu" for the microwave of \$163.89, the cost to Colonial for a replacement unit.

34. Colonial failed and refused to pay for the cost of installation of the replacement microwave.

35. Colonial's standard contract sets out under VI. LIMITATIONS OF LIABILITY paragraph 10 that "Colonial is responsible for installing replacement equipment of similar capacity, and efficiency, but not for matching dimensions, brand or color." (emphasis added)

36. Colonial breached its contract, and its duty of good faith, by failing and refusing to pay for the cost of installation of the microwave.

37. Plaintiff Polanco has provided Colonial with written notice of his dispute, and given Colonial sufficient time to respond.

IV.

CLASS ACTION ALLEGATIONS

38. Plaintiffs bring this action on their own behalf and on behalf of others similarly situated as a nationwide class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class which Plaintiffs Ronald and Theresia Lloyd seek to represent (“Lloyd class”) is composed of and defined as:

All persons who have held a residential home warranty contract from Colonial applicable to a house within the United States at any time since July ____, 2002, and within the original contract term of one year, had a claim denied for repair or replacement of a home component based on an alleged failure to perform annual maintenance or an alleged failure to provide annual maintenance records. Excluded from this class are the Defendant, any subsidiary or affiliate of the defendant, and any judge, arbitrator, or mediator who may adjudicate, arbitrate, or mediate this action.

39. The class which Plaintiff John Polanco seeks to represent (“Polanco class”) is composed of and defined as:

All persons who have held a residential home warranty contract from Colonial applicable to a house within the United States at any time since July ____, 2008 , and were offered a cash back in lieu of repair or replacement that did not include any amount for installation of the replacement unit or part. Excluded from this class are the Defendant, any subsidiary or affiliate of the defendant, and any judge, arbitrator, or mediator who may adjudicate, arbitrate, or mediate this action.

40. This action has been brought and may properly be maintained as class actions pursuant to the provisions of the Rule 23(a)(1)-(4) and Rule 23(b) of the Federal Rules of Civil Procedure, and satisfies the numerosity, commonality, typicality, adequacy and superiority requirements thereof because:

- (a) The plaintiff classes are so numerous that the individual joinder of all members is impracticable under the standard of Fed. R. Civ. P. 23(a)(1).
- (b) Common questions of law and fact exist as to all members of the classes, as required by Fed. R. Civ. P. 23(a)(2), and predominate over any questions which affect only individual members of the classes within the meaning of Fed. R. Civ. P. 23(a)(2). These common questions of law and fact include, without limitation:
 - (1) Whether Defendant has engaged in a violation of law as alleged herein;
 - (2) Whether Defendant by nature of its wrongful conduct is liable for damages and losses resulting from the conduct alleged herein; and

- (3) Whether the Defendant had a policy and uniform practice of breaching its uniform written warranty contracts, as alleged herein;
- (4) Whether the Defendant's policy and practice of breaching its uniform written warranty contracts was done in bad faith.
- (c) Plaintiffs' claims are typical of the claims of the members of the classes under Fed. R. Civ. P. 23(a)(3). The Plaintiffs and all members of the classes sustained damages arising out of defendant' common course of conduct in violation of law as complained herein. The losses of each member of the classes were caused directly by Defendant's wrongful conduct in violation of law as alleged herein.
- (d) The individual and representative plaintiffs will fairly and adequately protect the interests of the classes as required by Fed. R. Civ. P. 23(a)(4). Plaintiffs have no interests which are adverse to the interests of the class members. Plaintiffs purchased, like the other classes' members, a home warranty and had coverage denied or refused based on Colonial's pattern and policy of breaching its contracts in bad faith. Plaintiffs are

adequate representatives of the classes and any subclasses as designated by the court. Plaintiffs have retained counsel who have substantial experience and success in the prosecution of class action and consumer litigation.

- (e) The scheme affected all classes' members similarly. Plaintiffs and all members of the classes had claims denied or coverage refused on essentially identical grounds. As a result, the issues which affect plaintiff and the classes' members in common predominate over those which affect only the interest of any particular class member. Thus, common questions of law and fact greatly predominate over questions of law or fact affecting only individual members of the classes.
- (f) A class action is superior to other available methods for the fair and efficient adjudication of this controversy under Fed. R. Civ. P. 23(b) since individual joinder of all members of the classes is impracticable. Furthermore, as the damages suffered by each individual member of the classes may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the classes to redress the wrongs done to them. The cost to the court system

of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments and would magnify the delay and expense to all parties and the court system in multiple trials of the factual issues of the case. By contrast, the conduct of this action as a class action presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each class member.

V.

CLAIMS FOR RELIEF

COUNT 1 - Breach of Contract

41. Plaintiffs incorporate by reference the averments of paragraphs 1 through 40, including sub-paragraphs.

42. Colonial breached its contractual obligations to Plaintiffs Ronald and Theresia Lloyd and the Lloyd class by denying claims within the first year of the contract for failing to provide maintenance records in accordance with manufacturers' annual maintenance suggestions.

43. Colonial breached its contractual obligations to Plaintiff John Polanco by denying his claim for ductwork replacement.

44. Colonial breached its contractual obligations to Plaintiff John Polanco and the Polanco class members by failing to pay for the cost of installation for its “cash back in lieu” election under the contract.

45. As a consequence of Defendant’s breach of contract, all Plaintiffs and the classes’ members have suffered damages in the form of unpaid claims, underpaid claims, inconvenience, pain and suffering, and mental and emotional distress.

VI.

ARBITRABILITY

46. The Defendant’s standard agreement (copy attached) cannot be subject to arbitration since the American Arbitration Association (“AAA”), the group explicitly chosen by Colonial, refuses to administer any arbitration against Colonial due to its failure to comply with AAA’s rules and regulations. As AAA’s letter says, “[a]s [Colonial] has previously not complied with our request to adhere to our policy regarding consumer claims, we must decline to administer this claim and any other claims between [Colonial] and its consumers.” A copy of AAA’s letter is attached to this complaint as Exhibit B.

VII.

PRAYER FOR RELIEF

WHEREFORE, the premises considered, plaintiffs seek the following relief:

(a) following appropriate discovery, an order certifying this cause as a nationwide class action pursuant to Fed. R. Civ. P. 23, with appropriate subclasses as the Court deems appropriate, and notice as applicable to the absent class members;

(b) a declaration that Colonial's nationwide pattern and practice of conduct as alleged herein constitutes breach of contract and bad faith with respect to plaintiffs and the class as a whole;

(c) appropriate injunctive relief requiring Colonial to reform its practices and to pay claims pursuant to the provisions of its uniform warranty insurance policies;

(d) appropriate equitable relief, including requiring Colonial at the end of Phase I of the class action to provide an accounting of all transactions and other activity relating to the class members' insurance payments;

(e) upon a jury verdict, an award of compensatory and punitive damages to compensate plaintiffs and the class members and to punish Colonial and deter it and others similarly situated from bad faith conduct with regard to the payment of claims under similar contracts;

(f) upon a jury verdict, an award of penalties pursuant to La. Rev. Stat. Ann. § 22:1973 (2012);

(g) an award of reasonable attorney's fees and costs;

(h) interest; and

(i) such further and different relief as the Court may deem appropriate.

Respectfully submitted,

S/Stephen J. Herman
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JURY DEMAND

Plaintiff demands trial by jury.

OF COUNSEL

Notice to Clerk:

Plaintiff has requested in its motion filed contemporaneously herewith to serve the defendant by publication mailed to the following address:

Colonial Home Warranty,
1000 North West Street, Suite 1200#711,
Wilmington , DE 19801;
Phone Number: **1-877-313-0001**
info@colonialhomewarranty.com