

PASCO COUNTY CIVIL DIVISION - NEW PORT RICHEY
PAULA S. O'NEIL, CLERK AND COMPTROLLER

RECEIPT #: N 000236054
RECEIVED OF: DIEPPA
PART. ID: 1133302
BY CLERK: RIVECH
CHECKS: DP 1084

DATE: 02-07-2012

TIME: 10:31:51
MEMO:

\$420.00

CASH	CREDIT	CHANGE	OTHER
\$0.00	\$0.00	\$0.00	\$0.00

CASE NUMBER	EVENT	COURT/JUDGE	TAX NO.	AMOUNT
51-2012-CA-000799-XXXX-WS J FREITAS VS CITIZENS PROPERTY PARTY: FREITAS JOE	5412	PMT:CA FF GENERAL H SECTION H		\$400.00
51-2012-CA-000799-XXXX-WS J FREITAS VS CITIZENS PROPERTY PARTY: FREITAS JOE	7024	PMT:CA SUMMONS ISSUED H SECTION H		\$20.00
		TOTAL RECEIPT...		\$420.00

* CHECK/CHEQUE IS CONDITIONAL PAYMENT
* PENDING RECEIPT OF FUNDS FROM BANK. *

PAULA S. O'NEIL, CLERK & COMPTROLLER
PASCO COUNTY CIVIL DIVISION - NEW PORT RICHEY
P O BOX 338
NEW PORT RICHEY, FL 34656-0338
(727) 847-8176
OFFICE HOURS: MONDAY-FRIDAY 8:30AM - 5:00PM
www.pascoclerk.com

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PASCO COUNTY, FLORIDA

Case No.: 512012CA 0799WS

JOE FREITAS, Individually and on Behalf of
all Others Similarly Situated
Plaintiff,

H

vs.

CITIZENS PROPERTY INSURANCE
CORPORATION and
XACTWARE SOLUTIONS, INC.,

Defendants.

SUMMONS

TO ALL AND SINGULAR SHERIFFS OF SAID STATE:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the
Complaint in this action on the Defendant:

Jeff Atwater, Chief Financial Officer, State of Florida
CITIZENS PROPERTY INSURANCE CORPORATION
200 E. Gaines Street
Tallahassee, Florida 32399

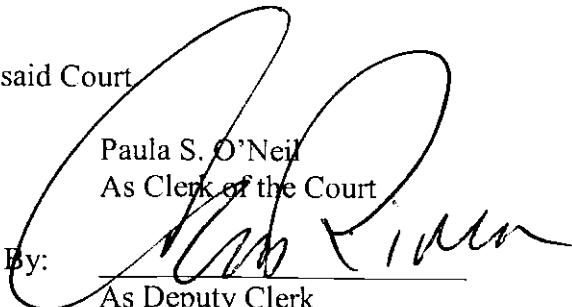
Each Defendant is required to serve written defenses to the Complaint on **BEAUSOLEL LAW GROUP, PLLC., 110 E. BROWARD BLVD., SUITE 1700, Fort Lauderdale, Florida 33301**, Plaintiffs attorney, within twenty (20) days after service of this Summons on that Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a Default will be entered against that Defendant for the relief demanded in the Complaint.

WITNESS My Hand and the Seal of said Court

FEB 07 2012

Paula S. O'Neil
As Clerk of the Court

By:


As Deputy Clerk

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
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JOE FREITAS, Individually and on Behalf of
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H

Plaintiff,

vs.

CITIZENS PROPERTY INSURANCE
CORPORATION and
XACTWARE SOLUTIONS, INC.,

Defendants.

SUMMONS

TO ALL AND SINGULAR SHERIFFS OF SAID STATE:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the
Complaint in this action on the Defendant:

**STERN, ELI
2136 BLACK LAKE BLVD
WINTER GARDEN, FLORIDA, 34787**

Each Defendant is required to serve written defenses to the Complaint on **BEUSOLEL LAW GROUP, PLLC., 110 E. BROWARD BLVD., SUITE 1700, FORT LAUDERDALE, FLORIDA 33301**, Plaintiff's attorney, within twenty (20) days after service of this Summons on that Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a Default will be entered against that Defendant for the relief demanded in the Complaint.

WITNESS My Hand and the Seal of said Court.

FEB 07 2012

Paula S. O'Neil
As Clerk of the Court

By: /s/ Christine Rivera
As Deputy Clerk

I. CASE STYLE

IN THE CIRCUIT COURT OF THE 6TH
JUDICIAL CIRCUIT IN AND FOR
PASCO COUNTY, FLORIDA

CASE NO. **5 1 2 0 1 2 C A 0 7 9 9 W S**
Judge: **U**

JOE FREITAS, Individually and on Behalf of
all Others Similarly Situated,

Plaintiff,

vs.

CITIZENS PROPERTY INSURANCE
CORPORATION and XACTWARE
SOLUTIONS, INC.,

Defendant.

II. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x in both the main category and subcategory boxes.

- | | |
|--|--|
| <input type="checkbox"/> Condominium | <input type="checkbox"/> Commercial foreclosure \$250,000 or more |
| <input checked="" type="checkbox"/> Contracts and indebtedness | <input type="checkbox"/> Homestead residential foreclosure \$0 - \$50,000 |
| <input type="checkbox"/> Eminent domain | <input type="checkbox"/> Homestead residential foreclosure \$50,001 - \$249,999 |
| <input type="checkbox"/> Auto negligence | <input type="checkbox"/> Homestead residential foreclosure \$250,000 or more |
| <input type="checkbox"/> Negligence---other | <input type="checkbox"/> Nonhomestead residential foreclosure \$0 - \$50,000 |
| <input type="checkbox"/> Business governance | <input type="checkbox"/> Nonhomestead residential foreclosure \$50,001 - \$249,999 |
| <input type="checkbox"/> Business torts | <input type="checkbox"/> Nonhomestead residential foreclosure \$250,000 or more |
| <input type="checkbox"/> Environmental/Toxic tort | <input type="checkbox"/> Other real property actions \$0 - \$50,000 . |
| <input type="checkbox"/> Third party indemnification | <input type="checkbox"/> Other real property actions \$50,001 - \$249,999 |
| <input type="checkbox"/> Construction defect | <input type="checkbox"/> Other real property actions \$250,000 or more |
| <input type="checkbox"/> Mass tort | <input type="checkbox"/> Professional malpractice |
| <input type="checkbox"/> Negligent security | <input type="checkbox"/> Malpractice—business |
| <input type="checkbox"/> Nursing home negligence | <input type="checkbox"/> Malpractice—medical |
| <input type="checkbox"/> Premises liability--commercial | |
| <input type="checkbox"/> Premises liability-residential | |
| <input type="checkbox"/> Products liability | |
| <input type="checkbox"/> Real property/Mortgage foreclosure | |
| <input type="checkbox"/> Commercial foreclosure \$0 - \$50,000 | |
| <input type="checkbox"/> Commercial foreclosure \$50,001 - \$249,999 | |

- | | |
|--|---|
| <input type="checkbox"/> Malpractice—other professional | <input type="checkbox"/> Corporate trusts |
| <input type="checkbox"/> Other | <input type="checkbox"/> Discrimination—employment or other |
| <input type="checkbox"/> Antitrust Trade regulation | <input type="checkbox"/> Insurance claims |
| <input type="checkbox"/> Business transactions | <input type="checkbox"/> Intellectual property |
| <input type="checkbox"/> Constitutional challenge—statute or ordinance | <input type="checkbox"/> Shareholder derivative action |
| <input type="checkbox"/> Constitutional challenge-proposed amendment | <input type="checkbox"/> Securities litigation |
| | <input type="checkbox"/> Trade secrets |
| | <input type="checkbox"/> Trust litigation |

III. REMEDIES SOUGHT (check all that apply):

- monetary;
 nonmonetary declaratory or injunctive relief;
 punitive

IV. NUMBER OF CAUSES OF ACTION: [2]

(specify) **Declaratory Judgment and Injunctive Relief**

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- yes
 no

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- no
 yes If "yes," list all related cases by name, case number, and court.

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- yes
 no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature *Leticia Dieppa*
 Attorney or party

Fla. Bar # 91015
 (Bar # if attorney)

Leticia Dieppa
 (type or print name)

2/7/12
 Date.

IN THE CIRCUIT COURT OF THE 6th JUDICIAL CIRCUIT, IN
AND FOR PASCO COUNTY, FLORIDA

JOE FREITAS, Individually and on Behalf of
all Others Similarly Situated,

Plaintiffs,

v.

CITIZENS PROPERTY INSURANCE
CORPORATION and
XACTWARE SOLUTIONS, INC.

Defendants.

512012CA 0799WS
CASE NO.: H

CLASS ACTION COMPLAINT FOR DECLARATORY JUDGMENT

CLASS REPRESENTATION

Plaintiff, JOE FREITAS, individually and on behalf of all others similarly situated, files his class action complaint for declaratory judgment, against Defendants, CITIZENS PROPERTY INSURANCE CORPORATION and XACTWARE SOLUTIONS, INC. and alleges as follow:

1. This is an action for a declaratory judgment brought pursuant to Chapter 86 of the Florida Statutes upon which this Court's jurisdiction is based.

A. PARTIES

2. Plaintiff, JOE FREITAS ("Plaintiff" or "Mr. Freitas"), is at all times material hereto a resident of 3903 Watson Drive, New Port Richey, Pasco County, Florida 34653.

3. Defendant, CITIZENS PROPERTY INSURANCE CORPORATION ("Citizens"), is a Florida corporation authorized to conduct the business of selling property insurance in Florida and at all times material hereto has been conducting said business in Pasco County, Florida and in the entire state of Florida.

4. Defendant, XACTWARE SOLUTIONS, INC. (“Xactware” or “360Value®”) is a foreign corporation domiciled in Utah, with its principal place of business located at 1426 E 750 North, Orem, Utah 84097. Xactware sells computer programs to insurance companies to assess property replacement cost values and at all times material hereto has been conducting said business in Pasco County, Florida and in the entire state of Florida.

B. BACKGROUND FACTS

5. In 2010, Citizens contracted with Xactware to purchase 360Value®, a property replacement cost estimator program to use when determining the replacement cost for new and renewal property casualty insurance policies. Rather than receive multiple bids for a replacement cost estimator tool, Citizens only received Xactware’s bid because it is a “sole source” provider and the software could be modified to meet Citizens’ replacement cost guidelines. In other words, 360Value® can be manipulated to artificially inflate the replacement cost of a home, which in turns means that Citizens Floridians more in yearly premiums.

6. On or about September 28, 2011, Mr. Freitas purchased a home in Pasco County for \$109,000. Mr. Freitas’ mortgage company required him to maintain property casualty insurance on his home.

7. When Mr. Freitas purchased his home, the mortgage company appraised his home for \$117,000.

8. Because no private insurance companies were issuing home owners insurance policies in Pasco County, Mr. Freitas had no alternative than to purchase his home owners’ insurance through Citizens.

9. Before closing on his home, Mr. Freitas purchased home owners' insurance from Citizens with a replacement value of \$139,000. The yearly premium for Mr. Freitas' insurance at a replacement value of \$139,000 was \$917.00.

10. Thirty days after closing, Mr. Freitas' insurance agent told him that Citizens would not insure his home with a replacement value of \$139,000, but it required him to insure his property for \$236,700 or they would cancel his policy. The yearly premium for Mr. Freitas to insure his property for \$236,700 is \$1,846.00.

11. Mr. Freitas hired an independent appraiser to prove to Citizens that the initial replacement cost value of \$139,000 was adequate. The local independent appraiser had years of appraising experience in Mr. Freitas' area and valued his property for replacement cost purposes at \$138,000; however, Citizens refused to consider appraisal values for his property from any other source other than 360Value®.

12. Because Citizens required Mr. Freitas' replacement cost value to remain at \$236,700, his yearly premiums increased by 100%, from \$917.00 to \$1846.00. This increase occurred solely because Citizens intentionally inflated the replacement cost value using 360Value® to charge higher premiums without increasing the insurance rate. In addition to higher premiums, Mr. Freitas' 2.5% windstorm deductible increased from \$3475.00 to \$5919.50, for the same reason.

C. SUBSTANTIVE ALLEGATIONS

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action under Florida Rule of Civil Procedure 1.220(b)(2), (3) because 1) Citizens has acted or refused to act on grounds generally applicable to all the members of the class, thereby making final injunctive relief or declaratory relief concerning the class as a

whole appropriate and 2) common questions of law and fact predominate over questions of fact affecting individual members of the Class. Plaintiff brings this action as a class action for declaratory, equitable, and other relief pursuant to Florida Rules of Civil Procedure, 1.220(b)(3) on behalf of the following proposed class: “all individuals who have purchased a new or renewed property casualty insurance policy from Citizens where Citizens used Value360® to determine the replacement value of the property” (the “Class”).

14. Upon completion of discovery with respect to the scope of the Class and claims, Plaintiff reserves the right to amend the Class definition. Excluded from the Class are Defendants, including any parent, subsidiary, affiliate, or control person of Defendants; Defendant’s officers, directors, agents, or employees; the judicial officers assigned to this litigation; and members of their staffs and immediate families.

15. The members of the Class are so numerous that joinder of all of them is impracticable. While the exact number and identities of members of the Class are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes and therefore avers that there are at least hundreds of Class members.

16. There are questions of fact and law common to members of the Class that predominate over any questions affecting any individual members, including, inter alia, the following:

- a. Whether Defendants artificially inflated replacement cost values for its property casualty policyholder’s property, which caused Plaintiff’s yearly premiums to unreasonably increase;
- b. Whether Defendants’ artificially inflated replacement cost values for its property casualty policyholder’s property creates insurance that is

unaffordable, which is in direct violation of Florida Statute § 627.351(6)(a)1 and the legislative intent for Citizens;

- c. Whether Defendants modified 360Value® to inflate the replacement cost values of Citizen's policyholder's property, which resulted in unreasonably high premiums;
- d. Whether Defendants intentionally inflated policyholder's property replacement cost values, thereby, increasing the premiums making property insurance unaffordable to its policyholders;
- e. Whether Citizens has the right to increase property values arbitrarily without those values being supported by fact or evidence, and, to the contrary, against the great weight of valuation evidence; and
- f. Whether Citizens has the right to charge an insurance premium based on an inflated, false, property value estimate.

17. Typicality: Plaintiff's claims are typical of the claims of other members of the Class in that Plaintiff alleges a common course of conduct by Defendants toward members of the Class. Plaintiff, like other members of the Class, was forced to purchase property casualty insurance from Citizens because private insurers were either unwilling or unable to provide property insurance in his county and Citizens became the insurer of last resort. Plaintiff and other members of the Class seek identical remedies under identical legal theories, and there is no antagonism or material factual variation between Plaintiff's claims and those of the Class.

18. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff's claims are coextensive with, and not antagonistic to, the claims of the other

members of the Class. Plaintiff is willing and able to vigorously prosecute this action on behalf of the Class, and Plaintiff has retained counsel experienced in litigation of this nature.

19. Certification under Rule 1.220(b)(3) is appropriate because a class action is superior to the other available methods for the fair and efficient adjudication of this action, and Plaintiff envisions no unusual difficulty in the management of this action as a class action.

ALLEGATION ONE

VIOLATION OF FLORIDA STATUTE § 627.351(6)(a)1

20. Florida Statute § 627.351(6)(a)1 states in pertinent part:

The legislature finds that private insurers are unwilling or unable to provide *affordable property insurance coverage* in this state to the extent sought and needed. The absence of *affordable property insurance* threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in the state is insured and that it is insured at *affordable rates* so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide *affordable property insurance* to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that *affordable property insurance* be provided and that it continues to be provided, as long as necessary, through Citizens Property Insurance Corporation, a governmental entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of *affordable property insurance* in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes

21. Mr. Freitas and other members of the Class meet the requirements of applicants who qualify to obtain affordable insurance from Citizens.

Emphases added

22. Mr. Freitas applied for insurance with Citizens and showed substantial proof of the value of his property to the Defendant. He filled out the application honestly and did not misrepresent any information provided to the Defendant. Yet, thirty days after closing, Citizens arbitrarily increased his replacement cost value on his property by almost \$100,000 without any evidence to show the increase was warranted. In fact, Citizens intentionally misrepresented Mr. Freitas' value to require him to pay more than double his original premium.

23. Citizens was able to accomplish this by using 360Value® and having it modified to meet its need to increase property values and, consequently, premiums, without violating the insurance rate cap.

24. Defendants' conduct constitutes a direct violation of Fla. Stat. § 627.351(6)(a)(1) and is in direct contravention to the Legislature's intent and public policy to provide affordable property insurance to qualified applicants.

25. Mr. Freitas and other members of the Class were damaged as a result of the conduct of the Defendant.

26. The Plaintiff has been required to retain the services of the undersigned law firm and is required to pay them a reasonable fee.

27. Citizens maintains it has acted properly under Florida law; however, they continue to inflate policyholder's replacement cost values and deny policyholders the right to fight the inflated valuations by not allowing or considering independent third party appraisals.

28. As explained above, there presently exists a justiciable controversy between the parties, and the parties are in doubt about their rights.

29. Plaintiff, JOE FREITAS, requests this Court enter a declaratory judgment finding:

- a. that Citizens has intentionally acted to inflate the replacement cost values for policyholder's property creating property insurance that is not affordable which is in direct violation of Florida Statute § 627.351(6)(a)1;
 - b. Defendants modified Xactware 360Value® to inflate the replacement cost values for their policyholders' property, which resulted in unreasonably high premiums and premiums based on false, misleading, and unsubstantiated estimates of property value;
 - c. Plaintiff has a right to submit information and evidence to Citizens to substantiate a replacement cost value for their property; and
 - d. An award of attorneys' fees pursuant to Fla. Stat. § 627.428, the costs of this action and such other relief as the Court deems appropriate.
30. Plaintiff asks the Court to enjoin Defendants from the following:
- a. Continuing to use 360Value® for its replacement cost valuation tool when writing or renewing property casualty insurance policies in the State of Florida.
 - b. Alternatively, to modify 360Value's® so that the replacement cost value is in-line with other appraisals.
 - c. Alternatively, to require Citizens to accept appraisals for sources other than 360Value® when determining the replacement cost value for new and renewal property casualty insurance policies.
31. Plaintiff, JOE FREITAS, hereby demands trial by jury of all issues so triable.
32. Plaintiff demands judgment declaring the rights (or status) of Plaintiff and that of the Class, and asks that the Court grant such other supplemental relief as may be appropriate.

33. Unless the court grants the relief sought, Plaintiffs will continue to be injured by having to pay excessive insurance premiums or being completely unable to afford property insurance whatsoever.

Respectfully Submitted,


Attorneys for Plaintiffs

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