

Cause No. _____

ANDREW CHONG and	§	IN THE DISTRICT COURT OF
HONGENG, LTD	§	
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
WESTCHESTER SURPLUS LINES	§	
INSURANCE COMPANY, ENGLE	§	
MARTIN AND ASSOCIATES, INC., AND	§	
THOMAS KORALEWSKI	§	___ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION & JURY DEMAND

TO THE HONORABLE JUDGE & JURY OF HARRIS COUNTY CITIZENS:

Plaintiffs ANDREW CHONG and HONGENG, LTD. ("Plaintiffs") files this Original Petition against Defendants WESTCHESTER SURPLUS LINES INSURANCE COMPANY ("Westchester" or "Carrier"), ENGLE MARTIN AND ASSOCIATES, INC. ("Engle Martin"), and THOMAS KORALEWSKI ("Koralewski") (collectively "Defendants") and would respectfully show the following:

Discovery Control Plan

1.1 Chong intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

Parties

2.1 Plaintiff, Andrew Chong is a natural person living and residing in the state of Texas.

2.2 Plaintiff, Hongeng, Ltd. is a Texas domestic limited company.

2.3 Upon information and belief, Westchester is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Westchester regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas and does not maintain an agent for service in this State. Accordingly, Westchester may be served with process by serving certified mail, return receipt requested, to **Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701** who can forward process to **436 Walnut Street, Philadelphia, PA 19106-3703**.

2.4 Upon information and belief, Engle Martin is a corporation organized under the laws of the State of Georgia regularly engaged in the business of adjusting insurance claims in Texas through its various Texas offices. Engle Martin regularly and systematically engages in business in Texas, operating for the purpose of accumulating monetary profit and may be served with process through **Corporation Service Company dba CSC-Lawyers Inc., 211 East 7th Street, Suite 620, Austin, Texas 78701**.

2.5 Upon information and belief, Thomas Koralewski is a natural person who resides and works in the State of Texas and may be served with process at **4903 Northfork Dr., Pearland Texas 77584-8613**.

Venue & Jurisdiction

3.1 Venue is proper in Harris County under Tex. Civ. Prac. & Rem. Code Section 15.002(a)(1), as all or a substantial part of the events or omissions giving

rise to this claim occurred in Harris County and Plaintiffs' property, Pine Garden Apartments, is located in Harris County, Texas. In particular, the insurance policy at issue and of which Chong is a beneficiary was to be performed in Harris County, Texas and the losses under the policy (including payments to be made to Chong under the policy) were required to be made in Harris County, Texas at the Harris County Property address, 8650 Pitner Road, Houston, Texas 77080. Further, investigation, including communications to and from Defendants and Plaintiffs (including inspections and representations at the Harris County property, telephone calls, mailings, and other communications to Chong) as well as the improper claim denials occurred in Harris County, Texas.

3.2 Plaintiffs seek damages within the jurisdictional limits of this Court. At this time, Plaintiffs seek monetary relief in an amount over \$1,000,000. Plaintiffs reserve the right to modify the amount and type of relief sought in the future.

Factual Background

4.1 On or before May 28, 2014, Westchester sold a commercial property policy (the "Policy") to Chong whereby Westchester would provide insurance coverage for the property, Pine Garden Apartments, located at 8650 Pitner Road, Houston, Texas 77080 (the "Property") in exchange for the timely payment of premiums. See Exhibit "A". The Property consists of several apartment buildings owned by Chong and Hongeng Ltd. The Policy was sold by Westchester to Chong as the insured under the Policy and provides coverage for damages to the Property caused by wind and hail.

4.2 On or about May 28, 2014, there was a wind and hail storm in Harris County which resulted in substantial damage to the Property. As a result, the exterior, roof, interior, HVAC, and other structures of the Property were damaged. A second wind and hailstorm struck the property on or about April 19, 2015 during the policy period further damaging the Property. Upon discovering the damage, Chong filed an insurance claim under the Policy with Westchester for damages to the property caused by the storms. Chong asked that the cost of repairs be covered pursuant to the Policy.

4.3 Westchester insures the Property. Westchester assigned adjusters, consultants, and agents to Chong's file that were inadequate and improperly trained. Specifically, Westchester assigned the claim to Engle Martin and Associates as the third party adjusting firm to handle the claim who in turn assigned the claim to its internal adjuster, Tom Koralewski. Mr. Koralewski was assigned as the adjuster with investigative responsibility and certain decision-making authority (he would have no authority to issue a significant claim payment, only a denial) over Chong's claim under Westchester's insurance policy. Engle Martin and Mr. Koralewski conducted an unreasonable and inadequate investigation and denied any wind and hail damage to the roofs, windows, HVAC, interior, and structures. Mr. Koralewski also grossly undervalued what damage he did accept. Specifically, Westchester's designated Texas adjuster, Thomas Koralewski ignored facts supporting Plaintiffs' assertions of covered hail and wind damages in May of 2014 and April 2015 and instead only accepted facts that would

support Defendants' pre-determined denial investigation. Further, Westchester's designated Texas adjuster, Koralewski, further unreasonably refused to consider damages from the May 2014 windstorm in denying the claim without reasonable basis to do so. *See Exhibit "B", January 8, 2016 Denial from Koralewski to Plaintiffs.*

4.4 Westchester and Mr. Koralewski subsequently assigned unqualified and biased consultants to the claim, Rimkus Consulting, an outfit that works almost exclusively in support of insurance companies. Mr. Koralewski failed to do his own investigation of damages to the Property and failed to engage competent consultants. Engle Martin and Koralewski chose to ignore obvious damages to the Property and specific submissions from forensic weather consultants confirming the covered wind and hailstorms in question at the subject location. Westchester relied on Engle Martin and Koralewski's incomplete and inadequate investigation in making coverage decisions under the Policy and deciding what amounts, if any, to pay on the claim. Plaintiffs were forced to hire its own representative and demand re-inspections and re-evaluations of the obvious damages to the Property that Defendants ignored. Defendants represented that certain damages were not covered under the Policy when in fact they were. Defendants represented that there were no covered wind and hail damages to the roofs and falsely stated that the admitted hail damages did not fall under their policy period.

4.5 Based on Westchester, Engle Martin and Koralewski's haphazard investigation, no payments have been issued under the Policy. Westchester, Engle Martin, and Mr. Koralewski wrongfully denied and delayed Plaintiffs' claim for

property repairs. Furthermore, Defendants have underestimated damages during their investigation and claimed the damages fall under the policy deductible. Defendants have chosen to continue to deny and delay timely payment of the damages. As a result, Plaintiffs have not been fully paid under the Policy provided by Westchester since the wind and hail storms.

4.6 As a result of Defendants' acts and/or omissions, Plaintiffs were required to retain an attorney to prosecute its claim for insurance benefits.

4.7 Unfortunately, Defendants have delayed payment for Plaintiffs' necessary and covered property repairs under its insurance policy. Given the repeated delays of payment, Plaintiffs have been subjected to significant economic impact, worry, distress, and continuing economic and physical damage. In addition, Plaintiffs have suffered financial harm and damage as a result of Defendants' denials and repeated delays. The significant effect of Defendants' wrongful and unjustified delays, however, is still uncompensated.

FIRST CAUSE OF ACTION--Violations of Texas Insurance Code

5.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-4.7 of this Petition as if fully set forth herein.

5.2 Westchester, Engle Martin, and Mr. Koralewski failed to attempt to effectuate a prompt, fair, and equitable settlement of a claim with respect to which liability has become reasonably clear, in violation of Texas Insurance Code Section 541.060 (a)(2)(A).

5.3 Westchester, Engle Martin, and Mr. Koralewski failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 Westchester, Engle Martin, and Mr. Koralewski failed to provide promptly a reasonable explanation, in relation to the facts or applicable law, for the denial of a claim, in violation of Texas Insurance Code Section 541.060 (a)(3).

5.5 Westchester, Engle Martin, and Mr. Koralewski refused to pay a claim without conducting a reasonable investigation with respect to the claim, in violation of Texas Insurance Code Section 541.060 (a)(7).

5.6 Westchester, Engle Martin, and Mr. Koralewski misrepresented the insurance policy under which it affords property coverage to Chong, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Westchester, Engle Martin, and Mr. Koralewski misrepresented the insurance policy to Chong, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

5.7 Westchester, Engle Martin, and Mr. Koralewski misrepresented the insurance policy under which it affords property coverage to Chong by failing to state a material fact that is necessary to make other statements made not misleading, in violation of Texas Insurance Code Section 541.061 (2). Westchester, Engle Martin, and Mr. Koralewski misrepresented the insurance policy to Chong by failing to state a material fact that is necessary to make other statements made not misleading, in violation of Texas Insurance Code Section 541.061 (2).

5.8 Westchester, Engle Martin, and Mr. Koralewski misrepresented the insurance policy under which it affords property coverage to Chong by making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of material fact, and failing to disclose a matter required by law to be disclosed, in violation of Texas Insurance Code Section 541.061 (3) and Texas Insurance Code Section 541.002 (1). Westchester, Engle Martin, and Mr. Koralewski misrepresented the insurance policy to Chong by making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of material fact, and failing to disclose a matter required by law to be disclosed, in violation of Texas Insurance Code Section 541.061 (3) and Texas Insurance Code Section 541.002 (1).

5.9 Westchester, Engle Martin, and Mr. Koralewski knowingly committed the foregoing acts, with actual knowledge of the falsity, unfairness, or deception of the foregoing acts and practices, in violation of Texas Insurance Code Section 541.002 (1).

SECOND CAUSE OF ACTION---Prompt Payment of Claim

6.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-5.9 of this Petition as if fully set forth herein.

6.2 Westchester, Engle Martin, and Mr. Koralewski failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

6.3 Westchester, Engle Martin, and Mr. Koralewski failed to timely commence investigation of the claim or to request from Chong any additional items,

statements or forms that Westchester, Engle Martin, and Mr. Koralewski reasonably believe to be required from Chong in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

6.4 Westchester, Engle Martin, and Mr. Koralewski failed to notify Chong in writing of the acceptance or rejection of the claim not later than the 15th business day after receipt of all items, statements and forms required by Westchester, Engle Martin, and Mr. Koralewski in violation of Texas Insurance Code Section 542.056(a).

6.5 Westchester, Engle Martin, and Mr. Koralewski delayed payment of Chong's claim in violation of Texas Insurance Code Section 542.058(a).

THIRD CAUSE OF ACTION--Statutory Interest

7.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-6.5 of the Petition as if fully set forth herein.

7.2 Plaintiffs make a claim for penalties of 18% statutory interest on the amount of the claims along with reasonable attorneys' fees for violation of Texas Insurance Code Subchapter B pursuant to Texas Insurance Code Section 542.060.

FOURTH CAUSE OF ACTION--Breach of Contract

8.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-7.2 of the Petition as if fully set forth herein.

8.2 Westchester, breached their contract with Plaintiffs. As a result of Westchester' breach, Plaintiffs suffered legal damages.

FIFTH CAUSE OF ACTION---Breach of duty of good faith & fair dealing

9.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-8.2 of the Petition as if fully set forth herein.

9.2 Westchester, as the property coverage insurers, had a duty to deal fairly and in good faith with Plaintiffs in the processing of the claim. Westchester breached this duty by refusing to properly investigate and effectively denying insurance benefits. Westchester knew or should have known that there was no reasonable basis for denying or delaying the required benefits. As a result of Westchester's breach of these legal duties, Chong suffered legal damages.

SIXTH CAUSE OF ACTION---Punitive Damages for Bad Faith

10.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-9.2 of this Petition as if fully set forth herein.

10.2 Defendants acted fraudulently and with malice (as that term is legally defined) in denying and delaying Chong's claim for benefits. Further, Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs.

SEVENTH CAUSE OF ACTION---Violations Of Texas DTPA

11.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-10.2 of this Complaint as if fully set forth herein.

11.2. The Deceptive Trade Practices-Consumer Protection Act (DTPA) provides additional protections to consumers who are victims of deceptive, improper, or illegal practices. Defendants' violations of the Texas Insurance Code create a cause

of action under the DTPA. Defendants' violations of the Texas Insurance Code, as set forth herein, specifically violate the DTPA as well.

KNOWLEDGE

12.1 Each of the actions described herein were done "knowingly" as that term is used in the Texas Insurance Code and were a producing cause of Plaintiffs' damages.

RESULTING LEGAL DAMAGES

13.1 Plaintiffs are entitled to the actual damages resulting from the Defendants' violations of the law. These damages include the consequential damages to its economic welfare from the wrongful denial and delay of benefits; the mental anguish and physical suffering resulting from this wrongful denial of benefits, and continued impact on Chong; lost credit reputation; and the other actual damages permitted by law. In addition, Plaintiffs are entitled to exemplary damages.

13.2 As a result of Defendants' acts and/or omissions, Plaintiffs have sustained damages in excess of the minimum jurisdictional limits of this Court.

13.3 Plaintiffs are entitled under law to the recovery of prejudgment interest at the maximum legal rate.

13.4 Defendants' knowing violations of the Texas Insurance Code and DTPA entitle Chong to the attorneys' fees, treble damages, and other penalties provided by law.

13.5 Plaintiffs are entitled to statutory interest on the amount of their claim at the rate of 18% per year as damages under the Texas Insurance Code 542.060(a).

13.6 As a result of Defendants' acts and/or omissions, Plaintiffs have sustained damages in excess of the jurisdictional limits of this Court.

13.7 Plaintiffs are entitled under law to the recovery of prejudgment interest at the maximum legal rate.

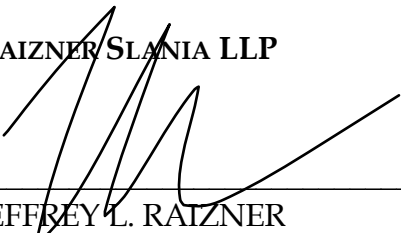
13.8 Plaintiffs are entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, the Texas Insurance Code 542.060(a)-(b), the Tex. Bus & Commerce Code §17.50 and Tex. Civ. Prac. & Rem. Code §37.009.

Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that Plaintiffs have judgment against Defendants for actual damages in excess of the minimum jurisdictional limits of this Court, pre- and post-judgment interest as allowed by law, costs of suit, and all other relief, at law or in equity, to which Plaintiffs may be entitled.

Respectfully submitted,

RAIZNER SLANIA LLP

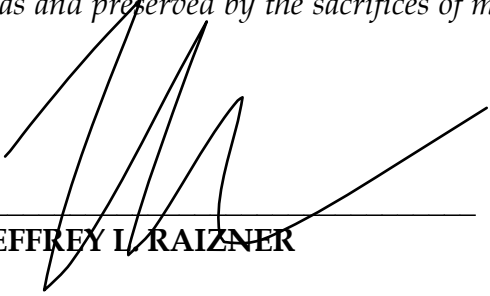


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JURY DEMAND

Chong hereby demands a trial by jury, a right enshrined in the Constitution of the United States of America and the State of Texas and preserved by the sacrifices of many. The necessary jury fee has been paid.



JEFFREY I. RAIZNER