

Cause No. 282,018-B

DESTINY WORLD OUTREACH CENTER, INC. <i>Plaintiff</i>	§ § § §	IN THE DISTRICT COURT OF
V.	§	BELL COUNTY, TEXAS
GUIDEONE ELITE INSURANCE COMPANY and McFERRIS HANNA <i>Defendants</i>	§ § §	§ <u>46</u> TH JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION & JURY DEMAND**

Plaintiff DESTINY WORLD OUTREACH CENTER, INC. (“Destiny” or “Plaintiff”) by and through its attorneys, files this Original Petition & Jury Demand against Defendants GUIDEONE ELITE INSURANCE COMPANY (“GuideOne”) and McFERRIS HANNA (“Hanna”) (collectively “Defendants”) and would respectfully show the following:

**Discovery Control Plan**

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

**Parties**

2.1 Plaintiff Destiny World Outreach Center, Inc. a domestic nonprofit corporation.

2.2 Upon information and belief, Defendant GuideOne is a foreign fire and casualty insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. GuideOne regularly and systematically issues insurance policies in the State of Texas and may be served by

mailing certified mail, return receipt requested to CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

2.3 Upon information and belief, McFerris Hanna is an individual living and residing in the State of Texas and may be served with process at McFerris Hanna, 7907 Nighthawk Trail, Arlington, Texas 76002.

### Venue & Jurisdiction

3.1 Venue is proper in Bell 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 Bell County and Plaintiff's property is located in Bell County, Texas. In particular, the insurance policy at issue and of which Plaintiff is a beneficiary was to be performed in Bell County, Texas and the losses under the policy (including payments to be made to Plaintiff under the policy) were required to be made in Bell County, Texas. Further, investigation, including investigation of the claim and communications to and from Defendant and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred in Bell County, Texas.

3.2 Plaintiff seeks damages within the jurisdictional limits of this Court. Plaintiff trusts the jury to evaluate the evidence, but at this time, Plaintiff seeks monetary relief in an amount over \$1,000,000. Plaintiff reserves the right to modify the amount and type of relief sought in the future.

## General Allegations

4.1 On or before March 28, 2014 Plaintiff entered into a contract, GuideOne marketed and sold a commercial insurance policy bearing Policy No. CPP 1201-570 to Destiny whereby GuideOne would provide property insurance for the commercial property located at 101 N. W. S. Young Avenue, Killeen, Texas 76543 (the "Property") in exchange for the timely payment of premiums (the "Policy"). The Policy was sold by GuideOne to Plaintiff as the insured under the Policy and provides coverage for the Property resulting from wind and hail.

4.2 On or about March 28, 2014, Plaintiff's property was substantially damaged by the severe wind and hail storm that struck the area. As a result, the roofs, exteriors, interiors, and HVAC of the Property were substantially damaged. Immediately after the storm, Plaintiff filed an insurance claim under the Policy with GuideOne for damages to the Property caused by the wind and hail storm. Plaintiff asked that the cost of repairs be covered pursuant to the Policy.

4.3 GuideOne is the insurer on the Property. In response to the claim, GuideOne assigned adjusters, consultants, and agents to Plaintiff's file that were inadequate and improperly trained. Specifically, GuideOne assigned Plaintiff's claim to an internal adjuster, McFerris Hanna, as the local adjuster charged with assessing damages under the Policy. Mr. Hanna was improperly trained and not equipped to handle this type of claim.

4.4 Mr. Hanna failed to perform a thorough investigation of the claim. Mr. Hanna performed substandard inspections of the Property. Mr. Hanna did not

prepare any estimates or scopes of damages to the Property or failed to provide those to the insured. Instead, Mr. Hanna retained a preferred vendor to visit the Property who was not qualified to evaluate this type of loss at this type of property. GuideOne relied exclusively on Mr. Hanna's substandard investigation in determining what amounts, if any, to pay on Plaintiff's claim and failed to perform its own investigation. As a result of Mr. Hanna's haphazard inspection, misrepresentations, and inadequate investigation, on December 9, 2015, GuideOne completely denied Plaintiff's claim and closed its file without issuing any payments to its insured. Further, Mr. Hanna represented to Destiny that the damage to the Property was actually related to poor installation despite the obvious hail damages. GuideOne and Mr. Hanna performed an inadequate, incomplete and unreasonable investigation of Plaintiff's claim, which is evidenced by the lack of estimates and reports for the necessary repairs for the Property.

4.5 GuideOne and Mr. Hanna wrongfully denied Plaintiff's claim for property repairs. Furthermore, GuideOne and Mr. Hanna underestimated what damages they did accept during the investigation. GuideOne and Mr. Hanna represented to Plaintiff that certain damages were not covered under the Policy when in fact they were. Mr. Hanna refused to provide answers to Plaintiff during the claims process, further delaying resolution of Plaintiff's claim in violation of his duties under Texas law. GuideOne and Mr. Hanna have chosen to continue to deny timely payment of the damages. As a result, Plaintiff has not been fully paid under the Policy provided

by GuideOne since the wind and hail storm. To this day, however, GuideOne refuses to pay for the necessary repairs to the Property as required under the Policy.

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

4.7 Unfortunately, Defendants have delayed payment for Plaintiff's necessary and covered property repairs under the insurance policy that GuideOne wrote. Given the repeated delays of payment, Plaintiff has been subjected to significant economic impact, worry, distress, and continuing economic and physical damage. Because of Defendants' delays, denials, and underpayment, Plaintiff has been unable to make necessary repairs to the Property which has resulted in further damages to the Property, including additional interior and roof damage, among others. In addition, Plaintiff has 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 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-4.7 of this Petition as if fully set forth herein.

5.2 GuideOne and Mr. Hanna 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 GuideOne and Mr. Hanna failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 GuideOne and Mr. Hanna 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 GuideOne and Mr. Hanna 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 GuideOne and Mr. Hanna misrepresented the insurance policy under which it affords Property coverage to Plaintiff, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). GuideOne and Mr. Hanna misrepresented the insurance policy to Plaintiff, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

5.7 GuideOne and Mr. Hanna misrepresented the insurance policy under which it affords Property coverage to Plaintiff, 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). GuideOne and Mr. Hanna misrepresented the insurance policy to Plaintiff 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 GuideOne and Mr. Hanna misrepresented the insurance policy under which it affords Property coverage to Plaintiff, 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). GuideOne and Mr. Hanna misrepresented the insurance policy to Plaintiff 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 GuideOne and Mr. Hanna 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 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-5.9 of this Petition as if fully set forth herein.

6.2 GuideOne and Mr. Hanna failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

6.3 GuideOne and Mr. Hanna failed to timely commence investigation of the claim or to request from Plaintiff any additional items, statements or forms that GuideOne and Mr. Hanna reasonably believe to be required from Plaintiff in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

6.4 GuideOne and Mr. Hanna failed to notify Plaintiff in writing of the acceptance or rejection of the claim not later than the 15<sup>th</sup> business day after receipt of all items, statements and forms required by GuideOne and Mr. Hanna in violation of Texas Insurance Code Section 542.056(a).

6.5 GuideOne and Mr. Hanna delayed payment of Plaintiff's claim in violation of Texas Insurance Code Section 542.058(a).

**THIRD CAUSE OF ACTION--Statutory Interest**

7.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-6.5 of the Petition as if fully set forth herein.

7.2 Plaintiff makes 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 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-7.2 of the Petition as if fully set forth herein.

8.2 GuideOne breached its contracts with Plaintiff. As a result of GuideOne's breaches, Plaintiff suffered legal damages.

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

9.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-8.2 of the Petition as if fully set forth herein.

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



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

10.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-9.2 of this Petition as if fully set for herein.

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

**SEVENTH CAUSE OF ACTION---Violations Of Texas DTPA**

11.1 Plaintiff re-alleges and incorporates 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.

**EIGHTH CAUSE OF ACTION---Fraud**

12.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-11.2 of this Complaint as if fully set forth herein.

12.2 GuideOne and Mr. Hanna acted fraudulently as to each representation made to Plaintiff concerning material facts for the reason they would not have acted and which GuideOne and Mr. Hanna knew were false or made recklessly without any knowledge of their truth. The representations were made with the intention that

they be acted upon by Plaintiff, who relied on those representations, thereby causing injury and damage to Plaintiff.

### **KNOWLEDGE**

13.1 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 Plaintiff’s damages.

### **RESULTING LEGAL DAMAGES**

14.1 Plaintiff is 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 Plaintiff; lost credit reputation; and the other actual damages permitted by law. In addition, Plaintiff is entitled to exemplary damages.

14.2 As a result of Defendants’ acts and/or omissions, Plaintiff has sustained damages in excess of the minimum jurisdictional limits of this Court.

14.3 Plaintiff is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

14.4 Defendants’ knowing violations of the Texas Insurance Code and DTPA entitle Plaintiff to the attorneys’ fees, treble damages, and other penalties provided by law.

14.5 Plaintiff is entitled to statutory interest on the amount of its claim at the rate of 18% per year as damages under the Texas Insurance Code §542.060(a).

14.6 Plaintiff is 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, Plaintiff respectfully requests that Plaintiff 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 Plaintiff may be entitled.

Respectfully submitted,

**RAIZNER SLANIA LLP**

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**ATTORNEYS FOR PLAINTIFF**

**JURY DEMAND**

*Plaintiff 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.*



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JEFFREY L. RAIZNER