

DC-17-11083

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Cause No. _____

RICHARD HORTON dba WOODWAY ON THE GREEN, INC.	§	IN THE DISTRICT COURT OF
	§	
	§	
V.	§	DALLAS COUNTY, TEXAS
	§	
PELEUS INSURANCE COMPANY, STRATA CLAIMS MANAGEMENT, LLC, ENGLE MARTIN & ASSOCIATES, INC., RISA HAYES VALLEJO and CHRISTOPHER VAN REES	§ § § § §	___ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION & JURY DEMAND

Plaintiff RICHARD HORTON DBA WOODWAY ON THE GREEN, INC. (“Woodway” or “Plaintiff”) by and through their attorneys, file this Original Petition & Jury Demand against Defendants PELEUS INSURANCE COMPANY (“Peleus” or “Carrier”), STRATA CLAIMS MANAGEMENT, LLC (“Strata”), ENGLE MARTIN & ASSOCIATES, INC. (“Engle Martin”), RISA HAYES VALLEJO (“Ms. Vallejo”), CHRISTOPHER VAN REES (“Mr. Van Rees”) (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, Richard Horton dba Woodway on the Green, Inc. is a domestic For-Profit Corporation organized under the laws of the State of Texas.

2.2 Upon information and belief, Defendant Peleus is a foreign surplus lines insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Peleus regularly and systematically issues insurance policies in the State of Texas. They may be served with process by serving certified mail, return receipt requested, to **Claims Manager, Peleus Insurance Company, 8720 Stony Point Parkway, Suite 400, Richmond, VA 23235.**

2.3 Upon information and belief, Strata is a corporation organized under the laws of the State of Texas regularly engaged in the business of adjusting insurance claims in Texas through its various Texas offices. Strata regularly and systematically engages in business in Texas, operating for the purpose of accumulating monetary profit and may be served with process through **CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.**

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 **CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.**

2.5 Upon information and belief, Risa Hayes Vallejo is a natural person residing and working in the State of Texas. She may be served with process by serving her at, **Risa Hayes Vallejo, 200 Rousseau Street, Waxahachie, Texas 75165-2740.**

2.6 Upon information and belief, Van Rees is a natural person residing and working in the State of Texas. He may be served with process by serving him at, **Christopher Van Rees, 4412 Black Otter Trail, Apt. 1153, Dallas, Texas 75287-5106.**

Venue & Jurisdiction

3.1 Venue is proper in Dallas County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(3) as it is the County where Defendants Strata and Engle Martins principal offices are located. Venue is also proper in Dallas County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(1), as a substantial part of the events or omissions giving rise to this claim occurred in Dallas County. In particular, the adjustment of the claim by Defendants Strata and Engle Martin for losses under the policy (including payments to be made to Plaintiff under the policy) were conducted in Dallas County, Texas out of Strata and Engle Martin's Dallas offices. Further, investigation, including communications to and from Defendants and Woodway (including telephone calls, mailings, and other communications to Woodway) and communications between Defendants including the denial of the claim occurred in Dallas 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 17, 2016, Peleus sold a commercial property insurance policy bearing Policy No. S3-1457 to Woodway whereby Peleus would provide insurance coverage for the property located at 6201 Woodway Drive, Fort Worth, Texas 76133 (the "Property") in exchange for the timely payment of premiums (the "Policy"). The Property consists of several apartment buildings owned by Woodway. The Policy was sold by Peleus to Woodway as the insured under the Policy and provides coverage for damages to the Property caused by wind and hail.

4.2 On or about March 17, 2016, Plaintiff's property was substantially damaged by a severe wind and hail storm that north Texas.. As a result, the roofs, HVAC, exteriors, and interiors of the Property were substantially damaged. Immediately upon discovering the damage, Plaintiff filed an insurance claim under the Policy with Peleus 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 Peleus is the insurer on the Property. In response to the claim, the Carrier assigned adjusters, consultants, and agents to Plaintiff's file that were inadequate and improperly trained. More specifically, Peleus assigned Strata to adjust the claim and Strata assigned Ms. Vallejo as the claims manager. Peleus also assigned Plaintiff's claim to Engle Martin as adjusters who in turn assigned its employee Mr. Van Rees to adjust the damages under the Policy. Peleus with ultimate decision-making authority falsely denied the claim, failed to conform to proper claim

settlement practices in Texas, failed to properly supervise its designated representatives, and unreasonably denied and delayed full and fair claim payment.

4.4 Peleus Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees failed to perform a thorough investigation of the claim. Mr. Van Rees inspected the property on January 4, 2017 and performed a substandard inspection of the Property. Mr. Van Rees grossly undervalued what damage he did accept. Defendants delayed the claims process and failed to communicate with the insured. Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees performed an inadequate, incomplete and unreasonable investigation of Plaintiff's claim, which is evidenced by their delays, lack of communication, refusal to hire to appropriate consultants, and estimate that fails to account for the necessary repairs for the Property. Peleus relied exclusively on Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees in determining what amounts, if any, to pay on Plaintiff's claim and failed to perform their own adequate investigation. Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees made false representations to Plaintiff's representative including illegitimately representing that the entirety of damages occurred prior to the policy period and improperly ignoring facts confirming and supporting the hail and wind event and in turn extent of damages. On April 6, 2017 Strata and Ms. Vallejo misrepresented the extent of damages confirmed at the property, falsely used excuses such as roof deficiencies and improper installation and made misrepresentations about available weather data including blatant misuse of the predictive modeling supposedly being relied on to deny and delay the claim. Further, on May 9, 2017, Strata and Ms. Vallejo

wrongfully claimed the roofs did not need to be replaced and instead blamed the clear damages on installation failures and the age of the roof systems. These are deceptive, unfair, and unreasonable claim actions as Peleus and Strata's underwriting confirms the good and insurable condition of the buildings.

4.5 Defendants wrongfully denied Plaintiff's claim for property repairs. Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees chose to ignore obvious damages to the Property. Defendants have chosen to continue to deny timely payment of the damages. As a result, Woodway has not been fully paid under the Policy provided by Peleus since the wind and hail storm. Woodway was forced to hire its own consultant to independently evaluate the damages to the Property because Defendants refused to do so. Plaintiff's own expert has identified substantial damage far beyond what Peleus acknowledged. To this day, Peleus 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 Peleus 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 Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees 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 Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees 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 Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees 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 Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees 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). Peleus, Engle Martin, and Van Rees 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 Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees 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). Peleus, Strata, and Engle Martin 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 Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees 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). Defendants 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 Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees 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 Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

6.3 Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees failed to timely commence investigation of the claim or to request from Plaintiff any additional items, statements or forms that Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees reasonably believe to be required from Plaintiffs in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

6.4 Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees failed to notify Plaintiff 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 Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees in violation of Texas Insurance Code Section 542.056(a).

6.5 Peleus, Strata, Engle Martin, Ms. Vallejo, and Mr. Van Rees 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 Peleus breached its contracts with Plaintiff. As a result of Carrier'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.

9.2 Peleus, as the property coverage insurer, had a duty to deal fairly and in good faith with Plaintiff in the processing of the claim. Peleus breached this duty by refusing to properly investigate and effectively denying insurance benefits. Peleus knew or should have known that there was no reasonable basis for denying or delaying the required benefits. As a result of Carrier'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 Peleus acted fraudulently and with malice (as that term is legally defined) in denying Plaintiff's claim for benefits. Further, Peleus 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.

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 Plaintiff's damages.

RESULTING LEGAL DAMAGES

13.1 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.

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

13.3 Plaintiff is 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 Plaintiff to the attorneys' fees, treble damages, and other penalties provided by law.

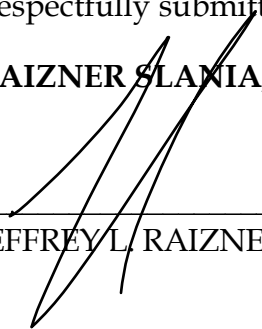
13.5 Plaintiff is entitled to statutory interest on the amount of its claim at the rate of 18% per year as damages under the Texas Insurance Code §542.060(a).

13.6 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 has 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



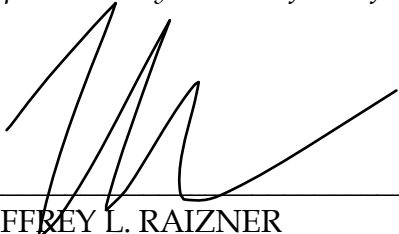
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ATTORNEYS FOR PLAINTIFF

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.



JEFFREY L. RAIZNER