

Cause No. _____

SRM INVESTMENTS, LLC dba	§	IN THE DISTRICT COURT OF
PIER CLUB APARTMENTS	§	
	§	
<i>Plaintiff</i>	§	
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
TED W. ALLEN & ASSOCIATES, INC.	§	
	§	
<i>Defendant</i>	§	___ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION & JURY DEMAND

TO THE HONORABLE JUDGE & JURY OF HARRIS COUNTY CITIZENS:

Plaintiff SRM INVESTMENTS, LLC d/b/a PIER CLUB APARTMENTS ("Pier Club" or "Plaintiff") file this Original Petition against Defendant TED W. ALLEN & ASSOCIATES, INC. ("Allen & Associates" or "Defendant") and would respectfully show the following:

Discovery Control Plan

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

Parties

2.1 Pier Club is a domestic limited liability company with its principal place of business in Texas.

2.2 Upon information and belief, Ted W. Allen & Associates, Inc. is a domestic for-profit corporation which maintains its principal place of business in Cypress, Harris County, Texas. Allen & Associates regularly conducts business in a

continuous and systematic manner in the State of Texas and can be served with process through its registered agent, Denise Allen, 17004 Grant Road, Cypress, Texas 77429.

Venue & Jurisdiction

3.1 Venue is proper in Harris County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(2) as it is the County where Defendant's principal office is located. Venue is also 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. In particular, Defendant marketed and procured the insurance policy at issue to Pier Club in Harris County, Texas and the representations regarding policy coverage (including coverages, limitations, and deductibles) were made in Harris County, Texas. Pier Club Apartments are also located in Harris County, Texas. Further, communications to and from Defendant and Pier Club (including telephone calls, mailings, and other communications to Pier Club) occurred in Harris County, Texas.

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

Factual Background

4.1 This suit arises from Defendant's wrongful acts or omissions related to the procurement and sale of the insurance policy which forms the basis of this suit.

4.2 On or before May 31, 2016, Allen & Associates marketed and sold a Commercial Property Policy (the "Policy") to Pier Club whereby coverage would be provided for Pier Club's property located at 9950 Club Creek Drive, Houston, Texas 77036 (the "Property") in exchange for the timely payment of premiums.

4.3 At the time that Allen & Associates secured the insurance policy for Pier Club, the Property was being used in accordance with Pier Club's customary business operations and intended to be insured consistent with the Plaintiff's specific instructions regarding the portfolio of properties. With full knowledge of Pier Club's business and the intentions regarding insuring the property portfolio, including a specific request that coverage be bound without per building limits regarding property damage or lost rents, Allen & Associates marketed and sold the Policy to Pier Club. The Policy was sold by Allen & Associates to Pier Club as the insured under the Policy and provides coverage to the Property, lost rents and to cover other losses for damages caused by fire.

4.4 On or about December 10, 2016, a catastrophic fire broke out at the Property. As a result, the exterior, roof, ceiling, interior, and other structures of the Property were damaged.

4.5 At the time of the fire, the Property was being utilized in accordance with Pier Club's customary operations, which was the same way the Property was being

used when the Policy was sold to Pier Club. Soon after the fire, Pier Club filed an insurance claim under the Policy with the insurance company for the substantial damages to the Property.

4.6 Pier Club submitted a claim to the insurance company under the Policy for the property damage. Pier Club asked that the cost of the damages be covered pursuant to the Policy, but the insurance company denied large portions of damages that coverage should have been secured for. Instead of coverage being extended as was requested, the insurance carrier applied stringent limits per building concerning the covered damages to the property and lost rents.

4.7 Allen & Associates, the agency that sold the Policy to Pier Club, failed to secure the requested building coverages and failed to remove references to per building limits despite clear requests for coverage by the insured clarifying Plaintiff's business needs and intent regarding the insurance agreement.

4.8 As a result of Defendant's acts and/or omissions, Pier Club was required to retain an attorney to prosecute its claim for insurance benefits.

4.9 Unfortunately, Pier Club has suffered significant financial harm and damage as a result of the Defendant's failures and misrepresentations.

FIRST CAUSE OF ACTION--Violations of Texas Insurance Code

5.1 Pier Club re-alleges and incorporates each allegation contained in Paragraphs 1-4.9 of this Petition as if fully set forth herein.

5.2 Allen & Associates misrepresented the insurance policy under which it affords property coverage to Pier Club, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

5.3 Allen & Associates misrepresented the insurance policy under which it affords property coverage to Pier Club, 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).

5.4 Allen & Associates misrepresented the insurance policy under which it affords property coverage to Pier Club, 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).

5.5 Allen & Associates 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).

Insurance Code Subchapter B pursuant to Texas Insurance Code Section 542.060.

SECOND CAUSE OF ACTION--Violations Of Texas DTPA

6.1 Pier Club re-alleges and incorporates each allegation contained in Paragraphs 1-5.5 of this Complaint as if fully set forth herein.

6.2 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.

THIRD CAUSE OF ACTION--Negligence

7.1 Pier Club re-alleges and incorporates each allegation contained in Paragraphs 1-6.2 of this Complaint as if fully set forth herein.

7.2 Allen & Associates owed a duty to Pier Club to obtain appropriate insurance coverage for Pier Club's property. Allen & Associates failed to properly obtain appropriate insurance coverage for Pier Club. Allen & Associates breached their duties to obtain appropriate insurance coverage for Pier Club and this breach was a proximate cause of Pier Club's damages.

FOURTH CAUSE OF ACTION--Negligent Misrepresentation

8.1 Pier Club re-alleges and incorporates each allegation contained in Paragraphs 1-7.2 of this Complaint as if fully set forth herein.

8.2 In the course of a business or a transaction in which Allen & Associates had interest, Allen & Associates negligently misrepresented to Pier Club that they were obtaining appropriate insurance coverage for Pier Club's property. Allen & Associates supplied false information for Pier Club to consider in purchasing its insurance policy and failed to exercise reasonable care or competence in communicating or obtaining information regarding Pier Club's property. Pier Club justifiably relied on Allen & Associates' representations that it had secured coverage for its property. Allen & Associates' negligent misrepresentations proximately caused Pier Club's damages.

KNOWLEDGE

9.1 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 Pier Club’s damages.

RESULTING LEGAL DAMAGES

10.1 Pier Club is entitled to the actual damages resulting from the Defendant’s violations of the law. These damages include the consequential damages to its economic welfare from the wrongful denial and delay of benefits; and continued impact on Pier Club; lost credit reputation; and the other actual damages permitted by law. In addition, Pier Club is entitled to exemplary damages.

10.2 As a result of Defendant’s acts and/or omissions, Pier Club has sustained damages in excess of the minimum jurisdictional limits of this Court.

10.3 Pier Club is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

10.4 Defendant’s knowing violations of the Texas Insurance Code and DTPA entitle Pier Club to the attorneys’ fees, treble damages, and other penalties provided by law.

10.5 Pier Club is 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).

10.6 Pier Club is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

10.7 Pier Club 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 Defendant 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

Pier Club 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