

DCV-20-07583
Cause No. _____

RUDRA DURSHAN, LLC DBA
WESTERN SKIES MOTEL
Plaintiff

V.

CAPACITY INSURANCE COMPANY,
AND PATRICK R. MEEGAN
Defendants

§ IN THE DISTRICT COURT OF
§
§
§
§ DONLEY COUNTY, TEXAS
§
§
§
§ 100th JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION & JURY DEMAND

Plaintiff RUDRA DURSHAN, LLC dba WESTERN SKIES MOTEL (“Western Skies” or “Plaintiff”) file this Original Petition against Defendants CAPACITY INSURANCE COMPANY (“Capacity”) and PATRICK R. MEEGAN (“Meegan”) (together “Defendants”) and would respectfully show the following:

Discovery Control Plan

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

Parties

2. Plaintiff, Rubra Durshan, LLC dba Western Skies Motel is a domestic limited liability company operating in the State of Texas.

3. Upon information and belief, Capacity is a fire and casualty insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Capacity regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. According to its insurance policy, Capacity may be served with process by serving its registered agent, **National Registered Agents, Inc., 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3140.**

4. Upon information and belief, Patrick R. Meegan is an individual residing in Collin County, Texas. Clark may be served with process at **Patrick R. Meegan, 2904 Tisinger Place, Plano, Texas 75075.**

Venue & Jurisdiction

5. Venue is proper in Donley County under TEX. CIV. PRAC. & REM. CODE §15.032 as the insured property is situated in Donley County, Texas. Venue is also proper in Donley 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 the claims occurred in Donley County. In particular, the adjustment of the claim by Defendants for losses under the policy (including payments to be made to Plaintiff under the policy) were conducted in Donley County, Texas, and the insured property at issue is located in Clarendon, Texas. Investigations and policy representations, including communications to and from Defendants and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred in Donley County, Texas.

6. Plaintiff seeks damages within the jurisdictional limits of this Court. 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.

Factual Background

The Property

7. Rubra Durshan, LLC dba Western Skies Motel owns and operates the motel located at 800 West 2nd Street, Clarendon, TX 79226, in Donley County, Texas.



The Policy

8. Prior to December 26, 2018, Plaintiff paid annual premiums, assessments, fees, surcharges, and taxes to Carrier to acquire comprehensive commercial insurance coverage for the Property under Policy No. CPP01009557A.

9. The Capacity Policy provides coverage for Plaintiff, for covered damages that occur during the Policy Period, from August 15, 2018 through August 15, 2019. In exchange for Plaintiff's premium payment, the Plaintiff's Policy includes the following limits and coverages, in relevant part:

COVERAGES PROVIDED – INSURANCE AT THE DESCRIBED PREMISES APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN.

Loc#	Bldg#	Coverage	Limit	Covered Cause of Loss	Co-Insurance	Replacement Cost Option	Monthly Limitation
01	01	Building	\$500,000	Special (Including Theft)	80%	Yes	
01	01	Business Income w/Extra Expense	\$60,000				1/4
01	01	Business Personal Property	\$100,000	Special (Including Theft)	80%	Yes	

SCHEDULE

Premises Number	Building Number	Windstorm Or Hail Deductible Percentage – Enter 1%, 2% Or 5%
1	1	1%

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

10. As evidenced by the Declarations Page and confirmed in the Policy provisions, the Policy provides coverage to each Property’s physical structure on a replacement cost value basis for damages caused by wind and hail up to \$660,000.00. *See Ex. A, Policy, at Declarations Pages.*

Plaintiff makes insurance claim for damages

11. As a result of the December 26, 2018 wind and hailstorm, the Property was substantially damaged. Sizeable portions of the roof were compromised by hail. There was also substantial interior and exterior damage to the buildings and damage to the signage at the property. The following photographs taken after the storm depict some of the damages:



12. The Property – especially the roofs – were substantially damaged by the hail. Yet as devastating as the physical damage was, Plaintiff felt fortunate to be protected by the insurance coverage they had procured to insure the Property from precisely this type of catastrophe. Immediately after the storm, Plaintiff promptly filed a claim with Carrier, alerting them to the extensive damages. This sense of security, borne of pricey contractual relationship, would prove illusory as Defendants began their investigation and handling of the claim.

Plaintiff works hard to document its damages for Defendants but unreasonably refuses to pay.

13. Capacity's claim-handling process resulted in a wrongful refusal to pay and both omitted the wealth of facts, physical evidence, obvious hail damages, and meteorological data supporting Plaintiff's claim. Capacity unreasonably pinned the losses on anything but the hail, an action designed to save Capacity millions of dollars in damages to the Property and the business.

14. Capacity assigned Patrick Meegan, as lead adjuster to handle the claim. Meegan inspected the property on March 16, 2020 and was unqualified and incapable of adequately assessing the damages to this type of commercial Property and was the source of many delays throughout the claim process. Defendants continued to delay the claim resolution and did not provide the insured with answers.

15. Capacity subsequently engaged a company called Rimkus Consulting Group, Inc (“Rimkus”) to perform an inspection of the Property. Capacity chose Rimkus, an engineering consulting company that is consistently retained by insurance carriers, to generate a report that he could use to deny or severely underpay the claim.

16. Per Capacity’s instructions, that is exactly what Rimkus did. On March 16, 2020, a consultant from Rimkus, Kenneth Wong, inspected the property to determine the scope of loss that resulted from hail damage. Mr. Wong’s report determined there was “The modified-bitumen roofing system and asphalt roofing system had not been damaged by a hail and/or wind event on or around April 17, 2019, or on any other date, except for one missing shingle tab due to deficient previous repairs, there was no other wind-related damage to the roof coverings” and that “water intrusion was caused by normal wear and tear.”

17. Capacity has delayed payment for Claim No. 2019CA0001 stating there was no damage related to wind or hail. Capacity issued a denial letter on March 26, 2019 and again on April 15, 2020. Despite clear evidence of covered replacement cost and mitigation damages, the Carrier has failed to date to issue the full payment owed under the Policy covering Plaintiff’s property and instead authorized the continued delays and underpayments.

18. To this day, due to Capacity’s outcome-oriented, inadequate, and haphazard investigation, Capacity has refused to pay for covered damages under the Policy.

Capacity ignores Plaintiff's demand letter

19. On June 1, 2017, Governor Abbott signed House Bill 1774 into law as Section 542A of the Texas Insurance Code. This new law was sponsored by approximately sixty state representatives and senators and contains important consumer protections against a variety of unscrupulous practices. Particularly, Section 542A.003 requires detailed, comprehensive pre-suit notice that is intended to make the claims and litigation processes more transparent and potentially even avoid unnecessary lawsuits. Upon receiving notice, an insurer has a right to conduct an inspection, and even make an offer to avoid litigation. When utilized properly, Section 542A should assist business consumers like Plaintiff to avoid protracted litigation over a clear claim.

20. In compliance with Section 542A.003, Plaintiff gave its pre-suit notice to Capacity on May 26, 2020. The pre-suit notice provided a comprehensive outline of Plaintiff's claim and damages, quantified its loss, and even offered to waive a formal claim for attorneys' fees if the contractual amounts were paid promptly.

21. Capacity did not respond to Plaintiff's demand letter.

FIRST CAUSE OF ACTION---Violations of Texas Insurance Code

22. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

23. Defendants 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).

24. The Carrier failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

25. Defendants 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).

26. The Carrier refused to pay the claims without conducting a reasonable investigation with respect to the claims, in violation of Texas Insurance Code Section 541.060 (a)(7).

27. Defendants misrepresented the insurance policies under which it affords property coverage to Plaintiff, by making an untrue statement of material facts, in violation of Texas Insurance Code Section 541.061 (1).

28. Defendants misrepresented the insurance policies 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).

29. Defendants misrepresented the insurance policies 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 facts 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).

30. Defendants 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

31. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

32. The Carrier failed to acknowledge receipt of the claim in violation of Texas Insurance Code

Section 542.055 (a)(1).

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

34. The Carrier 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 the Defendants in violation of Texas Insurance Code Section 542.056(a). The delay was egregious, unnecessary, and wholly caused by the Defendants.

35. The Carrier delayed payment of Plaintiff's claim in violation of Texas Insurance Code Section 542.058(a).

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

THIRD CAUSE OF ACTION---Statutory Interest

37. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

38. Plaintiff makes a claim for statutory interest penalties 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

39. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

40. As outlined above, The Carrier breached its contract with Plaintiff by refusing to pay for covered damages under the Policy. As a result of the Carrier's breach, Plaintiff suffered legal damages.

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

41. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

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

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

43. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

44. The Carrier acted fraudulently and with malice (as that term is legally defined) in denying and delaying Plaintiff's claim for benefits. Further, the Carrier 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

45. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

46. The Deceptive Trade Practices-Consumer Protection Act (DTPA) provides additional

protections to consumers who are victims of deceptive, improper, or illegal practices. Carrier's violations of the Texas Insurance Code create a cause of action under the DTPA. Carrier's violations of the Texas Insurance Code, as set forth herein, specifically violate the DTPA as well. Carrier has also acted unconscionably, as that term is defined under the DTPA.

47. Each of the actions described herein were done "knowingly" as that term is used in the DTPA and were a producing cause of Plaintiff's damages.

KNOWLEDGE

48. 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

49. 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 including loss of the property and business; and the other actual damages permitted by law. In addition, Plaintiff is entitled to exemplary damages.

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

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

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

53. Plaintiff is entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

54. As a result of Defendants' acts and/or omissions, Plaintiff has sustained damages in

excess of the jurisdictional limits of this Court.

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

56. 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 Business & Commerce Code §17.50 and Tex. Civ. Prac. & Rem. Code §37.009.

Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully request 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.

A handwritten signature in black ink, appearing to read "Andrew P. Slania". The signature is fluid and cursive, with a long horizontal stroke at the end.

ANDREW P. SLANIA