

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

DIYA MODI, LLC d/b/a BEST	§	
WESTERN OF MT. PLEASANT INN	§	
<i>Plaintiff</i>	§	
	§	
V.	§	Civil Action No. 5:15-cv-189
	§	
GUIDEONE NATIONAL INSURANCE	§	
COMPANY, UNDERWRITERS AT	§	
LLOYD'S, LONDON,	§	
<i>Defendant</i>	§	

PLAINTIFFS' AMENDED COMPLAINT & JURY DEMAND

Plaintiff DIYA MODI, LLC d/b/a BEST WESTERN OF MT. PLEASANT (“Diya Modi, LLC” or “Plaintiff”) files this Amended Petition against Defendants, GuideOne National Insurance Company and Certain Underwriters at Lloyd’s, London (“GuideOne” or “Underwriters”, collectively “Defendants”) and would respectfully show the following:

Parties

1. Diya Modi, LLC is a domestic limited liability company in good standing with a principal place of business in Titus County, Texas.
2. Upon information and belief, GuideOne is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. GuideOne regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. GuideOne does not maintain a registered agent on file in Texas and accordingly

may be served with process by serving certified mail, return receipt requested, to Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe, Austin, Texas 78701. GuideOne's policy of insurance in question does not designate the person to whom the commissioner is to mail process as required by the Texas Insurance Code, but upon information and belief, service may be forwarded to President, 1111 Ashworth Road, Des Moines, Iowa 50265-3538.

3. Upon information and belief, Underwriters is a non-admitted, foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Underwriters 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 the State. Accordingly, Underwriters may be served with process by serving certified mail, return receipt requested, to Texas Department of Insurance, 333 Guadalupe, Austin, Texas 78701 who can forward process to President, 25 West 53rd Street, Floor 14, New York, New York 10019-5401.

Venue & Jurisdiction

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiff and Defendants and the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interests and costs.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because this action concerns real property located in Titus County, Texas, and all or a

substantial part of the events giving rise to the claims described herein occurred in Titus County. In particular, the insurance policy at issue and of which Plaintiff is a beneficiary was to be performed in Titus County, Texas and the losses under the policy (including payments to be made to Plaintiff under the policy) were required to be made in Titus County, Texas. Further, investigation, including communications to and from Defendant and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred in Titus County, Texas.

Factual Background

6. On or before March 28, 2014, GuideOne sold a commercial property insurance policy bearing Policy No. PGO511004000 (the "Policy") to Diya Modi, LLC whereby GuideOne would provide insurance coverage for the commercial property located at 102 East Burton Road, Mount Pleasant, Texas 75455 (the "Property") in exchange for the timely payment of premiums. *See* Exhibit "A". The Policy was sold by GuideOne to Diya Modi, LLC as the insured under the policy and provides coverage for damages to the Property caused by wind and hail. Plaintiff is the named insured under the Policy and the owner of the Property.

7. On or before October 12, 2014, Underwriters sold a commercial property insurance policy bearing Policy No. ULL10205 (the "Policy") to Diya Modi, LLC whereby Underwriters would provide insurance coverage for the commercial property located at 102 East Burton Road, Mount Pleasant, Texas 75455 (the "Property") in exchange for the timely payment of premiums. *See* Exhibit "B". The Policy was sold by Underwriters to Diya Modi, LLC as the insured under the

policy and provides coverage for damages to the Property caused by wind and hail. Plaintiff is the named insured under the Policy and the owner of the Property.

8. On or about March 28, 2014, there was a hail storm in the area and at the Property. As a result, the Property sustained significant damage including damage to the roof, windows, exterior, interior, ceilings, interior, furnishings, and more. Upon discovering the damage, Diya Modi, LLC immediately filed an insurance claim under the Policy with GuideOne for damage to the Property caused by the wind and hail, asking that the damages be covered pursuant to the Policy.

9. On or about October 12, 2014, there was also a wind storm in the area and at the Property. As a result, the Property sustained significant damage including damage to the roof, windows, exterior, interior, ceilings, interior, furnishings, and more. Upon discovering the damage, Diya Modi, LLC filed an insurance claim under the Policy with Underwriters for damage to the Property caused by the wind and hail, asking that the damages be covered pursuant to the Policy.

10. Diya Modi, LLC timely submitted a claim for the damages under the Policy sold by GuideOne and under the Policy sold by Underwriters. GuideOne and Underwriters are the insurers on the Property. GuideOne and Underwriters assigned adjusters, consultants, and agents to Diya Modi, LLC's file that were inadequate and improperly trained to handle this type of claim. Specifically, GuideOne, a foreign company, assigned James Stafford, an adjuster out of Texas as

its agent and the individual adjuster with decision-making authority over the claim and responsibility for assessing damages to the Property under the Policy. Unfortunately, however, Stafford was unqualified and failed to perform a proper and thorough investigation of the claim. Underwriters, a foreign company, assigned Adam Brenner, an adjuster out of Texas, as its agent and the individual adjuster with decision-making authority over the claim and responsibility for assessing damages to the Property under the Policy. Brenner was also unqualified and failed to perform a proper and thorough investigation of the claim.

11. Defendants refused to conduct an adequate investigation into the damages to Diya Modi, LLC's property. Through its agents and representatives, Defendants failed to engage appropriate consultants and adjusters to objectively evaluate the damage and performed an outcome-oriented investigation aimed at underpaying or otherwise denying Diya Modi, LLC's claim.

12. On August 3, 2015 and on or before August 18, 2015, Defendants inspected the Property. Defendants failed to engage proper independent consultants or engineers to assess the damages. Defendants overlooked obvious damage and performed a haphazard inspection. After briefly visiting the Property, Defendants prepared an estimate of damages that grossly undervalued the damages to the Property. Defendants agreed to cover the full extent of the damages, but these admissions ultimately were misrepresentations. Because of Defendants' actions in refusing to acknowledge the extent of damage, Diya Modi, LLC was forced to hire its own consultant to prepare its own estimates and point

out obvious damages that Defendants ignored. Defendants falsely represented to Diya Modi, LLC and its representatives the amount of covered damages under the Policy. Defendants further made false representations regarding coverages afforded under the policies and Defendants prolonged and delayed any claims resolution. Ultimately, as a result of Defendants' substandard investigation and delays, Defendant GuideOne agreed to release the undisputed portion of the claim which is only a fraction of what is owed under the Policy, while Underwriters wrongfully denied the claim. *See Exhibit "C"*.

13. Defendants performed an inadequate, incomplete, and unreasonable investigation of Diya Modi, LLC's claim, which is evidenced by the estimates that fail to account for the necessary repairs to the Property. Defendants wrongfully denied and underpaid Diya Modi, LLC's claim for property repairs under the Policy. Defendants represented to Diya Modi, LLC that certain damages and losses were not covered under the policies when in fact they were. After delaying the claims process and after Diya Modi, LLC was forced to hire its own consultant, Defendants declined to continue evaluating the claim. Defendants has chosen to continue to deny and delay timely payment of the covered damages under the Policy. As a result, Diya Modi, LLC has not been fully paid under the policies provided by Defendants since the event. Moreover, Diya Modi, LLC's property has continued to worsen due to Defendants' delays and refusal to pay for adequate repairs. As a result of Defendants' actions, the Property has diminished in value and Plaintiff sustained a loss of business income.

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

15. Unfortunately, Defendants have delayed payment for Diya Modi, LLC's necessary and covered property repairs under the applicable insurance policies. Given the repeated delays of payment, Diya Modi, LLC has been subjected to significant economic impact, and continuing economic and physical damage. In addition, Diya Modi, LLC 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

16. Diya Modi, LLC re-alleges and incorporates each allegation contained in Paragraphs 1-13 of this Petition as if fully set forth herein.

17. 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).

18. Defendants failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

19. 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).

20. Defendants 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).

21. Defendants misrepresented the insurance policy under which it affords property coverage to Diya Modi, LLC, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Defendants misrepresented the insurance policy to Diya Modi, LLC, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

22. Defendants misrepresented the insurance policy under which it affords property coverage to Diya Modi, LLC 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). Defendants misrepresented the insurance policy to Diya Modi, LLC 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).

23. Defendants misrepresented the insurance policy under which it affords property coverage to Diya Modi, LLC 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 Diya Modi, LLC 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).

24. 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

25. Diya Modi, LLC re-alleges and incorporates each allegation contained in Paragraphs 1-22 of this Petition as if fully set forth herein.

26. Defendants failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

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

28. Defendants failed to notify Diya Modi, LLC 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 in violation of Texas Insurance Code Section 542.056(a).

29. Defendants delayed payment of Diya Modi, LLC's claim in violation of Texas Insurance Code Section 542.058(a).

THIRD CAUSE OF ACTION---Statutory Interest

30. Diya Modi, LLC re-alleges and incorporates each allegation contained in Paragraphs 1-27 of the Petition as if fully set forth herein.

31. Diya Modi, LLC 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

32. Diya Modi, LLC re-alleges and incorporates each allegation contained in Paragraphs 1-29 of the Petition as if fully set forth herein.

33. Defendants breached their contracts with Diya Modi, LLC. As a result of Defendants' breach, Diya Modi, LLC suffered legal damages.

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

34. Diya Modi, LLC re-alleges and incorporates each allegation contained in Paragraphs 1-31 of the Petition as if fully set forth herein.

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

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

36. Diya Modi, LLC re-alleges and incorporates each allegation contained in Paragraphs 1-33 of this Petition as if fully set for herein.

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

SEVENTH CAUSE OF ACTION---Violations of Texas DTPA

38. Diya Modi, LLC re-alleges and incorporates each allegation contained in Paragraphs 1-35 of this Complaint as if fully set forth herein.

39. The Deceptive Trade Practices-Consumer Protection Act (DTPA) provides additional protections to consumers who are victims of deceptive, improper, or illegal practices. Defendant's violations of the Texas Insurance Code create a cause of action under the DTPA. Defendant's violations of the Texas Insurance Code, as set forth herein, specifically violate the DTPA as well.

EIGHTH CAUSE OF ACTION---Fraud

40. Diya Modi, LLC re-alleges and incorporates each allegation contained in Paragraphs 1-37 of this Complaint as if fully set forth herein.

41. Defendants acted fraudulently as to each representation made to Diya Modi, LLC concerned material facts for the reason they would not have acted and which Defendants 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 Diya Modi, LLC, who relied on those representations, thereby causing injury and damage to Diya Modi, LLC.

KNOWLEDGE

42. 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 Diya Modi, LLC’s damages.

RESULTING LEGAL DAMAGES

43. Diya Modi, LLC 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; lost business income, lost credit reputation; and the other actual damages permitted by law. In addition, Diya Modi, LLC is entitled to exemplary damages.

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

45. Diya Modi, LLC is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

46. Defendants’ knowing violation of the duty of good faith and fair dealing entitle Diya Modi, LLC to exemplary damages.

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

48. Diya Modi, LLC 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).

49. Diya Modi, LLC 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,

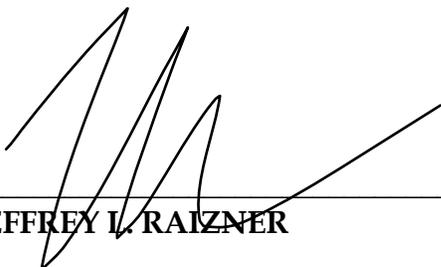
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JURY DEMAND

Diya Modi, LLC 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