

Cause No. \_\_\_\_\_

14925 MEMORIAL, LTD. and TRIYAR	§	IN THE DISTRICT COURT OF
RETAIL GROUP OF TX, LLC	§	
	§	
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
LEXINGTON INSURANCE COMPANY,	§	
CLEAR BLUE SPECIALTY INSURANCE	§	
COMPANY, ARCH SPECIALTY	§	
INSURANCE COMPANY, JAMES	§	
RIVER INSURANCE COMPANY,	§	
LANDMARK AMERICAN INSURANCE	§	
COMPANY, ASPEN SPECIALTY	§	
INSURANCE COMPANY, SOMPO	§	
AMERICA INSURANCE COMPANY,	§	
McLARENS, INC., and TIMOTHY	§	
BENNETT	§	_____ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION & JURY DEMAND**

TO THE HONORABLE JUDGE & JURY OF HARRIS COUNTY CITIZENS:

Plaintiffs, 14925 MEMORIAL, LTD. ("Memorial") and TRIYAR RETAIL GROUP OF TX, LLC ("Triyar") (collectively "Plaintiffs") file this Original Petition against Defendants LEXINGTON INSURANCE COMPANY ("Lexington"), CLEAR BLUE SPECIALTY INSURANCE COMPANY ("Clear Blue"), ARCH SPECIALTY INSURANCE COMPANY ("Arch"), JAMES RIVER INSURANCE COMPANY ("James River"), LANDMARK AMERICAN INSURANCE COMPANY ("Landmark"), ASPEN SPECIALTY INSURANCE COMPANY ("Aspen"), SOMPO AMERICA INSURANCE COMPANY ("Sompo") (Collectively "Carriers"), McLARENS, INC. ("McLarens"), and TIMOTHY

BENNETT (“Mr. Bennett”) (collectively “Defendants”) and would respectfully show the following:

**Discovery Control Plan**

1.1 Plaintiffs intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

**Parties**

2.1 Plaintiff, 14925 Memorial, Ltd. is a domestic limited partnership.

2.2 Plaintiff, Triyar Retail Group of TX, LLC is a domestic for-profit corporation.

2.3 Upon information and belief Lexington Insurance Company is a foreign insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. Lexington 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 this State. Accordingly, Lexington may be served with process by serving certified mail, return receipt requested, to **Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701** who can forward process to the **Division Executive, Commercial Property, 100 Summer Street, #2000, Boston, MA 02110.**

2.4 Upon information and belief Arch is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. Arch 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 this State. Accordingly, Arch may be served with

process by serving certified mail, return receipt requested, to Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701 who can forward process to the 10306 Regency Parkway Drive, Omaha, NE 68113.

2.5 Upon information and belief Clear Blue is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. Clear Blue 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 this State. Accordingly, Clear Blue may be served with process by serving certified mail, return receipt requested, to Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701 who can forward process to the 200 South College Street, Suite 2250, Charlotte, NC 28202.

2.6 Upon information and belief James River is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. James River 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 this State. Accordingly, James River may be served with process by serving certified mail, return receipt requested, to Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701 who can forward process to the 6641 West Broad Street, Suite 300, Richmond, VA 23230.

2.7 Upon information and belief, Landmark is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Landmark regularly conducts the business of

insurance in a systematic and continuous manner in the State of Texas. Landmark does not maintain an agent for service in Texas and accordingly may be served with process by serving certified mail, return receipt requested, to Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701 who can forward process to the 945 East Paces Ferry Road, Suite 1800, Atlanta, GA 30326.

2.8 Upon information and belief, Defendant Aspen is a non-admitted foreign surplus lines insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Aspen regularly and systematically issues insurance Claim in the State of Texas but does not maintain an agent for service. Accordingly, they may be served with process by serving certified mail, return receipt requested, to Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701 who can forward process to President, 175 Capital Blvd., Suite 300, Rocky Hill, CT, 06067-3914.

2.9 Upon information and belief, Defendant Sompo is a non-admitted foreign surplus lines insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Aspen regularly and systematically issues insurance Claim in the State of Texas. Accordingly, they may be served with process by serving certified mail, return receipt requested, to CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201

2.10 McLarens is a foreign for-profit company engaged in business in Texas, operating for the purposes of accumulating monetary profit. McLarens regularly conducts business in a systematic and continuous manner in the State of Texas.

McLarens may be served with process by serving certified mail, return receipt requested, to CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201

2.11 Upon information and belief, Timothy Bennett is a natural person who resides and works in the State of Texas and may be served with process to 14403 Twisted Canyon Drive, 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 resident of natural person defendant Mr. Bennett is a resident of Harris County. Venue is 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 and Plaintiffs' property that is the subject of the insurance claim, claim, denial, and litigation is in Harris County. In particular, the adjustment of the claim by Defendants McLarens and Mr. Bennett for losses under the claim (including denial and underpayment of the claim and payments to be made to Plaintiffs in Harris County under the claim) were conducted in Harris County, Texas. Further, investigations and claim representations, including communications to and from Defendants and Plaintiffs (including telephone calls, mailings, and other communications to Plaintiffs) occurred in Harris County, Texas. Additionally, site inspections and communications serving as the basis for suit occurred at the damaged subject property in Harris County.

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

### **Factual Background**

4.1 On or before June 5, 2013, Carriers sold a commercial property insurance claim (the "Claim") to Plaintiffs whereby the Carriers would provide insurance coverage for the property located at 15757 North Freeway, Houston, Texas (the "Property") in exchange for the timely payment of premiums. The Property consist of a structure owned by Plaintiffs. The Claim was sold by the Carriers to Plaintiffs as the insureds under the Claim and provides coverage for damages to the Property caused by a wind and hail.

4.2 On or about June 5, 2013, Plaintiffs' property was substantially damaged by a wind and hailstorm that struck Harris County. As a result, the roof, HVAC, exterior, and interior of the Property were substantially damaged. Immediately upon discovering the damage, Plaintiffs filed an insurance claim under the Claim with the Carriers for damages to the Property caused by the wind and hailstorm. Plaintiffs asked that the cost of repairs be covered pursuant to the Claim.

4.3 The Carriers are the insurers on the Property. In response to the catastrophe claim, the Carriers assigned adjusters, consultants, and agents to Plaintiffs' files that were inadequate and improperly trained. More specifically, the Carriers assigned Plaintiffs' claim to McLarens, Inc. who in turn assigned its employee Mr. Bennett to adjust the damages under the Claim.

4.4 McLarens and Mr. Bennett failed to perform a thorough investigation of the claim. Mr. Bennett inspected the Property on or about November 19, 2015. He performed a substandard inspection of the Property. After visiting the Property, Mr. Bennett did not prepare any estimates or scopes of damages to the Property or failed to provide those to the insured. Mr. Bennet falsely represented that the damages were merely cosmetic and failed to conduct an adequate investigation that would have clearly proved otherwise. Mr. Bennet ignored facts confirming coverage such as the existence of hail and wind damage at numerous sections of the Property. Mr. Bennett failed to hire any qualified experts to appropriately assess the damage. Mr. Bennett delayed the claims process and failed to communicate with the insured. Mr. Bennett also misrepresented coverage afforded under the Claim. McLarens and Mr. Bennett performed an inadequate, incomplete and unreasonable investigation of Plaintiffs' claims, which is evidenced by his delays, lack of communication, refusal to hire to appropriate consultants, and lack of estimates or scopes of damage to account for the necessary repairs for the Property. The Carriers relied exclusively on McLarens and Mr. Bennett in determining what amounts, if any, to pay on Plaintiffs' claim and failed to perform their own adequate investigation.

4.5 The Carriers, McLarens and Mr. Bennett wrongfully underpaid and denied Plaintiffs' claims for property repairs on April 4<sup>th</sup>, 2016. Defendants represented to Plaintiffs that certain damages were not covered under the Claim when in fact they were. The Carriers, McLarens and Mr. Bennett have chosen to continue to deny

timely payment of the damages. As a result, Plaintiffs have not been fully paid under the Claim provided by the Carriers since the wind and hailstorm. Plaintiffs were forced to hire their own consultant to independently evaluate the damages to the Property because Defendants refused to do so. To this day, the Carriers refuse to pay for the necessary repairs to the Property as required under the Claim.

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

4.7 Unfortunately, Defendants have delayed payments for Plaintiffs' necessary and covered property repairs under the insurance Claim that the Carriers wrote. Given the repeated delays of payments, Plaintiffs have been subjected to significant economic impact, worry, distress, and continuing economic and physical damages. Because of Defendants' delays, denials, and underpayment, Plaintiffs have 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, Plaintiffs have 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 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-4.7 of this Petition as if fully set forth herein.

5.2 The Carriers, McLarens and Mr. Bennett 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 The Carriers, McLarens and Mr. Bennett failed to adopt and implement reasonable standards for prompt investigation of claims arising under its Claim.

5.4 The Carriers, McLarens and Mr. Bennett failed to provide promptly a reasonable explanation, in relation to the facts or applicable law, for the denial of a claims, in violation of Texas Insurance Code Section 541.060 (a)(3).

5.5 The Carriers, McLarens and Mr. Bennett failing within a reasonable time to affirm or deny coverage of a claim to claimholders; or submit a proper reservation of rights to a claimholders in violation of Texas Insurance Code Section 541.060(a)(4).

5.6 The Carriers, McLarens and Mr. Bennett refused to pay the claim without conducting a reasonable investigation with respect to the claim, in violation of Texas Insurance Code Section 541.060 (a)(7).

5.7 The Carriers, McLarens and Mr. Bennett misrepresented the insurance Claim under which it affords Property coverage to Plaintiffs, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

The Carriers, McLarens and Mr. Bennett misrepresented the insurance Claim to Plaintiffs, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

5.8 The Carriers, McLarens and Mr. Bennett misrepresented the insurance Claim under which it affords Property coverage to Plaintiffs 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). The Carriers, McLarens and Mr. Bennett misrepresented the insurance Claim to Plaintiffs 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).

5.9 The Carriers, McLarens and Mr. Bennett misrepresented the insurance Claim under which it affords Property coverage to Plaintiffs 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). The Carriers, McLarens and Mr. Bennett misrepresented the insurance Claim to Plaintiffs 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).

5.10 The Carriers, McLarens and Mr. Bennett 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 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-5.10 of this Petition as if fully set forth herein.

6.2 The Carriers failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

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

6.4 The Carriers failed to notify Plaintiffs 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 the Carriers, McLarens and Mr. Bennett in violation of Texas Insurance Code Section 542.056(a).

6.5 The Carriers delayed payments of Plaintiffs' claims in violation of Texas Insurance Code Section 542.058(a).

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

7.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-6.5 of the Petition as if fully set forth herein.

7.2 Plaintiffs make 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 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-7.2 of the Petition as if fully set forth herein.

8.2 The Carriers breached their contract with Plaintiffs. As a result of the Carriers' breach, Plaintiffs suffered legal damages.

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

9.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-8.2 of the Petition as if fully set forth herein.

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

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

10.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-9.2 of this Petition as if fully set for herein.

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

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

11.1 Plaintiffs re-allege and incorporate 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 Plaintiffs' damages.

### **RESULTING LEGAL DAMAGES**

13.1 Plaintiffs are 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, and continued impact on Plaintiffs; lost credit reputation; and the other actual damages permitted by law. In addition, Plaintiffs are entitled to exemplary damages.

14.2 As a result of Defendants' acts and/or omissions, Plaintiffs have sustained damages in excess of the minimum jurisdictional limits of this Court.

14.3 Plaintiffs are 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 Plaintiffs to the attorneys' fees, treble damages, and other penalties provided by law.

14.5 Plaintiffs are 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).

14.6 As a result of Defendants' acts and/or omissions, Plaintiffs have sustained damages in excess of the jurisdictional limits of this Court.

14.7 Plaintiffs are entitled under law to the recovery of prejudgment interest at the maximum legal rate.

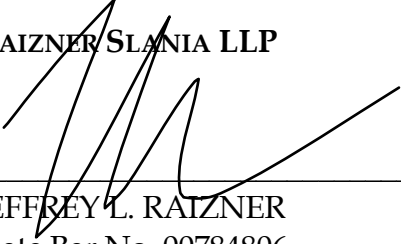
14.8 Plaintiffs are entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, the Texas Insurance Code 542.060(a)-(b), the Tex. Bus & Commerce Code §17.50 and Tex. Civ. Prac. & Rem. Code §37.009.

#### **Prayer**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that Plaintiffs 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 Plaintiffs may be entitled.

Respectfully submitted,

**RAIZNER SLANIA LLP**



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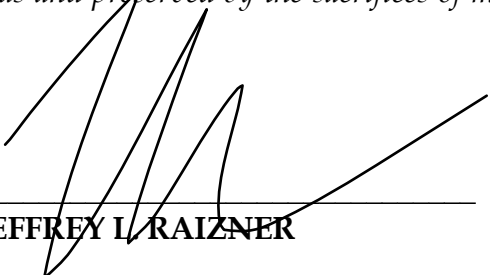
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**ATTORNEYS FOR PLAINTIFFS**

**JURY DEMAND**

*Plaintiffs 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**