

JEFFREY DINGER dba CINEMA 4 and § IN THE DISTRICT COURT OF
ROCKPORT CINEMA, INC. §
Plaintiffs, §
v. § ARANSAS COUNTY, TEXAS
STATE FARM LLOYDS §
Defendant. § _____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION & JURY DEMAND

Plaintiffs JEFFREY DINGER dba CINEMA 4 (“Dinger”) and ROCKPORT CINEMA, INC. (“Rockport Cinema”) (collectively “Plaintiffs”) files this Original Petition against STATE FARM LLOYDS (“State Farm”) and would respectfully show the following:

Discovery Control Plan

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

Parties

2. Plaintiff, Jeffrey Dinger is an individual resident in the State of Texas doing business as Cinema 4 in Aransas County, Texas.

3. Plaintiff, Rockport Cinema, Inc. is a domestic for-profit located and operating in Aransas County, Texas.

4. Upon information and belief, State Farm is a domestic insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. State Farm Lloyd’s physical address with the Texas Department of Interest is 1251 State Street, Suite 1000, Richardson Texas. As a domestic insurer, State Farm regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. According to its

insurance policy, State Farm may be served with process by serving **Corporation Services Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.**

Venue & Jurisdiction

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

6. Plaintiffs seek damages within the jurisdictional limits of this Court. At this time, Plaintiffs seek monetary relief in an amount over \$200,000 but not more than \$1,000,000. Plaintiffs reserve the right to modify the amount and type of relief sought in the future.

Factual Background

The Property

7. Cinema 4 operates as a movie theater located at 2702 Highway 35 N, Rockport, TX 78382-5709, in Aransas County, Texas.
8. The property is a one-story building consisting of 91,025 square feet of interior space.



The Policy

9. Prior to August 25, 2017, Plaintiffs paid annual premiums, assessments, fees, surcharges, and taxes to State Farm to acquire businessowners insurance coverage for the Property under Policy No. 90-J2-2658-2.
10. The Policy provides coverage for Plaintiffs, for covered damages that occurred during the Policy Period, from May 26, 2017 through May 26, 2018. In exchange for Plaintiffs' premium payment, the Plaintiffs' Policy includes the following limits and coverages, in relevant part:

Location Number	Location of Described Premises	Limit of Insurance* Coverage A - Buildings	Limit of Insurance* Coverage B - Business Personal Property	Seasonal Increase-Business Personal Property
001	2702 HIGHWAY 35 N ROCKPORT TX 78382-5709	No Coverage	\$ 585,500	25%

* As of the effective date of this policy, the Limit of Insurance as shown includes any increase in the limit due to Inflation Coverage.

SECTION I - EXTENSIONS OF COVERAGE - LIMIT OF INSURANCE - PER POLICY

The coverages and corresponding limits shown below are the most we will pay regardless of the number of described premises shown in these Declarations.

COVERAGE	LIMIT OF INSURANCE
Loss Of Income And Extra Expense	Actual Loss Sustained - 12 Months

11. As evidence by the Declarations Page and confirmed in the Policy provisions, the Policy provides coverage to the Property's business personal property up to \$585,000. The Policy also provide coverage for Loss of Income up to the actual loss sustained. *See* Ex. A, Policy, at Declarations Pages.

Hurricane Harvey

12. On or about August 25, 2017, Hurricane Harvey, recognized as one of the most devastating natural disasters in United States history, made landfall on the Texas coast in San Patricio County and Aransas County as a Category 4 hurricane. Wind gusts of up to 132 miles per hour were reported within the same area of the Property. Rockport, Texas experienced wind speeds of up to 150 miles per hour. The First American Weather Service has stated that these wind speeds are likely underestimated in coastal areas such as San Patricio County due to disabled equipment at the time Harvey made landfall. Hurricane Harvey continued to travel through the southeast part of Texas, inflicting billions of dollars in damages to private and public property. The Texas Division of Emergency Management incurred more than \$439 million in

costs associated with debris removal, public property damage, and police/EMS response immediately after Harvey. Texas Governor Greg Abbott has estimated that Hurricane Harvey's damages will total an historic \$180 billion.

Plaintiffs make insurance claim for damages

13. As a result of Harvey's extreme winds and rain when it hit the Texas Coast on or about August 25, 2017, the Property was substantially damaged. The catastrophic wind and rain caused substantial damage, including damage to the signage, furniture, fixtures, cameras, movie theatres, screens, and more. The following photographs taken after Harvey depict some of the damages:





14. The Property was substantially damaged by the storm. Yet as devastating as the physical damage was, Plaintiffs 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, Plaintiffs promptly filed a claim with State Farm, alerting them to the extensive damages. This sense of security, borne of pricey contractual relationship, would prove illusory as Defendant began their investigation and handling of the claim.

Plaintiffs work hard to document its damages for Defendant but received a denial.

15. State Farm's claim-handling process resulted in wrongful underpayment and omitted important facts, physical evidence, and meteorological data supporting Plaintiffs' claim and extensive losses. On September 15, 2017, Larry Anderson personally and partially inspected the property to determine the scope of damages that resulted from hurricane-force wind. State Farm

underpaid Plaintiffs for the covered damage to their Business Personal Property. State Farm also dramatically underpaid Plaintiffs' Loss of Income/Business Interruption claim. On July 17, 2018, State Farm denied any claim handling errors and also denied any further payments.

16. Plaintiffs were forced to hire their own consultants. These consultants identified dramatic damage that ruined the building's interior and business personal property. Despite clear evidence of covered damages, State Farm failed to issue the full payment owed under the insurance policy covering the Plaintiffs' property and instead authorized the continued delays and underpayments.

17. State Farm violated the Texas Insurance Code but begrudgingly paid \$395,555.09 on January 21, 2019. Since the August 2017 Hurricane, State Farm acted unreasonably, underpaid the amounts it ultimately and belatedly conceded, further delayed full payment, and took deductions in violation of the Texas Department of Insurance's regulations. To be sure, State Farm unreasonably applied a period of restoration entirely inconsistent with its own refusal to pay the claim benefits until January 21, 2019, refused to fully pay for the actual income loss sustained as was promised in the policy contract, unreasonably applied depreciation in contravention of published Texas Department of Insurance Rules, and further refused to acknowledge additional business personal property damages. State Farm's conceded illegal delays caused additional business losses as well as financial impacts including the hiring of consultants and attorneys to force State Farm to accept even some responsibility.

18. To this day, due to State Farm's inadequate and haphazard investigation, State Farm has refused to fully pay for covered damages under the Policy.

State Farm misses deadlines to respond to Plaintiffs' 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 Plaintiffs to avoid protracted litigation over a clear claim.

20. In compliance with Section 542A.003, Plaintiffs gave its pre-suit notice to State Farm on November 19, 2018. The pre-suit notice provided a comprehensive outline of Plaintiffs' 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. State Farm did not timely respond to the demand letter. As set forth above, State Farm begrudgingly paid some amounts it clearly knew it owed for several months on January 21, 2019 and continued other violations of the contract and Texas Insurance Code by refusing to pay the full amount of benefits.

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

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

23. State Farm 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. State Farm failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

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

28. State Farm misrepresented the insurance policies 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).

29. State Farm misrepresented the insurance policies 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 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. State Farm 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. Plaintiffs re-alleges and incorporate each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

32. State Farm failed to acknowledge receipt of the claim in violation of Texas Insurance Code

Section 542.055 (a)(1).

33. State Farm failed to timely commence investigation of the claim or to request from Plaintiffs any additional items, statements or forms that the Defendant reasonably believes to be required from Plaintiffs in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

34. State Farm failed to notify Plaintiffs 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 Defendant in violation of Texas Insurance Code Section 542.056(a). The delay was egregious, unnecessary, and wholly caused by the Defendant.

35. State Farm delayed payment of Plaintiffs' 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 Plaintiffs' damages.

THIRD CAUSE OF ACTION---Statutory Interest

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

38. Plaintiffs 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. Plaintiffs re-alleges and incorporate each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

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

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

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

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

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

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

44. State Farm acted fraudulently and with malice (as that term is legally defined) in denying and delaying Plaintiffs' claim for benefits. Further, State Farm 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

45. Plaintiffs re-alleges and incorporate 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. State

Farm's violations of the Texas Insurance Code create a cause of action under the DTPA. State Farm's violations of the Texas Insurance Code, as set forth herein, specifically violate the DTPA as well. State Farm 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 Plaintiffs' 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 Plaintiffs' damages.

RESULTING LEGAL DAMAGES

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

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

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

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

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

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

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

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

Prayer

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

Respectfully submitted,

RAIZNER SLANIA LLP



JEFFREY L. RAIZNER

State Bar No. 00784806

ANDREW P. SLANIA

State Bar No. 24056338

AMY B. HARGIS

State Bar No. 24078630

BEN WICKERT

State Bar No. 24066290

efile@raiznerlaw.com

2402 Dunlavy Street

Houston, Texas 77006

Phone: (713)554.9099

Fax: (713)554.9098

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.

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