

Cause No. _____

DONALD HUDGINS JR. AND	§	IN THE DISTRICT COURT OF
BAKER DEVELOPMENT COMPANY	§	
	§	
V.	§	TARRANT COUNTY, TEXAS
	§	
THE NETHERLANDS INSURANCE	§	
COMPANY AND ANNETTE	§	
TARQUINIO	§	___ JUDICIAL DISTRICT

PLAINTIFFS’ ORIGINAL PETITION & JURY DEMAND

TO THE HONORABLE JUDGE & JURY OF TARRANT COUNTY CITIZENS:

Plaintiffs DONALD HUDGINS JR. AND BAKER DEVELOPMENT COMPANY (collectively “Baker Development” or “Plaintiff”) file this Original Petition against Defendants THE NETHERLANDS INSURANCE COMPANY (“Netherlands Insurance”) AND ANNETTE TARQUINIO (“Tarquinio”) (together “Defendants”) and would respectfully show the following:

Discovery Control Plan

1.1 Baker Development intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

Parties

- 2.1 Baker Development is a domestic corporation.
- 2.2 Donald Hudgins Jr. is a natural person residing and working in the State of Texas.
- 2.3 Upon information and belief, Netherlands Insurance is a foreign insurance company engaged in the business of insurance in Texas, operating for the purpose

of accumulating monetary profit. Netherlands Insurance regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas and may be served with process by serving certified mail, return receipt requested, to Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

2.4 Upon information and belief, Annette Tarquinio a natural person residing and working in the State of Texas and may be served with process at 2001 Lewis Crossing Court, Keller, Texas 76248.

Venue & Jurisdiction

3.1 Venue is proper in Tarrant 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 Tarrant County. In particular, the insurance policy at issue and of which Baker Development is a beneficiary was to be performed in Tarrant County, Texas and the losses under the policy (including payments to be made to Baker Development under the policy) were required to be made in Tarrant County, Texas. Additionally, the property at issue is located in Tarrant County, Texas. Further, the investigation of the underlying claim, including communications to and from Defendants and Baker Development (including telephone calls, mailings, and other communications to Baker Development) occurred out of Vericclaim's office in Tarrant County, Texas.

3.2 Baker Development seeks damages within the jurisdictional limits of this Court. Baker Development trusts the jury to evaluate the evidence, but at this

time, Baker Development seeks monetary relief in an amount over \$1,000,000. Baker Development reserves the right to modify the amount and type of relief sought in the future.

Factual Background

4.1 On or before April 3, 2012, Netherlands Insurance sold a commercial property insurance policy bearing Policy No. CBP8857047 (the “Policy”) to Baker Development whereby Netherlands Insurance would provide insurance coverage for the commercial property located at 7110-7112 Burns and 7120-7144 Burns (also referenced as 7130 Burns), Richland Hills, Texas 76118 (the “Property”) in exchange for the timely payment of premiums. The Policy was sold by Netherlands Insurance to Baker Development as the insured under the policy and purports to provide coverage for damages to the Property caused by wind and hail.

4.2 On or about April 3, 2012, there was a wind and hail storm in Fort Worth and at the Property. As a result, the Property sustained significant damage including damage to the roof, HVAC, windows, exterior, interior, ceilings, interior, furnishings, and more. Upon discovering the damage, Baker Development immediately filed an insurance claim under the Policy with Netherlands Insurance for damage to the Property caused by the wind and hail, asking that the damages be covered pursuant to the Policy.

4.3 Baker Development timely submitted a claim for the damages under the Policy sold by Netherlands Insurance. Netherlands Insurance is the insurer on the

Property. Netherlands Insurance assigned adjusters, consultants, and agents to Baker Development's file that were inadequate and improperly trained to handle this type of claim. Specifically, Netherlands Insurance, a foreign company, assigned Tarquinio as the individual adjuster with decision-making authority over the claim and responsibility for assessing damages to the Property under the Policy. Tarquinio handled the entire claims process out of the local office. Unfortunately, however, Tarquinio was unqualified and failed to perform a proper and thorough investigation of the claim.

4.4 Tarquinio refused to conduct an adequate investigation into the damages to Baker Development's property. Tarquinio failed to engage appropriate consultants and adjusters to objectively evaluate the damage and performed an outcome-oriented investigation aimed at denying Baker Development's claim. On June 12, 2015, Defendants inspected the Property but Tarquinio did not prepare any estimates or scopes of damage to the Property or failed to provide those to the insured. Instead, Tarquinio retained a consultant to assess damage to the Property; that consultant was inadequate to evaluate the damage. Because of Tarquinio's actions, Plaintiff was forced to hire its own consultants and representatives prepare its own estimates pointing out obvious damages that Tarquinio and her chosen consultants ignored. Tarquinio falsely represented to Baker Development and its representatives that there was no "recent" hail damage to the Property. Tarquinio refused to provide the report or findings to Baker Development until the claim was denied. Throughout the claims process Tarquinio prolonged and delayed any

claims resolution. As a result of Tarquinio's substandard investigation and delays, on July 23, 2015, Baker Development's claim was denied and Netherlands Insurance refused to issue any payments under the Policy. *See Exhibit "A"*.

4.5 Netherlands Insurance relied on Tarquinio's substandard investigation in making coverage determinations and in deciding what amounts, if any, to pay on the claim. Netherlands Insurance and Tarquinio performed an inadequate, incomplete, and unreasonable investigation of Baker Development's claim, which is evidenced by the lack of estimates and the one report that fails to account for the necessary repairs to the Property.

4.6 Netherlands Insurance and Tarquinio wrongfully denied and underpaid Baker Development's claim for property repairs under the Policy. Netherlands Insurance and Tarquinio represented to Baker Development that certain damages and losses were not covered under the policies when in fact they were. After delaying the claims process, Tarquinio declined to continue evaluating the claim and, as a result, Netherlands Insurance refused to issue any payments under the Policy. Baker Development was forced to hire its own consultants, given Defendants' delay and refusal to completely pay for damages under the Policy. Netherlands Insurance and Tarquinio have chosen to continue to deny and delay timely payment of the covered damages under the Policy. As a result, Baker Development has not been fully paid under the policies provided by Netherlands Insurance since the event.

4.7 As a result of Defendants' acts and/or omissions, Baker Development was

required to retain an attorney to prosecute its claim for insurance benefits.

4.8 Unfortunately, Netherlands Insurance and Tarquinio have delayed payment for Baker Development's necessary and covered property repairs under its insurance policy. Given the repeated delays of payment, Baker Development has been subjected to significant economic impact, worry, distress, and continuing economic and physical damage. In addition, Baker Development 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

5.1 Baker Development re-alleges and incorporates each allegation contained in Paragraphs 1-4.8 of this Petition as if fully set forth herein.

5.2 Netherlands Insurance and Tarquinio 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 Netherlands Insurance and Tarquinio failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 Netherlands Insurance and Tarquinio 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).

5.5 Netherlands Insurance and Tarquinio 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).

5.6 Netherlands Insurance and Tarquinio misrepresented the insurance policy under which it affords property coverage to Baker Development, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Netherlands Insurance and Tarquinio misrepresented the insurance policy to Baker Development, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

5.7 Netherlands Insurance and Tarquinio misrepresented the insurance policy under which it affords property coverage to Baker Development 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). Netherlands Insurance and Tarquinio misrepresented the insurance policy to Baker Development 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).

5.8 Netherlands Insurance and Tarquinio misrepresented the insurance policy under which it affords property coverage to Baker Development 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). Netherlands Insurance and Tarquinio

misrepresented the insurance policy to Baker Development 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).

5.9 Netherlands Insurance and Tarquinio 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 Baker Development re-alleges and incorporates each allegation contained in Paragraphs 1-5.9 of this Petition as if fully set forth herein.

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

6.3 Netherlands Insurance and Tarquinio failed to timely commence investigation of the claim or to request from Baker Development any additional items, statements or forms that Netherlands Insurance and Tarquinio reasonably believe to be required from Baker Development in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

6.4 Netherlands Insurance and Tarquinio failed to notify Baker Development 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).

6.5 Netherlands Insurance and Tarquinio delayed payment of Baker Development' claim in violation of Texas Insurance Code Section 542.058(a).

THIRD CAUSE OF ACTION---Statutory Interest

7.1 Baker Development re-alleges and incorporates each allegation contained in Paragraphs 1-6.5 of the Petition as if fully set forth herein.

7.2 Baker Development 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

8.1 Baker Development re-alleges and incorporates each allegation contained in Paragraphs 1-7.2 of the Petition as if fully set forth herein.

8.2 Netherlands Insurance breached its contract with Baker Development. As a result of Netherlands Insurance's breach, Baker Development suffered legal damages.

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

9.1 Baker Development re-alleges and incorporates each allegation contained in Paragraphs 1-8.2 of the Petition as if fully set forth herein.

9.2 Netherlands Insurance, as the property coverage insurer, had a duty to deal fairly and in good faith with Baker Development in the processing of the claim.

Netherlands Insurance breached this duty by refusing to properly investigate and effectively denying insurance benefits. Netherlands Insurance knew or should have known that there was no reasonable basis for denying or delaying the required benefits. As a result of Netherlands Insurance's breach of these legal duties, Baker Development suffered legal damages.

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

10.1 Baker Development re-alleges and incorporates 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 Baker Development's claim 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 Baker Development.

SEVENTH CAUSE OF ACTION---Violations Of Texas DTPA

11.1 Baker Development re-alleges and incorporates 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.

EIGHTH CAUSE OF ACTION---Fraud

12.1 Baker Development re-alleges and incorporates each allegation contained in Paragraphs 1-11.2 of this Complaint as if fully set forth herein.

12.2. Netherlands Insurance and Tarquinio acted fraudulently as to each representation made to Baker Development concerned material facts for the reason they would not have acted and which Netherlands Insurance and Tarquinio 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 Baker Development, who relied on those representations, thereby causing injury and damage to Baker Development.

KNOWLEDGE

13.1 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 Baker Development’s damages.

RESULTING LEGAL DAMAGES

14.1 Baker Development 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; the mental anguish and physical suffering resulting from this wrongful denial of benefits, and continued impact on Baker Development; lost credit reputation; and the other actual damages permitted by law. In addition, Baker Development is entitled to exemplary damages.

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

14.3 Baker Development is 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 Baker Development to the attorneys' fees, treble damages, and other penalties provided by law.

14.5 Baker Development 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).

14.6 Baker Development 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, 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,

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JURY DEMAND

Baker Development 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