

Cause No. DC-17-05065

Tonya Pointer

GILLIEM POWER, INC. dba	§	IN THE DISTRICT COURT OF
MIDLOTHIAN KWIK KAR WASH	§	
	§	
	§	
V.	§	DALLAS COUNTY, TEXAS
	§	
COLUMBIA MUTUAL INSURANCE	§	
COMPANY, TEXAS INSURANCE	§	
CLAIMS SERVICE, INC. and	§	
CLIFFORD JONES FISKE	§	___ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION & JURY DEMAND

Plaintiff GILLIEM POWER, INC. dba MIDLOTHIAN KWIK KAR WASH (“Kwik Kar Wash” or “Plaintiff”) by and through their attorneys, files this Original Petition & Jury Demand against Defendants COLUMBIA MUTUAL INSURANCE COMPANY (“Columbia”), TEXAS INSURANCE CLAIMS SERVICE, INC. (“Texas Insurance”) and CLIFFORD JONES FISKE (“Fiske”) (collectively “Defendants”) and would respectfully show the following:

Discovery Control Plan

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

Parties

2.1 Plaintiff, Kwik Kar Wash, is a domestic for-profit corporation under the laws of the State of Texas.

2.2 Upon information and belief, Columbia is a fire and casualty insurance company engaged in the business of insurance in Texas, operating for the purpose

of accumulating monetary profit. Columbia regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Columbia does not maintain an agent for service in Texas and accordingly may be served with process by serving certified mail, return receipt requested, to **Byron C. Smith, 3420 Executive Center Drive, Suite 200, Austin, Texas 78731-1693.**

2.3 Upon information and belief, Texas Insurance is a domestic corporation operating out of its Texas offices, including its office in Dallas County, for the purpose of accumulating monetary profit. Texas Insurance regularly engages in the business of adjusting insurance claims in Texas and may be served with process through its registered agent, **Paul Parker, 1701 Gateway Blvd., #455, Richardson, Texas 75080.**

2.4 Upon information and belief, Mr. Fiske is a natural person residing and working in the State of Texas. He may be served with process at **Clifford Jones Fiske, 2913 Bluffview Drive, Garland, TX 75043-1451.**

Venue & Jurisdiction

3.1 Venue is proper in Dallas County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(2) as it is the resident of natural person defendant Clifford Jones Ziske is a resident of Dallas County. Venue is also proper in Dallas under Tex. Civ. Prac. & Rem. Code section 15.002(a)(1), as a substantial part of the events or omissions giving rise to this claim occurred in Dallas County including the denial and other communications occurred in Dallas County. In particular, the

adjustment of the claim by Defendants Texas Insurance and Mr. Fiske for losses under the policy (including denial and underpayment of the claim and payments to be made to Kwik Kar Wash in Dallas County under the policy) were conducted in Dallas County, Texas out of Defendants' Dallas County office. Further investigation, including communications to and from Defendants and Kwik Kar Wash (including telephone calls, mailings, and other communications to Kwik Kar Wash) and communications between Defendants regarding the claim occurred in Dallas County, Texas.

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

General Allegations

4.1 On or before April 28, 2015, Columbia sold a commercial property insurance policy bearing Policy No. GRGTX0000094371 to Kwik Kar Wash whereby Columbia would provide insurance coverage for the property located at 100 Silken Crossing, Midlothian, Texas 76065 (the "Property") in exchange for the timely payment of premiums (the "Policy"). The Property consists of a structure owned by Kwik Kar Wash. The Policy was sold by Columbia to Kwik Kar Wash as the insured under the Policy and provides coverage for damages to the Property caused by a hailstorm.

4.2 On or about April 28, 2015, Plaintiff's property was substantially damaged by a severe hailstorm that struck Ellis County. As a result, the roof, exterior, and interior of the Property were substantially damaged. Immediately upon discovering the damage, Plaintiff filed an insurance claim under the Policy with Columbia for damages to the Property caused by the hailstorm. Plaintiff asked that the cost of repairs be covered pursuant to the Policy.

4.3 Columbia is the insurer on the Property. In response to the catastrophe claim, the Carrier assigned adjusters, consultants, and agents to Plaintiff's file that were inadequate and improperly trained. More specifically, Columbia assigned Plaintiff's claim to Texas Insurance Claims Services who in turn assigned its employee Mr. Fiske to adjust the damages under the Policy.

4.4 Texas Insurance and Mr. Fiske failed to perform a thorough investigation of the claim. Mr. Fiske inspected the property on February 21, 2017. He performed a substandard inspection of the Property. Mr. Fiske failed to hire any qualified experts to appropriately assess the damage. Mr. Fiske delayed the claims process and failed to communicate with the insured. Mr. Fiske also misrepresented the Policy's coverage. Texas Insurance and Mr. Fiske performed an inadequate, incomplete and unreasonable investigation of Plaintiff's claim, which is evidenced by his delays, lack of communication, refusal to hire to appropriate consultants. Columbia relied exclusively on Texas Insurance and Mr. Fiske in determining what amounts, if any, to pay on Plaintiff's claim and failed to perform their own

adequate investigation. It is clear that Columbia intended to deny Plaintiff's claim all along, and its investigation was oriented towards a denial.

4.5 Columbia, Texas Insurance, and Mr. Fiske wrongfully underpaid and denied Plaintiff's claims for property repairs on March 3, 2017 before completing a proper investigation. Defendants represented to Plaintiff that certain damages were not covered under the Policy when in fact they were. Columbia, Texas Insurance, and Mr. Fiske have chosen to continue to deny timely payment of the damages. As a result, Kwik Kar Wash has not been fully paid under the Policy provided by Columbia since the hailstorm. Kwik Kar Wash was forced to hire its own consultant to independently evaluate the damages to the Property because Defendants refused to do so. To this day, Columbia refuses to pay for the necessary repairs to the Property as required under the Policy. Instead, despite reasonably clear evidence otherwise, Defendants have claimed that all of the damage is cosmetic.

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

4.7 Unfortunately, Defendants have delayed payment for Plaintiff's necessary and covered property repairs under the insurance policy that Columbia wrote. Given the repeated delays of payment, Plaintiff has been subjected to significant economic impact, worry, distress, and continuing economic and physical damage. Because of Defendants' delays, denials, and underpayment, Plaintiff has 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, Plaintiff 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 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-4.7 of this Petition as if fully set forth herein.

5.2 Columbia, Texas Insurance, and Mr. Fiske 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 Columbia, Texas Insurance, and Mr. Fiske failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 Columbia, Texas Insurance, and Mr. Fiske 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 Columbia, Texas Insurance, and Mr. Fiske 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 Columbia, Texas Insurance, and Mr. Fiske misrepresented the insurance policy under which it affords Property coverage to Plaintiff, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

Columbia, Texas Insurance, and Mr. Fiske misrepresented the insurance policy to Plaintiff, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

5.7 Columbia, Texas Insurance, and Mr. Fiske misrepresented the insurance policy 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). Columbia, Texas Insurance, and Mr. Fiske misrepresented the insurance policy 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).

5.8 Columbia, Texas Insurance, and Mr. Fiske misrepresented the insurance policy 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 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). Columbia, Texas Insurance, and Mr. Fiske misrepresented the insurance policy to Plaintiff 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 Columbia, Texas Insurance, and Mr. Fiske 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 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-5.9 of this Petition as if fully set forth herein.

6.2 Columbia, Texas Insurance, and Mr. Fiske failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

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

6.4 Columbia, Texas Insurance, and Mr. Fiske 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 Columbia, Texas Insurance, and Mr. Fiske in violation of Texas Insurance Code Section 542.056(a).

6.5 Columbia, Texas Insurance, and Mr. Fiske delayed payment of Plaintiff's claim in violation of Texas Insurance Code Section 542.058(a).

THIRD CAUSE OF ACTION---Statutory Interest

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

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

8.2 Columbia breached its contracts with Plaintiff. As a result of the Carrier's breaches, Plaintiff suffered legal damages.

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

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

9.2 Columbia, as the property coverage insurer, had a duty to deal fairly and in good faith with Plaintiff in the processing of the claim. Columbia breached this duty by refusing to properly investigate and effectively denying insurance benefits. Columbia 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

10.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-9.2 of this Petition as if fully set for herein.

10.2 Columbia, Texas Insurance, and Mr. Fiske acted fraudulently and with malice (as that term is legally defined) in denying Plaintiff's claim for benefits.

Further, Columbia, Texas Insurance, and Mr. Fiske 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

11.1 Plaintiff 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.

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 Plaintiff's damages.

RESULTING LEGAL DAMAGES

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

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

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

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

13.5 Plaintiff is entitled to statutory interest on the amount of its claim at the rate of 18% per year as damages under the Texas Insurance Code §542.060(a).

13.6 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 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.

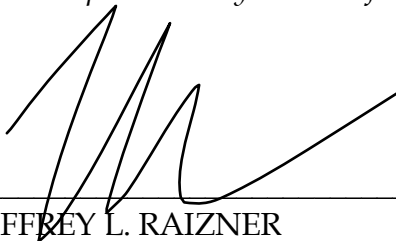
Respectfully submitted,
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JURY DEMAND

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.



JEFFREY L. RAIZNER