

Cause No. 342-287055-16

JANA FOOD SERVICE, INC.	§	IN THE DISTRICT COURT
<i>Plaintiff</i>	§	
	§	
V.	§	TARRANT COUNTY, TEXAS
	§	
NATIONWIDE AGRIBUSINESS	§	
INSURANCE COMPANY and		
KEVIN DOUGLAS WELCH	§	
<i>Defendants</i>	§	___ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION & JURY DEMAND

Plaintiff JANA FOOD SERVICE, INC. ("Jana Food" or "Plaintiff") by and through its attorneys, files this Original Petition & Jury Demand against Defendants NATIONWIDE AGRIBUSINESS INSURANCE COMPANY ("Nationwide") and KEVIN DOUGLAS WELCH ("Welch") (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 Jana Food Service, Inc. is a domestic corporation located in Arlington, Tarrant County, Texas.

2.2 Upon information and belief, Defendant Nationwide is a foreign fire and casualty insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Nationwide regularly and systematically issues insurance policies in the State of Texas and may be served

by mailing certified mail, return receipt requested to Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

2.3 Upon information and belief, Kevin Douglas Welch is an individual living and residing in the State of Texas and may be served with process at Kevin Douglas Welch, 1121 Roping Reins Way, Haslet, Texas 76052.

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 and Plaintiff's property which is the subject of this suit is located in Tarrant County, Texas. In particular, the insurance policy at issue and of which Jana Food is a beneficiary was to be performed in Tarrant County, Texas and the losses under the policy (including payments to be made to Overflow under the policy) were required to be made in Tarrant County, Texas. Further, investigation, including communications to and from Defendants and Jana Food (including telephone calls, mailings, and other communications to Jana Food) occurred in Tarrant County, Texas.

3.2 Jana Food seeks damages within the jurisdictional limits of this Court. Jana Food trusts the jury to evaluate the evidence, but at this time, Jana Food seeks monetary relief in an amount over \$1,000,000. Jana Food reserves the right to modify the amount and type of relief sought in the future.

General Allegations

4.1 On or before March 17, 2016, Nationwide marketed and sold a commercial insurance policy bearing Policy No. COP138638A to Jana Food whereby Nationwide would provide property insurance for the building located at 2116 Exchange Drive, Arlington, Texas 76011 (the "Property") in exchange for the timely payment of premiums (the "Policy"). The Policy was sold by Nationwide to Plaintiff as the insured under the Policy and provides coverage for the Property resulting from hailstorm.

4.2 On or about March 17, 2016, Plaintiff's property was substantially damaged by the severe hailstorm that struck the area. As a result, the roof, exteriors, interiors, business personal property, and other machinery equipment on the Property were substantially damaged. After the storm, Plaintiff filed an insurance claim under the Policy with Nationwide for damages to the Property caused by the hailstorm. Plaintiff asked that the cost of repairs be covered pursuant to the Policy.

4.3 Nationwide is the insurer on the Property. In response to the claim, Nationwide assigned representatives, adjusters, consultants, and agents to Plaintiff's file that were inadequate and improperly trained. Specifically, Nationwide assigned Plaintiff's claim to Kevin Welch as the local claims representative and adjuster charged with assessing damages under the Policy. Mr. Welch was improperly trained and not equipped to handle this type of claim.

4.4 Mr. Welch failed to perform a thorough investigation of the claim. On April 12, 2016, Mr. Welch inspected the Property but failed to complete an adequate

inspection and refused to acknowledge all the damages to the Property, despite the fact that Plaintiff and its representatives pointed out the damages to Mr. Welch. Moreover, Mr. Welch refused to retain appropriate consultants to evaluate the claim.

4.5 Throughout the claims process, Mr. Welch was the only point of contact on Nationwide's behalf yet he continually delayed the claims process and refused to provide answers to the insured. Nationwide relied exclusively on Mr. Welch's substandard investigation in determining what amounts, if any, to pay on Plaintiff's claim and failed to perform its own investigation. As a result of Mr. Welch's haphazard inspection, misrepresentations, and inadequate investigation, Nationwide underpaid Plaintiff's claim. Nationwide and Mr. Welch performed an inadequate, incomplete and unreasonable investigation of Plaintiff's claim, which is evidenced by the undervalued estimate of damages for the necessary repairs for the Property. Even after a second estimate of damages was prepared by Mr. Welch, no further payments were made to Plaintiff.

4.6 Nationwide and Mr. Welch wrongfully denied Plaintiff's claim for property repairs and equipment replacement. Furthermore, Nationwide and Mr. Welch underestimated what damages they did accept during the investigation. Nationwide and Mr. Welch represented to Plaintiff that certain damages were not covered under the Policy when in fact they were. Mr. Welch refused to provide answers to Plaintiff during the claims process, further delaying resolution of Plaintiff's claim in violation of his duties under Texas law. Nationwide and Mr. Welch have chosen to continue to deny timely payment of the damages. As a result, Plaintiff has not been fully paid

under the Policy provided by Nationwide since the windstorm. To this day, Nationwide refuses to pay for the necessary repairs to the Property as required under the Policy.

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

4.8 Unfortunately, Defendants have delayed payment for Plaintiff's necessary and covered property repairs under the insurance policy that Nationwide 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 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 1-4.8 of this Petition as if fully set forth herein.

5.2 Nationwide and Mr. Welch 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 Nationwide and Mr. Welch failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 Nationwide and Mr. Welch 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 Nationwide and Mr. Welch 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 Nationwide and Mr. Welch 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). Nationwide and Mr. Welch 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 Nationwide and Mr. Welch 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). Nationwide and Mr. Welch 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 Nationwide and Mr. Welch 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). Nationwide and Mr. Welch 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 Nationwide and Mr. Welch 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 Nationwide and Mr. Welch failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

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

6.4 Nationwide and Mr. Welch 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 Nationwide and Mr. Welch in violation of Texas Insurance Code Section 542.056(a).

6.5 Nationwide and Mr. Welch 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 Nationwide breached its contracts with Plaintiff. As a result of Nationwide'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 Nationwide, as the property coverage insurer, had a duty to deal fairly and in good faith with Plaintiff in the processing of the claim. Nationwide breached this duty by refusing to properly investigate and effectively denying insurance benefits. Nationwide knew or should have known that there was no reasonable basis for

denying or delaying the required benefits. As a result of Nationwide'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 Nationwide and Mr. Welch fraudulently and with malice (as that term is legally defined) denied Plaintiff's claim for benefits. Further, Nationwide and Mr. Welch 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

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 Plaintiff's damages.

RESULTING LEGAL DAMAGES

14.1 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.

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

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

14.5 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).

14.6 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 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 Plaintiff may be entitled.

Respectfully submitted,

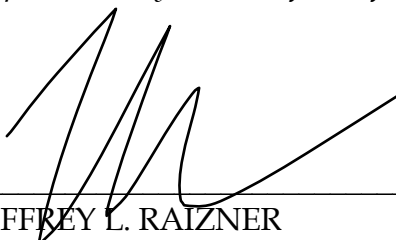
RAIZNER SLANIA LLP

JEFFREY L. RAIZNER
State Bar No. 00784806
ANDREW P. SLANIA
State Bar No. 24056338
AMY BAILEY HARGIS
State Bar No. 24078630
2402 Dunlavy Street
Houston, Texas 77006
Phone: 713.554.9099
Fax: 713.554.9098
Email: efile@raiznerlaw.com

ATTORNEYS FOR PLAINTIFF

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.



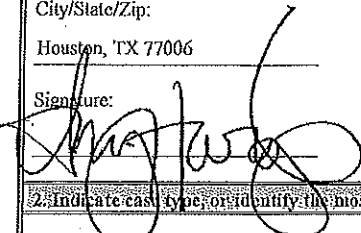
JEFFREY L. RAIZNER

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED **Jana Food Service, Inc. v. Nationwide Agribusiness Ins. Co. and Kevin Welch**
(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:		Person or entity completing sheet is:	
Name:	Email:	Plaintiff(s)/Petitioner(s): Jana Food Service, Inc.		<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____	
Amy B. Hargis	ahargis@raiznerlaw.com				
Address:	Telephone:	Defendant(s)/Respondent(s): Nationwide Agribusiness Ins. Co.		Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
2402 Dunlavy Street	713-554-9099				
City/State/Zip:	Fax:	Kevin Douglas Welch			
Houston, TX 77006	713-554-9098				
Signature:	State Bar No:	(Attach additional page as necessary to list all parties)			
	24078630				

2. Indicate case type or identify the most important issue in the case (select only 1):

Civil		Family Law		
Contract	Injury or Damage	Real Property	Marriage/Relationship	Post-judgment Actions (non-Title IV-D)
Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input checked="" type="checkbox"/> Other Debt/Contract: Insurance Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocal (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
Employment	Other Civil			
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____		

Tax	Probate & Mental Health	
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax: _____	Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings	<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____

3. Indicate procedure of remedy, if applicable (may select more than 1):

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
---	---	---

4. Indicate damages sought (do not select if it is a family law case):

Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees
 Less than \$100,000 and non-monetary relief
 Over \$100,000 but not more than \$200,000
 Over \$200,000 but not more than \$1,000,000
 Over \$1,000,000