

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RATHNA KUMAR D/B/A ANJALI	§	
CENTER FOR PERFORMING ARTS	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. 4:18-cv-332
	§	
SENTINEL INSURANCE COMPANY,	§	
LTD	§	
<i>Defendant.</i>	§	

PLAINTIFF’S ORIGINAL COMPLAINT & JURY DEMAND

Plaintiff RATHNA KUMAR D/B/A ANJALI CENTER FOR PERFORMING ARTS (“Anjali” or “Plaintiff”) files this Original Complaint & Jury Demand against Defendant SENTINEL INSURANCE COMPANY LTD (“Sentinel” or “Defendant”) and would respectfully show the following:

Parties

1. Dr. Rathna Kumar is an individual resident of the State of Texas doing business as Anjali Center for Performing Arts located in Fort Bend County, Texas.
2. Sentinel is a foreign insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Sentinel regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Sentinel may be served with process by serving **CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.**

Venue & Jurisdiction

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiff and Defendant and the amount in

controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interests and costs.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because this action concerns real property and a business located and operating in Fort Bend County, Texas, and all or a substantial part of the events giving rise to the claim described herein occurred in Fort Bend County, Texas. In particular, the insurance policy at issue and of which Plaintiff is a beneficiary was to be performed in Fort Bend County, Texas and the losses under the policy (including payments to be made to Plaintiff under the policy) were required to be made in Fort Bend County, Texas. Further, investigation, including communications to and from Defendant and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred in Fort Bend County, Texas.

Factual Background

The Property

5. Anjali, through its Founder-Director Dr. Rathna Kumar, owns and operates the commercial property located at 2615 Cordes Drive, Sugarland, Texas 77479 in Fort Bend County, Texas (the “Property”). Dr. Kumar, an internationally-renowned teacher, choreographer, dancer, artist, and ambassador of Indian arts, opened Anjali in 1975, as the first Indian dance school in Texas. Located at the Property since 2003, Anjali’s purpose is to promote and preserve Indian performing arts and is widely known as one of the premier Indian dance academies and institutions of Indian arts in the United States.

6. The Property is a single-story structure situated on almost one acre of land with a large hall, four art studios, office room, library, kitchen, dining, exhibition space,

storage area, shower area, laundry room, and a reception area. Anjali offers a multitude of services at the Property including teaching various types of regular classes in dance and music, offering frequent workshops in yoga practices and drama, hosting special events, renting spaces in the Property to other organizations and teachers in the Indian community, putting on various community performances, and more.

Sentinel Insurance Company, Ltd.

7. Unfortunately, Sentinel, a foreign insurance company, has a significant history in Texas of conducting arbitrary, outcome-oriented investigations intended to deny righteous claims. Sentinel has a known pattern of rewarding claims representatives and consultants who identify grounds to exclude property damage claims under their policies, in violation of Texas law and the promises within the insurance contract. This deceptive claims system was utilized against Anjali in contravention of the Texas Insurance Code.

The Policy

8. Prior to August 26, 2017, Anjali paid \$6,414 in annual premiums to Sentinel in order to acquire comprehensive commercial insurance coverage for the Property and the business under Sentinel's Policy No. 61 SBA IS6960 DX (the "Policy"). The Policy provides coverage for Anjali's business and the Property located at 2615 Cordes Drive, Sugarland, Texas 77479 for covered damages that occur during the Policy Period, from February 4, 2017 through February 4, 2018. In exchange for Anjali's premium payment, the Policy includes the following limits and coverages, in relevant part:

Deductible: \$ 1,000 PER OCCURRENCE
WINDSTORM OR HAIL: 1% (FORM SS 82 23)

BUILDING AND BUSINESS PERSONAL PROPERTY LIMITS OF INSURANCE

BUILDING

REPLACEMENT COST \$ 465,000

BUSINESS PERSONAL PROPERTY

REPLACEMENT COST \$ 30,000

PERSONAL PROPERTY OF OTHERS

REPLACEMENT COST NO COVERAGE

PROPERTY OPTIONAL COVERAGES APPLICABLE TO THIS LOCATION LIMITS OF INSURANCE

BUILDING STRETCH
FORM: SS 04 52
THIS FORM INCLUDES MANY ADDITIONAL COVERAGES AND EXTENSIONS OF COVERAGES. A SUMMARY OF THE COVERAGE LIMITS IS ATTACHED.

STRETCH FOR SCHOOLS
FORM: SS 40 42
THIS FORM INCLUDES MANY ADDITIONAL COVERAGES AND EXTENSIONS OF COVERAGES. A SUMMARY OF THE COVERAGE LIMITS IS ATTACHED.

LIMITED FUNGI, BACTERIA OR VIRUS COVERAGE: \$ 50,000

FORM SS 40 93
THIS IS THE MAXIMUM AMOUNT OF INSURANCE FOR THIS COVERAGE, SUBJECT TO ALL PROPERTY LIMITS FOUND ELSEWHERE ON THIS DECLARATION.
INCLUDING BUSINESS INCOME AND EXTRA EXPENSE COVERAGE FOR:

30 DAYS

PROPERTY OPTIONAL COVERAGES APPLICABLE TO ALL LOCATIONS LIMITS OF INSURANCE

BUSINESS INCOME AND EXTRA EXPENSE COVERAGE COVERAGE INCLUDES THE FOLLOWING COVERAGE EXTENSIONS:	12 MONTHS ACTUAL LOSS SUSTAINED
ACTION OF CIVIL AUTHORITY:	30 DAYS
EXTENDED BUSINESS INCOME:	30 CONSECUTIVE DAYS
EQUIPMENT BREAKDOWN COVERAGE COVERAGE FOR DIRECT PHYSICAL LOSS DUE TO: MECHANICAL BREAKDOWN, ARTIFICIALLY GENERATED CURRENT AND STEAM EXPLOSION	
THIS ADDITIONAL COVERAGE INCLUDES THE FOLLOWING EXTENSIONS	
HAZARDOUS SUBSTANCES	\$ 50,000
EXPEDITING EXPENSES	\$ 50,000
MECHANICAL BREAKDOWN COVERAGE ONLY APPLIES WHEN BUILDING OR BUSINESS PERSONAL PROPERTY IS SELECTED ON THE POLICY	
IDENTITY RECOVERY COVERAGE FORM SS 41 12	\$ 15,000

9. As evidenced by the Declarations Page, the Policy provides coverage to the Property’s physical structure at a replacement cost valuation of \$465,000.00, coverage to personal property at a replacement cost valuation of \$30,000.00, coverage for lost business income and extra expenses for up to at least 12 months, and more. *See* Exhibit “A”. The Policy also contains a wind/hail deductible of 1%. *See* Exhibit “A”. The core of the Policy is a “Special Property Coverage” form, which is a named perils explanation that includes coverage for, among other things, windstorm such as that arising from a hurricane. *See* Exhibit “A.” The operative policy language provides:

SPECIAL PROPERTY COVERAGE FORM

19. "Specified Cause of Loss" means the following:
 Fire; lightning; explosion, windstorm or hail;
 smoke; aircraft or vehicles; riot or civil
 commotion; vandalism; leakage from fire
 extinguishing equipment; sinkhole collapse;
 volcanic action; falling objects; weight of snow,
 ice or sleet; water damage.

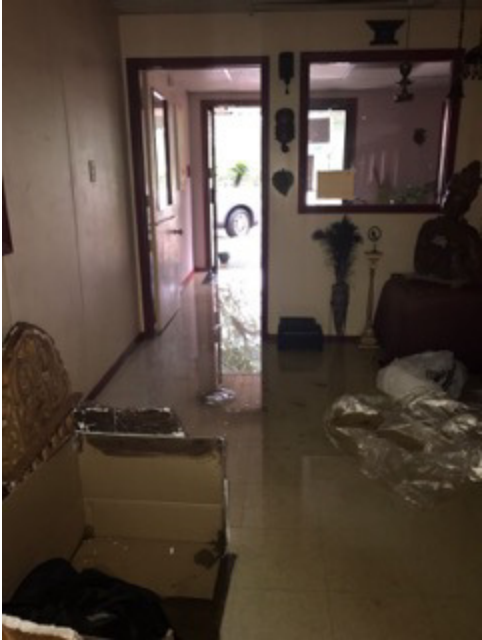
10. Like most other policies, the Policy provides coverage for damages to the interior of the Property that result from a “Covered Cause of Loss” (such as wind) to the roof or walls, but not for damages caused by “wind driven rain”. In the wake of Hurricane Harvey, many insurers would use this narrow limitation on coverage as a loophole through which they would cram almost all of their coverage denials.

Hurricane Harvey

11. 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 as a Category 4 hurricane with unbelievable wind speeds of up to 150 miles per hour. Hurricane Harvey’s wind and rain continued to travel through the southeast part of Texas, inflicting billions of dollars in damages to private and public property in Fort Bend County and Harris County alone. 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.

Anjali makes an insurance claim for Harvey related damage

12. As a result of Harvey’s extreme winds and rain when it hit Fort Bend County and specifically the Property, on or about August 26, 2017, the Property was substantially damaged. Sizeable portions of the Property’s roof were compromised by wind, allowing rain to be driven in, causing substantial interior damage. The following photographs taken immediately after Harvey depict some of the interior damage alone:





13. The Property—specifically the roof, interior, ceiling, windows, walls, flooring, windows, and other parts of the physical structure along with the extensive business property contained therein including electronics, furniture, equipment, props, and one-of-a-kind specialty Indian costumes imported from India—were completely destroyed by Harvey. Yet as devastating as the physical damage was, Anjali and its owner, Dr. Rathna

Kumar, felt fortunate to be protected by the almost \$500,000 in insurance coverage they had procured to insure the property from precisely this type of catastrophe. Immediately after the storm, Anjali promptly filed a claim with Sentinel, alerting them to the extensive damages. This sense of security, borne of a pricey contractual relationship, would prove illusory as Sentinel began their investigation and handling of the claim.

Anjali works hard to document its damages for Sentinel but received an immediate denial

14. Sentinel's claims-handling process resulted in a wrongful denial that omitted the wealth of facts, photographs, physical evidence, obvious wind damages, and meteorological data from Hurricane Harvey supporting Anjali's claim. Sentinel unreasonably pinned the loss on anything but the wind, an action designed to save Sentinel hundreds of thousands of dollars in damages to the Property and the business. In an effort to assist Sentinel with the claims process and to mitigate any further damages to the Property, Anjali engaged a roofing contractor to perform emergency mitigation services and assist with estimating some of the repair costs. Sentinel and its desk adjuster, "Inside Claim Rep" John Anderson, ignored the evidence.

15. Although Sentinel has, to date, provided no clear documentation of their inspection or findings, it denied the claim in full on September 5, 2017. According to the "Inside Claim Rep" John Anderson, who does not even appear to be located in Texas, Anjali's claim was denied in full on the basis that *water entry was not due to a storm created opening, but appeared to be related to heavy rain fall from Hurricane Harvey. See Exhibit "B."* It is unclear at this time whether Sentinel or Mr. Anderson conducted any testing whatsoever or made any attempt at preparing an estimate reflecting these outlandish findings. *See Exhibit "B"*. If any testing was conducted or estimates were in fact prepared,

none of those documents or explanations were provided to Anjali. Instead, Sentinel simply denied the claim and closed the file. To this day, Sentinel has refused to pay for any covered damages under the Policy.

The destruction of Anjali's business

16. Sentinel's unjustified refusal to pay has crippled Anjali's ability to conduct business and has totally impaired Anjali and the entire facility's operations. Instead of providing the contractual insurance benefits to restore the Property on a replacement cost value basis and assist Anjali with resuming operations for the community, Sentinel ignored Anjali, disregarded obvious wind damages to the Property, and wrongfully and haphazardly denied Anjali's claim. As a result of Sentinel's wrongful denial, Anjali has suffered immensely. In addition to the extensive damages to the Property's structure that Sentinel turned its back on, Anjali has been left to deal with adverse impacts to the business and suspended operations at the Property. For example, Anjali's classes had to canceled for months. Multiple long-term rental contracts in place with others in the community were canceled or withdrawn because of the dilapidated state of the Property. The adverse impact of Sentinel's wrongful denial to Anjali's business and its related income was never compensated under the Policy. Texas is pro-business place where small business owners like Dr. Rathna Kumar can enjoy a business environment where entities like Anjali can thrive. Sentinel disrupted the business environment for Anjali, and instead of honoring the insurance contract and serving as a contractual partner, Sentinel knowingly chose to deny the presented claim.

Sentinel ignores Anjali's demand letter

17. On June 1, 2017, Governor Abbot 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. Section 542A.003 in particular requires detailed, comprehensive presuit 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 Anjali to avoid protracted litigation over a clear claim.

18. In compliance with Section 542A.003, Anjali gave its pre-suit notice to Sentinel on October 26, 2017. The pre-suit notice provided a comprehensive outline of Anjali's claims and damages, quantified its loss, and even offered to waive a formal claim for attorneys' fees if the contractual amounts were paid promptly.

19. Sentinel did not bother to respond and in fact has now attempted to contact Anjali directly, despite being put on formal notice of Anjali's legal representation.

Count 1 ---Violations of Texas Insurance Code, Section 541

20. Anjali re-alleges and incorporates each allegation contained in Paragraphs 1-27 of this Complaint as if fully set forth herein.

21. Sentinel 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).

22. Sentinel failed to adopt and implement reasonable standards for prompt investigation of the claim arising under its policy.

23. Sentinel 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).

24. Sentinel 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).

25. Sentinel misrepresented the insurance policy under which it affords property coverage to Anjali, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Sentinel misrepresented the insurance policy to Anjali, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

26. Sentinel misrepresented the insurance policy under which it affords property coverage to Anjali 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). Defendant misrepresented the insurance policy to Anjali 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).

27. Sentinel misrepresented the insurance policy under which it affords property coverage to Anjali 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). Defendant misrepresented the insurance policy to Anjali 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).

28. Sentinel 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).

Count 2---Violations of the Texas Insurance Code, Section 542

29. Anjali re-alleges and incorporates each allegation contained in Paragraphs 1-27 of this Complaint as if fully set forth herein.

30. Sentinel failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

31. Sentinel failed to timely commence investigation of the claim or to request from Anjali any additional items, statements or forms that Sentinel reasonably believed to be required from Anjali in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

32. Sentinel failed to notify Anjali 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 Defendants in violation of Texas Insurance Code Section 542.056(a).

33. Sentinel delayed payment of Anjali's claim in violation of Texas Insurance Code Section 542.058(a).

34. 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 Anjali's damages.

Count 3 ---Statutory Interest

35. Anjali re-alleges and incorporates each allegation contained in Paragraphs 1-27 of the Complaint as if fully set forth herein.

36. Anjali 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.

Count 4---Breach of Contract

37. Anjali re-alleges and incorporates each allegation contained in Paragraphs 1-27 of the Complaint as if fully set forth herein.

38. As outlined above, Sentinel breached its contract with Anjali by refusing to pay for covered damages under the Policy. As a result of Sentinel breach, Anjali suffered legal damages.

Count 5---Breach of duty of good faith & fair dealing

39. Anjali re-alleges and incorporates each allegation contained in Paragraphs 1-27 of the Complaint as if fully set forth herein.

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

Count 6---Punitive Damages for Bad Faith

41. Anjali re-alleges and incorporates each allegation contained in Paragraphs 1-

27 of this Complaint as if fully set for herein.

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

Count 7---Violations of Texas Deceptive Trade Practices Act

43. Anjali re-alleges and incorporates each allegation contained in Paragraphs 1-27 of this Complaint as if fully set forth herein.

44. The Deceptive Trade Practices-Consumer Protection Act (DTPA) provides additional protections to consumers who are victims of deceptive, improper, or illegal practices. Defendant's violations of the Texas Insurance Code create a cause of action under the DTPA. Defendant's violations of the Texas Insurance Code, as set forth herein, specifically violate the DTPA as well. Defendant has also acted unconscionably, as that term is defined under the DTPA.

45. Each of the actions described herein were done "knowingly" as that term is used in the DTPA and were a producing cause of Anjali's damages.

Resulting Legal Damages

46. Anjali is 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, Anjali is entitled to exemplary damages.

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

48. Anjali is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

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

50. Anjali is entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

51. As a result of Defendant's acts and/or omissions, Anjali has sustained damages in excess of the jurisdictional limits of this Court.

52. Anjali is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

53. Anjali is entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, the Texas Insurance Code 542.060(a)-(c), the Tex. Bus & Commerce Code §17.50 and Tex. Civ. Prac. & Rem. Code §37.009.

PRAYER

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

Respectfully submitted,

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JURY DEMAND

Anjali Center for Performing Arts 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