

Cause No. _____

NEW DONG JIANG, INC. dba HUNAN'S RESTAURANT	§ § § § § § § § § §	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS ____ JUDICIAL DISTRICT
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PLAINTIFF'S ORIGINAL PETITION & JURY DEMAND

TO THE HONORABLE JUDGE & JURY OF HARRIS COUNTY CITIZENS:

Plaintiff NEW DONG JIANG, INC. dba HUNAN'S RESTAURANT ("Hunan" or "Plaintiff") files this Original Petition and Jury Demand against Defendants WESTCHESTER SURPLUS LINES INSURANCE COMPANY ("Westchester" or "Carrier"), McLARENS, INC. ("McLarens"), and SCOTT LILES ("Liles") (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, New Dong Jiang, Inc. dba Hunan Restaurant is a domestic for-profit corporation.

2.2 Upon information and belief Westchester Surplus Lines Insurance Company is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. Westchester regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas and

does not maintain an agent for service in this State. Accordingly, Westchester may be served with process by serving certified mail, return receipt requested, to **Mr. Paul Bech, Esq., Associate General Counsel, Chubb, 436 Walnut Street, Philadelphia, PA 19106-3703.**

2.3 Upon information and belief, McLarens is a foreign for-profit corporation operating out of its Texas offices, including its office in Harris County, for the purpose of accumulating monetary profit. McLarens regularly engages in the business of adjusting insurance claims in Texas and may be served with process through its registered agent, **CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.**

2.4 Upon information and belief, Mr. Liles is a natural person who resides and works in the State of Texas and may be served with process to **Scott Liles, 13100 Wortham Center Drive, Suite 190, Houston, TX 77065-5633.**

Venue & Jurisdiction

3.1 Venue is proper in Harris County, Texas, because the insured's property is located in Harris County, Texas Tex. Civ. Prac. & Rem. Code §15.032. Further, Venue is proper in Harris County under Tex. Civ. Prac. & Rem. Code §15.002(a)(1) as all or a substantial part of the events or omissions giving rise to this claim occurred in Harris County and Plaintiff's property that is the subject of the insurance policy, claim, denial, and litigation is in Harris County. In particular, the adjustment of the claim by Defendant Liles for losses under the policy (including denial and underpayment of the claim and payments to be made to Plaintiff in Harris County under the policy) were conducted in Harris County, Texas. Further, investigations and policy representations, including communications to and from Defendants and Plaintiff (including telephone calls, mailings, and other

communications to Plaintiff) occurred in Harris County, Texas. Additionally, site inspections and communications serving as the basis for suit occurred at the damaged subject property in Harris County. Critical representations by Defendant McLarens and Defendant Liles were made from and directed to Harris County, in particular the commitment to immediately issue the roof replacement approved payment.

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

Factual Background

4.1 On or before January 26, 2018, the Carrier sold a commercial property insurance policy bearing Policy No. FSF13857970001 to Plaintiff whereby the Carrier would provide insurance coverage for the property located at 3835 Bellaire Blvd., Houston, TX 77025 (the “Property”) in exchange for the timely payment of premium (the “Policy”). The Policy was sold by the Carrier to the Plaintiff as the insured under the Policy and provides coverage for damages to the Property caused by water intrusion.

4.2 On or about January 26, 2018, Plaintiff’s property was substantially damaged by water intrusion. As a result, the interior of the building was substantially damaged. Plaintiff asked that the cost of repairs be covered pursuant to the Policy. On June 10, 2019, the Carrier, through their authorized adjusting representative in Texas, Mr. Liles, confirmed that the damages were covered under the policy and “approved” payment of \$150,000 in total money for the damages. Specifically, Liles on behalf of the Carrier confirmed that \$74,766.84 in additional money would be issued and this was confirmed over the phone and

email on June 10 and June 11, 2019. Despite this representation, the Carrier has refused to fully pay this amount of undisputed damages. There are substantially more funds owed on this covered claim and now under the Texas Insurance Code

4.3 Westchester is the insurer on the Property. In response to the water intrusion claim, the Carrier assigned adjusters, consultants, and agents to Plaintiff's file that were inadequate and improperly trained and that would violate standard insurance practices when directed to do so by the Carrier. More specifically, the Carrier assigned Plaintiff's claim to Mr. Liles to adjust the damages under the Policy. The Carrier and adjuster Liles refused to honor their coverage representation, and Liles failed to stand by the commitment that he had appropriately made on behalf of the Carrier.

4.4 Mr. Liles inspected the property on November 30, 2018. He performed an inspection of the Property and but failed to prepare an estimate or scope of damages. Mr. Liles failed to hire qualified experts to appropriately assess the damage and delayed the claims process and failed to communicate with the insured. Mr. Liles also misrepresented coverage afforded under the Policy. Mr. Liles performed an inadequate, incomplete and unreasonable investigation of Plaintiff's claim, which is evidenced by his delays, lack of communication, and refusal to hire to appropriate consultants. The Carrier relied on Mr. Liles in determining what amounts, if any, to pay on Plaintiff's claim and failed to perform their own adequate investigation.

4.5 The Carrier, McLarens, and Mr. Liles wrongfully underpaid and denied Plaintiff's claim for property repairs. Defendants ultimately represented to the Plaintiff that certain damages were not covered under the Policy when in fact they were. The Carrier, McLarens, and Mr. Liles 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 the Carrier since the damage occurred. Plaintiff was forced to hire their own consultant to independently evaluate the damages to the Property because Defendants refused to do so. To this day, the Carrier refuses to pay for the necessary repairs to the Property as required under the Policy. Simply put, the Defendants chose to act unreasonably in refusing to issue the claim payment that their authorized representative had confirmed.

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 payments for Plaintiff's necessary and covered property repairs under the insurance policy that the Carrier wrote. Given the repeated delays of payments, Plaintiff has been subjected to significant economic impact, and continuing economic and physical damages. 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. 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 previous paragraphs of this Petition as if fully set forth herein.

5.2 The Carrier, McLarens, and Mr. Liles failed to attempt to effectuate a prompt, fair, and equitable settlement of a claims with respect to which liability has become reasonably clear, in violation of Texas Insurance Code Section 541.060 (a)(2)(A).

5.3 The Carrier, McLarens, and Mr. Liles failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 The Carrier, McLarens, and Mr. Liles failed to provide promptly a reasonable explanation, in relation to the facts or applicable law, for the denial of a claims, in violation of Texas Insurance Code Section 541.060 (a)(3).

5.5 The Carrier, McLarens, and Mr. Liles failing within a reasonable time to affirm or deny coverage of a claim to policyholders; or submit a proper reservation of rights to policyholders in violation of Texas Insurance Code Section 541.060(a)(4).

5.6 The Carrier, McLarens, and Mr. Liles refused to pay claims without conducting a reasonable investigation with respect to the claims, in violation of Texas Insurance Code Section 541.060 (a)(7).

5.7 The Carrier, McLarens, and Mr. Liles misrepresented the insurance policies 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). The Carrier, McLarens, and Mr. Liles misrepresented the insurance policies to Plaintiff, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

5.8 The Carrier, McLarens, and Mr. Liles misrepresented the insurance policies 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). The Carrier, McLarens, and Mr. Liles misrepresented the insurance policies 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).

5.9 The Carrier, McLarens, and Mr. Liles 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). The Carrier, McLarens, and Mr. Liles 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).

5.10 The Carrier, McLarens, and Mr. Liles 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 previous paragraphs of this Petition as if fully set forth herein.

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

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

6.4 The Carrier 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 the Carrier, McLarens, and Mr. Liles in violation of Texas Insurance Code Section 542.056(a).

6.5 The Carrier delayed payments 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 previous paragraphs of this Petition as if fully set forth herein.

7.2 Plaintiff make 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

8.1 Plaintiff re-alleges and incorporates each allegation contained in previous paragraphs of this Petition as if fully set forth herein.

8.2 The Carrier breached their contract with Plaintiff. As a result of the Carrier's breach, Plaintiff suffered legal damages.

8.3 The Carrier also breached the contract that their authorized representative, McLarens and Mr. Liles entered into, when they offered the approved damage payment to Plaintiff and Plaintiff's authorized representative accepted the proposed approved damage payment on June 10, 2019. This was a binding agreement to be performed immediately, yet the Carrier failed to comply with the agreement causing the Plaintiff to suffer 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 previous paragraphs of this Petition as if fully set forth herein.

9.2 The Carrier, as the Property coverage insurers, had a duty to deal fairly and in good faith with Plaintiff in the processing of the claim. The Carrier breached this duty by refusing to properly investigate and effectively denying insurance benefits even after they admitted that they owed the claim in writing. The Carrier knew or should have known that there was no reasonable basis for denying or delaying the required benefits. The Carrier's duty of good faith and fair dealing was non-delegable. 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 previous paragraphs of this Petition as if fully set forth herein.

10.2 Defendants acted fraudulently and with malice (as that term is legally defined) in denying and delaying Plaintiff'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 Plaintiff.

SEVENTH CAUSE OF ACTION---Violations of Texas DTPA

11.1 Plaintiff re-alleges and incorporates each allegation contained in previous paragraphs of this Petition 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, 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 as damages under the Texas Insurance Code 542.060(c).

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

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

14.8 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 request 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,

RAIZNER SLANIA LLP



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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