

Cause No. _____

MARY'Z MEDITERRANEAN	§	IN THE DISTRICT COURT OF
CUISINE, INC.	§	
<i>Plaintiff</i>	§	
	§	
v.	§	
	§	HARRIS COUNTY, TEXAS
BLACKBOARD INSURANCE	§	
COMPANY f/k/a HAMILTON	§	
INSURANCE COMPANY, TEXAS	§	
GENERAL INSURANCE, and	§	
MIR KHAN	§	
<i>Defendants</i>	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION & JURY DEMAND

TO THE HONORABLE JUDGE & JURY OF HARRIS COUNTY CITIZENS:

Plaintiff, MARY'Z MEDITERRANEAN CUISINE, INC. ("Mary'z" or "Plaintiff") file this Original Petition against BLACKBOARD INSURANCE COMPANY formally known as HAMILTON INSURANCE COMPANY ("Blackboard" or "Carrier"), TEXAS GENERAL INSURANCE ("Texas General"), and MIR KHAN (Mr. Khan) (together "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, Mary'z, is a domestic for-profit corporation in good standing with a principal place of business in Harris County, Houston, Texas.

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

accumulating monetary profit. Blackboard regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Blackboard may be served with process by serving certified mail, return receipt requested, to **CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.**

2.3 Upon information and belief, Texas General is a domestic limited liability company which maintains its principal place of business in Houston, Harris County, Texas. Texas General regularly conducts business in a continuous and systematic manner in the State of Texas and can be served with process through its registered agent, **3HM Holdings, LLC, 2500 W. Loop S., Suite 500, Houston, Texas 77027.**

2.4 Upon information and belief, Mir Khan is a natural person residing and working in the State of Texas. He may be served with process by serving him at, **Mir Khan, 11030 Bissonnet Street, Suite B, Houston, Texas 77099.**

Venue & Jurisdiction

3.1 Venue is proper in Harris County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(3), as Defendant Texas General's principal office is located in Harris County, Texas. In addition, venue is proper in Harris 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 Harris County. In particular, the adjustment of the claim by Defendant Blackboard for losses under the policy (including payments to be made to Plaintiff under the policy) were conducted in Harris County, Texas. Investigations and policy representations, including communications to and from Defendants and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) regarding insurance coverage and the claim at issue occurred in Harris County, Texas.

Additionally, the conduct of Defendant Texas General Insurance and Defendant Khan including the agent services in procuring the subject insurance policy, and other insurance agent acts under the Texas Insurance Code, occurred in Harris County.

3.2 Plaintiff seeks damages within the jurisdictional limits of this Court. 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.

Factual Background

4.1 This suit arises from Defendants' wrongful acts in the handling of Plaintiff's claim under its insurance policy for damages caused by a detrimental fire and from additional wrongful acts or omissions related to the procurement and sale of the insurance policy which forms the basis of this suit.

4.2 On or before September 9, 2017, Mr. Khan, Texas General, and Blackboard marketed and sold a Commercial Property Policy bearing Policy No. THIBP-00159-01 (the "Policy") to Mary'z whereby Blackboard would provide coverage for Plaintiff's property located at 8255 Richmond Avenue, Houston, Texas 77057 (the "Property") in exchange for the timely payment of premiums.

4.3 At the time that Mr. Khan, Texas General, and Blackboard secured the insurance policy for Mary'z, the Property was being used in accordance with Plaintiff's customary business operations and did not have an internal fire alarm system. Specifically, the Property includes a dining/bar area, a full kitchen, storage, an office, walk-in cooler, and a patio in front and back of the building. With full knowledge of Plaintiff's business, including the building protection design, and the way in which the Property was utilized, Mr. Khan, Texas General, and Blackboard marketed and sold the Policy to Mary'z. The

Policy was sold by Mr. Khan, Texas General, and Blackboard to Mary'z as the insured under the Policy and provides coverage to the Mary'z and its contents for damages caused by fire.

4.4 On September 9, 2017, a catastrophic fire broke out at the Property. As a result, the business equipment at the Property was damaged. In addition to damaging the business equipment, Plaintiff lost extensive business income.

4.5 At the time of the fire, the Property was being utilized in accordance with Plaintiff's customary operations and business design, which was the same way the Property was being used when the Policy was applied for and sold to Mary'z. Soon after the fire, Mary'z filed an insurance claim under the Policy with the insurance company Blackboard for the substantial damages to the business equipment and lost business income.

4.6 Mary'z submitted a claim to Blackboard under the Policy for the business personal property damage and lost business income. Mary'z asked that the cost of the damaged contents and repairs be covered pursuant to the Policy, but Blackboard has refused to make a payment on the Plaintiff's claim. Blackboard has also never provided Mary'z with a formal denial letter to explain why they won't cover the damages to Mary'z.

4.7 Blackboard conducted an unreasonable and inadequate investigation of the damages to the Property and looked to find policy exclusions in order to deny the claim. Blackboard wrongfully denied and delayed Plaintiff's claim for damages to contents and lost business income. Blackboard has chosen to continue to deny and delay timely payment of the damages. As a result, Mary'z has not been fully paid the benefits under the Policy provided by Mr. Khan, Texas General, and Blackboard.

4.8 Mr. Khan and Texas General, the agent and agency that sold the Policy to Mary'z,

claimed and falsely represented to Mary'z that damages caused by fire, among other things, would be, and indeed *are* covered by the Policy based on the known facts about the business, including the lack of an internal fire alarm system. Plaintiff trusted and relied upon the experience of Mr. Khan and Texas General to procure the appropriate coverage for its specialized business needs, and Mr. Khan and Texas General acted as the agent of Blackboard in connection with the procurement of coverage. Mr. Khan and Texas General led Mary'z to believe that the insurance policy secured would cover their business personal property and business income in the event of standards perils, including a fire loss.

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

4.10 Unfortunately, Blackboard has delayed payment for Plaintiff's necessary and covered property repairs under its insurance policy. Given the repeated delays of payment, Mary'z has been subjected to significant economic impact, worry, distress, and continuing economic and physical damage. In addition, Mary'z has suffered financial harm and damage as a result of Blackboard's denial and repeated delays. The significant effect of Mr. Khan, Texas General, and Blackboard's wrongful and unjustified delays, however, is still uncompensated.

FIRST CAUSE OF ACTION---Violations of Texas Insurance Code

5.1 Mary'z re-alleges and incorporates each allegation contained in Paragraphs 1-4.10 of this Petition as if fully set forth herein.

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

5.4 Blackboard 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 Blackboard failed to within a reasonable time to affirm or deny coverage of a claim to a policyholder; or submit a proper reservation of rights to a policyholder in violation of Texas Insurance Code Section 541.060(a)(4).

5.6 Blackboard 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).

5.7 Mr. Khan, Texas General, and Blackboard misrepresented the insurance policy under which it affords Property coverage to Mary'z, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Mr. Khan, Texas General, and Blackboard misrepresented the insurance policy to Mary'z, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

5.8 Mr. Khan, Texas General, and Blackboard misrepresented the insurance policy under which it affords Property coverage to Mary'z 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). Mr. Khan, Texas General, and Blackboard misrepresented the insurance policy to Mary'z 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 Mr. Khan, Texas General, and Blackboard misrepresented the insurance policy under which it affords Property coverage to Mary'z 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). Mr. Khan, Texas General, and Blackboard misrepresented the insurance policy to Mary'z 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 Mr. Khan, Texas General, and Blackboard 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 Mary'z re-alleges and incorporates each allegation contained in Paragraphs 1-5.10 of this Petition as if fully set forth herein.

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

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

6.4 Blackboard failed to notify Mary'z 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 Blackboard in violation of Texas Insurance Code Section 542.056(a).

6.5 Blackboard delayed payment of Mary'z's claim in violation of Texas Insurance Code Section 542.058(a).

6.6 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.

THIRD CAUSE OF ACTION---Statutory Interest

7.1 Mary’z re-alleges and incorporates each allegation contained in Paragraphs 1-6.6 of the Petition as if fully set forth herein.

7.2 Mary’z 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.

FOURTH CAUSE OF ACTION---Breach of Contract

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

8.2 As outlined above, Blackboard breached its contract with Mary’z by refusing to pay for covered damages under the Policy. As a result of Blackboard’s breach, Mary’z suffered legal damages.

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

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

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

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

10.1 Mary'z 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 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 Mary'z.

SEVENTH CAUSE OF ACTION---Violations Of Texas DTPA

11.1 Mary'z 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. Defendant has also acted unconscionably, as that term is defined under the DTPA.

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

EIGHTH CAUSE OF ACTION---Fraud

12.1 Mary'z re-alleges and incorporates each allegation contained in Paragraphs 1-11.3 of this Complaint as if fully set forth herein.

12.2. Mr. Khan, Texas General, and Blackboard acted fraudulently as to each representation made to Mary'z concerned material facts for the reason they would not have

acted and which Mr. Khan, Texas General, and Blackboard 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 Mary'z, who relied on those representations, thereby causing injury and damage to Mary'z.

NINTH CAUSE OF ACTION---Negligence

13.1 Mary'z re-alleges and incorporates each allegation contained in Paragraphs 1-12.2 of this Complaint as if fully set forth herein.

13.2 Mr. Khan and Texas General owed a duty Mary'z to obtain appropriate insurance coverage for Plaintiff's property, or if they could not obtain the requested coverage, to notify Mary'z of same. Mr. Khan and Texas General failed to properly obtain appropriate insurance coverage for Mary'z and failed to notify Mary'z of their misrepresentations and other failures. Mr. Khan and Texas General breached their duties to obtain appropriate insurance coverage for Mary'z and this breach was a proximate cause of Plaintiff's damages.

TENTH CAUSE OF ACTION---Negligent Misrepresentation

14.1 Mary'z re-alleges and incorporates each allegation contained in Paragraphs 1-13.2 of this Complaint as if fully set forth herein.

14.2 In the course of a business or a transaction in which Mr. Khan and Texas General had interest, Mr. Khan and Texas General negligently misrepresented to Mary'z that they were obtaining appropriate insurance coverage for standard covered perils for Plaintiff's business. Mr. Khan and Texas General supplied false information for Mary'z to consider in purchasing its insurance policy and failed to exercise reasonable care or competence in communicating or obtaining information regarding the property and policy coverages and

exclusions. Mary'z justifiably relied on Mr. Khan and Texas General's representations that it had secured coverage for its property. Mr. Khan and Texas General's negligent misrepresentations proximately caused Plaintiff's damages.

KNOWLEDGE

15.1 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

16.1 Mary'z 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 including loss of the property and business; and the other actual damages permitted by law. In addition, Mary'z is entitled to exemplary damages.

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

16.3 Mary'z is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

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

16.5 Mary'z is entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

16.6 As a result of Defendants' acts and/or omissions, Mary'z has sustained damages in excess of the jurisdictional limits of this Court.

16.7 Mary'z is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

16.8 Mary'z 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 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 B. HARGIS

State Bar No. 24078630

BEN WICKERT

State Bar No. 24066290

2402 Dunlavy Street

Houston, Texas 77006

Phone: 713.554.9099

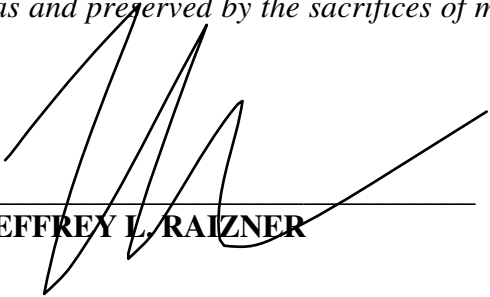
Fax: 713.554.9098

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