

C2020-0674A
CAUSE NO. _____

DUCKY'S SPORTSWEAR &
T-SHIRTS LLC

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IN THE DISTRICT COURT

V.

_____ JUDICIAL DISTRICT

TRAVELERS CASUALTY INSURANCE
COMPANY OF AMERICA

COMAL COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, DUCKY'S SPORTSWEAR & T-SHIRTS L.L.C, and files this Original Petition against TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA, ("Travelers") and in support thereof, would show as follows:

I.
DISCOVERY CONTROL PLAN LEVEL

Plaintiff intends for discovery to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure. This case involves complex issues and will require extensive discovery. Therefore, Plaintiff will ask the Court to order that discovery be conducted in accordance with a discovery control plan tailored to the particular circumstances of this suit.

II.
PARTIES AND SERVICE

Plaintiff is doing business in Comal County, Texas.

Travelers is in the business of insurance in the State of Texas. The insurance business done by Travelers in Texas includes, but is not limited to, the following:

- The making and issuing of contracts of insurance with the Plaintiff;
- The taking or receiving of application for insurance, including the Plaintiff's application for insurance;

- The receiving or collection of premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from the Plaintiff; and
- The issuance or delivery of contracts of insurance to residents of this state or a person authorized to do business in this state, including the Plaintiff.

Defendant, **Travelers Insurance Company of America**, can be served, via certified mail, through its registered agent, Corporation Service Company, at the following address: 211 East 7th Street, Suite 620, Austin, Texas 78701-3218. **Service is requested at this time.**

III. **JURISDICTION AND VENUE**

Venue is appropriate in Comal County, Texas because all or part of the conduct giving rise to the causes of action were committed in Comal County, Texas and Plaintiff and Properties which are the subject of this suit are located in Comal County, Texas. Accordingly, venue is proper pursuant to Texas Civil Practice & Remedies Code §15.002.

IV. **BACKGROUND FACTS**

Plaintiff is the owner of an Insurance Policy (hereinafter referred to as "the Policy"). Defendant provided the Plaintiff's business insurance for the business located at 272 S Union Ave, New Braunfels, Texas 78130, (hereinafter referred to as "the Property"). Travelers sold the Policy insuring the Property to Plaintiff.

During the terms of said Policy, Plaintiff has sustained and will sustain covered losses during the Covid-19 outbreak and subsequent Comal County and State of Texas Orders, attached hereto as Exhibit A, and Plaintiff reported same to Travelers pursuant to the terms of the Policy. Plaintiff asked that Travelers cover the cost for business interruption to the Property pursuant to the Policy. Travelers assigned Michael Sweigert to adjust the claim and investigate the

loss related to business interruption. The claim has been wrongfully denied. To date, Travelers has mishandled Plaintiff's claim and caused and will continue to cause Plaintiff further and additional damages.

Travelers made no request to Plaintiff for documents or information relating to the claim, and it denied Plaintiff's claims within days the claims were presented meaning it could not have done a proper or thorough investigation.

Travelers made material misrepresentations about Policy provisions, coverage and the law in Texas applying thereto. Travelers and its agents have kept and have in their possession a claim file which details the Plaintiff's claim and its investigation, adjustment, and subsequent denial of the claim.

Travelers wrongfully denied Plaintiff's claim for business interruption even though the Policy provides coverage for losses such as those suffered by Plaintiff. Furthermore, by information and belief, Travelers engaged its agents to misrepresent Policy provisions and coverage. To date, Travelers continues to deny the payment for Plaintiff's loss of business.

V. CAUSES OF ACTION

A. BREACH OF CONTRACT

Plaintiff re-alleges the foregoing paragraphs. Travelers and its agents' conduct constitute a breach of the insurance contract between it and Plaintiff. Travelers' failure and/or refusal, as described above, to pay Plaintiff adequate compensation as it is obligated to do under the terms of the Policy in question, and under the laws of the State of Texas, constitutes a breach of the insurance contract with Plaintiff.

Travelers failed to perform its contractual duty to adequately compensate Plaintiff under the terms of the Policy. Specifically, Travelers wrongfully denied coverage for Civil Authority and

loss of Business Income and refused to offer the full proceeds of the Policy, although due demand was made for proceeds to be paid in an amount sufficient to cover Plaintiff's business loss, and all conditions precedent to recovery under the Policy have been carried out and accomplished by Plaintiff. Travelers' conduct constitutes a breach of the insurance contract between it and Plaintiff.

B. NONCOMPLIANCE WITH TEXAS INSURANCE CODE

1. UNFAIR SETTLEMENT PRACTICES

Plaintiff re-alleges the foregoing paragraphs. Texas law is clear that insurance companies and anyone engaged in the business of insurance by investigating and adjusting a claim must conduct a reasonable, full and fair claim investigation. Travelers violated Chapter 541 of the Texas Insurance Code, in one or more of the following particulars:

§ 541.061. Misrepresentation of Insurance Policy.

- Making an untrue statement of material fact;
- Failing to state a material fact necessary to make other statements made not misleading;
- Making a misleading statement; and
- Failing to disclose a material matter of law.

2. THE PROMPT PAYMENT OF CLAIMS

Plaintiff re-alleges the foregoing paragraphs. Travelers' conduct constitutes and will continue to constitute multiple violations of the Texas Insurance Code, Prompt Payment of Claims. All violations made under this article are made actionable by TEX. INS. CODE §542.060.

Travelers failed to meet its obligations under the Texas Insurance Code regarding timely beginning an investigation of Plaintiff's claims, and requesting all information reasonably necessary to investigate Plaintiff's claims within the statutorily mandated time of receiving notice of Plaintiff's claims. Its conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.055.

Further, Travelers failed to accept or deny Plaintiff's full and entire claims within the statutorily-mandated time of receiving all necessary information. Its conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.056.

Travelers failed and will fail to timely pay Plaintiff's claim, and for all of the covered losses due to its wrongful denial of the policy benefits. TEX. INS. CODE §542.057.

Travelers failed and will fail to meet its obligations under the Texas Insurance Code regarding payment of claims without delay due to its wrongful denial. Its conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.058.

Because of Travelers' wrongful acts and omissions, Plaintiff was forced to retain the professional services of the attorney and law firm who is representing it with respect to these causes of action.

C. BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

Plaintiff re-alleges the foregoing paragraphs. Travelers' conduct constitutes a breach of the common law duty of good faith and fair dealing owed to the insureds pursuant to insurance contracts.

From and after the time Plaintiff's loss was presented to Travelers, its liability to pay the full claim in accordance with the terms of the Policy was reasonably clear. However, it has refused to pay Plaintiff in full and wrongfully denied the claim, despite there being no basis upon which a reasonable insurance company would have relied to deny the full payment. Travelers' conduct constitutes a breach of the common law duty of good faith and fair dealing.

Further, Travelers' failure, as described above, to adequately and reasonably investigate and evaluate Plaintiff's claims, although, at that time, it knew or should have known by the exercise of reasonable diligence that its liability was reasonably clear, constitutes a breach of the duty of

good faith and fair dealing.

VI. **KNOWLEDGE**

Each of the acts described above, together and singularly, was done "knowingly" by Defendant as that term is used in the Texas Insurance Code and was a producing cause of Plaintiff's damages described herein.

VII. **DAMAGES**

Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the proximate and producing causes of the damages sustained by Plaintiff.

For breach of contract, Plaintiff is entitled to regain the benefit of the bargain, which is the amount of the claim, together with attorney's fees.

For noncompliance with the Texas Insurance Code, Unfair Settlement Practices, Plaintiff is entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the Policy but for the wrongful denial, court costs, consequential damages not covered by Plaintiff's Policy and attorney's fees. For knowing conduct of the acts described above, Plaintiff asks for three times the actual damages. TEX. INS. CODE §541.152.

For noncompliance with the Texas Insurance Code, Prompt Payment of Claims, Plaintiff is entitled to the amount of the claim, as well as eighteen (18) percent interest per annum on the amount of such claim as damages, together with attorney's fees. TEX. INS. CODE §542.060.

For breach of the common law duty of good faith and fair dealing, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from the insurer's breach of duty, such as additional costs, economic hardship, losses due to nonpayment of the amount the insurer owed, and exemplary damages.

For the prosecution and collection of this claim, Plaintiff has been compelled to engage the services of the attorney whose name is subscribed to this pleading. Therefore, Plaintiff is entitled to recover a sum for the reasonable and necessary services of Plaintiff's attorney in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the Supreme Court of Texas.

VIII.

In addition, as to any exclusion, condition, or defense pled by Defendant, Plaintiff would show that:

The clear and unambiguous language of the policy provides coverage for business interruption and other losses to the Properties caused by losses made the basis of Plaintiff's claims;

In the alternative, any other construction of the language of the policy is void as against public policy;

Any other construction and its use by the Defendant violate the Texas Insurance Code section 541 et. seq. and is void as against public policy;

Any other construction is otherwise void as against public policy, illegal, and violates state law and administrative rule and regulation.

In the alternative, should the Court find any ambiguity in the policy, the rules of construction of such policies mandate the construction and interpretation urged by Plaintiff;

In the alternative, Defendant is judicially, administratively, or equitably estopped from denying Plaintiff's construction of the policy coverage at issue;

In the alternative, to the extent that the wording of such policy does not reflect the true intent of all parties thereto, Plaintiff pleads the doctrine of mutual mistake requiring reformation.

IX.
REQUEST FOR DISCLOSURES

Pursuant to the Texas Rules of Civil Procedure 194, Plaintiff requests that Defendant provide the information required in a Request for Disclosure.

X.
FIRST REQUEST FOR PRODUCTION TO TRAVELERS


- 1) Produce the non-privileged portion of Travelers' complete claim files for Plaintiff's Properties relating to or arising out of Plaintiff's losses for which Travelers opened claims under the Policy.
- 2) Produce all emails and other forms of communication between Travelers, its agents, adjusters, employees, or representatives and the agent and adjuster, and/or their agents, adjusters, representatives or employees relating to, mentioning, concerning or evidencing the Plaintiff's Policy and/or Properties which are the subject of this suit.

XI.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendant be cited to appear and answer herein; that, on final hearing, Plaintiff have judgment against Defendant for an amount, deemed to be just and fair by the jury, which will be a sum within the jurisdictional limits of this Court. FOR THE COURT: Plaintiff is forced to state a range amount of damages sought although Plaintiff believes that the amount of damages is solely for the jury to determine. However, because Plaintiff must state a range of damages, Plaintiff pleads that the damages will be more than \$100,000 but less than \$200,000. Plaintiff further pleads for costs of suit; for interest on the judgment; for pre-judgment interest; and, for such other and further relief, in law or in equity, either general or special, including the non-monetary relief of declaratory judgment against Defendant, to which Plaintiff may be justly entitled.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

PLAINTIFF REQUESTS A TRIAL BY JURY