

CAUSE NO. GC-20-02778-A

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| DALLAS BERKSHIRE PARTNERS, LTD. | § | IN THE COUNTY COURT |
| | § | |
| V. | § | |
| | § | AT LAW NO. _____ |
| FEDERAL INSURANCE COMPANY | § | |
| AND WILLIAM THORNTON | § | |
| | § | DALLAS COUNTY, TEXAS |

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, DALLAS BERKSHIRE PARTNERS, LTD., and files this Original Petition against FEDERAL INSURANCE COMPANY, a member of the Chubb Group of Insurance Companies (“Chubb”), and WILLIAM THORNTON (“Thornton”), 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 Dallas County, Texas.

Chubb is in the business of insurance in the State of Texas. The insurance business done by Chubb 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;
- Systematically maintaining contractual relationships with numerous agents who sell contracts of insurance on its behalf; 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 **Federal Insurance Company** can be served, via certified mail, through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-4284. **Service is requested at this time.**

Defendant **William Thornton** is a Texas resident and may be served at his business address at 19450 State Highway 249, Houston, Texas 77070-3057 by certified mail, return receipt requested. **Service is requested at this time.**

III. JURISDICTION AND VENUE

Venue is appropriate in Dallas County, Texas because all or part of the conduct giving rise to the causes of action were committed in Dallas County, Texas and Plaintiff and Property which are the subject of this suit are located in Dallas 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 841 Preston Road, Suite 750 and 841 A-B Preston Road, Dallas, Texas 75225 (hereinafter referred to as "the Property"). Chubb 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 Dallas County and State of Texas Orders (“Orders”), and Plaintiff reported same to Chubb pursuant to the terms of the Policy. Plaintiff asked that Chubb cover the cost for lost rents pursuant to the Policy. Chubb assigned William Thornton to adjust the claim and investigate the loss related to the lost rents; however, he failed to properly investigate as described more specifically below. Due to his failure, the claim has been wrongfully denied. To date, Thornton and Chubb have mishandled Plaintiff’s claim and caused and will continue to cause Plaintiff further and additional damages.

Thornton made no request to Plaintiff for documents or information relating to the claim, and Chubb denied Plaintiff’s claim within days the claim was presented meaning he could not have done a proper or thorough investigation.

Thornton and Chubb made material misrepresentations about Policy provisions, coverage and the law in Texas applying thereto. Chubb 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.

Chubb wrongfully denied Plaintiff’s claim for lost rents even though the Policy provides coverage for losses such as those suffered by Plaintiff. Furthermore, by information and belief, Chubb engaged its agents to misrepresent Policy provisions and coverage. To date, Chubb continues to deny the payment for Plaintiff’s lost rents.

V.

CAUSES OF ACTION AGAINST CHUBB

A. BREACH OF CONTRACT

Plaintiff re-alleges the foregoing paragraphs. Chubb and its agents’ conduct constitutes a breach of the insurance contract between it and Plaintiff. Chubb’s 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.

Chubb failed to perform its contractual duty to adequately compensate Plaintiff under the terms of the Policy. Specifically, Chubb wrongfully denied coverage for lost rents 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. Chubb's 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. Chubb 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.

§ 541.060. Unfair Settlement Practices.

Insurance Code chapter 541, section 541.060 by, among other things:

- misrepresenting one or more material facts and/or Policy provisions relating to coverage;
- making misrepresentations of law;

- failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which its liability has become reasonably clear;
- failing to promptly provide a reasonable explanation of the basis in law or fact for the denial of Plaintiffs' claims;
- refusing to affirm or deny coverage within a reasonable time;
- refusing to conduct a reasonable investigation;
- ignoring damage known to be covered by the Policy; and/or
- conducting an outcome-oriented investigation in order to provide a basis to underpay or deny the claim.

2. THE PROMPT PAYMENT OF CLAIMS

Plaintiff re-alleges the foregoing paragraphs. Chubb's 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.

Chubb 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, Chubb 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.

Chubb 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.

Chubb 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 Chubb's 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. Chubb's 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 Chubb, 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. Chubb's conduct constitutes a breach of the common law duty of good faith and fair dealing.

Further, Chubb's 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.

CAUSES OF ACTION AGAINST DEFENDANT THORNTON

A. NONCOMPLIANCE WITH TEXAS INSURANCE CODE

Plaintiff re-alleges the foregoing paragraphs. At all pertinent times, Thornton was engaged in the business of insurance as defined by the Texas Insurance Code. The acts and omissions of Thornton constitute one or more violations of the Texas Insurance Code. More specifically, Thornton has, among other violations, violated the following provisions of the Code:

1. Insurance Code § 542.003(b)(5).

2. Insurance Code chapter 541, section 541.060 by, among other things:

- misrepresenting one or more material facts and/or policy provisions relating to coverage;
- failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claims with respect to which their liability has become reasonably clear;
- failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claims under one portion of a policy with respect to which liability has become reasonably clear in order to influence Plaintiffs to settle its claims with respect to another portion of the policy;
- failing to promptly provide a reasonable explanation of the basis in law or fact for the denial of Plaintiff's claims;
- refusing to affirm or deny coverage within a reasonable time;
- refusing to conduct a reasonable investigation;
- ignoring damage known to be covered by the Policy; and/or
- conducting an outcome-oriented investigation in order to provide the carrier with a basis to deny the claim.

Chubb assigned the loss and the claim to Thornton who was at all pertinent times the agent of Chubb, through both actual and apparent authority. The acts, representations and omissions of Thornton are attributed to Chubb. Thornton was tasked with the responsibility of conducting a thorough and reasonable investigation of Plaintiff's loss. Despite the fact that the Texas Insurance Code dictates adjusters must conduct a reasonable investigation and adjustment of a claim, Thornton failed to do so and actually set out to conduct an outcome-oriented investigation and adjustment, which has and will result in an inequitable settlement of Plaintiff's claim.

Thornton pre-textually looked only for ways to avoid coverage rather than first trying to find coverage. Notably, he made no request for documentation. Instead he immediately sent Plaintiff a denial letter stating that there is no coverage for Plaintiff's loss without conducting an

investigation or adjustment of the claim. Thornton misrepresented the policy coverages to Plaintiff. He misrepresented to Plaintiff that in order to have coverage for lost rents, it had to have sustained direct physical loss or damage to the Property. The Policy covers direct physical *loss* to the property, yet Thornton failed to investigate the “loss to” the property due to the Orders. Physical loss is not defined by the Policy, and yet Thornton represented without any basis that the Orders did not constitute a “loss” even though physical loss has been broadly construed to apply to losses that do not necessarily cause actual physical alteration of the property. In fact, Thornton claimed that access to Plaintiff’s Property was not restricted or prohibited when he was clearly aware of the Orders.

As well, Thornton misrepresented to Plaintiff that coverage under civil authority does not apply because “there must be a prohibition of access to your premises or a dependent business premises.” But Thornton did no investigation whatsoever to make such a determination, and the civil authority coverage applies when there is a *physical loss* to other properties or dependent properties. The Orders clearly affected properties around Plaintiff’s and caused physical loss to the dependent properties that pay Plaintiff rent. But he did no investigation as to whether access to Plaintiff’s Property was prohibited and whether the dependent properties suffered a physical loss. Rather than advising Chubb to pay Plaintiff’s claim, investigating more (or at all) with respect to the Orders, Thornton sent Plaintiff a denial letter right after the claim was made, despite the fact the Policy provides coverage for Plaintiff’s lost rents. As result of Thornton’s misrepresentations, inadequate and outcome-oriented investigation in the form of no investigation, Plaintiff has not received any payment for the claim.

The foregoing conduct was and is the producing cause(s) of injury and damage to Plaintiff and Plaintiff has suffered damages including, without limitation, actual damages, economic

damages, and consequential damages. Thornton's conduct caused a failure to effectuate a prompt, reasonable settlement of the claim. Moreover, one or more of the foregoing acts or omissions were committed "knowingly" entitling Plaintiff to seek treble damages pursuant to the Insurance Code.

VII.
CAUSES OF ACTION AGAINST ALL DEFENDANTS FOR CIVIL CONSPIRACY

Plaintiff re-alleges the foregoing paragraphs. The Defendants conspired to delay and deny or underpay Plaintiff's claim. Chubb assigned Thornton to investigate Plaintiff's claim, and the Defendants set out to intentionally conduct an outcome-oriented investigation in order to avoid paying for all of the damages to Plaintiff's Property covered by the Policy. The denial letter misrepresenting coverage, as well as his failure to investigate or adjust the claim to create a basis for denial, were either independent acts by Thornton in violation of the Insurance Code or a meeting of the minds between Thornton and Chubb to accomplish violations of the Insurance Code – the discovery process will bear out which. The Defendants' conspiracy was a proximate cause of Plaintiff's damages.

VIII.
KNOWLEDGE

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

IX.
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.

X.

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

The clear and unambiguous language of the policy provides coverage for lost rents and other losses to the Property 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 Defendants 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, Defendants are 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.

XI. REQUEST FOR DISCLOSURES

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

XII. FIRST REQUEST FOR PRODUCTION TO CHUBB

- 1) Produce the non-privileged portion of Chubb's complete claim file for Plaintiff's Property relating to or arising out of Plaintiff's losses for which Chubb opened a claim under the Policy.
- 2) Produce all emails and other forms of communication between Chubb, 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 Property which is the subject of this suit.
- 3) Underwriting documents and communications, including but not limited to, any and all materials, documents, notations, files, reports, correspondence and/or other communications related to Plaintiff's application/s for coverage, binders, proposals, and the issuance of the policy, including renewals thereof. This request also includes materials, determination and/or

method for determining the forms and endorsements to be used in creating the policy. This request also includes information regarding the basis for rating and premium classifications used for Plaintiff. Finally, this request includes any internal communications or guidelines regarding the handling and/or coverage positions of Defendant regarding business interruption and other claims related to the 2019 Novel Coronavirus and/or COVID-19.

- 4) Any and all documents and/or communications from Chubb or any parent, subsidiary or affiliated entities to any third-party, including but not limited to insurance agents and brokers, marketing and/or public relations firms, at any time after December 15, 2019, and relating in any way to coverage or exclusions or denials of coverage for civil authority or for business interruption or business income loss and/ or commercial property coverage mentioning or referencing the 2019 Novel Coronavirus, the pandemic, and/or COVID-19.

XII.

FIRST REQUEST FOR PRODUCTION TO THORNTON

- 1) Produce Thornton's complete claim or adjusting file for Plaintiff's claim.
- 2) Produce all emails and other forms of communication between Chubb, its agents, adjusters, employees, or representatives and Thornton and/or his agents, adjusters, representatives or employees relating to, mentioning, concerning or evidencing the claim which is the subject of this suit. This request includes Documents and/or Communications relating to the handling of business interruption and other claims related to the 2019 Novel Coronavirus and/or COVID-19.

XIII.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer herein; that, on final hearing, Plaintiff have judgment against Defendants for an amount, deemed to be just and fair by the jury, which will be a sum within the jurisdictional limits of this Court. Plaintiff pleads that the damages will be more than \$200,000 but less than \$1,000,000. 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 Defendants, to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Michael Steinmark

Michael Steinmark

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PLAINTIFF REQUESTS A TRIAL BY JURY