

Cause No. 19-4124-362

<b>AMANDA DUNN and WILLIAM DUNN,</b> Plaintiffs,	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	OF DENTON COUNTY, TEXAS
	§	
<b>FARMERS INSURANCE,</b> Defendant.	§	<b>362ND JUDICIAL DISTRICT</b>

**PLAINTIFFS’ FIRST AMENDED PETITION**

Plaintiffs, **AMANDA DUNN and WILLIAM DUNN**, by and through the undersigned attorney, file this their First Amended Petition against Defendant, **FARMERS INSURANCE**. Plaintiffs intend only to amend their petition and not the discovery requests that were served along with the Original Petition in this cause. In support of this First Amended Petition, Plaintiffs state as follows:

**DISCOVERY-CONTROL PLAN**

- 1. Plaintiffs intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiffs seek monetary relief over \$100,000.

**CLAIM FOR RELIEF**

- 2. Plaintiffs seek monetary relief over \$200,000 but not more than \$1,000,000. Tex. R. Civ. P. 47(c)(4).

**PARTIES**

- 3. Plaintiffs, Amanda Dunn and William Dunn (hereinafter “Plaintiffs”), are individuals who reside in Denton County, Texas.
- 4. Defendant Farmers Insurance (hereinafter “Defendant” or “Farmers”), an insurance company that is licensed to do business in the State of Texas, may be served with process by delivering a copy of the petition and citation to Christine Granger, 15700 Long Vista Dr, Austin TX 78728 -3822, as its agent for service of process.

**JURISDICTION**

5. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

#### **VENUE**

6. Venue is proper in Denton County under Texas Civil Practice & Remedies Code section 15.002 because all or a substantial part of the events or omissions giving rise to the claim occurred in Denton County.

#### **FACTS**

7. On or about January 23, 2017, Defendant issued a homeowner's insurance policy (Policy Number: 99353-73-40) naming William Dunn as the insured. In addition to the named insured, the policy coverages also extend to "the spouse of a resident of the same household". At all relevant times, Amanda Dunn resided in the covered property as the spouse of William Dunn and was therefore a covered person under the policy. The policy covers losses caused by fire to "personal property owned, worn or used by an insured while on the residence premises." At all relevant times, the policy was in full force and effect.
8. On or about December 12, 2017, an accidental fire erupted in the property insured by the above-reference insurance policy. The fire caused substantial damage to various items of Plaintiffs' personal and community property. Plaintiffs timely notified Defendant of the loss and filed a claim against the policy (*Claim Number: 3009973495-1-2*).
9. Initially, Defendant's adjuster inspected the property, determined that there was property loss by fire, accepted liability, created an initial estimate of the damages, and issued a check to Plaintiffs. However, the adjuster's estimate assumed that Plaintiffs would replace at Walmart clothing that was purchased at Neiman Marcus. However, upon realizing that Plaintiffs were unwilling to replace at Walmart the clothes that they purchased at Neiman Marcus due to the significant price difference between the two stores, the adjuster handling the claim decided to stonewall the process and refuse to make additional payments. Instead of

- making payments as required by the insurance contract, Defendant demanded that Plaintiffs first purchase the replacement property and then submit the receipts for a possible reimbursement. In addition, months after the property had been cleaned up, Defendant's adjuster demanded another inspection as if Plaintiffs was required to live in a burnt, smoke-filled property for months until Defendant decided to inspect it again.
10. Defendant has received enough documents and has been able to conduct sufficient investigation to determine its liability under the insurance contract. Nonetheless, it has refused to issue payment.

### **CLAIMS**

11. ***Breach of Contract:*** Farmers insurance has breached the insurance policy by failing or refusing the pay for certain covered damages even after being presented with proof of loss and supporting documents.
12. ***Insurance Code Violation:*** Pursuant to section 541.060(a)(2) of the Texas Insurance Code, it is a violation of the Texas Insurance Code for an insurer to fail to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear. It has been over a year since the date of loss and Farmers Insurance has failed to attempt to resolve this matter in good faith. Instead, Farmers Insurance has subjected the claimants to the inconvenience of several inspections of the damaged property for no discernible purpose but to unreasonably delay payments.
13. ***Violation of the Texas Deceptive Trade Practices Act.*** Pursuant to Section 17.50 of the Texas Business and Commerce Code, "A consumer may maintain an action where any of the following constitute a producing cause of economic damages or damages for mental anguish...(4) the use or employment by any person of an act or practice in violation of Chapter 541, Insurance Code." Plaintiffs hereby incorporates by reference previously alleged facts and claims.

### **DAMAGES**

14. **Damage to personal property.** The fire caused damages to the personal property of the claimants in excess of \$129,470.20.
15. **Loss of Use.** Loss of use damages are estimated at \$10,000.
16. **Statutory Damages.** Because Defendant's actions were knowing or intentional, Plaintiffs seek treble damages as authorized by Texas Business and Commerce Code Section 17.50(b)(1). In addition, Plaintiffs seek all damages authorized by Texas Insurance Code Sec. 542.060, which states in relevant part:

**LIABILITY FOR VIOLATION OF SUBCHAPTER.**

(a) Except as provided by Subsection (c), if an insurer that is liable for a claim under an insurance policy is not in compliance with this subchapter, the insurer is liable to pay the holder of the policy or the beneficiary making the claim under the policy, in addition to the amount of the claim, interest on the amount of the claim at the rate of 18 percent a year as damages, together with reasonable and necessary attorney's fees. Nothing in this subsection prevents the award of prejudgment interest on the amount of the claim, as provided by law.

(b) If a suit is filed, the attorney's fees shall be taxed as part of the costs in the case.

(c) In an action to which Chapter 542A applies, if an insurer that is liable for a claim under an insurance policy is not in compliance with this subchapter, the insurer is liable to pay the holder of the policy, in addition to the amount of the claim, simple interest on the amount of the claim as damages each year at the rate determined on the date of judgment by adding five percent to the interest rate determined under Section 304.003, Finance Code, together with reasonable and necessary attorney's fees. Nothing in this subsection prevents the award of prejudgment interest on the amount of the claim, as provided by law. Interest awarded under this subsection as damages accrues beginning on the date the claim was required to be paid.

17. **Attorney Fees.** Plaintiffs have incurred, and will continue to incur, legal fees in the prosecution of this matter. Plaintiffs seek reasonable and necessary attorney fees as authorized by Texas Business and Commerce Code Section 17.50(d) and the Texas Insurance Code Section 542.060.

**CLAIMS**

18. All conditions precedent to Plaintiffs' claims for relief have been performed or have occurred.

**PRAYER**

- 19.** For these reasons, Plaintiffs ask that Defendant be cited to appear and answer. In addition, Plaintiffs ask to court to render judgment in her favor and award the following damages:
- a. Actual damages.
  - b. Prejudgment and postjudgment interest.
  - c. Statutory damages and interest pursuant to the Texas Deceptive Trade Practices Act and the Texas Insurance Code.
  - d. Court costs.
  - e. Attorney fees.
  - f. All other relief to which Plaintiffs are entitled.

Respectfully submitted,

/s/ Leroy Scott  
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