

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X Index No.

MICHELLE GRAY,

Date Filed:

Plaintiff(s),

**SUMMONS**

-against-

TRI-STATE CONSUMER INSURANCE COMPANY,

Plaintiff(s) designate Queens County. The basis of the venue designated is residence of Plaintiff(s).

Defendant(s).

-----X

Plaintiff(s) address:  
138-02 231<sup>st</sup> Street  
Laurelton, NY 11413

**TO THE ABOVE-NAMED DEFENDANT(S):**

**YOU ARE HEREBY SUMMONED** and required to serve upon Plaintiff(s) attorney an answer to the Verified Complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint.

Dated: Great Neck, New York  
November 25, 2013

Yours, etc.

GREENBLATT & AGULNICK, P.C.,

By: 

Scott E. Agulnick

Attorney for Plaintiff(s)

**MICHELLE GRAY**

55 Northern Blvd., Suite 302

Great Neck, New York

Tel: (718) 352- 4800

Fax: (718) 732- 2110

Defendants' Addresses:

Tri-State Consumer Insurance Company  
2 Robbins Lane  
Jericho, New York 11753

SUPREME COURT OF THE STATE OF NEW  
YORK COUNTY OF QUEENS

-----X  
MICHELLE GRAY,

Plaintiff(s),

-against-

TRI-STATE CONSUMER INSURANCE COMPANY,

Defendant(s).

-----X

Index No.

**VERIFIED COMPLAINT**

Plaintiff(s), **MICHELLE GRAY**, by her attorneys, **GREENBLATT & AGULNICK, P.C.**, for her Verified Complaint against the Defendant(s), alleges as follows:

**PARTIES**

1. Plaintiff, **MICHELLE GRAY**, is an individual residing at 138-02 231<sup>st</sup> Street, Laurelton, New York, 11413, in the County of Queens, City and State of New York.

2. Defendant, **TRI-STATE CONSUMER INSURANCE COMPANY**, (hereinafter "Insurance Company" or "TSC") is a domestic corporation licensed to issue property insurance policies and conduct business in the State of New York, with principal offices for the conduct of business located at 2 Robbins Lane, Jericho, New York 11753.

3. Insurance Company, its subsidiary, broker and/or agent is an insurance company licensed, admitted, engaging in, and/or authorized to engage in the business of casualty and homeowners insurance throughout the United States, including within the State of New York, with offices for the transaction of business located within the State of New York.

4. Plaintiff brings this action against Defendant TSC with regard to the Defendant TSC's failure to indemnify Plaintiff MICHELLE GRAY for her insurance claim following a fire loss at 138-02 231<sup>st</sup> Street, Laurelton, New York 11413 (hereinafter referred to as the "Property") on or about March 10, 2012 (hereinafter referred to as the "Loss"), the facts and circumstances being more fully set forth below.

5. The transaction of events and the real property that is the subject of this lawsuit is located within the County of Queens, City and State of New York.

### RELEVANT FACTS

6. At all times hereinafter alleged, Plaintiff owned and had an insurable interest the real property commonly referred to as 138-02 231<sup>st</sup> Street, Laurelton, New York 11413 (the "Property"), in the County of Queens, City and State of New York.

7. At all times hereinafter alleged, Plaintiff owned and had an insurable interest in the building, contents, fixtures, furniture, completed additions, and completed operations located at the Property.

8. That Defendant TSC its subsidiary, and/or agent, for good and valuable consideration and a premium paid, issued and/or reissued to Plaintiff an insurance policy, including endorsements and amendments thereto which became a part of said policy, bearing the policy number **HOP 116670** (hereinafter referred to as the "Policy"), whereby it insured the Property and contents therein against all risks of loss to the property up to the limits contained therein, including, *inter alia*, physical loss from fire and additional living expenses, and which was in effect on the date of loss. The policy was signed by the authorized agents of the Defendant, its subsidiary, and/or agent.

9. Pursuant to the policy, Defendant TSC its subsidiary, and/or agent agreed to insure the Plaintiff MICHELLE GRAY for a term of twelve (12) months, and in effect

on the March 10, 2012 loss date, against loss of property caused by, *inter alia*, fire. Defendant TSC, its subsidiary, and/or agent, during the policy term, agreed to indemnify Plaintiff MICHELLE GRAY against loss or damage sustained at the property.

10. On or about March 10, 2012, and while the insurance policy was in full force and effect, a fire took place at the property which caused property damage to Plaintiff's premises and contents.

11. Plaintiff hired Public Adjuster Freidman & Levin at the scene of the loss March 10, 2012.

12. On March 10, 2012, the Plaintiff notified the Defendant Insurance Company, its subsidiary, and/or agent, and the authorities of the fire at the aforementioned Property and of the loss sustained thereby (hereinafter the "Claim").

13. Plaintiff and her family, which includes Plaintiff's husband, mother in-law, and 4 children ages 16, 7, 6, and 1 year old, stayed in a hotel after the loss, the accommodations having been arranged by their public adjuster.

#### **THE BAD FAITH AND NIGHTMARE CLAIMS HANDLING BY TSC**

14. On March 12, 2012, Plaintiff notified TSC that living in a hotel was inconvenient and not suitable for a 1 year old child to stay in all day; therefore she would begin to look for a child care program. Plaintiff informed TSC that the cost of child care would be eight hundred dollars (\$800.00) per month. Defendant Insurance Company subsequently told Plaintiff that TSC would reimburse her for the child care expenses.

15. Defendant, TSC, sent their Contents Adjuster, "Smith" on March 15, 2012 to compile an inventory of Plaintiff's contents.

16. On March 16, 2012, "Peter" an employee of Prism General Services, who was hired by TSC, conducted an estimate of the damages at the Property.

17. Plaintiff received a check in the amount of ten thousand dollars (\$10,000.00) on March 20, 2012 from her Public Adjuster Freidman & Levin. Plaintiff was told the check was to be used to buy food, clothing and replace items that were damaged in the loss.

18. On March 29, 2012, the Plaintiff and her family, moved into a rental property located at 225-10 Mentone Avenue, Springfield Gardens, New York 11413. The rental property was provided by the Plaintiff's Public Adjuster Freidman & Levin in conjunction with Home Source. Defendant TSC paid the rent in the amount of two thousand two hundred dollars (\$2,200.00) directly to Home Source.

19. On or about April 6, 2012, the Plaintiff cancelled her contract with the Public Adjuster Friedman & Levin, and informed Defendant TSC of the cancellation as well.

20. Plaintiff faxed receipts for food in the amount of four thousand six hundred and seven dollars (\$4,607.00) and clothing in the amount of four thousand nine hundred eighty three dollars and forty cents (\$4,983.40) to Defendant TSC on April 9, 2012.

21. On April 10, 2012, Plaintiff received an advance check in the amount of five thousand (\$5,000.00) from Defendant TSC and also received a reimbursement check in the amount of five hundred dollars (\$500.00) for a property survey in which the Plaintiff had initially paid for.

22. Prism General Services estimated the actual cash value of the damage to the Property at two hundred twenty four thousand seven hundred ninety dollars and forty nine cents (\$224,790.49) and the replacement cost of the damage at two hundred fifty-one thousand two hundred fourteen dollars and eighteen cents (\$251,214.18) on or about April 11, 2012.

23. On or about April 18, 2012, the Plaintiff hired Tergram Engineer Services to perform the work to be completed at the Property. While assessing the damage to the Property asbestos was uncovered in the basement.

24. Plaintiff made numerous attempts to contact Defendant TSC to inform them of the discovery of asbestos in the basement of the Property.

25. On or about April 30, 2012, Tergram Engineer Services estimated the damage to the Property at two hundred seventy four thousand dollars (\$274,000.00).

26. On or about May 2, 2012, Plaintiff signed and submitted a Proof of Loss at Defendant TSC's office on the form demanded by TSC.

27. Defendant TSC alleged that Prism General Services informed them that there were no signs of asbestos in the Property.

28. On or about May 4, 2012, Plaintiff spoke with Defendant TSC regarding reimbursement for her child care expenses; she was told by Defendant "that the president did not sign the check yet", notwithstanding that the check was requested weeks if not months prior.

29. Plaintiff subsequently was informed by Defendant TSC that "all payments are suspended and no checks will be issued until further notice". Plaintiff was also told that she would have to pay her architect and thereafter wait for reimbursement from TSC despite the hardship and delay it would cause.

30. On or about May 8, 2012, Plaintiff contacted AmeriSci New York regarding the removal of asbestos in the basement. AmeriSci New York confirmed the presence of asbestos and initially estimated the abatement cost to be in excess of two thousand dollars (\$2,000.00) and thereafter Plaintiff informed TSC of the estimate and was told "that was too much money and they wouldn't pay for it".

31. On or about May 10, 2012, Plaintiff was told that Defendant was relying upon their hired estimate from Prism General Services, which said there was no asbestos found.

32. Plaintiff received a letter from TSC on or about May 15, 2012, stating that Defendant "had the right to fix the house and the contract to repair was given to Prism". Plaintiff thereafter contacted TSC regarding the aforementioned letter and was told "it is in the policy and TSC has the right to do the repairs".

33. That Plaintiff objected to TSC's assertion that Prism was going to perform the work, based in part on the obvious failure and/or refusal by Prism and/or TSC to acknowledge that asbestos abatement was required, and ultimately TSC acquiesced and withdrew their demand.

34. On or about May 18, 2012, Plaintiff gave Defendant the estimate from Tergram Engineering Services, and was told by TSC that Plaintiff should "give the estimate to Prism General Services herself... that TSC has nothing to do with her private engineering estimate... contact Prism and work it out".

35. That Plaintiff advised TSC that her estimate for the rebuilding of the house was more than Prism's and TSC advised further that TSC doesn't negotiate estimates and that was an issue to be resolved between her and Prism.

36. Plaintiff signed a contract on May 18, 2012 with Advanced Engineering Enterprise to perform the architectural drawing of the Property. Plaintiff notified Defendant TSC of the contract, amount and payment agreement, providing for two installment payments for the architectural drawing.

37. Plaintiff tried on various occasions from May 22, 2012 through May 25, 2012 to make contact with Defendant, and received no response until May 31, 2012. On May 31, 2012, Plaintiff informed Defendant that she had still not received any



reimbursement on utility payments such as electric, gas and laundry. Plaintiff previously submitted all bills and deposited bank checks for reimbursement.

38. Defendant informed Plaintiff that their hired contractor Prism General Services would be coming to the Property to complete an asbestos check.

39. On or about June 5, 2012, Plaintiff contacted Defendant again as she still had not received reimbursement for child care or utilities.

40. On June 6, 2012, Plaintiff spoke with "Peter" an employee of Prism General Services regarding the asbestos check and Plaintiff was told "I will stick to my estimate and we did not find asbestos in the house".

41. On or about June 7, 2012, Plaintiff informed Defendant about Prism General Services' "findings" and Plaintiff was told by Defendant that they would contact Prism General Services. A walk through of the Property was scheduled for June 22, 2012.

42. On June 13, 2012, Plaintiff received the first advance check with regards to her contents claim in the amount of five thousand dollars (\$5,000.00).

43. On or about June 16, 2012, Plaintiff submitted a complete list of her contents in excess of the policy limits.

44. Plaintiff tried on various occasions from June 18, 2012 through June 19, 2012 to make contact with Defendant to discuss the contents and other open aspects of the claim, and received no response during that time.

45. On June 22, 2012, Prism General Services failed to appear at the scheduled walk through at the Property, Plaintiff informed Defendant of their hired contractor's failure to appear.

46. On or about June 22, 2012, Plaintiff received a check in the amount of three hundred seventy five dollars (\$375.00) for reimbursement of utilities.

47. On June 25, 2012, Plaintiff informed Defendant that she had not received a reimbursement check for the laundry expenses, which Plaintiff had previously submitted to Defendant in the amount of two hundred forty dollars (\$240.00).

48. On or about June 26, 2012, without explanation, Defendant's adjuster "Smith" returned to the Property on June 26, 2012 for a second time to purportedly re-examine the Property and Contents, yet said examination was as cursory as the first.

49. On or about June 27, 2012, Plaintiff was informed by Defendant that TSC will "stick by Prism's estimate".

50. On or about June 29, 2012, Plaintiff submitted a copy of the deposit check in the amount of three thousand four hundred dollars (\$3,400.00) with regard to the architectural drawing for reimbursement.

51. On July 2, 2012, Plaintiff went to TSC's office and was shown a check requisition form in the amount of one hundred ninety thousand dollars (\$190,000.00) for her claim.

52. While Plaintiff was at TSC's office she was told "that the President Penny Hart needs to sign off on the check" and Plaintiff was also told to come back to TSC's office the following day.

53. Plaintiff was further advised, in sum and substance, that the check in the amount of one hundred ninety thousand dollars (\$190,000.00) was the total that she would receive until she completed the work and upon completion she would receive another check for approximately twenty-six thousand dollars (\$26,000.00).

54. On July 3, 2012, Plaintiff returned to TSC's office as instructed, at which time Plaintiff was then informed that the President will not sign the check unless Plaintiff shows proof that she is the property owner and that therefore all payments will be held.

55. Plaintiff left numerous messages for Defendant on July 5, 2012 and received no response during that time.

56. On or about July 6, 2012, Plaintiff spoke with Robert Peratta, a Claims Supervisor at TSC, who informed her that TSC will not release the check for the dwelling portion of the claim unless she submits an occupancy agreement. Plaintiff informed Mr. Peratta that she had previously submitted that document.

57. On July 10, 2012, Plaintiff submitted in person, another occupancy agreement to Defendant, along with a copy of the Deed to the Property, her marriage certificate, all four of her children's birth certificates, and income tax returns.

58. Notwithstanding duplicative compliance with all requests, Plaintiff was then told that the check cannot be issued because the President now wants pictures of the circuit breaker in the house, an illogical request in light of the circuit breaker being completely immaterial to the dryer fire which occurred at the Property.

59. On or about July 11, 2012, TSC sent an individual to the Property to take pictures of the circuit breaker.

60. On or about July 23, 2012, Plaintiff received a check in the amount of one hundred ninety thousand dollars (\$190,000.00) for the dwelling and a check in the amount of three thousand four hundred dollars (\$3,400.00) for reimbursement of the first payment for the architectural drawing with both checks having been dated June 29, 2012.

61. Plaintiff informed Defendant that the architect had not received the second payment and was therefore advised by TSC that they would have to wait for TSC to pay the architect's second payment without a reasonable explanation or logical basis for the delay in payment.

62. Plaintiff tried on several occasions from August 6, 2012 through August 10, 2012 to make contact with Defendant, and received no response during that time.

63. On August 13, 2012, Plaintiff faxed utility bills for dates June 16, 2012 through August 11, 2012 to Defendant. Plaintiff previously submitted copies of all deposited checks for payment and had still not received reimbursement from the March laundry bill that was previously submitted.

64. Plaintiff tried on various occasions from August 27, 2012 through August 31, 2012 to make contact with Defendant and received no response during that time.

65. On or about September 5, 2012, Plaintiff informed Defendant that she still had not received the aforementioned reimbursement check in the amount of one thousand four hundred dollars (\$1,400.00) for additional expenses and that the architect had not received their second payment as of yet.

66. Plaintiff spoke with Robert Peratta about the reimbursement check in the amount of one thousand four hundred dollars (\$1,400.00) that she had still not received.

67. Plaintiff tried on various occasions from September 10, 2012 through September 21, 2012 to make contact with Defendant, and received no response during that time.

68. On October 12, 2012, notwithstanding the fact that no one had ever substantively discussed the Contents claim with Plaintiff, Plaintiff was informed by TSC that the final payment amount on her Contents claim would be released to her that day.

69. At that time Robert Peratta was “unable to give the exact dollar amount because the President has not decided on the amount”, an illogical and suspicious comment considering Ms. Hart could not have had any firsthand knowledge of the claim itself.

70. From October 25, 2012 through November 13, 2012 Plaintiff was unable to reach the Defendant and received no response back during that time.

71. Due to Hurricane Sandy and the non-payment from TSC the architectural drawings were delayed, along with the plans and repairs.

72. Plaintiff made various attempts to contact TSC from November 13, 2012 through November 21, 2012, and received no response during that time.

73. On or about November 26, 2012, Plaintiff signed a contract with ALR Environmental Corp., to remove the asbestos confirmed to be present in the basement.

74. The cost of the removal of the asbestos by ALR Environmental totaled six thousand five hundred dollars (\$6,500.00).

75. Plaintiff was thereafter informed by TSC that they will not pay to have the asbestos removed, that she would have to pay for the removal and TSC would reimburse her.

76. Plaintiff tried on various occasions from December 4, 2012 through December 26, 2012 to make contact with Defendant, and received no response during that time. At that time the outgoing message for Defendant was "due to high call volume, line is busy".

77. On or about December 28, 2012, Plaintiff faxed utility bills and laundry expenses totaling one thousand forty dollars and ninety two cents (\$1,040.92) to Defendant.

78. Plaintiff made numerous attempts to contact Defendant on January 7, 2013, and the line was busy all day.

79. On or about January 15, 2013, Plaintiff met with Joe DeRosa, the adjuster on her claim file at TSC's office. Mr. DeRosa informed her that he will no longer be handling the claim and showed the Plaintiff the check requisition form for child care reimbursement in the amount of eight thousand six hundred dollars (\$8,600.00), and informed Plaintiff that the check was still awaiting the President's signature.

80. Plaintiff was also informed by Mr. DeRosa that after April 28, 2013, the rental property located at 225-10 Mentone Avenue, Springfield Gardens, New York 11413 will be paid for on a month to month basis. He assured the Plaintiff "he will file a request for an extension but not to worry".

81. During her meeting with Mr. DeRosa on January 15, 2013, Plaintiff received checks all dated December 11, 2012, in the following amounts; one hundred fifty nine dollars and fifty four cents (\$159.54) for utility bills, one hundred fifteen dollars (\$115.00) for laundry, one thousand four hundred twenty five dollars (\$1,425.00) for additional expenses, six thousand five hundred dollars (\$6,500.00) for reimbursement of Asbestos removal, sixty two thousand three hundred forty eight dollars and eighty one cents (\$62,348.81) for final contents payment, and one thousand seventy two dollars and forty two cents (\$1,072.42) for reimbursement for the NYC Building Department fee.

82. Plaintiff did not receive any checks for reimbursement of utilities or laundry costs since her meeting with Mr. DeRosa on January 15, 2013.

83. That on January 15, 2013, without substantive explanation, the Plaintiff was informed by Robert Peratta that all payments were "on hold".

84. On February 5, 2013, Plaintiff spoke with Rob Peratta and he informed her that Joe DeRosa was no longer employed at TSC and that he would now be handling her claim. Robert Peratta also told the Plaintiff that no payments of any kind would be disbursed until further notice.

85. On or about February 11, 2013 and February 15, 2013, Plaintiff called TSC and both times was told that Mr. Peratta was in a meeting and Plaintiff left messages for him on both occasions and he did not return either of her phone calls.

86. On or about March 5, 2013, Plaintiff spoke with Robert Peratta and he informed her that "all payments are still on hold" and Plaintiff discussed what she had

been told by Mr. DeRosa about the rental property located at 225-10 Mentone Avenue, Springfield Gardens, New York 11413, and Robert Peratta told the Plaintiff that “at this point I am unable to help you with anything”.

87. On or about March 5, 2013, Plaintiff was advised that an Examination Under Oath would be requested by TSC and again they could not speak to her about anything.

88. On or about March 19, 2013, Plaintiff contacted Robert Peratta again and he explained to her that “all payments and transactions are on hold until the EUO”.

89. On or about March 27, 2013, Plaintiff received a termination letter from TSC, advising her that effective May 13, 2013 her policy would be terminated.

90. Upon receipt of the termination letter, Plaintiff contacted Robert Peratta and he informed her that he cannot assist her with anything at this time.

91. In March 2013, the Plaintiff was diagnosed with breast cancer, and on March 30, 2013, she underwent an extremely invasive surgery to remove cancerous cells, and had to come back to her rental property and sleep on a cold hard wooden floor because TSC would not pay for enough furniture rental for her to have her own bed to sleep and recover in.

92. On or about April 2, 2013, Plaintiff received a telephone call from TSC stating that she was to contact TSC’s legal department to confirm the EUO date.

93. On or about April 10, 2013, Plaintiff informed Robert Peratta, that as of April 25, 2013 the lease agreement of the rental property will expire and Home Source advised they will be removing the rental furniture, to which Robert Peratta responded by telling the Plaintiff that he cannot help her and hung up on her abruptly.

94. On or about April 19, 2013, the Plaintiff spoke with “Shirley” at TSC’s legal department to confirm the scheduled Examination Under Oath date.

95. On April 22, 2013, the Examination Under Oath of Plaintiff was conducted at 1:00 PM in the TSC office.

96. On or about April 24, 2013, Plaintiff contacted Robert Peratta to remind him that Home Source would be removing the rental furniture out of the rental property the following day and that Plaintiff informed Robert Peratta that her family was going to be sleeping on the floor, to which Robert Peratta replied to the Plaintiff's grief with "I cannot help you".

97. Plaintiff was informed that she would have to wait two weeks for the final EUO report and that she should not contact TSC before then and also stated that the Plaintiff's policy is terminated as of May 13, 2013 for "failure to provide underwriting papers."

98. As of May 1, 2013, the Plaintiff began paying rent in the amount of two thousand two hundred dollars (\$2,200.00) to the landlord of the rental property while still paying the mortgage on her destroyed home.

99. That Plaintiff had articulated this to not only Robert Peratta but to the attorney from TSC at the EUO, who showed not an ounce of compassion for the struggle and hardships that the Plaintiff, her husband, and their 4 children are facing.

100. That TSC's conduct and blatant refusal to deal with the Plaintiff in good faith forced Plaintiff to retain counsel for the purpose of resolving the claim and negotiating all outstanding portions of the claim.

**THE CONVERSION OF UNDISPUTED FUNDS RIGHTFULLY DUE TO  
PLAINTIFF**

101. That upon review of the file by Plaintiff's legal counsel, it became clear that TSC had withheld a significant portion of the undisputed actual cash value of the loss



at the time TSC issued a check for one hundred ninety thousand dollars (\$190,000.00) and that the actual payment to the insured should have been two hundred twenty four thousand seven hundred ninety dollars and forty nine cents (\$224,790.49).

102. That for approximately six months, from May, 2013 to November, 2013, Plaintiff's legal counsel demanded a full accounting of the claim and specifically demanded a response as to where the missing thirty-four thousand seven hundred ninety dollars and forty-nine cents (\$34,790.49) of undisputed funds based upon TSC's own estimate, which was due to Plaintiff and rightfully Plaintiff's money as of the time the aforementioned check for one hundred ninety thousand dollars (\$190,000.00) was issued.

103. That rather than respond to the demand for information regarding the thirty-four thousand seven hundred ninety dollars and forty-nine cents (\$34,790.49) which TSC had converted for their own benefit, or for an accounting, TSC instead launched a further "investigation", designed only to further frustrate the Plaintiff and further secret their own conversion of entirely undisputed amounts which rightfully belonged to Plaintiff.

104. That demands for answers as to the missing thirty-four thousand seven hundred ninety dollars and forty-nine cents (\$34,790.49) were made via numerous letters to TSC and their counsel. There was never a response. Said letters are annexed hereto and incorporated by reference as EXHIBITS A-F.

#### **THE FURTHER "INVESTIGATION"**

105. That notwithstanding the above, Plaintiff cooperated with TSC's investigation, despite the bad faith and frivolous nature of same, and produced Plaintiff's husband for an Examination Under Oath, as was requested by Defendant TSC.

106. Notably, correspondence from the TSC claims department is rarely if ever signed and the signatory line merely reads “claims department”, further frustrating all insureds and depriving insureds the opportunity to know who is actually handling their claim file. A letter illustrating this practice is annexed hereto and incorporated by reference herein as EXHIBIT G.

107. That at the Examination Under Oath of Plaintiff’s husband on July 8, 2013 Plaintiff again demanded answers as to the status and location of the thirty-four thousand seven hundred ninety dollars and forty-nine cents (\$34,790.49) on the record, and again no response was given at all. The relevant portion of the Examination Under Oath transcript is annexed hereto and incorporated by reference herein as EXHIBIT H.

108. That every demand for answers regarding money that was actually missing and which rightfully belonged to Plaintiff fell upon deaf ears, demonstrating that it was TSC’s actual intent to convert the Plaintiff’s undisputed insurance proceeds, and in light of her being a person otherwise unsophisticated in insurance matters, to falsely advise Plaintiff that she was entitled to far less than she actually was due based upon TSC’s own estimate of the damages.

109. That even after specific demands were made on the record at the aforementioned Examination Under Oath, TSC refused to provide any answers regarding the claim, and demonstrated only a complete disregard for the rights of the policy holder.

**THE STATEMENT OF COVERAGE LETTER AND MALICIOUSLY  
CREATIVE ACCOUNTING**

110. That after numerous threats by legal counsel, Defendant responded by letter with a “Statement of Coverage Letter”, which, apart from being wrought with maliciously creative accounting, more than eighteen (18) months after the claim, annexed a manipulated estimate which was nearly twenty thousand dollars less than the Prism’s

estimate that had been provided to the insured following the loss and relied upon by Plaintiff since. The "Statement of Coverage Letter" is annexed hereto and incorporated by reference herein as EXHIBIT I.

111. That it was the Prism estimate that was provided after the loss which the insured was reasonably expected to rely upon, which Prism and TSC had both been "sticking by" and which TSC had now reduced without rhyme or reason other than to maintain its hold on the thirty-four thousand seven hundred ninety dollars and forty-nine cents (\$34,790.49) that TSC had converted.

112. That Plaintiff had previously received payments for loss of contents, albeit insufficient and without rational explanation as to the amounts paid, only to have TSC state eighteen (18) months later it had made an error and it was deducting twenty one thousand four hundred seventy three dollars ninety one cents (\$21, 473.91) from the just reduced amount due under the dwelling coverage, in order "to reimburse the carrier."

113. That Plaintiff had reasonably and justifiably relied upon the amounts previously paid for contents and TSC is estopped from utilizing a claimed "overpayment" to offset the amounts due under a separate and distinct coverage for the dwelling.

114. Moreover, considering that Plaintiff was demanding more than what was previously paid for contents and that TSC had never afforded Plaintiff a meaningful opportunity to negotiate the contents claim in good faith, and especially considering that TSC consistently refused to provide an accounting of the claim as was demanded by the insured, their conduct is particularly egregious and malicious.

115. That, upon information and belief, the reduction of the estimate eighteen (18) months after the loss was orchestrated by TSC employee Susan Mott and TSC President Penny Hart herself.

116. That with regard to the reduction in the dwelling repairs estimate, TSC directed their contractor, Prism, to remove most of the tax on their original estimate on the illogical and unlawful basis that the repairs were actually capital improvements and thus not taxable.

117. Incredibly, the basis for the reduction of the estimate was never formally communicated to the Plaintiff or Plaintiff's counsel, even in TSC's final letter to the insured, but rather extrapolated by Plaintiff from the differences with the original estimate and the newly manipulated estimate recently provided to Plaintiff.

### **TSC'S DECEPTIVE CLAIMS PRACTICES AND SCHEME**

118. That TSC's direction of their contractor to modify their estimate based upon nothing other than an attempt to save TSC money is not an isolated incident but part of an ongoing and pervasive scheme to defraud policyholders and deprive them of fair and equitable claim settlement where ever possible.

119. In this instance, TSC removed tax, which was properly included in the original estimate by TSC's own contractor.

120. As in the case here, TSC withheld undisputed funds money from the insured without a rational or lawful basis to do so, to convert that money for its own purposes, and deprive the insureds of their undisputed rights.

121. In other instances, TSC removes items such as profit and overhead on estimates, which amounts to twenty percent (20%) of a claim.

122. In other instances, TSC sends multiple contractors to a loss for the purpose of preparing estimates and chooses the least expensive estimate, regardless of how obscenely insufficient it is.

123. In other instances, and as is evident here, TSC directs contractor's to prepare multiple "totals" pages so that manipulated estimates appear legitimate to policy holders.

124. That as part of TSC's deceptive and fraudulent claims practices, TSC routinely launches "investigations" of claims and holds unnecessary and unreasonable Examinations Under Oath so as to frustrate policy holders and uses allegations of "fraud" in such bad faith and to such an extent that it shocks the conscience.

125. That in addition, TSC has in instances stopped payments on checks pending "investigation" after an insured complains that their payment was insufficient.

126. That as part of TSC's deceptive and fraudulent claims practices, and as occurred in Plaintiff's claim, TSC and its "contents adjusters" routinely perform only cursory inventories at destroyed properties, and later places the burden on the policyholder to fight to get paid for the items they lost.

127. That, as in the case with Plaintiff, said "contents adjusters" routinely and intentionally skip entire rooms of damaged contents so that TSC's adjustment of contents losses are entirely inadequate and fail to reflect the reality of what was lost.

128. That the contents adjuster who performed an "inventory" at Plaintiff's damaged home refused to enter the basement of the property where a huge portion of the Plaintiff's contents were located, essentially guaranteeing that the Plaintiff was to be shortchanged on her contents losses.

129. That the "contents adjuster" here did not even perform an independent inventory but rather relied on a portion of the inventory that had been submitted to TSC by the Plaintiff's terminated public adjuster.

130. In instances, as part of its deceptive and fraudulent claims practices, TSC uses random and biased depreciation on items, depreciating entire pages of contents as

much as 50% to 80%, without regard for the specific items but with only regard for the fact that many TSC insureds only have actual cash value policies and over-depreciation saves the carrier a significant amount of money.

131. As in the case here, TSC regularly and unfairly accuses policyholders of fraud, misrepresentation and concealment in an attempt to intimidate policyholders and deter further action on their part, whether legal or otherwise.

132. Illustrative of the pervasive nature of the foregoing deceptive scheme, following Superstorm Sandy, TSC employed such a tactic in a calculated attempt to avoid participation in the Department of Financial Services mediation program, by declaring that an inordinate number of the claims where mediation was requested were ineligible for mediation because the claims were fraudulent.

133. That TSC utilized similar tactics in the instant claim, by superfluously and unnecessarily including in its "Statement of Coverage Letter" provisions pertaining to fraud, misrepresentation, and concealment. See EXHIBIT I.

134. That TSC often employs the above tactics when dealing with minority policyholders such as the Plaintiff herein, believing that policyholders from certain socioeconomic groups will be less aggressive in pursuing their rights under their respective policies when faced with the threat, whether verbally or in writing, of an "investigation" or a complete denial of a claim based upon "fraud".

135. That the above tactics amount to deceptive claims practices and are part of a pervasive scheme at TSC to deprive policyholders of their rights under the policies and demonstrate a criminal indifference to its civil and contractual obligations under the policies and pursuant to the laws of the State of New York.

136. That TSC further reprimands and takes punitive action against employees who defy the orders of its leadership, including TSC President Penny Hart, despite those employees acting in accordance with the expectations under the insured's policies.

137. That, as was the case here, when a claims adjuster at TSC properly requests a check be issued for payment to an insured, TSC President Penny Hart often allows the unsigned check to sit on her desk for an extended period of time, from weeks to months, or more, while she determines how to further frustrate the insured or avoid payment altogether, as was evident in the Plaintiff's claims.

138. That Penny Hart's malicious and calculated refusal to timely sign checks due to insureds, as was the case with the Plaintiff's claim and others, is particularly egregious in light of the fact that TSC often sells policies with limitation periods for additional living expenses and delays in payment translate into delays in restoration and insureds ultimately having their additional living expenses cut off before their homes have become livable.

139. That TSC forces its employees to utilize underhanded tactics, as illustrated above or face discipline or possible termination of employment if such unlawful directives are not followed.

140. That TSC's claims adjusters routinely avoid direct communication with the insureds, avoiding calls, not signing letters, and otherwise eliminating meaningful communication regarding the claims process and handling.

141. That as part of TSC's deceptive claims practices, scheme to defraud, and utilization of various contractors to perform work on its behalf; TSC often advises insureds, as it did to Plaintiff, that it is arranging to have its own contractors perform the repairs pursuant to the provisions of the policy.

142. That TSC did advise Plaintiff of its intent to use its own contractors to perform the subject repairs to the property, however, Plaintiff objected and TSC finally agreed to withdraw its demand.

143. That it can be surmised that TSC's conduct was in part retribution for the insured's desire to use her own contractor, in that TSC loses certain benefits when the insured has their own contractor perform the repairs.

144. Those benefits include the ability to pay less for repairs, as the contractors who perform work for them often will accept less than fair market for the work, or cut corners, as is evident from TSC's contractor attempting to claim there was no asbestos at the Property.

145. That in some instances, TSC has their own contractor's perform the work and then demands a reduction after the fact.

146. Upon information and belief, in some instances TSC President Penny Hart's boyfriend Tom Cappa derives personal benefits from TSC's own contractors the repairs to insureds' premises performing the work in the form of "referral fees" paid to entities in which Tom Cappa has a pecuniary interest.

147. That the above conduct, as it pertains to TSC desiring to have its own contractor's perform the work, is part of the overall deceptive claims practice scheme, orchestrated as a whole by its President Penny Hart.

148. Furthermore, in some instances, TSC even refuses to pay those contractors, citing specious grounds for the refusal and resulting in further unjust enrichment to TSC.

149. The above fraudulent and deceitful scheme in dealing with its policy holders implies a criminal indifference to its civil obligations and deprives its insureds of their right to fair and efficient claims settlement.



150. That the above fraudulent and deceitful scheme affects not only the Plaintiff and other TSC policyholders but also the public at large, in that the above scheme has the potential to negatively affect every claim handled by TSC.

151. That the above fraudulent scheme and TSC's handling of the Plaintiff's claim is in breach of their duty of good faith and fair dealing.

152. That TSC trains their employees to handle claims in a manner which violates the rules and regulations regarding claims handling, as promulgated by the Department of Financial Services and as is set forth in the New York State Insurance Law.

153. That the contract of insurance itself employed merely as a device used in the broader scheme to defraud insureds, such as Plaintiff.

#### **THE BREACH & BAD FAITH**

154. The Plaintiff has submitted to the Defendant's request for a complete examination of all the facts and circumstances surrounding the loss, to the extent that such was requested by Defendant Insurance Company.

155. That Plaintiff has satisfied all conditions precedent to the instant suit.

156. At all times mentioned, the Plaintiff has not obtained any other insurance upon the described property.

157. That the insured has been deprived a fair opportunity to settle her claims and has been damaged as a result of the final and drastically changed position taken by TSC eighteen (18) months after the loss and after eighteen (18) months of deceptive claims practice.

158. That the insured has not been fully reimbursed for her dwelling claim, her contents claim, her additional living expenses and additional expense.

159. That Defendant, TSC, has failed to and/or refused to fully indemnify the Plaintiff for her total loss, to the extent of the Policy limits, although a demand has been made, and has further sustained consequential damages as a result of TSC's horrific conduct.

160. By reason of Insurance Company's contractual undertaking to Plaintiff pursuant to the Policy to properly evaluate and pay claims thereunder to the extent of Plaintiff's loss up to the limits prescribed by the Policy, Insurance Company owed and continues to owe Plaintiff the duties of good faith and fair dealing in connection with the parties' contractual relationship.

161. In accordance with the aforesaid duties of good faith and fair dealing, Insurance Company, and its agents, was and is prohibited from undertaking any act which would have the effect of injuring or destroying Plaintiff's rights deriving from her contractual relationship with Insurance Company under the Policy.

162. By failing to pay Plaintiff under the Policy to the full extent of Plaintiff's loss up to the limits of the Policy, despite legal precedent, statutory authority, and/or contractual obligations, and by engaging in the deceptive and fraudulent claims practices as set above, Insurance Company acted in bad faith and breached the duties of good faith and fair dealing owed to Plaintiff.

163. Furthermore, Insurance Company, and its agents, servants and/or employees, are governed by the regulations promulgated by the Superintendent of Insurance of the New York State Insurance Department as set forth in 11 NYCRR § 216.

164. That, *inter alia*, The New York Insurance Law prohibits and/or requires certain actions by insurers, their agents, and representatives and conduct by insurers, their agents and representatives; deviating from the following is deemed unfair claim settlement practice thereunder:

(a) Insurers may not engage in failing to acknowledge with reasonable promptness pertinent communications as to claims arising under their policies.

(b) Insurers may not fail to adopt and implement reasonable standards for the prompt investigation of claims arising under their policies.

(c) Insurers may not fail to attempt in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear.

(d) Insurers may not compel policyholders to institute suits to recover amounts due under their policies by offering substantially less than the amounts ultimately recovered in suits brought by them.

165. Plaintiff has duly demanded payment of her loss under the Policy and has submitted the supporting proofs of loss, to the extent that same was demanded.

**DECEPTIVE CLAIMS PRACTICES AND GBL § 349 VIOLATIONS DIRECTED  
AT THE PUBLIC AT LARGE**

166. In addition, Insurance Company, and its agents, servants and/or employees, are prohibited from engaging in deceptive acts and practices pursuant to General Business Law § 349 of the State of New York.

167. General Business Law § 349 prohibits deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in the State of New York and making such acts and practices unlawful.

168. Insurance Company, through its agents, servants and/or employees, has engaged in deceptive acts and practices in violation of General Business Law § 349 of New York by its bad faith interpretation of the insurance contract with Plaintiff and by disregarding material facts.

169. Furthermore, Insurance Company, through its agents, servants and/or employees, has engaged in deceptive acts and practices in violation of General Business Law § 349 of New York by virtue of its pervasive and deceptive claims handling scheme.

170. The aforesaid actions have not only caused injury to Plaintiff, but have the potential to harm the public at large.

171. Insurance Company's actions toward Plaintiff are part of a pattern and practice by Insurance Company to sell insurance policies to property owners, and then subsequently employ deceptive and underhanded tactics to then take the position that, under its latest interpretation, there is no coverage or limited coverage, effectively denying or hindering the processing of legitimate claims.

172. Insurance Company regularly denies and/or delays otherwise legitimate claims setting forth frivolous grounds for the denial or delay of claims, contrary to fact and common sense.

173. Insurance Company's outrageous actions demonstrate that degree of bad faith evincing a disingenuous, dishonest failure to carry out a contractual obligation, even rising to the level of a criminal indifference to its civil obligations.

**AND AS FOR A FIRST CAUSE OF ACTION**  
**BREACH OF CONTRACT AGAINST TRI-STATE CONSUMER**  
**INSURANCE COMPANY**

174. Plaintiff repeats and re-alleges all allegations set forth in the instant Verified Complaint as if more completely and fully set forth herein.

175. By failing to pay Plaintiff under the Policy to the full extent of Plaintiff's loss up to the limits of the Policy and based upon their conduct as set forth above, TSC breached its obligation under the Policy with regard to the loss at the property as well as their duty of good faith and fair dealing.

176. That by virtue of the foregoing, Insurance Company has not only breached the subject Policy, but also its implied duty of good faith and fair dealing.

177. As a result of TSC's breach, Plaintiff has been damaged in an amount to be determined at the time of trial but believed to be in excess of three hundred thousand dollars (\$300,000.00), plus appropriate statutory interest of nine percent (9%) from the date of the loss.

178. As a further result of Insurance Company's breach and bad faith, Plaintiff has suffered additional consequential damages, both monetary and otherwise, all contemplated by the parties and all which reasonably flow from TSC's conduct in the handling of a homeowner's fire claim following a catastrophic fire, in an amount to be determined at the time of trial, but believed to be in excess of one million dollars (\$1,000,000.00).

**AND AS FOR A SECOND CAUSE OF ACTION**  
**FRAUD AGAINST TRI-STATE CONSUMER INSURANCE COMPANY**

179. Plaintiff repeats and re-alleges all allegations set forth in the instant Verified Complaint as if more completely and fully set forth herein.

180. That the calculated scheme by TSC to systematically undermine the contractual rights of the Plaintiff amounts to fraud.

181. That Defendant TSC and its leadership had conspired to create a system wherein, despite promises of a quality insurance policy and claims handling in accordance with the rules regarding same and contractual obligations, the insured would never receive the benefits bargained for.

182. That TSC and its leadership knew at the time the policy was issued that if there was a loss, TSC would employ its arsenal of underhanded and deceptive tactics to deprive the Plaintiff of her rights under the policy.

183. That the conduct set forth above is illustrative of their conscious intent to defraud the Plaintiff, who like many other TSC clients are members of minorities and/or unsophisticated in insurance matters.

184. That but one illustrative example of the tortious conduct of TSC, independent of their breach of the contract itself, was the conversion in fact of undisputed amounts due to the Plaintiff in the amount of thirty-four thousand seven hundred ninety dollars and forty-nine cents (\$34,790.49) and the knowing misrepresentation of the amounts due to the Plaintiff under the policy.

185. That TSC and TSC President Penny Hart's practice of holding checks without signing them amounts to further fraudulent and tortious conduct, which ultimately results in physical and emotional hardship for an insured, including the Plaintiff herein.

186. That to date, no justifiable excuse was ever proffered but rather Defendant contrived a method to cover up its conduct by fraudulently reducing their own estimate eighteen (18) months after the loss.

187. That TSC had a duty, apart from that contained in the contract, in common law and principles of fiduciary duty, to not withhold undisputed funds or misrepresent to the insured the amounts due to her under the policy for approximately sixteen (16) months, without justification, with malicious intent, and for pecuniary gain.

188. That the intentional withholding of moneys admitted due to the Plaintiff for its own benefit, coupled with TSC's fraudulent misrepresentation of TSC's own adjustment of the claim, and the pattern of conduct set forth above, is far outside of the scope of contract and rises to the level of fraud.

189. That the fraud perpetrated against the Plaintiff by TSC is a mere part of TSC's scheme to defraud Plaintiff and those other policyholders that sought insurance

policies from the insured, touted as an inexpensive policy “for New Yorkers by New Yorkers” and claims by TSC that “Your home purchase is an investment deserving the protection that only an experienced insurance professional can provide.”

190. That the scheme to defraud and essentially destroy the rights of the Plaintiff herein and other insureds, existed prior to the inception and/or renewal of the subject policy.

191. The conduct as set forth above is egregious, directed toward the plaintiff and part of a pattern directed at the public.

192. That the fraud-laced conduct by TSC directed towards the Plaintiff and the public at large evinced such a high degree of moral turpitude and demonstrating such wanton dishonesty as to imply criminal indifference to civil obligations

193. As a result of TSC’s fraud, Plaintiff has been damaged in an amount to be determined at the time of trial but believed to be in excess of three hundred thousand dollars (\$300,000.00), plus appropriate statutory interest of nine percent (9%) from the date of the loss.

194. Based upon the foregoing, Plaintiff is entitled to and seeks punitive damages from TSC in the amount of five million dollars (\$5,000,000.00) or in an amount to be determined at trial.

**AND AS FOR A THIRD CAUSE OF ACTION**  
**CONVERSION AGAINST TRI-STATE CONSUMER INSURANCE**  
**COMPANY**

195. Plaintiff repeats and re-alleges all allegations set forth in the instant Verified Complaint as if more completely and fully set forth herein.

196. That the wrongful retention of undisputed amounts due to the Plaintiff in the amount of thirty-four thousand seven hundred ninety dollars and forty-nine cents

(\$34,790.49) and the knowing misrepresentation of the amounts due to the Plaintiff under the policy amounts to tortious conversion.

197. That to date, no justifiable excuse was ever proffered but rather Defendant contrived a method to cover up its intentional and tortious conduct by reducing their own estimate eighteen (18) months after the loss with a contrived and unlawfully manipulated revised estimate.

198. That Plaintiff had a lawful right to possession of, *inter alia*, the undisputed funds in the amount of thirty-four thousand seven hundred ninety dollars and forty-nine cents (\$34,790.49).

199. That Defendant interfered with the lawful right to possession of, *inter alia*, the undisputed funds in the amount of thirty-four thousand seven hundred ninety dollars and forty-nine cents (\$34,790.49).

200. That Plaintiff made express demands for the payment of the aforesaid funds, to no avail.

201. That TSC had a duty, apart from that contained in the contract, in common law and principles of fiduciary duty, to distribute and not withhold undisputed funds or misrepresent to the insured the amounts due to her under the policy for approximately sixteen (16) months, without justification, with malicious intent, and for pecuniary gain.

202. That the fraud-laced conversion by TSC which was directed towards the Plaintiff and part of the scheme directed at the public at large evinced such a high degree of moral turpitude and demonstrating such wanton dishonesty as to imply criminal indifference to civil obligations

203. Plaintiff has been damaged in an amount to be determined at the time of trial but believed to be in excess of three hundred thousand dollars (\$300,000.00), plus appropriate statutory interest of nine percent (9%) from the date of the loss.



204. Based upon the foregoing, Plaintiff is entitled to and seeks punitive damages from TSC in the amount of five million dollars (\$5,000,000.00) or in an amount to be determined at trial, along with reasonable attorneys fees pursuant to the statute.

**AND AS FOR A FOURTH CAUSE OF ACTION**  
**VIOLATION OF GENERAL BUSINESS LAW § 349 AGAINST**  
**TRI-STATE CONSUMER INSURANCE COMPANY**

205. Plaintiff repeats and re-alleges all allegations set forth in the instant Verified Complaint as if more completely and fully set forth herein.

206. Insurance Company, and its agents, servants and/or employees, are governed by the regulations promulgated by the superintendent of insurance of the New York State Insurance Department as set forth in 11 NYCRR § 216.

207. In addition, Insurance Company, and its agents, servants and/or employees, are prohibited from engaging in deceptive acts and practices pursuant to General Business Law § 349 of the State of New York.

208. Moreover, General Business Law § 349 prohibits deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in the State of New York and making such acts and practices unlawful.

209. Insurance Company, through its agents, servants and/or employees, has engaged in deceptive acts and practices in violation of General Business Law § 349 of New York by its bad faith interpretation of the insurance contract with Plaintiff(s).

210. Furthermore, Insurance Company, through its agents, servants and/or employees, has engaged in deceptive acts and practices in violation of General Business Law § 349 of New York, as is evidenced by the foregoing conduct and deceptive claims handling.

211. The aforesaid actions, policies, patterns of conduct, and fraud by TSC have not only caused injury to Plaintiff(s), but have the potential to harm the public at large.

212. Insurance Company's outrageous actions demonstrate that degree of bad faith evincing a disingenuous, dishonest failure to carry out a contractual obligation, arising to a criminal indifference to its civil obligations.

213. As a result of the aforesaid violations of General Business Law § 349 of the State of New York, Plaintiff(s) has been damaged in an amount to be determined at trial but believed to be in excess of one million dollars (\$1,000,000.00), plus appropriate interest.

214. As a further result of Insurance Company's violations of General Business Law § 349 of the State of New York, Plaintiff(s) is entitled to attorneys' fees.

215. Further, due to the willful and wanton nature of Insurance Company's conduct and the need to deter same to prevent public harm and injury, Plaintiff(s) demands punitive damages in the amount of five million dollars (\$5,000,000.00).

**AND AS FOR A FIFTH CAUSE OF ACTION**  
**ESTOPPEL AGAINST TRI-STATE CONSUMER**  
**INSURANCE COMPANY**

216. Plaintiff repeats and re-alleges all allegations set forth in the instant Verified Complaint as if more completely and fully set forth herein.

217. That Plaintiff was induced to change its position in reliance upon the payments actually made by TSC with regard to the adjustment of its contents coverage, to its detriment.

218. That the conduct by TSC of making a payment in a certain amount for loss of contents is conduct upon which a reasonable person would rely upon those payments being undisputed.

219. That the Plaintiff was induced to change its position in reliance upon the original Prism estimate with regard to the undisputed adjustment of the dwelling claim, to her detriment.

220. That the conduct by TSC of repeatedly relying upon the original Prism estimate by Prism and repeated representations that TSC was “sticking by” that estimate is conduct upon which a reasonable person would rely that the original Prism estimate was the undisputed amounts due to the Plaintiff.

221. That by virtue of the foregoing, Defendant, TSC, is estopped from reducing, offsetting, or otherwise reducing the amounts previously paid as due under the contents coverage in the policy.

222. That by virtue of the foregoing, Defendant TSC is estopped from reducing, offsetting, or otherwise reducing the undisputed amounts previously due under the dwelling coverage in the policy based upon the original Prism building estimate.

223. Plaintiff has been damaged in an amount to be determined at the time of trial but believed to be in excess of seventy-five thousand dollars (\$75,000.00), plus appropriate statutory interest of nine percent (9%) from the date of the loss.

**AND AS FOR A SIXTH CAUSE OF ACTION**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
**AGAINST TRI-STATE CONSUMER INSURANCE COMPANY**

224. Plaintiff repeats and re-alleges all allegations set forth in the instant Verified Complaint as if more completely and fully set forth herein.

225. That the above conduct of Defendant, when viewed the context of Plaintiff and her family being displaced from her home following a fire and for more than eighteen (18) months and while battling breast cancer, or otherwise, transcends the bounds of decency as to be regarded as atrocious and intolerable in civilized society.

226. That as a result of the Defendants intentional conduct, Plaintiff has suffered and continues to suffer a great level of emotional distress at the hands of Defendant.

227. Plaintiff has been damaged in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

228. Further, due to the willful and wanton nature of Insurance Company's conduct and the need to deter same to prevent public harm and injury, Plaintiff(s) demands punitive damages in the amount of five million dollars (\$5,000,000.00).

WHEREFORE, Plaintiff(s) **MICHELLE GRAY** demands judgment against **TRI-STATE CONSUMER INSURANCE COMPANY** as follows:

a. Under the **FIRST** Cause of Action, damages in an amount to be determined at trial but believed to be in excess of three hundred thousand dollars (\$300,000.00), plus appropriate interest, plus consequential damages directly resulting from Insurance Company's breach in the amount of one million dollars (\$1,000,000.00).

b. Under the **SECOND** Cause of Action, damages in an amount to be determined at trial but believed to be in excess of three hundred thousand dollars (\$300,000.00), plus appropriate interest, plus punitive damages directly resulting from Insurance Company's breach in the amount of five million dollars (\$5,000,000.00).

c. Under the THIRD Cause of Action, damages in an amount to be determined at trial but believed to be in excess of three hundred thousand dollars (\$300,000.00), plus appropriate interest, plus punitive damages directly resulting from Insurance Company's breach in the amount of five million dollars (\$5,000,000.00).

d. Under the FOURTH Cause of Action, damages in an amount to be determined at trial but believed to be in excess of one million dollars (\$1,000,000.00), plus appropriate interest, plus punitive damages in the amount of five million dollars (\$5,000,000.00), and reasonable attorneys fees.

e. Under the FIFTH Cause of Action, damages in an amount to be determined at trial but believed to be in excess of seventy-five thousand dollars (\$75,000.00), plus appropriate interest.

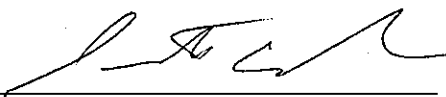
f. Under the SIXTH Cause of Action, damages in an amount which would exceed the jurisdictional limits of all other courts which would otherwise have jurisdiction, plus punitive damages in the amount of five million dollars (\$5,000,000.00).

g. Appropriate interest, the costs and disbursements of this action, reasonable attorneys' fees, and such other and further relief as the Court deems just and proper.

Dated: Great Neck, New York  
November 25, 2013

Yours, etc.,

**GREENBLATT & AGULNICK, P.C.**

By: 

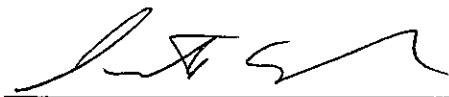
Scott E. Agulnick  
Attorneys for Plaintiff(s)  
**MICHELLE GRAY**  
55 Northern Blvd., Suite, 302  
Great Neck, New York 11021  
(718) 352- 4800

**ATTORNEY VERIFICATION**

The undersigned, an attorney admitted to practice law in the State of New York, affirms the following to be true under penalty of perjury:

I have read the foregoing SUMMONS and VERIFIED COMPLAINT and, upon information and belief, believe the contents thereof to be true. The basis of my belief is a review of the file maintained in my office. The reason I make this verification is because my client does not reside within the county in which I maintain my office.

Dated: Great Neck, New York  
November 25, 2013



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SCOTT E. AGLUNICK

Index No:  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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MICHELLE GRAY,

Plaintiff(s),

-against-

TRI-STATE CONSUMER INSURANCE COMPANY,

Defendant(s).

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**VERIFIED SUMMONS AND COMPLAINT**

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**GREENBLATT & AGULNICK, P.C.**

*Attorneys for PLAINTIFF(s)*

*Office and Post Office Address, Telephone*

55 Northern Boulevard, Suite 302

Great Neck, New York 11021

Tel: (718) 352- 4800

Fax: (718) 732- 2110

**“WE DO NOT ACCEPT SERVICE BY ELECTRONIC TRANSMISSION  
(FAX)”**

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To: DEFENDANT(S)

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**Certification pursuant to 22 NYCRR 130-1.1(a)**

It is hereby certified that, to the best of the undersigned’s knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the paper and/or the contentions herein are not frivolous as defined in section 130-1.1(c).

11/25/13

Dated



SCOTT E. AGULNICK, ESQ.

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Service of a copy of the within

is hereby **admitted**

.....  
Attorney(s) for

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