

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

ARLINGTON VENTURES, LP,  
*Plaintiff,*

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v.

Civil Action No. 4:18-cv-00970

ZURICH AMERICAN INSURANCE  
COMPANY,  
*Defendant.*

**PLAINTIFF’S ORIGINAL COMPLAINT & JURY DEMAND**

Plaintiff ARLINGTON VENTURES, LP (“Arlington” or “Plaintiff”) files this Original Complaint & Jury Demand against Defendant ZURICH AMERICAN INSURANCE COMPANY (“Zurich” or “Defendant”) and would respectfully show the following:

**Parties**

1. Arlington Ventures, LP is a domestic limited partnership in the State of Texas.
2. Zurich American Insurance Company is a foreign fire and casualty insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Zurich regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Zurich may be served with process by serving **Corporation Service Company, 211 E 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218.**

**Venue & Jurisdiction**

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiff and Defendant and the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interests and costs.
4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because this

action concerns real property and a business located and operating in Tarrant County, Texas, and all or a substantial part of the events giving rise to the claim described herein occurred in Tarrant County, Texas. In particular, the insurance policy at issue and of which Plaintiff is a beneficiary was to be performed in Tarrant County, Texas and the losses under the policy (including payments to be made to Plaintiff under the policy) were required to be made in Tarrant County, Texas. Further, investigation, including communications to and from Defendant and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred in Tarrant County, Texas.

### **Factual Background**

#### ***The Property***

5. Arlington owns and operates the commercial property located at 750 Six Flags Drive, Arlington, Texas 76011 in Tarrant County, Texas (the “Property”).



6. The Property is a four-story hotel situated on 54,537 square feet of land with 45,340 square feet of interior space.

***The Policy***

7. Arlington paid \$89,833.40 in annual premiums, assessments, fees, surcharges, and taxes to Zurich to acquire comprehensive commercial insurance coverage for the Property and the business under Zurich’s Policy No. PRA 0111268 01 (the “Policy”). The Policy provides coverage for Arlington’s business and the Property, for covered damages that occur during the Policy Period, from February 28, 2016 through February 28, 2017. In exchange for Arlington’s premium payment, the Policy includes the following limits and coverages, in relevant part:

<b>SUMMARY OF PREMISES</b>	
<b>PREMISES #</b>	<b>1</b>
	<b>PREMISES ADDRESS</b>
	750 SIX FLAGS DR
	ARLINGTON, TX 76011
<b>COVERAGE</b>	<b>LIMIT OF INSURANCE</b>
REAL PROPERTY	\$ 3,680,000
PERSONAL PROPERTY (EXCLUDING PERSONAL PROPERTY OF OTHERS AND STOCK)	\$ 500,000
BUSINESS INCOME	\$ 780,000
<b>DEDUCTIBLE</b>	<b>AMOUNT</b>
WIND AND HAIL--DIRECT DAMAGE AND TIME ELEMENT	\$ 13,000

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**ADDITIONAL COVERAGES -- LIMITS OF INSURANCE**

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Limits of Insurance applicable at a "premises" that differ from those indicated below will be shown under the Summary of Premises section of this Declarations for that "premises". Those Limits of Insurance replace, and are not in addition to, the Limits of Insurance shown below for those specified coverages and "premises". If any Additional Coverages do not apply at any specific "premises", the Limit of Insurance will show as Not Covered for those "premises".

COVERAGE	LIMIT OF INSURANCE
CIVIL AUTHORITY	
BUSINESS INCOME	30 DAYS
EXTRA EXPENSE	30 DAYS
CONSEQUENTIAL LOSS--NET LEASEHOLD INTEREST	\$ 25,000 PER PREMISES
CONSEQUENTIAL LOSS--TENANT'S IMPROVEMENTS AND BETTERMENTS	\$ 250,000 PER PREMISES
CONSEQUENTIAL LOSS--UNDAMAGED STOCK	\$ 250,000 PER PREMISES
CONTAMINATION BY A REFRIGERANT	NOT COVERED
CONTRACTUAL PENALTIES--BUSINESS INCOME	\$ 25,000 PER OCCURRENCE
DEBRIS REMOVAL--COVERED PROPERTY	COVERED
DEBRIS REMOVAL--SUPPLEMENTAL LIMIT	\$ 250,000 PER OCCURRENCE
DEBRIS REMOVAL--UNCOVERED PROPERTY	\$ 2,500 PER OCCURRENCE
DEFERRED PAYMENTS	\$ 50,000 PER OCCURRENCE

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**ADDITIONAL COVERAGES -- LIMITS OF INSURANCE**


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Limits of Insurance applicable at a "premises" that differ from those indicated below will be shown under the Summary of Premises section of this Declarations for that "premises". Those Limits of Insurance replace, and are not in addition to, the Limits of Insurance shown below for those specified coverages and "premises". If any Additional Coverages do not apply at any specific "premises", the Limit of Insurance will show as Not Covered for those "premises".

COVERAGE	LIMIT OF INSURANCE
DEPENDENT BUSINESS INCOME-- UNSCHEDULED LOCATIONS	\$ 250,000 PER OCCURRENCE
ELECTRONIC VANDALISM	
DIRECT DAMAGE	\$ 25,000 ANNUAL AGGREGATE
BUSINESS INCOME	\$ 25,000 ANNUAL AGGREGATE
EXPEDITING EXPENSE	\$ 25,000 PER PREMISES
EXPENSE TO REDUCE LOSS--BUSINESS INCOME	COVERED
EXTENDED PERIOD OF INDEMNITY--BUSINESS INCOME	30 DAYS
EXTRA EXPENSE	\$ 25,000 PER PREMISES
FAIRS OR EXHIBITIONS	
PERSONAL PROPERTY	\$ 50,000 PER OCCURRENCE
BUSINESS INCOME	\$ 10,000 PER OCCURRENCE
FIRE DEPARTMENT SERVICE CHARGE	\$ 250,000 PER PREMISES
FIRE PROTECTIVE EQUIPMENT REFILLS	COVERED

<b>THIS PREMIUM MAY BE SUBJECT TO AUDIT.</b> This premium does not include Taxes and Surcharges.	<b>TOTAL</b>	<b>\$</b>	<b>89,722.00</b>
<b>Taxes and Surcharges</b>	<b>TOTAL</b>	<b>\$</b>	<b>111.40</b>

8. As evidenced by the Declarations Page, the Policy provides coverage to the Property's physical structure for up to \$3,680,000.00. (See Ex. A, Policy, at Declarations Pages.)

9. The Policy also contains a Deductible provision that provides coverage for damages to the Property:

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DEDUCTIBLE	AMOUNT
WIND AND HAIL--DIRECT DAMAGE AND TIME ELEMENT	\$ 13,000

(See *id.*, Policy.)

***Arlington makes an insurance claim***

10. Arlington discovered damage at the Property due to the May 2016 windstorm. The Property was substantially damaged. Portions of the Property's roof and windows were compromised causing substantial interior damage. The following photographs taken and depict some of the damage:



11. The Property—specifically the roof, windows, exterior stucco, and the building’s interior were substantially damaged. Yet as extensive as the physical damage was, Arlington felt fortunate to be protected by \$3,000,000 plus in insurance coverage it had procured to insure the property from precisely this type of catastrophe. Arlington promptly filed a claim with Zurich, alerting them to the extensive damages. This sense of security, borne of a pricey contractual relationship, would prove illusory as Zurich began their investigation and handling of the claim.

***Arlington works hard to document its damages for Zurich but received an underpayment.***

12. Zurich’s retained adjuster, Matthew Vail, performed a cursory investigation of the Property on April 12, 2017 and prepared an estimate for payment to the insured. Mr. Vail documented \$51,453.24 in covered damages. On May 3, 2017, Arlington received notice from Michael Dorsey of Zurich American Insurance Company for payment in the amount of \$38,492.26 representing the Actual Cash Value of Arlington’s claim.

13. This amount represented a significant underpayment for the damages. In part due to this significant underpayment, in July 2017, Arlington engaged a public adjuster to represent its interests. It was only after Arlington notified Zurich that it had hired a public adjuster that Zurich retained Envista Forensics to assess the reported damage. On August 14, 2017, Envista performed an inspection at the Property. Envista’s report concluded that the damages were the result of “long-term deterioration of the seals,” recommended a supplemental payment in the amount of \$22,964.37 should be paid, and Zurich paid that amount.

14. Zurich’s claims-handling process omitted the wealth of facts, physical evidence, obvious damages, and meteorological data supporting Arlington’ claim. Zurich unreasonably determined the damage “was the result of long-term deterioration,” ignoring significant evidence to the contrary. Envista’s report simply rubber-stamped the underpayment that Zurich had

previously authorized.

***Zurich receives Arlington's demand letter***

15. On June 1, 2017, Governor Abbott signed House Bill 1774 into law as Section 542A of the Texas Insurance Code. This new law was sponsored by approximately sixty state representatives and senators and contains important consumer protections against a variety of unscrupulous practices. Particularly, Section 542A.003 requires detailed, comprehensive presuit notice that is intended to make the claims and litigation processes more transparent and potentially even avoid unnecessary lawsuits. Upon receiving notice, an insurer has a right to conduct an inspection, and even make an offer to avoid litigation. When utilized properly, Section 542A should assist business consumers like Arlington to avoid protracted litigation over a clear claim.

16. In compliance with Section 542A.003, Arlington gave its pre-suit notice to Zurich on October 1, 2018. The pre-suit notice provided a comprehensive outline of Arlington's claims and damages, quantified its loss, and even offered to waive a formal claim for attorneys' fees if the contractual amounts were paid promptly.

**Count 1 – Violations of Texas Insurance Code, Section 541**

17. Arlington re-alleges and incorporates each allegation contained in the previous Paragraphs of this Complaint as if fully set forth herein.

18. Zurich failed to attempt to effectuate a prompt, fair, and equitable settlement of a claim with respect to which liability has become reasonably clear, in violation of Texas Insurance Code Section 541.060 (a)(2)(A).

19. Zurich failed to adopt and implement reasonable standards for prompt investigation of the claim arising under its policy, and failed to properly train its adjusters, or to hire properly

trained adjusters.

20. Zurich failed to provide promptly a reasonable explanation, in relation to the facts or applicable law, for the denial of a claim, in violation of Texas Insurance Code Section 541.060 (a)(3).

21. Zurich refused to pay the claim without conducting a reasonable investigation with respect to the claim, in violation of Texas Insurance Code Section 541.060 (a)(7).

22. Zurich misrepresented the insurance policy under which it affords property coverage to Arlington, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

23. Zurich misrepresented the insurance policy under which it affords property coverage to Arlington by failing to state a material fact that is necessary to make other statements made not misleading, in violation of Texas Insurance Code Section 541.061 (2).

24. Zurich misrepresented the insurance policy under which it affords property coverage to Arlington by making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of material fact and failing to disclose a matter required by law to be disclosed, in violation of Texas Insurance Code Section 541.061 (3) and Texas Insurance Code Section 541.002 (1).

25. Zurich knowingly committed the foregoing acts, with actual knowledge of the falsity, unfairness, or deception of the foregoing acts and practices, in violation of Texas Insurance Code Section 541.002 (1).

**Count 2 – Violations of the Texas Insurance Code, Section 542**

26. Arlington re-alleges and incorporates each allegation contained in the previous Paragraphs of this Complaint as if fully set forth herein.

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

28. Zurich failed to timely commence investigation of the claim or to request from Arlington any additional items, statements or forms that Zurich reasonably believed to be required from Arlington in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

29. Zurich failed to notify Arlington in writing of the acceptance or rejection of the claim not later than the 15<sup>th</sup> business day after receipt of all items, statements and forms required by Defendants in violation of Texas Insurance Code Section 542.056(a).

30. Zurich delayed payment of Arlington's claim in violation of Texas Insurance Code Section 542.058(a).

31. Each of the actions described herein were done "knowingly" as that term is used in the Texas Insurance Code and were a producing cause of Arlington's damages.

### **Count 3 – Statutory Interest**

32. Arlington re-alleges and incorporates each allegation contained in the previous Paragraphs of this Complaint as if fully set forth herein.

33. Arlington makes a claim for statutory interest penalties along with reasonable attorneys' fees for violation of Texas Insurance Code Subchapter B pursuant to Texas Insurance Code Section 542.060.

### **Count 4 – Breach of Contract**

34. Arlington re-alleges and incorporates each allegation contained in previous Paragraphs of the Complaint as if fully set forth herein.

35. As outlined above, Zurich breached its contract with Arlington by refusing to pay for covered damages under the Policy. As a result of Zurich breach, Arlington suffered legal

damages.

**Count 5 – Breach of duty of good faith & fair dealing**

36. Arlington re-alleges and incorporates each allegation contained in previous Paragraphs of the Complaint as if fully set forth herein.

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

**Count 6 – Punitive Damages for Bad Faith**

38. Arlington re-alleges and incorporates each allegation contained in previous Paragraphs of this Complaint as if fully set for herein.

39. Defendant acted fraudulently and with malice (as that term is legally defined) in denying and delaying Arlington' claim for benefits. Further, Defendant had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Arlington.

**Count 7 – Violations of Texas Deceptive Trade Practices Act**

40. Arlington re-alleges and incorporates each allegation contained in previous Paragraphs of this Complaint as if fully set forth herein.

41. The Texas Deceptive Trade Practices Act (DTPA) provides additional protections to consumers who are victims of deceptive, improper, or illegal practices. Defendant's violations of the Texas Insurance Code create a cause of action under the DTPA. Defendant's violations of the Texas Insurance Code, as set forth herein, specifically violate the DTPA as well. Defendant

has also acted unconscionably, as that term is defined under the DTPA.

42. Each of the actions described herein were done “knowingly” as that term is used in the DTPA and were a producing cause of Arlington’ damages.

### **Resulting Legal Damages**

43. Arlington is entitled to the actual damages resulting from the Defendant’s violations of the law. These damages include the consequential damages to its economic welfare from the wrongful denial and delay of benefits including loss of the property and business; and the other actual damages permitted by law. In addition, Arlington is entitled to exemplary damages.

44. As a result of Defendant’s acts and/or omissions, Arlington has sustained damages in excess of the minimum jurisdictional limits of this Court.

45. Arlington is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

46. Defendant’s knowing violations of the Texas Insurance Code and DTPA entitle Arlington to the attorneys’ fees, treble damages, and other penalties provided by law.

47. Arlington is entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

48. As a result of Defendant’s acts and/or omissions, Arlington has sustained damages in excess of the jurisdictional limits of this Court.

49. Arlington is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

50. Arlington is entitled to the recovery of attorneys’ fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, Texas Insurance Code 542.060(a)-(c), and Tex. Bus & Commerce Code

§17.50.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully request that Plaintiff has a judgment against Defendant for actual damages in excess of the minimum jurisdictional limits of this Court, pre- and post-judgment interest as allowed by law, costs of suit, and all other relief, at law or in equity, to which Plaintiff may be entitled.

Respectfully submitted,

**RAIZNER SLANIA, LLP**



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**ATTORNEYS FOR PLAINTIFF**

**JURY DEMAND**

*Arlington hereby demands a trial by jury, a right enshrined in the Constitution of the United States of America and the State of Texas and preserved by the sacrifices of many. The necessary jury fee has been paid.*

A handwritten signature in black ink, appearing to read "Andrew P. Slania", written over a horizontal line.

**ANDREW P. SLANIA**