

Cause No. 2017-57615

BROOKWIND LTD.	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
v.	§	
	§	
	§	
HOUSTON CASUALTY COMPANY, QBE	§	
INSURANCE CORPORATION, ASPEN	§	
SPECIALTY INSURANCE COMPANY,	§	HARRIS COUNTY, TEXAS
HISCOX INC, WESTCHESTER SURPLUS	§	
LINES INSURANCE COMPANY,	§	
UNDERWRITERS AT LLOYD’S,	§	
LONDON, INTERNATIONAL	§	
INSURANCE COMPANY OF HANOVER	§	
SE, ALTERRA EXCESS & SURPLUS	§	151 <sup>st</sup> JUDICIAL DISTRICT
INSURANCE COMPANY, SOMPO JAPAN	§	
INSURANCE COMPANY OF AMERICA,	§	
INTERSTATE FIRE & CASUALTY	§	
COMPANY, RSUI INDEMNITY	§	
COMPANY, EDWARD MARTIN SEWELL,	§	
JR, STEVEN M. PHILLIPS AND ENGLE	§	
MARTIN & ASSOCIATES,	§	
<i>Defendants.</i>		

**PLAINTIFF’S THIRD AMENDED PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, BROOKWIND LTD. (hereinafter referred to as “Plaintiff”), and files this Third Amended Petition against Defendants, HOUSTON CASUALTY COMPANY (“HCC”), QBE INSURANCE CORPORATION (“QBE”), ASPEN SPECIALTY INSURANCE COMPANY (“Aspen”) HISCOX INC (“Hiscox”), WESTCHESTER SURPLUS LINES INSURANCE COMPANY (“Westchester”), UNDERWRITERS AT LLOYD’S, LONDON (“Underwriters”), INTERNATIONAL INSURANCE COMPANY OF HANOVER SE (“Hanover”), ALTERRA EXCESS & SURPLUS INSURANCE COMPANY (“Alterra”), INTERSTATE FIRE & CASUALTY COMPANY (“Interstate”), RSUI INDEMNITY

COMPANY (“RSUI”), (together, the “Carriers”), EDWARD MARTIN SEWELL, JR (“Sewell”), STEVEN M. PHILLIPS (“Phillips”) and ENGLE MARTIN AND ASSOCIATES (“EMA”) (to whom will be collectively referred to as “Defendants”), and respectfully would show this court as follows:

### **PARTIES**

1. Plaintiff, Brookwind Ltd. is a Domestic Limited Partnership and owns the Property that is the subject of this lawsuit.

2. Defendant, HCC, is a domestic fire & casualty insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. HCC’s principal office is located at 13403 Northwest Freeway, Houston, Harris County, Texas. It has appeared and answered in this case through counsel.

3. Defendant, QBE, is a foreign fire & casualty insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. QBE has appeared and answered in this case through counsel.

4. Defendant, Aspen, is a foreign surplus lines insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Aspen has appeared and answered in this case through counsel.

5. Defendant, Hiscox, is a foreign fire & casualty insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Hiscox has appeared and answered in this case through counsel.

6. Defendant, Westchester, is a foreign surplus lines insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit.

Westchester has appeared and answered in this case through counsel.

7. Defendant, Underwriters, is a foreign surplus lines insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Certain Underwriters have appeared and answered in this case through counsel.

8. Upon information and belief, Defendant, Hanover, is an alien surplus lines insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Hanover regularly and systematically conducts the business of insurance in the State of Texas but does not maintain an agent for service. Accordingly, they may be served with process by serving Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701, via certified mail, return receipt requested, who can forward process to Mendes and Mount, LLP, 750 Seventh Avenue, New York, NY 10019-6829.

9. Upon information and belief, Defendant, Alterra, is a foreign surplus lines insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Alterra has appeared and answered in this case through counsel.

10. Upon information and belief, Defendant, Interstate, is a foreign surplus lines insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Interstate regularly and systematically conducts the business of insurance in the State of Texas but does not maintain an agent for service. Accordingly, they may be served with process by serving Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701, via certified mail, return receipt requested, who can forward process to General Counsel's Office, Interstate Fire & Casualty Company, 33 West Monroe Street, Chicago, IL 60603.

11. Upon information and belief, Defendant, RSUI, is a foreign fire & casualty insurance

company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. RSUI regularly and systematically conducts the business of insurance in the State of Texas. Accordingly, this defendant may be served by serving its Registered Agent for Service: Corporation Service Company, 211 E. 7<sup>th</sup> St., Ste. 620, Austin, Texas 78701-3218, via certified mail, return receipt requested.

12. Defendant, Sewell, is an individual residing in Dallas, Texas and is an adjuster with a designated home state of Texas licensed with the Texas Department of Insurance. This defendant may be served at Engle Martin & Associates, Inc., 17304 Preston Rd., Ste. 75, Dallas, Texas 75252-5650, via certified mail, return receipt requested.

13. Defendant, Phillips, is an individual residing in Dallas, Texas and is an adjuster with a designated home state of Texas licensed with the Texas Department of Insurance. He has appeared through counsel.

14. Defendant EMA is a domestic company engaged in the business of insurance adjusting in the State of Texas. EMA regularly conducts business in a systematic and continuous manner in the State of Texas. This defendant may be served via certified mail, return receipt requested to its registered agent: CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

#### **DISCOVERY LEVEL**

15. Plaintiff intends for discovery to be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.

#### **JURISDICTION**

16. The Court has jurisdiction over this controversy because the damages are within the jurisdictional limits of this court. Plaintiff is seeking monetary relief over \$1,000,000. Plaintiff

reserves the right to amend this petition during and/or after the discovery process.

17. The Court has jurisdiction over Defendants, the Carriers, because these defendants engaged in the business of insurance in the State of Texas, and Plaintiff's causes of action arise out of Defendants' business activities in the State of Texas.

18. The Court has jurisdiction over Defendant, Sewell because this defendant engages in the business of adjusting insurance claims in the State of Texas, and Plaintiff's causes of action arise out of Defendants' business activities in the State of Texas.

19. The Court has jurisdiction over Defendant, Phillips, because this defendant engages in the business of adjusting insurance claims in the State of Texas, and Plaintiff's causes of action arise out of Defendants' business activities in the State of Texas.

20. The Court has jurisdiction over Defendant, EMA, because this defendant engages in the business of adjusting insurance claims in the State of Texas, and Plaintiff's causes of action arise out of Defendant's business activities in the State of Texas.

## **VENUE**

21. Venue is proper in Harris County, Texas because Defendant Houston Casualty Company's principal office is in Harris County. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(3).

22. Plaintiff is the owner of a property insurance policy ("the Policy") issued by the Carriers.

## **FACTS**

23. Plaintiff owns the insured Glen Rose Apartment Complex located at 745 E. Pecan St., Hurst, Texas 76053, and (hereinafter referred to as "the Property").<sup>1</sup> The Carriers sold the Policy insuring the Property to Plaintiff.

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<sup>1</sup> In some of the copies of the Policy issued by certain Carriers, the Property's address is erroneously listed as "945" E. Pecan St. This Third Amended Petition corrects that error from previous iterations of the Petition.

24. On or about December 27, 2015 and May 10, 2016, a hail storm and/or windstorm struck Hurst, Texas, causing severe damage to homes and businesses throughout the region (“the Storm”) including the Property. The Storm damaged the Property including extensive damage to Plaintiff’s roof. The damage was so severe that large sections of shingles were missing from the apartment complex’s roof systems. Plaintiff has made numerous repairs to the roof and tarped large sections of the roof to mitigate damages, but the interior damages continue to leak due to the Defendants low ball estimate and failure to pay the claim.

25. Plaintiff subsequently submitted a claim to the Carriers for the damage the Property sustained as a result of the Storm. Plaintiff requested that the Carriers cover the cost of repairs, including but not limited to, replacement of the roof and interior damage of the Property.

26. The Carriers assigned EMA (the “adjusting company”) to adjust the claim who in turn assigned Sewell and Phillips as the individual adjusters (“the adjusters”) on the claim. The adjusters were improperly trained and failed to perform a thorough investigation of the claim spending an inadequate amount of time inspecting Plaintiff’s Property. The adjuster conducted a substandard inspection of Plaintiff’s Property evidenced by the adjuster’s report, which failed to include all of Plaintiff’s storm damages noted upon inspection. The damages the adjuster included in the report were grossly undervalued and did not allow for adequate funds to cover the cost of repairs to all the damages sustained.

27. The adjusters failed to perform any of the industry standard tests for hail and wind damage during their inspections. For example, the adjusters did not conduct test squares nor did the adjusters perform brittleness tests.

28. The adjusters estimated that the roof damage to the entire apartment complex only

amounted to \$10,200.42. In an attempt to pressure the Plaintiffs representative into agreeing with the amount of damages, Defendants sent email correspondence refusing to release payment until Plaintiff's representative agreed to the \$10,200.42. The adjusters are yet to make full and final payment.

29. The Carriers and its personnel failed to thoroughly review and properly supervise the work of their assigned adjusters which ultimately led to the approving an improper adjustment and an inadequately unfair settlement of Plaintiff's claim. As a result of Defendants' wrongful acts and omissions set forth above and further described herein, Plaintiff was wrongfully denied on the claim and have suffered damages.

30. Together, Defendants set about to deny and underpay on properly covered damages. The Defendants failed to provide full coverage for the damages sustained by Plaintiff and under-scoped Plaintiff's damages, thereby denying adequate and sufficient payment on Plaintiff's claim. The photos of wind damaged shingles the adjusters provided evidence more damage than the \$10,200.42 offered. As a result of Defendants' unreasonable investigation, Plaintiff's claim was improperly adjusted, and Plaintiff was wrongfully denied on the claim and has suffered damages.

31. The mishandling of Plaintiff's claim has also caused a delay in Plaintiff's ability to fully repair the Property, which has resulted in additional damages. To this date, Plaintiff has yet to receive the full payment that he is entitled to under the Policy. The majority of the apartment units at the property continue to leak from the wind and hail damaged roofs. The adjusters refused to consider any interior damages when conducting their inspection of the property and did not inspect the interior of the apartment complex.

32. As detailed in the paragraphs below, the Carriers wrongfully denied Plaintiff's claim for

repairs of the Property, even though the Policy provided coverage for losses such as those suffered by Plaintiff.

33. To date, the Carriers continues to delay in the payment for the damages to the Property. As such, Plaintiff has not been paid in full for the damages to the Property.

34. Defendants the Carriers failed to perform its contractual duties to adequately compensate Plaintiff under the terms of the Policy. Specifically, it refused to pay the full proceeds of the Policy, although due demand was made for proceeds to be paid in an amount sufficient to cover the damaged Property, and all conditions precedent to recovery upon the Policy had been carried out and accomplished by Plaintiff. The Carriers' conduct constitutes a breach of the insurance contract between the Carriers and Plaintiff.

35. Defendants misrepresented to Plaintiff that the damage to the Property were not covered under the Policy, even though the damage was caused by a covered wind and hail occurrence. The adjusters misrepresented that the shingles were repairable and that the Property's roof systems did not warrant full replacement. Defendants' conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE § 541.060(a)(1).

36. Defendants failed to make an attempt to settle Plaintiff's claim in a fair manner, although they were aware of their liability to Plaintiff under the Policy. Defendants attempt at a take it or leave it offer is in violation of the insurance code. Defendants' conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE § 541.0060(a)(2)(A).

37. Defendants failed to explain to Plaintiff the reasons for their offer of an inadequate settlement. Specifically, Defendants failed to offer Plaintiff adequate compensation, without any explanation why full payment was not being made. Furthermore, Defendants did not communicate



that any future settlements or payments would be forthcoming to pay for the entire losses covered under the Policy, nor did they provide any explanation for the failure to adequately settle Plaintiff's claim. Defendants' conduct is a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE § 541.060(a)(3).

38. Defendants failed to affirm or deny coverage of Plaintiff's claim within a reasonable time. Specifically, Plaintiff did not receive timely indication of acceptance or rejection, regarding the full and entire claim, in writing from Defendants. Defendants' conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE § 541.060(a)(4).

39. Defendants refused to fully compensate Plaintiff, under the terms of the Policy, even though Defendants failed to conduct a reasonable investigation. Specifically, Defendants performed an outcome-oriented investigation of Plaintiff's claim, which resulted in a biased, unfair, and inequitable evaluation of Plaintiff's claim on the Property. Defendants' conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE § 541.060(a)(7).

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

41. Defendants the Carriers failed to accept or deny Plaintiff's full and entire claim within the statutorily mandated time of receiving all necessary information. The Carriers' conduct constitutes

a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE § 542.056.

42. Defendants the Carriers failed to meet its obligations under the Texas Insurance Code regarding payment of claim without delay. Specifically, it has delayed full payment of Plaintiff's claim longer than allowed and, to date, Plaintiff has not received full payment for the claim. The Carriers' conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE § 542.058.

43. From and after the time Plaintiff's claim was presented to the Carriers, the liability of the Carriers to pay the full claim in accordance with the terms of the Policy were reasonably clear. However, the Carriers have refused to pay Plaintiff in full, despite there being no basis whatsoever on which a reasonable insurance company would have relied to deny the full payment. The Carriers' conduct constitutes a breach of the common law duty of good faith and fair dealing.

44. Defendants knowingly or recklessly made false representations, as described above, as to material facts and/or knowingly concealed all or part of material information from Plaintiff.

45. As a result of Defendants' wrongful acts and omissions, Plaintiff was forced to retain the professional services of the attorney and law firm who are representing them with respect to these causes of action.

46. Plaintiff's experience is not an isolated case. The acts and omissions The Carriers committed in this case, or similar acts and omissions, occur with such frequency that they constitute a general business practice of the Carriers with regard to handling these types of claims. The Carriers' entire process is unfairly designed to reach favorable outcomes for the company at the expense of the policyholders.

## **CAUSES OF ACTION**

47. Each of the foregoing paragraphs is incorporated by reference in the following:

**I. Cause of Action against Houston Casualty Company – violation of TEX. INS. CODE § 541.060 and 541.061**

48. HCC has violated the Texas Insurance Code through its misrepresentations of the applicable insurance policy and coverages provided.

49. HCC is the first named insurance company in the policy applicable to this case. Upon information and belief, HCC was responsible for the claims adjusting and handling for Plaintiff's property.

50. Until the week that this Second Amended Petition was filed, HCC represented to their insured from the outset has been that HCC was misidentified, and that the proper party in the case was an entity called "Houston Casualty Company (UK Branch)." It asserted this position in a verified denial:

### **III. VERIFIED DENIAL**

3.01 **Misidentification.** As verified below, Plaintiff has named and served the wrong Defendant. The property that is the subject of this suit is insured by Houston Casualty Company (UK Branch), which is a distinct entity from the named and served defendant, “Houston Casualty Company.” Houston Casualty Company (UK Branch) is **not** a domestic Texas insurance company and is not a citizen of Texas, as alleged by Plaintiff. While there is a domestic Texas insurer known as Houston Casualty Company, the policy on which Plaintiff sues was issued by a separate and legally distinct entity, Houston Casualty Company (UK Branch). HCC/UK is neither incorporated in, nor has its principal place of business in, Texas. HCC/UK is incorporated in England and Wales (Branch No. BR004760) and maintains its principal place of business at 40 Lime Street, London, EC3M 5BS. Having received actual notice of the suit, HCC/UK waives the service requirement by filing this answer and making its general appearance. However, Plaintiff must reform the style of the case to reflect the correct defendant.

51. HCC’s representative continued to perpetuate this falsehood, insisting on immediate dismissal of all claims, even filing a motion for summary judgment on behalf of its supposed client “HCC (UK),” refusing to present a corporate representative deposition on behalf of the party correctly named and served, HCC, and otherwise denying any responsibilities imposed on it by the Texas Insurance Code and the Texas Department of Insurance.

52. On June 20, 2018, HCC filed a Second Amended Answer, finally confessing that HCC (UK) “is not a distinct legal entity, but rather a branch of Houston Casualty Company.”

53. The foregoing conduct constitutes an unfair or deceptive act and unfair claim settlement practice in the business of insurance in that these acts misrepresented to the claimants material facts

and policy provisions relating to coverage at issue in violation of 541.060 of the Texas Insurance Code.

54. The foregoing conduct constitutes misrepresentations of the applicable insurance policy in that it contains untrue statements of material fact, a failure to state a material fact necessary to make other statements not misleading, considering the circumstances under which the statements were made, and statements made in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact, making material misstatements of law, and failing to disclose matters pertaining to the policy required by law to be disclosed. This all violates Section 541.061 of the Texas Insurance Code.

## **II. Causes of Action Against Sewell and Phillips**

55. EMA assigned Sewell and Phillips to adjust this claim. Sewell and Phillips were improperly trained and performed an outcome oriented and unreasonable investigation of Plaintiff's damages. Sewell and Phillips did not properly assess all damages caused by the Storm and omitted covered damages from the report including the full extent of damage to the roof. Sewell and Phillips refused to fully compensate Plaintiff for the full amount Plaintiff is entitled under the Policy. The outcome oriented investigation of Plaintiff's claim resulted in a biased evaluation of Plaintiff's damages to the Property and the estimated damages were severely underestimated.

### **A. Noncompliance with Texas Insurance Code: Unfair Settlement Practices**

56. Defendants Sewell and Phillips' conduct constitutes multiple violations of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE § 541.060(a). All violations under this article are made actionable by TEX. INS. CODE § 541.151.

57. Defendants Sewell and Phillips are individually liable for his unfair and deceptive acts,

irrespective of the fact they were acting on behalf of the Carriers, because Sewell and Phillips are a “person” as defined by TEX. INS. CODE § 541.002(2). The term “person” is defined as “any individual, corporation, association, partnership, reciprocal or interinsurance exchange, Lloyds plan, fraternal benefit society, or other legal entity engaged in the business of insurance, including an agent, broker, adjuster or life and health insurance counselor.” TEX. INS. CODE § 541.002(2) (emphasis added). (See also *Liberty Mutual Insurance Co. v. Garrison Contractors, Inc.*, 966 S.W. 2d 482, 484 (Tex. 1998) (holding an insurance company employee to be a “person” for the purpose of bringing a cause of action against him or her under the Texas Insurance Code and subjecting him or her to individual liability)).

58. Defendants’ misrepresentations by means of deceptive conduct include, but are not limited to: (1) failing to conduct a reasonable inspection and investigation of Plaintiff’s damages; (2) stating that Plaintiff’s damages were less severe than they in fact were; (3) using their own statements about the non-severity of the damages as a basis for denying properly covered damages and/or underpaying damages; and (4) failing to provide an adequate explanation for the inadequate compensation Plaintiff received. Defendants Sewell and Phillips’ unfair settlement practices, as described above, of misrepresenting to Plaintiff material facts relating to the coverage at issue, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060 (a)(1).

59. Defendants Sewell and Phillips’ unfair settlement practices, as described above, of failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the claim, even though liability under the Policy is reasonably clear, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(2)(A).

60. Defendants Sewell and Phillips failed to explain to Plaintiff the reasons for the offer or offers of an inadequate settlement. Specifically, Defendants Sewell and Phillips failed to offer Plaintiff adequate compensation without any explanation as to why full payment was not being made. Furthermore, Defendants Sewell and Phillips did not communicate that any future settlements or payments would be forthcoming to pay for the entire losses covered under the Policy, nor was there any explanation for the failure as described above, of failing to promptly provide Plaintiff with a reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for the offer of a compromise settlement of Plaintiff's claim, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(3).

61. Defendants Sewell and Phillips' unfair settlement practices, as described above, of failing within a reasonable time to affirm or deny coverage of the claim to Plaintiff, or to submit a reservation of rights to Plaintiff, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(4).

62. Defendants Sewell and Phillips' did not properly inspect the Property and failed to account for and/or undervalued Plaintiff's roof damage, although reported by Plaintiff to the Carriers. Defendants Sewell and Phillips' unfair settlement practices, as described above, of refusing to pay Plaintiff's claim without conducting a reasonable investigation, constitutes an unfair method of competition, and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(7).

63. Sewell and Phillips misrepresented the insurance Claim under which it affords Property Coverage to Plaintiffs, by making an untrue statement of material fact described above, in violation of TEX. INS. CODE § 541.061 (1).

64. Sewell and Phillips misrepresented the insurance Claim under which it affords Property coverage to Plaintiffs by failing to state a material fact that is necessary to make other statements made not misleading, in violation of TEX. INS. CODE § 541.061 (2) and TEX. INS. CODE § 541.061 (3).

### **III. Causes of Action Against the Carriers**

65. Carriers intentionally breached its contract with Plaintiffs, intentionally violated the Texas Insurance Code and intentionally breached the common law duty of good faith and fair dealing.

#### **A. Breach of Contract**

66. The Carriers breached the contract of insurance it had with Plaintiff. The Carriers breached the contract by its failure/and or refusal to adequately pay the claim as it is obligated to do under the terms of the Policy in question and under the laws in the State of Texas.

#### **B. Noncompliance with Texas Insurance Code: Unfair Settlement Practices**

67. Carriers' conduct constitutes multiple violations of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE § 541.060(a). All violations under this article were made actionable by TEX. INS. CODE § 541.151.

68. Carriers' unfair settlement practice, as described above, of misrepresenting to Plaintiff material facts relating to the coverage at issue, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 5410.060(a)(1).

69. Carriers' unfair settlement practice, as described above, of failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the claim, even though the Carriers' liability under the Policy was reasonably clear, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(2)(A).



70. Carriers' unfair settlement practice, as described above, of failing to promptly provide Plaintiff with a reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for its offer of a compromise settlement of the claim, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(3).

71. Carriers' unfair settlement practices, as described above, of failing within a reasonable time to affirm or deny coverage of the claim to Plaintiff, or to submit a reservation of rights to Plaintiff, constitutes an unfair method of compensation and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(4).

72. Carriers' unfair settlement practice, as described above, of refusing to pay Plaintiff's claim without conducting a reasonable investigation, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(7).

73. Carriers misrepresented the insurance Claim under which it affords Property Coverage to Plaintiffs, by making an untrue statement of material fact described above, in violation of TEX. INS. CODE § 541.061 (1).

74. Carriers misrepresented the insurance Claim under which it affords Property coverage to Plaintiffs by failing to state a material fact that is necessary to make other statements made not misleading, in violation of TEX. INS. CODE § 541.061 (2) and TEX. INS. CODE § 541.061 (3).

**C. Noncompliance with Texas Insurance Code: Prompt Payment of Claims Statute**

75. Plaintiff is entitled to 18% interest and attorney fees under TEX. INS. CODE §542.060 for violating the Texas Insurance Code, Prompt Payment of claims TEX. INS. CODE §542.051 *et. seq.*

76. The Carriers failed to acknowledge receipt of Plaintiff's claim, commence investigation of the claim, and request from Plaintiff all items, statements, and forms that it reasonably believed would be required within the applicable time constraints under TEX. INS. CODE §542.055.

77. The Carriers failed to notify Plaintiff in writing of its acceptance or rejection of the claim within applicable time constraints under TEX. INS. CODE §542.056.

78. The Carriers delayed the payment of Plaintiff's claim following its receipt of all items, statements, and forms reasonably requested and required, longer than the amount of time provided for under TEX. INS. CODE §542.058.

**D. Breach of the Duty of Good Faith and Fair Dealing**

79. The Carriers breached the duty of good faith and fair dealing by failing to adequately and reasonably investigate and evaluate Plaintiff's claim while it knew or should have known, by the exercise of reasonable diligence, that its liability was reasonably clear.

**E. Knowledge**

80. Each of the acts described above, together and singularly, was done "knowingly" as that term is used in the Texas Insurance Code.

**DAMAGES**

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

82. The damages caused by the hail storm and/or windstorm have not been properly addressed or repaired in the months since the storm, causing further damages to the Property, and causing undue hardship and burden to Plaintiff. These damages are a direct result of Defendants' mishandling of Plaintiff's claim in violation of the laws set forth above.

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

84. 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, court costs, and attorney's fees. For knowing conduct of the acts described above, Plaintiff ask for three times their actual damages. TEX. INS. CODE § 541.152.

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

86. 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, exemplary damages and damages for emotional stress.

87. 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.

### **JURY DEMAND**

88. Plaintiff hereby demands a trial by jury and tender the appropriate fee.

### **DISCOVERY REQUESTS**

89. Pursuant to Texas Rules of Civil Procedure 194, Plaintiff requests that each Defendants disclose, within 30 days of service of this request, the information or materials described in Texas Rule of Civil Procedure 194.2(a)-(1).

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this court site Defendants to appear and answer herein and that Plaintiff have judgment taken against Defendants and recovers from Defendants all damages allowed by law, and that Plaintiff be awarded attorneys' fees for trial and any appeal of this case, for pre-judgment and post judgment interest as allowed by law, costs of court, and such other and further relief, both general and special, at law or in equity, to which Plaintiff is justly entitled.

Respectfully submitted,

*/s/Jeffrey L. Raizner*  
**RAIZNER SLANIA LLP**  
JEFFREY L. RAIZNER  
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Houston, Texas 77006  
Phone: 713.554.9099  
Fax: 713.554.9098

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all known counsel of record on June 27, 2018, pursuant to the Texas Rules of Civil Procedure.

/s/ Jeffrey L. Raizner  
Jeffrey L. Raizner