

Cause No. \_\_\_\_\_

PRINCEVILLE PROPERTIES, LTD	§	IN THE DISTRICT COURT OF
dba CASA NUBE	§	
<i>Plaintiff</i>	§	
	§	
v.	§	
	§	
AMRISC LLC, CERTAIN	§	
UNDERWRITERS AT LLOYD’S	§	
LONDON, INDIAN HARBOR	§	
INSURANCE COMPANY, QBE	§	HARRIS COUNTY, TEXAS
SPECIALTY INSURANCE COMPANY,	§	
STEADFAST INSURANCE COMPANY,	§	
GENERAL SECURITY INDEMNITY	§	
COMPANY OF ARIZONA, UNITED	§	
SPECIALTY INSURANCE COMPANY,	§	
LEXINGTON INSURANCE COMPANY,	§	
PRINCETON EXCESS AND SURPLUS	§	
LINES INSURANCE COMPANY,	§	
INTERNATIONAL INSURANCE	§	
COMPANY OF HANNOVER SE	§	
<i>Defendants</i>	§	_____ JUDICIAL DISTRICT

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

TO THE HONORABLE JUDGE & JURY OF HARRIS COUNTY CITIZENS:

Plaintiff PRINCEVILLE PROPERTIES, LTD dba CASA NUBE (“Casa Nube” or “Plaintiff”) file this Original Petition against AMRISC, LLC (“AmRisc”), CERTAIN UNDERWRITERS AT LLOYD’S, LONDON (“Underwriters”), INDIAN HARBOR INSURANCE COMPANY (“Indian Harbor”), QBE SPECIALTY INSURANCE COMPANY (“QBE Specialty”), STEADFAST INSURANCE COMPANY (“Steadfast”), GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA (“General”), UNITED SPECIALTY INSURANCE COMPANY (“United”), LEXINGTON INSURANCE COMPANY (“Lexington”), PRINCETON EXCESS AND SURPLUS

LINES INSURANCE COMPANY (“Princeton Excess”), and INTERNATIONAL INSURANCE COMPANY OF HANNOVER SE (“Hannover”) (together, the “Carriers”), and would respectfully show the following:

**Discovery Control Plan**

1.1 Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

**Parties**

2.1 Plaintiff, Casa Nube, is a domestic limited partnership in good standing with a principal place of business in Harris County, Texas.

2.2 Upon information and belief AmRisc, LLC, is a company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit with its home office at 20405 State Hwy 249, Ste. 430, Houston, TX 77070. AmRisc may be served with process by serving its registered agent, **CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.**

2.3 Upon information and belief, Underwriters is a foreign insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Underwriters regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Underwriters may be served with process by serving certified mail, return receipt requested, to **Mendes & Mount, LLP, 750 Seventh Avenue, New York, New York 10019-6829.**

2.4 Upon information and belief, Indian Harbor is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Indian Harbor regularly conducts the business of insurance

in a systematic and continuous manner in the State of Texas and does not maintain an agent for service in this State. Accordingly, Indian Harbor may be served with process by serving certified mail, return receipt requested, to **Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701** who can forward process to **Sarah Mims, Assistant Secretary, 505 Eagleview Blvd. Suite 100, Exton, PA 19341-0636.**

2.5 Upon information and belief, QBE Specialty is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. QBE Specialty regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas and does not maintain an agent for service on file in this State. Pursuant to the Policy, QBE Specialty may be served with process by serving certified mail, return receipt requested, to its agent, **CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201.**

2.6 Upon information and belief, Steadfast is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Steadfast regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas and does not maintain an agent for service on file in this State. Accordingly, Steadfast may be served with process by serving certified mail, return receipt requested, to **Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701** who can forward process to **General Counsel, Law Department, Steadfast Insurance Company, 1400 American Lane, Schaumburg, IL 60196-1056.**

2.7 Upon information and belief, General Security Indemnity Company of Arizona is a foreign surplus lines insurance company engaged in the business of insurance in Texas,

operating for the purpose of accumulating monetary profit. United Specialty regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. General does maintain a registered agent on file in Texas and accordingly may be served with process by serving certified mail, return receipt requested, to **Henry Klecan, CEO, One Seaport Plaza, 199 Water Street, New York, New York, 10038-3526.**

2.8 Upon information and belief, United Specialty is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. United Specialty regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. United Specialty does maintain a registered agent on file in Texas and accordingly may be served with process by serving certified mail, return receipt requested, to **President, Terry L. Ledbetter, 1900 L. Don Dodson Drive, Bedford, Texas 76021.**

2.9 Upon information and belief Lexington Insurance Company is a foreign insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Lexington regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Lexington may be served with process by serving certified mail, return receipt requested, to the **Division Executive, Commercial Property, 100 Summer Street, Boston, MA 02110.**

2.10 Upon information and belief, Princeton Excess is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Princeton Excess regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas and does not maintain an agent for service in this State. Accordingly, Princeton Excess may be served

with process by serving certified mail, return receipt requested, to **Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701** who can forward process to **General Counsel of The Princeton Excess and Surplus Lines Insurance Company, 555 College Road East, Princeton, NJ 08543.**

2.11 Hannover is a non-admitted, foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. International regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. International may be served with process by serving certified mail, return receipt requested, to **Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701** who can forward process to **Andrea Best, Drinker Biddle & Reath, LLP, 1177 Avenue of the Americas, 41<sup>st</sup> Floor, New York, NY 10036-2714.**

#### **Venue & Jurisdiction**

3.1 Venue is proper in Harris County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(3), as Defendant AmRisc's principal office is located in Harris County, Texas. In addition, venue is proper in Harris County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(1) as all or a substantial part of the events or omissions giving rise to this claim occurred in Harris County. In particular, the adjustment of the claim by Defendants for losses under the policy (including payments to be made to Plaintiff under the policy) were conducted in Harris County, Texas. Investigations and policy representations, including communications to and from Defendants and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred in Harris County, Texas. Additionally, AmRisc's unlawful conduct in the administering of this insurance policies, control of the claims handlers, and participation in profit-sharing based on the program's

profitability related to claims occurred in Harris County, Texas out of AmRisc's home office.

3.2 Plaintiff seeks damages within the jurisdictional limits of this Court. At this time, Plaintiff seeks monetary relief in an amount over \$1,000,000. Plaintiff reserves the right to modify the amount and type of relief sought in the future.

### **Factual Background**

4.1 On or before January 20, 2017, the Carriers, through the program design and management of Defendant AmRisc, sold a commercial property policy (the "Policy") to Casa Nube whereby the Carriers would provide insurance coverage for the property located at 9700 Court Glen, Houston, Texas 77099 (the "Property") in exchange for the timely payment of premiums. *See* Exhibit "A", Policy Declarations Page. AmRisc holds itself out as completing the risk valuations on the Property prior to coverage being bound in order to ensure profitability for the Carriers, and AmRisc, related to the subject Property. Further, AmRisc selects and manages claim administrator CJW and Associates, and claims adjusters Vericclaim, though CJW and Vericclaim are part of the same company. AmRisc is incentivized to closely manage CJW and Vericclaim because AmRisc's compensation is directly tied to the portfolio or "book profitability." To put it bluntly, AmRisc receives higher compensation if less is paid out on claims. The metric identified by AmRisc and the Carriers to compensate AmRisc based on lower claim payments is the "combined loss ratio." AmRisc puts portfolio deals together for the out-of-state non-admitted surplus lines Carriers. AmRisc involves itself on both sides of the insurance transaction, the underwriting process and in claims management. AmRisc's

conduct with regard to the Policy and Property qualifies as the business of insurance in this state.

4.2 The Policy was sold by the Carriers to Casa Nube as the insured under the Policy and provides coverage for damages to the Property caused by a windstorm. The Policy Period was from May 22, 2016 through May 22, 2017. Although somewhat unclear, the Policy purports to spread coverage amongst all of the Carriers. *See* Exhibit “A”.

4.3 On or about January 20, 2017, there was a windstorm in Harris County which resulted in substantial damage to the Property. As a result, the damaged building components include, among other items, light fixtures, windows, drywall, flooring, and the roofing system of the Property. Upon discovering the damages, Casa Nube filed an insurance claim on January 30, 2017 under the Policy with the Carriers for damages to the Property caused by the storm. Plaintiff asked that the cost of repairs be covered pursuant to the Policy.

4.4 The Carriers insure the Property. The Carriers, through Defendant AmRisc, assigned adjusters, consultants, and agents to Casa Nube’s file that were inadequate and improperly trained. Specifically, the Carriers delegated AmRisc to assign the claims to CJW and Defendant Vericclaim as the third party adjusting firm to handle the claims who in turn assigned the claim to its internal adjuster, Tom McCartney. Mr. McCartney was assigned as the adjuster with decision-making authority over Plaintiff’s claim under the Carriers’ insurance policy. Vericclaim and Mr. McCartney conducted an unreasonable and inadequate investigation on February 28, 2017 and denied any windstorm damage to property.

4.5 Specifically, on February 28, 2017, Tom McCartney with Vericclaim and Darrel O’Steen with Envista Forensics personally observed substantial wind damage that resulted

from a January 20, 2017 storm. The claims administrating company, Vericclaim, Inc. engaged and relied upon Envista Forensics' engineer, Matthew Cowen, who concluded that the damages were not storm related, and instead were a result of normal wear and tear, deferred maintenance, construction deficiencies, and sundry other excuses. They further confirmed damages to thousands of shingles and other areas of the property but instead of providing full indemnity, understated the damages and admitted only spot repairs. These opinions were unreasonable and pretextual, and this type of improper practice has become common among insurance industry engineers. Cowen's opinions were internally inconsistent, as he noted wind damage to the building, but suggested that the damage was pre-existing.

4.6 Despite clear evidence of covered damage, the Carriers engaged in and ratified this improper claims conduct and ultimately approved a gross underpayment of the contractual damages. This underpayment was issued on or after April 6, 2017 and it omitted important facts, physical evidence, and meteorological data supporting Casa Nube's claim. The Carriers instead unreasonably blamed the loss on causes other than wind to avoid contractual responsibilities and to save the Carriers in excess of \$1,000,000. Casa Nube cooperated throughout the claim process and even had a public adjusting team meticulously point out the extent of the damages covered by the subject policy.

4.7 Vericclaim and Mr. McCartney chose to ignore obvious damages to the Property. The Carriers relied on Vericclaim and Mr. McCartney's incomplete and inadequate investigation in making coverage decisions under the Policy and deciding what amounts, if any, to pay on the claim, which is evidenced by the estimates and reports that fail to account for the necessary repairs to the Property. Casa Nube was forced to hire its own representative and



demand re-inspections and re-evaluations of the obvious damages to the Property that Defendants ignored. Defendants represented that certain damages were not covered under the Policy when in fact they were.

4.8 Based on Vericclaim and Mr. McCartney's haphazard investigation, no payments have been issued under the Policy. The Carriers wrongfully denied and delayed Casa Nube's claim for repairs and replacement. Furthermore, Defendants have underestimated damages during their investigation. Defendants have chosen to continue to deny and delay timely payment of the damages. As a result, Casa Nube has not been fully paid under the Policy provided by the Carriers since the windstorm.

4.9 As a result of Defendants' acts and/or omissions, Casa Nube was required to retain an attorney to prosecute its claim for insurance benefits.

4.10 Unfortunately, Defendants have delayed payment for Casa Nube's necessary and covered Property damages under its insurance policy. Given the repeated delays of payment, Plaintiff has been subjected to significant economic impact, and physical damage. In addition, Plaintiff has suffered financial harm and damage as a result of Defendants' denials and repeated delays. The significant effect of Defendants' wrongful and unjustified delays, however, is still uncompensated.

**FIRST CAUSE OF ACTION---Violations of Texas Insurance Code**

5.1 Casa Nube re-alleges and incorporates each allegation contained in Paragraphs 1-4.10 of this Petition as if fully set forth herein.

5.2 AmRisc and the Carriers 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).

5.3 AmRisc and the Carriers failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 AmRisc and the Carriers 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).

5.5 AmRisc and the Carriers failed to within a reasonable time to affirm or deny coverage of a claim to a policyholder; or submit a proper reservation of rights to a policyholder in violation of Texas Insurance Code Section 541.060(a)(4).

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

5.7 AmRisc and the Carriers misrepresented the insurance policy under which it affords Property coverage to Casa Nube, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). AmRisc and the Carriers misrepresented the insurance policy to Casa Nube, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

5.8 AmRisc and the Carriers misrepresented the insurance policy under which it affords Property coverage to Casa Nube 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). The Carriers misrepresented the insurance policy to Casa Nube 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).

5.9 AmRisc and the Carriers misrepresented the insurance policy under which it affords Property coverage to Casa Nube 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). The Carriers and AmRisc misrepresented the insurance policy to Casa Nube 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).

5.10 AmRisc and the Carriers 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).

**SECOND CAUSE OF ACTION---Prompt Payment of Claim**

6.1 Casa Nube re-alleges and incorporates each allegation contained in Paragraphs 1-5.10 of this Petition as if fully set forth herein.

6.2 The Carriers failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

6.3 The Carriers failed to timely commence investigation of the claim or to request from Casa Nube any additional items, statements or forms that the Carriers, Vericclaim, and Mr. Grisham reasonably believe to be required from Casa Nube in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

6.4 The Carriers failed to notify Casa Nube 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 the Carriers in violation of Texas Insurance Code Section 542.056(a).

6.5 The Carriers delayed payment of Casa Nube's claim in violation of Texas Insurance Code Section 542.058(a).

6.6 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 Casa Nube's damages.

**THIRD CAUSE OF ACTION---Statutory Interest**

7.1 Casa Nube re-alleges and incorporates each allegation contained in Paragraphs 1-6.6 of the Petition as if fully set forth herein.

7.2 Casa Nube 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.

**FOURTH CAUSE OF ACTION---Breach of Contract**

8.1 Casa Nube re-alleges and incorporates each allegation contained in Paragraphs 1-7.2 of the Petition as if fully set forth herein.

8.2 As outlined above, the Carriers and AmRisc breached its contract with Casa Nube by refusing to pay for covered damages under the Policy. As a result of the Carriers and AmRisc's breach, Casa Nube suffered legal damages.

**FIFTH CAUSE OF ACTION---Breach of duty of good faith & fair dealing**

9.1 Casa Nube re-alleges and incorporates each allegation contained in Paragraphs 1-8.2 of the Petition as if fully set forth herein.

9.2 The Carriers, as the Property coverage insurers, had a non-delegable duty to deal fairly and in good faith with Casa Nube in the processing of the claim. The Carrier's breached this duty by refusing to properly investigate and effectively denying insurance benefits. The Carrier's knew or should have known that there was no reasonable basis for denying or delaying the required benefits. As a result of The Carrier's breach of these legal duties, Casa Nube suffered legal damages.

**SIXTH CAUSE OF ACTION---Punitive Damages for Bad Faith**

10.1 Casa Nube re-alleges and incorporates each allegation contained in Paragraphs 1-9.2 of this Petition as if fully set for herein.

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

**SEVENTH CAUSE OF ACTION---Violations Of Texas DTPA**

11.1 Casa Nube re-alleges and incorporates each allegation contained in Paragraphs 1-10.2 of this Complaint as if fully set forth herein.

11.2 The Deceptive Trade Practices-Consumer Protection Act (DTPA) provides additional protections to consumers who are victims of deceptive, improper, or illegal practices. Defendants' violations of the Texas Insurance Code create a cause of action under the DTPA. Defendants' 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.

11.3 Each of the actions described herein were done "knowingly" as that term is used in

the DTPA and were a producing cause of Casa Nube's damages.

### **KNOWLEDGE**

12.1 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 Casa Nube's damages.

### **RESULTING LEGAL DAMAGES**

13.1 Casa Nube is entitled to the actual damages resulting from the Defendants' 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, Casa Nube is entitled to exemplary damages.

14.2 As a result of Defendants' acts and/or omissions, Casa Nube has sustained damages in excess of the minimum jurisdictional limits of this Court.

14.3 Casa Nube is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

14.4 Defendants' knowing violations of the Texas Insurance Code and DTPA entitle Casa Nube to the attorneys' fees, treble damages, and other penalties provided by law.

14.5 Casa Nube is entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

14.6 As a result of Defendants' acts and/or omissions, Casa Nube has sustained damages in excess of the jurisdictional limits of this Court.

14.7 Casa Nube is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

14.8 Casa Nube is entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, the Texas Insurance Code 542.060(a)-(b), the Tex. Bus & Commerce Code §17.50 and Tex. Civ. Prac. & Rem. Code §37.009.

**Prayer**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully request that Plaintiff have judgment against Defendants 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**

*Plaintiff 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.*



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**JEFFREY L. RAIZNER**