

David Hernandez

DC-15-15153
Cause No. _____

ESTRADO 65, LLC AND	§	IN THE DISTRICT COURT OF
ESTRADO 25, LLC	§	
	§	
V.	§	DALLAS COUNTY, TEXAS
	§	
ASPEN SPECIALTY INSURANCE	§	
COMPANY, CHUBB CUSTOM	§	
INSURANCE COMPANY, LLOYDS	§	
OF LONDON, ALLIED WORLD	§	
ASSURANCE COMPANY, VERLCAIM	§	
INC., AND JASON R. KEEN	§	___ JUDICIAL DISTRICT

PLAINTIFFS’ ORIGINAL PETITION & JURY DEMAND

Plaintiffs ESTRADO 65, LLC AND ESTRADO 25, LLC (collectively “Estrado” or “Plaintiffs”) by and through their attorneys, file this Original Petition & Jury Demand against Defendants ASPEN SPECIALTY INSURANCE COMPANY (“Aspen”), CHUBB CUSTOM INSURANCE COMPANY (“Chubb”), LLOYDS OF LONDON (“Lloyds”), ALLIED WORLD ASSURANCE COMPANY (“Allied”) (together, the “Carriers”), VERICLAIM, INC. (“Vericclaim”) AND JASON R. KEEN (“Keen”) (collectively “Defendants”) and would respectfully show the following:

Discovery Control Plan

1.1 Plaintiffs intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

Parties

2.1 Plaintiff Estrado 65, LLC is a limited liability company organized under the laws of the State of Texas. Estrado 65, LLC is a named insured and is acting on

behalf of the tenancy in common that holds the property at issue. Estrado 65 files suit in its own interests and on behalf of the tenancy in common.

2.2 Plaintiff Estrado 25, LLC is a limited liability company organized under the laws of the State of Texas. Estrado 25, LLC is a named insured and a member of the tenancy in common that holds the property at issue.

2.3 Upon information and belief, Defendant Aspen is a non-admitted foreign surplus lines insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Aspen regularly and systematically issues insurance policies in the State of Texas but does not maintain an agent for service. Accordingly, they 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 President, 175 Capital Blvd., Suite 300, Rocky Hill, CT, 06067-3914.

2.4 Upon information and belief, Defendant Chubb is a non-admitted foreign surplus lines insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Chubb regularly and systematically issues insurance policies in the State of Texas but does not maintain an agent for service. Accordingly, they 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 President, 15 Mountain View Road, Warren, New Jersey, 07059.

2.5 Upon information and belief, Defendant Lloyds is a non-admitted foreign surplus lines insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Lloyds regularly and systematically issues insurance policies in the State of Texas but does not maintain an agent for service. Accordingly, they 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 President, 25 West 53rd Street, Floor 14, New York, New York 10019-5401.

2.6 Upon information and belief, Defendant Allied is a non-admitted foreign surplus lines insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Allied regularly and systematically issues insurance policies in the State of Texas but does not maintain an agent for service. Accordingly, they 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 President, 199 Water Street, Flood 29, New York, New York 10038-3532.

2.7 Upon information and belief, Vericclaim is a foreign corporation operating out of its Texas offices, including its office in Dallas County, for the purpose of accumulating monetary profit. Vericclaim regularly engages in the business of adjusting insurance claims in Texas and may be served with process through its registered agent, **CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.**

2.8 Upon information and belief, Jason R. Keen is a natural person residing and working in the State of Texas. He may be served with process by serving him at, **Jason R. Keen, 4004 Belt Line Road, Suite 205, Addison, Texas 75001.**

Venue & Jurisdiction

3.1 Venue is proper in Dallas County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(1), as a substantial part of the events or omissions giving rise to this claim occurred in Dallas County. In particular, the adjustment of the claim by Defendant Keen for losses under the policy (including payments to be made to Estrado under the policy) were conducted in Dallas County, Texas. Further, investigation, including communications to and from Defendants and Estrado (including telephone calls, mailings, and other communications to Estrado) and communications between Defendants regarding the claim occurred in Dallas County, Texas.

3.2 Plaintiffs seek damages within the jurisdictional limits of this Court. Plaintiffs trust the jury to evaluate the evidence, but at this time, Plaintiffs seeks monetary relief in an amount over \$1,000,000. Plaintiffs reserve the right to modify the amount and type of relief sought in the future.

General Allegations

4.1 On or before August 28, 2014, the Carriers sold a commercial property insurance policy bearing Policy No. PRADVEE14 to Estrado whereby the Carriers would provide insurance coverage for the property located at 6201 Indiana Avenue, Lubbock, Texas 79423 (the "Property") in exchange for the

timely payment of premiums (the "Policy"). *See* Exhibit "A". The Property consists of several apartment buildings owned by Estrado. The Policy was sold by the Carriers to Estrado as the insured under the Policy and provides coverage for damages to the Property caused by hail. Although somewhat unclear, the Policy purports to spread coverage amongst all of the Carriers. *See* Exhibit "A".

4.2 On or about August 28, 2014, Plaintiffs' property was substantially damaged by a severe hail storm that struck Lubbock County. As a result, the roofs, exteriors, HVAC, and other structures of the Property were substantially damaged. Immediately upon discovering the damage, Plaintiffs filed an insurance claim under the Policy with Carriers for damages to the Property caused by the hail storm. Plaintiffs asked that the cost of repairs be covered pursuant to the Policy.

4.3 The Carriers insure the Property. In response to the catastrophe claim, the Carriers assigned adjusters, consultants, and agents to Plaintiffs' file that were inadequate and improperly trained. More specifically, Carriers assigned Plaintiffs' claim to Vericclaim Inc. who in turn assigned Jason Keen to adjust the damages under the Policy.

4.4 Keen failed to perform a thorough investigation of the claim. He performed substandard inspections of the Property and failed to prepare any scopes or estimates of damage. Estrado's representatives pointed out obvious damage to Keen during his inspections that he ignored. Estrado was forced to demand Keen re-inspect the Property multiple times. Keen hired a consultant who is not licensed with the Texas Department of Insurance to estimate repairs to the Property. That

estimate grossly underestimated the extent and value of the damages to the Property. Keen failed to hire any Texas-licensed and qualified engineers or experts to appropriately assess the damage. Keen delayed the claims process and failed to communicate with the insured. Keen also misrepresented the Policy's coverage without providing any explanations to the insured. Keen performed an inadequate, incomplete and unreasonable investigation of Plaintiffs' claim, which is evidenced by his delays, lack of communication, refusal to hire to appropriate consultants, and estimate that fails to account for the necessary repairs for the Property. Carriers relied exclusively on Keen in determining what amounts, if any, to pay on Plaintiffs' claim and failed to perform their own adequate investigation.

4.5 Carriers, Vericlim, and Keen wrongfully underpaid and denied large portions of Plaintiffs' claims for property repairs. Furthermore, Carriers, Vericlim, and Keen underestimated what damages they did accept during the investigation. Carriers, Vericlim, and Keen represented to Plaintiffs that certain damages were not covered under the Policy when in fact they were. Carriers, Vericlim, and Keen have chosen to continue to deny timely payment of the damages. As a result, Estrado has not been fully paid under the Policy provided by Carriers since the hail storm. Estrado was forced to hire its own consultant to independently evaluate the damages to the Property because Defendants refused to do so. Plaintiffs' own expert has identified substantial damage far beyond what Carriers acknowledged. To this day, Carriers refuse to pay for the necessary repairs to the Property as required under the Policy.

4.6 As a result of Defendants' acts and/or omissions, Plaintiffs were required to retain an attorney to prosecute its claim for insurance benefits.

4.7 Unfortunately, Defendants have delayed payment for Plaintiffs necessary and covered property repairs under the insurance policy that Carriers wrote. Given the repeated delays of payment, Plaintiffs have been subjected to significant economic impact, worry, distress, and continuing economic and physical damage. Because of Defendants' delays, denials, and underpayment, Plaintiffs have been unable to make necessary repairs to the Property which has resulted in further damages to the Property, including additional interior and roof damage, among others. In addition, Plaintiffs have 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 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-4.7 of this Petition as if fully set forth herein.

5.2 Carriers, Vericlaim, and Keen 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 Carriers, Vericlaim, and Keen failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 Carriers, Vericclaim, and Keen 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 Carriers, Vericclaim, and Keen 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).

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

5.7 Carriers, Vericclaim, and Keen misrepresented the insurance policy 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 Texas Insurance Code Section 541.061 (2). Carriers, Vericclaim, and Keen misrepresented the insurance policy to Plaintiffs 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).

5.8 Carriers, Vericclaim, and Keen misrepresented the insurance policy under which it affords Property coverage to Plaintiffs, 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). Carriers, Vericlim, and Keen misrepresented the insurance policy to Plaintiffs 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).

5.9 Carriers, Vericlim, and Keen 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 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-5.9 of this Petition as if fully set forth herein.

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

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

6.4 Carriers, Vericlim, and Keen failed to notify Plaintiffs in writing of the acceptance or rejection of the claim not later than the 15th business day after receipt

of all items, statements and forms required by Carriers, Vericclaim, and Keen in violation of Texas Insurance Code Section 542.056(a).

6.5 Carriers, Vericclaim, and Keen delayed payment of Plaintiffs' claim in violation of Texas Insurance Code Section 542.058(a).

THIRD CAUSE OF ACTION---Statutory Interest

7.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-6.5 of the Petition as if fully set forth herein.

7.2 Plaintiffs make a claim for penalties of 18% statutory interest on the amount of the claims 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 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-7.2 of the Petition as if fully set forth herein.

8.2 Carriers breached its contracts with Plaintiffs. As a result of Carriers' breaches, Plaintiffs suffered legal damages.

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

9.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-8.2 of the Petition as if fully set forth herein.

9.2 Carriers, as the property coverage insurers, had a duty to deal fairly and in good faith with Plaintiffs in the processing of the claim. Carriers breached this duty by refusing to properly investigate and effectively denying insurance benefits. Carriers knew or should have known that there was no reasonable basis for

denying or delaying the required benefits. As a result of Carriers' breach of these legal duties, Plaintiffs suffered legal damages.

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

10.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-9.2 of this Petition as if fully set for herein.

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

SEVENTH CAUSE OF ACTION---Violations Of Texas DTPA

11.1 Plaintiffs re-allege and incorporate 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.

EIGHTH CAUSE OF ACTION---Fraud

12.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-11.2 of this Complaint as if fully set forth herein.

12.2 Carriers, Vericclaim, and Keen acted fraudulently as to each representation made to Plaintiffs concerning material facts for the reason they would not have acted and which Carriers, Vericclaim, and Keen knew were false or made recklessly without any knowledge of their truth. The representations were made with the intention that they be acted upon by Plaintiffs, who relied on those representations, thereby causing injury and damage to Plaintiffs.

KNOWLEDGE

13.1 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 Plaintiffs’ damages.

RESULTING LEGAL DAMAGES

14.1 Plaintiffs are 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; the mental anguish and physical suffering resulting from this wrongful denial of benefits, and continued impact on Plaintiffs; lost credit reputation; and the other actual damages permitted by law. In addition, Plaintiffs are entitled to exemplary damages.

14.2 As a result of Defendants’ acts and/or omissions, Plaintiffs have sustained damages in excess of the minimum jurisdictional limits of this Court.

14.3 Plaintiffs are 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 Plaintiffs to the attorneys' fees, treble damages, and other penalties provided by law.

14.5 Plaintiffs are entitled to statutory interest on the amount of its claim at the rate of 18% per year as damages under the Texas Insurance Code §542.060(a).

14.6 Plaintiffs are 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, Plaintiffs respectfully request that Plaintiffs 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 Plaintiffs may be entitled.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

JURY DEMAND

Plaintiffs hereby demand 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.



JEFFREY L. RAIZNER