

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

1910 RALSTON ROAD MEDICAL	§	
OFFICES, INC., and VICENTE	§	
ZAPATA, M.D.	§	
	§	
v.	§	Civil Action No. 4:18-cv-186
	§	
ACCEPTANCE INDEMNITY	§	
INSURANCE COMPANY	§	

PLAINTIFFS’ ORIGINAL COMPLAINT & JURY DEMAND

Plaintiff 1910 RALSTON ROAD MEDICAL OFFICES, INC. and VICENTE ZAPATA, M.D. (collectively “1910 Ralston” or “Plaintiff”) file this Original Complaint against Defendant ACCEPTANCE INDEMNITY INSURANCE COMPANY (“Acceptance” or “Defendant”) and would respectfully show the following:

Parties

1. 1910 Ralston is a domestic limited for-profit corporation in good standing with a principal place of business in Houston, Texas. Vicente Zapata is the sole member of 1910 Ralston Road Medical Offices, Inc., and he is a resident of the State of Texas.
2. Vicente Zapata, M.D. is a natural person residing in the State of Texas.
3. Acceptance is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. ACCEPTANCE 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. According to its insurance policy, Acceptance 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: **1314 Douglas Street, Suite 1600, Omaha NE 68102.**

Venue & Jurisdiction

4. 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.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because this action concerns real property located in Houston, Texas, and all or a substantial part of the events giving rise to the claim described herein occurred in Houston, Texas. In particular, the insurance policy at issue and of which Plaintiff is a beneficiary was to be performed in Houston, Texas and the losses under the policy (including payments to be made to Plaintiff under the policy) were required to be made in Houston, Texas. Further, investigation, including communications to and from Defendant and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred in Houston, Texas.

Factual Background

The Property

6. 1910 Ralston owns the commercial property located at 1910 John Ralston Road, Houston, Texas 77013 (the “Property”). The Property consists of remodeled medical offices, which provide full-service family medicine care.



7. The property is a one-story structure totaling approximately 13,448 square feet consisting of medical exam rooms and offices including a waiting room. Construction was completed on the Property in 1970 and was remodeled in 2002.

Acceptance Indemnity Insurance Company

8. Acceptance has a history in Texas of conducting arbitrary, outcome-oriented investigations intended to deny righteous claims. Despite Acceptance (and its parent company, IAT Insurance Group) collecting substantial amounts each year from Texas in premiums, Acceptance has intentionally shielded itself from regulation by the Texas Department of Insurance and has instead remained a non-admitted foreign surplus lines carrier. Instead, the company rewards claim representatives and consultants who identify grounds to exclude property damage claims under their policies, in violation of Texas law and the promises within the insurance contract. It is for these reasons that Acceptance/IAT Insurance Group has been sued many times in the last few years in

Texas with continual allegations of bad faith, fraud, and misrepresentations being levied against it. Acceptance often settles cases and requires stringent “confidentiality agreements” so that the wronged policyholders are not permitted to tell their story. This same unfair and deceptive claims system was utilized against the Plaintiff in contravention of the Texas Insurance Code and the insurance company’s nondelegable duty of good faith and fair dealing.

The Policy

9. Plaintiff paid \$9,294.60 to acquire Acceptance’s Policy No. CP00194280 (renewal of number CP00010912) (the “Policy”). The Policy covers one single location – the Property located at 1910 John Ralston Road, Houston, Texas 77013. The Policy Period is August 16, 2017 through August 16, 2018, and includes the date of loss of August 26, 2017, the date Harvey made landfall. The Policy includes the following limits and coverages:

COVERAGES PROVIDED Insurance at the described premises applies only for Coverages for which a Limit of Insurance is shown.							
Prem. No.	Bldg. No.	Coverage	Limit Of Insurance	Covered Causes Of Loss	Coin-surance *	Rate	Premium
1	1	Building	843,065	Special	80%	.798 \$	6,728
1	1	BPP Incl Stock	100,000	Special	80%	.798	798

* If Extra Expense Coverage, Limits on Loss Payment

OPTIONAL COVERAGES Applicable only when entries are made in the Schedule below. ++ Applies to Business Income only									
Prem. No.	Bldg. No.	REPLACEMENT COST (X)			INFLATION GUARD (%)		++ MONTHLY LIMIT OF INDEMNITY (Fraction or Percentage)	++ MAXIMUM PERIOD OF INDEMNITY (X)	++ EXTENDED PERIOD OF INDEMNITY (Days)
		Building	Personal Property	Including "Stock"	Building	Personal Property			
1	1	X	X	X					

10. As evidenced by the Declarations Page, the Policy provides for a replacement cost valuation, and contains a wind/hail deductible of 2%. The core of the Policy is a “Special Cause of Loss” form, that includes vague coverage language. See Exhibit “A.” The operative policy language provides:

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

1. Excluded in Section B., Exclusions; or
 2. Limited in Section C., Limitations;
- that follow.

Hurricane Harvey

11. On or about August 25, 2017, Hurricane Harvey, recognized as one of the most devastating natural disasters in United States history, made landfall on the Texas coast in Houston as a Category 4 hurricane. Hurricane Harvey traveled through the southeast part of Texas, inflicting billions of dollars in damages to private and public property. The Texas Division of Emergency Management incurred more than \$439 million in costs associated with debris removal, public property damage, and police/EMS response immediately after Harvey. Texas Governor Greg Abbott has estimated that Hurricane Harvey’s damages will total an historic \$180 billion.

Plaintiff makes an insurance claim for Harvey related damage

12. As a result of Harvey’s extreme winds when it made landfall on August 25, 2017, the Property was substantially damaged, and on August 26, 2017, Plaintiff made an insurance claims with Acceptance.

Acceptance retains adjuster to begin adjusting the claim

13. Because Acceptance does not have a single employee in Texas, they assigned The Artisan Works Group to handle the claim. Although Texas law provides that an insurer has a “non-delegable duty” to responsibly handle claims, delegate is precisely what foreign insurance entities like Acceptance do on a regular basis. Claims decisions are delegated to third-party administrators like Artisan with limited oversight by Acceptance. Claim settlement authorities are granted to these entities, but they are done on a restrictive, one-size-fits all limited basis that bears no relationship to the claim at hand. Oftentimes, claims are not even reported to the actual insurance company until a third-party administrator such as Artisan decides it rises to a level that merits the insurer’s attention. In this type of absentee insurer environment, claims standards and guidelines become arbitrary and are routinely outsourced. Adjuster training is deferred, or simply never happens. Financial incentives are turned on their head, as the third-party administrators and adjusters, and the managers who oversee them, are compensated with bonuses and incentives tied to profitability manufactured by claim denials. The absentee structure of Acceptance is such that it is virtually impossible to comply with Texas law concerning claims handling guidelines and the prohibition on delegating these guidelines. But for foreign insurance entities shielded by oceans and a vacuum of regulatory oversight, delegation to third party administrators has become the new normal.

The Artisan Works Group assigns an adjuster, who admits to roof replacement and interior damage

14. Artisan Works commenced its investigation by assigning Kenneth Grantz as the adjuster responsible for 1910 Ralston’s claim. According to the Texas Department of

Insurance, Grantz is a Texas resident and has been licensed as an adjuster for seven years at the time he was assigned to review the Property.

15. Although neither Acceptance nor Artisan Works has to date provided clear documentation of his inspection, Grantz purportedly visited the Property on September 30, 2017. According to Artisan, Grantz observed that the hurricane force winds ripped up the roof seems causing “severe” saturation to the roofing system and leaking to the interior of the building. He strongly recommended a full roof replacement due to the wind damage, replacement to ceiling tiles (in affected rooms) and significant repair to the drywall and insulation (above the flood line), but was asked to revise his estimate by IAT management (Smelts and Pepicello) on two separate occasions: 1) On October 10, 2017 for roof repair only and 2) October 11, 2017 for the exclusion of interior repair. *See* Exhibit “B”, Executive Summary of Claim. Ignoring the obvious damages already conceded in writing, Grantz and Artisan Works Group did what they were ordered to do by IAT management and lowballed the claim.

Acceptance uses the improper investigation to deny the claim

16. On or about October 2, 2017, Acceptance (through its internal claim managers, Dave Smelts and Nicole Pepicello at IAT Specialty) derailed the claim process with the owner’s representatives, contends that the water entry was not due to a storm created opening and that only a roof repair was warranted despite blatant evidence of the roof caving in. Without consulting any experts, Acceptance refused to pay the claim. Acceptance managers, Smelts and Pepicello ratified this improper claims conduct in approving the refusal to pay which omitted the scores of facts and meteorological data

supporting the 1910 Ralston Rd.'s claim and instead unreasonable pinned the loss on anything but the wind or weight of water, an action designed to save Acceptance in excess of \$180,000.00. This deceptive claim handling and outright false refusal has crippled the 1910 Ralston's ability to operate. Adjuster Kenneth Gratz, an adjuster in Texas, had an ethical and legal obligation to stand by his original admission that the damages were covered and not bow down to the pressure of IAT managers who had never been to the property and were simply out to protect the company's bottom line. Gratz independent decision to further his own career and relationship with IAT is separately deceptive, unfair, and caused damages to the insured.

Acceptance response to Plaintiff's demand letter

17. On June 1, 2017, Governor Abbot 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. Section 542A.003 in particular 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 1910 Ralston to avoid protracted litigation over a clear claim.

18. In compliance with Section 542A.003, Plaintiff gave its pre-suit notice on November 1, 2017. The pre-suit notice provided a comprehensive outline of Plaintiff'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.

19. On or about November 3, 2017, Nicole Pepicello (on behalf of IAT) mailed a replacement cost value payment in the amount of \$8,002.92 for full and final settlement for property damage.

20. On or about November 9, 2017, Nicole Pepicello (on behalf of IAT) mailed an acknowledgement of representation to Plaintiff's attorneys.

Count 1 ---Violations of Texas Insurance Code, Section 541

21. 1910 Ralston re-allege and incorporate each allegation contained in Paragraphs 1-27 of this Complaint as if fully set forth herein.

22. Acceptance 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).

23. Acceptance failed to adopt and implement reasonable standards for prompt investigation of the claim arising under its policy.

24. Acceptance 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).

25. Acceptance 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).

26. Acceptance misrepresented the insurance policy under which it affords property coverage to 1910 Ralston, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Acceptance misrepresented the

insurance policy to 1910 Ralston, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

27. Acceptance misrepresented the insurance policy under which it affords property coverage to 1910 Ralston 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). Defendant misrepresented the insurance policy to 1910 Ralston 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).

28. Acceptance misrepresented the insurance policy under which it affords property coverage to 1910 Ralston 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). Defendant misrepresented the insurance policy to 1910 Ralston 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).

29. Acceptance 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

30. 1910 Ralston re-alleges and incorporates each allegation contained in Paragraphs 1-27 of this Complaint as if fully set forth herein.

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

32. Acceptance failed to timely commence investigation of the claim or to request from 1910 Ralston any additional items, statements or forms that Acceptance reasonably believed to be required from 1910 Ralston in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

33. Acceptance failed to notify 1910 Ralston 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 Defendants in violation of Texas Insurance Code Section 542.056(a).

34. Acceptance delayed payment of 1910 Ralston's claim in violation of Texas Insurance Code Section 542.058(a).

35. 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 1910 Ralston's damages.

Count 3 ---Statutory Interest

36. 1910 Ralston re-alleges and incorporates each allegation contained in Paragraphs 1-27 of the Complaint as if fully set forth herein.

37. 1910 Ralston 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

38. 1910 Ralston re-alleges and incorporates each allegation contained in Paragraphs 1-27 of the Complaint as if fully set forth herein.

39. As outlined above, Acceptance breached its contract with 1910 Ralston by refusing to pay for covered damages under the Policy. As a result of Acceptance breach, 1910 Ralston suffered legal damages.

Count 5---Breach of duty of good faith & fair dealing

40. 1910 Ralston re-alleges and incorporates each allegation contained in Paragraphs 1-27 of the Complaint as if fully set forth herein.

41. Acceptance, as the property coverage insurer, had a non-delegable duty to deal fairly and in good faith with 1910 Ralston in the processing of the claim. Acceptance breached this duty by refusing to properly investigate and effectively denying insurance benefits. Acceptance knew or should have known that there was no reasonable basis for denying or delaying the required benefits. As a result of Acceptance breach of these legal duties, 1910 Ralston suffered legal damages.

Count 6---Punitive Damages for Bad Faith

42. 1910 Ralston re-alleges and incorporates each allegation contained in Paragraphs 1-27 of this Complaint as if fully set for herein.

43. Defendant acted fraudulently and with malice (as that term is legally defined) in denying and delaying 1910 Ralston's 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 1910 Ralston.

Count 7---Violations of Texas Deceptive Trade Practices Act

44. 1910 Ralston re-alleges and incorporates each allegation contained in Paragraphs 1-27 of this Complaint as if fully set forth herein.

45. The Deceptive Trade Practices-Consumer Protection 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.

46. Each of the actions described herein were done "knowingly" as that term is used in the DTPA and were a producing cause of 1910 Ralston's damages.

Resulting Legal Damages

47. 1910 Ralston 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, 1910 Ralston is entitled to exemplary damages.

48. As a result of Defendant's acts and/or omissions, 1910 Ralston has sustained damages in excess of the minimum jurisdictional limits of this Court.

49. 1910 Ralston is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

50. Defendant's knowing violations of the Texas Insurance Code and DTPA entitle 1910 Ralston to the attorneys' fees, treble damages, and other penalties provided by law.

51. 1910 Ralston is entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

52. As a result of Defendant's acts and/or omissions, 1910 Ralston has sustained damages in excess of the jurisdictional limits of this Court.

53. 1910 Ralston is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

54. 1910 Ralston is entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, the Texas Insurance Code 542.060(a)-(c), 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 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,

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ATTORNEYS FOR PLAINTIFF

JURY DEMAND

1910 Ralston 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.



JEFFREY L. RAIZNER