

Cause No. _____

STANCLIFF PARK APARTMENTS	§	IN THE DISTRICT COURT OF
LP, ASHFORD SPRING FOREST LP, and	§	
ASHFORD BAYOU VILLAGE PLACE LP	§	
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
AMRISC, LLC, CERTAIN UNDERWRITERS	§	
OF LLOYD'S, LONDON, INDIAN HARBOR	§	
INSURANCE COMPANY, QBE	§	
SPECIALTY INSURANCE	§	
COMPANY,	§	
STEADFAST INSURANCE COMPANY,	§	
GENERAL SECURITY INDEMNITY	§	
COMPANY OF ARIZONA, UNITED	§	
SPECIALTY INSURANCE COMPANY,	§	
LEXINGTON INSURANCE COMPANY,	§	
PRINCETON EXCESS AND SURPLUS	§	
LINES COMPANY, INTERNATIONAL	§	
INSURANCE COMPANY OF HANNOVER	§	
SE, VERICLAIM, INC. AND	§	
TOM MCCARTNEY	§	___ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION & JURY DEMAND

TO THE HONORABLE JUDGE & JURY OF HARRIS COUNTY CITIZENS:

Plaintiffs STANCLIFF PARK APARTMENTS LP, ASHFORD SPRING FOREST LP, AND ASHFORD BAYOU VILLAGE PLACE LP ("Plaintiffs") file this Original Petition against Defendants AMRISC, LLC ("AmRisc"), CERTAIN UNDERWRITERS AT LLOYDS, LONDON ("Underwriters"), INDIAN HARBOR INSURANCE COMPANY ("Indian Harbor"), PRINCETON EXCESS AND SURPLUS LINES INSURANCE COMPANY ("Princeton Excess"), 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”) and INTERNATIONAL INSURANCE COMPANY OF HANOVER, SE (“Hanover”) (together, the “Carriers”), VERICLAIM, INC. (“Vericlaim”), and TOM MCCARTNEY (“Mr. McCartney”) (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 Plaintiffs Stanford Park Apartments, LP, Ashford Spring Forest LP, and Ashford Bayou Village Place, LP are domestic limited partnerships.

2.2 Upon information and belief AmRisc, LLC, is company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit with its home office at 20405 State Highway 249, Suite 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 **Seaview House, 70 Seaview Ave, Ste 1, Stamford, CT 06902-6073.**

2.5 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 **General Counsel of The Princeton Excess and Surplus Lines Insurance Company, 555 College Road East, Princeton, NJ 08540-6616.**

2.6 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, Texas 75201.**

2.7 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, Tower 1, 19th Floor, Schaumburg, IL 60196-1056.**

2.8 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, 199 Water Street, New York City, New York, 10038-3526.**

2.9 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.**

2.10 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.**

2.11 International 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 Andrea Best, Drinker Biddle & Reath, LLP, 1177 Avenue of the Americas, 41st Floor, New York, New York 10036

2.12 Upon information and belief, Vericclaim is a foreign company engaged in business in Texas, operating for the purpose of accumulating monetary profit. Vericclaim regularly conducts business in a systematic and continuous manner in the State of Texas. Vericclaim may be served with process by serving its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

2.13 Upon information and belief, Tom McCartney is a natural person who resides and works in the State of Texas and may be served with process 2829 Concordia Ct., League City, Texas 77573-2294.

Venue & Jurisdiction

3.1 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 and Plaintiffs' Properties are located in Harris County, Texas. In particular, the insurance policy at issue and of which Plaintiffs is a beneficiary was to be performed in Harris County, Texas and the losses under the policy (including payments to be made to Plaintiffs under the policy) were required to be made in Harris County, Texas. Further, investigation, site inspections, and policy representations, including communications to and from Defendants and Plaintiffs (including telephone calls, mailings, and other communications to Plaintiffs) occurred in Harris

County, Texas out of Vericclaim's Houston office where McCartney is located and at the Properties located in Harris County. 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 Plaintiffs seek damages within the jurisdictional limits of this Court. At this time, Plaintiffs seek 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.

Factual Background

4.1 On or before January 28, 2016, the Carriers, through the program design and management of Defendant AmRisc, sold a commercial property policy (the "Policy") to Plaintiffs whereby the Carriers would provide insurance coverage for the properties located at 10350 Lands End Drive, Houston, TX 77099 ("Stancliff"), 6000 Bissonnet Street, Houston, TX 77081 ("Ashford Spring Forest"), and 6310 Dumfries Drive, Houston, TX 77096 ("Ashford Bayou Village") (the "Properties") 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 Properties prior to coverage being bound in order to ensure profitability for the Carriers, and AmRisc, related to the subject Properties. 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 Properties qualifies as the business of insurance in this state.

4.2 The Properties consists of multiple apartment complexes, each with several apartment buildings, owned by Plaintiffs. The Policy was sold by the Carriers to Plaintiffs as the insured under the Policy and provides coverage for damages to the Properties caused by wind and hail. Although somewhat unclear, the Policy purports to spread coverage amongst all of the Carriers. *See* Exhibit "A".

4.3 On or about January 28, 2016, there was a wind and hail storm in Harris County which resulted in substantial damage to the Properties. As a result, the exteriors, roofs, building interiors, HVAC units, and other structures of the properties were damaged. Upon discovering the damages, Plaintiffs filed an insurance claim under the Policy with the Carriers for damages to the Properties caused by the storm. Plaintiffs asked that the cost of repairs be covered pursuant to the Policy.

4.4 The Carriers insure the Properties. The Carriers, through Defendant

AmRisc, assigned adjusters, consultants, and agents to Plaintiffs' 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 claims to its internal adjuster, Tom McCartney. Mr. McCartney was assigned as the adjuster with decision-making authority over Plaintiffs' claims under the Carriers' insurance policy. Vericclaim and Mr. McCartney conducted an unreasonable and inadequate investigation and denied any wind and hail damage to the roofs, windows, HVAC units, interior, and other structures. Mr. McCartney also grossly undervalued what damage he did accept. Specifically, McCartney ignored or rejected facts, physical indicators, photos, and historical building reports confirming reasonably clear coverage for the windstorm damage to the Properties.

4.5 Mr. McCartney assigned unqualified and biased consultants to the claim. Mr. McCartney failed to do his own investigation of damages to the Properties and failed to engage competent consultants. Vericclaim and McCartney chose to ignore obvious damages to the Properties. The Carriers relied on Vericclaim and McCartney's incomplete and inadequate investigation in making coverage decisions under the Policy and deciding what amounts, if any, to pay on the claim. Plaintiffs was forced to hire its own representative and demand re-inspections and re-evaluations of the obvious damages to the Properties that Defendants ignored. Defendants represented that certain damages were not covered under the Policy when in fact they were.

4.6 Based on Vericclaim and McCartney's haphazard investigation, no payments have been issued under the Policy. The Carriers, Vericclaim, and Mr. McCartney wrongfully denied and delayed Plaintiffs' 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, Plaintiffs has not been fully paid under the Policy provided by the Carriers since the wind and hail storm.

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

4.8 Unfortunately, Defendants have delayed payment for Plaintiffs' necessary and covered Properties damages under its insurance policy. Given the repeated delays of payment, Plaintiffs has been subjected to significant economic impact, and physical damage. In addition, Plaintiffs 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 Plaintiffs re-alleges and incorporates each allegation contained in Paragraphs 1-4.8 of this Petition as if fully set forth herein.

5.2 The Carriers, AmRisc, Vericclaim, and Mr. McCartney 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 The Carriers, AmRisc, Vericclaim, and Mr. McCartney failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 The Carriers, AmRisc, Vericclaim, and Mr. McCartney 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 The Carriers, AmRisc, Vericclaim, and Mr. McCartney 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 The Carriers, AmRisc, Vericclaim, and Mr. McCartney misrepresented the insurance policy under which it affords Properties coverage to Plaintiffs, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). The Carriers, AmRisc, Vericclaim, and Mr. McCartney 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 The Carriers, AmRisc, Vericclaim, and Mr. McCartney misrepresented the insurance policy under which it affords Properties 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). The Carriers, Vericclaim, and Mr. McCartney 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 The Carriers, AmRisc, Vericclaim, and Mr. McCartney misrepresented the insurance policy under which it affords Properties 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). The Carriers, AmRisc, Vericclaim, and Mr. McCartney 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 The Carriers, AmRisc, Vericclaim, and Mr. McCartney 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-alleges and incorporates each allegation contained in Paragraphs 1-5.9 of this Petition as if fully set forth herein.

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

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

6.4 The Carriers, Vericclaim, and Mr. McCartney 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 the Carriers, Vericclaim, and Mr. McCartney in violation of Texas Insurance Code Section 542.056(a).

6.5 The Carriers, Vericclaim, and Mr. McCartney 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-alleges and incorporates each allegation contained in Paragraphs 1-6.5 of the Petition as if fully set forth herein.

7.2 Plaintiffs makes 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-alleges and incorporates each allegation contained in Paragraphs 1-7.2 of the Petition as if fully set forth herein.

8.2 The Carriers breached their contract with Plaintiffs. As a result of the Carriers' breach, Plaintiffs suffered legal damages.

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

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

SIXTH CAUSE OF ACTION--Punitive Damages for Bad Faith

10.1 Plaintiffs 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 Plaintiffs' 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 Plaintiffs.

SEVENTH CAUSE OF ACTION--Violations Of Texas DTPA

11.1 Plaintiffs 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.

EIGHTH CAUSE OF ACTION--Fraud

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

12.2. The Carriers, Vericlim, and Mr. McCartney acted fraudulently as to each representation made to Plaintiffs concerned material facts for the reason they would not have acted and which The Carriers, Vericlim, and Mr. McCartney 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, and continued impact on Plaintiffs; lost credit reputation; and the other actual damages permitted by law. In addition, Plaintiffs is entitled to exemplary damages.

14.2 As a result of Defendants' acts and/or omissions, Plaintiffs has 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 their claim at the rate of 18% per year as damages under the Texas Insurance Code 542.060(a).

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

14.7 Plaintiffs are entitled under law to the recovery of prejudgment interest at the maximum legal rate.

14.8 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 Plaintiff may be entitled.

Respectfully submitted,

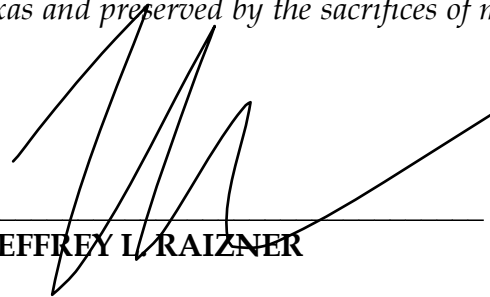
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JURY DEMAND

Plaintiffs 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