

Angie Avina

Cause No. DC-18-17513

OAK CLIFF HOSPITALITY, LLC and	§	IN THE DISTRICT COURT OF
OAK CLIFF HOSPITALITY, L.P.	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
UNITED SPECIALTY INSURANCE	§	
COMPANY, STRATA CLAIMS	§	
MANAGEMENT, LLC, ENGLE	§	
MARTIN & ASSOCIATES, LLC	§	
f/k/a ENGLE MARTIN &	§	
ASSOCIATES, INC., GEORGE L.	§	
MARES and RIDGE B. KIRN,	§	
<i>Defendants.</i>	§	_____ JUDICIAL DISTRICT

PLAINTIFFS’ ORIGINAL PETITION & JURY DEMAND

Plaintiffs OAK CLIFF HOSPITALITY, LLC and OAK CLIFF HOSPITALITY, L.P. (“Oak Cliff” or “Plaintiffs”) by and through their attorneys, files this Original Petition & Jury Demand against Defendants UNITED SPECIALTY INSURANCE COMPANY (“United” or “Carrier”), STRATA CLAIMS MANAGEMENT, LLC (“Strata”), ENGLE MARTIN & ASSOCIATES, LLC f/k/a ENGLE MARTIN & ASSOCIATES, INC. (“Engle Martin”), GEORGE L. MARES (“Mares”) and RIDGE B. KIRN (“Kim”) (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 are Texas organizations doing business in Texas.
2.2 Upon information and belief, United is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating

monetary profit. United regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Pursuant to the Policy, United 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 the **David Cleff, General Counsel, 1900 L. Don Dodson Drive, Bedford, TX 76021.**

2.3 Upon information and belief, Strata is a domestic limited liability company engaged in the business of adjusting insurance claims in Texas through its various Texas offices. Strata regularly and systematically engages in business in Texas, operating for the purpose of accumulating monetary profit. Strata is headquartered in Texas, and its principal office is located at 8144 Walnut Hill Lane, Suite 1400, Dallas, Texas, 75231. Strata 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 **CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.**

2.4 Upon information and belief, Engle Martin is a foreign limited liability company engaged in the business of adjusting insurance claims in Texas through its various Texas offices. Engle Martin regularly and systematically engages in business in Texas, operating for the purpose of accumulating monetary profit. Engle Martin 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 **CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.**

2.5 Upon information and belief, Mares is a natural person residing and working in the State of Texas. He may be served with process by serving him at, **George L. Mares, 8144 Walnut Hill Lane, Suite 1490, Dallas, Texas 75231-4449.**

2.6 Upon information and belief, Kirn, is a natural person residing and working in the State of Texas. He may be served with process by serving him at, **Ridge B. Kirn, 17304 Preston Road, Suite 975, Dallas, Texas 75252-5650.**

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, and Plaintiffs' property that is the subject of the insurance policy, claim, denial, and litigation is in Dallas County. In particular, the adjustment of the claim by Defendants Engle Martin and Kirn (including denial and underpayment of the claim and payments to be made to Oak Cliff in Dallas County under the policy) were perpetrated in Dallas County, Texas out of Engle Martin's Dallas office. Further investigation, including communications to and from Defendants and Oak Cliff (including telephone calls, mailings, and other communications to Oak Cliff) and communications between Defendants regarding the claim occurred in Dallas County, Texas. Additionally, site inspections and communications serving as the basis for suit occurred at the damaged subject property in Dallas County. Further, venue is proper in Dallas County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(3) because Defendant Strata's principal office is located 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 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.

Facts

4.1 On or before April 25, 2017, United sold a commercial property insurance policy bearing Policy No. SZU-S422087 to Oak Cliff whereby United would provide insurance coverage for the property located at 4610 South RL Thornton, Dallas, Texas 75042 (the “Property”) in exchange for the timely payment of premiums. The Property consists of a structure owned by Oak Cliff. The Policy was sold by United to Oak Cliff as the insured under the Policy and provides coverage for damages to the Property caused by a hailstorm. **See Policy, attached as Ex. 1.**

4.2 On or about April 25, 2017, Plaintiffs’ property was substantially damaged by a severe hailstorm that struck Dallas County. As a result, the roof, HVAC system, exterior, and interior of the Property were substantially damaged. Immediately upon discovering the damage, Plaintiffs filed an insurance claim under the Policy with United for damages to the Property caused by the hailstorm. Plaintiffs asked that the cost of repairs be covered pursuant to the Policy.

4.3 United is the insurer on the Property. In response to the catastrophe claim, it assigned adjusters, consultants, and agents to Plaintiffs’ file that were inadequate and improperly trained. More specifically, United assigned Plaintiffs’ claim to Strata to adjust the claim, and Strata assigned its employee Mares to adjust the damages under the Policy. Strata then assigned Plaintiffs’ claim to Engle Martin as independent adjusters, who in turn assigned its employee Kirn to adjust the damages under the Policy. United, with ultimate decision-making authority and acting on its own accord and through its agents Strata, Engle

Martin, Kirn, and Mares, failed to conform to proper claim settlement practices in Texas, failed to properly supervise its designated representatives, and unreasonably denied and delayed full and fair claim payment.

4.4 Specifically, Strata, Engle Martin, Mares and Kirn failed to perform a thorough investigation of the claim. Upon information and belief, Kirn inspected the property on June 26, 2017, and performed a cursory, substandard inspection of the Property. On or about July 5, 2017, Kirn prepared an estimate of covered damages that grossly undervalued what should be covered and paid under the policy.

4.5 On or about July 7, 2017, Strata, by and through Mares, sent Plaintiff a letter advising of the “undisputed” amounts covered under the policy. This letter simply adopted, without more, the cursory findings of Kirn and Engle Martin. After receiving this lowball finding of “undisputed” damages, Plaintiffs retained a licensed public adjuster, Balance Adjusters and Appraisers, Inc., and notified the Defendants of same.

4.6 It was only after learning that Plaintiffs had hired a public adjuster that Defendants decided to retain an engineering firm, Douglas Structure, PLLC, to inspect the Property. Douglas Structure performed a “Window Damage Evaluation Report” dated August 21, 2017. This report, prepared by Kevin Rogers, found the “none of the windows have sustained any wind or hail impact-related damage” and that condensation was due to “seal failure” consistent with “age-related deterioration of the windows.” In short, Douglas Structure’s report was an unreasonable and pretextual rubber-stamped of the unreasonable investigation made, and underpayment already found, by Strata and Engle Martin.

4.7 On or about September 1, 2017, Engle Martin and Kirn submitted an amended statement of loss that marginally increased the amounts payable from the original July 5

estimate, but still represented a significant underpayment of amounts owed.

4.8 It was not until March 8, 2018 – some six months after submitting this amended statement of loss – that Strata submitted a partial denial letter to the Plaintiffs. (**Ex. 2, March 8, 2018 Letter**). Among other things, the letter cited that the “claimed damage, or a portion of the claimed damage, may be attributed to wind driven rain; as no storm created openings were noted for all of the reported interior damages. Due to the policy provisions and the fact that the carrier, United Specialty Insurance Company has not completed their review of coverage, we are completing our investigation under a full reservation of rights.”

4.9 To date, more than 17 months after it filed its claim, Oak Cliff still has not received a coverage decision from the Defendants.

4.10 Despite clear evidence of covered damage, United Specialty (through Strata, Engle Martin, Kirn, Mares, and Douglas Structure) ignored this evidence and submitted a lowball estimate of covered damages, and manufactured policy provisions to support a denial.

4.11 Instead of taking responsibility for the adjusting and claims handling function, as is its non-delegable duty under Texas law, United outsourced out all of those functions to Strata, Engle Martin, Mares, Kirn, and Douglas Structure. United took no action to determine what amounts, if any, to pay on Plaintiffs’ claim, and failed to perform its own adequate investigation. It is clear that United intended to deny Plaintiffs’ claim all along, its investigation was oriented towards a denial, and the actions of Strata, Engle Martin, Mares, and Kirn were taken in full support of a denial and underpayment.

4.12 As a result, Plaintiffs have not been fully and promptly paid under the Policy provided by United. Plaintiffs were forced to hire their 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 United acknowledged. To this day, United refuses to pay for the necessary repairs to the Property as required under the Policy.

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

4.14 Unfortunately, Defendants have delayed payment for Plaintiffs' necessary and covered property repairs under the insurance policy that United 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 Section 541

5.1 Plaintiffs re-allege and incorporates each allegation contained in the above Paragraphs of this Petition as if fully set forth herein.

5.2 Defendants 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 Defendants failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 Defendants 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 Defendants 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 Defendants 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).

5.7 Defendants 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).

5.8 Defendants 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).

5.9 Defendants 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--- Violations of Texas Insurance Code Section 542

6.1 Plaintiffs re-allege and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

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

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

6.4 Defendants 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 Defendants in violation of Texas Insurance Code Section 542.056(a).

6.5 Defendants 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 incorporates each allegation contained in the previous Paragraphs 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 incorporates each allegation contained in the previous Paragraphs of the Petition as if fully set forth herein.

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

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

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

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

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

10.1 Plaintiffs re-allege and incorporates each allegation contained in the previous Paragraphs 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 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-allege and incorporates each allegation contained in the previous Paragraphs 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.

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 Plaintiffs' damages.

RESULTING LEGAL DAMAGES

13.1 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.

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

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

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

13.5 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).

13.6 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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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.



ANDREW P. SLANIA