

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

SCOTTSBURG HOSPITALITY CORP.	§	
dba SHC MOTEL 6 VICTORIA	§	
<i>Plaintiff</i>	§	
	§	
v.	§	Civil Action No. 4:18-cv-38
	§	
ROCKHILL INSURANCE	§	
COMPANY	§	
<i>Defendant</i>	§	

PLAINTIFF’S ORIGINAL COMPLAINT & JURY DEMAND

Plaintiff SCOTTSBURG HOSPITALITY CORP. dba SHC MOTEL 6 VICTORIA (“Scottsburg” or “Plaintiff”) files this Original Complaint & Jury Demand against Defendant ROCKHILL INSURANCE COMPANY (“Rockhill” or “Defendant”) and would respectfully show the following:

Parties

1. Scottsburg Hospitality Corp. is a domestic for-profit corporation located and operating in the State of Texas.
2. Upon information and belief Rockhill is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. Rockhill regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Rockhill may be served with process by certified mail, return receipt requested, to **General Counsel, Rockhill Insurance Company, 700 W. 47th Street, Suite 350, Kansas City, MO 64112.**

Venue & Jurisdiction

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is

complete diversity of citizenship between Scottsburg and Defendants and the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interests and costs.

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

Factual Background

The Property

5. Scottsburg owns and operates the commercial property located at 3716 Houston Highway, Victoria, Texas 77901 in Victoria County, Texas (the “Property”). The Property is a two-story structure totaling approximately 21,592 square feet, along with a community pool and a paved asphalt garden area. Scottsburg is the fee simple owner of the real estate comprising the Property, and also acts as operator of the Motel 6 franchise operated out of the Property.



Rockhill

6. Rockhill operates as a surplus lines commercial insurer in the State of Texas. In 2017, all surplus lines insurers operating in Texas wrote on a combined basis approximately \$5.5 billion in premiums. Of that, over \$25 million was written by Rockhill alone. *See* https://www.sltx.org/TexasMarketData/slrp33cow_2017_bypremium.pdf. Because of Rockhill's status, the company operates as an unlicensed surplus lines insurer that is neither admitted as an insurer in the state nor subject to traditional regulation by state regulators such as the Texas Department of Insurance.

The Policy

7. Prior to August 25, 2017, Scottsburg paid annual premiums, assessments, fees, surcharges, and taxes to Rockhill, along with additional surplus lines carriers subscribed to the Policy in layers, in order to acquire comprehensive commercial insurance coverage for the Property and business; in exchange for payment of a premium, Contract No. CTW001198 was issued—Rockhill's specific portion of the Policy is designated as Policy No. NSP00039-00 (the "Policy"). *See* Exhibit "A" at p.2. Upon information and belief, the Policy provides coverage for additional commercial property locations, which Scottsburg believes are all part of the Motel 6

group. The Policy states that the specific additional locations covered are “As per Schedule of Values on file with the Insurer(s).” *See* Exhibit “A”. Scottsburg maintains an insurable interest as the owner and operator of the insured Property and business according to the Schedule of Values.

8. The Policy provides coverage for Scottsburg’s business and the Property, for covered damages that occur during the Policy Period, from June 10, 2017 through June 10, 2018. In exchange for Scottsburg’s premium payment, the Policy includes the following limits and coverages, in relevant part:

Amount:	Per Participation Page	Rate: Agreed	Property Premium:	\$220,000.00
Part of	Per Participation Page		TRIA Premium:	Rejected
Excess of:	Per Participation Page		Equipment Breakdown:	N/A
			State tax: (Producer Responsibility)	
			Stamping fee: (Producer Responsibility)	
Amount is excess of deductibles(s) and is per occurrence and annual aggregate as applicable			Catastrophe Fee:	\$300.00
Total Insured Value:	\$91,258,275		Inspection Fee:	\$1,000.00
Perils:	Named Storm Causes of Loss Excluding Flood and Earth Movement		Total:	\$221,300.00
Coinurance:	NIL			
Coverage:	Buildings, Business Income with Extra Expense, Business Personal Property, Schedule of Sublimits, Ordinance or Law			

The Policy specifically outlines its coverage for damages caused by a “Named Storm” such as a hurricane:

A. Covered Causes of Loss

When “Named Storm” is shown in the Declarations, Covered Causes of Loss means the following:

We cover risk of direct physical loss or damage to covered property only when the direct physical loss is the result of a “Named Storm” that occurs during the policy period.

1. “Named Storm” means:

- a. A storm that is identified and named as a Hurricane, Tropical Depression, Cyclone or Tropical Storm by the National Hurricane Center of the U.S. National Weather Service; and
- b. that is identified as a Hurricane, Tropical Depression, Cyclone or Tropical Storm at the time of landfall in the State in which your covered and damaged property is located.

See Exhibit “A” at p. 31.

9. As evidenced by the Declarations Page, the Policy in whole provides coverage to the Property’s building, business income, and business personal property up to \$30,000,000, together

with the other locations insured under the Policy. Of that total coverage, Rockhill is responsible for the first \$15,000,000 in coverage:

Insurer	Agreement / Policy #	Participation (excess of deductibles per primary layer)			Premium	TRIA Coverage
		Limit	Part of	Excess of		
Rockhill Insurance Company (A- XII)	NSP000039-00	\$15,000,000	\$15,000,000	\$0	\$185,000.00	Rejected
Underwriters at Lloyd's, London (A XV)	B0429BA1702300/ LWH000924	\$3,750,000	\$15,000,000	\$15,000,000	\$8,750.00	Rejected
Underwriters at Lloyd's, London (A XV)	B0429BA1704667/ LWH000924	\$7,500,000	\$15,000,000	\$15,000,000	\$17,500.00	Rejected
Underwriters at Lloyd's, London (A XV)	B0429BA1702192 Section E/ LWH000924	\$3,750,000	\$15,000,000	\$15,000,000	\$8,750.00	Rejected
Total Limit:		\$30,000,000		Total Premium:	\$220,000.00	

See Exhibit "A" at p. 5.

10. The Policy also contains a Deductible provision that confirms coverage for damages to the Property that results from a named storm, including additional damages to the Property "regardless of any other cause or event that contributes concurrently or in any consequence to the damage or loss", subject to the deductible:

Named Windstorm Deductible Amount: 2% of Total Insured Values per location, per occurrence, subject to a minimum \$25,000 per occurrence.

All Other Windstorm/Hail Deductible Amount: \$N/A per occurrence or N/A% of Total Insured Values N/A, subject to a minimum \$N/A per occurrence.

The **Named Windstorm** Deductible, as shown above, applies to direct physical damage or loss to covered property by a Named Windstorm, regardless of any other cause or event that contributes concurrently or in any consequence to the damage or loss.

“Named Windstorm”: A storm that has been declared by the National Hurricane Center of the National Weather Service (hereinafter referred to as NHC) to be a Hurricane, Tropical Depression, Typhoon, Cyclone or Tropical Storm.

The occurrence begins at the time a watch or warning is issued by the NHC, and ends 72 hours after the termination of the last watch or warning issued by the NHC.

See Exhibit “A” at p. 14.

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, near the Property, as a Category 4 hurricane with wind speeds of up to 150 miles per hour. Hurricane Harvey’s wind and rain continued to travel through the southeast part of Texas, inflicting billions of dollars in damages to private and public property in its path. 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.

Scottsburg makes an insurance claim for Harvey-related damage

12. As a result of Harvey’s extreme winds and rain when it hit Victoria County and specifically the Property, on or about August 25, 2017, the Property was substantially damaged. Sizeable portions of the Property’s roof were compromised by wind. As a result, there was also interior damage to HVAC, drywall, flooring. The following photographs taken after Harvey depict some of the damage:



13. There was also significant damage to the roof and insulation:



14. The Property—specifically the roof, HVAC, drywall, and flooring—were substantially damaged by Harvey. Yet as devastating as the physical damage was, Scottsburg felt fortunate to be protected by substantial insurance coverage it had procured to insure the Property

from precisely this type of catastrophe. Immediately after the storm, Scottsburg promptly notified its agent and filed a claim with Rockhill, alerting them to the extensive damages. This sense of security, borne of a pricey contractual relationship, would prove illusory as Rockhill began their investigation and handling of the claim.

Scottsburg works hard to document its damages for Rockhill but is met with delays

15. Scottsburg hired their own consultant to assist with the task of determining the extent of the damage at the Property. Scottsburg promptly cooperated with Rockhill's requests for inspections and additional, extensive requests for documentation related to the business income loss as a result of Harvey.

16. Rockhill's claims-handling process resulted in extreme delays. Scottsburg provided a wealth of facts, physical evidence, obvious wind damages, and meteorological data from Hurricane Harvey supporting Scottsburg's claim. Rockhill appointed an internal adjuster to handle the file who was located out of Florida and nowhere near the Property or the insured. This adjuster was inadequately trained and refused to perform a competent investigation. She refused to provide updates to Scottsburg and its representative and caused additional claim delays. Rockhill's internal adjuster ultimately coordinated known insurer-friendly firm Rimkus Consulting Group to inspect the Property *in late October*, almost two months after Harvey had wreaked havoc on the Property.

17. Even Rockhill's own preferred vendor, Rimkus Consulting Group, confirmed the damage was related to wind, yet Rockhill continued to delay resolution of the claim by continuing to look for issues with wear and tear at the Property in order to avoid paying for the damages. Although Rockhill issued an initial "advance" of the claim of \$50,000 and a subsequent check of \$6,492.30, these amounts are nowhere near the damages caused by Harvey

that are covered under the Policy. To this day, Rockhill has continued to decline to pay for all of the covered damages under the Policy.

The Carrier ignores Scottsburg's demand letter

18. On June 1, 2017, Governor Abbott 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. Particularly, Section 542A.003 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 Scottsburg to avoid protracted litigation over a clear claim.

19. In compliance with Section 542A.003, Scottsburg gave its pre-suit notice to Rockhill on April 9, 2018. The pre-suit notice provided a comprehensive outline of Scottsburg'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.

20. Rockhill responded on June 8, 2018 with a blanket denial.

Count 1 – Violations of Texas Insurance Code, Section 541

21. Scottsburg re-alleges and incorporates each allegation contained in Paragraphs 1-19 of this Complaint as if fully set forth herein.

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

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

27. Rockhill misrepresented the insurance policy under which it affords property coverage to Scottsburg 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 Scottsburg 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. Rockhill misrepresented the insurance policy under which it affords property coverage to Scottsburg 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 Scottsburg 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. Rockhill 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. Scottsburg re-alleges and incorporates each allegation contained in Paragraphs 1-28 of this Complaint as if fully set forth herein.

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

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

33. Rockhill failed to notify Scottsburg 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. Rockhill delayed payment of Scottsburg'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 Scottsburg's damages.

Count 3 – Statutory Interest

36. Scottsburg re-alleges and incorporates each allegation contained in Paragraphs 1-34 of the Complaint as if fully set forth herein.

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

39. As outlined above, Rockhill breached its contract with Scottsburg by refusing to pay for covered damages under the Policy. As a result of Rockhill's breach, Scottsburg suffered legal damages.

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

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

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

Count 6 – Punitive Damages for Bad Faith

42. Scottsburg re-alleges and incorporates each allegation contained in Paragraphs 1-40 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 Scottsburg'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 Scottsburg.

Count 7 – Violations of Texas Deceptive Trade Practices Act

44. Scottsburg re-alleges and incorporates each allegation contained in Paragraphs 1-42 of this Complaint as if fully set forth herein.

45. The Texas Deceptive Trade Practices 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 Scottsburg's damages.

Resulting Legal Damages

47. Scottsburg 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, Scottsburg is entitled to exemplary damages.

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

49. Scottsburg 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 Scottsburg to the attorneys' fees, treble damages, and other penalties provided by law.

51. Scottsburg 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, Scottsburg has sustained damages in excess of the jurisdictional limits of this Court.

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

54. Scottsburg is entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, Texas Insurance Code 542.060(a)-(c), and Tex. Bus & Commerce Code §17.50.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Scottsburg respectfully request that Scottsburg have a 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 Scottsburg may be entitled.

Respectfully submitted,

RAIZNER SLANIA, LLP



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JURY DEMAND

Scottsburg 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.



ANDREW P. SLANIA