

Cause No. _____

UMBRELLA HOME L.L.C. DBA	§	IN THE DISTRICT COURT OF
PEBBLE BROOK APARTMENT HOMES	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
CERTAIN UNDERWRITERS AT LLOYD’S,	§	
LONDON, QBE SPECIALTY INSURANCE	§	
COMPANY, GENERAL SECURITY	§	
INDEMNITY COMPANY OF ARIZONA,	§	
LEXINGTON INSURANCE COMPANY,	§	
INTERNATIONAL INSURANCE	§	
COMPANY OF HANNOVER, PLC,	§	
INDIAN HARBOR INSURANCE	§	
COMPANY, STEADFAST INSURANCE	§	
COMPANY, UNITED SPECIALTY	§	
INSURANCE COMPANY, PRINCETON	§	
EXCESS & SURPLUS LINES INSURANCE	§	
COMPANY, AMRISC, LLC	§	
<i>Defendants.</i>	§	___ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION & JURY DEMAND

TO THE HONORABLE JUDGE & JURY OF HARRIS COUNTY CITIZENS:

Plaintiff UMBRELLA HOME, L.L.C. dba PEBBLE BROOK APARTMENT HOMES (“Pebble Brook” or “Plaintiff”) files this Original Petition against AMRISC, LLC (“AmRisc”), CERTAIN UNDERWRITERS AT LLOYD’S, LONDON (“Underwriters”), INDIAN HARBOR INSURANCE COMPANY (“Indian Harbor”), 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”), PRINCETON EXCESS AND SURPLUS LINES INSURANCE COMPANY (“Princeton Excess”), and INTERNATIONAL INSURANCE COMPANY OF HANNOVER SE

(“Hannover”) (together, the “Carriers”), and would respectfully show the following:

Discovery Control Plan

1.1 Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

Parties

2.1 Plaintiff, Pebble Brook, is a domestic limited liability company in good standing with a principal place of business in Harris County, Texas.

2.2 Upon information and belief AmRisc, LLC, is a company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit with its home office at 20405 State Hwy 249, Ste. 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 **Sarah Mims, Assistant Secretary, 505 Eagleview Blvd. Suite 100, Exton, PA 19341-0636.**

2.5 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, TX 75201.**

2.6 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, 1299 Zurich Way, Schaumburg, IL 60196-5870.**

2.7 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, One Seaport Plaza, 199 Water Street, New York, New York, 10038-3526.**

2.8 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.**

2.9 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.**

2.10 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 **Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701** who can forward process to

**General Counsel of The Princeton Excess and Surplus Lines Insurance Company,
555 College Road East, Princeton, NJ 08543.**

2.11 Hannover 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 **Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701** who can forward process to **Andrea Best, Drinker Biddle & Reath, LLP, 1177 Avenue of the Americas, 41st Floor, New York, NY 10036-2714.**

Venue & Jurisdiction

3.1 Venue is proper in Harris County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(3), as Defendant AmRisc's principal office is located in Harris County, Texas. In addition, 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. In particular, the adjustment of the claim by Defendants for losses under the policy (including payments to be made to Plaintiff under the policy) were conducted in Harris County, Texas. Investigations and policy representations, including communications to and from Defendants and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred in Harris County, Texas. 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 Plaintiff seeks damages within the jurisdictional limits of this Court. At this time, Plaintiff seeks monetary relief in an amount over \$1,000,000. Plaintiff reserves the right to modify the amount and type of relief sought in the future.

Factual Background

4.1 On or before November 12, 2017, the Carriers, through the program design and management of Defendant AmRisc, sold a commercial property policy (the “Policy”) to Pebble Brook whereby the Carriers would provide insurance coverage for the property located at 8801 Gustine Lane, Houston, Texas 77031 (the “Property”) 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 Property prior to coverage being bound in order to ensure profitability for the Carriers, and AmRisc, related to the subject Property. 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 Property qualifies as the business of insurance in this state.

4.2 The Policy was sold by the Carriers to Pebble Brook as the insured under the Policy and provides coverage for damages to the Property caused by a fire. The Policy Period was from September 30, 2017 through September 30, 2018. Although somewhat unclear, the Policy purports to spread coverage amongst all of the Carriers. *See* Exhibit “A”.

4.3 On or about November 12, 2017, Plaintiff’s property was substantially damaged by a fire. As a result, the damaged building components include, among other items, light fixtures, windows, drywall, flooring, HVACs, and the roofing system of the Property. Upon discovering the damages, Pebble Brook filed an insurance claim on December 7, 2017 under the Policy with the Carriers for damages to the Property caused by the fire. Plaintiff asked that the cost of repairs be covered pursuant to the Policy.

4.4 The Carriers insure the Property. The Carriers, through Defendant AmRisc, assigned adjusters, consultants, and agents to Pebble Brook’s 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 claim to its internal adjuster, Byron Woodward. Mr. Woodward was assigned as the adjuster with decision-making authority over Plaintiff’s claim under the Carriers’ insurance policy. Vericclaim and Mr. Woodward conducted an unreasonable and inadequate investigation on December 12, 2017 and denied any fire damage to property.

4.5 Specifically, on December 22, 2017, Mark M. O’Connell with Rimkus Consulting Group, Inc. personally observed substantial fire damage that resulted from a November 12, 2017 fire. The claims administrating company, Vericclaim, Inc. engaged and relied upon Rimkus’ engineer, Mark M. O’Connell, who concluded that the “complex had experienced

limited structural damage due to the reported explosion and fire” and “a limited area of plywood roof decking ...had experienced structural damage during fire extinguishing efforts.” These opinions were unreasonable and pretextual, and this type of improper practice has become common among insurance industry engineers. O’Connell’s opinions were internally inconsistent, as he noted fire damage to the building, but suggested that the damage were limited.

4.6 Despite clear evidence of covered damage, the Carriers engaged in and ratified this improper claims conduct and ultimately approved a gross underpayment of the contractual damages. This underpayment was issued on or after March 26, 2018 and it omitted important facts, physical evidence, and meteorological data supporting Pebble Brook’s claim. The Carriers instead unreasonably blamed the loss on causes other than fire to avoid contractual responsibilities and to save the Carriers in excess of \$1,000,000. Pebble Brook cooperated throughout the claim process and even had a public adjusting team meticulously point out the extent of the damages covered by the subject policy.

4.7 Vericclaim and Mr. Woodward chose to ignore obvious damages to the Property. The Carriers relied on Vericclaim and Mr. Woodward’s incomplete and inadequate investigation in making coverage decisions under the Policy and deciding what amounts, if any, to pay on the claim, which is evidenced by the estimates and reports that fail to account for the necessary repairs to the Property. Pebble Brook was forced to hire its own representative and demand re-inspections and re-evaluations of the obvious damages to the Property that Defendants ignored. Defendants represented that certain damages were not covered under the Policy when in fact they were.

4.8 Based on Vericclaim and Mr. Woodward’s haphazard investigation, an underpayment

has been issued under the Policy. The Carriers wrongfully denied and delayed Pebble Brook's 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, Pebble Brook has not been fully paid under the Policy provided by the Carriers since the fire.

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

4.10 Unfortunately, Defendants have delayed payment for Pebble Brook's necessary and covered Property damages under its insurance policy. Given the repeated delays of payment, Plaintiff has been subjected to significant economic impact, and physical damage. In addition, Plaintiff 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 Pebble Brook re-alleges and incorporates each allegation contained in Paragraphs 1-4.10 of this Petition as if fully set forth herein.

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

5.4 AmRisc and the Carriers 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 AmRisc and the Carriers failed to within a reasonable time to affirm or deny coverage of a claim to a policyholder; or submit a proper reservation of rights to a policyholder in violation of Texas Insurance Code Section 541.060(a)(4).

5.6 AmRisc and the Carriers 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).

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

5.8 AmRisc and the Carriers misrepresented the insurance policy under which it affords Property coverage to Pebble Brook 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 misrepresented the insurance policy to Pebble Brook 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).

5.9 AmRisc and the Carriers misrepresented the insurance policy under which it affords Property coverage to Pebble Brook 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 and AmRisc misrepresented the insurance policy to Pebble Brook 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).

5.10 AmRisc and the Carriers 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 Pebble Brook re-alleges and incorporates each allegation contained in Paragraphs 1-5.10 of this Petition as if fully set forth herein.

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

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

6.4 The Carriers failed to notify Pebble Brook 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 in violation of Texas Insurance Code Section 542.056(a).

6.5 The Carriers delayed payment of Pebble Brook's claim in violation of Texas Insurance Code Section 542.058(a).

6.6 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 Pebble Brook’s damages.

THIRD CAUSE OF ACTION---Statutory Interest

7.1 Pebble Brook re-alleges and incorporates each allegation contained in Paragraphs 1-6.6 of the Petition as if fully set forth herein.

7.2 Pebble Brook 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.

FOURTH CAUSE OF ACTION---Breach of Contract

8.1 Pebble Brook re-alleges and incorporates each allegation contained in Paragraphs 1-7.2 of the Petition as if fully set forth herein.

8.2 As outlined above, the Carriers and AmRisc breached its contract with Pebble Brook by refusing to pay for covered damages under the Policy. As a result of the Carriers and AmRisc’s breach, Pebble Brook suffered legal damages.

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

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

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

10.1 Pebble Brook 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 Pebble Brook’s 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 Pebble Brook.

SEVENTH CAUSE OF ACTION---Violations Of Texas DTPA

11.1 Pebble Brook 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. Defendant has also acted unconscionably, as that term is defined under the DTPA.

11.3 Each of the actions described herein were done “knowingly” as that term is used in the DTPA and were a producing cause of Pebble Brook’s damages.

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 Pebble Brook’s damages.

RESULTING LEGAL DAMAGES

13.1 Pebble Brook is 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 including loss of the property and business; and the other actual damages permitted by law. In addition, Pebble Brook is entitled to exemplary damages.

14.2 As a result of Defendants' acts and/or omissions, Pebble Brook has sustained damages in excess of the minimum jurisdictional limits of this Court.

14.3 Pebble Brook is 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 Pebble Brook to the attorneys' fees, treble damages, and other penalties provided by law.

14.5 Pebble Brook is entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

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

14.7 Pebble Brook is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

14.8 Pebble Brook is 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, Plaintiff respectfully request that Plaintiff 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,

RAIZNER/SLANIA LLP



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ATTORNEYS FOR PLAINTIFF

JURY DEMAND

Plaintiff 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