

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

488 NORTH FREEWAY LP	§	
	§	
<i>Plaintiff</i>	§	
	§	Civil Action No. 4:18-cv-4114
v.	§	
	§	
HARTFORD FIRE INSURANCE COMPANY	§	
	§	
<i>Defendant</i>	§	

PLAINTIFF’S ORIGINAL COMPLAINT & JURY DEMAND

Plaintiff 488 North Freeway LP (“488 N. Frwy” or “Plaintiff”) files this Original Complaint & Jury Demand against Defendant HARTFORD FIRE INSURANCE COMPANY (“Hartford” or “Defendant”) and would respectfully show the following:

Parties

1. 488 N. Frwy is a domestic limited partnership located and operating in the State of Texas.
2. Upon information and belief Hartford is a fire and casualty insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. Hartford regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Hartford may be served with process by serving its registered agent certified mail, return receipt requested, to **C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.**

Venue & Jurisdiction

3. 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. This Court has personal jurisdiction over Hartford because Plaintiff's claim against Hartford arises out of or relates to Hartford's contact with this forum, namely Hartford's performance under the applicable insurance contract, and Hartford's other representations and conduct related thereto.

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

Factual Background

The Properties

5. 488 N. Frwy owns the commercial properties located at 6200 Rothway Street, Houston, TX 77040¹, 6210 Rothway Street, Houston, TX 77040, and 9000 Jameel Road, Houston, TX 77040 in Harris County, Texas (the “Properties”). The Properties are three separate one-story commercial use buildings with 66,350 square feet of combined interior space. They are located on the same grounds.

6200 Rothway



¹ Consistent with HCAD, this building was initially listed in the Policy as Premises No. 3, 9000 Jameel Road; however, an endorsement modified the insured premises to the street address of 6200 Rothway, Houston, Texas 77040, effective as of the date of the inception of the Policy, November 12, 2016. Regardless of the naming convention, all three buildings were insured Properties under the Policy purchased by 488 N. Frwy.

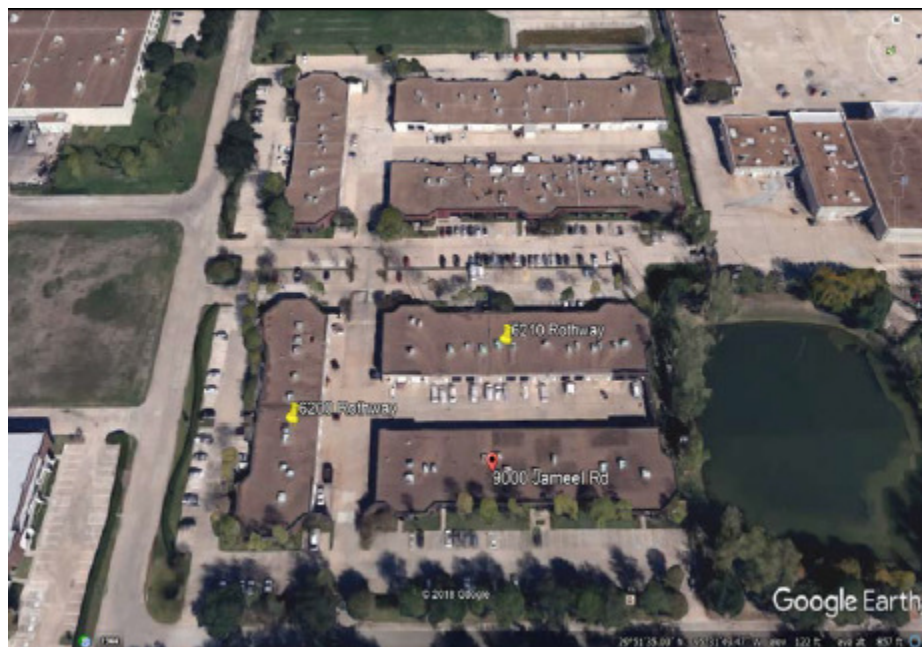
6210 Rothway



9000 Jameel



Ariel View



Google Earth imagery dated October 28, 2017.

The Policy

6. Prior to August 26, 2017, Hartford marketed and sold and 488 N. Frwy purchased comprehensive commercial insurance coverage for the Properties and the business under Hartford's Policy No. 61 UNN ZE9761 (the "Policy"). The Policy provides coverage for 488 N. Frwy's business and the Properties, for covered damages that occur during the Policy Period, from November 12, 2016 to November 12, 2017. In exchange for 488 N. Frwy's premium payment of \$54,044.00, the Policy includes the following limits and coverages, in relevant part:

FOR INSURANCE THAT APPLIES TO A SPECIFIC INSURED PREMISES| SEE: PROPERTY CHOICE - SCHEDULED PREMISES.

LIMIT(S) OF INSURANCE
IN ANY ONE OCCURRENCE

BUILDING \$10,311,100

VALUATION PROVISION:

REPLACEMENT COST (SUBJECT TO LIMITATIONS) APPLIES TO THE TYPES OF COVERED PROPERTY INSURED UNDER THIS POLICY. FOR VALUATION THAT APPLIES TO A SPECIFIC PREMISES SEE: PROPERTY CHOICE - SCHEDULED PREMISES.

PROPERTY CHOICE - BUSINESS INTERRUPTION - BLANKET DESCRIPTION OF COVERAGE

FOR INSURANCE THAT APPLIES TO A SPECIFIC PREMISES SEE: PROPERTY CHOICE - SCHEDULED PREMISES.

LIMITS OF INSURANCE
IN ANY ONE OCCURRENCE

SPECIAL BUSINESS INCOME: \$1,483,006

72 HOUR WAITING PERIOD APPLIES
PAYROLL IS INCLUDED

8. As evidenced by the Declarations Page, the Policy provides coverage to the Properties' physical structure on a replacement cost value basis for damages up to \$10,311,100.00. (See Ex. A, Policy, at Declarations Pages.) The Policy provides coverage for damages caused by wind. (See *id*, Policy).

9. The Policy also contains a Deductible provision that confirms coverage for damages to the Properties that result from windstorm or hail:

THE FOLLOWING DEDUCTIBLE(S) SHALL APPLY TO LOSS OR DAMAGE:

BY WINDSTORM OR HAIL:		
	PERCENTAGE	MINIMUM DEDUCTIBLE
THE FOLLOWING PERCENTAGE APPLIES:	2%	IN ANY ONE OCCURRENCE
		\$1,000
AS RESPECTS BUSINESS INCOME COVERAGE, A 72 HOUR WAITING PERIOD APPLIES.		
BY ANY OTHER COVERED LOSS,		
IN ANY ONE OCCURRENCE:	\$10,000	

(See *id.*, Policy.)

Hurricane Harvey

10. 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 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 Properties in Fort Bend County and Harris County alone. The Texas Division of Emergency Management incurred more than \$439 million in costs associated with debris removal, public Properties 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.

488 N. Frwy makes an insurance claim for Harvey related damage

11. As a result of Harvey’s extreme winds and rain when it hit Harris County and specifically the Properties, on or about August 26, 2017, the Properties were substantially damaged. Sizeable portions of the Properties’ roofs and exterior were compromised. As a result, there was also interior damage to ceilings, insulation, and flooring. The following photographs taken after Harvey depict some of the damage:

6200 Rothway



12. There was also significant damage to the roof:



6210 Rothway



9000 Jameel



13. The Properties—specifically the roofs and ceilings—were substantially damaged by Harvey. Yet as devastating as the physical damage was, 488 N. Frwy felt fortunate to be protected by over \$10,000,000 in insurance coverage it had procured to insure the Properties from precisely this type of catastrophe. After the storm, 488 N. Frwy promptly filed a claim with Hartford, alerting them to the extensive damages, opened as Claim No. Y34F82876. This sense of security, borne of a pricey contractual relationship, would prove illusory as Hartford began their investigation and handling of the claim.

Plaintiff works hard to document the damages for Hartford but received a denial.

14. Hartford's claims-handling process resulted in a wrongful denial that omitted the wealth of facts, physical evidence, obvious wind damages, and meteorological data from Hurricane Harvey supporting 488 N. Frwy's claim. (*See Exhibit B, Denial Letter*). Hartford unreasonably pinned the loss on anything but the wind, an action designed to save Hartford hundreds of thousands of dollars in damages to the Properties and the business.

15. Specifically, just weeks after 488 N. Frwy submitted the claim, on October 18, 2017, an adjuster from Damage Specialist, a company apparently hired by Hartford to outsource claim adjustments without regard to size or type, personally inspected the Properties to determine the cause of loss that resulted from Harvey's hurricane-force wind and water. Another inspection took place on November 7, 2017 by Travis Wells from HAAG engineering, a preferred vendor of Hartford. These inspections ignored obvious and extensive damages from Harvey at the Properties and were conducted with an intent to simply deny 488 N. Frwy's claim. The inspectors were not qualified to assess the type of damages to commercial properties such as the Properties at issue and, as a result, the inspections were haphazard, rushed, and incomplete.

16. Despite clear evidence of covered damage, Hartford engaged in and ratified the improper claims conduct and ultimately declined to warrant any payment. Hartford unreasonably stated in their reports that “the roofs had not been damaged by Harvey and no other storm-caused opening existed” in an effort to avoid contractual responsibilities and to save Hartford significant sums of money.

17. Months after Harvey left the Properties in a dilapidated state, Hartford finally issued its formal denial on January 18, 2018, which omitted important facts, physical evidence, and meteorological data supporting 488 N. Frwy’s claim. (*See Exhibit B*). Shockingly, Hartford claimed there was “no visible storm damage to the roof or roof accessories.” (*See Exhibit “B”*). 488 N. Frwy cooperated throughout the entire claim process.

18. To this day, Hartford has refused to pay for any covered damages under the Policy.

Hartford ignores 488 N. Frwy’s demand letter

19. 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 488 N. Frwy to avoid protracted litigation over a clear claim.

20. In compliance with Section 542A.003, 488 N. Frwy gave pre-suit notice to

Hartford on August 23, 2018. The pre-suit notice provided a comprehensive outline of Plaintiff's claim and damages, quantified their losses, and even offered to waive a formal claim for attorneys' fees if the contractual amounts were paid promptly.

21. Hartford responded to Plaintiff's demand letter with another blanket denial.

Count 1 – Violations of Texas Insurance Code, Section 541

22. 488 N. Frwy re-alleges and incorporates each allegation contained in Paragraphs 1-21 of this Complaint as if fully set forth herein.

23. Hartford 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).

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

25. Hartford 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).

26. Hartford 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).

27. Hartford misrepresented the insurance policy under which it affords Properties coverage to 488 N. Frwy, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Hartford misrepresented the insurance policy to 488 N. Frwy, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

28. Hartford misrepresented the insurance policy under which it affords Properties

coverage to 488 N. Frwy 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). Hartford misrepresented the insurance policy to 488 N. Frwy 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).

29. Hartford misrepresented the insurance policy under which it affords Properties coverage to 488 N. Frwy 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). Hartford misrepresented the insurance policy to 488 N. Frwy 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).

30. Hartford 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

31. 488 N. Frwy re-alleges and incorporates each allegation contained in Paragraphs 1-30 of this Complaint as if fully set forth herein.

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

33. Hartford failed to timely commence investigation of the claim or to request from 488 N. Frwy any additional items, statements or forms that Hartford reasonably believed to be

required from 488 N. Frwy in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

34. Hartford failed to notify 488 N. Frwy 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 Defendant in violation of Texas Insurance Code Section 542.056(a).

35. Hartford delayed payment of 488 N. Frwy's claim in violation of Texas Insurance Code Section 542.058(a).

36. 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 488 N. Frwy's damages.

Count 3 – Statutory Interest

37. 488 N. Frwy re-alleges and incorporates each allegation contained in Paragraphs 1-36 of the Complaint as if fully set forth herein.

38. 488 N. Frwy 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

39. 488 N. Frwy re-alleges and incorporates each allegation contained in Paragraphs 1-38 of the Complaint as if fully set forth herein.

40. As outlined above, Hartford breached its contract with 488 N. Frwy by refusing to pay for covered damages under the Policy. As a result of Hartford's breach, 488 N. Frwy suffered legal damages.

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

41. 488 N. Frwy re-alleges and incorporates each allegation contained in Paragraphs 1-40 of the Complaint as if fully set forth herein.

42. Hartford, as the Properties coverage insurer, had a non-delegable duty to deal fairly and in good faith with 488 N. Frwy in the processing of the claim. Hartford breached this duty by refusing to properly investigate and effectively denying insurance benefits. Hartford knew or should have known that there was no reasonable basis for denying or delaying the required benefits. As a result of Hartford's breach of these legal duties, 488 N. Frwy suffered legal damages.

Count 6 – Punitive Damages for Bad Faith

43. 488 N. Frwy re-alleges and incorporates each allegation contained in Paragraphs 1-42 of the Complaint as if fully set forth herein.

44. Hartford acted fraudulently and with malice (as that term is legally defined) in denying and delaying 488 N. Frwy's claim for benefits. Further, Hartford had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of 488 N. Frwy.

Count 7 – Violations of Texas Deceptive Trade Practices Act

45. 488 N. Frwy re-alleges and incorporates each allegation contained in Paragraphs 1-44 of the Complaint as if fully set forth herein.

46. The Texas Deceptive Trade Practices Act (DTPA) provides additional protections to consumers who are victims of deceptive, improper, or illegal practices. Hartford's violations of the Texas Insurance Code create a cause of action under the DTPA. Hartford's violations of the Texas Insurance Code, as set forth herein, specifically violate the DTPA as well. Hartford has also acted unconscionably, as that term is defined under the DTPA.

47. Each of the actions described herein were done "knowingly" as that term is used in the DTPA and were a producing cause of 488 N. Frwy's damages.

Resulting Legal Damages

48. 488 N. Frwy is entitled to the actual damages resulting from Hartford'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 Properties and business; and the other actual damages permitted by law. In addition, 488 N. Frwy is entitled to exemplary damages.

49. As a result of Hartford's acts and/or omissions, 488 N. Frwy has sustained damages in excess of the minimum jurisdictional limits of this Court.

50. Hartford's knowing violations of the Texas Insurance Code and DTPA entitle 488 N. Frwy to attorneys' fees, treble damages, and other penalties provided by law.

51. 488 N. Frwy is entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

52. 488 N. Frwy is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

53. 488 N. Frwy is entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, and 488 N. Frwy is entitled to recovery of attorneys' fees pursuant to Texas Insurance Code 542.060(a)-(c), and Tex. Bus & Commerce Code §17.50.

PRAYER

WHEREFORE, PREMISES CONSIDERED, 488 N. Frwy respectfully request that 488 N. Frwy have a 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 488 N. Frwy may be entitled.

Respectfully submitted,

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JURY DEMAND

488 North Freeway LP 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