

Cause No. A190154-C

ACADIAN CYPRESS & HARDWOODS, INC. dba ACADIAN HARDWOODS <i>Plaintiff,</i>	§ § § § § § § § § §	IN THE DISTRICT COURT OF
v.	§ § § § § § § § § §	ORANGE COUNTY, TEXAS
PENNSYLVANIA LUMBERMENS MUTUAL INSURANCE COMPANY, ENGLE MARTIN & ASSOCIATES, LLC and THOMAS KORALEWSKI <i>Defendants.</i>	§ § § § § § § § § §	<u>128th</u> JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION & JURY DEMAND

Plaintiff ACADIAN CYPRESS & HARDWOODS, INC. dba ACADIAN HARDWOODS (“Acadian” or “Plaintiff”) files this Original Petition against PENNSYLVANIA LUMBERMENS MUTUAL INSURANCE COMPANY (“PLM” or “Carrier”), ENGLE MARTIN & ASSOCIATES, LLC (“Engle Martin”) and THOMAS KORALEWSKI (“Koralewski”) (Collectively “Defendants”) and would respectfully show the following:

Discovery Control Plan

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

Parties

2. Plaintiff, Acadian Cypress & Hardwoods, Inc. dba Acadian Hardwoods is a foreign for-profit corporation in good standing with a principal place of business in the State of Texas.

3. Upon information and belief, PLM is a foreign fire and casualty insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. PLM regularly conducts the business of insurance in a systematic and

continuous manner in the State of Texas. PLM may be served with process through **Registered Agent Solutions, Inc., 1701 Directors Blvd., Suite 300, Austin, TX 78744-1044.**

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 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.**

5. Upon information and belief, Thomas Koralewski is an individual residing and working in the State of Texas. Mr. Koralewski may be served with process at **Thomas Koralewski, 14100 Southwest Freeway, Suite 420, Sugar Land, Texas 77478-3466.**

Venue & Jurisdiction

6. Venue is proper in Orange County under TEX. CIV. PRAC. & REM. CODE §15.032 as the insured property is situated in Orange County, Texas. Venue is also proper in Orange 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 the claims of Acadian occurred in Orange 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 Orange County, Texas, and the insured property at issue are located Vidor, Texas, within Orange County. Investigations and policy representations, including communications to and from Defendants and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred in Orange County, Texas.

7. 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

The Property

8. Acadian owns and operates the buildings and business located at 645 Canary Street, Vidor, Texas 77622 in Orange County, Texas (the “Property”). The two, one-story, steel buildings with metal panel siding have raised rib metal panel roof systems.



The Policy

9. Prior to August 25, 2017, Plaintiff paid annual premiums, assessments, fees, surcharges, and taxes to PLM to acquire comprehensive commercial insurance coverage for the Property under Policy No. 17-A007-01-17.

10. The Policy provides coverage for Plaintiff, for covered damages that occur during the Policy Period, from April 1, 2017 through April 1, 2018. In exchange for Plaintiff's premium payment, the Plaintiff's Policy includes the following limits and coverages, in relevant part:

Prem. No.	Bldg. No.	Location, Construction And Occupancy		
003	002	WAREHOUSE 645 Canary Street Orange Vidor, TX 77662 Frame		
003	001	OFFICE & WAREHOUSE 645 Canary Street Orange Vidor, TX 77662 Non-Combustible		
003		Blanket Building	\$1,515,456	
003		Blanket Personal Property of Insured	\$40,000	
003	001	Building	\$795,456 Included in Blanket	Special Form Including Theft 90%
		Personal Property of Insured	\$40,000 Included in Blanket	Special Form Including Theft 90%
		Stock	\$200,000 Included in Blanket	Special Form Including Theft 90%
003	002	Building	\$720,000 Included in Blanket	Special Form Including Theft 90%
		Stock	\$400,000 Included in Blanket	Special Form Including Theft 90%

003 001 Building
Replacement Cost

Personal Property of Insured
Replacement Cost

Stock
Replacement Cost

003 002 Building
Replacement Cost

Stock
Replacement Cost

Premises Number	Building Number	Windstorm Or Hail Deductible Percentage - Enter 1%, 2% Or 5%
001	008	2%
001	009	2%
001	010	2%
001	011	2%
001	012	2%
001	013	2%
001	014	2%
001	015	2%
001	016	2%
002	001	2%
003	001	2%
003	002	2%
005	001	5%

11. As evidenced by the Declarations Page and confirmed in the Policy provisions, the Policy provides coverage to the Property’s physical structure on a replacement cost value basis for damages caused by wind and hail up to \$1,515,456. Further, the Policy provides coverage for Business Personal Property for over \$40,000. *See* Ex. A, Policy, at Declarations Pages.

Hurricane Harvey

12. 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 property all the way into Orange County. 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.

Plaintiff makes insurance claim for damages

13. The following photographs taken after Harvey depict some of the damages:



14. The Property – especially the roofs – was substantially damaged by the storm. Yet as devastating as the physical damage was, Plaintiff felt fortunate to be protected by the insurance coverage they had procured to insure the Property from precisely this type of catastrophe. Immediately after the storm, Plaintiff promptly filed a claim with PLM, alerting them to the

extensive damages. This sense of security, borne of pricey contractual relationship, would prove illusory as Defendants began their investigation and handling of the claim.

Plaintiff works hard to document its damages for Defendants, but PLM unreasonably refuse to pay.

15. PLM's claim-handling process resulted in a wrongful refusal to pay and omitted a wealth of facts, physical evidence, obvious wind damages, and meteorological data supporting Plaintiff's claim. Defendants unreasonably pinned the losses on anything but the wind, an action designed to save PLM millions of dollars in damages to the Property and the business.

16. PLM assigned defendant Koralewski with Engle Martin to the claim. Mr. Koralewski never provided a scope of damages or an estimate. Mr. Koralewski subsequently engaged ProNet Group, Inc. to determine the extent of damage to the metal roofs of the two structures. Those persons were improperly trained as to their responsibilities and were instead directed to minimize – and in fact, did minimize – claim payments and delay the reconstruction project.

17. After these cursory and substandard inspections, and more than seven months after the Property was damaged, PLM denied the claim on April 24, 2018. The letter stated there was no wind damage to the roofs, there was no storm created opening, and wear and tear. This conclusory opinion from a company who consistently works for insurance carriers ignores the substantial facts and evidence confirming covered damage.

18. Only after Acadian rebutted ProNet's report did PLM allow a second engineer to evaluate the damage before issuing a second denial letter on September 19, 2018 based on the findings of Rogers Forensic's engineer, Kevin Rogers. Mr. Rogers states "The metal panel siding and roof systems of subject buildings have not sustained and wind or flood-related damage." Mr. Rogers went on to blame the damage on anything except the catastrophic winds from Hurricane Harvey. Rogers and the other adjusters assigned to the claim were unqualified and incapable of

adequately assessing the damages to this type of commercial Property and were the source of many delays throughout the claim process. Defendants continued to delay the claim resolution and did not provide the insured with answers.

19. PLM has ignored the scores of facts, witnesses and meteorological data supporting the covered claim. This deceptive claim handling and outright false denials have crippled Acadian's ability to operate their business. Acadian has cooperated throughout the claims process.

20. Over nineteen months after the Hurricane Harvey winds severely damaged this property, based on inadequate investigation, wrongful delays, and refusals to fully pay for reasonably clear damages, PLM has not issued a payment. To this day, due to Defendants outcome-oriented, inadequate, and haphazard investigation, PLM has refused to pay for covered damages under the Policy.

PLM responds to Plaintiff's demand letter with more refusals to accept responsibility

21. 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 pre-suit 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 Plaintiff to avoid protracted litigation over a clear claim.

22. In compliance with Section 542A.003, Plaintiff gave its pre-suit notice to Defendants on February 18, 2019. The pre-suit notice provided a comprehensive outline of Plaintiff's claim and

damages, quantified its loss, and even offered to waive a formal claim for attorneys' fees if the contractual amounts were paid promptly.

23. PLM did not respond to Acadian's demand letter.

FIRST CAUSE OF ACTION---Violations of Texas Insurance Code

24. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

25. 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).

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

27. 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).

28. Defendants refused to pay the claims without conducting a reasonable investigation with respect to the claims, in violation of Texas Insurance Code Section 541.060 (a)(7).

29. Defendants misrepresented the insurance policies under which it affords property coverage to Plaintiff, by making an untrue statement of material facts, in violation of Texas Insurance Code Section 541.061 (1).

30. Defendants misrepresented the insurance policies under which it affords property coverage to Plaintiff 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).

31. Defendants misrepresented the insurance policies under which it affords property coverage to Plaintiff by making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of material facts 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).

32. 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---Prompt Payment of Claim

33. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

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

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

36. PLM failed to notify Plaintiff 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 Defendants in violation of Texas Insurance Code Section 542.056(a). The delay was egregious, unnecessary, and wholly caused by the Defendants.

37. PLM delayed payment of Plaintiff's claim in violation of Texas Insurance Code Section 542.058(a).

38. Each of the actions described herein were done “knowingly” as that term is used in the Texas Insurance Code and were producing cause of Plaintiff’s damages.

THIRD CAUSE OF ACTION---Statutory Interest

39. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

40. Plaintiff 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

41. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

42. As outlined above, PLM breached its contract with Plaintiff by refusing to pay for covered damages under the Policy. As a result of PLM’s breach, Plaintiff suffered legal damages.

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

43. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

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

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

45. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of

this Petition as if fully set forth herein.

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

SEVENTH CAUSE OF ACTION---Violations Of Texas DTPA

47. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

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

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

KNOWLEDGE

50. 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 Plaintiff's damages.

RESULTING LEGAL DAMAGES

51. Plaintiff 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, Plaintiff is entitled to exemplary damages.

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

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

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

55. Plaintiff is entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

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

57. Plaintiff is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

58. Plaintiff 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 Business & 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,

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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.

A handwritten signature in black ink, appearing to read "Andrew P. Slania". The signature is fluid and cursive, with a long horizontal stroke at the end.

ANDREW P. SLANIA