

DC-17-05633

Marissa Pittman

Cause No. _____

ALLIED STONE, INC.	§	IN THE DISTRICT COUT OF
	§	
<i>Plaintiff</i>	§	
	§	
V.	§	DALLAS COUNTY, TEXAS
	§	
ACADIA INSURANCE	§	
COMPANY, UNION STANDARD	§	
INSURANCE GROUP, LLC and JAMES	§	
AMATO	§	
	§	
<i>Defendants</i>	§	___ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION & JURY DEMAND

Plaintiff ALLIED STONE, INC. (“Allied” or “Plaintiff”) by and through its attorneys, files this Original Petition & Jury Demand against Defendants ACADIA INSURANCE COMPANY (“Acadia”), UNION STANDARD INSURANCE GROUP, LLC (“Union Standard”), and JAMES AMATO (“Amato”) (collectively “Defendants”) 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 Allied is a foreign for-profit corporation in good standing with a principal place of business in the state of Texas.

2.2 Upon information and belief, Defendant Acadia is a foreign fire and casualty insurance company regularly engaged in the business of insurance in Texas,

operating for the purpose of accumulating monetary profit. Acadia regularly and systematically issues insurance policies in the State of Texas and may be served by mailing certified mail, return receipt requested to **Acadia Insurance Company, Attention: Craig Sparks, 122 West Carpenter Freeway, Suite 350, Irving, Texas 75039-2094.**

2.3 Upon information and belief, Defendant Union Standard is a citizen of the State of Texas as its principal place of business, nerve center, and Home Office are in Dallas, Texas at 222 Las Colinas Blvd. W, Suite 1300, Irving, Texas 75039-5433. Defendant Union Standard's senior management direct, control, and coordinate its business activities from the Home Office in Irving, Texas. Union Standard further confirms its citizenship of the State of Texas and principal place of business by designating the Irving headquarters as its "Home Office" on its trademarked website as of the date of the denial of this claim as well as on the date of the filing of this lawsuit. Union Standard may be served by mailing certified mail, return receipt requested to **Union Standard Insurance Group, LLC, Attention: Ty Collins Simmons, 122 W. Carpenter Freeway, Suite 350, Irving, Texas 75039-2049.**

2.3 Upon information and belief, James Amato is an individual living and residing in the State of Texas and working in Dallas County, Texas. Mr. Amato may be served with process at **James Amato, 1917 Springbranch Drive, Arlington, Texas 76006.**

Venue & Jurisdiction

3.1 Venue is proper in Dallas County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(3) as it is the principal place of business of Texas citizen Defendant Union Standard and under 15.002(a)(2) as the residence of natural person defendant James Amato is in Dallas County. Venue is proper in Dallas 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 Dallas County, Texas. In particular, the adjustment of the claim by Defendants for losses under the Acadia policy (including payments to be made to Allied under the policy) were conducted in Dallas County, Texas. Further, investigation, including communications to and from Defendants and Allied (including telephone calls, mailings, and other communications to Allied) and communications between Defendants regarding the claim occurred in Dallas County, Texas. Additionally, adjustment of the claim by Defendants Union Standard and Amato under the Acadia policy were conducted in Dallas County, Texas.

3.2 Allied seeks damages within the jurisdictional limits of this Court. Allied trusts the jury to evaluate the evidence, but at this time, Allied seeks monetary relief in an amount over \$1,000,000. Allied reserves the right to modify the amount and type of relief sought in the future.

General Allegations

4.1 Prior to April 19, 2016, Allied marketed and sold a commercial insurance policy bearing Policy No. CPA 4636752-12 to Allied whereby Acadia would provide property insurance for the structure located at 2201 W. Arkansas Street, Durant, OK 74701-5617 (the "Property") in exchange for the timely payment of premiums (the "Policy"). The Policy was sold by Acadia to Plaintiff as the insured under the Policy and provides coverage for the Property resulting from wind and hail storms.

4.2 On or about April 19, 2016, Plaintiff's property was substantially damaged by the severe wind and hail storm that struck the area. As a result, the roof, HVAC, exteriors, and interiors of the Property were substantially damaged. Immediately after the storm, Plaintiff filed an insurance claim under the Policy with Acadia for damages to the Property caused by the wind and hail. Plaintiff asked that the cost of repairs be covered pursuant to the Policy.

4.3 Acadia is the insurer on the Property. In response to the claim, Acadia assigned representatives, adjusters, consultants, and agents to Plaintiff's file that were inadequate and improperly trained. Specifically, Plaintiff's claim was mishandled by Union Standard and Mr. Amato out of Dallas, Texas. Mr. Amato handled the claim from Union Standard's Dallas office and under Union Standard's management and control. Mr. Amato conducted an unreasonable investigation of the cause and extent of damages, was improperly trained and not equipped to handle this type of claim.

4.4 Mr. Amato failed to perform a thorough investigation of the claim. On May 26, 2016, an adjuster for the Defendants arrived at the Property but failed to complete an adequate inspection and refused to acknowledge all the damages to the Property. Mr. Amato did not prepare any estimates or scopes of damages to the Property or failed to provide those to the insured. Because of Mr. Amato's failure to estimate or scope any damages, Plaintiff was forced to prepare its own estimate of damages and point them out to Mr. Amato. However, Mr. Amato ignored the facts supporting coverage, failed to give Plaintiff's presentation proper consideration, and denied the true extent of damages covered by the policy. Moreover, Mr. Amato refused to retain appropriate consultants to evaluate the claim. Specifically, Mr. Amato retained consultants from a preferred vendor and was unnecessarily hostile to the insured in claim communications and investigation methods. Mr. Amato then utilized the preferred vendor's report to make recommendations to Acadia on what portions of the claim to deny under the Policy.

4.5 Throughout the claims process, Mr. Amato was the only point of contact on Acadia's behalf yet he continually delayed the claims process and refused to provide answers to the insured and its representative. Further, Mr. Amato represented to the insured that although wind and hail damage existed at the property, he greatly underestimated the amount and extent of damage that would be clear to a competent building evaluator. Acadia relied on Mr. Amato's substandard investigation in determining what amounts, if any, to pay on Plaintiff's claim and failed to perform its own investigation. As a result of Union Standard and Mr. Amato's hostile

investigation, unreasonable claim approach, and misrepresentations, on July 20, 2016 and again on December 21, 2016, Acadia and Union Standard grossly underpaid Plaintiff's claim for wind and hail damages. Acadia, Union Standard and Mr. Amato performed an inadequate, incomplete and unreasonable investigation of Plaintiff's claim, which is evidenced by the failed inspections, the lack of appropriate estimates, and the preferred vendor's report which fails to account for damages and necessary repairs for the Property.

4.6 Acadia, Union Standard and Mr. Amato wrongfully denied and underpaid Plaintiff's claim for property repairs. Furthermore, Acadia, Union Standard and Mr. Amato underestimated what damages they did accept during the investigation. Acadia, Union Standard and Mr. Amato represented to Plaintiff that certain damages were not covered under the Policy when in fact they were. Mr. Amato refused to provide answers to Plaintiff during the claims process, further delaying resolution of Plaintiff's claim in violation of his duties under Texas law. Acadia, Union Standard and Mr. Amato have chosen to continue to deny timely payment of the damages. As a result, Plaintiff has not been fully paid under the Policy provided by Acadia since the wind and hail storm. To this day, Acadia refuses to pay for the necessary repairs to the Property as required under the Policy.

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

4.8 Unfortunately, Defendants have delayed payment for Plaintiff's necessary and covered property repairs under the insurance policy that Acadia wrote. Given

the repeated delays of payment, Plaintiff has been subjected to significant economic impact, worry, distress, and continuing economic and physical damage. Because of Defendants' delays, denials, and underpayment, Plaintiff has been unable to make necessary repairs to the Property which has resulted in further damages to the Property, including additional interior damage, among others. 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 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-4.8 of this Petition as if fully set forth herein.

5.2 Acadia, Union Standard and Mr. Amato 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 Acadia, Union Standard and Mr. Amato failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 Acadia, Union Standard and Mr. Amato 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 Acadia, Union Standard and Mr. Amato 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 Acadia, Union Standard and Mr. Amato misrepresented the insurance policy under which it affords Property coverage to Plaintiff, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Acadia, Union Standard and Mr. Amato misrepresented the insurance policy to Plaintiff, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

5.7 Acadia, Union Standard and Mr. Amato misrepresented the insurance policy 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). Acadia, Union Standard and Mr. Amato misrepresented the insurance policy 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).

5.8 Acadia, Union Standard and Mr. Amato misrepresented the insurance policy 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 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). Acadia, Union Standard and Mr. Amato misrepresented the insurance policy to

Plaintiff 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 Acadia, Union Standard and Mr. Amato 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 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-5.9 of this Petition as if fully set forth herein.

6.2 Acadia, Union Standard and Mr. Amato failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

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

6.4 Acadia, Union Standard and Mr. Amato 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 Acadia, Union Standard and Mr. Amato in violation of Texas Insurance Code Section 542.056(a).

6.5 Acadia, Union Standard and Mr. Amato delayed payment of Plaintiff's claim in violation of Texas Insurance Code Section 542.058(a).

THIRD CAUSE OF ACTION--Statutory Interest

7.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-6.5 of the Petition as if fully set forth herein.

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

8.2 Acadia breached its contracts with Plaintiff. As a result of Acadia's breaches, Plaintiff suffered legal damages.

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

9.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-8.2 of the Petition as if fully set forth herein.

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

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

10.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-9.2 of this Petition as if fully set for herein.

10.2 Acadia, Union Standard and Mr. Amato fraudulently and with malice (as that term is legally defined) denied Plaintiff's claim for benefits. Further, Acadia, Union Standard and Mr. Amato 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

11.1 Plaintiff 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.

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 Plaintiff's damages.

RESULTING LEGAL DAMAGES

13.1 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; the mental anguish and physical suffering resulting from this wrongful denial of benefits, and continued impact on Plaintiff; lost credit reputation; and the other actual damages permitted by law. In addition, Plaintiff is entitled to exemplary damages.

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

13.3 Plaintiff is 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 Plaintiff to the attorneys' fees, treble damages, and other penalties provided by law.

13.5 Plaintiff is 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 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 Tex. Bus & Commerce Code §17.50 and Tex. Civ. Prac. & Rem. Code §37.009.

Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests 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