

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

HERITAGE TEXAS PROPERTIES, LP, §
HERITAGE TEXAS GP, LLC §
and GEORGE J. MUECK §
Plaintiffs §

Civil Action No. 4:18-cv-4383

v. §

TWIN CITY FIRE INSURANCE §
COMPANY §
Defendant §

PLAINTIFFS’ ORIGINAL COMPLAINT & JURY DEMAND

Plaintiffs Heritage Texas Properties, LP, Heritage Texas GP, LLC (together, “Heritage”) and George J. Mueck (“Mueck”) (collectively “Plaintiffs”) file this Original Complaint & Jury Demand against Defendant Twin City Fire Insurance Company (“Twin City” or “Defendant”) and would respectfully show the following:

Parties

1. Heritage Texas Properties, LP is a domestic limited partnership located and operating in the State of Texas.
2. Heritage Texas GP, LLC is a domestic limited liability company located and operating in the State of Texas.
3. Mueck is a natural person who lives and works in the State of Texas.
4. Upon information and belief Twin City is a foreign fire and casualty insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. Twin City regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Twin City may be served with process by serving its

registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

Venue & Jurisdiction

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiffs 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 Twin City because Plaintiffs' claim against Twin City arises out of or relates to Twin City's contact with this forum, namely Twin City's performance under the applicable insurance contract, and Twin City's other representations and conduct related thereto.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred within this judicial district, and the property subject of the action is situated within this judicial district. Namely, this action concerns real property and a business located and operating in Harris County, Texas. The insurance policy at issue and of which Plaintiffs are a beneficiary was to be performed within this district, and the losses under the policy (including payments to be made to Plaintiffs under the policy) were required to be made within this district. Further, investigation, including communications to and from Defendant and Plaintiffs (including telephone calls, mailings, and other communications to Plaintiffs) occurred within this district.

Factual Background

The Property

7. Mueck owns the commercial property located at 14340 Memorial Drive, Houston, TX 77079 in Harris County, Texas (the “Property”). The Property is a one-story commercial use building with 12,214 square feet of interior space used as the office for Heritage Texas Properties, a Houston-based real estate business.



The Policy

8. Prior to August 26, 2017, Twin City sold a commercial insurance policy to Plaintiffs for the Property and the business under Twin City’s Policy No. 61 SBA IR6804 SC (the “Policy”). The Policy provides coverage for Plaintiffs’ business personal property and the Property, along with lost business income and extra expenses with an extension for civil authority actions, for covered damages that occur during the Policy Period, from September 1, 2016 to September 1, 2017. In exchange for Plaintiffs’ premium payment of \$22,014.00, the Policy includes the following limits and coverages, in relevant part:

Location: 001 Building: 001

14340 MEMORIAL DR
HOUSTON TX 77079

BUILDING AND BUSINESS PERSONAL PROPERTY LIMITS OF INSURANCE

BUILDING

REPLACEMENT COST \$ 1,737,436

BUSINESS PERSONAL PROPERTY

REPLACEMENT COST \$ 273,261

PROPERTY OPTIONAL COVERAGES APPLICABLE TO ALL LOCATIONS LIMITS OF INSURANCE

BUSINESS INCOME AND EXTRA EXPENSE
COVERAGES INCLUDES THE FOLLOWING
COVERAGES EXTENSIONS: 12 MONTHS ACTUAL LOSS SUSTAINED

ACTION OF CIVIL AUTHORITY: 30 DAYS
EXTENDED BUSINESS INCOME: 30 CONSECUTIVE DAYS

8. As evidenced by the Declarations Page, the Policy provides coverage to the Property’s physical structure on a replacement cost value basis for damages up to \$1,737,436 and coverage for damages to business personal property on a replacement cost value basis up to \$237,261.00. (*See Ex. A, Policy, at Declarations Pages.*) With respect to business income, the

Policy provides coverage for lost income in the amount of the actual loss sustained over the course of 12 months related to a covered cause of loss. Pursuant to the Policy, extra expenses are included and there is an extension of 30 days for civil authority actions. 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 Property that result from windstorm or hail:

Deductible: \$ 1,000 PER OCCURRENCE
WINDSTORM OR HAIL: 1% (FORM SS 82 23)

(*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 Property 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 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.

Plaintiffs make 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 Property, on or about August 26, 2017, the Property was substantially damaged. Sizeable portions of the Property's roof and exterior were compromised. As a result, there was also

interior damage to ceilings and insulation. The following photographs taken after Harvey depict some of the damage:



12. There was also significant damage to the roof:



13. The Property—specifically the roofs and ceilings—was substantially damaged by Harvey. Yet as devastating as the physical damage was, Plaintiffs felt fortunate to be protected by over \$2,000,000 in insurance coverage it had procured to insure the Property from precisely this type of catastrophe. After the storm, Plaintiffs promptly filed a claim with Twin City, alerting them to the extensive damages, opened as Claim No. Y34 F 74053. This sense of security, borne of a pricey contractual relationship, would prove illusory as Twin City began their investigation and handling of the claim.

Plaintiffs work hard to document the damages for Twin City but received a denial.

14. Twin City'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 Plaintiffs' claim. (*See* Exhibit B, Denial Letter). Twin City unreasonably pinned the loss on anything but the wind, an action designed to save Twin City hundreds of thousands of dollars in damages to the Property and the business.

15. Specifically, just days after Harvey ravaged the Property and the claim was submitted, on September 6, 2017, Twin City had already written off Plaintiffs' claim and issued a preliminary denial letter that offered no reasonable explanation of the facts underlying the denial and that failed to tie any relevant facts to the three pages of policy provisions cited by Twin City. (*See* Exhibit B). Remarkably, after citing various exclusions and ignoring the relevant coverages, the letter claims that no lost business income will be issued under the Policy because the shutdown

of Plaintiffs' business "was not due to direct physical damage by a covered cause of loss." (*See* Exhibit B).

16. Weeks after Plaintiffs submitted the claim, on September 24, 2017, Seamus Young, a "damage specialist", inspected the Property to determine the "cause of loss" that resulted from Harvey's hurricane-force wind and water. Days later, on October 4, 2017, another denial letter was issued which was seemingly identical to the prior denial issued just days after the storm, with slight differences in the introduction paragraph. Again, however, Twin City refused to acknowledge the damage caused by Hurricane Harvey in the midst of the catastrophe. Twin City did not prepare any scopes or estimates of damages or refused to provide them to the insured. Plaintiffs were forced to hire their own consultants to assess the damage properly and provide their own estimates of damages to Twin City in the face of the company's refusal to do so. After Twin City ignored its obligations, forcing Plaintiffs to demand the company re-assess the damages, another inspection took place on June 19, 2018 by Lan Vo from Donan Engineering, a preferred vendor of Twin City. This inspection also ignored obvious and extensive damages from Harvey at the Property and was conducted with an intent to simply rubber stamp the prior denial of Plaintiffs' claim for a second time. The inspectors were not qualified to assess the type of damages to commercial Property such as the Property at issue and, as a result, the inspections were haphazard, rushed, and incomplete.

17. Despite clear evidence of covered damage, Twin City engaged in and ratified the improper claims conduct and ultimately declined to warrant any payment. Twin City unreasonably stated in its denial "there was no direct physical loss or damage to the roof resulting from a Covered Cause of Loss" in an effort to avoid contractual responsibilities and to save Twin City significant sums of money. (*See* Exhibit B).

18. Months after Harvey left the Property in a dilapidated state, and after multiple demands by Plaintiffs and their representatives to appropriately evaluate damages to the Property under the Policy, yet another Twin City adjuster finally issued another denial on July 25, 2018, which again omitted important facts, physical evidence, and meteorological data supporting Plaintiffs' claim. (See Exhibit C). Shockingly, Twin City claimed, "The modified bitumen roof covering is not wind damaged." (See Exhibit "C"). Plaintiffs cooperated throughout the entire claim process.

19. To this day, Twin City has refused to pay for any covered damages under the Policy.

Twin City ignores Plaintiffs' demand letter

20. 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 Plaintiffs to avoid protracted litigation over a clear claim.

21. In compliance with Section 542A.003, Plaintiffs gave pre-suit notice to Twin City on September 13, 2018. The pre-suit notice provided a comprehensive outline of Plaintiffs' claim and damages, quantified their losses, and even offered to waive a formal claim for attorneys' fees if the contractual amounts were paid promptly.

22. Twin City responded to Plaintiffs' demand letter with another blanket denial.

Count 1 – Violations of Texas Insurance Code, Section 541

23. Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-21 of this Complaint as if fully set forth herein.

24. Twin City 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).

25. Twin City failed to adopt and implement reasonable standards for prompt investigation of the claim arising under its policy.

26. Twin City 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).

27. Twin City 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).

28. Twin City misrepresented the insurance policy under which it affords Property coverage to Plaintiffs, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Twin City misrepresented the insurance policy to Plaintiffs, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

29. Twin City misrepresented the insurance policy under which it affords Property coverage to Plaintiffs 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). Twin City misrepresented the insurance policy to Plaintiffs 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).

30. Twin City misrepresented the insurance policy under which it affords Property coverage to Plaintiffs 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). Twin City misrepresented the insurance policy to Plaintiffs 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).

31. Twin City 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

32. Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-30 of this Complaint as if fully set forth herein.

33. Twin City failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

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

35. Twin City 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).

36. Twin City delayed payment of Plaintiffs' claim in violation of Texas Insurance Code Section 542.058(a).

37. 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 Plaintiffs' damages.

Count 3 – Statutory Interest

38. Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-36 of the Complaint as if fully set forth herein.

39. Plaintiffs make 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

40. Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-38 of the Complaint as if fully set forth herein.

41. As outlined above, Twin City breached its contract with Plaintiffs by refusing to pay for covered damages under the Policy. As a result of Twin City's breach, Plaintiffs suffered legal damages.

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

42. Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-40 of the Complaint as if fully set forth herein.

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

Count 6 – Punitive Damages for Bad Faith

44. Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-42 of the Complaint as if fully set forth herein.

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

Count 7 – Violations of Texas Deceptive Trade Practices Act

46. Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-44 of the Complaint as if fully set forth herein.

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

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

Resulting Legal Damages

49. Plaintiffs are entitled to the actual damages resulting from Twin City'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, Plaintiffs are entitled to exemplary damages.

50. As a result of Twin City's acts and/or omissions, Plaintiffs have sustained damages in excess of the minimum jurisdictional limits of this Court.

51. Twin City's knowing violations of the Texas Insurance Code and DTPA entitle Plaintiffs to attorneys' fees, treble damages, and other penalties provided by law.

52. Plaintiffs are entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

53. Plaintiffs are entitled under law to the recovery of prejudgment interest at the maximum legal rate.

54. Plaintiffs are entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, and Plaintiffs are 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, Plaintiffs respectfully request that Plaintiffs 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 Plaintiffs may be entitled.

Respectfully submitted,

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JURY DEMAND

Heritage Texas Property, LP dba Heritage Texas GP LC and George J. Mueck 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