

Cause No. _____

MID-WEST TRADING CO., MIDWEST	§	IN THE DISTRICT COURT OF
ENGINE, INC., and POWER STEER, INC.	§	
	§	
	§	
V.	§	DALLAS COUNTY, TEXAS
	§	
	§	
ROCKHILL INSURANCE COMPANY,	§	
INTERNATIONAL INSURANCE	§	
COMPANY OF HANNOVER SE,	§	
ANTARES AUL 1274, LIBERTY	§	
SYNDICATE LIB 4472 via PIONEER	§	
UNDERWRITING, VERICLAIM, INC.,	§	
RONALD Mc CARTNEY and MATTHEW	§	
VAIL	§	____ JUDICIAL DISTRICT

PLAINTIFFS’ ORIGINAL PETITION & JURY DEMAND

TO THE HONORABLE JUDGE & JURY OF DALLAS COUNTY CITIZENS:

Plaintiffs MID-WEST TRADING CO., MIDWEST ENGINE, INC. and POWER STEER, INC. (“Plaintiffs”) file this Original Petition against Defendants ROCKHILL INSURANCE COMPANY (“Rockhill”), INTERNATIONAL INSURANCE COMPANY OF HANNOVER SE (“Hannover”), ANTARES AUL 1274 (“Antares”), LIBERTY SYNDICATE LIB 4472 via PIONEER UNDERWRITING (“Liberty”) (collectively “Carriers”), VERICLAIM, INC. (“Vericlaim”), RONALD Mc CARTNEY (“Mr. McCartney”), and MATTHEW VAIL (“Mr. Vail”) (collectively “Defendants”) and would respectfully show the following:

Discovery Control Plan

1.1 Plaintiffs intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

Parties

2.1 Plaintiff, Mid-West Trading Co. is a domestic for-profit corporation.

2.2 Plaintiff, Midwest Engine, Inc. is a domestic for-profit corporation.

2.3 Plaintiff, Power Steer, Inc. is a domestic for-profit corporation.

2.4 Upon information and belief Rockhill Insurance Company is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. Rockhill 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, Rockhill 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 **Mendes & Mount, 750 Seventh Avenue, New York, NY 10019-6829**.

2.5 Upon information and belief International Insurance Company of Hannover SE is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. Hannover 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, Hannover 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 Mendes & Mount, 750 Seventh Avenue, New York, NY 10019-6829.

2.6 Upon information and belief Antares AUL 1274 is an insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. Antares 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, Antares 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 Mendes & Mount, 750 Seventh Avenue, New York, NY 10019-6829.

2.7 Upon information and belief Liberty Syndicate LIB 4472 via Pioneer Underwriting is an insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. Liberty 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, Liberty 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 Mendes & Mount, 750 Seventh Avenue, New York, NY 10019-6829.

2.8 Upon information and belief, Vericclaim is a foreign corporation operating out of its Texas offices, including its office in Harris County, for the purpose of accumulating monetary profit. Vericclaim regularly engages in the business of adjusting insurance claims in Texas and may be served with process through its registered agent, **CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.**

2.9 Upon information and belief, Mr. McCartney is a natural person who resides and works in the State of Texas and may be served with process to **Ronald McCartney, 4801 Spring Valley Road, Suite 102-1A, Dallas, Texas 75244.**

2.10 Upon information and belief, Mr. Vail is a natural person who resides and works in the State of Texas and may be served with process to **Matthew Vail, 4004 Belt Line Road, Suite 205, Addison, Texas 75001.**

Venue & Jurisdiction

3.1 Venue is proper in Dallas County, Texas, because the insureds' property is located in Dallas County, Texas Tex. Civ. Prac. & Rem. Code §15.032. Further, Venue is proper in Dallas County under Tex. Civ. Prac. & Rem. Code §15.002(a)(1) as all or a substantial part of the events or omissions giving rise to this claim occurred in Dallas County and Plaintiffs' property that is the subject of the insurance policy, claim, denial, and litigation is in Dallas County. In particular, the adjustment of the claim by Defendant Mr. Vail for losses under the policy (including denial and underpayment of the claim and payments to be made to Plaintiffs in Dallas County under the policy) were conducted in Dallas

County, Texas. Further, investigations and policy representations, including communications to and from Defendants and Plaintiffs (including telephone calls, mailings, and other communications to Plaintiffs) occurred in Dallas County, Texas. Additionally, site inspections and communications serving as the basis for suit occurred at the damaged subject property in Dallas County. Critical representations by Defendant Vericclaim, Defendant Vail, and Defendant McCartney were made from and directed to Dallas County, in particular the commitment to immediately issue the roof replacement approved payment.

3.2 Plaintiffs seek damages within the jurisdictional limits of this Court. At this time, Plaintiffs seek monetary relief in an amount over \$1,000,000. Plaintiffs reserve the right to modify the amount and type of relief sought in the future.

Factual Background

4.1 On or before January 1, 2017, the Carriers sold a commercial property insurance policy bearing Policy No. GEP9887-16 to Plaintiffs whereby the Carriers would provide insurance coverage for the property located at 3641 East Kiest Blvd., Dallas, Texas 75203 (the "Property") in exchange for the timely payment of premium (the "Policy"). The Policy was sold by the Carriers to Plaintiffs as the insured under the Policy and provides coverage for damages to the Property caused by a fire.

4.2 On or about January 1, 2017, Plaintiffs' property was substantially damaged by a fire. As a result, the roofs of the Property were substantially damaged. Immediately upon discovering the damage, Plaintiffs filed an insurance claim

under the Policy with the Carriers for damages to the Property caused by the fire. Plaintiffs asked that the cost of repairs be covered pursuant to the Policy. On February 14, 2017, the carrier Defendants, through their authorized adjusting representatives in Texas, Vericclaim and Vail, confirmed that the damages were covered under the policy and the “approved” payment for the roof damages via written record and as reflected in an official insurance company estimate of damages. This representation and approved proposal was accepted by Plaintiffs on February 14, 2017 thus creating a binding and enforceable agreement. The amount also is confirmed as of February 14, 2017 to be an undisputed amount due and owing by the Carriers, absolutely improper to be leveraged against its own insureds. The claim should have been concluded right then and there.

4.3 Rockhill, Hannover, Antares, and Liberty are the insurers on the Property. In response to the fire claim, the Carriers assigned adjusters, consultants, and agents to Plaintiffs’ file that were inadequate and improperly trained and that would violate standard insurance practices when directed to do so by the carrier Defendants. More specifically, the Carriers assigned Plaintiffs’ claim to Mr. Vail to adjust the damages under the Policy. Even though Vail initially confirmed the cause and extent of damages in February of 2017, the carrier Defendants and adjuster McCartney falsely refused to honor their coverage representation, and Vail failed to stand by the commitment that he had appropriately made on behalf of the carriers.

4.4 Mr. Vail and Vericclaim failed to perform a thorough investigation of the claim and instead delayed the claim payment and pointed to an approved vendor report in order to reach the non-payment outcome that they desired. Mr. Vail inspected the property on January 9, 2017. He performed an inspection of the Property and prepared an estimate confirming the cause and extent of covered damages. Mr. McCartney approved Mr. Vail's estimate of damages and this confirmed coverage was directly represented to the insureds representatives on February 14, 2017. Then later, the carriers and their administrators engaged in deceptive and unfair claim practices by attempting to leverage the claim amount that they knew they owed. Mr. McCartney and Mr. Vail failed to hire qualified experts to appropriately assess the damage. Mr. McCartney and Mr. Vail delayed the claims process and failed to communicate with the insured. Mr. McCartney and Mr. Vail also misrepresented coverage afforded under the Policy. Mr. McCartney and Mr. Vail performed an inadequate, incomplete and unreasonable investigation of Plaintiffs' claim, which is evidenced by his delays, lack of communication, and refusal to hire to appropriate consultants. The Carriers relied on Mr. McCartney and Mr. Vail in determining what amounts, if any, to pay on Plaintiffs' claim and failed to perform their own adequate investigation. Further, the Carriers, McCartney, and Vail then ignored the promises that they made on the claim payment and attempted to invoke appraisal as part of an unlawful negotiating process. Through the written commitments regarding coverage and the extent of damages, the Carriers, McCartney and Vail are estopped from later

pointing to the appraisal provision in the policy. The Defendants confirmed coverage and the undisputed amount that they owed on the claim to Plaintiffs on February 14, 2017, and waived any right to later disclaim coverage and put the entire claim in an expensive and wasteful appraisal process.

4.5 The Carriers, Vericclaim, Mr. McCartney, and Mr. Vail wrongfully underpaid and denied Plaintiffs' claim for property repairs. Defendants ultimately represented to Plaintiffs that certain damages were not covered under the Policy when in fact they were. The Carriers, Vericclaim, Mr. McCartney, and Mr. Vail have chosen to continue to deny timely payment of the damages. As a result, Plaintiffs have not been fully paid under the Policy provided by the Carriers since the fire. Plaintiffs were forced to hire their own consultant to independently evaluate the damages to the Property because Defendants refused to do so. To this day, the Carriers refuse to pay for the necessary repairs to the Property as required under the Policy. The Carriers attempt on June 14, 2017 to place this matter into appraisal is in direct violation of the Texas Insurance Code, the common law duty of good faith and fair dealing, and is in breach of their contractual commitments. Simply put, the Defendants chose to act unreasonably in refusing to issue the claim payment that their authorized representative had confirmed and that Plaintiff accepted.

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

4.7 Unfortunately, Defendants have delayed payments for Plaintiffs' necessary and covered property repairs under the insurance policy that the Carriers wrote. Given the repeated delays of payments, Plaintiffs have been subjected to significant economic impact, and continuing economic and physical damages. Because of Defendants' delays, denials, and underpayment, Plaintiffs have been unable to make necessary repairs to the Property which has resulted in further damages to the Property. In addition, Plaintiffs have 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 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-4.7 of this Petition as if fully set forth herein.

5.2 The Carriers, Vericclaim, Mr. McCartney, and Mr. Vail failed to attempt to effectuate a prompt, fair, and equitable settlement of a claims with respect to which liability has become reasonably clear, in violation of Texas Insurance Code Section 541.060 (a)(2)(A).

5.3 The Carriers, Vericclaim, Mr. McCartney, and Mr. Vail failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 The Carriers, Vericclaim, Mr. McCartney, and Mr. Vail failed to provide promptly a reasonable explanation, in relation to the facts or applicable law, for the denial of a claims, in violation of Texas Insurance Code Section 541.060 (a)(3).

5.5 The Carriers, Vericclaim, Mr. McCartney, and Mr. Vail failing within a reasonable time to affirm or deny coverage of a claim to policyholders; or submit a proper reservation of rights to policyholders in violation of Texas Insurance Code Section 541.060(a)(4).

5.6 The Carriers, Vericclaim, Mr. McCartney, and Mr. Vail refused to pay claims without conducting a reasonable investigation with respect to the claims, in violation of Texas Insurance Code Section 541.060 (a)(7).

5.7 The Carriers, Vericclaim, Mr. McCartney, and Mr. Vail misrepresented the insurance policies 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). The Carriers, Vericclaim, Mr. McCartney, and Mr. Vail misrepresented the insurance policies to Plaintiffs, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

5.8 The Carriers, Vericclaim, Mr. McCartney, and Mr. Vail misrepresented the insurance policies 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). The Carriers, Vericclaim, Mr. McCartney, and Mr. Vail misrepresented the insurance policies 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).

5.9 The Carriers, Vericclaim, Mr. McCartney, and Mr. Vail 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). The Carriers, Vericclaim, Mr. McCartney, and Mr. Vail 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).

5.10 The Carriers, Vericclaim, Mr. McCartney, and Mr. Vail 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 Plaintiffs re-allege and incorporate 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 Plaintiffs any additional items, statements or forms that the Carriers,

Vericclaim, and Mr. Vail reasonably believe to be required from Plaintiffs in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

6.4 The Carriers failed to notify Plaintiffs 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, Vericclaim, Mr. McCartney, and Mr. Vail in violation of Texas Insurance Code Section 542.056(a).

6.5 The Carriers delayed payments of Plaintiffs' claim in violation of Texas Insurance Code Section 542.058(a).

THIRD CAUSE OF ACTION--Statutory Interest

7.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-6.5 of the Petition as if fully set forth herein.

7.2 Plaintiffs make 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 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-7.2 of the Petition as if fully set forth herein.

8.2 The Carriers breached their contract with Plaintiffs. As a result of the Carriers' breach, Plaintiffs suffered legal damages.

8.3 The Carriers also breached the contract that their authorized representative, Vericclaim and Matthew Vail entered into on February 14, 2017, 8:00 am, when they offered the approved damage payment to Plaintiffs and Plaintiffs' authorized

representative accepted the proposed approved damage payment on February 14, 2017 at 12:45 pm. This is a binding agreement in writing to be performed immediately, yet the Carriers failed to comply with the agreement causing the Plaintiffs to suffer legal damages.

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

9.1 Plaintiffs re-allege and incorporate 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 duty to deal fairly and in good faith with Plaintiffs in the processing of the claim. The Carriers breached this duty by refusing to properly investigate and effectively denying insurance benefits even after they admitted that they owed the claim in writing. The Carriers knew or should have known that there was no reasonable basis for denying or delaying the required benefits. The Carriers' duty of good faith and fair dealing was non-delegable. As a result of the Carriers' breach of these legal duties, Plaintiffs suffered legal damages.

SIXTH CAUSE OF ACTION--Punitive Damages for Bad Faith

10.1 Plaintiffs re-allege and incorporate 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 Plaintiffs' 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 Plaintiffs.

SEVENTH CAUSE OF ACTION---Violations of Texas DTPA

11.1 Plaintiffs re-allege and incorporate 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 Plaintiffs' damages.

RESULTING LEGAL DAMAGES

13.1 Plaintiffs are 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, and continued impact on Plaintiffs; lost credit reputation; and the other actual damages permitted by law. In addition, Plaintiffs are entitled to exemplary damages.

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

14.3 Plaintiffs are 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 Plaintiffs to the attorneys' fees, treble damages, and other penalties provided by law.

14.5 Plaintiffs are entitled to statutory interest on the amount of their claim at the rate of 18% per year as damages under the Texas Insurance Code 542.060(a).

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

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

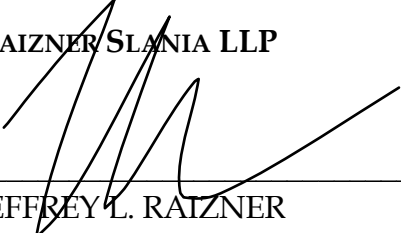
14.8 Plaintiffs are entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, the Texas Insurance Code 542.060(a)-(b), the Tex. Bus & Commerce Code §17.50 and Tex. Civ. Prac. & Rem. Code §37.009.

Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that Plaintiffs 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 Plaintiffs may be entitled.

Respectfully submitted,

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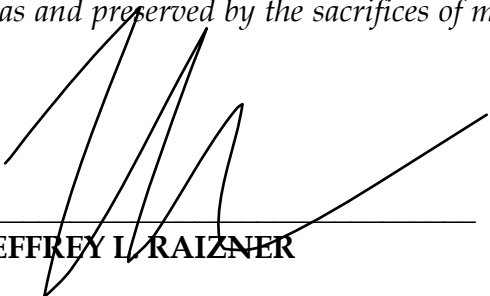
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ATTORNEYS FOR PLAINTIFFS

JURY DEMAND

Plaintiffs 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