

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

PRESTON PLAZA, LLC	§	
	§	
<i>Plaintiff</i>	§	
	§	
v.	§	Civil Action No. 4:18-cv-1197
	§	
WESTCHESTER SURPLUS LINES	§	
INSURANCE COMPANY	§	
	§	
<i>Defendants</i>	§	

**PLAINTIFF’S ORIGINAL COMPLAINT & JURY DEMAND**

Plaintiff PRESTON PLAZA, LLC (“Preston Plaza” or “Plaintiff”) files this Original Complaint & Jury Demand against Defendant WESTCHESTER SURPLUS LINES INSURANCE COMPANY (“Westchester” or “Defendant”) and would respectfully show the following:

**Parties**

1. Preston Plaza is a domestic limited liability company in the State of Texas.
2. Westchester is a foreign insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Westchester regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Westchester may be served with process by serving Saverio Rocca, Assistant General Counsel, Chubb Companies, 436 Walnut Street, Philadelphia, PA 19106-3703.

**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.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because this action concerns real property and a business located and operating in Harris County, Texas, and all or a substantial part of the events giving rise to the claim described herein occurred in Harris County, Texas. In particular, the insurance policy at issue and of which Plaintiff is a beneficiary was to be performed in 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 Harris County, Texas.

### **Factual Background**

#### ***The Property***

5. Preston Plaza owns and operates the commercial property located at 2816 Preston Avenue, Pasadena, Texas 77503 in Harris County, Texas (the “Property”).



The Property is a single-story structure situated on 17,486 square feet of land with 4,800 square feet of space to rent. There are four units within the structure.

***Westchester Surplus Lines Insurance Company***

6. Unfortunately, Westchester, a foreign insurance company, has a significant history in Texas of conducting arbitrary, outcome-oriented investigations intended to deny rightful claims. Westchester has a known pattern of rewarding claims representatives and consultants who identify grounds to exclude property damage claims under their policies, in violation of Texas law and the promises within the insurance contract. This deceptive claims system was utilized against Preston Plaza in contravention of the Texas Insurance Code.

***The Policy***

7. Prior to August 26, 2017, Preston Plaza paid \$2,226.00 in annual premiums, assessments, fees, surcharges, and taxes to Westchester to acquire comprehensive commercial insurance coverage for the Property and the business under Westchester's Policy No. D39232145 (the "Policy"). The Policy provides coverage for Preston Plaza's business and the Property, for covered damages that occur during the Policy Period, from June 13, 2017 through June 13, 2018. In exchange for Preston Plaza's premium payment, the Policy includes the following limits and coverages, in relevant part:

## Commercial Property Declarations

**Westchester**  
A Grubb Company

Company: WESTCHESTER SURPLUS LINES INSURANCE COMPANY

SYM: FS Policy ID: D39232145

Location		
Loc. No.	Bld. No.	Address
001	001	2816 PRESTON AVE, PASADENA, TX 77503

Coverages and Limits Provided					
Insurance at Described Location Applies Only for Coverage for Which a Limit of Insurance is shown					
Loc. No.	Bld. No.	Coverage	Rate	Limit of Insurance \$	Premium
001	001	BLDG	.61	\$200,000	\$1,220
Total Advance Premium This Page:					\$1,220
Total Advance Property Premium:					\$1,220

8. As evidenced by the Declarations Page, the Policy provides coverage to the Property’s physical structure for up to \$200,000.00. (*See* Ex. A, Policy, at Declarations Page.) The core of the Policy is a “Building and Personal Property Property Coverage” form, which is a “named perils” explanation that includes coverage for, among other things, windstorm such as that arising from a hurricane. (*See id.*) The operative policy language provides:

7. "Named Peril" means the perils of Fire; Lightning; Explosion; Windstorm or Hail; Smoke; Aircraft or Vehicles; Riot and Civil Commotion; Willful or malicious physical loss or damage by a means other than "Computer Virus" and/or an authorized or unauthorized access in, of or to any "Electronic Data", "Electronic Data Processing Equipment" and/or "Electronic Media"; Leakage from fire extinguishing equipment; Sinkhole Collapse; Volcanic Action; Building glass breakage; Falling Objects, Weight of snow, ice or sleet, Water Damage; Sonic Boom; Theft; Flood, Earthquake or Earth Movement.

9. The Policy also contains a “Windstorm or Hail Deductible Form” that provides coverage for damages to the interior of the Property that result from a “Covered Cause of Loss” (such as wind) to the roof or walls, including damages caused by wind driven rain:

With respect to loss or damage caused directly or indirectly by:

1. Windstorm or hail, or
2. Rain damage to the interior of any building or structure, or the property inside the building or structure, whether the rain is driven by wind or not, provided the building or structure first sustains windstorm or hail damage to its roof or walls through which the rain enters,

the Deductibles shown in the Schedule above replace any other applicable deductible.

Each location deductible shown in the Schedule above applies separately to such location, regardless of the number of locations that suffer loss or damage.

(*See id.*, Windstorm or Hail Deductible Form.)

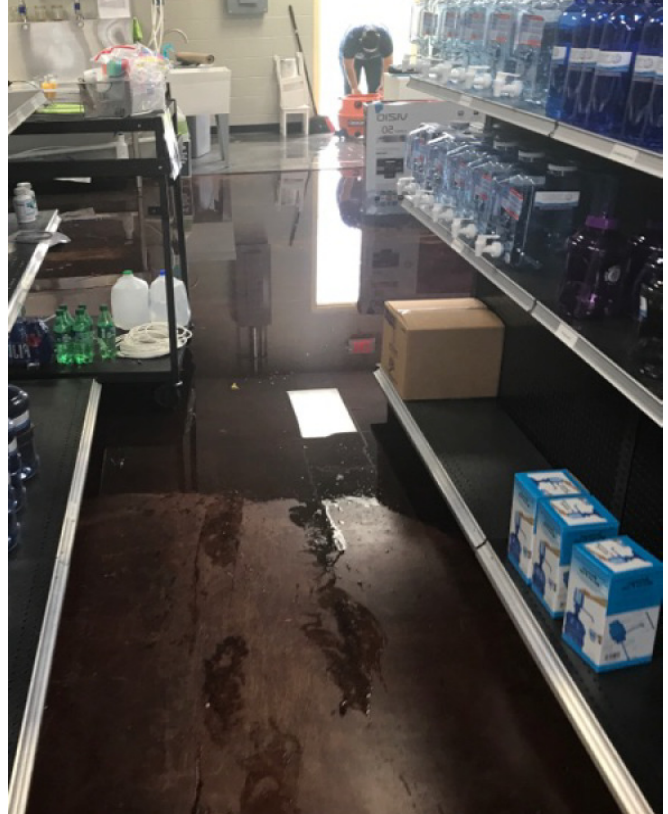
### ***Hurricane Harvey***

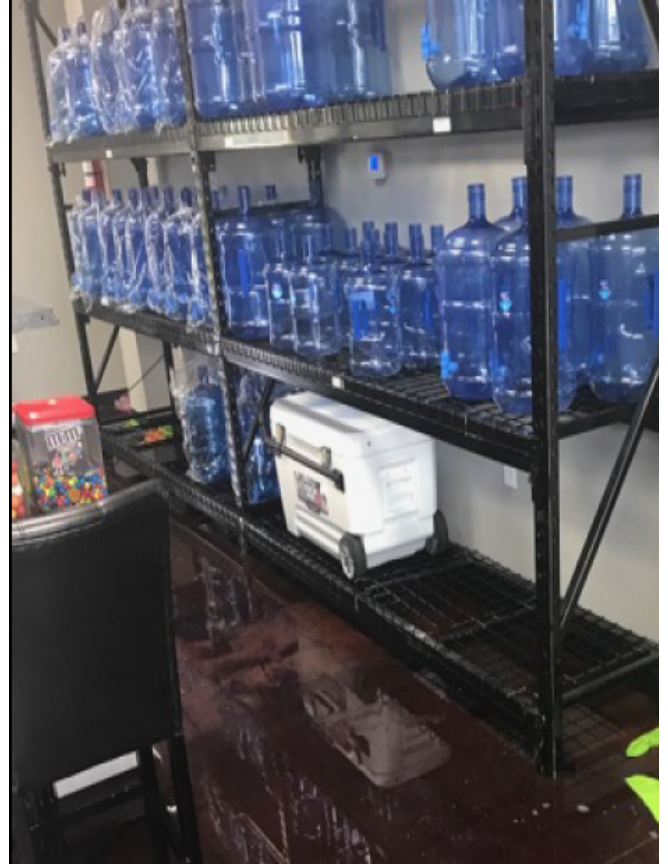
10. On or about August 25, 2017, Hurricane Harvey, recognized as one of the most devastating natural disasters in United States history, made landfall on the Texas coast as a Category 4 hurricane with wind speeds of up to 150 miles per hour. Hurricane Harvey’s wind and rain continued to travel through 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.

### ***Preston Plaza 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 Property, on or about August 26, 2017, the Property was substantially damaged. Sizeable portions of the Property’s roof were compromised by wind, allowing rain to be driven

in, causing substantial interior damage. The following photographs taken immediately after Harvey depict some of the interior damage alone:





12. There was also significant damage to the roof, insulation, and exterior lighting:





13. The Property—specifically the roof, drywall, paint, flooring, insulation, bathroom, lighting, ceilings, and other parts of the physical structure were damaged by Harvey. Yet as devastating as the physical damage was, Preston Plaza felt fortunate to be protected by the almost \$200,000 in insurance coverage it had procured to insure the property from precisely this type of catastrophe. Immediately after the storm, Preston Plaza promptly filed a claim with Westchester, alerting them to the extensive damages. This sense of security, borne of a pricey



contractual relationship, would prove illusory as Westchester began their investigation and handling of the claim.

***Preston Plaza works hard to document its damages for Westchester but received an immediate denial.***

14. Westchester'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 Preston Plaza's claim. Westchester unreasonably pinned the loss on anything but the wind, an action designed to save Westchester hundreds of thousands of dollars in damages to the Property and the business. In an effort to assist Westchester with the claims process and to mitigate any further damages to the Property, Preston Plaza engaged a roofing contractor to perform emergency mitigation services and assist with estimating some of the repair costs. Westchester and its desk adjuster, "Senior Claim Specialist" Kurt Kraft, ignored the evidence.

15. Although Westchester has, to date, provided no clear documentation of their inspection or findings, it denied the claim in full on November 14, 2017. (*See* Ex. B, Nov. 14, 2017 letter (the "Denial Letter.") According to Senior Claim Specialist Kurt Kraft, who apparently works out of Westchester's offices in Alpharetta, Georgia, Preston Plaza's claim was denied in full on the basis that water entry was "not the result of storm-created openings but pre-existing deficiencies and/or openings in the roof covering and sealant." (*Id.* at 2.)

16. In the Denial Letter, Westchester quoted the opinions of someone named Quentin Ragan, an engineer Westchester claims to have hired to support its conclusions. Ragan's opinions, as espoused in the Denial Letter, were internally inconsistent, as he noted "the batt insulation was temporarily wetted due to wind-driven rain," but then suggested that the damage was due to construction deficiencies. (*Id.* at 1.) It is unclear whether Westchester or Mr. Kraft

conducted any testing whatsoever or made any attempt at preparing an estimate reflecting these outlandish findings. (*See id.*) If any testing was conducted or estimates were in fact prepared, none of those documents or explanations have been provided to Preston Plaza. Instead, Westchester simply denied the claim and closed the file.

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

***Westchester ignores Preston Plaza's demand letter***

18. On June 1, 2017, Governor Abbot 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 Preston Plaza to avoid protracted litigation over a clear claim.

19. In compliance with Section 542A.003, Preston Plaza gave its pre-suit notice to Westchester on February 8, 2018. The pre-suit notice provided a comprehensive outline of Preston Plaza's claims and damages, quantified its loss, and even offered to waive a formal claim for attorneys' fees if the contractual amounts were paid promptly.

20. Westchester responded on March 30, 2018 with another blanket denial and rote recitation of the points in the Denial Letter.

**Count 1 – Violations of Texas Insurance Code, Section 541**

21. Preston Plaza re-alleges and incorporates each allegation contained in Paragraphs 1-19 of this Complaint as if fully set forth herein.

22. Westchester 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).

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

24. Westchester 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).

25. Westchester 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).

26. Westchester misrepresented the insurance policy under which it affords property coverage to Preston Plaza, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Westchester misrepresented the insurance policy to Preston Plaza, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

27. Westchester misrepresented the insurance policy under which it affords property coverage to Preston Plaza 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). Defendant misrepresented the insurance policy to Preston Plaza 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).

28. Westchester misrepresented the insurance policy under which it affords property coverage to Preston Plaza 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). Defendant misrepresented the insurance policy to Preston Plaza 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).

29. Westchester 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**

30. Preston Plaza re-alleges and incorporates each allegation contained in Paragraphs 1-28 of this Complaint as if fully set forth herein.

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

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

33. Westchester failed to notify Preston Plaza in writing of the acceptance or rejection of the claim not later than the 15<sup>th</sup> business day after receipt of all items, statements and forms required by Defendants in violation of Texas Insurance Code Section 542.056(a).

34. Westchester delayed payment of Preston Plaza's claim in violation of Texas Insurance Code Section 542.058(a).

35. 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 Preston Plaza's damages.

**Count 3 – Statutory Interest**

36. Preston Plaza re-alleges and incorporates each allegation contained in Paragraphs 1-34 of the Complaint as if fully set forth herein.

37. Preston Plaza 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**

38. Preston Plaza re-alleges and incorporates each allegation contained in Paragraphs 1-36 of the Complaint as if fully set forth herein.

39. As outlined above, Westchester breached its contract with Preston Plaza by refusing to pay for covered damages under the Policy. As a result of Westchester breach, Preston Plaza suffered legal damages.

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

40. Preston Plaza re-alleges and incorporates each allegation contained in Paragraphs 1-38 of the Complaint as if fully set forth herein.

41. Westchester, as the property coverage insurer, had a non-delegable duty to deal fairly and in good faith with Preston Plaza in the processing of the claim. Westchester breached this duty by refusing to properly investigate and effectively denying insurance benefits. Westchester knew or should have known that there was no reasonable basis for denying or delaying the required

benefits. As a result of Westchester breach of these legal duties, Preston Plaza suffered legal damages.

**Count 6 – Punitive Damages for Bad Faith**

42. Preston Plaza re-alleges and incorporates each allegation contained in Paragraphs 1-40 of this Complaint as if fully set for herein.

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

**Count 7 – Violations of Texas Deceptive Trade Practices Act**

44. Preston Plaza re-alleges and incorporates each allegation contained in Paragraphs 1-42 of this Complaint as if fully set forth herein.

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

46. Each of the actions described herein were done “knowingly” as that term is used in the DTPA and were a producing cause of Preston Plaza’s damages.

**Resulting Legal Damages**

47. Preston Plaza is entitled to the actual damages resulting from the Defendant’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, Preston Plaza is entitled to exemplary damages.

48. As a result of Defendant's acts and/or omissions, Preston Plaza has sustained damages in excess of the minimum jurisdictional limits of this Court.

49. Preston Plaza is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

50. Defendant's knowing violations of the Texas Insurance Code and DTPA entitle Preston Plaza to the attorneys' fees, treble damages, and other penalties provided by law.

51. Preston Plaza is entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

52. As a result of Defendant's acts and/or omissions, Preston Plaza has sustained damages in excess of the jurisdictional limits of this Court.

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

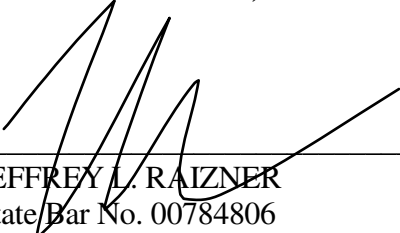
54. Preston Plaza is entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, Texas Insurance Code 542.060(a)-(c), and Tex. Bus & Commerce Code §17.50.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully request that Plaintiff has 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 Plaintiff may be entitled.

Respectfully submitted,

**RAIZNER SLANIA, LLP**



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**JURY DEMAND**

*Preston Plaza 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.*



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**JEFFREY L. RAIZNER**