

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

ROTHCHILD FAMILY PARTNERSHIP	§	
#2 LTD, ROTHCHILD MOORE	§	
INVESTMENTS LTD, ROTHCHILD	§	
MOORE INVESTMENTS II LLC,	§	
ROTHCHILD MOORE INVESTMENTS	§	
III LLC	§	
<i>Plaintiffs</i>	§	Civil Action No. 4:18-cv-2594
	§	
v.	§	
	§	
STATE AUTOMOBILE MUTUAL	§	
INSURANCE COMPANY	§	
<i>Defendant</i>	§	

**PLAINTIFFS’ ORIGINAL COMPLAINT & JURY DEMAND**

Plaintiffs ROTHCHILD FAMILY PARTNERSHIP #2 LTD (“Rothchild Family”), ROTHCHILD MOORE INVESTMENTS LTD (“Rothchild Moore”), ROTHCHILD MOORE INVESTMENTS II LLC (“Rothchild Moore II”), ROTHCHILD MOORE INVESTMENTS III LLC (“Rothchild Moore III”) (collectively “Plaintiffs”) files this Original Complaint & Jury Demand against Defendant STATE AUTOMOBILE MUTUAL INSURANCE COMPANY (“State Auto” or “Defendant”) and would respectfully show the following:

**Parties**

1. Rothchild Family Partnership #2, Ltd. is a domestic limited partnership located and operating in the State of Texas.
2. Rothchild Moore Investments, Ltd. is a domestic limited partnership located and operating in the State of Texas.
3. Rothchild Moore Investments II, LLC is a domestic limited liability company located and operating in the State of Texas.

4. Rothchild Moore Investments III, LLC is a domestic limited liability company located and operating in the State of Texas.

5. Upon information and belief State Auto is a foreign fire and casualty insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. State Auto regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. State Auto may be served with process by serving its registered agent certified mail, return receipt requested, to **Corporation Service Company, 211 East 7<sup>th</sup> Street, Suite 620, Austin, TX 78701-3218.**

#### **Venue & Jurisdiction**

6. 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.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because this action concerns real properties and a business located and operating in Harris County and Fort Bend County, Texas, and all or a substantial part of the events giving rise to the claims described herein occurred in Harris County and Fort Bend County, Texas. In particular, the insurance policies at issue and of which Plaintiffs are the beneficiaries were to be performed in Harris County and Fort Bend County, Texas and the losses under the policies (including payments to be made to Plaintiffs under the policies) were required to be made in Harris County and Fort Bend County, Texas. Further, investigation, including communications to and from Defendant and Plaintiffs (including telephone calls, mailings, and other communications to Plaintiffs) occurred in Harris County and Fort Bend County, Texas.

**Factual Background**

***The Properties***

8. Rothchild Family owns and operates the commercial properties located at 15115 Westheimer Road, Houston, Texas 77082; 14800 Westheimer Road, Houston, Texas 77077; 15015 Westheimer Road Houston, Texas 77082; 3719 Fry Road, Katy, Texas 77450; 920 South Fry Road, Katy, Texas 77450; 5613 2<sup>nd</sup> Street, Katy, Texas 77450; 5613 3<sup>rd</sup> Street, Katy, Texas 77450, in Harris County, Texas.

9. Rothchild Moore owns and operates the commercial property located at 8945 South Fry Road, Katy, Texas 77494 in Fort Bend County, Texas.

10. Rothchild Moore II owns and operates the commercial property located at 1997 Katy Mills Blvd, Katy, Texas 77494 in Harris County, Texas.

11. Rothchild Moore III owns and operates the commercial property located at 9006 South Fry Road, Katy, Texas 77494 (9006 Katy – Gaston Road) in Fort Bend County, Texas.

12. All of the properties described above are collectively referred to as the “Properties,” with individual properties sometimes referred to as a “Property.”

***15115 Westheimer Road***



13. This Property is a one-story business strip center situated on 54,330 square feet of land with 18,340 square feet of interior space. The center provides rental space for 9 business owners.

***14800 Westheimer Road***



14. This Property is a one-story business strip center situated on 77,001 square feet of land with 30,484 square feet of interior space. The center provides rental space for 12 business owners.

***15015 Westheimer Road***



15. This Property is a one-story business strip center situated on 94,569 square feet of land with 25,200 square feet of interior space. The center provides rental space for 15 business owners.

***3719 Fry Road***



16. This Property is a one-story business strip center situated on 60,723 square feet of land with 24,500 square feet of interior space. The center provides rental space for 13 business owners.

***920 South Fry Road***



17. This Property is a one-story business strip center situated on 34,830 square feet of land with 10,960 square feet of interior space. The center provides rental space for 1 business owner.

***5613 2<sup>nd</sup> Street***



18. This Property is a one-story business strip center situated on 16,375 square feet of land with 11,498 square feet of interior space. The center provides rental space for 5 business owners.



**5613 3<sup>rd</sup> Street**



19. This Property is a one-story business strip center situated on 7,200 square feet of land with 5,592 square feet of interior space. The center provides rental space for 5 business owners.

**8945 South Fry Road**



20. This Property is a one-story business strip center situated on 49,820 square feet of land with 14,630 square feet of interior space. The center provides rental space for 9 business owners.

***1997 Katy Mills Blvd***



21. This Property is a one-story business strip center situated on 44,649 square feet of land with 12,312 square feet of interior space. The center provides rental space for 7 business owners.

***9006 S. Fry Road (9006 Katy Gaston Road)***



22. This Property is a one-story business strip center situated on 62,936 square feet of land with approximately 16,300 square feet of interior space. The center provides rental space for 7 business owners.

***The Rothchild Family Policy***

23. Prior to August 25, 2017, Rothchild Family paid annual premiums, assessments, fees, surcharges, and taxes to State Auto in order to acquire comprehensive commercial insurance coverage for the Properties under State Auto's Policy No. BOP 2816131 03 (the "Rothchild Family Policy"). The Rothchild Family Policy provides coverage for Rothchild Family's Properties, for covered damages that occur during the Policy Period, from August 1, 2017 through August 1, 2018.



In exchange for Rothchild Family’s premium payment, the Rothchild Family Policy includes the following limits and coverages, in relevant part:

Building Address

15115 Westheimer Rd  
Katy, TX 77450

Construction/Protection Class

Construction: Masonry Non-Combustible  
Protection Class 01

CLASS CODE	OCCUPANCY
57635	Shopping Center - Less Than 25,000 Square Feet

COVERAGE DESCRIPTIONS

COVERED PROPERTY	LIMIT	THEFT COVERAGE	LOSS PAYMENT BASIS	AUTOMATIC INCREASE %	PREMIUM
Building	\$1,988,758	Yes	Replacement Cost	4	\$4,327

Property losses are subject to a \$5,000 deductible except as otherwise noted.

Losses due to windstorm or hail are subject to a deductible equal to 2% of the above property limits.

Building Address

14800 Westheimer  
Houston, TX 77082

Construction/Protection Class

Construction: Masonry Non-Combustible  
Protection Class 02

CLASS CODE	OCCUPANCY
67735	Shopping Center-25,000 To 50,000 Square Feet-Buildings Or Premises Not Occupied By The Insured

COVERAGE DESCRIPTIONS

COVERED PROPERTY	LIMIT	THEFT COVERAGE	LOSS PAYMENT BASIS	AUTOMATIC INCREASE %	PREMIUM
Building	\$3,479,626	Yes	Replacement Cost	4	\$8,684

Property losses are subject to a \$5,000 deductible except as otherwise noted.

Losses due to windstorm or hail are subject to a deductible equal to 2% of the above property limits.

Building Address

15015 Westheimer  
Houston, TX 77082

Construction/Protection Class

Construction: Masonry Non-Combustible  
Protection Class 01

CLASS CODE	OCCUPANCY
67735	Shopping Center-25,000 To 50,000 Square Feet-Buildings Or Premises Not Occupied By The Insured

COVERAGE DESCRIPTIONS

COVERED PROPERTY	LIMIT	THEFT COVERAGE	LOSS PAYMENT BASIS	AUTOMATIC INCREASE %	PREMIUM
Building	\$2,910,232	Yes	Replacement Cost	4	\$7,263

Property losses are subject to a \$5,000 deductible except as otherwise noted.

Losses due to windstorm or hail are subject to a deductible equal to 2% of the above property limits.

Building Address

3719 Fry Rd  
Katy, TX 77449

Construction/Protection Class

Construction: Masonry Non-Combustible  
Protection Class 02

CLASS CODE	OCCUPANCY
57635	Shopping Center - Less Than 25,000 Square Feet

COVERAGE DESCRIPTIONS

COVERED PROPERTY	LIMIT	THEFT COVERAGE	LOSS PAYMENT BASIS	AUTOMATIC INCREASE %	PREMIUM
Building	\$2,924,646	Yes	Replacement Cost	4	\$6,363

Property losses are subject to a \$5,000 deductible except as otherwise noted.

Losses due to windstorm or hail are subject to a deductible equal to 2% of the above property limits.

Building Address

920 S Fry Rd  
Katy, TX 77450

Construction/Protection Class

Construction: Masonry Non-Combustible  
Protection Class 02

CLASS CODE	OCCUPANCY
57635	Shopping Center - Less Than 25,000 Square Feet

COVERAGE DESCRIPTIONS

COVERED PROPERTY	LIMIT	THEFT COVERAGE	LOSS PAYMENT BASIS	AUTOMATIC INCREASE %	PREMIUM
Building	\$1,988,758	Yes	Replacement Cost	4	\$3,029

Property losses are subject to a \$5,000 deductible except as otherwise noted.

Losses due to windstorm or hail are subject to a deductible equal to 2% of the above property limits.

Building Address

5613 2nd St  
Katy, TX 77493

Construction/Protection Class

Construction: Non-Combustible  
Protection Class 02

CLASS CODE	OCCUPANCY
57635	Shopping Center - Less Than 25,000 Square Feet

COVERAGE DESCRIPTIONS

COVERED PROPERTY	LIMIT	THEFT COVERAGE	LOSS PAYMENT BASIS	AUTOMATIC INCREASE %	PREMIUM
Building	\$877,393	Yes	Replacement Cost	4	\$1,970

Property losses are subject to a \$5,000 deductible except as otherwise noted.

Losses due to windstorm or hail are subject to a deductible equal to 2% of the above property limits.

Building Address

5613 3rd St  
Katy, TX 77493

Construction/Protection Class

Construction: Non-Combustible  
Protection Class 02

CLASS CODE	OCCUPANCY
57635	Shopping Center - Less Than 25,000 Square Feet

COVERAGE DESCRIPTIONS

COVERED PROPERTY	LIMIT	THEFT COVERAGE	LOSS PAYMENT BASIS	AUTOMATIC INCREASE %	PREMIUM
Building	\$701,914	Yes	Replacement Cost	4	\$1,576

Property losses are subject to a \$5,000 deductible except as otherwise noted.

Losses due to windstorm or hail are subject to a deductible equal to 2% of the above property limits.

24. As evidenced by the Declarations Page, the Rothchild Family Policy provides coverage to the Properties’ physical structure on a replacement cost value basis for damages up to \$14,871,327.00. *See* Ex. A, Policy, at Declarations Pages. The Rothchild Family Policy also contains a Deductible provision that confirms coverage for damages to the interior of the Property that result from windstorm and hail.

***The Rothchild Moore Policy***

25. Prior to August 25, 2017, Rothchild Moore paid annual premiums, assessments, fees, surcharges, and taxes to State Auto in order to acquire comprehensive commercial insurance coverage for the Properties under State Auto’s Policy No. BOP 2816136 03 (the “Rothchild Moore Policy”). The Rothchild Moore Policy provides coverage for Rothchild Moore’s Properties, for covered damages that occur during the Policy Period, from August 1, 2017 through August 1, 2018. In exchange for Rothchild Moore’s premium payment, the Rothchild Moore Policy includes the following limits and coverages, in relevant part:

Building Address

8945 Fry Rd  
Katy, TX 77494

Construction/Protection Class

Construction: Masonry Non-Combustible  
Protection Class 02

CLASS CODE	OCCUPANCY
57635	Shopping Center - Less Than 25,000 Square Feet

COVERAGE DESCRIPTIONS

COVERED PROPERTY	LIMIT	THEFT COVERAGE	LOSS PAYMENT BASIS	AUTOMATIC INCREASE %	PREMIUM
Building	\$2,657,168	Yes	Replacement Cost	4	\$9,521

Property losses are subject to a \$5,000 deductible except as otherwise noted.

Losses due to windstorm or hail are subject to a deductible equal to 2% of the above property limits.

Building Address

1997 Katy Mills Blvd  
Katy, TX 77494

Construction/Protection Class

Construction: Masonry Non-Combustible  
Protection Class 02

CLASS CODE	OCCUPANCY
57635	Shopping Center - Less Than 25,000 Square Feet

COVERAGE DESCRIPTIONS

COVERED PROPERTY	LIMIT	THEFT COVERAGE	LOSS PAYMENT BASIS	AUTOMATIC INCREASE %	PREMIUM
Building	\$2,080,998	Yes	Replacement Cost	4	\$7,457

Property losses are subject to a \$5,000 deductible except as otherwise noted.

Losses due to windstorm or hail are subject to a deductible equal to 2% of the above property limits.

<u>Building Address</u>	<u>Construction/Protection Class</u>
9006 Fry Rd Katy, TX 77450	Construction: Masonry Non-Combustible Protection Class 02

<b>CLASS CODE</b>	<b>OCCUPANCY</b>
57635	Shopping Center - Less Than 25,000 Square Feet

**COVERAGE DESCRIPTIONS**

COVERED PROPERTY	LIMIT	THEFT COVERAGE	LOSS PAYMENT BASIS	AUTOMATIC INCREASE %	PREMIUM
Building	\$3,432,000	Yes	Replacement Cost	4	\$12,298

Property losses are subject to a \$5,000 deductible except as otherwise noted.

Losses due to windstorm or hail are subject to a deductible equal to 2% of the above property limits.

26. As evidenced by the Declarations Page, the Rothchild Moore Policy provides coverage to the Properties' physical structure on a replacement cost value basis for damages up to \$8,170,166.00. *See* Ex. B, Policy, at Declarations Pages. The Rothchild Moore Policy also contains a Deductible provision that confirms coverage for damages to the interior of the Property that result from windstorm and hail.

***Hurricane Harvey***

27. 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 insurance claims for Harvey related damages***

28. As a result of Harvey's extreme winds and rain when it hit Harris and Fort Bend Counties and specifically the Properties, on or about August 27, 2017, the Properties were substantially damaged. Sizeable portions of the Properties' roofs were compromised by wind. As a result, there was also interior damage to the properties. The following photographs taken after Harvey depict some of the damage:

***15115 Westheimer Road***



***14800 Westheimer Road***



*15015 Westheimer Road*

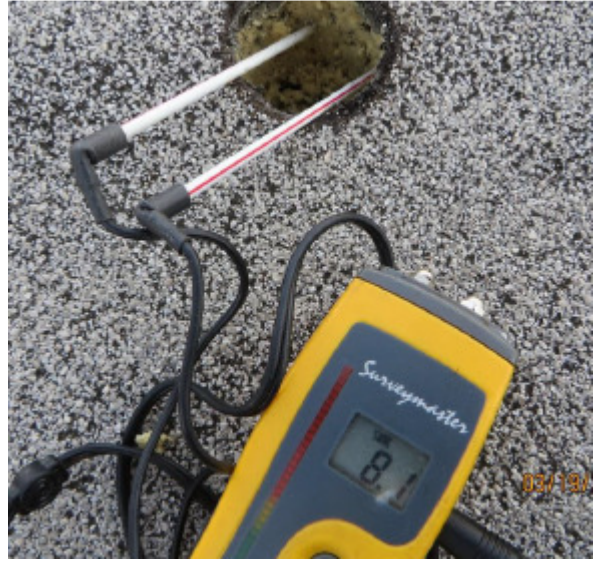


*3719 Fry Road*





***920 S. Fry Road***



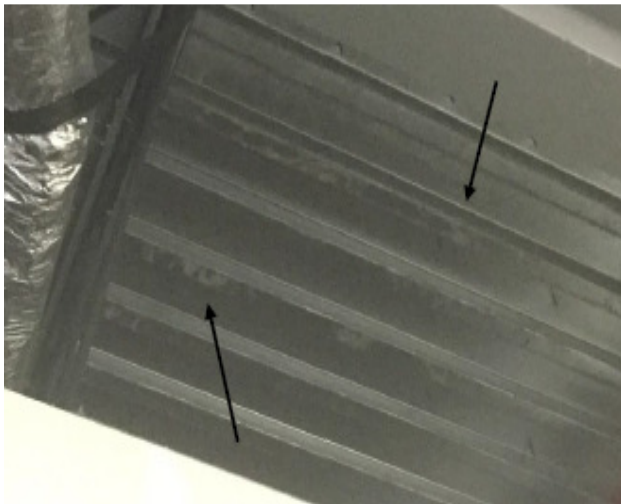
***5613 2<sup>nd</sup> Street***



**5613 3<sup>rd</sup> Street**



**8945 S. Fry Road**

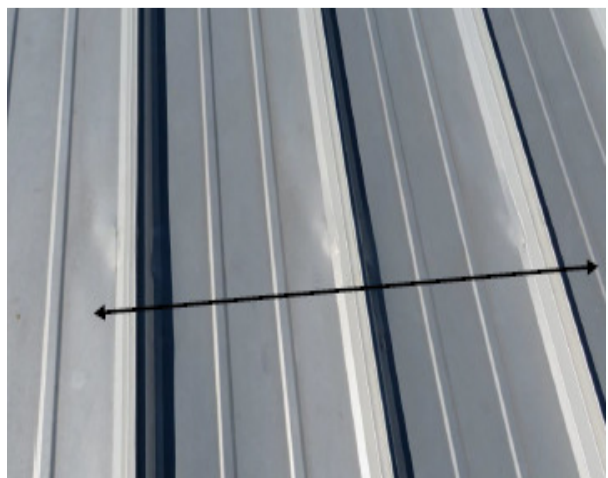




***1997 Katy Mills Blvd.***



***9006 Fry Road***



29. The Properties—specifically the roofs and ceilings—were substantially damaged by Harvey. Yet as devastating as the physical damage was, Plaintiffs felt fortunate to be protected by millions of dollars in insurance coverage it had procured to insure the properties from precisely this type of catastrophe. Immediately after the storm, Plaintiffs promptly filed claims with State Auto, alerting them to the extensive damages. This sense of security, borne of a

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

***Plaintiffs works hard to document its damages for State Auto but received denials.***

30. State Auto's claims-handling process resulted in wrongful denials that omitted the wealth of facts, physical evidence, obvious wind damages, and meteorological data from Hurricane Harvey supporting Plaintiffs' claims. State Auto unreasonably pinned the loss on anything but the wind, an action designed to save State Auto hundreds of thousands of dollars in damages to the Properties and the businesses.

31. State Auto assigned a claims adjuster, Jennifer Stivers, to handle the claims who was located in Ohio. Stivers was unqualified and incapable of adequately assessing the damages to the Properties and was the source of many delays throughout the claims process. After inspecting the Properties, State Auto and Stivers continued to delay claim resolution and ignored the insureds' requests for updates.

32. Finally, State Auto ultimately denied the claims on October 5, 2017 and October 13, 2017. *See Ex. C*, the "Denial Letters." According to Stivers, Plaintiffs' claims were denied on the basis that "no wind/storm related damages to the building" on 9 out of 10 properties. This conclusion was based on an outcome-oriented investigation aimed at denying Plaintiffs' claims from the outset. State Auto, its adjusters, and consultants ignored obvious catastrophic wind damage to the Properties, and refused to consider that Harvey's considerable winds were actually the source of damages. The claims adjustment process was unnecessarily complicated, disorganized, and conducted behind closed doors until State Auto ultimately wrongfully refused to compensate its insureds for any of the obvious covered damages under the Policies.



33. To this day, due to State Auto's outcome-oriented, inadequate, and haphazard investigation, State Auto has refused to pay for any covered damages under the Policies.

***State Auto ignores Plaintiffs' demand letter***

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

35. In compliance with Section 542A.003, Plaintiffs gave its pre-suit notice to State Auto on May 11, 2018. The pre-suit notice provided a comprehensive outline of Plaintiffs' claims and damages, quantified its loss, and even offered to waive a formal claim for attorneys' fees if the contractual amounts were paid promptly.

36. State Auto responded with another blanket denial.

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

37. Plaintiffs re-alleges and incorporates each allegation contained in Paragraphs 1-36 of this Complaint as if fully set forth herein.

38. State Auto 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).

39. State Auto failed to adopt and implement reasonable standards for prompt investigation of the claims arising under its policies.

40. State Auto 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).

41. State Auto 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).

42. State Auto 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). State Auto misrepresented the insurance policies to Plaintiffs, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

43. State Auto 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). Defendant 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).

44. State Auto misrepresented the insurance policies 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). Defendant misrepresented the insurance policies 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).

45. State Auto 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**

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

47. State Auto failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

48. State Auto failed to timely commence investigations of the claims or to request from Plaintiffs any additional items, statements or forms that State Auto reasonably believed to be required from Plaintiffs in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

49. State Auto failed to notify Plaintiffs in writing of the acceptance or rejection of the claims not later than the 15<sup>th</sup> business day after receipt of all items, statements and forms required by Defendant in violation of Texas Insurance Code Section 542.056(a).

50. State Auto delayed payments of Plaintiffs' claims in violation of Texas Insurance Code Section 542.058(a).

51. 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**

52. Plaintiffs re-alleges and incorporates each allegation contained in Paragraphs 1-50

of the Complaint as if fully set forth herein.

53. Plaintiffs 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**

54. Plaintiffs re-alleges and incorporates each allegation contained in Paragraphs 1-52 of the Complaint as if fully set forth herein.

55. As outlined above, State Auto breached its contracts with Plaintiffs by refusing to pay for covered damages under the Policy. As a result of State Auto's breach, Plaintiffs suffered legal damages.

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

56. Plaintiffs re-alleges and incorporates each allegation contained in Paragraphs 1-54 of the Complaint as if fully set forth herein.

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

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

58. Plaintiffs re-alleges and incorporates each allegation contained in Paragraphs 1-56 of this Complaint as if fully set for herein.

59. Defendant acted fraudulently and with malice (as that term is legally defined) in denying and delaying Plaintiffs' claims 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 Plaintiffs.

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

60. Plaintiffs re-alleges and incorporates each allegation contained in Paragraphs 1-58 of this Complaint as if fully set forth herein.

61. 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.

62. 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**

63. Plaintiffs are 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 denials and delays 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.

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

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

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

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

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

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

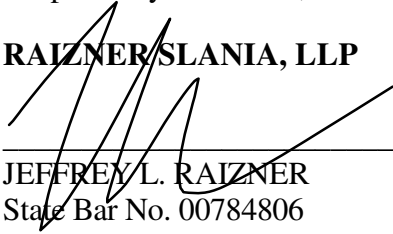
70. Plaintiffs are entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, Texas Insurance Code 542.060(a)-(c), and Tex. Bus & Commerce Code §17.50.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, 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,

**RAIZNER/SLANIA, LLP**

  
\_\_\_\_\_  
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Southern District Bar No. 15277

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**ATTORNEYS FOR PLAINTIFFS**

**JURY DEMAND**

*Plaintiffs 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.*



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**JEFFREY L. RAIZNER**