

Cause No. _____

SACHI TRADING, LLC	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff</i>	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
CERTAIN UNDERWRITERS AT	§	
LLOYD’S, LONDON – BRIT	§	
SYNDICATE 2987 and	§	
HIBBS-HALLMARK & CO.	§	
	§	
<i>Defendants</i>	§	_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION & JURY DEMAND

Plaintiff SACHI TRADING, LLC (“Sachi” or “Plaintiff”) files this Original Petition & Jury Demand against Defendants CERTAIN UNDERWRITERS AT LLOYD’S, LONDON – BRIT SYNDICATE 2987 (“Lloyd’s” or “Carrier”) and HIBBS-HALLMARK & CO (“Hibbs”) (collectively “Defendants”) and would respectfully show the following:

Discovery Control Plan

1.1 Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

Parties

2.1 Sachi Trading, LLC is a domestic limited liability company in the State of Texas.

2.2 Lloyd’s is a foreign insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Lloyd’s regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Lloyd’s may be served with process by serving **Walker Wilcox Matousek, LLP, One North Franklin, Suite 3200, Chicago, IL 60606.**

2.3 Hibbs is a domestic for-profit corporation which maintains its principal place of business in Texas. Hibbs regularly conducts the business in a systematic and continuous and systematic manner in the State of Texas and can be served with process through its registered agent, **Billy Hibbs, 501 Shelley Drive, Tyler, Texas 75701.**

Venue & Jurisdiction

3.1 Venue is proper in Harris County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(1) as all or a substantial part of the events or omissions giving rise to this claim occurred in Harris County. In particular, Plaintiff's property and business that is the subject of this suit is located in Harris County, Texas. Additionally, the policy at issue was marketed and sold to Plaintiff in Harris County, Texas. Adjustment of the claim by Defendants for losses under the policy (including payments to be made to Plaintiff under the policy) were conducted in Harris County, Texas. Investigations and policy representations, including communications to and from Defendants and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred in Harris County, Texas.

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

Factual Background

4.1 This suit arises from Defendants' wrongful acts in the handling of Plaintiff's claim under its insurance policy for damages caused by a detrimental fire and from additional wrongful acts or omissions related to the procurement and sale of the insurance policy which forms the basis of this suit.

4.2 Sachi is a scrap metal dealing business that processes metal and then sells it to mills for profit. Sachi's business is located on almost four acres of land at 7218 East Mount Houston Road, Houston, Texas 77050 in Harris County, Texas. The property consists of a large scrap metal yard, a main office building, and several covered areas throughout the property. The damaged business equipment that is part of the subject of this lawsuit, which is used to process the metal, includes the following: a Hyundai Excavator ("Excavator"); Hammel 950 DK Mobil Shredder ("Shredder"); Mobil Metal Separator 150 DK ("MMS"), Mobile Eddy Current Separator ("Eddy"); and a Kinshofer Shear ("Shear") (collectively referred to as the "Property"). The Eddy is powered by the MMS.

4.3 Hibbs is an insurance agency. On or before May 5, 2017, Hibbs and Lloyd's marketed and sold a Commercial Insurance Policy bearing Policy No. IM103217 (the "Policy") to Sachi whereby Lloyd's would provide coverage for Plaintiff's business equipment, the Property, for covered damages that occur during the Policy Period in exchange for the timely payment of premiums. *See* Exhibit "A". The Policy provides coverage for damages to the Property up to total limits of \$2,413,300.00 and also provides coverage for lost business income to Sachi up to \$500,000.00. *See* Exhibit "A".

4.4 At the time that Hibbs and Lloyd's sold the insurance policy to Sachi, the Property was being used in accordance with Plaintiff's customary business operations, as a scrap metal dealer, which is confirmed on the face of the Policy as well. *See* Exhibit "A". After completing an underwriting process to their own satisfaction, Hibbs and Lloyd's marketed and sold the Policy to Sachi. The Policy was sold by Hibbs and Lloyd's

to Sachi as the insured under the Policy and provides coverage to the Sachi for damages caused by fire.

4.5 On May 5, 2017, a catastrophic fire broke out at the Property. As a result, the business equipment at the Property was severely damaged. In addition to damaging the business equipment, Plaintiff lost extensive business income as a result of the fire damages to the property. The Separator and the Shredder were completely destroyed. The Excavator and the Shear were also damaged.

4.6 With the loss of the Shredder and the damaged Shear, Sachi had no equipment to prepare their scrap metal. The result was the lost business on significant material that could have been purchased and sold to mills for a profit in the course of Sachi's ordinary business operations. Because Sachi could not use its own business property to process the metal, Sachi was forced to resell bulk material after the fire in May 2017. The post-fire material had to be processed manually and also incurred higher labor costs.

4.7 At the time of the fire, the Property was being utilized in accordance with Plaintiff's customary operations and business design, which was the same way the Property was being used when the Policy was applied for and sold to Sachi. Soon after the fire, Sachi filed an insurance claim under the Policy with the insurance company Lloyd's for the substantial damages to the Property and lost business income. Sachi asked that the cost of the damages be covered pursuant to the Policy, but Lloyd's has refused to make a full payment on the Plaintiff's claim.

4.8 Unfortunately, Lloyd's, a foreign insurance company, has a significant history in Texas of conducting arbitrary, outcome-oriented investigations intended to deny righteous claims. Lloyd's 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 Sachi in contravention of the Texas Insurance Code.

4.9 Lloyd's conducted an unreasonable and inadequate investigation of the damages to the equipment and looked to find policy exclusions in order to deny the claim. Lloyd's wrongfully denied, underpaid, and delayed Plaintiff's claim for actual damages to the Property and lost business income. Specifically, Lloyd's has chosen to continue to deny and delay timely payment of the damages.

4.10 Even though Lloyd's has acknowledged coverage for fire damages to some of the Property, the foreign company has utilized biased and preferred vendor consultants Engle Martin & Associates and NARS to minimize the amount payable under the Policy. Moreover, Lloyd's has completely declined to pay for any damages to the Shear, representing instead that there is no coverage for this important piece of equipment. For the damages that Lloyd's has acknowledged, the payments have been partial at best. On August 21, 2017, Sachi received a check from Lloyd's for "undisputed" damages. These "undisputed" damages do not account for the actual damages to the Property. Lloyd's has refused to pay for all the coverages under the Policy, incorrectly calculated damages to the Property, applied wrong calculations to damaged equipment and wrongfully reduced lost business income, ignored Sachi's substantial documentation and calculations of actual damages covered under the Policy, and has refused to provide any explanation for its conduct. Sachi has provided Lloyd's with extensive documents and attempted to work with their chosen consultants to no avail. As a result, Sachi has not been fully paid the benefits under the Policy provided and sold to it by Hibbs and Lloyd's.

4.11 Hibbs, the agency that sold the Policy to Sachi, claimed and falsely represented to Sachi that damages caused by fire, among other things, would be, and indeed *are* covered by the Policy to all of Plaintiff's property, including the Shear. Plaintiff trusted and relied upon the experience of Hibbs to procure the appropriate coverage for its specialized business needs, and Hibbs acted as the agent of Lloyd's in connection with the procurement of coverage. Hibbs led Sachi to believe that the insurance policy secured would cover its business personal property and business income in the event of standards perils, including a fire loss.

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

4.13 Unfortunately, Lloyd's has delayed payment for Plaintiff's necessary and covered property repairs under its insurance policy. Given the repeated delays of payment, Sachi has been subjected to significant economic impact, worry, distress, and continuing economic and physical damage. In addition, Sachi has suffered financial harm and damage as a result of Lloyd's improper refusals, wrongful denial and underpayment, and repeated delays. The significant effect of Hibbs and Lloyd's wrongful and unjustified conduct, however, is still uncompensated.

FIRST CAUSE OF ACTION---Violations of Texas Insurance Code

5.1 Sachi re-alleges and incorporates each allegation contained in Paragraphs 1-4.13 of this Complaint as if fully set forth herein.

5.2 Lloyd's failed to attempt to effectuate a prompt, fair, and equitable settlement of a claim with respect to which liability has become reasonably clear, in violation of Texas Insurance Code Section 541.060 (a)(2)(A).

5.3 Lloyd's failed to adopt and implement reasonable standards for prompt investigation of the claim arising under its policy.

5.4 Lloyd's failed to provide promptly a reasonable explanation, in relation to the facts or applicable law, for the denial of a claim, in violation of Texas Insurance Code Section 541.060 (a)(3).

5.5 Lloyd's 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).

5.6 Hibbs and Lloyd's misrepresented the insurance policy under which it affords property coverage to Sachi, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Hibbs and Lloyd's misrepresented the insurance policy to Sachi, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

5.7 Hibbs and Lloyd's misrepresented the insurance policy under which it affords property coverage to Sachi 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). Hibbs and Lloyd's misrepresented the insurance policy to Sachi by failing to state a material fact that is necessary to make other statements made not misleading, in violation of Texas Insurance Code Section 541.061 (2).

5.8 Hibbs and Lloyd's misrepresented the insurance policy under which it affords property coverage to Sachi 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). Hibbs and Lloyd's

misrepresented the insurance policy to Sachi by making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of material fact, and failing to disclose a matter required by law to be disclosed, in violation of Texas Insurance Code Section 541.061 (3) and Texas Insurance Code Section 541.002 (1).

5.9 Hibbs and Lloyd's 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 Sachi re-alleges and incorporates each allegation contained in Paragraphs 1-5.9 of this Complaint as if fully set forth herein.

6.2 Lloyd's failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

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

6.4 Lloyd's failed to notify Sachi 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 Defendants in violation of Texas Insurance Code Section 542.056(a).

6.5 Lloyd's delayed payment of Sachi's claim in violation of Texas Insurance Code Section 542.058(a).

6.6 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 Sachi's damages.

THIRD CAUSE OF ACTION---Statutory Interest

7.1 Sachi re-alleges and incorporates each allegation contained in Paragraphs 1-6.6 of the Complaint as if fully set forth herein.

7.2 Sachi 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.

FOURTH CAUSE OF ACTION---Breach of Contract

8.1 Sachi re-alleges and incorporates each allegation contained in Paragraphs 1-7.2 of the Complaint as if fully set forth herein.

8.2 As outlined above, Lloyd's breached its contract with Sachi by refusing to pay for covered damages under the Policy. As a result of Lloyd's breach, Sachi suffered legal damages.

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

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

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

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

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

10.2 Defendants acted fraudulently and with malice (as that term is legally defined) in denying and delaying Sachi's 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 Sachi.

SEVENTH CAUSE OF ACTION---Violations Of Texas DTPA

11.1 Sachi re-alleges and incorporates each allegation contained in Paragraphs 1-10.2 of this Complaint as if fully set forth herein.

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

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

EIGHTH CAUSE OF ACTION—Fraud

12.1 Sachi re-alleges and incorporates each allegation contained in Paragraphs 1-11.3 of this Complaint as if fully set forth herein.

12.2 Hibbs and Lloyd's acted fraudulently as to each representation made to Sachi concerned material facts for the reason they would not have acted and which Hibbs and Lloyd's knew were false or made recklessly without any knowledge of their truth. The representations were made with the intention that they be acted upon by Sachi, who relied on those representations, thereby causing injury and damage to Sachi.

NINTH CAUSE OF ACTION---Negligence

13.1 Sachi re-alleges and incorporates each allegation contained in Paragraphs 1-12.2 of this Complaint as if fully set forth herein.

13.2 Hibbs owed a duty Sachi to obtain appropriate insurance coverage for Plaintiff's equipment, or if they could not obtain the requested coverage, to notify Sachi of same. Hibbs failed to properly obtain appropriate insurance coverage for Sachi and failed to notify Sachi of their misrepresentations and other failures. Hibbs breached their duties to obtain appropriate insurance coverage for Sachi and this breach was a proximate cause of Plaintiff's damages.

TENTH CAUSE OF ACTION---Negligent Misrepresentation

14.1 Sachi re-alleges and incorporates each allegation contained in Paragraphs 1-13.2 of this Complaint as if fully set forth herein.

14.2 In the course of a business or a transaction in which Hibbs had interest, Hibbs negligently misrepresented to Sachi that they were obtaining appropriate insurance coverage for Plaintiff's specialized business and equipment. Hibbs supplied false information for Sachi to consider in purchasing its insurance policy and failed to exercise reasonable care or competence in communicating or obtaining information regarding the Property and policy coverages and exclusions. Sachi justifiably relied on Hibbs' representations that it had secured appropriate coverage for its property. Hibbs' negligent misrepresentations proximately caused Plaintiff's damages.

KNOWLEDGE

15.1 Each of the actions described herein were done "knowingly" as that term is used in the Texas Insurance Code and were a producing cause of Plaintiff's damages.

RESULTING LEGAL DAMAGES

16.1 Sachi is entitled to the actual damages resulting from the Defendants' violations of the law. These damages include the consequential damages to its economic welfare from the wrongful denial and delay of benefits including loss of the property and business; and the other actual damages permitted by law. In addition, Sachi is entitled to exemplary damages.

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

16.3 Sachi is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

16.4 Defendants' knowing violations of the Texas Insurance Code and DTPA entitle Sachi to the attorneys' fees, treble damages, and other penalties provided by law.

16.5 Sachi is entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

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

16.7 Sachi is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

16.8 Sachi is entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, the Texas Insurance Code 542.060(a)-(c), the Tex. Bus & Commerce Code §17.50 and Tex. Civ. Prac. & Rem. Code §37.009.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully request that Plaintiff have judgment against Defendants for actual damages in excess of the minimum jurisdictional limits of this Court, pre- and post-judgment interest as allowed by law, costs of suit, and all other relief, at law or in equity, to which Plaintiff may be entitled.

Respectfully submitted,

RAIZNER SLANIA, LLP



JEFFREY L. RAIZNER
State Bar No. 00784806
ANDREW P. SLANIA
State Bar No. 24056338
AMY B. HARGIS
State Bar No. 24078630
2402 Dunlavy Street
Houston, Texas 77006
Phone: 713.554.9099
Fax: 713.554.9098
efile@raiznerlaw.com
ATTORNEYS FOR PLAINTIFF

JURY DEMAND

Sachi Trading, LLC 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