

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

TEXAS J & I LIMITED PARTNERSHIP	§	
	§	
<i>Plaintiff</i>	§	
	§	
v.	§	Civil Action No. 4:18-cv-1554
	§	
UNDERWRITERS AT LLOYD’S, LONDON	§	
	§	
<i>Defendant</i>	§	

PLAINTIFF’S ORIGINAL COMPLAINT & JURY DEMAND

Plaintiff TEXAS J & I LIMITED PARTNERSHIP (“Texas J&I” or “Plaintiff”) files this Original Complaint & Jury Demand against Defendant UNDERWRITERS AT LLOYD’S, LONDON (“Underwriters” or “Defendant”) and would respectfully show the following:

Parties

1. Texas J&I is a domestic limited partnership in the State of Texas.
2. Lloyd’s is a foreign surplus lines 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. According to its insurance policy, Lloyd’s may be served with process by serving **Messers Mendes & Mount, 750 7th Avenue, New York, NY 10019.**

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. Texas J&I owns and operates the commercial property located at 7355 Highway 6 South, Houston, Texas 77073 in Harris County, Texas (the “Property”).





The Property is a single-story structure situated on 331,056 square feet of land with 109,609 square feet of interior space.

Underwriters at Lloyd's London

6. Underwriters at Lloyd's, London operates as the most prolific surplus lines, commercial insurer in the State of Texas – by a sizeable margin. In 2017, all surplus lines insurers operating in Texas wrote on a combined basis approximately \$5.5 billion in premiums. Of that, \$1.5 billion was written by Underwriters at Lloyd's London, with the next largest entity writing approximately \$250 million in premiums. *See, https://www.sltx.org/TexasMarketData/slrp33cow_2017_bypremium.pdf.* With about 28% of the lucrative Texas market for commercial insurance, Underwriters at Lloyd's, London dominates the market as the largest participating insurance entity by a sizeable margin. Texas is one of the largest and most important markets for Lloyd's, and its Texas premiums represent about 10% of the total \$15 billion in premiums that Lloyd's writes annually throughout the United States.

7. Despite its critical place in the market, few business consumers recognize Underwriters at Lloyd's, London for what it really is. Even though it maintains market hegemony in Texas and many other states, Lloyd's is actually licensed in only Illinois, Kentucky and the US Virgin Islands. In every other state – most notably in Texas – Lloyd's operates as an unlicensed surplus lines insurer that is neither admitted as an insurer in the state nor subject to traditional regulation by state regulators such as the Texas Department of Insurance.

8. Historically, Lloyd's capital requirements were satisfied by investors called "members," each of whom bore unlimited liability for the insurance risks that Lloyd's underwrote. Today, institutional investors, typically international insurance companies, comprise the members that form most Lloyd's syndicates operating in Texas. These alien syndicates are nothing more than foreign insurance companies utilizing Lloyd's eligibility to write insurance in the lucrative Texas market. The Policy at issue is a prime example of this abuse. The Policy was underwritten by 2 distinct Lloyd's syndicates, each of whom is a foreign, unlicensed, non-admitted, ineligible entity. Their only legal nexus to writing insurance in this state is by essentially piggybacking on Lloyd's surplus lines eligibility – in other words, borrowing Lloyd's license in order to operate in Texas from foreign shores. Demonstrative of this alarming trend, the Policy reflects the following participating syndicates and their share of the risk under the Policy:

Beazley Lloyd's Syndicate 2623-82%
Beazley Lloyd's Syndicate 623-18%
Unique Market Reference: B6012BUSA17

9. None of these insurers are licensed to write insurance in Texas. None are admitted carriers. None appear to have one single employee in this state. None has complied with any Texas regulatory requirement. Each of these foreign entities is essentially borrowing Lloyd's

eligibility to write insurance in Texas, to the detriment of small business consumers like Texas J&I.

The Policy

10. Prior to August 26, 2017, Texas J&I paid \$19,950.00 in annual premiums, assessments, fees, surcharges, and taxes to Underwriters to acquire comprehensive commercial insurance coverage for the Property and the business under Underwriters' Policy No. W1AF9D170201 (the "Policy"). The Policy provides coverage for Texas J&I's business and the Property, for covered damages that occur during the Policy Period, from March 16, 2017 through March 16, 2018. In exchange for Texas J&I's premium payment, the Policy includes the following limits and coverages, in relevant part:

COVERAGES PROVIDED			
Insurance at the Described Premises applies only for Coverages for which a Limit of Insurance is shown			
Prem. No./ Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss
001/001	Buildings Rental Income	\$3,980,000 Per Occurrence	Special Form (ISO)

Total LIMIT OF INSURANCE in any one occurrence for all above coverages combined: \$3,980,000

Coinsurance	Valuation	Coverages
80 %	Actual Cash Value	Buildings
1/3	Monthly Limitation	Rental Income

PREMIUM:	
\$19,950	Policy Premium
Declined	Certified Acts of Terrorism Premium
\$0	Inspection Fees
\$19,950.00	Total Premium for above stated Policy Period

11. As evidenced by the Declarations Page, the Policy provides coverage to the Property's physical structure for up to \$3,980,000. (*See Ex. A, Policy, at Declarations Pages.*)

12. The Policy also contains a Deductible provision that provides coverage for damages to the interior of the Property that result from a “Peril(s)” (such as wind) to the roof or walls, including damages caused by wind driven rain:

DEDUCTIBLE		
Deductible	Peril(s)	Coverage(s)
5.00 % Of Values Per Building, Per Occurrence \$25,000 Minimum Per Occurrence	Named Storm	Buildings Rental Income
\$25,000 Per Occurrence All Other Wind	Wind, Wind Driven Rain, Hail	Buildings Rental Income
\$10,000 Per Occurrence	All Other Perils	Buildings Rental Income

Notwithstanding any provision to the contrary within this Policy or any endorsement thereto, it is understood and agreed the following definition applies to this Policy:

Named Storm Definition

Named Storm is defined as a storm that:

1. Has been assigned a named by the National Hurricane Center; and
2. Includes the 72 hours immediately following the downgrading of a Named Storm, as declared by the National Hurricane Center;

Named Storm Cause of Loss also includes loss resulting from:

1. Rain or wind driven rain which enters the insured building or structure through an opening created by the force of a Named Storm;
2. One or more tornadoes that are a result of actions or effects of a Named Storm; and
3. Any object, material or debris that is carried, propelled or in any manner moved by a Named Storm.

(See *id.*, Policy.)

Hurricane Harvey

13. 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

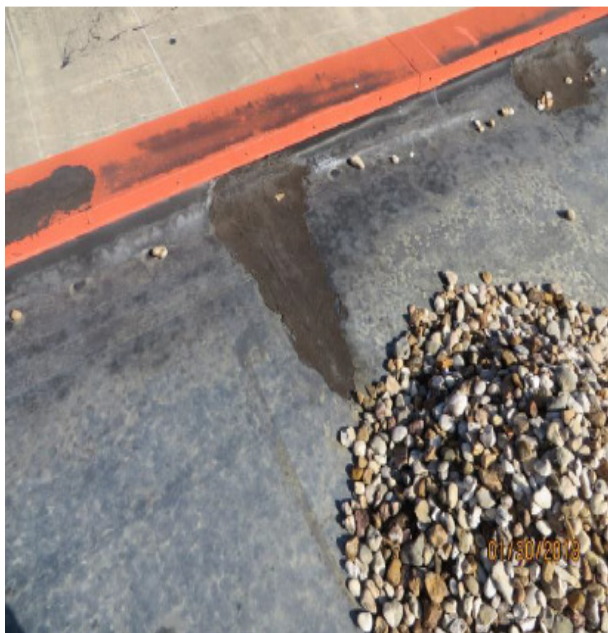
and rain continued to travel through the southeast part of Texas, inflicting billions of dollars in damages to private and public property in Fort Bend County and Harris County alone. The Texas Division of Emergency Management incurred more than \$439 million in costs associated with debris removal, 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.

Texas J&I makes an insurance claim for Harvey related damage

14. 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, causing water intrusion and substantial interior damage. The following photographs taken after Harvey depict some of the interior damage alone:



15. There was also significant damage to the roof and insulation:



16. The Property—specifically the roof, ceilings, and electrical parts of the physical structure were damaged by Harvey. Yet as devastating as the physical damage was, Texas J&I felt fortunate to be protected by the almost \$4,000,000 in insurance coverage it had procured to insure the property from precisely this type of catastrophe. Immediately after the storm, Texas J&I promptly filed a claim with Underwriters, alerting them to the extensive damages. This sense of security, borne of a pricey contractual relationship, would prove illusory as Underwriters began their investigation and handling of the claim.

Texas J&I works hard to document its damages for Underwriters but received a denial.

17. Underwriters' 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 Texas J&I's claim. Underwriters unreasonably pinned the loss on anything but the wind, an action designed to save Underwriters hundreds of thousands of dollars in damages to the Property and the business. In an effort to assist Underwriters with the claims

process and to mitigate any further damages to the Property, Texas J&I engaged a public adjuster to assist with estimating some of the repair costs. Underwriters and their preferred vendor, Vericclaim, Inc., ignored the evidence.

18. Although Underwriters has, to date, provided no clear documentation of their inspection or findings, it denied the claim in full on December 26, 2017. (*See* Ex. B, Dec. 26, 2017 letter (the “Denial Letter.”) According to Regional General Adjuster Scott Gardner, who apparently works out of Vericclaim’s offices in Philadelphia, PA, Texas J&I’s claim was denied in full on the basis that water entry was “related to deficiencies with evidence of long term leaks and deterioration.” (*Id.* at 1.)

19. In the Denial Letter, Underwriters quoted the opinions of someone named Don Pool, an engineer Underwriters claims to have hired to support its conclusions. If any estimates were in fact prepared, none of those documents or explanations have been provided to Texas J&I. Instead, Underwriters simply denied the claim and closed the file.

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

Underwriters ignores Texas J&I’s demand letter

21. 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 Texas J&I to avoid protracted litigation over a clear claim.

22. In compliance with Section 542A.003, Texas J&I gave its pre-suit notice to Underwriters on February 27, 2018. The pre-suit notice provided a comprehensive outline of Texas J&I'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.

23. Underwriters responded on March 27, 2018 with another blanket denial and rote recitation of the points in the Denial Letter.

Count 1 – Violations of Texas Insurance Code, Section 541

24. Texas J&I re-alleges and incorporates each allegation contained in Paragraphs 1-19 of this Complaint as if fully set forth herein.

25. Underwriters 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).

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

27. Underwriters 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).

28. Underwriters 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).

29. Underwriters misrepresented the insurance policy under which it affords property coverage to Texas J&I, by making an untrue statement of material fact, in violation of Texas

Insurance Code Section 541.061 (1). Underwriters misrepresented the insurance policy to Texas J&I, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

30. Underwriters misrepresented the insurance policy under which it affords property coverage to Texas J&I 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 Texas J&I 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).

31. Underwriters misrepresented the insurance policy under which it affords property coverage to Texas J&I 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 Texas J&I 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).

32. Underwriters 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

33. Texas J&I re-alleges and incorporates each allegation contained in Paragraphs 1-28 of this Complaint as if fully set forth herein.

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

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

36. Underwriters failed to notify Texas J&I 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).

37. Underwriters delayed payment of Texas J&I's claim in violation of Texas Insurance Code Section 542.058(a).

38. 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 Texas J&I's damages.

Count 3 – Statutory Interest

39. Texas J&I re-alleges and incorporates each allegation contained in Paragraphs 1-34 of the Complaint as if fully set forth herein.

40. Texas J&I 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

41. Texas J&I re-alleges and incorporates each allegation contained in Paragraphs 1-36 of the Complaint as if fully set forth herein.

42. As outlined above, Underwriters breached its contract with Texas J&I by refusing to pay for covered damages under the Policy. As a result of Underwriters breach, Texas J&I

suffered legal damages.

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

43. Texas J&I re-alleges and incorporates each allegation contained in Paragraphs 1-38 of the Complaint as if fully set forth herein.

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

Count 6 – Punitive Damages for Bad Faith

45. Texas J&I re-alleges and incorporates each allegation contained in Paragraphs 1-40 of this Complaint as if fully set for herein.

46. Defendant acted fraudulently and with malice (as that term is legally defined) in denying and delaying Texas J&I'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 Texas J&I.

Count 7 – Violations of Texas Deceptive Trade Practices Act

47. Texas J&I re-alleges and incorporates each allegation contained in Paragraphs 1-42 of this Complaint as if fully set forth herein.

48. 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.

49. Each of the actions described herein were done “knowingly” as that term is used in the DTPA and were a producing cause of Texas J&I’s damages.

Resulting Legal Damages

50. Texas J&I 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, Texas J&I is entitled to exemplary damages.

51. As a result of Defendant’s acts and/or omissions, Texas J&I has sustained damages in excess of the minimum jurisdictional limits of this Court.

52. Texas J&I is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

53. Defendant’s knowing violations of the Texas Insurance Code and DTPA entitle Texas J&I to the attorneys’ fees, treble damages, and other penalties provided by law.

54. Texas J&I is entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

55. As a result of Defendant’s acts and/or omissions, Texas J&I has sustained damages in excess of the jurisdictional limits of this Court.

56. Texas J&I is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

57. Texas J&I 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

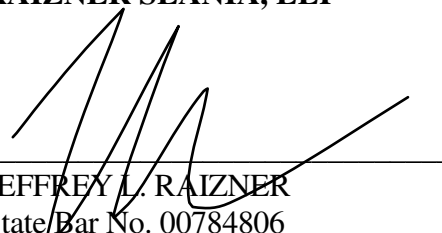
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PRAYER

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,

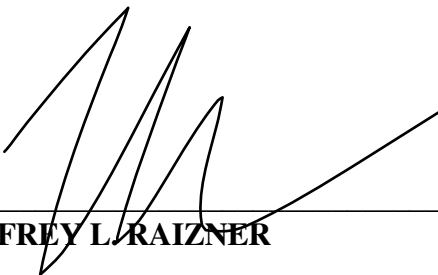
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JURY DEMAND

Texas J&I 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