

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

TRI INVESTMENTS, INC.  
*Plaintiff,*

§  
§  
§  
§  
§  
§  
§  
§

v.

Civil Action No. 5:18-cv-00116

UNITED FIRE & CASUALTY  
COMPANY  
*Defendant.*

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

Plaintiff TRI INVESTMENTS, INC. (“Plaintiff”) files this Original Complaint & Jury Demand against Defendant UNITED FIRE & CASUALTY COMPANY (“United Fire” or “Defendant”) and would respectfully show the following:

**Parties**

1. Tri Investments, Inc. is a domestic for-profit corporation located and operating in the State of Texas.

2. Upon information and belief United Fire is a foreign fire and casualty insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. United Fire regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. United Fire may be served with process by serving its registered agent certified mail, return receipt requested, to **Joe Johnson, 455 E Med Center Blvd Ste 400, Webster TX 77598-4398.**

**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 properties and a business located and operating in Webb County, Texas, and all or a substantial part of the events giving rise to the claims described herein occurred in Webb County, Texas. In particular, the insurance policy at issue and of which Plaintiff is the beneficiary were to be performed in Webb County, Texas and the losses under the policy (including payments to be made to Plaintiff under the policy) were required to be made in Webb County, Texas. Further, investigation, including communications to and from Defendant and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred in Webb County, Texas.

### **Factual Background**

#### ***The Properties***

5. Tri Investments, Inc. owns and operates the commercial properties located at 442 Logistic Drive, Laredo, Texas 78045 and 301 Flecha Lane, Laredo, Texas 78045, in Webb County, Texas.

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

#### ***442 Logistic Drive***



7. This property is a one-story commercial building situated on 129,939.48 ft<sup>2</sup> of land with 22,652 ft<sup>2</sup> of interior space. The building and land service as a commercial freight terminal.

***301 Flecha Lane, Laredo, Texas 78045***



8. This property is a one-story building situated on 43,560ft<sup>2</sup> of land with 10,336 ft<sup>2</sup> of interior space. The building and land service as a commercial freight terminal.

***The Tri Investments, Inc. Policy***

9. Prior to May 21, 2017, Tri Investments, Inc. paid annual premiums, assessments, fees, surcharges, and taxes to United Fire in order to acquire comprehensive commercial insurance coverage for the Properties under United Fire’s Policy No. 85318342 (the “Tri Investments, Inc. Policy”). The Tri Investments, Inc. Policy provides coverage for Tri Investments’ Properties, for covered damages that occur during the Policy Period, from April 15, 2017 through April 15, 2018. In exchange for Tri Investments’ premium payment, the Tri Investments’ Policy includes the following limits and coverages, in relevant part:

POLICY PERIOD: 12:01 A.M. Standard time FROM: 04-15-2017 TO: 04-15-2018  
 And for successive policy periods as stated below.

We will provide the insurance described in this policy in return for the premium and compliance with all applicable policy provisions. If we elect to continue this insurance, we will renew this policy if you pay the required renewal premium for each successive policy period, subject to our premiums, rules and forms then in effect. You must pay us prior to the end of the current policy period or else this policy will terminate after any statutorily required notices are mailed to you. An insufficient funds check is not considered payment.

PREM/ BLDG	DESCRIBED PREMISES AND COVERAGES	LIMIT OF INSURANCE	RATE	PREMIUM
	EQUIPMENT BREAKDOWN			149
	ULTRA PROPERTY PLUS			381
	BUSINESS INCOME INCL RENTAL VALUE-WITH EE	100,000		Incl
	WATER BACKUP	5,000		Incl
01 01	442 LOGISTICS LAREDO TX 78045-8930 MASONRY NON-COMBUSTIBLE FREIGHT TERMINALS			
	BUILDING	1,265,700	.177	2,241
	Special Causes of Loss	1,000 Ded		
	Replacement Cost	80% Coins		
	Automatic Valuation Adjustment			
	YOUR BUSINESS PERSONAL PROPERTY	112,600	.258	291
	Special Causes of Loss	1,000 Ded		
	Replacement Cost	80% Coins		
	4% Inflation Guard			
	ADDITIONAL INTEREST - 1st Mortgagee COMPASS BANK			
	PO BOX 10343 CONTINUED ON CP7002			

ABBREVIATIONS: BLDG=BUILDING COINS=COINSURANCE DED=DEDUCTIBLE INCL=INCLUDED PREM=PREMISES

PREM/ BLDG	DESCRIBED PREMISES AND COVERAGES	LIMIT OF INSURANCE	RATE	PREMIUM
01 01	CONTINUED BIRMINGHAM AL 35202-0343			
02 01	301 FLECHA LN LAREDO TX 78045-7095 NON-COMBUSTIBLE FREIGHT TERMINALS			
	BUILDING	336,000	.225	756
	Special Causes of Loss	1,000 Ded		
	Replacement Cost	80% Coins		
	Automatic Valuation Adjustment			
	ADDITIONAL INTEREST - 1st Mortgagee COMPASS BANK			
	700 SAN BERNARDO AVE LAREDO TX 78040-5025			
	Certified Acts of Terrorism Coverage			76

## FORMS SUPPLEMENTAL DECLARATIONS

The following coverage form(s) govern coverage that is not limited to any specific state even though they are specifically listed in only one state in the declarations.

## Other Forms

## Applicable to the state of Texas

CP0010(10-12)	BLDG & PERSONAL PROP COVG FORM
CP0090(07-88)	COMM PROP CONDITIONS
CP0140(07-06)	EXCL OF LOSS DUE TO VIRUS/BACTERIA
CP0142(03-12)	TX-CHGS
CP1030(10-12)	CAUSES OF LOSS-SPECIAL FORM
*CP7001(12-92)	COMM PROP DEC
*CP7002(12-92)	COMM PROP SUPPLEMENTAL DEC
CP7003(11-86)	AUTOMATIC VALUATION ADJUSTMENT-APPLIES TO BLDG
CP7053(08-01)	TX-CHGS-EQUIPMENT BREAKDOWN
CP7066(03-05)	EXCL-COSMETIC/APPEARANCE LOSS/DAMAGE
CP7067(02-12)	EQUIP BREAKDOWN ENHANCEMENT END
CP7088(09-14)	ULTRA PROP PLUS
IL0017(11-98)	COMMON POLICY CONDITIONS
IL0275(11-13)	TX-CHGS-CANCEL & NONRENEW PROVISIONS FOR CASUALTY
IL0952(01-15)	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
IL0995(01-07)	CONDITIONAL EXCL OF TERRORISM
IL7083(08-10)	PAYMENT OF LOSSES
ST0013(05-08)	EQUIPMENT BREAKDOWN STUFFER
*ST1333(09-15)	TX-IMPORTANT NOTICE-TELEPHONE NUMBERS
ST1428(05-02)	IMPORTANT INFO ABOUT A CHG TO YOUR POLICY
*ST1644(01-12)	POLICY WEBSITE STUFFER
*ST1728(07-12)	DISCLOSURE FOR EQUIP BREAKDOWN
*ST1882(06-16)	NOTICE-LOCATION & PREMISES CLARIFICATION

10. As evidenced by the Declarations Page and confirmed in the Policy's provisions, the Tri Investment Policy provides coverage to the Properties' physical structure on a replacement cost value basis for damages caused by wind and hail up to \$1,601,700.00. *See* Ex. A, Policy, at Declarations Pages.

***Plaintiff makes insurance claim for damages***

11. On May 21, 2017, a significant wind and hail storm hit Webb County and specifically, the Properties. As a result of the hail and windstorm, the Properties were substantially damaged. Sizeable portions of the Properties' roofs were compromised by hail and wind. As a result of the roof damages, there was also interior damage to the properties. The following photographs taken after the storm depict some of the hail marks and resulting damage:



442 Logistics Drive, Laredo, Texas 78045









*301 Flecha Lane, Laredo, Texas 78045*











12. The Properties—especially the roofs and ceilings—were substantially damaged by the storm. Yet as devastating as the physical damage was, Plaintiff 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, Plaintiff promptly filed claims with United Fire, alerting them to the extensive damages. This sense of security, borne of a pricey contractual relationship, would prove illusory as United Fire began their investigation and handling of the claim.

***Plaintiff works hard to document its damages for United Fire but received denials.***

13. United Fire’s claims-handling process resulted in wrongful denial that omitted the wealth of facts, physical evidence, obvious hail and wind damages, and meteorological data supporting Plaintiff’s claims. United Fire unreasonably pinned the loss on anything but the hail and wind, an action designed to save United Fire hundreds of thousands of dollars in damages to the Properties and the businesses.

14. United Fire assigned two claims adjusters, Patrick Peden and David Scott Walton to handle the claim: Peden located in Houston, Texas and Walton located in Lorena, Texas. Peden and Walton were unqualified and incapable of adequately assessing the damages to these types of commercial Properties and were the source of many delays throughout the claims



process. United Fire and its adjusters took months to even inspect the Properties or attempt to assess the damages. United Fire, Peden and Walton continued to delay the claim resolution and did not provide the insured with answers.

15. Finally, United Fire ultimately denied the claim on March 20, 2018, despite the fact that wind and hail damages were obvious and that liability under the Policy was reasonably clear. *See* Ex. B, the “Denial Letter.” In accordance with the Policy, Plaintiff submitted proofs of loss identifying exactly what damages were being claimed under the Policy for each Property. However, United Fire ignored the damages and simply rejected the proofs of loss without any explanation therefor. According to Peden, Plaintiff’s claim would not be paid and the proofs of loss were rejected because the “loss has not been determined to be that amount by United Fire and Casualty.” No explanation—or alternative amount—was set forth by United Fire. Their conclusions, denials, and refusal to acknowledge or pay the claim was based on an outcome-oriented investigation aimed at denying Plaintiff’s claim from the outset. United Fire, its adjusters, and consultants ignored obvious catastrophic hail and wind damage to the Properties and refused to consider that hail and wind were actually the source of obvious damages. The claims adjustment process was unnecessarily complicated, disorganized, and conducted behind closed doors until United Fire ultimately wrongfully refused to compensate its insured for any of the obvious covered damages under the policy.

16. To this day, due to United Fire’s outcome-oriented, inadequate, and haphazard investigation, United Fire has refused to pay for any covered damages under the Policy.

***United Fire ignores Plaintiff’s demand letter***

17. 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 pre-suit 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 Plaintiff to avoid protracted litigation over a clear claim.

18. In compliance with Section 542A.003, Plaintiff gave its pre-suit notice to United Fire on June 4, 2018. The pre-suit notice provided a comprehensive outline of Plaintiff's claim and damages, quantified its loss, and even offered to waive a formal claim for attorneys' fees if the contractual amounts were paid promptly.

19. United Fire responded with another blanket denial and requested a metallurgist inspection.

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

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

21. United Fire 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).

22. United Fire failed to adopt and implement reasonable standards for prompt investigation of the claims arising under its Policy.

23. United Fire 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).

24. United Fire 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).

25. United Fire misrepresented the insurance policy under which it affords property coverage to Plaintiff, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). United Fire misrepresented the insurance policy to Plaintiff, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

26. United Fire misrepresented the insurance policy under which it affords property coverage to Plaintiff 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 Plaintiff 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).

27. United Fire misrepresented the insurance policy under which it affords property coverage to Plaintiff 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 Plaintiff 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).

28. United Fire 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**

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

30. United Fire failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

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

32. United Fire failed to notify Plaintiff 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).

33. United Fire delayed payments of Plaintiff's claims in violation of Texas Insurance Code Section 542.058(a).

34. 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.

**Count 3 – Statutory Interest**

35. Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-50 of the Complaint as if fully set forth herein.

36. Plaintiff 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**

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

38. As outlined above, United Fire breached its contracts with Plaintiff by refusing to pay for covered damages under the Policy. As a result of United Fire's breach, Plaintiff suffered legal damages.

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

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

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

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

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

42. Defendant acted fraudulently and with malice (as that term is legally defined) in denying and delaying Plaintiff's 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 Plaintiff.

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

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

44. 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.

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

**Resulting Legal Damages**

46. Plaintiff 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 denials and delays of benefits including loss of the property and business; and the other actual damages permitted by law. In addition, Plaintiff is entitled to exemplary damages.

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

48. Plaintiff is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

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



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

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

52. Plaintiff is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

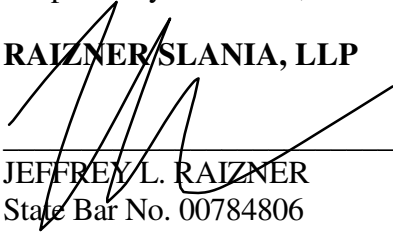
53. Plaintiff is entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, Texas Insurance Code 542.060(a)-(c), and Tex. Bus & Commerce Code §17.50.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that Plaintiff 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 Plaintiff may be entitled.

Respectfully submitted,

**RAIZNER/SLANIA, LLP**

  
\_\_\_\_\_  
JEFFREY L. RAIZNER

State Bar No. 00784806

Southern District Bar No. 15277

ANDREW P. SLANIA

State Bar No. 24056338

Southern District Bar No. 1057153

AMY B. HARGIS

State Bar No. 24078630

Southern District Bar No. 1671572

BEN WICKERT

State Bar No. 24066290

Southern District Bar No. 973044

[efile@raiznerlaw.com](mailto:efile@raiznerlaw.com)

2402 Dunlavy Street  
Houston, Texas 77006  
Phone: 713.554.9099  
Fax: 713.554-9098

**ATTORNEYS FOR PLAINTIFF**

**JURY DEMAND**

*Plaintiff 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**