

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

LA ESCONDIDA CONDOMINIUMS §  
PROPERTY OWNER’S ASSOCIATION §  
INC., f/k/a LA ESCONDIDA §  
CONDOMINIUM ASSOCIATION, INC. §

*Plaintiff*

v.

Civil Action No. 3:18-cv-3127

MAXUM INDEMNITY COMPANY §

*Defendant*

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

Plaintiff La Escondida Condominiums Property Owner’s Association, Inc. f/k/a La Escondida Condominium Association, Inc. (“La Escondida” or “Plaintiff”) files this Original Complaint & Jury Demand against Defendant MAXUM INDEMNITY COMPANY (“Maxum” or “Defendant”) and would respectfully show the following:

**Parties**

1. La Escondida is a domestic nonprofit corporation in the State of Texas.
2. Maxum is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Maxum regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. According to its insurance policy, Maxum may be served with process by serving certified mail, return receipt requested, to **Texas Commissioner of Insurance, 333 Guadalupe, Austin, Texas 78701** who can forward process to **Doug Elliot, President & CEO, Maxum Indemnity Company, 3655 North Point Parkway, Suite 500, Alpharetta, GA 30005.**

**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 a substantial part of the events or omissions giving rise to Plaintiff's claims occurred within this judicial district, and the property subject of the action is situated within this judicial district. Namely, this action concerns real property and a business located and operating in Dallas County, Texas. The insurance policy at issue and of which Plaintiff is a beneficiary was to be performed within this district, and the losses under the policy (including payments to be made to Plaintiff under the policy) were required to be made within this district. Further, investigation, including communications to and from Defendant and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred within this district.

**Factual Background**

***The Property***

5. La Escondida owns and operates the commercial property located at 4520 Holland Avenue, Dallas, Texas 75219 in Dallas County, Texas (the "Property"). The Property is a three-story multi-family residential building built in 1972.

***The Policy***

6. Prior to March 27, 2018, La Escondida paid \$4,830.00 in annual premiums, assessments, fees, surcharges, and taxes to Maxum to acquire comprehensive commercial insurance coverage for the Property under Maxum's Policy No. PRO-0106958-01 (the "Policy"). The Policy provides coverage for the Property for covered damages that occur during the Policy

Period, from April 1, 2017 through April 1, 2018. In exchange for La Escondida’s premium payment, the Policy includes the following limits and coverages, in relevant part:

COVERAGE PROVIDED		- INSURANCE AT THE DESCRIBED LOCATION APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN BELOW						
Prem. #	Bldg. #	Coverage	Cause of Loss	% of Co-Ins.	Valuation	Limit of Insurance	Rate	Premium
1	1	Building	SPECIAL	Nil	RC	\$438,880	.355	\$1,558.00
1	1	Business Personal Property	SPECIAL	Nil	RC	\$25,000	.356	\$89.00
1	1	Ordinance or Law - Coverage A	SPECIAL	Nil		Included	.000	\$0.00
1	1	Outdoor Property	SPECIAL	Nil	RC	\$7,000	.357	\$25.00
1	1	Misc. Property	SPECIAL	Nil	RC	\$50,000	.356	\$178.00
1	2	Building	SPECIAL	Nil	RC	\$235,840	.355	\$837.00
1	3	Building	SPECIAL	Nil	RC	\$235,840	.355	\$837.00
		Property Extension						INCL

7. As evidenced by the Declarations Page, the Policy provides coverage to the Property’s physical structures for up to \$910,560. (See Ex. A, Policy, at Declarations Pages.)

8. The Policy also contains a Deductible provision that provides coverage for damages to the Property, including windstorm and hail:

The Deductibles applicable to any one occurrence are shown below:

Prem. No.	Bldg. No.	Deductible	Covered Causes of Loss**
1	Bldg - 1	\$1,000	2
1	Bldg - 1	\$25,000	5
1	Bldg - 2	\$1,000	2
1	Bldg - 2	\$25,000	5
1	Bldg - 3	\$1,000	2

Schedule Continued on next page.

- (1) All Covered Causes of Loss
- (2) All Covered Causes of Loss except Windstorm or Hail
- (3) All Covered Causes of Loss except Theft
- (4) All Covered Causes of Loss except Windstorm or Hail and Theft
- (5) Windstorm or Hail
- (6) Theft

**Schedule Continues**

Prem. No.	Bldg. No.	Deductible	Covered Causes of Loss**
1	Bldg - 3	\$25,000	5

(See *id.*, Policy.)

***La Escondida makes an insurance claim***

9. La Escondida discovered damage at the Property due to March 2018 wind storm. The Property was substantially damaged. Portions of the Property's roof were compromised causing substantial interior damage. The following photographs taken and depict some of the interior damage alone:



10. There was also significant damage to the roof system:



11. The Property—specifically the roof, HVAC systems, windows, and the building’s interior were damaged. Yet as devastating as the physical damage was, La Escondida felt fortunate to be protected by almost \$1,000,000 in insurance coverage it had procured to insure the property from precisely this type of catastrophe. Immediately after the storm, La Escondida promptly filed a claim with Maxum, alerting them to the extensive damages. This sense of security, borne of a pricey contractual relationship, would prove illusory as Maxum began their investigation and handling of the claim.

***La Escondida works hard to document its damages for Maxum but received a denial.***

12. Maxum utilized its preferred vendor, Engle Martin, to handle adjustment of the claim on its behalf. Engle Martin’s adjustment was disorganized, rife with delays, and left many of the insured’s questions unanswered. La Escondida hired its own representative to assist with the claims process, but Engle Martin’s adjusters continuously ignored La Escondida’s

representative in an effort to intentionally mislead the insured about the claims process and ultimately deny the claim.

13. The Engle Martin adjuster assigned to the claim was David Eckenrode. Engle Martin and Maxum refused to provide any scopes of damage or answer any questions about the status of the claim, despite La Escondida's requests. Engle Martin refused to accept the damages on behalf of Maxum or provide any answers to the insured. Moreover, Maxum refused to retain any appropriate consultants to evaluate the claim. The claim was denied on April 27, 2018. La Escondida's representatives were forced to provide important facts, physical evidence, and meteorological data supporting La Escondida's claim in the wake of Maxum's refusal to properly investigate. Specifically, Engle Martin and Maxum stated that the damage was a result of a "clogged roof drain" and there was no coverage under the policy. *See Exhibit B, Denial Letter.*

14. To this day, Maxum has refused to pay for any damages under the Policy  
***Maxum ignores La Escondida's demand letter***

15. 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 La Escondida to avoid protracted litigation over a clear claim.

16. In compliance with Section 542A.003, La Escondida gave its pre-suit notice to Maxum on August 14, 2018. The pre-suit notice provided a comprehensive outline of La Escondida'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.

17. Maxum did not substantively respond to the pre-suit notice.

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

18. La Escondida re-alleges and incorporates each allegation contained in Paragraphs 1-17 of this Complaint as if fully set forth herein.

19. Maxum 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).

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

21. Maxum 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).

22. Maxum 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).

23. Maxum misrepresented the insurance policy under which it affords property coverage to La Escondida, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Maxum misrepresented the insurance policy to La Escondida, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

24. Maxum misrepresented the insurance policy under which it affords property coverage to La Escondida 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 La Escondida 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).

25. Maxum misrepresented the insurance policy under which it affords property coverage to La Escondida 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 La Escondida 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).

26. Maxum 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**

27. La Escondida re-alleges and incorporates each allegation contained in Paragraphs 1-26 of this Complaint as if fully set forth herein.

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

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

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

31. Maxum delayed payment of La Escondida's claim in violation of Texas Insurance Code Section 542.058(a).

32. 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 La Escondida's damages.

### **Count 3 – Statutory Interest**

33. La Escondida re-alleges and incorporates each allegation contained in Paragraphs 1-32 of the Complaint as if fully set forth herein.

34. La Escondida 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**

35. La Escondida re-alleges and incorporates each allegation contained in Paragraphs 1-34 of the Complaint as if fully set forth herein.

36. As outlined above, Maxum breached its contract with La Escondida by refusing to pay for covered damages under the Policy. As a result of Maxum's breach, La Escondida suffered legal damages.

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

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

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

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

39. La Escondida re-alleges and incorporates each allegation contained in Paragraphs 1-38 of this Complaint as if fully set for herein.

40. Defendant acted fraudulently and with malice (as that term is legally defined) in denying and delaying La Escondida'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 La Escondida.

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

41. La Escondida re-alleges and incorporates each allegation contained in Paragraphs 1-40 of this Complaint as if fully set forth herein.

42. 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.

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

### **Resulting Legal Damages**

44. La Escondida 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, La Escondida is entitled to exemplary damages.

45. As a result of Defendant’s acts and/or omissions, La Escondida has sustained damages in excess of the minimum jurisdictional limits of this Court.

46. La Escondida is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

47. Defendant’s knowing violations of the Texas Insurance Code and DTPA entitle La Escondida to the attorneys’ fees, treble damages, and other penalties provided by law.

48. La Escondida is entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

49. As a result of Defendant’s acts and/or omissions, La Escondida has sustained damages in excess of the jurisdictional limits of this Court.

50. La Escondida is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

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

**PRAYER**

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

Respectfully submitted,

**RAIZNER SLANIA, LLP**



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**ATTORNEYS FOR PLAINTIFF**

**JURY DEMAND**

*La Escondida 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.*

A handwritten signature in black ink, appearing to read "Andrew P. Slania", written over a horizontal line.

**ANDREW P. SLANIA**