

2019-16202 / Court: 133

Cause No. _____

LAEEQ MOB, LP A TEXAS LIMITED PARTNERSHIP	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
VALLEY FORGE INSURANCE COMPANY, CNA INSURANCE, ENGLE MARTIN & ASSOCIATES, LLC, JEFF KROEHLE, and MICHAEL HARGRAVE	§	
<i>Defendants.</i>	§	_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION & JURY DEMAND

Plaintiff LAEEQ MOB, LP A TEXAS LIMITED PARTNERSHIP (“Plaintiff”) files this Original Petition against VALLEY FORGE INSURANCE COMPANY (“Valley Forge”), CNA INSURANCE (“CNA”), ENGLE MARTIN & ASSOCIATES, LLC (“Engle Martin”), JEFF KROEHLE (“Kroehle”), and MICHAEL HARGRAVE (“Hargrave”) (Collectively “Defendants”) and would respectfully show the following:

Discovery Control Plan

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

Parties

2. Plaintiff, Laeeq Mob, LP (“Laeeq Mob”) is a domestic limited partnership located and operating in the State of Texas.

3. Upon information and belief, Valley Forge is a foreign fire and casualty insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Valley Forge regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Valley Forge may be served with

process through **CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.**

4. Upon information and belief, CNA is a corporation organized under the laws of the State of Texas regularly engaged in the business of adjusting insurance claims in Texas through its various Texas offices. CNA regularly and systematically engages in business in Texas, operating for the purpose of accumulating monetary profit and may be served with process by serving certified mail, return receipt requested, to **CNA Insurance, 5151 San Felipe, Suite 1200, Houston, Texas 77056.**

5. Upon information and belief, Engle Martin is a foreign limited liability company engaged in the business of adjusting insurance claims in Texas through its various Texas offices. Engle Martin regularly and systematically engages in business in Texas, operating for the purpose of accumulating monetary profit. Engle Martin 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 **CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.**

6. Upon information and belief, Jeff Kroehle is an individual living and residing and working in Plano, Collin County, Texas. Kroehle may be served with process at **Jeff Kroehle, 2117 Brabant Drive, Plano, Texas 75025-3330.**

7. Upon information and belief, Michael Hargrave is an individual living and residing and working in Arlington, Tarrant County, Texas. Hargrave may be served with process at **Michael Hargrave, 2220 Winter Sunday Way, Arlington, Texas 76012-4943.**

Venue & Jurisdiction

8. 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 the claims of Laeeq Mob occurred in Harris County. In particular, the 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, and the insured property at issue is located in Houston, Texas, within Harris County. 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. Venue is also proper in Harris County under TEX. CIV. PRAC. & REM. CODE §15.032 as the insured property is situated in Harris County, Texas.

9. 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

The Property

10. Laseq Mob, LP owns and operates the hospital located at 509 W. Tidwell Road, Houston, Texas 77091, in Harris County, Texas. The property consists 51,114 square feet of finished space. The three-story hospital was constructed in 2000 and has a porte-cochere at the main entrance.



The Policy

11. Prior to August 25, 2017, Plaintiff paid annual premiums, assessments, fees, surcharges, and taxes to Valley Forge to acquire comprehensive commercial insurance coverage for the Property under Policy No. B 6021562906.

12. The Policy provides coverage for Plaintiff, for covered damages that occur during the Policy Period, from June 28, 2017 through June 28, 2018. In exchange for Plaintiff's premium payment, the Plaintiff's Policy includes the following limits and coverages, in relevant part:

SCHEDULE OF LOCATIONS AND COVERAGE

LOCATION 1 BUILDING 1

500 W TIDWELL RD
HOUSTON, TX 77091

Construction: Modified Fire Resistive

Class Description: Lro ~ Office Occupants

Inflation Guard 3%

Windstorm or Hail Deductible: 1%

Windstorm or Hail Business Income Special Deductible: 72 HOURS

PROPERTY COVERAGE

	LIMIT OF INSURANCE
Accounts Receivable	\$25,000
Building	\$6,055,556
Business Personal Property	Not Covered
Electronic Data Processing	\$50,000
Equipment Breakdown	\$6,055,556
Fine Arts	\$25,000
Ordinance or Law - Demolition Cost, Increased Cost of Construction	\$25,000
Seasonal Increase: 25%	
Sewer or Drain Back Up	\$25,000
Valuable Papers & Records	\$25,000

13. As evidenced by the Declarations Page and confirmed in the Policy provisions, the Policy provides coverage to the Property's physical structure on a replacement cost value basis for damages caused by wind and hail up to \$6,055,556.00. *See* Ex. A, Policy, at Declarations Pages.

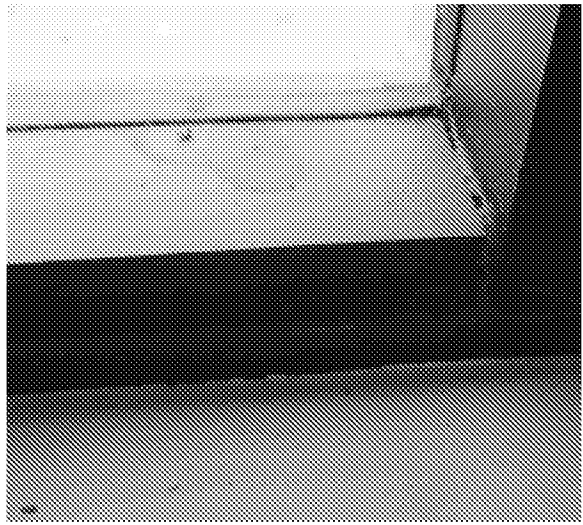
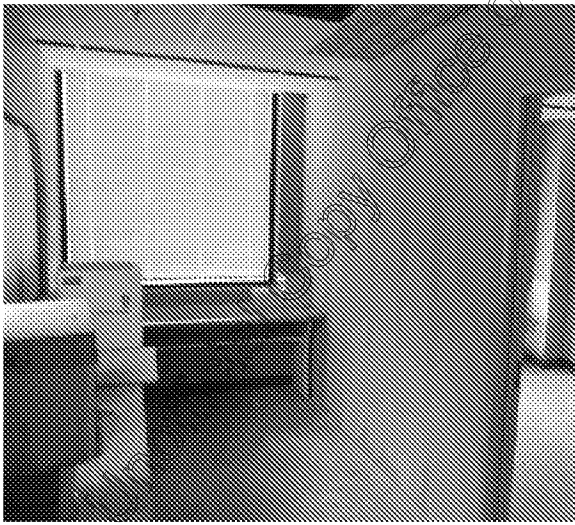
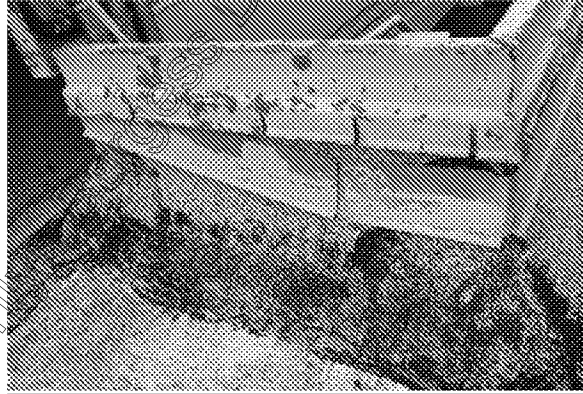
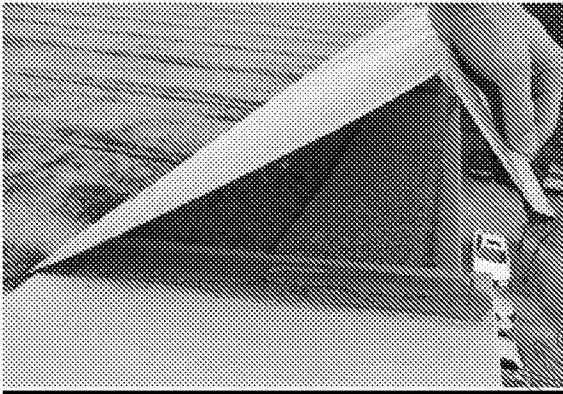
Hurricane Harvey

14. 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.

Plaintiff makes insurance claim for damages

15. As a result of Harvey's extreme winds and rain when it hit the Texas Coast on or about August 25, 2017, the Property was substantially damaged. Sizeable portions of the roofs and exterior were compromised by wind. As a result, there was also substantial interior damage to the buildings. The following photographs taken after Harvey depict some of the damages:



16. The Property – especially the roofs – were substantially damaged by the storm. Yet as devastating as the physical damage was, Plaintiff felt fortunate to be protected by the insurance

coverage they had procured to insure the Property from precisely this type of catastrophe. Immediately after the storm, Plaintiff promptly filed a claim with Valley Forge, alerting them to the extensive damages. This sense of security, borne of pricey contractual relationship, would prove illusory as Defendants began their investigation and handling of the claim.

Plaintiff works hard to document its damages for Defendants but Valley Forge unreasonably refuse to pay.

17. Defendants' claim-handling process resulted in a wrongful refusal to pay and omitted a wealth of facts, physical evidence, obvious wind damages, and meteorological data supporting Plaintiff's claim. Defendants unreasonably pinned the losses on anything but the wind, an action designed to save Valley Forge millions of dollars in damages to the Property and the business.

18. Valley Forge assigned Steve Romero and Jeff Kroehle with CNA to the claim. CNA subsequently engaged Nelson Forensics and Envista to employ representatives for the claim who were improperly trained as to their responsibilities, but who were instead directed to and did minimize claim payments and delay the reconstruction project. Mr. Romero stated that Stephen Duffy completed a site inspection, but to date no one has received a copy of Mr. Duffy's findings. These adjusters were unqualified and incapable of adequately assessing the damages to this type of commercial Property and were the source of many delays throughout the claim process. Defendants continued to delay the claim resolution and did not provide the insured with answers.

19. Sixteen months after the Hurricane Harvey winds severely damaged this property, based on inadequate investigation, wrongful delays, and refusals to fully pay for reasonably clear damages, Valley Forge has not issued payment. Valley Forge unreasonably blamed the loss on "pre-existing opening/deficiencies" and denied Hurricane Harvey played any role in the property damage in an effort to avoid contractual responsibilities and to save Valley Forge significant sums of money.

20. Despite clear evidence of covered replacement cost and mitigation damages, Valley

Forge failed to issue the full payment owed under the insurance policy covering our client's property and instead authorized the continued delays and underpayments.

21. To this day, due to Defendants outcome-oriented, inadequate, and haphazard investigation, Valley Forge has refused to pay for covered damages under the Policy.

Valley Forge responds to Plaintiff's demand letter with more refusals to accept responsibility

22. 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.

23. In compliance with Section 542A.003, Plaintiff gave its pre-suit notice to Defendants on December 20, 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.

24. CNA responded to the demand letter on behalf of Valley Forge on January 17, 2019 but refused to acknowledge its own wrongdoing.

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

25. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

26. Defendants 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).

27. Defendants failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

28. Defendants 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).

29. Defendants 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).

30. Defendants misrepresented the insurance policies under which it affords property coverage to Plaintiff, by making an untrue statement of material facts, in violation of Texas Insurance Code Section 541.061 (1).

31. Defendants misrepresented the insurance policies 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).

32. Defendants misrepresented the insurance policies 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 facts 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).

33. Defendants 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

34. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

35. Valley Forge failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

36. Valley Forge failed to timely commence investigation of the claim or to request from Plaintiff any additional items, statements or forms that the Defendants reasonably believe to be required from Plaintiff in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

37. Valley Forge failed to notify Plaintiff 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 the Defendants in violation of Texas Insurance Code Section 542.056(a). The delay was egregious, unnecessary, and wholly caused by the Defendants.

38. Valley Forge delayed payment of Plaintiff's claim in violation of Texas Insurance Code Section 542.058(a).

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

THIRD CAUSE OF ACTION---Statutory Interest

40. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

41. 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.

FOURTH CAUSE OF ACTION---Breach of Contract

42. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

43. As outlined above, Valley Forge breached its contract with Plaintiff by refusing to pay for covered damages under the Policy. As a result of Valley Forge's breach, Plaintiff suffered legal damages.

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

44. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

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

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

46. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

47. Valley Forge acted fraudulently and with malice (as that term is legally defined) in denying and delaying Plaintiff's claim for benefits. Further, Valley Forge had actual, subjective awareness

of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff.

SEVENTH CAUSE OF ACTION---Violations Of Texas DTPA

48. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set forth herein.

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

50. 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.

KNOWLEDGE

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 Plaintiff's damages.

RESULTING LEGAL DAMAGES

52. Plaintiff 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, Plaintiff is entitled to exemplary damages.

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

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

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

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

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

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

59. Plaintiff is entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, the Texas Insurance Code 542.060(a)-(b), the Business & 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



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ATTORNEYS FOR PLAINTIFF

Unofficial Copy Office of Marilyn Burgess District Clerk

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.



ANDREW P. SLANIA

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