

Cause No. **2019-02-12883**

REFUGIO COUNTY MEMORIAL	§	IN THE DISTRICT COURT OF
HOSPITAL DISTRICT	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	REFUGIO COUNTY, TEXAS
	§	
UNDERWRITERS AT LLOYD’S,	§	
LONDON, FAIR AMERICAN	§	
SELECT INSURANCE COMPANY,	§	
ENGLE MARTIN & ASSOCIATES, LLC,	§	
ANTHONY DeCESARE, and	§	
MELANIE LABRIE	§	
<i>Defendants.</i>	§	24th JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION & JURY DEMAND

Plaintiff REFUGIO COUNTY MEMORIAL HOSPITAL DISTRICT (“Plaintiff”) files this Original Petition against UNDERWRITERS AT LLOYD’S, LONDON (“Lloyd’s”), FAIR AMERICAN SELECT INSURANCE COMPANY (“Fair American”) (Collectively “Carriers”), ENGLE MARTIN & ASSOCIATES, LLC (“Engle Martin”), ANTHONY DeCESARE (“DeCesare”), and MELANIE LABRIE (“LaBrie”) (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, Refugio County Memorial Hospital District (“Refugio”) is a governmental taxing entity located and operating in the State of Texas.

3. Upon information and belief, 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.**

4. Upon information and belief, Fair American is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Fair American regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. According to its insurance policy, Fair American 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 **Counsel, Legal Department, Fair American Select Insurance Company, One Liberty Plaza, 165 Broadway, New York, NY 10006.**

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, Anthony DeCesare is an individual living and residing and working in Houston, Harris County, Texas. DeCesare may be served with process at **Anthony DeCesare, 10100 Southwest Freeway, Suite 420, Sugar Land, Texas 77478.**

7. Upon information and belief, Melanie LaBrie is an individual living and residing and working in Houston, Harris County, Texas. LaBrie may be served with process at **Melanie LaBrie, 1015 Southern Hills Road, Kingwood, Texas 77339.**

Venue & Jurisdiction

8. Venue is proper in Refugio 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 Refugio Hospital occurred in Refugio 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 Refugio County, Texas, and the insured property at issue are located Refugio, Texas, within Refugio County. Investigations and policy representations, including communications to and from Defendants and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred in Refugio County, Texas. Venue is also proper in Refugio County under TEX. CIV. PRAC. & REM. CODE §15.032 as the insured property is situated in Refugio 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. Refugio Hospital owns and operates the hospital district located at 107 Swift Street, Refugio, Texas 78377, in Refugio County, Texas.



11. The property consists of six buildings, the Hospital main building, the Physical Therapy building, the Refugio Rural Health Clinic, the Refugio Specialty Clinic, the EMS House, the Wellness Center and the Physician House. The main hospital was built on 4 acres of land and at the present time is a three-story building with four wings. Multiple additions have been added to the property since it was originally built.

The Policies

12. Prior to August 25, 2017, Plaintiff paid annual premiums, assessments, fees, surcharges, and taxes to Carriers to acquire comprehensive commercial insurance coverage for the Property under Policy Nos. NVP20216-00 (Lloyd's) and CPP1000370-00 (Fair American).

13. The Lloyd's Policy provides coverage for Plaintiff, for covered damages that occur during the Policy Period, from June 1, 2017 through June 1, 2018. In exchange for Plaintiff's premium payment, the Plaintiff's 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 Cause of Loss	Coinsurance*	Rates	Premium
All	All		\$11,199,060 (50%) per occurrence part of \$22,398,121 (100%) per occurrence	Special	Waived	Included	Included
*IF EXTRA EXPENSE COVERAGE, LIMITS ON LOSS PAYMENT							

14. The Fair American Policy provides coverage for Plaintiff, for covered damages that occur during the Policy Period, from June 1, 2017 through June 1, 2018. In exchange for Plaintiff's premium payment, the Plaintiff's 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	Coinsurance	Rates
All	All	Building, Business Personal Property, Business Income, Extra Expense	\$11,199,061 (50%) per occurrence part of \$22,398,121 (100%) per occurrence	Special	Waived	Included
*IF EXTRA EXPENSE COVERAGE, LIMITS ON LOSS PAYMENT						

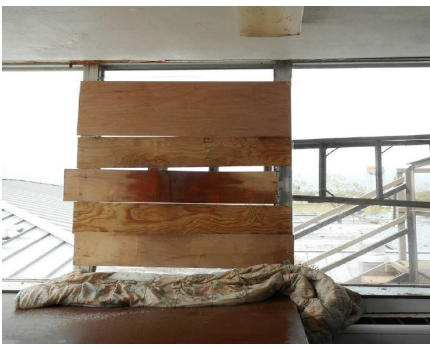
15. As evidenced by the Declarations Page and confirmed in the Policies provisions, the Policies provides coverage to each Property's physical structure on a replacement cost value basis for damages caused by wind and hail up to \$22,398,121.00. The Policies also provide coverage for Business Personal Property. *See* Ex. A and Ex. B, Policies, at Declarations Pages.

Hurricane Harvey

16. 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 in San Patricio County and Aransas County as a Category 4 hurricane. Wind gusts of up to 132 miles per hour were reported within the same area of the Property. Rockport, Texas experienced wind speeds of up to 150 miles per hour. The First American Weather Service has stated that these wind speeds are likely underestimated in coastal areas such as San Patricio County due to disabled equipment at the time Harvey made landfall. Refugio County is location just north of Rockport, Texas. Hurricane Harvey continued to travel through the southeast part of Texas, inflicting billions of dollars in damages to private and public property. 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

17. 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 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:



18. 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 Carriers, 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 unreasonably refuses to pay.

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

20. Lloyd's and Fair American assigned both, Melanie LaBrie and Anthony DeCesare of Engle Martin & Associates, as lead adjusters to handle the claim. LaBrie and DeCesare 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.

21. Engle Martin subsequently engaged JS Held, LLC to employ representatives for the claim who were improperly trained as to their responsibilities. On October 31, 2017, adjusters from JS Held, LLC, Justin Ayars and Alex Szatanek, personally and partially inspected the property to determine the scope of loss that resulted from hurricane-force wind and water damage. Fifteen months after the Hurricane Harvey winds severely damaged these properties, based on inadequate investigation, wrongful delays, and refusals to fully pay for reasonably clear damages, the Carriers had only issued partial payment. This is despite the fact that in December 2017 through April 2018 Engle Martin Adjuster, LaBrie, along with JS Held confirmed the physical damages to the hospital district buildings to at least be \$3,786,722.37 and issued an

estimate of damages confirming same to the insured's mitigation consultant, ServPro intended to be directly communicated to the insured, Refugio Hospital.

22. ServPro has also provided reasonably clear mitigation damage estimates and detailed scopes of work totaling at least \$2,800,000.00. Unfortunately, despite the Carriers' adjuster and representative under Texas law, LaBrie's concession as to the amount of clearly owed structural damages, the claim was detoured and delayed. Under direction from the Carriers, DeCesare changed adjusters on the claim and managed a process where clear damages would not be acknowledged, much less immediately paid for. The Carriers directed this wrongful handling on the claim and ratified the delays.

23. Despite clear evidence of covered replacement cost and mitigation damages, the Carriers failed to issue the full payment owed under the insurance policy covering our client's property and instead authorized the continued delays and underpayments.

24. To this day, due to Lloyd's and Fair American's outcome-oriented, inadequate, and haphazard investigation, Lloyd's and Fair American have refused to pay for covered damages under the Policy.

Lloyd's and Fair American ignores Plaintiff's demand letter

25. 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.

26. In compliance with Section 542A.003, Plaintiff gave its pre-suit notice to Lloyd's and Fair American on December 6, 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.

27. Fair American responded to the demand letter on December 21, 2018 but refused to acknowledge its own wrongdoing. Fair American falsely represented that it was prohibited from re-inspecting the property instead of taking personal responsibility for the fact that it simply refused to conduct this re-inspection without any basis for same. Even despite Fair American's hostility, Plaintiff held off on filing suit as requested until it was clear that it would be forced to institute litigation to get the benefits more than reasonably clear to be owed. Lloyd's did not substantially respond to the demand letter. Plaintiff fully complied with all applicable contractual and statutory conditions.

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

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

29. 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).

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

31. 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).

32. 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).

33. 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).

34. 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).

35. 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).

36. 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

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

38. Lloyd's and First American failed to acknowledge receipt of the claim in violation of Texas

Insurance Code Section 542.055 (a)(1).

39. Lloyd's and First American 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).

40. Lloyd's and First American 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.

41. Lloyd's and First American delayed payment of Plaintiff's claim in violation of Texas Insurance Code Section 542.058(a).

42. 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

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

44. 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

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

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

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

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

48. Lloyd's and First American 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. Lloyd's and First American breached this duty by refusing to properly investigate and effectively denying insurance benefits. Lloyd's and First American knew or should have known that there was no reasonable basis for denying or delaying the required benefits. As a result of Lloyd's and First American's breach of these legal duties, Plaintiff suffered legal damages.

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

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

50. Lloyd's and First American acted fraudulently and with malice (as that term is legally defined) in denying and delaying Plaintiff's claim for benefits. Further, Lloyd's and First American 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

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

52. The Deceptive Trade Practices-Consumer Protection Act (DTPA) provides additional

protections to consumers who are victims of deceptive, improper, or illegal practices. Lloyd's and First American's violations of the Texas Insurance Code create a cause of action under the DTPA. Lloyd's and First American's violations of the Texas Insurance Code, as set forth herein, specifically violate the DTPA as well. Lloyd's and First American have also acted unconscionably, as that term is defined under the DTPA.

53. 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

54. 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

55. 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.

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

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

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

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

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

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

62. 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

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.

A handwritten signature in black ink, appearing to read 'Andrew P. Slania', with a long horizontal stroke extending to the right.

ANDREW P. SLANIA