

2. The State Court Action alleges six causes of action: (i) breach of contract; (ii) breach of fiduciary duty; (iii) fraud; (iv) negligence; (v) violation of the Texas Deceptive Trade Practices – Consumer Protection Act; and (vi) violation of the Texas Insurance Code.

3. This matter is removable pursuant to the Class Action Fairness Act of 2005 (“CAFA”). Pub. L. No. 109-2, 119 Stat. 4 (2005) (codified in certain sections of 28 U.S.C., including Sections 1332 and 1453). As set forth below, this is a putative class action in which: (1) there are 100 or more members in Plaintiff’s putative class; (2) at least some members of the putative class have a different citizenship than some defendants; and (3) the amount in controversy in the proposed claims of the putative class members exceeds the sum or value of \$5,000,000 in the aggregate. Thus, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(d)(2)(A).

II. Removal Is Proper Because This Court Has Jurisdiction Pursuant to 28 U.S.C. §1332(d)

4. Under CAFA, federal diversity jurisdiction over class actions exists where “any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state” and in which the amount in controversy exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. §1332(d)(2)(C) and (d)(6).

5. The following entities subscribed to Policy No. CLU54563: Lloyd’s Syndicate 1955, Lloyd’s Syndicate 609, and Lloyd’s Syndicate 2987. *See* Exhibit D, Declaration of Mr. Mitchell Cole, Ex. 1.

6. Underwriters have a statutory right to have this action adjudicated in federal court based upon diversity jurisdiction under CAFA. Diversity of citizenship exists in this matter because Plaintiff and the sole capital provider (sometimes referred to as a “Name”) for Syndicate 2987 are citizens of different states. (Compl. at ¶¶ 3, 4). Furthermore, based upon the allegations in the

Complaint, the amount in controversy exceeds \$5,000,000, exclusive of interest and costs. Furthermore, the proposed class consists of more than 100 members. Accordingly, federal jurisdiction exists in this case under CAFA.

A. The Proposed Class Exceeds 100 Members

7. The Complaint seeks to certify a nation-wide class of insureds who purchased business interruption insurance policies from Underwriters whose Covid-19 related claims were denied. (Compl. at ¶ 11).

8. Plaintiff alleges that “the proposed Class consists of hundreds of entities, the joinder of which in one action is impracticable.” (Compl. at ¶ 12).

9. Without conceding liability, appropriateness of class treatment, appropriateness of Plaintiff’s class definition, or the validity of Plaintiff’s claims for relief, if the allegations in the Complaint are accepted as true, there are more than 100 proposed class members. *Stephenson v. Standards Ins. Co.*, No. SA:12-cv-01081-DAE, 2013 WL 3146977, at *7 (W.D. Tex. June 18, 2013) (relying on allegations in plaintiff’s petition that the proposed class members “number in the tens to hundreds of thousands” as sufficient to support a finding of jurisdiction under CAFA).

10. Accordingly, CAFA’s requirement that the proposed class consist of more than 100 members is satisfied. *See* 28 U.S.C. § 1332(d)(5)(B).

B. CAFA’s Requirement of Minimal Diversity is Satisfied

11. Plaintiff Post Oak alleges that it is a professional corporation organized under the laws of the State of Texas with its principal place of business in Houston, Harris County, Texas. (Compl. at ¶ 3).

12. To determine the citizenship of a Lloyd’s syndicate, a Court must look to the citizenship of the capital providers (“Names”) of the syndicate. *See generally, Corfield v. Dallas Glen Hills*

LP, 355 F.3d 853 (5th Cir. 2003). The capital provider for Lloyd’s Syndicate 2987 is Brit UW Ltd., which is incorporated under the laws of the United Kingdom and has its principal place of business in London, England. *See* Ex. D, ¶4.

13. Because the citizenship of Plaintiff and one of the syndicates is diverse, CAFA’s minimal diversity requirement is satisfied.

C. CAFA’s Amount In Controversy Requirement is Satisfied

14. Plaintiff purports to bring this action on behalf of “[a]ll Certain Underwriters customers with a business interruption insurance policy who filed a claim with Certain Underwriters for business interruption caused by the Coronavirus pandemic and were denied.” (Compl. at ¶ 11).

15. Plaintiff alleged that because the “proposed Class consists of hundreds of entities, the joinder of which in one action is impracticable.” (Compl. at ¶ 12).

16. Plaintiff in its Complaint seeks “actual and other damages of no less than \$1,000,000,” exemplary damages, treble damages, reasonable attorneys’ fees and expenses, and pre- and post-judgment interest. (Compl. at Prayer ¶¶ 1-6).

17. CAFA provides that district courts shall have original jurisdiction over any putative class action “in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs....” 28 U.S.C. §1332(d)(2).

18. CAFA further provides that, in determining whether this \$5,000,000 amount is met in class actions, “the claims of the individual class members shall be aggregated....” 28 U.S.C. § 1332(d)(6).

19. A defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. *See Carter v. Westlex Corp.*, 643 F. App’x 371, 375 (5th Cir. 2016).

20. A defendant can show that the amount in controversy exceeds the jurisdictional requirement if: “(1) it is apparent from the face of the petition that the claims are likely to exceed [the jurisdictional amount], or, alternatively, (2) the defendant sets forth ‘summary judgment type evidence’ of facts in controversy that support a finding of the requisite amount.” *Boles v. State Farm Lloyds*, No. H-13-286, 2013 WL 3820978 (S.D. Tex. July 23, 2013) (internal citation omitted) (holding defendant met burden of satisfying amount in controversy from the face of the complaint, but also based on demand letter plaintiff previously sent to defendant).

21. Underwriters deny that Plaintiff (and any of the putative class members) is entitled to any relief or that this matter is appropriate for class treatment. However, for purposes of this removal notice, it is apparent from the face of Plaintiff’s Complaint that the amount in controversy exceeds \$5,000,000, because Plaintiff seeks relief on behalf of itself and over 100 members of the proposed class for actual and consequential damages (which Plaintiff alleges is “no less than \$1,000,000), exemplary damages, treble damages, and attorneys’ fees and costs. Continuing, Plaintiff’s putative class as alleged has no territorial restrictions, such that there are thousands if not tens of thousands of potential class members. *See* Ex. D, ¶6.

22. Plaintiff’s Policy with Underwriters insures two separate properties, with business income limits of \$150,000 and \$100,000 respectively, for a total of \$250,000. *See*, Ex.1 to Exhibit D.

23. Since Plaintiff has alleged that there are “hundreds of entities” who are potential class members, multiplying the \$250,000 business income limits by a conservative 100 members totals \$25,000,000. Thus, the aggregate of the business income policy limits for the putative class would be approximately \$25,000,000.

24. Even assuming that each potential class member only insured one property, with a business income limit of \$100,000 (the lesser of Plaintiff's limits in order to avoid improperly inflating the amount in controversy), the amount in controversy would be approximately \$10,000,000 (\$100,000 x 100 members).

25. In addition, on September 28, 2020, Plaintiff's counsel sent a demand letter to Underwriters, alleging that Underwriters had wrongfully denied Plaintiff's business interruption claim, and made a demand of \$3,000,000 on behalf of Plaintiff *alone* to resolve any and all claims against Underwriters. A true and accurate copy of Plaintiff's demand letter is attached hereto as Ex. 2 to Ex. D, the Declaration of Mr. Mitchell Cole.

26. Thus, CAFA's amount-in-controversy requirement is satisfied.

III. Removal is Procedurally Proper

27. Underwriters were served through their registered agent on October 14, 2020.

28. Underwriters' Notice of Removal is timely because it is filed within thirty (30) days of Underwriters being served with Plaintiff's Complaint. 28 U.S.C. §1446(b)(2)(B).

29. Venue is proper in this Court pursuant to 28 U.S.C. §1441(a) because the United States District Court for the Southern District of Texas encompasses Harris County, Texas, where the State Court Action was originally filed.

30. Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of Removal is being filed with the Clerk of the District Court of Harris County, Texas, as provided by law, and written notice is being sent to Plaintiff's counsel.

31. Pursuant to 28 U.S.C. § 1446(a), and Local Rule 81, Underwriters attach to this Notice of Removal the following exhibits:

Exhibit A: Index of Matters Being Filed

Exhibit B: Civil Docket Sheet in the State Court Action

Exhibit C: Plaintiff's Original Petition filed in the State Court Action

Exhibit D: Declaration of Mitchell Cole

Exhibit D-1: Policy No. CLU53546

Exhibit D-2: Plaintiff's September 28, 2020 Demand Letter

Exhibit E: List of all counsel of record, including addresses, telephone numbers and parties being represented.

32. Underwriters in no way concede to any of the allegations set forth in the Complaint, including the parameters of Plaintiff's putative class or that this matter is appropriate for class treatment. Thus, all paragraphs and provisions contained herein are adversarial in nature, operate under all necessary assumptions and presumptions, and are set forth for the limited purpose of removing said matter to federal court.

33. Underwriters reserve the right to amend and/or supplement this Notice of Removal.

WHEREFORE, Underwriters respectfully request that this action, now pending in the District Court of Harris County, Texas, be removed to the United States District Court for the Southern District of Texas.

Respectfully submitted this 12th day of November 2020.

[SIGNATURE BLOCK ON NEXT PAGE]

WALKER WILCOX MATOUSEK, LLP

/s/ Tony L. Draper

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*Counsel for Certain Underwriters at Lloyd's, London
Subscribing to Policy No. CLU54563*

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on November 12, 2020, he electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system and served a true and correct copy via regular U.S. Mail to the following:

Alfonso Kennard, Jr.
Kennard Law, P.C.
2603 Augusta Drive, Suite 1450
Houston, TX 77057
Alfonso.Kennard@KennardLaw.com

/s/ Tony L. Draper

*Counsel for Certain Underwriters at
Lloyd's, London Subscribing to Policy
No. CLU54563*

EXHIBIT A

EXHIBIT B

HCDistrictclerk.com

POST OAK GRILL D/B/A LB RESTURANTS
(INDIVIDUALLY vs. CERTAIN UNDERWRITERS AT
LLOYDS LONDON SUBSCRIBING
Cause: 202062534 CDI: 7 Court: 113

11/11/2020

APPEALS

No Appeals found.

COST STATMENTS

No Cost Statments found.

TRANSFERS

No Transfers found.

POST TRIAL WRITS

No Post Trial Writs found.

ABSTRACTS

No Abstracts found.

SETTINGS

No Settings found.

NOTICES

No Notices found.

SUMMARY**CASE DETAILS**

File Date 10/2/2020
Case (Cause) Location Civil Intake 1st Floor
Case (Cause) Status Active - Civil
Case (Cause) Type Insurance
Next/Last Setting Date N/A
Jury Fee Paid Date 10/2/2020

CURRENT PRESIDING JUDGE

Court 113th
Address 201 CAROLINE (Floor: 10)
HOUSTON, TX 77002
Phone:7133686113
JudgeName RABEEA COLLIER
Court Type Civil

ACTIVE PARTIES

Name	Type	Post Jdgm	Attorney
POST OAK GRILL D/B/A LB RESTURANTS (INDIVIDUALLY AND ON BEHALF OF	PLAINTIFF - CIVIL		KENNARD, ALFONSO JR.
CERTAIN UNDERWRITERS AT LLOYDS LONDON SUBSCRIBING TO POLICY	DEFENDANT - CIVIL		
LB RESTURANTS	PLAINTIFF - CIVIL		KENNARD, ALFONSO JR.
CERTAIN UNDERWRITERS AT LLOYDS LONDON SUBSCRIBING TO POLICY	REGISTERED AGENT		

INACTIVE PARTIES

No inactive parties found.

JUDGMENT/EVENTS

Date	Description	Order Signed	Post Jdgm	Pgs Volume /Page	Filing Attorney	Person Filing
10/2/2020	JURY FEE PAID (TRCP 216)			0		
10/2/2020	ORIGINAL PETITION			0	KENNARD, ALFONSO JR.	POST OAK GRILL D/B/A LB RESTURANTS (INDIVIDUALLY AND ON BEHALF OF

10/2/2020 ORIGINAL PETITION

0

KENNARD,
ALFONSO JR.

LB RESTURANTS

SERVICES

Type	Status	Instrument	Person	Requested	Issued	Served	Returned	Received	Tracking	Deliver To
CITATION (CERTIFIED)	SERVICE RETURN/EXECUTED	ORIGINAL PETITION	CERTAIN UNDERWRITERS AT LLOYDS LONDON SUBSCRIBING TO POLICY	10/2/2020	10/2/2020			10/22/2020	73796284	CVC/CTM SVCE BY CERTIFIED MAIL
750 7TH AVENUE NEW YORK NY 10019										

DOCUMENTS

Number	Document	Post Jdgm	Date	Pgs
92791488	Domestic Return Receipt		10/22/2020	2
92529200	Certified Mail Receipt		10/05/2020	1
92430776	Plaintiff's Original Petition		10/02/2020	11
-> 92430777	Civil Case Information Sheet		10/02/2020	1
92481751	Certified Mail Tracking Number 7018 1830 0001 4427 4853		10/02/2020	2

EXHIBIT C

Cause No. _____

POST OAK GRILL d/b/a LB
RESTURANTS, Individually and on Behalf
of Those Similarly Situated,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT
LLOYD'S, LONDON SUBSCRIBING TO
POLICY NO. CLU54563

Defendant.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs, Post Oak Grill d/b/a LB Restaurants, ("Post Oak"), Individually and on Behalf of Those Similarly Situated, files this Plaintiffs' Original Petition, complaining of Defendant, Certain Underwriters at Lloyd's, London Subscribing to Policy No. CLU54563 ("Certain Underwriters"). In support, Plaintiffs state the following:

I. NATURE OF THE CASE

1. This is a class action against Defendant Certain Underwriters for deceiving and defrauding its policy holders in connection with claims for business interruption caused by the Coronavirus pandemic. Defendant made misrepresentations to its customers that it would cover business interruption

2. Plaintiff, on behalf of itself and Class Members, assert causes of action for breach of contract, breach of fiduciary duty, fraud, negligence, and violations of the Deceptive Trade Practices Act, and seek to recover actual and consequential damages of no less than \$1,000,000, exemplary damages, treble damages, attorneys' fees and costs.

**II.
PARTIES AND PROCESS**

3. Plaintiff Post Oak is a professional corporation organized under the laws of the State of Texas with its principal place of business in Houston, Harris County, Texas.

4. Defendant Certain Underwriters at Lloyd's London Subscribing to Policy No. CLU54563 is a foreign insurance syndicate with a certificate of authority to engage in the business of insurance in the State of Texas and conducts business in Houston, Harris County, Texas. Under the terms of the policy of insurance at issues, Certain Underwriters at Lloyd's London Subscribing to Policy No. CLU54563 may be served with process by serving its designated counsel, Mendes and Mount, 750 7th Avenue, New York, New York 10019.

**III.
JURISDICTION AND VENUE**

5. The Court has jurisdiction over the parties and subject matter in this suit. The amount in controversy is within the jurisdictional limits of the Court.

6. Venue is proper in Harris County, Texas, pursuant to the Texas Civil Practice and Remedies Code Section 15.002(a)(1) because it is the county in which a substantial part of the events or omissions giving rise to the claims herein occurred.

**IV.
DISCOVERY CONTROL PLAN**

7. Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, Plaintiff intends to conduct discovery under Level 3.

**V.
FACTS**

8. Plaintiff is a business incorporated as a Professional Corporation in the State of Texas.

9. Plaintiff purchased a business interruption insurance policy with Defendant. Plaintiff continued to pay premiums under the policy and at the time of the Coronavirus pandemic, Plaintiff had an effective business interruption insurance policy with Certain Underwriters at Lloyd's, London Subscribing to Policy No. CLU54563.

10. After experiencing business interruption due to the Coronavirus pandemic, Plaintiff made a claim with Certain Underwriters at Lloyd's, London Subscribing to Policy No. CLU54563. Certain Underwriters wrongfully denied coverage for Plaintiff's claim due to an alleged exclusion. The reasons Defendant gave for denying coverage were not valid.

VI. CLASS ACTION ALLEGATIONS

11. Pursuant to TEX. R. CIV. P. 42, Plaintiff brings this action as a class action on behalf of itself and all members of the following Class of similarly situated persons and entities:

All Certain Underwriters customers with a business interruption insurance policy who filed a claim with Certain Underwriters for business interruption caused by the Coronavirus pandemic and were denied.

Excluded from the Class are (i) Certain Underwriters senior executives and their immediate family members, and (ii) the Court, Court personnel, and their immediate family members.

12. On information and belief, the proposed Class consists of hundreds of entities, the joinder of which in one action is impracticable. The precise number and identities of the Class Members are currently unknown to Plaintiff but can easily be derived from Defendant's records.

13. Defendant violated the rights and interests of each Class Member in the same manner by their above-described uniform wrongful actions—to wit, wrongfully denying business interruption insurance claims caused by the Coronavirus pandemic despite the existence of valid insurance policies.

14. Common questions of law and fact predominate over any questions affecting individual

Class Members including, *inter alia*:

- (i) whether Plaintiffs had an existing business interruption insurance policy with the Defendant;
- (ii) whether Plaintiffs paid premiums for their business interruption policies;
- (iii) whether Defendant had a valid reason under the policy to deny Plaintiffs' claims;
- (iv) whether Defendant acted knowingly in wrongfully denying Plaintiffs' claims;
- (v) whether Defendant's above-described wrongful actions constitute breach of contract;
- (vi) whether Defendant's above-described wrongful actions constitute breach of fiduciary duty;
- (vii) whether Defendant's above-described wrongful actions constitute negligence;
- (viii) whether Defendant's above-described wrongful actions constitute breach of the Texas Deceptive Trade Practices-Consumer Protection Act;
- (ix) whether Defendant's above-described wrongful actions directly or proximately caused Plaintiffs and Class Members to suffer damages; and
- (x) whether Plaintiffs and Class Members are entitled to recover actual damages, consequential damages, punitive damages, treble damages, pre- and post-judgment interest, attorneys' fees, litigation expenses, and court costs and, if so, the amount of the recovery.

15. Plaintiff's claims are typical of Class Members' claims because Plaintiff and Class Members are all victims of Defendant's above-described wrongful actions.

16. Plaintiff and its counsel will fairly and adequately represent the interests of Class Members. Plaintiff has no interests antagonistic to, or in conflict with, those of any of the Class Members. Plaintiff's counsel is experienced in leading and prosecuting class actions and complex commercial litigation.

17. A class action is superior to all other available methods for fairly and efficiently adjudicating Plaintiff's and Class Members' claims. Plaintiff and Class Members have been harmed as a direct and proximate result of Defendant's above-described wrongful actions. Litigating this case as a class action is appropriate because (i) it will avoid a multiplicity of suits and the corresponding burden on the courts and Parties, (ii) it would be virtually impossible for all Class Members to intervene as parties in this action, (iii) it will allow numerous persons with claims too small to adjudicate on an individual basis because of prohibitive litigation costs to obtain redress for their injuries, and (iv) it will provide court oversight of the claims process once Defendant's liability is adjudicated.

18. Certification, therefore, is appropriate under TEX. R. CIV. P. 42(b)(3) because the above-described common questions of law or fact predominate over any questions affecting individual Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

19. Alternatively, certification is appropriated under TEX. R. CIV. P. 42(b)(1) because the prosecution of separate actions by individual Class Members would create a risk of either (1) inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible standards of conduct for the Defendant, or (2) adjudications with respect to individual Class Members that would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

20. Absent a class action, Defendant will retain the benefits of its wrongdoing despite violating the law and inflicting substantial damages on Plaintiff and Class Members.

VII. CAUSES OF ACTION

Count One – Breach of Contract

21. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff reasserts and incorporates all allegations set forth herein.

22. Plaintiff entered into valid, enforceable agreements with Certain Underwriters for business interruption insurance. Plaintiff are in privity with Certain Underwriters as parties to valid, enforceable contracts or implied contracts. Plaintiff have standing to sue Certain Underwriters for breach of those agreements.

23. Despite Plaintiff fulfilling their obligations under the agreements, Certain Underwriters breached the agreements by refusing to approve valid claims under the business interruption insurance policies without a valid reason to do so under those policies.

24. As a result of Certain Underwriters breach, Plaintiff has been injured. Plaintiff's damages are within the jurisdictional limits of the Court.

Count Two – Breach of Fiduciary Duty

25. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff reasserts and incorporates all allegations set forth herein.

26. Defendant had a fiduciary relationship with Plaintiff as its insurance customers and policy holders—owing Plaintiff proper representations and a duty to faithfully execute Defendant's obligations under the policies. Defendant failed to do so.

27. Defendant breached its fiduciary duty by making false representations of fact and by intentionally denying Plaintiff's claims on false pretenses. Defendant denied the claims based only on the total number of claims submitted and not based on whether the claims qualified for coverage under the policies.

28. As a result of Defendant's breaches of its fiduciary duties, Plaintiff have been damaged in an amount within the jurisdictional limits of the Court.

Count Three – Fraud

29. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff reasserts and incorporates all allegations set forth herein.

30. Defendant led Plaintiff and Class Members to believe it would evaluate claims based on objective facts and criteria rather than the total number of business interruption claims Defendant received. Defendant knowingly made false representations to Plaintiff and Class Members as to material facts.

31. As a result of relying on Defendant's representations, Plaintiff and Class Members have been damaged in an amount within the jurisdictional limits of the Court.

Count Four – Negligence

32. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff reasserts and incorporates all allegations set forth herein.

33. In the alternative, Defendant was negligent in processing Plaintiff's and Class Member's claims, leading to a denial of coverage.

34. Defendant owed a duty of care to Plaintiff and Class Members but breached that duty and made negligent misrepresentations.

35. Defendant's negligence proximately caused Plaintiff's and Class Members' damages, which are within the jurisdictional limits of the Court.

Count Five – Violation of the Deceptive Trade Practices Act

36. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff reasserts and incorporates all allegations set forth herein.

37. Plaintiff and Class Members were consumers as defined in the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"), embodied in the Texas Business & Commerce Code §17.46 *et seq.* Defendant are persons who can be sued for DTPA violations.

38. Defendant knowingly and/or intentionally committed false, misleading, and deceptive acts and, in doing so, violated provisions of the DTPA. In promising to (1) provide coverage for business interruption to its policy holders, and (2) objectively and impartially process claims for business interruption, but failing to do so as promised, Defendant knowingly and/or intentionally violated the DTPA in the following, but not so limited, ways:

- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has sponsorship, approval, status, affiliation, or connection which he does not;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; and
- Failing to disclose information about goods or services that was known at the time of the transaction with the intent to induce the consumer into a transaction that that the consumer would not have entered into the information been disclosed. TEX. BUS. & COM. CODE §17.46.

39. Defendant did not provide the services as promised and engaged in an unconscionable course of action to defraud Plaintiff and Class Members.

40. Because Defendant acted knowingly and/ or intentionally, Plaintiff and Class Members are entitled to and seek to recover treble damages under the Texas Deceptive Trade Practices Act. TEX. BUS. & COM. CODE §17.50 (b)(1).

Count Six – Violations of the Texas Insurance Code

41. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff reasserts and incorporates all allegations set forth herein.

42. Defendant's actions were in violation of the Texas Insurance Code, § 541.060 because Defendant engaged in an unfair or deceptive act or practice in the business of insurance. Specifically, Defendant violated § 541.060 by engaging in the following unfair settlement practices with respect to claims made by the Plaintiff class:

- misrepresenting to a claimant a material fact or policy provision relating to coverage at issue;
- failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear;
- failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;
- refusing to pay a claim without conducting a reasonable investigation with respect to the claim;

43. Because Defendant acted knowingly and/ or intentionally, Plaintiff and Class Members are entitled to and seek to recover treble damages under Section 541.152 of the Texas Insurance Code.

**VIII.
CONDITIONS PRECEDENT**

44. All conditions precedent to Plaintiff's recovery and the claims made the subject of this suit have been performed or have occurred.

**IX.
EXEMPLARY DAMAGES**

45. Plaintiff seek exemplary damages against Defendant pursuant to Chapter 41 of the Texas Civil Practice and Remedies Code. Exemplary damages are justified by Defendant's malice and ill will demonstrated by their knowledge and assistance in the fraud committed against Plaintiff.

**X.
ATTORNEYS FEES**

46. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff reasserts and incorporates all allegations set forth herein.

47. Pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code, Section 17.50(d) of the Texas Business and Commerce Code, and Section 541.152(a)(1) of the Texas Insurance Code, Plaintiff are entitled to recover reasonable attorney's fees and costs in the prosecution of this action.

**XI.
PRAYER**

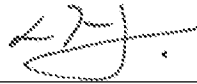
WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully pray that Defendant be cited to answer herein and that upon final trial of this case, the following relief be awarded:

1. Plaintiff be granted judgment against Defendant in the amount of actual and other damages of no less than \$1,000,000;

2. Plaintiff be granted judgment against Defendant for exemplary damages in a sum determined by the trier of fact;
3. Plaintiff be granted judgment against Defendant for treble damages as authorized by TEX. BUS. & COM. CODE § 17.50 (b)(1) and TEX. INS. CODE § 541.152 for knowing and/ or intentional conduct;
4. Plaintiff be granted judgment against Defendant in the amount of reasonable, necessary, and customary legal fees and expenses incurred in this lawsuit;
5. Plaintiff be granted judgment against Defendant for pre-judgment interest as provided by §302.002 of the Texas Finance Code, and post-judgment interest on the total amount of the judgment until paid at the maximum rate allowed by law, which is the interest rate published by the Consumer Credit Commissioner;
6. Plaintiff be granted judgment against Defendant for all costs of court; and Plaintiff be granted such other and further relief, special or general, legal or equitable, to which Plaintiff may show itself to be justly entitled to receive.

Respectfully submitted,

kennard law P.C.



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ATTORNEYS FOR PLAINTIFF