

CAUSE NO. 2015-51137

PRIME NATURAL RESOURCES, INC.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff	§	
	§	
v.	§	
	§	
CERTAIN UNDERWRITERS AT	§	HARRIS COUNTY, TEXAS
LLOYD'S, LONDON, SYNDICATE	§	
Numbers, 2020, 1084, 2001, 457, 510, 2791,	§	
2987, 3000, 1221, 5000, NAVIGATORS	§	
INSURANCE COMPANY UK.	§	
	§	
Defendant.	§	129th JUDICIAL DISTRICT

PLAINTIFF'S THIRD AMENDED PETITION

Plaintiff, Prime Natural Resources Inc. ("Prime"), brings this action against Defendants, Certain Underwriters at Lloyd's London, syndicate numbers, 2020, 1084, 2001, 457, 510, 2791, 2987, 3000, 1221, 5000, Navigators Insurance Company UK (the "Underwriters") participating in, subscribing to, or reinsuring-to-close, directly or indirectly, London Policy numbers 203794 and 203796 (collectively, the "Policy") and alleges as follows:

DISCOVERY CONTROL PLAN

1. Discovery in this action is intended to be conducted under Level 2 of Texas Rules of Civil Procedure 190.
2. Plaintiff seeks monetary relief over \$1,000,000.

INTRODUCTION

3. Prime brings this action against Underwriters for their willful and baseless failure to honor their coverage obligations under the Policy, for their Breach of Duty of Good Faith and Fair Dealing, and violations of the Texas Insurance Code.

BACKGROUND

4. Underwriters agreed to insure Prime's oil and gas drilling interest/operations in the Gulf of Mexico. Hurricane Rita destroyed Prime's offshore oil and gas platform, pipelines, flowlines, and the H2 well located at Ship Shoal 148. Prime spent millions of dollars restoring the SS 148 Facilities to their comparable, pre-loss operating condition. This work included debris removal of the H2 well, recompleting and restoring the H2 well, re-establishing connection to the H2 well bore, and ultimately, rebuilding the SS 148 "H" platform to place the H2 well into a comparable condition as existed prior to Hurricane Rita.

5. The cost and expense incurred are unambiguously covered under the terms, conditions and coverage grant contained in the Policy. After being made aware of the loss more than ten years ago, Underwriters have completely failed to respond to Prime's repeated requests and demands for coverage despite the clear and directly applicable grant of coverage. Because of the Underwriters' failure to resolve the Claim in good faith, Prime was forced to file this action.

THE PARTIES

6. Prime is a corporation organized and existing under the laws of the State of Texas with its principal offices and place of business at 500 Dallas Street, Suite 500, Houston, Texas 77002.

7. Underwriters are corporations or other business entities existing under the laws of one of the states in the United States or some other sovereign power or are individual underwriters of Lloyd's of London. The Policy provides that Underwriters consent to the jurisdiction of this Court and may be served with process by serving their agent for service of process, Mendes & Mount, 750 Seventh Avenue, New York, NY 10019-6829. Plaintiffs requested service be issued to the Commissioner of Insurance, Texas Department of Insurance, Commissioner of Insurance Mike Geeslin, 333 Guadalupe, Austin, Texas 78701. Defendant

Underwriters have appeared herein. A copy of this amended complaint has been sent to their attorney of record.

8. Prime brings this action against Defendants, Certain Underwriters at Lloyd's, London, syndicate numbers, 2020, 1084, 2001, 457, 510, 2791, 2987, 3000, 1221, 5000, and Navigators Insurance Company UK (the "Underwriters") participating in, subscribing to, or reinsuring-to-close, directly or indirectly, London Policy numbers 203794 and 203796 (collectively, the "Policy").¹

VENUE AND JURISDICTION

9. Defendants have consented to the personal jurisdiction of this Court. This Court has subject matter jurisdiction because the amount in controversy exceeds the minimum jurisdiction level of this Court. Venue is proper because a substantial part of the events or omissions giving rise to the claim occurred in Harris County.

FACTUAL BACKGROUND

A. Hurricane Rita

10. In March 1995 Prime Natural Resources, Inc. ("Prime"), through its predecessor F-W Oil Interests, Inc. ("F-W Oil"), entered into a Joint Offshore Operating Agreement ("JOA") with Phillips Petroleum ("Phillips") for the drilling of the H2 well in Ship Shoal Block 148 offshore Louisiana, approximately 75 miles south southeast of Morgan City. F-W Oil Interests and Phillips each took 50% working interest in the prospect, with Phillips designated as the ultimate operator after F&W finished drilling and completing the H2 well and the H platform. Pursuant to the parties' agreement, F-W Oil drilled the H2 well, set a platform, and built two flowlines from Ship Shoal 148 to Phillips' Ship Shoal 149 facility. Over the next several years,

¹ The Underwriters issued two essential identical policies to Prime on behalf of two different groups of underwriting syndicates and/or insurance companies. Copies of these policies have been provided previously to Defendants and the Court.

W&T Offshore, Inc. ("W&T") succeeded to Phillips' 50% interest in the Ship Shoal 148 property and Prime succeeded to F-W Oil's 50% interest. Since then, and through the filing of this suit, W&T acted as the operator of the SS 148 Facilities.

11. On or about September 23, 2005, Hurricane Rita traversed the Gulf of Mexico, destroying the facilities at Ship Shoal 148. In particular, the hurricane washed away the platform at the Ship Shoal 148 Complex, taking the H2 well out of production and leaving the wellhead and other production equipment at the bottom of the Gulf of Mexico.

12. Over the next year, W&T issued a series of Authorizations for Expenditures (AFE's) and Joint Interest Billings (JIBs) to Prime with respect to wreck and debris cleanup at Ship Shoal 148, recompleting and restoring the H2 well, re-establishing connection to the H2 well bore, and ultimately, rebuilding the SS 148 "H" platform. The costs associated with the completion of these activities, all of which were necessary to place the H2 well back into a comparable pre-loss condition exceeded \$17,000,000 on a 100% joint operating basis. Prime timely notified Underwriters of this loss.

13. The Policy issued is a Wellsure Energy Package policy with a policy period running from April 1, 2005 through April 1, 2006.

14. In addition to providing various types of coverage which are applicable to the present claim, and provide coverage for the claim, the Policy also includes Section 1B which provides;

1. **Coverage:**

Underwriters agree, subject to the terms and conditions of this Certificate, to reimburse the Assured for actual expenses incurred by the Assured including all in-hole equipment (including casing) owned by the Assured in redrilling, recompletion, washover, fishing and/or any other salvage operations as may be necessary to recover or restore any well which may be lost or damaged as a result of.

A. an occurrence insured against in Section IA of this insurance; or

B. loss of or damage to the drilling and/or workover and/or production equipment by lightning; fire, explosion or implosion above the surface of the ground or water bottom; collision with land, sea or air conveyance or vehicle, windstorm; collapse of derrick or mast; flood; strikes; riots; civil commotions or malicious damage; and where covered under Section IA, earthquake, volcanic eruption or tidal wave; and in respect of offshore wells only, collision or impact or anchors, chains, trawlboards or fishing nets.

And which cannot be recovered or restored by means other than redrilling and/or recompletion. Actual expenses for redrilling or recompletion shall be limited to the depth of the well and comparable condition that existed prior to the loss.

15. The coverage under the Policy including Section IB and other relevant sections was purchased by Prime in order to provide, and does provide, coverage for all costs incurred by Prime in the restoration of the Ship Shoal 148 Complex. Further, coverage is provided for all cost and actual expenses incurred in recompleting the Ship Shoal H2 well and getting it back into production as a result of the damage covered by or the result of Hurricane Rita.

16. As set forth below, Prime's claim clearly falls within the terms of the Policy and of Section IB of the policy. Further, the costs and actual expenses at issue arise from a liability imposed on Prime by law and incidental to removal of the wreck and debris clean up at Ship Shoal 148 H2 well, rebuilding the platform, re-establishing connection to the H2 well bore, and recompleting of the H2 well following a fortuity. All other requirements for coverage under the Policy have been met by Prime, thereby entitling Prime to coverage for all of the expenses incurred for recompletion and salvage operation necessary to restore the covered well to its pre-loss condition, including all costs and expenses incurred for removal of wreck and debris clean up.

17. Beginning in September of 2005, Underwriters were provided with a steady flow of information concerning Prime's loss through Underwriters appointed agent, Matthews

Daniel, Co. All documentation to support Prime's Proof of Claim was submitted to Underwriters' adjuster Matthews Daniel by Prime's partner in the JOA, W&T. W&T also provided Matthews Daniel access to W&T's electronic filing system known as "Imagio."

18. Underwriters and their agents at Matthews Daniel repeatedly represented to Prime and its brokers that it had sufficient information to process and adjust Prime's claim. Matthews Daniel acknowledged being in regular and continual contact with Prime since Matthews Daniel first acknowledged assignment of the claim. Matthews Daniel issued regular progress reports to Underwriters updating the insurer on the receipt of billings and expenditure authorizations from Prime and its operator, W&T.

19. Matthews Daniel recommended two payments be issued to Prime under the Policies. The first, for a Constructive Total Loss of the SS 148 "H" platform, was issued by Underwriters in June 2006 through Matthews Daniel had indicated the platform was a constructive total loss per the terms of the policy in November 2005. The second, a partial payment for well intervention/restoration costs, was issued December 2007. Matthews Daniel recommended this second payment to have been issued in July 2007. Together, these payments total nearly \$4 million. The total amount of the claim, however, was nearly \$8.8 million. Prime submitted all of the documentation supporting this by May 19, 2007, at the latest.

20. As of the date of filing of this lawsuit, Prime has not received payment on more than \$1.8 million of its outstanding claim. Prime has received no correspondence or other written request for additional information, no written reservation of rights letter, and no written denial from Underwriters. Underwriters' complete failure to investigate this claim in a timely fashion as required by Texas law, Underwriters' complete failure to respond in writing to any of the repeated request of Prime, and Underwriters' failure to either request additional information,

issue a reservation of rights letter or issue a denial letter are demonstrative of complete bad faith in handling and adjusting of the claim at issue in this lawsuit.

B. Prime Accepts Underwriters' Offer to Split the Claims and Enter a Tolling Agreement

21. On April 1, 2011, Underwriters' counsel J. Clifton Hall III wrote counsel for Prime with a proposal that the parties split the claims raised in Cause No. 2007-56696.

22. Specifically, Mr. Hall proposed in his letter that Underwriters would agree to split the claims in Cause No. 2007-56966 in return for an agreement that Prime would not proceed to trial in November 2011 on its remaining claims: "Defendants Underwriters and Matthew Daniels propose that Prime dismiss *without prejudice* those claims that are not the subject of Underwriters' partial summary judgment order....This process of dismissals will render Underwriters interlocutory order a final order that can be the subject of a direct appeal. Prime will then have the ability to appeal the Court's January 13, 2011 order. Upon the conclusion of the appeal process, Prime may re-file the dismissed claims against Underwriters and Underwriters are prepared to extend a tolling agreement so that no limitations period bars Prime's ability to proceed with a trial on the dismissed claims once the appeals are exhausted. Alternatively, should Prime not agree to this proposed dismissal that allows for Prime's direct appeal of the January 13, 2011 order, then Prime may proceed with the November 7, 2011 setting to try its pending claims against Underwriters."

23. Prime accepted Mr. Hall's offer.

24. The parties subsequently entered a tolling agreement drafted by Underwriters' counsel. Among other things, the tolling agreement provided that "Upon the entry of a final non-appealable judgment in connection with any appeal of the Final Judgment, the parties understand and agree that either Party may refile one or more claims that have been non-suited without

prejudice pursuant to this Agreement (“Non-Suited Claims(s)).” The tolling agreement further provided that the statute of limitations on all Non-Suited claims would be tolled.

25. Both Mr. Hall’s April 1, 2011 offer letter and the subsequent tolling agreement unambiguously provide that Prime could refile its Nonsuited Claims without prejudice to its right to reassert those claims in a separate, independent action: i.e., the parties agreed that res judicata would not apply as a bar to refiling of the Nonsuited Claims. Further, by acquiescing to splitting the Nonsuited claims from Cause No. 2007-56966, Underwriters waived the right to assert res judicata regarding those claims.

26. Prime subsequently filed a motion with the trial court nonsuiting all of its claims and requesting that the Court grant the motion to nonsuit the claims without prejudice.

27. The trial court subsequently entered a Final Order on October 24, 2011, which nonsuited Prime’s claims without prejudice and specifically excluded those claims from the Final Judgment, expressly stating that the Final Judgment was limited to the claims underlying the interlocutory summary judgment order and “shall not be interpreted or construed as an adjudication on the merits of any cause of action or claim that has been non-suited without prejudice by Prime and/or Underwriters prior to the entry of this Final Judgment.”

C. The Appeal and the Parties’ Rule 11 Agreement

28. In *Prime Natural Resources, Inc. v. Certain Underwriters at Lloyd’s, London*, 2015 WL 1457534 (Tex.App.—Houston [1st Dist], March 26, 2015, no pet.), the Court of Appeals affirmed the declarations of the trial court, indicating that:

- a. Coverage under Section II of the Policy (for Physical Loss and Physical Damage to the H platform and removal of debris of the H platform) is limited in an amount to the Policy’s scheduled limits for platforms/caissons, pipelines and debris removal. Costs incurred by Prime to repair/refurbish the H platform or remove the platform debris in excess of the Policy limits are not covered under Section II.

- b. Section IB of the Policy (Expense of Redrilling/Recompleting) does not provide coverage for costs incurred to replace, repair or refurbish the H platform or platform equipment or to remove H platform debris; and;
- c. Section IA (specifically, the Making Wells Safe Endorsement) does not provide coverage for costs to replace, repair or refurbish the H platform or remove H platform debris.

See Prime Natural Res., Inc. v. Certain Underwriters at Lloyd's, London, No. 01-11-00995-CV, 2015 WL 1457534, at *3 (Tex. App. Mar. 26, 2015).

29. As it relates to this last declaration, the Court of Appeals noted that the trial court made no determination as to whether Prime actually incurred costs which might be reimbursable under Section IA. *Id.* at *10. The Court of Appeals further noted that the trial court did not decide whether Underwriters had correctly classified those costs incurred by Prime. *Id.* Rather, the Court of Appeals clarified that the trial court's judgment declared only that those described as costs to replace, repair, or refurbish the H-Platform, or remove the H-Platform debris, were not covered under Section IA or the Making Wells Safe Endorsement. *Id.*

30. On July 31, 2015, the parties agreed that tolling period in which parties could refile the Nonsuited claims would be extended to Monday, September 1, 2015. That agreement was subsequently memorialized in signed Rule 11 agreement which was filed with the Court in Cause No. 2015-51137 on November 24, 2015.

31. Prime refiled its Nonsuited Claims against Underwriters on August 31, 2015 in Cause No. 2015-51137.

32. Prime is specifically not seeking platform-related costs in this lawsuit.

FIRST CAUSE OF ACTION
(Breach of Contract)

33. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

34. Prime has incurred costs and/or expenses associated with the wreck and debris clean up at the Ship Shoal 148 H2 well, rebuilding the platform, re-establishing connection to the H2 well bore, and ultimately, recompleting and restoring the H2 well as described above.

35. Prime tendered to the Underwriters its claim for coverage under the Section I B and other relevant provisions of the policy, including the Making Wells Safe Endorsement, and sought recovery for the costs and/or expenses it has incurred with the wreck and debris clean up at Ship Shoal 148 H2 well, rebuilding the platform, re-establishing connection to the H2 well bore, and ultimately, recompleting and restoring the H2 well.

36. Prime has complied with all conditions precedent to coverage under the Policy, or, alternatively, all conditions precedent have been waived and/or Underwriters are estopped from claiming such conditions precedent preclude payment under the Policy. To the extent any applicable conditions precedent have not been met by Prime and/or waived by Underwriters, Underwriters cannot demonstrate any resulting prejudice to their rights.

37. Pursuant to Section 1B and other relevant provisions of the Policy, Underwriters have a clear duty to indemnify Prime for the costs and/or expenses associated with the wreck and debris clean up at the Ship Shoal 148 H2 well, rebuilding the platform, re-establishing connection to the H2 well bore, and recompleting and restoring the H2 well to its comparable pre-loss condition. Underwriters have breached the Policy by failing and/or refusing to indemnify Prime for all the outstanding costs and/or expenses described above.

38. As a direct and proximate result of Underwriters' breach Prime has sustained, and the Underwriters are liable for, both actual and consequential damages. Underwriters still owe Prime more than \$1.8 million in proceeds under the policy. Moreover, Underwriters' failure to reimburse Prime under the policy has resulted in consequential damages to Prime. Prime has sustained lost business opportunities and lost profits. Finally, because it has been necessary to retain counsel and bring this action, Prime also merits recovery of its reasonable and necessary attorneys' fees under Tex. Civ. Prac. & Rem. Code §38.001, et seq.

SECOND CAUSE OF ACTION
(Unfair or Deceptive Acts under Texas Insurance Code Section 541)

39. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

40. Underwriters qualify as a "person" within the meaning of Texas Insurance Code §§ 541.002 *et seq.*

41. The Underwriters, after being made aware of the loss at issue and receiving all necessary information regarding same, and without reasonable justification, have not, as of the date of the filing of this lawsuit paid the claim, issued reservation of rights letter, a request for additional information, or a denial letter. In addition, both Underwriters and their agents that they had had sufficient information to adjust and/or process Prime's claim. To the extent Underwriters now attempt to take the position they lacked any necessary information or Prime failed to properly present a proof of loss, Underwriters have made misrepresentations and engaged in deceptive practices.

42. The Underwriters have refused to pay the claim that has been provided to them, and have effectively denied coverage under the Policy by failing to provide Prime any

indication whatsoever as to Defendants' position as it relates the claim made the basis of this suit.

43. The Underwriters' failure and refusal to provide coverage to Prime for the Claim on the grounds that the Policy does not provide coverage is unreasonable and in bad faith because the Claim is clearly covered under the Policy.

44. Instead of attempting to resolve Prime's Claim in good faith, the Underwriters totally failed to respond to the Claim in any fashion in a bad faith effort to delay or escape making payments due under the Policy to Prime.

45. In their handling of Prime's Claim, the Underwriters and Matthews Daniel have committed one or more of the following unfair settlement practices under Texas Insurance Code § 541.060(a), § 541.051, and § 541.061:

- (1) Underwriters misrepresented policy provisions relating to coverage at issue;
- (2) Underwriters failed to attempt in good faith to effectuate a prompt, fair and equitable settlement of a claim to which Underwriters' liability had become reasonably clear;
- (3) Underwriters failed to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim under one portion of the policy with respect to which Underwriters' liability had become clear in order to influence Prime to settle another claim under another portion of the coverage;
- (4) Underwriters failed to promptly provide Prime with a reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for the Underwriters'

effective denial of the Claim;

- (5) Underwriters failed to affirm or deny coverage to Prime within a reasonable period of time;
- (6) Underwriters failed to provide a pertinent reservation of rights to Prime within a reasonable period of time;
- (7) Underwriters refused to pay Prime's Claim without conducting a reasonable investigation with respect to the claim; and
- (8) Underwriters failed to disclose a matter required by law to be disclosed, including failing to make a disclosure in accordance with another provision of the Code.

46. Underwriters knowingly committed each of the unfair settlement practices listed above.

47. Prime has provided notice to the Underwriters of its intent to pursue Texas Insurance Code against them. Pursuant to the requirements of Texas Insurance Code § 541.154, the notice was given in a reasonable fashion.

48. As a direct and proximate result of Underwriters' deceptive and unfair settlement practices, Prime sustained, and Defendants are liable for, actual damages and expenses including loss of policy benefits and lost profits. In addition to its actual damages, Prime merits recovery of all such relief provided by Tex. Ins. Code § 541.152(a), including but not limited to costs of court as well as reasonable and necessary attorneys' fees. Moreover, as Underwriters knowingly engaged in the above deceptive acts, Prime should be awarded treble damages in accordance with Tex. Ins. Code § 541.152(b).

THIRD CAUSE OF ACTION
(Failure to Promptly Pay Claims under Texas Insurance Code Section 542)

49. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

50. The Underwriters constitute an insurer authorized to engage in business as an insurance company or to provide insurance in Texas to which Section 542, Subchapter B, of the Texas Insurance Code applies. The Underwriters, in addressing Prime's claim made the basis of this lawsuit, have failed to provide those acknowledgements and furnish those communications required by Texas law.

51. The Underwriters after being made aware of the loss at issue and receiving all necessary information regarding same, and without reasonable justification, have engaged in practices prohibited by the provisions of Texas Insurance Code.

52. The Underwriters failed to properly communicate to Prime their receipt of notice of the claim at issue. Specifically, The Underwriters failed to acknowledge receipt of the claim, commence a reasonable investigation, and request from the claimant all items, statements, and forms, the insurer reasonably believed would be required from the claimant as required under Tex. Ins. Code §542.055.

53. Despite the fact that Hurricane Rita occurred more than ten years ago, the Underwriters have still failed to provide Prime with any specific indication as to whether they have accepted or rejected the Claim. Section 542.056 of the Texas Insurance Code required Underwriters to notify Prime, in writing, of Underwriters acceptance or rejection of the Claim, not later than the 15th business day, or as applicable 30 business day, after Underwriters had been provided the information composing a final proof of loss. Underwriters have provided no

indication whatsoever to Prime that Underwriters required additional information or additional time in order to evaluate the Claim.

54. As a result of these actions and omissions on the part of The Underwriters, Prime has been damaged by denying the proceeds under a policy of insurance for which Prime paid appropriate premiums. The attendant delay has necessarily worked financial hardship on Prime.

55. The Underwriters' unjustified conduct entitles Plaintiff to all damages and penalties available under Tex. Ins. Code §542.060, including, but not limited to, the amount of the policy claim, damages in form of lost business opportunities and lost profits, and additional damages measured as interest on the amount of the claim at 18% per annum, and reasonable attorneys' fees.

FOURTH CAUSE OF ACTION
(Breach of the the Common Law Duty of Good Faith and Fair Dealing)

56. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

57. Underwriters had a common law obligation to deal fairly with Prime in good faith. By failing to timely acknowledge coverage, by denying or unreasonably delaying payments on certain claims, and failing to pay amounts owed to Prime as a result of the Hurricane Rita damage to Ship Shoal 148, Underwriters wholly failed to satisfy their duty of good faith and fair dealing, causing significant actual and other damages to Prime.

58. Underwriters further failed to deal fairly and in good faith with Prime by conducting an unreasonable investigation of the Hurricane damage to Ship Shoal 148. For example, in responding to discovery, Underwriters have taken the position they had not received sufficient information from Prime to adjust Prime's claim and that Underwriters were therefore

not in a position to accept or deny the claim. However, neither Underwriters nor its agent ever requested that Prime provide additional information. These actions make clear Underwriters had already decided to delay payment and/or deny the claim, and had settled upon a plan for doing so. Not only was Underwriters' investigation driven by the predetermined purpose of denying the claim, Underwriters also unreasonably delayed taking a position on coverage, and communicating same to Prime, on the Ship Shoal 148 Claim, which included the costs at issue. Underwriters prolonged the issue by misleading Prime into believing further investigation was being conducted that would result in Underwriters accepting the claim. Instead, Underwriters did not conduct an investigation in a reasonable manner and ultimately denied Prime's claim. Underwriters wholly failed to satisfy their duty of good faith and fair dealing, causing significant actual and other damages to Prime.

DAMAGES AND ATTORNEY'S FEES

59. Plaintiff seeks all actual damages, including damages for economic injury, exemplary damages, consequential damages, pre-judgment and post-judgment interest at the maximum rates allowed by law, court costs, and their reasonable and necessary attorney fees. Plaintiffs seek monetary relief of over \$1,000,000 at this time.

60. Plaintiff seeks its reasonable attorneys' fees, expenses, and costs incurred by this action and any appeals of this action, as authorized by section 38.001 of the Texas Civil Practice and Remedies Code, and any other applicable statute, the terms of any relevant contracts, and the common law of this state.

61. Plaintiff seeks punitive and exemplary damages as permitted by law, and seeks such other and further relief, general or special, at law or in equity, to which Plaintiffs may show themselves justly entitled.

JURY DEMAND

62. Plaintiff has demanded a jury trial. The appropriate fee has been tendered concurrently with the filing of this Petition.

CONDITIONS PRECEDENT

63. All conditions precedent to Plaintiff's claim for relief, if any, have been satisfied or excused.

PRAYER

For the reasons described above, Plaintiff respectfully asks the Court to issue a citation for Defendants to appear and answer, and that Plaintiff be awarded a judgment against Defendants and recover as follows:

- a. Actual damages, including policy proceeds due and owing and lost profits;
- b. Consequential damages;
- c. Interest as damages available under the Texas Insurance Code, including the 18% per annum interest on the amount of Prime's claim available under Tex. Ins. Code § 542.060;
- d. Additional (treble) damages provided by the Tex. Ins. Code §541.152(b);
- e. Exemplary damages pursuant to Tex. Civ. Prac. & Rem. Code § 41.001, *et seq.*
- f. Prejudgment Interest as provided by law;
- g. Attorneys' fees and expenses;
- h. Post-judgment interest as provided by law;
- i. Costs of suit; and
- j. Such other and further relief to which Prime may be justly entitled.

Respectfully submitted,

/s/ John Zavitsanos

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**COUNSEL FOR PLAINTIFF PRIME
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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2017, a true and correct copy of the foregoing document was served electronically through email and the electronic filing manager to all counsel of record in accordance with Texas Rules of Civil Procedure 21 and 21a as follows:

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