

3. In accordance with Local Rule CV-81(c)(1), Defendant states that the removed case is currently pending and provides the following list of all parties:

Herbert and Marlene Singer Living Trust, Plaintiff

The Travelers Lloyds Insurance Company, Defendant.

4. In accordance with Local Rule CV-81(c)(2), Defendant is filing contemporaneously herewith a civil cover sheet.

5. In accordance with Local Rule CV-81(c)(2), attached hereto as Exhibit "A" is a certified copy of the state court docket sheet and attached hereto as Exhibit "B" is a copy of all pleadings that assert causes of action, all answers to such pleadings and a copy of all process and orders served upon Travelers.

6. In accordance with Local Rule CV-81(c)(3) the following is a complete list of attorneys involved in this action:

Counsel for Plaintiff: Roger W. Anderson
State Bar No. 01213500
Gillen & Anderson
613 Shelley Park Plaza
Tyler, Texas 75701
Telephone: 903-581-8600
Facsimile: 903-581-8790

Counsel for Defendant: Wm. Lance Lewis
State Bar No. 12314560
Marcie L. Schout
State Bar No. 24027960
Quilling, Selander, Cummiskey & Lownds, P.C.
2001 Bryan, Street, Suite 1800
Dallas, TX 75201
Telephone: 214-871-2100
Facsimile: 214-871-2111

7. In accordance with Local Rule CV-81(c)(4) Defendant reports that neither party has requested a jury in the state court action.

8. In accordance with Local Rule CV-81(c)(5) the name and address of the Court from which the case is being removed is:

2nd Judicial District Court, Cherokee County, Texas
Cherokee County Courthouse
P.O. Drawer "C"
Rusk, Texas 75785
Phone: 903-638-2236
Fax: 903-638-2238

Ground for Removal: Diversity

9. This Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1332, in that this is a civil action where the matter in controversy exceeds \$75,000, and is between citizens of different States.

(a) The Amount in Controversy Exceeds the Federal Minimum Jurisdictional Requirements.

10. Plaintiff's Complaint alleges that it has suffered damages of \$184,000 as a result of the theft of copper for which it seeks insurance coverage. Complaint at ¶5, 7. In addition, Plaintiff seeks treble damages under the Texas Deceptive Trade Practices Act and attorney's fees. Plaintiff's Complaint clearly establishes that it is seeking damages in excess of the federal jurisdictional minimum of \$75,000, exclusive of costs and interest.

(b) There is Complete Diversity between Defendant and Plaintiff.

11. "For the purposes of diversity jurisdiction, the citizenship of a trust is determined by the citizenship of the trustee or trustees." *Ronald Alexander Leblanc Trust v. Ransom*, 276 F.Supp.2d 647, 651 (S.D. Tex. 2003). Herbert Singer is the Trustee of the Herbert and Marlene Singer Living Trust. Herbert Singer is an individual resident citizen of California. Plaintiff is accordingly a citizen of California for purposes of diversity jurisdiction.

12. Defendant is a Texas Lloyd's plan insurance association and is an unincorporated association. For purposes of diversity jurisdiction, the citizenship of a Lloyd's plan insurance association is determined by the citizenship of its underwriters. *Royal Ins. Co. of America v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993); *see also State Farm Lloyds v. Peed*, No. CIV.A. 3:00CV1696-BC, 2001 WL 513427 (N.D. Tex. May 9, 2001) ("For purposes of diversity jurisdiction, a Lloyds Plan insurer is considered an 'unincorporated association' whose citizenship is determined solely by the citizenship of its underwriters.").

13. The underwriters of Defendant are all citizens of Connecticut. None of the underwriters of Defendant are citizens of Texas or California.

14. Accordingly, because the amount in controversy exceeds \$75,000 and because Plaintiff is a citizen of California, while Defendant is not, and Defendant is not a citizen of Texas this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332. Removal is therefore proper.

WHEREFORE, Defendant prays that the above-described action now pending in the 2nd District Court in Cherokee County, Texas, be removed to this Court.

Respectfully submitted,

/s/ Wm. Lance Lewis

WM. LANCE LEWIS

Texas Bar No. 12314560

MARCIE L. SCHOUT

Texas Bar No. 24027960

**QUILLING, SELANDER, CUMMISKEY
& LOWNDS, P.C.**

2001 Bryan Street, Suite 1800

Dallas, Texas 75201

(214) 871-2100 (Telephone)

(214) 871-2111 (Facsimile)

**ATTORNEYS FOR DEFENDANT
THE TRAVELERS LLOYDS INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing pleading has been furnished to Plaintiff's counsel of record, via certified mail, return receipt requested, in accordance with the Federal Rules of Civil Procedure, this 13th day of February, 2009 at the address indicated below:

Roger W. Anderson
Gillen & Anderson
613 Shelley Park Plaza
Tyler, Texas 75701

/s/ Wm. Lance Lewis

Wm. Lance Lewis / Marcie L. Schout

A

CIVIL DOCKET

CASE NO. 2009-02-0111

NUMBER OF CASE	STYLE OF CASE	ATTORNEYS	KIND OF ACTION	DATE OF FILING										
				Month	Day	Year								
2009-02-0111	HERBERT & MARLENE SINGER LIVING TRUST VS TRAVELERS LLOYDS INSURANCE COMPANY	Roger W. Anderson Plaintiff Defendant.	Collection Suit	02	04	2009								
<table border="1"> <tr> <td colspan="2">FEE BOOK</td> <td rowspan="2">ORDERS OF COURT</td> <td rowspan="2">Mimic Book</td> <td rowspan="2">PROCESS</td> </tr> <tr> <td>Vol.</td> <td>Page</td> </tr> </table>				FEE BOOK		ORDERS OF COURT	Mimic Book	PROCESS	Vol.	Page				
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Vol.	Page													
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DATE OF ORDERS			Mimic Book	PROCESS										
Mo.	Day	Year												

CERTIFIED COPY CERTIFICATE

STATE OF TEXAS COUNTY OF CHEROKEE
 I hereby certify that the above is a true and correct copy of the original record on file in my office

Janeet Chatterjee
 DISTRICT CLERK

CHEROKEE COUNTY, TEXAS

By *Janeet Chatterjee* Deputy

B

FILED
AT 10:38 O'CLOCK 2 M.

FEB - 4 2009
Janet Gates
JANET GATES
CLERK, DISTRICT COURT
CHEROKEE COUNTY, TEXAS
BY _____ DEPUTY

NO. 2009-02-0111

**HERBERT AND MARLENE
SINGER LIVING TRUST**

VS.

**THE TRAVELERS LLOYDS
INSURANCE COMPANY**

§
§
§
§
§
§
§

IN THE DISTRICT COURT

CHEROKEE COUNTY, TEXAS

2ND JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the HERBERT AND MARLENE SINGER LIVING TRUST, Plaintiff, complaining of TRAVELERS LLOYDS INSURANCE COMPANY, Defendant, and files this Original Petition and for such cause of action would respectfully show the Court as follows:

I.

Plaintiff hereby requests that discovery of this cause be conducted pursuant to Rule 190.4, Level 3, Texas Rules of Civil Procedure. Pursuant to such request, Plaintiff hereby moves that the Court enter a Discovery Control Plan.

II.

Plaintiff, HERBERT AND MARLENE SINGER LIVING TRUST is an insured under a policy of insurance issued by Defendant which owns real property and improvements thereon in Jacksonville, Texas.

Defendant, TRAVELERS LLOYDS INSURANCE COMPANY, is an insurance carrier doing business in the State of Texas. Defendant may be served herein by service upon its agent for service of process, Corporation Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701-3232.

III.

Cherokee County is the County in which all or a substantial part of the events or omissions which give rise to the claim which is the subject of this suit occurred. Cherokee County is the County in which the insured property which is the subject of this suit was situated. Accordingly, venue is proper in Cherokee County, Texas pursuant to §15.001 and §15.032, Texas Civil Practice and Remedies Code.

IV.

On June 7, 2007, Defendant issued a policy of insurance providing business owners property and liability coverage for five locations, including a building located at 1822 S. Jackson, Jacksonville, Texas 75766, referred to in the policy as Premises Location No. 2, Building No. 1. The hereinabove described policy of insurance was issued for a policy period of July 17, 2007 to July 17, 2008.

V.

On or about December 17, 2007, Plaintiff discovered that it had suffered a theft loss at Location No. 2, Building No. 1. Specifically, copper from this building had been stolen requiring the complete replacement of the air-conditioning units. The damage sustained by Plaintiff as a result of this occurrence exceeded \$164,000.00.

VI.

The December, 2007 loss was promptly reported to the police and to Defendant. It was designated as Claim No. A8N0004 by Defendant. On or about March 7, 2008, Defendant wrongfully denied this claim on the grounds that coverage did not exist under this policy for vandalism and theft loss because the building was vacant. Plaintiff would respectfully show the Court that at all times material hereto, this building was not vacant as defined by the hereinabove described policy, and Defendant's denial of this loss was wrongful.

VII.

In late April, 2008, a second theft loss was sustained by Plaintiff to Location No. 2, Building No. 1. This theft of copper was also promptly reported to Defendant and was designated by Defendant as Claim No. A7U4895. In addition, this theft was also reported to the Jacksonville Police Department. The damage sustained by Plaintiff as a result of this occurrence exceeded \$20,000.00.

VIII.

Plaintiff promptly notified Defendant of the April, 2008 loss. Although Plaintiff has provided Defendant with all information requested with regard to this loss, Defendant has and continues to refuse to pay this claim. Defendant's refusal to pay this claim in a timely fashion, as required by law, is wrongful.

IX.

Plaintiff would respectfully show the Court that each of the losses sustained by Plaintiff, as described above, was a covered loss. Defendant's denial of coverage and refusal to pay the claims tendered to it constitutes breach of contract.

X.

Plaintiff would further show the Court that at all times material hereto, it was a consumer as that term is defined in §17.45, Texas Deceptive Trade Practices–Consumer Protection Act.

XI.

Defendant's denial of coverage and misrepresentation of the policy terms constituted false, misleading or deceptive acts or practices as defined by §17.46(b), D.T.P.A., including but not limited to the following:

- a. Representing that its goods or services had characteristics, uses, benefits which they did not have;
- b. Representing that the policy conferred or involved rights, remedies or obligations which it did not have; and
- c. Failing to disclose information regarding its goods or services which was known at the time of the transaction where such failure to disclose was intended to and did induce Plaintiff into a transaction into which Plaintiff would not have entered had such information been disclosed.

XII.

Plaintiff would further show the Court that the hereinabove described conduct of Defendant constituted an unconscionable course of action.

XIII.

Defendant's wrongful denial of coverage, misrepresentation of the policy terms and refusal to pay the tendered claims constituted unfair or deceptive acts or practices as defined in Chapter 541, Texas Insurance Code, including but not limited to the following:

- a. Making or causing to be made statements misrepresenting the terms, benefits or advantages of the insurance policy;
- b. Making any misrepresentation relating to an insurance policy by:
 1. Making any untrue statement of a material fact; or
 2. Failing to state a material fact which was necessary to make other statements not misleading, considering the circumstances under which the statements are made; or
 3. Making any statement in such a manner as to mislead a reasonably prudent person to a false conclusion of a material fact.

XIV.

Plaintiff would further show the Court that Defendant's wrongful conduct and refusal to timely pay the tendered claims constituted a violation of Chapter 542, Texas Insurance Code.

XV.

The wrongful conduct of Defendant was committed knowingly.

XVI.

The wrongful conduct of Defendant was committed intentionally.

XVII.

Defendant's wrongful conduct, as described above, was a proximate and/or producing cause of the actual damages sustained by Plaintiff arising out of the hereinabove described theft losses. The actual damages sustained by Plaintiff far exceed the minimum jurisdictional limits of this Court.

XVIII.

More than 60 days prior to the filing of this suit, presentment and notice of this claim was given to Defendant pursuant to Chapter 28, Texas Civil Practice and Remedies Code, and the applicable provisions of the Texas Insurance Code and Deceptive Trade Practices–Consumer Protection Act. Although afforded an opportunity to cure, Defendant failed and refused to do so.

XIX.

All conditions precedent to prosecution of this claim have been satisfied.

XX.

Plaintiff is entitled to recover reasonable and necessary attorneys' fees incurred for the prosecution of this claim.

XXI.

Plaintiff is entitled to recover additional damages not to exceed three times the amount of actual damages pursuant to the Texas Insurance Code.

XXII.

Plaintiff is further entitled to recover eighteen percent (18%) interest as additional damages pursuant to Chapter §542, Texas Insurance Code.

XXIII.

Plaintiff is entitled to recover three times its economic damages pursuant to the terms of the Texas Deceptive Trade Practices–Consumer Protection Act.

XXIV.

Plaintiff is entitled to prejudgment and post-judgment interest.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear herein and upon final hearing hereof that Plaintiff recover of and from Defendant its actual damages, attorneys' fees, additional damages, prejudgment interest, post-judgment interest, costs of Court and such other and further relief to which Plaintiff may show itself justly entitled.

Respectfully submitted,

GILLEN & ANDERSON
Attorneys and Counselors at Law
613 Shelley Park Plaza
Tyler, Texas 75701
(903) 581-8600
(903) 581-8790 (fax)

By: 

ROGER W. ANDERSON
State Bar No. 01213500

ATTORNEYS FOR PLAINTIFF

GILLEN & ANDERSON
ATTORNEYS AND COUNSELORS AT LAW

JAMES B. GILLEN, JR.
CERTIFIED MEDIATOR
E-MAIL: jgillen@tyler.net

613 SHELLEY PARK PLAZA
TYLER, TEXAS 75701-9457
TEL (903) 581-8600
FAX (903) 581-8790
www.gillenanderson.com

ROGER W. ANDERSON
BOARD CERTIFIED
PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
E-MAIL: rander@tyler.net

February 3, 2009

Janet Gates, District Clerk
Cherokee County Courthouse
135 S. Main Street
Rusk, Texas 75785

FILED
AT _____ O'CLOCK _____ M.

FEB - 4 2009

JANET GATES
CLERK, DISTRICT COURT
CHEROKEE COUNTY, TEXAS
BY _____ DEPUTY

RE: NO. _____ - **HERBERT AND MARLENE SINGER LIVING**
TRUST V. THE TRAVELERS LLOYDS INSURANCE COMPANY
Our File No.: RA/JG-20663

Dear Ms. Gates:

Enclosed herewith please find the original and one (1) copy of Plaintiff's Original Petition in the above-described matter which I request you file with the Court.

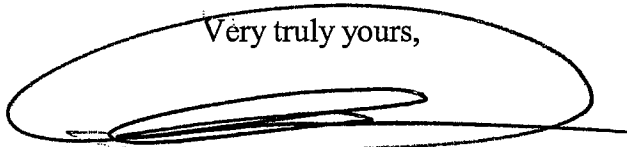
Please issue citation **for service by certified mail**, return receipt requested, pursuant to Rule 106, Texas Rules of Civil Procedure, upon Defendant, **Travelers Lloyds Insurance Company, by and through its agent for service of process, Corporation Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701-3232**. The enclosed extra copy of the Petition is to be served with the citation.

I also enclose herewith an extra copy of this letter with the request that you acknowledge receipt and filing of the above-described instrument by affixing your file-mark thereto and returning the same to me in the return addressed envelope which is provided for your convenience.

Our check for \$300.00 which represents the filing fee, issuance and service of citation is also enclosed.

Thank you for your cooperation.

Very truly yours,



ROGER W. ANDERSON

RWA/mh
Enclosure

Clerk:
Janet Gates, District Clerk
Cherokee County Courthouse
P.O. Drawer "C"
Rusk, Texas 75785

Attorney or Pro Se Petitioner:
ROGER W. ANDERSON
613 SHELLEY PARK PLAZA
TYLER, TEXAS 75701

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

T H E S T A T E O F T E X A S

TO: TRAVELERS LLOYDS INSURANCE COMPANY
AGENT: CORPORATION SERVICE CO.
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701-3232

Defendant, Greeting:

You are hereby commanded to appear by filing a written answer to the Original Petition at or before ten o'clock A.M. on the Monday next the expiration of twenty days after the date of service of this citation before the Honorable 2ND JUDICIAL DISTRICT of Cherokee County, Texas, at the Court House of said County in Rusk, Texas.

Said Plaintiff's Petition was filed on the 4th day of February A.D., 2009 .

The file number of said suit being 2009020111, Styled:

HERBERT AND MARLENE SINGER
LIVING TRUST

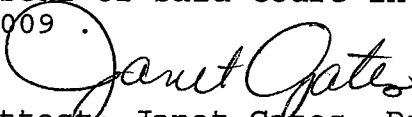
vs

THE TRAVELERS LLOYDS INSURANCE
COMPANY

The nature of Plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Original Petition accompanying this citation made a part hereof.

The officer executing this writ shall promptly mail the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand seal of said Court in Rusk, Texas, this the 4th day of February A.D., 2009 .



Attest: Janet Gates, District Clerk
Cherokee County, Texas

By _____ Deputy
JANET GATES

Case# 2009020111



CERTIFICATE OF DELIVERY BY MAIL

I hereby certify that on the 4th day of February, 2009 at 4 P.M., I mailed to AGENT: CORPORATION SERVICE COMPANY for Defendant, TRAVELERS LLOYDS INSURANCE COMPANY by Registered Mail Receipt requested, a true copy of this citation with a copy of the petition attached thereto.

Janet Gates
District Clerk/Deputy
JANET GATES

Certified Mail # 7008 1140 0004 9137 7054

Attach White Card:

Attach Green Card:

4502 2ET6 T000 04TT 9007
7008 1140 0001 9137 7054

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2009-02-0111

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Corporation Service Company for
Travelers Lloyds Ins. Co.
Street, Apt. No. or PO Box No.
Austin, Texas 78701-3232
City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions