



diversity purposes.

2. Defendant, Travelers Lloyds Insurance Company, is an insurance carrier doing business in the State of Texas. Defendant, Travelers Lloyds Insurance Company is hereinafter referred to as “Travelers.” Travelers alleges that it is a citizen of the State of Connecticut for diversity purposes. Travelers has already appeared in this cause.

3. Defendant, First Texas Insurance Services, LC, is an insurance broker doing business in the State of Texas. Defendant, First Texas Insurance Services, LC is hereinafter referred to as “First Texas.” First Texas has its principal place of business and is incorporated in the State of Texas. First Texas is a citizen of the State of Texas. First Texas may be served herein by service of process upon its registered agent, Larry McNeil, 700 Highlander Boulevard, Suite 350, Arlington, Texas 76015.

4. On June 7, 2007, Travelers 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.

5. At all times material hereto, including the issuance of the hereinabove described policy of insurance by Travelers, First Texas was the agent and broker with regard to such policy. All communications between Travelers and Plaintiffs with regard to the hereinabove described policy went through First Texas. Plaintiffs requested First Texas to procure complete business owners property and liability coverage for the five locations hereinabove described. First Texas represented to Plaintiffs, both expressly and impliedly, that it had procured complete business owners property

and liability coverage for the above-described locations.

6. At the time the hereinabove described policy was issued, the named insured was “Herbert and Marlene Singer Living Trust.” On November 29, 2007, Travelers issued an endorsement changing the named insured under the hereinabove described policy from Herbert and Marlene Singer Living Trust to “Gun Barrel–Jacksonville LLC and Herbert Singer.”

7. On or about December 17, 2007, Plaintiffs discovered that it had suffered a theft loss at Premises 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 Plaintiffs as a result of this occurrence exceeded \$164,000.00.

8. The December, 2007 loss was promptly reported to the police and to Defendants. It was designated as Claim No. A8N0004 by Travelers. On or about March 7, 2008, Travelers wrongfully denied this claim on the grounds that coverage did not exist under this policy for vandalism and theft loss because Travelers claimed the building was vacant. Although Plaintiffs have provided Travelers with all information requested with regard to this loss, Travelers has and continues to refuse to pay this claim. Travelers’ refusal to pay this claim in a timely fashion, as required by law, is wrongful.

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

10. Plaintiffs promptly notified Defendants of the April, 2008 loss. Although Plaintiffs have provided Defendants with all information requested with regard to this loss, Travelers has and

continues to refuse to pay this claim. Travelers' refusal to pay this claim in a timely fashion, as required by law, is wrongful.

11. Plaintiffs would respectfully show the Court that at all times material hereto, Premises Location No. 2, Building No. 1 was not vacant as defined by the hereinabove described policy. Travelers' denial and refusal to pay the hereinabove described losses were wrongful. Plaintiffs would respectfully show the Court that each of the losses sustained by Plaintiffs, as described above, were covered losses. Travelers' denial of coverage and refusal to pay the claims tendered to it constitutes breach of contract.

12. As described above, First Texas was responsible for all communications between Plaintiffs and Travelers with regard to the hereinabove described policy of insurance. At all times material hereto, First Texas acted as the broker/agent with regard to such insurance coverage.

13. Prior to July 27, 2007, Travelers sent its risk control consultant to inspect the insured property located at 1822 S. Jackson, Jacksonville, Texas 75766, including the building identified as Premises Location No. 2, Building No. 1. Defendants represented to Plaintiffs that this inspection was to evaluate the property and make recommendations to prevent losses and minimize the impact to Plaintiffs' business in the event of a loss. Travelers' risk control consultant prepared a written report dated July 27, 2007, a copy of which is attached hereto as Exhibit "A." The risk control consultant's report was sent by Travelers to First Texas' agent, Traci Davis. First Texas forwarded such report to Plaintiffs. Plaintiffs promptly completed the recommendations suggested in Travelers' report and so notified First Texas. At no time did either Defendant notify Plaintiffs that Travelers was claiming that the Premises Location was vacant.

14. As a result of Travelers' wrongful denial of the claims for the two theft losses described

above, Plaintiffs retained the services of the undersigned counsel to conduct an investigation. In connection therewith, Plaintiffs requested First Texas to provide them with a complete copy of all communications to and from Travelers relating to this policy and any claims thereunder. In response to repeated requests, First Texas ultimately delivered what it alleged constituted a complete copy of all such communications. The documents produced by First Texas did not include any notice from Travelers wherein Travelers alleged that the property in question was vacant or notice from First Texas to Plaintiffs that Travelers was asserting such a claim.

15. By letter dated December 3, 2008, a copy of which is attached hereto as Exhibit "B," Plaintiffs forwarded a demand letter to Travelers for breach of contract as well as violations of the DTPA and Texas Insurance Code. By letter dated February 2, 2009, Plaintiffs received a response from Travelers' counsel, a copy of which is attached hereto as Exhibit "C." On page 3 of Travelers' response, Travelers alleged that "when Travelers discovered the vacant condition of the property in 2007, it notified the agent of this condition and suggested that supplemental coverages may be advisable in light of this vacancy. No coverages were ever requested from Travelers."

16. Prior to the losses which are the subject of this suit, Plaintiffs had never received any notice from either Defendant that Travelers was claiming that it considered the property to be vacant. However upon receipt of Exhibit "C," Plaintiffs immediately notified First Texas of Travelers' allegations and renewed their demand for a copy of any such communications and/or confirmation that no such notice had been received from Travelers. A copy of Plaintiffs' request to First Texas is attached hereto as Exhibit "D." In response, First Texas denied, in writing, that it had any notice from Travelers wherein Travelers had claimed that it considered the property in question to be vacant. A copy of First Texas' responses of February 4th and February 23rd are attached hereto as

Exhibits “E” and “F” respectively.

17. In the course of producing its Additional Disclosures pursuant to this Court’s Scheduling Order, Travelers ultimately produced an e-mail to First Texas, a copy of which is attached hereto as Exhibit “G.” This e-mail dated July 30, 2007, to Traci Davis and Karen D. Griego, agents of First Texas, stated that Travelers considered the building vacant and suggested alternative coverage. Travelers never notified Plaintiffs, prior to the losses which are the subject of this suit, that it considered the building vacant. First Texas never notified Plaintiffs that Travelers considered the building vacant or had suggested alternative coverage. At all times material hereto, First Texas represented to Plaintiffs, both expressly and impliedly, that Plaintiffs had complete business owners property and liability coverage for the five locations, including Location No. 2 which is the subject of this suit. In fact, First Texas has repeatedly denied that Travelers ever provided it with any notice that Travelers considered the property to be vacant or suggested alternative coverage. Plaintiffs immediately provided a copy of Exhibit “G” to First Texas and afforded First Texas an opportunity to cure. The response of First Texas has been silence.

18. Plaintiffs would respectfully show the Court that the buildings identified in this policy as Location Nos. 1, 2 and 3 are collectively referred to as Cherokee Plaza. Cherokee Plaza consists of three buildings in Jacksonville, Texas. Location No. 2 is the largest with a total square footage of slightly more than 54,000 sq. ft. For many years, a large portion of this building was leased to Winn Dixie as a grocery store. However, Winn Dixie experienced financial problems. In March, 2004, Winn Dixie sold all of its equipment in the Cherokee Plaza store to Brookshire Grocery Company for approximately \$450,000.00. Ultimately in February, 2005, Winn Dixie filed suit for bankruptcy protection.

19. Brookshire Grocery Company requested Plaintiffs' permission to store the equipment in place subject to the same agreements that Plaintiffs had previously had with Winn Dixie. Plaintiffs consented to this arrangement. From March, 2004 until August, 2007, this space within Location No. 2, consisting of almost 48,000 sq. ft., was leased to Brookshire Grocery Company to store its equipment. During that entire period of time, Brookshire Grocery Company made use of the space as a storage facility for the grocery equipment, a part of its customary operations. In August, 2007, Plaintiffs accepted an assignment of this equipment from Brookshire Grocery Company as consideration for the rent due for its use of this building.

20. From August, 2007, until the equipment was ultimately sold in an auction in January, 2008, Plaintiffs stored this equipment in the same space located within Location No. 2. In November, 2007, Plaintiffs contracted with Prime Equipment to conduct an auction of the equipment. At Prime Equipment's recommendation, the auction was held in January, 2008. The equipment was sold and the proceeds accepted by Plaintiffs as the rent due from Brookshire Grocery Company. Accordingly, from August, 2007 to January, 2008, Plaintiffs used this space to store the hereinabove described equipment, a part of its customary operations.

21. On October 1, 2007, Plaintiffs entered into a written lease with Atwood Distributing, LP. This lease was subsequently amended on December 12, 2007. Plaintiffs leased the 47,972 sq. ft. of retail space within Location No. 2 to Atwood with six renewal options of five years each. Atwood's obligation to pay rent was commenced on the earlier of the following dates:

- (a) The date which is 90 days after Atwood had been notified by your insured that the premises were ready for occupancy and Atwood accepted the premises or
- (b) The date on which Atwood opened for business.

Upon execution of the lease, your insured began preparing the premises for Atwood as required by the lease. After removal of the grocery store equipment following the auction, construction began to prepare the space for Atwood. While Plaintiffs were actively involved in preparing this space for Atwood, the loss which is the subject of Claim No. A7U4895, the second theft loss, occurred. Atwood has moved into the premises and is open for business. Accordingly, from January 2008 until Atwood moved in and opened for business, Plaintiffs were preparing this space for a new tenant, a part of Plaintiffs' customary operations.

22. As set forth above, the portion of the premises previously rented to Winn Dixie, subsequently rented to Brookshire Grocery Company and thereafter used as storage by Plaintiffs has never been vacant as that term is defined in the policy. At all times material hereto, that portion of the premises has been used, either by a tenant or by the owner, Plaintiffs, to conduct their customary operations. There is nothing in the policy in question which would exclude the use of the space as a grocery store or storage facility. The term "customary operations" is an undefined term. After removal of the grocery equipment, the space was under active preparation, under the terms of the written lease, for occupancy by Atwood and is now occupied by Atwood. At all times material hereto, the balance of the space, approximately 6,283 sq. ft. in Location No. 2 was leased to Goodwill.

23. Travelers has admitted that Location No. 2 has a total of 54,255 sq. ft. At all times material hereto, this building has been 100% occupied, well above the 31% required by the policy. Therefore Location No. 2 was and is not vacant as defined by the policy.

24. At all times material hereto, including for years prior to issuance of the policy of insurance which is the subject of this suit, Travelers insured this property, including Location No. 2. During this time period, Travelers inspected the premises in question and knew of the use that was being



made of the premises, either by Plaintiffs tenant or by Plaintiffs themselves. At no time did either Travelers or First Texas notify Plaintiffs that the policy of insurance did not cover Location No. 2 nor did Travelers lessen the premiums charged because of any lack of coverage.

25. Plaintiffs deny that the location of the property in question was vacant as defined by the policy.

26. In the event the property in question was vacant as defined by the policy, which is denied by Plaintiffs, First Texas failed to notify Plaintiffs that Travelers was claiming the property to be vacant or to offer Plaintiff any alternative coverages which would have protected Plaintiffs in light of such claim.

27. The conduct of Defendants, as hereinabove described, constituted breach of contract.

28. Plaintiffs 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.

29. Defendants’ conduct, as described above, 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 Plaintiffs into a transaction into which Plaintiffs would not have entered had such information been disclosed.

30. Plaintiffs would further show the Court that the hereinabove described conduct of Defendants constituted an unconscionable course of action.

31. Defendants’ conduct, as described above, 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.

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

33. The wrongful conduct of Defendants was committed knowingly.

34. The wrongful conduct of Defendants was committed intentionally.

35. Defendants' wrongful conduct, as described above, was a proximate and/or producing cause of the actual damages sustained by Plaintiffs arising out of the hereinabove described theft losses.

The actual damages sustained by Plaintiffs exceed \$75,000.00, exclusive of costs and interest.

36. More than 60 days prior to the filing of this suit, presentment and notice of this claim was given to Defendants pursuant to Chapter 38, 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, Defendants failed and refused to do so.

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

38. Plaintiffs are entitled to recover reasonable and necessary attorneys' fees incurred for the prosecution of this claim.

39. Plaintiffs are entitled to recover additional damages not to exceed three times the amount of actual damages pursuant to the Texas Insurance Code.

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

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

42. Plaintiffs are entitled to prejudgment and post-judgment interest.

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

Respectfully submitted,

BY:         /s/          
ROGER W. ANDERSON  
Attorney-in-Charge for Plaintiffs

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

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Plaintiffs' Second Amended Original Complaint was forwarded electronically to Wm. Lance Lewis/James M. Wortman/Marcie L. Schout, 2001 Bryan Street, Suite 1800, Dallas, Texas 75202 in accordance with the Federal Rules of Civil Procedure and Local Rule CV-5 on this 30th day of June, 2009.

/s/

---

Martha Houts  
Secretary to Roger W. Anderson



July 27, 2007

Traci Davis-Agent  
Servicing Agent  
Herbert & Marlene Singer  
1822 S. Jackson  
Jacksonville, TX 75766

Dear Traci Davis:

A key objective of my visit to your 1822 S. Jackson, Jacksonville, Texas facility was to help identify ways to prevent losses and minimize the impact to your business in the event of loss. I spent time asking questions about, as well as observing your operations and facility related to General Liability and Property. Realizing that no two businesses are alike, I was most interested in reviewing the exposures to loss and associated controls that are specific to your unique operation.

**LOSS ANALYSIS**

No losses.

We also discussed some methods of helping minimize potential losses in the form of the recommendations listed below.

**NEW RECOMMENDATIONS**

**07-01 IMPORTANT Testing Of Automatic Sprinkler System**

The automatic sprinkler system should be tested annually by a qualified contractor or responsible employee to help ensure that the automatic sprinkler system is functional. Testing should be in accordance with NFPA 25 and include verification that the valve is in the open position, a water flow alarm test, and full flow two inch drain test. Results should be recorded for comparison purposes.

**07-02 Fire Department Connection - Replace Caps**

In order to keep out foreign materials, the missing caps on the fire department connection should be replaced and the connection inspected on a monthly basis. The piping should be visually examined for foreign materials before the caps are replaced.



This report is based upon the information supplied by customer personnel and / or on the conditions and practices observed at the time of the visit. The report may not list all unsafe conditions and practices; others may exist. This report is not an endorsement of and it may not be used to endorse or promote any practices, procedures, or products. The survey activities or any recommendations in this report are designed to assist the customers named in the report in the management of their own safety activities and should not be construed as legal advice. The responsibility for making changes in the operations, procedures, or for implementing any recommendations is the customer's. All warranties are hereby disclaimed and no liabilities are assumed to any party for any damages that may arise from the use of or reliance upon information contained in this report.

Herbert & Marlene Singer

July 27, 2007

**07-03 Control of Parking / unauthorized visitors**

Unauthorized Tractor trailers and other vagrant vehicles are using the vacant parking lot. All unauthorized vehicles should be removed and not allowed to use the vacant parking lot.

**07-04 Parking lot repairs**

Pot holes and other uneven walking surfaces pose a slip / trip hazard to visitors. Parking lot repairs should be made and these hazards corrected to reduce the likelihood of loss.

Please provide a **written response** on the status of the recommendations within 45 days of your receipt of this letter. To ensure your response is properly documented, please provide us with the below listed information:

Consultant's Name: William M. Page  
Job Number: 0047-050439

For your convenience, you may also fax or E-mail your response to:

William M. Page, Risk Control Consultant  
c/o Mary Beth Barlow  
Travelers  
P. O. Box 305192  
Nashville, TN 37230  
FAX: 1-877-739-9150  
E-Mail: [MBarlow@travelers.com](mailto:MBarlow@travelers.com)

**Industry-Leading Risk Control Resources**

Whether you are looking for assistance in completing a recommendation, browsing for current safety-related news, or searching for a technical bulletin on a particular risk control subject, you can visit our industry-leading website at [www.riskcontrol.com](http://www.riskcontrol.com). Our website is available 24/7 and contains a tremendous amount of risk control and safety information which is accessible to you exclusively as a Travelers customer. Once logged in, you can access our extensive database of educational materials, view our safety newsletter archives and submit risk control questions to be answered by our industry experts.

I appreciate the courtesy extended during my visit. Please contact me if you have questions or need help understanding my recommendations. I would also encourage you to contact me should you need assistance in helping you solve other risk control-related issues. As one of the largest commercial insurance providers with over 100 years of risk control experience and a staff of over 800 risk control professionals, I believe we are in a unique position to help you manage your exposures to insurable loss.

Sincerely,



William M. Page  
Risk Control Consultant  
214-570-6658  
[WPAGE@StPaulTravelers.com](mailto:WPAGE@StPaulTravelers.com)

Herbert & Marlene Singer

July 27, 2007

SA: 1365B1071  
LocID: 42-073-00093

Distribution:

Orig: As Addressed

1 cc: First Texas Ins Serv  
700 Highlander, Ste 350  
Arlington, TX 76015

1 cc: Tina Nguyen-Stocks  
Travelers  
Select Underwriting  
Dallas

**GILLEN & ANDERSON**  
ATTORNEYS AND COUNSELORS AT LAW  
613 SHELLEY PARK PLAZA  
TYLER, TEXAS 75701-9457  
TEL (903) 581-8600  
FAX (903) 581-8790  
www.gillenanderson.com

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

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

December 3, 2008

Ronnie Daly, Claims Representative  
Travelers Lloyds of Texas Insurance Company  
P. O. Box 657  
Flint, Texas 75762

VIA FAX AND  
CM RRR 7002 2410 0007 0631 3521

RE: **CLAIM NOS.:** A8N0004; A7U4895  
**INSURED:** HERBERT AND MARLENE SINGER LIVING TRUST  
**POLICY NO.:** IL-PACP-613D0684-TLC-07  
Our File No.: RA/JG-20663

Dear Mr. Daly:

Please be advised that I represent your insured, Herbert and Marlene Singer Living Trust, in connection with their claims pursuant to the above-described policy. The above-described policy was issued on June 7, 2007 for a policy period of July 17, 2007 to July 17, 2008. It provided 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. Your insured's claim involves two separate losses.

On or about December 17, 2007, your insured 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 replacement cost for those units alone was approximately \$164,000.00. This loss was promptly reported to the police and to your company. It has been designated as Claim No. A8N0004. On or about March 7, 2008, Travelers wrongfully denied this claim on the grounds that coverage did not exist under this policy for the vandalism and theft loss because the building was vacant. As set forth in detail before, this building was not vacant as defined in the policy, and Travelers' denial of this loss was wrongful.

In late April, 2008, a second theft loss was sustained by your insured to Location No. 2, Building No. 1. This theft of copper was also promptly reported to your company and has been designated as Claim Number A7U4895. In addition, the theft was also reported to the Jacksonville Police Department on May 1, 2008. The damage sustained to your insured as a result of this loss exceeded \$20,000.00. As of this date, this loss has not been paid and your company's failure to do so promptly and within the time required by applicable law is wrongful.

EXHIBIT

B



December 3, 2008

Page 2

The buildings identified in this policy as Location Nos. 1, 2 and 3 are collectively referred to as Cherokee Plaza. Cherokee Plaza consists of three buildings. Location No. 2 is the largest with a total square footage of slightly more than 54,000 sq. ft. For many years, a large portion of this building was leased to Winn Dixie as a grocery store. However, Winn Dixie experienced financial problems. In March, 2004, Winn Dixie sold all of its equipment in the Cherokee Plaza store to Brookshire Grocery Company for approximately \$450,000.00. Ultimately in February, 2005, Winn Dixie filed for bankruptcy protection.

Brookshire Grocery Company requested your insured's permission to leave the equipment in place subject to the same agreements they had previously had with Winn Dixie. Your insured consented to this arrangement. From March, 2004 until August, 2007, this space, consisting of almost 48,000 sq. ft. was leased to Brookshire Grocery Company to store its equipment. During that entire period of time, Brookshire Grocery Company made use of the space as a storage facility for the grocery equipment, a part of its customary operations. In August, 2007, your insured accepted assignment of this equipment as consideration for the rent due for that storage.

From August, 2007, until the equipment was ultimately sold in an auction in January, 2008, your insured stored this equipment in this same space. In November, 2007, your insured contracted with Prime Equipment to conduct an auction of the equipment. At Prime Equipment's recommendation, the auction was held in January, 2008. The equipment was sold and the proceeds accepted by your insured as the rent due from Brookshire Grocery Company. Accordingly, from August, 2007 to January, 2008, your insured used this space to store the hereinabove described equipment, a part of its customary operations.

On October 1, 2007, your insured entered into a written lease with Atwood Distributing, LP. This lease was subsequently amended on December 12, 2007. Your insured leased the 47,972 sq. ft. of retail space with six renewal options of five years each. Atwood's obligation to pay rent was to commence on the earlier of the following dates:

- (a) The date which is 90 days after Atwood had been notified by your insured that the premises were ready for occupancy and Atwood accepted the premises or
- (b) The date on which Atwood opened for business.

Upon execution of the lease, your insured began preparing the premises for Atwood as required by the lease. After removal of the grocery store equipment following the auction, construction began. While your insured was actively involved in preparing this space for Atwood, the loss which is the subject of Claim No. A7U4895 occurred. Atwood has now moved into the premises and is open for business. Accordingly from January 2008 until Atwood moved in and opened for business, your insured was preparing this space for its new tenant, a part of your insured's customary operations.

December 3, 2008

Page 3

As set forth above, the portion of the premises previously occupied by Winn Dixie, subsequently used for storage by Brookshire Grocery Company and thereafter for storage by your own insured has never been vacant as that term is defined in the policy. At all times material hereto, that portion of the premises has been used, either by a tenant or by the owner to conduct their customary operations. There is nothing in this policy which would exclude use of the space as a storage facility. The term "customary operations" is an undefined term. After removal of the grocery equipment, the space was under active preparation, under the terms of the written lease for occupancy by Atwood and is now occupied by Atwood. At all times material hereto, the balance of the space, approximately 6,283 sq. ft., in Location No. 2 was leased to Goodwill. As noted in your letter of March 7, 2008 regarding Claim No. A8N0004, Location No. 2 had a total of 54,255 sq. ft. At all times material hereto, it has been 100% occupied, well above the 31% required by the policy. Therefore Location No. 2 was and is not vacant as defined by the policy.

It is also important to note that during this entire time period, Travelers continued to insure Location No. 2. During this time period, Travelers inspected the premises in question and knew of the use which was being made of the premise, either by your insured's tenant or by your insured itself. At no time did Travelers advise your insured that it was not covering Location No. 2 nor did Travelers lessen the premiums charged because of any lack of coverage. Travelers' conduct constituted misrepresentations upon which your insured justifiably relied. Such misrepresentations induced your insured to continue to purchase the policies in question.

Therefore, each of the losses sustained by your insured was a covered loss. Your wrongful denial of coverage and refusal to pay the claims tendered to you constitute breach of contract.

In addition, your insured was a consumer as that term is defined in Section 17.45, Texas Deceptive Trade Practices—Consumer Protection Act. Travelers' denial of coverage and misrepresentation of the policy terms constituted a false, misleading or deceptive act or practice as defined by Section 17.46(b), DTPA, including but not limited to the following:

- (5) Representing that its goods or services have characteristics, uses, benefits which they do not have;
- (12) Representing that an agreement confers or involves rights, remedies or obligations which it does not have; and
- (24) Failing to disclose information regarding its goods or services which was known at the time of the transaction if such failure to disclose was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

December 3, 2008

Page 4

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

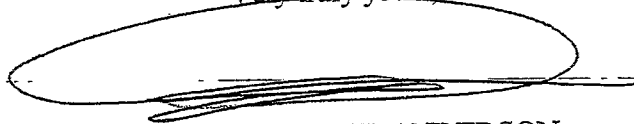
1. Making or causing to be made any statement misrepresenting the terms, benefits or advantages of an insurance policy. (Section 541.051(1));
2. Making any misrepresentation relating to an insurance policy by:
  - (a) Making any untrue statement of a material fact; or
  - (b) Failing to state a material fact which is necessary to make other statements not misleading, considering the circumstances under which the statements are made; or
  - (c) Making any statement in such a manner as to mislead a reasonably prudent person to a false conclusion of a material fact. (Section 541.062).

Travelers' wrongful conduct and refusal to pay these tendered claims constitutes a violation of Chapter 542, Texas Insurance Code. Pursuant to Section 542.060, your insured is entitled to recover 18% interest as additional damages as well as all reasonable and necessary attorneys' fees.

This letter is being forwarded to you pursuant to the notice requirements of Chapter 38, Texas Civil Practice and Remedies Code, as well as the Texas Deceptive Trade Practices-Consumer Protection Act and the Texas Insurance Code. Travelers is hereby afforded an opportunity to cure. Please be advised that as a result of the hereinabove described conduct by Travelers, your insured is entitled to recover all reasonable and necessary attorneys' fees which it has and will incur in the prosecution of this claim. As a result of Travelers' wrongful delay in the processing of this claim, time is of the essence so that your insured does not incur even further damages.

I appreciate your attention to this matter.

Very truly yours,



ROGER W. ANDERSON

RWA/mh

Wm. Lance Lewis  
Direct: 214.880.1827



E-mail: llewis@qsclpc.com

February 2, 2009

**VIA CMRRR No. 7180 2708 8598 2800 3440**

Roger W. Anderson, Esq.  
Gillen & Anderson  
513 Shelley Park Plaza  
Tyler, TX 75701-9457

Re: Claim Nos. A8N0004, A7U4895  
Insured: Herbert and Marlene Singer Living Trust/  
GunBarrell-Jacksonville, LLC  
Policy No. IL-PACP-613D0684-TLC-07  
Theft Damage to property at 1822 S. Jackson, Jacksonville, Texas 75766

Dear Mr. Anderson:

I represent The Travelers Lloyds Insurance Company ("Travelers") in connection with the above-referenced claims, and write in response to your December 3, 2008 letter addressed to Ronnie Daly.

As you know, Travelers issued a Building PAC policy of insurance, Policy No. ILPACP-613D0684 to the Herbert and Marlene Singer Living Trust, effective July 17, 2007 to July 17, 2008 (the "Travelers Policy"). The Travelers Policy was subsequently amended to name GunBarrell-Jacksonville, LLC as the named insured.

On December 18, 2007, Travelers received notice of a loss relating to the theft of copper from a roof top air conditioning unit at the building at 1822 S. Jackson, Jacksonville, Texas 75766. Travelers investigated the claim and determined that the building had been vacant for a number of years. As a result, on March 8, 2008, Travelers denied coverage for the claim. On May 14, 2008, Travelers received notice of a second loss relating to the theft of copper from the interior of the building at 1822 S. Jackson, Jacksonville, Texas 75766. Travelers investigated the claim and found that the property remained in a vacant condition. Accordingly, Travelers denied the second claim on June 9, 2008. After receiving your demand letter, Travelers reviewed its coverage analysis and claims investigation, and, after such review, must respectfully confirm its earlier denial of coverage for the above-referenced claims.

The BUSINESSOWNERS PROPERTY COVERAGE SPECIAL FORM (MP T1 02 02 05) of the Travelers Policy contains the following pertinent provisions:



Roger W. Anderson, Esq.  
February 2, 2009  
Page 2

## 5. Limitations

d. We will not pay for any loss or damage caused by any of the following, even if they are Covered Causes of loss, if the building where loss or damage occurs has been "vacant" for more than 60 consecutive days before that loss or damage occurs:

- (1) Vandalism;
- (2) Sprinkler Leakage, unless you have protected the system against freezing;
- (3) Building glass breakage;
- (4) Discharge or leakage of water;
- (5) "Theft"; or
- (6) Attempted "theft".

With respect to Covered Causes of Loss other than those listed in Paragraphs (1) through (6) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

\*\*\*

## G. PROPERTY DEFINITIONS

29. "Theft" means any act of stealing.

30. "Vacant" means the following:

- (1) When this policy is issued to a tenant, and with respect to the tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.
- (2) When this policy is issued to the building owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:
  - (a) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; or

Roger W. Anderson, Esq.  
February 2, 2009  
Page 3

(b) Used by the building owner to conduct customary operations.

Based on the above-referenced policy provisions and information revealed during Travelers' investigation of the claims, Travelers has determined that coverage does not exist for the losses at issue. It is undisputed that the losses were the result of theft. Moreover, Travelers' investigation revealed that the property was vacant for the 60 days prior to such theft. Your arguments that the property was not vacant because the insured was using it for the storage of equipment it was attempting to liquidate, and that the insured was conducting "customary operations" to have the property made ready for a new tenant are not availing. This property was customarily used as a retail shopping center and the property was not being used for that purpose for several years prior to the thefts at issue. The fact that some amount of equipment may have been stored at the vacant property does not change the fact that the property was in fact vacant.

Additionally, the fact that Travelers knew the property was vacant as of July 2007 does not change the coverage analysis. When Travelers discovered the vacant condition of the property in 2007, it notified the agent of this condition and suggested that supplemental coverages may be advisable in light of this vacancy. No such coverages were ever requested from Travelers. The policy expressly made clear the coverage provided and that there would be only limited coverage in the event the property was vacant.

Travelers expressly denies it engaged in any conduct which would constitute a violation of the Texas Deceptive Trade Practices Act. Additionally, because Travelers properly denied coverage for the above-referenced claims under the terms of the applicable policy, Travelers has not violated any provision of the Texas Insurance Code.

As a final matter, your letter purports to provide the notice required as a prerequisite for a claim for violations of the Texas Deceptive Trade Practices Act and violations of the Texas Insurance Code. While your letter generally discusses damages which you claim the insured suffered, nowhere in your letter is there a demand for a specific amount to resolve the alleged violations. In the absence of such a demand, the insured has not satisfied the notice pre-requisite to filing a claim under the Texas Deceptive Trade Practices Act and the Texas Insurance Code.

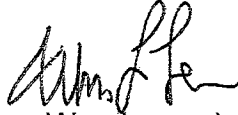
The above provisions and analysis constitute our best effort to inform you of the factors of which we are currently aware that affect coverage under the Travelers Policy for these claims. By informing you of the above-referenced policy provisions, Travelers is not waiving any right to assert additional policy defenses or to disclaim coverage based upon such provisions. Nothing contained in this correspondence constitutes a waiver, alteration or modification of the terms and conditions contained in the Travelers Policy. The above evaluation is not meant to be exhaustive, and there may be other policy terms and

Roger W. Anderson, Esq.  
February 2, 2009  
Page 4

conditions of the Travelers Policy which may apply to the claim. Travelers fully and expressly reserves and retains all rights which it has under the terms of the Travelers Policy and under the law.

If you are aware of additional facts that you believe may impact Travelers' decision, or if you would like to discuss this, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Lance Lewis". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Wm. Lance Lewis

WLL/ff  
3672 0049

**GILLEN & ANDERSON**  
ATTORNEYS AND COUNSELORS AT LAW

**JAMES B. GILLEN, JR.**  
CERTIFIED MEDIATOR  
E-MAIL: [jgillen@tyler.net](mailto:jgillen@tyler.net)

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

**ROGER W. ANDERSON**  
BOARD CERTIFIED  
PERSONAL INJURY TRIAL LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION  
E-MAIL: [rander@tyler.net](mailto:rander@tyler.net)

February 4, 2009

Traci Garner Davis  
First Texas Insurance Services, LLC  
700 Highlander Blvd., Suite 350  
Arlington, Texas 76015

Via E-mail [traci.davis@firsttexas.com](mailto:traci.davis@firsttexas.com)  
CMRRR 7002 2410 0007 0630 2044

RE: **GUN BARRELL-JACKSONVILLE, LLC**  
**Our File No.: RA/JG-20663**

Dear Ms. Davis:

As you know from our previous correspondence, I represent your insured, The Herbert and Marlene Singer Living Trust/Gun-Barrell-Jacksonville, LLC, with regard to their property damage loss at 822 South Jackson, Jacksonville, Texas 75766. On December 3, 2008, we forwarded a demand letter to Travelers for breach of contract as well as violations of the D.T.P.A. and Texas Insurance Code. A copy of that demand letter is attached hereto.

By letter dated February 2, 2009, I received the enclosed response from Travelers' counsel. On page 3 of Travelers' response, Travelers alleges that:

"When Travelers discovered the vacant condition of the property in 2007, it notified the agent of this condition and suggested that supplemental coverages may be advisable in light of this vacancy. No coverages were ever requested from Travelers."

We have previously requested that you provide us with a copy of all your communications with Travelers. Please provide me with a copy of the notice Travelers alleges it provided to you of the vacancy condition and suggestion of supplemental coverages. If you deny that Travelers ever provided such notice to you, please confirm that position in writing. If Travelers did provide that notice to you, please provide me with a copy of your transmittal of that notice and suggestion of supplemental coverage to your insured.

In light of Travelers' wrongful denial of this claim, suit has been filed. Accordingly, I need your immediate response to this request.

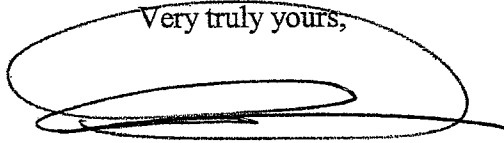




Traci Garner Davis  
First Texas Insurance Services, LLC  
February 4, 2009  
Page 2

I appreciate your immediate attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Roger W. Anderson", is written over the typed name. The signature is somewhat stylized and loops around the text.

ROGER W. ANDERSON

RWA/lah  
Enclosures

**Roger Anderson**

---

**From:** Traci Davis [traci.davis@firsttex.com]  
**Sent:** Wednesday, February 04, 2009 4:29 PM  
**To:** 'Lisa Henderson'  
**Cc:** 'Roger Anderson'  
**Subject:** RE: Gun Barrell-Jacksonville, LLC

Let me go back in my notes. I don't think I ever saw anything like this at all.. but let me verify it

---

**From:** Lisa Henderson [mailto:lhenderson@tyler.net]  
**Sent:** Wednesday, February 04, 2009 4:11 PM  
**To:** traci.davis@firsttex.com  
**Cc:** Roger Anderson  
**Subject:** Gun Barrell-Jacksonville, LLC

Dear Ms. Davis:

Please see the attached letter and documentation from Mr. Anderson.

Lisa A. Henderson, CLA  
Gillen & Anderson  
613 Shelley Park Plaza  
Tyler, Texas 75701  
903-581-8600  
903-581-8790 (fax)

No virus found in this incoming message.  
Checked by AVG - [www.avg.com](http://www.avg.com)  
Version: 8.5.283 / Virus Database: 270.12.6/2084 - Release Date: 04/29/09 06:37:00



**GILLEN & ANDERSON**  
ATTORNEYS AND COUNSELORS AT LAW  
613 SHELLEY PARK PLAZA  
TYLER, TEXAS 75701-9457  
TEL (903) 581-8600  
FAX (903) 581-8790  
[www.gillenanderson.com](http://www.gillenanderson.com)

**JAMES B. GILLEN, JR.**  
CERTIFIED MEDIATOR  
E-MAIL: [jgillen@tyler.net](mailto:jgillen@tyler.net)

**ROGER W. ANDERSON**  
BOARD CERTIFIED  
PERSONAL INJURY TRIAL LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION  
E-MAIL: [rander@tyler.net](mailto:rander@tyler.net)

February 13, 2009

Traci Garner Davis  
First Texas Insurance Services, LLC  
700 Highlander Blvd., Suite 350  
Arlington, Texas 76015

Via E-mail [traci.davis@firsttexas.com](mailto:traci.davis@firsttexas.com)

RE: **GUN BARRELL-JACKSONVILLE, LLC**  
**Our File No.: RA/JG-20663**

Dear Ms. Davis:

By letter dated February 4, 2009, I copied you with the response I had received from Travelers' counsel in which Travelers claimed that it had discovered the vacant condition of the property in 2007 and had notified the agent of this condition and suggested supplemental coverage. In your response on that same date, you notified me that you would review your notes. I have not heard any further response from you. Please advise me what, if any, notice you received from Travelers.

Very truly yours,

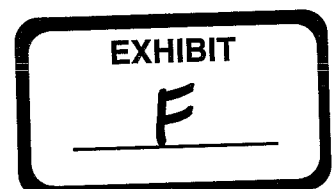


ROGER W. ANDERSON

RWA/lah

cc: Dr. Herbert Singer  
Jerry Tate

Via Fax 1-310-440-9973  
Via E-mail [jerrydtate@aol.com](mailto:jerrydtate@aol.com)



## Roger Anderson

---

**From:** Traci Davis [traci.davis@firsttex.com]  
**Sent:** Monday, February 23, 2009 9:18 AM  
**To:** 'Lisa Henderson'  
**Cc:** 'Roger Anderson'  
**Subject:** RE: Gun Barrell-Jacksonville, LLC

I have gone thru this complete file and I have gone thru all attachments, I do not have a letter or any forms indicating that Travelers notified us of a problem on this account in regards to vacancy

---

**From:** Lisa Henderson [mailto:lhenderson@tyler.net]  
**Sent:** Friday, February 13, 2009 2:40 PM  
**To:** traci.davis@firsttex.com  
**Cc:** Roger Anderson  
**Subject:** Gun Barrell-Jacksonville, LLC

Dear Ms. Davis:

Please see the attached letter from Mr. Anderson.

Lisa A. Henderson, CLA  
Gillen & Anderson  
613 Shelley Park Plaza  
Tyler, Texas 75701  
903-581-8600  
903-581-8790 (fax)

No virus found in this incoming message.  
Checked by AVG - [www.avg.com](http://www.avg.com)  
Version: 8.5.283 / Virus Database: 270.12.6/2084 - Release Date: 04/29/09 06:37:00

---

**From:** Nguyen-Stocks,Thien-Tien Thi [TNGUYENS@travelers.com]  
**Sent:** Monday, July 30, 2007 12:52 PM  
**To:** Traci Davis; Griego,Karen D  
**Cc:** Nguyen-Stocks,Thien-Tien Thi  
**Subject:** Herbert & Marlene Singer 1822 S. Jackson Jacksonville, TX 75766  
**Attachments:** SCL-Universal\_0047-050439\_0.doc

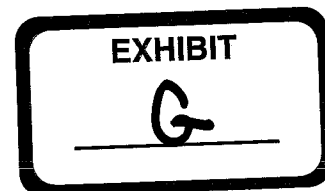
Building is currently vacant-pending renovation.

You may want to get builder risk to cover the renovation at this time. Upon completion & when tenants move in, LRO coverage can resume.

Loss control recommendation attached. Need written verification of status of compliance when we rewrite the LRO coverage again.

I am forwarding this email to your current underwriter & copy this memo in our Udoc file.

Tina Nguyen-Stocks, AU, CIC



TRAV 00188