

football season by the NCAA. This designation encouraged Wise to return to forego early entry into the professional football draft where he was certain to receive millions of dollars, and instead return to college for another season despite the risks of injury that could hinder or perhaps even eliminate his earning potential in professional football. Specifically, the designation qualified him to purchase a “loss of value” and permanent disability insurance to protect him from the potential financial repercussions of any injury during the 2016 college football season. The NCAA designation and ability to purchase such insurance are indispensable to the function of NCAA football and incentivize student athletes to continue playing college football notwithstanding the risks to their future NFL careers and their projected multi-million dollar earnings as professional football players.

3. The Agent Defendants approached Wise’s father, Deatrich Wise Sr., about the insurance policy because the Agent Defendants intended and knew that Wise Sr. was acting on behalf of Wise and would communicate this information to Wise. The Agent Defendants promised them that Wise Jr. would be financially protected from any loss of value associated with an injury if he purchased the insurance policy and procured the insurance. The Agent Defendants assured Wise and Wise Sr. that the Disability Policy would ensure that he would recover or mitigate any future loss of income that might result if he were injured during the insurance policy period, which encompassed the entire 2016 college football season. The agents informed them that any injury that caused him to drop in projected value would be covered, so that Wise could focus on being a good student and college football teammate. Accordingly, on or about September 1, 2016, Wise submitted an application to purchase the “loss of value” disability policy, and the Agent Defendants ultimately sold Wise Disability Policy Certificate

No. B1132HGBA16062061 (the “Disability Policy”) and received commissions associated with the Disability Policy.

4. Wise was assessed as one of the top defensive lineman in college football, which is premium position in pro football, typically targeted earlier in the NFL Draft. Wise’s preseason honors included, but are not limited to: 1. Chuck Bednarik Award Watch List, 2. Bronko Nagurski Trophy Watch List, 3. Athlon All-SEC Second Team, 4. Lindy’s All-SEC Third Team, and 5. Phil Steele All-SEC). Defendants and other prognosticators projected Wise as a top first round pick prior to his injury. However, during the policy period, Wise suffered an injury and his prospects for the 2017 NFL Draft declined sharply as a result. As a result of Wise’s injury, Wise was not selected until the fourth round and 131st selection of the 2017 NFL Draft. This decline amounted to a multi-million-dollar loss in the value of Wise’s rookie NFL contract. However, at all times, Wise understood and was informed by the Agent Defendants that the insurance he purchased would protect him in this “loss of value” as had been represented to him at all relevant times.

5. Wise subsequently made a claim to recover this “loss of value” under the Disability Policy. After numerous delays and spurious requests for information already accessible to them, the Insurer Defendants have yet to accept Wise’s claim. The Insurer Defendants’ failure to accept constitutes a breach of the Disability Policy, and was made in bad faith, maliciously and/or with a conscious disregard for Wise’s rights. Moreover, the Insurance Defendants claim that the Wise did not suffer a bodily injury under the Policy, because of their vague definition of missed games under the Policy. The Insurance Defendants’ interpretation of the Policy is directly contrary to what was represented to Wise by the Agent Defendants.

6. Therefore, Wise files this complaint seeking damages based on the Agent Defendants fraudulent and/or negligent misrepresentation of the terms of the Policy and for violations of the Texas Deceptive Trade Practices Act and the Insurance Code. Wise also files this petition seeking damages from the Insurer Defendants' wrongful denial of coverage.

II. DISCOVERY CONTROL PLAN

7. Discovery shall be conducted under Level 2 pursuant to Rule 190 of the TEXAS RULES OF CIVIL PROCEDURE.

III. JURISDICTION AND VENUE

8. This Court has jurisdiction, because the Wise's claims for relief exceed this Court's minimum jurisdictional limit. Venue of this suit lies in Dallas County, Texas because all or a substantial part of the events or omission giving rise to the claims occurred in Dallas County. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1). All representations were made to Deatrich Wise Sr., who was acting on behalf of Plaintiff. Wise Sr. was located in Dallas County, Texas for all such communications regarding the insurance policy. Defendants knowingly communicated the misrepresentations at the heart of this dispute to Deatrich Wise Sr. in Dallas County with the intent that he pass along such misrepresentations to Plaintiff. Further, venue of this suit lies in Dallas County, Texas because Defendant Lloyd's South Central Regional office is located in Dallas County, Texas. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(3).

IV. NOTICE AND CONDITIONS PRECEDENT

9. All conditions precedent necessary to maintain this action have been performed or have occurred.

V. PARTIES

10. Plaintiff Deatrich Wise, Jr. is an individual that may be served through the

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undersigned counsel of record for the purposes of this pleading only.

11. Defendant Certain Underwriters at Lloyd's, London is a non-resident entity that may be served through its counsel, Mendes & Mount, 750 Seventh Street Avenue, New York, NY 10019.

12. Defendant International Specialty Insurance, Inc. is a non-resident corporation that may be served through its counsel, Mendes & Mount, 750 Seventh Street Avenue, New York, NY 10019.

13. Defendant, The Professional Athlete Insurance Group, PLLC is a Texas professional limited liability company that may be served with process at 2591 Dallas Pkwy., Suite 300, Frisco, Texas, 75034.

14. Defendant Matthew Allen is an individual who may be served with process at his residence address located at 42 Jynteewood Circle Canyon, Texas 79015-1704.

VI. FACTUAL BACKGROUND

15. Wise was a star football player for the Arkansas Razorbacks and a top NFL draft prospect entering the 2016 college football season. Based on his skills and accomplishments, Wise was consistently projected as a top first-round prospect in the 2016 NFL draft had he been eligible to enter the NFL as a true junior following the 2015 college football season. Wise was also designated as an exceptional student athlete by the NCAA. This designation encouraged Wise to continue playing college football for another season, rather than simply awaiting the 2017 NFL Draft and working with professional pre-draft trainers and experts. Specifically, the designation qualified him to purchase "loss of value" disability insurance to protect him against any financial detriment in the event he suffered an injury during the 2016 college football season.

This would allow Wise to focus on being a good student and teammate while making sure that he

did not risk the millions of dollars that he was projected to receive from a professional football team.

16. On or about March 7, 2016, the Agent Defendants approached Wise to sign a letter confirming that PAIG was Wise's Agent of Record for any and all insurance needs. The letter also confirmed that Mr. Allen was the Broker of Record for any and all insurance needs. Mr. Allen represented to Wise that he would procure a policy of insurance that would pay Wise the difference between his projected salary and any drop in actual salary that might occur if he were to suffer an injury. As such, Wise could focus on being a good teammate and college student, which would allow Wise to play football without fear that he was harming his future earning potential.

17. From March 2016 through April 2016, the Agent Defendants provided quotes for different insurance companies, notified Wise and his father that Insurer Defendants valued Wise as a potential first-round draft pick, informed Wise that the threshold on the Insurer Defendants' quote under the loss-of-value was 4-years/3.6 million, and made several attempts to discuss the sale of the Insurer Defendants' insurance policy to Wise and his father. At all relevant times during these conversations with the intent to induce him to purchase the policy, the Agent Defendants told Wise's representative Wise Sr. that if Wise suffered any injury, and did not procure a \$3.6 million contract, the insurance would trigger to make up the difference. The Agent Defendants never disclosed that there could be certain conditions that would prevent this from occurring. Moreover, the Agent Defendants never disclosed that the representations they made about the scope of the policy coverage were false.

18. On or about September 1, 2016, Wise submitted an application to purchase a "loss of value" disability policy from the Defendants, and the Defendants ultimately sold Wise the

Disability Policy. Wise bought this Policy based on the representations from the Agent Defendants made to his representatives that the Policy would cover any loss of value below the 4 year/\$3.6 million threshold that occurred due to injury. The Agent Defendants never disclosed that they might provide different coverage than what they represented. Moreover, Defendants never provided Wise or his representatives with a copy of the policy.

19. On or about September 3, 2016, Wise injured his hand during the Arkansas Razorbacks football game against Louisiana Tech. This injury prevented Wise from fully showcasing his talents as a defensive end for NFL scouts and evaluators. However, Wise played with this injury through the rest of the season.

20. On or about October 22, 2016, Wise separated his shoulder during the Arkansas Razorbacks football game against University of Auburn. Again, this injury prevented Wise from fully showcasing his talents as a defensive end for NFL scouts and evaluators.

21. As a result of these injuries, Wise's draft value dropped significantly. With only one healthy hand and one hurt shoulder, Wise was not able to fully showcase his abilities. Wise was forced to confront 300-350 pound lineman, who were healthy, with these injuries. Wise was also forced to try and tackle premier college talent running backs with these injuries. This was a difficult and physically painful task. However, Wise had been assured that his \$3.6 million threshold salary was protected, so despite the pain and risk to his future, Wise participated in such games while injured, but could not physically participate in nearly half of the season's defensive plays.

22. Throughout the season, the pain and other physical limitations from his injuries prevented Wise from taking the field altogether. As such, Wise played most of the season hurt, but missed substantial parts of the season because of his injuries. Wise was not healthy, and

therefore could not play. When added together, the total defensive plays missed by Wise due to the injuries was the equivalent of nearly half the season, and well more than 3 games.

23. On April 29, 2017, Wise was drafted by the New England Patriots on the third and final day of the 2017 NFL Draft. Due to his injuries, he was not a first round pick as he was projected prior to the season. Wise's injuries and inability to showcase his talent led him to fall to the fourth round, where he was selected as the 131st pick. Wise signed a four-year, \$2,975,883.00 contract with the New England Patriots, \$624,117.00 dollars below the threshold of the Disability Policy.

24. Wise, through his agent Scott Casterline,¹ gave notice of Wise's claim to the Insurer Defendants and requested payment. However, the Insurer Defendants neither acknowledged receipt of the claim, commenced any investigation of the claim, or requested any items, statements, or forms from the Claimant within 15 days of such notice. Wise, via his agent Casterline, made multiple inquiries and requests for payment in an attempt to have Defendants fulfil the obligations they promised Wise.

25. In or about June 2017, Wise, with the assistance of his agent Scott Casterline, submitted a claim form (the "Claim Form") to the Insurer Defendants in support of Wise's claim for coverage under Section A of the Disability Policy (the "Proof of Loss"). However, rather than promptly evaluate and address the claim, the Insurer Defendants engaged in repeated delay tactics for more than six months. Wise was first contacted by Insurer Defendants' attorney, Robert Flannery ("Mr. Flannery"), by letter dated August 30, 2017. In that letter, Flannery requested "a copy of the contract with the New England Patriots that was entered into by Mr. Wise. At that point, however, it was common knowledge and a matter of public record that

¹ Mr. Casterline's office also is located in Dallas County.

Wise had already signed a contract with the New England Patriots worth several hundred thousand dollars less than the \$3.6 million target in the Disability Policy. In fact, Wise's contractual compensation was pre-determined and set by his draft pick status², so the request to see the specific terms of his contract was simply a delay tactic.

26. Furthermore, Wise's counsel and agent have called Ms. Camp, the claims adjuster assigned to Wise's claims numerous times for an update on the claim but did not receive timely responses. After delays and spurious requests for information, Wise was forced to file suit.

VII. CAUSES OF ACTION

VIOLATIONS OF CH. 541 AND 542 OF THE TEXAS INSURANCE CODE

27. The allegations set forth in the above paragraphs are hereby reasserted and fully incorporated by reference.

28. Defendants have misrepresented the terms of the policy, the benefits or advantages promised by the policy in violation of 541.051 of the Texas Insurance Code. The actions of Defendants as alleged above are in violation of statutory sections of the Texas Insurance Code thereby giving rise to a claim under Article 541.151 Tex. Ins. Code. Said violations are a producing cause of the Plaintiffs' damages. Specifically, Defendants' misrepresentations violate the Texas Insurance Code in the following respects:

- (a) Defendants misrepresented the terms, benefits or advantages of the insurance in violation of Texas Insurance Code Article 541.051.
- (b) Defendants made, or directly or indirectly caused to be made, an assertion,

² This information is available to anyone with the inclination to use the internet. Contracts are widely reported in the media and there are popular websites receiving millions of hits per week that are dedicated to player contracts, such as overthecap.com, rotoworld.com and spotrac.com.

representation or statement with respect to insurance that was untrue, deceptive or misleading in violation of Texas Insurance Code Article 541.052.

(c) Defendants misrepresented a material fact in violation of Texas Insurance Code Article 541.061.

(d) Defendants failed to state a material fact necessary to make other statements not misleading, considering the circumstances under which the statements were made in violation of Texas Insurance Code Article 541.061.

(e) Defendants made misrepresentations in such a manner as to mislead a reasonably prudent person to a false conclusion of a material fact in violation of Texas Insurance Code Article 541.061.

29. Defendants misrepresented that the Disability Policy would cover Wise should he sustain an injury that causes Wise NFL draft value to drop before the 2017 NFL Draft. This was untrue. Defendants never told Wise that the representations they made were false, or were anything other than unequivocally true.

30. Defendants have also failed to affirm or deny coverage of a claim under the Disability Policy in violation of 541.060 of the Texas Insurance Code.

31. Defendants have failed to acknowledge with reasonable promptness pertinent communications relating to a claim arising under the insurer's policy in violation of 542.003 of the Texas Insurance Code.

32. Defendants have not attempted in good faith to affect a prompt, fair, and equitable settlement of a claim submitted in which liability has become reasonably clear in violation of 542.003 of the Texas Insurance Code.

33. Defendants have failed to acknowledge receipt of Wise's claim, commenced any investigation of Wise's claim, or requested from the claimant all items, statements, and forms that Defendants reasonably believe will be required from Wise within 15 days in violation of 542.055 of the Texas Insurance Code.

34. Defendants have failed to accept or reject Wise's claims in violation of 542.056 of the Texas Insurance Code.

35. The Plaintiffs further sue for trebling of these damages and allege that Defendants' misrepresentations as described herein were committed "knowingly," in that Defendants had actual awareness, at the time of the acts complained of, of the falsity, deception or unfairness of the conduct in question, thereby entitling the jury to award the Plaintiffs three times their economic damages as additional damages under Article 541.152 of the Texas Insurance Code, for which Plaintiffs sue.

36. The Plaintiffs sue for reasonable and necessary attorneys' fees for the preparation and trial of this cause and any appeal therefrom pursuant to Article 541.152 of the Texas Insurance Code, taking into consideration all relevant factors.

NEGLIGENCE

(AGAINST THE AGENT DEFENDANTS)

37. The allegations set forth in the above paragraphs are hereby reasserted and fully incorporated by reference.

38. Wise brings this claim of negligence against the Agent Defendants. The elements of negligence are: (1) the existence of a duty; (2) breach of that duty by the defendant; (3) an injury to plaintiff occurred; and (4) the proximate cause of the damages was defendant's breach of its duty.

39. Each element of negligence is satisfied here. The Agent Defendants certainly owed the following duties to Wise as their client:

- a. Duty to keep Wise fully informed so that they can remain safely insured;
- b. Duty to review the Disability Policy; and
- c. Duty to explain the terms and conditions of the Disability Policy.

Additionally, the Agent Defendants undertook certain duties by making affirmative representations about the scope of the Disability Policy. Specifically, the Agent Defendants, in order to induce Wise to participate in the Disability Policy, represented that the policy would cover any injury that caused Wise's draft stock to slip below the \$3.6 million threshold. This imposed upon the Agent Defendants to fully disclose all other material issues related to the Disability Policy. The Agent Defendants breached the above duties causing Wise injuries.

BREACH OF CONTRACT

(AGAINST THE INSURER DEFENDANTS)

40. The allegations set forth in the above paragraphs are hereby reasserted and fully incorporated by reference.

41. Wise and Insurer Defendants entered into a binding enforceable contract, the Disability Policy. Wise fully performed all or substantially all of the things required of him under the Disability Policy, or was excused from his performance. All conditions required for Insurer Defendants' performance under the Disability Policy have occurred. Insurer Defendants have breached the Disability Policy by, among other things:

- a. Wrongfully denying Wise's claim for benefits thereunder;
- b. Failing to promptly and fully investigate the claim;

- c. Purporting to impose upon Wise conditions not required by the Disability Policy; and
- d. Failing to fulfill their obligation not to impair the rights of Wise, as the insured.

42. As a direct and proximate result of the Defendants' acts, Wise has been damaged in an amount in excess of the Court's jurisdictional limits. These damages include the benefits due under the Disability Policy, compensatory damages, general damages, special damages, benefit of the bargain damages, interest, costs and attorneys' fees, all of which Wise seeks to recover.

TORTIOUS BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

(AGAINST INSURER DEFENDANTS)

43. The allegations set forth in the above paragraphs are hereby reasserted and fully incorporated by reference.

44. Implied in the Disability Policy is a covenant that the Insurer Defendants would act in good faith and deal fairly with Wise, would do nothing to interfere with the rights of Wise to receive the benefits due under the Disability Policy, and would give at least the same level of consideration to Wise's interests as the Insurer Defendants gave their own.

45. In the course of denying coverage and failing/refusing to indemnify Wise under the Disability Policy, the Insurer Defendants breached the implied covenant of good faith and fair dealing by, among other things:

- a. Wrongfully denying Wise's claim for benefits thereunder;
- b. Failing to promptly and fully investigate the claim;
- c. Purporting to impose upon Wise conditions not required by the Disability Policy;

- d. Failing to fulfill their obligation not to impair the rights of Wise, as the insured;
- e. Ignoring Texas law and insurance industry standards; and
- f. Giving greater consideration to their own interests than Wise's interests.

46. The Insurer Defendants committed the acts alleged above for the purpose of consciously withholding from Wise the rights and benefits to which Wise was entitled under the Disability Policy, and without considering the interests of Wise to at least the same extent as the Insurer Defendants considered their own interests. The Insurer Defendants' acts were inconsistent with the reasonable expectations of their insured, contrary to established claims practices and legal requirements, and constitute bad faith.

47. As a direct and proximate result of the Insurer Defendants' acts, Wise has been damaged in an amount in excess of the Court's jurisdictional limits. These damages include the benefits due under the Disability Policy, compensatory damages, general damages, special damages, benefit of the bargain damages, punitive damages, costs and attorneys' fees, all of which Wise seeks to recover.

48. The Insurer Defendants' conduct was despicable and was done with a conscious disregard of Wise's rights, constituting oppression, fraud, and/or malice, in that the Insurer Defendants engaged in a series of acts designed to delay and deny the benefits to under the Disability Policy. The Insurer Defendants ignored Wise's interests and concerns, with the requisite intent to injure within the meaning of Ch. 542 of the Texas Insurance Code. Therefore, Wise is entitled to recover punitive damages from the Insurer Defendants in an amount sufficient to punish and to make an example of the Defendants and in order to deter similar conduct.

VIII. PUNITIVE DAMAGES AND ATTORNEY'S FEES

49. Wise is also entitled to punitive damages for the conduct of the Defendants. Wise further alleges that the cap on punitive damages found in TCPRC 41.008(b) is not applicable to Wise's claims in this case because Defendants knowingly or intentionally secured the execution of a document by deception in violation of Section 32.46 of the Texas Penal Code. Defendants, with intent to defraud or harm Plaintiffs, and by deception as described herein, caused Plaintiffs to sign or execute the various documents as described herein which affected Wise's property and pecuniary interests.

50. Additionally, Wise previously made demand to all Defendants for payment for Wise's loss more than thirty (30) days before the filing of this suit. No Defendant has tendered payment. As a result of Defendants' failure to pay, Wise retained the undersigned counsels to recover the such amounts. Pursuant to 38.001 of Texas Civil Practice and Remedies Code, Wise seeks all reasonable and necessary attorney's fees in this case which include the following:

- a) Preparation and trial of this lawsuit;
- b) Post-Trial, pre-appeal legal services;
- c) An appeal to the court of appeals;
- d) Making or responding to an application for writ of error to the Supreme Court of Texas;
- e) An appeal to the Supreme Court of Texas in the event application for writ of error is granted; and
- f) Post-judgment discovery and collection in the event execution on the judgment is necessary.

