

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

OPRY MILLS MALL LIMITED)
PARTNERSHIP; SIMON PROPERTY)
GROUP, L.P.; and LANDESBANK)
HESSEN-THÜRINGEN GIROZENTRALE,)

Plaintiffs,)

vs.)

No. 10-1504-IV

ARCH INSURANCE COMPANY; ASPEN)
INSURANCE UK LTD.; ESSEX)
INSURANCE COMPANY; GENERAL)
SECURITY INDEMNITY COMPANY OF)
ARIZONA; HISCOX INSURANCE)
COMPANY; IRONSHORE SPECIALTY)
INSURANCE COMPANY; LEXINGTON)
INSURANCE CO.; LIBERTY MUTUAL)
INSURANCE COMPANY; CERTAIN)
UNDERWRITERS AT LLOYDS OF)
LONDON; MAIDEN SPECIALTY)
INSURANCE CO.; RSUI INDEMNITY)
COMPANY; SOMPO JAPAN INSURANCE)
COMPANY OF AMERICA; TOKIO)
MARINE GLOBAL, LTD.; TORUS)
SPECIALTY INSURANCE CO.; XL)
INSURANCE AMERICA, INC.; ZURICH)
AMERICAN INSURANCE COMPANY; and)
AON RISK SERVICES CENTRAL, INC.,)

Defendants.)

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DAVIDSON CO. CHANCERY CT.
DC&M

COMPLAINT

COME NOW Plaintiffs, Opry Mills Mall Limited Partnership (“Opry Mills”), Simon Property Group, L.P. (“Simon”), and Landesbank Hessen-Thüringen Girozentrale (“Helaba”), for their Complaint against Defendants, Arch Insurance Company; Aspen Insurance UK Ltd.; Essex Insurance Company; General Security Indemnity Company Of Arizona; Hiscox Insurance Company; Ironshore Specialty Insurance Company; Lexington Insurance Co.; Liberty Mutual

Insurance Company; Certain Underwriters at Lloyds of London; Maiden Specialty Insurance Co.; RSUI Indemnity Company; Sompo Japan Insurance Company of America; Tokio Marine Global, Ltd.; Torus Specialty Insurance Co.; XL Insurance America, Inc.; Zurich American Insurance Company (collectively, "Insurers"); and Aon Risk Services Central, Inc. ("Aon"), say and allege:

Overview of the Action

1. This insurance coverage dispute arises from the catastrophic damage to the Opry Mills shopping mall (the "Mall" or the "Opry Mills Mall") as a result of the Cumberland River's historic flooding on May 2 and 3, 2010 (the "May 2010 Flood"). The damages to the Opry Mills Mall caused by the May 2010 Flood are estimated to exceed \$200 million. Fortunately, Opry Mills is insured under policies providing \$200 million in flood insurance. However, the Defendants, Insurers who issued policies covering the damages in excess of \$50 million, have denied coverage. The Insurers contend that Opry Mills is only entitled to \$50 million in coverage under policies issued by other insurers and none of the \$150 million in coverage provided by their policies. Opry Mills cannot restore the Mall without the insurance proceeds due and owing under the Insurers' policies. Opry Mills, along with its lender, Helaba, and Simon, the first named insured under the insurance policies at issue, bring this action to obtain the coverage necessary to restore the Mall and to compensate Plaintiffs for the damages caused by the Insurers' wrongful conduct as alleged herein.

Facts Relevant to All Counts

The Parties

2. Opry Mills is a limited partnership that owns and operates the Opry Mills Mall in Nashville, Tennessee.

3. Opry Mills is insured under policies of commercial property insurance issued to Simon, which is a limited partnership with its headquarters in Indianapolis, Indiana.

4. Helaba is a commercial lender that issued a loan to Opry Mills in 2007 in the principal amount of \$280 million which loan is secured by certain real and personal property and other assets of Opry Mills. Helaba is a loss payee under the insurance policies at issue in this lawsuit and has certain rights with respect to the proceeds of those policies.

5. The Insurers are insurance companies who collectively issued \$150 million in upper layer property insurance to Simon and Opry Mills insuring the Opry Mills Mall, in addition to other properties, during the period from January 1, 2010 to January 1, 2011, as described more fully herein.

6. Aon is an Illinois corporation with its principal place of business in Chicago, Illinois. Aon is a subsidiary of Aon Corporation, which is a global provider of insurance related services. Aon served as Simon's broker for purposes of obtaining the insurance at issue and as an agent of the Insurers with respect to the coverage placed under the insurance policies at issue and the issuance of certificates of insurance, pursuant to the express written authority of the Insurers.

The May Flooding at the Opry Mills Mall

7. During the May 2010 Flood, the Opry Mills Mall was inundated by historic flooding that occurred in and around Nashville, Tennessee.

8. The May 2010 Flood caused millions of dollars of damage to the Mall, to Opry Mills, and to the Mall's tenants. The damages affected all of the Mall's more than 100 tenants and caused a complete closure of the Mall, which continues to this day.

9. Plaintiffs' losses associated with the May 2010 Flood at the Opry Mills Mall are estimated to exceed \$200 million.

The Insurance Policies at Issue

10. At the time of the May 2010 Flood, Opry Mills and the Mall were insured under Simon's property insurance program, which provided \$1 billion in property insurance coverage underwritten by numerous insurance companies, each of which participated in a percentage of any loss at certain attachment points, or layers. For example, an insurance company subscribing to 10% participation at the \$50-100 million layer would pay 10% of the portion of an insured loss that was between \$50 million and \$100 million.

11. The following insurance policies (collectively, the "Policies") participate in Simon's insurance program in the layers between \$50 million and \$200 million at issue in this lawsuit:

Insurer	Policy No.	Participation
<u>\$50 - \$100 Million Layer</u>		
XL Ins. Am. Inc.	US00005668PR10A	10%
Arch Ins. Co.	PRP001937303	5%
Zurich Am. Ins. Co.	XPP914094303	10%
Tokio Marine Global Ltd.	FDP4322007	5%
GEP (Lloyds KLN510/CSL064)	GEP2505	5%
Hiscox Ins. Co.	URS250057010	7.5%
Ironshore Specialty Ins. Co.	79900	5%
RSUI Indem. Co.	NHD365223	10%
Lloyds (Syn. Nos. 0330, 1955, 4472, 1183)	WB1000051	7.5%
Lexington (SCOR/China Re)	87711965	10%
Liberty Mutual Ins. Co.	MQ2L9L425761020	5%
Essex Insurance Company	ESP6712	5%

Insurer	Policy No.	Participation
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\$100 - \$200 Million Layer

XL Ins. Am. Inc.	US00005668PR10A	10%
Arch Ins. Co.	PRP001937303	5%
Zurich Am. Ins. Co.	XPP914094303	20%
Tokio Marine Global Ltd.	FDP4322007	10%
Maiden Specialty Ins. Co.	S1LPY0016502M	5%
Gen. Sec. Indem. Co. of Az.	201010F1328801	5%
GEP (Lloyds KLN510/CSL064)	GEP2505	2.5%
Ironshore Specialty Ins. Co.	79801	2.5%
Torus Spec. Ins. Co.	07579A100APR	5%
Sompo Japan Ins. of Am.	PEP40055D0	25%
Aspen Ins. UK, Ltd.	PX5708610	5%
RSUI Indem. Co.	LHD365245	5%

12. Each insurer participating in Simon's insurance program insuring Opry Mills issued its own insurance policy for its participation in the program. Each of those policies was supposed to be based on the same coverage form.

13. Each of the Policies provides coverage for damages and losses caused by flooding. Because the Policies are voluminous and contain substantially similar language with respect to the issues in this case, a copy of only one of these policies (US00005668PR10A) is attached hereto as Exhibit 1. Copies of the other Policies will be made available upon request.

14. The "**Limits of Liability**"¹ section of the Policies identifies the flood coverage provided by the Policies as follows:

In the event of loss or damage insured under this policy, this **Insurer** shall be liable for its proportional share of \$1,000,000,000 per **occurrence** except as respects the following, excess of the policy deductibles:

¹ Quoted terms in bold are bold in the quoted provisions of the Policies.

* * *

\$200,000,000 per occurrence and in the aggregate in any one policy year as respects losses caused by **flood** except:

\$50,000,000 per **occurrence** and in the aggregate in any one policy year as respects losses caused by **flood** in **High Hazard Flood Zones**. (High Hazard Zones are within the 100 Year Flood plane or equivalent).

15. An endorsement to the Policies states, in part, as follows:

HIGH HAZARD FLOOD ZONES are defined as follows:

- a) all property at a "location" that is partially or totally situated in an area which at the time of loss or damage has been designated on a Flood Insurance Rate Map (FIRM) to be a Special Flood Hazard Area (SFHA), and/or
- b) all property in areas where the National Flood Insurance Program (NFIP) is not in effect, and where all property at a "location" is partially or totally situated in an area which is within a 100 year flood plain or its worldwide equivalent.

Special Flood Hazard Area (SFHA):

The areas of a Flood Insurance Rate Map (FIRM) identified as Zone(s): A, AO, AH, A1-30, AE, A99, AR, AR/A, AR/AE, AR/A1-30, AR/AH, AR/AH, AR/AO, V, V1-30, VE or VO.

HIGH HAZARD FLOOD LOCATIONS are defined as follows:

Chicago Premium Outlets, Aurora, IL
Coconut Point, Estero, FL
Coral Square, Coral Springs, FL
Crystal River, Crystal River, FL
Dadeland Mall, Miami, FL
Dare Center, Kill Devils Hill, NC
Desoto Square Mall, Bradenton, FL
Gulf View Square, Port Richey, FL
Miami International, Miami, FL
Newport Centre, Jersey City, NJ
Newport Crossing, Jersey City, NJ
Newport Plaza, Jersey City, NJ
Paddock Mall Off-site Storage, Ocala, FL
Petaluma Village Premium Outlets, Petaluma, CA
The Esplanade, Kenner, LA
Washington Square Mall, Indianapolis, IN

16. The deductible applicable to flood loss is described in the "**Deductible**" portion of the Policies as follows:

A. All loss or damage arising out of any one occurrence shall be adjusted as one loss and from the amount of such adjusted loss shall be deducted the sum of \$250,000 except ... as more fully described below.

* * *

E. In the event of property damage and/or time element loss as respects **flood** occurring in **High Hazard Flood Locations**, the sum to be deducted shall be the greater of \$500,000 per occurrence or the amount collectible under the National Flood Insurance Program.

17. Three of the Insurers – Liberty Mutual, RSUI Indemnity Co., and Essex – purported to include in one or more of their Policies additional endorsements related to coverage for flood. Copies of these endorsements are attached hereto as Exhibits 2, 3 and 4, respectively. However, Simon and Opry Mills understood and expected that all policies, including those issued by Liberty Mutual, RSUI, and Essex, would be identical with respect to flood coverage afforded. These endorsements do not limit the \$200 million in flood coverage available under Simon's insurance program for the Opry Mills Mall.

18. The parties to the Policies agreed and understood when they entered into the Policies that the only locations subject to the \$50 million sublimit for "**flood in High Hazard Flood Zones**" would be specifically listed in the Policies. As quoted above, those locations were listed immediately after the clause in the applicable endorsement stating that "**HIGH HAZARD FLOOD LOCATIONS** are defined as follows."

19. The Opry Mills Mall is not listed in the Policies as one of the "**HIGH HAZARD FLOOD LOCATIONS**."

20. The available flood coverage under the Policies for the Opry Mills Mall is the \$200 million limit of liability for “**flood**,” not the \$50 million coverage limit for “**flood in High Hazard Flood Zones**.”

Aon’s Representations on Behalf of the Insurers

21. Since Opry Mills acquired the Mall and Helaba extended a loan to Opry Mills in 2007, the insurers writing the property insurance policies covering the Mall have expressly authorized Aon Risk Services to issue certificates of insurance on their behalf. The Policies, for instance, state that “[p]ermission is granted for Aon Risk Services to issue Certificates [of Insurance] on the **Insurer’s** behalf.”

22. Before the May 2010 Flood at Opry Mills Mall and pursuant to its express authority granted by each of the Insurers who insured the Mall, Aon issued certificates of insurance to Helaba, Opry Mills and Simon confirming that the property at Opry Mills Mall was subject to the full limits available for flood under the policies then in effect, with no mention of the \$50 million sublimit for “**flood in High Hazard Flood Zones**.” Aon issued these certificates annually for the policies in effect at the time the certificates were issued.

23. On October 4, 2007, Aon issued a certificate of insurance stating that the flood coverage limit for Opry Mills under the insurance policies in force at that time was \$100 million (which was the aggregate limit for flood in place at that time), rather than the \$50 million aggregate limit for “high hazard” flood. A copy of this certificate of insurance is attached hereto as Exhibit 5.

24. In 2008, Aon issued another certificate of insurance confirming that the flood coverage limit for Opry Mills under the insurance policies in force at that time was \$200 million (which was the aggregate limit for flood in place at that time), rather than the \$50 million

aggregate limit for "high hazard" flood. A copy of this certificate of insurance is attached hereto as Exhibit 6.

25. In 2009, Aon issued yet another certificate of insurance confirming that the flood coverage limit for Opry Mills under the insurance policies in force at that time was \$200 million (which was the aggregate limit for flood in place at that time), rather than the \$50 million aggregate limit for "high hazard" flood. A copy of this certificate of insurance is attached hereto as Exhibit 7.

26. On January 7, 2010, Aon again issued a certificate of insurance pursuant to its authority granted by the Insurers under the Policies stating that the flood coverage limit for Opry Mills under the Policies was \$200 million, subject to a \$250,000 deductible. A copy of this certificate of insurance is attached hereto as Exhibit 8.

27. Aon issued each of the certificates of insurance attached as Exhibits hereto to Helaba, Opry Mills and Simon prior to the May 2010 Flood. These certificates of insurance were on a standard form referred to as an "ACORD 28" form. The ACORD 28 form states in capital, bold-face letters at the top that it is **"EVIDENCE OF COMMERCIAL PROPERTY INSURANCE."** The form further states that **"THIS IS EVIDENCE THAT INSURANCE AS IDENTIFIED BELOW HAS BEEN ISSUED, IS IN FORCE, AND CONVEYS ALL THE RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICIES."**

28. The certificates of insurance issued by Aon were consistent with the language of the insurance policies for which they were issued because the Opry Mills Mall is not listed as one of the **"HIGH HAZARD FLOOD LOCATIONS"** in any of those policies.

29. After the May 2010 Flood, Aon confirmed to Simon and Opry Mills that the applicable limit of liability for the flooding at Opry Mills was \$200 million. A copy of the email containing Aon's confirmation of the limits is attached hereto as Exhibit 9.

The Insurers' Wrongful Denial of Coverage

30. The insurance companies who issued policies covering the first \$50 million of losses in the Simon insurance program have paid and/or agreed to pay their maximum participation percentages (totaling \$50 million) for losses associated with the May 2010 Flood at the Opry Mills Mall.

31. On July 30, 2010, the Insurers sent a letter to Simon through their designated agent, Crawford Technical Services ("Crawford"), a copy of which is attached hereto as Exhibit 10. The July 30, 2010 Crawford letter denied coverage under the Policies on the grounds that the flood limit applicable to the Opry Mills Mall is the \$50 million coverage sublimit for "**flood in High Hazard Flood Zones.**"

32. On August 11, 2010, Simon and Opry Mills sent a letter to Crawford objecting to the Insurers' position, pointing out the Policy language and the prior consistent position of the Insurers that the \$50 million coverage sublimit for "**flood in High Hazard Flood Zones**" did not apply to Opry Mills – as represented by the Insurers through their designated agent, Aon, in the certificates of insurance attached hereto. The August 11, 2010 letter requested that the Insurers reconsider their position. A copy of this letter is attached hereto as Exhibit 11.

33. The Insurers have refused to provide coverage and to make any payment under the Policies for the losses and damages caused by the May 2010 Flood based on their position that the loss is subject to the \$50 million limit of liability for "**flood in High Hazard Flood Zones.**" This position is contrary to the language of the Policies and applicable law, and it is

contrary to the representations made by the Insurers, through their designated agent, Aon, before and after the May 2010 Flood.

COUNT I

Breach of Contract – Insurers

34. Plaintiffs incorporate by reference paragraphs 1-33 as if set forth fully herein.

35. The Insurers' refusal to provide coverage and to pay for any losses and/or damages in excess of \$50 million sustained by Opry Mills as a result of the May 2010 Flood is a breach of the Policies and the Insurers' obligations under the Policies and applicable law.

36. Plaintiffs have incurred damages as a result of the Insurers' breach of the Policies and of their obligations under applicable law. Plaintiffs' damages are continuing and the extent of their damages is not known at this time. Plaintiffs' damages include, without limitation, the proceeds due and owing under the Policies, the costs incurred by Plaintiffs to address the damages caused by the flooding, the diminished value of property and other assets that cannot be repaired or replaced without the insurance proceeds due and owing from the Insurers, the lost income and other damages caused by the Insurers' breach of the Policies, and other damages to be proven at the time of trial.

37. Plaintiffs have performed all conditions precedent to the Insurers' performance of their obligations under the Policies and applicable law, or all such conditions have been waived.

COUNT II

Estoppel - Insurers

38. Plaintiffs incorporate by reference paragraphs 1-37 as if set forth fully herein.

39. The Insurers authorized Aon to issue certificates of insurance on their behalf in connection with the coverage afforded by the Policies.

40. Prior to the May 2010 Flood at Opry Mills Mall, the Insurers, through their authorized agent, Aon, issued certificates of insurance representing that the full limit of liability for flood was available to Opry Mills Mall under the Policies, with no mention of the \$50 million sublimit of liability for “**flood in High Hazard Flood Zones.**” Aon issued these certificates of insurance to Helaba before Helaba funded the loan and in each year thereafter.

41. Plaintiffs relied on the certificates of insurance issued on behalf of the Insurers stating that the full limit of liability for flood was available to Opry Mills Mall, rather than the lower sublimit of liability for “**flood in High Hazard Flood Zones.**” Among other things, Helaba made a \$280 million loan on the property and refrained from requiring additional insurance coverage on the Mall based on the belief and understanding that sufficient funds would be available in the event of a casualty such as the May 2010 Flood. In reliance on the Policies and the certificates of insurance, Opry Mills did not seek additional insurance coverage for the Mall and did not undertake any additional measures to further minimize the potential for flood damage at the Mall.

42. By virtue of their statements in the certificates of insurance issued before the May 2010 Flood, the Insurers are estopped from asserting that coverage for the losses and damages caused by the May 2010 Flood at the Opry Mills Mall under the Policies is limited to the \$50 million sublimit, rather than the \$200 million flood limit the Insurers and their designated agent represented to Plaintiffs, both before and after the May 2010 Flood.

COUNT III

Declaratory Judgment

43. Plaintiffs incorporate by reference paragraphs 1-42 as if set forth fully herein.

44. A justiciable controversy exists regarding the parties' rights and obligations under the Policies and applicable law with respect to the limits of liability for Plaintiffs' losses and damages caused by the May 2010 Flood at the Opry Mills Mall in Nashville, Tennessee.

45. The issuance of a declaratory judgment by this Court will terminate existing uncertainty and controversy among the parties relative to the construction and interpretation of the Policies and the parties' rights and obligations under the Policies and applicable law.

COUNT IV

Promissory Estoppel - Aon

46. Plaintiffs incorporate by reference paragraphs 1-45 as if set forth fully herein.

47. Plaintiffs reasonably relied on the statements in the ACORD 28 certificates of insurance issued to them before the May 2010 Flood, including the statement that **"THIS IS EVIDENCE THAT INSURANCE AS IDENTIFIED BELOW HAS BEEN ISSUED, IS IN FORCE, AND CONVEYS ALL THE RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICIES"** and the statements indicating that the full policy limits for flood coverage were available to the Opry Mills Mall, with no mention of the \$50 million sublimit for **"flood in High Hazard Flood Zones."**

48. Plaintiffs also relied on the representations by Aon after the May 2010 Flood that the coverage limit of \$200 million would be available under the Policies in the event of a flood at Opry Mills Mall.

49. If the Court or a jury determines that the losses caused by the May 2010 Flood at the Opry Mills Mall are limited to the \$50 million sublimit for **"flood in High Hazard Flood Zones,"** then Aon is liable to Plaintiffs for Plaintiffs' uninsured losses associated with the May 2010 Flood.

ALTERNATIVE COUNT V

Breach of Contract - Aon

50. Plaintiffs incorporate by reference paragraphs 1-49 as if set forth fully herein.

51. Pursuant to the agreement between Aon and Simon for Aon to serve as Simon's broker of record for the 2010 policy year, Aon agreed to develop, recommend, negotiate and place property insurance for Simon for the 2010 policy year, including property insurance covering Opry Mills Mall. A copy of this agreement is attached hereto as Exhibit 12.

52. Simon and Opry Mills understood and expected that the insurance developed, recommended, negotiated and placed by Aon for Simon would include \$200 million in flood coverage in the event of a flood at Opry Mills Mall during the 2010 policy year.

53. Aon agreed with the understanding and expectation that the insurance developed, recommended, negotiated and placed by Aon for Simon would include \$200 million in flood coverage in the event of a flood at Opry Mills Mall during the 2010 policy year, as evidenced by the certificates of insurance attached hereto and the representations of Aon immediately after the May 2010 Flood.

54. Simon and Opry Mills also understood and expected that the policies issued by the Insurers would be identical with respect to the flood coverage afforded by the Policies.

55. If the Court or a jury determines that less than \$200 million in flood coverage limits are available under the Policies for the May 2010 Flood at Opry Mills Mall, then Aon breached its duty to develop, recommend, negotiate and/or place such insurance and Aon is liable to Plaintiffs for Plaintiffs' uninsured losses associated with the May 2010 Flood.

ALTERNATIVE COUNT VI

Negligence - Aon

56. Plaintiffs incorporate by reference paragraphs 1-55 as if set forth fully herein.

57. As Simon's broker of record, Aon had a duty as a matter of law to perform services for Simon using the skill and judgment required by professionals in Aon's business.

58. As the Insurers' designated agent for issuing certificates of insurance under the Policies, Aon had a duty to accurately represent the coverage afforded by the Policies and not to misrepresent that coverage.

59. Simon and Opry Mills understood and expected that the insurance developed, recommended, negotiated and placed by Aon for Simon would include \$200 million in flood coverage in the event of a flood at Opry Mills Mall during the 2010 policy year.

60. Aon agreed with the understanding and expectation that the insurance developed, recommended, negotiated and placed by Aon for Simon would include \$200 million in flood coverage in the event of a flood at Opry Mills Mall during the 2010 policy year, as evidenced by the certificates of insurance attached hereto and the representations of Aon immediately after the May 2010 Flood.

61. Simon and Opry Mills also understood and expected that the policies issued by the Insurers would be identical with respect to the flood coverage afforded by the Policies. However, Policies issued by Liberty Mutual, RSUI Indemnity Co., and Essex contain additional endorsements related to coverage for flood not found in the other Policies.

62. Plaintiffs further relied on the express representations by Aon that \$200 million in flood coverage was available in the event of a flood at Opry Mills Mall.

63. If the Court or a jury determines that less than \$200 million in flood coverage limits are available under the Policies for the May 2010 Flood at Opry Mills Mall, then Aon breached its duty to develop, recommend, negotiate and/or place such insurance and Aon misrepresented the coverage available under the Policies; and, in such event, Aon is liable to Plaintiffs for Plaintiffs' uninsured losses associated with the May 2010 Flood and/or Aon breached its duty not to misrepresent the coverage afforded by the Policies.

COUNT VII

Tennessee Consumer Protection Act – Insurers and/or Aon

64. Plaintiffs incorporate by reference paragraphs 1-63 as if set forth fully herein.

65. The certificates of insurance issued by Aon on behalf of the Insurers prior to the May 2010 Flood expressly represented that the flood coverage for the Opry Mills Mall was the full \$100 million and, later, \$200 million available under the insurance policies covering the Mall, including under the Policies.

66. The Insurers' refusal to acknowledge and pay for the coverage they understood, represented and intended to be covered by the Policies constitutes an unfair or deceptive practice or a practice declared unlawful under the Insurers and/or Aon within the meaning of the Tennessee Consumer Protection Act ("TCPA"), Tenn. Code § 47-18-109.

67. Alternatively, if it is finally determined that less than the \$200 million in flood coverage limit is available under the Policies for the May 2010 Flood at Opry Mills Mall, then the Insurers' and Aon's representations to the contrary in the certificates of insurance attached hereto amounted to an unfair or deceptive practice or a practice declared unlawful under the TCPA.

68. Plaintiffs have suffered an ascertainable loss of money or property as a result of the use of the unfair or deceptive practices by the Insurers and/or Aon within the meaning of the TCPA and Plaintiffs are entitled to all relief available under the TCPA as a result of such unfair or deceptive act.

69. The Insurers' and/or Aon's violation of the TCPA was willful and/or knowing, entitling Plaintiffs to three times their actual damages and all other relief the Court deems just and proper.

WHEREFORE, premises considered, Plaintiffs request the following relief:

1. That proper service be issued to the Defendants and that the Defendants be required to answer this Complaint in this Court;

2. Judgment in Plaintiffs' favor against the Insurers in an amount to be proven at trial sufficient to compensate Plaintiffs for their losses and damages caused by the Insurers' breach of their obligations under the Policies and applicable law;

3. Judgment in Plaintiffs' favor against the Insurers in an amount to be proven at trial sufficient to compensate Plaintiffs for their losses and damages caused by the May 2010 Flood to and including the \$150 million of remaining coverage available under the Policies;

4. Judgment declaring that the losses and damages caused by the May 2010 Flood at the Opry Mills Mall are not limited to the \$50 million sublimit under the Policies for "**flood in High Hazard Flood Zones**" and that the full \$200 million in flood coverage is available under the Policies (less the \$50 million already paid by other insurers);

5. If the Court or a jury determines that less than \$200 million in flood coverage limits are available under the Policies for the May 2010 Flood at Opry Mills Mall, Plaintiffs pray

for entry of a judgment against Aon in the amount of Plaintiffs' losses and damages associated with the May 2010 Flood at Opry Mills Mall and other permissible damages to be proven at trial;

6. Judgment in Plaintiffs' favor against the Insurers and/or Aon for three times Plaintiffs' actual damages proven at trial and all other damages available under the Tennessee Consumer Protection Act;

7. Award of all costs of this action;

8. Award of prejudgment and post-judgment interest for the full amount of Plaintiffs' claims to be proven at trial; and

9. Award of all reasonable attorneys' fees and litigation expenses incurred by Plaintiffs in this action;

10. Any other relief the Court deems proper.

JURY DEMAND

Plaintiffs demand a jury trial as to all claims asserted herein that involve issues triable of right by a jury.

Respectfully submitted,



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