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8 Attorneys for Plaintiff **Matthew S. Garza**

9 **UNITED STATES DISTRICT COURT**  
10 **EASTERN DISTRICT OF CALIFORNIA**

11 MATTHEW S. GARZA

12 Plaintiff,

13 vs.

14 CERTAIN UNDERWRITERS AT  
15 LLOYD’S OF LONDON  
16 SUBSCRIBING TO THE SUBJECT  
17 POLICY; PARADIGM - GILBERT  
18 INSURANCE GROUP, LLC; AND  
19 INTERNATIONAL SPECIALTY  
20 INSURANCE, INC.,

21 Defendants.

Case No. 1:20-at-00928

COMPLAINT

22 Plaintiff Matthew S. Garza alleges as follows:

23 **NATURE OF THIS ACTION**

24 1. Plaintiff Matthew S. Garza brings this lawsuit arising out of the  
25 Defendants failure to pay benefits under a disability insurance Certificate No.  
26 B1132HGBA16062263 (“Subject Policy”) against Defendants Certain Underwriters at  
27 Lloyd’s of London subscribing to the Subject Policy (“Lloyd’s”), Paradigm - Gilbert  
28 Insurance Group, LLC (“Gilbert”), and International Specialty Insurance, Inc. (“ISI”) because, among other things:

- 1 a. Lloyd's wrongfully denied insurance coverage for this clearly  
2 covered loss by asserting that Mr. Garza failed to disclose an unrelated prior  
3 treatment he received for pain in his right shoulder and rescinding the Subject  
4 Policy despite accepting an incomplete policy application from Mr. Garza and  
5 failing to request any of Mr. Garza's prior medical records before endorsing the  
6 Subject Policy to remove the subjectivities based on the incomplete application;
- 7 b. Lloyd's wrongfully refused to accept or deny, in whole or in part,  
8 insurance coverage for this clearly covered loss under the Subject Policy  
9 claiming that it was entitled to rely on other, unspecified exclusions;
- 10 c. ISI failed to ensure that Mr. Garza's application was complete and  
11 accurate or obtain any of Mr. Garza's medical records;
- 12 d. Gilbert knowingly submitted an incomplete and inaccurate policy  
13 application on behalf of Mr. Garza;
- 14 e. Lloyd's has unreasonably delayed, stalled and engaged in coverage  
15 gamesmanship to avoid paying the valid claim, including conducting  
16 impermissible and improper post-claims underwriting;
- 17 f. Lloyd's failed to view the evidence submitted by Mr. Garza in the  
18 light most favorable to providing coverage for the loss, as Lloyd's was required  
19 to do but, instead, improperly viewed the evidence solely through the lens of  
20 creating an artifice for denying coverage;
- 21 g. ISI and Gilbert breached the duties they owed to Mr. Garza as  
22 insurance brokers, acting as the agents or sub-agents for Mr. Garza, in  
23 connection with his disability claim and the procurement of the Subject Policy;  
24 and
- 25 h. Lloyd's breached the implied covenant of good faith and fair  
26 dealing in numerous ways detailed more fully below.

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**THE PARTIES**

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2           2.     Mr. Garza is, and at all relevant times relevant to this action was, a  
3 resident of the State of California, county of Fresno.

4           3.     Based upon information and belief, Defendant Lloyd’s is, and at all times  
5 relevant hereto was, a foreign entity that offers insurance products to individuals and  
6 businesses. The principal offices of Lloyd’s are located in London, England. The  
7 syndicates underwriting the insurance policy at issue here participate in an association  
8 of underwriters and individual insurance companies existing under the laws of the  
9 United Kingdom, which association has its principal place of business in London,  
10 England and which sold the Disability Insurance Policy covering Mr. Garza and the  
11 loss described below.

12           4.     Upon information and belief, at all relevant times, Lloyd’s was and is  
13 engaged in the business of, among other things, underwriting disability insurance  
14 policies for residents of the State of California, Lloyd’s does business in the State of  
15 California, and it underwrites insurance policies for risks and individuals located in  
16 the State of California.

17           5.     Based upon information and belief, Defendant ISI, formerly known as  
18 International Sports Insurance Services, Inc. is, and at all times relevant hereto was, a  
19 North Carolina corporation with its principal place of business located in Winston  
20 Salem, North Carolina and was authorized to transact business in the State of  
21 California and has transacted business in this State.

22           6.     Based upon information and belief, ISI holds itself out to the general  
23 public as being an approved coverholder for Lloyd’s.

24           7.     A description of the rights, duties and obligations of a “coverholder,” like  
25 ISI when issuing a Lloyd’s policy, is described on the Lloyd’s Internet Website<sup>1</sup> as  
26 follows: “Coverholder’ means a company or partnership authorised by a Managing  
27

28 <sup>1</sup> <https://www.lloyds.com/market-resources/third-party-oversight/compliance-and-operations/about-coverholders>

1 Agent to enter into a contract or contracts of insurance to be underwritten by the  
2 members of a syndicate managed by it in accordance with the terms of a Binding  
3 Authority.”

4 8. Upon information and belief, ISI acted as a wholesale broker by serving  
5 as a liaison between Gilbert and Garza on the one hand, and Lloyd’s on the other, in  
6 procuring the Subject Policy.

7 9. Upon information and belief, Paradigm - Gilbert Insurance Group, LLC  
8 is a limited liability company incorporated and headquartered in Fort Worth, Texas  
9 that acts as an insurance broker and is licensed and authorized to procure insurance  
10 policies from insurance companies on behalf of policyholders in the State of  
11 California.

12  
13 **JURISDICTION AND VENUE**

14 10. This Court has subject matter jurisdiction over this action pursuant to 28  
15 U.S.C. §1332 because there is complete diversity of the citizenship of the parties and  
16 the amount in controversy is greater than \$75,000, exclusive of interest, attorney fees,  
17 and costs.

18 11. This Court has personal jurisdiction over the defendants because, among  
19 other reasons: (a) the Subject Policy of insurance issued by Lloyd’s insured an  
20 individual who resides within this State and this judicial district; (b) was procured  
21 through ISI and Gilbert, insurance brokers licensed to do business in this State; and (c)  
22 provides that Lloyd’s shall submit to the jurisdiction of a court of competent  
23 jurisdiction in the United States.

24 12. Venue is proper in this judicial district, and division, pursuant to 28  
25 U.S.C. §§ 1391 (a), (b) (2), and (c) because a substantial part of the events and giving  
26 rise to this claim occurred in this judicial district, the Insured Person (Mr. Garza) is a  
27 resident of this judicial district, and the Defendants transact insurance business in this  
28 judicial district.

1                                   **GENERAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

2

3                   **Mr. Garza's Baseball Career**

4           13.     Mr. Garza is a former professional baseball player. He was a starting  
5 pitcher for 12 years in Major League Baseball (MLB). Mr. Garza was drafted with  
6 the 25th pick of the first round of the 2005 MLB draft by the Minnesota Twins after  
7 he had pitched three years at Fresno State University. He was a top-ranked pitching  
8 prospect in the Twins organization. Mr. Garza made his professional debut for the  
9 Twins on August 11, 2006. He continued to be a top-ranked pitching prospect in the  
10 Twins organization before being traded to the Tampa Bay Rays in 2007.

11           14.     From 2007 to 2013, Mr. Garza pitched successfully for the Tampa Bay  
12 Rays, Chicago Cubs, and Texas Rangers before he signed a four-year, \$52 million  
13 contract with the Milwaukee Brewers. That contract included a vesting option for a  
14 fifth year at \$13 million leading into the 2014 season.

15           15.     During his twelve-year MLB career, Mr. Garza pitched in 290 major  
16 league games, throwing nearly 28,000 pitches over 1,710 innings. He struck out 1,380  
17 batters and posted a career ERA of 4.09.<sup>2</sup>

18           16.     Unfortunately, Mr. Garza's career suddenly ended following the 2017  
19 season after he underwent surgery to correct a torn labrum in his right/pitching  
20 shoulder that was caused by a collision with 6'3", 250 pound Milwaukee Brewers'  
21 first basemen Jesús Aguilar at Miller Park on June 3, 2017, in a game against the Los  
22 Angeles Dodgers, when Garza was covering first base. Following that collision, Mr.  
23 Garza was placed on the disabled list for 10 days in June 2017. He attempted to pitch  
24 the rest of the season, despite the injury. He struggled badly and ultimately lost his  
25 spot in the Brewers' starting rotation before undergoing surgery during the offseason  
26 to repair the torn labrum in his pitching shoulder.

27

28                                   <sup>2</sup>     <https://www.mlb.com/player/matt-garza-490063>

1           17. As a direct result of the torn labrum he suffered on June 3, 2017, Mr.  
2 Garza was ruled out for the entire 2018 season and he was ultimately and later  
3 certified by a Physician as being wholly and continuously unable to participate in his  
4 chosen profession as a professional baseball player.

5  
6 **The Subject Policy**

7           18. Lloyd's issued the Subject Policy covering the Policy Period March 31,  
8 2017 to March 31, 2018. A true and correct copy of the Subject Policy is attached  
9 hereto as "Exhibit A."

10           19. Mr. Garza is both the Insured Person and the Owner and Beneficiary of  
11 the Subject Policy.

12           20. In exchange for a premium payment of \$188,174 (including ISI's broker  
13 fee and applicable taxes), the Subject Policy provides a Lump Sum Benefit of  
14 \$10,000,000 payable if Mr. Garza suffered a Permanent Total Disability during the  
15 Policy Period.

16           21. Under the Subject Policy, Lloyd's agreed to pay the Permanent Total  
17 Disability Lump Sum Benefit if:

18           a. The Insured Person has a Total Disability which begins within 12  
19 months of the Accident or first manifestation of any Sickness or Disease; and  
20 continues without interruption for the entire Elimination Period; and

21           b. The Insured Person is under the regular care of a Physician through  
22 the duration of the Total Disability; and

23           c. The Insured Person is living on the date the Permanent Total  
24 Disability Benefit Amount becomes payable; and

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1 d. The Insured Person has a Total Disability of continuous and  
2 indefinite duration that prevents the Insured Person from ever again  
3 Participating in his or her Occupation/Sport.<sup>3</sup>

4 22. Mr. Garza has satisfied all of these requirements.

5 23. As noted above, Mr. Garza suffered a torn labrum as a result of a serious  
6 accident (defined by the Subject Policy as a “single sudden and unexpected event,  
7 which occurs during the Policy Period at an identifiable time and place and which  
8 causes unexpected Bodily Injury at the time it occurs”) – when he collided with his  
9 teammate during a routine play during a game on June 3, 2017. While Mr. Garza was  
10 able to pitch through the injury for the remainder of the season (after missing a few  
11 games), Mr. Garza was forced to undergo rotator cuff surgery following the end of the  
12 2017 season.

13 24. Solely and directly as a result of the Injury suffered on June 3, 2017, Mr.  
14 Garza became wholly and continuously unable to Participate in his chosen occupation  
15 as a baseball player.

16 25. On or about July 20, 2019, Mr. Garza directed Gilbert to submit a claim  
17 for his Permanent Total Disability Lump Sum Benefit.

18 26. Mr. Garza has complied with all conditions and obligations imposed on  
19 him by the Subject Policy.

20 27. No exclusions or limitations apply to Mr. Garza’s claim for the  
21 Permanent Total Disability Lump Sum Benefit under the Subject Policy.

22

23 **Application for Subject Policy**

24 28. In April 2017, Gilbert submitted a partially completed Athletes  
25 Disability Insurance Application to Lloyd’s through ISI. Only 13 of the 29 questions  
26 on the application were completed. Despite the missing information, Gilbert directed  
27

28

<sup>3</sup> Condition 5 is omitted because Mr. Garza is both the Insured Person and the Owner & Beneficiary of the Subject Policy.

1 Mr. Garza to sign the application. At Gilbert's direction, Mr. Garza signed the  
2 incomplete application on or about April 9, 2017.

3 29. On or about April 9, 2017, at the direction of Gilbert, Mr. Garza also  
4 executed a HIPPA Compliant Authorization for Release of Health Related  
5 Information ("HIPPA Waiver") in favor of ISI permitting ISI to obtain Mr. Garza's  
6 otherwise confidential medical records on behalf of Lloyd's.

7 30. Gilbert then also signed the application on or about April 9, 2017,  
8 including a certification that all information provided by Mr. Garza was accurately  
9 recorded and that Mr. Garza had either filled out the application or review the  
10 completed application.

11 31. On or about April 13, 2017, Gilbert transmitted the incomplete  
12 application to ISI to forward on to Lloyd's.

13 32. Upon information and belief, ISI received and accepted the application  
14 on or about April 13, 2017. Upon information and belief, ISI accepted the application  
15 with full knowledge that 65% of the application did not include completed responses.

16 33. Upon information and belief, neither ISI nor Lloyd's requested or  
17 reviewed Mr. Garza's medical records, despite requiring him to execute the HIPPA  
18 waiver.

19 34. Upon information and belief, neither ISI nor Gilbert checked the  
20 information in the incomplete application against publicly available records of Mr.  
21 Garza's injury history to determine that the information in his application was  
22 complete and accurate. Instead, ISI and Gilbert submitted a mostly blank policy  
23 application to Lloyd's.

24 35. After receiving the incomplete application, and with full knowledge that  
25 65% of the requested information was missing from the application and the fact that a  
26 MLB pitcher with, at the time, 11 years of experience, Lloyd's issued the Subject  
27 Policy. The Subject Policy was endorsed effective May 11, 2017 to note that the  
28 "Subjectivities are deleted from the Schedule in their entirety, following receipt of the



1 satisfactory Application form dated April 9, 2017.” This endorsement includes a  
2 partial copy of the incomplete application form and is included as part of Exhibit A.

3  
4 **Claims Handling Process**

5 36. Rather than pay Mr. Garza the full policy benefit due and owing to him,  
6 as required by the Subject Policy, Lloyd’s has instead engaged in unlawful and  
7 impermissible acts of “post-claims underwriting,” in an attempt to avoid its  
8 contractual obligations under the Subject Policy, culminating in an unsupported,  
9 unilateral decision to rescind the Subject Policy and an attempt to return Mr. Garza’s  
10 premium payment.

11 37. Lloyd’s, through the lead underwriters, Hamilton Managing Agency  
12 Limited, claim that Mr. Garza submitted inaccurate or misleading information in his  
13 application, including allegedly failing to disclose prior issues with his right shoulder.

14 38. In fact, Lloyd’s, through ISI, accepted an incomplete application form  
15 that left 65% of the questions blank and failed to request or review any medical  
16 records despite requiring Mr. Garza to execute the HIPPA waiver.

17 39. Instead of conducting a thorough underwriting process before issuing the  
18 Subject Policy, Lloyd’s instead waited until after Mr. Garza submitted his claim to  
19 conduct a complete investigation of Mr. Garza’s medical and injury history.

20 40. Even after conducting this improper and impermissible post-claim  
21 underwriting process, Lloyd’s basis for deny Mr. Garza’s claim and rescinding the  
22 Subject Policy is wholly unrelated to the torn labrum Mr. Garza suffered as a result of  
23 the collision with his teammate during a routine play in June 2017.

24 41. In 2015, Mr. Garza missed approximately two starts due to pain in his  
25 right shoulder. Mr. Garza was diagnosed with tendonitis, received treatment, and was  
26 retroactively placed on the disabled list. While Mr. Garza continue to have mild pain  
27 and discomfort in his shoulder, this tendonitis did not impact his ability to pitch at a  
28 competitive major league level nor did it impact his scheduled starts. Certainly, this

1 mild discomfort had no impact on the damage caused by his violent collision almost  
2 two year later.

3 42. Lloyd's denial letter also improperly relied on vague and unsubstantiated  
4 allusions to other exclusions supposedly contained in prior letters, but which to date  
5 have never been fully identified or supported by Lloyd's.

6  
7 **FIRST CLAIM FOR RELIEF**

8 **(Breach of Contract)**

9 43. Mr. Garza re-alleges and incorporates by reference, each and every  
10 allegation set forth in paragraphs 1 through 42 inclusive above, as though they are set  
11 forth in full.

12 44. Mr. Garza fully complied with, and performed, all of the conditions and  
13 covenants on his part to be performed under the Subject Policy.

14 45. Lloyd's breached the Subject Policy in a number of ways including,  
15 without limitation, the following:

16 a. Failing and refusing to acknowledge coverage for Mr. Garza's  
17 disability claim, in direct violation of Benefits Section B of the Subject Policy  
18 even though Mr. Garza fully satisfied all applicable requirements set forth in of  
19 that Section;

20 b. Failing and refusing to pay Mr. Garza, as the owner and  
21 beneficiary of the Subject Policy, the full \$10 million policy limits in direct  
22 contravention of the express terms the Subject Policy;

23 c. Improperly using the investigation of Mr. Garza's disability claim  
24 to conduct impermissible post-claims underwriting in violation of Cal. Ins.  
25 Code § 10384;

26 d. Improperly rescinding the Subject Policy based on impermissible  
27 post-claims underwriting by Lloyd's; and  
28

1 e. Failing to timely accept or deny, in whole or in part, Mr. Garza's  
2 disability claim in contravention of California law.

3 46. Mr. Garza has been damaged, in an amount to be established at trial, as a  
4 direct and proximate result of the above listed contract breaches (and others)  
5 committed by Lloyd's.

6  
7 **SECOND CLAIM FOR RELIEF**

8 **(Breach of the Implied Duty of Good Faith and Fair Dealing)**

9 47. Mr. Garza re-alleges and incorporates by reference, each and every  
10 allegation set forth in paragraphs 1 through 42 inclusive above, as though they are set  
11 forth in full.

12 48. Implied in the Subject Policy is a covenant that Lloyd's would act in  
13 good faith and deal fairly with Mr. Garza. That obligation includes, among other  
14 things, an obligation that Lloyd's would not do anything to interfere with Mr. Garza's  
15 rights to receive the benefits due and owing under the Subject Policy and that Lloyd's  
16 would give as much, if not more, consideration to Mr. Garza's interest as Lloyd's  
17 gave to its own interests in responding to this loss.

18 49. Instead of complying with these duties and obligations, Lloyd's has acted  
19 in bad faith by, among other things, unreasonably, without good cause, and in bad  
20 faith:

21 a. Failing to view the medical information and medical records  
22 provided, along with the IME report, in the light most favorable to the Insured  
23 Person, Andre Garza;

24 b. Viewing, in bad faith, the medical information and medical records  
25 provided, along with the IME report through the lens of creating an artifice for  
26 denying coverage rather than supporting coverage;

27 c. Placing its own financial interests ahead of the financial interests  
28 of Mr. Garza;

1 d. Engaging in a systematic and orchestrated effort to stall, delay and  
2 stonewall payment of Mr. Garza's valid and collectible claim;

3 e. Engaging in impermissible and improper post-claim underwriting;

4 f. Failing to promptly and properly investigate Mr. Garza's claim  
5 with an eye towards honoring its contractual obligations while stringing Mr.  
6 Garza along; and

7 g. Otherwise acting contrary to the obligations imposed by the  
8 implied covenant of good faith and fair dealing in the Subject Policy.

9 50. In breach of the implied covenant of good faith and fair dealing, Lloyd's  
10 committed the acts alleged above for the purpose of consciously withholding from Mr.  
11 Garza the rights and benefits to which he is entitled to under the Subject Policy.

12 51. The acts described above by Lloyd's are (a) inconsistent with Mr.  
13 Garza's reasonable expectations; (b) contrary to established claims practices and legal  
14 requirements; (c) contrary to insurance industry custom and practice; (d) contrary to  
15 the express terms of the Subject Policy; and (e) constitute bad faith.

16 52. As a direct and proximate result of the unreasonable and bad faith  
17 conduct of Lloyd's, Mr. Garza has suffered, and will continue to suffer, damages  
18 under the Subject Policy, plus interest, and other economic and consequential  
19 damages, in a total amount to be shown at the time of trial.

20 53. The conduct by Lloyd's is despicable and outrageous, and was done with  
21 a conscious disregard of the rights and reasonable expectations of Mr. Garza,  
22 constituting oppression, fraud, and/or malice. Lloyd's engaged in the acts cited herein  
23 for the sole purpose of improperly denying benefits due under the Subject Policy and  
24 improperly rescinding the Subject Policy.

25 54. Specifically, by acting as alleged above, in light of the information, facts,  
26 and relevant law to the contrary, Lloyd's consciously disregarded the rights of Mr.  
27 Garza under the Subject Policy and California Law.

28 ///



1 the insurance requested including the duty to accurately, timely and truthfully submit  
2 information to Lloyd's on Mr. Garza's behalf.

3 61. As detailed more fully above, ISI breached the duties it owed to Mr.  
4 Garza by failing to, among other things: (a) improperly allowing Mr. Garza to submit  
5 an incomplete policy application for Lloyd's; (b) failing to ensure that Lloyd's  
6 obtained all relevant medical records during the underwriting process; (c) failing to  
7 check publicly available information to ensure that Mr. Garza's injury history was  
8 fully and accurately reported to the Insurers; (d) failing to properly shepherd Mr.  
9 Garza's claim through the claims process; and (e) failing to prevent Lloyd's from  
10 conducting improper post claims underwriting in a transparent attempt to manufacture  
11 a basis to deny Mr. Garza's claim and rescind the Subject Policy.

12 62. Each of the errors, acts, misrepresentations and/or omissions by ISI and  
13 Gilbert, among others, caused Lloyd's to deny Mr. Garza's claim and rescind the  
14 Subject Policy.

15 63. ISI and Gilbert's breaches are (a) inconsistent with Mr. Garza's  
16 reasonable expectations, (b) contrary to established claims practices and legal  
17 requirements, (c) contrary to insurance industry custom and practice, (d) contrary to  
18 the express terms of the Subject Policy, and (e) constitute bad faith.

19 64. Lloyd's originally denied this valid claim for disability insurance  
20 coverage under the Subject Policy procured by ISI and Gilbert as a direct and  
21 proximate result of ISI and Gilbert's failure to ensure that Mr. Garza's insurance  
22 application was complete and accurate.

23 65. ISI and Gilbert's breaches of their duties were a substantial factor in  
24 causing Mr. Garza's harm and Mr. Garza's has been damaged, in an amount to be  
25 established at trial, as a direct and proximate result of their breaches of the duties  
26 owed.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff pray for judgment as follows:

3  
4 **ON THE FIRST CLAIM FOR RELIEF**

5 1. For payment of the \$10 million policy limits, plus interest, according to  
6 proof at the time of trial.

7  
8 **ON THE SECOND CLAIM FOR RELIEF**

- 9 1. For damages, plus interest, according to proof at the time of trial;  
10 2. For reasonable attorneys' fees and expenses incurred by Plaintiff to  
11 obtain the benefits due them under the Subject Policy, plus interest, according to proof  
12 at the time of trial; and  
13 3. For punitive damages in an amount to be determined at trial.

14  
15 **ON THE THIRD CLAIM FOR RELIEF**

16 1. For damages, plus interest, according to proof at the time of trial.

17  
18 **ON ALL CLAIMS FOR RELIEF**

- 19 1. That judgment be entered in favor of Plaintiff and against Defendants and  
20 each of them;  
21 2. For costs of suit incurred herein; and

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1           3.     For such other, further, and/or different relief as may be just and proper.  
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4     Dated: November 18, 2020

**PILLSBURY WINTHROP SHAW  
PITTMAN LLP**

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6  
7           By:           /S/RICHARD C. GILLER            
                                  RICHARD C. GILLER

8                     Attorneys for Plaintiff **Matthew S.**  
9                     **Garza**

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