

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

MANSFIELD ROAD, LLC AND
BBR SHREVEPORT, LLC
Plaintiffs,

v.

GREAT AMERICAN INSURANCE
COMPANY OF NEW YORK
Defendant.

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Civil Action No. _____

Judge: Not Assigned

Magistrate Judge: Not Assigned

PLAINTIFFS' ORIGINAL COMPLAINT & JURY DEMAND

Plaintiffs MANSFIELD ROAD, LLC (“Mansfield”) and BBR SHREVEPORT, LLC (“BBR”) (collectively the “Plaintiffs”) file this Original Complaint & Jury Demand against Defendant GREAT AMERICAN INSURANCE COMPANY OF NEW YORK (“Great American” or “Defendant”) and would respectfully show the following:

Parties

1. **MANSFIELD ROAD, LLC** is a limited liability company organized under the laws of the State of Delaware with its principal place of business in New Jersey. Its sole constituent member, Martin Segal, is a citizen of the State of New Jersey. Mansfield is therefore a citizen of New Jersey for diversity purposes. It is licensed to do business and doing business in the State of Louisiana.

2. **BBR SHREVEPORT, LLC** is a limited liability company organized under the laws of the state of Delaware with its principal place of business in New York. Its sole constituent member, Martin Segal, is a citizen of the State of New Jersey. BBR is therefore a citizen of New Jersey for diversity purposes. It is licensed to do business and doing business in the State of Louisiana.

3. **GREAT AMERICAN INSURANCE COMPANY OF NEW YORK** is, upon information and belief, a foreign insurer with its principal place of business in Ohio, and its place of incorporation in New York. It is licensed to do business and doing business in the State of Louisiana. Great American may be served with process by serving its registered agent certified mail, return receipt requested, to Louisiana Secretary of State, 8585 Archives Ave., Baton Rouge, LA 70809.

Venue & Jurisdiction

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiffs and Defendant and the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interests and costs.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because this action concerns real properties located and operating in Shreveport, Caddo Parish, Louisiana, within this judicial district, and all or a substantial part of the events giving rise to the claims described herein occurred there. In particular, the insurance policy at issue and of which Plaintiffs are the beneficiary were to be performed in Shreveport, Caddo Parish, Louisiana and the losses under the policy (including payments to be made to Plaintiffs under the policy) were required to be made there.

Facts

6. Plaintiffs co-own the shopping center located off of Mansfield Road, Shreveport, LA 71118 (hereafter, the "Properties"). Plaintiffs purchased and then renewed a property and casualty insurance policy from Defendant with an effective policy period spanning from April 1, 2018 through April 1, 2019, and then renewed with an effective period of April 1, 2019 through

April 1, 2020 (hereafter, the “Policy”). A copy of the Policy is attached as **Exhibit 1**. The Policy, which provided coverage under policy number MAC 1110410-03-00, provided for the payment of the replacement cost value of property damage in the event of a covered loss.

7. The Policy contains a “Building and Personal Property Coverage Form” that provides, “we will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.” (Policy at 41). The Policy includes each of the Properties as “Covered Property.”

8. On or about March 25, 2019, there was a severe wind and hailstorm at the Properties, causing significant damage, including without limitation the roof systems at the locations. Significant leaks manifested after another severe wind and hailstorm on May 8, 2019. Matthew Delaney, on behalf of Plaintiffs, hired a licensed public insurance adjuster, South Wind Public Adjusters, Inc., (“SWPA”) to assess the damage from the storms.

9. Thereafter, Kelli Kyle with SWPA submitted a claim to Defendant for payment for covered damages under the policy, and the claim was assigned the claim number A00279702 (the “Claim”).

10. Defendant retained Engle Martin & Associates, as an independent adjuster, and Roof Technical Services and Young & Associates to investigate the claim. Representatives from the three companies investigated only some of the Covered Properties on May 13, 2020. During that inspection, Plaintiffs’ professional consultants, were present and specifically identified significant physical damage to the roof systems and exterior. Further, Plaintiffs’ consultants pointed out interior damages and leaks caused by the physical hail damage, in support of the claim.

11. On September 9, 2020, Defendant sent a reservation of rights letter indicating

Defendant maintains its right “to disclaim coverage for loss, or a portion of each loss, at a later date,” while they continued investigating. (*See Ex. 2, letter*).

12. The reservation of rights letter included a summary of the report by Roof Technical Services’ consultant, Bret Barnett, which recognized wind damage as well as hail dents and impacts, but was carefully drafted to diminish this impact of this patent and obvious damage. Indeed, as is frequently the case in commercial insurance adjusting. (*See Ex. 2, letter*).

13. Put simply, Defendant’s own consultants recognized there was wind and hail damage to the Properties. Yet, Defendant ignored all evidence of covered damages presented by both Plaintiffs’ and Defendant’s own retained consultants.

14. On December 7, 2020, Plaintiffs sent Defendant a sworn statement in partial proof of loss, which outlined in detail the extent and nature of Plaintiffs’ loss. (**Ex. 3, letter and proof of loss**).

15. Leah N. Engelhardt of Chaffe McCall LLP rejected the proof of loss, on behalf of Defendant, by letter on January 14, 2021 and, to date, has paid nothing.

Claims for Relief

FIRST CAUSE OF ACTION—Breach of Contract

16. Plaintiffs incorporate by reference for all purposes as if fully set forth herein all paragraphs above.

17. Plaintiffs are named insureds under the Policy. The Policy is a legally binding contract by and between Plaintiffs and Defendant. Plaintiffs have performed all of its responsibilities, duties, and conditions under the property and casualty insurance policy, and has met all conditions precedent.

18. Despite Plaintiffs’ performance of all conditions required under the property and

casualty insurance policy, Defendant breached the Policy by denying coverage to Plaintiffs and failing or refusing to make a payment of benefits owed under the Policy. Namely, the damage caused by hail is a Covered Cause of Loss for which Defendant owes to Plaintiffs Policy benefits.

19. As a direct and proximate result of Defendant's breach of contract, Plaintiffs have suffered economic damages.

SECOND CAUSE OF ACTION—Violation of LA. REV. STAT. § 22:1892

20. Plaintiffs incorporate by reference for all purposes as if fully set forth herein all paragraphs above.

21. Plaintiffs submitted a satisfactory proof of loss on December 7, 2020.

22. Defendant failed to pay the claim, or to make a written offer of settlement, within the applicable statutory period of 30 days after receipt of such proof of loss.

23. Such failure was arbitrary, capricious, and/or without probable cause. Defendant, by and through its retained adjusters, engineers, and contractors, willfully disregarded substantial evidence of hail damage at the Property. Defendant even disregarded meteorological evidence of significant hail damage at the Property on the date of loss that was found by its own personnel. Defendant's denial and refusal to pay is based upon a pretextual report conjured by a biased company that, upon information and belief, does a substantial percentage of its work for insurance carriers.

24. Under LSA-R.S. 22:1892, Defendant's arbitrary, capricious, and without-probable-cause failure to pay benefits owed subjects Defendant to a penalty of 50 percent of amounts due, plus reasonable and necessary attorney's fees and costs incurred as a result of Plaintiffs' need to hire the undersigned counsel.

**THIRD CAUSE OF ACTION—Violation of duty of good faith and fair dealing –
LA. REV. STAT. 22:1973**

25. Plaintiffs incorporate by reference for all purposes as if fully set forth herein all paragraphs above.

26. Additionally and alternatively, Defendant violated the duty of good faith and fair dealing. Pursuant to La. Rev. Stat. § 22:1973, Defendant contractually and statutorily assumed the duty of good faith fair dealing to Plaintiffs when it entered into the Policy with Plaintiffs and, thereafter, dutifully accepted Plaintiffs' premiums.

27. As detailed above, Defendant has wrongfully and intentionally withheld benefits due under the Policy by improperly denying coverage. Furthermore, this intentional withholding of benefits due under the Policy is unreasonable and was knowingly done without proper cause and, therefore, was committed in bad faith.

28. By committing the aforementioned acts, Defendant has breached the covenant of good faith and fair dealing implied in the Policy and imposed by statutory law. Defendant's breaches of good faith and fair dealing include, but are not limited to, the following:

- a. Unreasonably and in bad faith denying benefits due under the property and casualty insurance policy;
- b. Unreasonably and in bad faith denying payment or settlement of the claims;
- c. Unreasonably and in bad faith ignoring and refusing to consider information favorable to Plaintiffs' claim for benefits due pursuant to the property and casualty insurance policy;
- d. Unreasonably and in bad faith refusing to pay the benefits that Plaintiffs are due pursuant to the property and casualty insurance policy;
- e. Unreasonably and in bad faith placing their own welfare and financial interests ahead of the welfare and financial interests of Plaintiffs, who is their insured;

- f. Unreasonably and in bad faith compelling Plaintiffs to institute this litigation to obtain benefits due under the property and casualty insurance policy;
- g. Misrepresenting pertinent facts or insurance policy provisions relating to any coverages at issue (22:1973(B)(1));
- h. Failing to pay the amount of any claim due any person insured by the contract within sixty days after receipt of satisfactory proof of loss from the claimant when such failure is arbitrary, capricious, or without probable cause (22:1973(B)(5)); and
- i. Failing to pay claims pursuant to R.S. 22:1893 when such failure is arbitrary, capricious, or without probable cause (22:1973(B)(6)).

JURY DEMAND

29. Plaintiffs hereby demand a trial by jury on all issues. The necessary jury fee has been paid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that it be allowed to file this Complaint herein, and Plaintiffs further pray for the following:

- a) That Defendant be duly cited and served with a copy of this Complaint;
- b) That after due delays and legal proceedings had, there be judgment in favor of Plaintiffs herein and against the Defendant for all damages caused, in an amount reasonable in the premises, along with attorney fees and costs incurred, and statutory penalties as pleaded herein, together with legal interest thereon from the date of judicial demand until paid and for all costs of these proceedings;
- c) For any/all general and equitable relief as the law may allow and the nature of the case may permit; and

- d) That Plaintiffs be given written notice of all fixings, rules, hearings, judgments, and written reasons of this Honorable Court, issued or filed in these proceedings.

Respectfully Submitted,
RICE & KENDIG



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