



629402.C

VICAL D & W PLAZA, LLC

NUMBER: _____

VERSUS

FIRST JUDICIAL DISTRICT COURT

EMC PROPERTY & CASUALTY COMPANY

CADDO PARISH, LOUISIANA

PERMANENT ASSIGNMENT

SECTION ____

PETITION

The petition of VICAL D & W PLAZA, LLC ("VICAL" or "Plaintiff"), a Louisiana Limited Liability Company, respectfully represents:

1.

The following party, made defendant herein, is justly and legally indebted unto your petitioner, VICAL D & W PLAZA, LLC, in the amounts for damages as are reasonable in the premises, together with legal interest thereon from date of judicial demand until paid, and for all costs of these proceedings, for the reasons and causes of action hereinafter stated:

EMC PROPERTY & CASUALTY COMPANY ("EMC" or "DEFENDANT"), a foreign insurance company, with its principal place of business in Iowa, authorized to do and doing business in the State of Louisiana, which may be served through its agent for service of process, Louisiana Secretary of State, 8585 Archives Avenue, Baton Rouge, Louisiana 70809.

2.

Plaintiff owns the shopping center located at 1320 Hawn, 1402-1462 Hawn, and 200-208 N. Thomas, Shreveport, Louisiana 71109 (hereafter, the "Properties"). Plaintiff purchased and then renewed a property and casualty insurance policy from Defendant with an effective policy period spanning from February 28, 2018 through February 28, 2019, renewed for February 28, 2019 through February 28, 2020, and then renewed again with an effective period of February 28, 2020 through February 28, 2021 (hereafter, the "Policy"). A copy of the Policy is attached as Exhibit 1. The Policy, which provided coverage under policy number 5A4-01-70, provided for the payment of the replacement

cost value of property damage in the event of a covered loss.

3.

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 12). The Policy includes each of the Properties as "Covered Property."

4.

On or about May 8, 2019, there was a severe wind and hailstorm at the Properties, causing significant damage to the Properties, including without limitation the roof systems at the locations. After significant leaks manifested in February 2020, Matthew Delaney, on behalf of Plaintiff, submitted a claim to Defendant for payment for covered damages under the policy, which claim was assigned the claim number HF00-Z01575426 (the "Claim").

5.

On February 7, 2020, Defendant sent a reservation of rights letter indicating "we are not making a coverage determination at this time." Many months passed, with no contact from Defendant to Plaintiff. Given this frustration and delay, Plaintiff was forced to hire a licensed public insurance adjuster to represent its interests.

6.

Meanwhile, with still no communication from the Defendant as to the status of the Claim, on or around April 24, 2020, another significant wind and hail storm struck the Shreveport area, exacerbating the existing damage at the Properties.

7.

It was not until September 18, 2020, that Defendant finally sent someone to inspect the Properties, sending a consultant named Matthew Hill from JS Held. During that inspection, Plaintiff's professional consultants, also present, specifically identified significant physical damage to the roof systems, HVAC units, and exterior. Further, Plaintiff's consultants pointed out interior damages and leaks caused by the physical hail damage, in support of the claim.

8.

On November 20, 2020 – more than ten months after Plaintiff filed its insurance claim – Defendant sent a denial letter. (*See Ex. 2, denial letter with attachments*). This letter included the report Hill had prepared. That report recognized significant 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, Defendant conveniently and selectively ignored significant evidence of covered hail damage. This denial letter parroted much of the language from the report of Mr. Hill.

9.

Put simply, Defendant's own consultants recognized there was hail damages to the Properties. Yet, Defendant ignored all evidence of covered damages presented by both Plaintiff's and Defendant's own retained consultants.

10.

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

11.

Defendant rejected the proof of loss by email on December 8, 2020 and, to date, has paid nothing.

Claims for Relief

FIRST CAUSE OF ACTION—Breach of Contract

12.

Plaintiff incorporates by reference for all purposes as if fully set forth herein all paragraphs above.

13.

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

14.

Despite Plaintiff's performance of all conditions required under the property and casualty insurance policy, Defendant breached the Policy by denying coverage to Plaintiff 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 Plaintiff policy benefits.

15.

As a direct and proximate result of Defendant's breach of contract, Plaintiff has suffered economic damages.

**SECOND CAUSE OF ACTION—Violation of LA. REV. STAT. § 22:1892
Under the Contract**

16.

Plaintiff incorporates by reference for all purposes as if fully set forth herein all paragraphs above.

17.

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

18.

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.

19.

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.

20.

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 Plaintiff's need to hire the undersigned counsel.

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

Plaintiff incorporates by reference for all purposes as if fully set forth herein all paragraphs above.

21.

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 Plaintiff when it entered into the Policy with Plaintiff and, thereafter, dutifully accepted Plaintiff's premiums.

22.

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.

23.

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 Plaintiff's claim for benefits due pursuant to the property and casualty insurance policy;
- d. Unreasonably and in bad faith refusing to pay the benefits that Plaintiff is 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 Plaintiff, who is their insured;
- f. Unreasonably and in bad faith compelling Plaintiff 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)).

24.

The claims presented herein exceed the threshold for trial by jury and exceed \$75,000, the jurisdictional amount required for diversity removal to Federal Court. Plaintiff hereby demands a trial by jury on all issues. The jury bond will be paid when required in the Court's Scheduling Order.

25.

Petitioner shows that it will be necessary to call expert witnesses at the trial of this matter, and that the fees of such witnesses should be set by the court and should be taxed as costs of this suit against defendants.

WHEREFORE, PETITIONER PRAYS that defendant, EMC Property & Casualty Company, be duly cited to appear and answer this petition, and that it be served with a copy hereof;

- I. That after necessary legal delays and due proceedings had, there would be judgment therein in favor of petitioner, Vical D & W Plaza LLC, and against defendant, EMC Property & Casualty Company, for such damages as are reasonable in the premises, including, but not limited to the replacement cost value of property damage provided by contract, including repair and restoration of the property roofing system, HVAC system as well as all interior and exterior damages; and all damages provided in LSA-R.S 22:1973 and LSA-R.S. 22:1982, including damages caused by delays in promptly and fairly adjusting claims,

attorney's fees and penalties stemming from breach of contract, and legal interest from that date of this petition;

II. That the fees of expert witnesses be set by the court and taxed as costs of this suit against defendants;

III. For all costs of this suit, and for full, general and equitable relief for all orders and decrees necessary and proper in the premises and as the law may allow and the nature of the case may permit.

Respectfully Submitted,
RICE & KENDIG, LLC



William F. Kendig - Bar No. 17644
J. Marshall Rice- Bar No. 28980
M. Carl Rice - Bar No. 11217
Jason B. Nichols - Bar No. 28704
1030 Kings Highway
Shreveport, Louisiana 71104
Telephone: (318) 222-2772
Facsimile: (318) 222-6063
wfkendig@ricekendig.com

RAIZNER SLANIA, LLP
JEFFREY L. RAIZNER
Texas Bar No. 00784806
ANDREW P. SLANIA
Texas Bar No. 24056338
BEN WICKERT
Texas Bar No. 24066290
Pro Hac Vice Admission Forthcoming
efile@raiznerlaw.com
2402 Dunlavy Street
Houston, Texas 77006
Phone: 713.554.9099
Fax: 713.554-9098

ATTORNEYS FOR PLAINTIFF

PLEASE SERVE:

EMC PROPERTY & CASUALTY COMPANY
Through its agent for service of process:
Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, Louisiana 70809

VICAL D & W PLAZA, LLC

NUMBER: _____

VERSUS

FIRST JUDICIAL DISTRICT COURT

EMC PROPERTY & CASUALTY
COMPANY

CADDO PARISH, LOUISIANA

PERMANENT ASSIGNMENT

SECTION ____

ORDER

LET FOREGOING ANSWER CONSIDERED:

Let plaintiff, VICAL D & W PLAZA, LLC herein be granted a trial by civil jury and let the civil jury bond be set according to law.

THUS DONE in Shreveport, Caddo Parish, Louisiana, on this _____ day of _____, 2021.

DISTRICT JUDGE

VICAL D & W PLAZA, LLC

NUMBER: _____

VERSUS

FIRST JUDICIAL DISTRICT COURT

EMC PROPERTY & CASUALTY
COMPANY

CADDO PARISH, LOUISIANA

PERMANENT ASSIGNMENT

SECTION ____

**WRITTEN REQUEST FOR NOTICE OF TRIAL
AND OF JUDGMENT**

NOW INTO COURT, comes plaintiff, through undersigned counsel, and requests that it be given ten (10) days notice of the date of trial of the above cause by the Clerk of Court of the above court pursuant to Article 1572 of the Louisiana Code of Civil Procedure and requests written notice of all final judgments and interlocutory judgments pursuant to Articles 1913 and 1914 of the Louisiana Code of Civil Procedure in regard to all hearings held in the captioned matter.

Respectfully Submitted,

RICE & KENDIG, L.L.C.



William F. Kendig, La. Bar No. 17644
1030 Kings Highway
Shreveport, Louisiana 71104
Telephone: (318) 222-2772
Facsimile: (318) 222-2770
wfkendig@ricekendig.com

and

RAIZNER SLANIA, LLP
JEFFREY L. RAIZNER
Texas Bar No. 00784806
ANDREW P. SLANIA
Texas Bar No. 24056338
BEN WICKERT
Texas Bar No. 24066290
Pro Hac Vice Admission Forthcoming
efile@raiznerlaw.com
2402 Dunlavy Street
Houston, Texas 77006
Phone: 713.554.9099
Fax: 713.554-9098

ATTORNEYS FOR PLAINTIFF