

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
2007 AUG 24 PM 4:32
LORETTA G. WHYTE
07-4868
SECT. F MAG 3

SPINE CARE EAST, L.L.C.
Plaintiff

Versus

HANOVER INSURANCE COMPANY
Defendant

*
* Case No.
*
*
*
* Judge
*
*
* Magistrate
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COMPLAINT FOR DAMAGES AND BREACH OF CONTRACT

NOW COMES plaintiff, SPINE CARE EAST, L.L.C., a domestic limited liability company with its principal place of business in Orleans Parish, Louisiana at the time Hurricane Katrina struck southeast Louisiana who respectfully file this COMPLAINT FOR DAMAGES AND BREACH OF CONTRACT and respectfully avers as follows:

PARTIES

The following party is made defendant herein and are liable unto your petitioner for such damages as are reasonable and equitable, together with legal interest thereon from the date of judicial demand until paid:

1. HANOVER INSURANCE COMPANY ("Hanover"), a foreign insurance corporation licensed to issue insurance policies and is in fact issuing insurance policies in the State of Louisiana.

BACKGROUND

2. At all times material herein, plaintiff owned the medical clinic located at the following address in Orleans Parish, Louisiana, to-wit:

9820 Lake Forest Boulevard
New Orleans, Louisiana

350.00
Fee 350.00
 Process *ma*
 Dktd
— CtRmDep
— Doc. No

3. At all times material herein, plaintiff owned a Hanover commercial policy, policy number OHO-6926500, that provided "Business Interruption" coverage to petitioner for its **Lakeforest Boulevard** clinic.
4. At approximately 6:10 a.m. on August 29, 2005, Hurricane Katrina made landfall near Buras, Louisiana. The hurricane made a second landfall a short time later near the Louisiana-Mississippi border, the eye of the storm passing just east of the city of New Orleans at approximately 9:00 a.m. As expected, Hurricane Katrina produced a great deal of rain fall and caused significant wind damage throughout southeast Louisiana, including Orleans Parish.
5. Unfortunately, Katrina's violent winds caused significant damage to petitioner's **Lakeforest Boulevard** clinic.
6. The efficient proximate cause of plaintiffs' losses was "windstorm", a covered peril under the commercial business policy which was in full force and effect at all times pertinent herein.
7. Plaintiff notified Hanover of its losses and filed a claim shortly thereafter.
8. Hartford sent adjusters to evaluate petitioner's losses. The adjusters acted as Hanover's legal agents.
9. The adjusters' inspections comprised satisfactory proofs of losses. Plaintiff also provided Hanover with numerous documents reflecting its economic losses.
10. Despite extensive wind and related damages to petitioner's clinic that prevented any re-occupation, Hanover tendered petitioner only approximately \$12,771.35 under petitioner's business interruption coverage a sum far below the business losses sustained as a result of the hurricane.

CAUSES OF ACTION AGAINST DEFENDANT INSURER

BREACH OF CONTRACT

11. Plaintiff repeats and re-alleges all preceding paragraphs.
12. Plaintiff maintains that Hanover breached its contract with petitioner by failing to pay for

petitioner's covered losses.

13. As a result of its misconduct, Hanover is liable for petitioner's damages that resulted from the breach.

BAD FAITH PURSUANT TO LOUISIANA REVISED STATUTE 22:1220

14. Plaintiff repeats and re-alleges all allegations in paragraphs 1-12.

15. Plaintiff maintains that Hanover breached the following duties owed Plaintiff: (1) the duty of "*good faith and fair dealing*;" (2) the "affirmative duty to adjust claims fairly and promptly"; and (3) the "affirmative duty" to "*make a reasonable effort to settle claims with the insured or the claimant, or both.*"

16. Plaintiff further maintains that Hanover "knowingly committed or performed" the following acts, thereby breaching the insurer's duties: (1) *failing to pay a settlement* within thirty days after an agreement is reduced to writing; (2) denying coverage or attempting to settle a claim on the basis of an *application* which the insurer knows was *altered* without notice to, or knowledge or consent of, the insured; and (3) *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 and such failure was *arbitrary, capricious, and/or without probable cause.*

17. As a result of Hanover's aforementioned conduct, Hanover is liable for any damages sustained by plaintiff as a result of the breach, including, but not limited to specific and *general damages* (i.e. for mental anguish and/or inconvenience), attorneys' fees, and penalties. Such penalties include an amount not to exceed two times the damages sustained or five thousand dollars, which ever is greater.

BAD FAITH: LOUISIANA CIVIL CODE ARTICLE 1997

18. Plaintiff repeats and re-alleges all preceding paragraphs.

19. Plaintiff maintains that Hanover's aforementioned conduct violates La. Civil Code art. 1997.

20. As a result of its bad faith, Hanover is liable to plaintiff for all damages, foreseeable or not, that were sustained as a direct consequence of its failure to perform.

VIOLATION OF LOUISIANA REVISED STATUTE 22:658

21. Plaintiff repeats and re-alleges all preceding paragraphs.

22. Plaintiff maintains that Hanover violated La. Rev. Stat. § 22:658 by failing to initiate loss adjustment within thirty (30) days of being notified of plaintiff's claims.

23. Plaintiff maintains that Hanover violated La. Rev. Stat. § 22:658 by failing to issue payment to plaintiff within thirty (30) days after being provided satisfactory proofs of loss by plaintiff.

24. As a result of its misconduct, Hanover is liable for all damages occasioned by plaintiff, including specific and general damages, as well as attorneys' fees, costs, interests, penalties as provided in Section 658.

MISCELLANEOUS BREACHES OF DUTIES OWED INSURED PLAINTIFFS

25. Plaintiff repeats and re-alleges all preceding paragraphs.

26. Plaintiff maintains that Hanover further breached the aforementioned duties by committing the following, non-exclusive acts: (1) Failing to properly train its adjusters and agents; (2) failing to provide its adjusters and agents with proper uniform materials with which to properly evaluate claims; (3) failing to take into account the economic climate after Hurricane Katrina; (4) failing to account for the increase in labor, materials, costs, and time in valuing Plaintiff's claims; (5) failing to provide a proper means to facilitate contact between Plaintiff and Defendant Insurer; (6) instructing its adjusters and agents to undervalue Plaintiff's damages; (7) instructing its adjusters and agents to delay the process of Plaintiff's claim; (8) instructing its adjusters and agents to engage in multiple, time consuming evaluations of Plaintiff's claim; and (9) any and all misconduct as becomes known before trial.

27. As a result of its misconduct, Hanover is liable to Plaintiff for specific and general damages, as well as attorneys' fees, costs, interest and penalties.

UNCONSCIOUS CONTRACTUAL PROVISIONS

28. Plaintiff repeats and re-alleges all preceding paragraphs.

29. The aforementioned commercial business policy excludes coverage for damages caused by rising water, although the same commercial business policy provides coverage for wind and rain damage caused by hurricanes.

30. To the extent that the subject insurance policy contains an "anti-concurrent cause clause" or any other provision that purports to resist coverage where some of the loss sustained was caused by a non-covered peril is ambiguous and unenforceable as a matter of law in the context of Hurricane Katrina where, as here, the petitioner/policyholder possesses a commercial business Insurance Policy that provides hurricane coverage and contains a "Hurricane Deductible."

WAIVER

31. In the alternative, should the Court find Hanover's anti-concurrent cause clause legal and enforceable, then plaintiffs specifically allege that Hanover waived any of the exclusion's benefits by paying plaintiff a percentage of its covered losses.

EQUITABLE ESTOPPEL

32. In the alternative, should the Court find Hanover's anti-concurrent cause clause legal and enforceable, then plaintiff specifically alleges that Hanover is equitably estopped from enforcing the exclusion based on its partial payment to plaintiff for its covered losses.

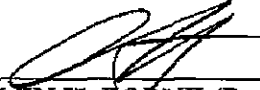
TRIAL BY JURY

33. Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, petitioner, *Spine Care East, L.L.C.*, prays that after due proceedings are had and after a jury verdict in its favor, that this Court enter judgment in its favor and against defendant, *Hanover Insurance Company* for all damages discussed herein, including, but not limited to, all general, specific, equitable, and punitive relief which include but are not limited to costs, attorneys fees, penalties, and interest from the date of injury and any and all other just relief this honorable court deems just.

RESPECTFULLY SUBMITTED:



ALLEN H. BORNE (Bar #16816)
RYAN P. REECE (Bar #26479)
223 Audubon Boulevard
New Orleans, Louisiana 70118
(504) 899-1234

PLEASE SERVE:

HANOVER INSURANCE COMPANY
Through its registered agent:
The Louisiana Secretary of State
8549 United Plaza Boulevard
Baton Rouge, Louisiana 70809