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JUDGE
MARTHA E. SASSONE

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24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 021-038

DIVISION _____

DOCKET NO. _____

BBD ROSEDALE, L.L.C.

VERSUS

THE HANOVER INSURANCE COMPANY

FILED: _____

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PARISH OF JEFFERSON, LA
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VERIFIED PETITION FOR DAMAGES

The Verified Petition of Plaintiff, BBD ROSEDALE, L.L.C. ("Rosedale"), a Louisiana limited liability company, with a domicile address located in the Parish of Jefferson, State of Louisiana, respectfully represents:

1.

Made a defendant herein is THE HANOVER INSURANCE COMPANY ("Hanover"), which is a foreign insurance company authorized to write insurance in the State of Louisiana.

2.

Rosedale is the owner of property located at 3770-3796 Veterans Boulevard, Metairie, Louisiana, which is commonly known as the Rosedale Mall.

3.

On August 29, 2005, Hurricane Katrina struck the Gulf Coast and caused significant damage throughout the Greater New Orleans area.

4.

The Rosedale Mall was one of the numerous properties that suffered significant damages as a result of Hurricane Katrina.

5.

Following the storm, when Rosedale was allowed to re-enter Metairie, it engaged the services of professional consultants, including William Bourgeois ("Bourgeois") of Shamrock Construction, a general contractor; James Cripps ("Cripps") of James S. Cripps Associates, an architect; and

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Conestoga-Rovers & Associates (“Conestoga”), an environmental remediation firm, to assess the damage to Rosedale Mall and to advise Rosedale whether or not the shopping center could be repaired or reconstructed to the extent necessary to allow Rosedale’s tenants to reoccupy the leased premises safely.

6.

The investigation conducted by Rosedale’s consultants revealed that wind from the storm had severely damaged Rosedale Mall’s roof and exposed it to rainwater and approximately one foot of water had flooded the first floor of the shopping center. Due to the heavy infiltration of rain as well as flooding in the lower level of the mall, mold developed throughout most of the shopping center. The hurricane’s rainwater and wind also impacted Rosedale Mall’s electrical, heating, ventilation, and air-conditioning systems.

7.

Due to the significant damage the shopping center suffered, Rosedale’s tenants could not reoccupy their leased premises and operate their businesses. Rosedale’s tenants have not, to date, been able to reopen their businesses and, as a result, have not paid their rent of approximately \$41,650 a month to Rosedale since the hurricane.

8.

At the time of the storm, Rosedale Mall was insured under Commercial Lines Policy, Number ZHO 7245725 01, issued by Hanover (the “Hanover Policy”). The Hanover Policy provides, *inter alia*, Commercial Property Coverage for Rosedale Mall with a limit of liability of \$3,244,500. The Hanover Policy also provides additional coverage to Rosedale under a Property Special Broadening Endorsement.

9.

Under the Hanover Policy, Hanover agreed to pay for direct physical loss of, or damage to, the Rosedale Mall property resulting from a covered loss, such as a windstorm, as well as damage to “business personal property,” the loss of “business income,” and the incurring of “extra expense.”

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10.

On September 7, 2005, immediately after Rosedale discovered the damage to the shopping center, it notified Hanover of its loss through Hanover's local insurance agent, Eagan Insurance Company.

11.

In response to Rosedale's notice, on October 11, 2005, Hanover sent Bill Crane ("Crane"), an independent insurance adjuster with Property Loss Consulting, Inc. ("PLC"), to inspect the property and assess the damage to it.

12.

On October 15, 2005, PLC issued a report to Hanover, which was prepared by Crane, and recommended that, in light of the damage to the shopping center, Hanover establish a reserve of \$2,750,000, allocating \$2,500,000 to property damage and \$250,000 to the loss of business income and extra expense.

13.

On October 24, 2005, in accordance with the terms of the Hanover Policy, Rosedale submitted its formal written notice of loss to Hanover even though Hanover had already received Crane's report and recommendation concerning the loss. Rosedale notified Hanover that its construction consultant, Bourgeois, had estimated the property damage to Rosedale Mall to be in excess of \$3,140,000. Rosedale also requested that Hanover provide Rosedale with its loss adjustment as soon as possible.

14.

Hanover subsequently informed Rosedale that PLC had reassigned Rosedale's claim to Scott Claire ("Claire"), another independent adjuster with that company.

15.

On November 8, 2005, Claire inspected the property and met with various representatives of Rosedale, including its members, Bourgeois, and Cripps. Claire also met with several of the

mall's tenants. After Claire conducted his inspection, Rosedale gave him a copy of Conestoga's environmental report, and Cripps provided him with the architectural plans for the shopping mall.

16.

On November 11, 2005, Rosedale delivered copies of its operating statement and the tenant leases for Rosedale Mall to Claire.

17.

On November 13, 2005, Paul Heywood ("Heywood") of Hanover contacted Rosedale's legal counsel and acknowledged Rosedale's written notice of loss. Heywood also indicated that he would contact PLC to determine the status of Crane's inspection and report.

18.

When Rosedale did not receive any information concerning the PLC report, its legal counsel contacted Heywood and requested a copy of the report. Initially, Heywood refused to provide Rosedale a copy of PLC's report and told Rosedale's counsel that PLC's report was a site investigation and recommendation to Hanover and not a loss adjustment. Heywood subsequently agreed to forward a copy of the report to Rosedale and, in exchange, asked that Rosedale provide Hanover its restoration estimate and environmental assessment, which it later did.

19.

Shortly thereafter, Rosedale asked Claire to have all inspections of the property completed by December 2, 2005 and informed him that it would not permit further access to the shopping center after that time because of the length of time Hanover had already had to conduct its inspections and perform its adjustment.

20.

Claire completed his inspection of Rosedale Mall on December 2, 2005. During Claire's inspection of the property, he was accompanied by Betsy Harris ("Harris"), an environmental expert with ATC Associates, Inc., a company engaged by Hanover to make an environmental assessment of the property. Harris was joined by Michael Orlando ("Orlando") of Emergency Restoration Incorporated, a mold remediation firm. Harris was accompanied further by Pat Brackley

("Brackley") of Brackley Construction, a construction consultant retained by Hanover and the original contractor for the shopping center.

21.

On December 13, 2005, Rosedale provided Hanover with a copy of a report from its construction consultant and another set of the tenant leases for Rosedale Mall.

22.

Despite the timely notice and other information provided by Rosedale, the numerous inspections performed by Hanover's adjusters and consultants on the property, and Crane's initial recommendation that Hanover establish a \$2,500,000 property-loss reserve and a \$250,000 business-income loss reserve, to date (more than four months after the hurricane damaged the property), Hanover has neither provided Rosedale with a loss adjustment for its claim nor paid any insurance benefits to Rosedale for its losses under the Hanover Policy, except an "advance" of \$500,000 on the property-loss claim and \$100,000 on the business-income loss claim.

23.

At the time Hanover tendered these advances to Rosedale, however, Hanover knew that the property-loss advance was insufficient for Rosedale to begin, much less complete, its renovation of the damaged property and the business-income loss advance was insufficient to cover the loss of rent Rosedale had incurred up to that time let alone any losses it might incur thereafter.

24.

Accordingly, Hanover has breached its agreement to provide insurance coverage to Rosedale under the Hanover Policy by failing to fairly and promptly adjust Rosedale's claim and timely pay Rosedale the insurance benefits due under the policy.

25.

In failing timely to adjust and pay Rosedale's claim, Hanover also breached the duty of good faith and fair dealing owed to its insured, Rosedale.

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26.

Hanover failed to initiate its loss adjustment of Rosedale's property damage claim within thirty (30) days after notification of the loss by Rosedale. Rosedale notified Hanover of its loss on September 7, 2005 and provided Hanover with its formal notice of loss on October 24, 2005. Nevertheless, as of November 13, 2005, Hanover informed Rosedale that it had received no loss adjustment from its adjuster, PLC. At no time since then has Hanover notified Rosedale that it has initiated its loss adjustment of Rosedale's claim. Moreover, to date, Hanover has not furnished Rosedale with the reports of its consultants, Clair, Orlando, and/or Brackley, despite Rosedale's repeated requests for those reports.

27.

Because of Hanover's failure to initiate its loss adjustment of Rosedale's claim within thirty (30) days of receiving Rosedale's notice of loss, Hanover has breached its statutory obligations to Rosedale under Louisiana Revised Statutes § 22:658 and is liable to Rosedale for the statutory penalties provided in Louisiana Revised Statutes § 22:1220.

28.

Hanover has also failed timely to pay Rosedale's claim. Despite receiving a proper proof of loss from Rosedale, Hanover failed to pay Rosedale's claim within sixty (60) days of its receipt of Hanover's proof of loss. At no time since Rosedale provided Hanover with its formal notice of loss has Hanover informed Rosedale that its proof of loss was unsatisfactory in any respect. Likewise, Hanover made no written offer to settle any of Rosedale's claim within that time period. Hanover's failure to settle and/or pay Rosedale's claim within the statutorily prescribed deadlines is arbitrary, capricious, and without probable cause.

29.

Accordingly, Hanover has breached its statutory obligations to Rosedale, under Louisiana Revised Statutes §§ 22:658 and 22:1220, to settle and/or pay its claim timely and is liable to Rosedale for the statutory penalties provided under those statutes.

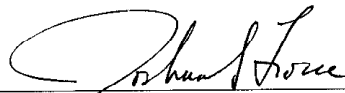
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30.

Rosedale requests a trial by jury on all issues.

WHEREFORE, Rosedale prays that Hanover be served with a certified copy of this Verified Petition and duly cited to appear and answer this Verified Petition and that, after due proceedings are had hereon, judgment be entered in its favor against Hanover for such damages as are reasonable in the premises, including, but not limited to, insurance benefits for property damage, business income, and extra expense as provided under the Hanover Policy and statutory penalties under Louisiana Revised Statutes §§ 22:658 and 22:1220, pre-judgment and post-judgment interest, all costs of these proceedings, and such other and further relief as this Court deems just and proper, including all general and equitable relief.

Respectfully submitted,



JAMES M. GARNER (# 19589)
RICHARD P. RICHTER (# 1562)
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