

**19th JUDICIAL DISTRICT COURT
EAST BATON ROUGE PARISH, LOUISIANA**

**D. CALLOWAY PROPERTIES, INC.
AND DONALD JOE CALLOWAY,**

Plaintiffs,

vs.

**JAMES CONSTRUCTION GROUP,
LLC, LIBERTY MUTUAL
INSURANCE COMPANY, AND
PEERLESS INDEMNITY INSURANCE
COMPANY,**

Defendants.

SUIT NO.:

PETITION FOR DAMAGES

PETITION FOR DAMAGES

INTRODUCTION

1. This is an action for actual and statutory damages brought by plaintiffs, D. Calloway Properties, Inc. and Donald Joe Calloway against defendants, James Construction Group, LLC, Louisiana Testing & Inspection, Inc., Liberty Mutual Insurance Company, and Peerless Insurance Indemnity Company, for damages caused by pile driving, breach of insurance contract, breach of the duties of good faith and fair dealing set forth in La. R.S. 22:1892 and 22:1973, and breach of Civil Code Article 2315. Because of ultrahazardous pile driving performed by James Construction near Mr. Calloway's gym, the building has suffered significant damage to the such areas as the pool, roof, and flooring. Although a commercial insurance policy was in place, Liberty Mutual Insurance Company and Peerless Insurance Indemnity Company have wrongfully refused to pay the insurance claim.

PARTIES

2. Plaintiff, D. Calloway Properties, Inc., is a Louisiana corporation with its principal place of business in Louisiana, domiciled in East Baton Rouge Parish.

3. Plaintiff, Donald Joe Calloway, is a Louisiana citizen residing in Ascension Parish, Louisiana. Mr. Calloway is the sole shareholder of D. Calloway Properties, Inc.

4. Defendant, Liberty Mutual Insurance Company, is a Massachusetts insurance company licensed to do and doing business in Louisiana and who may be served through its registered agent for service of process, the Louisiana Secretary of State, 8585 Archives Avenue, Baton Rouge, LA 70809.

5. Defendant, Peerless Insurance Indemnity Company, is an Illinois insurance company licensed to do and doing business in Louisiana and who may be served through its registered agent for service of process, the Louisiana Secretary of State, 8585 Archives Avenue, Baton Rouge, LA 70809.

6. Defendant, James Construction Group, LLC, is a limited liability company registered in Florida. Its principal place of business is in Louisiana and has at least one Louisiana member. It may be served through its registered agent for service of process, Corporation Service Company, 320 Somerulos St., Baton Rouge, LA 70802.

7. Defendant, Louisiana Testing & Inspection, Inc., is a Louisiana corporation. Its principal place of business is in Louisiana. It may be served through its registered agent for service of process, Joseph H. Guilbeaux, 2215 West Willow Street, Scott, LA 70583.

FACTUAL ALLEGATIONS

8. Within two (2) years of the filing of this suit, the building belonging to D. Calloway Properties and Donald Calloway located at 13436 Jefferson Highway, Baton Rouge, LA began suffering significant damage due to the pile driving of adjacent proprietor James Construction Group, LLC.

9. The damage includes but is not limited to damage to the pool, pool decking, roof, flooring, mirrors, and walls.

10. At the time of the loss, the building was insured by a policy of insurance issued and serviced by Liberty Mutual Insurance Company and Peerless Insurance Indemnity Company. All premiums were paid and remain current.

11. Mr. Calloway promptly reported the loss to, and filed a claim with insurers, Liberty Mutual Insurance Company and Peerless Insurance Indemnity Company.

12. In turn, Liberty Mutual Insurance Company dispatched an engineering firm, Madsen, Kneppers & Associates, Inc. ostensibly to investigate the cause of the loss to the damaged building.

13. Neither Liberty Mutual Insurance Company nor Peerless Insurance Indemnity Company ever dispatched an insurance adjuster to create an estimate of the necessary repairs.

14. Mr. Calloway explained to the representatives of the insurance companies that the pile driving of James Construction Group, LLC had caused significant damage to his building which is operated as a health club called Calloway's Court Club.

15. James Construction Group, LLC performed pile driving in connection with the extension of nearby Stumberg Lane. The construction project was completed sometime in 2015.

16. The pile driving was ongoing for many months, was extremely loud, and vibrations were felt and observed throughout the building.
17. The force of the pile driving was so strong that at least one of the piles being driven into the ground actually cracked.
18. In view of the excessive pile driving, one of the representatives of co-defendant Louisiana Testing & Inspection, advised the employees of Calloway's Court Club that he would do what he could to save the building's pool.
19. On information and belief, Louisiana Testing & Inspection was responsible and compensated for monitoring the vibrations created by the pile driving of James Construction Group, LLC.
20. On information and belief, Louisiana Testing & Inspection did not do a reasonably competent job of monitoring the pile driving.
21. Louisiana Testing & Inspection failed to take representative samples of the excessively violent pile driving performed by James Construction Group, LLC.
22. The engineer dispatched by Liberty Mutual visited the approximate 40,000 square foot building ostensibly to investigate the cause of the damages.
23. The engineer did view much of the damage but did not do a thorough job in interviewing the available witnesses who knew of the building's condition before and after the pile driving.
24. Louisiana Testing & Inspection provided the engineers with unrepresentative testing data which did not show the full extent of the pile driving's strong force.
25. The engineer was onsite at the approximate 40,000 square foot building for less than one (1) hour.
26. Relying on the brief site inspection and incomplete testing data, the engineers at Madsen, Kneppers & Associates, Inc. drafted a report finding that the damage to the building was not caused by the pile driving of James Construction Group, LLC.
27. Based upon the erroneous report, Liberty Mutual Insurance Company and Peerless Insurance Indemnity Company denied the insurance claim.
28. Had a representative of Liberty Mutual Insurance Company or Peerless Insurance Indemnity Company interviewed one of the dozens of available gym members or employees, he or she would have learned that the building was in good shape before the pile driving began but began experiencing significant damage after the pile driving commenced.

29. Had a representative of Liberty Mutual Insurance Company or Peerless Insurance Indemnity Company obtained complete testing data documenting the pile driving's strong force, the insurers would have discovered that the significant vibrations of the pile driving were strong enough to cause the extensive damage to the building.

30. Had Louisiana Testing & Inspection taken and/or provided complete, thorough and representative data concerning the force documenting the pile driving's strong force, the insurers would have discovered that the significant vibrations of the pile driving were strong enough to cause the extensive damage to the building. Moreover, James Construction Group, LLC would have been in a better position to know that its pile driving was seriously damaging the building.

31. But for the pile driving of James Construction Group, LLC, the damages to the building complained of herein would not have been sustained.

FIRST CAUSE OF ACTION: BREACH OF CIVIL CODE ARTICLE 667

32. Under Article 667, "[T]he proprietor is answerable for damages without regard for his knowledge or his exercise of reasonable care, if the damage is caused by an ultrahazardous activity. An ultrahazardous activity as used in this Article is strictly limited to pile driving or blasting with explosives." James Construction Group, LLC is thus liable for the damages its pile driving caused to the plaintiffs' building.

SECOND CAUSE OF ACTION: BREACH OF CONTRACT

33. Liberty Mutual Insurance Company and Peerless Insurance Indemnity Company are liable unto plaintiffs under Civil Code Articles 1906 *et seq.* because they failed to perform under the policy of insurance by:

- a. Not tendering the proceeds due under the policy in a timely fashion;
- b. Not thoroughly investigating the claim; and
- c. Not acting reasonably under the circumstances.

THIRD CAUSE OF ACTION: BAD FAITH

34. Liberty Mutual Insurance Company and Peerless Insurance Indemnity Company breached the duties of good faith and fair dealing set forth in La. R.S. 22:1892 and 22:1973 by:

- a. Failing to pay the amount of the claim due plaintiffs within 30 days after receiving satisfactory proof of the loss;

- b. Failing to make a written offer to settle plaintiffs' property damage claim within 30 days after receiving satisfactory proof of the loss;
- c. Breaching its affirmative duty to adjust the claim fairly and promptly;
- d. Breaching its affirmative duty to make a reasonable effort to settle claims with plaintiffs; and
- e. Arbitrarily, capriciously, and without probable cause failing to pay the amount of the claim due within 60 days after receiving satisfactory proof of the loss.

FOURTH CAUSE OF ACTION: BREACH OF CIVIL CODE ARTICLE 2315

35. Under Civil Code Article 2315, "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." Because of its negligence in collecting and producing the data measuring the pile driving's force, Louisiana Testing & Inspection, Inc. contributed to causing the excessive pile driving to continue and the plaintiffs' insurance claim to be denied. Thus it is liable for the resultant damages

WHEREFORE, plaintiffs, D. Calloway Properties, Inc. and Donald Joe Calloway, respectfully request that judgment be entered against defendants James Construction Group, LLC, Louisiana Testing & Inspection, Inc., Liberty Mutual Insurance Company, and Peerless Insurance Indemnity Company:

- A. Property damages pursuant to Civil Code articles 667, 1994, and 2315 and the insurance policy;
- B. Bad faith damages under La. R.S. 22:1892 and 22:1973;
- C. Attorneys' fees, pursuant to La. R.S. 22:1973;
- D. Interest under Civil Code Article 2000
- E. Court costs;
- F. Expert and consultant fees;
- G. Other damages to be amended, presented in the Pretrial Order, and/or proven at the trial of this matter; and
- H. Other and further relief as the Court may deem just and proper.

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RESPECTFULLY SUBMITTED,



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ATTORNEY FOR PLAINTIFFS

Please serve:

1. James Construction Group, LLC through its registered agent: Corporation Service Company 320 Somerulos St. Baton Rouge, LA 70802.	2. Liberty Mutual Insurance Company through its registered agent: Louisiana Secretary of State 8585 Archives Avenue Baton Rouge, LA 70809
3. Peerless Insurance Indemnity Company through its registered agent: Louisiana Secretary of State 8585 Archives Avenue Baton Rouge, LA 70809	4. Louisiana Testing & Inspection, Inc. through its registered agent: Joseph H. Guilbeaux, 2215 West Willow Street Scott, LA 70583