

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

[REDACTED]

Plaintiffs

vs.

**BANKERS INSURANCE COMPANY
d/b/a BANKERS INSURANCE
GROUP,**

Defendant.

Civil Action No.:

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

COMPLAINT

INTRODUCTION

1. This is an action for actual and statutory damages brought by plaintiffs, [REDACTED] against defendant, Bankers Insurance Company d/b/a Bankers Insurance Group, for breach of insurance contract and breach of the duties of good faith and fair dealing set forth in La. R.S. 22:1892 and 22:1973. [REDACTED] commercial building in Shreveport, LA suffered significant damage earlier this year. A well-documented arctic air mass infiltrated the area producing temperatures lower than 20 degrees. This caused a building water pipe to burst, damaging, among other things, drywall, sheetrock, flooring, and ceiling tiles. Around the same time, an expensive HVAC Condenser

unit was stolen from the building. Although [REDACTED] promptly filed a claim with Bankers Insurance Company, the insurer has unfairly delayed, denied, and underpaid the claim.

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 28 U.S.C. § 1332 since the parties are completely diverse and the amount in controversy exceeds \$75,000.00.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(d). Bankers' contacts with the Middle District, particularly East Baton Rouge Parish, would subject it to personal jurisdiction here under La. R.S. 22:1269 (B).

PARTIES

4. Plaintiff, [REDACTED] is an individual residing in [REDACTED], Louisiana.

5. Plaintiff, [REDACTED], is a limited liability company registered in [REDACTED] and doing business in Shreveport. Its sole member is Mr. [REDACTED]

6. Defendant, Bankers Insurance Company, is a Florida 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.

FACTUAL ALLEGATIONS

7. The situs of [REDACTED], Shreveport, Louisiana [REDACTED]. It is a three (3) unit office building. Before the losses, one unit was leased to a tax preparation business, another was for lease and also served as a storage area, and the third unit was used as [REDACTED]'s office.
8. On or about December 26, 2014, an HVAC condenser was stolen from the building.
9. On or about January, 5, 2014, a well-documented arctic air mass infiltrated the area producing frigid temperatures. Temperatures as low as 15 degrees were reported. The winter storm caused a water pipe above [REDACTED]'s ceiling tiles to burst, creating a deluge of water that badly damaged, among other things, drywall, flooring, ceiling tiles, and insulation.
10. At the time of the losses, the building was insured by a policy of insurance issued and serviced by Bankers Insurance Company. All premiums were paid and current.
11. [REDACTED] promptly reported the losses to Bankers Insurance Company.
12. In turn, Bankers dispatched a field adjuster, Mr. Bruce Hickman, to the place of loss, ostensibly to scope the property and create an estimate of the cost of the repairs. Mr. Hickman first inspected the loss in early January.

13. Remarkably, during the first inspection Mr. Hickman spent a mere 15 minutes investigating the loss. The interior of the building is approximately 2,500 square feet and the damages were extensive. [REDACTED] and his wife asked Mr. Hickman to stay longer so that they could show him the remaining damages. He declined.

14. Mr. and Mrs. [REDACTED] also believed that the roof may have been damaged by an accumulation of ice, snow, winds, and flying debris. So they asked Mr. Hickman to inspect the roof. He declined on the rationale that roof was wet.

15. Following the initial inspection, an estimate of repairs and tender from Bankers Insurance Company was not forthcoming. Remarkably, Bankers Insurance Company did not provide Mr. [REDACTED] with a completed estimate of repairs until June 4, 2014, six (6) months after the loss.

16. In the interim, Mr. [REDACTED] followed up with Bankers Insurance Company and Mr. Hickman multiple times. Mr. Hickman did make follow up inspections but delayed producing the estimate of repairs. Meanwhile, Bankers continued to delay paying the claim.

17. In March of 2014, because Mr. [REDACTED] was not satisfied with the first inspection, had not received an estimate of repairs and accompanying tender, and wanted to proceed with repairing his building, he solicited bids for repair. A reputable contractor in the area, Complete Interior & Drywall, Inc., bid \$60,000.00

to repair the building's interior. Another reputable contractor, Hope Contractors of Shreveport, Inc., bid \$61,400.00.

18. Mr. [REDACTED] emailed copies of the bids to Mr. Hickman as well as Ms. Lisa Dix, the Bankers Insurance Company desk adjuster supervising the claim. Mr. Hickman told Mr. [REDACTED] that he would include the bid items within his estimate of repairs.

19. The bid items were not included within the estimate of repairs.

20. Ms. Dix told Mr. [REDACTED] that the bids were too high.

21. To date Bankers Insurance Company has tendered a mere fraction of the money needed to repair the building's interior. As a result, the building remains in disrepair.

22. Ms. Lisa Dix represented to Mr. [REDACTED] that part of the loss was not being paid because mold was present and the policy limits for mold remediation are \$15,000.00. The trouble with that representation is the \$15,000.00 limitation only applies to damages *caused* by mold. The truth is that the policy, and industry standards, require payment for all property damages caused by burst pipes up to the policy limits of \$225,000.00.

23. Besides the interior damages, one HVAC unit was stolen on December 26, 2014 and water from the burst pipe damaged other parts of the HVAC system.

24. Mr. ██████ engaged a reputable contractor, Mr. John Harkins of American Air Conditioning and Heating Inc. of Bossier City, to investigate the loss. He found that the burst water pipe damaged important electrical components within the HVAC system. He recommended that in order for the system to function properly, two of the HVAC units should be replaced.

25. Bankers Insurance Company only paid for replacement of one (1) HVAC unit.

26. Upon information and belief, Bankers' field adjuster Mr. Hickman is not qualified to assess damages to HVAC systems. Moreover, it is industry standard for carriers to dispatch qualified third party technicians to investigate HVAC losses. Bankers did not do that and also ignored Mr. John Harkins' recommendations. As a result, the building's HVAC system has not functioned properly since December 25, 2013.

27. Because of Bankers Insurance Company's delays in properly paying the claim, the tax preparation tenant had to move out. The lease was for 12 months and the rent was \$1,1000.00 per month. Moreover, the unit that was for lease at the time of the loss had to be taken off the market. Based on the square footage, Mr. ██████ estimates that the other unit would rent for \$1,400.00 per month. Neither units are tenable given the disrepair of the interior and malfunctioning HVAC system.

28. Business income interruption coverage was in effect at the time of the loss.

29. Remarkably, Bankers Insurance Company has only tendered one payment of \$3,450.00, representing a mere three (3) months of the lost income from the tax preparation tenant.

30. Bankers Insurance Company failed to act in good faith in adjusting the insurance claim.

31. Bankers Insurance Company failed to reasonably perform its duties under the insurance policy.

32. Mr. [REDACTED] has suffered undue aggravation and stress, loss of enjoyment of life, mental anguish and psychological distress, humiliation, and embarrassment as a result of Bankers Insurance Company's failure to adjust the claim in good faith and reasonably perform under the insurance policy.

FIRST CLAIM FOR RELIEF: BREACH OF CONTRACT

33. Bankers Insurance Company is liable unto [REDACTED] under Civil Code Articles 1906 *et seq.* because it failed to perform under the policy of insurance by:

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

SECOND CLAIM FOR RELIEF: BAD FAITH

34. Bankers Insurance 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 within 30 days after receiving satisfactory proof of the loss;
- b. Failing to make a written offer to settle the 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 [REDACTED];
- e. Misrepresenting pertinent policy provisions including but unlimited to the mold coverage provision; and
- f. 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.

WHEREFORE, plaintiffs, [REDACTED]

[REDACTED], respectfully request that judgment be entered against Defendant Bankers Insurance Company for the following:

- A. Property damages and business interruption damages, pursuant to Civil Code Article 1994 and the insurance policy;
- B. General, mental anguish and distress, and hedonic damages under La. R.S. 22:1973 and *Durio v. Horace Mann Ins. Co.*, 74 So.3d 1159 (La., 2011);
- C. Bad faith damages under La. R.S. 22:1892 and 22:1973;
- D. Attorneys' fees, pursuant to La. R.S. 22:1973;
- E. Interest under Civil Code Article 2000;
- F. Court costs;
- G. Expert and consultant fees;
- H. Other damages to be amended, presented in the Pretrial Order, and/or proven at the trial of this matter; and
- I. Other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Please take notice that plaintiffs, [REDACTED]
demands trial by jury in this action.

DATED: December 16, 2014

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RESPECTFULLY SUBMITTED,

/s/ Nicholas M. Graphia
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