

**BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

IN RE: 2016 AND 2017 HURRICANE SEASONS FLOOD LITIGATION | MDL Docket _____

**PETITIONERS, MARCIA SAMUELSON, RANDY SAMUELSON, FELIX
GUARDIOLA, AND SUSAN GUARDIOLA’S MOTION FOR TRANSFER OF
RELATED ACTIONS TO THE SOUTHERN DISTRICT OF FLORIDA**

Petitioners, Marcia Samuelson, Randy Samuelson, Felix Guardiola, and Susan Guardiola (the “Petitioners”) hereby move for entry of an order transferring the Related Actions (described below) to the United States District Court for the Southern District of Florida for coordinated and consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure for the Judicial Panel on Multidistrict Litigation. This Motion is supported by the accompanying Brief and Schedule of Actions. In support of the motion, Petitioners state:

1. To date, Undersigned Counsel have filed twelve cases related to Hurricane Hermine and Hurricane Matthew in the Middle District and Northern District of Florida. These include the following cases:

- a. *Acker et al. v. Tower Hill Preferred Insurance Company*, No. 5:17-cv-00439-TJC-PRL (M.D. Fla.)
- b. *Auner et al v. Tower Hill Preferred Insurance Company*, No. 8:17-cv-02209-EAK-TGW (M.D. Fla.)
- c. *Batista et al v. Allstate Insurance Company*, No. 8:17-cv-02081-VMC-JSS (M.D. Fla.)
- d. *Cedar Key Marina II, Inc. v. Wright National Flood Insurance Company*, No. 1:17-cv-00236-MW-GRJ (N.D. Fla.)
- e. *Connors v. Tower Hill Prime Insurance Company*, No. 8:17-cv-02937-MSS-AAS (M.D. Fla.)
- f. *Guardiola et al. v. American Bankers Insurance Company of Florida*, No. 8:17-cv-02208-CEH-MAP (M.D. Fla.)
- g. *Guardiola et al v. American Strategic Insurance*, No. 8:17-cv-02211-CEH-TGW (M.D. Fla.)

- i. *Pate v. Allstate Insurance Company*, No. 1:17-cv-00238-MW-GR (N.D. Fla.)
- j. *Samuelson et al v. Tower Hill Preferred Insurance Company*, No. 8:17-cv-02214-JSM-MAP (M.D. Fla.)
- k. *Sheldon et al v. Tower Hill Preferred Insurance Company*, No. 8:17-cv-02215-JSM-AAS (M.D. Fla.)
- l. *Wassen et al v. Allstate Insurance Company*, No. 8:17-cv-02213-EAK-TGW (M.D. Fla.)

2. These are but a small number of the many federal flood claims that have been and are anticipated to be filed in the district courts of Florida, Puerto Rico, and the U.S. Virgin Islands, concerning the 2016 and 2017 hurricane seasons (collectively, the “Related Actions”).

3. The core factual allegations and claims in the Related Actions are similar. The plaintiffs are homeowners with flood insurance provided by insurers who participate in the NFIP. These homeowners/policyholders have made timely payments to their insurers. The plaintiffs have claimed losses caused by the 2016 and 2017 Hurricane Seasons—only to have their claims rejected and receive a much smaller payout. These homeowners have sustained catastrophic damage to their homes and their lives and seek to recover their actual losses. Thus, the cases present common questions of fact as required by 28 U.S.C. section 1407(a).

4. Most of these cases have been filed in the last year or two, and many have yet to be filed, but are anticipated to be filed in the coming weeks and months.

5. Transfer of the actions will prevent duplication of discovery, eliminate the possibility of conflicting pretrial rulings, and conserve party and judicial resources.

6. The United States District Court for the Southern District of Florida is the most appropriate forum for consolidation of the actions for the following reasons:

- a. the infrastructure of both Puerto Rico and the Virgin Islands was crippled by the 2016 and 2017 Hurricane Seasons;
- b. both Puerto Rico and the U.S. Virgin Islands lack the resources that the Southern District of Florida has at its disposal;

d. most claims are expected to arise in Florida—particularly the Southern District;

e. the Southern District of Florida is the most proximate jurisdiction able to provide translation services for native Spanish speakers.

Accordingly, the Petitioners respectfully requests that the Panel transfer the Related Actions to the Southern District of Florida for consolidation and coordinated pre-trial proceedings.

Dated: April 4, 2018

Respectfully submitted,

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: 2016 AND 2017 HURRICANE SEASONS FLOOD LITIGATION | MDL Docket _____

**BRIEF IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS
TO THE SOUTHERN DISTRICT OF FLORIDA PURSUANT TO 28 U.S.C. § 1407
FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

Petitioners, Marcia Samuelson, Randy Samuelson, Felix Guardiola, and Susan Guardiola (the “Petitioners”) file this brief in support of their motion to move the Judicial Panel on Multidistrict Litigation (the “Panel”) for transfer to and consolidation or coordination for pretrial purposes of the Related Actions (described below) arising out of flood claims incurred as a result of the 2016 and 2017 Hurricane Seasons within Florida, Puerto Rico, and the U.S. Virgin Islands, to the United States District Court for the Southern District of Florida.

I. Introduction

Over the past 50 years, Undersigned Counsel have litigated hundreds of federal flood claims and lawsuits in district courts across the country and have learned a great deal about how to improve the pretrial process from each of these experiences.¹ Recent events demonstrate that this type of litigation is likely to recur. Indeed, different federal judges in various district courts across the country are currently handling hundreds of lawsuits resulting from damages caused by Hurricane Irma, Hurricane Maria, and other flood events. Moreover, many thousands of additional federal lawsuits will inevitably be filed in the coming months and years as claims submitted to flood insurance companies progress through the Federal Emergency Management Agency’s

¹ There are hundreds of counsel (from solo practitioners to large firms) that specialize in prosecuting and defending federal flood claims and many have done a wonderful job for their clients. Undersigned counsel will continue to coordinate and cooperate with each counsel prior to any hearing that is respectfully set by this Panel.

(“FEMA”) flood insurance program. This petition refers to these both pending and future federal flood claims as the “Related Actions.”

Petitioners respectfully submit this petition as a procedure to better coordinate pretrial matters for the Related Actions and to provide guidance for future disasters that will greatly affect many hundreds of thousands of citizens across the country and cause tremendous damage to them and their surrounding communities. At this time, there are three main clusters of federal flood cases working their way through the federal system: (1) the Louisiana cases, (2) the Houston cases, and (3) the Florida/Puerto Rico/U.S. Virgin Island cases. The sole purpose of this petition is to consolidate all cases filed in Puerto Rico, the Virgin Islands, and Florida *only* in the Southern District of Florida for pre-trial purposes.²

To be clear, this consolidation relates *only* to the pretrial aspect of the Related Actions. Consolidation is not intended to interfere with other counsels’ representation of their clients. Rather, it is designed to assist other counsel to move their cases through the federal system more efficiently and to better prepare district courts and practitioners to handle recurring pretrial issues.

Undersigned Counsel have litigated thousands of flood claims for more than fifteen years and have served in various roles, such as being appointed liaison counsel (including in the precedent-setting Hurricane Sandy consolidated flood cases). Consequently, Undersigned Counsel have developed expertise in coordinated pretrial procedures. Undersigned Counsel have travelled the country to discuss how to better coordinate the pretrial aspect of the Related Actions and will

² Should the Panel consider consolidation in the Louisiana and Houston matters, Undersigned Counsel stand ready to assist the Panel in its deliberations. For example, there are many federal flood cases that are currently pending in different district courts in Louisiana. Moreover, some federal judges, such as Chief United States District Judge Lee H. Rosenthal, of the Southern District of Texas, anticipate coordinated efforts within their jurisdiction to organize pretrial procedures for federal flood cases pending in their district.

certainly continue those efforts while the Panel considers this petition. For these reasons, Undersigned Counsel are uniquely positioned to aid the Panel through consolidation of the Related Actions for pretrial purposes.

II. Background

a. Major flood events in the past several years have generated thousands of federal claims and lawsuits.

To understand the scope and significance of the Related Actions, the Panel should take note of the extraordinary series of severe flooding events that have recently impacted the United States and U.S. Territories and which have led to significant numbers of insurance claims and federal lawsuits.

i. Hurricane Irma, the Southeastern United States, and the U.S. Virgin Islands.

On September 10, 2017, Hurricane Irma made landfall on the lower Florida Keys and moved up the west coast of Florida, then continued its path of destruction into Georgia and South Carolina, causing significant flooding and damage amounting to approximately \$50 billion.³ After Governor Rick Scott declared a state of emergency, one of the largest evacuations in American history took place ahead of Hurricane Irma's landfall.⁴ What ensued was one of the costliest natural disasters in United States history.

Irma was destructive, to say the least. Florida saw storm surge as high as 15 feet near Captiva Island in the Keys and 1 to 10 feet (depending on location) all along both the east and west

³*Costliest U.S. tropical cyclones updated*, NOAA, <https://www.nhc.noaa.gov/news/UpdatedCostliest.pdf>.

⁴ Times Staff, *A Look at Hurricane Irma by the Numbers*, L.A. Times, September 12, 2017, <http://www.latimes.com/nation/nationnow/la-na-hurricane-irma-numbers-20170912-htmlstory.html>.

coasts as Irma tracked northward.⁵ The NOAA announced that parts of Florida have or would receive upwards of 20 inches of rain, with 12 inches falling in southern Georgia and Alabama.⁶ Just days earlier, the U.S. Virgin Islands had already experienced Hurricane Irma's destructive force firsthand. According to NOAA, the U.S. Virgin Islands experienced 7 to 11 feet of storm surge during the storm and 4 to 10 inches of rain with isolated reports of 15 inches.⁷ Hurricane Irma was a Category 5 storm when it struck the island and, in tandem with Hurricane Maria, effectively wiped out the islands' power infrastructure.

ii. Hurricane Maria, Puerto Rico and the U.S. Virgin Islands.

On September 20, 2017, Hurricane Maria made landfall on the southern coast of Puerto Rico. Consequently, the island was completely devastated by wind, rain, and flooding that caused upwards of \$90 billion in damage.⁸ Puerto Rico's governor declared a state of emergency and, after the storm, proclaimed that Hurricane Maria was "the worst catastrophe in island history."⁹ National reporting has further highlighted the total destruction of Puerto Rico's power infrastructure, causing what is now the longest blackout in United States history.¹⁰ Based on cost

⁵Hurricane Irma, NOAA, <https://www.nhc.noaa.gov/archive/2017/all1/all12017.public.047.shtml?>

⁶ *Id.*

⁷Hurricane Irma, NOAA, https://www.nhc.noaa.gov/archive/2017/all1/all12017.public_a.030.shtml?

⁸ *Id.*

⁹ *Puerto Rico Gov. deems Maria worst disaster in island's history*, New York Daily News, Sept. 24, 2017.

¹⁰ Rick Jervis, *5 Months Without Power*, USA Today, February 12, 2018, <https://www.usatoday.com/story/news/2018/02/12/power-outage-puerto-rico-latest-snap-islands-long-recovery-hurricane-maria/329322002/>.

estimates, Puerto Rico’s full recovery will require tens of billions of dollars and many years to complete.¹¹

On the day the storm struck Puerto Rico, NOAA reported the worsening effects of Hurricane Maria. At 11:00 a.m., Puerto Rico experienced storm surge of 6 to 9 feet along its coastline, and 12 to 18 inches of rain across the island with isolated reports of 25 inches.¹² During the 5:00 p.m. advisory, NOAA reported “CATASTROPHIC FLASH FLOODING” over portions of Puerto Rico and increased its reported rain totals to 20-25 inches of rain across the island, with isolated reports of 35 inches of rain.¹³

After the storm, U.S. television reports were grim. Newscasters that travelled to Puerto Rico reported that families located near rivers lost everything: “[i]t was horrible to see everything lost in a matter of a day. All my years of hard work just gone[.]”¹⁴ The official death toll reported by Puerto Rico is 64, but a recent lawsuit filed by Puerto Rican journalists claims the death toll to be over 1,000.¹⁵ Puerto Rico is still struggling to keep its lights on from one day to the next because the power grid is still very vulnerable during the island’s reconstruction.¹⁶

The U.S. Virgin Islands were struck by two Category 5 storms. The devastation caused by this grim coincidence is that the middle class that existed on the islands before the storm has been

¹¹ Benjamin Torres Gotay, *Preliminary Cost of Maria at 20 Billion*, El Nuevo Dia, October 8, 2017, <https://www.elnuevodia.com/english/english/nota/preliminarycostofmariaat20billion-2364200/>.

¹² *Hurricane Maria*, NOAA, <https://www.nhc.noaa.gov/archive/2017/al15/al152017.public.018.shtml?>.

¹³ *Hurricane Maria*, NOAA, <https://www.nhc.noaa.gov/archive/2017/al15/al152017.public.019.shtml?>.

¹⁴ Yaremi Farinas, *Impact Puerto Rico: Unprecedented Flooding*, CBS12, February 13, 2018, <http://cbs12.com/news/local/impact-puerto-rico-unprecedented-flooding>.

¹⁵ Avery Anapol, *Puerto Rican journalists sue over under-reported hurricane death toll*, The Hill, February 8, 2018, <http://thehill.com/homenews/media/372923-puerto-rican-journalists-sue-over-under-reported-hurricane-death-toll>.

¹⁶ *Supra* at n.3.

decimated.¹⁷ Hurricanes Irma and Maria dealt damage indiscriminately to luxury high rises, beachfront properties, multi-family homes, single family homes, and low income housing.¹⁸ The storm surge swallowed entire beachfront properties only to recede, mercifully, after the damage was done.¹⁹

iii. Claims and lawsuits generated by the 2016 and 2017 Hurricane Seasons.

The 2016 and 2017 Hurricane Seasons were the costliest on record due to flooding and storm surge that affected the southern United States and U.S. Territories.²⁰ The wide impact of the flooding is well illustrated by claims submitted through the Individual and House Program (“IHP”). Regarding Hurricane Irma in Florida, FEMA has already approved total IHP dollars of \$995,108,212.97 and claimants have submitted 773,615 Individual Assistance Applications to date.²¹ In Houston, FEMA reports 372,061 Individual Assistance Applications and has approved \$1,589,746,103.25 IHP dollars.²²

Due to the federal government’s administrative review, there are many thousands of claims which historically ripen into federal lawsuits. For example, the Hurricane Sandy Rebuilding Task

¹⁷ Tim Craig, *Shredded roofs shattered lives*, Washington Post, February 6, 2018, https://www.washingtonpost.com/news/national/wp/2018/02/06/feature/as-tourism-returns-hurricane-recovery-in-the-virgin-islands-is-leaving-some-residents-behind/?utm_term=.f71760a27833.

¹⁸ Dean Greenaway, *Storm surge leaves devastation behind on Tortola*, The Virgin Islands Daily News, September 24, 2017, http://www.virginislandsdailynews.com/news/storm-surge-leaves-devastation-behind-on-tortola/article_fda7cd58-ec45-5669-86ba-74b8585d1eca.html.

¹⁹ *Id.*

²⁰ Brian K. Sullivan, *The Most Expensive U.S. Hurricane Season Ever: By the Numbers*, Bloomberg, November 26, 2017, <https://www.bloomberg.com/news/articles/2017-11-26/the-most-expensive-u-s-hurricane-season-ever-by-the-numbers>.

²¹ FEMA, Florida Hurricane Irma (DR-4337), January 10, 2018, <https://www.fema.gov/disaster/4337>.

²² FEMA, Texas Hurricane Harvey (DR-4332), October 11, 2017, <https://www.fema.gov/disaster/4332>.

Force estimates that, after Hurricane Sandy, there were approximately 144,000 flood insurance claims and 2,000 lawsuits. Due to inadequate claim recovery, unsubstantiated claim denials, and complaints by many insured through the National Flood Insurance Program (NFIP), an administrative review of over 19,000 claims found 14,977 of those claims (over two-thirds) qualified to be reopened.²³ Additionally, following the most recent hurricane season, many individuals have engaged in disputes with FEMA regarding the filing of an adequate Proof of Loss and what constitutes a denial of a claim, which is a trigger for advancing a claim for relief, including filing a lawsuit. These common disputes and the administrative appeal process available to NFIP insureds will affect the timing of possible federal lawsuits. However, a consolidated approach to coordinating pretrial discovery will serve to expeditiously and efficiently move these claims through the federal court process, as well as conserve judicial resources.

In short, as a consequence of recent storm events, Undersigned Counsel expect many thousands of federal lawsuits to become ripe over the next several years. These federal hurricane cases will continue for many years and require the best possible coordination and consolidation, especially based upon the important learnings from the handling of the Hurricane Sandy federal claims.

b. Undersigned Counsel can assist the Panel in the wake of recent flood events.

FEMA was created on April 1, 1979, in part, to coordinate the federal government's role in responding to and helping recover from domestic disasters. The people employed by FEMA work hard to process and administer the hundreds of thousands of claims that result from these horrible disasters, and, in most instances, do so capably, with very limited instances of fraud or

²³ FEMA, Sandy Claims Review Division Update, March 10, 2017, https://www.fema.gov/media-library-data/1489185337202-2295567f3c7ba7f36d045acb8bc83aaf/Sandy_Claims_Review_Division_Fact_Sheet_031017.pdf.

controversy.²⁴ Jurisdictions such as the District Court in Puerto Rico will admittedly be overwhelmed once all of the FEMA claims work through the required processes and are eventually filed in that district (as required by the FEMA regulations). FEMA attempts on almost a weekly basis to provide guidance and warnings of possible fraud to hurricane victims in Puerto Rico and the Virgin Islands (such as March 13, 2018 FEMA Release 109 warning victims of scams in the administration of claims and FEMA Release 141 offering “advice” on making repairs) but many have already questioned the ability of the federal courts in Puerto Rico and the Virgin Islands to effectively coordinate the coming inundation of federal lawsuits.

Based on over 30 years of combined experience handling flood insurance claims arising out of various hurricane and record flood events, such as those that occurred in New Jersey and New York, Undersigned Counsel respectfully suggest that coordination, formulation and entry of standard pretrial orders will be helpful to all of the federal judges that handle these cases and to the practitioners that litigate these lawsuits. Undersigned Counsel are well positioned to assist the Panel with this task.

For example, the Merlin Group’s founder Chip Merlin has handled hundreds of federal flood cases in district and state courts across the country and has tremendous experience by being appointed and already serving as liaison counsel for all federal flood claims for many years in New Jersey from Hurricane Sandy. In addition, Rene M. Sigman has spent the last sixteen years of her career litigating property damage claims related to catastrophes, including federal flood claims in Houston and New York and similarly has been appointed by various judges in a leadership role

²⁴ For example, in *In re Hurricane Sandy Cases*, 303 F.R.D. 17, 17–25 (E.D.N.Y. 2014), the district court sanctioned defendants for failure to disclose to plaintiffs that original reports were rewritten by engineers that did not inspect flood-damaged properties. As explained further below, standard pretrial procedures can act as a prophylaxis of these types of incidents from repeating in other jurisdictions.

and capacity related to those catastrophe claims. She has also served as liaison counsel to help organize and coordinate pretrial procedures for catastrophe claims and lawsuits in Texas.²⁵

Petitioners respectfully suggest that it would be very helpful for this Panel to work with each of the appropriate and relevant district judges to transfer and coordinate for pretrial purposes all of the federal flood cases that are filed in Puerto Rico, the Virgin Islands and Florida to the Southern District of Florida. To date, there has been little coordination in these districts because those claims are only now working their way through the administrative process and will become federal lawsuits in the coming weeks and months. Consolidating the current cases and then transferring the later-filed actions for pretrial purposes at this early juncture will help the affected districts better manage the large number of federal lawsuits that are likely to arise in the coming years. This will also allow for a streamlined and better process for adjudicating these claims which will result in better recoveries for current and future flood victims.

III. Claims Filed and Expected Filings.

The Panel should consolidate the Related Actions because there are thousands of claims already filed and the number of filings will continue to increase. There are over 800 claims to date in Louisiana due to the Baton Rouge Flood. Simultaneously, federal flood claims are now being filed in the Southern, Middle, and Northern Districts of Florida.

²⁵ As stated previously, there are hundreds of practitioners from both small and large firms, such as Rajan Pandit in New Orleans and Morgan & Morgan in Florida, which have handled these cases in a very productive and professional manner for many years. Undersigned Counsel have been coordinating with and will continue to work with these practitioners to develop the best pretrial procedures. The main purpose of this petition is to generate and coordinate the best pretrial methods for the district court and not – in any manner – adversely affect the eventual trial of any of the individual cases that each of these law firms have retained.

In Puerto Rico, FEMA is expected to travel to the island and assist the over 5,100 NFIP policyholders file claims.²⁶ With only 500 claims filed so far, the Panel can expect to see thousands of filings in the coming months. Hurricane Maria has crippled Puerto Rico and inhibited federal assistance efforts from reaching homeowners in need. It is imperative to have a process in place to deal with these claims in an expeditious manner.

In the U.S. Virgin Islands, residents are still trying to put their lives back together after the utter devastation caused by Hurricanes Irma and Maria. The U.S. Virgin Islands have approximately 1,400 NFIP policies in force.²⁷ Once the claims are filed and rejected, there will be numerous plaintiffs in the coming months.

In Florida, plaintiffs have begun filing claims against insurers who participate in the NFIP and have rejected policyholders' claims that should be covered. For example, Felix and Susan Guardiola of St. Augustine, Florida, claimed a loss of \$183,865.00. *Guardiola v. Am. Strategic Ins.*, No. 17-cv-02211-CEH-TGW (ECF 1:7). The Guardiolas' amount claimed was rejected by American Strategic Insurance and the Guardiolas were only paid \$67,148.44. *Id.* at ECF 1:2. The amount paid by ASI was far below the damage actually caused by Hurricane Matthew. ASI participates in the NFIP. The Guardiolas have filed suit to obtain the difference.

Marcia and Randy Samuelson face similar circumstances. The Samuelsons' estimated losses were \$487,880.00. *Samuelson v. Tower Hill Preferred Ins. Co.*, No. 17-cv-02214 (ECF 1-1:5). Tower Hill Preferred Insurance Company rejected the Samuelsons' loss calculation and only paid out \$114,069.41 for building damage and \$15,000 for contents damage. *Id.* at ECF 1:2. Tower

²⁶ FEMA, Policy Statistics, Dec. 31, 2017, <https://bsa.nfipstat.fema.gov/reports/1011.htm> (Puerto Rico).

²⁷ FEMA, Policy Statistics, Dec. 31, 2017, <https://bsa.nfipstat.fema.gov/reports/1011.htm> (Virgin Islands).

Hill participates in the NFIP. Clearly, Tower Hill's payout was below the damage actually done by Hurricane Hermine. The Samuelsons have filed suit against Tower Hill to recover their actual losses.²⁸

The plaintiffs in the Related Actions have similar circumstances. The plaintiffs are homeowners with flood insurance provided by insurers who participate in the NFIP. These homeowners/policyholders have made timely payments to their insurers. The plaintiffs have claimed losses caused by the 2016 and 2017 Hurricane Seasons—only to have their claims rejected and receive a much smaller payout. These homeowners have sustained catastrophic damage to their homes and their lives and seek to recover their actual losses.

Consequently, lawsuits filed against insurers who provide flood insurance and participate in the NFIP are expected to substantially increase in the coming months and will encumber numerous district courts with claims based upon similar facts and issues arising from flood damage caused by the 2016 and 2017 Hurricane Seasons.

²⁸ These are just two of the many storm-related cases currently being litigated by Undersigned Counsel. Undersigned Counsel are currently litigating ten cases in the Middle District of Florida: 6 related to Hurricane Hermine (*Acker et al. v. Tower Hill Preferred Insurance Company*, No. 5:17-cv-00439-TJC-PRL; *Auner et al v. Tower Hill Preferred Insurance Company*, No. 8:17-cv-02209-EAK-TGW; *Batista et al v. Allstate Insurance Company*, No. 8:17-cv-02081-VMC-JSS; *Samuelson et al v. Tower Hill Preferred Insurance Company*, No. 8:17-cv-02214-JSM-MAP; *Sheldon et al v. Tower Hill Preferred Insurance Company*, No. 8:17-cv-02215-JSM-AAS; *Wassen et al v. Allstate Insurance Company*, No. 8:17-cv-02213-EAK-TGW) and 4 related to Hurricane Matthew (*Conners v. Tower Hill Prime Insurance Company*, No. 8:17-cv-02937-MSS-AAS; *Guardiola et al. v. American Bankers Insurance Company of Florida*, No. 8:17-cv-02208-CEH-MAP; *Guardiola et al v. American Strategic Insurance*, No. 8:17-cv-02211-CEH-TGW; *Netka v. First Community Insurance Company*, No. 3:18-cv-00180-HLA-JRK). Undersigned Counsel are also litigating two cases related to Hurricane Hermine in the Northern District of Florida (*Cedar Key Marina II, Inc. v. Wright National Flood Insurance Company*, No. 1:17-cv-00236-MW-GRJ, and *Pate v. Allstate Insurance Company*, No. 1:17-cv-00238-MW-GRJ).

IV. Consolidation in Hurricane Related Flood Cases Has Worked in the Past.

Consolidation has been an effective tool when resolving flood insurance cases that involve thousands of claims. In Houston, litigation arising out of the reservoir releases by the Army Corp of Engineers and the United States related to Hurricane Harvey was successfully consolidated in the U.S. Court of Federal Claims. Hurricane Harvey flood claims against the government were consolidated into two main groups: upstream claims and downstream claims.²⁹ The purpose of consolidation in both instances was to prevent duplicative discovery, reduce costs, and expedite the cases for trial.³⁰

Likewise, claims filed due to flooding caused by Hurricane Sandy were consolidated in the Eastern District of New York and the District of New Jersey.³¹ Hurricane Sandy flood claims in New Jersey were consolidated in the District of New Jersey while flood claims in New York were consolidated in the Eastern District of New York. The District of New Jersey's framework for consolidation: (1) requires mandatory minimum disclosures by both the defendants and the plaintiffs to provide certain information set forth in Case Management Order No. 1³² (*see* Exhibit 2); (2) prevents inconsistent pretrial proceedings; and (3) prevents fraudulent claims from being rewarded. New Jersey, with the assistance of the Merlin Law Group, crafted their case management order in contemplation of Federal Rule of Civil Procedure 16(b) to ensure "the just,

²⁹ Jack Witthaus, *Houston law firms named to consolidated Harvey flood cases*, Houston Business Journal, Nov. 21, 2017, <https://www.bizjournals.com/houston/news/2017/11/21/houston-law-firms-named-to-consolidated-harvey.html>.

³⁰ *Supra* at n.9. *See also* Message from the Chief Judge, U.S. Court of Federal Claims, <https://www.uscfc.uscourts.gov/node/2959>.

³¹ *Supra* at n.9.

³² Hurricane Sandy Case Management Order No. 1, District Court of New Jersey, <http://www.njd.uscourts.gov/sites/njd/files/SandyCaseManagementOrderNo1.pdf>.

speedy, and inexpensive” resolution of each case. The District of New Jersey also created a model “Final Pretrial Order” for use by the district court that would be useful in any hurricane case.

New York consolidated its Hurricane Sandy cases in the Eastern District using New Jersey’s consolidation model for the following reasons:

[T]o recommend procedure to ensure proper case filing and relation practices, to establish a plan for expedited discovery, and to facilitate the efficient resolution [of Hurricane Sandy claims] in a manner designed to avoid duplication of effort and unnecessary expense.

Case Management Order No. 1, *In re Hurricane Sandy Cases*, 14-mc-00041 (ECF 243:1).

The Eastern District of New York has effectively managed Sandy cases. In one instance, Sandy plaintiffs brought evidence that engineer reports had been altered from their original drafts by internal adjusters and claims handlers handling claims on behalf of the insurance carriers. The claims would have been denied based on the altered engineer reports. After evidentiary hearings concerning the altered engineering reports, the district court ordered the production of all drafts, red-lines, and originals to be produced in all consolidated Sandy matters under the case management orders.³³ The district court sanctioned the defendants for discovery violations³⁴ and those participating in the fraudulent reporting were prosecuted.³⁵ Given these points, consolidation of flood claims arising out of prior hurricanes has been both proper and effective in that resulting Pretrial Orders have been drafted to require not only final, but also preliminary reports to be produced to help address these unfortunate prior incidents.

³³ Russ Zimmer, *Judge rips Sandy insurer over flood report change*, App., November 10, 2014, <https://www.app.com/story/news/local/2014/11/10/flood-insurance-engineering-reports-changed/18822017/>.

³⁴ *In re Hurricane Sandy Cases*, 303 F.R.D. 17, 30-1 (E.D.N.Y. 2014).

³⁵ Erik Larson, *Engineering Firm Charged with Forging Sandy Reports*, Claims Journal, August 3, 2016, <https://www.claimsjournal.com/news/east/2016/08/03/272545.htm>.

V. Multidistrict Litigation (MDL) Consolidation Has Worked in other Large Scale Litigation Cases

Importantly, large scale litigation across districts has been effectively managed through the consolidation of claims by the Panel.

Consolidation by the Panel is in accordance with 28 U.S.C. § 1407(a) (2017), stating that “[w]hen civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings.”

One of the best and most productive examples was when the Panel consolidated all pretrial matters for all asbestos products liability claims in the Eastern District of Pennsylvania before The Honorable Eduardo C. Robreno. *See In re Asbestos Products Liability Litigation* 6, 771 F.Supp. 415, 422-23 (J.P.M.L. 1991) (noting that no single district had a nexus to all plaintiffs or defendants). The *Asbestos* litigation would have crippled the district courts had the Panel not consolidated all pretrial proceedings in the Eastern District of Pennsylvania.³⁶ During his tenure, Senior District Judge Robreno has handled over 192,000 actions to date and moved each case expeditiously to the approval of all plaintiff and defense counsel.³⁷ Now, Judge Robreno’s framework for the resolution of the *Asbestos* litigation is widely considered authoritative. *See* Exhibit 1 (Robreno’s 10 Steps to Resolution). Consolidation in the *Asbestos* cases has led to consistent pretrial rulings and has allowed other district courts to develop and apply the same expertise in other asbestos litigation and other mass tort actions. Given the enormous number of

³⁶*See Pending MDL Dockets, US Courts, http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-January-16-2018.pdf.* (Judge Robreno).

³⁷ *Id.*

asbestos cases and their speedy resolution, Judge Robreno's guidance and materials are very helpful and instructive in handling the cases arising out of the 2016 and 2017 Hurricane Seasons.

Likewise, the Panel held that consolidation was proper in the *Deepwater Horizon* litigation. *See In re Oil Spill by the Oil Rig Deepwater Horizon*, 731 F. Supp. 2d 1352, 1354 (J.P.M.L. 2010) (holding that centralization would "eliminate duplicative discovery, prevent inconsistent pretrial rulings, include rulings on class certification . . . and conserve the resources of the parties, their counsel, and the judiciary."). *Deepwater Horizon* was a man-made disaster that affected numerous jurisdictions from Florida to Texas and harmed thousands of different plaintiffs in different manners and needed to be coordinated with state court and commercial interests. *Id.* at 1356. Because of the volume of plaintiffs, the similarity of the claims, and the likelihood of duplicitous discovery, the Panel consolidated the MDL in the Eastern District of Louisiana. *Id.*

MDL consolidation is therefore proper where there are numerous claims arising out of similar facts across multiple districts to reduce costs for plaintiffs and defendants, eliminate duplicative discovery, and conserve judicial resources.

VI. The Panel Should Consolidate the Actions in the Southern District of Florida.

The flood insurance cases that are required to be filed (based upon FEMA regulations) in Puerto Rico, Virgin Islands and Florida arising out of the 2016 and 2017 Hurricane Seasons should all be consolidated in the Southern District of Florida because: (1) the infrastructure of both Puerto Rico and the Virgin Islands was crippled by the 2016 and 2017 Hurricane Seasons; (2) both Puerto Rico and the U.S. Virgin Islands lack the resources that the Southern District of Florida has at its disposal; (3) the Southern District of Florida has experience with cases of this type; (4) most claims are expected to arise in Florida—particularly the Southern District; and (5) the Southern District of Florida is the most proximate jurisdiction able to provide translation services for native Spanish

speakers. MDL consolidation of flood insurance claims arising from the 2016 and 2017 Hurricane Seasons will achieve efficient use of judicial resources, prevent duplicative discovery, and prevent fraudulent claims.

First, as discussed above, both Puerto Rico and the Virgin Islands have been set back economically, and their infrastructures are just starting to rebuild. The Southern District of Florida is the appropriate transferee court because the infrastructure was not affected as severely as Puerto Rico and the Virgin Islands. While individual plaintiffs in Florida may have suffered heavy losses due to Hurricane Irma, the state's infrastructure has been quickly repaired.

Second, the district courts in Puerto Rico and the Virgin Islands have access to fewer resources than the Southern District of Florida. Puerto Rico has only 7 judgeships, but 650 pending cases per judgeship as of September 30, 2017.³⁸ The Virgin Islands have 2 judgeships and 653 pending cases per judgeship.³⁹ Meanwhile, the Southern District of Florida has 18 judgeships and only 365 pending cases per judgeship.⁴⁰ The median time for resolution of a civil case in the Southern District of Florida is 4.2 months while the Puerto Rico and the Virgin Islands' median time for resolution of a civil case is 11.5 and 18 months respectively.⁴¹ The Southern District of Florida, therefore, has ample judicial resources to devote to this MDL in comparison to the district courts of Puerto Rico and the Virgin Islands.

Third, the Southern District also has extensive experience handling flood insurance cases involving FEMA.⁴² The Panel has before favored districts that have experience in the particular

³⁸ Puerto Rico, Federal Court Management Profile, U.S. Courts, http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0930.2017.pdf.

³⁹ *Id.* at 19 (Virgin Islands).

⁴⁰ *Id.* at 92 (Florida Southern).

⁴¹ *Id.* at 7, 19, 92.

⁴² See e.g. *Palmer v. Fidelity Nat'l Prop. & Cas. Ins. Co.*, 2014 WL 12461372 (S.D. Fla. 2014); *Reese v. FEMA*, 2013 WL 12086663 (S.D. Fla. 2013); *Blass v. Flagstar Bancorp, Inc.*, 841

area of litigation involved in the MDL.⁴³ Based on the Southern District's experience, and the Panel's preference for districts with experience in the relevant litigation area, the Southern District of Florida would facilitate the just and efficient conduct of this MDL.

Fourth, most claims are expected to be filed by Floridians. So far, 117,448 insurance claims have been filed in Dade County alone.⁴⁴ Over 25,000 of the Dade county claims are still open.⁴⁵ As these claims are closed by insurance companies, more plaintiffs are expected to join this MDL. Centralization of pretrial matters in the Southern District of Florida is therefore not only appropriate, but convenient for many plaintiffs.

Fifth, the Southern District of Florida is the closest jurisdiction geographically to Puerto Rico and the U.S. Virgin Islands and has native Spanish translators. This is important for plaintiffs who do not speak, or are not fluent in, English. Many plaintiffs from Puerto Rico are expected to be native Spanish speakers and the Southern District of Florida is well equipped to handle the demand for Spanish-language interpreters in the pretrial proceedings accompanying the Related Actions. Additionally, the Southern District's geographic proximity to Puerto Rico and the U.S. Virgin Islands makes it the most convenient venue for pretrial proceedings in the Related Actions.

Centralization of the Related Actions will promote the goals of 28 U.S.C. § 1407 by conserving judicial resources, preventing fraud, reducing litigation costs, preventing potentially inconsistent pretrial rulings, eliminating duplicative discovery, and permitting the cases to proceed more efficiently.

F.Supp. 2d 1280 (S.D. Fla. 2012); *Smith-Pierre v. Fidelity Nat'l Indem. Ins. Co.*, 2011 WL 3924178 (S.D. 2011); *Florida Key Deer v. Brown*, 2005 WL 2234155 (S.D. Fla. 2005).

⁴³ See *In re: Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prod. Liab. Litig.*, 996 F.Supp. 2d 1380, 1382-83 (J.P.M.L. 2014) (holding that a particular judge's experience with a similar docket would facilitate the just and efficient conduct of the litigation).

⁴⁴ Hurricane Irma Claims Data, Florida Office of Insurance Regulation, February 9, 2018, <https://www.florir.com/Office/HurricaneSeason/HurricaneIrmaClaimsData.aspx>.

⁴⁵ *Id.*

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the MDL Panel transfer and consolidate or coordinate all of the Related Actions within Florida, Puerto Rico, and the U.S. Virgin Islands, to the United States District Court for the Southern District of Florida for pretrial purposes.

Respectfully submitted,

Dated: April 4, 2018

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EXHIBIT 1

TEN STEPS TO RESOLUTION OF MDL-875

Updated October 2, 2012

- I. TRANSFER OF ALL CASES TO THE EASTERN DISTRICT OF PENNSYLVANIA.....Page 2, Ex. A
- II. SEVERANCE OF ALL CASES INTO SINGLE PLAINTIFF ACTIONS
 - a. Each Plaintiff is required to file a severed and amended complaint.....Page 6, Ex. B
- III. REQUIREMENT TO PROVIDE ALL VIABLE DEFENDANTS WITH A DIAGNOSTIC REPORT OR OPINION
 - a. Administrative Order No. 12.....Page 11, Ex. C
 - b. "Case is Listed for Hearing" flow chart.....Page 17, Ex. D
- IV. COMMUNICATION MODULE
 - a. Steering Committees.....Page 18, Ex. E
 - b. Website.....Page 21, Ex. F
- V. SHOW CAUSE HEARINGS
 - a. To dismiss cases for failure to comply with steps II and III.....Page 22, Ex. G
- VI. STATUS & SCHEDULING CONFERENCES
 - a. Cases dismissed voluntarily; dismissed to bankruptcy only; or dismissed for lack of prosecution.....Page 24, Ex. H
 - b. Cases not dismissed receive scheduling orders
- VII. COURT PROCEDURES
 - a. Procedures for filing motions.....Page 27, Ex. I
 - b. Requests for Settlement Conferences and/or referrals to Magistrate Judges.....Page 28, Ex. J
 - c. Requests for trials.....Page 29, Ex. K

VIII.	ASSIGNMENT OF CASES TO A MAGISTRATE JUDGE OR SENIOR JUDGE		
a.	For settlement and discovery and pretrial proceedings, by group or individually.....	Page 30, Ex. L	
IX.	SCHEDULE MOTIONS FOR SUMMARY JUDGMENT		
a.	Before District Judge		
b.	Summary Judgment flow chart.....	Page 32, Ex. M	
X.	TRIAL OR REMAND		
a.	Administrative Order No. 18.....	Page 33, Ex. N	
b.	Suggestion of Remand; Remand Memorandum.....	Page 36, Ex. O c. Legal Architecture.....	Page 39, Ex. P

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS : MULTIDISTRICT LITIGATION
LIABILITY LITIGATION : NO. MDL 875

ADMINISTRATIVE ORDER NO. 11, AS AMENDED EFFECTIVE MARCH 16, 2009

Whereas Asbestos Products Liability Litigation (MDL 875) has been an active, ongoing multidistrict action since July 29, 1991, and

Whereas the undersigned transferee judge has analyzed the existing Court case management procedures as they relate to MDL 875, and is of the view that adjustments of these procedures need to be made to allow a more efficient discharge of the transferee court's responsibilities, it is hereby

ORDERED that the following modifications to the existing procedures for the processing of cases, dockets, pleadings and orders in MDL 875 cases are adopted:

1. **Calendar Management.**

Effective immediately, and except as otherwise set forth herein, the management of the case files and dockets for all pending MDL 875 cases (and, the files and dockets for all future MDL 875 cases filed after the entry of this Administrative Order) shall be transferred to the Transferee Court in accordance with both the schedule compiled by the Clerk of the Transferee Court and the following terms:

A. **Actions to be taken by the Clerks of the Transferor Courts.**

- I. The Clerks of the Transferor Courts shall retain all case files for those actions in which all claims have been completely resolved between all parties, including bankrupt defendants, whether by dismissal, stipulation or attrition. Unless otherwise directed, case files and dockets of cases previously remanded to the Transferor Courts by the Judicial Panel on Multidistrict Litigation shall also be retained by the Transferor Court. In addition, the Clerks of the Transferor Courts shall retain all case files and dockets for those actions transferred to a state court or a federal district court registry which has been previously specifically established for the placement and tracking of asbestos personal injury cases which do not currently meet specified criteria for advancement to trial.
- II. The remaining cases having unresolved claims against bankrupt defendants and non-bankrupt defendants shall be transferred to the Transferee Court in the following manner:
 - a. In the interests of administrative efficiency and uniformity,

upon the entry of an Order of Transfer by the undersigned

judge, a list of all cases to be transferred shall be sent by the Clerk of the Transferee Court to the Clerk of the Transferor Court. The Clerk of the Transferee Court shall retrieve a copy of each docket sheet from the CM/ECF system from the Clerk of the Transferor Court for the transferred cases, and shall initiate a new file in the Transferee Court. The Clerk of the Transferor Court shall mark the Transferor Court's file "CLOSED."

- b. In the event the Transferor Court does not maintain its MDL 875 cases under the CM/ECF system, a paper copy of each docket sheet for the cases to be transferred shall be forwarded to the Clerk of the Transferee Court.
- c. New pleadings, documents and other papers received for filing after the case has been transferred shall be forwarded to the Clerk of the Transferee Court, and the Clerk of the Transferor Court shall notify all counsel concerned, as well as all pro se parties, that all future pleadings are to be filed with the Clerk of the Transferee Court, in accordance with the conditions set forth in Section 1.B.II of this Administrative Order, by giving notice of this Order to counsel and to any pro se party.

- III. Documents in any asbestos personal injury lawsuit involving MDL 875 filed in any one Transferor Court shall not be filed in the Transferee Court until a Transfer Order has been entered in the Transferee Court that states that documents in that specific Transferor Court shall be filed in the Transferee Court.
- IV. Any document in any asbestos personal injury lawsuit involving MDL 875, over which the Transferor Court, and not the Transferee Court, has jurisdiction and venue, shall not be filed in the Transferee Court until a Transfer Order has been entered in the Transferee Court that states that documents in that specific Transferor Court shall be filed in the Transferee Court.

B. Actions to be taken by the Clerk of the Transferee Court.

- I. The Clerk of the Transferee Court shall maintain dockets and create case files in all actions transferred from the Transferor Courts as soon as they are received.
- II. All documents submitted to the Clerk of the Transferee Court shall be treated in all respects in accordance with the Transferee Court's

Local Rules of Civil Procedure 5.1.2; and 5.1.3.

- III. The Clerk of the Transferee Court shall compile a schedule of all MDL 875 cases in order to allow for the more efficient transfer of MDL 875 cases from the Transferor Court to the Transferee Court.
- IV. The Clerk of the Transferee Court shall submit to the undersigned transferee judge a quarterly pending caseload status report specific to the Transferee Court and each Transferor District Court.

2. **Motions.**

All Motions pending in MDL 875 which are neither granted nor denied as of the date of transfer of a case from the Clerk of the Transferor Court to the Clerk of the Transferee Court shall be deemed denied *without prejudice* and with all time requirements held in abeyance from the initial date of filing. Counsel may refile any unresolved motions for further transferee court action. Motions brought in accordance with the procedures contained in Administrative Order #3 shall be preceded by a telephone conference with the Court. Disputing counsel shall attempt to resolve issues between the parties without Court assistance, and failing resolution, through a telephone conference with the Court prior to the filing of any disputed motion.

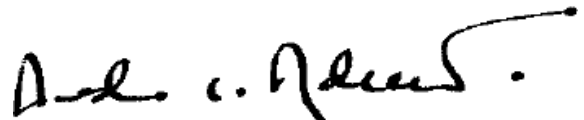
3. **Exclusions.**

The dockets and files for cases filed in the United States District Court for the Northern District of Ohio under the designation "MARDOC-MDL875(2)" shall not be transferred at this time under the terms of this order.

4. **Conflicts.**

To the extent that any conflicts exist, this Administrative Order shall take precedence over and supercede all previous administrative orders in this Multidistrict Litigation consolidation.

BY THE COURT:



EDUARDO C. ROBRENO, J.

Date: March 16, 2009

EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS:CONSOLIDATED UNDER
LIABILITY LITIGATION(NO. VI):MDL DOCKET NO. 875

:

KEYBOARD()

CIVIL ACTION

:

v.

:

:

KEYBOARD()

NO.: KEYBOARD()

:

(U.S.D.C. KEYBOARD())

:

ALL PLAINTIFFS

CIVIL ACTION

:

v.

:

:

ALL DEFENDANTS

NO.:

:

(U.S.D.C. Pennsylvania
Eastern)

:

ORDER

AND NOW, this day of , 2010, it is
hereby ORDERED¹ as follows:

¹

A civil action was filed in the TRANSFEROR DISTRICT COURT and properly docketed by that court as TRANSFEROR COURT CIVIL ACTION NO.; this civil action has been transferred to this court as part of the federal systemwide asbestos products liability litigation, known commonly as MDL 875.

This one civil action has been brought by # OF PLAINTIFFS IN ORIGINAL individual plaintiffs. We note that claims of different plaintiffs which involve common legal issues, but totally different

1. Within sixty (60) days, each individual plaintiff shall file one "Severed and Amended Complaint" in this Court. The Clerk of this Court is directed to assign civil action numbers to each individual plaintiff. Failure to comply with this section of the instant order may result, upon motion by any concerned defendant or by rule to show cause issued by the Court, in the dismissal of that specific plaintiff's civil action with prejudice, pursuant to Fed. R. Civ. P. 41(b).

2. Each Severed and Amended Complaint shall contain the specific claims asserted by that

alleged facts, may not be grouped into single action pursuant to the plain and unambiguous language of Fed. R. Civ. P. 20(a)(1). In the instant matter, while it is true that the claims do not arise out of the same transaction, occurrence or series of transactions or occurrences, and are not therefore related within the meaning of Fed. R. Civ. P. 20(a)(1). Pursuant to Fed. R. Civ. P. 21, federal courts may sever misjoined plaintiffs sua sponte when their claims do not arise out of the same transaction, occurrence or series of transactions or occurrences. In addition, courts may sever parties for the "efficient administration of justice." An action severed under Fed. R. Civ. P. 21 becomes an independent civil action. Moreover, the just, speedy and efficient processing of this matter in this court will require separate trials for each of these plaintiffs, as their lawsuits may involve different facts, different witnesses, different evidence, different legal theories and different defenses, which could lead to confusion of the jury if they were all tried together. In addition, it is obvious that permitting such multi-plaintiff actions with unrelated claims to proceed without severance would complicate discovery and interfere with its completion in accordance with assigned deadlines. Severance of this matter will require each of the plaintiffs to file a Severed and Amended Complaint that provides the necessary information about his or her individual claims. Likewise, a filing fee pursuant to 28 U.S.C. §1914(a) must be assessed for each of these individual plaintiffs (except for the lead plaintiff NAME), who has already satisfied the fee requirement in the TRANSFEROR DISTRICT COURT.

individual plaintiff against any defendant named in the Severed and Amended Complaint. Failure to comply with this section of the instant Order may result, upon motion by any concerned defendant or by a rule to show cause issued by the Court, in the dismissal of that specific plaintiff's civil action with prejudice, pursuant to Fed. R. Civ. P. 41(b).

3. Each Severed and Amended Complaint shall be submitted to the Clerk of the Court on disk in portable document format (.pdf), along with a courtesy paper copy of the complaint, for filing. Pursuant to Local Rule of Civil Procedure 5.1.2., all attorneys shall apply for a signature code by completing and filing with the Clerk of the Court a Validation of Signature Form, a copy of which is attached hereto. An attorney's signature code shall be entered on the signature line of the courtesy copy of the Severed and Amended Complaint for the purpose of signature validation pursuant to Fed. R. Civ. P. 11.

4. Absent prior leave of court, a Severed and Amended Complaint shall contain only those claims pleaded in the original multi-plaintiff action or some subset of those claims. Failure to comply with this section of this Order may result, upon motion by any concerned defendant or by a rule to show cause issued by the Court, in the dismissal of the affected claims with prejudice.

5. Absent prior leave of court, a Severed and Amended

Complaint shall not name any new defendants not named in the original multi-plaintiff action. Claims against any such "new defendants" may result, upon motion by any such "new defendant," in the dismissal of the affected claims with prejudice.

6. Claims against any defendant who is named in the original action, but who is not named as defendant by the specific plaintiff in any one specific Severed and Amended Complaint may result in the dismissal, sua sponte, of that specific plaintiff's civil action with prejudice.

7. Except for PLAINTIFF (the lead plaintiff in the aforesaid matter) originally filed in the TRANSFEROR DISTRICT COURT, each plaintiff who files a Severed and Amended Complaint shall remit to the Clerk of Court a filing fee in the amount of \$350.00 pursuant to 28 U.S.C. §1914(a). A specific plaintiff's failure to comply with this section of the instant Order may result in the dismissal, sua sponte, of the specific plaintiff's civil action with prejudice.

8. Each Severed and Amended Complaint must be served by the concerned plaintiff as required by Fed. R. Civ. P. 5.

AND IT IS SO ORDERED.

Date: _____


EDUARDO C. ROBRENO, J.

EXHIBIT "C"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS :
LIABILITY LITIGATION (NO. VI) : CIVIL ACTION NO.: MDL 875

This Document Relates to:
ALL ACTIONS

AMENDED ADMINISTRATIVE ORDER NO.12
(AS AMENDED EFFECTIVE AUGUST 27, 2009)

THE COURT, after examination of current procedures in place in this matter, and with a desire to facilitate the expeditious movement of pending cases on the MDL docket, and having had the benefit of input from the court-appointed plaintiff and defendant steering committees, hereby imposes the following filing requirements and procedures:

1. SUBMISSION OF IDENTIFICATION INFORMATION

All plaintiffs shall submit to the Court a report identifying each plaintiff by full name, date of birth, last four digits of plaintiffs SSN, and a statement indicating the status of the plaintiff in the case before the Court; ie., asbestos-related injury victim, spouse of injured party, administrator of injured party or deceased injured party, executor(trix), child of injured party, etc.

2. SUBMISSION OF RELATED COURT ACTIONS

Each plaintiff shall identify each and every prior or pending court or administrative action brought with the intent of satisfying in whole or in part, the damages sustained by the plaintiffs alleged asbestos-related personal injury. In each such instance, the plaintiff shall identify the claim, the parties involved, and the results of any action thereon.

3. SUBMISSION OF STATEMENT OF CASE STATUS

The plaintiff in each case shall identify all of the named defendants in the following manner:

- a) Each defendant with whom the plaintiff has achieved resolution of his/her claim, whether by settlement or agreement to dismiss without payment or by payment of a claim through the bankruptcy court, shall be identified and, where a dismissal has not yet been entered of record, a proposed order shall be submitted;

- b) Each defendant that the plaintiff now desires to dismiss from the action, with or without prejudice, the reason for the dismissal, and a proposed order;
- c) Each remaining defendant that is currently in bankruptcy with a claim pending, together with an order for the transfer of the claim to an active docket which the court has created for the holding of such claims; and
- d) Each non-bankrupt unsettled defendant.

4. SUBMISSION OF MEDICAL REPORTS

Each plaintiff asserting a claim based upon an alleged asbestos-related malignancy shall submit to the court a copy of the medical diagnosing report or opinion upon which the plaintiff now relies for the prosecution of the claims as if to withstand a dispositive motion.

Each plaintiff asserting a claim based upon an alleged non-malignant injury or condition shall submit to the court a copy of the medical diagnosing report or opinion upon which the plaintiff now relies for the prosecution of the claim as if to withstand a dispositive motion.

Each report or opinion submitted hereunder shall be based upon objective and subjective data which shall be identified and descriptively set out within the report or opinion.

5. ALTERNATIVE PLAINTIFF SUBMISSION

Alternative submissions to the court are acceptable under the following circumstances:

- a) If the plaintiff has remaining claims only against bankrupt parties and is desirous of seeking payment on those claims through the bankruptcy action, then, as an alternative to the required submissions under sections 2. and 4. above, the plaintiff may submit a proposed order for the transfer of this case to the "Bankrupts Only" docket in the form attached.
- b) If the plaintiff has viable claims remaining against both bankrupt and non-bankrupt parties and wishes to pursue through the bankruptcy action only those claims remaining against the bankrupt parties, then, as an alternative to the required submissions under sections 2. and 4. above, the plaintiff may submit a proposed order for the dismissal of the non-bankrupt parties with prejudice and the transfer of the remaining claims against the bankrupt parties to the "Bankrupts Only" docket in the form attached.
- c) The plaintiff may at any time submit to the court a proposed order to dismiss his/her case against all parties with prejudice. Plaintiff may also request a dismissal against any or all parties without prejudice; however, notice must be given to all parties, any of whom may file an objection within thirty (30) days

thereafter. The court will hold a hearing if deemed necessary.

6. TIMING REQUIREMENTS

Plaintiffs shall submit required documentation and proposed orders to the court in accordance with the schedule set forth:

- a) Plaintiffs whose cases were filed during the years 2007, 2006, and before July 29, 1991 shall file with the court their required papers on or before August 1, 2007.
- b) Plaintiffs whose cases were filed between July 29, 1991 and December 31, 1995 shall file with the court their required papers on or before September 1, 2007.
- c) Plaintiffs whose cases were filed in 1996, 1997 and 1998, shall file with the court their required papers on or before October 1, 2007.
- d) Plaintiffs whose cases were filed in 1999, 2000, 2001 and 2002, shall file with the court their required papers on or before November 1, 2007.
- e) Plaintiffs whose cases were filed in 2003, 2004, and 2005, shall file with the court their required papers on or before December 1, 2007.

The court may dismiss pursuant to F.R.C.P. 41(b) the cases of any plaintiffs who fail to comply with the requirements set forth.

7. SCREENED CASES

Current litigation efforts in this court and in the silica litigation have revealed that many mass screenings lack reliability and accountability and have been conducted in a manner which failed to adhere to certain necessary medical standards and regulations. The result is that mass screenings create an inherent suspicion as to their reliability. Where screenings have been conducted by the Sheet Metal Occupational Health Institute Trust and other organizations utilizing standards and protocols established by the American Thoracic Society (ATS), the Association of Occupational and Environmental Clinics (AOEC), and other accredited health organizations, there is a larger probability of adequacy for the reliability foundation necessary for admissibility. This court will therefore entertain motions and conduct such hearings as may be necessary to resolve questions of evidentiary sufficiency in non-malignant cases supported only by the results of mass screenings which allegedly fail to comport with acceptable screening standards.

8. EXCLUSIONS

The case designated as ZMDL 875 (MARDOC) shall be excluded from the requirements set forth and those actions shall continue to be governed by the requirements of previous orders of this court concerning the management of the MARDOC cases.

9. SETTLEMENT CONFERENCES / SUGGESTIONS OF REMAND

The court intends upon stepping up the pace of settlement conferences and will accordingly, issue orders to that effect. Counsel are expected to comply with all requirements of the notice and be prepared at the conference. All parties shall submit to the court at the time of the first settlement conference in any case, a short position paper stating their position relative to disease, exposure and damages. Mitigating factors for the purposes of settlement shall also be set forth.

If the parties have failed to achieve settlement following one or more settlement conferences and working with the court, the case may be referred to mediation or, if the court finds that the parties have negotiated in good faith without success, the court may suggest the case for remand. A determination of good faith may not be necessary with regard to all defendants. The court will continue to prioritize malignant and exigent cases.

10. MANNER OF SUBMISSIONS

All submissions to be made to the court pursuant to this order shall be paper filings with copies provided to all remaining viable parties in accordance with Rule 5, F.R.C.P.

11. SUBMISSIONS TO BE ELECTRONIC

From the date of this order forward, all submissions and changes or corrections thereto, shall be made and entered into the database at MDL875Submissions.com without the need to submit paper copies to the Court. The requirement for service upon other parties in accordance with Rule 5, F.R.C.P. shall remain. The Court has designated the law firms of Motley Rice (contact person: Lane Andrae) and Forman, Perry, Watkins, Krutz & Tardy (contact person: Mary Margaret Gay) as the Court's designees in assisting counsel with any problems that may occur with database submissions. Further communications with the designer of the software system for the database (Intercon Inc.) for administration purposes relative to Administrative Order No. 12 are now inappropriate as the contract between the Court and Intercon Inc. does not allow for payment of such services.

12. INCLUSIVENESS OF SUBMISSIONS

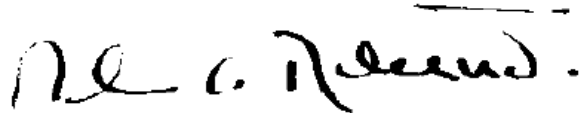
Except for those plaintiffs excluded under Administrative Order No. 12 by reason of their designation as part of 2 MDL 875 (MARDOC), **ALL PLAINTIFFS** with causes currently in MDL 875 are required to comply with the submission requirements set forth within Administrative Order No. 12. If any plaintiff was not included in the original schedule, i.e., plaintiffs with cases filed in the calendar year 2008, they shall comply within 30 days of the date of this order. The submission requirements shall further apply to all new actions assigned to MDL 875. Cases transferred subsequent to the date of this order shall comply within 30 days of the final date of transfer to the Eastern District of

Pennsylvania. Asbestos-related personal injury cases filed directly in the Eastern District of Pennsylvania shall be treated by counsel as if they were transferred into MDL 875 on the date of filing.

IT IS SO ORDERED.

Date: 9/3/09

BY THE COURT

A handwritten signature in black ink, appearing to read "Eduardo C. Robreno, J.", written over a horizontal line.

EDUARDO C. ROBRENO, J.

EXHIBIT "D"

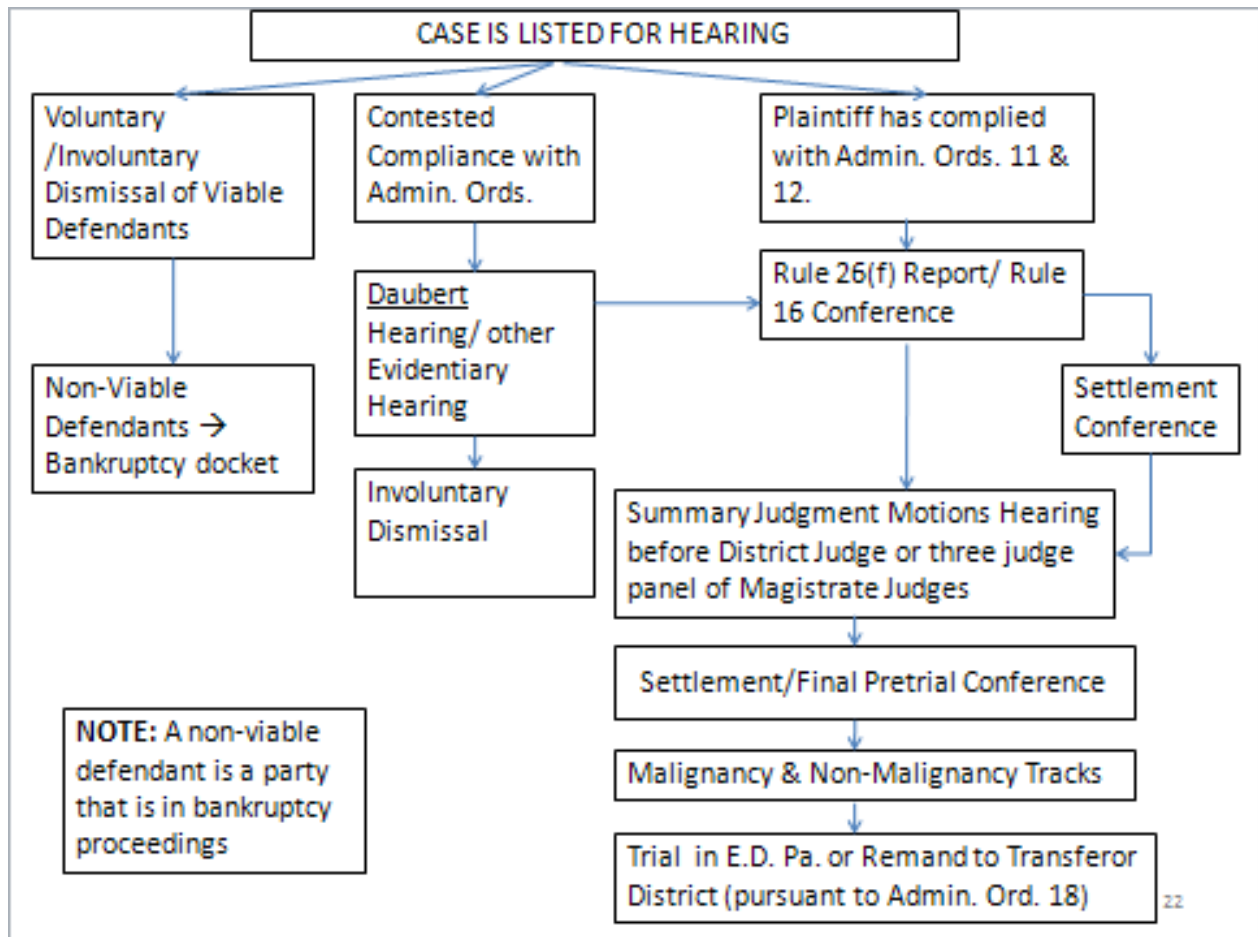


EXHIBIT "E"

Plaintiffs' Land-Based Steering Committee

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EXHIBIT "F"

The screenshot shows the homepage of the MDL 875 website. At the top is a navigation bar with links: Home Page, Site Map, FAQs, Notices, CM/ECF, What's New, Courthouse Locations, PACER, Jury Information, Fees, Historical Society, Services, Documents, and Search. Below this is a breadcrumb trail: Home > Documents > MDL > MDL 875 In Re: Asbestos. A left-hand menu lists various site sections with right-pointing arrows: Home Page, CM/ECF, PACER, Court Information, Local Rules, Forms, Jury Information, Trial Schedule, FAQs, Documents, Services, Search, Miscellaneous, Site Map, What's New, and External Links. The main content area features a header with tabs: MDL 875 Home, Notices, About, Updates, Procedures, Summary Judgment Procedures, and Calendar. The central text reads: "Welcome to the Web Site for MDL 875!" followed by "In Re: Asbestos Products Liability Litigation (No. VI)" in purple, "United States District Court for the Eastern District of Pennsylvania", and "The Honorable Eduardo C. Robreno, Presiding". An "Announcements" section contains a grey box with a red asterisk icon and the text: "NOTICE: Updates made on September 24, 2012. See [Updates](#)."

<http://www.paed.uscourts.gov/mdl875.asp>

EXHIBIT "G"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS	:	
LIABILITY LITIGATION (No. VI)	:	Consolidated Under
	:	MDL DOCKET NO. 875
CERTAIN PLAINTIFFS	:	
	:	Transferor District Court
v.	:	
	:	
CERTAIN DEFENDANTS	:	

ORDER

AND NOW, this -- day of ---- 2009, it is hereby **ORDERED** that a hearing on Defendants' motion for a rule to show cause in accordance with Administrative Order No. 12A, in the cases listed in the attached Exhibit "A", will be held on ----, -, 2009 at **10:00 am** in Courtroom 11A, United States Courthouse, 601 Market Street, Philadelphia, PA 19106.

It is further **ORDERED** that those Plaintiffs listed in Exhibit "A", attached, must show that they have complied with the

Court's order requiring the filing of a severed and amended complaint and the payment of an individual filing fee in each case, if required.

It is further **ORDERED** that Plaintiffs' counsel's failure to appear or to be excused from appearing will result in the dismissal of that Plaintiff's case for failure to prosecute.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.

EXHIBIT "H"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS : Consolidated Under MDL 875
LIABILITY LITIGATION (No. VI) :
 :
VARIOUS PLAINTIFFS : Cases listed in Exhibit "A,"
 : attached
v. :
 :
VARIOUS DEFENDANTS :
 :

O R D E R

STATUS AND SCHEDULING CONFERENCE

AND NOW, this ___th day of _____, 2012, it is hereby **ORDERED** that in the cases listed in Exhibit "A," attached, a status and scheduling conference will be held on _____, _____, 2012, at ___ a.m. in Courtroom ___, United States Courthouse, 601 Market Street, Philadelphia, PA 19106. Prior to the conference, counsel shall review and ascertain the status of each case. **Please review the Frequently Asked Question sheet attached to this Order for general information regarding cases in MDL 875.**

It is further **ORDERED** that prior to, or at, the conference, Plaintiff's counsel in each action must inform the Court as to the status of the case.¹

¹ If a status update is submitted to the Court prior to the conference, appearance by Plaintiff's counsel is excused. Defense counsel may appear at the conference to ascertain the status of the case, but appearance by Defense counsel is not required. Judge Robreno will not take the bench for the conference. The results of the conference will be posted on the MDL 875 website at: www.paed.uscourts.gov/mdl875u.asp. (Footnote continues...)

It is further **ORDERED** that Plaintiff's counsel shall provide the following information to the Court:

- a.) Each defendant with whom plaintiff has achieved resolution of his or her claim.
- b.) Each defendant that plaintiff now desires to dismiss from the action.
- c.) Each viable defendant that is still active in the case.

It is further **ORDERED** that, as to all viable, active defendants, counsel for the plaintiff in each case shall report to the court:

- a.) Status of compliance with Administrative Order no. 12 as amended.
- b.) Any outstanding discovery.
- c.) Any discovery that is still needed and a timetable for its completion.
- d.) Whether the plaintiff has obtained a medical diagnosing

(...Footnote continued from previous page)

A status update should be made in writing, filed on the docket AND either emailed to the MDL 875 law clerk, Michele_Ventura@paed.uscourts.gov, or sent to:

The Honorable Judge Eduardo C. Robreno
Attn: MDL 875 Law Clerk
U.S. District Court, Eastern District of Pennsylvania
601 Market Street Room 2609
Philadelphia, PA 19106

report or opinion upon which the plaintiff now relies for prosecuting his or her claim. If so, counsel shall provide the name and address of the physician or medical provider who has supplied the diagnosing report or opinion.

e.) Any motions pending.

f.) Readiness for trial and a proposed trial date.³

It is further **ORDERED** that, prior to the hearing, Plaintiffs' counsel may provide the Court with a list of cases which may be dismissed with prejudice or dismissed as to the viable defendants and moved to the bankruptcy only docket. The letter should include the Eastern District of Pennsylvania case number, the name of the plaintiff(s), and whether the case should be dismissed with prejudice or dismissed as to the viable defendants and moved to the bankruptcy only docket. Those cases will be removed from the list, and appropriate orders will be entered.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.

³ The court will order presumptively that any outstanding discovery be completed within 120 days from the date of the hearing.

EXHIBIT "I"

Motion Procedures

Contested Motions

If you wish to be heard on a contested motion, please follow the following procedure:

- 1. Any substantive, contested motion will be scheduled for a hearing date upon order of the Court. The Court will attempt to schedule hearings at the earliest possible date. When a hearing is scheduled, an order will be entered in each affected E.D. Pa. docket number.**
- 2. In the Court's discretion, any motion may be continued to a different date.**
- 3. All motions must be accompanied by a memorandum of law citing to the substantive or procedural rule which governs the motion.**
- 4. If factual materials are relevant to the determination of the motion, they shall be appended to the motion.**
- 5. Any party opposing the motion shall have fourteen (14) days within which to file and serve a response upon the moving party for non-dispositive motions, and twenty-one (21) days for dispositive motions. This response must include all relevant factual information in opposition to the motion and cite to the substantive or procedural rule relied upon for opposition. See E.D. Pa. Loc. R. Civ. P. 7.1(c).**
- 6. No reply to the opposing party's response shall be filed without leave of court, which shall be sparingly granted. However, parties have a right to file a reply regarding motions for summary judgment. See E.D. Pa. Loc. R. Civ. P. 7.1(c).**
- 7. There will be a strict limit of one continuance granted per party per motion.**

Administrative Motions

- 1. Any matter concerning scheduling or any administrative issue may be brought to the Court by motion.**
- 2. All motions must indicate whether the opposing side has consented and attach a sample formal order stating the relief sought.**
- 3. An administrative motion may be decided by the Court based on the papers without scheduling a hearing.**

EXHIBIT "J"

Settlement Conference Procedures

- 1. Any party may request a settlement conference in their case.**
- 2. In order to obtain a date for your settlement conference, please write or call Judge Robreno's MDL 875 law clerk and inform her of your request for a settlement conference.**
- 3. The MDL 875 law clerk will assign the case to a Magistrate Judge, and the Magistrate Judge will set a settlement conference date.**
- 4. Plaintiff shall give notice of this conference to each viable defendant in each case no fewer than thirty (30) days before the conference is scheduled. A Certificate of Notification of this notice shall be forwarded to the Magistrate Judge assigned to the case prior to the conference.**
- 5. Plaintiff shall provide to each viable defendant a copy of plaintiff's most current medical report relied upon and a synopsis of the exposure evidence against that defendant. Plaintiff is directed to make a reasonable demand upon each of the defendants, and the parties must attempt in good faith to negotiate settlement of the case(s) prior to the conference date.**
- 6. In preparation for the conference, parties must exchange information and complete such discovery as is necessary to be in a posture to negotiate settlement.**
- 7. Parties to all unresolved claims in the case shall appear at the conference with necessary authority to settle the case(s) with their principals present or immediately available to them by phone.**
- 8. The Magistrate Judge has the authority to require the principals to be present, to continue the conference for additional days or to postpone the conference with or without costs assessed.**
- 9. In the event that a claim is settled in full as to any individual claim or defendant, the Magistrate Judge shall dismiss that claim or the claim against the settled defendant with prejudice pursuant to Local Rule of Civil Procedure 41.1(b).**
- 10. In the event that a claim is not settled, the Magistrate Judge shall determine whether further settlement conferences will be helpful. If not, the Magistrate Judge shall inform the Presiding Judge whether the parties have negotiated in good faith and whether the parties are ready for trial or remand.**

EXHIBIT "K"

Trial Procedures

Parties wishing to proceed to trial, either jury or non-jury[1], shall comply with the following:

NOTE: This is the trial procedure for parties that wish to have a trial before an Article I judge (with consent of the parties) or before an Article III judge. In either case, for cases where the transferor court is other than the Eastern District of Pennsylvania, parties must waive any venue objections in order for the case to be tried in the Eastern District of Pennsylvania. See Administrative Order No. 22.

- 1. Write or call the MDL 875 law clerk.**
- 2. Certify that all discovery has been completed and that the parties are ready to try the case within thirty (30) days.**
- 3. Notify the MDL 875 law clerk whether parties will consent to trial before an Article I judge and whether parties have complied with Administrative Order No. 22.**
- 4. The trial judge will hold a scheduling conference promptly and assign a trial date within thirty (30) days.**

[1] Punitive damages in this case have been bifurcated and will not be subject to trial at this time.

EXHIBIT "L"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS	:	
LIABILITY LITIGATION (No. VI)	:	
		X
-----, et al,	:	
Plaintiffs,	:	
v.	:	
-----, et al,	:	
Defendants.	:	
		-----X

**ORDER OF REFERRAL TO MAGISTRATE JUDGE FOR
PRETRIAL DISCOVERY, SETTLEMENT
CONFERENCE, AND TRIAL PREPARATION**

The Court, in accordance with the Court’s policies outlined in Administrative Orders No. 3 & 12, has identified the above captioned case as being appropriate for referral to the Honorable Magistrate Judge Thomas J. Rueter to conduct pretrial procedures, supervision of discovery, settlement conferences, and preparation for trial. The Magistrate Judge may enter such orders as may be necessary to facilitate these tasks.

Unless modified by the Magistrate Judge, the scheduling order attached as Exhibit “A” shall be in effect for all cases referred by this order.

All parties remaining in the case shall take the following actions:

- 1.) Each Plaintiff (“Plaintiff”) whose action has been referred to a Magistrate Judge shall, within fourteen (14) days of this date, advise the Magistrate Judge as to all remaining Viable Defendants (“Viable Defendants”) (any Defendant not in bankruptcy proceedings or previously dismissed) in each case, together with the name, address, and telephone number of counsel. Plaintiff shall immediately forward to each Viable Defendant a copy of this referral order together with a list of cases in which that Viable Defendant is a named party. A Certificate of Notification certifying delivery of this Order and the notification to each Viable Defendant shall be forwarded to

the Magistrate Judge. In addition, Plaintiff shall provide to each Viable Defendant a copy of Plaintiff's most current medical report relied upon and a synopsis of the exposure evidence against that Viable Defendant. Plaintiff is directed to make a reasonable demand upon each Viable Defendant, and the parties must attempt in good faith to negotiate settlement of the case(s) prior to any settlement conference before the Magistrate Judge.

In furtherance thereof, the parties shall promptly exchange information and complete such discovery as is necessary to be in a posture to negotiate settlement. If the action remains unsettled, Plaintiffs and all Viable Defendants shall appear at all conferences with necessary authority to settle the case(s) with their principals present or immediately available to them by telephone. The Magistrate Judge may require the principals to be present, to continue the conference for additional days, or to postpone the conference with or without costs assessed.

All unresolved discovery issues shall be brought to the attention of the Magistrate Judge within twenty (20) days of the date of this order, or immediately as any such issue may arise in the future.

All parties shall comply with the requirements of Section 9, Administrative Order No. 12. Plaintiff MUST have made his/her submissions in accordance with Administrative Order No. 12, and all viable parties MUST have made payment to the Clerk of the Court as required under Administrative Order No. 14. A copy of each party's position paper relating to any scheduled settlement conference shall be received by the Magistrate Judge no later than three (3) days prior to the conference.

Inquiries relating to these cases and all matters scheduled hereunder may be directed to the Chambers of the Honorable Magistrate Judge Thomas J. Rueter at (215)-597-0048.

THE MAGISTRATE JUDGE MAY IMPOSE SANCTIONS AND/OR COSTS AGAINST ANY PARTY NOT IN COMPLIANCE WITH THIS NOTICE AND THE ORDERS SPECIFICALLY INCORPORATED BY REFERENCE AND ANY ORDERS ISSUED IN FURTHERANCE HEREOF.

Accordingly, it is **ORDERED** that the Court refers the above captioned action pending in MDL 875 to the Honorable Magistrate Judge Thomas J. Rueter for proceedings in accordance with this Order.

BY THE COURT:

Date:

Eduardo C. Robreno J.

EXHIBIT "M"

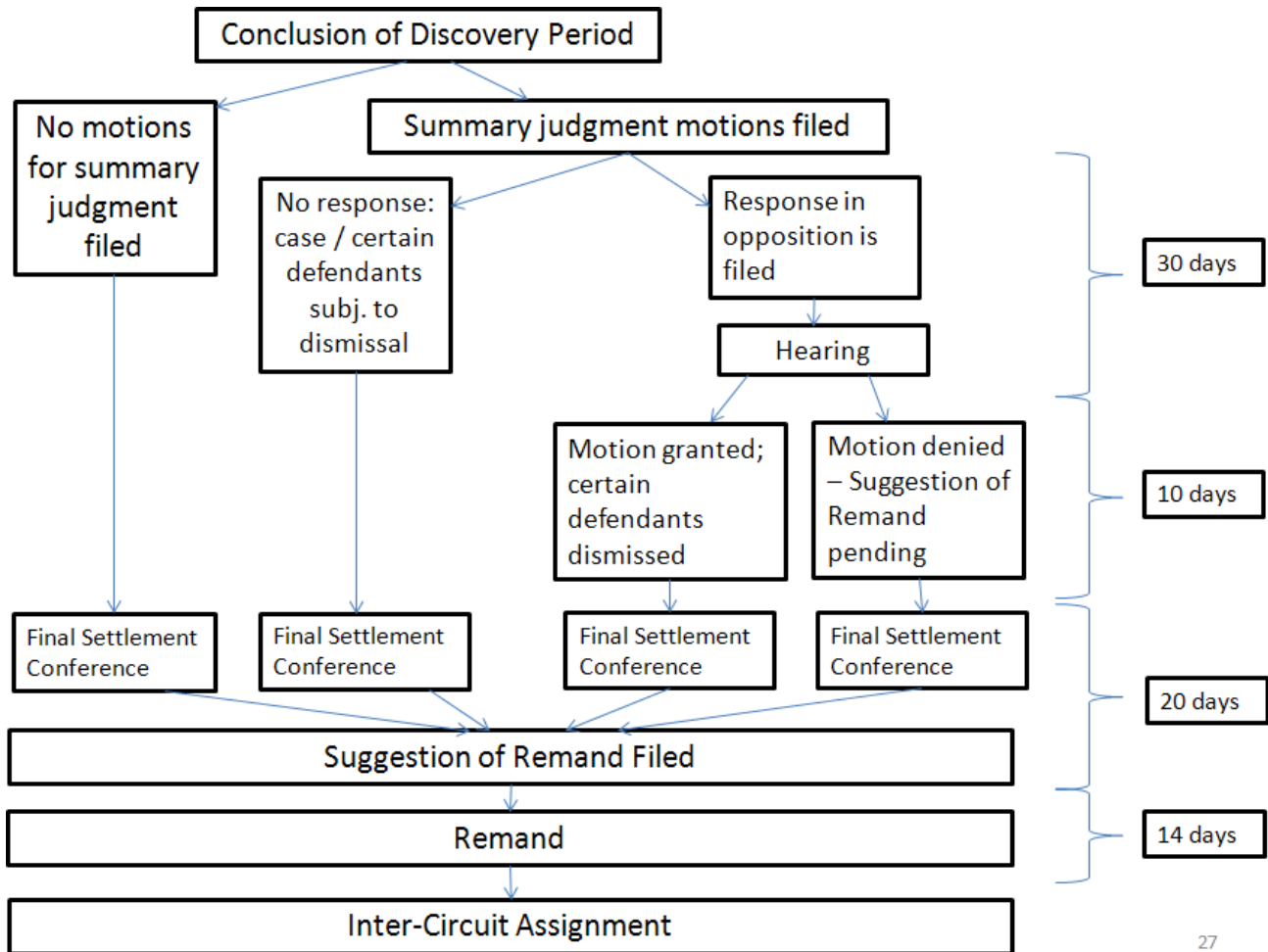


EXHIBIT "N"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS : MDL DOCKET NO. 875
LIABILITY LITIGATION (No. VI) :
: :
: Civil Action No.
: 2:01-md-875
THIS DOCUMENT RELATES TO :
ALL ACTIONS :

ADMINISTRATIVE ORDER NO. 18

Upon consideration of the motion to alter or amend Administrative Orders 3, 14, 15, and 16, filed on behalf of certain Plaintiffs by Motley Rice, LLC, the Court will institute a set procedure for Counsel seeking remand of an individual Plaintiff's case to the appropriate transferor District Court. Plaintiffs seeking to have their case remanded must file a motion for a suggestion of remand that conforms to the requirements set forth in this Administrative Order.

A motion for a suggestion of remand must contain, at a minimum, the following information with regard to each individual claim:

- 1.) The civil action number of the case in the district where it was originally filed.
- 2.) The civil action number of the case in the Eastern District of Pennsylvania, if the case has been assigned an E.D. Pa. civil action number.
- 3.) The name of the plaintiff in the case.
- 4.) The diagnosing report or opinion relied upon by plaintiff in compliance with Administrative Order no.

12.

- 5.) The identity of defendants that are still viable¹ in the case.
- 6.) A certification that the motion requesting the suggestion of remand has been served upon counsel for all other parties to the action.
- 7.) The specific reasons why remand is appropriate in this case. Plaintiff should specify:
 - a.) Whether Plaintiff has complied with Administrative Orders 12 and 12A.
 - b.) Whether the injured Plaintiff is alive.
 - c.) Whether the parties have submitted a Rule 26(f) report to the Court.
 - d.) Whether all relevant discovery has been completed or has been substantially completed. If not, identify the discovery still to be completed.
 - e.) The extent to which settlement conferences have been held in the case and the status of settlement negotiations.
 - f.) Whether there are any outstanding motions in the case. Counsel seeking remand should be able to certify that there are no outstanding motions remaining in the case.

¹ A viable defendant is a defendant which has not been dismissed from the case and is not in bankruptcy proceedings.

g.) Whether, if the case is remanded, the Plaintiff is prepared for trial without delay once on the transferor court's normal docket.

h.) The status of congestion in the transferor court docket.

After a motion for a suggestion of remand is filed with the Court, any Defendant opposing the suggestion of remand will be given 15 days to file a response. If there is no response filed and the Court determines that a suggestion of remand is appropriate, the motion will be granted as uncontested, pursuant to Local Rule of Civil Procedure 7.1(c). If there is a response, the Court will make a ruling on the parties' filings or schedule a hearing on the matter, if necessary.

Additionally, if a Plaintiff's case is prepared to proceed to trial, and all of the parties provide the necessary consent, both Article I and Article III Judges are available to hold trials in the Eastern District of Pennsylvania. Details on the procedure for requesting trial in the Eastern District of Pennsylvania, as well other MDL 875 case information, can be found on the MDL 875 website, available at www.paed.uscourts.gov/mdl875.asp.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.

EXHIBIT "O"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS	:	Consolidated Under
LIABILITY LITIGATION (No. VI)	:	MDL DOCKET NO. 875
	:	
	:	Transferred from (DISTRICT)
PLAINTIFF	:	Case No.
	:	
v.	:	
	:	
DEFENDANT	:	E.D. PA No. _____

SUGGESTION OF REMAND

AND NOW, this ___th day of |___, 2012, it is hereby **ORDERED** that, upon review of the above captioned case under MDL-875 Administrative Order No. 18, No. 01-875 (E.D. Pa. April 30, 2009), ECF No. 6197, the Court finds that, as to the above-captioned case:

- a.) Plaintiff has complied with MDL-875 Administrative Orders 12 and 12A (see the MDL 875 website's Administrative Orders page, at <http://www.paed.uscourts.gov/mdl875d.asp>).
- b.) Parties have completed their obligations under the Rule 16 order issued by the Court (see ECF No. ___).
- c.) All discovery has been completed.
- d.) The Court has adjudicated all outstanding motions, including dispositive motions. Particularly relevant rulings include:

- i.

ii.

e.) Rule 18 settlement discussions have been exhausted at this time as to the remaining viable defendants.

f.) The Court finds that this case is prepared for trial without delay once on the transferor court's docket, subject to any trial-related motions in limine (including Daubert challenges).

(THIS SECTION SUBJ. TO CHANGE, e.g. if transferor court will be dealing with a given legal issue)

g.) The remaining viable Defendants for trial are:

i.

ii.

iii.

h.) Any demand for punitive damages is severed, and claims for punitive or exemplary damages are retained by the MDL-875 Court. See Fed. R. Civ. P. 42(b).

Accordingly, the Court **SUGGESTS** that the above-captioned case should be **REMANDED** to the United States District Court for the **(DISTRICT)** for resolution of all matters pending within this case except punitive damages.¹

¹ The Court finds that the issue of punitive damages must be resolved at a future date with regard to the entire MDL-875 action, and therefore any claims for punitive or exemplary damages are hereby **SEVERED** from this case and retained by the MDL-875 Court in the Eastern District of Pennsylvania. See In re Collins, 233 F.3d 809, 810 (3d Cir. 2000) ("It is responsible

Alternatively, parties in the below-listed cases have **seven (7) days** within which to consent to a trial before an Article III or Magistrate Judge in the Eastern District of Pennsylvania. In such an event, if consent is granted, a trial will be scheduled within sixty (60) days, on a date convenient to the parties in Philadelphia, Pennsylvania, and the Suggestion of Remand will be vacated.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.

public policy to give priority to compensatory claims over exemplary punitive damage windfalls; this prudent conservation more than vindicates the Panel's decision to withhold punitive damage claims on remand."); see also In re Roberts, 178 F.3d 181 (3d Cir. 1999).

EXHIBIT "P"

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EXHIBIT 2

HURRICANE SANDY CASE MANAGEMENT ORDER NO. 1

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21. Consolidation with other Hurricane Sandy cases

1. Applicability of the HSCMO

This Hurricane Sandy Case Management Order No. 1 ("HSCMO") governs all Hurricane Sandy cases involving standard flood insurance policies sold and administered by participating Write Your Own ("WYO") Program insurance companies in accordance with the National Flood Insurance Program ("NFIP"), a Federal insurance program administered by the Federal Management Agency ("FEMA") pursuant to the National Flood Insurance Act ("NFIA"), 42 U.S.C. §§ 4001-4084 ("WYO action"), in addition to direct claims against the Federal Emergency Management Agency ("FEMA") pursuant to the NFIA ("direct suit"). The HSCMO shall supersede all prior orders concerning NFIP and/or direct suit actions. If a party requests to be exempted from the application of the HSCMO, the party shall submit an informal letter application to the Magistrate Judge within fourteen (14) days of entry of the HSCMO, setting forth, with specificity, good cause to warrant the requested exemption, and a statement of whether the

adversary consents to the requested exemption. The HSCMO shall govern the action unless otherwise ordered by the Court. In the event an individual action sets forth claims for damages caused by sources other than flooding (to include, without limitation, wind, fire, or any combination thereof), but pertaining to the same property, the cases shall be reassigned to the same District Judge and Magistrate Judge and consolidated for discovery purposes, as set forth in the HSCMO.

2. Federal Rule of Civil Procedure 16

The HSCMO constitutes the scheduling order contemplated by Federal Rule of Civil Procedure 16(b), in order to ensure "the just, speedy, and inexpensive" resolution of each NFIP and direct suit action in accordance with Federal Rule of Civil Procedure 1, and in recognition of the Court's commitment to the prompt, fair, and efficient resolution of these actions.

3. Automatic Dismissals of Certain Claims

- a. The following claims are hereby dismissed from any WYO action or direct suit:
 - i. Jury demands, see Lehman v. Nakshian, 453 U.S. 156, 160-61 (1981) (noting that, "[i]t has long been settled that the Seventh Amendment right to trial by jury does not apply in actions against the Federal Government"); Van Holt v. Liberty Mut. Fire Ins. Co., 163 F.3d 161, 165-67 (3d Cir. 1998) (noting that, "only FEMA bears the risk" of standard flood insurance policies issued by WYO companies and that "a lawsuit against a WYO company is [therefore], in reality, a suit against" the federal government because "the United States treasury funds [ultimately] pay off the insureds' claims"); Robinson v. Nationwide Mut. Ins. Co., No. 12-5065, 2013 WL 686352, at *6 (E.D. Pa. Feb. 26, 2013) (finding "no Constitutional right to a jury trial" for plaintiffs' WYO claims);
 - ii. State law claims, see C.E.R. 1988, Inc. v. Aetna Cas. & Sur. Co., 386 F.3d 263, 268 (3d Cir. 2004) (noting that "state-law claims are preempted by the NFIA" whether contractual in nature or "'sounding in tort[,]' but 'intimately related to the disallowance of

- [an] insurance claim") (citing Van Holt, 163 F.3d 161, 167);
- iii. Punitive damages claims, see Messa v. Omaha Prop. & Cas. Ins. Co., 122 F. Supp. 2d 513, 522-23 (D.N.J. 2000) (dismissing plaintiffs' "extra-contractual" punitive damages claim "because federal law does not provide for" such remedies in NFIP cases); 3608 Sounds Ave. Condo. Ass'n v. S.C. Ins. Co., 58 F. Supp. 2d 499, 503 (D.N.J. 1999) (finding plaintiff's state "common law claims of punitive damages and attorney's fees" not cognizable in suits "brought pursuant to the NFIA"); Dudick v. Nationwide Mut. Fire Ins. Co., No. 06-1768, 2007 WL 984459, at *5 (E.D. Pa. Mar. 27, 2007) (dismissing plaintiff's punitive damage claims because such claims "contravene the National Flood Insurance Program's purpose of reducing fiscal pressure on federal flood relief efforts")
- b. The following parties are hereby dismissed from any WYO action:
- i. FEMA; and/or
- ii. Directors and/or officers of FEMA.
- c. The following parties are hereby dismissed from any direct suit:
- i. Officers and/or directors of FEMA.
- d. Any counsel seeking to reinstate any such dismissed claims must file within thirty (30) days from the entry of the HSCMO a letter request to the Magistrate Judge for reinstatement. Any request to reinstate the dismissed claims shall set forth the specific legal basis for the requested relief (including, without limitation, all jurisdictional issues) with citations to relevant authority. The adversary shall thereafter have seven (7) days to file opposition.

4. Automatic Discovery Procedure²

In recognition of the issues generally implicated in NFIP and direct suit actions, the Court shall require the automatic disclosure of certain information in an expedited manner. This requirement is intended to facilitate the necessary evaluation of each action prior to the Court's initial case management conference. The following discovery protocol shall therefore govern the initial phase of discovery in lieu of the initial disclosures set forth by Federal Rule of Civil Procedure 26(a).

The discovery protocol generally requires that all pretrial discovery be completed within one hundred and twenty (120) days from entry of the HSCMO. The Hurricane Sandy Case Management Discovery Schedule, available on the Court's website for Hurricane Sandy litigation, generally summarizes the time frames within which the parties shall exchange, produce, and/or conduct necessary discovery.

Nothing in the HSCMO, however, shall be construed to preclude a party from exchanging additional information that a party reasonably considers to be helpful in evaluating the legal and factual contentions at issue in the litigation.

Each party must simultaneously serve Automatic Disclosures as set forth herein within thirty (30) days from entry of the HSCMO. Counsel should not file these Automatic Disclosures on the CM/ECF system.

a. Automatic Disclosures by the Plaintiff:

- i. Plaintiff shall provide the following disclosures with respect to each property set forth in the Complaint:

² The Court notes that the Eastern District of New York entered a Case Management Order concerning certain litigation arising out of Hurricane Sandy. In re Hurricane Sandy Cases, 14-mc-41, Case Management Order No. 1 (E.D.N.Y. Feb. 21, 2014), available at <https://www.nyed.uscourts.gov/sites/default/files/general-ordes/14mc41cmo01.pdf>. The Court adopted in part the Eastern District of New York's Case Management Order in the Court's Case Management Order No. 1, particularly with respect to Automatic Disclosures.

1. The current address of each plaintiff property owner;
 2. The address of each affected property;
 3. The name of each insurer and all policy numbers for each insurance policy held by or potentially benefitting plaintiff and/or the property on the date of the loss, including relevant claim numbers for any claims;
 4. A detailed itemized statement of claimed damages, including content claims if in dispute;
 5. A statement of any amounts paid or offered to be paid under the policy and a detailed itemization of those items for which plaintiff claims underpayment with citation to the supporting documentation;
 6. In the event of nonpayment, the basis upon which defendant denied coverage;
 7. A statement setting forth prior attempts at arbitration or mediation, if any; and
 8. The identification of any other Hurricane Sandy related lawsuits filed or contemplated for that particular property or plaintiff.
- ii. Plaintiff shall provide the following documents with respect to each property set forth in the Complaint:
1. All documents supporting or evidencing the claimed loss, including, without limitation, loss estimates from other insurers, any adjuster's reports, engineering reports, contractor's reports or estimates; photographs, claim log notes, and any other documents relating to repair work

performed as a result of Hurricane Sandy, including contracts, bids, estimates, invoices or work tickets for completed work repair documentation at issue;

2. All documents reflecting any payments received to date from any insurer, FEMA, or from any other federal, state, or local governmental program including, without limitation, the United States Small Business Association;
3. All documents relied upon by plaintiff in accordance with the applicable proof of loss requirements and documents required by the standard flood insurance policy, including documents relied upon by plaintiff to satisfy the detailed line item documentation requirement of the standard flood insurance policy;
4. Any written communications exchanged between the insured or insurer concerning the claimed loss; and
5. To the extent in plaintiff's custody, control, or possession, the entire nonprivileged file of any expert, estimator or contractor hired by the plaintiff or counsel to inspect the property and/or render a report, estimate, or opinion.

b. Automatic Disclosures by Defendant:

- i. Defendant shall provide the following disclosures with respect to each property set forth in the Complaint:
 1. In the event no payment on the policy has been made and/or offered, an explanation or statement setting forth the grounds for declination of

coverage, including, without limitation:

- a. Any applicable policy exclusions;
 - b. Whether non-payment of premiums resulted in the denial of coverage;
 - c. Whether the dispute and/or declination concerns the nature of the damage incurred and its coverage under the policy;
 - d. Whether the dispute and/or declination concerns the value of the claimed losses; and
 - e. Whether the dispute and/or declination concerns any other legal basis;
2. In the event payment on the policy has been made and/or offered, defendant's position concerning the remaining amount of loss disputed; and
 3. A statement setting forth prior attempts at arbitration or mediation, if any.
- ii. Defendant shall provide the following documents with respect to each property set forth in the Complaint:
1. All non-privileged documents contained in the claims file concerning the policy, including any declination letters and notices of nonpayment of premiums;
 2. Any documentation relating to an assessment of the claimed loss, including all loss reports and damage assessments, adjuster's reports, engineering reports, contractor's reports, photographs taken of the

damage or claimed losses, and any other evaluations of the claim;

3. The names and addresses of the adjusters for each claim;
 4. All claim log notes;
 5. Records of payments made to the insured pursuant to the policy;
 6. All expert reports and/or written communications that contain any description or analysis of the scope of loss or any defenses under the policy;
 7. All emails contained within the claim file or specific to that claim; and
 8. To the extent in defendant's custody, control, or possession, the entire nonprivileged file of any expert, estimator or contractor hired by the defendant or its counsel to inspect the property and/or render a report, estimate, or opinion.
- c. Production: The attorneys shall meet and confer by telephone or in person in good faith concerning the method and format of any production, including whether the production shall occur through electronic means within ten (10) days from entry of the HSCMO. All documents produced shall be Bates-stamped.
- d. Electronically-stored information ("ESI"): To the extent ESI is implicated in an individual action, the parties shall first meet and confer concerning any ESI issues. Thereafter, any disputes may be presented to the Magistrate Judge by way of informal letter application. Any requests for electronically-stored information shall address, with specificity, whether "the burden or expense of the proposed discovery outweighs its likely benefit," in light "of the issues at stake in the litigation," as set forth

in Federal Rule of Civil Procedure 26(b)(2)(C)(iii).

- e. Failure to Disclose: To the extent any party asserts that the adversary has failed to make appropriate disclosures, the party shall first make a written request setting forth, with specificity, the documentation and/or other information the party believes has not been disclosed. The adversary shall provide a written response within five (5) days from receipt of the initial correspondence. The parties shall then meet and confer, either in person or by telephone. Thereafter, any dispute shall be brought to the Magistrate Judge by way of informal letter application, which shall include counsel's certification that counsel have first met and conferred in person or by telephone concerning the dispute.

- f. Privilege Log: Any documents required to be produced pursuant to the HSCMO, but withheld on the basis of privilege, shall be identified in a privilege log in accordance with Federal Rule of Civil Procedure 26(b)(5). When the inadvertent or mistaken disclosure of any information, document or thing protected by privilege or work-product immunity is discovered by the producing party and brought to the attention of the receiving party, the receiving party's treatment of such material shall be in accordance with Federal Rule of Civil Procedure 26(b)(5)(B). Such inadvertent or mistaken disclosure of such information, document or thing shall not by itself constitute a waiver by the producing party of any claims of privilege or work-product immunity. However, nothing herein restricts the right of the receiving party to challenge the producing party's claim of privilege if appropriate within a reasonable time after receiving notice of the inadvertent or mistaken disclosure.

5. Statements of Contentions

Within forty-five (45) days from entry of the HSCMO, the parties shall exchange written statements of contentions.

The statements of contentions shall specifically address, without limitation, each party's legal, factual, and/or monetary contentions with respect to the litigation. Counsel should not file these Statements of Contentions on the CM/ECF system.

6. Additional Written Discovery

In addition to the Automatic Disclosures, the parties may conduct the following discovery following submission of the Statement of Contentions. All such additional discovery shall be served no later than sixty (60) days from entry of the HSCMO (fifteen (15) days after submission of the Statement of Contentions).

- a. Interrogatories: Each party may serve no more than one set of interrogatories limited to ten (10) interrogatories pursuant to Federal Rule of Civil Procedure 33.
- b. Requests for the Production of Documents: Each party may serve no more than one set of requests for the production of additional documents limited to ten (10) requests pursuant to Federal Rule of Civil Procedure 34.
- c. Requests for Admissions: Each party may serve no more than twenty (20) requests for admissions pursuant to Federal Rule of Civil Procedure 36.

Any responses, answers, and objections to initial written discovery requests shall be served in accordance with the Federal Rules of Civil Procedure and the Local Civil Rules.

7. Depositions of Fact Witnesses

- a. Each party may take no more than three (3) depositions pursuant to Federal Rules of Civil Procedure 30 and 31 without leave of Court. Such depositions shall conclude no later than one hundred and twenty (120) days from entry of the HSCMO.
- b. All depositions are to be conducted in accordance with the provisions of Appendix R to the Local Civil Rules.

- c. Scheduling of depositions shall be agreed upon by counsel and shall not be set unilaterally.

8. Motions to Amend

Any motions to amend the pleadings or to join new parties shall be filed no later than sixty (60) days from entry of the HSCMO.

9. Expert Witnesses

- a. All expert reports and expert disclosures pursuant to Federal Rule of Civil Procedure 26(a)(2) on behalf of plaintiff shall be served upon counsel for defendant not later than one hundred and fifty (150) days from entry of the HSCMO, and shall be accompanied by the *curriculum vitae* of any proposed expert witnesses.
- b. All expert reports and expert disclosures pursuant to Federal Rule of Civil Procedure 26(a)(2) on behalf of defendant shall be served upon counsel for plaintiff no later than one hundred and eighty (180) days from entry of the HSCMO, and shall be accompanied by the *curriculum vitae* of the proposed expert witness.
- c. Depositions of proposed expert witnesses pursuant to Federal Rule of Civil Procedure 26(b)(4)(A) shall be concluded no later than two hundred and ten (210) days from entry of the HSCMO.
- d. The parties shall also exchange, in accordance with the HSCMO, written statements identifying all opinion testimony counsel that the parties anticipate will be presented at trial pursuant to Federal Rule of Evidence 701 and Teen-Ed v. Kimball International, Inc., 620 F.2d 399 (3d Cir. 1980).

10. Discovery Applications and Motions

In light of the Court's requirement that the parties meet and confer prior to filing an informal discovery application or motion, the Court does not anticipate significant discovery motion practice.

To the extent necessary, any modifications to the schedule and/or scope of the discovery shall be directed to the Magistrate Judge, and shall be filed in accordance with Local Civil Rule 37.1. Counsel shall first meet and confer in good faith by telephone or in person concerning any need to modify the schedule and/or scope of the discovery. This meet and confer shall proceed any informal application or motion, and all informal applications and motions shall contain a statement certifying counsels' compliance with the meet and confer obligations set forth herein and in Local Civil Rule 37.1.

All factual discovery motions and applications shall be made returnable prior to the expiration of the one hundred and twenty (120) day pretrial discovery period.

11. Extensions of Time

Any enlargement of the deadlines set forth herein shall be directed to the Magistrate Judge, and shall be granted only upon a showing of good cause. Counsel shall confer telephonically prior to applying to the Magistrate Judge to extend a deadline, and any application shall state whether the adversary consents or opposes the requested extension. However, applications that state that counsel have either too many cases, or are otherwise too busy to meet the deadlines prescribed herein, will fail to establish the requisite good cause. In the event counsel of record claims to be too pressed with other cases, the Court may require substitution of new counsel.

12. Initial Case Management Conference

Within one hundred and twenty (120) days from entry of the HSCMO (at which time the parties shall have substantially, if not entirely, completed the pretrial discovery process), the parties shall appear telephonically for an initial case management conference before the Magistrate Judge on a date to be set by the Court. In the event the parties have not received a case management conference date upon expiration of the one hundred and twenty (120) day period, the parties shall submit a letter request to the Magistrate Judge, setting forth joint proposed dates.

In anticipation of the initial case management conference, the parties shall meet and confer by telephone or in person, and shall submit a joint status report to the Court five (5) days prior to the scheduled conference. The joint status report shall be submitted to the Magistrate Judge and shall not

be electronically filed on the CM/ECF system. The joint status report shall address, without limitation: (1) the discovery completed to date; (2) any additional and/or outstanding discovery; (3) the timeline for the completion of any additional and/or contemplated discovery; (4) an explanation as to why the discovery has not been completed; (5) a statement of the disputed factual and/or legal contentions, and the remaining amount in controversy; (6) any other Hurricane Sandy related lawsuits filed or contemplated for that particular property or plaintiff (including, without limitation, claims related to wind damage, flood damage, fire damage, or any combination thereof); and (7) a statement setting forth the status of settlement discussions (including the propriety of mediation, arbitration, and/or a settlement conference).

At the conference with the Court, all parties who are not appearing *pro se* shall be represented by counsel who are familiar with the file and have full authority to bind their clients in all pre-trial matters. Counsel shall also be prepared to discuss settlement.

The Court shall issue in each case a scheduling order after the initial case management conference, which shall address, without limitation, time periods within which to complete any remaining discovery, a referral to arbitration and/or mediation, if appropriate, a date for the final pretrial conference, and/or a time period within which to submit dispositive motions (except with respect to motions contemplated pursuant to Federal Rule of Civil Procedure 12(b)(1) and (b)(2)).

13. Dispositive Motions

To the extent contemplated by the Court's scheduling order issued after the initial case management conference, any dispositive motions shall be filed, served, and responded to in accordance with Local Civil Rules 7.1, 7.2, 56.1 and 78.1. No dispositive motions, except motions pursuant to Federal Rules of Civil Procedure 12(b)(1) and (b)(2), shall be filed prior to the initial case management conference.

14. Alternative Dispute Resolution

Arbitration pursuant to Local Civil Rule 201.1 remains a preferred option for NFIP and direct suit cases. The parties may stipulate to the referral of an action to arbitration, or

the Court may order arbitration if the contested issues appear arbitrable.

If the dollar value of loss constitutes the primary issue after the parties exchange their Statements of Contentions, the parties shall proceed to loss appraisal in accordance with the applicable standard flood insurance policy, or the Court shall refer the action to compulsory arbitration pursuant to Local Civil Rule 201.1. Any disputes concerning the scope, effect, and/or interpretation of the standard flood insurance policy with respect to the loss appraisal process shall be submitted to the Magistrate Judge by way of informal letter application.

15. Joint Final Pretrial Orders

In the event the Court sets a date for a final pretrial conference in a scheduling order after the initial case management conference, the proposed final pretrial order will be submitted in the standard form to be provided by the Court. In accordance with Federal Rule of Civil Procedure 16(d), trial counsel shall appear at the final pretrial conference unless expressly excused by the Court.

16. Notice and Opportunity to Inspect

Prior to the demolition of any existing real property during the course of the litigation, plaintiff shall provide to defendant sufficient written notice of plaintiff's intent to destruct, remediate, and/or demolish any relevant evidence. Defendant shall thereafter be afforded a full and fair opportunity to inspect the relevant evidence for a period not to exceed sixty (60) days.

17. Discovery Confidentiality Orders

Upon submission of a certification in accordance with Local Civil Rule 5.3(b), the discovery confidentiality order set forth in Appendix S to the Local Civil Rules shall be entered. No alternate form of discovery confidentiality order shall be permitted without prior approval from the Court. Any request to modify the discovery confidentiality order set forth in Appendix S shall set forth, with specificity, the grounds for any proposed changes.

18. Motions to Appear *pro hac vice*

Local Civil Rule 101.1 shall continue to govern motions to appear *pro hac vice*. However, in the event an attorney has been admitted *pro hac vice* in one NFIP or direct suit action, any applications to appear *pro hac vice* in subsequent cases may be submitted to the Magistrate Judge by informal letter application setting forth whether the adversary consents, containing a statement certifying that no reportable events in accordance with Local Civil Rule 101.1(c) have occurred during the intervening period, appending a copy of the order granting counsel's *pro hac vice* appearance, and a proposed order in accordance with the form available on this Court's website for Hurricane Sandy litigation.

19. Telephonic Appearances

Counsel shall be permitted to appear telephonically at all conferences, unless the Court expressly orders an in-person appearance.

20. Liaison Counsel


The Court finds no cause to necessitate the appointment of liaison counsel at this time.

21. Consolidation with other Hurricane Sandy cases

All claims pertaining to the same property or plaintiff (including, without limitation, wind, flood, fire, or any combination thereof) will be consolidated **for discovery purposes only** and assigned to the same District Judge and Magistrate Judge. In actions in which Plaintiff did not file all claims pertaining to the same property or plaintiff (including, without limitation, wind, flood, fire, or any combination thereof) in the same suit, the plaintiff shall advise the Magistrate Judge of all such cases as soon as practicable, but no more than thirty (30) days after entry of the HSCMO. Thereafter, any Judicial Officer may sign an order reassigning the related cases in accordance with Local Civil Rule 40.1(c) to the District Judge and Magistrate Judge assigned to the first pending action, in addition to an order consolidating the actions for discovery purposes only in accordance with Local Civil Rule 42.1.

IT IS on this 24th day of March 2014,

SO ORDERED.



JEROME B. SIMANDLE

IEF UNITED STATES DISTRICT JUDGE

**BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**IN RE: 2016 AND 2017 HURRICANE
SEASONS FLOOD LITIGATION**

MDL Docket _____

SCHEDULE OF ACTIONS

Case Captions	Court	Civil Action No.	Judge
Plaintiffs: Gregory James Acker, Lauren Murray Defendant: Tower Hill Preferred Insurance Company	M.D. Florida (Ocala)	5:17-cv-00439	Timothy J. Corrigan
Plaintiffs: Terri Auner and Andy Auner Defendant: Tower Hill Preferred Insurance Company	M.D. Florida (Tampa)	8:17-cv-02209	Elizabeth A. Kovachevich
Plaintiffs: John Batista and Theresa Batista Defendant: Allstate Insurance Company	M.D. Florida (Tampa)	8:17-cv-02081	Virginia M. Hernandez Covington
Plaintiffs: Marcia Samuelson and Randy Samuelson Defendant: Tower Hill Preferred Insurance Company	M.D. Florida (Tampa)	8:17-cv-02214	James S. Moody, Jr
Plaintiffs: Roger Sheldon and Viktoriia Sheldon Defendant: Tower Hill Preferred Insurance Company	M.D. Florida (Tampa)	8:17-cv-02215	James S. Moody, Jr
Plaintiffs: Timothy Wassen and Mary Wassen Defendant: Allstate Insurance Company	M.D. Florida (Tampa)	8:17-cv-02213	Elizabeth A. Kovachevich
Plaintiff: Kenneth Connors Defendant: Tower Hill Preferred Insurance Company	M.D. Florida (Tampa)	8:17-cv-02937	Mary S. Scriven

Plaintiffs: Felix Guardiola and Susan Guardiola Defendant: America's Bankers Insurance Company	M.D. Florida (Tampa)	8:17-cv-02208	Charlene Edwards Honeywell
Plaintiffs: Felix Guardiola and Susan Guardiola Defendant: America's Bankers Insurance Company	M.D. Florida (Tampa)	8:17-cv-02211	Charlene Edwards Honeywell
Plaintiffs: Sean Netka Defendant: First Community Insurance Company	M.D. Florida (Jacksonville)	3:18-cv-00180	Henry Lee Adams, Jr.
Plaintiff: Cedar Key Marina II Inc. Defendant: Wright National Flood Insurance Company	N.D. Florida (Gainesville)	1:17-cv-00236	Mark E. Walker
Plaintiff: Mary Pate Defendant: Allstate Insurance Company	N.D. Florida (Gainesville)	1:17-cv-00238	Mark E. Walker

**BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**IN RE: 2016 AND 2017 HURRICANE
SEASONS FLOOD LITIGATION**

MDL Docket _____

PROOF OF SERVICE

In accordance with Rule 4.1(a) of the Rules of Procedure for the United States Judicial Panel for Multidistrict Litigation, the undersigned hereby certifies that on April 4th, 2018, copies of the foregoing a) Motion for Transfer of Related Actions to the Southern District of Florida, b) Brief in Support of Motion for Transfer of Actions to the Southern District of Florida pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings, c) Schedule of Actions, and d) this Proof of Service were electronically filed with the Court for the JPML by using the CM/ECF system, and that service will be accomplished by the CM/ECF system on all registered CM/ECF participants. I further certify that the following non-registered CM/ECF participants were served by First-Class Mail, postage prepaid, on said date:

Acker et al v. Tower Hill Preferred Insurance Company; Case No.: 5:17-cv-00439-TJC-PRL	
<p>Clerk of Court United States District Court Middle District of District of Florida OCALA DIVISION Golden-Collum Memorial Federal Building & U.S. Courthouse 207 N.W. Second Street Ocala, Florida 34475 352-369-4860</p>	<p>J. Michael Pennekamp Fowler White Burnett, PA 1395 Brickell Ave 14th Flr Miami, FL 33131-3353 305/789-9200 Fax: 305/789-9201 Email: jmp@fowler-white.com Counsel for Defendant: Tower Hill Preferred Insurance Company</p>
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Auner et al v. Tower Hill Preferred Insurance Company, 8:17-cv-02209-EAK-TGW	
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Batista et al v. Allstate Insurance Company, 8:17-cv-02081-VMC-JSS	
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Samuelson et al v. Tower Hill Preferred Insurance Company, 8:17-cv-02214-JSM-MAP

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Sheldon et al v. Tower Hill Preferred Insurance Company, 8:17-cv-02215-JSM-AAS

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Wassen et al v. Allstate Insurance Company, 8:17-cv-02213-EAK-TGW

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Connors v. Tower Hill Prime Insurance Company, 8:17-cv-02937-MSS-AAS

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Guardiola et al. v. American Bankers Insurance Company of Florida, 8:17-cv-02208-CEH-MAP

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Guardiola et al v. American Strategic Insurance, 8:17-cv-02211-CEH-TGW

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Netka v. First Community Insurance Company, 3:18-cv-00180-HLA-JRK

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Clerk of the Panel
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Respectfully submitted this 4th day of April, 2018.

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**U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:17-cv-02209-EAK-TGW**

Auner et al v. Tower Hill Preferred Insurance Company
Assigned to: Judge Elizabeth A. Kovachevich
Referred to: Magistrate Judge Thomas G. Wilson
Cause: 42:4001 National Insurance Flood Act

Date Filed: 09/22/2017
Jury Demand: None
Nature of Suit: 110 Insurance
Jurisdiction: Federal Question

Plaintiff**Terri Auner**

represented by **Ashley Noelle Harris**
Merlin Law Group, PA
Suite 950
777 S Harbour Island Blvd
Tampa, FL 33602
813/229-1000
Fax: 813/229-3692
Email: aharris@merlinlawgroup.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff**Andy Auner**

represented by **Ashley Noelle Harris**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**Tower Hill Preferred Insurance Company**

represented by **J. Michael Pennekamp**
Fowler White Burnett, PA
1395 Brickell Ave 14th Flr
Miami, FL 33131-3353
305/789-9200
Fax: 305/789-9201
Email: jmp@fowler-white.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/06/2017	11	CASE MANAGEMENT AND SCHEDULING ORDER: Amended Pleadings/Joinder of Parties due by 1/29/2018; Discovery due by 5/7/2018; Dispositive motions due by 6/4/2018; Plaintiff disclosure of expert report due by 3/8/2018; Defendant disclosure of expert report due by 3/22/2018; Final Pretrial Conference set for 9/11/2018 at 10:30 AM in Tampa Courtroom 12A before Magistrate Judge Thomas G. Wilson. Trial term commencing on 11/5/2018. The parties anticipate a BENCH TRIAL will

		take 4 days to complete. Conduct mediation hearing by 5/18/2018. Lead counsel to coordinate dates. Signed by Judge Elizabeth A. Kovachevich on 12/6/2017. (SRC) (Entered: 12/06/2017)
12/01/2017	10	CASE MANAGEMENT REPORT. (Pennekamp, J.) (Entered: 12/01/2017)
11/29/2017	9	ENDORSED ORDER granting 8 Motion for Leave to File case management report without in person meeting of counsel. Signed by Judge Elizabeth A. Kovachevich on 11/29/2017. (EJJ) (Entered: 11/29/2017)
11/28/2017	8	MOTION for leave to file Case Management Report by Tower Hill Preferred Insurance Company. (Attachments: # 1 Text of Proposed Order)(Pennekamp, J.) (Entered: 11/28/2017)
11/02/2017	7	CORPORATE Disclosure Statement by Tower Hill Preferred Insurance Company identifying Corporate Parent Tomoka Re Holdings, Inc. for Tower Hill Preferred Insurance Company.. (Pennekamp, J.) (Entered: 11/02/2017)
11/02/2017	6	ANSWER and affirmative defenses to 1 Complaint by Tower Hill Preferred Insurance Company.(Pennekamp, J.) (Entered: 11/02/2017)
10/16/2017	5	RETURN of service executed on 10/12/17 by Terri Auner, Andy Auner as to Tower Hill Preferred Insurance Company. (Attachments: # 1 Exhibit Notice of Service of Process) (Harris, Ashley) (Entered: 10/16/2017)
09/26/2017	4	NOTICE of designation under Local Rule 3.05 - track 2 issued by Deputy Clerk on 9/26/2017. (SMB) (Entered: 09/26/2017)
09/25/2017	3	STANDING ORDER: Filing of documents that exceed twenty-five pages. Signed by Judge Elizabeth A. Kovachevich on 9/25/2017. (LMD) (Entered: 09/25/2017)
09/25/2017	2	SUMMONS issued as to Tower Hill Preferred Insurance Company. (LMD) (Entered: 09/25/2017)
09/22/2017	1	COMPLAINT against Tower Hill Preferred Insurance Company (Filing fee \$ 400 receipt number TPA045993) filed by Terri Auner, Andy Auner. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A, # 3 Exhibit B)(LMD) (Entered: 09/25/2017)

PACER Service Center			
Transaction Receipt			
04/04/2018 10:50:04			
PACER Login:	moskowitzpacer:5453594:0	Client Code:	Flood
Description:	Docket Report	Search Criteria:	8:17-cv-02209-EAK-TGW
Billable Pages:	2	Cost:	0.20

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

2017 SEP 22 PM 3:50

CLERK US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA FLORIDA
CIVIL ACTION NO.

TERRI and ANDY AUNER,

Plaintiffs,

v.

TOWER HILL PREFERRED INSURANCE COMPANY,

Defendant.

8:17 cv 2209 T 17 TGW

CIVIL ACTION COMPLAINT

Plaintiffs, TERRI and ANDY AUNER, by and through their counsel, file this Complaint against Defendant, TOWER HILL PREFERRED INSURANCE COMPANY, as follows:

INTRODUCTION

1. This is an action by the Plaintiffs, homeowners, against their insurance carrier, TOWER HILL PREFERRED INSURANCE COMPANY ("Tower Hill"), for benefits owed under the flood insurance policy, which have not been paid, as a result of Hurricane Hermine.

2. The Plaintiffs purchased a flood insurance policy from Tower Hill, which participated in the U.S. Government's National Flood Insurance Program ("NFIP") pursuant to the National Flood Insurance Act of 1968 ("NFIA"), and consequently issued the federal Standard Flood Insurance Policy ("SFIP") to the Plaintiffs.

3. Tower Hill failed to pay the damages due and owing under the insurance policy.

PARTIES

4. Plaintiffs, TERRI and ANDY AUNER ("Plaintiffs"), are individuals owning property located at 6120 Waverly Road, Weeki Wachee, Florida.

5. Defendant, TOWER HILL PREFERRED INSURANCE COMPANY, is an insurance company authorized to do business in the State of Florida.

JBA - 45993
3400

JURISDICTION

6. This Court has jurisdiction of this action pursuant to the National Flood Insurance Act, specifically 42 U.S.C. § 4001, *et seq.*

COUNT ONE – BREACH OF CONTRACT

7. Plaintiffs, at all relevant times, have been the owner of certain real property located at 6120 Waverly Road, Weeki Wachee, Florida.

8. Plaintiffs purchased a flood insurance policy, Policy Number 0000049079 (the “Policy”) from Tower Hill, which covered the property at issue in this matter. A copy of the declaration page is attached hereto as **Exhibit A**.

9. All premiums on the Policy were paid, and the Policy was in full force and effect at all relevant times herein.

10. On or about September 2, 2016, Hurricane Hermine caused extensive flooding to the northwest coast of Florida.

11. Hurricane Hermine was a flood event, a covered risk under the Policy.

12. Plaintiffs’ property sustained extensive damage as a result of flood waters associated with Hurricane Hermine.

13. Following Hurricane Hermine, Plaintiffs properly and promptly submitted an insurance claim to Tower Hill for damage to their property caused by flood waters associated with Hurricane Hermine.

14. On or about October 18, 2016, Tower Hill informed Plaintiffs that it would issue payment in the amount of \$31,158.04 for all damages covered under the Policy.

15. Tower Hill’s estimate of damage and payments were insufficient to correct the damage caused by flood waters associated with Hurricane Hermine.

16. On or about October 27, 2016, Plaintiffs submitted a Proof of Loss to Tower Hill pursuant to the terms of the Policy. A copy of the Proof of Loss is attached hereto as **Exhibit B**.

17. Tower Hill has breached the terms of the Policy by failing and refusing to pay all amounts due to the Plaintiffs pursuant to the terms of the Policy.

18. Plaintiffs have complied with all conditions precedent to the bringing of this action or, in the alternative, Tower Hill has waived same.


19. As a result of Tower Hill's breach, Plaintiffs have suffered damages, including the amounts to which they are legally entitled to recover under the terms of the subject Policy.

WHEREFORE, Plaintiffs, TERRI and ANDY AUNER, bring this action against Defendant, TOWER HILL PREFERRED INSURANCE COMPANY, and request the following relief:

1. Entry of judgment in their favor for all amounts to which they are entitled under the terms of the Policy;
2. An award of the costs of this action; and
3. Such other and further relief as this Court deems just and appropriate.

Dated: September 20, 2017

MERLIN LAW GROUP, P.A.

By: 
Ashley N. Harris, Esquire
aharris@merlinlawgroup.com
777 S Harbour Island Boulevard, Suite 950
Tampa, Florida 33602
Phone: (813) 229-1000
Facsimile: (813) 229-3692
Attorneys for Plaintiffs

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

TERRI and ANDY AUNER

(b) County of Residence of First Listed Plaintiff Hernando County, Florida
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Merlin Law Group, P.A.
777 S Harbour Island Boulevard, Suite 950, Tampa, Florida

DEFENDANTS

TOWER HILL PREFERRED INSURANCE COMPANY

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 4001, et seq.

Brief description of cause:
Breach of Insurance Contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE
09/20/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

EXHIBIT A



SHELDON PALMES
8489 W GROVER CLEVELAND BLVD
HOMOSASSA, FL 34446-1118

NFIP Policy Number: 0000049079
Company Policy Number: 0000049079
Agent: ROGER SHELDON



Policy Term: 12/29/2015 12:01 AM through 12/29/2016 12:01 AM
Renewal Billing Payor: INSURED

To report a claim, call: 877-254-6819
Agency Phone: (352) 628-1030

REVISED FLOOD INSURANCE POLICY DECLARATIONS
STANDARD POLICY - DWELLING FORM

DELIVERY ADDRESS

*****AUTO**MIXED AADC 598
000893 0.3650 MB 00.439 3 3 18
TERRI AUNER / ANDY AUNER 3/893
6120 WAVERLY ROAD
WEEKI WACHEE FL 34607-1549

INSURED NAME(S) AND MAILING ADDRESS

TERRI AUNER / ANDY AUNER
6120 WAVERLY ROAD
WEEKI WACHEE, FL 34607



COMPANY MAILING ADDRESS

TOWER HILL PREFERRED INSURANCE COMPANY
PO BOX 912132
DENVER, CO 80291-2132

PROPERTY LOCATION

6120 WAVERLY RD
WEEKI WACHEE, FL 34607-1549

DESCRIPTION: N/A

RATING INFORMATION

BUILDING OCCUPANCY: SINGLE FAMILY
CONDOMINIUM INDICATOR: NOT A CONDO
NUMBER OF UNITS: N/A
PRIMARY RESIDENCE: YES
ADDITIONS/EXTENSIONS: N/A
BUILDING TYPE: ONE FLOOR
ELEVATED BUILDING TYPE: NON-ELEVATED
BASEMENT/ENCLOSURE/CRAWLSPACE TYPE: NO BASEMENT

DATE OF CONSTRUCTION: 01/01/1979
COMMUNITY NUMBER: 120110 0161 D REGULAR PROGRAM
COMMUNITY NAME: HERNANDO COUNTY
CURRENT FLOOD ZONE: AE
GRANDFATHERED: NO
FLOOD RISK/RATED ZONE: AE
ELEVATION DIFFERENCE: N/A

MORTGAGEE / ADDITIONAL INTEREST INFORMATION

FIRST MORTGAGEE: WELLS FARGO BANK, N.A. ISAOA
PO BOX 621530 ATLANTA, GA 30362
SECOND MORTGAGEE: WELLS FARGO BANK WEST, N.A. ISAOA
P.O. BOX 621530 ATLANTA, GA 30362

LOAN NUMBER: 20160084100042
LOAN NUMBER: 08502051977000
LOAN NUMBER: N/A

ADDITIONAL INTEREST:

DISASTER AGENCY:

CASE FILE NUMBER: N/A
DISASTER AGENCY:

PREMIUM CALCULATION - Pre-FIRM Subsidized

	COVERAGE	DEDUCTIBLE	BASIC COVERAGE	BASIC RATE	ADDL COVERAGE	ADDL RATE	DED. DISCOUNT/SURCHARGE	PREMIUM
BUILDING	\$250,000	\$5,000	\$60,000	0.890	\$190,000	0.810	(\$394.00)	\$1,679.00
CONTENTS	\$31,600	\$5,000	\$25,000	1.120	\$6,600	1.470	(\$72.00)	\$305.00

Standard

Coverage limitations may apply. See your policy form for details.

Endorsement Effective Date: 02/10/2016

ENDORSEMENT PREMIUM: \$0.00

First Mortgagee Changed

ANNUAL SUBTOTAL:	\$1,964.00
INCREASED COST OF COMPLIANCE:	\$55.00
COMMUNITY RATING DISCOUNT: 25%	(\$510.00)
RESERVE FUND ASSESSMENT: 18.0%	\$220.00
PROBATION SURCHARGE:	\$0.00
ANNUAL PREMIUM:	\$1,729.00
HFIAA SURCHARGE:	\$25.00
FEDERAL POLICY SERVICE FEE:	\$40.00
TOTAL:	\$1,829.00
PRORATA PREMIUM ADJUSTMENT:	\$0.00
ADJUSTED ANNUAL PREMIUM:	\$1,829.00

IN WITNESS WHEREOF, I have signed this policy below and hereby enter into this insurance Agreement

**Zero Balance Due
This Is Not A Bill**

Donald C. Matz, Jr.

Donald C. Matz, Jr. / Executive President

Scott P. Rowe

Scott P. Rowe / Secretary

This declarations page along with the Standard Flood Insurance Policy Form constitutes your flood insurance policy.

Policy issued by TOWER HILL PREFERRED INSURANCE COMPANY

Company NAIC: 29050



File: 7456646

Page 1 of 2



DocID: 49600762

Printed 02/10/2016

EXHIBIT B

0000049079
 POLICY NO. FL
12/29/2015 - 12/29/2016
 POLICY TERM
\$250,000.00
 AMT OF BLDG COV AT TIME OF LOSS
\$31,600.00
 AMT OF CONTS COV AT TIME OF LOSS

DEPARTMENT OF HOMELAND SECURITY
 FEDERAL EMERGENCY MANAGEMENT AGENCY
 NATIONAL FLOOD INSURANCE PROGRAM
PROOF OF LOSS
 (See reverse side for Privacy Act Statement and
 Paperwork Burden Disclosure Notice)

O.M.B. No. 1660-0005
 Expires April 30, 2017

Sheldon Palmes
 AGENT 8469 W Grover Cleveland Blvd,
Homosassa, FL 34448
 AGENCY AT

TO THE NATION FLOOD INSURANCE PROGRAM:

At time of loss, by above indicated policy of insurance, you insured the interest of

Terri Auner & Andy Auner

against loss by flood to the property described according to the terms and conditions of said policy and of all forms, endorsements, transfers and assignments attached thereto.

TIME AND ORIGIN. A Flood loss occurred about the hour of 2:30 o'clock AM.,
 on the 2 day of September 20 16. The cause of said loss was:

OCCUPANCY The premises described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever:
Owner Occupied

INTEREST No other person or persons had any interest therein or encumbrance thereon except

1. FULL AMOUNT OF INSURANCE application to the property for which claim is presented is.....	\$	<u>281,600.00</u>
2. ACTUAL CASH VALUE of building structures.....	\$	<u>141,600.00</u>
3. ADD ACTUAL CASH VALUE OF CONTENTS of personal property insured.....	\$	<u>30,400.00</u>
4. ACTUAL CASH VALUE OF ALL PROPERTY.....	\$	<u>172,000.00</u>
5. FULL COST OF REPAIR OR REPLACEMENT (Building and Contents).....	\$	<u>215,000.00</u>
6. LESS APPLICABLE DEPRECIATION.....	\$	<u>43,000.00</u>
7. ACTUAL CASH VALUE LOSS is.....	\$	<u>172,000.00</u>
8. LESS DEDUCTIBLES.....	\$	<u>5,000.00</u>
9. NET AMOUNT CLAIMED under above numbered policy is.....	\$	<u>167,000.00</u>

The said loss did not originate by any act, design or procurement on the part of your insured, nothing has been done by or with the privity or consent of insured to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss, no property saved has in any manner been concealed, and no attempt to deceive the said insurer as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

I understand that this insurance (policy) is issued Pursuant to the National Flood Insurance Act of 1968, or Any Act Amendatory thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B, and that knowingly and willfully making any false answers or misrepresentations of fact may be punishable by fine of imprisonment under applicable United State Codes.

Subrogation - To the extent of the payment made or advanced under this policy, the insured hereby assigns, transfers and sets over the insurer all rights, claims or interest that he has against any person, firm or corporation liable for the loss or damage to the property for which payment is made or advanced. He also hereby authorizes the insurer to sue any such third party in his name.

The insured hereby warrants that no release has been given or will be given or settlement or compromise made or agreed upon with any third party who may be liable in damages to the insured with respect to the claim being made herein.

The furnishing of this blank or the preparation of proofs by a representative of the above insurer is not a waiver of any of its rights.

I declare under penalty of perjury that the information contained in the foregoing is true and correct to the best of my knowledge and belief.

State of Florida
 County of HEMLOCK

Executed this 27th day of October, 20 16

Name Ruth P. Wharton

Andy Auner ASG-000-52-296.0
Terri Auner ASG-000-54-863-0.



U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:17-cv-02081-VMC-JSS

Batista et al v. Allstate Insurance Company
Assigned to: Judge Virginia M. Hernandez Covington
Referred to: Magistrate Judge Julie S. Sneed
Cause: 42:4001 National Insurance Flood Act

Date Filed: 08/31/2017
Jury Demand: None
Nature of Suit: 110 Insurance
Jurisdiction: Federal Question

Plaintiff

John Batista

represented by **Ashley Noelle Harris**
Merlin Law Group, PA
Suite 950
777 S Harbour Island Blvd
Tampa, FL 33602
813/229-1000
Fax: 813/229-3692
Email: aharris@merlinlawgroup.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William C. Harris
Merlin Law Group, PA
Suite 950
777 S Harbour Island Blvd
Tampa, FL 33602
813/229-1000
Email: charris@merlinlawgroup.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Theresa Batista

represented by **Ashley Noelle Harris**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William C. Harris
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Allstate Insurance Company

represented by **J. Michael Pennekamp**
Fowler White Burnett, PA
1395 Brickell Ave 14th Flr
Miami, FL 33131-3353

305/789-9200
 Fax: 305/789-9201
 Email: jmp@fowler-white.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mediator

Jacob J. Munch

represented by **Jacob J. Munch**
 Munch & Munch, PA
 Suite 325
 600 S Magnolia Ave
 Tampa, FL 33606
 813/254-1557
 Fax: 813/254-5172
 Email: sealaw@tampabay.rr.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/13/2018	20	ENDORSED ORDER granting 19 Motion for Extension of Time to Complete Discovery. Plaintiffs' Disclosure of Expert Testimony shall be due on or before March 15, 2018;- Defendant's Disclosure of Expert Testimony shall be due on or before April 5, 2018;and- Discovery shall be completed by April 20, 2018. Signed by Judge Virginia M. Hernandez Covington on 2/13/2018. (Covington, Virginia) (Entered: 02/13/2018)
02/13/2018	19	Joint MOTION for Extension of Time to Complete Discovery of <i>Discovery Deadlines</i> by John Batista, Theresa Batista. (Harris, Ashley) (Entered: 02/13/2018)
12/04/2017	18	CERTIFICATE of interested persons and corporate disclosure statement by Allstate Insurance Company identifying Corporate Parent The Allstate Corporation, Corporate Parent Allstate Insurance Holdings, LLC for Allstate Insurance Company.. (Pennekamp, J.) (Entered: 12/04/2017)
12/04/2017	17	CERTIFICATE of interested persons and corporate disclosure statement by John Batista, Theresa Batista. (Harris, Ashley) (Entered: 12/04/2017)
11/22/2017	16	NOTICE OF RESCHEDULING HEARING: The Final Pretrial Conference previously scheduled for 9/13/2017 is rescheduled. New scheduling date and time: 9/20/2018 at 9:00 AM in Tampa Courtroom 14 B before Judge Virginia M. Hernandez Covington (SAT) (Entered: 11/22/2017)
10/30/2017	15	ORDER appointing Jacob Munch, Esq. as mediator in this action. The mediation conference is scheduled for April 9, 2018 at 10:00 a.m. The Court directs that all counsel, parties, corporate representatives, and any other required claims professionals shall be present at the mediation conference with full authority to negotiate a settlement. The Court does not allow mediation by telephone or video conference. Personal attendance is required. See Local Rule 9.05(c). Signed by Judge Virginia M. Hernandez Covington on 10/30/2017. (AWM) (Entered: 10/30/2017)
10/30/2017	14	NOTICE of mediation conference/hearing to be held on April 9, 2018 at 10:00a.m. before Jacob Munch.(Harris, Ashley) (Entered: 10/30/2017)
10/27/2017	13	ENDORSED ORDER: On October 17, 2017, the Court entered its Case Management and Scheduling Order, directing Batista to file a notice of mediation by October 24,

		2017. (Doc. # 12). A review of the docket reveals that no notice has been filed. Accordingly, Batista is directed to file a notice of mediation, indicating the date, time, and location of the mediation conference by October 30, 2017. Signed by Judge Virginia M. Hernandez Covington on 10/27/2017. (AWM) (Entered: 10/27/2017)
10/17/2017	12	CASE MANAGEMENT AND SCHEDULING ORDER: Final Pretrial Conference set for 9/13/2018 at 9:00 AM in Tampa Courtroom 14 B before Judge Virginia M. Hernandez Covington, Bench Trial set for the October 2018 trial term in Tampa Courtroom 14 B before Judge Virginia M. Hernandez Covington, Conduct mediation hearing by 6/11/2018. Lead counsel to coordinate dates. Signed by Judge Virginia M. Hernandez Covington on 10/17/2017. (SAT) (Entered: 10/17/2017)
10/16/2017	11	CASE MANAGEMENT REPORT. (Pennekamp, J.) (Entered: 10/16/2017)
10/04/2017	10	NOTICE of Appearance by William C. Harris on behalf of John Batista, Theresa Batista (Harris, William) (Entered: 10/04/2017)
10/02/2017	9	ENDORSED ORDER: Counsel are directed to meet and confer, in person or by telephone, and by October 16, 2017, file a completed Case Management Report. This document can be found on Judge Covington's page of the Court's website at www.flmd.uscourts.gov. Please be advised that the Court's Case Management Report form is different from those used by other judges. The Court will then determine whether a Case Management Hearing is necessary before entry of a Case Management and Scheduling Order. Signed by Judge Virginia M. Hernandez Covington on 10/2/2017. (AWM) (Entered: 10/02/2017)
10/02/2017	8	ANSWER and affirmative defenses to 1 Complaint by Allstate Insurance Company. (Pennekamp, J.) (Entered: 10/02/2017)
09/27/2017	7	NOTICE of pendency of related cases per Local Rule 1.04(d) by John Batista, Theresa Batista. Related case(s): no (Harris, Ashley) (Entered: 09/27/2017)
09/14/2017	6	RETURN of service executed on September 11, 2017 by John Batista, Theresa Batista as to John Batista, Theresa Batista. (Attachments: # 1 Exhibit Notice of Service of Process) (Harris, Ashley) (Entered: 09/14/2017)
09/13/2017	5	***TERMINATED-COUNSEL NOTIFIED TO REFILE USING CORRECT EVENT "SUMMONS RETURNED EXECUTED"***PROOF of service by John Batista, Theresa Batista (Attachments: # 1 Exhibit Notice of Service of Process)(Harris, Ashley) Modified on 9/14/2017 (LSS). (Entered: 09/13/2017)
09/13/2017	4	ORDER: This matter comes before the Court sua sponte. The Court takes this opportunity to address service of process as required by Federal Rule of Civil Procedure 4. See Order for details. Signed by Judge Virginia M. Hernandez Covington on 9/13/2017. (SAT) (Entered: 09/13/2017)
09/13/2017	3	RELATED CASE ORDER AND NOTICE of designation under Local Rule 3.05 - track 2. Signed by Judge Virginia M. Hernandez Covington on 9/13/2017. (SAT) (Entered: 09/13/2017)
08/31/2017	2	SUMMONS issued as to Allstate Insurance Company. (LSS) (Entered: 09/05/2017)
08/31/2017	1	COMPLAINT against Allstate Insurance Company (Filing fee \$ 400 receipt number TPA-45610) filed by John Batista, Theresa Batista. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A, # 3 Exhibit B)(LSS) (Entered: 09/05/2017)

Transaction Receipt			
04/04/2018 10:54:37			
PACER Login:	moskowitzpacer:5453594:0	Client Code:	Flood
Description:	Docket Report	Search Criteria:	8:17-cv-02081-VMC-JSS
Billable Pages:	3	Cost:	0.30

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

JOHN AND THERESA BATISTA,

CIVIL ACTION NO.

Plaintiffs,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

CIVIL ACTION COMPLAINT

Plaintiffs, JOHN and THERESA BATISTA, by and through their counsel, file this Complaint against Defendant, ALLSTATE INSURANCE COMPANY, as follows:

INTRODUCTION

1. This is an action by the Plaintiffs, homeowners, against their insurance carrier, ALLSTATE INSURANCE COMPANY (“Allstate”), for benefits owed under the flood insurance policy, which have not been paid, as a result of Hurricane Hermine.

2. The Plaintiffs purchased a flood insurance policy from Allstate, which participated in the U.S. Government’s National Flood Insurance Program (“NFIP”) pursuant to the National Flood Insurance Act of 1968 (“NFIA”), and consequently issued the federal Standard Flood Insurance Policy (“SFIP”) to the Plaintiffs.

3. Allstate failed to pay the damages due and owing under the insurance policy.

PARTIES

4. Plaintiffs, JOHN and THERESA BATISTA (“Plaintiffs”), are individuals owning property located at 3250 Minnow Creek Drive, Hernando Beach, Florida.

5. Defendant, ALLSTATE INSURANCE COMPANY, is an insurance company authorized to do business in the State of Florida.

JURISDICTION

6. This Court has jurisdiction of this action pursuant to the National Flood Insurance Act, specifically 42 U.S.C. § 4001, *et seq.*

COUNT ONE – BREACH OF CONTRACT

7. Plaintiffs, at all relevant times, have been the owner of certain real property located at 3250 Minnow Creek Drive, Hernando Beach, Florida.

8. Plaintiffs purchased a flood insurance policy, Policy Number 001803975935 (the “Policy”) from Allstate, which covered the property at issue in this matter. A copy of the declaration page is attached hereto as **Exhibit A**.

9. All premiums on the Policy were paid, and the Policy was in full force and effect at all relevant times herein.

10. On or about September 2, 2016, Hurricane Hermine caused extensive flooding to the northwest coast of Florida.

11. Hurricane Hermine was a flood event, a covered risk under the Policy.

12. Plaintiffs’ property sustained extensive damage as a result of flood waters associated with Hurricane Hermine.

13. Following Hurricane Hermine, Plaintiffs properly and promptly submitted an insurance claim to Allstate for damage to their property caused by flood waters associated with Hurricane Hermine.

14. On or about October 2, 2016, Allstate informed Plaintiffs that it would issue payment in the amount of \$71,741.47 for all damages covered under the Policy.

15. Allstate’s estimate of damage and payments were insufficient to correct the damage caused by flood waters associated with Hurricane Hermine.

16. On or about January 23, 2017, Plaintiffs submitted a Proof of Loss to Allstate pursuant to the terms of the Policy. A copy of the Proof of Loss is attached hereto as **Exhibit B**.

17. Allstate has breached the terms of the Policy by failing and refusing to pay all amounts due to the Plaintiffs pursuant to the terms of the Policy.

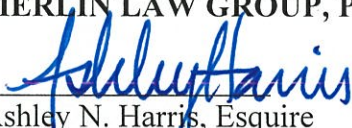
18. Plaintiffs have complied with all conditions precedent to the bringing of this action or, in the alternative, Allstate has waived same.

19. As a result of Allstate's breach, Plaintiffs have suffered damages, including the amounts to which they are legally entitled to recover under the terms of the subject Policy.

WHEREFORE, Plaintiffs, JOHN and THERESA BATISTA, bring this action against Defendant, ALLSTATE INSURANCE COMPANY and request the following relief:

1. Entry of judgment in their favor for all amounts to which they are entitled under the terms of the Policy;
2. An award of the costs of this action; and
3. Such other and further relief as this Court deems just and appropriate.

Dated: August 31, 2017

MERLIN LAW GROUP, P.A.
By: 
Ashley N. Harris, Esquire
aharris@merlinlawgroup.com
777 S Harbour Island Boulevard, Suite 950
Tampa, Florida 33602
Phone: (813) 229-1000
Facsimile: (813) 229-3692
Attorneys for Plaintiffs

JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law.

Plaintiff(s):

First Listed Plaintiff:

JOHN BATISTA ;

County of Residence: Hernando County

Additional Plaintiff(s):

THERESA BATISTA ;

Defendant(s):

First Listed Defendant:

ALLSTATE INSURANCE COMPANY ;

County of Residence: Outside This District

County Where Claim For Relief Arose: Hernando County

Plaintiff's Attorney(s):

Ashley Harris (JOHN BATISTA)
Merlin Law Group, P.A.
777 S Harbour Island Boulevard, Suite 950
Tampa, Florida 33602
Phone: 813-229-1000
Fax: 813-229-3692
Email: aharris@merlinlawgroup.com

Defendant's Attorney(s):

William C Harris
Merlin Law Group, P.A.
777 S Harbour Island Boulevard, Suite 950
Tampa, Florida 33602
Phone: 813-229-1000
Fax: 813-229-3692
Email: charris@merlinlawgroup.com

Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: N/A

Defendant: N/A

Origin: 1. Original Proceeding

Nature of Suit: 110 Insurance Contracts

Cause of Action: Action for damages under a National Flood Insurance Program policy pursuant to 42 U.S.C. § 4001, et seq.

Requested in Complaint

Class Action: Not filed as a Class Action

Monetary Demand (in Thousands):

Jury Demand: No

Related Cases: Is NOT a refiling of a previously dismissed action

Signature: Ashley N. Harris

Date: 8/31/17

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.



PO BOX 2964
 SHAWNEE MISSION, KS 66201-1364
 800-527-2634
 NAIC Number: 19232

Policy Number
1803975935



FLOOD DWELLING FORM STANDARD POLICY ENDORSEMENT DECLARATION

Named Insured and Mailing Address: JOHN & THERESA BATISTA 3250 MINNOW CREEK DRIVE HERNANDO BEACH, FL 34607	Policy Period: 12/26/2015 12:01am to 12/26/2016 12:01am Policy Term: ONE YEAR EFFECTIVE DATE OF CHANGE: 12/26/2015 Original New Business Effective Date: Reinstatement Date:
	Agent No: 056222 KILLINGSWORTH BKSULL PO BOX 1750 BROOKSVILLE, FL 34605-1750 Agent Phone: 352-796-1451
Payor: INSURED	

Property Location:
 3250 MINNOW CREEK
 SPRING HILL, FL 34607-2845

RATING DESCRIPTION	
Property/Building	Contents Location

Insured's Principal Residence: Y
SINGLE FAMILY; ONE FLOOR; NON-ELEVATED WITHOUT BASEMENT
LOWEST FLOOR ONLY ABOVE GROUND LEVEL Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on **01/01/1964 Pre-FIRM Subsidized**

LOCATION INFORMATION

Community Name: **HERNANDO COUNTY** * No: **1201100143D**
 Status: **REGULAR** CRS Class: **5** FIRM Zone: **VE** Current Flood Zone: **VE** Elevation Difference: Grandfathered: **N**

COVERAGE AND RATING INFORMATION						
Coverage Type	Coverage Limit	Deductible	Rate	Deductible Discount	Premium	
Building	\$ 250,000	\$ 2,000	1.16/2.05	\$ 0.00	\$	4,591.00
Contents	\$ 51,200	\$ 2,000	1.44/3.51	\$ 0.00	\$	1,280.00
ICC PREMIUM						\$ 55.00
ANNUAL SUBTOTAL						\$ 5,926.00
CRS DISCOUNT(25%)						\$ -1,482.00
RESERVE FUND ASSESSMENT						\$ 667.00
HFIAA SURCHARGE						\$ 25.00
FEDERAL POLICY FEE						\$ 45.00
TOTAL PREMIUM						\$ 5,181.00
ENDORSEMENT PREMIUM						\$ -2,338.00

THIS IS NOT A BILL

Policy Changes:
PRIMARY OR PRINCIPAL RESIDENCE CORRECTED

Attachments:

MERLIN

LAW GROUP

TAMPA, FL
777 S. HARBOUR ISLAND BLVD.
SUITE 950
TAMPA, FL 33602
TELEPHONE: (813) 229-1000
FAX: (813) 229-3692

EL225926039US

January 23, 2017

Via Overnight Mail

Allstate Insurance Company
P.O. Box 9880
Mobile, AL 36691

Re: Insured: John & Theresa Batista
Address: 3250 Minnow Creek Drive, Hernando Beach, FL 34607
Date of Loss: September 2, 2016
Policy No.: 1803975935

Dear Sir or Madam:

Enclosed is our client's proof of loss, and supporting documentation. Specifically, please find the following:

- Royal Palms Construction LLC line-by-line estimate in the amount of approximately \$55,451.59 and accompanying photographs;
- GeoEngineering, Inc. report dated October 4, 2016 with structure foundation stabilization estimate in the amount of approximately \$60,250.00;
- Contents inventory in the amount of approximately \$55,986.96;
- Photos of the damaged building and contents.

This proof of loss is for the total amount of damage claimed, and is inclusive of any previous payments made to Dr. and Mrs. Batista.

Please contact me with any questions at aharris@merlinlawgroup.com or 813-229-1000.

Very truly yours,



Ashley N. Harris

Enclosures.

cc: George Suydam, Central Florida Public Adjusters II, Inc.
Dr. John Batista, M.D.

www.merlinlawgroup.com

Blog: propertyinsurancecoveragelaw.com



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Tracking Number: EL225926039US

Updated Delivery Day: Tuesday, January 24, 2017
Signed for By: WAIVED // MOBILE, AL 36691 // 8:31 am

Product & Tracking Information

Postal Product:

Features:

PO to Addressee

Available Actions

[Proof of Delivery](#)

[Text Updates](#)

[Email Updates](#)

DATE & TIME	STATUS OF ITEM	LOCATION
January 24, 2017 , 8:31 am	Delivered, PO Box	MOBILE, AL 36691
Your item has been delivered and is available at a PO Box at 8:31 am on January 24, 2017 in MOBILE, AL 36691. Waiver of signature was exercised at time of delivery.		
January 24, 2017 , 8:16 am	Arrived at Post Office	MOBILE, AL 36609
January 24, 2017 , 7:16 am	Arrived at USPS Facility	MOBILE, AL 36619
January 23, 2017 , 9:30 pm	Departed USPS Facility	TAMPA, FL 33663
January 23, 2017 , 6:53 pm	Arrived at USPS Facility	TAMPA, FL 33663

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- [Terms of Use](#)
- [FOIA](#)
- [No FEAR Act EEO Data](#)

001803975935

POLICY NO. FL

12/26/2015 - 12/26/2016

POLICY TERM

\$250,000.00

AMT OF BLDG COV AT TIME OF LOSS

\$51,200.00

AMT OF CONTS COV AT TIME OF LOSS

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM

PROOF OF LOSS

(See reverse side for Privacy Act Statement and
Paperwork Burden Disclosure Notice)

O.M.B. No. 1660-0005
Expires April 30, 2017

Killingsworth Bksvll
AGENT

PO Box 1750, Brooksville, FL
AGENCY AT

TO THE NATION FLOOD INSURANCE PROGRAM:

At time of loss, by above indicated policy of insurance, you insured the interest of

John & Theresa Batista, 3250 Minnow Creek, Spring Hill, FL 34607-2845

against loss by flood to the property described according to the terms and conditions of said policy and of all forms, endorsements, transfers and assignments attached thereto.

TIME AND ORIGIN. A Flood - with NFIP loss occurred about the hour of Eight o'clock A M.,
on the 2 day of Sept. 20 16. The cause of said loss was:

Hurricane Hermine

OCCUPANCY The premises described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever:

Owner

INTEREST No other person or persons had any interest therein or encumbrance thereon except

John & Theresa Batista

1. FULL AMOUNT OF INSURANCE application to the property for which claim is presented is.....	\$ <u>301,200.00</u>
2. ACTUAL CASH VALUE of building structures.....	\$ <u>160,000.00</u>
3. ADD ACTUAL CASH VALUE OF CONTENTS of personal property insured.....	\$ <u>51,200.00</u>
4. ACTUAL CASH VALUE OF ALL PROPERTY.....	\$ <u>211,200.00</u>
5. FULL COST OF REPAIR OR REPLACEMENT (Building and Contents).....	\$ <u>171,688.56</u>
6. LESS APPLICABLE DEPRECIATION.....	\$ <u>17,168.85</u>
7. ACTUAL CASH VALUE LOSS is.....	\$ <u>154,519.71</u>
8. LESS DEDUCTIBLES.....	\$ <u>4,000.00</u>
9. NET AMOUNT CLAIMED under above numbered policy is.....	\$ <u>150,519.71</u>

The said loss did not originate by any act, design or procurement on the part of your insured, nothing has been done by or with the privity or consent of insured to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss, no property saved has in any manner been concealed, and no attempt to deceive the said insurer as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

I understand that this insurance (policy) is issued Pursuant to the National Flood Insurance Act of 1968, or Any Act Amendatory thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B, and that knowingly and willfully making any false answers or misrepresentations of fact may be punishable by fine of imprisonment under applicable United State Codes.

Subrogation - To the extent of the payment made or advanced under this policy; the insured hereby assigns, transfers and sets over the insurer all rights, claims or interest that he has against any person, firm or corporation liable for the loss or damage to the property for which payment is made or advanced. He also hereby authorizes the insurer to sue any such third party in his name.

The insured hereby warrants that no release has been given or will be given or settlement or compromise made or agreed upon with any third party who may be liable in damages to the insured with respect to the claim being made herein.

The furnishing of this blank or the preparation of proofs by a representative of the above insurer is not a waiver of any of its rights.

I declare under penalty of perjury that the information contained in the foregoing is true and correct to the best of my knowledge and belief.

Executed this 11th day of January, 20 17

Name Kim Stefan

Hernando County, Florida



KIM STEFAN
MY COMMISSION # FF 009667
EXPIRES: April 18, 2017
Bonded Thru Budget Notary Services

U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:17-cv-02214-JSM-MAP

Samuelson et al v. Tower Hill Preferred Insurance Company
Assigned to: Judge James S. Moody, Jr
Referred to: Magistrate Judge Mark A. Pizzo
Cause: 42:4001 National Insurance Flood Act

Date Filed: 09/22/2017
Jury Demand: Plaintiff
Nature of Suit: 110 Insurance
Jurisdiction: Federal Question

Plaintiff**Marcia Samuelson**

represented by **Ashley Noelle Harris**
Merlin Law Group, PA
Suite 950
777 S Harbour Island Blvd
Tampa, FL 33602
813/229-1000
Fax: 813/229-3692
Email: aharris@merlinlawgroup.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff**Randy Samuelson**

represented by **Ashley Noelle Harris**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**Tower Hill Preferred Insurance Company**

represented by **J. Michael Pennekamp**
Fowler White Burnett, PA
1395 Brickell Ave 14th Flr
Miami, FL 33131-3353
305/789-9200
Fax: 305/789-9201
Email: jmp@fowler-white.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/07/2017	9	CASE MANAGEMENT AND SCHEDULING ORDER: Discovery due by 12/5/2018, Dispositive motions due by 1/7/2019, Pretrial Conference set for TUESDAY, APRIL 9, 2019 at 9:30 AM in Tampa Courtroom 17 before Judge James S. Moody Jr., Bench Trial set for MAY 2019 in Tampa Courtroom 17 before Judge James S. Moody Jr. Signed by Judge James S. Moody, Jr. on 12/7/2017. (AD) (Entered: 12/07/2017)
12/05/2017	8	CASE MANAGEMENT REPORT. (Pennekamp, J.) (Entered: 12/05/2017)

11/02/2017	7	CORPORATE Disclosure Statement by Tower Hill Preferred Insurance Company identifying Corporate Parent Tomoka Re Holdings, Inc. for Tower Hill Preferred Insurance Company.. (Pennekamp, J.) (Entered: 11/02/2017)
11/02/2017	6	ANSWER and affirmative defenses to 1 Complaint by Tower Hill Preferred Insurance Company.(Pennekamp, J.) (Entered: 11/02/2017)
10/16/2017	5	RETURN of service executed on October 12, 2017 by Marcia Samuelson, Randy Samuelson as to Tower Hill Preferred Insurance Company. (Attachments: # 1 Exhibit Notice of Service of Process)(Harris, Ashley) (Entered: 10/16/2017)
10/10/2017	4	NOTICE of pendency of related cases re 3 Related case order and track 2 notice per Local Rule 1.04(d) by Marcia Samuelson, Randy Samuelson. Related case(s): no (Harris, Ashley) (Entered: 10/10/2017)
09/26/2017	3	RELATED CASE ORDER AND NOTICE of designation under Local Rule 3.05 - track 2. Issued by Deputy Clerk on 9/26/2017. (AD) (Entered: 09/26/2017)
09/25/2017	2	SUMMONS issued as to Tower Hill Preferred Insurance Company. (BSN) (Entered: 09/25/2017)
09/22/2017	1	COMPLAINT against Tower Hill Preferred Insurance Company with Jury Demand (Filing fee \$ 400 receipt number tpa045999) filed by Marcia Samuelson, Randy Samuelson. (Attachments: # 1 Exhibit, # 2 Civil Cover Sheet)(BSN) (Entered: 09/25/2017)

PACER Service Center			
Transaction Receipt			
04/04/2018 10:58:17			
PACER Login:	moskowitzpacer:5453594:0	Client Code:	Flood
Description:	Docket Report	Search Criteria:	8:17-cv-02214-JSM-MAP
Billable Pages:	2	Cost:	0.20

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

MARCIA and RANDY SAMUELSON,

Plaintiffs,

v.

TOWER HILL PREFERRED INSURANCE COMPANY,

Defendant.

CIVIL ACTION NO.

8:17cv2214T 30 MAR

2017 SEP 22 PM 3:51
MIDDLE DISTRICT OF FLORIDA
TALLAHASSEE, FLORIDA

FILED

CIVIL ACTION COMPLAINT

Plaintiffs, MARCIA and RANDY SAMUELSON, by and through their counsel, file this Complaint against Defendant, TOWER HILL PREFERRED INSURANCE COMPANY, as follows:

INTRODUCTION

1. This is an action by Plaintiffs, homeowners, against their insurance carrier, TOWER HILL PREFERRED INSURANCE COMPANY ("Tower Hill"), for benefits owed under the flood insurance policy, which have not been paid, as a result of Hurricane Hermine.

2. Plaintiffs purchased a flood insurance policy from Tower Hill, which participated in the U.S. Government's National Flood Insurance Program ("NFIP") pursuant to the National Flood Insurance Act of 1968 ("NFIA"), and consequently issued the federal Standard Flood Insurance Policy ("SFIP") to Plaintiff.

3. Tower Hill failed to pay the damages due and owing under the insurance policy.

PARTIES

4. Plaintiffs, MARCIA and RANDY SAMUELSON ("Plaintiffs"), own property located at 3748 N Hiawatha Terrace, Crystal River, Citrus County, Florida.

TRA - 45999
\$600

5. Defendant, TOWER HILL PREFERRED INSURANCE COMPANY, is an insurance company authorized to do business in the State of Florida.

JURISDICTION

6. This Court has jurisdiction of this action pursuant to the National Flood Insurance Act, specifically 42 U.S.C. § 4001, *et seq.*

COUNT ONE – BREACH OF CONTRACT

7. Plaintiffs, at all relevant times, have been the owners of certain real property located at 3748 North Hiawatha Terrace, Crystal River, Citrus County, Florida.

8. Plaintiffs purchased a flood insurance policy, Policy Number 8702109602 (the “Policy”) from Tower Hill, which covered the property at issue in this matter. A copy of the declaration page is attached hereto as **Exhibit A**.

9. All premiums on the Policy were paid, and the Policy was in full force and effect at all relevant times herein.

10. On or about September 2, 2016, Hurricane Hermine caused extensive flooding to the northwest coast of Florida.

11. Hurricane Hermine was a flood event, a covered risk under the Policy.

12. Plaintiffs’ property sustained extensive damage as a result of flood waters associated with Hurricane Hermine.

13. Following Hurricane Hermine, Plaintiffs properly and promptly submitted an insurance claim to Tower Hill for damage to their property caused by flood waters associated with Hurricane Hermine.

14. On or about February 21, 2017, Tower Hill issued payment to Plaintiffs in the amount of \$114,069.41 for building damages and \$15,000.00 for contents damages under the Policy.

15. Tower Hill's estimate of damage and payments were insufficient to correct the damage caused by flood waters associated with Hurricane Hermine.

16. On or about October 29, 2016, Plaintiffs submitted a Proof of Loss to Tower Hill pursuant to the terms of the Policy. A copy of the Proof of Loss is attached hereto as **Exhibit B**.

17. Tower Hill has breached the terms of the Policy by failing and refusing to pay all amounts due to Plaintiffs pursuant to the terms of the Policy.

18. Plaintiffs have complied with all conditions precedent to the bringing of this action or, in the alternative, Tower Hill has waived same.

19. As a result of Tower Hill's breach, Plaintiffs have suffered damages, including the amounts to which they are legally entitled to recover under the terms of the subject Policy.

WHEREFORE, Plaintiffs, MARCIA and RANDY SAMUELSON, bring this action against Defendant, TOWER HILL PREFERRED INSURANCE COMPANY, and request the following relief:

1. Entry of judgment in their favor for all amounts to which they are entitled under the terms of the Policy;
2. An award of the costs of this action; and
3. Such other and further relief as this Court deems just and appropriate.

Dated: September 20, 2017

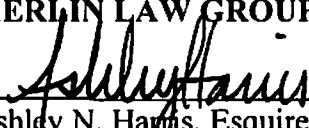
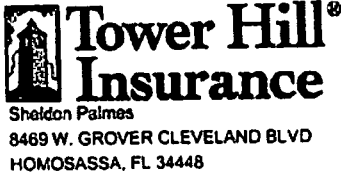
MERLIN LAW GROUP, P.A.
By: 
Ashley N. Harris, Esquire
aharris@merlmlawgroup.com
777 S Harbour Island Boulevard, Suite 950
Tampa, Florida 33602
Phone: (813) 229-1000
Facsimile: (813) 229-3692
Attorneys for Plaintiffs

EXHIBIT A



NFIP Policy Number: 8702109602
 Company Policy Number: 8702109602
 Agent: ROGER SHELDON

Policy Term: 07/28/2016 12:01 AM through 07/28/2017 12:01 AM
 Renewal Billing Payor: FIRST MORTGAGEE
 To report a claim, call: (877) 254-6819
 Agency Phone: (352) 628-1030

RENEWAL FLOOD INSURANCE POLICY DECLARATIONS
 STANDARD POLICY - DWELLING FORM

DELIVERY ADDRESS

MARCIA SAMUELSON
 3748 N HIAWATHA TER
 CRYSTAL RIVER, FL 34428-6203

INSURED NAME(S) AND MAILING ADDRESS

MARCIA SAMUELSON
 3748 N HIAWATHA TER
 CRYSTAL RIVER, FL 34428-6203

COMPANY MAILING ADDRESS

TOWER HILL PRIME INSURANCE COMPANY
 PO BOX 911968
 DENVER, CO 80291-1968

PROPERTY LOCATION

3748 N HIAWATHA TER
 CRYSTAL RIVER, FL 34428-6203

DESCRIPTION: N/A

RATING INFORMATION

ORIGINAL NEW BUSINESS DATE: 07/28/2004
 REINSTATEMENT DATE: N/A
 BUILDING OCCUPANCY: SINGLE FAMILY
 CONDOMINIUM INDICATOR: NOT A CONDO
 NUMBER OF UNITS: N/A
 PRIMARY RESIDENCE: YES
 ADDITIONS/EXTENSIONS: N/A
 BUILDING TYPE: ONE FLOOR
 BASEMENT/ENCLOSURE/CRAWLSPACE TYPE: NO BASEMENT

DATE OF CONSTRUCTION: 05/21/1970
 COMMUNITY NUMBER: 120063 0115 B REGULAR PROGRAM
 COMMUNITY NAME: CITRUS COUNTY
 CURRENT FLOOD ZONE: A11
 GRANDFATHERED: NO
 FLOOD RISK/RATED ZONE: A11
 ELEVATION DIFFERENCE: N/A
 ELEVATED BUILDING TYPE: NON-ELEVATED

MORTGAGEE / ADDITIONAL INTEREST INFORMATION

FIRST MORTGAGEE: NATIONSTAR MORTGAGE LLC ISAOA / ATIMA
 PO BOX 7729 SPRINGFIELD, OH 45501-7729

LOAN NUMBER: 063056880

SECOND MORTGAGEE:

LOAN NUMBER: N/A

ADDITIONAL INTEREST:

LOAN NUMBER: N/A

DISASTER AGENCY:

CASE FILE NUMBER: N/A
 DISASTER AGENCY:

PREMIUM CALCULATION – Pre-FIRM Subsidized

	COVERAGE	DEDUCTIBLE	BASIC COVERAGE	BASIC RATE	ADD'L COVERAGE	ADD'L RATE	DED. DISCOUNT/SURCHARGE	PREMIUM
BUILDING	\$250,000	\$2,000	\$60,000	0.940	\$190,000	0.850	\$0.00	\$2,179.00
CONTENTS	\$20,000	\$2,000	\$20,000	1.180	\$0	1.550	\$0.00	\$236.00

Coverage limitations may apply. See your policy form for details.

ANNUAL SUBTOTAL:	\$2,415.00
INCREASED COST OF COMPLIANCE:	\$55.00
COMMUNITY RATING DISCOUNT: 25%	(\$618.00)
RESERVE FUND ASSESSMENT: 15.0%	\$278.00
PROBATION SURCHARGE:	\$0.00
ANNUAL PREMIUM:	\$2,130.00
HFIAA SURCHARGE:	\$25.00
FEDERAL POLICY SERVICE FEE:	\$50.00
TOTAL:	\$2,205.00

IN WITNESS WHEREOF, I have signed this policy below and hereby enter into this Insurance Agreement

Donald C. Matz, Jr. / Executive President

Scott P. Rowe / Secretary

Zero Balance Due
This Is Not A Bill

This declarations page along with the Standard Flood Insurance Policy Form constitutes your flood insurance policy.

Policy issued by TOWER HILL PRIME INSURANCE COMPANY

Company NAIC: 11027

COMPANY MAILING ADDRESS
TOWER HILL PREFERRED INSURANCE COMPANY
PO BOX 912132
DENVER, CO 80291-2132

PROPERTY LOCATION
3748 N HIAWATHA TER
CRYSTAL RIVER, FL 34429-8200

RAVING ENGINEER
BUILDING OCCUPANCY
CONDOMINIUM INDICATOR
NUMBER OF UNITS
PRIMARY RESIDENCE
ADDITIONS/EXTENSIONS
BUILDING TYPE
ELEVATED BUILDING TYPE
BASEMENT/CLOSURE/CRAWL SPACE TYPE
NO BASEMENT

DESCRIPTION N/A

DATE OF CONSTRUCTION
COMMUNITY NUMBER
COMMUNITY NAME
CURRENT FLOOD ZONE
GRANDFATHERED
FLOOD RISK RATED ZONE
ELEVATION DIFFERENCE

MORTGAGE / ADDITIONAL INTEREST INFORMATION

FIRST MORTGAGEE NATIONSTAR MORTGAGE LLC ISAOA / ATDMA
 PO BOX 7729 SPRINGFIELD, OH 45501-7729

SECOND MORTGAGEE:

ADDITIONAL INTEREST:

DISASTER AGENCY:

PREMIUM CALCULATION - PFC FIRM SALES (12/18)

COVERAGE	DEDUCTIBLE	BASE COVERAGE	BASIC RATE	ADDITIONAL COVERAGE	ADDITIONAL RATE	REDUCED PREMIUM DISCOUNT	DISCOUNT
BUILDING	\$250,000	\$2,000	0.940	\$190,000	0.850	\$0.00	\$2,170.00
CONTENTS	\$20,000	\$20,000	1.180	\$0	1.550	\$0.00	\$226.00
ANNUAL PREMIUM							\$2,396.00
INCREASED COST OF CONSTRUCTION							\$25.00
COMMUNITY FLOOD ZONE DISCOUNT							(\$214.00)
RESERVE FUNDING DISCOUNT							(\$275.00)
OPERATIONAL SUBSIDY DISCOUNT							(\$2,000.00)
Annual Premium							\$2,182.00
LOAD PREMIUM							\$25.00
FEDERAL POLICY SERVICE FEE							\$60.00
TOTAL							\$2,267.00

Coverage limitations may apply. See your policy form for details.



EXHIBIT B

8702109602
POLICY NO. FL
07/28/2016 - 07/28/2017
POLICY TERM

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM
PROOF OF LOSS

O.M.B. No. 1660-0005
Expires April 30, 2017

(See reverse side for Privacy Act Statements and
Paperwork Burden Disclosure Notice)

\$250,000.00
AMT OF BLDG COV AT TIME OF LOSS
\$20,000.00
AMT OF CONTS COV AT TIME OF LOSS

Sheldon Palmes
AGENT
8469 W Grover Cleveland Blvd,
Homosassa, FL 34448
AGENCY AT

TO THE NATIONAL FLOOD INSURANCE PROGRAM:

At time of loss, by above indicated policy of insurance, you insured the interest of

Marcia & Randy Samuelson

against loss by flood to the property described according to the terms and conditions of said policy and of all forms, endorsements, transfers and assignments attached thereto.

TIME AND ORIGIN. A Flood loss occurred about the hour of 12 o'clock AM,
on the 2 day of September 20 16. The cause of said loss was:

OCCUPANCY The premises described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose
Owner Occupied

INTEREST No other person or persons had any interest therein or encumbrance thereon except
Nationstar Mortgage

1. FULL AMOUNT OF INSURANCE application to the property for which claim is presented is	\$	<u>270,000.00</u>
2. ACTUAL CASH VALUE of building structures	\$	<u>467,880.00</u>
3. ADD ACTUAL CASH VALUE OF CONTENTS of personal property insured	\$	<u>24,000.00</u>
4. ACTUAL CASH VALUE OF ALL PROPERTY	\$	<u>491,880.00</u>
5. FULL COST OF REPAIR OR REPLACEMENT (Building and Contents)	\$	<u>614,850.00</u>
6. LESS APPLICABLE DEPRECIATION	\$	<u>122,970.00</u>
7. ACTUAL CASH VALUE LOSS is	\$	<u>491,880.00</u>
8. LESS DEDUCTIBLES	\$	<u>4,000</u>
9. NET AMOUNT CLAIMED under above numbered policy is	\$	<u>487,880.00</u>

The said loss did not originate by any act, design or procurement on the part of your insured, nothing has been done by or with the party or consent of insured to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but which were destroyed or damaged at the time of said loss, no property saved has in any manner been concealed, and no attempt to deceive the said insurer as to the amount of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

I understand that this insurance (policy) is issued Pursuant to the National Flood Insurance Act of 1968, or Any Act Amending thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B, and that knowingly and willfully making any false answers or misrepresentations of fact may be punishable by fine of imprisonment under applicable United State Codes.

Subrogation - To the extent of the payment made or advanced under this policy, the insured hereby assigns, transfers and sets over the insurer all rights, claims or interest that he has against any person, firm or corporation liable for the loss or damage to the property for which payment is made or advanced. He also hereby authorizes the insurer to sue any such third party in his name.

The insured hereby warrants that no release has been given or will be given or settlement or compromise made or agreed upon with any third party who may be liable in damages to the insured with respect to the claim being made herein.

The furnishing of this blank or the preparation of proofs by a representative of the above insurer is not a waiver of any of its rights.

I declare under penalty of perjury that the information contained in the foregoing is true and correct to the best of my knowledge and belief.

Executed this 29 day of October, 20 16

Name Marcia Samuelson + Randy Samuelson

FEMA Form 086-0-9 (04/14)

Brandon Gauthier 10/29/16
Brandon Gauthier



JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS MARCIA and RANDY SAMUELSON</p> <p>(b) County of Residence of First Listed Plaintiff <u>Citrus County, Florida</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Merlin Law Group, P.A. 777 S Harbour Island Boulevard, Suite 950, Tampa, Florida</p>	<p>DEFENDANTS TOWER HILL PREFERRED INSURANCE COMPANY</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:20%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:50%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			IMMIGRATION	FEDERAL TAX SUITS	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) _____ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

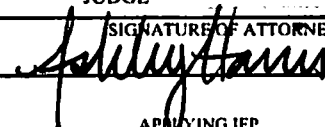
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 4001, et seq.

Brief description of cause:
Breach of Insurance Contract

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 09/20/2017

SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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**U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:17-cv-02215-JSM-AAS**

Sheldon et al v. Tower Hill Preferred Insurance Company
Assigned to: Judge James S. Moody, Jr
Referred to: Magistrate Judge Amanda Arnold Sansone
Cause: 42:4001 National Insurance Flood Act

Date Filed: 09/22/2017
Jury Demand: Plaintiff
Nature of Suit: 110 Insurance
Jurisdiction: Federal Question

Plaintiff**Roger Sheldon**

represented by **Ashley Noelle Harris**
Merlin Law Group, PA
Suite 950
777 S Harbour Island Blvd
Tampa, FL 33602
813/229-1000
Fax: 813/229-3692
Email: aharris@merlinlawgroup.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff**Viktoriia Sheldon**

represented by **Ashley Noelle Harris**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**Tower Hill Preferred Insurance Company**

represented by **J. Michael Pennekamp**
Fowler White Burnett, PA
1395 Brickell Ave 14th Flr
Miami, FL 33131-3353
305/789-9200
Fax: 305/789-9201
Email: jmp@fowler-white.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/21/2017	9	CASE MANAGEMENT AND SCHEDULING ORDER: Discovery due by 12/14/2018, Dispositive motions due by 1/14/2019, Pretrial Conference set for WEDNESDAY, APRIL 10, 2019 at 9:00 AM in Tampa Courtroom 17 before Judge James S. Moody Jr., Bench Trial set for MAY 2019 trial term in Tampa Courtroom 17 before Judge James S. Moody Jr. Signed by Judge James S. Moody, Jr. on 12/21/2017. (AD) (Entered: 12/21/2017)

12/15/2017	8	CASE MANAGEMENT REPORT. (Pennekamp, J.) (Entered: 12/15/2017)
11/02/2017	7	CORPORATE Disclosure Statement by Tower Hill Preferred Insurance Company identifying Corporate Parent Tomoka Re Holdings, Inc. for Tower Hill Preferred Insurance Company.. (Pennekamp, J.) (Entered: 11/02/2017)
11/02/2017	6	ANSWER and affirmative defenses to 1 Complaint by Tower Hill Preferred Insurance Company.(Pennekamp, J.) (Entered: 11/02/2017)
10/16/2017	5	RETURN of service executed on October 12, 2017 by Roger Sheldon, Viktoriia Sheldon as to Tower Hill Preferred Insurance Company. (Attachments: # 1 Exhibit Notice of Service of Process)(Harris, Ashley) (Entered: 10/16/2017)
10/10/2017	4	NOTICE of pendency of related cases re 3 Related case order and track 2 notice per Local Rule 1.04(d) by Roger Sheldon, Viktoriia Sheldon. Related case(s): no (Harris, Ashley) (Entered: 10/10/2017)
09/26/2017	3	RELATED CASE ORDER AND NOTICE of designation under Local Rule 3.05 - track 2. Issued by Deputy Clerk on 9/26/2017. (AD) (Entered: 09/26/2017)
09/25/2017	2	SUMMONS issued as to Tower Hill Preferred Insurance Company. (BSN) (Entered: 09/25/2017)
09/22/2017	1	COMPLAINT against Tower Hill Preferred Insurance Company with Jury Demand (Filing fee \$ 400 receipt number tpa 46001) filed by Roger Sheldon, Viktoriia Sheldon. (Attachments: # 1 Exhibit, # 2 Civil Cover Sheet)(BSN) (Entered: 09/25/2017)

PACER Service Center			
Transaction Receipt			
04/04/2018 11:01:43			
PACER Login:	moskowitzpacer:5453594:0	Client Code:	Flood
Description:	Docket Report	Search Criteria:	8:17-cv-02215-JSM-AAS
Billable Pages:	2	Cost:	0.20

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

ROGER and VIKTORIIA SHELDON,

8:17cv 2215 T 30 AAS
CIVIL ACTION NO.

Plaintiffs,

v.

TOWER HILL PREFERRED INSURANCE COMPANY,

Defendant.

2017 SEP 22 PM 3:55
U.S. DISTRICT COURT
MIDDLE DISTRICT OF
FLORIDA

F11 FN

CIVIL ACTION COMPLAINT

Plaintiffs, ROGER and VIKTORIIA SHELDON, by and through their counsel, file this Complaint against Defendant, TOWER HILL PREFERRED INSURANCE COMPANY, as follows:

INTRODUCTION

1. This is an action by Plaintiffs, homeowners, against their insurance carrier, TOWER HILL PREFERRED INSURANCE COMPANY ("Tower Hill"), for benefits owed under the flood insurance policy, which have not been paid, as a result of Hurricane Hermine.

2. Plaintiffs purchased a flood insurance policy from Tower Hill, which participated in the U.S. Government's National Flood Insurance Program ("NFIP") pursuant to the National Flood Insurance Act of 1968 ("NFIA"), and consequently issued the federal Standard Flood Insurance Policy ("SFIP") to Plaintiff.

3. Tower Hill failed to pay the damages due and owing under the insurance policy.

PARTIES

4. Plaintiffs, ROGER and VIKTORIIA SHELDON ("Plaintiffs"), own property located at 4131 South Jefferson Point, Homosassa, Citrus County, Florida.

TRA - 46001
\$400

5. Defendant, TOWER HILL PREFERRED INSURANCE COMPANY, is an insurance company authorized to do business in the State of Florida.

JURISDICTION

6. This Court has jurisdiction of this action pursuant to the National Flood Insurance Act, specifically 42 U.S.C. § 4001, *et seq.*

COUNT ONE – BREACH OF CONTRACT

7. Plaintiffs, at all relevant times, have been the owners of certain real property located at 4131 South Jefferson Point, Homosassa, Citrus County, Florida.

8. Plaintiffs purchased a flood insurance policy, Policy Number 8702649081 (the “Policy”) from Tower Hill, which covered the property at issue in this matter. A copy of the declaration page is attached hereto as **Exhibit A**.

9. All premiums on the Policy were paid, and the Policy was in full force and effect at all relevant times herein.

10. On or about September 2, 2016, Hurricane Hermine caused extensive flooding to the northwest coast of Florida.

11. Hurricane Hermine was a flood event, a covered risk under the Policy.

12. Plaintiffs’ property sustained extensive damage as a result of flood waters associated with Hurricane Hermine.

13. Following Hurricane Hermine, Plaintiffs properly and promptly submitted an insurance claim to Tower Hill for damage to their property caused by flood waters associated with Hurricane Hermine.

14. On or about November 4, 2016, Tower Hill issued payment to Plaintiffs in the amount of \$56,794.69 for building damages and \$19,500.00 for contents damages under the Policy.

15. Tower Hill's estimate of damage and payments were insufficient to correct the damage caused by flood waters associated with Hurricane Hermine.

16. On or about October 19, 2016, Plaintiffs submitted a Proof of Loss to Tower Hill pursuant to the terms of the Policy. A copy of the Proof of Loss is attached hereto as **Exhibit B**.

17. Tower Hill has breached the terms of the Policy by failing and refusing to pay all amounts due to Plaintiffs pursuant to the terms of the Policy.

18. Plaintiffs have complied with all conditions precedent to the bringing of this action or, in the alternative, Tower Hill has waived same.

19. As a result of Tower Hill's breach, Plaintiffs have suffered damages, including the amounts to which they are legally entitled to recover under the terms of the subject Policy.

WHEREFORE, Plaintiffs, ROGER and VIKTORIIA SHELDON, bring this action against Defendant, TOWER HILL PREFERRED INSURANCE COMPANY, and request the following relief:

1. Entry of judgment in their favor for all amounts to which they are entitled under the terms of the Policy;
2. An award of the costs of this action; and
3. Such other and further relief as this Court deems just and appropriate.

Dated: September 20, 2017

MERLIN LAW GROUP, P.A.

By: 

Ashley N. Harris, Esquire

aharris@merlinlawgroup.com

777 S Harbour Island Boulevard, Suite 950

Tampa, Florida 33602

Phone: (813) 229-1000

Facsimile: (813) 229-3692

Attorneys for Plaintiffs

EXHIBIT A



NFIP Policy Number: 8702649081
 Company Policy Number: 8702649081
 Agent: ROGER SHELDON

Policy Term: 02/15/2016 12:01 AM through 02/15/2017 12:01 AM
 Renewal Billing Payor: FIRST MORTGAGEE
 To report a claim, call: (877) 254-6819
 Agency Phone: (352) 628-1030

RENEWAL FLOOD INSURANCE POLICY DECLARATIONS
 STANDARD POLICY - DWELLING FORM

DELIVERY ADDRESS

ROGER SHELDON
 4131 S JEFFERSON PT
 HOMOSASSA, FL 34448-3518

INSURED NAME(S) AND MAILING ADDRESS

ROGER SHELDON
 4131 S JEFFERSON PT
 HOMOSASSA, FL 34448-3518

COMPANY MAILING ADDRESS

TOWER HILL PREFERRED INSURANCE COMPANY
 PO BOX 912132
 DENVER, CO 80291-2132

PROPERTY LOCATION

4131 S JEFFERSON PT
 HOMOSASSA, FL 34448-3518

DESCRIPTION: N/A

RATING INFORMATION

BUILDING OCCUPANCY: SINGLE FAMILY
 CONDOMINIUM INDICATOR: NOT A CONDO
 NUMBER OF UNITS: N/A
 PRIMARY RESIDENCE: YES
 ADDITIONS/EXTENSIONS: N/A
 BUILDING TYPE: ONE FLOOR
 ELEVATED BUILDING TYPE: NON-ELEVATED
 BASEMENT/ENCLOSURE/CRAWLSPACE TYPE: NO BASEMENT

DATE OF CONSTRUCTION: 05/19/1987
 COMMUNITY NUMBER: 120083 0215 B REGULAR PROGRAM
 COMMUNITY NAME: CITRUS COUNTY
 CURRENT FLOOD ZONE: A11
 GRANDFATHERED: NO
 FLOOD RISK/RATED ZONE: A11
 ELEVATION DIFFERENCE: N/A

MORTGAGEE / ADDITIONAL INTEREST INFORMATION

FIRST MORTGAGEE: REGIONS BANK DBA REGIONS MORTGAGE
 ISAOA PO BOX 200401 FLORENCE, SC 29502-0401
 SECOND MORTGAGEE: REGIONS BANK DBA REGIONS MORTGAGE
 ISAOA PO BOX 200401 FLORENCE, SC 29502-0401

LOAN NUMBER: 0897571944
 LOAN NUMBER: 00092501000000
 LOAN NUMBER: N/A

ADDITIONAL INTEREST:

DISASTER AGENCY:

CASE FILE NUMBER: N/A
 DISASTER AGENCY:

PREMIUM CALCULATION — Pre-FIRM Subsidized

	COVERAGE	DEDUCTIBLE	BASIC COVERAGE	BASIC RATE	ADDL COVERAGE	ADDL RATE	DED DISCOUNT/SURCHARGE	PREMIUM
BUILDING	\$280,000	\$2,000	\$60,000	0.890	\$190,000	0.810	\$0.00	\$2,073.00
CONTENTS	\$25,800	\$2,000	\$25,000	1.120	\$500	1.470	\$0.00	\$287.00

Coverage limitations may apply. See your policy form for details.

ANNUAL SUBTOTAL:	\$2,360.00
INCREASED COST OF COMPLIANCE:	\$65.00
COMMUNITY RATING DISCOUNT: 25%	(\$804.00)
RESERVE FUND ASSESSMENT: 15.0%	\$272.00
PROBATION SURCHARGE:	\$0.00
ANNUAL PREMIUM:	\$2,083.00
HFAIA SURCHARGE:	\$25.00
FEDERAL POLICY SERVICE FEE:	\$45.00
TOTAL:	\$2,153.00

IN WITNESS WHEREOF, I have signed this policy below and hereby enter into this Insurance Agreement

Donald C. Matz, Jr.
 Donald C. Matz, Jr. / Executive President

Scott P. Rowe
 Scott P. Rowe / Secretary

This declaration page along with the Standard Flood Insurance Policy Form constitutes your flood insurance policy.

Zero Balance Due
This is Not A Bill

Policy issued by TOWER HILL PREFERRED INSURANCE COMPANY

Company NAIC: 26050

EXHIBIT B

8702649081
POLICY NO. FL
2/15/2016 - 2/15/2017
POLICY TERM

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM
PROOF OF LOSS

O.M.B. No. 1660-0005
Expires April 30, 2017

\$250,000.00
AMT OF BLDG COV AT TIME OF LOSS
\$25,500.00
AMT OF CONTS COV AT TIME OF LOSS

Sheldon Palmes
AGENT
8469 W. Grover Cleveland Blvd
Homosassa, FL 34448
AGENCY AT

TO THE NATION FLOOD INSURANCE PROGRAM:

At time of loss, by above indicated policy of insurance, you insured the interest of

Roger Sheldon & Viktoriia Sheldon

against loss by flood to the property described according to the terms and conditions of said policy and of all forms, endorsements, transfers and assignments attached thereto.

TIME AND ORIGIN. A Flood loss occurred about the hour of 12 o'clock AM,
on the 2 day of September 20 16. The cause of said loss was:

OCCUPANCY The premises described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever:
Owner Occupied

INTEREST No other person or persons had any interest therein or encumbrance thereon except
**Regions Bank DBA Regions Mortgage
ISAOA PO BOX 200401 Florence SC 29502**

1. FULL AMOUNT OF INSURANCE application to the property for which claim is presented is.....	\$	<u>275,500.00</u>
2. ACTUAL CASH VALUE of building structures.....	\$	<u>273,140.00</u>
3. ADD ACTUAL CASH VALUE OF CONTENTS of personal property insured.....	\$	<u>64,000.00</u>
4. ACTUAL CASH VALUE OF ALL PROPERTY.....	\$	<u>337,140.00</u>
5. FULL COST OF REPAIR OR REPLACEMENT (Building and Contents).....	\$	<u>421,425.00</u>
6. LESS APPLICABLE DEPRECIATION.....	\$	<u>84,285.00</u>
7. ACTUAL CASH VALUE LOSS is.....	\$	<u>337,140.00</u>
8. LESS DEDUCTIBLES.....	\$	<u>0.00</u>
9. NET AMOUNT CLAIMED under above numbered policy is.....	\$	<u>337,140.00</u>

The said loss did not originate by any act, design or procurement on the part of your insured, nothing has been done by or with the privity or consent of insured to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss, no property saved has in any manner been concealed, and no attempt to deceive the said insurer as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

I understand that this insurance (policy) is issued Pursuant to the National Flood Insurance Act of 1968, or Any Act Amendatory thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B, and that knowingly and willfully making any false answers or misrepresentations of fact may be punishable by fine of imprisonment under applicable United State Codes.

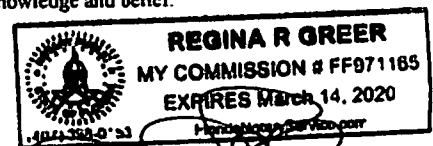
Subrogation - To the extent of the payment made or advanced under this policy; the insured hereby assigns, transfers and sets over the insurer all rights, claims or interest that he has against any person, firm or corporation liable for the loss or damage to the property for which payment is made or advanced. He also hereby authorizes the insurer to sue any such third party in his name.

The insured hereby warrants that no release has been given or will be given or settlement or compromise made or agreed upon with any third party who may be liable in damages to the insured with respect to the claim being made herein.

The furnishing of this blank or the preparation of proofs by a representative of the above insurer is not a waiver of any of its rights.

I declare under penalty of perjury that the information contained in the foregoing is true and correct to the best of my knowledge and belief.

Executed this 19th day of October, 2016
Name Roger Sheldon
Viktoriia Sheldon



[Signature]

Privacy Act Statement

The information requested is necessary to process the subject loss. The authority to collect the information is Title 42, U.S. Code, Section 4001 to 4028. It is voluntary on your part to furnish the information. However, omission of an item may preclude processing of the form. The information will not be disclosed outside of the Federal Emergency Management Agency, except to the servicing agent, acting as the government's fiscal agent; to claims adjusters to enable them to confirm coverage and the location of insured property; to certain Federal, State, and Local Government agencies for determining eligibility for benefits and for verification of agencies for acquisition and relocation-related projects, consistent with the National Flood Insurance Program and consistent with the routine uses described in the program's system of record. Failure by you to provide some or all of the information may result in delay in processing or denial of this claim and/or application.

PAPERWORK BURDEN DISCLOSURE NOTICE

Public reporting burden for the collection of information titled Claims for National Flood Insurance Program (NFIP) is estimated to average 6 hours per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and submitting these forms. You are not required to respond to this collection of information unless a currently valid OMB control number and expiration date is displayed in the upper right corner of these forms. Send comments regarding the accuracy of the burden estimate and suggestions for reducing the burden to: Information Collections Management, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, S.W., Washington, DC 20472, Paperwork Reduction Project (1660-0005). **NOTE: Do not send your completed form to this address.**

FEMA Form No.	Title	Burden Hours
086-0-6	Worksheet-Contents-Personal Property	2.5 Hours
086-0-7	Worksheet-Building	2.5 Hours
086-0-8	Worksheet-Building (Continued)	1.0 Hours
086-0-9	Proof of Loss	.08 Hours
086-0-10	Increased Cost of Compliance	2.0 Hours
086-0-11	Notice of Loss	.07 Hours
086-0-12	Statement as to Full Cost to Repair or Replacement Cost Coverage, Subject to the Terms and Conditions of this Policy	.10 Hours
086-0-13	National Flood Insurance Program Preliminary Report	.07 Hours
086-0-14	National Flood Insurance Program Final Report	.07 Hours
086-0-15	National Flood Insurance Program Narrative Report	.08 Hours
086-0-16	Cause of Loss and Subrogation Report	1 Hour
086-0-17	Manufactured (Mobile) Home/Travel Trailer Worksheet	.50 Hours
086-0-18	Mobile Home/Travel Trailer Worksheet (Continued)	.25 Hours
086-0-19	Increased Cost of Compliance (ICC) Adjuster Report	.42 Hours
086-0-20	Adjuster Preliminary Damage Assessment	.25 Hours
086-0-21	Adjuster Certification Application	.25 Hours

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ROGER and VIKTORIIA SHELDON

(b) County of Residence of First Listed Plaintiff Citrus County, Florida
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Merlin Law Group, P.A.
777 S Harbour Island Boulevard, Suite 950, Tampa, Florida

DEFENDANTS

TOWER HILL PREFERRED INSURANCE COMPANY

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 4001, et seq.

Brief description of cause:
Breach of Insurance Contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
09/20/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:17-cv-02213-EAK-TGW**

Wassen et al v. Allstate Insurance Company
Assigned to: Judge Elizabeth A. Kovachevich
Referred to: Magistrate Judge Thomas G. Wilson
Cause: 42:4001 National Insurance Flood Act

Date Filed: 09/22/2017
Jury Demand: None
Nature of Suit: 110 Insurance
Jurisdiction: Federal Question

Plaintiff**Timothy Wassen**

represented by **Ashley Noelle Harris**
Merlin Law Group, PA
Suite 950
777 S Harbour Island Blvd
Tampa, FL 33602
813/229-1000
Fax: 813/229-3692
Email: aharris@merlinlawgroup.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff**Mary Wassen**

represented by **Ashley Noelle Harris**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**Allstate Insurance Company**

represented by **J. Michael Pennekamp**
Fowler White Burnett, PA
1395 Brickell Ave 14th Flr
Miami, FL 33131-3353
305/789-9200
Fax: 305/789-9201
Email: jmp@fowler-white.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/28/2017	10	CASE MANAGEMENT AND SCHEDULING ORDER: Amended Pleadings/Joinder of Parties due by 2/5/2018; Discovery due by 7/25/2018; Dispositive motions due by 8/24/2018; Plaintiff disclosure of expert report due by 5/28/2018; Defendant disclosure of expert report due by 6/11/2018; Final Pretrial Conference set for 1/15/2019 at 10:30 AM in Tampa Courtroom 12A before Magistrate Judge Thomas G. Wilson. Trial term commencing on 2/4/2019. The parties anticipate a BENCH

		TRIAL will take 4 days to complete. Conduct mediation hearing by 8/9/2018. Lead counsel to coordinate dates. Signed by Judge Elizabeth A. Kovachevich on 12/28/2017. (SRC) (Entered: 12/28/2017)
12/15/2017	9	CASE MANAGEMENT REPORT. (Pennekamp, J.) (Entered: 12/15/2017)
12/01/2017	8	ENDORSED ORDER granting 7 Motion for Leave to File case management report without in person meeting. Signed by Judge Elizabeth A. Kovachevich on 12/1/2017. (EJJ) (Entered: 12/01/2017)
12/01/2017	7	MOTION for leave to file Case Management Report by Allstate Insurance Company. (Attachments: # 1 Text of Proposed Order)(Pennekamp, J.) (Entered: 12/01/2017)
11/02/2017	6	ANSWER and affirmative defenses to 1 Complaint by Allstate Insurance Company. (Pennekamp, J.) (Entered: 11/02/2017)
10/16/2017	5	RETURN of service executed on October 12, 2017 by Timothy Wassen, Mary Wassen as to Timothy Wassen. (Attachments: # 1 Exhibit Notice of Service of Process)(Harris, Ashley) (Entered: 10/16/2017)
09/27/2017	4	NOTICE of designation under Local Rule 3.05 - track 2 issued by Deputy Clerk on 9/27/2017. (SMB) (Entered: 09/27/2017)
09/26/2017	3	STANDING ORDER: Filing of documents that exceed twenty-five pages. Signed by Judge Elizabeth A. Kovachevich on 9/26/2017. (LMD) (Entered: 09/26/2017)
09/25/2017	2	SUMMONS issued as to Allstate Insurance Company. (LMD) (Entered: 09/26/2017)
09/22/2017	1	COMPLAINT against Allstate Insurance Company (Filing fee \$ 400 receipt number TPA045998) filed by Timothy Wassen, Mary Wassen. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A, # 3 Exhibit B)(LMD) (Entered: 09/26/2017)

PACER Service Center			
Transaction Receipt			
04/04/2018 11:04:51			
PACER Login:	moskowitzpacer:5453594:0	Client Code:	Flood
Description:	Docket Report	Search Criteria:	8:17-cv-02213-EAK-TGW
Billable Pages:	2	Cost:	0.20

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

TIMOTHY and MARY WASSEN,

CIVIL ACTION NO.

Plaintiffs,

v.

8.17 cv 2213 TAW

ALLSTATE INSURANCE COMPANY,

Defendant.

CIVIL ACTION COMPLAINT

Plaintiffs, TIMOTHY and MARY WASSEN, by and through their counsel, file this Complaint against Defendant, ALLSTATE INSURANCE COMPANY, as follows:

INTRODUCTION

1. This is an action by the Plaintiffs, homeowners, against their insurance carrier, ALLSTATE INSURANCE COMPANY ("Allstate"), for benefits owed under the flood insurance policy, which have not been paid, as a result of Hurricane Hermine.

2. The Plaintiffs purchased a flood insurance policy from Allstate, which participated in the U.S. Government's National Flood Insurance Program ("NFIP") pursuant to the National Flood Insurance Act of 1968 ("NFIA"), and consequently issued the federal Standard Flood Insurance Policy ("SFIP") to the Plaintiffs.

3. Allstate failed to pay the damages due and owing under the insurance policy.

PARTIES

4. Plaintiffs, TIMOTHY and MARY WASSEN ("Plaintiffs"), are individuals owning property located at 2030 NW 19th Street, Crystal River, Florida.

5. Defendant, ALLSTATE INSURANCE COMPANY, is an insurance company authorized to do business in the State of Florida.

2017 SEP 22 10 3:53
OFFICE OF THE CLERK
MIDDLE DISTRICT OF FLORIDA
TALLAHASSEE, FLORIDA
FILED

TAW-15928
\$400

JURISDICTION

6. This Court has jurisdiction of this action pursuant to the National Flood Insurance Act, specifically 42 U.S.C. § 4001, *et seq.*

COUNT ONE – BREACH OF CONTRACT

7. Plaintiffs, at all relevant times, have been the owner of certain real property located at 2030 NW 19th Street, Crystal River, Citrus County, Florida.

8. Plaintiffs purchased a flood insurance policy, Policy Number 4800274001 (the “Policy”) from Allstate, which covered the property at issue in this matter. A copy of the declaration page is attached hereto as **Exhibit A**.

9. All premiums on the Policy were paid, and the Policy was in full force and effect at all relevant times herein.

10. On or about September 2, 2016, Hurricane Hermine caused extensive flooding to the northwest coast of Florida.

11. Hurricane Hermine was a flood event, a covered risk under the Policy.

12. Plaintiffs’ property sustained extensive damage as a result of flood waters associated with Hurricane Hermine.

13. Following Hurricane Hermine, Plaintiffs properly and promptly submitted an insurance claim to Allstate for damage to their property caused by flood waters associated with Hurricane Hermine.

14. Allstate issued payment to Plaintiffs in the amount of \$16,404.78 for all damages covered under the Policy.

15. Allstate’s estimate of damage and payments were insufficient to correct the damage caused by flood waters associated with Hurricane Hermine.

16. On or about October 25, 2016, Plaintiffs submitted a Proof of Loss to Allstate pursuant to the terms of the Policy. A copy of the Proof of Loss is attached hereto as **Exhibit B**.

17. Allstate has breached the terms of the Policy by failing and refusing to pay all amounts due to the Plaintiffs pursuant to the terms of the Policy.

18. Plaintiffs have complied with all conditions precedent to the bringing of this action or, in the alternative, Allstate has waived same.

19. As a result of Allstate's breach, Plaintiffs have suffered damages, including the amounts to which they are legally entitled to recover under the terms of the subject Policy.

WHEREFORE, Plaintiffs, TIMOTHY and MARY WASSEN, bring this action against Defendant, ALLSTATE INSURANCE COMPANY and request the following relief:

1. Entry of judgment in their favor for all amounts to which they are entitled under the terms of the Policy;
2. An award of the costs of this action; and
3. Such other and further relief as this Court deems just and appropriate.

Dated: September 20, 2017

MERLIN LAW GROUP, P.A.

By: 

Ashley N. Harris, Esquire

aharris@merlinlawgroup.com

777 S Harbour Island Boulevard, Suite 950

Tampa, Florida 33602

Phone: (813) 229-1000

Facsimile: (813) 229-3692

Attorneys for Plaintiffs

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

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I. (a) PLAINTIFFS

TIMOTHY and MARY WASSEN

(b) County of Residence of First Listed Plaintiff Citrus County, Florida
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Merlin Law Group, P.A.
777 S Harbour Island Boulevard, Suite 950, Tampa, Florida

DEFENDANTS

ALLSTATE INSURANCE COMPANY

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

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- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 4001, et seq.

Brief description of cause:
Breach of Insurance Contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
09/20/2017

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING FFP

JUDGE

MAG. JUDGE

EXHIBT A



Allstate
You're in good hands.

PO BOX 2964
SHAWNEE MISSION, KS 66201-1364
800-527-2634
NAIC Number: 19232

Policy Number
4800274001



FLOOD DWELLING FORM STANDARD POLICY DECLARATION - RENEWAL

Named Insured and Mailing Address: TIMOTHY WASSEN MARY WASSEN 2030 NW 19TH ST CRYSTAL RIVER, FL 34428	Policy Period: 06/16/2016 12:01am to 06/16/2017 12:01am Policy Term: ONE YEAR
	Agent No: 034705 HEWITSON, KEVIN 8028 W GULF TO LAKE HWY CRYSTAL RIVER, FL 34429 Agent Phone: 352-563-2323
Payor: INSURED	

Property Location:
2030 NW 19TH ST
CRYSTAL RIVER, FL 34428

RATING DESCRIPTION	
Property/Building	Contents Location

Insured's Principal Residence: Y
 SINGLE FAMILY; TWO FLOORS; NON-ELEVATED WITHOUT BASEMENT
 LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/09/1989

LOCATION INFORMATION

Community Name CITRUS COUNTY * No: 1200630115B
 Status: REGULAR CRS Class: 5 FIRM Zone: A11 Current Flood Zone: A11 Elevation Difference: 2 Grandfathered: N

COVERAGE AND RATING INFORMATION

Coverage Type	Coverage Limit	Deductible	Rate	Deductible Discount	Premium
Building	\$ 237,000	\$ 1,250	0.38/0.08	\$ -7.00	\$ 363.00
Contents	\$ 85,000	\$ 1,250	0.38/0.12	\$ -3.00	\$ 164.00
				ICC PREMIUM	\$ 4.00
				ANNUAL SUBTOTAL	\$ 531.00
				CRS DISCOUNT(25%)	\$ -133.00
				RESERVE FUND ASSESSMENT	\$ 60.00
				HFIAA SURCHARGE	\$ 25.00
				FEDERAL POLICY FEE	\$ 50.00
				TOTAL PREMIUM	\$ 533.00

THIS IS NOT A BILL

Policy Changes:

Attachments:

FIRST MORTGAGEE
 BANK OF AMERICA NA ISAOA ATIMA
 PO BOX 961291
 FORT WORTH, TX 76161-0291
 LOAN NUMBER: 234243835

Issue Date: 06/09/2016

Homeoffice Copy

EXHIBIT B

004800274001
POLICY NO. FL
06/16/2016 - 06/16/2017
POLICY TERM

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM
PROOF OF LOSS

O.M.B. No. 1660-0005
Expires April 30, 2017

(See reverse side for Privacy Act Statement and
Paperwork Burden Disclosure Notice)

Kevin Hewitson
Agent # 034705

\$237,000.00
AMT OF BLDG COV AT TIME OF LOSS
\$85,000.00
AMT OF CONTS COV AT TIME OF LOSS

AGENT
8028 W Gulf To Lake Hwy
Crystal river FL 34439
AGENCY AT

TO THE NATION FLOOD INSURANCE PROGRAM:
At time of loss, by above indicated policy of insurance, you insured the interest of

Timothy Wassen & Mary Wassen

against loss by flood to the property described according to the terms and conditions of said policy and of all forms, endorsements, transfers and assignments attached thereto.

TIME AND ORIGIN. A Flood loss occurred about the hour of 12 o'clock AM.
on the 2 day of September 20 16. The cause of said loss was:

OCCUPANCY The premises described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever:
Owner Occupied

INTEREST No other person or persons had any interest therein or encumbrance thereon except

Bank of America NA ISAOA ATIMA PO BOX 961291 Fort Worth TX 76161

1. FULL AMOUNT OF INSURANCE application to the property for which claim is presented is.....	\$	<u>322,000.00</u>
2. ACTUAL CASH VALUE of building structures.....	\$	<u>402,480.00</u>
3. ADD ACTUAL CASH VALUE OF CONTENTS of personal property insured.....	\$	<u>68,000.00</u>
4. ACTUAL CASH VALUE OF ALL PROPERTY.....	\$	<u>571,100.00</u>
5. FULL COST OF REPAIR OR REPLACEMENT (Building and Contents).....	547,050 93,750	\$ <u>588,100.00</u>
6. LESS APPLICABLE DEPRECIATION.....		\$ <u>117,620.00</u>
7. ACTUAL CASH VALUE LOSS is.....		\$ <u>588,100.00</u>
8. LESS DEDUCTIBLES.....		\$ <u>1,250.00</u>
9. NET AMOUNT CLAIMED under above numbered policy is.....		\$ <u>586,850.00</u>

The said loss did not originate by any act, design or procurement on the part of your insured, nothing has been done by or with the privity or consent of insured to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss, no property saved has in any manner been concealed, and no attempt to deceive the said insurer as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

I understand that this insurance (policy) is issued Pursuant to the National Flood Insurance Act of 1968, or Any Act Amendatory thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B, and that knowingly and willfully making any false answers or misrepresentations of fact may be punishable by fine of imprisonment under applicable United State Codes.

Subrogation - To the extent of the payment made or advanced under this policy; the insured hereby assigns, transfers and sets over the insurer all rights, claims or interest that he has against any person, firm or corporation liable for the loss or damage to the property for which payment is made or advanced. He also hereby authorizes the insurer to sue any such third party in his name.

The insured hereby warrants that no release has been given or will be given or settlement or compromise made or agreed upon with any third party who may be liable in damages to the insured with respect to the claim being made herein.

The furnishing of this blank or the preparation of proofs by a representative of the above insurer is not a waiver of any of its rights.

I declare under penalty of perjury that the information contained in the foregoing is true and correct to the best of my knowledge and belief.

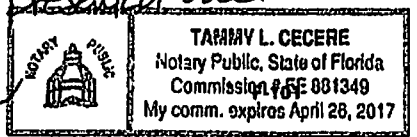
Timothy Wassen Mary Wassen

Executed this 25th day of October, 2016 by

Name Timothy A Wassen and Mary Wassen who presented valid Florida Drivers License.

FEMA Form 086-0-9 (04/14)

STATE OF FLORIDA
COUNTY OF CITRUS
Jenny Greene



Electronic Case Filing U.S. District Court Middle District of Florida
U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:17-cv-02937-MSS-AAS

Conners v. Tower Hill Prime Insurance Company
Assigned to: Judge Mary S. Scriven
Referred to: Magistrate Judge Amanda Arnold Sansone
Cause: 42:4001 National Insurance Flood Act

Date Filed: 12/07/2017
Jury Demand: Plaintiff
Nature of Suit: 110 Insurance
Jurisdiction: Federal Question

Plaintiff

Kenneth Conners

represented by **Ashley Noelle Harris**
Merlin Law Group, PA
Suite 950
777 S Harbour Island Blvd
Tampa, FL 33602
813/229-1000
Fax: 813/229-3692
Email: aharris@merlinlawgroup.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Tower Hill Prime Insurance Company

represented by **J. Michael Pennekamp**
Fowler White Burnett, PA
1395 Brickell Ave 14th Flr
Miami, FL 33131-3353
305/789-9200
Fax: 305/789-9201
Email: jmp@fowler-white.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/31/2018	9	CERTIFICATE of interested persons and corporate disclosure statement re 3 Interested persons order by Tower Hill Prime Insurance Company identifying Corporate Parent Tower Hill Holdings, Inc. for Tower Hill Prime Insurance Company.. (Pennekamp, J.) (Entered: 01/31/2018)
01/31/2018	8	ANSWER and affirmative defenses to 1 Complaint by Tower Hill Prime Insurance Company.(Pennekamp, J.) (Entered: 01/31/2018)
01/12/2018	7	ENDORSED ORDER GRANTING 6 Defendant's Unopposed Motion for Extension of Time to Respond to the Complaint. Defendant shall have up to and including February 1, 2018 to file its answer or otherwise respond to the Complaint. Signed by Judge Mary S. Scriven on 1/12/2018. (DKC) (Entered: 01/12/2018)
01/11/2018	6	Unopposed MOTION for Extension of Time to File Response/Reply as to 1 Complaint by Tower Hill Prime Insurance Company. (Attachments: # 1 Text of Proposed Order) (Pennekamp, J.) (Entered: 01/11/2018)

12/22/2017	5	CERTIFICATE of interested persons and corporate disclosure statement re 3 Interested persons order by Kenneth Conners. (Harris, Ashley) (Entered: 12/22/2017)
12/08/2017	4	SUMMONS issued as to Tower Hill Prime Insurance Company. (LD) (Entered: 12/11/2017)
12/08/2017	3	INTERESTED PERSONS ORDER Certificate of interested persons and corporate disclosure statement due by 12/22/2017. Signed by Judge Mary S. Scriven on 12/8/2017. (JLN) (Entered: 12/08/2017)
12/08/2017	2	RELATED CASE ORDER AND NOTICE of designation under Local Rule 3.05 - track 2. Notice of pendency of other actions due by 12/22/2017. Signed by Judge Mary S. Scriven on 12/8/2017. (JLN) (Entered: 12/08/2017)
12/07/2017	1	COMPLAINT against Tower Hill Prime Insurance Company with Jury Demand (Filing fee \$ 400 receipt number TPA47523) filed by Kenneth Conners. (Attachments: # 1 Exhibit A, # 2 Civil Cover Sheet)(LD) (Entered: 12/07/2017)

PACER Service Center			
Transaction Receipt			
04/04/2018 11:08:33			
PACER Login:	moskowitzpacer:5453594:0	Client Code:	Flood
Description:	Docket Report	Search Criteria:	8:17-cv-02937-MSS-AAS
Billable Pages:	2	Cost:	0.20

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

KENNETH CONNERS,

CIVIL ACTION NO.

Plaintiff,

v.

TOWER HILL PRIME INSURANCE COMPANY,

Defendant.

CIVIL ACTION COMPLAINT

Plaintiff, KENNETH CONNERS, by and through his counsel, files this Complaint against Defendant, TOWER HILL PRIME INSURANCE COMPANY, as follows:

INTRODUCTION

1. This is an action by Plaintiff, a homeowner, against his insurance carrier, TOWER HILL PRIME INSURANCE COMPANY (“Tower Hill”), for benefits owed under the flood insurance policy, which have not been paid, as a result of Hurricane Matthew.

2. Plaintiff purchased a flood insurance policy from Tower Hill, which participated in the U.S. Government’s National Flood Insurance Program (“NFIP”) pursuant to the National Flood Insurance Act of 1968 (“NFIA”), and consequently issued the federal Standard Flood Insurance Policy (“SFIP”) to Plaintiff.

3. Tower Hill failed to pay the damages due and owing under the insurance policy.

PARTIES

4. Plaintiff, KENNETH CONNERS (“Plaintiff”), owns property located at 527 South Peninsula Avenue, New Smyrna Beach, Volusia County, Florida.

5. Defendant, TOWER HILL PRIME INSURANCE COMPANY, is an insurance company authorized to do business in the State of Florida.

JURISDICTION

6. This Court has jurisdiction of this action pursuant to the National Flood Insurance Act, specifically 42 U.S.C. § 4001, *et seq.*

COUNT ONE – BREACH OF CONTRACT

7. Plaintiff, at all relevant times, has been the owner of certain real property located at 527 South Peninsula Avenue, New Smyrna Beach, Volusia County, Florida.

8. Plaintiff purchased a flood insurance policy, Policy Number 8701743607 (the “Policy”) from Tower Hill, which covered the property at issue in this matter. A copy of the declaration page is attached hereto as **Exhibit A**.

9. All premiums on the Policy were paid, and the Policy was in full force and effect at all relevant times herein.

10. On or about October 7, 2016, Hurricane Matthew caused extensive flooding to the east coast of Florida.

11. Hurricane Matthew was a flood event, a covered risk under the Policy.

12. Plaintiff’s property sustained extensive damage as a result of flood waters associated with Hurricane Matthew.

13. Following Hurricane Matthew, Plaintiff properly and promptly submitted an insurance claim to Tower Hill for damage to his property caused by flood waters associated with Hurricane Matthew.

14. On or about December 13, 2016, Tower Hill issued payment to Plaintiffs in the amount of \$49,103.48 for covered damages under the Policy.

15. Tower Hill’s estimate of damage and payments were insufficient to correct the damage caused by flood waters associated with Hurricane Matthew.

16. Plaintiff submitted a Proof of Loss to Tower Hill pursuant to the terms of the Policy.

17. Tower Hill has breached the terms of the Policy by failing and refusing to pay all amounts due to Plaintiff pursuant to the terms of the Policy.

18. Plaintiff has complied with all conditions precedent to the bringing of this action or, in the alternative, Tower Hill has waived same.

19. As a result of Tower Hill's breach, Plaintiff has suffered damages, including the amounts to which he is legally entitled to recover under the terms of the subject Policy.

WHEREFORE, Plaintiff, KENNETH CONNORS, brings this action against Defendant, TOWER HILL PRIME INSURANCE COMPANY, and requests the following relief:

1. Entry of judgment in his favor for all amounts to which he is entitled under the terms of the Policy;
2. An award of the costs of this action; and
3. Such other and further relief as this Court deems just and appropriate.

Dated: December 7, 2017

MERLIN LAW GROUP, P.A.
By: 
Ashley N. Harris, Esquire
aharris@merlinlawgroup.com
777 S Harbour Island Boulevard, Suite 950
Tampa, Florida 33602
Phone: (813) 229-1000
Facsimile: (813) 229-3692
Attorneys for Plaintiff

EXHIBIT A



NFIP Policy Number: 8701743607
 Company Policy Number: 8701743607
 Agent: ROGER SHELDON

Policy Term: 08/08/2016 12:01 AM through 08/08/2017 12:01 AM
 Renewal Billing Payor: INSURED
 To report a claim, call: (877) 254-6819
 Agency Phone: (352) 626-1030

REVISED FLOOD INSURANCE POLICY DECLARATIONS
 STANDARD POLICY - DWELLING FORM

DELIVERY ADDRESS: KENNETH CONNERS
 PO BOX 2511
 NEW SMYRNA BEACH, FL 32170

INSURED NAME(S) AND MAILING ADDRESS: KENNETH CONNERS
 PO BOX 2511
 NEW SMYRNA BEACH, FL 32170

COMPANY MAILING ADDRESS: TOWER HILL PRIME INSURANCE COMPANY
 PO BOX 911968
 DENVER, CO 80291-1988

PROPERTY LOCATION: 527 S PENINSULA AVE
 NEW SMYRNA BEACH, FL 32169-2933

RATING INFORMATION:
 ORIGINAL NEW BUSINESS DATE: 08/08/2003
 REINSTATEMENT DATE: N/A
 BUILDING OCCUPANCY: SINGLE FAMILY
 CONDOMINIUM INDICATOR: NOT A CONDO
 NUMBER OF UNITS: N/A
 PRIMARY RESIDENCE: YES
 ADDITIONS/EXTENSIONS: N/A
 BUILDING TYPE: ONE FLOOR
 BASEMENT/ENCLOSURE/CRAWLSPACE TYPE: NO BASEMENT

DESCRIPTION: N/A
 DATE OF CONSTRUCTION: 06/25/1964
 COMMUNITY NUMBER: 125132 0642 G REGULAR PROGRAM
 COMMUNITY NAME: NEW SMYRNA BEACH, CITY OF
 CURRENT FLOOD ZONE: AE
 GRANDFATHERED: NO
 FLOOD RISK RATED ZONE: AE
 ELEVATION DIFFERENCE: N/A
 ELEVATED BUILDING TYPE: NON-ELEVATED

MORTGAGEE / ADDITIONAL INTEREST INFORMATION:
 FIRST MORTGAGEE: LOAN NUMBER: N/A
 SECOND MORTGAGEE: LOAN NUMBER: N/A
 ADDITIONAL INTEREST: LOAN NUMBER: N/A
 DISASTER AGENCY: CASE FILE NUMBER: N/A
 DISASTER AGENCY:

PREMIUM CALCULATION - Pre-FIRM Subsidized

	COVERAGE	DEDUCTIBLE	BASIC COVERAGE	BASIC RATE	ADD'L COVERAGE	ADD'L RATE	DED. DISCOUNT/SURCHARGE	PREMIUM
BUILDING	\$233,900	\$2,000	\$80,000	0.940	\$173,900	0.850	\$0.00	\$2,042.00
CONTENTS	\$42,200	\$2,000	\$25,000	1.180	\$17,200	1.550	\$0.00	\$582.00

Coverage limitations may apply. See your policy form for details.
 Endorsement Effective Date: 08/08/2016
 ENDORSEMENT PREMIUM: \$0.00
 First Mortgagee Changed

ANNUAL SUBTOTAL:	\$2,604.00
INCREASED COST OF COMPLIANCE:	\$55.00
COMMUNITY RATING DISCOUNT: 15%:	(\$389.00)
RESERVE FUND ASSESSMENT: 16.0%:	\$338.00
PROBATION SURCHARGE:	\$0.00
ANNUAL PREMIUM:	\$2,599.00
HFIAA SURCHARGE:	\$25.00
FEDERAL POLICY SERVICE FEE:	\$50.00
TOTAL:	\$2,674.00
PRORATA PREMIUM ADJUSTMENT:	
ADJUSTED ANNUAL PREMIUM:	

IN WITNESS WHEREOF, I have signed this policy below and hereby enter into this Insurance Agreement.

Donald C. Matz, Jr.
 Donald C. Matz, Jr. / Executive President

Scott P. Rowe
 Scott P. Rowe / Secretary

This declarations page along with the Standard Flood Insurance Policy Form constitutes your flood insurance policy.

Zero Balance Due
This Is Not A Bill

Policy issued by TOWER HILL PRIME INSURANCE COMPANY

Company NAIC: 11027

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KENNETH CONNERS

(b) County of Residence of First Listed Plaintiff Volusia County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

MERLIN LAW GROUP, P.A.
777 S HARBOUR ISLAND BLVD, SUITE 950, TAMPA, FL 33602

DEFENDANTS

TOWER HILL PRIME INSURANCE COMPANY

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C § 4001, et seq.

Brief description of cause:
Breach of Insurance Contract

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
- DEMAND \$ _____
- CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE 12/07/2017 SIGNATURE OF ATTORNEY OF RECORD

Shelby Harris

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING OFF _____ JUDGE _____ MAG. JUDGE _____

**U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:17-cv-02208-CEH-MAP**

Guardiola et al v. American Bankers Insurance Company of Florida
Assigned to: Judge Charlene Edwards Honeywell
Referred to: Magistrate Judge Mark A. Pizzo
Cause: 42:4001 National Insurance Flood Act

Date Filed: 09/22/2017
Jury Demand: None
Nature of Suit: 110 Insurance
Jurisdiction: Federal Question

Plaintiff**Felix Guardiola**

represented by **Ashley Noelle Harris**
Merlin Law Group, PA
Suite 950
777 S Harbour Island Blvd
Tampa, FL 33602
813/229-1000
Fax: 813/229-3692
Email: aharris@merlinlawgroup.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff**Susan Guardiola**

represented by **Ashley Noelle Harris**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**American Bankers Insurance Company
of Florida**

represented by **Brian H. Koch**
Greenberg Traurig, LLP
Ste 2000
401 E Las Olas Blvd
Ft Lauderdale, FL 33301-4223
954/765-0500
Fax: 954/765-1477
Email: kochb@gtlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/14/2017	11	CASE MANAGEMENT AND SCHEDULING ORDER: Discovery due by 6/8/2018, Dispositive motions due by 7/6/2018, Pretrial statement due by 10/23/2018, All other motions due by 10/30/2108, Final Pretrial Conference set for 11/20/2018 at 1:45 PM in Tampa Courtroom 13A before Judge Charlene Edwards Honeywell, Bench Trial set

		for term commencing 12/3/2018 in Tampa Courtroom 13A before Judge Charlene Edwards Honeywell. Conduct mediation hearing by 6/6/2018. Lead counsel to coordinate dates. Signed by Judge Charlene Edwards Honeywell on 12/14/2017. (BGS) (Entered: 12/14/2017)
12/13/2017	10	CERTIFICATE of interested persons and corporate disclosure statement re 4 Interested persons order by American Bankers Insurance Company of Florida identifying Corporate Parent Interfinancial, Inc., Other Affiliate Assurant, Inc. for American Bankers Insurance Company of Florida.. (Koch, Brian) (Entered: 12/13/2017)
12/13/2017	9	CASE MANAGEMENT REPORT. (Harris, Ashley) (Entered: 12/13/2017)
11/02/2017	8	ANSWER and affirmative defenses to Complaint by American Bankers Insurance Company of Florida.(Koch, Brian) (Entered: 11/02/2017)
10/16/2017	7	RETURN of service executed on October 12, 2017 by Felix Guardiola, Susan Guardiola as to American Bankers Insurance Company of Florida. (Attachments: # 1 Exhibit Notice of Service of Process)(Harris, Ashley) (Entered: 10/16/2017)
10/11/2017	6	CERTIFICATE of interested persons and corporate disclosure statement re 4 Interested persons order by Felix Guardiola, Susan Guardiola. (Harris, Ashley) (Entered: 10/11/2017)
10/10/2017	5	NOTICE of pendency of related cases re 3 Related case order and track 2 notice per Local Rule 1.04(d) by Felix Guardiola, Susan Guardiola. Related case(s): no (Harris, Ashley) (Entered: 10/10/2017)
09/25/2017	4	INTERESTED PERSONS ORDER. Certificate of interested persons and corporate disclosure statement due by 10/10/2017. Signed by Judge Charlene Edwards Honeywell on 9/25/2017. (BGS) (Entered: 09/25/2017)
09/25/2017	3	RELATED CASE ORDER AND NOTICE of designation under Local Rule 3.05 - track 2. Notice of pendency of other actions due by 10/10/2017. Signed by Judge Charlene Edwards Honeywell on 9/25/2017. (BGS) (Entered: 09/25/2017)
09/22/2017	2	SUMMONS issued as to American Bankers Insurance Company of Florida. (LMD) (Entered: 09/25/2017)
09/22/2017	1	COMPLAINT against American Bankers Insurance Company of Florida (Filing fee \$ 400 receipt number TPA045992) filed by Felix Guardiola, Susan Guardiola. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A, # 3 Exhibit B)(LMD) . (Entered: 09/25/2017)

PACER Service Center			
Transaction Receipt			
04/04/2018 11:12:08			
PACER Login:	moskowitzpacer:5453594:0	Client Code:	Flood
Description:	Docket Report	Search Criteria:	8:17-cv-02208-CEH-MAP
Billable Pages:	2	Cost:	0.20

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

FELIX and SUSAN GUARDIOLA,

8:17 CV 2208 T 36 MAP
CIVIL ACTION NO.

Plaintiffs,

v.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA,

Defendant.

2017 SEP 22 PM 3:43
MIDDLE DISTRICT OF FLORIDA
TALLAHASSEE, FLORIDA

F11 FN

CIVIL ACTION COMPLAINT

Plaintiffs, FELIX and SUSAN GUARDIOLA, by and through their counsel, file this Complaint against Defendant, AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA, as follows:

INTRODUCTION

1. This is an action by Plaintiffs, homeowners, against their insurance carrier, AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA (“American Bankers”), for benefits owed under the flood insurance policy, which have not been paid, as a result of Hurricane Matthew.

2. Plaintiffs purchased a flood insurance policy from American Bankers, which participated in the U.S. Government’s National Flood Insurance Program (“NFIP”) pursuant to the National Flood Insurance Act of 1968 (“NFIA”), and consequently issued the federal Standard Flood Insurance Policy (“SFIP”) to Plaintiff.

3. American Bankers failed to pay the damages due and owing under the insurance policy.

PARTIES

4. Plaintiffs, FELIX and SUSAN GUARDIOLA (“Plaintiffs”), own property located 428 Arricola Avenue, St. Augustine, St. Johns County, Florida.

TR - 65992
#400

5. Defendant, AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA, is an insurance company authorized to do business in the State of Florida.

JURISDICTION

6. This Court has jurisdiction of this action pursuant to the National Flood Insurance Act, specifically 42 U.S.C. § 4001, *et seq.*

COUNT ONE – BREACH OF CONTRACT

7. Plaintiffs, at all relevant times, have been the owner of certain real property located at 428 Arricola Avenue, St. Augustine, St. Johns County, Florida.

8. Plaintiffs purchased a flood insurance policy, Policy Number 60050169092016 (the “Policy”) from American Bankers, which covered the property at issue in this matter. A copy of the declaration page is attached hereto as **Exhibit A**.

9. All premiums on the Policy were paid, and the Policy was in full force and effect at all relevant times herein.

10. On or about October 7, 2016, Hurricane Matthew caused extensive flooding to the east coast of Florida.

11. Hurricane Matthew was a flood event, a covered risk under the Policy.

12. Plaintiffs’ property sustained extensive damage as a result of flood waters associated with Hurricane Matthew.

13. Following Hurricane Matthew, Plaintiffs properly and promptly submitted an insurance claim to American Bankers for damage to their property caused by flood waters associated with Hurricane Matthew.

14. American Bankers issued payment to Plaintiffs in the amount of \$50,876.94 for covered damages under the Policy.

15. American Bankers' estimate of damage and payments were insufficient to correct the damage caused by flood waters associated with Hurricane Matthew.

16. On or about November 7, 2016, Plaintiffs submitted a Proof of Loss to American Bankers pursuant to the terms of the Policy. A copy of the Proof of Loss is attached hereto as **Exhibit B**.

17. American Bankers has breached the terms of the Policy by failing and refusing to pay all amounts due to Plaintiffs pursuant to the terms of the Policy.

18. Plaintiffs have complied with all conditions precedent to the bringing of this action or, in the alternative, American Bankers has waived same.

19. As a result of American Bankers' breach, Plaintiffs have suffered damages, including the amounts to which they are legally entitled to recover under the terms of the subject Policy.

WHEREFORE, Plaintiffs, FELIX and SUSAN GUARDIOLA, bring this action against Defendant, AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA, and request the following relief:

1. Entry of judgment in their favor for all amounts to which they are entitled under the terms of the Policy;
2. An award of the costs of this action; and
3. Such other and further relief as this Court deems just and appropriate.

Dated: September 20, 2017

MERLIN LAW GROUP, P.A.
By: 
Ashley N. Harris, Esquire
aharris@merlinlawgroup.com
777 S Harbour Island Boulevard, Suite 950
Tampa, Florida 33602
Phone: (813) 229-1000
Facsimile: (813) 229-3692
Attorneys for Plaintiffs

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

FELIX and SUSAN GUARDIOLA

(b) County of Residence of First Listed Plaintiff St. Johns County, Florida
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Merlin Law Group, P.A.
777 S Harbour Island Blvd, Suite 950, Tampa, Florida 33602

DEFENDANTS

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 4001, et seq.

Brief description of cause:
Breach of Insurance Contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 09/20/2017 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

EXHIBIT A



ASSURANT
Specialty
Property*

FLOOD POLICY DECLARATIONS
American Bankers Insurance Company of Florida
Scottsdale, AZ 85261-4337
Standard Policy

Policy Number: 60050169092016

Type: Renewal
Policy Period: 04/30/2016 To 04/30/2017
Form: Dwelling

For payment status, call: (800) 423-4403
These Declarations are effective
as of: 04/30/2016 at 12:01 AM

Address Info

Producer Name and Mailing Address:
HERBIE WILES INS
400 N PONCE DE LEON BLVD
ST AUGUSTINE, FL 32084-3587

Insured Name and Mailing Address:
GUARDIOLA, FELIX & SUSAN
116 PALMETTO DR
MIAMI SPRINGS, FL 33166-5810

NFIP Policy Number: 6005016909
Agent/Agency #: 06X981
Reference #: 70163-26231-000
Phone #: (904)829-2201

NAIC Number: 10111
Processed by:
Flood Service Center
P.O. Box 8695 Kalispell MT 59904-8695

Property Info

Property Location:
428 ARRICOLA AVE
ST AUGUSTINE, FL 32080-4566

Building Description:
Single Family
One Floor
Slab On Grade
Main House

Primary Residence: N
Premium Payor: 1st Mortgagee
Flood Risk/Rated Zone: AE Current Zone:
Community Number: 12 5145 0004 D
Community Name: ST. AUGUSTINE, CITY OF
Grandfathered: No
Post-Firm Construction
Program Type: Regular

Newly Mapped into SFHA:
Elev Diff: 1-
Elevated Building: N
Includes Addition(s) and Extension(s)
Replacement Cost: \$130,000
Number of Units: 1

Coverage & Rating

Type	Coverage	Rates	Deduct	Discount	Sub Total	Premium Calculation	
Building:	161,700	5.280 / .250	10,000	1.190-	2,224.00	Premium Subtotal:	2,224.00
Contents:						ICC Premium:	5.00
Contents:						CIS Discount:	.00
Location:						Reserve Fund Assmt:	334.00
						HFIAA Surcharge:	250.00
						Federal Policy Fee:	50.00
						Probation Surcharge:	.00
						Endorsement Amount:	.00
						Total Premium Paid:	2,963.00

Coverage Limitations May Apply. See Your Policy Form for Details.

Mortgage Info

First Mortgage:
NATIONSTAR MORTGAGE LLC
ISAOA
PO BOX 7729
SPRINGFIELD, OH 45501-7729
Loan#: 0602854713

Loss Payee:

Second Mortgage:

Disaster Agency:

EXHIBIT B

60050169092016
 POLICY NO. FL
 4/30/2016 - 4/30/2017
 POLICY TERM
 \$161,700.00
 AMT OF BLDG COV AT TIME OF LOSS
 \$0.00
 AMT OF CONTS COV AT TIME OF LOSS

DEPARTMENT OF HOMELAND SECURITY
 FEDERAL EMERGENCY MANAGEMENT AGENCY
 NATIONAL FLOOD INSURANCE PROGRAM
PROOF OF LOSS
 (See reverse side for Privacy Act Statement and
 Paperwork Burden Disclosure Notice)

O.M.B. No. 1660-0005
 Expires April 30, 2017

Herbie Willes Ins # 06X981
 AGENT 400 N. Ponce de Leon Boulevard
 Saint Augustine, FL 32084
 AGENCY AT

TO THE NATION FLOOD INSURANCE PROGRAM:
 At time of loss, by above indicated policy of insurance, you insured the interest of
Felix & Susan Guardiola

against loss by flood to the property described according to the terms and conditions of said policy and of all forms, endorsements, transfers and assignments attached thereto.

TIME AND ORIGIN. A FLOOD loss occurred about the hour of 12 o'clock M.,
 on the 7th day of October, 2016. The cause of said loss was: FLOOD

OCCUPANCY The premises described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose
 whatever:
Tenant Occupied

INTEREST No other person or persons had any interest therein or encumbrance thereon except
Nationstar Mortgage LLC ISAOA PO Box 7729, Springfield, OH 45501

1. FULL AMOUNT OF INSURANCE application to the property for which claim is presented is.....	\$ <u>161,700.00</u>
2. ACTUAL CASH VALUE of building structures.....	\$ <u>152,400.00</u>
3. ADD ACTUAL CASH VALUE OF CONTENTS of personal property insured.....	\$ <u>0.00</u>
4. ACTUAL CASH VALUE OF ALL PROPERTY.....	\$ <u>152,400.00</u>
5. FULL COST OF REPAIR OR REPLACEMENT (Building and Contents).....	\$ <u>190,400.00</u>
6. LESS APPLICABLE DEPRECIATION.....	\$ <u>38,000.00</u>
7. ACTUAL CASH VALUE LOSS is.....	\$ <u>152,400.00</u>
8. LESS DEDUCTIBLES.....	\$ <u>10,000.00</u>
9. NET AMOUNT CLAIMED under above numbered policy is.....	\$ <u>142,400.00</u>

The said loss did not originate by any act, design or procurement on the part of your insured, nothing has been done by or with the privity or consent of insured to violate the conditions of the policy, or render it void, no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss, no property saved has in any manner been concealed, and no attempt to deceive the said insurer as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

I understand that this insurance (policy) is issued Pursuant to the National Flood Insurance Act of 1968, or Any Act Amendatory thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B, and that knowingly and willfully making any false answers or misrepresentations of fact may be punishable by fine of imprisonment under applicable United State Codes.

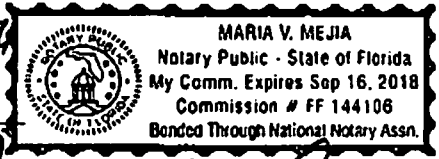
Subrogation - To the extent of the payment made or advanced under this policy; the insured hereby assigns, transfers and sets over the insurer all rights, claims or interest that he has against any person, firm or corporation liable for the loss or damage to the property for which payment is made or advanced. He also hereby authorizes the insurer to sue any such third party in his name.

The insured hereby warrants that no release has been given or will be given or settlement or compromise made or agreed upon with any third party who may be liable in damages to the insured with respect to the claim being made herein.

The furnishing of this blank or the preparation of proofs by a representative of the above insurer is not a waiver of any of its rights.

I declare under penalty of perjury that the information contained in the foregoing is true and correct to the best of my knowledge and belief.

Executed this 7 day of November, 2016
 Name Maria V. Mejia



Maria V. Mejia
Susan D. Guardiola
Felix Guardiola
Susan D. Guardiola

**U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:17-cv-02211-CEH-TGW**

Guardiola et al v. American Strategic Insurance
Assigned to: Judge Charlene Edwards Honeywell
Referred to: Magistrate Judge Thomas G. Wilson
Cause: 42:4001 National Insurance Flood Act

Date Filed: 09/22/2017
Jury Demand: Plaintiff
Nature of Suit: 110 Insurance
Jurisdiction: Federal Question

Plaintiff

Felix Guardiola

represented by **Ashley Noelle Harris**
Merlin Law Group, PA
Suite 950
777 S Harbour Island Blvd
Tampa, FL 33602
813/229-1000
Fax: 813/229-3692
Email: aharris@merlinlawgroup.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Susan Guardiola

represented by **Ashley Noelle Harris**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

American Strategic Insurance

represented by **J. Michael Pennekamp**
Fowler White Burnett, PA
1395 Brickell Ave 14th Flr
Miami, FL 33131-3353
305/789-9200
Fax: 305/789-9201
Email: jmp@fowler-white.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/14/2017	13	CASE MANAGEMENT AND SCHEDULING ORDER: Discovery due by 7/6/2018, Dispositive motions due by 8/10/2018, Pretrial statement due by 11/20/2018, All other motions due by 11/27/2018, Final Pretrial Conference set for 12/18/2018 at 2:00 PM in Tampa Courtroom 13A before Judge Charlene Edwards Honeywell, Bench Trial set for term commencing 1/7/2019 in Tampa Courtroom 13 A before Judge Charlene Edwards Honeywell. Conduct mediation hearing by 6/7/2018. Lead counsel to

		coordinate dates. Signed by Judge Charlene Edwards Honeywell on 12/14/2017. (BGS) (Entered: 12/14/2017)
12/04/2017	12	CASE MANAGEMENT REPORT. (Pennekamp, J.) (Entered: 12/04/2017)
12/04/2017	11	ORDER granting 10 Motion for Leave to File Case Management Report. Signed by Magistrate Judge Thomas G. Wilson on 12/4/2017. (Wilson, Thomas) (Entered: 12/04/2017)
11/28/2017	10	MOTION for leave to file Case Management Report by American Strategic Insurance. (Attachments: # 1 Text of Proposed Order)(Pennekamp, J.) (Entered: 11/28/2017)
10/30/2017	9	CERTIFICATE of interested persons and corporate disclosure statement re 4 Interested persons order by American Strategic Insurance identifying Corporate Parent ARX Holding Corporation for American Strategic Insurance.. (Pennekamp, J.) (Entered: 10/30/2017)
10/30/2017	8	ANSWER and affirmative defenses to 1 Complaint by American Strategic Insurance. (Pennekamp, J.) (Entered: 10/30/2017)
10/16/2017	7	RETURN of service executed on October 12, 2017 by Felix Guardiola, Susan Guardiola as to American Strategic Insurance. (Attachments: # 1 Exhibit Notice of Service of Process) (Harris, Ashley) (Entered: 10/16/2017)
10/11/2017	6	CERTIFICATE of interested persons and corporate disclosure statement re 4 Interested persons order by Felix Guardiola, Susan Guardiola. (Harris, Ashley) (Entered: 10/11/2017)
10/10/2017	5	NOTICE of pendency of related cases re 3 Related case order and track 2 notice per Local Rule 1.04(d) by Felix Guardiola, Susan Guardiola. Related case(s): no (Harris, Ashley) (Entered: 10/10/2017)
09/26/2017	4	INTERESTED PERSONS ORDER. Certificate of interested persons and corporate disclosure statement due by 10/10/2017. Signed by Judge Charlene Edwards Honeywell on 9/26/2017. (BGS) (Entered: 09/26/2017)
09/26/2017	3	RELATED CASE ORDER AND NOTICE of designation under Local Rule 3.05 - track 2. Notice of pendency of other actions due by 10/10/2017. Signed by Judge Charlene Edwards Honeywell on 9/26/2017. (BGS) (Entered: 09/26/2017)
09/25/2017	2	SUMMONS issued as to American Strategic Insurance. (CTR) (Entered: 09/26/2017)
09/22/2017	1	COMPLAINT against American Strategic Insurance with Jury Demand (Filing fee \$ 400 receipt number TPA045995) filed by Felix Guardiola, Susan Guardiola. (Attachments: # 1 Civil Cover Sheet)(CTR) (Entered: 09/26/2017)

PACER Service Center			
Transaction Receipt			
04/04/2018 11:16:26			
PACER Login:	moskowitzpacer:5453594:0	Client Code:	Flood
Description:	Docket Report	Search Criteria:	8:17-cv-02211-CEH-TGW
Billable Pages:	2	Cost:	0.20

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

FELIX and SUSAN GUARDIOLA,

Plaintiffs,

v.

AMERICAN STRATEGIC INSURANCE,

Defendant.

CIVIL ACTION NO.

8:17 cv 2211 T 36 TOW

2017 SEP 22 PM 3:11
CLERK US DISTRICT CO
MIDDLE DISTRICT OF FLORIDA
TAMPA FLORIDA

FILED

CIVIL ACTION COMPLAINT

Plaintiffs, FELIX and SUSAN GUARDIOLA, by and through their counsel, file this
Complaint against Defendant, AMERICAN STRATEGIC INSURANCE, as follows:

INTRODUCTION

1. This is an action by Plaintiffs, homeowners, against their insurance carrier, AMERICAN STRATEGIC INSURANCE (“ASI”), for benefits owed under the flood insurance policy, which have not been paid, as a result of Hurricane Matthew.

2. Plaintiffs purchased a flood insurance policy from ASI, which participated in the U.S. Government’s National Flood Insurance Program (“NFIP”) pursuant to the National Flood Insurance Act of 1968 (“NFIA”), and consequently issued the federal Standard Flood Insurance Policy (“SFIP”) to Plaintiff.

3. ASI failed to pay the damages due and owing under the insurance policy.

PARTIES

4. Plaintiffs, FELIX and SUSAN GUARDIOLA (“Plaintiffs”), own property located 56 Menendez Road, St. Augustine, St. Johns County, Florida.

5. Defendant, ASI, is an insurance company authorized to do business in the State of Florida.

TBA-45995
\$400

JURISDICTION

6. This Court has jurisdiction of this action pursuant to the National Flood Insurance Act, specifically 42 U.S.C. § 4001, *et seq.*

COUNT ONE – BREACH OF CONTRACT

7. Plaintiffs, at all relevant times, have been the owner of certain real property located at 56 Menendez Road, St. Augustine, St. Johns County, Florida.

8. Plaintiffs purchased a flood insurance policy, Policy Number 00FLD61518 (the “Policy”) from ASI, which covered the property at issue in this matter. A copy of the declaration page is attached hereto as **Exhibit A**.

9. All premiums on the Policy were paid, and the Policy was in full force and effect at all relevant times herein.

10. On or about October 7, 2016, Hurricane Matthew caused extensive flooding to the east coast of Florida.

11. Hurricane Matthew was a flood event, a covered risk under the Policy.

12. Plaintiffs’ property sustained extensive damage as a result of flood waters associated with Hurricane Matthew.

13. Following Hurricane Matthew, Plaintiffs properly and promptly submitted an insurance claim to ASI for damage to their property caused by flood waters associated with Hurricane Matthew.

14. ASI issued payment to Plaintiffs in the amount of \$67,148.44 for covered damages under the Policy.

15. ASI’s estimate of damage and payments were insufficient to correct the damage caused by flood waters associated with Hurricane Matthew.

16. Plaintiffs submitted a Proof of Loss to ASI pursuant to the terms of the Policy. A copy of the Proof of Loss is attached hereto as **Exhibit B**.

17. On or about February 22, 2017, ASI rejected Plaintiffs' Proof of Loss. A copy of the rejection letter is attached hereto as **Exhibit C**.

18. ASI has breached the terms of the Policy by failing and refusing to pay all amounts due to Plaintiffs pursuant to the terms of the Policy.

19. Plaintiffs have complied with all conditions precedent to the bringing of this action or, in the alternative, ASI has waived same.

20. As a result of ASI's breach, Plaintiffs have suffered damages, including the amounts to which they are legally entitled to recover under the terms of the subject Policy.

WHEREFORE, Plaintiffs, FELIX and SUSAN GUARDIOLA, bring this action against Defendant, AMERICAN STRATEGIC INSURANCE, and request the following relief:

1. Entry of judgment in their favor for all amounts to which they are entitled under the terms of the Policy;
2. An award of the costs of this action; and
3. Such other and further relief as this Court deems just and appropriate.

Dated: September 20, 2017

MERLIN LAW GROUP, P.A.
By: 
Ashley N. Harris, Esquire
aharris@merlinlawgroup.com
777 S Harbour Island Boulevard, Suite 950
Tampa, Florida 33602
Phone: (813) 229-1000
Facsimile: (813) 229-3692
Attorneys for Plaintiffs

EXHIBIT A

10. MATTHEW VANDERFOK

Fax: 1-800-705-0570

Processed By:
 e-Insonet Flood Insurance Processing
 P.O. Box 33018
 St. Petersburg, FL 33733-8018
 866-511-0793
 FloodUnderwriting@e-insonet.net
 FloodClaims@E-INS.net
 Endorsement - Manual



Dwelling Policy Form

Policy Declarations

Policy Number: 00FLD61518
 Product Type: Standard Policy
 Endorsement Reason: Mortgage Change

Policy Period: 06/16/2016 to 06/16/2017
 At 12:01 AM Local time at the described location
 Endorsement Effective: 6/16/2016

Named Insured

NAIC: 10872

Agent/Producer Name & Address

FELIX GUARDIOLA AND SUSAN GURADIOLA
 Property Location:
 56 Menendez Rd
 St Augustine, FL 32080-4555

41212 - HERBIE WILES INS INC.
 400 NORTH PONCE DE LEON BLVD ST AUGUSTINE,
 FL 32084
 (904)829-2201

Mailing Address

116 PALMETTO DR
 MIAMI SPRINGS, FL 33166

Payor: FELIX GUARDIOLA AND SUSAN GURADIOLA

Community Rating Information

Community Name: ST. AUGUSTINE, CITY OF
 Community Number: 123145-0318-H
 Flood Risk/Rated Zone: AE
 FIRM Type: PRE
 Program: Regular
 NFIP Grandfathering:
 Grandfathered: No

Building Information

Occupancy: Single Family
 Elevated Building: Yes
 Building Type: On s. Floor
 Elevated - Without Enclosure
 Replacement Cost: \$175,000
 Not Primary Residence
 No Addition(s) and Extension(s)
 Contents Location:
 Lowest Floor: Only Above Ground Level

Coverage Information

	Limit(s)	Deductible	Premium
Building	\$175,000	\$5,000	\$1,448.00
Contents	\$5,000	\$5,000	\$49.00
		Deductible Discount	-\$374.00
		ICC Premium	\$5.00
		ORS Disc: 15%	-\$169.00
		Reserve Fund Assessment:	\$144.00
MORTGAGE: The Reform Act of 1954 requires you to notify the WYO company for the policy within 60 days of any changes in the service of the loan. COVERAGE LIMITATIONS MAY APPLY. See Your Policy Form for Detail.			Federal Policy Fee: \$50.00
			HRFAA Surcharge: 250.00
			Total Premium Paid: \$1403.00
			Endorsement Premium: \$0.00
			Annual Premium: \$1,403.00

Special Provisions

This policy covers only one building. If you have more than one building on your property, please make sure each is covered. See Section III
 Property Covered within your flood policy for the NFIP definition of 'building' or contact your agent, broker or insurance company.

Forms and Endorsements

ASI FLD INSP 08, ASI FLD SOC 04, DW 04 2016

This Declaration Page, in conjunction with the policy, constitutes your Flood Insurance Policy. IN WITNESS WHEREOF, we have signed this policy below and hereby enter into this Insurance Agreement.

Kevin Milkey

Executive Vice President, American Strategic Insurance

Date: 10/11/2016

EXHIBIT B

00FLD61518
 POLICY NO. FL

06/16/2016 - 06/16/2017
 POLICY TERM

\$175,000.00
 AMT OF BLDG COV AT TIME OF LOSS

\$5,000.00
 AMT OF CONTS COV AT TIME OF LOSS

DEPARTMENT OF HOMELAND SECURITY
 FEDERAL EMERGENCY MANAGEMENT AGENCY
 NATIONAL FLOOD INSURANCE PROGRAM
PROOF OF LOSS

O.M.B. No. 1660-0005
 Expires April 30, 2017

(See reverse side for Privacy Act Statement and
 Paperwork Burden Disclosure Notice)

Herbie Wiles Ins In # 412112
 AGENT
400 North Ponce De Leon Blvd
St. Augustine FL 3084
 AGENCY AT

TO THE NATION FLOOD INSURANCE PROGRAM:
 At time of loss, by above indicated policy of insurance, you Insured the interest of

Felix Guardiola and Susun Guardiola

against loss by flood to the property described according to the terms and conditions of said policy and of all forms, endorsements, transfers and assignments attached thereto.

TIME AND ORIGIN. A FLOOD loss occurred about the hour of 12 o'clock M. on the 7th day of OCTOBER 20 16. The cause of said loss was:

OCCUPANCY The premises described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever:
Tenant

INTEREST No other person or persons had any interest therein or encumbrance thereon except N/A

1. FULL AMOUNT OF INSURANCE application to the property for which claim is presented is.....	\$	<u>180,000.00</u>
2. ACTUAL CASH VALUE of building structures.....	\$	<u>172,656.00</u>
3. ADD ACTUAL CASH VALUE OF CONTENTS of personal property insured.....	\$	<u>11,200.00</u>
4. ACTUAL CASH VALUE OF ALL PROPERTY.....	\$	<u>183,856.00</u>
5. FULL COST OF REPAIR OR REPLACEMENT (Building and Contents).....	\$	<u>229,820.00</u>
6. LESS APPLICABLE DEPRECIATION.....	\$	<u>45,964.00</u>
7. ACTUAL CASH VALUE LOSS is.....	\$	<u>183,856.00</u>
8. LESS DEDUCTIBLES.....	\$	<u>0.00</u>
9. NET AMOUNT CLAIMED under above numbered policy is.....	\$	<u>183,856.00</u>

The said loss did not originate by any act, design or procurement on the part of your insured, nothing has been done by or with the privity or consent of insured to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss, no property saved has in any manner been concealed, and no attempt to deceive the said insurer as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

I understand that this insurance (policy) is issued Pursuant to the National Flood Insurance Act of 1968, or Any Act Amendatory thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B, and that knowingly and willfully making any false answers or misrepresentations of fact may be punishable by fine of imprisonment under applicable United State Codes.

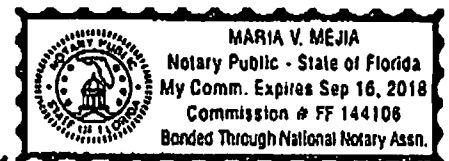
Subrogation - To the extent of the payment made or advanced under this policy, the insured hereby assigns, transfers and sets over the insurer all rights, claims or interest that he has against any person, firm or corporation liable for the loss or damage to the property for which payment is made or advanced. He also hereby authorizes the insurer to sue any such third party in his name.

The insured hereby warrants that no release has been given or will be given or settlement or compromise made or agreed upon with any third party who may be liable in damages to the insured with respect to the claim being made herein.

The furnishing of this blank or the preparation of proofs by a representative of the above insurer is not a waiver of any of its rights.

I declare under penalty of perjury that the information contained in the foregoing is true and correct to the best of my knowledge and belief.

Executed this 7th day of November, 2016
 Name Felix Guardiola



Felix Guardiola
Susun Guardiola Susan D. Guardiola

EXHIBIT C



e-INS Insurance Processing
P.O. Box 33018
St. Petersburg, FL 33733
(866) 511 – 0793
Fax (888) 901 – 3847
floodclaims@e-ins.net

February 22, 2017

Matthew Vanderford
107 Amar PI Suite 103
Panama City Beach, Fl. 33413

Policy Number: FLD61518
Date of loss: 10/7/2016
Claim Number: 6022-161001
Insured: GUARDIOLA AND SUSAN GURADIOLA

Dear Mr. Vanderford:

This letter will acknowledge receipt of the signed proof of loss for flood damage sustained to property at 56 Menendez Rd. St. Augustine, Fl. 32080, owned by your clients, Felix and Susan Guradiola.

We are formally rejecting the proof of loss you submitted on behalf of Felix and Susan Guardiola. The reason for the rejection that your proof is based upon an estimate completed by your contractors with which we do not agree and which contain items that are not covered under the NFIP policy.

You indicated that the independent adjuster had told you we would pay the claim based upon the undisputed amount regardless of whether the insured signs the Proof of Loss. Please see page 19 of 26 of the Flood Policy which states the following:

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

Your request for immediate disbursement of undisputed funds in the amount of \$97,186.42 is incorrect. You did not correctly read the Proof of Loss. The \$97,186.42 you are asking for reflects the combined value of all (damaged and undamaged) property owned by the insured at ACV. Damages start on line (5) \$84,434.69 which is subject to \$12,286.25 (line 6) in depreciation and the applicable deductibles of \$5,00.00 for an undisputed amount of **\$67,148.44.**

We had previously suggested you contact the IA with your concerns to see if any items on your estimate could be included as covered flood damage. We suggest that avenue is still open to you.

However, since you wish your client to be paid based upon the undisputed damage as outlined by the IA, we are again attaching the proof of loss in the undisputed amount for your client's signature.

It is our intent that neither your clients, Felix and Susan Guardiola nor American Strategic Insurance be prejudiced by any activity undertaken in the investigation of the loss and that all policy conditions and defenses will remain in full force and effect. American Strategic Insurance and Felix and Susan Guardiola shall not in any way change, waive, invalidate, or forfeit any of the terms, conditions and requirements of their policy or any of the rights of either party. We further notify you that any activity on our part by way of investigation or damage determination does not constitute any waiver of our rights.

If Felix and Susan Guardiola do not agree with the insurer's decision to deny their claim or any part of the claim, Federal law allows them to appeal that decision within 60 days of the date of this denial letter.

Their appeal must be in writing and include: a copy of this letter, a copy of the completed Proof of Loss form you submitted to the insurer, a statement of the basis for the appeal in as much detail as possible including relevant policy and claim information, and all the documentation that supports your written statement. The appeal must be sent to:

Federal Emergency Management Agency Mitigation Directorate Federal Insurance
Administrator 1800 South Bell Street

Arlington VA 20598-3010

To avoid delays, it is critical you complete the ZIP +4 Code given above.

You may not appeal if their dispute is or has been subject to appraisal or you have filed suit on the matter(s) upon which the insurer's denial of your claim or any part thereof is based.

If you do not agree with the final decision, please refer to the SFIP, Section VII. General Conditions, Paragraph R. Suit Against Us. The one-year period to file suit commences with the written denial from the insurer and is not extended by the appeals process. If you have any questions, concerns or require additional clarification on any portion of the claim process, please feel free to call me directly, (866) 511-0793.

Regards,
Flood Claim Department
Flood Processing Center
e-INS.net

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

FELIX and SUSAN GUARDIOLA

(b) County of Residence of First Listed Plaintiff St. Johns County, Florida
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Merlin Law Group, P.A.
777 S Harbour Island Boulevard, Suite 950, Tampa, Florida

DEFENDANTS

AMERICAN STRATEGIC INSURANCE

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 4001, et seq.
Breach of Insurance Contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

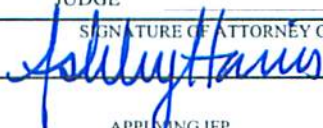
VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE
09/20/2017

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

U.S. District Court
Middle District of Florida (Jacksonville)
CIVIL DOCKET FOR CASE #: 3:18-cv-00180-HLA-JRK

Netka v. First Community Insurance Company
Assigned to: Senior Judge Henry Lee Adams, Jr
Referred to: Magistrate Judge James R. Klindt
Cause: 42:4001 National Insurance Flood Act

Date Filed: 01/31/2018
Jury Demand: Plaintiff
Nature of Suit: 110 Insurance
Jurisdiction: Federal Question

Plaintiff**Sean Netka**

represented by **Ashley Noelle Harris**
Merlin Law Group, PA
Suite 950
777 S Harbour Island Blvd
Tampa, FL 33602
813/229-1000
Fax: 813/229-3692
Email: aharris@merlinlawgroup.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**First Community Insurance Company**

represented by **J. Michael Pennekamp**
Fowler White Burnett, PA
1395 Brickell Ave 14th Flr
Miami, FL 33131-3353
305/789-9200
Fax: 305/789-9201
Email: jmp@fowler-white.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/15/2018	8	CORPORATE Disclosure Statement by First Community Insurance Company identifying Corporate Parent Bankers Specialty Insurance Company for First Community Insurance Company.. (Pennekamp, J.) Modified on 3/16/2018 contacted counsel in regards to using the correct case caption on all pleadings (TSW). (Entered: 03/15/2018)
03/15/2018	7	ANSWER and affirmative defenses to 1 Complaint by First Community Insurance Company.(Pennekamp, J.) Modified on 3/16/2018 contacted counsel in regards to using the correct case caption on all pleadings (TSW). (Entered: 03/15/2018)
02/26/2018	6	CERTIFICATE of interested persons and corporate disclosure statement re 5 Interested persons order by Sean Netka. (Harris, Ashley) (Entered: 02/26/2018)
02/16/2018	5	INTERESTED PERSONS ORDER Certificate of interested persons and corporate disclosure statement due by 3/2/2018. Signed by Senior Judge Henry Lee Adams, Jr. on 2/16/2018. (MO) (Entered: 02/16/2018)

02/02/2018	4	RETURN of service executed on 2/2/2018 by Sean Netka as to First Community Insurance Company (Attachments: # 1 Exhibit Notice of Service of Process)(Harris, Ashley) Modified on 2/5/2018 to edit text(TSW). (Entered: 02/02/2018)
02/01/2018	3	NOTICE of designation under Local Rule 3.05 - Track 2 (with attachments: # 1 - Case Management Report; #2 - Notice, Consent, and Reference of a Civil Action to a Magistrate Judge). Signed by Deputy Clerk on 2/1/2018. (MO) (Entered: 02/01/2018)
01/31/2018	2	SUMMONS issued as to First Community Insurance Company. (TSW) (Entered: 01/31/2018)
01/31/2018	1	COMPLAINT against First Community Insurance Company with Jury Demand (Filing fee \$ 400 receipt number JAX026615) filed by Sean Netka. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A, # 3 Exhibit B)(TSW) (Entered: 01/31/2018)

PACER Service Center			
Transaction Receipt			
04/04/2018 11:20:13			
PACER Login:	moskowitzpacer:5453594:0	Client Code:	Flood
Description:	Docket Report	Search Criteria:	3:18-cv-00180- HLA-JRK
Billable Pages:	2	Cost:	0.20

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

2018 JAN 31 AM 10:15

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DISTRICT

SEAN NETKA,

Plaintiff,

v.

CIVIL ACTION NO.

3:18-cv-180-JSR

FIRST COMMUNITY INSURANCE COMPANY

Defendant.

CIVIL ACTION COMPLAINT

Plaintiff, SEAN NETKA, by and through his counsel, files this Complaint against Defendant, FIRST COMMUNITY INSURANCE COMPANY, as follows:

INTRODUCTION

1. This is an action by Plaintiff, a homeowner, against his insurance carrier, FIRST COMMUNITY INSURANCE COMPANY (“First Community”), for benefits owed under the flood insurance policy, which have not been paid, as a result of Hurricane Matthew.

2. Plaintiff purchased a flood insurance policy from First Community, which participated in the U.S. Government’s National Flood Insurance Program (“NFIP”) pursuant to the National Flood Insurance Act of 1968 (“NFIA”), and consequently issued the federal Standard Flood Insurance Policy (“SFIP”) to Plaintiff.

3. First Community failed to pay the damages due and owing under the insurance policy.

PARTIES

4. Plaintiff, SEAN NETKA (“Plaintiff”), owns property located at 1361 Woodstork Court, Jacksonville Beach, Duval County, Florida.

5. Defendant, FIRST COMMUNITY INSURANCE COMPANY, is an insurance company authorized to do business in the State of Florida.

JURISDICTION

6. This Court has jurisdiction of this action pursuant to the National Flood Insurance Act, specifically 42 U.S.C. § 4001, *et seq.*

COUNT ONE – BREACH OF CONTRACT

7. Plaintiff, at all relevant times, has been the owner of certain real property located at 1361 Woodstork Court, Jacksonville Beach, Duval County, Florida (the “Property”).

8. Plaintiff purchased a flood insurance policy, Policy Number 6600057912 (the “Policy”) from First Community, which covered the property at issue in this matter. A copy of the declaration page is attached hereto as **Exhibit A**.

9. All premiums on the Policy were paid, and the Policy was in full force and effect at all relevant times herein.

10. On or about October 7, 2016, Hurricane Matthew caused extensive flooding to the east coast of Florida.

11. Hurricane Matthew was a flood event, a covered risk under the Policy.

12. Plaintiff’s property sustained extensive damage as a result of flood waters associated with Hurricane Matthew.

13. Following Hurricane Matthew, Plaintiff properly and promptly submitted an insurance claim to First Community for damage to his property caused by flood waters associated with Hurricane Matthew.

14. Upon information and belief, First Community retained CNC Catastrophe & National Claims to inspect and adjust the damages to Plaintiff’s home.

15. On or about October 15, 2016, Jeff Robbins, an adjuster working for CNC Catastrophe & National Claims inspected Plaintiff’s home.

16. On or about December 19, 2016, Jack Igo, an employee of CNC Catastrophe & National Claims provided an estimate of damages and Proof of Loss totaling \$73,507.63.

17. On December 28, 2016, Shannon Moody, an adjuster working for CNC Catastrophe & National Claims contacted the Plaintiff requesting a re-inspection of the Property to gather additional documentation.

18. On January 2, 2017, Mr. Moody performed a re-inspection of the Property.

19. On January 9, 2017, Mr. Moody provided a revised estimate of damages and revised Proof of Loss totaling \$87,077.15.

20. On January 13, 2017, Plaintiff was contacted by Joe Gregg of Bintech Partners, Inc. on behalf of First Community, and was advised that First Community declined to accept the revised estimate prepared by Mr. Moody.

21. On January 14, 2017, Plaintiff sent correspondence to Ruth Bennett, Director of Operations with BinTech Partners, Inc. expressing concern with the claims process.

22. On January 17, 2017, Plaintiff received a voicemail from Melissa Andrick with BinTech Partners, Inc. and Plaintiff returned Ms. Andrick's call on January 19, 2017. Ms. Andrick advised that she would determine the appropriate payment for Plaintiff's claim and that he would receive written communication by close of business on January 19, 2017.

23. Plaintiff received no communication from Ms. Andrick, and on January 30, 2017, Plaintiff contacted CNC Catastrophe & National Claims and was informed that CNC Catastrophe & National Claims was instructed to make numerous changes to their estimate and any further questions must be directed to First Community.

24. On January 30, 2017, CNC Catastrophe & National Claims provided an estimate of damages and Proof of Loss to Plaintiff totaling \$53,803.06 based on the revisions demanded by First Community.

25. On February 1, 2017, after receiving no response from First Community of BinTech Partners, Inc., Plaintiff sent a second letter to Ruth Bennett expressing his concern regarding the claims process. Plaintiff included in this correspondence 348 pages of photo documentation, adjuster reports and estimates, and a signed Proof of Loss for all flood damages totaling \$124,689.93. A copy of the signed Proof of Loss is attached hereto as **Exhibit B**.

26. On February 6, 2017, Plaintiff received payment in the amount of \$39,769.18 and a partial denial letter. The correspondence and payment was dated February 2, 2017.

27. On February 13, 2017, Plaintiff submitted an appeal to the Federal Insurance and Mitigation Administration enclosing a narrative of the claims process, adjuster estimates and reports, and correspondence between Plaintiff and First Community, CNC Catastrophe & National Claims, and BinTech Partners, Inc.

28. Plaintiff received no response to the appeal until August 2017, at which time he received confirmation from the Department of Homeland Security, Federal Emergency Management Agency (FEMA) advising that he was eligible to initiate the appeal.

29. Plaintiff has received no further communication from First Community or FEMA.

30. First Community's estimate of damage and payments were insufficient to correct the damage caused by flood waters associated with Hurricane Matthew.

31. Plaintiff submitted a Proof of Loss to First Community pursuant to the terms of the Policy.

32. First Community has breached the terms of the Policy by failing and refusing to pay all amounts due to Plaintiff pursuant to the terms of the Policy.

33. Plaintiff has complied with all conditions precedent to the bringing of this action or, in the alternative, First Community has waived same.


34. As a result of First Community's breach, Plaintiff has suffered damages, including the amounts to which he is legally entitled to recover under the terms of the subject Policy.

WHEREFORE, Plaintiff, SEAN NETKA, brings this action against Defendant, FIRST COMMUNITY INSURANCE COMPANY, and requests the following relief:

1. Entry of judgment in his favor for all amounts to which he is entitled under the terms of the Policy;
2. An award of the costs of this action; and
3. Such other and further relief as this Court deems just and appropriate.

MERLIN LAW GROUP, P.A.

Dated: January 30, 2018

By: 
Ashley N. Harris, Esquire
aharris@merlinlawgroup.com
777 S Harbour Island Boulevard, Suite 950
Tampa, Florida 33602
Phone: (813) 229-1000
Facsimile: (813) 229-3692
Attorneys for Plaintiff



NFIP Policy Number: 6600057912
Company Policy Number: 09-6600057912-02
Agent: 105105 BRIGHTWAY INSURANCE

Policy Term: 02/28/2016 12:01 AM through 02/28/2017 12:01 AM
Renewal Billing Payor: INSURED

To report a claim, call: 866-931-1306
Agency Phone: 8882545014

RENEWAL FLOOD INSURANCE POLICY DECLARATIONS
 STANDARD POLICY - DWELLING FORM

DELIVERY ADDRESS

SEAN NETKA
 1361 WOODSTORK CT
 JACKSONVILLE BEACH, FL 32250-8513

INSURED NAME(S) AND MAILING ADDRESS

SEAN NETKA
 1361 WOODSTORK CT
 JACKSONVILLE BEACH, FL 32250-8513

COMPANY MAILING ADDRESS

First Community Insurance Company
 PO BOX 912888
 DENVER, CO 80291-2888

PROPERTY LOCATION

1361 WOODSTORK CT
 JACKSONVILLE BEACH, FL 32250-8513

RATING INFORMATION

BUILDING OCCUPANCY: SINGLE FAMILY
CONDOMINIUM INDICATOR: NOT A CONDO
NUMBER OF UNITS: N/A
PRIMARY RESIDENCE: YES
ADDITIONS/EXTENSIONS: N/A
BUILDING TYPE: ONE FLOOR
ELEVATED BUILDING TYPE: NON-ELEVATED
BASEMENT/ENCLOSURE/CRAWLSPACE TYPE: NO BASEMENT

DESCRIPTION: N/A

DATE OF CONSTRUCTION: 01/01/1996
COMMUNITY NUMBER: 120078 0419 H REGULAR PROGRAM
COMMUNITY NAME: JACKSONVILLE BEACH, CITY OF
CURRENT FLOOD ZONE: AE
GRANDFATHERED: NO
FLOOD RISK/RATED ZONE: AE
ELEVATION DIFFERENCE: 2

MORTGAGEE / ADDITIONAL INTEREST INFORMATION

FIRST MORTGAGEE: BANK OF AMERICA NA
 BOX 961291 FORT WORTH, TX 76161-0291

SECOND MORTGAGEE: MICHAEL WILLIAM NETKA
 6850 CARDINAL COVE DR MINNETRISTA, MN 55364-9534

LOAN NUMBER: 99514245110820

LOAN NUMBER: N/A

LOAN NUMBER: N/A

ADDITIONAL INTEREST:

CASE FILE NUMBER: N/A
DISASTER AGENCY:

DISASTER AGENCY:

PREMIUM CALCULATION —

	<u>COVERAGE</u>	<u>DEDUCTIBLE</u>	<u>BASIC COVERAGE</u>	<u>BASIC RATE</u>	<u>ADD'L COVERAGE</u>	<u>ADD'L RATE</u>	<u>DED. DISCOUNT/SURCHARGE</u>	<u>PREMIUM</u>
BUILDING	\$250,000	\$1,250	\$60,000	0.430	\$190,000	0.080	(\$8.00)	\$402.00
CONTENTS	\$100,000	\$1,250	\$25,000	0.380	\$75,000	0.120	(\$4.00)	\$181.00

Standard

Coverage limitations may apply. See your policy form for details.

ANNUAL SUBTOTAL:	\$583.00
INCREASED COST OF COMPLIANCE:	\$4.00
COMMUNITY RATING DISCOUNT: 20%	(\$117.00)
RESERVE FUND ASSESSMENT: 15.0%	\$71.00
PROBATION SURCHARGE:	\$0.00
ANNUAL PREMIUM:	\$541.00
HFIAA SURCHARGE:	\$25.00
FEDERAL POLICY SERVICE FEE:	\$45.00
TOTAL:	\$611.00

In witness whereof, we, as officers of the stock Company declared on the Declarations Page, have caused this policy to be executed and attested. If required by state law, this policy shall not be valid unless countersigned by our authorized representative.

John A. Strong / Chairman & CEO

Richard Toma / General Counsel Corp. Sec.

Zero Balance Due
This Is Not A Bill

This declarations page along with the Standard Flood Insurance Policy Form constitutes your flood insurance policy.

Policy Issued by First Community Insurance Company



File: 7700377

Page 1 of 2



DocID



Netka Flood Claim # 157237

NFIP Policy Number: 6600057912

SWORN STATEMENT IN PROOF OF LOSS

(For Use With Replacement Cost Coverages)

\$350,000.00

AMOUNT OF POLICY AT TIME OF LOSS
2/28/2016 - 2/28/2017

POLICY TERM
09-6600057912.02

POLICY NO.

Brightway Insurance

AGENT

PO Box 5700
Jacksonville, FL 32250

AGENCY AT

TO First Community Insurance Company

At time of loss, by above indicated policy of insurance, you insured the interest of Sean Netka; 1361 Woodstork Ct.; Jacksonville Beach, FL 32250

against loss by Flood to the property described according to the terms and conditions of said policy and of all forms, endorsements, transfers and assignments attached thereto.

1. Time and Origin A Flood loss occurred about the hour of Ten o'clock AM on the 07 day of October, 2016, the cause of the said loss was: Tidal Waters Overflow

2. Occupancy The premises described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever:
Owner

3. Title and Interest At the time of loss the interest of your insured in the property described therein was Bank of America & Michael Netka & Sean Netka
No other person or persons had any interest therein or incumbrance thereon, except:

4. Changes Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy, possession, location, or exposure of the property described except:

5. Total Insurance The total amount of insurance upon the property described by this policy was, at the time of loss, \$350,000.00, as more particularly specified in the apportionment attached under Schedule "C," besides which there was no policy or other contract of insurance, written or oral, valid or invalid.

6. FULL REPLACEMENT COST of the said property at the time of the loss was	\$447,581.50
7. THE FULL COST OF REPAIR OR REPLACEMENT is	\$124,689.93
8. Applicable DEPRECIATION OR BETTERMENT is.....	\$6,692.65
9. ACTUAL CASH VALUE LOSS is	\$117,997.28
10. LESS DEDUCTIBLES and/or participation by the insured.....	\$2,500.00
11. ACTUAL CASH VALUE CLAIM is	\$115,497.28
12. SUPPLEMENTAL CLAIM, to be filed in accordance with the terms and conditions of the replacement cost coverage within 180 days from the date of loss as shown above, will not exceed	\$4,434.97

The said loss did not originate by any act, design or procurement on the part of your insured, or this affiant; nothing has been done by or with the privity or consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss; no property saved has in any manner been concealed and no attempt to deceive the said company, as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

The furnishing of this blank or preparation of proofs by a representative of the Insurance company is not a waiver of any of its rights.

Executed this 1st day of February, 20 17

Signature [Signature]
INSURED

Signature _____
INSURED



Netka Flood Claim # 157237

DEPARTMENT OF HOMELAND SECURITY
 FEDERAL EMERGENCY MANAGEMENT AGENCY
 NATIONAL FLOOD INSURANCE PROGRAM
PROOF OF LOSS

NFIP Policy Number: 6600057912

09-6600057912.02

POLICY NO. FL
2/28/2016 - 2/28/2017

POLICY TERM
\$250,000.00

AMT OF BLDG COV AT TIME OF LOSS
\$100,000.00

AMT OF CONTS COV AT TIME OF LOSS

DEPARTMENT OF HOMELAND SECURITY
 FEDERAL EMERGENCY MANAGEMENT AGENCY
 NATIONAL FLOOD INSURANCE PROGRAM

O.M.B. No. 1660-0005
 Expires April 30, 2017

PROOF OF LOSS

(See reverse side for Privacy Act Statement and
 Paperwork Burden Disclosure Notice)

Brightway Insurance

AGENT

PO Box 5700, Jacksonville, FL 32250

AGENCY AT

TO THE NATIONAL FLOOD INSURANCE PROGRAM:

At time of loss, by above indicated policy of insurance, you insured the interest of
Sean Netka; 1361 Woodstork Ct.; Jacksonville Beach, FL 32250

against loss by flood to the property described according to the terms and conditions of said policy and of all forms, endorsements, transfers and assignments attached thereto.

TIME AND ORIGIN A Flood loss occurred about the hour of Ten o'clock AM.,
 on the 07 day of October, 2016. The cause of the said loss was:

Tidal Waters Overflow

OCCUPANCY The premises described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever:

Owner

INTEREST No other person or persons had any interest therein or encumbrance thereon except:
Bank of America & Michael Netka & Sean Netka

1. FULL AMOUNT OF INSURANCE applicable to the property for which claim is presented is	<u>\$350,000.00</u>
2. ACTUAL CASH VALUE of building structures	<u>\$319,774.98</u>
3. ADD ACTUAL CASH VALUE OF CONTENTS of personal property insured	<u>\$89,500.00</u>
4. ACTUAL CASH VALUE OF ALL PROPERTY	<u>\$409,274.98</u>
5. FULL COST OF REPAIR OR REPLACEMENT (Building and Contents).....	<u>\$124,689.93</u>
6. LESS APPLICABLE DEPRECIATION	<u>\$6,692.65</u>
7. ACTUAL CASH VALUE LOSS is	<u>\$117,997.28</u>
8. LESS DEDUCTIBLES	<u>\$2,500.00</u>
9. NET AMOUNT CLAIMED under above numbered policy is	<u>\$115,497.28</u>

The said loss did not originate by any act, design or procurement on the part of your insured, nothing has been done by or with the privity or consent of your insured to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss, no property saved has in any manner been concealed, and no attempt to deceive the said insurer as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

I understand that this insurance (policy) is issued Pursuant to the National Flood Insurance Act of 1968, or Any Act Amendatory thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B, and that knowingly and willfully making any false answers or misrepresentations of fact may be punishable by fine, imprisonment, or both under applicable United States Codes.

Subrogation - To the extent of the payment made or advanced under this policy; the insured hereby assigns, transfers and sets over the insurer all rights, claims or interest that he has against any person, firm or corporation liable for the loss or damage to the property for which payment is made or advanced. He also hereby authorizes the insurer to sue any such third party in his name.

The insured hereby warrants that no release has been given or will be given or settlement or compromise made or agreed upon with any third party who may be liable in damages to the insured with respect to the claim being made herein.

The furnishing of this blank or the preparation of proofs by a representative of the above insurer is not a waiver of any of its rights.

I declare under penalty of perjury that the information contained in the foregoing is true and correct to the best of my knowledge and belief.

Executed this 13th day of February, 20 17
 Name [Signature]

Netka Flood Claim # 157237

NFIP Policy Number: 6600057912

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM

O.M.B. No. 1660-0005
Expires April 30, 2017

Statement as to full cost of repair or replacement
under the replacement cost coverage, subject
to the terms and conditions of this policy*

(See reverse side for Privacy Act Statement and Paperwork Burden Disclosure Notice)

Policy No. FL 09-6600057912.02

Agency at PO Box 5700, Jacksonville, FL 32250

Agent Brightway Insurance

Insured Sean Netka

Location 1361 Woodstork Ct., Jacksonville Beach, FL 32250

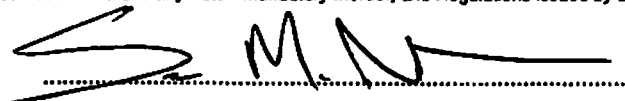
Type of property involved in claim Residential

Date of Loss 10/7/2016

1. Full Amount of Insurance applicable to the property for which claim is presented was	\$250,000.00
2. Full Replacement Cost of the said property at the time of the loss was	\$347,581.50
3. The Full cost of Repair or Replacement is	\$112,205.11
4. Applicable Depreciation is	\$4,713.18
5. Actual Cash Value loss is (Line 3 minus Line 4)	\$107,491.93
6. Less deductibles and/or participation by the insured	\$1,250.00
7. Actual Cash Value Claim is (Line 5 minus Line 6)	\$106,241.93

8. Supplemental Claim, to be filed in accordance with the terms and conditions of the Replacement Cost Coverage within
180 days from date of loss shown above, will not exceed \$4,434.97
(This figure will be that portion of the amounts shown on Lines 4 and 6 which is recoverable)

*The Standard Flood Insurance Policy is subject to the National Flood Insurance Act of 1968 and any Acts Ammendatory thereof, and Regulations issued by the Federal Insurance Administration pursuant to such statute(s).


..... Insured

..... Adjuster

[Query](#) [Reports](#) [Utilities](#) [Help](#) [Log Out](#)

JYDMD,MEDIATION

**U.S. District Court
Northern District of Florida (Gainesville)
CIVIL DOCKET FOR CASE #: 1:17-cv-00236-MW-GRJ**

CEDAR KEY MARINA II INC v. WRIGHT NATIONAL FLOOD INSURANCE COMPANY
Assigned to: JUDGE MARK E WALKER
Referred to: MAGISTRATE JUDGE GARY R JONES
Cause: 28:1346 Breach of Contract

Date Filed: 09/21/2017
Jury Demand: None
Nature of Suit: 110 Insurance
Jurisdiction: Federal Question

Plaintiff

CEDAR KEY MARINA II INC

represented by **ASHLEY NOELLE SMITH**
MERLIN LAW GROUP - TAMPA FL
777 S HARBOUR ISLAND BLVD STE
950
TAMPA, FL 33602
813-229-1000
Fax: 813-229-3692
Email: asmith@merlinlawgroup.com
ATTORNEY TO BE NOTICED

V.

Defendant

**WRIGHT NATIONAL FLOOD
INSURANCE COMPANY**

represented by **JOEL WAYNE MORGAN**
FREEBORN & PETERS LLP -
RICHMOND VA
411 EAST FRANKLIN STREET
SUITE 200
RICHMOND, VA 23219
804-644-1300
Fax: 804-644-1354
Email: jwmorgan@freeborn.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JASON PAUL STEARNS
FREEBORN & PETERS LLP - TAMPA FL
201 NORTH FRANKLIN STREET
SUITE 2150
TAMPA, FL 33602
813-488-2920
Fax: 813-472-7570
Email: jstearns@freeborn.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/30/2018	18	STATUS REPORT by CEDAR KEY MARINA II INC. (SMITH, ASHLEY) (Entered: 03/30/2018)
03/19/2018	17	ORDER granting 16 Motion to Appear Pro Hac Vice (Appointed JOEL WAYNE MORGAN for WRIGHT NATIONAL FLOOD INSURANCE COMPANY) signed by JUDGE MARK E WALKER on 3/19/18. (tss) (Entered: 03/19/2018)
03/16/2018	16	Consent MOTION to Appear Pro Hac Vice(Filing fee \$ 201 receipt number AFLNDC-4124112.) by WRIGHT NATIONAL FLOOD INSURANCE COMPANY. (Attachments: # 1 Exhibit Certificate of Good Standing, # 2 Exhibit Certification of Joel W. Morgan, # 3 Text of Proposed Order Proposed form of Order Granting Unopposed Motion for Leave to Appear pro hac vice, Consent to Designation and Request to Electronically Receive Notices of Electronic Filing) (STEARNS, JASON) (Entered: 03/16/2018)
02/28/2018	15	STATUS REPORT <i>Joint Status Report Regarding Discovery</i> by WRIGHT NATIONAL FLOOD INSURANCE COMPANY. (STEARNS, JASON) (Entered: 02/28/2018)
01/29/2018	14	STATUS REPORT <i>Regarding Discovery</i> by WRIGHT NATIONAL FLOOD INSURANCE COMPANY. (STEARNS, JASON) (Entered: 01/29/2018)
01/02/2018	13	STATUS REPORT - <i>Joint Status Report Regarding Discovery</i> - by WRIGHT NATIONAL FLOOD INSURANCE COMPANY. (STEARNS, JASON) (Entered: 01/02/2018)
12/15/2017	12	SCHEDULING AND MEDIATION ORDER entered pursuant to 11 Report of Rule 26(f) Planning Meeting - Discovery due by 5/4/2018 , Dispositive Motions to be filed by 5/25/2018 , Mediation Report due by 6/15/2018 , Jury Trial set for 9/25/2018 at 08:30 AM in U.S. Courthouse Gainesville before JUDGE MARK E WALKER - case referred to mediation; signed by JUDGE MARK E WALKER on 12/15/17. (tss) (Entered: 12/15/2017)
12/15/2017		ACTION REQUIRED BY DISTRICT JUDGE: Chambers of JUDGE MARK E WALKER notified that action is needed Re: 11 Report of Rule 26(f) Planning Meeting. (kdm) (Entered: 12/15/2017)
12/14/2017	11	REPORT of Rule 26(f) Planning Meeting. (STEARNS, JASON) (Entered: 12/14/2017)
11/30/2017	10	STATUS REPORT - <i>JOINT STATUS REPORT BY CEDAR KEY MARINA II, INC. AND</i> by WRIGHT NATIONAL FLOOD INSURANCE COMPANY. (STEARNS, JASON) (Entered: 11/30/2017)
11/13/2017	9	Corporate Disclosure Statement/Certificate of Interested Persons by CEDAR KEY MARINA II INC. (SMITH, ASHLEY) (Entered: 11/13/2017)
10/31/2017	8	INITIAL SCHEDULING ORDER. Signed by JUDGE MARK E WALKER on 10/31/17. Rule 26 Meeting Report due by 12/14/2017 . Discovery due by 3/1/2018 . Status Report due by 11/30/2017 . (bkp) (Entered: 10/31/2017)
10/30/2017	7	Corporate Disclosure Statement/Certificate of Interested Persons by WRIGHT NATIONAL FLOOD INSURANCE COMPANY identifying Corporate Parent Brown & Brown, Inc. for WRIGHT NATIONAL FLOOD INSURANCE COMPANY.. (STEARNS, JASON) (Entered: 10/30/2017)
10/30/2017	6	ANSWER to 1 Complaint, <i>And Affirmative Defenses</i> by WRIGHT NATIONAL FLOOD INSURANCE COMPANY. (STEARNS, JASON) (Entered: 10/30/2017)
10/16/2017	5	SUMMONS Returned Executed by CEDAR KEY MARINA II INC. WRIGHT NATIONAL FLOOD INSURANCE COMPANY served on 10/12/2017, answer due

		11/2/2017. (Attachments: # 1 Exhibit Notice of Service of Process) (SMITH, ASHLEY) (Entered: 10/16/2017)
09/22/2017	4	Summons Issued as to WRIGHT NATIONAL FLOOD INSURANCE COMPANY. (kdm) (Entered: 09/22/2017)
09/21/2017	3	CIVIL COVER SHEET. (SMITH, ASHLEY) (Entered: 09/21/2017)
09/21/2017	2	NOTICE of Filing Summons by Cedar Key Marina II, Inc. re 1 Complaint, (SMITH, ASHLEY) (Entered: 09/21/2017)
09/21/2017	1	COMPLAINT against WRIGHT NATIONAL FLOOD INSURANCE COMPANY (Filing fee \$ 400 receipt number AFLNDC-3980280.), filed by Cedar Key Marina II, Inc.. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C) (SMITH, ASHLEY) (Entered: 09/21/2017)

PACER Service Center			
Transaction Receipt			
04/04/2018 10:23:15			
PACER Login:	moskowitzpacer	Client Code:	Flood
Description:	Docket Report	Search Criteria:	1:17-cv-00236-MW-GRJ
Billable Pages:	2	Cost:	0.20

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

CEDAR KEY MARINA II, INC.,

CIVIL ACTION NO.

Plaintiff,

v.

WRIGHT NATIONAL FLOOD INSURANCE COMPANY,

Defendant.

CIVIL ACTION COMPLAINT

Plaintiff, CEDAR KEY MARINA II, INC., by and through its counsel, files this Complaint against Defendant, WRIGHT NATIONAL FLOOD INSURANCE COMPANY, as follows:

INTRODUCTION

1. This is an action by the Plaintiff against its insurance carrier, WRIGHT NATIONAL FLOOD INSURANCE COMPANY (“Wright”), for benefits owed under the flood insurance policy, which have not been paid, as a result of Hurricane Hermine.

2. Plaintiff purchased a flood insurance policy from Wright, which participated in the U.S. Government’s National Flood Insurance Program (“NFIP”) pursuant to the National Flood Insurance Act of 1968 (“NFIA”), and consequently issued the federal Standard Flood Insurance Policy (“SFIP”) to Plaintiff.

3. Wright failed to pay the damages due and owing under the insurance policy.

PARTIES

4. Plaintiff, CEDAR KEY MARINA II, INC. (“Plaintiff”), is a business owning property located at 12780 State Road 24, Cedar Key, Florida.

5. Defendant, WRIGHT NATIONAL FLOOD INSURANCE COMPANY, is an insurance company authorized to do business in the State of Florida.

JURISDICTION

6. This Court has jurisdiction of this action pursuant to the National Flood Insurance Act, specifically 42 U.S.C. § 4001, *et seq.*

COUNT ONE – BREACH OF CONTRACT

7. Plaintiff, at all relevant times, has been the owner of certain real property located at 12780 State Road 24, Cedar Key, Levy County, Florida.

8. Plaintiff purchased a flood insurance policy, Policy Number 1151329939 (the “Policy”) from Wright, which covered the property at issue in this matter. A copy of the declaration page is attached hereto as **Exhibit A**.

9. All premiums on the Policy were paid, and the Policy was in full force and effect at all relevant times herein.

10. On or about September 2, 2016, Hurricane Hermine caused extensive flooding to the northwest coast of Florida.

11. Hurricane Hermine was a flood event, a covered risk under the Policy.

12. Plaintiff’s property sustained extensive damage as a result of flood waters associated with Hurricane Hermine.

13. Following Hurricane Hermine, Plaintiff properly and promptly submitted an insurance claim to Wright for damage to its property caused by flood waters associated with Hurricane Hermine.

14. On or about October 27, 2016, Wright issued payment to Plaintiff in the amount of \$16,046.71 for all damages covered under the Policy.

15. Wright’s estimate of damage and payment(s) were insufficient to correct the damage caused by flood waters associated with Hurricane Hermine.

16. On or about October 20, 2016, Plaintiff submitted a Proof of Loss to Wright pursuant to the terms of the Policy. A copy of the Proof of Loss is attached hereto as **Exhibit B**.

17. On or about November 30, 2016, Wright rejected Plaintiff's Proof of Loss. A copy of the rejection letter is attached hereto as **Exhibit C**.

18. Wright has breached the terms of the Policy by failing and refusing to pay all amounts due to the Plaintiff pursuant to the terms of the Policy.

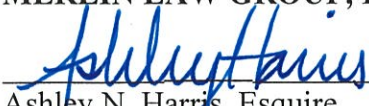
19. Plaintiff has complied with all conditions precedent to the bringing of this action or, in the alternative, Wright has waived same.

20. As a result of Wright's breach, Plaintiff has suffered damages, including the amounts to which it is legally entitled to recover under the terms of the subject Policy.

WHEREFORE, Plaintiff, CEDAR KEY MARINA II, INC., brings this action against Defendant, WRIGHT NATIONAL FLOOD INSURANCE COMPANY, and requests the following relief:

1. Entry of judgment in its favor for all amounts to which it is entitled under the terms of the Policy;
2. An award of the costs of this action; and
3. Such other and further relief as this Court deems just and appropriate.

Dated: September 20, 2017

MERLIN LAW GROUP, P.A.
By: 
Ashley N. Harris, Esquire
aharris@merlinlawgroup.com
777 S Harbour Island Boulevard, Suite 950
Tampa, Florida 33602
Phone: (813) 229-1000
Facsimile: (813) 229-3692
Attorneys for Plaintiff

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CEDAR KEY MARINA II, INC.,

(b) County of Residence of First Listed Plaintiff Levy County, Florida
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Merlin Law Group, P.A.
777 S Harbour Island Blvd, Suite 950, Tampa, Florida 33602

DEFENDANTS

WRIGHT NATIONAL FLOOD INSURANCE COMPANY

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|---------------------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Tort Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 U.S.C. § 4001, et seq
 Brief description of cause:
 Breach of Insurance Contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 09/20/2017 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

EXHIBIT A

FFL 99.001 1214
0732057
3/10/16

09 1151329939 00

Agent (813)661-0382
SOUTH POINTE SERVICES
16637 FISHHAWK BLVD STE 104
LITHIA FL 33547-3919

First Mortgagee
Loan 4001521100
DRUMMOND COMMUNITY BANK
ATIMA
PO BOX 1039
CHIEFLAND FL 32644-1039

Claims Information:

Please contact your agent or go to www.wrightflood.com to enter your claim as well as receive important information to mitigate the damage to your property. If you need to reach the insurance company the number is 1-800-725-9472.

073205709115132993916070

0000A

Company

NPAG 0373



EXHIBIT B

091151329939 00
POLICY NO. FL
3/7/2016 - 3/7/2017
POLICY TERM

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM
PROOF OF LOSS
(See reverse side for Privacy Act Statement and
Paperwork Burden Disclosure Notice)

O.M.B. No. 1660-0005
Expires April 30, 2017

\$392,000.00
AMT OF BLDG COV AT TIME OF LOSS
\$0.00
AMT OF CONTS COV AT TIME OF LOSS

South Point Services
AGENT 16637 Fishhawk Blvd
STE 104
Lithia FL 33547
AGENCY AT

TO THE NATION FLOOD INSURANCE PROGRAM:

At time of loss, by above indicated policy of insurance, you insured the interest of

Cedar Key Marina II Inc.

against loss by flood to the property described according to the terms and conditions of said policy and of all forms, endorsements, transfers and assignments attached thereto.

TIME AND ORIGIN. A Flood loss occurred about the hour of 12 o'clock AM.,
on the 2 day of September 2016. The cause of said loss was:

OCCUPANCY The premises described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever:
Business

INTEREST No other person or persons had any interest therein or encumbrance thereon except

Drummond Community Bank ATIMA PO BOX 1039 Chiefland FL 32644

1. FULL AMOUNT OF INSURANCE application to the property for which claim is presented is.....	\$ <u>392,000.00</u>
2. ACTUAL CASH VALUE of building structures.....	\$ <u>465,600.00</u>
3. ADD ACTUAL CASH VALUE OF CONTENTS of personal property insured.....	\$ <u>0.00</u>
4. ACTUAL CASH VALUE OF ALL PROPERTY.....	\$ <u>465,600.00</u>
5. FULL COST OF REPAIR OR REPLACEMENT (Building and Contents).....	\$ <u>582,000.00</u>
6. LESS APPLICABLE DEPRECIATION.....	\$ <u>116,400.00</u>
7. ACTUAL CASH VALUE LOSS is.....	\$ <u>465,600.00</u>
8. LESS DEDUCTIBLES	\$ <u>20,000.00</u>
9. NET AMOUNT CLAIMED under above numbered policy is	\$ <u>445,600.00</u>

The said loss did not originate by any act, design or procurement on the part of your insured, nothing has been done by or with the privity or consent of insured to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss, no property saved has in any manner been concealed, and no attempt to deceive the said insurer as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

I understand that this insurance (policy) is issued Pursuant to the National Flood Insurance Act of 1968, or Any Act Amendatory thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B, and that knowingly and willfully making any false answers or misrepresentations of fact may be punishable by fine of imprisonment under applicable United State Codes.

Subrogation - To the extent of the payment made or advanced under this policy; the insured hereby assigns, transfers and sets over the insurer all rights, claims or interest that he has against any person, firm or corporation liable for the loss or damage to the property for which payment is made or advanced. He also hereby authorizes the insurer to sue any such third party in his name.

The insured hereby warrants that no release has been given or will be given or settlement or compromise made or agreed upon with any third party who may be liable in damages to the insured with respect to the claim being made herein.

The furnishing of this blank or the preparation of proofs by a representative of the above insurer is not a waiver of any of its rights.

I declare under penalty of perjury that the information contained in the foregoing is true and correct to the best of my knowledge and belief.

Executed this 20th day of October, 2016

Name John G. Blouse / Paul L. Blouse

State of Florida
County of Levy
Personally appeared
John G. Blouse and
Paul L. Blouse before me
October 20, 2016

Marlene R. Simpson

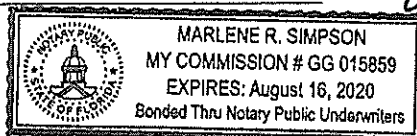


EXHIBIT C



We are flood.®

REJECTION OF PROOF OF LOSS

November 30, 2016

Cedar Key Marina II Inc
P.O. Box 744
Cedar Key, FL 32625-0744

RE: Insured: Cedar Key Marina II Inc
Claim Number: 16 0010241
Policy Number: 09 1151329939 00
Date of Loss: 09/01/2016
Location of Loss: 12780 State Road 24, Cedar Key, FL 32625-4729

Dear Policyholder(s):

This will acknowledge receipt of your Proof of Loss in the amount of \$445,600.00 signed on October 20, 2016.

The Proof of Loss forms cannot be accepted under the terms and conditions of the insurance policy for the following reason:

1. The amount claimed is not an accurate reflection of covered damage.
2. The amount claimed exceeds policy limits.

You were originally presented with a correct estimate and Proof of Loss from the field adjuster. We have reviewed the Proof of Loss signed on October 16, 2016 and payment has been issued in the amount of \$16,046.71, after application of your policy deductible.

Wright National Flood Insurance Company neither admits nor denies liability regarding this loss. Please do not construe this letter or any act on the part of Wright National Flood Insurance Company or its representatives or agents as a waiver of any rights or defenses to it by contract or law, as all such rights and defenses are hereby specifically reserved.

IX. What Law Governs

This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, et seq.), and Federal common law.

If you have any additional questions, please feel free to contact your field adjuster or our office.

Regards,

Michael Giovanniello
Claims Examiner
Wright National Flood Insurance Co.
P.O. Box 33064 St. Petersburg, FL 33733
800-725-9472 ext: 5311

[Query](#) [Reports](#) [Utilities](#) [Help](#) [Log Out](#)

MEDIATION

**U.S. District Court
Northern District of Florida (Gainesville)
CIVIL DOCKET FOR CASE #: 1:17-cv-00238-MW-GRJ**

PATE v. ALLSTATE INSURANCE COMPANY
Assigned to: JUDGE MARK E WALKER
Referred to: MAGISTRATE JUDGE GARY R JONES
Cause: 12:635 Breach of Insurance Contract

Date Filed: 09/26/2017
Jury Demand: Plaintiff
Nature of Suit: 110 Insurance
Jurisdiction: Federal Question

Plaintiff

MARY PATE

represented by **ASHLEY NOELLE SMITH**
MERLIN LAW GROUP - TAMPA FL
777 S HARBOUR ISLAND BLVD STE
950
TAMPA, FL 33602
813-229-1000
Fax: 813-229-3692
Email: asmith@merlinlawgroup.com
ATTORNEY TO BE NOTICED

V.

Defendant

ALLSTATE INSURANCE COMPANY

represented by **JOHN MICHAEL PENNEKAMP**
FOWLER WHITE BURNETT PA -
MIAMI FL
1395 BRICKELL AVE - 14TH FL
MIAMI, FL 33131
305-789-9200
Fax: 305-789-9201
Email: jmp@fowler-white.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/07/2018	10	SCHEDULING AND MEDIATION ORDER entered pursuant to 9 Report of Rule 26(f) Planning Meeting - Discovery due by 8/27/2018 , Dispositive Motions to be filed by 9/17/2018 , Mediation Report due by 10/8/2018 , Bench Trial set for 1/29/2019 at 08:30 AM in U.S. Courthouse Gainesville before JUDGE MARK E WALKER - Case referred to mediation; signed by JUDGE MARK E WALKER on 2/7/18. (tss) (Entered: 02/08/2018)
02/07/2018		ACTION REQUIRED BY DISTRICT JUDGE: Chambers of JUDGE MARK E WALKER notified that action is needed Re: 9 Report of Rule 26(f) Planning Meeting. (kdm) (Entered: 02/07/2018)
02/06/2018	9	REPORT of Rule 26(f) Planning Meeting. (PENNEKAMP, JOHN) (Entered: 02/06/2018)

01/26/2018		ACTION REQUIRED BY DISTRICT JUDGE: Chambers of JUDGE MARK E WALKER notified that action is needed Re: 7 Initial Scheduling Order - Rule 26 Meeting Report due by 1/12/2018. (None filed to date.) (kdm) (Entered: 01/26/2018)
12/12/2017	8	Corporate Disclosure Statement/Certificate of Interested Persons by ALLSTATE INSURANCE COMPANY identifying Corporate Parent THE ALLSTATE CORPORATION, Corporate Parent ALLSTATE INSURANCE HOLDINGS, LLC for ALLSTATE INSURANCE COMPANY.. (PENNEKAMP, JOHN) (Entered: 12/12/2017)
11/29/2017	7	INITIAL SCHEDULING ORDER signed by JUDGE MARK E WALKER on 11/29/17 - Fed.R.Civ.P. 7.1 Corporate Disclosure Statement Deadline set for 12/13/2017 , Rule 26 Meeting Report due by 1/12/2018 , Discovery due by 3/28/2018 . (tss) (Entered: 11/29/2017)
11/02/2017	6	ANSWER to 1 Complaint by ALLSTATE INSURANCE COMPANY. (PENNEKAMP, JOHN) (Entered: 11/02/2017)
10/16/2017	5	SUMMONS Returned Executed by MARY PATE. ALLSTATE INSURANCE COMPANY served on 10/12/2017, answer due 11/2/2017. (Attachments: # 1 Exhibit Notice of Service of Process) (SMITH, ASHLEY) (Entered: 10/16/2017)
10/06/2017	4	Summons Issued as to ALLSTATE INSURANCE COMPANY. (tss) (Entered: 10/06/2017)
09/26/2017	3	NOTICE of Filing Summons by Mary Pate re 1 Complaint (SMITH, ASHLEY) (Entered: 09/26/2017)
09/26/2017	2	CIVIL COVER SHEET. (SMITH, ASHLEY) (Entered: 09/26/2017)
09/26/2017	1	COMPLAINT against ALLSTATE INSURANCE COMPANY (Filing fee \$ 400 receipt number AFLNDC-3984202.), filed by Mary Pate. (Attachments: # 1 Exhibit A, # 2 Exhibit B) (SMITH, ASHLEY) (Entered: 09/26/2017)

PACER Service Center			
Transaction Receipt			
04/04/2018 10:26:51			
PACER Login:	moskowitzpacer	Client Code:	Flood
Description:	Docket Report	Search Criteria:	1:17-cv-00238-MW-GRJ
Billable Pages:	2	Cost:	0.20

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA**

MARY PATE,

CIVIL ACTION NO.

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

CIVIL ACTION COMPLAINT

Plaintiff, MARY PATE, by and through her counsel, files this Complaint against Defendant, ALLSTATE INSURANCE COMPANY, as follows:

INTRODUCTION

1. This is an action by the Plaintiff, a homeowner, against her insurance carrier, ALLSTATE INSURANCE COMPANY (“Allstate”), for benefits owed under the flood insurance policy, which have not been paid, as a result of Hurricane Hermine.

2. The Plaintiff purchased a flood insurance policy from Allstate, which participated in the U.S. Government’s National Flood Insurance Program (“NFIP”) pursuant to the National Flood Insurance Act of 1968 (“NFIA”), and consequently issued the federal Standard Flood Insurance Policy (“SFIP”) to Plaintiff.

3. Allstate failed to pay the damages due and owing under the insurance policy.

PARTIES

4. Plaintiff, MARY PATE (“Plaintiff”), owns property located at 5612 Riverside Drive, Yankeetown, Levy County, Florida.

5. Defendant, ALLSTATE INSURANCE COMPANY, is an insurance company authorized to do business in the State of Florida.

JURISDICTION

6. This Court has jurisdiction of this action pursuant to the National Flood Insurance Act, specifically 42 U.S.C. § 4001, *et seq.*

COUNT ONE – BREACH OF CONTRACT

7. Plaintiff, at all relevant times, has been the owner of certain real property located at 5612 Riverside Drive, Yankeetown, Levy County, Florida.

8. Plaintiff purchased a flood insurance policy, Policy Number 001802235059 (the “Policy”) from Allstate, which covered the property at issue in this matter. A copy of the declaration page is attached hereto as **Exhibit A**.

9. All premiums on the Policy were paid, and the Policy was in full force and effect at all relevant times herein.

10. On or about September 2, 2016, Hurricane Hermine caused extensive flooding to the northwest coast of Florida.

11. Hurricane Hermine was a flood event, a covered risk under the Policy.

12. Plaintiff’s property sustained extensive damage as a result of flood waters associated with Hurricane Hermine.

13. Following Hurricane Hermine, Plaintiff properly and promptly submitted an insurance claim to Allstate for damage to her property caused by flood waters associated with Hurricane Hermine.

14. On or about December 29, 2016, Allstate issued payment to Plaintiff in the amount of \$64,941.40 for all damages covered under the Policy.

15. Allstate’s estimate of damage and payments were insufficient to correct the damage caused by flood waters associated with Hurricane Hermine.

16. On or about October 20, 2016, Plaintiff submitted a Proof of Loss to Allstate pursuant to the terms of the Policy. A copy of the Proof of Loss is attached hereto as **Exhibit B**.

17. Allstate has breached the terms of the Policy by failing and refusing to pay all amounts due to Plaintiff pursuant to the terms of the Policy.

18. Plaintiff has complied with all conditions precedent to the bringing of this action or, in the alternative, Allstate has waived same.

19. As a result of Allstate's breach, Plaintiff has suffered damages, including the amounts to which she is legally entitled to recover under the terms of the subject Policy.

WHEREFORE, Plaintiff, MARY PATE, brings this action against Defendant, ALLSTATE INSURANCE COMPANY and requests the following relief:

1. Entry of judgment in her favor for all amounts to which she is entitled under the terms of the Policy;
2. An award of the costs of this action; and
3. Such other and further relief as this Court deems just and appropriate.

Dated: September 26, 2017

MERLIN LAW GROUP, P.A.
By: 
Ashley N. Harris, Esquire
aharris@merlinlawgroup.com
777 S Harbour Island Boulevard, Suite 950
Tampa, Florida 33602
Phone: (813) 229-1000
Facsimile: (813) 229-3692
Attorneys for Plaintiff

EXHIBIT A



Allstate
You're in good hands.

PO BOX 2964
SHAWNEE MISSION, KS 66201-1364
800-527-2634
NAIC Number: 19232

Policy Number
1802235059



FLOOD DWELLING FORM STANDARD POLICY ENDORSEMENT DECLARATION

Named Insured and Mailing Address: MARY PATE PO BOX 94 YANKEETOWN, FL 34498-0094	Policy Period: 06/29/2016 12:01am to 06/29/2017 12:01am Policy Term: ONE YEAR EFFECTIVE DATE OF CHANGE: 06/29/2016 Original New Business Effective Date: Reinstatement Date:
	Agent No: 054404 HERITAGE INS INC, PO BOX 9 INGLIS, FL 34449-0009 Agent Phone: 352-447-2276
Payor: INSURED	

Property Location:
5612 RIVERSIDE DR
YANKEETOWN, FL 34498-2355

RATING DESCRIPTION	
Property/Building	Contents Location

Insured's Principal Residence: Y
 SINGLE FAMILY; ONE FLOOR; ELEVATED WITH CRAWLSPACE;
 CRAWLSPACE WITH PROPER OPENINGS; INCLUDE ADDITION AND EXTENSION
 LOWEST FLOOR ONLY ABOVE GROUND LEVEL Subject to, III.
 Property Covered, Paragraph B.

Date of construction or substantial improvement was on 05/12/1952 Pre-FIRM Subsidized

Coverage Limitations May Apply. See Your Policy for Details.

LOCATION INFORMATION

Community Name: YANKEETOWN, TOWN OF No: 1201470637F
 Status: REGULAR CRS Class: 6 FIRM Zone: AE Current Flood Zone: AE Elevation Difference: Grandfathered: N

COVERAGE AND RATING INFORMATION					
Coverage Type	Coverage Limit	Deductible	Rate	Deductible Discount	Premium
Building	\$ 132,700	\$ 2,000	0.94/0.85	\$ 0.00	\$ 1,182.00
Contents	\$ 14,100	\$ 2,000	1.18/1.55	\$ 0.00	\$ 166.00
			ICC PREMIUM		\$ 70.00
			ANNUAL SUBTOTAL		\$ 1,418.00
			CRS DISCOUNT(20%)		\$ -284.00
			RESERVE FUND ASSESSMENT		\$ 170.00
			HFIAA SURCHARGE		\$ 25.00
			FEDERAL POLICY FEE		\$ 50.00
			TOTAL PREMIUM		\$ 1,379.00

THIS IS NOT A BILL

Policy Changes:
BUILD DESCRIPTION CORRECTED; BASEMENT TYPE CORRECTED

Attachments:

Issue Date: 02/02/2017

Insured Copy

EXHIBIT B

001802235059
POLICY NO: FL
6/29/2016 - 6/29/2017
POLICY TERM

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM
PROOF OF LOSS

O.M.B. No. 1660-0005
Expires April 30, 2017

(See reverse side for Privacy Act Statement and
Paperwork Burden Disclosure Notice)

\$132,700.00
AMT OF BLDG COV AT TIME OF LOSS
\$14,100.00
AMT OF CONTS COV AT TIME OF LOSS

Heritage Insurance Co.
AGENT 388 Hwy 40 W
Inglis, FL 34449
AGENCY AT

TO THE NATION FLOOD INSURANCE PROGRAM:
At time of loss, by above indicated policy of insurance, you insured the interest of

Mary Pate

against loss by flood to the property described according to the terms and conditions of said policy and of all forms, endorsements, transfers and assignments attached thereto.

TIME AND ORIGIN. A Flood loss occurred about the hour of 12 o'clock AM,
on the 2 day of September 20 16. The cause of said loss was:

OCCUPANCY The premises described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose
whenever:
Owner Occupied

INTEREST No other person or persons had any interest therein or encumbrance thereon except N/A

1. FULL AMOUNT OF INSURANCE application to the property for which claim is presented is.....	\$ 146,800.00
2. ACTUAL CASH VALUE of building structures.....	\$ 251,550.00
3. ADD ACTUAL CASH VALUE OF CONTENTS of personal property insured.....	\$ 39,445.74
4. ACTUAL CASH VALUE OF ALL PROPERTY.....	\$ 290,995.74
5. FULL COST OF REPAIR OR REPLACEMENT (Building and Contents).....	\$ 300,857.18
6. LESS APPLICABLE DEPRECIATION.....	\$ 60,171.44
7. ACTUAL CASH VALUE LOSS is.....	\$ 240,685.74
8. LESS DEDUCTIBLES.....	\$ 2,000.00
9. NET AMOUNT CLAIMED under above numbered policy is.....	\$ 238,685.74

The said loss did not originate by any act, design or procurement on the part of your insured, nothing has been done by or with the privity or consent of insured to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss, no property saved has in any manner been concealed, and no attempt to deceive the said insurer as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

I understand that this insurance (policy) is issued pursuant to the National Flood Insurance Act of 1968, or Any Act Amending thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B, and that knowingly and willfully making any false answers or misrepresentations of fact may be punishable by fine of imprisonment under applicable United State Codes.

Subrogation - To the extent of the payment made or advanced under this policy; the insured hereby assigns, transfers and sets over the insurer all rights, claims or interest that he has against any person, firm or corporation liable for the loss or damage to the property for which payment is made or advanced. He also hereby authorizes the insurer to sue any such third party in his name.

The insured hereby warrants that no release has been given or will be given or settlement or compromise made or agreed upon with any third party who may be liable in damages to the insured with respect to the claim being made herein.

The furnishing of this blank or the preparation of proofs by a representative of the above insurer is not a waiver of any of its rights.

I declare under penalty of perjury that the information contained in the foregoing is true and correct to the best of my knowledge and belief.

Executed this 20 day of October 20 16
Name Mary Pate

STATE OF FLORIDA
COUNTY OF Citrus
On this 20 day of October 2016
the foregoing or attached instrument was acknowledged before
me by Mary Pate
who is/are personally known to me or
who has/have produced F-101
as identification and who (did) (did not) take an oath.
Notary Public

FEMA Form 086-0-9 (04/14)

Privacy Act Statement

The information requested is necessary to process the subject loss. The authority to collect the information is Title 42, U.S. Code, Section 4001 to 4028. It is voluntary on your part to furnish the information. However, omission of an item may preclude processing of the form. The information will not be disclosed outside of the Federal Emergency Management Agency, except to the servicing agent, acting as the government's fiscal agent; to claims adjusters to enable them to confirm coverage and the location of insured property; to certain Federal, State, and Local Government agencies for determining eligibility for benefits and for verification of agencies for acquisition and relocation-related projects, consistent with the National Flood Insurance Program and consistent with the routine uses described in the program's system of record. Failure by you to provide some or all of the information may result in delay in processing or denial of this claim and/or application.

PAPERWORK BURDEN DISCLOSURE NOTICE

Public reporting burden for the collection of information titled Claims for National Flood Insurance Program (NFIP) is estimated to average 6 hours per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and submitting these forms. You are not required to respond to this collection of information unless a currently valid OMB control number and expiration date is displayed in the upper right corner of the these forms. Send comments regarding the accuracy of the burden estimate and suggestions for reducing the burden to: Information Collections Management, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, S.W., Washington, DC 20472, Paperwork Reduction Project (1660-0005). **NOTE: Do not send your completed form to this address.**

FEMA Form No.	Title	Burden Hours
086-0-6	Worksheet-Contents-Personal Property	2.5 Hours
086-0-7	Worksheet-Building	2.5 Hours
086-0-8	Worksheet-Building (Continued)	1.0 Hours
086-0-9	Proof of Loss	.08 Hours
086-0-10	Increased Cost of Compliance	2.0 Hours
086-0-11	Notice of Loss	.07 Hours
086-0-12	Statement as to Full Cost to Repair or Replacement Cost Coverage, Subject to the Terms and Conditions of this Policy	.10 Hours
086-0-13	National Flood Insurance Program Preliminary Report	.07 Hours
086-0-14	National Flood Insurance Program Final Report	.07 Hours
086-0-15	National Flood Insurance Program Narrative Report	.08 Hours
086-0-16	Cause of Loss and Subrogation Report	1 Hour
086-0-17	Manufactured (Mobile) Home/Travel Trailer Worksheet	.50 Hours
086-0-18	Mobile Home/Travel Trailer Worksheet (Continued)	.25 Hours
086-0-19	Increased Cost of Compliance (ICC) Adjuster Report	.42 Hours
086-0-20	Adjuster Preliminary Damage Assessment	.25 Hours
086-0-21	Adjuster Certification Application	.25 Hours

**U.S. District Court
Middle District of Florida (Ocala)
CIVIL DOCKET FOR CASE #: 5:17-cv-00439-TJC-PRL**

Acker et al v. Tower Hill Preferred Insurance Company
Assigned to: Judge Timothy J. Corrigan
Referred to: Magistrate Judge Philip R. Lammens
Cause: 42:4001 National Insurance Flood Act

Date Filed: 09/22/2017
Jury Demand: None
Nature of Suit: 110 Insurance
Jurisdiction: Federal Question

Plaintiff

Gregory James Acker

represented by **Ashley Noelle Harris**
Merlin Law Group, PA
Suite 950
777 S Harbour Island Blvd
Tampa, FL 33602
813/229-1000
Fax: 813/229-3692
Email: aharris@merlinlawgroup.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Lauren Murray

represented by **Ashley Noelle Harris**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Tower Hill Preferred Insurance Company

represented by **J. Michael Pennekamp**
Fowler White Burnett, PA
1395 Brickell Ave 14th Flr
Miami, FL 33131-3353
305/789-9200
Fax: 305/789-9201
Email: jmp@fowler-white.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/20/2017	11	CERTIFICATE of interested persons and corporate disclosure statement re 10 Case management and scheduling order by Gregory James Acker, Lauren Murray. (Harris, Ashley) (Entered: 12/20/2017)
12/19/2017	10	CASE MANAGEMENT AND SCHEDULING ORDER: Discovery deadline is 5/29/2018; Conduct mediation hearing by 6/6/2018; Dispositive and Daubert motions due by 6/29/2018; Pretrial statement due by 11/14/2018; Final Pretrial Conference set

		for 11/20/2018 at 10:00 AM before Judge Timothy J. Corrigan; and, Trial set for trial term commencing 12/3/2018 at 9:00 AM before Judge Timothy J. Corrigan. Signed by Deputy Clerk on 12/19/2017. (Attachments: # 1 Mediation Report form, # 2 docket sheet)(MD) (Entered: 12/19/2017)
12/01/2017	9	CASE MANAGEMENT REPORT. (Pennekamp, J.) (Entered: 12/01/2017)
11/07/2017	8	CORPORATE Disclosure Statement by Tower Hill Preferred Insurance Company identifying Corporate Parent Tomoka Re Holdings, Inc. for Tower Hill Preferred Insurance Company.. (Pennekamp, J.) (Entered: 11/07/2017)
11/07/2017	7	ANSWER and affirmative defenses to 1 Complaint by Tower Hill Preferred Insurance Company. (Pennekamp, J.) (Entered: 11/07/2017)
10/17/2017	6	RETURN of service executed on 10/17/17 by Gregory James Acker, Lauren Murray as to Tower Hill Preferred Insurance Company. (Attachments: # 1 Exhibit Notice of Service of Process)(Harris, Ashley) (Entered: 10/17/2017)
09/27/2017	5	NOTICE of designation under Local Rule 3.05 - track 2. Signed by Deputy Clerk on 9/27/2017. (Attachments: # 1 Case Management Report form, # 2 Consent to US Magistrate Judge Jurisdiction letter and form)(MD) (Entered: 09/27/2017)
09/26/2017	4	Case transferred in from Tampa Division on 09/26/2017 Case Number 8:17-cv-2210. Case assigned to District Judge Timothy J. Corrigan and Magistrate Judge Philip R. Lammens. New Case Number: 5:17-cv-439-Oc-32PRL. (HAQ) (Entered: 09/26/2017)
09/26/2017	3	ORDER: The Clerk is directed to transfer this case to the Ocala Division of the United States District Court for the Middle District of Florida. See Order for details. Signed by Judge Virginia M. Hernandez Covington on 9/26/2017. (KAK) (Entered: 09/26/2017)
09/25/2017	2	SUMMONS issued as to Tower Hill Preferred Insurance Company. (LMD) (Entered: 09/25/2017)
09/22/2017	1	COMPLAINT against Tower Hill Preferred Insurance Company (Filing fee \$ 400 receipt number TPA045994) filed by Gregory James Acker, Lauren Murray. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A, # 3 Exhibit B)(LMD) (Entered: 09/25/2017)

PACER Service Center			
Transaction Receipt			
04/04/2018 10:34:02			
PACER Login:	moskowitzpacer:5453594:0	Client Code:	Flood
Description:	Docket Report	Search Criteria:	5:17-cv-00439-TJC-PRL
Billable Pages:	2	Cost:	0.20

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

GREGORY JAMES ACKER and
LAUREN MURRAY,

8:17 cv 2210 T 33 TBM

CIVIL ACTION NO.

Plaintiffs,

v.

TOWER HILL PREFERRED INSURANCE COMPANY,

Defendant.

CIVIL ACTION COMPLAINT

Plaintiffs, GREGORY JAMES ACKER and LAUREN MURRAY, by and through their counsel, file this Complaint against Defendant, TOWER HILL PREFERRED INSURANCE COMPANY, as follows:

FILED
SEP 22 11 35 AM '18
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
CRYSTAL RIVER, FLORIDA

INTRODUCTION

1. This is an action by the Plaintiffs, homeowners, against their insurance carrier, TOWER HILL PREFERRED INSURANCE COMPANY ("Tower Hill"), for benefits owed under the flood insurance policy, which have not been paid, as a result of Hurricane Hermine.

2. The Plaintiffs purchased a flood insurance policy from Tower Hill, which participated in the U.S. Government's National Flood Insurance Program ("NFIP") pursuant to the National Flood Insurance Act of 1968 ("NFIA"), and consequently issued the federal Standard Flood Insurance Policy ("SFIP") to the Plaintiffs.

3. Tower Hill failed to pay the damages due and owing under the insurance policy.

PARTIES

4. Plaintiffs, GREGORY JAMES ACKER and LAUREN MURRAY ("Plaintiffs"), are individuals owning property located at 387 NW Magnolia Circle, Crystal River, Florida.

TRA-45994
\$400

5. Defendant, TOWER HILL PREFERRED INSURANCE COMPANY, is an insurance company authorized to do business in the State of Florida.

JURISDICTION

6. This Court has jurisdiction of this action pursuant to the National Flood Insurance Act, specifically 42 U.S.C. § 4001, *et seq.*

COUNT ONE – BREACH OF CONTRACT

7. Plaintiffs, at all relevant times, have been the owner of certain real property located at 387 NW Magnolia Circle, Crystal River, Florida.

8. Plaintiffs purchased a flood insurance policy, Policy Number 0000332511 (the “Policy”) from Tower Hill, which covered the property at issue in this matter. A copy of the declaration page is attached hereto as **Exhibit A**.

9. All premiums on the Policy were paid, and the Policy was in full force and effect at all relevant times herein.

10. On or about September 2, 2016, Hurricane Hermine caused extensive flooding to the northwest coast of Florida.

11. Hurricane Hermine was a flood event, a covered risk under the Policy.

12. Plaintiffs’ property sustained extensive damage as a result of flood waters associated with Hurricane Hermine.

13. Following Hurricane Hermine, Plaintiffs properly and promptly submitted an insurance claim to Tower Hill for damage to their property caused by flood waters associated with Hurricane Hermine.

14. Tower Hill estimated the covered damages to be in the amount of \$130,973.54.

15. Tower Hill's estimate of damage and payments were insufficient to correct the damage caused by flood waters associated with Hurricane Hermine.

16. On or about October 20, 2016, Plaintiffs submitted a Proof of Loss to Tower Hill pursuant to the terms of the Policy. A copy of the Proof of Loss is attached hereto as **Exhibit B**.

17. Tower Hill has breached the terms of the Policy by failing and refusing to pay all amounts due to the Plaintiffs pursuant to the terms of the Policy.

18. Plaintiffs have complied with all conditions precedent to the bringing of this action or, in the alternative, Tower Hill has waived same.

19. As a result of Tower Hill's breach, Plaintiffs have suffered damages, including the amounts to which they are legally entitled to recover under the terms of the subject Policy.

WHEREFORE, Plaintiffs, GREGORY JAMES ACKER and LAUREN MURRAY, bring this action against Defendant, TOWER HILL PREFERRED INSURANCE COMPANY, and request the following relief:

1. Entry of judgment in their favor for all amounts to which they are entitled under the terms of the Policy;
2. An award of the costs of this action; and
3. Such other and further relief as this Court deems just and appropriate.

Dated: September 20, 2017

MERLIN LAW GROUP, P.A.
By: 
Ashley N. Harris, Esquire
aharris@merlinlawgroup.com
777 S Harbour Island Boulevard, Suite 950
Tampa, Florida 33602
Phone: (813) 229-1000
Facsimile: (813) 229-3692
Attorneys for Plaintiffs

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS GREGORY JAMES ACKER and LAUREN MURRAY (b) County of Residence of First Listed Plaintiff <u>Citrus County, Florida</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, and Telephone Number) Merlin Law Group, P.A. 777 S Harbour Island Boulevard, Suite 950, Tampa, Florida	DEFENDANTS TOWER HILL PREFERRED INSURANCE COMPANY County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known) _____
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%; text-align: center;">PTF DEF</td> <td style="width:10%; text-align: center;"><input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%; text-align: center;">PTF DEF</td> <td style="width:10%; text-align: center;"><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td></td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td></td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td></td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td></td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF DEF	<input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF DEF	<input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State		<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State		<input type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country		<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation		<input type="checkbox"/> 6 <input type="checkbox"/> 6
Citizen of This State	PTF DEF	<input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF DEF	<input type="checkbox"/> 4 <input type="checkbox"/> 4														
Citizen of Another State		<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State		<input type="checkbox"/> 5 <input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country		<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation		<input type="checkbox"/> 6 <input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District (specify) _____
 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 4001, et seq.

Brief description of cause:
Breach of Insurance Contract

VII. REQUESTED IN COMPLAINT:


CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 09/20/2017

SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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EXHIBIT A



**Tower Hill[®]
Insurance**

INS CENTRE OF DUNNELLON
20156 E PENNSYLVANIA AVE
DUNNELLON, FL 34432

NFIP Policy Number: 0000332511
Company Policy Number: 0000332511
Agent: DAVID BIRD

Policy Term: 02/05/2016 12:01 AM through 02/05/2017 12:01 AM
Renewal Billing Payor: FIRST MORTGAGEE

To report a claim, call: (877) 254-6819
Agency Phone: (352) 489-1992

REVISED FLOOD INSURANCE POLICY DECLARATIONS

STANDARD POLICY - DWELLING FORM

DELIVERY ADDRESS

GREGORY JAMES ACKER / LAUREN MURRAY
387 NW MAGNOLIA CIR
CRYSTAL RIVER, FL 34428

INSURED NAME(S) AND MAILING ADDRESS

GREGORY JAMES ACKER / LAUREN MURRAY
387 NW MAGNOLIA CIR
CRYSTAL RIVER, FL 34428

COMPANY MAILING ADDRESS

TOWER HILL PRIME INSURANCE COMPANY
PO BOX 911968
DENVER, CO 80291-1968

PROPERTY LOCATION

387 NW MAGNOLIA CIR
CRYSTAL RIVER, FL 34428-3819

DESCRIPTION: N/A

RATING INFORMATION

ORIGINAL NEW BUSINESS DATE: 02/05/2016
REINSTATEMENT DATE: N/A
BUILDING OCCUPANCY: SINGLE FAMILY
CONDOMINIUM INDICATOR: NOT A CONDO
NUMBER OF UNITS: N/A
PRIMARY RESIDENCE: YES
ADDITIONS/EXTENSIONS: N/A
BUILDING TYPE: ONE FLOOR
BASEMENT/ENCLOSURE/CRAWLSPACE TYPE: NO BASEMENT

DATE OF CONSTRUCTION: 01/01/1970
COMMUNITY NUMBER: 120340 0188 D REGULAR PROGRAM
COMMUNITY NAME: CRYSTAL RIVER, CITY OF
CURRENT FLOOD ZONE: AE
GRANDFATHERED: NO
FLOOD RISK/RATED ZONE: AE
ELEVATION DIFFERENCE: N/A
ELEVATED BUILDING TYPE: NON-ELEVATED

MORTGAGEE / ADDITIONAL INTEREST INFORMATION

FIRST MORTGAGEE: FRANKLIN AMERICAN MORTGAGE, ISAOA/TIMA C/O CENTRAL LOAN ADMINISTRATION & REPORTING PO BOX 202028 FLORENCE, SC 29502-2028 LOAN NUMBER: 0081492548
SECOND MORTGAGEE: LOAN NUMBER: N/A
ADDITIONAL INTEREST: LOAN NUMBER: N/A
DISASTER AGENCY: CASE FILE NUMBER: N/A
DISASTER AGENCY:

PREMIUM CALCULATION — Pre-FIRM Subsidized

	COVERAGE	DEDUCTIBLE	BASIC COVERAGE	BASIC RATE	ADD'L COVERAGE	ADD'L RATE	DED. DISCOUNT/SURCHARGE	PREMIUM
BUILDING	\$250,000	\$2,000	\$60,000	0.890	\$190,000	0.810	\$0.00	\$2,073.00
CONTENTS	\$0	\$0	\$0	1.120	\$0	1.470	\$0.00	\$0.00

Coverage limitations may apply. See your policy form for details.

Endorsement Effective Date: 08/06/2016

ENDORSEMENT PREMIUM: \$0.00

Insured / Mailing Address Changed

ANNUAL SUBTOTAL:	\$2,073.00
INCREASED COST OF COMPLIANCE:	\$55.00
COMMUNITY RATING DISCOUNT:	0% \$0.00
RESERVE FUND ASSESSMENT:	15.0% \$319.00
PROBATION SURCHARGE:	\$0.00
ANNUAL PREMIUM:	\$2,447.00
HFIAA SURCHARGE:	\$25.00
FEDERAL POLICY SERVICE FEE:	\$45.00
TOTAL:	\$2,517.00
PRORATA PREMIUM ADJUSTMENT:	
ADJUSTED ANNUAL PREMIUM:	

IN WITNESS WHEREOF, I have signed this policy below and hereby enter into this Insurance Agreement

Donald C. Matz, Jr.
Donald C. Matz, Jr. / Executive President

Scott P. Rowe
Scott P. Rowe / Secretary

**Zero Balance Due
This Is Not A Bill**

This declarations page along with the Standard Flood Insurance Policy Form constitutes your flood insurance policy.

Policy issued by TOWER HILL PRIME INSURANCE COMPANY

Company NAIC: 11027

This page is intentionally left blank.



EXHIBIT B

0000332611
 POLICY NO. 2105/2016 - 2/05/2017
 POLICY TERM
 \$250,000.00
 AMT OF INSURANCE AT TIME OF LOSS
 \$0.00
 AMT OF CONTENTS AT TIME OF LOSS

DEPARTMENT OF TREASURY AND SECURITY
 FEDERAL EMERGENCY MANAGEMENT AGENCY
 NATIONAL FLOOD INSURANCE PROGRAM
PROOF OF LOSS
 (See reverse side for Mortgage Act Statement and
 Payment Check Disbursement Statement)

USF 1 No. 1620-0003
 Expires April 30, 2017

David Bird
 721 NE Highway 15
 Crystal River, FL 34429

TO THE NATION FLOOD INSURANCE PROGRAM:
 At time of loss, by above indicated policy of insurance, you loaned the interest of
Gregory James Acker & Lauren Murray
 against loss by flood to the property described according to the terms and conditions of said policy and of all forms, endorsements, transfers and assignments made thereto.

TIME AND ORIGIN: 1 Flood loss occurred about the hour of 12 o'clock AM
 on the 2 day of September 20 16. The cause of said loss was

OCCUPANCY: The premises described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatsoever:
Owner Occupied

INTEREST: No other person or persons had any interest therein or encumbrances thereon except
Vandyk Mortgage Corporation ISAOA ATIMA 2449 Camelot Ct SE Grand Rapids MI 49546

1. FULL AMOUNT OF INSURANCE application to the property for which claim is presented is	\$ 250,000.00
2. ACTUAL CASH VALUE of building structures	\$ 420,840.00
3. ADD ACTUAL CASH VALUE OF CONTENTS of personal property insured	\$ 0.00
4. ACTUAL CASH VALUE OF ALL PROPERTY	\$ 420,840.00
5. FULL COST OF REPAIR OR REPLACEMENT (Building and Contents)	\$ 526,950.00
6. LESS APPLICABLE DEPRECIATION	\$ 105,210.00
7. ACTUAL CASH VALUE LOSS is	\$ 420,840.00
8. LESS DEDUCTIBLES	\$ 2,000.00
9. NET AMOUNT CLAIMED under above numbered policy is	\$ 418,840.00

The said loss did not originate by any act, design or procurement on the part of your insured, nothing has been done by or with the party or parties insured to violate the conditions of the policy, or render it void, no articles are mentioned herein or an appraised schedule is attached, but such as were destroyed or damaged at the time of said loss, no property saved has in any manner been concealed, and no attempt to deceive the said insurance to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and constituted a part of this report.

I understand that this insurance (policy) is issued pursuant to the National Flood Insurance Act of 1968, or Any Act Amendments thereto, and applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter II, and that knowingly and willfully making any false statement or misrepresentation of fact may be punishable by fine or imprisonment under applicable United States Codes.

Subrogation - To the extent of the payment made or advanced under this policy, the insured hereby assigns, transfers and releases the interest, all rights, claims or interest that he has against any person, firm or corporation liable for the loss or damage to the property for which payment is made hereon. He also hereby authorizes the insurer to sue any such third party in his name.

The insured hereby warrants that no release has been given or will be given or settlement or compromise made or agreed upon with any third party that may be liable in damages to the insured with respect to the claim being made hereon.

The furnishing of this blank is the preparation of proceeds by a representative of the above insurer and a waiver of any of its rights.

I declare under penalty of perjury that the information contained on the foregoing is true and correct to the best of my knowledge and belief.

Gregory James Acker *Lauren Murray*
 Executed this 2016 day of October 20 16
 at Crystal River, FL

