

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO.:

**GARDEN-AIRE VILLIAGE SOUTH
CONDOMINIUM ASSOCIATION INC.
A Florida corporation**

Plaintiff,

v.

**QBE INSURANCE CORPORATION
A Pennsylvania corporation,**

Defendant.

_____ /

COMPLAINT

Plaintiff Garden-Aire Villiage South Condominium Association Inc., by and through undersigned counsel hereby sues Defendant QBE Insurance Corporation and alleges:

I. PARTIES JURISDICTION AND VENUE

1. This is an action for declaratory relief concerning Plaintiff's rights under an insurance policy brought pursuant to section 86.011, *et. seq.* Florida Statutes. Plaintiff seeks indemnity and other benefits in excess of \$75,000.

2. Plaintiff is a Florida, not-for-profit corporation, operating as a condominium association. Plaintiff owns and operates a condominium property located in Broward County, Florida.

3. Defendant QBE Insurance Corporation, (hereinafter QBE), is a Pennsylvania corporation with its principle place of business in the State of New York.

4. Because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, this Court has jurisdiction over this action pursuant to 28 U.S.C § 1332.

5. The actions and omissions described in this Complaint occurred in Broward County, Florida. Accordingly, venue is proper in the Southern District of Florida.

II. FACTUAL ALLEGATIONS

6. QBE is engaged in the business of selling property insurance policies to condominium associations throughout the State of Florida.

7. All of the insurance policies that QBE issued that provide property coverage for condominium buildings and that were in effect during the year 2005 include standard, numbered, forms and endorsements describing the type of coverage provided and setting forth the parties' respective rights and obligations.

8. Plaintiff purchased two different QBE insurance policies numbered QF3326-04 and QF2107-09, insuring various buildings constituting part of its condominium property. All of these buildings are described in the both of the QBE insurance policies' declarations pages.

9. On October 24th, 2005, while the above referenced policy was in full force and effect, Hurricane Wilma struck South Florida.

10. Hurricane Wilma damaged Plaintiff's insured condominium property, including the buildings insured under both QBE insurance policies.

11. The damages to Plaintiff's property caused by Hurricane Wilma included, but were not limited to, damage to windows, sliding glass doors, and to roofs.

12. Plaintiff promptly notified QBE of its Hurricane Wilma loss.

13. Damages caused by a hurricane are covered under the subject QBE insurance policy.

14. On or before October 27th, 2005, QBE received actual notice of Plaintiff's losses and assigned these losses claim numbers 5P18744W-01 and 5P18745W-01.

15. QBE has entered into an arrangement with non-party Florida Intracoastal Underwriters, Limited Company (hereinafter "FIU.") to handle and process all claims made under property insurance policies that QBE sold to Florida condominium associations.

16. On behalf of QBE, FIU retained an independent adjusting company to inspect Plaintiff's property, document the losses, and report back to FIU concerning the losses.

17. Ultimately, both of Plaintiff's claims were closed, and no payments have ever been made to Plaintiff for either loss.

III- COUNT I - (SEEKING A DECLARATORY JUDGMENT CONCERNING COVERAGE FOR WINDOWS AND SLIDING GLASS DOORS, QBE'S DUTY TO ADJUST PLAINTIFF'S LOSS, AND PLAINTIFFS RIGHT TO HAVE THE DISPUTES CONCERNING THE AMOUNT OF LOSS RESOLED THROUGH APPRAISAL)

18. By closing Plaintiff's Hurricane Wilma claims without payment, QBE has implicitly taken the position that the amount of both of Plaintiff's Hurricane Wilma claims was less than the policy deductible.

19. However, Plaintiff disagrees and believes that it has sustained covered damage well in excess of its deductible for both claims.

20. QBE has never provided any written explanation concerning why it believes that Plaintiff was not entitled to any indemnity for its Hurricane Wilma claims.

21. QBE has often taken the position that windows and sliding glass doors that only provide access to a single individual condominium unit are not covered under the QBE policy form that was in effect when Hurricane Wilma struck.

22. However, this position is inconsistent with decisions of this Court and relevant administrative authority.

23. A significant portion of Plaintiff's claim involved damage caused by Hurricane Wilma to windows and sliding glass doors at Plaintiff's property that provide access to only one condominium unit.

24. Accordingly, Plaintiff believes that QBE's erroneous position concerning coverage for these windows and sliding glass doors resulted in a severe undervaluation of Plaintiff's claim, and thereby caused or contributed to QBE's failure to pay any indemnity to Plaintiff.

25. The adjusters and claim handlers that QBE contracted to handle its Hurricane Wilma claims routinely took the position that the insured was required to "present the claim."

26. However, the standard provisions in the QBE insurance policies in effect when Hurricane Wilma struck include a clause that states:

4. Loss Payment

...

We [QBE] will determine the value of the lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any application provision which amends or supersedes the Valuation Condition.

(QBE policy form number CP 00 17 04 02, p.10 of 14)

27. The standard forms used in the QBE policies that were in effect when Hurricane Wilma struck also contain a clause which provides:

8. Valuation

We [QBE] will determine the value of the Covered Property in the event of loss or damage...

(QBE Policy Form CP 00 17 04 02 , p.11 of 14)

28. Furthermore, in *Vest v. Travelers Insurance Company*, 753 So.2d 1270, 1275-1276 (Fla. 2000), the Florida Supreme Court observed that an insurer is obligated to use its own expertise in evaluating an insured's claim.

29. Contrary to QBE's often stated position, QBE (not it's insured), is obligated to determine the amount of any covered loss in accordance with the scope of coverage provided by the insurance policy that it drafted.

30. However, QBE has never attempted to evaluate Plaintiff's claims. Or if it has, QBE has never disclosed its findings to Plaintiff.

31. The standard provisions of the QBE insurance policy that were in effect when Hurricane Wilma struck also contain a clause which provides:

2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their difference to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

(QBE Policy Form CP 00 17 04 02, p. 9 of 14)

32. Florida courts, including the Florida Supreme Court, have repeatedly interpreted similar appraisal clauses as both authorizing and requiring disputes concerning causation of damages to be resolved through appraisal when it is admitted or proven that there has been a covered loss.

33. Accordingly, Plaintiff believes that any dispute concerning the amount of Plaintiff's claim, including but not limited to disputes related to causation, must be resolved through appraisal. Therefore, in addition to other relief, Plaintiff seeks through this action an order compelling QBE to participate in appraisal pursuant to the appraisal clauses in the subject insurance policies.

34. As a result of the foregoing, Plaintiff is in doubt concerning its rights under the QBE insurance policies and the extent of the coverage that they provide.

35. There is a bona fide, actual, present practical need for a declaration concerning the parties' rights and obligations relating to QBE insurance policies issued to Plaintiff.

36. Plaintiff seeks a declaration concerning its rights and QBE's obligations under the subject insurance policy. The declaration that Plaintiff seeks deals with an ascertainable state of facts and a present controversy concerning those facts.

37. The parties to this action have an actual, present, adverse, and antagonistic interest relating to the insurance policy described in the subject QBE insurance policies.

38. Plaintiff has been required to retain undersigned counsel to pursue this action. Pursuant to sections 627.428, Florida Statutes, QBE should be ordered to pay Plaintiff's reasonable attorneys fees in bringing this action.

39. QBE has not, at any time prior to the date of this Complaint, requested any documents from Plaintiff in connection with its evaluation of Plaintiff's Hurricane Wilma claims.

40. QBE has not, at any time prior to the date of this Complaint, requested that Plaintiff appear for any examination under oath in connection with its evaluation of Plaintiff's Hurricane Wilma claims.

41. QBE has not, at any time prior to the date of this Complaint, requested that Plaintiff submit a proof of loss in connection with Plaintiff's Hurricane Wilma claims.

WHEREFORE, Plaintiff respectfully request that this Honorable Court take jurisdiction over this action and enter a declaratory judgment stating:

a) Plaintiff's Hurricane Wilma losses are covered under the QBE insurance policy described in Paragraph 8 above;

b) Pursuant to the terms of QBE's insurance policy, QBE is obligated to determine the amount of Plaintiff's covered Hurricane Wilma losses, and that it must do so immediately;

c) QBE is obligated to disclose to Plaintiff how it determined the amount of Plaintiff's Hurricane Wilma losses;

d) Windows and sliding glass doors that only provide access to individual condominium units are covered under the QBE insurance policies;

e) If the parties are unable to agree as to the amount of covered damage that Plaintiff sustained, that dispute must be resolved pursuant to the terms of the subject QBE insurance policies' appraisal clause;

f) In the event that an appraisal is necessary, that the Court will retain jurisdiction to appoint a neutral umpire and to reduce any resulting appraisal award to an enforceable judgment;

g) QBE is obligated to pay Plaintiff's attorney's fees pursuant to section 627.428, Florida Statutes.

IV- COUNT IV – (SEEKING A DECLARATORY JUDGMENT THAT QBE'S FAILURE TO COMPLY WITH SECTION 627.701(4)(a) RENDERS ITS NON-COMPLIANT HURRICANE DEDUCTIBLE VOID)

42. This is an action for declaratory judgment. The declaration sought herein would entitle Plaintiff to recover more than \$75,000.

43. Section 627.701(4)(a), Florida Statutes, requires a specific disclosure to be made in a font no smaller than 18 point whenever a property insurance policy contains a separate windstorm deductible.

44. The standard forms that QBE used for its insurance policies that were in effect when Hurricane Wilma struck South Florida contains a deductible provision that does not comply with section 627.701(4)(a) in that the disclosure is not in the required font size and does not include all of the language required by section 627.701(4)(a).

45. Thus, the required disclosure does not appear anywhere in either insurance policy that QBE issued to Plaintiff.

46. As a result of QBE's violation of Section 627.701(4)(a), the windstorm deductible is void.

47. The outcome of this declaratory judgment claim will be controlled by the ultimate resolution of *Chalfonte Condominium Apartment Ass'n v. QBE Insurance Corp.*, 561 F.3d 1267 (11th Cir., 2009), which involves identical facts. The Eleventh Circuit has certified a question concerning the remedies available for the violation Section 627.701(4)(a), to the Florida Supreme Court. As of the date of this pleading, the Florida Supreme Court has yet to decide that case.

(Continued on next page)

WHEREFORE Plaintiff respectfully requests that this Honorable Court enter a declaratory judgment in favor of Plaintiff declaring that the hurricane deductible on the subject policies is void, and that QBE cannot withhold any amount for Plaintiff's claim in excess of the standard policy deductible.

Respectfully Submitted.

THE LAW OFFICES OF JEFFREY N. GOLANT, P.A.
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Fax:(954) 942-5272
Email. jgolant@jeffreygolantlaw.com

By

/S/ Jeffrey N. Golant Esq.

Fla. Bar. No. 0707732

Attorney For Plaintiff

JS 44 (Rev. 2-08)

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 THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

<p>I. (a) PLAINTIFFS</p> <p>GARDEN-AIRE VILLAGE SOUTH CONDOMINIUM ASSOCIATION</p> <p>(b) County of Residence of First Listed Plaintiff <u>Broward</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number)</p> <p>Law Offices of Jeffrey N. Golant, P.A. 1000 W. McNab Rd. Ste. 150 Pompano Beach, FL 33069 (954) 912-5770</p>	<p>DEFENDANTS</p> <p>QBE Insurance Corporation</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 LAND INVOLVED.</p> <p>Attorneys (if known) _____</p>
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(a) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

<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 type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" 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></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input 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 checked="" 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 checked="" 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 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 checked="" 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
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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 (Excl. 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, Label & 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	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 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"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety Health <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 SOCIAL SECURITY <input type="checkbox"/> 861 BIA (1985b) <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
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Lots to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w. Disabilities Employment <input type="checkbox"/> 446 Amer. w. Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 700 Other Labor Litigation <input type="checkbox"/> 701 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitration <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"/> 810 Selective Service <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <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 Re-filed- (see VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case YES NO b) Related Cases YES NO

(See instructions second page.) JUDGE: _____ DOCKET NUMBER: _____

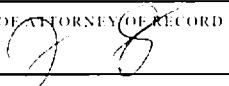
VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

28 U.S.C Sec. 1332 - This is a declaratory judgement action concerning a property insurance policy.

LENGTH OF TRIAL via 2 days estimated (for both sides to try entire case)

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

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE SIGNATURE OF ATTORNEY OF RECORD:  DATE: 10/18/10

FOR OFFICE USE ONLY

AMOUNT: _____ RECEIPT #: _____ JEP: _____

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)*
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)*
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)*
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: