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U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA

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LORETTA G. WHYTE  
CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

ANDANTE, L.L.C., CALVIN C.  
FAYARD, JR., AND FRANCES FAYARD  
Plaintiffs

VERSUS

AIG PRIVATE CLIENT GROUP  
Defendant

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CIVIL ACTION

NO. 07-4783

SECTION " " ( )

SECT. K MAG 2

COMPLAINT

NOW INTO COURT, through undersigned counsel, come Andante, L.L.C., Calvin C. Fayard, Jr. and Frances Fayard, (Hereinafter "Policyholders"), who respectfully complain as follows:

I.

Made defendant herein is: AIG Private Client Group. AIG Private Client Group, (hereinafter "AIG"), a foreign insurer authorized to do and doing business in the State of Louisiana, which can be served through the Louisiana Secretary of State.

II.

This Court has personal jurisdiction over AIG because it was transacting business in this

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District within the relevant time periods by way of selling insurance policies to Policyholders.

III.

Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to this action occurred in this District and AIG regularly transacts business in this District.

IV.

Policyholders seek compensatory and punitive damages from AIG as a result of its wrongful conduct, as well as declaratory relief by the Court that:

- a. The first efficient proximate cause of the losses suffered by Policyholders on August 29, 2005 was “windstorm,” a covered peril under the insurance policy purchased by Policyholders, thereby rendering any subsequent impact from water released by the levee and/or levee wall failures irrelevant to coverage afforded by the insurance policy;
- b. The second efficient proximate cause of the losses resulting from water entering the City of New Orleans and surrounding parishes on August 29, 2005 from the breaches in the levees and levee walls along the 17<sup>th</sup> Street Canal, London Avenue Canal, Industrial Canal, and elsewhere was *acts of negligence*, standard covered perils in AIG’s homeowner insurance policy;
- c. The third efficient proximate cause of the losses resulting from water entering the City of New Orleans and surrounding parishes on August 29, 2005 was “storm surge,” a known meteorological phenomenon that is not specifically excluded by AIG’s insurance policy, in contrast to other insurance policies available in the

market, thereby rendering any damage caused by “storm surge” and resulting water pressure covered under the policy;

- d. The breaking or failure of levees or boundaries of lakes, reservoirs, rivers, streams, or other bodies of water was a peril not specifically excluded by AIG’s insurance policy, in contrast to other insurance policies available in the market; and
- e. The damage caused by water entering the City of New Orleans and surrounding parishes from Hurricane Katrina beginning on August 29, 2005, due to the breaches in the levee walls along the 17<sup>th</sup> Street Canal, London Avenue Canal, Industrial Canal, and elsewhere neither falls within the common and approved definition of “flood,” nor within the subject insurance policy’s exclusions of “flood.”

#### **FACTUAL BACKGROUND**

##### V.

At all pertinent times, Policyholders owned immovable property with improvements and personal property located at 5809 St. Charles Avenue in New Orleans, Louisiana.

##### VI.

Policyholders purchased an AIG homeowner’s insurance policy (the “All Risk Policy”).

##### VII.

Policyholders purchased the policy with the reasonable expectation that they would be able to recover for any and all losses caused by hurricanes, including any and all damage proximately and efficiently caused by hurricane wind, and “storm surge” proximately caused by hurricane wind.

##### VIII.

At no time did AIG specifically exclude from coverage the breaking or failure of boundaries

and levees of lakes, rivers, streams, or other bodies of water, despite AIG's advanced knowledge of the fragility of the New Orleans area levee systems and the topography of the Greater New Orleans Metropolitan Area.

IX.

Policyholders trusted and relied upon AIG's representations that the subject policy would cover any damage caused by a hurricane and, thus, reasonably believed that their Policy would cover any and all hurricane damage.

X.

The amount of insurance coverage for the Policyholders was based on the estimated cost of replacing the home, an amount established by AIG or an agent authorized by them to determine the replacement cost of each individual home.

XI.

At all times relevant hereto, Policyholders made timely payment of the premiums due on their All Risk Policy, which was in full force and effect at the time of their loss.

XII.

At 6:10 a.m. on August 29, 2005, Hurricane Katrina made landfall near Grande Isle, Louisiana as a Category 4 hurricane, and then made a second landfall a short time later near the Louisiana-Mississippi border, the eye of the storm passing just east of the City of New Orleans at approximately 9:00 a.m.

XIII.

As a result of the effects of Hurricane Katrina on the New Orleans region, Policyholders had damage to their home and the some of the contents of their home were destroyed.

XIV.

Based upon information and belief, Policyholders aver that any damages attributable to the levee failures are the result of improper or negligent design, construction, maintenance of the levees by various third parties and/or third party negligence.

XV.

Upon returning to the city and evaluating the damage associated with Hurricane Katrina and its aftermath, Policyholders instituted a claim for loss pursuant to their insurance policy.

XVI.

Despite presenting satisfactory proofs of loss for damage sustained as a result of the hurricane, AIG continuously utilized dilatory tactics leading to substantial delays in adjusting Policyholders' claims.

XVII.

Additionally, AIG refused to adequately adjust the claims and make payment of the amount of the claim, despite having been presented with satisfactory proofs of loss for damage sustained as a result of the hurricane.

**COUNT I**

**DECLARATORY JUDGMENT**

XVIII.

Policyholders repeat and re-allege the allegations of the foregoing paragraphs as if the same were set forth at length herein.

XIX.

An actual controversy exists between Policyholders and AIG concerning AIG's duty to

indemnify Policyholders for their losses.

XX.

Consequently, under the circumstances, it is necessary and appropriate for the Court to declare Policyholders and AIG's rights and duties under the Policy pursuant to 28 U.S.C. § 2201.

XXI.

The losses suffered by Policyholders as a result of Hurricane Katrina are covered losses under the respective All Risk Policy.

XXII.

Policyholders have attempted to give timely notification to AIG and made demands that AIG cover Policyholders' losses.

XXIII.

AIG is obligated by the terms and conditions of their All Risk Policy to indemnify Policyholders for their losses.

XXXIV.

AIG has refused to indemnify Policyholders for their losses and has denied coverage, in whole or in part, for the losses.

XXV.

Thus, Policyholders are entitled to a declaratory judgment that the damages they suffered are covered losses under the All Risk Policy.

XXVI.

Specifically, Policyholders losses were caused by covered perils, the efficient causes of their

losses were covered perils and the efficient and proximate causes of loss were covered perils.

XXVII.

Further, to give the “flood” exclusions a broad reading and thus disallow the coverage for the damages arising from this catastrophic disaster, which occurred despite the vast and expansive levees existing in the greater New Orleans area, would contravene the very purpose of homeowner’s policies.

XXVIII.

The reasonable expectations of Louisiana policyholders is that “flood” encompasses overflowing of the Mississippi River or other body of water, accumulation of surface water due to heavy rainfalls, or similar phenomena, but not the unnatural event of the failure of virtually all man-made water containment structures surrounding the New Orleans Metropolitan Area due to negligent conduct beyond the policyholders’ control.

XXIX.

Finally, Policyholders should not be deprived of the coverage of the All Risk Policy where AIG has drafted vague, ambiguous and unclear limitations on coverage, thereby violating the rule that exclusions must be clearly and explicitly drafted. If so intended, and in contrast to other insurance policies available in the market, AIG should have specifically excluded hurricane damage and/or the failure of levees as the most probable perils for the New Orleans Metropolitan Area. Instead, AIG decided to sell the same comprehensive All-Risk Homeowners’ Insurance Policy that they sell in the “high and dry” plains throughout the United States.

XXX.

While AIG may continue to make investment income during the course of any protracted

legal proceedings, Policyholders, on the other hand, have little recourse but to sit idly by awaiting a decision.

XXXI.

As a result, without resolution of this issue by declaratory judgment, Policyholders, in most instances, may be unable to remedy the damages they fully expected were covered by their All Risk Policy.

**WHEREFORE**, Policyholders respectfully request that this Court enter a declaratory judgment in their favor and against AIG as to Count I, ordering and decreeing that:

(1) The first efficient proximate cause of the losses suffered by Policyholders on August 29, 2005 was “windstorm,” a covered peril under the insurance policy purchased by Policyholders, thereby rendering any subsequent impact from water released by the levee and/or levee wall failures irrelevant to coverage afforded by the insurance policy;

(2) The second efficient proximate cause of the losses resulting from water entering the City of New Orleans and adjoining parishes on August 29, 2005 from the breaches in the levees and levee walls along the 17<sup>th</sup> Street Canal, London Avenue Canal, Industrial Canal, and elsewhere, was *acts of negligence*, standard covered perils in AIG’s homeowners insurance policy;

(3) The third efficient proximate cause of the losses resulting from water entering the City of New Orleans and adjoining parishes on August 29, 2005 was “storm surge,” a known meteorological phenomenon that is not specifically excluded by AIG’s insurance policy, in contrast to other insurance policies available in the market, thereby rendering any damage caused by “storm surge” and resulting water pressure covered under the policies;

(4) The breaking or failure of boundaries of lakes, reservoirs, rivers, streams, or other



bodies of water was a peril not specifically excluded by AIG's insurance policy, in contrast to other insurance policies available in the market; and

(5) The damage caused by water entering the City of New Orleans and adjoining parishes from Hurricane Katrina beginning on August 29, 2005, due to the breaches in the levees and levee walls along the 17<sup>th</sup> Street Canal, London Avenue Canal, Industrial Canal, and elsewhere, neither falls within the common and approved definition of "flood," nor within the subject insurance policy's exclusions of "flood."

**COUNT II.**

**AIG FAILED TO PROPERLY ADVISE POLICYHOLDERS  
OF THE AVAILABILITY OF FLOOD INSURANCE**

**XXXII.**

In 1956, Congress enacted the Federal Flood Insurance Act. The National Flood Insurance Act, as amended in 1968, is now the seminal authority for the current National Flood Insurance Program ("NFIP"). Congress created the NFIP to provide insurance coverage for property located in flood plain areas where the risk of certain natural or seasonal flooding is increased.

**XXXIII.**

The NFIP provides a minimum level of insurance for the peril of natural or seasonal flooding with a cap of \$250,000 per property. 42 U.S.C. § 4121(a)(1).

**XXXIV.**

Since the inception of the NFIP, the insurance industry has been willing to sell insurance in excess to the minimal level of coverage provided by the NFIP. Thus, the availability of additional flood insurance was known to and sold by AIG at the time it sold its All Risk Policy to

Policyholders.

XXXV.

Despite this knowledge, at no time prior to August 29, 2005 did AIG advise Policyholders that - contrary to its representations - its true intent was not to cover damage or loss caused by hurricanes that may involve damage, in part, from water beyond the NFIP limit, and that their home may accordingly be grossly under-insured, or that additional coverage could be purchased in excess of the NFIP limit.

XXXVI.

Policyholders were not adequately advised of the scope and availability of flood insurance under the National Flood Insurance Program by AIG.

**COUNT III**

**BREACH OF CONTRACT**

XXXVII.

Policyholders repeat and re-allege the allegations of the foregoing paragraphs as if the same were set forth at length herein.

XXXVIII.

A valid contract exists between Policyholders and AIG in the form of the All Risk Policy, which obligates AIG to cover the loss of or damage to a dwelling and personal property therein which is caused by wind or windstorms.

XXXIX.

Policyholders paid all premiums due under their All Risk Policy and materially performed their obligations under that policy.

XL.

Upon proper and repeated demands by Policyholders, AIG has refused to meet its obligations under the All Risk Policy and refused to pay the full extent of damages sustained by Policyholders home as a result of being destroyed or damaged by the efficient proximate cause of windstorms.

XLI.

As a direct and proximate result of the breach by AIG, Policyholders were deprived of the benefit of insurance coverage for which AIG was paid substantial premiums and, accordingly, Policyholders have suffered substantial damages.

XLII.

Policyholders aver that AIG negligently failed to exercise reasonable care in fulfilling its duties to Policyholders, more particularly, but not limited to:

- 1). Failing to initiate loss adjustment of a claim after notification of loss;
- 2). Failing to promptly and adequately adjust the claims presented;
- 3). Provide an initial tender of payment at prices falling below regional commercial standards;
- 4). Failing to make complete payment after receipt of satisfactory proofs of loss of that claim;
- 5). Failing to fulfill the terms and conditions of the insurance contract at issue;
- 6). Failing to exercise reasonable care in the supervision of subordinates and employees;
- 7). Failing to exercise reasonable care;
- 8). Breach of express and implied warranties; and
- 9). Any and all other acts of negligence to be proven at trial.

XLIII.

As a result of the above referenced conduct, Policyholders have sustained damages in the following non-exclusive ways:

1. loss of personal property and property value;
2. inconvenience;
3. loss of use of property;
4. loss of income;
5. loss of profits;
6. loss of business opportunity;
7. as well as other damages to be proven at trial.

**WHEREFORE**, Policyholders demand judgment against AIG for all amounts due under the All Risk Policy, other compensatory damages, interest, attorney's fees, costs, and any further relief this Court deems equitable, just and proper.

**COUNT IV**  
**BREACH OF THE IMPLIED COVENANT OF**  
**GOOD FAITH AND FAIR DEALING**

XLIV.

Policyholders repeat and re-allege the allegations of the foregoing paragraphs as if the same were set forth at length herein.

XLV.

*By selling its All Risk Policy to Policyholders, AIG assumed a duty of good faith and fair dealing to Policyholders, including an obligation to promptly indemnify Policyholders for the losses.*

XLVI.

AIG has failed to follow Louisiana's long-standing efficient proximate cause doctrine and has instead adopted an industry-wide approach to denying valid claims for inappropriate reasons.

XLVII.

AIG has continuously denied coverage for Policyholders losses by equating the efficient proximate cause of windstorm and the negligent design, construction and maintenance of the New Orleans area levees and/or third party negligence with flooding.

XLVIII.

AIG has continuously denied coverage for claims by equating “storm surge” with flood, thereby improperly expanding the flood exclusion and ignoring the reasonable expectation of Louisiana policy holders.

XLIX.

Moreover, upon information and belief, AIG directed its adjusters to follow specific “guidelines” whereby the adjusters would arbitrarily, capriciously and without probable cause, find a nearby waterline and apply it to Policyholders property in order to deny full payment of Policyholders’ claims.

L.

Upon information and belief, AIG further directed its adjusters to ignore all other information and evidence and, instead, to use only the procedure and guidelines mandated by them, specifically; the arbitrary application of any nearby waterline to Policyholders’ property.

LI.

By engaging in all of the conduct above, AIG lacks an arguable or legitimate basis for refusing to pay the Policyholders’ claims

LII.

In directing its adjusters to undertake the ongoing practice of ignoring any information or evidence other than the arbitrary and capricious application of any nearby waterline, AIG violated La. Rev. Stat. Ann. § 658.2(A)(1) which provides that “[n]o insurer shall use the floodwater mark on a covered structure without considering other evidence, when determining whether a loss is covered or not covered under a homeowners’ insurance policy.”

LIII.

By engaging in the conduct described above, AIG has violated the duties of good faith and fair dealing owed to Policyholders.

LIV.

Moreover, by engaging in the conduct above, AIG’s persistent and systematic actions and failures to act were done with malice and gross negligence and with a disregard for Policyholders’ rights so as to warrant the imposition of punitive damages against AIG.

LV.

Additionally, Policyholders contend that AIG has been arbitrary and capricious in the adjustment and handling of this claim pursuant to Louisiana Revised Statute 22:658.

LVI.

Policyholders further contend that the actions of AIG were arbitrary and capricious and violated the duty to deal with Policyholders in good faith in failing to make a reasonable effort to settle their claim pursuant to La. R.S. 22:1220.

LVII.

Pursuant to La. Rev. Stat. Ann. § 22:1220(A), AIG owes Policyholders a “duty of good faith and fair dealing” as well as a duty to “adjust claims fairly and promptly and to make a reasonable effort to settle claims” with Policyholders.

LVIII.

La. Rev. Stat. Ann. § 22:1220(B) prohibits AIG from, inter alia, “[m]isrepresenting pertinent facts or insurance policy provisions relating to any coverages at issue” and “[f]ailing to pay the amount of any claim . . . when such failure is arbitrary, capricious or without probable cause.”

LIX.

AIG has misrepresented the coverage afforded by its insurance policy provisions by wrongfully and without a legitimate basis seeking to have the “flood” exclusions given a broad reading in an effort to disallow coverage for the damages arising from Hurricane Katrina.

LX.

As such, AIG has breached known duties through a motive of self interest and/or ill will without having a reasonable basis to deny these claims, instead denying claims in an arbitrary and capricious manner and without probable cause.

LXI.

By engaging in all of the above conduct, AIG has engaged in bad faith conduct in violation of La. Rev. Stat. Ann. § 22:1220.

LXII.

As a direct and proximate result of the AIG's bad faith actions, Policyholders have suffered, and will continue to suffer, substantial damages.

LXIII.

Policyholders hereby demand trial by jury on all issues so triable.

**WHEREFORE**, Policyholders for trial by jury; and that after due proceedings, that there be judgment in favor of Policyholders and against AIG for damages as are reasonable in the premises with legal interest thereon from date of judicial demand and for all costs of these proceedings, and all general and equitable relief deemed proper by this Honorable Court.

Respectfully submitted:

**FAYARD & HONEYCUTT, APC**

A handwritten signature in black ink, appearing to be a stylized name, positioned above the page number.



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