

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ALABAMA

DELANEY DEVELOPMENT, INC. ,	*	
DELANEY’S, INC. and	*	CIVIL ACTION NO. 11-277
CABANA APARTMENTS	*	
	*	
VERSUS	*	JUDGE:
	*	
WESTCHESTER SURPLUS LINES	*	MAGISTRATE:
INSURANCE COMPANY, INC., ESSEX	*	
INSURANCE COMPANY, and LANDMARK	*	
AMERICAN INSURANCE COMPANY	*	

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**COMPLAINT FOR DAMAGES**

NOW INTO COURT, through undersigned counsel, comes plaintiffs, Delaney Development, Inc., Delaney’s, Inc. and Cabana Apartments, who respectfully represent as follows in this Complaint for Damages:

I.

Made plaintiffs herein are:

**DELANEY DEVELOPMENT, INC.**, a corporation organized under the laws of Alabama and with its principal place of business in Alabama;

**DELANEY’S, INC.**, a corporation organized under the laws of Alabama and with its principal place of business in Alabama; and

**CABANA APARTMENTS**, a corporation organized under the laws of Alabama and with its principal place of business in Alabama.

II.

Made defendants herein are:

**WESTCHESTER SURPLUS LINES INSURANCE COMPANY**, an insurance company authorized to do and doing business within Alabama and within the jurisdiction of this Honorable Court;

**ESSEX INSURANCE COMPANY**, an insurance company authorized to do and doing business within Alabama and within the jurisdiction of this Honorable Court; and

**LANDMARK AMERICAN INSURANCE COMPANY**, an insurance company authorized to do and doing business within Alabama and within the jurisdiction of this Honorable Court.

III.

Jurisdiction herein is invoked pursuant to 28 U.S.C. §1332 as the parties' citizenships are completely diverse and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

IV.

Venue is proper under 28 U.S.C. §1391(a)(2) because a substantial part of the events giving rise to this claim occurred in Mobile, Alabama within the Southern District of Alabama.

V.

Defendants are justly and truly indebted to Plaintiffs herein for damages, together with legal interest thereon from the date of judicial demand until paid, and for costs in these proceedings, for the following, to-wit:

VI.

Plaintiffs, Delaney Development, Inc. and Delaney's, Inc., own a residential apartment building located in Mobile, Alabama, namely, Cabana Apartments.

VII.

Plaintiffs contracted with Westchester Surplus Lines Insurance Company (hereinafter “Westchester”), Essex Insurance Company (hereinafter “Essex”) and Landmark American Insurance Company (hereinafter “Landmark”) to insure its apartment building. The Westchester policy bears policy number D35885766 001. The Essex policy bears policy number ESP 1864. The Landmark policies bear policy numbers LHD 3344863 and LHD 334864.

VIII.

In the days preceding Hurricane Ivan’s landfall on September 16, 2004, weather forecasters and government officials predicted that Hurricane Ivan, which was then in the Gulf of Mexico, would severely impact southern Alabama.

IX.

In anticipation of the impending storm, government officials ordered a voluntary evacuation of the greater Mobile area in and around southern Alabama. The voluntary evacuation order applied to everyone, including the plaintiffs. The voluntary evacuation order forced everyone to remain away from the affected area until official notice to return was provided.

X.

On September 16, 2004, Hurricane Ivan made landfall in the greater southern Alabama area. This windstorm severely damaged Plaintiffs’ property located at 3800 Michael Blvd., Mobile, AL 36609. Plaintiffs mitigated its damages at all relevant times, performing necessary repairs in an attempt to swiftly reopen its apartments.

XI.

Plaintiffs timely notified Westchester, Essex and Landmark of its loss after Hurricane Ivan caused damage to Plaintiffs' property.

XII.

Shortly after the storm, Westchester, Essex and Landmark began sending adjusters to Plaintiffs' property to determine the scope of damage to Plaintiffs' property. The respective insurance adjusters performed inspections of the damaged property.

XIII.

As late as May 27, 2005, Essex wrote to Plaintiffs discussing their losses resulting from Hurricane Ivan. Specifically, Essex requested documentation to support plaintiffs' claims regarding the loss of rents portion of plaintiff's claim. Said correspondence interrupted the statute of limitations as to Plaintiffs' losses. Continuing after this date, the insurance companies continued to adjust Plaintiffs' losses resulting from Hurricane Ivan, sending tender checks as late as March, 2006.

XIV.

As of the date of the filing of this Complaint, Westchester, Essex and Landmark has not tendered Delaney Development, Inc. and Cabana Apartments a sufficient amount to adequately compensate Plaintiffs for their losses from Hurricane Ivan.

XV.

At all times pertinent hereto, Westchester, Essex and Landmark provided insurance coverage for the matters, risks, and things involved herein.

XVI.

Plaintiffs' commercial insurance policies issued by Westchester, Essex and Landmark provide coverage for loss or damage caused by the peril of wind.

XVII.

Despite having been provided with "satisfactory proof of loss," and despite conducting its own thorough investigation of the damages Plaintiffs incurred from Hurricane Ivan, Westchester, Essex and Landmark have not adequately paid for any or all of the damage sustained to Plaintiffs' property caused by this covered loss.

XVIII.

Westchester, Essex and Landmark are liable unto Plaintiffs under the following legal theories:

- a. Breach of contract;
- b. Breach of duty of good faith and fair dealing; and
- c. Any and all other legal theories which may be found through discovery and proven at trial in this matter, including but not limited to, bad faith adjusting.

XIX.

Westchester, Essex and Landmark have committed other acts of negligence, breach of contract, and breach of its duty of good faith and fair dealing, all of which will be shown and proven at the trial of this matter.

XX.

As a result of Westchester, Essex and Landmark's actions, Plaintiffs have suffered the following nonexclusive list of damages:

- a. Loss of use of insured property;
- b. Loss of enjoyment of insured property;
- c. Loss of business income;
- d. Loss of movable goods;
- e. Diminution in value of the property;
- f. Permanent repair and remediation expenses;
- g. Temporary repair and remediation expenses;
- h. Attorney's fees;
- i. Costs of this litigation; and
- j. All other losses that will be proven at the trial of this matter.

XXI.

Plaintiffs reserve the right to supplement and amend this Complaint for Damages.

XXII.

Plaintiffs pray for trial by jury.

**WHEREFORE**, plaintiffs herein, Delaney Development, Inc., Delaney's, Inc. and Cabana Apartments pray that the defendants, Westchester Surplus Lines Insurance Company, Essex Insurance Company and Landmark American Insurance Company be served with a copy of this Complaint and be duly cited to appear and answer the same, and that after expiration of all legal delays and due proceedings, there be judgment rendered in favor of Plaintiffs and against Defendants, in an amount that will fully compensate Plaintiffs for its damages pursuant to the evidence and in accordance with the law; all sums with legal interest thereon from the date of judicial demand until fully paid, for all costs of these proceedings, and for all general and equitable relief.

Respectfully submitted,

/s/C. Bennett Long

C. Bennett Long (Bar No. LON0046 )  
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Mobile, AL 36607

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Facsimile: (251) 476-1042

Email: [bennett@lwpc.com](mailto:bennett@lwpc.com)

ATTORNEY FOR PLAINTIFFS

**SERVICE WILL BE ISSUED VIA LONG ARM SERVICE**

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

CC

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.)

<p><b>I. (a) PLAINTIFFS</b>                  Delaney Development, Inc. and Cabana Apartments</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Mobile</u>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b>                  C. Bennett Long, 116 East I-65 Service Road North, Ste. A                  Mobile, AL 36607, (251) 564-4346</p>	<p><b>DEFENDANTS</b>                  Essex Insurance Company</p> <p>County of Residence of First Listed Defendant <u>Mobile</u>                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (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 checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (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:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input checked="" type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <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
Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
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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)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<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	<p><b>PERSONAL INJURY</b></p> <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	<p><b>PERSONAL INJURY</b></p> <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 <p><b>PERSONAL PROPERTY</b></p> <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"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p><b>SOCIAL SECURITY</b></p> <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)) <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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"/> 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
<p><b>REAL PROPERTY</b></p> <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	<p><b>CIVIL RIGHTS</b></p> <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	<p><b>PRISONER PETITIONS</b></p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <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

7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1332

Brief description of cause:  
Hurricane Ivan

**VII. 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

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE C. Bennett Long DOCKET NUMBER \_\_\_\_\_

DATE 05/27/2011

SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_