

24<sup>th</sup> JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO.

839-979

DIVISION “H”

AVMI, L.L.C., AND ANNE CANNON, INDIVIDUALLY,  
AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VERSUS

METAIRIE TOWERS CONDOMINIUM ASSOCIATION, INC., METAIRIE TOWERS  
BOARD OF DIRECTORS, THROUGH ITS INDIVIDUAL MEMBERS, RON CARTER,  
BETTY MILES, ELLYN MEIER, CAROLYN DIAZ, JENNIFER FAGAN, MARY KAY  
ZAHN, & ANNE BABST, STRATEGIC CLAIMS CONSULTANTS, LLC, GNO  
PROPERTY MANAGEMENT, L.L.C., BURLINGTON INSURANCE COMPANY,  
GREENWICH INSURANCE COMPANY, FEDERAL INSURANCE COMPANY,  
INTERSTATE FIRE & CASUALTY INSURANCE COMPANY, ABC INSURANCE  
COMPANY, DEF INSURANCE COMPANY, AND GHI INSURANCE COMPANY

FILED: \_\_\_\_\_

DEPUTY CLERK

CLASS ACTION PETITION FOR DAMAGES

The Petition of AVMI, L.L.C., a foreign limited liability company, domiciled in the County of Harrison, State of Mississippi, and Anne Cannon, a person of the full age of majority and domiciled in the Parish of Jefferson, State of Louisiana, individually and on behalf of all others similarly situated, with respect represent:

I.

Petitioners bring this action on their own behalf and on behalf of other similarly situated in the respects alleged herein.

II.

This is a class action brought pursuant to La. Code of Civ. Proc. Art. 591, *et. seq.*, on behalf of all persons and entities, who at any time during the period of August 29, 2021 to the present owned condominium units at Metairie Towers, a 7-story 219-unit condominium unit complex located at 401 Metairie Road in Metairie, Louisiana 70005 (“Metairie Towers”) (hereinafter the “Owners” or the “Class”). Excluded from the Class are unit owners who are members of the board of directors during the period defined herein.

### III.

This class action litigation arises out of Hurricane Ida, which caused damage to Metairie Towers, and the subsequent mishandling of the property, procurement of insurance, insurance claims, insurance proceeds, remediation, repairs and restoration of Metairie Towers by the named Defendants.

### IV.

Made Defendants herein are the following:

1. **Metairie Towers Condominium Association, Inc. (the "Condo Association").**
2. **Metairie Towers Board of Directors**, an entity elected by and pursuant to the Declarations of file in the public records and responsible for managing Metairie Towers, **through its individual members, Ron Carter, Betty Miles, Ellyn Meier, Carolyn Diaz, Jennifer Fagan, Mary Kay Zahn, & Anne Babst (the "Board")**, all persons of the full age of majority and believed to be domiciled in Parish of Jefferson, State of Louisiana.
3. **Burlington Insurance Company**, a foreign insurance company authorized to do and doing business in the State of Louisiana, who had a policy of insurance where the named insured was Metairie Towers Condominium Association, Inc.
4. **Greenwich Insurance Company**, a foreign insurance company authorized to do and doing business in the State of Louisiana, who had a policy of insurance where the named insured was Metairie Towers Condominium Association, Inc.
5. **Federal Insurance Company**, a foreign insurance company authorized to do and doing business in the State of Louisiana, who had a policy of insurance where the named insured was Metairie Towers Condominium Association, Inc.
6. **Interstate Fire & Casualty Insurance Company**, a foreign insurance company authorized to do and doing business in the State of Louisiana, who at all pertinent times herein had a policy of directors and officers liability insurance wherein the named insured was Metairie Towers Condominium Association, Inc. and/or Metairie Towers Board of Directors.
7. **Strategic Claims Consultants, LLC**, a foreign limited liability company with its principal place of business in Atlanta, Georgia;
8. **GNO Property Management, L.L.C.**, a domestic limited liability corporation with its principal place of business in Orleans Parish, State of Louisiana.
9. **ABC Insurance Company**, a foreign insurance company authorized to do and doing business in the State of Louisiana, who at all relevant times provided liability insurance coverage to individual members of the Metairie Towers Board of Directors.

10. **DEF Insurance Company**, a foreign insurance company authorized to do and doing business in the State of Louisiana, who at all relevant times provided liability insurance coverage to Strategic Claims Consultants, LLC.
11. **GHI Insurance Company**, a foreign insurance company authorized to do and doing business in the State of Louisiana, who at all relevant times provided liability insurance coverage to GNO Property Management, L.L.C.

#### V.

On or about August 29, 2021, Hurricane Ida made landfall causing substantial damage to Metairie Towers.

#### VI.

As a result of the damage caused by Hurricane Ida, Metairie Towers as a whole was rendered uninhabitable, the Owners were forced out of their units, and repairs/reconstruction were undertaken without obtaining a vote of its members.

#### VII.

The Condo Association and/or the Board made insurance claims for the property damage to Metairie Towers and undertook the management of the insurance proceeds as well as repairs, restoration, and remediation on behalf of the Owners.

#### VIII.

The Owners were advised by the Condo Association and/or the Board that the repairs to Metairie Towers would take approximately one-year and that the insurance coverage available was sufficient to complete the repairs and restoration.

#### IX.

Thereafter, the Condo Association and/or the Board advised the Owners to remove all of their contents, personal property and movable property from their units.

#### X.

The Condo Association and/or the Board approved and/or directed third parties to gut the entire structure known as Metairie Towers, including all common areas and individual units regardless of whether they had sustained any direct damage from Hurricane Ida. The Owners were advised that the entire property, including undamaged units, was being gutted so that asbestos remediation could be done.

## **XI.**

During the time the property and the units were being gutted, the Condo Association and/or the Board were not transparent with the Owners and failed to put any issues affecting their units to a vote. Specifically, the Condo Association and/or the Board collected, disbursed, and spent first party insurance funds without any explanation, oversight or checks and balances.

## **XII.**

Pursuant to Article X(5) of the Articles of Incorporation, the Metairie Towers Condominium Association, Inc. was required to appoint a Trustee for the benefit of unit owners. In the event of a decision to rebuild, the insurance proceeds were to be paid out by the insurance trustee as the reconstruction and repairs progressed in accordance with an insurance trust agreement. The trust agreement was required to provide in pertinent part for the following provisions:

- (a) The new construction or repairs shall be in the charge of an architect or engineer, who may be an employee of the Board of Directors, satisfactory of the Insurance Trustee;
- (b) Prior to the commencement of the reconstruction or repair of the damaged improvements, other than such work as may be necessary to protect the condominium from further damage, the plans or specifications for such reconstruction or repair shall be submitted to the Insurance Trustee for its approval, which approval shall not be unreasonably withheld or delayed;
- (c) Unless otherwise required by the Insurance Trustee, notice of each request for an advance of the proceeds of the Insurance shall be made to the Insurance Trustee or its representative, at least ten days prior to payment by the Insurance Trustee and shall be accompanied by a certificate from the inspecting architect to the effect that:
  - (i) all work completed has been performed in accordance with the plans and specifications and all building codes or other similar governmental requirements;
  - (ii) the amount requested to be advanced is required to reimburse the Board of Directors of the Association for payments previously made by the Board of Directors or is due to the contractor responsible for the restoration or repair, or to subcontractors, materialmen, laborers, engineers, architects, or to other persons responsible for services or materials in connection with such restoration or repair, or for fees or the like necessarily incurred in connection with the same;

- (iii) when added to amounts previously advanced or paid by the Insurance Trustee, the amount requested to be advanced does not unreasonably exceed the value of the work done or the materials delivered to the date of such request;
- (iv) funds remaining available to the Insurance Trustee are sufficient to complete the reconstruction or repair.

### **XIII.**

Instead of appointing an Insurance Trustee, Metairie Towers Condominium Association, Inc. or the Board without the authority of the Unit owners appointed a Tripartite Management Team comprised of (1) Metairie Towers Condominium Association, Inc. – Ron Carter; (2) Strategic Claims Consultants, LLC – Brandon Lewis; GNO Property Management, L.L.C. – Robert Philips – (1) to review contractor invoices; (2) to submit the invoices and contractor documents to the insurer; (3) to receive the funds owed pursuant to the insurance policy; and (4) to distribute the funds to the contractor(s).

### **XIV.**

At no time did the Tripartite Management Team retain the services of an engineer or an architect to oversee the construction or repairs and certify that the funds remaining after payment of invoices were sufficient to complete the reconstruction or repair as was required by Paragraph X(5)(c)(iv).

### **XV.**

On April 4, 2023, the Owners were finally given an accounting of the insurance proceeds collected and how these insurance funds were spent, giving rise to this lawsuit. Moreover, the Owners were for the first time advised that there would not be enough proceeds to complete the restoration or repair and it was expected that the Owners would be accessed \$50,000 to \$60,000 per unit to complete the repairs/restoration.

### **XVI**

In sum, the Owners were advised that approximately \$20,000,000 of insurance proceeds were spent and Metairie Towers and all of its 219 units are still completely uninhabitable and gutted.

## **XVII.**

Petitioners further aver that pursuant to Paragraph X(1) of the Article of Incorporation, the property was to be insured in an amount equal to the maximum insurance replacement as determined annually by an appraisal by the insurance company affording such protection. The property was significantly underinsured and the required appraisal to determine the insurable replacement basis was never obtained on an annual basis.

## **XVIII.**

As a result of the actions and inactions of Defendants, Metairie Towers Condominium Association, Inc., Metairie Towers Board of Directors, through its individual members, Ron Carter, Betty Miles, Ellyn Meier, Carolyn Diaz, Jennifer Fagan, Mary Kay Zahn, & Anne Babst, Strategic Claims Consultants, LLC, and GNO Property Management, L.L.C., the Class has sustained damages as set forth below based on (1) negligence; (2) negligence per se – violations of the law and their own rules and regulations; (3) detrimental reliance; and (4) breach of fiduciary.

### **NEGLIGENCE**

## **XIX.**

The Defendants, Metairie Towers Condominium Association, Inc. and/or Metairie Towers Board of Directors, through its individual members, and/or Strategic Claims Consultants, LLC and/or GNO Property Management, L.L.C. acted negligently, including, without limitation, by:

1. Failure to be transparent with the Owners on all issues;
2. Failure to put substantial financial issues to a vote;
3. Failure to properly administer the insurance proceeds;
4. Mismanaging the insurance claims and insurance proceeds;
5. Failure to exercise reasonable care to avoid depletion of the insurance proceeds;
6. Improperly applying and utilizing the insurance proceeds;
7. Mismanaging the repairs, restoration, and remediation;
8. Depleting the insurance proceeds without restoring Metairie Towers or even completing substantial repairs;
9. Failure to procure adequate insurance coverage;
10. Failure to notify the Owners that Metairie Towers was underinsured;
11. Failure to follow their own rules regarding appointment of an insurance trustee.
12. Failure to comply with their duties as set forth in the Louisiana Condominium Act – La. R.S. § 9:1121.101, *et seq.*
13. Managing insurance proceeds without the required authority of the Owners.
14. Failing to get approval from the Owners to make repairs given the untenable condition of the building.

## **NEGLIGENCE PER SE**

### **XX.**

The Condo Association and/or Board, through its individual members, are governed by strict and rigid rules and regulations regarding the collection and disbursement of insurance proceeds. The Condo Association and/or the Board violated the Louisiana Condominium Act, its own internal articles and/or bylaws and rules resulting in the mismanagement, misuse, misapplication, and inefficient application of the insurance proceeds, which caused substantial damage to the Class.

### **XXI.**

According to the Articles of Incorporation of the Metairie Towers Condominium Association, Inc. Paragraph X(5) – Insurance Trustee, in the event of a casualty loss, the insurance proceeds should be paid over to an Insurance Trustee to manage, disperse, and prevent the depletion of these proceeds. The Condo Association and/or the Board violated Section 5 by failing to appoint a trustee pursuant to its own bylaws.

## **DETRIMENTAL RELIANCE**

### **XXII.**

Defendants made misrepresentations to the Owners on which they relied to their detriment regarding: (1) the amount of time it would take to make the repairs or to restore Metairie Towers; (2) the management of the insurance proceeds; (3) the adequacy of insurance proceeds to complete the repairs; (3) the adequacy of insurance coverage on Metairie Towers. As such, Defendants are liable for detrimental reliance pursuant to La. Civ. Code art. 1967.

## **BREACH OF FIDUCIARY DUTY**

### **XXIII.**

All of the Defendants acted in the capacity of fiduciaries and had a fiduciary duty as it relates to the Class.

### **XXIV.**

The fiduciary duty owed by the Defendants to manage, collect, and disburse insurance proceeds was breached and the end result was the misappropriate, and inappropriate disbursement, and overall lack of transparency and efficiency in using the first-party insurance proceeds collected for the benefit of the Owners.

**XXV.**

The end result of this mismanagement was that a substantial amount of insurance proceeds were paid to remediate the premises and the Owners now find themselves in a position where they have no place to live, and will likely be charged with a substantial assessment due to the negligence of the Defendants.

**XXVI.**

At all pertinent times herein, Burlington Insurance Company, Greenwich Insurance Company, and Federal Insurance Company issued to Metairie Towers Condominium Association, Inc. commercial general liability policies of insurance which provided coverage for the acts and/or omission of the Defendant, Metairie Towers Condominium Association, Inc., as alleged herein.

**XXVII.**

At all pertinent times herein, Interstate Fire & Casualty Insurance Company provided directors and officers liability insurance coverage for the negligent acts alleged herein against the Metairie Towers Condominium Association, Inc. and Metairie Towers Board of Directors.

**XXVIII.**

At all pertinent times herein, ABC Insurance Company provided liability insurance coverage for the negligent acts alleged herein of Strategic Claims Consultants, LLC and its agents and representatives and as such that insurer is responsible for the negligent acts of the Defendant, Strategic Claims Consultants, LLC.

**XXIX.**

At all pertinent times herein, DEF Insurance Company provided liability insurance coverage for the negligence acts alleged herein of GNO Property Management, L.L.C. and its agents and representatives and as such that insurer is responsible for the negligent acts of the Defendant, GNO Property Management, L.L.C.

**XXX.**

At all pertinent times herein, GHI Insurance Company provided liability insurance coverage for the negligent acts alleged herein of the individual members of the Metairie Towers Board of Directors and as such that insurer is responsible for the negligent acts and breach of fiduciary duties of the Metairie Towers Board of Directors' individual members.



## **DAMAGES**

### **XXXI.**

As a result of the negligence and other acts and omissions of Defendants, individually and as a management team, the Class has suffered the following damages:

- 1) Loss of use of the premises and their units;
- 2) Diminution in value.
- 3) Condominium fees.
- 4) Damage to contents, personal property, and movables.
- 5) Miscellaneous and additional expenses incurred, including moving expenses, storage expenses.
- 6) Mental anguish, severe and substantial mental anguish associated with the destruction of their units.
- 7) Loss of substantial insurance proceeds, which were collected and mismanaged.

## **CLASS ACTION ALLEGATIONS**

### **XXXII.**

- 1) Plaintiffs bring this action on their own behalf and as a class action, pursuant to La. Code Civ. Proc. art. 591, on behalf of themselves and on behalf of all persons and entities who owned condominium units at Metairie Towers located at 401 Metairie Road, Metairie, Louisiana 70005 from August 28, 2021 to present, hereinafter (the "Class"). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any Defendant.
- 2) This action is properly maintainable as a class action.
- 3) The Class is so numerous that joinder of all members is impracticable. As of April 1, 2023 there are over one hundred and fifty Owners and entities scattered throughout the country.
- 4) Questions of law and fact are common to the Class, including, among others:
  - a. Whether Defendants have breached their fiduciary duties owed to Plaintiffs and the Class; and
  - b. Whether Defendants have committed acts of negligence which have caused monetary damages to Plaintiffs and the Class;
- 5) Plaintiffs are committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of the other members of the Class and Plaintiffs have the same interests as the other members of the Class. Accordingly, Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

- 6) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

**WHEREFORE:**

- 1) That after due proceedings this action be certified as a class action pursuant to the provision of LA C.C.P. art. 591, et seq., in the respects alleged hereinabove, for the purposes of determining the common issues of liability for compensatory damages and the basis for assessment of exemplary damages, if any.
- 2) That upon certification of the class action, the Court call for the formulation of a suitable management plan pursuant to LA C.C.P. art. 593 (C).
- 3) That after due proceedings are had that there be judgment herein in favor of the petitioners and against the Defendants for all compensatory damages as are reasonable in the premises, plus legal interest from the date of judicial demand until paid, for all costs of this suit and for all other just and equitable relief permitted by law.
- 4) That the rights of the Plaintiffs and the members of the class to establish their entitlement to compensatory damages, and the amounts thereof, be reserved for determination in their individual actions.
- 5) That Plaintiffs recover their costs for the prosecution of this class action.
- 6) That attorney's fees be awarded to Class counsel.

Respectfully submitted,

CHEHARDY, SHERMAN, WILLIAMS,  
RECILE & HAYES

BY:   
\_\_\_\_\_  
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KIRKENDALL DWYER, L.L.P.

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**PLEASE SERVE:**

1. **Metairie Towers Condominium Association, Inc.**  
Through its Registered Agent for Service of Process:  
Mr. Robert Phillips  
826 Union Street, Suite 200  
New Orleans, Louisiana 70112

2. **PLEASE WITHHOLD SERVICE**  
**Metairie Towers Board of Directors**  
Through its individual member:  
Mr. Ron Carter

(SEE ADDITIONAL SERVICES ON THE FOLLOWING PAGE)

3. **PLEASE WITHHOLD SERVICE**  
**Metairie Towers Board of Directors**  
Through its individual member:  
Ms. Betty Miles
4. **PLEASE WITHHOLD SERVICE**  
**Metairie Towers Board of Directors**  
Through its individual member:  
Ms. Ellyn Meier
5. **PLEASE WITHHOLD SERVICE**  
**Metairie Towers Board of Directors**  
Through its individual member:  
Ms. Carolyn Diaz
6. **PLEASE WITHHOLD SERVICE**  
**Metairie Towers Board of Directors**  
Through its individual member:  
Ms. Jennifer Fagan
7. **PLEASE WITHHOLD SERVICE**  
**Metairie Towers Board of Directors**  
Through its individual member:  
Ms. Mary Kay Zahn
8. **PLEASE WITHHOLD SERVICE**  
**Metairie Towers Board of Directors**  
Through its individual member:  
Ms. Anne Babst
9. **RETURN FOR SERVICE VIA LONG ARM STATUTE**  
**Strategic Claims Consultants, LLC**  
Through its Registered Agent for Service of Process  
3050 Amwiler Road, Suite 200-B  
Atlanta, Georgia 30360
10. **GNO Property Management, L.L.C.**  
Through its Registered Agent for Service of Process:  
Mr. Robert Kirk Phillips  
551 Hickory Avenue  
Harahan, Louisiana 70123
11. **Burlington Insurance Company**  
Through its Registered Agent for Service of Process:  
Louisiana Secretary of State  
8585 Archives Ave.  
Baton Rouge, LA 70809
12. **Greenwich Insurance Company**  
Through its Registered Agent for Service of Process:  
Louisiana Secretary of State  
8585 Archives Ave.  
Baton Rouge, LA 70809
13. **Federal Insurance Company**  
Through its Registered Agent for Service of Process:  
Louisiana Secretary of State  
8585 Archives Ave.  
Baton Rouge, LA 70809

**14. Interstate Fire & Casualty Insurance Company**  
Through its Registered Agent for Service of Process:  
Louisiana Secretary of State  
8585 Archives Ave.  
Baton Rouge, LA 70809

**15. PLEASE WITHHOLD SERVICE**  
**ABC Insurance Company**  
Through its Registered Agent for Service of Process:

**16. PLEASE WITHHOLD SERVICE**  
**DEF Insurance Company**  
Through its Registered Agent for Service of Process:

**17. PLEASE WITHHOLD SERVICE**  
**GHI Insurance Company**  
Through its Registered Agent for Service of Process: