Louisiana Worship Hospitality LLC v. Lexington Insurance Company

United States District Court -Eastern District of Louisiana
Civil Acton No.: 08-3740

Expert Report

FOR MEDIATION PURPOSES ONLY

Respectfully Submitted by:

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Section I – Opinions to be Rendered

I have been asked by the Merlin Law Group to review and analyze documents as listed in Section II of this report (below) and to opine on Lexington Insurance Company's ("Lexington") denial of coverage of the claim of Louisiana Worship Hospitality LLC DBA New Orleans Grand Palace Hotel ("Grand Palace Hotel") (assigned a date of loss of May 25, 2007) based on the reasons enumerated in the September 19, 2007 letter of AIG Domestic Claims, Inc.("AIG Claims") to Eddie Bhatt of the Grand Palace Hotel.

Section II – Data or Information Considered

- Examination Under Oath of Ashok (Eddie) Bhatt – August 16, 2007;
- Letter of September 19, 2007 from AIG Domestic Claims Brent Barton to Eddie Bhatt;
- Letter of December 4, 2007 from The Greenspan Company's Masood Khan to Wayne R. Glaubinger, Mound, Cotton, Wollan & Greengrass and Brent Barton AIG Domestic Claims, including attached estimate of damage amounts by peril and by floor;
- Letter of December 14, 2007 to Masood Khan of The Greenspan Company from GAB Robins General Executive Adjuster Roger Sawyer;
- Letter of January 10, 2008 to Masood Khan of The Greenspan Company from GAB Robins General Executive Adjuster Roger Sawyer;
- Letter of January 28, 2008 to Masood Khan of The Greenspan Company from GAB Robins General Executive Adjuster Roger Sawyer;
- Civil District Court for the Parish of Orleans, State of Louisiana, Louisiana Worship Hospitality LLC versus Lexington Insurance Company – Petition for Damages May 19, 2008;

- Answer and Affirmative Defenses July 17, 2008;
- Plaintiff's First Set of Requests for Production of Documents to Defendant – November 7, 2008
- Defendant's Responses to Plaintiff's First Set of Requests for Production of Documents – December 2008;
- Lexington Insurance Company – Policy issued to Louisiana Hospitality LLC from December 29, 2006 to December 29, 2007 – policy number CA 91118
- Deposition of Eddie Bhatt – January 19, 2008
- Deposition of Hemlata Vyas – January 20, 2009
- Deposition of Jake Mello – February 10, 2009
- Deposition of Roger Sawyer – February 11, 2009
- Deposition of Edward A. Mossien, Jr. – February 19, 2009
- Deposition of Brent Barton – February 20, 2009
- Lexington Produced Documents 0000001 to 00000613

Section III – Qualifications

I have been providing in depth insurance and risk advice to businesses and organizations for over 20 years. I have the attained the designation of CPCU (Chartered Property and Casualty Underwriter) CIC (Certified Insurance Counselor) and AU (Associate in Underwriting) and regularly speak as a National Faculty member for the Society of Certified Insurance Counselors. As an Expert Commentator for the International Risk Management Institute (IRMI), I research and write articles on various coverage issues. For additional information on my qualifications, see the Curriculum Vitae attached.

Section IV – Opinions

<u>Opinion #1</u> – The Grand Palace Hotel was not vacant or unoccupied.

The Lexington Insurance Company policy #1115726 (LEX 0000001 to 0000048) issued to Louisiana Hospitality, LLC does not define the term "vacant."

Vacant

First, it is important to consider the term "vacancy" as a term of art in the hotel or hospitality industry and contrast the usage of that industry to its usage as a term of art the insurance industry. For example, when a hotel puts out a sign that indicates "vacancy," no reasonable insurance company would conclude that such an advertisement would render the hotel building "vacant" for the purposes of property insurance.

Yet, AIG Claims does not attempt to make any distinction between "vacancy" as a term of art in the hospitality industry and "vacant" as a term of art in the insurance industry when relying on

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Ashok "Eddie" Bhatt's Examination Under Oath taken on August 16, 2007 to determine the Grand Palace Hotel was vacant.[1]

Second, given the above, and considering Lexington has not defined "vacant" in its policy, it is equally important to determine the meaning of this term of art in the insurance industry.

The following is taken from *Black's Law Dictionary [Eight Edition]* regarding the definition of "vacant."

> Empty; unoccupied. Courts have sometimes distinguished *vacant* from *unoccupied*, holding that *vacant* means completely empty while *unoccupied* means not routinely characterized by the presence of human beings. [Underlined supplied]

Based on the above definition, and applying it to the Grand Palace Hotel, the hotel building was *not vacant* as it was *never completely empty*. Throughout the Lexington policy period, substantial amounts of personal property were kept in the hotel. In fact, Roger Sawyer, Executive General Adjuster for GAB Robins recommended "retaining an expert to inventory the contents for future reference" (GAB 0376). That expert, Nardone & Company, did submit a report dated July 23, 2007, complete with photos, depicting various contents, including furniture such as double, king and queen beds located in guest rooms, office furniture (desks and chairs), as well as inventory (headboard, lamps, chairs) in storage (GAB 0095 to 0124). In addition, Mr. Sawyer did testify that there were contents within the hotel building.[2]

In his deposition, Brent Barton of AIG Claims readily admits that he was not aware of personal property items within the hotel, but nonetheless believed the building was vacant.[3] While Mr. Barton could not recall whether or not the Lexington policy *even had a definition of vacancy*, let alone what the actual definition might be[4], he nevertheless applied *his own definition of vacancy* – as the hotel was not being used as a hotel it was, he concluded, (without any apparent basis) vacant.[5]

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[1] **Deposition of Brent Barton** – Page 157, lines 18-24 "Q: So it is your position today that the property was vacant for more than 60 days; is that correct? A: That is my position based upon what the insured's representative told us in his EUO and told our adjuster. Also - Page 180, lines 2-5, "I think the insured was fully aware of the basis *they told us about the vacancy and unoccupancy of the building...*" [Emphasis supplied]

[2] **Deposition of Roger Sawyer** – Page 114, lines 7-14, "Q: As of the May 25, 2007 you would agree that there were contents, personal contents, within the structure, correct? A: Yes. Q: Everything hadn't been removed from the structure; is that accurate? A: Yes."

[3] **Deposition of Brent Barton** – Page 157, lines 10-17, "Q: Do you know whether or not it had personal property items within it? A: I'm not aware that it had personal property items by any guests of the hotel. Q: What about personal property items owned by the hotel? A: *It may – I'm not aware that it had personal property items owned by the hotel.*" [Emphasis supplied]

[4] **Deposition of Brent Barton** – Page 159, lines 3-7, "Q: Is there a definition within the policy for vacancy? A: As I sit here today I don't recall whether this particular policy there was a definition for vacancy."

[5] **Deposition of Brent Barton** – Page 156-157, lines 21-25 and lines 12-9, "Q: Is the position of your approval that the building was vacant at the time of the loss? A: That's my understanding based upon the facts told to Roger Sawyer by the insured and from the insured's EUO testimony. *The building was not being used for the purpose it was intended, which was a hotel.* Q: Is that your understanding of what the definition of vacancy is? A: It's my understanding that the hotel was vacant. It had no guests. And was not open as a hotel at the time." [Emphasis supplied]

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Unoccupied

The Lexington Insurance Company policy #1115726 (LEX 0000001 to 0000048) issued to Louisiana Hospitality LLC does not define the term "unoccupied."

Recalling Black's definition noted above, "unoccupied" means "not routinely characterized by the presence of human beings." Clearly, the Grand Palace Hotel cannot be said to lack for the presence of human beings. At the outset, it is important to note that the definition merely requires the presence of human beings, not that human beings must be *residing in the building*.

In his first report to AIG Claims dated July 3, 2007 (GAB 0373 to 0377), Roger Sawyer of GAB Robins reported (GAB 0376) "Since the hotel lost electricity on February 10, 2007, the Insured used staff employees to walk the premises at various hours of the evening. Since the hotel lost electricity, due to the vandalism of 2/10/07, security has been very minimal and generally consisted of the building engineer who was residing on the premises. The building engineer would walk the hallways of the building at various hours in the evening in an effort to keep vandals out of the building."

In addition, in his August 16, 2007 EUO, Eddie Bhatt testified that after the February 10, 2007 electrical shutdown, he and several of his employees were present. Mr. Bhatt and an employee, Daniel Adame, both lived on the premises in two separate trailers.[6] In addition, Mr. Bhatt spent time working in the office of the hotel, and was in the hotel office on May 16, 2007 when he witnessed vandalism by Joel E. Buss.[7] Mr. Barton of AIG Claim acknowledges this in his deposition.[8]

When applying *Black's* definition of "unoccupied" to the Grand Palace Hotel, it becomes apparent that the building was not "unoccupied." Put another way, the record does clearly show that there was, in fact, a 24 hour presence of Mr. Bhatt and his employees in and around the Grand Palace Hotel building after February 10, 2007.

Thus the building cannot reasonably be characterized as not routinely having the presence of human beings and thus cannot be deemed to be unoccupied.

The record shows that Mr. Barton of AIG Claims viewed "unoccupied" in the same manner as he viewed the term "vacant." He did not know if the Lexington policy even included a definition for "unoccupied." In fact, Mr. Barton asserts the "the words speak for themselves" even though it is

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[6] **Examination Under Oath – Ashok (Eddie) Bhatt**, page 63, lines 9-13, "The Lopez, my own employees, the security people, and the, you know, caretaker of the building. We were all there. So I have a trailer in the building in the service alley. I live in the trailer."

[7] See Exhibit #5 to Bhatt EUO – Statement to police "I was awake and sitting at the front desk in the lobby. I saw Mr. Buss throw a brick at a window."

[8] **Deposition of Brent Barton – Page 158-159**, lines 16-25 and line 2, "Q: And was your understanding that there was nobody in the place for more than 60 days? A: It was my understanding it had no guests and the hotel was closed. There were individuals that went in and out of the hotel, including the insured's representatives and his employees, but they were not staying in the hotel. My understanding is they stayed in trailers behind the hotel."

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clear he does not know what words are "speaking" or if any words actually exist in the policy related to "unoccupancy".[9] As with "vacant," Mr. Barton supplies his own definition of "unoccupied" for the purposes of the claim denial, which he concludes, again without apparent basis, means that no guests are in the hotel.[10]

Conclusion

The Lexington Insurance Company policy does not define either the term "vacant" or "unoccupied." As Lexington Insurance Company has failed to provide its own definition within its policy, the plain meaning of these terms, which can be found in *Black's Law Dictionary*, must be applied to the terms "vacant" and "unoccupied." Consequently, AIG Claims is not free, on behalf of Lexington Insurance Company, to supply their own definitions of "vacant" and "unoccupied" as they have clearly done in their claim denial. The Grand Palace Hotel was neither "vacant" nor "unoccupied" from December 29, 2006 to May 25, 2007, the date of the claim in dispute. Therefore, Lexington Insurance Company cannot deny coverage based on the Grand Palace Hotel building being either "vacant" or "unoccupied."

<u>Opinion #2</u> – Even if the Grand Palace Hotel is found to be vacant or unoccupied, Lexington was fully aware in the summer of 2007 the hotel had not reopened after the February 10, 2007 claim.

In the alternative, even if the Grand Palace Hotel is somehow found to be vacant or unoccupied (which it is not), Lexington Insurance Company was fully aware the Grand Palace Hotel had not reopened as late as the summer of 2007. The record shows that GAB Robins on behalf of Lexington Insurance Company handled the Grand Palace Hotel's February 10, 2007 claim and GAB and Lexington knew this claim resulted in the cutting of the power and the evacuation of hotel guests from the hotel. Thus Lexington was fully aware of the status of the hotel. Further, Lexington Insurance Company eventually paid a claim of approximately $1.3 million, most of which was not paid until the summer of 2007.[11]

Lexington Insurance Company knew the Grand Palace Hotel was not operating as a hotel and would not be operating as a hotel, *at the earliest*, until the full amount of the February 10, 2007 claim was paid, which Lexington or its representatives knew was not until the summer of 2007. Yet, Lexington collected and retained the full annual premium of $119,736 (LEX 0000001), despite Lexington's current contention that as of April 10, 2007, or a little more than four months into the policy term, its policy provided no coverage.

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[9] **Deposition of Brent Barton** – Page 159, lines 8-12, "Q: Is there a definition for unoccupancy within the policy? A: Again as I sit here I don't recall whether there was a definition the words speak for themselves."

[10] **Deposition of Brent Barton** – Page 159, lines 9-15, "Q: What does the term unoccupancy mean? A: It was unoccupied by guests of the hotel. The hotel was not being used as a hotel. Q: Define the term unoccupied. A: Well, this is used as – this term is unoccupancy, but the meaning there is no one in the place."

[11] **Deposition of Eddie Bhatt** – page 21, lines 18-22, "Q: Okay. I understand. Now, when you got the 1.3 million that you've testified was not used to repair anything, on or about what date was that money received? A: I think it was July or August, 2007."

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Stated differently, Lexington collected and retained premium for approximately eight months, or over $86,000 of premium, for an insurance policy which Lexington now contends *provided virtually no coverage for Louisiana Hospitality LLC.*

Conclusion

Lexington Insurance Company knew of the cutting of power and evacuation of the hotel in February, 2007 and further knew that the hotel had not reopened as late as the summer of 2007. Nonetheless, *Lexington continued to collect and retain the full annual premium.* Retaining the full annual premium, when combined with the knowledge possessed by Lexington regarding the operation of the hotel, strongly suggests that Lexington was providing coverage and is thus tantamount to waiving any policy limitation for vacancy or unoccupancy that is related hotel closing. In sum, it is exceedingly unfair for Lexington to collect the *full annual premium* with complete knowledge that the hotel was not operating and then contend that the policy *did not* provide any coverage for the hotel building because the *hotel was not operating.* The only reasonable inference from such actions is that Lexington did intend to provide coverage for the hotel whether or not it was operating, and thus waived any policy defense for vacancy or occupancy.

<u>Opinion #3</u> – AIG Claims erroneously contends the vacancy and unoccupancy clause "precludes coverage for any vandalism claim after February 10, 2007.[12]"

In the AIG Claims (LEX 0000114 to 0000118) denial letter of September 19, 2007, Brent Barton cites clause **36. Vacancy and Unoccupancy** and denies that any coverage exists for any vandalism claims *after "February 10, 2007."* Even the most cursory reading of this policy limitation plainly shows the limitation does not apply unless the property "has remained vacant or unoccupied for a period of sixty (60) or more days.[13]"

Conclusion

AIG Claims misreads its own policy and asserts a policy limitation that is clearly erroneous. The limitation, if it applies at all, *requires the property to be vacant or unoccupied for a period of sixty days or longer,* not the *day after* the location purportedly becomes vacant or unoccupied as AIG claims wrongly contends in it September 19, 2007 letter.

<u>Opinion #4</u> – The Lexington Insurance Company policy #1115726 (LEX 0000001 to 0000048) effective December 29, 2006 to December 29, 2007, issued to Louisiana Hospitality, LLC, did not include the Louisiana Standard Fire Policy.

In the AIG Claims denial letter of September 19, 2007 (LEX 0000114 to 0000118), Brent Barton cites the Louisiana Standard Fire Policy (LEX 00000116), specifically the **Conditions Suspending or Restricting Coverage**.

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[12] AIG Claims letter date September 19, 2007, page 2 (LEX 0000111), states "This exclusion precludes coverage for vandalism claims *after February 10, 2007.*" [Emphasis supplied]

[13] LEX 0000032 – page 16, MAN PR8545 (09/02)

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However, Mr. Barton fails to recognize that the Lexington Insurance Company #1115726 (LEX 0000001 to 0000048) issued to Louisiana Hospitality LLC does NOT contain the Louisiana Standard Fire Policy form nor does the policy Lexington Forms Schedule (LEX 0000002) provide any reference to the Louisiana Standard Fire Policy.

Conclusion

Simply stated, Lexington Insurance Company has failed to include the Louisiana Standard Fire Policy on its policy issued to Louisiana Hospitality LLC but nevertheless seeks to use the terms of the non-existent Louisiana Standard Fire policy to its advantage - to restrict the coverage available to its policyholder. Attempting to enforce policy terms that cannot be found anywhere in the policy is both unreasonable and unfair. In sum, Lexington cannot enforce any provisions of the Louisiana Standard Fire policy against Louisiana Hospitality LLC as such terms were never a part of its policy.

Opinion #5 – Even if it is determined that the Louisiana Standard Fire Policy is incorporated into the Lexington Insurance Company policy (LEX 0000001 to 0000048), Lexington has expressly waived any and all of the Louisiana Standard Fire Policy's terms and conditions.

Should Lexington Insurance Company somehow be successful in arguing that the Louisiana Standard Fire Policy is incorporated by reference or Lexington is otherwise allowed to reform the policy to include the Louisiana Standard Fire, it is important to note that Lexington has expressly waived any of the Louisiana Standard Fire Policy's terms and conditions.

Specifically, clause **40. Full Waiver** of the Lexington Insurance Company Manuscript form (MAN PR9545 (09/02)) also (LEX 0000035), states the following:

> The terms and conditions of this form and endorsements are substituted for those of the policy to which it is attached, terms and conditions and endorsements of latter being waived.

The Louisiana Standard Fire Policy provides coverage for fire and extended coverage only. Therefore, it becomes apparent that the Lexington Insurance Company policy is generally intended to be attached to the Louisiana Standard Fire Policy. Put another way, the Louisiana Standard Fire Policy is the base policy and the Lexington policy is attached to that base policy. As Lexington has expressly stated that the terms and conditions of its form are substituted for those of the policy *to which it is attached* (it is attached to the Louisiana Standard Fire Policy), the terms and conditions of the Louisiana Standard Fire Policy have been waived by Lexington.

Conclusion

Lexington Insurance Company has expressly waived all terms and conditions of the policy to which it is attached. Therefore, even if somehow it is determined that the Louisiana Standard Fire Policy is part of Lexington policy, Lexington has *expressly waived* any of its defenses under the Louisiana Standard Fire Policy and cannot now assert the defense found in the Louisiana Standard Fire Policy clause entitled **Conditions Suspending or Restricting Insurance**.

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<u>Opinion #6</u> – Even if it is determined that the Louisiana Standard Fire Policy is incorporated into the Lexington Insurance Company policy (LEX 0000001 to 0000048), the hazard was not "increased."

In the AIG Claims denial letter of September 19, 2007 (LEX 0000114 to 0000118), Brent Barton contends that the actions of Louisiana Hospitality LLC – leaving the hotel empty and providing less security – constituted an increase in hazard (LEX 00000116 to LEX 0000117).

First, as explained in more detail in Opinion #1 above, the building was not left empty. Second, Mr. Barton acknowledges there was security, but apparently not enough, at least in his opinion, to avoid an *increase* in hazard (LEX 00000117). He makes reference to the paid off-duty police detail that were engaged by Louisiana Hospitality prior to the February 10, 2007 loss and notes that this was discontinued resulting (at least in his view) in the in the inability of Louisiana Hospitality LLC to control the premises and remove vandals (LEX 00000117).

Apparently, in order to avoid an increase in hazard, Mr. Barton would require that "...Louisiana Hospitality...*control the premises and remove vandals*" (LEX 0000017). However, no explanation is offered as to what would be considered adequate security to accomplish such control and thus avoid an increase in hazard.

When considering the security requirements Lexington imposes on its policyholders, it is worth observing that residents of New York (Mr. Barton and Mr. Mossien) or Houston (Mr. Sawyer) likely lacked appreciation of the affects Hurricane Katrina has had and continues to have on the City of New Orleans, not the least of which was the rampant and sophisticated crime that resulted, including the increase theft of certain metals, such as copper and aluminum.[14] This is of particular importance as an increase in hazard is "within the control or knowledge of the insured." It is evident that, at least in part, Mr. Barton presupposes that Louisiana Hospitality had the *ability* to control the crime and theft in New Orleans in 2007.

Considering the above, Mr. Barton is suggesting that Lexington Insurance Company will pay for vandalism or theft claims only if policyholder has enough controls in place to avoid vandalism and theft claims. Conversely, if the policyholder cannot exert enough control to avoid vandalism and theft claims, then Mr. Barton considers the situation to be an "increase in hazard" and will refuse to pay the very claims for which the policyholder requires coverage. Of course, this utterly fails to take into consideration the actual situation in the City of New Orleans and thus results in a misguided view of what constitutes an "increase in hazard." This "Catch-22" attitude raises the question as to whether Lexington had provided any coverage at all after February 10, 2007.

Further, to the extent that funds or benefits were available under the Lexington policy arising from the February 10, 2007 claim to pay for the security Lexington apparently demanded of its policyholders, such as under Extra Expense coverage, it was incumbent upon Lexington or its

[14] **Deposition of Edward Mossien, Jr.** – Page 107-108, lines 13-25 and line 2; "Q: At the time of the loss in 2007, in the summer of 2007 when the investigation was going on, did you have an appreciation for the various mechanisms as to how thieves would keep from being detected when they would steal copper or other parts of metallic portions of buildings? A: No. Q: Something you learned more recently? A: Yes."

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representatives, for example, GAB, to offer such payments to the extent available under the policy. AIG Claims assistant vice president Edward Mossien, Mr. Barton's superior, admits as much in his deposition.[15] In fact, Mr. Mossien acknowledges paying additional security for construction and also paying security costs as Extra Expense.[16] However, neither Lexington nor its representatives, such as AIG Claims or GAB, ever suggested to Louisiana Hospitality LLC payments might be available under Extra Expense coverage to pay for security after the February 10, 2007 loss.

Conclusion

It is also important to again point out that Lexington had full knowledge that the hotel was shut down on February 10, 2007 and that Lexington had every right to cancel the policy according to its terms[17] if Lexington did not wish to assume the risks that existed after February 10, 2007. Instead, as more fully explained in Opinion #2, Lexington chose to keep the policy in effect and collect and retain the full annual premium of $119,376, but now seeks to avoid payment of claims under the policy by contending that its policyholder "increased the hazard."

The above leaves the policyholder to only speculate on what Mr. Barton would have considered adequate security to avoid "increasing the hazard" – it may even be inferred that a Lexington Insurance Company policyholder based in New Orleans would be required to *hire its own private police force to avoid an "increase in hazard,"* a requirement that is obviously quite extreme and is both unreasonable and unrealistic. Further, Lexington and its representatives did not offer to pay for any security after the February 10, 2007 loss, yet expected the policyholder to, at the least, hire private police detail. In sum, when considering the situation in New Orleans on and after the February 10, 2007 loss, and taking into account that Louisiana Hospitality did continue with security, Louisiana Hospitality did not act in such a manner as to "increase the hazard."

<u>Opinion #7</u> – Any losses taking place after the policy inception of December 29, 2006 are fortuitous in nature.

In the AIG Claims (LEX 0000114 to 0000118) denial letter of September 19, 2007, Brent Barton contends the claims do not appear to be "fortuitous" in nature.

As with "vacancy" and "unoccupancy," the term "fortuitous" is not defined in the Lexington policy. According to Roger Sawyer of GAB, fortuity means "should have been able to foresee

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[15] **Deposition of Edward Mossien, Jr.** – Page 78, lines 13-22, "Q: Would you agree that as part of a good faith and fair dealing, that an adjuster should advise the policyholder of steps needed to be done by the policyholder to collect the benefits under the insurance policy? A: Yes."

[16] **Deposition of Edward Mossien, Jr - Page 141 to 142, lines 19 to 25 and lines 3-11, "Q: You have presided over in your past adjustment claims involving damage to commercial buildings where as part of the construction costs there is an itemized out additional security for construction; correct? A: Yes Q: In your experience, as a claims adjuster, you've had instances where there's been claimed as extra expense additional security for a building following a loss; correct? A: Claimed by the insured, yes."**

[17] LEX 0000008 – **Standard Property Condition – Cancellation Clause "This policy may be cancelled by the Company by mailing to the insured, at the mailing address shown in this policy or last known address, written notice stating when, not less than 30 days thereafter (10 days for non-payment of premium) such cancellation shall be effective."**

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it.[18]" In his letter of December 14, 2007 to Masood Khan of Greenspan Adjusters International, (GAB 0406 to GAB 0408) Mr. Sawyer repeats AIG Claims reasons for the May 25, 2007 claim denial, including repeating the statement that the vandalism losses do not appear "fortuitous" in nature (GAB 0407).

Louisiana Civil Code, Article 1875, defines a fortuitous event:

> A fortuitous event is one that, at the time the contract was made, could not have been reasonably foreseeable. [Emphasis added]

In Louisiana, an event is fortuitous if its occurrence cannot be reasonably foreseen. Moreover, such an event lacks fortuity *only if* the event can be reasonably foreseen *at the time* the contract is made. Events that are not foreseeable *at the time a contract is made* are considered to be fortuitous in Louisiana.

Conclusion

What is apparent from the Louisiana Civil Code is that *only losses that were not foreseeable on* December 29, 2006, the inception of the Lexington policy, can be avoided by Lexington because of the lack of fortuity. In other words, AIG Claims contention that vandalism and theft claims that that might have been foreseeable *after* December 29, 2006 are precluded from coverage due to lack of fortuity is mistaken and without validity in Louisiana. Any such incidents of vandalism or theft are considered to be fortuitous in Louisiana.

Opinion #8 – Lexington Insurance Company previously inspected the Grand Palace Hotel and cannot now claim they were unaware of its condition after Hurricane Katrina.

In his deposition, Eddie Bhatt testified that a representative of Lexington Insurance Company inspected the hotel prior to issuance of the policy.[19] Not only is it the custom and practice of a non-admitted or surplus lines insurance company to inspect *all policyholders*, the Lexington Property Worksheet (LEX 0000052) confirms an inspection of the building was ordered by Lexington as well as a Dun and Bradstreet report. In fact, in its Property Worksheet (2) (LEX 0000053), Lexington lists the housekeeping of the building as "average."

Conclusion

After apparently inspecting the building and characterizing the housekeeping as "average," it seems extraordinarily disingenuous for Lexington to now complain of how badly deteriorated the hotel building was purportedly from events taking place prior to the policy period, such as from

[18] **Deposition of Roger Sawyer** – Page 173, lines 11-13, "Q: What's fortuitous? A: Foreseeing, should have been able to foresee it."

[19] **Deposition of Eddie Bhatt** – page 123-124, lines 18-25 and line 1, "A: When we ordered the policy, they issued a binder, and then before they issued the policy, they sent their representative to inspect the premises. Q: And so you remember, then, receiving a binder and an inspection? A: The inspection from the company. Somebody came there, their representative. I don't remember who came, but somebody came."

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Hurricane Katrina. In sum, Lexington Insurance Company knew or should have known about the risk they had assumed. To the extent the denial of the claim of May 25, 2007 is derived from the Lexington or GAB's notion that the building was in poor shape prior to the policy issuance is badly misguided.

Reservations

I reserve the right to amend, change or supplement any portion of this report as additional documents, information or testimony is disclosed.

Section V – List of Publications

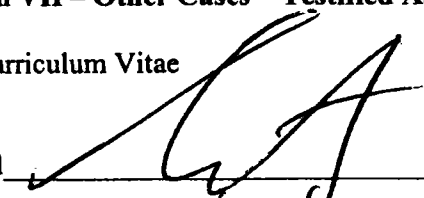
See Curriculum Vitae attached

Section VI- Compensation

I am being compensated for my time at a rate of $275.00 per hour plus out of pocket expenses.

Section VII – Other Cases – Testified As Expert

See Curriculum Vitae

Signed 

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