

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

SCOTT A SAVERAID TRUST FOR
SCOTT A SAVERAID REVOCABLE TRUST CASE NO: 2:25-cv-00394

Plaintiff,

v.

QBE SPECIALTY INSURANCE
COMPANY,

Defendant.

**ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS TO THE AMENDED COMPLAINT**

The Defendant, QBE Specialty Insurance Company (“QBE”), responds to the Amended Complaint (Doc. 26) filed by the Plaintiff, Scott A. Saveraid Revocable Trust (“Plaintiff”), and counterclaims for declaratory judgment and unjust enrichment.

ANSWER

1. Admitted only that Plaintiff seeks damages in excess of fifty thousand dollars, exclusive of interest, attorney fees, and costs. Denied that Plaintiff is entitled to any recovery.

2. Admitted.

3. Admitted that QBE is a foreign company licensed to transact business in the State of Florida pursuant to Florida Surplus Lines insurance laws. Otherwise denied.

4. Admitted that venue is proper in the United States District Court for the Middle District of Florida.

5. Admitted that QBE issued to the Plaintiff a surplus lines property insurance policy, number OUA10111693-01 (the “Policy”), effective from July 22, 2022, to July 22, 2023 (the “Policy”), insuring the property located at 5664 Estero Boulevard Fort Myers Beach, FL, 33931 (the “Property”). The Policy speaks for itself and provides coverage pursuant to its coverage provisions, exclusions, conditions, and limitations. Admitted that it is attached as Exhibit A to the Amended Complaint.

6. The Policy speaks for itself and provides coverage pursuant to its coverage provisions, exclusions, conditions, and limitations.

7. Admitted that the Plaintiff paid all insurance premiums and that the Policy was in full force and effect on the alleged date of loss. Otherwise denied.

8. Admitted only that Hurricane Ian made landfall in Fort Myers Beach on September 28-29 of 2022, and that the force of wind and storm surge from Hurricane Ian damaged the Property. Otherwise denied.

9. The Policy speaks for itself and provides coverage pursuant to its coverage provisions, exclusions, conditions, and limitations. Otherwise denied.

10. The Policy speaks for itself and provides coverage pursuant to its coverage provisions, exclusions, conditions, and limitations.

11. Denied.

12. Admitted that QBE designated claim number 869775N, assigned adjuster Tory Tucker, and attempted to inspect the property. Otherwise denied.

13. Admitted that QBE designated claim number 869775N, assigned adjuster Tory Tucker, and attempted to inspect the property. Otherwise denied.

14. Without knowledge. Therefore, denied.

15. Without knowledge. Therefore, denied.

16. Without knowledge. Therefore, denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

COUNT I - BREACH OF CONTRACT

22. QBE reincorporates its responses to the allegations contained in paragraphs one (1) through twenty one (21) of the Amended Complaint.

23. The Policy speaks for itself and provides coverage pursuant to its coverage provisions, exclusions, conditions, and limitations.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense: The Policy bars coverage where damage, in whole or in part, concurrently or in any sequence to the loss, is damaged by water, which is defined to include “flood surface water, waves, including tidal wave and tsunami, tides, tidal water overflow of any body of water, or spray from any of these, all whether or not drive by wind, including storm surge.” Water falling within this definition caused damage during Hurricane Ian, barring coverage for the claim.

Second Affirmative Defense: The Policy bars damage caused by faulty, defective, or inadequate design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction, materials used therein, or maintenance. These caused damage for which the Plaintiff cannot recover.

Third Affirmative Defense: The Policy contains bars coverage for loss, in whole or in part, concurrently or in any sequence to the loss, caused directly or indirectly by the enforcement of any ordinance or law, including but not limited to those requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, or the removal of resulting debris. To the extent any portion of the claimed loss arises from compliance with or enforcement of an ordinance or law, coverage is excluded (subject to the Policy’s Loss Settlement provision).

Fourth Affirmative Defense: The Plaintiff is not entitled to relief under Florida's Valued Policy Law ("VPL"), Fla. Stat. § 627.702, because the statute does not apply to surplus lines insurers under Fla. Stat. § 626.913-626.937.

Fifth Affirmative Defense: To the extent Plaintiff can establish that coverage exists under the Policy, any such coverage is limited solely to property damage that Plaintiff affirmatively proves was caused by wind, rain, or other covered, non-excluded perils.

Sixth Affirmative Defense: To the extent Plaintiff can establish coverage under the Policy, any recovery must be reduced by the applicable deductible and offset by all prior payments made by QBE. Plaintiff is not entitled to any double recovery or payment in excess of the amount actually owed under the terms and conditions of the Policy.

Seventh Affirmative Defense: To the extent Plaintiff can establish that coverage exists under the Policy, any such coverage is limited to the replacement cost of the loss, which does not include any increase costs incurred to comply with the enforcement of any ordinance or law, or at the actual cash value until actual repairs are completed. The Plaintiff, however, may use up to 10% of the limit of liability that applies to Coverage A for the increased costs of construction incurred due the enforcement of any ordinance or law.

Eighth Affirmative Defense: Plaintiff seeks to recover for additional living expenses and loss of use under Coverage D of the Policy. However, QBE has already paid the full Coverage D limit of \$20,600. Accordingly, Plaintiff is not entitled to any further recovery for additional living expenses or loss of use.

Ninth Affirmative Defense: Plaintiff seeks to recover for loss of personal property under Coverage C of the Policy. However, QBE has already paid the full Coverage C limit of \$51,500.00. Accordingly, Plaintiff is not entitled to any further recovery under that coverage.

Tenth Affirmative Defense: In the event of recovery, any fee request is subject to the restrictions and limitations contained in the Florida Statutes, including but not limited to any restrictions contained in Fla. Stat. § 627.70152.

COUNTERCLAIM

QBE sues the insureds Scott A. Saveraid and Scott A. Saveraid Trust for Scott A. Saveraid Revocable Trust (“Counter-Defendants”), for declaratory judgment and unjust enrichment.

1. This is an action for damages in excess of \$75,000, exclusive of court costs, attorneys’ fees, and interests.

2. At all material times, the Counter-Defendants have been citizens of Iowa.

3. At all material times, QBE has been a North Dakota corporation with its principal place of business in the State of New York.

4. At all material times, QBE has been a surplus lines insurance carrier governed by Chapter 626 of the Florida Statutes, and has been authorized to insure properties in the State of Florida pursuant to Florida’s surplus lines laws.

5. At all relevant times, the Counter-Defendants were and are the owner of real property located at 5664 Estero Boulevard Fort Myers Beach, FL, 33931 (the “Property”).

6. In consideration of premiums paid to it, QBE issued to the Counter-Defendants a surplus lines property insurance policy, number OUA10111693-01 (the “Policy”), for the period of July 22, 2022, to July 22, 2023.

7. The Policy expressly excludes losses arising directly or indirectly from water, defined as “flood, surface water, waves, including tidal wave and tsunami, tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind, including storm surge.”

8. The Policy excludes coverage where water causes damage, regardless of any other cause or event contributing concurrently or in any sequence to the loss.

9. On or about September 28, 2022, the Property sustained a direct physical loss as a result of Hurricane Ian’s severe storm surge.

10. The storm surge from Hurricane Ian caused a constructive total loss to the Property.

11. The Counter-Defendants reported this total loss to QBE on September 29, 2022.

12. QBE designated claim number 869775N to the loss, and investigated the claim.

13. On or about November 20, 2023, QBE completed its investigation of the claim and issued a written coverage determination.

14. This coverage opinion mistakenly opened coverage for dwelling damages in the amount of \$384,872.32, resulting in a net payment to the Counter-Defendants of \$307,622.32 after application of the \$77,250 deductible.

15. Additionally, QBE mistakenly opened coverage for the Loss of Use Policy limits of 20,600.00.

16. QBE's November 20, 2023, coverage determination letter informed the Counter-Defendants that the Policy specifically excludes flood damage "regardless of any other cause or event contributing concurrently or in any sequence to the loss."

17. The coverage determination letter further mentioned that the present coverage decision is based on information presently known, and reserved the right to assert any additional coverage defenses, or modify its coverage position.

18. On February 6, 2025, the Counter-Defendants filed a Civil Remedy Notice of Insurer Violation ("CRN") against QBE.

19. The CRN claims that the Property suffered from a total loss as a result of Hurricane Ian.

20. The Counter-Defendants' CRN seeks \$1,441,879 (minus prior payments and the deductible) as the replacement costs of the Property, and cites to Florida's Value Policy Law ("VPL") in support.

21. QBE responded to the Counter-Defendants' CRN, denying the allegations, and asserting that there is no coverage for any part of the claim and that VPL does not apply because QBE is a surplus lines insurer.

22. In its response, QBE reserved its right to seek recovery of any sums in which the Counter-Defendants were not entitled to and was unjustly enriched.

23. The Counter-Defendants subsequently filed a Notice of Intent to initiate litigation and the instant lawsuit.

24. In its Amended Complaint, the Counter-Defendants claim that the Property was rendered a constructive total loss by Hurricane Ian.

25. The Counter-Defendants seek, *inter alia*, the “full cost of repair of the damage to the Property.”

**COUNTERCLAIM COUNT I: DECLARATORY JUDGMENT AS TO
THE APPLICATION OF FLORIDA VALUE POLICY LAW**

26. QBE incorporates and realleges its allegations in paragraphs one (1) through twenty five (25) of this counterclaim as if fully set forth here.

27. This is a counterclaim for declaratory relief pursuant to 28 U.S.C. § 2201 (Federal Declaratory Judgment Act).

28. An actual, present, and justiciable controversy exists between QBE and Counter-Defendants as to whether Florida’s Value Policy Law (“VPL”), codified at Fla. Stat. § 627.702, applies to the Policy issued by QBE, a surplus lines insurer.

29. The Counter-Defendants' Civil Remedy Notice¹ asserts entitlement to the full replacement cost of the Property under VPL, despite the fact that QBE is a surplus lines insurer not subject to section 627.702.

30. Similarly, the Counter-Defendants seek recovery of replacement cost damages in this lawsuit without any express basis under the terms of the Policy, but implicitly seeks the protections and benefits of the VPL for the "full cost of repair of the damage to the Property."

31. QBE is therefore in doubt as to its legal rights and obligations with respect to Counter-Defendants' demand for replacement cost coverage under VPL.

32. QBE seeks a judicial declaration that Florida's Value Policy Law does not apply to the Policy issued by QBE, and that Counter-Defendants are not entitled to recovery or damage valuation under the VPL.

WHEREFORE, QBE respectfully requests that this Court enter a declaratory judgment in its favor, finding that Florida's Value Policy Law does not apply to the subject Policy or QBE as a surplus lines insurer, and awarding such other and further relief as the Court deems just and proper.

¹ QBE does not assert that bad faith is somehow ripe; it cites to the CRN as it establishes a present dispute regarding application of the VPL.

COUNTERCLAIM COUNT II: UNJUST ENRICHMENT

33. QBE incorporates and realleges its allegations in paragraphs one (1) through five (25) of this counterclaim as if fully set forth here.

34. The Policy's water exclusion applies to the claim, limiting recovery under QBE's Policy for the Counter-Defendants' claims.

35. QBE has conferred a direct benefit upon the Counter-Defendants' by affording \$307,622.32 in dwelling coverage and \$20,600.00 in loss of use payments the Counter-Defendants were not entitled to.

36. The Counter-Defendants know of this direct benefit to it conferred by QBE.

37. The Counter-Defendants accepted this benefit voluntary, and without coercion.

38. In response, the Counter-Defendants filed this action demanding additional benefits it is not entitled to.

39. QBE has informed the Counter-Defendants that they are not entitled to this benefit.

40. The Counter-Defendants have therefore benefitted from QBE's payment without recompense to QBE.

41. The circumstances are such that it would be inequitable for the Counter-Defendants to retain the benefit without paying value to QBE.

42. Accordingly, should the Counter-Defendants be allowed to retain the full value of QBE's prior payments, the Counter-Defendants will have been unjustly enriched.

43. QBE is entitled to restitution in the form of a monetary judgment in the amount of \$307,622.32 plus \$20,600.00, the value conferred by QBE in excess of the Policy's coverage provisions.

WHEREFORE, QBE demands the repayment from the Counter-Defendants of the difference between the QBE payment of \$307,622.32 under Coverage A and \$20,600.00 under Coverage D, and the amount actually owed under QBE's Policy, plus interests and its attorneys' fees under the Wrongful Act Doctrine.

Respectfully submitted,

HINSHAW & CULBERTSON LLP

/s/ Vicente I. Cortesi

Vicente I. Cortesi

Florida Bar No. 1025099

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and will be sent by electronic mail to counsel for the Plaintiff/ Counter-Defendants.

HINSHAW & CULBERTSON LLP

/s/ Vicente I. Cortesi

Vicente I. Cortesi

Florida Bar No. 1025099

Joseph V. Manzo

Florida Bar No. 52309

2811 Ponce de Leon Blvd.,

Suite 1000, Tenth Floor

Coral Gables, FL 33134

Telephone: 305-358-7747

Facsimile: 305-577-1063

jmanzo@hinshawlaw.com

vcortesi@hinshawlaw.com

eriesgo@hinshawlaw.com

jhodges@hinshawlaw.com

Attorneys for QBE