

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case No. 08-23350-CIV-GRAHAM/TORRES

KING COLE CONDOMINIUM  
ASSOCIATION INC., a Florida  
Non Profit Organization,

Plaintiff,

vs.

QBE INSURANCE CORPORATION, a  
foreign corporation,

Defendant.

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**OMNIBUS ORDER**

**THIS CAUSE** comes before the Court upon the following pending motions: (i) Defendant's Motion in Limine to Preclude Evidence of Alleged Non-Compliance with Fla. Stat. § 627.701 ; (ii) Defendant's Motion in Limine to Preclude Testimony of Dr. Lee Branscome Regarding Damages Relating to Hurricane Wilma [D.E. 58]; (iii) Defendant's Motion in Limine to Preclude Evidence and References to Other Claims Against QBE, Including Affirmative Defenses Used by QBE in Other Lawsuits [D.E. 59] and (iv) Defendant's Motion in Limine to Preclude Evidence of, or References to, Claims Handling Practices [D.E. 60].

**I. BACKGROUND**

This case is one of several actions in this District related to damages resulting from Hurricane Wilma, which occurred in October 2005. The instant action was filed by King Cole

Condominium Association against QBE Insurance Corporation for property damage to Plaintiff's residential condominium property. This Omnibus Order addresses certain pending motions in limine.

## II. LAW AND DISCUSSION

### A. Defendant's Motion in Limine to Preclude Evidence of Alleged Non-Compliance with Fla. Stat. § 627.701 [D.E. 70]

In pertinent part, Count I of the Amended Complaint [D.E. 39], seeks, inter alia, "a declaration that the Insurance Contract fails to comply with Section 627.701(4)(a), *Florida Statutes*, therefore, the provisions concerning coinsurance and a separate hurricane deductible are void and unenforceable." [See D.E. 39] Defendant argues that, as found by two other Courts in this District, there is no remedy for an alleged violation of § 627.701. See Chalfonte Condo. Apt. Ass'n v. QBE Ins. Corp., Case No. 06-81046 and Buckley Towers Condo. Inc., v. QBE Ins. Corp., Case No. 07-22988.

Having reviewed the record and the relevant case law, this Court concurs with the Courts in Chalfonte and Buckley Towers who concluded that § 627.701 does not provide a private right of action to Plaintiff. The undersigned recognizes that the issue is currently on appeal to the Eleventh Circuit and has been certified to the Florida Supreme Court, see Chalfonte Condo. Ap't Ass'n v. QBE Ins. Corp., 561 F.3d 1267 (11th Cir. March 9, 2009). In the absence of controlling precedent requiring a different conclusion, however, Defendant's motion in limine on this issue is granted.

**B. Defendant's Motion in Limine to Preclude Testimony of Dr. Lee Branscome Regarding Damages Related to Hurricane Wilma [D.E. 58]**

Defendant filed a motion in limine to preclude certain testimony of Lee M. Branscome. Dr. Branscome is expected to testify about the wind speeds and gusts and the duration of storm force winds at the King Cole property, among other things. Defendant specifically wants to preclude testimony by Mr. Branscome regarding damages to the building resulting from Hurricane Wilma or that Hurricane Wilma was a costly hurricane. The Court finds that Dr. Branscome may not testify regarding damages resulting from Hurricane Wilma. Dr. Branscome's testimony shall be limited to his expertise as a meteorologist.

**C. Defendant's Motion in Limine to Preclude Evidence and References to Other Claims Against QBE [D.E. 59]**

Defendant seeks to preclude evidence or references to other claims or lawsuits filed against it arguing that such evidence would have a prejudicial effect. [See D.E. 59] Plaintiff counters that this evidence is relevant when, for example, it demonstrates a financial link between an expert witness and the Defendant. [See D.E. 69] The Court finds that Plaintiff may be permitted to present evidence concerning when Defendant and witnesses have previously worked together on other matters, including examining witnesses on (i) the number of cases worked on together with

Defendant and (ii) the percentage of the witness' income derived from working with Defendant. That said, Plaintiff will not be allowed to reference a specific case by name, caption or case number.<sup>1</sup> The parties are hereby on notice to closely adhere to the Court's parameters on this issue and, to the extent necessary, the Court may revisit the issue at trial. Accordingly, Defendant's motion is granted, in part and denied, in part.

**D. Defendant's Motion in Limine to Preclude Evidence of, or References to, Claims Handling Practices and Incorporated Memorandum of Law [D.E. 60].**

Defendant seeks to preclude evidence of its claims handling practices. To the extent Defendant's claims handling practices relate to the pending breach of contract claim, the motion in limine is denied. However, Plaintiff is precluded from presenting evidence of or referring to Defendant's claims handling practices to the extent such evidence relates to a claim for breach of the implied warranty of good faith and fair dealing and not insurance coverage. Accordingly, Defendant's motion is granted in part and denied in part.

**III. CONCLUSION**

Based on the foregoing, it is hereby

**ORDERED AND ADJUDGED** i) Defendant's Motion in Limine to Preclude Evidence of Alleged Non-Compliance with Fla. Stat.

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<sup>1</sup> For example, the questions may be generally framed as "Do you recall testifying in another matter?" without reference to the case name.

§ 627.701 is **GRANTED**. It is further

**ORDERED AND ADJUDGED** that Defendant's Motion in Limine to Preclude Testimony of Dr. Lee Branscome Regarding Damages Relating to Hurricane Wilma [D.E. 58] is **GRANTED**. It is further

**ORDERED AND ADJUDGED** that Defendant's Motion in Limine to Preclude Evidence and References to Other Claims Against QBE, Including Affirmative Defenses Used by QBE in Other Lawsuits [D.E. 59] and is **GRANTED, IN PART AND DENIED, IN PART** as set forth herein. It is further

**ORDERED AND ADJUDGED** Defendant's Motion in Limine to Preclude Evidence of, or References to, Claims Handling Practices [D.E. 60] is **GRANTED IN PART and DENIED in PART** as set forth herein.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 20 day December, 2009.

  
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DONALD L. GRAHAM  
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Torres  
Counsel of Record