

**29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. CHARLES**

**STATE OF LOUISIANA**

**NO.: 82,255**

**DIVISION**

**ZYDECO'S II, LLC, ZYDECO'S CORP,  
DUSTIN GAINNEY AND ROSEMARIE GAINNEY**

**VS.**

**CERTAIN UNDERWRITERS AT LLOYD'S, LONDON SUBSCRIBING TO  
CERTIFICATE /POLICY NO. D1180D150152-59633, DAVID BRENNAN,  
DAVE BRENNAN INSURANCE, INC. AND BRAISHFIELD ASSOCIATES, INC**

2019 JUN 24 PM 12:08  
ST. CHARLES PARISH, LA  
CLERK OF COURT  
JUDICIAL DISTRICT  
ST. CHARLES, LA

*Mrs. S. J. [unclear]*

**REASONS FOR JUDGMENT**

On May 30, 2016, a restaurant known as "Zydeco's" located on Highway 90 in Boutte, Louisiana was struck by lightning, causing a fire which resulted in the restaurant being totally destroyed. The land and building housing the restaurant's operations were owned by Zydeco's Corporation; the operator of the restaurant business was Zydeco's II, LLC, a separate entity from Zydeco's Corporation. Dustin Gainney and Rosemarie Gainney were the owners of both Zydeco's II, LLC and Zydeco's Corporation. The restaurant had been insured by Certain Underwriters at Lloyd's, which had issued a policy of Commercial Property Insurance to Zydeco's II, LLC and Zydeco's Corporation. After the fire, Lloyd's rescinded the policy from its inception (rather than denying the claim), resulting in the instant litigation.

After substantial and often contentious pre-trial discovery, motions, and court hearings, trial on the merits was held on March 25-28, 2019. The matter was left open at conclusion of trial to allow the Court an opportunity to review various video depositions. After review of same, the Court set timelines for counsel to file post-trial briefs in accordance with law. The last such brief was filed on May 23, 2019, at which time the matter was taken under advisement.

**DISCUSSION**

In a nutshell, this case turns on credibility—especially the credibility of Dustin and Rosemarie Gainney. The Court found the Gainney's to be credible and believable witnesses. The testimony of both Dustin Gainney and Rosemarie Gainney was direct, sincere, and to the point. Their demeanor on the stand, the confidence in the rightness

of their case, and their candor were something that only a trier of fact could observe. Simply put, there is no doubt in this Court's mind that they were telling the truth. The Court specifically finds that any mistakes they made in the application for insurance herein were honest mistakes; the Gainey's had no intent to defraud or deceive anyone.

The Gainey's professional trustworthiness was corroborated by Dave Brennan, their long-time insurance agent. Mr. Brennan flatly stated his belief that the Gainey's were honest people when he asserted that there was "no way" that they were involved in deception or fraud.

Despite the reams of evidence adduced herein, the Court finds there wasn't a scintilla of evidence adduced by Lloyd's which proved that any misrepresentation was made by the Gainey's with the intent to deceive. The Court finds that almost everything produced by Lloyd's was hyperbole, argument, and innuendo.

The bottom line is that Lloyd's unlawfully and improperly rescinded the insurance policy, Zydeco's sustained substantial damages as a result of this improper rescission, and their actions constitute bad faith under Louisiana law. Because of Lloyd's bad faith, penalties and attorney's fees must be awarded in accordance with law.

The Court has thoroughly reviewed the post-trial memoranda filed by counsel. In a nutshell, the Court does not feel that it can write a better synopsis of the evidence and law than that presented in Plaintiff's Post-Trial Memorandum. Therefore, the Court will adopt as its Reasons for Judgment the findings of fact and law as set forth in plaintiffs' memorandum as if copied *in extenso*.

## **REFLECTIONS**

The Courts involved in this case (District and Appellate), their staffs and the Clerk of Courts' staffs have spent literally thousands of work hours on this litigation. The record of the 29<sup>th</sup> Judicial District Clerk of Court is twenty-five (25) volumes, a record in civil litigation in the almost sixty year history of this District. The record contains hundreds of exhibits containing thousands of pages. And for what?

This Court has spent hundreds of hours preparing for and hearing motions, trying the case on its merits, reading briefs and law, writing Reasons for Judgment,

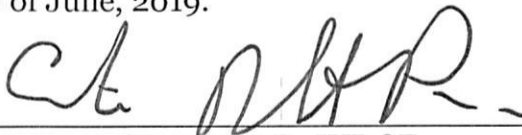
preparing Judgments and Orders, and examining and reviewing evidence. Counsel for all parties and their staff have undoubtedly invested thousands of hours and untold sums in the prosecution and defense of their clients. And for what?

In a nutshell, this extensive and expensive litigation took on “a life of its own” because Lloyd’s chose the wrong path in adjusting (or not adjusting) this claim. Call it bad corporate policy in the adjusting and investigation of this claim (if such a policy exists), bad judgment, or bad advice—the bottom line is the actions of Lloyd’s resulted in the ruin of a business which depended on the good faith of its insurer to protect it from loss. There was no good faith here. Rather, it seems to this Court that a decision was made early on to deny the claim, and to then use every legal avenue at Lloyd’s disposal to justify that denial. In this Court’s opinion, that’s bad faith.

Following the law fastidiously is the duty of every judge. This Court has a history of being a conservative court who has told more than one litigant: “I’m boring—you know what I’m going to do just by looking in the green books.” Following the law as written in the “green books” has been the goal of this court its entire career. While this Court does not typically deal with cases of the financial magnitude and complexity as the one before the court, the facts of this case—when taken in the context of Louisiana law—demand the judgment being rendered herein as being the appropriate course of action by this Court.

There will be judgment in accordance with the foregoing reasons.

Hahnville, Louisiana, this 24<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
EMILE R. ST. PIERRE, JUDGE

STATE OF LOUISIANA  
PARISH OF ST. CHARLES  
I HEREBY CERTIFY THAT THE WITHIN  
AND FOREGOING IS A TRUE COPY OF THE  
ORIGINAL ON FILE IN THIS OFFICE.  
  
CLERK OF COURT  
ST. CHARLES PARISH

**29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. CHARLES**

**STATE OF LOUISIANA**

**NO.: 82,255**

**DIVISION C**

**ZYDECO'S II, LLC, ZYDECO'S CORP,  
DUSTIN GAINEY AND ROSEMARIE GAINEY**

**VS.**

**CERTAIN UNDERWRITERS AT LLOYD'S, LONDON SUBSCRIBING TO  
CERTIFICATE /POLICY NO. D1180D150152-59633, DAVID BRENNAN,  
DAVE BRENNAN INSURANCE, INC. AND BRAISHFIELD ASSOCIATES, INC**

**JUDGMENT**

Trial on the merits in this matter was held on March 25-28, 2019. At the conclusion of trial, each party was allowed to submit post-trial memoranda in accordance with Louisiana law and Supreme Court Rules. After considering all the evidence presented, including testimony, depositions and exhibits, considering the arguments advanced by counsel, and for the Reasons for Judgment attached hereto and made a part hereof, the Court finds as follows:

1) Certain Underwriters at Lloyd's, London's August 26, 2016 rescission of policy D1180D150152-59633 is hereby found to be invalid;

2) Certain Underwriters at Lloyd's, London violated their duties of good faith and fair dealing in the investigation and adjustment of the May 30, 2016 fire loss in violation of La. R.S. 22:1973;

3) Certain Underwriters at Lloyd's, London failed to pay the Zydeco's II, LLC and Zydeco's Corp.'s claim within 30 days of receiving satisfactory proof of loss in violation of La. R.S. 22:1892;

4) As a result of Certain Underwriters at Lloyd's, London's improper rescission and violation of La. R.S. 22:1892 and 22:1973, Zydeco's II, LLC and Zydeco's Corp. sustained damages, to wit:

- A) Loss of building in the amount of \$1,228,561.86;
- B) Debris Removal Costs of \$28,500.00;
- C) Loss of business of \$4,900,000.00;

2019 JUN 24 PM 12:03  
CLERK OF COURT  
ST. CHARLES PARISH  
JUDICIAL DISTRICT COURT  
DIVISION C  
JAMES D. BRADY

5) As a result of its improper rescission, Certain Underwriters at Lloyd's, London is liable to pay Zydeco's II, LLC and Zydeco's Corp. for the above listed actual damages sustained in the amount of \$6,157,061.86;

6) As a result of Certain Underwriters at Lloyd's, London's violation of La. R.S. 22:1973, Zydeco's II, LLC and Zydeco's Corp., are entitled to statutory penalties of \$12,314,123.72;

7) As a result of Certain Underwriters at Lloyd's, London's failure to pay a claim within 30 days of satisfactory proof of loss in violation of La. R.S. 22:1892, Zydeco's II, LLC and Zydeco's Corp. are entitled to attorney's fees in the amount of \$7,388,474.23.

Based on the foregoing findings,

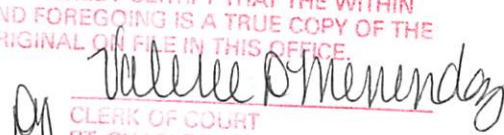
**IT IS ORDERED, ADJUDGED AND DECREED** that there be judgment herein in favor of Zydeco's II, LLC and Zydeco's Corp. and against Certain Underwriters at Lloyd's, London in the amount of \$25,859,659.81, together with legal interest thereon from the date of judicial demand until paid.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Certain Underwriters at Lloyd's London be cast for all costs of these proceedings.

**JUDGMENT READ, RENDERED, AND SIGNED** at Hahnville, Louisiana this 24<sup>th</sup> day of June, 2019.

  
EMILE R. ST. PIERRE, JUDGE

**PLEASE NOTIFY ALL COUNSEL**

STATE OF LOUISIANA  
PARISH OF ST. CHARLES  
I HEREBY CERTIFY THAT THE WITHIN  
AND FOREGOING IS A TRUE COPY OF THE  
ORIGINAL ON FILE IN THIS OFFICE.  
  
CLERK OF COURT  
ST. CHARLES PARISH