

IN THE CHANCERY COURT OF PIKE COUNTY, MISSISSIPPI

BOARD OF MAYOR AND SELECTMEN
OF MCCOMB, MISSISSIPPI

PLAINTIFFS

V.

TALEX ENTERPRISES, LLC, a MISSISSIPPI
LIMITED LIABILITY COMPANY, HUDSON
INSURANCE COMPANY, A DELAWARE
CORPORATION, AND JOHN DOES 1-5

DEFENDANTS

2017-435

COMPLAINT FOR DISCOVERY AND OTHER RELIEF

TO THE HONORABLE CHANCERY COURT OF PIKE COUNTY, MISSISSIPPI:

COMES NOW the Plaintiff, the Board of Mayor and Selectmen of the City of McComb, Mississippi ("McComb") who file its Complaint for Discovery and other relief against the Defendants, Talex Enterprises, LLC, a Mississippi Liability Company ("Talex"), Hudson Insurance Company ("Hudson Insurance"), a Delaware corporation, and John Does 1-5, and the Plaintiff would show the following:

1. The Plaintiff is a special charter municipality organized and existing under the laws of the State of Mississippi, and is governed by its Board of Mayor and Selectmen.
2. The Defendant, Talex Enterprises, LLC is a Mississippi limited liability company, whose home office address is 730 Vogel Street, McComb, Mississippi 39648, and whose registered agent for service of process is Terrance Alexander, 730 Vogel Street, McComb, Mississippi 39648.
3. The Defendant, Hudson Insurance Company is a corporation organized and existing under the laws of the State of Delaware, whose home office is located at 1209 Orange Street, Wilmington, Delaware 19801, and which Defendant has named as its registered agent for service of process CT Corp. System of Mississippi, 645 Lakeland

Drive, Ste. 101, Flowood, Mississippi 39232.

FACTS

4. The Defendant Talex is the owner of certain real property situated at 220-230 Main Street, McComb, in Pike County, Mississippi, and more particularly described as follows, to-wit:

Lots 14, 15, and 16 and Lot 13, less and except a strip 9 feet 9 inches off the North side of Lot 13, all in Square E of the City of McComb City, Pike County, Mississippi, and being two buildings fronting 100.12 feet on Main Street by 99.90 feet on North Broadway, together with all rights and appurtenances thereunto belonging, including all rights owned by grantors in a party wall on the North side of Lots 14, 15, and 16, and a party wall on the East side of Lot 13, less 9 feet 9 inches off the North side thereof.

Being the same property conveyed to Terrance Alexander DBA Jubilee Performing Arts Center by Faraway, LLC in Warranty Deed dated June 23, 2014, and filed for record on June 23, 2014 as Instrument No. 258844 in the records of the Chancery Clerk of Pike County, Mississippi.

5. The Defendant Hudson Insurance Company, is believed to have written and placed in effect its policy of insurance affording various coverages on the above property, including General Liability coverage.

6. On the afternoon of Sunday, July 23, 2017, the Defendant Talex was the owner and possessor of the multi-story buildings located at 220-230 Main Street in downtown, McComb, Mississippi, whose legal description is the tract of property described above.

7. On Sunday, July 23, 2017, the multi-story building at 220-230 Main Street owned by Defendant, Talex and believed to be insured by Hudson Insurance Company, collapsed, causing extensive damage not only to the insured premises and adjoining property, including public streets and buildings, and the streets and sidewalk were

rendered impassable because of bricks, concrete, and other debris.

8. After the building collapsed, the remaining portions of the building were rendered unsafe and were required to be immediately stabilized in order to prevent further damage and destruction. The Plaintiff declared an emergency condition, and secured services of a qualified contractor, experienced in stabilization and rehabilitation of collapsed buildings so as to prevent further injury and property destruction.

9. The Plaintiff was required to expend public funds for engineering services, public safety expenses, as well as amounts required to be paid to the contracting firm hired for stabilization and rehabilitation of the buildings at 220-230 Main Street in downtown McComb.

10. The buildings at 220-230 Main Street in downtown McComb are located at the principal traffic artery in the central shopping and office district of McComb. Because of the collapse, adjoining property owners were required to close their businesses. Traffic was unable to go past the collapsed buildings and public utilities were severely damaged.

11. The Plaintiff, after the buildings collapsed, learned that prior to the collapse, the owner of Talex received actual notice that an unsafe amount of water was accumulating on the roof of the building, that the roof's supportive structure was in danger, and that the great weight of the water threatened to cause the buildings to collapse. Even though this warning had been received by the Defendant Talex, the Defendant's principal officer did nothing to cause repairs to be made to the building. There was no effort made to drain the very large amount of water that was standing on the roof of the building, and Talex did not warn other persons about the danger attributable to the roof condition on the building and its support structure.

12. The Plaintiff is advised and believes that other individuals may have acted in concert with the named Defendants, at various times, or may have possessed knowledge about the precarious condition of the roof and structure of the buildings located at 220-230 Main Street in McComb, and that other persons, by their acts and/or omissions, may have significantly interfered with the public health, safety, peace, comfort and convenience by failing to act regarding the dangerous condition that existed in the buildings at 220-230 Main Street for an unknown period of time. The Plaintiff names as additional Defendants herein John Doe 1-5, whose identity is now unknown to the Plaintiff..

COUNT ONE: BILL OF DISCOVERY

The Plaintiff re-asserts all forgoing factual allegations.

13. The Defendant Hudson Insurance issued a policy affording insurance coverage for the property owned by Defendant Talex located at 220-230 Main Street in McComb, Mississippi. The policy covered the buildings known as JPAC, Kramer Roof, and City Drug Store, and is believed to be the only insurance policy on this property. Further, Plaintiff believes that the policy provided general liability coverage.

14. The Plaintiff believes that general liability coverage is provided for in the insurance policy, and the Plaintiff believes that the losses sustained by McComb will be afforded coverage under the general liability or other provisions of the policy.

15. The named Defendants in this case have generally refused to provide to the Plaintiff any information about the insurance policy and the contents of its declaration page, including the amounts and provisions of its general liability coverage, other amounts and provisions of its building coverage, the amount and provisions of its deductible insurance coverage, and other details of the insurance policy in effect for property located at 220-230

Main Street in McComb, Mississippi.

16. This Honorable Court through a Bill of Discovery has the power and authority to grant the substantive relief sought in Plaintiff's Bill of Discovery.

17. The Plaintiff has made diligent efforts to obtain the information regarding the insurance coverage on the building located at 220-230 Main Street, in McComb, Mississippi. The Plaintiff, by and through its elected officials and other agents, have made reasonable efforts to obtain the information regarding available insurance coverage, but its requests have been denied by the Defendants.

18. The Plaintiff is entitled to an Order of the Court, directing the production of subject insurance policy (*Moore v. Bell Chevrolet-Pontiac-Buick-GMC, LLC*, 864 So.2d 939 (Miss. 2004)).

COUNT TWO: PUBLIC NUISANCE

19. The Plaintiff repeats and re-asserts all factual allegations already made in this Complaint.

20. The Defendant Talex, during its ownership of the buildings at the corner of Main and Broadway, maintained a public nuisance, and unreasonably interfered with a right common to the general public. The Defendant's conduct involved a significant interference with the public health, the public safety, the public peace, the public comfort and the public convenience. (*Comet v. Delta, Inc., v. Pate Stevedore, Co.*, 521 So.2d 857 (1988)).

21. The Defendant, for a significant period of time before its buildings' collapse, was aware of the accumulation of vast amounts of water on the roof of the building,

causing the roof structure to severely deteriorate and adversely affecting support structure and walls throughout the building.

22. The Defendant Talex had actual knowledge that the roof and its supporting walls and structures were in an extremely dangerous condition, that the roof and walls were greatly weakened and were likely to fall at any time unless the accumulated water on the building's roof was drained, the dangerous condition of the roof repaired, and the integrity of its structural support corrected.

23. Large quantities of rain water collected on the roof of the building, and the roof, walls, ceilings and other components of the buildings structure were damaged, created a condition of significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience.

COUNT THREE: NEGLIGENCE

24. The Plaintiff repeats and re-asserts all factual allegations already made in this Complaint.

25. The Defendant Talex received actual notice of the dangerous condition of its property and failed to remove water from the roof, and take other measures to protect the building.

26. The owner or occupant of real property is liable for injuries to the property of others, where caused by the negligence of the land owner, even though such injuries are inflicted outside the limits of the property.

27. The owner of real property Talex, owed to such persons outside his property the duty to exercise reasonable care under the circumstances, and the owner must use ordinary care to maintain the premises in such a manner as not to injure property on

adjacent premises.

28. Liability should be imposed on the Defendant, Talex on the grounds that Talex created and maintained a nuisance on its property.

29. After learning that the buildings at 220-230 Main Street were in danger of collapsing, the Defendant Talex failed to warn adjoining property owners of a dangerous condition of which the Defendant was aware.

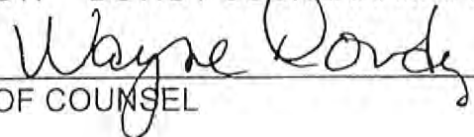
WHEREFORE, the Plaintiff files its complaint and upon a hearing, the Plaintiff is entitled to the following relief:

1. An Order directing the Defendants Talex and Hudson Insurance Company to provide to the Plaintiff a copy of the insurance policy of Hudson Insurance, insuring the buildings located at 220-230 Main Street, in Downtown McComb;
2. An award of damages for amount of funds for cost expended by the Plaintiff to remove debris and rubbish from city streets, sidewalks, to provide the cost incurred by the Plaintiff in the stabilization of the buildings at 220-230 Main Street;
3. To compensate the Plaintiff for costs incurred such as the payment of overtime to law enforcement officers. The Plaintiff, for the above damages which will be shown on the trial of this case, is entitled to a judgment of and from the Defendants in an amount to shown at trial, not less than Four Hundred Thousand Dollars (\$400,000.00).

Plaintiff prays for general relief.

BOARD OF MAYOR AND SELECTMEN
OF MCCOMB, MISSISSIPPI

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