IN THE COUNTY COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 17-3505 COCE (53)
JUDGE: ROBERT W. LEE

24/7 EMERGENCY WATER REMOVAL, INC. (a/a/o Gary Gerstenfeld),
Plaintiff,
vs.

SAFEPOINT INSURANCE COMPANY,
Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court on October 30, 2017 for hearing of the Defendant's Motion for Summary Judgment, and the Court's having reviewed the Motion, the entire Court file, and the relevant legal authorities; having heard argument; having made a thorough review of the matters filed of record; and having been sufficiently advised in the premises, the Court finds as follows:

This case involves a claim for damages arising out of a water discharge loss. The Plaintiff was hired by the homeowner to take measures which arguably constituted "emergency remedial measures" under the homeowner's insurance policy. The policy contains a limitation on loss for "emergency remedial measures" which the Defendant argues applies to this claim. The limitation of liability provision caps damages at the greater of $3,000.00 or 1% of the home's insured value. In this case, the claim is for greater than this amount. The insurer made a payment based on the cap amount, but argues that the Plaintiff failed to comply with the limitation of liability provision, and as a result, no additional sums are due.

The limitation provision at issue in this case could clearly have been better drafted. It requires the claimant to submit a "request" to exceed the cap, but provides no time limitation for this request. Based on the language as written, the "request" can be submitted even after the work has been completed. However, once the "request" is made, whenever that may be, the insurer has 48 hours to approve or reject the "request." If the insurer misses the 48-hour deadline, the claimant may exceed the cap up to "the cost incurred by [the insured] for the reasonable emergency measures necessary to protect the property from further damage."

After the work was completed, the Plaintiff sent the insurer an email with an invoice. The email stated, "Please send payment for emergency services to your insured." The insurer acknowledges receiving this email and invoice, and further acknowledges that it did not respond within 48 hours. The insurer argues, however, that this email does not constitute a "request to exceed the limit." The Court disagrees.

There is nothing in the language of the policy's limitation provision that requires any magic language or method to make a "request." The word is not defined. No form is specified. The claimant's language – "please send payment for emergency services" – is in the nature of a demand or dun that is clearly encompassed within the ordinary meaning of the word "request." *See* W. Burton, Legal Thesaurus 448 (1980); American Heritage Dict. of the English Language 1105 (1976). Moreover, by attaching the invoice, the insurer was clearly aware that the claimant wanted to exceed the cap in the limitation provision. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Defendant's Motion for Summary Judgment is DENIED.

DONE AND ORDERED this 31st day of October, 2017 in Fort Lauderdale, Broward County, Florida.

ROBERT W. LEE
County Court Judge

Copies Furnished by Court
Copies furnished to:
Imran Malik, Attorney for Plaintiff, Maitland
Hope C. Zelinger, Attorney for Defendant, Fort Lauderdale