

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL ACTION**

ESTERO BEACH AND TENNIS CLUB,  
INC., a Florida not for Profit Corporation

*Plaintiff,*

v.

Case No.:

RITeway INSURANCE REPAIR SERVICE,  
INC., a Florida Profit Corporation, and  
GUSTAVO MARRERO, individually,

*Defendants.*

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**COMPLAINT**

Plaintiff, Estero Beach and Tennis Club, Inc. (“Estero Beach”), sues Defendants, Riteway Insurance Repair Service, Inc. (“Riteway”), and Gustavo Marrero (“Marrero”), individually, and alleges:

1. This is an action for negligence with damages exceeding \$50,000 exclusive of interest, costs, and attorneys’ fees.
2. Estero Beach is a condominium association governing a property in Estero, Florida.
3. Riteway is a for profit corporation that provides, inter alia, an umpire to serve on appraisal panels for damages claims conducted pursuant to property insurance policies in Florida.
4. Marrero was vice president of Riteway and served as an umpire on appraisal panels conducted pursuant to property insurance policies in Florida.
5. After Hurricane Irma, Estero Beach, as insured, had a pending insurance claim for storm damage that it had submitted to its insurer, American Coastal Insurance Company (“ACIC”). Estero Beach and ACIC could not agree on the amount of damage or whether to engage in appraisal

under the policy. Estero Beach filed suit for breach of the policy in the Circuit Court of the 20<sup>th</sup> Judicial Circuit, in and for Lee County under case number 20-CA-424 (“the Lawsuit”).

6. The Parties eventually commenced appraisal pursuant to a Court order in the Lawsuit. Estero Beach had designated Paul Middleton (“Middleton”) as its appraiser and ACIC had designated Charlie Baker (“Baker”) as its appraiser.

7. In September 2020, Middleton and Baker contacted Marrero to request that Marrero serve as umpire to complete the appraisal panel. Marrero’s role would be to determine the amount of the loss where Middleton and Baker could not agree.

8. Marrero agreed to serve as umpire on September 16, 2020. Marrero provided Middleton and Baker with a Riteway Fee Schedule that set forth rates of compensation for umpire services, including a flat fee of \$3,000 for up to the first ten hours of work and then \$300 per hour thereafter. There was also a provision for recovery of “professional fees.” A copy of the Riteway Fee Schedule is attached as **Exhibit “A”**.

9. No agreement was ever discussed, or written agreement executed regarding Marrero’s compensation for his services as umpire. Marrero just assumed that the appraisers agreed to the fee schedule.

10. In fact, Estero Beach relied upon the Riteway Fee Schedule as documenting that it would billed hourly fees as set forth therein for Marrero’s services as umpire.

11. Marrero devoted a substantial amount of time to the appraisal, but had no billing system or other method to keep track of the time he spent working on the file. Having negligently kept no record of his time, Marrero did not know how many hours to bill. However, Marrero understood that a “standard rate” for umpire services was two percent of the appraisal award.

12. Marrero sent an initial proposed Appraisal Award on December 17, 2021, and after considering correspondence from the parties, issued a revised proposed Appraisal Award on February 15, 2022. Estero Beach's appraiser (Middleton) signed the revised proposed award the same day. On February 16, 2022, ACIC's appraiser advised that he would not sign.

13. On February 22, 2022, Marrero signed the revised proposed Appraisal Award establishing the actual cash value ("ACV") of Estero Beach's loss at \$9,498,502.38 and the replacement cost value ("RCV") at \$10,204,913.14. Because it was signed by Marrero and Middleton, the Appraisal Award was binding on the parties regarding the amount of the loss. A copy of the Appraisal Award is attached as **Exhibit "B"**.

14. Apparently, that same day, Marrero prepared his invoice for the matter. Ultimately, Marrero did not bill on an hourly basis as set forth in the Riteway Fee Schedule. Instead, he carelessly and recklessly chose two percent of the appraisal award as the basis. In addition, Marrero also billed for the services of Consulting & Estimating Services, Inc. the estimator that Marrero relied on. Consulting & Estimating Services, Inc. also calculated its compensation as a percentage of the appraisal award (.75%) rather than hourly. After adding some hourly clerical charges, Marrero divided the total amount equally between Estero Beach and ACIC and sent invoices. A copy of the invoice to Estero Beach is attached as **Exhibit "C"**.

15. Subsequently, Marrero created an Umpire Activity Log by taking the amount he calculated divided up across the various categories of hours until the total apparent hourly charges matched the amount he decided to bill. A copy of the Umpire Activity Log is attached as **Exhibit "D"**.

16. Marrero did not inform Estero Beach that he had changed the basis upon which he billed for his services as umpire or for the estimator. Estero Beach did not otherwise know and paid the invoice.

17. On March 23, 2022, ACIC forwarded Estero Beach payment of \$2,259,483.38 that it contended was the amount due pursuant to the Appraisal Award after making reductions for what it considered to be Marrero's failures to abide by policy provisions and a court order related to the appraisal.

18. On October 4, 2022, ACIC filed an Amended Motion to Determine Reasonable Fee for Appraisal Umpire, Gustavo Marrero, and on October 19, 2022, its Second Amended Motion to Determine a Reasonable Fee for Appraisal Umpire, Gustavo Marrero. Both filings argued that Marrero's compensation should be reduced because Marrero:

“outsourced a significant amount of his work to Consulting & Estimating Services, Inc. in exchange for a fee calculated as .75% of the total amount awarded in appraisal. Thus, the more money awarded in appraisal, the more money Consulting & Estimate Services, Inc. stood to receive for its work in this matter; however, Mr. Marrero did not disclose this before rendering the Appraisal Award.”

19. On October 21, 2022, Marrero was deposed by the parties and disclosed how both he and Consulting & Estimating Services, Inc., calculated their respective fees as a percentage of the Appraisal Award and not based upon hours worked.

20. On October 31, 2022, ACIC filed a motion to amend its pleading to assert an affirmative defense that Marrero's Appraisal Award should be vacated for the failure of the form of the order to comply with the relevant court order. ACIC also asserted an affirmative defense that the Appraisal Award should be vacated because Consulting and Estimating Services, Inc. charged a percentage-based fee based of the Appraisal Award and performed a large amount of work of the Umpire. Finally, ACIC asserted an affirmative defense that the Appraisal Award must be vacated because Marrero's fee, based upon a percentage of the appraisal award, destroyed his required impartiality as umpire.

21. ACIC's proposed counterclaim sought to vacate the Appraisal Award because Marrero destroyed his required impartiality as umpire by charging a fee based upon a percentage of the Appraisal Award and because of the failure of the form of the Appraisal Award to comply with the court order.

22. Given Marrero's admission that he had destroyed his required impartiality by changing his method of billing effectively to an unlawful contingency fee, Estero Beach had no choice but to agree that Marrero's Appraisal Award be vacated. In an order on November 14, 2022, the Court vacated Marrero's Appraisal Award effective November 7, 2022, and ordered Estero Beach and ACIC to conduct a new appraisal.

23. Pursuant to discretion granted ACIC in the Court's order of November 14, 2022, ACIC insisted that an entirely new appraisal panel was required, and the second appraisal had to be conducted "from scratch." Accordingly, all the expenses Estero Beach incurred for the year-long first appraisal panel (including without limitation Marrero's fee) as well as the benefit of the Appraisal Award itself were rendered worthless by Marrero's reckless decision to change his method of billing to one not permitted by law for an impartial umpire.

24. Estero Beach incurred significant expenses as a direct result of the Court's order vacating the Appraisal Award in the form of litigation expenses and attorneys' fees as well as expert fees and other costs arising out of the second appraisal. In addition, Estero Beach was deprived of its recovery of its insurance proceeds during the time it took to conduct the second appraisal and for the matter to be resolved.

25. On July 31, 2023, the second appraisal panel issued an appraisal award (the "Second Appraisal Award") valuing the ACV of Estero Beach's loss at \$1,663,662.53 and the RCV at \$1,741,949.76. A copy of the Second Appraisal Award is attached as **Exhibit "E"**.

26. The new valuations were a reduction of \$7,834,839.85 for ACV and \$8,462,963.38 for RCV. Moreover, the new ACV amount was \$595,820.85 less than the payment that ACIC conceded it owed under Marrero's award. However, after review of the Second Appraisal Award, ACIC demanded the return of \$1,499,300.62.

27. All conditions precedent to the instant action have occurred, been performed, been waived, or otherwise satisfied.

### **COUNT I – NEGLIGENCE AGAINST MARRERO**

28. Plaintiff incorporates the allegations in paragraphs one through 27 as if fully set forth herein.

29. As umpire, Marrero owed Estero Beach a duty to be a competent and impartial umpire.

30. Marrero breached his duty to Estero Beach by destroying his required impartiality by charging a fee based upon a percentage of the Appraisal Award both for his work and by permitting Consulting & Estimating Services, Inc. to do the same and by incorporating that into his invoice.

31. Marrero's breach of duty was the proximate cause of Marrero's Appraisal Award being vacated, which resulted in damages in the form of, *inter alia*, rendering worthless the Appraisal Award itself and all of Estero Beach's underlying expenses resulting in it; the expenses of the second appraisal; the loss of the difference in ACV between Marrero's Appraisal Award and the Second Appraisal Award; the loss of the funds ultimately returned to ACIC; and the lost use of funds during the delay caused by the vacation of Marrero's Appraisal Award.

WHEREFORE, Estero Beach and Tennis Club, Inc., demands judgment in its favor and against Gustavo Marrero as well as an award of damages, prejudgment interest, costs of this action and such other and further relief as this court may deem to be just and proper.

**COUNT II – NEGLIGENCE AGAINST RITEWAY INSURANCE REPAIR SERVICE,  
INC.**

32. Plaintiff incorporates the allegations in paragraphs one through 27 as if fully set forth herein.

33. At all material times, Marrero was acting as an officer and employee of Riteway.

34. All of Marrero's actions as umpire and his billing were taken within the course and scope of his employment by Riteway and in the furtherance of Riteway's business.

35. Marrero's duty to Estero Beach to be a competent and impartial umpire is lawfully imputed to Riteway.

36. Marrero's breach of duty to Estero Beach by destroying his required impartiality by charging a fee based upon a percentage of the Appraisal Award both for his work and by permitting Consulting & Estimating Services, Inc. to do the same and by incorporating that into his invoice, is lawfully imputed to Riteway.

37. Marrero's breach of duty, lawfully imputed to Riteway, was the proximate cause of Marrero's Appraisal Award being vacated, which resulted in damages in the form of, *inter alia*, rendering worthless the Appraisal Award itself and all of Estero Beach's underlying expenses resulting in it; the expenses of the second appraisal; the loss of the difference in ACV between Marrero's Appraisal Award and the Second Appraisal Award; the loss of the funds ultimately returned to ACIC; and the lost use of funds during the delay caused by the vacation of Marrero's Appraisal Award.

WHEREFORE, Estero Beach and Tennis Club, Inc., demands judgment in its favor and against Riteway Insurance Repair Service, Inc., as well as an award of damages, prejudgment interest, costs of this action and such other and further relief as this court may deem to be just and proper.

**GOEDE, DEBOEST & CROSS, PLLC**



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*Attorneys for Plaintiff*





**ITEWAY FEE SCHEDULE**

<b><u>COMPARATIVE ESTIMATES / APPRAISALS</u></b>	
<b><u>FLAT RATE</u></b>	Min- \$350.00 (Up To \$17,500.00) or 2% of the total estimate
<b><u>ESTIMATOR TIME</u></b>	GC - \$250.00 per hour Associate - \$150.00 per hour
<b><u>UMPIRE FEES</u></b> <b><u>Residential</u></b>	Flat Rate \$3,000.00 up to 10 hours Add \$300.00 per hour thereafter* <i>*Plus, any professional fees</i>
<b><u>UMPIRE FEES</u></b> <b><u>COMMERCIAL/ LARGE LOSS</u></b>	Flat Rate <b>Min</b> -\$5,000.00 up to 10 hours Add \$300.00 per hour thereafter* <i>*Plus, any professional fees</i>
<b><u>EXPERT - SUBCONTRACTORS</u></b>	Per Invoice plus 50%
<b><u>CLERICAL</u></b>	\$60.00 per hour, with a 1 hour minimum
<b><u>PHOTOGRAPHS</u></b>	\$2.00 each
<b><u>MILEAGE</u></b>	\$0.58 per mile

<b><u>CABINET INSPECTIONS</u></b>	
<b><u>CABINET INSPECTION</u></b>	\$500.00
<b><u>ADMINISTRATIVE FEE</u></b>	\$500.00

<b><u>ROOF INSPECTIONS</u></b>	
<b><u>TYPICAL ROOF INSPECTION BY GENERAL CONTRACTOR</u></b>	\$500.00
<b><u>TYPICAL ROOF INSPECTION BY LICENSED ROOFING COMPANY</u></b>	\$500.00

<b><u>DEPOSITIONS</u></b>	
<b><u>ESTIMATOR TIME</u></b>	\$500.00 with a 2-hour minimum. Then, an additional \$300.00 per hour, or any partial hour, thereafter.
<b><u>ASSOCIATE TIME</u></b>	\$600.00 with a 2-hour minimum. Then, an additional \$250.00 per hour, or any partial hour, thereafter.
<b><u>CLERICAL</u></b>	\$60.00 per hour, with a 1 hour minimum

<u><b>ITEL</b></u>	<u><b>SAMPLE COLLECTIONS</b></u> \$250.00
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<u><b>REPORT</b></u>	<u><b>CONTENTS</b></u> \$500.00 minimum
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**DECLARATION OF APPRAISAL**

We, the undersigned, certify that we have duly, conscientiously, and impartially performed the duties within our appointment pursuant to the appraisal clause of the subject policy. We have conducted an assessment of the amount of a loss, including determinations as to the cost of repair or replacement and whether or not the requirement for a repair or replacement was caused by the peril of Windstorm / Hurricane. The award does not include causes such as normal wear and tear, dry rot, or damages from any other source. The amount of loss due to Windstorm/ Hurricane only is determined as follows :

**APPRAISAL AWARD**

Insured: Estero Beach and Tennis Club, Inc.  
 Insurer: American Coastal Insurance Co.  
 Loss Location: 7300 Estero Beach Boulevard, Fort Myers, FL 33931  
 Date of Loss: 09/10/20217  
 Policy Number: AMC-32035-02  
 Claim Number: 4143036

Premise/location	Building	Replacement Cost	Depreciation	Actual Cash Value
Location 1	A	\$2,966,028.37	\$245,546.13	\$2,720,482.24
Location 2	B	\$2,793,463.37	\$241,161.97	\$2,552,301.40
Location 3	C	\$2,735,555.30	\$219,703.45	\$2,515,851.85
Location 4	Maintenance	\$ 9,800.00		\$ 9,800.00
Additional Cost	Paid Invoices	\$ 867,869.14		\$ 867,869.14
Other Structures	Fence, Tennis Court, Pool, etc.	\$ 108,384.69		\$ 108,384.69
General Conditions		\$ 723,813.06		\$ 723,813.06
<b>Total</b>		<b>\$10,204,913.14</b>		<b>\$9,498,502.38</b>
Ordinance or law		<b>As Incurred Per the Policy and Florida law</b>		

Note: All prior payment(s) and Deductible(s) will be subtracted from the above amounts by the parties.

Witness our hand this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Charles A. Baker, Jr. (Appraiser for Carrier)

Date: \_\_\_\_\_

  
 Paul Middleton (Appraiser for Insured)

Date: 2-15-22

  
 Umpire

Date: 2/22/2022



**Riteway Insurance Repair Service, Inc.**

1157 NW 159<sup>th</sup> Drive, Ste. 100 Miami, Fl 33169  
Florida State Certified General Contractor CGC 020392  
**Fire, Water and Storm Damage Restoration Specialists**  
**Appraisal and Umpire Services**

October 18, 2022

Insurance Estimating & Appraisal, Inc.

ATTN: Paul Middleton paul@ieausa.com

RE: Estero Beach and Tennis Club, Inc.  
7300 Estero Beach Boulevard  
Fort Myers, Fl. 33931

Dear Mr. Middleton,

Pursuant your instructions the following is a Bill for Umpiring Services rendered in connection with the appraisal services at the above referenced location.

All services rendered to review voluminous file documents, Exhibits etc, preliminary loss inspection with both appraisers on 06/28/2021, 09/27/2021 and 09/28/2021.

- 1. Follow up loss experts' meetings work file & travel time to and from loss location. Zoom meetings, phone conferences, etc. Discussion with all parties involved to bring the appraisal to a resolution, prepare and execute award. ....\$198,227.53
- 2. Expenses costs relating to estimate prep and revisions.....\$ 74,585.33
- 3. Miscellaneous Clerical .....\$ 4,800.00

**TOTAL AMOUNT DUE..... \$277,612.86**

**Fifty percent (50%) Due from Insured:.....\$138,806.43**

It has been a pleasure to serve you. Please feel free to contact me with any questions you may have.

Please Make Checks Payable To: Riteway Insurance Repair Service, Inc.  
Fed. I.D. No: 59-2161317

Respectfully submitted,

Yuleisy Fernandez

954.923.3677 – Fax – 954.923.0546  
[office@ritewayfla.com](mailto:office@ritewayfla.com)





**Riteway Insurance Repair Service, Inc.**

1157 NW 159<sup>th</sup> Drive, Ste. 100, Miami, FL 33169  
Florida State Certified General Contractor CGC 020392

**Fire, Water and Storm Damage Restoration Specialists**  
South Broward 954.923.3677 – Fax – 954.923.0546

[office@ritewayfla.com](mailto:office@ritewayfla.com)

**Umpire Service**

**Umpire Activity Log**

**Insured:** Estero Beach and Tennis Club, Inc.  
**Carrier** American Coastal Insurance Company  
**Claim #:** 4143036  
**D/Loss:** 09/10/2017  
**L/Loss:** 7300 Estero Beach Blvd, Fort Myers, FL

**Project Breakdown**


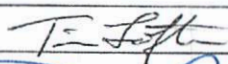
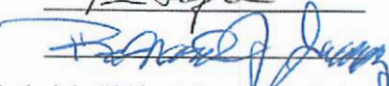
	<b><u>HOURS</u></b>
Umpire Services	
Obtain documents from Appraisers, initial review, organize & sort documents into Riteway file system	86
Initial inspection (Exterior only)	10.0
Review & study 2 (two) binders of documents presented by Charlie Baker	100.0
Review & study 4 (four) binders of documents presented by Paul Middleton	200.0
Prepare for & attend Umpire meeting	50.0
Lunch with Appraisers: \$162.18	
Work on & release initial findings report	90.0
Letters/Email/Zoom/Phone Calls: both internal & external personnel	20.0
Work on & release final Umpire report	7.0
<u>Receive, review &amp;/or execute closing docs</u>	<u>2.9</u>
Total Hours	<b>565.9</b>

# EXHIBIT E

Insured Estero Beach and Tennis Club Inc  
 Location Address 7300 Estero Blvd  
 City, State Zip Fort Myers Beach, FL 33931  
 Peril Hurricane (Wind)  
 Date of Loss 9/10/2017

We appraisers and umpire hereby appraise the amount of loss as follows:

Item	Description	Replacement Cost	Actual Cash Value
1	Building A	317,358.70	301,490.77
2	Building B	560,349.47	532,332.00
3	Building C	688,836.41	654,394.59
	Swimming Pool	1098.76	1098.76
	Tennis Courts	102,820.00	102,820.00
	Maintenance Shed	9,800.00	9,800.00
	Landscaping	13,771.68	13,771.68
	Awning	47,298.76	47,298.76
	Other Structures	615.98	615.98
The total amount of loss is:*		\$1,741,949.76	\$1,663,622.53

	Signature	Date
Appraiser for the Insured		7/31/2023
Appraiser for the Insurer		7/28/2023
Umpire		7/31/2023

\* Note award will be reduced by the deductible(s) and prior payments. The terms and conditions of the policy apply to the award. The award includes the Wareham estimate plus additional mitigation expense plus allowances for general conditions, painting, and drywall. The deliberation of the Appraisal Panel is confidential and exempt from depositions or suit in case the Award is challenged, or a bad faith claim is filed. Furthermore, to the maximum extent permitted by law, no party will assert any claims against the named Appraiser or named Umpire or their respective firms, seeking to hold them or their firms liable for any act of omission in performing their duties as an Appraiser or Umpire.