

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT  
CIVIL ACTION NO.

23-0817H

LM GENERAL INSURANCE COMPANY AS )  
SUBROGEE OF DANIEL L. DONA AND SCOTT )  
EBNER, )  
Plaintiff )

VS. )

BOSTON WATER AND SEWER COMMISSION, )  
Defendant )

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
2023 APR - 4 PM 3:28  
JOHN E. POWERS III  
ACTING CLERK MAJESTRIS

**COMPLAINT**

1. The Plaintiff is LM GENERAL INSURANCE COMPANY AS SUBROGEE OF DANIEL L. DONA and SCOTT EBNER (hereinafter the "Insured" "LM GENERAL" of 1200 Washington Street, Boston, MA 02118), an existing insurance corporation organized under the laws of the State of Illinois, and duly authorized to do business in Massachusetts, with a place of business at 175 Berkeley Street, Boston, MA 02116.
2. The Defendant is BOSTON WATER AND SEWER COMMISSION (hereinafter "BWSC") is a Massachusetts municipal entity with a place of business and administrative offices located at 980 Harrison Avenue, Boston, MA 02119.
3. At all times material to this action, LM GENERAL insured Daniel L. Dona for certain coverage related to an automobile, namely a 2019 BMW 330i, (hereafter "Insured Auto" or 2019 BMW") which Daniel L. Dona owned and controlled.

**FACTS**

4. On or about April 14, 2020, a water main in the South End of Boston, MA, at or near Harrison Avenue and Perry Street, approximately 30 inches in diameter failed (hereinafter "Water Main"), resulting in flooding to the area, including flooding parking garage where the Insured's Auto was parked, causing it to be damaged beyond repair.
5. At all times material to this action, the BWSC owned and/or operated, controlled and maintained the Water Main.

**COUNT I**  
(Negligence)

6. Plaintiff incorporates the allegations of paragraphs above with the same force and effect as if herein set forth.
7. At all times material to this action, the BWSC and its agents knew or should have known that

the areas of the Water Main that failed needed maintenance action, inspection and replacement before a failure and known flooding from a 30 inch water main break could occur.

8. The BWSC had duties to exercise reasonable care in its operation, maintenance and replacement of the water and sewer pipes and distribution system under its charge.
9. The BWSC had duties in its operation, maintenance and replacement of the water and sewer pipes and distribution system under its charge, to be reasonably prudent, careful, safe and skillful while maintaining reasonable control over it.
10. The BWSC breached its duties of care and was negligent, for reasons including:
  - a. Over pressurizing the water mains including the Water Main;
  - b. Causing the Water Main to crack and break due to hydraulic shock or so called water hammer effects while operating the water supply and the Water Main;
  - c. Insufficient and defective maintenance on the Water Main and other parts of the water supply systems.
  - d. Insufficient and defective training of employees and workers who worked for Defendant and its agents.
  - e. Insufficient and defective management of the water mains and operations by Defendant.
  - f. Failures to inspect and repair the water mains and Water Main.
  - g. Failures to properly and timely act to stop the water flowing to the broken Water Main after notice of the water break.
  - h. Failures to properly and timely engage an emergency response to stop the water flowing from the broken Water Main after notice of the water break.
  - i. Failures to establish and execute a proper and effective emergency response in place to deal with the broken Water Main situation.
  - j. Failed and improper maintenance to shut off valves needed to isolate the water flows to the Water Main.
  - k. And otherwise failing to operate the water system and Water Main in a workmanlike manner as required under the circumstances.
11. The BWSC's negligence was the proximate cause of the damages incurred by the Plaintiff's Insured in this action.
12. The BWSC's gross negligence was the proximate cause of the damages incurred by the Plaintiff's Insured in this action.

13. Plaintiff issued a policy of insurance to its Insured, policy number/claim number 042384825-0001.
14. The Plaintiff, pursuant to: a contract of insurance and consideration paid; and/or an assignment of rights; and/or Massachusetts General Laws; and/or the common laws of the Commonwealth of Massachusetts, is a subrogee of the rights and claims of the Insured(s) above, as described herein.
15. Plaintiff now stands subrogated to the rights and causes of action of its Insured, the subrogor, to the extent of payments made to and/or on the Insured's behalf, and asserts its subrogation rights through this Complaint.
16. The vehicle, 2019 BMW and property insured by the Plaintiff suffered loss and damages.
17. After the damage to the Insured's Vehicle, Plaintiff's estimator estimated the cost of repairs at \$44,700.00.
18. The Plaintiff considered the Insured's Vehicle to be totaled and that paying for any repairs was too costly and presented too much risk of further unknown damages.
19. The insured's vehicle was inspected by an adjuster who appraised damages in accordance with Plaintiff's policy with its insured, and Plaintiff paid for or on behalf of its insured \$14,657.19 for personal property vehicle damage, towing, rental, etc.
20. The breakdown of Plaintiff's damages is:
  - a. \$54,174.38 Paid to or on behalf Plaintiff's Insured for damages to the 2019 BMW as the car was considered totaled; this is based upon the fair market value reports; \$50,916.89 to Financial Services Vehicle Trust for lien/value on Insured Vehicle; \$3,257.49 to Daniel L. Dona and Scott Ebner for value of the 2019 BMW.
  - b. \$ 300.00 Plaintiff's Insured's deductible on the Policy of Insurance.
  - c. -\$ 9,572.75 Credit received from CoPart from the auction sale of the Insured's Vehicle for \$10,300.00 minus charges for: towing (Todisco Services, Inc)-\$108.86; yard/gate fees-\$108.00; labor- \$84.00; storage -\$220.00; Letter - \$36.89; CoPart Service charges of; total loss express - \$40.00; title processing - \$53.00; PIP program charge - \$76.00.
  - d. \$44,901.63 Balance due on this complaint.
21. At all relevant times, Plaintiff insured the Insured Vehicle owned by its Insured.
22. Plaintiff's Insured(s) were available and could have been contacted on April 14, 2020 after the Water Main break and in the following hours by phone, text, email or in person to move their 2019 BMW from the area, or have it removed, to avoid damages or to mitigate damages.

23. The Defendant created, permitted or maintained a condition or activity which caused substantial and unreasonable interference with use and enjoyment of property of the Plaintiff's Insured(s).
24. As a direct and proximate result of Defendant's negligence, Plaintiff's Insured's Vehicle was damaged and/or reduced in value, in the amount of \$44,901.63, which takes into account any towing, storage, car rental, salvage, where applicable.
25. The Plaintiff's Insured(s) made a claim pursuant to the policy and Plaintiff paid the claim to or on behalf of its Insured(s) for \$44,901.63 due to property damage arising from flood loss.
26. Plaintiff seeks compensation, damages, reimbursement, costs, interest, and other damages from the Defendant in addition to reimbursement of any deductible paid by its Insured(s).
27. Pursuant to M.G.L. c .258, s. 2 Defendant BWSC is liable for the damages caused by its employees and/or agents' negligence while acting within the scope of their employment.
28. Plaintiff or its agents made proper presentment(s) upon a municipal officer or other officer of the Defendant Boston Water and Sewer Commission in accordance with applicable laws and regulations, including M.G.L. c. 258, s. 4, within two years of the date of the flooding incident which caused damages referred to herein. Said letter(s) and communications (true copies and proof of service are attached hereto) were sufficiently detailed to put the municipal officer or other officer on notice of the claim(s) so that the officer could investigate its validity, notices and demands in accordance with the applicable statutes.
29. The Boston Water and Sewer Commission has failed to pay in response to the claims and notices from the Plaintiff or its agents.
30. This complaint has been filed within three (3) years of the date that the cause of action accrued.
31. True and accurate copies of the Proof of Loss, Accident Reports, Claim notes and information and/or related documents in support of this claim are attached hereto.

WHEREFORE, Plaintiff demands judgment against Defendant for the sum of \$44,901.63, together with interest from date of filing the complaint, plus costs or for the fair value of same and for such other and further relief as may be allowed by law.

## **COUNT II**

(Negligence-Special Duty to Insured)

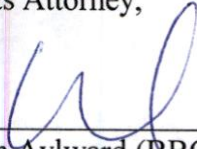
32. Plaintiff incorporates the allegations of paragraphs above with the same force and effect as if herein set forth.
33. At all times material to this action, the BWSC and its agents knew or should have known that the areas of the Water Main that failed needed maintenance action, inspection and replacement before a failure and known flooding from a 30 inch water main break could

occur.

34. At all times material to this action, the BWSC and its agents owed the knew or should have known after the flooding began that certain property near the area of the flood would be damaged, including easily identifiable property such as the Insured's car in low lying areas and failed to take action or sufficient action to prevent or mitigate damages suffered by the Insured's Vehicle.
35. At all times material to this action, the BWSC and its agents had the phone number or ability to communicate with the Plaintiff's Insured, his building, the garage where the car was parked or his agents over the hours in which the water accumulated, to ask Plaintiff's Insured or his agents to move the Insured Vehicle car to try to avoid or mitigate any damages.
36. Plaintiff's Insured was available and could have been contacted on April 14, 2020 after the Water Main break and in the following hours by phone, text, email or in person to move his 2019 BMW from the area, or have it removed, to avoid damages or to mitigate damages.
37. The BWSC and its agents owed Plaintiff a special duty to mitigate or avoid damages and failed to do anything or enough to prevent or mitigate the Plaintiff's insured's damages.
38. The BWSC owed a duty to the Plaintiff's Insured(s) beyond that owed to the general public and had a special relationship with the Plaintiff's Insureds because the Insured Vehicle was readily identifiable at the scene of dangerous flooding.
39. This special relationship gives rise to a duty to act with reasonable care to prevent harm where the BWSC reasonably could foresee that it would be expected to take affirmative action to protect the Plaintiff's Insured(s) and could anticipate harm to the Plaintiff's Insured from its failure to do so.
40. The Defendant was negligent and is liable for the damages of \$44,901.63, being the balance due for intentional and/or negligent tortious damage done to the Insured's Vehicle together with interest from , on or before which date due demand for payment was made.
41. True and accurate copies of the proof of loss, accident reports, claim notes and information and/or related documents in support of this claim are attached hereto.

WHEREFORE, Plaintiff demands judgment against Defendant for the sum of \$44,901.63, together with interest from date of filing the complaint, plus costs or for the fair value of same and for such other and further relief as may be allowed by law.

The Plaintiff,  
By Its Attorney,



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Dated: April 1, 2023

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS SO TRIABLE

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO  
COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT  
PURPOSE.