

Pennsylvania. Process may be served on ACE-INA through its Registered Agent, the Chief Financial Officer at 200 E. Gaines Street, Tallahassee, Florida 32399.

II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this civil action under 28 U.S.C. § 1332(a) because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states and in which citizens or subjects of a foreign state are additional parties.

6. This Court has personal jurisdiction over ACE-INA because it is licensed to do business in the State of Florida and it does, in fact, do business in the State of Florida.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2) in that this is a judicial district where a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.

III. FACTUAL BACKGROUND

8. This is an insurance coverage dispute.

A. The Policy

9. ACE-INA issued to IYC policy number YWR Y06973504 ("ACE-INA Policy"), effective August 7, 2005. This was not the first policy between these parties, and prior dealings between the parties set the tone for the events at issue in this lawsuit. Halmos, and the other individual Plaintiffs, are also insured as "covered persons" under the ACE-INA Policy. The ACE-INA Policy provides a number of coverages that are applicable to this claim, including, but not limited to:

PERILS INSURED AGAINST: We will provide coverage for accidental, direct physical loss or damage to your insured vessel as

well as salvage charges, except as specifically excluded in this policy.

ACE-INA Policy, at 19.

SALVAGE CHARGES: We will pay for salvage charges you incur arising from a covered loss. Payments for salvage charges will be in addition to any other payments we make for losses covered by this policy. However, the most we will pay for salvage charges is the Part A: Property Damage Coverage limit shown on the Declarations Page. The Part A: Property Damage Coverage Deductible Amount does not apply to this coverage.

ACE-INA Policy, at 20.

PROTECTION AGAINST LOSS: If your vessel or other property covered by this policy is damaged, you must take all reasonable steps to protect it from further damage. We will reimburse you for reasonable expenses for protecting the property from further damage. Payments for protecting damaged property will be in addition to any other payments we make for losses covered by this policy. However, the most we will pay for protecting damaged property is the coverage limit which applies to that property.

ACE-INA Policy, at 25.

PERILS INSURED AGAINST: We will pay sums that you or a covered person become legally obligated to pay as a result of the ownership, operation or maintenance of your insured vessel because of:

- a. attempted or actual raising, removal or destruction of the wreck of your insured property;
- b. failure to raise, remove or destroy the wreck of your insured property;
- c. bodily injury or loss of life;
- d. your liability to paid crew as defined in the Jones Act or under general Maritime Law;
- e. loss or damage to any property;
- f. pollution or contamination of any kind.

ACE-INA Policy, at 21.

CLAIMS OR SUIT AGAINST YOU: If a claim is made or suit is brought against you or a Covered person for liability that may be covered under this policy [W]e will have the option of naming

attorneys to represent you. Payments for the cost of your legal defense will be in addition to payments we make under your coverage for liability claims against you.

ACE-INA Policy, at 26.

PERILS INSURED AGAINST: We will pay for reasonable medical, ambulance, hospital, professional nursing and funeral costs that become necessary due to accidental bodily injury to persons injured while in, upon, boarding, leaving or towed behind your insured vessel. We will pay only for those costs incurred within one year of the date of accident.

ACE-INA Policy, at 21.

B. Legacy and Hurricane Wilma

10. On October 24, 2005, the sailing vessel S/Y Legacy, a 158' luxury sailing yacht owned by IYC, was in a hurricane hole in the Gulf of Mexico off the Florida Keys, with Halmos on board operating the vessel with his experienced captain and six person crew. At that time, the Legacy was in the path of Hurricane Wilma. The crew of the Legacy did what was reasonably necessary and prudent while acting with due care and in good faith after taking reasonable and necessary precautions to prevent the grounding of Legacy before and during the onslaught of Hurricane Wilma, and to minimize any alleged damage to the sanctuary and all natural resources as a result thereof and thereafter. Despite these efforts, on October 24, 2005, Legacy was cast adrift. The crew attempted to utilize Legacy's two engines to resist the forces of Wilma, but eventually the storm forced Legacy aground in the Florida Keys National Marine Sanctuary. Due in part to acts and/or omissions of ACE-INA, the Legacy remained aground at the same location for over two (2) years. Since that time, Plaintiffs have undertaken extensive efforts and expended tens of millions of dollars (which ACE-INA has not reimbursed as required by the terms of the policy) to protect Legacy and the surrounding environment from any further damage. Even so, the delay caused by ACE-INA exacerbates the damages to Plaintiffs.

C. Defendant's Responses to Plaintiffs' Requests for Coverage

11. Plaintiffs timely and properly gave notice of the claims in accordance with the Policy and applicable law. Plaintiffs have submitted various claims (or portions thereof) for covered losses under the ACE-INA Policy prior to filing this lawsuit. ACE-INA has refused to pay some of those claims under the appropriate provisions of the ACE-INA policy.

**IV.
CAUSES OF ACTION**

A. Breach of Contract

12. Plaintiffs timely and properly submitted claims under the ACE-INA Policy. By refusing to pay these claims under the appropriate provisions of the ACE-INA Policy, ACE-INA breached its contractual obligations to Plaintiffs. As a result of these breaches, Plaintiffs were deprived of benefits under the ACE-INA Policy.

13. All conditions precedent to Plaintiffs' right to recover have occurred, been performed, or been waived by ACE-INA.

B. Declaratory Judgment

14. There is a present controversy between Plaintiffs and ACE-INA regarding coverage under the ACE-INA Policy. Thus, pursuant to 28 U.S.C. § 2201, Plaintiffs seek a judicial declaration as follows:

- a. An actual, real and substantial controversy now exists between Plaintiffs and ACE-INA;
- b. The ACE-INA Policy was in effect at all relevant times;
- c. Plaintiffs have, at all relevant times, complied with all conditions for coverage under the ACE-INA Policy to the extent required by law;

- d. Plaintiffs are entitled to coverage as insureds under the ACE-INA Policy; and
- e. The ACE-INA Policy provides coverage for the claims set forth herein.

C. Extra-contractual Claims

15. ACE-INA's acts and/or omissions, through its employees, agents, representatives, and/or others, were committed in bad faith. ACE-INA, through its employees, agents, representatives, and/or others, has made numerous misrepresentations concerning the subject of this lawsuit, including but not limited to misrepresentations pertaining to the ACE-INA Policy and applicable law. ACE-INA, through its employees, agents, representatives, and/or others, has engaged in a pattern and practice of attempting to minimize its own liability at the expense of Plaintiffs.

16. To the extent that the Court determines that Florida law applies to this dispute, then Plaintiffs allege that ACE-INA, by its actions and inactions, has violated the provisions of Fla. Stat. Ann. § 624.155. More specifically, ACE-INA:

- a. Made material misrepresentations to an insured or other person having an interest in the proceeds payable under such contract or policy, for the purpose and with the intent of effecting settlement of such claims, loss, or damage under such contract or policy on less favorable terms than those provided in, and contemplated by such contract or policy;
- b. Committed or performed with such frequency as to indicate a general business practice some or all of the following:
 - 1. Failing to adopt and implement standards for the proper investigation of claims;
 - 2. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
 - 3. Failing to acknowledge and act promptly upon communications with respect to claims;

4. Failing to promptly provide a reasonable explanation in writing to the insured of the basis in the insurance policy, in relation to the facts or applicable law, for denial of a claim or for the offer of a compromise settlement;
 5. Failing to promptly notify the insured of any additional information necessary for the processing of a claim; or
 6. Failing to clearly explain the nature of the requested information and the reasons why such information is necessary;
- c. Did not attempt in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests;
 - d. Failed to promptly settle claims, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

By virtue of its failure to comply with the requirements of Fla. Stat. Ann. § 624.155, ACE-INA is liable to Plaintiffs, in addition to the amount of the claim, for additional damages caused by the alleged violations of the statute, including, but not limited to mental anguish, court costs, attorneys' fees, and interest on all of the foregoing amounts at the maximum rate allowed by law. Additionally, Plaintiffs would show that the acts and/or omissions of ACE/INA giving rise to the aforesaid violations occur with such frequency as to indicate a general business practice and such acts and/or omissions were willful, wanton, and malicious, or in reckless disregard for the rights of any insured. Therefore, Plaintiffs are entitled under Fla. Stat. Ann. § 624.155(5) to judgment against ACE-INA for punitive damages.

17. Pleading in the alternative, to the extent that the Court determines that South Carolina law applies to this dispute, then Plaintiffs allege that ACE-INA, by its actions and inactions, has

exercised bad faith under the common law of South Carolina as applied to insurance contracts and claims thereon. More specifically:

- a. A mutually binding contract of insurance exists between the Plaintiffs and ACE-INA;
- b. ACE-INA refused to pay benefits due under the contract;
- c. This resulted from ACE-INA's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on the contract; and
- d. Such acts and/or omissions caused damage to Plaintiffs.

Additionally, Plaintiffs would show that such acts and/or omissions of ACE-INA were willful or in reckless disregard of Plaintiffs' rights under the ACE-INA Policy. As a result thereof, Plaintiffs are entitled to recover punitive damages and attorneys' fees, under S.C. Code Ann. § 38-59-40(1), court costs, and interest on all awarded amounts at the maximum rate allowed by law.

D. Intentional Infliction of Emotional Distress/Negligent Infliction of Emotional Distress

18. Additionally and alternatively, Halmos would further show that he is a person; that ACE-INA's acts and/or omissions were committed intentionally or recklessly, or negligently; that as a result thereof Halmos suffered severe emotional distress; that ACE-INA's conduct was extreme and outrageous; that ACE-INA's conduct proximately caused Halmos' emotional distress; and no alternative cause of action would provide a remedy for the severe emotional distress caused by ACE-INA's conduct. Therefore, ACE-INA is liable to Halmos for the intentional/negligent infliction of emotional distress inflicted upon Halmos, and the damages suffered by Halmos as a result thereof.

E. Attorneys' Fees

18. Because of ACE-INA's acts and/or omissions, Plaintiffs have been required to retain the services of the undersigned counsel to prosecute their claims in this action.

19. Plaintiffs are entitled to recover, and request the award of, attorneys' fees, expenses, and costs expended in connection with this action, and any appeals therefrom, pursuant to Florida law (Fla. Stat. Ann. §§ 624.155 and 627.428) and/or South Carolina law (S.C. Code Ann. § 38-59-40(1)). Plaintiffs are also entitled to recover their attorneys' fees, expenses and costs in accordance with the federal Declaratory Judgment Act, 28 U.S.C. §2202.

VI.
JURY DEMAND

20. Plaintiffs hereby demand a trial by jury for all issues so triable.

VII.
PRAYER

21. Plaintiffs respectfully pray that upon trial of this cause the Court enter judgment awarding them:

1. All actual damages suffered by Plaintiffs as a result of ACE-INA's breaches of contract and statutes;
2. The declaratory relief sought by Plaintiffs as set forth above;
3. Punitive damages under Florida and/or South Carolina law;
4. Attorneys' fees and costs of court;
5. Pre- and post-judgment interest at the highest rate allowed by law; and
6. Such other and further relief to which it may be justly entitled.

Respectfully submitted,

THE LAW OFFICE OF HUGH J. MORGAN

By:



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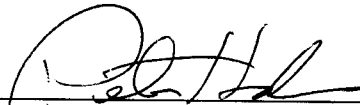
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08-10084 CIVIL COVER SHEET MARTINEZ

MAGISTRATE JUDGE BROWN

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

Peter Halmos, Individually and on Behalf of Other Insureds Under and Pursuant to ACE-INA Insurance Contract, and International Yachting

(b) County of Residence of First Listed Plaintiff Monroe (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hugh Morgan P. O. Box 1117 Key West, FL 33041 305.306.5676

DEFENDANTS

Insurance Company of North America

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

08-10084 - MARTINEZ / BROWN

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

REC'D by [Signature] D.C. OCT 22 2008 STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. FLA. - KEY WEST

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Re-filed (see VI below) 4 Reinstated or Reopened 5 From another district (specify) 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case YES NO b) Related Cases YES NO (See instructions second page): JUDGE N/A DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332; insurance coverage dispute & related claims LENGTH OF TRIAL via 7 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD S/ Hugh Morgan

DATE October 22, 2008

FOR OFFICE USE ONLY

AMOUNT 350.00 RECEIPT 222405 IFP