

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LAURA PENDERGEST-HOLT
Plaintiff,

§
§
§
§
§
§
§
§
§
§

VS.

CIVIL ACTION NO. _____

CERTAIN UNDERWRITERS AT
LLOYD’S OF LONDON AND ARCH
SPECIALTY INSURANCE CO.

Defendant

**PLAINTIFF’S ORIGINAL COMPLAINT, REQUEST FOR
DECLARATORY JUDGMENT, AND REQUEST FOR AN EMERGENCY
PRELIMINARY INJUNCTION**

Plaintiff, LAURA PENDERGEST-HOLT, files this her Original Complaint, Request for Declaratory Judgment, and Request for an Emergency Preliminary Injunction against Certain Underwriters at Lloyd’s of London and Arch Specialty Insurance Co. (collectively “Underwriters”),¹ and would show:

I. INTRODUCTION

1. Plaintiff seeks a declaration she is entitled coverage under the policies that are the subject of this lawsuit.

¹ Underwriters include Lloyd’s of London Underwriting Members in Syndicates 2987, 2488, 1886, 2623, 1084, 4000, 1083, 1274, and 623, and Arch Specialty Insurance Company.

2. Plaintiff seeks damages against the Underwriters for Bad Faith, Breach of Contract, Breach of the Common Law Duty of Good Faith and Fair Dealing, and for Violation of the Texas Insurance Code.

3. Plaintiff further seeks injunctive relief from the Court to require the Underwriters to begin paying and continue to pay claims for expenses, fees and costs to her attorneys related to her defense of claims and allegations against her by the Securities and Exchange Commission (the "SEC") and the Department of Justice (the "DOJ") during the pendency of her claims against the Underwriters.

II. PARTIES

4. Plaintiff, LAURA PENDERGEST-HOLT, is resident of the state of North Carolina. She may be served with any subsequent pleadings through her attorney of record in this matter.

5. Underwriters subscribing to the D&O Policy for the policy period of August 15, 2008 to August 15, 2009. Underwriters are insurers authorized to do business in the State of Texas. Underwriters may be served with process through their agent for service, Mr. Arthur Washington, Mendes & Mount, 750 Seventh Avenue, New York, New York 10019-6829.

6. Underwriters subscribing to the PI Policy for the policy period August 15, 2008 to August 15, 2009. Underwriters are insurers authorized to do business in the State of Texas. Underwriters may be served with process through their agent

for service, Mr. Arthur Washington, Mendes & Mount, 750 Seventh Avenue, New York, New York 10019-6829.

7. Underwriters subscribing to the Excess Policy for the policy period August 15, 2008 to August 15, 2009. Underwriters are insurers authorized to do business in the State of Texas. Underwriters may be served with process through their agent for service, Mr. Arthur Washington, Mendes & Mount, 750 Seventh Avenue, New York, New York 10019-6829.

III. JURISDICTION AND VENUE

8. This Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. §§ 1331, 1332, 1367, 2201 and 2202.

9. Venue is proper in this judicial district and division under 28 U.S.C. §1391(b)(2) because a substantial part of the alleged events or omissions giving rise to the claims occurred in this judicial district and division.

IV. FACTUAL BACKGROUND

10. This case arises out of the seizure of Stanford International Bank, Ltd., Stanford Capital Management, LLC, Stanford Financial Group Company and the Stanford Group Company (collectively, “the Stanford Group”), among other entities, by the SEC and the criminal prosecution of Plaintiff and others by the DOJ.

11. Plaintiff was the Chief Investment officer of Stanford Financial Group Company. She is an insured pursuant to the following insurance policies issued by Underwriters: (1) Lloyd's D&O and Company Indemnity Policy, reference number 576/MNK558900; (2) Lloyd's Financial Institutions Crime and Professional Indemnity Policy, reference number 576/MNA85300; and (3) Lloyd's Excess Blended "Wrap" Policy, reference number 576/MNA831400 (the "D&O Policies"). Plaintiff is an officer as defined in the Policy and is entitled to a defense pursuant to the terms of the D&O Policies. The D&O Policies' definition of "costs, charges, and expenses" provides for payment for reasonable and necessary attorneys' fees incurred in defense of any claim. These terms are broadly defined so as to include defense of the criminal case, and the Underwriters have acknowledged such in writing, on three separate occasions, to defense counsel of their obligation to pay such defense costs.

12. On February 17, 2009, the SEC filed its Complaint against Plaintiff in the matter entitled SEC v. Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management, LLC, R. Allen Stanford, James M. Davis, and Laura Pendergest-Holt, Case No. 3:09-cv-0298, in the United States District Court for the Northern District of Texas – Dallas Division.

13. On February 25, 2009, Plaintiff timely submitted a notice of claim to the Underwriters concerning the SEC action and two additional civil class actions.

14. On February 26, 2009, Plaintiff was arrested and charged by the DOJ with Obstruction of an Agency of the United States, the SEC. On February 27, 2009 and on March 4, 2009, Plaintiff timely submitted additional notices of claims that identified the criminal matter as well.

15. On June 18, 2009, Plaintiff was charged in another indictment along with four other defendants in Criminal No. H-09-342 in the Southern District of Texas, Houston Division. The previous indictment against her was dismissed.

16. The D&O Policies provide indemnity coverage for the Stanford entities and their officers and directors, including Plaintiff. The Underwriters agreed in the D&O Policies to advance defense costs and expenses and to “pay...on behalf of the Directors and Officers” and “on behalf of the Company” for “Loss resulting from any Claim first made during the Policy Period for a Wrongful Act.” A “Claim” means a “written demand for monetary damages,” or a “judicial or administrative proceeding initiated against any of the Directors and Officers or the Company in which they may be subjected to a binding adjudication of liability for damages or other relief.” The D&O Policies therefore provide only for the payment of amounts owed to third-parties (in this case Plaintiff’s defense lawyers), not for the payment of amounts that may be owed directly to the Stanford entities.

17. The Underwriters advised Plaintiff and her lawyers that they would advance defense cost to her for both the SEC and the criminal case, with the first payment scheduled for July 1, 2009.

18. On June 25, 2009, counsel for the Underwriters² wrote that they “learned for the first time [on June 24, 2009]” that the Receiver³ “now takes the position that all proceeds under the policies...are ‘Receivership Assets’ as defined by the Court’s February 17, 2009 order.” The Underwriters’ further advised that “the Receiver has taken the position that his right to the proceeds ‘supersedes’ the right of the insureds.” Because the Receiver had threatened to pursue contempt charges, the Underwriters advised that no payments would be made absent a ruling from the Dallas District Court.

19. On October 9, 2009, Judge Godbey issued his ruling declaring that the insurance policies were not an asset of the Stanford Companies and that the Underwriters were free to make payments as promised.

20. On November 16, 2009, the Underwriters issued two letters: one finally acknowledging payment to counsel for Plaintiff through August 27, 2009, and the other declining to extend any coverage for fees, expenses or charges related to the charges against her after August 27, 2009.

² Underwriters to date have been represented by Barry A. Chasnoff and Daniel McNeel Lane, Jr. of the law firm Akin Gump Straus Hauer & Feld LLP in San Antonio.

³ The Receiver, Ralph Janvey, is represented by the law firms of Baker Botts and Thompson and Knight.

21. In their declination letter, the Underwriters state that they have concluded that the claims by Plaintiff are excluded by the D&O Policy's money laundering exclusion and by the PI Policy's government claims exclusion and international corporate or business policy exclusion.

V. THE INSURANCE POLICIES

A. The D&O Policy

22. On August 25, 2008, the Underwriters issued the D&O Policy to Stanford Financial Group Company, Stanford Group Company and various Stanford entities for the policy period of August 15, 2008 to August 15, 2009. The D&O Policy pays, on behalf of the company, directors and officers, loss resulting from any claim first made during the policy period for a wrongful act. The Underwriters have claimed a number of exclusions in an attempt to try and wrongfully deny coverage to Plaintiff. Specifically, they claim that the Underwriters shall not be liable to make any payment for loss resulting from any claim:

- I. brought about or contributed to in fact by: (a) any dishonest, fraudulent or criminal act or omission by the Directors or Officers or the Company, or (b) any personal profit or advantage gained by any of the Directors and Officers or the Company to which they were not legally entitled...as determined by a final adjudication;

....

- L. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way relating to any act, error or omission in connection with the performance of any professional services by or on behalf of the Company for the benefit of any other entity or person; or

....

- T. arising directly or indirectly as a result of or in connection with any act or acts (or alleged act or acts) of Money Laundering or any act or acts (or alleged act or acts) which are in breach of and/or constitute an offence or offences under any money laundering legislation (or any provisions and/or rules or regulations made by any Regulatory Body or Authority thereunder).

This exclusion T further provides:

Notwithstanding the foregoing Exclusion, Underwriters shall pay Costs, Charges, and Expenses in the event of an alleged act or alleged acts until such time that it is determined that the alleged act or alleged acts did in fact occur. In such event the Directors and Officers and the Company will reimburse Underwriters for such Costs, Charges and Expenses paid on their behalf.

B. The PI Policy

23. On July 25, 2008, Underwriters issued the PI Policy to Stanford Financial Group Company, Stanford Group Company, and various Stanford entities for the policy period August 15, 2008 to August 15, 2009. The PI Policy provides that Underwriters shall reimburse the assureds for loss resulting from any claim first made during the policy period for a wrongful act in the performance of a professional service. Once again, the Underwriters have claimed a number of exclusions in a wrongful attempt to deny coverage to Plaintiff. Specifically, the Underwriters have cited the following exclusions for non-payment:

- E. brought about or contributed to in fact by any dishonest, fraudulent or criminal act or omission or any personal profit or advantage gained by any of the Directors, Officers and Employees to which they were not

legally entitled, provided, however, no Wrongful Act shall be imputed to any other person for the purpose of determining the applicability of this Exclusion;

....

- K. made against any of the Assureds by or at the behest of any federal or state governmental body or governmental agency, except when acting solely in the capacity of a customer or client of the Company or on behalf of a customer or client of the Company;

....

- N. where, and to the extent that, the Loss by reason of such Claim represents the return by the Assureds of excessive fees, commissions, costs or other charges;

....

- R. for any Intentional Corporate or Business Policy

Corporate or Business Policy as used in this Exclusion shall mean any policy which has been approved, condoned, ratified or endorsed by two or more members of the Assureds' Management and which results in (a) a financial disadvantage to two or more of the Assured's clients, and (b) the Assured making a financial gain to which they were not entitled, whether or not such gain was returned.

The Assured's Management shall be deemed to be R. Allen Stanford, James Davis and James Stanford;

....

- S. arising directly or indirectly as a result of or in connection with any act or acts (or alleged act or acts) which are in breach of and/or constitute an offence or offences under any Money Laundering legislation (or any provisions and/or rules or regulations made by any regulatory body or authority thereunder); or

....

X. (a) arising out of or in connection with any circumstances or occurrences which have been notified to the Insurer on any other insurance affected prior to the inception of this Policy

(b) arising out of or in connection with any circumstances or occurrences known to the Assured at inception of this Policy which could reasonably be expected to give rise to Loss of more than USD 100,000 under this Policy

Solely for the purposes of knowledge as required by point (b) above, the term "Assured" shall mean: the first named Assured's General Counsel or Corporate Risk manager.

C. The Excess Policy

23. On July 25, 2008, the Underwriters issued the Excess Policy to Stanford Financial Group Company, Stanford Group Company and various Stanford entities for the policy period of August 15, 2008 to August 15, 2009. The Excess policy provides that the Underwriters shall indemnify or reimburse pay on behalf of the assured, any loss or losses first discovered and/or any claim or claims first made against the assured during the period of insurance hereon up to the Excess Policy's limit of liability, but in excess of the underlying policies' limits. Once again the Underwriters have claimed that the following are several terms and conditions that preclude payment:

7. Except as otherwise provided herein this Policy is subject to the same terms, exclusions, conditions and definitions as the Policy of the Primary Insurers. No amendment to the Policy of the Primary Insurers during the period of this Policy in respect of which the Primary Insures require an additional premium or a deductible shall be

effective in extending the scope of this Policy until agreed in writing by the Underwriters.

Additionally, the Excess Policy's amount of liability is "USD 45,000,000 [for] each and every loss [per] any one claim but USD 90,000,000 in the annual aggregate over all Sections combined."

VI. COUNT ONE: REQUEST FOR DECLARATORY RELIEF

25. Plaintiff incorporates paragraphs 1 through 23 by reference.

26. The Declaratory Judgment Act expressly authorizes this Court to declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. 28. U.S.C. §2201. Also, such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. *Id.*

27. Plaintiff requests that this Court issue three declarations to terminate the uncertainty or controversy giving rise to this proceeding.

A. D&O Policy

28. An actual case or controversy exists between the parties as to whether, under the circumstances set forth above, certain terms, conditions, and exclusions found in the D&O Policy relieve Underwriters of their obligation to pay for any Loss resulting from any of the Stanford Entities' Noticed Claims, including but not limited to: Exclusion I, relating to dishonest, fraudulent, or criminal acts or

omissions; Exclusion L, relating to the performance of professional services; or Exclusion T, relating to money laundering.

29. Plaintiff seeks a declaration that certain exclusions to coverage, including but not limited to Exclusion I, Exclusion L, and Exclusion T do not relieve the Underwriters obligations to pay any amounts for Loss resulting from any of Plaintiff's noticed claims.

30. Entry of a declaratory judgment is necessary and appropriate to avoid the risks and uncertainty arising out of the above-described controversy.

B. PI Policy

31. An actual case or controversy exists between the parties as to whether, under the circumstances set forth above, certain terms, conditions, and exclusions found in the PI Policy relieve Underwriters of their obligation to pay for any Loss resulting from any of the Plaintiff's notice claims, including but not limited to: Exclusion E, relating to dishonest, fraudulent, or criminal acts or omissions; Exclusion K, relating to government claims; Exclusion N, relating to the return of excessive fees; Exclusion R, relating to an intentional corporate or business policy; Exclusion S, relating to money laundering; or Exclusion X, relating to prior knowledge of circumstances.

32. Plaintiff seeks a declaration that certain exclusions to coverage, including but not limited to Exclusion E, Exclusion K, Exclusion N, Exclusion R, Exclusion

S, and Exclusion X do not relieve the Underwriters of their obligations to pay any amounts for Loss resulting from any of the Plaintiff's noticed claims.

33. Entry of a declaratory judgment is necessary and appropriate to avoid the risks and uncertainty arising out of the above-described controversy.

C. Excess Policy

34. An actual case or controversy exists between the parties as to whether, under the circumstances set forth above, certain terms, conditions and exclusions found in the primary policies relieve the Underwriters of their obligations under the Excess Policy to pay for any Loss resulting from any of the Plaintiff's noticed claims, including but not limited to: Exclusion I, Exclusion L, and Exclusion T in the D&O Policy; and Exclusion E, Exclusion K, Exclusion N, Exclusion R, Exclusion S, and Exclusion X in the PI Policy.

35. Plaintiff seeks a declaration that certain exclusions to coverage found in the D&O Policy (including but not limited to Exclusion I, Exclusion L, and Exclusion T) and certain exclusions to coverage found in the PI Policy (including but not limited to Exclusion E, Exclusion K, Exclusion N, Exclusion R, Exclusion S, and Exclusion X) do not relieve the Underwriters of their obligations to pay any amounts for Loss resulting from any of the Plaintiff's noticed claims.

36. Entry of a declaratory judgment is necessary and appropriate to avoid the risk and uncertainty arising out of the above-described controversy.

VII. COUNT TWO: BAD FAITH

37. Plaintiff incorporates paragraphs 1 through 23 by reference.

38. Plaintiff was an insured under the insurance policy reference above, that was issued by the Underwriters, which gave rise to a duty of good faith and fair dealing.

39. Underwriters breached the duty by denying and delaying payment of a covered claim when the Underwriters knew their liability under the policy was reasonably clear.

40. Underwriters' breach of duty proximately caused injury to Plaintiff, which have resulted in the following damages:

- Mental anguish;
- Violation of her 6th Amendment right to effective assistance of counsel;
- Actual damages for her outstanding legal bills to defense counsel in both her criminal and civil proceedings for which payment was promised as well as future fees, expenses, and costs that will be incurred in her defense; and
- Punitive damages for the fraudulent, malicious, intentional, or grossly negligent conduct of the Underwriters under Tex. Civ. Prac. & Rem. Code §41.003.

VIII. COUNT THREE: BREACH OF CONTRACT

41. Plaintiff incorporates paragraphs 1 through 23 by reference.

42. Underwriters refusal to pay Plaintiff's claim in accordance with the Policy constitutes Underwriters' repudiation and or breach of the Policy. All conditions precedent to recovery have been performed or have occurred, yet Underwriters have continued in their refusal to pay a valid claim.

43. Plaintiff is entitled to costs and attorney's fees for the pursuit of this action pursuant to Texas Civil Practice & Remedies Code §38.001 and Texas Insurance Code Art. 21.55.

IX. COUNT FOUR: BREACH OF THE COMMON LAW DUTY OF GOOD FAITH AND FAIR DEALING

44. Plaintiff incorporates paragraphs 1 through 23 by reference.

45. Underwriters owed the Plaintiff the duty to deal fairly and in good faith in processing Plaintiff's claim. Underwriters breached their duty of good faith and fair dealing by refusing to pay Plaintiff's claim, when based upon the facts available to Underwriters, it was reasonably clear that the Plaintiff's claim was covered and Underwriters were obligated to pay under the policy.

46. Underwriters are liable for punitive damages because Underwriters breach of the duty of good faith and fair dealing was accomplished by intentional, fraudulent or grossly negligent conduct.

X. COUNT FIVE: VIOLATIONS OF THE TEXAS INSURANCE CODE

47. Plaintiff incorporates paragraphs 1 through 23 by reference.

48. The actions of Underwriters as described above constitute violations of the Texas Insurance Code Title 5, Subtitle C, Chapter 41, as follows:

- Section 541.060(a)(1); misrepresenting to a claimant a material fact or policy provision relating to the coverage at issue;
- Section 541.060(a)(2); failing to attempt in good faith to effectuate a prompt, fair and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear;
- Section 541.060(a)(3); failing to promptly provide a policy holder a reasonable explanation of the basis of the policy, in relation to the facts or applicable law, for the insurer's denial of the claim or offer of a compromised settlement of the claims;
- Section 541.060(a)(7); refusing to pay a claim without conducting a reasonable investigation with respect to the claim;
- Section 541.061(4); making a material misstatement of law;

49. Plaintiff is entitled to an award of up to three times the amount of her actual damages because of Underwriters' knowing violations of the Texas Insurance Code.

50. Pursuant to Texas Insurance Code, Title 5, Subtitle C, Chapter 541, Subchapter 541.152, Plaintiff is entitled to a statutory penalty of 18% per annum, plus reasonable and necessary attorney's fees.

XI. COUNT SIX: REQUEST FOR EMERGENCY PRELIMINARY INJUNCTION

51. Plaintiff incorporates paragraphs 1 through 23 by reference.

52. Pursuant to Federal Rule of Civil Procedure 65(a), Plaintiff requests that this Court issue a Preliminary Injunction that requires the Underwriters to not only begin paying on claims for fees, expenses and costs already incurred by Plaintiff, but also to continue making payment for fees, expenses and costs to her attorneys in both SEC litigation and the criminal case against her.

53. Plaintiff will suffer irreparable harm if a preliminary injunction is not issued and she has no other remedy at law that can cure the immediate harm that will be done by the non-payment of fees, expenses and costs to her attorneys.

54. Plaintiff request that a hearing on the on the preliminary injunction be set within 10 days of Plaintiff providing notice to the Underwriters of her request for a preliminary injunction.

XII. EXEMPLARY DAMAGES

55. Plaintiff suffered injury independent of the loss of policy benefits, and that injury resulted from the Underwriters' gross negligence, malice, or actual fraud, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code §41.003(a).

XIII. ATTORNEY'S FEES

56. Plaintiff is entitled to costs and attorney's fees for the pursuit of this action pursuant to Texas Civil Practice & Remedies Code §38.001 and Texas Insurance Code Art. 21.55.

XIV. JURY DEMAND

57. Plaintiff hereby demands a jury trial.

XV. PRAYER

THEREFORE, Plaintiff respectfully requests that the Court enter an Order including or directing the following relief:

(A) For a declaratory judgment stating that one or more of the terms, conditions, or exclusions found in the D&O Policy do not relieve the Underwriters from any obligations to pay any amounts for Loss under that Policy resulting from any of the Plaintiff's noticed claims, including but not limited to Exclusion I, Exclusion L, and Exclusion T;

(B) For a declaratory judgment stating that one or more of the terms, conditions, or exclusions found in the PI Policy do not relieve the Underwriters from any obligations to pay any amounts under that Policy for Loss resulting from any of the Plaintiff's noticed claims, including but not limited to Exclusion E, Exclusion K, Exclusion N, Exclusion R, Exclusion S, and Exclusion, X;

(C) For a declaratory judgment stating that certain exclusions to coverage found in the D&O Policy (including but not limited to Exclusion I, Exclusion L, and Exclusion, T) and certain exclusions to coverage found in the PI Policy (including but not limited to Exclusion E, Exclusion K, Exclusion N, Exclusion R, Exclusion S, and Exclusion X) do not relieve the Underwriters of any obligations

to pay any amounts under the Excess Policy for Loss resulting from any of the Plaintiff's noticed claims;

(D) Recovery from the Underwriters of their obligations to pay defense costs both civil and criminal actions filed against Plaintiff;

(E) Actual damages as set forth in this petition;

(F) Exemplary damages or damages up to three times the actual damages, as found by the trier of fact;

(G) Attorney's fees, costs of court, pre-judgment interest, and post-judgment interest and such other and further relief that Plaintiff may show herself justly entitled to receive incurred in this action;

(H) Additional damages of 18% per annum;

(I) For such other relief the Court deems proper, just and equitable.

DATED: November 17, 2009.

Respectfully submitted,

/s/ *Dean Blumrosen*

DEAN BLUMROSEN

Attorney at Law

State Bar No: 02517900

S.D. Tex No.: 20892

4309 Yoakum Blvd., Suite 2000

Houston, Texas 77006

Phone: (713) 524-2225

Fax: (713) 524-5570

Attorney for Plaintiff

LAURA PENDERGEST-HOLT