

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CNA FINANCIAL CORPORATION,)
CONTINENTAL CASUALTY COMPANY)
and COLUMBIA CASUALTY COMPANY,)

Plaintiffs,)

v.)

CERTAIN UNDERWRITERS AT)
LLOYD'S LONDON, including SOMPO)
CANOPIUS, LLOYD'S SYNDICATE 4444)
CNP; SOMPO CANOPIUS, LLOYD'S)
SYNDICATE 958 CNP; CHAUCER)
CASUALTY, LLOYD'S SYNDICATE 1084)
CSL; MARKEL, LLOYD'S SYNDICATE)
3000 MKL; TALBOT VALIDUS GROUP,)
LLOYD'S SYNDICATE 1183 TAL; and)
BRIT GLOBAL SPECIALTY, LLOYD'S)
SYNDICATE 2987 BRT,)

Defendants.)

Case No.

2017CH09627
CALENDAR/ROOM 03
TIME 00:00
Declaratory Judgment

2017 JUL 14 PM 1:11

COMPLAINT

Plaintiffs CNA Financial Corporation, Continental Casualty Company and Columbia Casualty Company (collectively "Plaintiffs"), state the following for their complaint against defendants Certain Underwriters at Lloyd's London, namely Sompo Canopius, Lloyd's Syndicate 4444 CNP; Sompo Canopius, Lloyd's Syndicate 958 CNP; Chaucer Casualty, Lloyd's Syndicate 1084 CSL; Markel, Lloyd's Syndicate 3000 MKL; Talbot Validus Group, Lloyd's Syndicate 1183 TAL; and Brit Global Specialty, Lloyd's Syndicate 2987 BRT (collectively "Defendants"):

Introduction

1. Plaintiffs are insured under a Primary Comprehensive Crime Bond issued by Defendants in effect from October 6, 2015 to November 6, 2016 with contract number B0509FINFW1500305 (the "Bond"). The Bond is attached as Exhibit A.
2. The Bond provides Plaintiffs with up to \$25 million in Fidelity insurance coverage, subject to a \$500,000 deductible, as well as Audit Expense coverage with a limit of liability of \$1 million and no deductible.
3. Plaintiffs Continental Casualty Company ("Continental") and Columbia Casualty Company ("Columbia") (collectively, "Plaintiff Insurers") suffered a loss covered by the Bond by reason of a fraudulent scheme perpetrated by one of Plaintiff Insurers' then employees and officers ("Employee"), who stole more than \$16 million in premiums belonging to Plaintiff Insurers.
4. Plaintiff Insurers timely notified the Defendants under the Bond of this covered loss, submitted a timely proof of loss and otherwise satisfied all obligations and conditions precedent to coverage under the Bond.
5. Defendants have declined to provide coverage under the Bond.
6. Plaintiff Insurers bring this action to recover amounts owed in insurance under the Bond and other relief to which they are entitled.

The Parties

7. Plaintiff CNA Financial Corporation is a Delaware corporation with its principal place of business in Chicago, Illinois. CNA Financial Corporation is an insurance holding company and does not do business as an insurance company. CNA Financial Corporation is a

plaintiff in this action only to the extent that it is required to bring this action as the named Assured pursuant to General Agreement H(i) of the Bond.

8. Plaintiff Continental is an Illinois insurance company with its principal place of business in Chicago, Illinois. Continental is a Subsidiary (as that term is defined in the Bond) of CNA Financial Corporation and an Assured under the terms of the Bond.

9. Plaintiff Columbia is an Illinois insurance company with its principal place of business in Chicago, Illinois. Columbia is also a Subsidiary (as that term is defined in the Bond) of CNA Financial Corporation, and it is a direct and wholly owned subsidiary of Continental and an Assured under the terms of the Bond.

10. Defendants are certain underwriters or syndicates authorized to issue insurance under the name Underwriters at Lloyd's London, namely Sompo Canopus, Lloyd's Syndicate 4444 CNP; Sompo Canopus, Lloyd's Syndicate 958 CNP; Chaucer Casualty, Lloyd's Syndicate 1084 CSL; Markel, Lloyd's Syndicate 3000 MKL; Talbot Validus Group, Lloyd's Syndicate 1183 TAL; and Brit Global Specialty, Lloyd's Syndicate 2987 BRT.

Jurisdiction and Venue

11. The Bond was issued to Plaintiffs in Chicago, Illinois and many of the events giving rise to this claim occurred in Chicago, Illinois.

12. Marsh USA, Inc., Plaintiffs' broker for the Bond, was and is located in Chicago.

13. Defendants are subject to jurisdiction in this State pursuant to the Illinois Long Arm Statute, 735 ILCS 5/2-209. The Defendants are or were transacting business within Illinois pursuant to 735 ILCS 5/2-209(a)(1), and Defendants have contracted under the Bond to insure a person, property and/or risk located within Illinois at the time of contracting pursuant to 735 ILCS 5/2-209(a)(4). In addition, the Service of Suit clause in the Bond provides that

Defendants agree to submit to the jurisdiction of a court of competent jurisdiction within the United States.

14. Venue is proper under 735 ILCS 5/2-101 in that all relevant transactions pertaining to this action took place at least in part in Cook County, Illinois.

Factual Background

15. Continental hired Employee as an underwriter after Employee's graduation from college in 1988.

16. Employee was promoted to assistant vice president in 1996 and, at the end of 2007, was promoted again to Vice President, Underwriting in the Alternative Risk Group.

17. Employee held the position of Vice President from the end of 2007 until Continental terminated his employment in February 2016.

18. During the time period relevant to this action, Employee was the leader of a group that underwrote complex coverages offered by Continental and Columbia to policyholders in the health care industry. To all outward appearances, Employee was a productive and successful officer, and he was liked, trusted and respected.

19. However, unknown to Plaintiff Insurers or to anyone else, during the 15-year time period from 2001 to 2016 Employee was secretly robbing Plaintiff Insurers, stealing more than \$16 million in insurance coverage premiums that were paid in exchange for coverage that Plaintiff Insurers were providing.

20. Employee's fraud did not begin to come to light until after Continental terminated his employment in February 2016 for a reason unrelated to the fraud at issue.

21. After Employee's job termination, Plaintiff Insurers discovered the fraud that Employee had perpetrated while going through the files in his office.

22. Based on the initial indications of Employee's fraud, Plaintiff Insurers retained an outside law firm Seyfarth Shaw LLP ("Seyfarth") to perform certain functions, including investigating Employee's activities, auditing and assisting in the determination of the loss payable under the Bond.

23. The investigation uncovered fraud committed by Employee in connection with his actions in binding Columbia to provide matching deductible medical professional liability coverage for a large hospital system policyholder (the "Insured") for certain of its hospitals located within a specific geographic region. ("Account #1").

24. For many years, Plaintiff Insurers have issued Hospital Professional Liability or Medical Facilities Liability coverage for certain of the Insured's hospitals.

25. The coverage purchased by the Insured for some of its hospitals was a type known as "matching deductible" insurance.

26. As suggested by the "matching deductible" name, this type of coverage is different than standard medical professional liability coverage. It is generally purchased by large health care providers that seek to avoid higher malpractice insurance coverage rates. These providers often prefer to control, handle and adjust their own claims, and believe that they can save costs by doing so, but are still required to comply with regulatory requirements for doing business, which include having in place actual medical professional liability insurance coverage or self-insuring. Matching deductible coverage fits the needs of policyholders in this situation, such as the Insured's hospitals encompassed within Account #1, by allowing them to comply with mandatory state regulatory insurance requirements at a cost that is much less than standard malpractice coverage. An insurer providing this coverage provides its policyholder with the

insurance that is needed to meet regulatory requirements but also provides an insurance safety net that applies and pays claims if the policyholder becomes insolvent.

27. Employee first bound Columbia to provide matching deductible coverage for Account #1 starting in the 2004-2005 policy year. During this first year, Employee handled the account properly, and Columbia received the premiums paid for that coverage.

28. Employee thereafter renewed the Columbia matching deductible coverage for Account #1 from 2005 through 2016. Employee, however, did not record these renewals with Columbia and kept them secret from his colleagues by handling the account entirely by himself.

29. For these 2005 through 2016 renewals, Employee bound Columbia to coverage for Account #1 and issued invoices for premium for this coverage. The Insured paid Columbia premium for each policy bound by Employee for Account #1 by remitting payment to its broker, who accepted the Insured's premium payments on behalf of Columbia.

30. However, during the period of the fraud, Employee fraudulently directed the broker into remitting the premium (minus the 10% commissions that the broker was entitled to deduct) to a bank account that Employee controlled instead of into the appropriate account of Plaintiff Insurers, thereby defrauding Plaintiff Insurers by stealing this premium from Plaintiff Insurers.

31. In total, Employee stole more than \$13.5 million in net premiums belonging to Plaintiff Insurers for Account #1.

32. Plaintiff Insurers referred Employee's fraud to the U.S. Attorney's Office for the Northern District of Illinois, which in turn also referred the matter to the Federal Bureau of Investigation.

33. During a meeting with Employee, Plaintiff Insurers, and members of federal law enforcement, including from the U.S. Attorney's Office as well as the Federal Bureau of Investigation, which took place on June 13, 2016 at the U.S. Attorney's Office for the Northern District of Illinois (Chicago), Employee, after consulting with his criminal defense attorney, declined the Assistant U.S. Attorney's offer for proffer protection and proceeded to admit in detail his theft of Account #1 premiums.

34. A few days before the June 13, 2016 meeting, Employee's attorney informed Plaintiff Insurers that Employee had stolen matching deductible insurance coverage premiums paid by another account in 2002 ("Account #2"). Employee also admitted to his theft of the Account #2 premiums during the June 13, 2016 meeting at the U.S. Attorney's Office.

35. The manner of Employee's fraud with respect to Account #2 was nearly identical to the Account #1 fraud. Employee admitted that he renewed an existing Continental matching deductible policy for Account #2, failed to record the policy with Continental (so that no other employees of Plaintiff Insurers would be aware of it) and then directed the broker to remit the net of the premiums collected on behalf of Continental to the same bank account Employee later used for the Account #1 fraud. Employee estimated the amount of premium he stole in connection with Account #2 to be around \$340,000.00.

36. Based on records Plaintiff Insurers have obtained, it appears that the amount Employee actually stole was more than \$425,000.00.

37. During the June 13, 2016 meeting, Employee further admitted to law enforcement that in or around 2001 he also stole premiums from two additional accounts ("Account #3" and "Account #4"), which were insured under retroactively rated medical malpractice policies.

38. According to Employee, Account #3 and Account #4 owed premiums to Continental. Employee worked to collect the premium amount owed to Continental after Continental write-offs were posted on the books for these accounts.

39. Employee recalled that he collected an estimated \$3,000,000 owed to Plaintiff Insurers from Account #3 and Account #4. At the June 13, 2016 meeting, Employee initially stated that he split the recovery equally with Continental, but acting through his attorney, he subsequently corrected his estimate, stating that he kept as much as 65% of the estimated \$3,000,000 owed to Plaintiff.

40. Plaintiff Insurers have since obtained records indicating that the amount Employee collected from these accounts was more than \$3.25 million. Using the estimated percentage of Employee's theft, Employee therefore admitted to stealing more than \$2.1 million in premiums belonging to Plaintiff Insurers in connection with Account #3 and Account #4.

41. Employee repeatedly stated throughout his admissions and statements to law enforcement that he acted alone to perpetrate these fraudulent actions.

42. Employee is currently awaiting to be charged by the U.S. Attorney's Office for the Northern District of Illinois. Because Employee declined proffer protection, Employee's statements and admissions from June 13, 2016 may be used against him in any criminal prosecution, including in a plea agreement or at trial.

The Bond

43. Plaintiffs are insured under a Primary Comprehensive Crime Bond issued by Defendants in effect from October 6, 2015 to November 6, 2016 with contract number B0509FINFW1500305.

44. Insuring Agreement A of Section 1 of the Bond provides as follows:

The underwriter, in consideration of an agreed premium, agrees to indemnify the Assured for loss where discovery occurs during the Policy Period (or Discovery Period if applicable):

INSURING AGREEMENTS

(A) FIDELITY

- (1) By reason of and resulting directly from dishonest, fraudulent or malicious acts committed by an Employee acting alone or in collusion with others. Such dishonest or fraudulent acts must be committed by the Employee with the intent:
 - (a) To cause the Assured to sustain such loss, or
 - (b) To obtain financial benefit for the Employee or another person or entity acting in collusion with the Employee, or
 - (c) To cause physical loss of or damage to Property, Data or Storage Media as a result of acts committed by an Employee (including malicious acts of Employees), whether committed alone or in collusion with others, which acts are committed with the intent to cause the assured to sustain such loss.

* * *

45. Insuring Agreement A of the Bond is subject to limits of liability of \$25 million any one Single Loss and in the aggregate excess of a \$500,000 deductible.

46. Insuring Agreement I of Section 1 of the Bond provides as follows:

The underwriter, in consideration of an agreed premium, agrees to indemnify the Assured for loss where discovery occurs during the Policy Period (or Discovery Period if applicable):

* * *

(I) AUDIT EXPENSE

By reason of fees, costs and expenses paid to the Assured's auditors with the prior approval of the Underwriters, which shall not be unreasonably withheld, delayed or denied (excluding the cost of services rendered by Employees of the Assured) for producing and certifying particulars of details of the Assured's business required by the Underwriters in order to arrive at the loss payable under this Section of the policy. It is further

understood and agreed that if no loss is established hereunder then the Assured will bear all such expenses.

47. Insuring Agreement I of the Bond covering "Audit Expense" is subject to limits of liability of \$1,000,000 any one Single Loss. These limits of liability are not subject to a deductible.

Plaintiff Insurers' Proof of Loss and Defendants' Erroneous Disclaimer

48. Plaintiff Insurers timely provided written notice to Defendants under the Bond of the loss it suffered from Employee's theft of premiums for Account #1, Account #2, Account #3, and Account #4.

49. By letter dated May 20, 2016 Plaintiff Insurers issued a notice of claim and request for audit approval in which it advised Defendants of facts discovered concerning Employee's fraud related to Account #1. Plaintiff Insurers further advised that it had retained the services of Seyfarth to assist with Plaintiff Insurers' investigation of the matter for assistance with reviewing and determining the necessary steps to investigate the loss and submit a proof of loss under the Bond. Plaintiff Insurers asked Defendants to confirm their approval of their use of Seyfarth to assist in their investigation pursuant to Insuring Agreement I of the Bond.

50. On September 9, 2016 Plaintiff Insurers submitted a preliminary proof of loss with supporting attachments detailing information supporting Plaintiff Insurers' loss related to Employee's theft of premiums for Account #1, Account #2, Account #3, and Account #4.

51. Plaintiff Insurers submitted additional documentation in support of their proof of loss by correspondence dated November 18, 2016, February 23, 2017, and May 19, 2017.

52. By letter dated June 21, 2017 Defendants denied Plaintiff Insurers' claim for coverage under the Bond.

53. In addition, although Defendants initially, through their broker, advised Plaintiff Insurers by correspondence dated May 31, 2016 that it “will consider reimbursement of those fees, costs and expenses incurred by Seyfarth Shaw LLP in furtherance of producing and certifying particulars of details of the Assured’s business required by underwriters in order to arrive at the loss payable,” Defendants later, in correspondence dated November 2, 2016, advised Plaintiff Insurers that their expenses in connection with Seyfarth’s services are not covered based on the fact that Seyfarth is a law firm.

54. Plaintiff Insurers seek in this action to recover amounts owed in insurance under the Bond plus pre-judgment interest and any other appropriate relief.

COUNT I – DECLARATORY JUDGMENT

55. Plaintiffs incorporate herein the allegations set forth in paragraphs 1-54 of their Complaint.

56. Plaintiff Insurers have properly submitted a proof of loss in connection with Employee’s theft of premium for Account #1, Account #2, Account #3, Account #4 demonstrating coverage under the Bond.

57. Defendants have denied such coverage.

58. Upon information and belief the parties disagree concerning the interpretation of one or more provisions of the Bond.

59. Plaintiff Insurers therefore seek a declaration of their rights under the terms and conditions of the Bond.

60. Pursuant to section 2-701 of the Illinois Code of Civil Procedure, an actual controversy exists between the parties hereto, making this case proper for disposition by way of declaratory judgment.

COUNT II -- BREACH OF CONTRACT

61. Plaintiffs incorporate herein the allegations set forth in paragraphs 1-60.

62. The Bond is a valid and enforceable contract between Plaintiffs and Defendants.

63. Plaintiff Insurers have performed any and all obligations they may owe to Defendants and satisfied any conditions that may apply under the Bond with respect to the claims alleged herein.

64. Defendants have breached their obligations to Plaintiff Insurers under the Bond.

65. The Bond's Insuring Agreement (A), Fidelity, provides that Defendants will indemnify Plaintiff Insurers for loss "[b]y reason of and resulting directly from the dishonest, fraudulent or malicious acts committed by an Employee alone or in collusion with others."

66. Plaintiff Insurers suffered a loss from Employee's thefts of net premiums paid by Account #1, Account #2, Account #3, and Account #4.

67. The loss Plaintiff Insurers suffered as the result of Employee's thefts of net premiums paid by Account #1, Account #2, Account #3, and Account #4 falls squarely within the coverage provided by Insuring Agreement (A) of the Bond.

68. Defendants have wrongfully disclaimed coverage and have failed to provide coverage due under the Bond.

69. As a result of Defendants' breach of the Bond, Plaintiff Insurers have suffered damages in an amount equal to the loss described above minus the applicable deductible of \$500,000.

70. Plaintiff Insurers are also entitled to certain costs and fees under Insuring Agreement (I), Audit Expense, including certain of the costs and fees incurred by Seyfarth Shaw

in investigating Employee's activities, auditing and assisting in the determination of the loss payable under the Bond.

71. Plaintiff Insurers are entitled to pre-judgment interest under 815 ILCS 205/2.

WHEREFORE, Plaintiffs seek judgment in their favor against the Defendants for the amount of insurance coverage owed, plus pre-judgment interest, attorneys' fees and costs related to this action and any other appropriate relief.

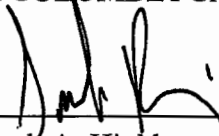
JURY DEMAND

Plaintiffs demand trial by jury.

Dated: July 14, 2017

Respectfully submitted,

CNA FINANCIAL CORPORATION,
CONTINENTAL CASUALTY COMPANY
and COLUMBIA CASUALTY COMPANY



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