

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

AIX SPECIALTY INSURANCE COMPANY

versus

**JOHN C. WILLIAMS ARCHITECTS, LLC
AND JOHN C. WILLIAMS, INDIVIDUALLY**

CASE NO:

JUDGE “_”:

MAG (_):

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff AIX Specialty Insurance Company (hereinafter “AIX”), for its Complaint for Declaratory Judgment, alleges on knowledge, information and belief as follows:

1. AIX files this action to obtain a judicial determination and declaration as to the parties’ rights and obligations under Architects and Engineers Professional Liability Policy No. L10 A48733603, issued by AIX to John C. Williams, Architects, LLC, for the policy period of November 27, 2017 to November 27, 2018 (hereinafter the “Policy”). A true and correct copy of the Policy, without the application, is attached hereto as Exhibit A.

2. An actual and justifiable controversy has arisen and now exists relating to the parties’ respective rights, duties and obligations under the Policy. In particular, AIX seeks a judicial determination that there is no coverage nor duty to defend under the Policy for the lawsuit encaptioned *Make It Right Foundation, Make It Right-New Orleans, LLC, and Make It Right-New Orleans Housing, LLC v. John C. Williams Architects, LLC and John C. Williams*, Civil District Court for the Parish of Orleans, State of Louisiana, Civil Action No. 2018-9399, Division I-14 (hereinafter the “Make It Right Action”), which names John C. Williams Architects, LLC and John C. Williams, individually, as defendants. True and correct copies of the Make It Right action Petition is attached hereto as Exhibit B. In the Make It Right Action, it is alleged that defendants John C. Williams Architects, LLC and John C. Williams individually

(hereinafter “Williams”) breached professional duties and obligations owed to their client, Make It Right, and fraudulently concealed same from Make It Right, beginning as early as 2012.

3. AIX disputes that coverage is available for the Make It Right Action because the insured Williams had knowledge of a claim by Make It Right against him, and/or had knowledge of facts which could reasonably cause him to foresee a claim, prior to the effective date of the AIX Policy, implicating the limitation on coverage set forth in the AIX Policy at Section A of the Policy. See Exhibit A.

4. Additionally, AIX disputes that coverage is available for the Make It Right Action because that claim was not first made and reported in the same AIX Policy period, as required by the terms of the AIX Policy. See Exhibit A.

PARTIES

5. Plaintiff AIX is a corporation organized and existing under the laws of the State of Delaware, and with its principal place of business in Wilmington, Delaware.

6. Defendant John C. Williams Architects, LLC is a Louisiana limited liability company organized under Louisiana law, with its principal place of business in New Orleans, Louisiana.

7. Defendant John C. Williams, individually, is a citizen and resident of New Orleans, Louisiana.

JURISDICTION AND VENUE

8. This is an action for declaratory judgment pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, and Rule 57 of the Federal Rules of Civil Procedure, for the purpose of determining a question of actual controversy between the parties as described more fully below.

9. This Action currently is ripe for adjudication.

10. This Court has jurisdiction over this Action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the opposing parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. A substantial part of the events giving rise to the claims at issue occurred in this District, and Williams maintains its office in this District.

FACTUAL BACKGROUND AND ALLEGATIONS

12. AIX issued a Claims Made and Reported Architects and Engineers Professional Liability Policy to the named insured John C. Williams Architects, LLC, with a policy period of November 27, 2017 to November 27, 2018.

13. The AIX Policy policy provides that:

This is a CLAIMS MADE AND REPORTED policy. Subject to the terms, conditions, exclusions and limitations of this policy, coverage is limited to liability for only those claims that are first made against you and reported to us in writing after the retroactive date and during the policy period or any optional extended reporting period, if exercised by you.

See Policy, Exhibit A.

14. The Policy provides limits of liability of \$2,000,000 per claim, and \$2,000,000 aggregate inclusive (?) of claims expenses. See Declarations Page, Exhibit A. The Policy also has a deductible of \$15,000 for each claim. See Declarations Page, Exhibit A.

15. Subject to all its terms and conditions, the Policy provides that:

A. COVERAGE – WHAT THIS POLICY INSURES

1. PROFESSIONAL SERVICES COVERAGE

We will pay on your behalf those sums which you become legally obligated to pay as damages and claim expenses because of any claim made against you, and reported to us in writing during the

policy period, or any extended reporting period, if applicable, arising from a wrongful act in the rendering or failure to render your professional services.

...

The following additional requirements and limitations apply to coverage provided under A.1., A.2., and A.3.:

- a. The wrongful act must have occurred on or after the applicable retroactive date(s);
- b. You had no knowledge of facts which could have reasonably caused you to foresee a claim, or any knowledge of the claim, prior to the effective date of this policy; and
- c. The claim must first be made and reported to us in writing during the policy period or any extended reporting period, if applicable, and must arise from any wrongful act to which this policy applies.

See Exhibit A, Section A.

16. Both John C. Williams Architects, LLC, and John C. Williams, individually, are insureds under the AIX Policy.

17. The Policy provides that:

B. DEFENSE AND SETTLEMENT (INCLUDED IN THE LIMIT OF LIABILITY)

We have the right to investigate and the exclusive right to defend any claim made under this policy, even if obligated to defend any criminal investigation, criminal proceeding or prosecution against you. If a claim is not covered under the policy, we will have no duty to defend it.

See Policy, Exhibit A.

18. The Policy defines "claim" as:

Claim means a written demand or suit you receive alleging a wrongful act(s) arising from your professional services.

See Policy, Exhibit A.

19. The term “policy” is defined in the Policy as:

Policy means that policy form, the Declarations, and any endorsements to the policy issued by us, and your application, including all supplements.

See Policy, Exhibit A.

20. The policy defines “professional services” as:

Professional services means those services you are legally qualified to perform for others in your capacity as an architect, engineer, land surveyor, landscape architect, construction manager, interior designer, scientist, technical consultant or as specifically defined by endorsement to the policy.

See Policy, Exhibit A.

21. The Policy defines “wrongful acts” as:

Wrongful act(s) means any actual or alleged negligent act, error or omission committed in the course of your professional services for others by you or by any other entity or joint venture for which you are legally liable in the course of rendering your professional services.

See Policy, Exhibit A.

22. The Williams insureds have demanded coverage for the Make It Right Action.

23. AIX has provided Williams with a defense to the Make It Right Action, subject to a complete Reservation of Rights, including but not limited to the issue of whether the insureds’ had knowledge of facts which could have reasonably caused them to foresee a claim, or had any knowledge of the claim, prior to the effective date of the AIX Policy, as well as the issue of whether the Make It Right claim was first made and reported in the same policy period.

THE MAKE IT RIGHT ACTION

24. In the Make It Right Action, Make It Right alleges that Williams began performing professional services for it in June 2007, in connection with a construction project.

See Exhibit B, Paragraphs 16, and 22.

25. In the Make It Right Action, Make It Right alleges that Williams was aware of

problems with the construction project, resulting from an alleged defective design by Williams, by at least 2012. See Exhibit B, Paragraphs 28 and 40.

26. In the Make It Right Action, Make It Right alleges that Williams concealed these alleged errors from Make It Right. See Exhibit B, Paragraphs 38-43.

CONTROVERSY AND RIPENESS

27. Williams has sought coverage for the Make It Right Action under the AIX Policy, including by requesting that AIX provide Williams with a defense in the Make It Right Action.

28. AIX is presently defending Williams in the Make It Right Action, subject to a Reservation of Rights.

29. The parties dispute whether coverage applies to the Make It Right claim.

30. Aix has filed this Declaratory Judgment Action seeking a Judicial determination of its duty to defend and indemnify Williams in the Make It Right Action.

31. The coverage issues at issue in this Action will directly govern AIX's defense obligations, if any, under the Policy in the Make It Right Action. This matter is therefore rip for adjudication.

COUNT I

For A Declaration That There Is No Coverage For The Make It Right Action Because Williams Had Knowledge Of Facts Which Could Have Reasonably Caused Him To Foresee A Claim, Or Knowledge Of The Claim, Prior To The Effective Date Of The Policy.

32. AIX re-alleges and incorporates by reference the allegations in Paragraphs 1-31 of this Complaint.

33. The Policy's insuring agreements define and limit the scope of the coverage provided by AIX. The Policy states that:

A. COVERAGE – WHAT THIS POLICY INSURES

1. PROFESSIONAL SERVICES COVERAGE

We will pay on your behalf those sums which you become legally obligated to pay as damages and claim expenses because of any claim made against you, and reported to us in writing during the policy period, or any extended reporting period, if applicable, arising from a wrongful act in the rendering or failure to render your professional services.

...

The following additional requirements and limitations apply to coverage provided under A.1., A.2., and A.3.:

- a. The wrongful act must have occurred on or after the applicable retroactive date(s);
- b. You had no knowledge of facts which could have reasonably caused you to foresee a claim, or any knowledge of the claim, prior to the effective date of this policy; and
- c. The claim must first be made and reported to us in writing during the policy period or any extended reporting period, if applicable, and must arise from any wrongful act to which this policy applies.

See Exhibit A, Section A.

34. The above-quoted Policy requirements are a limitation or coverage, not an exclusion to coverage, and define the scope of this coverage provided by AIX to Williams.

35. The Make It Right suit was first reported to AIX by Williams on September 21, 2018.

36. The AIX Policy states that the effective date of its pertinent policy is “November 27, 2017”. See Policy Declarations, Exhibit A.

37. The Make It Right Action alleges that Williams became aware of his alleged errors by “at least 2012”. See Exhibit B, Paragraphs 28 and 40.

38. Additionally, AIX has learned that on or about **June 25, 2015**, Make It Right

made a formal, written demand upon Williams, concerning its “claims” against Williams for “design defects” for the subject construction project.

39. The demands made by Make It Right by at least **June 25, 2015** are sufficient to constitute knowledge of facts which could reasonably cause Williams to foresee a claim, or knowledge of the claim, all of which bring the Make It Right Action beyond the scope of the coverage provided by AIX.

40. By reason of the foregoing, AIX is entitled to a judgment declining that the Policy does not afford coverage to Williams for the Make It Right Action.

COUNT II

For A Declaration That There Is No Coverage For The Make It Right Action Because This Claim Was Not First Made And Reported To AIX During The Same Policy Period.

41. AIX re-alleges and incorporates by reference the allegations in Paragraphs 1-40 of the Complaint.

42. The AIX Policy specifically provides that:

This is a CLAIMS MADE AND REPORTED policy. Subject to the terms, conditions, exclusions and limitations of this policy, coverage is limited to liability for only those claims that are first made against you and reported to us in writing after the retroactive date and during the policy period or any optional extended reporting period, if exercised by you.

See Policy, Exhibit A.

43. The Make It Right suit was first reported to AIX by Williams on September 21, 2018.

44. The AIX Policy states that the effective date of its pertinent policy is “November 27, 2017”. See Policy Declarations, Exhibit A.

45. The Make It Right Action alleges that Williams became aware of his alleged errors by “at least 2012”. See Exhibit B, Paragraphs 28 and 40.

46. Additionally, AIX has learned that on or about **June 25, 2015**, Make It Right made a formal, written demand upon Williams, concerning its “claims” against Williams for “design defects” for the subject construction project.

47. Additionally, AIX has learned that on or about **June 25, 2015**, Make It Right made a formal, written demand upon Williams, concerning its “claims” against Williams for “design defects” for the subject construction project.

48. The demand received by Williams on or about June 25, 2015 is sufficient to meet the AIX Policy definition of a “claim”.

49. Because Williams received a claim from Make It Right by June 2015 at the latest, but did not report any claim until September 21, 2018, the Make It Right claim falls beyond the claims made and reported requirements of the AIX Policy.

50. By reason of the foregoing, AIX is entitled to a judgment declining that the Policy does not afford coverage to Williams for the Make It Right Action.

WHEREFORE, AIX respectfully requests that the Court aver judgment in its favor, and declare that AIX has no obligation to defend or indemnify John C. Williams Architects, LLC or John C. Williams individually, in the Make It Right Action and, more specifically:

- A. Enter judgment that there is no coverage for the Make It Right Action because Williams had knowledge of facts which could have reasonably caused him to foresee a claim, or any knowledge of the claim, prior to the November 27, 2017 effective date of the AIX Policy;
- B. Enter judgment that there is no coverage for the Make It Right Action because that claim was not first made and reported in the same AIX policy period, as required by the Policy; and
- C. Award AIX any and all other relief to which it may be entitled.

Respectfully submitted,

FRILOT, LLC

/s/ David S. Daly _____

DAVID S. DALY (La. 20774)

ELLIOT M. LONKER (La. 24527)

1100 Poydras St., Suite 3700

New Orleans, LA 70163

Daly Phone: (504) 599-8329

Daly Fax: (504) 599-8139

Daly Email: DDaly@Frilot.com

Lonker Phone: (504) 599-8186

Lonker Fax: (504) 599-8141

Lonker Email: ELonker@Frilot.com

*Counsel for defendants, AIX Specialty Ins.
Co.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of October, 2020, a copy of the above and foregoing was filed electronically with the Clerk of Court and all counsel of record using the CM/ECF system.

/s/ David S. Daly _____

DAVID S. DALY