

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

FILED
SEP 24 2020
BRANNIE LADNER
CIRCUIT CLERK
BY: *Katherine M. Mandy*
D.C.

GULFSIDE CASINO PARTNERSHIP

PLAINTIFF

VS.

CASE NO. A2401-2020-460

WESTCHESTER SURPLUS LINES INSURANCE
COMPANY

DEFENDANT

COMPLAINT
(JURY TRIAL DEMANDED)

Plaintiff, Gulfside Casino Partnership, files this Complaint against the Defendant named herein and in support would show:

PARTIES

1. Gulfside Casino Partnership ("GCP") is a Mississippi general partnership organized under the laws of the state of Mississippi with its principal place of business located at 3300 W. Beach Blvd., Gulfport, Mississippi 39501. GCP's general partners are Gulfside Casino, Inc. ("GCI") and Copa Casino of Mississippi, LLC ("CCM"). GCP is doing business as Island View Casino Resort. The members of CCM are residents of the states of Mississippi and Texas. GCI is a Mississippi corporate entity with its principal, and only corporate office, in Gulfport, Harrison County, Mississippi.

2. Westchester Surplus Lines Insurance Company (“Westchester”) is a foreign corporation with its principal place of business and home office located at 500 Colonial Center Parkway, Suite 200, Roswell, Georgia 30076. Westchester is not a licensed insurance company in the state of Mississippi but is authorized to do business in the state of Mississippi. Westchester issues various policies of insurance in the state of Mississippi including the subject participation policy. Westchester may be served with process by service through its designated service agent. Paul Bech, Esquire, Associate General Counsel, Chubb, 436 Walnut Street, Philadelphia, PA. 19106-3703.

3. At all material times alleged, Westchester issued the subject insurance contract (policy) to GCP, a resident of the state of Mississippi. Westchester made a contract (policy) with GCP to be performed in whole or in part in this state. Further, Westchester committed a tort in whole or in part in this state against GCP as contemplated by Miss. Code Ann. §13-3-57.

JURISDICTION AND VENUE

4. This Court has proper subject matter and *in personam* jurisdiction. Venue is proper in the First Judicial District of Harrison County, Mississippi.

FACTS

5. On or about May 1, 2019, the effective date of coverage, Westchester issued a surplus lines participation policy to GCP. By Endorsement No. 1 (“Endorsement”) effective May 1, 2019, Westchester, Lloyd’s, Interstate Fire, Axis, Starr, Everest, Allied, Endurance, Underwriters at Lloyd and Independent Specialty, as participating companies, agreed to pay on behalf of GCP the amount recoverable in accordance with

the terms and conditions of the Participation Policy and Endorsement, not to exceed the participation maximum articulated in the Endorsement. For ease of reference, the Endorsement Participants, including Westchester, will be referred to collectively or singularly as "EP." A copy of the Westchester Participation Policy, including Endorsement No. 1 ("Policy"), is attached hereto as Exhibit A.

6. Westchester and the other EP charged a premium for surplus lines coverage in the amount of \$3,624,199.00. GCP paid the full amount of the premium and at the time of the acts and occurrences complained of herein, the Participation Policy and Endorsement No. 1 were in full force and effect.

7. Westchester and the other EP agreed to participate in Cancellation Coverage with a Ten (\$10,000,000.00) Million Dollar sublimit. The Policy language provides as follows:

"This policy is extended to insure the Time Element loss incurred by an Insured resulting from the cancellation of, and/or inability to accept bookings or reservations for accommodations, receive admissions, and/or interference with the business at any insured Location all as a result of the Occurrence of the following whether or not physical damage occurs to the property of the Insured or regardless of whether caused by or resulting from loss, damage or destruction from a covered cause of loss:

(c) a contagious or infectious disease at an insured Location, as determined by a public or civil authority, that affects persons or premises;

(e) any of the following that occur within a radius of 15 miles of an insured Location, to the extent such Time Element loss is not otherwise insured elsewhere in this Policy;

(1) Outbreak of a contagious and/or infectious disease as determined by a public or civil authority;

(f) closing in whole or in part of an insured Location either by the Insured or by a civil authority due to the existence or threat of hazardous conditions either actual or suspected at an insured Location;

Coverage in this provision shall not conflict or reduce coverage provided elsewhere in this policy.

HISTORICAL BACKGROUND OF COVID-19

8. On January 21, 2020, the World Health Organization began issuing daily “situation reports” on the status of the 2019-nCoV.

9. On March 11, 2020, the World Health Organization declared 2019-nCoV a pandemic.

10. On March 15, 2020 the Mississippi Department of Health reported four new cases bringing the total to 10 cases in the state. Schools were ordered closed until March 20, 2020. The schools remained closed for the remainder of the 2019-2020 calendar school year.

CLOSURE ORDER / COVERAGE TRIGGERED

11. On March 16, 2020, the Mississippi Gaming Commission (“Commission”) ordered the closure of the twenty-six (26) casinos operating in the state of Mississippi, including GCP doing business as Island View Casino Resort in the First Judicial District of Harrison County Mississippi (also referred to as Location”). At that time, GCP employed approximately 1,800 citizens.

12. Immediately following the Commission's order, GCP was unable to accept bookings or reservations for accommodations, receive admissions, and/or conduct its business at its insured Location caused by the outbreak of a contagious and/or infectious disease as determined by a public or civil authority within a 15 mile radius of an insured Location. Further, GCP was unable to accept bookings or reservations for accommodations, receive admissions, and/or conduct its business at its insured Location which involved the closing in whole or in part of an insured Location either by the Insured or by a civil authority due to the existence or threat of hazardous conditions either actual or suspected at an insured Location.

13. GCP immediately reported the matter to its insurance agent, BancorpSouth Insurance Services (BXSI). At all material times, BXSI was acting as an agent for GCP and EP. On April 29, 2020 an adjuster with Crawford Global Technical Services ("Crawford"), the assigned adjuster under the Policy, contacted GCP to acknowledge receipt of the claim on behalf of the EP. Crawford provided GCP with a written request for information.

14. On May 4, 2020, GCP provided Crawford a detailed response to its request for information, including its estimated loss of net revenue in the amount of \$46,228,293.00 for the three-month period from March - May 2020.

15. On May 7, 2020, GCP and Crawford scheduled a phone conference and discussed the information GCP provided on May 4, 2020.

16. On May 16, 2020, GCP provided Crawford with the supplemental information requested as well as a copy of the Mississippi Gaming Commission's Order

Authorizing Reopening that the Mississippi Gaming Commission (MGC) issued the same day. GCP also provided the MGC guidelines limiting GCP's operations.

17. On May 21, 2020, GCP was permitted to reopen its doors for business subject to the MGC restrictions and guidelines.

18. On July 8, 2020 Crawford Global transmitted a Reservation of Rights ("RR") letter together with various directives and postulations about coverages, defenses and exclusions. The RR letter was a shot fired across the bow by Westchester and the other EP that the claim may be denied, or the claim investigation will continue indefinitely notwithstanding the ongoing financial hardship GCP was enduring. A copy of the RR letter is attached hereto as Exhibit B.

19. Within five days, GCP transmitted its demand letter to Crawford which as of the filing of the Complaint is reposed in the stale files of Crawford and the EP. A copy of the demand letter is attached hereto as Exhibit C. On September 10, 2020, GCP sent a letter to Crawford as a follow-up to the GCP demand, its damages and addressed the failure of Crawford to respond to the demand. A copy of the letter is attached hereto as Exhibit D. Thereafter, GCP received a letter from Crawford advising that Everest Indemnity is not an Endorsement Participant on the Cancellation Coverage. Crawford did not address GCP's demand for policy limits on behalf of Westchester and the other EP.

20. GCP institutes this action to recover contract amounts due under the Participation Policy, to seek recovery under other causes of action together with all

damages it suffered and continues to suffer as a proximate result of the willful breach of contract which rises to the level of an intentional, independent tort.

COUNT I

DELAY/BREACH OF CONTRACT

21. GCP adopts and realleges each allegation set forth in the previous paragraphs to Count I.

22. At a material times the subject Policy and the Endorsement No. 1 were in full force and effect and all premiums due have been paid. GCP fully complied with its contractual obligations under the Policy, although it is now clear that Westchester and the other EP's had no intention from the outset of complying with the Policy payment obligations as evident from the sixteen (16) page RR letter.

23. The delay actions constitute a breach of contract (policy) under the terms of the Policy. The Policy creates an implied duty on the part of Westchester and the other EP to act in good faith and to deal fairly with GCP in accord with industry standards and in accord with Mississippi law in investigating, adjusting and timely paying any claim or loss submitted by GCP. This never occurred.

24. Mississippi leaders are reopening businesses under strict guidelines that will limit occupancy, require social distancing, and otherwise restrict operations. These guidelines will further require property owners to sanitize and deep-clean facilities as well as implement other protective measures. These guidelines are expected to limit GCP's business income and cause GCP to incur extra expense.

25. GCP has furnished the required financial information to Crawford. Crawford never requested a completed Proof of Loss from GCP and never sought to obtain statements under oath as provided for in the Policy. Westchester and Crawford simply refused to fully adjust this claim in good faith and has wrongfully withheld payment of the amounts due under the Policy forcing GCP to institute suit.

26. GCP is entitled to recover all amounts due under the Policy.

COUNT II

TORTIOUS DELAY/ BREACH OF CONTRACT- INTENTIONAL TORT

27. GCP adopts and realleges each allegation set forth in Count I and the previous paragraphs to Count I.

28. After receiving and accepting the premium from GCP, Westchester on behalf of the EP wrongfully refused to fully investigate, evaluate, properly adjust and pay GCP's claim, all in violation of Mississippi law and in contravention of the clear terms of the Policy. Properly adjusting a claim in accord with the implied contractual duty of good faith owed to GCP under Mississippi law does not mean adjusting a claim for the exclusive purpose of generating a defense to defeat payment of the claim.

29. Westchester and the other EP obtained a significant premium from GCP, invested the premium paid by GCP, and has realized earnings from its investment. Westchester and the other EP embarked upon a course of conduct to avoid payment under the Policy, all to its benefit and to the financial detriment of GCP.

30. With full knowledge of the consequences of its action, including full knowledge of the significant financial obligations of GCP to its lender and to maintain its

operations, Westchester's willful and wanton conduct and the utter disregard of the Policy language and the Policy rights of GCP compelled GCP to pursue litigation, incur legal fees and costs to obtain what GCP is legally and rightfully entitled to under the Policy.

31. Such willful, wanton or grossly negligent conduct is void of a reasonable or arguable basis to deny or withhold coverage and to delay the payment of the claim which elevates the conduct of Westchester and the other EP to an independent tort.

32. In addition to the contract and compensatory damages sought in Counts I, II and III, GCP is entitled to punitive damages and attorney fees as a proximate result of the willful, wanton and oppressive breach of the Policy and the conduct of Westchester and the other EP that resulted in the breach.

COUNT III

NEGLIGENCE PER SE VIOLATION OF MISSISSIPPI STATUTORY LAW

33. GCP adopts and realleges each allegation set forth in Counts I and II and the previous paragraphs to Count I.

34. In addition to the foregoing, while improperly refusing to pay GCP's claim and forcing GCP to pursue litigation to recover amounts due under the Policy, Westchester violated Mississippi statutory law with respect to the renewal of the Policy. Westchester ignored the statutory notice requirement when an insurer makes material and substantial changes in its coverage. This failure forced GCP to accept the reduced coverage while also having to pay a premium more than 20% greater than the prior year's premium. On May 1, 2020, GCP was compelled to renew its coverage. The premium

charged for the coverage increased more than 20% (from \$3,624,199.00 in 2019 to \$4,533,452.00) although Westchester and the other EP, with blatant impunity, refused to pay under the terms of the Cancellation Coverage.

35. With full knowledge that GCP is required by its lenders to carry the coverage afforded under the Policy and with full knowledge its conduct has and will continue to harm GCP, Westchester failed to provide GCP with the required statutory notice that there was material and substantial changes in the Policy by reducing coverage for the 2020-2021 policy period.

36. The commissions and omissions of Westchester are in clear violation of Miss. Code Ann. §§ 83-5-28 and 83-11-7. The oppressive, wanton or grossly negligent conduct placed GCP in an impossible situation with the Policy expiration imminent and the financial losses sustained by GCP under the current policy continuing to escalate. As such, GCP is entitled to actual and punitive damages.

COUNT IV

ATTORNEY FEES/VEASLEY FEES

37. GCP adopts and realleges each allegation set forth in Counts I, II and III and the previous paragraphs to Count I.

38. In the event of a punitive damage judgment against Westchester, GCP is entitled to an award of attorney fees or, alternatively, in the absence of a punitive damage judgment, GCP is entitled to attorney fees under the teachings of *Universal Life v. Veasley*.

WHEREFORE, PREMISES CONSIDERED, GCP moves for judgment as follows:

- A. Judgment against Westchester under Counts I, II and III for actual and compensatory damages greater than \$10,000,000.00 in addition to punitive damages greater than \$90,000,000.00 utilizing a multiplier of nine times the actual and compensatory damages.
- B. Attorney fees under Count IV against Westchester in conjunction with the punitive damage award, or alternatively, an award of attorney fees under the teachings of *Universal Life v. Veasley*.
- C. Pre-judgment and post-judgment interest. Pre-judgment interest is based on the liquidated sum fixed under the Policy as of the date of loss.
- D. Any further relief to which GCP may be entitled.

Respectfully submitted this the 24th day of September 2020.

GULFSIDE CASINO PARTNERSHIP,
PLAINTIFF

OWEN and OWEN, P.L.L.C.

BY:



JOE SAM OWEN

JOE SAM OWEN (MSB# 3965)
MITCHELL L. OWEN (MSB# 103895)
OWEN and OWEN, P.L.L.C.
1414 25th Avenue
Post Office Drawer 420
Gulfport, MS 39502-0420
TEL: (228) 868-2821
FAX: (228) 864-6421
EMAIL: jso@owen-owen.com
EMAIL: mlo@owen-owen.com