

CAUSE NO. D-1-GN-21-000984

RGF OHR USA, INC.	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
CONTINENTAL CASUALTY	§	
COMPANY,	§	
Defendant.	§	<u>345TH</u> JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, RGF OHR USA, INC., and files this Original Petition against CONTINENTAL CASUALTY COMPANY (hereafter "Continental" or "Defendant") and in support thereof, would show as follows:

I.

DISCOVERY CONTROL PLAN LEVEL

1. Plaintiff intends for discovery to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure. This case involves complex issues and will require extensive discovery. Therefore, Plaintiff will ask the Court to order that discovery be conducted in accordance with a discovery control plan tailored to the particular circumstances of this suit.

II.

PARTIES AND SERVICE

2. Plaintiff, RGF OHR USA, INC, is a holding company. It fully owns Indeed, Inc. which is a company that provides job referral and search services to potential employees and

employers. Indeed's offices are co-headquartered in Austin, Texas and Stamford, Connecticut. Plaintiff is incorporated in Delaware.

3. Continental Casualty Company ("Continental" or "Defendant") is in the business of insurance in the State of Texas. The insurance business done by both entities in Texas includes, but is not limited to, the following:

- The making and issuing of contracts of insurance with the Plaintiff;
- The taking or receiving of application for insurance, including the Plaintiff's application for insurance;
- The receiving or collection of premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from the Plaintiff; and
- The issuance or delivery of contracts of insurance to residents of this state or a person authorized to do business in this state, including the Plaintiff.

4. Defendant Continental Casualty Company can be served through its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136. Service is requested at this time.

III.

JURISDICTION AND VENUE

5. Venue is appropriate in Travis County, Texas because all or part of the conduct giving rise to the causes of action took place in Travis County, Texas, and some of the Property which is the subject of this suit is located in Travis County, Texas. Accordingly, venue is proper pursuant to Texas Civil Practice & Remedies Code §15.002.

IV.

BACKGROUND FACTS

6. Plaintiff's wholly owned subsidiary, Indeed, is the number one job site in the world, with over 250 million unique visitors every month. Indeed provides job seekers free access to search for jobs, post resumes, and research companies. Indeed also provides free and paid services to employers with the goal of helping them find hires for their open roles – posting and marketing job opportunities, assisting companies search through resumes, and organizing hiring events. Indeed has offices in Austin, Texas as well as Connecticut, California, New York, Arizona, and Washington state.

7. Plaintiff is the owner of an Insurance Policy (hereinafter referred to as "the Policy").¹ Defendant provided the Plaintiff's business insurance for all personal and real property owned by Plaintiff within the United States (hereinafter referred to as "the Property"). Defendant sold the Policy insuring the Property to Plaintiff. The Declarations pages for the Policy and the policy provided to Plaintiff are attached hereto as Exhibit A. The Policy has been continuously in full force and effect since inception, providing coverage for, among other things, property, business personal property, business income, extra expense, and leasehold interests. Plaintiff has performed all of its obligations under the Policy, including faithfully paying significant premiums to cover the business from loss.

8. The World Health Organization ("WHO") identified the disease caused by the 2019 Novel Coronavirus as "COVID-19" on February 11, 2020. On March 6, 2020, the City of Austin decided to cancel its annual SXSW Film Festival. On March 11, WHO characterized COVID-19 as a pandemic. WHO saw "alarming levels of spread and severity, and by the alarming levels of

¹ Plaintiff has been substituted for Indeed as the beneficiary of the Policy. See Ex. B (endorsement recognizing name change).

inaction." WHO representatives stated, "[W]e have never before seen a pandemic sparked by a coronavirus. This is the first pandemic caused by a coronavirus. And we have never before seen a pandemic that can be controlled, at the same time." The Center for Disease Control ("CDC") has stated that a "pandemic is a global outbreak of disease. Pandemics happen when a new virus emerges to infect people and can spread between people sustainably. Because there is little to no pre-existing immunity against the new virus, it spreads worldwide."

9. On March 13, 2020, the State of Texas Governor Greg Abbott issued a Declaration of State Disaster as a result of Covid-19 and the next day, the Mayor of Austin prohibited gatherings of 250 or more. On March 23 and 24, 2020, "Stay Home Stay/Work Safe" orders were issued in Travis County. On March 31, 2020, the State of Texas Governor Greg Abbott signed an executive order for the public to stay home and closing all "non-essential" businesses and limiting other businesses beginning April 2nd through April 30th of 2020. The City of Austin extended their "Stay Home Stay Safe" order until May 8, 2020, with plans to extend it further. The described purposes of the Orders are to protect the "health, safety and welfare" of Travis County and Texas residents, and to slow the spread of Covid-19 by "minimizing social gatherings" and "minimize in-person contact." According to the Texas Department of Health and Human Services, Covid-19 has been and continues to be present in Travis County.

10. Similar orders were issued by state and local civil authorities where Indeed also has offices, in Connecticut, California, New York, Arizona, and Washington state. From March 2020 to the present, these and similar orders have continued to cause Indeed the direct physical loss of its office space.

11. On March 4, 2020, based on concerns about the possible spread of COVID-19 at its offices, Indeed closed all of its offices and ordered its employees to work from home. In

response to orders from civil authorities at the state and local level, and based on continued concerns about the possible spread of COVID-19 at its offices, from March 4, 2020 through the present, Plaintiff has continued to keep its offices closed and its employees have continued to work from home.

12. As a result of Plaintiff's direct physical loss of its offices, Plaintiff has experienced loss of earnings due to, at least in part, the following:

- Diminished capacity to manage sales staff and client support teams, which has limited Indeed's ability to attract and retain customers
- The total and complete loss of value of services from vendors that Indeed uses onsite at its offices, including transportation, custodial services, catering, etc.
- The total and complete loss of the ability to invite clients and potential clients onsite for production demonstrations, which has limited Indeed's ability to attract and retain customers
- Diminished productivity of all employees due to technology issues relating to working remotely
- Diminished productivity caused the inability to meet in person
- Additional costs of equipping employees with the necessary technology to work remotely
- Additional costs associated with retro-fitting and reopening some of its offices

13. On August 21, 2020, Plaintiff asked that Defendant cover the costs for business interruption, extra expense, civil authority, and leasehold interest, pursuant to the Policy. To date, Defendant has mishandled Plaintiff's claim and caused and will continue to cause Plaintiff further and additional damages.

14. Plaintiff's Policy "insures against risks of direct physical loss of or damage to property and/or interests." See Exhibit A at 10. The Policy also "covers against loss resulting from necessary interruption of business caused by direct physical loss of or damage to covered property," including lost earnings. *Id.* at 11. Covered property includes "all real and personal property owned or used by" Indeed." *Id.* at 10. Plaintiff suffered lost income when it was forced to close its offices due to fear of COVID-19.

15. The reference to "direct physical loss of or damage to covered property" in the Policy necessarily includes "loss" of property that does not involve physical damage; otherwise the phrase "direct physical loss" becomes a nullity. The disjunctive "or" is used as a function word to indicate an alternative. If "loss" of property necessarily required some kind of "damage" to the property, then there would be no need to refer to "loss," because all instances of "loss" would already be covered by the reference to "damage."

16. At the very least, there is an ambiguity in the Policy as to whether "loss" includes the loss of the use of property, even when the property is not physically damaged. Defendant could have, but did not, define "direct physical loss" to limit the coverage to being predicated only on actual physical damage to property. The ambiguity must be construed against Defendant.

17. Plaintiff's Policy also provides additional coverage for the "actual loss sustained"
- "a. during the period of time while access to the Insured's Location is prohibited by order of civil authority, but only when such order is given as a direct result of physical loss or damage to property of the type insured from a peril insured against occurring at or in the immediate vicinity of said Location;
or

- b. during the period of time when as a direct result of physical loss or damage to property of the type insured from a peril insured against, ingress to or egress from the Insured's Location is thereby physically prevented.” *Id.* at 14.

18. The orders of state and local governments that prevented Indeed from using its offices throughout the country qualify as orders of a “civil authority.” Furthermore, these orders were issued in response to threat of COVID-19, which as described above, had caused Plaintiff “physical loss” of its property. Accordingly, the losses Indeed suffered as a result of the stay-at-home orders issued by various state and local governments are covered by the Policy.

19. The Policy also insures Plaintiff against “reasonable and necessary extra expense, as hereinafter defined, incurred by the Insured in order to continue as nearly as practicable the normal operation of the Insured's business following direct physical loss of or damage to covered property...”. *Id.* at 15. As mentioned above, Plaintiff incurred multiple extra expenses in order equip its employees to work from home, including but not limited to purchasing and shipping additional equipment, and training employees on the technology needed for remote work. These extra expenses are plainly covered by the Policy, as they were necessary for Indeed to carry on operations as normally as possible.

20. The Policy also insures Plaintiff's leasehold interest in the real property that it leases if its loss of the leasehold interest is “caused by physical loss or damage...”. *Id.* at 17. The Policy insures covers the cost of rent for property that is wholly or partially “untenable or unusable.” *Id.* The office space that Plaintiff leases qualifies, because it has become unusable and untenable as a result of the physical loss of the property due to COVID-19 and the related civil authority orders.

21. Defendant responded to Plaintiff's August 21, 2020 Notice of Claim by email dated September 2, 2020, requesting additional information from Plaintiff. Plaintiff has continued to gather information relevant to its claimed losses; because these losses are ongoing, Plaintiff's information-gathering is likewise an ongoing process.

22. In March 2021, Plaintiff asked Defendant to enter into a tolling agreement to preserve Plaintiff's rights under the Policy while it continued to gather information and explore its options with regard to recovering under the Policy. On the morning of March 4, 2021, Defendant indicated its refusal to enter the tolling agreement. Based on a one-year limitations period in the Policy for any related legal action, in order to preserve its rights under the Policy, Plaintiff is filing this Complaint.

V.

CAUSES OF ACTION

A. BREACH OF CONTRACT

23. Plaintiff re-alleges the foregoing paragraphs. Defendant and its agents' conduct constitute a breach of the insurance contract between it and Plaintiff. Defendant's failure and/or refusal, as described above, to pay Plaintiff adequate compensation as it is obligated to do under the terms of the Policy in question constitutes a breach of the insurance contract with Plaintiff.

24. Defendant failed to perform its contractual duty to adequately compensate Plaintiff under the terms of the Policy. Although due demand was made for proceeds to be paid in an amount sufficient to cover Plaintiff's business loss, and all conditions precedent to recovery under the Policy have been carried out and accomplished by Plaintiff, Defendant's conduct constitutes a breach of the insurance contracts between it and Plaintiff.

B. THE PROMPT PAYMENT OF CLAIMS

25. Plaintiff re-alleges the foregoing paragraphs. Defendant failed and will fail to meet its obligations under the Texas Insurance Code regarding payment of claim without delay due to its wrongful denial. Its conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.058.

26. Because of Defendant's wrongful acts and omissions, Plaintiff was forced to retain the professional services of the attorney and law firm who is representing it with respect to these causes of action.

VI.

KNOWLEDGE

27. Each of the acts described above, together and singularly, was done "knowingly" by Defendant as that term is used in the Texas Insurance Code and was a producing cause of Plaintiff's damages described herein.

VII.

DAMAGES

28. Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the proximate and producing causes of the damages sustained by Plaintiff.

29. For breach of contract, Plaintiff is entitled to regain the benefit of the bargain, which is the amount of the claim, together with attorney's fees.

30. For noncompliance with the Texas Insurance Code, Prompt Payment of Claims, Plaintiff is entitled to the amount of the claim, as well as eighteen (18) percent interest per annum on the amount of such claim as damages, together with attorney's fees. TEX. INS. CODE §542.060.

31. For the prosecution and collection of this claim, Plaintiff has been compelled to engage the services of the attorney whose name is subscribed to this pleading. Therefore, Plaintiff is entitled to recover a sum for the reasonable and necessary services of Plaintiff's attorney in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the Supreme Court of Texas.

IX.

FIRST REQUEST FOR PRODUCTION TO DEFENDANT

32. Pursuant to the Texas Rules of Civil Procedure 196, Plaintiff requests that Defendant provide the information required:

- 1) Produce the non-privileged portion of Defendant's complete claim file for Plaintiff's Property relating to or arising out of Plaintiff's losses for which Defendant opened a claim under the Policy.
- 2) Produce all emails and other forms of communication between Defendant, its agents, adjusters, employees, or representatives and the agent and adjuster, and/or their agents, adjusters, representatives or employees relating to, mentioning, concerning or evidencing the Plaintiff's Policy and/or Property which are the subject of this suit.
- 3) Underwriting documents and communications, including but not limited to, any and all materials, documents, notations, files, reports, correspondence and/or other communications related to Plaintiff's application/s for coverage, binders, proposals, and the issuance of the policy, including renewals thereof. This request also includes materials, determination and/or method for determining the forms and endorsements to be used in creating the policy. This request also includes information regarding the basis for rating and premium classifications used for Plaintiff. Finally, this request includes any internal communications or guidelines regarding the handling and/or coverage positions of Defendant regarding business interruption and other claims related to the 2019 Novel Coronavirus and/or COVID-19.
- 4) Any and all documents and/or communications from Defendant or any parent, subsidiary or affiliated entities to any third-party, including but not limited to insurance agents and brokers, marketing and/or public relations firms, at any time after March 4, 2020, and relating in any way to coverage or exclusions or denials of coverage for civil authority or for business interruption or business income loss and/ or commercial property coverage mentioning or referencing the 2019 Novel Coronavirus, the pandemic, and/or COVID-19.

X.

33. WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer herein; that, on final hearing, Plaintiff has judgment against Defendants for an amount, deemed to be just and fair by the jury, which will be a sum within the jurisdictional limits of this Court. Plaintiff pleads that the damages will be more than \$1,000,000. Plaintiff further pleads for costs of suit; for interest on the judgment; for pre-judgment interest; and, for such other and further relief, in law or in equity, either general or special, including the non-monetary relief of declaratory judgment against Defendants, to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Thomas A. Nesbitt

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