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BIG DRAW ENTERTAINMENT, LLC

Plaintiff,

v.

BEAZLEY INSURANCE SERVICES, INC.;
EVEREST INDEMNITY INSURANCE
COMPANY; JOHN DOES 1-25,

Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON VICINAGE
LAW DIVISION

DOCKET NO.:

Civil Action

COMPLAINT

Plaintiff, Big Draw Entertainment, LLC, by way of Complaint, hereby states as follows:

INTRODUCTION

1. This is an action for breach of contract and bad faith arising from Defendants' unjustified denial of coverage under a specialty insurance policy purchased by Plaintiff for entertainment event cancellation.

PARTIES

2. Plaintiff, Big Draw Entertainment, LLC ("BDE"), is a duly formed New Jersey limited liability company with a principal place of business at 470 Broadway, Suite 271, Bayonne, New Jersey.

3. BDE was formed for the purpose of, *inter alia*, financing and funding ventures and events in the entertainment industry.

4. Defendant, Beazley Insurance Services, Inc. (“Beazley”), is a specialist insurance services company with a place of business at Ernst & Young Plaza, 725 S. Figueroa Street, Suite 2050, Los Angeles, California.

5. Defendant, Everest Indemnity Insurance Company (“Everest”), is an insurance provider and underwriter with a domestic headquarters at 1 Everest Way, Warren, New Jersey.

6. Defendants, John Doe 1-25, are fictitious individuals or entities, including but not limited to insurance agents, adjusters, entertainment promoters and ticketing agents, who are or may be liable to BDE for the claims asserted in the Complaint.

FACTUAL BACKGROUND

7. BDE was the financial sponsor of a Deep Purple concert tour in Mexico initially consisting of ten shows scheduled to take place from November 3, 2018 to November 24, 2018.

8. In or about September 2018, BDE obtained a policy of event cancellation insurance (No. W0000247918P) from Beazley designed to reimburse BDE for losses occasioned by the potential cancellation, abandonment, disruption or rescheduling of any of the shows (the “Policy”). BDE paid the premium for the Policy on November 8, 2018.

9. Beazley issued the Policy (as coverholder for Certain Underwriters at Lloyd’s of London) only after an exacting five month underwriting process. This process involved, among other things, a careful review of contracts and financials, and an investigation of the band members, its management, promoters and other tour participants.

10. The underwriting was so detailed that Beazley and Everest learned of a two-year-old health event involving the drummer.

11. Notwithstanding the availability of an alternate drummer on the outside chance that the original drummer could not perform, Beazley nearly doubled the premium as a condition of issuing the Policy.

12. Based on the Policy language, Everest and Beazley bear an equal percentage of the limit of liability.

13. The Policy period was from September 28, 2018 to November 26, 2018.

14. The Policy covered, “net loss[es] following the necessary cancellation, abandonment, disruption or rescheduling of the event, which is the sole and direct result of a cause not otherwise excluded which occurs during the period and is beyond your control and the control of the participants.”

15. Each show was subject to different indemnity limits based upon an assessment of anticipated losses arising from a covered cancellation.

16. The two final shows of the tour were scheduled for November 21, 2018 and November 24, 2018.

17. The indemnity limit for the November 21, 2018 show was \$511,816.

18. The indemnity limit for the November 24, 2018 show was \$792,166.

19. Both shows were necessarily canceled solely for reasons beyond BDE’s control, and the control of the tour participants as that term is defined in the Policy.

20. It was reported that the shows were forced to cancel due to the abrupt loss and unavailability of the sound and lighting equipment and contractor, and thereafter, for security concerns expressed by an alternate venue.

21. Accordingly, on November 24, 2018, BDE made a timely claim under the Policy for losses associated with the cancellations.

22. Premier Insurance Services was assigned to investigate and adjust the claim (“Premier”).

23. BDE cooperated fully in the claims’ investigation.

24. However, neither Beazley nor Premier conducted an adequate or sufficient investigation, and affirmatively chose not to inquire into the facts supporting BDE’s claim.

25. Neither Beazley nor Premier interviewed the principals of BDE who had been present for parts of the tour, or the principal of BDE who served as assistant tour manager and who was present for the entire tour.

26. Beazley and Premier likewise did not interview or obtain information from the tour promoter, the lighting and sound sub-contractor, the production manager or venue representatives; all of whom had the most knowledge of the circumstances of the cancellations.

27. In addition to the inadequate investigation, Beazley and Everest delayed making a coverage determination for two years.

28. On November 13, 2020, Beazley issued a letter denying coverage entirely, and refused to make any payments under the Policy on the purported grounds that the cancellations were either not coverage triggering events or were subject to certain exclusions under the Policy.

29. This determination was based on information from individuals who were not in a position to, and did not, know the operative facts underlying the claim.

30. The limited nature and narrow scope of the investigation demonstrated a predetermined intent to deny the claim, and once Beazley and Premier found a purported basis to do so, they looked no further.

31. BDE disputed the coverage determination, but Beazley has refused to reconsider it, or conduct any further investigation as demanded and required.

32. Rather, Beazley purported to agree to mediation leading BDE to believe that it was open to discussion of its decision, and willing to give BDE the opportunity to present additional evidence supporting the claim.

33. Shortly before the mediation, however, Beazley withdrew, citing grounds that were simply a pretext for evading its responsibility to BDE.

COUNT I
BREACH OF CONTRACT

34. Plaintiff incorporates each and every allegation in the complaint as if set forth herein at length.

35. The Policy constitutes a valid and enforceable contract between the parties.

36. Under the Policy, Beazley agreed to cover losses occasioned by necessary event cancellations out of BDE's control and not otherwise excluded.

37. The cancellations for which BDE submitted claims were coverage triggering events.

38. The claims were not subject to any Policy exclusions.

39. BDE complied with all Policy provisions, including the payment of premiums and timely notice of claims.

40. Nonetheless, Defendants have unjustifiably refused to pay BDE's claim in breach of the Policy.

41. BDE has and continues to suffer damages as a result of the breach.

WHEREFORE, Plaintiff demands judgment against Defendants for:

- a. compensatory damages;
- b. interest as provided by statute and common law;
- c. reasonable attorneys' fees and costs; and

- c. such other relief as the Court may deem equitable and just.

COUNT II
BAD FAITH DENIAL OF COVERAGE

42. Each and every insurance contract contains an implied covenant of good faith and fair dealing with its insured as to *inter alia* the handling of claims made against the policy.

43. BDE suffered a compensable loss under the Policy, and properly presented its claim to Defendants.

44. Defendants placed their own interests above that of BDE, unreasonably and unjustifiably denied a covered claim, and otherwise dealt with BDE in a manner that showed a preordained decision to deny any claims.

45. Defendants failed and refused to conduct a full, fair and prompt investigation of the claim.

46. Defendants failed and refused to fully, fairly and promptly evaluate and adjust the claim, intentionally delaying a coverage determination for two years.

47. Defendants denied BDE's claim based on insufficient and biased information.

48. Defendants did not search the Policy for grounds for coverage that would protect BDE, but rather, searched Policy, and conducted its investigation, for the purpose of finding a basis to deny coverage.

49. Defendants' conduct constitutes a breach of the covenant of good faith and fair dealing which has and continues to cause BDE to suffer damages.

WHEREFORE, Plaintiff demands judgment against Defendants for:

- a. compensatory and punitive damages;
- b. interest as provided by statute and common law;
- c. reasonable attorneys' fees and costs; and

d. such other relief as the Court may deem equitable and just.

Flowers & O'Brien, LLC
*Attorneys for Plaintiff, Big Draw
Entertainment, LLC*

By: /s/ Kerry Brian Flowers
Kerry Brian Flowers, Esq.

Dated: November 4, 2022

CERTIFICATION OF NO OTHER ACTIONS

Pursuant to Rule 4:5-1, I certify that to the best of my knowledge and belief, the matter in controversy is not the subject of any action pending in any other court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I know of no other parties other than the parties set forth in this pleading that should be joined in the above action. I recognize the continuing obligation of each party to file with the Court and serve on all parties an amended Certification if there is a change in the facts stated in this original Certification.

By: /s/ Kerry Brian Flowers
Kerry Brian Flowers, Esq.

Dated: November 4, 2022

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Kerry Brian Flowers, Esq. is hereby designated as trial counsel on behalf of the Plaintiff.

By: /s/ Kerry Brian Flowers
Kerry Brian Flowers, Esq.

Dated: November 4, 2022

CERTIFICATION PURSUANT TO R. 4:5-1(b)(3)

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

By: /s/ Kerry Brian Flowers
Kerry Brian Flowers, Esq.

Dated: November 4, 2022