IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ERIK TAUBE, DMD, DBA TAUBE FAMILY DENTAL, on behalf of himself and all others similarly situated, Plaintiff, v. HARTFORD FINANCIAL SERVICES GROUP INC, DBA THE HARTFORD, a Delaware Corporation, and TWIN CITY FIRE INSURANCE COMPANY, an Indiana Corporation Defendants.	)	Case No.: 3:20-cv-00565-SMY JURY TRIAL DEMANDED

PLAINTIFFS' BRIEF IN OPPOSITION TO HARTFORD FINANCIAL SERVICES GROUP'S MOTION TO DISMISS

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I. INTRODUCTION

Hartford Financial Services Group ("HFSG" as it calls itself or "The Hartford" as Plaintiff does) bases its argument that it has nothing to do with this case principally on the supposed fact that it is merely "a holding company that does not write insurance policies."[1] For that proposition, it relies on a self-serving statement in an SEC document that it "has no significant business operations of its own." But Plaintiff alleges that he purchased his insurance Policy from "The Hartford" – *i.e.*, HFSG – an allegation that must be taken as true at this stage. And Plaintiff didn't just make it up. As he shows herein, his Policy refers over and over again to the entity with which he is doing business as "The Hartford"– *close to 20 times* the number of references to the nominal "insurer," Twin City Fire Insurance Company ("Twin City"). Nowhere does the Policy say that "The Hartford" means "Twin City," and who would think it does? "Twin City Fire Insurance Company" doesn't even have "Hartford" in its name. Not only that, but, on behalf of the insurer, the Policy was signed by two individuals identified as "Our President and Secretary," who turn out to be the President *of HFSG* and a "corporate secretary" who lists her employer on www.linkedin.com as HFSG, where she is Assistant General Counsel. And the Policy's third signatory was a Compliance Officer of HFSG, where she serves as Vice President. Other evidence as well, as shown below, demonstrates that HFSG was a party to the Policy and controlling Twin City's operations. In fact, someone other than Twin City has to have been running things. Based on what Plaintiff has learned, Twin City seems to have no employees.

The basis for this motion thus falls apart. By alleging that he purchased his Policy from The Hartford, Plaintiff has established Article III standing and personal jurisdiction sufficient to survive this motion. The same is true of The Hartford's argument that Plaintiff fails to state a claim. Perhaps The Hartford can come up with a sufficient evidentiary basis to show it doesn't

[1] Mem. in Supp. of Def. Hartford Fin. Serv. Grp, Inc.'s Mot. to Dismiss ("Def. Mem"), Doc. #33 at 7.

belong in this case, but that's for summary judgment, as courts have repeatedly found when The Hartford tried this same gambit before. It doesn't warrant dismissal under Fed. R. Civ. P. 12. As *Smith v. Sentinel Ins. Co., Ltd.*, 2010 WL 5174377, at *2 (N.D. Okla. Dec. 15, 2010), explained

> The contract is replete with references to both "The Hartford" and to "Sentinel Insurance Company's" ("Sentinel") role in the contract. (See Dkt. # 2–1, p.6–38). The complaint thus states a plausible claim that HFSG is a proper party defendant in this case. HFSG's arguments that "The Hartford" is merely a trade name, and that HFSG did not have sufficient involvement in the insurance claim to either be in privity or a special relationship are arguments better addressed on summary judgment. Therefore, the Motion to Dismiss (Dkt. # 16) is denied.

This Court should make a similar finding and deny this motion.

II. PROCEDURAL BACKGROUND

Plaintiff, a dentist in Mascoutah, brought this action on June 15, 2020, alleging that he and a putative class of Illinois dental practices insured by The Hartford had sustained business losses because of the COVID-19 pandemic. Plaintiff's Class Action Complaint, Doc. #1. He relied on a provision that provided for reimbursement of losses when a business suspension was "caused by direct physical loss of or physical damage to property." *Id.* ¶ 72.

In response, Defendants each moved to dismiss. *See* Doc. #19, #21. Twin City relied on the Policy's so-called "Virus Exclusion" that provides that the insurer will not pay for losses from the "[p]resence, growth, proliferation, spread or any activity of '… virus." Doc. #22 at 3. It did not challenge Plaintiff's allegation that it had sustained losses due to a suspension of its business "caused by direct physical loss of or physical damage to property." HFSG filed its own motion arguing, as it does here, that it doesn't belong in this case because it wasn't a party to the Policy.

Plaintiff followed with the pending Amended Complaint ("Am. Comp."), Doc. #27, in which he elaborated on his allegations against "The Hartford," the name he used for HFSG. *See* Am. Comp. at 1 (Intro. Para.) and ¶¶ 17-19, 63-66. He also alleged that the Virus Exclusion did not apply because it requires the "presence" of a virus on the insured's property and there was "no

evidence that the virus ha[d] ever been in their premises." *Id.* ¶¶ 78-80. He additionally alleged that, even if the Virus Exclusion were applicable, "under the principles of regulatory estoppel and general public policy, Defendants should be estopped from enforcing it." *Id.* ¶ 81. In support, he alleged that the insurance industry, including The Hartford, had obtained regulatory approval of the Virus Exclusion by falsely claiming that it was a mere clarification in that – or so the industry represented – the policies had never been, nor were intended to be, a source of recovery for loss caused by disease-causing agents. *Id.* ¶¶ 82-91. That representation was false because "courts had repeatedly found that property insurance policies covered claims involving disease-causing agents, and had held on numerous occasions that any condition making it impossible to use property for its intended use constituted 'physical loss or damage to such property.'" *Id.* ¶ 87.

In response, Twin City abandoned the position that the complaint should be dismissed for failure to state a claim. Instead, it answered the Amended Complaint.[2] The case against it is therefore now at issue, and discovery can begin once the Court holds a Scheduling Conference. The Hartford, however, attacked the Amended Complaint with the instant motion.

III. ARGUMENT

A. The Amended Complaint Adequately Alleges That The Hartford (or HFSG) Was a Party to the Contracts

The Amended Complaint uses the short name, "The Hartford" for HFSG and alleges that Plaintiff purchased his Policy from it. Am. Comp. ¶¶ 1, 3, 63. On this motion, that must be taken as true. "For purposes of a motion to dismiss, the court must accept all factual allegations in the complaint as true and draw all reasonable inferences from those facts in favor of the plaintiff." *Appleby v. Sprint Nextel Corp.*, 2008 WL 2130428, at *1 (S.D. Ill. May 20, 2008) (Gilbert, J.). "[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual

[2] *See* Answer and Affirmative Defenses of Twin City to Plaintiffs' Amended Class Action Complaint ("TC Answer"), Doc. #31.

proof of those facts is improbable, and that a recovery is very remote and unlikely." *Indep. Tr. Corp. v. Stewart Info. Servs. Corp*., 665 F.3d 930, 935 (7th Cir. 2012) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). But there is no reason to think that proof of those facts is improbable here. Everything about these transactions suggests that The Hartford, meaning HFSG, was a party and that The Hartford operates as one unitary entity.

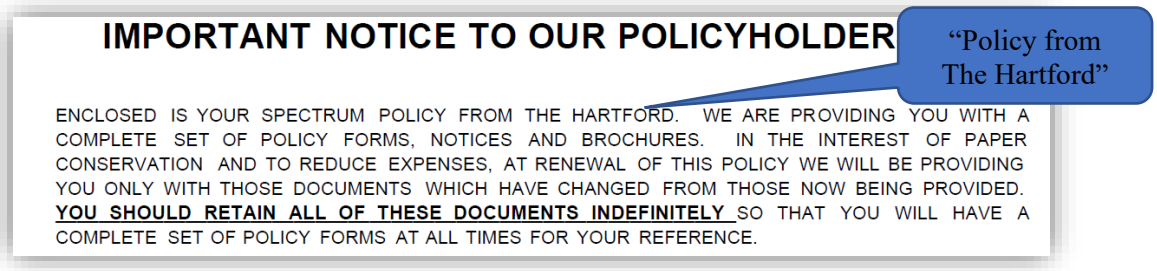
For starters, Plaintiff paid his bills with ACH withdrawal by The Hartford after receiving payment reminders signed "The Hartford" that did not mention Twin City. Am. Comp. ¶ 18. In the Policy, Doc. 27-1, the name "The Hartford' is virtually omnipresent, with more than 100 references (not counting many appearances of "The Hartford" in the company logo below a drawing of a reindeer). *Id.* ¶ 66. How about "Twin City?" Only *six* mentions. *Id.* ¶ 6.

Nowhere does the Policy even suggest that "The Hartford" is the same thing as "Twin City" or that the names are interchangeable. In its brief (though not its Policy), HFSG states that "the term 'The Hartford' is a name that generally refers to HSFG and its subsidiaries"; but it cites nothing to support that (the quote it offers doesn't even mention "The Hartford"; *see* Def. Mem. at 8.). Even if that were the case, moreover, it's a concession that "The Hartford" *does* refer to HFSG. When a policyholder sees "The Hartford" in his policy, what is he or she *supposed* to think? That it somehow means "Twin City Fire Insurance Company," a name that doesn't even include the word "Hartford?" Obviously not. It conveys the impression that it means the whole Hartford company, which policyholders have seen in ads and other references for years.

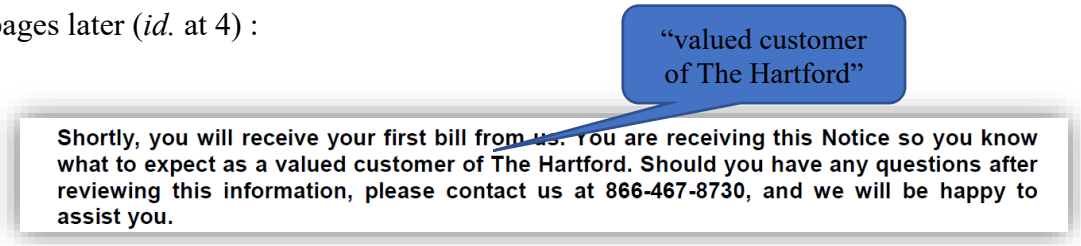
HFSG also contends that "The Hartford" is a registered trademark – while citing nothing for that either. It offers Ex. 1, which doesn't even mention "trademark." *See* Def. Mem. 8. But assume "The Hartford" *is* a registered trademark.[3] Think of the difference between a company

[3] In a case pending in the Eastern District of Missouri, where HFSG made the same argument with the same lack of support in its motion to dismiss, in its *reply brief* it submitted a document from the U.S. Patent and Trademark Office

and a trademark. Apple, Inc. is a company. One of its trademarks is "Apple®," which – as it explains on its website – it applies to the generic term "computers."[4] You buy the trademarked Apple computer from Apple the company. The names are the same, but no one would confuse the Apple product with the Apple company. So look at how Plaintiff's Policy refers to "The Hartford." Here it is at the top of the first page, Doc. #27-1 at 2:



Two pages later (*id.* at 4) :



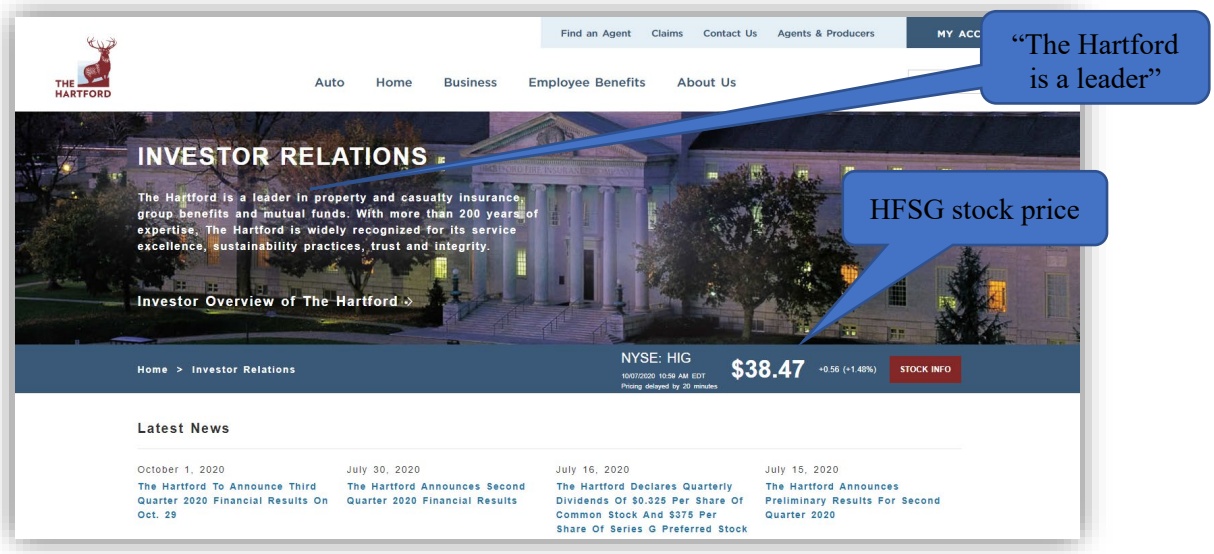
Dr. Taube is obviously not a valued customer of a trademark. He's a customer of a *company*, "The Hartford," and there's nothing to indicate that that company is Twin City Fire Insurance.

On its website, The Hartford uses the name to refer to HFSG, and there can be no confusion. Here is its Investor Relations page, which touts its insurance business, displays the HFSG stock price, and posts news announcements:[5]

that lists "The Hartford" as a trademark of a separate Hartford subsidiary, Hartford Fire Insurance Company. *See Robert E. Levy, D.M.D., LLC v. Hartford Financial Services Group, Inc.*, No. 4:20-cv-00643-SRC, Doc. #37 at 2-3.

[4] https://www.apple.com/legal/intellectual-property/trademark/appletmlist.html (accessed 10/7/2020).

[5] https://ir.thehartford.com/investor-relations/default.aspx (accessed 10/7/2020).



Look at the Latest News. "The Hartford to Announce," "Announces," "Declares," "Announces." The company referred to as "The Hartford" and doing all this announcing and declaring is unmistakably HFSG.

But supposedly without warning "The Hartford" might mean "Twin City Fire Insurance Company" and nothing but "Twin City Fire Insurance Company." One might be excused for thinking of the oft-quoted passage by Lewis Carroll:

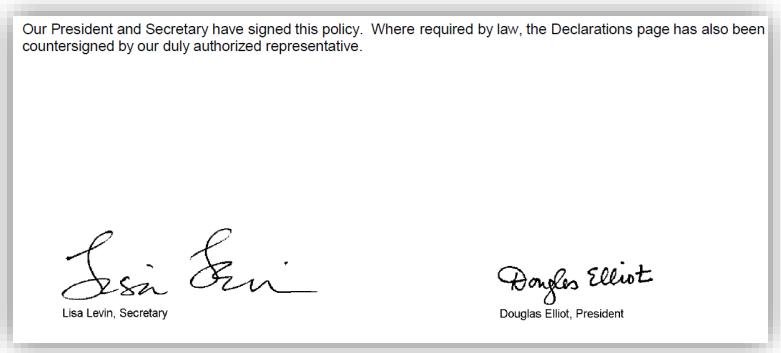
> "When *I* use a word,' Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean – neither more nor less."
>
> "The question is," said Alice, "whether you *can* make words mean so many different things."
>
> 'The question is,' said Humpty Dumpty, 'which is to be master – that's all.'"[6]

In *DeBold v. Stimson*, , 1043 n. 3 (7th Cir. 1984). the Seventh Circuit rejected what it called "the Humpty Dumpty theory of language" in statutory construction. And, under Illinois law, it's also not allowed in interpreting an insurance policy. "If a term in the policy is subject to more than one reasonable interpretation within the context in which it appears, it is ambiguous. …

[6] Lewis Carroll, *Through the Looking Glass*, chapter 6 (emphasis in original).

Ambiguous terms are construed strictly against the drafter of the policy and in favor of coverage." *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90, 119, 607 N.E.2d 1204, 1217 (1992) (citation omitted). The insurer could have avoided the ambiguity by clarifying what it meant by "The Hartford" in the Policy. It did not, and therefore the term must be interpreted in favor of coverage by HFSG.

In fact, everything about the Policy shows that The Hartford/HFSG was running the show. As noted above, it's not called a "Twin City policy." It's "your Spectrum policy from The Hartford." And consider who signed for the insurance company. Here's the signature page:


Our President and Secretary have signed this policy. Where required by law, the Declarations page has also been countersigned by our duly authorized representative.

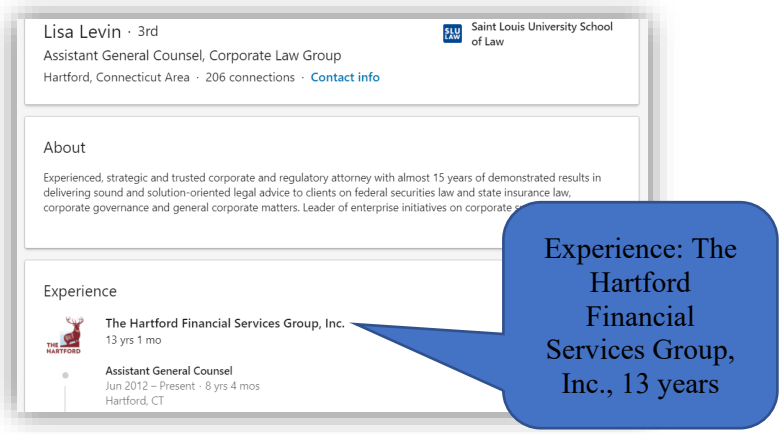
Lisa Levin, Secretary

Douglas Elliot, President

Doc. #27-1 at 25. "Our President and Secretary." Note that it doesn't say whose President and Secretary they are. For the President, the answer is that Mr. Elliot is President of, that's right, HFSG.[7] As for Ms. Levin, on her LinkedIn page, she says that her employer for the past 13 years has also been HFSG, where she is now Assistant General Counsel:[8]

[7] Ex. A, available at https://www.bloomberg.com/profile/person/3700927 (accessed 10/9/2020). Plaintiff believes that the court can take judicial notice of the various items he refers to herein, such this webpage and others, including LinkedIn pages, Twin City Quarterly Reports and other materials that are publicly available. "Judicial notice of historical documents, documents contained in the public record, and reports of administrative bodies is proper." *Menominee Indian Tribe of Wisconsin v. Thompson*, 161 F.3d 449, 456 (7th Cir. 1998). Courts have taken judicial notice of information on websites. See, *e.g.*, *Patel v. Zillow, Inc.*, 2017 WL 3620812, at *10 (N.D. Ill. Aug. 23, 2017), *aff'd,* 915 F.3d 446 (7th Cir. 2019); *Leveyfilm, Inc. v. Fox Sports Interactive Media, LLC*, 2014 WL 3368893, at *2 (N.D. Ill. July 8, 2014). HFSG similarly asked the Court to take judicial notice of a web page. Def. Mem. at 3, n. 2. If the Court does not believe that these are subject to judicial notice, Plaintiff asks for leave to amend his complaint to include them.

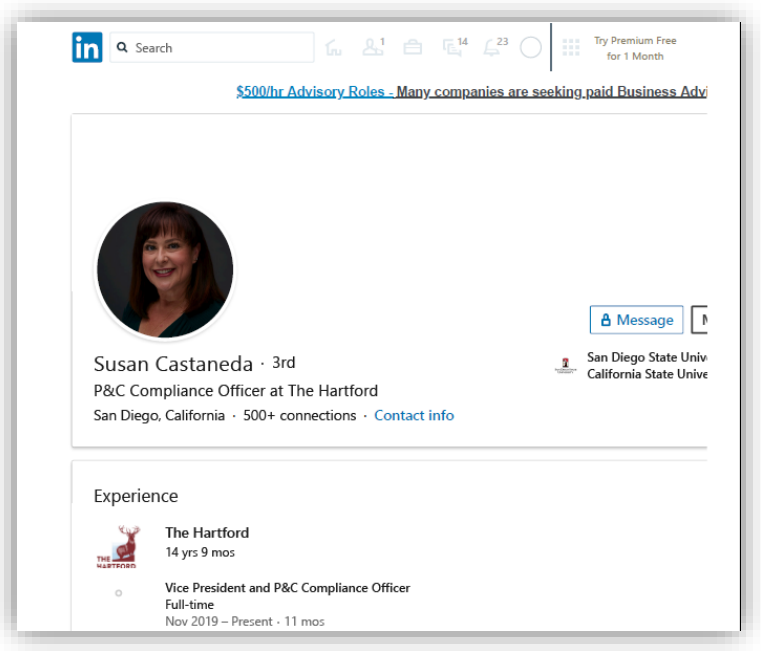
[8] Ex. B available at https://www.linkedin.com/in/lisa-levin-a2297b4a/ (accessed 10/9/2020).



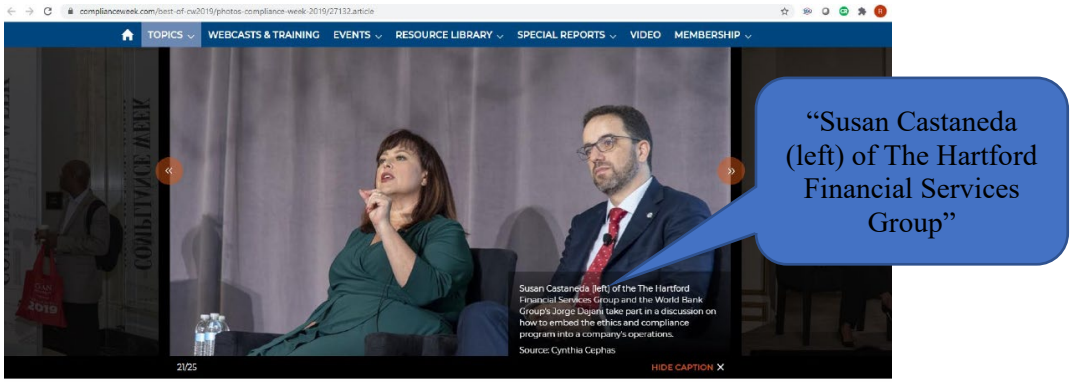
The issue of whether HFSG is a party to "The Hartford" insurance policies is currently being litigated in the Eastern District of Missouri in *Robert A. Levy, D.M.D., LLC v. Hartford Financial Services Group, Inc.*, No. 4:20-cv-00643-SRC (E.D. Mo.). In that case, HFSG presented documents to show that in 2019, Mr. Elliot and Ms. Levin were also President and Secretary of HFSG's subsidiaries, including Twin City. Plaintiff should be allowed discovery to learn how Mr. Elliot carries out his presidential duties at Twin City – in fact, whether he has such duties or is President in name only – but, in any event, that merely appears to confirm that these companies are all managed as a single entity. As for Ms. Levin, she is still signing as "Secretary" *even though she is no longer Secretary of Twin City*. When Plaintiff's Policy was renewed in September 2020, she again signed as Secretary. Ex. C at pdf page 30. That policy has a process date of June 30, 2020. *See*, *e.g.*, *id.* at 15. At that point, Plaintiff has no idea what entity she was Secretary of, but it certainly wasn't Twin City. By then, she was still Assistant General Counsel of HFSG, but she had been replaced as Twin City's Secretary by Kevin Floyd Barnett.[9] Yet she still signed as Secretary, confirming that the companies are simply interchangeable entities.

[9] *See* Twin City's Quarterly Statement As of June 30, 2020, available at https://s24.q4cdn.com/787643700/files/doc_downloads/Statutory/Pool/2020/q2/2Q20-Twin-City-Fire-Insurance-Company.pdf (accessed 10/9/2020) (Ex. D). Mr. Bradford had been Secretary since at least March 31, 2020. *See* Quarterly Statement As of March 31, 2020, available at https://s24.q4cdn.com/787643700/files/doc_downloads/Statutory/Pool/2020/05/1Q20-Twin-City-Fire-Insurance-Company.pdf (accessed 10/9/2020) (Ex. E).

There is one other signatory on the Policy, Susan L. Castaneda, who signed the Declarations page as Authorized Representative. *See* Doc. #27-1 at 179. According to her entry on LinkedIn, she is Vice President and P&C Compliance Officer of "The Hartford," where she has worked for nearly 15 years; her page doesn't mention Twin City, just The Hartford[10]:



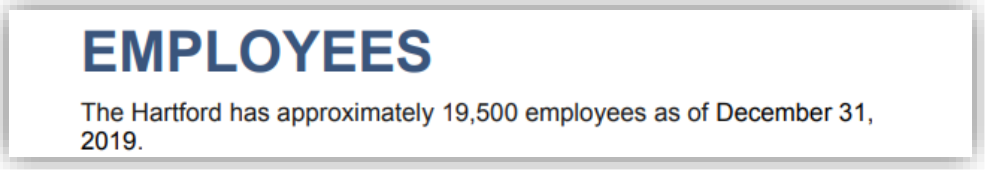
Ms. Castaneda is also shown on the website of a Compliance conference speaking on a panel and identified as being "of the Hartford Financial Services Group."[11]



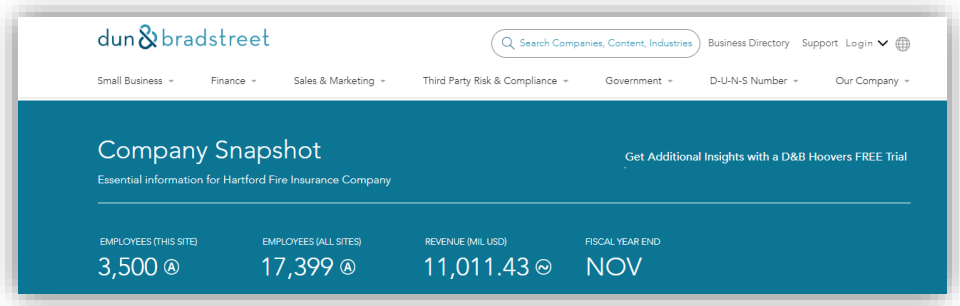
[10] Ex. F, available at https://www.linkedin.com/in/susan-castaneda-8479b950/ (accessed 10/9/2020).
[11] Ex. G, available at https://www.complianceweek.com/best-of-cw2019/photos-compliance-week-2019/27132.article (accessed 10/9/2020). To see her photo, one must scroll through a number of pictures.

In other words, she is a compliance officer with HFSG and calls her employer "The Hartford." She certainly knows what "The Hartford" means.

In the *Levy* case, HFSG presented evidence to show that Ms. Castaneda's employer is actually a separate subsidiary, the Hartford Fire Insurance Company ("Hartford Fire"). According to this evidence, the individual signing Twin City policies is not an employee of Twin City or HFSG, but an employee of Hartford Fire. And there is a good reason for that. *The vast majority* of those in the Hartford Family are employed by Hartford Fire. That seems to be where they put their employees, regardless of where they supposedly do their work. In its most recent Form 10-K, The Hartford told the SEC that it had 19,500 employees[12]:



How many of those were actually employed by Hartford Fire? According to Dun & Bradstreet, fully 89%, or 17,399 to be exact[13]:



About a dozen years ago, a California court found that, "[w]ith the exception of a single

[12] 2019 SEC Form 10-K, available at https://d18rn0p25nwr6d.cloudfront.net/CIK-0000874766/4bf6650d-8159-494e-815e-ee7336e7fa38.pdf (accessed 10/1/2020) at 19.

[13] https://www.dnb.com/business-directory/company-profiles.hartford_fire_insurance_company.9e5d672855a329d5f557f8e8eb47d7b7.html (accessed 10/1/2020; the A in a circle refers to "Actual.").

foreign subsidiary, the individual employees of all of the HFSG subsidiaries … are each employed by and paid by Hartford Fire." *Demery v. Hartford Underwriters Ins. Co.*, 2008 WL 534721, at *6 (Cal. App. 2008) (Ex. H hereto). By that measure, Twin City has no employees at all and couldn't do anything, much less issue insurance policies or pay claims. It's just a shell.

Here's another example showing how the various Hartford companies are managed as one. It comes from the *Levy* case. One of the Plaintiffs is an orthodontics practice named Farhad Moshiri and Mazyar Moshiri, D.M.D., M.S., P.C ("Moshiri"). Moshiri had a policy with Twin City as the nominal insurer that ran from April 1, 2019 to April 1, 2020. This policy said that when renewed, the insurer would only provide pages that have changed, so – in bold-faced underlining to make sure the policyholder got the message – "**YOU SHOULD RETAIN ALL OF THESE DOCUMENTS INDEFINITELY**."

Levy, Doc. # 17-4 at 2. So Moshiri did renew and, in the new policy, was thanked for doing so:

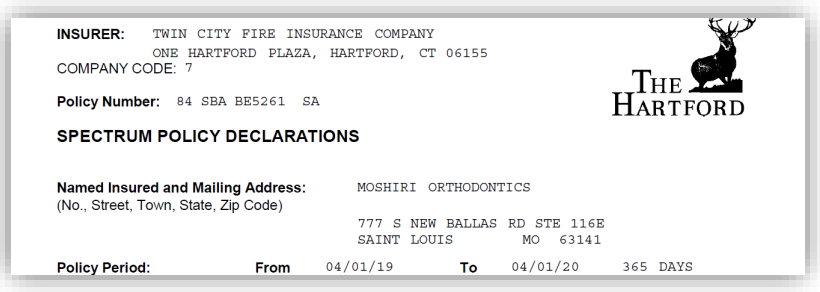

THANK YOU FOR RENEWING YOUR POLICY WITH US

If you're receiving this renewal through the mail directly from The Hartford, please note that we've only attached new, changed or updated documents. These include your new declarations page, which outlines your coverage, as well as any notices and brochures with updated information. We leave out unchanged documents to help cut down on paperwork and mailing costs. You can keep the attached documents filed alongside those from your previous policy if you wish.

If you're receiving this renewal electronically, or it's been mailed by your agent, it may include all of your documents - even ones that haven't changed.

Levy, Doc. 17-5 at 2. But who did the renewing? In other words, who's the "us" with whom Moshiri renewed?" Not Twin City. Now the nominal "insurer" of what had been called "this

policy" was a different Hartford subsidiary, Sentinel Insurance Company. Compare the two Declarations pages:



INSURER: TWIN CITY FIRE INSURANCE COMPANY
ONE HARTFORD PLAZA, HARTFORD, CT 06155
COMPANY CODE: 7

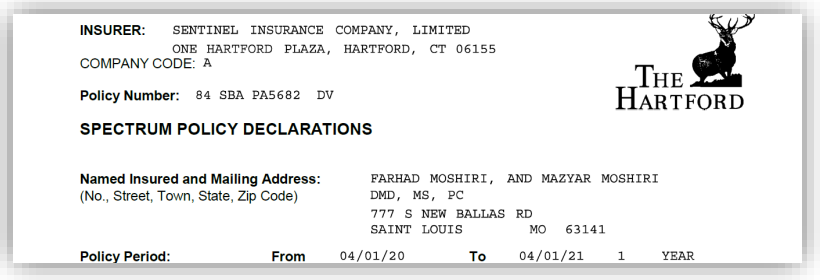
Policy Number: 84 SBA BE5261 SA

THE HARTFORD

SPECTRUM POLICY DECLARATIONS

Named Insured and Mailing Address: MOSHIRI ORTHODONTICS
(No., Street, Town, State, Zip Code)
777 S NEW BALLAS RD STE 116E
SAINT LOUIS MO 63141

Policy Period: **From** 04/01/19 **To** 04/01/20 365 DAYS



INSURER: SENTINEL INSURANCE COMPANY, LIMITED
ONE HARTFORD PLAZA, HARTFORD, CT 06155
COMPANY CODE: A

Policy Number: 84 SBA PA5682 DV

THE HARTFORD

SPECTRUM POLICY DECLARATIONS

Named Insured and Mailing Address: FARHAD MOSHIRI, AND MAZYAR MOSHIRI
(No., Street, Town, State, Zip Code) DMD, MS, PC
777 S NEW BALLAS RD
SAINT LOUIS MO 63141

Policy Period: **From** 04/01/20 **To** 04/01/21 1 YEAR

Id., Doc. #17-4 at 12; #17-5 16. They're exactly the same except for the Policy Period and the name of the "Insurer." But how can that be? How can there be a "renewal of this policy" with a different entity? "Renew" means "to arrange for something to continue for a longer period of time."[14] If this "something" that is continuing was a policy only with Twin City, it wasn't *renewed*. It could only have been renewed if the new policy was with the same entity, and the only entity in the picture that could qualify is The Hartford/HFSG. HFSG therefore has to have been a party or the policy couldn't have been "renewed."

All of this shows that the companies are operated as one. In its appellate brief in *Demery*, Hartford stated: "The interconnected nature of the Hartford companies extends far beyond the common Hartford name. It is also legal, operational, and financial." Ex I at 6. Yes, operational, as we've seen.

[14] https://www.macmillandictionary.com/us/dictionary/american/renew (accessed 10/9/2020.)

B. The Hartford Has Not Established the Basis for Dismissal for Lack of Standing

Plaintiff has the burden on Article III standing, but "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 496 (7th Cir. 2005) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 569 (1992)); *accord*, *Hatchett v. Henry Schein, Inc.*, 2020 WL 733834, at *4 (S.D. Ill. Feb. 13, 2020) (Rosenstengel, J.). "[I]n reviewing the standing question, the court must be careful not to decide the questions on the merits for or against the plaintiff, and must therefore assume that on the merits the plaintiffs would be successful in their claims." *Sierra Club v. U.S.E.P.A.*, 774 F.3d 383, 389 (7th Cir. 2014) (*quoting City of Waukesha v. EPA*, 320 F.3d 228, 235 (D.C. Cir.2003)). That means that, at this stage, the Court must assume that Plaintiff will prove that he purchased the Policy from HFSG, as he alleged.

But The Hartford's standing argument is simply that "Plaintiff does not have a contract with HFSG, and his alleged injury is not fairly traceable to HFSG." Def. Mem. at 8. Its basis is evidentiary. It couldn't have had a contract, it insists, because its SEC 10-K says it "has no significant business operations of its own." Def. Mem. at 3. That simply is a factual refutation of Plaintiffs' allegations that they purchased the policies from The Hartford; it cannot be considered on a motion to dismiss. Plaintiff's allegation must be taken as true, and Plaintiff must be allowed discovery to prove it. That's the logical corollary of the principle that, at this stage, Plaintiff's allegations must be taken as true.

Defendant argues that "[c]ourts across the country have observed that a plaintiff cannot sue a defendant with which it has no contract or relationship," a proposition for which it cites *one opinion***,** an unpublished Seventh Circuit decision that is far afield from this case in that it was an

appeal from a denial of a Rule 60(b) motion to vacate a 20-year-old judgment on the ground of fraud on the court. *See Ventre v. Datronic Rental Corp.*, 482 F. App'x 165, 169 (7th Cir. 2012). In any event, whether a party can sue a defendant with which it has no contract is not the issue. The issue is whether Plaintiff has alleged enough to take discovery on his allegations.

One recent decision granted a motion to dismiss a COVID-19 business loss claim against HFSG on grounds of lack of standing. *See Franklin EWC, Inc. v. Hartford Fin. Servs. Grp., Inc.*, 2020 WL 5642483, at *4–5 (N.D. Cal. Sept. 22, 2020). HFSG may rely on it in its reply brief, but it is completely inapposite here. In finding that plaintiff had "failed to show that HFSG is a party to the Policy," the court relied on a declaration of a knowledgeable witness who stated that HSFG "was not involved with Plaintiff's contract or claims in any way." *Id.* at *5. HSFG submitted nothing of the sort here. Furthermore, that plaintiff "d[id] not dispute its lack of a contract with HFSG." *Id.* As noted, Plaintiff alleges that he purchased his Policy from HFSG. Am. Comp. ¶¶ 1, 3, 63. And, if all that weren't enough to show the inapplicability of the holding, the court ruled that, "[i]n light of the rapidly evolving legal landscape involving COVID-19 business interruption coverage," the dismissal of HFSG was "with leave to amend." *Franklin*, 2020 WL 5642483, at *6.

C. The Case Should Not Be Dismissed for Lack of Personal Jurisdiction

HFSG devotes most of its argument on personal jurisdiction to general personal jurisdiction. Def. Mem. at 9-10. But here the basis of personal jurisdiction is specific personal jurisdiction, which depends on whether the defendant has "'purposely directed' his activities at residents of the forum … and the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (citations omitted). Although "contracting with an out-of-state party alone cannot establish automatically sufficient minimum contacts in the other party's home forum," *N. Grain Mktg., LLC v. Greving*, 743 F.3d

487, 493 (7th Cir. 2014), there is much more here, including The Hartford's use of an Illinois-based insurance agent, Bell Insurance Solutions in Collinsville, and the promise to provide insurance coverage for Plaintiff's office in Mascoutah.

Defendants recognize that entering into a contract providing for such insurance in Illinois – the real object of the transaction – is sufficient for personal jurisdiction. After all, they do not contest personal jurisdiction on behalf of Twin City.[15] The question is whether Plaintiff has established similar facts in order to survive this motion by HFSG.

"The plaintiff has the burden of establishing personal jurisdiction, and where, as here, the issue is raised by a motion to dismiss and decided on the basis of written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts." *Tamburo v. Dworkin*, 601 F.3d 693, 700 (7th Cir. 2010). The Court need not conduct an evidentiary hearing, and, without one, "the court must 'accept as true all well-pleaded facts alleged in the complaint and resolve any factual disputes ... in favor of' Plaintiffs." *Greene v. Karpeles*, 2019 WL 1125796, at *1 (N.D. Ill. Mar. 12, 2019) (*citing Felland v. Clifton*, 682 F.3d 665, 672 (7th Cir. 2012)); *see also GCIU-Emp'r Ret. Fund v. Goldfarb Corp.*, 565 F.3d 1018, 1020 n.1 (7th Cir. 2009) ("[W]e read the complaint liberally with every inference drawn in favor of plaintiff and resolve all factual disputes in favor of plaintiff."); *accord, Curry v. Revolution Laboratories, LLL*, 949 F.3d 385, 393 (7th Cir. 2020). Moreover, "it is within the discretion of the district court to allow a plaintiff to conduct limited discovery in order to establish that jurisdiction exists." *Sanderson v. Spectrum Labs, Inc.*, 248 F.3d 1159 (7th Cir. 2000).

Plaintiff has shown the basis for specific personal jurisdiction by alleging that he purchased his Policy from The Hartford/HFSG. Because the Court must accept that allegation as true, it is

[15] *See* TC Answer, Doc. #31, not including an affirmative defense of lack of personal jurisdiction.

sufficient to survive this motion. The only fact that HFSG offers to support its argument is this: "Again, Plaintiff's use of the term "The Harford" to attempt to demonstrate actions of HFSG is misplaced because that term encompasses the entire group of companies at the Hartford, including Twin City and others. Ex. 1 at p. 6." Def. Mem. at 11. That Exhibit is an excerpt from Hartford's SEC 10-K for 2019. Here's what that page says about "The Hartford":

> Item 1. BUSINESS
>
> ***
>
> GENERAL
>
> The Hartford Financial Services Group, Inc. (together with its subsidiaries, "The Hartford", the "Company", "we", or "our") ….

Defendant's Ex. 1, Doc. #33-1 at 6. That is merely an explanation of what "The Hartford" means *in the Form 10-K*. It is not part of the Policy and was not incorporated into the Policy. If Defendants had wanted "The Hartford" to have the same meaning in the Policy, all it had to do is include this: "As used in this Policy, 'The Hartford' refers to Twin City Fire Insurance Company." But it didn't do that. Thus, it doesn't suffice to tip the balance in HFSG's favor at this stage and wouldn't even if the Court weren't obligated to "resolve any factual disputes … in favor of plaintiff." *Greene*, 2019 WL 1125796 at *13.

D. The Amended Complaint States a Claim Against HFSG

The Hartford's contention that Plaintiff fails to state a claim against it is based on the same argument it made against standing and personal jurisdiction, namely that it doesn't have a contract with Plaintiff. It fails for the same reasons.

The Hartford states that "[c]ourts routinely dismiss claims against HFSG" that are similar to the one in this case. Def. Mem. at 13. But the six decisions on which it relies show nothing of the

sort. In one the plaintiff *stipulated* to HFSG's dismissal.[16] In another, the plaintiff did not oppose the motion.[17] Another was brought by the plaintiff pro se and it isn't clear that the plaintiff offered anything to show a contractual relationship.[18] Another case was dismissed because the plaintiff – who did not allege that HFSG was a party to the contract – relied on an inapplicable statute to establish vicarious liability.[19] And one case turned on personal jurisdiction, not failure to state a claim; the plaintiff had alleged that HFSG was "doing business in the State of Alabama," but HFSG submitted uncontradicted affidavits from its Vice President and Assistant Vice President stating that that wasn't true.[20] HFSG has submitted nothing like that here.

That leaves *NBL Flooring, Inc. v. Trumbull Ins. Co.*, 2014 WL 317880, at *1 (E.D. Pa. Jan. 28, 2014). There, the court had *denied* HFSG's motion for judgment on the pleadings. *NBL Flooring, Inc. v. Trumball Ins. Co.*, 2012 WL 3135533 at *2 (E.D. Pa. Aug. 1, 2012). In the decision HFSG cites, the court mentioned that it had denied the earlier motion and considered the issue *on summary judgment*. *NBL*, 2014 WL 317880, at *1. That is what this Court should do, if The Hartford decides to renew its position in a summary judgment motion.

It's also what the court did in *Smith*, 2010 WL 5174377, at *1, where HFSG made the identical argument it makes here. The court ruled:

> The contract is replete with references to both "The Hartford" and to "Sentinel Insurance Company's" ("Sentinel") role in the contract. (See Dkt. # 2–1, p.6–38). The complaint thus states a plausible claim that HFSG is a proper party defendant in this case. HFSG's arguments that "The Hartford" is merely a trade name, and that HFSG did not have sufficient involvement in the insurance claim to either be in privity or a special relationship are arguments better addressed on summary judgment. Therefore, the Motion to Dismiss (Dkt. # 16) is denied.

[16] *Winkler v. Hartford Fin. Servs. Grp., Inc.*, 2011 WL 1705559, at *2 (D. Nev. May 3, 2011)
[17] *LV Diagnostics, LLC v. Hartford Fin. Servs. Grp., Inc.*, 2018 WL 651327, at *2 (D. Nev. Jan. 31, 2018)
[18] *Chaichian v. Hartford Fin. Servs. Grp., Inc.,* 2016 WL 4480038, at *2 (W.D. Ark. Aug. 3, 2016), report and recommendation adopted, 2016 WL 4467910 (W.D. Ark. Aug. 23, 2016).
[19] *Engel v. Hartford Ins. Co. of the Midwest*, 2012 WL 275200, at *2 (D. Nev. Jan. 31, 2012).
[20] *Mt. Hebron Dist. Missionary Baptist Ass'n of AL, Inc. v. Hartford Co.*, 2017 WL 2486092, at *3 (M.D. Ala. Mar. 16, 2017), supplemented, 2017 WL 4838867 (M.D. Ala. Apr. 3, 2017), and report and recommendation adopted, 2017 WL 2485228 (M.D. Ala. June 8, 2017).

Id. The court reiterated its ruling when HFSG argued that, because it was not a proper party to the lawsuit, it should not have to respond to discovery:

> After examining the record herein, the Court finds that the relationship among the various Hartford entities and HFSG's role in the corporate structure is unclear; consequently, the Court cannot find that the information Plaintiffs seek could have no possible bearing on the claims/defenses in this case. Therefore, the relevance objection is overruled. Furthermore, simple fairness dictates that if HFSG has filed a Motion for Summary Judgment supported by evidentiary materials, Plaintiffs be given an opportunity to respond with evidence of their own—evidence gathered through the process of discovery.

Smith v. Sentinel Ins. Co., 2011 WL 2883433, at *2 (N.D. Okla. July 15, 2011). (The case was settled while summary judgment was pending. Doc. #123 in *Smith v. Sentinel Insurance Co., Ltd.*, No. 4:10-cv 00269 (N.D. Okla.)). This Court should take the same approach and allow discovery before considering HFSG's contention.

E. In the Alternative, the Court Should Allow Discovery on Whether HFSG is the Alter Ego of the Other Defendants

In the alternative, Plaintiff requests that the Court allow Plaintiff to take discovery on whether HFSG is subject to "alter ego" liability under Illinois law. "[A] court may disregard a corporate entity and pierce the veil of limited liability where the corporation is merely the alter ego or business conduit of another person or entity." *A.L. Dougherty Real Estate Mgmt. Co., LLC v. Su Chin Tsai,* 2017 IL App (1st) 161949, ¶ 24, 98 N.E.3d 504, 515 (*quoting Peetoom v. Swanson,* 334 Ill. App. 3d 523, 527, 268 Ill.Dec. 305, 778 N.E.2d 291 (2002)). "Piercing the corporate veil is not a separate cause of action but instead is a means for imposing liability in an underlying cause of action." *A.L. Dougherty*, 98 N.E.3d at 515.

There are two elements that must be present to find that one corporation is the alter ego of the other. "[I]it must be shown that it is so controlled and its affairs so conducted that it is a mere instrumentality of another, and it must further appear that observance of the fiction of separate existence would, under the circumstances, sanction a fraud or promote injustice." *Massey v.*

Cassens & Sons, Inc., 2007 WL 773382, at *2 (S.D. Ill. Mar. 12, 2007) (Herndon, J.) (*quoting Main Bank of Chicago v. Baker*, 427 N.E.2d 94, 101 (Ill. 1981)).

Plaintiff believes that discovery might well enable them to establish these elements. The first one is pretty clear already. If HFSG doesn't control and influence Twin City, why else are its employees, up to its President, signing the policies? Why else is the President of HFSG the President of Twin City? Why else is an Assistant General Counsel of HFSG signing the Policy as Secretary when she isn't the Secretary of Twin City? Why else is a Vice President and compliance officer of HFSG signing the Policy as Authorized Representative? Why else is a separate subsidiary supposedly renewing a Twin City policy? No other reason is conceivable. Furthermore, somebody has to be controlling Twin City other than Twin City because, as shown above, Twin City apparently has no employees.

There is also a basis to think that HFSG is using its corporate cloak "to promote injustice." *Main Bank*, 427 N.E.2d at 101. Hartford companies have been sued in no fewer than 198 COVID cases, with more filed every week.[21] Many are class actions, some nationwide, many state-wide and not limited to a particular industry or professional group as this case is.[22] Damages – the total losses due to COVID-19 shutdowns of all Hartford insureds – may be inconceivably huge, more than the subsidiaries can pay themselves. A subterfuge to promote injustice? You bet.

IV. CONCLUSION

The Hartford's motion to dismiss should be denied. In the alternative, if the Court believes the motion has merit on the present record, Plaintiff requests leave to file a Second Amended Complaint to update its allegations against HFSG only.

Dated: October 9, 2020 Respectfully submitted,

[21] https://cclt.law.upenn.edu/ (accessed 10/9/2020).
[22] Hartford's Resp. in Opp. to Order to Show Cause Purs. to 28 U.S.C.§ 1407, Doc. 146 in MDL No. 2963, at 13-17.

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2020, the foregoing was filed with the Court Clerk via the Court's electronic filing system and served on upon all counsel of record via the Court's electronic notification system.

/s/ Richard S. Cornfeld