

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA,
CHARLESTON DIVISION**

| | | |
|---|---|---------------------------------|
| Coffey & McKenzie, LLC, |) | C/A NO.: 2:20-cv-01671-BHH |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| Twin City Fire Insurance Company, d/b/a The |) | |
| Hartford. |) | |
| Defendant. |) | |
| |) | ANSWER AND AFFIRMATIVE |
| |) | DEFENSES OF DEFENDANT |
| |) | TO PLAINTIFF'S COMPLAINT |
| |) | |

Twin City Fire Insurance Company d/b/a The Hartford (“Twin City”), by and through its counsel, hereby answers and responds to Coffey & McKenzie LLC’s (“Plaintiff’s”) Complaint.

PARTIES, JURISDICTION, AND VENUE¹

1. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 1, and therefore denies same.

2. Twin City admits it is an insurance company currently incorporated in Indiana and that it is authorized to conduct business in South Carolina. Twin City admits that is authorized to conduct business in other states in the United States. Twin City denies the remaining allegations of Paragraph 2.

¹ For ease of reference, this Answer uses the headings and subheadings that Plaintiff included in its Complaint. The use of such headings is not an admission by Twin City of the truth of any allegations contained in the headings or subheadings. Twin City denies any suggestions implied by the headings and subheadings.

3. Paragraph 3 states legal conclusions to which no response is required. To the extent any response is required, Twin City admits that it issued a Business Owner's Policy No. 01 SBA BE7451 (the "Policy") to Coffey & McKenzie LLC, a business located in Clarendon County, South Carolina. Twin City denies the remainder of the allegations in this paragraph.

4. Paragraph 4 states legal conclusions to which no response is required. To the extent a response is required, Twin City admits that United States District Court for the District of South Carolina is the proper Court to which this lawsuit was to be removed.

FACTUAL BACKGROUND

5. Twin City restates and incorporates by reference Twin City's responses to Paragraphs 1 through 4, as if fully set forth herein.

6. In response to the allegations of Paragraph 6, Twin City denies the Plaintiff's allegations regarding the Policy period. Twin City admits that it entered into a contract of insurance with Plaintiff, the terms and conditions of which speak for themselves. Twin City admits that the total annual premium for the Policy is \$9,573. Upon information and belief, Twin City further admits the allegations of the last sentence of Paragraph 6.

7. Twin City denies the allegations in the first sentence of Paragraph 7. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the allegations of the second sentence of Paragraph 7, given its vagueness, and therefore denies same.

8. In response to the allegations of Paragraph 8, Twin City admits that Plaintiff contacted Twin City to report a claim under the Policy but denies the remaining allegations.

9. Twin City denies the allegations of Paragraph 9.

10. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 10 and therefore denies same. Twin City denies that it engaged in bad faith adjusting of Plaintiff's claim.

**FOR A FIRST CAUSE OF ACTION
(Violation of S.C. Code §§ 38-59-20 and -40)**

11. Twin City restates and incorporates by reference Twin City's responses to Paragraphs 1-10, as if fully set forth herein.

12. Paragraph 12 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 12.

13. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 13.

14. Paragraph 14 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 14.

15. Paragraph 15 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 15.

16. Paragraph 16 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 16.

**FOR SECOND CAUSE OF ACTION
(Declaratory Judgment)**

17. Twin City restates and incorporates by reference Twin City's responses to Paragraphs 1-16, as if fully set forth herein.

18. Paragraph 18 states legal conclusions to which no response is required. To the extent a response is required, Twin City admits that Plaintiff seeks a judicial declaration but denies that Plaintiff is entitled to the relief requested.

19. Paragraph 19 states legal conclusions to which no response is required. To the extent a response is required, Twin City admits that Plaintiff seeks a judicial declaration but denies that Plaintiff is entitled to the relief requested or that Twin City's claims practices constitute bad faith.

20. Paragraph 20 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 20.

**FOR FOURTH [sic] CAUSE OF ACTION
(Breach of Contract)**

21. Twin City restates and incorporates by reference Twin City's responses to Paragraphs 1-20, as if fully set forth herein.

22. Twin City admits that it entered into a contract of insurance with Plaintiff on July 8, 2019 with a policy period of July 20, 2019 to July 20, 2020. The remainder of the allegations in Paragraph 22 state legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 22.

23. Paragraph 23 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 23.

24. Paragraph 24 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 24.

**FOR FIFITH [sic] CAUSE OF ACTION
(Bad faith Refusal to Pay Insurance Claim)**

25. Twin City restates and incorporates by reference Twin City's responses to Paragraphs 1-24, as if fully set forth herein.

26. Paragraph 26 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 26.

27. Paragraph 27 and subparagraphs a-d state legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 27.

28. Paragraph 28 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 28.

29. Paragraph 29 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 29.

The “Wherefore” clause and the subparagraphs that follow do not allege any facts and therefore no response is required. To the extent a response is required, Twin City denies that Plaintiff is entitled to the requested relief or any other relief. To the extent any further response is required, Twin City denies the allegations contained in the “Wherefore” clause and the subparagraphs that follow.

AFFIRMATIVE DEFENSES

Twin City asserts the following affirmative defenses and reserves all rights to amend or supplement these defenses when and if amended or additional defenses become appropriate and/or available in this action. The statement of any defense herein does not assume the burden of proof for any issue to which the applicable law places the burden of proof on Plaintiff.

FIRST AFFIRMATIVE DEFENSE (Failure to state a claim)

The Complaint fails to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE
 (Virus-Exclusion)

The Policy contains an exclusion titled “‘Fungi’, Wet Rot, Dry Rot, Bacteria or Virus.” Form SS 40 93 07 05 at 1. Plaintiff’s claims are barred or limited, in whole or in part, to the extent that the alleged loss or damage, if any, is excluded by the ‘Fungi’, Wet Rot, Dry Rot, Bacteria or Virus exclusion.

THIRD AFFIRMATIVE DEFENSE
 (Virus-Limited Additional Coverage-Limits)

The Policy contains a provision titled “Limited Coverage For ‘Fungi’, Wet Rot, Dry Rot, Bacteria and Virus.” Form SS 40 93 07 05 at 2-3. Plaintiff’s claims may be barred or limited, in whole or in part, by the time period and/or sub-limits applicable to the Limited Coverage for ‘Fungi’, Wet Rot, Dry Rot, Bacteria and Virus provision.

FOURTH AFFIRMATIVE DEFENSE
 (Comparative fault, waiver, estoppel, and unclean hands)

Plaintiff’s claims may be barred or limited, in whole or in part, by the doctrines of comparative fault, waiver, estoppel, and/or unclean hands.

FIFTH AFFIRMATIVE DEFENSE
 (Merger clause)

The Policy is the sole agreement between the parties, and Defendant did not breach any Policy terms.

SIXTH AFFIRMATIVE DEFENSE
 (Terms of the Policy are controlling)

Defendant’s obligations in the Policy are defined, limited, and controlled by the terms and conditions of the Policy, including, but not limited to, the coverages, limits, sub-limits, exclusions, endorsements, conditions, and all other terms set forth therein.

SEVENTH AFFIRMATIVE DEFENSE
(Failure to comply with Policy)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent that Plaintiff failed to perform its obligations under the Policy.

EIGHTH AFFIRMATIVE DEFENSE
(Losses not covered by Policy)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent Plaintiff seeks relief for damages or losses not covered by the Policy.

NINTH AFFIRMATIVE DEFENSE
(Two or More Coverages)

The Policy contains a General Condition titled "Insurance Under Two Or More Coverages." Form SS 00 05 10 08 at 2. Plaintiff's claims may be limited, in whole or in part, to the extent the Insurance Under Two Or More Coverages provision is applicable to the loss or damage.

TENTH AFFIRMATIVE DEFENSE
(Other insurance)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent other insurance or contributing insurance is applicable to the alleged loss or damage.

ELEVENTH AFFIRMATIVE DEFENSE
(Failure to exhaust other insurance coverage)

Plaintiff's claims may be barred or limited, in whole or in part, because Plaintiff has not demonstrated exhaustion of coverage for losses under other more specific insurance policies.

TWELFTH AFFIRMATIVE DEFENSE
(Deductibles, Sub-limits)

Plaintiff's claims may be barred or limited, in whole or in part, by applicable deductibles, retentions, and/or limits and sub-limits (including per occurrence limits) contained in the Policy.

THIRTEENTH AFFIRMATIVE DEFENSE
(Outside Period of Restoration)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent Plaintiff seeks to recover for loss incurred outside the Period of Restoration.

FOURTEENTH AFFIRMATIVE DEFENSE
(Law or public policy)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent coverage is excluded by express provisions of law or public policy.

FIFTEENTH AFFIRMATIVE DEFENSE
(Conditions precedent and subsequent)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent that conditions precedent and subsequent to the availability of insurance coverage under the Policy have not been satisfied.

SIXTEENTH AFFIRMATIVE DEFENSE
(Offset)

Defendant's obligation to Plaintiff, if any, is subject to offset for recoveries by Plaintiff from other persons or entities.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Valuation Clause)

Plaintiff's claims may be limited, in whole or in part, by the valuation provisions in the Policy.

EIGHTEENTH AFFIRMATIVE DEFENSE
(No "direct physical loss")

Plaintiff's claims may be barred or limited, in whole or in part, to the extent there is no direct physical loss of or direct physical damage to covered property.

NINETEENTH AFFIRMATIVE DEFENSE
(No “direct physical loss” – Business Interruption)

Plaintiff’s claims may be barred or limited, in whole or in part, because the interruption to Plaintiff’s business, if any, was not due to the direct physical loss of or direct physical damage to property caused by or resulting from a covered cause of loss.

TWENTIETH AFFIRMATIVE DEFENSE
(Covered Cause of Loss)

Plaintiff’s claims may be barred or limited, in whole or in part, to the extent Plaintiff cannot demonstrate a Covered Cause of Loss, as defined in the Policy. Form SS 00 07 07 05 at 2.

TWENTY-FIRST AFFIRMATIVE DEFENSE
(Ordinance or Law-Limits)

The Policy contains an Additional Coverage provision for “Ordinance or Law.” Form SS 00 07 07 05 at 7-8. Plaintiff’s claims may be barred or limited, in whole or in part, by the time period and/or sub-limits applicable to the Ordinance or Law provision.

TWENTY-SECOND AFFIRMATIVE DEFENSE
(Pollution Exclusion)

The Policy contains an exclusion titled “Pollution.” Form SS 00 07 07 05 at 17-18. Plaintiff’s claims may be barred or limited, in whole or in part, to the extent that the alleged loss or damage, if any, is excluded by the Pollution exclusion.

TWENTY-THIRD AFFIRMATIVE DEFENSE
(Consequential Losses Exclusion)

The Policy contains an exclusion titled “Consequential Losses.” Form SS 00 07 07 05 at 17. Plaintiff’s claims may be barred or limited, in whole or in part, to the extent that the alleged loss or damages, if any, are excluded by the Consequential Losses exclusion.

TWENTY-FOURTH AFFIRMATIVE DEFENSE
(Civil Authority- Limits)

The Policy contains an Additional Coverage provision for “Civil Authority.” Form SS 00 07 07 05 at 11. Plaintiff’s claims may be barred or limited, in whole or in part, by the time period and/or sub-limits, if any, applicable to the Civil Authority provision.

TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Business Income from Dependent Properties-Limits)

The Policy contains an Additional Coverage provision for “Business Income from Dependent Properties.” Form SS 00 07 07 05 at 11-12; SS 04 08 09 07 at 6. Plaintiff’s claims may be barred or limited, in whole or in part, by the time period and/or sub-limits, if any, applicable to the Business Income from Dependent Properties provision.

TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Extended Business Income-Limits)

The Policy contains an Additional Coverage provision for “Extended Business Income.” Form SS 00 07 07 05 at 11; SS 04 08 09 07 at 6. Plaintiff’s claims may be barred or limited, in whole or in part, by the time period and/or sub-limits, if any, applicable to the Extended Business Income provision.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE
(Acts or Decisions-Exclusion)

The Policy contains an exclusion titled “Acts or Decisions.” Form SS 00 07 07 05 at 18. Plaintiff’s claims are barred or limited, in whole or in part, to the extent that the alleged loss or damage, if any, is excluded by the Acts or Decisions exclusion.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE
(No bad faith)

Plaintiff’s claims may be barred or limited, in whole or in part, because Defendant has at all relevant times acted reasonably and in good faith.

TWENTY-NINTH AFFIRMATIVE DEFENSE
(No bad faith- Claim was properly handled)

Plaintiff's claims may be barred or limited, in whole or in part, because Defendant conducted a full, fair, prompt, and thorough investigation of all bases of Plaintiff's insurance claim.

THIRTIETH AFFIRMATIVE DEFENSE
(No bad faith- Liability not reasonably clear)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent that coverage is fairly debatable. *See S.C. § Code 38-59-20(4).*

THIRTY-FIRST AFFIRMATIVE DEFENSE
(No bad faith- Reasonable grounds)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent that Defendant had reasonable grounds to deny Plaintiff's insurance claim.

THIRTY-SECOND AFFIRMATIVE DEFENSE
(Punitive damages violate due process)

The Complaint, to the extent that it seeks punitive or exemplary damages, violates Defendant's rights to substantive due process as provided by the Fifth and Fourteenth Amendments to the United States Constitution. The imposition of any punitive damages in this matter would deprive Defendant of its property without due process of law under the United States Constitution. Therefore, any such award that purports to be imposed without Defendant having received such rights may not be included in any final judgment.

THIRTY-THIRD AFFIRMATIVE DEFENSE
(Punitive damages constitute excessive fines)

Plaintiff's request for punitive damages violates the excessive fine clause of the Eighth Amendment to the United States Constitution.

THIRTY-FOURTH AFFIRMATIVE DEFENSE
(No private right of action)

Plaintiff's claims may be barred or limited, in whole or in part, because the applicable statutes do not provide for a private right of action.

THIRTY-FIFTH AFFIRMATIVE DEFENSE
(Failure to mitigate)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent that Plaintiff failed to mitigate damages, if any. To the extent Plaintiff failed to take reasonable steps to mitigate Plaintiff's alleged damages, if any, Plaintiff should be denied any recovery in this action.

THIRTY-SIXTH AFFIRMATIVE DEFENSE
(Statutory Caps on Punitive Damages)

Defendant specifically asserts all available procedures and defenses to punitive damages available under South Carolina Code §§ 15-32-520 and -530.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE
(Reservation of future defenses)

Plaintiff's claims may be barred or limited, in whole or in part, by additional defenses that cannot now be articulated because of the generality of the pleadings, and other presently undeveloped information. Accordingly, Defendant reserves the right to supplement the foregoing defenses as may appear as this case progresses to the full extent permissible by law.

PRAAYER FOR RELIEF

WHEREFORE, based on the above answers and defenses, Defendant respectfully requests that the Court enter an order:

- i. denying Plaintiff the relief sought in the Complaint;
- ii. dismissing the Complaint in its entirety with prejudice;
- iii. awarding Defendant its costs and expenses, including its attorneys' fees; and

iv. awarding Defendant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

WOMBLE BOND DICKINSON (US) LLP
/s/ Kevin A. Hall
Kevin A. Hall (Federal Bar No. 5375)
kevin.hall@wbd-us.com
M. Todd Carroll (Federal Bar No. 9742)
todd.carroll@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
803.454.6504

And

Sarah D. Gordon
Frank Winston
Laura Lane-Steele
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
Phone: 202-429-8005
Email: sgordon@steptoe.com
Pro Hac Vice Applications Forthcoming

Attorneys for Defendant

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