

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-cv-60626-WPD

-----X	
THE CORNFELD GROUP, LLC,	:
	:
Plaintiff,	:
v.	:
	:
CERTAIN UNDERWRITERS AT LLOYD’S,	:
LONDON SUBSCRIBING TO POLICY AMR-	:
55418-01; INDIAN HARBOR INSURANCE	:
COMPANY; QBE SPECIALTY INSURANCE	:
COMPANY; STEADFAST INSURANCE	:
COMPANY; GENERAL SECURITY	:
INDEMNITY COMPANY OF ARIZONA;	:
UNITED SPECIALTY INSURANCE	:
COMPANY; LEXINGTON INSURANCE	:
COMPANY; PRINCETON EXCESS AND	:
SURPLUS LINES INSURANCE COMPANY;	:
and, INTERNATIONAL INSURANCE	:
COMPANY OF HANNOVER SE,	:
	:
Defendants	X

DEFENDANTS’ ANSWER AND AFFIRMATIVE DEFENSES
TO COMPLAINT FOR DECLARATORY RELIEF

COMES NOW against defendants, Certain Underwriters at Lloyd’s, London Subscribing To Policy AMR-55418-01 (“Underwriters”), Indian Harbor Insurance Company (“Indian Harbor”), QBE Specialty Insurance Company (“QBE”), Steadfast Insurance Company (“Steadfast”), General Security Indemnity Company of Arizona (“GSIC”), United Specialty Insurance Company (“USI”), Lexington Insurance Company (“Lexington”), Princeton Excess and Surplus Lines Insurance Company (“Princeton Excess”), and HDI Global Specialty SE, formerly known as International Insurance Company of Hannover SE (“HDI”) (collectively hereinafter, “Defendants”), through their undersigned counsel, and answer the Complaint for

Declaratory Relief (“Complaint”) filed by the plaintiff, The Cornfeld Group, LLC (“Cornfeld”), as follows:

JURISDICTION AND VENUE

1. Paragraph 1 states Plaintiff’s claim for relief, to which no response is required. To the extent that it requires a response, Defendants deny that Plaintiff is entitled to the relief requested.

2. Paragraph 2 of the Complaint contains a characterization of this action to which no response is required. To the extent that a response is required, Defendants admit that this is an action for damages in excess of \$15,000. By way of further response, Defendants deny that Plaintiff is entitled to the any relief from Defendants.

3. Defendants deny that the Circuit Court in and for Broward County, Florida is the proper venue for this action in that the subject insurance policy calls for the arbitration of all disputes in New York.

THE PARTIES

4. Defendants lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 4 and, therefore, deny all allegations.

5. Defendants admit that Underwriters is presently authorized to transact business in the State of Florida. Defendants deny any remaining allegations contained in Paragraph 5 of the Complaint.

6. Defendants admit that Indian Harbor is presently authorized to transact business in the State of Florida. Defendants deny any remaining allegations contained in Paragraph 6 of the Complaint.

7. Defendants admit that QBE is presently authorized to transact business in the State of Florida. Defendants deny any remaining allegations contained in Paragraph 7 of the Complaint.

8. Defendants admit that Steadfast is presently authorized to transact business in the State of Florida. Defendants deny any remaining allegations contained in Paragraph 8 of the Complaint.

9. Defendants admit that GSI is presently authorized to transact business in the State of Florida. Defendants deny any remaining allegations contained in Paragraph 9 of the Complaint.

10. Defendants admit that USI is presently authorized to transact business in the State of Florida. Defendants deny any remaining allegations contained in Paragraph 10 of the Complaint.

11. Defendants admit that Lexington is presently authorized to transact business in the State of Florida. Defendants deny any remaining allegations contained in Paragraph 11 of the Complaint.

12. Defendants admit that Princeton Excess is presently authorized to transact business in the State of Florida. Defendants deny any remaining allegations contained in Paragraph 12 of the Complaint.

13. Defendants admit that HDI is presently authorized to transact business in the State of Florida. Defendants deny any remaining allegations contained in Paragraph 13 of the Complaint.

GENERAL ALLEGATIONS

14. Defendants admit that Underwriters, Indian Harbor, QBE, Steadfast, GSI, USI, Lexington, Princeton Excess, HDI, and ORUIC participate in a first-party property insurance program (account no. 473036) issued to The Cornfeld Group et al., which went into effect on March 22, 2017 through March 22, 2018 (the “Policy”). Defendants respectfully refer the Court to the Policy for all of its terms, conditions, provisions, limitations, exclusions, and endorsements. To the extent that any of the allegations in Paragraph 14 of the Complaint are contrary to or inconsistent with the content of the Policy, Defendants deny those allegations.

15. Defendants admit that the Policy insures the premises located at: Newport Beachside Resort - 16701 Collins Ave., Sunny Isles Beach, FL 33160; Margate Commerce Center (Lakeview) - 1401-1485 Banks Rd., Margate, FL 33063; Banks Road Commerce Center – 2000 Banks Road, Margate, FL 33063; Stock Island – 5570 3rd Ave., Stock Island, FL 33040; and, Peary Court – 100-147 Peary Court, Key West, FL 33040 (the “Properties”), as well as other locations. Defendants deny any remaining allegations contained in Paragraph 15 of the Complaint.

16. Defendants admit that they employed an adjuster to investigate the claim. Defendants deny any remaining allegations contained in Paragraph 16 of the Complaint.

17. Defendants admit that they issued reservation of rights letters to Cornfeld dated November 6, 2017 and December 12, 2018. Defendants deny any remaining allegations contained in Paragraph 17 of the Complaint.

18. Defendants admit that the reservation of rights letter addressed to Cornfeld dated November 6, 2017 cites to several exclusions. Defendants deny any remaining allegations contained in Paragraph 18 of the Complaint.

19. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint and, therefore, deny all allegations.

20. Defendants admit that a payment was issued to Cornfeld for \$1,250,000.00 on December 19, 2017. Defendants deny any remaining allegations contained in Paragraph 20 of the Complaint.

21. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint and, therefore, deny all allegations.

22. Defendants deny the allegations contained in Paragraph 22 of the Complaint.

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. Defendants admit that the Insured invoked the Arbitration Clause of the Policy. To the extent that any of the allegations in Paragraph 24 of the Complaint are contrary to or inconsistent with the content of the Policy, Defendants deny those allegations. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 24 and, therefore, deny all such allegations.

25. Defendants admit that the Policy contains an Arbitration Clause. Defendants respectfully refer the Court to the Policy for all of its terms, conditions, provisions, limitations, exclusions, and endorsements. To the extent that any of the allegations in Paragraph 25 of the Complaint are contrary to or inconsistent with the content of the Policy, Defendants deny those allegations.

26. Defendants admit that both parties selected respective arbitrators. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 26 and, therefore, deny all such allegations.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.

28. Defendants deny the allegations contained in Paragraph 28 of the Complaint.

29. Defendants specifically deny that they admitted coverage for this matter and reference reservation of rights letters sent to Cornfeld dated November 6, 2017 and December 12, 2018, respectively. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 29 and, therefore, deny all such allegations.

COUNT I –DECLARATORY RELIEF

30. Defendants repeat and reallege their response to Paragraphs 1 through 29 as if fully set forth at length herein.

31. Defendants admit that the Policy is an enforceable contract. Defendants deny the remaining allegations in Paragraph 31

32. Defendants admit that both parties selected respective arbitrators. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 32 and, therefore, deny all such allegations.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

GENERAL DENIAL

Defendants deny each and every allegation, matter and thing contained in the Complaint, except as hereinabove admitted, qualified, or otherwise stated.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

For a first affirmative defense, Defendants state that the Complaint should be dismissed for improper venue pursuant to Fed. R. Civ. P. 12(b)(3) or the case should be transferred to the District Court for the Southern District of New York pursuant to 28 U.S.C.A. § 1406. Venue is proper in the District Court for the Southern District of New York under 28 U.S.C. § 1391 and 9 U.S.C. § 4, as well as under 9 U.S.C. § 204. Specifically, the Policy designates New York, NY as the place of the arbitration. It states:

The seat of the Arbitration shall be in New York and the Arbitration Tribunal shall apply the law of New York as the proper law of this insurance.

[Doc. No. 1-4, Exhibit “B,” Policy, Section VII, ¶ C at p. 29 of 49].

SECOND AFFIRMATIVE DEFENSE

For a second affirmative defense, Defendants allege that Plaintiff’s Complaint, and the one count therein, fails to state or set forth facts sufficient to constitute any claim for relief against Defendants.

THIRD AFFIRMATIVE DEFENSE

For a third affirmative defense, Defendants allege that one or more of Plaintiff’s claims are barred, in whole or in part, because there is no duty or performance owed for some or all of the allegations in the Complaint, under the terms, conditions, provisions, limitations, and exclusions contained within the Policy, effective March 22, 2017 through March 22, 2018. Defendants reserve their rights to rely upon all sections of the Policy.

FOURTH AFFIRMATIVE DEFENSE

For a fourth affirmative defense, Defendants allege that Plaintiff's claims may be barred to the extent that it failed to perform all the obligations, covenants, and conditions precedent and subsequent required under the Policy.

FIFTH AFFIRMATIVE DEFENSE

For a fifth affirmative defense, Defendants allege that Plaintiff's Complaint may not be maintained because this dispute is subject to the arbitration clause in the Policy.

SIXTH AFFIRMATIVE DEFENSE

For an sixth affirmative defense, Defendants allege that Plaintiff's Complaint is barred by the doctrine of unclean hands.

RESERVATION - ADDITIONAL AFFIRMATIVE DEFENSES

Defendants reserve the right to assert additional defenses and to further amend its answer as further information concerning Cornfeld's claim is developed through discovery or otherwise.

Dated: Fort Lauderdale, Florida
March 15th, 2019

Respectfully submitted,

MOUND COTTON WOLLAN & GREENGRASS LLP

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