

IN THE CIRCUIT COURT FOR  
BALTIMORE CITY, MARYLAND

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BALTIMORE CITY

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CIVIL DIVISION

THE FUND FOR ANIMALS, INC. )  
700 Professional Drive )  
Gaithersburg, Maryland 20879-3418, )

Plaintiff,

v.

Case No. 24-C-12-005268.

NATIONAL UNION FIRE INSURANCE )  
COMPANY OF PITTSBURGH, PA )  
175 Water Street )  
New York, NY 10038 )

Defendant.

Case: 24-C-12-005268  
CV File New  
Appear Fee  
MSU  
TOTAL

**COMPLAINT**

Plaintiff The Fund For Animals, Inc. ("The Fund For Animals" or "Plaintiff"); by and through its attorneys, brings this action for a declaratory judgment pursuant to the Maryland Uniform Declaratory Judgments Act, § 3-406 of the Courts & Judicial Proceedings Article ("CJP"), and for breach of contract against defendant National Union Fire Insurance Company of Pittsburgh, PA ("National Union"), and in support thereof alleges as follows:

**INTRODUCTION**

1. This lawsuit involves an insurance coverage dispute between the Plaintiff, a national nonprofit charitable organization, which is an affiliate of The Humane Society of the United States ("HSUS") and is devoted to protecting animals, and its insurer, National Union.

2. HSUS and certain affiliated parties, including Plaintiff, purchased insurance from National Union.

3. National Union issued the following policies that are at issue in this case:
  - a. a Not-For-Profit Individual and Organization Insurance Policy: Policy No. 965-95-51 for the policy period January 1, 2007 to June 1, 2008; and
  - b. a Management Liability, Professional Liability, Crime Coverage and Kidnap and Ransom/Extortion Coverage for Non Profit Organizations: Policy No. 01-932-56-98, for the policy period June 1, 2009 to June 1, 2010.

4. Both of these policies provide for insurance coverage for loss that arises out of the conduct of the insured nonprofit organizations and their directors, officers, and employees.

5. Both of these policies expressly name The Fund For Animals as an Additional Insured.

6. Both of these policies include coverage for employees for Individual Insured Loss arising from a Claim during the policy period.

7. This insurance was designed to protect HSUS, The Fund For Animals, and their directors, officers and employees from certain risks of loss. Those risks included risks arising out of their nonprofit work on behalf of animals, which included litigation, legislative and lobbying efforts, humane education and public awareness campaigns, and owning and operating animal sanctuaries and wildlife rehabilitation centers on a nationwide basis.

8. In 2000 and 2003, The Fund For Animals brought lawsuits against Feld Entertainment, Inc. ("Feld Entertainment") alleging violations of the Endangered Species Act based on Feld Entertainment's abusive treatment of elephants (collectively "the ESA Litigation").

9. Thereafter, in August 2007, Feld responded by suing The Fund For Animals and the other nonprofit groups which had brought the ESA Litigation by claiming that these groups had committed RICO violations and committed other violations of state law in a conspiracy against Feld Entertainment (the "2007 Feld Lawsuit").

10. The 2007 Feld Lawsuit was stayed from November 2007 to December 2009, while the ESA Litigation was pending.

11. In December 2009, after a non-jury trial in February and March of 2009, the Court entered a judgment in favor of Feld in the ESA Litigation for lack of standing. At that time, the stay on the 2007 Feld Lawsuit was lifted.

12. In February 2010, Feld Entertainment amended its 2007 complaint and, in addition to The Fund For Animals, named HSUS and two HSUS employees, Jonathan Lovvorn and Kimberly Ockene, as additional defendants. Feld Entertainment also added several other claims, including state law claims for malicious prosecution and abuse of process, among other claims, in addition to RICO (the "2010 Feld Lawsuit") (collectively with the 2007 Feld Lawsuit, the "Feld Litigation").

13. Plaintiff provided written notice to National Union of the Feld Litigation in March 2010.

14. In its May 2010 response, National Union refused to provide any insurance coverage on the grounds that the claims had not been reported during the policy period. Specifically, National Union claimed that notice should have been provided in 2007 at the time of the 2007 Feld Lawsuit and thus denied coverage.

15. Notwithstanding its denial of coverage in May 2010, National Union has suffered no prejudice based on when it was provided notice of the Feld Litigation.

16. Moreover, even assuming arguendo that The Fund For Animals breached a policy by not providing notice to National Union during the policy period for the 2007 Policy, such a breach is excused under the express statutory protections provided to insured parties under Maryland's Insurance Code § 19-110.

17. National Union's refusal to provide insurance coverage constitutes a breach of contract and a violation of Maryland law.

18. Plaintiff is currently deprived of the insurance coverage for which it paid and has brought this lawsuit to enforce its contractual rights to insurance coverage.

### **PARTIES**

19. The Fund For Animals is a national nonprofit charitable organization conducting activities throughout the United States. The Fund For Animals is incorporated in New York and maintains its principal place of business in Gaithersburg, Maryland, after becoming affiliated with HSUS in 2005. It is devoted to protecting the welfare of animals.

20. National Union Fire Insurance Company of Pittsburgh, PA is a Pennsylvania corporation which maintains its principal place of business at 175 Water Street, New York, New York. National Union is licensed to sell and does regularly sell insurance in the State of Maryland.

### **JURISDICTION AND VENUE**

21. This Court has personal jurisdiction over the Defendant pursuant to Maryland Code, §§ 6-103(b)(1), (b)(2), and (b)(6) of the Courts & Judicial Proceedings Article ("CJP"), insofar as this action arises from Defendant's transaction of business in the State of Maryland, its contracts to supply services in the State of Maryland, and/or its contracts to insure Plaintiff for,

or on, certain property, risks, contracts, obligations, or agreements located, executed, or to be performed in the State of Maryland at the time the contracts were made.

22. Venue is proper in this Court under CJP §6-201 (a) because Defendant carries on a regular business in Baltimore City.

### **FACTS COMMON TO ALL COUNTS**

23. HSUS and some of its affiliates, including The Fund For Animals as an Additional Insured, purchased insurance from National Union. National Union issued Not-For-Profit Individual and Organization Insurance Policy No. 965-95-51 for the policy period January 1, 2007 to June 1, 2008 (the “2007 Policy”) and delivered the 2007 Policy to HSUS’s office in Gaithersburg, Maryland.

24. National Union also issued Management Liability, Professional Liability, Crime Coverage and Kidnap and Ransom/Extortion Coverage for Non Profit Organizations No. 01-932-56-98, for the policy period June 1, 2009 to June 1, 2010 (“the 2010 Policy”) and delivered the 2010 Policy to HSUS’s office in Gaithersburg, Maryland.

25. Plaintiff paid all premiums due for the 2007 and 2010 Policies to Defendant in a timely manner by check mailed from its corporate headquarters in Gaithersburg, Maryland.

#### *The 2007-2008 Insurance Policy*

26. The term of the 2007 Policy is from January 1, 2007 to June 1, 2008.

27. The 2007 Policy provided as follows:

- a. “Coverage A: Individual Insured Insurance,” which provides that:  
“This Policy shall pay on behalf of each and every Individual Insured Loss arising from a Claim first made against such Individual Insured during the Policy Period...and reported to the insurer pursuant to the terms of this

policy for any actual or alleged Wrongful Act in his/her respective capacities as an Individual Insured of the Organization, except when and to the extent that the Organization has indemnified the Individual Insured. The Insurer shall, in accordance with and subject to Clause 8, advance Defense Costs of such Claim prior to its final disposition”; and

- b. “Coverage C: Organization Entity Coverage,” which provides that:  
“This Policy shall pay on behalf of the Organization Loss arising from a Claim first made against the Organization during the Policy Period... and reported to the insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act of the Organization. The Insurer shall, in accordance with and subject to Clause 8, advance Defense Costs of such Claim prior to its final disposition.”

28. The 2007 Policy includes the following definitions and terms relevant to this dispute:

- a. “Claim” is defined to mean:

“(1) a written demand for monetary relief; or  
(2) a civil, criminal, regulatory, or administrative proceeding for monetary or non—monetary relief which is commenced by:  
(i) service of a complaint or similar pleading;  
...”

- b. “Individual Insured” means “a past, present or future...director, officer,...department head,...Employee or volunteer of the Organization”;

- c. "Employee" means "any past, present or future...employee of the Organization...";
- d. "Organization" means: "(1) the Named Organization designated in Item 1 of the Declarations; (2) any Subsidiary thereof; and (3) and Affiliate thereof listed by endorsement to this policy;"
- e. The Named Organization designated in Item 1 of the Declarations is HSUS;
- f. Endorsement 19 lists The Fund For Animals as an Affiliate of HSUS that is an Additional Insured under the 2007 Policy;
- g. "Loss" means "damages...judgments, settlements, pre- and post-judgment interest..."
- h. "Wrongful Act" means "(1) with respect to Individual Insureds, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such Insureds in his/her respective capacities as such, or any matter claimed against such Individual Insured solely by reason of his/her status as Individual Insureds of the Organization; (2) with respect to the Organization under Coverage C, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by or on behalf of the Organization."
- i. "Defense Costs" is defined to mean "reasonable and necessary fees, costs and expenses consented to by the Insurer...resulting solely from the investigation, adjustment, defense, and appeal of a Claim against the Insureds..."

- j. "Insured" means "the Organization and all Individual Insureds."

*The 2009-2010 Insurance Policy*

29. The term of the 2010 Policy is from June 1, 2009 to June 1, 2010.

30. The 2010 Policy provides as follows:

- a. "Coverage A: Individual Insured Insurance," which provides that:

"This Policy shall pay on behalf of each and every Individual Insured Loss arising from a Claim first made against such Individual Insured during the Policy Period... and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act of such Individual Insured, except when and to the extent that the Organization has indemnified the Individual Insured. The Insurer shall, in accordance with and subject to Clause 5 of this Coverage Section, advance Defense Costs of such Claim prior to its final disposition"; and

- b. "Coverage C: Organization Entity Coverage," which provides that:

"This Policy shall pay on behalf of the Organization Loss arising from a Claim first made against the Organization during the Policy Period... and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act of the Organization. The Insurer shall, in accordance with and subject to Clause 5 of this Coverage Section, advance Defense Costs of such Claim prior to its final disposition."

31. The 2010 Policy includes the following definitions and terms relevant to this dispute:



- a. "Claim" is defined to mean: (1) a written demand for monetary, non-monetary or injunctive relief...; or (2) a civil, criminal, regulatory, or administrative proceeding for monetary, non-monetary, or injunctive relief which is commenced by: (i) service of a complaint or similar pleading;...
- b. "Individual Insured" means "a past, present or future...director, officer,...department head,...Employee of the Organization."
- c. "Employee" means "any past, present or future...employee of the Organization..."
- d. "Organization" means: "(1) the Named Organization; (2) any Subsidiary thereof; and (3) any Affiliate thereof listed by endorsement to this policy..."
- e. The Named Organization designated in Item 1 of the Declarations is HSUS.
- f. The Endorsements list The Fund For Animals as an Affiliate of HSUS that is an Additional Named Insured under the 2010 Policy.
- g. "Loss" means "damages, judgments, settlements, pre- and post-judgment interest, Defense Costs and Crisis Management Loss..."
- h. "Wrongful Act" means "(1) with respect to Individual Insureds, any breach of duty, neglect, error, misstatement, misleading statement, omission, or act by such Insureds in his/her respective capacities as such, or any matter claimed against such Individual Insured solely by reason of his/her status as an Individual Insured of the Organization; (2) with respect to the Organization under Coverage C, any breach of duty, neglect, error,

misstatement, misleading statement, omission or act by or on behalf of the Organization[.]”

i. “Defense Costs” is defined to mean “reasonable and necessary fees, costs and expenses consented to by the Insurer...resulting solely from the investigation, adjustment, defense and appeal of a Claim against the Insureds...”

j. “Insured” means “the Organization and all Individual Insureds.”

*The ESA Litigation and The Feld Litigation*

32. In 2000 and 2003, The Fund For Animals joined other nonprofit organizations and a former circus employee in bringing a suit against Feld Entertainment and Ringling Bros. and Barnum & Bailey (collectively “Feld Entertainment”) based on Feld Entertainment’s mistreatment of Asian elephants used in its circus. The plaintiffs in these lawsuits (collectively the “ESA Litigation”) alleged that Feld Entertainment had violated the Endangered Species Act by systematically and brutally mistreating circus elephants.

33. During the 2007-2008 Policy Period, while the ESA Litigation was pending, Feld Entertainment filed a complaint in the United States District Court for the District of Columbia on or about August 28, 2007 (“2007 Feld Lawsuit”). This lawsuit was brought against the plaintiffs in the ESA Litigation, specifically the nonprofit organizations, The Fund For Animals, the ASPCA, the Animal Protection Institute, and the Animal Welfare Institute, and individual plaintiff Tom Rider, a former Ringling Brothers employee, and the Wildlife Advocacy Project, which was not a plaintiff in the ESA Litigation. The 2007 Feld Lawsuit alleged violations of the Racketeer Influence and Corrupt Organizations Act (“RICO”) and the Virginia Conspiracy Act for conspiracy to harm a business. Feld Entertainment alleged that in bringing the ESA

Litigation the nonprofit organizations had perpetrated a scheme to permanently ban Asian elephants in circuses. In addition, Feld Entertainment alleged that the defendants had defrauded them of money and property, with the ultimate objective of banning Asian elephants in all forms of entertainment and captivity.

34. On November 7, 2007, the District Court for the District of Columbia stayed the 2007 Feld Lawsuit pending the outcome of the ESA Litigation.

35. The ESA Litigation proceeded to a non-jury trial, which took place in February and March of 2009.

36. On December 30, 2009, the Court found that no plaintiff had established Article III standing and entered judgment in favor of Feld Entertainment in the ESA Litigation on that basis. At or about that time, the stay on the 2007 Feld Lawsuit was lifted.

37. With the stay lifted, on February 16, 2010, Feld Entertainment filed an amended complaint against the defendants in the 2007 Feld Lawsuit, including The Fund For Animals, asserting counts for RICO and several state law claims including abuse of process, malicious prosecution, maintenance, and champerty (the "2010 Feld Lawsuit").

38. In the 2010 Feld Lawsuit, Feld Entertainment also named other defendants, for the first time, including HSUS, an affiliate of The Fund For Animals, two HSUS employees, Jonathan R. Lovvorn and Kimberly D. Ockene, who had served as counsel of record in the ESA Litigation for a period of time, and the lawyers and law firm that had represented the ESA plaintiffs in the ESA Litigation. Feld Entertainment alleged that the plaintiffs in the ESA Litigation, among other things, had maliciously prosecuted Feld Entertainment and conspired to perpetrate and did perpetrate a criminal scheme to permanently ban elephants in circuses.

39. Subsequent to its receipt of the First Amended Complaint, Plaintiff made a claim for National Union to provide insurance coverage. Specifically, on March 1, 2010, HSUS provided formal notice of the Feld Litigation by letter to National Union through BB&T Insurance and sought coverage for insured parties, including Plaintiff.

40. On May 26, 2010, Chartis, the administrator handling these claims on behalf of National Union, sent a coverage disclaimer letter, indicating that it was National Union's position "that there is no coverage for this claim, based on the Insureds' failure to provide notice during the policy period."

41. The insured parties and National Union exchanged further correspondence during 2010; however, National Union steadfastly maintained its denial of coverage.

42. The filing of the 2007 Feld Lawsuit constituted a Claim under the 2007 Policy that occurred during the 2007 Policy Period.

43. The filing of the 2010 Feld Lawsuit constituted a Claim under the 2010 Policy that occurred during the 2010 Policy Period.

44. National Union's refusal to provide insurance coverage under the 2007 Policy constitutes a breach of contract, is without basis, and violates the law.

45. National Union's refusal to provide insurance coverage under the 2010 Policy constitutes a breach of contract, is without basis, and violates the law.

46. Plaintiff is now required to defend itself in that litigation without the benefit of the insurance which it had purchased from Defendant National Union.

47. The National Union Policies define the term Claim in express terms based on when a complaint is served on the Insured. Here, the first Feld complaint was served on The

Fund For Animals during the 2007 Policy Period (in August 2007), thus triggering coverage during the 2007 Policy Period.

48. The second Feld complaint was served during the 2010 Policy Period (in February 2010), thus triggering coverage during the 2010 Policy Period.

49. Notice of these claims was provided and appropriate. Furthermore, National Union suffered no prejudice as a result of the timing of the notice provided to it by Plaintiff and any alleged delay in notice. The 2007 Feld Lawsuit was stayed while the underlying ESA Litigation was pending. During this time period, no litigation activity occurred in this case prior to the giving of notice: there was no discovery, no documents were provided by any parties, no interrogatories were answered, and no depositions were taken. Nor were there any adverse rulings.

50. Furthermore, even assuming arguendo that The Fund For Animals breached the policy by not providing notice to National Union during the policy period for the 2007 Policy, such a breach is excused under the express statutory protections provided to insured parties under Maryland's Insurance Code § 19-110, entitled Disclaimers of Coverage on Liability Policies, which provides that an insurer may disclaim coverage on a liability insurance policy on the ground that the insured or a person claiming the benefits of the policy through the insured has breached the policy by not giving the insurer required notice "only if the insurer establishes by a preponderance of the evidence that the...lack of notice has resulted in actual prejudice to the insurer."

51. Additionally, there has been limited activity in the case, since the time that notice was provided, because on March 8, 2011, the Court stayed discovery pending resolution of the motion to dismiss.

52. On July 9, 2012, the U.S. District Court issued an opinion granting in part, and denying in part, defendants' omnibus motion to dismiss.

53. After years of limited activity, The Feld Litigation has now started to move forward at a rapid pace. Thus, it is essential that National Union provide insurance coverage to Plaintiff as it is required to do under the insurance policies that Plaintiff purchased.

## COUNT I

### **(Breach of Contract as to the 2007 Insurance Policy)**

54. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.

55. Plaintiff performed its obligations under the terms of the 2007 Policy in all material respects.

56. Even assuming arguendo that The Fund For Animals breached the policy by not providing notice to National Union during the policy period for the 2007 Policy, such a breach is excused under the express statutory protections provided to insured parties under Maryland's Insurance Code § 19-110.

57. National Union has breached the terms of this Policy by refusing to pay the Losses that Plaintiff may, is, or will be obligated to pay because of the Feld Litigation brought by Feld Entertainment Inc., including reasonable and necessary attorney's fees, costs and expenses incurred in the investigation and defense of the Feld Litigation.

58. As a proximate result, Plaintiff has incurred and will continue to incur reasonable and necessary attorney's fees and defense costs in excess of \$25,000.00.

WHEREFORE, in light of the foregoing, Plaintiff prays that a judgment of compensatory damages be entered against National Union for an amount in excess of \$25,000.00, including attorney's fees and costs incurred in bringing this suit.

## **COUNT II**

### **(Breach of Contract as to the 2010 Insurance Policy)**

59. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.

60. Plaintiff performed its obligations under the terms of the 2010 Policy in all material respects.

61. National Union has breached the terms of this Policy by refusing to pay the Losses that Plaintiff may, is, or will be obligated to pay because of the Feld Litigation brought by Feld Entertainment Inc., including reasonable and necessary attorney's fees, costs and expenses incurred in the investigation and defense of the Feld Litigation.

62. As a proximate result, Plaintiff has incurred and will continue to incur reasonable and necessary attorney's fees and defense costs in excess of \$25,000.00.

WHEREFORE, in light of the foregoing, Plaintiff prays that a judgment of compensatory damages be entered against National Union for an amount in excess of \$25,000.00, including attorney's fees and costs incurred in bringing this suit.

## **COUNT III**

### **(Declaratory Judgment as to the 2007 Insurance Policy)**

63. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.

64. An actual and justiciable controversy exists between the parties herein regarding coverage of the claims at issue under the terms of the 2007 Policy.

65. The complaint filed by Feld Entertainment in 2007 against Plaintiff and others alleges Claims for Loss as those terms are defined in the 2007 Policy.

66. A Claim was made during the 2007-2008 Policy Period.

67. Even assuming arguendo that The Fund For Animals breached the policy by not providing notice to National Union during the policy period for the 2007 Policy, such a breach is excused under the express statutory protections provided to insured parties under Maryland's Insurance Code § 19-110.

68. The Fund For Animals reported that Claim to National Union without National Union suffering any prejudice.

69. The complaint filed by Feld Entertainment in 2007 alleges violations of state and federal law and is covered under the terms of the 2007 Policy as it alleges Wrongful Acts committed by The Fund For Animals.

70. Under the terms of the 2007 Policy, National Union is obligated to pay all losses Plaintiff becomes legally obligated to pay, either as money damages or defense costs in connection with the Feld Complaint.

71. National Union has suffered no actual prejudice because of any alleged delay in notification of the 2007 Feld Complaint.

WHEREFORE, in light of the foregoing, Plaintiff requests that this Court enter a judgment declaring as follows:

- A. That National Union is obligated to pay all losses the Plaintiff becomes legally obligated to pay in the Feld Litigation, including any judgment entered against



it, as well as the attorney's fees, costs, and expenses incurred in the investigation and defense of the Feld Litigation;

- B. That National Union is obligated to pay all costs incurred in bringing this Complaint, including attorney's fees, costs and expenses; and
- C. That this Court grant such additional relief as may be necessary and appropriate.

#### **COUNT IV**

##### **(Declaratory Judgment as to the 2010 Insurance Policy)**

72. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.

73. An actual and justiciable controversy exists between the parties herein regarding coverage of the claims at issue under the terms of the 2010 Policy.

74. The complaint filed by Feld Entertainment in 2010 alleges Claims for Loss as those terms are defined in the 2010 Policy.

75. A Claim was made during the 2009-2010 Policy Period.

76. Plaintiff reported that Claim to National Union without National Union suffering any prejudice.

77. The complaint filed by Feld Entertainment in 2010 alleges violations of state and federal law and is covered under the terms of the 2010 Policy as it alleges Wrongful Acts committed by Plaintiff.

78. Under the terms of the 2010 Policy, National Union is obligated to pay all losses Plaintiff becomes legally obligated to pay, either as money damages or defense costs in connection with the Feld Complaint.

79. National Union has suffered no actual prejudice because of any alleged delay in notification of the 2010 Feld Complaint.

WHEREFORE, in light of the foregoing, Plaintiff requests that this Court enter a judgment declaring as follows:

- A. That National Union is obligated to pay all losses the Plaintiff becomes legally obligated to pay in the Feld Litigation, including any judgment entered against it, as well as the attorney's fees, costs, and expenses incurred in the investigation and defense of the Feld Litigation;
- B. That National Union is obligated to pay all costs incurred in bringing this Complaint, including attorney's fees, costs and expenses; and
- C. That this Court grant such additional relief as may be necessary and appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all claims and issues triable as a matter of right by a jury.

Dated: September 6, 2012

Respectfully submitted

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