

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ITT CORPORATION,)	
)	
Plaintiff,)	Civil Action No. :
)	
v.)	
)	
ACE AMERICAN INSURANCE)	JURY TRIAL DEMANDED
COMPANY, AND ACE PROPERTY)	
AND CASUALTY INSURANCE)	
COMPANY,)	
)	
Defendants.)	

COMPLAINT

Plaintiff ITT Corporation (“ITT”), by and through its attorneys, Morgan, Lewis & Bockius, LLP, hereby file this Complaint against ACE Property and Casualty Insurance Company (“ACE Property”) and ACE American Insurance Company (“ACE American”) (collectively the “ACE Defendants”), and avers as follows:

Nature of the Action

1. In this action, ITT, the insured under two policies issued by the ACE Defendants - Nos. XSL G2374837A and XOO G24895713 (the “ACE Policies”) -- seek to recover compensatory and punitive damages arising out of the ACE Defendants’ unreasonable and unlawful refusal to consent to the settlement of a personal injury claim brought against ITT and covered by the ACE Policies. By unreasonably withholding their consent to the settlement of such claim, which was well within the limits of the ACE Policies, the ACE Defendants exposed ITT to a possible substantial judgment well in excess of the settlement amount. In so doing, the ACE Defendants knowingly and deliberately breached the ACE policies and violated 42 Pa. C.S.A. § 8371.

Parties

2. Plaintiff ITT Corporation is an Indiana corporation having its principal place of business at 1133 Westchester Avenue, White Plains, NY 10604.

3. Defendant ACE Property and Casualty Insurance Company is a Pennsylvania corporation having its principal place of business at 436 Walnut Street, Philadelphia, PA 19106-3703.

4. Defendant ACE American Insurance Company is a Pennsylvania corporation having its principal place of business at 436 Walnut Street, Philadelphia, PA 19106-3703.

Jurisdiction and Venue

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332, as the parties are of diverse citizenship and the amount in controversy exceeds \$75,000. The Court has personal jurisdiction over the ACE Defendants because they are licensed to do business, do business, are incorporated in, conducted business during the relevant time period, and have maintained a substantial presence in Pennsylvania that places them within the personal jurisdiction of this Court.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a).

The ACE Policies

7. During the period from January 1, 2009 to January 1, 2010, ITT was insured under two policies issued by the ACE Defendants: a general liability policy issued by ACE American, No. XSL G2374837A, having a \$1,000,000 per occurrence limit in excess of ITT's \$1,000,000 retention (the "ACE CGL Policy"); and a second level umbrella policy issued by ACE Property, having a coverage limit of \$25,000,000 (the "ACE Umbrella Policy"). Copies of the ACE CGL Policy and ACE Umbrella Policy are attached hereto as Exhibits A and B.

8. Under the terms of the ACE CGL Policy, ACE American agreed to “pay the insured for the ‘ultimate net loss’ in excess of the ‘retained limit’ shown in the Declarations that the insured becomes legally obligated to pay as damages because of ‘bodily injury’ . . .” *See* Ex. B at 1, Excess Commercial General Liability Policy. The “Ultimate Net Loss” is defined in the ACE CGL Policy as the “total amount which the insured is legally obligated to pay as damages due to an ‘occurrence’ or offense arising out of covered claims or ‘suits’ either by adjudication or a settlement. . .” *Id.* at 17.

9. Under the terms of the ACE Umbrella Policy, ACE Property agreed to “pay on behalf of ‘insured’ those sums in excess of the ‘retained limit’ that the ‘insured’ becomes legally obligation to pay as damages because of ‘bodily injury’ . . .” *See* Ex. B at 1 (Commercial Umbrella Liability Policy).

10. Under both policies, “bodily injury” is defined as “bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.” *See* Ex. A at 13, Ex. B at 15. Additionally, the ACE Umbrella Policy included coverage for “mental anguish or mental injury resulting from bodily injury.” Ex. B. at 15.

The Underlying Litigation Against ITT

11. On April 21, 2011, an action was commenced against ITT in the Circuit Court for Macon County, Missouri, captioned as *Romona and Thomas Mulnix v. MFA Oil Co. and ITT Corporation.*, Civ. No. 11MA-CC00022 (Macon Ct. Cir. Ct., Apr. 2011) (the “Underlying Litigation”). Plaintiffs in the Underlying Litigation were the wife and son of a man named Thomas Mulnix, who brought suit following an explosion that caused the death of Mr. Mulnix after having spent 39 days in the hospital. Co-defendant MFA Oil Company was also insured by the ACE Defendants.

12. The claims asserted against ITT fell squarely within the coverage of the ACE Policies.

13. Pursuant to the terms of the policies, ITT provided timely notice to the ACE Defendants. The ACE Defendants did not deny that the ACE Policies covered the claim.

14. Throughout the course of proceedings in the Underlying Litigation, ITT, through its defense counsel, regularly report to the ACE Defendants concerning the progress of the Underlying Litigation, including their analysis of the issues, risks and potential liability. In turn, the ACE Defendants actively participated in the preparation of the defense of the case.

15. During the course of the Underlying Litigation, Plaintiffs in the Underlying Litigation claimed damages in excess of \$15 million.

16. Although ITT and its co-defendant could assert defenses to liability, causation and damages, counsel for ITT believed that plaintiffs would be able to support a substantial damages figure at trial. The risks of liability were substantial and likely to increase as the case proceeded.

**The Mediation and Settlement of the Underlying Litigation
and the ACE Defendants' Bad Faith Breach of the Policies**

17. In March 2013, the parties in the Underlying Litigation agreed to submit their claims to mediation. The parties, including the ACE Defendants, agreed to mediation in Kansas City, Missouri before Mark Kempton, who is an experienced mediator.

18. The ACE Defendants consented to and agreed to participate in the mediation before Mr. Kempton; and the ACE Defendants were represented in person throughout the entire course of the mediation, which took place on March 7, 2013.

19. At the mediation, plaintiffs initiated settlement discussions and made a joint demand for settlement from all the defendants to the action. However, as the mediation progressed, plaintiffs made a settlement demand to ITT only.

20. Toward the conclusion of the mediation, Mr. Kempton proposed a settlement of all of the claims asserted against ITT and recommended a settlement figure that he expressed was reasonable based upon all the facts and circumstances that had been made know to him by the parties and their insurers over the course of the mediation.

21. After further negotiation and discussion, plaintiffs accepted the mediator's proposed settlement. Likewise, after further negotiation and discussion, counsel for ITT also recommended that ITT accept the settlement offer, which was a full release of all claims, including those claims that claimants were seeking in the Underlying Action, which exceeded \$15 million.

22. Because the CGL Policy had a \$1,000,000 retention, ITT would be responsible for paying the first \$1,000,000 of the proposed settlement. The ACE Defendants would be responsible for the balance of the settlement, which was millions of dollars under the limit of the ACE Policies.

23. The ACE Defendants categorically refused to consent to the proposed settlement. This was despite the mediator recommending the settlement and all other parties agreeing to a settlement that was seen as a reasonable resolution of the claims -- well below the amount that claimants were seeking in the Underlying Action.

24. Notwithstanding the recommendation from defense counsel and the mediator, the representative for the ACE Defendants stated that he would agree to a settlement that was \$500,000 less than what the claimants had said they would accept and the mediator proposed (which was well within the policy limits) and with ITT paying the first \$1,000,000 of the settlement. When asked to explain his rationale for refusing to accept both the mediator's and defense counsel's recommendation that would require the ACE Defendants to pay only \$500,000

more than they had already agreed to contribute, the representative for the ACE Defendants refused to provide any specifics. The representative for the ACE Defendants stated without any factual basis that the proposed settlement number was “too much.”

25. ITT urged the ACE Defendants to reconsider its categorical refusal to consent to or to participate in any settlement, but the ACE Defendants refused to reconsider their position. By unreasonably withholding their consent to the settlement of the claims asserted against ITT in the Underlying Litigation, the ACE Defendants exposed its insured to a potential substantial judgment in excess of \$15 million.

26. After ITT entered into the settlement in the Underlying Litigation, it attempted to continue discussions with the ACE Defendants regarding its contribution to settle the claims. On March 20, 2013, a representative for the ACE Defendants responded to ITT’s demand for payment on the ACE Policies and stated that ACE believes that the amount ITT settled for is “unreasonable.”

Count I: Breach of Contract

27. ITT incorporates all the foregoing averments by reference as if each were set forth fully herein.

28. The settlement of the Underlying Litigation was reasonable and the ACE Defendants were required to pay a portion of that settlement under the ACE Policies for damages due to “bodily injury.”

29. The ACE Defendants breached the ACE Policies by unreasonably refusing to consent to the settlement of the Underlying Litigation.

30. The ACE Defendants conduct in refusing to consent to the settlement of the Underlying Litigation was without excuse or justification.

31. As a direct and proximate result of the ACE Defendants breach, ITT has suffered and continues to suffer damages in excess of \$75,000.

Count II: §8371 Claim

32. ITT incorporates all the foregoing averments by reference as if each were set forth fully herein.

33. Under the ACE Policies, the ACE Defendants had a fiduciary duty to act in good faith, including in their fair dealing in the handling of claims brought against their insured, ITT.

34. The ACE Defendants knew, or were reckless in not knowing, that they had no reasonable basis to withhold consent to the settlement of the Underlying Litigation, thereby exposing ITT to substantial risk and breaching the ACE Policies.

35. As a result of its unreasonable refusal to consent to the settlement of the Underlying Litigation, the ACE Defendants have violated 42 Pa. Const. Stat. Ann. §8371, giving rise to damages under 42 Pa. Const. Stat. Ann. §8371, having:

- a. refused settlement of the Underlying Litigation that the ACE Defendants were required to pay under the ACE Policies for damages due to “bodily injury” covered by the terms of the insurance agreements;
- b. refused settlement of the Underlying Litigation in an amount proposed by a neutral mediator at a mediation that the ACE Defendants had consented to, attended, and participated in;
- c. acted recklessly in rejecting the settlement after ITT contributed more than one-third of the settlement with its own money;
- d. acted recklessly in rejecting and refusing to listen to the recommendation of defense counsel to ITT in the Underlying Litigation that the ACE Defendants should agreed to and accept the reasonable settlement;

- e. acted recklessly in rejecting and refusing to discuss the basis for rejecting the settlement in the Underlying Litigation that was only \$500,000 above the amount that the ACE Defendants agreed to contribute;
- f. acted recklessly in rejecting and refusing to discuss the settlement in the Underlying Litigation that was millions of dollars less than the \$15,000,000 that counsel for ITT in the Underlying Action reasonably believed plaintiff could substantiate in damages, which would have drastically increased ITT's exposure;
- g. failed to communicate to ITT a reasonable basis for rejecting the settlement when ITT attempted to continue the discussion with after the mediation;
- h. compelled ITT to institute this litigation to recover amounts due under the ACE Policies; and
- i. repudiated their contractual obligations.

Demand for Relief

WHEREFORE, ITT demands the following:

1. That judgment is entered in its favor and against the ACE Defendants on Count I and II;
2. That damages consistent with proof at trial are awarded on Count I and II;
3. An award of punitive damages against the ACE Defendants due to their violation of 42 Pa. Const. Stat. Ann. §8371;
4. An award of reasonable attorney's fees;
5. An award of court costs, fees, interest and all other amounts authorized under the law; and
6. Such other relief as this Honorable Court deems just and proper.

Dated: March 26, 2013

Respectfully submitted,



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JURY DEMAND

Plaintiff ITT Corporation hereby requests a trial by jury on all issues so triable.

Dated: March 26, 2013

Respectfully submitted,



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