

STATE OF LOUISIANA

24th JUDICIAL DISTRICT COURT

FOR THE PARISH OF JEFFERSON

DOCKET NO.: 807-143

DIVISION: L

SIKA INVESTMENTS, LLC

VERSUS

RLI CORP. D/B/A MT. HAWLEY INSURANCE COMPANY;
EI INVESTMENTS, INC.;
MARSH & MCLENNAN AGENCY, LLC;
ARI UNDERWRITERS, INC.;
ABC INSURANCE COMPANY;
DEF INSURANCE COMPANY; AND
XYZ INSURANCE COMPANY

FILED: _____ DEPUTY CLERK: _____

PETITION FOR INSURANCE PROCEEDS,
BAD FAITH PENALTIES,
BREACH OF CONTRACT,
AND NEGLIGENCE

PARTIES

1.

Plaintiff, Sika Investments, LLC ("Sika"), is a Delaware limited liability company admitted to do business in the state of Louisiana, with its principal business office at 2511 Silverside Road, Ste. 105, Wilmington, DE 19810. Sika owns Camellia Square, a retail shopping center ("Camellia Square"), and a 79-room Microtel Inn & Suites by Wyndham ("Microtel") located in Louisiana.

2.

Defendant, RLI Corp. d/b/a Mt. Hawley Insurance Company ("Mt. Hawley"), is a foreign surplus lines insurer not admitted and/or authorized to do business in

Louisiana. Mt. Hawley issued Sika Policy No. MCP0168316 (“Policy”) covering Camellia Square and Microtel. *See* Exhibit A.

3.

Mt. Hawley is a Delaware corporation with its principal place of business in Illinois. It may be served via the Louisiana long-arm statute through its agent for service of process Jeffrey D. Fick, 9025 N. Lindbergh Drive, Peoria, IL 61615.

4.

Defendants, EI Investments, Inc. f/k/a and d/b/a Eustis Insurance, Inc. and/or Eustis Insurance & Benefits (“EI”) and Marsh & McLennan Agency LLC d/b/a Eustis Insurance & Benefits (“Marsh”) (EI and Marsh are collectively referred to as “Eustis”); and ARI Underwriters, Inc. (“ARI”), served as Sika’s insurance agents/brokers for the Policy, and Eustis mailed it a copy of same. *See* Exhibit A, Mt. Hawley-00006, Exhibit B. Eustis has served as Sika’s insurance agent for more than 10 years.

5.

EI is a Louisiana corporation with its principal office address at 110 Veterans Memorial Blvd., Suite 200, Metairie, LA 70005. It may be served through its agent for service of process, Registered Agent Solutions, Inc., 3867 Plaza Tower Drive, 1st Floor, Baton Rouge, LA 70816. Marsh is a foreign limited liability company authorized to do business in Louisiana with its registered office in Louisiana at 3867 Plaza Tower Drive, Baton Rouge, LA 70816. Marsh may be served through its agent for service of process, C T Corporation System, 3867 Plaza Tower Drive, Baton Rouge, LA 70816.

6.

ARI is a Louisiana corporation with its principal office address business at 80 Normandy Drive, Kenner, LA 70065. It may be served through its agent for service of process, Paul Dreher, 80 Normandy Drive, Kenner, LA 70065.

7.

Defendant ABC is the insurer of EI for its errors and omissions at issue in this lawsuit which is being sued pursuant to the Louisiana Direct Action Statute, LSA-R.S. § 22:1269. Defendant DEF is the insurer of Marsh for its errors and omissions at issue in this lawsuit which is being sued pursuant to the Louisiana Direct Action Statute, LSA-R.S. § 22:1269.

8.

Defendant XYZ is the insurer of ARI for its errors and omissions at issue in this lawsuit which is being sued pursuant to the Louisiana Direct Action Statute, LSA-R.S. § 22:1269.

9.

Venue is proper in Jefferson Parish as this action is against joint or solidary obligors and it is brought in a parish of proper venue under Article 42 against defendants EI and/or ARI. *See* LA. CODE CIV. PROC. art. 42(2) & 73(A).

FACTS

10.

The Policy provides Sika with limits of \$376,184 for “Business Income/Rental Value (with Extra Expense)” (“BI”) for Camellia Square and \$500,000 BI for Microtel. *See* Exhibit A, Mt. Hawley-00009.

11.

Sika has suffered BI losses covered under the Policy due to Covid-19 as its buildings have been damaged and access, ingress, and/or egress to them was prohibited and/or impaired by civil authority. *See, e.g.*, Mt. Hawley-00028-37 (Business Income (and Extra Expense) Coverage Form), Mt. Hawley-00109 (Ingress or Egress).

12.

The use of Sika's buildings was prohibited and/or impaired for their intended use as a retail shopping center for Camellia Square and as a hotel for Microtel for which BI coverage Sika paid premiums to Mt. Hawley.

13.

The business of the Camellia Square retail shopping center and of the Microtel hotel were "suspended" as defined in the Policy due to issues outlined above. The policy defines "suspension" as including the "slowdown" of Sika's business activities or as including when "part or all of the described premises [that] is rendered untenable" as the policy provides coverage for Business Income including "Rental Value." *See* Exhibit A, Mt. Hawley-00037.

14.

Civil authority orders prevented access to and impaired ingress from or egress to Sika's properties for which a specific Policy endorsement was issued. *See, e.g.*, Exhibit A, Mt. Hawley-00109. There were also curfews issued for the municipality of Slidell where the Sika's Camellia Square retail shopping center is located.

15.

The peril of impairing access to Sika's buildings by governmental "stay-at-home" and curfew orders due to coronavirus is similar to the perils of riot, strike, picketing, etc. which would impair access to the buildings and are clearly covered under the policy. *See, e.g.,* Exhibit A, Mt. Hawley-00089, -00109.

16.

Sika timely reported its claim to Mt. Hawley and supplied it satisfactory proof of loss demanding payment of the full BI limits under the Policy for both locations, but to date, Sika has been paid nothing by Mt. Hawley for its claim.

17.

On its website in a page entitled "Insurance for Your Business," Eustis touts its experience in business insurance in general as follows and confirms that it evaluates its clients' business "potential risk exposures" and makes "recommendations" regarding insurance coverage for same as follows:

At Eustis, we work with our clients throughout Louisiana *to fully understand their businesses and their potential risk exposures.* Only then will *we make recommendations.*

See <https://www.eustis.com/business-insurance/> (last visited June 5, 2020)

(emphasis added).

18.

Eustis also specifically touts its experience specifically with hotels as follows and again confirms that it knows that "industry's unique needs and challenges"; works in a "consultative fashion" with those businesses; reviews their coverage "to look for areas in need of improvement"; and again makes "recommendations" regarding insurance coverage as follows:

Our decades of working in partnership with hotels, motels, and other hospitality-based businesses have given us insight into the industry's **unique needs and challenges.** Because we are an independent insurance agency with a long history in hospitality coverage, we're able to leverage our relationships with top-rated insurance companies to offer the most competitive pricing.

Eustis agents work with businesses in a consultative fashion to manage and mitigate risk. We take the time to fully understand your needs and objectives, and then **we review your current insurance coverage to look for areas in need of improvement.** Only once we've developed a complete picture of your current coverage needs will **we make recommendations.**

See <https://www.eustis.com/business-insurance/hotels-motels-hospitality>

(last visited June 5, 2020).

19.

Similarly, the ARI website touts its business insurance selection and analysis services, including “proper coverage selection” and “Business Income/Extra Expenses analysis” as follows:

[T]he founder of ARIUW is uniquely positioned to assist you with a variety of services, **including but not limited to proper coverage selection, . . . Business Income/Extra Expense analysis**

See <https://www.ariuw.com/> (last visited June 5, 2020) (bold emphasis in original; other emphasis added).

20.

The ARI website further touts “Shopping centers,” “Retail” and “Hotels” as “accounts” for which it provides insurance brokerage writing services. See <https://www.ariuw.com/accounts> (last visited June 5, 2020).

21.

Thus, Eustis and ARI held themselves out to Sika as advisors of hotel, retail, and shopping center business income insurance.

22.

Sika reasonably relied on Eustis and ARI's representations of their unique expertise in insurance coverage selection and policy recommendations for its industry following their reviews and analysis of Sika's insurance and business.

23.

Eustis and ARI were not mere "order takers" for Sika's insurance, but rather specifically held themselves out as consultative insurance advisors to insureds who would recommend appropriate coverages.

24.

Based on these affirmative representations regarding their insurance-related services, Eustis and ARI had a heightened duty to Sika regarding its coverage selections on which Sika reasonably relied.

25.

Sika's assumption that it was properly insured by the Policy for its BI losses is warranted by Eustis and ARI's representations of their unique insurance expertise and advice.

26.

To the extent Mt. Hawley late pays and/or does not pay all of Sika's BI damages, Eustis and ARI are liable to Sika for the BI coverage they should have recommended to Sika due to their affirmative representations on which Sika relied.

**FIRST CAUSE OF ACTION AGAINST
MT. HAWLEY FOR INSURANCE PROCEEDS**

27.

Sika repeats and alleges the allegations in all preceding paragraphs as though fully set forth herein.

28.

As indicated above, Sika asserts a claim against Mt. Hawley for all proceeds due under the Policy.

**SECOND CAUSE OF ACTION AGAINST
MT. HAWLEY FOR BAD FAITH PENALTIES**

29.

Sika repeats and alleges the allegations in all preceding paragraphs as though fully set forth herein.

30.

Sika submitted satisfactory proof of loss to Mt. Hawley, and Mt. Hawley has not paid Sika its losses within 30 days, thereby subjecting Mt. Hawley to an additional 50% of the amount due and Sika's attorneys' fees as provided by LSA-R.S. § 22:1892.

31.

Alternatively, Sika submits this instant lawsuit is satisfactory proof of loss to Mt. Hawley of its claim under the policy and that, if Sika does not pay the Sika's claim for the full BI limits under the Policy within 30 days of receipt of same, Mt. Hawley must pay Sika 50% of the amount due and Sika's attorneys' fees as provided by LSA-R.S. § 22:1892.

32.

Also, if Mt. Hawley does not pay Sika within 60 days of satisfactory proof of loss of Sika's claim either presented previously or by this Petition, Mt. Hawley must pay Sika the damages it has sustained due to Sika's non-payment as well as two times the damages Sika sustained under LSA-RS. § 22:1973.

THIRD CAUSE OF ACTION
BREACH OF CONTRACT AND/OR NEGLIGENCE OF EUSTIS AND ARI

33.

Sika repeats and alleges the allegations in all preceding paragraphs as though fully set forth herein.

34.

To the extent Sika is found to be uninsured and/or underinsured for its Covid-19-related losses under the Policy, Sika submits it was due to the breach of contract and/or negligence of Eustis and ARI in the following non-exclusive particulars:

- (a) Failing to advise Sika about the need for broader virus-related coverage for its retail shopping center and hotel businesses in which there are numerous people entering and exiting daily;
- (b) Failing to perform due diligence regarding Sika's business as affirmatively was represented would be done; and/or
- (c) Failing to recommend appropriate insurance coverages to Sika.

35.

The defendants, Mt. Hawley, Eustis, and ARI, are all jointly and solidarily liable with each other for all damages Sika has suffered due to their negligence and/or breaches of contract for its Covid-19 losses.

FOURTH CAUSE OF ACTION
DIRECT ACTION CLAIM AGAINST INSURERS OF EUSTIS AND ARI

36.

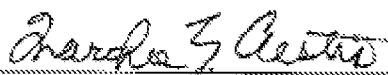
Sika repeats and alleges the allegations in all preceding paragraphs as though fully set forth herein.

37.

Sika asserts a claim under the Louisiana Direct Action Statute, LSA-R.S. § 22:1269, against the insurers of EI, Marsh, and ARI, as ABC, DEF, and XYZ insurers, for all Sika's claims asserted against them. Sika reserves its rights to substitute the correct name of the insurers at issue once identified.

WHEREFORE, Sika respectfully prays, after due proceedings had, that:

- (1) Defendants, Mt. Hawley, EI, Marsh, and ARI, be held jointly and solidarily liable with each other for all losses suffered by Sika due to Covid-19;
- (2) EI, Marsh, and ARI's insurers be held liable for all amounts they owe Sika; and
- (3) Sika receive any other equitable and general relief as the nature of this case will allow.


MARTHA Y. CURTIS, #20446
ASHLEY G. COKER, #30446
SHER GARNER CAHILL
RICHTER KLEIN & HILBERT, L.L.C.
909 Poydras Street, Suite 2800
New Orleans, Louisiana 70112
Telephone: (504) 299-2100
Facsimile: (504) 299-2300
ATTORNEYS FOR PLAINTIFF
SIKA INVESTMENTS, LLC

PLEASE PROVIDE ATTORNEYS FOR PLAINTIFF THE CITATION AND CONFORMED COPY OF THIS PETITION FOR LONG-ARM SERVICE FOR:

RLI Corp. d/b/a Mt. Hawley Insurance Company
via the Louisiana long-arm statute
through its agent for service of process
Jeffrey D. Fick
9025 N. Lindbergh Drive
Peoria, IL 61615

PLEASE SERVE:

EI Investments, Inc.
f/k/a and d/b/a Eustis Insurance, Inc. and/or
d/b/a Eustis Insurance & Benefits
through its agent for service of process
Registered Agent Solutions, Inc.
3867 Plaza Tower Drive, 1st Floor
Baton Rouge, LA 70816

ARI Underwriters, Inc.
through its agent for service of process
Paul Dreher
80 Normandy Drive
Kenner, LA 70065

Marsh & McLennan Agency LLC
d/b/a Eustis Insurance & Benefits
C T Corporation System
3867 Plaza Tower Drive
Baton Rouge, LA 70816

Shelley M. Mauterer

From: Johnson, Bill <bjohnson@shergarner.com>
Sent: Tuesday, June 9, 2020 10:49 AM
To: Shelley M. Mauterer
Cc: Sanderson, Sean
Subject: RE: EFile Case: 807143

Confirm receipt

Thanks,

Bill

BILL JOHNSON | FINANCIAL DIRECTOR | SHER GARNER CAHILL RICHTER KLEIN & HILBERT, L.L.C.



909 Poydras Street | Suite 2800 | New Orleans, LA 70112 | bjohnson@shergarner.com | O: 504-299-2214 |
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Gretna LA 70053
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