

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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STEADFAST INSURANCE COMPANY,

Court File No.: \_\_\_\_\_

Plaintiff,

vs.

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

GLOBAL TRAVEL ALLIANCE, INC.,

Defendant.

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Plaintiff, Steadfast Insurance Company (“Steadfast”), by and through its attorneys, Cousineau, Van Bergen, McNee & Malone, as and for its declaratory judgment Complaint against Defendant Global Travel Alliance, Inc. (“Global Travel”), states as follows:

**THE PARTIES**

1. At all relevant times, Steadfast is and was an Illinois corporation engaged in the insurance business with a statutory home office located at 1299 Zurich Way, Schaumburg, Illinois 60196, and its principal place of business located at 1299 Zurich Way, Schaumburg, Illinois 60196. Steadfast operates as a non-admitted surplus lines insurer in Minnesota.

2. At all relevant times, defendant Global Travel is and was a domestic corporation duly organized and existing under and by virtue of the laws of the State of Montana. Upon information and belief, Global Travel’s principal place of business is in a state other than Illinois.

3. At all relevant times, defendant Global Travel has been authorized to do business and has been doing business in Minnesota, and maintains an office for the conduct of business at 12750 Nicolet Avenue, Suite 210, Burnsville, Minnesota.

**JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter pursuant to 28 U.S. Code § 1332 because the matter in controversy exceeds the sum of \$75,000 and the case is between citizens of different states.

5. Venue is proper in this Court pursuant to pursuant to 28 U.S. Code § 1391 because Defendant is a resident of Minnesota.

**FACTUAL BACKGROUND**

**The Underlying Lawsuit**

6. On or about April 24, 2020, Global Travel Alliance was named as a defendant in a putative class action lawsuit filed in the United States District Court for the District of Montana, Billings Division, captioned *Lisa Sides, et al. v. Global Travel Alliance*, Case 1:20-cv-00053-SPW-TJC (hereinafter “the Lawsuit”).

7. On or about May 19, 2020, a Second Amended Complaint was filed in the Lawsuit. On or about June 26, 2020, a Third Amended Complaint was filed in the Lawsuit. Copies of the Complaint, Second Amended Complaint and Third Amended Complaint are annexed hereto as Exhibits A, B and C, respectively.

8. The substantive allegations of the Complaint, Second Amended Complaint and Third Amended Complaint (hereinafter, collectively, “the Complaint”) are substantially identical.

9. The Complaint is brought by the parents of six children, on behalf of themselves and others similarly situated. The named plaintiffs allegedly are all citizens of Montana. The putative class members are alleged to be citizens of many different states.

10. The Complaint alleges that Global Travel is a tour company that sells educational travel packages to students. Plaintiffs allege that the children were booked on various Global Travel Alliance educational tours that were cancelled as a result of the coronavirus pandemic and travel restrictions.

11. Plaintiffs allege that Global Travel unilaterally canceled and postponed the scheduled trips, and then improperly gave plaintiffs the choice of accepting a voucher or losing some or all of the tour cost.

12. Plaintiffs allege that Global Travel improved its own financial position by cancelling the trips it had sold to the plaintiffs and refusing to grant full refunds by conflating the terms of its unsafe trip cancellation policy, the customer cancellation policy and its travel insurance program.

13. The Second Amended Complaint contained eight Counts: 1) Breach of Contract, 2) Breach of the Implied Covenant of Good Faith and Fair Dealing; 3) Conversion; 4) Unjust Enrichment; 5) Unfair Trade Practices and Consumer Protection Act; 6) Negligence; 7) Money Had and Received; and 8) Declaratory Judgment and Injunctive Relief. The Third Amended Complaint dropped the second, fourth, fifth and eighth Counts, and alleges the following:

Count I: Negligence

Plaintiffs allege that Global Travel breached its duty to exercise reasonable care in its conduct involving its response to the coronavirus pandemic by conflating its company cancellation policy with its customer cancellation policy, canceling the trips while claiming a right to keep some or all of the funds paid by the plaintiffs; serving its own economic interests at the expense of the plaintiffs; and seeking to transfer its own business risk and expense associated with the pandemic to plaintiffs.

Count II – Breach of Contract

Plaintiffs allege that Global Travel breached its contracts with plaintiffs by cancelling their tours due to the pandemic and then asserting the customer cancellation clause in the contracts to justify keeping all or part of plaintiffs' funds, and creating a voucher program that was not in the contract.

Count III – Unfair Trade Practices and Consumer Protection Act

Plaintiffs allege that defendant's actions constituted unfair or deceptive acts or practices, and seek compensatory damages, statutory treble damages and attorneys' fees.

Count IV - Declaratory Judgment and Injunctive Relief

Plaintiffs seek a declaratory judgment that Global Travel's cancellation of plaintiffs' trips does not entitle it to retain the funds paid by plaintiffs under the relevant contract provisions or, if it does, that such provisions are void as against law and public policy and Global Travel should be enjoined from withholding plaintiffs' funds.

Count V – Equitable Constructive Trust

Plaintiffs seek an accounting of all funds held by Global Alliance, and the placement of such funds in an Equitable Trust for redistribution to plaintiffs.

14. Plaintiffs seek to certify a class of all persons who purchased trips from Global Travel pursuant to the same contract form, whose trips were canceled due to the coronavirus pandemic and who have not received a full refund from Global Travel.

15. On or about May 20, 2020, Global Travel's counsel tendered the Second Amended Complaint in the Lawsuit to Zurich for defense and indemnity under a Travel Agents and Tour Operators Professional Liability Insurance Policy issued by Steadfast to Global Travel.

16. By letter dated June 19, 2020, Steadfast agreed to defend Global Travel in the Lawsuit under the Policy, pursuant to a full reservation of rights. The letter advised Global Travel that indemnity coverage for the Lawsuit was unlikely on numerous grounds, including that the Lawsuit does not allege a negligent act or omission, and the claims for declaratory, injunctive and equitable relief, and treble damages, do not seek "Damages" as required by the Insuring Agreement of the Policy. Steadfast further advised that the Policy contains numerous applicable exclusions, including exclusions for breach of contract, unfair or deceptive trade practices, intentional conduct, failure to pay refunds, claims arising out cancellation provisions, and claims arising out of the gaining of profit to which the insured was not legally entitled.

**The Steadfast Policy**

17. Steadfast issued Travel Agents and Tour Operators Professional Liability Insurance Policy number EOL9321118-15 to Global Travel for the period January 1, 2020 to January 1, 2021 (hereinafter, "the Policy"). A copy of the Policy is attached hereto as Exhibit D.

18. The Insuring Agreement, paragraph A., contains four Coverage parts: Coverage A for "Bodily Injury and Property Damage Liability" caused by an "Occurrence"; Coverage B for "Non-owned and Hired Auto Liability" caused by an "Occurrence"; Coverage C for "Professional Liability"; and Coverage D for "Personal Injury Liability" arising out of "Travel Agency Operations".

19. The Plaintiffs in the Lawsuit do not allege any "Bodily Injury," "Property Damage," "Personal Injury" or an Occurrence" as defined in the Policy. Accordingly, there is no coverage for the Lawsuit under Coverages A, B or D of the Policy.

20. Coverage C of the Policy provides coverage to the insured for those sums that the Insured becomes legally obligated to pay as "Damages" arising out of a negligent act or negligent omission in the conduct of "Travel Agency Operations."

21. The Policy excludes coverage for any claim or suit based upon or arising out of an insured's breach of contract (Exclusion "A").

22. The Policy excludes coverage for any claim or suit arising out of the insured's violation of any consumer fraud, consumer protection, unfair trade practices or deceptive business practice or statutory or common law unfair competition (Exclusion "K").

23. The Policy excludes coverage for any claim or suit based upon or arising out of any act or omission by the insured which is intentional, dishonest, fraudulent, malicious, or criminal, regardless of whether the damages were intended (Exclusion "N").

24. The Policy excludes coverage for any claim or suit based upon or arising from the inability or failure to pay or collect money, including refunds (Exclusion “O”).

25. The Policy excludes coverage for any claim or suit based upon or arising out of any cancellation provisions, or any dispute with respect to fees or charges (Exclusion “P”).

26. The Policy excludes coverage for any claim or suit based upon or arising out of the gaining of profit or advantage to which the insured was not legally entitled (Exclusion “U”).

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST  
GLOBAL TRAVEL  
(DECLARATORY JUDGMENT)**

27. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 26 of this Complaint as if more fully set forth herein.

28. Global Travel has tendered its defense and indemnification in connection with the Lawsuit to Steadfast under the Policy.

29. Plaintiffs in the Lawsuit allege that Global Travel canceled plaintiffs’ tours due to the coronavirus pandemic, and failed or refused to refund the cost of the tours to the plaintiffs. Plaintiffs further allege that Global Travel’s actions either breached the terms of its contracts with the plaintiffs, or the terms of those contracts are void and against public policy. Plaintiffs do not allege a negligent act or negligent omission as required by Coverage D of the Policy.

30. Plaintiffs in the Lawsuit do not allege that any person has sustained “Bodily Injury,” as defined in the Policy.

31. Plaintiffs in the Lawsuit do not allege any “Property Damage,” as defined in the Policy.

32. Plaintiffs in the Lawsuit do not allege “personal injury,” as defined in the Policy.

33. Plaintiffs in the Lawsuit do not allege any “Occurrence,” as defined in the Policy.



34. Plaintiffs in the Lawsuit seek declaratory, injunctive and equitable relief, as well as treble damages, which are not “Damages” as defined in the Policy and as required by the Insuring Agreement of the Policy.

35. Coverage for plaintiffs’ claims for breach of contract is precluded by the Policy’s exclusion for claims caused by or arising out of breach of contract (Exclusion “A”).

36. Coverage for plaintiffs’ claims for unfair trade practices and consumer protection act violations is precluded by the Policy exclusion for claims or suits arising out of the insured’s violation of any consumer fraud, consumer protection, unfair trade practices or deceptive business practice or statutory or common law unfair competition (Exclusion “K”), and by the exclusion for intentional, dishonest or fraudulent acts (Exclusion “N”).

37. Coverage for plaintiffs’ claims is precluded by the Policy exclusion for any claim or suit based upon or arising from the inability or failure to pay or collect money, including refunds (Exclusion “O”).

38. Coverage for plaintiffs’ claims is precluded by the Policy exclusion for any claim or suit based upon or arising out of any cancellation provisions, or any dispute with respect to fees or charges (Exclusion “P”).

39. Coverage for plaintiffs’ claims is precluded by the Policy exclusion for any claim or suit based upon or arising out of the gaining of profit or advantage to which the insured was not legally entitled (Exclusion “U”).

40. By reason of the foregoing, Steadfast seeks a declaration that it has no duty to defend and indemnify Global Travel in the Lawsuit under the Policy.

41. There exists a real, actual and justiciable controversy between Plaintiff and Global Travel herein.

42. Plaintiff has no adequate remedy at law to have its rights and duties determined as to the merits set forth herein.

**WHEREFORE**, Plaintiff respectfully requests that the Court issue a judgment declaring that it has no duty to defend and indemnify Global Travel for the claims alleged in the Complaint in the Lawsuit, along with such other and further relief as this Court deems just and proper.

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.**

**COUSINEAU, VAN BERGEN, MCNEE &  
MALONE, P.A.**

Dated: August 28, 2020

By: /s/Robyn K. Johnson

**Peter G. Van Bergen #0112033**

**Robyn K. Johnson #0309734**

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