

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION
Civil Action No. 5:09-CV-143

ARSENAL DIGITAL SOLUTIONS)
WORLDWIDE, INC.,)
)
Plaintiff,)
)
v.)
)
AMERICAN INTERNATIONAL SOUTH)
INSURANCE COMPANY,)
)
Defendant.)
)

**COMPLAINT
JURY TRIAL DEMANDED**

COMPLAINT

Plaintiff Arsenal Digital Solutions Worldwide, Inc. (“Arsenal” or “Plaintiff”), by and through its attorneys, files this Complaint against Defendant American International South Insurance Company (“AISIC” or “Defendant”), and alleges as follows:

Nature of the Action

1. This is an insurance coverage action. This Complaint seeks damages for Defendant’s breach of a directors and officers insurance policy issued to Plaintiff by Defendant. Plaintiff has incurred (and will continue to incur) covered Defense Costs arising from a lawsuit pending in the State of Louisiana which Defendant has refused to pay. In addition, Plaintiff seeks the direction of this Court with respect to Defendant’s obligations for any settlement or judgment in that lawsuit.

Parties

2. Plaintiff Arsenal Digital Solutions Worldwide, Inc. is a Delaware corporation, with its principal place of business located in Cary, North Carolina.

3. Defendant American International South Insurance Company, a member company of American International Group, Inc. (“AIG”), is a foreign insurance company authorized to do business in the State of North Carolina. AISIC is a Pennsylvania corporation, with its principal place of business in New York. AISIC issued and delivered the relevant policy to Plaintiff in North Carolina.

4. Pursuant to N.C. Gen. Stat. § 58-16-30 (2008), the Defendant will be served with legal process by service upon its registered agent in North Carolina and/or upon the North Carolina Insurance Commissioner.

Jurisdiction and Venue

5. Plaintiff and Defendant are citizens of different states and the amount in controversy exceeds \$75,000. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332.

6. Venue is appropriate in this district because the insurance policy which is the subject of this action was applied for, issued, and delivered to the Plaintiff in this district.

Statement of Facts

7. Arsenal purchased the Private Company Liability Insurance Policy number 673-33-91 with a Policy Period of August 9, 2006 through December 31, 2007 (the “Policy”). A true and correct copy of the Policy is attached hereto as Exhibit 1 and fully incorporated herein by reference.

8. Plaintiff is the Named Insured Entity under the Policy. The Policy provides liability insurance for the Named Entity (Arsenal) and any Subsidiary of Arsenal in addition to

their Individual Insureds, which include, *inter alia*, Arsenal's and its Subsidiaries' past, present and future officers and directors but only in their capacity as such.

9. North Carolina law applies to the interpretation of the Policy.

10. On or about November 20, 2007, two security holders of Arsenal (Mr. Kevin M. Pollard and Ms. Meghan Marie Pollard Leypoldt) filed an action against Arsenal and others, styled *Kevin H. Pollard and Meghan Marie Pollard Leypoldt v. Arsenal Digital Solutions Worldwide, Inc.*, Case No. 653-346, in the 24th Judicial Circuit for the Parish of Jefferson, State of Louisiana (the "Pollard Action"). The complaint alleges, *inter alia*, that Arsenal and certain Arsenal directors and officers, with other individuals and entities were liable to Mr. Pollard and Ms. Leypoldt for damages arising from conspiracy, fraud, negligent misrepresentation, violation of the Louisiana Unfair Trade Practices Act (L.S.A. R.S. 51:1401 *et seq.*), breach of fiduciary duty, and a minority shareholder claim. The complaint also seeks rescission of certain alleged mergers of certain defendant entities into other entities, and related disgorgement of profits following upon the rescission(s). A true and correct copy of the complaint in the Pollard Action is attached hereto as Exhibit 2 (the "Complaint") and fully incorporated herein by reference. The Complaint named as defendants Arsenal as well as the directors and officers whom Arsenal agreed to indemnify for the Pollard Action.

11. The Complaint names as entity defendants, Arsenal and Arsenal Digital Solutions USA, Inc. ("Arsenal USA"), both of which are insured under the Policy.

12. The Complaint also names as Defendant, Access Data Direct LLC ("ADD"), which the Complaint alleges was merged with another company, One Room Systems, Inc. ("ORSI") in December, 1998, and a new company, the Defendant Vertical Markit Corporation ("Vertical Markit Corporation") was formed.

13. The Complaint alleges that a year later, in December 1999, another Defendant, Usendit.com, Inc. (“Usendit”) was formed and that “Vertical [Markit] (and therefore ADD) was merged into Usendit. Thus as a result of this merger, Pollard’s original company, ADD became a subsidiary of Usendit.”

14. The complaint alleges, and Arsenal acknowledges, that on July 19, 2000, Usendit changed its name to Arsenal and later in 2000, Vertical Markit, then a Subsidiary of Arsenal, changed its name to Arsenal USA.

15. On information and belief, ORSI became a wholly-owned subsidiary of Arsenal USA (then known as Vertical Markit), which in turn was and is a wholly-owned subsidiary of Arsenal (then known as Usendit.)

16. On information and belief, ADD was formally dissolved on December 28, 2006, prior to the filing of the Complaint in the Pollard Action.

17. On information and belief, at the time of the filing of the Complaint in the Pollard Action, ORSI was a North Carolina corporation with its principal place of business in North Carolina and a wholly-owned subsidiary of Arsenal USA, and therefore also an insured Subsidiary under the policy.

18. Thus, at the time the Pollard Complaint was filed, ADD had been dissolved; ORSI was a Subsidiary of Arsenal USA, which was in turn a subsidiary of Arsenal; Vertical Markit had changed its name to Arsenal USA; and Usendit had changed its name to Arsenal.

19. The Complaint also named as defendants entities and individuals who were not affiliates, directors or officers of Arsenal: Southeast Interactive Technology Funds, Covestco-Seteura, LLC, Richard Sears, Steve Rakes, and Robert A. Hass (collectively the “SEITF

defendants”). Upon information and belief, the SEITF Defendants are **not** insured under the Policy.

20. The Complaint also named as individual defendants: Norvell E. Miller, IV, Rami Elkhatab, Frank Brick, David M. Lloyd, Alesdair J. Kemsley Pein, and Michael Ressler (the “Arsenal Individual Defendants,”) each of whom is an Individual Insured under the Policy and all of whom Arsenal has indemnified and is indemnifying for the Pollard Action. Mr. Miller was a director of Arsenal and of Arsenal USA; Mr. Brick was CEO and a director of Arsenal and CEO, president, and a director of Arsenal USA; Messrs. Elkhatab, Lloyd, Pein, and Ressler were directors of Arsenal.

21. According to the allegations in the Complaint, by the late spring of 2001, the underlying plaintiff, Mr. Pollard, was no longer an officer, although, upon information and belief, he continued as a board member of Arsenal until 2006. The other underlying plaintiff, Ms. Leypoldt, was never, upon information and belief, an officer or director of any of the Arsenal entities.

22. Upon receipt of the Complaint, Arsenal timely notified AISIC of the Pollard Action and requested full coverage under the Policy.

23. The Pollard Action falls within the scope of the Policy’s relevant Insuring Agreement, Coverage B: Private Company Insurance, which provides:

24. This Policy shall pay the Loss of the Company arising from a:

- (i) Claim first made against the Company;¹ or
- (ii) Claim first made against an Individual Insured,

during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act,

¹ “Company means the Named Entity and any Subsidiary thereof.” Policy, Section 2, Definitions (c).

but, in the case of (ii) above, only when and to the extent that the Company has indemnified the Individual Insured for such Loss pursuant to law, common or statutory, or contract, or the Charter or By-laws of the Company duly effective under such law which determines and defines such rights of indemnity. The insurer shall, in accordance with and subject to Clause 8, advance Defense Costs of such Claim prior to its final disposition.

Ex. 1 at 1.

25. Pursuant to law, common or statutory, or contract, or the Charter or By-laws of the Company duly effective under the law, Arsenal is indemnifying the above-referenced “Individual Insureds” for Loss arising from the Pollard Action, which constitutes a “Claim first made” against those Individual Insureds under the Policy.

26. Further, the Arsenal entities named in the Pollard Action are also Insureds under the Policy, and the Claims made against them constitute Claims and Securities Claims against the Organization also insured by the Policy.²

27. The Policy defines the term “Claim” in relevant part:

(b) “Claim” means:

(1) a written demand for monetary or non-monetary relief (including any request to toll or waive any statute of limitations); or

(2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary or non-monetary relief which is commenced by:

(i) service of a complaint or similar pleading;
or

(ii) return of an indictment (in the case of a criminal proceeding); or

² As noted above, Pollard also named Arsenal USA, ADD, Vertical Markit Corporation, and Usendit as defendants. Each of these entities was either a predecessor company or a wholly-owned subsidiary of Plaintiff and are therefore covered Insureds under the Policy.

- (iii) receipt or filing of a notice of charges. . . .

The term “Claim” shall include an Employment Practices Claim and a Securities Claim.

Ex. 1 at 2.

28. The Policy defines the term “Securities Claim”:

(r) “Securities Claim” means a Claim (including a civil lawsuit or criminal proceeding brought by the Securities & Exchange Commission) made against an Insured anywhere in the world alleging a violation of any law, regulation or rule, whether statutory or common law, which is:

(1) brought by any person or entity alleging, arising out of, based upon or attributable to, in part or in whole, the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities of the Company, or

(2) brought by a securities holder of the Company, whether directly, by class action, or derivatively on the behalf of the Company, or otherwise, alleging any Wrongful Act of an Insured.

Ex. 1 at 5.

29. The Policy defines the term “Wrongful Act”:

(t) “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 their respective capacities as such, or any matter claimed against such insured solely by reason of their status as directors, officers or Employees of the Company;

(2) with respect to the Company, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by the Company; and

(3) with respect to service on an Outside Entity, any matter claimed against an individual insured as defined in definition (i)(2) arising out of his or her serving as a director, officer, trustee or governor of an Outside Entity in

such capacity, but only if such service is at the specific written request or direction of the Company.

With respect to an Employment Practices Claim, the term “Wrongful Act” shall include any Employment Practices Violation.

Ex. 1 at 6.

30. The Complaint constitutes a Claim first made against the Company, as well as a Claim first made against Individual Insureds whom Arsenal has indemnified during the Policy Period, and such Claim was reported to AISIC pursuant to the terms of the Policy.

31. The Policy defines the term “Loss” in relevant part as “damages (including back pay and front pay), judgments, settlements, pre- and post-judgment interest, and Defense Costs. . . . If an additional premium is stated in Item 7 of the Declarations page, then Loss shall specifically include (subject to the policy’s other terms, conditions and exclusions . . .) punitive, exemplary and multiple damages. . . . It is further agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages. . . .” Ex. 1 at 4. There is an additional premium stated in Item 7.

32. The Policy defines “Defense Costs” as “reasonable and necessary fees, costs and expenses consented to by the Insurer.” Because AISIC has denied any obligation to pay, the Insurer’s “consent” to defense costs is not required.

33. The Policy also provides that AISIC has a duty to advance Defense Costs to Plaintiff. Clause 8 of the Policy provides, in relevant part:

the Insureds shall have the right to tender the defense of the Claim to the Insurer, which right shall be exercised in writing by the Named Entity on behalf of all Insureds to the Insurer pursuant to the notice provisions of Clause 7 of the policy. . . Further, from the date the Claim is first made against the Insureds to the date when

the Insurer accepts the tender of the defense of such Claim, the Insureds shall take no action, or fail to take any required action, that prejudices the rights of the Insureds or the Insurer with respect to such Claim. Provided that the Insureds have complied with the foregoing, the Insurer shall be obligated to assume the defense of the claim, even if such Claim is groundless, false or fraudulent. The assumption of the defense of the Claim shall be effective upon written confirmation sent thereof by the Insurer to the Named Entity. . . . (Emphasis added.)

When the Insurer has not assumed the defense of a Claim pursuant to this Clause 8, *the Insurer shall advance nevertheless, at the written request of the Insured, Defense Costs prior to the final disposition of a Claim*

Ex. 1 at 11-12 (emphasis added). By the plain terms of the Policy, AISIC has a duty to advance Defense Costs arising from the Pollard Action.

34. AISIC repudiated that duty when, on or about January 14, 2008, AISIC issued a coverage denial letter to Mr. Brian C. Schneider, General Counsel of Arsenal, expressly denying all coverage for the Pollard Action under the Policy. A true and correct copy of AISIC's coverage denial letter dated January 14, 2008 is attached hereto as Exhibit 3 and is fully incorporated herein by reference.

35. In AISIC's January 14, 2008 coverage denial letter, AISIC denied coverage for the entire Pollard Action allegedly based on, among others, a Policy exclusion found in Clause 4(i) of the Policy. Exhibit 3, p. 3.

36. The Policy's exclusion, Clause 4(i), provides that the Insurer shall not be liable to make any payment for Loss in connection with a Claim made against an Insured:

(i) which is brought by an Insured or by the Company; which is brought by any security holder of the Company, whether directly or derivatively, unless such security holder's Claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any Insured. . . .

Ex. 1 at 6-7.

37. At the time the Pollard Action was filed, Mr. Pollard was no longer an officer or director of Arsenal. The Pollard Action was instigated and continued totally independent of and totally without the solicitation of or intervention of any then-current Arsenal officer or director. Furthermore, the referenced exclusion does not apply to the causes of action brought by Mr. Pollard because Mr. Pollard is not an “Insured.” The Policy’s definition of “Insured” includes both the Company and “Individual Insureds.” Ex. 1 at 4. The Policy defines “Individual Insureds” as:

Any past, present or future duly elected or appointed directors, officers, management committee members or members of the Board of Managers of the Company, ***but only in their capacity as such.***

Ex. 1 at 3 (emphasis added). Mr. Pollard brought the Pollard Action in his personal capacity and as a security holder – *not* in his capacity as a past director or officer of Arsenal.

38. In addition, AISIC relied on the above exclusion to deny coverage wrongfully for the *entire* Pollard Action. Ms. Leypoldt, the other plaintiff in the Pollard Action, also brought her Claim and Securities Claim against Arsenal and its directors and officers. Without any explanation whatsoever, AISIC summarily denied coverage for the action brought by Ms. Leypoldt pursuant to Clause 4(i) – even though she indisputably is not and never was an officer or director of Arsenal or any Arsenal entity.

39. In its denial letter, AISIC also relied upon Exclusion 4(h), which provides: “The Insurer shall not be liable to make any payment for Loss in connection with a Claim made against an Insured:... (h) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the Company, or any other Insured under any express contract or agreement; provided however that with respect to Employment Practices Claims, this exclusion

shall not apply to the extent any liability does not arise under such express employment contract or agreement. . . .” This exclusion also does not apply. The underlying plaintiffs are not suing for contractual liability of the Company or any other Insured under any express contract or agreement. To the contrary, the underlying plaintiffs seek rescission of certain contracts and agreements.

40. In refusing to advance Defense Costs arising from the Pollard Action, AISIC has breached the Policy.

41. Plaintiff properly notified Defendant of the Pollard Action and has fully complied with all conditions precedent to coverage.

42. AISIC’s denial of coverage, breach of the Policy, and refusal to pay Plaintiff’s Defense Costs is in bad faith.

COUNT I
Breach of Contract

43. Plaintiff incorporates by reference the enumerated paragraphs above, as if fully set forth herein.

44. The Policy obligates AISIC to pay and “advance Defense Costs” for each Claim to Arsenal “prior to the final disposition of a claim.”

45. An insurer’s defense-payment obligation is broader than its obligation to pay damages.

46. An insurer must pay Defense Costs if any facts or allegations bring the claim even potentially within the protection purchased.

47. Under the applicable standard, AISIC is obligated to pay Plaintiff’s Defense Costs with respect to the Pollard Action, subject only to any applicable retention and limits of liability.

48. AISIC denies that it has the obligation to advance Plaintiff the Defense Costs Plaintiff has incurred and will continue to incur in defense of the Pollard Action. AISIC has denied all coverage outright and has thereby breached its obligations under the Policy and North Carolina law.

49. Because AISIC has not paid according to the Policy terms, Plaintiff has been forced to bear the costs of its own defense, despite having paid substantial premiums for the Policy. To date, these Defense Costs have exceeded \$75,000, and continue to accrue.

50. Plaintiff has complied with all conditions and obligations under the Policy regarding its rights to receive Defense Costs from AISIC with respect to the Pollard Action. AISIC's wrongful failure and refusal to advance Defense Costs to Plaintiff with respect to the Pollard Action constitutes a breach of contract and has caused Plaintiff to expend its monies to defend itself in those actions.

51. As a direct result of AISIC's breach of contract, Plaintiff has suffered damages in an amount to be determined at trial.

COUNT II
Declaratory Judgment Regarding Defense Costs

52. Plaintiff incorporates by reference the enumerated paragraphs above, as if fully set forth herein.

53. An insurer must pay Defense Costs if any facts or allegations bring the claim even potentially within the protection purchased.

54. Under the applicable standard, AISIC is obligated under the Policy to pay Plaintiff's Defense Costs with respect to the Pollard Action, subject only to any applicable retention and limits of liability.

55. In spite of its duty not only to pay Defense Costs but also to advance such costs, AISIC refused to pay, and continues to refuse to pay, any Defense Costs.

56. Plaintiff has fulfilled all of its duties under the Policy, including any duty it may have had to notify AISIC of the Pollard Action, to provide AISIC with information respecting the allegations in the Pollard Action, and to cooperate with AISIC.

57. Plaintiff demanded from AISIC payment of Defense Costs that were incurred in defending the Pollard Action but AISIC has refused to pay Plaintiff for any Defense Costs.

58. Defense Costs have and will exceed \$75,000.

59. There is a justiciable controversy between Plaintiff and AISIC with respect to AISIC's duties to advance on-going Defense Costs to Plaintiff in connection with the Pollard Action.

60. Plaintiff is entitled to a declaration that under the terms of the Policy, Defendant must pay Plaintiff's Defense Costs in connection with the Pollard Action until such time as the Pollard Action is resolved.

61. The declaration of rights pursuant to 28 U.S.C. §§ 2201 and 2202 would alleviate the uncertainty facing Plaintiff with regard to Defendant's obligations under the Policy to advance Defense Costs arising from the Pollard Action.

COUNT III
Declaratory Judgment Regarding Indemnification

62. Plaintiff incorporates by reference the enumerated paragraphs above, as if fully set forth herein.

63. AISIC sold the Policy to Plaintiff. The Policy obligates AISIC to "pay the Loss of the Company arising from a . . . claim first made against the Company, or . . . Claim first

made against an 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.”

64. The Policy defines a “Wrongful Act” to include any “breach of duty, neglect, error, misstatement, misleading misstatement, omission or act by such Insureds in their respective capacities as such, or any matter claimed against such Insured solely by reason of their status as directors, officers, or Employees of the Company; [and] with respect to the Company, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by the Company.”

65. AISIC’s indemnity obligations under the Policy in fact were triggered by the allegations asserted in the Pollard Action, because those allegations fall under the definition of “Wrongful Act.”

66. Plaintiff has fulfilled all of its duties under the Policy, including any duty it may have had to notify AISIC of the Pollard Action, to provide AISIC with information respecting the allegations in the Pollard Action, and to cooperate with AISIC.

67. Plaintiff has demanded that Defendant indemnify Plaintiff for any liability which may be incurred in conjunction with the claims made in the Pollard Action. AISIC has denied coverage and refuses to indemnify Plaintiff for any potential liability associated with the Pollard Action.

68. While Plaintiff and its directors and officers deny all liability to the Pollard claimants, the Pollard Action could result in a settlement or damages awarded against Plaintiff and/or its directors and officers, and Plaintiff should not be forced to absorb the full financial impact of those results.

69. There is a justiciable controversy between Plaintiff and AISIC with respect to AISIC's duties to indemnify Plaintiff in connection with the Pollard Action.

70. Plaintiff is entitled to a declaration that under the terms of the Policy, Defendant must indemnify Plaintiff for any liability incurred in connection with the Pollard Action.

71. The declaration of rights pursuant to 28 U.S.C. §§ 2201 and 2202 would alleviate the uncertainty facing Plaintiff with regard to Defendant's obligations under the Policy to indemnify Plaintiff for any liability arising from the claims asserted in the Pollard Action.

COUNT IV
Bad Faith Denial and Handling of Claims

72. Plaintiff incorporates by reference the enumerated paragraphs above, as if fully set forth herein.

73. Despite the fact that "Wrongful Acts" as defined in the AISIC Policy were alleged in the Pollard Action, AISIC wrongfully refused (and continues to refuse) to indemnify Plaintiff or advance Defense Costs to Plaintiff.

74. AISIC unreasonably and with wrongful intent withheld (and continues to withhold) payment of all of Plaintiff's Defense Costs despite Plaintiff's full compliance with all Policy requirements.

75. Upon information and belief, AISIC did not base its decision to withhold payment under the Policy on a legitimate or honest disagreement as to the validity of the claim. In particular, there can be no legitimate basis upon which to deny and refuse to pay the costs of defending Ms. Leypoldt's Claim and Securities Claim, for she never was an Arsenal officer or director.

76. AISIC failed to use reasonable care in the exercise of its relationship with Plaintiff.

77. AISIC did not act as a reasonable insurer would have acted under the same or similar facts and circumstances.

78. AISIC's actions in regard to Plaintiff's claims for indemnity and/or Defense Costs with respect to the Pollard Action were without justification or excuse, grossly negligent, oppressive, and/or taken in bad faith to further AISIC's own improper objectives and with disregard for the interests of Plaintiff, to the prejudice and detriment of Plaintiff, in violation of applicable common and statutory law.

79. As a direct and proximate result of the egregiously wrongful conduct of AISIC, Plaintiff is entitled to recover, in addition to compensatory damages in an amount to be determined at trial, punitive damages as set forth in N.C. Gen. Stat. §§ 1D-1, et seq.

COUNT V
Unfair and Deceptive Trade Practices

80. Plaintiff incorporates by reference the enumerated paragraphs above, as if fully set forth herein.

81. AISIC's actions in connection with this matter have constituted violations of N.C. Gen. Stat. §§ 58-63-10 and 58-63-15, each of which constitute unfair and deceptive trade practices in violation of N.C. Gen. Stat. §§ 75-1.1 *et seq.* AISIC's unfair and deceptive trade practices have included, without limitation, in addition to those actions described hereinabove, the following:

- (a) Even though AISIC's obligations to advance Defense Costs to Plaintiff and indemnify Plaintiff for the Pollard Action are reasonably clear, AISIC has not, in good faith, attempted to effectuate a fair and equitable settlement of Plaintiff's claims;

- (b) AISIC has compelled Plaintiff to initiate this litigation to recover the amounts due to Plaintiff under the Policy by offering substantially less (i.e., nothing) than the amounts Plaintiff will ultimately recover from this litigation;
- (c) AISIC has attempted to resolve Plaintiff's claims under the Policy for far less (i.e., nothing) than the amount a reasonable person would believe Plaintiff is entitled to recover under the Policies;
- (d) AISIC has unreasonably failed to acknowledge coverage and advance Defense Costs for the Pollard Action;
- (e) AISIC failed and refused to provide coverage or a defense to Plaintiff based on an unreasonable interpretation of the Policy;
- (f) AISIC otherwise engaged in unfair and deceptive practices in this matter;
- (g) Such acts were in or affecting commerce; and
- (h) Such acts were the direct and proximate cause of damages to Plaintiff.

82. As a direct, foreseeable and proximate result of AISIC's unfair and deceptive trade practices, Plaintiff is entitled to recover its damages, including those set forth in N.C. Gen. Stat. §§ 75-1. *et seq.*, in an amount to be determined at trial.

Prayer for Relief

WHEREFORE, Plaintiff respectfully demands the following relief:

1. Judgment declaring that:
 - (a) AISIC, as a matter of fact and law, is liable to advance all sums for Plaintiff's Defense Costs with respect to the Pollard Action and that AISIC's duty to advance Defense Costs will continue until a final

resolution of the claim is made against Plaintiff and/or any AISIC insured who is a defendant in the Pollard Action (each subject only to any applicable retention and applicable limits of liability); and

(b) that AISIC, as a matter of fact and law, is liable to indemnify Plaintiff for any damages, expenses, settlement costs, disbursements or costs that Plaintiff has paid or will be required to pay with respect to the Pollard Action (each subject only to any applicable retention and limits of liability);

2. To the extent allowed by law, an award of compensatory, incidental, consequential, treble and punitive damages to Plaintiff and against AISIC;

3. To the extent allowed by law, an award of pre- and post-judgment interest, attorneys' fees, expenses, costs, and disbursements pursuant to N.C. Gen. Stat. § 75-16 *et seq.* and other applicable law;

4. A jury trial on all issues so triable; and

5. Such other and further relief as the Court deems just and proper.

Respectfully submitted this 30th day of March, 2009.

KILPATRICK STOCKTON LLP

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