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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
2012 MAY 14 PM 3:12

ALLSTATE INSURANCE COMPANY,)
)
Plaintiff,)
)
v.)
)
PREFERRED FINANCIAL SOLUTIONS, INC.,)
JEFFREY BROOKS, CREDIT CARD RELIEF,)
INC., and THOMAS P. DAKICH d/b/a DAKICH)
& ASSOCIATES,)
)
Defendants.)

No. _____

1:12-cv-0649 JMS-DML

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Allstate Insurance Company ("Allstate"), by and through its attorneys, SmithAmundsen LLC, and pursuant to 28 U.S.C. §§2201 and 2202, brings this Complaint for Declaratory Judgment and states as follows:

PARTIES

1. Plaintiff Allstate is a corporation existing under and by virtue of the laws of the State of Illinois with its principal place of business in Northbrook, Illinois and at all times relevant was duly authorized and licensed to write policies of insurance.
2. Defendant Preferred Financial Solutions, Inc. ("PFS") is a corporation existing under and by virtue of the laws of the State of Indiana with its principal place of business in Indianapolis, Indiana.
3. Defendant Jeffrey Brooks ("Brooks") is the President of PFS. Brooks resides in Zionsville, Indiana and is an Indiana citizen.

4. Defendant Credit Card Relief, Inc. ("CCR") is a corporation existing under and by virtue of the laws of the State of Indiana with its principal place of business in Indianapolis, Indiana.

5. Defendant Thomas P. Dakich doing business as Dakich & Associates ("Dakich") is an attorney licensed to practice law in the State of Indiana. Upon information and belief, Dakich is a citizen of Indiana.

6. Dakich is an owner, principal, officer, director, shareholder, agent and/or manager of Defendant CCR.

JURISDICTION & VENUE

7. The jurisdiction of the Court is premised upon 28 U.S.C. § 1332, as the parties are citizens of different states and the matter in controversy, exclusive of interest and costs, exceeds the sum of seventy-five thousand dollars (\$75,000.00).

8. Venue is premised upon 28 U.S.C. §1391 in that each defendant is a resident of this District as defined by 28 U.S.C §1391(c) and a substantial part of the events or omissions giving rise to this suit occurred in this District and the subject insurance policies were applied for and delivered in this district.

FACTS

The Underlying Lawsuit

9. Currently pending in the United States District Court for the Middle District of Georgia, Macon Division, is a lawsuit styled *Tina M. Gregory f/k/a Tina Adams Green & Eddie James Wells, Sr., individually and as Class Representative for all others similarly situated v. Preferred Financial Solutions, Credit Card Relief, Thomas P. Dakich d/b/a Dakich &*

Associates, Rhonda Roell-Taylor, & Jeffrey Brooks, Case No. 5:11-CV-00422 MTT (“the Underlying Lawsuit”).

10. On January 10, 2012, an Amended Complaint for Damages in Class Action (“the Underlying Complaint”) was filed in the Underlying Lawsuit. A copy of the Underlying Complaint is attached hereto and incorporated herein as Exhibit “A.”

11. The Underlying Complaint names PFS, Brooks, CCR, and Dakich and others as defendants (PFS, Brooks, CCR, and Dakich are collectively referred to as “the Underlying Defendants”). Exhibit A.

12. The Underlying Complaint alleges that the Underlying Defendants are interrelated entities that collectively comprise a debt adjustment services operation targeting financially troubled customers, including customers in Georgia, and extracting fees for worthless services. Exhibit A at p. 2 (¶2).

13. The Underlying Complaint alleges that the Underlying Defendants promote themselves in print, on the internet, and in broadcast media as a provider of debt settlement services, debt elimination services, or debt reduction services that can negotiate a settlement of a customer’s unsecured debt for less than 60% of the amount owed. Exhibit A at pp. 3 (¶¶7-8), 12 (¶58), 19 (¶90).

14. It is alleged in the Underlying Complaint that the advertisements state that a customer participating in the program will pay a certain sum monthly into an account, diverting all monthly payments toward debt that has been enrolled in the program and that the purpose of the program is to withhold payments, causing the debts to enter default and/or forcing the creditors to sell the debt. Once a debt is in default or sold off, an attempt to negotiate a

settlement of the amount owed at a discount is made. Exhibit A at pp. 4 (¶10), 5 (¶18), 12-14 (¶¶59-63).

15. The Underlying Complaint alleges that plaintiff Tina M. Gregory (“Gregory”), a Georgia resident, entered into an agreement with Underlying Defendants to resolve debts on or about January 15, 2008 based on the Underlying Defendants advertising and paid them a total of \$3,120.00 until cancelling the agreement on or about July 22, 2008. Exhibit A at pp. 12 (¶28), 14 (¶¶64-65), 16 (¶¶71-73).

16. It is further alleged in the Underlying Complaint that plaintiff Eddie James Wells (“Wells”), a Georgia resident, entered into an agreement with the Underlying Defendants based on their advertising on May 28, 2010, paying them \$3,150.00. Exhibit A at pp. 19 (¶¶90-91), 20 (¶94).

17. The Underlying Complaint alleges that the Underlying Defendants never made any attempts to pay or settle Gregory’s or Wells’ debt. Exhibit A at pp. 16 (¶¶74-75), 19 (¶¶92-93).

18. The Underlying Complaint seeks recovery under theories of piercing the corporate veil, alter ego, and joint venture. Exhibit A at pp. 2 (¶¶3-4), 3 (¶5).

19. Count I of the Underlying Complaint alleges that the Underlying Defendants’ fees and practices are in violation of the Georgia Debt Adjustment Act (OCGA §§ 18-5-1 *et seq.*), alleging that the Underlying Defendants never paid to any of plaintiffs’ creditors, resulting in 100% fee paid to defendants, and accepted fees in excess of the amount allowed under the Act, seeking penalties in the amount of \$5,000 per class member. Exhibit A at pp. 26-28 (¶¶118-134).

20. Count II alleges that the Underlying Defendants' fraudulently induced the underlying plaintiffs to pay for debt settlement services with no intent or possibility of actually resolving debt and misrepresented their ability to resolve debt. Exhibit A at pp. 28-29 (¶¶134-138).

21. Count III alleges that the Underlying Defendants represented that they would provide debt settlement services and handle plaintiffs' credit obligations, creating a fiduciary duty to plaintiffs which was breached. Exhibit A at pp. 29-30 (¶¶139-144).

22. The Underlying Complaint seeks class clarification for all Georgia residents that paid fees to defendants for debt settlement services from July 1, 2003 through the present. Exhibit A at pp. 22-26 (¶¶103-117).

23. Upon information and belief, from July 1, 2003, the beginning of the alleged class period, through August 26, 2011, 751 customers enrolled in the Underlying Defendants debt settlement program paying fees in the amount of approximately \$1,252,959.00.

THE ALLSTATE POLICIES

24. The Underlying Defendants tendered this matter to Allstate for defense.

25. Allstate issued yearly Business Insurance Policies to "Preferred Leads," identified in the Declarations as a "corporation," that were in effect, in relevant part, from July 20, 2002 to July 20, 2012 ("the Allstate Policies").

26. Prior to July 20, 2005, Allstate Policy No. 050 695888 covered premises in both Indiana and Illinois.

27. Beginning on July 20, 2005, separate policies were issued for premises in Indiana under Policy No. 050 695888 and for premises in Illinois under Policy No. 050 006952.

28. The Allstate Policies, in pertinent part, contain similar terms and conditions. Certified copies of the Indiana and Illinois Allstate Policies in effect July 20, 2007 to July 20, 2008 are attached hereto and incorporated herein as Exhibits "B" and "C," respectively. Allstate will amend this Complaint for Declaratory Judgment to attach certified copies of the Allstate Policies for all pertinent policy periods once the policies are compiled.

29. According to Allstate's records, PFS is identified by endorsement to the Allstate Policies as a named insured.

30. The Allstate Policies have limits of liability in the amount of \$2,000,000.00 per accidental event and \$100,000.00 for advertising injury. The liability limit for all advertising injury increased to \$300,000 at some point in or about 2004 or 2005.

31. The Allstate Policies provide liability coverage (Coverage B – Business Liability), in pertinent part, as follows:

Coverage B – Business Liability

Part One – Comprehensive Liability

Liabilities Covered

We will pay on behalf of persons insured all sums which they become legally obligated to pay as damages arising out of an accidental event, personal injury or advertising injury that occurs while this policy is in effect...

* * * *

Defense

We will defend any suit brought against persons insured seeking damages to which this Part applied, even if the allegations in the suit are groundless, false or fraudulent...

* * * *

Persons Insured

Who Has Liability Coverages

The following people and organizations are persons insured under this Part:

3. If you are shown in the Declarations as any organization other than an individual, partnership or joint venture: executive officers, stockholders, members of the board of trustees, and directors or governors while they are acting within the course and scope of their duties.
4. Your employees while acting within the course and scope of their employment.
6. Any organization you acquire or form during the policy period and in which you have at least a majority interest, except for joint ventures. We will not provide coverage for that organization if it is covered under any other policy, even if you cannot collect because you have exhausted that policy's limits of liability. Coverage for an organization you acquire or form will end 90 days after you acquire or form it, unless specifically added to the policy by endorsement.

* * * *

Your Liability Coverages apply separately to each person insured. However, the Limit of Liability is the most we will pay, regardless of the number of persons insured.

* * * *

Definitions

When used in this policy:

"Accidental Event" means an accident, including continuous or repeated exposure to the same conditions, resulting in bodily injury or property damage. An accident cannot be intended or expected by any persons insured...

"Advertising Injury" means the action of calling something to the attention of the public by means of printed or broadcast paid announcements for the sale of goods, products or services.

"Advertising Injury" means injury arising out of one or more of the following offenses:

1. Oral or written publication of advertising material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
2. Oral or written publication of advertising material that violates a person's right to privacy;

3. Misappropriation of advertising ideas or style of doing business; or
4. Infringement of copyright, title or slogan as a result of your advertising.

* * * *

“Personal Injury” means injury, other than bodily injury, arising out of one or more of the following offenses:

1. false arrest, detention or imprisonment;
2. malicious prosecution;
3. wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy...
4. oral or written publication of material that slanders or libels a person or organization or disparages a person’s organization goods, products or services; or
5. oral or written publication of material that violates a person’s right of privacy.

Personal injury does not include offenses committed in the course of your advertising, broadcasting, publishing or telecasting activities.

See Exhibit B at pp. 37-39, 54-57; Exhibit C at pp. 38-40, 55-58.

32. The Allstate Policies also contain the following pertinent exclusions:

Exclusions – Liabilities We Do Not Cover

We do not cover:

16. Any personal injury or advertising injury arising from the activities of any partnership or joint venture not shown in the Declarations.
19. Any advertising injury arising out of:
 - c. Incorrect description of or mistake in advertised price of goods, products or services sold, offered for sale or advertised.
21. Any accidental event, personal injury, or advertising injury, arising out of the rendering of or the failure to render scientific or

professional services, or consulting business or technical services...

See Exhibit B at pp. 39, 43-44; Exhibit C at pp. 40, 44-45.

33. The "Amendatory Endorsement for Customizer Policies" in the Allstate Policies states as follows:

What Law Will Apply

This policy is issued in accordance with the laws of the [State of Indiana for the Indiana Policy/State of Illinois for the Illinois Policy] and covers property or risks principally located in [State of Indiana for the Indiana Policy/State of Illinois for the Illinois Policy]. Subject to the following paragraph, the laws of the [State of Indiana for the Indiana Policy/State of Illinois for the Illinois Policy] shall govern any and all claims or disputes in any way related to the policy.

* * * *

See Exhibit B at pp. 82; Exhibit C at pp. 83.

COUNT I
CCR & Dakich Are Not Insureds

34. Allstate adopts and incorporates as if fully set forth herein the allegations contained in paragraphs 1 through 33 above.

35. The Allstate Policies provide liability coverage only to "Persons Insured."

36. CCR and Dakich are not identified as named insureds in the Allstate Policies.

37. CCR and Dakich are not identified as additional insureds in the Allstate Policies.

38. CCR and Dakich do not qualify as "Persons Insured" under the Allstate Policies.

39. Allstate has no obligation to defend CCR for the claims alleged in the Underlying Lawsuit.

40. Allstate has no obligation to defend Dakich for the claims alleged in the Underlying Lawsuit.

41. Alternatively, to the extent CCR was acquired or formed by a named insured

during the pendency of Allstate's coverage, Allstate's coverage is only in effect for a 90 day period following the acquisition or formation according to paragraph 6. of the Persons Insured provision.

WHEREFORE, Allstate respectfully request that this Court find and declare:

- A. That CCR and Dakich are not "Persons Insured" under the Allstate Policies;
- B. That Allstate has no obligation to defend CCR and/or Dakich for the Underlying Lawsuit;
- C. That to the extent CCR was acquired or formed by a named insured during the pendency of Allstate's coverage, Allstate's coverage is only in effect for a 90 day period following the acquisition or formation;
- D. That Allstate is entitled to fees and costs in bringing this lawsuit; and
- E. Award any such further relief this Court deems just.

COUNT II
No Duty to Defend

42. Allstate adopts and incorporates as if fully set forth herein the allegations contained in paragraphs 1 through 41 above.

43. The Underlying Complaint alleges damages resulting from violations of the Georgia Debt Adjustment Act based on defendants' failure to provide services promised and charging excessive fees.

44. The Underlying Complaint does not allege an "accidental event," defined in the Allstate Policies as an accident not intended or expected.

45. The Underlying Complaint does not allege "personal injury," defined in the Allstate Policies as false arrest, detention or imprisonment; malicious prosecution; wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy; oral or written

publication of material that slanders or libels a person or organization; or publication of material that violates a person's right of privacy.

46. There are also no allegations of "advertising injury" in that the Underlying Complaint does not allege libel or slander, violation of any person's privacy rights, use of another's advertising ideas or style of business, or infringement on copyright.

47. Pursuant to Exclusion 19, the Allstate Policies exclude coverage for "advertising injury" arising out of incorrect description of or mistake in advertised price of goods, products or services sold, offered for sale or advertised.

48. As the Underlying Complaint alleges that the Underlying Defendants advertised themselves as providing debt settlement services and failed to provide the advertised services, to the extent there is "advertising injury," coverage is excluded under Exclusion 19.

49. Coverage is also excluded under Exclusion 16 to the extent the Underlying Defendants are or are operated as joint ventures.

50. There is also no coverage to the extent any claims in the Underlying Complaint arise from the rendering of professional services under Exclusion 21.

WHEREFORE, Allstate respectfully request that this Court find and declare:

- A. That the Underlying Complaint does not allege any "accidental event" under the Allstate Policies;
- B. That the Underlying Complaint does not allege any "personal injury" under the Allstate Policies;
- C. That the Underlying Complaint does not allege any "advertising injury" under the Allstate Policies;
- D. That "advertising injury" coverage is excluded because the Underlying Complaint alleges incorrect description or mistake in products or services sold, offered for sale or advertised;
- E. That coverage under the Allstate Policies is excluded for any claims arising out of

professional services;

- G. That Allstate has no obligation to defend PFS, Brooks, CCR and/or Dakich for the Underlying Lawsuit;
- H. That Allstate is entitled to fees and costs in bringing this lawsuit; and
- I. Award any such further relief this Court deems just.

Dated: 5/11/12

Respectfully submitted,



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