

Shapleigh Smith, Jr., Esq.
E-mail: ssmith@dinse.com

May 27, 2020

VIA EMAIL: jud.chittendenunit@vermont.gov

Christine Brock, Clerk
Vermont Superior Court
Chittenden Civil Division
P. O. Box 187
Burlington, VT 05402-0187

Re: American Morgan Horse Association, Inc., et al. v. Philadelphia Indemnity Insurance Company
Docket No.: 356-5-20 Cncv

Dear Christine:

For filing with the Court, enclosed please find Plaintiffs':

- Amended Declaratory Judgment Complaint;
- [Redlined] Amended Declaratory Judgment Complaint; and
- Certificate of Service

We are filing the Amended Declaratory Judgment Complaint under Rule 15(a).

Please feel free to contact me should you have any questions or concerns. Thank you for your time and attention to this matter.

Sincerely,

/s/ Shapleigh Smith, Jr.

Shapleigh Smith, Jr.

SS/pjg
Enclosures

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
Docket No. 356-5-20 Cncv

<i>Plaintiff(s)</i>	<i>vs.</i>	<i>Defendant(s)</i>
AMERICAN MORGAN HORSE ASSOCIATION, INC., MARI SANDERSON, CLARENCE A. "TONY" LEE, III, CAROL FLETCHER, TERRI STURM, STEVEN HANDY, KATE KIRSCH, HARLAN GRUNDEN, KRIS BREYER, WILLIAM "MIKE" GOEBIG, JR., CINDY MUGNIER, SHARON "SHERRY" COLE, GEORGIE GREEN, JEFFREY GOVE, and CARRIE MORTENSEN		PHILADELPHIA INDEMNITY INSURANCE COMPANY

CERTIFICATE OF SERVICE

I certify that I have today delivered Plaintiffs' **1) Amended Declaratory Judgment Complaint** and **2) [Redlined] Amended Declaratory Judgment Complaint** to all other parties to this case as follows:

- By first class mail by depositing it in the U.S. mail;
- By personal delivery to _____ or his/her counsel;
- X** Other. Explain: **VIA EMAIL**

The names and addresses of the parties/lawyers to whom the mail was addressed or personal delivery was made are as follows:

Alexander G. Henlin, Esq.
ahenlin@suloway.com

Dated at Burlington, Vermont this 27th day of May 2020.

Signature: /s/ Shapleigh Smith, Jr.

Print Name: Shapleigh Smith, Jr., Esq.

Counsel for: Plaintiffs

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. 356-5-20 Cncv

AMERICAN MORGAN HORSE)
ASSOCIATION, INC., MARI)
SANDERSON, CLARENCE A.)
"TONY" LEE, III, CAROL)
FLETCHER, TERRI STURM,)
STEVEN HANDY, KATE KIRSCH,)
HARLAN GRUNDEN, KRIS)
BREYER, WILLIAM "MIKE")
GOEBIG, CINDY MUGNIER,)
SHARON "SHERRY" COLE,)
GEORGIE GREEN, JEFFREY)
GOVE, AND CARRIE MORTENSEN,)
Plaintiffs,)
)
v.)
)
PHILADELPHIA INDEMNITY)
INSURANCE COMPANY)
)
Defendant.)

AMENDED DECLARATORY JUDGMENT COMPLAINT

NOW COME Plaintiffs, the American Morgan Horse Association, Inc. ("AMHA"), Mari Sanderson, Clarence A. "Tony" Lee, III, Carol Fletcher, Terri Sturm, Steven Handy, Kate Kirsch, Harlan Grunden, Kris Breyer, William "Mike" Goebig, Cindy Mugnier, Sharon "Sherry" Cole, Georgie Green, Jeffrey Gove, and Carrie Mortensen ("collectively Plaintiffs"), by and through their attorneys, Dinse P.C., and hereby complain against the Defendant as follows:

INTRODUCTION

1. AMHA is a New York not-for-profit corporation headquartered in Lexington, Kentucky organized in 1909 to preserve, promote, and perpetuate the Morgan horse breed. AMHA is an I.R.S. 501(c)(5) tax-exempt agricultural organization. Until January 2020, AMHA was headquartered in Shelburne, Vermont.

2. In 2002 AMHA founded The American Morgan Horse Educational Charitable Trust (“AMHECT”) as a separate charitable organization under New York law to fund a broad array of public charities closely related in purpose and function to AMHA. AMHECT qualifies as both an I.R.S. 509(a)(3) “supporting organization” and an I.R.S. 501(c)(3) tax-exempt charity. Until January 2020, AMHECT was headquartered in Shelburne, Vermont.

3. Mari Sanderson is an AMHA director and an AMHECT trustee. Ms. Sanderson resides in Norco, California.

4. Clarence “Tony” Lee, III is an AMHA director and serves as AMHA’s President; he is also an AMHECT trustee. Mr. Lee resides in Birmingham, Alabama.

5. Carol Fletcher is a former AMHA director and an AMHECT trustee. Ms. Fletcher is a resident of Woodville, Washington.

6. Terri Sturm is an AMHA director and an AMHECT trustee. Ms. Sturm is a resident of Las Vegas, Nevada.

7. Steven Handy is an AMHA director and an AMHECT trustee. Mr. Handy is a resident of Marlborough, Massachusetts.

8. William “Mike” Goebig is a former AMHA director and a current AMHECT trustee. Mr. Goebig is currently serving as AMHECT’s President and is a resident of Kutztown, Pennsylvania.

9. Cindy Mugnier is a former AMHA director and a former AMHECT trustee. Ms. Mugnier is a resident of Belchertown, Massachusetts.

10. Sharon “Sherry” Cole is a former AMHA director and a former AMHECT trustee. Ms. Cole is a resident of Nobelsville, Indiana.

11. Georgie Green is a former AMHA director and a former AMHECT trustee. Ms. Green is a resident of Morgan Mill, Texas.

12. Jeffrey Gove is a former AMHA director and a former AMHECT trustee. Mr. Gove is a resident of Seabrook, New Hampshire.

13. Kris Breyer is an AMHA director and former AMHECT trustee. Ms. Breyer is a resident of Wauconda, Illinois.

14. Kate Kirsch is an AMHA director. Ms. Kirsch is a resident of Clarence, New York.

15. Harlan Grunden is an AMHA director. Mr. Grunden is a resident of Curtis, Nebraska.

16. Carrie Mortensen is the Executive Director of AMHA and AMHECT. She is a resident of Lexington, Kentucky.

17. Philadelphia Indemnity Insurance Company (“Philadelphia”) is a Pennsylvania-based insurance company headquartered in Bala Cynwyd, Pennsylvania that provides “Director and Officer” liability coverage for AMHECT,

AMHA, and their respective trustees and directors under Policy Number PHSD 1464164 (“the AMHA Policy”) and Policy Number PHSD1464150 (“the AMHECT Policy”) issued to AMHECT and AMHA in Vermont. Copies of these policies are attached as **Exhibit A**.

UNDERLYING FACTS

18. On or about September 7, 2019, Victoria Bennett (“Bennett”) filed suit against Mari Sanderson, Clarence A. “Tony” Lee, III, Carol Fletcher, Terri Sturm, Kate Kirsch, Harlan Grunden, Kris Breyer, Steven Handy, William “Mike” Goebig, Cindy Mugnier, Sharon “Sherry” Cole, Georgie Green, Jeffrey Gove, and Carrie Mortensen in Chittenden Superior Court, alleging claims under New York’s Not-For Profit Law (“N-PCL”) for purported asset mismanagement and corporate waste based on a fundamental misunderstanding of the relationship between AMHECT and AMHA. **Exhibit B**. Bennett’s Complaint also advanced an election grievance claim on her own behalf as an AMHA member. *Id.*

19. On or about September 30, 2019, Bennett filed an Amended Complaint, advancing the same N-PCL allegations and continuing to press her own election grievance claim (“the Underlying Suit”). **Exhibit C**.

20. In broad terms, the Underlying Suit takes issue with the AMHA-AMHECT relationship and lays at AMHA’s doorstep claims related to AMHECT’s handling of funds as follows:

(a) ***Operation of the Grand National Show***: Bennett alleges various missteps by the committee formed by the AMHECT Board to oversee operation of the Grand National Show—known as the Grand National Show Committee—an annual horse show that operates as a fundraiser.

In the Amended Complaint, Bennett claims that the Committee allegedly operated without oversight, “attempted to keep its finances secret from AMHA and AMHECT,” assumed control of certain funds transferred to AMHECT, and “amassed” more than \$1,000,000 in Show proceeds. **Exhibit C**, ¶¶ 49, 54 - 58.

(b) ***AMHECT Amendment and Tax Filings***: Bennett alleges that in 2011, AMHECT improperly changed the composition of AMHECT’s Board of Trustees from a “mirror board” with AMHA to a Board comprised of AMHA’s President and four to eight AMHA members elected by the AMHA Board. **Exhibit C**, ¶¶ 35, 114(a), (b), 123(a), (b). Plaintiff also alleges that AMHECT made “material misstatements” about this change in composition on its tax returns, allegedly exposing AMHECT to potential back taxes and penalties. *Id.*, ¶¶ 38, 46 - 48, 114(c), 123(c).

(c) ***AMHECT’s proposal to sublicense the Marks to the MWC***: A significant portion of Bennett’s allegations relate to a contemplated transaction by which the trademarks for the Grand National Show would be sold, licensed, or sublicensed to a new, independent 501(c)(3) organization, Morgan World Championship, Inc. **Exhibit C** ¶¶ 61-71, 79, 82-88, 91-105. There was considerable exploration and discussion of the proposal between 2015 and 2018.

21. Counts I-IV of Underlying Suit, although styled as derivative claims on behalf of AMHA, are, for the most part, factually predicated on AMHECT trustee actions.

22. Count V of the Underlying Suit is an election grievance claim personal to Bennett alleging that when AMHA reduced the size of its Board in 2016, triggering elections for all of the Board seats, she was wrongfully deprived of a year of her term as a director. **Exhibit C** ¶¶ 108(b), 147.

23. The Underlying Suit asserts claims against Breyer, Cole, Green, Goebig, Fletcher, Lee, Mugnier, and Sanderson individually for actions and votes cast in their AMHECT trustee capacities.

24. Of the 103 factual background paragraphs in the Underlying Suit, 70 relate to AMHECT trustee actions.

25. Bennett has never been an AMHECT trustee.

26. In September of 2019, Plaintiffs alerted Philadelphia to a potential lawsuit, providing a courtesy copy of a draft Complaint as provided to Ms. Mortenson. Through this communication, Plaintiffs tendered the draft Complaint for a defense.

27. On September 13, 2019, without any coverage investigation or inquiry as to whether suit had in fact commenced, Philadelphia issued a blanket denial of coverage under the AMHA Policy.

28. On October 4, 2019, Plaintiffs provided further notice of Bennett's claims, forwarding a copy of Bennett's Complaint and Amended Complaint to Philadelphia as filed, again requesting Philadelphia defend Plaintiffs in the underlying action.

29. On October 8, 2019, Philadelphia once again denied the request for coverage, providing no additional explanation of its denial.

30. On October 12, 2019, after Ms. Mortensen requested an explanation of the denial in writing, Philadelphia declined to provide any further information on its coverage position, relying instead on its pre-suit denial.

31. On December 12, 2019, Plaintiffs, through counsel, once again tendered the defense of the Underlying Suit to Philadelphia, requested that Philadelphia reconsider its coverage denial under the AMHA Policy and, to the

extent not previously considered, that Philadelphia defend and indemnify Plaintiffs under the terms of the AMHECT Policy.

32. Philadelphia responded, through counsel, on January 30, 2020, refusing to reimburse Plaintiffs for the complete cost of the defense.

33. On or about May 8, 2020, Philadelphia sent a notice of non-renewal to AMHA, stating that it would not renew coverage under the policies due to “claims history, and a total incurred of \$100,000.” **Exhibit D.**

34. Philadelphia has not issued any payments to, or on behalf of, AMHA and most certainly has not disbursed or paid \$100,000 in connection with the Underlying Suit brought by Bennett.

35. Upon information and belief, the only claim AMHA has ever tendered to Philadelphia for defense is the Underlying Suit and Philadelphia has not “incurred” any losses in connection with the litigation.

36. As of the filing of this Amended Complaint, Philadelphia continues to deny its obligation to reimburse Plaintiffs for their defense costs.

THE INSURANCE COVERAGE

37. The AMHA Policy provides Director and Officer Liability Coverage on a claims-made basis for the period of August 27, 2019 to August 27, 2020. The AMHA Policy covers “Loss” caused by “D & O Wrongful Acts” of the “Individual Insured” where a “Claim” is made during the policy period.

38. The AMHA Policy also covers “Loss” to the “Organization” where it has indemnified “Individual Insureds” for “Loss” arising out of “D & O Wrongful Acts.”

39. AMHA is listed as an “Organization” on the Declaration Page for the Philadelphia policy.

40. The Plaintiffs are Individual Insureds as that term is defined in the AMHA Policy.

41. Victoria Bennett’s lawsuit constitutes a “Claim” as that term is defined in the AMHA Policy.

42. The lawsuit alleges “D & O Wrongful Acts” as that term is defined in the AMHA Policy.

43. Pursuant to the terms of the AMHA Policy, the Insured has the right to tender the defense to the Underwriter and the Underwriter has the obligation to undertake and manage the defense of such Claim, even if the Claim is groundless, false or fraudulent.

44. Pursuant to the terms of the AMHA Policy, when the Insured has tendered the defense to the Underwriter, the Underwriter has the obligation to pay all defense costs even where there are covered and uncovered “Losses” asserted in the “Claim.”

45. Under the terms of the AMHA Policy, “Loss” includes cost of defense and damages.

46. The AMHECT Policy provides Director and Officer Liability Insurance on a claims-made basis for the period of August 27, 2019 to August 27, 2020 and covers “Loss” caused by “D & O Wrongful Acts” of the “Individual Insured” where a “Claim” is made during the policy period.

47. The AMHECT Policy provides coverage under nearly identical policy terms and conditions as under the AMHA Policy.

48. The individually named Plaintiffs are “Individual Insureds” as that term is defined in the AMHECT Policy.

49. Victoria Bennett’s lawsuit constitutes a “Claim” as that term is defined in the AMHECT Policy.

50. The lawsuit alleges “D & O Wrongful Acts” against the individually named Plaintiffs as that term is defined in the AMHECT Policy.

51. As in the AMHA Policy, the Underwriter is obligated to fully defend the individually named Plaintiffs under the terms of the AMHECT Policy, even if Bennett’s lawsuit asserts claims that are groundless, false or fraudulent.

52. Philadelphia has improperly disclaimed its defense obligation under the terms of the AMHA and AMHECT Policies, despite Plaintiffs’ tender to Philadelphia for defense and indemnity in the underlying action.

53. As a result of Philadelphia’s improper refusal to accept Plaintiffs’ tender of the defense, AMHA is currently funding the defense of the Plaintiffs in the Underlying Suit pursuant to this Court’s Ruling of January 14, 2020.

COUNT I
(Duty to Defend - AMHA Policy)

54. Pursuant to the plain terms of the AMHA Policy, the Underlying Suit is a Claim for D&O Wrongful Acts against Individual Insureds.

55. Count V of the Underlying Suit is a claim personal to Ms. Bennett based on an alleged D&O Wrongful Act as against the Individual Insureds not subject to any exclusion in the AMHA Policy.

56. Plaintiffs have tendered the defense of the Underlying Suit to Philadelphia.

57. Under the terms of the AMHA Policy, Philadelphia is obligated to defend the entirety of the Underlying Suit, even if the allegations are groundless, false or fraudulent.

58. Plaintiffs are entitled to a declaration that Philadelphia is required to defend the entirety of the Underlying Suit under the terms of the AMHA Policy.

COUNT II
(Duty to Defend - AMHECT Policy)

59. Pursuant to the plain terms of the AMHECT Policy, the Underlying Suit is a Claim for D&O Wrongful Acts against the Individual Insureds.

60. Insofar as Bennett's claims in the Underlying Suit state claims against Plaintiffs in their individual capacities on the basis of actions and votes cast as AMHECT trustees, the AMHECT Policy provides coverage for these claims, whether or not Bennett has standing to sue individually named Plaintiffs for their "D&O Wrongful Acts" as AMHECT trustees.

61. Plaintiffs have tendered the defense of the Underlying Suit to Philadelphia.

62. Under the terms of the AMHECT Policy, Philadelphia is obligated to defend the entirety of the Underlying Suit, even if the allegations are groundless, false or fraudulent.

63. Plaintiffs are entitled to a declaration that Philadelphia is required to defend the entirety of the Underlying Suit under the terms of the AMHECT Policy

COUNT III
(Bad Faith Claims Handling-Philadelphia)

64. The AMHA and AMHECT Policies Philadelphia issued to Plaintiffs contain Pro Pak Elite Enhancements that modify the defense allocation clauses in the policies to ensure “full allocation” and “one hundred percent” coverage of defense costs by Philadelphia for suits involving both covered and un-covered Losses.

65. The “Full Allocation” clause in the Pro Pak Elite Enhancement reforms the language of the AMHA and AMHECT Policies to conform to Vermont’s settled precedent that, once a duty to defend is triggered, the insurer is bound to defend the entire suit, including claims that might not be covered.

66. Philadelphia’s refusal to pay all defense costs is not reasonable in light of the language of the Policy.

67. Plaintiffs tendered the defense of the Underlying Suit to Philadelphia and have repeatedly explained why they are entitled to all defense costs; Philadelphia has acted unreasonably by continuing to deny that it has a full defense cost obligation.

68. In declining to accept the full defense tendered by Plaintiffs, Philadelphia knowingly and intentionally disregarded the express terms of the AMHA and AMHECT Policies.

69. Plaintiffs have been forced to defend themselves in the Underlying Suit, a complex not-for-profit matter, despite having paid two sets of premiums to Philadelphia—one for AMHA and the other for AMHECT—for policies that expressly provide for Plaintiffs' full defense in actions such as Bennett's.

70. To date, Philadelphia has not accepted Plaintiffs' defense tender and, in doing so, has acted in bad faith.

71. Philadelphia has also recently declined to renew coverage for AMHA without basis and on grounds that are inaccurate and incorrect. Although the notice of non-renewal states that the non-renewal is due to "a total incurred of \$100,000" Philadelphia has yet to make any payments or disbursements in connection with the Underlying Suit brought by Bennett. AMHA has not submitted any other claims to Philadelphia.

72. Philadelphia's stated grounds for non-renewal were false and inaccurate and, accordingly, the non-renewal was in bad faith.

73. Plaintiffs are entitled to an award of compensatory damages and punitive damages in an amount to be determined at trial, attorney's fees, and other such relief as the Court deems just and proper.

PRAYER FOR RELIEF

74. This action is brought pursuant to Vermont's declaratory judgment statute, 12 V.S.A. § 4711, et seq. Plaintiffs bring this action to obtain a declaration as to Philadelphia's obligations for defense and indemnity under the AMHA and AMHECT Policies. An actual controversy of a justiciable nature exists between involving the rights and liabilities under the two policies and depends upon the interpretation thereof, which controversy may be determined by a judgment of this court.

WHEREFORE, Plaintiffs pray for the following relief:

1. A declaration that Philadelphia is obligated to defend Plaintiffs in the Underlying Suit and reimburse Plaintiffs for the defense costs incurred by virtue of Philadelphia's denial of its defense obligations under the AMHA Policy AMHECT Policy terms.
2. An award of compensatory and punitive damages for Philadelphia's bad faith claims handling in an amount to be determined by a jury;
3. An award of costs, attorney's fees, and expenses and such other and further relief the Court deems appropriate.

PLAINTIFFS REQUEST A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.

DATED at Burlington, Vermont, this 27th day of May, 2020.

By: /s/ Shapleigh Smith, Jr.
Shapleigh Smith, Jr., Esq.
Margarita I. Warren, Esq.
DINSE
209 Battery Street
Burlington, VT 05401
802-864-5751
ssmith@dinse.com
mwarren@dinse.com

Counsel for Plaintiffs

EXHIBIT

D

PHILADELPHIA INDEMNITY
INSURANCE COMPANY
ONE BALA PLAZA, SUITE 100
BALA CYNWYD PA 19004-1401

USPS CERTIFIED MAIL



9407 1102 0088 1274 4223 25

INC.
AMERICAN MORGAN HORSE ASSOCIATION,
4066 SHELBURNE RD STE 5
SHELBURNE VT 05482-4904

US POSTAGE AND FEES PAID

FIRST-CLASS

May 08 2020

Mailed from ZIP 92704

1 oz First-Class Mail Letter



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PHILADELPHIA INDEMNITY INSURANCE COMPANY
1-877-438-7459
ONE BALA PLAZA, SUITE 100
BALA CYNWYD PA 19004
NOTICE OF NONRENEWAL OF INSURANCE

RECEIVED MAY 19 2020

Named Insured & Mailing Address:

AMERICAN MORGAN HORSE ASSOCIATION,
INC.
4066 SHELBURNE RD STE 5
SHELBURNE VT 05482

Producer: 0113408

TITUS INSURANCE AGENCY
PO BOX 476
SHELBURNE VT 05482

Policy No.: PHSD1464164
Type of Policy: FF :FLEXI PLUS FIVE
Date of Expiration: 08/27/2020; 12:01 A.M. Local Time at the mailing address of the Named Insured.

We will not renew this policy when it expires. Your insurance will cease on the Expiration Date shown above.

The reason for nonrenewal is **due to claims history, and a total incurred of \$100,000.**

Named Insured

AMERICAN MORGAN HORSE ASSOCIATION,
INC.
4066 SHELBURNE RD STE 5
SHELBURNE VT 05482

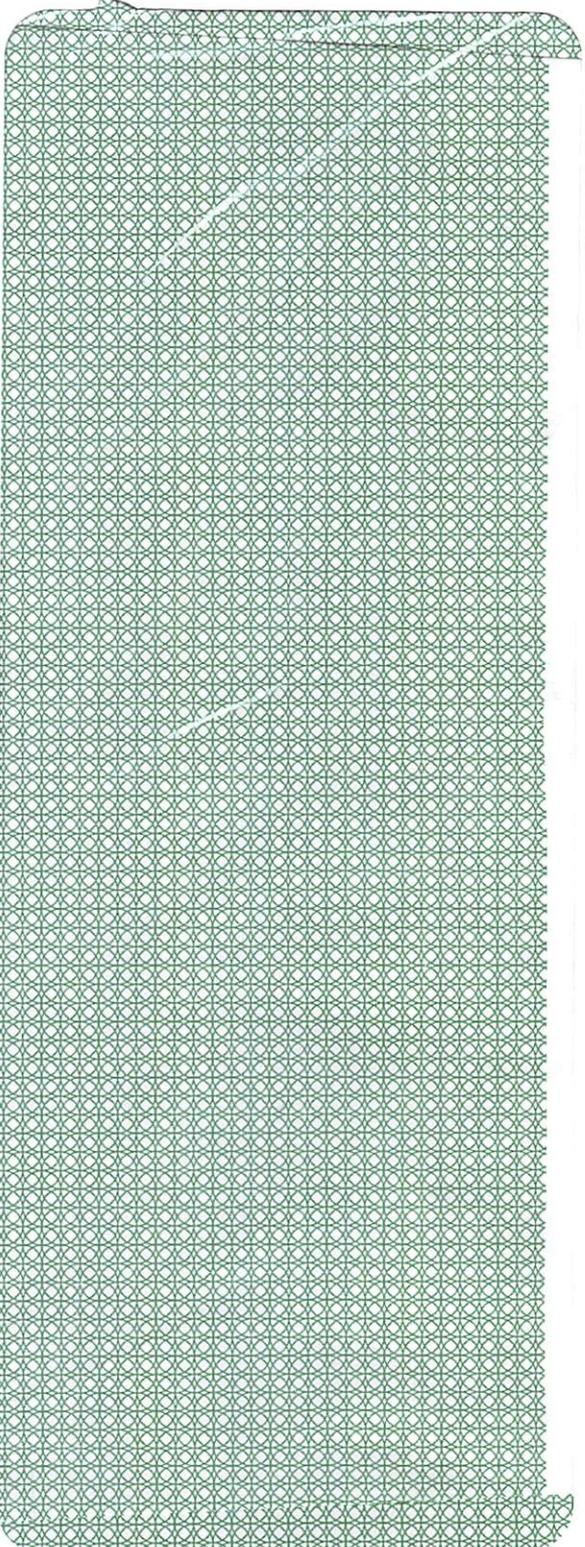
Date Mailed:
8th day of May, 2020

Madeline Barroso-Sesay

MADELINE BARROSO-SESAY



CERTIFIED MAIL



RECEIVED MAY 19 2020

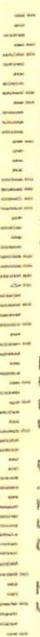
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 THE NATIONAL MUSEUM OF THE MORGAN HO
 4037 IRON WORKS PKWY STE 150
 LEXINGTON KY 40511-8508

BC: 40511850830 *1569-04258-15-23



STATE OF VERMONT

SUPERIOR COURT
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NOW COME Plaintiffs, the American Morgan Horse Association, Inc. (“AMHA”), Mari Sanderson, Clarence A. “Tony” Lee, III, Carol Fletcher, Terri Sturm, Steven Handy, Kate Kirsch, Harlan Grunden, Kris Breyer, William “Mike” Goebig, Cindy Mugnier, Sharon “Sherry” Cole, Georgie Green, Jeffrey Gove, and Carrie Mortensen (“collectively Plaintiffs”), by and through their attorneys, Dinse P.C., and hereby complain against the Defendant as follows:

INTRODUCTION

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UNDERLYING FACTS

18. On or about September 7, 2019, Victoria Bennett (“Bennett”) filed suit against Mari Sanderson, Clarence A. “Tony” Lee, III, Carol Fletcher, Terri Sturm, Kate Kirsch, Harlan Grunden, Kris Breyer, Steven Handy, William “Mike” Goebig, Cindy Mugnier, Sharon “Sherry” Cole, Georgie Green, Jeffrey Gove, and Carrie Mortensen in Chittenden Superior Court, alleging claims under New York’s Not-For Profit Law (“N-PCL”) for purported asset mismanagement and corporate waste based on a fundamental misunderstanding of the relationship between AMHECT and AMHA. **Exhibit B**. Bennett’s Complaint also advanced an election grievance claim on her own behalf as an AMHA member. *Id.*

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In the Amended Complaint, Bennett claims that the Committee allegedly operated without oversight, “attempted to keep its finances secret from AMHA and AMHECT,” assumed control of certain funds transferred to AMHECT, and “amassed” more than \$1,000,000 in Show proceeds. **Exhibit C**, ¶¶ 49, 54 - 58.

(b) **AMHECT Amendment and Tax Filings**: Bennett alleges that in 2011, AMHECT improperly changed the composition of AMHECT’s Board of Trustees from a “mirror board” with AMHA to a Board comprised of AMHA’s President and four to eight AMHA members elected by the AMHA Board. **Exhibit C**, ¶¶ 35, 114(a), (b), 123(a), (b). Plaintiff also alleges that AMHECT made “material misstatements” about this change in composition on its tax returns, allegedly exposing AMHECT to potential back taxes and penalties. *Id.*, ¶¶ 38, 46 - 48, 114(c), 123(c).

(c) **AMHECT’s proposal to sublicense the Marks to the MWC**: A significant portion of Bennett’s allegations relate to a contemplated transaction by which the trademarks for the Grand National Show would be sold, licensed, or sublicensed to a new, independent 501(c)(3) organization, Morgan World Championship, Inc. **Exhibit C** ¶¶ 61-71, 79, 82-88, 91-105. There was considerable exploration and discussion of the proposal between 2015 and 2018.

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28. On October 4, 2019, Plaintiffs provided further notice of Bennett's claims, forwarding a copy of Bennett's Complaint and Amended Complaint to Philadelphia as filed, again requesting Philadelphia defend Plaintiffs in the underlying action.

29. On October 8, 2019, Philadelphia once again denied the request for coverage, providing no additional explanation of its denial.

30. On October 12, 2019, after Ms. Mortensen requested an explanation of the denial in writing, Philadelphia declined to provide any further information on its coverage position, relying instead on its pre-suit denial.

31. On December 12, 2019, Plaintiffs, through counsel, once again tendered the defense of the Underlying Suit to Philadelphia, requested that Philadelphia reconsider its coverage denial under the AMHA Policy and, to the

extent not previously considered, that Philadelphia defend and indemnify Plaintiffs under the terms of the AMHECT Policy.

32. Philadelphia responded, through counsel, on January 30, 2020, refusing to reimburse Plaintiffs for the complete cost of the defense.

33. On or about May 8, 2020, Philadelphia sent a notice of non-renewal to AMHA, stating that it would not renew coverage under the policies due to “claims history, and a total incurred of \$100,000.” Exhibit D.

34. Philadelphia has not issued any payments to, or on behalf of, AMHA and most certainly has not disbursed or paid \$100,000 in connection with the Underlying Suit brought by Bennett.

35. Upon information and belief, the only claim AMHA has ever tendered to Philadelphia for defense is the Underlying Suit and Philadelphia has not “incurred” any losses in connection with the litigation.

~~36.~~ As of the filing of this Amended Complaint, Philadelphia continues to deny its obligation to reimburse Plaintiffs for their defense costs incurred to date.

THE INSURANCE COVERAGE

37. The AMHA Policy provides Director and Officer Liability Coverage on a claims-made basis for the period of August 27, 2019 to August 27, 2020. The AMHA Policy covers “Loss” caused by “D & O Wrongful Acts” of the “Individual Insured” where a “Claim” is made during the policy period.

38. The AMHA Policy also covers “Loss” to the “Organization” where it has indemnified “Individual Insureds” for “Loss” arising out of “D & O Wrongful Acts.”

~~396~~. AMHA is listed as an “Organization” on the Declaration Page for the Philadelphia policy.

~~4037~~. The Plaintiffs are Individual Insureds as that term is defined in the AMHA Policy.

~~4138~~. Victoria Bennett’s lawsuit constitutes a “Claim” as that term is defined in the AMHA Policy.

~~4239~~. The lawsuit alleges “D & O Wrongful Acts” as that term is defined in the AMHA Policy.

~~430~~. Pursuant to the terms of the AMHA Policy, the Insured has the right to tender the defense to the Underwriter and the Underwriter has the obligation to undertake and manage the defense of such Claim, even if the Claim is groundless, false or fraudulent.

~~441~~ Pursuant to the terms of the AMHA Policy, when the Insured has tendered the defense to the Underwriter, the Underwriter has the obligation to pay all defense costs even where there are covered and uncovered “Losses” asserted in the “Claim.”

~~452~~. Under the terms of the AMHA Policy, “Loss” includes cost of defense and damages.

~~463~~. The AMHECT Policy provides Director and Officer Liability Insurance on a claims-made basis for the period of August 27, 2019 to August 27, 2020 and covers “Loss” caused by “D & O Wrongful Acts” of the “Individual Insured” where a “Claim” is made during the policy period.

[474](#). The AMHECT Policy provides coverage under nearly identical policy terms and conditions as under the AMHA Policy.

[485](#). The individually named Plaintiffs are “Individual Insureds” as that term is defined in the AMHECT Policy.

[496](#). Victoria Bennett’s lawsuit constitutes a “Claim” as that term is defined in the AMHECT Policy.

[5047](#). The lawsuit alleges “D & O Wrongful Acts” against the individually named Plaintiffs as that term is defined in the AMHECT Policy.

[5148](#). As in the AMHA Policy, the Underwriter is obligated to fully defend the individually named Plaintiffs under the terms of the AMHECT Policy, even if Bennett’s lawsuit asserts claims that are groundless, false or fraudulent.

[5249](#). Philadelphia has improperly disclaimed its defense obligation under the terms of the AMHA and AMHECT Policies, despite Plaintiffs’ tender to Philadelphia for defense and indemnity in the underlying action.

[539](#). As a result of Philadelphia’s improper refusal to accept Plaintiffs’ tender of the defense, AMHA is currently funding the defense of the Plaintiffs in the Underlying Suit pursuant to this Court’s Ruling of January 14, 2020.

COUNT I
(Duty to Defend - AMHA Policy)

[541](#). Pursuant to the plain terms of the AMHA Policy, the Underlying Suit is a Claim for D&O Wrongful Acts against Individual Insureds.

[552](#). Count V of the Underlying Suit is a claim personal to Ms. Bennett based on an alleged D&O Wrongful Act as against the Individual Insureds not subject to any exclusion in the AMHA Policy.

[563](#) Plaintiffs have tendered the defense of the Underlying Suit to Philadelphia.

[574](#). Under the terms of the AMHA Policy, Philadelphia is obligated to defend the entirety of the Underlying Suit, even if the allegations are groundless, false or fraudulent.

[585](#). Plaintiffs are entitled to a declaration that Philadelphia is required to defend the entirety of the Underlying Suit under the terms of the AMHA Policy.

COUNT II
(Duty to Defend - AMHECT Policy)

[596](#). Pursuant to the plain terms of the AMHECT Policy, the Underlying Suit is a Claim for D&O Wrongful Acts against the Individual Insureds.

[6057](#). Insofar as Bennett's claims in the Underlying Suit state claims against Plaintiffs in their individual capacities on the basis of actions and votes cast as AMHECT trustees, the AMHECT Policy provides coverage for these claims, whether or not Bennett has standing to sue individually named Plaintiffs for their "D&O Wrongful Acts" as AMHECT trustees.

[6158](#). Plaintiffs have tendered the defense of the Underlying Suit to Philadelphia.

~~6259~~. Under the terms of the AMHECT Policy, Philadelphia is obligated to defend the entirety of the Underlying Suit, even if the allegations are groundless, false or fraudulent.

~~630~~. Plaintiffs are entitled to a declaration that Philadelphia is required to defend the entirety of the Underlying Suit under the terms of the AMHECT Policy

**COUNT III
(Bad Faith Claims Handling-Philadelphia)**

~~641~~. The AMHA and AMHECT Policies Philadelphia issued to Plaintiffs contain Pro Pak Elite Enhancements that modify the defense allocation clauses in the policies to ensure “full allocation” and “one hundred percent” coverage of defense costs by Philadelphia for suits involving both covered and un-covered Losses.

~~652~~. The “Full Allocation” clause in the Pro Pak Elite Enhancement reforms the language of the AMHA and AMHECT Policies to conform to Vermont’s settled precedent that, once a duty to defend is triggered, the insurer is bound to defend the entire suit, including claims that might not be covered.

~~663~~. Philadelphia’s refusal to pay all defense costs is not reasonable in light of the language of the Policy.

~~674~~. Plaintiffs tendered the defense of the Underlying Suit to Philadelphia and have repeatedly explained why they are entitled to all defense costs; Philadelphia has acted unreasonably by continuing to deny that it has a full defense cost obligation.

685. In declining to accept the full defense tendered by Plaintiffs, Philadelphia knowingly and intentionally disregarded the express terms of the AMHA and AMHECT Policies.

696. Plaintiffs have been forced to defend themselves in the Underlying Suit, a complex not-for-profit matter, despite having paid two sets of premiums to Philadelphia—one for AMHA and the other for AMHECT—for policies that expressly provide for Plaintiffs’ full defense in actions such as Bennett’s.

7067. To date, Philadelphia has not accepted Plaintiffs’ defense tender and, in doing so, has acted in bad faith.

71. Philadelphia has also recently declined to renew coverage for AMHA without basis and on grounds that are inaccurate and incorrect. Although the notice of non-renewal states that the non-renewal is due to “a total incurred of \$100,000” Philadelphia has yet to make any payments or disbursements in connection with the Underlying Suit brought by Bennett. AMHA has not submitted any other claims to Philadelphia.

72. Philadelphia’s stated grounds for non-renewal were false and inaccurate and, accordingly, the non-renewal was in bad faith.

7368. Plaintiffs are entitled to an award of compensatory damages and punitive damages in an amount to be determined at trial, attorney’s fees, and other such relief as the Court deems just and proper.

PRAYER FOR RELIEF

[7469](#). This action is brought pursuant to Vermont's declaratory judgment statute, 12 V.S.A. § 4711, et seq. Plaintiffs bring this action to obtain a declaration as to Philadelphia's obligations for defense and indemnity under the AMHA and AMHECT Policies. An actual controversy of a justiciable nature exists between involving the rights and liabilities under the two policies and depends upon the interpretation thereof, which controversy may be determined by a judgment of this court.

WHEREFORE, Plaintiffs pray for the following relief:

1. A declaration that Philadelphia is obligated to defend Plaintiffs in the Underlying Suit and reimburse Plaintiffs for the defense costs incurred by virtue of Philadelphia's denial of its defense obligations under the AMHA Policy AMHECT Policy terms.
2. An award of compensatory and punitive damages for Philadelphia's bad faith claims handling in an amount to be determined by a jury;
3. An award of costs, attorney's fees, and expenses and such other and further relief the Court deems appropriate.

PLAINTIFFS REQUEST A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.

DATED at Burlington, Vermont, this 27~~6~~th day of May, 2020.

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