

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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American Zurich Insurance Company,

Civil Action No.: 1:21-cv-04585

Plaintiff,

vs.

Meadow Park Rehabilitation & Health Care Center
LLC,

Defendant.
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COMPLAINT

Plaintiff American Zurich Insurance Company (“Zurich”) hereby files its complaint against Defendant Meadow Park Rehabilitation & Health Care Center LLC (“Meadow Park”) and states as follows:

INTRODUCTION

1. This is a breach of contract action. Zurich seeks money damages arising out of Meadow Park’s liability to Zurich for unpaid retrospective premium totaling \$470,191.00, which amount is due to Zurich under workers’ compensation insurance policies.

2. Meadow Park is a Named Insured under the policies that received benefits of the insurance coverage provided by Zurich. Meadow Park is liable for the retrospective premium obligation under the express terms of the policies at issue.

PARTIES

3. Plaintiff Zurich is an Illinois corporation with its principal place of business in Schaumburg, Illinois.

4. Defendant Meadow Park is a New York limited liability company with its principal place of business in Flushing, New York.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this cause pursuant to 28 U.S.C. § 1332 because it is a controversy between citizens of different states and the matter in controversy, exclusive of interest and costs, exceeds \$75,000.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) because Defendant resides in New York in this Judicial District.

BACKGROUND FACTS

7. Meadow Park is an inpatient rehabilitation and nursing facility located in Fresh Meadow, New York.

8. Zurich provided workers compensation to Meadow Park for five policy years spanning from January 27, 2013 through January 27, 2018 (collectively, the “Insurance Program”).

9. The insurance policies set forth the terms and conditions of the coverage provided to Meadow Park by Zurich.

10. The insurance policies are loss sensitive, meaning Meadow Park agreed to assume responsibility for a portion of its insurance risk. In a loss sensitive policy, the amounts due for the insurance continue after the policy expiration date based on how the losses develop over time.

11. Here, the loss sensitive component was structured through a retrospective-rating provision that obligates Meadow Park to share in the insurance risk by paying retrospective premium to Zurich. The retrospective premium is calculated pursuant to an agreed formula that takes into account the initial premium paid, the subsequent losses, taxes, and other agreed factors.

12. Meadow Park is responsible for the retrospective premium as Meadow Park is identified as the Named Insured on Item 1 of the policies’ Information Page. The policies require “you” to pay the retrospective premium and define “you” as the “employer named in Item 1 of the information page.”

13. Zurich has fully complied with its obligation under the Insurance Program. Zurich has provided workers' compensation coverage, paid claims, and calculated the resulting amounts due.

14. Zurich sent an invoice to Meadow Park that reflects the retrospective premium due under the Insurance Program. The invoice reflects that Meadow Park owes retrospective premium for two policy years. Specifically, \$218,474.00 is owed for Policy WC 6738692-01, \$251,931.00 is owed for Policy WC 6738692-02, and Meadow Park is entitled to a \$214.00 credit for Policy WC 6738692-04. A total of \$470,191.00 is therefore due to Zurich. The invoice is attached as Exhibit 1.

15. Without excuse or justification, Meadow Park has failed to pay amounts owed for the retrospective premium under the Insurance Program.

16. Apart from and in addition to the principal amount, Meadow Park owes Zurich for interest due on the unpaid invoice. Under New York law, prejudgment interest is mandatory and runs at the rate of nine percent (9%) per annum from the invoice due date. Interest will continue to accrue.

COUNT I
BREACH OF CONTRACT – POLICY WC 6738692-01

17. Zurich repeats and realleges the allegations of paragraphs 1 through 16 above as if fully set forth herein.

18. Policy WC 6738692-01 attached as Exhibit 2 is a valid and enforceable contract.

19. Zurich has fully performed its obligations under this policy by providing insurance coverage and other benefits to Meadow Park.

20. Meadow Park received the insurance coverage and other benefits provided under the policy.

21. As the Named Insured, the policy requires Meadow Park to pay the retrospective premium obligation in the principal amount of \$218,474.00 as reflected in the unpaid invoice.

(Ex. 1.)

22. Zurich has sent the unpaid invoice to Meadow Park and demanded payment of the amounts due.

23. Without excuse or justification, Meadow Park has breached the provisions of the policy by failing to pay the amounts due.

WHEREFORE, Zurich prays for judgment in its favor and against Meadow Park as follow:

- (a) Finding that Meadow Park is liable for the \$218,474.00 due under Policy WC 6738692-01 and is liable for \$470,191.00 under the Insurance Program;
- (b) Finding that Meadow Park is liable for prejudgment and postjudgment interest for the unpaid insurance obligation; and
- (c) Granting Zurich such other and further relief as this Court deems just and proper.

COUNT II
BREACH OF CONTRACT – POLICY WC 6738692-02

24. Zurich repeats and realleges the allegations of paragraphs 1 through 23 above as if fully set forth herein.

25. Policy WC 6738692-02 attached as Exhibit 3 is a valid and enforceable contract.

26. Zurich has fully performed its obligations under this policy by providing insurance coverage and other benefits to Meadow Park.

27. Meadow Park received the insurance coverage and other benefits provided under the policy.

28. As the Named Insured, the policy requires Meadow Park to pay the retrospective premium obligation in the principal amount of \$251,931.00 as reflected in the unpaid invoice.

(Ex. 1.)

29. Zurich has sent the unpaid invoice to Meadow Park and demanded payment of the amounts due.

30. Without excuse or justification, Meadow Park has breached the provisions of the policy by failing to pay the amounts due.

WHEREFORE, Zurich prays for judgment in its favor and against Meadow Park as follow:

- (a) Finding that Meadow Park is liable for the \$251,931.00 due under Policy WC 6738692-02 and is liable for \$470,191.00 under the Insurance Program;
- (b) Finding that Meadow Park is liable for prejudgment and postjudgment interest for the unpaid insurance obligation; and
- (c) Granting Zurich such other and further relief as this Court deems just and proper.

COUNT III
UNJUST ENRICHMENT

31. Zurich repeats and realleges the allegations of paragraphs 1 through 30 above as if fully set forth herein.

32. Meadow Park has been enriched by receiving the benefits of the Insurance Program.

33. The enrichment to Meadow Park came at Zurich's expense as Zurich has paid substantial sums on Meadow Park's worker's compensation claims under the Insurance Program.

34. It is against equity and good conscience to permit Meadow Park to retain the benefits of the Insurance Program without paying the amounts owed for the retrospective premium due under the Insurance Program.

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