

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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CERTAIN INTERESTED UNDERWRITERS AT LLOYD’S	:
LONDON,	: Index No.:
	:
Plaintiff,	: Date Filed: May 4, 2022
	:
-against-	: Plaintiff designates
	: New York County as venue
	:
RHG MANPOWER INC, ANGEL ALBERTO GATICA	:
NAVA, KARINA MARTINEZ, ROCK GROUP NY CORP.,	: <u>SUMMONS</u>
SATO CONSTRUCTION CO., INC. d/b/a FLAG	:
WATERPROOFING AND RESTORATION COMPANY,	:
VIDARIS, INC., SOUTHWEST MARINE AND GENERAL	: The basis for venue is the
INSURANCE COMPANY, ENDURANCE AMERICAN	: venue of the underlying
SPECIALTY INSURANCE COMPANY, TOKIO MARINE	: action
SPECIALTY INSURANCE COMPANY, JOHN/JANE DOES	:
1-10 (said names being fictitious), and ABC or XYZ CORP.	:
	:
Defendants.	:
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X

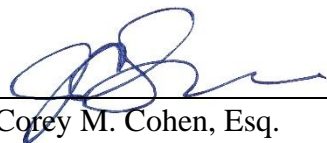
TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve your Answer, or if the Complaint is not served with this Summons, to serve notice of appearance on the Plaintiff’s attorney(s) within 20 days after service of this Summons, exclusive of the date of service, or within 30 days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
May 4, 2023

Yours, etc.

FURMAN KORNFELD & BRENNAN LLP

By: 
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Asher Kest, Esq.
Attorneys for Plaintiff
CERTAIN INTERESTED UNDERWRITERS
AT LLOYD'S LONDON
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New York, NY 10005
Tele: (212) 867-4100
FKB File No.: 406.035

TO: RHG Manpower Inc.
19208 Jamaica Avenue
Queens, New York 11423

Angel Alberto Gatica Nava and Karina Martinez
105-35 Otis Avenue, 1st Floor
Queens, NY 11368

Rock Group NY Corp.
119 Mt. Vernon Avenue, Suite 2E
Mt. Vernon, NY 10550

Sato Construction Co., Inc. d/b/a Flag Waterproofing and Restoration Company
10-40 Borden Avenue
Long Island City, NY 11104

Vidaris, Inc.
360 Park Avenue South, 15 Floor
New York, NY 10010

Southwest Marine and General Insurance Company
412 Mt. Kemble Ave, Suite 300C
Morristown, NJ 07960

Endurance American Specialty Insurance Company
750 3RD Ave FL 2
New York, NY, 10017

Tokio Marine Specialty Insurance Company
401 Edgewater Place, Suite 400
Wakefield, MA 01880

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3. In its application for the Policies, RHG states unequivocally that it is 100% General Contractor with RHG's only payroll being for the "Supervisory" class of work. *See* Ex. A, RHG Application. Further, RHG notes in its application that it does not hire "Day Laborers or Casual Laborers."

4. RHG held themselves out as a general contractor without direct employees performing construction work on construction sites.

5. RHG represented that their annual income was expected to be \$2,000,000.

6. Underwriters conducted analysis and provided a premium based on RHG's representations.

7. RHG performed direct labor.

8. RHG is not a general contractor.

9. RHG is a subcontractor.

10. RHG's annual income exceeded their represented income by multiples.

11. RHG has continually, and continues to, misrepresent its income during the policy period.

12. RHG's representations: regarding the nature of RHG's work; that they were a general contractor; that they had no direct employees or payroll beyond supervisory employees; and their annual income, were material misrepresentations.

13. Underwriters analyzed and underwrote the Policies based on RHG's representations that they were 100% a general contractor with payroll limited to supervisory workers.

14. Underwriters calculated the premium RHG would pay for the Policies based on RHG's representations

15. Underwriters calculated additional premium based on the representations of RHG.
16. Underwriters would not have issued the Policies as they stand if it was known that RHG directly employed laborers on construction projects.
17. Underwriters would not have issued the Policies as they stand if it was known that RHG was a subcontractor and not 100% a general contractor.
18. Underwriters would not have issued the Policies as they stand if it was known that RHG's income during the policy period was going to be above \$5,000,000.
19. The Policies should be declared void *ab initio* based on the material misrepresentations made by RHG to obtain the Policies.

THE POLICIES

20. RHG obtained a general liability insurance policy (the "General Liability Policy") from Underwriters based on the above stated material misrepresentations.
21. The General Liability Policy was issued with policy limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate limit.
22. The General Liability Policy was issued with a policy number of 10268L170375.
23. The General Liability Policy had a policy period from August 16, 2017 to August 16, 2018.
24. RHG obtained an excess insurance policy (the "Excess Policy") from Underwriters based on the material misrepresentation that RHG was solely a general contractor who did not employ any construction labor.
25. The Excess Policy was issued with policy limits of \$4,000,000 per occurrence and general aggregate limit.
26. The Excess Policy was issued with a policy number of 10268L170376.

27. The Excess Policy had a policy period from August 16, 2017 to August 16, 2018.

PARTIES

28. Plaintiff Underwriters are the underwriters to the Policies.

29. Defendant RHG is the named insured under the Policies.

30. Defendant RHG was and still is a domestic corporation duly authorized and existing under the laws of the state of New York.

31. Defendant RHG maintained a principal place of business located at 19208 Jamaica Avenue, Queens, New York 11423.

32. Defendant RHG maintained a principal place of business located at 1676 East 19th Street, Brooklyn, New York 11229.

33. That at all times hereinafter mentioned, Defendant RHG transacted business in the State of New York.

34. Defendants Angel Alberto Gatica Nava and Karina Martinez (collectively “Gatica”) are notice defendants to the instant action as potential and alleged rights of Gatica may be affected by the judicial declaration requested herein.

35. Gatica are residents of the State of New York residing in Queens County.

36. Defendant Rock Group NY Corp. (“Rock Group”) is a notice defendant to the instant action as potential and alleged rights of Rock Group may be affected by the judicial declaration requested herein.

37. Defendant Rock Group was and still is a domestic corporation duly authorized and existing under the laws of the State of New York.

38. Defendant Rock Group was and still is a foreign corporation duly authorized and existing under the laws of the state of New York.

39. Defendant Rock Group claims that RHG is owed coverage from Underwriters, and that RHG must indemnify Rock Group.

40. Defendant Sato Construction Co., Inc. d/b/a Flag Waterproofing and Restoration Company (“Sato”) is a notice defendant to the instant action as potential and alleged rights of Sato may be affected by the judicial declaration requested herein.

41. Defendant Sato was and still is a domestic corporation duly authorized and existing under the laws of the State of New York.

42. Defendant Sato was and still is a foreign corporation duly authorized and existing under the laws of the State of New York.

43. Defendant Sato claims that RHG is owed coverage from Underwriters, and that RHG must indemnify Sato.

44. Defendant Vidaris, Inc. (“Vidaris”) is a notice defendant to the instant action as potential and alleged rights of Vidaris may be affected by the judicial declaration requested herein.

45. Defendant Vidaris was and still is a domestic corporation duly authorized and existing under the laws of the State of New York.

46. Defendant Vidaris was and still is a foreign corporation duly authorized and existing under the laws of the State of New York.

47. Southwest Marine and General Insurance Company (“Southwest”) is a notice defendant to the instant action as potential and alleged rights of Southwest may be affected by the judicial declaration requested herein.

48. Defendant Southwest was and still is a domestic corporation duly authorized and existing under the laws of the State of New York.

49. Defendant Southwest was and still is a foreign corporation duly authorized and existing under the laws of the State of New York.

50. Defendant Southwest is licensed and issuing insurance policies in the State of New York.

51. In the alternative, Defendant Southwest is unlicensed and issuing insurance policies in the State of New York.

52. Endurance American Specialty Insurance Company (“Endurance”) is a notice defendant to the instant action as potential and alleged rights of Endurance may be affected by the judicial declaration requested herein.

53. Defendant Endurance was and still is a domestic corporation duly authorized and existing under the laws of the State of New York.

54. Defendant Endurance was and still is a foreign corporation duly authorized and existing under the laws of the State of New York.

55. Defendant Endurance is licensed and issuing insurance policies in the State of New York.

56. In the alternative, Defendant Endurance is unlicensed and issuing insurance policies in the State of New York.

57. Tokio Marine Specialty Insurance Company (“Tokio”) is a notice defendant to the instant action as potential and alleged rights of Tokio may be affected by the judicial declaration requested herein.

58. Defendant Tokio was and still is a domestic corporation duly authorized and existing under the laws of the State of New York.

59. Defendant Tokio was and still is a foreign corporation duly authorized and existing under the laws of the State of New York.

60. Defendant Tokio is licensed and issuing insurance policies in the State of New York.

61. In the alternative, Defendant Tokio is unlicensed and issuing insurance policies in the State of New York.

62. Defendants, John Does 1-10, are fictitious names for individuals who are unknown and may be notice defendants.

63. Defendants, John Roe Corps 1-10, are fictitious names for businesses, partnerships, corporations, and/or legal entities, who are unknown and may be notice defendants.

JURISDICTION AND VENUE

64. This declaratory judgment action is brought pursuant to CPLR § 3001. An actual justiciable controversy exists as to the rights and obligation of the parties to a justiciable controversy under the Policies.

65. This Court has personal jurisdiction over the Defendants because Defendants regularly conduct business in New York and/or reside in New York.

66. The dispute exists as to whether the Policies are void *ab initio* as a result of RHG's material misrepresentation, among other disputes, including allegations by Rock Group and Sato that they are owed coverage as additional insureds under the Policies; and allegations by Southwest, Endurance, and Tokio that they are owed reimbursement for coverage of one or more notice defendants. There is an actual case or controversy between the parties.

COUNT I**The Policies Should Be Declared Void *ab initio* As A Result of Defendant RHG's Material Misrepresentations Made with Intent to Defraud Underwriters into Issuing the Policies**

67. Underwriters incorporate by reference paragraphs 1-66 as if fully set forth in this count.

68. On or about August 16, 2017, Defendant RHG submitted an application to Underwriters for policies to afford coverage for Commercial General Liability and for Excess Coverage.

69. On this application, among other material misrepresentations, Defendant RHG noted the following material misrepresentations:

- Defendant RHG was 100% a general contractor;
- Defendant RHG's income was represented to be expected as \$2,000,000;
- Defendant RHG's payroll was limited to supervisory class of work; and
- Defendant RHG does not hire "Day Laborers or Casual Laborers."

70. Defendant RHG knew that it was a false statement to claim they were 100% a general contractor when Defendant RHG made the statement.¹

71. Defendant RHG made the statement that they were 100% a general contractor with the intent to defraud Underwriters.

72. Defendant RHG made the statement that they were 100% a general contractor with the intent to obtain the Policies from Underwriters.

¹ The risk, underwriting, and chances of a claim are different when there are direct employees on site conducting construction work. General contractors generally sub-contract to other contractors to complete work. A subcontractor is customarily contractually required to indemnify and provide insurance coverage for both the general contractor and owner, while a general contractor's contractual indemnification and insurance responsibilities will likely be limited to an owner. For these and other reasons, the risks and calculations are different for a general contractor versus a subcontractor.

73. Defendant RHG's statement that they were 100% a general contractor constitutes a material misrepresentation.

74. If Underwriters knew that Defendant RHG was not 100% a general contractor, Underwriters would not have entered into the contractual Policies with Defendant RHG.

75. Defendant RHG materially misrepresented that RHG's only payroll was for supervisory work in order to obtain the Policies.

76. By *inter alia* stating that the entirety of RHG's payroll was for "Supervisory" class of payroll, RHG misrepresented that it did not retain direct employees to conduct labor on construction sites. The underwriting calculus is different because of the risks and chances of claims associated with direct employees on site.

77. Defendant RHG knew that it was a false statement to claim that RHG's only payroll was for supervisory work when Defendant RHG made the statement.

78. Defendant RHG made the statement that RHG's only payroll was for supervisory work with the intent to defraud Underwriters.

79. Defendant RHG made the statement that RHG's only payroll was for supervisory work with the intent to obtain the Policies from Underwriters.

80. Defendant RHG's statement that RHG's only payroll was for supervisory work constitutes a material misrepresentation.

81. If Underwriters knew that Defendant RHG had payroll and direct employees beyond supervisory payroll and workers, Underwriters would not have entered into the contractual Policies with Defendant RHG.

82. Defendant RHG materially misrepresented that RHG did not hire "Day Laborers or Casual Laborers."

83. Defendant RHG knew that it was a false statement to claim that RHG did not hire “Day Laborers or Casual Laborers.”

84. Defendant RHG made the statement that RHG did not hire “Day Laborers or Casual Laborers” with the intent to defraud Underwriters.

85. Defendant RHG made the statement that RHG did not hire “Day Laborers or Casual Laborers” with the intent to obtain the Policies from Underwriters.

86. Defendant RHG’s statement that RHG did not hire “Day Laborers or Casual Laborers” constitutes a material misrepresentation.

87. If Underwriters knew that Defendant RHG hired “Day Laborers or Casual Laborers,” Underwriters would not have entered into the contractual Policies with Defendant RHG.

88. Defendant RHG misrepresented its income.

89. Defendant RHG has continued, and continues, to misrepresent and hide its true income.

90. If Underwriters knew that Defendant RHG misrepresented its income, Underwriters would not have entered into the contractual Policies with Defendant RHG as they were issued.

91. The aforementioned misrepresentations or non-disclosures, alone or together, were material to Underwriters because they affected the risk assumed by Underwriters.

92. Underwriters would not have issued the Policies to Defendant RHG if Underwriters had known of the aforementioned fraudulent misrepresentations and non-disclosures made by Defendant RHG.

93. Upon information and belief, Defendant RHG made the above material misrepresentations with the intent to deceive Underwriters.

94. Upon information and belief, Defendant RHG withheld the true facts, as aforesaid, for the purpose of inducing Underwriters to issue the Policies, which Underwriters might not have otherwise issued.

95. Upon information and belief, RHG is not a general contractor.

96. Upon information and belief, RHG is a subcontractor.

97. Upon information and belief, RHG employs direct laborers to entities it contracts as subcontract with.

98. Upon information and belief, RHG employs day laborers and casual laborers to entities it contracts as subcontract with.

99. RHG did not hire “Day Laborers or Casual Laborers.”

100. Upon information and belief, RHG employs and provides direct laborers to entities it contracts with and does not supervise RHG’s employees work.

101. Upon information and belief, RHG employs and provides direct laborers to entities it contracts with the entities thereafter manage RHG’s employees work.

102. On the basis of the material misrepresentations and non-disclosures made by Defendant RHG in their application to obtain the Policies, Underwriters are entitled to void the Policies *ab initio*.

103. Underwriters has no other avenue of relief.

COUNT II**Underwriters Have No Obligations to Provide Defense or Indemnification to Defendant RHG or Any Other Entity as The Policies Were Obtained as a Result of Defendants' Material Misrepresentations and Are Void *ab initio***

104. Underwriters incorporates by reference paragraphs 1-103 as if fully set forth in this count.

105. On the basis of the foregoing, Underwriters are entitled to a judgment declaring that Underwriters have no obligation to provide defense or indemnification to Defendant RHG or any other entity seeking defense or indemnification under the Policies, as a result of the Policies being void *ab initio*.

106. Underwriters has no other avenue of relief.

WHEREFORE Underwriters seeks a declaration and judgment stating:

- A. That the Policies are void *ab initio* and Underwriters retroactively have no obligations to Defendant RHG or any other entity or individual resulting from the Policies;
- B. That Underwriters have no obligations to Defendants to defend, indemnify, or take any action regarding any action presently brought or that may be brought in the future, or any other claim brought against the Policies;
- C. For any other relief that this Court deems just and equitable.

Dated: New York, New York
April 4, 2023

FURMAN KORNFELD & BRENNAN LLP

By: /s/ Corey M. Cohen
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Asher Kest, Esq.
Attorney for Plaintiff
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