

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

HERTZ INVESTMENT GROUP, LLC

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Plaintiff

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VERSUS

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RSC INSURANCE BROKERAGE, INC.,
D/B/A RISK STRATEGIES COMPANY

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Defendant

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NO.: 21-cv-

SECTION: ()

JUDGE:

MAG. JUDGE:

COMPLAINT

PARTIES

1.

Plaintiff, Hertz Investment Group, LLC (“Hertz”), is the **First Named Insured** on The Zurich EDGE Policy No. ERP0280044-02 with policy period May 31, 2019 to May 31, 2020 (“Policy”). Hertz as well as other Hertz-related entities filed a separate action in Civil District Court for the Parish of Orleans, State of Louisiana for its alleged Covid-19-related losses against American Guarantee and Liability Insurance Company (“Zurich”), which was removed to this Court and is subject to a pending motion to remand. *See Hertz Inv. Grp., LLC et al. v. Am. Guar.*

& Liab. Ins. Co., No. 21-cv-0855 (E.D. La.). Zurich has alleged in that separate action that several Hertz-related entities (“Building Owners”)¹ are not insureds under the Policy. In an abundance of caution, Hertz is filing this separate Complaint against the producer of the Policy as Hertz had specifically directed the producer to make the Building Owners insureds for all purposes under the Policy and the producer provided written evidence that such had been done on which Hertz detrimentally relied if they were not such insureds.

2.

Defendant RSC Insurance Brokerage, Inc., d/b/a Risk Strategies Company (“RSC”), is Zurich’s agent and producer of the Policy. RSC is a Delaware corporation with its principal place of business in Massachusetts. RSC is doing business in Louisiana with both its principal business establishment and its

¹ Building Owners include Hertz Group Realty Trust, Inc.; HPT New Orleans OSS, LLC; New Orleans I Holdings, LLC; Hertz Texaco Center, LLC; Hertz 909 Poydras, LLC; Poydras Center, LLC; Plaza Investments II Holdings, LLC; Plaza Investments III Holdings, LLC; Hertz Lake Charles One, LLC; Hertz Jackson One, LLC; Hertz Jackson Two, LLC; Hertz Jackson Three, LLC; Hertz Jackson Four, LLC; Hertz OJP Holdings, LLC; Hertz Clinton One, LLC; Hertz Jackson City Centre, LLC; Hertz Knoxville One, LLC; Hertz Forum Holdings, LLC; Hertz Memphis Two, LLC; Hertz Memphis Three, LLC; Hertz Memphis Four, LLC; HPT Birmingham 2501 20th, LLC; HPT Sunbelt Portfolio, LLC; Hertz Westchase Park Plaza, LLC; Hertz Houston Brookhollow, LP; Hertz Fort Worth Energy Way, LP; Hertz Richmond Holdings, LLC; Richmond Riverfront Plaza, LP; Hertz Norfolk 999 Waterside, LLC; Hertz Jacksonville One, LLC; Hertz Greensboro 300 North Greene, LLC; Hertz 10 South Broadway, LLC; Hertz Baltimore 7 St. Paul Street, LLC; Hertz Indianapolis 111 Monument, LLC; HPT Indianapolis 101-111 West Virginia LLC; Hertz Grand Rapids One, LLC; Cheyenne Corporate Center, LLC; Hertz Center at 600 Vine St, LLC; Hertz Cleveland 600 Superior, LLC; Skylight Office Tower Holdings, LLC; Hertz Cleveland North Point, LLC; Hertz Columbus One, LLC; Hertz Gateway Center, LP; and Hertz Milwaukee 100 East Wisconsin, LLC.

registered office and registered agent in Louisiana listed with the Louisiana Secretary of State as Corporation Service Company, 501 Louisiana Avenue, Baton Rouge, LA 70802.

JURISDICTION

3.

This court has jurisdiction over this matter under 28 U.S.C. § 1332 as Hertz is diverse from RSC and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

VENUE

4.

Venue is proper in this judicial district as a substantial part of property that is the subject of this action is situated in this district. *See* 28 U.S.C. § 1391(2).

NATURE OF THE ACTION

5.

If Zurich were to prevail on its argument that the Building Owners are not insureds under the Policy for all purposes and were not to pay for all their Covid-19-related losses and damages, including but not limited to all damages, penalties, attorneys fees, fees, and interest, Hertz seeks to recover from RSC all such damages (direct and consequential), penalties, attorneys' fees, fees, interest, and other relief to which it is legally entitled arising from Zurich's failure to promptly and fully pay

all benefits arising under the Policy arising from Covid-19 that caused property damage and business interruption to the various insured buildings for which (1) the Building Owners are the registered property owners with the applicable assessors' office; (2) RSC, on behalf of Zurich, accepted from HIG a Statement of Values identifying the Building Owners as "Entity (Named Insured)" for the Policy; and (3) RSC, on behalf of Zurich, issued Evidence of Commercial Property Insurance Evidence dated 5/28/2019 regarding the Policy to the Building Owners as "Named Insured" to each of the Building Owners care of Hertz. *See, e.g.*, HERTZ/INSURANCE-0009-0013, Exhibit A; HERTZ/EOP/5-28-2019/00001 to 00118, Exhibit B.

FACTS

6.

On information and belief, RSC was Zurich's agent and producer of the Policy, with RSC having a contract with Zurich regarding binding it for same, and with RSC getting paid commissions from Zurich for same including one previous renewal of same with policy number ERP0280044-01.

7.

Therefore, Zurich is bound by RSC's representations on its behalf (and THG South, Inc.'s same representations before RSC as to policy number ERP0280044-00) that each Building Owner was a "Named Insured" under the Policy and the

Policy's two predecessors for all purposes.

8.

Alternatively, if Zurich prevails on its recent argument that the Building Owners are not insureds under the Policy for all purposes, then RSC is liable to Hertz for its misrepresentation regarding same and must step in the shoes of Zurich and be liable to Hertz for all amounts which the Building Owners would be able to recover against Zurich if the Building Owners were insureds for all purposes as represented in the various Evidences of Commercial Property Insurance issued by Zurich through RSC and via RSC's acceptance of Hertz's Statements of Value listing the Building Owners as "Entity (Named Insured)" for their respective buildings and related immovable and business personal property and business interruption.

9.

Moreover, on January 10, 2018, in connection with taking over being the producer for Zurich's Policy, RSC specifically told Hertz in writing that it would "review and analyze [Hertz's] current insurance program including but not limited to coverage forms, limits, structure, premiums, etc.;" "perform a thorough review of existing property [*i.e.*, Zurich] programs;" and "review policy language for breadth and protection of Hertz." To the extent Zurich prevails on its recent argument that the Building Owners are not insureds under the Policy for all purposes and/or that there is no coverage for Hertz for its Covid-19-related losses under the Policy, RSC

breached its specific written promises to Hertz to thoroughly review and analyze Zurich's existing policy property coverage forms, limits, and structure and policy language for the breadth and protection of Hertz as Hertz conveyed to RSC in writing that it wanted all Building Owners listed as "named insureds" on the Policy for all purposes as was necessary to be in compliance with their respective mortgage loan documents, and/or RSC negligently failed to procure the full insurance protection for the Building Owners for all purposes under the Policy as instructed by Hertz.

10.

While Hertz submits the Building Owners' are named insureds under the Policy for all purposes and that their Covid-19-related claims are covered under the Policy, if Zurich prevails that the Building Owners are not covered as insureds under the Policy for all purposes and/or are not covered under the Policy for their Covid-19-related losses, Hertz is filing this protective, alternative suit against RSC for its negligence and/or breach of contract related to same and/or Hertz's detrimental reliance on RSC's representations regarding same in an abundance of caution.

11.

RSC held itself out to Hertz specifically and to the world generally as an expert advisor of insurance, including in real estate.

12.

Hertz reasonably relied on RSC's representations of its expertise in insurance coverage and policy recommendations, following its promised thorough analysis and review of Hertz's existing property policy with Zurich.

13.

RSC was not a mere "order taker" for Hertz's insurance, but rather specifically held itself out as being a "top national specialty broker providing risk management advisory services, insurance and reinsurance placement, for property" which would provide appropriate actionable recommendations to Hertz as to specific coverages. *See, e.g.,* <https://www.risk-strategies.com/> (last visited June 1, 2021).

14.

Based on these affirmative representations regarding its insurance-related advisory services, RSC had a heightened duty to Hertz regarding its coverage recommendations on which Hertz reasonably relied.

15.

Hertz's assumption that the Building Owners were named insureds on the Policy for all purposes and that their losses related to Covid-19 were covered under the Policy is warranted by RSC's representations to Hertz of its unique insurance expertise and advice.

16.

On information and belief, RSC also acted as Zurich's agent and producer for the Policy receiving specific payments/commissions from its placement of Hertz's Policy for which Hertz paid a premium of over \$2.755 million.

17.

To the extent Zurich's argument that the Building Owners are not named insureds for all purposes under the Policy regarding Covid-19 and/or that their losses related to Covid-19 are not covered under the Policy, RSC is liable to Hertz for all losses regarding same due to RSC's affirmative representations of its expertise on which Hertz relied and/or Hertz's specific request to Zurich through RSC that the Building Owners be named insureds for all purposes under the Policy and for all other applicable liability and environmental policies.

FIRST COUNT
BREACH OF CONTRACT AND/OR NEGLIGENCE OF
AND/OR DETRIMENTAL RELIANCE

18.

Hertz repeats and alleges the allegations in all preceding paragraphs as though fully set forth herein.

19.

To the extent the Building Owners are found to not be insureds for all purposes under the Policy and/or for their Covid-19-related losses under the Policy, Hertz submits it was due to the breach of contract and/or negligence of RSC in the following non-exclusive particulars:

(a) Failing to advise Hertz about the Policy's definitions of "Insured";

(b) Failing to advise Hertz about the Policy not defining "subsidiary";

(c) Failing to advise Hertz about any written documentation Zurich required to make each of the Building Owners an "insured" for all purposes in addition to the Statement of Values submitted to Zurich through RSC which includes 19 columns of the Building Owners' specific information as to their specific buildings including listing the Building Owners as "Entity Name (Named Insured)" as Hertz instructed RSC to make the Building Owners insureds for all purposes under all applicable policies, including property, liability, and environmental;

(d) Failing to perform due diligence regarding Hertz's business operations;

(e) Failing to confirm coverage for the Building Owners for all

purposes to Hertz, especially after promising in writing to do a thorough review and analysis of Hertz's existing property insurance coverages for breadth and protection of Hertz and providing actionable recommendations for same; and/or

(f) Failing to advise Hertz about the need for broader virus-related coverage for the businesses it manages in which there are numerous people entering and exiting daily in various buildings it manages.

20.

In the further alternative, to the extent Zurich prevails on its argument that the Building Owners were not insureds under the Policy for all purposes related to Covid-19, Hertz detrimentally relied on the Evidences of Commercial Property Insurance for the Building Owners provided to it from RSC on May 28, 2019 showing each of the Building Owners as a "Named Insured" and listing their respective mortgagees as the mortgagees which Evidences of Commercial Property Insurance were never rescinded before Covid-19 losses started in the spring of 2020.

21.

In that alternative, RSC is liable to Hertz for all damages, penalties, attorneys' fees, fees, interest, etc. that Hertz has suffered or will suffer due to its negligence and/or breaches of contract and/or Hertz's detrimental reliance on its representations for the Building Owners' Covid-19-related losses.

WHEREFORE, Hertz respectfully prays that:

- (1) If Zurich's recent argument that the Building Owners are not insureds under the Policy for all purposes regarding Covid-19 and/or that their losses due to Covid-19 are not covered under the Policy be upheld, that RSC be held liable to Hertz for all amounts that the Building Owners would have been entitled to if they were insureds under the Policy for all purposes and/or that they would have been entitled to if the Policy provided coverage for their Covid-19-related losses; and
- (2) Any other equitable and general relief the nature of this case will allow.

/s/ James M. Garner

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