

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

BEAT THE STREETS WRESTLING, INC.,

Plaintiff,

v.

ARTHUR J. GALLAGHER RISK
MANAGEMENT SERVICES, INC.,

Defendant.

Case No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Beat the Streets Wrestling, Inc. (“Plaintiff” or “BTS Wrestling”), by and through its attorneys, for its Complaint against Defendant, Arthur J. Gallagher Risk Management Services, Inc. (“Defendant” or “AJG Risk Management”), alleges as follows:

PRELIMINARY STATEMENT

1. This is an action by a long-term client (BTS Wrestling) against an insurance broker (AJG Risk Management) for breach of contract, insurance broker negligence premised upon a special relationship, and breach of fiduciary duty premised upon a special relationship.

2. AJG Risk Management breached its obligations under a contract to procure insurance and its duties owed to BTS Wrestling under New York law and, thereby, caused BTS Wrestling to suffer damages in excess of \$778,000.

3. BTS Wrestling, a nonprofit providing services to New York City-area underprivileged youths, was forced to cancel its annual fundraising event for 2020 that historically accounts for approximately half of its net annual revenue (a fact of which AJG Risk Management was aware) due to the unprecedented danger posed by the spread of the severe

acute respiratory syndrome coronavirus 2 (“SARS-CoV-2” or the “novel coronavirus”)¹ and the resulting stay-at-home and other orders issued by New York state and local governments.

4. Despite its six-year-plus relationship with BTS Wrestling, its active role in reviewing and renewing BTS Wrestling’s insurance coverages, and its knowledge and understanding that the annual fundraising event was vital to the financial condition and well-being of BTS Wrestling, AJG Risk Management failed to procure appropriate and adequate business interruption and/or event cancellation insurance coverage for BTS Wrestling with respect to its annual fundraising event.

JURISDICTION

5. This Court has jurisdiction with respect to this action pursuant to 28 U.S.C. § 1332(a)(1) because this is a civil action between a citizen of New Jersey, on the one hand, and a citizen of Illinois, on the other hand, and because the amount in controversy exceeds \$75,000, exclusive of interest and costs.

VENUE

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and/or omissions giving rise to the claims occurred in this district.

PARTIES

7. BTS Wrestling is a citizen of New Jersey.

8. BTS Wrestling is a corporation incorporated in New Jersey, and it presently has a principal place of business in New Jersey.

¹ “Severe acute respiratory syndrome coronavirus 2,” “SARS-CoV-2,” and “novel coronavirus” are terms used to refer to the virus itself, and as mentioned below, “COVID-19” is the term used to refer to the disease caused by the virus.

9. BTS Wrestling temporarily, currently manages its operations with an address at a P.O. Box in New Jersey, P.O. Box 441, Jersey City, New Jersey 07303.

10. AJG Risk Management is a citizen of Illinois.

11. AJG Risk Management is a corporation incorporated in Illinois, and it has a principal place of business in Illinois.

12. AJG Risk Management's executive office is located at 2850 Golf Road, Rolling Meadows, Illinois 60008.

FACTS

13. BTS Wrestling is a nonprofit organization that supports underprivileged youths in the New York City area by instilling, through the sport of wrestling, the life lessons of perseverance and resilience in the face of adversity.

14. BTS Wrestling teaches middle school and high school students the rules and skills of the sport of wrestling and assists these children in applying the discipline, work ethic, perseverance, self-reliance, and humility learned therefrom to other areas of their lives.

15. BTS Wrestling, when operating in normal, ordinary times, serves over 1,500 youths daily.

16. To enable it to provide these services to such a large number of youths, BTS Wrestling holds and relies upon an annual fundraising event from which it generates approximately half its net annual revenue.

17. BTS Wrestling's annual fundraising event over the past three years (2017-2019) generated an average gross revenue of \$1,225,764, with an average net amount of \$692,732 to BTS Wrestling.

18. Each year, this fundraising event is held at a large venue in the New York City area.

19. Wrestling exhibition matches are an integral part of this fundraising event.

20. Almost every year, BTS Wrestling's fundraising event is held outdoors: 2010 on the USS Intrepid, 2011-2017 in Times Square, and 2018 at Pier 17/South Street Seaport.

21. The 2019 fundraiser was held (and the 2020 fundraiser was supposed to be held) at Madison Square Garden's Hulu Theater.

Plaintiff's Reliance upon AJG Risk Management for Its Advice and Expertise

22. Since at least 2014, BTS Wrestling has retained AJG Risk Management as an insurance broker and an adviser for BTS Wrestling's insurance needs.

23. BTS Wrestling, as a nonprofit, does not have an internal Chief Risk Officer or substantial equivalent.

24. At all relevant times hereto and with respect to the allegations herein, BTS Wrestling and AJG Risk Management acted through their authorized and/or apparent agents and/or representatives.

25. Since at least 2014, AJG Risk Management has obtained various insurance coverages for BTS Wrestling and managed the renewals of those insurance coverages.

26. As part of each renewal process (including the renewal process at issue here), AJG Risk Management would communicate with the insurance carrier(s), obtain information from BTS Wrestling that was requested by said insurance carrier(s), update BTS Wrestling's file(s) with the insurance carrier(s), maintain its own file of BTS Wrestling's previous applications and insurance policies, review the then-current application(s) for insurance, and

review other client-specific information such as BTS Wrestling's audited financial statements and statements identifying the membership of the Board of Directors.

27. And, in perhaps the most important aspect of the renewal process, AJG Risk Management would also identify coverages that it deemed important that BTS Wrestling did not yet have and obtain quotes for the same for BTS Wrestling's review.

28. Over the course of this relationship, AJG Risk Management demonstrated an ostensible expertise in all relevant matters of insurance.

29. BTS Wrestling wanted insurance coverage for all aspects of its operations and often asked AJG Risk Management whether BTS Wrestling had such coverage in place.

30. BTS Wrestling asked AJG Risk Management to identify any missing coverages.

31. On at least one occasion in the past few years, AJG Risk Management brought an emerging coverage (cyber risk) to BTS Wrestling's attention and advised BTS Wrestling to bind such coverage.

32. BTS Wrestling, relying upon AJG Risk Management's expertise and advice, bound such coverage in that instance.

33. Throughout the entirety of their relationship, BTS Wrestling relied upon AJG Risk Management's expertise when ultimately selecting BTS Wrestling's insurance coverages.

The Cancellation of BTS Wrestling's 2020 Annual Fundraising Event and Loss of Substantial Revenue/Income

34. In early March 2020, due to the unprecedented danger posed by the rapid spread of the novel coronavirus, Governor Cuomo issued what would become the first of many executive orders for the protection of persons and property located in the state of New York.

35. At about the same time, for the same reasons, Mayor Bill de Blasio issued the first of many emergency executive orders for the protection of persons and property located in New York City.

36. In relevant parts, these executive orders (both state and local) have continued in effect, to varying degrees.

37. These executive orders declared states of emergency and mandated, *inter alia*, restrictions on the size of gatherings of people, closures of the premises of non-essential businesses, and that people should remain at home unless performing an enumerated “essential” function, job, or task.

38. BTS Wrestling’s annual fundraising event for 2020 was scheduled for May 28, 2020, at Madison Square Garden’s Hulu Theater.

39. However, in early March, a day before tickets to BTS Wrestling’s fundraising event were to go on sale, BTS Wrestling was contacted by a representative from Madison Square Garden to discuss withholding the tickets for the fundraiser due to the circumstances surrounding the spread of the novel coronavirus.

40. Specifically, on Friday, March 13, a Madison Square Garden representative contacted Brendan Buckley (“Buckley”) at BTS Wrestling and urged BTS Wrestling to withhold sale of the annual fundraising event tickets.

41. The tickets were to be available for purchase on Monday, March 16, but in light of the above conversation, the tickets were not put on sale as planned.

42. In the days following, other events to be held at Madison Square Garden, such as conference tournaments for the NCAA’s basketball leagues, the NCAA’s March Madness

tournament, certain NCAA wrestling and other championship events, and NBA games, were canceled.

43. Games for every major sports league and large gatherings in New York City and across the United States were also canceled (for example, South by Southwest conference and festivals, *all* events at Madison Square Garden, music concerts, and Broadway theaters' performances).

44. In late March or early April, a Madison Square Garden representative again contacted Buckley and advised him that many, if not all, events at Madison Square Garden were being canceled.

45. In early May, Buckley again spoke with a Madison Square Garden representative who informed him that Madison Square Garden was likely to be closed to hosted events until at least September 1, 2020.

46. Due to the state and local executive orders, BTS Wrestling's 2020 fundraising event was not held on May 28, 2020.

47. Due to the state and local executive orders and the general uncertainty and concern surrounding the spread and transmission of the novel coronavirus, BTS Wrestling has been unable to hold its 2020 fundraising event to date.

48. BTS Wrestling will not host its 2020 fundraising event in 2020 in-person, given the continued restrictions on the size of in-person gatherings and other applicable restrictions.

49. BTS Wrestling is planning to host a *virtual* fundraising event "in" Hoboken, New Jersey, on or about September 17, 2020, however BTS Wrestling will still suffer a loss of net revenue/income despite this mitigation effort due to either reduced attendance, advertising/sponsorship, and/or ticket revenue/income.

50. To date, there is no publicly available vaccine for the disease caused by the novel coronavirus, which is “COVID-19.”

51. Despite some perceived progress, relatively little is scientifically known about or agreed-upon with respect to COVID-19, other than its high rate of transmission and virulence.

52. Several states, such as Texas and Florida, have eased their gathering and business operation restrictions that were similar to those found in the New York state and local executive orders only to be faced with a resurgence of COVID-19 cases and a resultant need to reinstate their prior more restrictive orders on gatherings and business operations.

53. Given the continued uncertainty and danger posed by the novel coronavirus, it is unreasonable to expect that BTS Wrestling’s annual fundraising event can safely take place this year in-person.

54. BTS Wrestling, therefore, has lost the net revenue/income typically earned from the annual fundraising event.

55. Also due to the cancellation of the annual fundraising event, BTS Wrestling was forced to incur the extra expense of \$3,000 for a public relations team.

56. Further, BTS Wrestling lost at least 50% of its deposit (\$25,000) for the after-fundraiser venue. BTW Wrestling is, at present, negotiating the return of 50% of its deposit and may or may not receive it.

Philadelphia Indemnity Insurance Company’s Denial of Coverage

57. During the last renewal period that is relevant to the instant matter, AJG Risk Management obtained for BTS Wrestling from Philadelphia Indemnity Insurance Company (“Philadelphia”) a Commercial Lines Policy, including various insurance coverages,

endorsements, extensions, exclusions, and restrictions, having a policy period of September 1, 2019, to September 1, 2020 (the “Philadelphia Policy”).

58. The Philadelphia Policy, however, did not contain business interruption, event cancellation, and/or any other coverage applicable to the loss of net revenue/income sustained by BTS Wrestling due to the cancellation of its 2020 annual fundraising event.

59. As it had done for years, BTS Wrestling relied upon AJG Risk Management’s expertise and advice that the Philadelphia Policy contained any and all insurance coverages that BTS Wrestling would need.

60. On or about April 1, 2020, BTS Wrestling submitted a claim to Philadelphia for its loss of net revenue/income due to the cancellation of its annual fundraising event.

61. On or about May 1, 2020, by and through MSW Adjustment Group, Philadelphia denied coverage for BTS Wrestling’s claim for lost net revenue/income.

62. After BTS Wrestling requested that Philadelphia reconsider its denial of coverage, Philadelphia again denied coverage for BTS Wrestling’s claim on or about June 5, 2020.

63. Among other reasons, Philadelphia stated that it was denying coverage for BTS Wrestling’s claim because the Philadelphia Policy either did not provide first-party coverage or such first-party coverage was excluded by the Philadelphia Policy’s “virus or bacteria” exclusion.

64. As a result of this gap in coverage, BTS Wrestling has suffered a loss in its net revenue/income for the current operating year of approximately \$750,000, plus extra costs and expenses in excess of \$28,000.

COUNT I – BREACH OF CONTRACT

65. Plaintiff repeats and realleges as if set forth fully herein paragraphs 1 through 64.

66. In September 2019, BTS Wrestling engaged AJG Risk Management to obtain appropriate and adequate insurance coverage for the entirety of its business operations, as it had done each year since at least 2014.

67. In September 2019, and for at least several years before that time, AJG Risk Management was aware that BTS Wrestling earned approximately half of its annual revenue from the annual fundraising event.

68. In or around September 2019, the written, electronic communications by and between BTS Wrestling and AJG Risk Management established a valid and enforceable contract between BTS Wrestling and AJG Risk Management (the “Insurance Procurement Contract”) pursuant to which AJG Risk Management would conduct a review of BTS Wrestling’s then-current insurance coverages, advise as to the adequacy of the same, and obtain any coverages (renewing or new) approved by BTS Wrestling.

69. In the alternative, in or around September 2019, the oral communications by and between BTS Wrestling and AJG Risk Management established a valid and enforceable contract between BTS Wrestling and AJG Risk Management pursuant to which AJG Risk Management would conduct a review of BTS Wrestling’s then-current insurance coverages, advise as to the adequacy of the same, and obtain any coverages (renewing or new) approved by BTS Wrestling.

70. BTS Wrestling has performed its obligations under the contract with AJG Risk Management; specifically, it paid and/or caused to be paid to AJG Risk Management commission or other fees associated with the procurement of the Philadelphia Policy.

71. AJG Risk Management breached the Insurance Procurement Contract by, either individually or cumulatively:

- a. failing to conduct a sufficient review of BTS Wrestling's then-current insurance coverages,
- b. failing to sufficiently advise BTS Wrestling as to the adequacy of its then-current insurance coverages,
- c. failing to sufficiently identify any missing insurance coverages, and/or
- d. failing to obtain any missing insurance coverages,

all with respect to the loss of net revenue/income sustained by BTS Wrestling due to the cancellation of the 2020 annual fundraising event.

72. AJG Risk Management breached the Insurance Procurement Contract by failing to advise BTS Wrestling that it needed and by failing to obtain business interruption, event cancellation, and/or any other insurance coverage with respect to loss of net revenue/income from BTS Wrestling's annual fundraising event.

73. Business interruption, event cancellation, and/or other insurance coverage that would have covered BTS Wrestling's loss of net revenue/income from the cancellation of the fundraising event was commercially available.

74. AJG Risk Management knew or should have known that business interruption, event cancellation, and/or other insurance coverage that would have covered BTS Wrestling's loss of net revenue/income from the cancellation of the fundraising event was commercially available.

75. BTS Wrestling would have purchased such business interruption, event cancellation, and/or other insurance coverage to cover its loss of net revenue/income from the cancellation of the fundraising event if AJG Risk Management had identified that such coverage was available.

76. Philadelphia has denied coverage for BTS Wrestling's loss of net revenue/income and other costs and expenses from the cancellation of the 2020 annual fundraising event.

77. AJG Risk Management's breaches have, therefore, caused damages to BTS Wrestling in a loss of net revenue/income in an amount of approximately \$750,000, plus more than \$28,000 in extra costs and expenses.

COUNT II – NEGLIGENCE (SPECIAL RELATIONSHIP)

78. Plaintiff repeats and realleges as if set forth fully herein paragraphs 1 through 64.

79. For the reasons set forth in paragraphs 22 through 33, *inter alia*, a "special relationship" (as interpreted and defined under New York law) existed between BTS Wrestling and AJG Risk Management.

80. Because of this special relationship, AJG Risk Management owed duties to BTS Wrestling above and beyond the ordinary duty of an insurance broker's duty to procure requested coverage.

81. Because of this special relationship AJG Risk Management owed duties to BTS Wrestling to, either individually or cumulatively:

- a. conduct a reasonable and sufficient review of BTS Wrestling's then-current insurance coverages,
- b. reasonably and sufficiently advise BTS Wrestling as to the adequacy of its then-current insurance coverages,
- c. reasonably and sufficiently identify any missing insurance coverages, and/or
- d. failing to obtain any missing and necessary insurance coverages,

all with respect to the loss of net revenue/income sustained by BTS Wrestling caused by the cancellation of the 2020 annual fundraising event.

82. In September 2019, BTS Wrestling engaged AJG Risk Management to obtain appropriate and adequate insurance coverage for the entirety of its business operations, as it had each year since at least 2014.

83. In September 2019, and for at least several years before that time, AJG Risk Management was aware that BTS Wrestling earned approximately half of its annual revenue from the annual fundraising event.

84. AJG Risk Management breached its duties owed to BTS Wrestling by, either individually or cumulatively:

- a. failing to conduct a reasonable and sufficient review of BTS Wrestling's then-current insurance coverages,
- b. failing to reasonably and sufficiently advise BTS Wrestling as to the adequacy of its then-current insurance coverages,
- c. failing to reasonably and sufficiently identify any missing insurance coverages,
- d. failing to obtain any missing insurance coverages, and/or
- e. failing to act reasonably pursuant to any other duty imposed by the parties' special relationship,

all with respect to the loss of net revenue/income sustained by BTS Wrestling due to the cancellation of the 2020 annual fundraising event.

85. AJG Risk Management breached its duties owed to BTS Wrestling by failing to reasonably advise BTS Wrestling that it needed and by failing to obtain business interruption, event cancellation, and/or any other insurance coverage with respect to loss of net revenue/income from BTS Wrestling's annual fundraising event.

86. Business interruption, event cancellation, and/or other insurance coverage that would have covered BTS Wrestling's loss of net revenue/income from the cancellation of the fundraising event was commercially available.

87. AJG Risk Management knew or should have known that business interruption, event cancellation, and/or other insurance coverage that would have covered BTS Wrestling's loss of net revenue/income from the cancellation of the fundraising event was commercially available.

88. BTS Wrestling would have purchased such business interruption, event cancellation, and/or other insurance coverage to cover its loss of net revenue/income from the cancellation of the fundraising event if AJG Risk Management had reasonably identified that such coverage was available.

89. Philadelphia, the insurance company from which AJG Risk Management purportedly obtained insurance for BTS Wrestling, has denied coverage for BTS Wrestling's loss of net revenue/income from the cancellation of the 2020 annual fundraising event.

90. AJG Risk Management's breaches have, therefore, caused damages to BTS Wrestling in a loss of net revenue/income in an amount of approximately \$750,000, plus more than \$28,000 in extra costs and expenses.

COUNT III – BREACH OF FIDUCIARY DUTY (SPECIAL RELATIONSHIP)

91. Plaintiff repeats and realleges as if set forth fully herein paragraphs 1 through 65 and 78 through 90.

92. For the reasons set forth in paragraphs 22 through 33, *inter alia*, a "special relationship" (as interpreted and defined under New York law) existed between BTS Wrestling and AJG Risk Management.

93. Because of this special relationship, AJG Risk Management owed fiduciary duties to BTS Wrestling above and beyond the ordinary duty of an insurance broker's duty to procure requested coverage.

94. Because of this special relationship AJG Risk Management owed fiduciary duties of loyalty and honesty to BTS Wrestling.

95. In September 2019, BTS Wrestling engaged AJG Risk Management to obtain appropriate and adequate insurance coverage for the entirety of its business operations, as it had each year since at least 2014.

96. In September 2019, and for at least several years before that time, AJG Risk Management was aware that BTS Wrestling earned approximately half of its annual revenue from the annual fundraising event.

97. AJG Risk Management breached its fiduciary duties of loyalty and honesty owed to BTS Wrestling, either individually or cumulatively:

- a. by failing to put BTS Wrestling's interests above its own when reviewing BTS Wrestling's then-current insurance coverages,
- b. when advising BTS Wrestling as to the adequacy of its then-current insurance coverages,
- c. when identifying any missing insurance coverages, and
- d. in failing to obtain any missing insurance coverages,

all with respect to the loss of net revenue/income sustained by BTS Wrestling due to the cancellation of the 2020 annual fundraising event.

98. AJG Risk Management breached its fiduciary duties of loyalty and honesty owed to BTS Wrestling by failing to put BTS Wrestling's interests above its own when failing to

advise BTS Wrestling that it needed to obtain business interruption, event cancellation, and/or any other insurance coverage with respect to loss of net revenue/income from BTS Wrestling's annual fundraising event and/or in failing to obtain such coverages.

99. Business interruption, event cancellation, and/or other insurance coverage that would have covered BTS Wrestling's loss of net revenue/income from the cancellation of the fundraising event was commercially available.

100. AJG Risk Management knew or should have known that business interruption, event cancellation, and/or other insurance coverage that would have covered BTS Wrestling's loss of net revenue/income from the cancellation of the fundraising event was commercially available.

101. BTS Wrestling would have purchased such business interruption, event cancellation, and/or other insurance coverage to cover its loss of net revenue/income from the cancellation of the fundraising event if AJG Risk Management had reasonably identified that such coverage was available.

102. Philadelphia has denied coverage for BTS Wrestling's loss of net revenue/income from the cancellation of the 2020 annual fundraising event.

103. AJG Risk Management's breaches have, therefore, caused damages to BTS Wrestling in a loss of net revenue/income in an amount of approximately \$750,000, plus more than \$28,000 in extra costs and expenses.

WHEREFORE, Plaintiff, Beat the Streets Wrestling, Inc., respectfully requests the entry of judgment as follows:

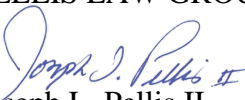
(1) On **Count I**, awarding damages in favor of Plaintiff in an amount to be determined at trial, but in no event less than \$778,000 plus interest and costs;

- (2) On **Count II**, awarding damages in favor of Plaintiff in an amount to be determined at trial, but in no event less than \$778,000, plus interest and costs;
- (3) On **Count III**, awarding damages in favor Plaintiff in an amount to be determined at trial, but in no event less than \$778,000 plus interest and costs; and
- (4) Granting Plaintiff any other or further relief that the Court deems just and proper.

Dated: September 4, 2020

Respectfully submitted,

PELLIS LAW GROUP, LLP


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*Attorneys for Plaintiff, Beat the Streets
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JURY DEMAND

Plaintiff, Beat the Streets Wrestling, Inc., hereby demands a trial by jury on all issues and matters so triable.

Dated: September 4, 2020

Respectfully submitted,

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