

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 5:23-cv-234

RALEIGH RADIOLOGY ASSOCIATES, INC.,

Plaintiff,

v.

ARTHUR J. GALLAGHER RISK
MANAGEMENT SERVICES, LLC,

Defendant.

AMENDED COMPLAINT

Plaintiff, pursuant to Fed. R. Civ. P. 15(a)(2), with Defendant's consent, amends its complaint to read alleged herein.

PARTIES

1. Plaintiff ("Raleigh Radiology"), is a corporation duly organized and existing under North Carolina law.
2. Raleigh Radiology's registered and principal offices are located in Wake County, North Carolina.
3. Raleigh Radiology is Wake County's first radiology practice. Raleigh Radiology's practice began with one doctor at Rex Hospital, and now has more than forty service providers in seven imaging centers located throughout the Triangle.
4. The Defendant in the original Complaint, Arthur J. Gallagher Risk Management Services, Inc., was an Illinois corporation with its principal office in Rolling Meadows, Illinois.
5. The Defendant in this Amended Complaint, Arthur J. Gallagher Risk Management Services, LLC, is a Delaware Corporation with its principal office in Rolling Meadows, Illinois.

6. This action was originally commenced in Wake County, North Carolina, Superior Court on March 31, 2023 by filing of a Complaint and issuance of a summons directed to Arthur J. Gallagher Risk Management Services, Inc. (“Risk Management Inc.”). After this action was commenced, Plaintiffs learned that, eleven days before the original Complaint was filed, Arthur J. Gallagher Risk Management Services, Inc., filed with the North Carolina Secretary of State an Application for Certificate of Withdrawal, disclosing that Risk Management Inc. had withdrew by merger and merged into Arthur J. Gallagher Risk Management Services, LLC (“AJG” or “Defendant”).

7. Before filing the original Complaint, Plaintiff had consulted the North Carolina Secretary of State’s web site to determine Risk Management Inc.’s registered agent for service of process. The Secretary of State’s web site at that time did not disclose Risk Management Inc.’s merger into AJG.

8. Raleigh Radiology had intended to amend its Complaint to substitute AJG as the defendant in lieu of Risk Management, Inc. It therefore had not served Risk Management Inc. as of April 28, 2023.

9. On April 28, 2023, AJG removed this action to this Court. (DE 1). AJG stated in its Notice of Removal that AJG was the proper entity to be named as the defendant in this action. *Id.* at 1, n. 1.

10. AJG is an insurance brokerage, risk management, and human resources and benefits consulting firm whose predecessor entities were founded in 1927 in Chicago, Illinois by Arthur J. Gallagher. AJG now has 39,000 employees and represents to clients and potential clients that it possesses a global network that allows it to provide its services in every state in the United States, including North Carolina, and more than 130 countries.

JURISDICTION AND VENUE

11. This court has jurisdiction over the parties to this action, pursuant to 28 § 1332.
12. Venue is proper in this Court, pursuant to 28 U.S.C. § 1441.

MATERIAL FACTS

AJG Undertakes and Succeeds in Procuring Replacement Cyber Insurance for Raleigh Radiology for the 2021-2022 Coverage Year

13. In early 2021, Raleigh Radiology, enticed by AJG’s promises of less expensive replacements for Raleigh Radiology’s insurance coverages, including group discounts, moved its insurance portfolio from its long-time broker to AJG.

14. In February 2021, AJG, acting as Raleigh Radiology’s insurance broker, agreed to provide Raleigh Radiology with insurance, risk management, and consulting services, including assistance with obtaining insurance coverage for medical professional liability, cyber, and regulatory risks. AJG continued to work as an insurance broker on Raleigh Radiology’s behalf to obtain insurance services through July 2022.

15. In the first quarter of 2021, AJG replaced Raleigh Radiology’s cyber insurance policies with primary and excess cyber insurance policies with combined coverage totaling \$10 million. At the time, Raleigh Radiology had an e-MD/MEDEFENSE Plus cyber insurance policy from Lloyd’s of London that was active from April 25, 2020 to April 25, 2021. That policy provided Raleigh Radiology with, among others, the following coverages:

- a. Third-party coverage for multimedia liability, security and privacy liability, privacy regulatory defense and penalties, Payment Card Industry Data Security Standard (“PCI DSS”) liability, and Telephone Consumer Protection Act of 1991 (“TCPA”) defense;

- b. First-party coverage for cyberevent costs, post-incident remediation costs, brand loss stemming from adverse media report or notification, system failure, dependent system failure, cyber extortion, cybercrime, reward expenses, and court attendance costs.

16. On February 9, 2021, AJG provided Raleigh Radiology with two coverage proposals – one primary policy proposal from 100% Lloyd’s of London (“Lloyd’s”) for a \$5 million Cyber+ policy, and one excess policy proposal from Hudson Excess Insurance Company (“Hudson”) for \$5 million of coverage in excess of the underlying 100% Lloyd’s policy. AJG asked Raleigh Radiology for authorization to bind both coverages.

17. On February 15, 2021, Raleigh Radiology signed an authorization for AJG to bind the 100% Lloyd’s policy and the Hudson policy. The policies had active dates from February 15, 2021 to February 15, 2022. The 100% Lloyd’s of London policy provided Raleigh Radiology with, among others, the following coverages:

- a. First-party coverage for Raleigh Radiology’s expenses following a cyber attack, including access to an approved panel of cyber response professionals and other service providers including legal counsel, cyber-forensics, public relations, victim notification, call center support, credit monitoring, and identity theft remediation;
- b. First-party coverage for Raleigh Radiology to recreate or restore data, software, or firmware that is corrupted or damaged by a malicious attack, including those perpetrated via malware, a denial of service attack, and/or social engineering;

- c. First-party coverage for Raleigh Radiology's loss of income and extra expense due to computer system disruption caused by malicious attack;
- d. First and third-party coverage for Raleigh Radiology in the event of fraudulent transfers arising from a social engineering incident or an unauthorized use of Raleigh Radiology's computer system; and,
- e. First-party coverage for Raleigh Radiology's expenses to mitigate or terminate cyber extortion or ransomware threats.

AJG Fails to Procure Renewed or Replacement Cyber Insurance for Raleigh Radiology for the 2022-2023 Coverage Year

18. AJG began its efforts to renew or replace the 100% Lloyd's policy and the Hudson policy with a meeting between AJG's Area President for the Healthcare Practice, Erik A. Burt, and Chief Operating Officer, Joanne Watson, in November 2021. At the meeting, the two discussed how to prepare for renewing Raleigh Radiology's medical professional liability, cyber, and regulatory insurance policies for the 2022-2023 coverage year.

19. In January 2022, AJG continued its efforts to renew or replace Raleigh Radiology's cyber insurance. First, Mr. Burt reached out to Ms. Watson to get additional information for an application to extend the 100% Lloyd's policy by 30 days, providing Raleigh Radiology with more time to either renew or replace that policy.

20. Next, AJG's Area Vice President for the Healthcare Practice, Dean Gereau, and AJG's Client Service Manager for the Healthcare Practice, Lauren Gray, were tasked with working with Raleigh Radiology's Watson to complete the relevant applications for renewal or replacement cyber insurance policies.

21. On January 10, 2022, Mr. Gereau asked Raleigh Radiology to complete AJG's Cyber Liability Application and Ransomware Supplemental Application (the "AJG Applications") to renew or replace the 100% Lloyd's policy.

22. On January 31, 2022, Ms. Gray asked Raleigh Radiology to complete the questionnaire Hudson required to renew Raleigh Radiology's excess cyber insurance policy (the "Corvus Application").

23. Thereafter, there was regular communication between AJG and Raleigh Radiology to complete the applications. Raleigh Radiology responded promptly to all requests for information from AJG.

24. On January 31, 2022, Raleigh Radiology (through Ms. Watson) presented AJG with a completed and signed AJG Application. Raleigh Radiology (again, through Ms. Watson) sent AJG a completed Corvus Application on February 14, 2022.

25. Neither Mr. Gereau nor Ms. Gray nor anyone else at AJG responded to Raleigh Radiology's emails transmitting the completed applications to renew or replace Raleigh Radiology's soon-to-expire primary and excess cyber insurance policies.

26. Having received no response indicating that the coverage was not being bound or renewed, Raleigh Radiology understood that they had taken all steps necessary to provide AJG with the information necessary for AJG to protect Raleigh Radiology against any lapse in its necessary cyber risk coverages.

27. At 12:01 am on February 15, 2022, Raleigh Radiology's coverage under its 2021-2022 cyber and cyber excess policies expired. At that time, AJG had not warned Raleigh Radiology and Raleigh Radiology was not aware that it was without cyber coverage of any kind.

Raleigh Radiology Suffers a Ransomware Attack

28. On or about February 14, 2022, and unbeknownst to Raleigh Radiology, an unauthorized threat actor gained access to Raleigh Radiology's network.

29. Between February 14, 2022, and February 17, 2022, the threat actor deployed various tools to gain further access to multiple Raleigh Radiology systems.

30. On February 17, 2022, the threat actor deployed ransomware on selected Raleigh Radiology systems, encrypting critical files and leaving ransom messages demanding payment.

31. Following this discovery, on the morning of February 17, 2022, Ms. Watson emailed Mr. Burt, Mr. Gereau, and Ms. Gray requesting that someone contact her immediately. Ms. Watson reached out to AJG's representatives thinking that Raleigh Radiology could access an equivalent to the \$5 million cyber liability insurance that had been in force the year prior, or at least that it could access the Hudson excess cyber liability that Raleigh Radiology had completed the application to renew given the time of the incident.

32. On the morning of February 17, 2022, Mr. Gereau and Ms. Watson spoke by phone. This conversation was the first time that anyone from Raleigh Radiology was informed that its coverage may have lapsed.

33. During this conversation, Raleigh Radiology learned, for the first time, that AJG had not:

- a. procured the extension of the Lloyd's policy that Mr. Burt emailed Ms. Watson about;
- b. obtained a renewal of the Hudson excess policy; or
- c. obtained an in-effect replacement for either the Lloyd's policy or the Hudson excess policy.

34. Rather than having coverage under the insurance that AJG represented that it would procure for Raleigh Radiology, Raleigh Radiology was left almost completely on its own to respond to the cyber incident.

35. The only coverage that AJG was able to offer was \$50,000 in cyber coverage under a professional liability policy from Tokio Marine HCC. Other than this amount, Raleigh Radiology had no coverage for losses stemming from the cyber incident as a result of AJG's failure to act.

36. From February 17, 2022 to March 25, 2022, Raleigh Radiology worked with its selected professionals to remediate the cyber incident and restore its systems to normal operation.

37. In order to remediate the damage caused by the cybercriminals, Raleigh Radiology's selected professionals had to identify and contain the attack; conduct a forensic analysis; establish interim operations to allow Raleigh Radiology to continue functioning while the attack was remediated; restore from backups; and test that all remediation efforts were successful.

38. Raleigh Radiology also had to retain legal advisors to evaluate and provide counsel regarding its obligations.

39. Fortunately, the professionals that Raleigh Radiology retained saw no evidence that data was exfiltrated from the compromised systems or that cybercriminals sought to exploit the data beyond encrypting it in place.

40. Raleigh Radiology paid over \$330,000.00 in investigation, remediation and incident response costs.

41. Raleigh Radiology lost an estimated \$685,000.00 in net revenue from reduction in patients and procedures due to the ransomware attack.

42. Raleigh Radiology incurred expenses of more than \$5,000.00 to replace certain computer equipment as part of its remediation efforts after the ransomware attack.

43. Raleigh Radiology had insufficient insurance coverage for these costs as a result of AJG's failure to secure 2022-2023 coverage.

**FIRST CLAIM FOR RELIEF
(Negligence)**

44. Raleigh Radiology re-alleges and incorporates herein by reference the allegations of all prior and subsequent Paragraphs of this Complaint.

45. AJG, an insurance broker, undertook to procure coverage against a designated risk (cyber attack) for its client, Raleigh Radiology.

46. AJG, acting as Raleigh Radiology's insurance broker, was negligent in the following particulars:

- a. It failed to obtain replacement coverage for the Lloyd's and Hudson policies before they expired, while knowing Raleigh Radiology was relying on and trusting it to do so;
- b. It failed to warn Raleigh Radiology that AJG was not going to procure or was unable to procure replacement coverage for Raleigh Radiology before the Lloyd's and Hudson policies expired;
- c. It failed to advise or recommend to Raleigh Radiology that it should engage other agents or brokers to seek coverage because AJG was not going to obtain or was unable to obtain replacement coverage for Raleigh Radiology before the Lloyd's and Hudson policies expired;

- d. It failed to exercise its best efforts on Raleigh Radiology's behalf to obtain replacement coverage for the Lloyd's and Hudson policies before they expired; and
- e. In such other and further particulars as may be adduced through discovery and at trial.

47. As a result of AJG's negligence, Raleigh Radiology sustained damages in excess of \$25,000.00.

**SECOND CLAIM FOR RELIEF
(Breach of Contract)**

48. Raleigh Radiology re-alleges and incorporates herein by reference the allegations of all prior and subsequent Paragraphs of this Complaint.

49. AJG contracted with Raleigh Radiology to provide medical malpractice, cyber, and regulatory insurance risk management services and to obtain policies in those areas.

50. AJG breached its contract in at least the following particulars:

- a. It failed to obtain replacement coverage for the Lloyd's and Hudson policies before they expired, while knowing Raleigh Radiology was relying on and trusting it to do so;
- b. It failed to exercise its best efforts on Raleigh Radiology's behalf to obtain replacement coverage for the Lloyd's and Hudson policies before they expired; and
- c. In such other and further particulars as may be adduced through discovery and at trial.

51. As a result of AJG's breach of contract, Raleigh Radiology sustained damages in excess of \$25,000.00.

**THIRD CLAIM FOR RELIEF
(Breach of Fiduciary Duty)**

52. Raleigh Radiology re-alleges and incorporates herein by reference the allegations of all prior and subsequent Paragraphs of this Complaint.

53. At all times relevant to this Complaint, AJG was Raleigh Radiology's insurance broker.

54. AJG owed Raleigh Radiology a fiduciary duty in procuring insurance to replace the Lloyd's policy and to either renew or replace the Hudson policy.

55. Raleigh Radiology had requested AJG to procure this insurance.

56. AJG breached its fiduciary duty to Raleigh Radiology, by, among other things:

- a. Undertaking to procure a \$5 million primary cyber insurance policy and a \$5 million excess cyber insurance policy for Raleigh Radiology and failing to procure such policies;
- b. Failing to give notice to Raleigh Radiology that it could not procure such policies; and,
- c. In other and further particulars to be adduced through discovery and at trial.

57. Raleigh Radiology has sustained substantial damages as a result of AJG's breaches of its fiduciary duties to Raleigh Radiology.

58. Raleigh Radiology is entitled to recover damages from AJG for its breaches of its fiduciary duties in excess of \$25,000.

JURY DEMAND

Raleigh Radiology, pursuant to G.S. § 1A-1, Rule 38(b), hereby demands a trial by jury in this action on all claims so triable of right.

WHEREFORE, Raleigh Radiology respectfully prays the Court that:

1. Raleigh Radiology have and recover of Defendant compensatory damages in excess of \$25,000.00;
2. Raleigh Radiology have and recover interest on all compensatory damages awarded in this action, from the date this action is commenced until the judgement is satisfied, pursuant to G.S. § 24-5;
3. The costs of this action be taxed against Defendant; and,
4. Raleigh Radiology have such other and further relief as the Court shall deem just and proper.

This the 4th day of May, 2023.

BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, L.L.P.

By: /s/ Gary S. Parsons
Gary S. Parsons
N.C. State Bar No. 7955
S. Wilson Quick
N.C. State Bar No. 44725
Attorneys for Plaintiff
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 573-6241
Facsimile: (336) 232-9040
Email: gparsons@brookspierce.com
Email: wquick@brookspierce.com

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will serve the following users:

Christopher J. Blake
J. Matthew Gorga
Nelson Mullins Riley & Scarborough, LLP
301 Hillsborough Street, Suite 1400
Raleigh, NC 27603
Chris.blake@nelsonmullins.com
Matt.gorga@nelsonmullins.com

This the 4th day of May, 2023.

/s/ Gary S. Parsons
Gary S. Parsons