

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

IRONSHORE SPECIALTY)	
INSURANCE COMPANY,)	
)	JURY DEMAND
Plaintiff,)	
)	Civil Action No. _____
v.)	District Judge _____
)	Magistrate Judge _____
TEAM HEALTH HOLDINGS, INC.,)	
)	
Defendant.)	
)	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Ironshore Specialty Insurance Company (“Ironshore”) brings this complaint for declaratory judgment in its favor and against Defendant Team Health Holdings, Inc. (“Team Health”). In support thereof, Ironshore states and alleges as follows:

NATURE OF THE CASE

1. This is an insurance coverage dispute. Ironshore seeks a declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, that its E&O – Miscellaneous Professional Liability Excess Policy, No. 002711900, for the period of March 31, 2016 to March 31, 2017 (“Ironshore Excess Policy”) does not provide coverage for Team Health’s defense of or the settlement it entered into with the United States Government and certain relators regarding false claims for payment to Medicare as a result of Team Health’s failure to comply with the conditions precedent in the policy and various exclusions that operate to limit or bar coverage. A copy of the Ironshore Excess Policy is attached as Exhibit “A.”

2. The Ironshore Excess Policy sits excess of and follows form to the AIG Specialty Risk Protector Policy, policy number 01-285-30-91 (“AIG Policy”), for the policy period of

March 31, 2016 to March 31, 2017. A copy of the AIG Policy is attached as Exhibit “B”.

3. As a condition precedent to coverage under the Ironshore Excess Policy, Team Health is required to provide notice to Ironshore in accordance with the notice provisions of the Ironshore and AIG Policies. Further, the Ironshore Excess Policy clearly denotes that notice of a Claim must be made to Ironshore Specialty Insurance Company’s office in New York, New York.

4. In addition, the AIG Policy, to which the Ironshore Policy follows form, explicitly states that Team Health is required to seek and obtain consent from its insurers, including Ironshore, prior to it assuming any financial obligation, including defense costs, or incurring any cost to settle any Claim.

5. Despite the AIG Policy’s clear language, and that of Ironshore’s Excess Policy, Team Health failed to satisfy both the notice and consent conditions with regard to Ironshore. Despite its noncompliance, Team Health contends that Ironshore is nonetheless required to provide coverage under the Ironshore Excess Policy because it provided notice – albeit late – and/or to AIG, and hinted that a settlement may occur at some point in the future – despite never seeking or obtaining consent from Ironshore before entering into the settlement.

6. Further, the underlying litigation arises from and is based upon fraudulent conduct by Team Health in submitting false claims to federal healthcare programs in order to receive payments for services that were not provided and/or were medically unnecessary. Such conduct is not covered under the Ironshore Excess Policy and is not insurable under the law.

7. For the reasons that follow in this Complaint, Ironshore seeks a declaration that coverage under the Ironshore Excess Policy is not available to Team Health for its defense and settlement of the underlying action.

8. Ironshore’s grounds for declaratory relief include: (1) Team Health failed to provide timely notice under the Notice and Obligation provision in the AIG Policy and under the Ironshore Excess Policy; (2) Team Health failed to obtain written consent from Ironshore to

enter into the Settlement with the United States Government and certain relators and incurred defense costs; and (3) that coverage cannot be afforded for fraudulent conduct under the Policies and is, in fact, uninsurable under Tennessee law.

THE PARTIES

9. Plaintiff Ironshore Specialty Insurance Company is an Arizona corporation with its principal place of business in Massachusetts.

10. Upon information and belief, Defendant, Team Health Holdings, Inc. is a national healthcare organization that consists of holding companies, operating subsidiaries, affiliated professional entities, and individuals that contracts with hospitals, hospital systems or other clinical care entities to provide medical staffing services at various medical facilities, including hospital emergency departments. Team Health is a Delaware corporation with its principal place of business located in Knoxville, Tennessee.

JURISDICTION AND VENUE

11. Ironshore brings this action pursuant to 28 U.S.C. §§ 1332, 2201 and 2202.

12. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the matter in controversy exceeds, exclusive of interests and costs, the sum of seventy-five thousand dollars (\$75,000.00).

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a). Team Health resides in this jurisdiction and regularly conducts business in this district.

14. Team Health is subject to personal jurisdiction in Tennessee.

BACKGROUND

The Ironshore Excess Policy

15. The Ironshore Excess Policy provides an aggregate liability limit of \$10,000,000, for all Loss under all Coverages combined, in excess of the \$10,000,000 liability limit provided by the AIG Policy and a \$1,000,000 self-insured retention.

16. On the declaration page, The Ironshore Excess Policy clearly states in all capital letters: **THIS POLICY IS A CLAIMS MADE POLICY**. Exhibit A, Declarations.

17. The Ironshore Excess Policy follows from to the AIG Policy as follows:

In consideration of the payment of the premium and in reliance upon all statements made in the application for this Policy and the Followed Policy, including the information furnished in connection therewith, whether directly or through public piling, and subject to all terms, definitions, conditions, exclusions and limitations of this policy, the Insurer agrees to provide insurance coverage to the Insureds in accordance with the terms, definitions, conditions, exclusions and limitations of the Followed Policy, except as may be otherwise provided in this Policy.

Exhibit A, Section I.

18. The Ironshore Excess Policy defines the **Followed Policy**¹ as “Specialty Risk Protector”, policy number 01-285-30-91, *i.e.*, the AIG Policy, and the insurer of the **Followed Policy** as “AIG Specialty Insurance Company” (“AIG”). Exhibit A, Declarations.

19. Importantly, as a condition precedent to coverage under the Ironshore Excess Policy, the Ironshore Excess Policy requires notice to Ironshore in accordance with the notice provisions of the AIG Policy:

As a condition precedent to their rights under this policy, the Insureds shall give to the Insurer as soon as practicable written notice of any Claim in accordance with the terms, conditions, definitions, exclusions and limitations of the Followed Policy.

Exhibit A, Section IV(C).

20. Further, the Ironshore Excess Policy makes it clear that Team Health is required to notify Ironshore of a Claim, Wrongful Act or Loss as follows:

¹ Bold terms are defined in the policies.

ITEM 9. NOTICE TO INSURER

A. Notice of Claim, Wrongful Act or Loss:

Send to Company Indicated Above
c/o Ironshore Insurance Services LLC.
One State Street Plaza
8th Floor
New York, NY 10004

Exhibit A, Declarations.

The AIG Policy

21. The AIG Policy in turn contains a Notice and Obligation Provision that states in relevant part:

6. NOTICE

- (a) The **Insureds** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice to the **Insurer** of any **Claim** made against an **Insured** or a **First Party Event** *as soon as practicable after*:
- (1) any personnel in the office of any member of the **Control Group** first becomes aware of the **Claim**; or
 - (2) any **First Party Event** commences or, solely with respect to a **Discovery Coverage Section**, is discovered.

Notwithstanding the foregoing and regardless of whether any personnel described in (1) above has become aware, in all events each **Claim** under a **Claims-Made and Reported Coverage Section** must be reported *no later* than either:

- (1) *forty-five (45) days after the end of the Policy Period*; or
- (2) the end of any applicable **Discovery Period**....

Id., General Terms and Conditions, 6 (emphasis added).

22. Therefore, under the Ironshore Policy, Team Health was required to report any **Claim** to Ironshore no later than forty-five (45) days after the March 31, 2017 Policy Period end date – so on or before May 15, 2017.

23. Further, Team Health had specific obligations before incurring costs and entering into a settlement, which included, in relevant part the following:

7. INSURED'S OBLIGATIONS

In connection with all **Claims** and **First Party Events** under this policy, each **Insured** agrees to the following:

- (a) such **Insured** shall send the **Insurer** copies of all demands, suit papers, other related legal documents and invoices for **Defense Costs** received by such **Insured**, as soon as practicable; . . .
- (c) such **Insured** shall cooperate with and help the **Insurer** and/or any counsel appointed pursuant to the terms of this policy, including, without limitation, as follows:
 - (1) by not admitting liability;
 - (2) in making settlements;
- (d) unless required to do so by law, Insureds shall not, without the Insurer's prior written consent:
 - (1) assume any financial obligation or incur any cost unless specifically allowed to settle any Claim on behalf of all Insureds within the retention pursuant to a Coverage Section.
 - (2) take any action, or fail to take any required action which prejudices the Insurer's rights under this policy. . . .

Exhibit B, General Terms and Conditions, 7.

24. Indeed, the AIG Policy, to which the Ironshore Excess Policy follows form, specifically requires that Team Health obtain *prior written* consent from its Insurers, including Ironshore, before entering into a settlement to resolve any **Claim**.

25. In addition, the AIG Policy, and, therefore, Ironshore Excess Policy, provides Ironshore with certain rights and duties as to the Team Health's defense:

DEFENSE

- (a) The **Insurer** has the right and duty to defend a **Suit** for a **Wrongful Act**, even if the **Suit** is groundless, false or fraudulent.

Exhibit B, Insuring Agreements.

26. Further, the AIG Policy contains various exclusions that bar coverage. Under Endorsement #2, 6.MB(b), with respect to the SPL Coverage Section, the policy does not cover **Loss** in connection with a **Claim** made against an **Insured** alleging, arising out of, based upon or attributable to any **Wrongful Act** committed with the knowledge that it was a **Wrongful Act**.

27. Finally, under the AIG Policy, with respect to the coverage afforded under the Medical Billing E&O Coverage Endorsement, for **Billing Wrongful Acts, Loss** means “settlements” and includes “civil fines or penalties imposed by a government entity (including but not limited to multiplied portion of damages arising from a **Billing Wrongful Act** and those civil fines and penalties imposed pursuant to the False Claims Act (31 U.S.C. §§3729(a) – 3733) . . .”, but does not include and there is no coverage for: (1) the return or restitution of fees, profits, charges or benefit payments to any Commercial Payor or government health benefit payor or program; (2) punitive, exemplary, aggravated and multiple damages (unless coverage is expressly provided in the definition of Loss); (3) non-pecuniary relief; and (4) matters which are deemed uninsurable under the law. Exhibit B, End. #2.

Underlying Litigation and Notice to Insurers

28. On April 25, 2016, certain relators filed a qui tam action in the United States District Court for the Eastern District of Texas captioned *United States ex rel. Hernandez, et al. v. TeamHealth Holdings, Inc., et al.*, No. 2: I 6-cv-00432-JRG, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(6).

29. On October 25, 2016, Team Health received a civil investigative demand (“CID”) from the U.S. Department of Justice, pursuant to the Federal False Claims Act.

30. The CID stated that it was being issued pursuant to the False Claims Act, 31 U.S.C. §§ 3729-3733 related to allegations and concerns that Team Health “knowingly submitted or caused to be submitted false claims to federal healthcare programs in order to receive payment services that were not provided and/or were medically unnecessary.” A copy of the CID is attached as Exhibit “C”.

31. Later that same day, Team Health provided notice of the CID to AIG under the AIG Policy. Team Health did not provide notice to Ironshore.

32. On January 6, 2017, AIG accepted the CID as a Claim pursuant to Endorsement #2 of the AIG policy subject to a reservation of rights on a number of issues including under Endorsement #2, Clause 6.MB(b) which excludes coverage in connection with a Claim made against an insured alleging, arising out of, based upon or attributable to any Wrongful Act committed with the knowledge that it was a Wrongful Act.

33. On March 31, 2017, the Ironshore Excess Policy expired.

34. On June 28, 2018, the United States filed a notice of election to decline intervention in the realtor's Qui Tam Complaint.

35. On July 2, 2018, the court partially unsealed the underlying Complaint.

36. On September 24, 2018, Team Health was served with the relator's Complaint.

37. One day later, on September 25, 2018, Team Health provided AIG with a copy of the Complaint. Team Health did not provide a copy of the Complaint to Ironshore.

38. The Relator Complaint stated that the Relators were bringing the action pursuant to the *qui tam* provisions of the Federal False Claims Act 31, U.S. C. § 3729 *et. seq.* ("FCA"), and similar *qui tam* provisions under various state false claims acts – including the Tennessee Medicaid False Claims Act, Tenn. Code. §§ 71-5-181 *et. seq.*

39. The realtors claimed that Team Health used two fraudulent schemes – the "Shared Visit Scheme" and the "Critical Care Scheme" – to systematically submit false claims to the Centers for Medicare and Medicaid Services ("CMS") for reimbursement for services performed by healthcare providers at Team Health emergency rooms. Further, the relators averred that Team Health intentionally carried out these schemes to unlawfully obtain grossly overpaid reimbursement amounts from CMS.

40. The realtor's filed a First Amended Complaint on November 12, 2018. Team Health did not provide a copy of the Amended Complaint to Ironshore either.

41. Second and Third Amended Complaints were filed by the relators on September 19, 2019 and September 15, 2020, respectively. A copy of the Third Amended Complaint is attached as Exhibit “C.” Team Health did not provide copies of the Second or Third Amended Complaints to Ironshore.

42. On April 7, 2021 – five years after the realtors initially instituted suit, and after Team Health received the CID and reported the CID claim to AIG – Team Health wrote to Ironshore advising that it anticipated a “Loss in connection with the dispute as defined in the Relator Action that would exceed the underlying coverage and, as a result, believed excess coverage under the Ironshore Excess Policy was expected.”

43. In the April 7, 2021 letter, Team Health claimed that “Ironshore is on notice of the dispute, a qui tam case captioned *U.S. ex rel. Caleb Hernandez & Jason Whaley, relators, et al. v. Team Health Holdings Inc.; Team Finance, L.L.C; Team Health Ins.; Ameriteam Services, L.L.C.; HCFS Health Care Financial Services, L.L.C.; & Quantum Plus, L.L.C. (d/b/a TeamHealth West)*, no. 2:16-cv-00432-JRG (E.D. Tex.) (“*Hernandez*”).²

44. After receiving this communication, Ironshore asked questions and requested information relating to the Claim being asserted and the timeline of events that occurred with regard to the CID and Relator Action.

45. In response to Ironshore’s inquiries, on May 13, 2021, Team Health advised Ironshore that, over four years prior, it had received the CID and that “Team Health provided notice of the CID to AIG Specialty Insurance Company (“AIG”) under policy number 01-285-30-91 the same day.”

46. Team Health confirmed that it had promptly submitted the relator Complaint to AIG on September 24, 2018 but said nothing about whether notice was also provided to

² Team Health contends that it provided notice through a Loss Run on June 5, 2017 sent by Team Health’s broker, Alliant Insurance Services, during the underwriting of the 2017-2018 renewal policy. The Loss Run was sent to Ironshore’s underwriters 66 days after the expiration of the 2016-2017 Policy.

Ironshore at the same time.

47. Nowhere in the May 13, 2021 letter does Team Health provide any details related to any settlement discussions that were taking place; nor did it request consent from Ironshore related to any settlement Team Health was contemplating entering into at that time.

48. One month later, on June 14, 2021, the U.S. Government, relators and Team Health entered into a Settlement Agreement.

49. On June 29, 2021, after the Settlement Agreement was executed, Team Health sent Ironshore a copy of the fully executed June 14, 2021 Settlement Agreement along with confirmation of payment of the settlement and an Order of Dismissal dated June 25, 2021.

50. The Settlement Agreement set forth the claims asserted by the United States and relators noting that both had generally averred that Team Health knowingly submitted or caused to be submitted false claims for payment to Medicare by instituting and executing the two schemes and that in furtherance of the two schemes, Team Health made, used or caused to be made or used, false records and statements material to false or fraudulent claims.

51. The Settlement Agreement provided, in relevant part, that Team Health would pay the United States \$42,500,000 which was comprised of, in part, "\$21,250,000 in restitution." The United States would then pay the Relators \$12,112,500. Further, Team Health agreed to pay the relators' attorneys' fees and costs in the amount of \$5,500,000.

**COUNT I - DECLARATORY JUDGMENT
NOTICE AND CONSENT**

52. Ironshore incorporates the foregoing paragraphs as though fully set forth herein.

53. The Policies require written notice be provided to Ironshore, as a condition precedent to Team Health's coverage, "as soon as practicable" but in no event later than 45 days after the expiration of the policy period. Further, the Ironshore Excess Policy clearly denotes where Team Health is to provide written notice of a Claim, Wrongful Act or Loss:

Send to Company Indicated Above
c/o Ironshore Insurance Services LLC.
One State Street Plaza
8th Floor
New York, NY 10004

54. The Policies also explicitly state that Team Health is required to seek and obtain consent from its insurers, including Ironshore, *prior* to it assuming any financial obligation, including defense costs, or incurring any cost to settle any Claim.

55. Ironshore and Team Health disagree about whether Team Health provided notice to Ironshore in accordance with the Policies and also disagree about whether Team Health obtained prior written consent for the defense costs and settlement for which it now seeks coverage as required under the Policies.

56. Ironshore contends that Team Health did not comply with the notice provisions in the policies and never requested Ironshore's consent for defense costs or to enter into any settlement with the United States and relators.

57. Therefore, Ironshore respectfully requests a declaration that Team Health has failed to meet the notice and consent conditions precedent to coverage and, therefore, coverage does not exist for its claim.

58. A judicial decision is necessary and appropriate at this time so that the parties may ascertain their rights under the Policy.

COUNT II – DECLARATORY JUDGMENT
THE UNDERLYING CONDUCT CONSTITUTED FRAUDULENT OR INTENTIONAL
ACTS WHICH ARE UNINSURABLE UNDER THE POLICY, PUBLIC POLICY AND
TENNESSEE LAW

59. Ironshore incorporates the foregoing paragraphs as though fully set forth herein.

60. The CID stated that Team Health “knowingly submitted or caused to be submitted false claims to federal healthcare programs in order to receive payment services that were not provided and/or were medically unnecessary.”

61. The relator Complaints averred generally that Team Health “fraudulently requires

its providers to falsely documents that critical care services were provided within patient medical records when critical care services were not provided or were not medically necessary.”

62. Coverage does not exist under the Ironshore Excess Policy and under public policy and Tennessee law for Team Health’s claim as it arises from fraudulent, intentional, willful and wanton conduct.

63. A judicial decision is necessary and appropriate at this time so that the parties may ascertain their rights under the Policy.

PRAYER FOR RELIEF

WHEREFORE, pursuant to 28 U.S.C. § 2201, *et seq.*, Plaintiff Ironshore Specialty Insurance Company requests the Court enter judgment in its favor as follows:

A. A judgment declaring that Team Health has failed to meet the conditions precedent to coverage under the Ironshore Excess Policy by failing to provide timely notice of the Claim;

B. A judgment declaring that Team Health has failed to meet the conditions precedent to coverage under the Ironshore Excess Policy by failing to obtain Ironshore’s consent to the Settlement Agreement Team Health entered into with the United States and Relators or the defense costs incurred related to its Claim;

C. A judgment that coverage does not exist under the Ironshore Excess Policy and under public policy and Tennessee law for Team Health’s claim as it arises from fraudulent, intentional, willful and wanton conduct;

D. Award Ironshore all costs and expenses incurred in this matter, and grant any such other and further relief that this Court deems just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Ironshore respectfully demands a jury for trial to take place in this matter on an early date upon all issues which cannot be determined as a matter of law.

Respectfully Submitted:

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